# State of New Jersey Commission of Investigation



## ASSOCIATED HUMANE SOCIETIES

*March* 2003

## State of New Jersey Commission of Investigation

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#### State of New Jersey

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The State Commission of Investigation herewith formally submits, pursuant to N.J.S.A. 52:9M, a report and recommendations based on its investigation into Associated Humane Societies.

Respectfully,

Francis E. Schiller

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#### **EXECUTIVE SUMMARY**

Although Associated Humane Societies [hereinafter AHS] was established in 1923, its relevant history began in 1970 when Lee Bernstein orchestrated a takeover of the Board of Trustees and entrenched himself as executive director with full power over the organization. He transformed a rundown old house that served as a kennel for area strays into a multi-million dollar, comprehensive animal-services empire. Today, AHS has three locations and includes three shelters, two veterinary clinics, a zoo, a pet cemetery, an animal control program for municipalities and an extensive array of fundraising programs. It constitutes the largest shelter operation in the state.

Just as Bernstein deserves the credit for AHS's growth and impressive successes, he also must shoulder the blame for its severe shortcomings. As Bernstein built his empire, he neglected the welfare of the very animals that formed its foundation. The substandard conditions and treatment of the animals, which existed on a large scale until recently, betrayed AHS's massive fundraising campaign through the years and contradicted AHS's persona as a "humane" organization. Bernstein capitalized on the plight of animals to garner millions of dollars in contributions, but failed to apply any portion of those millions to establish a satisfactory level of care and treatment. He ignored the welfare of tens of thousands of animals that passed through the shelters' doors.

The history of AHS's shelter operation has been dominated by deplorable kennel conditions, inhumane treatment of animals by workers, mismanagement and nonexistent or inadequate medical care. The problems were neither singular nor occasional. The accounts and descriptions provided by members of the public and former and current staff members, including veterinarians, paint a bleak picture of

shelter life. The reality for the animals belied AHS's propaganda that its "sole purpose" has been "the care and welfare of animals" and that it has "a high adoption rate." It has been only in recent years, since the commencement of the Commission's investigation, that AHS has expended substantial funds to improve the appearance of the facilities and the conditions under which the animals are housed. Even more recently, there have been improvements in the veterinary care rendered to the animals and in the performance of duties by kennel staff.

The cause of the problems that have plagued the shelters has been Bernstein's refusal to spend adequate money on the operation. His parsimony pervaded all aspects of shelter life, from the plant facilities to veterinary care. Bernstein balked at even the most basic improvements, including adequate heating and air conditioning systems, the purchase of sufficient cleaning supplies, repair of the septic system, emergency treatment for stray animals picked up at night, and a flea-and-tick program. Typically, it was only the tenacity of select veterinarians that occasioned some improvement. However, even when cost was not a factor or was minimal, Bernstein failed to implement very basic improvements, such as supervision of kennel workers, proper cleaning and sanitation procedures, and training of the staff on how to handle an animal and to recognize illnesses and injuries.

The conditions under which the animal shelters operate today stand in stark contrast to

<sup>&</sup>lt;sup>1</sup> In early 1998, the Commission began investigating both AHS and the state and county SPCAs. The investigation of AHS was suspended by the end of the year because of the additional resources required in the investigation of the SPCAs and did not resume until mid-2001. The management of AHS knew of the Commission's investigation from the outset.

those that existed in prior years and at the start of the Commission's investigation. The failure of Bernstein lies in his inordinate delay to embark on a program of construction and repairs and to establish proper standards on a continuing basis. His drive to accumulate a sizable monetary reserve came at the expense of the animals. Such a goal did not excuse his failure to provide basic care and sanitary conditions and should have come only after a satisfactory shelter operation was attained. Bernstein's refusal to spend money was all the more egregious in light of the financial portrait of AHS, which was not a "shoestring" operation. From July 1, 1994, through June 30, 2002, AHS's profits totaled \$8,918,466 and averaged in excess of \$1 million each year. The profit for fiscal year ending June 30, 1997, reached close to \$2 million. addition, between July 1, 1993, and June 30, 1999, the fair market value of AHS's investments and cash balances grew from \$6,532,291 to \$12,610,764. Even with applying small sums to capital improvements in 2000 and 2001 and a substantial downturn in the stock market in 2001 and 2002, their fair market value as of June 30, 2002, was \$11,104,940.

In addition to ignoring the state's regulations governing the operation of animal shelters, Bernstein also has defied the law by having veterinary technicians perform spay and neuter operations on shelter animals and nonveterinarians administer rabies vaccinations. There also have been violations of the recordkeeping requirements for the maintenance and use of controlled dangerous substances and the improper use of expired drugs on shelter animals. Further, AHS has failed to make full disclosure to the state regarding its arrangements with independent professional fundraisers. All of these practices have occurred as recently as 2002.

AHS's Board of Trustees has not fulfilled its stewardship role and, therefore, must share the responsibility for the organization's failures.

The 10-member body, which has been handpicked by Bernstein, includes Bernstein and four other employees. Eight trustees have held their seats for between 22 and 32 years. The Board has been a feckless body that has provided no direction, has exercised no oversight, has formulated no policy and has operated in contravention of the by-laws. It has removed itself from any involvement with AHS's finances. Its officers have performed no meaningful duties. Indeed, the vast majority of trustees are strikingly ignorant about AHS's operations. Many of the Board's own members described it as "self-perpetuating" and a "rubber stamp" for Bernstein.

Although AHS is a multi-million dollar operation and its activities are multi-faceted, it has been operated as though it were a "momand-pop" store. Although there are executive and assistant directors and shelter and office managers, the areas of responsibility are not well delineated and the lines of authority are unclear. There is no system of accountability for any level of employee. In addition, there is an absence of proper procedures and controls with respect to AHS's finances. There is no review of revenue and disbursements, no requirement for supporting documentation for reimbursement of employee expenditures or disbursements from petty cash, no established protocol for the hiring of contractors and professional fundraisers, no measures to ensure that fundraising expenses are reasonable in relation to the contributions generated, no controls with respect to the receipt or deposit of contributions and no documentation of contributions made by check or cash. Solicitation materials have not always been accurate and donors' intentions have not always been effectuated.

The Commission's examination of the animal control services provided by AHS to approximately 70 municipalities disclosed problems in both AHS's rendering of the services and the municipalities' handling of the

Clearly, animal control is not a priority for municipalities. At the same time, AHS has a virtual monopoly on the market. Both AHS and local officials have ignored the statutory mandate that only certified animal control officers may provide the services. preparing and submitting the contracts to the municipalities, AHS has not utilized a consistent approach or uniform methodology constructing the fees. The vast majority of municipal officials have failed to negotiate the contract provisions, to provide even a modicum of review to the contracts, to verify the invoices or to impose a system of accountability for the AHS employees entering their jurisdictions.

Throughout this investigation, Commission staff were a visible presence at the shelters, particularly the one in Tinton Falls, and questioned many staff members at all levels about shelter practices and conditions. By the conclusion of the investigation, improvements were evident in the cleaning and sanitizing of animal enclosures and the concomitant odor, the feeding of animals, the veterinary care provided to them, the appearance and repair of the facilities, and the quality of the kennel workers. In addition, employees who were not certified to

provide animal control services were required to attend the state course, although some continued in their positions after they failed the course. Although plans to improve the Tinton Falls and Lacey shelters commenced prior to the initiation of the Commission's investigation, some individuals opined that the extent of the renovations were influenced by it.

In issuing this report, the Commission does not seek to shut AHS's doors or to discourage the public from contributing to its programs. The organization serves a vital role in the state. However, in order for AHS to accomplish its mission to serve the interests of the animals in its custody, it is imperative that it transformed into a properly governed, managed and soliciting organization. requires a newly constituted Board of Trustees, a new executive director, a management structure clear lines of responsibility accountability, implementation of financial controls and procedures, proper oversight of the day-to-day shelter operations, and attention to the legal requirements regarding the operation of the shelters and the provisions of animal control services.

#### AN OVERVIEW AND BRIEF HISTORY

In September 1923, five men and women incorporated Associated Humane Societies of New Jersey in order "[t]o promote the interest of and to solicit the community to protect and care for dumb animals and to solicit funds for this purpose" and to maintain a dog pound, animal shelter, hospital, cemetery and crematory. The incorporation document stated that its purpose was "[e]specially to maintain and conduct proper shelters for homeless and vagrant animals." Ten men and women were named as the trustees. In February 1976, amendments were filed to the certificate to change the organization's name to Associated Humane Societies, Inc.; to extend the purposes of the corporation to include the maintenance of an Animal Care Center, the operation of a hospital clinic, the education of the public in the care and treatment of animals and the encouragement of humane education in public and private schools; to specify the methods of "fund raising services" to include boarding, grooming, spaying or neutering, and tattooing animals, selling animal supplies, publishing animal literature, conducting educational clinics, soliciting donations and offering animal control programs, provide, upon dissolution, for the distribution of corporate assets to similar entities and not to the members of the corporation.

The organization initially had its headquarters at 468 North 5<sup>th</sup> Street in the City of Newark. According to records, AHS acquired the property, which contained a house and a second structure, for "one dollar and other good and valuable consideration" in April 1924. In the early 1950s, AHS relocated to 124 Evergreen Avenue in Newark after receiving the property, which included an old house and related structures, pursuant to a bequest. Construction of the current building began in April 1968, with the first section completed in April 1969 and the second one in June 1970. The Newark facility

always has been the location of the organization's administrative offices and has included an animal clinic available to the public.

Since the establishment of the Newark facility, AHS has opened two additional animal shelters. In 1974, after purchasing property that contained a kennel, AHS opened a second shelter at 2960 Shafto Road in what is now the Township of Tinton Falls. This location has never included a veterinary clinic. In September 1977, AHS completed construction of its third facility at Humane Way in Lacey Township. Its most ambitious undertaking, this facility today includes an animal shelter, the Popcorn Park Zoo, Animal Haven Farm, Kitty City, the Share-A-Pet Program, a pet cemetery and a veterinary clinic available to the public. In addition to operating its own animal shelters, AHS has been under contract with the Township of Union to operate its shelter from April 1, 1996, until December 31, 1999, when the shelter was closed, and since the construction of a new building in January 2002. AHS also conducted a store-front shelter operation in New York City from late 1976 to early 1984. All of the shelters offer adoption services, which include spay or neuter surgeries, accept the surrender of pets and provide for the euthanasia, disposal, cremation or burial of pets. In addition, the three shelters owned by AHS have contractual arrangements to provide animal control services to municipalities, three county entities and a state highway authority. Since the spring of 1970, AHS has published a magazine, presently entitled Humane News, which features rescued and distressed animals.

Each year, the AHS animal shelters handle about 15,000 animals, primarily dogs and cats. In approximate figures, the Newark shelter manages 60% of the animals, while the Tinton Falls one processes 28% and the Lacey one

handles 12%. The Newark facility has 133 dog runs, including runs for the boarding of animals, 87 cat cages, 109 cages for dogs or cats, and two areas for feral cats. The Tinton Falls shelter includes 31 indoor/30 outdoor dog runs, 32 indoor dog runs, six dog cages, 30 cat cages, 39 cat or dog cages, a cattery for up to 36 cats and an area for feral cats. The Lacey facility numbers 61 dog runs, 42 cat cages, 65 dog or cat cages, and areas for free-roaming cats.

Since the 1970s, AHS's fundraising activities significantly. have increased Currently, these activities include mail and telemarketing solicitations, the placement of canisters featuring sick or injured animals at stores and various other programs featured in the bi-monthly publication of Humane News. Most of the solicitations are related to programs connected to the Lacey facility. They include the Share-A-Pet Program, which began in February 1978 and is comprised of Kitty City and Animal Haven Farm, programs by which individuals make monthly contributions towards maintenance of particular cats and dogs, respectively;<sup>2</sup> the Popcorn Park Wildlife Club, established in June 1978, whereby individuals contribute monthly amounts to sponsor particular animals in the zoo; the Popcorn Park Zoological Society; the Eternal Wall, a board containing bronze plates with the names of individuals who contributed \$1,000 or more in the name of a loved one or pet, and The Arbor of Love, a bronze sculpture in the reception area for the names of individuals who contribute certain monetary amounts in memory of a deceased person or animal. Since September 1989, AHS has rented an office at 45 Division Street, Keyport, as a telemarketing office to solicit donations for the Popcorn Park Zoo. At various times. AHS also has conducted a Chinese auction and card parties and has offered for sale

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bumper stickers, mugs, tee shirts, sweatshirts, caps, coloring books, calendars, dog and cat beds, videotapes of the animals participating in the Share-A-Pet Program and Popcorn Park Wildlife Club, raffles of televisions and automobiles, and publications on such topics as cremation and burial services, allergy-proofing pets, and wills and bequests.

AHS employs approximately 109 individuals. An executive director, Lee Bernstein, runs the AHS operation. There are two assistant directors, Terrence "Terry" Clark, who primarily supervises personnel and the purchasing of supplies, and Roseann Trezza, who oversees some of the fundraising programs and the publication of Humane News. Additional administrative staff at the Newark headquarters includes five individuals. Two employees maintain a telemarketing operation and one employee conducts a canister route. Fifty-six employees, or 51% of the workforce, are kennel workers. A manager supervises each of the three shelters. There are also located at the shelters five administrative personnel; 12 veterinary staff members, including three veterinarians, for the two clinics; eight personnel for the zoo; 11 drivers who perform animal control services, and several maintenance employees.

A one-man operation. The history of AHS for the past 32 years is the history of Lee Bernstein. He has served as Executive Director since 1968. In 1970, he took control of the Board of Trustees and has dominated the organization to this day. After taking control of AHS, he embarked on an ambitious program that transformed the organization into a multi-million dollar operation.

There are no records or recollections of the activities of AHS prior to 1950. During the 1950s and 1960s, according to individuals who were involved then, AHS was operated by a group of mostly elderly women. This group

<sup>&</sup>lt;sup>2</sup> The "sponsors" are allowed to visit and walk their dogs and bring them treats. Many provide leashes and collars, which are placed in the reception area for sale to the public.

converted an old, rundown house, which had been bequeathed to AHS, into a makeshift pound to care for abandoned dogs and cats. They had contracts with the City of Newark and some of the neighboring towns to house their strays. The women also picked up strays that they observed while driving around the streets and in response to telephone calls from area residents. They engaged in limited fundraising appeals by mailing membership and contribution cards to individuals who licensed their dogs.

Bernstein's association with **AHS** commenced in approximately 1966, when he responded to one of AHS's mailings to become a member. A councilman with the City of Newark since 1963, he offered his assistance to the women, who gratefully accepted, and soon took an active role. He spoke at civic meetings to promote the shelter and had his secretary type address labels for the mailings. At his request in 1967, he was placed on the Board of Trustees and shortly thereafter became the first vice-On his recommendation, other president. individuals were placed on the Board. September 1968, Bernstein volunteered his services as the organization's first executive director. His position became salaried in July 1969.

In a series of shrewd and calculated moves, Bernstein succeeded substantial monetary increases in AHS's contract with the City of Newark for animal control services and in paving the way for him to become AHS's salaried executive director. Councilman Bernstein maneuvered through the Newark City Council a resolution awarding a new contract to AHS at an increased rate. When the propriety of his actions resulted in a recall election, Bernstein orchestrated the passage of another resolution that awarded a new contract to AHS at substantially more money, while, at the same time, obtaining the approval of the AHS Board to pay him a salary as executive director if he were to lose the recall election.

The following facts emerge from court documents. In November 1967, the Council passed a resolution, introduced by Councilman Bernstein, for the cancellation of the last six months of the city's contract with AHS, but without a concomitant reduction in the contract The time period covered January 1 through June 30, 1968, and amounted to between \$14,500 and \$17,500. In February 1968, the Council adopted a resolution to award AHS a new contract, retroactive to January 1 of that year, at a rate of \$25,000 annually. The vote of the Council, which included Bernstein and another member of the AHS Board, was In light of Bernstein's role in unanimous. negotiating the contract on behalf of AHS and then voting for it, a movement to remove him from office commenced in 1968. In March 1969, the Council passed a resolution for a oneyear contract with AHS to run from April 1969 through March 1970, with no contract amount stipulated. The resolution was introduced by a councilman who was also an AHS Board member and was approved unanimously by all Council members, including the acting Council president, who subsequently became an AHS Board member, Bernstein and the other AHS Board member. However, contrary to the terms of the resolution, the contract that was annexed to the resolution called for its automatic renewal for an additional four years and stipulated a rate of \$45,000 for each of the first two years and \$50,000 for each of the following three years. Bernstein also negotiated this contract on behalf of AHS. On the day prior to the Council's approval of the 1969 resolution, the AHS Board of Trustees held a meeting, at which Bernstein stated that the Council's approval of the contract was contingent upon the Board "undertaking to hire Mr. Bernstein as executive director, for a term of five years, at an annual salary of \$15,000, should [he be] defeated in his forthcoming recall election. He made plain that the amounts of the increases over the 1968 rate (\$20,000 - \$25,000) were more than adequate to cover such salary – and, in the event that he won

his recall election, [he] would then have a \$15,000 annual windfall." Immediately following Bernstein's defeat as councilman in the special election held in June 1969, he signed a five-year contract to be AHS's Executive Director at an annual salary of \$15,000.

As Executive Director, Bernstein had a different vision for AHS and soon clashed with the women who had been running the organization. At the annual Board meeting on June 6, 1970, at which time the election of trustees was scheduled, Bernstein flooded the small meeting room with his allies and succeeded in having them become general members. Consequently, Bernstein was able to dominate the election, to oust those who opposed him and to have his supporters elected to the Board. The current Board President, who was elected to the Board that night, stated in an interview that "most of us originally" were "personal friends of Bernstein's." He continued, "Lee didn't want anyone on the Board that was against Lee. That's why Lee had all his friends on the Board in the beginning." The ousted old guard immediately mounted a legal challenge to void the election of the new Board, but it failed. The exact reasons for the outcome are not known.

The City of Newark, citing the conflict of interest in Bernstein's roles as Councilman and negotiator for AHS, filed suit to render the contract with AHS null and void and to recover damages. The city prevailed and was awarded \$37,500 in damages. In his written opinion,

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dated January 29, 1971, Judge Samuel Allcorn, Jr., stated the following:

In the light of the foregoing, the Court is satisfied that the contract of March 25, 1969 had its genesis in a corrupt understanding by which Lee Bernstein would receive employment and be supplied with a regular source of income, in the event that his political tenure (and income) were terminated by the recall election of June 1969. corrupt understanding that undoubtedly was conceived in the mind of Mr. Bernstein, but to which the other members of the Board of Trustees of the defendant Humane Societies. nevertheless, gave their prior approval and assent. A corrupt understanding, furthermore, which, when the bill was presented, the Board of Trustees acknowledged and paid in full by the hiring of Mr. Bernstein as executive director, for a term of five years, at an annual salary of \$15,000.

The evidence also points strongly to the conclusion that those members of the City Council of Newark who were present at and participated in the executive session of the conference of March 18, 1969, were privy to (if not also party to) this corrupt understanding between Mr. Bernstein and the Humane Societies. Every one of them was aware of the dual and conflicting positions held by Mr. Bernstein and Mr. [Frank] Addonizio as regards this transaction between the City and the Humane Societies. Moreover, six of the nine of members the City Council participating in the executive session of March 18, 1969 and who voted to adopt the resolution on March 19, 1969, were also members of the City Council on November 1, 1967 and voted on that

<sup>&</sup>lt;sup>3</sup> Opinion and decision of the Honorable Samuel Allcorn, Jr., J.S.C. (January 29, 1971), in favor of the City of Newark in its suit to set aside the 1969 contract with AHS. With respect to the "added services [contained in the contract that AHS] was to provide to the City as justification for the increase in the contract rate," the court found "beyond question that the truly additional services of any real value were honored more in the breach than in performance" and constituted "'goodies' indeed – a mere facade."

occasion to "amend" the 1967 contract by reducing its term from one year to six months, which resulted in a gift of \$5,000 of City funds to the Humane Societies for the six month period from January 1, to June 30, 1968.

Be this as it may, the members of the City Council, as well as the involved City administrative personnel, at the very least were guilty of gross indifference and wanton unconcern for the interests of the City in this transaction. They displayed not the slightest regard for the citizens and taxpayers of the City who, even then, were struggling to meet the tide of increasing municipal expenditures of a legitimate nature.

In short, integrity and fair dealing were absent on both sides.

In this posture of affairs, the inevitable and compelling conclusion is

that the contract here in question cannot be said to have been entered into in good faith or that such services as may have been performed were performed in good faith. Instead bad faith abounded – bad faith on the part of the individuals charged with the management of both corporations, charitable and municipal, which, if permitted to go uncorrected can result only in the further victimization of the taxpayers of the City. [Citations omitted.]

AHS filed an appeal of the court's decision. On February 10, 1972, the Appellate Division of the Superior Court of New Jersey affirmed the judgment "essentially for the reasons stated in the comprehensive opinion of Judge Allcorn."

Although Bernstein's actions triggered a lawsuit that resulted in a cancellation of the contract, AHS was able later to negotiate a new one. The ruling and judgment of the court had no effect on Bernstein's retention by AHS.

#### THE BOARD OF TRUSTEES

Since Lee Bernstein's takeover of the Board of Trustees on June 6, 1970, he has dominated the appointment of trustees and, with rare exception, has maintained control over their actions. There has never been a challenge to any Board member or officer. The Board constitutes an ineffectual body that has ignored the mission of AHS to care for the animals and has allowed Bernstein free reign to operate the organization as he pleases. It acts not as an independent body, but as a rubber stamp for Bernstein. It lacks structure and operates in the absence of procedures. Clearly, the Board has abdicated its role. It is safe to say that if AHS, as a nonprofit organization, were not required to have a board of trustees, there would be none. The words of the President best epitomize the overall attitude of this Board: "I'm not heavily involved in this. I go along with Lee to keep this going."

The Board relinquished its fundamental responsibility to provide oversight of organization's operation, management leadership, to engage in strategic planning and to ensure fruition of the goals. Its nonfeasance has extended to every aspect of its proper role, including monitoring the finances and, most importantly, safeguarding the welfare of the animals. Measured by any principle or standard governance promulgated by leading authorities for the boards of nonprofit, soliciting organizations, AHS's Board has failed. According to *The Nonprofit* Organization "The trustees of Handbook, philanthropic organizations hold the key to effective management. Since that is where 'the buck starts,' it is they who must see that the will to manage is exercised, and that management principles are actually applied."<sup>4</sup> "Every member of the board has a responsibility to act with due diligence in the exercise of his or

<sup>4</sup> The Nonprofit Organization Handbook, edited by Tracy D. Connors (McGraw-Hill 1980), p. 2-9.

her duties. This is particularly true as the board relates to the management responsibilities of the organization." Further, "At least one trustee (preferably the chairperson) must have the will and also the willingness to 'stick his or her neck out' by asking searching and perhaps awkward questions." BoardSource cites "oversight" as one of the primary responsibilities of a nonprofit board. It states, "The board is responsible for ensuring that the organization is well run. moderates the power of management, and has the power to hire and remove the chief executive, usually called the executive director president." Further, "The board of directors ensures the nonprofit's mission and sets policies and guidelines to fulfill that mission. guidance includes strategic planning to ensure that adequate finances, leadership, and proper internal controls exist to carry out the nonprofit organization's goals. The board must also provide oversight to ensure that the organization is operating in a legal and ethical manner." The BBB Wise Giving Alliance<sup>8</sup> states the principle as follows: "The governing board has the ultimate oversight authority for any charitable organization" and must "provide[] adequate oversight of the charity's operations and its staff." Indications of adequate oversight include "regularly scheduled appraisals of the CEO's performance, evidence of disbursement controls

<sup>&</sup>lt;sup>5</sup> *Id.* at 6-48.

<sup>&</sup>lt;sup>6</sup> *Id.* at 2-9.

<sup>&</sup>lt;sup>7</sup> BoardSource, formerly the National Center for Nonprofit Boards, was established in 1988 and is based in Washington, D.C. By offering extensive training and consulting programs, it "enables organizations to fulfill their missions by helping build strong and effective nonprofit boards."

<sup>&</sup>lt;sup>8</sup> The BBB Wise Giving Alliance was established in March 2001 with the merger of the two preeminent charity watchdogs, the Council of Better Business Bureaus' Foundation, together with its Philanthropic Advisory Service, and the National Charities Information Bureau. It has issued Standards for Charitable Accountability, which replaced the separate standards of each entity and were the product of a two-year study. These standards "seek to encourage fair and honest solicitation practices, to promote ethical conduct by charitable organizations and to advance support of philanthropy." The Alliance collects and distributes information on nationally soliciting nonprofit organizations that are the subject of donor inquiries.

such as board approval and monitoring of the budget and fund raising practices, accounting establishment of procedures sufficient to safeguard charity finances." addition, the board "should regularly assess its effectiveness in achieving its mission." To that end, it must have "a defined process in place to evaluate the success and impact of its program(s) in fulfilling the goals of the organization and that also identifies ways to address any deficiencies." The standards promulgated by the Council of Bureaus<sup>9</sup> Better **Business** dictate "(s)oliciting organizations shall have an active governing body," which is defined as one that "exercises responsibility in establishing policies, retaining qualified executive leadership, and overseeing that leadership."

The *laissez-faire* attitude of the Board is evidenced further in its failure to appoint committees as dictated by its by-laws. The nominating committee has been the only committee appointed in accordance with the by-laws, but it has been constituted merely to sanction the continuation of Board members. The only other committee established was a personnel committee, which was formed at the May 9, 2001, meeting for the sole purpose of apprising the bookkeeper of her termination because Bernstein did not want to handle the matter. The absence of other committees is reflected in the Board's omission to study any of

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AHS's activities for the purpose of formulating policies. According to *The Nonprofit Organization Handbook*, the committees of nonprofit boards "contribute to the overall health and vitality of our organizations in ways that are irreplaceable." Their role is to study, evaluate or investigate a matter and to recommend policies and activities to the board. 11

**The officers.** As ineffectual as the Board is. its officers are completely useless. Particularly glaring is the lack of involvement of the President and two Vice-Presidents, who, "as the key officers,"12 possess "special duties derived from their leadership responsibilities."<sup>13</sup> All of AHS's officers are mere figureheads who exist only to comply with the by-laws. officer characterized his position as "token." The President has not maintained close communication with the Executive Director regarding the operation and did not know even the approximate salary of the Executive and Assistant Directors. The lack of any role for the officers is highlighted by the fact that it took the Board 16 months to fill the position of treasurer when the individual resigned his trusteeship in 1997. The failure of the officers to assume any leadership role on the Board or with the organization is exemplified by the fact that most trustees do not even know the identity of the officers. Indeed, the Board President was unable to name any of the other officers, including his brother, who has been the secretary for close to two years. Even more astonishing is the fact that some officers do not even know that they are officers. Moreover, the majority of trustees are unaware that there are, and always have been, two vice-presidents. The few duties performed by the officers are ministerial at best, such as the president calling the meetings to order, a vicepresident calling them to order in the president's absence and the treasurer or secretary signing necessary documents. The president plays no

<sup>9</sup> The Council of Better Business Bureaus is the umbrella organization of the Better Business Bureau system that includes more than 150 bureaus throughout the United States and much of Canada. Founded in 1912, the bureaus assist close to 24 million consumers and businesses each year. The Council is supported in the United States by its membership of approximately 300 leading national corporations and by 129 local bureaus. Its mission is "to promote and foster the highest ethical relationship between businesses and the public through voluntary selfregulation, consumer and business education, and service excellence." To that end, the Council has promulgated business standards for publicly soliciting organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code and other organizations conducting charitable solicitations. Voluntary adherence to these standards by soliciting organizations, according to the Council, "will inspire public confidence, further the growth of public participation in philanthropy, and advance the objectives of responsible private initiative and self-regulation." The standards were developed with the professional and technical assistance of representatives of soliciting organizations, professional fundraising firms and associations, the accounting profession, corporate contributions officers, regulatory agencies and the Better Business Bureau system.

<sup>&</sup>lt;sup>10</sup> The Nonprofit Organization Handbook, supra at 2-75.

<sup>&</sup>lt;sup>11</sup> *Id.* at 2-75 to 2-93.

 $<sup>^{12}</sup>$  *Id.* at 6-48.

<sup>&</sup>lt;sup>13</sup> Ibid.

role in the formation of the meeting schedule or agenda. The treasurer has never assumed any role with respect to AHS's finances or investments. The current Treasurer candidly stated that she perceives no function for herself. Bernstein, the only individual who has attended every Board meeting, is said to run the meetings. From January 1994 through August 2002, he called to order one annual meeting, even though the President and Vice-Presidents were present. During the same period, he also convened 20 of the 43 regular meetings, even though the President or one or both of the Vice-Presidents were present at 18 of them and the Treasurer and Secretary were present at the other two. Bernstein also has signed and submitted meeting minutes, even though he never was the secretary.

Officers continue in their positions without opposition and for extended periods of time, even decades. It is usually the resignation of an officer from the Board that prompts his or her replacement. The President has held the position since early 1973, after serving as vicepresident for two years, the first vice-president since 1971 and the second vice-president since 1979. The current Secretary held the position from November 1996 to July 1997 and was appointed again in January 2001. predecessor held the position for over 27 years from June 1973 to November 1996 and from July 1997 to January 2001. The current Treasurer, who was appointed in November 1998, was preceded by an individual who had held the office for 20 years. The President's rationale that the same officers are continued in their positions for the sake of "continuity" and "to concentrate on the issues at hand" is ludicrous in light of the fact that they do nothing.

**Profile of the trustees.** At present, the Board of Trustees includes Albert Beim as President, William Sano as First Vice-President, Leonard Atlas as Second Vice-President, Barbara Lathrop as Treasurer, Harold Beim as Secretary, John Bergmann, Lee Bernstein, Terry

Clark, Douglas Kilian and Roseann Trezza. Bernstein was appointed to the Board in 1972, <sup>14</sup> Albert Beim and Sano in 1970, Trezza and Atlas in 1972, Harold Beim in 1973, Lathrop in 1976, Kilian in 1981, <sup>15</sup> Clark in 1997 and Bergmann in 2001. <sup>16</sup>

Pursuant to the by-laws, the Board consists of 10 members.<sup>17</sup> Eight of the trustees have been members for between 22 and 32 years, 18 eight are over the age of 62 years and are employees (Executive Director Bernstein, Assistant Directors Clark and Trezza, Lacey facility manager Bergmann and Harold Beim, who handles the placement and collection of fundraising canisters). One individual continued as a trustee for more than 20 years until his death in 1997 at the age of 89, even though he had not attended a meeting for more than three years. Three trustees were friends and/or business acquaintances of Bernstein's during the 1960s. Two are brothers. In the past five years, vacancies have been filled by current or former employees, viz. the former veterinarian of the Newark facility, an assistant director and, most recently, an employee hired in 1974 and appointed the manager of the Lacey facility in 1977.

Although the Board has been marked by the longevity of its members, the late 1990s witnessed the unusual trend of trustees resigning out of frustration with the Board's meaningless role. In each instance, a current or former employee was called upon to fill the vacancy. One trustee, originally appointed in 1977,

<sup>&</sup>lt;sup>14</sup> Bernstein also had been a member of the Board from 1967 to 1970.

<sup>&</sup>lt;sup>15</sup> AHS's 1978-1979 Commemorative Journal lists Kilian as the Technical Advisor.

<sup>&</sup>lt;sup>16</sup> Bergmann is the only trustee whose appointment or election to the Board is not reflected in the minutes. His presence at a meeting was first noted in the May 9, 2001, minutes.

According to a survey conducted by BoardSource, the average size of the board of a nonprofit organization is 19 members, with 17 members constituting the median. BoardSource notes that organizations with larger budgets tend to have larger boards.

<sup>&</sup>lt;sup>18</sup> AHS by-laws specify a trustee term of six years. According to a survey conducted by BoardSource, in conjunction with Stanford University, California, the most common term is three years and the second most common is two years.

resigned in 1997 because he finally became frustrated with Bernstein's dominance of the Board and the failure of the organization to spend money to improve the conditions for the animals. Another trustee, a former veterinarian at the Newark facility, resigned after only three and one-half years because he "really had no input" and the meetings were "a total waste of time." One of the assistant directors, a trustee and employee since 1972, resigned her position for brief periods during the last 15 years "when people, especially Lee, would aggravate me." The other assistant director, an employee since 1988, resigned four years after his first appointment in 1997 because Bernstein ignored the Board's directives. He stated, "What's the sense to be on the Board if he did what he wanted anyway?" Returning in about six months at Bernstein's request, he opined that Bernstein selected him under the belief that he would "vote his way." The reason articulated by both assistant directors for returning to the Board was their hope that they could accomplish more for the organization by being a trustee.

AHS's auditors have noted the stagnation of the Board. Its 2001 management letter, which accompanied its annual audit, admonished that "the Board membership does not rotate on a regular basis." It continued:

We believe that when the terms of certain Board members expire, the Organization should consider bringing in new Board members. This provides the Organization the opportunity to obtain the insights of new members. This would also allow the Organization to develop and further enhance their fundraising efforts and strategies by exposing the Organization to new contacts and ideas.

Thus, the auditors recognized as a chief responsibility of a nonprofit board the establishment of "an orderly procedure for the *selection* of new board members" in order "to

assure infusion of 'new blood' and the dropping of inactive members." [Emphasis in original.] Typical of its lack of responsibility, the AHS Board ignored its auditors' recommendation.

Conflicts of interest. It is self-evident that board members of nonprofit organizations must avoid conflicts of interest. As noted by BoardSource, even the appearance of a conflict must be avoided. AHS's trustees have not exercised prudence in this regard.

Currently, employees of AHS constitute one-half of the 10-member Board of Trustees. Four of them represent the organization's top management. Since 1993, AHS employees have constituted 50% or more of the trustees in attendance at the vast majority of the Board meetings. Their employment relationship establishes a material conflict of interest. According to standards developed by the Council of Better Business Bureaus and its Philanthropic Advisory Service, tax-exempt, public "soliciting shall organizations have an independent governing body." Specifically, "Organizations whose directly and/or indirectly compensated board members constitute more than one-fifth (20%) of the total voting membership of the board or of the executive committee will not meet this standard." In early 2002, the BBB Wise Giving Alliance Council tightened the standards to ensure that the governing body is independent and free of self-dealing. provision requires that a board have "[n]ot more than one directly compensated (e.g., a paid staff member) or indirectly compensated (e.g., spouse or family relation of paid staff member) person serving as a voting member of the board. Compensated members shall not serve as the board's chair or treasurer." The composition of AHS's Board of Trustees stands in flagrant disregard of both the original and revised standards. For most of the past 34 years, AHS's Board violated the 20% rule. Currently, six trustees, or 60% of the Board, fall within the

<sup>&</sup>lt;sup>19</sup> The Nonprofit Organization Handbook, supra at 2-53.

proscription of the new standard. They are Executive Director Bernstein, Assistant Director Clark, Assistant Director Trezza, Lacey manager Bergmann, employee Harold Beim and President Albert Beim. the brother of Harold. Furthermore, from September 1991 through October 1999, Harold Beim's wife was employed as a receptionist in the Newark clinic. In addition, although neither Bernstein nor Clark has the title of treasurer, Clark has full control over AHS's investments and Bernstein controls which expenditures are brought before the Moreover, some of the employee-Board. trustees have not refrained from introducing, seconding or voting on motions that would benefit them as employees.

A significant conflict exists with respect to the trustee positions of Bernstein, Clark and Trezza, who comprise the key administrators of AHS. First, according to the minutes, Bernstein and Clark voted to approve the renewal of their own employment contracts in 1997 Bernstein, Clark and Trezza voted to renew their contracts in 2000. Second, the Board's approval of their employment contracts was never preceded by any evaluation of their performance. Indeed, it would be difficult to hold such discussions in their presence as trustees. However, even if each individual were to be excused, the discussion would include the input of four other trustees who are employees. Moreover, the Board never formulated job descriptions for the top three managers. Thus, AHS's Board operates in violation of an arch standard promulgated by the BBB Wise Giving Alliance to "provid[e] adequate oversight of the charity's operations and its staff" by engaging in "regularly scheduled appraisals of the CEO's performance." In addition, the minutes do not indicate that either Harold or Albert Beim abstained from voting on the former's employment contract. A conflict situation also exists with respect to the independent judgment of Clark and Trezza, who are subordinate to Bernstein, and especially Bergmann, who does

not have the protection of a written employment contract.

Bernstein's selection of attorneys to represent AHS from the 1970s to the present has created the appearance of a conflict, if not an actual one. In the 1970s, Bernstein was represented in different personal matters by two attorneys, one of whom he placed on the Board of Trustees and the other of whom he selected to represent AHS. In addition, from at least 1980, the attorney selected by Bernstein to represent AHS in a variety of legal matters also has represented him personally.

Additional conflicts arose when Bernstein allowed his friends on the Board to benefit financially from AHS. In the 1980s, three trustees, who are still Board members, rendered business services to AHS, for which One continued to provide they were paid. services until mid-2001. When a trustee closed his business in 1989. Bernstein allowed him to become an AHS employee, first as manager of the Newark shelter, then as manager of the Tinton Falls shelter and finally to oversee the collection of fundraising placement and canisters. His canister route continues to this day. He receives a salary, health and pension benefits, and a motor vehicle, together with a gasoline credit card. From 1993 through 2000, he received an annual salary of between \$25,500 and \$33,874.

