

the Animals' ADVOCATE

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Volume 20 Number 2

THE QUARTERLY NEWSLETTER OF THE ANIMAL LEGAL DEFENSE FUND

INSIDE:

EPA's Deadly
"Food Safety"
Plan: Illegal,
Immoral,
Unreliable

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Standing In Barney's Shadow

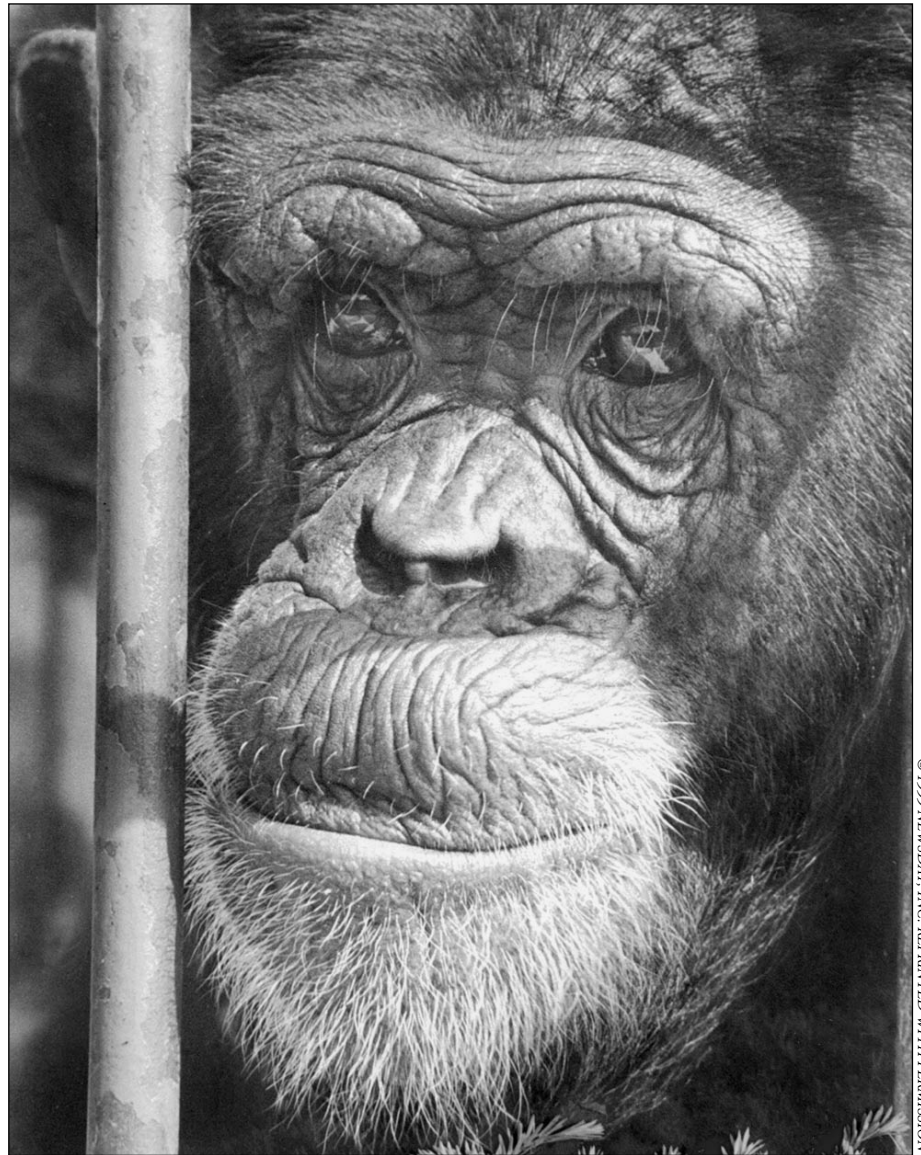
*How one chimp flew the coop
— and crashed the courtroom*

Perhaps Barney just couldn't wait any longer for justice.

Barney, a 19-year-old chimpanzee born and reared in captivity, had spent more than half his life behind the bars of the Long Island Game Farm when he leapt into the annals of legal history in 1996. One of his keepers would later describe him as "brilliant." But his keepers never had a clue about Barney.

Chimps are extraordinarily social animals. Barney was held in virtual solitary confinement, his only company the throngs of strangers who came to view him through a chain-link fence. On behalf of Mark Jurnove, a frequent visitor disturbed by the isolation and neglect that marked Barney's daily life, ALDF sued the U.S. Department of Agriculture for willfully ignoring the Animal Welfare Act, which since 1985 has directed the agency to protect the "psychological well-being" of primates.

