

ANIMAL RIGHTS LAW REPORTER

was published from January 1980 – October 1983.

Publisher:

Society for Animal Rights, Inc.

Editor:

Professor Henry Mark Holzer

This document contains all issues of this publication.

ANIMAL RIGHTS LAW REPORTER

Communicating Current Developments in Animal Rights Law

Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

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Professor Henry Mark Holzer, Editor

JANUARY 1980

IN THE COURTS

Each issue of ARLR will contain information about animal rights cases currently in the courts. ARLR will try to provide as much information about each case as possible, including: its title, the jurisdiction where it is pending, the names and addresses of counsel, and the nature and theory of the plaintiff's claim and the defense to it.

HOW MUCH IS A PET WORTH?

Among the most important animal rights legal issues today is the emerging question of the measure of damages for the intentional or negligent destruction of a pet.

Usually, in the past, if an aggrieved pet owner sued, either the complaint would be dismissed for failure to state a claim upon which relief could be based or, if the pleading was sustained and eventually liability was established, the recovery would be only for nominal damages. Needless to say, no one who loses a pet through the intentional or negligent conduct of a tortfeasor can adequately be recompensed, no matter what the amount of the monetary recovery, and usually these kinds of cases are not brought with recompense in mind. On the contrary, the underlying motive has been to punish the offender, both in the name of justice, and in the hope that next time someone else's pet will be spared because of the lesson that has been taught by the successful lawsuit. Indeed, there can be no doubt that if causes of action can be developed which can survive dismissal motions, and if a substantial measure of damages for the intentional or negligent destruction of a pet can become the norm rather than the exception, the lives of many pets can be saved. The object of this kind of litigation is to make it too costly to kill someone's pet intentionally or negligently.

Recently, there have been some important developments in this important area of animal rights law.

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

• In Banaszczek v. Kowalski, 10 D. & C. 3d (Pennsylvania District and County Reports) 94 (1979), compensation was sought for emotional distress and mental anguish as the result of the alleged shooting of two dogs. Though a case of first impression in Pennsylvania, the court relied on Florida and Texas decisions to uphold the complaint and allow the plaintiff to seek a recovery "for emotional distress in the instance of the malicious destruction of a pet..." This was, according to the court, "the more enlightened view."

• On behalf of two clients, attorney Hugo L. Ricci, Jr., 578 Charles Street, Providence, Rhode Island 02904 has commenced an action in the Providence, Rhode Island, Superior Court, charging two veterinarians and an animal hospital with negligently causing the death of a pet dog. The complaint alleges that the plaintiffs "suffered great emotional strain, loss and care and affection for their beloved animal, the loss of enjoyment and association with the animal in question, as well as the tremendous loss of sentimental value."

• For several years, an action entitled Alice Koller v. Ambassador Animal Hospital, Inc., et al., has been pending in the Circuit Court of Montgomery County, Maryland. Having survived an attempt to dismiss the complaint, the Koller case will be tried early in 1980. It seeks \$50,000 in compensatory and punitive damages for the negligence of the defendants.

• A very significant case is Cole v. Creamer, et al., which was brought in the United States District Court, District of Maine. The action for compensatory and punitive damages was based on a police officer's alleged killing of two dogs belonging to Cole. Imaginatively, Cole sued under the federal Civil Rights Act. The district judge, on a motion to dismiss the complaint, held, as to the federal claim, that (1) the dogs were "property" within the meaning of the Fourteenth Amendment, (2) they were of more than minimal value, (3) Cole adequately pleaded a federal civil rights violation, and (4) Creamer's immunity as a police officer was qualified and did not protect him from liability if he acted in "bad faith" and without probable cause. As to Cole's state claim, Maine law apparently provides a civil remedy for "the full value" of a dog unlawfully killed, and the court held that this count of the complaint was sufficient. Cole's next hurdle was the "amount in controversy" problem. Plaintiff sought damages totaling \$22,000: \$2,000 for the loss of the "possession and companionship of the dogs"; \$10,000 for his mental and emotional suffering resulting from Creamer's act; and \$10,000 punitive damages." The court could find no Maine cases regarding valuation of dogs, but cited to the general rule "that while an owner may recover the 'full market value' of a dog, he may not recover for the dog's sentimental value." For this proposition, he cited a West Virginia case, Corpus Juris Secundum, and an ALR 3d annotation. However, relying on the Florida and Texas cases cited in Banaszczek, the judge recognized an exception in situations where the defendant is charged with having acted "wantonly or maliciously." Since the complaint did plead that Creamer acted in that manner, the court upheld the \$2,000 claim. As to the \$10,000, the same "wanton and malicious" allegations carried Cole over the bar to collecting for emotional suffering. The same

was held as to the \$10,000 punitive damages claim. Unfortunately, although the plaintiff had survived a motion to dismiss and, in the process, established important principles for animal rights law, the case never went to trial. It was settled, with the plaintiff receiving a modest sum.

• A fascinating measure of damages case was decided in March of 1979 in the Civil Court of the City of New York (Corso v. Crawford Dog and Cat Hospital, Inc., 97 Misc. 2d 530 (1979)). The plaintiff alleged that the defendant had wrongfully disposed of her deceased dog and failed to turn its remains over to plaintiff for burial. Indeed, the allegation was that when plaintiff opened what was supposed to be her dog's casket, she found instead the body of a dead cat. Plaintiff sustained no special damages, but in the nonjury trial described her mental distress and anguish in detail. The relevant portion of Judge Seymour Friedman's opinion follows:

"The question before the court now is twofold. (1) Is it an actionable tort that was committed? (2) If there is an actionable tort is the plaintiff entitled to damages beyond the market value of the dog?

"Before answering these questions the court must first decide whether a pet such as a dog is only an item of personal property as prior cases have held (Smith v. Palace Transp. Co., 142 Misc. 93). This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.

"As in the case where a human body is withheld (Zaslowsky v. Nassau County Public Gen. Hosp., 27 Misc. 2d 379; Diebler v. American Radiator & Std. Sanitary Corp., 196 Misc. 618), the wrongfully withholding or, as here, the destruction of the dog's body gives rise to an actionable tort.

"In ruling that a pet such as a dog is not just a thing I believe the plaintiff is entitled to damages beyond the market value of the dog. A pet is not an inanimate thing that just receives affection; it also returns it. I find that plaintiff Ms. Corso did suffer shock, mental anguish and despondency due to the wrongful destruction and loss of the dog's body.

"She had an elaborate funeral scheduled and planned to visit the grave in the years to come. She was deprived of this right.

"This decision is not to be construed to include an award for the loss of a family heirloom which would also cause great mental anguish. An heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree or losing a family picture album is not actionable. But a dog -- that is something else.

"To say it is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept.

"Accordingly, the court finds the sum of \$700 to be reasonable compensation for the loss suffered by the Plaintiff." (97 Misc. 2d at 531, emphasis added.)

- An interesting statute related to the measure of damages problem is Section 491 of the California Penal Code: It expressly declares dogs to be personal property, and there is case law interpreting the section concerning the value of a dog's life.

- Among the bibliographical materials in our "In the Legal Literature" section are a few law review articles related to the measure of damages problem.

The measure of damages issue is of continuing interest to SAR and ARLR, so we would greatly appreciate being kept abreast of all developments. We will endeavor to follow all the cases that we are aware of, and will publicize all others that are brought to our attention.

STATE PROTECTION OF ENDANGERED SPECIES

California's Endangered Species law (Penal Code §630o) is in trouble. Ironically, the danger to it comes from an interpretation of federal laws which were designed to protect endangered species.

The Attorney General of the State of California has apparently concluded that whenever the federal Endangered Species Act allows the importation of a species of animal product listed in Section 650o of the California law --alligators, green sea turtles, elephants, or any other -- there is automatically a conflict between federal and California law, and the more restrictive state provision is preempted and overridden.

The result, we are informed, is that California's Attorney General has not enforced his state's Endangered Species Act in every case where he could have.

For example, the California law appears to be more restrictive than federal law as to the products of green sea turtles, elephants, seals and alligators. As a result, in cases involving these products, California's Attorney General has taken the position that the less restrictive federal law has preempted the California law. However, the legislative history of the federal law appears to be just the opposite.

At present, there are several actions pending in California on this important issue. Needless to say, through an interpretation like that of California's Attorney General every state endangered species law could be emasculated whenever federal law was less restrictive, simply by hoisting the banner of "preemption."

The fight in California is being led by Laurence W. Kessenick (One Kearny Street, San Francisco, California 94108, 415/781-5500). He is very much interested in knowing whether any other state endangered

species laws have been undermined by the contention that they have been preempted by federal law.

IN THE LEGISLATURES

Each issue of ARLR will contain a report of legislation pending and recently enacted concerning animal rights. Coverage will include Congress, and to the extent possible, local and state legislatures. ARLR will try to provide as much information about each bill as possible, including: where it is pending, its reference number, the name(s) of its sponsor(s), its current status, and, where possible, a summary of its major provisions.

- In June of 1979, New York State enacted legislation repealing its infamous Metcalf-Hatch Act (Public Health Law §505) which for 27 years compelled public pounds and shelters receiving public funds to relinquish dogs and cats to laboratories for experimentation.

- A new statute for all parts of New York State except New York City, effective January 1, 1980, substantially revamps the licensing and identification requirements for dogs. Among the law's most noteworthy features are the issuance of permanent identification numbers and the requirement that certain municipalities appoint a dog control officer and establish a pound. Penalties are provided for violation of the law, and other provisions include protection of deer and night quarantine. A very significant provision deals with "idemnification for dog damage."

- The New York City Council has before it a bill to create a city-wide Department of Animal Affairs, which would centralize all animal-related governmental functions into one department possessing the powers to handle all animal affairs. The bill, #288, was introduced by City Council Member Antonio G. Olivieri; is pending in the Government Operations Committee and will carry over through 1981.

- According to the September 25, 1979 issue of the Camden, NJ, Courier-Post, Cherry Hill's council enacted a dog-control ordinance containing two provisions that ARLR had never before seen. According to the report, dog owners must be at least 18 years old, unless a parent or legal guardian assumes co-ownership and full responsibility for the animal. The other provision is that "dogs will be allowed to bark up to 65 decibels between 10 pm and 7 am. The decibel readings will be taken by the township health department." Julie Busby, author of the article, wrote that the ordinance "requires pet owners found guilty of the noise provisions to either remove their dogs from the premises or surgically alter the pet's vocal chords." Anyone challenging either of the provisions should keep ARLR posted. ARLR would also appreciate receiving information concerning any comparable laws in other jurisdictions.

- The California legislature on September 14, 1979 gave final passage to an Animal Rights resolution, making California the first state to acknowledge the rights of animals. Sponsored by Senator David Roberti at the request of The Fund for Animals, the resolution was en-

dorsed by 29 humane organizations in the state. The text of the resolution can be obtained from The Fund for Animals, 8733 Sunset Blvd., Los Angeles, CA 90069.

LEGISLATION IN CONGRESS

- H. 282, introduced by Rep. Robert Drinan, appropriates \$12 million to promote the development of methods of research, experimentation and testing that minimize the use of, and pain and suffering to, live animals. Referred to Interstate and Foreign Commerce Committee.
- H. 1297, introduced by Rep. Clarence D. Long, to discourage the use of leghold or steel jaw traps on animals. Referred to Interstate and Foreign Commerce Committee.
- H. 1471, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972 to prohibit the issuance of general permits authorizing the taking of marine mammals in connection with commercial fishing operations. Referred to Merchant Marine and Fisheries Committee.
- H. 1735, introduced by Rep. Fernand J. St. Germain, to provide for loans for municipal, low-cost, nonprofit spay/neuter clinics for dogs and cats. Referred to Interstate and Foreign Commerce Committee.
- H. 2427, introduced by Rep. John J. Duncan, to amend the Animal Welfare Act to prohibit the use of live animals as visual lures in dog racing and training. Referred to Agriculture Committee.
- H. 4631, introduced by Rep. Glenn M. Anderson et al, to amend the Animal Welfare Act to prohibit certain transactions and activities involving sight hound dogs trained by the use of any animal as a live visual lure or by involving animals used as live visual lures. Referred to Agriculture Committee.
- H. 4805, introduced by Rep. Fred Richmond et al, to establish a National Center for Alternative Research, to develop and coordinate alternative methods of research and testing which do not involve the use of live animals, to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals, to disseminate information on such methods. The bill further provides that 30 to 50 percent of the biomedical research budget be diverted to the purposes of the bill. Referred to Interstate and Foreign Commerce and Science and Technology.
- H. 5033, introduced by Rep. Lester L. Wolff et al, to provide for termination of the Interim Convention on the Conservation of North Pacific Fur Seals, to prohibit the taking of seals in the Pribilof Islands. Referred to Foreign Affairs, Merchant Marine and Fisheries, and Interior and Insular Affairs Committees.
- S. 425, introduced by Senators Harrison J. Williams and Claiborne Pell, to end the use of steel-jaw, leghold traps. Referred to Environment and Public Works Committee.

The foregoing bills, introduced in 1979, carry over through 1980. Copies of bills may be obtained by writing to the House Documents Room, U. S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646 publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

IN THE LEGAL LITERATURE

Each issue of ARLR will contain bibliographical material on the subject of animal rights law. Although all available sources will be drawn on, it is expected that much of the material will come from publications referenced in The Index to Legal Periodicals. ARLR will provide each article's author and title, a brief description of what it contains (unless the title is sufficiently descriptive), and the citation to where it appears. From time to time, an especially significant legal article or book will be reviewed.

Endangered Species Act of 1973

- Stromberg, The Endangered Species Act of 1973: Is the Statute Itself Endangered?, 6 Environmental Affairs 511 (1978).
- Stromberg, The Endangered Species Act Amendments of 1978: A Step Backwards? 7 Boston College Environmental Affairs Law Review 33 (1978).
- Swift, Endangered Species Act: Constitutional Tensions and Regulatory Discords, 4 Columbia Journal of Environmental Law (1977).
- Travis, The Endangered Species Act of 1973, 2 Harvard Environmental Law Review 129 (1976).
- Palmer, Endangered Species Protection: A History of Congressional Action, 4 Environmental Affairs 255 (1975).
- Lachenmeier, The Endangered Species Act of 1973: Preservation or Pandemonium?, 5 Environmental Law 29 (1974).

Marine Mammals

- Dobra, Cetaceans: A Litany of Cain, 7 Boston College Environmental Affairs Law Review 165 (1978). [Discusses the International Whaling Commission and federal laws that protect marine mammals.]
- Mason, The Bowhead Whale Controversy: Background and Aftermath of Adams v. Vance, 2 Harvard Environmental Law Review 363 (1977).
- Scarff, The International Management of Whales, Dolphins, and Porpoises: An Interdisciplinary Assessment, 6 Ecology Law Quarterly 323 (Part One), 571 (Part Two).
- Rich, The Tuna-Porpoise Controversy, 1 Harvard Environmental Law Review 142 (1976).

Larsen, Progress in Polar Bear Research and Conservation in the Arctic Nations, 4 Environmental Affairs 295 (1975). [Up to 1973, when an international agreement was signed by Canada, Denmark, Norway, the Soviet Union, and the United States.]

Animal Rights, Anti-Cruelty Laws

Rikleen, The Animal Welfare Act: Still a Cruelty to Animals, 7 Boston College Environmental Affairs Law Review 129 (1978).
Dichter, Legal Definitions of Cruelty and Animal Rights, 7 Boston College Environmental Affairs Law Review 147 (1978). [Urges broadening of anti-cruelty statutes to grant animals legal rights, including standing to sue.]
Use of Animals in Medical Research: The Need for Governmental Regulation. 24 Wayne Law Review 1733 (1978).
Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats, 14 San Diego Law Review 484 (1977).
Burr, Toward Legal Rights for Animals, 4 Environmental Affairs 205 (1975) [Discusses common law, early statutes, current laws, a model "Act Establishing Standards of Care Owed to Certain Types of Animals."]
Friend, Animal Cruelty Laws: The Case for Reform, 8 University of Richmond Law Review 201 (1974).

Animal Foods and Drugs

Allera, FDA's Combination Animal Drug Policy - Is it Feasible? Or, Should Elsie be the Only One Getting Milked?, 33 Food Drug Cosmetic Law Journal 267 (1978).
Linderman, Freedom of Information, Animal Drug Regulations, 33 Food Drug Cosmetic Law Journal 274 (1978).
Guest, Status of the FDA's Program on the Use of Antibiotics in Animal Feeds, 31 Food Drug Cosmetic Law Journal 54 (1976).
Recker, Animal Feeding Factories and the Environment: A Summary of Feedlot Pollution, Federal Controls, and Oklahoma Law, 30 Southwestern Law Journal.
Mongiardo, A Response to New Approaches to be Used in the Regulation of Animal Drugs, 31 Food Drug Cosmetic Law Journal 59 (1974).
Blackwell, How Now Brown Cow: Regulation of Feedlot Pollution in Wisconsin, 3 Environmental Affairs 769 (1974).
Schulze, Animal Production and Future Development of Food Law, 28 Food Drug Cosmetic Law Journal 512 (1973).

Miscellaneous

Margolin, Liability Under the Migratory Bird Treaty Act, 7 Ecology Law Quarterly 989 (1979).
Federal Regulation of Zoos, 5 Environmental Affairs 381 (1976).
Domestic Animal Liability in Missouri: Jaws, Paws and Claws, 45 UMKC Review 280 (1976).
Veterinary Practice Acts: A Call for Reform, 3 Hofstra Law Review 733 (1975).
Veterinarians At Fault: Rare Breed of Malpractitioners, 7 U.C.D. Law Review 400 (1974).
Liability for the Injury and Destruction of Canines, 26 University of Florida Law Review 78 (1973). [Concentrates on Florida Law.]

Etling, Who Owns the Wildlife? 3 Environmental Law 23 (1973). [The states or the federal government.]
Schwartz, Estate Planning for Animals, 113 Trusts & Estates 387 (1974).

[Although the Index to Legal Periodicals does contain references to articles on the subject of an owner's liability for damage done by his/her animals, those articles will not be listed here.]

BULLETIN BOARD

To the extent that appropriate material is available, each issue of ARLR will contain a "bulletin board" section. It will announce the formation and activities of attorney groups, provide information about legal actions that are being considered and persons seeking pro bono counsel for animal rights cases, publish inquiries concerning animal rights law, and otherwise try to help pollinate the legal movement for animal rights by disseminating general information not covered elsewhere in ARLR.

- Attorneys for Animal Rights is a group of attorneys and law students in the San Francisco Bay Area who share a common interest in animal rights issues. About a year old, the organization meets regularly and discusses animal rights law issues. AFAR hopes to provide an attorney and law student referral service. (Contact Laurence W. Kessenick, One Kearny Street, San Francisco, CA 94108 (415/781-5500).)

- With the advent of computers containing law-related programming -- e.g., Lexis, Westlaw, Juris, Scorpio -- it is possible to search very thoroughly, and quickly, many animal rights law areas. ARLR is currently trying to obtain "print-outs" covering various topics, and we welcome information from anyone else concerning what they have access to and/or what is already available. Watch the "Available Resources" section of ARLR for announcements.

- The American Society for the Prevention of Cruelty to Animals (441 East 92 Street, New York, NY 10028) has been training volunteers to act as the Society's special agents in various counties throughout New York State. As special agents, the volunteers possess peace officer status and are thus authorized to enforce most of the state's animal welfare laws. The volunteer special agents are particularly useful in counties which either completely lack an SPCA or which have a less than fully effective SPCA. So far, there are 19 volunteer special agents in counties outside New York City. The volunteers receive one week of training, which includes courses in the humane laws, investigations, report writing, courtroom procedures, animal care and handling and more. (Contact Jack Cherry, 212/876-7700.)

AVAILABLE RESOURCES

To the extent that appropriate material is available, each issue of ARLR will contain an "available resources" section. It will report on the existence of important judicial and legislative animal rights materials: legal precedents, complaints and other pleadings, memoranda-of-law and briefs, model bills and other legislation. "Available resources" will provide all necessary information about where to obtain this material.

The following material is available now.

- An analysis of the statutes and administrative regulations concerning greyhounds for each state which allows greyhound racing and a statute and administrative regulation which, if adopted, could prevent the training of racing greyhounds through the use of any live animals, including rabbits. (Contact SAR, specifying the state for which you wish the analysis.)

- The complaint in Jones v. Beame, a New York case which reached that state's highest court. The complaint sought declaratory relief against the City of New York, charging that its operation of its zoos was in violation of New York State's anti-cruelty statutes. The case was noteworthy for its attempt to 1) create a civil cause of action out of criminal statutes, 2) apply state anti-cruelty laws against a municipality in that state, and 3) create a group of plaintiffs sufficiently representative of the interests in the case so as to possess "standing to sue." Also the brief in the Court of Appeals of the State of New York, containing mainly the "standing" argument, but referring as well to the first two points. This case is a blueprint for challenging a municipality's operation of its zoos. (Contact SAR.)

- A constitutional challenge, on "Establishment Clause" grounds, to the so-called "kosher exemption" of the Federal Humane Slaughter Act (Act of August 27, 1958, Pub. 1. No. 85-765, 72 Stat. 562 (1959) 7 U.S.C. §§1901-1906 (1970)). The complaint spells out the constitutional theory of the case. Various memoranda of law and briefs address the "standing" problem and the underlying "Establishment Clause" violation. Of interest also is the petition for certiorari. (Contact SAR.)

- A brief on the subject of "measure of damages" for veterinary malpractice. As noted elsewhere in this REPORTER, among the most important animal law issues in the next decade will be the measure of damages for the intentional/negligent injury or death of pets. (Contact SAR.)

- From Cole v. Creamer (see "In the Courts") plaintiff's complaint, memorandum in support of complaint, two of his pretrial memoranda and the court's opinion on defendants' unsuccessful motion to dismiss the complaint. (Contact SAR.)

- A statute, which can also be utilized as an administrative regulation, creating a Department of Animal Affairs. Suitable for use on

a state-wide or local level, this statute contains all of the provisions necessary for the centralization of all animal-related governmental functions into one department possessing the powers to handle all animal affairs (Contact SAR.)

- A Lexis search of the word "dog" in the U.S. Code. There were forty-four references cited (Contact SAR.)

- A handbook containing detailed information about how the federal Freedom of Information Act can be used to obtain a wide variety of material from the United States government. (Available at 75 cents per copy from SAR.)

- The new statute of New York State regarding the licensing and identification of dogs (see "In the Legislatures.") (Contact SAR.)

- An ancient, but interesting, case is Sentell v. New Orleans, 166 U.S. 698 (1897), which involves a statute entitling dogs to some measure of legal protection if placed by their owners on the assessment rolls. If the dogs were killed, compensation could be based on their assessed value.

[Where the price of materials available from SAR is not indicated, SAR will charge the cost of photocopying, the time involved and postage.]

EDITOR'S COMMENT

At the end of each issue of ARLR, there will be a few lines from its editor. His comments will be drawn from that issue of the REPORTER, underscoring or elaborating something that appears there.

For this first issue, it seems most fitting to comment not so much on what appears, but on that it appears. No one reading the REPORTER needs to be told that, not long ago, the idea of animal rights law was viewed as absurd by all but a handful of people. Yet, in only the past few years, the idea has grown to the point where it is possible -- indeed, necessary -- to publish this Animal Rights Law Reporter. Consider fully the significance of being able to publish information about animal rights law in legal literature, in courts, in legislatures; about the formation of attorney groups devoted to using the law on behalf of animals; about the availability of legal pleadings, briefs, model laws -- all in the cause of legal rights for animals.

Quite beyond the content of any specific piece of information in this, the first issue of the Animal Rights Law Reporter, its real accomplishment is that it has come into being. Hopefully, its existence signals a new chapter in the struggle for animal rights through law.

Henry Mark Holzer

To a considerable extent, ARLR depends on its readers for information about current developments in animal rights law. Please send us clippings, legal papers, legislative proposals, case decisions, administrative rulings, animal rights law bibliography memoranda, etc. We will publish what we can.

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals.

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; serves as an informational resource for the media, writers and other humane organizations; drafts legislation and in other ways seeks to advance the animal rights cause.

A tax exempt organization under §501(c)3 of the Internal Revenue Code, SAR invites tax deductible contributions in support of its work which is entirely supported by contributions and bequests.

SAR's REPORT, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

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IN THE COURTS

APRIL 1980

SAN CLEMENTE ISLAND "GOAT CASE"

San Clemente Island, under the jurisdiction and control of the U.S. Navy, lies 70 miles off the coast of Southern California. Among the feral animals inhabiting the island are approximately 5,000 goats. According to the Navy, the goats threatened certain endangered species plants, and thus had to be exterminated. Decimating the goats to save the plants would not be the case's only irony.

To solve its problem, the Navy proposed to kill the goats by shooting them from helicopters.

On May 29, 1979, Attorney Marcelle Philpott-Bryant went into Los Angeles federal court seeking declaratory and injunctive relief to prohibit the slaughter. Cognizant of the "standing to sue" problems inherent in this type of litigation, her plaintiffs included "the Fund for Animals, Animal Defense Council, Give Our Animals Time (GOAT), and [a] U.S. Navy civilian employee, representing a class of civilian employees who work on the island and who have hunted the goats for recreation and meat."

It was alleged, among other things, that the Navy had failed to comply with NEPA. The government invoked the Endangered Species Act on behalf of the plants.

The District Court issued a temporary restraining order and, later, a preliminary injunction prohibiting the killing.

On January 23, 1980, the Court "so ordered" a stipulation between the parties. In general, its terms were as follows:

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- 1) the preliminary injunction continued in effect;
- 2) it was extended to include feral deer and pigs;
- 3) the Navy would enter into a contract for the humane removal of all feral animals from the island;
- 4) a census would be taken of all feral animals on the island;
- 5) a removal schedule and procedure was established;
- 6) the court retained jurisdiction over the removal;
- 7) the Navy would obtain, from an independent source, an Environmental Impact Assessment in connection with the effect of military operations (target practice) "on every aspect of San Clemente Island, including but not limited to, all forms of plant life, all forms of animal life, and archeological ruins, artifacts, sites and Indian burial grounds."

Space limitations preclude saying anything more here about this case, but it should be emphasized that the case is significant in several respects. One concerns how Ms. Philpott-Bryant approached and solved the standing problem. Another involves the complaint's and amended complaint's imaginative claims for relief, of which only one was based on NEPA. Third was the seemingly anomalous conflict between the interests of the island's feral animals and the plants allegedly protected by the Endangered Species Act. Fourth has to do with the government caving in on an important animal rights legal issue when confronted by knowledgeable, dedicated lawyers. And lastly, the attitude of the United States District Judge, Hon. Robert M. Takasugi, demonstrates that there are judges who can be convinced in animal rights cases.

VIRGINIA PREVENTS BOW-ARROW HUNT

Last month, the Commonwealth of Virginia struck a blow for animal rights. Virginia's Attorney General, Marshall Coleman, ably assisted by Assistant Attorney General John B. Purcell, Jr. (Supreme Court Building, Richmond, Va., 23219), went to court to prevent a proposed bow-arrow hunt. Their complaint eloquently states the situation they confronted:

"The Defendants have circulated in the County of Dinwiddie and in various other localities of this and other States by hand and through the mail a handbill inviting the public to participate in a so-called 'Bow Hunt Jamboree' on or about Good Friday and Easter Eve of 1980. Attached as Exhibit A is a copy of the handbill.

"During the 'Jamboree' the Defendants will release swine, goats, rams, buffalo, turkeys and other exotic and domesticated animals which members of the public, for a fee, will be allowed to kill with a bow and arrow.

"The Defendants intend to provide refreshment stands, taxidermist services, and butchering services which will turn the event into a circus-like slaughter of helpless creatures.

"The Defendants are continuing to evidence their intention to hold this event.

"The killing of animals in such a manner is cruel, wicked, indecent, malicious, illegal, immoral and thereby constitutes a public nuisance, and an affront to the County of Dinwiddie and the Commonwealth of Virginia.

"The killing of animals in such a manner constitutes torture, ill-treatment, and the infliction of inhumane injury or pain in violation of Section 18.2-392 of the Code of Virginia.

"The holding of this event violates the Defendants' duties as owners of animals to provide humane care and treatment as required by Section 3.1-796.42 of the Code of Virginia."

In addition to contending that the proposed hunt violated Virginia's public nuisance and cruelty laws, Coleman and Purcell invoked other provisions of the Commonwealth's statutes, among them its Endangered Species Law, regulations concerning the importation of animals, and general licensing and permit rules. The Commonwealth's hearing memorandum (brief) elaborated on its legal claims, and set forth the evidence it could produce to substantiate its charges at the court hearing.

At the March 20, 1980, hearing, the circuit court judge issued an injunction barring the hunt. Its promoter's comment, according to the Washington Star, was: "I didn't lose. I haven't been defeated." He was also quoted as having said that: "There are events like these all over the states, including one next month in North Carolina."

Perhaps. But Virginia has proved that determined lawyers, creatively using available legal tools, can stop such barbaric violations of animal rights.

FERAE NATURAE

A contemporary discussion of what is an animal ferae naturae, and what the consequences of that legal status are, is found in Wiley v. Baker (Texas Court of Civil Appeals, 1980). The case involved an elk that had escaped from a game farm, later shot by someone not its owner. No damages were possible, held the court, because when the elk escaped, it "regained its status as an animal ferae naturae."

NUMBERS RESTRICTIONS ON PETS

Cobb County Georgia has a zoning ordinance which recognizes "commercial and noncommercial kennels." Defendant kept five dogs on his residence property, which was zoned single family residential. The Board of Commissioners sued to enjoin operation of the "commercial" kennel, existence of a nuisance was alleged, and it was contended that operation even of a "noncommercial kennel" in a single family residential district violated the zoning law.

Defendant claimed that "the zoning ordinance failed to define the terms commercial and noncommercial kennel," and thus violated federal and Georgia due process.

The trial court defined kennel to mean an "establishment for the breeding or boarding of dogs," commercial and noncommercial were apparently given their ordinary meaning, and following a nonjury trial defendant was enjoined from maintaining more than three dogs on the premises.

The two paragraph majority opinion merely rubber-stamped the trial court. The dissent, on the other hand, frames the issue quite clearly, and points out the problem of the case:

"It seems to me that the trial court in overruling the defendant's motion to dismiss has determined that a person who keeps more than three dogs on his property is operating a 'commercial kennel.' I see no rational basis for making such a determination. The zoning ordinance, not the court, should have specifically made this determination. Absent this, the ordinance was too vague and indefinite."

In other words, the majority in the Supreme Court of Georgia seems to have endorsed the view that, even where a local zoning law does not set a specific number limitation on household pets, a trial court can define an ordinance's terms so as to make the mere number of animals the test of what is "commercial" and/or a "kennel," and thus establish a de facto number limitation when none has been established de jure. (Bell v. Barrett, 241 Ga. 103, 243 S.E. 2d 40 (1978).

STANDING TO SUE: ENDANGERED SPECIES

A very important recent case on standing to sue is Palila (Psittirostra baillewi) an endangered species, Sierra Club, etc. v. Hawaii Department of Land and Natural Resources, etc., 471 F. Supp. 985 (U.S.D.C., D. Hawaii, 1979). The case's significance is apparent from the first paragraph-and-a-half of the court's decision:

"The Palila (Psittirostra baillewi) [an endangered species of bird] seeks the protection of this Court from harm caused by feral sheep and goats.

"An action for declaratory and injunctive relief was filed in the name of the Palila by the Sierra Club...suing as next friends and on their own behalf, as plaintiffs."

Apparently, neither the defendants nor the court were especially concerned about the standing allegation, as the court adjudicated the substantive issues without addressing standing to sue.

On the merits, most significantly the court ruled that the Tenth Amendment does not inhibit the Endangered Species Act's enforcement, even as applied to a species which is endemic within a particular state---as a result of Congress' interstate commerce power and its power to enact legislation implementing valid treaties.

ENDANGERED SPECIES: BOBCAT PELTS

For a while, all U.S. exports of bobcat pelts had been banned under a 54-nation treaty, the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Apparently, the ban resulted in an increased bobcat population. The Endangered Species Scientific Authority (ESSA) then ruled that renewed export would not threaten the survival of the species as a whole.

In the litigation that followed, U.S. District Court Judge June L. Green (in the District of Columbia) ruled (in an unreported opinion) that all but five states and parts of two others could resume export of bobcat pelts. The export ban was continued in Florida, North Dakota, Wisconsin, Massachusetts, New Mexico and parts of Oregon and Texas, only because insufficient data was available concerning the potential effect of renewed exports on bobcat populations. With Judge Green's decision, another chapter has been written in the "numbers game" saga of the U.S. Government's wildlife "management" policies.

ENDANGERED SPECIES: EAGLES

Last month, the Associated Press reported that a county judge in the Fort Myers area of Florida levied a \$787.50 fine against a land developer whose employees had cleared brush to within 100 feet of a pine tree where two bald eagles (which are protected) had hatched at least one eaglet. Perhaps the most significant aspect of the case was stated by an agent of the Federal Fish and Wildlife Service: the case establishes "that state courts are ready to enforce the federal provisions."

U.C.C.: HORSE AS "GOODS"

Article 2 of the Uniform Commercial Code applies only to transactions in "Goods." In Key v. Bagen (136 Ga. App. 373, 221 S.E. 2d 234, 18 UCC Repr. 1882 (1975)), a horse purchased for "recreational" use was deemed covered by the Code. In the light of the UCC's extensive arsenal of buyer's remedies, the decision raises interesting possibilities concerning the liability of pet shops for the sale of pets and other animals.

CRUELTY PROSECUTION: VIDEOTAPE

UPI reported last fall that a Bossier City, Louisiana, municipal judge convicted four former employees of the city animal pound of cruelty to animals. They were charged with using a lead pipe to beat cats to death. One of the four had been videotaped by a Shreveport television cameraman who hid as a cat was beaten to death. The pound's former supervisor pleaded guilty, paid a \$200 fine and received a 30-day suspended jail term. Since proof is often difficult to obtain in these kinds of cases, the videotaping technique seems like a good one. However, care should be taken to guard against illegal searches, and violations of privacy and civil rights. The advice of counsel should be sought.

CRUELTY PROSECUTION: EXTRADITION

Last Christmas Eve cable television in New York City showed a film in which a small dog was shot and killed. Investigation has apparently disclosed that the killer adopted the dog in Colorado, where the needless killing of any animal is a misdemeanor. If the killer can be found, there is a possibility that he will be extradited to Colorado to face criminal charges. The idea is an interesting one, not often considered in animal cruelty cases. In principle, however, there is no reason why extradition laws can not be invoked under these circumstances.

IN THE LEGISLATURES AND AGENCIES.

CONGRESS

House bill 1297 is scheduled for a hearing on May 29, 1980. This bill would discourage the use of the leg-hold trap. It would ban interstate shipment of fur or leather taken from animals trapped in states or foreign countries which had not banned the manufacture, sale and use of the leg-hold trap.

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, D.C., 20515, or the Senate Documents Room, Washington, D.C., 20510. A self-addressed label should be enclosed.

THE STATES

California S.1270 to repeal city or county ordinances which require animal control departments to sell surrendered and unclaimed animals for experimentation was not acted upon in committee and cannot be brought up again this session.

Connecticut S.579 to repeal the law compelling public pounds to turn over unclaimed animals to laboratories was passed in the Senate on April 22, 1980. The vote was 21-13. On April 28, 1980, the bill was passed in the House. The vote was 116-23.

Florida CS-HB345 would require that dogs and cats given for adoption or sold by public or private animal shelters be sterilized. Referred to the Committee on Community Affairs.

Minnesota S.923 to establish public low cost spay/neuter clinics was favorably reported from the Agriculture Committee but did not reach the floor for action as the legislature prepared to adjourn.

Minnesota S.1886 and H.2072 to repeal the law compelling public pounds to turn over unclaimed animals to laboratories was not acted upon, but the repeal bills will be introduced again in the next session.

New Jersey S.1074 would give any humane society that has been in existence for at least ten years and which has been classified as nonprofit and certified as tax exempt the same rights, powers and privileges as the New Jersey S.P.C.A. Referred to the Committee on Natural Resources and Agriculture.

New Jersey A.1500 would give municipalities the power to enact ordinances banning the pursuit, taking, trapping, snaring or killing of birds and animals within its territorial limits. An ordinance which contained standards or penalties more stringent than the regulations of the State Fish and Game Code would supersede the code. Referred to the Committee on Agriculture and Environment.

New York State S.8277 and A.10012 would permit taxpayers to designate that one dollar of the taxpayer's taxes be distributed to county or city governments for animal spaying and neutering purposes. Referred to the Senate Committee on Investigations, Taxation and Government Operations and the Assembly Committee on Ways and Means.

• Among the animal rights legal issues which will come to the fore in the 1980's is that of "numbers limitation"--restrictions on the number of animals which can be kept in any one place. Los Angeles has a city ordinance which sets a limit of three dogs and/or three cats per household. However, many residents exceed this limit either deliberately or because they do not know about the ordinance. The City Council committee backed a plan which would make it legal to keep more than three dogs and/or cats, provided residents are willing to pay for the privilege. Robert L. Rush, general manager of the Los Angeles Animal Regulation Department, said that permits would be issued to households located in remote areas where there would be no inconvenience to neighbors. Rush said the fee would be \$45 and would cover all the city's administrative costs. He believes that the plan would give the department more control than it now has, because inspectors would be able to inspect the conditions under which the animals are kept. Members of the Police, Fire and Public Safety Committee supported the recommendation, which would set up a system of permits costing \$45 and good for three years. The plan has the support of the city administrative officer, but it has drawn opposition from the City Planning Commission. Commissioners expressed fear that lifting the limit might encourage illegal breeding of cats and dogs.

"Numbers limitation" cases arise when zoning laws are attacked or enforced. See Bell v. Barrett, discussed in "In the Courts."

Other than as reported in this issue, as to all bills mentioned in the January Reporter, there has been no change.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Ill., 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

IN THE LEGAL LITERATURE

The January, 1980 issue of ARLR contained legal bibliography from 1973 through 1979. The following four articles update that bibliography:

Craig, Animal Drug Amendments of 1968--In Retrospect, 34 Food Drug Cosmetic Law Journal 228 (1979).

Frank, Factory Farming: An Imminent Clash Between Animal Rights Activists and Agribusiness, 7 Boston College Environmental Affairs, Law Review 423 (1979).

Rosenblatt, The Federal Trust Responsibility and Eskimo Whaling, 7 Boston College Environmental Law Review 505 (1979).

Van Houweling, Looking Back at the Animal Drug Amendments of the Act, 34 Food Drug Cosmetic Law Journal 199 (1979).

The following articles from The Index to Legal Periodicals cover the period 1955-1972:

Animal Behavior Evidence, 31 Montana Law Review 257 (1970). [Admissibility in Montana criminal trials.]

Animal Lex, 25 Tennessee Law Review 471 (1958). [Tennessee law on dogs, cattle, cats, bees and nuisances by attracting animals.]

Brennan, Bequests for the Care of Specific Animals, 6 Duquesne Law Review 15 (1967).

Evidence: Should the Weight of Authority Go to the Dogs, 1 Tulsa Law Journal 192 (1964). [Admissibility of blood hound and police dog evidence in criminal trials.]

Fencing Laws in Missouri - Restraining Animals, 32 Missouri Law Review 519 (1967).

Hammering Dog's Head With Fists is "Abuse" Under Statute Fixing Liability for Dog Owners, 16, Maryland Law Review 79 (1956).

Hannah, Is Res Ipsa for the Dogs? 3 Valparaiso Law Review 183 (1968). [Application of res ipsa loquitor to veterinary malpractice cases.]

Herrington and Regenstein, The Plight of Ocean Mammals, 1 Environmental Affairs 792 (1971).

Hogan, Distrain of Animals Ferae Naturae, 34 Oregon Law Review 217 (1955). [Right of land owner to distrain fur-bearing animals which have escaped from the custody of their owner.]

Johnston, The Fight to Save a Memory, 50 Texas Law Review 1055 (1972).
[Wild Free-Roaming Horses and Burros Act.]

Man, His Dog and Birth Control: A Study of Comparative Rights, 70
Yale Law Journal 1205 (1971). [Application of Connecticut's anti-
contraceptive statute to dogs.]

Nature and Property in Dogs, 4 Idaho Law Review 105 (1967). [Extent
of state police powers over dogs.]

Protection of Animals by Means of International Law - With Special
Reference to the Convention for the Protection of Animals During
International Transportation, 18 International and Comparative Law
Quarterly 771 (1969).

The Right to Kill Wild Animals in Defense of Persons or Property,
31 Montana Law Review 235 (1970).

Shuster, Productivity and the Decline of American Sperm Whaling, 2
Environmental Affairs 345 (1972).

Strobel, Malpractice by Veterinarians, 15 Cleveland-Marshall Law
Review 276 (1966).

Trusts for Animals in New York - Benefits and Perpetuities, 17 Syracuse
Law Review 705 (1966).

Vanishing Wildlife and Federal Protective Efforts, 1 Ecology Law
Quarterly 520 (1971).

The following articles, also from The Index to Legal Periodicals,
are pre-1955:

Animal--Prisoner at the Bar, 3 Notre Dame Law Review 30 (1927).

The Cat and the Law, 12 Temple Law Quarterly 89 (1937).

Constitutional Law, Legislative Grants, Bovine Tuberculosis Laws, 18
California Law Review 697 (1930).

The Dog in Jurisprudence, 5 New York Law Review 354 (1927).

Dog Within Contemplation of Statute Requiring Train to Stop When
Animal Is On Track, 30 Law Notes 232 (1927).

Doggerel, 4 Rocky Mountain Law Review 149 (1932).

Due Process, Dogs as Property, Police Power of Legislation, 18 Iowa Law Review 91 (1932).

Eradication of Bovine Tuberculosis, 15 Iowa Law Review 509 (1930).

Ferocity in Oysters, 2 Notre Dame Law Review 203 (1927).

Interstate Trade Barriers Affecting the Sale of Livestock Remedies, 15 University of Kansas Law Review 25 (1946).

Larceny - Animals - Shooting and Bleeding as Constituting Asportation, 13 Minnesota Law Review 383 (1928-1929).

Law of Bees, 5 North Carolina Law Review 46 (1926).

Prosecution of Animals and Lifeless Things in Greek Law, 4 Lincoln Law Review 1 (1931).

Rights in "Wild Animals" Farmed for Fur, 8 Boston University Law Review 74, 12 Minnesota Law Review 172, 31 Law Notes 234 (1928).

State Livestock-Remedy Laws, 8 Food Drug Cosmetic Law Journal 417 (1953).

Erratum: The correct page number of the Schwartz article referred to on page 9 of the January ARLR is not 387, as reported, but 376.

The following articles by Stephen I. Burr appeared in Animals Magazine on the dates indicated:

Should Animals Have Legal Rights? (July/August, 1977).

Movie Cruelty (April, 1978).

Animal Experimentation: The British Point of View (August, 1979).

Volume 1 of ALR 3d contains two interesting articles on the "damages" problem. Pages 997-1010 deal with the measure and elements of damages for the killing or injuring of a dog, and pages 1022-1025 deal with the amount of damages.

Volume 4, No. 1 (1980) of The Harvard Environmental Law Review contains a fascinating article entitled "The Emerging Law of Wildlife II: A Narrative Bibliography of Federal Wildlife Law." Its first paragraph explains the article's purpose:

"Since the publication of a 1975 wildlife law bibliography¹ (Bibliography I), a series of novel legal developments has prompted an outpouring of legal literature. Those developments and the resulting legal scholarship are defining a new federal law of wildlife which is the subject of this bibliography (Bibliography II). Bibliography I contended that the advent of important new federal wildlife statutes and the emergence of an increasingly vocal constituency of wildlife partisans had given birth to a whole new branch of law. It forecast important practical ramifications regarding the new and broader emphasis on wildlife species protection and overall ecosystem habitat management. Bibliography I also predicted that the scholarly attention necessary to transform the series of seemingly unrelated statutes, cases and regulations into a substantial area of legal learning would inevitably follow from the public concern with matters of wildlife welfare. Since 1975, while state wildlife management programs (i.e., traditionally hunting and fishing regulation) have been undergoing an unspectacular, nearly unreported evolution, sensational judicial decisions premised upon the new federal wildlife statutes have burst into national prominence. For example, the United States Supreme Court has decided eight wildlife cases since 1975² and others are pending.³ As a result, the predictions of Bibliography I are materializing sooner than its authors anticipated. Bibliography II lists and briefly explains the post-1975 legal literature that is contributing to this expansion of wildlife law."

1. Coggins & Smith, The Emerging Law of Wildlife: A Narrative Bibliography, 6 Env't'l L. 583 (1976) [hereinafter cited as Bibliography I].

2. Cappaert v. United States, 426 U.S. 128 (1976); Kleppe v. New Mexico, 426 U.S. 529 (1976); Payallup Tribe, Inc. v. Washington Game Dep't. 433 U.S. 165 (1977) (Payallup III); Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977); Baldwin v. Montana Fish & Game Commission, 436 U.S. 371 (1978); TVA v. Hill, 437 U.S. 153 (1978); Hughes v. Oklahoma, 99 S. Ct. 1727 (1979); Washington v. Washington State Commercial Passenger Fishing Vessel Association, 99 S. Ct. 3055 (1979).

3. Andrus v. Allard, 47 U.S.L.W. 3553 (No. 78-740, Feb. 21, 1979) (probable jurisdiction noted).

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, ETC.

On an occasional basis, material from hearings and legislative reports will be included in ARLR.

Endangered Species Authorization and Oversight, Hearings Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, 96th Congress, First Session, April 6, July 16, and July 20 and 27, 1979.

H.R. 4685, A Bill to Provide for the Control of the Importing into, and the Exporting from, the United States of Elephants and Elephant Products, Hearings Before the Committee on Merchant Marine and Fisheries, House of Representatives, 96th Congress, First Session, July 25 and 26, 1979.

International Wildlife Conservation, Hearings Before the Subcommittee on Resource Protection of the Committee on Environment and Public Works, United States Senate, 96th Congress, First Session, November 7, 1979.

Animal Cancer Research Act, Hearing Before the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition and Forestry, United States Senate, 96th Congress, First Session, December 10, 1979.

Laws and Treaties of the U.S. Relevant to Marine Mammal Protection Policy, P.B.-281024 is a good source book. It is available through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161 (\$11.75).

BULLETIN BOARD

- Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, New York, 11201.

- Assistant State Attorney General Kevin F. Manson, 1400 Edgewood Drive, Pierre, South Dakota, 57501, is seeking a position in animal welfare with public or private groups, in a management, consultant or practitioner capacity. Among his other demonstrated interests in animal rights, Mr. Manson founded and was President of South Dakota's second incorporated humane society. He was also involved in the organization of the state's third humane society and serves on its Board of Directors.

- On Saturday, April 26, 1980, various animal rights and animal welfare organizations, including San Francisco's Attorneys for Animal Rights, observed World Day for Laboratory Animals at the University of California Medical Center in San Francisco, California.

• Curt Meltzer, who is associated with the law firm of Friedman, Friedman, Levy & Bottiglieri (P.C.) (655 Madison Avenue, New York, N.Y., 10021) is available for consultation in matters involving animal rights law. Mr. Meltzer, whose undergraduate and masters degrees are in Environmental Studies, has experience in research and writing in the area of humane legislation.

• Attorney Marcelle Philpott-Bryant (see the "goat case" in "In the Courts") recently organized Attorneys for Animal Rights in Los Angeles, California, patterned after San Francisco's AFAR. AFAR (LA) held its first meeting in February, 1980. At its second, 50 people attended. Comprised of lawyers, paralegals, and law students, AFAR (LA) will seek to educate its members, to provide free legal telephone consultation to humane groups and others seeking information and advice concerning animal law matters, and to litigate on behalf of legal rights for animals. (Contact Marcelle Philpott-Bryant, 234 E. Colorado Blvd., Suite 620, Pasadena, Ca., 91101).

AVAILABLE RESOURCES

• A Juris print-out of the 126 federal statutory citations containing the word "animal" or "animals." (Contact SAR).

• The Texas Court of Civil Appeals opinion in Wiley v. Baker (see "In the Courts"). (Contact SAR).

• From the "goat case" (see "In the Courts"): plaintiffs' amended complaint, federal defendants' opposition to plaintiffs' motion for leave to amend, transcript to proceedings in the U.S. District Court, plaintiffs' memorandum of fact and law, and the stipulation-settlement memorandum-order. The amended complaint is an excellent prototype for federal animal rights litigation, containing important "standing to sue" allegations. (Contact SAR).

• From Coleman v. Maciuk (the bow hunt case, see "In the Courts"), plaintiffs' bill of complaint and hearing memorandum (brief). The former contains Virginia's theories upon which the hunt was enjoined, and the latter is an excellent development of those theories which integrates both the law and the underlying factual data and expert testimony. Also available is the proposed order, and the actual order entered by the Circuit Court. Together, these documents are a superb blueprint for a comparable proceeding in any jurisdiction. (Contact SAR).

• A cluster of sections (287.301-287.308) in the "Dog Law" part of Michigan's Agriculture Law (Michigan Compiled Laws Annotated) add up to potential protection for that state's dog owners. Section 287.301 provides that:

"Sec.1. From and after the first day of January, 1940, any person may have any dog tattooed with a registration number, as hereinafter provided. The owner of any such dog shall apply to the commissioner of agriculture, on blanks furnished by such commissioner, for the registration of any such dog. Upon satisfying the commissioner of agriculture that the applicant is the owner of such dog, the commissioner of agriculture shall assign a specific number (which shall not permit duplication) of the ownership of such dog, such number to be tattooed on and through the ear of the animal and on the inside and through the skin of a rear leg,--such tattooing to be done by such persons as shall be designated by the commissioner of agriculture, and shall be made by the use of permanent tattoo ink, such person so tattooing any dog to receive such fee therefor as shall be designated by the commissioner of agriculture. The application for registration shall be accompanied by a fee of \$1.00"

Section 287.3d imposes on the agriculture commissioner a duty to maintain a permanent record of the owner and provide that information on request to any law enforcement agency.

• The State of Missouri has adopted a novel approach to financing its wildlife and conservation activities. In 1976, Missouri's electorate approved a constitutional amendment to earmark for the Department of Conservation 1/8 of 1% of statewide sales tax revenues. Last year, \$30 million of the Department's \$47 million budget was realized through this channel.

EDITOR'S COMMENT

I am happy to report that the first issue of ARLR has been very well received. Our mail indicates that an animal rights law newsletter has been sorely needed for a long time, and that there are a large number of people--lawyers and laypersons alike--who want, and can make good use of, the material that ARLR will publish.

To help ARLR realize its goal of "communicating current developments in animal rights law," two interested lawyers have come forward and volunteered their services. One, Henry Cohen, has been responsible for preparing much of the legal bibliography that has appeared in these two issues. The other, Curt Meltzer (a recent graduate of Brooklyn Law School; see "Bulletin Board"), has helped organize material for this issue's "In the Courts." We are grateful to both of them.

Also of significance is that ARLR was consulted by the Virginia Attorney General's office in connection with its ultimately successful effort to stop the bow hunt (see "In the Courts").

All of this--the mail, the volunteers, the requests for help--proves that ARLR has a place in the animal rights movement, and it strengthens our resolve to make ARLR as useful as we can.

Henry Mark Holzer

To a considerable extent, ARLR depends on its readers for information about current developments in animal rights law. Please send us clippings, legal papers, legislative proposals, case decisions, administrative rulings, animal rights law bibliography memoranda, etc. We would also ask that our readers tell us what available resources they have.

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals.

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; serves as an informational resource for the media, writers and other humane organizations; drafts legislation and in other ways seeks to advance the animal rights cause.

A tax exempt organization under §501(c)3 of the Internal Revenue Code, SAR invites tax deductible contributions in support of its work which is entirely supported by contributions and bequests.

SAR's REPORT, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law

Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

IN THE COURTS

JULY 1980

CRUELTY: EXPOSURE IN "THE GUNS OF AUTUMN"

On September 5, 1975 CBS-TV broadcast "The Guns of Autumn," a teleplay dealing with the subject of "sport" hunting. On September 28, 1975, CBS-TV broadcast "Echoes of 'The Guns of Autumn,'" which presented the public's reaction to "The Guns of Autumn."

CBS News, a Division of CBS, Inc., was sued by the Michigan United Conservation Clubs, its Executive Director, and several Michigan "sport" hunters who claimed to represent "more than one million sport hunters and hunting license buyers within the State of Michigan."

Plaintiffs claimed to have been defamed by the two telecasts.

The question for the trial court (U.S.D.C., West. Dist. Mich.) on defendant's motion for summary judgment was whether the publications were "of and concerning" the plaintiffs -- a crucial element in establishing a prima facie case of defamation.

The court's answer was in the negative: "As a matter of law, the defamation of a group this large can have no personal application to individual members, thus the only way a group member can maintain suit is if the circumstances surrounding publication give rise to the conclusion that the member was being focused upon." Summary judgment was awarded CBS.

Although this decision is basically one rooted in defamation law, and although related subsidiary issues are also present in the case, the court's opinion is significant for animal rights law in at least two respects.

First, media exposure of inhumane treatment of animals continues to be protected by both the law of defamation and by First/Fourteenth Amendment speech/press guarantees.

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

Second, the opinion should be a signal to the media that, because of how it is protected, it should emulate the courageous stand taken by CBS in airing both broadcasts and then in defending (not settling) the "Guns" case.

Any decision of any court, anywhere, that protects and promotes free expression is a decision for animal rights -- because public disclosure of the violation of those rights is a crucial ingredient in redressing them.

ANIMALS AS PROPERTY: TESTATOR CONTROL

Last month, the San Francisco Superior [trial level] Court rendered a decision in a case that some observers had believed called for the exercise of Solomonic wisdom.

The following description of a part of that case is taken from a letter received by ARLR's Editor, written by Laurence W. Kessenick, Esq., founder and President of San Francisco's Attorneys for Animal Rights.

"Before Mary Murphy's tragic death by suicide, she prepared a will. In Article III of that will in its codicil, she directed that her dog (Sido) be put to death by a veterinarian. The facts were uncontroverted that she had a deep love for Sido and was concerned that, subsequent to her death, he might fall into the hands of an uncaring animal shelter or some worse fate. When she was discovered dead in her apartment, the police delivered the animal to the San Francisco SPCA. The Director of the SPCA, Richard Avanzino, took personal possession of the dog and refused to deliver the dog back to the executrix of the estate, Rebecca Smith.

"Essentially, Rebecca demanded return of the dog so that she could carry out the request of the testator. When she was not able to obtain possession of the dog, she filed a request for instructions from the Probate Court to direct disposition of the dog. In her request for instructions, she admitted that the testator had only the kindest motives in making her request. The facts of the case also showed that the entire residue of the estate which was in six figures had been given to Pets Unlimited, a private animal shelter in San Francisco. Interestingly, Mary Murphy had adopted the pet from Pets Unlimited several years previously and had signed an agreement in which she had agreed to return the animal to Pets Unlimited in the event she could no longer care for the animal. Pets Unlimited has such an agreement as a standard clause in all of its adoption papers. It is a unique animal shelter in that, once it takes possession of an animal, it will not dispose of the animal but retains it indefinitely or until adopted.

"The matter received sufficient publicity in California so that the Legislature passed a bill providing, in essence, that it was against public policy for persons to will the death of an animal. After some preliminary controversy in drafting the language of the bill, the bill was narrowed so that, as a practical matter, it would only affect the Sido situation. The bill was on the

"Governor's desk to be signed the day before the court hearing and the Governor signed the bill on the evening of June 16, the evening prior to the probate hearing.

"[Mr. Kessenick] attended the probate hearing on behalf of Attorneys for Animal Rights. . . .after all parties had seated themselves at the counsels' table and the press had settled in the rear of the courtroom, the judge asked if any of the parties had anything further to state since the court had studied all of the briefs and was prepared to rule on the dog's fate.

"Counsel for the San Francisco SPCA, Stuart Wein, responded by pointing out that he understood that the Governor had signed the bill. The court responded by stating that it had not been personally informed by the Governor's Office that the bill had been signed and absent such personal confirmation, the court would not take notice of the bill's effect. The court went on by explaining that the court was ready to rule in any event.

"In the ensuing minutes, counsel for the various parties discussed an ancillary matter. The phone rang, and the clerk instructed the judge that indeed the Governor's Office was on the line. The judge rose and went into chambers. . . .

"After a couple of minutes, the judge returned and immediately stated that, indeed the Governor had signed the bill as this had just been confirmed by the Governor's attorney.

"The court went on, by stating, however, that it was prepared to rule on this matter regardless of the existence or nonexistence of legislation in question. The judge then recited an opinion in support of his ruling that the gift in question was indeed violative of public policy and to carry out the language of the gift would in fact be the commission of a criminal act. The judge began by pointing out that the purpose of wills and probate proceedings is to provide for a method of passing on property at the time of one's death. It was not, the judge felt, the purpose of a probate proceedings or of a will to destroy property. The judge alluded to the fact that ample precedent could be cited for this proposition. The judge pointed out that dogs are in fact a very special type of personal property and there exist a multiplicity of statutes in our state providing protection to dogs under most circumstances. These statutes, the judge pointed out, provide that in fact animal shelters have a positive duty to protect and care for injured dogs or abandoned animals and that under such circumstances, it would be incongruous to conclude that the law provided less protection to a healthy animal than one which had been abandoned or was sick or injured. The judge also pointed to the Pennsylvania trial court decision in the "Capers" case which the court concluded represented a sound approach to this problem.

"Under the court's decision, the animal became part of the residue of the estate and will, therefore, be delivered to Pets Unlimited, the residuary legatee. "

Doubtless, the San Francisco Superior Court's ruling in the "Sido" case will encourage other tests of testator's wishes concerning the care and disposition of their surviving pets. This issue is far from an easy one, and ARLR wishes to follow it closely. To that end, we urge our readers to let us know about any comparable cases.

ANIMALS AS PROPERTY: THE HAWAII DOLPHINS

By now, most people involved in animal rights law know that in May 1977 two dolphins, the subjects of behavioral experiments at the University of Hawaii, were taken from their tanks and released into the Pacific.

Many, however, do not know the major details, nor their implications.

The two defendants were charged with first-degree theft for obtaining or exerting unauthorized control over another's property valued at over \$200 with the intent of depriving the owner of that property.

One of the two went to trial first.

The trial judge, as a matter of law, defined the dolphins as "property" -- not as "persons" or anything else. This ruling foreclosed, among other defenses, the so-called "choice of evils" defense, and the case was apparently tried and given to the jury strictly as one of theft.

After eight days of trial, the lone defendant was convicted of the felony of first-degree theft. The jury was out less than an hour.

Clearly, central to the prosecution of this case was the question of whether the captive dolphins were sufficiently the "property" of the University so that the defendant's tampering with them could be theft under the Hawaii criminal code. Although the court decided affirmatively its ruling raises more questions than it answers -- not the least of which are why and to what extent live animals are, and ought to be, the property of human beings. Indeed, one clear implication of the "Sido" case is that Sido was insufficiently Mrs. Murphy's property so as to allow her the right of unfettered disposition upon her death. It is interesting to speculate about whether the result in these two cases can be reconciled. If Sido was not enough Mrs. Murphy's property for her to will the animal's death when she died, why were the dolphins enough the University's so as to support a theft conviction? On the other hand, if the dolphins were not sufficiently the University's property to justify the conviction, then perhaps the outcome in the Sido case can easily be justified. ARLR actively solicits contemporary cases involving the "animals as property" issue.

SPCAs: FIGHTING FOR INPUT AND CONTROL

It is not uncommon for legal battles to rage over who can have input into the decision-making process of SPCA boards of directors, and sometimes over actual control of those boards.

For example, several years ago bitter litigation engulfed New York's ASPCA in which the plaintiffs alleged that the ASPCA was indifferent to animal suffering and guilty of corporate waste.

Among the relief sought by the plaintiffs, Gretchen Wyler and Linda L. Meyer, both members of the ASPCA Board of Managers, was judgment ordering the individual defendants to account for their official conduct as officers, managers or both of the ASPCA; ordering the defendants to account for the loss and waste of corporate assets; ordering defendants to permit plaintiffs to inspect the books and records of the ASPCA; ordering the removal of the individual defendants from their positions as officers, managers or both, of the ASPCA; ordering the revision of the ASPCA's by-laws to remove all improper delegations of the management functions of the Board and granting an accounting by two of the defendants of all monies expended or expenses approved by them purportedly on behalf of the ASPCA during their tenure as officers of the organization.

Prior to trial the matter was settled in a manner satisfactory to plaintiffs.

Another example involved the Louisiana SPCA, located in New Orleans. A plaintiff group alleged in 1979 that since 1973 there had been no general membership meeting, no election of board members, no election of officers, no creation of committees. Plaintiffs also complained about defendants' contention that Executive Committee management of the LSPCA was authorized and appropriate. The case grew rather complex, but ultimately the court held that a membership meeting should be held, thereby apparently vesting (or re-vesting) ultimate control over the LSPCA's affairs in its members.

It is entirely likely that, as consciousnesses are raised concerning the legal rights of animals, more attention will be focused on the organization and operation of SPCAs and other humane organizations. With that attention will necessarily come legal battles to affect policies and even to change management. ARLR will try to watch this area closely, and will report developments as they arise.

CRUELTY: BIRD POISONING

Hardly a season passes without a new report of some official attempt to poison birds. Too often, the bird killers succeed. So it is with great pleasure that ARLR reports one attempt that was prevented.

The City of Youngstown, Ohio, proposed to employ a strychnine poisoning program to "control" its pigeon population.

Animal Charity League, Inc., of Ohio, represented by Mark A. Huberman, Esq. (204 Stambaugh Building, Youngstown, Ohio 44503, 216/744-5151) sued for injunctive relief, contending "that the health hazard was overstated, if not contrived, and that the use of strychnine poisoning was inhumane, unwise and ineffective due to the excruciatingly painful method of killing involved, the danger of non-targeted species, and the infeasibility of long-term population control by this method."

Mr. Huberman believed that if Animal Charity "clearly established for the record that all major national and international animal welfare associations universally condemn strychnine poisoning for animal population control, a prima facie case of cruelty would be placed before the Court." Condemnations of the practice were received from leading organizations, and even from a few official departments.

Faced with Mr. Huberman's extensive documentation, and confronted with an impending trial, the Youngstown Law Director and the Health Commissioner settled the case on terms drafted for the court by plaintiff's counsel. Mr. Huberman's comments -- made in a recent letter to SAR -- are worth quoting.

"If there is an important lesson our experience provides to the animal welfare movement, it is that local government action frequently under the guise of protecting the 'public health,' is often completely arbitrary and without justification where unprotected wildlife is involved. As the [stipulation of settlement] confirms, our investigation established not only had there been no meaningful consideration of alternative methods of pigeon population control prior to the institution of the strychnine program, but there had not even been a single documented case on file of any so-called 'pigeon-related' disease.

"It surely points out to us the urgent need for a Department of Animal Affairs [which SAR has proposed - Ed.] in every major city in America, an agency whose institutional purpose will be to insure that the important mandates of cruelty and animal welfare statutes are respected at all levels of society."

IN THE LEGISLATURES AND AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U. S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

S. 2619, which provides for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands, and for other purposes, was introduced April 28 and referred jointly to the Committees on Foreign Relations, Commerce, Science and Transportation, Environment and Public Works, and Energy and Natural Resources.

Hearings on H. 1297, which had been scheduled for May 29, were postponed. Hearings were not rescheduled as this Reporter went to press. The bill would discourage the use of the leghold trap.

H. 6847 would amend the Animal Welfare Act to redefine the terms "animal" and "pain"; to require the use of anesthesia for certain painful procedures and to provide for appointment of an advisory committee. The bill was referred jointly to the Committees on Agriculture, Interstate and Foreign Commerce and Science and Technology.

THE STATES

Colorado's income tax form allows taxpayers to channel any amount they wish from their tax refunds into the state's nongame wildlife program. In Colorado, nongame wildlife -- everything not hunted or fished for -- includes about 80 percent of the wildlife species found in the state. In the program's first three years, the program has produced nearly a million dollars for Colorado's 748 species of nongame animals. Though about 30 other states are interested in such a program, apparently only Oregon has passed a similar law. (Compare New York's S. 8277 and A. 10012, reported in the April 1980 ARLR.)

Connecticut S. 579 to repeal the law compelling public pounds to turn over unclaimed animals to laboratories was signed into law by Governor Ella Grasso on May 20.

Florida S. 714 to prohibit the use of live rabbits in the training of greyhounds passed the Senate 35-3 on May 13 but died in the House June 4 when a motion to withdraw the bill from committee failed to receive the required 2/3 vote.

A New York bill to ban the use of decompression chambers for killing animals was signed into law by Governor Hugh Carey in early July.

A New York bill (A. 9450-A and S. 7980) authorizing police officers to take possession of stray, homeless or abandoned animals and transport them to an appropriate animal shelter or facility was withdrawn from the Governor's desk by the sponsor after humane organizations requested that it be amended to require that police deliver the animals to "an incorporated humane society or municipal pound." The amendment was being prepared when the legislature recessed.

Pennsylvania bills to forbid all experiments on animals in elementary and secondary schools and to make extensive strengthening amendments to the anti-cruelty statutes were introduced in early July. Additional information on the legislation will be reported in the next ARLR.

THE AGENCIES

The Grand Canyon area is soon to be the scene of a showdown between the feral burro (descendants of the burros introduced in the 16th century by Spanish explorers) and the federal Park Service. A fascinating (and revealing) explanation has been provided an SAR member by the Sierra Club Legal Defense Fund, Inc., from which the following excerpt is taken.

"...the feral burro in the Grand Canyon is classified as an exotic species; one not native to the place where found. Most importantly, the Grand Canyon Park Service has determined that the burro is changing the ecologic composition of the Grand

Canyon and is prospering at the expense of the park's native biotic communities. This is not a new finding, since park managers have recognized damage caused by burros as early as 1924. An Environmental Impact Statement has been prepared by the Park Service on the issue in question. The E.I.S. documents adverse impacts caused by burros on vegetation, soils, water resources, cultural resources and small mammal communities. Since it is a basic management policy of the National Park Service to protect and preserve native ecosystems, the Grand Canyon National Park has decided to remove the burro population from the Grand Canyon area.

"The Sierra Club is in agreement with the Park Service. The Sierra Club's general policies with regards to Feral Burros and the protection of native ecosystems and fragile resources are as follows:

- 1) Burro herds must be culled in areas where native habitats have become impoverished because of overpopulation, and where overgrazing is evident. Burro herd numbers should be maintained at a level which would minimize impact on native habitats.

- 2) The burro must be eliminated from all Federal and state lands where they would pose a threat to habitats in which rare, endangered, threatened, or endemic species of flora and fauna exist.

- 3) The feral burro must be eliminated from all areas which are protected by the Antiquities Act.

- 4) The feral burro must be eliminated from all National Parks and Monuments.

- 5) Burros must be managed and controlled in National Recreation Areas, and removed from those sections of the NRA in which they pose a threat to rare, endangered, threatened, or endemic biota, or cultural sites protected under the Antiquities Act.

"The tentative decision proposed by the National Park Service for the Grand Canyon calls for the live removal of burros. The Park Service itself cannot afford to carry out live removal due to the high expenses involved. (It has been estimated that it will cost between \$700-\$900 to remove each of the 350 burros from the area.)

"The Park Service will provide a 60-day period for public removal of the burros, after which time, the remaining burros will be shot. It is important to note that the Park Service will be flexible about the 60-day limit and is willing to extend the deadline if the public demonstrates an active interest and effort show reasonable efficiency and rapidity. The removed burros will be up for adoption.

"The following Sierra Club policies regarding managing and controlling Burros are also harmonious with the Park Service decision:

- 1)The feral burro must be strictly managed and controlled.
- 2)Federal and State agencies must insure that burro management methods are humane.
- 3)The Sierra Club recognizes the necessity of utilizing mechanized transportation (helicopters) for management purposes.
- 4)the use of firearms by competent federal agencies or their appointees is a humane method of direct reduction of feral burros.
- 5)The Sierra Club endorses the concept of private ownership of feral burros as pets or pack animals.
- 6)The Sierra Club opposes the utilization of feral burros for sporting purposes, including wrangling or mustanging of herds, burro racing, or for any similar activity.
- 7)The Sierra Club suggests that, when feasible, carcasses resulting from burro reductions be donated to government institutions.

"The removal of the burros from the Grand Canyon National Park will reduce the burro population in Arizona by 12% and only 3-4% in the western states."

The Department of the Interior's Fish and Wildlife Service proposes to permit commercial importation from the Australian States of New South Wales, Queensland, South Australia and Western Australia of kangaroos.

In inviting public comment by July 16, the Service reported (Federal Register, Vol. 45, No. 117, Monday, June 16, 1980) that the red kangaroo, the eastern gray kangaroo and the western gray kangaroo have been listed as Threatened species under the Endangered Species Act of 1973 since December 30, 1974. The Service has now completed its five year review of the status of these species which was initiated by a publication of a notice in the Federal Register (44FR 29566) on May 21, 1979. "This review leads to the conclusion that all three species of kangaroos remain 'Threatened' as defined by the Endangered Species Act of 1973. The review also demonstrates to the Service that the Australian States of New South Wales, Queensland, South Australia and Western Australia now have met the requirements of 50 CFR Section 17.40 (a)(1)(i)(B) for the commercial import of kangaroos and the Service therefore proposes to permit such commercial importation from those states."

"At the end of a two year period, the Service will review again the entire situation and determine at that time whether the importation ban should be reimposed to conserve the kangaroos."

IN THE LEGAL LITERATURE

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, INC.

- "Problems in Air Shipment of Domestic Animals," Hearings before a subcommittee of the Committee on Government Operations, House of Representatives, 93rd Congress, First Session, Sept. 25, 26, 27 and 28, 1973 (24-508).
- "Care of Animals Used for Research, Experimentation, Exhibition, or Held for Sale as Pets," Hearings before the Subcommittee on Livestock and Grains of the Committee on Agriculture, House of Representatives, 91st Congress, Second Session on H.R. 13957, June 8 and 9, 1970, Serial DD (47-329).
- "Problems in Air Shipment of Domestic Animals," 13th Report by the Committee on Government Operations, Dec. 21, 1973 (25-976 0) Union Calendar No. 338 House Report No. 93-746.
- "Humane Treatment of Animals Used in Research," Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 87th Congress, Second Session, on H.R. 1937 and H.R. 3550 Sept. 28 and 29, 1962. (91142).
- "Horse Protection Act of 1969," Hearing before the Subcommittee on Energy, Natural Resources, and the Environment of the Committee on Commerce, U. S. Senate, 91st Congress, First Session, on S. 2543, Sept. 17, 1969, Serial 91-27 (35-028).
- "Animal Dealer Regulation," Hearings before the Committee on Commerce, U. S. Senate, 89th Congress, Second Session, on S. 2322, S. 3059, and S. 3138, March 25, 28, and May 25, 1966, Serial No. 89-61 (62-317).
- "Horse Protection Act of 1970," Hearing before the Committee on Commerce, U. S. Senate, 93rd Congress, First Session, May 2, 1973, Serial No. 93-62 (28-801).
- "Impounded Animals for Educational Purposes," Hearings before a Special Subcommittee of the Committee on the District of Columbia, U. S. Senate, 81st Congress, First Session, on S. 1703, May 24 and 25, 1949 (91703).
- "Regulate the Transportation, Sale and Handling of Dogs and Cats Used for Research and Experimentation," Hearings before the Subcommittee on Livestock and Feed Grains of the Committee on Agriculture, House of Representatives, 89th Congress, Second Session, March 7 and 8, 1966, Serial X (60-678).
- "Humane Slaughtering of Livestock," Hearings before the Committee on Agriculture and Forestry," U. S. Senate, 85th Congress, Second Session, on S. 1213, S. 1497, and H.R. 8308, April 28, 29, 30 and May 1, 1958 (25425).
- "Animal Welfare Act Amendments of 1974," Hearings before the Subcommittee on Livestock and Grains of the Committee on Agriculture, House of Representatives, 93rd Congress, Second Session, on H.R. 15843, H.R. 16738 and Related Bills, Aug. 6, 7, 8, 13, 14, 15 and 20, Sept. 30, and Oct. 2, 1974, Serial No. 93-TTT (41-558).

"Painful Trapping Devices," Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, 94th Congress, First Session, on H.R. 66, H.R. 790, H.R. 5429, H.R. 6651, H.R. 8367, H.R. 9918, H.R. 10099, H.R. 10316, H.R. 10369, H.R. 10586, H.R. 10652, and H.R. 10770, Nov. 17, 18, 1975, Serial No. 94-18 (67-691).

"International Wildlife Conservation," Hearing before the Subcommittee on Resource Protection of the Committee on Environment and Public Works, U. S. Senate, 96th Congress, First Session, Nov. 7, 1979, Serial No. 96-H32 (55-2810).

"Elephants," Hearings before the Committee on Merchant Marine and Fisheries, House of Representatives, 96th Congress, First Session, on H.R. 4685, July 25, 26, 1979, Serial No. 96-13 (53-3750).

"Endangered Species," Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, 96th Congress, First Session, on Endangered Species Authorization and Oversight, H.R. 2218, April 6, 1979; Endangered Species Scientific Authority Oversight, July 16, 1979; Endangered Species Act Oversight, July 20, 27, 1979 Serial No. 96-12 (52-547 0).

BULLETIN BOARD

Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201.

David L. Welling, Esq. (15760 Ventura Blvd., Encino, CA 91436, 213/784-4748) has announced that he and several other attorneys in southern California are forming a non-profit organization called Attorneys for Animal Rights (Southern California).

The Federal Law of March 9, 1978, for the Protection of Animals, enacted by the Federation of Switzerland is a document worth studying. Too lengthy to cover in detail here, it deals with such subjects as cruelty, exploitation, transportation, experimentation, slaughter (no conscious mammal may be slaughtered), abandonment, etc. In addition, and of considerable interest to animal rights activists in the United States are several uncommon provisions. For example: the authorities have the power to intervene in situations where because of mental illness or alcoholism a person is incapable of properly caring for an animal. The expense of relocation and lodging is borne by the previous owner. The penalties for violation of this law are stiff indeed.

A group of about 20-25 New York area lawyers and paralegals have just formed the Lawyers Committee for the Enforcement of Animal Protection Law. They hope eventually to offer an advisory service to other members of their profession; to accept certain cases, without charge, which should be brought to set precedent; to make pro bono referrals in cases where people cannot otherwise secure legal assistance; to establish a national network of lawyers concerned about issues relating to animals. Contact the Committee at 2067 Broadway, Room 27, New York 10023, 212/490-0077.

AVAILABLE RESOURCES

The District Court's opinion in the "Guns of Autumn" case. (Contact SAR.)

The Attorneys for Animal Rights (San Francisco) amicus curiae brief in the "Sido" case. (Contact SAR.) When the court's complete opinion becomes available, note will be made here and where it can be obtained will be announced.

The complaint in the case of Gretchen Wyler and Linda L. Meyer vs. Encil E. Rains, John D. Beals, Jr., Wm. Joshua Barney, Jr., Louis F. Bishop, III, Ernest B. Burton, John F. Butler, Bernard G. Gross, William D. Haggard, III, Charles S. Haines, Albert E. Hart, Jr., James H. Jenkins, Robert A. Krantz, Jr., Mrs. C. Ruxton Love, Jr., Alastair B. Martin, Warren N. Ponvert, John W. Ream, William Rockefeller, James L. Van Alen, Henry Van Duzer Wing, Constance Woodworth and the American Society for the Prevention of Cruelty to Animals. (Contact SAR.)

The petition for a writ of quo warranto and injunctive relief in the LSPCA case. (Contact SAR.)

The Park Service's Environmental Impact Statement in the Grand Canyon burro matter may be obtained from the Superintendent, P.O. Box 129, Grand Canyon National Park, Grand Canyon, AZ 86023.

The Swiss Protection of Animals Law, in French, or in summarized English translation. (Contact SAR.)

The stipulation of settlement in the Ohio pigeon poisoning case. This document, in addition to explaining the basis on which the case was settled, is extremely useful as a summary blueprint of how an anti-poisoning case should be structured. (Contact SAR.)

EDITOR'S COMMENT

Recently I had occasion to re-read the January and April 1980 issues of ARLR, in connection with the preparation of this issue. A major question occurred to me.

Having reported on a wide variety of issues, having been asked for assistance by several attorneys around the country, having been sent some material to share with our readers, having received many requests for ARLR and increased our mailing list for it substantially, I began to wonder just how extensive is the animal rights law movement in America. How many lawyers are out there, involved in these matters even on a part-time or occasional basis? What kinds of cases are they handling? Are they winning or losing, and why? Where are they located, mostly? Where are they getting their clients? How is the reception in court? Do they see progress? What is the prognosis for animal rights law? Who are these lawyers? Why do they do this kind of work? How did they get started?

There are dozens of such questions -- all directed to one central point: what is going on out there in animal rights law?

Since the whole consists of the sum of its parts, ARLR would very much like to be informed about those parts. Please let us know, and we'll pass on the information.

Henry Mark Holzer

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

About the publisher

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

OCTOBER 1980

IN THE COURTS

ANIMALS AS PROPERTY: THE HAWAII DOLPHINS

There have been significant new developments in this case (State of Hawaii v. LeVasseur) since our July 1980 Report.

On appeal to the Intermediate Court of Appeals of the State of Hawaii LeVasseur's conviction (and 5 years probation with 6 months in jail) was affirmed.

Basically, six grounds (plus harshness of the sentence) were urged for reversal. Two -- the trial judge's abuse of discretion in limiting voir dire and his quashing a subpoena duces tecum -- were quickly disposed of pursuant to state law. Two Federal constitutional points -- advancement of the trial date allegedly in violation of the Sixth Amendment, and denial of an "impartial tribunal" allegedly in violation of the Fourteenth Amendment -- were just as quickly disposed of.

The remaining two grounds -- "choice of evils" and errors in the jury instructions -- were related.

LeVasseur had "contended that he chose to commit the lesser harm of theft in the first degree [releasing the dolphins] in order to avoid greater harm either to the dolphins or to the statutorily expressed policy of the United States [Marine Mammal Protection Act, etc.]. The trial court's ruling that the choice of evils defense was not available to [LeVasseur was] a central issue in this appeal." Though much of the court's decision on this point turns on statutory construction, it did specifically "agree with the ruling of the court below and hold that [LeVasseur's] action in removing the dolphins from their tanks, transporting them to Yokohama Bay and there releasing them into the ocean, thereby committing the crime of theft, was at

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

least as great an evil as a matter of law as that sought to be prevented. Accordingly the trial court correctly ruled that under the instant circumstances, the choice of evils defense was not available."

As to the alleged error in jury instructions, on the principal objection the appeals court held that the trial court's instruction "that the dolphins were property" was sufficient and appropriate.

Following the affirmance, LeVasseur moved for reconsideration, which was denied unanimously, per curiam.

Doubtless, further efforts to appeal will be made. ARLR will continue to follow this case.

IN THE LEGISLATURES AND AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

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CONGRESS

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CRUELTY: RACEHORSE DRUGGING

S. 2636 and H.R. 7254, the Corrupt Horse Racing Practices Act of 1980, was introduced in Congress in May to eliminate the inhumane practice of drugging racehorses. The American Horse Protection Association reports that "in the last several years, racehorse drug abuse has grown to epidemic proportions and now threatens the entire industry. Horses with injured legs, which are unfit to race, are given powerful anti-

inflammatory or painkilling drugs to enable them to run. Too often, the horse's injured leg shatters under the stress of racing, causing dangerous spills in which horses are crippled and must be destroyed, and jockeys are seriously injured or, in some cases, paralyzed or killed."

The bill will require that each horse entered in a race be tested prior to the race to determine whether prohibited drugs are present in its bloodstream.

S. 2636 was referred to the Senate Judiciary Committee. H.R. 7254 was referred to the House Interstate and Foreign Commerce and Judiciary Committees.

LEGHOLD TRAPS

Hearings on H. R. 1297, to discourage use of the leghold trap, were twice scheduled and twice cancelled.

ILLEGAL TRADE

H. R. 5604 to raise penalties for illegal interstate and foreign commerce in fish and wildlife was reported, amended and passed by the House in July. The Senate version, S. 1882, was reported, amended and awaits Senate action. The Senate Report No. on S. 1882 is 96-739.

THE STATES

DEPARTMENTS OF ANIMAL AFFAIRS

Of all the municipalities in the United States, Los Angeles is one of the few having an entirely separate department devoted to all animal and animal-related issues. Comparable to SAR's proposed local or state-wide Department of Animal Affairs, the Los Angeles approach is well worth studying and implementing in other jurisdictions.

SPAY/NEUTER PROGRAMS

New Jersey A. 1937 directs the State of New Jersey Health Department to establish a pilot program for a spay/neuter clinic at which members of the public may have dogs and cats spayed at \$17.50; male dogs and cats neutered at \$11.50. The bill, which was drafted by Society for Animal Rights, Inc., appropriates \$200,000 from the General Fund to the Health Department to carry out the provisions of the proposed law.

A. 1937 has been referred to the Assembly Agriculture and Environment Committee.

THE AGENCIES

CRUELTY: ZOOS

Several years ago Society for Animal Rights tried unsuccessfully to apply New York State's anti-cruelty laws to New York City's operation of its three municipal zoos (see ARLR January 1980, Available Resources, Jones v. Beame). Now, the U. S. Department of Agriculture has charged New York City with violating the federal Animal Welfare Act in respect to those zoos. Echoing SAR's complaint, the federal government alleges a multitude of inadequacies: housing, protection from vandals, pest control, health care, quarantine facilities, sanitation, space, diet. In short, New York City's zoos have been charged by the U. S. government with violating virtually every aspect of animal care. The Department of Agriculture does not seem to realize, however, that it is the keeping of animals in zoos that itself causes many of the problems complained about.

CRUELTY: SORING

The U. S. Department of Agriculture, through administrative procedures, fined two Pennsylvania men \$1,000 and \$350 respectively for showing a "sore" Tennessee Walking Horse in violation of the federal Horse Protection Act.

CRUELTY: WHALING

In July, United States efforts to obtain a worldwide moratorium on the slaughter of whales fell 4 votes short of a required three-quarters majority (17) vote in the International Whaling Commission. For the second year Japan and the Soviet Union -- the only countries with deep-sea whaling fleets -- successfully thwarted the wishes of a majority of member nations. Voting for the moratorium were: Argentina, Australia, Denmark, France, Mexico, Netherlands, New Zealand, Oman, Sexchelles, Sweden, Switzerland, United Kingdom, United States. Voting against were Japan, USSR, Canada, Chile, Iceland, South Korea, Peru, Spain, South Africa. Two nations abstained: Brazil and Norway.

CRUELTY: HUMANE FIREFIGHTING

Recently an obscure but quite important animal rights legal issue was brought to ARLR's attention by a New York City attorney who is also a high-ranking member of the N. Y. C. Fire Department.

For generations firefighters everywhere have risked their lives to save pet animals, and often animals that were not pets. However, as our society changed in the 1960s the shoe began to be on the other foot: some animals -- guard/attack dogs -- became a menace to firefighters.

In the mid-1970s, cognizant of the threat to its personnel but at the same time recognizing the humane aspect of the problem, New York City's

Fire Department promulgated procedures aimed at protecting both the firefighters and all animals encountered at fires and other emergencies, including guard/attack dogs.

The procedures are comprehensive and make clear that "[u]se of hand tools, appliances, or in the extreme, requesting police assistance to have the dog destroyed, is considered as a last resort when the civilians' or firefighters' safety is involved." The first reason (of three) given for this policy is that injuring or destroying a guard/attack dog is "an inhumane act."

ARLR believes that every police and fire department in America should have formal humane policies dealing with handling of animals in emergency situations, and applauds New York City's Fire Department for theirs.

CRUELTY: BIRD POISONING (TERNs V. GULLS)

This past spring the U.S. Fish and Wildlife Service began to exterminate one protected species on behalf of another.

Monomoy Island, the site of a federal wildlife refuge, is haven for about 5,000 nesting terns and 60,000 nesting gulls. According to the federal government and others, the gulls are pushing the terns off the island. Therefore, the Wildlife Service killed nearly 3,000 gulls. However, no one claims that the "solution" is a permanent one. Next year, and for some time after that, the killing will have to continue. ARLR is unaware of any meaningful opposition to the gull killing.

FERAL BURROS

A great deal of confusion apparently exists concerning the feral burro situation in the Grand Canyon National Park and in New Mexico's Bandelier National Monument.

First, who's who. As we said in April's ARLR: the animals are "descendants of the burros introduced in the 16th century by Spanish explorers." The National Park Service, a federal agency, claims the burros cause ecological damage and wants them removed -- dead or alive. Some organizations (e.g., the Sierra Club) agree. Others (e.g., the American Horse Protection Association) want the animals to remain in their natural habitat. Still others (e.g., The Fund for Animals) agree to the burros' removal, but only alive. Etc.

As of last summer, federal District Judge Juan Burciaga in Albuquerque, NM, had temporarily restrained removal of the burros from Bandelier. Our latest information is that the T.R.O. has been dissolved and the plaintiff's case dismissed.

Federal district Judge William Copple in Phoenix barred the Park Service from destroying any animals until disposition of a pending lawsuit. November 19, 1980 is the next court date.

Meanwhile, Cleveland Amory's Fund for Animals has been moderately successful in humanely removing the burros from the Grand Canyon. Though there are still more of the animals to be captured, so far none have been slaughtered -- by the U. S. government or any one else.

IN THE LEGAL LITERATURE

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Gregory M. Travaglio & Rebecca J. Clement, "International Protections of Marine Mammals," 5 Columbia J. of Environmental Law 199 (1979).

Nancy M. Ganong, "Endangered Species Act Amendments of 1978: A Congressional Response to Tennessee Valley Authority v. Hill," 5 Columbia J. of Environmental Law 283 (1979).

BULLETIN BOARD

Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201.

Attorneys for Animal Rights (San Francisco) is interested in having several issues researched. On the chance that some ARLR reader(s) may have already covered the ground, or may be willing to do some research, here is what is sought, in AFAR (SF)'s words:

"Research Issue: The potential for imposing a penalty where an oil spill causes the death of birds and other wildlife. Brings up the issue of the status of animals as property and the value of a nonhuman life.

"Routine vaccination of animals upon entry to a pound or shelter. Issue: consent vs. public benefits of inoculation.

"Angel Island Deer. Deer were artificially introduced to the island and are multiplying rapidly, leading to overgrazing and erosion of the environment. An Environmental Impact Report has been prepared advocating the removal of the animals by transport. The Fish & Game Department has held a hearing and adopted the EIR; there may be some challenge to this. Issues: appropriate action(s) to be taken in order to best protect the deer.

"No Pet Policies. This has come up on a number of occasions, most recently at a hearing of the San Francisco Housing Authority, where a no pet policy was adopted, along with a grandfather clause. Issue: the need for some strong arguments against no pet restrictions, or the proposal of reasonable (compromise) restrictions that do not preclude all pet ownership.

"Issue: the jurisdiction and powers of local humane societies with regard to cruelty problems that may not be purely local in nature (e.g., ships docked at S.F. Port with stolen dogs on board to be used for food and/or sale in foreign countries)." (Contact Laurence W. Kessenick, Esq., 333 Market Street, 23rd Floor, San Francisco, CA 94105.)

A law professor reader of ARLR suggests, rightly, an important research topic: to what extent can a humane organization lobby without risk of losing its exempt status? If anyone has a paper on this topic, or writes one, ARLR would like to know.

The August 1980 issue of Trans World Airline's in-flight magazine, Ambassador, carried an interesting story about the animal rights movement. The author refers to ARLR, quotes its editor, and mentions a few animal rights legal items which, to the best of our knowledge, have appeared together only in ARLR.

ARLR is provided free-of-charge to interested persons, organizations and libraries. To receive our publication it is necessary only to write to SAR and request to be put on our mailing list.

The editor wishes to acknowledge, with gratitude, the many letters and other communications which he has received from ARLR readers. He hopes they understand that everything can not be answered, but that as often as possible ARLR will reflect what they have written about. Rest assured that nothing even remotely useful will be ignored.

AVAILABLE RESOURCES

New York City Fire Department's training bulletin concerning the encountering of animals at fires and other emergencies. (Contact SAR.)

U.S. Fish and Wildlife Service's Environmental Assessment regarding "Management of Tern Populations on Monomoy National Wildlife Refuge, Chatham, Massachusetts." (Contact SAR.)

Los Angeles' Municipal Code provision for its Department of Animal Regulation. (Contact SAR.)

Papers prepared for a law school course in Wildlife Law. The topics are on particular species, such as wolves or polar bears or on issues such as exotic species, the Bowhead/Eskimo problem and animal intelligence. (Contact Professor David S. Favre, Detroit College of Law, 136 East Elizabeth Street, Detroit, MI 48201.)

Attorneys for Animal Rights (San Francisco)'s Constitution and Bylaws -- indispensable to proper creation of such an organization. (Contact SAR.)

A thought-provoking monograph containing "Model State Animal Protection Statutes." Its basic idea is the proposal for a new state agency to supervise all activities involving animals. Akin in con-

cept to SAR's Department of Animal Affairs and Los Angeles' Department of Animal Regulation, the "Model" is also patterned in part on an approach taken by some European countries. Model animal laws of every type are crucially important, and thoughtful discussion of all proposals is very desirable. (Contact James Mason, Esq., P. O. Box 5234, Westport, CT 06880.)

The California Superior Court's unpublished opinion in In Re Murphy-Smith v. Avanzino (the "Sido" case) -- a fascinating and important statement of one judge's attitude concerning the complicated issue of animals as property. (Contact SAR.)

Also the San Francisco SPCA's pleadings in that case submitted on behalf of Sido. (Contact SAR.)

From State of Hawaii v. LeVasseur (The "Hawaii Dolphins" case): the opinion of the Intermediate Court of Appeals, dated June 27, 1980; Defendant-Appellant's motion and memorandum for reconsideration; court's per curiam denial of motion.

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

EDITOR'S COMMENT

This issue of ARLR, the fourth, will conclude our first year of publication. In that time we have seen an idea grow into a reality. Our constituency has applauded our efforts. Lawyers have come forward to assist us in our undertaking. We have been asked for, and have rendered, assistance in a variety of animal rights law matters. Our publication has been identified as being in the forefront of the animal rights law movement. We have made badly needed resources available to those attorneys in the legal front lines, and we have begun to make it known just who those attorneys are.

In short, our hope that ARLR would become the central clearinghouse for animal rights law information is beginning to be realized.

But there is a long way yet to go, and I want to use this opportunity to indicate some of the needs.

Here at ARLR we need input from our readers -- who, in the end, are the best source of information. We need data concerning court cases, legislative and administrative matters, legal bibliography, announcements, requests. We especially need resources: case citations, memoranda, briefs, pleadings, discovery documents, model ordinances and statutes and much more. Please share with us so that we may share with others who hold values common to our own.

Outside, much is needed: more and more groups of attorneys for animal rights; a body of animal rights law in published form (see my regular announcement in "Bulletin Board" seeking volunteer writers); law school courses on animal rights law; and, in a couple of years, the first national conference of all lawyers concerned with the legal rights of animals.

All this, and more, can and will be done. ARLR considers its part of the task as a trust obligation. We hope that, with the years to come, increasing numbers of American lawyers will join our cause.

Henry Mark Holzer

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.s.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

JANUARY 1981

IN THE COURTS

Beginning with this issue of ARLR, our "In the Courts" Department will be divided into "Federal" and "State" categories. This division, made solely for convenience, should make it easier for readers quickly to locate material of specific jurisdictional/substantive interest.

FEDERAL

PROSECUTIONS

U.S. v. Global Zoological Imports, Inc. (C.D. Cal., 1980), involved the indictment of individuals and corporations for wildlife and customs violations: conspiracy to import birds via false documentation, importation of endangered species, theft of birds from a quarantine station, receipt of stolen birds with knowledge they were infected with disease, obstruction of justice. The principal defendants were convicted on all nine counts, eight of which were felonies, and the principal individual defendant received 18 months in jail, three and a half years more suspended, and he was enjoined from trading in wildlife for five years.

U.S. v. Molt involved close to 1,000 reptiles and various charges and cases. Lacey Act counts were challenged on the ground that Fiji and Papua New Guinea laws were not "foreign wildlife laws" within the scope of the Act. Though the District Court agreed, the Third Circuit reversed in part. (*U.S. v. Molt*, 452 F. Supp. 1200 (E.D. Pa., 1978), rev'd in part and remanded, 599 F.2d 1217 (3 Cir., 1979)). A bench trial conviction of dealing in wildlife knowing that it was illegally imported (18 USC 545) — the sentence was a year and a day and a \$10,000 fine — was affirmed by the Third Circuit. (*U.S. v. Molt*, 79-1774, Feb. 12, 1980).* A jury convicted Molt

of violating the Endangered Species Act by illegally importing 12 tortoises from Madagascar. A one year sentence and a \$10,000 fine was imposed. The Third Circuit reversed, on July 17, 1980, holding that its construction of an exemption's meaning failed to provide Molt with fair notice of what conduct is covered. A rehearing was denied.

In two other cases, Molt pleaded guilty to 12 felonies and 18 misdemeanors, including violations of 18 USC 542, 18 USC 545, and the Lacey Act. He received one year concurrent sentences on the Lacey Act counts, and two months more on the smuggling counts. Of considerable additional significance, is that the court prohibited Molt from importing reptiles and travelling to five named countries during the three year probationary period to follow the jail time.

In *U.S. v. Harvey* (E.D. La., 1977) the defendant received six months suspended sentence for violating the Migratory Bird Treaty Act. Though placed on five years inactive probation and ordered not to hunt migratory birds, two years later he pleaded *nolo contendere* to three counts of an information and guilty to a fourth for violation of the Act. Shortly after, his probation was revoked and he was ordered to serve six months.

A participant in the Bureau of Land Management's Adopt-A-Horse program sold his 100 adopted horses

*ARLR regrets that time did not allow us to obtain the reporter citation for this case and others. The district court cases are mostly unreported.

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

to a slaughterhouse for processing into horsemeat for shipment abroad. Convicted of conversion of government property (18 USC 641) and of violating the Horse and Burro Act (16 USC 1338(a)), he was sentenced to 18 months in jail on the former and five years on the latter, concurrent. The Ninth Circuit affirmed. (*U.S. v. Hughes*, No. 79-1428, 9 Cir., 1980)

Five trappers have been convicted of illegally trapping and selling approximately \$100,000 worth of bobcat and coyote hides. The sentences included jail time, fines and community service. There is an irony here: the defendants, U.S. Fish and Wildlife Service salaried fur trappers, sold the hides for their personal benefit. (*U.S. v. Carter and Kriwox*, *U.S. v. Ruegger*, *U.S. v. Carrico*, *U.S. v. Shaver* (D. Ore., 1980))

A bird smuggling conviction (18 USC 545) (250 parrots, which all died from Exotic Newcastle Disease), resulted in a sentence of six months in jail on a three year term, followed by five years probation in *U.S. v. Rives*, S.D. Cal.

Another 18 USC 545 bird smuggling conviction (50 military macaws), on a plea, resulted in a sentence of three months in jail on a two year term, followed by three years probation in *U.S. v. Nietotapia*. S.D., Cal.

A *nolo contendere* plea to Lacey Act charges (100 iguanas) resulted in a sentence of six months suspended, three years probation, and a \$1,000 fine for one defendant and for another a six month suspended sentence, 18 months probation, and a \$500 fine in *U.S. v. Domy* and *U.S. v. Korn*, D. Ariz.

Violations of the Eagle Protection Act (16 USC 668) resulted in a sentence of 60 days in jail for one defendant and probation and a fine for another when eagle parts were found in a package sent from one defendant to the other. (*U.S. v. Ward*, *U.S. v. Paulson* (D. Ore., 1969))

In another Oregon case a guilty plea was entered to a violation of the Migratory Bird Treaty Act and the Eagle Protection Act. Sentence was five months in jail and 500 hours of community service. (*U.S. v. Bond*, D. Oreg.)

In *U.S. v. Ramirez*, S.D. Texas, the captain of a shrimper was convicted on his guilty plea of possessing a green sea turtle in violation of the Endangered Species Act. Sentence was a \$500 fine and probation.

U.S. v. Carrigan (D. Minn. 1980) involved an indictment for taking and selling protected birds. Defendant, who had a lengthy history of wildlife law violations, pleaded guilty to violating both Acts and received a three year sentence, no part of which was suspended — perhaps a record for actual jail time given in a wildlife law prosecution.

U.S. v. Lopez, S.D. Tex., involved the conviction of ten persons for smuggling approximately 500 parrots from Mexico into Texas. The actual smuggler was sentenced to five years; the "receiver" got four years and a \$4,000 fine.

Although ARLR usually reports only cases which have been completed at least at the trial level, in this issue we make a significant exception. *U.S. v. Robertson*, in the Oregon federal district court, is probably the first *criminal* case to be brought under the federal Animal Welfare Act (7 USC 2156). A three court information charges the defendant with mailing steel gaffs, cockfighting, and promotional materials into a state which prohibits cockfighting.

STATE WILDLIFE CONTROL: DIMINISHED POWER

Geer v. Connecticut, 161 U.S. 519 (1896) had upheld the constitutionality of a statute prohibiting out-of-state transportation of game birds killed in-state. The premise was that a state's power over wildlife within its borders was so comprehensive — actually "ownership" — that such a restriction did not involve interstate commerce. Now the Supreme Court has expressly overruled *Geer*, holding in *Hughes v. Oklahoma*, 99 S.Ct. 1727 (1979), that a statute prohibiting out-of-state shipment of minnows from Oklahoma waters was unconstitutionally violative of the commerce clause. *Hughes* is significant in that it may represent an attitude supportive of greater "federalization" of animal control law.

