Although the Fagans could have been charged with up to 230 counts of misdemeanor neglect, prosecutors waited months to bring a single charge. In the meantime, animal welfare organizations and individuals across the state cared for the animals taken from the Fagans. Because criminal charges had not yet been brought, these good Samaritans were unable to apply for a “cost of care” bond requiring the Fagans to pay the costs until trial. As a result, these organizations spent tens of thousands of dollars in care-related expenses with no way of knowing if they’d ever be reimbursed.

But there was another, far-greater concern than money for these groups: The Fulton County

**INSIDE:**

Battle Over Anti-Cat Law Continues

See Page 3
More Judges Considering the Interests of Animals

Every day, you'll find at least one “trend story” in your local newspaper. Reality TV is in. Boy bands are out. Low-carb diets are hot. Low-fat diets are not. Gas prices are rising. Hemlines are falling. And on and on.

I’m not a professional journalist, but there is one trend I can report on. I can’t help but notice it: “Trend stories” about animal custody disputes are definitely in!

In the last few months, I’ve received calls from more than a dozen journalists working on articles about the growing number of animal custody battles. When a couple splits up these days, it’s not necessarily the house or the car they fight over. It’s the cat or the dog or the bird. Though the media’s only noticed it recently, at ALDF we’ve been tracking this trend for years, and I was more than happy to chat about it with all the reporters who were suddenly calling.

I think both the animal custody disputes as well as all the articles about them are positive developments. Both reflect the fact that animal law is doing exactly what we’ve always predicted it would: It’s entering the mainstream.

In the past, judges would simply look at an animal as yet another piece of property shared by the couple. Divvying up animals like inanimate objects was the norm — even though the animals were considered family by the people involved. Courts would never consider shared custody, visitation rights or the welfare/best interests of the animal.

But now many courts are moving towards a new approach, given both the undisputed emotional lives of companion animals and the overwhelming evidence that Americans view their companion animals as being inherently different from other forms of “property.” A California Supreme Court Justice acknowledged that difference in a dissenting opinion when he wrote, “The value of pets in daily life is a matter of common knowledge and understanding as well as extensive documentation. People of all ages...enjoy their companionship. Those who suffer from serious disease or injury and are confined to their home or bed experience a therapeutic, even spiritual, benefit from their presence.”

Judges (often encouraged by ALDF friend-of-the-court briefs) have also displayed a growing willingness to consider the best interests of the companion animal when determining which party should get custody. In one recent case, the Alaska Supreme Court upheld the award of sole custody of the family’s Labrador retriever to the husband because the wife’s other dogs threatened the Labrador. The court made its ruling based on a determination that the dog wasn’t safe in the wife’s new residence. In another case, an appellate court in New York awarded custody of a cat based on the emotional connection between the animal and the defendant in the case. The court held that the cat was a feeling individual who had “lived, prospered, loved and been loved” by the defendant alone.

When writing about all these developments, many of the reporters I spoke to couldn’t resist the occasional cutesy turn of phrase: “the fur is flying in America’s divorce courts” and the like. But the gist of their articles was never dismissive or condescending. Arguing over animals in court wasn’t portrayed as “kooky” or “out there” — merely new and interesting. And I think that’s an accomplishment in itself for the animal law movement.

If judges and journalists can embrace the idea of attorneys arguing what’s best for animals in court, then surely the rest of the world won’t be far behind. And that’s a trend we can all be happy about!

Sincerely,

Joyce Tischler
Primate Lawsuit Dismissal Appealed

Last summer, ALDF filed suit in U.S. District Court challenging the U.S. Department of Agriculture’s failure to ensure the humane treatment of primates in captivity as mandated by the Animal Welfare Act (AWA). The suit was filed on behalf of ALDF, the Animal Welfare Institute and three individuals who’ve had regular contact with primates who experienced severe psychological distress due to inadequate housing and conditions. The government responded with a motion to dismiss based on procedural issues, arguing that the issue was moot because the USDA had already acted in accordance with AWA and that the court didn’t have jurisdiction to rule on the matter anyway.

