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of Animal Welfare Law

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A note from ALAW

Welcome to the autumn/winter issue of the Journal of Animal Welfare Law. Animal Welfare Law does not exist in a vacuum and one of ALAW's core values is to promote the importance of Inter-disciplinary working, which is reflected in this edition of the Journal.

David Williams, from the Department of Veterinary Medicine University of Cambridge gives us his impressions of the first International Conference on Veterinary and Animal Ethics held in September 2011.

Kim Stallwood sets out why, as a non-lawyer, he considers the law as critically important in progressing animal welfare. Kim is the European Director of the Animals and Society Institute which seeks to advance the status of animals in public policy.

As regular readers will know the Journal has kept a watching brief over the course of the year on the use of wild animals in circuses with Chris Draper from the Born Free Foundation providing the Journal with updates of events.

Alan Bates looks at some of the legal issues surrounding covertly obtained material used as evidence in prosecution cases. Bridget Martin discusses the illegal trade in rhino horn while Sally Case discusses the issue of juvenile offenders in relation to prosecutions for animal cruelty.

Finally, good wishes for the forthcoming holiday season and New Year to the Journal's readers and supporters.

Jill Williams
Editor

Undercover evidence: The use of covertly filmed footage as evidence in animal welfare prosecutions

**Alan Bates, Barrister,
Monckton Chambers**

Every so often, a news story about an apparent case of animal abuse provokes such a strong public reaction that politicians and decision-makers are forced to respond. The outpouring of public disgust, outrage, and sometimes anger, is so politically powerful because it is seen to come, not only from people who already support animal causes, but from people with no previous involvement. Such news stories have historically played an important role in expanding the supporter base for animal welfare groups. Without the prompt of the emotional response, most people are simply too busy to turn their minds towards ethical questions.

Such news stories are, of course, critically dependent on filmed footage. Pictures (and particularly moving pictures) have a power to prompt emotional responses from the public in a way that written descriptions very rarely do nowadays. If the public conscience is to be pricked, it is therefore vital that campaigners be able to obtain filmed footage, including from laboratories, intensive farms and other places from which the public are normally kept out.

Once the footage has been obtained, the footage may appear to show, not only lawful uses of animals, but also

abuses that contravene the criminal law. In such cases, there is likely to be public clamour for prosecutions to be brought, to assuage the strong sense that society needs to condemn, and thus disclaim responsibility or approbation for, the conduct in question. But to what extent, if at all, does the way that filmed footage was obtained affect its admissibility as evidence to support a prosecution?

That is a question that has recently come to the fore again, as a result of the filming of the treatment of animals at an Essex slaughterhouse.

An individual animal rights supporter had entered a slaughterhouse premises and placed a CCTV camera there with a view to obtaining footage of the slaughtering process. But the footage, when it was viewed, in fact revealed much more than that. In particular, it revealed what appear to be multiple examples of breaches of the Welfare of Animals (Slaughter or Killing) Regulations 1995 (“WASK”) and, worse still, examples of the deliberate infliction of suffering (the deliberate infliction of suffering on a captive animal being an offence not only under WASK but also under the Animal Welfare Act 2006). By way of example, the footage appears to show slaughterhouse workers abusing pigs in the slaughter chain by kicking and

punching them, and burning them on their faces with cigarettes.

The individual who obtained the footage passed it on to Animal Aid (a national animal rights organisation), who in turn sent it to the Food Standards Agency (“the Agency”) (the body which enforces WASK) so that the serious concerns raised by the footage could be urgently investigated and prosecutions brought wherever appropriate.

To Animal Aid’s dismay, the Agency refused to investigate the matters revealed by the footage. The Agency explained that prosecutions brought following the Agency’s investigations were brought by the Department for Environment, Food and Rural Affairs (Defra), and Defra had stated that it would not bring prosecutions using “*evidence provided by a third party that it could not obtain under its own*

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statutory powers". As to the place where this alleged policy could be found, the Agency referred to a document previously provided to Animal Aid in July 2010 in which Defra had made various suggestions that such evidence could not properly be relied on by Defra because of the Human Rights Act, the Regulation of Investigatory Powers Act and/or other legislation (though the document did not state any definite conclusions about those matters). The Agency's refusal to investigate the matters revealed by the footage received widespread media attention, with Sky News, *The Daily Telegraph*, *The Independent* and the *Daily Mail* being among the media outlets that gave prominent coverage to the story. The coverage generated a considerable amount of public disquiet at the Agency's refusal to investigate and Defra's apparent refusal even to consider bringing prosecutions.

The Agency's refusal to investigate the matters revealed by the footage received widespread media attention

Defra's immediate response to this media coverage was to deny that it had in place the policy to which the Agency had referred, thus contradicting the Agency's public

statements. Then, within two weeks of the date when the news story first appeared, Defra and the Agency informed Animal Aid that the Agency would, after all, commence an investigation with a view to possible prosecutions. Animal Aid understands that files have now been submitted to the Crown Prosecution Service ("CPS") (which has now taken over responsibility for the tasks previously performed by Defra's prosecutions team), and decisions on whether and whom to prosecute are currently awaited.

So what is the law on whether or not prosecutions can be brought using videotape evidence obtained by a private citizen acting on his own initiative (i.e. without any instructions or involvement of any State agency)?

The starting point appears to be the principles applied by the Court of Appeal in *Rosenberg*.¹ That case arose out of a long-running dispute between neighbours, during which one neighbour (Mr B) had installed a video camera on the wall of his house to film the goings-on in the garden of his next door neighbour, Ms R. The video footage revealed evidence of drug dealing. Mr B handed the footage to a police officer, and Ms R was subsequently prosecuted and convicted of drug offences. She challenged her convictions on the ground that the video filming of her garden had been in breach of the Regulation of Investigatory Powers Act 2000 ("RIPA"), and that the footage should therefore not have been admitted as evidence against her.

“ police involvement in any filming carried out by a private citizen was a factor that the trial court could take into account ”

The Court of Appeal dismissed Ms R's appeal. Section 78 of the Police and Criminal Evidence Act 1984 ("PACE") provided a discretion for the trial court to exclude evidence "if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it". The degree of police involvement in any filming carried out by a private citizen was a factor that the trial court could take into account in deciding to exercise its Section 78 discretion to exclude evidence. On the facts of Ms R's case, however, the police had neither initiated nor encouraged the filming; and, accordingly, their acceptance and use of the video footage provided to them by Mr B did not constitute a breach by them of PACE, RIPA or Article 8 of the European Convention on Human Rights. Thus, there was no reason why the evidence should not be admitted.

As *Rosenberg* illustrates, the fact that a private citizen has obtained particular evidence through covert filming and/or civil trespass is unlikely to itself be sufficient to lead to the exclusion of the footage as evidence at trial, at least where the filming has not been initiated or

¹R v Rosenberg [2006] EWCA Crim 6, [2006] All ER (D) 127 (Jan).

encouraged by the police or other government agencies.² In that regard, it is important to remember that the Human Rights Act applies only to public authorities; it does not apply ‘horizontally’. A decision by the CPS or Defra to bring a prosecution in circumstances where the “evidential test” and the “public interest test” in the Code for Crown Prosecutors were both met could not sensibly be said to in itself constitute a breach of the Human Rights Act.

These principles have been recognised by the CPS in its published guidance on the enforcement of the Hunting Act 2004. The guidance states:

“No authorisation under RIPA or the Police Act needs to be sought where an NGO ... conducts surveillance for its own purposes. RIPA and the Police Act regulate the activities of public authorities so that those activities do not offend against Article 8 of ECHR.” (emphasis in the original.)

Accordingly, *“no authorisation would be required where the police neither initiate nor encourage the surveillance even though they may be aware of it”*.

On the other hand, where the police *“are aware of the intention of the NGO to conduct covert surveillance and intend making use of the surveillance product in the event that*

it reveals evidence of a crime, it would be appropriate to seek an authorisation. This would undoubtedly be the case where the NGO is tasked to conduct the surveillance, whether explicitly or by necessary implication.” Even in circumstances where an authorisation should have been obtained, however, the fact that one was not obtained does not mean the evidence will automatically be excluded. Rather, *“the fact that the evidence was obtained in breach of a Convention right is a factor which the court will consider when exercising its discretion under section 78 of PACE”*.

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Thus, campaigners wishing to use covert surveillance or similar means to uncover unlawful conduct may wish to be aware of the potential for any prior discussions that they may have with the police (or the RSPCA)³ about the use of such means to be relied on by a defendant to resist the admission of the evidence against

him. Where, however, there have been no such prior discussions and the footage appears otherwise reliable, it is likely to be admissible. The law therefore strikes a fair balance between: (i) discouraging the police from using relationships with third parties to circumvent the legal restraints which attach to the police’s own investigatory powers; and (ii) enabling prosecutions to be brought where the efforts of journalists or campaigners, carried out independently of government agencies, has revealed criminal misconduct that might otherwise never have been uncovered.⁴

² Indeed, there are every year cases of high profile prosecutions being brought following undercover investigations by national newspapers and TV documentary makers, in circumstances where the evidence would almost certainly have been excluded had the same methods used by the journalists been employed by, or with the connivance of, the police.

³ An interesting question arises (though outside the scope of this article) as to the extent to which it is appropriate to regard the position of the RSPCA as being, for these purposes, analogous to that of the police or other state agencies with law enforcement responsibilities. Pursuant to section 67(9) of PACE, the PACE codes of practice apply, not only to police officers, but also to other persons “who are charged

with the duty of investigating offences or charging offenders”. Such a duty can arise from a private employment contract where one of the things the person is employed to do is to investigate criminal offences (see *Joy v Federation Against Copyright Theft Ltd* [1993] Crim LR 588; and *RSPCA v Eager* [1995] Crim LR 59). It is therefore likely that RSPCA inspectors are bound by the PACE codes, and that courts should therefore be more ready to exclude evidence obtained by the RSPCA in circumstances where it would not have been lawful for the police to have used the same methods, even if the evidence would not have been excluded if obtained by another non-State organisation or individual. The RSPCA is not, however, a “public authority” for the purposes of

s.6 Human Rights Act (see *RSPCA v Attorney General* [2002] 1 WLR 448 at [37(a)]), and it is therefore not required to act compatibly with the Convention rights.

⁴ The fact that the evidence is admissible does not, of course, protect individuals or organisations from civil liability for trespass or other torts, or indeed from criminal liability in respect of any offences committed in order to obtain the evidence. Those individuals and organisations may, however, in some circumstances have an arguable defence based on ‘the public interest’, ‘necessity’ or ‘lawful excuse’. Appropriate legal advice should be sought by anyone planning to carry out covert filming or voice recording activity.

