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## Chapter 14

# State Regulation of Animal Use

*It is time for states to stop having two sets of cruelty laws, one for the general public and a weaker one for the research community. Cruelty does not cease to exist by simply moving the activity within the four walls of a laboratory.*

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# State Regulation of Animal Use

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States have enacted a bewildering array of laws governing animals—their control, their ownership and disposition as human property, the responsibilities and liabilities of their owners, and the duty of care that is owed animals, including freedom from unnecessary and unjustified suffering. State laws in the last category are the most venerable; many predate any congressional action on the subject. These laws take several general forms, including the regulation of animal use in experimentation and the delegation of authority to local governments to regulate animal use and treatment (33). With Federal entry into the field, the potential for conflict and duplication arises.

This chapter summarizes State laws affecting the use of research animals and examines the potential for conflict or duplication with current Federal law. The analysis is restricted to laws with some bearing on the conduct of research and where some potential for conflict or duplication may exist. Examples of types of local laws or ordinances are cited to illustrate the contexts in which local law has affected research, but no attempt is made to describe such legislation independent of the operation of State law.

## ANTICRUELTY LAWS

At common law, animals were entitled to no intrinsic right of protection, reflecting the prevailing belief that they were mere human instrumentalities. Two classes of animals existed, domestic and wild, with domestic animals considered the property of their owners and legally protected only as possessions. An owner could treat an animal in any manner, as long as no public nuisance was created. Abuse of an animal owned by another created liability in the abuser only for resulting damage to the economic value of the animal (2,4).

This means that any legal right or duty owed to animals by humans must have a statutory basis (33). Every U.S. jurisdiction has in place a statute prohibiting cruel treatment of some types of animals. These statutes generally apply criminal penalties (usually lower class misdemeanors) and civil sanctions for specified violations (74). Most of the original State anticruelty statutes were enacted prior to the turn of the century and have common, continental roots as offshoots of general societal concern for humane treatment. The first such statute, known as an “override, overdrive” law because it outlawed riding or driving farm animals beyond reasonable limits, was passed in the Massachusetts Bay Colony in 1641. It provided that “No man shall exercise any Tyranny

or Cruelty towards any Brut Creatures which are usually kept for the use of man” (19).

The principal social goals promoted by the imposition of criminal or economic penalties for cruel or inhumane treatment of animals are threefold (3,33):

- protecting the *interests of society* and promoting morality by deterring conduct considered wanton or offensive, such as willful mistreatment of animals;
- protecting the *interests of animals* and preventing neglect by establishing enforceable minimum standards of care for animals; and
- protecting the economic *interests of animal owners* by shielding animals against treatment that invades or damages the owner’s economic interest (including companionship and enjoyment).

Most anticruelty statutes serve the first two goals by prohibiting and punishing active cruelty to animals (beating, burning, castrating, shooting, pouring acid on hooves, or overworking) and, in some cases, passive cruelty occasioned by neglect, such as failure to provide basic necessities (food, water, shelter, or appropriate care) (36). Since most State anticruelty statutes combine elements of both ac-

tive and passive cruelty, these concepts are discussed under this single rubric. Special duties of care, such as those imposed in some States on animal carriers, pet stores, and others, generally do not affect research facilities (39).

### ***General Provisions***

State anticruelty statutes often incorporate prohibitions on both active cruelty and failure to meet a generally described duty of care. Under these laws, several elements must be proved to sustain a conviction and penalty:

- The mistreated animal must come under the statute's coverage.
- The person charged with infliction or neglect must similarly be subject to the reach of the law, as must the conduct complained of.
- The act complained of must not be the subject of any exceptions to the statute.
- There must be no statutory defenses that can be sustained against the act complained of.
- The prescribed level of human knowledge or intent must be present if required by statute. Most States, however, do not require culpability to be proven (33).

Culpability depends on the presence of a specified state of mind at the time of the commission of the act. Except for statutes that create liability without culpability, conduct must generally fall into one of the following categories to result in the commission of an offense:

- **Intentional, Knowing or Willful** The individual must be conscious of his or her conduct, intend his or her voluntary actions or failure to act, and know or should know the actual consequences.
- **Recklessly Negligent:** This lesser level applies to an individual who is aware of and consciously disregards a substantial and unjustified risk to another interest (the animal's interest in avoiding cruel treatment).
- **Negligent:** This lowest level of culpability, also known as criminal negligence, applies to an individual who fails to perceive a substantial and unjustified risk incurred by his or her action or inaction. The standard applied in cases of criminal negligence is proof of a

gross deviation from the standard of care observed by a reasonable person in similar circumstances.

Many statutes incorporate more than one level of culpability (33,36).

The other type of criminal statute, often combined with those that prohibit specified acts of cruelty, deals with nonfeasance or omissions. These laws establish a minimum duty of care toward an animal by making it a crime to fail to meet that duty in some specified way. Their objective is general care of covered animals, rather than protection from immediate harm. If no degree of culpability is required, defenses applicable under active statutes are not available. Nonetheless, if words like "willfully," "intentionally," or "knowingly" are used, then the appropriate degree of culpability must be proved. The most comprehensive "duty-of-care" statute is Virginia's Animal Welfare Act, which requires all companion-animal owners to provide adequate food, water, shelter, and space, as well as humane care and treatment and veterinary care necessary to prevent suffering. The maximum penalty upon conviction is a fine of \$100 (117).

The variability of the basic elements of anti-cruelty statutes is demonstrated by a recent review by the Animal Welfare Institute of laws in the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and the Canal Zone. The Institute found the following:

- **Definition of "Animal":** Twenty-nine anti-cruelty laws protect "any animal," including all living creatures except humans. Nineteen others provide no definition at all, and others apply the word to domestic animals, captive animals, or warm-blooded creatures.
- **Culpability** Thirty-two jurisdictions have prohibitions on specified types of cruelty with no qualifying phrases—i.e., no requirement for proof of a particular state of mind on the part of the person charged. The other 23 have one or more of the qualifying phrases described above.
- **Food, Water, and Shelter** Statutory prohibitions against failure to provide for basic animal survival vary in both definition and interpretation. Thirty-two jurisdictions have laws

requiring food and water, with no qualifying phrases. Twenty-three others qualify the duty of care to provide food and water with some requirement to prove at least a high degree of neglect; the word used most often as a qualifier here is “unnecessarily.”

- **Other Living Conditions:** Requirements for adequate exercise or space, light, ventilation, and clean living conditions are found in some statutes. Eight jurisdictions require fresh air. Exercise or adequate space is required by 11. One requires sufficient light, and two laws mention clean living conditions.
- **Abandonment** General anticruelty statutes in 42 jurisdictions prohibit the abandonment of animals. In several cases, abandonment is restricted to willful, cruel, or intentional abandonment, to abandoning animals to die, to abandoning disabled animals, or to abandoning domestic animals.
- **Humane Transport:** Thirty-eight jurisdictions incorporate provisions prohibiting cruel or inhumane transport of various classes of animals. Minnesota’s statute is most specific, applying to “any live animal” and defining in detail requirements for humane transport. In most jurisdictions, however, laws governing humane transportation are much more general, often consisting of no more than a single section incorporating undefined or vaguely defined terms.
- **Poisoning:** Twenty-four jurisdictions prohibit or restrict the use of poison to inflict injury or death on an animal. Some statutes are modified with terms such as “needlessly,” and others are found outside general anticruelty law, intended to apply primarily to livestock or other animals held and kept for specific purposes, usually related to their economic value in a given activity, such as racing or hunting (74).

Some statutes acknowledge the potential application of general anticruelty statutes to research facilities. Twenty-three jurisdictions specifically exclude experimental animals from the reach of criminal anticruelty statutes; 25 others make no mention of any possible relation (89) (see table 14-1). Interpretation of these statutes is discussed later in this chapter.

Table 14.1.—Laws on Research and Animal Cruelty, by Jurisdiction

State/jurisdiction	Research exemption	No mention in law	Other
Alabama		X	
Alaska	X		
Arizona		X	
Arkansas		X	
California	X		
Colorado		X	
Connecticut		X	
Delaware	X		
District of Columbia	X		
Florida	X		
Georgia	X		
Hawaii	X		
Idaho	X		
Illinois		X	
Indiana			
Iowa		X	
Kansas	X		
Kentucky		X	
Louisiana	X		
Maine	X		
Maryland			
Massachusetts		X	
Michigan		X	
Minnesota		X	
Mississippi		X	
Missouri	X		
Montana		X	
Nebraska		X	
Nevada	X		
New Hampshire		X	
New Jersey	X		
New Mexico		X	
New York	X		
North Carolina	X		
North Dakota		X	
Ohio		X	
Oklahoma		X	
Oregon		X	
Pennsylvania			( <sup>c</sup> )
Rhode Island		X	
South Carolina		X	
South Dakota	X		
Tennessee		X	
Texas	X		
Utah	X		
Vermont	X		
Virginia	X		
Washington	X		
West Virginia		X	
Wisconsin	X		
Wyoming		X	

<sup>a</sup>Exempts “veterinary practices.”

<sup>b</sup>Expressly intends for animals used for “scientific or medical activity” to be protected from “intentional cruelty” but exempts “normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable.”

<sup>c</sup>Prohibits entry or search to enforce the law “where scientific research is being conducted by or under the supervision of graduates of reputable scientific schools or where biological products are being produced for the care or prevention of disease.”

SOURCE: National Association for Biomedical Research, *State Laws Concerning the Use of Animals in Research* (Washington, DC: Foundation for Biomedical Research, 1985).

