

INVENTED CAGES: THE PLIGHT OF WILD ANIMALS IN CAPTIVITY

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“God loved the birds and invented trees. Man loved the birds and invented cages.”
--Jacques Deval, *Afin de vivre bel et bien*

Recent high-profile media cases, like Ming the tiger living in a high-rise in Harlem with owner Antoine Yates, or the lion found wandering in suburban Ohio, have focused public attention more on the dangers that wild non-human animals pose to human beings rather than the reverse: the dangers posed by human beings to wild animals that live in captivity.

*Discussions about the private ownership of wild animals are likely to raise strong emotions on both sides of the “empty cages” versus “larger cages” debate. Though a good deal has been written on this subject, much of the material focuses on either advocating or condemning outright bans on such ownership, or offering various regulatory schemes for strengthening regulations. A number of animal advocate organizations have proposed model statutes that would govern the breeding, ownership, care and sale of wild animals in captivity.*²

What has not been addressed explicitly, however, are the ways in which current laws and regulations ultimately fail the animals, offering inadequate protections from neglect, abuse, and outright cruelty. Many current regulations, for example, are designed primarily to protect the public from dangerous animals and do little to protect and preserve the animals themselves.

¹ This article is dedicated to Little Bear, whose tragic story launched the research that resulted in this article.

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² Among these are People for the Ethical Treatment of Animals (<http://www.peta.org>), Humane Society of the United States (<http://www.hsus.org>), Animal Protection Institute (<http://www.api4animals.org>), and Captive Wild Animal Protection Coalition (<http://www.cwapc.org>).

This paper distinguishes itself from others on related subjects, in part, by exploring not only the issues and concerns raised by the acquisition and private ownership of wild animals, but also the messy tangle of applicable laws, regulations and licensing schemes that often fail wild animals held in captivity.

As of this writing, twenty states do not permit private ownership of wild animals, but in the thirty states that currently do, the types of animals permitted, as well as regulations and licensing schemes and enforcement strategies, vary widely.

For example, in some states allowing private possession, permits are required for certain animals, but not for others. In Nevada, for instance, it might be legal to own a pet tiger without a permit, but possession of a cougar would require a license. In many states, it is perfectly legal to own primates privately, or even larger animals like bears and elephants. The federal licensing regulations of the United States Department of Agriculture (USDA) seem to focus on the activities and uses associated with private ownership, such as exhibition and breeding, but seem not particularly concerned with the animals themselves.

“Private ownership” is often defined as that ownership which is “non-government-controlled,” though such a distinction does not accurately reflect the various complex funding arrangements of many regulated and accredited zoos and other animal facilities. Some zoos and facilities rely on private endowments and donations, but can also maintain close relations with public entities like cities and municipalities. In many of these more “public” venues, there is often a fairly high level of scrutiny regarding the care of the animals themselves.³

Technically, private ownership refers to the keeping of wild animals in roadside zoos and menageries; circuses and carnivals; and private breeding facilities or in backyards under single-family ownership. It also includes such facilities as rehabilitation centers and rescue sanctuaries. But an important distinction should be made here. Legitimate sanctuaries and rehabilitation centers, which focus strictly on providing wild animals with care and

³ The American Zoological and Aquarium Association (AZA) divides its membership into four categories: commercial, conservation partners, institutional members (like zoological parks and aquariums), and related facilities (like rescue centers, wildlife sanctuaries, rehabilitation centers, breeding farms, and educational organizations). Depending on the type of facility, the AZA offers either accreditation or certification to those facilities that have met their specific standards through a fairly rigorous process that involves self-evaluation, peer review, and on-site inspections. Many city zoos and facilities like Sea World and the San Diego Wild Animal Park are AZA-accredited and, as part of the process, have had to demonstrate good ownership and management. See <http://www.aza.org/Accreditation>. This is not to say, however, that there are not well-run facilities that are not AZA-certified. Some non-profit sanctuaries, such as the Exotic Feline Rescue Center (EFRC) in Indiana—which neither buys, sells, nor breeds—focus solely on the highest care of rescued animals. The EFRC provides shelter, food, medical care and, in many cases, rehabilitation, to large cats who have either been confiscated by authorities or relinquished by private owners unable to meet their needs. While the public is allowed to visit, the primary goal is strictly to educate and raise donations, not to “entertain.” In true sanctuaries, there are no “petting zoos” or “animal rides” or interactive amusements that require the animals to perform or come in personal contact with the visitors. Throughout the country, there are a number of small, privately owned zoos which charge fees to the public, and may include “animal entertainment” and activities like camel rides and petting zoos. According to the AZA, some of these facilities “do pretty well by the animals,” but for financial reasons have not applied for accreditation by the AZA. (Telephone interview with AZA spokesperson September 2004.) What makes it difficult to cleanly delineate “private ownership” is that, as alluded to earlier, many large zoos have complicated funding schemes. For example, the National Zoological Park in Washington is, to some extent, supported by the federal government, but at the same time, administered by the Smithsonian Institution, a privately endowed foundation. The San Diego Zoo is technically a private, “nonprofit” zoo owned and managed by the Zoological Society of San Diego. For the purposes of this article, “private ownership” refers primarily to that ownership which involves the keeping of wild animals for personal pleasure, income, and/or private breeding and sale on the open market.

maintenance, do not sell, breed, or use the animals as entertainment.⁴ The policies and practices of private groups operating under the rubric of “rescue” or “conservation” are quite varied. Some, like the so-called “Feline Conservation Center” (FCF), a national organization of big cat aficionados, are actively engaged in breeding programs and sale to licensed private owners who may use the animals as companions or for entertainment and exhibit. By contrast, legitimate sanctuaries like Indiana’s EFRC and the Tiger Creek Wildlife Refuge in Texas, neither breed nor sell animals. Their single purpose is to provide sanctuary for large cats rescued from often abusive and deplorable conditions and to offer them a “good life.”⁵

Organizations like the American Humane Society, the U.S. Department of Agriculture, the American Veterinary Association, Animal Protection Institute, the Roar Foundation, American Zoological Association (AZA), and city and county animal shelters across the country condemn private ownership and support outright bans on private breeding, selling, and ownership of wild animals, citing both the welfare of the animals and the safety of the community.

In general, most of the private rescue centers, regardless of their status, do not support outright bans on private ownership. But even those that are engaged in the breeding, sale and transport of these animals—like the Feline Conservation Federation—generally support stricter regulations and discourage “casual ownership.”

The objective of this article is to fill some of the gaps that exist in current literature addressing the complexities and problems coincident with the private possession of wild animals, and to demonstrate the need for regulations and statutory schemes that would mesh at local, state, and national levels.”⁶

I. INTRODUCTION: DANGEROUS OR ENDANGERED, IMPERILED OR PERILOUS?

Large wild and exotic cats such as lions, tigers, cougars, and leopards are dangerous animals Because of these animals’ potential to kill or severely injure both people and other animals, an untrained person should not keep them as pets. Doing so poses serious risks to family, friends, neighbors, and the general public. Even an animal that can be friendly and loving can be very dangerous.

--The United States Department of Agriculture

⁴ Legitimate rescue and rehabilitation centers typically have not-for-profit status, do not engage in breeding or selling animals, and limit exhibition, if there is any exhibition at all, primarily to donating guests. Unless otherwise noted, “private ownership” in this article does not include such sanctuaries and rehabilitation centers.

⁵ As of this writing, the Exotic Feline Rescue Center houses and cares for about 170 large cats rescued from all over the United States.

⁶ With respect to state laws, we discuss the laws of Texas and Indiana. As this article aims to forge a general overview and understanding of the issue of the private possession of wild animals, it would exceed the scope, in addition to being logistically impracticable, to delineate the statutory and regulatory schemes of all fifty states. We present Texas and Indiana law as examples, both for their representativeness, as well as for the simple reason that the authors are respective citizens of those states. As we will discuss, while both Texas and Indiana are states that have instituted regulations, not bans, on the possession of exotic animals, they differ slightly in their respective approaches to such regulation.

The dangers that wild animals pose to the human community have long been recognized, and many laws relating to the ownership of animals demonstrate this concern. Stories about idiosyncratic people who keep wild or exotic animals abound in the media, but only usually when the animals escape or otherwise pose a tangible threat. The dangers associated with owning wild animals are recognized and correspondingly reflected in tort law, in particular. The *Restatement of Torts* has long provided that owners of wild animals should be held strictly liable for harms committed by their animals.⁷ Section 507 of the *Restatement (Second) of Torts* states:

(1) A possessor of a wild animal is subject to liability to another for harm done by the animal to [others] . . . although the possessor has exercised the utmost care to prevent the harm.⁸

Further, a tentative draft of the *Restatement (Third) of Torts* reiterates the idea:

(a) The owner or possessor of a wild animal is subject to strict liability for physical harm caused by the wild animal.

(b) A wild animal is an animal that belongs to a category which has not been generally domesticated and which is likely, unless restrained, to cause personal injury.⁹

It has really been only in the last several decades that a growing awareness of the harm that captivity inflicts on the animals themselves and the ethics and morality of keeping wild animals in captivity have entered the discussion. This shift has resulted in large part from the increased insight into and growing awareness of the complexity and richness of the cognitive and emotional characteristics of non-human animals.¹⁰

As this article will point out, many laws and regulations governing private ownership of wild animals have focused almost exclusively on public health and safety with little regard for the well-being or care of the wild animals themselves. Thus far, lawmakers have accorded little consideration to the fact that non-human animals are conscious and sentient beings, *not* inanimate objects or property, thereby maintaining the status of non-human animals owned by humans as legal property.¹¹

Recent studies on animal behavior demonstrate strong evidence that non-human animals have far richer and more complex social, emotional, and cognitive lives than previously thought,

⁷ See RESTATEMENT (SECOND) TORTS § 507 (1977).

⁸ See *id.*

⁹ RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 22 (T.D. No. 1 2001).

¹⁰ For a detailed discussion of the extraordinary cognitive and emotional lives of nonhuman animals, see, e.g., MARK BEKOFF, *MINDING ANIMALS: AWARENESS, EMOTIONS, AND HEART* (Foreword by Jane Goodall) (2002); KRISTIN VON KREISLER, *THE COMPASSION OF ANIMALS: TRUE STORIES OF ANIMAL COURAGE AND COMPASSION* (1999); STEPHEN BUDIANSKY, *IF A LION COULD TALK: ANIMAL INTELLIGENCE AND THE EVOLUTION OF CONSCIOUSNESS* (1998); VICKI HEARNE, *ANIMAL HAPPINESS* (1994).

¹¹ The authors express their shared belief that animals are not “things” and that animals in captivity should not be classified as “property” under the law. Recent cases discussing such issues as the custody of non-human animals in divorce, as well as the potential for non-economic damages in wrongful death suits of companion animals, suggest that the legal status of animals as property is not only being challenged, but also being blurred. See, e.g., *Petco Animal Supplies, Inc. v. Schuster*, No. 03-03-00354-CV (Tex. App. 2004) (Under the heading “‘Intrinsic value’ loss of companionship,” the court states, “Indeed, within our jurisdiction, there are myriad examples that Texans today view dogs more as companions, friends, or even something akin to family than as an economic tool or benefit. . . . As an intermediate appellate court, we are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court unless and until the high court overrules them or the Texas Legislature supersedes them by statute.”)

and that many animals in captivity, even if well-fed, are often bored, lonely, and unhappy.¹² Though zoos continue to face controversy over the ethics of caging wild animals, many zookeepers and animal behaviorists now acknowledge that the needs of wild animals far exceed the barely minimal standards regulations provided in the past.

Many zoos, for example, are now implementing animal enrichment programs that encourage mental stimulation and promote activities and social groupings for the emotional well-being of the animals kept in captivity.¹³ Even with all their resources, many of which are out of reach for most private individuals, zoos are still unable to replicate life in the wild, and maintaining the physical and mental welfare and well-being of wild animals in captivity poses numerous ongoing challenges. Regulations prescribed under the Animal Welfare Act (AWA)¹⁴ and the recent reforms to the Lacey Act,¹⁵ which forbid the interstate transportation of many wild animals for use as pets, have helped to offer some protection. Nonetheless, such laws are few and far between and remain woefully insufficient.

“Wild animals” is a legal designation distinguishing them from domestic animals like cats, dogs, and certain farm animals. In addition, wild animals are placed in one of two categories: those who are non-native (exotics) and those who are native.¹⁶ Legally, wild animals are described as “animals in a state of nature” or “animals *fearae naturae*,” classifications which convey significant legal implications in tort suits that turn on the question of strict liability versus negligence.¹⁷ Various state statutes and regulations governing the keeping of wild animals often simply characterize wild animals as “non-domestic” animals.¹⁸

Every year, hundreds of thousands of wild animals, many of whom are known as “exotics,”¹⁹ are sold in the wild pet trade which is, by some estimates, a \$10 billion a year business.²⁰ Some of them are captured in their native habitats and either smuggled in to the

¹² See, e.g., Adam Bissen, *Large Animals Suffer in Zoo Captivity*, DAILY CARDINAL, Oct 7, 2003, at <http://www.dailycardinal.com/news/2003/10/07/News/Report.Large.Animals.Suffer.In.Zoo.Captivity--520716.shtml> (describing stereotypy, a behavior in which animals engage in pacing activities in zoos).

¹³ See, e.g., KERWOOD WOLF EDUCATION CENTER, INC., at <http://www.kerwoodwolf.com/index.html>; *Synopsis of the Environmental Enrichment Program*, 2ND CHANCE SANCTUARY, at <http://www.2ndchance.info/Enrichment.htm>; and *Great Apes and Other Primates*, SMITHSONIAN NATIONAL ZOOLOGICAL PARK, at <http://www.nationalzoo.si.edu/Animals/Primates/Enrichment/default.cfm>.

¹⁴ 7 U.S.C. §§ 2131-2159 (2004). A detailed discussion of the AWA appears below.

¹⁵ 16 U.S.C. §§ 3371-78 (2004).

¹⁶ The United States Department of Agriculture (USDA) defines “exotic animals” as “animals foreign to the United States, whether wild or domesticated.” See *United States Department of Agriculture, Licensing and Registration Under the Animal Welfare Act*, APHIS, available at <http://www.aphis.usda.gov/lpa/pubs/awlicreg.html#Intro>.

¹⁷ The doctrine of strict liability for harm caused by animals was historically applied to the trespass of livestock. Case law suggests that strict liability is not reserved only for wild animals, but can be applied to domestic animals with known vicious propensities (dogs are a common example). See generally SONIA S. WAISMAN, BRUCE A. WAGMAN, AND PAMELA D. FRASCH, *ANIMAL LAW: CASES AND MATERIALS* 150-175 (2002).

¹⁸ Tort law has certainly made the distinction between “wild” and “tamed” animals based on an idea of the “inherent nature” of various animals. A Louisiana Appeals court has stated: “In ordinary speech, sanctioned as well by dictionaries, the word ‘domestic’ means belonging to the home or household, and the word ‘domesticated’ means made domestic or converted to domestic use. Where descriptive of the word ‘animals,’ these terms in general usage carry the meaning of ‘tamed,’ ‘associated with family life,’ or ‘accustomed to live in or near the habitations of men.’” *Smith v. State Farm Fire & Cas. Co.*, 381 So. 2d 913, 914 (1980) (quoting 4 AM. JUR. 2d 250 § 1).