Bernstein created yet another conflict situation with respect to the purchase of motor vehicles. During the past five years, he has directed the purchase of numerous vans and one automobile from the dealership that has employed his son-in-law.

**Trustees speak out.** Interviews of all current and some prior Board members were very revealing. In surprising candor, most portrayed the Board as a "do-nothing" body that serves as a "yes-man" to Bernstein. One

individual described AHS as "Bernstein's organization," while another termed Bernstein the "owner" of AHS. One stated, "It's basically a dictatorship by Mr. Bernstein," while another asserted that Bernstein "has full control." The Board was described as "self-perpetuating" and its members as Bernstein's "hand-picked group of people." "It's cronyism to its maximum," posited one individual. Current and former trustees echoed the belief that Bernstein selected them because he assumed that they would not oppose him at meetings.

Several individuals described the Board as a "rubber stamp" for Bernstein's actions. Many admitted that Bernstein makes a lot of decisions about AHS's operation without consulting the Board and does not bring all appropriate matters before it. One trustee, a longtime friend of Bernstein's, stated that Bernstein "asks me just about everything," but does not bring those same issues before the entire Board. Another trustee stated that the Board defers to Bernstein and "let[s] him do what he wants to do." Bernstein was accused by many of "drag[ging] his feet when he doesn't want to do something." Although some trustees credited Bernstein for particular improvements to the facilities that they had favored, they nevertheless admitted that they acquiesced in his inordinate delay in achieving them. As one trustee asserted, proposals are made, "but Bernstein prevails." For example, despite the opinion of many trustees that the salaries paid to kennel workers have been inadequate, they passively have accepted Bernstein's response that an increase would cost "too much money." Similarly, Board members opined that AHS should have a "comfortable" amount of money in the bank and utilize the remainder to improve the facilities and salaries, but they failed to effect any change. As one individual stated, "We were gutless. We let Bernstein do what he wanted."

Even though numerous trustees were critical of Bernstein's non-responsiveness to the

Board's wishes or directives and his inordinate delay in implementing many directives, the fact remains that the Board took no measures to force his compliance. In an attempt to explain or excuse their failure to act, trustees typically alluded to their personal relationships with Bernstein or their desire not "to make waves." Almost all of the trustees appeared awe-struck in crediting Bernstein with building AHS into the organization that it is today. As one trustee stated, "There would not be a Society if Lee had not been the Executive Director." sought to justify the Board's abdication of its role by declaring that AHS is "Bernstein's baby. This isn't just an organization, it's Lee Bernstein." He added, "I didn't create this thing. I just go along." One individual sought to excuse the trustees' ineffectualness with the explanation that they were unaware that Bernstein failed to implement their directives because they never followed up on their own directives. He added that they never looked beyond the meeting's agenda. The Board President summed up the trustees' inaction as "The Board tells Bernstein to do something. He takes his sweet time. The Board does not force him. Bernstein is the father of this organization. How do you go against the father? He brought this organization to where it is today. He raised the money through his own two hands. I have to give him the respect that is due him." When asked if that means that Bernstein does whatever he wants to do. he relied, "Yes. Most of the Board does defer to him." The President admitted that Bernstein knows "he can manipulate" people on the Board. He reflected the attitude of other trustees when he stated that as long as AHS "is doing good and accomplishing what it's supposed to be doing, [then] let him do what he wants." However, the flaw in this attitude is that none of the trustees has bothered to examine AHS's activities or performance to assess whether it has been "doing good and accomplishing" its mission.

Without exception, current and former trustees utilized terms such as "cheap" and "frugal" to describe Bernstein. Many trustees attributed the poor salaries for kennel workers and inadequacies in the physical plants to Bernstein's paranoia about money, viz. his fear that AHS would not be able to continue financially. Bernstein candidly admitted that he has been parsimonious all of his life and is especially so with AHS. One trustee remarked that Bernstein is not concerned about the animals, but "is there to conserve money." Another stated that he prefers to have the money draw interest rather than apply it for the care of On every issue, lamented an the animals. individual, "[i]t's always the money." Another averred, "You always have to battle to spend money." One individual described the meetings as "screaming matches" regarding issues related to the expenditure of substantial funds. Some trustees confessed that as they witnessed AHS's investments grow, they could have spent the money more wisely to help the animals. longtime trustee and friend, with whom Bernstein frequently has consulted on issues, admitted, "I'm used as an excuse sometimes when Bernstein doesn't want to give someone something, to justify not spending to others."

Even in the face of their own admissions and examples of Bernstein's refusal or inordinate delay in carrying out the Board's directives, some trustees still insisted that the Board is not a "rubber stamp" for Bernstein. They cited the adversarial debates that have existed at times However, such vociferous with Bernstein. disagreements should not be confused with the fact that Bernstein has prevailed in doing what he pleases. Interestingly, a number of these trustees were unwilling to identify themselves as Bernstein's allies, even though other Board members characterized them as such. trustee, considered an ally of Bernstein's, vehemently denied that the Board is a "rubber stamp" and stated that he disagrees "with a lot of what Bernstein does." However, when pressed, he was unable to cite any such disagreements and confessed that he accepts Bernstein's explanation of controversial matters. Another trustee, also a longtime ally, admitted that "Bernstein runs things. If he doesn't want to do it, he won't." He added, "Most of the time, the Board lets Bernstein do what he wants, but sometimes, on major things, the Board will fight him." The only example that he could offer was the purchase of generators for the Lacey facility, but reluctantly admitted that it "took years" for the Board to force him to purchase them "because Bernstein was dragging his feet."

**Board meetings.** The Board of Trustees conducts two types of meetings, viz. annual and regular meetings, both of which are required by the by-laws. Although special meetings may be convened under the by-laws, 20 the Board has held only one such meeting since 1993. The annual meetings are mere formalities. The Board President admitted that they are perfunctory and are held only to conform to the by-laws. One trustee confessed that he "couldn't tell the difference between the annual meeting and the regular Board meeting." The regular Board meetings are convened not on a regular basis, but because Bernstein or one of the Assistant Directors decides that there are issues to be discussed. A recent occurrence highlights the ultimate control exerted by Bernstein in scheduling the meetings. In September 2002, after Trezza decided that a meeting should be held and had notices mailed to the trustees, Bernstein, without consulting Trezza, issued a notice canceling the meeting. In every annual management letter since 1993, AHS's auditors criticized the fact that management determined when the meetings were held and recommended that a regular meeting schedule be established and maintained. The prudence of holding regularly scheduled meetings is echoed in The Nonprofit Organization Handbook.<sup>21</sup> On occasions, Board meetings were circumvented

<sup>&</sup>lt;sup>20</sup> Article 3, Section 3.

<sup>&</sup>lt;sup>21</sup> The Nonprofit Organization Handbook, supra at 2-53.

when Bernstein telephoned those he could trust to ask how they would vote on particular issues and then took an "official vote" on the telephone. Bernstein acted upon such votes even though he did not contact a majority of the trustees. As recently as January 2002, Bernstein handled a matter in this fashion when he agreed to the settlement of a disputed bequest. One of Bernstein's allies admitted that Bernstein has contacted him by telephone "to get approval for things." Other trustees also confessed to the Another Board member and circumvention. employee also has contacted some of the trustees to ascertain their positions on certain issues in advance of meetings.

Attendance and active participation are not sine qua nons for membership on the Board. To the contrary, individuals have remained on the Board despite not attending any meetings for years. At only two of the 43 regular meetings that were held from January 1994 through August 2002 were all 10 trustees present. The number of trustees usually in attendance ranged between five, which is a quorum, and nine. One trustee did not appear at any meeting from at least 1994 until his death in 1997 and rarely attended meetings before then. One of the two Vice-Presidents failed to attend 30 meetings, or 70%, while the other Vice-President did not attend 23 meetings, or 53%. In 1995, one trustee attended only one of the five meetings, while another was present at only two. The President attended only one-half of the meetings in 1996 and 2001. In 2001, one trustee attended none of the meetings. The trustees who regularly Board attended the meetings were employees. They constituted between 33% and 60% of those present from 1993 through 1997 and between 40% and 71% from 1998 through August 2002. As a result, they represented 50% or more of the attending trustees in 26 of the 43 meetings. Since January 2002, AHS employees have constituted five of the 10 trustees, thereby representing a quorum.

The Board has held between four and six regular meetings each year, except in 1993 and 1994 when only two meetings were convened. According to BoardSource, the median number of yearly board meetings conducted by nonprofit organizations is nine, with 12 as the most frequently cited number of meetings. AHS's Board meetings, which usually lasted between one and one-quarter and one and three-quarter hours, did not appear to follow any format or guidelines. In a glaring omission, the by-laws do not require adherence to any set of parliamentary rules. No committees were formed to review or assess any program or activity. Resolutions that were passed at meetings frequently were not attached to the minutes and were not maintained in any files. Motions rarely preceded the Board's decisions. Only one set of minutes contains the recording of any vote, but, even in this instance, the minutes fail to identify the significance of the "yes" and "no" votes. Typically, the minutes read "it was unanimously decided," "the Board agreed" or "it was affirmatively decided." The minutes highlight the Board's failure to make decisions or to follow up on ones that it has made and Bernstein's delayed response to or disregard of Board decisions that he opposes. They reflect no rationale for any of the Board's decisions. They also reveal the trustees' lack of familiarity with issues from one meeting to the next. example. apparently forgetting unanimously decided at its January 23, 2001, meeting to eliminate the use of executive session when discussing employee-related issues, the Board convened an executive session at its July 23, 2002, meeting to discuss such an issue. Similarly, the Board repeatedly decided the same For instance, it voted to document employee warnings in the personnel files at its meetings on June 12, 2000, July 19, 2000, and January 23, 2001.

According to trustees, as corroborated by the minutes, Board meetings typically consisted of Bernstein providing updates on such matters

as the acquisition of additional animals for the zoo, particular fundraising programs and the income generated by each, the receipt of wills or bequests, the status of some municipal contracts, searches for and hirings of veterinarians, salary increases for shelter workers and purchases of trucks and vans. When Bernstein made recommendations, the Board routinely approved them. Meetings also included heated arguments about various issues, such as personnel matters involving the possible termination professional staff, particular fundraising projects and the need for benches on the zoo grounds.

The Board's approach to issues has been erratic. Examples of issues where formal votes were taken include "that cold cuts be served at all future Board Meetings," the renewal of contracts for the Executive and Assistant Directors, a pension plan for Bernstein, the ordering of plaques in appreciation of two individuals, revision of the employee manual, the clearing of brush to create a dog path for individuals to walk the Share-A-Pet animals at the Lacey facility, "an early spay/neuter policy for all Society animals," the purchase of digital cell phones for Clark and Trezza, AAA coverage "executive staff vehicles" authorization of a corporate credit card for Clark. The Board exhibited no consistency as to which major expenditures it approved. It voted on some of the improvements to the zoo, but not others. Between January 1, 1994, and June 30, 2001, the Board approved the acquisition of fixed assets costing approximately \$2.8 million, when, in fact, close to \$4.2 million was purchased. Specifically, trustees sanctioned the \$5,000 restoration of a historic water fountain and the purchase of an incinerator for the Lacey facility, park benches for the zoo and cages that cost \$5,100 for the Tinton Falls isolation room, but they did not vote on the purchase of an incinerator for the Newark facility, the acquisition of computer equipment, the expansion of the kennels at the Tinton Falls shelter, the construction of a gift shop and

renovation of the reception area at the Lacey facility, the purchase of trucks and vans, the annual purchase of a motor vehicle for Bernstein, the agreement to lease elaborate medical signs for the three facilities at an ultimate cost of more than \$33,000 or the \$25,000 settlement of the related lawsuit, and the installation of a new roof at the Newark facility. In repeated instances when the Board voted on improvements to the facilities, it failed to discuss the cost or to fix an amount. For example, in August 2000, when the Board was presented with various renovations for the Newark and Lacey facilities, which ultimately cost \$453,004, they merely "approved allocation of monies for renovations" as opposed to specifying a ceiling amount. Similarly, the Board did not take a uniform approach with respect to the employment contracts of the veterinarians. It approved some, but not others. The Board also acted inconsistently in 1998 regarding the mortgage given to the manager of the Tinton Falls shelter. On February 10, the Board voted not to renew the mortgage when it became due in April. On March 31, it agreed to extend the mortgage for one year. Apparently not recalling this decision, the Board again voted on May 5 to extend it for one year. November 11, making no reference to its prior decisions, the Board voted to handle the mortgage on a month-to-month basis. mortgage has continued to this day without further review. In addition, some of the Board's actions have been incomprehensible. Although an independent contractor had been handling a canister route since July 1999 and although the Board was presented with an executed contract dated January 12, 2000, at its January 18, 2000, meeting, the Board decided that it would not approve the contract until the contractor produced proof of insurance coverage, worker's compensation insurance and automobile insurance. Despite Bernstein's representation at the March 21, 2000, meeting "that we have received proof of insurance coverage," there is no record that any insurance was obtained by the company. Not only did the Board neglect to

inquire about proof of the other types of insurance, but it never formally approved the Finally, the Board refrained from contract. making policy decisions in appropriate cases, but involved itself in matters that appear strictly operational. Although the issue of off-site adoptions was presented on at least four occasions, the Board failed to formulate a policy decision. However, when Trezza advised of "the problems the Newark facility is having sending dogs to our Lacey facility for possible adoption," the Board voted to establish a policy that "Lacey will accept dogs from Newark and Tinton Falls whenever possible."

Expansion of the Tinton Falls shelter between November 1997 and February 1999 underscores the Board's minimal involvement and surrender of control to Bernstein even with respect to a huge expenditure. According to the minutes of Board meetings, although Bernstein advised the Board about the facility's expansion as early as April 26, 1994, the Board never voted on the issue and no trustee other than Bernstein provided any input at Board meetings. After the initial notification, there was no reference to the expansion until the August 1, 1995, meeting. The minutes simply state, "The Society will apply for a variance to put up a new building in Tinton Falls. Mr. Bernstein assured the Board that he will hire more staff if we expand the facility." At subsequent meetings, Bernstein advised the Board of the status of variance, zoning board and site plan approvals. According to the minutes of the August 26, 1997, meeting, Bernstein informed the Board that the costs of the renovations were estimated at between \$200,000 and \$260,000, but the Board did not approve any ceiling amount. At the February 10, 1998. meeting. Bernstein "discussed the expansion." The minutes state that "it is believed that the costs will be much higher" and contain the Board's approval to increase the budget to \$350,000. However, the minutes are devoid of any reasons for or discussion of the increased construction costs. During the May 5,

1998, meeting, Bernstein advised the Board that "the Tinton Fall's expansion is 95% completed," when, in fact, it was only little more than 50% At this time, most of the \$350,000 approved for the project had been expended. Even though the total cost of the improvements soared to \$588,292, the minutes contain no further approval by the Board or justification for the increase. The absence of deliberative planning or of any controls to monitor the escalating construction costs is reflected in the interviews of Bernstein, who attributed the rising costs to "add-ons" by the Assistant Directors, although he did concur, Clark, who claimed that he, Bernstein and Trezza kept adding to the project, and Trezza, who disavowed any involvement with the construction.

Meeting minutes confirm the Board's ineffectiveness in having Bernstein implement its directives in a timely manner. At the same time, they reveal the Board's protracted and repetitive decision-making process. In each case, certain trustees felt strongly about the issue, but Bernstein opposed it because of the cost. Invariably, Bernstein proceeded unfazed by the Board's repeated directives or the complaints of individual members. The following examples are noted:

- Trustees first raised the need for benches for the zoo grounds at the April 26, 1994, meeting. Bernstein opposed their purchase because of the expense and preferred that the public contribute to their cost. The Board voted to purchase the benches at the July 12, 1994, meeting and again at the February 28, 1995, meeting. Some benches were finally purchased in late March 1995 and the remaining ones in mid-July 1995.
- The installation of a new air ventilation system for the holding room at the Newark shelter was

discussed at the April 25, 1995, meeting and again at the October 24, 1995, meeting, when it received Board approval. The system was finally installed in February 1996.

- At the April 25, 1996, meeting, the Board approved the purchase of a snow blower for the Lacey facility. At the June 18, 1996, meeting, the Board again approved its purchase. The equipment was not purchased until September 1996.
- The acquisition of generators for the Lacey zoo was first raised at the April 25, 1996, meeting. At the November 11, 1997, meeting, more than one and one-half years later, the Board approved their purchase. Nevertheless, cost estimates were not presented until the February 10, 1998, meeting. The May 5, 1998, minutes state only that Bernstein "advised on generators for the Popcorn Park Zoo." At the August 11, 1998, meeting, "The Board continued to discuss the purchase of generators for the Zoo" "approximately approved and \$90,000.00" for their purchase. At the November 11, 1998, meeting the Board approved "\$126,000 for the purchase and installation generators for the Zoo." Preparation for the installation of the generators commenced on November 30, 1998, and the generators were purchased on March 1, 1999. The June 12, 2000, minutes state that Bernstein advised that the generators "are now permanently in operation."

The renovation of Kitty City at the Lacey facility exemplifies the inordinate delay in taking a project from initial proposal to final completion. Trezza originally advanced the

proposal in 1995, but, even though other trustees supported the project, it took lengthy and heated arguments with Bernstein at Board meetings before construction commenced in late 1999. The minutes of the April 25, 1995, meeting reflect Trezza's "request" for the enlargement of Kitty City. The Board approved the expansion two meetings later at the August 1, 1995, meeting. Bernstein opposed the construction at Although there was further "discussion" at the October 24, 1995, meeting and the Board directed that construction costs be obtained, it was reported at the April 25 and June 18, 1996, meetings that no action was taken yet. At the June 3, 1997, meeting, Bernstein reported that "construction on Kitty City will begin" shortly, but as of the July 15, 1997, meeting, "nothing has been done." Bernstein advised at the August 26, 1997, meeting that "[h]e will begin to look into the Kitty City expansion." Discussions continued at the November 11 and December 16, 1997, meetings. At the March 31, 1998, meeting, Trezza urged that the Kitty City expansion "should begin as soon as possible" and the Board approved \$40,000 to begin the project. However, actual construction did not begin until September 1999. The project was completed in spring 2000.

Perhaps the most egregious defiance by Bernstein of a Board decision occurred with respect to the emergency veterinary treatment of sick or injured strays that were picked up at night and on weekends and holidays when an AHS veterinarian was not available. The issue was first raised at the November 11, 1998, meeting, when the Board "unanimously agreed" that requiring "emergency animals care" transported "to the clinic immediately." According to the accounts of both AHS veterinarians and employees, as confirmed by the records of the emergency veterinary clinics, animals were not receiving emergency care even after this decision. Prompted by Dr. Lisa Levin, AHS's Chief Veterinarian, the issue again was raised at the April 24, 2000, meeting, at which

time the Board "agreed" that the AHS drivers must contact Dr. Levin for direction as to whether to transport an injured or sick stray animal to an emergency clinic. The minutes further reflect that the Board "emphasized" that the two AHS clinics render to sick and injured strays "the basic needs to keep them comfortable pain-free." Nevertheless, and Bernstein continued to instruct the drivers to take all strays, regardless of the severity of the injury or illness, to the shelter and not an emergency clinic. At the June 12, 2000, meeting, the Board again discussed the issue and determined that "[a] directive" be issued to the AHS drivers to take sick or injured animals to emergency clinics at night even "without the consent of upper management" and that "it is the responsibility" of the driver to ensure that "the animal is In an attempt to sever Bernstein's control over the drivers, the Board added, "No action will be taken against any [driver] who, at his own discretion, transports an injured [animal] emergency clinic for treatment." Undaunted, Bernstein continued in defiance of the Board's decision. The issue reached critical proportions when, on July 6, 2000, an AHS driver, after contacting Bernstein for direction, took a severely injured cat to the Tinton Falls shelter at night and the cat was found dead the next morning. Negative publicity swirled around the incident and the Board convened a special session on July 19 to discuss "emergency animal medical care." According to the minutes, "guidelines were put into effect in a form of a Resolution which was voted on and approved by This Resolution, which will be signed by all members at the next meeting, and [sic] gives specific instructions to be followed by all employees when emergency treatment of an injured or sick animal is warranted." At the next meeting on August 22, "the Board reaffirmed the initiation of the resolution." Despite the Board's seemingly firm stance on the issue, it failed to follow up on both the directive and the resolution. Not only was a resolution never signed by the trustees, but none was ever finalized and disseminated.<sup>22</sup> The drivers also did not receive the "directive" authorized by the Board.

Even in matters not involving the expenditure of funds, the Board failed to follow up on its decisions and Bernstein acted in disregard of its directives. At its July 15, 1997, meeting, "[t]he Board unanimously agreed to send a memo to all of our drivers regarding the importance of not leaving animals in our vans during extremely hot weather." However, the memorandum was never prepared disseminated and the Board never reviewed the matter again. At the August 26, 1997, meeting, Trustee "Barbara Lathrop advised the Board of the recent shortage of pet food at our facilities. Lee Bernstein agreed to look into the problem." However, the minutes of subsequent meetings contain no report of his findings or reference to the issue. At the December 16, 1997, meeting, the Board "agreed" to revise the employee Although updates were provided at most of the meetings in 1998, the minutes contain no reference to the manual thereafter and, as of November 2002, the manual still had not been completed. At its November 11, 1998, meeting, the Board "unanimously agreed" that sick or injured animals picked up at night and requiring immediate care would be transported to an emergency veterinary clinic and "agreed" to evaluate, in one year, the cost of providing emergency treatment and to recommendations at that time. However, the Board did not revisit the issue after the passage of one year. It was not until the April 24, 2000, meeting that the Board decided to include in the municipal contracts for animal control services a provision that the municipality will bear the cost of any emergency care rendered to stray animals if the owners are not located. However, there was no discussion about the costs encountered

<sup>&</sup>lt;sup>22</sup> AHS officials, who were able to produce only page one of the draft resolution, admitted that it was not finalized and was not provided to the drivers. Interestingly, the one page includes the provision that the "Executive Director has agreed that he is no longer involved in the dispatching or transmitting [of] any advice concerning the placement of

by AHS since its November 11, 1998, decision. According to the minutes of the March 21, 2000, meeting, although the Board expressed disapproval of Bernstein appearing on the television program, The People's Court, "Mr. Bernstein disagreed and will be appearing." Even though the Board passed a resolution on February 25, 1997, authorizing Trezza to work with animal rescue groups, Bernstein flouted the resolution in early 2001 when he dispatched AHS drivers to Cape May County to retrieve dogs that Trezza had turned over to a rescue Moreover, when presented with his defiance at its January 23, 2001, meeting, the Board took no action and deferred the issue to the following meeting. However, it failed to address the issue at subsequent meetings.

On at least two occasions, the Board decided an issue well after AHS management was implementing it. On January 18, 2000, the Board approved the contract between AHS and McAulay, Inc., to administer a canister route, but the contractual arrangement already commenced in July 1999 and Bernstein had signed the contract on January 12, 2000. At its April 24, 2000, meeting, the Board "agreed" to have all municipal contracts "systematized" by including a provision requiring the transfer of injured or sick animals to emergency clinics during non-business hours and allocating the cost to the municipality if no owner were identified. However, such a provision was being included in some contracts as early as 1996.

The minutes also reflect the Board's inability to act on a number of issues, some important and some simple. Although the Board was presented at its August 1, 1995, meeting with the seemingly straightforward issue of whether to charge reduced rates to indigent senior citizens for the euthanasia or cremation of their pets, "[n]o decision was forthcoming." Dr. Levin spoke of the need for additional staff at the Lacey clinic at the May 18, 1999, Board meeting and the need for additional veterinary staff at the

Newark clinic at the August 11, 1999, meeting, but the Board reached no decisions and did not address the issues at subsequent meetings. The Board was advised at its January 23, 2001, meeting of problems with the vendor who maintained the canister route and was informed at the August 28, 2001, meeting that the vendor "is behind in their [sic] payments to the Society" and at the November 28, 2001, meeting that the vendor "is seriously behind in his payments to the Society." Nevertheless, it was not until the March 19, 2002, meeting, when the vendor was in arrears for \$13,200, that the Board decided to cancel the contract. Not only did the Board fail to implement any of the recommendations made by its auditors, but even when a particular audit or recommendation was raised, the Board failed to follow up. According to the minutes of the February 13, 1996, meeting, a trustee referred to the annual audit of the prior year and requested "that we discuss this at our next board meeting." At the following meeting on April 25, 1996, there was no discussion of the audit, but "[i]t was agreed upon that we should discuss [it] at the next meeting." The trustees again "agreed" at the June 18, 1996, meeting that "the Board should discuss" the auditors' letter. discussion ever took place. The minutes of the November 11, 1998, meeting reflect "[a] lengthy discussion" of the audit and the auditor's recommendations, but no action was taken. The Board also discussed the auditors' recommendations at its February 16, 1999, meeting, with the minutes indicating that the Board held "[a] lengthy discussion" and made "several recommendations" that "will discussed further at the next meeting." However, there was no further discussion. Even when the Board approved implementation of one of the auditors' recommendations, it did not follow through. In response to a recommendation that the Board establish a regular meeting schedule, the Board agreed on February 13, 1996, to conduct meetings on the first Tuesday of every other month. It failed to do so. At its June 18, 1996, meeting, the trustees again agreed to hold

their meetings "on a more continual basis" and agreed a second time to the bi-monthly schedule. Again, the Board ignored its own schedule. Similarly, at its June 18, 2002, meeting, the Board discussed the recommendation made by the auditors to Bernstein and Trezza that additional members be added to the Board. Although the recommendation did not specify a number, the trustees were told that five additional members were suggested. However, they voted to present a constitutional amendment to add three, not five, members at the upcoming annual meeting. At the annual meeting on August 20, 2002, the Board voted, on a motion by Bernstein, "to table the proposed amendment until meetings can be held with the auditors." No meetings were held and the number of Board members was never increased.

The Constitution and By-Laws. AHS's governing document is entitled "Constitution and By-Laws." There is no record, and trustees have no recollection, of when the current document was adopted or revised. It is axiomatic that a nonprofit board should adhere to its constitution and by-laws. However, for AHS's Board, the governing document is irrelevant. The trustees, including the officers, generally are not familiar with its provisions and some never received a As one trustee stated, the copy of it. Constitution is "not something we deal with a lot." In fact, not only did several trustees admit that they are not concerned about adhering to its provisions, but one trustee audaciously declared that it is not his "concern" to know the provisions or whether the Board is following When convenient to facilitate its operation, the Board simply has amended its provisions. For example, when it became difficult to hold meetings because of the lack of a quorum, the solution was not to elect conscientious members to the Board, but to amend the by-laws to reduce the number constituting a quorum. The by-laws contain two There is no provision serious omissions. requiring term limits for the Board members. As

a result, trustees have remained in their positions for years and even decades. In addition, although a certified financial audit is commissioned, the by-laws simply require an annual audit.

It is no surprise, then, that for at least the past 13 years, the Board has operated in contravention of numerous provisions of the bylaws:

- As set forth in the chapter entitled *The Animal Shelters*, the Board has contravened perhaps the most important provision entrusting it with "the power to take any action necessary for the welfare of the Society." (Article 4, Section 6)
- Despite the requirement for an annual meeting, none was held in 1999. (Article 3, Section 1)
- The President has never fulfilled the requirement that he present a general report of the prior year's activities at the annual meeting. (Article 3, Section 4)
- Despite the requirement that "[t]here shall be at least four (4) board meetings a year," fewer meetings were held in 1993 and 1994 and only four meetings were convened in 1996 and 2001. (Article 4, Section 2)
- The provision that regular Board meetings can be cancelled only with the approval of six trustees has never been followed. (Article 4, Section 2)
- Contrary to the provision requiring the formation of a membership committee, whose mandate is to "solicit memberships and report the

- names to the Board," none has been established. (Article 7, Section 1)
- Despite the requirement for its formation, no finance committee has been appointed. (Article 7, Section 3) Moreover, although this committee has the mandate "to review the budget and make its recommendations for approval or disapproval," no budget has ever been composed. (Article 7, Section 3C)
- Although the role of the nominating committee is to "nominate candidate for each place to be filled on the Board of Trustees," the committee nominated individuals for the positions of officers on one (Article 7, Section 2) occasion. Further, the appointment of a nominating committee each year has been a meaningless exercise because it invariably has nominated the same individuals when their terms have expired. In addition, the committee has not been appointed "[a]t least 60 days prior to the Annual Meeting" and has not adhered to that it report requirement nominations to the president and secretary within 20 days after its appointment. (Article 7, Section 2) The Board President stated that the only reason he forms the nominating committee is "to follow the by-laws."
- Even though only members who have paid their dues can vote for Board members, two trustees have been allowed to vote even though one has been in arrears and the other was never asked to pay dues. (Article 2, Section 1)

- Contrary to the provision that the president execute "on behalf of the Society all contracts," the President has signed only some of the vendor contracts, two of the approximately 65 contracts for animal control services and none of the contracts with veterinarians. (Article 6, Section 1B) The Board never passed a resolution delegating this responsibility to Bernstein or Clark, the individuals who typically have signed the contracts.
- The president is required to "[m]ake a monthly report to the Board of Trustees of all information obtained in the exercise of his or her duties, which is not available from the regular committee reports." (Article 6, Section 1D) Not only has the President not presented such reports, but monthly meetings have not been held and committee reports have not been prepared for the meetings.
- The Board has not fulfilled its mandate to "have the management, investment, control and disposition of the affairs, property and funds of the Society." (Article 4, Section 3) It has neglected to take an active role in any aspect of AHS's fiscal or managerial operations.
- Although the Board has "designate[d] who shall sign checks," each of the three individuals so designated has signed one of the other's name. (Article 4, Section 3)
- Even though the Board "shall have the power to remove any member of the Board for being absent from its meetings for three successive meetings without good cause, for

failure to demonstrate active work and effort on behalf of the Society," it has continued numerous trustees in their positions despite their absence from meetings for lengthy periods of time or their lack of active participation. (Article 4, Section 3) Meeting minutes do not indicate any reasons why removal actions were not pursued.

- Although the Board has complied with the provision to commission an annual audit and to present the auditors' report at the annual meeting, the trustees have failed to review the report and to implement any of its recommendations. (Article 4, Section 5)
- Contrary to the requirement that the Board elect its officers at the first regular meeting following the annual meeting, the election typically has occurred during the annual meeting. (Article 5, Section 1) Further, an election as such has not been held. Rather. the Board simply "decided" to continue the individuals in their positions. Moreover, even though the by-laws do not specify a procedure for the nomination or election of officers, the Board has failed to establish one.
- Even though there is no provision for the conduct of business except at annual, regular or special meetings, the minutes of Board meetings indicate that the telephone "polling" of trustees occurred twice in 1999, once in 2001 and twice in 2002. (Article 3, Sections 1, 2 and 3; Article 4, Section 2)

- Although officers are to be elected to one-year terms, at its April 23, 2002, meeting, the Board nominated Albert Beim to a six-year term as President and Lathrop to a six-year term as Treasurer. (Article 5, Section 2)
- Despite the absence of a provision allowing the appointment of honorary members or members *emeritus*, the Board has been appointing the former since 1981 and the latter since 1977.

The governing document has been constructed so as to foreclose any possibility of intervention by outsiders. Although it bestows upon "members" the right to vote and to hold office and defines a member as "any person who pays \$5.00 annual dues,"23 the Board has complete discretion in deciding who is permitted to become a member or to continue as one. A majority of the Board is authorized to deny an application for membership for any reason<sup>24</sup> and to terminate an existing membership "for cause at any time and shall have full discretionary powers in doing so."25 In each instance, the individual has a right to appeal the denial or termination of membership to the Board, but that right is rendered nugatory. In all cases, the Board's decision on an appeal "shall be final."<sup>26</sup> Moreover, the individual's notice of appeal must be filed "10 days after the date of rejection or expulsion,"<sup>27</sup> but there is no requirement for the individual to be notified of the Board's decision or to be notified in a timely manner. In an effort limit the number of applications for membership, the President conveniently has neglected to appoint, and the trustees to call for, a membership committee as required under the by-laws.<sup>28</sup> The sole function of this committee is "to solicit memberships." As a practical matter,

<sup>&</sup>lt;sup>23</sup> Article 2, Section 1.

<sup>&</sup>lt;sup>24</sup> Article 2, Section 3.

<sup>&</sup>lt;sup>25</sup> Article 2, Section 5.

<sup>&</sup>lt;sup>26</sup> Article 2, Section 6.

<sup>&</sup>lt;sup>27</sup> Ibid.

<sup>&</sup>lt;sup>28</sup> Article 7, Section 1A.

the only time that an individual becomes a member is when he or she writes a letter to AHS to request the designation. Such letters have been infrequent and have not always received a response. In addition, the document makes it difficult, if not impossible, to nominate candidates for election to the Board. A candidate can be nominated only by "[a]ny group of 25 members" and only if the group files "a petition with their signatures at least 30 days before the Annual Meeting with the Secretary of the Society."<sup>29</sup> No nominations are permitted "from the floor."<sup>30</sup> Because the time within which the annual meeting must be held is so broad, the provision allows the Board, if it receives such a petition, to convene the meeting at an earlier date and thereby render the petition in violation of the 30-day notice. The provision that the annual meeting "shall be held during the months between May and September," may be convened at any time and place "specified by the Board of Trustees" and may be postponed by the president, with the approval of a majority of the board, "to any other day"<sup>31</sup> invests the Board with sweeping discretion. This provision replaced the one requiring that the annual meeting be convened in May. members must receive notice of the annual meeting, there is no requirement regarding how far in advance the notice must be mailed or received.<sup>32</sup> To ensure further the status quo, the Board added a provision establishing nominating committee, which is appointed by the president, to propose the candidates for The action was taken in trustee positions. response to a takeover threat perceived by the trustees. As one trustee averred, "It's a safety net." The nominating committee is a complete sham. It has proposed the same individuals to the Board when their terms have expired. Additional safety valves were inserted with the provisions that no more than three or four trustees, which constitutes less than a majority,

are eligible for re-election at any one time and that any vacancy that arises is to be filled by a majority of the trustees.<sup>33</sup> With respect to the former provision, although the election of fewer trustees than a majority is recommended to ensure continuity, AHS's Board was not so motivated.

What trustees do not know or care to know. The ignorance of individual trustees about the role and operation of the Board is startling, not only because they constitute its governing body, but also because they have been involved with the organization for so long. It can only be attributed to their utter lack of interest and involvement. Some trustees appear to have been living in a vacuum, isolated from the problems that have plagued AHS. One longtime trustee believes that "the organization is doing a marvelous job. I'm very satisfied with it. I would not change anything."

Almost all of the trustees were unable to name the Board's officers or were mistaken in identifying them. Further, they did not know what duties they perform. They were only aware that the president calls the meetings to order and that the vice-president does so in his absence. Most were unaware that there are two vicepresidents. Trustees candidly admitted that there is no purpose served by having officers, except to meet the requirements of the by-laws. Many did not know the procedure for replacing Board members. One trustee did not know of an employee's appointment to the Board the year before. Most were unfamiliar with the types of members that AHS has. Most did not know if or when the by-laws were last amended. Despite the assertion of many trustees that the Board's role is to set policy, they were unable to provide any examples. In fact, according to the President, "The Board does not set policy."

Trustees differed on the number of meetings convened each year; AHS's annual

<sup>&</sup>lt;sup>29</sup> Article 3, Section 5.

<sup>30</sup> Ibid.

<sup>&</sup>lt;sup>31</sup> Article 3, Section 1.

<sup>&</sup>lt;sup>32</sup> Article 6, Section 4.

<sup>&</sup>lt;sup>33</sup> Article 4, Section 1.

operating costs, with some not knowing even the approximate amount; whether they are provided with minutes of the prior meeting; whether the Board passes an annual budget; the approximate value of AHS's investments; whether a written financial report is distributed at meetings or what it contains; whether AHS's auditors make recommendations in conjunction with conducting an annual audit; whether meetings have been cancelled for lack of a quorum; whether the Board approves the annual purchase of a motor vehicle for Bernstein's use; whether the Board has a role in the hiring of veterinarians, and the purpose of the nominating committee and how it is assembled. trustees were unaware that the two veterinary clinics operate at substantial losses each year. Two mistakenly believed that the constitution sets a fixed amount over which the Board must approve expenditures. One was under the erroneous belief that no purchase can be made without first obtaining two estimates and the approval of Assistant Director Clark. though the by-laws entrust the Board with "the management, investment, control and disposition of the . . . funds of the Society," no trustee appeared knowledgeable or interested in AHS's investments. They have been satisfied to receive, without question or debate, the occasional printout summarizing the bottom-line figures for the bank accounts and investments. Most did know that Assistant Director Clark is in charge of the investments, but not that he receives advice from an outside financial expert. Even those trustees who are current or retired business people are disinterested in AHS's finances. One trustee, who used to own his own business, cavalierly stated that he has "throw[n] away" the annual financial statements. Except in one instance, the trustees have taken no active role in assessing AHS's fundraising programs. It was only in March 2002 that the Board insisted upon the termination of the contractor that administered AHS's canister route for not remitting AHS's share of the contributions. However, the action of the Board, which had been apprised of problems as early as January 2001 and had been informed in August and again in November 2001 of the contractor's failure to issue the payments, was protracted.