Most of the laws that do address the issue exempt “scientific experiments” or “investigations” entirely. In Alaska, one defense to prosecution is that the defendant’s conduct “conformed to accepted veterinary practice [or] was part of scientific research governed by accepted standards” (1). Maine allows proof of “accepted veterinary practice or bona fide experimentation for scientific research” as an affirmative defense to a charge of cruelty as well, so long as the animal’s destruction, if required, is not “unnecessarily cruel unless directly necessary to the veterinary purpose” (89). Florida’s 59-year-old law states that cruelty “shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science” (34). Georgia is more direct in establishing a connection between the exemption and the interest protected by it: “The killing or injuring of an animal for humane purposes or in the furtherance of medical or scientific research is justifiable” (53). Others contain specific provisos that the statutes not be construed to prohibit or interfere with scientific research, if done by qualified persons in a humane manner (18)(30). The majority simply exempt “acceptable veterinary practices” and “bona fide experiments” or research “governed by accepted standards” (89).

Three other anticruelty statutes, all amended within the last 3 years, are equivocal. The Indiana Code was amended in 1983 to exempt “veterinary practices” from the general anticruelty statute (63). In Pennsylvania, neither an exemption nor a provision interpreting the statute as excluding scientific use is included in the law. The general grant of authority to police or humane society agents to enter premises for the purpose of seizing and destroying exploited animals prohibits entry or search “where scientific research work is being conducted by or under the supervision of graduates of reputable scientific schools or where biological products are being produced for the care or prevention of disease” (97).

The Maryland General Assembly, in a 1984 amendment, expressed its intention that “all animals . . . under private, local, state, or federally funded scientific or medical activity . . . be protected from intentional cruelty” but provided that

no person is to be held liable for criminal prosecution due to “normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable.” Authorized enforcement officers otherwise permitted to take possession of animals to protect them from neglect or cruelty cannot do so without prior review and recommendation from the Division of Veterinary Medicine in the Department of Health and Mental Hygiene. Reports to the State’s attorney for the county in which the facility is located must be made by the Division within 48 hours of receipt of a complaint (75).

Of greatest concern to those engaged in testing and research are older, general anticruelty statutes that prohibit cruelty to all animals without requiring proof of a culpable state of mind. Many of these statutes do not generally exempt scientific inquiry from the prohibitions, and those statutes that attempt to do so often fail to define “animal” or “science” or contain vague definitions of the terms. Virtually none of the statutes surveyed attempts to define what activities constitute scientific research, nor do they establish separate classifications for experimental animals.

### ***Enforcement***

Like Congress, State legislatures delegate enforcement to the executive branch of government, which is authorized to promulgate regulations and enforce them under authority of an enactment. The exercise of the police power to control and protect animals has been sustained in a variety of areas, including controlling migration of animals into a State, requiring registration and licensing of animals, controlling contagious and infectious diseases borne by animals, and compensating private parties for the destruction of animals in furtherance of anticruelty laws (33).

Because criminal penalties are imposed for violations of anticruelty statutes, primary enforcement responsibility generally rests with “duly constituted” law enforcement authorities—police and sheriff’s departments. Most State legislatures, however, recognize the difficulty of ensuring enforcement of anticruelty statutes on the local level and have also delegated limited police powers to private, not-for-profit organizations, principally

humane societies or societies for the prevention of cruelty to animals (74). These limited grants of authority are most frequently extended to seizure of animals found to be cruelly treated, neglected, or abandoned, in violation of an applicable State law. In some States, officers or agents of these groups possess specific powers for intervention, inspection, or the procurement of warrants or summonses or the ability to be deputized by local law enforcement officials for such purposes. In New York, for example, lawfully appointed agents of the American Society for the Prevention of Cruelty to Animals (ASPCA) have been judicially recognized as “peace officers” and are therefore authorized to issue summonses for violations of anticruelty laws. Another New York State case allowed the ASPCA to seize without a warrant and impound animals held in violation of cruelty statutes.

In States where no powers are specified or implied, societies formed for this purpose have developed investigative programs on which State or local law enforcement officers rely for preliminary investigative activities. There appears to be some movement away from statutory grants of authority to nongovernmental agencies for this purpose. Several States have repealed prior grants and others have left undisturbed laws with no mention of them. Beyond enforcement through specific grants of police power, many anticruelty groups initiate criminal investigations by filing complaints or resorting to civil actions against agencies or facilities to enjoin alleged cruelty to animals (33,36).

### ***Constitutionality***

Several State anticruelty statutes have been attacked on grounds that they are unconstitutionally vague, either because the statute allegedly fails to give a person of ordinary intelligence fair notice that a contemplated act is forbidden or because the statute as drafted encourages arbitrary arrests and convictions. In almost all instances, both active cruelty and duty-of-care provisions have survived constitutional challenges based on vagueness, even though their breadth and lack of definition and specificity makes them susceptible to such attacks (9,62).

### **Cruel Acts**

An Arizona statute outlawing cockfighting was found to be unconstitutionally vague in its use of the terms “animal” and “needless suffering,” and two convictions were overturned (104). Disparate results were reached in cases brought for convictions for the same activity in Kansas and Hawaii (86,105); the court was able to sustain the statute in the latter case because statutory definitions of “animals” and “cruelty” helped overcome problems of vagueness. These cases are instructive for another reason. When convictions have been thrown out, it is because courts have been unwilling to interpret general statutes to forbid cockfights in the absence of legislative action making these previously acceptable acts illegal.

### **Duty of Care**

Courts have applied the same general principles of construction used in constitutional challenges to anticruelty statutes in upholding their components governing minimum husbandry or humane treatment standards. High courts in at least two States have sustained legislative establishment of broad standards of care, but judicial interpretations of the application of those standards varies. For example, a Texas court found, without explanation, that the duty-of-care statute “sufficiently informs an accused of the nature and cause of the accusation against him and that it is not unconstitutionally indefinite.” Idaho’s Supreme Court upheld the legislature’s intent to establish broad standards of care, suggesting that “proper care” is that degree of care that a prudent person would use under similar circumstances. Virginia’s statute attempts to define the terms “adequate feed” and “adequate water,” but ultimately the standard adopted is a “reasonable level of nutrition,” though it adds nothing to the law’s specificity. Thus, the duty charged to anyone responsible for animal care is speculative, though the duty implicitly requires knowledge of the animal’s requirements (33).

Review of the available case law indicates that courts are reluctant to accept constitutional attacks even against vague and undefined anticruelty statutes, preferring to limit themselves to measuring defendants’ conduct against general statutory provisions on a case-by-case basis.

## ***Judicial Interpretation of Applicability of Anticruelty Statutes to Research***

Historically, those interested in protecting laboratory animals from cruelty have used general anticruelty statutes against research facilities or individual researchers, but (at least until 1981) to little effect. In 1914, for example, the Women's SPCA sued six faculty members at a Pennsylvania medical school for "wanton cruelty," but no conviction resulted (33).

Two recent cases give some indication how a modern State court might respond to a confrontation between anticruelty and research interests.

### **The Taub Decision**

The most celebrated and controversial case in this area is *Maryland v. Taub*, Montgomery County police investigated conditions at a laboratory that was performing stroke research on non-human primates that was funded by the National Institutes of Health (NIH). The investigation resulted in seizure of the primate colony. In January 1982, the county's State's attorney filed 17 charges against the investigator, Edward Taub, charging him with violation of Maryland Code, Article 27, Section 59 (1957, 1976 Repl. Vol.), with respect to each of 17 primates. Following a trial in district court, the defendant was found guilty of failing to provide necessary veterinary care for 6 animals and acquitted of all other charges. On appeal to the circuit court, a jury hearing the case de novo found Taub guilty of one charge of failing to provide necessary veterinary care for 1 monkey, known as "Nero" (76).

Taub appealed to the Maryland Court of Appeals, asserting that the law was unconstitutional because the Federal Animal Welfare Act preempted State jurisdiction in the area of federally funded research, and attacking several of the trial court's evidentiary rulings. The Maryland high court reversed the circuit court's decision and remanded the case with instructions to dismiss the charges (32). Tracing the legislative history of the Maryland statute from 1890 to its last revision in 1976, the court concluded that the legislature had not intended the statute to apply to

this type of research activity under a Federal program, basing its ruling on three points:

- The legislative intent was interpreted as exempting from punishment acts not involving "unnecessary" or "unjustifiable" pain, given exceptions for "customary and normal veterinary and agricultural husbandry practices" and the last sentence of Section 59, which states:

It is the intention of the General Assembly that all animals shall be protected from intentional cruelty, but that no person shall be liable for normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable.

- The court imputed to the assembly "awareness" of the Federal Animal Welfare Act, which constituted a "comprehensive plan for the protection of animals used in research facilities, while at the same time recognizing and preserving the validity of use of animals in research."
- Taub's laboratory was subject to detailed regulations of the U.S. Department of Agriculture (USDA), which set forth specifications for humane handling, care, treatment, transportation, and veterinary care. With respect to the latter, the court noted that Federal law recognized and preserved the validity of animal research. The court also noted the application of NIH's grant requirements to the defendant's project (32).