¹⁹ “Exotic” is a term of art distinguishing those wild animals which are non-native from those native to a particular locale. For practical reasons, we will sometimes use “exotic” and “wild” interchangeably throughout this article.

²⁰ *Exotic Animals: Born Free, Sold Out*, HELPING ANIMALS, at <http://www.helpinganimals.com/h-other-exotic.html>.

United States or legally imported.²¹ Others are bred in captivity by private breeders and sold to private owners, some of whom are backyard hobbyists who enjoy the idea of having wild animals as pets, and others who contend they are engaged in “conservation education” and “wildlife management.” Some animals, treated as “surplus” from traveling shows, private menageries, and roadside zoos end up being sold into the exotic pet trade, medical research, “canned hunts,” or for body parts used in the “medicinal trade.”²²

Further, only 5,000 tigers are reportedly left in the wild, partly because of the popularity of their organs which have played a large role in traditional Eastern medicine.²³ In India and Russia, tigers are poached at the rate of one per day. A huge black market exists in tiger parts. Teeth, claws, fat, nose leather, bones, eyeballs, tail, bile, and brain are used to cure various ills, including headaches, insomnia, fever, and laziness. Tiger dung is used to treat alcoholism. The tiger penis has traditionally been used in love potions. In addition, tigers are also hunted because of the threat they pose to farmers and their livestock in areas near tiger habitats.²⁴

Lions, too, are also considered a “vulnerable population” with numbers currently estimated at about 23,000. Although leopard numbers top out at an estimated 300,000 and they are still abundant in some parts of Africa and Asia, they are critically endangered in places like North and West Africa, and in some Asian countries.²⁵

II. DEFINING THE PROBLEM

The keeping of wild and exotic animals brings with it huge responsibilities and drawbacks. Many of these animals are acquired when they are young, either through sale or well-intentioned acts of rescue. Owning a wild animal can be an exciting experience, precisely because wild animals do not behave like domestic animals.

For example, tiger cubs are perfectly rendered grown tigers in miniature. They bear enough similarity to domestic kittens at play that their appeal is understandable. They are designed, as nature intended, high on the adorable-visual scale to compel protection and care from their parents. But they are literally only months away from becoming heavily-muscled, 500-pound predators, red in tooth and claw, who will be capable of devouring 80 pounds of meat in one feeding, at a cost of roughly \$600 a month. Simply put, exotic cubs can initially be every

²¹ 20,000 prairie dogs, for example, are yanked from their homes in Texas every year and shipped off to “pet” stores. *Inside the Exotic Animal Trade*, PETA, at <http://www.peta.org/factsheet/files/FactsheetDisplay.asp?ID=44>.

²² See, e.g., ROSALIND REEVES, *POLICING INTERNATIONAL TRADE IN ENDANGERED SPECIES: THE CITES TREATY AND COMPLIANCE 200* (2002).

²³ See, e.g., Rosalind Reeves, *POLICING INTERNATIONAL TRADE IN ENDANGERED SPECIES: THE CITES TREATY AND COMPLIANCE 200* (2002).

²⁴ In May 2002, seven men were indicted in Chicago for killing 17 tigers and one leopard to sell their skulls, hides, meat, and other body parts, which can bring \$10,000 or more per animal. Six tigers and one leopard were rescued. Michael Satchell, *How some of America's best zoos get rid of their old, infirm, and unwanted animals*, ANIMALS IN PRINT ON-LINE NEWSLETTER, at <http://www.all-creatures.org/aip/nl-26aug2002-zoos.html>.

²⁵ See *Nowhere to Roam: Wildlife Reserves Alone Cannot Protect Big Cats. A Look at New Ways to Save Them*, TIME, Aug. 23, 2004, at 50.

bit as lovable and seductive as their domesticated feline cousins, and the desire to own one is not always governed by the rational or the practical.²⁶

Baby wild animals, whether bought or rescued, suffer great trauma in being separated from their mothers. Just like human babies, baby animals require a lengthy period of bonding for their physical, emotional, and cognitive development. For example, monkeys sold as pets are prematurely yanked from their mothers, and therefore denied the chance to bond properly, leaving both mother and baby traumatized.²⁷ Even if already living in captivity, the mothers of these desired babies are often force-bred to produce offspring for sale, relegated to small breeding cages where they are treated to limited and miserable lives.²⁸

The emotional, as well as the physical, misery of these non-human animals hardly sounds promising for a well-adjusted companion animal. In truth, many caged monkeys kept by private owners begin, as they mature, to exhibit uncontrollable aggression toward their human owners as well as self-destructive impulses, such as compulsive masturbation and head-banging. In an attempt to prevent injury, some primate owners actually have the monkey's teeth shaved or even removed (a very painful procedure leading to subsequent health problems), which still does little to curtail aggression from the monkey. In addition, to prevent the habit of pinching, some owners will have the monkey's fingertips removed.

A full-grown monkey cannot, however, be trained out of aggression, and non-abusive punishment does not work. Adult pet monkeys who end up viciously attacking their owners and engaging in destructive behaviors have been known to be beaten and otherwise harmed. Unable to return to the wild, and unsuitable for domestic life, these monkeys are left with few options. Some end up being euthanized, others are sold for medical research. Still others are relegated to miserable, lonely lives in solitary confinement.²⁹

Baby raccoons, like baby non-human primates, are also adorable, with their soft, furred faces, large, expressive eyes and bandit markings. But, according to the American Raccoon Association, more than half of those "cute babies" kept as pets do not survive their first year.³⁰

There are a number of reasons that raccoons do not make good pets. For starters, their natural curiosity and agility lead them to destructive behaviors around a house. It is not at all uncommon to hear about pet raccoons tearing up mattresses to make nests; ripping out screens, door jambs, and baseboards; and climbing wherever they want, including into closets and cupboards where they can wreak havoc. Raccoons are also playful creatures for whom biting and scratching are a normal part of social interaction. As a result, they can inadvertently inflict severe injuries on their human companions. Given these aggressive behaviors, many pet raccoons are beaten, kicked, and abused by their owners either in self-defense or as punishment. Many raccoons, when given away by frustrated owners, have difficulty bonding with a new person, and may become even more aggressive and unhappy in their new environment. At the

²⁶ These facts are based on the numerous visits Alyce Miller has made to such animal sanctuaries such as the Exotic Feline Rescue Center.

²⁷ It is not uncommon for breeders to have to sedate mother monkeys who are grief-stricken over the disappearance of their babies. The stolen babies are often shipped in airline baggage, and if they live through the experience, engage in aberrant and self-mutilating behaviors. See *Statement of Purpose*, JUNGLE FRIENDS PRIMATE SANCTUARY, at <http://www.junglefriends.org/booklet/bkpage11.shtml>.

²⁸ See *Nonhuman Primates in Private Sector Possession*, AESOP PROJECT, at http://www.aesop-project.org/Private_Sector.

²⁹ See *id.*

³⁰ See *Raccoons as Pets*, AMERICAN RACCOON ASSOCIATION, at <http://www.geocities.com/EnchantedForest/Glade/9378/pets.html>.

same time, a tame raccoon, who lacks sufficient fear of people, cannot survive if let loose in the wild, having come to depend on human beings for food and shelter.³¹

It is illegal in many states to own a raccoon, and if authorities discover one living in a household, the raccoon will be confiscated and, most likely, destroyed.³² The sad stories of many pet raccoons have been chronicled by rehabilitation and wildlife advocates who see the end result of these failed attempts to tame a wild animal. As one raccoon aficionado notes, “If you keep a raccoon caged, all you will have is a caged wild animal, not a pet.”³³

Simply put, unlike dogs and cats, which have been domesticated over thousands of years and have adapted to life with human companions, wild animals, including primates and smaller wildlife, have not. In general, wild animals fare much better on their own without human interference.

According to experienced animal rehabilitator Janice Turner, Certified Wildlife Rehabilitator with Indiana’s WildCare, orphaned baby wild animals often “bond” with human animals for the short period of their development that requires nurture and care. But, she notes, there comes a time when these animals reach a level of maturity and begin to “wild up,” demonstrating signs of pulling away and establishing a distance in preparation for adulthood as a wild animal. It is at this stage that many possessors of wild animals begin to see behavioral changes that include aggression, destructiveness, and unhappiness.³⁴

Tales of exotic animals kept in shoddy conditions and made to suffer as a result could fill volumes, if not libraries. The stories that follow help to illustrate some of the crucial issues.

A. *The Tiger Truck Stop Incidents*

Notable among stories that abound regarding the squalor in which privately owned exotic animals live is the series of incidents involving an infamous establishment called the Tiger Truck Stop.

Emily Kern of the *Baton Rouge Advocate* has written about tiger abuse, including in the context of the Tiger Truck Stop.³⁵ In September 2003, Kern reported on M. Sandlin, owner of

³¹ In addition to carrying rabies and raccoon roundworm (*baylisascaris procyonis*), captive raccoons are susceptible to obesity and serious dietary deficiencies. Other reasons that raccoons do not make good pets include legal liability and difficulty in finding a veterinarian willing to treat raccoons (one concern is that a rabid raccoon may be asymptomatic at the time of treatment). Raccoons are also messy and unpredictable. Releasing a rescued baby raccoon is likely to result in his death, since he will not possess the necessary survival skills. See John Hughes, *Twenty good reasons not to have a pet raccoon*, available at http://www.pattyswildliferescue.com/20_reasons.htm (last visited Dec. 31, 2004).

³² One reason for this is that raccoons have been found to carry dangerous diseases. For instance, *Baylisascaris procyonis*, or roundworm, is a parasite commonly found in raccoons. If transferred to dogs or human beings, the parasite can lead to blindness, central nervous system damage and even death. Wormers are available, but must be administered with great regularity. For more information, see *id.*

³³ See *Raccoons: Dealing with Pest Problems*, THE GABLE, at <http://www.geocities.com/RainForest/Vines/4892/problems.html>.

³⁴ Interview with Janice Turner, certified wildlife rehabilitator (at her home in Monroe County, Indiana) Nov. 13, 2004.

³⁵ Emily Kern, *Three Truck-Stop Tigers Taken to Haven Over Violations*, BATON-ROUGE ADVOCATE, Sept. 6, 2003; Emily Kern, *Tiger Truck Stop Owner Disputes Claim Man Says Cats Received Proper Care, Nourishment*, BATON-ROUGE ADVOCATE, Sept. 14, 2003.

the Baton Rouge, Louisiana, Tiger Truck Stop, who was required by the USDA to give up three out of four of the Bengal tigers in his possession, as he had violated numerous Animal Welfare Act provisions.³⁶ Among other flagrant acts, the tigers under Sandlin's care were forced to live in small, dilapidated cages, sleep on concrete floors, and were provided virtually no medical care or supervision. In addition, one tiger cub died when the cubs had been taken to a veterinarian to be declawed. Finally, a USDA inspector reported that a pair of three-week old cubs was being bottle-raised in the truck stop office, where they could potentially have been stepped on or swallowed harmful substances.³⁷

Sandlin denied any wrongdoing, saying he bottle-raised two of the cubs in his office and would do it again.³⁸ Sandlin was ultimately assessed a fine of \$2,500, of which \$1,500 was suspended.³⁹

A similar situation occurred at the Tiger Truck Stop in El Paso, Texas. There, seven tigers—three adults and four cubs—were forced to live in poor conditions in a “cramped roadside zoo.” Consequently, the tigers were moved to the Rocky Mountain Wildlife Conservation Center (RMWCC), where they now enjoy a sixty-five acre habitat, which includes a wading pool for the tigers' enjoyment and relief.⁴⁰

Pat Craig, owner of RMWCC, notes that tigers and mountain lions are the two wild animals most often bought and raised as pets in the U.S., that over 7,000 tigers exist outside of the zoo system in this country, and that many owners are unable to afford to provide humane care for these animals. In addition, owners often cross-breed their exotic animals with different subspecies, leaving them “useless as sources of genetic diversity for conservation programs.”⁴¹

B. The Tiger Rescue Fiasco

John Weinhart and his partner, Marla Smith, ran Tiger Rescue, a putative animal rescue sanctuary in Riverside, California. As it turned out, authorities later charged that the establishment was a ground for illegal breeding and inhumane treatment of the animals who had the misfortune of ending up there. As of this writing, both Weinhart and Smith have been charged with 63 felony and misdemeanor counts, including child endangerment, illegal breeding, and animal cruelty. At the time of the charges, the couple had an eight year-old son who, among other things, often bathed with an alligator in a bathtub.

On April 22, 2003, investigators found dozens of tigers and other large felines, many dead, in the couple's “trash-and-feces-strewn home where two small alligators languished in a bathtub and a juvenile tiger was kept chained in the patio area.”⁴² The search yielded 90 tiger carcasses, including 58 cubs in the couple's freezer. According to eyewitnesses, in order even to

³⁶ Kern, Sept. 6, *supra* note 35.

³⁷ *Id.*

³⁸ Kern, Sept. 14, *supra* note 35.

³⁹ *Id.*, and Kern, Sept. 6, *supra* note 35.

⁴⁰ Theo Stein, *Seven Malnourished Tigers Get Room to Roar and Roam at Colo. Wildlife Sanctuary*, DENVER POST, Jan. 21, 2003, at B-01.

⁴¹ *See id.*

⁴² Sandra Stokley, *Judge Orders Trial in Tiger Raid Case*, (Riverside, Calif.) PRESS-ENTERPRISE, July 12, 2003, at B-01.

conduct this inquiry, investigators had to “walk around mounds of trash and animal waste and sidestep the rotting carcasses of big cats.”⁴³

Soon after the initial investigation, many felines from Weinhart’s premises were relocated to sanctuaries in Colorado, Indiana,⁴⁴ and Texas, as well as the Performing Animal Welfare Society’s (PAWS) Ark 2000 sanctuary in San Andreas, California.⁴⁵ As of the latest report, a second group of tigers originally at the Tiger Rescue “sanctuary” have been moved to the PAWS sanctuary.⁴⁶ Meanwhile, Weinhart still faces criminal charges related to his handling of the animals at his enterprise.⁴⁷

C. The Story of Judah

Reporter Miles Blumhardt has written of similar stories in an article articulately describing what many consider the abusive treatment exotic animals suffered before being transported to a sanctuary.⁴⁸ Blumhardt writes:

There is Judah, the mountain lion, whose ears are permanently pinned back thanks to its owner beating the animal about the head so badly that the cartilage is mush. Zeus is a male lion who was found being fed Whiskas cat food and kept in a garage when he was found in Thornton. Big Nalla is a lioness that was found cut and furless about the neck thanks to her owners tying tires around her neck to keep her from moving about. Agape is a male lion that was abandoned when [his] circus owner became a preacher. And then there are seven tigers recently rescued from a tiger truck stop near El Paso, Texas, which were fed a chicken every other day and were so emaciated they nearly lost their stripes.⁴⁹

Blumhardt takes pains to differentiate himself from more committed, radical animal protection groups such as the People for the Ethical Treatment of Animals, but notes that one isn’t required to have the level of compassion of PETA members in order to deplore the miserable conditions in which the animals he writes about are made to exist.⁵⁰

⁴³ *See id.*

⁴⁴ The animals were sent to the aforementioned Exotic Feline Rescue Center.