The trustees' ignorance also extends to the operation of AHS. Even though the board of a nonprofit organization is not expected to be involved in its day-to-day functioning, it is presumed that the members will be conversant about the operation. One individual stated that in his more than 30 years as a trustee, he has not "even noticed the day-to-day operation." Most trustees have never visited the kennel areas of some or all of the shelters or have not done so in the last 10 years. Many did not know whether or not veterinary services are provided at each of the three shelter locations. Most did not know the policy regarding the medical care of shelter animals or the emergent care of animals picked up at night, even though the issues were raised at numerous meetings. Only one trustee, other than the Executive and Assistant Directors, knew the change in policy following the July 2000 cat incident.<sup>34</sup> Some trustees claimed no knowledge of the incident. One trustee did not know which of the three facilities have been renovated. Another was unaware of the expansion and renovation of the Tinton Falls shelter and thought that the improvements, which were completed in 1999, had yet to be done. Estimates by trustees of the cost of renovating the Tinton Falls facility ranged from \$110,000 to Most did not know even the \$1 million. approximate cost of the major renovations recently undertaken at the Lacey facility at a cost of more than \$1 million.

The abdication of the trustees lies not only in their ignorance of numerous areas, but also in their failure to act when made aware of situations. Although some trustees "heard" of problems, they admitted that they did nothing to inquire into them. Several failed to follow up on

<sup>&</sup>lt;sup>34</sup> The incident is set forth in the chapter entitled *The Animal Shelters*, at pages 64 to 65.

complaints of inadequate food supplies at the Tinton Falls shelter. One trustee stated that he was aware that the veterinarian at the Lacey clinic was attending to clinic animals at the expense of shelter animals, but acknowledged that he did nothing to remedy the situation. The trustees were almost unanimous in opinion that the salaries of the shelter workers should be higher, but they never demanded that Bernstein increase them. The President cited as one of his responsibilities the proper treatment, salary and benefits for employees, but when he was asked why the kennel workers were not paid more, he responded, "Good question." In typical fashion, trustees acquiesced in Bernstein's response that a salary increase was "too much money." Attempting to justify their inaction in this regard, one trustee iterated Bernstein's philosophy that anyone can perform shelter work and that money is not a factor. When the Board was made aware that animal cages were not cleaned regularly, they quickly dismissed the issue with Bernstein's explanation, "We clean twice a day. We can't clean every time a dog goes to the bathroom." One trustee repeatedly challenged the honesty of the contractor who handled AHS's canister route, but always acquiesced in Bernstein's refusal to terminate his services. Many trustees voiced dissatisfaction with AHS's attorney because of his inattentiveness, delay and eagerness to settle lawsuits. However, Bernstein, who had selected him years earlier, resisted his removal. Although the minutes of the November 28, 2001, meeting reflect "the current need for" his replacement, the Board decided to postpone the matter until "the next meeting," but never revisited the issue. Despite receiving the recommendations of AHS's auditors each year, the Board never directed Bernstein to implement any of them. In fact, some trustees were not even aware that recommendations were included in the auditors' annual reports. One trustee charged that "it's up to Bernstein to implement the recommendations" and that the only "follow-up" that may occur is if "someone might say, 'Do it."

The Board also surrendered its role with respect to financial matters.<sup>35</sup> It has given Bernstein carte blanche to control AHS's expenditures. In only 23 of the 43 regular Board meetings held from January 1994 through August 2002 is there any reference to a treasurer's report. One trustee, a businessman, stated that he does not "pay attention" to the financial reports because "that's not my thing." No finance committee was ever established to monitor AHS's expenditures and revenue or to oversee its investments. Although the Board usually filled the position of treasurer, the individual never had any responsibilities except to sign an occasional document. Other trustees knew of no role for the treasurer. The Board has never approved a budget or directed that one be prepared. One AHS official stated that no one on the Board knows if management is spending within its means or exceeding it. One trustee summed up the sentiment expressed by many of the trustees when he confessed, "We don't have a good enough handle on what we spend money on." Nevertheless, no trustee was ever spurred to demand accountability.

Although AHS's contracts to provide government entities with animal control services generated \$7,181,947 from July 1, 1994, through June 30, 2001, the minutes contain very few references to them. Trustees listened to Bernstein's occasional updates regarding the renewal or cancellation of particular contracts or cost of living increases in the rates, but never received or demanded the information on a continual basis. In addition, the Board never sought, even annually, an overall assessment of the program, the total number of contracts or the projected increase or reduction in income and related expenses.

The Board has never instituted any procedure for the review of bills or even a bill list. A recent appointee to the Board admitted

<sup>&</sup>lt;sup>35</sup> The Board's failure with respect to overseeing AHS's finances is highlighted in the chapter entitled *A Financial Portrait*.

that he has not been asked to approve any expenditure thus far. It has been left to Bernstein to decide whether to apprise the trustees of particular expenditures or to present them for Board approval. In many cases, Bernstein merely advised the Board of major purchases, rather than obtain its approval. Trustees never insisted that they inspect any bills or be informed of any financial details. Further, they never set a threshold monetary amount over management must obtain Board approval. Their lackadaisical attitude towards the expenditure of even substantial sums is reflected in the fact that none of the trustees were familiar with the cost of the Lacey facility renovations, which exceeded \$1 million, or those of the Tinton Falls shelter, which approached \$600,000. Their attitude was simply that they had to be done.

Trustees also appeared disinterested about AHS's vast cash and investment accounts, which exceeded \$7 million for fiscal year ending 1994, \$8 million for each fiscal year ending 1995 and 1996, \$10 million for each fiscal year ending 1997 and 2001, \$11 million for each fiscal year ending 1998 and 2002, and \$12 million for each fiscal year ending 1999 and 2000. From January 1, 1994, through June 30, 2001, investment buy and sell transactions surpassed \$20 million. The Board has been content to allow Assistant Director Clark to invest the funds and maintain the accounts as he has deemed appropriate. According to Clark, "I can do just about everything without the Board's approval." The trustees have failed to establish even the most general parameters for the investment of monies. AHS's auditors constantly criticized their lack of a formal investment policy. When Clark has chosen to apprise the Board of investment issues, he has done so to "protect" himself and not because the Board sought an active role. As reflected in the minutes, since 1994, he has done so only three times. During the March 31, 1998, obtained meeting, Clark the Board's authorization to discuss AHS's investments with an outside consultant. At the February 16, 1999, meeting, when Clark reported the suggestion of the financial consultant to transfer monies from one fund to another, the Board approved the action, as well as continuing the relationship with the consultant. The third time occurred at the March 19, 2002, meeting, when Clark raised the "possibility" of reducing the number of brokers in light of the number of stocks recently bequeathed to AHS. The minutes disclose the trustees' desire to distance themselves from the investment area. Rather than address the issue raised by Clark, they instead "unanimously agreed that Terry Clark would continue to handle Society investments as he sees fit."

In addition to trustees ignoring issues that should have concerned them, there is evidence that AHS staff deliberately shielded them from controversial letters addressed to them at the Newark facility. When a trustee resigned in 1997 after 27 years, he wrote to the President to explain his resignation and to express his builtup frustration at the way the Board was operated. However, the letter never reached the President, but was opened instead by Assistant Director Trezza. In May 1997, approximately seven months before the dismissal of the volunteers at the Tinton Falls shelter, one of them authored a letter to each of the trustees. She was critical of the inability of the shelter manager to supervise the workers, the unresponsiveness of Assistant Director Clark at a recent meeting to complaints about the shelter, the failure of workers to administer medications to animals, the staff's indifference to people interested in adopting animals and the failure to render proper care to the animals. She offered suggestions on how to improve the management of the shelter and the treatment of the workers. However, every letter was intercepted and never reached the trustees.

A blind eye towards the care of animals. The failure of the trustees, self-professed animal lovers, to ensure the proper medical care of AHS's animals, even in the face of glaring indications that sick and injured

animals were languishing in the shelters and dying, is particularly flagrant. They blindly assume that proper care always has been rendered to shelter animals. Their Pollyanna views are but further indication of the renunciation of their role.

Although some trustees admitted that they did not know AHS's policy in treating sick or injured animals picked up at night, others stated that it always has been to render immediate medical care to them. One trustee posited that it "would be inhumane" to allow an injured or sick animal to languish in a cage overnight. Another asserted, "Everyone knows that an injured animal must be taken to a vet" immediately. Some trustees declared that the Board's policy is to take care of all sick or injured animals "at any cost." The Board President commented that AHS's "shelters shouldn't want for anything, especially food or medicine, with \$9 million in the bank."

The assumptions and beliefs of the trustees strain credulity in light of the negative media publicity in 1996 regarding allegations of substandard shelter conditions at AHS facilities, the negative newspaper publicity in 1998 concerning the allegations of improper care at the Tinton Falls shelter, the scandal in 2000 surrounding the severely injured cat that was taken at night by an AHS driver to the Tinton Falls shelter and found dead the following morning, and the repeated notification of the Board by the supervising veterinarian concerning inadequate veterinary care. As detailed above, even when issues were presented at meetings and even when the Board issued directives regarding veterinary care, there was no follow-up to determine compliance or the issuance of sanctions when it became clear that Bernstein defied its orders. When one trustee was asked in an interview how veterinary care is delivered to the animals at the Tinton Falls facility after he stated that there is no veterinarian there, he replied, "That's a good question." Rather than

examine for themselves the allegations of the volunteers who were banned from the Tinton Falls shelter, the trustees chose instead to embrace Bernstein's version. The Board President admitted that no trustee was interested in reviewing the allegations, but merely accepted the explanations offered by Bernstein and the Assistant Directors. Trustees also readily accepted Bernstein's account of the severely injured cat that was taken to the Tinton Falls shelter one night in July 2000 and found dead the following morning. As one trustee stated, Bernstein told him that the story was "just wrong." Another trustee had no recollection of the incident.

The obliviousness of trustees to matters involving the medical care and treatment of shelter animals also is startling because, according to the minutes, some issues were presented at length at Board meetings. Veterinary issues were brought before the Board primarily at the insistence of Dr. Levin, the Chief Veterinarian. The minutes of the January 18, 2000, meeting indicate that "[t]he Board discussed the problem of private practice versus shelter practice at the Society's medical departments. A discussion took place and will be discussed further at the next meeting." The issue was discussed not at the next meeting, but at the subsequent one on April 24, 2000. Both sets of minutes contradict trustees who claimed that the priority of the veterinarians has always been the shelter animals and that the issue of "private practice versus shelter practice" was never brought before them. Even though the policy regarding the emergency medical treatment of sick or injured animals that are picked up after normal business hours was discussed at the November 11, 1998, and the April 24, June 12, July 19 and August 22, 2000, meetings and was the subject of a Board resolution, most trustees were unaware of the policy and that the issue had even been discussed. The trustees who were ignorant of the policy included those who had advanced and

seconded the motion at one of the meetings to establish a policy of immediate treatment.

How the Board operates. Another aspect of the trustees' abandonment of their role lies in their failure to establish a proper management system for the organization and their allowing Bernstein free reign. As a result, the Board has been drawn into ridiculous internecine battles among management personalities and has become involved in day-today operational matters that should not have concerned them. Some of these issues indicate the failure of Bernstein, as Executive Director, to manage his staff in a professional manner and to resolve conflicts among his subordinates, while others reflect attempts by upper management to circumvent Bernstein's decisions that were contrary to the animals' welfare.

numerous issues, Trustee and On Assistant Director Trezza convinced the Board to pass resolutions supporting her position when she confronted difficulties in fulfilling her duties. Four such resolutions were adopted at the February 25, 1997, meeting. As a result of Trezza experiencing problems with the manager of the Lacey facility, the Board resolved that she "shall have no responsibility whatsoever to our Forked River [Lacey] Animal Care Center unless she choses [sic] to do so." In a second resolution, which Trezza sought because of interference by Bernstein, the Board resolved that it is her "option . . . to determine which adoption form will be used at our Newark Animal Center." The third resolution, which also was prompted by Bernstein's actions, directed that both Assistant Directors "have the right to go to an outside veterinarian for treatment of a particular animal if the Society veterinarian cannot or will not perform the necessary procedures. The cost of this treatment should not exceed \$1000.00." Finally, the Board agreed that Trezza "be permitted to make available animals to rescue groups and other non-profit [sic] organizations for placement."

The minutes do not disclose what led to the adoption of these resolutions. At the January 23, 2001, meeting, Trezza complained that employees at the Tinton Falls shelter were releasing wildlife that were still sick and euthanizing wildlife without the approval of the veterinarian. Although the Board did not pass a resolution, it "unanimously agreed" that Trezza was to be notified of all wildlife brought to the facility for her determination on how to handle each case.

The Board's lack of control also is reflected in its failure to maintain a system for the objective recording of meeting minutes. Although for the past five years the Executive Assistant has been present at meetings to record what takes place, the integrity of her notes has not been maintained. Rather, minutes have been subject to the personal agendas of individuals, most notably Trezza and, to a lesser degree, Clark. Although Trezza oversees the adoption of animals. Bernstein overrode her decision to allow a rescue group to take a number of purebred and mixed-breed dogs without charge. Bernstein, who wanted AHS to offer the animals for adoption in order to obtain the fees, directed an employee to drive to Cape May County to reclaim the animals and return them to AHS. Trezza then raised the issue at the next Board meeting. In unusual detail, the minutes to the January 23, 2001, meeting contain the following information authored by Trezza:

There was a very long and heated discussion concerning the use of Rescue Groups for purebred animals coming into the Society. Executive Director, [sic] Lee Bernstein will not allow rescue groups to take our purebred animals even though the Board passed a Resolution dated February 27, 1997, giving Roseann Trezza permission to make available to rescue groups and other non-profit organizations Society animals for

placement. A copy of the Resolution is attached for your information.

In a recent incident, Ms. Trezza made available animals, including purebreds, from both our Newark and Tinton Falls facilities to another rescue [group] for adoption to good homes. Mr. Bernstein was advised of the situation and sent one of our animal control officers to Cape May to retrieve the animals and return them to Tinton Falls for adoption.

The argument escalated with both Mr. Bernstein stating that he does not want purebred animals being made available and Ms. Trezza stating that she will continue to make them available. The discussion was at a stalemate and will be brought up again at the next Board meeting. [It is noted that the issue was not raised at the subsequent meeting.]

When AHS became the 90% beneficiary of a life insurance policy pursuant to a will that left the remaining 10% to another individual, Bernstein telephonically contacted four trustees and obtained their approval to enter into a consent order authorizing a greater share to the in order to avoid litigation. individual Bernstein's unilateral handling of the matter infuriated other trustees, including Clark, who ensured that Bernstein's dereliction was noted in the minutes of the January 29, 2002, Board meeting. After indicating that "[a] discussion was held concerning the Estate," the minutes continue:

Executive Director Lee Bernstein agreed to the proposal and advised that he had polled four members of the Board prior to this meeting who also approved. However, the Board discussed this matter at length and, although the Executive Director, [sic] agreed to the proposed

Consent Order, he did so without majority approval.

The beginning of a shift away from Bernstein's dominance? Some trustees claimed that in recent years, Bernstein has not been as powerful or dominant as he had been in the past, that Board members have become increasingly vocal about what they want done and that Bernstein has acquiesced in more situations. One trustee stated that he is not "dragging his feet" as much anymore. Another commented, "The Board has done a lot to loosen his grip." Yet another trustee observed that at first, "whatever Bernstein said, the Board went along with it," but "gradually, it just turned around." Whether the easing of Bernstein's authority is due to his advancing age, his health problems or the Commission's investigation, it remains to be seen whether this trend continues.

In the face of perceived weakening of Bernstein's control, those trustees who are also employees are taking the initiative in moving forward with their proposals for improvements. Realizing that when they raised issues "and saw [they] could get away with it, [they] kept going." As one trustee and Assistant Director stated, "I'm getting away with more." The Assistant Directors are following up on Board decisions, rather than leaving it to Bernstein to implement them or to implement them on his own timetable. Over Bernstein's objections for lengthy periods of time, the Board in 2002 finally approved the renovation of the holding room at the Newark facility, the construction of a storage area for heavy equipment at the Popcorn Park Zoo and the replacement of outdated cellular telephones. In contrast to prior practice, the Assistant Directors proceeded with implementation of these proposals and did not wait for Bernstein to act upon them. At the same time, one Assistant Director is undertaking to do some things on his own, rather than seeking Bernstein's permission, which he typically denied. For example, he is now arranging for needed repairs, albeit minor,

to be done at the Newark shelter without asking Bernstein. Previously, Bernstein either refused

to approve the repairs or had them done with inferior materials to save money.

### A FINANCIAL PORTRAIT

AHS presents an attractive financial picture. It generates sufficient income to meet its operating costs, invests significant maintains substantial cash and investment funds, and pays for major purchases and renovations without having to resort to outside financing. However, despite its strong financial position, the organization operates in the absence of financial procedures and controls and contravention of sound fiscal practices. Board of Trustees and management continually have ignored the recommendations of their auditors to implement proper practices and procedures in order to strengthen the internal control structure and operation.

AHS is a nonprofit corporation "organized and operated exclusively . . . for the prevention of cruelty to . . . animals," as described in Section 501(c)(3) of the Internal Accordingly, pursuant to Revenue Code. Section 501(a) of the Code, its income is exempt from state and federal income taxes. However, some areas of AHS's operation are unrelated to its tax-exempt status and, therefore, revenue derived therefrom is taxable. With respect to these activities, AHS reports expenses in excess of revenue and, therefore, pays no income taxes. AHS uses the accrual method of accounting and operates on a fiscal year basis, from July 1 through June 30. Its bookkeeping system combines a manual and computerized system that is controlled from AHS's headquarters at the Newark facility. The Commission examined AHS's financial records for the fiscal years from July 1, 1994, through June 30, 2001.<sup>36</sup>

For fiscal years ending 1995 through 2001, AHS had total revenue of \$40,205,856 and

total expenditures of \$32,716,558. It concluded each fiscal year with a profit of \$1,103,424 for 1995, \$860,547 for 1996, \$1,702,502 for 1997, \$1,205,935 for 1998, \$1,067,017 for 1999, \$1,007,197 for 2000 and \$542,676 for 2001. During the same time frame, it had cash and investment accounts valued at \$7,015,825 for 1994, \$8,143,073 for 1995, \$8,814,310 for 1996, \$10,757,842 for 1997, \$11,934,547 for 1998, \$12,610,764 for 1999, \$12,146,556 for 2000 and \$10,987,779 for 2001. In addition, for fiscal year 2002, AHS realized a profit of \$1,429,168 and had cash and investments valued at \$11,104,940.

#### **REVENUE**

AHS's annual revenue was \$5,005,003 for 1995, \$5,050,171 for 1996, \$6,009,146 for 1997, \$5,648,425 for 1998, \$5,876,055 for 1999, \$6,317,737 for 2000 and \$6,299,319 for 2001. The two primary sources of revenue were (1) public support through contributions, bequests and fundraising activities, and (2) fees for services, including those from the operation of the two veterinary clinics, various program services and the contracts for animal control services. For the seven-year period under review, public support generated \$22,221,954, or 55.27%, of the total revenue, and fees for services produced \$13,384,104, or 33.29%. The remaining sources of income included dividend and interest income, which yielded \$3,860,025, or 9.60%, and the sale of assets, including property and investments, which contributed \$376,315, or 1%.

**Public support.** AHS receives bequests, solicits contributions through a variety of programs, including Share-A-Pet Program, Animal Haven Farm, membership fees, canisters and the sale of garbage bags and tee shirts, and

<sup>&</sup>lt;sup>36</sup> For purposes of the Commission's analysis, expenses allocated to depreciation costs are not included in calculating AHS's total expenses or annual profit. Further, all annual figures are reported on a fiscal year basis.

routinely promotes fundraising special events, such as a Chinese auction, sweepstakes, calendars and address labels. Of the total annual revenue, these public support sources generated \$2,681,821 (53.58%) in 1995, \$2,484,972 (49.21%) in 1996, \$3,563,205 (59.30%) in 1997, \$2,915,503 (51.62%) in 1998, \$3,275,004 (55.73%) in 1999, \$3,643,042 (57.66%) in 2000 and \$3,658,407 (58.08%) in 2001.

For the seven-year period under review, the three income categories comprising this source of revenue were as follows:

- Bequests totaled \$8,272,787 and ranged between 8.89% and 27.20% of the annual income each year.
- Monetary contributions to AHS totaled \$10,376,100 and constituted between 22.98% and 30.43% of the annual revenue. The bulk of the contributions were made through the mail, ranging between \$1,217,420 and \$1,334,582, or 20.02% and 25.55%, annually. These contributions included donations to the Share-A-Pet Program, the Animal Haven Farm, the Popcorn Park Zoo, various solicitations by mail every winter, spring and fall, termed mailings," "appeal and other donations, which included those to the fund for canine vests, the Eternal Wall and the memorial for Sonny, the elephant who died in February 2001. Membership constituted fees fraction of the mailed contributions. The most profitable fundraising activity was the Share-A-Pet Program, which yielded between \$467,346 and \$519,610 each year and totaled \$3,456,867. The sources of the remaining contributions were donations made at the shelter locations, donations placed in

canisters located in stores throughout the state, and the sale of garbage bags and tee shirts. The annual donations at the shelter sites fluctuated between \$41,384 and \$74,199, or .66% and 1.42%, while the yearly income from the canisters and sale of garbage bags and tee shirts, which AHS categorized together, ranged between \$132,519 and \$193,439, or 2.22% and 3.86%.

• Special events generated a total of \$3,573,067 and ranged between 7.48% and 10.89% of the annual revenue. Three fundraising activities constituted most of the revenue in this category. They were a sweepstakes program for the raffle of an automobile, the sale of calendars and the sale of address labels. Most of the income was received through the mail.

**Program Services.** The fee-for-services offered by AHS to the public include animal control services, veterinary clinics, ticket sales for Popcorn Park Zoo, and animal-related services. such as adoptions, surrenders, cremations, disposal, burials, spay or neutering surgeries, ambulance fees and boarding. Annual income from these program sources yielded \$1,725,620 (34.50%) in 1995, \$1,826,505 (36.16%) in 1996, \$1,813,993 (30.20%) in 1997, \$1,791,211 (31.70%) in 1998, \$1,895,852 (32.26%) in 1999, \$2,096,569 (33.18%) in 2000 and \$2,234,354 (35.46%) in 2001.

The specific program services are as follows:

 Government contracts. Most of the program services revenue was derived from contracts with government entities, primarily municipalities, a state highway authority and some county agencies, to provide animal control services. They have numbered approximately 65 contracts each year. For the period. seven-year this area constituted \$7,181,947, or 53.66%, of the revenue. Annually, it made up 45.80% in 1995 and between 52.84% and 57.26% in each of the other years. Except for a slight dip in 1998, annual revenue from this source grew steadily from \$790,271 in 1995 to \$1,239,283 in 2001. The contracts have been a profitable activity for AHS. For the seven years, expenses amounted to \$3,130,208, leaving a profit of \$4,051,739. Annually, the profit ranged between \$387,552 and \$691,567.

- Veterinary clinics. After the animal control service contracts, the next major source of program service revenue was the operation of AHS's two veterinary clinics. For the seven-year period, the clinics produced \$2,401,698, or 17.94%, of total service revenue. On a yearly basis, they generated between \$307,739 and \$373,127, or 14.68% and 21.62%.
- Animal-related fees. Adoption fees generated most of the income in this category. They constituted \$1,304,236, or 9.74%, for the seven years, and between \$159,484 and \$221,132, or 8.39% and 12.81%, annually.

### **EXPENDITURES**

Annual expenses, before depreciation, were \$3,901,579 for 1995, \$4,189,624 for 1996, \$4,306,644 for 1997, \$4,442,490 for 1998, \$4,809,038 for 1999, \$5,310,540 for 2000 and

\$5,756,643 for 2001. Salaries, hourly wages and employee benefits, which ranged between 60% and 67% annually, comprised the biggest expense each year. The second largest expense category was printing and postage, which ranged between 11% and 18% annually. Most of these expenses were related to the fundraising programs involving calendars, address labels and Other significant categories letter appeals. included occupancy expenses, such as utilities, rent, and garbage and animal waste disposal, which ranged between 3.91% and 4.71% each year, and drug expenses, which ranged between 3.27% 5.25% annually. and Minimal expenditures were made for animal food and supplies, such as cages, traps and litter, which averaged 2% to 3% annually, and cleaning chemicals and supplies, which ranged between .04% and .54% each year.

### **CASH AND INVESTMENTS**

The fair market value of AHS's cash and investments rose from \$6,532,291 on July 1, 1993, to \$11,104,940 on June 30, 2002. Except for fiscal years 2000, 2001 and 2002, the value increased steadily each year, viz. by \$1,127,248 in 1995, \$671,237 in 1996, \$1,943,532 in 1997, \$1,176,705 in 1998 and \$676,217 in 1999. The decreases of \$464,208 in 2000 and \$1,158,777 in 2001 were due to AHS's sale of investments in order to supplement its operating revenue to finance improvements to the facilities. downturn in the stock market also contributed to the decline in 2001. Between June 30, 2001, and June 30, 2002, a continuing slide in the stock market caused unrealized investment losses of \$1,027,137. At present, the approximate allocation is 50% equities, 40% bonds and fixed income instruments, and 10% cash and cash equivalents.<sup>37</sup>

<sup>&</sup>lt;sup>37</sup> Cash equivalents are certificates of deposit with maturity dates of three months or less.

AHS had cash and cash equivalents of \$1,032,070 on June 30, 1994, \$600,114 on June 30, 1995, \$608,874 on June 30, 1996, \$713,078 on June 30, 1997, \$432,124 on June 30, 1998, \$719,272 on June 30, 1999, \$672,084 on June 30, 2000, \$655,297 on June 30, 2001, and \$1,172,750 on June 30, 2002. Its investments, which included mutual funds, corporate stocks and bonds, US government-backed securities, mortgage-backed securities and certificates of deposit with maturity dates of more than three months, were valued at \$5,983,755 on June 30, 1994, \$7,542,959 on June 30, 1995, \$8,205,436 on June 30, 1996, \$10,044,764 on June 30, 1997, \$11,502,423 on June 30, 1998, \$11,891,492 on June 30, 1999, \$11,474,472 on June 30, 2000, \$10,332,482 on June 30, 2001, and \$9,932,190 on June 30, 2002.

The major flaw, indeed tragedy, in the manner in which AHS has conducted its financial affairs lies in its failure to have fulfilled its mission to promote the welfare of animals under its care. AHS has accumulated and maintained inordinately greater funds than were necessary for its annual operation. From June 30, 1995, through June 30, 1999, the organization devoted most of the net cash generated by its operating activities to increasing its investment portfolio, while, at the same time, realizing sufficient cash from operations to pay for relatively minor purchases of property and equipment. It was not until fiscal years ending June 30, 2000 and 2001 that AHS drew from its investment portfolio to help cover the costs for new property and equipment. Nevertheless, AHS reduced its investments merely by \$539,337 in fiscal year 2000 and by \$677,053 in fiscal year 2001.

At no time did the Board of Trustees or management assess the organization's current and future needs and resources in planning for continuity of operation. According to the National Charities Information Bureau, "The organization's use of funds should reflect consideration of current and future needs and resources in planning for program continuity." By failing to apply funds in accordance with such an evaluation, AHS violated a main tenant of the BBB Wise Giving Alliance that charitable organizations "[a]void accumulating funds that could be used for current program activities." To comply with this standard, according to the Alliance, "the charity's net assets available for use should not exceed twice the total expenses budgeted for the current year." AHS failed to adhere to the Alliance's standard in three of the seven years under review. A comparison of AHS's net assets available for use at the beginning of each fiscal year to its actual expenses for that year establish that for the years ending June 30, 1997, through June 30, 1999, the net assets were more than double that year's The excess assets that AHS had expenses. available for use, but did not apply, were \$336,910 for fiscal year 1997, \$1,923,719 for fiscal year 1998 and \$1,405,195 for fiscal year 1999. AHS met the standard for fiscal years 2000 and 2001 because of substantial capital improvements and purchases of equipment in comparison to the prior five years. For years 1995 and 1996, the net assets available for use were just under twice the actual expenses. However, even in years when net assets were more than twice the annual expenses, AHS failed to apply funds to improve the deplorable facility conditions, to render basic medical care even to alleviate pain and suffering, or to expend minimal sums on such items as the repair of the sewerage system and the purchase of bleach.

Mortgages held by AHS. AHS holds two mortgages that as of June 30, 2002, had balances totaling \$83,061. AHS issued the first mortgage in November 1984, when it sold property in Brooklyn, New York, that it had received as a bequest. The mortgage had a balance of \$11,496 on June 30, 2002, and expires in March 2004. Trustees generally were not aware of this mortgage. There is no

reference to the mortgage in any of the Board minutes from 1994 through 2002.

In April 1993, AHS gave a \$79,000 mortgage loan to the manager of the Tinton Falls shelter and his wife when they purchased a home in Union Beach, New Jersey. As of June 30, 2002, the mortgage, which expires in February 2023, had a balance of \$71,565. It was the idea of Executive Director Lee Bernstein to issue the mortgage to AHS's employee, who was unable to obtain one from a financial institution. Bernstein authorized the mortgage for 100% of the purchase price and without any property appraisal or determination of the mortgagees' financial worthiness. Even though interest rates have declined considerably since 1993, there has never been an attempt to refinance the mortgage, which carries an interest rate of nine percent. There is no evidence that the Board of Trustees approved the mortgage. Although the mortgage note stipulated a 30-year payout, it nevertheless provided that the balance was due no later than April 1, 1998. At its February 10, 1998, meeting, the Board decided not to renew the mortgage when it came due. However, shortly thereafter, at its March 31, 1998, meeting, the Board was persuaded by Bernstein to extend the mortgage for one year. At the November 11, 1998, meeting, apparently not recalling its prior decision, the Board directed that the mortgage continue "on a month to month basis." There has been no further discussion of the issue. Some trustees do not believe that AHS should be "in the mortgage business," while one trustee questions why Bernstein refused to give a mortgage to another longtime employee.

#### FIXED ASSETS

The value of AHS's fixed assets, which include land, buildings and improvements, furniture and equipment, and motor vehicles, substantially increased from \$2,393,692 as of July 1, 1994, to \$6,103,594 as of July 1, 2001.

From July 1, 1994, through June 30, 2001, AHS made land purchases of \$127,921, purchased furniture and equipment totaling \$169,508, bought motor vehicles, including vans and automobiles, for \$438,719, and had building and improvement costs of \$3,459,141. Of the total costs for buildings and improvements. \$1,425,585, or 41%, was incurred for the Popcorn Park Zoo, while only \$934,569, or 27% was spent on the Lacey shelter and animal clinic. \$641,546, or 19%, was expended on the Tinton Falls shelter, and \$455,848, or 13%, was for the Newark shelter and animal clinic. Of the total equipment costs, computer furniture and equipment constituted \$110,158, or 65%, while the largest purchase of non-computer equipment was \$35,093, or 21%, for a Bobcat loader and accessories in May 2001. The annual purchase of a new automobile for Bernstein amounted to \$154,081, or 35%, of the total cost for motor vehicles.

#### **ANNUAL AUDITS**

Since 1992, AHS has engaged a New Jersey accounting and management consulting firm to conduct a certified annual audit of its statements of assets, liabilities and net assets, together with the related statements of activities, cash flows and functional expenses. Each year, the auditing firm submitted to AHS's Board of Trustees an audit report and management letter that "noted certain matters involving the internal control structure and its operation." The auditors considered these matters to be "reportable conditions," which. according management letters, "involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements." The areas repeatedly cited by the auditors included the failure to

segregate duties in the accounting department, "which weakens a system of internal control," to prepare annual budgets and monthly financial statements, to record the accounts payable in the general ledger on a monthly basis in order to the reporting management to "misleading" "interim financial information," to have a formal investment policy, to update the accounting system, computerized formulate a succession plan in the event of the retirement or disability of the executive director. addition. the auditors continuously recommended that the Board establish and maintain a regular meeting schedule instead of having management determine it. According to the auditors, regularly scheduled meetings "would make the management accountable for the financial condition and operations of the Corporation." Not only did the Board never implement even one of the auditors' recommendations, but it rarely discussed them at its meetings.

## ABSENCE OF FINANCIAL CONTROLS AND ACCOUNTABILITY

There has been a complete abdication by the Board of Trustees of its responsibilities with respect to the fiscal operation of AHS and its financial well-being. According to *The Nonprofit Organization Handbook*,

Every member of the board has a responsibility to act with due diligence in the exercise of his or her duties. This is particularly true as the board relates to the management responsibilities of the organization.

Some members of the board, however, have special duties derived from their leadership responsibilities. The chairperson and vice-chairperson have particular responsibility as the key officers and must be attuned to the

financial condition of the group. Many of the decisions they need to make require consideration of financial matters. Without an understanding of the financial implications of any decision, it will be more difficult to make the right decision concerning what happens within your agency.<sup>38</sup>

Responsibility also rests with Executive Director Bernstein.

No finance committee and a treasurer in name only. The roles of the treasurer and finance committee in a nonprofit corporation cannot be minimized and the failure of AHS's Board in these regards cannot be overstated. According to The Nonprofit Organization Handbook, the treasurer is "the officer with the greatest responsibility in the financial area."39 The authoritative treatise advises, "Because the treasurer's job is so important, be careful to elect the strongest person available."<sup>40</sup> Further, "[t]he treasurer acts for the board and ensures" that the organization's books are properly kept; financial statements are presented; a budget is planned; the organization's assets "have been afforded sufficient protection," and an internal audit is conducted. 41 It is the treasurer who should meet with the managerial and bookkeeping staffs to prepare reports for the board. 42 Similarly, the finance committee is an essential part of a board's organization and possesses "the duties of helping the treasurer account for the economic resources of the group."<sup>43</sup> Specifically, it must "[c]ontrol and supervise the finances (funds and assets) of the organization"; must "[p]repare, together with the chief administrative officer and treasurer, a recommended budget for the year"; must "[s]ubmit a proposed budget to the board for approval"; must "[r]eceive and review

<sup>&</sup>lt;sup>38</sup> The Nonprofit Organization Handbook, supra at 6-48.

<sup>&</sup>lt;sup>39</sup> Ibid.

<sup>&</sup>lt;sup>40</sup> Ibid.

<sup>&</sup>lt;sup>41</sup> *Ibid*.

<sup>&</sup>lt;sup>42</sup> Ibid.

<sup>&</sup>lt;sup>43</sup> *Id.* at 6-48.

monthly or quarterly financial reports on expenditures and income [and] [i]f necessary, require an accounting of items not consistent with those budgets approved by the board"; must "[s]tudy and recommend the investment of surplus funds," and must "review the results of an annual external audit of the previous year's accounts."

Contrary to well-established principles governing nonprofit organizations, as well as its own by-laws, AHS's Board has never had a finance committee. Although it has filled the position of treasurer, the trustees holding the title have never exercised any responsibilities of the office. Indeed, it was revealed in an interview of the current Treasurer that she did not even know that she has the title. Further, the Board allowed the position to lapse for 16 months when the treasurer resigned as a trustee in 1997.

The minutes of only 23 of the 43 regular Board meetings held since January 1, 1994, make any reference to the reading or review of a treasurer's report. Furthermore, no reports were attached to the minutes or included in the numerous records turned over to the Commission pursuant to subpoenas. What is loosely termed a financial report has been presented at Board meetings not by the treasurer, but by Bernstein, and has been prepared by the bookkeeper without any involvement by the treasurer. The report is merely a "cash flow" statement of the cash and investment account balances and does not contain the revenue and expenditures. The the has ignored continuing recommendation of the auditors that full monthly financial statements be prepared and reviewed by management and the Board. The auditors advised that such statements "would greatly assist management in detecting problem areas in a timely manner and in evaluating the overall financial condition of the Society."

No annual budget. Contrary to its bylaws, AHS has never been guided by a budget. The Board of Trustees never approved a budget or directed that one be prepared. In failing to do repeatedly ignored the recommendation of its auditors that a budget be drafted and reviewed by management and the trustees. In every one of their management letters, the auditors advised that the budget constituted another tool, in addition to the financial statements, to assist both management and the Board in the timely identification of evaluating problem areas and in organization's financial health. The letters that accompanied the annual audits for fiscal years ending June 30, 1995 and 1996 specifically noted that "the preparation of budgets would assist in managing the Corporation's cash flow and provide management with a better control over the operations of the clinic."