The Maryland statute neither generally exempted scientific research from the reach of its anticruelty law nor regulated experimentation separately, as some others do. On 1984, the Maryland General Assembly enacted a law that made the anticruelty statute's application to research activities less ambiguous.) The Maryland court's disposition of the case illustrates a judicial reluctance to find cruelty in an activity of some recognized social utility. Its value as a bellwether for other States is limited, however, for several reasons. First, although the case may be cited by other defendants as a helpful precedent, it is law only in Maryland. Second, the holding in this case may be limited to its particular facts. At the trial that resulted in conviction, a substantial amount of testimony was heard on the issue of adequate

veterinary care in research involving intentional injury to the research subjects. The court's opinion did not fully address this issue. Third, the court relied heavily on its presumption that the General Assembly of Maryland had been aware of the Federal Animal Welfare Act when it last amended the statute, 8 years earlier. Many of the two dozen or so general anticruelty laws that contain no research exemption have not been amended since the 1966 passage of the Animal Welfare Act.

### The Preemption Question

The Taub decision is also relevant to the question of research coverage by general anticruelty statutes because of what the case did not decide. On appeal, Taub asserted that his conviction was invalid for five main reasons, three of which addressed themselves to actions occurring in or taken by the trial court (sufficiency of evidence, permitting medical experts to define the term "veterinary care)" and denial of a fair trial due to introduction of evidence of Nero's physical condition more than a month after he had been seized). But Taub also contended that the Maryland statute was unconstitutionally vague, because the definition of "animal" was excessively broad and because it was unclear as to what was "(the most humane method reasonably available" and what were included or excluded from "normal human activities to which the infliction of pain to an animal is purely incidental and unavoidable." In addition, he claimed that his prosecution was barred by the Supremacy Clause of the Federal Constitution and that the reach of Maryland's general statute was therefore preempted by congressional passage of the Federal Animal Welfare Act (10).

Thus, the court was presented with two constitutional questions of considerable importance to the continued enforceability of general anticruelty statutes. First, do the old, nonspecific formulations of cruelty provide sufficient notice of what conduct is prohibited, under what circumstances, and how violation of the law can be avoided? Second, has Congress so occupied the field of research regulation that enforcement of a similar "State law would violate the principle that the Federal Constitution and reasonable Federal laws enacted under it are the supreme law of the

land? The Animal Legal Defense Fund (ALDF), formerly known as Attorneys for Animal Rights, Inc., a nonprofit professional legal group interested in better laws protecting animals, joined the State attorney general as a friend of the court in defending the appeal and briefing the constitutional issues raised by Taub's challenges (11,66).

Whether a State law is preempted by a Federal law is a matter of statutory interpretation by a State or Federal court. (Jurisdiction is concurrent where these questions arise, since both the State and the Federal Government have a stake in the outcome of the question.) Court decisions touching on this question over the years have established two general requirements for Federal preemption of a State statute. First, the Federal Government must have the *authority* to preempt the State's enactment. Second, Congress must have intended to preempt State law (115).

Preemptive authority is found where Congress legitimately exercises an enumerated power, such as the constitutional power to regulate interstate commerce (79,100,112,118). A Federal law may also be preemptive when, supported by application of the "Necessary and Proper Clause" (111), it gives effect to an enumerated power, even though the means used is not expressly enumerated in the Constitution (68). In either of those circumstances, if the law is found to have a rational basis for regulation and effectuation of an enumerated power, it is capable of preempting a State law (90). A Federal law does not have preemptive capability, however, if Congress uses its enumerated powers alone to go beyond its areas of enumerated concerns to achieve a result that a State could also achieve by the exercise of its reserved power.

Congress may exercise an enumerated power to achieve an end extraneous to the effectuation of that power. Thus, for example, Congress may exercise its spending power to encourage an extraneous goal such as humane treatment for research animals. As a general principle, however, if an enumerated power is used to affect an area not within the Federal "circle" of interests, it cannot compel the States to accept that exercise. In such cases, concurrent jurisdiction exists (16)68) 110). The ALDF brief relied on this principle in its assertion that, while Congress' power to appro-

priate funds for the general good may be used to require Federally funded research facilities to comply with Federal standards of animal care, this does not preempt similar State laws. Thus, the grantee of Federal funds maybe bound to adhere to any conditions of the grant, but the State cannot be and is not so bound except to the extent that the State itself accepts Federal research funds. ALDF argued that denial of preemptive capability would promote valuable public policy by “preserving to the people of Maryland the right to determine what constitutes cruelty” (66).

Once a Federal law is shown to be constitutionally capable of preemption, it must be demonstrated against a generally applicable presumption in favor of State laws that Congress either explicitly or by inference intended for the Federal law to supersede conflicting State enactments (57,98). Determining legislative intent can sometimes be difficult, especially when Congress avails itself of more than one enumerated power, against which different constitutional standards must be applied (28). When the State law involves the exercise of its traditional police powers—to protect the welfare of its citizens—preemption will occur only when there is proof that such was the Federal law’s clear purpose (35). If there is insufficient evidence that Congress intended to totally occupy the field regulated by the respective laws, there must be sufficient conflict between them for the State law to stand as “an obstacle to accomplishment and execution of the full purposes and objectives of Congress” (57).

Both the State and ALDF argued, first, that exercise of a traditional police power was involved and, second, that Section 2145(b) of the Animal Welfare Act made it sufficiently clear that Congress intended to establish a cooperative enforcement scheme rather than a conflicting one, so that no conflict or obstacle to attainment of Federal objectives was presented (11,66). (Section 2145(b) of the act authorizes USDA to cooperate with State and local governments carrying out “any State, local, or municipal legislation or ordinance on the same subject.”) Taub, on the other hand, pressed the argument that the State law was in conflict with, and an obstacle to, the congressional objective of minimizing disruption of research (10). In any case, the court decided that the mat-

ter may be disposed of by the conclusion that the Maryland statute simply is inapplicable to Dr. Taub (32).

The decision was not at all surprising, given the publicity about the case over 2 years (8,73,88). Reaction was also predictable. One professional society’s newsletter concluded that the Maryland court had “wisely recognized” the fact that the “ultimate goal [of biomedical research] is improvement of the human condition” and claimed that the decision provided an “important legal precedent that affirms the propriety of the use of animals in biomedical research” (31). One of the attorneys on the ALDF brief called the court’s decision “opaque” observing that “one manifestation of the court’s confused reasoning is that attorneys and commentators cannot agree on the grounds for the decision” (122). Writing in the *New England Journal of Medicine*, an attorney-professor who reviewed the decision and the resulting commentary reached this sober conclusion (27):

It is now necessary for the Congress to consider whether or not it wishes to address this question and to remove the uncertainty in the law by making it clear that the Animal Welfare Act is intended to be a comprehensive, exclusive system of control over the use of animals in experimental facilities and activities in interstate and foreign commerce and under the National Institutes of Health research programs. Without such clarification, investigators and operators of facilities face the possibility of local criminal prosecution, seizure of animals, injunctions to close facilities, and cessation of animal investigations. It should be understood, however, that this Federal mandate, if accepted, means that the administrative system for monitoring, including on-site inspection, must be adequate to insure continued compliance with national standards for humane treatment. Otherwise, state-level organizations with a sincere and reasonable concern about the care of animals will be justified in demanding local enforcement and surveillance of biomedical research programs involving laboratory animals.

### ***Winkler v. Colorado***

Only one other State court case addresses the question of preemption by the Animal Welfare Act. In *Winkler v. Colorado*, that State’s supreme court considered a preemptive challenge to Colo-

rado regulations prohibiting the importation of pets for resale from States with less stringent licensing laws and regulations covering commercial pet dealers. The court found preemptive capability, holding that Congress used an enumerated power to effectuate an enumerated power: regulating interstate commerce. The challenge to the State law was not sustained, however; the court found that the act not only “clearly did not indicate preemptive intent, but rather, expressly endorsed state-federal cooperation” (119).

### ***Criticisms***

Despite the fact that it set the stage for future collisions between research and animal interests, the *Taub* case is not particularly valuable for resolving such conflicts, since the court avoided constitutional questions in reaching its decision. The decision suggests that when a court is confronted with a difficult case involving sharply contrasting but supportable interests and obscure legal principles whose potential impact on a decision far outweighs their understandability in application, it will go to extraordinary lengths to avoid that decision. It is a natural and conservative reaction for a judge to decline an invitation to make law that prejudices an existing enforcement system, however imperfect, when the legislature has shown no inclination to do so itself. The mixture of enumerated powers supporting the Animal Welfare Act, coupled with evidence that Congress did not intend to preempt the field of research regulation, are probably sufficient to avoid preemption. That result, however, cannot be predicted with any confidence.

Animal welfare advocates criticize general anticruelty laws as being ineffective in protecting animals from harm (19,29,124). The statutes' vagueness and the frequent requirement for some degree of culpability both exact high standards of proof and subject statutes to a greater risk of ineffectiveness. Other criticisms are that general anticruelty statutes fail to anticipate and prevent cruelty or neglect, instead taking effect only when a sustainable complaint is entered. Enforcement of these statutes is generally entrusted to local law enforcement agencies, which for a number of reasons typically assign them a comparatively low priority. State regulations and local proce-

dures for investigating and building a criminal case against a violator are complex, involving complicated rules governing warrants and searches. Fines are low, as a rule, and criminal violations comparatively hard to prove. When convictions are obtained, fines assessed against violators are generally collected by the State, though humane societies or SPCAs with limited enforcement authority must spend their own funds to investigate and prove cases (33,36).

### ***Recent Initiatives in Anticruelty Laws***

Critics of current anticruelty statutes, who have pressed to extend the laws' reach to research activities, have not met with a great deal of success. They insist that two basic changes must be made if anticruelty laws are to be enforced meaningfully: First, animal welfare specialists must be trained and used; second, those trained specialists must be given increased enforcement authority (81). One situation hailed as a model is Massachusetts' creation of a private right-f-action and its delegation to the Massachusetts SPCA and, more recently, to the Animal Rescue League, of authority to act as agents of the Commissioner of Health in enforcing the State's anticruelty laws.