AIRBORNE HUNTING ACT: CONSTITUTIONALITY

Holding that the Act is within Congress' interstate commerce power, the Ninth Circuit upheld its constitutionality. (*U.S. v. Helsley*, No. 79-1100 (9 Cir., Nov. 16, 1979))

EAGLE PROTECTION ACT: VALIDITY OF REGULATIONS MIGRATORY BIRD TREATY ACT:

Interior Department regulations prohibited commercial transactions in parts of birds which had been killed prior to eagles being protected under the Migratory Bird Treaty and Eagle Protection Acts, even though they had at that time been killed legally. In *Andrus v. Allard*, 100 S.Ct. 318 (1979), the U.S. Supreme Court held unanimously that the two statutes authorized the regulations and that the resultant restrictions on sale did not constitute an unconstitutional taking.

EAGLE PROTECTION ACT: INDIAN RIGHTS AS DEFENSE

The Ninth Circuit in *U.S. v. Fryberg*, 14 ERC 1731 (9th Cir. 1980) rejected the assertion of Indian treaty rights as a defense to a criminal charge of taking a bald eagle

without a permit (16 U.S.C. §668). A prior case, *U.S. v. White*, 508 F2d 453 (8 Cir. 1974) had held that Congress had not expressly abrogated Indian treaty rights with the passage of the Eagle Protection Act. As a result, when an Indian was within the hunting rights preserved under a particular Indian treaty, he seemed to be protected from the criminal provisions of the E.P.A. After considering the circumstances surrounding the passage of the Act, the minor nature of the infringement on Indian rights, and the availability of a permit if religious needs were involved, the Ninth Circuit rejected the analysis of the Eighth Circuit and held that Congress *did* intend to abrogate Indian treaty rights to the extent necessary to protect the American Bald Eagle. With such a clear split in the Circuits, an appeal to the Supreme Court is probably inevitable.

ENDANGERED SPECIES ACT: CLASSIFICATION

Regulations pursuant to the Endangered Species Act prohibited importation and trade of green sea turtle products from turtle farms. A Cayman turtle farmer sued and the district court held that the agency's inclusion of farmed turtles in its ban was allowable under both the Act and the Convention on International Trade in Endangered Species. (*Cayman Turtle Farm v. Andrus*, 478 F.Supp. 125 (D. D.C., 1979))

ENDANGERED SPECIES ACT: APPLICATION TO STATES

In addition to standing issues (see April 1980 edition of ARLR) the case of *Palila v. Hawaii*, 471 F. Supp. (D.C. Hawaii 1979) is important because of the method by which it extended the Endangered Species Act to the activities of state governments. Section 7 of the Act protects critical habitat from destruction by *federal* action, but in this case, the *state's* refusal to remove feral sheep and goats from the birds' habitat because of hunter pressures could not be directly tied to any *federal* action. The Court's decision arises instead under Section 9 of the Act which makes it illegal to "take" any member of an endangered species within the United States. The term "take" is defined (§ 3[19]) to mean to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect . . ." While the words of the definition focus on individual animals, the district court, with the aid of the regulatory definition of harm, stretched out the prohibition of Section 9 to include habitat management programs which have a negative impact on the critical habitat of endangered species. In effect, the Court is imposing the same test as required by § 7 on the state government activities. If this reading of the ESA is upheld (and there is some question that this result was within the intention of Congress), then a very wide door has been opened that will allow close scrutiny of the actions of state game agencies.

ENDANGERED SPECIES ACT: MULTIPLE STEP PROCESS

One of the most difficult applications of § 7(a) (2) of the Endangered Species Act (which requires that no action taken by a Federal Agency shall jeopardize a species or adversely modify its habitat) is when a multiple step process like oil leasing is involved. Several key questions received preliminary answers in a district court opinion, *North Slope Borough v. Andrus*, 10 ELR 20115 (D.D.C. January 22, 1980). BLM had received nominations for 236 oil leasing tracts in the Beauford Sea off Alaska and decided to offer 186 tracts for lease. This is only the first step in a three-step process: leasing, exploration, and production. Citing *TVA v. Hill*, the judge held that notwithstanding the fact that BLM retained control of the projects throughout the three-step process, the requirements of the ESA must be fully satisfied at this *first* stage in the process. If upheld, this expansive view of federal agency action will allow application of ESA at the first stage of a multiple step process and allow immediate review in Court. Additionally, the Court held that when insufficient information exists to determine whether or not § 7(a) (2) of ESA will be violated, then "consultation [between the Action Agency and Department of Interior] must also be continued until a comprehensive biological opinion satisfying the mandate of § 7(b) is developed." In this case, the possible impact of the proposed oil drilling on the Bowhead and Gray whales was and is unknown. Not enough scientific information concerning the life cycles of the two whales is known to allow a prediction. Research has begun but it will take another four years before all the information is available. The Court said the B.L.M. could proceed with its leasing program only so long as they do not violate § 7(d) which requires that the agency "not make any irreversible or irretrievable commitment of resources . . ." This opinion makes clear that ignorance of ecological impacts is not a sufficient basis to proceed upon. Instead, agencies must gain sufficient information to make the required prediction *before* proceeding with a project.

ENDANGERED SPECIES ACT, ETC.: SUING THE GOVERNMENT

Puerto Rico's Governor and others sued the federal government charging that Navy activities on Vieques (an island 10 miles off Puerto Rico) violate a wide range of federal environmental laws. Among other laws, sections 7 and 9 of the Endangered Species Act (16 USC 1536 and 1538) were invoked. Plaintiffs lost, and have appealed. (*Carlos Romero-Barcelo, etc., et al. v. Brown, et al.* 478 F. Supp. 646 (D.P.R., 1979.))

FERAL BURROS: BANDELIER NATIONAL MONUMENT

On August 20, 1980, the American Horse Protection Association's complaint against the federal government and others was dismissed. Suing under NEPA (42

USC 4321 *et seq.*) and the National Park Service Act (16 USC 1 *et seq.*), plaintiff had sought an injunction to prevent the removal of the burros. The district court found, among other things, that: the Monument's vegetation has degraded due to the burros; unless they are removed, the area will require hundreds of years to recover; the burros have damaged archeological sites and detrimentally affected the Monument's natural and archeological environment; the burros' removal is required to alleviate the serious impact on the Monument's natural and cultural resources, and an environmental impact statement was unnecessary. AHPA says that it will appeal.

FERAL BURROS: GRAND CANYON NATIONAL PARK

As we reported in the October 1980 issue of ARLR, last July a federal judge in Arizona though declining to enjoin burro roundups until a November trial, did bar the Park Service from destroying any of the animals. It now appears that in late October the Judge (William Copple, in Phoenix) granted summary judgment for the Park Service and vacated the November trial date. AHPA is apparently not through with this case, either, and there should be more to report in the next issue of ARLR.

STATE AND LOCAL

ANIMALS AS PROPERTY: THE HAWAII DOLPHINS

State of Hawaii v. LeVasseur continues. On August 4, 1980, the *Hawaii* Supreme Court denied a petition for certiorari. On August 28, 1980, the trial court (though not the original trial judge) modified defendant's six months jail sentence to 400 hours of community service. On October 3, 1980, a petition for certiorari was filed in the Supreme Court of the *United States*. The question presented there is: "Whether a defendant in a criminal trial is denied due process of law and/or compulsory process, guaranteed rights safeguarded by the 5th and 6th Amendments to the U.S. Constitution, when a trial court precludes any and all proffered testimony of witnesses who would corroborate what was on the defendant's mind at the time he acted, thereby rebutting the specific intent required for conviction." That this question is basically one of evidence underscores a problem that has been in this so-called "animal rights" case from the beginning: at no time in the proceedings does there appear to have been a clear-cut, comprehensive, constitutionally-based argument(s) for animal rights, e.g., dolphins falling within the 14th Amendment's scope. Indeed, the *LeVasseur* case eloquently demonstrates the still wide chasm between merely claiming animal rights in court, and developing serious legal defenses of those rights.

By way of marked contrast, at Dexter Cate's Japanese trial in May of this year (for freeing trapped dolphins from fishing nets) expert testimony was given by Peter

Singer, author of *Animal Liberation*. In a letter to ARLR's editor, Professor Singer explained that his role: "... was to expound the view of animal rights which was the basis for Dexter Cate's actions. I spent about two hours on the witness stand responding to questions by [Cate's lawyer]. I was then briefly cross-examined by the prosecutor and questioned for about half an hour by the judge. As far as I know, this is the first time that testimony about animal rights has been admitted as part of the defense of someone on trial for liberating animals. Unfortunately it did not prevent Dexter being found guilty on the charge of forcibly interfering with business, but he did receive a suspended sentence so perhaps the judge took it into account in mitigation."

ZONING: GOATS

Within the past several months two zoning cases involving animals have surfaced, each involving goats. In one, the Associated Press (dateline Sanford, Florida) reported in mid-October that Seminole County Judge Alan Dickey fined Mrs. Ingebord Morris \$25 for harboring 11 baby goats. The story also reported that, apparently unrelated to the fine, the county commissioners contend that the goats' presence violate the zoning ordinance and so they will seek to have the animals removed. If any ARLR reader in or near Seminole county, Florida, can obtain specific legal information about this case(s), we would appreciate having it.

In Westchester County, New York, a local zoning board has decided that the presence of a neutered, dehorned Nubian goat — deemed by the board to be within the zoning category of "poultry, livestock, or furbearing animals" — on less than 10 acres was illegal. On appeal, the trial court held that the town of New Castle's zoning code inadequately defined "customary" household pets, and failed specifically to exclude unwanted types of animals. Exclusion of the goat was thus "arbitrary and capricious."

ZONING: BURROS

Though the issue is not yet in court, the Monterey (California) Board of Supervisors has apparently concluded that "large animals" like burros have no place in subdivisions. ARLR would appreciate readers in the Monterey area looking out for further developments. The owner appears to be named Kathy Byrd.

ANIMALS AS PROPERTY: OWNER'S CONTROL OF LIFE

On October 6, 1980 a lawsuit was filed by the Michigan Humane Society seeking to restrain the owners of a one year old dog named Sparky from putting him to death. The suit was filed after a plea was made by a neighbor who sought assistance from the Society in sparing the dog's life.

The facts are important to understanding what happened legally. Sparky, who frequently was allowed to run loose in the neighborhood, was befriended by a family who gave him refuge for three weeks this past summer after he had wandered into their subdivision. This family fell in love with the dog but ultimately learned the identity of his owners and Sparky was returned. Over the course of the summer, and with the owners' permission, the "adoptive" family often took Sparky for walks and played with him, returning him home after their visit.

On October 3, 1980 Sparky was hit by a car while running loose and, although injured, found his way to the adoptive family's home. They rushed him to a veterinarian and offered to pay all medical expenses involved in saving the dog's life. The veterinarian called the dog's owner for permission to operate on Sparky, but the owners refused, even though all costs had been assumed by his other "family." The owner was unemployed, could not afford the cost of the operation himself, and expressed a firm belief in the "constitutional right" to determine Sparky's fate.

The Society's lawsuit set forth the facts, imputed negligence to the owners in allowing the dog to run loose, and asserted an affirmative duty on the part of the owners "to provide medical treatment for their animal or to cause said treatment to be given" and alleged that the owner-defendants were "in violation of that law by failing to allow medical care to be rendered." The suit further stated that the defendants "having the charge and custody of Sparky, acted in reckless disregard for his well being." The lawsuit was filed in conjunction with a motion for injunctive relief claiming "immediate and irreparable damage and loss" to Sparky unless a temporary restraining order was granted by the court.

That order was granted by Oakland County Circuit Court Judge Hilda Gage on October 6, 1980, minutes before Sparky was supposed to be taken from the clinic and put to death. Her order (1) prevented the owner-defendants from putting Sparky to death, (2) prevented them from interfering with the dispensing of medical care and surgery required by him, (3) prevented them from regaining possession of him and (4) granted custody of the dog to the Michigan Humane Society pending a show cause hearing on the matter. Prior to that hearing the owners agreed to have Sparky treated, and to keep him confined in the future.

Sienne LaRene, the Society's attorney, views the Sparky case as "a strong indication that the courts are becoming receptive to what are essentially animal rights issues. Although the ... case was dismissed after Sparky was restored to health, it is the type of suit that squarely joins the issue of people rights versus animal rights. The suit was based upon the theory that an animal has a right to his life if a viable alternative exists to maintain his life despite the wishes of the owner." As Ms. LaRene points out, however, this is not

a precedent-setting case, as a temporary restraining order only gives immediate relief pending a determination of the issues. There was no ultimate judicial determination because the situation was remedied and the suit dropped. The significance of the case was the fact that it was possible to obtain immediate injunctive relief to save the dog's life even though the owner's wishes in the matter were clear to all. (See "ANIMALS AS PROPERTY: TESTATOR CONTROL" in the July 1980 ARLR). This issue — owner control over whether a healthy pet animal lives or dies — is emerging as a profoundly serious one affecting animal rights. ARLR would like to be kept abreast of all legal developments in this area.

ANIMALS AS PROPERTY: EATING YOUR PET

The annals of animal abuse contain grisly tales *ad nauseam*, and a new low in human behavior, reported from California, points up an obscene loophole in that state's animal protection laws. According to United Press International (with the awful details omitted) a Samoan family in Sacramento apparently killed, skinned, and presumably ate their pet dog. San Francisco SPCA Director Richard Avanzino was quoted as saying, correctly it seems, that "apparently there's no state or federal law against humanely slaughtering your own pet, as long as it's not done commercially." If so, this legislative oversight (among the numerous others in the anti-cruelty statutes of all of the states which reflect society's slow progress in recognizing the right of all sentient life to equal protection) ought to be corrected at the earliest opportunity.

SPCAs AND SHELTERS: OFFICIAL NEGLECT

The "Available Resources" department of the January 1980 ARLR referred to SAR's *Jones v. Beame* case which unsuccessfully tried to apply New York State's anti-cruelty laws to the unspeakable conditions in New York City's three zoos. When SAR started that case it was aware that municipal operation of zoos, and sometimes even shelters, caused substantial animal suffering.

Now a case has surfaced in Missouri which makes the same point. Although ARLR does not have full details, some are known. The local chapter of the Mid-Missouri Humane Society has charged that Sedalia's makeshift shelter was "deplorable" and threatened that if the City failed to promptly improve the situation the Society would sue to compel the city to "enforce its own [shelter] ordinance."

Unfortunately, deplorable conditions at municipal shelters are not uncommon.

CRUELTY: CONVICTIONS

ARLR readers have probably noticed that during our first year of publication coverage of matters involving

cruelty to animals have been limited to instances where something more than just the cruelty was involved: the use of videotape to prove the case; extradition; exposure of cruelty by T.V., with protection from liability for defamation; preventing wholesale poisoning of birds. Our principal reason for this policy has been because most cruelty cases do not present significant *legal* issues — usually the law is quite clear, but only the facts are in dispute. However, with this issue of ARLR our policy will be changed. Recently, the Bucks County (Pennsylvania) SPCA proposed a cruelty prosecution digest of Pennsylvania humane societies, permised on the obvious benefits of shared knowledge and experience, especially for humane societies which operate under the same state law. This idea is extremely valuable, and should be supported within Pennsylvania.

Since ARLR is a national publication we believe that to the same extent Pennsylvania societies can benefit from shared local cruelty prosecution data, they and other societies in the U.S. may derive some benefit from shared national data — even though there are differences between the various state laws, and reports we receive often contain only rudimentary information, and many of the cases are of doubtful precedential value.

Accordingly, beginning with this issue ARLR will simply present the bare and, hopefully, not too grisly facts of nationwide cruelty convictions that we become aware of, with as much identification as we have so that interested parties can run down the details should they wish to. (Needless to say, if anyone does, ARLR would like to be informed.)

In addition, ARLR will continue to report CRUELTY: PROSECUTION TECHNIQUES and other categories of cruelty which present legal issues.

Five University of Michigan students — who mutilated, burned, and killed their fraternity's mascot cat during a drunken spree — were each sentenced by Judge S. J. Elden of Ann Arbor, Michigan's 15th District, to \$360 (court cost) fines and 200 hours of community service working with animals. One year sentences were deferred.

A 44 year old man — who, while drunk, hanged his hunting beagle — was sentenced by General District Judge G. O. Clemens of Virginia to a weekend in jail, a \$400 fine, 100 hours of community service, and continuation in a program for alcoholic rehabilitation. The judge offered to suspend the fine if the defendant donated the \$400 to the SPCA, which had organized a letter-writing campaign to urge the maximum sentence of 12 months in jail and a \$1,000 fine.

A Texas dude ranch owner — who caused the death of a horse through inadequate nourishment — was

sentenced by Dallas County Criminal Court Judge Harold Entz to 180 days in jail and a \$2,000 fine. It is believed that the sentence is the harshest ever in Texas for the misdemeanor of animal cruelty.

A 32 year old Long Beach, California, man — who pleaded guilty to misdemeanor dogfighting and cruelty to animals charges — was sentenced by Superior Court Judge Ellsworth Beam to six months in jail, fined \$625, and placed on three years strict probation.

A 33 year old Rhode Island man — who killed a stray cat in a microwave oven — was sentenced in Warwick, Rhode Island, by District Court Judge Victor J. Beretta to a \$200 fine plus court costs.

CRUELTY: RITUAL KILLINGS

New York's ASPCA has been involved in the investigation of groups which sacrifice animals in the course of alleged "religious" rituals. Sheep, goats, lambs, pigeons, ducks, chickens and other animals have been butchered in these ceremonies. To date, the ASPCA has brought charges against members of the Santeria "religion," and against an individual practicing what at this time the ASPCA believes to be "Voodoo." The defendants are being charged with violating various New York City Health Code provisions, and sections of the New York State Agriculture and Markets Law which prohibit cruelty to animals. The defense that has been raised in the Santeria case is freedom of religion. These cases, and others like them, are going to be profoundly important to animal rights.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U. S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

When the 96th Congress (1979-1980) adjourned, all pending bills automatically died. ARLR will report in the April 1981 issue on legislation introduced in the 97th Congress.

THE STATES

ANIMAL CONTROL: STRAYS

Last October, United Press International reported that the Wabash County (Illinois) Board of Commissioners had offered a \$1 "bounty" for every stray dog caught and held for the dogcatcher. (Although the story implied that "youngsters" would do the catching, it is unlikely that an ordinance would be drawn in that way.) While control of stray animal populations is commendable and indispensable, like other animal work it must be performed by dedicated professionals, not by, at best, well-intentioned amateurs, or, at worst, by "bounty hunters" (of any age).

STATE PREEMPTION: LEGHOLD TRAP

In the January 1980 issue of ARLR we discussed the problem of claimed federal preemption of state Endangered Species Laws. Now the problem has apparently arisen on lower governmental levels: claimed state preemption of local regulation.

The Peninsula Humane Society (in San Mateo County, California) had been trying to secure adoption of an ordinance which would virtually outlaw the steel jaw trap in that county.

A legal obstacle was raised by the County District Attorney's contention that the state law "preempted" the field of steel jaw trap regulation, thus precluding counties from enacting tougher laws. At this writing, ARLR does not know if the issue has been resolved. Like the federal-state preemption problem, this one of state-local is quite serious and deserves attention.

FEDERAL PREEMPTION: CALIFORNIA'S ENDANGERED SPECIES ACT

On the federal-California preemption front, there has been some progress.

With the help of San Francisco's AFAR, California State Senator Wilson prepared an amendment to Penal Code § 6530 aimed at bettering the situation. The bill passed the Senate and if it becomes law, ARLR will report its content.

ZONING: IN PUBLIC HOUSING

In October, the San Francisco Housing Authority Commission unanimously adopted a prospective "no pets" policy. Apparently, there are several exemptions, including those for blind or deaf residents.

SPAY/NEUTER PROGRAMS

SAR's New Jersey bill, A. 1937, to establish a state-operated low cost spay/neuter clinic program with an appropriation of \$200,000 was reported favorably November 10 by the Assembly Agriculture and Environment Committee and passed 57-5 on November 24 by the Assembly. The bill carries over to the 1981 session when it is expected to be acted upon by the Senate Natural Resources and Agriculture Committee and the Senate. SAR has recommended amendments to increase the fees from \$17.50 and \$11.50 to a level which would make the fee scale self-sustaining as well as low cost.

VETERINARY GOOD SAMARITAN ACT

New Jersey Senate bill 1076 as amended provides that any veterinarian who, in good faith, gives emergency care to any animal at the scene of an accident or one brought to him from the scene of an accident is not liable for civil damages because of any act or omission in rendering the emergency care. The measure awaits final passage by the Assembly.

ANIMAL IMMOBILIZERS

New Jersey A. 917 as originally introduced would have permitted postmen and meter readers to disable a dog with Mace, tear gas "or any other substance." After the public protested, the bill was amended to limit the spraying substance to one which "is specified as being noninjurious to canines or other animals by the Commissioner of Health and which immobilizes only on a temporary basis and produces only temporary physical discomfort." Lois Stevenson, Animals and People columnist for the Newark, NJ *Star-Ledger*, reported that the only products which now meet those criteria are made from red pepper contained in mineral oil and propelled from the spray can by nitrogen. Among the products are Halt, Stop Dog, Sentinel, Guardian and Stinger. Under the bill, the Health Commissioner must prepare a list of acceptable products and other brands can be added if proved eligible.

REPEAL OF POUND SEIZURE LAWS

Citizens for Animals, a national lobby and political organization, conducted pre-election polls of candidates for election and re-election to the Massachusetts and California state legislatures on the question of repealing existing laws and ordinances compelling or permitting the surrender of impounded animals for the purpose of experimentation.

By mid-December 11 Massachusetts Representatives and one Senator who had answered the poll in the affirmative, had prepared their bills for introduction for the 1981 session and a number of others who had also answered affirmatively were also expected to sponsor. The legislation will repeal the mandatory seizure law

and further provide that no local government division or its agent(s) may sell or give impounded animals for experimentation.

Citizens for Animals, which has headquarters in Clarks Summit, Pa, is working with the Massachusetts SPCA in the repeal effort.

California's state law authorizes counties and cities to adopt ordinances determining the manner of disposing of impounded animals. As a result, many counties and cities sell or otherwise transfer impounded animals to laboratories.

A number of California candidates for election and reelection also responded affirmatively to Citizens for Animals poll on the question of amending the state statute so that counties, cities and other political subdivisions could no longer adopt ordinances under which impounded animals would be made available for experimentation. Citizens for Animals sponsored the drafting of the necessary legislation and is working with California animal rights workers in connection with the introduction of the measure.

THE AGENCIES

FEDERAL WILDLIFE SECTION CREATED

In October 1979 a Wildlife Section was created in the Land and Natural Resources Division of the U.S. Department of Justice. Starting with eight staff attorneys, the Section not only concentrates on criminal enforcement of federal wildlife laws, but also provides representation to federal agencies in civil wildlife cases. Among the statutes within the Section's jurisdiction are the Endangered Species Act (16 USC 1531-1540), the Lacey Act (18 USC 42-44), the Black Bass Act (16 USC 851-856), the Fish and Wildlife Coordination Act (16 USC 661-667e), the Airborne Hunting Act (16 USC 742j-2), the Migratory Bird Treaty Act (16 USC 701-711), the Bald and Golden Eagles Act (16 USC 668-668d), and parts of the Marine Mammal Protection Act (16 USC 1361-1384). In addition, the Section has responsibility for prosecuting violators of the Customs Laws whenever wildlife is involved. It is significant that the Wildlife Section expects to work closely with local U. S. Attorneys and various federal investigative agencies to develop and prosecute wildlife cases, since all too often indication of even statutorily mandated animal rights do not enjoy a high priority in most prosecutors' offices.

FEDERAL WILDLIFE LAW ENFORCEMENT COORDINATION COMMITTEE CREATED

Early last year representatives of the Fish and Wildlife Service, National Marine Fisheries Service, Animal and Plant Health Inspection Service, Customs Service, and Department of Justice signed a Memorandum of

Understanding which officially established the Wildlife Law Enforcement Coordinating Committee. It will coordinate investigations into the illegal wildlife trade and enforce wildlife trade restrictions. Also established was the inter-agency Texas Task Force, a prototype of others to follow, to cope with a problem unique to the southwest: bird smuggling.

NATIONAL MARINE FISHERIES SERVICE: TAKING AND IMPORTING OF MARINE MAMMALS (Fed. Reg. Vol. 45, No. 186, 62999)

The National Marine Fisheries Service waived the moratorium of the Marine Mammal Protection Act of 1972 (Pub.L. 92-522) to permit the importation in 1976 of Cape fur seals harvested in South Africa. However, this waiver was rendered invalid by decision of the D.C. Court of Appeals in *Animal Welfare Institute et al v. Kreps*, 561 F.2d 1002 (D.C. Cir. 1977) and no further importation permits were issued after this decision. The Agency therefore amends 50 CFR Part 216 by deletion of the regulation that sanctioned the waiver (50 CFR 216.32).

NATIONAL MARINE FISHERIES SERVICE: TAKING OF BOWHEAD WHALES BY INDIANS, ALEUTS, OR ESKIMOS FOR SUBSISTENCE PURPOSES (Fed. Reg. Vol. 45, No. 206, 70032)

At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission (IWC) adopted an amendment to the Schedule of the International Convention for the Regulation of Whaling, 1946 (Convention), which established a three year quota for the taking of the Bering Sea stock of bowhead whales for calendar years 1981, 1982 and 1983 of 45 landed or 65 struck, whichever occurs first, with a maximum of 17 whales landed in any year. The Schedule of the Convention containing the three year quota will become effective on November 26, 1980. The Whaling Convention Act of 1949 requires Schedule Amendments to be adopted as Federal regulations. NOAA is beginning to plan for the rule making which will implement this quota. (50 CFR Part 320)

FOOD AND QUALITY SERVICE, USDA: HUMANE HANDLING AND TREATMENT OF LIVESTOCK, SOLICITATION OF INFORMATION (Fed. Reg. Vol. 45, No. 179, 60448)

The Food Safety and Quality Service sought information and comments by November 12, 1980 from all interested members of the public on the need for modification of certain provisions relating to the humane handling of livestock contained in the Federal meat inspection regulations. The Agency had been requested by a slaughterer to allow the withholding of water from cattle for a period of time not in excess of 24 hours when such withholding is specified in the sales

contract. The Agency was also requested to allow the withholding of water from animals which are to be slaughtered within 24 hours from the time they arrive at the slaughter establishment. (9 CFR Part 313)

ENVIRONMENTAL PROTECTION AGENCY: PROPOSED RESTRICTIONS ON THE USE OF STRYCHNINE

The Environmental Protection Agency in November invited public comments on its proposed restriction on the use of strychnine against prairie dogs because of the danger that black-footed ferrets, which are threatened with extinction, can die after eating poisoned prairie dogs. The agency also proposed banning strychnine in areas inhabited by such endangered species as the gray wolf and grizzly bear. Its use would also be banned against deer mice, meadow mice, chipmunks and woodchucks but the poison could still be used against ground squirrels, kangaroo rats, cotton rats, jackrabbits and porcupines.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION: LIMIT ON PORPOISE KILLING BY TUNA FISHERMEN REDUCED

The National Oceanic and Atmospheric Administration on October 21, 1980 reduced to 20,500 the 1981 annual limit of porpoises killed as tuna are netted. The limit, a reduction from 31,150, will remain in effect for five years. Violators will continue to be fined up to \$10,000 per incident. The new regulations list 10 types of dolphin and the number of each that can be killed in the course of fishing for yellowfin tuna. The allowable kills range from 11, 890 on the northern off-shore spotted porpoise to 40 striped porpoises, found chiefly in the southern tropical region of the Pacific.

INTERIOR DEPARTMENT: PRIVATE "ENFORCEMENT" OF ENDANGERED SPECIES ACT

Apparently for several years a University of California (Davis) researcher had been experimenting on gibbons, an endangered species. Though a permit from the Secretary of the Interior was required under the Act, none had been obtained. The International Primate Protection League petitioned the Interior Department to perform its statutory duty. The University then admitted that it had indeed been conducting the experiments without a permit, and agreed to apply for one. Putting aside the experimentation aspects of this situation (which SAR opposes), an important legal point can be made: it is believed that the League's petition to the Secretary was the first time that a private organization took advantage of the Endangered Species Act's provision that "civilians" can demand that the Act be enforced.

INTERNAL REVENUE SERVICE: DEDUCTIBLE ANIMALS

A deaf taxpayer living alone had a cat who responded

to unusual sounds and thus alerted the owner to possible danger. The owner had registered the cat as a "hearing aid animal" with animal control authorities. The I.R.S., according to *The New York Times* of September 2, 1980, has ruled that the cost of maintaining the cat is a deductible medical expense.

H.U.D.: PETS IN PUBLIC HOUSING

Since the "no-pet" problem in rental housing is a growing one, it is significant that H.D.D. has backed off a no-pet edict in the past.

The Dade County (Florida) Department of Housing and Urban Development (in which, doubtless, there is considerable federal tax money) decreed a no-pet policy. One of their units was occupied by an elderly lady who had to move her dog to a local vet's whose board bills consumed a substantial part of her pension. Reading of the woman's plight, a humane worker from Louisiana contacted one of her U.S. Senators, J. Bennett Johnston, and requested that he intervene. He did, writing directly to H.U.D. Secretary Patricia Harris. The result was a prompt response to the Senator from an Assistant Secretary who wrote that: "[t]he Dade County Department of Housing and Urban Development . . . has established the policy that pets presently living there will be permitted to stay."

IN THE LEGAL LITERATURE

NEW PUBLICATIONS

Wildlife Newsletter is a bimonthly supplement to the *Land and Natural Division Journal* (Wildlife Section, U.S. Department of Justice, Washington, DC 20530). Aimed at an audience with interests in wildlife law, it contains information on civil and criminal cases, legislative developments, and other wildlife-related material in which the federal government has an interest. ARLR will extract important material from *Wildlife Newsletter*.

BOOK REVIEW

The Sinking Ark, by Norman Myers (Pergamon Press, 1979), reviewed by Prof. S. Favre, Detroit College of Law.

Mr. Myers is to be commended on a clear and informative discussion of the international problem of disappearing species (plant and animal) and of the underlying economic forces that are the roots of many of the pressures presently reducing species numbers. His focus on tropical moist forest is justified and frightening as he explains the problems to be faced in the near future for these important ecological areas. The only shortcoming of the book is that under his perceptions and arguments, the motivational basis for both the concern over species reduction and for the seeking of

solutions is limited to human self-interest. While this approach has a very practical appeal, the lack of concern for the rights and needs of wildlife themselves is distressing and the practical arguments may, in the long run, be insufficient motivation to force the types of changes suggested by the author.

BULLETIN BOARD

ANIMAL RIGHTS LAW WRITING PROJECT

Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201.

POLITICAL ACTION

In recognition that "[t]he time has come for the animal rights and welfare movement to emerge as a rational, serious and powerful political force," a group of Californians has formed PAWAC (Political Animal Welfare Action Committee, 17070 Broadway Terrace, Oakland, CA 94611). Chaired by Laurence W. Kessenick, Esq., of San Francisco's Attorneys for Animal Rights, PAWAC describes itself as "[a] nonprofit, nonpartisan political action committee, fighting for the rights of animals. Formed in compliance with all laws in [California] and registered with the Fair Political Practices Commission, PAWAC provides financial assistance and endorsements to political candidates who have an established record of supporting animals."

ANIMAL RIGHTS LAW COURSE

A Natural Resources and Wildlife Law course is now taught at George Washington University Law Center by Oliver A. Houck, Vice President and former General Counsel of the National Wildlife Federation.

ASPCA RECEIVES DOGFIGHTING STUDY GRANT

New York's ASPCA has received a grant from the Geraldine Dodge Foundation to study dogfighting. The almost completed research study entailed both book research and review of the work done in this area by humane societies and police. In the course of the project, investigations by ASPCA agents (who have peace officer status) were undertaken and in Rochester, NY, an ASPCA agent went undercover, wired in such a manner as to enable other ASPCA agents to monitor what was going on. The undercover agent was able to become friendly with local dogfighters, and was thereby able to witness a dogfight. One arrest was made for violation of the New York State Agriculture and Markets Law relating to animals fighting. The case is still pending.

NEW YORK LAWYERS COMMITTEE RECEPTION

The newly formed Lawyers Committee for the Enforcement of Animal Protection Law in New York is holding its first reception sometime in late January. All in-

terested attorneys are invited to join them. For further information please call 212/490-0077.

ASPCA SEEKS INFORMATION

New York's ASPCA solicits all information concerning cult-type ritual killings of animals. Also sought is information about dogfighting. Please contact Ellnor Molbegott, General Counsel, ASPCA, 441 East 92 Street, New York, NY 10028.

AVAILABLE RESOURCES

WILDLIFE SEIZURES AND FORFEITURES

A little known feature of federal wildlife and customs law provides for seizure and forfeiture of illegal wildlife and wildlife parts, a complicated procedure under the best of circumstances. An outline of the relevant statutes and important commentary (including cases) appears in Vol. 1, No. 2 (May 1980) of *Wildlife Newsletter*. (Contact Land and Natural Resources Division, Wildlife Section, Department of Justice, Washington, DC 20530).

Through statutes like the Lacey Act (18 USC 42 et seq.) foreign wildlife laws are sometimes enforced in U.S. courts, which causes difficulty for prosecutors unfamiliar with those laws. To remedy this problem the federal Wildlife Section is beginning to summarize some of those foreign laws, and Indonesia (with Australia and Papua New Guinea), a principal source of wildlife coming out of the South Pacific, is covered in Vol. 1, No. 3 (July 1980) of *Wildlife Newsletter*. (Contact Land and Natural Resources Division, Wildlife Section, Department of Justice, Washington, DC 20530).

WILDLIFE SEIZURES AND FORFEITURES

Even though federal law expressly authorizes seizures and forfeitures in wildlife cases, many federal agents fear personal liability. The Wildlife Section has prepared a memorandum on the subject, which appears in Vol. 1, No. 3 (July 1980 of *Wildlife Newsletter*. (Contact Land and Natural Resources Division, as above).

NEPA: FERAL BURRO REMOVAL

The New Mexico federal District Court's findings of fact and conclusions of law in the American Horse Protection Association case involving removal of feral burros from Bandelier National Monument. (Contact SAR.)

HAWAII v. LeVASSEUR

In addition to the papers mentioned in the October 1980 ARLR: judgment of the Circuit Court; U.S. Supreme Court *certiorari* petition. (Contact SAR.)

NOTE: SAR asks to be reimbursed for the cost of photocopying resources available from it. An invoice will accompany the materials.

EDITOR'S COMMENT

No one who reads ARLR needs to be told just how much legal activities on behalf of animal rights are burgeoning throughout America. Every week ARLR receives material demonstrating that more and more lawyers and law students are getting involved, that an impact is being made in legislatures, that legal writing about animal rights is being published. Indeed, the existence and success of ARLR itself is eloquent testimony to how animal rights law is coming of age. That being so, Society for Animal Rights, publisher of Animal Rights Law Reporter, has concluded that the next logical step for the movement, if the interest exists, is to bring together in one place as many animal rights lawyers as possible — in order to exchange ideas, to fuel each other's and the movement's activities, and to publically demonstrate that there is an animal rights law movement populated by serious, competent professionals. SAR/ARLR hope to organize the First Conference on Animal Rights Law for about two days sometime in late 1981 or early 1982.

To help in our consideration of this project, we would like to elicit the following information ("without prejudice," of course) from our lawyer and law student readers: (1) would you be interested in attending such a conference, and, if so; (2) what would be your geographical preference, and why; (3) what time of the year would you prefer, and why; (4) what topics would you like to have covered, and why; (5) would you be willing to participate by presenting a paper, conducting a workshop, being on a panel, or otherwise? In addition to your answers to these questions, we would appreciate any comments you may have about such a conference.

Hopefully, by April 1981, when we publish our next issue of ARLR, we will have a clear idea of whether there is sufficient interest among animal rights lawyers to make a Conference on Animal Rights Law feasible.

Henry Mark Holzer

NEW POLICY ON SUBSCRIPTIONS

Starting with the April 1981 issue, ARLR will be sent free upon request to members of Society for Animal Rights, Inc. Membership dues are \$15 or, for Voting Members, \$50 per annum. (SAR members also receive the SAR Report, published quarterly, to provide information on the Society's programs and on the animal rights movement in general). ARLR will continue to be sent free upon request to interested organizations, law libraries, attorneys general, public officials and government agencies involved with or interested in the legal rights of animals.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

APRIL 1981

IN THE COURTS

FEDERAL

PROSECUTIONS/CONVICTIONS

In October 1979 the Wildlife Section of the venerable land and National Resources Division was formed within the Department of Justice. Since then, the Section has initiated or assisted other government agencies in numerous investigations, some 35 prosecutions, and over 100 import related civil forfeiture actions. The Wildlife Section reports that "[t]he major prosecutions, which have focused on commercial wildlife dealers, have resulted in increasingly stiff penalties. Jail time, once a rarity in wildlife cases, is now a very real possibility — and a real deterrent. Fines now range in the thousands of dollars, not the hundreds." Kudos from ARLR.

Guilty pleas to illegally importing 717 sperm whale teeth resulted for one defendant in six months jail time on a two year sentence for smuggling (18 USC 545) and another six months suspended on an Endangered Species Act count. Apparently, heavy defense costs mitigated against more severe fines. (*U.S. v. Cabrera-Lopez* (S.D. Cal.))

Five members of one family pleaded guilty to Endangered Species Act and Lacey Act violations for illegally taking and transporting 566 alligator hides. Two of the five were fined \$2,000 each and the other three \$1,000 each. All received two years probation. In addition, as part of the sentence the court ordered that the proceeds from sale of the hides (approximately \$40,000) go toward Fish and Wildlife Service undercover

activities. Various legal questions presented by the order are being studied by the Service. (*U.S. v. Buzbee* (S.D. Alabama))

A taxidermist was convicted on 11 of 12 counts of Migratory Bird Treaty Act (16 USC 703) violations and smuggling (18 USC 545) 75 birds of 37 species were involved in the Migratory Bird Treaty Act counts. Five polar bear skins imported in violation of the Marine Mammal Protection Act and the Tariff Act of 1930 were involved in the smuggling counts. Sentence was six months in jail and concurrent two year terms, with four years probation to follow. A \$5,000 fine was also assessed. (*U.S. v. Leap* (N.D. Ill.))

A smuggling indictment involving yellowheaded amazon birds resulted in a plea to 18 USC 545. Sentence was six months in jail, three years probation, and a \$300 fine. (*U.S. v. Martin* (S.D. Cal.))

A smuggling and Endangered Species Act charge involving 29 Gila monsters resulted in a plea to smuggling. Sentence was three years probation, a concurrent one year suspended, and a \$3,000 fine. (*U.S. v. Collings* (E.D. Pa.))

A federal judge in Texas granted a Rule 29 motion for acquittal because the government had failed to prove the species or source of imported turtle meat. This was an unfortunate ruling since a poll of the jury later revealed that 12 of the 13 (including an alternate) believed that the government had proved it. (*U.S. v. Pace* (S.D. Tex.))

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

A federal magistrate handling an Animal Welfare Act (7 USC 2156) prosecution ordered an acquittal in a "promotion of cock fighting" case, holding that the manufacture of cock fighting equipment, without more, does not amount to "promotion."

U.S. v. La Blue et al. (C.D. Cal.) Resulted in Rule 29 motions being granted for three co-defendants, based on the government's failure to prove "knowing" customs law violations. Government prosecutors are well aware of this problem in customs cases, and that merely producing fraudulent documents is insufficient. They must be pinned on someone in particular.

An Endangered Species Act (16 USC 1538) conviction for taking a loggerhead turtle resulted in a 90-day suspended sentence, two years unsupervised probation.

In what the Wildlife Section calls a "major import and conspiracy case," a bird dealer/quarantine station has been indicted, with others, on a multitude of counts: violations of customs, wildlife, agriculture laws and general criminal statutes. The list of statutes allegedly violated is too long to set forth here, but ARLR will follow the case and report further developments as they occur. From all appearances, the "major . . . case" characterization is apt. (*U.S. v. Slocum et al.* (No. 90-8-1-44 (S.D. Fla.)))

The theft of 14 of the total population of 27 squawfish (an endangered fresh water salmon) from the National Fish Hatchery of Willow Beach (in northwestern Arizona) resulted in indictments for possession of endangered species (16 USC 1538), theft of government property (18 USC 641), and interstate transportation of stolen property (18 USC 2314). Considerable efforts since 1974 to bring back this species have apparently been halted by the theft. (*U.S. v. Runyon et al.* (D. Ariz.))

The alleged smuggling of 16 military macaws has resulted in a one count indictment under 18 USC 545. (*U.S. v. Hunt* (No. 81-0003, S.D. Cal.))

Allegedly offering for sale two mountain zebra skins has resulted in a one count violation of information under 16 USC 1538 (a) (1) (f). (*U.S. v. Zacks* (D. Mass.))

An alleged conspiracy to smuggle 50 Finsch's amazons (lilac-crowned amazons) resulted in an indictment under 18 USC 371 and 545. (*U.S. v. de Borundy* (S.D. Cal.)) Two others pleaded guilty to misdemeanors for their role in the affair.

The alleged shooting and killing of coyotes and foxes

from a helicopter without a permit, and the alleged sale of 56 coyotes and foxes taken illegally, resulted in indictments under 18 USC 371, 16 USC 722-j-1, 18 USC 2, 18 USC 43 (a) (.). (*U.S. v. Vogan et al.* (D. Wyo.))

There is an important point for animal rights law to be made about the increasing number of wildlife trade law prosecutions themselves. Prior to the federal government's fairly recent emphasis on enforcement of wildlife trade law, prosecutions were for relatively minor violations, sentences were thus equally minor, and jail time was rare. As a chart recently prepared by the Wildlife Section shows, federal courts have had their consciousness raised lately and, realizing the seriousness of wildlife law violations, now impose commensurately more serious penalties. For example some of the cumulative totals are: 21 jail sentences ranging from five months to five years; 10 sentences more, under five months; 120 years of probation; over \$110,000 in fines; prohibitions or restrictions on future trading in wildlife; 1,500 hours of approved public service. In addition, much of the wildlife involved in these cases was forfeited to the government, causing even more losses to the defendants. That all this has happened in a relatively short period of time is significant. That it is creating an environment of general consciousness raising among government lawyers and federal judges is also significant, as is the availability of sentencing information from which judges can receive guidance as they are called upon to sentence. But most significant is that the Wildlife Section's success so far once again proves a central premise of SAR/ARLR's approach to animal rights law: that crucial to success is knowledgeable, concerted effort rooting in comprehensive information. As the Wildlife Section's efforts are demonstrating, that is a hard combination to beat.

ENDANGERED SPECIES ACT: MULTIPLE STEP STEP PROCESS (PART II)

The *North Slope Borough v. Andrus*, District Court opinion, was discussed in the January 1981 edition of ARLR (See p. 3). On appeal, the D.C. Circuit (10 ELR 20832, October 1980), negated the expansive view of the Endangered Species Act which had been expounded by the District Court. The Circuit Court gave great weight to the fact that the Department of Interior had retained legal authority over private activities during the *entire* leasing process, including during the drilling of oil. The lessees had been warned by the Department of Interior of the necessity of protecting whales, and, additionally, recognizing the long lead time necessary before oil was produced. The Circuit Court held that compliance with the ESA should be considered at *each* step in the leasing process, rather than being fully satisfied *prior* to the first step. Since no one could say for *certain* that oil drilling would interfere with the endangered whales, and since oil *leasing* certainly would not, it was allowable to proceed. This opi-

nion shifts the momentum and focus of the process back to "drilling as usual," placing the burden on those wishing to stop an ongoing process, to prove harm rather than placing the burden on those wishing to obtain the oil leases to prove that their activity will not harm the whales or other endangered species.

ENDANGERED SPECIES ACT: BOBCATS

A unanimous decision by a three-judge panel of the Court of Appeals for the District of Columbia Circuit is the most recent word in the lengthy proceedings involving bobcat pelts. The court has decisively banned the export of North American bobcat pelts until a reliable method for determining the species' population is developed. The court criticized the Endangered Species Scientific Authority, which allowed 80,000 bobcats to be killed annually and their pelts exported, without having any clear idea on a state-by-state basis of how many bobcats there were. This intelligent approach was a long time in coming.

ENDANGERED SPECIES ACT: STANDING

Keep an eye on this one! In *Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson et al.* (D.D.C.), plaintiffs allege that the Forest Service's grant of mineral exploration rights in an area inhabited by grizzlies violates NEPA and ESA. Most important, however, is that in addition to the Sierra Club and Defenders of Wildlife, the plaintiffs include 12 grizzly bears.

ENDANGERED SPECIES ACT: HABITAT

A County Flood Control District destroyed a feeding habitat for the California Least Tern without application or notice to the government. A consent judgement included a \$10,000 civil penalty and a permanent injunction.

MARINE MAMMAL PROTECTION ACT: "IMPORTATION"

Two recent cases deal with the meaning of what constitutes "importation," and assess civil penalties for "stopovers" in the United States (*In re Darcyllynn Shawver, et al.*, NOAA Docket No. 825-021; *In re Akkio Kawahara*, NOAA Docket No. 934-028)

INTERNATIONAL WHALING CONVENTION ACT: REGULATIONS

In *Hopson v. Kreps* (9th Cir. 1980), the Ninth Circuit considered an appeal by Native Alaska Eskimos from a lower court ruling. It had held that the Secretary of

Commerce's adoption of regulations pursuant to the International Whaling Convention Act presented a non-justiciable "political question." While not addressing several of the Eskimo's claims, the 9th Circuit did agree with the plaintiffs' contention that the courts had review power to determine whether the statutory sections which Congress passed to implement the international treaty did delegate the broad discretionary power claimed by the Secretary of Commerce. While referring to 16 U.S.C. § 916j (a) and § 319(b) (which appears to grant such authority), because this issue had not been fully considered by the lower court the case was remanded for full consideration of the issue. (The lawyers continue to argue; the whales continue to die).

STATE AND LOCAL

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

A District of Columbia man's dog suffered traumatic glaucoma and blindness in an automobile accident. The owner sued for emotional anguish and loss of companionship. The Superior Court awarded \$200 for the dog's injuries, and the D.C. Court of Appeals affirmed. The Supreme Court of the United States declined review, as many newspapers throughout the country noted. Once again, it is appropriate for ARLR to observe that the measure of damages issue in animal rights law is among the most important. It must be solved conceptually and intellectually all the way to its core, and only then carefully planned test litigation brought in a proper forum.

Although there is a tremendous amount of work, legal and other, to be done in solving the measure of damages problem in regard to injury or death of pet animals, more and more is happening in other areas that may be of help analogously. For example, the legal rights of fetuses (if any) are something to be considered. Recently, the Alabama Supreme Court held that an unborn child is a "family member" under an insurance policy (*Alabama Farm Bureau Mutual Casualty Ins. Co. v. Piggott*, 79 543). In *Georgia*, an endangered 39 week old viable fetus had the "right" to be delivered by cesarean, though the mother's religion prohibited the procedure (*Jefferson v. Gribbin Spalding County Hospital Authority*, 37244 — a *per curiam* decision of the Georgia Supreme Court). *Presley v. Newport Hospital*, 365 A.2d 748 (Rhode Island, 1976) held that parents can sue a hospital over injury to a fetus. Building on that, a Rhode Island Superior Court judge has held that a motorist who caused an accident in which a pregnant woman lost her near-term fetus could be held criminally liable for the fetus' death (*State v. Amaro*, N.2-79-108). Whether a fetus is a "person" entitling it to sue for medical malpractice was deferred until trial in a Washington, D.C. Superior Court case. If an unborn human being has legally cognizable rights, what about extant animals — and what about their owners?

CRUELTY: PROSECUTIONS/CONVICTIONS

There appear to be signs that more law enforcement authorities are beginning to concern themselves with dog fighting. Pursuant to a recently enacted Arizona law making dog fighting a felony, and a California law imposing stiff penalties for possession of a fighting animal, a series of recent arrests were made and indictments are pending. For example, in Pima County Arizona recently three people were charged with five counts of the felony of animal fighting. Apparently, the same three also face California charges arising out of the possession and transportation of dogs for fighting purposes.

A Minnesota law prohibiting "greased pig" contests has been interpreted to require the application of an artificial substance to the animals body. Accordingly, charges were dismissed in a "hog wrestling" case where no such substance had been used.

A former Olympic gold medal winner of the 1930's was found guilty of the mistreatment of horses and other animals on his ranch. He was sentenced to a suspended 1 day in jail and a fine and court costs totaling \$100.

An 18 year old man was charged in a three count criminal information in Pittsburgh's federal court with the beating death of a rare golden eagle, an endangered species. The 18 year old and a 17 year old juvenile also beat to death a redtail hawk and a goshawk while all three were tethered in the yard of an amateur ornithologist who was also a licensed falconer.

An Alaska Superior Court judge sentenced a defendant to 1 year in jail for stomping a barking puppy to death during an armed robbery. (The defendant also received 5 years for burglary, 10 years for robbery, five years for physically assaulting the victims, and two years for being a felon in possession of a firearm).

A Tennessee man was sentenced to perform 100 hours of public service work (preferably at a Humane Society), to 11 months 29 days of probation, and to pay court costs and hospital bills, for shooting a neighbor's dog with a .357 magnum pistol.

A Washington D.C., pet shop owner was convicted by a Superior Court jury of cruelty to animals arising out of failure to provide proper care.

Although it is a civil rather than a criminal matter, it is worth reporting that movie director Michael Cimino has been sued for \$1,000,000 for abusing a horse rented for filming of his new film, the as-yet-unreleased "Heaven's Gate." In addition, the American Humane Association apparently received reports that another horse was blown up by a hand grenade in a battle scene, that prolonged cock-fighting occurred (though it

is illegal in Montana, where the film was shot), that trip wires were used, and that three cows were slaughtered. Cimino was also the director the "The Deer Hunter."

ZONING: CHICKENS

Riviera Beach, Florida, has an ordinance prohibiting the keeping of poultry or livestock. It was recently employed against a local woman who kept a pet chicken. The woman was placed on probation for six months.

HUNTING/TRAPPING: COUNTERATTACK

Oregonians Against Trapping had supported a ballot measure to limit the use of animal traps. They were opposed by various individuals and organizations, and lost. Alleging that their opponents had intentionally circulated false and misleading information, OAT sued them and sought general damages of \$250,000 and punitive damages of \$1,000,000. The case is pending.

Another interesting anti-hunting case was filed by a Rhode Island group, Defenders of Animals. It has sued to prevent the state from importing 100 snowshoe hares from New Brunswick for hunting purposes.

HUNTING/TRAPPING: COMPROMISE

Last fall The Fund for Animals sought a temporary injunction from a federal judge to stop Pennsylvania's one-day black bear hunt. Apparently, the Fund was concerned that during a previous study of the bear population certain tranquilizers were used which could harm humans who ate the bear meat. The case ended when the Fund withdrew its objections to the hunt when procedures were agreed on to safeguard against anyone eating tainted meat.

FOREIGN

ARLR is, of course, intended to be of assistance to the animal rights law movement in its efforts in American courts, legislatures and agencies. Accordingly, up until now virtually no mention has been made of events occurring abroad or of material available from non-U.S. sources. However, occasionally something foreign comes to our attention which has obvious value for the animal rights law movement in America. With this issue of ARLR we will begin to report such information on a "when available" basis.

CRUELTY: "UNNECESSARY" SUFFERING

In a unanimous opinion rendered on July 11, 1978, the

Court of Appeal for the Province of Quebec, District of Montreal, rendered an important decision in *Queen v. Menard*. Although the court's basic premises regarding animal rights and humankind's relation to animals leave a great deal to be desired, the *legal* aspects of the decision are quite useful for those who would litigate the perennial problem of what "unnecessary" pain and suffering means. In *Menard* the court held that euthanasia by forced carbon monoxide ingestion taking in excess of 30 seconds to kill, and not alleviated by easy and feasible elimination of intolerable carbon levels, caused "unnecessary" suffering. It is evident that veterinary and scientific expert testimony was essential to the case's success.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U. S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

ILLEGAL FISH/WILDLIFE TRADE

H. 1638 provides for control of illegally taken fish and wildlife. To Merchant Marine and Fisheries Committee.

MARINE MAMMALS

H. 1672 amends Marine Mammals Protection Act of 1972 to prohibit the issuance of general permits which authorize taking of marine mammals in connection with commercial fishing. To Merchant Marine and Fisheries Committee.

HCR 18 urges a moratorium on the commercial killing of whales. To Foreign Affairs Committee.

ENDANGERED SPECIES.

H. 2214 establishes a federal program to provide public information on wildlife preservation and the endangered species. To Merchant Marine and Fisheries Committee.

STATE AND LOCAL

ZONING: EXOTICS

The Weld County (Colorado) Commissioners have denied a special use permit for a local osteopath's proposed exotic animal farm at his 80 acre rural home, which reportedly housed lions, leopards, and Bengal tigers.

ZONING: ANIMALS IN URBAN APARTMENTS

Hearings were recently held on a two year old bill in the New York City Council which would "grandfather" many pets which are currently residing in city apartments in violation of "no pet" clauses in leases.

POUND SEIZURE LAWS

A Massachusetts bill has been introduced to repeal the seizure law under which pounds have been compelled to send animals to laboratories for experimentation. The bill (H.B. 1245) further provides that no dog officer in a private or official capacity shall give or sell any animal to any laboratory or dealer.

SPCAs AND SHELTERS

New Jersey Senate bill 1074 would extend to other humane societies the law enforcement powers which have long been extended only to the New Jersey SPCA and its branches. Passed by the Senate last year the bill is pending in the Assembly Agriculture Committee chaired by Assemblyman H. Donald Stewart.

ANIMALS AS PROPERTY: PET KILLING

In response to the recent killings of cats and dogs by recent immigrants, apparently for food, California State Senator Marz Garcia has introduced SB 49. It amends the California Penal Code to make it a misdemeanor to kill a cat or dog for the purpose of consumption. That such a bill should be necessary in 1980 speaks volumes about the state of our culture.

ANIMAL CONTROL: FLYING PIGEONS

Wayne, New Jersey, has prohibited the owners of homing, racing and carrier pigeons from flying the birds between noon and dusk.

ANIMAL CONTROL: LICENSING

Though it is not common for states or municipalities to license cats, some do. In July 1980 Charlotte, North Carolina enacted a comprehensive animal control ordinance. Section 3-25 requires that cats be licensed and immunized against rabies. (The \$5.00 cost for the former and \$8.00 cost for the latter apparently caused many people to dump cats and the city animal shelter reportedly euthanized hundreds in the few months following enactment of the ordinance.

SPCAs AND SHELTERS: HOLDING PERIOD

California SB 544 mandated that impounded cats be held for 72 hours, as dogs are.

PREDATOR CONTROL

SJR 6 establishes a national policy for taking of predatory or scavenging mammals and birds on public lands. To Environment and Public Works Committee.

TRAPPING

H. 1002 regulates the trapping of mammals and birds on federal lands. To Merchant Marine and Fisheries and Energy and Commerce Committees.

H. 374 to discourage use of leghold or steel jaw traps on animals in the U.S. To Energy and Commerce Committee.

EXPERIMENTATION

HCR 38 pertains to the methods used on animals in research. To Energy and Commerce and Science and Technology Committees.

H. 556 establishes a National Center of Alternative Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplication of experiments on live animals; to disseminate information on such methods. To Energy and Commerce and Science and Technology Committees.

H. 930 establishes a commission to study alternative methods to the use of live animals in laboratory research and testing. To Science and Technology Committee

H. 220 and H. 2110 promote development of methods of research, experimentation and testing that minimize the use of, and pain and suffering to, live animals. To Energy and Commerce and Science and Technology Committees.

SEALING TREATY

H. 348 and H. 560 provide for termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957 to prohibit the taking of seals in the Pribilof Islands. To Foreign Affairs, Interior and Insular Affairs and Merchant Marine and Fisheries Committees.

FEDERALISM: ENDANGERED SPECIES

A major victory was California's SB 1953, conceived and sponsored by Attorneys for Animal Rights (San Francisco), solving a problem discussed in ARLR, January 1980, p.4, and January 1981, p.7. The bill, in effect, continues to allow California to bar the sale of animal products from species not protected by the federal Endangered Species Act.

VETERINARIANS: GOOD SAMARITAN ACT

California AB 2342 now protects veterinarians from liability, the same as physicians, when they treat an injured animal under emergency conditions when an owner is unavailable to authorize treatment.

THE AGENCIES

FEDERAL WILDLIFE LAW ENFORCEMENT COORDINATING COMMITTEE: CALIFORNIA TASK FORCE

In January 1981 Committee Members (see ARLR Jan/81, p.8) established the California Task Force to focus on wildlife importation violations in the Los Angeles and San Diego areas.

ARIZONA GAME AND FISH COMMISSION

The Commission has approved the shotgunning of coyotes from helicopters, to be done by U.S. Fish and Wildlife Service employees.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Department recently lifted a 10 year ban on the sale of crocodile skin items in New York.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION: REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS; TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS (Fed. Reg. Vol. 46, No. 4, 1761)

On October 31, 1980, NOAA published its final decision and final rule (45 FR 72178-72196) concerning the taking of porpoises incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (ETP). The regulations contained in that publication became effective on January 1, 1981, and provide in § 216.24(d) (2) (i) (D) that the Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. Proposed amendments to § 216.24(d) (2) (i) (A) (3) are hereby announced which would modify the apportionment to individual porpoise stocks of the total allowable annual mortality limit for U.S. vessels of 20,500 animals for the years 1981-1985 and beyond. The finding that 20,500 porpoise mortalities incidental to commercial fishing in the ETP will not be to the disadvantage of the porpoise stocks is not affected by the proposed regulatory amendments, nor is any other aspect of the regulations published at 45 FR 72187-72196. The Marine Mammal Protection Act of 1972, as amended (MMPA), requires that NOAA assure itself that contemplated incidental takings will not disadvantage the affected porpoise stocks over the period of the takings. Therefore, this notice supplies information concerning the expected impact of takings under the proposed regulatory amendments.

INTERIOR DEPARTMENT/OES

The department's office of Endangered Species, in a significant policy change, will henceforth concentrate on the recovery of species already on the endangered species list rather than on adding measurably to the list. "Recovery" entails taking steps to remove threats to a species. Many observers believe that even a partial moratorium on listing endangered species will only cause many of them to disappear even faster.

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES

In March, delegates from 67 countries meeting in New Delhi added three whale species — sperm, sei, and fin

— to the list of animals and plants banned from international commerce. Henceforth, international trade in the oil, meat, and bones of three species — virtually the only whales still hunted by commercial fleets — will be outlawed.

DEPARTMENT OF AGRICULTURE/APHIS

Delta Airlines, Inc., the first airline to be penalized for violating transportation standards of the Animal Welfare Act, has been fined \$2,000. Charged with transporting dogs in substandard shipping containers and with transporting one dog from Washington, D.C., to Birmingham, Alabama, while in obvious physical distress (the animal died in transit from heat prostration), Delta waived an oral hearing and settled the charges without admitting or denying guilt. Delta agreed to inform its personnel about the AWA standards for transporting animals.

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

While there were never an abundance of books, articles, etc., published on the subject of animal rights law, nor is there now; nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p.9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention.

INTERNATIONAL WHALING COMMISSION

The review of the 32d International Whaling Commission Meeting is now available in: Hearing before the Subcommittee on International Organizations of the Committee on Foreign Affairs, House of Representatives, 96th Congress, Second Session, September 10, 1980.

ELEPHANT PROTECTION ACT OF 1979

Now available is: Hearing before the Subcommittee on Resource Protection of the Committee on Environment and Public Works, United States Senate, 96th Congress, Second Session, on H.R. 4685, an act to provide for the control of the importing into and the exporting from the United States of elephant and elephant products, and for other purposes and Senate Amendment No. 1680, the International Wildlife Resources Conservation Act of 1980, June 30, 1980.

BULLETIN BOARD

ANIMAL RIGHTS LAW WRITING PROJECT

Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

SYMPOSIUM ON PET LOSS AND HUMAN EMOTION

On March 27-29, 1980, the Foundation of Thanatology (630 West 168th Street, New York, NY 10032) and The Animal Medical Center sponsored a symposium entitled "Veterinary Medical Practice: Pet Loss and Human Emotion." The emotional relationship between human beings and animals is a crucially important building block in developing a measure of damages theory which will compensate pet owners for the injury or death of a loved animal. ARLR's editor, Professor Henry Mark Holzer, was a panelist at the symposium, which made a significant contribution to the study of this important subject.

ARLR SEEKS ASSISTANT EDITOR

Since its inception 16 months and 6 issues ago ARLR has been compiled, edited and written by Professor Henry Mark Holzer, with much of the legislative material provided by SAR's president, Helen Jones. As recent issues of ARLR show, its scope has broadened and increasingly greater amounts of material are being included. Accordingly, a volunteer assistant editor is sought. The person must be a lawyer, possess basic writing skills, be willing and able conscientiously and consistently to devote about 20 hours quarterly, have a serious commitment to animal rights law, and (preferably) reside in the New York City area. Please contact Professor Holzer in writing, at Brooklyn Law School, 250 Joralemon Street, Brooklyn, New York 11201.

FIRED PROFESSOR NEEDS LEGAL HELP

A university biology professor in Illinois who alleges that he can prove that his discharge was because of his "anti-vivisection beliefs" has unsuccessfully sought the ACLU's help, which turned him down because his

school is private not public. The school's chapter of the American Association of University Professors will also apparently be of no help either. Needless to say, if the professor has been fired because of anti-vivisection beliefs his case is of great importance to the animal rights law movement. Any attorney, especially those in Illinois, interested in further details should contact Helen Jones at SAR.

SOUTHERN CALIFORNIA LAW FIRM AFFILIATION SOUGHT

Henry Mark Holzer, Special Counsel and a Director of SAR and Editor of its Animal Rights Law Reporter, currently Professor of Law at Brooklyn Law School (250 Joralemon Street, Brooklyn, New York 11201), seeks an "of counsel" affiliation (limited to animal rights, constitutional law and general appellate practice) with a Southern California law firm.

AVAILABLE RESOURCES

MAJOR WILDLIFE LAW PROSECUTIONS

Not too long ago the federal effort to prosecute violations of wildlife laws began in earnest. A summary of major prosecutions is available from SAR.

WILDLIFE LAW SENTENCING SUMMARY

The Wildlife Section has prepared a summary of sentences in many of its prosecutions during the past few years. It contains the case name, the wildlife involved, who was convicted of what, and the sentence. The summary is available from SAR.

DELTA AIRLINES' CONSENT DECISION

The "Stipulation and Consent Decision" in the Agriculture Department's case against Delta for violation of transportation provisions of the Animal Welfare Act is available from SAR.

QUEEN v. MENARD

The Court of Appeals opinion in this case is available from SAR.

Society for Animal Rights
and
Animal Rights Law Reporter
Announce the First National Conference
On Animal Rights Law

On Friday and Saturday, November 27 and 28, 1981, SAR and ARLR will sponsor the first national Conference on Animal Rights Law. To be held in midtown Manhattan, the Conference will include at least 14 hours of working sessions, Friday and Saturday luncheons, and a Saturday evening closing dinner featuring a speaker prominent in the animal rights movement. Among the many reasons for choosing New York City is the existence of approximately 50 well recognized law schools between New England and Virginia, and the significant number of potential registrants.

The SAR/ARLR conference on Animal Rights Law is open to lawyers, law teachers, law students and judges. Although the number of conference participants will be strictly limited to well under a hundred, if space permits there will be a few registrations reserved for lay persons active in the animal rights law movement.

The conference registration fee (inapplicable to persons presenting papers, participating in panels etc.), will be \$75.00 per participant, except for law students whose registration fee will be \$35.00. (The number of registrations available for law students will be limited). The registration fee will cover the two days of meetings, the Friday and Saturday luncheons and the Saturday dinner. All other expenses of attending the conference will, of course, be the registrant's own responsibility. Beginning April 15, 1981, SAR will begin to accept applications for conference registration, reserving the right to reject applications in its sole discretion and to close registration when its predetermined cut-off point has been reached. Conference registration applications should be on the applicant's letterhead, if possible, or should otherwise identify the applicant's connection with the legal profession or the Animal Rights Law movement. The registration application should also include full payment of the registration fee. All registrations for the conference will have to be completed by mail, and under no circumstances will registration be allowed at the conference itself.

Although subject to change, the conference's tentative program is as follows:

Friday, November 27, 1981: formal opening of conference and welcome by Helen Jones, President of Society For Animal Rights, Inc.; How SPCAs and

private attorneys can help each other, especially regarding the prosecution of cruelty cases; the standards for and nuances of veterinary malpractice; a theory of increased measure of damages for injury to or death of a pet animal; luncheon; litigation on behalf of animals, including: defending the animal rights activist, animal rights cases as viewed from the bench, panel discussion of test-case litigation, problems and pitfalls in animal rights litigation.

Saturday, November 28, 1981: Animals and decedent's estates, including "Sido" type problems, bequests to and of animals, the problem of precatory language; legal and other resources available to the animal rights lawyer, including how to use federal and state Freedom of Information Acts for maximum results; luncheon; panel discussion of model animal protection codes and Departments of Animal Affairs; the lawyer's role in legislative and other political action on behalf of animals, including election polling, lobbying; animal rights law as viewed from the legislature; open floor discussion concerning goals and strategies of the Animal Rights Law movement in the eighties, and special interest projects (e.g., law school courses in Animal Rights, National Organization of Animal Rights Lawyers (which will probably be one concrete result of the conference), centralization of referral/employment for animal rights lawyers) closing dinner.

This program is somewhat but not entirely flexible, so we will consider other topics for a while longer. Any suggestions should be forwarded promptly, especially by persons wishing to participate in the presentations themselves. (Not all of the above topics have yet been "spoken for" — so anyone interested in any of them should let us know quickly).

Even though the conference was a long way off when first announced in the January 1981 Animal Rights Law Reporter, the early response (from all over the country) has exceeded our expectations and some commitments to attend have been made already. Accordingly, we strongly urge those persons really serious about attending to register for the conference as soon as possible, because given our somewhat limited space it would be entirely counter-productive for us to close registration before the people whom we really want at the conference have gotten into it.

EDITOR'S COMMENT

When SAR began its Animal Rights Law Reporter in January 1980, SAR set three principal animal rights law goals to achieve by the end of 1983. The first was to create a nationally recognized clearinghouse of information for the animal rights law movement.

The second was to use that clearinghouse as a springboard for an animal rights law conference, which would be the prototype for annual conferences thereafter.

The third was for that conference to provide the impetus, among other things, for a national organization of animal rights lawyers.

Now, in April 1981, considerably ahead of schedule, SAR/ARLR can report substantial progress toward all three of these goals.

ARLR has quickly become *the* source for material embracing all aspects of the animal rights law movement.

SAR/ARLR's first national Conference on Animal Rights Law will be held in New York City on November 27 and 28, 1981. SAR/ARLR have been informed by serious, experienced professionals that they wish to use the conference as an opportunity to organize a Society of Animal Rights Lawyers.

These developments are dramatic, unequivocal proof of the animal rights law movement's vitality. Though it is being said more and more often today that animal rights is an idea whose time has come, the repetition does not diminish the statement's truth. It is, of course, only natural and fitting that lawyers shall be in the vanguard of such a movement.

After the conference, at the end of 1981 SAR/ARLR intend to set further goals. By then, they may be even more ambitious than our last three.

Henry Mark Holzer

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

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ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

JULY 1981

IN THE COURTS

FEDERAL

PROSECUTIONS/CONVICTIONS

The *Slocum* prosecution (ARLR 4/81, p.2) has resulted in jury convictions for a variety of wildlife and related violations. Other counts remain to be tried. (*U.S. v. Slocum, et al.*, No. 90-8-1-44 (S.D. Fla.)).

Endangered Species Act convictions involving a leatherback sea turtle resulted in a \$2,000 fine on each of two counts (taking/possession and importation) for the ship's captain, and a \$500 fine (for taking/possession) for a fisherman (*U.S. v. Goodwin, et al.*, No. 80-4460-N (N.D. Fla.)).

A conviction was obtained after trial on all three counts of an information charging the killing of a golden eagle (Bald and Golden Eagle Act), a red-tailed hawk and a goshawk (Migratory Bird Treaty Act) (*U.S. v. Foringer* (W.D. Pa.)).

A guilty plea was entered to a charge of smuggling 16 military macaws (ARLR 4/81, p.2) (*U.S. v. Hunt*, No. 81-0003 (S.D., Cal.)).

A three-count indictment has been returned against a fishing captain and his crewman for taking, possessing and attempting to import a loggerhead sea turtle in violation of the Endangered Species Act, 16 USC 1538 (a) (1) (C), (D) and (A) (*U.S. v. Duke and Helm* (S.D. Tex.)).

A four year investigation by federal and state agents has resulted in a federal indictment (Lacey Act) for the killing and trading of Nevada Desert Bighorn Sheep in violation of Nevada law.

Three men pleaded guilty to stealing 14 endangered Colorado River squawfish. See 4/81 ARLR, p.3.

ENDANGERED SPECIES ACT: STATE ACTION/"TAKING"

The District Court opinion of *Palila v. Hawaii* was described in January 1981 ARLR, p.3. Now, the Ninth Circuit has affirmed the lower court ruling (15 ERC 1741 (1981)). In a short opinion, the Ninth Circuit found, first, that summary judgment was appropriate, and, secondly, that a "taking" had occurred. Using the definition of "harm" from the regulations (50 CFR § 17.3(c)) the Court found that the state's plan to maintain sheep and goats in the critical habitat of the Palila was in violation of the Endangered Species Act. As precedent this case could constitute powerful leverage over state management efforts which interfere with endangered species, and by expansion the case could be a limitation on any state action interfering with critical habitat. From the discussion of the two courts, the case might also support efforts to stop private activities which interfere with critical habitat. This case seems to represent a substantial widening of the scope of the Endangered Species Act, the court having ordered complete eradication of the sheep and goats from the birds' habitat in order to protect the species. *Palila v. Hawaii*

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

has even greater significance than the decision itself, however, because it has apparently been a spur to the Fish and Wildlife Service's attempt to make a major change in the Endangered Species Act. Section 9 makes it illegal "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct" involving endangered species (emphasis added). According to current regulations, "harm" includes "significant environmental modification," which means that habitat changes are reachable by the Act. But now the Service would like to redefine "harm" to exclude habitat modification and to include only direct attempts to injure or kill endangered species.

ENDANGERED SPECIES ACT: § 7 (a) (2)'s CONSULTATION RESPONSIBILITIES

The First Circuit has held that the Navy failed to meet its consultation responsibilities under § 7 (a) (2) of the Endangered Species Act in connection with its activities on Vieques Island, off Puerto Rico. The court reversed and remanded, holding that the Navy had failed to obtain a necessary biological opinion as required by the ESA. Also remanded was a § 9 "taking" claim.

ENDANGERED SPECIES ACT: CLASSIFICATION

Cayman Turtle Farm v. Andrus (ARLR 1/81, p.3) has been affirmed by the District of Columbia Circuit.

MARINE MAMMAL PROTECTION ACT: WHALE SHOOTING

Though no individual could be identified as having fired shots at a whale in Alaskan waters, though there was no evidence that any whale was actually hit, and though the ship's master had no knowledge of the incident and had instructed his crew against such conduct, the ship was held in violation of the Act and assessed a civil penalty of \$15,000 (*U.S. v. F/V Repulse*, No. A79-105 (D. Alaska)).

AIRBORNE HUNTING ACT: FORFEITURE

Recently, an aircraft involved in a violation of the Act was forfeited, the court holding that the proceeding was civil in nature, not criminal (*U.S. v. One 1949 Piper PA 18 Super Cub Airplane*, Civ. No. 80-3010 (D. So. Dakota)).

NEPA: CHINA LAKE BURRO KILLINGS

Although for the past 37 years the United States Navy

has occupied approximately 1,700 square miles of China Lake, California, where a Naval Weapons Center is located, feral burros have roamed the China Lake area for about the last 100 years.

On a week-end in March of this year, without prior notice to anyone, Navy riflemen shot and killed approximately 267 burros within about a 275 square mile area. The purported reason: a safety hazard, to wit, burro-aircraft collision. (In all 37 years of the Navy's occupancy, there had never been such a collision).

A week after the killings, on behalf of The Fund for Animals, Cleveland Amory offered to remove humanely whatever burros as might be necessary to remedy the problem. The Navy declined the offer, and on the next weekend secretly shot and killed 320 more burros.

Soon after, the Animal Protection Institute (represented by Joyce S.A. Tischler) obtained a TRO in the Fresno federal court based on a suit grounded in NEPA and a state anti-cruelty statute. At about the same time, The Fund for Animals, Attorneys for Animal Rights (Los Angeles) and Cleveland Amory as "next friend" of the burros joined the Fresno case as plaintiffs (represented by Marcelle Philpott-Bryant).

A hearing on a preliminary injunction was continued, pursuant to an Interim Settlement Agreement, to allow time for publication and circulation of the Navy's Draft Programmatic Environmental Impact Statement. It was agreed that, pending further proceedings, if any burros wandered into the 275 square mile area that was the subject of the lawsuit, the Navy would notify the plaintiffs who would then have five days to remove the animals. (Some have been removed already.)

At a June public hearing on the DPEIS plaintiffs' attorneys presented objections to the DPEIS.

STATE AND LOCAL

CRUELTY: PROSECUTIONS/CONVICTIONS

A Canadian part-time resident of North Miami, Florida, strangled and drowned five stray cats. Convicted of cruelty to animals, a misdemeanor, he received the maximum sentence: one year in jail. An appeal has been taken.

The 1/81 ARLR solicited information on behalf of New York's ASPCA concerning cult-type ritual killings of animals, seemingly an emerging problem. Now, a case has come to light in Middletown Township, New Jersey, which appears to involve horrible mistreatment of animals in connection with an alleged witchcraft cult headed by a woman with a history of abusing animals.

A North Carolina woman was fined \$200 plus court costs, given two years probation and ordered to pay \$1,547.00 to the county SPCA as a result of her conviction for cruelty to animals, i.e., six malnourished horses. An appeal was taken, the defendant pleaded no contest, a six-month suspended sentence was imposed and a fine, and she gave custody of the horses to the SPCA. Two months later, she was ordered to reimburse the SPCA \$7,804.00 for the horses' care. If the horses are sold, the proceeds will be credited to the \$7,804.00 obligation.

In Bucks County, Pennsylvania, a woman was fined \$100.00 for cruelty to animals, i.e., a malnourished dog. A condition of reclaiming the dog is restitution to the SPCA for its expenses for the dog's care. In the same area, three 17-18 year olds were convicted of cruelty to animals and disorderly practices for having tied a live possum to the hood of a car and having hit and kicked it, and poured beer over it. They were sentenced to \$1,300 in fines and ordered to perform volunteer work at the county SPCA.

A Scranton, Pennsylvania, man was fined \$326.00 for having left his dog tied on a porch in subzero temperature and having beaten it with a broomstick.

Jail sentences, fines, and considerable time working for an SPCA were meted out to several defendants for possessing fighting dogs. The defendants were also ordered to make restitution for the dogs' care. One defendant was prohibited from owning pit bulldogs. See 4/81 ARLR, p.4.

An Ohio man was given a suspended sentence and placed on probation for a conviction on charges that he promoted a dog fight.

A Washington State judge has held that the state's 1901 law barring cock fights does not deny either due process or equal protection, and an appellate court has upheld that decision.

HUNTING/TRAPPING: BEAR HUNTS

In the 4/81 ARLR, p.4, we reported about the Fund For Animals' efforts to stop Pennsylvania's one-day black bear hunt. ARLR did not intend to imply that the Fund approved of the hunt. Indeed, the Fund's Pennsylvania coordinator informed the judge that her organization was "totally opposed to the bear hunt under any conditions."

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

After a year or so of legal skirmishes, John Harris has

sued an upstate New York county, a deputy sheriff, a sheriff, and a farmer, for \$2,000,000 for the shooting death of Slick, a "show" wolf. The federal action in Rochester, New York, alleges that a conspiracy existed to kill Slick and then to cover up the shooting, and that "Harris has been deprived of the future earning of Slick and of the comfort, society, companionship, affection and intangible benefits of a unique and loving animal."

CRUELTY: BIRD POISONING

An action has recently been commenced in the Allegheny County, Pennsylvania, Court of Common Pleas by a vermin-insect-pest extermination corporation for a declaratory judgment that the use of strychnine bait on wild or feral pigeons does not violate Pennsylvania law. It is alleged that the pigeons are unprotected by the anti-cruelty law because they are "pests."

CALIFORNIA ENDANGERED SPECIES LAW

A Canoga Park, California, western-wear store, which sold boots made of African elephant ears, was fined \$2,500.00 and ordered to begin a six-month advertising campaign supporting the Act. The store also forfeited 16 pairs of the boots, which had been selling for \$450.00 each. In another case, a \$2,500 fine was levied against a different retail store for selling python skin boots. In all, 29 pairs were confiscated.

ANIMALS AS PROPERTY: CUSTODY OF A DOG IN A DIVORCE

In Texas a husband appealed a trial court judgment of divorce which divided the couple's property and made the wife "managing conservator" of their dog. In what appears to be a serious opinion, the appellate court held that although the office of "managing conservator" was intended to apply only to human children, not dogs, the wife could keep the dog since she had been given it some ten years earlier. As a matter of fact, the husband had agreed to the wife's custody of the dog so long as he could have reasonable visitation, which he received. His only complaint was that his wife had been named "managing conservator."

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

The New York Law Journal of July 10, 1980, p.11, published an otherwise unreported case of great importance. Though in the small claims part of New York City's Civil Court, the opinion by Judge Taylor nevertheless made a convincing case for a measure of damages designed to compensate for the negligent

death of a loved pet. The amount of the award is unimportant. What is important is the *theory*, and for that reason the opinion in *Brousseau v. Rosenthal* is reprinted here in full.

"This small claims action presents the question of how to make plaintiff whole in dollars for the defendant's negligence in causing the death of plaintiff's dog.

"The evidence adduced at trial shows that on July 28, 1979, Ms. Brousseau delivered her healthy, eight-year-old dog for boarding at Dr. Rosenthal's kennel. When she returned to the kennel on Aug. 10, she was told that her dog had died on Aug. 6. In this bailment for mutual benefit, defendant will be held only to a standard of ordinary care (*Aronette Mfg. Co., Inc., v. Capital Piece Dye Works, Inc.*, 6 N.Y. 2d 465, 1959; *Griffin v. Ruping*, 220 N.Y.S. 2d 399, Schuyler County Ct., 1961; Warren, New York Negligence, vol. 2A sec. 4.04). Nevertheless, defendant's failure to return the bailed dog presumptively establishes his negligence, shifting the burden of proving due care to the defendant-bailee (id. at sec. 4.08; *Proctor & Gamble v. Lawrence Ware Corp.*, 16 N.Y. 2d 344, 1965; *Aronette Mfg. Co., Inc., v. Capitol Piece Dye Works*, supra; *Dalton v. Hamilton Hotel Operating Co.*, 242 N.Y. 481, 1926).

"That the usual rules apply to bailees of animals is not disputed (*Moeran v. N.Y. Poultry, Pigeon & Pet-Stock Ass'n*, 28 Misc. 537, 59 N.Y.S. 584, App. T. 1899; N.Y. Neg., supra, sec. 4.21). The policy that affords to the bailor the benefit of the presumption of negligence recognizes that the facts and proof surrounding the property's loss are peculiarly within the knowledge and control of the bailee. In this case, where plaintiff consented to an autopsy of the dog, but where no report was forthcoming, and where contradictory explanations of the loss were proffered by defendant, but no competent proof was adduced as to the cause of the dog's death, the fairness of this rebuttable presumption of negligence is manifest.

"Having found that plaintiff is entitled to recover, we must devise a formula for computing the fair measure of her damages.

"Although the general rules and principles measure damages by assessing the property's market value, the fact that Ms. Brousseau's dog was a gift and a mixed breed and thus had no ascertainable market value need not limit plaintiff's recovery to a merely nominal award (1 ALR 3d 999). An element of uncertainty in the assessment of damages or the fact that they cannot be calculated with absolute mathematical accuracy is not a bar to plaintiff's recovery (60 ALR 2d 1348; 15 Am. Jur., Damages, sec. 21).

"Although the courts have been reluctant to award

damages for the emotional value of an injured animal (*Stettner v. Graubard*, 82 Misc. 2d 132, 368 N.Y. 2d 683, Town Court of Harrison, Westchester County, 1975; *Smith v. Palace Transp. Co., Inc.*, 142 Misc. 93, 253 N.Y. S. 87, Municipal Ct., Manhattan, 1931), the court must assess the dog's actual value to the owner in order to make the owner whole (*Blauvelt v. Cleveland*, 198 App. Div. 229, 190 N.Y.S. 881, 4th Dept., 1921; *Smith v. Palace Transp. Co., Inc.*, supra; 94 ALR 731-35). The court finds that plaintiff has suffered a grievous loss. The dog was given to her when it was a puppy in August, 1970 shortly after plaintiff lost her husband. To this retired woman who lived alone, this pet was her sole and constant companion. Plaintiff testified that she experienced precisely the kind of psychological trauma associated with the loss of a pet that has received increased recent public attention (see, e.g., A. Fischer, "When A Pet's Death Hurts Its Master," *New York Times*, Thurs., May 8, 1980 at p. 3, col. 5). As loss of companionship is a long recognized element of damages in this state (see *Millington v. Southeastern Elevator Co.*, 22 N.Y. 2d 498, 239 N.E. 2d 897, 293 N.Y.S. 2d 305, 1968) the court must consider this as an element of the dog's actual value to this owner (*Blauvelt v. Cleveland*, supra).

"Plaintiff must also be made whole for the protective value to her of this part-German Shepherd (*Blauvelt v. Cleveland*, supra; *Stettner v. Graubard*, supra, Warren, N.Y. Negligence, vol. 6A, sec. 6.01). The testimony indicates that plaintiff relied heavily on this well-trained watchdog and never went out into the street alone at night without the dog's protection. Since the dog's death, plaintiff does not go out of her apartment after dark. In addition, her home was burglarized and a watch given to her on retirement was stolen while she was watching television in her own back bedroom. Had the dog been alive, no one would have entered her apartment undetected, for the dog would have barked vigorously at the mere sound of a presence in the hallway outside her apartment.

"Resisting the temptation to romanticize the virtues of a "human's best friend," it would be wrong not to acknowledge the companionship and protection that Ms. Brousseau lost with the death of her canine companion of eight years. The difficulty of peculiarly measuring this loss does not absolve defendant of his obligation to compensate plaintiff for that loss, at least to the meager extent that money can make her whole. The

"Although loss of companionship has been excluded both as an element of damages in wrongful death cases and as an independent common law action. *Liff v. Schildkrout*, 49 N.Y. 2d 622 (1980) that holding was based upon the statutory preemption and upon the statutory language of EPTL 5-4.3 *Liff v. Schildkrout*, supra at 633. Because there is no analogous wrongful death statute that governs damages for the loss of an animal, the policies behind the loss of consortium cases impact upon the court's consideration in the instant case. See *Millington v. Southeastern Elevator Co.*, supra."

dog's age is not a depreciation factor in the court's calculations, for "manifestly, a good dog's value increases rather than falls with age and training" (*Stettner v. Graubard, supra, at 685*). The court therefore awards judgment to plaintiff in the sum of \$550 plus costs and disbursements."

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

Because of the importance of federal legislation concerning animals, beginning with this issue ARLR will regularly report *all* bills and regulations currently pending in Congress, instead of merely adding to the lists in previous issues new legislation as it is introduced. At the present time, the following bills and resolutions are pending before the 97th Congress.

RESEARCH METHODS

H.B. 220, introduced by Rep. Geraldine A. Ferraro, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.R. 556, introduced by Rep. Robert A. Roe; Rep. Harold C. Hollenbeck, and Rep. Frederick W. Richmond, to establish a National Center of Alternative

Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplication of experiments on live animals; to disseminate information on such methods. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 930, introduced by Rep. Virginia Smith, to establish a commission to study alternative methods to the use of live animals in laboratory research and testing. Referred to Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.C.R. 38, introduced by Rep. G. William Whitehurst, pertaining to the methods used on animals in research. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

S.R. 65, introduced by Sen. David Durenberger, et al., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

SEALS

H.B. 348, introduced by Rep. Frank Horton, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to Committee on Foreign Affairs, of which Rep. Clement J. Zablocki is Chairman; the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

TRAPPING

H.B. 374, introduced by Rep. Clarence Dickinson Long, to discourage the use of leg-hold or steel jaw traps on animals in the United States. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 1002, introduced by Rep. Glenn M. Anderson, to

regulate the trapping of mammals and birds on federal lands. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman; and Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

ZOOLOGICAL FOUNDATION

H.B. 642, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE MAMMALS

H.B. 1672, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972, in order to prohibit the issuance of general permits thereunder which authorize the taking of marine mammals in connection with commercial fishing operations. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ANIMAL DAMAGE

H.B. 1956, introduced by Rep. E. de la Garza, et al., amends the Act of March 2, 1931, to require the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to implement a program for animal damage control. Referred to Committee on Agriculture of which Rep. E. de la Garza is Chairman.

WILDLIFE PRESERVATION

H.B. 2214, introduced by Rep. Carl D. Purcell; Rep. Benjamin A. Gilman, and Rep. Anthony C. Beilenson, to establish a federal program to provide public information on wildlife preservation and the endangered species. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 2978, introduced by Rep. Don L. Bonker, et al., to provide for additional protection of steelhead trout as a game fish. Referred to Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman,

and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

HORSE RACING

H.B. 2331, introduced by Rep. Bruce Vento, et al., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on the Judiciary of which Rep. Peter W. Rodino, Jr. is Chairman.

MARINE SANCTUARIES

H.B. 2357, introduced by Rep. John B. Breaux, to repeal Title III, Marine Sanctuaries of the Marine Protection, Research, and Sanctuaries Act of 1972. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

S.B. 1003, introduced by Sen. Bob Packwood, to amend Title III of the Marine Protection Research and Sanctuaries Act of 1972, as amended, to authorize appropriations for such Title for fiscal years 1982 and 1983. Status . . . Reported, no amendment, Sen. Report No. 97-44 on 4/23/81; Passed Senate on 5/4/81; Sent to House Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, on 5/6/81.

S.B. 1186, introduced by Sen. Bob Packwood, to amend the Marine Mammal Protection Act of 1972, as amended, to extend the authorization of appropriations for fiscal years 1982 and 1983. Status . . . Reported, no amendment; Sen. Report No. 97-63, on 5/14/81.

S.B. 1213, introduced by Sen. John H. Chafee, to amend Title I of the Marine Protection, Research, and Sanctuaries Act, as amended. Status . . . Reported; no amendment, Sen. Report No. 97-119, on 5/15/81; Passed Senate as reported on 6/2/81; Passed House without amendment on 6/11/81; Sent to President on 6/16/81; Approved — Public Law 97-16, on 6/23/81.

MIGRATORY BIRDS

H.B. 3442, introduced by Rep. Harold Sawyer, to establish a Webless Migratory Game Bird Research Fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH AND WILDLIFE

S.B. 736, introduced by Sen. John H. Chafee, et al., to provide for the control of illegally taken fish and wildlife. Referred to Committee on Environmental and Public Works, by unanimous consent with instructions that once reported, the bill be referred to the Committee on the Judiciary of which Sen. Strom Thurmond is Chairman, for not to exceed thirty calendar days. Status . . . Hearing in Senate on 4/1/81; reported, amended, Sen. Report No. 97-123 on 5/21/81.

WHALES

H.C.R. 96, introduced by Rep. Don L. Bonker and Rep. Walter B. Jones, calling for an indefinite moratorium on the commercial killing of whales and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale populations. Referred to Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman. Status . . . Hearing in House on 6/16/81.

S.R. 148, introduced by Sen. Bob Packwood, calling for a moratorium of indefinite duration on the commercial killing of whales. Referred to Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman.

MAMMALS AND BIRDS/PUBLIC LANDS

S.J.R. 6, introduced by Sen. Alan Cranston, to establish a national policy for taking of predatory or scavenging mammals and birds on public lands. Referred to Committee of Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

STATE AND LOCAL

ANIMALS AS PROPERTY: PET SHOPS

An important issue surfaced recently in Fairfax County, Virginia, regarding the sanctions for pet shops' indifference (or worse) to the welfare of animals in their custody. Currently only misdemeanor charges can be brought, often a lengthy and fruitless procedure. To lighten regulation, to hit pet show owners in their pocketbooks, and to provide some measure of relief to the animals, a law was proposed that would allow the county to revoke a pet shop's license if it violated animal welfare laws. Alexandria County, Virginia, and other jurisdictions have such a law on their books. Properly enforced, it can go a long way toward providing a speedy and reasonably effective way of punishing the abuse of pet animals.

A bill was recently introduced in the New York State Assembly by Assemblyman Eugene Levy aimed at avoiding entirely the regulatory problems associated with pet shops. Mr. Levy's bill would have simply banned altogether the sale of cats and dogs in virtually all retail establishments. The bill attracted little or no support (much of the opposition to it came from "animal lovers,") and now appears to be dead. One further note: Assemblyman Levy's bill was not drafted as tightly as it could or should have been, and had it been enacted circumvention would not have been difficult. Since there are lawyers who are adept at drafting animal protection legislation and are willing to do so *pro bono*, their expertise should be utilized.

CRUELTY: FORFEITURE OF ANIMALS

Most state anti-cruelty laws provide for penalties of fine or imprisonment or both upon conviction for cruelty to animals but are silent on the subject of the future custody of the animals or animals involved in the case. The convicted person often demands that the prosecuting humane society return the animal seized during a prosecution or refuses to relinquish the animal to the society.

To correct that deficiency in Pennsylvania law, SAR has brought about the introduction of S. 358, sponsored by Senator Edward P. Zemprelli. The bill will add to the anti-cruelty law the following: "A person convicted under this subsection shall, in addition to the punishment provided for in this title, be sentenced to forfeit his right to own animals for the period of time as the court shall direct."

ANIMAL CONTROL: LICENSING

Another cat licensing ordinance has come to our attention, this one in Flemington, New Jersey. Allegedly aimed at clearing the stray population, some cats are being euthanized while others are being licensed.

CRUELTY: DOGFIGHTING

The Tennessee House of Representatives voted 91 to 4 to raise from a misdemeanor to a felony dog, bull and bear fighting. By a vote of 67 to 27 cock fighting was left a misdemeanor. It is a misdemeanor to be present at a dog, bull, bear or cock fight.

ANIMALS AS PROPERTY: PET KILLING

The attempt in California to enact legislation making it a crime to kill cats and dogs for human consumption has bogged down. However, some of the sponsors intend to reintroduce a bill at the earliest opportunity.

VETERINARIANS: GOOD SAMARITAN ACT

New Jersey's S-1076 proposed to extend immunity from civil liability to veterinarians who render emergency care to animals.

SPCAs AND SHELTERS: EUTHANASIA

In Michigan a state wide law now prohibits killing by means of a decompression chamber, and authorizes animal shelters to use sodium pentobarbital.

HUNTING/TRAPPING: ANTI-HUNTING LEGISLATION

Four bills have been introduced in Maine concerning bears: LD 502 and 22 (restricting the bear hunting season), LD 435 (outlawing the trapping of bears), LD 91 (prohibiting the hunting of bears with bait).

HUNTING/TRAPPING: ANTI-TRAPPING LEGISLATION

In New York, AB 2683 and AB 3617 and SB 2049 are aimed at outlawing the leghold trap and at requiring annual public hearings on what other traps should be permitted.

Anti-leghold trap legislation has been introduced in New Jersey (SB 671), Connecticut (HB 6168 and SB 62) and Colorado (HB 1217). In Georgia, efforts to impose a two year moratorium on trapping failed (SR4).

HUNTING/TRAPPING: PRO-HUNTING LEGISLATION

In five states, eight bills have been introduced to permit hunting on Sunday: Connecticut (HB 5869), Maine (LD 412), Mississippi (H 785, H 644, H 151, H 1093), Virginia (HB 1750), West Virginia (HB 710).

A statewide referendum in South Dakota has upheld (181, 126 to 128, 958) a legislative act which had restored dove hunting.

Three states are considering legislation to allow the hunting of doves (the worldwide symbol of peace): Ohio (SB 34, SB 29), Minnesota (HB 162, SB 138), New York (a recommendation is apparently being made to the Department of Environmental Conservation).

SPCAs AND SHELTERS: PEACE OFFICER STATUS

New Jersey SB 1074 would allow members of certain animal rights groups to make arrests for violation of animal welfare laws. Money received from fines would go the organization to which the arresting person belonged.

Utah Sub. SB 149 would permit humane organizations to "deputize" volunteers to enforce hunting, fishing and trapping laws.

EXPERIMENTATION: UNCLAIMED ANIMALS

Los Angeles Mayor Tom Bradley on July 8 signed into law an order repealing Section 53.11(h) of the Municipal Code which for 31 years compelled the sale of unclaimed dogs and cats from the City's animal shelters to laboratories. The repeal measure was passed 10-3 on June 30 by the City Council.

THE AGENCIES

NATIONAL MARINE FISHERIES SERVICE: REINDEER AND FOX HUNTING ON PRIBILOF ISLANDS, ALASKA (Red. Reg. Vol. 46, No. 65, 20557)

Under the authority of the Fur Seal Act of 1966 (Pub. L.89-702) and Reorganization Plan No. 4 of 1970 (84 Stat. 2090) the National Marine Fisheries Service (NMFS) published regulations on the hunting of reindeer and foxes on the Pribilof Islands, Alaska. Since passage of the Alaska Native Claims Act of 1971 (Pub. L. 92-203), and subsequent transfer of land ownership from the Federal government to Native village corporations, the NMFS no longer claims jurisdiction over reindeer and foxes on these lands. NMFS has retained ownership of only the fur seal rookeries on the Pribilof Islands. The NMFS therefore amends 50 CFR 215 by deletion of regulations governing reindeer and fox hunting (50 CFR 215.24), effective April 6, 1981.

FISH AND WILDLIFE SERVICE: TRADE BAN LIFTED ON KANGAROOS

A six year ban on U.S. commercial trade in kangaroos has been lifted by the U.S. Fish and Wildlife Service following a one year review. After two years, the Interior Agency will reevaluate the situation, including the status of the animals. The decision was based on evidence that the three largest kangaroo species have reached healthy numbers and are being properly managed in Australia.

According to Dr. Eugene Hester, Acting Deputy Director of the Fish and Wildlife Service: The three kangaroo species — the red and eastern and western gray — will continue to be classified as "threatened," a less serious category than endangered status. Dr. Hester said this was being done as a "prudent course" so that commercial trade can be closed down if problems arise. But, for now, apparently the kangaroos are adequately enough "protected" in Australia so that they can be slaughtered at will.

SAN FRANCISCO ANIMAL CONTROL AND WELFARE COMMISSION: PROHIBITION OF ANIMAL OWNERSHIP.

A proposal to get at the obscene practice of dog fighting by flatly prohibiting the ownership of pit bulldogs in San Francisco was squelched when some of its proponents realized that, though well intentioned, it was overboard.

INTERNATIONAL WHALING COMMISSION: BOWHEAD WHALES

The Commission sets quotas on the taking of endangered bowhead whales. Recently, the U.S. Department of Justice was investigating possible violations of those quotas by Eskimo whalers. However, that investigation has been dropped because early this year the federal National Oceanic and Atmospheric Administration signed a two year agreement with the Alaska Eskimo Whaling Commission giving the Eskimos much of the responsibility for enforcing the quotas and conducting the whale census on which the quotas are based. The U.S. Attorney's office in Anchorage characterized the decision to drop the investigation as flowing from the "spirit of cooperation" that the agreement reflected.

INTERNATIONAL WHALING COMMISSION: MORATORIUM

The acting head of the federal National Oceanic and Atmospheric Administration has announced that at the Commission's July meeting in Britain, the United States will press for a moratorium on commercial whaling. However, he was not optimistic about the prospects since a three-quarters of the twenty-seven member nations would have to agree, and ten have commercial whaling industries.

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

While there were never an abundance of books, articles, etc., published on the subject of animal rights law, nor is there now, nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p.9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention.

AWARDS OF ATTORNEYS' FEES BY FEDERAL COURTS AND FEDERAL AGENCIES

A fascinating study of attorneys' fees in the federal system has been prepared by the Congressional Research Service of the Library of Congress. Interestingly, there are quite a few federal statutes which authorize an award of attorneys' fees, some of which may be of potential interest to animal rights lawyers.

BULLETIN BOARD

ANIMAL RIGHTS LAW WRITING PROJECT

Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201.

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

ARLR SEEKS ASSISTANT EDITOR

Since its inception 19 months and 7 issues ago ARLR has been compiled, edited and written by Professor Henry Mark Holzer, with much of the legislative material provided by SAR's president, Helen Jones. As recent issues of ARLR show, its scope has broadened and increasingly greater amounts of material are being included. Accordingly, a volunteer assistant editor is sought. The person must be a lawyer, possess basic writing skills, be willing and able conscientiously and consistently to devote about 20 hours quarterly, have a serious committment to animal rights law, and (preferably) reside in the New York City area. Please contact Professor Holzer in writing, at Brooklyn Law School, 250 Joralemon Street, Brooklyn, New York, 11201.

THE WAGES OF SIN

Last fall, a 7-month old Dallas girl was severely bitten and crushed to death by an eight-foot "pet" python that escaped from its glass cage and crawled into the child's crib. Authorities speculated that the reptile was hungry (it was usually fed a hamster every two weeks). If Dallas, or the state of Texas, ever enacts long-overdue anti-exotic "pet" legislation, it will come too late for little Toni.

Just before last Christmas a 15-year old New Jersey boy was killed by the accidental discharge of a companion's shotgun. The two were hunting. Three days later a Pennsylvania hunter fired at a deer deep in the woods. His bullet tore through the wall of a mobile home 200 yards away, killing an 18 day old baby in his crib. If New Jersey and Pennsylvania had laws prohibiting hunting, two more children would be alive today (let alone countless innocent animals).