The Board's dereliction in this regard also has contravened sound fiscal standards and principles espoused by leading authorities on nonprofit boards. According to the BBB Wise Giving Alliance, "to ensure that the charity spends its funds honestly, prudently and in accordance with statements made in fund raising appeals," the governing board should approve an "annual budget for its current fiscal year, outlining projected expenses for major program activities, fund raising, and administration." The Nonprofit **Organization** Handbook recognizes the importance of preparing a budget. It notes that "the budgeting process is essential to the successful operation of any organization, including nonprofit organizations. Some will even go so far as to say that an organization without an effective budget is doomed to failure."<sup>45</sup> The treatise states that the purpose of a budget is "to translate program plans into financial terms and to provide the board with needed control of expenditures by staff."<sup>46</sup>

<sup>&</sup>lt;sup>44</sup> *Id.* at 2-87.

<sup>&</sup>lt;sup>45</sup> *Id.* at 6-50.

<sup>&</sup>lt;sup>46</sup> *Id.* at 2-54.

Absence of internal control policies. A significant area constantly criticized by AHS's auditors has been the failure to establish policies for the internal control of expenditures. Their management letters admonished: "A small number of persons have the primary responsibility for performing most of the accounting and financial duties. As a result, some of the aspects of internal accounting control, which rely upon adequate segregation of duties, are missing in your Organization." In order to overcome the "[in]adequate segregation of duties," the auditors recommended several procedures, including the "[r]eview supporting documentation for all disbursements in excess of predetermined amounts" and the "[r]eview [of] monthly financial statements and question[ing] [of] variances." The auditors urged, "Have a questioning attitude." However, the Board of Trustees never discussed the auditors' recommendations for internal fiscal controls and management never instituted any As indicated below, there was no managerial review of expenditures, expense checks were processed even when they lacked supporting documentation and the two signatures on many of them were written by the same person.

Check signing. Pursuant to corporate resolutions, the checks for AHS's checking accounts require two signatures. The only ones authorized to sign checks are Executive Director Bernstein and Assistant Directors Terry Clark and Roseann Trezza. Except for the payroll checks, which contain Clark's original signature and a stamp of Bernstein's signature, there are no procedures to ensure that two individuals sign the checks or review the reason for their issuance. Bernstein and Clark have signed most of the checks. Although each has signed the name of the other on occasion for the sake of expediency, Clark has signed Bernstein's name on a routine basis in order to shield certain checks from him. After the bookkeeper prepares the checks, she gives them to Clark, who then removes the ones that he does not want Bernstein to view, signs them with both signatures and returns them to the bookkeeper for mailing. When interviewed, Clark explained that he has done this to avoid tirades by Bernstein about spending too much money. He asserted that Bernstein "would raise the roof" if he learned of these expenditures. Bernstein stated in an interview that he and Clark have signed the other's name to checks, but only when necessary because of the other's unavailability. He added that he is certain that Clark has signed his name to checks, even when written for large amounts, without his knowledge.

**Contracts to provide animal control services.** Although these contracts generated \$7,181,947 for the seven-year period under review and the by-laws require the Board president to execute all contracts, the President has not done so. Further, there is no procedure for the Board's review or assessment of the contracts, even on an annual basis.

Reimbursement of purchases made by **administrators.** To promote ethical practices by charitable entities, the Council of Better Business Bureaus promulgated the guideline that "[s]oliciting organizations shall establish and exercise adequate controls over disbursements." Contrary to sound fiscal policy, AHS has failed implement any procedure for the reimbursement of purchases made by its administrators. There has never been a review of or challenge to any receipt, even when the item purchased was not identified. Although the Commission found no evidence of fraud, it was impossible to verify that AHS received the purchased items, even when they were identified. Further, and perhaps more significantly, the absence of proper internal procedures creates an atmosphere ripe for theft and projects an appearance of impropriety to the contributing public.

During the seven-year period under review, Bernstein and Clark utilized personal credit cards to make purchases for AHS. 47 These purchases exceeded \$225,000, \$175,000 of which was charged by Clark. Both Bernstein and Clark simply submitted to the bookkeeper the credit card statements with the amounts for payment indicated. The bookkeeper then issued checks to the credit card companies regardless of whether there was any supporting documentation as to the nature of the expenses. On many occasions, Clark submitted the statements without any supporting receipts to identify the items purchased. There was never a procedure for the review of credit card statements. Bernstein admitted in an interview that he had no idea of the amounts charged by Clark. He never reviewed any of the statements submitted by Clark or signed the checks for payment. The bookkeeper, believing that she was not in a position to do so, never challenged the lack of supporting documentation or explanation for the purchases. For example, attached to one credit card statement was a \$123.60 receipt, dated April 2001, that indicated payment for cakes, beverages, cups and utensils and bore the handwritten notation "Board meeting etc." Even though there was no meeting that month, it was paid. Another credit card statement, which was paid, included an October 2000 receipt bearing the notation "Newark animals" and indicating the purchase of potato salad and Cajun turkey. There were 108 charges that were not accompanied by a charge slip or bill. On 27 charges, although there was a charge slip, but no bill, there was no indication of what was purchased. In every instance where a credit card payment was made, the same person made the

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purchase, received the item and submitted the bill for automatic payment.

The absence of a procedure for verification also exists with respect to the gasoline credit cards issued by AHS to the three top administrators, the trustee/employee who operates a canister route, the employee in charge of some of AHS's fundraising programs and the drivers who provide the animal control services. Not only do these individuals fail to submit their gasoline receipts 99% of the time, according to the bookkeeper, but when they do provide them, no one reviews or compares them to the monthly bills from the gasoline companies.

The petty cash account is another area that lacks fiscal controls. There are no procedures requiring review of the reimbursement requests, documentation of the items purchased or identification of the persons receiving the cash. Submissions are never challenged. The bookkeeper simply issues During the seven-year period of payment. review, reimbursements from petty cash were made in excess of \$208,000, \$68,771 of which was paid to Bernstein, Clark and Trezza. Bernstein received the majority of the money at \$44,520, while Trezza was paid \$17,443 and Clark received \$6,808. Reimbursements totaling \$139,657 were made for a variety of expenses at the three shelter locations, but there were no records to indicate who made the purchases. Petty cash disbursements of \$110,661 were made at the Lacey facility, \$20,212 at the Newark facility and \$8,784 at the Tinton Falls shelter.

Lack of inventory for equipment. AHS spent more than \$50,000, mostly through personal credit cards that AHS paid, on the acquisition of computers and related equipment, camera equipment, car phones, telephone equipment, appliances, and maintenance including equipment, a snow blower. Nevertheless, management never created a permanent record describing the items and

<sup>&</sup>lt;sup>47</sup> Although Bernstein was issued several credit cards bearing both his name and that of AHS, these cards are not corporate credit cards. As a result of inquiry by Commission staff into the use of personal credit cards, Assistant Director Clark asked the Board at its January 29, 2002, meeting to authorize a corporate credit card for him. In February, Clark received a credit card, but it is in his and AHS's names and is not a corporate card.

noting their serial numbers, location and cost. The failure to maintain and to monitor an inventory of these items renders them highly susceptible to employee theft.

Outdated computer system. For its bookkeeping system, AHS utilizes a combination of manual entries and computers. according to the auditors, the computer system is "old and outdated." In each of their management letters for fiscal years ending June 30, 2000 and 2001, a full page was devoted to an assessment of the current system and recommendations for improvement. The auditors stated, "The system does not provide Management with meaningful information and all subsidiary records and supporting schedules are maintained manually." Nevertheless, the Board not only failed to initiate any evaluation of or improvement in the system, but did not even discuss the issue. Bernstein also ignored the recommendation.

Cash and investment accounts. At no time did the Board of Trustees exercise any meaningful control over AHS's substantial cash and investment accounts. The fair market valuation of these accounts at the close of each fiscal year was as follows:

- June 30, 1993: \$ 6,532,291
- June 30, 1994: \$ 7,015,825
- June 30, 1995: \$ 8,143,073
- June 30, 1996: \$ 8,814,310
- June 30, 1997: \$10,757,842
- June 30, 1998: \$11,934,547
- June 30, 1999: \$12,610,764
- June 30, 2000: \$12,146,556
- June 30, 2001: \$10,987,779

• June 30, 2002: \$11,104,940

The Board surrendered its role to Assistant Director Clark, who has possessed full discretion in investing and maintaining the monies since his hiring in 1988. Moreover, it was Bernstein and Board that assigned not the him responsibility. Between January 1, 1994, and June 30, 2001, the minutes of Board meetings indicate that the trustees made decisions on only two very minor financial issues and that they did not discuss or receive information on buy and sell transactions that totaled more than \$20 million. The recommendation of the auditors that a professional investment manager oversee the investments and make recommendations was given short shrift. Clark attempted to contact "some guy, but he didn't return my call."

In every management letter, the auditors criticized the absence of a formal investment policy and the reliance on the recommendations of individual brokers. They also faulted the maintenance of numerous brokerage accounts and the investment in small value certificates of deposit. The auditors repeatedly recommended that (1) the Board establish and approve a formal investment policy; (2) the Board consider engaging a professional investment manager to assist management in maximizing investment returns, and (3) as a review procedure, management provide a report to the Board on the investment decisions made since the prior Board meeting and the Board formally affirm the manager's internal investment actions. According to the auditors, an investment strategy is essential in order to increase the return earned on investments and should be documented and approved by the Board. An additional recommendation was that AHS track the fair market value of its numerous investments on a monthly basis, rather than at the end of each year when the auditors conduct their audit. By not maintaining the fair market value of its investments on a continuing basis, "management

does not have a true picture of the value of its investment holdings."

In addition to addressing general policy issues and procedures, the auditors denounced specific investments. Their annual management letters cited AHS's investments in tax-deferred obligations as lacking prudence because of its tax-exempt status. Moreover, unlike AHS's mutual fund investments, these obligations carried higher administrative costs and penalty restrictions on withdrawals. The Board, as well management, ignored repeated the recommendations to transfer the funds to higheryielding, taxable instruments. As of June 30, 2001, \$1,703,088 remained invested in taxdeferred holdings.

The auditors also disapproved of AHS's maintaining deposits in several banks in excess of the limits insured by the Federal Deposit Insurance Corporation [hereinafter FDIC]. They admonished that this was a significant deficiency internal control structure recommended that in order for AHS to protect itself from potential loss, the excess amounts must be transferred to other financial institutions. By maintaining bank balances above the \$100,000 amount insured by the FDIC for each bank, AHS continually exposed hundreds of thousands of dollars to risk. The uninsured amounts for the years ending June 30, 1994, through June 30, 2001, were \$720,618, \$500,366, \$622,826, \$736,305, \$849,205, \$480,897, \$516,593 and \$927,498, respectively.

Capital improvements and equipment purchases. According to BoardSource, "Loss of public confidence and a damaged reputation are the most likely results of a poorly managed conflict of interest. Because public confidence is important to most nonprofits, boards should take steps to avoid even the appearance of impropriety." To that end, boards should "[e]stablish[] procedures, such as competitive bids, that ensure that the organization is

receiving fair value in the transaction." AHS operated in violation of this basic tenet.

From July 1, 1994, through June 30, 2001, AHS expended more than \$4 million in capital improvements and equipment purchases. Nevertheless, its administrators made no attempt to obtain bids or quotations in an effort to obtain the most competitive prices. In addition, AHS arranged for construction work to be done without any written contracts with the companies. Moreover, at the same time that they were hired to provide services at the shelters, two of the contractors did personal work for Bernstein in 1993 and a major contractor did work for him in 2001.

**Bequests.** Because of the absence of sufficient controls, a number of irregularities have occurred with respect to the receipt and application of monies received from individuals' last wills and testaments. These irregularities are detailed below under the subheading entitled *Irregularities Regarding Bequests and Annuities*.

**Fundraising activities.** AHS has engaged in a variety of fundraising activities, some of which have been handled by its own staff and others of which have been conducted by outside contractors. These activities have included "special events," appeals by telephone and through the mail, the collection of donations from canisters, and the sale of tee shirts and garbage bags.

With respect to the activities conducted by independent contractors, AHS never sought any accountability of the monies collected versus the amounts that it received. Indeed, AHS was paid only a fraction of the monies collected. Contributors to these programs no doubt expected that AHS would receive most, if not all, of the monies. Clearly, AHS has acted in contravention of state regulations governing its "responsibility" as a charitable organization to "establish and exercise control over fund raising

activities conducted for its benefit,"48 as well as the standards charitable watchdog According to the Council of organizations. Better Business Bureaus, "Soliciting organizations shall establish and exercise controls over fund raising activities conducted for their benefit by staff, volunteers, consultants, contractors, and controlled or affiliated entities, including commitment to writing of all fund raising contracts and agreements."

Contributions through the mail. During the seven-year period under review, AHS received in excess of \$12 million through the mail. With rare exception, there have been no internal controls to ensure the financial integrity and accountability of these contributions. AHS's practices have been contrary to established standards for the receipt and recording of donations by charitable organizations. To promote the ethical practices by soliciting organizations for the receipt and accounting of contributions, the Better Business promulgated the following standard: "Soliciting organizations shall establish and exercise adequate controls over contributions."

AHS has solicited the public extensively through mailing requests and advertisements in Humane News, a bi-monthly publication with a approximately circulation of 65,000. Contributions have been mailed to one of several post office boxes rented in the Township of Lacey and the Borough of Keyport. Bernstein has maintained full control of the retrieval and counting of these contributions. According to Bernstein, he removes the envelopes from the post office boxes several times each week, opens the envelopes, removes and counts the cash and checks, and records the amounts on about 80% of the envelopes because they do not include a note indicating the amount. By Bernstein's own admission, it has not been uncommon for him to open envelopes while driving his automobile. He records the contribution amounts on an

adding machine tape by fundraising category and, every Monday, submits the tapes, cash and checks to the bookkeeper at the Newark facility. The bookkeeper prepares the deposit slips, but does not record the names of the donors in the cash receipts journal, on the deposit tickets or on the tapes. She notes only the total amount of the contributions in the cash receipts journal. She gives the deposit slips, cash and checks to Bernstein, who then makes the deposits within one or two days at a bank in Lacey Township that is used principally for the Lacey operation. The envelopes are forwarded to an independent contractor, who compiles a computer list of the names and addresses of the donors for future fundraising mailings. For extremely brief periods of time, Bernstein delivered the envelopes to office personnel to remove the cash and checks, although he still opened the envelopes. Between July 1, 1994, and June 30, 2001, the independent contractor was paid \$370,860 to generate the computer lists and more than an additional \$200,000 to provide AHS with computer equipment and service. hired the husband and wife company in 1990 and, in 1997, obtained the Board's approval for a five-year contract.

It is inexplicable why Bernstein has chosen to transport the contributions for deposit to AHS's Lacey Township bank and thereby delay the deposit of the money, instead of having the bookkeeper deposit the receipts at AHS's Newark bank. Bernstein offered as an the delay explanation for and apparent inconvenience that the Newark bank charged for each deposited check and for any check returned for insufficient funds. However, according to a bank official, from July 1994 to July 2000, AHS's account did not carry any service or maintenance fees. In July 2000, AHS changed its Newark bank account to a small business interest checking account that assesses transaction fees, but also pays interest. Although Bernstein's explanation, while not apposite for the time period prior to July 2000, may be

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<sup>&</sup>lt;sup>48</sup> *N.J.A.C.* 13:48-12.1.

reasonable after that date, the question still remains why an account at another Newark bank was not explored.

Bernstein's practices neither ensure the accountability and integrity of the contributions nor prevent the intentional or accidental diversion of monies. The weaknesses are many. One person controls the retrieval and opening of the envelopes, the recording of the amounts on an adding machine tape and the deposit of the receipts. There is no reconciliation of the computerized contribution list with the amounts recorded in the cash receipts journal. Because AHS maintains no records identifying the donor with the amount, it is impossible for the bookkeeper or independent auditor to trace a disputed or questioned contribution in the financial records. Finally, the contributions are not deposited in a timely manner because Bernstein holds the receipts up to one week before giving them to the bookkeeper to prepare the deposit slips and then does not make the deposits for another day or two. For these reasons, AHS's auditors, in their management letters, repeatedly criticized the absence of controls regarding the contributions and the failure to segregate the duties in processing them. Although they advised the Board of Trustees that having the same person receive, open and deposit the mailed contributions runs counter to a system of internal controls, the Board never directed a different procedure and Bernstein never altered his practices.

Three of the annual fundraising programs have consisted of mailings of calendars, address labels and letters of appeal. Two companies handled these projects until 2000, when one of the companies assumed all three projects. Although AHS paid more than \$2.3 million for these programs during the seven-year period, AHS never entered into any formal contracts with them or attempted to obtain quotations from other companies in order to ensure the best price. In fact, unknown to AHS's administrators, the

company does not print the items, but acts as a middleman in utilizing several other companies to print them. Clearly, AHS has failed to examine the arrangement with its contractor and to negotiate the best price. In light of the substantial disbursements, sound fiscal policy required that AHS obtain a minimum of three quotations from vendors and execute a contract.

Canister donations. Until recently, AHS utilized both an independent contractor and an employee to administer its canister program. Since 1992, AHS has employed one of the trustees to place and collect hundreds of canisters in north and central New Jersey. The independent contractor had handled thousands of canisters that covered a larger geographical area that reached into New York City and Pennsylvania.

AHS began its canister program in the 1970s, when, according to Bernstein, he hired Alfonso Bergamo and Seymour Medwin after they were released from jail following convictions for gambling-related offenses. For a brief period in the 1970s, Medwin also served as AHS's fundraising chairman. Bernstein later changed their status from AHS employees to independent contractors, at which point they formed Al-Sy, Inc., which was incorporated in April 1980. Beginning in January 1995, the operation continued under Janci, Inc., which was incorporated in December 1994 by Bergamo's cousin, Patrick Jemas. Bergamo became an employee of the company. The formation of Janci to replace Al-Sy was triggered by the enactment of the Charitable Registration and Investigation Act, which became effective in August 1994. According to Bergamo, he wanted to "start clean" with another corporation that could register under the new law. The minutes of the July 12, 1994, Board meeting contain Bernstein's statement that "all individuals who would be affected by this [Act] have been notified." Registration under the new law by Al-Sy would have required the disclosure of

Bergamo's and Medwin's criminal convictions. Jemas confirmed to Commission staff that Bergamo knew that he would not be able to form a fundraising company because of his criminal convictions and that Janci provided a "front" for the canister operation. In early July 1999, according to both Bergamo and Jemas, Bergamo literally threw him out of the office. Bergamo then continued the operation under McAulay, Inc., a company that he had his girlfriend incorporate on July 15, 1999. McAulay subsequently entered into a contract with AHS. Written and oral communications by AHS officials and personnel with both Janci and McAulay were primarily with Bergamo, who, when interviewed, admitted to being an organized crime associate.

AHS's contracts with both Janci and McAulay called for the placement of "collection cans in stores, businesses, and offices in the State of New Jersey and New York" and their automatic renewal "if both parties live up to the terms of this agreement." The contract between AHS and Janci stipulated that AHS would receive the greater of 33 1/3% of the gross weekly collection or a flat weekly payment of \$1,000. The one with McAulay provided that the weekly payment to AHS would be the greater of 25% of the gross weekly collection or a flat weekly fee of \$1,000 initially and \$1,200 after October 16, 1999. For the entire period under review, AHS always received the flat fee. At no time did the independent contractor provide, or AHS demand, any accounting of the total monies canisters. collected from the management and Board of Trustees simply accepted the weekly payment without requiring proof that it represented the greater amount. Further, although the contracts with both Janci and McAulay required that they "make available their books, records, bank account statements pertaining to this program to the Society upon request," AHS never sought to examine their financial records.

Not only were the individuals selected by Bernstein highly unsuitable for the job of collecting cash contributions, but the companies that Bergamo used as fronts were disreputable. Although Janci was incorporated in December 1994, it filed annual reports with the Secretary of State's Office only for years 1995, 1996 and 1997. Further, in response to a subpoena issued by the Commission for all of Janci's financial records, Jemas was able to produce very few documents, viz. bank records only for years 1996 through 1998 and corporate income tax returns only for years 1997 and 1998. Significantly, the corporation never maintained any records for the formal accounting of the monies collected from AHS's canisters.

In January 2002, McAulay ceased making the weekly payments to AHS. According to Bergamo, the company fell into arrears because his girlfriend was stealing cash to finance her drug habit. In a March 20, 2002, letter to McAulay, Clark stated that the company was in arrears for an 11-week period in the amount of \$13,200 and advised of the decision of the Board of Trustees to cancel the contract. Thereafter, McAulay issued to AHS a number of checks, but all were returned for insufficient funds. As of October 15, 2002, AHS has been paid only \$2,400. Bergamo issued the checks through yet a third company that is fronting for him. Moreover, following the cancellation of the contract, AHS had evidence that Bergamo continued to disburse and to collect AHS fundraising canisters.

Sale of tee shirts and garbage bags. Since May 1988, AHS has contracted with Bagger the Better, a West Long Branch company, to conduct telemarketing sales of tee shirts bearing an AHS logo and plain garbage bags. AHS has been the company's only client. Pursuant to the contract, AHS has received a weekly commission check representing 15% of the garbage bag sales and 10% of the tee shirt sales, together with a summary of the weekly

sales. The company has never increased the percentages.

AHS has received only a fraction of the sales made by the company. Between January 1, 1996, and December 31, 2001, Bagger the Better generated \$1,814,690 in sales, but paid AHS merely \$220,062, representing an annual percentage of between 11.42% and 13.46%. Thus, AHS's fundraising expenses for this program amounted to approximately 88% of the contributions. This figure far exceeds the standard recommended by the BBB Wise Giving Alliance that charitable organizations "[s]pend no more than 35% of related contributions on fundraising. Related contributions are donations received as a result of fund raising efforts."

The contract with Bagger the Better states that AHS "shall have the right to inspect and audit the books of the fund raiser during reasonable hours at the place of business of the fund raiser monthly on dates mutually convenient to the parties herein." However, AHS never sought to examine the company's records or even to verify the sales figures. Neither the trustees nor management exhibited any interest in ascertaining whether the fundraising effort was the most cost-effective for the organization or the donors.

Contracts. Neither Bernstein nor the Board of Trustees has established any procedure for the review or approval of contracts. As a result, there is no uniform approach to employment and vendor contracts. The Board has approved some contracts, but has not sanctioned the vast majority of them. The President has signed some of the contracts, as required by the by-laws, but has not executed most of them.

**Employment contracts.** The Board has concerned itself only with the employment contracts for the Executive Director and the Assistant Directors. However, its role has been

perfunctory. The trustees have renewed the contracts prematurely without reasonable or any justification, have not evaluated the performance of each individual, have not reviewed the duties and responsibilities assigned to each director and have not played any role in setting their salaries, increments or compensation packages.

The Board neglected to enter into any employment contracts with its three top executives until 1990, when, according to Trezza, she requested one in order to secure her position with AHS because of a souring personal relationship with Bernstein. As a result of her request, contracts also were executed with Bernstein and Clark. Since 1990, there have been three contracts with each director. Clearly, the contracts were mere formalities and further demonstrate the control that Bernstein has exercised over the Board.

The contracts for Bernstein, Clark and Trezza, which mirrored one another, were renewed prior to their dates of expiration. The five-year contracts dated January 1, 1990, were renewed prematurely on April 26, 1994, and were made for a six-year period commencing on May 1, 1994. This was the only instance where the minutes provided a reason for the early renewals, viz. that "there are very few Board meetings." In 1997, the Board renewed the contracts three years prior to the 2000 expiration date, this time for a five-year period. In 2000, two years before the expiration date of 2002, the Board again renewed each contract for another five-year period. In neither instance did the minutes indicate any reason for the early renewals. Moreover, although the minutes of the 2000 Board meeting indicate approval for a fiveyear extension, the contracts themselves stipulate a six-year extension.

The Board has handled the contracts with its three directors differently than it has those with the veterinarians. The contracts with the veterinarians have specified their compensation, benefits and hours of employment. In contrast, the directors' contracts have not addressed these issues. Instead, each contract simply contained the statement, "The Employee shall receive the same salary and benefits as currently in force, unless increased by the Employer, subject to the availability of funds." Although meeting minutes indicate that the Board approved the renewal of their contracts, they disclose no discussion as to duties and responsibilities, performance, benefits, salary or increments. Indeed, because the directors also were trustees, it would have been difficult, if not impossible, to hold such discussions in their presence. Moreover, even if each director had recused himself or herself, employees/trustees would have been placed in the difficult position of discussing their fellow employees or supervisors.

AHS also has an employment contract with the fundraiser who manages the telephone marketing operation from an office in Keyport. The contract is dated 1990 and bears the signature of a non-officer trustee as witness. Even though AHS officials have modified the contractual arrangement with the fundraiser, they never rewrote the contract. In addition, the minutes of Board meetings reflect no discussion of the contractual arrangement or assessment of the operation by the trustees.

### Contracts with independent fundraisers.

The lack of an established procedure to formalize contractual relationships also existed with respect to AHS's arrangements with independent contractors for the placement and collection of fundraising canisters. Not only did AHS fail to enter into a contract at times, but it was able to produce, pursuant to Commission subpoenas, only two of the five contracts that it did execute.

As detailed above, the canister operation was handled by three successive companies, *viz*. Al-Sy, Janci and McAulay, all of which involved Alfonso Bergamo. AHS never entered into a contract with Al-Sy. Although Janci

commenced the operation in January 1995, AHS did not formalize a contract with the company The 1996 contract had a 1996. until commencement date of January 5, but was not signed until November 4. Although it specified a two-year term to end on January 5, 1998, AHS executed an identical contract in June 1997 for a one-year period. Upon the termination of the 1997 contract on June 30, 1998, AHS entered into another one-year contract. contracts with Janci were on AHS letterhead and were signed by Bernstein, Board President Beim and the president of Janci. When the contract with Janci ended on June 30, 1999, the operation continued under McAulay, but AHS did not execute a contract with McAulay until January 12, 2000, more than six months later. Bernstein and the president of McAulay signed the contract. According to the minutes of Board meetings, this was the only contract that Bernstein presented to the Board for its approval. Nevertheless, he did so after the contract was signed.

# IRREGULARITIES REGARDING BEQUESTS AND ANNUITIES

AHS has benefited substantially from the largess of testators. From July 1, 1994, through June 30, 2001, it received \$8,272,787. For fiscal year 2002, it received an additional \$3,243,335. However, a number of irregularities occurred.

The wrong beneficiary. Under a will signed in January 1981, AHS received and deposited two checks totaling \$80,000 in July 1999 and December 2000. However, the beneficiary named in the will was the "Humane Society of the United States, Elizabeth, New Jersey Division" and not Associated Humane Societies, which never was located in Elizabeth. The Humane Society of the United States, a national organization that was founded in 1954, maintains 10 regional offices. Its Mid-Atlantic Regional Office, which is in Flanders, New

Jersey, originally was located in Elizabeth. According to the records of the law firm that represented the estate, when a paralegal telephoned AHS in April 1998 to inquire whether the organization was originally known as the Humane Society of the United States and located in Elizabeth, an AHS employee stated that "they used to be, however, they are a separate entity of them now." When the Commission raised the issue with AHS administrators, they stated that the employee innocently erred and that the checks were mistakenly deposited to AHS's bank account. However, AHS's representatives had adequate notice that their organization was not the intended beneficiary. Not only did AHS receive a copy of the will, but it also received and executed the Refunding Bond and Release. As a result of its findings, the Commission notified the estate's law firm, which undertook steps to recover the monies from AHS. Full restitution by AHS has been made.

Misplaced checks. In two instances, checks representing distributions from the estate of individuals who bequeathed amounts to AHS were not deposited to its bank account. AHS lacked adequate procedures for the recording and deposit of these checks, which were discovered by Commission staff in records produced by AHS pursuant to subpoenas. One check, dated December 8, 1998, was written in the amount of \$33,091. Even though AHS had received prior distributions, totaling \$27,134.79, from the same estate and Bernstein and the Executive Assistant had signed the requisite documents pertaining to the final distribution, the check was never recorded in the receipts journal or deposited. A second check, in the amount of \$1,000, was dated October 20, 1999. Although Trezza and the Board President signed the document acknowledging receipt of the check within eight days of its date, the check was neither recorded in the receipts journal nor deposited to a bank Commission staff notified AHS's account. administrators when it discovered the checks.

Misapplication of monies. A standard promulgated by every charitable watchdog organization requires the soliciting entity to spend funds in accordance with the donor's intentions and to be able to substantiate their proper use. In October 1997, AHS received a bequest of \$204,819. The will, a copy of which was provided to AHS, stipulated that the bequest was "to be used for charitable purposes at Animal Haven Farm." However, AHS failed to apply the monies as the testator intended. The check was deposited to AHS's main checking account and there was no financial accounting to demonstrate that the funds were applied to the intended program.

Undue influence. Α standard promulgated by the Better Business Bureau regarding fundraising practices by soliciting organizations states, "Fund raising shall be conducted without excessive pressure." Bernstein, According he has made to presentations at nursing homes to generate interest in the organization. At times, his tactics have been alleged to be overly aggressive.

In December 1999, it was reported to the Ocean County Board of Social Services that a 90-year-old woman, who was accompanied by Bernstein, went to her bank, withdrew more than \$30,000 and purchased an annuity that named AHS as the beneficiary. The agency initiated an investigation and a civil action was instituted. The court appointed a guardian to represent the elderly woman, who was adjudged to be "An Alleged Incapacitated Person." In May 2000, the court entered an order directing that the woman file an irrevocable Power of Attorney to her niece and nephew, which "Power may not be revoked by [her] except by Court Order," and that her niece and nephew "have complete control over [her] finances." The niece withdrew the proceeds of the annuity to support her aunt's health care needs. In an interview by Commission staff, Bernstein explained that the woman was a contributor to AHS and wanted to

leave more money to it. He stated, "We helped her out."

### MISLEADING SOLICITATION **MATERIALS**

It is indisputable that a charitable organization's representations for the solicitation of contributions must be accurate and consistent with its mission. To that end, the leading professional organizations concerned with the reputability of charities and fundraisers have formulated standards requiring no less than honest and complete literature for the solicitation of contributions from the public. To ensure that representations made by a soliciting organization to the public are accurate and complete, the Council of Better Business Bureaus promulgated a standard that states. "Solicitations informational materials, distributed by any means, shall be accurate, truthful and not misleading, both in whole and in part." Standards issuing its for Charitable Accountability, the BBB Wise Giving Alliance sought "to ensure that the charity spends its funds honestly, prudently and in accordance with statements made in fund raising appeals." In order "[t]o meet this standard, a charity should be able to substantiate, on request, that the timing and nature of its expenditures are in accordance with donor restrictions, designations and expectations." Because an appeal is frequently "the only direct contact a donor has with a charity and may be the sole impetus for giving," the charity must "ensure that [its] representations to the public are accurate, complete and respectful." Accordingly, the organization must "[h]ave solicitations informational materials, distributed by anv means, that are accurate, truthful and not misleading, both in whole and in part." Code of Ethical Principles, the Association of Fundraising Professionals<sup>49</sup> states, "Members

shall take care to ensure that all solicitation materials are accurate and correctly reflect their organization's mission and use of solicited funds." Further, "Members shall take care to ensure that contributions are used in accordance with donor's intentions." AHS has failed to adhere to these standards in soliciting and applying donations for the Share-A-Pet and Eternal Wall Programs.

**Share-A-Pet Program.** This fundraising program was established in February 1978. Generating between \$467,346 and \$519,610 annually from 1995 through 2001,<sup>50</sup> it has constituted AHS's biggest moneymaker from public appeals. It solicits longterm, monthly donations, from as little as \$10, from individuals interested in providing care for a specific dog or cat selected by AHS for this purpose. The donors receive a color photograph of the animal and quarterly reports on its condition and may visit and interact with the animal. Currently, 26 animals and several thousand donors participate in the program. According to AHS's literature, all funds "are directly applied to the care of these animals. Any funds that exceed what is needed for a particular animal are applied to the care & welfare of other shelter animals."

computer Although records are maintained to indicate the names of the sponsors, the animals sponsored and the amounts donated, there is no accounting of how the monies are spent. AHS maintains no separate bank account or financial records concerning the disposition of Therefore, it is impossible to determine if the funds, in fact, are devoted to the care of the program and other shelter animals or to unrelated activities such as the public veterinary clinic. administrative costs investments. Moreover, no reconciliation of the

<sup>&</sup>lt;sup>49</sup> The Association of Fundraising Professionals, which was established in 1960, works to advance philanthropy

through advocacy, research, education and certification programs. It represents more than 25,000 members in 165 chapters throughout the United States, Canada and Mexico.

<sup>50</sup> Contributions to the Wildlife Club constitute a small portion of the annual figures.

computer records with the cash receipts journal can be performed because AHS fails to identify the source of a receipt in the cash receipts journal or on the bank deposit ticket.

Eternal Wall Program. AHS solicits donations for the Eternal Wall, a 4-foot by 6.75-foot plaque located in the entranceway of the Lacey shelter. According to the literature, for a onetime donation of \$1,000, a bronze nameplate honoring an individual will be permanently affixed to the wall. Currently, there are 445 named plates. The soliciting material further states that "this donation will be put into a special fund where only the interest will be used but the principal will never be touched."

Contrary to the representations contained in the soliciting material, the monies are not placed in "a special fund," but are recorded in AHS's financial receipts journal along with other general mail contributions. The contributions are not even recorded as a separate category of revenue to maintain their integrity. The principal is not preserved in any special bank account, with only the interest being used. Rather the monies are deposited to AHS's regular checking account.

# FAILURE TO APPLY FUNDS AS DIRECTED

AHS has been the recipient of grants and trust funds, but has failed to apply the monies in accordance with the governing terms. As set forth above, the standards promulgated by leading charitable watchdogs dictate that a soliciting organization apply the funds in accordance with the donor's intentions and that it be able to substantiate that the timing and nature of the expenditures meet the donor's designations. As the BBB Wise Giving Alliance succinctly states, the soliciting organization must "[s]pend funds in accordance with donor intentions." Phrased somewhat differently by

the Association of Fundraising Professionals in its Code of Ethical Principles, a soliciting organization's use of monies from a restricted fund for a purpose other than the one stipulated "violate[s] the principle of honoring donor intent."

Therese K. White Revocable Living Trust Agreement. Following her death, Therese K. White's will established a perpetual trust whereby AHS, together with many other charitable organizations, was to receive a fixed percentage of the trust's assets on a quarterly At the time of its creation, the trust's basis. assets were valued at \$600,000. November 1995 and July 2001, the trust distributed \$35,394 to **AHS** with the understanding that the funds would be applied, pursuant to the donor's intentions, to improve the lives of the shelter animals. Mrs. White's intentions were expressed to AHS officials both in writing and telephone conversation. However, AHS failed to fulfill all of the terms of the trust as directed and as promised.

The donor's intentions and expectations for the use of the funds were expressed to AHS in an August 10, 1995, letter from the trustee:

Mrs. White expressed her desire that the funds be used to improve the health and overall condition of those animals already in your shelters: 1. with better sanitation[;] 2. with better medical equipment and supplies[, and] 3. with better food and comforts. sheltered animals don't have "homes" of their own, she wanted to make their lives as comfortable as possible. Once those specific areas were addressed, she said you could use any remaining funds for whatever purpose you deemed necessary. But she did want the funds used, NOT simply invested by the Humane Society. [Emphasis in original.]

. . . .

So, I'm sure you can understand my wanting your assurance that these funds will be utilized as Mrs. White wished. Although not a condition for receiving the funds, assurance of your intention to comply with her wishes would mean a lot.

In a subsequent letter to AHS, which was dated November 20, 1995, and included the first payment, the trustee stated:

To recap our past conversations, all income received from this Trust must be used, as much as is reasonably possible, in the year it's received for those purposes considered important to Mrs. White. A small balance (not to exceed \$500.00) can be carried over, if necessary, to the following year.

As evidenced by the letter sent to the trustee by AHS's fundraising manager, AHS understood the wishes of the donor and agreed to them. The letter, attached to which was AHS's "proposal for utilization of the funds," stated, in part:

Our goal is to improve sanitation and decrease the spread of disease among the cats and dogs in our three shelters. . . . I understand that we would be required to utilize the fund monies each quarter, and therefore, would plan on using the quarterly allotment within that time in the purchase of supplies needed on an ongoing basis. Should there be monies left over we could easily find a need for them for special items to help maintain shelter animals' health. . . .

Further, in an internal memorandum to AHS bookkeeping, with copies to Bernstein, Clark and

Trezza, dated November 24, 1995, the fundraising manager stated:

I have been working very closely over the past several months with the trust officer . . . regarding trust funds which will be forthcoming to the Associated Humane Societies. . . I have attached backup documentation regarding the exchanges between [the trustee] and myself describing certain criteria and requirements regarding the funds, but have summarized them below:

- a separate and discrete fund must be set up; the monies are not to be invested, nor placed in a general fund.
- the monies received must be completely used by the end of each year, with a small balance not to exceed \$500 to be carried over to the following year.
- the monies must be used in accordance with Therese K. Wright's [sic] wishes, and that is that the funds should "improve the health and overall conditions of THOSE ANIMALS ALREADY IN YOUR SHELTERS:
  - 1. with better sanitation[;]
  - 2. with better medical equipment and supplies[, and]
  - 3. with better food and comforts" . . . . [Emphasis in original.]