U.S. District Judge Charles Richey agreed, blasting the department's "abject failure" to set down enforceable rules for roadside zoos and research labs. More significantly, his landmark ruling gave human observers "standing," the right to go to court to assure basic standards of humane treatment for animals covered under the law.



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Predictably, the government appealed, insisting, as it had for over a decade, that the only law that mattered was the USDA's lumbering bureaucracy. Barney's case was still wending its way through the courts on June 5, 1996 — five years ago this spring
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**Barney at the Long
Island Game Farm,
before vaulting to
immortality in 1996**

For the **RECORD**

“Serious problems have happened in all five species cloned so far, and all are mammals, so of course it’s going to happen in humans....

You can dispose of these animals, but tell me, what do you do with abnormal humans?”

Rudolf Jaenisch, cloning pioneer, on the prospect of human cloning (*Washington Post*, March 7, 2001)

“Whether it’s Viagra, I don’t know, but the market is certainly down.”

Tina Fagan, Canadian Sealers Association, on flagging Asian demand for powdered male seal genitalia (*Boston Globe*, March 22, 2001)

Appeals
&
REBUTTALS

Message from the
PRESIDENT

Shadows and Light

When Congress amended the Animal Welfare Act in 1985 to provide for the “psychological well-being” of nonhuman primates, millions of caring people naturally assumed a problem had been solved. Not until 11 years later, when ALDF sued the U.S. Department of Agriculture for stubbornly refusing to implement the law, did some begin to grasp the true dimensions of the animals’ legal Catch-22.

It was disturbing enough to learn that the USDA could simply choose to ignore a congressional directive. But many were shocked to discover they were powerless to do anything about it: Not only did animals lack standing to sue, but so did we two-legged creatures whose tax dollars keep the \$60 billion agency afloat. Three years after ALDF went to court to demand more humane treatment for Barney (see story, front page), a federal appeals court upheld a limited right of standing under the Animal Welfare Act. How limited? Under current law, if you can’t show that you suffered personally by witnessing inhumane treatment of animals, you — and, more to the point, the animals — are out of luck.

That amounts to a free pass for most research labs, for example, where witnesses risk their livelihoods and their careers by speaking out. In any case, no matter how grotesque the actual experiments being conducted, the Animal Welfare Act is largely mute on the subject of research; its main thrust is to require labs to meet minimal housing and maintenance standards for the animals under their so-called care. To make matters worse, the USDA regards birds, rats and mice, the victims of 90 percent of all animal experiments, as beyond even the flimsy shield of the Animal Welfare Act. As for the billions of cows, sheep, pigs, chickens and other animals bred as commodities, the AWA clearly doesn’t apply.

Is there a light at the end of this dark tunnel? Not quite yet, I’m afraid. Every day, though, the outlines of the problem become clearer to greater numbers of people, and a bit of the darkness lifts. As I travel the country talking to people in all walks of life, I’m constantly struck by the way caring citizens are horrified to realize the indifference with which the American justice system treats (or mistreats) animals. They think the existence of anti-cruelty statutes and the AWA translates to adequate protection and enforcement, and are outraged to learn otherwise. And that outrage, I’m convinced, will help fuel the movement for legal rights for nonhuman animals.

In fact, it already is. John Stuart Mill once described the three phases of any social reform movement: ridicule, discussion and acceptance. As an animal lawyer, I can vividly remember being ridiculed, both in court and out. But I’m happy to report that hasn’t happened in a long time, thanks in part to the remarkable educational value of high-profile cases like Barney’s. We’re well into the discussion phase now, and it won’t be long before we reach acceptance.

Most people of good will already believe “there oughta be a law.” As more and more of them realize what it means for animals to lack basic legal rights, they won’t merely support change. They’ll insist upon it.



For the animals,

Steve Ann Chambers

Steve Ann Chambers, President

Have something to say about animal rights? Want to praise or admonish us for something *we’ve* said?

With the next issue of *The Animals’ Advocate*, we plan to begin publishing letters to the editor on a regular basis. Keep in mind that brevity is the soul of wit, and that we reserve the right to

edit for clarity and length. And please be sure to include an address and phone number where you can be reached. (We promise to print only your name and city.)