Simba and the Vienna Bronze Sculpture – a brief examination of the plight of the rhinoceros

**Bridget Martin, Senior Lecturer in Law
University of Lancaster**

On 30th June 2009, as Donald Allison was about to board a flight to China via Amsterdam, he was stopped by officers of the UK Border Agency. His luggage was searched and found to contain a Vienna bronze sculpture of a bird on a log. But this was no ordinary bronze sculpture. It had been specially constructed out of resin in order to hide two rhinoceros horns, horns that had been cut from the body of Simba, an elderly white rhinoceros, who had died aged 41 years, that April.¹ Allison pleaded

guilty to offences under the Customs and Excise Management Act 1979 and was sentenced at Manchester Crown Court to 12 months in prison. These particular horns, which were confiscated, had been prevented from adding even more fuel to an illegal though highly lucrative trade which is believed to have a severe effect on wild rhinoceros populations.

There are five species of rhinoceros in the world today and although they once ranged widely, they are now confined to parts of Africa, India and Asia, and they are in trouble. All of them are included on the IUCN's Red List of Threatened Species. Of the two species that are found in Africa, the White Rhinoceros (*Ceratotherium simum*) is the most numerous, its status is merely "near threatened" and its population is gradually increasing,² whereas the Black Rhinoceros³ (*Diceros bicornis*) is "critically endangered",⁴ its population having declined by over 90% in the last 60 years, although its numbers too are slowly increasing.⁵

The remaining species are found in Asia. They are the Indian Rhinoceros⁶ (*Rhinoceros unicornis*), listed as "vulnerable",⁷ the Sumatran Rhinoceros (*Dicerorhinus sumatrensis*)⁸ and the Javan Rhinoceros (*Rhinoceros sondaicus*),⁹ both of which are critically endangered, both with populations fewer than 250 mature individuals and both with populations continuing to decline.

All species of rhinoceros are therefore to a greater or lesser extent in a parlous position and although the reasons for this vary, their main threats come from people. As populations have grown, so have people needed more land for habitation and for agriculture. Kaziranga National Park, a World Heritage Site that contains the world's largest population of Indian rhinoceroses, provides a good example of some of the pressures that can be experienced. They include: illegal fishing, livestock grazing and heavy traffic on a

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¹ See "Rhino horn smuggler jailed", Legal Eagle, February 2011, NO. 63, P. 3.

² IUCN SSC African Rhino Specialist Group 2008. *Ceratotherium sinum*. In: IUCN 2010. IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 08/02/2011

³ Also known as the Hook-lipped Rhinoceros

⁴ It was first listed as such in 1996

⁵ From 2,400 in 1995 to 4,180 by December 2007, see Emslie 2006; Emslie et al. 2007; African Rhino Support Group data 2008 –IUCN SSC African Rhino Specialist

Group 2008. *Diceros bicornis*. In: IUCN 2010. IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 09/02/2011

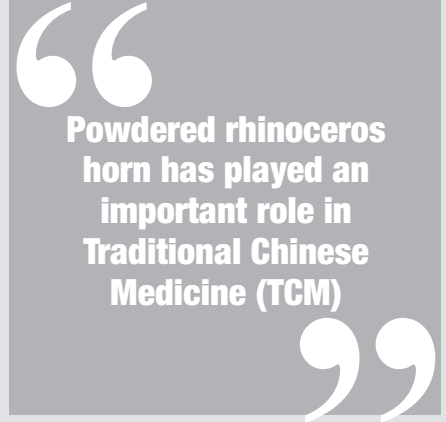
⁶ Also known as the Greater One-horned Rhinoceros and the Great Indian Rhinoceros

⁷ Talukdar, B.K., Emslie, R., S.S., Choudury, A., Ellis, S., Bonal, B.S., Malakar, M.C., Talukdar, B.N. & Barua, M. 2008. *Rhinoceros unicornis*. In: IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 09/02/2011

⁸ Van Strien, N.J., Manullang, B., Sectionov, Isnan, W., Khan, M.K.M., Sumardja, E., Ellis, S., Han, K.H.,

Boeadi, Payne, J. & Bradley Martin, E. 2008. *Dicerorhinus sumatrensis*. In: IUCN 2010. IUCN Red list of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 08/02/2011

⁹ Van Strien, N.J., Steinmetz, R., Manullang, B., Sectionov, Han, K.H., Isnan, W., Rookmaaker, K., Sumardja, E., Khan, M.K.M. & Ellis, S. 2008. *Rhinoceros sondaicus*. In: IUCN 2010. IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 02/03/2011



National Highway.¹⁰ Illegal logging can also cause problems. A quick glance at some of their former range states is also illuminating. The Sumatran Rhinoceros, which once ranged from “Bhutan and north-eastern India through Yunnan, Myanmar, Thailand, Cambodia, Lao PDR, Viet Nam and the Malay Peninsula and onto the islands of Sumatra and Borneo in Indonesia”¹¹ is now confined to small pockets.¹² Many of these former range countries have been subject to a great deal of political turmoil. Similarly with the Black rhinoceros, whose territories stretched across many war zones. However, the greatest threat to the rhinoceros comes from poaching.

Depending on its species, the animals possess one or two horns¹³ and it is this that is largely contributing to their downfall. Powdered rhinoceros horn has played an important role in Traditional Chinese Medicine (TCM) for hundreds of years, its supposedly medicinal properties used to heal a variety of ailments, although now it is almost exclusively used to treat fevers.¹⁴ Other horn is used to make ornately carved handles for ceremonial daggers or carved into libation cups, articles that are highly prized in the Middle East and China. In other words, these items are traded and, because the animals are rare, all transactions fall within the provisions of CITES.

CITES, or the Convention on International Trade in Endangered

Species of Wild Fauna and Flora,¹⁵ does precisely what it says, it regulates trade in endangered species, that is, species that are threatened with extinction or which may become so, and it does it by means of a permit system. All the species to which it applies are listed in the appropriate Appendix. Appendix I “shall include all species threatened with extinction which are or may be affected by trade”,¹⁶ while Appendix II lists those species that are not currently threatened with extinction, but that “may become so unless trade in specimens of such species is subject to strict regulation”.¹⁷



Under the Convention, “species” are defined to include “any species, subspecies or geographically separate population thereof”.¹⁸ In other words, different populations of the same species can be considered independently for listing purposes. This distinction is important when maximizing the protection of rhinoceroses. Furthermore, “species” also applies to “specimens of

species” and “specimens” may be living or dead and include “any readily recognisable part or derivative thereof”.¹⁹ In other words, it applies to rhinoceros horn, whether powdered as medication or in the form of decorative goods, as well as to the living animal.

Under CITES, trade can only be carried out by means of a system of permits. The strictest regulation applies to Appendix I species, where international trade will only be authorised “in exceptional circumstances”.²⁰ Both export and import permits are required from the Management Authority of these States,²¹ and they will only be granted if the Scientific Authority of the importing State advises that the import is “for purposes which are not detrimental to the survival of the species involved”²² and that, if the specimen is alive, the proposed recipient “is suitably equipped to house and care for it”.²³ Trading of Appendix II specimens is slightly more flexible. Thus CITES outlaws most trade in rhinoceroses. The only trade that is legal, is where a specific population is downlisted to Appendix II for a particular purpose that contributes towards the animals’ conservation. This happened in 1994 to the South African population of

¹⁰ <http://www.worldheritagekaziranga.com/Conservation-Ecological-Threats.html>

¹¹ See note 8, Foose et al. 1997, Grubb 2005

¹² Ibid. For example, the only population of *Dicerorhinus sumatrensis harrisoni*, 1 of its 3 subspecies, consists of 50 rhinoceroses found in Sabah and Kalimantan (Meyaard 1986 7 Van Strien 2005)

¹³ For example: the Indian rhinoceros has 1 horn, the white rhinoceros has 2

¹⁴ CoP 15 Doc. 45.1 (Rev. 1) Annex 1. A Report from the IUCN Species Survival Commission, African and Asian Rhino Specialist Groups and TRAFFIC to the

CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP 14) and Decision 14.89, Tom Milliken, Richard H. Emslie and Bibhab Talukdar (compilers). Between 2006-2009 probably more than 3,100 kg. rhinoceros horn reached illegal Asian markets

¹⁵ It was concluded in March 1973 but only entered into force on 1 July 1975

¹⁶ Article II (1)

¹⁷ Article II (2). There is also Appendix III, but is not relevant to this article.

¹⁸ Article I (a)

¹⁹ Article I (b)

²⁰ See note 16

²¹ In the UK, this is the Wildlife Licensing and Registration Service (WLRS) which is part of the Animal Health and Veterinary Laboratories Agency, an executive agency of Defra

²² Article III 3(a)

²³ Article III(b)

the Southern White rhinoceros, when a limited number of live animals were sold to go to “approved and acceptable destinations”.²⁴ In effect, this permits small numbers to be moved to a different area where perhaps they will be able to establish a new population thus slightly increasing the species’ chances of survival. However, what it fails to do is to stop all the illegal trading, which, because these products are still so highly sought after, becomes ever more lucrative as the animals become progressively rare. Hence the illegal killing continues.

In the early 1990s, the Environmental Investigation Agency (EIA) decided to look into what appeared to be a frenzy of poaching rumoured to be fuelled by a syndicate in a remote part of China which, allegedly, was stockpiling rhinoceros horn. Their progress was filmed, much of it with hidden cameras and the results were disturbing. The investigation, part of which was made into a programme and shown on television,²⁵ clearly demonstrated the links of the chain, from the poverty stricken African poachers willing to risk their lives for very little money, up to what indeed did prove to be a syndicate of Chinese officials who were stockpiling rhinoceros horn instead of gold because the horn was more valuable. A very different form of Futures Market! Of the original 6 tonnes only a small fraction remained when the team arrived, ostensibly to buy up the remaining stock. After checking that the horn was indeed from rhinoceroses, for it

can be other material masquerading as such, they agreed to the sale. It was then that these same officials volunteered the local police to help transport the cargo over the border! One of the results of this investigation was that the Chinese Government set up a wildlife protection unit and burned some of the horn. Furthermore, the USA put pressure on Taiwan to tighten up procedures at its ports of entry and exit, to ensure that this leaky border was sealed and no more horn got through to China. For a time, the poaching, if not entirely stopped, was greatly reduced and numbers of the Black rhinoceros, which had suffered a catastrophic decline of 96% between 1970 and 1997 began to steadily increase.²⁶

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Poaching is a cruel business. Unfortunately, with all the political unrest and war being waged, particularly on the African continent, there is no shortage of weaponry to use to kill these animals. The EIA programme²⁷ showed some harrowing footage. In one instance, two rhinoceroses had been gunned

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down by Kalashnikov rifles and left to die in agony after their horns had been cut off. This had probably taken as long as two days. What made the whole incident even more disturbing and tragic was that both animals were heavily pregnant, soon to give birth. Deeply shocking. In the twenty first century however, poaching has also gone “high tech”. The poachers are using helicopters to hunt down their victims, which they either shoot with guns or dart with tranquillisers. They land when the animal is unconscious, cut off their horns with chainsaws and remove them by air. “The whole operation can take as little as 10 minutes” and the animals are left to bleed to death, if they are not dead already.²⁸ This time, much of the demand comes from Viet Nam, “where a cabinet minister recently claimed his cancer had been cured by a potion containing ground rhino horn”,²⁹ an infinitely more dangerous claim than merely that it heals fevers.