⁴⁵ Sandra Stokley, *Nine More Tigers Reach New Home*, (Riverside, Calif.) PRESS-ENTERPRISE, Aug. 3, 2004, at B-01.

⁴⁶ *Id.*

⁴⁷ *See id.*

⁴⁸ Miles Blumhardt, *Center Gives New Life to Mistreated and Abandoned Animals*, FORT COLLINS COLORADOAN, May 18, 2003, Section Xplore, at 4G. It is interesting to note that Fort Collins, Colorado, is the location of one of two main Animal Care offices in the United States. Animal Care is a subdivision of APHIS, which is the United States Department of Agriculture’s Animal Plant and Health Inspection Service. We discuss these entities in detail below.

⁴⁹ *See id.*

⁵⁰ *See id.*

III. WHO OWNS WILD/EXOTIC ANIMALS?

There is no typical portrait of the person who chooses to own a wild animal, and the spectrum is broad. Excluding for the moment those whose main goal is profiteering, many are self-described animal lovers, perhaps with romanticized visions of what life with a wild animal companion might be like. Certainly Hollywood has encouraged such a romance with personified animal protagonists like Gentle Ben and Charlie, the Lonesome Cougar. Others are those who, like the members of the Feline Conservation Federation, perceive themselves as “stewards of the wild” with a mission to increase wild populations in captivity and to educate the public through the breeding and sale of “big cats” who are used in exhibition and entertainment, or what the authors of this article might call “edutainment.”⁵¹

One example of a wildlife pet owner might be the child who convinces her parents to buy a ferret from a pet store.⁵² Another might be the methamphetamine or cocaine dealer who believes that keeping a big cat chained in his urban bedroom or rural trailer home offers protection from rip-offs and assaults.⁵³ A third might be the well-meaning backyard hobbyist who having always loved foxes, purchases a baby fox from a breeder, and relegates him to a life tied to a long clothesline outside.⁵⁴ Another could be the celebrity who loves primates and builds a compound to house and care for his animals, all of whom come with papers and statements of good health.⁵⁵ Then, there might be the rural family who starts a small roadside menagerie, open to the public for a charge, and exhibits caged wild animals ranging from raccoons and squirrels to exotics like cougars and lynx;⁵⁶ or the animal entertainer who, while

⁵¹ For more information about FCF, see FELINE CONSERVATION FEDERATION, at <http://www.thefcf.com>.

⁵² Some estimates demonstrate that ferrets are the third most popular pet in the country, after dogs and cats, despite the fact that they are often classified as “exotics” and are illegal in a number of states, cities, and counties. See *Ferret Popularity on the Rise*, PRESS RELEASE NEWSWIRE, October 28, 2004, at <http://www.prweb.com/releases/2004/10/prwebxml171305.php>. The keeping of ferrets is highly controversial: Ferret owners tout the benefits of their animal companions, while their antagonists assert that ferrets are wild animals, even when domesticated, bringing with them many of the problems of non-native species.

⁵³ A number of the big cats living at the Exotic Feline Rescue Center were discovered by law officials in drug busts. For example, seventeen of their cats, including three baby tigers, were rescued in 2000 from deplorable conditions in a Pittsburgh basement during a drug raid.

⁵⁴ The fox referenced here is an Arctic Fox who was finally given up as a rescue to the rehabilitation organization WildCare in Bloomington, Indiana, and sent to live with a rehabilitation specialist.

⁵⁵ Pop icon Michael Jackson, whose “Neverland” ranch sports a private zoo with giraffes and elephants, sent his beloved chimpanzee Bubbles to live with animal trainer, Bob Dunn. “At 19, ‘Bubbles is an adult chimp and a wild animal,’ says Dunn. ‘We don’t let him out to play.’ Instead Jackson and his children visit the ranch to frolic with some baby chimps.” See *Michael Jackson May Face a Cash Crunch*, CNN, July 29, 2002, available at <http://archives.cnn.com/2002/SHOWBIZ/Music/07/29/cel.jackson/index.html>. It should be noted that a number of celebrities have invested large amounts of money and time in the cause of animal protection. A partial list includes Alec Baldwin, Kim Basinger, Ricky Lake, Alice Walker, Alicia Silverstone, Naomi Campbell, Pamela Anderson, Doris Day, Brigitte Bardot, Rue McLanahan, Beatrice Arthur, Bob Barker, Chrissie Hynde of the Pretenders, Moby, Paul McCartney, and his daughter, Stella McCartney.

⁵⁶ Roughly 2,500 roadside menageries, safari parks, circuses, breeders, dealers, and other exhibitors hold USDA licenses and receive inspections. But “weak federal regulations and a crazy-quilt pattern of local and state wildlife laws leave only a thin skein of protection for the animals. Virtually anyone can obtain a permit to exhibit, breed, and sell exotics; no qualifications are required. . . . Though these small zoos, along with traveling circuses and other animal shows, are licensed and inspected by the U.S. Department of Agriculture, their inhabitants often exist in cramped compounds and tiny cages with poor protection from the elements, marginal food, and spotty veterinary care. They typically get little psychological enrichment beyond a tire swing, a plastic ball, and a few dead tree

believing her role in the world is helping to save endangered species through “edutainment,” nonetheless enjoys training tigers and other wild animals to perform tricks. There might also be the animal lover who begins his misguided private breeding program to increase the population of various endangered species, selling the offspring to some of those previously mentioned. Last in this non-exhaustive list of examples might be the impulse buyer whose goodwill and curiosity exist in inverse proportion to the necessary education and resources for keeping a bear or a lion, but who thinks that cub for sale in someone’s barn ‘looked cute,’ and is now stuck with a full-grown, unhappy, expensive, aggressive, and dangerous animal who lives in a tiny cage in a basement or is chained in the backyard.⁵⁷

Large, unwanted wild animals cannot be taken to the local shelter or simply given away to a friend. Zoos do not take in exotic “castoffs” and will euthanize any left on their doorstep.⁵⁸ The fate of the exotics is often even sadder than the hundreds of thousands of unwanted domestic animals who end up euthanized in the local animal shelter.

IV. GOOD INTENTIONS ARE NOT ALWAYS ENOUGH

“[T]he American Veterinary Medical Association opposes the keeping of wild carnivore animals [and reptiles and amphibians] as pets and believes that all commercial traffic of these animals for such purpose should be prohibited.”⁵⁹

As many animal advocates are quick to point out, wild animals simply do not flourish in most domesticated situations, even those designed to provide the wild animal with reasonable care.⁶⁰ The exceptions, of course, are legitimate rescue sanctuaries and rehabilitation centers which offer either temporary or permanent homes to orphaned, abandoned, injured, or

branches. Half crazy from boredom and lack of exercise, the highly social primates and cooped-up predators often mutilate themselves and spend hours pacing to and fro and biting the bars of their cages.” Satchell, *supra* note 24.

⁵⁷ The following examples of animals now safely living in “sanctuary” are taken from the PAWS website and exemplify “typical” scenarios of what happens to wild and exotic animals kept as pets: Blake, a mountain lion, was confiscated in 1993 from his owners who had had him declawed, and kept him inside the house, feeding him an insufficient diet. When he began to chew on furniture, he was punished by being kept in a small box. Denny, a lion, was bought from a pet store by his owner when he was a baby. A botched declawing job left all four of his paws mutilated. His owner also had him defanged. According to PAWS, “Samantha (a mountain lion) was born in a drive-through Safari Park in Arkansas. She was taken from her mother before she was three weeks of age and placed in the “petting zoo” at the park. She was sold to a visitor who felt sorry for her because she appeared to be starving. Two months later her owners surrendered her to the local humane society because “she was getting out of hand.” *Animal Guests*, PAWS, at <http://www.pawsweb.org/site/animals/felines.htm>. The Humane Society contacted PAWS and Samantha arrived weighing ten pounds, unable to stand on her back legs. Dragging herself by her front legs, the tiny feline was suffering from malnutrition and calcium deficiency. Samantha has since improved on a balanced diet and calcium supplements. She bounds around her enclosure and chases her boomer ball, unaware that a few years ago she was unable to walk.” *Id.*

⁵⁸ Douglas Birch, *Zoos Slam Door on Exotic Pets Looking for Homes*, BALTIMORE SUN, July 17, 1995, at 1B.

⁵⁹ See *Wild Animal Policy*, AMERICAN VETERINARIAN MEDICAL ASSOCIATION, available at <http://www.avma.org/noah/members/policy/polwild.asp>.

⁶⁰ Estimates vary. According to PETA, up to 75% of all wild animals kept as pets die in their first year of captivity. See, e.g., *Inside the Exotic Animal Trade*, PETA, at http://www.peta.org/mc/factsheet_display.asp?ID=44. According to Big Cat Rescue, a nonprofit educational sanctuary in Florida, 98% of pet wild animals will die within their first two years. See *Did you Know?*, BIG CAT RESCUE, at http://www.bigcatrescue.org/animal_abuse.htm.

confiscated wild animals who cannot be returned to the wild. Despite even the best intentions of many owners of wild animals, these animals often do not and cannot adjust to life with human beings.

The recent and tragic case of famous Las Vegas illusionists and entertainers Siegfried and Roy, whose performing white tiger brutally attacked and almost killed Roy while on stage, demonstrates that, no matter how “close” human animals feel to their wild animal “possessions,” these animals are often unpredictable and resist full domestication. Roy Horn, who remains partially paralyzed, is convinced that the nearly 400-pound tiger Montecore was actually attempting to protect him.⁶¹

Some of the relationships that begin with good intentions result in injury to the owner or abuse, illness, and even death of the animal. Take, for example, the pet Java monkey Zip, owned by a Lansing, Illinois, woman, who suspected the seven year-old primate had been abused or neglected in his past life. One day, without warning, he leaped onto the woman’s head and began a vicious attack after she had let him out of his cage to play. The woman lost a pint and a half of blood, and sustained six-inch deep bites and lacerations on her body. Sadly, Zip’s fate was to be put to death.⁶² Every year, a number of such incidents occur around the country.⁶³

There are those who may come to possess a wild animal through an act of rescue, and may believe integrating the animal into their households as pets to be an act of kindness.⁶⁴ Such actions, even if the wild animal is indeed in need, are best left to trained rehabilitation experts.⁶⁵ Most cities and counties have non-profit wildlife rehab centers who generally can be contacted through the local humane society or animal shelter. These organizations can offer the appropriate facilities and care and, in some cases, can successfully reintroduce an orphaned or injured wild animal back into his or her native habitat. If not, they are connected to networks of wildlife sanctuaries where an animal may find a place to live out her or his life.

As just suggested, the diets and special physical needs, such as space and habitat, of wild animals are at best difficult, and at worst impossible to replicate. In their native habitats, tigers

⁶¹ The Oct. 3, 2003, attack was variously reported in newspapers and broadcasts across the country.

⁶² Maria T. Galo, Pet Monkey Attack Puts Its Owner in Hospital: 25-Pound Animal No ‘Monster,’ Woman Says, PET MONKEY INFO, Feb. 20, 2000, available at <http://www.petmonkey.info/news.htm>.

⁶³ Some examples from the year 2004 include the following:

In Massena, New York, a four year-old girl was hospitalized for bruises and an eye injury after being mauled by one of her grandmother’s pet cougars. In Port Sulphur, Louisiana, a woman barely managed to survive a vicious attack by her pet leopard as she patted the animal inside the cage. The leopard was subsequently shot by her brother-in-law and police officers. In Elizabethtown, Illinois, a man was mauled to death by his pet lion while changing the animal’s bedding. In Surrey County, North Carolina, a 14-year old girl who was taking pictures of one of her father’s pet tigers inside the cage was seriously mauled. All four tigers owned by the father were then shot. Just the year before, also in North Carolina, a 10-year old boy was mauled to death by his aunt’s pet tiger. There is nothing predictable about wild animals except their unpredictability. These stories are reported by the Animal Protection Institute, which maintains a partial list of “captive feline incidents” since 1990. See *Captive Feline Incidents*, ANIMAL PROTECTION INSTITUTE, available at <http://www.api4animals.org/383.htm>.

⁶⁴ Sometimes well-meaning tourists in foreign countries have bought wild animals from local black market sellers, believing that they are saving the animal from a worse fate, such as being eaten. In certain Asian countries, a prized dish in certain restaurants involves fresh monkey brains—eaten while the monkey is still alive. So long as the seller can make money, whether from the well-meaning tourist or the restaurant, the trade in wild animals persists.

⁶⁵ Many wild animals who appear to be injured or abandoned are not. Mother killdeer, for example, will mimic injury to draw potential predators away from the nest. Fawns, whose spotted coats offer camouflage, will often wait quietly by themselves for their mothers to return from foraging for food. It is important for those who come across a wild animal to be certain he is actually in need of help before removing him from the wilds.

and cheetahs are territorial animals that travel 400-600 square miles in search of prey.⁶⁶ The nature of many wild animals kept in cages and enclosures is such that they may experience stress leading to aggression, placing them in danger of being punished, beaten, and surgically mutilated (tooth and claw removal are common procedures). As a result, many end up unwanted and abandoned. Many of the “unwanted” animals are sold to biomedical research facilities, or even sent to roadside zoos and menageries masquerading as sanctuaries. It is no wonder that some animal humane organizations estimate that 60-80% of exotic animals kept in captivity die within the first year.⁶⁷

*A. The Case of Little Bear*⁶⁸

In addition to the custodians of wild animals already mentioned, there are those who simply do not meet even minimum standards of care and responsibility, yet continue to “own” wild animals. This seemingly contradictory desire is difficult to understand, and can often result in tragedy for the animals. Little Bear was a baby black bear who was sold by a breeder in the spring of 2004 to a woman in Greene County, Indiana, who held a USDA license giving her the legal right to keep wild animals.⁶⁹ Assuming the breeder was also licensed, this purchase was perfectly legal in the state of Indiana. Little Bear was three months old when he was sold. In the wild, baby bears stay with their mothers until they are two to three years old, the age at which they can finally fend for themselves.⁷⁰

Little Bear joined several other “exotic” animals in Ms. X’s menagerie, including two cougars, a tiger, and a lion, also permitted under her license. Little Bear arrived with a certificate attesting to his good health. Sadly, that good health was short-lived. Within a month, Little Bear was discovered “half-dead” on Ms. X’s living room floor by deputies looking for a neighbor. Arriving at Little Bear’s house to make inquiries, the sheriff’s deputies discovered a baby bear that was severely malnourished, underweight, and suffering from terrible seizures. He was about a third of the weight a healthy bear his age should have been, and barely able to hold up his head. A normal bear cub his age should have already been climbing trees and learning to forage.

The sheriff’s deputies phoned the Indiana Department of Natural Resources (DNR), who came to confiscate the dying cub. DNR does not regulate or license “exotics,” and technically, has neither the authority nor the facilities to rehabilitate wild animals. Little Bear was taken to a local wildcare rehabilitation organization where volunteers spent a month round the clock with him, but were unsuccessful in restoring him to health. According to one of the volunteers, Little Bear was having violent seizures lasting up to an hour at a time, during which “he would cry like

⁶⁶ *Nowhere to Roam*, *supra* note 25, at 44-53.