INTERNATIONAL CONFERENCE ON HUMAN/COMPANION ANIMAL BOND

On October 5-7, 1981, the University of Pennsylvania Center for the Interaction of Animals and Society will sponsor the above entitled conference. Inquiries should be made to the center at School of Veterinary Medicine, University of Pennsylvania, 3800 Spruce Street, Philadelphia, PA 19104.

INTERESTING OLDER CASE

U.S. v. Sanford, 547 F. 2d 1085 (9 Cir., 1976) involved the effect of federal undercover agents' involvement in Lacey Act prosecutions.

SOUTHERN CALIFORNIA LAW FIRM AFFILIATION SOUGHT:

Henry Mark Holzer, Special Counsel and a Director of SAR and Editor of its Animal Rights Law Reporter, currently Professor of Law at Brooklyn Law School (250 Joralemon Street, Brooklyn, New York 11201) seeks an "of counsel" affiliation (limited to animal rights, constitutional law and general appellate practice) with a Southern California law firm.

ATTORNEYS SEEK TO CHALLENGE POUND SEIZURE LAWS

Attempts to repeal laws permitting or requiring shelters to release animals for laboratory experimentation have recently been reported in both ARLR (1/81) and SAR Report (5/81). Attorneys for Animal Rights seeks to establish a network of attorneys who are involved or interested in fighting in the courts to end this practice. In the event that legislative efforts do not prove successful, AFAR would like to hear from (1) anyone having knowledge of pound seizure laws (similar to those in the County and City of Los Angeles), especially those which require that animals be treated "humanely" by the institutions to which they are released; and (2) any attorneys involved or interested in bringing suit to challenge the validity of such laws, or taking action to seek enforcement of the "humane"

standard. AFAR is also interested in contacting anyone who may be able to provide historical or legal material regarding the interpretation of the word "humane" in the context of animal experimentation. (Contact Mary Mitchell, 959 Galey Avenue (#6), Los Angeles, CA 90024).

WILDLIFE LAW ENFORCEMENT SEMINAR

Three months ago the Wildlife Section of the Land and Natural Resources Division of the Justice Department held a four day seminar in Washington, D.C. Attended by more than 50 agents, administrators and lawyers from the Departments of Justice, Interior, Treasury, Commerce and Agriculture, lectures and workshops covered various aspects of investigation and prosecution. It is expected that the course materials will later be published as a wildlife law enforcement manual.

AVAILABLE RESOURCES

LIBRARY RESOURCE

The Humane Society of the United States has established the Joyce Mertz Gilmore Library. Under the aegis of the Institute for the Study of Animal Problems (publisher of the informative *International Journal for the Study of Animal Problems*), the library currently contains approximately 1,500 volumes and 100 newsletters. Compiling is under way of a reprint file of relevant journal articles. (HSUS is in Washington, D.C.).

CONSTITUTIONALITY OF COCK FIGHTING STATUTE

The District Court's memorandum upholding the constitutionality of the Washington State anti-cock fighting statute is available from SAR.

CHINA LAKE BURRO CASE

A variety of papers are available from the China Lake burro case: stipulation and order, plaintiffs' offer for resolution of the controversy, temporary restraining order, complaint, memorandum in support of motion for TRO and supplementary memorandum, government's opposition, plaintiffs' comments to Navy's DPEIS. Contact SAR.

THE DOG IN THE DIVORCE CASE

The opinion of the Texas Court of Civil Appeals in *Arrington v. Arrington* is available from SAR.

Society for Animal Rights
and
Animal Rights Law Reporter
Announce the First National Conference
On Animal Rights Law

On Friday and Saturday, November 27 and 28, 1981 SAR and ARLR will sponsor the first national Conference on Animal Rights Law.

The Conference will be held at the Carnegie Conference Center of the Carnegie Endowment for International Peace, 54th floor, RCA Building, 30 Rockefeller Plaza, New York, NY 10020 (Tel.: (212) 572-8222).

The program for the entire Conference is as follows:

Friday, November 27, 1981.

9:00 a.m. — 10:00 a.m.

Welcoming statement (Helen Jones).

Introduction to Conference (Henry Mark Holzer).

The animal rights movement: historical analogies (Nancy Jane Shestack).

10:00 a.m. — 10:30 a.m.

Legal and other resources for animal rights lawyers (Peter Lovenheim).

10:30 a.m. — 11:00 a.m.

Private lawyers and SPCAs: a natural symbiosis (Ellnor Molbegott).

11:00 a.m. — 11:15 a.m.

The nature and detection of veterinary malpractice (Richard Novick).

11:45 a.m. — 12:15 p.m.

Toward a new theory of measure of damages for intentional/negligent death/injury of an owned animal (Laurence W. Kessenick).

12:15 p.m. — 1:15 p.m.

On-premises lunch (Vegan).

1:15 p.m. — 5:00 p.m.

Litigation on Behalf of Animals.

1:15 p.m. — 2:00 p.m.

Defending the animal rights activist (Douglas A. Trant).

2:00 p.m. — 2:45 p.m.

Overview of test case litigation (Henry Mark Holzer).

2:45 p.m. — 5:00 p.m.

Panel on test case litigation, moderated by Henry Mark Holzer: prospective cases and underlying theories (Laurence W. Kessenick), dealing with courts and adversaries (Marcelle Philpott-Bryant), standing to sue (Henry Mark Holzer).

Saturday, November 28, 1981.

9:00 a.m. — 9:45 a.m.

The "Sido" problem: bequests of animals (Frances Carlisle).

9:45 a.m. — 10:30 a.m.

Intervivos and testamentary gifts on behalf of animals — the problems and pitfalls (Joyce S.A. Tischler).

10:30 a.m. — 12:00 noon

Legislative and related activities on behalf of animals.

10:30 a.m. — 11:15 a.m.

Candidate polling and legislative lobbying (Helen Jones).

11:15 a.m. — 12:00 noon

The view from the legislature (Aloysius J. Ahearn).

12:00 noon — 1:00 p.m.

On-premises lunch (Vegan).

1:00 p.m. — 3:00 p.m.

Panel on animal rights legislation, moderated by Henry Mark Holzer: the problems and pitfalls, the role of model laws, and the means to the end (Juliann Tenney, William A. Reppy, Jr., David S. Favre, Henry Mark Holzer).

3:00 p.m. — 5:00 p.m.

Plenary session on special projects.

3:00 p.m. — 3:45 p.m.

Curriculum proposal for animal rights courses (Nancy Jane Shestack).

3:45 p.m. — 4:15 p.m.

Encyclopedia of Animal Rights Law writing project (Henry Mark Holzer).

4:15 p.m. — 5:00 p.m.

Attorneys For Animal Rights, a national organization of animal rights lawyers (Laurence W. Kessenick, Joyce Tischler).

5:00 p.m. — 7:00 p.m.

At leisure.

7:00 p.m. — 9:30 p.m.

Cocktails and dinner (Vegan) at a restaurant to be announced. The after-dinner speaker will be Cleveland Amory.

It is expected that short breaks will be possible between certain presentations, and time has been provided for a question/answer period following each presentation.

The SAR/ARLR conference on Animal Rights Law is open to lawyers, law teachers, law students and judges. Although the number of conference participants will be strictly limited to well under a hundred, if space permits there will be a few registrations reserved for lay persons active in the animal rights law movement.

The conference registration fee for attendees not participating in the program is \$75.00, except for law students whose registration fee is \$35.00 (the number of registrations available for law students remains limited). The registration fee covers the two days of the conference, the Friday and Saturday luncheons and the closing dinner on Saturday evening. All other expenses of attending the conference will, of course, be the attendees' own responsibility.

SAR began to accept conference registrations on April 15, 1981, and has already received them from persons in New York, California, Florida, Tennessee, North Carolina, Michigan, Ohio, Connecticut, Oregon and the District of Columbia.

SAR reserves the right to reject applications in its sole discretion and to close registration when a predetermined cutoff point has been reached. Conference registration applications should be on the applicant's letterhead, if possible, or should otherwise identify the applicant's connection with the legal profession or the animal rights law movement. The registration application should also include full payment of the registration fee. All registrations for the conference will have to be completed by mail, and under no circumstances will registrations be accepted at the conference itself.

Short biographies of those persons who are participating in the conference program are as follows:

Aloysius Ahearn

A high school English teacher by profession, Aloysius J. Ahearn has served as a Representative in the Connecticut legislature where he compiled an outstanding record on behalf of animal rights. He served as Chairman of the Animal Welfare Subcommittee and fought successfully to defeat various inhumane legislation, e.g.: a bill which would have allowed the "sport" of falconry in Connecticut. In addition, Aloysius J. Ahearn sponsored significant animal welfare bills which are now law in Connecticut, e.g.: creating the first state-operated low cost spay/neuter clinic in the nation; banning the decompression chamber to euthanize dogs and cats; repealing a law which required pounds to send animals to laboratories; illegalizing the breeding and sale of skunks.

Cleveland Amory

A figure known throughout the world for his work on behalf of animal rights, Cleveland Amory founded the Fund for Animals in 1967 and he serves as its unpaid president. Author of *Mankind? Our Incredible War on Wildlife*, wherever animals are in trouble, he seems to appear — on the Sea Shepherd, preventing the killing of whales; in the Grand Canyon, saving feral burros; off the Canadian coast, protesting the slaughter of baby seals.

Frances Carlisle

A member of the University of California (Davis) Law School class of 1982, and a member of the School's Law Review, Frances Carlisle received her B.A. from Barnard College in 1967. She has done volunteer legal work for New York's American Society for the Prevention of Cruelty to Animals.

David S. Favre

A Professor of Law at Detroit College of Law, David S. Favre is a graduate of the University of Virginia and William & Mary. Among the courses that Professor Favre teaches are Environmental Law, Law and Science and Wildlife Law. He has contributed to ARLR.

Henry Mark Holzer

A Professor of Law at Brooklyn Law School, Henry Mark Holzer has been active in the animal rights movement for a decade. He is Special Counsel to, and a director of, SAR, founder and editor of ARLR, and has lectured, written and litigated on a variety of animal rights issues.

Helen Jones

A tireless, lifelong worker for the cause of animal rights, Helen Jones began her career as a volunteer for the Lackawanna County (Pennsylvania) Humane Society. After a short stint as membership director for the American Humane Association, she resigned to become a founder of the Humane Society of the United States. While with HSUS, she formed the National Catholic Society for Animal Welfare which she ran in her spare time, seeking to better the church's attitude toward animals. In late 1960, Helen Jones resigned from HSUS to devote all of her energies to NCSAW, which in 1972 changed its name to Society for Animal Rights. She is President of SAR and chairwoman and a trustee of Citizens for Animals, a humane lobby.

Laurence W. Kessenick

A graduate of UCLA and the Hastings Law School, Laurence W. Kessenick was a founder and is president of Attorneys for Animal Rights (San Francisco). He was also founder and is chairman of Political Animal Welfare Action Committee, an organization which

raises money to support the candidacy of California politicians who in turn support animal rights legislation. Mr. Kessenick has been involved in the "Sido" case, in litigation over California's endangered species law, and in a successful legislative effort to strengthen that law.

Peter Lovenheim

Currently Government Relations Counsel for the Humane Society of the United States, Peter C. Lovenheim received his law degree from Cornell University. He was Staff Attorney for The Reporters Committee for Freedom of the Press and Project Director for The Freedom of Information Service Center, and he possesses extensive experience utilizing the federal Freedom of Information Act and its state counterparts. Mr. Lovenheim's powerful article on the milk-fed veal industry appeared in *New York* magazine in 1979

Elinor D. Molbegott

A graduate of Boston University and Albany Law School, Elinor D. Molbegott has served as a Legal Intern for Society For Animal Rights and a Legislative Aide in the New York State Assembly. Since 1977 she has been General Counsel to New York's American Society for the Prevention of Cruelty to Animals.

Richard M. Novick

A Doctor of Veterinary Medicine who received his degree from the University of California (Davis), Richard M. Novick has practiced in Manhattan for the last decade. He also holds a Juris Doctor degree from Brooklyn Law School.

Marcelle Philpott-Bryant

A lawyer and former high school teacher who received her B.A. and teaching credential at U.C.L.A., Marcelle Philpott-Bryant founded and is currently president of Attorneys for Animal Rights (Los Angeles). She practices law in Santa Monica, California, and has represented The Fund for Animals in the San Clemente Island and China Lake cases. She has also been active in matters involving mental health, juveniles, drug abuse and women's rights.

William A. Reppy, Jr.

A Professor of Law at Duke University School of Law, William A. Reppy, Jr. has served as a Law Clerk for the Supreme Court of California and then for the late William O. Douglas at the Supreme Court of the United States. He is a graduate of Stanford Law School, where he was an editor of the Law Review.

Nancy Jane Shestack

A lawyer who also has earned a B.A. in philosophy from

Wellesley, an M.A. Ed. in history from Washington University, and a M.S.L. from Yale, Nancy Jane Shestack is an experienced teacher. In addition, she has been a member of the Connecticut Civil Liberties Union Board of Directors, a Legal Intern for Defenders of Wildlife and a lobbyist for the Alaska Coalition.

Juliann Tenney

A graduate of the University of North Carolina and then of the Duke University School of Law, Juliann Tenney has been a Commissioner of the Chapel Hill, North Carolina, Housing Authority, and an intern in the office of a member of the United States House of Representatives. She is currently in private practice.

Joyce S.A. Tischler

A graduate of Queens College and the University of San Diego School of Law, Joyce S. A. Tischler was a founder and has been an officer of Attorneys for Animal Rights (San Francisco). The author of "Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats," which appeared in 14 *San Diego Law Review*, she has participated in several animal rights cases including the "Sido" controversy and the China Lake burro killings.

Douglas A. Trant

A criminal lawyer with considerable major felony jury trial experience, Douglas A. Trant received his J.D. degree from the University of Tennessee. He was associated with that school's legal clinic, and earlier with the Legal Services Corporation of Alabama.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

EDITOR'S COMMENT

It is fair to say that only in the last couple of years has the animal rights law movement really been born. Before that, though there were a few lawyers involved in animal cases — counsel for SPCAs and shelters, attorneys for the few national humane organizations, etc — there was no cohesiveness among those interested in the problems of animals and the law.

But now things are very different, indeed. This publication goes to nearly 1,500 lawyers throughout the United States, in November of this year ARLR/SARs first national Conference on Animal Rights Law will be held, by year's end there will exist an activist national organization of animal rights lawyers, at least two animal rights law writing projects are now underway, already there is an informal attorney referral network with a formal one not far down the line, and humane organizations (and others) are beginning to know which lawyers to call upon when they need help.

All these developments, and others, raise an important issue which must begin to be considered by every lawyer who is interested in working for animal rights: specialization. All of us know that in conventional legal practice today it is simply not possible for one lawyer to be fully competent in a multitude of areas. Indeed, merely to keep current in individual areas like tax, estate planning, wills and trusts, negligence, real property, criminal law, securities, corporations, is nearly an all-consuming task. To keep satisfactorily current in a few or several of these areas is simply not possible.

So, too, in what has until now been described as "animal rights law." Do we mean federal or state? In the federal sphere alone, can a practitioner be fully knowledgeable about the Airborne Hunting Act, Migratory Bird Treaty Act, Endangered Species Act, Eagle Protection Act, Humane Slaughter Act, National Environmental Protection Act, etc.? On the state side, cases and legislation involve zoning, veterinarians, landlord/tenant, trapping, hunting, animal control and much, much more. And the skills of a civil litigator or appellate expert are quite different from those of a counsellor, as are the abilities of a drafter of legislation or a criminal defense lawyer.

In sum, the fundamental principle of division of labor mandates that only shoemakers make shoes and only brain surgeons open the skull. Equally, as the animal rights law movement takes its first steps into a world at best indifferent to the rights of animals, it is necessary that each of the members of that movement look carefully into what they can and would do best.

Henry Mark Holzer

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

OCTOBER 1981

IN THE COURTS

FEDERAL

CRIMINAL PROSECUTIONS/CONVICTIONS

In previous issues of ARLR a significant amount of material concerning criminal prosecutions and convictions was obtained from the *Wildlife Newsletter* of the Department of Justice's Land and Natural Resources Division, Wildlife Section. It has been ARLR's practice to edit that information before passing it along to our readers, mostly to conserve needed space. However, because the federal prosecutions/convictions are becoming more and more important, and because the case descriptions provided by the Wildlife Section are so full of useful information, beginning with this issue of ARLR we will simply "pick up" with a minimum of editing the information put out by the Section as it applies to the concerns of ARLR and its readership.

United States v. Jacobson, No. 80-1571 (9th Cir. June 12, 1981). The Ninth Circuit has reversed the order of the District Court for the District of Arizona suppressing evidence in this bird smuggling case. The District Court held that Customs agents had violated Jacobson's Fourth Amendment rights by searching a van that had crossed the Mexico/Arizona border and proceeded onto Jacobson's ranch. The Ninth Circuit disagreed, holding that the warrantless search was justified as an extended border search even though it had occurred on private property. The court noted that Customs agents have specific statutory authority to enter onto private property and that Jacobson's fenced compound served both as a residence and a place of business in concluding that Jacobson had no "reasonable expectation of privacy" from Customs intrusion. Under the totality of the circumstances, therefore, the court held the warrantless search appropriate.

United States v. Molt, (E.D. Pa.). The District Court for the Eastern District of Pennsylvania recently held a hearing on reptile dealer Henry A. Molt, Jr.'s motion for reduction of sentence. Molt had pled guilty to two multi-count indictments charging smuggling and Lacey Act violations and had received concurrent 14-month terms. The convictions were later affirmed by the Third Circuit. The District Court decided that a reduction in sentence was appropriate and ordered that Molt serve a nine rather than 14-month term.

United States v. Slocum, (S.D. Fla.). On June 4, the District Court handed down sentences in this major wildlife prosecution involving the theft from quarantine of birds infected or exposed to Newcastle disease. Bert Slocum, the principal defendant and quarantine station owner, received concurrent one year terms and a total fine of \$18,000 for theft of birds, violation of quarantine regulations, and filing a false indemnity claim with the Department of Agriculture. Louise Slocum, his wife, received two years of probation and a \$1,000 fine. Ray Slocum, their son, received two years of probation under the Youth Corrections Act, 18 U.S.C. 5005. The remaining defendants, Francine Miller and Doris Fuller, also received two years of probation.

United States v. Phillips, Hamrick, and Blackenship, (W.D. Wash.). On March 18, 1981, Everett Del Phillips, Randall Lee Hamrick and Harry Craig Blackenship each pled guilty to one Lacey Act count. As part of a plea bargaining agreement, 11 additional counts alleging violations of the Lacey Act and Eagle Protection Act were dismissed. The charges involved the unlawful interstate transportation from Idaho to Washington of parts from three bighorn sheep, three elk, three deer, two antelope and a bald

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

eagle. All of that wildlife was forfeited to the government, along with a grizzly bear rug from Alaska possessed by one of the defendants. Each defendant received a \$7,500 fine, one year suspended jail sentence, and three years' active probation during which he may not hunt or fish within the United States. The U.S. Fish and Wildlife Service conducted the investigation.

United States v. Northwest Fish Company; United States v. Standard Fish Company; United States v. Meincke Fisheries; United States v. Reynolds Fish Company; United States v. Western Fish Company; United States v. United Fish Company; (E.D. Mich.). United States v. Zemski; United States v. Demore Seafood Company; United States v. Tank Fish Company; United States v. Port Clinton Fisheries; United States v. Szuch (N.D. Ohio). These related cases prosecuted in Detroit and Toledo involved Black Bass Act, 16 U.S.C. 852, and conspiracy charges. The Black Bass Act, a companion statute to the Lacey Act, prohibits the interstate transport of illegally taken fish. The 315 counts in these cases resulted from the illegal take and transport during a five year period of over 475,000 pounds of walleye with a retail value of over 1.4 million dollars. The walleye were caught in the Ohio waters of Lake Erie in violation of an Ohio prohibition against commercial take of the species and, in 403 illegal trips, transported at night in rented vans across state lines. The companies pled guilty this past winter. Substantial fines have now been imposed: Northwest — 63 counts, \$12,500 fine (\$12,400 state fine as well); Meincke — 88 counts, \$17,500 fine (state civil action seeking approximately \$1,000,000 damages pending); Standard — 14 counts, \$2,800 fine; Reynolds — 14 counts, \$2,800 fine (state civil action pending); Western Fish Co. — \$400 fine; United States — 11 counts, \$1,100 fine; Port Clinton — 62 counts, \$12,400 fine (state civil action pending); Demore — 3 counts, \$600 fine; Tank Fish — 15 counts, \$3,000 fine (state civil action pending); Zemski — 20 counts, \$4,000 fine (state civil action pending); Szuch — 15 counts, \$3,400 fine.

United States v. Sousa, CR 81-14 (D.R.I.). Florencio Sousa pled guilty on February 20, 1981 to illegally importing 55 raw sperm whale teeth in violation of 18 U.S.C. 545. The sperm whale is an endangered species whose teeth are valued at approximately \$100 each. Sousa received one year's probation, a \$1,000 fine, and forfeited the teeth to the government. National Marine Fisheries Service agents developed the case.

United States v. Meekin, (D. Nev.). Meekin and Starr, two of the four defendants in this previously reported Lacey Act case involving interstate transport of illegally taken bighorn sheep, each pled guilty to one count of a four count indictment in late May. A third defendant, Stark, went to trial before a jury in late May and was acquitted. The government dismissed charges against Owen, the fourth defendant. Sentencing of Meekin and Starr is slated for mid-July. Fish and Wildlife Service agents developed the case.

The following cases grew out of a cooperative undercover investigation by the Fish and Wildlife Service and the Illinois Department of Conservation. The investigation,

locally dubbed "Quackscam," [some joke — ed.] culminated on December 3, 1980 in 61 arrests and numerous seizures of wildlife and equipment by state and federal officials.

United States v. Coufal, (C.D. Ill.). Taxidermist Donald Bruce Coufal was charged on December 17, 1980 in a 10-count indictment with possession, offer to sell, and sale of migratory birds in violation of the Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.* The 30 birds involved in the case included short-eared and screech owls, a blue heron, a pied-billed grebe, and a bald eagle. Coufal pled guilty to three possession counts and one sale count. He received a \$3,000 fine, five years' probation and was ordered not to hunt or accompany hunters for two years.

United States v. Logsden, (C.D. Ill.). A 22-count indictment filed March 31, charged David Alan Logsden with various unlawful activities on the Meredosia National Wildlife Refuge, including trespass, firearms possession, and spotlighting and taking deer (16 U.S.C. 668dd(c) and 668dd(e)), with theft of government property (18 U.S.C. 641), and with assault of a federal officer (18 U.S.C. 111 and 1114). Logsden pled guilty to two counts of taking deer on the Refuge and to theft of government property. He received five years' probation and a \$1,000 fine on the taking counts and 45 days jail time and a \$1,000 fine on the theft count. The court ordered that he neither hunt nor accompany hunters for two years. Finally, the court ordered forfeiture of Logsden's high-powered rifle.

United States v. Kimbrow and Danner, (C.D. Ill.). Kimbrow and Danner, charged March 31, 1981 with Migratory Bird Treaty Act, 16 U.S.C. 703, violations, pled guilty to sale of 332 wood ducks, blue-winged teal, and green-winged teal. Defendants allegedly attracted the ducks by baiting. Each received five years' probation and was prohibited from hunting or accompanying hunters for two years. Danner received a \$2,000 fine and Kimbrow a \$1,500 fine. Three shotguns were forfeited from Kimbrow. In addition, Danner was assessed a 30-day sentence and \$1,000 fine after pleading guilty to assault of federal officer at the time of his arrest.

United States v. Ashcraft, (C.D. Ill.). Robert Ashcraft was indicted March 31, 1981 for trespass, illegal possession of firearms, and spotlighting and hunting deer on the Meredosia National Wildlife Refuge. He pled guilty to trespass, receiving a \$500 fine and one year's probation during which he may neither hunt nor accompany hunters.

United States v. Logsden, (C.D. Ill.). James Lee Logsden was also charged with trespass and hunting on the Meredosia National Wildlife Refuge. He, too, pled guilty to trespass and received a \$500 fine and one year's probation during which hunting and accompanying hunters were prohibited.

United States v. Runyon, (D. Ariz.). Steven Runyon, Alan Brown, and Russell Christie were charged in a three-count indictment with the theft and interstate transport of 27 endangered squawfish from a national fish hatchery. Estimates of the loss to the government from the crime range from \$120,000 to \$2,000,000. Each of the defen-

dants recently pled guilty to interstate transportation of stolen property, 18 U.S.C. 2314. Runyon received a \$3,000 fine, three years' probation, and was directed to do 400 hours of public service. Christie and Brown received a \$1,000 fine and were directed to do 100 hours of public service. The case was developed by Fish and Wildlife Service agents.

United States v. Roberts, Murphy and Brannon; United States v. Apgar, Apgar and Koster; United States v. McAlpine, Johnson and Albert; United States v. O'Neill, (D. Alas.). A major Fish and Wildlife Service investigation recently resulted in an initial series of informations under the Marine Mammal Protection Act (MMPA). The 11 defendants charged in these cases allegedly dealt in substantial quantities of walrus ivory taken in violation of the MMPA's moratorium on taking and importation of marine mammals and marine mammal products. Wildlife and Marine Resources attorneys have responsibility for the prosecutions.

United States v. Angeles, (E.D. Va.). Adorado M. Angeles was found guilty by a federal magistrate in Richmond of violating the Lacey Act. The case involved the transport of deer on two occasions from Virginia to Maryland in violation of a Virginia prohibition on commercial dealings in deer. Angeles was sentenced on June 5, receiving a \$5,000 fine, one year's suspended sentence, and one year's active probation. The Fish and Wildlife Service conducted the investigation in cooperation with state agents.

United States v. Petruzielo, (D. Me.). Petruzielo, who had pled guilty to selling 15 birds in violation of the Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*, was sentenced June 1, 1981 to a one year's suspended sentence and one year's probation. As part of the plea agreement in the case, Petruzielo also agreed to forfeiture of his automobile. The separate *in rem* forfeiture proceeding is still pending before the District Court.

United States v. Foringer, (W.D. Pa.). Foringer was recently sentenced for violations of the Bald and Golden Eagle and Migratory Bird Treaty Acts. The court assessed an indefinite term not to exceed four years custody under the Youth Corrections Act, 18 U.S.C. 5005, with a two year probationary term to follow.

United States v. Fass Brothers, Inc., (E.D. Va.). Fish dealer Fass Brothers, Inc. pled guilty to a two-count indictment charging falsification of fish dealing reports in violation of the Fishery Conservation Management Act, 16 U.S.C. 1857. On June 2, the dealer received a \$1,250 fine on each count, for a total fine of \$2,500.

United States v. Hunt, (S.D. Cal.). Glenn Hunt, who pled guilty to smuggling military macaws, was sentenced to five years' probation under the Youth Corrections Act, 18 U.S.C. 5005. The birds were sold at auction on April 29.

IMPORT PERMIT DENIAL (BIRDS)

Slocum v. United States, et al., 81-1106-CIV-SMA (S.D. Fla.). Quarantine station owner Bert R. Slocum, whose

conviction and sentence for theft of diseased birds from quarantine were reported in this and a previous ARLR, recently sued the government over an import permit denial. Slocum claims that the Department of Agriculture violated both his Fifth Amendment due process rights and the Administrative Procedure Act by denying him a permit to import over 4,400 exotic birds from Indonesia, South America, and Belgium. Under 9 CFR 92.4(c), the Department of Agriculture may deny an import permit application in order to prevent dissemination of disease. The District Court denied Slocum's request for a temporary restraining order directing issuance of the permit. Wildlife and Marine Resources' attorneys have responsibility for the case.

ENDANGERED SPECIES ACT: KANGAROOS

Defenders of Wildlife v. Watt, (D.D.C. May 28, 1981). Defenders unsuccessfully challenged the decision of the Fish and Wildlife Service to lift the regulatory ban on import of three species of kangaroos listed as "threatened" under the Endangered Species Act. In a detailed rulemaking, FWS found that the prerequisites for import established in 1974 when the kangaroos were listed — findings by the Australian states that exports would not be detrimental to the kangaroos' survival and development of sustained yield management plans for the species — were met. Defenders did not contest compliance with those prerequisites, rather arguing that the commercial import of threatened species is inconsistent with the conservation goal of the Endangered Species Act. In Defenders' view, the original kangaroo regulation exceeded the authority given FWS to protect threatened species. The District Court disagreed, concluding that the regulatory method adopted by FWS to encourage the Australian states to develop kangaroo management plans and thus promote kangaroo conservation was appropriate under the circumstances. The court therefore granted the government's motion for summary judgment. Defenders has appealed and has sought expedited review of the District Court's decision.

ENDANGERED SPECIES ACT: GRIZZLY BEARS

Cabinet Mountains Wilderness, et al. v. Peterson, et al., No. 80-2450 (D.D.C. April 15, 1981). Granting the Government's motion for summary judgment, the District Court ruled against plaintiffs' claims under the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). Plaintiffs argued both that the proposed exploratory drilling for minerals in the Cabinet Mountains Wilderness authorized by the Forest Service would jeopardize a small Montana population of grizzly bears, a threatened species under the ESA, and that the drilling could not proceed without an environmental impact statement. Noting first that the "arbitrary and capricious" standard of the Administrative Procedure Act governed the case, the court held that the Forest Service had met its burdens under the ESA and NEPA. As to the ESA claim, the court found that the Forest Service had considered all relevant evidence and had attempted to minimize effects on the bears by adopting mitigation measure suggested

STATE AND LOCAL

by the Fish and Wildlife Service. On the grounds that the Forest Service had approved only exploratory drilling, not mining, and would conduct further environmental studies should actual mining come under consideration, the court also found the Forest Service in compliance with NEPA requirements. The Sierra Club, representing plaintiffs, has appealed.

WILD FREE ROAMING HORSES AND BURROS ACT

Mountain States Legal Foundation, et al. v. Andrus, No. C79-275K (D. Wyo. March 13, 1981). The District Court for the District of Wyoming recently granted Mountain States' Motion for Partial Summary Judgment in this suit under the Wild Free Roaming Horses and Burros Act, 16 U.S.C. 1331 *et seq.*, over demands placed by wild horses on lands in the Rock Springs area. The court ordered the Bureau of Land Management to remove all wild horses from private lands in the Rock Springs District except for that number acceptable to the Rock Springs Grazing Association. The court also ordered BLM to remove all excess horses from public lands within two years, defining excess to mean any number over that identified as appropriate in a final environmental impact statement, or, in the absence of such a statement, any number over that existing at the time of passage of the Wild Horse Act. The government has filed notice of appeal.

ENVIRONMENTAL PROTECTION ACT: REFINERY

In the matter of: The Pittston Company NPDES Permit Application. On May 7, 1981, the Acting Administrator of the Environmental Protection Agency denied petitions for review filed by numerous parties to this proceeding, including Region I, U.S. Environmental Protection Agency; Region I, U.S. Department of Interior; National Oceanic and Atmospheric Administration, with New England Fishery Management Council; Conservation Law Foundation of New England, Inc., with Natural Resources Council of Maine and the National Wildlife Federation, and Roosevelt-Campobello International Park Commission. The petitions principally raised problems of jeopardy to endangered whales and bald eagles. The denial of review means that the lengthy and controversial administrative proceedings over the Pittston Company's efforts to obtain necessary permits for a proposed refinery near Eastport, Maine are at an end. Litigation over EPA's issuance of the NPDES (Clean Water Act) permit is anticipated.

ENDANGERED SPECIES ACT: FAILURE (OR REFUSAL) TO LIST

The Environmental Defense Fund has stated that it intends to sue Interior Secretary James G. Watt in order to force him to resume listing animal and plant species threatened with extinction. It is alleged that under the Watt regime the listing process has come to a virtual halt.

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

The Associated Press reported that the president of a Florida humane society proposed to the court an unique alternative to a criminal charge of cruelty to animals. After a humane inspector removed two dogs from a locked car in 90°-plus heat, in lieu of pressing the criminal charges the humane society's president suggested that the perpetrators spend an hour in an unventilated car under the same temperature conditions. They accepted, and did the time. The society's president was quoted as saying that the "punishment fits the crime."

A Pennsylvania man who killed one of his own dogs with a pickaxe because he lost his temper was fined \$300.00 plus court costs for cruelty to animals. By itself, unfortunately, this kind of a story is not uncommon. There are too many examples of animal owners killing or injuring their own animals. What this story and all of the others point up so clearly is the need for legislation which not only punishes this kind of cruelty, but which bars such people from owning any other animals. (See IN THE LEGISLATURES, in the next section.) According to the pickaxe murderer, "We have four dogs, nine kittens, five cats, dozens of chickens, ducks, a rooster and four guinea hens."

In Westover, West Virginia, another man who lost his temper pleaded guilty to beating a puppy to death. The Magistrate levied the maximum fine, \$110.00, the highest amount possible under the law. *ARLR is informed that the magistrate receives ARLR.*

CRUELTY: BIRD POISONING

The action reported in the July 1981 ARLR concerning strychnine bait has been resolved in the Pennsylvania Court of Common Pleas. The judge dismissed the complaint, which sought a declaratory judgement that the use of the poison on wild or feral pigeons did not violate Pennsylvania law.

SPCA'S AND SHELTERS: FIGHTING FOR INPUT AND CONTROL

In New York State the local Long Beach (Long Island) League for Animal Protection has apparently possessed at least county-wide "peace officer" powers for some four decades, even though it has not used those powers and even though the organization operates only in Long Beach. Recently, the League for Animal Protection, a group covering a considerably larger geographical area, has sued the Long Beach organization in order to obtain its own peace officer powers. This case points up the problems that can arise over SPCA/shelter jurisdiction, monopoly powers granted to a single organization by the

legislature, and the existence of significant enforcement powers in the hands of organizations which are unaware that they have such powers or which are unwilling to exercise them.

ANIMAL CONTROL: TWO-BITE RULE

It is not uncommon for a municipality to have a local ordinance which provides that if an animal (usually a dog) bites twice, regardless of the cause or other circumstances, it shall be put to death. Recently, ARLR was asked by an interested party in Florida for some theories upon which such statutes could be attacked and such cases defended. Our thoughts are passed along here for whatever help they may be. To begin with, these kinds of ordinances provide for no hearing at all and thus raise substantial questions of procedural due process. A related point is that they create what amounts to an irrebuttable presumption, and thus may run afoul of the holding in such cases as *LaFleur* where the Supreme Court of the United States has dealt with such presumptions. Related to this last point is that usually these kinds of ordinances leave much to be desired definitionally, allowing for the possibility of a "void for vagueness" defense. Then there is the point that these laws create virtual strict liability, a category of responsibility reserved under the common law (and even some statutes) for the owners of "wild" animals. Lastly, a defense of "excessiveness" can be made, bottomed on the Eighth and Fourteenth Amendments' "cruel and unusual punishments" prohibition — the theory being that the visitation of such drastic capital punishment on the animal and/or the owner is grossly (and thus unconstitutionally) excessive when compared to the "crime."

STATE ENDANGERED SPECIES LAWS

Justin Boot Company v. Brown et al. represents a significant victory for California's endangered species legislation. The United States District Court for the Eastern District of California has held that for animals not specifically included under the protection of the federal Endangered Species Act, but protected under California law, there is no federal preemption and California can bar the importation of products from such animals. In other words, when it comes to the protection of endangered species, California can go further than the federal government without fear of having its determinations invalidated because the latter did not go as far as did the state. Since the essence of preemption is an *intent* to preempt, it seems that the District Court reached the proper conclusion. But the decision will almost certainly be appealed. In addition, since the federal Act is administered by bureaucrats, care must be taken that no administrative action be allowed to undermine the failure of Congress to manifest an intent to preempt state endangered species legislation.

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

Late in August United Press International reported that the Hawaii Supreme Court upheld a ruling that the death of a family pet is sufficient to sustain a judgment for \$1,000.00 for emotional distress. A lower court had awarded that amount for a quarantine station's negligence in placing a dog in a van directly exposed to the sun, where the animal died from heat prostration. The award is even more significant because the dog's owners did not witness its death.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

At the present time, the following bills and resolutions are pending before the 97th Congress.

RESEARCH METHODS

H.B. 220, introduced by Rep. Geraldine A. Ferraro, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.R. 556, introduced by Rep. Robert A. Roe; Rep. Harold C. Hollenbeck, and Rep. Frederick W. Richmond, to establish a National Center of Alternative Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplica-

tion of experiments on live animals; to disseminate information on such methods. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 930, introduced by Rep. Virginia Smith, to establish a commission to study alternative methods to the use of live animals in laboratory research and testing. Referred to Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.C.R. 38, introduced by Rep. G. William Whitehurst, pertaining to the methods used on animals in research. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

S.R. 65, introduced by Sen. David Durenberger, et al., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.C.R. 27, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 2110, introduced by Rep. Brian J. Donnelly, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to live animals. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 4406, introduced by Rep. Patricia Schroeder, to amend the Animal Welfare Act to insure the humane treatment of laboratory animals. Referred to the Committee on Agriculture of which Rep. E. de la Garza is Chairman, the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

SEALS

H.B. 348, introduced by Rep. Frank Horton, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to Committee on Foreign Affairs, of which Rep. Clement J. Zablocki is Chairman; the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 560, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman, the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

LACEY ACT AMENDMENTS

On May 21, the Senate Committee on Environmental Works reported out S. 736, the proposed Lacey Act Amendments. The version of S. 736 that the full Senate will now consider contains modifications adopted by the Committee to reflect comments submitted by interested federal agencies and private parties. In the House of Representatives, the House Subcommittee on Fish and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee has sent H.R. 1638, a bill mirroring the Senate bill, to the full Committee for review. Passage of the Lacey Act Amendments this year looks promising. Senate Report No. 97-123.

FISH AND WILDLIFE

S.B. 736, introduced by Sen. John H. Chafee, et al., to provide for the control of illegally taken fish and wildlife. Referred to Committee on Environmental and Public Works, by unanimous consent with instructions that once reported, the bill be referred to the Committee on the Judiciary of which Sen. Strom Thurmond is Chairman; for not to exceed thirty calendar days. Status: Hearing in Senate on 4/1/81; reported, amended, Sen. Report No. 97-123 on 5/21/81. S. committee discharged 6/22/81. To S. Calendar 6/22/81. Amended on S. floor 7/24/81. Passed S. as amended 7/24/81. To H. Committee on Merchant Marine & Fisheries 7/28/81.

WHALES

H.C.R. 96, introduced by Rep. Don L. Bonker and Rep. Walter B. Jones, calling for an indefinite moratorium on the commercial killing of whales and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale populations. Referred to Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman. Status: Hearing in House on 6/16/81. Passed H. with amendment 7/15/81. To S. Committee on Foreign Relations 7/21/81.

S.R. 148, introduced by Sen. Bob Packwood, calling for a moratorium of indefinite duration on the commercial killing of whales. Referred to Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Reported without written S. report 7/20/81. Agreed to by S. 7/20/81.

TRAPPING

H.B. 374, introduced by Rep. Clarence Dickinson Long, to

discourage the use of leg-hold or steel jaw traps on animals in the United States. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 1002, introduced by Rep. Glenn M. Anderson, to regulate the trapping of mammals and birds on federal lands. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman; and Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

ZOOLOGICAL FOUNDATION

H.B. 642, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE MAMMALS

H.B. 1672, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972, in order to prohibit the issuance of general permits thereunder which authorize the taking of marine mammals in connection with commercial fishing operations. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ANIMAL DAMAGE

H.B. 1956, introduced by Rep. E. de la Garza, et al., amends the Act of March 2, 1931, to require the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to implement a program for animal damage control. Referred to Committee on Agriculture of which Rep. E. de la Garza is Chairman.

WILDLIFE PRESERVATION

H.B. 2214, introduced by Rep. Carl D. Purcell; Rep. Benjamin A. Gilman, and Rep. Anthony C. Beilenson, to establish a federal program to provide public information on wildlife preservation and the endangered species. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 2978, introduced by Rep. Don L. Bonker, et al., to provide for additional protection of steelhead trout as a game fish. Referred to Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

HORSE RACING

H.B. 2331, introduced by Rep. Bruce Vento, et al., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on the Judiciary of which Rep. Peter W. Rodino, Jr. is Chairman.

MARINE SANCTUARIES

H.B. 2357, introduced by Rep. John B. Breaux, to repeal Title III, Marine Sanctuaries of the Marine Protection, Research, and Sanctuaries Act of 1972. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

S.B. 1003, introduced by Sen. Bob Packwood, to amend Title III of the Marine Protection Research and Sanctuaries Act of 1972, as amended, to authorize appropriations for such Title for fiscal years 1982 and 1983. Status: Reported, no amendment, Sen. Report No. 97-44 on 4/23/81; Passed Senate on 5/4/81; Sent to House Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, on 5/6/81. Amended to contain text of H. 2449 as passed 7/13/81. Passed H. as amended (Voice) 7/13/81.

S.B. 1186, introduced by Sen. Bob Packwood, to amend the Marine Mammal Protection Act of 1972, as amended, to extend the authorization of appropriations for fiscal years 1982 and 1983. Status: Reported, no amendment; Sen. Report No. 97-63, on 5/14/81.

S.B. 1213, introduced by Sen. John H. Chafee, to amend Title I of the Marine Protection, Research, and Sanctuaries Act, as amended. Status: Reported; no amendment, Sen. Report No. 97-119, on 5/15/81; Passed Senate as reported on 6/2/81; Passed House without amendment on 6/11/81; Sent to President on 6/16/81; Approved — Public Law 97-16, on 6/23/81.

MIGRATORY BIRDS

H.B. 3442, introduced by Rep. Harold Sawyer, to establish a Webless Migratory Game Bird Research Fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MAMMALS AND BIRDS/PUBLIC LANDS

S.J.R. 6, introduced by Sen. Alan Cranston, to establish a national policy for taking of predatory or scavenging mammals and birds on public lands. Referred to Committee of Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

FISH

S.B. 874, introduced by Sens. Slade Gordon, Henry M. Jackson, James A. McClure and Howard M. Metzbaum, to provide for additional protection of steelhead trout as a game fish. Referred to the Committee on Indian Affairs.

TUNA PROTECTION

S.B. 1564, introduced by Sens. Lowell P. Weicker, Jr., Paul E. Tsongas, John H. Chafee, Ernest F. Hollings, William V. Roth, Jr., Bill Bradley, Paula Hawkins, Claiborne Pell, Lawton Chiles, Edward M. Kennedy, John W. Warner, is entitled the American Tuna Protection Act. Referred to the Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman.

H.B. 4457, introduced by Reps. James J. Howard, Claudine Schneider, Guy V. Molinari, G. William Whitehurst, Gerry E. Studds, William J. Hughes and Nicholas Mavroules, is entitled The Tuna Protection Act. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

WHALES

H.C.R. 18, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

S.R. 147, introduced by Sen. Bob Packwood, calling for a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman.

FISH RESTORATION

S.B. 546, introduced by Sens. Jennings Randolph, Russell B. Long, Howell Heflin, Walter D. Huddleston and Barry Goldwater, is entitled The Fish Restoration Act of 1981. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 3325, introduced by Rep. John J. Duncan, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 3717, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep.

Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

ILLEGAL TRADE

H.B. 1638, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to provide for the control of illegally taken fish and wildlife. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE LIFE PROTECTION

H.B. 2449, introduced by Reps. Norman E. D'Amours and Walter B. Jones, to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended to authorize appropriations for such Title for fiscal years 1982, 1983 and 1984. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 2948, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Marine Mammal Protection Act of 1972 during fiscal year 1982. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 4084, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve the operation of the Marine Mammal Protection Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

STATE AND LOCAL

CRUELTY: BARRING FUTURE ANIMAL OWNERSHIP

A major problem in the enforcement of anti-cruelty laws is that following conviction the perpetrator is free to abuse other animals that he or she owns. To close this loophole in animal protection statutes, SAR and ARLR were recently asked by legislators in the Commonwealth of Pennsylvania to prepare a memorandum which could be the basis of remedial legislation. Because the issue is so important and the solution to the problem so simple, ARLR reproduces here in full that memorandum:

A vague, unspecific "constitutional" objection has been raised which is impossible to refute because to do so would be to accept the burden of having to prove a negative. However, it is possible to state why such legislation would quite clearly be *constitutional*.

The Constitution of the United States of America creates a "Federal" system of government, meaning that the central (federal) government and the constituent states each possess certain powers which are related to the different functions each performs. Thus, the federal government

has the power to declare war, clearly a "national" kind of power, and the states have the power to regulate the use of land, clearly a "local" kind of power.

The principal Constitutional source of this divided power as to the states is the Tenth Amendment, which provides that if a power is not specifically delegated to the federal government in the Constitution, or specifically denied to the states in the Constitution, then that power belongs to the states. The power to legislate on behalf of animals is thus "reserved" to the states constitutionally, and it can be said thusly that animal rights legislation is constitutionally-based. That being so, certain important corollaries follow.

Every presumption favors the constitutionality of a statute. (*Fletcher v. Peck*, 10 U.S. 87 (1810); *Legal Tender Cases*, 79 U.S. 457 (1870); *South Carolina Highway Department v. Barnwell Bros.*, 303 U.S. 117 (1938); *United States v. Carolene Products Co.*, 304 U.S. 144 (1938); *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962)).

The presumption of constitutionality is extremely strong (*I.L.F.Y. Co. v. Temporary State Housing Rent Commission*, 10 N.Y. 2d 263 (1961), appeal dismissed, 369 U.S. 795 (1962); *Nettleton Co. v. Diamond*, 27 N.Y. 2d 182 (1970); appeal dismissed sub nom. *Reptile Products v. Diamond*, 401 U.S. 969, 1971)).

It is also presumed that the legislature has duly investigated the subject area of the legislation and found the facts necessary to support it. (*I.L.F.Y. Co. v. Temporary State Housing Rent Commission*, supra; *Lincoln Building Associates v. Barr*, 1 N.Y. 2d 413 (1956), appeal dismissed, 355 U.S. 12 (1957); *East New York Savings Bank v. Hahn*, 293 N.Y. 622 (1944), aff'd, 326 U.S. 230 (1945)).

The burden of overcoming these extremely strong presumptions, and of proving unconstitutionality, rests entirely with whomever challenges the statute. (*Nettleton Co. v. Diamond*, supra; *People ex rel. Henderson v. Board of Supervisors*, 147 N.Y. 1 (1895)).

That unconstitutionality must be proved beyond a reasonable doubt. (*Nettleton Co. v. Diamond*, supra; *People v. Pagnotta*, 25 N.Y. 333 (1969); *Matter of Fay*, 291 N.Y. 198 (1943)).

As to the State's exercise of its police power specifically, it is presumptively reasonable and constitutional (*Salsburg v. Maryland*, 346 U.S. 545, 553, 74 S.Ct. 280, 284 (1954); *U.S. v. Carolene Products Co.*, 304 U.S. 144, 154, 58 S.Ct. 778, 784, (1938)), the challenger has the burden to show unreasonableness and unconstitutionality (*Bibb v. Navajo Freight Lines*, 359 U.S. 520, 529, 79 S.Ct. 962, 967 (1959)), and it will be upheld if any state of facts is either known or could reasonably be assumed which affords support for it (*U.S. v. Carolene Products Co.*, supra).

And even if one who challenges a statute's constitutionality carries all of the aforesaid burdens and satisfactorily demonstrates unconstitutionality, no statute will be declared unconstitutional except as a last resort, after

every reasonable means of reconciliation with the Constitution has been tried. (*Ashwander v. T.V.A.*, 297 U.S. 288 (1936). (Brandeis, J., concurring, at 347-8)).

In light of the foregoing, and in light of the existence of anti-cruelty legislation in every jurisdiction in America, state and federal, and in light of the fact that such legislation has survived various constitutional challenges, the proposed legislation for Pennsylvania, which merely augments that Commonwealth's present anti-cruelty legislation by strengthening the penalty for violation, is manifestly constitutional. Indeed, focusing solely on the augmented penalties, analogies quickly come to mind. For example: when parents or other custodians of minors abuse them, not only can the victims be removed from that custody, but other children as well; the confiscation of property used in the commission of a crime, or other "contraband," has long been a fact of legal life and no challenges on constitutional grounds have been successful.

This legislation would be an amendment to the current Pennsylvania anti-cruelty laws. It should provide as follows:

Upon the conviction of any person for violation of any provision of the anti-cruelty laws of the Commonwealth of Pennsylvania (incorporate here the statutes' citations), in its discretion the sentencing court shall possess the power to:

1. direct that the animal involved be humanely destroyed provided that a licensed veterinarian appointed by the court has certified that it would be cruel to keep such animal alive;
2. deprive such convicted person of the ownership, possession, or constructive possession of such animal for such period of time, including permanently, as the court shall direct;
3. deprive such convicted person of the ownership, possession, or constructive possession of any other animal for such period of time, including permanently, as the court shall direct;
4. make such order as may be required to assure that the animal which has been cruelly treated and removed from the ownership, possession or constructive possession of the person convicted shall be humanely cared for;

Violation of any order made pursuant to paragraph 2 or 3 above shall be punishable as a misdemeanor.

Any person convicted of cruelty to an animal and subject to an order made pursuant to paragraph 2 or 3 may, after the expiration of five years from the date of such order, petition the sentencing judge for relief from such order. Such person shall have the burden of proving by clear and convincing evidence that he or she has not during the period that the order was in effect either owned, possessed or had constructive possession of whatever animal or animals that were the subject of said order,

that he or she had fully complied with the terms of said order, and that he or she had not been charged with cruelty to animals. If, at the time such petition is brought, the sentencing judge is not an active judge of the court wherein the petitioner was convicted, the petition may be made to another judge of the same court.

(As to barring future ownership of animals, readers should note the Confal, Cogsdon, Kimbrow and Danner, and Ashecraft cases above (IN THE COURTS, federal), where part of the sentences included a prohibition against hunting for a specified period.)

CRUELTY: NEW YORK CITY HORSE CARE BILL

Recently New York City enacted a long-overdue law which licenses the privately owned horses in the municipality, some 2,000 in number. In addition, the new law establishes standards for the animals' care.

HUNTING: DEER HUNTING IN PARK PRESERVE

By a 7-0 vote, the Florida governor's cabinet opened the Rosahatchee Park Preserve for a 1982 deer season. The issue had been opposed by the Florida Audubon Society and other groups.

The cabinet had earlier approved a deer season in the preserve; anti-hunting groups obtained a court injunction which stopped hunting for all but two days of the 1981 season but the cabinet subsequently gave the 7-0 approval as a result of efforts by Florida hunters and a lobbyist retained by The Wildlife Legislative Fund of America.

Florida S.B. 536 and H.B. 859 will if passed again close the Park Preserve to deer hunting.

HUNTING/TRAPPING: ANTI-TRAPPING LEGISLATION

The Maryland Legislature recently enacted legislation which substantially limits the use of the leghold trap in Baltimore County. There are now three counties in Maryland which do so. ARLR is informed that in Maryland when a bill affects only a single county the state legislature will normally pass it if that county's full delegation supports it. That being so, it has been suggested that "a county by county approach may be a good way to proceed to avoid the familiar massive opposition by hunters and trappers to a proposed statewide law." The idea seems sound, not just for Maryland, but for any other state where the situation is the same. ARLR is interested in knowing of comparable jurisdictions.

ANIMAL CONTROL: OWNERSHIP OF CERTAIN ANIMALS PROHIBITED

Maryland has recently enacted a statute which provides that: "A person may not import into Maryland, offer for

sale, trade, barter or exchange as a household pet any live fox, skunk, raccoon, bear, alligator, cayman crocodile, poisonous snake, or member of the cat family other than the domestic cat. However, a person may offer these species for sale, trade, barter, import, or exchange to a public zoo, park, museum, or educational institution for educational, medical, scientific, or exhibition purposes. Exempted . . . are those species of wildlife not being kept as household pets and which are individually exempted by a permit issued by the department of natural resources."

THE AGENCIES

TEXAS PARKS AND WILDLIFE DEPARTMENT: DELEGATION OF POWER

In an official opinion, the Texas Attorney General has informed a state legislator that the Texas Parks and Wildlife Department cannot, absent express statutory authority, contract with a private attorney to prosecute shrimp and confiscation cases and other wildlife infringements of the law. At present, there is no such statutory authority. An interesting idea.

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

While there were never an abundance of books, articles, etc., published on the subject of animal rights law, nor is there now, nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p.9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention.

MEASURE OF DAMAGES

A new book by Dr. Donald R. Griffin, *The Question of Animal Awareness* (The Rockefeller University Press, New York, \$13.95), updates the first edition published five years ago. In this revised work the author pursues his theory that some animals may possess the power to "think," noting that recent research has shown that many animals do communicate in a variety of unusual ways. It may very well be that establishing that animals have some kind of cognitive capacity is another piece in the puzzle of establishing that substantial damages ought to be awarded for the intentional/negligent death/injury of a pet animal. Given this connection to animal rights law, ARLR would be interested in a review of *The Question of Animal*

Awareness. Anyone wishing to write a review should inform ARLR, in order to establish priority.

ANIMAL RIGHTS AND HUMAN MORALITY

Professor Bernard E. Rollin of Colorado State University has written a book with the above title (Prometheus Books (Harper & Row), New York, \$17.95 cloth, \$9.95 paper). From its table of contents the book appears to attempt comprehensively to deal with all of the relevant moral aspects of the animal-human relationship. Since the moral-ethical question underlies the entire subject of animal rights law, Professor Rollin's book could be very important. ARLR solicits a review. Anyone wishing to review *Animal Rights and Human Morality* should inform ARLR in order to establish priority.

LAW, ETHICS AND RESEARCH ANIMALS

Theodore S. Meth, Esq., has written an article entitled "The Limits of Legislation in Achieving Social Change" in the May-June 1981 issue of the *International Journal for the Study of Animal Problems*. Mr. Meth's article is there described as "... about law, not laboratory animals or philosophical ethics. It proceeds from the premise that law is an appropriate, perhaps inevitable, instrument for dealing with ethical issues relating to the use of research animals."

ANIMAL RIGHTS AND RADICAL CHIC

Jim Mason, Esq., has written an article entitled "The Politics of Animal Rights: Making the Human Connection," in the July-August 1981 issue of the *International Journal for the Study of Animal Problems*. Among other things, the article is concerned with examining an alleged connection between the exploitation of animals and human oppression of other human beings.

BULLETIN BOARD

ASSOCIATION OF VETERINARIANS FOR ANIMAL RIGHTS

Nell C. Wolff, D.V.M., 69-40 229th Street, Bayside, New York 11364 (212-224-8647) has founded the non-profit organization named above. Dr. Wolff has stated publicly that: "I believe that an active group of veterinarians could have a great impact on the prevention of injustices against animals. A veterinary association for animal rights could also help the causes of existing civic and humane organizations. I think that prophylactic veterinary medicine should involve more than vaccinations. It should also include programs to prevent abuse and suffering of animals." Dr. Wolff has some very innovative ideas concerning what veterinarians can do about animal rights,

and he reports interest from about fifty of his colleagues, with more inquiries being received each week.

ANIMAL RIGHTS LAW WRITING PROJECT

Lawyers with writing experience and a desire to participate in an animal rights law writing project are asked to contact Professor Henry Mark Holzer, Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201.

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

ARLR SEEKS ASSISTANT EDITOR

Since its inception 19 months and 7 issues ago ARLR has been compiled, edited and written by Professor Henry Mark Holzer, with much of the legislative material provided by SAR's president, Helen Jones. As recent issues of ARLR show, its scope has broadened and increasingly greater amounts of material are being included. Accordingly, a volunteer assistant editor is sought. The person must be a lawyer, possess basic writing skills, be willing and able conscientiously and consistently to devote about 20 hours quarterly, have a serious commitment to animal rights law, and (preferably) reside in the New York City area. Please contact Professor Holzer in writing, at Brooklyn Law School, 250 Joralemon Street, Brooklyn, New York, 11201.

AVAILABLE RESOURCES

FEDERAL CIVIL WILDLIFE CASES

Twenty-seven civil wildlife cases of importance have been reported in the *Wildlife Newsletter* during 1979-1981. The Wildlife Section has prepared a summary of those cases, and it is available from SAR.

PREEMPTION OF STATE ENDANGERED SPECIES LAWS

The *Man Hing Ivory and Imports* case, like *Justin Boot*, (see IN THE COURTS, above), involved the issue of whether federal endangered species law preempted California's own statute. On behalf of the Fund for Animals, San Francisco attorney Laurence W. Kessenick (President of Attorneys for Animal Rights) submitted an *amicus curiae* brief in the Ninth Circuit. It is available from SAR.

The opinion of Judge Raul A. Ramirez in the *Justin Boot* case is very interesting reading on the subject of preemption generally, and the application of that doctrine to California's endangered species legislation. A copy is available from SAR.

Society for Animal Rights
and
Animal Rights Law Reporter
Announce the First National Conference
On Animal Rights Law

On Friday and Saturday, November 27 and 28, 1981 SAR and ARLR will sponsor the first national Conference on Animal Rights Law.

The Conference will be held at the Carnegie Conference Center of the Carnegie Endowment for International Peace, 54th floor, RCA Building, 30 Rockefeller Plaza, New York, NY 10020 (Tel.: (212) 572-8222).

The program for the entire Conference is as follows:

Friday, November 27, 1981.

9:00 a.m. — 10:00 a.m.

Welcoming statement (Helen Jones).

Introduction to Conference (Henry Mark Holzer).

The animal rights movement: historical analogies (Nancy Jane Shestack).

10:00 a.m. — 10:30 a.m.

Legal and other resources for animal rights lawyers (Peter Lovenheim).

10:30 a.m. — 11:00 a.m.

Private lawyers and SPCAs: a natural symbiosis (Ellnor Molbegott).

11:00 a.m. — 11:15 a.m.

The nature and detection of veterinary malpractice (Richard Novick).

11:45 a.m. — 12:15 p.m.

Toward a new theory of measure of damages for intentional/negligent death/injury of an owned animal (Laurence W. Kessenick).

12:15 p.m. — 1:15 p.m.

On-premises lunch (Vegan).

1:15 p.m. — 5:00 p.m.

Litigation on Behalf of Animals:

1:15 p.m. — 2:00 p.m.

Defending the animal rights activist (Douglas A. Trant).

2:00 p.m. — 2:45 p.m.

Overview of test case litigation (Henry Mark Holzer).

2:45 p.m. — 5:00 p.m.

Panel on test case litigation, moderated by Henry Mark Holzer: prospective cases and underlying theories (Laurence W. Kessenick), dealing with courts and adversaries (Marcelle Philpott-Bryant), standing to sue (Henry Mark Holzer).

Saturday, November 28, 1981.

9:00 a.m. — 9:45 a.m.

The "Sido" problem: bequests of animals (Frances Carlisle).

9:45 a.m. — 10:30 a.m.

Intervivos and testamentary gifts on behalf of animals — the problems and pitfalls (Joyce S.A. Tischler).

10:30 a.m. — 12:00 noon

Legislative and related activities on behalf of animals.

10:30 a.m. — 11:15 a.m.

Candidate polling and legislative lobbying (Helen Jones).

11:15 a.m. — 12:00 noon

The view from the legislature (Aloysius J. Ahearn).

12:00 noon — 1:00 p.m.

On-premises lunch (Vegan).

1:00 p.m. — 3:00 p.m.

Panel on animal rights legislation, moderated by Henry Mark Holzer: the problems and pitfalls, the role of model laws, and the means to the end (Julian Tenney, William A. Reppy, Jr., David S. Favre, Henry Mark Holzer).

3:00 p.m. — 5:00 p.m.

Plenary session on special projects.

3:00 p.m. — 3:45 p.m.

Curriculum proposal for animal rights courses (Nancy Jane Shestack).

3:45 p.m. — 4:15 p.m.

Encyclopedia of Animal Rights Law writing project (Henry Mark Holzer).

4:15 p.m. — 5:00 p.m.

Attorneys For Animal Rights, a national organization of animal rights lawyers (Laurence W. Kessenick, Joyce Tischler).

5:00 p.m. — 7:00 p.m.

At leisure.

7:00 p.m. — 9:30 p.m.

Cocktails and dinner (Vegan) at a restaurant to be announced. The after-dinner speaker will be Cleveland Amory.

It is expected that short breaks will be possible between certain presentations, and time has been provided for a question/answer period following each presentation.

The SAR/ARLR conference on Animal Rights Law is open to lawyers, law teachers, law students and judges. Although the number of conference participants will be strictly limited to well under a hundred, if space permits there will be a few registrations reserved for lay persons active in the animal rights law movement.

The conference registration fee for attendees not participating in the program is \$75.00, except for law students whose registration fee is \$35.00 (the number of registrations available for law students remains limited). The registration fee covers the two days of the conference, the Friday and Saturday luncheons and the closing dinner on Saturday evening. All other expenses of attending the conference will, of course, be the attendees' own responsibility.

SAR began to accept conference registrations on April 15, 1981, and has already received them from persons in New York, California, Florida, Tennessee, North Carolina, Michigan, Ohio, Connecticut, Oregon and the District of Columbia.

SAR reserves the right to reject applications in its sole discretion and to close registration when a predetermined cutoff point has been reached. Conference registration applications should be on the applicant's letterhead, if possible, or should otherwise identify the applicant's connection with the legal profession or the animal rights law movement. The registration application should also include full payment of the registration fee. All registrations for the conference will have to be completed by mail, and under no circumstances will registrations be accepted at the conference itself.

Short biographies of those persons who are participating in the conference program are as follows:

Aloysius Ahearn

A high school English teacher by profession, Aloysius J. Ahearn has served as a Representative in the Connecticut legislature where he compiled an outstanding record on behalf of animal rights. He served as Chairman of the Animal Welfare Subcommittee and fought successfully to defeat various inhumane legislation, e.g.: a bill which would have allowed the "sport" of falconry in Connecticut. In addition, Aloysius J. Ahearn sponsored significant animal welfare bills which are now law in Connecticut, e.g.: creating the first state-operated low cost spay/neuter clinic in the nation; banning the decompression chamber to euthanize dogs and cats; repealing a law which required pounds to send animals to laboratories; illegalizing the breeding and sales of skunks.

Cleveland Amory

A figure known throughout the world for his work on behalf of animal rights, Cleveland Amory founded the Fund for Animals in 1967 and he serves as its unpaid president. Author of *Mankind? Our Incredible War on Wildlife*, wherever animals are in trouble, he seems to appear — on the Sea Shepherd, preventing the killing of whales; in the Grand Canyon, saving feral burros; off the Canadian coast, protesting the slaughter of baby seals.

Frances Carlisle

A member of the University of California (Davis) Law School class of 1982, and a member of the School's Law Review, Frances Carlisle received her B.A. from Barnard College in 1967. She has done volunteer legal work for New York's American Society for the Prevention of Cruelty to Animals.

David S. Favre

A Professor of Law at Detroit College of Law, David S. Favre is a graduate of the University of Virginia and William & Mary. Among the courses that Professor Favre teaches are Environmental Law, Law and Science and Wildlife Law. He has contributed to ARLR.

Henry Mark Holzer

A Professor of Law at Brooklyn Law School, Henry Mark Holzer has been active in the animal rights movement for a decade. He is Special Counsel to, and a director of, SAR, founder and editor of ARLR, and has lectured, written and litigated on a variety of animal rights issues.

Helen Jones

A tireless, lifelong worker for the cause of animal rights, Helen Jones began her career as a volunteer for the Lackawanna County (Pennsylvania) Humane Society. After a short stint as membership director for the American Humane Association, she resigned to become a founder of the Humane Society of the United States. While with HSUS, she formed the National Catholic Society for Animal Welfare which she ran in her spare time, seeking to better the church's attitude toward animals. In late 1960, Helen Jones resigned from HSUS to devote all of her energies to NCSAW, which in 1972 changed its name to Society for Animal Rights. She is President of SAR and chairwoman and a trustee of Citizens for Animals, a humane lobby.

Laurence W. Kessenick

A graduate of UCLA and the Hastings Law School, Laurence W. Kessenick was a founder and is president of Attorneys for Animal Rights (San Francisco). He was also founder and is chairman of Political Animal Welfare Action

Committee, an organization which raises money to support the candidacy of California politicians who in turn support animal rights legislation. Mr. Kessenick has been involved in the "Sido" case, in litigation over California's endangered species law, and in a successful legislative effort to strengthen that law.

Peter Lovenheim

Currently Government Relations Counsel for the Humane Society of the United States, Peter C. Lovenheim received his law degree from Cornell University. He was Staff Attorney for The Reporters Committee for Freedom of the Press and Project Director for The Freedom of Information Service Center, and he possesses extensive experience utilizing the federal Freedom of Information Act and its state counterparts. Mr. Lovenheim's powerful article on the milk-fed veal industry appeared in *New York* magazine in 1979.

Elinor D. Molbegott

A graduate of Boston University and Albany Law School, Elinor D. Molbegott has served as a Legal Intern for Society For Animal Rights and a Legislative Aide in the New York State Assembly. Since 1977 she has been General Counsel to New York's American Society for the Prevention of Cruelty to Animals.

Richard M. Novick

A Doctor of Veterinary Medicine who received his degree from the University of California (Davis), Richard M. Novick has practiced in Manhattan for the last decade. He also holds a Juris Doctor degree from Brooklyn Law School.

Marcelle Philpott-Bryant

A lawyer and former high school teacher who received her B.A. and teaching credential at U.C.L.A., Marcelle Philpott-Bryant founded and is currently president of Attorneys for Animal Rights (Los Angeles). She practices law in Santa Monica, California, and has represented The Fund for Animals in the San Clemente Island and China Lake cases. She has also been active in matters involving mental health, juveniles, drug abuse and women's rights.

William A. Reppy, Jr.

A Professor of Law at Duke University School of Law, William A. Reppy, Jr. has served as a Law Clerk for the Supreme Court of California and then for the late William O. Douglas at the Supreme Court of the United States. He is a graduate of Stanford Law School, where he was an editor of the Law Review.

Nancy Jane Shestack

A lawyer who also has earned a B.A. in philosophy from

Wellesley, an M.A. Ed. in history from Washington University, and a M.S.L. from Yale, Nancy Jane Shestack is an experienced teacher. In addition, she has been a member of the Connecticut Civil Liberties Union Board of Directors, a Legal Intern for Defenders of Wildlife and a lobbyist for the Alaska Coalition.

Jullann Tenney

A graduate of the University of North Carolina and then of the Duke University School of Law, Jullann Tenney has been a Commissioner of the Chapel Hill, North Carolina, Housing Authority, and an intern in the office of a member of the United States House of Representatives. She is currently in private practice.

Joyce S.A. Tischler

A graduate of Queens College and the University of San Diego School of Law, Joyce S. A. Tischler was a founder and has been an officer of Attorneys for Animal Rights (San Francisco). The author of "Rights for Nonhuman Animals: A Guardianship Model for Dogs and Cats," which appeared in 14 *San Diego Law Review*, she has participated in several animal rights cases including the "Sido" controversy and the China Lake burro killings.

Douglas A. Trant

A criminal lawyer with considerable major felony jury trial experience, Douglas A. Trant received his J.D. degree from the University of Tennessee. He was associated with that school's legal clinic, and earlier with the Legal Services Corporation of Alabama.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

— EDITOR'S COMMENT —

With this issue, ANIMAL RIGHTS LAW REPORTER concludes its second year of publication — virtually on the eve of the first national Conference on Animal Rights Law. Under the circumstances, it seems fitting that the Conference be described in more detail than it has been before.

- *The animal rights movement: historical analogies.* Ms. Shestack will draw parallels between the current struggle for animal rights and legendary battles of the past over slavery, women's rights, and other important ethical-social issues. The parallels are astonishing.
- *Legal and other resources for animal rights lawyers.* Mr. Lovenheim will share his extensive knowledge of the Freedom of Information Act and the state open-records laws, and make known the host of other resources available to animal rights lawyers in connection with litigation, legislation and writing. The scope and usefulness of available material is truly mind-boggling.
- *Private lawyers and SPCAs: a natural symbiosis.* Ms. Molbegott will explore the various ways in which animal rights lawyers can leverage their time and ability by helping SPCAs to do a bigger and better job, and in turn be helped by SPCAs in the lawyers' private efforts on behalf of animal rights. This area of mutual cooperation contains several exciting possibilities for the attorneys and the organizations alike.
- *The nature and detection of veterinary malpractice.* Dr. Novick, as a practicing veterinarian and a lawyer, knows very well what constitutes veterinary malpractice **medically and legally**. He will explain the veterinary-legal meaning of such essential concepts as "ordinary care," "proximate cause," "duty," to the end that the nature of veterinary malpractice be clearly understood by the legal practitioner who wishes to understand it, prepare a malpractice case and press it to a successful conclusion. Few lawyers know anything about this field.
- *Toward a new theory for measure of damages for intentional/negligent death/injury of an owned animal.* Mr. Kessenick will develop a theory which is the necessary centerpiece of the attempt by animal rights lawyers to do something about the intentional/negligent death/injury of owned animals. Usually, liability is not difficult to establish. But tort cases fail because of the traditional attitude that animals are mere "property" with little or no value to humans beyond nominal worth. One key to increased concern for and considerate treatment of animals is a measure of damages for their injury/death which takes into account their real value as cherished companions, and punishes the violators of their rights accordingly. This presentation promises to be groundbreaking.
- *Defending the animal rights activist.* Mr. Trant will discuss the various unusual aspects of a criminal case which involve charges growing out of animal rights activism. Interestingly, some of the historical parallels to the women's and civil rights' movements significantly condition how the criminal trial of an animal rights activist must be approached. As activism, let alone militancy, on behalf of animals increases, as surely it will, the criminal defense aspects of litigation are beginning to assume greater importance.
- *Panel on test case litigation.* The panel — Mr. Kessenick, Ms. Philpott-Bryant and I — will sort out the important considerations confronting animal rights lawyers with regard to test case litigation. The history of other movements contains valuable lessons concerning what goals can be expected to be accomplished and when, what criteria proposed test case litigation ought to satisfy, and a host of other issues crucial to intelligent and successful use of available legal resources. Test case litigation is an important tool for the animal rights movement, and it should be used wisely. This panel will propose some beginning ideas.
- *The "Sido" problem: bequests of animals.* Ms. Carlisle will identify some of the central difficulties faced as the result of the inevitable mortality of everyone who owns an animal. The extremely widespread problem of intestate or testamentary disposition of a loved animal surfaces publicly only occasionally, in a situation like the "Sido" case. But when it does, the problems associated with the question of what is to be done with a living creature often calls for Solomonic wisdom. Virtually all the potential problems can be avoided, and lawyers can do a real service for their clients and for animals by understanding and employing the legal steps that are there to be taken.

- *Intervivos and testamentary gifts on behalf of animals — the problems and pitfalls.* Ms. Tischler will direct her attention to another problem related to the mortality of persons who own animals: providing for their care when the owner becomes incapacitated or dies. Because of the “animals as property” view it is often not easy to make, or implement, appropriate arrangements for animals. It is possible, however, and understanding how will inevitably make the lot of many animals and their owners considerably better.
- *Candidate polling and legislative lobbying.* Ms. Jones will reveal some of the techniques which she has so successfully employed over the years in various legislatures on behalf of animal rights. Success with legislatures is not easy under the best of conditions, and working on behalf of animals can be extremely difficult, even debilitating. But there are techniques that work, and Helen Jones not only knows most of them, but she invented many. This talk will be indispensable for any lawyer who intends to approach a legislature on behalf of animal rights.
- *The view from the legislature.* Mr. Ahearn will disclose what he learned from the inside of the Connecticut legislature concerning efforts to enact animal rights legislation. This window into how the legislators think, what they look for, what rankles them, how to win them over, when a winning case quickly becomes a loser, and much more gleaned from the speaker’s years in the legislature will nicely augment Ms. Jones’ presentation which will view the problem from the “outside.”
- *Panel on animal rights legislation.* The panel — Juliann Tenney, Professors Reppy and Favre and I — will dig into some real basics: the underlying context of just what animals are of concern to us, where they are, who has them, and what is being done to them; what, in light of all of that, needs to be done; how it needs to be done; who is to do it; “ideal” versus “practical” considerations; the place for model laws in the solution; federal versus state solutions; the fate of present laws; the problem of preemption.
- *Curriculum proposal for animal rights courses.* Ms. Shestack will present a comprehensive proposal for the teaching of animal rights courses. The coverage of her proposal and the extensive bibliography are the groundwork for a revolution in the teaching of animal rights.
- *Encyclopedia of Animal Rights Law writing project.* I will enlarge on my previously stated contention that until animal rights law is “codified” between hard covers, so that lawyers can go to one source for all they need to know about at least the “hornbook” level of animal rights law, there will be no recognized field. The creation of such a source is not an unusually difficult task, especially if there are enough people to contribute some effort.
- *Attorneys for Animal Rights, a national organization of animal rights lawyers.* Mr. Kessenick and Ms. Tischler will unveil their plan for the creation of a nationwide organization of lawyers who are dedicated to the furtherance of animal rights through law. No one knowledgeable about animal rights law in the United States today can have any doubt that this is an idea whose time has come — nor that five years from now the efforts of such an organization on the national scene will be considered no differently from those of other already recognized legal action organizations like the ACLU, NAACP, Sierra Club.

By the time this issue of ARLR reaches you an advertisement for the Conference will probably have appeared in *The National Law Journal* and *The New York Law Journal*. In addition, posters have been sent to approximately fifty law schools in the northeast corridor, and other steps have been taken to publicize the Conference. As the issue of ARLR goes to press we are not certain how many persons will be attending the Conference, but we are certain that it will be a seminal event in the newly born movement of animal rights law. Helen Jones and I look forward to meeting many of our legal friends at the Conference next month.

Henry Mark Holzer

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ANIMAL RIGHTS LAW REPORTERTM

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

JANUARY 1982

IN THE COURTS

FEDERAL

FREE SPEECH: "THE GUNS OF AUTUMN" REVISITED

In the July 1980 ARLR we reported that a federal district court in Michigan had granted summary judgment to CBS News in a defamation case brought by Michigan hunters over the hard-hitting television documentary "The Guns of Autumn." Now the United States Court of Appeals for the Sixth Circuit has affirmed. Although summary judgment had been based on a failure to prove "of and concerning," an essential element of a common law defamation claim, we observed in July 1980 that the decision was important in at least two respects. First, because media exposure of cruelty to animals is protected speech. Second, because the decision should be a signal to others that the courageous stand by CBS News — first to do the show, and then to litigate the case rather than settling it — should be emulated, in the name of calling public attention to just how badly animals are treated in our culture. One other point is suggested by "The Guns of Autumn" case. As the animal rights movement spreads, there are going to be more and more defamation cases brought by those whom the movement attacks. The implications of this are clear: speakers must be on solid ground when they make statements, or the movement and they will suffer for their mistakes; and when defamation cases are brought, they must be defended with the utmost professional ability. This is a "sleeper" area in animal rights law, a veritable ticking time-bomb.

ENDANGERED SPECIES ACT: STANDARD FOR JUDICIAL REVIEW

The Forest Service granted permission to a private company for the drilling of exploratory wells in a north-west Montana wilderness area, which was the habitat of threatened grizzly bears. The Sierra Club and other plaintiffs claimed that the granting of the permit was in violation of NEPA, since a EIS had not been written, and also in violation of the Endangered Species Act. The plaintiff's suggested that the test of the agency action should be whether or not the decision was in substantial compliance with the ESA. In a classical expression of judicial restraint, the District Court disagreed (*Cabinet Mountains Wilderness v. Peterson* 510 F.Supp. 1186, 11 ELR 20812 (D.D.C. 1981), rejecting this approach. It adopted the Administrative Procedure Act test, where a Court will overturn agency decisions only if "arbitrary and capricious." Three key points apparently supported the agency's decision. First, the agency had substantial information from the public and scientific community prior to making the decision. Second, the agency had adopted the mitigation measures supported by the Fish and Wildlife Service. Finally, the Forest Service retained substantial control over the permit conditions, should the need for further control measures later arise. Reading between the lines, it appears that unless an agency rejects the suggestion of the Fish and Wildlife Service, it will be most difficult for private plaintiffs to prove that the agency action is arbitrary and capricious. The Court looks to the Fish and Wildlife Service as a standard of concern — if they do not object to another agency's action, then it is most unlikely a Court will.

ENDANGERED SPECIES: ATTORNEY FEES

As a follow-up to the previous report on the Pallia Bird case (see July '81 ARLR), it is interesting to note that

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

counsel for the Sierra Club requested fees under the Endangered Species Act. The Court (16 ERC 1309, D.C. Hawaii 1981) provides a full discussion of the criteria used in setting the hourly rate (\$110/hour), and the number of hours for which reimbursement would be allowed. As pointed out by the Court, the criteria for appeal work is different from efforts before the District Court. Also, it is interesting to note that the District Court Judge had made substantial reductions in the number of hours for which reimbursement would be allowed for the appeal work. The Court did allow the Sierra Club attorney to recover for the preparation of the attorney fee petitions, but at a reduced hourly rate. (Apparently, the skill needed was perceived as less.)

ENDANGERED SPECIES ACT: NEPA NOT REQUIRED

The Pacific Legal Foundation has been frustrated in its attempt to remove several species from the endangered species list. In *Pacific Legal Foundation v. Andrus*, 16 ERC 1397 (1981), the Sixth Circuit rejected the claim of plaintiffs that the Department of Interior was required to write a NEPA statement before determining whether or not to list a species as threatened or endangered. In doing so, the Court had to recognize a new exception to the broad requirements of NEPA. The listing of a species (in this case various mussels), which resulted in the holding up of the building of a dam by the Tennessee Valley Authority, was pretty clearly a federal action which significantly affected the environment. So the requirements of NEPA would have been expected to be met, unless one of the judicially created exceptions was found to apply. The court found inappropriate the exceptions based upon time constraints, or the writing of a functionally equivalent document. The Sixth Circuit held, however, that since the Secretary would not have the discretion to consider the five factors discussed in an impact statement, it would be senseless to draft a document that could not be used. Since NEPA conflicts with the agency authorizing statute — i.e. 16 USC § 1533 lists the only factors to be considered by the Secretary when listing a species as endangered or threatened — an environmental impact statement is not required. There is currently an agreement between T.V.A. and the Department of Interior under which T.V.A. will try to transplant the mussels to a new area before completing the dam.

WILD FREE ROAMING HORSES AND BURROS ACT: REMOVAL

The Mountain States Legal Foundation has obtained a victory in the U.S. District Court of Wyoming (*Mountain States Legal Foundation v. Andrus*, 16 ERC 1351 (1981)). Plaintiff sought removal of wild horses which were allegedly creating excessive demands on grazing lands and thus injuring the ranchers of the Rock Springs, Wyoming area. The Court quoted 16 USC § 1333 which requires the Secretary to "manage" the horses so as to achieve an ecological balance on the public lands. Other than the fact that the number of horses have approximately tripled in the area, the Court provided no other information about the horses and the local ecology.

Neither did it provide any insight as to how to take into account commercial grazing when determining the ecological balance of the area. The Act requires that the needs of other wildlife be taken into account, but is silent on the question of domestic animals under grazing permits. While unstated, it appears that an Environmental Impact Statement is being written for the management of the area. The Court ordered that unless found otherwise in the final EIS, the excess of horses (which shall be removed) shall be those which exceed the number in the area when the Act was passed in 1972. BLM was also ordered to remove *all* wild horses from a particular area unless the local Grazing Association consents to their remaining. No intervening parties are mentioned at the District Court level. The short opinion appears to be much more concerned with interference with the ranchers' economic interests than the full functioning of the federal Act.

NEPA: CHINA LAKE BURRO KILLINGS

In the July 1981 ARLR we reported on the pendency of federal litigation over the United States Navy's slaughter of wild burros in China Lake, California. That case has been settled, the federal government agreeing, among other things, to allow The Fund For Animals humanely to remove the burros. The Navy has also agreed to reimburse the Fund for some of its costs in the removal, and to relinquish any rights it might have to the burros so removed. (So it seems that paper (with the right words on it, filed in the right place) can even stop bullets!)

ANIMAL WELFARE ACT: CRUELTY

Friends of Animals has sued the Department of Agriculture seeking to stop a surgical-supply company from using dogs to test operating techniques and equipment until the government can investigate charges of cruelty to the animals. In essence, the suit is trying to force the government to enforce the law against the private company. Two violations of the Act were alleged: failure to provide proper anesthesia, and that the company obtained the dogs from unlicensed dealers.

MARINE MAMMAL PROTECTION ACT: DALL PORPOISE

Friends of Animals has also sued the Department of Commerce to declare invalid a regulation promulgated on May 7, 1981, which provides for the issuance of a permit to the Federation of Japan Salmon Fisheries Cooperative Association for the incidental taking of marine mammals, primarily Dall porpoise, in the North Pacific Ocean and in the U.S. Fishery Conservation Zone. Various sections of the Marine Mammal Protection Act are invoked, as well as NEPA. In addition, the standing allegations are very interesting, and add to the ever-growing number of "boiler plate" models that are available to the animal rights law movement.

STATE AND LOCAL

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

The Michigan Humane Society has charged a man with shooting a cat with a BB gun, blinding it. The charge is maliciously maiming an animal. A *felony* carrying up to a four year term on conviction, the maiming charge has in the past been used only for attacks on horses and dogs.

In Tampa, Florida, a man who drowned a puppy by repeatedly tossing it into a rain-swollen lake was sentenced to 30 days in jail and fined \$300.00.

A Seattle, Washington man was sentenced to the maximum — 180 days in jail — for beating an 8-month-old dog with a belt.

Three men in Mt. Pleasant, Michigan, who stabbed and slaughtered a domesticated deer kept in a fenced area of a city park were sentenced to 90 days in jail, six months probation, and a \$100 fine each. They were also sentenced to repair the damaged pen, and, incredibly, to *capture another deer to be kept in the park.*

For shooting a Canadian goose with an arrow a Wisconsin man was fined \$117.20.

Convicted of cruelty to animals for allowing his pit bull terrier and his boxer to kill a neighbor's 12-year-old dalmation, a man in Evergreen, Colorado, was fined \$4,000.00, ordered to pay court costs, and directed to buy the neighbor a new dog. The maximum penalty could have been two years and/or a \$5,000.00 fine on the cruelty charge.

In Minnesota three men were convicted of felony dog-fighting charges ranging from engaging, promoting and staging, to training and refereeing, and even to attending a fight. A 13-year veteran of the local police force had apparently been involved, but ended up testifying for the prosecution.

In the Houston area, 19 people were arrested in a major raid on dogfighters and charged with misdemeanors carrying a maximum penalty of a \$2,000.00 fine and a year in jail. Because Texas has no law against watching a dog-fight, many of the spectators had to be released.

Miller County, Arkansas, police arrested 28 people in a raid on a dogfighting pit and charged them with misdemeanor counts. Significantly, some of the people arrested were from across the border in Texas.

HUNTING/TRAPPING: INDIAN RIGHTS

A Pit River Indian charged with unlawful possession of deer out of season defended on the ground that his tribe had never given up its hunting "rights." The California Supreme Court disagreed, holding that state fish and game rules were quite clear and that no exception existed for Indians who allegedly possessed vestigial rights to kill

animals whenever they wished. (ARLR has not seen the opinion in this case.)

HUNTING/TRAPPING: BEARS

UPI reported recently that a black market ring of poachers and retailers have killed as many as 200 bears in the last 12 months and sold the gall bladders, claws and paws to Asians for what they believe to be medicinal purposes. An arrest has been made, and other warrants have been issued, for the charge of "buying and selling bear parts" — a misdemeanor carrying a \$500.00 fine and a year in jail. (The California Legislature is considering a bill that would make the crime a felony.)

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

A Pennsylvania lawsuit based in part on pleadings provided by SAR, involving civil rights violations, was settled recently. The case grew out of local police having shot a man's dog when it was unleashed and allegedly off the owner's property. The amount of the settlement was said to be in "four figures."

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

Joyce S. A. Tischler, President Elect of Attorneys For Animal Rights, recently commenced an action in the Napa County Superior Court, State of California, against a kennel for the death of a boarding dog as the result of an attack by a pit bull at the same premises. Causes of action are stated in negligence, wanton and reckless conduct, conversion, breach of bailment contract, negligent infliction of emotional distress and strict liability. Damages sought are as follows: \$1,000.00 for the value of the dog; \$2,000.00 for time and money expended by plaintiffs following the death of their dog; \$10,000.00 for emotional distress, pain and suffering; \$50,000.00 in punitive and exemplary damages; attorney's fees; costs; and such other and further relief as the Court may deem just and proper.

ANIMALS AS PROPERTY: DEFINITION OF "ANIMAL"

A Massachusetts law carries a \$100.00 fine for giving away an "animal" as a prize in a game of skill. But does the term include a goldfish? In *Knox v. Massachusetts SPCA*, decided by the Massachusetts Appellate Court on August 31, 1981 (Mass. App. Ct. Adv. Sh. 1557), the answer was "yes." Although the state's animal legislation does not define the word "animal," the court relied on an 1887 Massachusetts case, most dictionary meanings, and common sense. The issue raised by this case suggests that animal rights lawyers might profitably check the statutes of their own states to see what the word "animal" means there.

CRUELTY: AN INTERESTING IDEA

Apparently in an attempt to be funny and make a fast buck, an Ohio man produced a calendar featuring photo-

graphs of cats in situations where their injury or death appeared imminent. The poses were staged, the cats unhurt, and the calendar quickly pulled out of circulation. But there is an interesting idea contained in the story. In addition to the predictable sources of outrage, it was reported that *manufacturers* whose products were used in the photographs (e.g., a lawn mower) threatened to sue. Perhaps this idea could be expanded to cover situations where products intended for one use were used for, or otherwise associated with, cruelty to animals.

STATE ENDANGERED SPECIES LAW: STIFF PUNISHMENT

A Los Angeles ivory merchant, charged with two counts of violating California's Endangered Species Act, pleaded no-contest and agreed to the following: a \$5,000.00 fine, forfeiture of close to a million dollars worth of contraband, donation of \$3,000.00 to the city so it could set up public display booths, and payment of \$1,500.00 for an advertising campaign denouncing the slaughter of elephants. The defendant was also placed on 18 months probation.

HUNTING/TRAPPING: CIVIL ACTION

An interesting case (*Person v. The Woodstream Corporation*) has been filed in the Connecticut federal court. The manufacturer of a steel-jaw leghold trap has been sued for damages to plaintiff arising from her cat being caught in the trap. "The injuries to the cat included severe tearing and mutilation of the flesh and crushing of the bone structure in said cat's front right leg which injuries necessitated an amputation of the leg. The injuries to the domestic cat, witnessed by the Plaintiff, caused said Plaintiff to suffer extreme mental anguish and emotional distress." The first count alleges negligence, the second strict liability (the trap as "an inherently dangerous instrumentality"), and the third is based on a products liability theory.

EXPERIMENTATION/THE MARYLAND PRIMATE CASE

For the past few months there has been much media coverage of proceedings in Maryland concerning a small group of primates, victims of experimentation and other cruel treatment at Institute for Behavioral Research, Inc. Quite a lot has happened, and ARLR hopes to have a complete description of all the legal events for our next issue. For now, however, suffice to say that an undercover investigation by Alex Pacheco of PETA (People for the Ethical Treatment of Animals, Inc., P.O. Box 56272, Washington, D.C. 20011, (301) 270-6343) and others resulted in the issuance of a search and seizure warrant by a Maryland Circuit Court judge. Not long after, principals of the Institute were charged with violations of Maryland's anti-cruelty laws. The Institute's head, Dr. Edward Taub, was convicted on six counts of inadequate veterinary care (one count for each of six primates). A *De Novo* appeal lies.

Throughout the criminal litigation, a persistent and

obviously crucial problem has been custody of the primates (they are now being held by NIH). To prevent their return to Dr. Taub's Institute, an action was recently filed in the Circuit Court for Montgomery County, Maryland, by Edward L. Genn, Esq., 9 No. Adams Street, Rockville, MD 20850 (424-8400) on behalf of PETA, the International Primate Protection League and others. Basically rooted in equity, the case is against the Institute, the National Institutes of Health, and others. Mr. Genn's allegations of standing to sue — in one sense, the heart of the case — are superb, and should be studied by everyone facing the standing problem in animal rights litigation.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

RESEARCH METHODS

H.B. 220, introduced by Rep. Geraldine A. Ferraro, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.R. 556, introduced by Rep. Robert A. Roe; Rep. Harold C. Hollenbeck, and Rep. Frederick W. Richmond, to establish a National Center of Alternative Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplication of experiments on live animals; to disseminate information on such methods. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 930, introduced by Rep. Virginia Smith, to establish a commission to study alternative methods to the use of live animals in laboratory research and testing. Referred to Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.C.R. 38, introduced by Rep. G. William Whitehurst, pertaining to the methods used on animals in research. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

S.R. 65, introduced by Sen. David Durenberger, et al., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.C.R. 27, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 2110, introduced by Rep. Brian J. Donnelly, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to live animals. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 4406, introduced by Rep. Patricia Schroeder, to amend the Animal Welfare Act to insure the humane treatment of laboratory animals. Referred to the Committee on Agriculture of which Rep. E. de la Garza is Chairman, the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

SEALS

H.B. 348, introduced by Rep. Frank Horton, to provide for

the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to Committee on Foreign Affairs, of which Rep. Clement J. Zablocki is Chairman; the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 560, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman, the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

LACEY ACT AMENDMENTS

On May 21, the Senate Committee on Environmental Works reported out S. 736, the proposed Lacey Act Amendments. The version of S. 736 that the full Senate will now consider contains modifications adopted by the Committee to reflect comments submitted by interested federal agencies and private parties. In the House of Representatives, the House Subcommittee on Fish and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee has sent H.R. 1638, a bill mirroring the Senate bill, to the full Committee for review. Passage of the Lacey Act Amendments this year looks promising. Senate Report No. 97-123.

FISH AND WILDLIFE

S.B. 736, introduced by Sen. John H. Chafee, et al., to provide for the control of illegally taken fish and wildlife. Referred to Committee on Environmental and Public Works, by unanimous consent with instructions that once reported, the bill be referred to the Committee on the Judiciary of which Sen. Strom Thurmond is Chairman, for not to exceed thirty calendar days. Status: Hearing in Senate on 4/1/81; reported, amended, Sen. Report No. 97-123 on 5/21/81. S. committee discharged 6/22/81. To S. Calendar 6/22/81. Amended on S. floor 7/24/81. Passed S. as amended 7/24/81. To H. Committee on Merchant Marine & Fisheries 7/28/81. Passed House in lieu of House 1638 on 11/4/81.

WHALES

H.C.R. 96, introduced by Rep. Don L. Bonker and Rep. Walter B. Jones, calling for an indefinite moratorium on the commercial killing of whales and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale populations. Referred to Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman. Status: Hearing in House on 6/16/81. Passed H. with amendment 7/15/81. To S. Committee on Foreign Relations 7/21/81.

S.R. 148, introduced by Sen. Bob Packwood, calling for a moratorium of indefinite duration on the commercial killing of whales. Referred to Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Reported without written S. report 7/20/81. Agreed to by S. 7/20/81.

TRAPPING

H.B. 374, introduced by Rep. Clarence Dickinson Long, to discourage the use of leg-hold or steel jaw traps on animals in the United States. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 1002, introduced by Rep. Glenn M. Anderson, to regulate the trapping of mammals and birds on federal lands. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman; and Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

ZOOLOGICAL FOUNDATION

H.B. 642, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE MAMMALS

H.B. 1672, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972, in order to prohibit the issuance of general permits thereunder which authorize the taking of marine mammals in connection with commercial fishing operations. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ANIMAL DAMAGE

H.B. 1956, introduced by Rep. E. de la Garza, et al., amends the Act of March 2, 1931, to require the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to implement a program for animal damage control. Referred to Committee on Agriculture of which Rep. E. de la Garza is Chairman.

WILDLIFE PRESERVATION

H.B. 2214, introduced by Rep. Carl D. Purcell; Rep. Benjamin A. Gilman, and Rep. Anthony C. Bellenson, to establish a federal program to provide public information on wildlife preservation and the endangered species. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to Committee on Merchant Marine

and Fisheries of which Rep. Walter B. Jones is Chairman, and Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman. Status: Hearing in House on 7/8/81.

H.B. 2978, introduced by Rep. Don L. Bonker, et al., to provide for additional protection of steelhead trout as a game fish. Referred to Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 5002, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve fishery conservation and management. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

HORSE RACING

H.B. 2331, introduced by Rep. Bruce Vento, et al., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on the Judiciary of which Rep. Peter W. Rodino, Jr. is Chairman.

MARINE SANCTUARIES

H.B. 2357, introduced by Rep. John B. Breaux, to repeal Title III, Marine Sanctuaries of the Marine Protection, Research, and Sanctuaries Act of 1972. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

S.B. 1003, introduced by Sen. Bob Packwood, to amend Title III of the Marine Protection Research and Sanctuaries Act of 1972, as amended, to authorize appropriations for such Title for fiscal years 1982 and 1983. Status: Reported, no amendment, Sen. Report No. 97-44 on 4/23/81; Passed Senate on 5/4/81; Sent to House Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, on 5/6/81. Amended to contain text of H. 2449 as passed 7/13/81. Passed H. as amended (Voice) 7/13/81.

S.B. 1186, introduced by Sen. Bob Packwood, to amend the Marine Mammal Protection Act of 1972, as amended, to extend the authorization of appropriations for fiscal years 1982 and 1983. Status: Reported, no amendment; Sen. Report No. 97-63, on 5/14/81.

S.B. 1213, introduced by Sen. John H. Chafee, to amend Title I of the Marine Protection, Research, and Sanctuaries Act, as amended. Status: Reported; no amendment; Sen. Report No. 97-119, on 5/15/81; Passed Senate as reported on 6/2/81; Passed House without amendment on

6/11/81; Sent to President on 6/16/81; Approved —
Public Law 97-16, on 6/23/81.

MIGRATORY BIRDS

H.B. 3442, introduced by Rep. Harold Sawyer, to establish a Webless Migratory Game Bird Research Fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MAMMALS AND BIRDS/PUBLIC LANDS

S.J.R. 6, introduced by Sen. Alan Cranston, to establish a national policy for taking of predatory or scavenging mammals and birds on public lands. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

FISH

S.B. 874, introduced by Sens. Slade Gordon, Henry M. Jackson, James A. McClure and Howard M. Metzenbaum, to provide for additional protection of steelhead trout as a game fish. Referred to the Committee on Indian Affairs. Status: Hearing In Senate on 9/28/81.

TUNA PROTECTION

S.B. 1564, introduced by Sens. Lowell P. Weicker, Jr., Paul E. Tsongas, John H. Chafee, Ernest F. Hollings, William V. Roth, Jr., Bill Bradley, Paula Hawkins, Claiborne Pell, Lawton Chiles, Edward M. Kennedy, John W. Warner, is entitled the American Tuna Protection Act. Referred to the Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman.

H.B. 4457, introduced by Reps. James J. Howard, Claudine Schneider, Guy V. Molinari, G. William Whitehurst, Gerry E. Studds, William J. Hughes and Nicholas Mavroules, is entitled The Tuna Protection Act. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

WHALES

H.C.R. 18, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

S.R. 147, introduced by Sen. Bob Packwood, calling for a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Status: Hearing in Senate on 6/25/81.

FISH RESTORATION

S.B. 546, introduced by Sens. Jennings Randolph, Russell B. Long, Howell Heflin, Walter D. Huddleston and

Barry Goldwater, is entitled The Fish Restoration Act of 1981. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman. Status: Hearing in House on 7/8/81.

H.B. 3325, introduced by Rep. John J. Duncan, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 3717, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

ILLEGAL TRADE

H.B. 1638, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to provide for the control of illegally taken fish and wildlife. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-276 on 10/19/81; Passed House as reported on 11/4/81; Passage vacated by House and S. 736 passed in lieu on 11/4/81.

MARINE LIFE PROTECTION

H.B. 2449, introduced by Reps. Norman E. D'Amours and Walter B. Jones, to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended to authorize appropriations for such Title for fiscal years 1982, 1983 and 1984. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-52 on 5/18/81; Bill title amended on House floor on 7/13/81. Passed House as amended on 7/13/81; Passage vacated by House and S. 1003 passed in lieu on 7/13/81.

H.B. 2948, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Marine Mammal Protection Act of 1972 during fiscal year 1982. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-53 on 5/18/81.

H.B. 4084, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve the operation of the Marine Mammal Protection Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 7/13/81, Reported; amended, House Report No. 97-228 on 9/16/81; Passed House as reported 9/21/81. To Senate Committee on Commerce, Science and Transportation on 9/23/81; Passed Senate without amendment on 9/29/81; Sent to President on 9/30/81; Approved — Public Law 97-58, on 10/9/81.

STATE AND LOCAL

ANIMAL CONTROL: PROVIDING FOR ABANDONED ANIMALS (Indiana)

An Indiana State Senator has proposed that a tax be imposed on pet food sales, the proceeds to go for the shelter and feeding of abandoned dogs and cats. A penny per pound tax was estimated to yield a prospective \$2.23 million per year, to be distributed between the state's 92 counties on a population formula.

ZONING: ANIMALS ON THE BEACH (Florida)

James E. Willingham, Esq. (501 Park Avenue South, Winter Park, Florida 32789, (305) 628-8682) informs ARLR that Volusia County has outlawed the presence of domestic animals on the beach. He seeks suggestions and/or precedents that can be of use in challenging the county ordinances.

ANIMAL CONTROL: BOUNTIES (Minnesota)

The following are the two sections of Minnesota's grisly bounty law:

348.12 BOUNTIES, CERTAIN BIRDS AND ANIMALS. Any county board or board of town supervisors may, by resolution, offer a bounty for the destruction of gophers, ground squirrels, or rattlesnakes. The resolution may be made to cover the whole or any part of the county, and may be annually renewed, but it shall have force and effect only during the calendar year in which it was adopted or renewed. The bounty shall be in such amount or amounts and apply during such months, as may be designated by the county board or board of town supervisors by resolution.