Send letters to: Editor, *The Animals’ Advocate*, c/o Animal Legal Defense Fund, 127 Fourth St., Petaluma, CA 94952.



After a Timeout, Moment of Truth Nears for EPA Animal Testing Plan

In mid-January, as the moving vans idled outside the White House, federal regulators found themselves racing the clock to nail down an ambitious, long-delayed proposal to test the safety of thousands of foods and chemicals.

For millions of animals, the clock is still ticking. And it could turn out to be a time bomb.

As *The Animals' Advocate* went to press, a federal court was nearing a decision on whether the animals will fall victim to the EPA's plans to identify pesticides and other chemicals that pose a threat to human endocrine systems. The program would take effect under a pending settlement between the EPA and the Natural Resources Defense Council, which had sued the agency to speed compliance with the 1996 Food Quality Protection Act.


On learning of the settlement agreement, ALDF — representing PETA, the Doris Day Animal League and Physicians Committee for Responsible Medicine — quickly sought to intervene in the case, objecting that the EPA planned to test as many as 87,000 different substances, using anywhere from 600,000 to 1.2 million animals for every 1,000 chemicals tested. Valerie Stanley, ALDF senior staff attorney, told the court that the plan — which was not made public until Jan. 19, 2001, the final day of the Clinton era — “lacks any detailed discussion of how the use of animals in testing will be reduced or eliminated.”

At a hearing in April, U.S. District Judge Charles A. Legge agreed that the EPA was proceeding with undue haste. He noted the 11th-hour deal with NRDC “was negotiated during a very short time period, without an opportunity for meaningful comment by even the interested parties who have already appeared in this case,” including the groups represented by ALDF. He ordered the agency to post details of the proposed settlement on its Website, and set a new court date for June 14.

A section of the 1996 food-safety law

requires the EPA to develop a program, “using appropriate validated test systems and other scientifically relevant information,” to identify substances known as endocrine disruptors, blamed by scientists for birth defects in a range of wildlife species and considered a potential hazard to human fetal development. Suspects include PCBs and thousands of other contaminants found in our air, water and food.

But while the health threats are real, the agreement between the EPA and NRDC fails to address alternatives to massive animal testing, such as first subjecting chemicals to a non-animal screen — a step that would actually speed up the process of identifying threats to human health. Moreover, the plaintiffs and ALDF have raised serious questions about the validity of the animal tests themselves, which may have little or no relevance for humans.

“We already know, from direct observation in natural settings, how endocrine disruptors affect certain wildlife species. We don't need endless reams of additional data from non-validated tests,” said Stanley. “The EPA can design chemical testing programs that will protect human health and the environment, without cruel and unnecessary animal testing. We mean to make sure that it does.” 

“We don't need endless reams of additional data from non-validated tests.”

Valerie Stanley,
ALDF senior
staff attorney

FOR MORE INFO

► For updates on this developing story, visit our Website at www.aldf.org.



Rose-Tu: Ugly memories, but a sizable victory

“The public needs to see that there will be consequences when you mistreat animals, even in a state-run zoo.”