⁶⁷ Different figures in this range were given by such organizations as American Humane Society and American Veterinary Medical Association.

⁶⁸ General information about this case has been documented by the Animal Legal Defense Fund. See *Bear Euthanized After Alleged Neglect*, ALDF, July 11, 2004, available at <http://www.aldf.org/content.asp?sect=action§ionid=2>.

⁶⁹ Though the woman’s identity is publicly available, we choose to use here the pseudonym of Ms. X. Apart from serving several practical purposes, the use of such a generic name also conveys the idea that this woman represents, tragically, perhaps hundreds, or even thousands of people who own wild animals.

⁷⁰ *Sounds from the Den: A Collection of Bear Facts*, BEAR DEN, at <http://www.bearden.org/sounds3.html>.

a human baby.”⁷¹ His condition never improved and, eventually, to everyone’s deep dismay, he was mercifully euthanized by a veterinarian in Bloomington, Indiana.

This was not the first time Ms. X had come to the attention of the authorities. A full-grown bear previously in her possession had managed to escape from his cage, and had to be shot by the DNR. For this she paid a \$550 fine to the USDA, and was allowed to continue her activities, despite the fact that primates in her care were allegedly were left to starve to death, and were later buried in her backyard.⁷² Ms. X is currently being charged with a Class B misdemeanor for “neglect” under Indiana’s anti-cruelty statute. Nonetheless, though Little Bear was confiscated, several other exotic animals still remain in her custody.

B. Where Does One Buy Wild or Exotic Animals?

Acquiring an exotic animal, either legally or illegally, is easy to do. Wild animals such as exotic birds, reptiles, and ferrets are readily available in pet stores. Other wild animals, like monkeys, birds, bears, tigers, lions, and cougars, can be purchased at auctions, through magazine and newspaper ads, and even over the Internet.⁷³ *Animal Finders’ Guide* and *Rare Breeds Journal* are just two of dozens of publications that advertise rare and unusual animals for sale.⁷⁴

Smaller exotic cats like caracals and servals are often advertised on the Internet as raised by hand and bottle-fed to insure their good temperaments and suitability as household pets. As one serval-as-pet advocate writes, “These are delightful animals that adapt well to pet life, and win the hearts and minds of almost anyone privileged (sic) enough to know them. Therefore, this species has acquired a group of people who are passionately interested in their welfare.”⁷⁵

Further, those seeking to purchase a capuchin monkey or a bear cub, for instance, or who might think that owning a lion would be akin to having *The Lion, the Witch and the Wardrobe’s* “Aslan” in their backyards, can easily find such wild and exotic animals advertised online, in newspapers and in magazines. Depending on the “quality,” a baby tiger or lion can sell for as little as the price of a purebred puppy—approximately \$400.⁷⁶ A baby capuchin monkey sells for around \$4,500, while a spider monkey is about half that price.⁷⁷

Estimates on the number of big cats—lions, tigers, cougars, jaguars, and leopards, commonly known as “exotic felines”—held in private hands in the United States vary from

⁷¹ Much of this information was gleaned from the wildlife rehabilitation center staff at WildCare in Bloomington, Indiana. The words quoted here are those of the volunteer who served as Little Bear’s primary caretaker.

⁷² The primate information has not been officially verified, though an Indiana Department of Natural Resources representative, who preferred not to be named, responded, “your information is correct.”

⁷³ Monica Engebretson, Debbie Giles, and Nicole Paquette, *The Dirty Side of the Exotic Pet Trade*, 34 *ANIMAL* 2 (2003).

⁷⁴ Jim Mason, *The Booming Trade in Exotic Animals*, 14 *ANIMALS AGENDA* 4 (1994), available at <http://articles.animalconcerns.org/ar-voices/archive/exotic.html>.

⁷⁵ *The Ethics of Owning A Serval*, *SERVAL*, at <http://www.geocities.com/serval/site/ethics.html>.

⁷⁶ Brian Handwerk, *Big Cats Kept As Pets Across U.S., Despite Risk*, *NATIONAL GEOGRAPHIC*, Oct. 9, 2003, available at http://news.nationalgeographic.com/news/2002/08/0816_020816_EXPLcats.html.

⁷⁷ The World Health Organization takes a dim view of keeping non-human primates, who are notorious for harboring deadly and contagious illnesses such as tuberculosis, Hepatitis, and Simian Herpes B. According to People for the Ethical Treatment of Animals, about 90 percent of macaque monkeys are infected with the Herpes B virus. See *WILD LIFE PIMPS* (PETA), <http://www.wildlifepimps.com/frontpage.htm>.

15,000⁷⁸ to 33,000.⁷⁹ Currently, there are more tigers bred, raised and sold in the United States than exist in the wild, and most of these are “pets.” Less than ten percent are kept in accredited zoos or sanctuaries.⁸⁰ Many of these tigers have been bred indiscriminately, leading to genetic weaknesses and health problems. Such breeders, and others who keep wild animals, continue to operate without realizing the repercussions of perpetuating genetic weaknesses such as the abusive inbreeding required to produce the white tiger, an animal that does not exist in the wild and is often plagued with deformities (club feet and cleft palettes), defects (misshapen heads), and low intelligence. This may explain, in part, their popularity in entertainment.⁸¹ To be sure, mutant or deformed tigers are hardly in hot demand, and many come to sad ends.

Where do these animals originally come from? Many are bred and raised in captivity, while others are captured from their native habitats. The latter is almost always a brutal enterprise, as evidenced by the plight of baby primates who are often ripped from the arms of their mothers when they are just hours or days old. Wild baby orangutans, for example, typically watch as their mothers are shot. Because these babies will continue to cling to their dead mothers, it is then easy for them to be taken.⁸²

Wild “exotic” birds are often packed tightly in containers for international shipment, their beaks and wings clipped for the long journey. Unsurprisingly, only a tiny percentage usually survive the stress and torment of the trip. In a recent customs inspection at the Miami airport, a smuggler was discovered with 44 Cuban melodious finches strapped to his legs. Naturally, many of the birds had died during the grueling trip.⁸³ In a similar operation, a Swedish man was recently apprehended by Thai officials for attempting to smuggle eight dangerous snakes, four of whom were baby king cobras, all found dead in containers strapped to his legs.⁸⁴

Wild animals that are bred and raised in captivity often fare no better. So-called “pocket pets,” including sugar gliders, prairie dogs, hedgehogs and ferrets are a good example of smaller wild animals mostly bred in captivity. Many of these are actually too large to fit into a pocket (hence, making the name a misnomer and creating potential harm to the nonconforming animal), but are prized for their “cuteness,” their “wildness” ignored. Though some of these animals are captured in the wild, many of them are mass-produced in breeding conditions similar to that of puppy mills and sold by pet distributors all over the United States. Even those bred in captivity

⁷⁸ See THE ROAR FOUNDATION, <http://www.shambala.org>.

⁷⁹ Michael Fisher, *Seized Tigers Find a New Home*, (Riverside, Calif.) PRESS-ENTERPRISE, April 25, 2003, at A-1.

⁸⁰ See Wayne Pacelle, Chief Executive Officer of the Humane Society of the United States, *Leave Wild Animals Where They Belong, in the Wild*,” available at <http://www.hsus.org/ace/21353>.

⁸¹ See *The White Tiger Fraud*, BIG CAT RESCUE, http://www.bigcatrescue.org/white_tigers.htm for more information on the plight of the white tiger. White tigers, for example, do not exist in the wilds, and are the result of intensive inbreeding. Responsible breeding programs militate against furthering the population of white tigers, despite their popular and commercial appeal. In fact, many zoos, like the National Zoo in Washington, now post signs in front of tiger cages explaining why they no longer display white tigers as a way of educating the public about the “unnaturalness” of the white tiger.

⁸² See *Nonhuman Primates in Private Sector Possession*, *supra* note 28.

⁸³ These songbirds are popular pets and can be sold for as much as \$350 each. The smuggler of the birds was charged with unlawful importation and possession and lying on his customs form. See *44 Birds in the Pants May Equal 10 Years in Jail*, (CRIME BLOTTER) ABC NEWS, September 4, 2004, available under archives at <http://www.abcnews.com>.

⁸⁴ *Man Snared with Snakes Strapped to Legs*, PLANET ARK, Sept. 25, 2003, available at <http://www.planetark.org/dailynewsstory.cfm/newsid/22355/newsDate/25-Sep-2003/story.htm>. The man was charged under Australia’s Environmental Protection and Biodiversity Act.

still retain many of their wild habits and instincts, and recently, many of these animals have been known to present serious health risks, carrying such diseases as monkeypox and *E. coli* that affect human animals.⁸⁵

Furthermore, there are licensed breeders and sellers of wild animals and unlicensed ones. There are breeders and sellers who describe themselves as animal lovers, and others for whom wild animals are simply a salable product in the big business of the exotic pet trade, second only, some assert, to the illegal drug black market.

Regardless of the breeder's or seller's intentions, there is often a surplus of animals that end up unwanted. Some are killed or discarded because they have become too expensive or dangerous to keep, or both, or are no longer profitable, like large animals used in a circus, carnival, or a photo booth. Those cute lion and tiger cubs displayed in roadside zoos or used in photo booths lose their appeal as soon as they mature, and must then be replaced by the next generation of "cute babies."⁸⁶

Because many wild animals are either large or dangerous, or both, they cannot simply be taken to a local shelter or adopted out. Some end up being sold to medical research. As alluded to earlier some older, unwanted male lions and tigers are sold for use in canned hunts, in which "sportsmen" get to shoot a trapped lion in a transport cage.⁸⁷ In addition, as noted above, tigers often meet early deaths because their body parts are in high demand in international "medicinal black market."⁸⁸ And in many unfortunate cases for both human and non-human animals, the unwanted wild animal is set loose or ends up escaping, a fate that can often result in injury to people or the animal, or even death.

V. PRIVATE OWNERSHIP AS "CONSERVATION" OF ENDANGERED WILDLIFE

There are a number of private organizations around the country that actually advocate the ownership of wild animals. These groups argue that the breeding and sale of wild animals are part of larger conservation efforts, and that such ownership is lodged in an inherent right. The FCF, referred to in the preface, is just such an organization. Though it uses the word "conservation" in its title, the group supports and advances the breeding, sale, and private ownership of exotic felines, outlining its missions as follows:

Whereas governments and other conservation organizations focus on preservation of the species in the wild, the FCF seeks to function as insurance, encouraging

⁸⁵ A particularly notorious case is that of Phil's Pocket Pets, a pet distributor operating out of suburban Chicago, who sold prairie dogs who, unbeknownst to him, had been infected with the monkeypox virus by a Gambian rat he also owned. A number of people, including children, who came in contact with the prairie dogs fell ill in Illinois, Wisconsin, and Indiana. As a result, the Illinois governor signed a ban on the sale, importation, or display of Gambian rats or prairie dogs. Despite such cases, in 2002 alone, more than 10,000 prairie dogs were shipped out of Texas and sold as pets in the United States. *Health Officials in 3 States Battle Outbreak of Monkeypox*, KATU TV, June 9, 2003, at <http://www.katu.com>.

⁸⁶ See generally *The Dirty Side of the Exotic Animal Pet Trade*, ANIMAL PROTECTION INSTITUTE, available at <http://www.api4animals.org/1563.htm>; and *Breeding and Selling*, BIG CAT RESCUE, at <http://www.bigcatrescue.org/breeding.htm>.

⁸⁷ The only wild lions found outside of Africa now are the 300 in the Gir Forest sanctuary in India. In an unnamed column, TIME, Aug. 23, 2004, at 46.

⁸⁸ See *The White Tiger Fraud*, *supra* note 81.

breeding of those felines often neglected in zoological collections due to their special requirements.⁸⁹

How breeding large cats in captivity contributes to increasing numbers in the wild is unclear. For starters, these are not species native to the United States and cannot be released like wolves or eagles. Second, many members of FCF are not animal husbandry or rehabilitation specialists. Members of the FCF include serious hobbyists, entertainers, magicians, circus and carnival owners, and others who use large cats in entertainment acts.⁹⁰

Though many private owners, breeders, and sellers of wild animals, like some of the members of the FCF, are quick to condemn owners they view as “irresponsible,” and ask not to be judged by the casual and careless owners (often the ones featured in the media) who engage in abusive and cruel behaviors, they may, nevertheless, be naive in their good intentions. Not only are they contributing to a problem of the surplus of wild animals in captivity, but they are also discounting the highly specialized skills involved in the maintenance of captive habitats for increasing the populations of endangered or threatened species.

FCF members are also adamant about their role providing badly needed non-AZA education and backup gene pools.⁹¹ The obvious problem with this logic, as noted, is that this proliferation of wild animals bred and sold in captivity bears no relationship to the dwindling populations in the wild. In addition, education about wildlife does not require the breeding and selling of wild animals in captivity, regardless of whether an organization maintains studbooks and exercises care in avoiding genetic flaws. The private breeding, sale, and ownership of exotic felines also does nothing to address the factors that lead to the endangerment of species in the

⁸⁹ See *About Us*, FELINE CONSERVATION FEDERATION, at <http://www.felineconservation.org/R3/AboutUs/Purpose.html>.

⁹⁰ Many of those who use wild animals in acts claim these activities have educational value. We would argue, however, that there is nothing educational about watching a tiger jump through a fire-laced hoop. Training methods used on wild animals are often cruel and abusive, in part because of the size and danger these animals pose, though circuses like Ringling Brothers and members of the FCF assert that animals are trained only through positive reinforcement and use of food. See, e.g., *The Reality of Zoos*, THE CAPTIVE ANIMALS PROTECTION SOCIETY, at <http://www.captiveanimals.org/zoos/zse1.htm>; *Circuses: Three Rings of Abuse*, PETA, at http://www.peta.org/mc/factsheet_display.asp?ID=66; and *Animals are not ours for Entertainment*, CIRCUSES.COM, <http://www.circuses.com> (detailing abuses in both entertainment and in zoos).

⁹¹ For more information on the Feline Conservation Federation, please see <http://www.thefcf.com>. In an email exchange, Lynn Culver, the FCF Director of Legal Affairs, sent this information regarding FCF's philosophy:

FCF maintains studbooks for all feline species. FCF members financially support a 25,000 acre wild feline reserve in Ecuador. FCF conducts husbandry courses around the country. FCF advises people to help them obey the law. FCF has developed a Model for State Regulation that addresses both public safety and animal welfare concerns that is available for anyone to use on our web site www.felineconservation.org. FCF supports responsible captive husbandry and private ownership rights. FCF discourages novice ownership of big cats. FCF helps people who keep wild cats be better caregivers. FCF offers a placement referral service to help insure that cats in need of relocation are placed in knowledgeable and legal facilities. We place more cats than both the self-promoting sanctuary associations combined. FCF has the largest combined captive habitat of all associations. FCF is full of sanctuaries that are not members of TAOS or ASA, as well as breeders, exhibitors and collectors and many, many excellent private owners that the press loves to refer to as "pet" owners. FCF members house geoffrey's cat, leopard cat, Eurasian lynx, jungle cat, African and Asian leopard, all species that are not part of the AZA collection plan that will not exist in captivity if private ownership is banned everywhere.