In compliance with the terms set forth by the trustee, AHS established a special interestbearing checking account for the funds and spent some of the funds in accordance with the donor's intentions. For example, disbursements from the account were applied to improve the air conditioning system in the kennels and to purchase stainless steel cages and medical supplies. However, in contravention of the terms that all income be applied in the year received, except for small balances not exceeding \$500, the year-end balances for the account from 1995 through 2000 were \$3,622, \$8,705, \$14,789, \$20,929, \$8,659 and \$2,020, respectively. The failure to apply the funds in accordance with the terms of the trust is all the more egregious in light of the substandard conditions that existed at the shelters, especially the Tinton Falls facility, during these years.

Educational grant. AHS applied for and received a grant to provide the residents of Ocean County with a better understanding about In November 1997, Ocean Federal Foundation, now Ocean First Foundation, issued AHS a check for \$24,725 based on AHS's proposal that it would hire and pay the salary and fringe benefits of a full-time instructor with knowledge of science and wildlife-related issues and would conduct educational tours presentations at the Popcorn Park Zoo. The project was to begin with notification of grant approval. However, AHS did not meet the terms of the grant and the grantor never demanded an accounting of the funds.

Upon receipt of the grant funds, AHS opened a separate, interest-bearing checking account for the proceeds. However, as of June 30, 2001, there was no activity in the account except for the posting of interest. The balance at that time was \$26,999.54. When Bernstein was questioned in an interview as to why the monies remained in the account, he responded, "I don't know what to say." In addition, the Commission's examination of AHS's records establishes that a "full time instructor" was never hired. The individual that AHS claimed to be the "full time instructor" was, in fact, the employee who had prepared the grant application. He had been hired in September 1996, terminated in April 1997, rehired in July 1997 and terminated for a final time in October 2001. Hired as the public relations representative for AHS at the Lacey facility, his duties included preparing grant applications, fundraising and speaking engagements before schoolchildren and senior citizens.

Don Herman Trust Fund. The special fund established by the will of Don Herman represents another example of a restricted use fund whose terms have not been fully According to the agreement implemented. prepared pursuant to the terms of the will and executed by AHS in March 1992, AHS was to use the proceeds to establish a special fund "to provide life-saving surgery and medical treatment for the pets of indigent applicants; and not use the resources of the Fund for healthy or essentially healthy pets in need of routine veterinary care such as examinations, shots, neutering or spaying, unless these procedures are necessary adjuncts of life-saving surgery and medical treatment." The agreement required AHS to "[p]ublicize the Fund, where necessary, in order to alert potential applicants to its existence, and to attract additional donations," to "wherever possible, a voluntary, establish, agreement with each feasible, repayment approved applicant, avoiding collection efforts, or pressure to repay, of any kind," and to attempt to extend the benefits to "shut-ins and others who cannot physically visit . . . [AHS's] clinics."

Between June 1992 and December 1993, AHS received \$41,700 in distributions from the estate and deposited the monies into a separate, interest-bearing checking account. From June 1992 through June 2001, only 264 individuals were allowed to avail themselves of the fund. As of June 30, 2001, the bank account balance for the fund was \$33,430.

AHS has violated numerous provisions of the agreement. Its officials have not publicized the fund as required. Their explanation is that the availability of the fund has circulated "by word of mouth." However, according to AHS's fundraising manager, the fund has not been utilized fully. The failure to advertise the fund

also has meant that it has not attracted additional donations. Further, AHS has not applied the monies on a routine basis to assist indigent pet owners and has made no effort to bring veterinary care to anyone's home. Veterinarians previously employed by AHS complained to Commission staff that they were not able to take full advantage of the fund. According to Dr. Lisa Levin, Bernstein represented that until a second veterinarian was hired for the Newark clinic to handle private clients, her clinic responsibilities would be limited to emergency cases and Don Herman clients. However, as she wrote to Bernstein, that "arrangement did not last very long" because of his priority to treat paying clients. Dr. Wallace Wass, the current veterinarian at the Newark facility, is not inclined to utilize the fund. When he was asked in an interview if the fund is advertised, he declared, "Absolutely not! Everyone would want to be on it!" He added, "It does not help my bottom line" in demonstrating clinic revenue. He also stated that Clark told him that it does not "benefit" AHS to use the fund.

Archie Gottesman Trust Fund. To establish the Spay/Neuter Subsidy Fund, Archie Gottesman provided AHS with a \$500 check in February 1995 and a second \$500 check in December 1995. The letter that accompanied the first check set forth the following terms for the use of the funds:

1. The money will only be used to spay and neuter dogs and cats adopted at or brought to the Associated Humane Society in Newark. 2. In order to help assure that the person who is getting their animal spayed or neutered has the means to support a pet, the money will be used to subsidize the operation, not to pay for it completely. 3. The decision to use The Spay/Neuter Subsidy Fund will be made by you or the current vet.

Contrary to these terms, the checks were deposited not into a separate checking account, but into AHS's main checking account. AHS administrators failed to maintain separate documentation regarding the application of the funds and, therefore, are unable to demonstrate if or how the monies have been utilized. Further, Dr. Wass stated that the availability of the funds is not advertised "because we would not be able to handle the volume."

# VIOLATIONS OF NEW JERSEY'S CHARITABLE REGISTRATION AND INVESTIGATION REGULATIONS

The state's statutory scheme for the regulation of charities is found at *N.J.S.A.* 45:17A-18 *et seq.* In creating the Charitable Registration and Investigation Act of 1994 [hereinafter the Act],<sup>51</sup> the Legislature declared

that in order to protect the public from fraud and deceptive practices, it is essential that information concerning charitable fund raising activities of charitable organizations, professional fund raisers, commercial co-venturers and solicitors be readily available to the people of this State. . . . that information concerning the financial ends and means of charitable fund raising in this State must be more readily available to the citizens by whose generosity such funds are raised. . . . that, to accomplish these ends, it is necessary to require the registration of charitable organizations, professional fund raisers, and solicitors with the Attorney General, and that the Attorney General have the powers necessary to obtain and disseminate to the public data concerning fund raising practices of these persons.<sup>52</sup>

<sup>52</sup> *N.J.S.A.* 45:17A-19.

<sup>&</sup>lt;sup>51</sup> The Act replaced the less stringent Charitable Fundraising Act of 1971.

Accordingly, the Charitable Registration and Investigation Section of the Division of Consumer Affairs, Department of Law and Public Safety, registers and regulates all charitable organizations, professional fundraisers and fundraising counsels that operate in New Jersey. Each year, these individuals and groups must renew their registrations by completing a renewal registration form and submitting financial documents relating to their activities, including fundraising contracts and reports.

Violations by AHS. At the April 26, 1994, meeting of the Board of Trustees, Bernstein alerted the trustees to the new law. The minutes state, "The Executive Director advised that a new Consumer Affairs Law has been passed and closer scrutiny must be taken with regard to the collection can operation and the operation that sells the garbage bags." At the next meeting on July 12, 1994, "A discussion was held concerning the new Consumer Affairs Laws and the Fundraising Laws. Lee Bernstein advised [that] all individuals who would be affected by this have been notified."

Despite the clear requirements of the law and the knowledge of AHS's Board and management, AHS falsified portions of the Long Form Renewal Registration Statement, CRI-300R, for each year ending June 30, 1995, through June 30, 2001:

The Act requires an organization to utilization disclose its independent paid fundraiser, which is defined in N.J.A.C. 13:48-1.3 as "any person, including any assignee, subcontractor or any successor in interest. who for compensation performs for a charitable organization any service in connection with which contributions are, or will be solicited in this State by that compensated person or by any compensated person he employs, procures, or engages,

directly or indirectly to solicit contributions." To this end, the annual renewal form poses the following question: "Since the last filing of its Initial or Renewal Registration Statement, did organization use an independent paid fund raiser or fund raising counsel?" though AHS employed Even independent contractors in each of the seven fiscal years to handle the canister collections and sale of garbage bags and tee shirts, AHS always answered the question in the In doing so, AHS negative. administrators deliberately concealed from the state and the public its use of independent paid fundraisers. addition, three of the contractors engaged by AHS failed to register annually as professional fundraisers with the Charitable Registration and Investigation Section, as required by N.J.S.A. 45:17A-27.53 Not only did they transgress the Act, but AHS committed additional violations by contracting with them.<sup>54</sup> As a result, AHS is subject to denial, suspension or revocation of its registration<sup>55</sup> and both AHS and the contractors are subject to civil penalties.<sup>56</sup>

• Every year, AHS failed to report the gross contributions<sup>57</sup> collected on its

of the Association of Fundraising Professionals that "members shall comply with all applicable local, state, provincial, and federal civil and criminal laws."

<sup>&</sup>lt;sup>54</sup> *N.J.A.C.* 13:48-13.2(a)7.

<sup>&</sup>lt;sup>55</sup> *N.J.A.C.* 13:48-13.3(a).

<sup>&</sup>lt;sup>56</sup> N.J.A.C. 13:48-14.1. In addition, subsection 14.1(a)2 provides that a person may be ordered to "[c]ease and desist from any act or practice . . . or take necessary affirmative corrective action . . . ."

Under *N.J.A.C.* 13:48-1.3, "[g]ross contributions" is defined as "the total amount of contributions received nationwide by a charitable organization before any deductions for expenses or collection or for overhead or

behalf and the fundraising expenses of each professional fundraiser. Rather, it submitted merely the net contributions that it received from each fundraising contractor. made the same error on its annual federal return. Form 990. organizations exempt from income tax. By failing to report the proper from its independent fundraisers, AHS violated a primary standard for charitable accountability set forth by the BBB Wise Giving Alliance that a soliciting organization

> [a]ccurately the report charity's expenses in its financial statements. For example, audited or unaudited statements which inaccurately fund claim zero raising otherwise expenses or the understate amount charity spends on fund raising, and/or overstate the amount it spends on programs will not meet this standard.

The annual registration form includes the question, "Are any of the organization's officers, directors, five most trustees or highly compensated employees related by blood, marriage or adoption to each other?" On each of the seven forms filed by AHS, this question was answered in the negative. AHS failed to disclose the filial relationship between two of the trustees, who have served on the Board for more than 30 years.

The form requires the disclosure of any criminal or civil violation bearing upon the honesty of key individuals in response to the following question: "Has the organization or any of its present officers, directors, trustees or principal salaried executive staff employee[s] ever been convicted of any criminal offense committed in connection with the performance of activities regulated under this act or or civil any criminal offense involving untruthfulness dishonesty or any criminal offense relating adversely to the registrant[']s fitness to perform activities regulated by this act?" On its seven annual forms, AHS responded to this question in the negative, despite the disbarment of one of the trustees, an attorney, for the misappropriation of clients' funds.

The registration form "shall be signed by two authorized officers, including the chief fiscal officer of the organization, who shall certify that all information contained in registration statement is correct."58 Executive Director Bernstein and one of the two Assistant Directors have signed each of the annual forms. None of them ensured the accuracy of the information. AHS has not employed anyone in the position of chief fiscal officer.

In addition to violating state laws, AHS also has contravened the charitable registration requirements of the State of New York. Although AHS's canister contractor solicited in New York City and although AHS has utilized a New York company to solicit automobile

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for compensation for any services such as the services provided by a fund raising counsel or an independent paid fund raiser."

<sup>&</sup>lt;sup>58</sup> *N.J.A.C.* 13:48-5.1(e).

donations since 1995,<sup>59</sup> AHS failed to make proper disclosure on the reports required to be filed with the Charities Bureau of the state's Office of the Attorney General. On each Annual Financial Report, Form CHAR497, submitted for the seven years ending June 30, 1995, through June 30, 2001, AHS responded "N/A" or "None" to questions regarding the name and address of each professional fundraiser, a description of the event and the total public donations, including the amounts retained by the fundraiser. Thus, AHS administrators concealed from New York and its contributing residents the fact that it engaged independent paid fundraisers to operate there.

**Violations by contractors.** The Act places several responsibilities upon paid professional fundraisers. Pursuant to *N.J.S.A.* 45:17A-27, they must register annually by filing the prescribed registration form, <sup>60</sup> file a copy of its contract with the charitable organization at least 10 days prior to the performance of any service, <sup>61</sup> file a bond in which it is the principal obligor <sup>62</sup> and, within 40 days of the end of the charitable organization's fiscal year, file a financial report for the solicitation campaign. <sup>63</sup>

The companies that conducted AHS's canister operation failed to comply with the Act. Al-Sy never registered under the Act or its predecessor act. <sup>64</sup> Janci conducted the route from January 1995 to June 1999, but did not register until October 1996. McAulay registered as a professional fundraiser for the first two years that it was engaged by AHS. However,

<sup>59</sup> AHS has been paid for cars donated to the company in the name of AHS. For the majority of the donated cars, which have been destined for the junk heap, AHS has received \$25 per car. On cars that could have been resold, AHS has received 20% of the wholesale price listed in the appraisal guide. As of April 2002, AHS had received approximately \$37,000 from this program.

when its registration expired on June 30, 2001, the company did not register again even though it continued as AHS's fundraiser through March 2002. In failing to register, McAulay and Janci also stood in violation of their contracts with AHS that "[a]ll laws and regulations of the NJ Consumer Affairs Charitable Department shall be followed."

In addition, Janci failed to file the requisite financial reports, "Report of Charitable Solicitation Professional Fund Raiser," for every year except calendar years 1996, when it reported gross canister collections of \$124,010, and 1997, when it reported \$144,317. However, the 1996 report was not filed until November 1997 and the 1997 report was prepared by a certified public accountant, who had to reconstruct Janci's records. McAulay also failed to file a financial report for each of the years that it was engaged by AHS.

AHS's telemarketer of tee shirts and garbage bags also has been in violation of the Act. Since 1988, when Bagger the Better was first hired by AHS, the West Long Branch company has never registered with the state or filed the requisite reports and supporting documentation.

## QUESTIONABLE FINANCIAL PRACTICES

Although AHS's status as a nonprofit, charitable organization exempts it from the payment of federal and state income taxes, it engages in business activities that are not substantially related to the exercise or performance of its charitable purpose. Income derived from these unrelated business activities is not exempt, but is taxable at the corporate rate.

AHS's unrelated business activities include the clinic operations, cremations, burials and boarding. For the tax years ending June 30,

<sup>&</sup>lt;sup>60</sup> N.J.S.A. 45:17A-27a.

<sup>&</sup>lt;sup>61</sup> N.J.S.A. 45:17A-27d.

<sup>&</sup>lt;sup>62</sup> *N.J.S.A.* 45:17A-27g(1).

<sup>&</sup>lt;sup>63</sup> N.J.S.A. 45:17A-27g(3).

<sup>&</sup>lt;sup>64</sup> The Charitable Fundraising Act of 1971.

1995, through June 30, 2001, AHS filed the requisite tax forms, but reported a net loss each year and escaped any tax liability. Although the net income generated by these unrelated business activities, excluding the clinic operations, totaled \$370,004 for the seven-year period, the gain was offset by substantial losses of \$1,652,815 that were reported for the operation of the clinics. However, to arrive at an annual operating loss for the clinics and avoid any tax liability, AHS undertook an overly aggressive approach. It allocated solely to the clinics the primary expenditures of salaries and fringe benefits for the veterinarians and technicians, drug expenses for certain years and outside veterinary expenses for certain years. Although sizable portions of these expenses were attributable to the shelter operations, AHS failed to allocate them among the shelters, the clinics and the zoo. Its failure to do so contradicted the statements, which were contained in the federal and state forms filed by AHS, that the clinics also served the shelter animals. In an interview, Bernstein confirmed that the veterinary staff treats both shelter animals and those brought in by the paying public and that the medications are administered to both shelter and privately-owned animals. He admitted that the losses reported for the clinics would not be as great if some of the expenses were allocated to the operations of the shelters and zoo. Because AHS did not make proper allocation of the expenses, it is impossible to ascertain the extent to which clinic losses have been overstated and the extent, if any, to which taxable income and tax liability have been understated.

In addition, AHS's failure to allocate the clinic expenses to their appropriate functional categories has left the Board of Trustees and management unable to evaluate the success of the clinic operations and, therefore, to assess whether they are efficient, effective and worthwhile. In discussing functional expense reporting, *The Nonprofit Organization Handbook* states that

exempt organizations may be most successful when they use their income promptly and effectively. Accordingly, although it is important to determine whether more has been spent than received during a period, the real measure of success must be found in the degree to which the organization accomplishes its stated objectives. An important step in this evaluation process should be a determination of the costs of each program. <sup>65</sup>

Accordingly, there must be an allocation of AHS's resources. If substantial losses are, in fact, the result of operating the clinics, then the Board and management must determine if the program is accomplishing the organization's goals.

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<sup>65</sup> The Nonprofit Organization Handbook, supra at 6-15.

### THE ANIMAL SHELTERS

The purposes for which this corporation is formed are . . . Especially to maintain and conduct proper shelters for homeless and vagrant animals.

**Certificate of Incorporation (filed September 21, 1923)** 

The object of the Associated Humane Societies, Inc., shall be the prevention of cruelty to animals throughout the U.S. and specifically the State of New Jersey, maintenance of animal care centers, proper appliances for disposal of sick, injured & abandoned animals which shall include crematorium & hospital, the maintenance of a hospital clinic & other facilities for the care, treatment & disposition of sick & injured animals, to educate and instruct the public in the care & treatment of animals and to encourage humane education in public & private schools and to do whatever is necessary to promote the general welfare of animals everywhere.

Preamble, Constitution and By-Laws

The motto of this Society shall be "BE KIND TO ANIMALS." The Motto, Constitution and By-Laws

My main concern is the welfare of the animals.

Lee Bernstein, quoted in *The Star-Ledger* (February 5, 1971)

The history of AHS's three shelters belies its pronouncements that the welfare of the animals is foremost. Its overall shelter operation, which handles approximately 15,000 animals annually, has been plagued over the years by deplorable kennel conditions and inadequate or nonexistent veterinary care. Individuals who authored letters of complaint invariably noted the anomaly of a humane organization that "raises a lot of money via heartbreaking ads," the phrasing in one letter, but allows substandard conditions to exist. Although the Commission received complaints about each shelter, the majority of them, as well as the most egregious, pertained to the Tinton Falls facility. However, in recent years, particularly after the Commission's commencement of the investigation, AHS has committed substantial sums of money to improving the conditions for the animals at each shelter. There has been a marked improvement not only in the appearance of each facility, but also in the quality of care and treatment rendered to the animals.

The sudden improvements at the three shelters beg the question of why the facilities continued in abject, substandard conditions for so long a period of time in light of the substantial funds accumulated by AHS. The failure of this organization is its inability to have formulated and implemented proper standards on a continuing basis. For more than a decade, Executive Director Lee Bernstein has attempted to justify the substandard conditions by stating, initially, that he wanted AHS to have one year's operating budget in the bank and, more recently, that he wanted a three-year operating budget. His argument has been mere sophistry. Efforts to build a sizable reserve should come only after a satisfactory shelter operation has been attained. Deplorable conditions and neglect of animals are inexcusable in light of AHS's profits and sizeable investment account balances over the

years. Moreover, AHS failed at times to undertake even inexpensive measures, such as purchasing an additional freezer to store euthanized animals, repairing the drainage system, purchasing a first-aid kit for kennel workers or providing them with latex gloves.

From July 1, 1994, through June 30, 2002,66 AHS enjoyed a total profit of \$8,918,466 and averaged in excess of \$1 million annually. The profit for the year ending June 30, 1997, topped \$1.7 million. Between July 1, 1993, and June 30, 1999, the fair market value of AHS's investments and cash balances steadily grew from \$6,532,291 to \$12,610,764, for a total increase of \$6,078,473. It was not until fiscal years ending June 20, 2000 and 2001 that AHS reduced its investments, albeit by insignificant amounts, to assist in financing some of the capital improvements. As of June 30, 2002, even with the downturn in the stock market, the fair market value of AHS's investment and cash portfolios was an impressive \$11,104,940.

An early description of the three shelters is contained in the 1990 evaluation reports filed in response to AHS's application to a philanthropic foundation for a grant to support a humane education program for schoolchildren in Essex, Monmouth and Ocean counties. Based on an assessment of AHS's operation by three independent reviewers, all professionals in the field of animal shelters, the foundation denied the application. One reviewer stated:

The three shelters run by Associated Humane are in deplorable physical condition in relation to the financial capabilities of this organization. Sheltering practices are below minimum and the financial resources are available to correct these conditions.

 $^{66}$  AHS operates on a fiscal year basis from July 1 through June 30.

Humane education is important[,] but this group has the funds to start this program on their own.

Another evaluator noted that Bernstein is "well known for running substandard shelters, which I can testify to after visiting the Tinton Falls shelter. That he should have a bank statement like his while operating this shelter in this manner is unconscionable." The third reviewer concluded, "Although a humane education program is very important for every shelter, I don't see the need to subsidize this organization. They clearly have the resources to pay for a humane educator and fund a program."

The descriptions set forth below regarding the conditions of the three shelters and the treatment of the animals are based upon the accounts provided to the Commission by current and former veterinarians, shelter managers, office managers, staff, veterinary technicians, kennel workers and volunteers, as well as individuals who visited the shelters to adopt, surrender or re-claim animals. Their portrayal of inhumane conditions was consistent.

Particularly compelling are the detailed accounts and experiences provided by the AHS veterinarians and reflected in their written communications with Bernstein. They paint a disturbing picture of a neglectful and uncaring staff, sick and injured animals that did not receive proper treatment and deplorable shelter conditions. Veterinarians at both the Newark and Lacey clinics voiced the same experiences with Bernstein. He constantly criticized the cost of their treating too many shelter animals and harangued them about spending far more money to care for them than they were generating in income from private clients. Bernstein sought to remove from the veterinarians' professional judgment the decision of which animals to treat. As one veterinarian stated, it is a conflict of interest for an individual who is concerned about the expenditure of monies to dictate what

treatments are to be administered; veterinarians should oversee veterinarians and the operation of a medical clinic.

The memoranda between the and Bernstein<sup>67</sup> veterinarians reflect their continuing effort to have facility conditions and animal care improved. However, Bernstein remained impervious to plea any improvement that cost money. One veterinarian observed that Bernstein's spewing of complaints about spending too much money ran counter to his more public theme of "we help animals." Bernstein also refused to increase the veterinary staff even though it was insufficient to handle both the shelter and private animals. The reality of the Newark medical department contradicted the language in AHS's form letter, which sought to hire a veterinarian, that the hospital "caters primarily to the society animals, and to many families that cannot afford to pay the regular fees of local veterinarians and are referred to us by them for help." Patently, Bernstein's priority was the paying clientele and not the shelter animals.

The descriptions provided bv veterinarians and others establish AHS's failure to comply with the state's regulations governing animal shelters.<sup>68</sup> These regulations, which were promulgated by the state Department of Health and Senior Services, outline the necessity of implementing a program of disease control and rendering adequate veterinary care. They provide, in part:

> (a) . . . The disease control program shall address both the animals' physical and psychological well-being,

<sup>67</sup> It is noted that the veterinarians, not AHS, provided these memoranda to the Commission. The documents

were not contained in the personnel or other files that the

N.J.A.C. 8:23A-1.1 et seq.

including stress from auditory, visual, and olfactory stimuli.

- (b) Each animal shall be observed daily by the animal caretaker in charge, or by someone under his or her direct supervision for clinical signs of communicable disease or stress. Sick, diseased, injured or lame animals shall be provided with at least prompt, basic veterinary care (that is, to alleviate pain and suffering) or euthanized, unless such action is inconsistent with the purposes for which the animal was obtained and is being held; provided, however, that this provision shall not affect compliance with N.J.S.A. 4:19-15.16, which requires all stray animals to be held for seven days.
- (c) Any animal under confinement for, or with signs of, a communicable disease shall be separated from other healthy animals and placed in an isolation area in order to minimize dissemination of such disease. Caretakers shall wash their hands after handling these animals and follow procedures which control the dissemination of disease recommended by the contracting veterinarian.<sup>69</sup>

Effective March 20, 2000, the following language was added to subsection (b):

> Animals displaying signs of stress shall be provided with relief pursuant to the disease control and health care program. delineated above. in (a) Environmental stress can be mediated through reducing the negative impact of excess noise, smells, visual stimuli, and perceived threats; socialization; exercise;

Commission subpoenaed from AHS. <sup>68</sup> Selected Laws, Regulations and Information Relating to Rabies and Control of Dogs: Part 3: Facility Operation,

<sup>&</sup>lt;sup>69</sup> *N.J.A.C.* 8:23A-1.9, Disease Control.

increased privacy; and providing comfort, such as soft bedding.

It is clear that Bernstein's parsimony has been the root cause of the substandard shelter conditions and the neglect of the animals. His refusal to spend money was echoed uniformly by executive staff, by members of the Board of Trustees, by current and former veterinarians, shelter managers and workers, office managers and staff, and volunteers, and by individuals in the animal welfare community who have dealt with him in a professional capacity. Bernstein has been driven by a self-created principle to minimize expenses, a principle that has propelled him to sacrifice the care and treatment of injured and sick animals in favor of creating investment wealth. At the same time, he has sought to maximize revenue by demanding high fees for the adoption of animals, especially purebreds. As one AHS executive asserted, "It is all about money." Prior to the 1998 renovation of the Tinton Falls facility, which increased the shelter's capacity, severe overcrowding was a routine occurrence. When an individual associated with an animal welfare organization confronted Bernstein about the overcrowded conditions, he replied that there was a lack of space because of all the animal control service contracts that AHS had with the towns. However, if AHS sought to contract with an increasing number of municipalities to house their animals, while also recognizing the inadequacies of the aged facility, then he should have embarked upon the renovations much earlier. This is especially so in light of the substantial investments that AHS enjoyed at the time. Bernstein ignored the admonition repeated by the Department of Health and Senior Services that "[f]acilities must have a large enough capacity to house animals obtained from their contract service areas."

The absurd levels to which Bernstein has gone to contain expenses is reflected in the following exchange of memoranda with a

veterinarian regarding the number of needles to be used in vaccinating a shelter animal. December 6. 1994, memorandum. the veterinarian instructed the two recently hired technicians as follows: "After hydrating the vaccine, a new needle should be placed on the syringe before administering the vaccine to the animal (the needles that come with the syringe are dull to begin with and two passages through rubber stoppers obviously make them even duller)." Bernstein reacted by issuing a memorandum to the veterinarian that "effective immediately, use only **ONE** needle animal. . . . This would also cut the cost of \$7.00-\$10.00 a box of 250 in half. Furthermore, it would also cut back on the disposal." [Emphasis in original.] He continued:

I have found it necessary to cut our expenses wherever possible. Even if it is \$40.00-\$50.00 a month, I must do it. With our donations running at least \$15,000 less than previous years, I must save every nickel and dime that I can. I have a girl up here ripping coupons that are worth 2 cents to raise money. I cannot go into our reserves at this time and I am obligated to meet our expenses from current assets.

PLEASE! Wherever you can save 5 or 10 cents – do it. [Emphasis in original.]

In a responding memorandum, the veterinarian countered that the needles "are not especially high quality to begin with, become much more dull [with one or two passages through a vial's rubber stopper] and, therefore, more painful to the animal upon injection." She asserted, "According to you, the cost is \$0.03-\$0.04 per animal for an additional needle (plus probably at most \$0.01 for medical waste disposal) - a bargain for an organization concerned about animal welfare." She noted that "some shelter personnel are not especially adept administering injections and a dull needle make[s] the job harder on everyone" and cited a recent complaint by a woman "who was appalled by her cat being stabbed four times before the vaccine was successfully administered at the shelter." During this timeframe, AHS realized profits in excess of \$1 million and had cash and investment balances valued at more than \$8 million.

The practical effect of Bernstein's penury on the shelter conditions is reflected in the delayed improvements made to the shelters and the scant money spent on cleaning supplies and animal food. The failure to apply needed funds in these areas explains the horrid conditions witnessed by so many individuals. During fiscal years ending June 30, 1993 and 1994, AHS made minimal building improvements and expended most of the money on the Popcorn Park Zoo, not the shelters. Of the \$63,499 that was spent in fiscal year 1993, \$44,124, or 69%, was for the For fiscal year 1994, only \$53,292 was devoted to shelter improvements and \$19,778 of that amount was spent on the zoo. A substantial portion of the building improvements for each fiscal year 1995 through 2001 also was for the zoo. A total of \$1,425,585 (41%) was devoted to the zoo, while only \$875,119 (25%) was for the Lacey shelter, \$58,450 (2%) was for the Lacey clinic, \$641,546 (19%) was for the Tinton Falls shelter, \$444,342 (13%) was for the Newark shelter and \$11,506 (.33%) was for the Newark clinic. Spending on facility improvements increased somewhat in fiscal years 1995 (\$90,572), 1996 (\$98,282) and 1997 (\$162,988), but it was not until fiscal year 1998 that expenditures increased substantially. For 1998, \$424,807 was spent and a similar amount, viz. \$453,330, was disbursed for 1999. For fiscal year 2000, substantial improvements at the Lacey facility accounted for the significant jump to \$1,423,162. For fiscal year 2001, \$806,000 was expended.

Cleaning chemicals and supplies, which always constituted a nominal part of AHS's total

annual expenditures, ranged from a low of \$1,556 for the year ending June 30, 1996, to a high of \$31,363 for the year ending June 30, 2001. Cleaning costs substantially increased over the prior year's expenses for the years ending June 30, 2000, and June 30, 2001. The costs were \$9,582 for the fiscal year ending 1995, \$1,556 for 1996, \$2,961 for 1997, \$3,565 for 1998, \$13,501 for 1999, \$26,957 for 2000 and \$31,363 for 2001. A substantial portion of these supplies each year was for use at the zoo. It is noteworthy that the spike in cleaning costs occurred after the Commission commenced its investigation.

Animal food and supplies, such as litter, traps and cages, also constituted a minimal part of AHS's annual operating costs. They ranged between a mere 2% and 3% each year. In light of AHS's substantial liquid assets, the purchase of food for the shelter animals should never have Although the fact that been a problem. substantial amounts of food were donated to AHS may account, in part, for the low figures, the fact remains that shortages of food existed and canned food for puppies and dogs having trouble eating dry food had to be purchased by workers or volunteers at their own expense. In fact, the minutes to the August 1997 Board meeting reflect that one of the trustees advised "of the recent shortage of pet food at our facilities" and that Bernstein "agreed to look into the problem." However, no follow-up on the issue was reported in subsequent minutes. Shortages of animal food posed a continuing problem at the Tinton Falls shelter. According to a former manager, the facility was not "well stocked" and repeated requests to the Newark office were required to obtain food deliveries. Currently, the shelter manager does not ensure that adequate supplies are maintained. addition, despite problems with the availability of animal food, AHS trustees and employees have been allowed to help themselves to the donated food. In an April 11, 1995, memorandum to all employees, Bernstein sought to suspend this benefit. He stated, "Due to a severe shortage of our surplus stock, effective immediately, no cat or dog food is to be purchased [by] or given to any board member, volunteer or employee until further notice." According to one veterinarian, Bernstein wanted the shelter staff to give the animals less food because he did not want to purchase it.

Underlying Bernstein's refusal to spend sufficient funds for the medical care of the shelter animals is his unfounded philosophy that stray animals become the property of AHS at the conclusion of the seven-day holding period. 70 Therefore, he avers, it is solely within AHS's discretion whether or not to provide them with veterinary treatment. According to a board member of a state animal welfare organization, Bernstein stated, "Why should I provide vet care if I'm not paid for it?" Bernstein's philosophy of "ownership" of shelter animals also, in his mind, has justified the flouting of state laws and regulations for their care and treatment. only has he failed to comply with regulations facilities,<sup>71</sup> governing housing primary enclosures<sup>72</sup> and sanitation,<sup>73</sup> but he repeatedly has denied animals "prompt, basic veterinary care (that is, to alleviate pain and suffering)."<sup>74</sup> In addition, despite admonitions against the practices, he has had non-veterinarians administer rabies vaccinations and perform spay and neuter operations.

Bernstein's failure to provide adequate veterinary treatment has had the greatest impact on the stray animals picked up during the night. He completely ignored the regulatory mandate that "[i]t shall be the responsibility of the attendant or driver to inspect the animals to

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determine whether they need veterinary care, and if so, to immediately obtain such care from a licensed veterinarian."<sup>75</sup> Rather, he established the procedure that the AHS driver contact him about an injured or sick animal seized after business hours. He usually instructed the driver to place the animal in a cage overnight or, if the injuries were life-threatening, driver to directed the euthanize it immediately. without consulting an AHS veterinarian. Despite efforts by the Director of Veterinary Services to have the drivers contact her or another AHS veterinarian to determine if required animal's injuries immediate emergency care by an outside veterinary clinic and despite repeated instructions to that effect by the Board of Trustees, Bernstein generally prevailed in having the drivers contact him. The turning event in the treatment of these animals occurred on July 6, 2000, when a severely injured cat was left untreated overnight and was found dead the following morning. Responding to a call between 1:30 and 2:30 a.m., an AHS driver from the Tinton Falls shelter found a cat that had been hit by a car. The cat's intestines were exposed, it had a broken back and there was no movement in its rear legs. When the driver contacted Bernstein and related the condition of the animal, Bernstein directed him to make the cat comfortable at the shelter and advised that it could be euthanized in the morning. According to the driver, Bernstein stated, "Why pay the vet [to euthanize the cat] – we can do it for nothing." The driver then transported the cat to the shelter and placed it in a cage. An officer with the New Jersey Society for the Prevention of Cruelty to Animals investigated the incident. According to his investigation report, Bernstein told him that he understood that the wound was two and one-half inches long and was not "that bad" and that "if it were as bad as described[,] that cat would endure more trauma on the ride to the vet[,] so if it were made comfortable at the shelter it could be put down in the morning and we could save on the

<sup>&</sup>lt;sup>70</sup> *N.J.A.C.* 8:23A-1.10(a)1 provides, "Impounded animals must be kept alive for seven days to give opportunity for rabies disease surveillance and opportunity for owners to reclaim."

<sup>&</sup>lt;sup>71</sup> N.J.A.C. 8:23A-1.3, 1.4 and 1.5.

<sup>&</sup>lt;sup>72</sup> *N.J.A.C.* 8:23A-1.6.

<sup>&</sup>lt;sup>73</sup> *N.J.A.C.* 8:23A-1.8.

<sup>&</sup>lt;sup>74</sup> *N.J.A.C.* 8:23A-1.9(b).

<sup>&</sup>lt;sup>75</sup> *N.J.A.C.* 8:23A-1.12(h).

vet bill also." Bernstein also stated that "he has nothing but the interest of the animal foremost in all his decisions." The report documented the interview of the AHS driver, who was questioned about AHS's procedure regarding the pickup of injured animals at night. He stated that "Lee [Bernstein] told all the drivers that vet bills were much to[o costly] and he was to be notified first about any sick or injured animal. He made a loud display about this in Tinton Falls." The report also recited another incident, which was related by the Director of Veterinary Services, concerning a pregnant stray cat with "blood bubbles...coming from its nose" that should have received emergency care. At Bernstein's direction, the cat was taken to the shelter where it was not examined by a veterinarian for 15 hours, during which time it "suffered a great deal."

The July 6, 2000, cat incident garnered negative publicity for AHS, led to Bernstein's forced resignation as a captain of the New Jersey Society for the Prevention of Cruelty to Animals and caught the attention of AHS's Board of Trustees. The Board convened a special meeting and passed a resolution directing that AHS drivers transport animals to emergency veterinary clinics during the night for necessary immediate treatment.

The dramatic change in AHS's practices regarding the emergency veterinary treatment of animals picked up at night is demonstrated in the number of such cases before and after the July 6 cat incident. According to records of the three area hospitals or clinics that AHS has used to render emergency care, no animals were transported to their facilities prior to 1998 and only 20 or fewer animals were taken to them in 1998, in 1999, and in the first half of 2000. The number jumped to 73 for the last six months of 2000 following the cat incident, 132 for 2001 and 112 for the first 10 months of 2002. The animals at the Tinton Falls shelter benefited the most. The number of these animals that received

emergency medical care increased from 17 cases from 1998 through June 2000 to 30 cases during the six months that followed the cat incident, an increase of 76.5%. Equally startling were the results in 2001, when the number of cases increased by almost 282%, and in the first 10 months of 2002, when there was a 271% growth.

### NEWARK ANIMAL CARE CENTER

Located on approximately a one-half acre at 124 Evergreen Avenue, the Newark facility represents AHS's initial shelter operation. Constructed between April 1968 and June 1970, it is an old building in the inner city of Newark. The shelter has always included a veterinary clinic open to the public. In the past year, a cat court was added and the entryway was remodeled. Construction of a new holding room currently is underway. Because of the volume of dogs received by the shelter from surrounding municipalities and from the City of Newark in particular, severe overcrowding has been the history of this shelter. In fact, during the late 1990s and early 2000s, it became routine each week for the veterinarian to be treating injuries resulting from dogfights in the runs. Two types of veterinarians have worked at this shelter those who adhered to the program of tending to the private clinic animals as the priority and minimizing expenses, and those who sought to improve the overall conditions of shelter life.