348.13 BOUNTIES PAID BY TOWNS, REQUIREMENTS. The four feet of striped and gray gophers and woodchucks, both front feet of pocket gophers, the heads and rattles of rattlesnakes, and the bodies of birds and

reptiles other than rattlesnakes shall be produced to the chairman of the town board of the town where they were killed, and if he shall be satisfied that they were killed within the designated territory and by the person producing them, he shall certify to the county auditor the number of each kind so killed. The certificate shall be issued by the chairman of the town board at the end of each month and shall show the names of all persons entitled to bounty for the preceding month, the number of each kind of animals, reptiles and birds so killed, and the amount of bounty that each person is entitled to receive. The county auditor shall issue thereon a warrant on the county treasurer payable to the chairman of the town board who issued the certificate, for the full amount of the bounty allowed by law according to the certificate, and upon receipt of the warrant the chairman shall pay the proper persons the bounty allowed by law for the preceding month.

The chairman to whom such feet, heads, bodies, and rattles are produced shall immediately cause such heads, feet, bodies, and rattles to be destroyed and shall cause the removal of one foot from each bird.

Any town board may also offer a bounty for the destruction of the animals, birds, and reptiles described in section 348.12 and adopt rules for the payment thereof, which bounty so offered by a town shall be in addition to any bounty which may be offered by the board of county commissioners.

The town board of any town located in any county having over 45,000 and less than 49,000 inhabitants according to the 1950 federal census, may by resolution require that the tail instead of the feet of striped, gray and pocket gophers and woodchucks be produced.

ANIMALS AS PROPERTY: DOING TIME WITH THEIR OWNERS (California)

Los Angeles apparently has an ordinance which requires the City to impound the animal of anyone who goes to jail unless the prisoner (human) agrees to give it up. If not, the animal remains in the City's custody, no matter how long the owner is out of circulation. Efforts are underway to allow for only a 30 day holding period.

HUNTING/TRAPPING: PRO-TRAPPING LEGISLATION (Minnesota)

In Minnesota House File #1222 and Senate File #1229 have been introduced to inhibit the ability of municipalities to restrict trapping.

POUND SEIZURE LAWS: REPEAL (Minnesota)

In Minnesota House File #122 and Senate File #497 have been introduced to repeal the state's pound seizure law. Action on the bills is expected in the session which began in January 1982.

A REQUEST FOR HELP

Starting with the next issue of ARLR (April 1982) we hope to report on pending state legislation with the same degree of completeness as we have with federal legislation. We would like very much to carry in each issue of ARLR (space and the availability of information permitting) all pertinent animal legislation pending in every state in the Union. The format will be exactly as our federal legislation format, and the states will be listed alphabetically. The value of this kind of a master index of animal legislation pending throughout the United States is obvious. But for ARLR to be able to do it is going to require real effort from a lot of people. To the best of our knowledge this information does not exist in any one place, demonstrating once again the regrettable fragmentation of the animal rights movement. No doubt this department of ARLR will start slowly and will have to grow into the formidable kind of coverage that we seek, and that the movement sorely needs. But a beginning must be made. Please see the Bulletin Board item "State Legislative Correspondents Sought," which appears below.

THE AGENCIES

ENDANGERED SPECIES ACT: "HARM"

In the July 1981 issue of ARLR [In The Courts, Endangered Species Act: State Action/"Taking"] we observed that the Fish and Wildlife Service had taken aim at the concept of "harm" in section 9 of the Endangered Species Act, and was contemplating a narrower interpretation. Now, in the Federal Register of Wednesday, November 4, 1981 [Vol. 46, No. 213, p. 54748-54749] the Service has announced a final rule effective November 4, 1981. "Harm" is redefined to mean any action, including habitat modification, which *actually* kills or injures wildlife, rather than the present interpretation which might be read (and was) to include habitat modification or degradation alone without further proof of death or injury. Habitat modification as injury would only be covered by the new definition if it significantly impaired essential behavioral patterns of a listed species.

ENDANGERED SPECIES ACT: BOBCATS

The Fish and Wildlife Service has announced a preliminary determination that the bobcat is inappropriately listed as potentially threatened with extinction unless international trade is controlled and that such control is also unnecessary in order to effectively regulate international trade in other listed species. [Federal Register, Monday, September 14, 1981, Vol. 46, No. 177, p. 45653].

INTERNATIONAL WHALING COMMISSION: SPERM WHALES

Last summer, following a personal plea to the International Whaling Commission by President Reagan for an indefinite moratorium on commercial whaling, the Commission set a so-called "zero quota" on all sperm whaling in the Southern Hemisphere and the North Atlantic. This Spring, a decision will be made on the North Pacific. (Non-explosive harpoons were outlawed for use on minke whales beginning with the 1982-83 season).

FISH AND WILDLIFE SERVICE: COYOTE CONTROL

The Interior Department's Fish and Wildlife Service recently announced new measures to control coyotes which allegedly prey on livestock, including use of a poison which had been banned and the easing of restrictions against killing coyote cubs in their dens. The poison is the toxic chemical 1080. Other "predator control" measures may include the use of cyanide pellets, steel traps, and shooting coyotes from the air. (It should be emphasized that these measures are to be taken in order to protect sheep, cattle and poultry — so that rather than being killed in nature by other animals, they can be profitably killed by man in slaughterhouses.)

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

While there were never an abundance of books, articles, etc., published on the subject of animal rights law, nor is there now, nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p. 9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention. So far the response to our previous requests for reviews has been good, and we hope to have even more in future issues. Persons interested in doing reviews should check with ARLR's editor first, to ascertain that the proposed book or article has not been assigned to anyone else. Reviews, of course, reflect the reviewers' opinions and not necessarily SAR's, ARLR's or the editor's.

POUND SEIZURE

The September-October 1981 *International Journal for the Study of Animal Problems*, sponsored by the Humane Society of the United States in Washington, D.C., contains an interesting article by K.P. Stoller, a biomedical consultant to The Fund for Animals. It is entitled "Sewer Science & Pound Seizure."

ZOOS

For those in the animal rights movement who are determined to do something about the deplorable zoos in

this country, three articles in the *International Journal* (mentioned above) should be of interest. They are entitled: *An Overview of Zoo Goals and Exhibition Principles*, *The Role and Responsibility of Zoos: An Animal Protection Viewpoint*, and *People at Zoos: A Sociological Approach*.

TESTAMENTARY DESTRUCTION OF PETS

Frances Carlisle, a speaker at the SAR/ARLR Conference on Animal Rights Law, has written an informative paper on the "Sido" problem entitled "The Sido Case and Beyond: Destruction of Pets by Will Provision." It appears at *California Veterinarian* 7/81.

LIVESTOCK

Aldrich and Day, "Recent Changes in the Law of Livestock Grazing," *The Public Land Law Review* 83 (1980).

ENDANGERED SPECIES ACT

Bodi, "Protecting Columbia River Salmon Under the Endangered Species Act," 10 *Environmental Law* 349 (1980).

WILDLIFE

Coggins and Ward, "The Law of Wildlife Management on the Federal Public Lands," 60 *Oregon Law Review* 59 (1981).

MARINE MAMMALS

M'Gonigle, "The 'Economizing' of Ecology: Why Big Rare Whales Still Die," 9 *Ecology Law Quarterly* 119 (1980).

ANIMAL RIGHTS BIBLIOGRAPHY

Among the more significant blows struck recently for the cause of animal rights is the prodigious bibliographical reference book compiled by SAR director Professor Charles R. Magel. It contains thousands of entries of books and articles in the English language and is doubtless the most complete book of its kind in existence. *A Bibliography on Animal Rights and Related Matters* is published by University Press of America, Washington, D.C. and costs \$28.50. Available from SAR, Professor Magel's book is worth its weight in gold to everyone in the animal rights movement.

BOOK REVIEW: ANIMAL RIGHTS AND HUMAN MORALITY (Bernard E. Rollin, Prometheus Books, 1981, reviewed by Henry Cohen, legislative attorney with the Library of Congress).

This book is short (182 pages) but is chock full of valuable ideas and information. Superbly readable, it can

be fully understood by the layperson but will also profit the philosopher, lawyer, and scientist. Its only fault is its broad scope, which limits the author's opportunity for close reasoning and the reader's for significant retention.

Professor Rollin addresses four main topics relating to animals rights: philosophy, law, experimentation, and pets. The section on philosophy, without footnote, presents to the novice Descartes, Hume, Kant, Rawls, Wittgenstein, and most of the issues relating to animals that are currently debated in philosophy journals. Yet the author provides more than a summary. He proposes a theory based on the *telos* or essence or nature of animals, which he suggests establishes moral rights for animals beyond those established by Peter Singer's *Animal Liberation*.

In the second part of the book Professor Rollin furnishes an introduction to legal philosophy, culminating with Ronald Dworkin's theory on the inseparability of law and morals. Having argued in the first chapter for the premise that animals have moral rights, Rollin relies on Dworkin's theory to conclude that animals must be given legal rights as well. From a practical standpoint, this means judicial standing for animals and animal protection legislation written in the language of rights.

It is in the area of animal experimentation that Professor Rollin has the most to offer, because he is a professor not only of philosophy but of physiology and biophysics. He attempts to establish a dialogue between research scientists and animals rights activists; respect and communication between these two groups, the author believes, is necessary for progress to occur. Professor Rollin recognizes that some experimentation is necessary and inevitable, but that much consists of pointless cruelty. He advocates that research be permitted only when the benefits clearly outweigh the suffering, and that the rights of experimental animals be respected as far as the research will allow. He also offers numerous specific suggestions for changes in research procedures, veterinary education, and legislation.

Professor Rollin recognizes that no one can be argued into morality, and states that the major purpose of his book is to get "people to shift their intellectual and emotional gestalts on animals" (p. 47). This means to get hunters, meat-eaters, many research scientists, and those who abandon their pets, to realize, at a gut level, that they are inflicting unjustifiable suffering on fellow inhabitants of the planet.

BULLETIN BOARD

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

STATE LEGISLATIVE CORRESPONDENTS SOUGHT

Readers will have noticed that commencing with this issue of ARLR our listing of state legislative information prominently identifies which state the legislation comes from. Henceforth, we intend to try to handle the state legislative material in the same way that we have lately been handling the federal material: by keeping a running account of all animal rights legislation pending in each state, updating as we go along.

To succeed in this goal, it is essential that we delegate the initial preparation of the state legislative material to one person in each state, with the added responsibility of keeping us updated quarterly as the legislative situation changes. So, on a first-come first-served basis, ARLR is seeking volunteer state legislative correspondents (who will be given credit, by name and address, as the preparers of the information that they provide). California and New York are already "spoken for," and anyone interested in other states should contact Professor Holzer before doing any work. The format will follow that of our federal legislation report.

NATIONAL ORGANIZATION OF ANIMAL RIGHTS LAWYERS FORMED

The San Francisco-based Attorneys For Animal Rights has become a national organization, the announcement having been made at November's SAR/ARLR sponsored Conference On Animal Rights Law in New York City. Attorneys For Animal Rights is actively seeking both members and contributors. Because a national organization of animal rights lawyers is an integral part of the animal rights law movement, SAR and ARLR are pleased to reprint as an appendix to this issue of the *Animal Rights Law Reporter* the AFAR "flyer" that was distributed at the Conference. This new organization deserves the support of all lawyers interested in animal rights law.

"MODEL STATE ANIMAL PROTECTION STATUTES"

Deborah Kenn, Legal Counsel for Friends of Animals, Inc., reports that her organization is now in the process of revising and seeking comments on these model laws, prepared for FoA several years ago by Jim Mason, Esq. They are referred to in the October 1980 ARLR under Available Resources, where they are characterized as "a thought-provoking monograph."

FEDERAL ANIMAL PROTECTION/WELFARE STATUTES

The litigation responsibilities of the Wildlife and Marine Resources Section of the Justice Department's Land and Natural Resources Division now include the following federal statutes:

The Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

Lacey Act, 18 U.S.C. 41-44, 47
Black Bass Act, 16 U.S.C. 851-856
Airborne Hunting Act, 16 U.S.C. 742j-1
Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*
Migratory Bird Conservation Act, 16 U.S.C. 715-715d, 715e, 715f-715k, 715l-715r
Bald and Golden Eagle Protection Act, 16 U.S.C. 668-688d
Dingell-Johnson Fish Restoration Act, 16 U.S.C. 777-777i, 777k
National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, 668ee
Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431 *et seq.*
Fish Conservation and Management Act of 1976, P.L. 94-265, 16 U.S.C. 1801 *et seq.*
Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607
Convention on the High Seas, 13 U.S.T. 2314
Convention on the Continental Shelf, 15 U.S.T. 473
Convention on Fishing and Conservation of Living Resources of the High Seas, 17 U.S.T. 140
The Whaling Convention Act, 16 U.S.C. 916 *et seq.*
The Tuna Convention Act, 16 U.S.C. 951 *et seq.*
The Northwest Atlantic Fisheries Act, 16 U.S.C. 981 *et seq.*
The Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*
The Sockeye Salmon or Pink Salmon Fishing Act, 16 U.S.C. 776 *et seq.*
The Fur Seal Act of 1966, 16 U.S.C. 1151 *et seq.*
The Protection of Sea Otters on the High Seas Act, 16 U.S.C. 1171 *et seq.*
The Wild Horses and Burros Act, 16 U.S.C. 1331-1340
The Fish and Wildlife Coordination Act, 16 U.S.C. 661-667e
The Animal Damage Control Act, 7 U.S.C. 426 *et seq.*

ARLR would appreciate receiving the names and citations of all other federal animal protection/welfare statutes that our readers are aware of (even the obvious ones).

ENCYCLOPEDIA OF ANIMAL RIGHTS LAW

One of the principal medium-range goals of the animal rights law movement must be to make animal rights law a recognized and discrete field within our profession. Animal rights law must take its place along with criminal law, corporate law, real estate law, environmental law, securities law, antitrust law, immigration law, and all the other specialized fields of legal endeavor which cumulatively make up the mosaic of contemporary American law. Until that happens, animal rights law will remain in the closet and our impact will be far less than it can, and must be.

Several important activities are needed:

- Lawyers must get out there and litigate, and they must draft legislation;
- A national organization of such lawyers must begin functioning and must act as a clearinghouse for personnel and information;
- Conferences like the one just concluded, and other meetings and symposia where animal rights lawyers can be trained, must be held consistently and grow broader in scope;

But important as these kinds of activities are, probably none is indispensable. What *is* absolutely essential, however, is a serious, comprehensive literature of animal rights law — books, articles, reviews, statutes, cases — the centerpiece of which must be a virtual encyclopedia of contemporary animal rights law. There must be a readily available resource for the legal profession comprehensively presenting exactly what animal rights law *is*. Today, there is nothing even remotely like that, anywhere.

The creation of an encyclopedia of contemporary American animal law is not nearly as formidable as at first it might seem. Indeed, it is not at all difficult.

First, a natural division exists between the laws of the federal government and the states, thereby making the task considerable more manageable organizationally.

Second, although there are perhaps a dozen or so principal federal statutes as well as others of lesser importance, there are dozens of lawyers interested in animal rights law — some of whom have already demonstrated that they possess the requisite skills and experience for such a project, thereby substantially minimizing the onerousness of the task for each individual contributor.

Third, each contribution to the encyclopedia of contemporary American animal law can be prepared pursuant to a pre-designed outline, thereby saving each contributor virtually all of the time-consuming analytical work which is always a necessary antecedent to every serious writing project.

Fourth, as to the federal statutes, the nature of the research is normally not difficult, it is readily available, and it is almost always of manageable proportions.

Therefore, since an encyclopedia of contemporary American animal law is essential to our movement, and since with some work one can be written, ARLR's editor proposes the preparation of a volume (or two, if necessary) containing the *federal* laws. (If that can be done, later the more difficult state laws can be tackled.) ARLR's editor will be the editor, and will write an introduction to the book. His efforts and all contributions will be gratis, and SAR will be offered the opportunity to publish the completed book. (If it is published by anyone else, any remuneration will be contributed to SAR).

Each applicable federal statute will comprise a separate chapter of the book (it may be useful to combine a few

statutes) and they will be structured as follows:

1. A brief statement of what the statute was/is intended to accomplish;
2. going back to the beginning, the concrete events, situations, stimulate, etc. which caused the legislation to be introduced;
3. the exact bill that was introduced, when by whom, etc. (including all amendments);
4. the complete legislative history (summarized, where necessary, but without loss of content), including hearings, debates, amendments, conference committee reports, etc;
5. circumstances (e.g., political) surrounding enactment and executive approval, including messages, statements, ceremonies, etc.;
6. in exact chronological order, where possible, all administrative and case-law application and interpretation of the statute, and all amendment(s) thereof and all application and interpretation of the amendment(s);
7. ending in a complete summary statement of exactly what the law actually means today;
8. then, as an appendix to the chapter, the statute's full text, and a bibliography of legislative materials and applicable cases.

Concern will be with what the law is, not what it ought to be. There should be no value judgments.

Length will be determined by the necessities of each statute.

The writing level should be between professional-technical and first-class journalism-gearred for the intelligent layperson.

The citation in footnotes to all primary sources for all propositions will be indispensable.

The timetable shoots for finished, typographer-ready copy no later than August 31, 1982, 8 months from now.

Among the major federal statutes which will have to be covered are: Endangered Species Act, Lacey Act, Humane Slaughter Act, Marine Mammal Protection Act, Twenty-Eight Hour Law, Laboratory Animal Welfare Act, Horse Protection Act. In addition, there is legislation protecting birds, whales, fish, etc., and there are treaties, too. Then there is the lesser federal legislation.

This undertaking will "Jell" when there are commitments for the major federal statutes, on a first-come, first-served basis. The Endangered Species Act has already been spoken for.

There is only one caveat: A project like this necessarily involves a considerable amount of mutual reliance. People come aboard on the usually tacit understanding that others will not only join, but that they will live up to their commitments. Too often some people do not deliver, leaving others in the lurch. Nearly everyone who is serious about animal rights law already has more to do than they can. So it should be expressly understood that before anyone volunteers for this important writing project, they

must be certain that they can do it, and that they will.

"THE EXPLOITERS AMONG THE DEFENDERS"

Not long ago, SAR received in the mail a one page statement with the above title. Bearing a copyright notice for the year 1980 and indicating that the author was Jacob Lipitsky, Box 182, Closter, New Jersey 07624, permission to reproduce the text was granted. We have done so below because Mr. Lipitsky's point is well taken, and lays bare a problem that sooner or later the animal rights movement will have to come to grips with.

Animal exploitation is alive and well within the animal rights movement. Many animal liberationists who are vegan, denounce vivisection, hunting, zoos, etc. and otherwise try to avoid being accomplices in animal suffering engage in a more subtle form of animal exploitation: using the fight for animal rights to promote political aims which have nothing to do with animal liberation. This hurts the animals in that it weakens and discredits the animal rights movement.

Animal experiments performed by the armed services are neither more nor less objectionable than those performed by anybody else. Some animal rights leaders, however, are trying to single out those experiments in an effort to attack the military at the same time that they attack vivisection. This is a fallacy: the fact that many doctors are vivisectors does not discredit the whole of medicine.

In a free country — its free institutions being preserved by the very armed services they deprecate — their right to advocate any views they see fit is not in question. What is objectionable is using animal rights contexts to advocate other philosophies which have nothing to do with animal rights.

Some animal rights leaders try to depict animal exploitation as the result of one particular economic system: capitalism. Do people in socialist countries not consume flesh and eggs? Do socialist countries not send animals in rockets into space? Are there reports, of which I am unaware, of much animal rights activity in socialist countries?

Some animal rights leaders recommend coordination or liaison with "other progressive movements." Not only are "other progressive movements" embarrassed by any association with animal rights; some of them contain elements which are in contradiction with the animal rights philosophy: the feminist movement advocates legalizing abortion, which is a form of animal killing; the movement for the economic development of Third World countries advocates an increase in the standard of living which, in most eyes, entails

an increase in the consumption of flesh; the anti-nuclear movement advocates a return to coal, which has a more serious and widespread impact on the environment, and therefore on animals, human and non-human, than nuclear energy; the movement for the rights of native Americans advocates, among other things, the preservation or restitution of fishing and hunting "rights;" the so-called "peace" movement advocates a reduction of the defense capabilities of Western democracies, which would open the way to world dominion by communism, a system under which there are no human rights, let alone animal rights.

Do animal liberationists want to promote killing, fishing, hunting and flesh-eating? If not, let the animal rights movement concentrate on animal liberation, and leave other issues to be aired in other fora.

To the extent that they are able to "muddle through" — to use Professor Mangel's expression — these contradictions, individual animal liberationists might wish to join any of these other movements (or their counterparts advocating opposite views), but the animal rights movement itself should not be identified with any position except those relating to the rights of animals.

CONFERENCE ON ANIMALS IN RESEARCH

"The Role of Animals in Scientific Research and their Effectiveness as Substitute Models for Man" will be held at Manchester, England, on April 21-23, 1982. Contact Humane Research Trust, Brook House, 24 Bramhall Lane South, Bramhall, Stockport, Cheshire SK7 2DN, UK.

ZOO FREES SEALS

Late in November the Associated Press reported that four harbor seals at Portland's Washington Park Zoo were released into the Pacific Ocean because visitors constantly threw them inedible objects, which the seals ate. In a fascinating statement, a zoo spokesperson observed that "It just isn't fair to keep them at the expense of their health."

GREENPEACE FREES WHALE

A month earlier, the Associated Press reported that the Greenpeace Foundation had freed a 1,100 pound beluga whale that was being trained by the United States Navy to recover unexploded submerged torpedoes. According to the Navy, the whale later returned to captivity on its own. Greenpeace's position was that freeing the whale "was the act of an organization representing the majority of people in North America who believe whales should be free." Greenpeace's action is significant as another example of

the kind of "civil disobedience" which is bound to occur more and more as the animal rights movement grows. In turn, that will lead to the necessity for evolving creative defenses to the kinds of charges which will inevitably be brought against persons who engage in that sort of conduct — a subject addressed at SAR/ARLR's recent Conference.

JACKRABBIT SLAUGHTER

Last month hundreds of Idaho farmers on horseback, motorcycles and on foot, armed with pool cues, baseball bats and homemade spears clubbed to death thousands and thousands of wild jackrabbits, allegedly to save crops. *The New York Times* reported that the Idaho Humane Society could not stop the farmers because the state anti-cruelty law protected only domestic animals. Then, on December 17, 1981, the *Times* reported that: "The Idaho Humane Society says it will supply eastern Idaho farmers with plastic to build a tent into which jackrabbits could be herded, then killed with carbon monoxide gas. [The] executive director of the society said this was more acceptable than clubbing the hares to death . . ." Farmers apparently took the position that gassing the animals was untested and probably impracticable. So far this year, about tens of thousands jackrabbits have been clubbed to death in eastern Idaho.

AVAILABLE RESOURCES

CONFERENCE ON ANIMAL RIGHTS LAW

A set of cassette tapes of the SAR/ARLR first national Conference On Animal Rights Law is available from SAR. The price is \$49.00, plus shipping and handling. Orders must reach SAR by March 15, 1982. For a detailed description of the Conference's subject matter, see the October 1981 issue of ARLR.

MEASURE OF DAMAGES

Prominent New York attorney Harry Lipsig has written an article entitled "Pet Owners' Damages For Emotional Distress," which appears on the front page of the *New York Law Journal* for Friday, October 23, 1981. (Available through SAR).

THE GOLDFISH CASE

The Massachusetts Appellate Court's opinion in the goldfish case, referred to above, is available through SAR.

THE NAPA COUNTY KENNEL CASE

Joyce S.A. Tischler's complaint in the kennel case, referred to above, is available either from her at Attorneys For Animal Rights, or from SAR.

JAPANESE SALMON FISHERIES CASE

The complaint in Friends of Animals' case against the Commerce Department, referred to above, is available from Deborah Kenn, Esq., Friends of Animals, 11 West 60th Street, New York, NY 10023, or from SAR.

FRIENDS OF ANIMALS' SURGICAL SUPPLY CASE

The complaint in this case is available from Ms. Kenn.

CHINA LAKE SETTLEMENT

The stipulation of settlement in the burro case, referred to above, is available from Joyce S.A. Tischler, Marcelle Philippott-Bryant (1513 6th Street, Suite 201, Santa Monica, California 90401), or from SAR.

CIVIL ACTION FOR TRAPPING

The complaint in *Person v. The Woodstream Corporation*, referred to above, is available from SAR or Philip Matthew Hart, Esq., The Carriage House, 604 Chapel Street, New Haven, Connecticut 06511.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

— EDITOR'S COMMENT —

It was a year ago, in the January 1981 issue of ARLR, that the idea of a Conference on Animal Rights Law was first announced. Advanced at first tentatively, since there was no way to know how much interest there would be, the idea grew to the point where a few months later it had become clear that many lawyers throughout the country thought that the idea was a good one.

Indeed it was!

On November 27 and 28, 1981, there came together in New York City about sixty people, from all over the United States. And for those of us who were there, it was magic. Unfortunately, it is not possible to capture on paper (or even on tape) the special quality of what went on for those two days: One's discovery that there were others in the legal profession who shared some of your deepest values; the sense of solidarity arising from open discussions of those values, and how to protect and implement them through law; the intellectual excitement as speaker after speaker explained how the law could be enlisted in the widening battle for animal rights; the feeling that something could indeed be done about the virtually endless problems that animals confront; the satisfaction that speaker and attendee alike experienced merely from being a part of what was happening; the strengthened ability which resulted from exposure to challenging new legal ideas; the knowledge gained; the awareness that everyone there stood at the threshold of something brand new; for those two days, at least, frustration took a back seat to hope.

Tangibly, much came out of the Conference. A prototype now exists for future conferences — and SAR/ARLR are already beginning to plan for next year's, perhaps on the West Coast. Considerable important substantive information has been developed and communicated, which will help greatly in litigation, legislation and writing. Attorneys For Animal Rights is now a national organization, with all that implies. The Encyclopedia of Animal Rights Law writing project has been launched.

And in the January 4, 1982, issue of *The National Law Journal*, a lengthy, front page article appears by Ben Gerson, which recognizes that animal rights law is already very much a part of the legal landscape. Prominently mentioning SAR, ARLR and the Conference, Mr. Gerson's article will be read by thousands of lawyers across America.

Looking back on all of this, and realizing that this issue of the Animal Rights Law Reporter starts the publication's third year, one thing is very clear indeed: the animal rights law movement is an idea whose time is *now*.

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

APPENDIX

Why do animals need lawyers?

Because the unnecessary suffering of millions of farm and laboratory animals goes unnoticed under our present legal system.

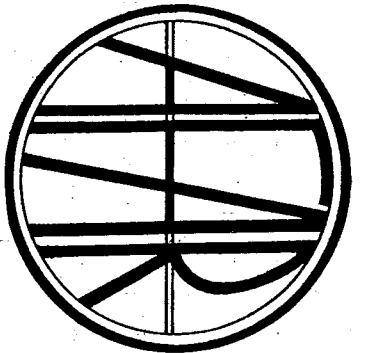
Because several states have broad-ranging Endangered Species Acts, which are under constant judicial attack from importers of ivory, skins, and other animal products.

Because far too often, pets are harmed or killed by neighbors, local public officials, or others, but attorneys traditionally have not taken these cases.

"What we must do is bring non-human animals within our sphere of moral concern, and cease to treat their lives as expendable for whatever trivial purposes we may have."

Peter Singer
in Animal Liberation

Animals need lawyers because every day, private individuals and public agencies take actions that affect the lives of thousands of animals.



What is Attorneys for Animal Rights (AFAR)?

AFAR is a group of attorneys and law students who care about animals. They use their skills to assure that animals get the full protection of our state and federal laws.

AFAR is the only nationwide organization of attorneys and law students working on animal rights issues.

AFAR is not a law firm, but a nonprofit, charitable, tax-exempt organization. Your donations go directly into litigation costs.

Who does AFAR serve?

AFAR serves animals by representing the people who actively care for animals, and the organizations that work to protect those animals.

What AFAR attorneys have done

When the U.S. Navy killed 648 feral burros at China Lake, California, and proposed to kill thousands more, AFAR attorneys went to court to halt the killings. Moreover, they pressed for a thorough and objective review of all alternatives to the killing, as mandated by the National Environmental Policy Act.

AFAR attorneys played a key role in the courtroom drama of Sido, a dog willed to die by her owner. The court refused to uphold the will provision, recognizing the difference between a dog and non-living property.

AFAR attorneys assisted a State Senator and several humane groups in drafting an amendment to the California Endangered Species Act, which will have a national and international impact.

AFAR attorneys brought suit against a major airline company for the death of a dog in the cargo compartment of a plane. The message: animals should not be handled like inanimate objects.

AFAR attorneys and law students have tackled these and other issues in order to protect the lives and interests of animals.

ATTORNEYS FOR ANIMAL RIGHTS



Yes, I want to support your work for the animals.

Please put my name on your mailing list.

My donation in the amount of _____ is enclosed.

This donation is a gift for _____ (name).

Name _____

Address _____

City _____ State _____ Zip _____

Please make checks payable to

**ATTORNEYS FOR
ANIMAL RIGHTS**

For tax purposes, donations to AFAR qualify as charitable under federal and California laws.

Your check, made payable to Attorneys for Animal Rights, will enable us to carry on the fight to protect animals. Contributors will be kept informed of AFAR's efforts through our regular newsletters.

Please send this form, along with your check or money order, to:

ATTORNEYS FOR ANIMAL RIGHTS
333 Market Street, Suite 2300
San Francisco, California 94105
(415) 751-7262

Your contribution to AFAR is vital.

All donations are tax deductible.

Attorneys cost money.



Hiring an attorney is very costly. The costs of litigation include not only the many hours spent doing research and investigation, but also court costs; deposition costs, travel expenses and various other fees.

AFAR attorneys and law students have donated hundreds of hours of their free time and will continue to do so, but relying on volunteerism and free time is not the best answer.

**The answer is legal power
for animals through a strong
AFAR.**

What AFAR does with your contribution

AFAR makes grants to attorneys working on important animal rights litigation.

AFAR maintains an animal rights "lawyers' network", with central listings of attorneys throughout the United States who are available for animal-related legal assistance.

AFAR maintains a library of pleadings and decisions from litigation involving animal rights and welfare issues.

ANIMAL RIGHTS LAW REPORTER

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

APRIL 1982

IN THE COURTS

FEDERAL

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

In the closing days of 1980, an action was filed in the United States District Court for the Eastern District of Michigan seeking compensatory and punitive damages against police officers and the incorporated village which employed them for the unauthorized and illegal shooting of a pet dog. Among other things, the complaint alleged: "That the illegal killings of the (dogs) was a violation of the civil rights of each of the Plaintiffs, and was an unconstitutional denial of property without due process of law." The defendant's moved to dismiss for failure to state a claim under which relief could be granted under 42 U.S.C. 1983, and the court found that the allegation quoted above adequately stated a claim for relief which could be granted pursuant to that statute. "Plaintiff's complaint, on its face," said the court, "alleges that the defendants acted intentionally, unlawfully and color of State law in denying them of their 'property.' A family's pet dog is recognized as 'property' which is subject to the protection of federal and state law. *Sentell v. New Orleans & Carrollton RR Co.*, 166 U.S. 698 (1897); *Finley v. Barker*, 219 Mich. 442 (1922). 42 U.S.C. 1983 provides a cause of action, by way of damages, for the deprivation, under color of State law, of rights protected by the Constitution or laws of the United States. The Fourteenth Amendment to the Constitution provides that persons shall not be deprived of their 'property' without due process of law. Accordingly, Plaintiff's complaint states a claim for which, if proven, relief may be granted § 1983." Therefore, Defendant's motion to dismiss was denied. However, several days into the trial, the case was settled, we are informed,

for \$3,000.00. While it is encouraging to see yet another case brought under the federal Civil Rights Act for the intentional shooting of a pet animal by police, it needs to be emphasized once again that these kinds of cases must be well pleaded for there to be any chance of recovering. And even then, when the pleading is in the shape that it should be in, there is not going to be any law made in this area if cases are settled. That is not to say that a plaintiff does not have every right to settle his or her case, or that (for a variety of reasons) it is undesirable to do so. ARLR's point is that only by pressing cases like these to their conclusions can a body of law be built up, which will bring these kinds of illegal police actions directed against pet animals under the protection of the federal Civil Rights Statutes.

NEPA: CHINA LAKE BURRO KILLING

ARAR has announced that the U.S. Navy has finally agreed to pay all of the costs to remove the remaining Feral Burros at the Naval Weapons Center. Humane groups will handle the adoption process.

WILD HORSES

Joyce Tischler of AFAR has filed suit on behalf of three humane groups against Interior Secretary Watt and the BLM, seeking to enjoin the planned killing of wild horses removed from public lands.

The ANIMAL RIGHTS LAW REPORTER'S purpose is to provide animal rights activists with information which could aid in legal efforts on behalf of animals. However, it should not be assumed that ARLR's reporting necessarily constitutes approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or the Editor, of the ideas, action, or anything else reported, or of the persons connected therewith.

STATE AND LOCAL

CRUELTY: PROSECUTIONS/CONVICTIONS

Grisly stories of animal mutilation at fraternity houses continue to surface. In Missouri, two young men were arrested and charged with "maliciously wounding and killing an animal," a misdemeanor carrying a maximum penalty of \$50 in fines and three months in jail. One defendant left the state before he was arraigned, and cannot be returned, since he is charged only with a misdemeanor. The other eventually pleaded guilty and received one year's probation. The county assistant prosecuting attorney, who had characterized the statutes' penalty as "ridiculous," nonetheless thought that "justice was done because it was a first offense."

The operator of a "Rent-a-Dog" business was found guilty of a cruelty charge filed by the Pennsylvania Humane Society. The charges grew out of a Doberman brought to the defendant for training, which lost one third of its body weight (27 pounds) in the 19 days the dog was in the custody of the trainer. The defendant received a \$100 fine and thirty days in the county jail.

National attention was received lately by a story from Berlin, New Hampshire as the result of a rather unique sentence. A man convicted of abandoning four puppies in subzero cold at a local dump was sentenced to the very same treatment. The judge gave the defendant the choice of paying the \$200 fine or spending two consecutive nights at the dump, from 5 p.m. to 5 a.m. The judge was quoted as having said "The primary thing is the feeling of isolation and being rather helpless — and cold, too. I wanted it done before the first of March so it still would be quite cold." The town is about 60 miles from the Canadian border and at that time of year the nighttime temperature often dips below zero. The story ended when the defendant was unable to continue through the night exposed to the very same elements to which he had left the puppies.

A Seattle man received a maximum sentence of 180 days in jail for beating an eight-month-old cocker spaniel with a belt. The municipal court judge characterized the beating as "totally unreasonable behavior."

Two men from Troy, New York, charged with taking a deer out of season and using a spotlight pleaded guilty and were fined \$1,100 each.

In Ohio, dogfighting is a felony under a law enacted last year. The potential penalty is up to five years in jail and a \$7,500 fine. Recently, an Ohio man pleaded guilty to three dogfighting charges and was given a suspended sentence of up to five years on probation on each charge. He was also ordered to pay about \$6,500 to the U.S. Humane Society in Columbus which has cared for the defendant's four animals since the fall of 1981. The assistant county prosecutor said that he was "extremely pleased with the outcome" of the case. On the other hand, the defendant's attorney was quoted as having said "Nobody's spent a day in jail over any of these accusations."

A persistent problem of animal cruelty is that of inadequate shelter. Recently, a Tennessee man received a 10-day jail sentence for having left his dog chained outside in the rain for at least three days without food. The dog died and animal cruelty charges were brought.

A 23 year old Georgia man, who apparently deliberately swerved his car to hit and kill a dog, was convicted in a jury trial and fined \$250 and sentenced to 12 months probation. He was also assessed \$160 more, to be paid to the dog's owner.

The San Francisco SPCA has charged a local metal company with a misdemeanor charge of animal cruelty as the result of a dog dying after it had licked cyanide-laced water trickling from the firm's factory.

Though not directly related to our concerns in the United States, a few items from Great Britain may be of interest to our readers. A man who attacked his pet dog with an axe and left the badly wounded animal tied up in a shed, was not only fined nearly \$200 and ordered to pay about \$60 in court costs, but he was *banned from keeping a dog for ten years*. The magistrate was quoted as having said: "Your behaviour cannot be registered in words . . . a case of cruelty and lack of care which no human being should be accused of carrying out." Another defendant was also banned from keeping dogs and holding a pet shop license for ten years after he admitted charges of cruelty, breaches of slaughterhouse regulations, and having a pet shop without a license. Apparently, among other things, the defendant was in the business of selling animals for ritual slaughter. A fine of nearly \$3,000 was also levied. His lawyer, referring to the defendant as "a person of contrition," asserted that it was not in his client's nature "to be deliberately cruel."

A Florida bank executive was convicted of cruelty to animals resulting from his deliberately running over a neighbor's dog with a lawn mower. The dog had to be euthanized. The county judge initially refused bail pending a presentence hearing, causing the defendant to spend a short time in jail. The judge then allowed \$1,000 bail and the defendant was released. On the misdemeanor conviction he faces a maximum penalty of up to a year in jail and/or up to a \$1,000 fine.

A Los Angeles area Roman Catholic priest who drowned 10 cats has been charged with cruelty to animals. Misdemeanor charges were filed in Van Nuys Municipal Court by a Deputy City Attorney.

CRUELTY: RACEHORSE DRUGGING

Late last year Florida's Third District Court of Appeal construed the following section of a 1980 statute:

550.241 Racing of animals under certain conditions prohibited; penalties.

(1) The racing of an animal with any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent or any substance which is foreign to the natural horse or dog is prohibited.

Here is the court's opinion:

HORSE RACING; REGULATION F.S. 550.241
Simmons v. Div. of Pari-Mutuel Wagering, 3d
D.C.A. No. 81-59, Dec. 8, 1981.

"We are called upon to decide whether Section 550.241, Florida Statutes (Supp. 1980) (regulating the drugging of race-horses), is constitutional in the face of an attack by the appellants, certain owners and trainers of horses . . . that this law constitutes (1) a taking of property without just compensation; (2) an invalid exercise of the police power because not rationally related to the purpose of regulating racing; (3) an improper delegation of legislative authority to the Division of Pari-Mutuel Wagering; and (4) is so vague as to invite arbitrary application. These same attacks were rejected by the trial court*** (W)e certainly cannot say that to prohibit the racing of an animal with drugs is not rationally related to the regulation of racing or is an unreasonable means to accomplish that regulation. However, we must find otherwise in respect to the prohibition of 'any substance foreign to the natural horse or dog'*** Accordingly, we declare unconstitutional that clause of Section 550.241, Florida Statutes (Supp. 1980), which prohibits the racing of any animal with 'any substance foreign to the natural horse or dog'. In all other respects, we hold the statute to be constitutional and affirm the judgment of the trial court."

CRUELTY: PROHIBITING FUTURE OWNERSHIP

A Michigan trial court convicted a Kent County man of failing to provide proper food, drink, shelter and other care and maintenance for horses. (MCLA 752.21 MSA 28.161). The sentence consisted of 60 days in jail, 18 months probation, restitution to the Humane Society, a \$250 fine, costs of \$250 or 30 days additional in jail, placing trusteeship of the horses in the Humane Society, and a prohibition of custody, care or ownership of animals during probation. Motion for a new trial was denied. The county circuit court affirmed. Eventually, the Michigan Court of Appeals — though holding that to be sufficient a cruelty charge must plead not only ownership, but also control and custody — upheld the conviction and sentence. It also applied the "plain view" exception to usual search and seizure requirements, thus validating the Humane Society's and Deputy Sheriff's entry onto private property to remove the mistreated horses.

FREE SPEECH: POUND SEIZURE

In an unusual move, a Michigan animal dealer sought an injunction to prevent a member of The Fund For Animals from speaking out against "pound seizure." The Wayne County Circuit Court in Detroit, Michigan, denied the application.

ANIMALS AS PROPERTY: THE HAWAII DOLPHINS CASE

The case of the Hawaii dolphins, reported in ARLR on several occasions in the past, is continuing to surface in Hawaii. The issue this time is the value of the two bottlenosed dolphins who were released into the Pacific Ocean several years ago after having been taken from a marine laboratory. The defendants were convicted; one of them was ordered to reimburse the State of Hawaii for the value of the highly trained dolphins. However, it fell to the Hawaii State Adult Probation Office to determine how much the dolphins were worth in order that the value could be assessed against the convicted defendant. This seemingly collateral issue in the Hawaii Dolphins' case is not an inconsequential as it might appear. Readers of ARLR are aware of the difficulty plaintiffs have encountered on the measure of damages aspect of tort liability cases, in assessing the value of an animal which has been intentionally or negligently killed or injured. Ironically, that same problem is now cutting the other way in the efforts of the probation in Hawaii to ascertain the value of the dolphins which the convicted defendants released into the Pacific Ocean. It will be interesting to follow how the Hawaii Probation Department solves the problem, and in its solution there may be something of value for the wider measure of values problem.

ANIMALS AS PROPERTY: DEFINITION OF "ANIMAL"

In the January 1982 issue of ARLR (page 3) we reported the decision in *Knox v. Massachusetts SPCA*, which involved the question of whether a goldfish was an "animal." The court's decision indicated that the Commonwealth's animal statutes did not define the word "animal." Since that time we have been advised that both the court and lawyers apparently overlooked Chapter 49A, Section 1 of the Massachusetts Statutes, "Use of Certain Animals for Scientific Investigation, Experiment or Instruction." "Animal" is there defined as "the dog and the cat specifically and all of the sentient creatures other than man."

ANIMALS AS PROPERTY: LIABILITY FOR ANIMALS' ACTS

In Middlesex County, New Jersey, a husband and wife were convicted of aggravated assault for the attack and mauling by their dogs of a young boy. The husband was sentenced to 6 months and a \$6,000.00 fine (\$5,000.00 of it to be contributed to the violent crimes compensation board). The wife was sentenced to probation and a \$2,000.00 fine (\$1,000.00 to be contributed to the violent crimes compensation board). An appeal has been taken. A civil action has recently been instituted by the injured party in the New Jersey Superior Court.

SPCAs AND SHELTERS: NEGLIGENCE

A lawsuit was recently brought against the Hennepin

County Humane Society for a destruction of a pet dog that had been brought to the Humane Society after being found by a neighbor. Apparently, although the Humane Society's literature indicated that it would hold an animal for approximately eight days before destroying it, the dog in this case was killed in less than two hours despite the fact that, it is alleged, a "lost dog report" had already been turned in with respect to that particular dog. The complaint contains causes of action for punitive damages and in negligence.

ENDANGERED SPECIES: CALIFORNIA

The California Department of Fish and Game and the Los Angeles County District Attorney's Office raided six stores in the fashionable Rodeo Drive district of Beverly Hills not long ago, seizing shoes and clothing made from the skin of endangered species. Goods made from crocodile and python skins were seized in what one game warden characterized as California's "largest reptile skin seizure" thus far. Penal Code Section 6350 was invoked against the retailers, but apparently the law does not extend to the user, only being directed against the importation and sale. Misdemeanors are involved, which could bring fines up to \$1,000. Though jail time is provided for in the Statute, it is unlikely that anyone will be so sentenced.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Ill. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

At the present time, the following bills and resolutions are pending before the 97th Congress.

RESEARCH METHODS

H.B. 220, introduced by Rep. Geraldine A. Ferraro, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.R. 556, introduced by Rep. Robert A. Roe; Rep. Harold C. Hollenbeck, and Rep. Frederick W. Richmond, to establish a National Center of Alternative Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplication of experiments on live animals; to disseminate information on such methods. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 930, introduced by Rep. Virginia Smith, to establish a commission to study alternative methods to the use of live animals in laboratory research and testing. Referred to Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.C.R. 38, introduced by Rep. G. William Whitehurst, pertaining to the methods used on animals in research. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

S.R. 65, introduced by Sen. David Durenberger, et al., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.C.R. 27, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 2110, introduced by Rep. Brian J. Donnelly, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 4406, introduced by Rep. Patricia Schroeder, to amend the Animal Welfare Act to insure the humane treatment of laboratory animals. Referred to the Committee on Agriculture of which Rep. E. de la Garza is Chairman, the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

SEALS

H.B. 348, introduced by Rep. Frank Horton, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to Committee on Foreign Affairs, of which Rep. Clement J. Zablocki is Chairman; the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 560, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman, the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

LACEY ACT AMENDMENTS

On May 21, the Senate Committee on Environmental Works reported out S. 736, the proposed Lacey Act Amendments. The version of S. 736 that the full Senate will now consider contains modifications adopted by the Committee to reflect comments submitted by interested federal agencies and private parties. In the House of Representatives, the House Subcommittee on Fish and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee has sent H.R. 1638, a bill mirroring the Senate bill, to the full Committee for review. Passage of the Lacey Act Amendments this year looks promising. Senate Report No. 97-123.

FISH AND WILDLIFE

S.B. 736, introduced by Sen. John H. Chafee, et al., to provide for the control of illegally taken fish and wildlife. Referred to Committee on Environmental and Public Works, by unanimous consent with instructions that once reported, the bill be referred to the Committee on the Judiciary of which Sen. Strom Thurmond is Chairman, for not to exceed thirty calendar days. Status: Hearing in Senate on 4/1/81; reported, amended, Sen. Report No. 97-123 on 5/21/81. S. committee discharged 6/22/81. To S. Calendar 6/22/81. Amended on S. floor 7/24/81. Passed S. as amended 7/24/81. To H. Committee on Merchant Marine & Fisheries 7/28/81. Passed House in lieu of House 1638 on 11/4/81. Sent to President on 11/5/81; Approved — Public Law 97-79, on 11/16/81.

H.B. 5662, introduced by Reps. Edwin B. Forsythe and John B. Breau, to extend until October 1, 1983, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

WHALES

H.C.R. 96, introduced by Rep. Don L. Bonker and Rep. Walter B. Jones, calling for an indefinite moratorium on the commercial killing of whales and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale populations. Referred to Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman. Status: Hearing in House on 6/16/81. Passed H. with amendment 7/15/81. To S. Committee on Foreign Relations 7/21/81.

S.R. 148, introduced by Sen. Bob Packwood, calling for a moratorium of indefinite duration on the commercial killing of whales. Referred to Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Reported without written S. report 7/20/81. Agreed to by S. 7/20/81.

H.C.R. 18, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

S.R. 147, introduced by Sen. Bob Packwood, calling for a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Status: Hearing in Senate on 6/25/81.

TRAPPING

H.B. 374, introduced by Rep. Clarence Dickinson Long, to discourage the use of leg-hold or steel jaw traps on animals in the United States. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 1002, introduced by Rep. Glenn M. Anderson, to regulate the trapping of mammals and birds on federal lands. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman; and Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

ZOOLOGICAL FOUNDATION

H.B. 642, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE MAMMALS

H.B. 1672, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972, in order to prohibit the issuance of general permits thereunder which authorize the taking of marine mammals in connection with commercial fishing operations. Referred to Com-

mittee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ANIMAL DAMAGE

H.B. 1956, introduced by Rep. E. de la Garza, et al., amends the Act of March 2, 1931, to require the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to implement a program for animal damage control. Referred to Committee on Agriculture of which Rep. E. de la Garza is Chairman.

WILDLIFE PRESERVATION

H.B. 2214, introduced by Rep. Carl D. Purcell; Rep. Benjamin A. Gilman, and Rep. Anthony C. Beilenson, to establish a federal program to provide public information on wildlife preservation and the endangered species. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman. Status: Hearing in House on 7/8/81.

H.B. 2978, introduced by Rep. Don L. Bonker, et al., to provide for additional protection of steelhead trout as a game fish. Referred to Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 5002, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve fishery conservation and management. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

FISH

S.B. 874, introduced by Sens. Slade Gordon, Henry M. Jackson, James A. McClure and Howard M. Metzenbaum, to provide for additional protection of steelhead trout as a game fish. Referred to the Committee on Indian Affairs. Status: Hearing in Senate on 9/28/81.

H.B. 5661, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to authorize appropriations to carry out fishery conservation and management during fiscal year 1983. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 5663, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to authorize appropriations to carry out the Anadromous Fish Conservation Act during fiscal year 1983. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

HORSE RACING

H.B. 2331, introduced by Rep. Bruce Vento, et al., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on the Judiciary of which Rep. Peter W. Rodino, Jr. is Chairman.

MARINE SANCTUARIES

H.B. 2357, introduced by Rep. John B. Breaux, to repeal Title III, Marine Sanctuaries of the Marine Protection, Research, and Sanctuaries Act of 1972. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

S.B. 1003, introduced by Sen. Bob Packwood, to amend Title III of the Marine Protection Research and Sanctuaries Act of 1972, as amended, to authorize appropriations for such Title for fiscal years 1982 and 1983. Status: Reported, no amendment, Sen. Report No. 97-44 on 4/23/81; Passed Senate on 5/4/81; Sent to House Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, on 5/6/81. Amended to contain text of H. 2449 as passed 7/13/81. Passed H. as amended (Voice) 7/13/81. House amendments agreed to by Senate with amendments on 12/11/81; Senate amendments agreed to by House on 12/14/81. Sent to President on 12/15/81; Approved — Public Law 97-109 on 12/26/81.

S.B. 1186, introduced by Sen. Bob Packwood, to amend the Marine Mammal Protection Act of 1972, as amended, to extend the authorization of appropriations for fiscal years 1982 and 1983. Status: Reported, no amendment; Sen. Report No. 97-63, on 5/14/81. Indefinitely postponed by Senate on 12/8/81.

S.B. 1213, introduced by Sen. John H. Chafee, to amend Title I of the Marine Protection, Research, and Sanctuaries Act, as amended. Status: Reported; no amendment, Sen. Report No. 97-119, on 5/15/81; Passed Senate as reported on 6/2/81; Passed House without amendment on 6/11/81; Sent to President on 6/16/81; Approved — Public Law 97-16, on 6/23/81.

MIGRATORY BIRDS

H.B. 3442, introduced by Rep. Harold Sawyer, to establish a Webless Migratory Game Bird Research Fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MAMMALS AND BIRDS/PUBLIC LANDS

S.J.R. 6, introduced by Sen. Alan Cranston, to establish a national policy for taking of predatory or scavenging mammals and birds on public lands. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

TUNA PROTECTION

S.B. 1564, introduced by Sens. Lowell P. Weicker, Jr., Paul E. Tsongas, John H. Chafee, Ernest F. Hollings, William V. Roth, Jr., Bill Bradley, Paula Hawkins, Claiborne Pell, Lawton Chiles, Edward M. Kennedy, John W. Warner, is entitled the American Tuna Protection Act. Referred to the Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman.

H.B. 4457, introduced by Reps. James J. Howard, Claudine Schneider, Guy V. Molinari, G. William Whitehurst, Gerry E. Studds, William J. Hughes and Nicholas Mavroules, is entitled The Tuna Protection Act. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH RESTORATION

S.B. 546, introduced by Sens. Jennings Randolph, Russell B. Long, Howell Heflin, Walter D. Huddleston and Barry Goldwater, is entitled The Fish Restoration Act of 1981. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman. Status: Hearing in House on 7/8/81.

H.B. 3325, introduced by Rep. John J. Duncan, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 3717, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

ILLEGAL TRADE

H.B. 1638, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to provide for the control of illegally taken fish and wildlife. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is

Chairman. Status: Reported; amended, House Report No. 97-276 on 10/19/81; Passed House as reported on 11/4/81; Passage vacated by House and S. 736 passed in lieu on 11/4/81.

MARINE LIFE PROTECTION

H.B. 2449, introduced by Reps. Norman E. D'Amours and Walter B. Jones, to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended to authorize appropriations for such Title for fiscal years 1982, 1983 and 1984. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-52 on 5/18/81; Bill title amended on House floor on 7/13/81. Passed House as amended on 7/13/81; Passage vacated by House and S. 1003 passed in lieu on 7/13/81.

H.B. 2948, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Marine Mammal Protection Act of 1972 during fiscal year 1982. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-53 on 5/18/81.

H.B. 4084, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve the operation of the Marine Mammal Protection Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 7/13/81. Reported; amended, House Report No. 97-228 on 9/16/81; Passed House as reported 9/21/81. To Senate Committee on Commerce, Science and Transportation on 9/23/81; Passed Senate without amendment on 9/29/81; Sent to President on 9/30/81; Approved — Public Law 97-58, on 10/9/81.

DOGS

H.R. 379, introduced by Rep. Daniel B. Crane, expressing the sense of the House of Representatives regarding the torture and mutilation of dogs for profit in the Republic of the Philippines. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

PINNIPEDS

H.C.R. 285, introduced by Rep. G. William Whitehurst, calling for a regional conservation treaty to protect Northern Hemisphere pinnipeds. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

HORSES/BURROS

S.B. 2183, introduced by Sen. James McClure, et al., a bill to amend the Wild, Free-Roaming Horses and Burros Act. It's principal provision would authorize the Bureau of Land Management to sell "excess" unadopted wild horses and burros. The "other viable uses" to which Senator McClure referred are the uses of horse traders, slaughterhouses and rodeos.

H.B. 5825, introduced by Rep. Don E. Young, et al., to make certain amendments to Public Law 92-195 relating to the protection of wild free-roaming horses and burros. Referred to the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ENDANGERED SPECIES ACT

The Endangered Species Act, which became law in 1973, will soon be before the Congress for reauthorization hearings. In essence, the Act applies to every species of plant, defines wildlife as virtually all creatures ranging from multicellular sponges to the Great Apes, and requires the protection of the critical habitat of any species in danger of extinction. Under the Act, the Interior Department possesses the power to determine what species are endangered and then to list them publicly. The Act also illegalizes the capture, killing, transportation, selling, buying, possessing, importing or exporting any of the listed plants or animals. There is also a separate category for "threatened" species, which are organisms on the brink of becoming endangered. They are also protected, with certain exceptions. At present, the Office of Endangered Species currently lists 51 plants and 143 animals as endangered, and 7 plants and 38 animals as threatened. In order to prevent the importing or trading of endangered species which are native to foreign lands, the Office lists 402 foreign animals as endangered and 16 animals and 1 plant as threatened. To be reauthorized, a final version of the Act containing proposed revisions must be completed by May 15, then pass both Houses in Congress, and be signed by President Reagan before October 1, 1982. If this does not happen, the Act will lapse. The battle will be significant, and we will try to follow it as closely as possible in ARLR.

STATE AND LOCAL

A REQUEST FOR HELP

Beginning with this issue we will make a start toward reporting on pending state legislation with the same degree of completeness as we have with federal legislation. We would like very much to carry in each issue of

ARLR (space and the availability of information permitting) all pertinent animal legislation pending in every state in the Union. The format will be exactly as our federal legislation format, and the states will be listed alphabetically. The value of this kind of a master index of animal legislation pending throughout the United States is obvious. But for ARLR to be able to do it is going to require real effort from a lot of people. To the best of our knowledge this information does not exist in any one place, demonstrating once again the regrettable fragmentation of the animal rights movement. No doubt this department of ARLR will start slowly and will have to grow into the formidable kind of coverage that we seek, and that the movement sorely needs. But a beginning must be made. Please see the Bulletin Board item "State Legislative Correspondents Sought," which appears below. To date, correspondents have signed up from California, Connecticut, New Jersey, New York, North Carolina, Pennsylvania, Tennessee.

CALIFORNIA (Virginia Handley, The Fund For Animals Inc., Fort Mason Center, San Francisco, CA 94123, 415-474-4020).

MOUNTAIN LIONS: SB 1333 by Senator Robert Presley. Currently, the California Mountain Lion is protected by a hunting moratorium that expires this year. SB 1333 continues to guard the lions from trophy hunters and houndsmen. Permits will be given for livestock depredation. Lion territoriality keeps them from overpopulating (estimated 1,000). Females have only two kittens every two years.

POUND SEIZURE: SB 1438 by Senator David Roberti. Currently, over 15,000 pets are sold to laboratories from animal shelters in California. SB 1438 prohibits this practice of "pound seizure." Pound Seizure damages public cooperation and trust in animal shelters.

GUARD DOGS: AB 2456 by Assemblyman Richard Katz. Currently, guard dog services may rent out dogs to people and companies for protection. Others will train dogs. AB 2456 requires bonding and testing of the trainers and humane treatment for the animals, many of whom have been abused even beyond the training itself.

PREDATORS: AB 2596 by Assemblyman Doug Bosco. Currently, State Parks prohibit killing wildlife. Thus, some predators have found refuge there from predator control. AB 2456 allows the Director of Agriculture to demand the "eradication" of any predators in any State area he deems necessary to protect the livestock industry.

TRAPPING: AB 2600 by Assemblyman Sam Farr. Currently, several hundred thousand animals in California are trapped by steel-jaw leghold traps. AB 2600 prohibits trapping except for predator or disease control.

BIG HORN SHEEP: AB 2823 by Assemblyman Gerald Felando. Big Horn Sheep are currently protected from hunting. AB 2823 would allow hunting with a permit from California Department of Fish & Game.

BEARS: SB 1671 by Senator Diane Watson. There is an epidemic of poaching in California, particularly of bears, whose products are lucrative in the Asian market. Senator Watson seeks to make the poaching of bears a felony, a higher penalty than the present misdemeanor.

PREDATOR CONTROL POISON 1080: California Budget. President Reagan has rescinded President Nixon's ban on Compound 1080, a painful poison deadly not only to predators, but to all non-target animals (wild and domestic) that come in secondary contact with it. There is no antidote. Governor Brown will be instrumental in determining whether or not 1080 will kill in California. He has the power to activate the Task Force he formed to advise him on the hazards of 1080, and the California Budget could stipulate that none of the \$693,000 appropriated for predator control can be used for any program that includes 1080 or denning (killing coyote pups in their dens).

CONNECTICUT (Philip Matthew Hart, Esq., The Carriage House, 604 Chapel St., New Haven, CT 06511, 203-865-1055)

ARLR is advised by Mr. Hart that the Connecticut Legislature is not now considering any animal welfare legislation.

GEORGIA

Dogfighting. The Georgia General Assembly recently enacted legislation making dogfighting a felony, carrying a penalty of \$5,000 fine and one to five years in prison. An apparent loophole in the law is that spectators are not penalized.

MARYLAND

H. 401 introduced by Delegate Torrey Brown exempts "animals that are used in medical, scientific or teaching research" from the protection of the state's anti-cruelty statute. Clearly a response to the Taub case, Delegate Brown, also a doctor at Johns Hopkins Medical School, filed H. 401 a month prior to Taub's conviction of cruelty to animals. The bill did pass the House of Delegates, but was killed by the Senate Committee on Judicial Proceedings.

MASSACHUSETTS

H. 1141 introduced by Representative Michael Lombardi repeals the commonwealth's pound seizure law and

prohibits any voluntary sale of pets in public shelters to animals dealers or research institutions. Presently the bill is in the Committee on Counties. The House chairman of this committee, Charles Flaherty, is also employed by Boston College as director of research administration.

MICHIGAN

Wildlife Tax Check-Off. H.B. 5068, introduced by Rep. Anderson, would allow taxpayers filing a state return to designate that \$1.00, \$5.00 or \$10.00, of any refund due be credited for support of wildlife research and habitat improvement for nongame wild animals; referred to the Committee on Taxation.

MINNESOTA

Hunting/Trapping: Snares. The Minnesota Department of Natural Resources late in 1980 promulgated a new regulation which liberalize the use of snares. Apparently, Order No. 2080 allows coyotes and foxes in the northern half of Minnesota now to be taken by the use of snares.

NEW JERSEY (Society for Animal Rights, Inc., 421 S. State Street, Clarks Summit, PA 18411 717-586-2200)

A. 820 introduced by Assemblymen Thomas Gallo and Thomas Cowan, to provide for the rights of tenants to keep animals and birds in leased residential premises.

S. 1101 introduced by Senators S. Thomas Gagliano, Donald T. DiFrancesco, John B. Paoletta, Gerald R. Stockman, John A. Lynch, Ms. Wynona M. Lipman, James P. Vreeland, Jr., Frank X. Graves, Jr., Daniel J. Dalton, John T. Gregorio, H. James Saxton, Lee B. Laskin, Leonard T. Connors, Jr., James R. Hurley, John P. Gallagher, John H. Dorsey, John F. Russo, Wayne Dumont, Jr., Walter E. Foran, Francis J. McManimon and Herman T. Costello, to authorize the Commissioner of Health to establish a spaying and neutering clinic for dogs and cats and to appropriate \$95,000.

A. 982 introduced by Karl Weidel, to regulate the exhibition of potentially dangerous non-domesticated, exotic or non-game animals and to appropriate \$15,000 to the Department of Environmental Protection for implementation to be repaid from permit fees collected.

A. 1025 introduced by Assemblymen Robert C. Janiszewski and Thomas F. Cowan, to prohibit the destruction of animals through the use of decompression or gas chambers.

A. 1145 introduced by Assemblyman Karl Weidel, to provide for the regulation of wild animals exhibited by circuses and carnivals.

S. 1203 introduced by Senator Carmen A. Orechio, to amend laws enacted for the protection of animals.

S. 1159 introduced by Senator Raymond J. Zane, to extend the season for commercial pheasant, quail and partridge shooting preserves to May 1 from March 15.

NEW YORK (Elinor Molbegott, Esq., General Counsel, ASPCA, 441 East 92nd Street, New York, NY 10028, 212-876-7700)

PET SHOPS: A. 6059 introduced by Assemblyman Eugene Levy prohibits the sale of dogs and cats at pet shops.

A. 1148 and S. 806 introduced by Assemblyman Clarence D. Lane and Senator Howard C. Nolan, Jr., respectively, prescribe standards for pet shops and require pet shops to obtain licenses to operate from the Commissioner of Agriculture and Markets.

SHELTER FOR DOGS: A. 9812 and S. 7929 introduced by Assemblyman Howard L. Lasher and Senator Donald Halperin, respectively, prescribe standards of proper shelter for dogs and require owners and those persons having charge or custody of dogs to provide their dogs with such proper shelter.

MOTOR VEHICLE STRIKING ANIMALS: A. 9891-A introduced by Assemblyman Gary Proud makes it a misdemeanor to strike and injure an animal with a motor vehicle without taking steps to locate the owner of such animal and to take appropriate action so that the animal may have necessary attention.

TRUSTS FOR ANIMALS: S. 1725 introduced by Senator Anthony V. Gazzara validates dispositions of property in trust or otherwise for the purpose of the care, maintenance and well-being of such animals.

SPAY/NEUTER: A. 1248 and S. 539 introduced by Assemblyman Mark Alan Siegel and Senator Roy M. Goodman, respectively, require personal income tax returns to include a place where a taxpayer may designate that one dollar of the taxpayer's taxes be used for animal spaying and neutering programs.

CANINE WASTE: A. 2513 introduced by Assemblyman Gary Proud requires dog owners in cities with a population between 200,000 and 300,000 persons to remove any feces left by their dogs in any public area. The existing Canine Waste law affects cities with a population of 400,000 or more persons.

A. 3048 and S. 2336 introduced by Assemblyman John Brian Murtaugh and Senator Franz S. Leichter, respectively, require dog owners in New York City to carry a properly validated dog license issued by the ASPCA when such dog owners are accompanied by their dogs on public streets.

ANIMAL DEATH REPORTS: S. 1808 introduced by Senator Gary L. Ackerman requires veterinarians and

animal health technicians to maintain in their offices animal death reports for any animal that dies in such offices.

COSMETIC SURGERY: A. 7093 and S. 5858 introduced by Assemblyman William B. Finneran and Senator Emanuel R. Gold, respectively, prohibit the removal of cat claws except for therapeutic purposes.

EUTHANASIA: S. 5867 introduced by Senator Frank Padavan allows only the following methods of euthanasia for lost, strayed, homeless, abandoned or improperly kept animals: injection of barbituric acid derivatives, carbon monoxide gas, nitrogen gas, or nitrous oxide gas in a chamber.

A. 4438 and S. 3363 introduced by Assemblyman Robert C. Wertz and Senator James J. Lack, respectively, state that dogs at shelters may be euthanized by the injection of a drug by persons who have successfully completed a training course if a municipality passes a local law or ordinance requiring such training.

PET GROOMERS: S. 6247 introduced by Senator Gary L. Ackerman requires pet groomers to obtain a license from the State Commissioner of Agriculture and Markets prior to acting as a pet groomer.

ANIMALS IN MOVIES: A. 2791 introduced by Assemblyman Leonard P. Stavisky makes it a misdemeanor to intentionally kill or injure an animal for the production of certain motion pictures.

LIVE ANIMAL PRIZES: S. 966 introduced by Senator Anthony V. Gazzara prohibits the giving away of dogs and cats as a prize in any game, drawing, contest, sweepstakes or other promotion.

DRAIZE TEST: A. 3221-A introduced by Assemblyman Jerrold Nadler requires the Commissioner of Health to prohibit laboratories and research institutions to perform eye irritancy tests known as the "Draize Eye Test."

EDUCATION: A. 10468 and S. 8384 introduced by Assemblywoman Florence M. Sullivan and Assemblyman Edward C. Sullivan and Senator Frank Padavan, respectively, require live animals on the premises of elementary and secondary schools to be housed and cared for in a humane manner. The bill also prohibits the use of live vertebrate animals as part of an experiment or for any other purpose in such schools or for school related activities except that wild animals may be observed in the free living state, in zoological parks, gardens or aquariums and the normal living patterns of pets may also be observed.

HANDICAPPED PERSONS: A. 8664 and S. 921 introduced by Assemblyman Denis J. Butler and Senator Anthony V. Gazzara, respectively, provide that blind persons may on their tax returns deduct from gross income the expenditures for the obtaining, training and sustaining of a guide dog.

POUNDS: A. 8473-A introduced by Assemblyman William J. Bianchi, Jr., provides that in lieu of adoption or euthanasia, a municipality may transfer unredeemed dogs at pounds to societies for the prevention of cruelty to animals and to any humane society incorporated as a type B corporation. The reference to type B corporations is a cause for concern because under New York State law corporations in that category are not limited to humane organizations but include scientific institutions as well. Bill also lessens the holding period for dogs requisitioned by an agency which trains seeing eye or guard dogs or uses dogs for law enforcement purposes.

ANIMAL FIGHTING: S. 8438 introduced by Senator Frank Padavan increases the fine and imprisonment term for persons convicted of dogfighting. The bill provides that persons convicted for a first offense are guilty of a misdemeanor and persons convicted for a second or subsequent offense are guilty of a Class E felony. Fines and prison terms are specified in the bill.

A. 10094 introduced by Assemblyman William B. Hoyt increases the fine and imprisonment term for persons violating the animal fighting statutes. The bill provides that persons convicted for a first offense are guilty of a misdemeanor and persons convicted for a second or subsequent offense are guilty of a felony. Fines and prison terms are specified in the bill.

SALE OF BABY RABBITS: A. 2390-A introduced by Assemblywoman Elizabeth A. Connelly prohibits the sale of baby rabbits unless person selling such rabbits has proper brooder facilities.

CERTIFICATES OF INCORPORATION: A. 4450 and S. 3473 introduced by Assemblyman Gordon W. Burrows and Senator Joseph R. Pisani, respectively, require the certificates of incorporation of societies for the prevention of cruelty to animals to have the approval of the Commissioner of Agriculture and Markets. Presently, such certificates must have the approval of the ASPCA.

TRAPPING: A. 3617 introduced by Assemblyman Eliot Engel prohibits the manufacture, sale, offer for sale, possession, importation or transportation or setting of the steel-jaw leghold trap. The bill also prohibits the taking of any animal by means of the leghold trap.

S. 2049 introduced by Senator Frank Padavan prohibits the manufacture, sale, offer for sale, possession, importation, transportation or setting of the steel-jaw leghold trap and prohibits the taking of any animal by means of the trap. The bill further states that if the Commissioner of the Department of Environmental Conservation finds that there are no practical or viable alternatives to the leg-hold trap or other prohibited trap, he may authorize such use.

S. 5837 introduced by Senator Franz S. Leichter prescribes standards for trapping wildlife including, but not limited to, the prohibition of steel leg-hold traps on land and includes the requirement that all traps be visited at intervals not exceeding twenty-four hours.

DOG LICENSING: A. 8970-A and S. 7057-A introduced by Assemblyman Alan G. Hevesi and Senator Franz S. Leichter, respectively, to increase dog license fees and impoundment fees, to raise fines for violators of the law, to expand the agencies empowered with enforcement, to increase holding period for identified dogs and cats and to require ASPCA to notify owners of identified dogs and cats in its shelters.

A. 7073 and S. 4865 introduced by Assemblyman Gary Proud and Senator Martin J. Knorr, respectively, provide that persons who are sixty-five years of age or older and earn \$8,500.00 or less for the income tax year shall be exempt from the annual dog license fee for one dog.

A. 772 introduced by Assemblyman A. Pinny Cooke provides that dog owners who are sixty-two years of age or older do not have to pay dog license fees.

A. 1678-A and S. 1292-A introduced by Assemblyman Matthew J. Murphy, Jr., and Senator Hugh T. Farley, respectively, require owners of dogs that have died to notify the Commissioner of Agriculture and Markets of the death.

ENDANGERED SPECIES: A. 4 introduced by Assemblyman William F. Passannante extends the power of the Commissioner of the Department of Environmental Conservation by permitting him to allow the importation and sale of the skin, body, parts or products of certain animals that are now not permitted to be imported or sold.

ANIMAL CARE FACILITIES: A. 10602 introduced by Assemblyman Neil W. Kelleher requires animal clinics, hospitals, boarding facilities and shelters to have an attendant on duty on a twenty-four hour a day basis.

PETS IN HOUSING: A. 3248-B and S. 2520-B introduced by Assemblymen Harry Smoler, Alexander B. Grannis and Mark Alan Siegel and Senator Donald Halperin, respectively, provide that the keeping of a pet in violation of a prohibition in a lease or occupancy agreement against such practice shall not constitute sufficient grounds for terminating a tenant's occupancy; bills also provide for affirmative defenses to actions for specific performance of no-pet clauses in leases and occupancy agreements.

A. 9633 introduced by Assemblyman A. Pinny Cooke provides that nursing homes and residential care facilities may board animals when in the determination of the nursing home or facility and the Commissioner of Health, such boarding will promote the general well-being of the residents therein.

A. 9633 introduced by Assemblywoman Gerdi Lipschutz provides that no person shall be denied residence in residential care facilities or be subjected to removal from such facilities on the sole ground that such person possesses a household pet.

A. 10146 and S. 8168 introduced by Assemblyman Alexander B. Grannis and Senators Martin Markowitz,

Martin J. Knorr and Olga S. Mendez, respectively, provide that no person who is sixty-two years of age or older may be denied occupancy in or subjected to eviction from any housing project.

TAX ON PET FOOD: A. 10746 introduced by Assemblyman Jerrold Nadler provides that there shall be imposed an additional tax on all dog and cat food possessed in the state, by any person, for sale. Monies collected from this tax shall be used for providing care and maintenance of stray dogs and cats.

TRAPPING

The Town of Bedford recently enacted an ordinance aimed at diminishing the ability of trappers to operate within the town limits. After a pet dog was caught in a leg-hold trap, a hue and cry arose in the town to do something about trapping. Unfortunately, the ordinance did not go nearly far enough, thereby creating a serious problem confronting proponents of anti-trapping legislation. It was argued by some that state law preempted towns and other legal subdivisions of the State from enacting anti-trapping ordinances. By a four-to-one vote the Town Board passed a Firearms and Traps Ordinance which bans the discharge of firearms, setting of traps and use of the long-bow within the Town of Bedford unless it is done by a landowner on his or her own property or by a person possessing the written permission of the property owner.

ARLR has been informed by Defenders of Wildlife (1244 19th Street, N.W., Washington, D.C. 20036, 202-659-9510, Margaret G. Morrison) that they are in the process of compiling a state-by-state survey on this bothersome preemption problem, examining whether local government units can or cannot enact anti-trapping ordinances, especially if those ordinances are more restrictive than the State's own laws and regulations. As soon as this information is available, ARLR will inform its readers. The Defenders of Wildlife are compiling this material as part of a larger work: a manual for citizens seeking to bring about changes in trapping laws. Given the growing movement to ban trapping on a local level, the preemption problem assumes even greater significance than it has had up until now. It may very well be that the key to successful local action against trapping lies in solving whatever preemption problems may exist. ARLR is very interested in this issue and would greatly appreciate whatever information its readers are able to provide.

NORTH CAROLINA (Prof. William A. Reppy, Jr., Duke University School of Law, Durham, North Carolina 27706, 919-684-3804).

ARLR is advised by Professor Reppy that the North Carolina Legislature is not now considering any animal welfare legislation.

TENNESSEE (Deborah H. Scarlett, 124 Gilbert Lane, S.E., Knoxville, TN 37920)

ANIMAL CONTROL: S.B. 908, introduced by Sen. Edward Davis, to allow persons in Shelby County to shoot and kill blackbirds with birdshot on own property or on another's with owner's permission for a certain period. Status: Held on Senate desk. Companion H.B. 618, introduced by Reps. David A. Shirley and Barry E. Sterling. Status: Passed House as amended 4/28/81.

S.B. 1162, introduced by Sen. Ben W. Hooper II, an Act relative to "The Dog and Cat Humane Death Act," to provide for the use of barbiturates in the killing of animals in addition to the traditional methods. Status: Passed Senate on 2/3/82. Referred to H. Agriculture Committee of which Rep. Roscoe Pickering is chairman.

S.B. 2109, introduced by Sen. Edward C. Blank II, to authorize counties to impose a privilege tax on owning, keeping or harboring dogs and cats to provide for rabies control, strays, and other programs for humane treatment of such dogs and cats. Referred to State and Local Government Committee of which Sen. Avon N. Williams, Jr. is chairman.

FISH AND GAME: S.B. 289, introduced by Sen. Anna Belle Clement O'Brien, to provide for the protection of catfish as a game fish. Referred to Calendar Committee of which Sen. Edward Davis is chairman. Companion H.B. 1065, introduced by Rep. James M. Henry. Referred to a subcommittee of Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

S.B. 1275, introduced by Sens. Edgar H. Gillock, Ray C. Albright and Milton H. Hamilton, Jr., to amend and repeal various game and fish laws; imposes regulations on the buying or selling of red fox hides, furs or pelts; provides for the Tn. Wildlife Resources Agency to assess proposed bills and resolutions to determine whether any such bill or resolution does not provide for the protection and preservation of game and fish. Status: Passed Senate on 4/27/81. Received in House on 4/28/81. Held on House desk. Companion H.B. 1182, introduced by Reps. U.A. Presnell Moore and James R. McKinney. Referred for study to subcommittee of Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

S.B. 2086, introduced by Sens. Edward Davis and Edgar H. Gillock, to amend T.C.A. 51-437 provisions governing the taking of fish, mussels and other aquatic life other than game fish; to provide for the quick release with the least possible injury of all wildlife taken accidentally in connection with a commercial operation. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. On Committee Calendar for 3/3/82. Companion H.B. 2141, introduced by Rep. Ivory O. Hillis, Jr. Referred to the Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

S.B. 2087, introduced by Sen. Edgar H. Gillock, to provide for punishment as principals for those aiding and abetting violations of the game and fish laws. Referred to Energy and Natural Resources of which Sen. Edgar H. Gillock is chairman. On Committee Calendar for 3/3/82. Companion H.B. 2143, introduced by Rep. Ivory O. Hillis, Jr. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

FUR TRADE: S.B. 2032, introduced by Sens. Ray C. Albright and Edgar H. Gillock, to repeal T.C.A. 51-515 which governs the lawful purchase or sale of red fox hides, furs or pelts in certain counties. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. In Committee Calendar for 3/3/82.

HUMANE TREATMENT: H.J.R. 246, introduced by Reps. Sharon Bell and S. Thomas Burnett, to create a committee to determine the feasibility of regulating the household pet industry, to insure humane treatment of household pets which are bred or held for the purpose of sale. Referred to Agriculture Committee of which Rep. Roscoe Pickering is chairman.

S.B. 1157, introduced by Sen. Victor H. Ashe, to enact the "Pet Shop Licensure Law;" to provide for the promulgation of rules and regulations to insure the humane treatment of pets. Referred to Government Operations Committee Calendar of which Sen. William H. Ortwein is chairman. On Committee Calendar for 3/3/82. Companion H.B. 831, introduced by Rep. Sharon Bell. Referred to Agriculture Committee of which Rep. Roscoe Pickering is chairman.

HUNTING: S.J.R. 41, introduced by Sen. Robert Odell Burleson, to direct the TN. Wildlife Resources Agency to study the feasibility of allowing hunting on state-owned land. Status: Returned by Governor w/o signature on 5/6/81.

S.B. 1411, introduced by Sen. Ben W. Hooper II, to amend T.C.A. 51-420 by providing for closed season on raccoons during the months of March, April and May. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. Companion H.B. 897, introduced by Rep. Dennis M. "Mike" Robertson. Status: Passed House on 4/15/81. Received by Senate on 1/25/82. Held on Senate desk.

S.B. 1626, introduced by Sen. Ben Longley, to provide for a closed season upon foxes in McMinn County; to permit foxes to be chased with dogs unless the wildlife resources commission provides for a closed season for the protection of the species. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. Companion H.B. 1758, introduced by Rep. Clyde B. Webb. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

S.B. 2030, introduced by Sens. Ray C. Albright and Edgar H. Gillock, to make unlawful the hunting of bear, deer or

wild boar with certain weapons and with shotguns loaded with more than one solid ball. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. On Committee Calendar for 3/3/82.

S.B. 2088, introduced by Sen. Edgar H. Gillock, to amend T.C.A. 51-417 to make it unlawful to hunt deer with the aid of artificial light from vessels in any waters of the state as well as from motor vehicles; to increase the penalties provided for in T.C.A. 51-429. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. On Committee Calendar for 3/3/82. Companion H.B. 2147, introduced by Rep. Ivory O. Hillis, Jr. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

TRAPPING: S.B. 2275, introduced by Sen. Ernest Crouch, to prohibit the use of any steel leg-hold trap in Rhea County. Status: Passed 1st consideration on 2/18/82. Companion H.B. 2012, introduced by Rep. Bill Carter. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis is chairman.

WILDLIFE PRESERVATION: S.R. 29, introduced by Sen. Edgar H. Gillock, to create a Senate committee to study the fish and game laws of Tennessee and the TN. Wildlife Resources Agency. Status: Introduced and Adopted (voice vote) on 5/27/81.

S.J.R. 94, introduced by Sen. Edgar H. Gillock, to provide for a special joint committee to study the game and fish laws of Tennessee and the Tennessee Wildlife Resources Agency, such laws said to be to safeguard wildlife for the hunter, fisherperson, and all citizens of Tennessee to enjoy for both game and non-game purposes. Status: Adopted by Senate on 4/27/81. Referred to House Calendar and Rules Committee of which Rep. Elbert T. Gill is chairman.

S.B. 2083, introduced by Sens. Robert Odell Burleson and Edgar H. Gillock, to prohibit wanton waste of wildlife by requiring reasonable attempts to recover killed or wounded wildlife. Referred to Energy and Natural Resources Committee of which Sen. Edgar H. Gillock is chairman. On Committee Calendar for 3/3/82. Companion H.B. 2144, introduced by Reps. Ivory O. Hillis, Jr., Rabon W. "Ray" Johnson and Robert S. Stallings. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

THE AGENCIES

ENDANGERED SPECIES ACT: BOBCATS

The *Federal Register*, Volume 47, No. 6, Monday, January 11, 1982, page 1242, announces the Fish and Wildlife Service's determination that the bobcat is inappropriately in-

cluded on Appendix II of the CITES Treaty. It also announces the Service's decision to submit a proposal to remove United States and Canadian populations of the bobcat from Appendix II. It is there stated that "Information obtained from the states by the former Endangered Species Scientific Authority and the Service shows that the bobcat is not potentially threatened with extinction unless international trade is controlled and such control is unnecessary in order to effectively regulate international trade in other species included in CITES appendices."

ANIMAL WELFARE ACT: RULEMAKING PETITION

The Humane Society of the United States conducted a year-long study of the Research Facility Annual Reporting System, as established by the Act. As a result HSUS has filed with the Agriculture Department a lengthy Petition for Rulemaking and Collateral Relief which, among other things, seeks definition of the terms "pain" and "distress" and "routine procedures," and seeks a requirement that research facilities explain adequately why pain relieving drugs are withheld from animals used in experiments acknowledged to cause pain and distress.

FISH AND WILDLIFE SERVICE: PREDATOR CONTROL

President Reagan has revoked (Executive Order 12342 of January 27, 1982) Executive Order No. 11643, which President Nixon had signed, barring the federal use of predator control poisons. The action will be useful to many western ranchers who will benefit from the federal government's help in protecting their private investments from predators. The immediate effect will be to permit the Interior Department to use carbon monoxide cartridges to fumigate coyote dens. The longer range possibilities include a return to the use of Compound 1080, a consequence desired by many ranchers and stockmen. However, 1080's use is still prohibited by an EPA ban. EPA is presently holding hearings to reconsider the ban against Compound 1080.

INTERNATIONAL WHALING COMMISSION: BOWHEAD WHALES

Even though the bowhead whale is endangered, Eskimo whalers along Alaska's West and North Coasts will be allowed to harpoon 19 of them this year under an agreement reached between federal officials and the Alaska Eskimo Whaling Commission. Readers of ARLR will recall that last year agreement was reached between the parties allowing the Eskimos to manage their own hunts, with technical assistance from the National Oceanic and Atmospheric Administration. The recent agreement is an extension of the earlier one. In 1980 the International Whaling Commission set limits allowing Eskimos to strike, or harpoon, up to 65 whales and land 45 in the 1981-82-83 seasons combined.

ANIMAL WELFARE ACT: NEW YORK CITY ZOOS

The Department of Agriculture's Animal and Plant Health Inspection Service announced recently that it has charged New York City, a U.S.D.A. — licensed animal exhibitor under the Animal Welfare Act, with violations of the Act arising out of the City's failure to provide adequate fencing for certain animals at the Flushing Meadows Zoo. (This seems like a complaint that the barracks were unpainted at Auschwitz).

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

While there were never an abundance of books, articles, etc., published on the subject of animal rights law, nor is there now, nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p. 9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention. So far the response to our previous requests for reviews has been good, and we hope to have even more in future issues. Persons interested in doing reviews should check with ARLR's editor first, to ascertain that the proposed book or article has not been assigned to anyone else. Reviews, of course, reflect the reviewers' opinions and not necessarily SAR's, ARLR's or the editor's.

ANIMAL RIGHTS BIBLIOGRAPHY

Among the more significant blows struck recently for the cause of animal rights is the prodigious bibliographical reference book compiled by SAR director Professor Charles R. Magel. It contains thousands of entries of books and articles in the English language and is doubtless the most complete book of its kind in existence. *A Bibliography on Animal Rights and Related Matters* is published by University Press of America, Washington, D.C. and costs \$28.50. Available from SAR, Professor Magel's book is worth its weight in gold to everyone in the animal rights movement.

MEASURE OF DAMAGES

8 A.L.R. 4th 1287 contains a brief but important annotation entitled "Measure, elements, and amount of damages for killing or injuring cat." In addition, the article contains reference to nearly a dozen other, related annotations.

BOOK REVIEW: THE QUESTION OF ANIMAL AWARENESS: EVOLUTIONARY CONTINUITY OF MENTAL EXPERIENCE (Donald R. Griffin, The Rockefeller University Press, 1981, \$13.95, 209 pp., reviewed by Joan Gilbert).

If you've assumed that argument about animal reasoning ended decades ago, Griffin has a sad surprise: most scientists still question whether animals even think and many cozily insist they feel no fear or pain, at least not enough to trouble conscience in any use of animals for fun and profit. For the sake of continued illusion of infallibility and untrammelled use of lab animals, apparently, science does not mind sharing the reasoning of hunters, trappers and promoters of dog fights and rodeos.

Ergo, in any legal matter involving animals and requiring scientific authority, beware. Not all in that wide field are open-minded logical thinkers, dedicated to finding the truth and indifferent about where chips fall in exposing it. Here are some colleague statements Griffin quotes:

"Most people are determined to hold the line against animals . . ." Roger Brown. ". . . if it were to be established . . . that animals differ from men only to degree and not in kind, we would then no longer have any moral basis for treating them differently from men . . ." W.J. Adler. And Griffin adds: "Followed to its logical conclusion, this argument implies . . . more dangerous potential than nuclear physics . . ."

Griffin, a professor at Rockefeller University in New York City and president of the Guggenheim Foundation, is himself a member of the scientific community. In his work with bats and other animals he coined the word echo-location and earned the unofficial title, "father of the field." His critique of colleagues is not unqualified, bitter or contemptuous; he's objective throughout, quoting also some of those who agree with him, and he often says "we" regarding collective attitudes past and present. He tells how his own early work was hampered by acceptance of popular assumptions about animal capabilities and refers to how "our simplicity filter" protected against unwelcome ideas.

However, gathered randomly from the text are his descriptions of how some of the country's best minds operate when challenged about animal awareness: ". . . begging questions . . . refusing to consider the issue . . . making questionable and unqualified assumptions . . . holding to inflexible frames of reference . . . giving arbitrary low value to whatever is difficult to study . . . unscientific value judgements . . ."

Griffin stays away from moral problems caused by non-human animals' ambiguous rank in our ethical system. The only legal affair he touches is KoKo, a California zoo gorilla loaned for a program in which she was taught to use sign language and who, in an IQ test for mute humans, scored among those of modest intelligence. When the zoo demanded her return, the question arose of whether or not this creature, who could communicate better than many human retardants, was still property.

Griffin believes there is more to animals than is convenient or comfortable to admit. This feeling comes from his own work and from his study of work done with "talking" primates and with communication necessary for the complex teamwork of honey bees and ants. He reviews these studies, quoting and answering their detractors.

The final comment is that it is conceited of us to keep saying no mental experience but our own could exist or have importance. He urges "agnostic openmindedness" as a first step toward finding out the truth about animal thinking and says "it is time" to do this. Since he is speaking mainly to pure scientists, though, the purpose he holds forth is so "a truly experimental science of cognitive ethology" could develop.

Unscientific others will have to steer mankind though the horrifying danger that, facing truth, our consciences will dictate changes requiring great bravery. It's hard to imagine his suggestions as to how truth might be found ever being followed and it's even harder, after his picture of a community fond of "quibbling ideas to death," to visualize the concession that humaneists were right all along, that animals do, indeed, feel pain and pleasure, fear and hope. It's very easy to see science forever refusing to accept findings; retreating forever into jargon, and the public continuing to buy that solemn pronouncement, "There is no conclusive evidence that . . ."

By whose judgement, inconclusive?" is seldom asked, or "Is any evidence, in fact, being sought? By whom?" The situation of animals seems unlikely to change much while science, like religion before it, is blindly worshipped. Meanwhile, whoever needs a scientist to confirm that animals do indeed, think and suffer, must seek out his man — or woman — with care, and can use this book for help in anticipating arguments on both sides.

ANIMAL RIGHTS AND HUMAN MORALITY

Bernard E. Rollin's book by the above title is reviewed by Professor Harlan B. Miller in the January-March 1982 issue of the *International Journal for the Study of Animal Problems*. *Animal Rights and Human Morality* was also reviewed in the January 1982 issue of *ARLR*.

THE QUESTION OF ANIMAL AWARENESS. EVOLUTIONARY CONTINUITY OF MENTAL EXPERIENCE.

ANIMALS ARE EQUAL: AN EXPLORATION OF ANIMAL CONSCIOUSNESS.

The same issue of the *International Journal for the Study of Animal Problems* contains a review of each of these two books. The former is also reviewed above.

THE GENESIS OF CONTEMPORARY ANIMAL RIGHTS THOUGHT

In a few very interesting pages the January-March 1982 *International Journal for the Study of Animal Problems* (Vol. 3, No. 1) addresses the topic of "Animal Liberation —

The Modern Revival" by A.N. Rowan and "The Oxford Vegetarians — A Personal Account" by Peter Singer. Dr. Rowan raises the question of why the "current interest in animal welfare and animal rights . . . should have suddenly burst upon the scene and . . . and why so many of the protagonists seem to have been raised and/or educated in Britain." Professor Singer's account constitutes at least a partial answer to Dr. Rowan's question.

ENDANGERED SPECIES ACT REAUTHORIZATION

The Center for Environmental Education (624 Ninth St. N.W., Washington, D.C. 20001) has produced a "Endangered Species Act Reauthorization Bulletin," based on the belief that "the American people want a strong Endangered Species Act." The Bulletin is aimed at explaining why species are needed, how ESA works, and how individual Americans can help keep it strong. It is the Center's intention to issue succeeding issues of the Bulletin until ESA is reauthorized. It is an interesting publication, covering such topics as "The Value of Species," "Species Losses," "How the Endangered Species Act Prevents Species Extinctions," "The Endangered Species Act Reauthorization," "Defending the Endangered Species Act," and "What You Can Do."

BULLETIN BOARD

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

STATE LEGISLATIVE CORRESPONDENTS SOUGHT

Readers will have noticed that commencing with this issue of ARLR our listing of state legislative information prominently identifies which state the legislation comes from. Henceforth, we intend to try to handle the state legislative material in the same way that we have lately been handling the federal material: by keeping a running account of all animal rights legislation pending in each state, updating as we go along.

To succeed in this goal, it is essential that we delegate the initial preparation of the state legislative material to one person in each state, with the added responsibility of keeping us updated quarterly as the legislative situation changes. So, on a first-come first-served basis, ARLR is seeking volunteer state legislative correspondents (who will be given credit, by name and address, as the preparers of the information that they provide).

ENCYCLOPEDIA OF ANIMAL RIGHTS LAW

One of the principal medium-range goals of the animal rights law movement must be to make animal rights law a recognized and discrete field within our profession. Animal rights law must take its place along with criminal law, corporate law, real estate law, environmental law, securities law, antitrust law, immigration law, and all the other specialized fields of legal endeavor which cumulatively make up the mosaic of contemporary American law. Until that happens, animal rights law will remain in the closet and our impact will be far less than it can, and must be.

Several important activities are needed:

- Lawyers must get out there and litigate, and they must draft legislation;
- A national organization of such lawyers must begin functioning and must act as a clearinghouse for personnel and information;
- Conferences like the one just concluded, and other meetings and symposia where animal rights lawyers can be trained, must be held consistently and grow broader in scope;

But important as these kinds of activities are, probably none is indispensable. What *is* absolutely essential, however, is a serious, comprehensive literature of animal rights law — books, articles, reviews, statutes, cases — the centerpiece of which must be a virtual encyclopedia of contemporary animal rights law. There must be a readily available resource for the legal profession comprehensively presenting exactly what animal rights law *is*. Today, there is nothing even remotely like that, anywhere.

The creation of an encyclopedia of contemporary American animal law is not nearly as formidable as at first it might seem. Indeed, it is not at all difficult.

First, a natural division exists between the laws of the federal government and the states, thereby making the task considerable more manageable organizationally.

Second, although there are perhaps a dozen or so principal federal statutes as well as others of lesser importance, there are dozens of lawyers interested in animal rights law — some of whom have already demonstrated that they possess the requisite skills and experience for such a project, thereby substantially minimizing the onerousness of the task for each individual contributor.

Third, each contribution to the encyclopedia of contemporary American animal law can be prepared pursuant to a pre-designed outline, thereby saving each contributor virtually all of the time-consuming analytical work which is always a necessary antecedent to every serious writing project.

Fourth, as to the federal statutes, the nature of the research is normally not difficult, it is readily available, and it is almost always of manageable proportions.

Therefore, since an encyclopedia of contemporary American animal law is essential to our movement, and since with some work one can be written, ARLR's editor proposes the preparation of a volume (or two, if necessary) containing the *federal* laws. (If that can be done, later the more difficult state laws can be tackled.) ARLR's editor will be the editor, and will write an introduction to the book. His efforts and all contributions will be gratis, and SAR will be offered the opportunity to publish the completed book. (If it is published by anyone else, any remuneration will be contributed to SAR).

Each applicable federal statute will comprise a separate chapter of the book (it may be useful to combine a few statutes) and they will be structured as follows:

1. A brief statement of what the statute was/is intended to accomplish;
2. Going back to the beginning, the concrete events, situations, stimulate, etc. which caused the legislation to be introduced;
3. the exact bill that was introduced, when by whom, etc. (including all amendments);
4. the complete legislative history (summarized, where necessary, but without loss of content), including hearings, debates, amendments, conference committee reports, etc;
5. circumstances (e.g., political) surrounding enactment and executive approval, including messages, statements, ceremonies, etc.;
6. in exact chronological order, where possible, all administrative and case-law application and interpretation of the statute, and all amendment(s) thereof and all application and interpretation of the amendment(s);
7. ending in a complete summary statement of exactly what the law actually means today;
8. then, as an appendix to the chapter, the statute's full text, and a bibliography of legislative materials and applicable cases.

Concern will be with what the law is, not what it ought to be. There should be no value judgments.

Length will be determined by the necessities of each statute.

The writing level should be between professional-technical and first-class journalism-geared for the intelligent layperson.

The citation in footnotes to all primary sources for all propositions will be indispensable.

The timetable shoots for finished, typographer-ready copy no later than August 31, 1982, 8 months from now.

Among the major federal statutes which will have to be covered are: Endangered Species Act, Lacey Act, Humane Slaughter Act, Marine Mammal Protection Act, Twenty-Eight Hour Law, Laboratory Animal Welfare Act, Horse Protection Act. In addition, there is legislation protecting birds, whales, fish, etc., and there are treaties, too. Then there is the lesser federal legislation.

This undertaking will "Jell" when there are commitments for the major federal statutes, on a first-come, first-served basis. The Endangered Species Act has already been spoken for.

there is only one caveat: A project like this necessarily involves a considerable amount of mutual reliance. People come aboard on the usually tacit understanding that others will not only join, but that they will live up to their commitments. Too often some people do not deliver, leaving others in the lurch. Nearly everyone who is serious about animal rights law already has more to do than they can. So it should be expressly understood that before anyone volunteers for this important writing project, they must be certain that they can do it, and that they will.

The project moves ahead slowly. Commitments have been made for the Endangered Species Act, the CITES Treaty, the Animal Welfare Act, and the Horse Protection Act. For details see ARLR January 1982.

THE WAGES OF SIN

While on a hunting trip a Greene County, New York man climbed over a tall barbed-wire fence and braced himself with his .308-caliber semiautomatic rifle. He apparently slipped on a rock, the gun discharged, and a single shot into the chest killed him.

In mid-February, United Press International reported from Texas that a 23-year-old hunter wounded three of his companions, apparently for no reason, and then was shot to death by one of the wounded men. According to the local District Attorney, "it would appear one man — the deceased — started shooting everybody and they had to kill him."

In the closing days of 1981, according to the Associated Press, a 15-year-old Massachusetts boy committed suicide with a .22-caliber rifle after the gun discharged and wounded his best friend as the two boys were fox hunting.

"THE EXPLOITERS AMONG THE DEFENDERS," continued.

Jacob Lipitsky's statement by the above title, published in ARLR for January 1982, drew two responses. Each agreed that the issue raised by Mr. Lipitsky needs airing. Each disagreed with Mr. Lipitsky's position. Because SAR and ARLR believe that the motivation for one's dedication to the cause of animal rights is an important, if not essential, ingredient in one's actions, we are publishing one of the two statements. We have chosen the shorter one only because of space limitations. The statement was written by Mr. Doug Moss, co-founder of Animal Rights Network and co-editor of Agenda which Mr. Moss characterizes as "an independent animal rights magazine."

Jacob Lipitsky's letter entitled, "The Exploiters Among the Defenders," (Jan. 1982 ARLR), touches

on several areas which indeed warrant some discussion: *How* do we see animal rights in relation to other social change issues? *What* are the social and political prerequisites (if any) for progress in the animal rights field? *Why* do some activists and groups stress liaison with other movements? Perhaps I can provide some insight and clarification here:

Understanding the historical processes of social change is paramount to effective action in any issue area. The typewriter was not invented before the alphabet, the automobile not before the wheel. Similarly, it is unlikely that animal liberation will be reached before some semblance of humane-ness is reached within the boundaries of the human species. I do not put this forth because of a preference for human well-being over animal well-being, nor do I seek to use the animal rights movement to promote other political aims. It is simply an historical fact which may or may not be a bitter pill for animal rights activists to swallow. But consider the following:

Are we going to liberate fish before Native Americans get their just share of the land that was stolen from them by violence? Are we going to eliminate vivisection while one out of four Americans develops cancer each year? Are we going to solve the pet-overpopulation problem, with a pet in every home, while the poor, overwhelmingly Black and Hispanic, are still struggling to feed themselves? And, are we going to outlaw meat-eating and liberate animals forever while nuclear warheads still loom threateningly over every man, woman, child, and animal on earth? Mr. Lipitsky seems to think so but I believe this is a grave error which can only further the image of naivete that our movement already has.

Fifty-cents of every tax dollar funds military expansion. This is the military that slaughters people in El Salvador and in other depressed countries where U.S. corporate profits take preference over human lives. In addition, this activity represents the single most inflationary entity within the human economy, indirectly contributing more to social discontent than any other entity. This inhibits progress in the animal rights movement as it does in other humane movements, and therefore warrants challenge by *all* social change activists. The military possesses the instruments of destruction that can kill us all, thereby rendering all other humane struggles, including ours for animals, virtually meaningless — that is, unless we recognize it as the threat that it is and include it on our list of issues to be dealt with. Yes, the military purports to defend “freedoms,” but does not the budget-cutting it demands effectively take from us the very *real* freedoms (health care, fair housing, education) that it is supposed to be defending?