Email from Lynn Culver, FCF Director of Legal Affairs (August 19, 2004, revised by Lynn Culver, September 15, 2004) (on file with author Alyce Miller).

wild, such as loss of natural habitat or encroachment and poaching by human beings.⁹² Interestingly, the FCF, which holds exotic cat conventions for its members, does support stricter regulation of wild animal sale, breeding, and ownership, though it decries outright bans.

By contrast, the Association of Sanctuaries (TAOS) in Minnesota is a non-profit organization set up to assist sanctuaries “in providing quality rescue and care for displaced animals.” The organization condemns all private ownership of wild animals, adhering to their motto, “Keep the wild in your heart, not in your backyard.” They offer accreditation to those sanctuaries who can meet their exacting standards, which include a strict no-breeding policy (exceptions made for animals on the verge of extinction under a careful scientific breeding and reintroduction program), no sales or use of animals as entertainment or other commercial activities, a life-time commitment to the animals by the licensee, and limited and unobtrusive viewing access by the public.⁹³

Many of the wild animals finding their way into private hands are classified as “endangered” or “vulnerable” species, meaning that their declining numbers in the wild are moving them toward extinction. Perhaps, this is part of the appeal for private owners. Not only are they getting a “piece of the wild,” but they own a creature that soon may be extinct.

In addition, underlying the enterprise of individuals like Lynn Culver of the FCF, is the general notion that in the United States, the “land of the free,” the exercise of freedom, regardless of its domain, is an inherent right. One such enthusiast states: “This is America, whose bill of rights [sic] grants us the right to life, liberty, and pursuit of happiness. My pursuit of happiness involves exercising the liberty to share my life with a serval. Our current fight for freedom is taking place not on the shores of a foreign country, but here in the political arena. What do Americans do when their cherished freedoms and ways of life are attacked? They fight. And they win. We will win the fight to protect our beloved cats.”⁹⁴

Apart from the minor detail that the “right to life, liberty, and pursuit of happiness” was granted in the Declaration of Independence, and not in the Bill of Rights of the Constitution, the logic founding this serval enthusiast’s argument is wayward, at best. First, the writer quoted here ends her passionate plea in a different place from where she begins. Her initial appeal is for the protection of her freedom to keep a serval, while her final *cri de coeur* suggests that it is the animals the writer wants to protect, and not the freedom to keep the animals.

These are two distinct objectives; protecting one’s “freedom” to possess a wild animal is at loggerheads with protecting the animals themselves.

Further, and more importantly, it has been well established that constitutional freedoms have limits.⁹⁵ One cannot simply assert, for instance, that activities such as robbing, injuring, murdering, enslaving, or otherwise harassing others are justifiable because such actions fulfill the

⁹² See generally FELINE CONSERVATION FEDERATION, at <http://www.thefcf.com>. The organization describes itself as “an internationally recognized federation of enthusiasts interested in the propagation and preservation of all the wild feline species.” Their membership is made up of “a wide range of exotic cat enthusiasts such as professional breeders and educators, sanctuary and zoo owners and individual ‘pet’ owners.”

⁹³ See The Association of Sanctuaries (TAOS), at <http://www.taosanctuaries.org/index04.htm>.

⁹⁴ *The Ethics of Owning a Serval*, *supra* note 75.

⁹⁵ See, e.g., *Employment Div. v. Smith*, 494 U.S. 872, 894 (1990) (superseded on other grounds) (“Under our First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute.”); see also Alan E. Brownstein, *Constitutional Wish Granting and the Property Rights Genie*, 13 CONSTITUTIONAL COMMENTING 7, 26-27 (1996) (citing *Burson v. Freeman*, 504 U.S. 191 (1992); and *United States v. Lee*, 455 U.S. 252, 254 (1982)).

actor's "pursuit of happiness." It is worth noting that in pre-Emancipation America, many Americans (both Caucasians and non-Caucasians) used a similar rationale and rhetoric to justify keeping slaves.⁹⁶ Few, if any, reasonable people today, however, would dispute that such an application of the Declaration of Independence's dictates falls far outside the scope of the spirit and the letter of those dictates.

Regardless of a fundamental disagreement between groups such as FCF and those who believe in a more comprehensive animal protection schema, it is worth reiterating that even groups such as Culver's remain strongly in favor of more stringent laws regulating such possession. They, too, in the end, lament the inadequacy of the current regulatory schemes available at both the state and federal levels.

VI. WHAT CURRENT LAWS AND REGULATIONS LOOK LIKE

The United States currently offers a veritable maze of laws and regulations addressing the private possession of exotic animals, primarily in the form of federal, state, and local statutes. These take primarily three forms: outright bans, licensing/permitting schemes, and general regulatory oversight not requiring licenses or permits, but outlining guidelines by which private owners of wild animals must abide.⁹⁷ There is little consistency from state to state, and a number of serious gaps exist between federal, state and local laws. In order to negotiate one's way through the labyrinth, it may be helpful to begin at the federal level.

The principal federal organizations in charge of oversight for exotic animal possession are the United States Department of Agriculture (USDA) and the United States Fish and Wildlife Service (FWS), a sub-agency under the United States Department of the Interior. The USDA is the administrative agency assigned to enforce the Animal Welfare Act (AWA) and, as such, governs the possession of animals (both exotic and non-exotic), primarily in commercial circumstances, and issues licenses and registrations to such private owners as zoos, circuses, breeders, researchers, and exhibitors. The body that actually develops and implements regulations to enforce the AWA's provisions is a subsection of the USDA, the Animal Plant and Health Inspection Service (APHIS), which, in turn, has an "Animal Care" (AC) division. AC has the "direct responsibility to administer and enforce the [AWA], including licensing, registration, inspection, and investigation of complaints."⁹⁸ The investigative and enforcement arm of APHIS and AC, Investigative and Enforcement Services (IES), "investigates violations of AC regulations and reviews and processes violation cases referred for formal administrative action."⁹⁹

⁹⁶ The authors here are not analogizing the experience of slaves and animals, but instead are acknowledging parallels in the rhetoric and logic employed for rationalizing subjugation. Some of these include the idea of inferiority; God-given mastery over "lesser beings" who are "different" (otherness); tradition, and the like. *See, e.g.*, STEVEN WISE, *DRAWING THE LINE* (2002); CHARLES PATTERSON, *ETERNAL TREBLINKA: OUR TREATMENT OF ANIMALS AND THE HOLOCAUST*, (2005); and MARJORIE SPIEGEL, *THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY* (Foreword by Alice Walker) (1997).

⁹⁷ *See, e.g.*, Matthew G. Liebman, *Overview of Exotic Pet Laws* (2004), ANIMAL LEGAL & HISTORICAL CTR., at <http://www.animallaw.info/articles/ovusexoticpets.htm> (last viewed Sept. 13, 2004).

⁹⁸ *THE ANIMAL DEALERS: EVIDENCE OF ABUSE OF ANIMALS IN THE COMMERCIAL TRADE 1952-1997* (349) (M.E. Drayer ed., 1998).

⁹⁹ *Id.* at 349-50.

The second federal agency mentioned, but with which this essay deals little, in fact, is the FWS. Among a host of other functions, the FWS implements and enforces the provisions of the Endangered Species Act (ESA), which is the implementing statute for the Convention on International Trade in Endangered Species of Flora and Fauna, otherwise known as “CITES.” The ESA has a list of species considered “endangered,” meaning in danger of extinction, and “threatened,” referring to animals and plants on their way to being endangered. The Act regulates the importation of many endangered species, such as various species of tigers, in order (in theory) to optimize their chances of survival. At the federal level, however, FWS is far less involved in the private possession of exotic animals once possessed than is APHIS.

Despite the existence of these federal agencies and their purported jurisdiction, the bulk of legal issues arising with respect to wild animals occur at the state and local levels. This predominance of state authority is explained by at least two reasons. First, as early as 1904 in this country, a state’s highest court declared that the regulation of wildlife fell squarely within a state’s police powers; as such regulation was directly connected to the public welfare.¹⁰⁰ In fact, the *Bootman* court determined the Lacey Act,¹⁰¹ passed in 1900, granted the authority to states to exercise their police powers over even “foreign game” just as if the game had been produced in that state.¹⁰² Second, all states have taken a stance with respect to the private possession of wild animals, whether it be through implementing outright bans, permit/licensing schemes, or general, light regulation without any permit or license requirements. One of the principal reasons that the majority of legal and regulatory issues arising in the context of privately possessed exotic animals occur at the state and local levels is that the USDA’s jurisdiction under the Animal Welfare Act is strictly circumscribed. As a result, a consideration of laws and regulations at the state level will serve to illustrate how these apply to the private possession of exotic animals in the majority of cases in the United States.

By way of example, we will discuss Indiana and Texas law to demonstrate particulars regarding state regulatory schemes governing the private possession of wild animals. The two states are similar in that rather than establishing total or partial bans on wild animal possession, they both regulate the possession by requiring licenses or permits. The states differ, however, in the way in which power to regulate is distributed. In Indiana, the Department of Natural Resources (DNR) plays a central role in issuing permits and regulating possession, while in Texas, as of 2001, regulation and oversight occur primarily at the local level.

In addition, exotics and native wildlife are treated differently through various statutes and licensing. For example, in Indiana it is illegal to own a raccoon or red fox, because these animals are “native” to the state, but it is perfectly legal to own a big cat. In fact, as we discuss below, it is legal to own a large exotic cat like a tiger or lion in thirty states, though a permit is often required depending on the activities involved.

¹⁰⁰ See *New York v. Bootman*, 72 N.E. 505 (1904).

¹⁰¹ The spelling at that time, as it appears in *Bootman*, was “Lacy.” See *id.* at 506.

¹⁰² See *id.* It is worth noting that, among a whole host of other sources, *Bootman* perhaps helped to set the tone for the underlying attitude towards nonhuman animals in this country’s jurisprudence. The court stated that non-human animals, fish and game in the *Bootman* context, were important to human animals insofar as the former provided the latter with an important “food supply,” as well as “delightful recreation.” *Id.* at 507.

A. Indiana Law

The primary laws that speak to the possession of exotic animals in Indiana are found in the Indiana Code (IC)¹⁰³ and the Indiana Administrative Code (IAC).¹⁰⁴ The relevant IC sections are brief. Subsection 1 states that the relevant sections do not apply to licensed commercial dealers, zoological parks, circuses, or carnivals.¹⁰⁵ Subsection 2 defines “zoological park” (rather broadly, in fact), and subsections 3-5 collectively serve as an enabling mechanism for the director of the DNR to administer and enforce provisions of the IAC governing private possession of wild animals. These sections allow the director to issue permits based on specified criteria and to enforce the regulations pertaining to wild animal possession by such means as seizure of the animal if the circumstances so warrant. Finally, subsection 6 of the IC states that the rules adopted must provide for the safety of the public and the “health” of the animals.¹⁰⁶ As is typical, any notion addressing the animal’s “welfare” or “well-being” is ignored.

The IAC addresses requirements that must be met before the DNR issues permits. The Code has two sets of requirements, depending on the type of animal involved. If the animal is designated either as “Class I” or “Class II,” as defined under section 5 of the Code,¹⁰⁷ then a prospective owner is allowed to possess the animal, but must apply to the DNR for a permit to possess within five days after acquisition.¹⁰⁸

Requirements for owning a “Class III” animal, however, are more stringent.¹⁰⁹ Applicants for a Class III wild animal permit must present considerable detail about the animal, including the conditions in which the animal will be kept and maintained. For instance, applicants are required to specify the species of the animal, the location where the animal will be housed, and the type of enclosure used to confine the animal.¹¹⁰ In addition, permit applications must include a written verification from a licensed veterinarian stating that the animal is immunized, in good health, and free of disease;¹¹¹ a plan for the rapid and safe recapture of the animal, should the animal escape;¹¹² and proof that the animal was lawfully acquired.¹¹³

It is worth reiterating that one of the primary differences between the way Indiana and Texas oversee private ownership of wild animals resides in the centralization of authority. As

¹⁰³ See IND. CODE §§ 14-22-26-1 through 6 (2004).

¹⁰⁴ IND. ADMIN. CODE tit. 312, r. 9-11-1 through 15 (2004).

¹⁰⁵ See IND. CODE §§ 14-22-26-1 (2004). Some of these would be covered by the USDA. As our discussion elucidates, however, there are tremendous gaps between state and federal laws, enabling animals (and their welfare) to “fall through the cracks,” so to speak.

¹⁰⁶ IND. CODE §§ 14-22-26-1 (2004).

¹⁰⁷ “(1) Class I includes any wild animal which, because of its nature, habits, or status, is not a threat to personal or public safety. (2) Class II includes any wild animal which, because of its nature, habits, or status, may pose a threat to human safety.” IND. ADMIN. CODE tit. 312, r. 9-11-5 (2004). Specific animals listed categorized as “Class I” are the East Cottontail Rabbit, Gray Squirrel, Fox Squirrel, and Southern Flying Squirrel. Animals classified as “Class II” are the beaver, coyote, gray fox, red fox, mink, muskrat, opossum, raccoon, skunk, and weasel. See “Wild Animal Possession Permits,” handout attachment accompanying the IAC as sent by the IN DNR.

¹⁰⁸ See *id.*; and IND. ADMIN. CODE tit. 312, r. 9-11-5(b) (2004).

¹⁰⁹ IND. ADMIN. CODE tit. 312, r. 9-11-8 (2004). “Class III” animals include purebred wolves, all species of bears and wild cats (except feral cats), venomous reptiles, and crocodylians that reach at least a length of five feet.

¹¹⁰ IND. ADMIN. CODE tit. 312, r. 9-11-2(c).

¹¹¹ See *id.* at subsection (d).

¹¹² See *id.* at subsection (e).

¹¹³ See *id.* at subsection (i).

indicated, Indiana's DNR is the chief governing body from which regulations, enforcement, and general oversight issue. In Texas, on the other hand, governance of exotic animal possession occurs at the local level, as we will see shortly. The United States Court of Appeals for the Seventh Circuit has, nonetheless, held that local ordinances governing private ownership of wild animals are not preempted by either the Indiana DNR or by the federal Animal Welfare Act.¹¹⁴

In *DeHart*, the Seventh Circuit ruled that the Animal Welfare Act was drafted with the idea of collaboration and interplay with state and local rules in mind, so that a local ordinance governing private ownership of exotic animals could stand.¹¹⁵ Consequently, while governing authority for private ownership of exotic animals may reside principally in the Indiana DNR, local ordinances retain a significant amount of power.¹¹⁶

*(1) Further Details on Indiana Laws on Private Possession of Exotic Animals:
A Law Enforcement Officer's Perspective¹¹⁷*

In Indiana, anyone wishing to possess wild or exotic animals that are native to Indiana, such as certain types of deer, raccoons, skunks, and the like, must first obtain state-issued permits. Prospective possessors of non-native species, on the other hand, including most large, exotic felines, would generally obtain a USDA license, if applicable, and may obtain an Indiana state permit, as well, if they so choose, though most do not obtain both. In the case of large felines, for instance, an owner, under many circumstances, would have to obtain a USDA permit, but may opt to acquire an Indiana state Class III permit, as well, though obtaining the state permit is strictly voluntary.¹¹⁸

Primates are an exception. Indiana law does not address primates at all. Therefore, in order to acquire a primate for private possession, an individual in Indiana would normally turn to federal sources to comply with any applicable regulation, even if the possession does not entail commercial activity.¹¹⁹

¹¹⁴ See *DeHart v. Town of Austin, Indiana*, 39 F.3d 718, 722 (7th Cir. 1994).