This spring, a federal judge ruled in favor of the government, granting its motion to dismiss. Acting on behalf of ALDF and its allies, the law firm of Meyer & Glitzenstein quickly responded with an appeal. The case is now before the Ninth Circuit Court of Appeals, which should issue a ruling before the end of the year.

“The USDA has been dragging its feet for so long on this issue, it’s unfortunate that we’ve had to deal with one more delay,” says ALDF Executive Director Joyce Tischler. “We’re looking forward to the day when we can present the facts in court. There are thousands of apes and monkeys out there locked up in inhumane conditions that ignore their psychological needs. It’s USDA’s responsibility to make sure that doesn’t happen — and they’re plainly not doing their job.”

Legal Hurdle for Akron Lawsuit

Animal advocates in Akron, Ohio, are vowing to continue their fight against that city’s cruel anti-cat ordinances despite a recent legal setback. Two years ago, the Akron city council decreed that unleashed outdoor cats are illegal, and the city began handing out cat traps to anyone who asked for them. Since then, more than 3,000 cats have been captured and killed. With backing from ALDF, six Akron citizens filed suit challenging the city’s actions as unconstitutional and the anti-cat ordinances as overbroad and vague. A trial was scheduled for this spring.

But before the trial date could arrive, Summit County Court of Common Pleas Judge Burnham Unruh granted a motion for summary judgment in favor of the city. Unruh based his ruling on a number of technical issues related to how the ordinances were passed. (The lawsuit argued that the city council had overstepped its authority by passing the outdoor cat restrictions at a private retreat as opposed to a public meeting.) As a result of Unruh’s ruling, the trial was cancelled.

That doesn’t mean Akron’s cats will never have their day in court, however. Supported by an ALDF grant, attorney J. Jeffrey Holland has filed an appeal. And Holland points out that the lawsuit has already had an impact despite the disappointing ruling.

“This litigation has brought about a great deal of public scrutiny of the animal control policies and practices of Akron and Summit County, and that’s led to significant changes,” Holland says. “The city has established minimum guidelines for trapping cats, and it now has a policy of refusing to distribute traps during inclement weather. Following pressure by local activists, leadership at the county animal shelter has changed for the better, and a citizen’s committee is being established to oversee its operations. In our view, this isn’t nearly enough — not while these misguided ordinances remain on the books. But it is a step in the right direction.”

ALDF will keep up the pressure on the city outside of the courtroom, as well. Animal advocates are being asked to sign a petition protesting the city council’s cat policies. More than 1,000 signatures have been collected so far — including that of Mary Tatman, the great great great great granddaughter of Col. Simon Perkins, Akron’s founding father. As Tatman sees it, her ancestor would’ve been displeased to see how the town’s leaders are treating felines today.

“The Perkins family was quite fond of cats,” she says.

You can sign the Akron petition online by logging onto the ALDF website (www.aldf.org) and clicking on “A Call for Action in Akron.”
Coast to Coast

continued from front page

District Attorney’s office told some of them to prepare to return about 30 animals to the Fagans. A hearing was scheduled in the Town of Oppenheim Justice Court, and there was every indication the D.A. would cut a plea deal allowing the Fagans to take their animals back.

That’s when ALDF got involved. Alerted to the situation by the Fulton County Society for the Prevention of Cruelty to Animals and Spring Farm CARES, a nonprofit animal sanctuary, ALDF Staff Attorney (and former prosecutor) Dana Campbell flew to New York immediately. Once on the ground in Fulton County, she worked to swing the spotlight of the local media onto the case, organizing a press conference and using action alerts on the ALDF website to pull dozens of animal-friendly activists to the hearing. She also spoke with the D.A. and helped Spring Farm CARES and the Fulton County SPCA find a local attorney to represent them in the criminal case and possible civil cases regarding custody of the seized animals.

And it worked. Multiple charges were eventually brought against the Fagans in Fulton County Court (in the process removing the case from the inexperienced Justice Court), and the couple was arraigned and indicted. Even more importantly, the D.A. publicly announced that she had scrapped plans to give some of the animals back.

Today, many of the formerly neglected animals have been placed in loving homes. All are receiving humane care.