Dana Campbell,
of ALDF's
Anti-Cruelty
Division

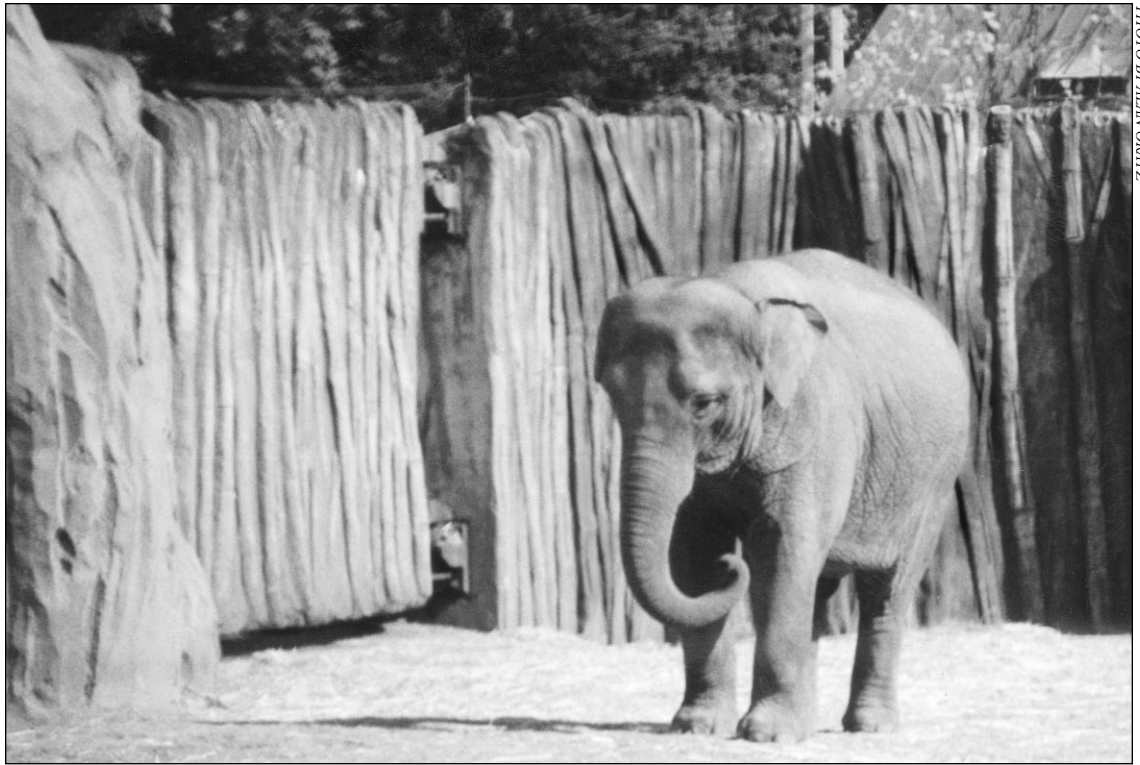


PHOTO BY ALAN ORATZ

Baby Elephant's Tormentor Won't Get Second Chance

Spurred by new evidence and steady pressure from ALDF, once-reluctant prosecutors won a conviction in March against a former animal handler accused of stabbing and sodomizing a baby elephant at the Oregon Zoo.


Convictions in such cases are rare. This one was doubly unusual because the district attorney's office in Multnomah County, Ore., had refused to bring charges in the case since it first made headlines in the spring of 2000. According to zoo records, Rose-Tu, a 6-year-old Asian elephant, received 176

puncture wounds from a metal-tipped stick meant to be used as a goad, and witnesses reported seeing elephant keeper Fred Marion attempting to insert the two-foot-long tool in the animal's anus.

Marion was fired, but prosecutors balked at going to court, insisting they could not prove Rose-Tu had suffered substantial pain.

The dramatic about-face came after Dana Campbell, an attorney with ALDF's Anti-Cruelty Division in Portland, put prosecutors in touch with a veterinary expert who could help show that Rose-Tu had suffered sufficiently to warrant pressing charges. Campbell was in regular contact with the district attorney's office in the weeks before the decision, and had earlier pressed to have the case reassigned to a more experienced prosecutor, a shift that was instrumental in winning the conviction.

“I'm extremely pleased they agreed to look at the case again and do the right thing by charging the animal handler with animal abuse,” Campbell said. “The public needs to see that there will be consequences when you mistreat animals, even in a state-run zoo.”

Marion entered a no-contest plea to a charge of second-degree animal abuse. He was sentenced to two years' probation and 120 hours of community service, and — in what may be the critical piece of the agreement — forbidden to have any contact with animals for the next two years. 

How to Keep Helping Animals For Dog Years To Come.

You dream of a better life for the animals. Your will can be the way. Through your bequest to ALDF, you can help us carry on your steadfast devotion to protecting *all* animals from cruelty, abuse and exploitation.

For estate planning information, write Joyce Tischler, Executive Director, Animal Legal Defense Fund, 127 Fourth Street, Petaluma, CA 94952-3005, or call (707) 769-7771.

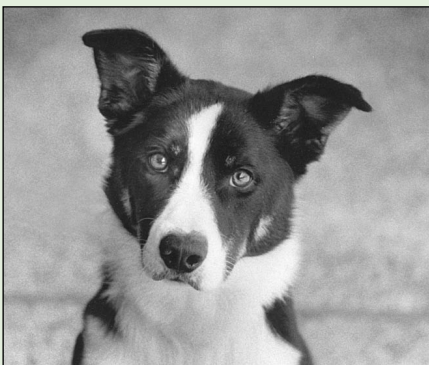


PHOTO BY SUMNER FOWLER/MARIN HUMANE

Barney

continued from page 1

— when he made his escape. Forgoing the tranquilizer gun, a game farm employee killed the 140-pound, 5-foot chimp by firing three rounds from a 12-gauge shotgun into his chest. Another employee had forgotten to lock his cage, and Barney easily scaled the 7-foot fence that sealed him off from the crowds, who on this warm afternoon included hundreds of schoolchildren. The frightened, flailing chimp, pursued and under physical attack, scratched two teachers, both of whom were treated at the scene. Only the facility's owner, with a three-inch bite on his arm, required a visit to the hospital.