¹¹⁵ See *id.* In addition, local governments are often the best judges as to concerns regarding public health and safety for the local population, thereby making it suitable for local authorities to regulate such matters under appropriate circumstances.

¹¹⁶ See also *Hendricks County Bd. of Zoning Appeals v. Barlow*, 656 N.E.2d 481 (1995) (holding that statute setting forth licensing procedures for persons desiring to possess wild animals was clear and unambiguous and did not preempt local governments from regulating possession or location of wild animals).

¹¹⁷ Information detailed in the following discussion was derived from a phone interview with an agent at the Indiana Department of Natural Resource's Division of Law Enforcement (DLE), who wished to remain anonymous, September 21, 2004. The section on federal/state interplay presages a more detailed discussion of this interaction below.

¹¹⁸ Even if one were to obtain a state permit voluntarily (and it is hard to imagine a situation in which an individual would want to subject herself to unnecessary regulation), what force such a permit would wield is unclear, as technically, the animal who didn't require a state permit in the first place would fall outside the state's jurisdictional authority.

¹¹⁹ There is, of course, a restriction on the importation of primates into the United States. The Center for Disease Control (CDC) regulates such importation, generally allowing it only for scientific research, education, or exhibition purposes. See *Importation of Nonhuman Primates*, CDC, available at <http://www.cdc.gov/ncidod/dq/nonhuman.htm> (last visited August 14, 2005).

In Indiana, possessors of wild animals must renew their possession permits yearly, the renewal being accompanied by an inspection from the Division of Law Enforcement (DLE) to ascertain the suitability of the permit renewal. Generally, this is the only time during the year that an individual's premises are investigated to determine whether they comply with the relevant state laws regarding the keeping of the animals.

It is possible, however, that if a third party witness has reason to believe that a private wild animal owner is violating state laws in possessing the animal, that individual can contact the DLE, at which time the agency may decide to send officers to investigate the claims and take whatever action they deem appropriate. These actions can range from permit revocation and animal removal to filing criminal charges against the violator.

In the case of Little Bear, his custodian has been charged with cruelty to an animal, which, under Indiana law, is categorized as a class B misdemeanor and can result in a maximum of 180 days in jail and a \$1,000 fine.¹²⁰ It is interesting to note that the charge levied against Mrs. X is a charge ensuing from Indiana's anti-cruelty statute (though not the class D felony version), and not from the Indiana Administrative Code or other provisions regarding the keeping of wild animals referenced above. If an animal owner's actions are sufficiently egregious, as in Little Bear's case, the DLE is free to reach beyond the IAC's provisions to charge a perpetrator with an even more severe violation should the circumstances so merit.

(2) The Interplay (Or Lack Thereof) Between Federal and State Provisions

In addition to state penalties, penalties can ensue at the federal level, as well. If a wild animal owner has transgressed both federal and state provisions, according to the DLE, the federal and state agents will usually carry out their respective investigations separately. Communication between federal and state enforcement is generally uncommon unless there arises a need for conferral between the two bodies. At the extreme, when it comes to enforcement, a violator of federal and state laws can be haled into both federal and state courts for her or his respective transgressions.

According to the DLE, conflicts between the federal and state authorities generally do not arise, as the respective jurisdictions of these bodies do not overlap. At least in Indiana, that activity falling under state and that falling under federal jurisdiction are reasonably apparent and distinct. And as noted, should there be reason for investigation by both federal and state authorities, it can be done with little friction.

A distinction between the federal and state processes is that at the federal level, violations of the Animal Welfare Act would subject violators to an administrative proceeding at the USDA. Should a case require further adjudication, such as if a party appeals, only *then* would the parties be in federal court proper, and not an administrative agency. At the state level in Indiana, however, there is no administrative-level proceeding. Violations of the IC or IAC, if taken to the adjudicative stage, go directly to state court.

¹²⁰ Abandonment or Neglect of Vertebrate Animals, IND. CODE § 35-46-3-7 (2004).

B. Texas Law

(1) General State Provisions

The Texas Health and Safety Code (HSC) provides a general exemplar for municipalities in Texas to follow in regulating, among other domains, the private ownership of wild animals.¹²¹ Just as with other provisions we have examined and will consider, the HSC defines key terms, including “wild animal,”¹²² requires registration of wild animals,¹²³ display of the certificate of registration,¹²⁴ liability insurance,¹²⁵ periodic inspection of the animals,¹²⁶ a plan of action in case the animals escape,¹²⁷ and the proper care, treatment and transportation of the animals.¹²⁸ In addition, the HSC delineates penalties for violation of its provisions (offenses are deemed Class C misdemeanors) and outlines an adjudicative process available to persons governed by these provisions.¹²⁹

In 2001, in conjunction with the Texas Board of Health, the drafters of the Texas Health and Safety Code permitted the registration of “dangerous wild animals,” defined to include, among others, big cats, apes, and bears.¹³⁰ Furthermore, the legislature determined that regulation of private ownership of wild animals should take place at the local level.¹³¹ As a result, Texas has nearly as many differing provisions regarding private possession of wild animals as it has municipalities. Constraints of space and time prevent considering each such locale, but Harris County provides an apt example.

Harris County is the third largest county in the United States, and is the county in which the city of Houston, the nation’s fourth largest city, lies. While the city of Houston itself has established an outright ban on private possession of exotic animals,¹³² Harris County, the overarching entity which includes Houston, allows such possession.¹³³

¹²¹ TEX. HEALTH & SAFETY CODE ANN. §§ 822.101--115 (Vernon 2004).

¹²² *See id.* at § 822.101.

¹²³ *See id.* at § 822.103.

¹²⁴ *See id.* at § 822.106.

¹²⁵ *See id.* at § 822.107.

¹²⁶ *See id.* at § 822.108.

¹²⁷ *See id.* at § 822.110.

¹²⁸ *See id.* at § 822.112.

¹²⁹ *See id.* at §§ 822.105, 113-15; *see also* TEX. LOC. GOV’T. CODE ANN. § 240.003(c) (Vernon 2004).

¹³⁰ *See* Regulation of Wild Animals, 36 TEX. PRAC. § 35.4A (citing TEX. HEALTH & SAFETY CODE ANN. §§ 822.101-116 (Vernon 2004)).

¹³¹ *See* “Historical and Statutory Notes” to TEX. HEALTH & SAFETY CODE ANN. §§ 822.101-115 (Vernon 2004), section 6(b) to (d) of Acts 2001, 77th Leg., ch. 54 (c).

¹³² Keeping of Wild Animals, HOUSTON, TEX. ORDINANCE, ART. III.

¹³³ *See* Harris County’s Regulations Relating to the Keeping of Wild Animals in the Unincorporated Area of Harris County, Texas, *available at* <http://www.countypets.com/DWA/DWAregs2002-Final.htm> (last accessed Sept. 14, 2004).

(2) *The Houston City Code*

The Houston City Code (the Code) defines “wild animal” broadly:

[T]he term wild animal shall mean any mammal, amphibian, reptile or fowl of a species that is wild by nature and that, because of its size, vicious nature or other characteristics, is dangerous to human beings. Such animals shall include, but not be limited to, lions, tigers, leopards, panthers, bears, wolves, wolf-dog hybrids, cougars, coyotes, coyote-dog hybrids, raccoons, skunks . . . , apes, gorillas, monkeys of a species whose average adult weight is 20 pounds or more, foxes, elephants, rhinoceroses, alligators, crocodiles, caymans, fowl larger than a macaw, all forms of venomous reptiles and any snake that will grow to a length greater than eight feet. The term shall also include any animal listed as an “endangered species” under the federal Endangered Species Act of 1973 . . . or any fowl protected by the Migratory Bird Treaty Act. The term . . . shall not include gerbils, hamsters, guinea pigs, mice and domesticated rabbits.¹³⁴

Thus defining “wild animal,” the Code immediately follows this provision with a section entitled “Possession Prohibited,” which clearly states: “It shall be unlawful for any person to be in possession of a wild animal within the city.”¹³⁵ Moreover, the ordinance has in place stringent penalties for infractions:

Violation of any provision of this article is a misdemeanor punishable by a fine of not less than \$500.00, nor more than \$2,000.00. Each wild animal possessed in violation of this article and each day on which it is possessed shall constitute and be punishable as a separate offense.¹³⁶

Despite the force of the prohibition, the Code provides a plethora of exceptions which permit wild animal possession. Primarily, the broadest exemptions are provided for under section 6-59, “Exceptions to section 6-51”:

[Section 6-51 does] not apply to animals kept for treatment in a facility operated by a veterinarian licensed by the state, animals kept in publicly owned zoos, and animals used for research or teaching purposes by a medical school, licensed hospital or nonprofit university or college providing a degree program.¹³⁷

In addition, exemptions exist for transportation of wild animals used for filmmaking, productions, and the like,¹³⁸ and for wild animals used in exhibitions, carnivals, and circuses.¹³⁹ In the latter case:

[So long as a] person holds a current and valid exhibitors license under the federal Animal Welfare Act . . . or a current and valid circus, carnival, or zoo operator’s license issued under chapter 824 of the Texas Health and Safety Code, [s/he is not required to obtain a city permit for the wild animal].¹⁴⁰

¹³⁴ Wild Animal Defined, HOUSTON, TEX. ORDINANCE, art. III, secs. 6-51.

¹³⁵ *Id.* at secs. 6-52.

¹³⁶ *Id.* at secs. 6-54, “Penalty.”

¹³⁷ *Id.* at secs. 6-59.

¹³⁸ *See id.* at secs. 6-61.

¹³⁹ *See id.* at secs. 6-55, both generally and specifically at subsection (g).

¹⁴⁰ *Id.*

This provision, albeit on a small scale, illustrates, as well, the interplay of local, state, and federal laws regulating the private ownership at issue here.

Finally, the Code authorizes the Director of the Texas Department of Health and Human Services to administer the regulations outlined in the Code,¹⁴¹ again displaying the local/state interplay.

(3) *The Harris County Regulations*¹⁴²

As discussed, in 2001, the Texas legislature amended wild animal legislation that had existed (and been amended numerous times) in the state since 1981, allowing counties to regulate “dangerous wild animals” at all locations in the unincorporated area of a county, regardless of proximity to schools or other places.¹⁴³ This authority does not extend, however, to the territory within a city or municipality;¹⁴⁴ hence, the distinction between the outright ban in the city of Houston and the regulation, but not complete ban, of wild animals in Harris County.

The Harris County Regulations (HCR) are given force by both section 240 of the Texas Local Government Code, specifically, § 240.002, and Subchapter E of Chapter 822 of the Texas Health & Safety Code, §§ 101-116, referenced earlier.¹⁴⁵ Interestingly, the HCR state that their purpose, along with protecting the “health, safety and general welfare of people in Harris County,” is to “protect the health, safety and general welfare of animals kept in Harris County.”¹⁴⁶ In addition, the regulations state that they do not have broader power than state or federal laws with respect to keeping wild animals. While a Texas court (or the United States Court of Appeals for the Fifth Circuit) has, to the authors’ knowledge, not ruled, as did the Seventh Circuit in *DeHart*, that local ordinances have the authority to regulate their locales regardless of conflicts with state provisions on the topic, the HCR unequivocally provide that they do not “serve to legalize any activity otherwise prohibited under the laws of Texas or the United States.”¹⁴⁷

With respect to the structure of enforcement, just as with the federal and Indiana laws considered, Harris County’s Public Health & Environmental Services Department, through its Animal Control Division, is authorized to enforce the HCR and to issue citations in Harris County for violations therein.¹⁴⁸

To begin, the HCR make a distinction between “wild animal” and “dangerous wild animal,” but there is overlap between the two categories: “[T]he term ‘dangerous wild animal’ may include animals designated as ‘wild animals’ in these regulations and the Commissioners Court may find that a ‘wild animal’ is also a ‘dangerous wild animal.’”¹⁴⁹ In general, the list of

¹⁴¹ See *id.* at secs. 6-58.

¹⁴² Harris County’s Regulations, *supra* note 133.

¹⁴³ See 36 Tex. Prac. § 35.4A.

¹⁴⁴ See TEX. LOC. GOV’T. CODE ANN. § 240.002(b) (Vernon 2004).

¹⁴⁵ See Harris County’s Regulations, *supra* note 133, at sec. 1(A).

¹⁴⁶ *Id.* at sec. 1(B).

¹⁴⁷ *Id.* at sec. 1(C).

¹⁴⁸ *Id.* at sec. 1(D).

¹⁴⁹ *Id.* at sec. 3, *Definitions*.

‘dangerous wild animals’ is meant to be congruent with the list provided for in § 822.101 of the Texas Health & Safety Code,¹⁵⁰ while a list of animals considered ‘wild animals’ which “are determined to be dangerous . . . pursuant to Texas Local Government Code § 240.001” is provided with the HCR as an appendix, and is a more generalized categorization of animals considered to be wild, but not dangerous.¹⁵¹ In any event, for the purposes of this article, the distinction is immaterial to our analysis, as the animals referred to in the HCR are those we are addressing in this piece. Accordingly, we employ the term ‘wild animal’ to encompass both categories outlined in the HCR.

It is worth noting again that the provisions of the city, county, state, and federal codes do not operate in a vacuum, as these provisions periodically cross-reference one another. For instance, the HCR require that, in the application for a certificate of registration, an owner or custodian of the wild animal provide a copy of any USDA license(s) s/he may have,¹⁵² and further, require that, in an application for renewal, a veterinarian find that the “care and treatment of the animal of the owner meets or exceeds the standards prescribed under subchapter 822 [of the Texas Health & Safety Code].”¹⁵³ Requirements for primary enclosures for wild animals in Harris County must conform to standards outlined in § 822.111 of the Texas Health & Safety Code.¹⁵⁴ And actions undertaken by Harris County’s Animal Control Division must conform to requirements of the Animal Welfare Act.¹⁵⁵ Similarly, the HCR refer to the Texas Local Government Code,¹⁵⁶ the Texas Penal Code,¹⁵⁷ and the Texas Health and Safety Code, as well.¹⁵⁸

The provisions of the HCR are fairly detailed. To begin, custodians of wild animals must keep the animals at least 1,000 feet from child care facilities, schools and residences, and must provide a primary enclosure in which to house the animals, both for public safety, as well as for the animals’ welfare.¹⁵⁹ The primary enclosure must adhere to the requirements outlined in §822.111 of the Texas Health & Safety Code, which generally provide that the enclosure must be of sound construction in order to secure the animal’s well-being, to protect her from injury, and to prevent her from escaping.¹⁶⁰ Among other things, the primary enclosure must, specifically, provide adequate temperature regulation for the animal’s well-being,¹⁶¹ be properly lit to permit inspection and cleaning,¹⁶² be equipped with adequate electrical power and potable water,¹⁶³

¹⁵⁰ *See id.*; *see also* TEX. HEALTH & SAFETY CODE ANN. § 822.101 (Vernon 2004).