Although poaching has increased, so has international capacity to fight back. There are now 175 signatory parties to CITES and the preamble to the Convention states that “international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade”. This is now happening and there are an increasing

²⁴See note 2

²⁵It was an episode in the series “Animal Detectives”, “Animal Detectives – Rhinos”, first broadcast on television in the 1990s

²⁶<http://www.savetherhino.org/etargetsrinm/site/1209/default.aspx> Accessed 22/02/2011

²⁷ See note 25

²⁸ Richard Thomas “Surge in Rhinoceros Poaching in South Africa”, *TRAFFIC Bulletin* Vol. 23 No. 1 (2010), p. 3

²⁹ “Rhino poaching soars in South Africa”, *Legal Eagle*, February 2011, No. 63, p. 14

number of successful prosecutions in the “producer” and “consumer” countries, as the following examples from 2010 will serve to demonstrate. In Kenya, 5 rhinoceros horns were seized and confiscated at Jomo Kenyatta International Airport, part of a cargo falsely declared to be avocado pears.³⁰ In South Africa, a Vietnamese national, arrested at O.R. Tambo International Airport, was found guilty on seven counts of illegal possession of rhinoceros horn, 7 horns taken from 4 poached animals. The presiding Magistrate dealt harshly with the defendant, refusing to fine him and instead, sentencing him to 10 years in prison, not only because “he wanted to send a strong message to Viet Nam with this sentence, as fines did not seem to be a deterrent” but also because the defendant “had travelled to South

border with Myanmar and found to be in possession, inter alia, of 10 slices of horn from the critically endangered Javan rhinoceros. They were expected to be sentenced to a term in custody of more than 15 years.³²

Another South African case again highlights the role of Viet Nam in the current resurgence of killing. Rather more disturbing however, is the fact that on this occasion veterinarians appeared to be involved. The two, together with nine other persons, were allegedly part of a rhinoceros poaching syndicate operating in the Limpopo province. This case is due to be heard in April.³³ Europe too has had its successes, but it has not always been easy to secure a satisfactory result.

It was as far back as 1982 that the European Union passed its first Regulations³⁴ implementing CITES, with a number of others passed since then, all of them stronger than CITES itself.³⁵ Within the UK, it is the Customs and Excise Management Act 1979 and the Control of Trade in Endangered Species (Enforcement) Regulations, the COTES Regulations, a number of which have been passed from 1985 onwards, that are applied to enforce CITES and the EU Regulations. However, it was not until the 1990s that many prosecutions were brought. One of the earliest cases of selling Traditional Chinese Medicines (TCMs) containing parts of endangered species, including powdered rhinoceros horn, was

R v Yeung and Lee 1995.³⁶ Indeed, it was thought to be the first such prosecution in the world. Thousands of bottles of medicine were seized at their premises. The two defendants, Chinese herbalists, were charged with offering items for sale, namely, remedies containing parts of endangered species. They admitted the offences and were fined £3,000 and £2,000 respectively. Lee also admitted 1 charge of keeping an item for sale. Now, however, it is very unusual to get rhinoceros horn in TCMs in the UK.³⁷

One of the strengths of CITES is that its enforcement procedures include the confiscation of illegally traded specimens.³⁸ Although this allows rhinoceros horn to be confiscated, as it was in Yeung and Lee, this is not necessarily a straightforward procedure. Indeed, the extraordinary case of R. v Bull, Eley, Scotchford – Hughes and Arcott 1998 well illustrates this. The owner of the horn, Bull, was already in prison serving a life sentence for the murder of his wife. He had a stock of rhinoceros horn that he wanted to sell, to provide him with funds when he had completed his sentence. Therefore he, together with Eley, who being outside prison was acting as Bull’s main agent and salesman, plotted with others as to how the sale should be accomplished. Unfortunately for them, their fellow conspirators were actually members of the RSPCA’s Special Operations Unit and the South East Regional Crime Squad. It was a long and complex undercover operation.

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Africa specifically to commit a crime with self-enrichment as motivation, without taking the effect of the damage into consideration”.³¹ A similarly strong line was taken in China, where the two accused were stopped at a checkpoint on the

³⁰ See TRAFFIC Bulletin Vol. 23 No. 1 (2010), “Seizures and Prosecutions”, Africa, Kenya, pp. 30-31

³¹ See note 30, South Africa, p. 31

³² See note 30, China, p. 32

³³ See note 31

³⁴ Council Regulation 3626/82 and Council Regulation 3418/83

³⁵ It is Council Regulation 338/97 and Commission Regulation 865/2006 that currently enforce CITES within the European Union

³⁶ “£5,000 fines for animal potions”, The Times, 7 September 1995

³⁷ Information given to the author by the WRLS

³⁸ Article VIII 1(b)

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As poaching has soared to unprecedented levels, so have prices achieved for ‘worked’ horns
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The four defendants were charged under the Control of International Trade in Endangered Species (Enforcement) Regulations 1985, with conspiring to sell 240 kilos of rhinoceros horn. At the time of their arrest, this amounted to 1% of the world’s total wild white rhinoceros population. All four were found guilty though their sentences varied. Bull had 15 months added on to his remaining custodial term. He also had to pay £700 costs. Eley was given a prison service of 9 months and the other two, their girlfriends, were ordered to do up to 120 hours community service.³⁹

The horn was confiscated, but not for long. Unfortunately, because it was old and fell within the category of pre-CITES specimens, it had to be returned, Bull could keep it. However, he could not sell it as it was “unworked”. Rhinoceros horn falls within one of two categories, “unworked” (ie. raw) or “worked” and while raw horn cannot be sold, some pieces of “worked” horn may

be sold, imported or even re-exported. This loophole originates from European Commission Regulation 865/2006 which sets out an antiques derogation,⁴⁰ under which “worked” horn (acquired in its finished state before 1 June 1947) could be sold because, allegedly, it is more valuable than the raw material.⁴¹ Until about two years ago, rhinoceros horn trophies fell within the “unworked” category, when the European Commission ruled that such trophies should be considered to be works of art.

Whilst it is obvious that objects such as ornamental daggers and Ming and Qing dynasty libation cups are indeed objects d’art, a rhino horn mounted on a plaque for wall hanging is surely more sensibly categorised as “unworked” or raw material. However, once the Commission had ruled that trophies were “worked”, the antiques trade in these items rapidly increased, with sellers responding “positively to a raft of conspicuously high prices paid by Far Eastern bidders...”.⁴² Indeed, some recent research carried out by the UK’s Wildlife Licensing and Registration Service (WLRS) shows a clear correlation between increased levels of poaching of wild rhinoceros and application to WLRS for permits to re-export “worked” specimens of horn. As poaching has soared to unprecedented levels, so have prices achieved for “worked” horns and subsequent applications for re-export permits.⁴³ WRLS is convinced these

additional horns are helping to fuel the trade, and that people are buying by weight rather than artistic merit.⁴⁴

The rules on import, re-export and sale of “worked” or “unworked” rhinoceros horn are complex and have recently been made even stricter.⁴⁵ In September 2010, WLRS, acting unilaterally, issued new, stricter guidelines which required, inter alia, that they, WLRS, must give pre-sale approval for all potential UK sales of rhinoceros horn under the antiques derogation. They would also, with very few exceptions, refuse all applications for permits for the re-export of items made of rhinoceros horn.⁴⁶

However, even this was not enough. In November 2010, one specimen of rhinoceros horn sold for the record sum of £155,000. John Hounslow, Head of WLRS, has said that “There is evidence that comparatively poor examples of taxidermy containing rhino horn have been selling for £40,000 - £50,000 far exceeding their value as art objects” and because they, (WLRS), intend to protect wild rhinoceroses “it is important that future applications for the export of rhinoceros horn, with a small number of notable exceptions, are refused”. Furthermore, he states that

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At the time of their arrest, this amounted to 1% of the world’s total wild white rhinoceros population.
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³⁹ TRAFFIC Bulletin Seizures and Prosecutions: Vol. 16 No. 3 (March 1997) to Vol. 23 No. 1 (December 2010), see Vol. 17 No.2 (June 1998), Europe, UK

⁴⁰ Article 62(3)

⁴¹ Simon Barnes, “Psst! Want to make a mint out of rhino horn?”, The Times, 20 November 2010

⁴² Roland Arkell, “EU set to outlaw mounted rhino horn sales”, Antiques Trade Gazette, 9 February 2011. See

<http://www.antiquestradegazette.com/news/7809.aspx> Accessed 09/02/2011

⁴³ In fact they doubled from 8 in 2009 to 16 in 2010, as did poaching incidents, up from about 150 to over 300

⁴⁴ Information provided for the author by the Wildlife Licensing and Registration Service

⁴⁵ GN 1: General guidance notes for Importers and Exporters, issued January 2011; GN 2: General Notes

on commercial use, issued February 2011; and GN 7 (February 2011): Additional guidance notes for traders in worked specimens. GN 1 and GN 2 detail the exact procedures and requirements for licence applications

⁴⁶ “Animal Health to Prevent Export of Rhino Horn from UK”, Animal Health Press Release, 22 December 2010. See http://www.defra.gov.uk/animalhealth/cites/news/archived_news/200910-Prevent-Exp... Accessed 28/02/2011

“This decision is based on evidence that such applications, if approved, could potentially fuel demand for rhino horn, which may lead directly to an increase in poaching”.⁴⁷

In February 2011, the European Commission acted to clarify the definition of “worked” rhinoceros horn.⁴⁸ Under the new guidance, “worked” rhinoceros horn includes, for example, “taxidermied rhino head including horn(s), mounted or un-mounted; and rhino horn carved or fashioned into a complete and identifiable artistic or utility object.