The private right-f-action allows citizens to bring civil suits to enjoin violations, reap statutory damages, and collect court costs and attorneys' fees if successful. Massachusetts SPCA officers are commissioned as special State police officers and given training by the police academy and the Massachusetts SPCA. They have arrest and prosecution authority for violations. Inspections are conducted when a problem becomes apparent. The officers can use selective enforcement procedures that focus on serious violations, which conserves time, money, and personnel while increasing the law's deterrent effect (77). Supporters of this model argue that efficient enforcement of the type contemplated by it would curtail animal abuse, including abuse occurring in laboratories. Skeptics point to the obvious increase in cost entailed by such qualification and training requirements, and they wonder if the research community would accept enforcement of anticruelty provisions by its chief antagonists (19).

Legislatures that have revised their anticruelty statutes within the last several years are mindful of the problems in applying and enforcing older laws. Virginia, for example, totally revised its Animal Welfare Act. Enforcement powers, duties, and training and skill requirements for "animal wardens" were increased, and local humane societies were granted limited warrant, search, and arrest powers (117). Florida, while not considering any animal welfare amendments per se, upgraded the maximum fine for active cruelty to animals from \$1,000 to \$5,000, and the fine for confinement without food, water, or exercise or for abandonment from \$500 to \$5,000 (58). The Michigan Humane Society has drafted a model anticruelty bill, as well as publishing a comprehensive guide to enforcement of the existing Michigan statute and supplements for use in Illinois and New York (69,70,71). (A model statute is a law proposed for State adoption by a group of experts, frequently a national conference of legal scholars, though advocacy groups are increasingly likely to offer model laws incorporating their positions. Although model statutes are intended to promote uniformity among the States, a State adopting such a law will often modify it to some extent to meet its own needs, or it may only adopt a portion of the model statute.) The Michigan guide and its supplements detail the process of investigating suspected cruel conduct and building a case against the suspected violator.

Another model anticruelty statute (26) includes provisions regulating research animals by dividing covered animals into three classes, with treatment depending on their classification. Class A animals are chimpanzees, gorillas, and dolphins. An experiment that causes a significant amount of pain to a Class A animal would be prohibited unless it is performed in a licensed research facility, it causes less suffering than any alternative

experiment that would provide the same scientific information at a reasonable cost, and it is limited to gaining information about human or animal disease, injury, or mental disorder. In addition, weapons research on Class A animals would be banned unless the experiments dealt directly with counteracting the health effects of weapons. Furthermore, behavioral research with this group would be prohibited unless justified by health-related reasons.

Class B animals are all other mammals. The model statute prohibits scientific experiments that cause suffering to Class B animals unless the same restrictions that apply to Class A animals are met. Behavioral research is not prohibited, however.

Class C consists of any other vertebrate. Only two restrictions would apply to experiments causing pain to Class C creatures: The research facility would have to be licensed, and the experiment would have to produce less pain than any other reasonably priced experiment that would produce the same information.

This model statute provides both criminal penalties and civil damages for violations. The criminal provisions would be enforced by law enforcement officers and the others by any interested party (see discussion of private enforcement interests in the next section). Recordkeeping by facilities is required, and the records could be inspected at any time. Required entries include the number and types of animals used, the conditions under which animals were kept, and a description of the purpose and design of the experiment. Proponents contend that adoption of this statute would provide clear standards of research-animal care, resulting in less abuse. Critics cite the difficulty of classifying species so as to satisfy everyone and the inconsistency of arbitrarily excluding behavioral research for Class A animals (12,19).

## **RIGHT TO TAKE LEGAL ACTION ON AN ANIMAL'S BEHALF**

### ***Past Trends***

There are two ways a State could allow legal action on an animal's behalf. First, an anticruelty statute could provide private citizens with a right to compel enforcement of the law. In nonanimal

contexts, such a right is exercised by bringing against the enforcement agency a legal action seeking a court order directing the agency to enforce the law. Second, a legislature or court could confer upon private citizens "standing to sue" on an animal's behalf, such as by allowing citizens

to act as legal guardians of an animal's welfare. The requirement of standing is satisfied either if it is conferred by statute or if a court holds that the plaintiff has a legally protectable and tangible interest at stake in the litigation.

One State trial court was called on in 1982 to decide whether the Animal Welfare Act or either or both of two Connecticut laws confer upon a private citizen a right to compel enforcement of the statutes against, and the right to seek damages from, a research entity on behalf of an animal. In *Friends of Animals, Inc. v. U.S. Surgical Corporation*, the plaintiffs filed a complaint alleging that the defendant's use of dogs in teaching its technical field representatives how to use surgical staplers violated both the Animal Welfare Act and the State's general anticruelty law. The Connecticut anticruelty law is a general misdemeanor statute with no qualifiers and contains no research exemption. (Similar attempts by this group to get a Federal hearing on these charges are described in ch. 13. For a complete chronology of the lawsuits between these parties and a more detailed examination of the attempted use of the act and the State's anticruelty laws against a research enterprise, see the case study at the end of this chapter.)

The group, claiming for its members "a personal stake and an intense interest in the prevention of cruelty to animals" asserted a private right of action against the company to enforce the laws and recover damages. The defendant moved to strike the complaint for failure to state a claim on which relief could be granted, a pleading that, under Connecticut rules of procedure, automatically tests the legal sufficiency of the complaint. The court struck the anticruelty counts, finding no legislative intent to create a private right of action and noting that the plaintiff introduced no legal authority in support of its contention that such a right existed.

To support the alleged right under the Animal Welfare Act, the plaintiff claimed the act was analogous to the Marine Mammal Protection Act (5). (A Federal court had previously interpreted the latter to support a private right to sue, as discussed in ch. 13.) The Connecticut court rejected this analogy. Citing a judicial-review provision in

the latter statute that is not found in the Animal Welfare Act, the absence of any proof that the Congress intended to create a private right to enforce the Animal Welfare Act, and the absence of supporting case law, the judge struck the balance of the Friends of Animals complaint, leaving no issues for trial before the court (45).

### ***Recent Initiatives to Create Legally Enforceable Rights for Animals***

Support is growing in the animal welfare community for establishing independent and legally enforceable rights for animals, on the theory that effective enforcement of animal interests will never occur as long as they are balanced against, and almost always outweighed by, competing human or social considerations. This reflects a general historical progression toward treating animals as intrinsically valuable and away from treating them as mere chattels or personal property (7)29).

Interest in this concept is fed by the success of animal welfare groups in expanding the reach of statutes like the Marine Mammal Protection Act by winning the right to sue on behalf of protected animals, at least in a limited sense (5,120). Acceptance of other statutes with similar objectives, such as the Endangered Species Act, has led to a widening circle of protected and judicially enforceable interests for animals (22,29). Conferring standing to sue on animals would allow humans to sue on an animal's behalf (or on behalf of a class of animals) to protect the interests of the animal. Groups such as the Animal Welfare Institute have used their judicially conferred standing to sue the Federal Government and others under the Endangered Species Act, for example, on behalf of interests they believe are not being protected sufficiently (29).

Standing proposals have led naturally to other interest-protecting roles for those seeking to protect animals' rights. In particular, application of the familiar principles of guardianship is sought. Under guardianship principles, the legislative status of animals, especially companion species, would be changed from property to possessors of specified rights, while the definition of a guard-

ian would be amended to include a person who “has elected to take responsibility for the care and well-being” of an animal. Thus, guardianship would commence on adoption or purchase. Legal guardians could be appointed by courts to assume duties as custodians and conservators of a laboratory animal’s rights, including the right to sue. The relationship could be terminated by judicial removal for malfeasance or nonfeasance and would terminate on the animal’s death or the guardian’s incapacity. The guardian’s ability to protect and enforce the animal’s interests, by lawsuit if necessary, would afford animals better protection, it is argued (109).

As discussed, courts have thus far been unwilling to confer standing on human plaintiffs in the absence of a specific statutory grant. In the U.S. *Surgical* case, the Connecticut Superior Court found no sustainable private right to enforce either the Animal Welfare Act or the State’s anti-cruelty statute. Even if courts were less conservative about granting standing, and even if the burden required for standing of showing actual injury were not as rigorous, the interest being affected still must be cognizable at law. Using the Endangered Species Act as an analogy, what would be required at a minimum is conferring the right to judicial review on “any person” affected by an action taken under the law containing the right of review. Thus, the likelihood of legislative, fol-

lowed by judicial, acceptance of even some minimal version of animal standing is probably not imminent. Acceptance of novel interpretations of otherwise familiar concepts of guardianship to cover animals is likely to be even farther off.

As frustrated as animal advocates have been in their efforts to secure enforcement of laws protecting animals, they show no sign of abating. Several such cases, instituted or pending at the Federal level, are examined in chapter 13, and the case study at the end of this chapter discusses a series of cases, involving the same parties, that explores a variety of unsuccessful theories. Recently, Actors and Others for Animals and the Fund for Animals sued the Los Angeles County Board of Supervisors, alleging their failure to enforce the county’s pound release ordinances, which require certification of humane treatment of animals by institutions seeking to purchase pound animals (108). Common-law theories, such as nuisance, have been used in these suits, and environmental statutes have been enlisted as well. In 1984, a California Superior Court dismissed a suit brought by a coalition of animal welfare groups, citing provisions of the California Environmental Quality Act, to include an evaluation of laboratory-animal use in an environmental impact report for a new, \$46 million science building at the University of California at Berkeley (20).