“Most of our cases involve animals who’ve already been abused, and we’re left trying to help shelters and D.A.s get a conviction and a strong sentence,” Campbell says. “But here we had a chance to prevent further harm to these damaged animals by jumping in and preventing their return to their alleged abusers. Any day you can prevent cruelty is a very good day.”

A phone call out of the blue brought Campbell another such “good day” — though at first the situation seemed anything but good.

The call was from Lt. Randy Covey, animal abuse investigator for the Oregon Humane Society (OHS). The Humane Society had found itself — and more than 120 neglected birds — in a tight spot, and Covey was looking for help.

The birds (most of them exotic macaws, parrots and lovebirds) had been languishing in the home of a woman who’d been involuntarily committed to a mental institution for an indefinite period of time. OHS seized them, but quickly found itself overwhelmed by the expense, space and time needed to care for so many sensitive animals with special needs. Yet it couldn’t place the birds in new, loving homes because of a tricky legal Catch-22.

Under Oregon state law, the birds couldn’t be forfeited to OHS unless the owner was charged

Stamp of Approval

ALDF recently received the letter below from Spring Farm CARES, which stepped in to provide care for the dozens of neglected animals.

Dear Dana,

When one thinks of speaking for those with no voice, for those who are homeless, the cruelty investigator at the crime scene often. In the short time you were here, you taught me to call the screaming at times when injustice is so blatant, you allowed me to see that there was a light at the end and end.

If there is a story to tell your family, tell them: When I and Spring Farm come to the hurdles we know it’s you and your organization are standing right next to us, rather be.

Sincerely,

Jeffrey C. Eyre
Director of Humane Services
Spring Farm CARES

The Animals Lose a Friend

A

LDF staff member Lynda Pilger spent much of her life trying to help animals. Sadly, that life ended far too soon: Pilger died Thursday, May 27, at the age of 39.

“We’re simply stunned by this tragedy,” says ALDF President Steve Ann Chambers. “Losing Lynda has been a big blow for all of us.”

An administrative assistant in ALDF’s Anti-Cruelty Division in Portland, Ore., Pilger was killed while walking home from the office with her border collie Bear, who’d been with her at work. They were crossing the Morrison Bridge when a vehicle skidded out of control and struck them both. Pilger died at the scene. Bear was rushed to a veterinary hospital with severe injuries.

A committed animal activist, Pilger worked to help abused farm animals, ban the use of leghold traps and educate lawmakers about animal issues. A former board member of Humane USA-Oregon, she also volunteered extensively at the Oregon Humane Society, working directly with animals to help get them adopted to new, loving homes. She joined ALDF earlier this year, bringing her expertise and commitment to the Anti-Cruelty Division’s efforts to end abuse.

“Lynda was often the first person people spoke to when they called us looking for help,” says Anti-Cruelty Division Director Pamela Frasch, who hired Pilger. “She was a wonderful, big-hearted person, and we miss her.”

Bear is still struggling to recover from a shattered left femur and severe spinal injuries. A few weeks after the accident, he had to undergo major back surgery. The veterinary surgeons attempted to fuse two pairs of vertebrae together, thus taking pressure off Bear’s spinal cord, stabilizing his skeletal structure and hopefully giving him the ability to walk on all fours again. Early indications suggest that the operation was a success.
with or convicted of criminally neglecting them. Because the woman was deemed mentally unstable and institutionalized by the courts, she wasn’t legally capable of committing such a crime. So how to help these animals find new homes?

After Campbell heard the story, she whipped into action, researching legal strategies. She quickly hit upon a unique solution: Ask the judge to give legal custody of the birds to OHS with the power to do what was in their best interest. And the judge did just that, issuing a protective order on behalf of the animals. OHS was granted full legal responsibility for the birds, and most of them have since been adopted by new, caring, capable human guardians.

If the birds in this case had been children, this is exactly how the law would’ve worked in the first place. But because they were animals, they were left in limbo — until we could think up a way to get them out. Fortunately, the judge was willing to take the birds’ best interests into consideration. That sets a precedent attorneys can use to help animals in the future...and that’s what ALDF is all about.