The earliest accounts received by the Commission of conditions at the Newark shelter date back to the mid-1980s through the early 1990s. Uniformly, the facility was described as filthy, very overcrowded and permeated with a stench. It was termed "horrendous" by many. There was no air filtration system in the shelter. Piles of dead dogs that lay by the incinerator awaiting incineration added to the malodor. It was common for water containers to be empty, for obviously sick animals to be housed with healthy ones and for domestic cats to be placed

in the same enclosures with feral cats. Cages and cat boxes were not cleaned routinely and frequently were filthy with feces, urine and dirt. When bleach was used to clean the dog runs, it was not hosed down well or was not allowed to dry before the dogs were returned to the runs, thereby burning their paws. One veterinarian stated that the animal enclosures were cleaned each morning and late in the afternoon, but the animal waste was allowed to accumulate during Because of the filthy conditions, the day. reported a veterinarian, disease was "out of sight." Kennel cough, parvovirus, distemper and sarcoptic mange were rampant. There were more than fleeting periods of infestations of fleas in the shelter, cockroaches in the infirmary and basement, and rats in the garage. Eyewitness accounts reported sick dogs lying on the ground in the runs with "crusty" eyes and roaches eating the drainage from their eyes. Animals received no inoculations upon entering the facility. Many animals died soon after their adoption. A high percentage of adopted animals was returned because of sickness. Their fate was euthanasia. Kennel workers mistreated dogs by taunting them and turning high-pressure hoses on them. An individual observed a worker throwing a cat into a cage by its tail. A dog with fresh blood covering its ear was put into a cage. According to one shelter manager, animals were euthanized before the seven-day holding period. In addition, dogs in bite cases were killed prior to the 10-day holding period and their heads were not always forwarded to the state laboratory for testing. The typical response to a sick animal was not medical treatment, but euthanasia, which usually was performed without a sedative in order to save on the cost. According to an individual who adopted a sick kitten on two separate occasions and telephoned the shelter to relate her experiences, one of the administrators told her that "the kennel was not big enough to separate the sick from the well" and "despite the fact that they do have veterinarians, the shelter does not make enough money to check animals for certain diseases, including feline leukemia."

administrator also "made many crude remarks including the suggestion that all animals taken by Associated Humane should be put to death." In the early 1990s, some of the approximately 20 volunteers, who assisted with the adoption of animals both on the premises and at off-site locations, attempted to render medical care to the animals by administering medications that they had obtained from their own veterinarians or by taking the animals to their veterinarians on days when they took them for off-site adoptions.

A graphic depiction of the shelter on a day in early 1990 is contained in a letter of complaint filed with the Department of Health and Senior Services. The individual, who observed "sick, suffering, overcrowded animals" and "idle, dispassionate workers," wrote:

I visited the shelter intending to adopt a kitten or cat, and I found my way to the room that housed the kittens and young cats. There were many cats and kittens in this room, most of them sick, some of them too sick to open their eyes or lift their heads. One little black kitten lay on the floor, it's [sic] eyes glued shut from all the discharge from its eyes and nose. I picked it up and with my shirt tail [sic], cleaned its face, while a bored worker looked on. Many of the cats in this room were in this condition. I chose two kittens - one which had arrived only a few days earlier, and was still relatively healthy looking, and a gray kitten who was quite ill, covered with discharge from eyes and nose, and from diarrhea that had dried all around her anus and tail and back legs. I cleaned her up and went off to the front desk to adopt them. With a glance at the gray kitten, the worker at the desk told me she was sick and could not be adopted! When I insisted, I was directed to speak to the manager, who explained that the Humane Society's policy is to not adopt sick animals to

people in order to avoid lawsuits if the animals died. After sufficiently convincing him that I would take proper care of this kitten, and after signing a legal release giving up any right to sue the shelter if the kitten died, he allowed me to adopt both kittens. I asked him if the rest of the sick, unadoptable kittens and cats were being treated for their illnesses so they could eventually be adopted, and he shrugged his shoulders. I can only assume that some of these animals actually are allowed to die slowly of illness while the humane means of euthanasia is ignored.

I paid \$33.00 for each of my cats, money I pray did not go to help pay the salaries for any of the workers I encountered while I was at the shelter. While I waited for the woman at the front desk to fill out the adoption papers, I found myself in a crowded waiting room, filled mostly with idle shelter workers. One of the male workers sauntered through the room, carelessly waving a hypodermic needle with which he was about to inject a cat. This cat had just come in, and was obviously ill, dehydrated, sneezing and congested. Nevertheless he proceeded to administer the vaccination, in the waiting room, while laughing and chatting with his coworkers.

In August 1991, the coordinator of a philanthropic foundation's Animal Assistance Program for New Jersey, which provides grants to nonprofit animal shelters to strengthen their "humane mission," visited the Newark facility. In a written report, she characterized her reaction as "shocked." She described the lobby as containing approximately 30 stacked cages, each holding adult cats or a litter of kittens. The cages were smaller than average-sized cages for cats and too small to hold even a litter pan. Shredded newspaper served both as bedding and for waste.

The walls of the front office were in disrepair and in need of paint, while the floor required tiling or resurfacing. The dog runs were extremely overcrowded with dogs of various sizes housed together. The runs were "a disgrace not only in their size and the number of dogs they held, but in their appearance. Walls and floors were all in dire need of repair and most of the runs held wooden beds which is not an acceptable surface for sanitizing and disinfecting for disease control." Although there was "evidence of recent cleaning by the wet floors, the odors were a combination of animal waste and chemicals." The dogs were "in various degrees of health." The kittens and cats that were kept in separate small, glass enclosures looked "terrible." The adult cats were in particularly "bad condition with" respiratory infections and the kittens were very lethargic. The report concluded, "Though the building itself is in disgrace, the attitudes of the animals is the most compelling aspect of my visit."

The coordinator again visited the shelter in July 1994, after AHS applied for a \$5,000 grant to develop an animal control instruction guide. She found that the facility "has not changed from my previous site visit." She observed the kennel area to be overcrowded, "old, dirty, and depressing." Although workers were hosing the dog runs during her visit, she found no evidence of the use of disinfectant. Included in her written report were the comments of an employee who directed her to two runs that held cats:

She looked inside and made the statement, "Any dead?" She then told me a kitten and an adult cat were dead this morning when she came in.

The report concluded, "This facility, as it exists, is probably the worst example of sheltering in the state." The foundation denied AHS's request for funding.

Continuing through the mid-1990s, the paperwork necessary to track an animal from initial entry to final disposition typically was inadequate. There was no screening of individuals who wanted to adopt animals. Although bleach was used to clean the dog runs, it frequently was not diluted or rinsed sufficiently, causing the dogs' paws to be burned when they returned. One manager admitted that during 1995 and 1996, the thoroughness of the cleaning depended upon the worker and "who was watching." He described the basement conditions as "horrible." The sick and injured animals that were housed there were not always treated promptly and there was no segregation of sick animals from healthy ones. According to a February 1995 memorandum, another manager found a cat with a tumor that had "exploded." Although the animal had arrived five days earlier and had exhibited symptoms, none of the workers took the cat to the veterinarian for an examination. Another memorandum in 1995 by the same manager chastised the office staff for not implementing the veterinarian's directives regarding follow-up treatment or administration of medications. People complained of adopting animals with fleas and/or ear mites. infestation of some of the animals was so severe that family members were bitten by the fleas and the carpet and furniture in their homes became infested. Complaints that adopted animals were sick also abounded. Their examination by outside veterinarians disclosed that many animals were malnourished and that some were very ill with diseases that caused their death within relatively short periods of time.

Eyewitness accounts during the second half of 1998 paint a dismal picture of the shelter. Kennel workers agitated dogs by yelling and waving their arms at them. There was a severe cockroach problem in the area where puppies and cats were caged and an infestation of mice and rats in the medical room, outside the kitchen and in the holding area containing small dogs and cats. Workers were not properly trained on

how to clean the animal enclosures. The common method used to force dogs from the inside to the outside runs for cleaning purposes was to turn the hose on them. The paws of many dogs became irritated because they were returned to the runs before the floors dried after being washed down with bleach. The cleaning of the cages in the holding area usually consisted of changing the shredded newspaper without washing and disinfecting the cage walls, ceilings and doors. Throughout the day, workers did not scoop the waste from the dog runs. Because cans of dog food frequently were donated, dogs typically were not fed the same brand every day and food that was intended for specific purposes, prescription food, such as dog indiscriminately fed to all dogs, thereby risking reactions such as vomiting or diarrhea in some.

Throughout the 1990s, individuals who adopted animals that turned out to be sick, many of which died shortly after their adoption, found no solace when they called the shelter either to complain about the sick animal or to alert the shelter that other animals also might be sick. Typically, they were told that the AHS veterinarian could not examine their animals for several days. Other individuals complained that it took months before the AHS veterinarian had the time to alter their adopted animals.

For at least the past decade, AHS has demonstrated no consistency when dealing with animal rescue groups. Some were charged nominal or no fees, while others had to pay fees as high as \$250. It was reported to the Commission that some administrative staff have circumvented official procedures by taking it upon themselves to turn over animals to rescue groups for nominal amounts in order to enable them to leave the facility. In fact, Bernstein's preference to charge the public high fees for purebreds has placed him in a continuing struggle with Assistant Director Roseann Trezza, who seeks to adopt to rescue groups for minimal or no fees. In addition, the Commission learned

of numerous incidents during the last several years, which were confirmed by veterinary records, of the rescue of animals that were diagnosed by outside veterinarians with severe medical problems that were not identified or treated at AHS. For example, a greyhound, which was adopted in 1996 after only nine days at the shelter, was malnourished and had sores on its body and paws that were not being treated. When a worker noticed that the animal refused to eat, he tried to feed it with some of his lunch, but no effort was made by AHS to address the health problems. In 2000, no treatment was rendered to a basset hound with bulging eyes. Following adoption, the dog was diagnosed with advanced glaucoma, which required the removal of both eyes. Another basset hound was adopted in the same year and taken to a veterinary hospital the following day because of vomiting and diarrhea. The dog was diagnosed with a severe urinary tract infection, which had not been treated. In 2001, a rescue group adopted a mixed-breed dog that had been in the shelter for approximately one year. It was discovered that a cord was tied tightly around its neck and was partially embedded. In the same year, a rescue group adopted a dog that had been at the shelter for approximately one month and had been observed by the representative over several visits. The animal was extremely malnourished, a condition that appeared to worsen on each visit, and had a fever of 104.3 degrees at the time of its adoption. Following adoption, the dog was treated by a veterinarian and made a full recovery. Also in 2001, a rescue group responded to advertisement for the adoption of three rare male Abyssinian felines that were less than one year old. AHS employee advised representative that they had had diarrhea since their surrender, that they were "stressed out" and that their condition was worsening. organization adopted the kittens, which were huddled and shaking in the back of a cage in the medical room amidst barking dogs. The kittens recovered fully.

Accounts of the veterinarians. The veterinarians who were employed at the Newark facility provide riveting accounts of the substandard treatment and care of the shelter animals. Their attempts to render medical care to these animals were thwarted continuously by Bernstein's tightfistedness.

Dr. Anthony Tavormina, the veterinarian from 1986 to 1993, described the shelter at the time of his resignation as overcrowded and filthy. Workers hosed the runs, but did not apply any disinfectant. Whether the runs were scooped during the day depended upon the individual worker and whether any of the "bosses" ventured into the kennel areas. He described the basement area as a "dungeon" and stated that it was "pretty raunchy down there - dark, gloom[y], damp." Dr. Tavormina admitted that he was more lenient about the shelter conditions because of the low caliber of the staff. Initially, he believed that the staff "was trying," but later concluded that the poor maintenance of the shelter was because the workers were "nasty and hoodlums." At the core of every problem was the refusal to spend money.

Dr. Gloria Binkowski, who was hired in July 1993, accepted the position in the belief that she could make a difference in improving the care of the shelter animals. Although her contract established her as the "Chief Veterinarian for AHS on a full-time basis, practicing veterinary medicine in a reputable manner conforming at all times to the standards of practice in her profession," the title was in name only. From the outset, Bernstein complained to her about the high cost of running an animal shelter and chastised her for spending including too much money on supplies, medications, in operating the medical She soon discovered that the department. decision of which shelter animals to treat was not even hers to make. Her written protocols regarding disease control and cleaning were not implemented. There was no training of the

workers in the identification of sick or injured animals. She was confronted with a high turnover, which she attributed to low wages, of kennel workers and technicians who assisted her in the clinic. To limit the expense of employing technicians even further, Bernstein used to reduce their regular hours, refuse to pay them overtime hours or limit the number of hours for which they could be compensated. Bernstein discovered that Dr. Binkowski was able to function one Saturday without a technician, he told her that she should continue to do so. Dr. Binkowski resigned after only two years when she was constrained to conclude that she could not make a difference for the animals. When Bernstein asked her to reconsider her resignation, she presented him with a list of necessary changes, but he refused to make any of them because of the cost.

When Dr. Binkowski began her employment, she found the facility to be "chaotic," dirty, malodorous and very noisy. The staff frequently neglected to establish the necessary paperwork for incoming animals. Many animals were sick when they arrived or became ill shortly thereafter. There was no medical examination of incoming animals, no quarantine area for the observation of arriving animals, no isolation area for diseased animals and no segregation of healthy animals from sick ones. When she pressed Bernstein on the need for a quarantine room for cats, his initial responses of not having sufficient funds gave way to his statement, "I can make a quarantine room by killing all these animals!" inadequacies of the facility and absence of proper protocols resulted in a high death rate from disease. Cats died of feline distemper. Canine distemper was rampant. Parvovirus and mange also were problematic, but to lesser degrees. Dr. Binkowski opined that there were "countless" instances of deaths that were "preventable by proper quarantine and remedial steps to stop the recycling of distemper and parvo[virus] through the shelter." These included the deaths of not only stray animals, but also animals that were housed at the shelter when their owners were hospitalized or involved in motor vehicle accidents.

Not only did AHS lack a procedure for the medical evaluation of incoming animals before they were placed in the general population, but such an examination specifically excluded from Dr. Binkowski's responsibilities. The employees who staffed the reception area were the only individuals to see these animals. They failed to report even the most obvious injuries and conditions and, because they were not trained in recognizing infections, dismissed as minor health problems ones that were serious. Typically, they failed even to check for fleas or ear mites. understaffing of kennel workers and their lack of training in identifying sick and injured animals served to exacerbate the problem. Consequently, Dr. Binkowski discovered instances of injured animals languishing in cages without treatment. For example, a dog that was emaciated and had a broken jaw when it was brought to the shelter received no treatment and its jaw became gangrenous. When Dr. Binkowski discovered its condition, she had to euthanize the animal. Her examination of a cocker spaniel, which was selected for adoption, revealed that the dog had a serious heart problem that was not diagnosed during its stay at the shelter and that it suffered from "long-standing" sarcoptic mange, which also went untreated. She further discovered that the dog was described as one or two years old by a worker to the adopter when, in fact, it was Moreover, there were administrative elderly. directives that certain conditions not be treated. For instance, stray cats with mange were not allowed to receive any treatment during the seven-day holding period that preceded their euthanasia.

Sick or injured stray animals that were brought to the shelter at night suffered perhaps the worse fate. There was no system for their evaluation either that night or the following day. It was happenstance if a worker reported an injury or apparent condition to Dr. Binkowski during the next day. For example, in 1995, a dog that was hit by a car received no medical attention until 1:00 p.m. on the following day when the dog's owner claimed her and discovered her condition.

There were problems with respect to the administration of vaccinations and medications prescribed by Dr. Binkowski. The staff frequently failed to record whether they vaccinated incoming animals. As reflected in memoranda by both Dr. Binkowski and the shelter manager, workers also failed repeatedly administer immunization and other vaccinations to animals or to implement medical directives for their follow-up treatment or medication. Even when animals were vaccinated upon arrival, Dr. Binkowski's directives to update the vaccines as a preventive measure, especially for puppies and kittens, periodically were ignored or countermanded by Bernstein because of the cost. The only animals that routinely received vaccinations were those selected for adoption.

Dr. Binkowski quickly learned that her medical judgment as to which shelter animals required treatment would be superceded. As a result, far fewer animals received medical care than were in need of it. When Dr. Binkowski first began her employment, she found that although AHS did not employ enough workers to become familiar with all of the shelter animals and did not train them to identify those in need of veterinary treatment, some workers did advise her of sick animals. Her procedure was to have the workers bring the animals to the medical department, where she kept them for treatment. However, whenever Bernstein found shelter animals in the clinic, he made it clear that the medical department was for the animals of the paying public and for recently adopted animals. He stated that treating shelter animals and keeping them in the hospital either for recovery or isolation purposes cost money in terms of supplies and her time. He told Dr. Binkowski that not all shelter animals in need of treatment were to be treated. His philosophy was that the strong ones would survive and the others would not. Assistant Director Terry Clark also expressed disapproval of her treating shelter animals. In an apparent attempt to dissuade her, Clark stated in one conversation that Bernstein's remedy would be to euthanize any shelter animals that he finds in the clinic.

Dr. Binkowski's solution was to make excuses to Bernstein about the need for keeping some animals in the hospital area and to return others to the shelter, albeit too early in her opinion, with instructions for their medication. However, her strategy did not appease Bernstein. In a memorandum to Dr. Binkowski dated August 30, 1993, less than two months after she was named Chief Veterinarian, Bernstein "elaborate[d]" on "the priority of Society animals" for treatment. He stated that the only shelter animals eligible for treatment were injured animals that were brought to the shelter under the municipal contracts, animals selected for adoption, "special cruelty cases or special interest cases that will be featured in the HUMANE NEWS," and animals brought from the Tinton Falls facility that are sick or injured or are selected for adoption and must be spayed or These enumerated "special cases" would be "channeled" to her through the front desk. Further, only he or one of the Assistant Directors would "advise" her of any other "animals to be treated." Bernstein concluded the memorandum by stating, "We are apprising you of the reality of the situation at the Society so that you will see where our priorities are concerning Society animals." In addition, Dr. Binkowski's practice of returning animals under treatment to the shelter with instructions to the worker to administer certain medications was thwarted when Trezza issued a memorandum. dated March 9, 1994, to the front office and

kennel staff that she was assigning one individual in the front office to "be responsible for dispensing the medication [and that n]o medications are to be held or given out by the kennel staff." According to Dr. Binkowski, this rule effectively deprived many, if not most of the animals of their medications because the front office employee had numerous other responsibilities and administering to the shelter animals was not her primary assignment. Another method employed by Bernstein to restrict Dr. Binkowski's treatment of shelter animals was to forbid kennel workers from taking animals that they believed to be in need of veterinary care to the medical department. Frequently, her requests to have shelter animals brought to the medical department, either as a follow-up to treatment or because a kennel worker identified a problem, were not honored at all or were not honored in a timely fashion. Similarly, when Bernstein concluded that Dr. Binkowski's ordering of medical supplies became too great an expense, he fashioned another rule. She no longer had the discretion to order the supplies that she deemed necessary, but had to obtain Clark's approval for their purchase.

In light of the prevalence of disease throughout the shelter, it was common for sick animals to be adopted. Kittens invariably had distemper or upper respiratory infections, as did most of the dogs and cats, and parvovirus was prevalent among the dogs. Some of the individuals who adopted animals were forced to seek medical care from outside veterinarians because of the backlog in obtaining an appointment with the medical department. Depending on who was at the front desk to take the calls, some people were told that they could exchange the animal for another one. However, the exchange only served to return the health problems to the shelter and usually one sick animal was replaced with another sick one. In a memorandum to Bernstein dated May 18, 1994, Dr. Binkowski advised that "a large percentage" of the adopted animals were ill primarily with

respiratory and/or gastrointestinal disorders and that they "were probably ill in the shelter but the problems were certainly unattended or ignored by the shelter personnel." She also advised Bernstein of the fraudulent representation in the letter given to individuals adopting puppies and kittens that all of them "have been checked by our medical department and/or staff." She told him to delete the sentence because "as you know I do not have the opportunity to examine most of the animals in the shelter and . . . [t]here is no one qualified at the shelter at this time[,] nor has there been since I've been employed at Associated Humane[,] to do this assignment." Moreover, because of the understaffing in the medical department, the waiting list for individuals to have their newly adopted animals spayed or neutered grew to two or three months. Despite the inordinate delay, but because revenue was at stake, Bernstein directed that the state's list of low-cost spay or neuter locations not be distributed unless someone specifically requested it.

The care of shelter animals was eased somewhat in June 1994, when AHS hired a veterinarian from Cuba as a veterinary technician for the shelter. Initially, he administered the medications prescribed by Dr. Binkowski and eventually began diagnosing and treating simple conditions on his own. Dr. Binkowski opined that although his training had been in farm animals and although incoming animals should be examined by a veterinarian, his efforts were better than the alternative of no treatment. Nevertheless, with approximately 30 animals entering the facility each day, there remained far more animals in need of diagnosis and treatment than animals that received attention.

Dr. Binkowski was not allowed into an area of the basement that remained locked at all times. She ventured there only on a couple of occasions when an administrative employee asked her to try to help some of the animals. Although the area was referred to as a hospital,

Dr. Binkowski called the term "a grotesque name for it." The approximately 30 dogs and 30 cats that were kept there included pregnant and nursing cats and dogs, animals with serious diseases, such as severe mange, distemper or parvovirus, and pit bulls. According to Dr. Binkowski, Bernstein considered these animals "lost causes." She was not permitted to bring these animals to the clinic for any treatment or easing of their suffering. Bernstein did not even want the pit bulls to receive vaccinations, which he viewed as a needless expense because they were euthanized at the conclusion of the sevenday holding period. Dr. Binkowski argued that even if they were going to be euthanized, they could still be a source of disease for other animals in that area and for the shelter and privately-owned animals that were recovering in the adjacent room, which was separated only by a door and was utilized as an isolation room for the medical department. She explained that distemper, which is airborne, and parvovirus can be transmitted through fomites. However. Bernstein was not persuaded.

Dr. Binkowski identified the following additional problems in the operation of the shelter. After she treated or performed surgery on wildlife, shelter personnel delayed in transferring them to rehabilitators. Much of the food fed to shelter animals was from donated cans, even though many were dented and some were even swollen. Although she advised both Bernstein and Clark of the poor air quality, including the ammonia level, in both the shelter and hospital and suggested in an April 1994 memorandum to Clark that it "could be a major factor in the high level of respiratory disease seen in the shelter," no changes were made. In addition, not only did Bernstein refuse to improve the assessment of individuals seeking to adopt animals, but he interfered with Dr. Binkowski's judgment regarding the suitability of individuals to adopt. For example, after Bernstein overruled her decision not to adopt another dog to a person who had returned the first dog because she did not like its eyes, the woman returned this dog, as well. On another occasion, Dr. Binkowski refused to allow a family to adopt the same dog that it had just surrendered because it was unable to deal with the animal's problems. She had treated the dog for two broken legs and when the dog was surrendered, she discovered that the family had failed to provide proper follow-up care. Bernstein overruled her decision, allowed the family to take the dog and collected a second adoption fee.

Dr. Binkowski made repeated attempts, in both conversations and memoranda, to bring health-related issues to Bernstein's attention. These issues addressed the need for better sanitation methods; the lack of an isolation room to segregate cats that had upper respiratory infections; the failure to undertake any measures to curb kennel cough among the dogs; the understaffing of the medical department, which contributed to a lengthy waiting list to have adopted animals altered; the use of wood pallets, which promote disease, in the dog runs, and the need to train the staff on identifying diseases. However, as reflected in Bernstein's May 18, 1994, memorandum to Dr. Binkowski following his receipt of a letter from an individual whose recently adopted puppy died from parvovirus, his chief concern was not the improvement of shelter conditions or staffing levels, but the "bad publicity" and loss of "a customer." threatened to deduct from her salary adoption fees that he may have to reimburse to people in the future if she did not prevent similar occurrences. Bernstein completely ignored the individual's complaint about the uncaring and blasé attitude of the staff person whom he notified about the death of his puppy from parvovirus and the possibility that other puppies may be infected. In addition, when the individual initially called about the puppy's severe symptoms, he was told that he could not bring the animal to the clinic for several days.

Dr. Binkowski responded to Bernstein in a letter stating, in part:

Many things, including the reputation of Associated Humane would be improved if the conditions in the shelter and health of the animals were better. Yet you have not followed my suggestions/ recommendations in the shelter and you have, in fact, criticized me many times for treating shelter animals. It is I who should bill you for all the extra hours I put in at AHS to treat shelter animals and to treat the many sick recently adopted animals for diseases which might have been preventable if shelter conditions were improved.

In a letter to Bernstein dated May 21, 1994, Dr. Binkowski recited a litany of "recommendations/issues which need attention." addition urging that In to veterinarian/epidemiologist evaluate "[a]ll facets specifically shelter protocol," she recommended that shelter personnel receive "formal training on handling animals, cleaning cages, basic hygiene" and be of "[b]etter quality"; that dogs be vaccinated against kennel cough; that a quarantine system be instituted for incoming and sick animals; that sick animals be treated, "not just placed in a hospital room in the shelter where they may or may not receive care"; that cats be treated for feline leukemia virus and feline immunodeficiency virus; that a centralized log be kept for animals that require medical attention; that a daily log be kept of an "animal's disposition[,] eg. eating, urinating, vomiting, diarrhea"; that a direct phone line be placed in the medical department to prevent screening by the front desk; that greater effort be given to the adoption of animals; that the ventilation system be tested and renovated to ensure adequate ventilation; that a series of vaccines, which she outlined, be administered to puppies and kittens; that all incoming animals be dewormed; that effort be made to keep litters separated, and that

at least one additional veterinarian be hired. Bernstein's response to this letter, as well as other written and oral recommendations made by Dr. Binkowski, was always the same. Whether the recommendation involved little or no cost or a substantial expenditure, he invariably claimed that he could not afford to make the changes. Dr. Binkowski summed up the problem for the Commission by saying, "You have to want to treat [the animals] and Bernstein just did not want to"

On April 3, 1995, Dr. Binkowski tendered her resignation, effective the following July, in a memorandum that reflected her frustrations:

Over the past 1½ years in both conversation and memo, I have told you that conditions in the shelter needed to be improved and T made specific recommendations to you. **Improving** shelter conditions would have a positive effect on the functioning and the income of the medical department. I have also asked that at least one more veterinarian be hired in the medical department. To a large degree, my recommendations have not been followed - in fact they have been ignored or ridiculed by some of the administration.

While I have repeatedly stressed the need for more and better qualified personnel at AHS, today you informed me that because the medical department managed to get through the day on Saturday without a technician[,] you wanted to cut down further on technician services to the medical department. This is unacceptable.

I have made a good salary, relatively speaking at AHS, but I am exhausted by all the hours I need to work and I am defeated by the stress and frustration

incurred by working in a situation where remedial steps are not taken to prevent perpetual sickness and calamity.

It is intolerable that I should not be supported and in fact be criticized for giving appropriate medical care to sick and injured shelter animals and newly adopted animals.

When Bernstein beseeched Dr. Binkowski to reconsider her decision, she responded in a memorandum, dated April 15, 1995, that reiterated her prior recommendations and began as follows:

After you received my letter of resignation, you asked me what it would take to get me to sign a contract. One of the main reasons I am resigning is insufficient resources because allocated for basic needs - housing, food, and medical well-being of the shelter animals and the operation of the Medical As a result, it is my Department. professional judgment that minimal standards of care are not being met and that delivery of medical care to animals is sorely lacking to the point that animals are suffering. Indeed, I am becoming increasingly alarmed at the level of care provided by AHS which I think is often below the minimal standard of humane care provided by state anti-cruelty laws. Also, I am concerned that AHS is acting negligently toward animal owners and the public that it is supposed to serve. I should state that I have many examples in addition to ones described below which I will discuss with you or any interested party.

Dr. Binkowski stated that she would reconsider her resignation if AHS properly staffed the medical department. She argued: At present, AHS is severely understaffed, minimal standards of animal care are not being met and <u>cannot</u> be met by one licensed veterinarian operating a hospital for "regular clients", [sic] shelter animals, and shelter adopted animals in a shelter where approximately 1000 - 1500 animals are admitted each month. [Emphasis in original.]

Specifically, she recommended the hiring of two additional, full-time licensed veterinarians for the medical department, a full-time licensed veterinarian for the shelter, two full-time technicians for the medical department, with no cap placed on their hours, a full-time technician for the shelter and a technician for the shelter on Saturdays. She proposed that arrangements be made with local emergency clinics for the medical care of injured or sick strays picked up during the night and that they be offered as an option when newly adopted animals needed to be seen on an emergency basis. She proposed the construction of a quarantine unit for incoming animals and isolation units for respiratory diseases, parvovirus and communicable diseases. She cited the poor ventilation system and unacceptable noise level as areas in need of improvement. She advised that wildlife should be transferred to rehabilitators in a timely manner and that damaged cans of dog food should be discarded. She urged that a veterinary technician be hired for the Tinton Falls shelter. Dr. Binkowski concluded her memorandum as follows:

In summary[,] some of the operating conditions of the shelter fall below the minimum standard of veterinary care and humane animal care and some operating conditions are illegal. The animals are suffering as a result of shelter operating conditions and AHS management.

Bernstein's response to the measures proposed by Dr. Binkowski is reflected in her

May 21, 1995, memorandum, in which she advised that she would adhere to her date of resignation:

You have not discussed my recommendations with me except to say that you couldn't agree to them because it would cost too much money. You do not seem to appreciate that it is my professional judgment that the current state of the care of animals at AHS is below what I consider to be minimally acceptable.

The veterinarian who followed Dr. Binkowski was hired to supervise the care of the shelter animals and to operate the private clinic. However, Dr. Dryden Evans acceded to Bernstein's philosophy and devoted his time to private clients, shelter emergencies and the spaying or neutering of shelter animals that were adopted. He left the treatment of shelter animals to the technicians, who consulted with him only if there was a problem, and did not concern himself with any cleaning or disease protocols for the shelter. Dr. Evans left in October 1999.

In December 1997, approximately two and one-half years after Dr. Evans began employment, AHS hired a second veterinarian, Dr. Lisa Levin. She found that the workers were untrained and lax in their duties. They did not properly clean the animal enclosures, did not report even the most obvious illnesses or injuries to the medical department, did not follow any system in housing the animals together and did not monitor the daily conditions of the animals. For approximately the first two years of her employment, Dr. Levin focused on the shelter animals, while Dr. Evans concentrated on the clinic practice. After Dr. Evans left, she attempted "to juggle the clinic and shelter practices." However, when the demands of the shelter animals became too great, she restricted the clinic practice primarily to emergencies and indigent pet owners. Consequently, the private clinic business decreased. When Bernstein vigorously complained about diminishing revenue, she retorted that her contract with AHS "spoke towards shelter animals." Specifically, the contract required that she "handle, to the best of her abilities, the care of client animals as well as the care of Society-owned animals." At her suggestion, AHS advertised for another veterinarian, but, according to Dr. Levin, Bernstein was not willing to pay enough for a Dr. Levin sought to second veterinarian. improve the shelter conditions and the treatment and care of the animals, but continuously met resistance. When her recommendations involved the expenditure of money, threats to resign became her most potent weapon to effect change. She left on June 16, 2001, when her husband accepted a job in a neighboring state.

In April 1999, Dr. Levin was appointed AHS's first Director of Veterinary Services. As director, she was to serve as the protocol officer for humane care in order to ensure a certain standard of care at all three AHS shelters. 76 One of the biggest hurdles that she faced was Bernstein's constant countermanding of her directives. By doing so, Bernstein violated the terms of her contract, which he executed, that she "will be given the full and proper authority for managing" the medical staff, as well as shelter employees "if it applies to a medical case or concern." Dr. Levin stated bluntly, "He corrupted my decisions." Invariably, every issue had to do with money. In her arguments with Bernstein, Dr. Levin repeatedly asked him whether the priority was the private clinic practice or the shelter animals, that is, whether AHS was "practice driven" or "shelter driven." Although his standard response was that AHS was both, his actions placed the priority with the private clinic because he wanted to make money. Dr. Levin observed that AHS publicized sympathetic stories about animals, but operated a private practice at the expense of the shelter

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<sup>&</sup>lt;sup>76</sup> Dr. Levin's experiences with the Tinton Falls and Lacey shelters appear below under those subsections.

animals. She commented, "We don't have pictures of private practice animals on the coin cans." Determined that the shelter animals should not suffer because of Bernstein's emphasis on the private clinic animals, Dr. Levin constantly battled with him. Bernstein defended his position by complaining, initially, that sufficient income was not generated by AHS and, later, that the stock market was not performing well. In response, Dr. Levin employed a variety of arguments, including the suggestion that he not purchase a new car every year. She termed it "a constant tug of war with Bernstein."

When Dr. Levin began her employment with AHS, an area that she immediately found to be lacking was the cleanliness of the facility. The priority of the workers was not the runs and cages, but the area where the public entered. In addition, the workers applied a strong bleach solution that was harmful to the animals. Because they did not dilute the bleach sufficiently when they cleaned the runs, the dogs had difficulty breathing and their eyes became irritated. The staff also failed to squeegee the runs after hosing them. The holding room for incoming animals, which Dr. Levin characterized as "the Black Hole of Calcutta" and was crowded with cages that were stacked three levels high, was not hygienic because it was not cleaned regularly and had not been grouted in a very long time. To implement proper cleaning procedures, Dr. Levin distributed to the workers a written protocol that she obtained from a national animal humane organization. The twopage document was explicit on how to clean the interior of an animal enclosure and its contents, including food and water bowls and bedding items. In addition, when she discovered that workers cleaned the automatic feeders in the dog runs only once a week, she instructed them to check them every day. As a result of these and because of Dr. Levin's supervision, there was a noticeable improvement in the cleaning methods.

Another area addressed by Dr. Levin shortly after her arrival was the failure of workers to identify pain and suffering in the shelter animals. She wanted them to recognize that a dog that vomited or was pawing at its ear was in need of medical attention and should be reported to her. Dr. Levin held some training sessions with the staff and distributed a two-andone-half-page handout, prepared by a national humane organization, on recognizing illness, pain and suffering in companion animals. She instructed them to contact her regarding any sick animals that they noticed. She also directed the veterinary technicians to monitor the animals that she continued to treat after their return to the shelter. Bernstein constantly complained to her about the money that was spent on her care of certain animals.

Dr. Levin also found that workers were ignorant about animals in general. Not only were they not provided with training, but there was no monitoring of their treatment of the animals. For instance, it was not uncommon for fighting dogs to be placed together in the same runs or for a very small dog to be housed with a large one. Dr. Levin corrected these situations when she observed them and attempted to educate the staff. She instructed workers that when they discovered that a dog was not eating for several days because of the presence of a dominant dog that monopolized the feeder, they should transfer the dog to a cage and feed it there.

For approximately two years, Dr. Levin complained to management about the lack of an adequate heating and air-conditioning system in the shelter. At various times throughout the year, the heat or cold temperatures were extreme. The humidity in the basement area was so severe that the animal food became moist and moldy. In 2000, she finally was able to convince the Board of Trustees to have a proper system installed. However, it took about one year for the contractor to complete the project.

Driven by his desire to minimize expenses, Bernstein continually injected himself in matters involving Dr. Levin's care and treatment of the shelter animals and ranted about her spending money when the clinic was not generating sufficient funds. He typically charged, "What did you bring in? Nothing!" or "You're not bringing in enough!" She told him not to micromanage the operation of the clinic. It was only through her tenacity that she was able prevail in achieving basic medical improvements for shelter animals. For example, soon after her arrival, Dr. Levin was confronted with an "overwhelming" flea and tick problem and an adopted dog that required treatment for Rocky Mountain Spotted Fever, a tick-borne disease transmittable to both animals and humans. In a memorandum to Clark, she identified the problem and proposed a leading, but very expensive product to combat the infestation and as an aggressive preventive measure to protect both the animals and staff. Although Clark gave his approval, Bernstein confronted her when he saw the first bill and stated, "You really have to restrain yourself! Look at this bill!" A tug of war ensued, with Bernstein directing that she reduce the application of the product and Dr. Levin insisting that full application was more cost-effective in the long run. Dr. Levin ultimately prevailed. Another example cited by Dr. Levin was her ordering of pain medication, which, discovered, was not administered to animals following surgery. She obtained the approval of both Assistant Directors for the purchase of the medicine, the cost of which she was able to negotiate from \$200 to \$125 a bottle. However, when Bernstein saw the bill, he exclaimed, "What is this, gold? You have to restrain yourself." Dr. Levin also succeeded in having nursing cats separated from sick ones, despite Bernstein's complaints that they were taking up too much cage space for too long. The problem ultimately was solved when a new cat area was constructed as a result of Trezza's efforts and persistence.

Bernstein was most vociferous about the cost of medical treatment for shelter animals. When Dr. Levin first arrived, she was appalled to find that injured animals brought to the shelter at night were placed in cages and received no medical attention until the arrival of the veterinarian the next morning. Stravs that arrived during the weekend received no medical treatment until Monday morning. Dr. Levin established the procedure that the drivers were to contact her or the veterinarian assigned to the Lacey facility for direction on whether to transport these animals to an emergency facility. However, complaining about the cost of emergency care for stray animals, Bernstein countermanded her directive. He instructed the drivers not to contact the veterinarians and not to take the strays to any overnight, emergency It was not until the July 2000 cat incident at the Tinton Falls shelter, detailed above at pages 64 to 65, that emergency veterinary care became available for injured strays during the night. Bernstein also did not want injured pit bulls treated because of the policy to euthanize them immediately after the seven-day holding period. Nevertheless, Dr. Levin surreptitiously attempted to administer pain medication to make them comfortable until they were euthanized.