## REGULATION OF RESEARCH

### *Past Trends*

Apart from regulating agricultural and other economically oriented uses of animals, some States regulate the use of animals for research purposes. Twenty-one jurisdictions regulate research specifically, either in the context of general registration, licensure or inspection laws, or independently:

- Four States allow or require regulation of research facilities: California (15,17), Michigan (84), Tennessee (107), and Virginia (117).
- Seven States and the District of Columbia require licensing or registration for a research facility to receive pound animals: D.C. (30), Illinois (61), Iowa (65), Minnesota (87), Ohio (95), Oklahoma (96), South Dakota (103), and Utah (116).
- Two States extend an exemption from their animal cruelty statutes only to research approved or licensed by the State: New Jersey (92) and New York (93).
- Two States require licenses to use dogs or cats in research: Connecticut (24) and Massachusetts (77).
- Five States exempt all research facilities or federally licensed facilities from State licensing programs: Colorado (23), Kansas (67), North Carolina (94), Pennsylvania (97), and Rhode Island (99).

Most State statutes deal with the procurement of animals for research. For example, the Michigan statute makes it unlawful to sell animals to an unlicensed research facility (84). Dogs used in research must be marked. Animals cannot be sold to research facilities at a public auction or by weight, and when an animal is purchased for research, a bill of sale signed by the seller must be retained. A facility failure to abide by those rules could result in revocation of its required license (85). Conditions in animal holding facilities are also common concerns in these laws. New York facilities must treat research animals kindly and humanely and must feed and house them properly (93). Animals held in California facilities must receive satisfactory food, shelter, and sanitation (15,17).

State legislatures have been as reluctant as Congress to go behind the laboratory door. California law provides that the Department of Health Services is required to promulgate rules for the control and humane use of animals in specified types of research (17). The New York statute specifies that:

... commensurate with experimental needs and with the physiologic function under study, all tests, experiments, and investigations involving pain shall be performed under adequate anesthesia (93).

Under that statute, the Commissioner of Health has promulgated regulations applicable to research in the State university system to require ethical review of experimental procedures by the degree of pain and suffering caused the animal involved.

Some of the statutes extend their requirements only to the use of companion animals. Massachusetts requires a license prior to experimentation on dogs and cats (77), and Connecticut requires a license for research on dogs only (24). Institutions in Illinois, Iowa, or Oklahoma that plan to use live dogs or cats may apply for a license to obtain animals from a pound (61)65,96); in Ohio, to receive impounded dogs institutions must be certified by the Ohio Public Health Council as being engaged in teaching or research (95).

State research-regulation laws enacted since the passage of the Animal Welfare Act are mindful

of the potential for duplication. California specifically exempts some laboratories from its licensure law, such as those regulated by the National Institutes of Health (17). Facilities in Kansas holding a current Federal registration under the Animal Welfare Act are exempt from State law (67), as are federally regulated facilities in North Carolina and Rhode Island (94)99). Facilities in Pennsylvania that have undergone a Federal inspection within the past year are exempt from regular inspections by Commonwealth animal wardens (97).

With the exception of Massachusetts and Kansas, inspection and enforcement authorities are State-level agencies. The California statute prohibits delegation of this authority to anyone other than an employee of the Department of Health Services (17). Conversely, Kansas law allows the Commissioner of Health to appoint county and city health commissioners as authorized representatives for inspection purposes (67). In Massachusetts, research institutions must apply to the Commissioner of Licenses for a license to “employ dogs or cats in scientific investigation, experiment or instruction or for the testing of drugs or medicines.” The Commissioner must investigate the applicant prior to licensure to determine whether the public interest is served by granting a license and that the licensee “is a fit and proper institution to receive such license.” Licenses are revocable, after notice and hearing, and must be renewed annually. Knowing violators are subject to a fine of up to \$100 for each discovered violation of the statute. Local courts are authorized to enjoin violations “or to take such other actions as equity and justice require” in enforcing the licensing law. The Commissioner is given a general grant of rulemaking and inspection authority, and visitation and inspection powers may be delegated by regulation to the Massachusetts SPCA and the Animal Rescue League of Boston, “as agents of the commissioner” (77).

### ***Recent Initiatives in Research Regulation***

Proposals to enact or modify licensing statutes suggest such changes as increasing control over the research process; requiring stricter standards

of treatment and care; increasing recordkeeping and inspection functions; streamlining investigation, complaint, and prosecution procedures; and providing additional enforcement resources. Other than these proposals, not many other initiatives have been put forward to prevent or reduce experimental-animal suffering. The model statute discussed above has not generated a great deal of interest (26). Bills routinely introduced in the legislatures of more populous States require per-

centage reductions in funds spent on animal research, require consideration and adoption of alternatives to animal use, or attack the legitimacy of animal usage in some other way. But none has yet been taken seriously. Nevertheless, House Bill 742 in Massachusetts would mandate a 5 percent annual reduction per institution in the number of animals used in that State's research laboratories.

## POUND RELEASE LAWS

### *Past Trends*

All States have statutes that provide for the seizure, holding, and humane destruction of unowned or unclaimed stray animals (74). These laws, which are most complex and aggressive in their application to dogs and cats, attempt to balance the need for protection of the public's health and safety from unmanaged animals against the rights and duties of private animal ownership, whether for aesthetic or commercial purposes. To serve the interests of public protection and welfare, most States provide for the release to research institutions of unowned or unclaimed animals, usually dogs and cats, under certain circumstances or when specified conditions are met, such as obtaining a license. Such statutes generally provide for a suitable holding period after collection or seizure, so that owners have an opportunity to claim their animals, and specify procedures to be followed by owners, holding facilities, and claiming institutions. Many municipalities also have laws either requiring or authorizing the release of "random-source" animals to research institutions. Definitions of what types of institutions qualify to claim random-source animals, and at what level of "scientific research," vary widely. As noted, there is little agreement on what legitimate scientific research is. Sometimes this is left to authorities responsible for regulating research, independent of general anticruelty laws, and some types of educational research activities are proscribed (33,36). These laws are summarized in table 14-2.

The authority of States to release unclaimed animals to appropriate research facilities has never been successfully challenged. In 1959, for example, the Supreme Judicial Court of Massachusetts declined to rule that such a scheme impaired any rights of petitioning humane societies or pet owners, or that it called for an unconstitutional expenditure of public funds or property (78). The force of the court's ruling was rendered moot by the recent passage in Massachusetts of a law, discussed below, prohibiting the release or importation of pound animals for research purposes.

Currently, nine States (Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont) prohibit the release of dogs and cats from pounds for research purposes (89). The most far-reaching of these laws was passed by Massachusetts in 1983 and went into effect in October 1984. Besides repealing the State's old pound release statute and eliminating all pertinent references in general pound law, the new statute prohibits the release by "dog officers" or municipalities of any animal to any "business or institution licensed or registered as a research facility or animal dealer with the United States Department of Agriculture." A research "institution" is defined as (77):

... any institution operated by the United States or by the Commonwealth or a political subdivision thereof, or any school or college of medicine, public health, dentistry, pharmacy, veterinary medicine or agriculture, medical diagnostic laboratory or biological laboratory, hospital or

Table 14.2.—Laws on Pound Animal Use, by Jurisdiction

State/jurisdiction	Prohibit release	Require release	Allow release	No ment <sup>1</sup> in law	Other
Alabama				X	
Alaska				X	
Arizona			X		
Arkansas				X	
California			X		
Colorado				X	
Connecticut	X				
Delaware				X	
District of Columbia		X			
Florida				X	
Georgia				X	
Hawaii	X				
Idaho				X	
Illinois					X
Indiana				X	
Iowa		X			
Kansas				X	
Kentucky				X	
Louisiana				X	
Maine	X				
Maryland					X
Massachusetts	X				
Michigan			X		
Minnesota		X			
Mississippi				X	
Missouri				X	
Montana				X	
Nebraska				X	
Nevada				X	
New Hampshire	X				
New Jersey	X				
New Mexico				X	
New York					X
North Carolina			X		
North Dakota				X	
Ohio			X		
Oklahoma		X			
Oregon				X	
Pennsylvania	X				
Rhode Island	X				
South Carolina				X	
South Dakota		X			
Tennessee			X		
Texas				X	
Utah		X			
Vermont	X				
Virginia					X
Washington				X	
West Virginia				X	
Wisconsin			X		
Wyoming				X	

SOURCE: National Association for Biomedical Research, *State Laws Concerning the Use of Animals in Research* (Washington, DC: Foundation for Biomedical Research, 1955).

other educational or scientific establishment within the Commonwealth above the rank of secondary school, which, in connection with any of its activities) investigates or gives instruction concerning the structure or functions of living organisms or the causes, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

Effective October 1, 1986, Section 9 of the law will forbid the importation of similar animals into the Commonwealth for research purposes:

... no person, institution, animal dealer or their authorized agents shall transport, or cause to be transported, any animal obtained from any municipal or public pound, public agency, or dog officer acting individually or in an official capacity into the commonwealth for purposes of research) experimentation, testing, instruction or demonstration.

Under the provisions of Section 9, any institution obtaining animals before the deadline must have filed a report with the Department of Public Health "detailing its plans for discontinuation of the use of such animals."

The impact of recent laws forbidding the acquisition of unclaimed animals for research is uncertain. Research community representatives in Massachusetts have claimed that the new laws, when fully in effect, will add perhaps \$6 million to the annual price of research conducted in the Commonwealth (80,82). The added cost to taxpayers of humanely destroying animals that remain unclaimed at pounds must also be considered, although it could be argued that taxpayers bear the cost of sacrificing animals in research as well, however indirectly (81). The effects of the new Massachusetts laws merit close observation.