So it's tempting to believe Barney was tired of waiting for justice. But it's far more likely that Barney was simply being a chimp, which meant seizing any opportunity — provided in this case by a careless employee — to flee a life of misery and deprivation. In that respect, even a “brilliant” chimp like Barney is no different from a rat in a lab, a cow in a so-called factory farm or a dog or cat in an abusive home. All experience pain. All suffer needlessly at the hands of humans. And since they can't demand justice for themselves, the task falls to those of us who — like that compassionate visitor to the Long Island Game Farm — empathize with their distress.

In 1999, a federal appeals court reversed Richey's order for tough new regulations, but upheld his far-reaching ruling on standing. And while enabling people to sue on behalf of animals was a historic step, it was only a step: The American justice system remains blind to the right of animals to have their lives and interests respected as inherently valuable. Defenders of the status quo flinch in feigned horror at the prospect of animals being treated “like people,” as though animal-rights advocates secretly want suffrage for sea turtles. The real issue, of course, is the right of animals to be *animals*. Everyone who shares a home with nonhuman animals knows they are living, feeling beings, not “things” to be used and discarded. When will the law catch up with the rest of America?


“The law is part of the problem,” declares Joyce Tischler, ALDF's co-founder and executive director. “It's also the heart of the solution.”

And the legal landscape, while still treacherous terrain for species other than *Homo sapiens*, is clearly changing. Over the past five years, thanks to a blizzard of custody and wrongful death and injury cases involving animals, judges have been forced to acknowledge the special status of companion animals as bona fide family members. More and more state legislatures are upgrading violent crimes against animals from misdemeanors to felonies, while abusers are more apt to be prosecuted and convicted. Young, idealistic attorneys-in-training are flocking to animal law courses at America's most prestigious universities, and will soon be

advancing the cause of animals with creative new legal strategies. Some, gavel in hand, may build on Judge Richey's precedent directly from the bench.

Beyond the courtroom, evidence of the nation's growing interest in animal issues is everywhere, cropping up even in prime-time TV programs like “The Practice” and “Popular.” And the sooner America recognizes that animals need the law's protection, the sooner our judges and politicians will provide it.

Meanwhile, the courthouse doors have been pried open, once and — eventually — for all. As the *New York Times* said in a front-page story in 1999, animal-rights lawyers are energetically “filing novel lawsuits and producing new legal scholarship to try to chip away at a fundamental principle of American law: that animals are property and have no rights.”

The story gave ALDF a starring role. But the hero was, and always will be, a lonely chimp named Barney. 

“The law is part of the problem. It's also the heart of the solution.”

Joyce Tischler,
ALDF executive director

Chimp Shot Dead In Missouri



A 28-year-old chimp named Suzy, a retired zoo animal housed at a refuge in a rural area south of St. Louis, was killed in April when a teen-age neighbor allegedly shot her without provocation.

Suzy, along with two other chimps, escaped from an unlocked cage at a USDA-licensed compound near Festus, population 8,000, where she and her companions were well-known to local residents. She was already feeling the effects of several tranquilizer darts when a neighbor, 17, allegedly fired at her — even as she was lying on the ground — despite the urgent pleas of the facility's owners and others at the scene.

“That chimp had been shot with a tranquilizer dart and was no harm to anyone,” one witness reported, “but he shot [her] three times with a shotgun.” Suzy was euthanized for humane reasons after a veterinarian determined that her injuries would eventually be fatal.

To take action:

At press time the prosecuting attorney for Jefferson County, Mo., had not yet decided whether or not animal-cruelty charges will be filed against the juvenile. Please send letters encouraging him to file charges in this case.


Bob Wilkins
Prosecuting Attorney's Office, Jefferson County
P.O. Box 100
Hillsboro, MO 63050 

BRIEFS...

Endangered, Sure, But How They Dress Up a Room...