For these reasons, the military experimentation issue is a favorite of many activists today. It is also preferred as a target issue for other reasons pertaining to strategy and simple common sense. The use of animals to perfect methods of warfare represents a clear contradiction to the “human benefit” justifica-

tion for animal experimentation because its purpose is to kill. True, that most doctors favor vivisection does not discredit the whole of medicine, but unlike the military, medicine at least has the intention, however “muddled,” of bettering the human condition. The military cannot reasonably make that same claim. No one is suggesting that activists drop everything else of importance to jump on this particular issue alone. But it does present us with an opportunity to put animal rights in perspective (for the benefit of skeptics) and at the same time show that we “animal lovers” care about all life, not just non-human animals.

I do not know of anyone who has made public comparisons of capitalism with socialism or communism in the context of animal rights. However, it is *capitalism* we live in, and *capitalists* (factory farmers, research institutions, hunting and trapping industries) we are dealing with in the course of our own struggles in this hemisphere. We may pass judgement on the system we live in, but only on its own merits (or lack of) as it pertains to our struggle, and not by comparison to what exists elsewhere.

The discussion of liaison with other movements is another bone of contention articulated in Mr. Lipitsky's letter. Many feel, however, that at this early stage of movement-building, we could benefit greatly by drawing in those with experiences in social change work. A well-rounded understanding of the bigger picture which includes the domination of animals as *one of many entities*, is needed. Yes, other progressive movements are often embarrassed by association with animal rights. But this is usually due to the unwillingness of many animal rights activists to see beyond their one issue of concern.

We fight for animals (not people), we say, because animals are powerless and cannot speak for themselves. This is true, yet non-human animals are not the only victims of oppression who are powerless. The fact that women, third-world people, racial minorities, and unemployed workers are *still* fighting for their rights is evidence enough of *their* powerlessness. And although they may not be cute, furry creatures, they are still worth fighting for, even if one's only motivation is to set the stage for animal liberation.

HUMAN/COMPANION ANIMAL BOND

As previous issues of ARLR have made clear, one important key to an increased measure of damages for the intentional or negligent death or injury of owned animals is the relationship between those animals and the individuals with whom they share their lives. In that regard, the International Journal for the Study of Animal Problems, referred to above, contains a brief but illuminating report on the First International Conference on the Human/Companion Animal Bond, held at the University of Pennsylvania on October 5-7, 1981. The report is worth reading, and the underlying material presented at the Conference appears to be fascinating.

POLITICAL ACTION COMMITTEES

No one active in the animal rights law movement needs to be told about the powerful political lobbying activities of those on the other side. Medical associations, veterinary associations, animal dealers, experimentors, drug companies, the cosmetic industry, and many more spend countless sums of money and tens of thousands of hours influencing elected representatives at every level of government. Much of the time these efforts are channeled through so-called "political action committees." Long identified with groups like organized labor, political action committees have lately become highly specialized and more and more visible. They have also become very effective, as not a few liberal former United States Senators will quickly attest.

Therefore, it comes as welcome news indeed that the animal rights movement is beginning to move into the Political Action Committee side of the legislative battle.

One such organization appears to be Minnesota Voters for Animals and the Environment (1471 Barclay Street, St. Paul, Minnesota 55106). Newly formed, its goal is stated to be the education of "citizens as to which candidates for various political offices support our goals." Issues of concern to MVAE are the following:

- Prohibition of the leghold trap.
- Conservation of wildlife habitat, especially wetlands.
- Repeal of the state law which mandates that public dog/cat pounds turn strays over to experimental researchers.
- Strengthening and enforcement of clean air and clean waters laws.
- Preservation and protection of endangered and threatened wildlife.
- Protection of specific animal species such as black bears, timber wolves, bobcats, lynx, mourning doves, and many others.
- Establishment and enforcement of legislation ending the abuse and providing for the proper treatment and care of domestic animals.

One of the most interesting things about political action committees is how easy they are to establish, to operate and to use to maximum advantage. In addition, the tax aspects are not quite what most people believe them to be.

Another animal rights political action committee is California's PAWAC (Political Animal Welfare Action Committee), referred to in the Bulletin Board Section of the January 1981 issue of ARLR.

Virtually all of the major lobbying organizations in California's capitol have political action committees. A political action committee is nothing more than a device to channel funds towards political candidates who are running for political office in such a way so as to maximize the visibility of the source of the funds. Money is essential to run a political campaign and a candidate will be aware

of those organizations which have contributed to his or her campaign. At present, the animal welfare movement has no means of supporting candidates in any way which will provide visibility to the movement. PAWAC was designed to remedy this omission. PAWAC was formed originally only to support or oppose candidates for statewide office. Political action committees are not ordinarily formed as corporations but ordinarily exist as committees or, in legal terminology, as unincorporated organizations. Such a committee ordinarily has a Board of Directors and certain officers, the most important of whom is the Secretary-Treasurer. The Secretary-Treasurer has the legal obligation to make certain that the committee files all the required statements under California law and to assure that contributions are properly identified and proper books are kept. There are upward limits as to the amount the committee can contribute toward one candidate but they are sufficiently high to assure that no violation ever occur. If more than \$10,000 is contributed toward any one individual candidate, then certain special procedures have to be followed. For purposes of California law, a committee only becomes a political action committee if it either collects \$500 or more in a calendar year or expends \$5,000 or more in a calendar year.

The forms which must be filed include the following:

The committee will have to file a "Statement of Organization" within 10 days after it becomes a political action committee. This document is filed with the Secretary of State.

In addition, the committee will have to file a number of disclosure statements, evidencing persons who have contributed money to the committee, the amounts contributed, and candidates for whom the committee has given money in support. Such statements have to be filed 40 days before an election, 12 days before an election, and 65 days after the election.

When Proposition 9 was passed, the voters voted in many restrictions in order to minimize the influence of lobbyists and others who might unduly pressure the Legislature. Lobbyists had to register and, one key restriction prohibited lobbyists from making more than \$10 in contributions to any candidate in any one calendar month. This restriction also meant that a lobbyist could neither be an employee of a political action committee or be on the Board of Directors of a political action committee. However, the California Supreme Court very recently struck down this prohibition as violating a lobbyist's First Amendment right of association. This means that PAWAC, may freely involve lobbyists on its Board and may pay lobbyists if it wishes.

A special tax status is given to political action committees under both the federal and state income tax laws. To qualify for tax exempt status, the political action committee should be organized "exclusively to support political candidates." If so organized, the political action committee does not have to pay income tax on any of the amounts received from members of the public, even though it may not have expended those amounts within the calendar

year. It is theoretically possible that the political action committee could pay federal and state income tax; however, it would only owe such income tax on amounts of money which have resulted from investments which have been made based upon contributions received. In order to owe any federal or state income tax, it would be necessary for the political action committee to generate sufficient investment income so that if it were a corporation it would similarly be taxed. The likelihood of this happening is again remote, to say the least. One of the advantages of not forming a political action committee as a corporation is that it will not be necessary to expressly file either with federal or state government any applications for tax exempt status. If PAWAC was formed as a corporation it would have to expressly apply.

Perhaps the most important item to be discussed at an initial organization meeting will be the methods available to assure adequate funding. Political action committees are typically adjunct organizations to trade associations. Trade associations have an already established membership or constituency, the mailing list of which is invariably given to the political action committee. In contrast, PAWAC was not the brainchild of any one animal welfare organization and in fact was intended to be as broadly representative as possible. For this reason, it was essential that PAWAC's organizers give serious consideration to the means by which PAWAC could become known to persons who are likely to contribute money in its support.

ARLR has been informed by Long Island, New York, attorney Raul E. Szabo that he has incorporated an organization named Animal Rights Political Action Committee, Inc. as a Not-For-Profit corporation under the laws of the State of New York.

TAX-EXEMPT AND GOVERNMENT-SUBSIDIZED VETERINARY SERVICES

No one who reads this publication needs to be reminded that the movement for publicly funded and operated spay-neuter clinics and related services for animals are growing by leaps and bounds. Nor does it appear that the American Veterinarian Medical Association needs to be reminded. Last fall that Association sponsored a Conference on the Development of Government-Subsidized Veterinary Services which was attended by 90 persons. The purpose of the Conference was to examine the issues raised by the development of government-subsidized veterinary services and to attempt to identify possible governmental actions concerning such organizations. The implications for animal rights are obvious.

AVMA AND ANIMAL RIGHTS

About a year and a-half ago the American Veterinary Medical Association began investigating the possibility of establishing a standing committee on animal welfare. The AVMA Board has now authorized a standing committee of the Board on Animal Welfare. *The Journal of the American*

Veterinary Medical Association (179(a):753, 1981) reports that the eight-member Board Committee will, over the next two years, review and catalogue publications on animal rights, factory farming, and the use of live animals in research and industry. They will also attend national meetings of animal welfare groups and identify and develop position papers for the various areas where the AVMA may wish to become involved. This would appear to be clear recognition on the part of the AVMA that the animal rights issue is one of central importance to their organization, and a movement that now must be reckoned with.

"SPORT" HUNTING STUDY

Society for Animal Rights has published a study entitled "Surplus Population: A Fallacious Basis for Sport Hunting," by Professor David S. Favre and Gretchen Olsen. As Helen Jones has said, "Hunters often defend their actions on the ground that they are doing a noble deed by killing surplus wildlife." The study, underwritten by SAR, really demonstrates the fallacy in such an assertion. "Surplus Population: A Fallacious Basis for Sport Hunting" is an indispensable tool for those who would take any legal action against hunting.

ACTION FOR LIFE CONFERENCE

Action For Life (Box 5888, Bethesda, MD 20814, 301-530-1737, 415-474-4020) has announced a National Training and Mobilization Conference for Animal Rights and Vegetarian Action," to be held 15-19 April 1982 in San Francisco.

EXPERIMENTATION

It has been reported that in connection with the Westinghouse Science Talent Search, a national competition among high-school seniors, vertebrates are not allowed to be removed from their environment.

SPAY/NEUTER CLINICS

Society for Animal Rights, which was responsible for the first statewide spay/neuter clinic program in America (in Connecticut), has begun a campaign to add two more clinics in that state. In May or June SAR will sponsor a West Coast Symposium devoted to this issue.

ATTORNEYS FOR ANIMAL RIGHTS

AFAR will take a policy position against the introduction of Compound 1080 as a method of predator control. A letter will be sent to state and federal officials.

AFAR has expressed an interest in co-sponsoring the SAR/ARLR 1982 Second National Conference on Animal Rights Law, and a committee is now actively investigating the prospect.

A plan is being considered which would provide for the organization of local AFAR chapters and define their relationship to a national AFAR umbrella organization.

AVAILABLE RESOURCES

SPCAs AND SHELTERS: NEGLIGENCE COMPLAINT

The complaint in the Hennepin County Humane Society case referred to above is available from SAR.

CRUELTY: MICHIGAN HORSE CASE

The Circuit Court and Court of Appeals opinions in the Kent County horse cruelty case referred to above are available from SAR.

HUNTING/TRAPPING: Snares

A copy of the snaring regulation (No. 2080) referred to above is available from Friends of Animals and Their Environment, P.O. Box 7283, Minneapolis, Minnesota 55407.

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

The complaint, answer and various other papers in connection with the 42 U.S.C. 1983 case referred to above are available from SAR.

HSUS ANIMAL WELFARE ACT PETITION

The Petition for Rulemaking and Collateral Relief submitted to the Agriculture Department by HSUS, referred to above, is available from HSUS at 2100 L Street, N.W., Washington, DC 20037, 202-452-1100.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

— EDITOR'S COMMENT —

Viewed individually, attitudes in the popular press and in professional journals about animal rights generally, and animal rights law in particular, are usually interesting and sometimes even encouraging. However, cumulatively a wider picture is beginning to emerge.

For example, in the last couple of months alone, the following were among the animal rights and animal rights law subjects emanating from such publications:

Widely syndicated columnist Jack Anderson devoted an entire story to the squalor and suffering endured by the hapless victims of "puppy mills."

The Wall Street Journal ran a lengthy front page story, callously entitled "Livestock Lib" and subtitled "Protest Grows on Way Many Farmers Confine Pigs, Hens, Veal Calves," and subtitles "Animal Rightists Seek to Ban Tight Pens, Neck Chains and Cutting Off of Tails."

United Press International put out a story from Washington, D.C., acknowledging that farm leaders are becoming increasingly aware of the growing need to address animal welfare issues.

The June 1981 issue of *California Veterinarian* contained an article "Animal Rights, Animal Welfare and the Law."

The January 1982 issue of the American Psychological Association *Monitor* contained a lengthy front page article entitled "Animal Research: Striking a Balance," and subtitled "Taub Conviction revives centuries-old debate."

On January 17, 1982, *The New York Times* carried an article entitled "Study Finds Public Knows Little of Wildlife." And there is more.

Importantly, the issue of animal rights is beginning to assume larger proportions in the veterinary profession. Readers will recall that in the October 1981 ARLR mention was made of the formation of the Association of Veterinarians for Animal Rights. The Association's organizer, veterinarian Neil C. Wolff, DVM, was able to place a letter-to-the-editor in the February, 1982, issue of the *Journal of the American Veterinary Medical Association*. Dr. Wolff's letter is important not only for what it says, but for what it implies. It is as follows:

Dear Sir:

As a director of the newly formed Association of Veterinarians For Animal Rights, I applaud AVMA President Jacob E. Mosier's recent statements regarding animal rights (JAVMA, Sept. 15, 1981, p. 532). He was right on target when he proclaimed "the animal rights movement has many facets which are in accord with the very tenets of our professional purpose and in these areas we owe our support and allegiance."

It makes sense that the veterinary profession should expand its scope of animal protection and pain prevention—our veterinary oath draws no boundaries as to which animals we should help and which we shouldn't.

Issues crying out for attention include trophy hunting, sperm whale hunting, abusive wildlife leg-hold traps, dogfighting, cockfighting, bullfighting, clubbing of Canadian harp and seal pups, investigation of advances in alternative methods to killing animals in research, unnecessary pain and torture of some laboratory animals, certain inhumane factory farming procedures, continuing steps to outlaw ear cropping (the AVMA House of Delegates condemned ear cropping in 1977 and dogfighting and cockfighting in 1979), race track injustices, animal smuggling, extinctions, dog and cat overpopulation problems, and painful practices in rodeos. There are many more examples.

Whereas components of some issues will not prompt outright condemnation from veterinarians (though most should), they should at the minimum cause a beckoning for investigative studies.

As Dr. Mosier has stated, veterinarians should become knowledgeable about and promote AVMA symposiums involving animal rights. Perhaps in the future the AVMA will reach a revelation stage where a healthy slice of the budget pie will be devoted to relieving the sufferings of many neglected animals. I hope so.

Neil C. Wolff, DVM
Association of Veterinarians For Animal Rights
69-40 229th St.
Bayside, NY 11364

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTER®

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

JULY 1982

IN THE COURTS

FEDERAL

WILD HORSES: ADOPT-A-HORSE PROGRAM

The American Horse Protection Association has brought an action in the Washington, D.C. federal court aimed at preventing the Bureau of Land Management from destroying several hundred wild horses and burros which are being held in government corrals. Early in January 1982 BLM raised its adoption fees for wild horses and burros to \$200.00 for the former and \$75.00 for the latter, plus transportation costs to the point of adoption. Simultaneously, BLM apparently decided that all horses and burros that were not adopted within 45 days would be destroyed. At the end of the first 45 day period, several hundred horses and burros remained in BLM corrals around the country, and the animals were targeted for destruction. On top of that, AHPA received information that BLM had delivered 26 wild horses from one of its holding corrals to a small Nevada zoo, so the animals could be killed there and fed to three captive lions. Further investigation revealed that BLM had sent wild horses to other western zoos on prior occasions, apparently for the same purpose. Because AHPA believes that available evidence proves a sufficient demand for adoption, and thus no need for the destruction of horses and burros, it will argue that BLM is actually destroying the Adopt-A-Horse Program by a combination of unreasonably high fees and inadequate publicizing of the Program. The additional claim will be made that by sending the captive animals to zoos, BLM is violating its own ban on using the animals for commercial purposes.

PREDATOR CONTROL

In April an action was filed against Interior Secretary James G. Watt aimed at compelling him to abandon

announced plans which would allow the use of Compound 1080 to kill coyotes. The action also seeks to compel him to prohibit the killing of coyote pups in their dens. Apparently in response to pleas by sheep ranchers, Watt approved the experimental use of Compound 1080, and also lifted a ban against the killing of coyote pups by burning or gasing them in their dens or dragging them out with barbed wire and clubbing them to death.

STATE AND LOCAL

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

In the April 1982 issue of ARLR we reported that a Los Angeles area Roman Catholic priest who had drowned 10 cats was charged in the Van Nuys Municipal Court with cruelty to animals. In May, Father Allen DeLong pleaded no contest to a misdemeanor charge of cruelty to animals. The Municipal Court Commissioner gave the priest a choice of one of three possible penalties: a \$300.00 fine, 10 days in jail, or a \$300.00 contribution to a humane organization. At the present time, there is no information available as to which of the three choices Father DeLong has accepted. (If he chooses to pay, the apparent cost of drowning a cat in Van Nuys, California is \$30.00.)

A suspended Atlantic City, New Jersey patrolman was found guilty of cruelty for fatally shooting an eight month old dog that had chased him while he was riding a bicycle. Brigantine, New Jersey, Municipal Court Judge Steven Kaplan ordered the defendant to buy a new puppy for the animal's owner and fined the defendant \$175.00. In addition, he was required to perform 30 hours of community service work. The defendant was suspended

The purpose of the ANIMAL RIGHTS LAW REPORTER is to provide information which can be useful in legal efforts on behalf of animals rights. Nothing reported herein is approved by Society for Animal Rights, Inc., Animal Rights Law Reporter, or its Editor, unless such approval is expressly stated.

from the police force after the incident and faces a departmental disciplinary hearing on charges that he illegally used his service revolver to kill the dog and displayed conduct unbecoming a police officer. Under those circumstances, the defendant said he planned to appeal the conviction, which could cost him his job.

A Lorain, Ohio, man was sentenced to 90 days in the county jail and fined \$500.00 in Municipal Court for pouring paint thinner on a Great Dane and setting it on fire. The judge suspended 30 days of the sentence and the fine on condition that the defendant pay \$150.00 in veterinarian expenses. A psychiatrist's pre-sentencing report apparently had concluded that the defendant was prone to "eccentric" behavior and "bizarre" thinking, but that he did not warrant psychiatric treatment. Cruelty to animals is a second-degree misdemeanor punishable by up to 90 days in jail and a fine of up to \$750.00.

Despite a plea by a Florida woman that she tried to take care of her injured dog at home because she could not afford a veterinarian, she was sentenced to 10 days in jail for allowing the dog to go without treatment after having been hit by a car. Ultimately, the dog had to be destroyed. Those ARLR readers who approve of a jail sentence for neglect/abuse of an animal might wish to commend Judge Roberta Knowles in Bradenton, Florida.

Despite the plea that "I love the dog. But she was sick. I just couldn't afford it," a county judge sentenced a Florida man to 30 days in jail for neglect in a case involving an emaciated eight year old collie covered with sores. Although the judge found that the defendant's conduct was not wilful, he compared it to other recent incidents of animal cruelty in the Tampa, Florida area: a one-legged dog found on a rock in Tampa Bay, tied to a bowling ball; a dog that drowned as it tried to paddle ashore dragging the weight of a concrete block; and a dog that had to be destroyed after being mutilated by a man on a rider lawnmower. Calling the neglect "inexcusable," the judge insisted that the defendant actually serve the month's sentence on the misdemeanor conviction. The Associated Press reported that the defendant sounded astonished: "You're sending me to 30 days in jail? I can't afford to lose my job. I can't lose my house. I just came out of debt. I need a lawyer." The judge replied: "It's terrible what you did to that dog. You can call a lawyer from jail." The defendant was then fingerprinted and led to a holding cell. Those ARLR readers who approve of a jail sentence for neglect/abuse of an animal might wish to commend Hillsborough County (Tampa, Florida) Judge Robert Bonanno.

The January 1981 ARLR reported that a Rhode Island man who killed a stray cat in a microwave oven had been convicted. Now, that conviction on animal cruelty charges has been upheld by the Rhode Island Supreme Court. The defendant will have to spend 15 days in jail and pay a \$200.00 fine. The trial judge was District Court Judge Victor J. Beretta. Those ARLR readers who approve of a jail sentence for this kind of atrocity might wish to commend the judge.

A Miramar, Florida, resident was fined \$965.00 plus court costs in an animal cruelty case for dragging his Doberman Pinscher alongside a car traveling 30 miles per hour. At

the trial, the defendant told South Broward County Judge Patti Englander that he was attempting to teach the animal to walk. A separate proceeding was to be held to determine whether the defendant would be allowed to keep the dog, which survived.

The New Jersey SPCA is pressing charges in Sussex County against a livestock auctioneer and a hauler (also a livestock dealer, licensed by the New Jersey Department of Agriculture) for having transported and then auctioned a mutilated one-month-old calf. The calf's hind legs had been severed below the hocks, his ears had been cut off close to his head, and he had been made to walk across the auction block in that condition, the state SPCA agent reported. The defendants are charged with inflicting unnecessary cruelty on an animal, transporting it in a cruel manner, and "disorderly persons" offenses each carrying penalties of up to 6 months in jail or \$250.00 in fines. Because the state has no money to prosecute, the SPCA agent has had to search for a private attorney willing to present the case on the SPCA's behalf. Needless to say, as usual, obtaining testimony from a veterinarian has proved to be extremely difficult. The calf was destroyed by police, at the behest of the humane agents, soon after it was discovered.

The treatment of a Great Dane who was at least 50 pounds underweight has resulted in the first complaint ever filed in Solano County, California, for animal neglect. Failure to care for animals is a misdemeanor in California, punishable by imprisonment in the county jail for a period not exceeding 6 months, or by a fine not exceeding \$500.00, or both. According to the local humane agent the Solano SPCA had never before pressed charges for failure to care for an animal. Realizing that it was unlikely the owners would receive either a jail term or a fine, the humane agent stated that he did not want the dog returned to their custody, which the owners were trying to obtain. Indeed, the defendant filed court papers asking that the dog be returned to him. He also claimed that the dog was illegally seized, and therefore evidence about its condition should be suppressed. However, Vallejo-Benicia Municipal Court Judge F. Paul Dacey, Jr. ruled that the humane agent had probably cause to take possession of the animal: "It was reasonable for the humane agent to be concerned that an attempt would be made to conceal the dog if [the humane agent] left the area for any reason including the obtaining of a search warrant. The condition of the dog was so bad that if he had not taken immediate possession of the animal and it was thereafter concealed, the animal probably would have died. The above facts constitute exigent circumstances that required immediate seizure not only to preserve the evidence of a crime but to save the life of the dog." Solano County is in Northern California, not far from the Walnut Creek area.

ANIMALS AS PROPERTY: PET POISONING

An action has been brought in the Circuit Court of Dane County, Wisconsin, seeking damages for the defendant's poisoning of his neighbor's puppy. The first cause of action, in conversion, contains allegations that: "Plaintiff had devoted a great amount of time, effort, emotional commitment and money to feed, maintain, shelter,

exercise, train, provide veterinary care and otherwise provide responsible care for [the puppy]. A strong emotional bond existed between Plaintiff and [the puppy], providing Plaintiff a sense of companionship . . . and producing an obedient, trusting nature in [the puppy]. The second cause of action is in negligence. The third cause of action is for the infliction of emotional distress, and includes an allegation that "as a direct causal result of defendant's conduct in poisoning [the puppy], Plaintiff suffered a extreme disabling emotional response to defendant's conduct. Plaintiff was unable to function in his other relationships, to work at his job or to sleep properly because of the emotional distress caused by defendant's conduct, and Plaintiff sustained other permanent personal injuries consisting of a shock to his nervous system, great mental pain and suffering, anguish and grief, which he still suffers and will continue to suffer in the future." The fourth cause of action is in trespass. Compensatory damages of \$10,000.00 is sought, and punitive damages of \$15,000.00. ARLR has had some input into this case and is assured by the attorney for the Plaintiff that he intends to present as thorough a case as possible on the measure of damages point.

ANIMALS AS PROPERTY: THEFT

A St. Louis, Missouri, man was sentenced to a year in jail and a \$5,000.00 fine by St. Louis Circuit Court Judge Thomas W. Challis in the name of the "Children of St. Louis & St. Louis County who were victimized" by the theft of a rare leopard cub from the St. Louis Zoo. The defendant was convicted of attempted burglary, second degree burglary and stealing in the amount of over \$150.00. To a request by the defendant's attorney that his client be placed on probation, the judge responded: "This case requires more than a slap on the wrist." The cub, whose species is endangered, was never found. The defendant has appealed. Those ARLR readers who approve of a jail sentence under these circumstances might wish to commend the judge.

TAUB CONVICTED AGAIN

Dr. Edward Taub, director of the Institute for Behavioural Research, Silver Spring, MD, in September 1981 was charged with 15 counts of cruelty to monkeys used in his experiments. After a long court battle, Dr. Taub was convicted on six counts of cruelty.

He appealed the conviction and a jury trial was commenced June 14 in Montgomery County MD. On July 2, the jury found Taub guilty of one count of cruelty to one animal. Taub is reportedly appealing again.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as

such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

At the present time, the following bills and resolutions are pending before the 97th Congress.

RESEARCH METHODS

S.R. 65, introduced by Sen. David Durenberger, et al., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 220, introduced by Rep. Geraldine A. Ferraro, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 930, introduced by Rep. Virginia Smith, to establish a commission to study alternative methods to the use of live animals in laboratory research and testing. Referred to Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 2110, introduced by Rep. Brian J. Donnelly, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to live animals. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 4406, introduced by Rep. Patricia Schroeder, to amend the Animal Welfare Act to insure the humane treatment of laboratory animals. Referred to the Committee on Agriculture of which Rep. E. de la Garza is Chairman, the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 6245, Introduced by Reps. Doug Walgren, Don Fuqua, Margaret M. Heckler, et al., to promote the development of nonanimal methods of research,

experimentation, and testing, and to assure humane care of animals used in scientific research, experimentation and testing. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.R. 556, introduced by Rep. Robert A. Roe; Rep. Harold C. Hollenbeck, and Rep. Frederick W. Richmond, to establish a National Center of Alternative Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplication of experiments on live animals; to disseminate information on such methods. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.C.R. 27, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritation test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.C.R. 38, introduced by Rep. G. William Whitehurst, pertaining to the methods used on animals in research. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

SEALS

H.B. 348, introduced by Rep. Frank Horton, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to Committee on Foreign Affairs, of which Rep. Clement J. Zablocki is Chairman; the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 560, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman, the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

LACEY ACT AMENDMENTS

On May 21, the Senate Committee on Environmental Works reported out S. 736, the proposed Lacey Act Amendments. The version of S. 736 that the full Senate will now consider contains modifications adopted by the Com-

mittee to reflect comments submitted by interested federal agencies and private parties. In the House of Representatives, the House Subcommittee on Fish and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee has sent H.R. 1638, a bill mirroring the Senate bill, to the full Committee for review. Passage of the Lacey Act Amendments this year looks promising. Senate Report No. 97-123.

FISH AND WILDLIFE

S.B. 736, introduced by Sen. John H. Chafee, et al., to provide for the control of illegally taken fish and wildlife. Referred to Committee on Environmental and Public Works, by unanimous consent with instructions that once reported, the bill be referred to the Committee on the Judiciary of which Sen. Strom Thurmond is Chairman, for not to exceed thirty calendar days. Status: Hearing in Senate on 4/1/81; reported, amended, Sen. Report No. 97-123 on 5/21/81. S. committee discharged 6/22/81. To S. Calendar 6/22/81. Amended on S. floor 7/24/81. Passed S. as amended 7/24/81. To H. Committee on Merchant Marine & Fisheries 7/28/81. Passed House in lieu of House 1638 on 11/4/81. Sent to President on 11/5/81; Approved — Public Law 97-79, on 11/16/81.

H.B. 5662, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to extend until October 1, 1983, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 3/22/82. Reported; no amendment, House Report No. 97-514 on 5/13/82; Passed House with amendment (Voice) on 6/8/82.

H.B. 6535, introduced by Reps. Gene Chapple, Don H. Clausen and Norman D. Shumway, to provide for the restoration of the fish and wildlife in the Trinity River Basin, Calif. Referred to the Committee on Interior and Insular Affairs on which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

WHALES

S.R. 147, introduced by Sen. Bob Packwood, calling for a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Status: Hearing in Senate on 6/25/81.

S.R. 148, introduced by Sen. Bob Packwood, calling for a moratorium of indefinite duration on the commercial killing of whales. Referred to Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Reported without written S. report 7/20/81. Agreed to by S. 7/20/81.

H.C.R. 18, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

H.C.R. 96, introduced by Rep. Don L. Bonker and Rep. Walter B. Jones, calling for an indefinite moratorium on the commercial killing of whales and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale populations. Referred to Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman. Status: Hearing in House on 6/16/81. Passed H. with amendment 7/15/81. To S. Committee on Foreign Relations 7/21/81.

H.J.R. 462, introduced by Rep. G. William Whitehurst, calling for a wildlife preserve for humpback whales in the West Indies. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

TRAPPING

S.B. 2239, introduced by Sens. Lowell P. Weicker, Jr., Callborne Pell, Paul S. Sarbanes and Lloyd Bentsen, to end the use of steel-jaw leghold traps. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 374, introduced by Rep. Clarence Dickinson Long, to discourage the use of leg-hold or steel jaw traps on animals in the United States. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 1002, introduced by Rep. Glenn M. Anderson, to regulate the trapping of mammals and birds on federal lands. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman; and Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

ZOOLOGICAL FOUNDATION

H.B. 642, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE LIFE

S.B. 1003, introduced by Sen. Bob Packwood, to amend Title III of the Marine Protection Research and Sanctuaries Act of 1972, as amended, to authorize appropriations for such Title for fiscal years 1982 and 1983. Status: Reported, no amendment, Sen. Report No. 97-44 on 4/23/81; Passed Senate on 5/4/81; Sent to House Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, on 5/6/81. Amended to contain text of H. 2449 as passed 7/13/81. Passed H. as amended (Voice) 7/13/81. House amendments agreed to by Senate with amendments on 12/11/81; Senate amendments agreed to by House on 12/14/81. Sent to President on 12/15/81; Approved — Public Law 97-109 on 12/26/81.

S.B. 1186, introduced by Sen. Bob Packwood, to amend the Marine Mammal Protection Act of 1972, as amended, to extend the authorization of appropriations for fiscal

years 1982 and 1983. Status: Reported, no amendment; Sen. Report No. 97-63, on 5/14/81. Indefinitely postponed by Senate on 12/8/81.

S.B. 1213, introduced by Sen. John H. Chafee, to amend Title I of the Marine Protection, Research, and Sanctuaries Act, as amended. Status: Reported; no amendment, Sen. Report No. 97-119, on 5/15/81; Passed Senate as reported on 6/2/81; Passed House without amendment on 6/11/81; Sent to President on 6/16/81; Approved — Public Law 97-16, on 6/23/81.

S.B. 2591, introduced by Sen. John H. Chafee, to extend Titles 1 and 11 of the Marine Protection, Research and Sanctuaries Act, as amended. (Placed on the calendar.)

H.B. 1672, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972, in order to prohibit the issuance of general permits thereunder which authorize the taking of marine mammals in connection with commercial fishing operations. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 2357, introduced by Rep. John B. Breaux, to repeal Title III, Marine Sanctuaries of the Marine Protection, Research, and Sanctuaries Act of 1972. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 2449, introduced by Reps. Norman E. D'Amours and Walter B. Jones, to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended to authorize appropriations for such Title for fiscal years 1982, 1983 and 1984. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-52 on 5/18/81; Bill title amended on House floor on 7/13/81. Passed House as amended on 7/13/81; Passage vacated by House and S. 1003 passed in lieu on 7/13/81.

H.B. 2948, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Marine Mammal Protection Act of 1972 during fiscal year 1982. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-53 on 5/18/81.

H.B. 4084, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve the operation of the Marine Mammal Protection Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 7/13/81. Reported; amended, House Report No. 97-228 on 9/16/81; Passed House as reported 9/21/81. To Senate Committee on Commerce, Science and Transportation on 9/23/81; Passed Senate without amendment on 9/29/81; Sent to President on 9/30/81; Approved — Public Law 97-58, on 10/9/81.

H.B. 6112, introduced by Rep. Norman E. D'Amours, to amend Title 11 of the Marine Protection, Research and Sanctuaries Act of 1972. Referred to the Committee on

Science and Technology of which Rep. Don Fuqua is Chairman and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 6113, introduced by Rep. Norman E. D'Amours, to amend Title 1 of the Marine Protection, Research and Sanctuaries Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Public Works and Transportation of which Rep. James J. Howard is Chairman.

ANIMAL DAMAGE

H.B. 1956, introduced by Rep. E. de la Garza, et al., amends the Act of March 2, 1931, to require the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to implement a program for animal damage control. Referred to Committee on Agriculture of which Rep. E. de la Garza is Chairman.

WILDLIFE PRESERVATION

H.B. 2214, introduced by Rep. Carl D. Purcell; Rep. Benjamin A. Gilman, and Rep. Anthony C. Beilenson, to establish a federal program to provide public information on wildlife preservation and the endangered species. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH

S.B. 546, introduced by Sens. Jennings Randolph, Russell B. Long, Howell Heflin, Walter D. Huddleston and Barry Goldwater, is entitled The Fish Restoration Act of 1981. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

S.B. 874, introduced by Sens. Slade Gordon, Henry M. Jackson, James A. McClure and Howard M. Metzenbaum, to provide for additional protection of steelhead trout as a game fish. Referred to the Committee on Indian Affairs. Status: Hearing in Senate on 9/28/81.

S.B. 2450, introduced by Sens. Bob Packwood, Ted Stevens and Slade Gorton, to authorize funds for the Magnuson Fishery Conservation and Management Act for fiscal years 1983, 1984, and 1985 to improve conservation and management of our nation's fisheries. Referred to Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman.

H.B. 1638, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to provide for the control of illegally taken fish and wildlife. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-276 on 10/19/81; Passed House as reported on 11/4/81; Passage vacated by House and S. 736 passed in lieu on 11/4/81.

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant

Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman. Status: Hearing in House on 7/8/81.

H.B. 2978, introduced by Rep. Don L. Bonker, et al., to provide for additional protection of steelhead trout as a game fish. Referred to Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 3325, introduced by Rep. John J. Duncan, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 3717, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 5002, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve fishery conservation and management. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-549 on 5/17/82.

H.B. 5661, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to authorize appropriations to carry out fishery conservation and management during fiscal year 1983. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 5663, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to authorize appropriations to carry out the Anadromous Fish Conservation Act during fiscal year 1983. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 3/22/82. Reported; amended, House Report No. 97-546 on 5/17/82. Passed House as reported (Voice) on 6/8/82.

H.B. 6660, introduced by Rep. Gene Snyder, to provide additional revenues for projects relating to fish restoration and management. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

HORSE RACING

S. 1043, introduced by Sens. David Pryor, Claiborne Pell, Donald W. Riegle, Jr., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to the Judiciary Committee.

MIGRATORY BIRDS

H.B. 3442, introduced by Rep. Harold Sawyer, to establish a Webless Migratory Game Bird Research Fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 6411, introduced by Reps. John B. Breaux, Edwin B. Forsythe and James L. Oberstar, to extend until October 1, 1988, the authority for advances to the migratory bird conservation fund. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MAMMALS AND BIRDS/PUBLIC LANDS

S.J.R. 6, introduced by Sen. Alan Cranston, to establish a national policy for taking of predatory or scavenging mammals and birds on public lands. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

TUNA PROTECTION

S.B. 1564, introduced by Sens. Lowell P. Weicker, Jr., Paul E. Tsongas, John H. Chafee, Ernest F. Hollings, William V. Roth, Jr., Bill Bradley, Paula Hawkins, Claiborne Pell, Lawton Chiles, Edward M. Kennedy, John W. Warner, is entitled the American Tuna Protection Act. Referred to the Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman.

H.B. 4457, introduced by Reps. James J. Howard, Claudine Schneider, Guy V. Molinari, G. William Whitehurst, Gerry E. Studds, William J. Hughes and Nicholas Mavroules, is entitled The Tuna Protection Act. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

DOGS

H.R. 379, introduced by Rep. Daniel B. Crane, expressing the sense of the House of Representatives regarding the torture and mutilation of dogs for profit in the Republic of the Philippines. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

PINNIPEDS

H.C.R. 285, introduced by Rep. G. William Whitehurst, calling for a regional conservation treaty to protect Northern Hemisphere pinnipeds. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

HORSES/BURROS

S.B. 2183, introduced by Sen. James McClure, et al., a bill to amend the Wild, Free-Roaming Horses and Burros Act. It's principal provision would authorize the Bureau of Land Management to sell "excess" unadopted wild horses and burros. The "other viable uses" to which Senator McClure

referred are the uses of horse traders, slaughterhouses and rodeos.

H.B. 5825, introduced by Rep. Don E. Young, et al., to make certain amendments to Public Law 92-195 relating to the protection of wild free-roaming horses and burros. Referred to the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ENDANGERED SPECIES

S.B. 2309, introduced by Sens. John H. Chafee, George J. Mitchell and Slade Gorton, to amend the Endangered Species Act of 1973, to authorize funds for fiscal year 1983. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

S.B. 2310, introduced by Sen. John H. Chafee, to amend the Endangered Species Act of 1973 and authorize appropriations for fiscal years 1983 and 1984. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 6133, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1984. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ENDANGERED SPECIES ACT: REAUTHORIZATION

Early in June, the House of Representatives approved a three-year extension of the Endangered Species Act and, at the same time, added several amendments. The House action extended the life of the Act and added an amendment that would require endangered and threatened species to be listed for protection within a specific time period. The latter action had been sought because of Interior Department foot-dragging in placing new species on the list.

STATE AND LOCAL

A REQUEST FOR HELP

Beginning with the April 1982 ARLR we began reporting on animal related legislation in several of the states with a degree of completeness comparable to that of the federal legislation that ARLR has been reporting on. Ideally, we would like very much to carry in each issue of ARLR (space and the availability of information permitting) all pertinent animal legislation pending in every state of the Union. The format will be exactly as our federal legislation format, and the states will be listed alphabetically. The value of this kind of a master index of animal legislation pending throughout the United States is obvious. But the only way ARLR is going to be able to do it, is if we get some help. To the best of our knowledge, this information does not exist in any one place, demonstrating once again the regrettable fragmentation of the animal rights movement. As we expected, this department of ARLR is starting slowly and it will have to grow into the formidable kind of coverage that we seek, and that the animal rights movement sorely needs. We have made a beginning, but to succeed we will need the help of others. As the material below indicates, we have legislative correspondence from several states so far; other states are still open. Anyone interested in reporting on those states for ARLR should contact the Editor.

CALIFORNIA

(Virginia Handley, The Fund For Animals Inc., Fort Mason Center, San Francisco, California 94123, 415 — 474-4020).

MOUNTAIN LIONS: SB 1333 by Senator Robert Presley. Currently, the California Mountain Lion is protected by a hunting moratorium that expires this year. SB 1333 continues to guard the lions from trophy hunters and houndsmen. Permits will be given for livestock depredation. Lion territoriality keeps them from overpopulating (estimated 1,000). Females have only two kittens every two years. Passed Senate; now in Assembly.

POUND SEIZURE: SB 1438 by Senator David Roberti. Currently, over 15,000 animals are sold to laboratories from animal shelters in California. SB 1438 prohibits his practice of "pound seizure." Pound Seizure, among other things, damages public cooperation and trust in animal shelters.

GUARD DOGS: AB 2456 by Assemblyman Richard Katz. Currently, guard dog services may rent out dogs to people and companies for protection. Others will train dogs. AB 2456 requires bonding and testing of the trainers and humane treatment for the animals, many of whom have been abused even beyond the training itself. Passed Assembly; now in Senate.

PREDATORS: AB 2596 by Assemblyman Doug Bosco. Currently, State Parks' policy is to prohibit killing

wildlife. Thus, some predators have found refuge there from predator control. AB 2456 allows the Director of Agriculture to negotiate with other state agencies concerning eradication of a predator in any public area. Passed Assembly; now in Senate.

TRAPPING: AB 2600 by Assemblyman Sam Farr. Currently, several hundred thousand animals in California are trapped by steel-jaw leghold traps. AB 2600 prohibits trapping except for predator or disease control. Dropped in Assembly by author.

ANIMALS (AND CHILDREN) IN TRUCKS: AB 3048 by Assemblyman Larry Kapiloff. Bill prohibits animals and children from riding unsecured in the bed of pick-up trucks. Exempted are farm dogs and livestock. Passed Assembly. Now in Senate.

PETS IN HOUSING: AB 3149 by Assemblyman Jim Costa implements Senator Roberti's pets in housing law by removing liability from housing authorities for acts done by Senior Citizen's pets. Passed Assembly; now in Senate.

BIG HORN SHEEP: AB 2823 by Assemblyman Gerald Felando. Big Horn Sheep are currently protected from hunting. AB 2823 would allow hunting with a permit from California Department of Fish & Game. Killed in Assembly Committee.

BEARS: SB 1671 by Senator Diane Watson. There is an epidemic of poaching in California, particularly of bears, whose products are lucrative in the Asian market. Senator Watson seeks to make the poaching of bears a felony, a higher penalty than the present misdemeanor. Passed Senate; now in Assembly.

PREDATOR CONTROL POISON 1080: *California Budget.* President Reagan has rescinded President Nixon's ban on Compound 1080, a painful poison deadly not only to predators, but to non-target animals (wild and domestic). There is no antidote. Governor Brown can now decide whether or not 1080 will kill in California.

Stanislaus County, CA

POUND ANIMALS: The Board of Supervisors voted early this year to stop pound seizure but to permit the University of California at Davis to requisition animals if they are anesthetized and killed before regaining consciousness.

CONNECTICUT

(Philip Matthew Hart, Esq., The Carriage House, 604 Chapel St., New Haven, Connecticut 06511, 203 — 865-1055).

ARLR is advised by Mr. Hart that the Connecticut Legislature is not now considering any animal welfare legislation.

FLORIDA

(Stuart A. Cohen, Esq., 12430 S.W. 147 Terrace, Miami, Florida 33186, 305 — 251-9000).

ARLR is advised by Mr. Cohen that the Florida legislature is not now considering any animal welfare legislation.

GEORGIA

DOGFIGHTING: The Georgia General Assembly recently enacted legislation making dogfighting a felony, carrying a penalty of \$5,000 fine and one to five years in prison. An apparent loophole in the law is that spectators are not penalized.

ILLINOIS

ANIMAL CONTROL: Chicago, IL, City Alderman Ivan M. Rittenberg has introduced amendments to Chapter 98 of the City's Municipal Code that reform the city's animal control ordinances. The action is the result of Alderman Rittenberg's frustrating experiences retrieving his lost dogs from the city pounds.

The amendments include the establishment of a spay/neuter program and a prohibition on the release of dogs and cats for experimentation. In the rationale for the amendments, Alderman Rittenberg stated that "submitting pet animals to vivisection and experimentation is callous, distasteful and banal."

IOWA

SEIZURE LAW: In Iowa humane societies under contract as municipal pounds are seeking an exemption from the state's seizure law. The House bill has not obtained favorable action in the Senate.

MARYLAND

VIVISECTION EXEMPTION: In an activity related to the case against Dr. Edward Taub, Maryland Delegate Torrey Brown introduced House Bill 401 to exempt "animals that are used in medical, scientific or teaching research" from the protection of the state's anti-cruelty statute. Brown, also a doctor at Johns Hopkins School of Medicine, filed H.B. 401 on behalf of the Maryland Society for Medical Research (MSMR) a month prior to Taub's conviction. In testimony presented before the House Committee on Environmental Matters, Dr. Franklin M. Loew, MSMR's then president and now dean of Tufts University School of Veterinary Medicine in Boston, stated this bill "will strengthen public confidence in the regulation of animal use in medical and scientific research and teaching."

Under the provisions of H.B. 401, all complaints regarding research animals must be diverted to the Maryland Department of Health and Mental Hygiene. If the

complainant is dissatisfied with the department's findings, an appeal can be made to an appeal panel composed of only the state veterinarian and a public health veterinarian. No other recourse is provided in H.B. 401. The MSMR's testimony asked that an amendment be added establishing a method "for separating frivolous from genuine 'complaints'." The bill did pass the House of Delegates, but was killed by the Senate Committee on Judicial Proceedings.

While the MSMR was attempting to amend the Maryland anti-cruelty statute to prevent a recurrence of a Taub-like incident, a group of scientists were mobilizing to defend Taub. The Biomedical Research Defense Fund's purpose is to raise monies "to fight the anti-vivisectionists, to defend Ed Taub and . . . to educate the public about the nature and importance of biomedical and behavioral research and to inform other researchers how they may protect themselves from a similar attack." Two of the three officers are employed by Johns Hopkins School of Medicine and one of the sponsors is Dr. Robert R. Marshak, dean of the University of Pennsylvania School of Veterinary Medicine.

Without a doubt, the Taub case and the growing public support for animal rights has made the research and scientific community quite fearful and excitable.

MASSACHUSETTS

(Sheryl Lynn Broad, New England Anti-Vivisection Society, One Bulfinch Place, Boston, Massachusetts 02114, 617 — 523-6020).

(Steven M. Wise, Esq., 2001 Beacon Street, Brighton, Massachusetts, 617 — 566-1745).

GUARD DOGS: In 1981, the Massachusetts General Court passed model legislation regulating the guard dog industry. Sponsored by Rep. Richard T. Moore, this new law requires businesses training and/or leasing guard dogs to obtain a license from the Massachusetts Department of Agriculture. Regulations addressing the kenneling, training and general well-being of these dogs are being promulgated by the Commissioner of Agriculture. The Massachusetts SPCA and the Animal Rescue League of Boston will be authorized by the Department of Agriculture to enforce the law and its regulations.

MOURNING DOVES: S. 815 by Senator Carol Amick prohibits the hunting of or possession of a mourning dove and the possession or disturbing of its nest or eggs.

TAX CHECK-OFF: S. 1353 by Senator Robert Wetmore establishes a check-off system on the state income tax form that would permit money to be used in nongame wildlife programs.

POUND ANIMALS: H. 6539 (substituted for H. 1141) introduced by Representative Michael J. Lombardi, repeals the Commonwealth's pound seizure law and prohibits any voluntary sale of pets in public shelters to animal dealers or research institutions. An attempt in the House

to affix an amendment exempting the University of Massachusetts failed by a large majority. The bill successfully passed through two readings in the Senate and the Senate Ways and Means Committee. The third Senate reading, hopefully the final step before reaching the Governor, is delayed until the legislature reconvenes in the fall.

NOTE: The Massachusetts Legislature has recessed until the fall, however, assessment of those bills assigned to Study Orders should continue throughout the summer.

The majority of Massachusetts animal welfare/wildlife conservation legislation has been absorbed into three study orders within the Committee on Natural Resources and Agriculture. Awaiting approval by both branches of the legislature, the study orders authorize ongoing work during the recess of the General Court. Although one purpose for this action is to consolidate meaningful legislation via testimony and investigation, historically study orders are a maneuver to bypass and ultimately kill the intent of the original bills.

Most bills pertaining to dog, cats and animal control are pending action in the House Committee on Counties.

Massachusetts is the last state allowing "free petitioning" by its residents. Because anyone can submit a bill in any form, a great number of animal related bills are introduced annually. Most are poorly researched and written despite their good intentions.

MICHIGAN

WILDLIFE TAX CHECK-OFF: H.B. 5068, introduced by Rep. Anderson, would allow taxpayers filing a state return to designate that \$1.00 \$5.00 or \$10.00, of any refund due be credited for support of wildlife research and habitat improvement for nongame wild animals; referred to the Committee on Taxation.

MINNESOTA

POUND ANIMALS: In Minnesota attempts to prohibit the release of impounded animals for experimentation have failed this legislative session. Medical-veterinary schools were the major opponents.

HUNTING/TRAPPING: Snares. The Minnesota Department of Natural Resources late in 1980 promulgated a new regulation which liberalize the use of snares. Apparently, Order No. 2080 allows coyotes and foxes in the northern half of Minnesota now to be taken by the use of snares.

NEW JERSEY

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200)

SPAY/NEUTER CLINIC: S. 1101 sponsored by Sen. S. Thomas Gagliano and co-sponsored by 19 other Senators, to establish a state administered low cost spay/neuter clinic program, was favorably reported from the Senate Natural Resources and Agriculture Committee on June 24. It is expected to be brought to a vote of the full Senate this summer.

A. 1471 introduced by Assemblyman Bennett and three other sponsors, to establish a pilot clinic for the spaying and neutering of dogs and cats, to establish fee schedules and to appropriate \$95,000.

TAX DEDUCTION: A. 1222 introduced by Assemblyman Perun and two other sponsors, to provide for deduction from New Jersey gross income tax the cost of spaying and neutering dogs and cats.

EUTHANASIA: A. 1232 introduced by Assemblyman Rod and one other sponsor, to permit animal euthanasia only through intravenous injections of sodium pentobarbital.

ANTI-CRUELTY: A. 1248 introduced by Assemblymen Rod and Perun, to amend laws enacted for the protection of animals.

RESCUE AND LIEN: A. 1249 introduced by Assemblymen Rod and Perun, to give humane societies right to impound animal allegedly mistreated and to charge person found guilty of cruelty.

TENANTS: A. 1288 introduced by Assemblyman Jackman and two other Sponsors, to provide reasonable pet privileges to tenants.

LICENSE DIFFERENTIAL: S. 1417 introduced by Senators S. Thomas Gagliano, John P. Gallagher, and 13 other Sponsors, to provide for an additional \$3.00 dog registration tag fee for those not spayed or neutered to be placed in the "Pilot Clinic Fund" to be used for operation of a pilot spay/neuter clinic.

A. 1472 introduced by Assemblyman Bennett and three other Sponsors, to provide for an additional \$3.00 dog registration tag fee for those not spayed or neutered.

TRAPS: S. 1420 introduced by Senator Frank X. Graves, Jr., to permit municipalities to ban the placement of traps and snares which can endanger the general public.

S. 1575 introduced by Senator Carmen A. Orechio, to prohibit the manufacture, sale, importation, transportation, possession, use and attempt to use steel-jaw leghold type animal traps and to repeal R.S. 23: 4-38.1.

A. 1645 introduced by Assemblyman Mazur and 11 other Sponsors, to prohibit manufacture, sale, use, etc., of steel-jaw leghold animal traps.

ANIMAL EXHIBITS: A. 1601 introduced by Assemblyman Perun, to prohibit the exhibition of animals in shopping malls.

POLICE DOGS AND HORSES: A. 1605 introduced by Assemblyman D. Gallo, to provide that killing or harming a police dog or horse is a crime of the fourth degree.

DOG BITES: A. 1606 introduced by Assemblyman D.

Gallo, to waive 10 day confinement period when police dog bites a person in the line of duty.

VETERINARY MEDICINE: A. 1619 introduced by Assemblyman D. Gallo and five other Sponsors, to revise and update statutes governing the practice of veterinary medicine.

NEW YORK

(Ellnor Molbegott, Esq., General Counsel, ASPCA, 441 East 92nd Street, New York, New York 10028, 212-876-7700)

PET SHOPS: A. 6059 introduced by Assemblyman Eugene Levy prohibits the sale of dogs and cats at pet shops. Commerce Committee.

A. 1148 and S. 806 introduced by Assemblyman Clarence D. Lane and Senator Howard C. Nolan, Jr., respectively, prescribe standards for pet shops and require pet shops to obtain licenses to operate from the Commissioner of Agriculture and Markets. Agriculture Committees.

SHELTER FOR DOGS: A. 9812-A and S. 7929 introduced by Assemblyman Howard L. Lasher and Senator Donald Halperin, respectively, prescribe standards of proper shelter for dogs and require owners and those persons having charge or custody of dogs to provide their dogs with such proper shelter. Assembly Rules Committee. Senate Agriculture Committee.

MOTOR VEHICLE STRIKING ANIMALS: A. 9891-B introduced by Assemblyman Gary Proud makes it a misdemeanor to strike and injure an animal with a motor vehicle without taking steps to locate the owner of such animal and to take appropriate action so that the animal may have necessary attention. Transportation Committee.

TRUSTS FOR ANIMALS: S. 1725 introduced by Senator Anthony V. Gazzara validates dispositions of property in trust or otherwise for the purpose of the care, maintenance and well-being of such animals. Judiciary Committee.

SPAY/NEUTER: A. 1248 and S. 379 introduced by Assemblyman Mark Alan Siegel and Senator Roy M. Goodman, respectively, require personal income tax returns to include a place where a taxpayer may designate that one dollar of the taxpayer's taxes be used for animal spaying and neutering programs. Assembly Ways and Means Committee. Senate floor.

CANINE WASTE: A. 2513 introduced by Assemblyman Gary Proud requires dog owners in cities with a population between 200,000 and 300,000 persons to remove any feces left by their dogs in any public area. The existing Canine Waste law affects cities with a population of 400,000 or more persons. Health Committee.

DOG LICENSES: A. 3048 and S. 2336 introduced by Assemblyman John Brian Murtaugh and Senator Franz S.

Leichter, respectively, require dog owners in New York City to carry a properly validated dog license issued by the ASPCA when such dog owners are accompanied by their dogs on public streets. Health Committees.

ANIMAL DEATH REPORTS: S. 1808 introduced by Senator Gary L. Ackerman requires veterinarians and animal health technicians to maintain in their offices animal death reports for any animal that dies in such offices. Education Committee.

COSMETIC SURGERY: A. 7093 and S. 5858 introduced by Assemblyman William B. Finneran and Senator Emanuel R. Gold, respectively, prohibit the removal of cat claws except for therapeutic purposes. Agriculture Committees.

EUTHANASIA: S. 5867 introduced by Senator Frank Padavan allows only the following methods of euthanasia for lost, strayed, homeless, abandoned or improperly kept animals: injection of barbituric acid derivatives, carbon monoxide gas, nitrogen gas, or nitrous oxide gas in a chamber. Agriculture Committee.

A. 4438 and S. 3363 introduced by Assemblyman Robert C. Wertz and Senator James J. Lack, respectively, state that dogs at shelters may be euthanized by the injection of a drug by persons who have successfully completed a training course if a municipality passes a local law or ordinance requiring such training. Agriculture Committees.

PET GROOMERS: S. 6247 introduced by Senator Gary L. Ackerman requires pet groomers to obtain a license from the State Commissioner of Agriculture and Markets prior to acting as a pet groomer. Agriculture Committee.

ANIMALS IN MOVIES: A. 2791 introduced by Assemblyman Leonard P. Stavisky makes it a misdemeanor to intentionally kill or injure an animal for the production of certain motion pictures. Codes Committee.

LIVE ANIMAL PRIZES: S. 966 introduced by Senator Anthony V. Gazzara prohibits the giving away of dogs and cats as a prize in any game, drawing, contest, sweepstakes or other promotion. Agriculture Committee.

DRAIZE TEST: A. 3221-A introduced by Assemblyman Jerrold Nadler requires the Commissioner of Health to prohibit laboratories and research institutions to perform eye irritancy tests known as the "Draize Eye Test." Agriculture Committee.

EDUCATION: A. 10468 and S. 8384 introduced by Assemblywoman Florence M. Sullivan and Assemblyman Edward C. Sullivan and Senator Frank Padavan, respectively, require live animals on the premises of elementary and secondary schools to be housed and cared for in a humane manner. The bill also prohibits the use of live vertebrate animals as part of an experiment or for any other purpose in such schools or for school related activities except that wild animals may be observed in the free living state, in zoological parks, gardens or aquariums and the normal living patterns of pets may also be observed. Education Committees.

HANDICAPPED PERSONS: A. 8664 and S. 921 introduced by Assemblyman Denis J. Butler and Senator Anthony V. Gazzara, respectively, provide that blind persons may on their tax returns deduct from gross income the expenditures for the obtaining, training and sustaining of a guide dog. Assembly Ways and Means Committee. Senate Investigations Committee.

POUNDS: A. 8473-A introduced by Assemblyman William I. Bianchi, Jr., provides that in lieu of adoption or euthanasia, a municipality may transfer unredeemed dogs at pounds to societies for the prevention of cruelty to animals and to any humane society incorporated as a type B corporation. The reference to type B corporations is a cause for concern because under New York State law corporations in that category are not limited to humane organizations but include scientific institutions as well. Bill also lessens the holding period for dogs requisitioned by an agency which trains seeing eye or guard dogs or uses dogs for law enforcement purposes. Ways and Means Committee.

ANIMAL FIGHTING: S. 8438 introduced by Senator Frank Padavan increases the fine and imprisonment term for persons convicted of dogfighting. The bill provides that persons convicted for a first offense are guilty of a misdemeanor and persons convicted for a second or subsequent offense are guilty of a Class E felony. Fines and prison terms are specified in the bill. Passed Senate Referred to Assembly Agriculture Committee.

A. 10094 introduced by Assemblyman William B. Hoyt increases the fine and imprisonment term for persons violating the animal fighting statutes. The bill provides that persons convicted for a first offense are guilty of a misdemeanor and persons convicted for a second or subsequent offense are guilty of a felony. Fines and prison terms are specified in the bill. Agriculture Committee.

A. 4360-B sponsored by Assemblyman Roger J. Robach increases the fine for those persons involved in dogfighting activities from a minimum of \$1,000 to a maximum of \$25,000. Rules Committee.

SALE OF BABY RABBITS: A. 2390-A introduced by Assemblywoman Elizabeth A. Connelly prohibits the sale of baby rabbits unless person selling such rabbits has proper brooder facilities. Passed Assembly. Referred to Senate Agriculture Committee.

CERTIFICATES OF INCORPORATION: A. 4450 and S. 3473 introduced by Assemblyman Gordon W. Burrows and Senator Joseph R. Pisani, respectively, require the certificates of incorporation of societies for the prevention of cruelty to animals to have the approval of the Commissioner of Agriculture and Markets. Presently, such certificates must have the approval of the ASPCA. Assembly Child Care Committee. Senate Corporations Committee.

TRAPPING: A. 3617 introduced by Assemblyman Eliot Engel prohibits the manufacture, sale, offer for sale, possession, importation or transportation or setting of the steel-jaw leghold trap. The bill also prohibits the taking of any animal by means of the leghold trap. Environmental Conservation Committee.

S. 2049 introduced by Senator Frank Padavan prohibits the manufacture, sale, offer for sale, possession, importation, transportation or setting of the steel-jaw leghold trap and prohibits the taking of any animal by means of the trap. The bill further states that if the Commissioner of the Department of Environmental Conservation finds that there are no practical or viable alternatives to the leg-hold trap or other prohibited trap, he may authorize such use. Conservation Committee.

S. 5837 introduced by Senator Franz S. Leichter prescribes standards for trapping wildlife including, but not limited to, the prohibition of steel leg-hold traps on land and includes the requirement that all traps be visited at intervals not exceeding twenty-four hours. Conservation Committee.

S. 8505 sponsored by Senator John R. Dunne provides that the Department of Environmental Conservation may, by order, regulate the locating, setting, placing and size of body gripping traps on land for any area of the state. This bill would empower DEC to nullify any municipal ordinance limiting or barring use of the leghold trap. Passed Senate. Referred to Assembly Ways and Means Committee.

DOG LICENSING: A. 8970-A and S. 7057-B introduced by Assemblyman Alan G. Hevesi and Senator Franz S. Leichter, respectively, to increase dog license fees and impoundment fees, to raise fines for violators of the law, to expand the agencies empowered with enforcement, to increase holding period for identified dogs and cats and to require ASPCA to notify owners of identified dogs and cats in its shelters. Assembly Rules Committee Senate Agriculture Committee.

A. 7073 and S. 4865 introduced by Assemblyman Gary Proud and Senator Martin J. Knorr, respectively, provide that persons who are sixty-five years of age or older and earn \$8,500.00 or less for the income tax year shall be exempt from the annual dog license fee for one dog. Assembly Ways and Means Committee. Senate Aging Committee.

A. 772 introduced by Assemblyman A. Pinny Cooke provides that dog owners who are sixty-two years of age or older do not have to pay dog license fees. Aging Committee.

A. 1678-A and S. 1292-A introduced by Assemblyman Matthew J. Murphy, Jr., and Senator Hugh T. Farley, respectively, require owners of dogs that have died to notify the Commissioner of Agriculture and Markets of the death. Stricken.

ENDANGERED SPECIES: A. 4 introduced by Assemblyman William F. Passannante extends the power of the Commissioner of the Department of Environmental Conservation by permitting him to allow the importation and sale of the skin, body, parts or products of certain animals that are now not permitted to be imported or sold. Environmental Conservation Committee.

ANIMAL CARE FACILITIES: A. 10602 introduced by Assemblyman Neil W. Kelleher requires animal clinics,

hospitals, boarding facilities and shelters to have an attendant on duty on a twenty-four hour a day basis. Agriculture Committee.

PETS IN HOUSING: A. 3248-D and S. 2520-D introduced by Assemblymen Harry Smoler, Alexander B. Grannis and Mark Alan Siegel and Senator Donald Halperin, respectively, provide that the keeping of a pet in violation of a prohibition in a lease or occupancy agreement against such practice shall not constitute sufficient grounds for terminating a tenant's occupancy; bills also provide for affirmative defenses to actions for specific performance of no-pet clauses in leases and occupancy agreements. Assembly Floor. Senate Judiciary Committee.

A. 9620 and S. 9798 introduced by Assemblymen A. Plinny Cooke, and Senator Paul Kehoe, respectively, provides that nursing homes and residential care facilities may board animals when in the determination of the nursing home or facility and the Commissioner of Health, such boarding will promote the general well-being of the residents therein. Passed Assembly. Senate Rules Committee.

A. 9633 introduced by Assemblywoman Gerdi Lipschutz provides that no person shall be denied residence in residential care facilities or be subjected to removal from such facilities on the sole ground that such person possesses a household pet. Health Committee.

A. 10146 and S. 8168 introduced by Assemblyman Alexander B. Grannis and Senators Martin Markowitz, Martin J. Knorr and Olga S. Mendez, respectively, provide that no person who is sixty-two years of age or older may be denied occupancy in or subjected to eviction from any housing project. Assembly floor. Passed Senate.

S. 9885 sponsored by Senator Leon Bogues provides that persons may not be denied occupancy in, or be deemed in violation of the provision of, their leases solely because they keep a reasonable number of pets on the premises. Judiciary Committee.

TAX ON PET FOOD: A. 10746 introduced by Assemblyman Jerrold Nadler provides that there shall be imposed an additional tax on all dog and cat food possessed in the state, by any person, for sale. Monies collected from this tax shall be used for providing care and maintenance of stray dogs and cats. Ways and Means Committee.

HUNTING AND FISHING: S8826/A1182 broadens the cooperative program of the state that promotes opening of private lands to public hunting and fishing, to include the active promotion and implementation of programs to open all public lands of the state to hunting and fishing by the public. In Assembly: Ways and Means; in Senate: Conservation & Recreation.

HUNTING: S5372-A/A8853 allows use of pre-established bait piles in the hunting of bear in the northern zone of the state. Passed Assembly; now in Conservation & Recreation Committee of Senate.

S8283-A allows the hunting of big game in Eastern region of the state with pistols. Sponsored by Senator Cook.

COYOTES: S7993 allows raising coyotes and foxes in captivity for their fur. Passed Senate.

Islip, NY

DOG LIMIT: The town of Islip proposed an ordinance which would define a kennel as any premises which harbored more than three dogs and prohibits any kennel without a variance. In effect, the ordinance would have prohibited everyone in the town from having more than three dogs in their homes. A public hearing was scheduled for April 6, 1982, at the height of an extraordinary snow blizzard. Nevertheless, about 150 people attended the hearing to protest the proposed ordinance. One person spoke in favor of the ordinance because he objected to barking dogs. Numerous persons spoke in opposition. The Town Board could not accommodate all those who wished to speak in opposition. A petition in opposition by 2,185 persons was presented. As a result, the Town Board announced it would withdraw the ordinance and suggested the formation of a Citizen's Committee for further study.

NORTH CAROLINA

(Prof. William A. Reppy, Jr., Duke University School of Law, Durham, North Carolina 27706, 919-684-3804).

ARLR is advised by Professor Reppy that the North Carolina Legislature is not now considering any animal welfare legislation.

OHIO

Cleveland, OH

EXOTIC ANIMALS: A proposed ordinance calls for the seizure of "dangerous" animals — lions, alligators, crocodiles, poisonous and constrictor snakes, bears, wolverines, badgers and any others deemed to be dangerous by public safety officials — or for a three day notice requiring their removal from the city.

PENNSYLVANIA

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200).

ANTI-CRUELTY: S.B. 1208 (Printer's No. 1850), introduced by Senator George Gekas et al, to add strengthening amendments to the anti-cruelty code was laid on the table in the Senate May 25, 1982 after being considered for the second time.

Mahanoy City, PA

PET LIMIT: The Mahonoy City Council has amended its code to bar the keeping of more than four pets at any residence, the only exception being fish and turtles.

TENNESSEE

(Deborah H. Scarlett, 124 Gilbert Lane S.E., Knoxville, Tennessee 37920).

FISH AND GAME: S.B. 289, introduced by Sen. Anna Belle Clement O'Brien, to provide for the protection of catfish as

a game fish. Referred to Calendar Committee of which Sen. Edward Davis is chairman. Companion H.B. 1065, introduced by Rep. James M. Henry. Referred to a subcommittee of Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

S.B. 2086, introduced by Sens. Edward Davis and Edgar H. Gillock, to amend T.C.A. 51-437 provisions governing the taking of fish, mussels and other aquatic life other than game fish; to provide for the quick release with the least possible injury of all wildlife taken accidentally in connection with a commercial operation. Became Public Chapter No. 807 on April 23, 1982.

S.B. 2087, introduced by Sen. Edgar H. Gillock, to provide for punishment as principals for those aiding and abetting violations of the game and fish laws. Became Public Chapter No. 808 on April 23, 1982

S.B. 1275, introduced by Sens. Edgar H. Gillock, Ray C. Albright and Milton H. Hamilton, Jr., to amend and repeal various game and fish laws; imposes regulations on the buying or selling of red fox hides, furs or pelts; provides for the Tn. Wildlife Resources Agency to assess proposed bills and resolutions to determine whether any such bill or resolution does not provide for the protection and preservation of game and fish. Status: Passed Senate on 4/27/81. Received in House on 4/28/81. Held on House desk. Companion H.B. 1182, introduced by Reps. U.A. Presnell Moore and James R. McKinney. Referred for study to subcommittee of Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

WILDLIFE PRESERVATION: S.R. 29, introduced by Sen. Edgar H. Gillock, to create a Senate committee to study the fish and game laws of Tennessee and the Tn. Wildlife Resources Agency. Status: Introduced and Adopted (voice vote) on 5/27/81.

S.J.R. 94, introduced by Sen. Edgar H. Gillock, to provide for a special joint committee to study the game and fish laws of Tennessee and the Tennessee Wildlife Resources Agency, such laws said to be to safeguard wildlife for the hunter, fisherperson, and all citizens of Tennessee to enjoy for both game and non-game purposes. Status: Adopted by Senate on 4/27/81. Referred to House Calendar and Rules Committee of which Rep. Elbert T. Gill is chairman.

H.B. 2144, introduced by Reps. Ivory O. Hillis, Jr., Rabon W. "Ray" Johnson and Robert S. Stallings, to prohibit wanton waste of wildlife by requiring reasonable attempts to recover killed or wounded wildlife. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman. On March 16, 1982 Committee returned to clerk's desk.

HUNTING: S.J.R. 41, introduced by Sen. Robert Odell Burleson, to direct the Tn. Wildlife Resources Agency to study the feasibility of allowing hunting on state-owned land. Status: Returned by Governor w/o signature on 5/6/81.

S.B. 2088 introduced by Sen. Edgar H. Gillock to amend T.C.A. 51-417 to make it unlawful to hunt deer with the aid of artificial light from vessels in any waters of the state as well as from motor vehicles; to increase the penalties provided for in T.C.A. 51-429. Became Public Chapter No. 701 on April 12, 1982.

FOXES: S.B. 1626, introduced by Sen. Ben Longley, to provide for a closed season upon foxes in McMinn County; to permit foxes to be chased with dogs unless the wildlife resources commission provides for a closed season for the protection of the species. Became Public Chapter No. 667 on April 23, 1982.

RACCOONS: H.B. 897, introduced by Rep. Dennis M. "Mike" Robertson to amend T.C.A. 51-420 by providing for closed season on raccoons during the months of March, April and May. Status: Passed House on 4/15/81. Received by Senate on 1/25/82. Held on Senate desk.

ANIMAL CONTROL: S.B. 908, introduced by Sen. Edward Davis, to allow persons in Shelby County to shoot and kill blackbirds with birdshot on own property or on another's with owner's permission for a certain period. Status: Held on Senate desk. Companion H.B. 618, introduced by Reps. David A. Shirley and Barry E. Sterling. Status: Passed House as amended 4/28/81.

PET SHOPS: H.B. 831, introduced by Rep. Sharon Bell to enact the "Pet Shop Licensure Law," to provide for the promulgation of rules and regulations to insure the humane treatment of pets. Referred to Agriculture Committee of which Rep. Roscoe Pickering is chairman.

HUMANE TREATMENT: H.J.R. 246, introduced by Reps. Sharon Bell and S. Thomas Burnett, to create a committee to determine the feasibility of regulating the household pet industry, to insure humane treatment of household pets which are bred or held for the purpose of sale. Referred to Agriculture Committee of which Rep. Roscoe Pickering is chairman.

KILLING METHODS: S.B. 1162, introduced by Sen. Ben W. Hooper II, an Act relative to "The Dog and Cat Humane Death Act;" to provide for the use of barbiturates in the killing of animals in addition to the traditional methods. Status: Passed Senate on 2/3/82. Referred to H. Agriculture Committee of which Rep. Roscoe Pickering is chairman.

MISCELLANEOUS

The National Society for Medical Research (NSMR) is distributing to its supporters a model state bill that provides for the release of unwanted animals to research organizations, academic institutions and industries.

One of the rationales presented for the legislation is that research animals receive equal or better care than animals in pounds or shelters. Article II of the bill requires the transfer of unwanted animals for research from pounds, animal shelters, pet shops, and boarding

kennels. In addition, the bill mandates regulatory standards for these facilities. Veterinary establishments and most research laboratories are exempt from meeting any state humane standards.

Animal research advocates have been trying to divert the public's wrath away from animal experimentation and toward the numbers of animals annually killed in pounds and shelters. They contend that the numbers of pound/shelter animals used in research is insignificant when one looks at the millions of animals killed yearly by humane workers. NSMR states that it is "more ethical" to release unwanted animals to research than kill them humanely at the pound or shelter. Researchers would like the public to view innocent, homeless animals as the culprit in the use of pound/shelter animals for experimentation rather than the scientific community.

In a calculated effort to insure continued access to pound animals, NSMR has suggested that "directors of animal care facilities in medical schools and research organizations be included in the supervisory bodies overseeing the operation and policies of pounds." This could be very dangerous because of the vested interest researchers have in perpetuating dog and cat overpopulation: the more homeless animals ... the more research animals.

Society for Animal Rights advises animal advocates monitoring state legislative activities to be on the lookout for NSMR's bill during the upcoming session.

THE AGENCIES

VETERINARIANS: ADMINISTRATIVE PUNISHMENT

A Maryland Veterinarian was fined \$3,000.00 by the Maryland board of Veterinarian Examiners because of the starvation death of a dog boarded at his kennel. In addition the veterinarian's license was suspended for 60 days, and he was placed on probation for six months. The Washington Humane Society brought the case before the Maryland Board of Veterinarian Examiners. The Philippine-trained veterinarian claimed that the decision had been influenced by his minority status, and he said he would appeal.

INTERNATIONAL WHALING COMMISSION: BOWHEAD WHALES

The April 1982 ARLR reported that even though the Bowhead Whale is endangered, Eskimo whalers along Alaska's west and north coasts will be allowed to harpoon 19 of them this year under an agreement between federal officials and the Alaska Eskimo Whaling Commission. The *Federal Register*, Volume 47, No. 91, Tuesday, May 11, 1982, page 20137, contains a fascinating elaboration of the agreement which allows Eskimos to slaughter survivors of this endangered species.

MAINE MOOSE HUNT

Maine's Department of Inland Fisheries and Wildlife is permitting a moose hunt this fall. One thousand hunting permits will be drawn by cub scouts from over 40,000 applicants. Hunting experts estimate that more than 900 moose will be killed. Because of the trusting and docile nature of Maine's moose, almost every hunter will be assured of gunning down a moose.

S.M.O.O.S.A. (Save Maine's Only Official State Animal), headed by writer/editor John Cole, has been circulating petitions to place the moose hunt issue on the November 1982 ballot. SAR's Maine members are helping in this campaign. To help defray S.M.O.O.S.A.'s phone, printing, and advertising expenses, SAR has contributed \$500 to this important effort.

Maine's moose hunt once again raises the issue of state fish and wildlife agencies being completed dominated by hunting, trapping and fishing interests. Wildlife and wild areas are "managed" exclusively for these small special interest groups. The general public presently has little access and no influence on the decision-making process. In a potentially precedent-setting event, the S.M.O.O.S.A. campaign will allow all of Maine's residents to decide the fate of their moose.

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

There were never an abundance of books, articles, etc., published on the subject of animal rights law, nor are there now, nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p.9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention. So far the response to our previous requests for reviews has been good, and we hope to have even more in future issues. Persons interested in doing reviews should check with ARLR's editor first, to ascertain that the proposed book or article has not been assigned to anyone else. Reviews, of course, reflect the reviewers' opinions and not necessarily SAR's, ARLR's or the editor's.

ANIMAL RIGHTS BIBLIOGRAPHY

Among the more significant blows struck recently for the cause of animal rights is the prodigious bibliographical reference book compiled by SAR director Professor Charles R. Magel. It contains thousands of entries of books and articles in the English language and is doubtless the most complete book of its kind in existence. *A Bibliography on Animal Rights and Related Matters* is published by University Press of America, Washington, D.C. and costs \$28.50. Available from SAR, Professor Magel's book is worth its weight in gold to everyone in the animal rights movement.

WILD HORSE AND BURRO ACT

"Good intentions gone "estrays" — The Wild, Free-Roaming Horse & Burro Act," is a Note which appears at 16 Lane & Water Law Review 525 (1981).

EXPERIMENTATION

The use of animals in medical research and testing: Hearings before the Subcommittee on Science, Research & Technology of the Committee on Science & Technology, 97th Congress, 1st Session (1981), No. 68.

ANIMALS AS PROPERTY: PETS AND DECEDENT ESTATES

A law review article on the "Sido" case has been published by Fran Carlisle, Esq., in the Real Property, Probate & Trust Law Journal, Winter 1981 issue, Volume 16, No. 4, page 894.

VETERINARY MALPRACTICE: MEASURE OF DAMAGES

A recent article in Trial, the national legal newsmagazine of the Association of Trial Lawyers of America, contains an article entitled "Veterinarian Malpractice — How much was that doggy in the window?" by Charlottesville, Virginia Attorney Mark S. Lindensmith. Lindensmith recognizes that the "market value" premise of tort liability for the intentional/neglect death/injury of a pet animal is "wholly inadequate."

COYOTE CONTROL: COMPOUND 1080

The always-informative *International Journal for the study of Animal Problems*, April-June 1982, Volume 3, Number 2, contains a brief but thorough update on the Compound 1080 controversy now raging (pages 99-104).

ENDANGERED SPECIES

Erdheim, The Wake of the Snail Darter: Insuring the Effectiveness of Section of the Endangered Species Act, 9 Ecology Law Quarterly 629 (1981).

Exemption Process for Endangered Species Act Outlined, 105 Public Utilities Fortnightly 39 (May 8, 1980).

Martin, The Interrelationships of the Mineral Lands Leasing Act, the Wilderness Act, and the Endangered Species Act: A Conflict in Search of Resolution, 12 Environmental Law 363 (1982).

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Smith, Book Review of Ehrlich and Ehrlich, *Extinction: The Causes and Consequences of the Disappearance of Species*, 55 Southern California Law Review 769 (1982).

MISCELLANEOUS

Velluva, The Fish and Wildlife Coordination Act in Environmental Litigation, 9 Ecology Law Quarterly 489 (1981).

White, The Lawyer at Large (anecdotes about litigation regarding animals), 55 Florida Bar Journal 688 (Oct 1981).

McLeavy, Creature Feature (animal trial procedures and exorcism in Europe), 9 Student Lawyer 19 (Feb. 1981).

Felando, Book Review of Joseph and Greenough, *International Management of Tuna, Porpoise and Billfish*, 10 California Western International Law Journal 386 (1980).

Jones, Book Review of Lund, *American Wildlife Law*, 9 Boston College Environmental Affairs Law Review 499 (1980-81).

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, INC.

"Current Livestock Industry Problems," Hearings before the Subcommittee on Livestock, Dairy, and Poultry of the Committee on Agriculture, House of Representatives, 97th Congress, First Session, June 19, 1981 (97-V).

"Marine Mammal Protection Act," Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, 97th Congress, First Session on Marine Mammal Protection Act Authorization, H.R. 2948, April 7, 1981; Marine Mammal Protection Act Improvement, H.R. 4084, July 13, 1981 (97-8).

"Review of the 33D International Whaling Commission Meeting," Hearing before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs, House of Representatives, 97th Congress, First Session, September 22, 1981.

"Endangered Species Act Oversight," Hearings before the Subcommittee on Environment Pollution of the Committee on Environment and Public Works, United States Senate, First Session, December 8 and 10, 1981 (97-H34).

BULLETIN BOARD

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

ENCYCLOPEDIA OF ANIMAL RIGHTS LAW

The project moves ahead slowly. Commitments have been made for the Endangered Species Act, the CITES

Treaty, the Animal Welfare Act and the Horse Protection Act. For details, see the January 1982 ARLR. In this connection, it is encouraging to report that ARLR's Editor, Professor Henry Mark Holzer, has been invited by two of America's leading law book publishing companies to prepare a book on Animal Rights Law. Discussions between Professor Holzer and the publishers are now underway. In addition, SAR is considering the publication of a series of monographs on various Animal Rights Law topics which may be published in connection with the proposed encyclopedia of Animal Rights Law and/or the book that Professor Holzer is now in negotiations concerning. Once again, we wish to stress the importance of the encyclopedia project and invite those interested in serious scholarship to consider participating.

"SPORT" HUNTING STUDY

Society for Animal Rights has published a study entitled "Surplus Population: A Fallacious Basis For Sport Hunting," by Professor David S. Favre with Gretchen Olsen. As Helen Jones had said: "Hunters often defend their actions on the ground that they are doing a noble deed by killing surplus wildlife." The study, commissioned and underwritten by SAR, clearly demonstrates the fallacy in such an assertion.

"Surplus population: A Fallacious Basis For Sport Hunting" is an indispensable tool for those who would take any legal action against hunting.

LAWYER ORGANIZATION

The Lawyers Committee for the Enforcement of Animal Protection Law, Inc., Room 306, 30 East 40th Street, New York, New York 10016, 212 — 696-9107, recently became a not-for-profit corporation under the laws of the State of New York.

HUNTING: TORT LIABILITY

An upstate New York University student died of a bullet wound sustained when she was hit by a hunter's stray bullet. The hunter told state police that he had aimed at an animal, fired, and missed while hunting on his own land, which is on the opposite side of a river from a University campus. The bullet apparently went across the river and struck the young woman, who died without regaining consciousness. While no charges were filed pending completion of the state police investigation, doubtless there is a strong case for liability in tort.

EXPERIMENTATION AND THE FIRST AMENDMENT

According to the Associated Press, two Colorado State University student journalists were arrested when they tried to photograph a laboratory where slow, aging greyhounds are killed for use in anatomy classes. The anatomy professor called the police, who handcuffed the students

and charged them with third-degree trespassing. The professor was concerned that photographs of the laboratory could jeopardize the school's ability to get dogs from a nearby racetrack. Each year about two hundred greyhounds are given to the school by the animal's former owners. The dogs are considered no longer useful for racing or breeding purposes, or for other purposes. So the school euthanizes and embalms them, and then uses them for anatomy classes. Since Colorado is a state university it would be interesting to see what a state Freedom of Information Act request might turn up.

LOST PET DETECTIVE

A Texas woman who searches for lost pets for a \$20.00 fee is in trouble with the State Board of Private Investigators. The state law requires that private investigators have a \$150.00 license, public liability insurance and \$10,000.00 surety bonding. In addition, three years of investigation experience is required. The Board takes the position that the woman is a private investigator, and thus must be licensed.

VETERINARY JURISPRUDENCE

Jerrold Tannenbaum, Esq., is teaching a course in Veterinary Jurisprudence and Economics at the Tufts University School of Veterinary Medicine. Mr. Tannenbaum's outline for the course is fascinating and formidable, and covers such topics as Introduction to the Legal System, The Property Aspect of Animals, The Veterinarian's Duty of Reasonable Care, The Veterinarian's Contractual Obligations, Other Forms of Veterinary Malpractice, The Measure of Damages, Malpractice Insurance, Obligations of the Client, etc.

CONFLICT OF INTEREST

On May 15 and 16, 1982, the New York *Daily News* ran a two part article on the subject of conflicts of interest in the animal welfare field. The article's devastating expose of how persons associated with experimentation on animals hold influential positions in humane organizations is must reading for anyone involved with the animal rights legal field. Among other things, serious legal questions, (including those of liability,) are presented by the kind of conflicts of interest revealed in the article. According to the Daily News, Dr. Robert R. Marshak, Dean of the School of Veterinary Medicine at the University of Pennsylvania, where live-animal tests are conducted, resigned from the Board of Directors of the Humane Society of the United States whose goals include "exposing and eliminating the plight of animals in research." Though Marshak, the former Humane Society of the United States director, had been directly or indirectly associated with more than one organization involved in experimentation on animals, he was not the only one. It may be that members of, or contributors to, organizations whose officers and/or directors possess this kind of conflict of interest have recourse under the statutes of their various states. More important, the by-laws of every humane organization

should prohibit this kind of conflict of interest. Many — such as SAR, Inc. — do. The SAR provision is:

"No person shall be eligible to serve as a Director who is receiving a compensation for services from this or any humane organization. No person who has or has had any proprietary interest in any business enterprise or organization engaged in or promoting animal research activities, commerce in or exploitation of animals for profit shall be eligible to serve as a Director. No person who is, or has been an employee, consultant, or representative of any person or organization engaged in or promoting animal research activities, commerce in or exploitation of animals for profit shall be eligible to serve as a Director. No person who is or has been engaged in the pursuit, practice, or teaching of any branch of human or animal medicine or any science collateral, related or subsidiary thereto shall be eligible to serve as a Director. No person who has or controls any investment in, or derives any economic benefit from any business or enterprise which is engaged in or promoting animal research activities, or commerce in or exploitation of animals for profit shall be eligible to serve as a Director. Any Director not having or maintaining eligibility for the office of Director as provided by these by-laws shall forthwith be removed from such office by the Board. At any meeting of Voting Members of the Society, the Voting Members may remove from the Board of Directors any member thereof for reasonable cause . . . The disqualifications for office applicable by these by-laws to Directors shall also apply to officers and staff."

WASHINGTON, D.C. HUMANE SOCIETY

ARLR recently received from Washington, D.C., attorney Brenda H. Kelley an interesting report on the Washington, D.C., Humane Society. We found Ms. Kelley's report of sufficient interest to reproduce it here for the information of our readers.

The structure of government in the District of Columbia differs from that in place in other jurisdictions. Legislation for the District is passed by the City Council, a body composed of various committees. Following signature by the Mayor, the United States Congress has thirty (30) days to review the legislation. If congress does not act within this period the legislation becomes law in the District.

In 1870, Congress chartered the Washington Humane Society ("WHS") as the Society for the Prevention of Cruelty to Animals ("SPCA"). (Act of Congress of June 21, 1870, 16 Stat. 158, ch. 135. See, D.C. Code § 32-901 et seq., attached). The 1870 anti-cruelty law has never been amended, and currently there is no movement afoot to do so. The existing law is stringent and much protection for animals in the District could be lost in the process of amendment.

In addition to the 1870 law, the District has an "animal control" law, passed in 1979 and amended in 1980. Under the 1979 law, the Mayor may hire the WHS to serve as the District's animal control agency. This has been done, and the WHS works in cooperation with the Metropolitan

Police Department and the Office of the Corporation Counsel, to implement the provisions of the 1979 law. The District's animal control law is unique. Unlike animal control laws in effect in other jurisdictions, it requires distemper vaccinations. It also requires that an animal be neutered prior to release from an animal shelter.

A strict law, such as the 1870 law in the District of Columbia, is only half the necessary armament in the battle for protection of animals. Without enforcement and adequate funding for animal protection the 1870 law might be only a curiosity of archaic language. Fortunately the WHS receives strong backing in its efforts to enforce one of the nation's oldest anti-cruelty statutes from the Office of the United States Attorney in the District. The U.S. Attorney's office and the WHS have developed a close professional working relationship. The U.S. Attorney's Office has a strong reputation for vigorous enforcement and successful prosecution of well-prepared cases, which has served to enhance the reputation of the WHS as a local agency uniquely effective in its efforts to prevent cruelty to animals. The WHS has developed high minimum standards for enforcement of anti-cruelty laws. The Washington Humane Society's standards for food, drink, air, space, light, indoor and outdoor shelter, veterinary care, sanitation and grooming of animals are reputedly among the most stringent and comprehensive in the nation.

With regard to funding, it should be emphasized that the WHS is privately funded. While the Society's reputation for successful and comprehensive animal protection helps to attract donors, its policy of keeping cruelty cases open until full compliance with the law is established means that adequate funding remains a top priority. Although animal control enforcement by the WHS is city-funded by contract, the Society's cruelty prevention efforts are made possible only by private contributions.

At present there are no animal welfare bills formally under consideration by the Judiciary Committee of the City Council. A draft law entitled "Commercial and Institutional Uses of Animals" is informally in the works, but the effort has not yet progressed beyond the grassroots level. As envisioned, the law will regulate pet shops, bar the importation of exotics and require inspection of all lab research facilities in the District.

BIOMEDICAL RESEARCH DEFENSE FUND

The Biomedical Research Defense Fund's purpose is to raise monies "to fight the anti-vivisectionists, to defend Ed Taub and . . . to educate the public about the nature and importance of biomedical and behavioral research and to inform other researchers how they may protect themselves from a similar attack." Two of the three officers are employed by Johns Hopkins School of Medicine and one of the sponsors is Dr. Robert R. Marshak, dean of the University of Pennsylvania School of Veterinary Medicine.

ANIMAL RIGHTS "CHECK OFF"

Laws have been enacted in a number of states to enable taxpayers to indicate if they wish to make a contribution from tax refunds for specific purposes.

In New Jersey, for example, this year taxpayers for the first time were asked to indicate if they wished to contribute \$2, \$5, or \$10 for the Endangered and Nongame Species Project. A total of \$350,000 was expected to be earmarked by the time all the tax returns had been completed.

Similar enabling legislation in every state to permit taxpayers to contribute to start-up funds for state-administered spay/neuter clinics would greatly facilitate enactment of legislation requiring the states to operate the clinics for dog and cat reproduction control.

SAR members can help by asking their state legislators to introduce two bills: one to permit the contributions on tax returns and the other to require the state to operate low cost or self-sustaining spay/neuter clinics. If the legislators answer affirmatively, SAR should be contacted to provide model bills.

STUDENTS, ANIMALS AND EXPERIMENTATION

In July 1981, the National Science Teachers Association (NSTA) formally adopted a position statement on the use of live animals by preuniversity level students and teachers. The NSTA Code of Practice recommends that projects should not interfere with an animal's normal health nor cause suffering. The code says that "a student shall only undertake those procedures on vertebrate animals that could be done on humans without pain or hazard to health."

Many organizations have endorsed the NSTA Code of Practice including the American Veterinary Medical Association and the National Research Council's Institute of Laboratory Animal Resources (ILAR). But ILAR has attached a caveat to the NSTA statement. In the official endorsement ILAR carefully noted that this code is merely a guideline and that it does not apply if a student conducts his/her study at "colleges, universities, or other scientific institutions that are registered by the United States Department of Agriculture under the Animal Welfare Act." In other words, no matter how cruel, crude or absurd the student's project, if it was done in an "appropriate facility" ILAR approves it without question. ILAR reserves judgment on those that are done outside an "appropriate facility."

An example of a project that automatically received ILAR's approval because it was done at a USDA registered research facility was one entered this spring in the Massachusetts State Science Fair. A student surgically devocalized mice and then observed how this surgery affected the mating habits of the mice. To the credit of the Massachusetts State Science Fair officials, the project was disqualified because the mice were subjected to pain and distress.

ILAR's position is easily understood by reviewing their aims. These include providing data on breeding techniques, information on the location and availability of laboratory and free-ranging animals, and employment opportunities in the laboratory animal field. ILAR counsels various federal agencies on laboratory animals and calls itself the "key advisory group in the laboratory animal field." Thus, ILAR protecting its own interests could not possibly endorse any infringement, no matter how obscure, on laboratory animal experimentation in research facilities.

Society for Animal Rights does not sanction the use of any animals in the classroom or in related activities. All studies and projects involving animals should be limited to the observation of animals in their normal or natural living environments. And no animals should be maintained in schools or displayed at science fairs.

BOSTON ATTORNEYS FOR ANIMAL RIGHTS

Newly elected officers of the Boston chapter of Attorneys for Animal Rights are: Steven M. Wise, President; Ruth Flaherty, Vice President; Sarah Luick, Secretary; Wilma Rosenberg, Treasurer.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

AVAILABLE RESOURCES

The summons and complaint in the Dade County, Wisconsin, puppy poisoning case is available from the clerk of that court (case number 82CV2636), or from Laurence Bodine, Esp., of the firm of Stafford, Rosenbaum, Rieser & Hansen, 131 West Wilson Street, Suite 1200, P.O. Box 1784, Madison, Wisconsin 53701, Tel. (608) 256-0226.

"SPORT" HUNTING STUDY

The "sport" hunting study prepared by Professor David S. Favre for SAR is available from SAR.

CONFLICT OF INTEREST ARTICLE

The New York *Daily News* two-part article on conflicts of interest of the animal welfare field is available from SAR.

WASHINGTON, D.C., HUMANE SOCIETY

A compilation of the 1870 Act of Congress chartering the Washington Humane Society, and the District of Columbia's Animal Control Law of 1979 and 1980, are available from SAR. Also available from SAR are the Washington Humane Society's Standards for Enforcement of Anti-Cruelty Laws.

STATE STATUTES' RESEARCH EXEMPTIONS

Society for Animal Rights has just completed an analysis of all 50 state anti-cruelty statutes in relation to exemptions for experimentation on animals.

The investigation revealed that 32 states have no specific exemptions for research and testing activities; six states have exemptions for certain research facilities, and the remaining 12 states exempt carte blanche research and testing activities.

SAR urges animal rights advocates to monitor closely state legislation to prevent any weakening amendments to state anti-cruelty statutes.

Entitled "Analysis of Anti-Cruelty Statutes in Reference to Exemptions for Experimentation," the complete study is available from SAR for \$1. Requests should be accompanied by a stamped, self-addressed #10 envelope.

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTER®

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

OCTOBER 1982

IN THE COURTS

FEDERAL

THE EVERGLADES DEER

In the middle of last July, millions of Americans and countless other people throughout the world watched in rapt attention as television unfolded the battle in Miami over Florida's proposal to allow hunters to kill 2,000 deer. The entire story is impossible to recount in this space, and no attempt will be made to do so. (If a written opinion from the federal district court becomes available, ARLR will of course report it.) However, some things must be said. In the name of "conservation" and "mercy" the State of Florida proposed to allow 2,000 hunters a two-day period in which to kill approximately 1,500 to 2,000 deer who were allegedly starving in their flooded Everglades habitat. Several Miami, Florida, lawyers — among them Stuart A. Cohen, Esq., ARLR's Florida legislative correspondent — took it unto themselves to attempt to stop the hunt. Their initial effort, in the Florida state courts, was, not surprisingly, unsuccessful. From there, they went to the United States District Court for the Southern District of Florida on a complaint embodying a variety of federal statutes, including the Endangered Species Act. After a five-hour hearing, a temporary restraining order was issued until Saturday evening, thereby stopping the hunt for the first two days. After some preliminary skirmishing, the Endangered Species Act was the only claim that survived and a hearing was held limited to that Act. The plaintiffs' position was that the conduct of the hunt would endanger the Florida Panther, the Indigo Snake and the Everglades Kite, all of which are protected by the Endangered Species Act. When the hearing was over, the court refused the injunction and the temporary restraining order expired. At that point, an agreement was reached with the Game Commission whereby the plaintiffs would not appeal, the following two-day hunt would be restricted to one section only, and in another section a rescue of deer could be

attempted. In the end, the hunt was cancelled by the Game Commission before its established expiration time, "only" 700-800 deer were killed, and a handful were rescued.

EAGLE PROTECTION ACT: CONVICTION

A 54-year-old Victorville, California, man who said he was a member of the United Lumbee Indian Nation, was sentenced to three years' probation by a federal magistrate after pleading guilty to illegally possessing feathers of golden and bald eagles. In addition, the defendant's motorhome was forfeited to the government after it was seized by agents of the U.S. Fish and Wildlife Service because it was allegedly used by the defendant as a place to sell eagle parts. The arrest and conviction resulted from the defendant's sale of various eagle parts to an undercover agent of the Fish and Wildlife Service.

WILD, FREE-ROAMING HORSE AND BURRO ACT: PENDING LITIGATION

Last July, the Interior Department released a status report of all litigation then pending under the Act. It is set forth below for the information of ARLR's readers.

1. *American Horse Protection Association, Inc. v. Kleppe*; Civil No. 76-1455 (D.D.C., filed 1976)

Issue

The American Horse Protection Association (AHPA) contends that the base population level of the Challis wild horse herd should be greater than that proposed by the Bureau of Land Management (BLM). BLM proposed a base population of 150 adult horses, an adult being

The purpose of the ANIMAL RIGHTS LAW REPORTER is to provide information which can be useful in legal efforts on behalf of animal rights. Nothing reported herein is approved by Society for Animal Rights, Inc., Animal Rights Law Reporter, or its Editor, unless such approval is expressly stated.

considered 2 years of age or older. With colts and yearlings there would be a minimum of 200 horses in the herd. AHPA seeks a base population in excess of 300 animals. The plaintiffs maintain that BLM has erred in its calculations of population growth, weights of horses, and in determining nutritional and forage requirements. Also, they argue that BLM has not complied with the National Environmental Policy Act (NEPA).

Status

On September 23 and 24, 1981, a hearing was held on BLM's motion to dissolve the current injunction which prevents BLM from gathering wild horses in the Challis herd area. On November 19, 1981, the court ruled that BLM was justified in using the 1.25 animal unit month conversion factor for calculation of forage requirements of wild horses in the Challis herd area. However, the court found that BLM had failed to give full consideration to all alternatives for management of wild horses and denied BLM's motion to dissolve the court's injunction. Therefore, BLM is permanently enjoined from conducting any wild horse gatherings in the Challis Planning Unit until all requirements of NEPA and the Wild Free-Roaming Horse and Burro Act have been met.

The case was appealed to the U.S. Court of Appeals for the District of Columbia Circuit. Both parties have filed their pleadings and are awaiting a decision of the court.

2. *State of Nevada, ex. rel. Nevada State Board of Wildlife Commissioners and Nevada State Department of Wildlife v. Andrus*; Civil No. R-79-185-BRT (D. Nev., filed 1979)

Issue

The State of Nevada claims that the large populations of wild horses and burros in Nevada pose a threat to their habitat, wildlife, and other range values. Nevada disputes the decision of the U.S. Supreme Court (*Kleppe v. New Mexico* (1976)) which declared that wild horses and burros on public lands are under the exclusive jurisdiction of the United States.

Nevada asks the court to require BLM to conduct a timely and uninterrupted removal of wild horses until the wild horse population is reduced to the reported 1971 level of 10,000 animals. It also asks the court to make a declaration that Nevada has the constitutional power and right to protect its wildlife resources from the consequences of the wild horse and burro program and that Nevada be allowed to conduct a humane program of wild horse and burro removal.

Status

A stay has been granted pending settlement discussions.

3. *Mountain States Legal Foundation v. Andrus*; Civil No. C-79-275K (D. Wyo., filed 1979)

Issue

Plaintiffs contend that BLM has failed to maintain an ecological balance in its horse populations; to protect and manage wild horses; and to remove wild horses from private lands upon request of the landowner. The plaintiffs request the court to require BLM to reduce the number of horses to prevent further damage to the horses, their habitat, and the ecological condition of the public lands. They also seek damages for their losses and payment to the Rock Springs Grazing Association of \$.04 per day for each horse remaining on the checkerboard area. The plaintiffs also claimed that the former Director of BLM should be personally liable for damage caused by wild horses on private lands, because they believed certain decisions by the Director in 1979 prevented wild horses from being removed from lands owned by members of the Rock Springs Grazing Association.

Status

On March 3, 1981, the trial judge, acting on a motion for a partial summary judgment request by BLM, ruled in favor of the Bureau in dismissing the former Director from any personal liability in the suit.

On March 13, 1981, the trial judge ruled in favor of the plaintiffs and ordered BLM to remove all wild horses from the checkerboard grazing lands in the Rock Springs District, except that number which the Rock Springs Grazing Association voluntarily agreed to leave in said area. This removal was to be completed within 1 year following the order. The judge also ordered that all excess wild horses within the Rock Springs District are to be removed within 2 years following the order. The judge defined excess in the order and the act as meaning that the wild horse population exceeds the number deemed appropriate by a final environmental statement. In the absence of such a statement, excess means the number of horses above the number present in the area at the time the act was passed.

Both plaintiff and BLM appealed the decision. However, the Tenth Circuit Court of Appeals dismissed these appeals because the trial court failed to rule on all of the plaintiff's claims.