¹⁵¹ *See* Appendix A to the HCR, “Wild Animals That Are Dangerous and in Need of Control in Harris County, Texas.” The HCR provides that the list “may be amended from time to time as [the Harris County] Commissioners Court finds necessary to protect human health and safety.” Harris County’s Regulations, *supra* note 133, at sec. 3.

¹⁵² *See* Harris County’s Regulations, *supra* note 133, at sec. 5(E)(3).

¹⁵³ *See id.* at sec. 5(E)(4)(b).

¹⁵⁴ *See id.* at sec. 8(A).

¹⁵⁵ *See id.* at sec. 9(J).

¹⁵⁶ *See id.* at sec. 11(A) and Appendix.

¹⁵⁷ *See id.* at sec. 8(N).

¹⁵⁸ *See generally id.*

¹⁵⁹ *See id.* at secs. 4(A) and (B).

¹⁶⁰ *See id.* at sec. 8(A).

¹⁶¹ *See id.* at sec. 8(B).

¹⁶² *See id.* at sec. 8(D).

¹⁶³ *See id.* at sec. 8(E).

and, at a minimum, provide “floor space at least six times the area occupied by the animal when in a normal standing or reclining position.”¹⁶⁴

In addition, briefly, the HCR provide that custodians must obtain a Certificate of Registration (COR),¹⁶⁵ valid for up to one year,¹⁶⁶ in order to keep a wild animal. The regulations require detailed information regarding the owner and animal,¹⁶⁷ as well as a sworn statement that the custodian has liability insurance for the animal, is not violating pertinent deed restrictions, and plans to house the animal in a location in compliance with the HCR,¹⁶⁸ in order to be issued the certificate. In addition, the HCR mandate that the COR be prominently displayed.¹⁶⁹

The HCR also delineate situations in which one’s COR can be denied or revoked,¹⁷⁰ or those in which the animal can be restrained or impounded.¹⁷¹ In addition, the regulations outline procedures that custodians must follow should their animal escape or attack a person.¹⁷² And finally, the HCR describes the enforcement procedures in place that address violations of these regulations.¹⁷³ In general, Section 12 provides that “[a]n offense under this section is a Class C misdemeanor as authorized pursuant to §240.003 of the Local Government Code,”¹⁷⁴ and the HCR grant the county attorney authority to file an action in District Court to enjoin a violation or threatened violation of the regulations.

Most pertinent to the present article, however, is the treatment accorded to the animals under the HCR. The list of protections provided by the regulations began earlier under the description of the primary enclosure requirements. In continuation of those, the HCR require that the primary enclosures be kept clean, sanitary, and well drained to prevent attracting rodents, vermin, or other disease-carrying pests.¹⁷⁵ In addition, the enclosures must periodically be cleared of food, biological (and other) waste, the bedding must routinely be changed, and all other disease hazards should be handled in accordance with any applicable federal, state, and county laws in order to reduce pollution, prevent disease and public health nuisances, and protect the environment.¹⁷⁶ It would appear then, that at least on paper, the drafters of the HCR gave some considered thought to the animals’ welfare. As is very often the case, the difficulty arises in the *consistency* of enforcement.

¹⁶⁴ See *id.* at sec. 8(G).

¹⁶⁵ See *id.* at sec. 4(D).

¹⁶⁶ See *id.* at sec. 5(G).

¹⁶⁷ See *id.* at sec. 4(C).

¹⁶⁸ See *id.* at sec. 4(D).

¹⁶⁹ See *id.* at sec. 7.

¹⁷⁰ See *id.* at sec. 6.

¹⁷¹ See *id.* at sec. 9.

¹⁷² See *id.* at sec. 10. These involve notifying the proper authorities and assuming responsibility for any resultant damage or injury consequent to the animal’s escape.

¹⁷³ See *id.* at sec. 11.

¹⁷⁴ See *id.* at subsection (A).

¹⁷⁵ See *id.* at subsection (J).

¹⁷⁶ See *id.* Note that the animals’ welfare is not specifically mentioned in this subsection, though it recurs as a theme throughout the HCR.

VII. THE MACHINATIONS OF LICENSING, AND HOW ANIMALS ARE TRAPPED BETWEEN FEDERAL & STATE LAWS¹⁷⁷

As we have already seen, the licensing and regulatory world is not designed for the convenience and protection of nonhuman animals. Animals in captivity cannot “call 911,” so to speak, when being mistreated, neglected, starved, or abused. They must depend on our system of regulations and laws to insure their well-being, yet often those laws fail, as they did with Little Bear. An example of the slippage between federal and state laws would occur in the case of an owner holding a USDA permit for possession of “exotics” who cannot, however, be investigated on allegations of neglect or abuse by the applicable state agency, which, because of local proximity, might actually be better situated to follow up on complaints but lacks the authority to do so. Similarly, local animal shelters are generally not in a position to handle problems and complaints regarding non-domestic animals. And, sadly, as explained in the earlier discussion of the IN DLE, there is no official system for cross-reporting. While informal exchanges between state and local authorities occasionally take place in feed stores and casual encounters, there is no clear conduit or mandatory reporting between, say, a state DNR officer and a USDA inspector.

Typically, state agencies such as DNRs, are charged with overseeing native wildlife, yet they are given no authority over the keeping of exotic animals. Those animals not covered by a state’s statutory or regulatory authority would then, presumably, default to federal jurisdiction. However, as we are about to detail, such a net does not always exist at the federal level. And for cases in which federal jurisdiction does ensue, the constraints are so lenient that the putatively regulated animals can still be left to suffer.

A contributing problem is that it is relatively inexpensive and easy to acquire USDA licenses. The USDA offers three kinds of licenses, and then only for certain kinds of animals under certain conditions: Class A, which allows owners to sell animals raised at their facilities; Class B, which allows owners to broker or sell animals raised by another person; and Class C, reserved for exhibitors only. A key problem with this schema occurs in its application: owners of animals who should be regulated rarely fit easily into one category.¹⁷⁸

Once an owner has a license, it is very difficult to revoke it, unless the person fails to renew on time. Even incidents of non-compliance are often handled through a system of fines, rather than revocation, as evidenced in the earlier escaped bear incident with Little Bear’s owner Ms. X. And it goes without saying that unlicensed breeders and owners live completely outside the law, and their animals remain outside the scope of any legally enforceable protections.

¹⁷⁷ Much of the discussion and information in this section stems from telephone interviews both authors conducted with official APHIS representatives, including Jim Rogers, APHIS Spokesperson and Media Coordinator, and Darby Halladay, APHIS spokesperson, on Oct. 6 and 7, 2004.

¹⁷⁸ To apply for a USDA license, a prospective owner must fill out APHIS Form 7003-A under the AWA. This can be downloaded from the Internet and must be filled out and submitted with a nominal application fee. After receiving the form, the USDA sends out an inspector to view the facility to determine compliance with the Animal Welfare Act. In addition, the prospective owner and the veterinarian must complete and sign APHIS Form 7002, describing strategies for disease prevention and control, nutrition, safety, and veterinary care, which also includes yearly visits to the premises by the vet. This form is kept by the owner and must be available for any on-site inspections by the USDA inspector.

A. Scope

All this adds up to the fact that the USDA, the federal administrative agency that enforces the Animal Welfare Act (AWA),¹⁷⁹ holds no jurisdiction over private ownership alone of exotic animals.¹⁸⁰ The ownership must be coupled with other activity. According to APHIS, the USDA's jurisdiction is limited. The agency "regulates activity of a certain type," namely, the transportation, breeding for sale, exhibition of, and biomedical research on animals covered under the AWA,¹⁸¹ and issues licenses and registrations to applicants therein. In addition, whether these animals are exotic or non-exotic is of little significance to the AWA. As stated, what matters is the activity itself, which, in the majority of cases, is of a commercial nature.¹⁸²

B. Enforcement and Penalties for Violations

It is the responsibility of the USDA's Animal Care division to perform compliance inspections of licensed and registered facilities.¹⁸³ To that end, AC employs Veterinary Medical Officers and other animal care inspectors (collectively, "Inspectors"), who, at least once each year, visit licensees' facilities unannounced.¹⁸⁴ APHIS requires owners and managers of licensed and registered facilities to comply with certain standards regarding, among others, housing, ventilation, lighting, interior surfaces, primary enclosures, sanitation, recordkeeping, adequate

¹⁷⁹ The Animal Welfare Act, instituted in 1966 (as the Lab Animal Welfare Act) and amended several times since, is concerned primarily with the housing needs and the humane, veterinary, and nutritional care of covered animals. It has been said of the Animal Welfare Act: "[T]he federal Animal Welfare Act, which provides the primary regulation of the use of animals in experiments, does little beyond regulating issues of animal husbandry. It explicitly provides no restriction of what can be done to animals, or how it can be done." Robert Garner, *Animal Rights and Animal Welfare*, ANIMAL RIGHTS LAW PROJECT at http://www.animal-law.org/library/araw_iv.htm. Garner, who is clearly sympathetic toward welfarist reforms, correctly observes that the aim of the federal Act "is not primarily to regulate the kind of procedures adopted but only the supply and care of animals destined for research institutions (purchase, transportation, housing, and handling)."

¹⁸⁰ Therefore, businesses or individuals who collect animals for their "private collections," for instance, are exempt from USDA regulations. Further, as noted earlier, it is a subagency of the USDA, APHIS, that assumes responsibility for matters arising under the AWA, primarily through its Animal Care division.

¹⁸¹ Large groups of animals are not covered under the AWA. Along with exotic animals possessed privately, most notable among exempted animals are farm and a large swath of research animals, as well as "cold-blooded" animals. See David Favre, *Overview of U.S. Animal Welfare Act* (May 2002), ANIMAL LEGAL & HISTORICAL CTR., at http://www.animallaw.info/articles/ovusawa.htm#BM5_Which_Other_Animals.

¹⁸² According to Mr. Halladay, if, for example, the custodian of a regulated animal took the animal to a shopping mall to allow people to have their photographs taken with the animal, the USDA would retain jurisdiction even if no money changed hands. Other examples of regulatory jurisdiction would include a magician who owns rabbits he uses in his public performances. Though rabbits are not "exotic" under most any definitional scheme, their mere exhibition automatically subjects the magician to USDA jurisdiction. Conversely, a rock star who decides to have a pet lion for "fun," but who doesn't exhibit the animal or use her for any other regulated activity, would fall outside the USDA's purview.

¹⁸³ See *Compliance Inspections*, APHIS, available at <http://www.aphis.usda.gov/oa/pubs/inspect.html>.

¹⁸⁴ See *id.* Inspectors are distributed territorially throughout the United States based on the concentration of licensees and registrants. According to APHIS spokesperson Jim Rogers, there are 100 inspectors nationwide who make 10,000 annual inspections at USDA-licensed facilities.

veterinary care, and the handling and transportation of regulated animals.¹⁸⁵ If the inspectors discover violations, a number of steps are taken, depending on the severity of the violation.

First, inspection reports are prepared for every facility visited, regardless of the existence of violations,¹⁸⁶ which are then sent to the appropriate APHIS office for further review.¹⁸⁷ The regional office director, in conjunction with personnel at APHIS headquarters,¹⁸⁸ then determines the existence and severity of any possible violations. If authorities find violations, they then contact Investigative and Enforcement Services (IES), which exists independently of AC. IES further investigates the matter in question and submits a report to APHIS' Office of General Counsel (OGC), which can then issue a legal complaint against the violating licensee based on the findings before it.¹⁸⁹

In extreme circumstances, where inspectors discover violations so flagrant as to require immediate action, under the authority of AC, they can act in conjunction with local law enforcement authorities to confiscate animals. In fact, the AWA does not provide APHIS with warrant powers. Therefore, it nearly always falls to local authorities, whatever be their office, to confiscate the animals and transport them to the custody of an APHIS-approved licensee. In the case of Little Bear, the DNR had no authority over his welfare and no resources to aid him. Had the DNR officer on duty not made the imaginative leap to transport Little Bear to the local rehabilitation facility, WildCare, the only other option would have been to euthanize him on the spot.

In cases where violations occur outside of the time frame of the inspectors' annual visit, APHIS responds to information supplied by ordinary citizens who report possible AWA violations. Regardless of where people place a call, whether to APHIS, or to their local animal care bureaus, or even their local law enforcement authorities, APHIS maintains that there is a general understanding that the entity with jurisdiction (in the case of AWA violations, APHIS) will be contacted.

Despite these regulations and implementing guidelines, the problems engendered by such a system are evident. Though inspections ought to be carried out annually, in reality, inspections are conducted on a risk level assessment made by USDA inspectors.¹⁹⁰ If, for instance, a licensed facility is assessed as "low risk," inspections would occur less frequently, perhaps once every eighteen months, rather than every year. Conversely, facilities rated as higher risk could be visited more often. The troubling issue that persists, nevertheless, is, in Jim Rogers' words, "the inspection is the picture of what's happening at the time of inspection."¹⁹¹ The degree to which licensees and registrants comply with USDA regulations during the time between

¹⁸⁵ *See id.*

¹⁸⁶ In the case of minor, reparable violations, inspectors often require violating licensees to remedy the violation within a short time and return on the prescribed deadline date to verify compliance. In cases of easily remediable violations, inspectors might even require on-site reparations.

¹⁸⁷ There are two regional APHIS Animal Care offices, one for states west of the Mississippi (Fort Collins, CO) and one for states east of the river (Raleigh, NC).

¹⁸⁸ APHIS headquarters are located in Riverdale, MD. Unlike the regional APHIS AC offices just mentioned, which deal only with Animal Care, the MD headquarters govern all APHIS matters.

¹⁸⁹ This process, while occurring in the context of an administrative agency, follows the same trajectory as that in any legal proceeding. That is, the OGC facilitates service upon the violator, who must then answer the complaint, and so forth.

¹⁹⁰ APHIS spokesperson Jim Rogers explained this point.

¹⁹¹ *Id.*

inspections, which can often be over a year, is something the system is currently unable to monitor or enforce. What is particularly troubling is that if a licensee has a conviction for past violations, there exists no reporting mechanism from which inspectors can learn of this history. They would simply have to hear of it through some other informal source.¹⁹²

In addition, as learned from both APHIS spokespersons interviewed, as well as from APHIS's own on-line guidelines,¹⁹³ APHIS highly stresses compliance over any kind of penalty implementation ("the goal is not to punish, but to bring people into compliance").¹⁹⁴ While, on one hand, this emphasis on compliance is immediately useful, the question remains as to what happens between the time of an on-the-spot compliance and the next inspection, which could occur weeks, months, or even a year, later.

Should a case reach the penalty stage, penalties for violating the AWA are issued by the assigned Administrative Law Judge (ALJ) and range, as noted, from imposed fines¹⁹⁵ all the way to, in cases of egregious violations, criminal prosecution.¹⁹⁶ As there are no rigidly defined fact situations mandating specific penalties, ALJs make case-by-case determinations of the severity of violations and can suspend, or even revoke, licenses.¹⁹⁷ On the whole, however, more than having to dole out penalties, the principal concern and desire of APHIS is to have licensees comply with the AWA. Therefore, the majority of violation cases focus on getting licensees to fall into compliance. What this starts to feel like to many animal advocates is a system of "bad foster care." It would seem, instead, that pursuing the spectrum of available legal remedies, would, in the long term, increase education and offer a deterrent effect, thereby providing for better and more humane care for the animals in question, which, in turn, would contribute to greater public safety.