Ignoring a federal ban on imports of endangered argali sheep, which are rapidly vanishing from their Asian homeland, the U.S. Fish and Wildlife Service has issued hundreds of permits to American hunters over the past five years to bring the animals back as trophies. In April, ALDF joined with other animal protection organizations, conservation groups and scientists in a lawsuit to help bring the species back from the brink of extinction.

Argali sheep, the largest in the world, have been on America's endangered list throughout most of their range for nearly a decade. But the Fish and Wildlife Service, the agency responsible for maintaining the list, gave the species only a "threatened" ranking in Kyrgyzstan, Mongolia and Tajikistan, allowing imports from those countries under certain conditions. In 1993, with the survival of the species increasingly in doubt, the USFWS proposed upgrading the listing to "endangered." But the proposed rule is still outstanding, and these majestic animals are still being killed and imported with the agency's blessing.

"It is unconscionable that hundreds of animals in this imperiled species have been killed simply so wealthy American trophy hunters can add more heads to their collections," said Michael Markarian, executive vice president of the Fund for Animals, a plaintiff in the suit. "The Fish and Wildlife Service has acted illegally and irresponsibly by granting hundreds of import permits, by not soliciting or considering public comment, and by leaving this proposed rule in limbo while the argali population continues to decline." 

"It is unconscionable that hundreds of animals in this imperiled species have been killed simply so wealthy American trophy hunters can add more heads to their collections."

Michael Markarian,
Fund for Animals


For Animals, Too, War is Hell, Love Rocks

Thousands of elephants, gorillas and other endangered species, including the rare, giraffe-like okapi, have become casualties of the three-year-long civil war in the Congo, a U.N. panel confirmed recently.

In addition to plundering rainforest habitat critical to wildlife in the battle-torn central African nation — where some 2 million civilians are thought to have died already from starvation and deprivation — soldiers are working with desperate villagers to kill elephants by the thousands for their tusks and meat, for which there is a thriving market. Conservation groups have previously reported an alarming drop in the numbers of lowland gorillas in the area since fighting began, and poachers have virtually exterminated the gorillas, elephants and antelopes in at least one national park.

Calling the situation "grave," the panel reported that in one rebel-controlled zone that had been home to 350 elephant families, for example, only two families remain. "There is serious concern among conservationists that the rest fled of their own accord or were killed," it said, adding that two tons of elephant tusks were traced to the area late last year.

Canada's harp seals, by contrast, may be benefiting from the worldwide availability of Viagra. According to a new study of the sealing industry in Newfoundland and Quebec, the annual "harvest" was around 90,000 in 2000, down from 280,000 in recent years. Researchers suspect the explanation is that China — where powdered male seal genitalia has long been considered an aphrodisiac — is heeding the advice of Bob Dole, the potency pill's best-known pitchman.

"On Viagra, the evidence is purely anecdotal," the research team's leader told the *Boston Globe*. "But we heard from the sealers that the Asian market is drying up and that modern pharmaceuticals may be the reason." 



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The Year in Review

Here's a brief summary of the Animal Legal Defense Fund's activities in 2000:

Ending Animal Cruelty

ALDF's Zero Tolerance for Cruelty Campaign stepped up its push for more aggressive prosecutions of crimes against animals, and for tough sentences for those convicted of such crimes. In one widely reported case, a Philadelphia man received the maximum sentence of up to two years in prison after pleading guilty to killing his girlfriend's kitten, Stripes, with a butcher's knife.

Winning Justice for Animals

ALDF and its member attorneys continued to file friend-of-the-court briefs in custody and economic-damage cases involving animals, urging judges to consider the needs and best interests of companion animals — and thereby acknowledge that animals are more than mere property. Two closely watched cases centered on a pair of Rottweilers, Roxanne and Guinness, in Orange County, Calif., and on Missy, a Chihuahua, in Dallas.

Strengthening State Laws


With guidance from ALDF, the state of Tennessee became the first to authorize damages for the “non-economic” value of animals — that is, loss of companionship, society, love and affection.

Under the “T-Bo bill,” named for a 12-year-old Shih Tzu killed in an attack by another dog — and introduced by T-Bo's guardian, Tennessee state Sen. Steve Cohen — guardians in wrongful injury or death cases can recover up to \$4,000 in damages, instead of the previous “replacement value” of the animal. ALDF actively supported the measure.