“This decision is based on evidence that such applications, if approved could potentially fuel demand for rhino horn”

However, “rhino horn mounted on a plaque, shield or other type of base for wall hanging; rhino horn removed from a plaque, shield or other type of base; or rhino horn with minimal or rudimentary carving” all fall within the category of “unworked” horn. This new advice was included in the most recent UK Guidance, GN7, issued by WLRS in February 2011. Under it, “details of all worked specimens of rhino horn to be offered

for sale in the UK under the antiques derogation (Article 62(3) of EC Regulation 865/2006 must be submitted to Animal Health (SSC-WLRS) for pre-sale approval”⁴⁹ and only when this has been received and WLRS is satisfied that the item does indeed fall within the new, clarified definition of “worked”, will it be possible to sell it.⁵⁰

Herds of rhinoceroses have roamed the earth for millions of years. Our ancestors lovingly painted them in the heart of caves, part of some mysterious religious ritual.⁵¹ Today however, they are in trouble and there are not many of them left, their problems caused mainly by people. Despite the fact that active measures to conserve all five species have been ongoing for a number of years and that there is no shortage of volunteers prepared to work in the dangerous field of rhinoceros protection, numbers continue to fall. It would seem that the rewards for poaching are still too great. Those involved in illegal trading in rhinoceros horn remain undeterred by a substantial body of legislation which has resulted in successful prosecutions in many countries. The penalties can be severe. Yet while the price of the horn continues to be higher than that of gold and some people foolishly believe in its medicinal properties, even to the extent that it can cure cancer, what hope is there? Even in the UK, Simba’s dead body was mutilated. The future for the rhinoceros looks rather bleak.

⁴⁷ Ibid

⁴⁸ As contained in EC Regulation 338/1997, Art. 2(w)

⁴⁹ GN 7 (February 2011): Additional guidance notes for traders in worked specimens, para. 2 Rhino Horn. See also “New rules make it illegal to trade mounted rhino horns in the UK”, Animal Health Press Release, 18 February 2011 - <http://www.defra.gov.uk/animalhealth>

[/news/180211-new-rules-rhino-horns-in-the-UK...](#)
Accessed 28/02/2011

⁵⁰ Ibid

⁵¹ The author saw a prehistoric painting of a woolly rhinoceros when she visited the French cave of Lascaux

The abuse of animals by juvenile offenders

Sally Case, Head of Society Prosecutions Royal Society for the Prevention of Cruelty to Animals (RSPCA)

From a prosecutor's perspective, the involvement of a juvenile in an animal case makes consideration of prosecution a more complex exercise. It can often bring together the most horrific forms of violent abuse against an animal, with one of the most vulnerable category of potential defendant. At the right moment, this category of offenders can sometimes offer an opportunity to work with and engage youths in a local community, bringing some good to the darkest of situations.

The Code for Crown Prosecutors sets out some common public interest factors tending in favour of and against prosecution. Those factors pointing towards prosecution include whether the offence involved the use of a weapon or violence, whether the offence was carried out by a group and whether the victim was vulnerable.

Other considerations for youth offenders are their past conduct and whether they have already received reprimands or final warnings. Prosecutors are specifically advised to take into account the interests of the youth when deciding whether it is in the public interest to prosecute them, and consider whether the person has tried to put right the loss or harm caused by them.

“Those factors pointing towards prosecution include whether the offence involved the use of a weapon or violence”

The RSPCA considers whether to bring private prosecutions against those who commit offences involving animals. The Charity, which has been protecting animals in this way since 1824, does so in order to meet its charitable objects “to promote kindness and to prevent or suppress cruelty to animals”. A conviction can mean a court order to move an animal out of an abusive and violent home. It can also mean a person is disqualified from further involvement with animals, protecting other animals from future risk. And a conviction can send a clear message to society at large as to what is, and is not, acceptable conduct towards animals.

A volunteer researcher was recently used to provide a detailed analysis of RSPCA cases involving juvenile offenders. The results confirmed some long held beliefs about the

profile of juvenile offenders; and also some more surprising information about the nature of those offences. A relatively small number of cases were used for the research to enable a more in-depth analysis of each to be performed. In total, 46 juveniles in 33 cases from 2008 were considered. All of these cases resulted in conviction. This older data was used to enable analysis to take place of reoffending data after that time.

Of those youths considered, 82% were male, and 74% were in the 15 - 17 age bracket. Only half of them were in education at the time of the offence, and 30 % were not in education or employed. 50% of those considered had previous convictions; between them they had 48 convictions for 104 offences, and 13 reprimands and 10 warnings. Six of the 23 youths had multiple convictions and these covered a wide variety of common offending patterns including convictions for theft, criminal damage, public disorder, violence, and the misuse of drugs. One defendant had been previously prosecuted by the RSPCA and in another case the RSPCA had previously visited and spoken to the family about the same animal.

In interview the defendants had been asked why they had harmed animals. Three admitted causing intentional cruelty, with one of these suggesting it

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Attacks on animals in these cases were particularly horrific, including throwing a rabbit against a wall
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helped him relieve his anger. Fourteen of the juveniles appeared to simply lack judgment about the appropriate way to treat animals, and four denied any wrong-doing. Three youths blamed their use of alcohol at the time of the offence, and seven appeared to have hurt animals for fun, out of boredom or peer pressure. Only 11 of the people considered expressed any regret for their actions. In three cases parents expressed remorse for their children's actions, but in two cases parents refused to engage with the RSPCA at all. In four families, there appeared to be some encouragement of their children's actions, or involvement in offences against animals themselves.

In three quarters of the offences committed by the study group, the actions were carried out in a group rather than by individual, and in 82% of cases the offences were committed in an urban rather than a rural area. Alcohol or drug use was not as prevalent as might have been

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seven appeared to have hurt animals for fun, out of boredom or peer pressure
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assumed; only appearing to feature in 17% of cases, with another 7% of defendants admitting to regular drug use, although it was not clear whether they were under the influence of drugs at the time of the offence. There was a clear correlation however between the involvement of alcohol in the offence

and the level of violence against the animal. Attacks on animals in these cases were particularly horrific, including throwing a rabbit against a wall, beating a hedgehog to death with a bicycle chain over a 30 minute period and swinging a cat by its tail and kicking it. Weapons were usually very crude items that were to hand, rather than anything designed or sophisticated. In 24% of cases weapons were used, including cigarette lighters, rocks and sticks.

In one particularly distressing case a group of youths were witnessed torturing a sheep in rural Norfolk. They chased the pregnant rare breed ewe around a field shouting at each other to “stab it”, “fork it” and “punch it”. When police arrived they followed the blood stained drag marks to a wheelie bin and found the body of the sheep stuffed inside. Veterinary evidence showed the ewe had been kicked, punched and stamped on. She had broken ribs, a broken jaw and a dislocated neck and she had been stabbed with a pitch-fork through her eye, chest and liver. Bricks, sticks and stakes had also been used in the attack.

Two youths aged 16 and 17 were identified from the group and they admitted playing a part in its death. They were each sentenced to a four month detention and training order and disqualified from keeping animals for 10 years. A third youth admitting chasing the animal and was given a referral order and ordered to pay compensation to the owner of the sheep.

Referral orders and supervision orders were the most common outcomes for the group analysed from 2008 data, whilst 25 of the 46 were disqualified from keeping animals for some period. Four defendants were made the subject of a curfew, and seven were ordered to

perform unpaid work or community service.

Against this rather depressing analysis were positives. Only one of the defendants reoffended against animals in the period 2008 – 2011, to the knowledge of the RSPCA. In many cases RSPCA Inspectors are able to use such incidents to bring together the local community and other youths, who are often appalled at what has occurred in their area. Educative work in schools and alongside Youth Offending Teams meant that some good was able to come from these murky moments of human life.

Acknowledgements

With grateful thanks to Dominika Flindt – volunteer.

Case Summary: Jakobski v Poland (Application no. 18429/06)

Janusz Jakobski, a Polish national, filed an application against the Republic of Poland with the European Court of Human Rights in which he alleged that his right to observe his religious beliefs protected under Article 9 of the Convention had been infringed. The Claimant, who is serving an eight-year prison sentence for rape, complained that custodial authorities had repeatedly refused to provide him with a meat-free diet essential for a practising Mahayana Buddhist.

Submission of the Parties

The Claimant's case was that under Article 9 of the Convention the state is obliged to respect and support the individual's freedom to practice his or her religion. The state would only be allowed to refute this right in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Jakobski asserted that a request for a meat free diet cannot be said to menace such limitations. Lastly, he maintained that a Buddhist who does not follow Buddha's directions stops the self-development and resist Buddha's teachings at the core of this religion. The Claimant referred the Court to the Third Secondary Precept of Shakyamuni Buddha,

which states: "*A disciple of the Buddha must not deliberately eat meat. He should not eat the flesh of any sentient being. The meat-eater forfeits the seed of Great Compassion ... Those who do so are guilty of countless offences.*"

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respect and support the
individual's freedom to
practice his or her
religion
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The government submitted that although under Polish law the state is not obliged to provide special diet in accordance with prisoner's religious beliefs they do not dispute that a diet might be considered to be an essential part of one's religion that falls under the merit of Article 9 of the Convention. However, Jakobski had in the past agreed to a PK diet (a diet that contains no pork and includes very little meat) and as such he cannot claim that vegetarianism is an essential part of his practice. Relying on Wikipedia the state argued that the Mahayana wing of

Buddhism encouraged rather than required its devotees to abstain from eating meat products. Lastly, providing a special meal for one person would not only be too burdensome for the prison staff but also too expensive on the prison system.

Ruling

The court held that Jakobski's wish to follow a vegetarian diet could be regarded as having been motivated or inspired by religion and was therefore not unreasonable. Consequently, his rights under Article 9 of the Convention had been infringed by the state. While the panel of judges recognized that making separate meals could have financial implications and as a result indirect effect on the treatment of other prisoners the Court held that the Claimant had asked for simple meat free meals only that did not require special products, preparation or cooking methods. The court was not convinced that preparation of a vegetarian meal for the applicant would have a substantial effect on the management of the prison or would worsen the quality of meals provided to the other detainees.

News Updates

Expulsion of NGOs from Ivory Trade Talks

The International Fund for Animal Welfare (IFAW) reported (17 August 2011) that NGOs, including the European Commission, were excluded from the 61st meeting of the Convention on Illegal Trade in Endangered Species (CITES) Standing Committee when discussions about the future of ivory trade were about to commence. On the agenda was the ivory-decision making mechanism, elephant management and conservation, as well as poaching and illegal ivory trade.

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NGOs, including the European Commission, were excluded from the 61st meeting of CITES Standing Committee
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The request to remove members of the civil society and to conduct talks behind closed doors came from Kuwait who made this request on behalf of some Asian countries. The alleged rationale for this expulsion was disclosure of sensitive documents.

However, according to IFAW all documents were readily available on the CITES website prior to discussions taking place.

Kenya and UK strongly opposed removal of the NGOs from the talks citing their great expertise on the subject of elephants and ivory sale. After a vote the NGOs were allowed to come back to the discussion table.

The CITES Standing Committee oversees the implementation of rules for the international trade in over 34,000 species between the triennial meetings of the 175 CITES member States. The top issues debated during the 61st meeting included new financial mechanisms, elephant conservation, measures to reduce current levels of rhino poaching, tigers and other big cats, mahogany and other timber species, sturgeon and caviar trade, and the sourcing of reptile skins used in the leather industry.