C. Federal and State Interplay

The interplay of the federally based AWA and state regulations could be said to mirror, in a minimal way, that of the United States Constitution and respective state constitutions in that, just as state constitutions can broaden, as well as provide for, different rights granted in the

¹⁹² *See id.*

¹⁹³ *See generally* APHIS, available at <http://www.aphis.usda.gov>.

¹⁹⁴ Telephone interview with Jim Rogers, APHIS Spokesperson and Media Coordinator (Oct. 6, 2004).

¹⁹⁵ The fining structure for USDA violations provides for a penalty of \$2,750 per count, per animal, per day, although if a violation affecting 10 animals is at issue, for instance, only one count will be applied. A violator charged with one count for a feeding infraction, as an example, could be fined \$2,750 multiplied by 365 days for a year in which she transgressed USDA rules. One can see how this fine structure, in theory, would strongly encourage immediate and regular compliance.

¹⁹⁶ While the OGC prepares its complaint in a given case, the Department of Justice, through locally based United States Attorneys, could simultaneously also elect to institute criminal proceedings against violating licensees, though this rarely occurs. Mr. Halladay indicated that, again, no firm criteria exist for such determinations. All violations are evaluated on a case-by-case basis.

¹⁹⁷ Another APHIS employee (who prefers to remain anonymous) stated that AC officials are often familiar with local animal care and rescue groups in various regions, so that if it becomes necessary to confiscate animals, they have mechanisms set in place to which they can turn for support. Interestingly, this employee also made a point of indicating that animal welfare or interests were "very low on the totem pole" where the AWA and its enforcement are concerned. Telephone interview with anonymous APHIS employee (Oct. 5, 2004). It is worth pointing out that the nature of these phone interviews is largely informal and the information gleaned can often be a function of fortuitousness and timing.

federal Constitution,¹⁹⁸ so local laws regarding the private possession of wild animals can often be far more expansive than federal authority. In this way, state regulations can exercise wider jurisdiction, as well as address broader issues, than those provided in the AWA.

As already mentioned, the USDA regulates the exhibition of animals. An exhibitor may apply for and obtain a USDA license to carry out an animal exhibition enterprise, but if she resides in a city (such as the city of Houston, as discussed earlier) which prohibits the private possession of exotic animals, and her situation does not fit into one of the exemptions provided for in that city's code of ordinances, she would be precluded from running her exhibit.

As APHIS AC spokesperson Darby Halladay states, "In general, there is nothing in the AWA that prohibits states from doing anything to USDA licensees. If a state or local jurisdiction has more stringent requirements than the AWA, then USDA licensees have to meet those requirements."¹⁹⁹ By definition, Mr. Halladay notes, the AWA and state provisions governing the private possession of exotic animals do not usually overlap, much less conflict, because the AWA, as indicated above, is completely silent on the private possession of exotic animals as pets. Contrarily, as we have seen, many jurisdictions maintain stringent provisions regarding the possession of exotic or wild animals, regardless of the function the animals or the keeping of them would perform.

The problems inherent in this interplay are grave. Simply put, while the federal and state provisions addressing exotic animals in a variety of domains, particularly in terms of private possession, generally co-exist without friction and tend to cover most issues that might arise with respect to such animals, the great potential for "slippage" leads to the tragic, but not uncommon, cases like those of Little Bear. Let us explore in greater detail what occurred in that case.

Ms. X, a USDA licensee, allegedly purchased Little Bear from another USDA licensee, and, as pointed out earlier, at the time of the purchase, Little Bear was in good health. Because Little Bear was a non-native animal, Indiana laws regarding the private possession of animals like him simply did not apply. In fact, Little Bear could well have been with his new custodian without the benefit of any regulation whatsoever. Because Ms. X exhibited the animals in her possession, however, she was required to obtain a USDA license. Had she merely kept Little Bear and her other animals as pets, based on the regulatory scheme delineated in this essay, no rules, neither federal nor state, would have provided for even the most minimal standards or inspections for these animals.

As it happens, Ms. X is a USDA licensee, but that fact makes Little Bear's fate all the more troubling. Indiana sheriff's deputies discovered Little Bear and reported their findings to the state DNR. The DNR conservation officer did everything in his power to help Little Bear, including contacting the USDA to ask them to revoke Ms. X's license. Because Indiana had no jurisdiction in the matter, the officer's only recourse was to call the applicable licensing authority, the USDA. The snarl there is that with so little oversight and so many licensed facilities, USDA officials had no evidence of Ms. X's other alleged violations, and consequently did not have reason or authority to pursue confiscating her license. What they did have on record, however, was a citation for a bear she owned which had escaped her custody a few years before and had to be shot. Even so, the USDA required at that time only that Ms. X pay them a fine (less than \$1000), which she did, and which directly went into the United States Treasury.

¹⁹⁸ See, e.g., *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293 (1982); and *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1981).

¹⁹⁹ Telephone interview with Darby Halladay, APHIS AC spokesperson (Oct. 7, 2004).

While limited charges have been filed in Little Bear's case, it remains to be seen what will happen.²⁰⁰ Ms. X's mistreatment of Little Bear and continued possession of other animals under her roof represents a far more frequent occurrence than those who care about animals and value justice, would either like or be willing to believe.

The lapses of clarity in the regulations and the weaknesses inherent in the federal/state interplay can be illustrated by the challenges associated with determining who needs to do what, when, and how. The following communication with Janice Turner, a Certified Wildlife Rehabilitator with Indiana's WildCare organization, drives home this problem:

Now, I have a licensing story to share with you. When I first was asked to take Bandit, the Arctic Fox who was so sick when I got him, I called the state office of Fish & Wildlife and asked Linnea Petercheff to send me an application for a possession permit for an exotic animal. When I got the application, I completed it and then called the DNR officer at Paynetown post who approved my rehab permit and asked him to come and inspect Bandit and the kennel we had put up for him. He came to my house and checked everything out and then signed off on the possession application. I then mailed it, along with the licensing fee, to Linnea. A few days later it came back to me with a note saying that in order to keep an Arctic Fox I needed a federal permit, not a state permit. So I called F&W and asked them who [sic] I needed to talk to in order to apply for a federal permit. The first number I was given reached an answering machine, so I left a complete message and waited for three months for a return call. Then I called F&W again and was given another number, this one with a 703 area code, for a Dr. Kirsten. By this time I was getting a bit frustrated. But I called Dr. Kirsten and he asked what I planned to do with Bandit. I explained that he hadn't had a very good life until then (he even had a broken leg as a baby and the owners didn't take him to a vet) and all I wanted to do was to give him a permanent home where he could be happy for the rest of his life, however long that turns out to be. That's when he told me that I don't need a permit for that. So I can keep exotic animals as pets and not need a permit for them. I own two Arctic Foxes and one Pearl Fox, and unless I start doing ed[ucation] presentations with them, I can't get a permit for them. If they take part in any of our education programs, then they must be listed on WildCare's federal permit for education animals. Other than that, no one checks to see if they have been spayed or neutered (yes) or if they appear to be healthy (yes) or if they have their shots (yes).²⁰¹

Ms. Turner was one of the principal rehabilitators who worked with Little Bear upon his arrival at WildCare, and, as indicated by the letter, is a conscientious caregiver and rehabilitator. Here we have an example of an owner who wanted to comply with whatever regulations—state, federal, or both—existed in order to ensure the well-being of her animals, but was met with obstacles in her concerted efforts to obtain direction or cooperation from government authorities. If even determined people who seek to comply with laws can 'get away with' not abiding by these laws, it would clearly be exceedingly easy for any number of wild animal possessors to

²⁰⁰ The latest on Ms. X's case has been documented at the Animal Legal Defense Fund's website. See ALDF, <http://www.aldf.org>.

²⁰¹ Email from Janice Turner, WildCare, (Oct. 6, 2004).

evade laws and regulations otherwise applicable, on paper, to such private possession. Our research has indicated that Ms. Turner's story is not an exceptional circumstance.

IX. A BRIEF OVERVIEW OF RECENT AND PENDING LEGISLATION, AND SAMPLE PROPOSED MODEL LEGISLATION

Unfortunately, the ease with which custodians of exotic animals can sidestep the law with respect to their possession of these animals is not limited only to weaknesses with the USDA and its purported enforcement of the AWA. The Endangered Species Act, for instance, which deals more with importation than possession within the country, is intended to protect tigers of all ancestries. Mixed-breed, or "generic" tigers, however, are subject to less stringent regulations.²⁰² While purebred tigers cannot legally be sold through interstate commerce, according to Tim Santel, an agent with the United States Fish and Wildlife Service, the agency assigned to enforce the ESA, mixed breeds may be sold under some circumstances.²⁰³ In addition, although owners of purebred tigers are required to obtain federal permits, owners of generic tigers are not so required. As a result of such loopholes, there is created, in the words of Craig Hoover, deputy director at the World Wildlife Fund, a "second-class citizen of endangered species."²⁰⁴

Nonetheless, on the positive side, legislation in recent months has made progress toward stricter regulation of the private possession of exotic animals. On December 19, 2003, President Bush signed into law an amended version of the Lacey Act,²⁰⁵ known as the Captive Wildlife Safety Act.²⁰⁶ This law prohibits the interstate and foreign commerce of dangerous exotics such as lions, tigers, leopards, cheetahs, jaguars, and cougars to be used as pets, and makes no distinction between pure-bred and hybrid animals.²⁰⁷ While the law does make inroads on the way to preventing the practice of keeping exotic felines as pets in this country by addressing the interstate and foreign movement of these animals, it does not prevent states from continuing to breed and sell large cats within their borders. The legislation does, nevertheless, provide a positive stride toward the protection of exotic animals.

Even more recently, on November 3, 2004, Governor Pataki of New York signed into law an exotic pets bill that bans the private sale and possession of wild and dangerous exotic animals, including tigers, lions, cougars, bears, wolves, alligators, and non-human primates. As of this writing, similar bills are pending in the legislatures of Arkansas, Minnesota, Washington state, and Oregon.²⁰⁸

In the meantime, organizations such as the Animal Legal Defense Fund (ALDF), Animal Protection Institute (API), and the Captive Wildlife Animal Protection Coalition, have as their

²⁰² Deborah Sullivan Brennan, *Raid Uncovers Extent of Traffic in Big Cats*, LOS ANGELES TIMES, June 1, 2003, at B6.

²⁰³ *See id.*

²⁰⁴ *See id.*

²⁰⁵ 16 U.S.C. §§ 3371-78 (2004).

²⁰⁶ Public Law No. 108-191 (2003).

²⁰⁷ *See* 16 U.S.C. § 3371(g) (2004); and 16 U.S.C. § 3372 (a)(2)(C), (e)(1)-(3) (2004).

²⁰⁸ *See, e.g.*, CAPTIVE WILD ANIMAL PROTECTION COALITION, at <http://www.cwapc.org/legislation/state.html> for the latest news on such legislation.

mission, among other projects, the protection of captive wildlife in this country. ALDF and API, in addition, have drafted model proposed legislation for the reference of federal, state, and local authorities, in order for these to shape their laws to the end of protecting privately possessed exotic animals. These organizations' efforts provide a strong foundation from which the public and lawmakers can work to improve the lives of animals, human and non-human alike.

X. CONCLUSION

Little Bear is only one of thousands of privately owned wild or exotic animals whose fate involves senseless and unnecessary neglect, abuse, cruelty, and death. Because of the special characteristics and needs of wild and exotic animals, regardless of whether they were snatched from the wild or raised in captivity, they simply *do not* make good pets. Unlike cats and dogs, who have a long history of domestication and a symbiotic relationship with human beings, wild and exotic animals remain wild, despite all efforts (including cruelty) to domesticate or tame them. In captivity, many wild animals are left to suffer, while a large portion simply die.

But assuming that it is legal to own nonhuman animals like Little Bear, the laws and licensing schemes governing private ownership of wild and exotic animals continue to focus almost exclusively on human safety and particular activities related to the use of those animals, while remaining indifferent to the safety and well-being, not to mention happiness, of the animals themselves. An underlying philosophy militating against the passage of stricter laws to protect wild animals is that Americans should have the right to do what they want with their own property. This "unbridled freedom" paradigm is deeply flawed. All rights and privileges must be balanced by duties and obligations for no right or privilege ever absolute. While current laws and regulations in the United States do permit individuals to possess wild or exotic animals privately, this legally sanctioned activity is no more a "right" in the absolute sense than the ability of slave owners to possess human beings as chattel was in the 19th century. As long as animals are considered property in the eyes of the law, there will always be limits to their protection and welfare.

Little Bear was a non-domesticated animal "owned" legally under a USDA license whose predicament surfaced only by accident. Despite his owner's history of violations, Little Bear was offered no protections. Little Bear's story concludes unhappily as, after months of trial postponements and continuances, the case charging Ms. X with neglect of Little Bear was thrown out of court. According to the conservation officer who confiscated the bear cub, the court dismissed the case because in Indiana it is illegal to enter a home without a search warrant—even to rescue an animal that is suffering. With respect to non-human animals, the court appears to be saying that not even such "exigent circumstances" as cruelty inflicted on an animal justify a search without a warrant.²⁰⁹

One solution to the plight of wild animals kept in captivity is to implement a federally-sanctioned ban, making it illegal to breed, sell, or possess wild or exotic animals. Under such a ban, those animals currently owned privately could be grandfathered in, but further breeding,

²⁰⁹ At the time of this writing yet another confiscated wild animal, this time a skunk, once "owned" by Ms. X, had to be euthanized by the local rehabilitation center because of failing health. This update, in addition to the most recent information on the Little Bear case, was received in an informal email forwarded to Alyce Miller on June 30, 2005, by one of the volunteers at WildCare who worked closely with Little Bear.

selling, and buying would be made illegal, and oversight of conditions would be increased. Further exceptions to the ban would include those licensed sanctuaries engaged in legitimate rescue and rehabilitation efforts.

More moderate solutions would involve stricter regulations, heightened oversight, more stringent qualifications for buying, selling, breeding, and owning wild animals, and an increase in the number of formal inspections by trained inspectors. Federal, state, and local officials would engage in cross-reporting and other forms of communication regarding the status of the wild animals in private possession. The gaps in regulations would be closed significantly by a reorganization of statutory schemes, and a standardization of federal, state, and local laws. In addition, the bar for minimal conditions now required for keeping a wild or exotic, regardless of the status of the animal or activity associated with it, would be raised and implemented to match the standards of legitimate sanctuaries and/or AZA standards for accredited zoos.

Implementing these sorts of measures requires, to be sure, an entire re-education of a culture, and the adoption of an ideology based not on “possession,” but on a notion of compassionate stewardship. Until we as a society recognize the value of all life and incorporate that philosophy into our legal system, we will continue to perpetuate the suffering of nonhuman animals in the name of rugged individualism, egotism, profit, and even misguided affection.