Keeping Wild Horses Wild

Under threat of legal action from ALDF, the federal Bureau of Land Management scrubbed a plan to eradicate wild horses from a portion of northwestern Colorado. Working with an expert in rangeland ecology, ALDF raised serious doubts about the agency's efforts to pin the blame for rangeland degradation on the horses, attributing it instead to livestock and oil-and-gas development. In Utah, steady legal pressure from ALDF led to the release into the wild of more than 70 horses rounded up and held in captivity by the BLM.

Building for the Future

ALDF was a proud sponsor of “2000: Year of the Humane Child,” a coalition of national animal protection groups working to teach children compassion, respect and responsibility toward all living creatures. ALDF also continued to foster Student ALDF chapters on campuses throughout the country, and staff and member attorneys taught classes in animal law at law schools from coast-to-coast. 



FINANCIAL REPORT – 2000

A copy of ALDF's full audited financial statement may be obtained by writing to ALDF.

CURRENT ASSETS

Cash	\$391,415
Investments	1,811,179
Pledges & accounts receivable	98,273
Prepaid expenses	31,404
Total Current Assets	\$2,332,271

NONCURRENT ASSETS

Property and Equipment, net	\$42,022
Receivable (real property)	300,000
Other	10,702
Total Noncurrent Assets	\$352,724
	\$2,684,995

LIABILITIES AND NET ASSETS

Accounts payable and accrued liabilities	\$112,559
Net assets:	
Unrestricted	2,272,436
Temporarily restricted	300,000
Total Net Assets	\$2,572,436
	\$2,684,995

During the year ended Dec. 31, 2000, the stock market suffered several adjustments and ALDF's investments were not immune to such downward corrections. ALDF believes its unrealized losses reflect only temporary declines in the market values of its investments.

SUPPORT AND REVENUE

Donations	\$2,401,435
Foundations	76,422
Estates	809,196
Attorney dues	4,100
List rental	160,992
Interest, dividends, gains on investments	92,697
Unrealized gain (loss) on investments	(574,682)
Realized loss on investments	(9,635)
Net assets released from restriction	65,000
Other	11,438
Total Support and Revenue	\$3,036,963

EXPENSES

Program services	\$2,497,396
Administration	109,709
Membership development	526,294
Other	0
Total Expenses	\$3,133,399
Increase (decrease) in unrestricted net assets	(96,436)
Increase (decrease) in temporarily restricted net assets	(65,000)
Net assets at beginning of year	2,733,872
Net assets at end of year	\$2,572,436

In Oregon, Primate Abuse Is USDA-Approved

As a lab tech at the Oregon Regional Primate Research Center, Matt Rossell secretly took hours of graphic video footage of monkeys confined to filthy cages, many of them alone and exhibiting behavior that appears psychotic. Some bear gruesome, self-inflicted wounds.

In the eyes of the U.S. Department of Agriculture, that's just business as usual.


Responding to a complaint filed by ALDF on behalf of Rossell, who worked at the lab from April 1998 until he resigned in June 2000, the USDA has found that "only a few of the concerns raised in the complaint could be verified and/or would be considered violations" of the federal Animal Welfare Act.

ALDF called for the investigation last year, noting the absence of adequate regulations by the USDA — the agency responsible for enforcing the act, which loosely governs the treatment of animals in research labs — and especially its failure to safeguard the psychological well-being of nonhuman primates. Allowing research institutions to formulate and enforce their own rules, ALDF warned, virtually guarantees the kind of inhumane warehousing of animals that Rossell captured on tape.

The agency has made clear, however, that the

fate of the monkeys at the Oregon facility will remain very much in the hands of their keepers. Following an inspection, it said the center would be required "to develop procedures for ensuring that appropriate efforts are made to socially house all nonhuman primates," and "to reduce the stress" of animal roundups. The agency also called for an internal review of electro-ejaculation procedures (routinely used to gather semen) to prevent further injuries.

But it found that a host of other alleged violations — including inadequate veterinary care, unsanitary conditions and lack of training for staff — either could not be verified or were being addressed.

ALDF and Rossell, who says he witnessed "baby monkeys distressed and diseased, living in their own filth, and adult monkeys gone mad, attacking and biting their own bodies," filed the formal complaint last September. Shortly after he resigned, according to *Willamette Week*, 26 lab techs at the facility signed their own letter complaining of poor primate care and "a crisis-oriented environment." The Portland-based weekly reported that 1,000 of the center's 2,500 monkeys are housed indoors, many of them in single, 4.3-square-foot cages. 

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