Bernstein's approval of some of the improvements urged by Dr. Levin had more to do with his desire to save money than it did to improve the life of the animals. For example, newly arriving puppies were not isolated from the general population until Dr. Levin halted all adoptions for a two-week period following an outbreak among new puppies of parvovirus, which quickly spread throughout the shelter. Although Bernstein initially wanted adoptions to continue so as not to interrupt the flow of income, it was only when he saw the \$2,000 bill for medication to control the outbreak that he issued a memorandum directing that new puppies be isolated for observation.

The demands of the Newark clinic mounted and, in Dr. Levin's opinion, threatened the care and treatment of the shelter animals. She concluded that she was not able to attend fully to both the clinic and shelter animals. She phrased the conflict in terms of whether AHS's priority was the care and treatment of the shelter animals or the pets brought to the clinic by the public. The situation was exacerbated, if not created, by an inadequate veterinary staff. Dr. Levin found herself in constant battle with Bernstein, who demanded that the clinic be fully responsive to the public. Frustrated, Dr. Levin wrote to Bernstein that she would resign if she were not allowed to give the priority to shelter animals. Her January 10, 2000, letter stated:

> During each AHS Board Meeting I have attended, I have asked the questions, "Is The Humane Society shelter-driven or private practice-driven?" And, each time, your answer to me has been, "Both." While I agree that our private practices (Newark and Forked River) could be a potential financial supplement to our shelters, this can only occur with a proper veterinary complement. As you know, AHS continues to advertise for New Jersey-licensed veterinarians; unfortunately, I have not yet identified appropriate individuals for location. From my perspective, that means your current veterinary staff (Dr. Finkelstein and myself) must dedicate itself to the medical care of AHS shelter animals.

> It is not pictures of [Newark's] The Ehrlich Animal Hospital or the Forked River private practice that are pasted to our charity cans or featured in *The Humane News*. It is the pictures and stories of the abandoned, the neglected, the abused, and the dead that draw our donors to us. And, that is what drew me to AHS.

. . . .

The presence of one, New Jerseylicensed veterinarian in Newark does not allow the standard of care I want assured client and shelter animals. It was my understanding from the last Board meeting I attended, that until another veterinarian could be found to replace Dr. Evans, AHS-Newark's private practice would be restricted to the provision of emergency care and to the attention of Don Herman/Archie Fund clients [funds established to treat the pets of indigent owners]. This arrangement did not last very long, due to your concern about the Newark practice losing the clientele it had established. "Open to all," a policy I disagreed with, under the circumstances, took a toll on my attention to shelter concerns. Even the current amendment to scaled-back client hours is a bad response; the public knows we're open . . . not just a little open, but open. It does not matter that only three clients may be scheduled for the morning: more clients may "walk-in"; more clients always call with a need to, at least, speak with the veterinarian; and, of course, there are the emergencies. On occasion, I have had to direct clients to [a former AHS veterinarian with a nearby private practice], because the day's essential work won't otherwise be completed. I am quite frustrated with the current situation, and must recommend a return to "shelter first." [Emphasis in original.]

The best of my abilities is expressed in my love and interest for our shelter animals, as well as for those animals belonging to those caring individuals without the wherewithal to provide medical attention for them. I came to AHS from a shelter. I came to that shelter from another shelter. And, I came

to that shelter from yet another shelter. If you wish to continue maintaining a private practice, (excluding Herman/Archie Fund clients) however limited, with one veterinarian, then I must reluctantly and sadly offer my resignation. You have argued that [prior veterinarians] managed to maintain a busy private practice, while being available for Newark shelter animals. This may be true, but your needs and my desire demand that I not just be available, but that I be there, if the Newark, Union, Tinton Falls and Forked River shelter animals. the concern of a humane society, are to be treated in a humane society fashion. [Emphasis in original.]

Dr. Levin shifted her focus towards the shelter animals and away from the private clinic animals. However, problems continued.

In an April 24, 2000, letter to Bernstein, Dr. Levin capsulated their recent conversations and documented her position on a number of issues. She noted that the personnel problems between the veterinarian and staff at the Lacey medical department and "your reticence to support my directives, as well as your tendency to overrule them," rendered it impossible for her to fulfill her supervisory obligations. Addressing Bernstein's "belief" that the expenses charged by an area clinic for providing emergency care to strays picked up during evening hours "were far too great," she noted that she carried a pager in order to be available after hours to respond to questions of emergency care. She criticized his idea of having a veterinary technician, who resided in an apartment at the Newark shelter, treat the emergency cases as untenable in all but the most simple and routine cases. She advised him that many cases require two individuals with veterinary experience and that in difficult cases, which most of the situations appeared to be, the animals would still have to be sent to the animal hospital for proper treatment. Fearing that animals would be euthanized instead of provided with proper care, she stated, "It is outrageous to commit to providing emergency service, but euthanize an animal due to the inability of obtaining a necessary radiograph or providing essential and stabilizing intravenous fluid therapy." Dr. Levin requested to appear before the Board of Trustees to present the issue of emergency care:

I asked that I be able to present my position for support at the April 24, 2000 Board meeting, but you preferred that no outsiders be present at the meeting. I asked that I might submit my position in written form for Board discussion. You granted this request, and I believe the best route for resolving this difficulty is to have the Board review this letter and to have you respond to me, in writing, with your final comments.

Dr. Levin concluded the letter by stating, "Until I receive written, supportive comments from you and the AHS Board of Directors, my pager will remain with the Society (as well as the attendant responsibility for emergency coverage) and Lacey Medical Department management will be in your purview." In an addendum to her letter, Dr. Levin stated,

I have maintained, for a long time, that it is abhorrent to run private practices (Newark and Lacey) at the expense of AHS shelter animals. I believe that the private practices are potentially terrific financial enhancements for AHS, but their existence is dependent on adequate staffing and ability to address our primary concern, shelter animal issues. My contract reflects this belief.

The minutes of the April 24, 2000, Board meeting reflect its decision to have the drivers contact Dr. Levin at night "when a sick/injured animal appears to be in serious condition" and

for Dr. Levin to decide if outside "emergency vet care" is warranted. However, subsequent events confirm that Bernstein ignored the procedure.

the end of Dr. Levin's Towards employment, AHS hired a veterinarian to work on Saturdays to handle the private clinic animals and, thus, to generate more income. Dr. Karen Negrin worked for only 16 Saturdays before tendering her resignation because of what she considered to be "illegal" activities. The first incident concerned her fortuitous observation of a veterinary technician performing a spay operation on a shelter cat.<sup>77</sup> The second incident occurred when shelter workers were going to euthanize a dog after it bit one of the workers. Dr. Negrin emphatically told them that the dog had to be quarantined for 10 days and that an incident report had to be filed. It was necessary for her to threaten to report the incident to the state if she did not find the dog quarantined when she returned on the following Saturday. This incident "broke the camel's back" and Dr. Negrin submitted her resignation. She told the Commission that while Dr. Levin remained at the facility pending the hiring of her replacement, she was able to complain to her and "things would be taken care of." However, once Dr. Levin left, "I was out on my own." Dr. Negrin believed that matters were not handled properly and "that I could not correct [them] by myself so I gave notice and left."

After Dr. Levin resigned on June 16, 2001, the shelter remained without the services of any veterinarian for almost two months until Dr. Wallace Wass was hired to begin on August 11, 2001. Dr. Wass opined that the shelter and clinic operations warrant the hiring of a second veterinarian. He admitted that he relies upon two veterinary technicians, who received veterinary training in their respective native countries of Cuba and Romania, to attend to the shelter animals. He stated, "There probably isn't an

 $^{77}$  The incident is detailed in the chapter entitled *Violations of Law*, at pages 129 to 130.

animal here that doesn't have some type of disease." He typically visits the shelter area once a week, primarily to check on animals held for observation in bite cases and to determine whether animals should be euthanized within the seven-day holding period. Although his contract identifies the shelter animals as his primary responsibility and that he is to "perform clinical duties" only "as time allows," the majority of his time is spent on the clinic practice. Most of the time that he spends on shelter animals is to perform spay or neuter operations on animals selected for adoption. It is the technicians who examine the animals prior to their adoption. He admitted that adopted animals frequently are brought to the clinic because they are sick. Stating that Bernstein is "very cost conscience," Dr. Wass acknowledged that Bernstein becomes "very upset" with the cost of having an area emergency hospital render care to injured animals picked up at night. Dr. Wass also believes that "too much money is spent" on their emergency treatment. He added that Bernstein is "always" concerned about cutting costs -"everyone knows he screams about cost."

## TINTON FALLS ANIMAL CARE CENTER

In 1974, AHS purchased an existing kennel on 2.2 acres of land at 2960 Shafto Road in what is now the Township of Tinton Falls and officially opened its second shelter facility. Following the purchase of additional acreage in 1998 and 2000, the shelter currently sits on close to six acres. The original facility included 31 indoor/30 outdoor dog runs and a cat court. In June 1998, AHS completed a renovation of the original kennel and the construction of a new kennel, which added 32 indoor dog runs and isolation and examination rooms. In January 1999, a new cat shelter was erected to replace the existing structure. In contrast to AHS's two other facilities, the Tinton Falls operation has consisted solely of an animal shelter and has never included a veterinary clinic either for the shelter animals or the public.

Change has been slow in coming to this shelter. The 1998 and 1999 renovations and new construction significantly improved appearance of the facility and enabled it better to accommodate the number of animals. They are attributed to Bernstein's realization that they were necessary to keep pace with the increasing number of strays impounded under the municipal contracts. The improvement in the medical care of the animals and the cleaning of the animal enclosures has occurred only in the last several years. Further, it was not until 2002 that the administration addressed problems of drinking and drug use by kennel workers and of some workers leaving early and having others punch their time cards. Nevertheless, more needs to be done. Clark listed this shelter last in terms of proper medical care and could not vouch that the animal enclosures are disinfected on a daily basis. In addition, the staff still includes individuals who do not care about the animals and do not properly execute their responsibilities.

Described as the exclusive domain of Bernstein, the Tinton Falls shelter has been the neglected facility in AHS's empire. None of the top managers have been located there and although Bernstein has visited on a weekly, sometimes daily basis, he reportedly has not ventured into the kennel areas very often. The Assistant Directors have visited infrequently and only for limited purposes, the one to address an occasional personnel problem and the other to take photographs for Humane News. An on-site veterinarian was never located at this shelter, except for a couple of weekdays between January 2000 and June 2001. Perhaps because there has not been a full-time veterinarian, sick or injured animals languished to a far greater degree at this shelter than those at the two other facilities. Because of Bernstein's drive to contain costs, euthanasia was the prescribed

Although at any given time the treatment. shelter may not have been marked by overcrowding or unsanitary conditions, such problems existed at an alarmingly high rate. Underlying every problem at the shelter was the issue of money. Not only did Bernstein refuse to spend money, but he was driven to generate revenue, even when it contravened the welfare of For example, despite the the animals. willingness of personnel or volunteers to adopt a very sick or injured animal that was destined for euthanasia and to assume the cost of having the animal treated by a veterinarian, Bernstein nevertheless exacted substantial adoption fees from them.

Prior to and during 1998, the shelter typically was overcrowded, was plagued by unsanitary conditions and was lacking in veterinary care. A veterinary technician was not even hired. The yelping of dogs was loud and constant. Proper cleaning procedures and use of bleach to sanitize the animal enclosures were the exception. Individuals reported Commission that on their first visit to the shelter, they encountered a stench so overwhelming that they had to leave to avoid becoming physically The shelter suffered from inexperienced, uncaring and ineffectual managers and untrained, indifferent and even sadistic workers. formula proved deadly for the animals. Bernstein thwarted the efforts of veterinarians at the Newark and Lacey clinics to implement procedures for the proper care of the animals. Dr. Cynthia Rockafellow, who was assigned to the Lacey clinic between 1994 and 1998 and had a supervisory role over the medical care of the Tinton Falls animals, found the shelter to be "a continuing problem." When Dr. Lisa Levin became the supervising veterinarian of the Tinton Falls shelter in 1998, she sought to establish a protocol for the humane care of the Bernstein constantly animals. However, overrode her directives to shelter staff. After becoming Director of Veterinary Services in 1999, she found that of the three facilities, the Tinton Falls shelter was "the most troubling."

The individual who became the manager of the shelter in 1997 graphically portrayed the conditions at the time of his arrival. Arriving from the Newark facility, where he was a driver, described the conditions as "horrible, terrible." Euthanized animals were "all over the place – in piles in the back. There were mice, cockroaches and mice feces all over." There were five or six animals to a cage. Workers cleaned the dog kennels by throwing bleach on the floor and hosing them down. They did not powerwash the runs. Generally, repairs were not made and the facility was very run-down. The paint was peeling. Cages were broken. Because Bernstein was always "in charge" of this shelter and countermanded his instructions to the staff to improve the care of the animals, the manager asked to be relieved of his responsibilities. He was allowed to resume his position as a driver and remained at the shelter. He opined that after the completion of the 1998 renovations, the facility and conditions improved 80%. remarked, "Finally, I saw some money being spent."

When the top administrators appointed an employee at the Newark facility as the manager of the Tinton Falls shelter in October 1998, they advised him that despite the expenditure of substantial sums of money to enlarge and improve the facility, problems remained. The new manager termed the shelter "the forgotten Proper recordkeeping regarding the animals was not maintained. Male and female animals were not always segregated. inordinate number of animals were sick because they were not properly diagnosed and medicated. Approximately 75% of the cats had to be euthanized because they were diseased. The absence of proper cleaning and disinfecting procedures also contributed to the high degree of illness. He stated that it was "an ongoing battle" to have the workers clean properly. His efforts

to convince Bernstein to pay more to the workers were futile. The storage area where the bags containing euthanized animals were kept was "an absolute horrible mess." Frequently, the freezers could not be closed because they were packed to capacity and contained blood and maggots, which covered the workers when they removed the carcasses. Because of his good relationship with Trezza, who was in charge of the adoption process, the manager was able to increase the adoption rate by easing the guidelines. He also transferred some of the animals to the Lacey facility because animals there had a better chance of adoption. The priority given to the clinic animals by the veterinarian at the Lacey facility delayed the spaying or neutering of animals selected for adoption at the Tinton Falls shelter. According to the manager, this delay caused an overcrowding of animals at times and the ensuing, unnecessary euthanization of many of them. Up until the time that he resigned in May 2000, he attempted to conceal from Bernstein the bills from an area hospital where animals were sent for emergency care after normal business However, when Bernstein discovered some of the bills, he directed that they be sent to the post office box that he controlled. Thereafter, with each bill, he questioned why the animal was treated. He remarked to the manager, "The State says we just have to make them comfortable. We can't send them all to the hospital."

Reviewers with the Animal Assistance Program of a prominent philanthropic foundation documented the conditions of the shelter in early 1990, July 1994 and late 1998 in response to grant applications submitted by AHS, all of which were denied. In 1990, the evaluator found the physical plant to be "substandard" and the animal care to be unsatisfactory. One example cited in the report was the cat room, which also contained small and medium-size dogs. The report stated that in addition to "the health and stress problems of mixing these species in a confined area, the dogs were placed in

inadequate and antiquated caging that would not even have met USDA minimum standards for laboratory animals." It concluded, "That [Bernstein] should have a bank statement like his while operating this shelter in this manner is unconscionable." In 1994, another reviewer found the facility to be "a scaled down Newark facility" with severe overcrowding of dogs and "extreme" odors, which indicated that the kennels were hosed but not disinfected. response to questioning, the office staff stated that the adoption fees included a veterinarian examination. However, no such examinations were being provided. In 1998, the evaluator reported that the outdoor cat colony was "most appalling with incredible overcrowding"; that there were four times as many cats as there should have been for its size; that there were all degrees of sickness and disease; that there were "lots of sick cats" with diarrhea, vomiting and upper respiratory infections, and that there was an insufficient number of litter boxes, with only two boxes for 40 to 50 cats. The indoor cat colony was small and the overcrowding was even worse. In addition, the dog cages were very old, "which should not be with the amount of money that AHS has," and the adoption fees were not fixed amounts and were higher for purebred dogs. The reviewer also recorded that staff members ignored her for 45 minutes until she asked questions of one employee. When she inquired about volunteering, she was advised that they were not allowed any longer because of liability issues. She opined in her report that insurance companies offer liability policies for volunteers.

Shortly after the March 1998 New York Times article reporting the allegations of volunteers who were banned from the shelter, an official with a prominent New Jersey animal welfare association made several visits there. Although she found that the dog runs were clean, she observed sick animals that were not receiving medical care. There were many emaciated puppies with distended stomachs and

runny eyes. The vast majority of the 30 cats in the cat cage appeared to be suffering from an upper respiratory infection, which is highly contagious. The cattery contained only four litter boxes, which were filthy, and porous materials upon which the cats rested. Two cats that had open sores were not segregated from the general population and, according to an attendant, were not being treated. When the official reported her findings to Bernstein, he replied simply that all of the cats would have to be euthanized because of their condition. In the spring of 1998, individuals with the same association reported that some runs contained up to five large dogs, that sick dogs were housed with healthy ones, that cat enclosures included both healthy and sick animals, and that many of the automatic water bowls were filthy.

During the past decade, the shelter has had a series of six managers. Not only did they lack any background or experience in shelter management, but most demonstrated no interest in the animals' welfare. Some managers rarely ventured into the kennel area. Others were unresponsive to repeated complaints about improper drainage of the waste and poor cleaning methods. Even though sick or injured animals languished in cages until they were euthanized, managers refused to allow volunteers to take the animals to veterinarians at their own expense. As a result, volunteers arranged for their friends to "adopt" some of the animals and paid the fees themselves. They then placed the animals in other shelters or had them fostered until they became healthy and adoptable.

Similarly, the vast majority of kennel workers failed to care adequately for the animals. Allegations of workers' neglect and abuse of the animals abounded. There never has been any screening process for the hiring of workers or training program for new staff. In general, the effectiveness of the kennel staff was dependent not upon any scrutiny or oversight by the managers, but upon an individual's personal

concern for the animals. Workers placed aggressive and nonaggressive dogs in the same run, healthy and sick dogs or cats together and, on occasion, unsterilized male and female dogs in the same cage. Some workers turned the hose on the dogs that they deemed to be difficult. It was not uncommon for workers to taunt the animals or to yell at barking dogs to "shut the fuck up." Syringes and needles that were dropped on the floor were still used on the animals. The only training that workers had in administering shots was their own experimentation or instruction by others who also lacked formal training. Staff members who were interested in having sick animals treated usually had to assume the responsibility of deciding which medications to administer to them. A couple of well-motivated individuals even read books in an attempt to educate themselves on the treatment of certain illnesses. However, experimentation was the instructor. One "technician" confessed to being appalled by her own actions when a dog became lame after she injected a distemper shot into the animal's leg instead of under its skin.

Bernstein's response to the poor quality of workers at this facility has been to say that the cleaning of cages and runs is a very unpleasant task that very few people are willing to undertake. He has denied that salary is a factor. While there may be some validity to his argument concerning the nature of the work, it nevertheless overlooks the organization's failure to screen applicants regarding their attitudes towards animals, to train them, to supervise them and to offer them more than the minimum wage. As a result, there have been, and continue to be, workers who taunt the animals and misrepresent the aggressiveness of those they do not like in order to have them euthanized.

The combination of a lack of procedures and an untrained and uncaring staff has impacted adversely on the public. Some staff members were indifferent to visitors interested in adopting

animals, while others were rude to inquiring individuals. When stray animals were brought to the shelter, employees did not consistently check them against the list of lost pets reported by their owners. Consequently, pets were not always returned to their owners, but were euthanized or were adopted to others. Staff often delayed in picking up the feral cats that were caught in traps provided by AHS. Incorrect or conflicting information was given to persons who contacted the shelter. For example, area residents who inquired about the need to alter stray cats were told that males do not have to be altered. The adoption fees quoted to individuals depended not upon a fixed schedule, but upon the particular staff member. Individuals were quoted one fee over the telephone and a different one when they appeared in person. One individual, who inquired about the adoption of a particular cat whose untreated neck was swollen from ear mites, initially was told that the fee was \$65, later was quoted a fee of \$100 and finally was allowed to pay \$75 when she informed the employee that she only had that amount of money with her. The staff also has quoted different fees for the cremation of pets. As recently as January 2002, inconsistent fees were given by telephone to Commission staff.

The conditions of the facility are depicted in detail in the following accounts of managers, workers and volunteers:

- Animals that were filthy upon arrival were not cleaned before or after being placed in cages.
- All too frequently, the kennels were severely overcrowded. Although each dog run reasonably held two animals, four large dogs or up to eight small dogs typically were housed together. As a result, even if the dogs were able to turn around at times, they were not able to lie down. The problem was exacerbated during the

winter months when the dogs were not allowed to enter the outside portion of the runs and, consequently, were unable to lie down or were forced to lie in their own feces.

- Workers made no attempt to segregate the animals by temperament or size. As a result, there were instances when a dominant dog prevented more timid ones from eating or from entering the inside run from the outdoors, even in the cold weather. Another consequence was fighting among the dogs. When that occurred, the wounds of injured dogs were not always cleaned. 1997, three dogs in a run attacked a fourth dog, leading to injuries that resulted in its death.
- Overcrowding extended to the cats as well. Designed to hold 15 to 20 cats comfortably, the cat court typically housed 50 to 100 cats. Two cats to a cage was the exception and four or more cats was common.
- overcrowding became SO severe that euthanasia was the only recourse. mass euthanasia performed on an indiscriminate basis. However, euthanasia could always be employed because the freezers used to store the dead carcasses were filled to capacity and At these times, the overflowing. already overcrowded conditions became even more severe.
- Animals were not always sedated before being euthanized. Both kennel workers and volunteers attested to dogs being given heart shots and yelping loudly in pain or convulsing before dying. Complaints to the

- shelter manager were futile. It was suggested to Commission staff that this method of euthanasia was employed because of directions by Bernstein to conduct the widespread euthanasia quickly. There also were instances of cats being tossed into plastic bags before they were dead.
- The shed where euthanized animals were stored typically was overloaded. It became a haven for flies and maggots, and blood often pooled on the floor. Workers who had to remove the carcasses were not provided with protective clothing.
- There were occasions when the freezer doors could not be forced closed because of the volume of bags containing dead animals, when bags containing dead carcasses laid on the ground surrounding the freezers and when dead animals were piled in the room where the euthanasia was performed. Either because of the volume of carcasses or the age of the freezers, the inside of the units failed at times to maintain the proper temperature. As a result, carcasses became covered with maggots, some of the euthanized animals burst. spewing blood and debris, and workers became covered with blood. Nevertheless, the repeated occurrence of this deplorable situation failed to alter the procedure for emptying the freezers and disposing of the bodies. Trips to the landfill usually occurred everv three to seven weeks. Importuning by the workers had to occur before the manager contacted the Newark office to obtain a check for the landfill.

- Bags of feces were stored in a freezer that at times was packed to capacity with carcasses and failed to maintain the proper temperature. The same illclad workers had to carry these leaking bags, along with bags containing the animal carcasses, to the vans for disposal at the landfill.
- Animal carcasses were not always placed in plastic bags. The resultant stench was so severe that some workers vomited when they removed them to the vans for transportation to the landfill.
- Sick or injured strays that were brought to the facility typically languished in cages without medical attention or even pain medication. When Bernstein was asked to approve veterinary treatment, his standard response was to deny it because the animal would euthanized at the conclusion of the mandated statutorily seven-day holding period. On a few occasions, he directed workers to leave dogs that had been hit by cars in cages because "I'm not spending any money" on them.
- During the summer of 1998, animals were infested with ticks, but there was no medication to treat them. One worker attempted to remove them by hand.
- Because the cats' food bowls were not cleaned routinely, the food became moldy. On one occasion, numerous cats died after ingesting severely moldy food.
- The dogs ate food from metal boxes attached to the walls. These

- containers rarely were sanitized or even cleaned. Fresh dog food was simply added to the stale food. It was not uncommon for food to become moldy after the runs were hosed down. One worker admitted to cleaning the food bins only once a week and finding bugs in them at those times.
- The cleaning routine usually consisted of hosing down the cages with water without the use of any disinfectant. Bleach was applied only occasionally when someone dropped off a case from the Newark shelter or a volunteer used her own money to purchase it. When bleach was used, workers did not dilute it sufficiently or rinse the floors well, thereby irritating the pads of the dogs' feet.
- The drainage system was inadequate. The hosing down of the dog pens caused feces to collect in the trenches, which ran through the runs. This situation not only contributed to the stench, but also posed a serious health risk for the dogs that drank the water and ate the waste.
- The squalor contributed to the majority of dogs experiencing some type of upper respiratory infection. There was no system to administer antibiotics to every animal that required them or to administer them on a continuing basis to particular animals once treatment began. Exacerbating the dismal medical situation was the fact that sick dogs were rarely segregated from the healthy ones. The response to the occasional outbreak of parvovirus was to apply bleach in hosing down

the particular run containing the sick dog, but not the surrounding runs.

- Attention was not always paid to separating male from female dogs.
   Consequently, there were occasions when female dogs became pregnant while at the shelter.
- The cages in the isolation room were not cleaned and the animals were not fed or given water on days when the assigned employee failed to appear for work.
- It was not uncommon for workers to turn the hose on dogs and spray them in the face with water.
- After the group of volunteers was terminated in February 1998, there was insufficient staff to walk all of the dogs and many, if not most of the dogs were not walked on a regular basis.
- Wildlife, including injured ones, were always turned over rehabilitators in a timely manner, even though no staff person had experience in housing or treating There were instances when them. wildlife were kept at the shelter for inordinately long periods and when infant wildlife, including birds. squirrels and rabbits, were left in cages without proper care and feeding died. **Eyewitness** and soon observations during 1997 depicted the housing for rabbits as a wooden hutch with a leaky roof that was located to the rear of the kennel. The hay in the hutch usually was wet and moldy. One individual rescued four rabbits that were kept in a cage on the ground. The cage had no floor and

the rabbits were sitting in mud up to their shoulders. Even though they received no treatment at the shelter, the rescuer's veterinarian found that some were infected with mange, ear mites and ticks. One rabbit, which was rescued after about a three-month stay at the shelter, was losing its fur because the paper that lined its cage was changed infrequently and became soaked with urine.

Injured animals typically were placed in cages without medical attention and were eventually euthanized. Only occasionally, once or twice a month, were sick animals transported to AHS's Lacey clinic to be treated by the veterinarian there. Injured pit bulls, which were confiscated in investigations of pit bull fighting, received no medical care or even pain medication during the seven-day holding period before they were euthanized. When a stray cat that was covered with maggots was brought to the shelter, it was rinsed with water and placed in a cage without any medical treatment. It did not eat or drink and died within a couple of days. There were incidents where it took several days to transport dogs that were hit by motor vehicles to the Newark facility for medical attention. No treatment was afforded to a dog that had sustained head injuries in a fight with another dog at the shelter. When the wounds became severely infected, the animal was euthanized. The following additional examples are noted:

- In the fall of 1996, nearby workers failed to respond to the screeches of a puppy that was being attacked by two young pit bulls. One of the volunteers removed the puppy, which was bloodied around its face and ears.
- In the spring of 1997, an injured pit bull, which was seized during a raid on a pit bull fight, had numerous lacerations on its head, but received

no treatment or pain medication for the seven days until it was euthanized.

- In September 1997, a volunteer sought to take to her veterinarian a small dog that appeared very ill, but was not being treated. The manager finally was persuaded to allow her to take the animal, but only after the volunteer signed a waiver releasing AHS from any responsibility for the dog's condition and paid the full adoption fee. The veterinarian diagnosed the dog with malnutrition, a very high fever and severe kennel cough. With proper treatment, the dog made a full recovery.
- In the fall of 1997, no treatment was given to a dog that was covered with tar and resorted to scratching itself raw. When volunteers reported its condition to the staff, they were told simply that the tar could not be removed.
- In the winter of 1997, a choker chain was not removed from a stray dog before it was placed in a run. The dog later was found hanged when the choker became hooked on the chain link fence.
- During the last six months of 1997, a dog that was in the shelter for a month lost significant weight and became listless. When taken to a veterinarian following its adoption, the dog was found to be dehydrated, emaciated and suffering from a severe infection. During the same period, a dog received no treatment for an infection in both ears that eventually developed oozing pus.

- In January 1998, a cocker spaniel with a severe ear infection received treatment only when a volunteer purchased and applied a salve. Even though an individual wanted to adopt the dog and absorb the cost of the ear surgery, the manager refused to allow the adoption because surgery was required. However, AHS did not have the surgery performed and the dog ultimately was euthanized.
- In September 1998, a two-year-old Akita escaped from its owners' backyard late one night, was badly injured after being hit by two motor vehicles and, at the direction of the police officer who responded to the scene, was transported by an AHS driver to the shelter. The dog received no medical treatment. addition, although the dog wore a tag, no one at the shelter attempted to contact the owners. The following morning, upon realizing that the dog had escaped, one of the owners telephoned the shelter and was informed that his pet was there and was "fine." When his wife arrived at the shelter to claim the dog, she found the dog to be severely injured and unable to walk. Staff members had to assemble a stretcher to carry the dog into her automobile. While in the vehicle, the dog lost consciousness and died.<sup>78</sup>

The conditions under which the cats were maintained were particularly deplorable. From at least 1990, feral and domestic cats were

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<sup>&</sup>lt;sup>78</sup> Perhaps in a preemptive strike motivated by fear that the family would file a lawsuit for the inept handling of its pet, Bernstein had two summonses issued to the owner, one for failing to have a current license and the other for allowing the dog to run at large. The owner pled guilty to the charges and paid a fine in an effort to spare his family further anguish.

housed together. Feral cats were placed in a fenced-in outdoor enclosure that contained a shelter to provide escape from inclement weather. Rusty nails protruded from the fence. In an attempt to escape, many feral cats cut their paws on the nails. However, they were not treated and died if the cuts became infected. The situation was reported to the shelter supervisor and Bernstein, both of whom responded that the problem would be remedied, but no action was taken until a complaint was made to Dr. Levin during her visit to the shelter. She instructed the contractor who was working on the facility to correct the problem. Numerous cats also were crowded into a single cage. Sick cats were not isolated from healthy ones in the cat court, resulting in the need to euthanize scores of them when disease spread. Because the isolation room was too small and contained too few cages, sick cats were placed in very small cages that were intended for rabbits. Because antibiotics were not always administered, some of the sick or injured cats that were placed in the isolation room on one day were found dead on the next day. For a period of time, the responsibility of identifying cats with upper respiratory infection was assigned to a volunteer instead of a trained veterinary technician. However, the volunteer was reluctant to identify the diseased cats because they were euthanized instead of receiving treatment. In an attempt to treat some of the sick cats, a volunteer purchased the antibiotics tetracycline and amoxycillin from her veterinarian and surreptitiously mixed it in the food of these cats. She also purchased from her veterinarian kits to test cats for feline leukemia, a test that AHS did not perform. Sick cats were transported to the Lacey facility for treatment only if people wanted to adopt them. occasion, one manager used to encourage one of the volunteers, a cat fancier, to take a sick cat to her home to nurse it back to health so that it would not be euthanized and then return it to the shelter for adoption. The volunteer even took some of the cats to her veterinarian for treatment at her own expense. Although medications were

present at times at the shelter and instructions were given about their administration to some of the cats, the workers were not always diligent in administering them. Volunteers also brought cat food to supplement the shelter's inadequate supplies and frequently were the only ones who provided the cats with drinking water. In 1993, because the cat court had no roof, it was not uncommon to find six or seven dead cats following a rainfall. Despite AHS having millions of dollars in investments and the relatively low cost of the improvements, it was the generosity of a particular volunteer who loved cats that financed the replacement of the roof, as well as other improvements to the cat court and the construction of an area for feral cats. From May 1995 through August 2001, she contributed close to \$36,000 to improve the plight of the cats at the shelter. It was Bernstein who typically solicited her contributions with the argument that her generosity would save the lives of many cats.

It was not uncommon for the volunteers to fill the void in terms of providing or obtaining medical care for some of the shelter animals or improving their surroundings. From 1996 to 1998, they typically took matters into their own hands when their requests to the shelter manager or, in a severe case, to Clark were to no avail. For example, when a large dog had difficulty walking after becoming emaciated dehydrated, two volunteers took the animal to a veterinarian at a personal cost of close to \$800. One of them then adopted the dog, which resumed normal weight to become a healthy animal. It was a volunteer who noticed that a dog had a rope embedded in its neck. Because of the inordinate delay in transferring the animal to the Newark facility, the volunteer removed the rope and applied salve that she purchased. In addition, when one of the volunteers offered to have her relatives construct plastic platforms for the dog runs to replace the wooden ones, which were breeding grounds for germs and lasted only a couple of years, Bernstein balked at the cost differential, even though the plastic "beds" were more cost-effective in the long run. On their own, the volunteers had the plastic platforms built with monies generated by their fundraising efforts. Further, there was no outdoor area to walk the dogs, many of which had been at the shelter for months, until a fence was donated and installed by the volunteers to create such an area.

Shelter staff maintained no records to document the medical conditions of animals or the administration of medications. Instructions by some shelter managers to medicate certain animals were not always followed. workers failed to log the information that particular animals received medication, while others administered the medication only once, even though the instructions required that it be given several times a day. Because animals sometimes were returned to the wrong cages after the kennels were cleaned, medications were administered to the wrong animals and the ones requiring them never received any. Moreover, there were occasions when drug supplies were not replenished for several days.

Descriptions of the substandard shelter conditions also appear in letters of complaint filed with the state Department of Health and Senior Services and the local inspecting authority by individuals who visited the shelter to adopt an animal or because they contributed money to the organization. These letters date as early as September 1992, when an individual who adopted a dog complained that "we've never seen or smelled such filth. There were three or four dogs per run. The stink was as though you were in a closed room – the runs are Puppies are crowded together in outdoors. cages." [Emphasis in original.] A series of letters beginning in March 1994 and continuing through 1997 continued the themes overcrowding of dogs and cats, an overwhelming stench and filthy conditions. Some of the letters also charged that animals that entered the shelter healthy became sick after being there only a

week or two. A couple of complainants alleged that shelter workers were abusing the animals based on their observations that the animals were very aggressive towards the workers, but not the visitors. An October 1994 letter reported the author's observation of a dead cat in an outside doghouse and a "dying" cat lying on the grass, while shelter workers were reading newspapers and drinking coffee. A December 1995 letter related that many cats were housed in cages that were too small to hold a litter box, that healthy cats were located next to sick ones and that cats were housed outdoors in a chain link pen with a concrete floor that had only a covering overhead and provided no heat. A July 1997 letter reported the following conditions for the cats: those in the outside pens had diarrhea; one cat was drooling while lying in water and another was lying in a water dish and had black drool flowing from its mouth; the cages had no litter boxes; cat food was covered with flies, and domestic and feral cats were housed together, as were sick and healthy ones. The complainant charged that all of the animals were kept outdoors even though the temperature was in the high 90s. When she brought this to the attention of one of the workers, he retorted, "No one goes Some of the letters prompted in there." government inspections that confirmed the allegations and resulted in corrective action by AHS. For example, a 1994 complaint that dogs were lying in water and were crowded in the runs resulted in an inspection that found that there was overcrowding and that dogs were in fact lying in water in some of the runs because of a gutter stoppage that caused water to back up into the runs. At the direction of the inspector, shelter staff rectified both problems. Later in 1994, the local inspecting authority confirmed the existence of malodor in the shelter and made recommendations on how to address it. Significantly, AHS took action in these instances only after being directed by the inspectors.

During this timeframe, the setting of adoption fees was left primarily to the discretion

of the shelter manager. There was no consistency in the fees, except that substantially more was charged for purebreds. A number of individuals attributed statements to Bernstein about wanting to obtain a lot of money for particular purebred dogs. AHS set high adoption fees, up to \$300 for a purebred dog and over \$100 for a purebred cat, under the rationale that high fees would ensure that the person would care for the animal because it had value, would dissuade individuals from adopting the purebreds and encourage the adoption of mixed breeds, and would discourage persons from selling the animals to laboratories for testing. Although such rationale may have some merit, the fees were exceedingly high and often served to discourage caring individuals from adopting. Rarely did AHS staff make any attempt to assess the character of the person seeking to adopt in deciding the amount of the fee. Clearly, the fees were more reflective of the profit motive that drove many of AHS's policies. This motive is no better seen than in Bernstein's insistence that volunteers or employees pay adoption fees for certain animals even though they were to be euthanized or required medical treatment, which AHS refused to provide.