“We really appreciate Dana’s open-mindedness, expertise and willingness to pursue something that had never, to our knowledge, been done before. She was able to draw in new resources to assist us and make this a good resolution,” says Lt. Covey. “It would’ve been a much more difficult situation without her.”

Covey’s not the only one who’s full of praise for Campbell — and ALDF’s other dedicated staff members.

“It takes a special kind of commitment to work for ALDF,” says Executive Director Joyce Tischler. “There are so many animals in need out there it can feel overwhelming. But Dana didn’t let that stop her when these cases came her way. She used her legal expertise to find unique solutions that kept animals from harm. And that’s what ALDF is all about.”

—Dana Campbell, ALDF Staff Attorney

Man Accused of Starving Dogs

A Tennessee man accused of starving two dogs to death and nearly killing three puppies will go on trial this November.

Late last year, authorities in Houston County found the dead dogs and the emaciated puppies in a pen on the property of Sydney B. Warden. Neighbors reported that Warden hadn’t cared for the animals properly, and the puppies were seized and taken to a local animal hospital. According to the county sheriff’s department, a veterinarian’s report backed up the claim that the dogs had not been given proper care — in fact, the puppies had all developed rickets, a disease linked to malnutrition.

Warden faces multiple counts of felony aggravated cruelty. If Warden isn’t convicted — or if the charges are dropped or a plea bargain is reached before trial — the puppies could be returned to his custody.

Please act now! To encourage the local prosecutor to pursue the case vigorously, send a letter to:

Mr. Carey Thompson
Assistant District Attorney
Humphreys County Courthouse, Room 206
Waverly, TN 37185

“Any day you can prevent cruelty is a very good day.”

—Dana Campbell, ALDF Staff Attorney
The Year in Review

Last year was another busy one for the Animal Legal Defense Fund. In 2003, ALDF worked to:

ENCOURAGE AGGRESSIVE PROSECUTION OF ABUSERS

In 2003, ALDF’s Anti-Cruelty Division tracked dozens of cases, frequently stepping in to offer law enforcement officials expert advice. By the end of the year, approximately 120 prosecutors had received direct assistance from ALDF. In one typical case, the Anti-Cruelty Division researched state anti-cruelty law, prepared a lengthy memo for prosecutors and even suggested sentencing options in a prosecution involving a pair of cruelly neglected Doberman pinschers — one of whom died of starvation and disease. The judge in the case followed the sentencing suggestions and barred the abuser from having more animals in her home.

PUSH GOVERNMENT TO PROTECT ANIMALS

Nearly two decades ago, Congress amended the Animal Welfare Act to require that standards be established to promote the psychological well-being of apes and monkeys in zoos, labs and other facilities. But thanks to years of bureaucratic foot-dragging, nothing much happened. So in 2003, ALDF filed suit in U.S. District Court challenging the federal government’s failure to live up to its obligations. ALDF also played government watchdog in other ways, protesting USDA rule changes that restrict access to animal inspection reports and urging the FAA to mandate safer handling of animals on airplanes. On the local level, ALDF helped scuttle plans to exterminate nearly 50,000 prairie dogs near Lubbock, Texas. And ALDF teamed with Alley Cat Allies and a local group, Citizens for Humane Animal Practices, to battle the Akron, Ohio, city council’s efforts to exterminate outdoor cats.

SUPPORT ANIMAL ADVOCATES

Through its Project and Litigation Committee, ALDF provided thousands of dollars in grants to attorneys working on important animal law cases across the country, including the team targeting Akron’s anti-cat ordinance with a lawsuit. ALDF also gave member attorneys access to our extensive database of pleadings, memos and briefs to assist them in making their own cases stronger. And ALDF and its member attorneys filed numerous friend-of-the-court briefs in cases involving animals. The briefs urged judges to consider the interests of animals when making their decisions — thus acknowledging that animals are more than mere property. Many of the cases were on the cutting-edge of legal thought, helping to build a new body of law that is slowly but surely expanding the legal system’s view of animals.