Slaughter without stunning banned in the Netherlands

Eurogroup for Animals reported (29 June 2011) that the Dutch parliament voted to ban slaughter of livestock without prior stunning. The ban puts an end to exemption that has allowed

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a ban is not directed against religious slaughter but rather that religion is not a sufficient reason for animals to suffer
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Muslims and Jews living in the Netherlands to slaughter animals according to centuries-old dietary norms.

According to Eurogroup's communiqué the Dutch government's decision to vote in favour of such a ban is not directed against religious slaughter but rather that religion is not a sufficient reason for animals to suffer unnecessarily. The various religious groups based in the Netherlands that practise ritual killing of animals were invited to find an alternative animal friendly methods.

This bill was proposed by the Party for the Animals and after scientific consensus that animals that are made unconscious prior to slaughter suffer less, than animals that are killed fully conscious.

Dr. Courat from Eurogroups said: *“This is a major step forward for animal welfare and we urge all of the 26 other European Union member states to follow the example of the Dutch government. It will however be possible for religious groups to get an exemption, but only when they provide indisputably proof that their alternative method will not cause more harm to animal welfare than pre-slaughter stunning.”*

If the bill passes the upper house of the Dutch parliament later this year it will alleviate suffering of 1 million animals in the Netherlands.

Sweden, Norway, Luxembourg, and Switzerland had ritual slaughter of livestock, but the EU permits religious dispensation.

EU's ban on seal products

In 2009 the European Parliament and the Council adopted a Regulation (No 1007/2009), which banned the trade in seal products in the European Union. The ban was implemented in light of concerns about the animal welfare aspects of seal hunts.

Hunting methods used by sealers such as shooting, netting and clubbing were also put into question. The ban that came into force in 2010 applies to imported seal products as well as to seal products produced in the EU.

IFAW's communiqué from 8 June 2011 informs that the Canadian government had asked the World Trade Organization (WTO) to form a formal dispute resolution panel that would review the ban in terms of whether the ban complies with WTO rules.

Hunting methods used by sealers such as shooting, netting and clubbing were also put into question

In turn the EU Parliament reaffirmed their position for the EU ban on seal products, and had asked the Canadian government to withdraw their request for review, which they say is counter to positive trade relations.

The spokesperson for the IFAW said: *“Canada must respect the right of Europeans to say ‘no’ to a bloody, cruel and unnecessary industry. This WTO challenge on behalf of a dying industry will cost millions and could threaten a trade deal worth billions to Canadian and European citizens.”*

The IFAW further reports that despite this year's hunt smallest scale since 1993, the video footage they were able to obtain shows that sealers continue to engage in intentional cruelty. They intend to share the evidence as a further prove that commercial sealing is *“inhumane, unnecessary, and outdated practice that should be stopped.”*

The EU barred the import of white pelts taken from baby seals in 1983. Belgium and Netherlands have banned seal products, and the US has banned Canadian seal products since 1972.

The use of animals in experimentation

Under the Motto **“Together it is possible”** 900 professionals from 50 countries gathered in Montreal, Canada between the 21-25 August 2011 to take part in a dialogue on how to replace, reduce or refine (the three R's) the use of animals in experimentation.

The goal of the 8th World Congress on Alternatives and Animal Use in the Life Sciences was *“to bridge the distance between science and policy and to identify opportunities for collaborations.”*

Among the debated themes was international development in the three R's and regulatory testing, alternative method development, public participation in animal policy decision making, conflicts between the three R's, incorporation of the three R's in education and training, linking the three R's to animal welfare, and replacement and reduction in basic research. The use of animals in experiments and the eventual reduction and replacement is also a hot topic in Europe. The EU Directive

The use of animals in experiments and the eventual reduction and replacement is also a hot topic in Europe

2010/63/EU aimed to update and replace the 1986 EU Directive 86/609/EEC on the protection of animals used for scientific purposes. The goal behind this revision was to 'harmonise' animal research legislation in the EU, to strengthen the protection of animals used in scientific procedures in line with the EC Treaty of Rome protocol on animal welfare, and to implement fully the principles of the 3Rs. The 'new' Directive acknowledges the capacity of animals to sense and express pain, suffering, distress and lasting harm and seeks to improve

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The goal behind this revision was to ‘harmonise’ animal research legislation in the EU
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the welfare of animals used in scientific procedures by raising minimum standards for their protection in line with the latest scientific developments. While the target is to replace live animals in experiments, the Directive states that the use of animals is *“necessary to protect human and animal health and the environment.”*

The Eurogroup for Animals (22 August 2011) requested the 8th World Congress participants to ensure that the EU and the European researchers work out a strategy that will adopt the three R’s and implementing this strategy in all aspects on research and testing.

Sonja Van Tischen of Eurogroup said: *“The goal of the World Congress is to bridge the gap between science, policy and education by identifying mechanisms which enable effective knowledge transfer and the translation of science based evidence into good animal practices. Non-animal alternatives will result in higher quality science and it is time for the EU to act and promote alternative methods by committing to their development and use.”*

The implementation of the EU Directive 2010/63/EU will start in January 2013.

Degradation from the Battery Cage Ban

In the last issue of the Journal attention was brought to the Eurogroup’s call on the EU’s Commission to adhere to the deadline for the ban of the barren battery cages after some egg producers failed to invest in new egg production systems.

The egg producers had 12 years to change their practices in order to comply with this law.

On 16th August 2011 the Eurogroup for Animals strongly opposed the suggestion of the Belgian Minister Onkelinx that she would be willing to grant egg producers unable to implement the new systems six months “period of grace”. The Eurogroup states that should the postponement took place it would be illegal and in breach of the EU Directive that clearly states that as of 1 January 2012 chickens cannot be kept in battery ban cages under any conditions.

Director of the Eurogroup, Sonja Van Tische, stated the following: *“Eurogroup is extremely concerned that member states are taking unilateral decisions to postpone this ban, either by stating that they will not control the ban before a given time as is the case in Spain or like*

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as of 1st January 2012 chickens cannot be kept in battery ban cages under any conditions
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Belgium where they have put forward their own conditions. It is appalling how member states treat EU legislation to protect animals. Enforcement and compliance are becoming a big joke with large numbers of animals suffering as a result.”

Badger Cull in Wales Postponed

In March the Welsh Assembly voted in favour of a badger cull to eradicate the spread of bovine tuberculosis in cattle. The cull was to apply in West Wales, in the so-called intensive action area of north Pembrokeshire and neighbouring areas of Ceredigion and Carmarthenshire.

The Guardian reports (21 June 2011) that the Welsh environment minister John Griffiths put a halt on the cull, and ordered a scientific review that will look into the tactics of how to control the disease and to find out the best way to tackle bovine TB.

The Badger Trust welcomed a “rigorous review” but maintains that the cull ordered by the previous government was *“legally flawed and was likely to have been quashed by the High Court on judicial review.”*

The report of the panel, chaired by Prof. Christopher Gaskell of the Royal Agricultural College, is expected to be completed before the end of the year.

Dominika Flindt Researcher

News from Columbia

During August and September 2010, the university group "Javeriana Animal Protection", organised the academic event "Seminar-Workshop: Participatory tools for Animal Protection in Colombia" at Pontificia Universidad Javeriana in Bogotá, Colombia.

This seminar-workshop was one of the first of its kind in Columbia intended to train citizens in the legal, ethical and participatory tools for animal protection with links to the animal protection movement and NGOs.

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Twenty seven speakers and approximately fifty attendees took part in the event

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The seminar-workshop lasted over five days, during which lectures and group activities were conducted covering thirty topics related to animal protection. Twenty seven speakers and approximately fifty attendees took part in the event. In addition, local control officers at District and National, levels explained what powers have been developed for animal protection.

Topics included: the current context of animal abuse, the bioethical perspective, concepts of leadership

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Some of the participants (teachers and students) participated actively in the management and promotion of different activities
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and the study of Colombian and international law. Later a session on local, national and international animal protection practices.

The following modules were presented: specific policy issues, case studies, government agencies responsible for the supervision and control as well as appropriate mechanisms for implementation in the lines of: pets, animals used in work, animals used in shows, animals used for experimental and wild animals. Exercises were conducted in applying the tools learned and finally, the event closed with a panel of experts in ethics and policy.

Some of the participants (teachers and students) participated actively in the management and promotion of different activities that have enabled small and medium achievements in animal protection issues in the country.

The seminar-workshop was made possible by financial and logistical support of the Career of Ecology, School of Environmental and Rural Studies, Bioethics Institute and Welfare Vice-Rector of the Pontificia Universidad Javeriana, Further support was provided by the Environmental Police and the District Oversight, which we owe grateful thanks.

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³ Psychologist M.sc. AnimaNaturalis. Agenda Animal

⁴ Filmmaker. Animal Defenders International

Stop Press

British Union for the Abolition of Vivisection v Information Commissioner

(Unreported) Independent November 16, 2011

In what has been described as a 'landmark ruling' the Information Tribunal found in favour of the British Union for the Abolition of Vivisection (BUAV) in its bid to force Newcastle University to hand over details of Home Office licences to conduct experiments on primates. The University is expected to appeal. Further details will appear in the next edition of the journal.

Dog breeding laws in Wales

The First Minister announced in August 2011 Welsh Government plans to introduce dog breeding legislation to address unsatisfactory practices among some dog breeding establishments. It is planned that legislation will tighten the thresholds for when a dog breeding licence is required and set staff to dog rations.

International Conference on Veterinary and Animal Ethics

**David Williams MA VetMB PhD CertVOphthal CertWEL FHEA FRCVS,
Department of Veterinary Medicine,
University of Cambridge CB3 0ES**

It seems strange, given the importance of animal welfare since Ruth Harrison's *Animal Machine* nearly fifty years ago, that it has taken until now for an international conference on veterinary and animal ethics to be held. Stranger indeed in retrospect given what a success the meeting was; perhaps the time was just right for such a conference. The meeting, held at the Royal College of Physicians in London, spanned two days with the first covering more general issues in animal ethics and the second looking in more detail at the out-working of those concepts in different areas of animal use from wildlife, through laboratory animals, production animals, companion animals and animals used in sport. Finally, global and governmental issues were discussed together with broader aspects of ethical citizenship, ethics

and economics and, you will be glad to know, the legal aspects of veterinary ethics.

The meeting started with an excellent overview of the historical aspects of veterinary ethics in Britain by Dr Abigail Woods from Imperial College. The veterinary profession started as a small and fragmented body asserting its superiority over unqualified practitioners, seeking to show that treating animals ethically entailed putting them under qualified veterinary care. Woods suggests that this met with only qualified success. Parliament did pass the Veterinary Surgeons Act in 1881 giving qualified professionals a monopoly over the use of the term *Veterinary Surgeon*. But treatment of animals by unqualified people was still legal; curtailment of advertising by veterinary surgeons made it difficult for them to assert their perceived superiority over those who had not been to veterinary school.