### ***Recent Initiatives in Pound Release Laws***

The success of those who wish to repeal pound release laws or to prohibit the use of stray and abandoned companion animals in research by some other means has been spotty. Most of the

laws permitting the use of pound animals in research were passed in the decade following World War II, when the need for inexpensive research models began to mount, and the vast majority of jurisdictions still permit it. As table 14-2 shows, 6 jurisdictions require release of impounded animals for research purposes, 7 permit it, 29 neither expressly require nor forbid release, and 9 prohibit the practice. Most delegate that authority to local animal control officers and authorities (89). Release repeals have succeeded in larger areas, which are perceived to have the resources for less-convenient means of disposition of unwanted animals. Smaller jurisdictions without those resources are faced with animal and disease control problems that are as persistent as ever. Thus, a senate committee in Florida reported a bill in 1984 that required more-humane methods of euthanasia for strays but rejected a proposal to prohibit city and county shelters from sending excess animals to the University of Florida for experimental purposes (114). Similarly, the Humane Society in Larimer County, CO, voted unanimously in May 1983 to sell animals to Colorado State University for veterinary research in order to raise funds.

Pound release laws, whether mandatory or permissive, have come under close scrutiny in the last 10 years at both the State and local level. A 25-year-old law in New York requiring the release of pound animals to State-run research institutions was repealed in 1979 (21). A bill defeated in the Wisconsin Senate by a vote of 2-97 would have amended the current law requiring pounds and shelters to release unclaimed dogs to State-accredited institutions, upon proper requisition, for research purposes (33,121).

A running legislative battle has been taking place in the California Assembly for several years. Two major bills dominated the legislative agenda in 1983 and 1984, but neither received approval. Senate Bill No. 883, defeated in 1984 in an assembly committee, would have repealed current requirements for pound signs warning owners and others that animals could be used in research and

would have generally prohibited the release by local pounds and shelters of live dogs, cats, and other animals for the purpose of experimentation, testing, demonstration, or research (14). Assembly Bill No. 1735, left pending in the 1984 assembly session, would have modified the same law by permitting persons leaving strays to stipulate that the animal not be used for research purposes. Further, it would have extended the mandatory holding period for potential research animals and prohibited release of any pound animal to a research facility prior to a determination that the facility meets specified standards of humane animal care (13). (California law currently provides, in a regulation-of-research statute, that the Department of Health Services may not make any rule "compelling the delivery of animals for the purpose of research, demonstration, diagnosis, or experimentation," thus leaving the policy to the discretion of local jurisdictions (17).)

Substantial recent activity has occurred at the local level, as well. For 3 years, the City of Los Angeles has prohibited the release of cats or dogs for research (60). In 1984, commissioners in Jackson County, MI, refused to prohibit the release of pound animals to research institutions and educational facilities. Advocates of the measure subsequently failed in their drive to have the issue placed on a referendum ballot (102). In 1983, the Society for Humane Ethics and Principles petitioned the Board of Supervisors for Maricopa County, AZ, to adopt a policy prohibiting the sale of impounded animals to research facilities, following the State legislature's rejection of the society's proposal for a State law with identical restrictions (72)83). The board adopted the proposal and the policy has been sustained by an opinion issued by the State attorney general in 1984 (25).

In 1985, 11 influential animal welfare organizations joined in an effort to prevent all use of pound and shelter animals for scientific purposes. The new National Coalition to Protect Our Pets (Pro-Pets), which includes both humane societies and antivivisection groups, seeks legislation toward this end (64).

## ANIMAL USE IN EDUCATION

### *Past Trends*

Of all areas of State and local law dealing with the humane treatment of experimental animals, the realm of education is probably the most neglected. Statutes that refer to humane treatment in grammar and secondary schools usually contain very general terms, leaving the interpretation for instructional and curricular requirements to local school authorities.

Twenty-one States, in codes governing public instruction, list requirements for teaching students about the value of animals. These requirements vary widely and correspond to legislative perceptions of both the morality and utility of humane treatment. Some States, such as Pennsylvania and Wyoming, require a certain amount of time per week or other designated instruction period to be devoted to “kindness to” or “humane treatment of” animals. Others require such instruction, in more general terms, on designated days of the year—“bird, flower, and arbor day” in Tennessee, “arbor and bird day” in Wisconsin, “bird” day in Utah, and “conservation” day in New York. New York, however, also requires general-instruction programs in “moral and humane education” and “protection of wildlife and humane care of domestic animals,” while Wisconsin mandates such programs regarding “kindness to and the habits, usefulness and importance of animals and birds, and the best methods of protecting, preserving and caring for all animal and bird life.” California, besides requiring each teacher to “impress upon the minds of the pupils the principles of morality . . . including kindness toward domestic pets and the humane treatment of living creatures,” requires public elementary and secondary schools to house and care for live animals in a “(humane and safe” manner and prohibits killing or injuring, including anesthetizing, live vertebrates. Illinois and Massachusetts prohibit any “experiment upon any living animal for the purpose of demonstration in any study” in a public school. Further, dogs and cats may not be killed for vivi-

section, nor can any animal provided by or killed in the presence of a pupil be so used. Dissection of dead animals is limited to classrooms before students “engaged in the study to be illustrated thereby” (74).

Interest is increasing in laws restricting the use of at least some animals in experimentation below the undergraduate level. Recently introduced Kansas Senate Bill No. 529 forbids any school principal, administrator, or teacher from allowing any live vertebrate animal in a school or sponsored activity to be used as part of a scientific experiment or procedure in which the normal health of the animal is interfered with or in which fear, pain, suffering, or distress is caused. Covered experiments and procedures include, but are not limited to:

. . . surgery, anesthetization, and the inducement by any means of painful, lethal, stressful, or pathological conditions through techniques that include but are not limited to:

- (a) administration of drugs;
- (b) exposure to pathogens, ionizing radiation, carcinogens, or to toxic, hazardous or polluting substances;
- (c) deprivation; and
- (d) dielectric shock or other distressing stimuli.

Dissection of dead animals would be permitted if confined to classrooms, and the bill requires that its provisions not be construed to prohibit “biological instruction involving the maintenance and study of living organisms or the vocational instruction in the practice of animal husbandry.” Finally, the bill requires live animals in schools to be housed and cared for in a humane and safe manner, assigning personal responsibility to the teacher or other adult supervisor of a project or study. Violations would be punished as Class A misdemeanors.

A bill introduced in Florida seeks to set State policy regarding experimentation with live animals. The bill prohibits biological experiments on living subjects other than lower orders of life or

anatomical specimens purchased from biological supply houses. Further, it permits only noninterventional observation of vertebrate animals (59). A similar bill was introduced in the New York Assembly in 1983 (58).

Only one case has tested the application of a State's general anticruelty statute to secondary school experimentation. For a science fair project, a New Jersey high school student intentionally inflicted two chickens with cancer and later killed them for dissection. The court first found that the State's general exemption for scientific research was unavailable to the student, since he was not a licensed institution. The plaintiff, the New Jersey SPCA, argued that experiments such as this one were needless and unnecessary. Adopting an expansive view of what constitutes scientific activity, the court found that the experiment did not violate the New Jersey anticruelty statute, for several reasons, including:

- the student had received proper supervision and normal protocols had been employed;
- there were general benefits to society in permitting such experimentation; and

- the chickens were given proper care during the term of the experiment, and it was unclear whether the chickens were in pain during the experiment (91).

### ***Recent Initiatives in Education***

Measures continue to be introduced that restrict the use of some types of animals for experimentation, teaching, or demonstration purposes and that prohibit painful or invasive procedures of any kind, as outlined above (56). An extreme example is Massachusetts House Bill No. 742, which would eliminate the use of animals for demonstration purposes at medical schools.

There appears to be growing interest among professional and humane oriented organizations in establishing standards for animal use in teaching and promoting science to the young that also encourage humane attitudes. The Scientists' Center for Animal Welfare (Bethesda, MD), for example, has targeted science fairs (see ch. 9) as candidates for making students more sensitive to the needs of animals.

## **SUMMARY AND CONCLUSIONS**

Unlike the Federal Animal Welfare Act, most State anticruelty statutes were enacted prior to the turn of the century, and they have been interpreted as protecting the interests of society, the animal owner, and the animal, in roughly that order. Most forbid both active cruelty (torture, "overriding") and failure to satisfy some specific (food, water, shelter) or nonspecific ("necessary sustenance") duty of care owed to animals. Many incorporate vague or undefined terms, require some proof of state of mind (culpability) to sustain a conviction, and are subject to a variety of defenses. Enforcement of most aspects of these statutes is usually delegated to local police and to humane societies. The members of humane societies are generally not trained to build criminal cases skillfully, they lack the enforcement tools to do so, and they are underfunded for the task.

The application of these statutes to the conduct of research is unclear, since many State anti-

cruelty laws are general in nature and contain no specific exemption for research activity. The only case that offered the ideal forum for resolving conflicting research and animal protection interests at the Federal and State level—and for deciding whether Congress intended to occupy the field of laboratory-animal regulation or, rather, to establish a cooperative system of protection—was decided without addressing these issues. Another State court found no preemptive intent in Congress' passage of the Animal Welfare Act. It seems clear enough that the act is intended to complement, or at least operate concurrently, with State efforts at research regulation, but courts' reluctance to render broad decisions in cases on animals and the mixture of constitutional principles represented in the act make prediction of outcome difficult in any given case.