A hearing was held January 13, 1982, to consider defendant's motion to amend the final order and to consider remaining issues in the case.

On February 19, 1982, the trial judge, citing past findings of the Supreme Court that diminution in value is not basis for compensation under the Fifth Amendment, denied compensation to the plaintiffs for forage consumed by wild horses.

In addition, the court amended its order of March 13, 1981. The amended order provided that horses in the Wells/Pilot Butte checkerboard lands are to be managed at levels agreed upon by private landowners and BLM, and that remaining animals in other areas are to be managed at levels established by completed and future land use plans. The amendment also extended by approximately 1½ years the deadline for removal of excess animals from the Rock Springs District. Also amended was the court's definition of excess to include those wild horses above the population level that BLM has determined to be appropriate *in accordance with its multiple-use management responsibilities* or, in the absence of such a determination, the number of horses above the number present at the time the act was passed.

The Mountain States Legal Foundation has filed a Notice of Appeal with the Tenth Circuit Court of Appeals.

4. *American Horse Protection Association, Inc. v. Andrus*; Civil No. R-78-105-BRT (D. Nev., filed 1978)

Issue

AHPA and the Humane Society of the United States seek a permanent injunction to prevent BLM from implementing plans to remove excess wild horses from public lands in Nevada. The plaintiffs maintain that BLM failed to comply with NEPA and the Wild Free-Roaming Horse and Burro Act. They argue that the combined removals represent significant actions; inventories are inflated and based upon unsound census techniques; BLM's plans do not have the benefit of in-depth knowledge of range conditions, dietary requirements and habitat overlap of wild horses, livestock, and wildlife; and BLM has not adequately addressed alternatives.

BLM denies the allegations and argues that the removals maintain wild horse populations at interim levels until forage allocations are made and Herd Management Area Plans are completed and implemented. The grazing environmental impact statements analyze impacts of various population level alternatives for wild horses as required by NEPA.

Status

On September 11, 1980, an agreement was reached at the trial court level. To provide adequate time for consideration of staying action, all parties agreed that BLM would notify AHPA 20 days in advance of all wild horse gatherings in Nevada. However, the agreement was not applied to a roundup in the Stone Cabin-Reveille Valleys scheduled to begin a few days later. AHPA requested an injunction pending appeal of that roundup, but the injunction was refused by the district court. AHPA then

filed a motion for a stay pending appeal. On February 4, 1981, the Ninth Circuit Court of Appeals granted AHPA's request. On June 7, 1982, the court agreed with the defendants that the case was moot because the particular roundup at issue had occurred prior to issuance of the appellate court's stay. The appeal was dismissed.

5. *Fallini v. Watt*; Civil No. 81-536-RDF (D. Nev., filed 1981)

Issue

The plaintiff has requested the court to require BLM to remove all wild horses from his private property and to prevent the animals from straying on the subject lands in the future. Plaintiff asserted identical facts in an earlier case which was eventually dismissed.

Status

BLM has filed an answer to the complaint and asks the court to deny plaintiffs request on the grounds that the claims have already been decided by the court.

6. *Sheridan, et al. v. Andrus, et al.*, Civil No. 79-HC-1306 (D. Col., filed 1980)

Issue

Plaintiffs claim BLM illegally took 120 unbranded horses during the Douglas Mountain wild horse gathering in 1977 and 1978, and are asking \$300 per horse (\$36,000) in damages. The plaintiffs also claim BLM owes \$4,000 for the use of private lands during the gathering.

Status

A decision of February 12, 1981, ordered BLM to pay the plaintiffs \$275 per horse for 71 horses. These animals were all unbranded horses for which the plaintiffs were denied ownership during the Douglas Mountain gathering. There were no damages allowed for the use of private lands during the gathering.

BLM's appeal of the decision has been filed. BLM is delaying its efforts to recover grazing fees and gathering costs of the 71 horses pending resolution of the appeal request.

7. *T Quarter Circle Ranches, Inc. v. Watt*; Civil No. R-81-110-ECR (D. Nev., filed 1981)

Issue

T Quarter Circle Ranches, Inc., has requested the court to require BLM to remove the wild horses located on private and leased properties (checkerboard lands.)

Status

A show cause hearing was held before a U.S. Magistrate on July 22, 1981, at which both sides presented witnesses and arguments. After the hearing both parties submitted proposed find-

ings and crossfiled motions for summary judgment. On January 29, 1982, the Magistrate filed her report and recommendations with the court. The defendants objected to the Magistrate's recommendations and requested a hearing before the court. The hearing was held on July 6, and the judge's decision is pending.

8. *Animal Protection Institute of America, Inc., et al. v Watt*; Civil No. LV-82-113-RDF (D. Nev., filed 1982)

Issue

Citing the alleged failure of BLM to comply with the Wild Free-Roaming Horse and Burro Act, plaintiffs seek a preliminary and permanent injunction against BLM to prevent the destruction of excess wild horses and burros removed from the public lands. Plaintiffs contend that the series of action (i.e., removal and adoption fee policies) taken by BLM are arbitrary, capricious and violative of the Wild Free-Roaming Horse and Burro Act. Further, plaintiffs assert that BLM has actually created the need to slaughter horses, that there is no sound basis for the \$200 figure (adoption fee for wild horses) and that defendants must be restrained from killing horses until such time as a full review can be had concerning defendant's conformance with the law.

Status

Following a March 29 hearing, the court denied plaintiff's motion for a preliminary injunction on April 9. No date has been set for a hearing on the merits of the case. Defendants have filed an answer to the complaint.

9. *American Horse Protection Association, Inc., et al. v Watt*; Civil No. 82-0559 (D.D.C., filed 1982)

Issue

Plaintiffs object to BLM's removal and adoption fee policies. They contend that there is an adequate adoption demand and argue that there is no need to destroy excess animals. Plaintiffs also allege that the destruction by zoo operators and eventual consumption of the carcasses by zoo animals is a form of commercial exploitation and in violation of the law. Plaintiffs seek preliminary and permanent injunctions. Arguing the similarities between this case and *Animal Protection Institute, Inc. v. Watt* in Nevada and that the majority of wild horses are in Nevada, the defendants requested a change of venue to Nevada.

Status

The defendants' motion for a change of venue was denied and a hearing was held on May 25, 1982. BLM agreed to continue its moratorium on the destruction of healthy unadopted animals until the court's decision is issued. Upon request of the defendants, the court has issued a stay pending the formulation of a regulation on adoption fees (estimated December 1982).

10. *DeMar Dahl v. Watt, et al.*, Civil No. R-82-124-BRT (D. Nev., filed 1982)

Issue

The plaintiff requests that the court order BLM to reduce immediately the number of wild horses on allotments for which he holds grazing permits to the level present when the Wild Free-Roaming Horse and Burro Act was enacted in 1971.

Status

BLM has not filed an answer to the complaint.

11. *Bright-Holland Company v. Watt*; Civil No. R-82-153-BRT (D. Nev., filed 1982)

Issue

Plaintiffs ask the court to require BLM to remove wild free-roaming horses and burros from their private lands. They allege the presence of wild horses has caused permanent damage to their land and seek compensation as well as a daily payment for each wild horse and burro remaining on their property.

Status

An answer to the complaint has not been filed at this time.

STATE AND LOCAL

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

The Solano County, California animal neglect case reported in the July 1982 ARLR has ended in a no-contest plea to charges of animal cruelty. The defendant was sentenced to two years' probation and 100 hours of community service. He also received 10 days in jail, but it will be suspended once the 100 hours of community service are completed. Further, the defendant was directed to surrender his mistreated dog and barred from having any other animal at his home until authorized by his probation officer.

A Carteret County Grand Jury has indicted two young women from Harkers Island, North Carolina, on charges of breaking and entering with intent to commit larceny and larceny after a break-in. The interesting aspect of this case is that the two were also charged in a separate indictment with communicating a threat to obtain wrongfully \$18,000 from the owners of a cat taken by the two and held for ransom. Apparently, the Grand Jury took the matter quite seriously.

The Indiana Court of Appeals has sustained the 1981 conviction of an Evansville man charged with cruelty to animals. The defendant had been fined \$100 and court costs in the trial court. The appeals court found that: "The evidence and the permissible inferences therefrom disclosed that the five young dogs, while in [the defendant's] possession, were piteously emaciated and badly infected with hookworms. They were kept in a filthy room covered with feces and debris. Without adequate food and water the dogs had become dehydrated."

A University of Florida student was sentenced to 60 days in jail for tossing his pet guinea pig into a heated frying pan. Alachua County Judge Stan Morris imposed the jail term on a guilty plea to the cruelty to animals charge. In addition, the defendant was ordered to pay \$198 to the local humane society for the guinea pig's 51 days of treatment for second-degree burns. The defendant allegedly said he committed the act out of anger because the rodent had bitten him.

Three men accused of shooting wild burros near Oatman, Arizona, pleaded guilty in county court. Two of them were sentenced to 30-day jail terms, fined \$336 each and ordered to contribute 80 hours of public service work. The third man was sentenced to a 15-day jail term and fined \$336.

A 25-year-old Lauderdale, Florida, man who pleaded guilty to feeding a neighbor's stolen cat to his pet bulldogs became the first person in Broward County to draw jail time for cruelty to animals. County Judge John T. Luzzo sentenced the defendant to a \$1,000 fine, a year's probation and 60 days in Broward County jail. The judge termed the crime "particularly heinous and disgusting," and ordered the defendant to undergo psychological evaluation. The Miami Herald reported that as he was sentenced the defendant moaned, sobbed and gasped for air.

Although cockfighting is not specifically outlawed in Maryland, handlers can be charged with animal cruelty. Last summer, some were. As the result of undercover police work, the promoters of cockfights at a rural horse farm were arrested and charged with animal cruelty and housing a gambling operation. An attorney for one of the defendants said that the State's animal cruelty statute would be challenged on the grounds of "vagueness."

Tim Greyhavens, Field Investigator for the Great Lakes Regional Office of the Humane Society of the United States, has informed SAR of two minor errors in ARLR's April 1982 report of a dogfighting case in Ohio. First, the current Ohio dogfighting law provides for a maximum penalty of up to five years in jail and a \$2,500 fine, not \$7,500 as stated. The defendant was fined \$2,500 each on three separate counts, totalling a \$7,500 fine. He was also given a suspended 2-5 years' sentence and placed on five years' probation. In addition, the \$6,600 that the defendant was ordered to pay for the care of his dogs went to the Capital Area Humane Society in Columbus, not the Humane Society of the United States. Mr. Greyhavens, whom we thank for the correction, has also informed us that since that case came to trial, his office has been involved in another major dogfighting investigation in the Toledo, Ohio area. This investigation led to the arrest and conviction of seven individuals on both felony and misdemeanor counts of dogfighting. Four of the defendants have received sentences of \$1,800 each, 80 hours of public service work, three years' probation, plus restitution of costs for dogs confiscated by the Toledo Humane Society. The remaining three individuals are awaiting sentencing pending probationary reports.

A twenty-one-year-old New Jersey man who pleaded guilty to one count of animal cruelty for the killing and

mutilation of a pregnant cow has been sentenced to 90 days in the county jail on weekends and \$950 in fines and restitution. The defendant and a juvenile (who was tried in Juvenile Court) attacked the animal with axes and a butcher knife during a drunken spree. The judge who imposed the weekend sentence said he did so in order to allow the defendant to be able to continue working to pay off the money owed to the animal's owner. The assistant prosecutor found the sentence "simply outrageous." "In a society of law," he said, "we must protect the defenseless, including helpless animals. [The defendant] does not deserve walking the street like the rest of us."

HORSE TRAINERS: STRICT LIABILITY

The California Court of Appeals, Second Appellate District, has held that a horse trainer is liable for the presence of a prohibited drug in a horse under his care even absent a showing that he had actually administered the drug. Rule 1887 of the California Horse Racing Board provides that: "The trainer shall be the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties . . ." The Court held that the rule imposes strict liability on the trainer for the condition of the horse and is designed to afford maximum protection to the wagering public.

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

The owner of a pure-bred female Alaskan malamute has sued the owner of a black male labrador retriever for negligently allowing him to run loose and at large and in consequence impregnate the malamute who was in heat. Damages of almost \$20,000 are sought for ruining the malamute's earning potential as a breeding animal. In addition, \$556 is sought to cover expenses that include veterinarian bills and \$119 worth of food. The malamute had been left unattended in the owner's backyard when the incident occurred. The case is in the Bucks County, Pennsylvania, county court. The litter, 13 in all, have been adopted out to good homes.

ANIMALS AS PROPERTY: CIVIL RIGHTS ACT CLAIM

The United States District Court for the Eastern District of New York was recently confronted with the question of whether defendants' unlawful seizure and impoundment of plaintiff's pedigreed samoyed dog constitutes a deprivation of plaintiff's property without due process of law so as to give rise to a claim under 42 U.S.C. § 1983. The plaintiff's dog was sitting on the back porch of her home when the dog warden of the Town of Riverhead entered plaintiff's property, went up to the porch, snared the dog with a rope, and proceeded to drag the dog off the porch and into the dog warden's truck. The dog warden took the dog to the pound where it was impounded until the next day, when plaintiff was forced to pay a \$5 redemption fee to get her dog back. In addition to the constitutional due process claim under § 1983, pendent claims under state law are asserted. \$1,000,000 damages are sought, \$100,000 as compensation for emotional distress and humiliation stemming from the one-day loss of the dog, and \$900,000 punitive damages. The importance of this issue is that, as the court said, "accepting plaintiff's allegations at face value, the dog warden makes

it a practice to intrude upon the property of Riverhead residents for the purpose of seizing their dogs without justification and without any opportunity for the dog owner to intervene and prevent the seizure." On the defendants' motion to dismiss, the court observed that they had "brought no facts to the court's attention that would countenance a seizure of plaintiff's property absent a pre-deprivation notice and opportunity to be heard, the normal standard necessary to satisfy the due process clause." Because defendants failed to demonstrate that there was no set of facts that, if proved, would constitute a violation of plaintiff's constitutional rights, the motion to dismiss was denied. This can be a very important case. The attorney for the plaintiff, who brought this imaginative action, is Raoul E. Szabo, 74 Woodacres Road, East Patchogue, New York 11772.

MARYLAND ANTI-CRUELTY STATUTE UPHELD

On July 12, 1982, the Maryland Court of Special Appeals upheld the constitutionality of that state's anti-cruelty statute. The opinion in *In Re: William G.*, 52 Md. App. 131 (1982) is set forth below in its entirety.

In this case we are asked to decide whether the Maryland Cruelty to Animals Statute is unconstitutionally vague. Article 27, sections 59 and 62 of the Maryland Code (1982 Repl. Vol.) in relevant part provide:

Section 59.

Any person who (1) overdrives, overloads, deprives of necessary sustenance, tortures, torments, cruelly beats, mutilates or cruelly kills; or (2) causes, procures or authorizes these acts; or (3) having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the animal, or unnecessarily fails to provide the animal with nutritious food in sufficient quantity, necessary veterinary care, proper drink, air, space, shelter or protection from the weather, is guilty of a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or by imprisonment not to exceed 90 days, or both.

Section 62.

The words 'torture,' 'torment,' and 'cruelty' mean every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted, and the word 'animal' means every living creature except man.

Appellant, William G., was found delinquent by the Juvenile Judge of the Circuit Court of Baltimore City — Division for Juvenile Causes for violating the cruelty to animals statute and was placed in a residential treatment center.

The evidence adduced at the adjudicatory hearing disclosed that on 12 March 1981 a male dog belonging to appellant attempted to mate with a female dog owned by a neighbor. When the efforts of the male dog were apparently repulsed by the female dog,

appellant kicked the female dog and threatened to kill her. Later, appellant poured turpentine on the female dog and lit the turpentine with a match causing the dog to catch fire. An officer called to the scene observed the dog in pain and "going around in circles." Because of the burning, the dog had to be destroyed.

Appellant argues that the cruelty to animals statute is so vague and indefinite as to violate the due process clause of the Fourteenth Amendment of the Federal Constitution. That "its terms are so vague that a person of ordinary intelligence would be forced to guess as to the scope of the proscribed activity, and it fails to provide even the barest standard for enforcement." He asserts that the statute "on its face would appear to proscribe such common activities as the swatting of flies, the steaming of live crabs, using live minnows to bait hooks or shucking fresh oysters."

It is a basic principle of due process that a criminal statute must state with reasonable clarity the acts it proscribes. In *Connally v. General Construction Co.* 269 U.S. 385, 391 (1926) the Supreme Court observed:

That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

Accord Bowers v. State, 283 Md. 115 (1978), and *In re: Leroy T.*, 285 Md. 508 (1979); see also *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) where the standards for evaluating vagueness were enunciated.

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on a *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications. (Footnotes omitted).

Appellant here challenges the constitutionality of the statute principally on grounds of "facial vagueness." In *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 102 S. Ct., 888 (1982), the Supreme

Court held that when a statute is challenged on facial vagueness grounds and no constitutionally protected conduct is implicated such as the right of free speech or association under the First Amendment, the challenge can only succeed if it is demonstrated that the law is impermissibly vague in all of its applications. Moreover, the person challenging the statute "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." In other words, "one to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756 (1974). Likewise, in *Bowers v. State*, *supra*, the Court of Appeals commented at 283 Md. 122:

As a general rule, the constitutionality of a statutory provision under attack on void-for-vagueness grounds must be determined strictly on the basis of the statute's application to the particular facts at hand. Thus, it will usually be immaterial that the statute is of questionable applicability in foreseeable marginal situations, if a contested provision clearly applies to the conduct of the defendant in a specific case. (Citations omitted).

Thus, the issue is not whether the hypothetical cases alluded to by appellant are covered by the statute, but whether the conduct of appellant is proscribed by the statute. Although cruelty to animals apparently was not a crime at common law, today most jurisdictions have statutes making the mistreatment of animals a punishable offense. See 4 Am. Jur. 2d, Section 27, *Cruelty to Animals*, and annotation: *Cruelty to Animals*, 82 A.L.R. 2d 797, et seq. The question as to what specific act comes within the scope of the law depends on the language of the statute. Section 59 provides, among other things, that any person who tortures, torments, cruelly beats, mutilates or cruelly kills an animal is guilty of a misdemeanor. Section 62 defines the words "torture," "torment" and "cruelty" to mean every act, whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted, and the word "animal" means every living creature except man. Applying appellant's conduct to the statute, we do not think that any persons of ordinary intelligence would differ in concluding that a dog is an animal under the statute and that the burning of a dog to the extent that he had to be destroyed constitutes torture, torment and cruelty as defined by the statute.

Therefore, because appellant's conduct falls within the prohibitions of the Cruelty of Animals statute, he has no standing to assert that the statute may be vague, indefinite or uncertain as applied to others in situations not before us.

For the reasons herein stated, we affirm.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Ill. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

At the present time, the following bills and resolutions are pending before the 97th Congress.

RESEARCH METHODS

S.R. 65, introduced by Sen. David Durenberger, et al., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 220, introduced by Rep. Geraldine A. Ferraro, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to, live animals. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 930, introduced by Rep. Virginia Smith, to establish a commission to study alternative methods to the use of live animals in laboratory research and testing. Referred to Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 2110, introduced by Rep. Brian J. Donnelly, to promote the development of methods of research, experimentation, and testing that minimize the use of, and pain and suffering to live animals. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 4406, introduced by Rep. Patricia Schroeder, to amend the Animal Welfare Act to insure the humane treatment of laboratory animals. Referred to the Committee on

Agriculture of which Rep. E. de la Garza is Chairman, the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

H.B. 6245, Introduced by Reps. Doug Walgren, Don Fuqua, Margaret M. Heckler, et al., to promote the development of nonanimal methods of research, experimentation, and testing, and to assure humane care of animals used in scientific research, experimentation and testing. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman. Status: Hearing in House on 5/4/82.

H.B. 6928, introduced by Reps. Don Fuqua, Doug Walgren and 16 others, to promote the development of nonanimal methods of research, experimentation, and testing, and to assure humane care of animals used in scientific research, experimentation, and testing. Referred to the Committee of Energy and Commerce of which Rep. John D. Dingell is Chairman and the Committee of Science and Technology of which Rep. Don Fuqua is Chairman.

H.R. 556, introduced by Rep. Robert A. Roe; Rep. Harold C. Hollenbeck, and Rep. Frederick W. Richmond, to establish a National Center of Alternative Research to develop and coordinate alternative methods of research and testing which do not involve the use of live animals; to develop training programs in the use of alternative methods of research and testing which do not involve the use of live animals; to eliminate or minimize the duplication of experiments on live animals; to disseminate information on such methods. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman. Status: Reported, no amendment, H. Report No. 97-707 on 8/10/82. To House Calendar on 8/10/82. Agreed to by House. (Roll-call) on 9/9/82.

H.C.R. 27, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.C.R. 38, introduced by Rep. G. William Whitehurst, pertaining to the methods used on animals in research. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman, and the Committee on Science and Technology of which Rep. Don Fuqua is Chairman.

SEALS

H.B. 348, introduced by Rep. Frank Horton, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred

to Committee on Foreign Affairs, of which Rep. Clement J. Zablocki is Chairman; the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 560, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman, the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

LACEY ACT AMENDMENTS

On May 21, the Senate Committee on Environmental Works reported out S. 736, the proposed Lacey Act Amendments. The version of S. 736 that the full Senate will now consider contains modifications adopted by the Committee to reflect comments submitted by interested federal agencies and private parties. In the House of Representatives, the House Subcommittee on Fish and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee has sent H.R. 1638, a bill mirroring the Senate bill, to the full Committee for review. Passage of the Lacey Act Amendments this year looks promising. Senate Report No. 97-123.

FISH AND WILDLIFE

S.B. 736, introduced by Sen. John H. Chafee, et al., to provide for the control of illegally taken fish and wildlife. Referred to Committee on Environmental and Public Works, by unanimous consent with instructions that once reported, the bill be referred to the Committee on the Judiciary of which Sen. Strom Thurmond is Chairman, for not to exceed thirty calendar days. Status: Hearing in Senate on 4/1/81; reported, amended, Sen. Report No. 97-123 on 5/21/81. S. committee discharged 6/22/81. To S. Calendar 6/22/81. Amended on S. floor 7/24/81. Passed S. as amended 7/24/81. To H. Committee on Merchant Marine & Fisheries 7/28/81. Passed House in lieu of House 1638 on 11/4/81. Sent to President on 11/5/81; Approved — Public Law 97-79, on 11/16/81.

H.B. 5662, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to extend until October 1, 1983, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 3/22/82. Reported; no amendment, House Report No. 97-514 on 5/13/82; Passed House with amendment (Voice) on 6/8/82.

H.B. 6535, introduced by Reps. Gene Chappie, Don H. Clausen and Norman D. Shumway, to provide for the restoration of the fish and wildlife in the Trinity River Basin, Calif. Referred to the Committee on Interior and Insular Affairs on which Rep. Morris K. Udall is Chairman, and to

the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

WHALES

S.R. 147, introduced by Sen. Bob Packwood, calling for a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Status: Hearing in Senate on 6/25/81.

S.R. 148, introduced by Sen. Bob Packwood, calling for a moratorium of indefinite duration on the commercial killing of whales. Referred to Committee on Foreign Relations of which Sen. Charles H. Percy is Chairman. Reported without written S. report 7/20/81. Agreed to by S. 7/20/81.

H.C.R. 18, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

H.C.R. 96, introduced by Rep. Don L. Bonker and Rep. Walter B. Jones, calling for an indefinite moratorium on the commercial killing of whales and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale populations. Referred to Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman. Status: Hearing in House on 6/16/81. Passed H. with amendment 7/15/81. To S. Committee on Foreign Relations 7/21/81.

H.J.R. 462, introduced by Rep. G. William Whitehurst, calling for a wildlife preserve for humpback whales in the West Indies. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

TRAPPING

S.B. 2239, introduced by Sens. Lowell P. Weicker, Jr., Caliborne Pell, Paul S. Sarbanes and Lloyd Bentsen, to end the use of steel-jaw leghold traps. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 374, introduced by Rep. Clarence Dickinson Long, to discourage the use of leg-hold or steel jaw traps on animals in the United States. Referred to Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

H.B. 1002, introduced by Rep. Glenn M. Anderson, to regulate the trapping of mammals and birds on federal lands. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman; and Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

ZOOLOGICAL FOUNDATION

H.B. 642, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

MARINE LIFE

S.B. 1003, introduced by Sen. Bob Packwood, to amend Title III of the Marine Protection Research and Sanctuaries Act of 1972, as amended, to authorize appropriations for such Title for fiscal years 1982 and 1983. Status: Reported, no amendment, Sen. Report No. 97-44 on 4/23/81; Passed Senate on 5/4/81; Sent to House Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, on 5/6/81. Amended to contain text of H. 2449 as passed 7/13/81. Passed H. as amended (Voice) 7/13/81. House amendments agreed to by Senate with amendments on 12/11/81; Senate amendments agreed to by House on 12/14/81. Sent to President on 12/15/81; Approved — Public Law 97-109 on 12/26/81.

S.B. 1186, introduced by Sen. Bob Packwood, to amend the Marine Mammal Protection Act of 1972, as amended, to extend the authorization of appropriations for fiscal years 1982 and 1983. Status: Reported, no amendment; Sen. Report No. 97-63; on 5/14/81. Indefinitely postponed by Senate on 12/8/81.

S.B. 1213, introduced by Sen. John H. Chafee, to amend Title I of the Marine Protection, Research, and Sanctuaries Act, as amended. Status: Reported; no amendment, Sen. Report No. 97-119, on 5/15/81; Passed Senate as reported on 6/2/81; Passed House without amendment on 6/11/81; Sent to President on 6/16/81; Approved — Public Law 97-16, on 6/23/81.

S.B. 2591, introduced by Sen. John H. Chafee, to extend Titles 1 and 11 of the Marine Protection, Research and Sanctuaries Act, as amended. (Placed on the calendar.)

H.B. 1672, introduced by Rep. C. W. Bill Young, to amend the Marine Mammal Protection Act of 1972, in order to prohibit the issuance of general permits thereunder which authorize the taking of marine mammals in connection with commercial fishing operations. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 2357, introduced by Rep. John B. Breaux, to repeal Title III, Marine Sanctuaries of the Marine Protection, Research, and Sanctuaries Act of 1972. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 2449, introduced by Reps. Norman E. D'Amours and Walter B. Jones, to amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended to authorize appropriations for such Title for fiscal years 1982, 1983 and 1984. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-52 on 5/18/81; Bill title amended on House floor on 7/13/81. Passed House as amended on 7/13/81; Passage vacated by House and S. 1003 passed in lieu on 7/13/81.

H.B. 2948, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Marine Mammal Protection Act of 1972 during fiscal year

1982. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-53 on 5/18/81.

H.B. 4084, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve the operation of the Marine Mammal Protection Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 7/13/81. Reported; amended, House Report No. 97-228 on 9/16/81; Passed House as reported 9/21/81. To Senate Committee on Commerce, Science and Transportation on 9/23/81; Passed Senate without amendment on 9/29/81; Sent to President on 9/30/81; Approved — Public Law 97-58, on 10/9/81.

H.B. 6112, introduced by Rep. Norman E. D'Amours, to amend Title 11 of the Marine Protection, Research and Sanctuaries Act of 1972. Referred to the Committee on Science and Technology of which Rep. Don Fuqua is Chairman and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported, amended, House Report No. 97-558, Pt. I on 5/17/82.

H.B. 6113, introduced by Rep. Norman E. D'Amours, to amend Title 1 of the Marine Protection, Research and Sanctuaries Act of 1972. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee on Public Works and Transportation of which Rep. James J. Howard is Chairman. Status: Reported, amended, House Report No. 97-562, Pt. I on 5/18/82. To House Committee on Public Works and Transportation on 5/18/82. Hearing in House on 6/16/82. Reported, amended, House Report No. 97-562, Pt. II on 7/29/82.

ANIMAL DAMAGE

H.B. 1956, introduced by Rep. E. de la Garza, et al., amends the Act of March 2, 1931, to require the Secretary of the Interior, in cooperation with the Secretary of Agriculture, to implement a program for animal damage control. Referred to Committee on Agriculture of which Rep. E. de la Garza is Chairman.

WILDLIFE PRESERVATION

H.B. 2214, introduced by Rep. Carl D. Purcell; Rep. Benjamin A. Gilman, and Rep. Anthony C. Beilenson, to establish a federal program to provide public information on wildlife preservation and the endangered species. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

FISH

S.B. 546, introduced by Sens. Jennings Randolph, Russell B. Long, Howell Heflin, Walter D. Huddleston and Barry Goldwater, is entitled The Fish Restoration Act of 1981. Referred to the Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

S.B. 874, introduced by Sens. Slade Gordon, Henry M. Jackson, James A. McClure and Howard M. Metzenbaum, to provide for additional protection of steelhead trout as a game fish. Referred to the Committee on Indian Affairs. Status: Hearing in Senate on 9/28/81.

S.B. 2450, introduced by Sens. Bob Packwood, Ted Stevens and Slade Gorton, to authorize funds for the Magnuson Fishery Conservation and Management Act for fiscal years 1983, 1984, and 1985 to improve conservation and management of our nation's fisheries. Referred to Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman. Status: Hearing in Senate on 5/3/82. Reported, amended, Senate Report No. 97-519 on 8/10/82.

H.B. 1638, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to provide for the control of illegally taken fish and wildlife. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-276 on 10/19/81; Passed House as reported on 11/4/81; Passage vacated by House and S. 736 passed in lieu on 11/4/81.

H.B. 2250, introduced by Rep. John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman. Status: Hearing in House on 7/8/81.

H.B. 2978, introduced by Rep. Don L. Bonker, et al., to provide for additional protection of steelhead trout as a game fish. Referred to Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 3325, introduced by Rep. John J. Duncan, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 3717, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to provide additional funds for certain projects relating to fish restoration. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman, and the Committee on Ways and Means of which Rep. Dan Rostenkowski is Chairman.

H.B. 5002, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to improve fishery conservation and management. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman. Status: Reported; amended, House Report No. 97-549 on 5/17/82.

H.B. 5661, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to authorize appropriations to carry out fishery conservation and management during fiscal year

1983. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 8/4/82.

H.B. 5663, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to authorize appropriations to carry out the Anadromous Fish Conservation Act during fiscal year 1983. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 3/22/82. Reported; amended, House Report No. 97-546 on 5/17/82. Passed House as reported (Voice) on 6/8/82.

H.B. 6660, introduced by Rep. Gene Snyder, to provide additional revenues for projects relating to fish restoration and management. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

HORSE RACING

S. 1043, introduced by Sens. David Pryor, Claiborne Pell, Donald W. Riegle, Jr., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to the Judiciary Committee. Status: Hearing in Senate on 5/26/82.

H.B. 2331, introduced by Reps. Bruce Vento, Robert McClory and 14 others, to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman and the Judiciary Committee.

MIGRATORY BIRDS

H.B. 3442, introduced by Rep. Harold Sawyer, to establish a Webless Migratory Game Bird Research Fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 6411, introduced by Reps. John B. Breaux, Edwin B. Forsythe and James L. Oberstar, to extend until October 1, 1988, the authority for advances to the migratory bird conservation fund. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Hearing in House on 5/25/82.

MAMMALS AND BIRDS/PUBLIC LANDS

S.J.R. 6, introduced by Sen. Alan Cranston, to establish a national policy for taking of predatory or scavenging mammals and birds on public lands. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

TUNA PROTECTION

S.B. 1564, introduced by Sens. Lowell P. Weicker, Jr., Paul E. Tsongas, John H. Chafee, Ernest F. Hollings, William V. Roth, Jr., Bill Bradley, Paula Hawkins, Claiborne Pell, Lawton Chiles, Edward M. Kennedy, John W. Warner, is entitled the American Tuna Protection Act. Referred to the Committee on Commerce, Science and Transportation of which Sen. Bob Packwood is Chairman.

H.B. 4457, introduced by Reps. James J. Howard, Claudine Schneider, Guy V. Molinari, G. William Whitehurst, Gerry E. Studds, William J. Hughes and Nicholas Mavroules, is entitled The Tuna Protection Act. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

DOGS

H.R. 379, introduced by Rep. Daniel B. Crane, expressing the sense of the House of Representatives regarding the torture and mutilation of dogs for profit in the Republic of the Phillippines. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

PINNIPEDS

H.C.R. 285, introduced by Rep. G. William Whitehurst, calling for a regional conservation treaty to protect Northern Hemisphere pinnipeds. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

HORSES/BURROS

S.B. 2183, introduced by Sen. James McClure, et al., a bill to amend the Wild, Free-Roaming Horses and Burros Act. It's principal provision would authorize the Bureau of Land Management to sell "excess" unadopted wild horses and burros. The "other viable uses" to which Senator McClure referred are the uses of horse traders, slaughterhouses and rodeos.

H.B. 5825, introduced by Rep. Don E. Young, et al., to make certain amendments to Public Law 92-195 relating to the protection of wild free-roaming horses and burros. Referred to the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman, and to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ENDANGERED SPECIES

S.B. 2309, introduced by Sens. John H. Chafee, George J. Mitchell and Slade Gorton, to amend the Endangered Species Act of 1973, to authorize funds for fiscal year 1983. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman. Status: Hearing in Senate on 4/19/82. Reported, amended, Senate Report No. 97-418 on 5/26/82. Indefinitely postponed by Senate and House 6133 passed in lieu on 6/9/82.

S.B. 2310, introduced by Sen. John H. Chafee, to amend the Endangered Species Act of 1973 and authorize appropriations for fiscal years 1983 and 1984. Referred to Committee on Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 6133, introduced by Reps. John B. Breau and Edwin B. Forsythe, to authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1984. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Reported, amended, House Report No. 97-567, Pt. I on 5/17/82. To House Committee on Foreign Affairs on 5/17/82. House committee discharged on 6/7/82. To House Calendar on 6/7/82. Amended on House floor on 6/8/82. Passed House as amended on 6/8/82. Amended to contain text of S.2309 as amended on 6/9/82. Passed S. as amended on 6/9/82. Senate amendments, rejected by House on 6/23/82. Conferees appointed by House on 6/23/82. Conferees appointed by Senate on 6/24/82.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

STATE AND LOCAL

A REQUEST FOR HELP

Beginning with the April 1982 ARLR we began reporting on animal related legislation in several of the states with a degree of completeness comparable to that of the federal legislation that ARLR has been reporting on. Ideally, we would like very much to carry in each issue of ARLR (space and the availability of information permitting) all pertinent animal legislation pending in every state of the Union. The format will be exactly as our federal legislation format, and the states will be listed alphabetically. The value of this kind of a master index of animal legislation pending throughout the United States is obvious. But the only way ARLR is going to be able to do it, is if we get some help. To the best of our knowledge, this information does not exist in any one place, demonstrating once again the regrettable fragmentation of the animal rights movement. As we expected, this department of ARLR is starting slowly and it will have to grow into the formidable kind of coverage that we seek, and that the animal rights movement sorely needs. We have made a beginning, but to succeed we will need the help of others. As the material below indicates, we have legislative correspondence from several states so far; other states are still open. Anyone interested in reporting on those states for ARLR should contact the Editor.

CALIFORNIA

No update was received from Virginia Handley by the time this issue of ARLR went to press. See the July 1982 ARLR.

CONNECTICUT

No update was received from Philip Matthew Hart, Esq. by the time this issue of ARLR went to press. See the July 1982 ARLR.

FLORIDA

(Stuart A. Cohen, Esq., 12430 S.W. 147 Terrace, Miami, Florida 33186, 305 — 251-9000).

ARLR is advised by Mr. Cohen that the Florida legislature is not now considering any animal welfare legislation.

ILLINOIS

CULT ANIMAL SLAUGHTER: Last summer, by a unanimous vote of all 45 Chicago aldermen present, the City of Chicago enacted an ordinance outlawing the slaughter of animals for ritual purposes (Kosher slaughter was exempted). A fine of not less than \$50, nor more than \$1,000 may be levied for each offense, and each animal involved will be considered a separate offense.

MASSACHUSETTS

(Sheryl Lynn Broad, New England Anti-Vivisection Society, One Bulfinch Place, Boston, Massachusetts 02114, 617 — 523-6020).

GUARD DOGS: In 1981, the Massachusetts General Court passed model legislation regulating the guard dog industry. Sponsored by Rep. Richard T. Moore, this new law requires businesses training and/or leasing guard dogs to obtain a license from the Massachusetts Department of Agriculture. Regulations addressing the kenneling, training and general well-being of these dogs are being promulgated by the Commissioner of Agriculture. The Massachusetts SPCA and the Animal Rescue League of Boston will be authorized by the Department of Agriculture to enforce the law and its regulations.

MOURNING DOVES: S. 815 by Senator Carol Amick to prohibit the hunting of or possession of a mourning dove and the possession or disturbing of its nest or eggs — bill killed suddenly without floor debate after successful passage through both Senate and House.

TAX CHECK-OFF: S. 1353 by Senator Robert Wetmore establishes a check-off system on the state income tax form that would permit money to be used in nongame wildlife programs.

POUND ANIMALS: H. 6539 (substituted for H. 1141) introduced by Representative Michael J. Lombardi, repeals the Commonwealth's pound seizure law and prohibits any voluntary sale of pets in public shelters to animal dealers or research institutions. An attempt in the House to affix an amendment exempting the University of Massachusetts failed by a large majority. The bill successfully passed through two readings in the Senate and the Senate Ways and Means Committee. The third Senate reading is hopefully the final step before reaching the Governors' desk.

The majority of Massachusetts animal welfare/wildlife conservation legislation has been absorbed into three study orders within the Committee on Natural Resources and Agriculture. Awaiting approval by both branches of the legislature, the study orders authorize ongoing work during the recess of the General Court. Although one purpose for this action is to consolidate meaningful legislation via testimony and investigation, historically study orders are a maneuver to bypass and ultimately kill the intent of the original bills.

Most bills pertaining to dog, cats and animal control are pending action in the House Committee on Counties.

Massachusetts is the last state allowing "free petitioning" by its residents. Because anyone can submit a bill in any form, a great number of animal related bills are introduced annually. Most are poorly researched and written despite their good intentions.

NEW JERSEY

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200)

SPAY/NEUTER CLINICS: SAR's legislation (S. 1101 and A. 1471) to establish a state administered clinic program awaits action by the Assembly Agriculture and Environment Committee, having been passed by the Senate July 22, 1982 by a 28-1 vote. The bill includes an appropriation of \$95,000.

EUTHANASIA METHOD: Gov. Thomas Kean in July signed into law a bill outlawing decompression chambers to destroy unwanted or homeless animals. The new law also makes it a disorderly persons' offense to impound any animal without sufficient food and water.

TAX DEDUCTION: A. 1222 introduced by Assemblyman Perun and two other sponsors, to provide for deduction from New Jersey gross income tax the cost of spaying and neutering dogs and cats.

ANTI-CRUELTY: A. 1248 introduced by Assemblymen Rod and Perun, to amend laws enacted for the protection of animals.

RESCUE AND LIEN: A. 1249 introduced by Assemblymen Rod and Perun, to give humane societies right to impound

animal allegedly mistreated and to charge person found guilty of cruelty.

TENANTS: A. 1288 introduced by Assemblyman Jackman and two other Sponsors, to provide reasonable pet privileges to tenants.

LICENSE DIFFERENTIAL: S. 1417 introduced by Senators S. Thomas Gagliano, John P. Gallagher, and 13 other Sponsors, to provide for an additional \$3.00 dog registration tag fee for those not spayed or neutered to be placed in the "Pilot Clinic Fund" to be used for operation of a pilot spay/neuter clinic.

A. 1472 introduced by Assemblyman Bennett and three other Sponsors, to provide for an additional \$3.00 dog registration tag fee for those not spayed or neutered.

TRAPS: S. 1420 introduced by Senator Frank X. Graves, Jr., to permit municipalities to ban the placement of traps and snares which can endanger the general public.

S. 1575 introduced by Senator Carmen A. Orechio, to prohibit the manufacture, sale, importation, transportation, possession, use and attempt to use steel-jaw leghold type animal traps and to repeal R.S. 23: 4-38.1.

A. 1645 introduced by Assemblyman Mazur and 11 other Sponsors, to prohibit manufacture, sale, use, etc., of steel-jaw leghold animal traps.

ANIMAL EXHIBITS: A. 1601 introduced by Assemblyman Perun, to prohibit the exhibition of animals in shopping malls.

POLICE DOGS AND HORSES: A. 1605 introduced by Assemblyman D. Gallo, to provide that killing or harming a police dog or horse is a crime of the fourth degree.

DOG BITES: A. 1606 introduced by Assemblyman D. Gallo, to waive 10 day confinement period when police dog bites a person in the line of duty.

VETERINARY MEDICINE: A. 1619 introduced by Assemblyman D. Gallo and five other Sponsors, to revise and update statutes governing the practice of veterinary medicine.

NEW YORK

No update was received from Elinor Molbegott, Esq., at the time this issue of ARLR went to press. See the July 1982 ARLR.

NORTH CAROLINA

(Prof. William A. Reppy, Jr., Duke University School of Law, Durham, North Carolina 27706, 919-684-3804).

ARLR is advised by Professor Reppy that the North Carolina Legislature is not now considering any animal welfare legislation.

OHIO

(Gwen Gerber, P.O. Box 942, Logan, Ohio, 43138, 614-385-8636).

DOG RACING: H.B. 90 by Rep. Jones to amend Sections 3769.02, 3769.03, 3769.071, and 3769.99 and to enact Sections 3769.31 to 3769.43 of the Revised Code to provide for, regulate and license the parimutual or certificate method of wagering on the results of dog races; to levy a tax on the wagering, and to earmark fees, taxes, and other money due the State from dog racing, for primary and secondary education. Introduced and assigned to the House Committee of the State Government on January 21, 1982. Currently, there is no dog racing in Ohio. The bill not only designates where the monies go, it provides for the commission and other necessary elements of dog racing.

POUNDS: H.B. 186 by Representatives Carney and McClaskey to amend Sections 955.12, 955.16, and 959.06 of the Revised Code to prohibit county dog wardens from assessing costs for destroying animals brought to them for that purpose by humane societies or other non-profit institutions or organizations whose purpose is to prevent cruelty to animals. Introduced and assigned to the Agriculture and Natural Resources Committee on February 11, 1982. Postponed indefinitely on May 5, 1982.

HUMANE SOCIETIES: H.B. 276, by Rep. Tansey to amend Sections of the Revised Code for the purpose of adopting a new section number as indicated in parentheses, relative to the relationship between boards of county commissioners and county humane societies. Introduced and assigned to the Agriculture and Natural Resources Committee on February 26, 1982. This would make it necessary to receive approval of the county commissioners and prosecuting attorney with the power to approve the funds for an attorney to represent the humane society. The dog warden would be permitted to deliver all animals seized to the humane society to be dealt with in accordance with the law.

S.B. 235, a companion bill introduced and assigned to the Local Government, Urban Affairs, and Small Business Committee on April 29, 1982.

HUNTING: S.B. 216, by Rep. Maurer to amend Section 1531.02 of the Revised Code to remove the prohibition against hunting red fox or grey fox on Sunday. Introduced and assigned to the Energy and Natural Resources Committee on April 28, 1982.

H.B. 585, by Representatives James, Malott, Ball, Haines, and Skeen to enact Section 1531.081 of the Revised Code to establish the right to hunt wild animals as authorized by federal law. Introduced on June 9, 1982. No committee assignment to date.

DOG LICENSING: AM. H.B. 724, by Rep. McClaskey to amend Sections 955.01, 955.04, 955.05, and 955.99 and to repeal Section 955.06 of the Revised Code to increase the late filing penalty for registration of dogs, eliminate reduction of registration fees after July 1 of each year, and increase the penalty for subsequent violations of the

confinement of dogs statute. Introduced to the Agriculture and Natural Resources Committee October 1, 1981, Amended on May 5, 1982, and passed out of the House to the Senate on June 16, 1982. No committee assignment to date. The late filing penalty will be in an amount equal to the registration fee. The first offense, a person is guilty of a misdemeanor of the fourth degree.

SPAY/NEUTER: H.B. 975 by Rep. Hartley to amend Sections 955.01 and 955.99 of the Revised Code to encourage the spaying and neutering of dogs. Introduced and assigned to the Agriculture and Natural Resources Committee on April 21, 1982. This bill reduces by one-half the tag fee for a spayed or neutered dog.

POUND SEIZURE: H.B. 890 by Rep. McClaskey to amend Sections 955.15 and 955.16 of the Revised Code to permit the sale of impounded, unclaimed dogs to federally licensed animal dealers and to allow dog wardens and pound keepers to destroy humanely or dispose of other unwanted domestic animals. Introduced March 2, 1982, to the Agriculture and Natural Resources Committee. Referred to the Rules Committee March 30, 1982. No further action anticipated.

TENNESSEE

(Deborah H. Scarlett, 515 Brown Mountain Loop, Knoxville, TN 37920).

FISH AND GAME: S.B. 289, introduced by Sen. Anna Belle Clement O'Brien, to provide for the protection of catfish as a game fish. Referred to Calendar Committee of which Sen. Edward Davis is chairman. Companion H.B. 1065, introduced by Rep. James M. Henry. Referred to a subcommittee of Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

S.B. 2086, introduced by Sens. Edward Davis and Edgar H. Gillock, to amend T.C.A. 51-437 provisions governing the taking of fish, mussels and other aquatic life other than game fish; to provide for the quick release with the least possible injury of all wildlife taken accidentally in connection with a commercial operation. Became Public Chapter No. 807 on April 23, 1982.

S.B. 2087, introduced by Sen. Edgar H. Gillock, to provide for punishment as principals for those aiding and abetting violations of the game and fish laws. Became Public Chapter No. 808 on April 23, 1982.

S.B. 1275, introduced by Sens. Edgar H. Gillock, Ray C. Albright and Milton H. Hamilton, Jr., to amend and repeal various game and fish laws; imposes regulations on the buying or selling of red fox hides, furs or pelts; provides for the Tn. Wildlife Resources Agency to assess proposed bills and resolutions to determine whether any such bill or resolution does not provide for the protection and preservation of game and fish. Status: Passed Senate on 4/27/81. Received in House on 4/28/81. Held on House desk. Companion H.B. 1182, introduced by Reps. U.A. Presnell Moore and James R. McKinney. Referred for study to subcommittee of Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman.

WILDLIFE PRESERVATION: S.R. 29, introduced by Sen. Edgar H. Gillock, to create a Senate committee to study the fish and game laws of Tennessee and the Tn. Wildlife Resources Agency. Status: Introduced and Adopted (voice vote) on 5/27/81.

S.J.R. 94, introduced by Sen. Edgar H. Gillock, to provide for a special joint committee to study the game and fish laws of Tennessee and the Tennessee Wildlife Resources Agency, such laws said to be to safeguard wildlife for the hunter, fisherperson, and all citizens of Tennessee to enjoy for both game and non-game purposes. Status: Adopted by Senate on 4/27/81. Referred to House Calendar and Rules Committee of which Rep. Elbert T. Gill is chairman.

H.B. 2144, introduced by Reps. Ivory O. Hillis, Jr., Rabon W. "Ray" Johnson and Robert S. Stallings, to prohibit wanton waste of wildlife by requiring reasonable attempts to recover killed or wounded wildlife. Referred to Conservation and Energy Committee of which Rep. Ivory O. Hillis, Jr. is chairman. On March 16, 1982 Committee returned to clerk's desk.

HUNTING: S.J.R. 41, introduced by Sen. Robert Odell Burlason, to direct the Tn. Wildlife Resources Agency to study the feasibility of allowing hunting on state-owned land. Status: Returned by Governor w/o signature on 5/6/81.

S.B. 2088 introduced by Sen. Edgar H. Gillock to amend T.C.A. 51-417 to make it unlawful to hunt deer with the aid of artificial light from vessels in any waters of the state as well as from motor vehicles; to increase the penalties provided for in T.C.A. 51-429. Became Public Chapter No. 701 on April 12, 1982.

FOXES: S.B. 1626, introduced by Sen. Ben Longley, to provide for a closed season upon foxes in McMinn County; to permit foxes to be chased with dogs unless the wildlife resources commission provides for a closed season for the protection of the species. Became Public Chapter No. 667 on April 23, 1982.

RACCOONS: H.B. 897, introduced by Rep. Dennis M. "Mike" Robertson to amend T.C.A. 51-420 by providing for closed season on raccoons during the months of March, April and May. Status: Passed House on 4/15/81. Received by Senate on 1/25/82. Held on Senate desk.

ANIMAL CONTROL: S.B. 908, introduced by Sen. Edward Davis, to allow persons in Shelby County to shoot and kill blackbirds with birdshot on own property or on another's with owner's permission for a certain period. Status: Held on Senate desk. Companion H.B. 618, introduced by Reps. David A. Shirley and Barry E. Sterling. Status: Passed House as amended 4/28/81.

PET SHOPS: H.B. 831, introduced by Rep. Sharon Bell to enact the "Pet Shop Licensure Law," to provide for the promulgation of rules and regulations to insure the humane treatment of pets. Referred to Agriculture Committee of which Rep. Roscoe Pickering is chairman.

HUMANE TREATMENT: H.J.R. 246, introduced by Reps. Sharon Bell and S. Thomas Burnett, to create a committee to determine the feasibility of regulating the household pet industry, to insure humane treatment of household pets which are bred or held for the purpose of sale. Referred to Agriculture Committee of which Rep. Roscoe Pickering is chairman.

KILLING METHODS: S.B. 1162, introduced by Sen. Ben W. Hooper II, an Act relative to "The Dog and Cat Humane Death Act;" to provide for the use of barbiturates in the killing of animals in addition to the traditional methods. Status: Passed Senate on 2/3/82. Referred to H. Agriculture Committee of which Rep. Roscoe Pickering is chairman.

THE AGENCIES

INTERNATIONAL WHALING COMMISSION

In July of this year the International Whaling Commission voted to end the commercial slaughter of whales by 1985. The 25 to 7 vote, however, is not binding and it is possible that it could be defied by any of the dissenters, most notably Japan.

FEDERAL TRADE COMMISSION

Last summer the Senate Commerce Committee voted to remove veterinarians and their associations from the jurisdiction of the Federal Trade Commission. The bill would exempt professionals and their associations from antitrust and consumer protection provisions of the law, but leave enforcement of antitrust violations to the Justice Department. Under the legislation, an end would come to FTC rulemaking that preempts state laws concerning professionals and restricts the agency's authority to investigate professionals acting in compliance with state regulations. At the present time, the matter appears to be in limbo.

REGULATORY REFORM

An interesting sidelight on the Reagan administration's proposed reform of administrative regulations is the negative impact on hunting seasons for migratory birds and waterfowl. The National Wildlife Federation has complained that a major feature of the regulatory reform would require federal rules to lie before Congress for up to 45 days before being finally adopted, during which time Congress could review and, if it chose, veto the proposed rule. The National Wildlife Federation's executive vice president claimed that Congressional review "would play havoc with the establishment of hunting seasons. As it is now, notices of the start of hunting seasons are often published only days before the beginning of the seasons. Adding another review to an already lengthy survey and consultation process would most certainly delay or shorten hunting seasons."

ENDANGERED SPECIES: AFRICAN ELEPHANT

An interesting item appears at Federal Register, p. 31334 et seq. (Vol. 47, No. 139, Tuesday, July 20, 1982). There, the Fish and Wildlife Service of the Interior Department sets forth a revised rule for the African elephant regarding the importation or exportation of ivory. Most interesting are the comments received on the proposed rule by the Fish and Wildlife Service, and the answers thereto.

ENDANGERED SPECIES: OCELOT

At Federal Register p. 31670, Vol. 47, No. 140, Wednesday, July 21, 1982, a final rule appears adding the ocelot to the List of Endangered Fish and Wildlife.

FISH AND WILDLIFE SERVICE: MINNESOTA GREY WOLF

At Federal Register p. 30528, Vol. 47, No. 145, Wednesday, July 14, 1982, there appears a proposed rule under which the gray wolf in Minnesota would be, for the most part, "managed" by the Minnesota Department of Natural Resources. In addition, that Department would be authorized to permit a "sport harvest" of gray wolves, and would permit the sale in interstate and international commerce of wolves and wolf pelts lawfully taken in that harvest provided that the State's tagging requirements were observed and the provisions of CITES were met. The proposed rule states that the "harvest" would take place primarily in areas where wolves have repeatedly preyed on livestock, and would be limited by the wolf density figures established in the Fish and Wildlife Service's Eastern Timber Wolf Recovery Plan.

IN THE LEGAL LITERATURE

BOOK AND ARTICLE REVIEWS SOLICITED

There were never an abundance of books, articles, etc., published on the subject of animal rights law, nor are there now; nevertheless there are some. ARLR welcomes brief reviews of the current literature (see January 1981 ARLR, p. 9), and we would also appreciate being informed about any books, articles, etc. that come to our readers' attention. So far the response to our previous requests for reviews has been good, and we hope to have even more in future issues. Persons interested in doing reviews should check with ARLR's editor first, to ascertain that the proposed book or article has not been assigned to anyone else. Reviews, of course, reflect the reviewers' opinions and not necessarily SAR's, ARLR's or the editor's.

INTERNATIONAL JOURNAL FOR THE STUDY OF ANIMAL PROBLEMS.

The July-September 1982 issue of the *International Journal for the Study of Animal Problems* (Volume 3, No. 3) has several articles that will be of interest to those in the animal rights field:

"Pound Animals for Research Institutions?"

"Survey Uncovers Americans' Ignorance about Animals."

"The Judaeo-Christian Tradition and the Human/Animal Bond."

"Reporting Requirements under the Animal Welfare Act: Their Inadequacies and the Public's Right to Know."

"The Silver Spring 17." Related to this article is an editorial on the Taub case entitled "The Issue of Science and the Issue of Care."

VETERINARIANS FOR ANIMAL RIGHTS

This new organization recently published its first issue of *Animal Rights — News and Views*. Aimed at veterinarians, information can be had from Dr. Neil Wolf, Association of Veterinarians for Animal Rights, 69-40 229th Street, Bayside, New York 11364.

CUSTODY OF DR. TAUB'S MONKEYS

Henry Cohen, Esq., legislative attorney with the Congressional Research Service of the Library of Congress, has prepared a memorandum for the American Law Division Entitled "Right to Custody of the Silver Spring Laboratory Monkeys." Dated June 25, 1982, the Report is available through any Member of Congress.

ANIMALS SUING IN CONTRACT AND TORT

Henry Cohen, Esq., has written a brief but thought provoking essay entitled "Some Preliminary Thoughts on Permitting Animals to Sue in Contract and Tort." Mr. Cohen's paper is as yet unpublished, but is available from S.A.R.

ALL THAT DWELL THEREIN: ANIMAL RIGHTS AND ENVIRONMENTAL ETHICS

A new book with the above title by Professor Tom Regan has just been published by the University of California Press, 2223 Fulton Street, Berkeley, California 94720. Tom Regan is Professor of Philosophy at North Carolina State University and his new book includes some exciting essays. For example: "Utilitarianism, Vegetarianism and Animal Rights;" "Animal Rights, Human Wrongs — An Examination and Defense of One Argument Concerning Animal Rights;" "Animal Rights and the Law: The Need for Reform." *All That Dwell Therein* is 259 pages long, retails for \$18.95, and its ISBN Number is 0-520-04571-8. Doubtless Professor Regan's book will be indispensable reading for everyone concerned with animal rights.

ORION NATURE QUARTERLY

A new magazine by the above name made its appearance a few months ago. Published in New York (136 East 64th

Street, New York, New York 10021), the first issue, Summer 1982, contains one article and one book review that will be of interest to members of the animal rights movement. The former is entitled "Beyond Kindness, Animals and Moral Theory," by Professor Bernard E. Rollin. Dr. Rollin is, of course, author of the recent *Animal Rights and Human Morality* (Prometheus Books, 1981). The book review is of Donald R. Griffin's *The Question of Animal Awareness: Evolutionary Continuity of Mental Experience*.

WILD-FREE ROAMING HORSE AND BURRO ACT

The Wild-Free Roaming Horse and Burro Act (P.L. 92-195) became law on December 15, 1971. The Fourth Report to Congress, dated June 1982, has recently been published. It is available from the Government Printing Office.

MARINE MAMMAL ANNUAL REPORT

On June 21, 1982 the Secretary of Commerce sent to the Congress the Annual Report on the Administration of the Marine Mammal Protection Act of 1972, covering the period April 1, 1981 to March 31, 1982. The Report is available from the Assistant Administrator for Fisheries, National Marine Fisheries' Service, U.S. Department of Commerce, Washington, D.C. 20235.

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

The Fish and Wildlife Service of the Department of the Interior has announced the availability of the lists of endangered and threatened wildlife and plants. Copies may be obtained from the Office of Public Affairs — Publications, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, INC.

"Humane Care and Development of Substitutes for Animals in Research Act," a Report from the Committee on Science and Technology to accompany H.R. 6928, House of Representatives, 97th Congress, Second Session, August 19, 1982 (97-777).

"Live Cattle Futures Market," Hearing before the Subcommittee on Livestock, Dairy and Poultry of the Committee on Agriculture, House of Representatives, 97th Congress, Second Session, February 26, 1982 (97-FFF).

"Endangered Species Act Amendments of 1982," Hearing before the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works, United States Senate, 97th Congress, Second Session, April 19 and 22, 1982 (S2309).

BOOK REVIEW

Henry S. Salt, *Animals' Rights Considered in Relation to Social Progress*, (Clarks Summit, Pennsylvania: Society for Animal Rights, Inc., 1980) 232 - XVI \$9.95. Reviewed by Dale Jamieson, Center for the Study of Social Policy, University of Colorado. Reprinted from *Philosophical Topics*.

Henry Salt was an extraordinary person of the sort that seems peculiar to Edwardian England. Educated at Eton and Cambridge, he returned to his old school for several years before retiring to a cottage in the country to write and think. There, growing his own vegetables, he lived frugally for the remainder of his long life. Salt wrote or edited more than 50 volumes of prose and poetry, as well as contributing to many periodicals and editing several more. He died in 1939 at the age of 88 after writing 3 autobiographies. *Seventy Years Among Savages* was the revealing title of one. Salt wrote his own funeral oration, declaring that he had died as he had lived, "a rationalist, socialist, pacifist and humanitarian" who "wholly disbelieve(d) in the present established religion," who looked forward to an age without "warfare, or the robbery of the poor by the rich, or the ill-usage of the lower animals by man."

Through Salt was virtually unknown in his lifetime, his influence was felt through the British Labor Party. H.M. Hyndman, its leader, Ramsey MacDonald, its first Prime Minister, and Sidney and Beatrice Webb were among his friends. G.K. Chesterton and George Bernard Shaw also fell under his spell. But Mahatma Ghandi was by far the most important figure affected by Salt. Soon after Ghandi arrived in England Salt befriended him. Under Salt's tutelage, Ghandi developed a moral foundation for his traditional Hindu vegetarianism. And it was Salt through his biography of a little known American radical, Henry David Thoreau, who introduced Ghandi to the philosophy of non-violent civil disobedience.

The volume under review is a reprint of the 1922 edition of Salt's *Animals' Rights in Relation to Social Progress*, but it includes more as well. There is a preface by Peter Singer in which he acknowledges his debt to Salt, as well as an annotated bibliography, prepared by Salt, with entries ranging from Mandeville's *Fable of the Bees* (1723) to Hawkins's *The Soul of an Animal* (1921). Salt's bibliography has been updated with an additional 46 pages of entries prepared by Professor Charles Magel. The volume is topped off with a bibliography of Salt's own writings, along with a brief biographical sketch.

In recent years many of Salt's concerns have begun to move into the spotlight. In the last decade there has been renewed interest in socialism, feminism and animal rights. There remain some tiresome souls, however, who persist in mistaking such concerns for the tell-tale sign of syrupy sentimentalism and mindless mushiness. For them Salt reserved his harshest words.

The fear of this absurd charge deprives the cause of humanity of many workers who would otherwise

lend their aid, and accounts in part for the unduly diffident and apologetic tone which is too often adopted by humanitarians. We must meet this ridicule, and retort it without hesitation on those to whom it properly pertains. The laugh must be turned against the true "cranks" and "crochet-mongers" — the noodles who can give no wiser reason for the infliction of suffering on animals than that it is "better for the animals themselves" — the flesh-eaters who labour under the pious belief that animals were "sent" us as food — the silly women who imagine that the corpse of a bird is a becoming article of head-gear — the half-witted sportsmen who vow that the vigour of the English race is dependent on the practice of fox-hunting — scientists who are unaware that vivisection has moral and spiritual, no less than physical consequences. (p. 123)

Reading Salt is not just an exercise in the history of ideas: his work continues to address some of the most important philosophical problems concerning the moral status of animals. I shall mention only two.

Since the publication of Peter Singer's *Animal Liberation* in 1975, a large and growing literature concerning our treatment of non-humans has developed. Much of the literature that is critical of Singer is rooted in misunderstanding and confusion. To a very great degree this is attributable to the unpalatability (some think literally) of Singer's conclusions, and the hostility they engender. But to some degree it is also attributable to the ambiguities and infelicities of *Animal Liberation*. As he has subsequently made clear, Singer is a utilitarian. Animals do not have rights, but neither do humans. Still the rhetoric of rights is employed in *Animal Liberation*, and it is no wonder that some critics have been misled. The republication of the volume under review permits us to see that the rhetoric of rights in *Animal Liberation* is the ghost of Singer's great influence, Henry Salt. Salt argued that if humans have rights, and he thought they did, then one can deny them to animals only on pain of inconsistency. He argued that "there is no difference *in kind* between man and other animals." (p. 134) He was willing to grant that animals are less intelligent and sentient than humans, however, and that therefore their rights are less stringent than ours. The issue of whether or not animals have rights has recently been explored in the pages of *Philosophy and Public Affairs* (Sumner, 1980). Tom Regan argues therein that the utilitarian considerations adduced by Singer are not sufficient for imposing an obligation to be vegetarian. Regan argues that an obligation to be vegetarian can only be sustained if animals have a right of life, and that moreover, some animals do have a right to life. In reply, Singer asserts that he is a utilitarian and a vegetarian, and a vegetarian because he is a utilitarian. On this issue at least, Regan is Saltier than Singer.

The debate concerning the moral status of animals has also stimulated interest in the moral foundations of population policy. Some, for example Leslie Stephen, have argued that it is in the interests of the animals themselves that we eat them. If we did not eat cows and pigs, for example, there would be no cows or pigs at all. This view suggests that animals are replaceable. It is no loss if

an animal is killed and eaten so long as he is replaced by another animal. Salt thought this view rested on a simple mistake.

Meantime, instead of committing the gross absurdity of talking of non-existence as a state which is good or bad, or in any way comparable to existence, we might do well to remember that animals' rights, if we admit them at all, must begin with the birth, and can only end with the death, of the animals in question, and that we cannot evade our just responsibilities by any such quibbling references to an imaginary ante-natal choice in an imaginary ante-natal condition. (p. 63)

Peter Singer has dubbed Salt's view, the "Prior Existence View," and the alternative proposed by Stephen and others, "the Total View."

The Prior Existence View holds that existence and non-existence are non-comparable, and therefore that bringing a being into existence cannot be said to benefit it. As plausible as this might sound, there are grave problems with this view. Though perhaps we do not think of bringing a happy child into existence as conferring a favor upon him, we do, it seems, think of bringing an unhappy child into existence as harming him. Suppose that a woman is pregnant, and she knows with a high degree of certainty that the fetus is defective, and that he would have little chance of a happy life. Many would say that the woman be obliged to abort the fetus, or better yet, not to conceive such a fetus. I might be said that the child would be better off dead. But if one is obliged not to bring unhappy children into existence, why isn't one obliged to bring happy children into existence? Moreover, if existence and non-existence are non-comparable, then what rational grounds can we have for saving people's lives? If we don't confer a favor on someone by bringing her into existence, how can we be said to confer a favor on someone by maintaining her in existence?

The Total View suggests that a population policy is right so long as it increases total happiness. But as Jan Narveson pointed out long ago, this view is indifferent between making existing people happier and making more happy people, so long as the total amount of happiness remains the same. But common sense suggests that happiness is not like milk. It is better to have a few very happy people (or cows), even if the amount of happiness (or milk) remains the same. Work on these problems continues, and Salt's view is certainly not the most implausible in the field.

Henry Salt is not just an interesting figure in the history of ideas. His contributions to the debate concerning animal rights are still relevant and significant. We should be grateful to the Society for Animal Rights for making available this important work by a neglected thinker. It will be required reading for anyone concerned with the contemporary debate. It will be an especially important source for those interested in the historical background of the present debate. But moreover, this volume is a good read for anyone concerned with the intellectual history of an important era, and the unique contributions of a fascinating man.

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(This bibliography combines and updates all previous bibliographies published in ARLR).

BULLETIN BOARD

NOTICES OF MEETINGS, CONFERENCES, ETC.

ARLR is interested in being informed about meetings, conferences, etc. which, directly or indirectly, are concerned with the subject of animal rights law.

AFAR CONFERENCE

Attorneys for Animal Rights has announced that on April 9 - 10, 1983, it will hold a membership meeting, Board of Directors meeting, and Animals and the Law Conference in San Francisco. The January 1983 issue of ARLR will contain further details. Information can be obtained from Attorneys for Animal Rights, Suite 2300, 333 Market St., San Francisco, CA 94105.

THANKS TO TAUB PROSECUTOR

The following is the text of a letter sent by Professor Henry Mark Holzer to Andrew Sonner, Esq., State's Attorney, Montgomery County, 50 Court House Square, Rockville, MD 20850.

Dear Mr. Sonner:

Now that the trial aspect of the Taub affair is over, it is fitting that formal note be taken of your dedication to seeing that justice be done and that the rights of the helpless, abused animals who fell victim to Dr. Taub are vindicated.

As Special Counsel to Society for Animal Rights and Editor of its *Animal Rights Law Reporter*, and as one who cares deeply about the well being of animals, please accept my thanks for a job well done.

Devoting so much effort to the Taub matter, in Montgomery County, no less, was truly heroic. Your conduct should be greatly appreciated by all who are concerned with animal rights.

Cordially,

Henry Mark Holzer

ARLR AND THE ANIMAL RIGHTS MOVEMENT

More and more, requests are being made to reprint material from ARLR. The most recent one is from the Humane Society for Larimer County, Colorado.

HARRIMAN (NEW YORK) STATE PARK DEER HUNT

The Committee to Abolish Sport Hunting, Inc., 453 East 84th Street, New York, New York 10028, chaired by Luke A. Dommer, is gearing up for another lawsuit this Fall in

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order to block this year's Harriman State Park deer hunt. Mr. Dommer points out that contributions to his organization are tax-deductible.

GRAND JURY REPORT ON ANIMAL SHELTER

The Santa Cruz County, California, Grand Jury rendered a scathing report on the county animal shelter, following a year-long investigation. Although the Grand Jury did not recommend criminal action against the officials of the shelter, 31 recommendations for improvement were made — including one that the county and three cities that fund the shelter operation not renew their contract with the non-profit firm that runs it. In addition, conflicts of interest were cited, and significant failures of humane treatment. The Grand Jury report is a veritable checklist of how not to run an animal shelter.

LEMURS SAVED FROM VANDERBILT UNIVERSITY

The International Primate Protection League, in tandem with public outcry, may have succeeded in saving two Duke University lemurs from a Vanderbilt University professor who wanted to acquire them in order to study their brains. Apparently, the experimenter backed off when the League began contacting newspapers in South Carolina, Tennessee and North Carolina. IPPL has arranged to have the animals transferred to an animal sanctuary in Texas where they will be allowed to live out their lives in captivity, but free from experimentation.

TAUB CASE *AMICUS CURIAE* BRIEFS

The notorious case of Dr. Taub will soon be appealed as the doctor attempts to reverse his conviction. The Assistant State's Attorney who tried the case has advised ARLR's Editor that several significant legal questions will be raised on the appeal, and that his office would welcome the filing of *amicus curiae* briefs by interested animal rights organizations.

THE CANADIAN ANIMAL LAW REPORTER

With ARLR as a model, the Essex County Humane Society of Windsor, Ontario, Canada, has begun to publish "The Canadian Animal Law Reporter." Its intention is to serve as an internal information service principally among humane societies.

HUMAN-ANIMAL RELATIONSHIPS

The Center to Study Human-Animal Relationships and Environments, 1-117 Health Sciences Unit, 515 Delaware Street, S.E., University of Minnesota, Minneapolis, MN 55455 is actively engaged in the study of the relationships between human beings and animals. For example, in the Spring of 1982 the Center sponsored a university course entitled "Perspectives: Interrelationships of People and Animals in Society Today."

SAR/ARLR NOTICED

Not long ago the Wildlife Legislative Fund of America reported on last year's National Conference on Animal Rights Law and the existence of ARLR. Quoting ARLR's editor that "in five years there will be a section of the ABA on animal rights," the Wildlife Legislative Fund of America observed that: "The arguments of the animal rights extremists are being taken seriously, and their new aura of respectability, combined with their growing professionalism, poses a real threat to sportsmen. In their view that animals deserve the same legal rights as children and the mentally incompetent continues to gain ground, the effect on sportsmen will be disastrous. The legal ramifications are mind-boggling. Animals no longer would be considered a natural resource of the people, to be managed and harvested under reasonable guidelines. They would have legal standing in court, including the right to have a lawyer do their talking for them." Yes, indeed, it looks like the killers of innocent animals are finally beginning to get our message.

AMERICAN VETERINARY MEDICAL ASSOCIATION

Apropos of the Editor's Comment in this issue of ARLR, there are two recent editorials in the *Journal of the American Veterinary Association* which are of interest. An editorial on July 15, 1982 entitled "Coping with government-subsidized veterinary services," discusses the problem that private veterinarians are having with animal welfare organizations which provide veterinary services. Among other things, the editorial recognizes that veterinarians could get into antitrust trouble through efforts to contest competition by humane organizations. However, in a not-too-subtle reminder, the editorial concludes by observing that: "persons are free to petition their governing or regulatory agencies for rulings on activities that may be viewed as unfair. Most difficult of all for veterinarians will be to find ways to collaborate with and support animal welfare organizations in their legitimate pursuits, and at the same time convince these organizations that animal health care services should be provided by veterinarians conducting private practices."

The August 15, 1982 issue of JAVMA contained an article entitled "AVMA and the Animal Welfare Issues." The article answers about 15 questions that veterinarians have been asking about today's animal welfare issues. These include the meaning of "animal rights," a survey of the most important contemporary issues, experimentation, companion animals, the role of the veterinarian in animal rights issues.

AVAILABLE RESOURCES

Available from SAR are:

- The Santa Cruz grand jury report.
- The §1983 opinion.
- The Chicago anti-slaughter ordinance.
- The two JAVMA articles.
- The horse trainer opinion.

— EDITOR'S COMMENT —

Recent evidence suggests that the organized veterinary profession is beginning to become deeply concerned about the animal rights movement, and is taking steps to deal with it.

As we reported in the April 1982 ARLR, about a year-and-a-half ago the American Veterinarian Medical Association began to investigate the possibility of establishing a standing committee on animal "welfare."

Then the AVMA Board authorized a standing committee of the Board on animal welfare. The last issue of ARLR reported the mandate of that committee.

Last Fall, the American Veterinary Medical Association sponsored a Conference on the Development of Government-Subsidized Veterinary Services, which was attended by some 90 persons. The avowed purpose of the Conference was to examine the issues for the veterinary profession raised by the development of government-subsidized veterinary services.

In late 1981 the Internal Revenue Service made a ruling to the effect that the operation of a full-service veterinary clinic by a particular Michigan humane society was not an activity which promoted that organization's exempt purpose, but was rather an unrelated business activity whose income was fully taxable. Deeply involved in that affair was the Michigan Veterinary Medical Association and it has been alleged that veterinarians from outside Michigan contributed financial support to the case.

The Virginia Beach, Virginia, SPCA's non-profit animal clinic was held in March 1982 to have been acting in violation of its charter and of state regulations. The action had been filed against the SPCA by the South Hampton Roads Veterinary Association which, the *Journal of the American Veterinarian Medical Association* reported, contended that the clinic was not operating within the legal bounds of a tax-exempt entity, and was unfairly drawing business away from private veterinarians. In a statement reminiscent of the Michigan case, the plaintiffs' attorney indicated that the Internal Revenue Service might revoke the SPCA's tax-exempt status. The attorney also referred to the lawsuit as "a test case," referring to the Michigan situation described above. According to the JAVMA, the American Veterinary Medical Association contributed \$2,000.00 to the Virginia case.

All of the above, and more, leads us to JAVMA's May 1, 1982, issue (volume 180, number 9), which reports on a set of Guiding Principles concerning animal welfare issues. JAVMA reports that the Principles "provide that AVMA positions should be concerned primarily with the scientific aspects of the medical well-being of animals rather than with the philosophical moral aspects." It is crucially important that the animal rights movement understand the implications of this policy statement. For one thing, doubtless this attitude made it possible for the committee to propose that the AVMA would take the position "that current laws and regulations governing the use of animals, when properly enforced and implemented, are adequate to insure humane care and treat-

ment of laboratory animals." And more: "The AVMA encourages proper stewardship of animals but defends and promotes the use of animals in meaningful research, safety testing, and teaching programs." In other words, by blinding itself to the philosophic or moral aspects surrounding the treatment of animals it becomes easy for the AVMA not only to condone the use of laboratory animals, but even to encourage it. Freed from the constraints of philosophy or morality, the organized veterinary profession would be free to ignore the brutalization of animals, the very beings whom individual veterinarians have taken an oath to aid.

Lest anyone doubt that this is exactly what many members of the veterinary profession desire to do, another proposal of the AVMA's Animal Welfare Committee provides irrefutable proof. That committee also proposed the following AVMA position statement: "The AVMA believes that the use of the term 'Animal Rights' has to do with personal philosophical values and therefore recommends that the terms 'Animal Rights' not be used, and encourages the profession to focus its attention on the welfare and humane treatment of animals." The committee added that statutes in all states protect animals from cruelty and mistreatment, but the law has not clearly recognized animals as having legal or moral rights.

The specific examples of organized veterinary actions against humane organizations mentioned above must be analyzed in connection with the AVMA's Animal Welfare Committee's proposal, just discussed, that the major organization of veterinarians in the United States eschew all philosophic and moral concerns regarding animals. Rejection of those concerns will provide the rationalization not only for organized veterinarians to continue and enlarge their attack on the animal rights movement generally and on humane societies in particular, but even worse it will free veterinarians of any constraints or inhibitions regarding their own treatment of animals and their judgment of how others treat them.

In short, the animal rights movement faces a significant challenge not only on the concrete level when its humane societies are attacked by the veterinary profession, but even more when the organized veterinary profession seeks to disassociate itself wholly from any philosophic or moral concerns regarding animals and their treatment. It seems to us that because the implications of that premise are all too obvious, the current movement within the organized veterinary profession to divorce all philosophical or moral concerns from the treatment of animals must be fought from without and from within. From the outside, the animal rights movement must make an issue of this unfortunate phenomenon, and must confront the organized veterinary profession with a consequences of its abdication from philosophy and morality. And from within, the many veterinarians who care deeply about animal rights must fight their own organizations in order to turn back this tide of amorality, and in its place force the AVMA to recognize that not only do animals have rights, but that the efforts of every veterinarian in the United States should be devoted to protecting and advancing those rights.

ANIMAL RIGHTS LAW REPORTER®

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

JANUARY 1983

IN THE COURTS

FEDERAL

ENDANGERED SPECIES ACT: STANDING TO SUE

In *Grover River Organization v. Department of Interior*, 12 ELR 20730, 10th Cir (1982), the plaintiff organization had as its primary purpose the promotion of flood control projects, as many of its members had previously suffered flood damage. They asserted that the listing of the leopard darter as a threatened species was improper as it was done without an EIS. The Tenth Circuit overturned the lower court and held the plaintiff did not have sufficient standing to assert its claims disbelieving that the plaintiff had demonstrated injury to itself or its members simply because of the previous flood problems.

ENDANGERED SPECIES ACT: SECTION 7 and OIL REFINERIES

In *Roosevelt Campobello International Park Commission v. EPA*, 685 F.2d 1034, 12 ELR 20903 (1st Cir 1982), the First Circuit reversed the granting of a water permit (NPDES) by the EPA for the building of an oil refinery at Eastport, Maine, on the basis of failure to comply with the requirements of Section 7 of the Endangered Species Act. A denial of a permit at the regional level had been overturned by an administrative law judge and national EPA, which issued the permit. Eagles and whales were the focus of concern, and critical to the decision was the fact that the Fish and Wildlife Service's biological opinions found that EPA could not be assured that the action would not jeopardize the protected species. With both the eagle and whale, the likelihood of a significant oil spill was an important factual issue. The administrative law judge found the likelihood of an oil spill so insignificant as to not represent a threat, and, therefore, that Section 7 of the ESA was not violated. The court noted that the issue

was not whether, by a preponderance of the evidence, passage could be made with reasonable safety, but the harder one of whether — after using the best data available — it was established that the risk of significant oil spills from the proposed tanker traffic was so small as to insure there is no likelihood of jeopardizing the two endangered species. The Court held that EPA had a duty to obtain the best evidence possible. In this case a "real time simulation" using a supertanker in the proposed route, as well as an actual mapping of the sea route, would have provided much better data upon which to make a risk assessment. The permit was overturned until such studies are carried out and new assessments are made of the results. This opinion is important because it supports the proposition that any Federal agency under the ESA may not remain in ignorance, or be limited by the evidence presented, but that it has an affirmative duty to obtain the best available scientific information before making a decision.

MIGRATORY BIRD TREATY ACT: CONVICTION

In *United States v. Mackie*, 12 ELR 20972 (1982), the Ninth Circuit upheld a conviction where the defendants had offered to sell whole eagles and eagle parts to undercover agents. The defendants argues two points. First, that they should have been charged under the more specific Bald and Golden Eagle Protection Act. The Court rejected this argument, stating that they could not find any congressional intent to prohibit prosecution under the MBTA, on the theory that the more specific BGEPA pre-empts the MBTA. The defendants also argued that the presidential agreement with the President of Mexico to extend the criminal sanctions of the MBTA to include eagles was an unconstitutional delegation of congressional power. This, too, was rejected as without merit.

The purpose of the ANIMAL RIGHTS LAW REPORTER is to provide information useful in legal efforts on behalf of animal rights. Nothing herein necessarily reflects approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or its Editor. Information contained herein is obtained from sources deemed reliable.

ENDANGERED SPECIES ACT: FEDERAL ACTION

In *Cabinet Mountains Wilderness v. Peterson*, 685 F2d 678, 12 ELR 21058 (D.C. Cir 1982), plaintiff citizen groups challenged the decision of the U.S. Forest Service to allow exploratory mineral drilling in the Cabinet Mountains Wilderness Area. They alleged violations of the Endangered Species Act and NEPA. The ESA was involved because approximately six grizzly bears, a threatened species, are in the general area. The Forest Service adopted the measures suggested in the biological opinion of the Fish and Wildlife Service. The Circuit Court upheld the lower court's use of the "arbitrary and capricious" standard for review of the agency action. Since the ESA does not specify a standard, it is governed by Section 706 of the Administrative Procedure Act. (See ARLR, Jan. 1982, for discussion on the lower court opinion.)

ANIMAL WELFARE ACT

Nine pending charges of violating the Animal Welfare Act were resolved in the past several months and 12 new charges of violating the act were filed, according to the U.S. Department of Agriculture's Animal and Plant Health Inspection Service.

The nine resolved cases were settled as follows:

An animal dealership in Kansas agreed to a \$100 fine and 30 day suspension of its USDA license. The suspension remains in effect until the kennels are in full compliance with animal care standards.

A city-owned zoo in Texas agreed to pay a \$100 fine and accept a permanent injunction against future violations. The city agreed to appropriate additional funds for the zoo and provide needed training for animal caretakers.

The owner of a private zoo in Ohio paid a USDA fine and agreed to issuance of a cease-and-desist order against future violations. He also agreed to promptly build a perimeter fence for the zoo and to transport and exhibit animals in ways that minimize risk of harm to the public.

A nationwide airline company settled a charge brought after a dog carried by the company died in transit. The company paid a \$2,000 fine and agreed to comply with the regulations and standards of the act when handling live animals in the future.

A dog dealer in Wisconsin agreed to surrender the dealership's USDA license and accepted a cease-and-desist order against future violations.

A guinea pig dealer in Wisconsin consented to issuance of a cease-and-desist order against future violations.

An animal dealer in Missouri agreed to a 60-day suspension of his dealer's license, with the license to remain suspended until his kennels meet the minimum standards required under the act. He also accepted a cease-and-desist order.

A Texas-based animal trainer paid \$1,000 and agreed to a 90-day suspension of his exhibitor's license, with the license suspension to remain in effect until he is in full compliance. He also accepted a cease-and-desist order.

A California research institution agreed to a cease and desist order against filing a late annual report on the use of animals in research.

STATE AND LOCAL

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

The July 1982 ARLR reported an incident in Sussex County, New Jersey, involving a livestock auctioneer, a hauler, and a mutilated calf. Apparently, animal cruelty charges against the auction market were dismissed by a municipal court judge. The livestock hauler apparently failed to appear for the hearing, and a bench warrant was issued.

Although an assistant state's attorney and a defense lawyer had arranged a guilty plea to animal cruelty charges which would have caused the defendant only to pay veterinarian fees, an unspecified fine, and to be placed on probation, the trial judge rejected the plea bargain. Instead, he sentenced the defendant to ninety days in jail, with forty-five of them suspended. In addition, the judge sentenced the defendant to pay a \$1,000 fine and \$600 in veterinary costs. Using a machete the defendant had amputated a portion of the male dog's sexual anatomy. Interestingly, the presiding judge had previously presided over the *Taub* case in the District Court. Although Judge Klavin informed the defendant that he had thirty days to appeal, the judge refused to stay the sentence pending appeal. Thus a sheriff led the defendant from the courtroom in handcuffs. (One cannot help wishing that the sentence was imposed in Saudi Arabia).

A Shelbyville, Tennessee, man was fined \$25 and court costs after conviction on a cruelty charge. He beat a two-year-old pinto for at least an hour, even after the horse had collapsed. The judge apparently declined to impose a jail sentence observing that "the imposition of a reasonable fine is sufficient."

A New Jersey animal trainer was fined \$500 for animal cruelty because of the death of a 7,000 pound elephant that froze in a barn. The defendant was found guilty of both civil and criminal animal cruelty for failing to provide sufficient heat for the animal and for failing to properly house it.

A man in Tacoma, Washington, who intentionally hit a dog with his car was sentenced to a year in jail and a \$250 fine. He had previously been convicted of cruelty to animals.

NO-PET CLAUSES

A 72 year-old Maryland man and his 90 year-old wife are fighting in court to keep their cat in a high-rise apartment complex for the elderly. One of their arguments is that the cat is necessary to the woman's

"health and welfare." Although the lease has a no-pet clause, the elderly couple prevailed in the trial court and the landlord is apparently appealing to the appellate court.

HARRIMAN (NEW YORK) STATE PARK DEER HUNT

Despite the efforts of the Committee to Abolish Sport Hunting, this year's deer hunt could not be stopped. The committee also sought unsuccessfully to prevent the 1981 hunt, the first in the park's 70 year history.

ANIMALS AS PROPERTY: MEASURE OF DAMAGES

The lawsuit reported in the October 1982 ARLR concerning a labrador retriever who allegedly was negligently allowed to run loose and impregnate a malamute, was settled for \$350.

TAUB v. STATE

On November 5, 1982 the Maryland Court of Appeals granted a petition for a writ of certiorari in this notorious case. The questions which the petition presents for review are as follows:

1. Is Article 27, 59, of the Annotated Code of Maryland unconstitutional because it fails to give fair notice of what conduct is prohibited, and therefore, denies due process and equal protection of the law?
2. Is Article 27, 59, of the Annotated Code of Maryland as applied to the Petitioner in conflict with federal law, and does it encroach upon a field that has been pre-empted by the federal government?
3. Can the Petitioner be lawfully prosecuted under Article 27, 59, of the Annotated Code of Maryland for medical research on animals done pursuant to a federal grant and supervised by the United States government?
4. Should the lower court have granted the Petitioner's Motion for a Judgment of Acquittal when the State failed to prove that Petitioner inflicted "unnecessary or unjustifiable physical pain or suffering" on the animal in question?
5. Was the Petitioner twice placed in jeopardy for the same offense when the lower court permitted evidence of alleged unsanitary conditions at Petitioner's laboratory to be introduced in evidence after Petitioner was acquitted of this offense in the District Court?

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as

such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

The 97th Congress ended in late December 1982. Following are enactments in addition to those already reported in 1981 and 1982 issues of ARLR.

ENDANGERED SPECIES

H.B. 6133, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1984. Referred to Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Conference Reported filed, House Report No. 97-835 on 9/20/82. Agreed to by Senate (Voice) on 9/20/82. Agreed to by House (Voice) on 9/30/82. Approved — Public Law 97-304 on 10/13/82.

FISH AND WILDLIFE

H.B. 5662, introduced by Reps. Edwin B. Forsythe and John B. Breaux, to extend until October 1, 1983, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Status: Senate Committee discharged (Voice) on 10/1/82. Passed Senate without amendment (Voice) on 10/1/82. Approved — Public Law 97-347 on 10/18/82.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

MASSACHUSETTS

STATE AND LOCAL

To date, ARLR has been able to obtain regular legislative reporting from California, Connecticut, Florida, Massachusetts, New Jersey, New York, North Carolina, Ohio and Tennessee. Persons interested in acting as ARLR's legislative correspondents in the other states are encouraged to contact the Editor.

CALIFORNIA

(Virginia Handley, The Fund For Animals Inc., Fort Mason Center, San Francisco, California 94123, 415-474-4020).

Of the many bills regarding animals introduced in the California legislature during its last session, few were enacted. Those that were are set forth below.

MOUNTAIN LIONS: SB 1333. The existing moratorium on the trophy hunting of mountain lions was extended for three years.

BEARS: SB 1671. Increased the maximum punishment for the sale and purchase of bear meat and parts.

GUARD DOGS: AB 2456. Provided for the licensing and regulation of those who furnish guard dogs.

COYOTE KILLING: AB 2596. Allows the killing of coyotes on state land.

ANIMALS IN OPEN TRUCKS: AB 3048. Provides for a three-year study of the number of traffic accidents caused by an animal jumping or falling from a motor vehicle onto a highway.

FLORIDA

(Stuart A. Cohen, Esq., 12430 S.W. 147 Terrace, Miami, Florida 33186, 305-251-9000).

Although the Florida legislature is not now considering any animal welfare legislation, the state has recently increased penalties for crimes involving animals. The maximum fine for Cruelty to Animals (Sec. 828.12, Florida Statutes), a first-degree misdemeanor, has been raised from \$1,000 to \$5,000. The fine for attending or betting on the fighting or baiting of animals (828.122, F.S.), also a first-degree misdemeanor, was raised from "not less than \$500 and not more than \$1,000" to "not more than \$5,000." The confinement of animals without sufficient food, water or exercise and the abandonment of animals (both contained in 828.13, F.S.), was raised from a second-degree misdemeanor to a first-degree misdemeanor and the maximum fine rose from \$500 to \$5,000.

ILLINOIS

Broadview, IL

Broadview, a suburb of Chicago, has enacted an ordinance limiting the number of adult cats per household to two. In addition, the animals must be leashed when outdoors, and licensed. A first offense is punishable by a fine of from \$5.00 to \$25.00.

POUND ANIMALS: H.6539 (substituted for H.1141) introduced by Representative Michael J. Lombardi, repeals the Commonwealth's pound seizure law and prohibits any voluntary sale of pets in public shelters to animal dealers or research institutions. After successful passage through the House and two readings in the Senate and Senate Ways and Means Committee, the bill was amended December 8 as follows: "This act shall take effect upon its acceptance in a city by a vote of the city council with the approval of the mayor and in a town by a majority vote at an annual town meeting." The amended bill was passed to be engrossed and later sent to the House where the amendment was concurred. After enactments by both branches, the Senate motioned to reconsider, followed by a motion to table this legislation. Both motions must receive and pass a roll-call vote before House 6539 can reach the Governor's desk. In the final hours of the session, H.6539 was killed by the Senate.

TAX-EXEMPT STATUS: Charles River Breeding Laboratories, Inc., possibly the largest breeder of laboratory animals, received sales tax exemption with passage of H.6445. The new law will take effect in January. In 1981 Charles River reported a net income of \$5,186,700, based on net sales of \$39,356,300.

NEW JERSEY

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200)

SPAY/NEUTER CLINICS: A.1471 (SAR's legislation) to establish a state administered clinic program passed the Assembly 74-0 on Dec. 6, 1982, awaiting action on a merger with S.1101 which was passed by the Senate. No further report as we go to print.

A.1917 introduced by Assemblyman D. Gallo and 8 other Sponsors, to provide for the establishment of a program for the spaying and neutering of dogs and cats owned by indigents, and for an Animal Population Control Fund. Passed the Assembly and sent to NRA Committee of the Senate.

LICENSES: A.1472 introduced by Assemblyman Bennett and three other Sponsors to provide an additional twenty-cents fee for dog registration tags to fund A.1471. Passed Assembly and sent to NRA Committee of the Senate.

A.589 changing the annual expiration date for municipal licenses for dogs, has been signed into law.

EUTHANASIA METHOD: A.1025 prohibiting the destruction of animals through the use of the decompression or gas chambers has been signed into law. S.396 prohibiting the use of decompression or gas chambers has been signed into law.

TENANTS: A.1774 introduced by Assemblyman Perun, to regulate the keeping of pets on rental premises in certain circumstances.

A.1288 introduced by Assemblyman Jackman and two other Sponsors, to provide reasonable pet privileges to tenants.

TAX DEDUCTION: A. 1222 introduced by Assemblyman Perun and two other sponsors, to provide for deduction from New Jersey gross income tax the cost of spaying and neutering dogs and cats.

ANTI-CRUELTY: A. 1248 introduced by Assemblymen Rod and Perun, to amend laws enacted for the protection of animals.

RESCUE AND LIEN: A. 1249 introduced by Assemblymen Rod and Perun, to give humane societies rights to impound animal allegedly mistreated and to charge person found guilty of cruelty.

TRAPS: S. 1420 introduced by Senator Frank X. Graves, Jr., to permit municipalities to ban the placement of traps and snares which can endanger the general public.

S. 1575 introduced by Senator Carmen A. Orechio, to prohibit the manufacture, sale, importation, transportation, possession, use and attempt to use steel-jaw leghold type animal traps and to repeal R.S. 23: 4-38.1. A. 1645 introduced by Assemblyman Mazur and 11 other Sponsors, to prohibit manufacture, sale, use, etc., of steel-jaw leghold animal traps.

A. 1936 introduced by Assemblyman Perun, to require the humane disposition of animals captured in certain animal traps and prescribe penalties for violations thereof.

ANIMAL EXHIBITS: A. 1601 introduced by Assemblyman Perun, to prohibit the exhibition of animals in shopping malls.

POLICE DOGS AND HORSES: A. 1605 introduced by Assemblyman D. Gallo, to provide that killing or harming a police dog or horse is a crime of the fourth degree.

DOG BITES: A. 1606 introduced by Assemblyman D. Gallo, to waive 10 day confinement period when police dog bites a person in the line of duty.

VETERINARY MEDICINE: A. 1619 introduced by Assemblyman D. Gallo and five other Sponsors, to revise and update statutes governing the practice of veterinary medicine.

S. 1811 introduced by Senator Orechio, to amend the laws governing the practice of veterinary medicine in New Jersey.

ANIMAL REPELLENT: S. 1914 introduced by Senator Cardinale, to permit certain persons to carry and use substances to repel animal attacks.

DISPOSAL OF ANIMAL CARCASSES: A. 1915 introduced by Assemblyman Marsella and 11 other sponsors, to provide for the disposal of animal carcasses.

HUNTING: S. 1719 introduced by Senator Dalton, to permit hunting sea ducks on Sunday under certain conditions.

WILDLIFE: A. 1927 introduced by Assemblyman Mazur and 5 other Sponsors, to restrict the use of land purchased by the Department of Environmental Protection with certain conservation funds for the preservation of endangered and non-game species.

FISH: A. 2181 introduced by Assemblyman Palaia, to regulate the taking and prohibit the sale of striped bass in the state.

NEW YORK

(Elinor Molbegott, Esq., General Counsel, ASPCA, 441 East 92nd Street, New York, New York 10028, 212-876-7700).

Mrs. Molbegott informs us that the New York Legislature concluded its session without having passed any significant animal legislation. All bills will have to be introduced anew at the 1983 session.

Brookhaven, NY

Brookhaven, a town on New York's Long Island, has enacted an ordinance limiting the number of adult dogs in a residential district to not more than ten. Special exemptions are available, and kennels are recognized. Violation is an offense punishable by a fine up to \$500 and/or imprisonment for up to six months. Each week's violation is a separate offense.

NORTH CAROLINA

(Prof. William A. Reppy, Jr., Duke University School of Law, Durham, North Carolina 27706, 919-684-3804).

The last session of the North Carolina Legislature concluded without enacting any legislation significantly affecting animals.

TEXAS

The City of Fort Worth, reacting to a 4 year-old girl being attacked by a "pet" jaguar, is considering an ordinance to bar "dangerous animals" from the City, whether they are caged or not.

MISCELLANEOUS

ANTI-HUNTER LEGISLATION: A hunter's lobby has prepared a model law aimed at illegalizing certain "action tactics" of anti-hunting activists. It is reported that the lobby began its efforts in January 1982 and that since then eight states have, to some extent, accepted the proposed provisions; California, Connecticut, Michigan, Minnesota, Montana, New York, Vermont and Washington. The core of the bill is the prohibition of "harassment." Barred is interference with the lawful "taking" of a wild animal. The maximum penalty for violation is a fine of \$500 and/or thirty days imprisonment. The model law also contains a provision making it unlawful to fail to obey the order of a peace officer to desist from harassment. Violation of that section is punishable by a maximum penalty of \$1,000 and/or ninety days imprisonment. Injunctions are also provided for, as are punitive damages. There are, of course, certain obvious legal problems in this statute. But the better approach is to kill it in the various legislatures rather than relying on the courts to do the job, after the model law has been enacted.

THE AGENCIES

ENDANGERED SPECIES

The Interior Department is now apparently ready to place the last remaining caribou herd in the contiguous United States on the endangered species list. There are a mere twenty or so of the animals left, roaming the border between Idaho, Washington and British Columbia. Also slated for listing as an endangered species is the Wyoming toad, which exists only in one 40-acre area in one Wyoming county.

INTERNATIONAL WHALING COMMISSION

In early November, the International Whaling Commission reported that Japan, the Soviet Union and three other nations (Chile, Peru and Norway) had filed formal objections to the worldwide ban on commercial killing of whales that the Commission voted in July and which is supposed to go into effect in 1986. The meaning of the objections is that the five countries have served notice that they do not consider themselves bound by the ban. The United States had asked Japan not to ignore the ban.

CANADIAN SEAL HUNT

The Commissioners of the European Economic Community have agreed to ban the import of products from baby seals. Next, approval of the EEC Council of Ministers is necessary.

ANIMAL WELFARE ACT: AIRLINE ANIMAL TRANSPORTATION

Eastern Airlines paid a \$2,000 penalty to the federal government in settlement of a charge that the carrier violated federal law in the death of a dog it shipped from Atlanta to San Francisco. The government alleged that Eastern used an undersized and poorly ventilated crate, possibly causing the dog to die from heat prostration. Eastern paid the fine without admitting or denying the charges.

IN THE LEGAL LITERATURE

INTERNATIONAL JOURNAL FOR THE STUDY OF ANIMAL PROBLEMS.

The October-December 1982 issue of the *International Journal for the Study of Animal Problems* (Volume III, No. 4) contains several articles that will be of interest to those in the animal rights field:

"The Problems of Pain; What Do Animals Really Feel?"

"The Future of Research Into Relationships Between People and Their Animal Companions" (This article contains an apparently extensive reference bibliography).

"The Changing Concept of Animals as Property."

"The Economics of Farm Animal Welfare."

The Michigan Humane Society has published its *Handbook of Animal Cruelty Law*, authored by a criminal trial attorney who has directed the Michigan Humane Society's Cruelty Investigation Department for the past five years. The 130 page handbook was originally intended to provide law enforcement agencies and humane societies in Michigan with an understanding of animal cruelty laws and to assist in the investigation, development and prosecution of cruelty cases. There is, of course, a similarity in cruelty laws throughout the United States, and this handbook could be useful outside of Michigan. It sells for \$15 per copy and may be obtained from the Michigan Humane Society, 7401 Chrysler, Detroit, Michigan, 48211.

ETHICS & ANIMALS

Ethics & Animals is a quarterly journal published in March, June, September and December by the Society for the Study of Ethics & Animals, Department of Philosophy & Religion, Virginia Polytechnic Institute and State University, Blacksburg, Virginia 24061. Volume III, No. 3, September 1982, announces that the 1983 meeting topic will be the relation between "Animal Liberation" and Environmental Ethics — raising the question of whether concern for the welfare of individual animals is compatible with the ascription of independent moral value to species, ecosystems, and similar entities. The issue also contains an article entitled "On Being Morally Expendable," by Professor Steve F. Sapontzis. There is also a review of Professor Tom Regan's new book from the University of California Press, *All That Dwell Therein; Essays on Animal Rights and Environmental Ethics*. Henry Cohen, Esq., has also contributed a comment on one aspect of R.G. Frey's book *Interests and Rights; The Case Against Animals*.

JURIS-NOTES

Juris-notes is the newsletter of the Jurisprudence Section of the Association of American Law Schools. Volume I, No. 1, July 1982, addresses the important question of "Rights," especially as concerns animals. The newsletter's editor, Professor A. D'Amato Northwestern Law School, Chicago, Ill. 60611, invites comments.