EDUCATE THE PUBLIC

ALDF’s website (www.aldf.org) has frequently updated information on topics relevant to animals and the people who care about them, including estate planning for companion animals, advice for those whose animals have been harmed (and useful background information for the attorneys handling their cases) and much more. In addition, ALDF publishes The Animals’ Advocate and a newsletter for legal profes-
Animal Legal Defense Fund released a new "e-newsletter" in 2003 to bring news about animal law developments to more people via the Internet. Education was also a face-to-face endeavor, with ALDF staffers making presentations on animal law and anti-cruelty law across the country.

STRENGTHEN STATE ANTI-CRUELTY LAWS

Years of ALDF work bore fruit when West Virginia and Wyoming became the 39th and 40th states to adopt felony anti-cruelty laws. ALDF's Anti-Cruelty Division worked closely with legislators in both states, and the initial drafts of the laws were written by an ALDF attorney. ALDF also worked to see Oregon's Measure 3 struck down, which finally happened thanks to an Oregon Court of Appeals ruling. Measure 3 barred the state from forcing forfeiture of property before criminal activity had been proved in court, stranding animals in shelters for months or even years while their abusers' cases crawled through the legal system. In addition, ALDF worked behind the scenes to help write legislation that would ban sexual assault against animals in Florida; introduce similar legislation in the state of Washington; draft and build support for a comprehensive animal protection bill in Rhode Island; and forge new relationships with lawmakers at the National Convention for State Legislators in San Francisco.

BUILD THE FUTURE

ALDF continued to encourage interest in animal law by supporting Student Animal Legal Defense Fund chapters on law school campuses. ALDF made grants to numerous student chapters to help the law students pull off new, more ambitious activities and ALDF created an e-mail discussion list so that active members across the nation could keep abreast of new developments in animal law. ALDF staffers also taught and guest lectured in animal law classes. The number of active student chapters jumped from 32 to 45 nationwide, signifying that — with a little help from ALDF — interest in animal law continues to grow within the legal field.

FINANCIAL REPORT – 2003

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

CURRENT ASSETS

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NONCURRENT ASSETS

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LIABILITIES AND NET ASSETS

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EXPENSES

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Increase (decrease) in unrestricted net assets | 356,274 |
Net assets at beginning of year           | 2,407,032 |
Net assets at end of year                 | **$2,763,306** |
The Winter 2003 issue of The Animals’ Advocate featured an article about Max, a cat in Spokane, Wash., who died after being set on fire by a pair of teenagers (“Little Steps on a Long Road”). Many ALDF supporters were disappointed by the lenient sentence the teens received—one year of probation, a fine, 150 hours of community service and random drug checks. ALDF was disappointed, as well. That’s why ALDF has awarded a grant to attorney Adam Karp so he can pursue a civil case against the individuals who abused Max so cruelly.

Representing Bernadette Womack, Max’s human guardian, Karp has filed a lawsuit requesting that the lenient sentence the teens received—a year of probation, a fine, 150 hours of community service and random drug checks—be overturned. ALDF was disappointed, as well. That’s why ALDF has awarded a grant to attorney Adam Karp so he can pursue a civil case against the individuals who abused Max so cruelly.

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“The damages are clearly appropriate here...,” the brief argues. “Max was...a living, breathing, feeling being with an identifiable physical and emotional life and consciousness, and an important member of the plaintiff’s family.”

The case is expected to go to trial April 25, 2005. According to Karp, this kind of lawsuit could be a valuable tool for animal advocates.

“It could provide a means to compensate for the unnecessary and cruel suffering of nonhuman animals, whether the money is put in trust for the animal’s care or [handed over] to the animal’s guardian or used to investigate and prosecute animal cruelty,” says Karp, who credits ALDF with providing “critical financial and strategic support” for the case.

Some of that strategic support has come from ALDF Anti-Cruelty Division Director Pamela Frasch, who has worked with Karp on the Max case. Frasch is excited about the new opportunities lawsuits like this one could open up.

“Pursuing non-economic damages gives us another option,” she says. “If we’re not satisfied that justice was done in the criminal courts, we can take the matter to the civil courts. One way or another, we can make sure animal victims like Max aren’t forgotten.”