Twenty States and the District of Columbia regulate research to some extent. Like the Federal act, however, most address themselves to pro-

curement and treatment of animals after experimentation, rather than to specific standards of care to be observed before and during research. These laws concern themselves primarily with dogs and cats, and some merely require or encourage licensing or some other type of certification to enable research facilities to obtain pound animals. Several States have passed regulatory laws that complement the Federal act, in the sense that they exempt facilities from compliance with certain responsibilities if they fulfill similar requirements under Federal law, regulations, or guidelines.

All States have laws providing for the control and disposition of stray and abandoned dogs and cats. Beginning in the late 1940s, States began adopting laws requiring or permitting research facilities to purchase strays from pounds and shelters. These laws have been the targets of repeal efforts.

All 50 States and the District of Columbia allow some form of pound animal use for research and training. To date, 9 States prohibit in-State procurement (although not importation from out-of-State) of pound animals for research and training. Of these, Massachusetts will in October 1986 prohibit the use of any animal obtained from a pound.

Twenty-one States have some provision in their codes requiring the teaching of "kindness" or "humanity" toward, or the "value" of, animals. A few place some restrictions on animal use in grammar and secondary schools.

Advocates of laboratory-animal protection criticize current State and local efforts to assure animals' humane treatment for several reasons, the main ones being that compliance schemes are overly complex and bureaucratic, that training and resources are inadequate, and that existing laws are not specific enough in their standards for care, treatment, and use. One model statute would regulate research use more closely by establishing classes of eligible research animals, based on comparative intelligence, with specific proofs to be met before animals in any class could be used in experiments.

Interest is growing in establishing direct, legally enforceable rights for animals. Some protection groups have endeavored to protect laboratory animals by seeking enforcement of anticruelty statutes or suing those they see damaging animals' interests. They have had virtually no success. Some have advocated conferring standing to sue on animals by applying the traditional concepts of guardianship to them.

Reviewing recent trends in each of these fields of law, it appears certain that animal welfare and humane groups will continue to press their case for reform on all fronts. Thus, it is likely that research and animal welfare interests will continue to collide in all three branches of Government at the State and local levels. Though some bills have been introduced that seek to reduce animal use in experimentation, promote other models, or eliminate the use of animals entirely, they have not been given serious consideration.

### **CASE STUDY:**

#### ***FRIENDS OF ANIMALS, INC. v. U.S. SURGICAL CORPORATION***

Every year, the United States Surgical Company used approximately 900 dogs to train sales representatives in the proper use of their [surgical] staple guns—a tool that is rapidly replacing conventional stitching of wounds or operation cuts. The representatives are chosen primarily for their sales ability and thus may have little or no medical knowledge. Before being sent out on the road, they must pass through a six-week training course. The company is now the focus for animal welfare protest in Connecticut. Their position has not been improved by allegations of animal abuse in a newspaper expose or the

fact that one of the dealers who supplied them with dogs has been convicted of animal cruelty and of receiving stolen animals (101).

Thus was summarized a dispute between Friends of Animals, Inc., a major animal welfare organization, and U.S. Surgical Corporation, a large, private manufacturing interest using dogs to train its own personnel and customers in the use of its products. Behind local newspaper headlines on the case was a running legal battle involving several distinct lawsuits in Federal as well as State courts. Regardless of the positions or motives of

the litigants, the cases in which they are parties provide an interesting view of the perceived roles that existing Federal and State animal welfare laws play when such disputes arise.

### ***The Parties***

#### **Friends of Animals, Inc.**

Friends of Animals, Inc. (FOA), is a not-for-profit, charitable organization incorporated under the laws of New York, with registered agents in a number of other States. FOA claims some 100,000 members nationwide, more than 5,000 of whom live in Connecticut, where these FOA complaints were filed. **FOA** is active in defense of all animals' right to humane treatment—politically, as well as legally. In the suits, FOA alleged that among its members are "individuals who are owners of dogs and . . . who have an intense interest in the proper administration and enforcement" of animal welfare laws (37).

#### **U.S. Surgical Corporation**

Headquartered in Norwalk, CT, U.S. Surgical Corporation is the leading producer of surgical stapling devices used for surgical tissue repair and wound closure. It has been in business for some 18 years and total sales in 1982 were \$146 million. Its surgical products, marketed under the trade name AUTO-SUTURE, are sold in over 40 countries. U.S. Surgical has international subsidiaries in seven European countries and Australia, and the company employs about 1,900 people, two-thirds of whom work in Connecticut. Though it receives no Federal funding to support its product research or development, the company is subject to inspection and licensure by the Animal and Plant Health Inspection Service (APHIS) as a "research facility" under the Federal Animal Welfare Act, by the Drug Enforcement Administration under the Controlled Substances Act, and by the Departments of Health and Consumer Protection in Connecticut, which regulate the use and disposal of dogs in research (106,123). U.S. Surgical's president has expressed concern about the amendment of the Federal Animal Welfare Act that would require the company to appoint nonaffiliated persons to internal animal care review com-

mittees that have access to confidential business information (113).

### ***The Controversy***

U.S. Surgical's use of dogs purchased from local animal dealers to provide live-tissue training for its sales staff, also known as technical field representatives, in the use of surgical stapling equipment at the Norwalk teaching facility first came to the public's attention with the publication of a newspaper article in November 1981. That article contained a variety of allegations about the company's practices:

- "Sales personnel with no medical experience and surgeons destroyed at least 900 dogs at the Norwalk laboratory between October 1, 1980, and September 30, 1981. Additional hundreds of dogs are operated on each year for sales demonstration purposes by the company's traveling sales staff and at regional and national sales meetings."
- Anesthesia was "routinely administered to the dogs by persons with no medical training, including the sales staff."
- U.S. Surgical "failed to comply, for three consecutive years, with federal laws that [required it] to register with the U.S. Department of Agriculture."
- In at least one case, the personnel performing live-tissue training demonstrated the strength of the staple closure by lifting a dog by the clamp enclosing the abdominal fascia and by attempting to sunder the stapled cut.
- Some dogs appeared to be inadequately anesthetized, "jumping, jerking, writhing, and moaning" or showing other apparent signs of pain or distress during demonstrations, and others died prematurely, apparently from overdoses of barbiturates used for anesthesia.
- USDA officials quoted in the article were of the opinion that use of dogs for this purpose was a legal research activity although they "questioned the validity of sacrificing animals, especially in such large numbers, for this type of commercial purpose."
- One of the federally licensed dealers from whom the company had acquired dogs had

been “convicted in local court [in New Jersey] of receiving stolen dogs, animal cruelty, failing to keep proper records and failing to provide animals with adequate shelter from the cold” (54).

U.S. Surgical contended that its salespeople are given hands-on, live-tissue training in the use of its surgical stapling equipment, principally to “enable [them] to provide technical assistance in the operating room the first few times a surgeon uses the stapling instrumentation on a human patient.” U.S. Surgical’s technical field representatives also act as instructors, under the supervision of professors of surgery, in the laboratory portion of surgical-stapling seminars at postgraduate teaching hospitals. The company provides an “intense, five-week training program” for these purposes, consisting of instruction in “anatomy, physiology, surgical terminology, aseptic surgical techniques, surgical gowning, gloving, and scrubbing, and operating room protocol,” in addition to supervised live-tissue training. Refresher courses on new surgical-stapling procedures are given to all sales staff at least once each year (106).

U.S. Surgical responded to major charges contained in the 1981 article as follows:

- In all, 974 dogs were acquired and used during the period mentioned, but only for ‘(teaching regarding technical application and use of surgical instrumentation in well-accepted surgical procedures,’ and not for demonstration purposes. The company asserts that only foam wound and organ models are used for sales demonstration purposes.
- All anesthetic procedures are initiated and supervised by two “laboratory technicians trained in animal care and handling and who have been previously employed in animal laboratories responsible for both survival and nonsurvival animal research work.”
- The company “complied in good faith” with Animal Welfare Act requirements. U.S. Surgical first applied for registration of its Stamford, CT, facility on June 4, 1976; it was first visited by USDA-APHIS inspectors in February 1979, and informed that it was not registered under the act. An inspection was conducted under ‘(license-pending” status. The

company reapplied for registration on February 20, 1979, and Registration No. 16-28 was issued on March 27, 1979.

- “The strength of the staples is tested to demonstrate their benefit when used in human clinical surgery; however, the methods described lifting dogs by the staples and attempting to pull incisions apart by hand] are not employed.”
- Although ‘(the level of sedation may vary during the program,” due to periodic administration of regulated doses to maintain unconsciousness without overdose, “the animal never regains consciousness or experiences discomfort.” U.S. Surgical also stated that multiple teaching procedures are performed on single dogs in one session, “minimizing the need to use even more dogs and maximizing the teaching benefit provided by the animal.”
- Expressing no specific opinion about the statements made by the quoted USDA-APHIS inspector as to the utility of using dogs for this purpose, U.S. Surgical noted that they had been contacted by a USDA veterinarian who would be writing to substantiate its need to use live animals.
- Dogs used in live-tissue training were acquired only from federally licensed dealers, their identification tags were checked and recorded, and their condition was evaluated prior to acceptance. If, as was stated in the article, the New Jersey dealer had had its Federal license revoked, then reinstated when violations had been corrected, the dealer “must be considered an acceptable source by the USDA” (123).