NEWSLETTER OF SCIENTISTS' CENTER FOR ANIMAL WELFARE

The Scientists' Center for Animal Welfare "seeks to foster the humane stewardship of animals by improving awareness of scientists and the public concerning animal issues." F. Barbara Orlans, Ph.D., is President of the Center (P.O. Box 3755 Washington, D.C. 20007). Interesting articles in the October 1982 issue (Volume IV, No. 3) are; "Values and Issues in Veterinary Medicine," "Animal Pain" and "Pets in Society."

ENDANGERED SPECIES: PREEMPTION

A very important article — "Federal Preemption of State Commerce Bans Under the Endangered Species Act" — has been published at 34 *Stanford Law Review*

1323 (1982). Written by Tony Phillips of the Stanford Law School *Law Review*, the article argues that states should have considerable leeway in restricting commerce in endangered species more strictly than does the federal government. Mr. Phillips' important conclusion is that: "both federal and state laws restrict commerce to reduce legal and illegal economic pressures on endangered and threatened species. Federal prohibitions, however, may be excused by permits. These permits also may preempt more restrictive state laws. Congress did not, however, intend for all ESA permits to preempt state sales bans. Except where ESA's explicit exemption purposes — scientific study, propagation, and species survival — require preemption of state law, federal permits should excuse only federal restrictions. States whose citizens value wildlife preservation more highly than the availability of commercial products of wildlife nearing extinction should be able to police themselves accordingly, and section 6(f) of ESA allows them to do so."

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, INC.

"The Use of Animals in Medical Research and Testing," Hearings before the Subcommittee on Science, Research and Technology of the Committee on Science and Technology, U.S. House of Representatives, 97th Congress, First Session, October 13, 14, 1981.

"Impact of Regulations on Production, Processing, and Export of Poultry," Hearing before the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Committee on Agriculture, Nutrition, and Forestry, United States Senate, 97th Congress, Second Session, February 16, 1982.

LEGAL ARTICLES CONCERNING ANIMAL PROTECTION AND ANIMAL RIGHTS: ADDENDA

These citations update the bibliography in the October 1982 ARLR.

Atkins, *Wild Horses and Burros Act Preempts State Authority*, 17 *Natural Resources Journal* 337 (1977).

Erdheim, Book Review of S. Yaffee, *Prohibitive Policy: Implementing the Federal Endangered Species Act of 1973*, 10 *Ecology Law Quarterly* 311 (1982).

Galant, *Animals Behind Bars*, 9 *Environmental Action* 4 (1978) [on the right of zoos and other institutions to keep wild animals in captivity].

Halter and Thomas, *Recovery of Damages by States for Fish and Wildlife Losses Caused by Pollution*, 10 *Ecology Law Quarterly* 5 (1982).

Hill, Warren, and Wolfe (eds.), *AAZPA Manual of Federal Wildlife Regulations*, American Association of Zoological Parks and Aquariums, Wheeling, W. Va. [a continuously updated looseleaf compilation of federal and state regulations concerning keeping wildlife in captivity].

Lindensmith, *How Much was that Doggy in the Window*, 18 *Trial* 49 (1982) [on veterinary malpractice].

Nelson, *Palila v. Hawaii Department of Land and Natural Resources: State Governments Fall Prey to the Endangered Species Act of 1973*, 10 *Ecology Law Quarterly* 281 (1982).

Van Dyke and Heftel, *Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency*, 3 *University of Hawaii Law Review* 1 (1981).

BULLETIN BOARD

PSYCHOLOGISTS FOR THE ETHICAL TREATMENT OF ANIMALS.

An organization by the above name has been formed by members of the American Psychological Association. Inquiries should be addressed to Dr. Kenneth Shapiro, Bates College, Lewiston, Maine 04240. The organization will seek establishment of a special group within the APA which will be dedicated to the protection of animal subjects in experimentation. It has been announced that the group also hopes to stimulate research concerned with the human-animal relationship.

HARVARD ANIMAL RIGHTS STUDY

Harvard University's Office of Government and Community Affairs commissioned a study analyzing the animal rights movement in America, specifically emphasizing its goals, strategies, funding sources and its effect on biomedical research at Harvard and other institutions. The study, in its own words, "was prompted by concern over an apparent increase in animal rights activities, press coverage of those activities and the amount of advertising purchased by antivivisection groups in publications and public places such as subways and buses." The Study is explosive in the facts it reports and in the conclusions it draws.

THE WAGES OF SIN

A rare animal importer was bitten on the hand by a deadly King Cobra while inspecting one of his reptile shipments at Kennedy International Airport. The dealer survived. The cobra was destroyed. As usual.

POACHING

Although the full extent of illegal trafficking in wildlife is not known, the United States Department of the Interior has estimated that it amounts to 10% to 25% of the legal trade which, by itself, was more than five hundred million dollars in imports and exports in 1980. Thus, the illegal trade is staggering. Texas officials reported that the number of state wildlife regulations violations has more than doubled in the last ten years. Apparently, neither state nor federal law effectively deters today's poachers. The problem is going to become worse simply because there is little or no law enforcement available, given the scope of the poaching that exists. In addition, the gains far exceed the penalties even if a poacher is caught. For example, bobcat hides average \$200 to \$250 in price, while fines for trapping them illegally run about \$50. A modern wrinkle is that poachers these days utilize expensive motor vehicles

and boats, armed with sophisticated electronic equipment to monitor police radio frequencies. A small glimmer of hope for the endangered African rhinoceros in Yemen's recent total ban on imports of rhinoceros horns. Yemen has been the world's single biggest market for the poacher-supplied item. The rhinos, whose population in Africa have declined by more than 50% in the last decade, and by 90% in a few countries, are slaughtered in order to make hilts for ceremonial daggers from their horns. In some places, the powdered horn is considered to be an aphrodisiac. Informed sources, however, do not expect the Yemeni ban to help much, because in that area of the world smugglers operate with virtual impunity. Probably, the slaughter of rhinos will end only when there are no more rhinos to slaughter.

EXPERIMENTATION: INSURANCE

The National Society for Medical Research — devoted to promoting "public understanding of the principles and humanitarian goals of biomedical and behavioral research" — recently reminded its members "of the legal implications raised by recent cases involving the use of animals in biomedical research." Noting the "increasing incidents of laboratory raids and potential legal costs from ensuing action," the Society informed its members that it had arranged for professional liability insurance. The policy provides limits of liability of \$1,000,000 per claim and covers liability, legal costs and even libel and slander. Given that all insurance premiums are predicated on the underwriter's expectation of its financial exposure it is extremely significant that the annual premium for the policy is a mere \$62.

TAUB CASE *AMICUS CURIAE* BRIEFS

Persons and organizations interested in filing *amicus curiae* briefs in *Taub v. State* (Court of Appeals of Maryland, Petition Docket No. 393) should contact Deborah Handel, Esq., Criminal Appeals and Correctional Litigation Division, Office of the Attorney General, The Munsey Building, 4th floor, 7 North Calvert Street, Baltimore, Maryland 21202, (301) 576-6422.

ANIMAL ABUSE STUDY

The Geraldine F. Dodge Foundation has funded a research project to investigate the relationship between gross cruelty to animals by children and their subsequent commission of violent criminal acts when they become adults. Dr. Stephen Kellert of Yale University is conducting the study, in collaboration with an investigator from the Menninger Clinic.

ORGANIZED VETERINARIANS

The concern of veterinarians with certain activities of humane organizations continues. For example, in a recent issue of *Veterinary News* (a publication of the New York State Veterinary Medical Society) concern was expressed by one of the society's regional directors that not-for-profit organizations were opening spay clinics and otherwise competing with veterinarians in private practice.

AMERICAN VETERINARY MEDICAL ASSOCIATION.

Consistent with its view of animal rights, the AVMA's speakers' bureau is named not the "Animal Rights Speaker's Bureau," but the "Animal Welfare Speakers' Bureau." This difference is not mere nomenclature. On the contrary, it underscores the view of the American Veterinary Medical Association that its institutional concern should be with the "welfare" of animals rather than with their "rights." Interestingly, the AVAMA's Committee on Animal Welfare was bombarded with letters reacting to its proposed set of Guiding Principles (reported in an earlier issue of ARLR). As a result the Committee was obliged to modify its initial statement, which now reads: "AVMA positions will be concerned primarily with the scientific aspects of the medical wellbeing of animals. It is also recognized that veterinarians have certain ethical, philosophical, or moral values that must be considered." In addition, to its earlier statement that "AVMA has a long-term concern and commitment to the welfare . . . of animals," the committee has now added the phrase "and humane treatment."

SMITHSONIAN DEERHUNT

Finally, officials of the Smithsonian Institution caved in to pressure from wildlife groups and Congress and cancelled the National Zoo's scheduled rifle and bow-and-arrow hunt of native American white-tailed deer at its animal preserve in the Virginia Blue Ridge Mountains. Instead of "trimming" the allegedly overpopulated deer herd, efforts will be made to relocate the deer.

LEGHOLD TRAP

New Jersey law prohibits steel-jaw leghold trapping in all first and second class counties. However, although Somerset County became a second class county following the 1980 census, the New Jersey Division of Fish, Game and Wildlife recently denied the county's status and thus declared that the statute was inapplicable. The truth has now come out, and an animal welfare organization has succeeded in making the information known to the public and getting the law enforced.

ADOPT-A-HORSE PROGRAM

A Texas man who had acquired 176 horses through the Federal Bureau of Land Management's "Adopt-a-Horse" program was arrested on a misdemeanor charge of cruelty to animals arising out of the apparent starvation of about 30 wild horses on his ranch.

JACKRABBIT SLAUGHTER

Last year's death-by-clubbing of thousands upon thousands of jackrabbits may happen again. Recently a spokesman for the Idaho Farm Bureau contended that the number of rabbits in Eastern and Southern Idaho was as high as ever, despite last winter's killing of an estimated 130,000 rabbits.

POLICEMAN DISCIPLINED FOR ANIMAL CRUELTY

A New Jersey police officer has been fired for needlessly shooting a cat and then lying about what he did. Local SPCA agents have been trying to press animal cruelty charges in addition to the disciplinary firing of the police officer.

PET EATING

A Michigan man claimed that hunger drove him to kill and then eat his neighbor's dog. Although the sentencing judge gave the defendant the maximum 90 days in jail on the cruelty charge, the judge observed: "It's not for us to judge what a desperate man should eat. If a man is starving, he has a right to do what he has to do. My compassion wasn't for the dog, it was for the man."

MORE AIDING AND ABETTING

Angry conservationists in Australia contend that it is American imports of kangaroo products that are endangering that country's best known animal. Two years ago the United States lifted its 1974 ban on the import of kangaroo hides. When, in 1980, the United States Interior Department's Fish and Wildlife Service lifted the ban on the ground that kangaroos were more numerous in Australia than previously believed, the killing moved into high gear again. Reportedly, six million kangaroos are killed annually in Australia. The ban was lifted because the kangaroo was no longer considered endangered. The underlying philosophy apparently is that if an animal is endangered, its slaughter ceases until its numbers increase sufficiently to allow the slaughter to begin again. When the slaughter reduces the animal's number to the endangered point, the slaughter again ceases. In sum, slaughter of animals is prohibited only when it reaches the point where there won't be enough animals left to slaughter.

ATTORNEYS FOR ANIMAL RIGHTS FIRST ANNUAL CONFERENCE

Attorneys For Animal Rights (AFAR) will sponsor its first annual conference on animal rights law, on Saturday, April 9 and Sunday, April 10, 1983, at the Fort Mason Conference Center, San Francisco, California.

At the SAR/ARLR Animal Rights Law Conference, held in November, 1981, a new tradition was begun: that of lawyers discussing the issues of legal importance in the field of animal rights. AFAR hopes to further this tradition by providing various workshops designed to inform legal professionals about the existing statutory and case law, and the potential for litigation in the future, as well as a two-hour plenary session focusing on the philosophical underpinnings of the animal rights movement. Each workshop will include a question and answer period.

The program for the conference (subject to change) is as follows:

Saturday, April 9, 1983 (Morning): Opening Remarks by AFAR President Laurence Kessenick. *Two hour*

Plenary Session on the concept of rights, moral, legal, and philosophical, the concepts of animality and bestiality, why the animal rights movement has emerged today, the connection with other movements, and a historical view of animal rights law.

Lunch

Saturday (Afternoon):

Companion Animal Litigation Workshop: a review of the case law and new theories.

Landlord-Tenant and Zoning Problems Workshop: a discussion of the case law and practical advice, handling evictions, challenging no pet policies and ordinances limiting the number of pets per household.

Workshop on Representing The Animal Rights Activist: Advising activists, criminal defense work, advising state humane officers and humane societies.

Procedural Issues Workshop: Standing to sue, increased measures of damages, remedies, use of new theories, such as habeas corpus and guardian ad litem.

Saturday Evening: Dinner (optional)

Sunday, April 10, 1983 (Morning):

Exploitation of Animals For Food and Research: a review of federal and state laws, case law, testing the state anti-cruelty statutes, the potential for civil actions.

Estate Planning and Animals Workshop: animals and decedents' estates, bequests to and of animals, charitable gifts to humane organizations, problems with trusts, Sido-type problems.

Lunch

AFAR Membership Meeting

Sunday (Afternoon): *Two Hour Workshop on Protection of Wildlife*: historical view of wildlife protection and the environmental movement, relevant federal and state laws, preemption problems, international laws and treaties, protection of animals in zoos and circuses, creating new remedies, standing to sue.

The Conference registration fee, which covers two days of workshops and Saturday and Sunday luncheons, is as follows: (On or before March 15, 1983) General Participant, \$75, Law Student/Senior, \$35, Dinner (optional), \$20; (After March 15, 1983) General Participant, \$85, Law Student/Senior, \$45; Dinner, same.

All other expenses of attending the conference will, of course, be the registrant's responsibility. The Conference is open to lawyers, judges, law teachers, law students, and members of the general public. The AFAR membership meeting is open to members of AFAR only. The number of conference participants will be limited by the space available at the Fort Mason Conference Center; thus we suggest that applicants

register early. AFAR is presently accepting applications for registration, and reserves the right to reject applications, in its sole discretion. Full payment of the registration fee must accompany the application. If you wish to receive a brochure and registration form, write to: Attorneys for Animal Rights, 333 Market Street, 23rd Floor, San Francisco, California 94122, (415) 665-5896.

AVAILABLE RESOURCES

Available from SAR are:

- The Harvard Study of the animal rights movement.
- The anti-hunter model legislation.
- The Brookhaven Town Council dog limitation ordinance.
- The *Taub v. State* petition for writ of certiorari.

CALIFORNIA 1982 LEGISLATIVE RECORD

Political Animal Welfare Action Committee (PAWAC), P.O. Box 68, San Ramon, California 94583, (415) 474-4020, has compiled a chart showing how each member of the California Senate and Assembly voted on each of last session's nine major pieces of animal legislation. This chart is indispensable to anyone in California who follows animal legislation. It is available through PAWAC.

FLORIDA DEER HUNT OPINION

Available from SAR is a copy of the Florida federal district judge's opinion on the injunction motion. It is fascinating reading. Among other things, the judge found "citizen" standing under the Endangered Species Act and that (citing *Pallia v. Hawaii*, 471 F. Supp. 985 (1979), aff'd 639 F. 2d 495 (9 Cir., 1981) state officials could be sued in an injunction action.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

— EDITOR'S COMMENT —

This issue of ARLR is its thirteenth, as we begin the fourth year of our publication. During that time my Editor's Comments have ranged widely. I have discussed the genesis of ARLR, and the importance to be found in its mere existence. I have noted that ARLR quickly found its place in the animal rights movement. Several Comments were devoted to the SAR/ARLR First National Conference on Animal Rights Law, held in New York just over a year ago. I have observed how the animal rights issue grows daily by leaps and bounds. I have addressed the issue of legal specialization within the animal rights law field. I have spoken of the American Veterinary Medical Association's newly-found institutional reaction to the concept of animal rights. I have solicited information from our readers about what is happening out there in the world about animal rights, and expressed my views about what needs to be done. And I have talked about goals.

Not a few of our major goals have been achieved. We have, in the past three years, published nearly two hundred pages of materials in ARLR on the subject of animal rights law. We have a network of regular contributors, both those who merely forward material to us and those who actually prepare it. One legal conference has already been held, and another is soon to be held. Attorneys for Animal Rights promises to be a viable organization, and an informal network of lawyers already exists throughout the country, who more and more are coming to rely on each other for help when needed. Hardly a week passes without an animal rights case surfacing in some court in the United States.

The American Veterinary Medical Association has obviously been obliged to undertake a serious consideration of the concept of animal rights vs. animal welfare, and that dialogue has only just begun. Legal efforts on behalf of animals are receiving increasing recognition, not only on a national level but on an international level as well. Federal and state legislators, when approached by lobbyists for animal rights causes, more and more consider the subject of animal rights a serious one with significant political overtones. Much more can be said, but the point is quite clear: the animal rights movement, and within it animal rights law, has undoubtedly come of age.

Indeed, in my judgment we are at a crossroads. The exciting growth of the past few years proves that the forward momentum is ours, and that if we proceed on the same course, the next several years will show exponential growth across the board. The decade of the Eighties can show more growth for animal rights, and for animal rights law, than everything in the past combined.

But this optimism must be tempered by two dangerous trends which have barely surfaced. The first, addressed in past pages of ARLR, is an attempt to use the animal rights movement as merely a means to other ends. Whether those ends are characterized as a class struggle, social justice, freedom from exploitation, or

whatever, the motivational common denominator has no place in the animal rights movement. The only legitimate goal of our movement is to secure the rights of animals as an end in itself. Anything else is not only collateral, possibly antithetical to the best interests of animals, and counterproductive, but it is also a cruel and dishonest attempt to use the animal rights movement for what are essentially political ends. More likely than not, this problem will increase and become more clearly defined in the years to come.

The second disturbing possibility for the animal rights movement, and especially for those concerned with the legal aspects of the movement, is increasing militancy: destruction of factory farm conveyor belts, break-ins; defacement, releasing animals, etc. This tactic will take its tone from the British experience. Recently, a previously unknown organization calling itself the "Animal Rights Militia" was among the groups claiming responsibility for having mailed a letter bomb to Prime Minister Margaret Thatcher's official residence. Four similar packages were defused at the House of Commons, addressed to the leaders of Britain's three opposition parties and a Home Office minister responsible for animal legislation. Not long before that, another animal rights militant told a London Newspaper that: "There's going to be more violent action against property, and I have the fear that it may get violent against people, too."

It must be understood that cruelty to, and other exploitation of, animals is the result of ideas. The wrong ideas, to be sure, but nonetheless ideas. So it should be obvious that, at bottom, the only thing that will ever enduringly change the awful treatment animals receive in the modern world is the acceptance of different, better ideas. It is that cause which the animal rights movement must concern itself with, and it is that cause in which lawyers can be the cutting edge.

I ask upon what pinnacle do we base human life and wellbeing that denies all rights to every species but our own?

Douglas Houghton, in a parliamentary debate,
House of Commons, May 11, 1973

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTER®

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

APRIL 1983

IN THE COURTS

FEDERAL

MARINE MAMMALS

To prevent the death and injury of porpoises, the Department of Commerce had issued regulations denying fishing permits to tuna boat captains unless they allowed observers on their boats. The observers would monitor applicable regulations and the fishermen faced fines of up to \$20,000 per violation, one year in prison and forfeiture of cargo. In a 2-1 decision, the United States Court of Appeals for the Ninth Circuit nullified the regulations against a challenge that placing observers aboard boats amounted to an unconstitutional search of the vessels.

The act now lists the information the BLM should have prior to making a decision — less than would have been required under the 1976 injunction [16 U.S.C. 1333(b) (2)]. Finally, the court noted that the new language supports the BLM taking quick action for removal of excessive numbers of horses, and that long term, court ordered studies, if required prior to taking action, would be inappropriate. The case was remanded to district court to consider recent BLM management decisions in light of the 1978 amendments.

WILD HORSES AND BURROS ACT: REMOVAL FROM THE RANGE

In 1976 the BLM was enjoined from removing wild horses from Idaho public lands unless "full and careful" consideration of all other alternatives was shown. In effect, the decision gave preference to the wild horses' use of the range over commercial activities. The D.C. Circuit has removed the injunction in *American Horse Protection Assoc. v. Watt*, 694 F2d 1310, 13 ELR 20156 (D.C. Cir., Dec. 10, 1982). The court gave a detailed consideration of the 1978 amendments to the Wild and Free-Roaming Horses and Burros Act, finding several significant policy changes in the new language. First, wild horses are not to receive priority in the management of federal lands. They are to be removed from an area when necessary to preserve and maintain a thriving natural ecological balance and "multiple use" relationship (i.e. commercial use), 16 U.S.C. § 1332(f). Secondly, the amendments give the BLM greater flexibility in making decisions on removal.

STATE AND LOCAL

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

In *People v. Allen*, 81 SA 472, the Supreme Court of Colorado held on January 24, 1983, that a statute prohibiting cruelty to animals is not unconstitutionally vague mainly because it is cast in general terms. Charged with the neglect of eight horses, the defendant prevailed on a county court to dismiss the charges on the ground of vagueness and overbreadth. The Supreme Court, drawing comparisons to child-abuse and neglect cases found that the wording of § 18-9-202 provided sufficiently flexible standards to ensure effective application of the legislative policy of preventing and punishing the abuse of animals.

A Hennepin County (Minnesota) man was sentenced to 20 days in the workhouse for strangling a cat and repeatedly stomping it. His plea of guilty to a misdemeanor charge of cruelty to animals could have gotten him 90 days and/or a \$500 fine.

A Pennsylvania man was fined \$100 plus court costs for beating a cat and stabbing it with a long, pointed stick.

The purpose of the ANIMAL RIGHTS LAW REPORTER is to provide information useful in legal efforts on behalf of animal rights. Nothing herein necessarily reflects approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or its Editor. Information contained herein is obtained from sources deemed reliable.

Another Pennsylvania man was fined \$300 plus court costs for neglect of a puppy which strangled to death on a chain. Witnesses said that the puppy had been chained outside, without shelter, food or water.

A Pennsylvania woman pleaded guilty and was fined \$41.50 for failure to provide adequate shelter for a dog.

A Pennsylvania judge imposed a \$300 fine, to be paid in small installments, on a fifteen year old boy who was found guilty of cruelty to animals for striking a tame mallard duck with a heavy stick and rendering it unconscious. The judge called the unprovoked attack a dastardly and inhumane act, and directed the boys' mother to take him home and examine his attitudes about God's creatures.

The July 1982 ARLR reported an incident in Sussex County, N.J., involving a livestock auctioneer, a hauler, and a mutilated calf. The January 1983 ARLR reported that when the livestock hauler apparently failed to appear for a scheduled hearing, a bench warrant was issued. The hauler finally showed up, and the charge that he had been responsible for cruelty to the animal was dismissed. Earlier, the judge had dismissed similar charges against the livestock market, contending that there was only hearsay testimony to link it to transportation of the mutilated calf. However, the hauler was fined \$500 for transporting the calf "in a cruel manner," a disorderly persons offense. Then, the judge suspended \$400 of the \$500 fine. The net result: a \$100 fine for a man who transported and delivered to an auction block a calf with its hind feet and ears cut off.

Two Iowa men who dragged a stolen llama nearly five blocks behind a pick-up truck were sentenced to five years in a reformatory and a month in the county jail.

A Hamilton Township, New Jersey, animal control officer has been charged with two counts of cruelty to animals and suspended from his job for leaving a cat caged and unattended for five days.

POACHING

A Berrien County District Court Magistrate recently fined three men nearly \$1,800 for poaching 19 rabbits. They also lost their hunting permits for 1983-1984. Another man was charged with the illegal sale of small game, pleaded guilty, and paid \$388 in fines and liquidated damages. A Detroit man pleaded guilty to a reduced charge of illegal possession of 194 pounds of salmon, and was assessed \$50 in court cost and \$2,835 in liquidated damages to be paid to the State Game and Fish Protection Fund.

SPCA'S AND SHELTERS

Last month, an Alabama Circuit Court judge declared unconstitutional — on vagueness and due process grounds — the state law giving animal protection groups the right to confiscate abused or neglected animals. An appeal has been filed. (Animal rights groups interested in filing *amicus curiae* briefs should contact Deanie Van Bebber, Chairwoman, Marshall County Humane Society).

The Editors Comment in the October 1982 ARLR referred to a case involving the Virginia Beach, Virginia, SPCA's non-profit animal clinic, which was held to have been acting in violation of its charter and in violation of state regulations. The action had been filed against the SPCA by the South Hampton Roads Veterinary Association and a couple of veterinarians. The contention was that the clinic was not operating within the legal bounds of a tax-exempt entity, and was unfairly drawing business away from private veterinarians. A Petition for Appeal to the Supreme Court of Virginia was filed and, as of a couple of months ago, had not been resolved.

ANIMALS AS PROPERTY: SATISFYING A JUDGMENT

A strange situation has surfaced in Trenton, New Jersey. While investigating a dog bite report, a policeman was bitten by the dog in question. So the policeman then shot the dog. The dog's owner sued the city and the policeman, and lost. Thereafter, the policeman sued the dog's owner, claiming "malicious prosecution" and several other things. He won a \$1,100 judgment. In an effort to satisfy that judgment the policeman is seeking to execute on the dog, by having it sold at auction.

NO-PET CLAUSES

A class action lawsuit has been filed in Hackensack, New Jersey. As usual, the case appears to present issues of breach of contract, waiver, estoppel, misrepresentation, etc. Interestingly, the few allegations of the complaint that we have seen appeared to be rather sophisticated. This should be no surprise, since no-pet clause litigation is becoming more and more sophisticated, as lawyers are becoming more imaginative and better versed in the precedent cases.

STANDING TO SUE

In what appears to be a dismissal grounded in a lack of standing to sue, a Connecticut Superior Court judge dismissed a five-count complaint filed against a Norwalk Company by Friends of Animals. Friends of Animals had claimed that the company violated federal and state laws by demonstrating surgical staplers on live dogs. The judge stated that: "[t]he claim for recovery is based upon [the plaintiff's] peculiar and particular sensitivities and not upon its rights as a member of the general public." FOA claims that it will refile.

ANIMALS AS PROPERTY

A Pennsylvania case raises an interesting and important question: how secure can someone be legally when they adopt an animal? A nine-month-old German shepherd was taken from its owner after he was charged with letting the animal run loose and improperly transferring the dog's license from another

pet. A Magistrate ruled that the defendant could have the dog back if he made some effort to pay \$233 in fines and costs. He failed to pay up, and the dog was then adopted by a nearby family. Now, the original defendant is in court trying to get the dog back. Preliminarily, the dog has been returned. The adopted family contends that they satisfied a ten-day waiting period required by the city ordinance for ownership of an adopted animal. The case points out that when people adopt animals, they should be very sure whether there are specific legal provisions providing for when legal title to the animal vests in them.

TRAPPING: WHO IS GUILTY?

A young Arizona man, out in the boondocks, came across a fox in a leghold trap. Naturally, the fox's leg was in terrible condition, so the boy calmed the animal, released it from the trap and took it home. Not knowing what to do, the good samaritan and his mother called the Arizona Game and Fish Department, the Arizona Humane Society, the Phoenix Zoo and the local animal shelter. Finally, the shelter took the fox away and although the boy thought it would wind up in the zoo, he later learned it had been put to death. Then, a State Game and Fish Officer served the boy with a misdemeanor citation for disturbing a trap. A Game and Fish Department Regional Supervisor was quoted as saying that "trappers have a right to trap and have a right not to have their traps disturbed." When the case finally got to court, it was dismissed because the Justice of the Peace concluded the young man had had no criminal intent!

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any

of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

The legislation reported below has been introduced into the 98th Congress.

ALASKA — ANIMALS AND WILDLIFE

S.B. 49, introduced by Senator Ted Stevens, et al., to reopen hunting and trapping lands in Alaska. Referred to the Committee of Energy and Natural Resources of which Senator James A. McClure is Chairman.

KODIAK BEAR NATIONAL WILDLIFE REFUGE

S.B. 340, introduced by Senator Frank A. Murkowski, for the acquisition by the United States by exchange of certain native owned lands or interests in lands in Alaska. Referred to the Committee of Energy and Natural Resources of which Senator James A. McClure is Chairman.

CONVENTIONS — NORTH PACIFIC FUR SEALS

H.B. 387, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Committee of Foreign Affairs of which Rep. Clement J. Zablocki is Chairman, the Committee of Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman and the Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

DESERT PUFFISH NATIONAL WILDLIFE REFUGE

S.B. 84, introduced by Senator Alan Cranston, to authorize the establishment of the Desert Pupfish National Wildlife Refuge in the State of Nevada. Referred to the Committee of Energy and Natural Resources of which Sen. James A. McClure is Chairman.

ENDANGERED SPECIES — WHALES

HCR 15, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Committee of Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

HCR 69, introduced by Rep. William R. Ratchford, et al., expressing the sense of the Congress with respect to those nations that have filed an objection to the International Whaling Commission ban on commercial whaling. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman and the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

HJR 136, introduced by Rep. G. William Whitehurst, calling for a wildlife preserve for humpback whales in the West Indies. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

IMPORTS — LEOPARD SKIN

S.B. 404, introduced by Senator Edward Zorinsky, to permit the importation of leopard skin. Referred to the Committee of Finance of which Senator Robert Dole is Chairman.

IMPORTS — KANGAROOS

H.B. 1903, introduced by Rep. Robert J. Mrazek, to prohibit the importation into the United States of certain kangaroos and products made therefrom. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

NATIONAL ZOOLOGICAL FOUNDATION

H.B. 431, introduced by Rep. G. William Whitehurst, to establish a National Zoological Foundation. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

PINNIPEDS

HCR 77, introduced by Rep. G. William Whitehurst, calling for a regional conservation treaty to protect Northern Hemisphere pinnipeds. Referred to the Committee on Foreign Affairs of which Rep. Clement J. Zablocki is Chairman.

RACEHORSES — DRUGS

H.B. 1694, introduced by Rep. Bruce F. Vento, to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to the Committee of Energy and Commerce of which Rep. John D. Dingell is Chairman and the Judiciary Committee of which Rep. Peter W. Rodino, Jr. is Chairman.

RESEARCH METHODS

HCR 58, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

S.B. 657, introduced by Senator Robert Dole, to amend the Animal Welfare Act to ensure the proper treatment of laboratory animals. Referred to the Committee on Agriculture, Nutrition and Forestry of which Sen. Jesse Helms is Chairman.

WILDLIFE REFUGE

H.B. 1626, introduced by Rep. Barbara F. Vucanovich, to authorize the recreational use of Ruby Lake National Wildlife Refuge in the State of Nevada. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

H.B. 1723, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations through fiscal year 1986 for the Great Dismal Swamp, Minnesota Valley, Sailors' Snug Harbor, and San Francisco Bay National Wildlife Refuges. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman on 3/1/83. Hearings begun by Fisheries Subcommittee on 3/9/83.

S.B. 696, introduced by Senators Lloyd Bentsen and John Tower, to ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas. Referred to the Committee of Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 1935, introduced by Rep. Bill Patman, et al., to ratify an exchange agreement concerning national wildlife refuge system lands located on Matagorda Island in Texas. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman on 3/7/83. Hearings begun by Fisheries Subcommittee on 3/9/83.

H.B. 1438, introduced by Rep. Gene Chappie, et al., to provide for the restoration of the fish and wildlife in the Trinity River Basin, California. Referred to the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

STEEL-JAW LEGHOLD TRAPS

H.B. 1797, introduced by Rep. Clarence D. Long, et al., to end the use of steel-jaw leghold traps on animals in the United States and abroad. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman.

MIGRATORY GAME BIRDS

H.B. 891, introduced by Rep. Harold S. Sawyer, to establish a webless migratory game bird research fund and to require a federal permit for the taking of any webless migratory game bird. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ENVIRONMENTAL PROTECTION

H.B. 492, introduced by Rep. Bill Chappell, Jr., to authorize the Secretary of the Interior to classify and inventory wetland resources, to measure wetlands degradation, to evaluate the environmental contribution of natural wetlands. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

WILD HORSES AND BURROS

S.B. 457, introduced by Senator James A. McClure, et al., to require the protection, management, and control of wild free-roaming horses and burros on public lands. Referred to the Committee on Energy and Natural Resources of which Senator James A. McClure is Chairman.

H.B. 1675, introduced by Rep. Barbara F. Vucanovich, et al., to require the protection, management, and control of wild free-roaming horses and burros on public lands. Referred to the Committee on Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman and the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

STATE AND LOCAL

To date, ARLR has been able to obtain regular legislative reporting only from those states listed below which set forth the name and address of a legislative correspondent. Persons interested in acting as ARLR's legislative correspondents in other jurisdictions are encouraged to contact the Editor.

CALIFORNIA

(Virginia Handley, The Fund For Animals Inc., Fort Mason Center, San Francisco, California 94123, 415-474-4020).

POUNDS/SHELTERS. SB 883 by Senator David Roberth prohibits pounds and shelters from making animals available to research facilities but authorizes transfer of animals from pounds and shelters to animal health technology programs accredited by the Board of Examiners in Veterinary Medicine.

PREDATOR CONTROL: AB 799 by Assemblyman Byron Sher prohibits the use of the highly toxic poison Compound 1080 for the purpose of predator control in California.

ENDANGERED SPECIES TAX CHECK-OFF: AB 384 by Assemblyman Bob Campbell provides for a check-off on state income tax forms to contribute to a fund for the use of endangered species programs to be handled by the State Department of Fish & Game.

TRAPPING/PREEMPTION: AB 1114 by Assemblyman Lou Papan allows cities and counties to pass laws on trapping that are more restrictive than the State Fish & Game laws. This would allow local governments to ban the trap.

EUTHANASIA: AB 2024 by Assemblyman Jack O'Connell prohibits the use of the nitrogen cabinets for the purpose of euthanasia of dogs and cats.

FLORIDA

(Stuart A. Cohen, Esq., 12430 S.W. 147 Terrace, Miami, Florida 33186, 305-251-9000).

HIGHWAYS: HB.7 introduced by Rep. Christian Meffert proposes an amendment to §.316.073, Florida Statutes, by adding that persons riding or leading animals on a roadway or shoulder shall be subject to the Florida Uniform Traffic Control Act; and proposes a new section (§.316.0825, F.S.) which requires operators of vehicles to use reasonable care when approaching a "led or ridden animal."

KILLING DOGS: HB. 8 introduced by Rep. Christian Meffert proposes an expansion of the defense in a civil or criminal proceeding to killing or injuring a dog, from "satisfactory proof that the dog was killing cattle or sheep" to "a reasonable belief that the dog was either killing, harassing or causing injury to, or would have killed or injured, cattle, sheep or horses."

MANATEES: HB. 18, introduced by Representatives Evans, Jones, Gardner and Patchett proposes that in order to protect manatees, the Florida Department of Natural Resources shall regulate the operation and speed of motorboats within the Turkey Creek area of Brevard County all year long, instead of the current November 15 to March 31.

SB 44 introduced by Sen. Clark Maxwell is a companion bill to the above.

DEER HUNTING: HB. 99 introduced by Rep. Carl Carpenter and Rep. Herbert Morgan, proposes that persons hunting deer shall wear at least 500 square inches of daylight fluorescent orange material.

GREYHOUND RACING: HB. 113 introduced by Rep. Robert Reynolds, proposes that children accompanied by a parent or guardians be allowed to attend, but not bet at, greyhound and horse races.

HORSE AND GREYHOUND RACING: HB. 124 introduced by Rep. Robert Reynolds would allow horse-racing and dogracing on Sundays, but would continue to prohibit more than six days of racing in any one week.

AUTHORITY TO ENTER PROPERTY: HB. 151 introduced by Rep. Frank Williams proposes the elimination of the authority of Game and Fresh Water Fish Commission officers to enter upon all property, posted or otherwise, as part of the commission police power.

(The G&FWFC can now enter upon posted and non-posted property to enforce state statutes and commission rules relating to animals and fresh water fish, including bag limits and methods used to kill.)

HUNTING SAFETY: SB. 8 introduced by Sen. Joe Carlucci would require certain hunters to obtain a certificate of competency and safety in firearms handling.

DRUGGING HORSES: SB.72 introduced by Agriculture Committee, et al., proposes limiting the prohibition on drug use at horse shows and horse sales; and outlines procedures relating to horse show occupational licenses.

MISCELLANEOUS: The Game and Fresh Water Commission filed both an emergency and a permanent rule restricting public access to the 37.33 acre Judges Cave tract in Jackson County, which, according to the Commission, is an important brood rearing and reproductive area for the endangered gray bat. The area is being established as a wildlife refuge for the animal. (Rules No. 39-ER83-1 and 39-14.05.)

The decision in last summer's Florida Everglades Deer Case, styled *The Fund for Animals, et al. vs. The Florida Game and Fresh Water Fish Commission, et al.*, has been reported at 550 F. Supp. 1206(S.D.Fla., 1982.)

GEORGIA

The Georgia House recently passed a bill providing for sentences from one of five years imprisonment and fines of up to \$10,000 for the killing or injuring of a police dog. According to one State Representative, the new felony is necessary because the killing of police dogs has become quite a serious problem.

MAINE

(Kenneth J. Shapiro, Psychologists for the Ethical Treatment of Animals, Psychology Department, Bates College, Lewiston, ME 04240)

COYOTES: H.46 by Representative Connors would establish a bounty on coyotes.

TRAPS: S. 162 by Senator Usher would prohibit the trapping of bear with the leghold steel jaw bear trap.

HUNTING: S. 169 by Senator Usher would prohibit harassment of hunters, trappers, and fishermen.

NONGAME WILDLIFE: A second draft of S. 298 has been written, a bill to finance a non game species management program through an income tax check-off system.

MOOSE HUNTING INITIATIVE: On February 14, 1983 James S. Henderson, Deputy Secretary of State, State of Maine, transmitted to the 111th Legislature of the State of Maine an initiated bill entitled "An act to repeal the law providing an open season on moose." The

Department of State of the State of Maine stated that the minimum number of valid signatures required to initiate the legislation was 37,026, and after review by the Department of State it was determined that the number of valid signatures obtained by the initiative's proponents was 39,942. According to Mr. Henderson, "[s]ince the petitions have previously satisfied the constitutional requirements in all other respects, under the provisions of Article IV, Part Third, Section 18, of the constitution of Maine, I do hereby declare this initiative petition to be valid." Mr. Henderson added that if the legislature rejects the initiative proposal, "a referendum election would be called for November, 1983."

MARYLAND

Although it had long been assumed that cockfighting was illegal under Maryland's anti-cruelty statutes, in September of 1982 a county judge dropped charges against a man who ran a cockfight, contending that cockfighting was not specifically provided for in the anti-cruelty statute. As a result, anti-cockfighting legislation has been introduced, with a couple of the bills making the conduct a misdemeanor carrying a \$500 fine and other bills providing for felony treatment carrying a fine of up to \$2,000. In addition, there is apparently other legislation pending which would sanction cockfighting, by prohibiting only the giving away of prizes, or allowing wagering, or charging admission fees to attend cockfights.

Legislation has been proposed to create a State Wildlife Theft Prevention Fund which would be used to promote the public awareness of game laws and to finance rewards to any persons providing information leading to the conviction of anyone violating game laws. The legislation was proposed in reaction to the State's apparent inability adequately to police such things of the killing of endangered species, illegal hunting, trapping and sale of wildlife.

The Baltimore County Council voted recently in favor of a bill requiring all county cat owners to have their cats vaccinated against rabies. Apparently, the council acted after reports reached it that last year in Virginia more than 700 cats were reported to have rabies and that the rabies problem has been reported in at least 3 Maryland Counties.

MASSACHUSETTS

(Sheryl L. Broad, New England Anti-Vivisection Society, One Bulfinch Place, Boston, Massachusetts 02114 (617) 523-6020).

POUND ANIMALS: H.2769 introduced by Representative Michael F. Flaherty and companion S.1212 introduced by Senator Michael LoPresti repeal the Commonwealth's pound seizure law and prohibit any voluntary sale of animals in public shelters to animal dealers or research institutions. They have been assigned to

Committee on Counties and Natural Resources and Agriculture, respectively. Six other bills (H.1237, H.1241, H.2134, H.2766, H.3235, S.215) repeal the seizure law, however, not all prohibit voluntary sale.

RESEARCH: H.2770 introduced by Representative Michael F. Flaherty and companion S.1211 introduced by Senator Michael LoPresti prohibit the use of animals in "any scientific investigation, experimentation, or use for medical school or other instruction, or testing of drugs or medicine, if alternative methods are available or the knowledge sought to be gained is available from other scientific data, or the experiment is repetitive, or designed for demonstrative purposes." Both bills in Natural Resources and Agriculture.

H.3545 introduced by Representative John E. Murphy and H.3717 by Representative Thomas F. Brownell establish a seven-member commission to investigate animal abuse and vivisection. Representing animal rights groups, the research community, medical schools, and private citizenry, the commission's authority would include the power to investigate complaints and subpoena witnesses/records in response to unlawful complaints alleging animal abuse and vivisection.

S.197 introduced by Senator Michael LoPresti amends Ch. 147, Sec. 10 by adding New England Anti-Vivisection Society to the list of special police officers.

Several other research animal-related bills have been filed, however, they have not as yet received a number.

EUTHANASIA: H.2395 introduced by Representatives Allan Chiocca and Stephen Doran, amends Ch. 140 by prohibiting euthanasia of impounded animals by shooting, electrocution, or by injection of T-61 or succinylcholine chloride. Shooting is permitted "only in an emergency situation to prevent extreme suffering or in which the safety of people or other animal life is threatened." Assigned to Natural Resources and Agriculture.

ANTI-CRUELTY STATUTE: S.1176 introduced by Senator Carol Amick amends Ch. 272, Sec. 77 by adding "sanitary environment." Assigned to Natural Resources and Agriculture.

MOURNING DOVES: S.1178 introduced by Senator Carol Amick prohibits both the director and division of fisheries and wildlife board from establishing "any season of the hunting, taking, or possession of mourning doves." Assigned to Natural Resources and Agriculture.

H.417 introduced by Joseph Paolilli authorizes the director of the division of fisheries and wildlife to establish an open season for the hunting of the mourning dove.

TAX CHECK-OFF: H.1801 introduced by Representative Joseph Manning establishes a check-off system on the state income tax form that would permit money to be used in nongame wildlife programs. Assigned to Committee on Taxation. Similar bills have been filed over the last several years, however, disputes have arisen over how the monies should be allocated within the Department of Environmental Affairs. The Secretary has proposed a compromise measure in the establishment of an environmental special fund.

H.123, recommended by the Department of Fisheries, Wildlife and Recreational Vehicles, establishes a check-off system, however, these revenues would stay within the Department.

HUMANE LAW ENFORCEMENT: H.2947 introduced by Representative Richard Moore extends inspection privileges of special police officers (Ch. 147) to all places animals are "maintained for commercial, educational or scientific use. . ." This allows for inspection rights into all research facilities and all research animal dealers. Assigned to Natural Resources and Agriculture.

SPAY/NEUTER: S.196 introduced by Senator Michael LoPresti requires non-profit, tax exempt humane societies to expend a minimum of 5% of its net worth toward maintaining free spay/neuter clinics for those years gross assets exceed \$500,000. Assigned to Committee on Counties.

MICHIGAN

TAX CHECK-OFF FOR WILDLIFE: H.B. 4181, introduced February 22, 1983, would allow individuals receiving an income tax refund to designate \$1.00, \$5.00 or \$10.00 thereof to go into a special fund for the benefit of non-game wild animals and designated endangered plants and animals.

NEW JERSEY

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200)

VETERINARY MEDICINE: Signed into law was A.1619 which revises and updates statutes governing the practice of veterinary medicine.

ANIMAL EXHIBITS: Signed into law was A.1601 which prohibits the exhibition of animals in shopping malls.

FISH: SCR. 3001 introduced by Senator Connors and 7 other Sponsors, to memorialize Congress and the President to require the Federal Environment Protection Agency to take immediate remedial action concerning PCB contamination of blue fish along the coastal waters.

OR. 3001 Introduced by Assemblyman Rod, to memorialize Congress and the President to require the Federal Environmental Protection Agency to take immediate remedial action concerning PCB contamination of blue fish along the coastal waters.

PRO-HUNTING: A. 3059 introduced by Assemblyman Chinnici and 6 other Sponsors, to provide penalties for persons interfering with the lawful hunting, trapping or catching of birds, fish and other animals.

DOGS: A. 3145 introduced by Assemblyman Perun and 5 other Sponsors, to strengthen notice requirements for removal of dogs from owners' permits, to establish size limits on dog enclosures and prohibit importation of certain young dogs into the state.

ANIMAL CONTROL: A. 3205 introduced by Assemblyman Zimmer and 6 other Sponsors, to upgrade the training requirements for people who enforce the laws concerning animal control.

TRAPPING: A. 3207 introduced by Assemblyman Mazur and 10 other Sponsors, to prohibit the manufacture, sale, importation, transportation, possession, use and any attempt to use the steel-jaw leghold type animal traps.

SENIOR CITIZENS AND PETS: S. 3023 introduced by Senator Bassano, to permit nursing homes and residential health care facilities to board cats and dogs when the animals will promote the well-being of the residents.

NEW YORK

(Elinor Molbegott, Esq., General Counsel, ASPCA, 441 East 92nd Street, New York, New York 10028, 212-876-7700).

ANIMALS IN MOVIES: A. 542 introduced by Assemblyman Stavisky provides that a person is guilty of a misdemeanor if such person intentionally kills or injures an animal for the production of certain motion pictures.

SALE OF BABY RABBITS: A. 1688 sponsored by Assemblyman Connelly prohibits the sale of baby rabbits unless the seller provides proper brooder facilities for the care of the baby rabbits while in the seller's possession. Bill also provides that baby rabbits shall not be dyed and that baby rabbits under two months of age may not be sold or given away in any quantity of less than six.

PEACE OFFICERS: A. 3661 and S. 2937 sponsored by Assemblyman Coombe and Senator Cooke, respectively, provide that despite the fact that officers and agents of duly incorporated societies for the prevention of cruelty to animals are peace officers, they shall not be authorized to carry, possess, repair or dispose of a firearm unless the appropriate license has been obtained.

PET SHOPS: A. 2790 introduced by Assemblyman Levy prohibits the sale of dogs and cats at pet shops.

S. 2334 introduced by Senator Nolan prescribes standards for pet shops and requires pet shops to obtain licenses to operate from the Commissioner of the Department of Agriculture and Markets.

MOTOR VEHICLE STRIKING ANIMALS: A. 2638 introduced by Assemblymen Proud and Nagle requires persons who, while operating a motor vehicle, strike and injure a cat, to stop and endeavor to locate the owner of the cat or the police, and to take other reasonable action so that the cat may have necessary attention. Dogs and cattle are already protected under this law.

SHELTERS AND POUNDS: A. 215 and S. 252 sponsored by Assemblyman Bianchi and Assemblywoman Goodhue, respectively, provide that a municipality may transfer ownership of unredeemed dogs to societies for the prevention of cruelty to animals and humane societies; bills also lessen holding period for dogs at shelters if such dogs are requisitioned by an agency which trains seeing eye or guard dogs or uses dogs for law enforcement purposes.

WILDLIFE: A. 2312 and S. 2142 introduced by Assemblymen Hinchey, Murphy and Orazio and Senator Steinfeldt, respectively, provide that no person shall interfere with the lawful taking of wildlife by another; no person shall disturb the behavior of wildlife with the intent to prevent their lawful taking; no person shall disturb another person who is engaged in the lawful taking of wildlife, with intent to dissuade or otherwise prevent the taking.

A. 2055 introduced by Assemblyman Passannante extends the power of the Commissioner of the Department of Environmental Conservation by granting him the power to allow the importation and sale of the skin, body, parts or products of animals that are currently protected under the Environmental Conservation Law from being sold or offered for sale.

A. 1890 and S. 1438 introduced by Assemblyman Bianchi and Senator Berman, respectively, make it unlawful for any person to use compound 1080 (sodium fluoroacetate).

A. 623 and S. 603 introduced by Assemblymen Harenberg and Cochrane and Senator Trunzo, respectively, provide that it shall be unlawful for any person to hunt or trap wildlife within the confines of a park preserve.

A. 1510 introduced by Assemblyman Grannis provides that a county, city, town or village may adopt local laws or ordinances to ban the placement of traps, snares and other devices which can endanger and harm children and pets within the territorial limits of the municipality.

ANIMAL FIGHTING: A. 3626 and S. 2888 introduced by Assemblymen Roback, Hoyt and Engel and Senators Kehoe and Padavan, respectively, increase the maximum fine for persons who are convicted of violating the animal fighting statutes to \$25,000.00.

A. 3484 introduced by Assemblyman Hoyt increases the penalty for those persons who are convicted of violating the animal fighting statutes two or more times to a felony punishable by a fine of not less than \$10,000.00 or by imprisonment for not less than one year, nor more than five years, or both.

SHELTER FOR DOGS: A. 3696 and S. 2948 introduced by Assemblyman Lasher and Senators Halperin and Winikow, respectively, prescribe standards for the care of dogs that are left alone outdoors in enclosed areas. In particular, the bills require that such dogs be provided access to a sanitary protective structure.

PETS IN HOUSING: S. 2807 introduced by seven senators provides that no tenant shall be deemed in violation of the provisions of any lease solely because the tenant keeps a reasonable number of pets in his apartment, provided such pets are not a health or safety hazard.

A. 2553 and S. 2029 introduced by twenty-four assemblypersons and sixteen senators, respectively, provide that the keeping of a pet in violation of a prohibition in a lease or occupancy agreement against such practice shall not constitute sufficient basis for terminating such occupancy; bills also provide that any provision in a tenant's lease restricting the keeping of pets shall be deemed waived if the tenant has kept the pet in the apartment for one year or more and the keeping of the pet was disclosed to the tenant's landlord or landlord's agent.

A. 1371 introduced by Assemblyman Passannante provides that no tenant shall be denied occupancy in a multiple dwelling or be subjected to eviction therefrom on the sole ground that he has a dog or a cat.

A. 2404 and S. 1860 introduced by numerous assemblypersons and senators provide that no person who is sixty-two years of age or older may be denied occupancy in or be subjected to eviction from any housing project on the sole ground that such person has a dog or a cat.

A. 1051 and S. 751 introduced by Assemblypersons Cooke and Lipschutz and Senator Kehoe, respectively, provide that facilities providing health related services may at the discretion of such facility and the Commissioner of the Department of Health, board one cat or dog.

A. 435 introduced by Assemblywoman Lipschutz provides that no patient shall be denied residence in any private residential health care facility or be subjected to removal therefrom on the sole ground that such person has a pet.

DOG LICENSING: S. 222 introduced by Halperin raises the dog license fee in New York City to \$10.60 for each spayed dog and \$12.60 for each unspayed dog except that persons sixty-five years of age or older shall pay \$8.50 for each dog. The bill further provides that the increase in fees shall be used for the reopening and maintenance of shelters closed before January 31, 1983.

EXPERIMENTATION IN SCHOOLS: A. 2047 introduced by Assemblyman Grannis provides that no live vertebrate animals may be used in any elementary or secondary school receiving public funds or for an activity associated with or sponsored by such schools except that the students may observe the normal living patterns of wild animals in zoological parks, gardens and aquaria and may observe the normal living patterns of pets, fish or domestic animals. Bill further provides that live animals on the premises of such schools shall be housed and cared for in a humane and safe manner.

New York City

A bill has been introduced into the New York City Council to offer some measure of protection for guard dogs. The bill would require the licensing of guard dog trainers and would bar anyone from a license who has been convicted of cruelty to animals. Additionally, a five-person board headed by the Health Commissioner would be responsible for establishing new rules for the care and training of guard dogs.

NORTH CAROLINA

(Prof. William A. Reppy, Jr., Duke University School of Law, Durham, North Carolina 27706, 919-684-3804).

ANIMAL THEFT: S.B. 72 would make criminal the theft of all animals regardless of value; theft of an animal worth more than \$400 would become a felony. At present only theft of a farm animal can be a felony.

FUNDING: S.B. 23 would appropriate funds for the state Wildlife Resources Commission on condition none be used for studies of fox populations.

WILDLIFE: S. 146 would authorize state income tax payers to earmark all or part of tax refunds for protection of nongame wildlife.

IMPOUNDMENT: H.B. 314 would authorize two named counties to sell impounded dogs and cats to animal dealers.

HUNTING: H.B. 155 would prohibit hunting of animals with use of bait such as grains, fruit, and salt.

S.B. 28. Would limit hunting by use of lights in Iredell County.

H.B. 85 would bar hunting from public roads and hunting on private lands without an entry permit in Lenoir County.

BIRD SANCTUARY: H.B. 109 would establish a bird sanctuary in Chowan County.

EXOTIC ANIMALS: Several counties are considering ordinances barring or regulating the harboring of exotic animals (such as lions, tigers) following attacks by such animals on neighbors. The state house has passed such a bill.

PENNSYLVANIA

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200).

EUTHANASIA: H. 350 introduced by Rep. Thomas Murphy completely prohibits the use of the decompression chamber.

S. 303 introduced by Sen. Doyle Corman prohibits the decompression chamber except for scientific research. It prescribes the use of sodium pentobarbital as the methods of euthanasia.

S. 392 introduced by Sen. Anthony Andrezeski prohibits any use of the decompression chamber and prescribes the use of either an injection or use of a carbon monoxide chamber. This bill is similar to Maine's law regulating the euthanasia of dogs and cats.

HUNTING: H. 2707 prohibits deliberate harassment of hunters and wildlife for the purpose of disrupting lawful sport hunting activities.

TENNESSEE

(Deborah H. Scarlett, 515 Brown Mountain Loop, Knoxville, TN 37920).

POLICE DOGS: S.B. 31, introduced by Sen. Steve Cohen, to amend T.C.A. 39-417 to create a felony offense of knowingly killing a dog owned or used by a law enforcement agency or official. Referred to Calendar Committee of which Sen. Edward Davis is chairman. On Committee Calendar for 2-28-83.

Companion H.B. 358, introduced by Rep. Dan Byrd. Referred to Judiciary Committee of which Rep. Michael Murphy is chairman.

ANIMAL GIVEAWAYS: S.B. 195, introduced by Sen. Milton Hamilton, to amend T.C.A., Title 39, Ch. 4, to prohibit the sale, offering for sale, bartering or giving away of fowl under three weeks of age, or rabbits under two months of age, as pets, toys, premiums or novelties, or to color, dye, or stain fowl or rabbits. Placed on Commerce, Labor and Agriculture Committee of which Carl Moore is chairman.

Companion H.B. 59, introduced by Rep. Don Dills. Referred to Commerce Committee of which Rep. Ed Murray is chairman.

RACCOON HUNTING: S.B. 69, introduced by Sen. Anna Belle Clement O'Brien, to amend T.C.A. 51-408 to authorize and regulate the hunting and chasing of raccoons. Referred to Energy and Natural Resources Committee of which Sen. Joe Crockett is chairman.

Companion H.B. 30, introduced by Rep. Dennis "Mike" Robertson. Referred to Conservation and Environment Committee of which Rep. Ivory Hills is chairman.

WASHINGTON

(Steve Ann Chambers-Castanes, Esq., 2133 Third Avenue, Seattle, Washington 98121, (206) 292-9827).

SENIOR CITIZENS AND PETS: S.B. 3059 the legislature found that senior citizens, particularly those of low income, public housing or in nursing homes, often lead lonely and harsh lives. The legislature recognizes that the warmth and companionship provided by pets can significantly improve the quality of senior citizens' lives. The legislation was enacted with the intent to insure that senior citizens and persons in nursing homes will not be deprived of access to pets.

TRANSPORTATION OF ANIMALS IN CRUEL OR UNNECESSARILY PAINFUL MANNER: S.S.B. 3051 provides any person who transports or confines any domestic animal in a cruel or unnecessarily painful manner, posture or confinement or, that will obviously jeopardize the safety of the animal or the public shall be guilty of a misdemeanor. This section does not by itself restrict the transportation of domestic animals in the rear portion of pickup trucks, however, in such situations where such transportation will obviously jeopardize the safety of the animal, the person transporting an animal in the rear portion of a pickup truck or similar vehicle will be guilty of a misdemeanor.

EXOTIC BIRDS: H.B. 945 provides it shall be unlawful for any person or transportation company to bring into the state for any purpose, any domestic animals or psittacine birds without first having secured an official health certificate certified by the state veterinarian of origin of such animal; or birds meet the health requirements promulgated by the Director of Agriculture of the State of Washington.

The principles of justice, if they are to make solid and permanent headway, must be applied with thoroughness and consistency. If there are rights of animals, there must *a fortiori* be rights of men; and, as I have shown, it is impossible to maintain that an admission of human rights does not involve an admission of animals' rights also.

Henry S. Salt, *Animals' Rights Considered*
in Relation to Social Progress

THE AGENCIES

ENDANGERED SPECIES

The Selkirk herd of woodland caribou, the last indigenous caribou in the contiguous forty-eight states, has been placed on the endangered species list. The animals range over Northern Idaho and Washington and British Columbia, and only 13-20 of them are believed left alive. The action, by the Interior Department's Fish and Wildlife Service, is only an emergency listing. It will last eight months, during which time the agency will take steps to place the caribou on the permanent endangered list. As such, hunting of the animals will be banned and other special protection will be afforded them. Poachers, fires and collisions with motor vehicles have been decimating the herd in recent times. The Interior Department's announcement came only hours before a deadline that had been set by the National Audubon Society, after which the organization intended to file a lawsuit to protect the Selkirk caribou.

Although the International Whaling Commission last summer approved by a vote of 25-7 the five-year moratorium on all commercial whaling, former Japanese Prime Minister Suzuki rejected the moratorium. The ban was scheduled to take effect in 1985. In an important article in the January 19, 1983, edition of *The New York Times* John B. Oakes noted that the International Whaling Commission vote "reflected rising worldwide concern over the virtual extinction of several whale species and the extreme depletion — threatening their survival — of all the rest, because of overhunting (often illegal and always unimaginably cruel) by a handful of nations led by Japan. Tokyo's subsidized support," said Mr. Oakes, "of a dying industry serves no legitimate purpose, for there is a cheaper, readily available substitute for every whale product." It should also be noted that two-thirds of the members of the United States Senate and more than sixty members of the House had demanded, at the time Mr. Oakes wrote his article, that the Japanese be made to understand, in the clearest terms, that sanctions will be imposed if commercial whaling continues after the cutoff date set by the International Whaling Commission. Even the State Department has promised to take action "beginning this spring," when the next allocation of the amount of fish to be taken by the Japanese in United States waters will be made.

IN THE LEGAL LITERATURE

INTERNATIONAL JOURNAL FOR THE STUDY OF ANIMAL PROBLEMS.

The January-March, 1983 issue of the *International Journal for the Study of Animal Problems* (Volume IV, No. 1) contains at least two articles that are of interest to those in the Animal Rights field: "The LD50 — The Beginning of the End" and "Vivisection and Misanthropy — Thoughtful Use of Animals."

SAR'S SALT BOOK REVIEWED

The Winter 1983 issue of *Orion Nature Quarterly* contains a two page review of *Animals' Rights Considered in Relation to Social Progress* by Henry S. Salt, republished by Society for Animal Rights. The review concludes that "*Animals' Rights* is required reading for all serious students of the issue."

QUEBEC ANIMAL LAW

The Quebec Society for the Defence of Animals has published a book entitled *Animal Welfare and the Law in Quebec*. The 163 page, well-indexed handbook contains what appears to be virtually every law in the Province of Quebec regarding animals and their treatment. Some of the provisions are fascinating, and could well serve as models for legislation in the United States.

KOSHER SLAUGHTER

An article on the subject of kosher slaughter entitled "Using Restraint" appears in Volume VIII, No. 2, of *Moment*, published by Jewish Educational Ventures, Inc., 462 Boylston Street, Suite 301, Boston, Massachusetts 02116.

ASSOCIATION OF VETERINARIANS FOR ANIMAL RIGHTS

The January 1983 issue (Volume II, No. 1) of *Animal Rights, News and Views*, published by the Association of Veterinarians for Animal Rights, contains the following articles of interest:

- "Animal Rights: Now we are asking the right questions."
- "Scientific views on Animal Rights."
- "The Animal Welfare Prospective."
- "The Rights of Animals."
- "The Sido Case and Beyond: Destruction of Pets by Will Provision."
- "Immoral and Moral Uses of Animals."

ETHICS & ANIMALS

The December 1982 (Volume III, No. 4) issue of *Ethics & Animals* contains a review by Henry Cohen, Esq., of Professor Tom Regan's 1982 book *All That Dwell Therein: Essays on Animal Rights and Environmental Ethics*. *Ethics & Animals* is published by the Society for the Study of Ethics & Animals, c/o Department of Philosophy and Religion, Virginia Polytechnic Institute & State University, Blacksburg, Virginia 24061. The March 1983 (Volume IV, No. 1) of *Ethics & Animals* contains reviews of *Environmental Ethics and Non-Human Rights*, *Interpretations of Life and Prohibitions About Killing*, and *Animal Rights and Human Morality*.

AMERICAN VETERINARY MEDICAL ASSOCIATION

An interesting article on the subject of government-subsidized clinics appears in the January 1983 issue (Volume V, No. 1) of the *National Animal Protection Newsletter* of The American Humane Association, 9275 East Hampden Avenue, Denver, Colorado 80231.

ANIMAL LAW

Prof. David S. Favre and Dr. Murray A. Loring have written a new book by this title to be published in July 1983 by Greenwood Press, 88 Post Road West, P.O. Box 5007, Westport, CT 06881.

Over the past hundred years many cases have been litigated and many new laws have been added to state and federal statutes. Favre and Loring's work organizes and discusses the statutes and provides a broad perspective on the area of animal law. It is a general reference source for many federal and state statutes in addition to over 500 court decisions which are referenced by chapter and note at the end of the book.

Favre, a law professor, and Loring, an attorney and veterinarian, discuss the differences between domestic and wild animals, define terms, and discuss various animal categories. The statutes of eight regionally representative states — California, Idaho, Michigan, Mississippi, New York, Oregon, Texas and Virginia — are examined and compared throughout the book. The book covers topics such as animals in wills and trusts, the legal warranties which arise on the selling of animals, criminal responsibility for maltreatment of animals, and a discussion of federal wildlife statutes.

Each of the twelve chapters treats a specific topic within the area of animal law. To aid in the understanding of the legal principles, many hypothetical and real-life situations are presented and discussed thoroughly. Footnotes for each major point are included at the end of each chapter. Included as appendices are the text for a Pet Adoption Agreement and a bill proposed to the Michigan state legislature on cruelty acts. A table of cases and general subject index complete the volume.

LEGAL ARTICLES CONCERNING ANIMAL PROTECTION AND ANIMAL RIGHTS: ADDENDA

Blumm, *Hydropower vs. Salmon: The Struggle of the Pacific Northwest's Anadromous Fish Resources For A Peaceful Coexistence with the Federal Columbia River Power System*, 11 *Environmental Law* 212 (1981).

Coggins and Russell, *Beyond Shooting Snail Darters in Pork Barrels: Endangered Species and Land Use in America*, 70 *Georgetown Law Journal* 1433 (1982).

Burk, *The Endangered Species Act: Should It Affect Indian Hunting and Fishing Rights?*, 2 *Public Land Law Review* 123 (1982).

Endangered Species Act, Annual Committee Reports on Significant Legislative Judicial, and Administrative Developments in 1981, 15 *Natural Resources Lawyer* 303 (1982).

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, INC.

"Endangered Species Act," Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, U.S. House of Representatives, 97th Congress, Second Session on Endangered Species Act Reauthorization and Oversight, February 22, March 8, 1982.

"Fish and Wildlife Miscellaneous — Part 4," Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, U. S. House of Representatives, 97th Congress, Second Session on Fish and Wildlife Service Budget Briefing, February 17, 1982, Wetlands Loan Act — H.R. 6411, May 25, 1982, Matagorda Island, Texas, Oversight, May 26, 1982.

"Not can they reason? Nor can they talk? But can they suffer?"

18th Century Philosopher
Jeremy Bentham

BULLETIN BOARD

ANIMAL ABUSE STUDY

In the January 1983 ARLR it was reported that the Geraldine F. Dodge Foundation had funded a research project to investigate the relationship between gross cruelty to animals by children and their subsequent commission of violent criminal acts when they become adults. Dr. Stephen Kellert of Yale University was named as conducting the study, in collaboration with an investigator from the Menninger Clinic. ARLR has been advised by Mr. John Walsh, Regional Director (Massachusetts), World Society for the Protection of Animals that WSPA had initiated the study, and that the Foundation presented the money to WSPA, which still administers the funds for the study. It was Mr. Walsh who initiated the study as a result of his work with the Division of Law Enforcement of the Massachusetts S.P.C.A. After several years of investigating and prosecuting cruelty cases, Mr. Walsh recognized a certain form of cruelty committed by a unique type of offender who, he felt, would continue committing violent acts against animals and people. WSPA is consulting with Animal Protection Organizations in other countries, in the hope that similar studies can be initiated abroad.

ANIMAL RIGHTS SEMINAR

Dr. Florence Dunbar is organizing a seminar in animal rights to be held at the DePaul University Law School in Chicago, to be held sometime in the late Spring or early Summer of 1983. She seeks lawyers, professors, and other persons concerned with the subject of animal rights who might be interested in participating in and/or attending such a seminar. Letters addressed to Dr. Dunbar in care of SAR will be forwarded.

ANIMAL RIGHTS COURSE

Nancy Jane Shestack, Esq., is currently teaching a seminar at the University of Connecticut School of Law entitled "Problems in Environmental Law: Animal Rights and Protection."

ATTORNEYS FOR ANIMAL RIGHTS FIRST ANNUAL CONFERENCE

On April 9 and 10, 1983, attorneys for Animal Rights held its First Annual Conference at the Fort Mason Conference Center in San Francisco, California, with nearly 100 registrants and others attending the Conference.

ARLR AND THE ANIMAL RIGHTS MOVEMENT

More and more, ARLR is being quoted in other publications and requests are being made to reprint from ARLR. The February 1982 issue of the *Iowa State Veterinary Newsletter* discussed ARLR and what it does, and that mention was repeated in the January 1983 issue of *Veterinary Medicine/Small Animal Clinician*.

The January-March 1983 *International Journal of the Study of Animal Problems* has noted SAR's state-by-state examination and analysis of anti-cruelty statutes.

The Editor's Comment from the October 1982 ARLR has been reprinted in the January 1983 issue of *Animal Rights, News and Views*, published by the Association of Veterinarians for Animal Rights.

SAR TOPS LIST IN HARVARD REPORT

Harvard University's Office of Government and Community Affairs has released the most penetrating report ever made on the Animal Rights and Animal Welfare Movement in the United States. Entitled "The Animal Rights Movement in the United States: Its Composition, Funding Sources, Goals, Strategies and Potential Impact on Research," it concludes not only that SAR has been in the forefront of the legal battle but, among other things, that "[l]egal recognition of the rights of animals stems largely from two lawsuits brought by SAR's Helen Jones."

LEGAL ASSISTANCE SOUGHT

Tim Greyhavens (405 South Church, Bowling Green, Ohio 43402) seeks information about unreported cases discussing or defining the term "necessary sustenance," as found in the anti-cruelty laws of many states.

ZOOS AND ANIMAL RIGHTS

Several months ago the Associated Press reported about approximately 30 macaque monkeys which have resided at the Detroit Zoo since 1964. The news article quoted a zoo director as admitting that the monkeys were living under "the worst possible conditions in their winter quarters." Apparently, Michigan's severe winters are devastating for the monkeys. Since no other zoo wants them, they are scheduled to be sent to a St. Louis University diabetes research laboratory where, eventually, they will be killed.

INTERNATIONAL CONGRESS FOR THE LEGAL PROTECTION OF ANIMALS

This organization recently concluded its first meeting in Bordeaux, France. It is now eliciting interest in developing a journal to be entitled "The International Legal Review for the Protection of Animals." The organization seeks members and/or translators. Interested parties should contact Me Caroline Daigueperse, Institut Juridique International Pour La Protection Des Animaux, 86 rue de Pas-Saint-Georges, 33000, Bordeaux, France.

ANIMAL RIGHTS PANEL

In conjunction with the Western Division meetings of the American Philosophical Association, the Society for Asian and Comparative Philosophy will hold a meeting devoted to a panel discussion of "East-West Perspectives on Ethics and Animals." The meeting will be held from 7:30 to 10:30 p.m., Thursday, April 28, 1983. Among the panelist is Professor Tom Regan of North Carolina State University.

THE WAGES OF SIN

The Florida Game and Fresh Water Fish Commission investigates hunting-related accidents. During the 1981-1982 hunting season, from November 14, 1981 to January 27, 1982 there were close to thirty people accidentally shot. Some hunters were shot by other hunters, some hunters shot themselves. One hunter had much of his head blown away, another was blinded in both eyes. One hunter, a poor swimmer, drowned while trying by himself to retrieve a killed deer from the water. Some hunters were killed.

EDITOR'S COMMENT

An unmistakable trend has developed within and around the animal rights movement during the last couple of years — a trend which needs to be identified and discussed. We begin with the dictionary definition of the word "confrontation:" "facing or opposing boldly, defiantly, or antagonistically." While to those of us in the center of the animal rights movement the signs of confrontation have been increasing rapidly, the trend may not be so obvious to others.

The January 1983 issue of ARLR reported on the emergence of a model law prepared by hunters aimed at illegalizing the activities of anti-hunting activists and thus neutralizing those activists. We reported that in only about one year eight states had, to some extent, favorably viewed the proposed provisions: California, Connecticut, Michigan, Minnesota, Montana, New York, Vermont and Washington. Since we wrote those words, the model legislation has been introduced in Maine, New Hampshire and New Jersey. Thus, the confrontation between hunters and anti-hunters escalates in the legislative halls, and it can be expected to escalate physically in the outdoors if and when any of the proposed laws are enacted.

In the October 1982 ARLR we discussed how the American Veterinary Medical Association has become deeply concerned about the low-cost spay/neuter programs run by humane organizations. This confrontation already involves the Internal Revenue Service and the courts. Clearly, the organized veterinary profession has awakened to what it perceives as a serious threat to its members' well-being, and the AVMA is apparently determined legally to confront those who threaten veterinarians no matter where that confrontation may lead.

In the January 1983 issue of ARLR we noted the increasing militancy of some factions of the animal rights movement. Almost at the same moment those words were written, a group calling itself the Animal Liberation Front staged a Christmas Day raid on a Howard University Medical School laboratory, removing between two and three dozen cats used in experiments. In a New Year's Day editorial, entitled "Bust the Cat Burglars," the *Washington Post* noted that the research (involving nerve transmissions) being conducted at Howard was "important," and clearly approved the experimentation in principle. Based on the militancy that has long been evidenced in Great Britain over cruelty to animals, and given the unmistakable signs of that militancy's rapid growth in the United States, it could not be clearer that the vivisectors are on a collision course with a certain segment of the anti-vivisection movement here.

AVAILABLE RESOURCES

HARVARD REPORT

Harvard University's report entitled "The Animal Rights Movement of the United States: Its Composition Funding Sources, Goals, Strategies and Potential Impact on Research" is available from SAR.

QUEBEC ANIMAL LAW

Animal Welfare and the Law in Quebec is available from the Quebec Society for the Defence of Animals, 1509 rue Sherbrooke ouest, Suite 5, Montreal, H3G 1M1, (514) 932-4260.

VIRGINIA BEACH SPCA CASE

The Petition for Appeal is available from SAR.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

Examples could be multiplied, but the point should be clear simply on the basis of the three examples given above: the animal rights movement is heating up like never before, and that heat is increasingly causing confrontations across the entire spectrum of animal rights activities.

Perhaps the most fundamental confrontation that is emerging is the one between animal "welfare-ists" and animal "rights-ists." The distinction here is far from merely a semantic one. On the contrary, it cuts to the heart of the animal rights (and animal rights law) movement. Using vivisection as an example, the difference between the two camps becomes crystal clear. Animal welfare-ists are, essentially, "regulationist." They do not oppose vivisection *in principle*, — they merely believe that animals who are the subject of experimentation should be treated "decently," that they should live — and die — in clean cages. On the other hand, Animal Rights-ists *are* opposed to vivisection *in principle*, they believe in the unqualified liberation of all animals from laboratories. The implications of each position are not hard to translate into other areas of concern about animals. Contrary to the animal welfare-ists, animal rights-ists believe that mackerel and blue fish are as entitled to live as whales and porpoises. Rabbit furs are as obscene on humans as jaguar pelts. Dog racing is as wrong as bullfighting. Killing blackbirds is as immoral as slaughtering eagles. And so on.

Of all of the confrontations now present and building in the animal rights movement, only a few of which have been discussed above, none looms as large as the forthcoming struggle between animal welfare-ists and animal rights-ists. In large measure the outcome of that battle will determine the fate of animals.

The reasons for legal intervention in favour of children, apply not less strongly to the case of those unfortunate slaves and victims of the most brutal part of mankind, the lower animals . . . What it would be the duty of a human being, possessed of the requisite physical strength, to prevent by force, if attempted in his presence, it cannot be less incumbent on society generally to repress."

John Stuart Mill,
"Principles of Political Economy."

ABOUT THE PUBLISHER

Society for Animal Rights, Inc., publisher of the ANIMAL RIGHTS LAW REPORTER, is a national organization engaged in calling attention to and seeking to prevent the many forms of exploitation and abuse which cause suffering in animals. SAR's ultimate goal is to achieve for animals the rights now denied them both in law and in practice.

Concerned with semantics and nomenclature, SAR has, through its name, activities and literature, increasingly caused the term "animal rights" to be adopted in common usage by the media in preference to the offensive term "animal lovers."

Incorporated January 28, 1959 in the District of Columbia, SAR produces and distributes literature on a wide range of subjects of animal exploitation; circulates a documentary film collection to schools and colleges throughout the U.S.; sponsors seminars for activists; organizes demonstrations against the abuse of animals; conducts national advertising campaigns to enlist opposition to specific forms of exploitation; serves as an information resource for the media, writers and other humane organizations; drafts legislation and in other ways works actively to advance the animal rights cause.

SAR and an affiliated national lobby for humane laws, Citizens for Animals, have in recent years brought about a New Jersey law prohibiting the sale or other transfer of animals from pounds and shelters to laboratories; repealed New York State's Metcalf-Hatch Act which compelled pounds to send animals to laboratories; repealed a similar law in Connecticut; brought about, in Connecticut, the nation's first state-operated low cost spay/neuter program to reduce the overpopulation of dogs and cats; litigated issues concerning great numbers of animals in courts on the state and federal levels.

SAR's Report, published quarterly, keeps members and friends informed of its programs and of developments in the animal rights field nationally and internationally.

The nationwide work of Society for Animal Rights, Inc., is supported by memberships, contributions and bequests. SAR is a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code as a result of which contributions in support of its programs are deductible for income tax purposes.

ANIMAL RIGHTS LAW REPORTER®

Communicating Current Developments in Animal Rights Law
Published by Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

JULY 1983

IN THE COURTS

FEDERAL

PREEMPTION: CALIFORNIA

On March 11, 1983, the United States Court of Appeals for the Ninth Circuit handed down an important decision in the *Justin* case, involving preemption of California law by federal law. Appellant, a manufacturer of boots, asked the Ninth Circuit to reverse the district court's judgment that California Penal Code Section 6530 is not preempted by current federal statutes or regulations. Appellant sought the ruling because it wished to engage in trade within the state of California in boots made from the hides of African elephants, Indonesian pythons, and the Wallaby kangaroo. California Penal Code Section 6530, according to the Ninth Circuit, "purports to prohibit such trade." The *per curiam* decision of the Ninth Circuit then said as follows: "Holding that federal laws, with respect to trade in all three species at issue did not preempt state law the district court ruled that section 6530 could be applied to appellant.*** For the reasons set forth in *Man Hing Ivory & Imports, Inc. v. Deukmejian* . . . (9th Cir., 1983), we are compelled to reverse, in part, the district court's ruling in this case. The district court here ruled in part that Section 6530 would prohibit trade within California in elephant products even by a federal permittee. That part of the district court's decision cannot stand since we held in *Man Hing* that Section 6530 could not be applied to the holder of federal permit for import and export trade in African elephant products.*** We sustain the balance of the district court's holding that the Section 6530 prohibition on trade in pythons and kangaroos is not preempted by the terms of the Endangered Species Act or implementing regulations [footnote omitted]. Since the Secretary has not listed either the Indonesian python or the Wallaby kangaroo as 'endangered' or 'threatened' species, Section 6 (f) of the act has no application to state regulations restricting or prohibiting trade in

those species.*** This aspect of the district court's decision is consistent with principles of federal preemption, see *Pacific Legal Foundation v. State Energy Resources Conservation & Development Commission*, 659 F. 2d 903, 919 (9th Cir., 1981), cert. denied 102 S. Ct. 2959 cert. granted in companion case *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Development Commission*, 659 F. 2d 908 (9th Cir., 1981), cert. granted 102 S.C.T. 2956 (1982), and our decision in *Man Hing* . . ."

ENDANGERED SPECIES ACT: ANIMAL TRAINER

A Colorado exotic animal trainer has been charged in Denver federal court with the illegal purchase and shipment of endangered animals. The Denver United States Attorney has charged in six counts that the defendant purchased four Siberian tigers, a leopard, a jaguar and a Bengal tiger even though all those animals are on the federal government's endangered species list and purchase or interstate transportation of them is a misdemeanor.

ENDANGERED SPECIES ACT: "ART"

In March, after two days of testimony before Judge James Lawrence King, in Federal District Court, S.D. Fla. (Miami), in *National Wildlife Rescue Team, Inc., et al. v. Christo, et al.*, (Case No. 83-462-CIV-JLK.), the "environmental artist" Christo, as defendant, signed a Stipulation and Agreed Order. It settled the suit, giving plaintiffs the authority to monitor the wildlife on eleven islands in Biscayne Bay during Christo's effort to surround the islands with floating pink polypropylene skirts radiating 200 feet from the shoreline. In the com-

The purpose of the ANIMAL RIGHTS LAW REPORTER is to provide information useful in legal efforts on behalf of animal rights. Nothing herein necessarily reflects approval by Society for Animal Rights, Inc., Animal Rights Law Reporter, or its Editor. Information contained herein is obtained from sources deemed reliable.

plaint, prepared and filed by Miami attorney Douglas Paul Solomon, (one of the attorneys who defended the Everglades Deer last July (ARLR, Oct. 1982)), the plaintiffs alleged that the plastic substantially threatened the habitats of brown pelicans, manatees and a bald eagle family which are protected under the Endangered Species Act, and that the U.S. Army Corps of Engineers should have prepared an Environmental Impact Statement under NEPA and conducted a public hearing under its own regulations. Christo also absorbed the costs of plaintiffs' monitoring boat and agreed to create a fund for the restoration of Biscayne Bay in the event that any permanent damage remained after removal of the two-week display. Under the order, the Court retained jurisdiction for up to two years to enforce the settlement terms.

MARINE MAMMAL PROTECTION ACT: OBSERVERS BARRED

A 1983, Ninth Circuit, ruling has dealt a substantial blow to the efforts of the government to monitor the killing of porpoises as incidental to tuna fishing. In a split opinion, the court in *Balelo v. Baldrige*, 13 ELR 20203 (9th Cir., 1983), held that the presence of an observer on a commercial fishing vessel constituted a Fourth Amendment search. The majority held that such a search could be justified only if there was direct statutory authorization for it, and since the MMPA does not contain such specific authorization the presence of the observer, even if just for scientific purposes, is unlawful. In the dissenting opinion, Judge Goodwin held that the search was constitutionally permissible. He noted that the observer program was critical to controlling the killing of porpoises, and that the industry itself had previously supported the activity. The authorization for the search said the dissenter, was "clearly implied by the statute," for without it a primary goal of the Act, regulation based on knowledge, would be substantially frustrated.

EAGLES

Last month, a two year undercover operation culminated in the issuance of warrants for about 50 people (mostly Indians) charged with killing and/or trafficking in eagle feathers and other parts of protected birds for profit. Interior Secretary Watt (a hunter) made the announcement, calling the large scale killing of eagles "revolting and repulsive." Eagles are protected under various federal acts.

WILD HORSES: AHPA SUIT

The American Horse Protection Association, Inc. has filed suit against officials of the Interior Department and the Bureau of Land Management to prevent large-scale wild horse adoptions of the kind that resulted in the deaths of more than thirty animals in Texas last fall. AHPA's lawsuit seeks an injunction against any more large-scale wild horse adoptions. It also asks that the recipients of large numbers of horses be investigated to determine if they have treated their horses humanely, and that they be prevented from receiving title to their horses until the investigations are completed.

CRUELTY: CRIMINAL PROSECUTIONS/CONVICTIONS

Four hunters in Colorado were convicted and each fined \$300 for illegally killing a doe. The killing was apparently unplanned, as the hunters simply stopped their pickup truck, got out and fired volleys of shots at a small herd of deer, wounding the doe. They left the injured deer where it fell and were apprehended only because they were turned in by two other hunters.

A Virginia man who admitted shooting a pet cat and running it over with a car to make the death look accidental was sentenced to *eight months* in jail. Actually, the maximum sentence of twelve months had been imposed, but four months of it was suspended on condition that the defendant make restitution to the cat's owner for veterinary bills. The conviction was apparently entered on a plea of guilty to the charge of maliciously killing the cat.

A New York man was charged with cruelty to animals for killing several one-day-old puppies by placing them in a paper bag and attaching it to the exhaust pipe of a running car.

An angry Massachusetts judge gave a young man a year in jail and a \$1,375 fine for hurling two six-week-old kittens 50 feet into traffic.

A Florida eighth-grader who admitted tossing pain killer tablets to a river otter in a zoo was charged with attempted poisoning and attempted cruelty to animals.

ANIMALS AS PROPERTY: SATISFYING A JUDGEMENT-A CORRECTION

Florana M. Tuccillo, president of Animals In Distress, Inc., of Trenton, New Jersey, has called our attention to an error (caused by our reliance on a newspaper account) on page 2 of the April, 1983 *Animal Rights Law Reporter*. We are informed that: "The policeman was *not* bitten by the dog. The dog bit no one, thus the injustice of him [the policeman] pulling a gun and shooting the dog. The dog will not be sold at auction. We have put up a bond and the dog is protected." ARLR regrets the inaccuracy, thanks Ms. Tuccillo for her correction, and is delighted that the dog is protected.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

IN THE LEGISLATURES & AGENCIES

Unless otherwise noted, there has been no change in status concerning any bill reported in previous issues of ARLR.

ARLR will try to keep its readers current on pending federal legislation which affects animal rights, as well as such state legislation as we become aware of. It should be noted, however, that Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Il. 60646, publishes a state-by-state service which reports such legislation. If any of ARLR's readers have access to that service and wish to make the information available to ARLR, we will be happy to make such information available to our readers.

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

The legislation reported below has been introduced into the 98th Congress.

ELEPHANTS — IVORY TRADE

H.B. 3104, introduced by Rep. Anthony C. Beilenson and 70 other sponsors, to provide for the control of the importing into, and the exporting from, the United States of elephants, and elephant products. Referred to the Committee of Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

ENDANGERED SPECIES — FOREIGN ASSISTANCE

S.B. 1067, introduced by Sen. Claiborne Pell and 3 other sponsors, to assist other countries in the protection of endangered species and to enhance international understanding and knowledge of environmental issues. Referred to the Foreign Relations Committee of which Sen. Charles H. Percy is Chairman.

FISH AND WILDLIFE FOUNDATION

H.B. 2809, introduced by Rep. John B. Breaux, et al., to establish a U.S. Fish and Wildlife Foundation. Referred to the Committee of Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman.

S.B. 1271, introduced by Sen. John H. Chafee, et al., to encourage citizen participation in wildlife conservation programs and to establish the National Fish and Wildlife Foundation. Referred to the Environmental and Public Works Committee of which Sen. Robert T. Stafford is Chairman.

FUR SEALS

H.B. 2840, introduced by Rep. Don Young, to provide for the orderly termination of federal management of the Pribilof Islands, Alaska. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

LABORATORY ANIMALS

H.R. 170, introduced by Rep. Tom Lantos and 6 other sponsors, concerning the proper treatment of laboratory animals. Referred to the Post Office and Civil Service Committee of which Rep. William D. Ford is Chairman.

MARINE SANCTUARIES

S.B. 1282, introduced by Sen. John H. Chafee, et al., to extend Titles 1 and 11 of the Marine Protection Research and Sanctuaries Act, as amended. (Placed on the calendar.)

MIGRATORY BIRD CONSERVATION FUND

S.B. 1284, introduced by Sen. John H. Chafee, to extend until October 1, 1985, the authority for advances to the migratory bird conservation fund. (Placed on the calendar.)

H.B. 2268, introduced by Rep. Edwin B. Forsythe, to extend until October 1, 1993, the authority for appropriations to the migratory bird conservation fund. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

RACEHORSES

S.B. 1233, introduced by Sen. David Pryor, et al., to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to the Judiciary Committee of which Sen. Strom Thurmond is Chairman.

H.B. 1694, introduced by Rep. Bruce F. Vento, to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to the Committee of Energy and Commerce of which Rep. John D. Dingell is Chairman and the Judiciary Committee of which Rep. Peter W. Rodino, Jr. is Chairman. Hearings begun by Criminal Justice Committee on 4-27-83.

RESEARCH METHODS

S.B. 964, introduced by Sen. Orrin G. Hatch and Sen.

Edward M. Kennedy, to require the Secretary of Health and Human Services to arrange for the conduct of a study with respect to the use of live animals in biomedical and behavioral research. Referred to the Labor and Human Resources Committee of which Sen. Orrin G. Hatch is Chairman.

H.B. 2633, introduced by Rep. Brian J. Donnelly, to promote the development of research, experimentation and testing that minimize the use of pain and suffering to, live animals. Referred to the Committee on Energy and Commerce of which Rep. John D. Dingell is Chairman and the Committee of Science and Technology of which Rep. Don Fuqua is Chairman.

RESOURCES MANAGEMENT

S.B. 1068, introduced by Sen. John H. Chafee and Sen. Claiborne Pell, to provide for the efficient utilization of wildlife resources conservation expertise by the Government of the United States and other nations for the purposes of enhancing the ability of such nations to manage their wildlife resources consistent with mankind's long-term best interests and providing reliable information upon which to guide United States actions. Referred to the Foreign Relations Committee of which Sen. Charles H. Percy is Chairman.

RUSSELL LAKES WATERFOWL MANAGEMENT AREA

S.B. 1502, introduced by Sen. Gary Hart, to amend Title 1 of the Reclamation Project Authorization Act of 1972 (Public Law 92-514; 86 Stat. 964) as amended by Public Law 96-375 (94 Stat. 1507). Referred to the Committee of Environment and Public Works of which Sen. Robert T. Stafford is Chairman.

H.B. 2823, introduced by Rep. Ray Kogovsek, to amend Title 1 of the Reclamation Project Authorization Act of 1972 in order to provide for the establishment of the Russell Lakes Waterfowl Management Area as a replacement for the authorized Mishak National Wildlife Refuge. Referred to the Interior and Insular Affairs Committee of which Rep. Morris K. Udall is Chairman.

WETLANDS

S.B. 1329, introduced by Sen. John H. Chafee and Sen. Robert T. Stafford, to extend until October 1, 1983, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat. Referred to the Environment and Public Works Committee of which Sen. Robert T. Stafford is Chairman.

H.B. 3082, introduced by Rep. Edwin B. Forsythe, to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

S.B. 978, introduced by Sen. John H. Chafee, to extend until October 1, 1993, the authorization for appropriations to the migratory bird conservation fund. Referred to the Environment and Public Works Committee of which Sen. Robert T. Stafford is Chairman.

H.B. 2395, introduced by Rep. John B. Breaux and Rep. Edwin B. Forsythe, to extend the Wetlands Loan Act. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

WILDLIFE REFUGE

S.B. 696, introduced by Senators Lloyd Bentsen and John Tower, to ratify an exchange agreement concerning National Wildlife Refuge System lands located on Matagorda Island in Texas. Referred to the Committee of Environment and Public Works of which Sen. Robert T. Stafford is Chairman. Hearings begun by Pollution Subcommittee on 5/19/83. Committee began markup on 6-23-83. See House 1935 for further action on 6-23-83.

S.B. 1014, introduced by Sen. John C. Danforth and Thomas F. Eagleton, to authorize the implementation of a plan for Trimble Wildlife Area replacement. Referred to the Environment and Public Works Committee of which Sen. Robert T. Stafford is Chairman.

S.B. 1232, introduced by Sen. David Pryor, et al., to clarify the responsibilities of the Secretary of the Interior with respect to national wildlife refuges. Referred to the Environment and Public Works Committee of which Sen. Robert T. Stafford is Chairman.

H.B. 1723, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to authorize appropriations through fiscal year 1986 for the Great Dismal Swamp, Minnesota Valley, Sailors' Snug Harbor, and San Francisco Bay National Wildlife Refuges. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman on 3/1/83. Hearings begun by Fisheries Subcommittee on 3/9/83. Approved by Subcommittee with amendments on 4-12-83. Reported with amendments, House Report 98-66 on 4-18-83. Passed by House as reported on 4-19-83. Referred to Senate Environmental Committee on 4-21-83. Ordered reported without amendments on 5-10-83. Reported without amendments, House Report 98-93 on 5-13-83.

H.B. 1935, introduced by Rep. Bill Patman, et al., to ratify an exchange agreement concerning national wildlife refuge system lands located on Matagorda Island in Texas. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman on 3/7/83. Hearings begun by Fisheries Subcommittee on 3/9/83. Approved by Subcommittee on 4-12-83. Ordered reported on 4-13-83. Reported without amendments, House Report 98-67 on 4-18-83. Passed under suspension of rules by 2/3 vote on 4-19-83. Referred to Senate Environmental Committee on 4-21-83. Hearings begun by Senate Pollution Subcommittee on 5-19-83. Ordered reported by Environment Committee without amendments in lieu of S.696 on 6-23-83.

WHALES

HJR 136, introduced by Rep. G. William Whitehurst, calling for a wildlife preserve for humpback whales in the West Indies. Referred to the Foreign Affairs Committee of which Rep. Clement J. Zablocki is Chairman.

H.B. 2122, introduced by Rep. Bill Emerson, to require the Secretary of the Interior to permit trapping in the Ozark National Scenic Riverways area. Referred to the Interior and Insular Affairs Committee of which Rep. Morris K. Udall is Chairman.

ALASKA — ANIMALS AND WILDLIFE

S.B. 49, introduced by Senator Ted Stevens, et al., to reopen hunting and trapping lands in Alaska. Referred to the Committee of Energy and Natural Resources of which Senator James A. McClure is Chairman. Hearings begun by Public Lands Subcommittee on 4-15-83.

WILD HORSES AND BURROS

S.B. 457, introduced by Senator James A. McClure, et al., to require the protection, management, and control of wild free-roaming horses and burros on public lands. Referred to the Committee on Energy and Natural Resources of which Senator James A. McClure is Chairman. Hearings begun by Public Lands Subcommittee on 4-11-83.

ENVIRONMENTAL PROTECTION

H.B. 492, introduced by Rep. Bill Chappell, Jr., to authorize the Secretary of the Interior to classify and inventory wetland resources, to measure wetlands degradation, to evaluate the environmental contribution of natural wetlands. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman. Hearings begun by Fisheries Subcommittee on 4-18-83 and 6-23-83.

STATE AND LOCAL

To date, ARLR has been able to obtain regular legislative reporting only from those states listed below which set forth the name and address of a legislative correspondent. Persons interested in acting as ARLR's legislative correspondents in other jurisdictions are encouraged to contact the Editor.

It should be understood that, to a considerable extent, ARLR depends on volunteer correspondents for the information we print concerning state and local legislative activity. Often, ARLR has not seen the actual text of the legislation to which we refer, and relies for its description on our correspondents. On occasion, we have caught a mischaracterization of what a piece of legislation actually provides, and have made the appropriate correction before going to press. Doubtless, however, on other occasions mischaracterizations have gotten past us. Therefore, ARLR urges anyone interested in any legislation to which we refer to obtain copies of the actual bills from the legislative correspondents whose names and addresses are provided in ARLR.

CALIFORNIA

(Virginia Handley, The Fund For Animals Inc., Fort Mason Center, San Francisco, California 94123, 415-474-4020).

POUNDS/SHELTERS. SB 883 by Senator David Roberti prohibits pounds and shelters from making animals available to research, but authorizes transfer of animals from pounds and shelters to animal health technology programs accredited by the Board of Examiners in Veterinary Medicine.

ENDANGERED SPECIES TAX CHECK-OFF: AB 384 by Assemblyman Bob Campbell provides for a check-off on state income tax forms to contribute to a fund for the use of endangered species programs to be handled by the State Department of Fish & Game.

TRAPPING/PREEMPTION: AB 1114 by Assemblyman Lou Papan allows cities and counties to pass laws on trapping that are more restrictive than the State Fish & Game laws. This would allow local governments to ban the trap.

EUTHANASIA: AB 2024 by Assemblyman Jack O'Connell prohibits the use of the nitrogen cabinets for the purpose of euthanasia of dogs and cats.

FLORIDA

(Stuart A. Cohen, Esq., Mayfair in the Grove, Suite 4A, Coconut Grove, Florida 33133, (305) 251-9000).

SALTWATER FISHERIES: SB 926 introduced by Sen. McPherson establishes fines for taking certain saltwater species and for the use of poisons, drugs and other chemicals to capture marine life without a license.

SEA TURTLES: SB 711 by Sen. Vogt and HB 475 by Rep. Patchett, would make the operation of certain otter trawl nets without a turtle excluder device, a second-degree misdemeanor.

PANTHERS: SB 1077 introduced by the Committee on Natural Resources and Conservation and Sens. Neal, Mann, Kirkpatrick and Grizzle, would establish the Florida Panther Research and Management Trust Fund, supported by oil and gas exploration tax, and a Panther Technical Advisory Panel, both within the Game and Fresh Water Fish Commission, for the benefit of the approximately twenty remaining endangered Florida Panthers, who are the official state animals.

NONGAME WILDLIFE: SB 1004 by Sen. Mann would create within the Game and Fresh Water Fish Commission, a Nongame Wildlife Trust Fund for the benefit of "species not commonly pursued for sport or profit."

HB 1298 sponsored by the Committee on Natural Resources combines SB 1004, above and SB 1077 relating to Panthers.

HORSE AND DOG RACING: SB 172 by McPherson with HB 113, reported in the April 1983 ARLR, proposes that children accompanied by a parent or guardian be allowed to attend, but not bet at, greyhound and horse races. Referred to Commerce and Appropriations Committees.

SB 952 by Sen. Thurman and HB 600 would authorize the issuance of permits to nonprofit corporations to conduct non-thoroughbred horse races without wagering.

SB 1192 introduced by Sen. Kirkpatrick and HB 1341 would allow the Division of Pari-Mutual Wagering to adopt rules allowing the use of Furosemide and Phenylbutazone, with certain limits, in horses if it is in "the best interest of racing." HB 1341 passed both houses.

HORSES: HB 407 by the Committee on Regulatory Reform would require a license for horse sales, shows and exhibitions; would provide a penalty for knowingly allowing a horse to participate if it is drugged, burned, lacerated, or in any condition causing pain, if it is being treated with any blistering or chemical agent, or if tacks, nails, or wedges are used on the horse.

ANIMAL-RELATED LAW ENFORCEMENT: HB 249 by Rep. Kelly would expand the authority of special officers of the Department of Agriculture and Consumer Services to include crimes relating to wild animals and aquatic life.

ENDANGERED SPECIES: SB 331 by Sen. Fox and HB 1033 by Rep. Gallagher would make the taking or attempting to take a bald eagle a third-degree felony.

LIVESTOCK MARKETS: SB 356 by the Committee on Agriculture and HB 406, would amend several provisions of Sec. 534.49, Florida Statutes, relating to purchasers at livestock auction markets.

DOGS: SB 392 by Sen. Thurman, and HB 8 by Rep. Meffert (reported in the April 1983 ARLR) would expand the defense in a civil or criminal proceeding to killing or injuring a dog, from "satisfactory proof that the dog was killing cattle or sheep" to "a reasonable belief that the dog was either killing, harassing or causing injury to, or would have killed or injured, cattle, sheep or horses."

GAME AND FRESH WATER FISH COMMISSION: SB 553 by Sen. Vogt proposes as amendment to the Florida Constitution by renaming this constitutional agency the "Wildlife and Fisheries Commission" and expanding its jurisdiction to include all aquatic life.

HB 243 by Reps. Dunbar and Patchett proposes an amendment to the Florida Constitution placing all wild animal life and all (not only fresh water) aquatic life under this agency.

HUNTING: HB 505 by Rep. Toblissen would prohibit the Game and Fresh Water Fish Commission from limiting or barring the use of lead shot ammunition while hunting wild waterfowl and would prohibit the state from requesting that the Federal Government enforce any federal rule limiting or barring the use of such lead shot ammunition.

HB 876 by the Committee on Natural Resources and Reps. Mitchell and Hollingsworth, provides that any person violating a rule, regulation or order of the Game and Fresh Water Fish Commission which prohibits the taking of wildlife on any unpaved county road, is only a noncriminal infraction.

HB 988 by Rep. Mitchell creates the "Florida Sportsmen's Bill of Rights" which proposes to make additional land, which is under the jurisdiction of all state agencies, available for hunting and fishing.

SALE OF ANIMALS: SB 394 proposed by Sen. Rehm would make the purchase or sale without a permit of a skunk, raccoon, fox, opossum, ferret, or similar animal, which is a vector of rabies, a second-degree misdemeanor.

HB 670 by Reps. Locke, Clements and Smith, would require persons who regularly sell animals as pets to keep records of purchases and sales for one year.