Vets did have an important role in preventing such unethical and cruel practices such as the docking of the tails of horses but it took us many years to have the same consideration of the docking of puppy's tails. The 1912 Animals (Anaesthetics) Bill requiring anaesthetics for certain veterinary procedures, did not have

support from the leaders of the profession, most probably because its lay promoters had failed to seek veterinary input from the start. At this point the majority of cases seen were horses, but the increasing importance of production animals did not go unremarked by veterinary surgeons. Woods notes Lesley Pugh commenting in 1924 "*Too often the cow becomes a mere machine for the provision of milk. As a result of our ignorance ... we fail sooner or later to maintain its efficiency*". It was to be another forty years before Ruth Harrison exposed this to public view and consternation in her seminal book, *Animal Machines*.

The aftermath of the Second World War with its emphasis on increasing production targets worsened this scenario- albeit that British citizens had full bellies, the aptly named 'cheap food' policy - but the use of science and the increasing respect for professional expertise improved the vet's lot and the passage of the Veterinary Surgeon's Act in 1948 enshrined this in law. Having said this, the veterinary profession generally dismissed lay concern over factory farming as 'sentimental anthropomorphism' asserting the profession's moral responsibility for human practices but defining animal health, in an editorial in the

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treating animals
ethically entailed
putting them under
qualified veterinary
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Veterinary Record from 1969, as the “*maximum economic production commensurate with economy and humanity*”. Woods terms the period from 1948 to 1975 as “*the eclipse of animal ethics*” but by this latter date the Royal College’s Guide to Professional Conduct offers the beginning of an insight into a change in ethical thinking among veterinarians. In 1975, the rationale for the Guide was “*preventing members from harming each other*” while by 1978 the rules were formulated “*with the interests of animals and their owners clearly in mind*”. These changes continued until in 1987 a veterinary surgeon was removed from the register for performing treatment causing a pony unnecessary suffering and distress. In 1993, the College’s surveillance over clinical practice extended to defining the docking of dogs’ tails (which Woods points out had been debated since 1969) as unethical. Now the College has a certificate and diploma in Animal Welfare Science Ethics and Law and ethics and welfare are widely discussed, as this meeting shows. We have spent much of this review

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the Royal College’s Guide to Professional Conduct offers the beginning of an insight into a change in ethical thinking
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discussing Dr Woods’ opening lecture but this historical account was important in laying the foundation for the rest of the meeting. Next Professor Peter Sandøe from Copenhagen discussed the developing

concept of animal welfare moving from the idea of cruelty to animals from as far back as Martin’s Act of 1822 to ensuring ‘no unnecessary suffering’ as integral in British legislation in the Animal Welfare Act 2006. Considerations of animal welfare had moved from the Five Freedoms proposed by the Farm Animal Welfare Council (now Committee) after the Brambell Committee of 1965 to FAWC’s latest concepts of ‘A life worth living’ and ‘A good life’. These concepts were further discussed by Professor Bernard Rollin from Colorado who underlined that pain and pleasure in the utilitarian calculus which lies at the heart of much animal welfare since Bentham’s day were not sufficient to define what animals need. Pleasure and pain certainly matter to animals, but what about other ‘matterings’? The concept of *telos*, the ‘catness’ of a cat, as we might put it: what matters to a bird is much more than just an absence of pain and a provision of pleasure. The ability to scratch and mark in a cat, even to hunt, the ability of a migratory bird to migrate at the right time of year, all should be central to our understanding of animal welfare. Central but also difficult to provide, I would say. One can ensure a freedom from hunger and thirst, but how does one provide the ability to hunt small birds without compromising their *telos*?! Rollin gave the fascinating example of servals in a zoo enclosure where provision of meat in a bowl in no way provided for their needs. Devising a machine that fired meat balls for the servals to ‘hunt’, as described by Hal Markowitz, Shirley LaForse in Applied Animal Behaviour Science back in 1987, might seem somewhat absurd but it worked! We might ask how such an understanding of animal behavioural needs can fit with out current

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Pleasure and Pain certainly matter to animals, but what about other ‘matterings’?
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legislation, but the Five Freedoms enshrined in the Animal Welfare Act of 2006 include the provision in section 9.2(c) ‘to exhibit normal behaviour patterns’, which could easily include such enrichments.

Other lecturers in the first day covered areas from the use of Mepham’s ethical matrix in analysis of animal use, the concept of justice in animal welfare, placing animal welfare in the context of environmental impacts and climate change and finally a debate on the question ‘Is it better to have lived and lost, that never to have lived at all?’ The vote was in favour of the motion but a substantial minority abstained.

The second day focussed more on the practical outworking of these theoretical ethical considerations, from our interactions with wildlife, the use of animals in laboratory science, the ownership of companion animals, the use of production animals through to the use of animals in sport. Are veterinary ethics compatible with the use of animals in research, where some of the animals will be bred and reared with the express purpose of causing some degree of harm for the benefit not of the animals themselves but of scientific advance or drug development? Utilitarianism is the key ethical background to the Animals (Scientific Procedures) Act 1986 while the banning of great apes in research in 1997 and through article 8 of EU directive 2010/63/EU has a more deontological foundation unless, with article 55, ‘exceptional and scientifically justifiable reasons’

become evident. More widely UK legislation requires suffering to be minimised by using ‘animals that have the lowest degree of neurophysiological sensitivity’ echoing Marshall Halls’s Five Principles as long ago as 1871. The 3Rs of Replacement, Reduction and Refinement proposed by Russell and Burch in 1959 are explicitly referred to in EU Directive 2010/63 where member states should “*contribute by research to the development and validation of alternative approaches*”. How these benefits for laboratory animals will be influenced by improvements in the EU legislation for all member states which will potentially involve a watering down of UK law has yet to be fully assessed.

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What then of production animals whose very reason for living is to be killed for food?
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What then of production animals whose very reason for living is to be killed for food? The presentation at the conference focussed on the impact of ethical debate on the welfare of newborn animals, Non-therapeutic abortions of cows used to synchronise oestrous, calving and lactation across a herd was a significant problem as was the issue of what to do with male calves, unwanted and thus disposed of in many systems. Lamb and piglet mortality was another significant issue. Producing 11 or more piglets per litter yielded higher economic benefits even if at the expense of

some neonates dying. But was this acceptable? Birth in the wild is hazardous too however, but how should that figure in our assessment of neonatal mortality in captive reared animals? It might seem that keeping companion animals, where care of the individual was much more important than in high-yielding production units. But ethical issues from the problems of animals used for sport and inbred pedigree animals whether by enhancement of some pet animals or over-treatment of others were all issues discussed both in the lectures and over coffee and tea between them.

For lawyers however, perhaps the most interesting paper in the second day would be that presented by Marie Fox from the University of Birmingham on veterinary ethics and the law. The day before Carolyn Johnston from Kings College London had compared veterinary and medical ethics, showing the dilemmas facing doctors after Harold Shipman and Alder Hey Marie Fox extended that to look at the problems with the Veterinary Surgeons’ Act of 1966 as it currently stands. The veterinary profession stands alone in being entirely self-related and having a disciplinary system that dates back to 1966 with the prosecutorial and adjudicative functions are vested within the same body. Appeals are heard through the Privy Council and the whole procedure can hardly be said to be transparent. Fox’s paper deserves an article to itself in this journal but for several veterinarians in the audience, this reviewer included, was a stark wake-up call to the need for much further work by the Royal College, even if Defra does not feel able currently to devote time and money to the reassessment of the Veterinary Surgeons Act.

We then heard some insightful lectures on various aspects of ethics in practice. For example, Nigel Gibbens, the UK’s CVO, reminded us of wicked problems such as bovine TB and told us that man’s interests dominate any political decisions about the use of farm and other animals. Of course, this is no surprise but is nevertheless a stark reminder of our dominancy.

Finally, John McNerny gave a penetrating and incisive paper on animal ethics in the market economy. Considering that the market is not driven by ethical motives, McNerny suggested that the opposite was often the case with incentives all too common for an ethics-free market, as we have seen all too often in the banking and mortgage sectors in recent years. There is an opportunity for ethics to influence the market but that depends on the consumer with huge potential to drive the market and thus influence animal welfare. The whole conference, brilliantly organised and run, was inspiring and thought provoking. My only sadness was that the conference, open to all as it was, did not seem to attract members of what we might call the radical animal rights end of the spectrum. But as the organisers would no doubt tell us, this was the first International Conference on Veterinary and Animal Ethics – perhaps in future meetings opportunities will arise for debate across a wider ethical spectrum. As it was the meeting was stimulating and constructive, a chance to hear many key international speakers and to network with others holding animal ethics close to their heart.

Government and Church inaction allows Animal Cruelty to thrive claims Oxford Theologian

Press release from the Oxford Centre of Animal Ethics September 2011

Government and Church inaction over animal welfare compounds animal cruelty, Professor Andrew Linzey, a theologian at Oxford University and the director of the Oxford Centre for Animal Ethics, will claim at a special RSPCA service for animals at Westminster Abbey on Sunday 2nd October.

Citing the failure of the Government to act on wild animals in circuses, plans for “mega-dairies”, and the decision to kill badgers without sufficient scientific evidence, he argues that the Government has failed to confront the “multi-headed hydra” of animal cruelty. “As one moves out, another moves in”, he says. “Having dismantled the worst aspects of factory farming, we now face the emergence of “mega dairies” in which up to eight thousand cows are to be kept permanently inside

factories devoid of natural light and pasture. Only a few days ago, we heard of plans for “mega- piggeries” to house no less than 30,000 pigs. We are turning animals into food machines.”

Professor Linzey claims that “The underbelly of cruelty to animals shows no sign of diminishing” since complaints of cruelty investigated by the RSPCA have risen year on year from 137,245 in 2007 to 159,686 in 2010. “Why is it that we cannot as a society see that animal cruelty, like cruelty to children, should not be tolerated?” he asks.

Andrew Linzey also castigates church indifference to animal cruelty. The churches “are nowhere in this debate. With a few honourable exceptions - and I mean a very few - English archbishops and bishops haven’t even addressed the issue in the past decade or more. Almost all church leaders, who are normally loquacious in lamenting regressive social policies, can’t even register cruelty as an issue. They talk airily of environmental responsibility, but, when it comes to confronting our specific duties to other sentient creatures, fall silent.”

The root problem, he says, is a failure of theology, especially the “idolatry” of thinking that God is only interested in the human species.

“Christians haven’t got much further than thinking that the whole world was made for us, with the result that animals are only seen in an instrumental way as objects, machines, tools, and commodities, rather than fellow creatures. To think that animals can be defined by what they do for us, or how they meet our needs, is profoundly un-theological.”

“The truth is that we are spiritually blind in our relations to other creatures, as blind as men have been to women, whites have been to blacks, and straights have been to gays. Political sluggishness and church indifference only compound the problem of animal cruelty.”