### ***The Lawsuits***

Friends of Animals filed its first lawsuit against U.S. Surgical in Federal court in Connecticut on December 29, 1981, a little less than 2 months after the newspaper article had appeared (37). Alleging that the defendant company, registered as a research facility as defined in the Federal Animal Welfare Act, had killed 974 dogs to demonstrate its surgical equipment, FOA contended that the demonstrations:

- were “at times, performed without the proper administration of anesthesia”;

- did not constitute “experimentation and/or research, as permitted by . . . the Animal Welfare Act”; and
- violated the Connecticut anticruelty statute.

The FOA complaint also contended that similar demonstrations performed from 1977 through 1979, when the company was not registered under the act, were not permitted experiments or research and violated the State anticruelty statute. FOA petitioned the court for a jury trial; unspecified compensatory damages; \$5 million in punitive damages; interests, costs, and attorney’s fees; and “other equitable relief.” On February 8, 1982, U.S. Surgical filed a motion, under Rule 12 of the Federal Rules of Civil Procedure, to dismiss the suit because the plaintiff had failed to state a claim on which the court could base any warranted relief (38). Two days later, FOA filed a separate suit in the Superior Court of Connecticut, alleging the same facts, complaining of the same acts by the company, and requesting the same relief (41). On February 12, 1982, FOA filed a motion for voluntary dismissal without prejudice of the action filed in the Federal court, under Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, asserting that the Federal court lacked jurisdiction over the subject-matter of the suit (39). The court concurred and dismissed the suit without prejudice (40).

FOA amended the State court complaint on April 6, 1982, adding three additional counts to the original two (42). The third count alleged that the surgical-stapling demonstrations performed on anesthetized dogs from 1977 through 1981 violated Connecticut Statute 22a-15, which contains a general declaration of policy on environmental preservation. Counts Four and Five complained that the demonstrations constituted a nuisance and violated the provisions of the Animal Welfare Act. Thus, in addition to asserting that the company’s complained-of activity violated Federal and State animal welfare laws, FOA contended that it amounted to a compensable common-law nuisance and also violated Connecticut’s stated policies concerning protection of the public trust in natural resources.

U.S. Surgical countered with motions to strike the first two counts, on April 12, 1982, and the last three counts added by amendment, on May

19, 1982. In its memoranda in support of the motions, the company responded to the allegations as follows:

- The Connecticut anticruelty statute, being a criminal statute, created no private right of action to seek or compel enforcement of its provisions. According to U.S. Surgical, the law was not enacted to specially benefit a particular class and no evidence of legislative intent to create a private right of action could be found. The company claimed that such a right would be inconsistent with the statutory scheme of criminal and administrative enforcement erected by the legislature to protect both animals in general and dogs used in research.
- FOA lacked standing to sue, both on behalf of its members and on its own behalf, since the alleged injury was neither direct nor “distinct from a general interest shared with the public at large.”
- Punitive damages could not be awarded to FOA since no allegation was made that the defendant’s acts were committed to intentionally and wantonly violate FOA’s rights or showed a reckless indifference to the rights of FOA.
- The Connecticut statute articulating the state’s interest in natural resources as a “public trust” provided no basis for FOA’s challenge to U.S. Surgical’s use of dogs, for three reasons. First, it authorizes no private right of action. Second, the State’s declared policy of protecting the public trust in natural resources does not apply to defendant’s use of dogs. Third, the environmental statute does not supersede other State laws governing the use of dogs in research.
- FOA lacked standing to sue on grounds of nuisance, having suffered no direct and distinct injury of an interest in real property.
- The Federal Animal Welfare Act created no private right of action in favor of FOA, for the same reasons stated in U.S. Surgical’s response to the first count (43,44).

FOA filed an opposition to U.S. Surgical’s motion to strike on June 10, 1982, and the court heard oral arguments on the motion on November 3, 1982 (106).

The superior court entered a decision granting the company's motion to strike all five counts of FOA's complaint (45). With regard to the alleged violation of Connecticut's anticruelty law, the court construed the criminal-penalty law strictly and found no evidence of intent to create a private right to enforce its provisions. Although the Court did find legislative intent to create a private right to seek injunctive relief against pollution, under the Connecticut Environmental Protection Act, it rejected FOA's contention that dogs were covered by the statute.

The court also rejected FOA's charge that U.S. Surgical's destruction of dogs for surgical purposes constituted a common-law nuisance because FOA both "failed to set forth allegations that established a public nuisance" and based its claim for recovery "upon its peculiar and particular sensitivities and not upon its rights as a member of the general public." Additionally, the court rejected FOA's claim that the Federal Animal Welfare Act created a private right of enforcement similar to that created by the Marine Mammal Protection Act. Finally, the court agreed with U.S. Surgical that FOA could not collect punitive damages unless it pleaded and proved that the company had shown "(a) reckless indifference to the rights of others or an intentional and wanton violation of those rights" (45).

On December 21, 1982, before judgment had been entered on the motion to strike, FOA filed an amended complaint in Connecticut superior court, alleging again that U.S. Surgical's use of dogs for surgical demonstrations was reckless, wanton, sometimes without proper anesthetization, and constituted a public nuisance (46). FOA also claimed that the company's use of dogs violated a New Jersey anticruelty statute. The revised complaint added a new party to the proceedings: Pierre Quintana, a resident of Wilton, CT, who alleged that his springer spaniel, "George," was "stolen by agents or servants or employees of the U.S. Surgical Corporation and converted to said owner's use." FOA asked for a trial by jury and the same relief as earlier. U.S. Surgical, unaware that a substitute complaint had been filed, the following day filed a motion for early entry of judgment on the motion to strike (47,106).

**While** the action in State court continued, FOA refiled its case in Federal District Court on December 29, 1982, again asserting an interest on behalf of its members in "legally sufficient enforcement of the Animal Welfare Act" (48). Reiterating the allegations of the company's use of dogs in 1981, FOA renewed its contention that proper anesthetics were not used. It further alleged that U.S. Surgical had purchased live dogs from unlicensed dealers, in violation of the act, and that the company's surgery on live animals did not constitute experimentation and/or research as permitted by the act and was performed with "reckless indifference to the lives and well-being" of the animals.

Almost 4 months later, FOA moved for leave to amend the renewed complaint, and the motion was granted (49). In its amended complaint, filed on April 13, 1983, FOA charged that Rudolph Varana, a federally licensed animal dealer doing business as Varana Rabbit Farms, had committed "criminal acts"—i.e., received a stolen golden retriever, for which he was convicted under New Jersey Law—"as agent and servant for the U.S. Surgical Corporation . . . in direct violation of 7 U.S.C. 2131(3) which states that one of the purposes of the *Animal Welfare Act* is 'to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen'." FOA contended that the company knew or should have known of "(its agent" Varana's "criminal acts" but continued to purchase dogs from him. As a result of Varana's "criminal acts" and U.S. Surgical's own negligence, FOA claimed that it had "been required to expend substantial amounts of money, [had] diverted substantial corporate resources, and [had] been forced to restructure [its] activities in order to investigate the criminal activities of said Rudolph Varana . . . and address the violations of the Animal Welfare Act and regulations enacted thereof [sic] by the U.S. Surgical Corporation." (FOA did not state that the golden retriever had been acquired and used by U.S. Surgical.)

Meanwhile, the company filed a request to revise the substituted complaint in the State court action, asserting that the second count of the substituted complaint reiterated allegations of pub-

lic nuisance that had already been stricken by the Court (50). Failure by FOA to object to the request resulted in the request being granted on May 9, 1983, leaving intact the counts concerning the claimed violation of the New Jersey anticruelty statute and the alleged theft of Quintana's dog (106).

On December 9, 1983, FOA's lawyer moved to withdraw as counsel in the Federal case. The request was granted in March 1984. On August 23, 1984, FOA's new attorney filed a motion to dismiss the Federal complaint with prejudice, and moved to withdraw the State complaint and to set aside a judgment of dismissal entered in that case. Both motions were granted and the lawsuits were dismissed, not to be filed again (51,52,106). A newspaper story a week before the dismissal and withdrawal motions were filed by FOA reported that prior counsel had instituted suit against FOA for nonpayment of legal fees in the U.S. Surgical cases and others filed on FOA's behalf (6).

### ***Discussion of the Case***

Almost 3 years of legal sparring over an animal welfare controversy, conducted in both Federal and State courts, came to no substantive conclusion on the real issues in disagreement. There was no examination by a judge or a jury of the evidence to determine whether U.S. Surgical's use of anesthetized dogs to train its personnel in the use of surgical-stapling equipment on human pa-

tients was cruel or unjustified. FOA's attempts to invoke Federal and State animal use, anticruelty, animal theft, and even environmental statutes to "punish" or control behavior it deemed cruel or unjustified accomplished little more than the consumption of substantial amounts of time and judicial resources.

This result can be attributed to a number of factors, chief among which is a demonstrated reluctance on the part of judges to permit private enforcement of laws entrusted by legislation to administrative and law-enforcement agencies. Whether FOA decided to abandon its prosecution of U.S. Surgical as a result of disagreements with initial counsel or a realization of the unlikelihood of a victory on the merits is an open question. Statements attributed to FOA representatives in published press accounts could support both of those reasons (6,55).

Connecticut regulates the use of live companion animals (dogs) in research; its general anticruelty statutes make no mention as to whether its provisions also apply to the conduct of research. The same situation exists in 24 other States. If the complex and wholly inconclusive legal maneuvering in *Friends of Animals, Inc. v. US. Surgical Corporation* is indicative of what might occur in similar circumstances in other jurisdictions, it is unrealistic to expect a result that settles anything or satisfies any party with an ideological interest in the treatment of laboratory animals and the human benefits of animal research.

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