HB 888 by Rep. Mitchell would exempt the casual sale of dogs and cats by persons not engaged in the business of selling animals, and the sale by municipal animal control agencies and humane organizations from the health requirements which must be met prior to the sale.

Administrative Agencies

The Game and Fresh Water Fish Commission has made numerous changes to Chapter 39, Florida Administrative Code, which include the following:

Rule 39-4.08 prohibits hunting with guns within the rights-of-way of federal, state or county roads, except within wildlife management areas.

Rule 39-11.07 prohibits vehicles, other than oil exploration or government vehicles, on Eleven Mile Road in the Big Cypress Wildlife Management Area (which is the last stronghold of the approximately twenty remaining endangered Florida Panthers.)

Rules 39-12.02 and 12.10 modify various provisions regarding the taking of game animals over bait.

Rule 39-13.04 adjusts the opening and closing dates of non-migratory hunting seasons.

Rules 39-14.02, 14.05, 14.07 and 14.08 added three new wildlife management areas; changed acreage of five existing wildlife management areas; deleted one wildlife refuge; altered several fish management areas; and altered areas where wild hogs are considered game mammals.

Rules 39-15.04, 15.05, 15.061 and 15.062 establishes that, in specified areas: "(d)uring hunting season, all

persons between the ages of six and 65 (except residents certified totally and permanently disabled) entering the area for activities other than hunting shall possess a wildlife management area permit and be in the company of a hunter with all necessary permits. No more than four such persons may accompany each hunter." The rules also adjust the opening season and bag limits for existing, and establish them for new, wildlife management areas.

Rule 39-24.02 allows the taking of raccoon and opossum at night with dogs and the aid of a light with any .22 rim-fire firearm (except .22 magnum.)

Rules 39-27.03, 27.04 and 27.06 alters the designations of certain endangered and threatened species, including changing the name of the Everglades Kite, one of the species threatened in last summer's Everglades Deer controversy, to the "Snail Kite."

Rule 39-25.02 amends the regulation for taking reptiles and provides for limited use of nets for taking turtles under permit.

MISCELLANEOUS: The Florida Game and Fresh Water Fish Commission has reported that during the 1981 season, Florida fur buyers purchased more than 38,000 raccoons which brought the hunters/trappers \$381,000; 1912 otter with a hunter/trapper value of \$28,680; and 1,031 bobcats that brought \$25,775. Also frequently sold are beaver, opossum, coyote and mink. It was noted that the actual numbers may be twice as high since a large number of pelts are sold outside of Florida. The Commission reported that "furbearers of the state continue to provide a substantial source of recreation and supplemental income." (Florida Wildlife, March-April, 1983, page 49.)

MAINE

(Kenneth J. Shapiro, Psychologists for the Ethical Treatment of Animals, c/o Psychology Department Bates College, Lewiston, Maine 04240)

NONGAME WILDLIFE: S.P. 122, introduced by Senator Wood to provide an income tax check off for voluntary support of nongame wildlife management, passed both Senate and House and awaits governor's signature.

HUNTING: S.P. 63, introduced by Senator Usher to prohibit harassment of hunters, trappers and fishermen, passed both Senate and House and awaits governor's signature.

MISCELLANEOUS: No action has yet been taken on a bill to provide an open season on coyotes. Bills to outlaw steel jaw bear traps, to place a bounty on coyotes, and to repeal open season on moose all were killed. However, the Maine Supreme Court has approved a November referendum on outlawing the state's moose hunt. By a vote of 6-1 the Supreme Court upheld a lower court decision that a group called SMOOSA ("Save Maine's Only Official State Animal") had collected sufficient petition signatures to force a referendum. Unfortunately, the referendum will have no effect on this year's moose season set for September 19-24, 1983.

MARYLAND

Senate Bill No. 85 has been enacted and amends Article 27, Section 59, of the Annotated Code of Maryland ("Cruelty to Animals"). The effective date of the amendment is July 1, 1983, and, in effect, it outlaws cockfighting in the State of Maryland. ARLR is advised that doubt exists as to whether the amendment outlaws the possession, breeding or transportation of fighting cocks.

MASSACHUSETTS

(Sheryl L. Broad, New England Anti-Vivisection Society, One Bulfinch Place, Boston, Massachusetts 02114 (617) 523-6020).

POUND ANIMALS: H.2769 introduced by Representative Michael F. Flaherty and companion S.1212 introduced by Senator Michael LoPresti repeal the Commonwealth's pound seizure law and prohibit any voluntary sale of animals in public shelters to animal dealers or research institutions. They have been assigned to Committee on Counties. Six other bills (H.1237, H.1241, H.2134, H.2766, H.3235, S.215) repeal the seizure law, however, not all prohibit voluntary sale.

S.1862 introduced by Senator Paul D. Harold and Representative Thomas F. Brownell exempts City of Quincy from Commonwealth's pound seizure law. Quincy has been one of largest suppliers of animals under Ch.49A. Passed Senate. Ordered to House Committee on Third Reading.

RESEARCH: H.2770 introduced by Representative Michael F. Flaherty and companion S.1211 introduced by Senator Michael LoPresti prohibit the use of animals in "any scientific investigation, experimentation, or use for medical school or other instruction, or testing of drugs or medicine, if alternative methods are available or the knowledge sought to be gained is available from other scientific data, or the experiment is repetitive, or designed for demonstrative purposes." Both bills referred to Committee on Counties.

H.3545 introduced by Representative John E. Murphy and H.3717 by Representative Thomas F. Brownell establish a seven-member commission to investigate animal abuse and vivisection. Representing animal rights groups, the research community, medical schools, and private citizenry, the commission's authority would include the power to investigate complaints and subpoena witnesses/records in response to unlawful complaints alleging animal abuse and vivisection. Assigned to Committee on Counties.

H.5596 (Substituted for S.197) signed into law. Introduced by Senator Michael LoPresti amends Ch. 147, Sec. 10 by extending special police powers to New England Anti-Vivisection Society and Berkshire Animal Protective Society.

H.5968 introduced by Representative Michael F. Flaherty prohibits operation of any facility which uses primates for scientific research or testing. Assigned to Committee on Counties.

H.5973 introduced by Representative Michael F. Flaherty prohibits the importation of any live animal for the purpose of scientific research or testing. Assigned to Committee on Counties.

H.5972 introduced by Representative Michael F. Flaherty mandates a 20% reduction in animals used for scientific research or testing. Assigned to Committee on Counties.

H.5969 introduced by Representative Michael F. Flaherty prohibits the use of any live animal for scientific research or testing.

EUTHANASIA: H.6283 (Substituted for H.2395) introduced by Representatives Allan Chiocca and Stephen Doran, amends Ch. 140 by prohibiting euthanasia of impounded animals by shooting, electrocution, or by injection of T-61 or succinylcholine chloride. Shooting is permitted "only in an emergency situation to prevent extreme suffering or in which the safety of people or other animal life is threatened." Ordered to House Committee on Third Reading.

ANTI-CRUELTY STATUTE: S.1176 introduced by Senator Carol Amick amends Ch. 272, Sec. 77 by adding "sanitary environment." Referred to Committee on Counties.

MOURNING DOVES: S.1178 introduced by Senator Carol Amick prohibits both the director and division of fisheries and wildlife board from establishing "any season of the hunting, taking, or possession of mourning doves." Passed Senate. Ordered to House Committee on Third Reading.

H.417 introduced by Joseph Paoilli authorizes the director of the division of fisheries and wildlife to establish an open season for the hunting of the mourning dove. Dead. House accepted negative report from Committee on Natural Resources.

TAX CHECK-OFF: H.1801 introduced by Representative Joseph Manning establishes a check-off system on the state income tax form that would permit money to be used in nongame wildlife programs. Assigned to Committee on Taxation. Similar bills have been filed over the last several years, however, disputes have arisen over how the monies should be allocated within the Department of Environmental Affairs. The Secretary has proposed a compromise measure in the establishment of an environmental special fund.

H.5997, (Substituted for H.123) recommended by the Department of Fisheries, Wildlife and Recreational Vehicles, establishes a check-off system, however, these revenues would stay within the Department. Referred to House Ways and Means.

HUMANE LAW ENFORCEMENT: H.2947 introduced by Representative Richard Moore extends inspection privileges of special police officers (Ch. 147) to all places animals are "maintained for commercial, educational or scientific use. . ." This allows for inspection rights into all research facilities and all research animal dealers. Referred to Committee on Counties.

SPAY/NEUTER: H.5834 introduced by Representative Michael F. Flaherty requires non-profit, tax exempt humane societies to expend a minimum of 5% of its net worth toward maintaining free spay/neuter clinics for those years gross assets exceed \$500,000. Ordered to House Committee on Third Reading.

TRAPPING: H.3543 introduced by Representative Alfred A. Minahan prohibits use of all traps that are not of the cage or box type. Assigned to Committee on Counties.

HUNTING: H.3536 introduced by Representative Robert A. Cerasoli, over-turned by voice vote an adverse report from the Committee on Natural Resources and Agriculture. Presently under consideration for this year's tentative constitutional convention, the bill's proposed amendment asserts the "unalienable right" to "promote and defend hunting as a rifle, handgun and pistol shooting sport, and a bow and arrow shooting sport."

NEW HAMPSHIRE

POUNDS/SHELTERS: HB 226 introduced by Representative Rick Trombly prohibits the release of any animal from any humane association or animal control facility for the purpose of experimentation or vivisection. Signed on June 16 by Governor John Sununu, it will become effective on August 15. This bill amended RSA 471-B.

EXPERIMENTATION IN SCHOOLS: HB 559 introduced by Representative Rick Trombly prohibits certain experiments on live animals in school grades kindergarten through 12. The bill was killed by the Committee on Education because "there is no concrete evidence of live experimentation on animals in New Hampshire."

INDIANA

(Susan Wintsch, Bloomington Animal Control Commission, 1005 E. Hunter, Bloomington, IN 47401)

ANIMAL FIGHTING: After Michigan and Ohio stiffened their laws against dog fighting, owners and promoters began crossing over into Indiana where penalties are lighter. Now, however, the Hoosier state has amended its own Code to discourage the activity. Senate Bill No. 105, signed into law by Indiana Governor Robert Orr on April 19, 1983, stiffens the penalties against owners, promoters and spectators at dog and cock fights in the state. Under the new legislation, to take effect on September 1, 1983, attendance at cruel animal contests, which has not been considered a crime in the

past, will be a Class A Misdemeanor, punishable by up to a year in jail and a \$5,000 fine. Anyone who knowingly buys or owns an animal to be used in a fighting contest, or promotes such an event — all Class B Misdemeanors under the present Code — will in future be guilty of a Class D Felony, punishable by up to two years in jail and a \$10,000 fine.

NEW JERSEY

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200)

SPAY/NEUTER: S. 1101 SCS OCR authorizes the Commission of Health to establish a spaying and neutering clinic for dogs and cats and appropriates \$95,000.

A. 1472 OCR provides for an additional 20 cents dog registration tag fee for those not spayed or neutered.

A. 1917 2nd OCR provides for the establishment of a program for the spaying and neutering of dogs and cats.

PETS IN HOUSING: A. 3399 to define refusal to sell or rent real property to person because that person has a domesticated animal as discrimination.

PET INNOCULATION: A. 3309 to provide that certain dogs or cats with a current rabies vaccination shall be revaccinated and confined for not less than 90 days.

ANTI-CRUELTY: A. 3312 to enable New Jersey Society for the Prevention of Cruelty to Animals to enforce certain cruelty provisions, receive legal assistance from the county or municipal prosecutor and retain custody of certain animals.

FISH: S. 3303 to revise the law regulating the harvesting and possession of striped bass.

NEW YORK

(Elinor Molbegott, Esq., General Counsel, ASPCA, 441 East 92nd Street, New York, New York 10028, 212-876-7700).

ANIMALS IN MOVIES: S. 6285 introduced by Senator Stavisky provides that a person is guilty of a misdemeanor if such person intentionally kills or injures an animal in the production of certain motion pictures. Senate Codes Committee.

SALE OF BABY RABBITS: A. 1688 introduced by Assemblyman Connelly prohibits the sale of baby rabbits unless the seller provides proper brooder facilities for the care of the baby rabbits while in the seller's possession. Bill also provides that baby rabbits shall not be dyed and that baby rabbits under two months of age may not be sold or given away in any quantity of less than six. Passed Assembly. Referred to Senate Agriculture Committee.

HUMANE LAW ENFORCEMENT: A. 3661 and S. 2937 introduced by Assemblyman Coombe and Senator Cooke, respectively, provide that despite the fact that officers and agents of duly incorporated societies for the

prevention of cruelty to animals are peace officers, they shall not be authorized to carry, possess, repair or dispose of a firearm unless the appropriate license has been obtained. Assembly and Senate Codes Committees.

A. 5232-A and S. 4583-A introduced by Assemblymen Rettaliata and Harenberg and Senator Marino, respectively, provide that a corporation for the prevention of cruelty to animals may be incorporated in Suffolk County. Passed Assembly and Senate. Signed into Law by Governor.

A. 6601-A and S. 4932-A introduced by Assemblyman D'Andrea and Senator Bruno, respectively, provide that despite the fact that officers and agents of duly incorporated societies for the prevention of cruelty to animals are peace officers, they shall not be authorized to carry, possess, repair or dispose of a firearm unless the appropriate license has been obtained; they shall not be authorized to use physical force in making an arrest or preventing an escape; and they shall not be authorized to carry out warrantless searches when such searches are constitutionally permissible and when they are acting pursuant to their special duties. Assembly and Senate Codes Committees.

PET SHOPS: A. 2756 introduced by Assemblyman Levy prohibits the sale of dogs and cats at pet shops. Assembly Agriculture Committee.

S. 2334 introduced by Senator Nolan prescribes standards for pet shops and requires pet shops to obtain licenses to operate from the Commissioner of the Department of Agriculture and Markets. Senate Agriculture Committee.

MOTOR VEHICLE STRIKING ANIMALS: A. 2638 introduced by Assemblymen Proud and Nagle requires persons who, while operating a motor vehicle, strike and injure a cat, to stop and endeavor to locate the owner of the cat or the police, and to take other reasonable action so that the cat may have necessary attention. Dogs and cattle are already protected under this law. Assembly Transportation Committee.

SHELTERS AND POUNDS: A. 215-D and S. 252-D sponsored by Assemblyman Bianchi and Senator Goodhue, respectively, provide that a municipality may transfer ownership of unredeemed dogs to societies for the prevention of cruelty to animals and humane societies; bills also lessen holding period for dogs at shelters if such dogs are requisitioned by an agency which trains seeing eye or guard dogs or uses dogs for law enforcement purposes. Assembly Ways and Means Committee. Senate floor.

WILDLIFE: A. 2312 and S. 2142-B introduced by Assemblymen Hinchey, Murphy and Orazio and Senator Steinfeldt, respectively, provide that no person shall interfere with the lawful taking of wildlife by another; no person shall disturb the behavior of wildlife with the intent to prevent their lawful taking; no person shall disturb another person who is engaged in the lawful taking of wildlife, with intent to dissuade or otherwise prevent the taking. Assembly Codes Committee. Senate floor.

A. 2055 introduced by Assemblyman Passannante extends the power of the Commissioner of the Department of Environmental Conservation by granting him the power to allow the importation and sale of the skin, body, parts or products of animals that are currently protected under the Environmental Conservation Law from being sold or offered for sale. Assembly Environmental Conservation Committee.

A. 1890 and S. 1438 introduced by Assemblyman Bianchi and Senator Berman, respectively, make it unlawful for any person to use compound 1080 (sodium fluoroacetate). Passed Assembly. Referred to Senate Rules Committee.

A. 623 and S. 603 introduced by Assemblymen Harenberg and Cochrane and Senator Trunzo, respectively, provide that it shall be unlawful for any person to hunt or trap wildlife within the confines of a park preserve. Assembly Environmental Conservation Committee. Senate Conservation Committee.

A. 1510 introduced by Assemblyman Grannis provides that a county, city, town or village may adopt local laws or ordinances to ban the placement of traps, snares and other devices which can endanger and harm children and pets within the territorial limits of the municipality. Assembly Local Governments Committee.

S. 4011 introduced by Senator Leichter provides that trapping within one-quarter of a mile of an occupied habitation in a populated area is prohibited except by landowners using cage or box trapping. The bill further provides that the use of steel leg hold traps shall be limited to underwater or spring-hole sets and that dry land sets shall employ only quick-killing or conibear-type traps or box traps. All traps must be visited at intervals not exceeding twenty-four hours. Senate Conservation Committee.

A. 5031 introduced by Assemblymen Engel and Grannis provides that no person shall manufacture, sell, offer for sale, possess, import, transport, set, take or attempt to take any animal by means of a trap of the steel-jaw leg hold type. Assembly Environmental Conservation Committee.

A. 5875 introduced by Assembly Committee on Rules at request of the Department of Environmental Conservation (DEC) provides that DEC may regulate the locating, setting, size and placing of body gripping traps on land for any area of the state. Assembly Codes Committee.

A. 3683-B and S. 2986-A introduced by Assemblyman Hinchey and Senators Steinfeldt and Dunne, respectively, provide that persons who kill a tattooed or otherwise identifiable dog who had been pursuing or killing game or wildlife within certain areas of the state must immediately notify the local dog control officer who must then notify the dog's owner of the death. Passed Assembly and Senate. Signed into Law by Governor.

A. 7852 and S-6180 introduced by Assembly Committee on Rules at request of Assemblyman Hinchey, and

Senator Steinfeldt, respectively, provide that it is unlawful for persons over 16 years of age to hunt migratory waterfowl within the state without first procuring a state migratory bird stamp. Assembly Environmental Conservation Committee. Senate Conservation Committee.

ANIMAL FIGHTING: A. 3626-A and S. 2888-A introduced by Assemblymen Roback, Hoyt and Engel and Senators Kehoe and Padavan, respectively, increase the maximum fine for persons who are convicted of violating the animal fighting statutes to \$25,000.00. Assembly Codes Committee. Senate floor.

A. 3484 introduced by Assemblyman Hoyt increases the penalty for those persons who are convicted of violating the animal fighting statutes two or more times to a felony punishable by a fine of not less than \$10,000.00 or by imprisonment for not less than one year, nor more than five years, or both. Assembly Agriculture Committee.

SHELTER FOR DOGS: A. 3696 and S. 2948 introduced by Assemblyman Lasher and Senators Halperin and Winikow, respectively, prescribe standards for the care of dogs that are left alone outdoors in enclosed areas. In particular, the bills require that such dogs be provided access to a sanitary protective structure. Assembly and Senate Agriculture Committees.

PETS IN HOUSING: S. 2807 introduced by seven senators provides that no tenant shall be deemed in violation of the provisions of any lease solely because the tenant keeps a reasonable number of pets in his apartment, provided such pets are not a health or safety hazard. Senate Judiciary Committee.

A. 2553-B and S. 2029-B introduced by twenty-four assemblypersons and sixteen senators, respectively, provide that the keeping of a pet in violation of a prohibition in a lease or occupancy agreement against such practice shall not constitute sufficient basis for terminating such occupancy; bills also provide that any provision in a tenant's lease restricting the keeping of pets shall be deemed waived if the tenant has kept the pet in the apartment for one year or more and the keeping of the pet was disclosed to the tenant's landlord or landlord's agent. Passed Assembly. Referred to Senate Housing Committee.

A. 1371 introduced by Assemblyman Passannante provides that no tenant shall be denied occupancy in a multiple dwelling or be subjected to eviction therefrom on the sole ground that he has a dog or a cat. Assembly Judiciary Committee.

A. 2404 and S. 1860 introduced by numerous assemblypersons and senators provide that no person who is sixty-two years of age or older may be denied occupancy in or be subjected to eviction from any housing project on the sole ground that such person has a dog or a cat. Assembly floor. Senate Aging Committee.

A. 1051 and S. 751 introduced by Assemblypersons Cooke and Lipschutz and Senator Kehoe, respectively, provide that facilities providing health related services may at the discretion of such facility and the Commissioner of the Department of Health, board one cat or dog. Passed by Assembly and Senate. Signed into law by Governor.

A. 435 introduced by Assemblywoman Lipschutz provides that no patient shall be denied residence in any private residential health care facility or be subjected to removal therefrom on the sole ground that such person has a pet. Assembly Health Committee.

DOG LICENSING: S. 222 introduced by Senator Halperin raises the dog license fee in New York City to \$10.60 for each spayed dog and \$12.60 for each unspayed dog except that persons sixty-five years of age or older shall pay \$8.50 for each dog. The bill further provides that the increase in fees shall be used for the reopening and maintenance of shelters closed before January 31, 1983. Senate Agriculture Committee.

EXPERIMENTATION IN SCHOOLS: A. 2047-A introduced by Assemblyman Grannis provides that no live vertebrate animals may be used in any elementary or secondary school receiving public funds or for an activity associated with or sponsored by such schools except that the students may observe the normal living patterns of wild animals in zoological parks, gardens and aquaria and may observe the normal living patterns of pets, fish or domestic animals. Bill further provides that live animals on the premises of such schools shall be housed and cared for in a humane and safe manner. Assembly floor.

POLICE ANIMALS: A. 4602-A and S. 4056-A introduced by Assemblypersons Gorski and Keane and Senators Volker and Winikow, respectively, provide that it shall be unlawful for any person to kill or injure any animal used for law enforcement purposes by any police agency while such animal is in the performance of its duties or to interfere with the activities of any police officer who is being assisted by such police animal. Passed Senate. Referred to Assembly Codes Committee.

ANIMALS AS PRIZES: A. 7882 introduced by the Committee on Rules at the request of Assemblyman Pillittere, prohibit the giving or offering to give away any live animal as a prize in any game, drawing, contest, sweepstakes or other promotion. Assembly Rules Committee.

S. 5124-A introduced by Senator Daly prohibits the giving or offering to give away any live animal other than a fish as a prize in any game, drawing, contest, sweepstakes or other promotion. Senate Agriculture Committee.

S. 6165 introduced by Senator Gazzara prohibits the giving or offering to give away a dog or cat as a prize in any game, drawing, contest, sweepstakes or other promotion. Senate Agriculture Committee.

SPAYING/NEUTERING: S. 5987 introduced by Senator Padavan provides that a licensed animal health technician may, under the direction of a licensed veterinarian, perform spaying or neutering and such animal health technician may humanely destroy certain animals. Senate Agriculture Committee.

EXPERIMENTATION: S. 5170 introduced by Senator Padavan provides that no dog control officer, humane society or society for the prevention of cruelty to animals shall sell, give, transfer or otherwise make available any animal in its custody, possession or control, for purposes of research, experimentation, testing, teaching or learning skills. Senate Agriculture Committee.

SHELTER FOR ANIMALS: A. 7923 and S. 6179 introduced by Assembly Rules Committee at the request of Assemblyman Lasher and Senator Kehoe, respectively, provide that any person who deprives any animal of necessary shelter shall be guilty of a misdemeanor. Assembly and Senate Agriculture Committees.

PET FOOD TAX: A. 5265 introduced by Assemblyman Nadler provides that there shall be an additional tax on pet food and monies collected shall be used for providing care and maintenance of stray dogs and cats. Assembly Ways and Means Committee.

CANINE WASTE: A. 5641 and S. 4716 introduced by Assemblyman Murtaugh and Senator Leichter, respectively, provide that dog owners must carry properly validated dog license when walking dogs on a public street in New York City. Assembly and Senate Health Committees.

New York City

A bill has been introduced into the New York City Council to offer some measure of protection for guard dogs. The bill would require the licensing of guard dog trainers and would bar anyone from a license who has been convicted of cruelty to animals. Additionally, a five-person board headed by the Health Commissioner would be responsible for establishing new rules for the care and training of guard dogs.

NORTH CAROLINA

(Professor William A. Reppy, Jr., Duke University School of Law, Durham, North Carolina 27706, 919-684-3804).

ANIMAL THEFT: S.B. 72 has been enacted making criminal the theft of all animals regardless of value; theft of an animal worth more than \$400 is a felony.

IMPOUNDED ANIMALS: H.B. 314 has been passed, authorizing three named counties to sell unclaimed dogs and cats to animal dealers "licensed by, or to institutions registered with the U.S. Department of Agriculture under the Animal Welfare Act (Ch. 54 of Title 7, U.S.C.)." H.B. 849 would add a fourth county.

H.B. 376 would prohibit animal shelters and pounds from making cats and dogs available for use in "scien-

tific or educational activities." Vote on it will likely be delayed. House Joint Resolution 1309 was introduced; it calls for study of the matter. H.B. 376 would also amend a statute authorizing cities to "destroy" animals to read "humanely destroy."

PERMITS: H.B. 364 has been passed by the House to restrict possession of large felines to permit holders. To qualify for a permit the animal must be securely confined so as to present no threat to persons or property.

SANCTUARIES: Two bills have been enacted creating wildlife preserves and bird sanctuaries in Chowan County. H.B. 109 creates the Arrowhead Beach Bird Sanctuary, and H.B. 390 establishes the Cape Colony Bird Sanctuary.

HUNTING LIMITED: Several bills have been passed to prohibit hunting from roads in certain North Carolina counties or parts thereof: Counties affected are Craven (H.B. 504), Perquimans (H.B. 572), Lenoir (H.B. 85), Wilson (H.B. 607) and Hoke (H.B. 883). The legislation for Hoke County does not apply to abutting land-owners and persons to whom they have given written permission to hunt from roads. In Wilson County hunting for deer on the land of another without the owner's consent was prohibited as well. In Lenoir County hunting with dogs on the land of another was similarly restricted.

H.B. 68 was enacted, authorizing the Wildlife Resources Commission (WRC) to extend the number of hours during which lights may not be used in hunting. Counties must request a prohibition of the use of such lighting. S.B. 28, which would have affected the use of lights in Iredell County alone, was killed.

Bills have been enacted which repeal two counties' exemptions from the WRC's power to regulate hunting. In Stokes County the hunting of deer has been affected by H.B. 624. Fox hunting in Onslow County was made subject to the general laws of the state by H.B. 296.

Bills have been introduced which would prohibit hunting deer with dogs in parts of Martin (H.B. 521), Moore (H.B. 640) and Richmond (H.B. 845) Counties. The two earlier bills have passed the House, and await action in the Senate.

HUNTING LICENSES: Fees for hunting licenses were increased by ratification of S.B. 202. Most increases were less than \$4.00

PUBLIC HUNTS: Legislation (H.B. 363) has been passed which authorizes the Wildlife Resources Commission to conduct "managed hunts" on public lands.

RABIES: Proposed recodification of the Public Health Law includes sections on rabies similar to existing law under another chapter (Agriculture). S. 141 was passed by the Senate, and awaits action in the house.

The legislation would also authorize Sanitary District Boards to regulate or prohibit animal stockyards and pens.

VACATIONING DOGS. H.B. 580 would have repealed N.C.'s unique law making it a misdemeanor for a dog

(no other type animal is covered) to enter a hotel or motel room. It passed the house with an amendment requiring the innkeeper to place a "dog slept here" sign on the door of each room after a dog stayed in it. This development led to tabling of the bill and it is unlikely to be enacted in any form.

PREVIOUS REPORTS: No action has been taken on other bills reported in the last issue of A.R.L.R.

PENNSYLVANIA

(Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, Pennsylvania 18411, 717-586-2200).

EUTHANASIA: H. 350 introduced by Rep. Thomas Murphy completely prohibits the use of the decompression chamber.

S. 303 introduced by Sen. Doyle Corman prohibits the decompression chamber except for scientific research. It prescribes the use of sodium pentobarbital as the methods of euthanasia.

S. 392 introduced by Sen. Anthony Andrezeski prohibits any use of the decompression chamber and prescribes the use of either an injection or use of a carbon monoxide chamber. This bill is similar to Maine's law regulating the euthanasia of dogs and cats.

TENNESSEE

(Deborah H. Scarlett, Route 3, Belt Road, #17, Knoxville, TN 37920).

POLICE DOGS: S.B. 31, introduced by Senator Steve Cohen, to amend T.C.A. 39-417 to create a felony offense of knowingly killing a dog owned or used by a law enforcement agency or official. Referred to Calendar Committee of which Senator Edward Davis is chairman. On Committee Calendar for 2-28-83. Passed Senate 3-14-83. House referred to Judiciary Committee 4-6-83.

Companion H.B. 358, introduced by Rep. Dan Byrd. Referred to Judiciary Committee of which Rep. Michael Murphy is chairman. 3-28-83 Recalled from Committee and withdrawn.

ANIMAL GIVEAWAYS: S.B. 195, introduced by Senator Milton Hamilton, to amend T.C.A., Title 39, Ch. 4, to prohibit the sale, offering for sale, bartering or giving away of fowl under three weeks of age, or rabbits under two months of age, as pets, toys, premiums or novelties, or to color, dye, or stain fowl or rabbits. Placed on Commerce, Labor and Agriculture Committee of which Carl Moore is chairman. Companion H.B. substituted 4-14-83.

Companion H.B. 59, introduced by Rep. Don Dills. Referred to Commerce Committee of which Rep. Ed Murray is chairman. 4-26-83 Became Public Chapter 155.

RACCOON HUNTING: S.B. 69, introduced by Sen. Anna Belle Clement O'Brien, to amend T.C.A. 51-408 to authorize and regulate the hunting and chasing of raccoons. Referred to Energy and Natural Resources

Committee of which Sen. Joe Crockett is chairman. 3-28-83 Passed House; failed in Senate. 4-6-83 Failed in Energy and Natural Resources Committee.

Companion H.B. 30, introduced by Rep. Dennis "Mike" Robertson. Referred to Conservation and Environment Committee of which Rep. Ivory Hills is chairman.

S.B. 1002, introduced by Sen. Leonard C. Dunavant, to amend T.C.A. 39-3-104, 39-3-115, and 39-3-121 by providing for fines and confinement for cruelty to animals; and by making it a misdemeanor to abandon animals, also punishable by fines and confinement. Referred to Judiciary Committee of which William H. Ortwein is chairman. Deferred to 1984 session on 4/26/83.

Companion H.B. 1207, introduced by Thomas C. Wheeler. Referred to Judiciary Committee of which Michael Murphy is chairman on 4-8-83.

VIRGINIA

A bill has been defeated in Virginia that would have sanctioned the shooting of wild dogs and cats. Steered through the Virginia House as an alleged anti-rabies measure, humane activists in the state were able to kill the outrageous bill in committee. The idea of the bill was to remove "feral" dogs and cats from the coverage of Virginia law as legally protected animals. A pragmatic legislator observed that: "the number of farmers in the state has dwindled to three percent. There are a lot more dog owners than there are farmers nowadays."

THE AGENCIES

ENDANGERED SPECIES ACT: KANGAROOS

The Interior Department has proposed dropping Australian kangaroos from its list of threatened species. In addition, the Interior Department will propose that a ban on the importing of kangaroo skin and meat, now temporarily suspended, be lifted completely. An associate director of The Fish and Wildlife Service said that kangaroos could be removed from the threatened species list because Australia "now has an effective program to maintain the animal's population." An official of the Australian Embassy in Washington, D.C. admitted that Australia had requested this change. (The president of the Kangaroo Protection Committee estimated that some six million kangaroos are killed *legally* each year in Australia and that *illegal* hunting brought the total much higher.)

ANIMAL WELFARE ACT

A New Jersey animal dealer has been ordered to suspend business operations for 21 days by U.S. Department of Agriculture officials. Rudolph Vrana of Millville, N.J., a dealer licensed under the Animal Welfare Act, was prohibited from buying, selling or transporting any animals covered by the Act during the suspension, which began March 24. The suspension was imposed by USDA's Animal and Plant Health Inspection Service because its inspectors found serious violations on Feb. 24, 1983, including deficiencies in veterinary care, sanitation, identification and recordkeeping. Other violations occurred on Feb. 28, and again on

March 14, 1983, when Vrana allegedly transported animals in commerce under extremely overcrowded conditions. Dr. I. H. Huff, veterinarian in charge of field operations in New Jersey, said that shipping animals under overcrowded conditions could cause a very serious and immediate threat to the health and safety of the animals concerned. Moreover, he said inadequate veterinary care and sanitation practices pose a direct threat to the animals' wellbeing, and faulty record-keeping obstructs the enforcement of the Act. Huff said that APHIS has the authority to order summary suspensions up to 21 days. He said that APHIS intends to file an administrative complaint against Vrana, who will then have an opportunity to respond. (With the exception of a change in one word (for tense purposes), the foregoing is a verbatim statement by the Animal and Plant Health Inspection Service of the U.S. Agriculture Department. It epitomizes the central fallacy of the Animal Welfare Act: Regulation of animal abuse.

IN THE LEGAL LITERATURE

INTERNATIONAL JOURNAL FOR THE STUDY OF ANIMAL PROBLEMS

The April-June, 1983, issue of the *International Journal For The Study of Animals Problems*, 2100 L Street, N.W., Washington, D.C. 20037, (Vol. IV, No. 2) contains several items of interest to those in the Animal Rights field: "Achieving a consensus on dog control strategies: a brief primer;" "The Canadian harp seal hunt: a moral assessment;" "Historical trends in American animal use and perception."

ONE WORLD

The Fall/Winter, 1982-1983, issue of *One World*, P.O. Box 1351, State College, Pennsylvania 16801-0606, (Vol. II, No. 1/2) also contains several articles that are of interest to those in the Animal Rights field: "Harp seal clubbing to be over at last!"; "Editorial: On militancy, violence, and property rights;" "ANPAC: National political action committee for animals;" "Animal rights law: a special report;" "The ethical 'pet'".

ETHICS & ANIMALS

The June, 1983, issue of *Ethics & Animals*, Department of Philosophy, Virginia Polytechnic Institute, Blacksburg, Va. 24061, (Vol. IV No. 2) contains several articles that are of interest to those in the Animal Rights field: "Interest and Animals, Needs and Language;" "Can animals be moral agents?"

FORUM

Published quarterly in French, English, German and Italian, and edited by the Council of Europe, *Forum* often has interesting and important articles on Animal Rights subjects. For information: Directorate of Press and Information, Council of Europe, 67006 Strasbourg Cedex, France.

VIVISECTION

Pavelock, "Towards legal rights for laboratory animals?", 10 *Journal of Legislation*, 198 (1983).

ENDANGERED SPECIES

A book review of *Prohibitive policy: implementing the federal endangered Species Act* will be found at 81 *Michigan Law Review* 1104 (1983).

ENVIRONMENTAL LAW

"Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority: the court as biologist, will be found at 12 *Environmental Law* 773 (1982).

EXPERIMENTATION (UNITED KINGDOM)

A March, 1983, report entitled "Animal experimentation in the United Kingdom: proposals submitted to the Home Secretary jointly by The British Veterinarian Association, The Committee For The Reform of Animal Experimentation and The Fund For The Replacement of Animals in Medical Experiments" begins with the recognition that experiments on animals to advance biological knowledge "should continue provided that the new legislation safeguards the welfare of animals used in experiments. . . ." (For an exercise in compromise and contradiction, the report needs to be read to be believed).

WILD HORSES AND BURROS

"The appropriate degree of management under the Wild Free-Roaming Horses and Burros Act" appears at 19 *California Western Law Review* 419 (1983).

WILD HORSE AND BURROS REPORT

The Wild Horse and Burro Report, published by the U.S. Department of the Interior, Bureau of Land Management, for March, 1983, has several interesting articles: "Final adoption fee regulations lower wild horse fee" and "The National Academy of Sciences Report on wild horses burros: analysis by the Bureau of Land Management and the Forest Service." In addition, the Report contains a "Litigation Update" and a list of "Resolved Litigation."

WILDLIFE: CASES, LAWS AND POLICY

Associated Faculty Press, Inc. of National University Publications (90 South Bayles Avenue, Port Washington, N.Y. 11050, (516) 883-0570) has just published Detroit College of Law Professor David S. Favre's book by the above title. Two hundred seventy-seven pages long, *Wildlife* is priced at \$17.50.

LEGISLATIVE HEARINGS, COMMITTEE REPORTS, INC.

"Humane Care for Animals in Research," Hearing before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, Congress, Second Session on H.R. 6928, December 9, 1982.

"Amendment to the Wild, Free-Roaming Horses and Burros Act — Public Law 92-195, Hearings before the Subcommittee on Public Lands and Reserved Water of the Committee on Energy and Natural Resources, United States Senate, 97th Congress, Second Session on S. 2183, Boise ID, August 7, 1982.

BULLETIN BOARD

THE WAGES OF SIN

A sixteen-year-old boy nearly died from a snake bite inflicted by a poisonous Gaboon viper that was stolen from the National Zoo. According to the newspaper reports, the boy was carrying the snake in a plastic garbage bag, and was bitten when he slung the sack over his shoulder as he stepped off a city bus.

DISPOSABLE PETS

The May, 1983, issue of *Cat Fancy* magazine contained an interesting editorial reporting on recent research by a veterinarian and an anthropologist. Between January, 1979, and April, 1981, the two asked fourteen hundred people who were surrendering pets to an animal care center why they were doing so. The researchers reported that: "Time and time again, the reason for surrendering a pet came down to convenience . . . they had come to the conclusion that it would be more convenient for them not to have the pet than to take whatever actions might be necessary to keep it. To put it simply, we are a 'consumer' society and pets are one of the things we consume . . . and when these items no longer serve our purpose, we throw them away to obtain new ones."

TAUB v. STATE OF MARYLAND: AMICUS BRIEF

Attorneys For Animal Rights, Inc. and Attorneys For Animal Rights-Boston, Inc., have filed an *amicus curiae* brief in the Court of Appeals of Maryland on behalf of the state of Maryland. The brief contains three points: that the relevant section of the Maryland law is constitutional; that Maryland need not prove "unnecessary or unjustifiable pain or suffering" under the applicable section; and that the Animal Welfare Act was not intended to, and did not, preempt the applicable section of the Maryland law.

ANPAC: NATIONAL POLITICAL ACTION COMMITTEE FOR ANIMALS

Connie Kagan, a former Congressional Fellow, has founded and is Chairperson of ANPAC, Animal Political Action Committee. It is intended that ANPAC will support legislators and candidates who are committed to act on behalf of animals. ANPAC will be headquartered in Washington, D.C.

ANIMALS IN POLITICS

According to a brochure recently received by ARLR, Animals in Politics (50 West 77th Street, Suite 902, New York, N.Y. 10023), "holds that the educational and publicity efforts of the animal welfare/rights movement must ultimately be translated into enforceable laws if animals are to have effective protection based on legal rights. The goal of Animals in Politics is to create a politically influential entity which will advance, defend and protect the interests of animals. Only by building up local and national political strength with the unity of purpose of a single nationwide force can we hope to achieve significant changes in the legalized treatment of animals.

AFAR CONFERENCE

As mentioned in the April 1983 issue of ARLR, Attorneys For Animal Rights held a conference in San Francisco on April 9-10, 1983. The proceedings are described in AFAR's Spring 1983 Newsletter.

AMERICAN BAR ASSOCIATION AND ANIMAL RIGHTS

The American Bar Association, Young Lawyers Division, has established an Animals and the Law Committee.

The goals of the Animals and the Law Committee include educating attorneys about the law as it relates to animals and providing a forum for the exchange of ideas and information among attorneys interested in this area of the law. The Committee intends to gather and disseminate information concerning animals and the law through a newsletter and by writing articles for legal publications. The Committee also intends to sponsor seminars, comment on legislation and provide assistance to attorneys involved with animal related cases.

Elinor Molbegott, General Counsel of the American Society for the Prevention of Cruelty to Animals, has been appointed chairperson of this Committee. Lawyers interested in joining the ABA's Animal and the Law Committee should contact Elinor Molbegott at the ASPCA, 441 East 92nd Street, New York, N.Y., 10028, phone: (212) 876-7700.

(Two years ago ARLR's Editor, Professor Henry Mark Holzer, predicted that within five years the ABA would have a Section on Animal Rights. He is delighted with this development and congratulates those responsible for it).

ANIMAL PAC

Southern Florida attorney Stuart A. Cohen has formed the Animal Rights Political Action Committee.

GRATITUDE AND PUBLIC RELATIONS

Lawyers — especially those involved with Animal Rights — can afford to learn something about both of the above. So we're reprinting in full a letter we recently received — from the San Francisco SPCA to the local District Attorney.

March 23, 1983

District Attorney Arlo Smith
880 Bryant Street, Room 322
San Francisco, CA 94103

Dear District Attorney Smith:

We'd like to take this opportunity to commend the District Attorney's Office, and to thank you for the outstanding manner in which your staff handles cases involving crimes against animals. The deputy district attorneys assigned to our cases consistently demonstrate genuine interest and concern in prosecuting those who violate our city and state animal protection laws. Many members of your staff have gone to great lengths to assist in bringing to justice people guilty of animal abuse, and we note with gratitude that the Courts are responding by giving serious attention to such cases with increasing frequency.

A recent case in point, Municipal Court No. 580761, involved a man charged with deliberately abusing and neglecting a rabbit, which he reputedly found abandoned and brought home to keep as a pet. After the animal had suffered from injuries for several days without care, a citizen called our Shelter at 1:30 one morning to report the situation. Night Officer Linda Gunn responded and rushed the rabbit to a veterinary hospital for emergency treatment, but it was too late to save its life. The doctor in charge had to euthanize the animal at 2:00 a.m.

SF/SPCA Humane Officer Sandra Thuet conducted a thorough investigation into the incident and made an arrest. She presented affidavits, photographs, hospital records and a full report to your office. Deputy District Attorneys Jim Collins and Bill Hickey did an excellent job in prosecuting the case based on our officers' reports.

On March 9, 1983, the accused was found guilty of violating California Penal Code 597f which prohibits the neglect of an animal in one's possession. Municipal Court Judge Quidachy sentenced the perpetrator to 30 days in prison and two years probation for his crime.

We are deeply grateful for the diligence and responsiveness of your staff, and for Judge Quidachy's just disposition of this matter. The San Francisco SPCA is gratified to see crimes against animals being treated as serious offenses against society in our City. We truly believe this attitude accurately reflects the strong feelings of the people of San Francisco that we will not tolerate violent acts against any helpless living being, and that such acts will be punished with the severity they deserve.

Sincerely,

RICHARD AVANZINO
President

RA:lg

cc: Judge Ronald E. Quidachy

AVAILABLE RESOURCES

TAUB v. MARYLAND AMICUS BRIEF

The Attorneys For Animal Rights and Attorneys For Animal Rights — Boston, Inc. *amicus curiae* brief in the Court of Appeals of Maryland in the *Taub* case may be obtained from Attorneys For Animal Rights — Boston, Inc., Suite 309, 2001 Beacon Street, Boston, Massachusetts 02146, (617) 566-1745.

EXPERIMENTATION

The "Animal experimentation in The United Kingdom" report is available from SAR.

EDITOR'S COMMENT

Last month, *The New York Times* reported the grisly kill figures for New York State's last (1982) hunting season. The so-called Department of Environmental Conservation reported that there were 185,455 deer, 7,313 wild turkeys and 694 black bears killed. (Only nine hunters were killed). In the course of the *Times* article, the Commissioner of Environmental Conservation was quoted as saying that: "Hunting is a very safe form of outdoor *recreation*. . . (my emphasis)" To those of us who understand that state "conservation" departments exist primarily to assure a constant supply of animals to be murdered by the kill-happy hunters of America, it comes as no surprise that the Commissioner's characterization of hunting as "recreation" places it on the same par as swimming, picnicking, golf, tennis and strolling in the park. To equate the slaughter of defenseless mammals with harmless, and even necessary, leisure time activities is to display an indifference to suffering and life which is virtually incomprehensible. But the Commissioner and his kind are the "enemy." People who love animals and who are trying to help them know better — or so we are told.

In the April, 1983 issue of ARLR, I wrote: "Of all the confrontations now present and building in the Animal Rights movement, only a few of which have been discussed above, none looms as large as the forthcoming struggle between animal welfareists and animal rights-ists. In large measure the outcome of that battle will determine the fate of animals."

The ink was hardly dry on those words when ARLR received a press release from the California branch of The Fund For Animals, Inc. The press release announced the commencement of a lawsuit against the Los Angeles County Board of Supervisors and officials of the Department of Health Services, alleging that the County has failed to enforce its pound seizure ordinances. And what does the law suit seek?: "... enforcement of the ordinances which require certification of the humane treatment of animals by institutions seeking to purchase pound animals." That's right. Near as we could tell from the press release, the much heralded lawsuit is not aimed at *ending* the obscene practice of pound seizure. Here is what was said by a spokesman for the lawsuit: "The ordinances enacted in 1960 state that the unclaimed and unadopted pets may be sold to research institutions that are 'conducting research under humane conditions'. We believe that the County, as a matter of official policy and practice, has failed to inspect or even inquire as to whether these animals are being used inhumanely." In other words, as we understand the lawsuit and the statement just quoted, The Fund For Animals and other plaintiffs seem to be accepting the existence of both pound seizure and experimentation, and the complaint concerns only how, within that obscene context, the animals are being treated. Apparently the lawsuit does not understand that the concept of humaneness is wholly inapplicable to experimentation and that the two are utterly antithetical.

We had hardly finished reading the Fund's news release when a statement from Animalines (P.O. Box 1696, San Francisco, California 94101-1696) came to our attention. In discussing today's animal rights/welfare movement it made the point that:

In the main, our philosophical differences are more tactical than fundamental, more rhetoric than substance. Yes, there are some among us who genuinely believe that human needs are pre-eminent to those of other creatures; however, the majority of us share the belief that non-humans are entitled to basic intrinsic rights — rights that cannot be morally subjugated to human needs. So, the always present fragmentation of the movement, which divides our already limited numbers, is more a matter of strategy and personality than ideology.

There is a colossal mistake here, one which epitomizes the precise cancer at the heart of the animal rights/welfare movement today, not only in the United States of America but throughout the entire world.

What fragments the movement, what divides our limited numbers, is exactly ideology, nothing more and nothing less. Very soon the movement will be convulsed by the need of every person in it to make a fundamental choice. That choice will be whether they believe in Animal Rights or whether they believe in animal welfare. The choice will be whether they believe in absolute, undeniable, irreversible rights for non-human animals, or whether they do not. In principle, viewing hunting as "recreation" is no different from the "clean cage" mentality which is willing to abide experimentation if, of course, it is for a "good" purpose. For some time now the lines have been becoming clearer. Lawsuits like the Fund's, seeking amelioration rather than abolition, and statements like Animalines' attributing the profound cleavage in the movement to mere strategy and personality" are making those lines indelible. And that which Animalines dismisses — ideology — is what, in the final analysis, is going to force people to choose sides.

PLEASE HELP

To a considerable extent, ARLR depends on its readers and their contacts for information about current developments in animal rights law. Please send us clippings, articles, legal papers, legislative proposals, case decisions, administrative rulings, bibliography, etc. Also, so others in the animal rights law movement, and the animals themselves, can have the benefit of work already done, please inform us about what resources are available. ARLR will publish all that it can.

ANIMAL RIGHTS LAW REPORTER®

Communicating Current Developments in Animal Rights Law
Published by International Society for Animal Rights, Inc.
421 South State Street, Clarks Summit, PA 18411

Professor Henry Mark Holzer, Editor

OCTOBER 1983

IN THE COURTS

FEDERAL

ENDANGERED SPECIES ACT: NON LISTED PLANT

The Forest Service had approved a development plan for the Snow Bowl ski area north of Flagstaff, Arizona. The proposed expansion of the ski lifts significantly increased the threat of destruction by hikers to a small yellow-flowered plant called *senecio franciscanus*. All parties were aware of the existence of the plant, its very limited range and the increased threat posed by the project. The plant, previously proposed but dropped in 1979, was not listed as endangered or threatened. In *Wilson v. Block*, 19 ERC 1201 (C.A.D.C., May 20, 1983) the plaintiffs argued that this action violated § 7(a) of the Endangered Species Act. There, unlike other places in the Act, the term "endangered species" is modified by the term "any" rather than "listed." Thus, the plaintiffs argued that any plant in fact endangered should be protected, whether or not formally listed by the Secretary of Interior. The Circuit Court rejected this argument and held that prior to § 7 becoming legally effective, the species must be listed. It would seem that the principles of this case would apply equally to animals. The Court noted that in November, 1982, after oral argument, the Secretary proposed that the plant be listed as a threatened species, thus triggering the consultation process required by § 7(a) (3). (In delaying destruction there is always hope).

FISH AND WILDLIFE SERVICE

Not long ago *Newsweek* magazine reported an interesting and encouraging change in emphasis by the Fish and Wildlife Service regarding poaching on public land. *Newsweek* reported that with the upsurge in commercial exploitation of wildlife on public land in recent years, federal agents have been deployed undercover to combat poachers in several states. Apparently, the effort is paying

off. Indictments are being obtained in Colorado, Montana, Alaska, California and other jurisdictions. Often, the federal agents are working together with state agents. Admittedly, at present the poachers are ahead, but this new federal seriousness concerning the problem may make a dent.

State and Local

CRUELTY: PROSECUTIONS/CONVICTIONS

Southern Illinois authorities arrested 67 people from seven states at a remote dog fighting arena during a contest involving pit bull terriers. Unfortunately, a new Illinois law making dog fighting a felony has been passed by the Illinois legislature, but has not yet been signed by the Governor.

An employee of the New York City Parks Department was charged with fatally scalding a monkey in the City's Prospect Park Zoo, allegedly because the primate had pulled the worker's hair. The monkey died. The employee was charged with a violation of the New York State Agriculture and Market Law, a misdemeanor punishable by up to a year in jail. It should be noted, as press reports have, that nearly ten years ago Society for Animal Rights sued, unsuccessfully, to close the Prospect Park Zoo and the City's two others.

A Pittsburgh man was fined \$40 plus court costs and directed to pay \$100 restitution to a neighboring family whose pet goose the defendant had stolen.

After an inspection of an elderly man's property by the town dog warden and a veterinarian allegedly revealed that a large number of dogs were poorly nourished or

The purpose of the ANIMAL RIGHTS LAW REPORTER is to provide information useful in legal efforts on behalf of animal rights. Nothing herein necessarily reflects approval by International Society for Animal Rights, Inc., Animal Rights Law Reporter, or its Editor. Information contained herein is obtained from sources deemed reliable.

diseased, a local Justice of the Peace signed an order for the animals to be destroyed. Accordingly, the dog warden, her fourteen-year-old son and two town constables entered the property and shot the dogs. Initially, all four were charged with violations of New York's anti-cruelty law, but later, on the District Attorney's motion, another judge dismissed the charges on the ground that there was no criminal intent.

Following up on an item reported in the July 1983 ARLR, the thirteen-year-old Florida boy accused of tossing Tylenol tablets into a zoo's otter pond pleaded guilty to attempted animal cruelty and was sentenced to two weeks as a zoo keeper.

A Wisconsin youth was fined \$117.20 and stripped of his hunting privileges for a year for shooting a Canadian goose with a bow and arrow.

A Norfolk, Virginia, sailor was sentenced to 90 days in jail and a \$100 fine for leaving a mother cat and five kittens unattended for two weeks. Four of the kittens died. At last report, the defendant, a crew member on a nuclear missile carrier, remained in jail because of his inability to post a \$500 bond.

A Baltimore judge ordered a New York man, whose frantic dog broke through a car window to escape sweltering heat, to contribute \$1,000 to the local Society for the Prevention of Cruelty to Animals.

WILDLIFE

A Miami man received one year's probation and a \$1,000 fine for failing to keep a pet wolf on a leash. In addition the defendant was ordered to perform 40 hours of community service at the Humane Society. Additionally, he was ordered to keep the 18-month-old pet in a cage.

ANIMALS AS PROPERTY

After a year of bitter divorce proceedings, a California judge has awarded a childless couple joint custody of their dog in accordance with California's child custody laws. The judge ruled that the dog was, in effect, a "child substitute" and as such should be jointly owned and shared by the divorcing couple. In addition, neither the husband or the wife will be allowed to take the dog out of the state without written permission from the other.

COUNTER ATTACK AND DEFAMATION

As ARLR predicted a couple of years ago, targets of the wrath of animal rights activists are beginning to counterpunch by using libel laws. An interesting case has been brought in the court of common pleas of Montgomery County, Pennsylvania, by the proprietor of a livestock auction who claims that an animal rights activist defamed him by her comments about plaintiff's sales of animals. Compensatory and punitive damages

are sought. Interestingly, although the alleged defamatory statements were made to and in newspapers, they were not named as defendants.

NUISANCE LAWS

A Virginia judge has sentenced to death a three-year-old dog for "criminal barking," according to UPI. A neighbor had complained that the dog barked at least three times a week for at least 30 minutes at a time. An appeal is planned.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A woman and her two children sued their dog's veterinarian alleging that he had threatened to "do away with" the animal unless they paid their bill. Unable to raise enough money fast enough, they sought an injunction stopping the veterinarian from disposing of the dog. The trial court granted summary judgment for the veterinarian. Finding that a genuine issue of fact exists where a jury could reasonably conclude that a veterinarian's conduct was so extreme and outrageous as to cause serious mental and emotional injuries, Judge Brock for the Supreme Court of Tennessee held that if the plaintiffs' claim was true it would demonstrate conduct intolerable in a civilized society. The Court reversed and remanded for trial on the merits. (*Lawrence v. Stanford*).

INJUNCTIONS AGAINST ANIMAL CRUELTY

An interesting memorandum opinion and order was issued earlier this year in the general sessions court at Kingsport, Tennessee. Rather than attempt to summarize it here, we will reprint it in its entirety:

Memorandum Opinion and Order

"This matter came on to be heard on this the 20th day of January, 1983, before the Honorable George H. Garrett, Judge of the General Sessions Court, Division II, at Kingsport, Tennessee. The court finds that all parties are properly before the court and that a hearing was conducted in this matter. After receiving the evidence, the court is of the opinion that the following memorandum opinion and order should enter.

The court finds that a mandatory injunction was issued on the 17th day of January, 1983, in an effort to prevent irreparable injury to the animals that are the subject matter of this proceeding. The court finds that there was no adequate remedy at law available to the plaintiff, Sullivan County Humane Society, Incorporated, to insure that the animals in questions would not be the victim of further physical neglect or death. This court is cognizant of the fact that the unbridled power of an officer of a humane society to take charge of mistreated animals, to provide them with food and to detain them until expenses are paid without restricting the authority of the officers to cases of emergency of public necessity and without providing notice to the owner and an opportunity for a

hearing could involve due process issues. However, in this case the court finds that the facts presented to the court by the officials of the Sullivan County Humane Society constitute a case which, in relation to the animals that were still alive, was a case which the court would classify as an emergency situation involving life threatening conditions to the animals in question. While the issuance of mandatory injunctions are not favored by the law, in this case the court is of the opinion that the issuance of the injunction was necessary to protect the lives of the animals in question and was a matter that demanded immediate action growing out of public necessity. The plaintiffs were justified in seeking to invoke the equity jurisdiction of this court for the purposes contained in their complaint. The evidence introduced at this hearing which was uncontroverted by the defendant, William R. Collins, was of such a nature that would shock the conscience of even the most callous person. On several occasions during the month of January, 1983, various individuals observed the animals in question in a kennel located in Sullivan County, Tennessee. The animals appeared to be sick, malnourished, and without food or water. Several animals had died and were frozen to the ground. Upon further investigation the officials of the Sullivan County Humane Society found that sanitary conditions in the kennel itself were of such a nature that it was unfit for the animals to continue to remain in said kennel. Following the issuance of the mandatory injunction the plaintiffs along with officials of the Sullivan County Sheriff's Department entered the kennel and found even more shocking conditions which the court finds unnecessary to comment on at this time for the purpose of the entry of this order. Pursuant to the orders of the court the animals were removed from the kennel and were placed in the temporary legal custody of the plaintiffs for the purpose of receiving such medical treatment that might be required. Since their initial removal the animals have remained in the custody of the Sullivan County Humane Society. Under the common law the members of the animal kingdom were possessed of no inherent right to protection from the brutality or wanton abuse of man. He could at his will inflict on animals any conceivable amount of pain, suffering or torture. However, in recent years a more humane attitude has been exhibited. Laws have been passed for the common object of protecting animals from ill treatment or cruelty of man. Animals have rights which, like human beings, are to be protected. *Tennessee Code Annotated*, Section 39-3-112 and 39-3-113 authorized officials of the Society for the Prevention of Cruelty to Animals to intercede on their behalf. The Sullivan County Humane Society in an effort to protect the lives of the animals in question, which in their opinion were living in life threatening situations, sought the assistance of the court. For the Society to have done otherwise would have violated their very purpose for existence, that is to protect animals from neglect and abuse. Those individual members of the Sullivan County Humane Society who were involved in this matter should be commended for their efforts which undoubtedly resulted in saving the lives of many of the remaining animals. After receiving the evidence in this matter, the court is of the opinion that the following order should enter.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT the court finds that the mandatory injunction issued in this case shall continue until such time as the court is convinced that:

(1) The animals who are the subject matter of this action have received such medical and nutritional care that will allow them to be released from the custody of the Sullivan County Humane Society without placing them in a life threatening situation.

(2) The owner of the animals, Mr. William R. Collins has made arrangements for the proper care and housing of the animals, said care to include (a) a clean and sanitary pen and run; (b) proper housing to protect the animals from exposure to the elements; (c) an adequate supply of clean water and nutritional food; (d) receptacles for the water and food; (e) the pen and run shall be located in close proximity to the defendant's residence to insure proper care, supervision and treatment of the animals. The Sullivan County Humane Society shall be responsible for inspecting and approving the pen and run and shall report to the court in writing their findings.

(3) The Sullivan County Humane Society shall monitor this matter for a period of ninety (90) days after the animals are returned to insure that the animals are being properly cared for. The defendant is ordered to cooperate with the Sullivan County Humane Society in their monitoring efforts.

(4) It is further ordered that the defendant, William R. Collins, shall be liable for all expenses incurred in this matter including those expenses incurred by the Sullivan County Humane Society for the care and treatment of the animals, all veterinarian bills and any other costs incidental to the care and treatment of the animals involved in this matter.

(5) The costs of this matter are taxed to the defendant."

* * *

(It is inconceivable that after making the findings of cruelty that he did, the judge could return the surviving animals to their "owner.")

TAUB CONVICTION REVERSED

The conviction of Dr. Edward Taub for failing to provide necessary veterinary care for a monkey was reversed. Following is the significant portion of the recent decision by the Court of Appeals of Maryland:

"While Dr. Taub has raised several issues concerning the constitutionality of section 59, preemption of this section by the Federal Act, and certain alleged errors in the trial court's evidentiary rulings, we believe the matter may be disposed of by our conclusion that section 59 simply is inapplicable to Dr. Taub and the laboratory and thus the charges against him should be dismissed. We recognize that this issue was not raised previously although it was discussed at oral argument. Under Maryland Rule 813 a our scope of review is "ordinarily" limited to questions raised and decided by the trial court. Nevertheless, as the

rule employs the term "ordinarily," it permits exceptions and we have occasionally decided cases on issues not previously raised. See, e.g., *Squire v. State*, 280 Md. 132, 368 A.2d 1019 (1977); *Bartholomey v. State*, 260 Md. 504, 273 A.2d 164 (1971), *vacated in part and remanded on other grounds*, 408 U.S. 938, 92 S.Ct. 2870, 33 L.Ed.2d 759 (1972), *reh'g denied*, 409 U.S. 901, 93 S.Ct. 180, 34 L.Ed.2d 162 (1972); *Martin G. Imbach, Inc. v. Deegan*, 208 Md. 115, 117 A.2d 864 (1955). Because our conclusion as to this issue is completely dispositive of the case, we shall consider it.

By Chapter 198 of the Laws of Maryland, 1890, the legislature, for the first time, made it a misdemeanor for

"any person who wilfully sets on foot, instigates, engages in, or in any ways furthers any act of cruelty to any animal, or any act tending to produce such cruelty, or by any act, conduct, neglect, or omission wilfully causes, permits or suffers any animal to undergo any species of torture or cruelty. . . ."

Torture and cruelty were thereafter defined "to include everything whereby *unjustifiable* physical pain, suffering, or death [w]as caused or permitted. . . ." (Emphasis added.)

In 1904, this chapter became section 57 and 58 of Article 27 without change. The next legislative action of significance, pertinent to the issue before us, occurred in 1955, Chapter 19, when a specific penalty for violation of the section was provided. In 1957, by Chapter 296, the legislature removed from the penalty provision the language "in the discretion of the Court." By Chapter 718 of the Laws of 1963, the penalty provision was changed to provide for up to ninety days imprisonment. The legislature increased the fine provision of \$1,000.00 in 1966, by Chapter 333. In 1972, by Chapter 719, the legislature repealed the pertinent sections and enacted a new section 59 to read as follows:

"Any person who (1) overdrives, overloads, deprives of necessary sustenance, tortures, torments, cruelly beats, mutilates or cruelly kills; or (2) causes, procures or authorizes these acts; or (3) having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the animal, or unnecessarily fails to provide the animal with proper food, drink, air, space, shelter or protection from the weather, is guilty. . . ."

Section 62 was amended to define "torment," otherwise it remained essentially unchanged. In 1975, by Chapter 716, section 59 was repealed and reenacted with the language as it was at the time of the inception of this case, as set forth below:

"Any person who (1) overdrives, overloads, deprives of necessary sustenance, tortures, torments, cruelly beats, mutilates or cruelly kills; or (2) causes, procures or authorizes these acts; or (3) having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the animal, or unnecessarily fails to provide the animal with nutritious food in sufficient quantity, necessary veterinary care, proper drink, air,

space, shelter or protection from the weather, is guilty of a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or by imprisonment not to exceed 90 days, or both. Customary and normal veterinary and agricultural husbandry practices including but not limited to dehorning, castration, docking tails, and limit feeding, are not covered by the provisions of this section. In the case of activities in which physical pain may unavoidably be caused to animals, such as food processing, pest elimination, animal training, and hunting, cruelty shall mean a failure to employ the most humane method reasonably available. It is the intention of the General Assembly that all animals shall be protected from intentional cruelty, but that no person shall be liable for criminal prosecution for normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable."

It can readily be seen that the legislature has consistently been concerned with the punishment of acts causing "unnecessary" or "unjustifiable" pain or suffering. Furthermore, clearly the legislature recognized that there are certain normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable and, in such instances, section 59 does not apply.

In addition, we are confident that the legislature was aware of the Federal Animal Welfare Act which was, in part, to insure that animals intended for use in research facilities would be provided humane care and treatment. Under the terms of that Act, a research facility is required to register with the Secretary of Agriculture (7 U.S.C.A. § 2136 (1973, 1976 Supp.)), to comply with standards promulgated by the Secretary to govern the humane handling, care, and treatment of animals (§ 2143 (1976 Supp.)), is subject to inspection of their animals and records (§ 2147 (1973)), and is subject to civil and criminal penalties, as well as a cease and desist order for any violation of the Act (§ 2149(b) and (c) (1976 Supp.)). Thus the Act provides a comprehensive plan for the protection of animals used in research facilities, while at the same time recognizing and preserving the validity of use of animals in research (§ 2146 (1973 and 1976 Supp.)).

Moreover, the involved laboratory was subject to detailed regulations of the Secretary of Agriculture (9 C.F.R. § § 3.75-3.91 (1978)) which set forth specifications for humane handling, care, treatment, transportation of nonhuman primates, and for veterinary care. With respect to the latter, again provision is made for a recognition and preservation of the validity of research purposes.

Lastly, being a recipient of an NIH grant, the laboratory became subject to pertinent regulations thereof governing the care and treatment of animals used in the research which was the subject of the grant (U. S. Dept. of Health, Education, and Welfare, Public Health Service, NIH Publication No. 80-23, Guide for the Care and Use of Laboratory Animals (rev. 1978, reprinted 1980)).

Accordingly, we do not believe the legislature intended section 59 of Article 27 to apply to this type of research activity under a federal program. We shall, therefore, reverse Dr. Taub's conviction and remand this matter to the Circuit Court for Montgomery County with instructions to dismiss the criminal information."

IN THE LEGISLATURES & AGENCIES

CONGRESS

Copies of bills may be obtained by writing to the House Documents Room, U.S. Capitol, Washington, DC 20515, or the Senate Documents Room, Washington, DC 20510. A self-addressed label should be enclosed.

The legislation reported below has been introduced into the 98th Congress.

HEALTH AND MEDICAL FACILITIES

H.B. 2350, introduced by Henry A. Waxman and nine other sponsors, the Health Research Extension Act. This legislation contains a provision requiring entities applying for research funds through the National Institutes of Health (NIH) to establish animal care committees to monitor the care and treatment of research animals and to meet certain standards in conducting animal research. Referred to Energy & Commerce Committee on 3/24/83. Committee began markup on 5/3/83. Ordered reported with amendments on 5/10/83. Reported with amendments, House Report 98-191 on 5/16/83. Rule granted allowing amendments (House Resolution 208) on 5/24/83. House began consideration on 7/25/83.

S.B. 773, introduced by Sen. Orrin G. Hatch. The Animal Research Study Act of 1983 is requiring an 18-month study of the use of animals in research. Bill added an amendment to NIH renewal authorization. Referred to Labor Committee on 3/10/83. Hearings begun by Committee on 3/17/83. Ordered reported with amendments on 4/18/83. Reported with amendments, Senate Report 98-110 on 5/16/83.

KODIAK BEAR NATIONAL WILDLIFE REFUGE

S.B. 340, introduced by Sen. Frank H. Murkowski, for the acquisition by the United States by exchange of certain native owned lands or interests in lands in Alaska. Referred to the Energy and Natural Resources Committee of which Sen. James A. McClure is Chairman.

ANTARCTIC MARINE LIVING

H.B. 3416, introduced by Reps. John B. Breaux and Edwin B. Forsythe, to implement the Convention on the Conservation of Antarctic Marine Living Resources. Referred to Merchant Marine Committee on 6/27/83. Hearings begun by Fisheries Subcommittee on 6/30/83.

FISH AND WILDLIFE FOUNDATION

H.B. 2809, introduced on 4/28/83 by Rep. John B. Breaux, et al., to establish a U.S. Fish and Wildlife Foundation. Referred to Merchant Marine Committee on 4/28/83. Hearings begun by Fisheries Subcommittee on 5/2/83.

Ordered reported with amendments on 5/10/83. Reported with amendments, House Report 98-134, Pt. I on 5/16/83. Referred to Ways and Means Committee on 6/2/83. Ordered reported with amendments on 6/29/83. Reported with amendments, House Report 98-134 Pt. II, by Ways and Means Committee on 7/1/83. Passed under suspension of rules by 2/3 vote on 7/12/83. Referred to Senate Environment on 7/13/83.

S.B. 1271, introduced by Sen. John H. Chafee, et al., to encourage citizen participation in wildlife conservation programs and to establish the National Fish and Wildlife Foundation. Referred to Environment Committee on 5/12/83. Hearings begun by Pollution Subcommittee on 5/19/83.

NORTH PACIFIC FUR SEALS

H.B. 387, introduced by Rep. Robert A. Roe, to provide for the termination of the Interim Convention on the Conservation of North Pacific Fur Seals of February 9, 1957, to prohibit the taking of seals in the Pribilof Islands. Referred to the Foreign Affairs Committee on which Rep. Clement J. Zablocki is Chairman, the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman and the Committee of Interior and Insular Affairs of which Rep. Morris K. Udall is Chairman.

H.B. 2840, introduced on 4/28/83 by Rep. Don Young, to provide for the orderly termination of federal management of the Pribilof Islands, Alaska. Referred to Merchant Marine Committee on 4/28/83. Hearings begun by Fisheries Subcommittee on 5/19/83. Ordered reported with amendments on 5/19/83. Reported with amendments, House Report 98-213 on 5/23/83. Passed under suspension of rules by 2/3 vote on 5/23/83. Referred to S Commerce Committee on 5/25/83. Ordered reported with amendments on 8/2/83. Reported with amendments; without written report on 8/3/83. Report filed, Senate Report 98-212 on 8/4/83. Passed by Senate on 8/4/83.

MARINE SANCTUARIES

S.B. 1282, introduced by Sen. John H. Chafee, et al., to extend Titles 1 and 11 of the Marine Protection Research and Sanctuaries Act, as amended. Reported without amendments, Senate Report 98-88 by Environment Committee on 5/16/83.

MIGRATORY GAME BIRDS

H.B. 891, introduced by Rep. Harold S. Sawyer, to establish a webless migratory game bird research fund and to require a federal permit for the taking of any webless migratory game bird. Referred to Merchant Marine Committee on 1/25/83. Hearings begun by Fisheries Subcommittee on 7/26/83.

S.B. 1284, introduced on 5/16/83 by Sen. John H. Chafee, to extend until October 1, 1985, the authority for advances to the migratory bird conservation fund. Reported without amendments, Senate Report 98-90, by Environment Committee on 5/16/83.

H.B. 2268, introduced by Rep. Edwin B. Forsythe, to extend until October 1, 1993, the authority for appropriations to the migratory bird conservation fund. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman. Referred to Merchant Marine Committee on 3/23/83. Hearings begun by Fisheries Subcommittee on 6/23/83.

WETLANDS

S.B. 978, introduced by Sen. John H. Chafee, to extend until October 1, 1993, the authorization for appropriations to the migratory bird conservation fund. Referred to Environment Committee on 5/19/83. Hearings begun by Pollution Subcommittee on 7/12/83.

H.B. 3082, introduced by Rep. Edwin B. Forsythe, to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat. Referred to the Merchant Marine Committee on 5/23/83. Hearings begun by Fisheries Subcommittee on 6/23/83. Approved with amendments by Subcommittee on 7/26/83.

S.B. 1329, introduced by Sen. John H. Chafee and Sen. Robert T. Stafford, to extend until October 1, 1983, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat. Referred to the Environment and Public Works Committee of which Sen. Robert T. Stafford is Chairman. Referred to Environment Committee on 4/5/83. Hearings begun by Pollution Subcommittee on 7/12/83.

H.B. 2395, introduced by Rep. John B. Breaux and Rep. Edwin B. Forsythe, to extend the Wetlands Loan Act. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman. Referred to Merchant Marine Committee on 4/5/83. Approved with amendments by Fisheries Subcommittee on 5/2/83. Ordered reported without amendments on 5/10/83. Reported with amendments, House Report 98-132 on 5/16/83.

RACEHORSES

H.B. 1694, introduced by Rep. Bruce F. Vento, to prohibit the drugging or numbing of racehorses and related practices, and to amend Title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices. Referred to Energy & Commerce; Judiciary Committees on 2/25/83. Hearings begun by Criminal Justice Committee on 4/27/83.

WILDLIFE REFUGES

H.B. 1438, introduced by Rep. Gene Chappie and two other sponsors, to provide for the restoration of the fish and wildlife in the Trinity River Basin, Calif. Referred to the Interior and Insular Affairs Committee of which Rep. Morris K. Udall is Chairman and the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

H.B. 1935, introduced by Rep. Bill Patman, et al., to ratify an exchange agreement concerning national wildlife refuge system lands located on Matagorda Island in Texas. Referred to the Committee on Merchant Marine and Fisheries of which Rep. Walter B. Jones is Chairman on 3/7/83. Hearings begun by Fisheries Subcommittee on 3/9/83. Approved by Subcommittee on 4-12-83. Ordered reported on 4-13-83. Reported without amendments, Senate Report 98-176 on 7/11/83. Passed by Senate on 7/22/83. Sent to President on 7/26/83. Public Law 98-66 on 8/4/83.

H.B. 1626, introduced by Rep. Barbara F. Vucanovich, to authorize the recreational use of Ruby Lake National Wildlife Refuge in the State of Nevada. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

ALASKA — ANIMALS AND WILDLIFE

S.B. 49, introduced by Senator Ted Stevens, et al., to reopen hunting and trapping lands in Alaska. Referred to the Committee of Energy and Natural Resources of which Senator James A. McClure is Chairman. Hearings begun by Public Lands Subcommittee on 4-15-83. Committee began markup on 7/22/83. Ordered reported with amendments; without recommendation on 8/4/83.

DESERT PUFFISH

S.B. 84, introduced by Sen. Alan Cranston, to authorize the establishment of the Desert Pupfish National Wildlife Refuge in the State of Nevada. Referred to the Energy and Natural Resources Committee of which Sen. James A. McClure is Chairman.

WHALING MORATORIUM

S.R. 174, introduced by Sen. Howard H. Baker, Jr. and two other sponsors, to re-affirm support for the International Whaling Commission moratorium on commercial whaling. Placed on Senate calendar on 7/14/83. Passed by Senate on 7/16/83. Passage vitiated on 7/18/83. Amendments adopted on 7/18/83. Passed by Senate on 7/18/83.

HCR 15, introduced by Rep. Robert A. Roe, urging a moratorium on the commercial killing of whales. Referred to the Foreign Affairs Committee of which Rep. Clement J. Zablocki is Chairman.

HCR 69, introduced by Rep. William R. Ratchford and 15 other sponsors, expressing the sense of the Congress with respect to those nations that have filed an objection to the International Whaling Commission ban on commercial whaling. Referred to the Foreign Affairs Committee of which Rep. Clement J. Zablocki is Chairman and the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

LEOPARD SKINS

S.B. 404, introduced by Sen. Edward Zoorinsky, to permit the importation of leopard skin. Referred to the Finance Committee of which Sen. Robert Dole is Chairman.

KANGAROOS

H.B. 1903, introduced by Rep. Robert J. Mrazek, to prohibit the importation into the United States of certain kangaroos and products made therefrom. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

LAMPREY EEL

H.B. 3472, introduced by Rep. Guy Vander Jagt, to amend the Wild and Scenic Rivers Act to permit the control of the lamprey eel in the Pere Marquette River. Referred to the Interior and Insular Affairs Committee of which Rep. Morris K. Udall is Chairman.

NATIONAL ZOOLOGICAL FOUNDATION

H.B. 431, introduced by G. William Whitehurst, to establish a National Zoological Foundation. Referred to the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

PINNIPEDS

HCR 77, introduced by Rep. G. William Whitehurst, calling for a regional conservation treaty to protect Northern Hemisphere pinnipeds. Referred to the Foreign Affairs Committee of which Rep. Clement J. Zablocki is Chairman.

RESEARCH METHODS

HCR 58, introduced by Rep. Andrew Jacobs, Jr., expressing the sense of the Congress that any federal agency that utilizes the Draize rabbit eye irritancy test should develop and validate alternative ophthalmic testing procedures that do not require the use of animal test subjects. Referred to the Committee of Energy and Commerce of which Rep. John D. Dingell is Chairman.

S.B. 657, introduced by Sen. Robert Dole and five other sponsors, to amend the Animal Welfare Act to ensure the proper treatment of laboratory animals. Referred to Agriculture Committee on 3/2/83. Hearings begun by Committee on 7/20/83.

WILD HORSES AND BURROS

H.B. 1675, introduced by Rep. Barbara F. Vucanovich and 11 other sponsors, to require the protection, management and control of wild free-roaming horses and burros on

public lands. Referred to the Interior and Insular Affairs Committee of which Rep. Morris K. Udall is Chairman and the Merchant Marine and Fisheries Committee of which Rep. Walter B. Jones is Chairman.

STEEL-JAW LEGHOLD TRAPS

H.B. 1797, introduced by Rep. Clarence D. Long and 54 other sponsors, to end the use of steel-jaw leghold traps on animals in the United States and abroad. Referred to the Energy and Commerce Committee of which Rep. John D. Dingell is Chairman.

FISH AND WILDLIFE SERVICE APPROPRIATIONS

H.B. 3363, introduced by Rep. Sidney R. Yates, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1984. Referred to the Committee of the Whole House on the State of the Union. Reported without amendments, House Report 98-253, by Appropriations Committee on 6/21/83. Rule granted allowing amendments (H. R. 244) on 6/22/83. Amendments rejected (150 to 271; House Leg. 221) on 6/28/83. Amendments rejected (206 to 213; House Leg. 223) on 6/28/83. Amendments adopted on 6/28/83. Passed by House (272 to 144; House Leg. 224) on 6/28/83. Referred to Senate Appropriation Committee on 6/29/83. Approved with amendments by Interior Subcommittee on 7/18/83. Ordered reported with amendments on 7/19/83. Reported with amendments, Senate Report 98-184 on 7/19/83. Amendments adopted on 8/1/83. Amendments adopted on 8/3/83.

STATE AND LOCAL

It should be understood that, to a considerable extent, ARLR depends on volunteer correspondents for the information we print concerning state and local legislative activity. Often, ARLR has not seen the actual text of the legislation to which we refer, and relies for its description on our correspondents. On occasion, we have caught a mischaracterization of what a piece of legislation actually provides, and have made the appropriate correction before going to press. Doubtless, however, on other occasions mischaracterizations have gotten past us. Therefore, ARLR urges anyone interested in any legislation to which we refer to obtain copies of the actual bills from the legislative correspondents whose names and addresses are provided in ARLR.

CALIFORNIA

(Virginia Handley, The Fund For Animals Inc., Fort Mason Center, San Francisco, California 94123, 415-474-4020).

(The Legislature is adjourned until January, 1984).

POUNDS/SHELTERS. SB 883 by Senator David Roberti prohibits pounds and shelters from making animals

available to research, but allows transfer of animals from pounds and shelters to animal health technology programs accredited by the Board of Examiners in Veterinary Medicine.

ENDANGERED SPECIES TAX CHECK-OFF: AB 384 by Assemblyman Bob Campbell provides for a check-off on state income tax forms to contribute to a fund for the use of endangered species programs to be handled by the State Department of Fish & Game.

TRAPPING/PREEMPTION: AB 1114 by Assemblyman Lou Papan allows cities and counties to pass laws on trapping that are more restrictive than the State Fish & Game laws. This would allow local governments to ban the trap.

EUTHANASIA: AB 2024 by Assemblyman Jack O'Connell prohibits the use of the nitrogen cabinets for the purpose of euthanasia of dogs and cats.

AB 2160 by Assemblyman Charles Calderon allows bloodless bullfights for entertainment and financial gain. Present law allows them only in connection with religious events.

AB 1735 by Assemblyman William Filante alleges to be an alternative to SB 883. It repeats some federal requirements and current policies (annual inspections, holding periods, etc.) into State law.

AB 1548 by Assemblyman Frank Hill allows "herd adjustment" (trophy hunting) of Big Horn Sheep.

FLORIDA

(Stuart A. Cohen, Esq., Mayfair in the Grove, Suite 4A, Coconut Grove, Florida 33133, (305) 251-9000).

The Florida legislature is not now considering any animal legislation.

ILLINOIS

(Cheryl Nyberg, 504 E. Pennsylvania Ave., Champaign, Illinois 61820)

REGISTRATION FEES: H.B. 440, introduced by Rep. Klemm, amends the Animal Control Act to increase the maximum dog registration fee from \$4.00 to \$10.00. Passed both House and Senate by June 28, 1983.

DOGFIGHTING: H.B. 485, introduced by Rep. McAuliffe et al., increases the penalties for conducting animal fights for sport or entertainment and prohibits ownership or possession of any device designed for use in animal fights. Passed both House and Senate by June 28, 1983.

GREYHOUND RACING: H.B. 1583, introduced by Rep. Bullock et al., creates the Illinois Greyhound Racing Board to regulate greyhound racing and is patterned after the Illinois Horse Racing Act of 1975.

INJURIES/NEUTERING: H.B. 1597, introduced by Rep. Klemm, amends the Animal Control Act by providing for compensation to persons injured by homeless animals. House Amendment No. 2 requires shelters and pounds to neuter dogs and cats before releasing them or to obtain a new owner's signature on a written neutering agreement. Passed both House and Senate by June 27, 1983.

CARRIER PIGEONS: H.B. 1620, introduced by Rep. Giorgi, prohibits the killing, interfering with, or injury of carrier pigeons and increases the fines to \$50.00 — \$100.00.

INDIANA

(Susan Wintsch, Bloomington Animal Control Commission, 10005 East Hunter, Bloomington, Indiana 47401).

This County, in south-central Indiana, will set an important legal precedent if a proposed ordinance is adopted this fall. The law would make it illegal to keep a wild animal as a pet. Although such an ordinance is already in effect within the city limits of Bloomington, the county seat, few if any counties in the State have considered prohibiting the purchase or ownership of wild animals. Interestingly, such ownership is still allowed even within the City of Indianapolis itself. The proposed ordinance has, however, been tabled indefinitely, and its fate is unknown.

MAINE

(Kenneth J. Shapiro, Psychologists for the Ethical Treatment of Animals, c/o Psychology Department Bates College, Lewiston, Maine 04240)

NONGAME WILDLIFE: L. D. 1151. An act to provide an income tax checkoff for voluntary support of nongame wildlife management is now public law 526 and will go into effect spring of 1984.

HUNTING: L. D. 1586. An act to prohibit harassment of hunters, trappers, and fishermen is now public law 366.

COYOTE: A bill to establish a bounty on coyotes was killed in committee.

MASSACHUSETTS

(Sheryl L. Broad, New England Anti-Vivisection Society, One Bulfinch Place, Boston, Massachusetts 02114 (617) 523-6020).

POUND ANIMALS:

ProPets, a coalition of concerned citizens, supported by NEAVS and MSPCA, has filed an initiative petition with the Attorney General and Secretary of State to repeal the Commonwealth's pound seizure law. Petition for enactment by the legislature requires 61,000 valid signatures by

Nov. 23, 1983. Should the 1984 legislature fail to enact the petition, an additional 10,000 signatures are required to place the petition question on the Nov. 1984 ballot. Beyond the provisions of H. 2769 and S. 1212, the petition prohibits all dog officers, dealers, institutions, from participating in the release, importation and/or acceptance of any pound animal for the purpose of research, experimentation, testing, demonstration, or instruction. Violation of these provisions carries criminal penalties. The petition further mandates licensing by the Commonwealth of all research institutions and dealers, requiring licensees to keep and annually file detailed records of each animal in custody. Violation of provisions may result in the revocation of license granted by the Commissioner of Public Health. Agencies authorized by Ch. 140, Sec. 10 will have the right to inspect all licensees.

S. 1862 introduced by Senator Paul D. Harold and Representative Thomas F. Brownell exempts the City of Quincy from the Commonwealth's pound seizure law and prohibits voluntary sale. Signed into law. Quincy has been one of the largest suppliers of animals under Ch. 49A.

Other Ch. 49A Home Rule Exemptions Signed into Law: H. 3449, City of Woburn; H. 5675, City of Kingston; S. 202, City of Hull.

Pending Home Rule Exemptions: H. 2663, City of Amherst (Passed House); H. 4116, City of Newton (Passed House); H. 5475, City of Marshfield (Senate Counties).

TAX CHECK-OFF:

Signed into law. S. 1928 is a redraft of numerous similar bills (including H. 1801 and H. 5997) providing a check-off system on the state income tax form that would permit money to be used in nongame wildlife programs. Revenues will be held within a dedicated fund for the Department of Fisheries and Wildlife, with annual appropriations to the Department as determined by the legislature. Twenty-six states have similar funding programs.

TRAPPING:

H. 3543 introduced by Representative Alfred A. Minahan to prohibit use of all traps that are not of the cage or box type. Dead. House accepted negative report from Committee on Natural Resources.

ANIMAL CONTROL:

H.3997 introduced by Representative Vincent J. Piro mandates dog officers maintain systems of records which disclose the date and location of each apprehension, place of confinement, if tagged the name and address of owner, name and address of new owner including the date of sale or transfer, date and method of euthanasia and name of person who administered euthanasia. All records to be maintained in the County Dog Office and the City/Town Clerk for a period of two years. House Committee on Third Reading.

NEW JERSEY

(International Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, PA 18411, 717-586-2200)

ANIMAL CONTROL: A. 3983 to require registration and certification by Department of Transportation of those persons who destroy animals for animal control facilities.

S. 3589 to establish certain training and educational qualifications for animal control officers.

LOBSTER FISHING: A. 3916 to place certain restrictions on the taking of lobsters from salt waters of the State by any means, importing, exporting, possessing, buying, selling or offering to buy or sell and to authorize the use of lobster or fish pots for the taking of lobster in certain salt waters.

S. 3572 to limit the taking, buying and selling of lobsters in the State.

S. 3579 to place certain minimum size restrictions on the taking of lobsters from the salt waters of the State.

FISHING: AR. 3070 to memorialize Congress and the President to oppose enactment of HR 2965, the Uniform Marine Recreational Fishing Licensing Act of 1983.

DOG LICENSE FEES: S. 3560 to postpone the imposition and collection of additional dog license fees until January 1, 1984.

TRAPPING: A. 3728 to make the prohibition of the use of steel-jaw leghold type animal traps optional within each municipality.

NEW YORK

(Elinor Molbegott, Esq., General Counsel, ASPCA, 441 East 92nd Street, New York, New York 10028, 212-876-7700).

The New York legislature is out of session until January 1984. All legislation pending at the close of the last session expired.

NORTH CAROLINA

(William A. Reppy, Jr., Professor of Law, Duke University, Durham, N.C., 27706, 919-684-3804).

The North Carolina General Assembly adjourned in August after disposing of the following bills:

POLICE ANIMALS: H.B. 918 was enacted creating a felony offense of knowingly and willfully causing serious injury to or killing an animal used for law enforcement purposes by any law enforcement agency.

BEAVER BOUNTY: S.B. 313 was passed giving to the Board of Commissioners of Columbus County \$10,000 for the purpose of paying bounties on beavers in order to reduce the beaver population in Columbus County.

HUNTING EXTENDED: H.B. 994 was enacted to permit the use of handguns and handgun ammunition in taking big game mammals. During the regular gun seasons for hunting bear, deer and wild boar (wild turkeys specifically excluded), these animals may be taken with types of handguns and ammunition approved for such use by the Wildlife Resources Commission (WRC).

HUNTING LIMITED: H.B. 1198 has been enacted, making it unlawful for any person to place exotic species of wild animals or wild birds or other species not indigenous to the area, in an area for the purpose of stocking the area for hunting or trapping.

H.B. 1342 has been passed, prohibiting in Harnett County the use of center-fire rifles in hunting on the land of another or from any road or right-of-way adjoining the land of another without written permission of the owner of that land.

S.B. 432 was passed making it unlawful to hunt bears with dogs in Pamlico County.

H.B. 1213 which would have prevented the use of artificial lights in the hunting of deer was not enacted.

STUDY: H.B. 1142 was passed, authorizing the Legislative Research Commission to study the disposition of animals by animal shelters and pounds. The study shall include methods of finding responsible new owners for such animals as pets, methods relating to sale or resale of impounded animals to persons, firms or corporations for scientific or educational purposes, methods and cost of humanely controlling the State's dog and cat populations.

PREVIOUS REPORTS: H.B. 376 prohibiting animal shelters and pounds from making cats and dogs available for use in "scientific or educational activities" and H.B. 849 authorizing Edgecombe County to sell impounded dogs and cats to licensed animal dealers and registered institutions, were not enacted because of the passage of H.B. 1142.

S.B. 580 which would have repealed N.C.'s law making it a misdemeanor for a dog to enter a hotel or motel room has not been passed.

S.B. 146's enactment brings to North Carolina a "tax-check-off" method of raising contributions for non-game wildlife programs. Under the scheme taxpayers can designate all or a portion of a state income tax refund as such a contribution.

PENNSYLVANIA

(International Society for Animal Rights, Inc., 421 South State Street, Clarks Summit, PA 18411, 717-586-2200).

EUTHANASIA: H. 350 introduced by Rep. Thomas Murphy completely prohibits the use of the decompression chamber.

S. 303 introduced by Sen. Doyle Corman prohibits the decompression chamber except for scientific research. It prescribes the use of sodium pentobarbitol as the methods of euthanasia.

S. 392 introduced by Sen. Anthony Andrezeski prohibits any use of the decompression chamber and prescribes the use of either an injection or use of a carbon monoxide chamber. This bill is similar to Maine's law regulating the euthanasia of dogs and cats.

THE AGENCIES

ENDANGERED SPECIES: GRAY WOLVES

The U.S. Department of the Interior has decided to let ranchers and hunters in Minnesota trap gray wolves, a threatened species that numbers only 1,200 in the lower 48 states, because it says the wolves have shown they can survive whether or not they are protected.

"The number of wolves in Minnesota has been remarkably stable for many years, despite quite radical changes in the way the law has treated the species," the U.S. Fish and Wildlife Service said in announcing its plans to allow the killing of 50 to 160 wolves a year.

"It, therefore, is impossible from a biological perspective to argue that complete protection of the species is necessary," the statement said.

IN THE LEGAL LITERATURE

INTERNATIONAL JOURNAL FOR THE STUDY OF ANIMAL PROBLEMS

The July-September 1983 issue of the *International Journal for the Study of Animal Problems*, 2100 L Street N.W., Washington, D.C. 20037 (Vol. 4, No. 3) contains several items of interest: "Selecting a spay/neuter program for animal control in the city of Charlotte;" "Protection of animals and animal experimentation: a survey of scientific experts;" "Does wildlife have legal standing? — The penguin case in Patagonia;" "Point-Counterpoint: Draft Australian code of animal welfare and response by Australian federation of animal societies."

CORRUPT HORSERACING PRACTICES ACT

The Government Printing Office (Serial No. J-97-117) has available "Hearings Before the Subcommittee on Criminal Law of the Committee on the Judiciary United States Senate 97th Congress Second Session on S. 1043, a Bill to prohibit the drugging or numbing of racehorses and related practices."

ANIMAL LEGAL RIGHTS IN WISCONSIN

The animal health division of the Wisconsin Department of Agriculture, Trade and Consumer Protection (801 West Badger Road, P.O. Box 8911, Madison, Wisconsin 53708) has published in booklet form all Wisconsin statutes pertaining to the humane treatment of animals.

LAW REVIEW ARTICLES

Bieg, *Montana Grizzly Bears Protest Exploratory Drilling in Wilderness Area*, 23 *Natural Resources Journal* 467 (1983) (comment on a decision holding environmental impact statement not required under NEPA: *Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678 (D.C. Cir. 1982)).

Bonnie, *Corrupt Horse Racing Practices Act of 1980: A Threat to State Control of Horse Racing*, 70 *Kentucky Law Journal* 1159 (1981-82) (The "Act" referred to (S. 2636, 96th Congress, and H.R. 7254, 96th Congress) was not enacted).

Coggins and Evans, *Predators' Rights and American Wildlife Law*, 24 *Arizona Law Review* 821 (1982).

Garrison and Klein, *Brennan Revisited: Trainer's Responsibility for Race Horse Drugging*, 70 *Kentucky Law Journal* 1103 (1981-82) ("Brennan" refers to *Brennan v. Illinois Racing Board*, 247 N.E.2d 881 (Ill. 1969)).

Ragsdale, book review of *Keepers of the Game: Indian-Animal Relationships and the Fur Trade*, 23 *Natural Resources Journal* 281 (1983).

Chambers and Hines, *Recent Development Concerning the Use of Animals in Medical Research*, 4 *Journal of Legal Medicine* 109 (1983) (an overview of animal law issues, broader than indicated by the title, by two lawyers concerned that "[a] potentially serious roadblock looms in the path of medical research.")

Zurvalec, *Use of Animals in Medical Research: The Need for Governmental Regulation*, 24 *Wayne Law Review* 1733 (1978).

PETS AND LEASES

The recent issue of the *ABA Journal* (69:1213-15 (1983)) contains an interesting article by the above title.

"Fish and Wildlife Conservation Issues," Hearing before the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works, United States Senate, 98th Congress, First Session on S. 696 and H.R. 1935, Bills Relating to Matagorda Island, Tex., S. 1271 to Establish the National Fish and Wildlife Foundation, H.R. 1723 Authorizing Appropriations for Three Wildlife Refuges, May 19, 1983.

"Protection, Management, and Control of Wild Free-Roaming Horses and Burros," Hearings before the Sub-

committee on Public Lands and Reserved Water of the Committee on Energy and Natural Resources, United States Senate, 98th Congress, First Session on S. 457, A Bill to Require the Protection, Management, and Control of Wild Free-Roaming Horses and Burros on Public Lands, Rock Springs, Wyo., March 19, 1983, Washington, DC., April 11, 1983.

BULLETIN BOARD

BUDDHISTS AND ANIMALS

Buddhists Concerned for Animals, Inc. (330 Page Street, San Francisco, California 94102) is a new organization for those "who see consideration of animals, and responsiveness to their suffering, as an integral part of Buddhist practice." The organization publishes a quarterly newsletter and the Winter 82-83 issue explains the organization's beliefs.

CONFERENCE

DePaul University's College of Law will conduct a day-long seminar on the legal and moral aspects of "Animal Rights" on October 27, 1983 in Chicago. The sessions will be moderated by Attorney Florence Dunbar. Information may be obtained from Animal Rights Seminar, DePaul University College of Law, 25 East Jackson Blvd., Chicago, Illinois 60604 or by telephoning Donna Marie Primas at (312) 321-7700.

ATTORNEYS FOR ANIMAL RIGHTS

The 1984 AFAR Conference will be held in Washington, D.C. A National Conference Planning Committee is being formed, and those interested should contact Joyce Tischler at (415) 665-5896.

HUNTERS

An interesting advertisement from the The Wildlife Legislative Fund of America, soliciting support for its battle against anti-hunting groups, lists among its supporters "State Wildlife Agencies."

EXPERIMENTATION

The June 22, 1983 issue of *Chemical Week* reports on a threat to research with animals in Switzerland. "Swiss drug producers face a serious threat to their research efforts from a petition against the use of animals for experimental purposes. More than 155,000 signatures have been gathered, and under the Swiss system, the petition must be put to a national vote. Yves Dunant, chairman of Sandoz (Basel) says that if it should pass, 'medical and biological research at our universities would be seriously hampered, and the pharmaceutical industry might well be

paralyzed.' A general prohibition of animal experimentation, he notes, 'would make it necessary to transfer the whole research organization abroad.' That could lead to 'wholesale' relocation of the Swiss pharmaceutical industry, he adds. A vote on the matter has not yet been scheduled."

THE NATIONAL LAW JOURNAL

Page 32 of this weekly newspaper's September 26, 1983 issue reported on six cases from various areas of the law. In the criminal category, the *Taub* case was described. The tort category discussed *Lawrence v. Stanford*. Two out of six reported cases involved animals.

EDITOR'S COMMENT

In response to the Editor's Comment in ARLR's last issue, one letterwriter accused me of "promoting divisiveness . . . between so-called animal rights-ists and animal welfare-ists."

Another said that the Comment "endorses the 'ideology' that animals have 'absolute, undeniable, irreversible rights,' and implies that anyone who does not agree is an enemy of the animal rights movement."

As to the "divisiveness" charge, the writer wasn't precise enough. I did not promote divisiveness, *I recognized its existence* — something few others have been willing to do.

As to the "ideology" charge, my answer is that anyone who doesn't understand that animals have rights is not necessarily an *enemy* of the animal rights movement, — rather, he/she is not *part* of the animal rights movement (and that includes utilitarians, who do not and cannot believe that animals have rights).

I mention and comment on these two letters because they epitomize the reason why *this is the last issue of the Animal Rights Law Reporter*. Conceived as the informational arm of the incipient animal rights law movement, and born with much optimism and a bit of naivete, too often during its life the *Animal "Rights" Law Reporter* has found itself having to report about not animal *rights*, but animal *welfare*. Indeed, in large measure it has been the flow of material coming into, and reported by, ARLR that has helped bring into focus the profound difference between animal welfare and animal rights, and between the philosophies of the adherents of each. Other factors have contributed, too.

For example, SAR recently analyzed the history and consequences of British and American *compromise* on the animal issue. *The Harvard report*, from an outsider's perspective, unmistakably understood the rights vs. welfare issue, and made it plain who stood where. SAR's, "summit conference" regarding *abolition of pound seizure* (see the July 1983 *SAR Report*) exposed the serious shortcomings of some pro-animal organizations. The current, much ballyhooed, Los Angeles "pound seizure" case which seeks a declaratory judgment requiring *not an end to pound seizure*, but instead only "that defendants conduct full and complete inspections of all institutions which are certified to use or seek certification for

use of pound animals in experimental research to ensure that such institutions are conducting experiments upon animals only under humane conditions."

I could go on and on, citing examples of compromise, contradictions, cowardice, stupidity, venality, sanction, and more — all traceable to a single common denominator: *a failure or refusal to distinguish between the concept of animal rights and the concept of animal welfare*. SAR, ARLR and I reject the latter and embrace the former. Accordingly, beginning in 1984, *International Society for Animal Rights*, formerly Society for Animal Rights, will commence publication of the first *International Journal of Animal Rights*. Devoted *exclusively* to articles on the many and diverse aspects of animal rights — ethical, legal, political, social, economic, psychological, etc. — *IJAR* will incorporate a section known as "Animal Rights Law Reporter" (still a federally protected trademark).

We wish to express our deep gratitude to all those who have supported ARLR during these four years, especially our legislative correspondents. It is our hope that they, and others, will continue to provide us with material — *but only that which is truly animal rights in nature*.

In response to the recent letter from The Fund For Animals' that "(t)he absolutist philosophy reflected in your (July) editorial is a disservice to those fighting for animal rights . . ." we say that one does not fight for animal rights by sanctioning experimentation, which is the antithesis of animal rights.

To the charge that our action is divisive, polarizing and the like, we have but one answer: *that is our intention*. Those who wish to work for animal *welfare* will, unfortunately, find no dearth of opportunities. Those who wish to devote their energies to animal *rights* will find a warm, grateful welcome at the International Society for Animal Rights.

SAR Now International Society for Animal Rights

SAR on August 16, 1983 became International Society for Animal Rights when the corporate name change was effected. The change was recommended unanimously by members of the Board of Directors on May 7 and approved by an overwhelming majority of Voting Members in balloting concluded July 3.

From the time of its founding in 1959, the Society has been national and international in its concerns, affiliations and activities. The Society's focus is on animal *rights* which knows no national boundaries: the exploitation and suffering of animals are matters that cross national boundaries.

In the opinion of the members of the Board of Directors, therefore, a change of the corporate name to International Society for Animal Rights more accurately reflects the international concept of animal rights and the concerns and activities of the Society.