Professor Linzey concludes by arguing that “we worship a false God when we worship ourselves, or when we think only human beings matter to God, or when we think our power over animals is its own justification, or when we regard cruelty to any creature as a small, insignificant, matter, or, even worse, when we think God condones any infliction of suffering”.

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Having dismantled the worst aspects of factory farming, we now face the emergence of ‘mega-dairies’
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Review of “The link between Animal Abuse and Human Violence”

The Link between Animal Abuse and Human Violence is a collection of papers, edited by Reverend Professor Andrew Linzey, most of which were presented at the International Conference on the Relationship between Animal Abuse and Human Violence held under the auspices of the Oxford Centre for Animal Ethics in 2007.

The book focuses upon the link between cruelty to animals and the abuse of vulnerable humans.

Whilst it has long been accepted by philosophers and great thinkers that there is a link between cruelty to animals and the abuse of vulnerable humans, there is now mounting empirical evidence of the connection. The papers in this book provide a critical overview of current theories and research in relation to this link

The book focuses upon the link between cruelty to animals and the abuse of vulnerable humans

and address the ethical issues and policy implications with multi-disciplinary contributions from international leaders in the field.

The book greatly benefits from a thoughtful and erudite introduction by Professor Linzey which introduces the key issues in this area and relates them to the various chapters in the book. There are contributions from academics and professionals from a wide range of disciplines and jurisdictions which further enhances the scope of the arguments put forward.

There are twenty seven papers in this book from 36 authors. The book is usefully divided into sections of papers which cover the following topics: Overview of Existing Research; Emotional Development and Emotional Abuse; Children, Family Violence and Animals; Animal Abuse and Serial Murder; Ethical Perspectives on Human-Animal Relations; Law Enforcement, Offenders and Sentencing Policy; Prevention and Professional Obligations; and The Abuse of Wild Animals. Professor Linzey introduces each section and summarises the key points from the individual papers. The book is organised in such a manner that it could be used for reference in relation to specific areas of interest or read in its totality.

Given the range of contributions in the papers, it is impossible to adequately represent the same within the confines of a short book review. A brief overview of some of the main issues examined in some of the papers will be summarised with the proviso that the book itself contains so much more of value and interest.

There are twenty seven papers in this book from 36 authors. The book is usefully divided into sections of papers

The book significantly adds to the basic research undertaken to date by presenting compelling arguments that the failure to address the cruelty connection is “short changing” child welfare and that cruelty to animals is a matter of moral concern given the sentience and capacity to suffer of the animal concerned.

Whilst some of the research undertaken on the cruelty connection has been criticised due to methodological problems, there is mounting consensus that there now



**Cruelty to animals in
childhood is associated
with later harmful
antisocial behaviour
including violence**



exists substantial theoretical and empirical evidence to support a link between human violence and animal abuse which should raise concern for the welfare of the children, adult victims of domestic violence and animals concerned. Cruelty to animals in childhood is associated with later harmful antisocial behaviour including violence, sex offending, non-violent crime and vandalism. There is evidence to suggest that children may be at risk of significant harm in families where there is cruelty to animals, that animal and child abuse co-exists and that cruelty to animals by children has potential implications for future violent behaviour.

Powerful moral arguments are put forward in some of the papers that animals should not be viewed in purely instrumental terms in the cruelty connection debate with regard to the negative impact of animal cruelty upon the human perpetrator and their human victim. The abuse of animals is also morally wrong because animals have the right not to be harmed and neglected and merit respectful treatment as inherently valuable beings.

Professor Linzey advocates that a holistic approach will require that we challenge abuse even where there are apparent benefits to humankind (“necessary cruelty” such as that involved in the meat and vivisection industries) otherwise we are vulnerable to the argument that anything which benefits human

beings is morally justifiable. Professor Linzey states that this moral calculus should be questioned and we should ask whether any practice which involves cruelty to animals can benefit humankind.

The subject matter of this book, the link between cruelty to animals and the abuse of vulnerable people, is of great importance and the book itself provides an invaluable and authoritative introduction and overview of the main and wider issues in this debate.

Without exception, the papers and the contributions of Professor Linzey significantly add to the knowledge base relating to the cruelty connection and the book will be an invaluable resource for researchers, policy makers and those working in the field with responsibilities for the protection of vulnerable people and animals. The book merits wider readership and adds to the growing debate about the morality of our treatment of animals.

Karen White

No Substitute for the Law

Kim Stallwood

Institute of Animals and Social Justice

At the RSPCA's Rights of Animals symposium at Trinity College Cambridge in 1976 I heard Lord Houghton of Sowerby state animal welfare to be a legal issue.

*"There is no complete substitute for the law," he said. 'Public opinion, though invaluable and indeed essential, is not the law. Public opinion is what makes laws possible and observance widely acceptable.'*¹

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as with all aspects of the regulated life, the law, including animal law, is imperfect.
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Between World War Two and his death in 1996, Lord Houghton played a primary role in British politics. He was a Labour MP 1949-74; Minister for the Social Services 1964-67; and Chairman of the Parliamentary Labour Party 1967-74. He was made a Life Peer in 1974. In the House of

Lords he took a particular interest in animal welfare. I recall him as an authority external to the animal welfare movement, who provided much-needed leadership to a young social movement in understanding the importance of the law to animal welfare.

There is progress to report in animal welfare regulations and legislation since 1976. This includes the Badgers Act 1992, Fur Farming (Prohibition) Act 2000, Hunting Act 2004 and Animal Welfare Act 2006. Also, European Union directives restricted or banned various egregious practices to do with the production of fur, animal research and factory farming.

Nevertheless, with the bicentenary of the Martin's Act of 1822 (An Act to prevent cruel and improper Treatment of Cattle) a decade away, have we paid sufficient attention to Lord Houghton?

My assessment, having been in leadership positions in the animal welfare movement in the UK and US since 1976, is that Lord Houghton is as relevant today as he was 35 years ago. This is why organisations such as the Association of Lawyers for

Animal Welfare and the Animal Legal Defence Fund in the US are so important. Equally vital is the development in legal studies of Animal Law, which has made significant progress in the US and increasingly in Europe and Australia.

If politics is the art of the possible, as Otto von Bismarck observed famously, legislation comes from the art of the political compromise. Consequently, as with all aspects of the regulated life, the law, including animal law, is imperfect. This reality is a challenge to those, like me, who seek laws giving animals moral and legal rights. This need not be an obstacle if there is an understanding of how social justice issues and their corresponding social movements move in the public's consciousness from unfamiliarity to acceptance. My view is that there are five stages necessary to complete this transformation.

The first is Public Education, when people are enlightened about the issue and embrace it into their lives. This is followed by Public Policy Development, which is when political parties, businesses, schools, professional associations and other

¹ Cited in David Paterson and Richard D. Ryder. 1979. Animals' Rights--a Symposium. 209

entities that constitute society adopt sympathetic positions on the issue. Legislation, when laws are passed on the issue, and Litigation, when they are implemented and enforced, are stages three and four. The final and fifth stage is Public Acceptance, which is when most people say that this is what they always thought!

My view is the currently we are in stages one and two and increasingly three and four. In other words, we understand animal welfare principally as personal lifestyle choice when it ought to be also the responsibility of public policy and government.

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The first is Public Education, when people are enlightened about the issue and embrace it into their lives
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With this in mind, I convened recently a group of animal advocates and sympathetic academics to establish an animal welfare think tank. The Institute for Animals and Social Justice (IASJ) was launched earlier this summer at a symposium at the London School of Economics. We were honoured that ALAW's Paula Sparks joined us as a speaker and Jeremy Chipperfield accepted our invitation to be a trustee. IASJ's mission is to embed animal protection as a core policy goal of government and intergovernmental organisations. Our work

complements that of the Animals and Social Institute (ASI), which I cofounded with Ken Shapiro, editor of the journal *Society & Animals*, in the US in 2005. ASI is an independent research and educational organisation that advances the status of animals in public policy and promotes the study of human-animal relationships.

I see IASJ, ASI and ALAW as part of an encouraging trend toward a more sophisticated approach to animal welfare. They and related initiatives in academia are vital to move public opinion through the five stages, from unfamiliarity to acceptance, in their understanding of animal welfare. A key player in this process is Minding Animals International (MAI). MAI acts as a bridge between advocacy and academia and consists of a network of more than 2,500 academics, artists, activists and advocates. MAI organised its first conference in Australia in 2009. The next will be in Utrecht in July 2012.

Notwithstanding this progress and exciting development, I worry Lord Houghton's message is not being heard enough. This is not to dismiss in any way anything anyone is doing. But, as a social movement, the animal protection movement, I believe, views with suspicion the political process. We keep our distance from public policy and mainstream politics when we should be understanding them as long-term strategic objectives to establishing effective legal protection we all want animals to have.

It is dispiriting to learn about animal cruelty. It is understandable to despair at the inadequacy of the law

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It is understandable to despair at the inadequacy of the law for animals and its enforcement
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for animals and its enforcement. But it is also empowering to know how to work within society to ensure it has the necessary effective legislation and sufficient law enforcement resources to regulate and, ultimately, end animal exploitation. This is why there is no substitute for the law.

Kim Stallwood is an independent scholar, author and advisor on the moral and legal status of animals. His email is kim@kimstallwood.com and Web site is www.kimstallwood.com.

Further Links

Institute for Animals and Social Justice <http://www.iasj.org.uk/>

Animals and Society Institute <http://www.animalsandsociety.org/>

Minding Animals International <http://www.mindinganimals.com/>

Minding Animals Conference 2012 <http://www.uu.nl/faculty/humanities/EN/congres/mindinganimals/Pages/default.aspx?refer=/EN/FACULTIES/HUMANITIES/CONGRES/MINDINGANIMALS/Pages/default.aspx>

Wild Animals in travelling Circuses: the Circus has still not left town

**Chris Draper, Senior Scientific Researcher
Born Free Foundation**

On 23rd June 2011, a Backbench Business debate addressed the motion tabled by Mark Pritchard MP, Jim Fitzpatrick MP, and Bob Russell MP:

“That this House directs the Government to use its powers under section 12 of the Animal Welfare Act 2006 to introduce a regulation banning the use of all wild animals in circuses to take effect by 1 July 2012”.

there was an impending legal challenge to the established national ban on wild animals in circuses in Austria

The debate featured surprising revelations and accusations from Mark Pritchard MP regarding the pressure put on him by Government to drop or amend his motion¹; and overwhelming and spirited cross-

party calls for a ban, culminating in the unanimous support for the motion.

However, the Minister present in the Commons, James Paice MP, had repeated the refrain that there are “serious risks of legal challenge”² if a ban was to be put in place³ - the rationale being that there was an impending legal challenge to the established national ban on wild animals in circuses in Austria. However, since then, few details have emerged regarding the legal challenge in Austria, beyond confirmation that Circus Krone has brought a case against the Austrian Government in the national court.⁴ Nonetheless, the decision on this issue falls to the Austrian courts, and one might have thought would have no bearing on decision-making in Westminster.

No. 10 still talks of being “minded to ban”,⁵ and joins Ministers in referring only to the welfare of the 39 animals currently in circuses – seemingly disregarding the almost inevitable import of animals into the country and expansion of the range of species used if a ban is not put in place. Furthermore, it would appear

that the Government intends to proceed with a licensing regime “in the meantime”.⁶ However, it is difficult to imagine how a regulatory system could be implemented, only to be replaced with a ban at some point in the near future. It seems likely that whatever course of legislative action is decided upon will be with us for a considerable time to come, as to demand that the circus industry meets regulations, only to revoke their licences a short time later in the light of a ban is likely to present even more legal obstacles than already faced. Consequently, the Born Free Foundation is adamant that now is the time to ban.

Recently, there have been some changes at Defra: a new policy team and Lord Taylor of Holbeach replacing Lord Henley as Minister with responsibility for the welfare of wild animals. There is a chance that this represents an opportunity for a fresh outlook on the issue.

Defra has met briefly with several of the main NGOs involved in campaigning on this issue, but no drafts of the proposed regulations have been circulated to date. In fact, recent communications would

¹ OJ C 530, 23.6.2011, p. 549

² OJ C 530, 23.6.2011, p. 581

³ The Speaker did not accept a tabled amendment that called for a ban “as soon as all outstanding legal impediments have been resolved”. OJ C 530,

23.6.2011, p. 549

⁴ OJ C 530, 23.6.2011, p. 583

⁵ Letter from David Cameron to Virginia McKenna, 14th September 2011

⁶ Letter from David Cameron to Virginia McKenna, 14th September 2011

indicate that although Defra is looking into regulations, they await Ministerial instructions on how to proceed. A licensing system was originally anticipated to be in place by the end of the year.

There are several obstacles to a regulatory and inspection system for travelling circuses – obstacles that we believe are insurmountable in the pursuit of protection and promotion of animal welfare. For example, as circuses move site every one or two weeks, and each site may differ radically in size, amenities and infrastructure, common sense would dictate that inspections should occur at each site. However, it is apparent that such an inspection regime would be regarded by the authorities as unworkable and overly-burdensome.

The clear intention is that regulations would be based on general and species-specific standards. In general, there is a tendency for animal keeping standards to reflect current practice rather than best practice; and more importantly, most standards are based on “myth and tradition”, rather than being scientifically validated.⁷ Consequently, relying on pre-existing standards (from zoos, circuses etc. worldwide) to assist in drawing up standards for UK circuses is fraught with problems.

Discussion with Defra so far has indicated that whatever standards are implemented, Defra is determined that they must be considered to be achievable by circuses. The travelling circus environment and the itinerant nature of circuses place limits on improvements that could be achieved.

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The clear intention is that regulations would be based on general and species-specific standards
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As a result, we are convinced that insisting that standards are achievable will lead to little or no real change in animals’ welfare.

Finally, I return to the issue of science. So much of the debate has been predicated on animal welfare science, while the moral and ethical dimensions have been repeatedly over-ruled, seemingly in ignorance of the accepted underpinning of animal welfare as a “mandated science” that comprises an interplay between values and empirical evidence.⁸ Sadly, we still hear misrepresentations and misunderstandings of the science involved: James Paice MP was incorrect in stating that “The Radford review concluded in 2007 that no scientific evidence existed to show that circuses by their nature compromised the welfare of wild animals”.⁹ More accurately, the report of the Chairman of the Circus Working Group cited insufficient evidence, in the opinion of the Academic Panel.

It is one of Defra’s stated key policy outcomes “to ensure that all kept animals are treated appropriately and humanely”.¹⁰ It is difficult to imagine what is appropriate about the use of wild animals in circuses, regardless of what standards and inspection regime may be proposed.

Acknowledgments:

I would like to thank Liz Tyson from CAPS for her comments.

⁷ Melfi V (2009). There are big gaps in our knowledge, and thus approach, to zoo animal welfare: a case for evidence-based zoo animal management. *Zoo Biology* 28: 574-588

⁸ Fraser D (2008). *Understanding Animal Welfare: The Science in it's Cultural Context*. Oxford: Wiley-Blackwell

⁹ OJ C 530, 23.6.2011, p. 583

¹⁰ Defra (2011). *Animal Welfare Evidence Plan 2011-2012*. <http://www.defra.gov.uk/publications/files/pb13487-ep-animal-welfare.pdf>

House of Commons Symposium: 'Zoo licensing - is the regulatory regime working?'

The ALAW symposium took place on the 30 November, with Andrew Rosindell MP, former Shadow Minister for Animal Welfare and Chair of the All Party Parliamentary Group on Zoos and Aquariums, giving the opening speech. The panel consisted of: Dr Anna Meredith, Chair of the Zoo Expert Committee and zoo inspector for the Scottish Government; Chris Draper, Senior Scientific Researcher at the Born Free Foundation; Dr Miranda Stevenson, Director of the British and Irish Association of Zoos and Aquariums; and Liz Tyson, Director of the Captive Animals' Protection Society (CAPS).

The panel provided an informed insight into some of the issues under the current regime.

Zoos are regulated by the Zoo Licensing Act 1981 (as amended by the Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002 which put into effect enforcement powers to secure the aims and objectives of the European Council Directive 1999/22/EC) (the 'Act').

The UK legislative framework is comparatively strong imposing various obligations on Zoos including conservation, animal

welfare and educational obligations, although the extent of some of the obligations is geared to the size of the zoo with smaller zoos not expected, for example, to have the same scale of international conservation function of larger zoos.

“The UK legislative framework is comparatively strong imposing various obligations on Zoos including conservation”

The UK is thought to be particularly strong on animal welfare, assisted by the passing of our Act before the EU regulation was introduced.

Zoo inspectors undertake inspections to assess compliance of zoos with their obligations. The results of which are fed back to the relevant local authority. The local authority is then responsible for enforcing any required actions, normally related to making improvements and with conditions attached. If conditions are not met, the zoo, or part thereof, could face closure. The Department for Environment, Food and Rural Affairs

(Defra) is the responsible body for ensuring local authorities comply with their obligations.

The Act gives wide powers of enforcement to the local authorities and where the local authority is committed and knowledgeable the regime can work well. However, the panel were agreed that although we have a very strong system in place this had not always transpired in practice, and there are unfortunately still many instances where standards are not met or enforced.

Research undertaken by both the Born Free Foundation and by CAPS found a lack of consistency in the standards of inspections with 11% being carried out by inspectors who are not fully qualified. Further two inspections, 100 miles apart, were carried out on the same day, raising questions as to their robustness.

When inspections are carried out, they include an assessment of the animals' welfare. The results are marked on a set pro forma. One of the issues is that, this only allows for a limited 'yes', 'no' or 'yes but' answer hindering effective reporting or enforcement.

One such tick box is on 'the standards of care of the animals'. Such a measure is not only vague but also fails to capture data relating to the

different standards of care needed and being achieved for different species of animals. A more nuanced approach is required.

A large amount of information was provided by the panel, with many statistics, some encouraging and others highlighted areas were further work was needed, displaying some of the failures by zoos to meet the required standards and for local authorities to be more proactive in enforcing high standards. A few are included below.

Research indicates that 60% of the zoos failed to meet all their obligations under the regulatory regime. One area which consistently produced substandard results was animal health care. Out of 47 criteria on animal welfare, one zoo only reached satisfactory standards on 27 of the aspects required. One quite alarming statistic showed that, six years after conditions had been attached, 24% had still not met the required standards. Further, 89% of recent inspections showed non-compliance with directions, with little or no evidence of zoo closures. In one instance a council failed to close a zoo after non compliance, and were open to the arguments by the zoo to negotiate the removal of the condition

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as an alternative to closure. The obligation of re-housing the animals would have fallen to the council which could be viewed as a daunting task.

Results did depend on a number of different factors, for instance the type of zoo. It was found that the farm class of zoos regularly came out quite poorly and with aquariums were at the top. Part of the problems it seems is low local authority resources. Also it seems a lack of understanding of the legislation and the needs of animals themselves.

A number of issues were identified and suggestions made by the panel of ways forward. Judicial Review of a Council's failure to act was suggested but there are issues around timing. Publicising failures on the part of the zoos, the local authorities and Defra could do more to facilitate local authorities to take up their responsibilities more boldly. While the zoo inspectorate has a role in enabling and supporting zoos to improve their standards there was also a need for a greater emphasis on enforcement.

The current pro-formas should be revised to assist better quality of inspections together with issuing clearer guidance and instructions regarding the obligations imposed by the Act both to the zoos and local authorities. Reporting to the EU may in this case not be effective as UK standards, although with problems are in a large part compliant and the EU have appeared to have been hesitant to intervene in worse cases.

So the regulatory regime although working, is in need of repair. Whichever and however many of the steps forward are taken; it is time to act now. As evidenced by the panel and attendance at the Symposium, there are thankfully people to take this forward.

Vyaj Lovejoy
Pupil Barrister
1 Mitre Court
Chambers

**“
One area which
consistently produced
substandard results was
on animal welfare
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**How to contact us: Email info@alaw.org.uk or write to
ALAW, PO Box 67033, London, NW1W 8RB
www.alaw.org.uk**

What is ALAW?

ALAW is an organisation of lawyers interested in animal protection law. We see our role as pioneering a better legal framework for animals and ensuring that the existing law is applied properly.

We believe that lawyers should, as well as interpreting laws, ask questions about the philosophy underlying them: they have always played a central role in law reform. There is also a real need to educate professionals and the public alike about the law.

Animal cruelty does not, of course, recognise national boundaries and we are building up a network of lawyers who are interested in animal protection in many different countries.

What ALAW will do?

ALAW will:

- take part in consultations and monitor developments in Parliament and in European and other relevant international organisations,
- highlight areas of animal welfare law in need of reform,
- disseminate information about animal welfare law, including through articles, conferences, training and encouraging the establishment of tertiary courses,
- through its members provide advice to NGOs and take appropriate test cases,
- provide support and information exchange for lawyers engaged in animal protection law.

Who can be a member?

Solicitors, trainee solicitors, legal executives, barristers, pupil barristers, judges and legal academics are eligible to join and will receive regular issues of the *Journal of Animal Welfare Law*. Other interested parties can become subscribers to the *Journal* and receive information about conferences and training courses.

How can you help?

Apart from animal protection law itself, expertise in many other areas is important - for example, public law, civil liberties, environmental health, planning law, freedom of information, civil litigation, media law, company law and charity law.

In addition, lawyers have well-developed general skills such as advocacy and drafting which are useful in many ways. Help with training and contributions to the *Journal* are also welcome.