Despite extensive improvements in the physical plant in 1998, problems have continued into 2002. The shelter has not been well stocked with food for the animals and the current manager has delayed in contacting Clark for A volunteer and some shelter shipments. workers have purchased food with their own money. Similarly, the shelter has continued to experience an insufficient quantity of cleaning supplies, particularly bleach and dishwashing detergent. Requests to the current manager for these supplies frequently have been ignored. To remedy the shortage, volunteers and a couple of conscientious workers have used their own money to purchase dishwashing detergent, bleach and even sponges for the cages and dog runs. Some of the workers who clean the cattery have brought their own cleaning supplies

because of the poor quality of supplies provided by AHS. Given the assumption of Clark, who oversees the purchase of supplies and their delivery, that adequate supplies of food and cleaning products are always available, there is obvious breakdown in communication between the shelter and the administration in Newark. In addition, decisions on who is allowed to adopt typically have been left to whoever is at the front desk, resulting in the absence of a uniform approach. Although there have been improvements in the tracking of animals that arrive at the shelter, problems remain. As recently as the spring of 2002, a sick kitten, which had bitten a person, was brought to the shelter. However, not only was the animal not quarantined for rabies observation, but when it was found dead within a day or so of its arrival, it was transported to the landfill with other euthanized animals. Because of the shelter's failure to send its head to the state laboratory for examination, the individual was forced to undergo the series of vaccinations against rabies.

Although there has been significant overall improvement in the cleaning of cages and runs, the quality of the cleaning has continued to be dependent on the individual kennel worker. Therefore, visitors to the shelter at various times in 2000 encountered dirty conditions in the animal enclosures and a strong stench. During the summer of 2001, it was reported that some workers allowed feces, diarrhea and urine, even when it contained blood, to accumulate in the dog runs. At times, dogs laid in their own waste. Animal waste also remained caked on the bottom of some of the plastic platforms for periods of time before being cleaned. Even when available, disinfectant was not always used to clean the cages and runs. The mop that was used to wash an area after the waste was scooped was kept in a pail of water that turned brown from excrement. Although the drains fill with dog hair, they have not been cleaned on a regular basis and some workers merely have picked up the grate to the

drain and have washed the hair and waste down the drain, thus causing the system to become clogged. The animal enclosures used in the vans to transport animals rarely have been cleaned. As recently as July 2002, it was reported that they were crusted with blood, feces and vomit. The automatic feeders have not always been cleaned and dead mice have been found in them.

The daily cleaning of the cages and runs did not occur until the end of 2001. However, workers ignored the build-up of waste in the late afternoons when readying to depart for the day. For that reason, one volunteer has attempted to schedule her visits at this time of day to provide the cleaning. Another volunteer, who usually has visited during the afternoons on Saturdays and Sundays, has made it a practice to stay until late afternoon in order to scoop the waste from the runs because kennel workers "slack off" near closing time. The cages in the medical room generally have not been cleaned properly or disinfected. The cleaning protocol has appeared weakest on the weekends, especially during the middle to late afternoon when workers prepare to depart. The reports of accumulated waste in the dog runs on weekend afternoons, when the shelter manager is not present, was confirmed during 2002 by Commission staff, who found substantial accumulation in the runs of the old kennel, although not in the new kennel area. When a volunteer recently complained to the supervisor that puppies were moving through their waste in the cage, his response was that there was no one to clean the area, even though several workers were congregating outdoors. Compounding the difficulty in maintaining a clean environment has been the unavailability of the shelter's washer and dryer that were intended for the animals' blankets and towels. Because the machines have been appropriated by the wife of an AHS driver, both of whom reside in an apartment on the shelter premises, one of the volunteers takes them to her home to wash them.

Other problems have continued to plague the shelter. Food that is moldy or insect-infested is still given to the animals. In the summer of 2002, when Bernstein caught a worker discarding food that was infested with worms, he admonished, "Don't throw out perfectly good food - the worms are protein - they're mealworms!" Euthanized cats routinely have been left on the table in the medical room for hours before being placed into plastic bags and transferred to the freezers. The shelter still does not have birthing boxes. During the end of 2001, the several dogs that had puppies were placed in the medical room in cages that were so small that some of the puppies of two of the dogs suffocated. In addition, sick animals were kept in cages in this room even though spay and neuter operations were performed there. As a result, there was a high infection rate and sick animals that were treatable often became worse. The few individuals who continue to volunteer at the shelter have been bringing canned dog food for those animals that are unable to eat from the automatic feeders. On occasion, one volunteer has contacted Clark, who directed her to purchase the dog food and then obtain reimbursement. For a time in 2001, Bernstein halted the practice of giving feline distemper vaccinations to stray cats because of the cost. He remarked that a stray cat entering the feral cat court would not be leaving it.

The effectiveness of the current shelter manager, who has held the position since October 2000, is highly questionable. He has been described as incompetent, disinterested in the animals and Bernstein's "clone" in restricting the expenditure of monies. Although both Assistant Directors consider him unsatisfactory, Bernstein has continued him in the position. Originally hired by Bernstein in the early 1970s, he resigned in March 1995 and was rehired in July 1996. In April 1993, it was Bernstein's decision for AHS to give him a mortgage. The manager has failed in his supervisory responsibilities. implemented no He has

measures to investigate allegations of drinking and drug use by kennel workers during the workday, to prevent workers from taking extended breaks and lunch hours and from departing early, while others punch their time cards, and to ensure that all animals receive adequate medical care. He has instructed that ill or injured animals not receive medical treatment until after the seven-day holding period. He has directed that seemingly healthy dogs receive the dry dog food, while the donated, canned dog food be given to the dogs that are in the isolation room or are very thin. He has been unconvinced to modify his instructions even in situations where some of the dogs refuse to eat the dried food or small or flat-faced dogs have difficulty utilizing the metal feeders. He has taken no or delayed action in response to complaints that the dried dog food in the feeders was moldy. He has allowed food and cleaning products to dwindle before contacting the Newark office to replenish them. The manager's son, who is employed as a driver, has transported animals in a carrier that was filthy with blood and feces from other animals. In May 2002, he failed the test to become certified as an animal control officer, but providing such services continues municipalities. He has delayed in transporting severely injured animals to the shelter after picking them up. In July 2002, the Board of Trustees suspended him following one such incident, but did so only after an officer with the New Jersey Society for the Prevention of Cruelty to Animals demanded that some action be taken.

The level of veterinary care afforded to shelter animals has continued to be inadequate. The Lacey clinic has not been notified of all animals in need of medical care. Injured pit bulls, which are euthanized after the seven-day period, typically do not receive any medical attention. Despite the directive of the Board of Trustees that sick or injured animals requiring emergency treatment be transported to the area veterinary clinic, Bernstein still balks at the cost and presses for justification. Although the care

of sick or injured dogs improved considerably after the July 2000 cat incident, sick and injured cats routinely are placed in cages without any medical attention. The cost factor, as the primary reason for these situations. highlighted by Bernstein's instruction to an office worker at the end of 2000 to euthanize animals if that were cheaper than providing medical treatment. In the spring of 2001, volunteers and supervisory personnel were taking animals to outside veterinarians at their own expense. As recently as the summer of 2002, it was not uncommon for sick or injured animals to receive no medical care, even to ease suffering, during the seven-day holding period that preceded their euthanasia. The following specific examples are noted:

> In early 1999, an individual who witnessed a motor vehicle hit a German shepherd/Labrador secured the dog until an AHS driver responded to the scene to transport the animal to the Tinton Falls shelter. The dog had a compound fracture of the rear leg, with the bone protruding When the witness and bleeding. telephoned the shelter to inquire about the dog's condition, he was advised that because there is no veterinarian at the shelter, the dog would be transferred to the Lacey facility for medical treatment. dog arrived there more than two hours after it was picked up. When the witness contacted the Lacey facility, he was informed that the dog's leg would be wrapped in a soft cast and kept comfortable until its owner was located. His offer to pay to have the dog's leg set in a hard cast was declined because, he was told, nothing could be done during the seven-day holding period. He then arranged for television coverage of the incident. As a result of the media

exposure, AHS allowed him to adopt the dog for a fee and he took the animal to his veterinarian for proper treatment. No one ever claimed the dog and the individual has the animal to this day. When interviewed by the television reporter, Bernstein stated that AHS would have euthanized the dog after the seven days.

- In the summer of 2001, a family was interested in adopting a dog that had kennel cough, but was told that the adoption would not be allowed until the dog improved. However, after six weeks, the dog's condition worsened. The family persuaded the veterinarian at the Lacey facility to permit the adoption, but only after it completed a medical release form. The family the dog to its personal veterinarian, who diagnosed the dog not only with kennel cough, but also with an eye infection and a severe yeast infection. All conditions were treated and the animal recovered fully.
- September 2001, employee observed injuries to a dog after other workers used a pole loop to drag the animal from the old kennel to the new one, the employee filed a medical form to have the veterinarian at the Lacey clinic examine the dog and had the veterinarian notified of the incident by telephone. However, the dog was not transported to Lacey examination and was euthanized the next day.

The experiences of an officer with a county Society for the Prevention of Cruelty to Animals underscore the medical problems at the shelter. In the spring of 2001, a dog that was

severely matted received no treatment until after the seven-day holding period and only after the officer complained to Clark. As recently as September 2001, the current shelter manager admitted that not all stray animals receive medical attention during the seven-day holding The officer discovered that on period. September 29, 2001, a cat that had been picked up at night and placed in a cage was found dead the following morning. In 1998, when he discovered that the manager euthanized an animal during the seven-day holding period, he admonished him against the practice. manager told the officer that Bernstein had instructed him to euthanize pit bulls before the expiration of the waiting period. The individual who was the manager later confirmed this instruction to Commission staff. In addition, he stated that the instruction also applied to other animals, such as old or vicious dogs.

Individuals who are not well-suited to the care of animals continue to be employed as kennel workers and veterinary technicians. In order to clean the animal enclosures, staff members have held a leash or pole loop in such a way as almost to hang the dog while removing it from the run and also have thrown animals from one cage into another cage. In September 2001, as workers dragged a dog from the old to the new kennel with the use of a pole loop, the animal was screeching in pain and its mouth was Some workers deliberately have euthanized animals that volunteers and other staff members cared about. In particular, a "veterinary technician," who appears to enjoy the act of euthanizing, has selected animals to which volunteers and even office staff have become attached. The same individual also has exaggerated the condition of some animals when speaking to the veterinarian at the Lacey facility in order to obtain authorization to euthanize them instead of treating them.<sup>79</sup> Some of the workers

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<sup>&</sup>lt;sup>79</sup> On October 22, 2002, an officer with a county Society for the Prevention of Cruelty to Animals filed eight

have taken glee in taunting the volunteers with comments such as a particular animal "didn't go down easy" and the technician is "just killing and killing," she was told to stop, "but she's just killing and killing."

The uncaring attitude of some workers is reflected further in their irresponsibility when dealing with the public. During the last several years, there have been numerous incidents of staff members advising pet owners that their lost animals were not at the shelter, even though they were. Workers also have failed to notify some pet owners when their surrendered pets were going to be euthanized, even though they had paid the \$25 to receive a "humane call" in order to reconsider the surrender. In the summer of 1998, when a cat did not return home after being allowed outdoors, her owner contacted the shelter and learned that the cat was there. He arrived at the shelter within a couple of hours only to learn that his family cat had escaped for some unknown reason. The cat was never located. The owner declined Bernstein's offer to select one of the shelter's cats. In June 2001, a rescuer of cocker spaniels was contacted by someone at the shelter and asked if she would be interested in taking two cocker spaniels that just had entered the shelter. She agreed to take both. However, when she arrived the following day, she learned that one of the dogs had been euthanized, even though it was tagged for her pick-up. No one at the shelter could offer any explanation.

Accounts of the veterinarians. A primary area of neglect at the Tinton Falls shelter has been the medical care and treatment of the animals. The shelter has never had the benefit of the presence and services of a full-time veterinarian. In contravention of state law, for a period of time in the early 1990s, veterinary technicians working in the Newark clinic were dispatched to the Tinton Falls shelter to perform

complaints against this individual for needlessly euthanizing kittens and a cat.

spay and neuter surgeries on a weekly basis. During the mid-1990s, despite the absence of veterinary services, the shelter manager rejected the offer of a local veterinarian to volunteer his services at the shelter. The manager lied when he stated that the facility had a veterinarian on staff. Aware of the overcrowded conditions and the failure to render proper treatment to sick animals, the veterinarian opined that perhaps the facility was reluctant to have a professional learn of the conditions there.

The experiences of the veterinarians hired for the Newark and Lacey clinics highlight the extent of the medical problems at the Tinton Falls shelter. While assigned to the Newark clinic, Dr. Gloria Binkowski trained two workers at the Tinton Falls shelter on how to euthanize an animal. Although her instructions included the sedation of the animal first, top management told her that sedatives would not be purchased because of the expense.

While Dr. Cynthia Rockafellow was stationed at the Lacey facility from September 1994 to April 1998, her responsibilities included the supervision of the Tinton Falls shelter because it had no on-site veterinarian or even a veterinary technician. She considered the shelter to be "a continuing problem" and opined that it was "still a problem up until I left." Because she made no more than four visits there and did not train the staff, she refused to establish anyone as a veterinary technician. She prepared a written medical protocol, which she gave to the three top administrators, but never knew if it was given to the workers or was posted at the shelter. She also did not know who was maintaining the required drug records. During visits to the shelter. Dr. Rockafellow encountered numerous problems, including a general lack of cleanliness, overcrowding and the failure to maintain an When she discovered that isolation area. untrained employees had access to medical supplies, she removed them. Despite her instructions to the shelter manager, the staff

continued to allow the adoption of sick animals, which were then brought to her at the Lacey clinic on an emergency basis. Occasionally, animals died following their adoption. The shelter manager failed to oversee the conduct of the workers, to implement her instructions for the care of the animals and to halt the injection of rabies vaccinations by the staff. When she learned of animals needing medical treatment or surgery, she had them transported to the Lacey facility. However, because there was inadequate room for them to recuperate there, the animals were returned quickly to the Tinton Falls shelter. Dr. Rockafellow could never be certain that the medicines that accompanied them were, in fact, administered to them. Consequently, she occasionally took recovering animals to her home so that she could properly care for them and even adopted some.

Dr. Rockafellow's efforts to examine and treat more of the shelter animals failed to improve their overall plight. Her complaints about the shelter manager to Bernstein and Clark were to no avail. In a meeting with Bernstein, Clark and the shelter manager, Dr. Rockafellow outlined the numerous problems and stated that facility was in need of extensive restructuring. Although everyone agreed with her assessment, no changes were forthcoming. Dr. Rockafellow's constant complaints about the various problems to Bernstein received a standard response of "got to do something," but he never did. Even when she communicated to him warnings by an official with the Department of Health and Senior Services, no improvements were effected. In her opinion, Bernstein's tactic was simply to "yes" her.

Beginning in January 2000, after leaving and then returning to AHS's employ, Dr. Rockafellow was assigned to the shelter on a part-time basis. She visited there three or four days a week to treat the animals and to oversee the medical protocol. She continued to believe that the shelter required a full-time veterinarian.

She "doubt[ed]" that the staff adhered to her medical protocol when she was not present and "wondered what they were doing when I was not there." She stated that there was adequate medical care only "when guided by vet staff." Moreover, the treatment room was not adequately equipped to perform surgeries on the animals. She opined that the rate of euthanasia was as high as it was because she was not there every day. By the end of 2000, Bernstein transferred Dr. Rockafellow to the Lacey facility with no supervisory role over the Tinton Falls shelter.

After becoming the supervisory veterinarian in April 1998, Dr. Levin began going to the shelter once a week for several hours and occasionally remained all day. On the other days, she spoke with the staff by telephone. However, after a while, because of the demands of the Newark facility, she sometimes did not go there for two or three weeks. Her increasing workload at the Newark clinic reached the point that, at times, an entire month passed before she was able to make a visit. Although the shelter required her continual scrutiny, she was not able to provide it. She believed that the shelter housed a sufficient number of animals to justify the presence of a full-time veterinarian or, at the very least, a full-time technician, but was unable to convince Bernstein. Her increasing frustration that problems continued unabated compelled her constantly to threaten to resign. She remained with promises that there would be improvements, but those promises rarely materialized. For example, her repeated requests to have a heating and air-conditioning system installed because of serious problems with heat and humidity fell on deaf ears until she threatened to quit.

When Dr. Levin began visiting the shelter, she found that the staff did not properly sanitize the cages and runs or render proper care to sick and injured animals. She also observed moldy food in the animal cages. Some of her

immediate actions were to create an isolation room and, to lessen the stress on the animals, to direct that the dog and cat enclosures be rearranged so that they were not facing each other. It was immediately apparent to her that a solution of diluted bleach had not been applied in a long time to disinfect the facility. When she directed the staff to use a bleach solution, workers failed to dilute it properly and the fumes caused corneal ulcers and breathing problems for animals and irritated the paws of dogs. subsequent visits, when she questioned workers as to when they last sanitized the facility, they told her that it had not been done for several days. She then had them clean while she was there. Dr. Levin repeatedly provided the staff with written protocols on the proper cleaning of shelter cages and runs and the identification of pain and suffering in animals, but never saw them on her subsequent visits and the workers never implemented them on a consistent basis.

Dr. Levin discovered numerous other problems at the shelter. When she observed that domestic and feral cats were housed together, she had to argue with management to have them separated. Cats in the wild cat shed were being injured by protruding nails, a situation that she quickly remedied. There was no system for the recording and vaccination of animals upon entering the shelter. The animals were not tagged, did not receive any of the standard vaccinations such as bordetella or distemper, were not dewormed and received no treatment to prevent fleas or ticks. Further, medical records were not maintained on any of the animals. When Dr. Levin questioned the staff in the front office about the existence of such procedures and records, the standard response was, "We're real busy." The shelter manager served as the de facto veterinary technician, but on occasions when Bernstein observed her administering medications to animals, pursuant to Dr. Levin's directives, he questioned why she was tending to the animals when there were people in the reception area. As a result, Dr. Levin insisted that a full-time veterinary technician be hired. It was not until July 2000 that a shelter employee, who had no training or experience, was assigned the duties of a veterinary technician. 80

It was a constant struggle for Dr. Levin to have proper treatment rendered to the animals by an uncaring and unresponsive staff. visits to the shelter, Dr. Levin examined the sick animals and wrote orders for their treatment, in addition to sending written orders from Newark. However, she constantly found that the staff was not following her instructions to enter the orders into the computer. She prescribed medications for animals, with instructions that she be advised after three days if the animals were not responding to treatment, but was not notified. She could never be certain whether the medications were administered. In fact, some of the workers admitted to her that they were not giving the medicines, and there were occasions when she found that the bottles that she had sent from Newark for particular animals had not been opened. When she pressed the workers on their failure to implement her directives, their typical response was that they did not have time because they had to clean and, moreover, the animals were going to be euthanized anyway. Written notes that she left at the shelter for the treatment of particular animals seemed to disappear. She was unable to locate them on subsequent visits and no staff member claimed responsibility for filing them. When she reported to Bernstein the failure of the staff to implement her medical directives, he retorted, "Who do you get for minimum wage?" When she suggested that they be paid more, he responded, "You're not going to get them. There's an employment crisis in New Jersey."

Bernstein constantly countermanded Dr. Levin's directives, including those on the proper cleaning of the facility, to the managers and

<sup>&</sup>lt;sup>80</sup> Problems arose in connection with this individual's treatment and euthanasia of animals. See footnote 79 above.

staff. More often than not, Dr. Levin was unable to force the staff to do what she deemed proper for the animals because of his interference. She quoted Bernstein as saying, "Keep your nose out of my business." He also thwarted her attempts to have sick animals or those requiring surgery brought to the Newark clinic. He told her, "Do you know how much it costs to send a driver up to Newark?" The shelter manager also delivered Bernstein's message to her that animals could not be transported to Newark because "we're spending a lot on the road." Rather than formulate reasonable standards on which animals could be sent to the Newark clinic based upon the severity of illness or need for surgery, Bernstein established an absolute bar. animals that were selected for adoption were transported to the Lacey or Newark clinics for spay or neuter operations.

A series of letters authored by Dr. Levin to Bernstein documents her inability to have proper cleaning and treatment protocols implemented and reflects mounting her frustrations. In a letter dated November 17, 1998, in which she quoted the state regulations on disease control and to which she attached the Guidelines for Veterinary Supervision, she stated:

> While my contract requires that I perform medical services for AHS-TF animals, as needed, unfortunately, most of my efforts are to no avail. Too often are my medical directives lost, ignored, or independently modified by AHS-TF staff members. Despite my initial educational sessions with staff, turnover has not allowed the level of caretaker observation significantly improve. Attempts to educate new staff are thwarted by the workload they carry (i.e. - they aren't able to fit me in to their schedule); to the credit of some, they do advise me of sick, injured, or perceived-ill animals, when I am at AHS-TF. Still, this is no substitute

for grounding in the basics of *Recognizing Illness, Pain and Suffering in Companion Animals* (the title of an educational session created for the AHS-TF staff, and a copy of which I have attached to this memorandum).

Dr. Levin cited as an example an incident that had occurred the prior week when a worker found that a puppy was sensitive when she touched behind his right ear, but investigated no further. As a result, a large wound in the ear, in addition to multiple lacerations along the ear's border, went unnoticed and untreated for several days until her visit to the shelter. Dr. Levin noted as "[a]nother area of concern . . . the use of controlled substances . . . regard for their use is far too casual." Specifically, the staff failed to complete the "record-keeping [sic] logsheets" that she had provided for the "daily update of controlled substance use" and the shelter manager ignored her April 1998 memorandum "regarding this activity."

In a bold move, Dr. Levin concluded her November 17, 1998, letter by resigning her supervisory role over the Tinton Falls shelter:

> For repeated obstruction (intentional or unintentional) of my veterinary activities (including the disregard of my Veterinary Procedures handout), the casual regard for controlled substances, as well as the currently unsolved theft of controlled substances at AHS-TF (a situation which leaves me entirely uneasy), I am immediately terminating my supervisory role for the AHS-TF facility. Per New Jersey State law, I am required to notify the State of this change. I am obligated to do this, both to maintain my credibility and to protect my New Jersey State license. . . . Should there be a meaningful change in the operation of the AHS-TF facility, I will then reconsider my role. [Emphasis in original.]

Her offer "to provide veterinary services at AHS-TF, in accord with our initial agreement" went unanswered by Bernstein.

Nevertheless, Dr. Levin continued in a supervisory role in an attempt to render medical care to the animals. However, the failure of the staff to attend to their medical needs reached critical proportions by July 2000, as reflected in her July 6 letter to Bernstein:

With great frustration, I am compelled to inform you about medical procedural improprieties at our Tinton Falls facility.

Attempts I have made at setting medical care policy for Tinton Falls' animals have failed; this has been the focus of at least two other memoranda to you on this subject, as well as of many conversations with you.

I am recently aware of being bamboozled about the vaccination, deworming, and Frontline [preventive flea and tick medication] status of each Tinton Falls animal. Also, there has been cruel inattention to the emergency medical needs of two animals I can identify within just the past twenty-four hours: 1) Why was not the ill Maltese sent to Red Bank [emergency veterinarian hospital] for care? 2) Why was a severely injured, owned animal, picked up at the owner's house returned to Tinton Falls, instead of brought to Red Bank for care?

I have given AHS more than enough time to remedy the inattention to my directives, but these same directives have no chance of being observed, if the executive director ignores them. The following list of directives must be met, if I am to remain in a supervisory position for our Tinton Falls facility:

- 1) Night calls and injured animals must be the morning's first priority.
- 2) Animals on-treatment are next in order of priority. General rounds will follow.
- 3) HONEST records must be kept of vaccinations, deworming and Frontline applications.
- 4) The air conditioning system installation must be finished. I don't care whose fault it is.
- 5) Neither my medical judgment, nor that of Dr's. [sic] Finkelstein and Baris [the veterinarians at the Lacey facility] are to be second-guessed or countermanded by AHS lay members. Just this week, we have seen the cruel consequences of such behavior.

If these grievous concerns are not resolved by the morning of Thursday, July 13, 2000, I will send the attached letter to Dr. Colin Campbell [of the Department of Health and Senior Services]. I had hoped that my supervisory presence at Tinton Falls would have bettered the animals' lot. I am sad and disappointed that my sincere and significant efforts have been so thwarted by such malignant behaviors.

The continuing problems at the shelter prompted Dr. Levin to write a memorandum, dated August 18, 2000, to the newly appointed shelter manager. After noting his arrival at "the most troublesome facility at AHS" that has had "a legacy of problems long before your arrival as manager," she recognized his "pains to correct several outrageous inadequacies," most recently "the tremendous effort you made to properly update the . . . controlled dangerous substance Focusing only upon the (CDS) records." deficiencies of that week, Dr. Levin noted that staff failed to follow identification procedures for incoming animals, even though they had been at the shelter for nine days; that of

the four dogs that had been selected for adoption and transported to the Newark shelter for spaying operations, one dog turned out to be a male that required to be neutered, which makes a difference in the surgery time to be scheduled, and the remaining three female dogs were already spayed, and that the paperwork on one dog transported to the Newark shelter for surgery was accompanied by paperwork that indicated that it was "put to sleep." Nonetheless,

the most troubling event this week has been the Benadryl overdosing of the Boxer [sic] puppy. I repeated myself at least twice about the proper dose to administer to the puppy, and Kelly later calls to report that the pup was huffing and puffing after receiving a dose TEN TIMES GREATER than that prescribed. WHO made this mistake?! I had to check the toxicology text for an antidote; my lack of surety was borne-out by the text -"NO known antidote." Sure, there are non-specific methods that one must make to ensure (as best as one can) the elimination of the drug, but I really hate doing this with "NO known antidote" drugs. Unfortunately, this is the second time such a gross overdosing has occurred. It must NEVER occur again. [Emphasis in original.]

Dr. Levin went on to assert that her "faith in the Tinton Falls staff has not been mirrored with their attention to detail; it's been reflected as a repetitive and capricious abuse of my good will (and veterinary license)." She expressed "sad[ness] that the professional trust I had for the Tinton Falls staff has been so violated, and that so many animals have not received the care I expected for them" and admonished that in the future, "all medically-related mishaps will result in severe censure from me." She concluded by reaffirming their joint effort "to marshal the Tinton Falls staff into the staff they should be,

and provide our animals with the best care possible."

Dr. Levin's inability to make weekly visits to the shelter as a result of her increasing workload at the Newark facility, while problems at the Tinton Falls shelter persisted unabated, compelled Dr. Levin to relinquish her role as supervisory veterinarian over the Tinton Falls shelter. In a letter dated October 11, 2000, to Bernstein, she recounted the continuing problems and announced her resignation:

I find it is impossible to continue in my role as veterinary supervisor for The Associated Humane Societies' Tinton Falls facility. For my entire tenure, I have repeatedly called upon and expected both staff and administration to follow my lead in the provision of quality care for Tinton Falls animals; unfortunately, so many of my expectations (being those of anv humane and reasonable veterinarian) have been unmet. To this there remains a casualness associated with necessary vaccinations and deworming; today's review of cage cards finds that untimely vaccinations have been administered to most dogs (if, at all) in the Tinton Falls kennels, and inappropriate reconstitution of vaccines (found in the refrigerator) forced me to destroy sixteen doses. application (for flea and tick control) is questionable, judging by the heavily fleainfested Dachshund [sic] presented last week to Newark for surgery. While there has been significant improvement in the recorded use of controlled substances, it is still faulty; just today, I found a sixtyeight milliliter discrepancy in the Fatal Plus log. I also found an unused tube of eye ointment that I had earlier directed for use in a Tinton Falls cat who I had seen in Newark; when I questioned its pristine condition, I was told that the cat had been euthanized (without continued treatment of an improving eye, this unsurprisingly animal was not recommended by Tinton Falls staff for euthanasia). Another apparent lack of attention today's was ignorant demonstration of bleach use in the old kennel; dogs were locked outside for hours in the cold, while the fumes of undiluted bleach persisted well beyond the kennel's rinsing; my handout (as old as my tenure), graphically and verbally detailing proper kennel cleaning, has once more been "lost."

Although my vehicle's tire recall and the assessment of our newest veterinarian have made a physical presence for me at Tinton Falls difficult (at this point, perhaps monthly visits), I speak with them many times each day, perform their adoption surgeries, and attend their sick animals. Today's visit to Tinton Falls reinforces my belief in the need for a strong, fair manager, a humane, dedicated full-time veterinarian (or an experienced veterinary technician), and a willing staff. With the exception of emergency veterinary care coverage, I am unsatisfied with the progress made by Tinton Falls. While I am still very happy to provide veterinary care for Tinton Falls animals, I no longer feel that my efforts as facility veterinary supervisor will have any positive impact; as well, I believe that my credibility and livelihood veterinarian will be jeopardized, should I continue in a supervisory capacity.

Dr. Levin concluded by advising Bernstein that she would inform both the county and state health officials of her resignation. The same date, Dr. Levin notified in writing the state Department of Health and Senior Services and the Monmouth County Regional Health Commission No. 1.

Bernstein responded to Dr. Levin's resignation in a letter, dated October 13, 2000, which provided explanations and justifications to her specific complaints. Dr. Levin refuted each and every one in a reply letter dated October 17, 2000. Concerning Bernstein's statement that she had found the facility to be in "excellent" condition only a few weeks earlier, she stated,

On[] that day, I found an optimal staffing level, which permitted expected and proper care delivery for the animals. I was very much encouraged by this development; unfortunately, staffing levels declined, with a subsequent, significant, and parallel decrement in the level of care provided for our shelter I am quite aware of the animals. hiring/keeping difficulty kennel in workers at AHS-TF. I am also quite aware of the historical difficulties experienced by and associated with AHS-TF managers. The combination of poor staffing levels, sometimes poor staff, and management difficulties is disastrous for any attempt at proper care for our AHS-TF shelter animals. As my original letter **AHS-TF** stated, requires you staffing, fair appropriate strong, management, and a humane, full-time veterinarian (or experienced veterinary technician); anything less than this results in sub-optimal care for our animals.

Dr. Levin next addressed Bernstein's insistence that vaccinations were given to all incoming animals and that appropriate information on animals arriving at night was recorded:

As regards vaccine schedules, I do not agree with the "scrap paper" approach mentioned in your letter. Quickly penning an animal's arrival on "scrap paper" is an entirely unacceptable practice for the largest animal shelter system in New Jersey. My last visit

found very few animals vaccinated the day of arrival; most were vaccinated four to five days after arrival . . . and, that's if I could find a vaccine notation on the animal's cage card or computer paperwork. Also outstanding by their notational absence. were dates of Frontline application and deworming. Frontline is an appropriate method of flea/tick control in the shelter, and deworming is critically important to animal and human health. AHS animal comfort has been enhanced, and postadoption compensation requests for flea/tick veterinary treatments have been made negligible by our use of Frontline. On the occasions when our routine dewormer has been ineffective (certain parasites escape its breadth), adopters understand this, and we treat the cause. However, failure to administer our routine dewormer places our animals and adopters at risk; the Centers for Disease Control (whose deworming recommendations I have many times given to AHS-TF) has continued to warn of the zoonotic potential (i.e.-human roundworm infection originating from a dog/cat) harbored by all animals not dewormed by this common veterinary compound; I remember a New England Journal of Medicine article describing the loss of a child's eye due to a roundworm infection. AHS-TF staff must become more responsible in the performance and record keeping [sic] of animal treatment (vaccination, et[cetera]), if we are to provide an accepted standard of care for our animals, and to avoid future litigation inappropriate stemming from non-existent [sic] deworming practices.

Specifically, Dr. Levin dismissed as inaccurate Bernstein's explanations for an incoming fleainfested dog that did not receive a flea application and for a cat whose eye was not treated with the prescribed ointment:

Your explanation (or that given to you) of a flea-infested Dachshund's Frontline "miss" is unacceptable, and a different story than that relayed to me by [a staff member]. As well, I found no evidence of compliance with the medical orders I had given for a cat's eye disease.

On the issue of the use of bleach in cleaning the kennels, Bernstein stated that prior to receiving her letter, he had purchased a new pump for the proper mixing of bleach and water. Dr. Levin countered:

The use of bleach in the kennels was addressed by me on the day of my last visit. Only then, was a purchase order sent to Terry Clark for the purchase of a PVC pump for a fifty-five gallon drum that would contain a diluted bleach preparation. The reason for this purchase was that the metal pump had long been rusted, and so obviously never used. How, up until this time, had the bleach been used?

Bernstein concluded his letter with the admonition, "I truly hope you will reconsider your resignation from the Tinton Falls Facility and not put the Society in the untenable position of coping with the euthanasia of animals at Tinton Falls." In response, Dr. Levin closed her letter with the following:

While you have previously responded to my voiced concerns and letters with promises for improvement at the AHS-TF facility, the after-effects [sic] have been transitory. I believed and believe that yet another conversation or letter, prior to my resignation would have been gilding the lily. As there has been no meaningful change in the provision of animal care at AHS-TF, despite my exhortations, my resignation decision remains unchanged.

Dr. Wallace Wass, who succeeded Dr. Levin at the Newark facility, holds the title of Director of Veterinary Medical Services. In an interview, he stated that he runs the Newark clinic and that two veterinarians operate the Lacey clinic, but made no mention of the animals at the Tinton Falls shelter. He confirmed that none of the AHS veterinarians visits the shelter to examine or treat the animals. He was unable to recall the last time that someone at the Tinton Falls shelter telephoned him regarding the condition of an animal and assumed that the staff contacts the Lacey veterinarians. He has visited the Tinton Falls shelter on only two occasions, once prior to being hired when he accompanied Dr. Levin to each of AHS's three locations and again after he was hired in order to meet the staff. He admitted that he has not issued any medical or cleaning protocol for the shelter. In fact, he has not "looked" at the cleaning there. He believes that the Tinton Falls shelter should have a full-time veterinarian.

# LACEY (FORKED RIVER) ANIMAL CARE CENTER

In September 1977, AHS opened its 10.8-acre, newly constructed, third facility at Humane Way in Lacey Township. Today, the facility includes an animal shelter, the Popcorn Park Zoo, a pet cemetery and a clinic that is available to the public. It also is the location of the Animal Haven Farm and Kitty City. The facility is attractive, clean and well maintained and the animals receive adequate medical attention. The conditions are in marked contrast to the substandard ones that existed until only recently.

The Lacey facility has witnessed gradual improvement since its opening. In early 1990, a

formal veterinary clinic was established. Prior thereto, during the 1980s, when equipment and a hospital area were lacking, it was common for sick animals to be adopted and for new owners to have to take the animals to outside veterinarians for treatment at their own expense. Further, it was not until mid-2000 that extensive renovations to the shelter were completed and that the care and treatment of the animals, as well as the cleaning and disinfecting of the animal enclosures, greatly improved. In contrast, during the early and mid-1990s, animal enclosures were not routinely sanitized, disease flourished among the animals and a stench permeated the facility, due in part to an inadequate drainage system that constantly backed up. The workers received no training on cleaning, the care of animals or the identification of illnesses or injuries. Workers failed to address such common problems as particular dogs not eating because of the presence of an aggressive dog in the run. Sick animals were housed with healthy ones. Frequently, bags of food had to be discarded because they contained maggots or the food became rancid. The shelter was described as filthy, in contrast to the clinic, which was "spotless." Veterinary treatment for shelter animals was delayed because of the priority given to clinic animals. Local animal control officers who brought injured strays to the shelter at night had to leave them in cages without any medical attention. In July 1994, following AHS's grant application to a philanthropic foundation, a reviewer made a site visit and reported that the "facility for dogs was similar to the two other kennels in Newark and Tinton Falls. There was little to no ventilation for the animals and the odors were extreme." The report also noted severe overcrowding of the animals. The application was denied.

Problems at the shelter continued into the late 1990s. Sick or injured animals that were picked up during the night received no medical attention until the following day, regardless of how threatening the medical condition. They

were placed in the same room as cats and barking dogs, thereby causing further trauma to them. The relatively small outdoor cat cage housed 20 to 40 cats and included both domestic and feral ones. There was no prior screening of the cats for disease or to determine if they were altered.

During the 1990s and into 2000, the shelter was described as "dreary," dirty and malodorous. There was an inadequate ventilation system, which contributed to the stench. No system was in place to instruct newly hired employees on how to clean the animal enclosures. Consequently, the thoroughness of cleaning depended upon the motivation of the individual worker. Not every worker routinely cleaned and disinfected the feeders or enclosure Some did not even apply doors and walls. One manager instructed bleach to the runs. workers not to clean the cat areas too often with bleach because of the expense. If a dog refused to go into an outside run, then the inside run was not cleaned. The dog food in the metal feeders became moldy at times because some workers failed to replace the food. Few workers groomed the animals under their care. The workers understood that the priority of the veterinary staff was the private clinic animals and not the shelter animals, whose medical needs were addressed when there was time. A medical request form had to be completed before a shelter animal was examined, which usually occurred at the end of the day following the private clinic hours or at least within 24 hours. However, only when the temperature of cats exceeded 104 degrees was a medical emergency deemed to exist. kennel worker was responsible for giving an animal in his or her area the prescribed medication, but some workers were derelict in following the directives. The lack of caring by some workers was highlighted by their kicking dogs and by the actions of one worker who tossed an ill cat from hand to hand before euthanizing it.

Accounts of the veterinarians. As with AHS's two other shelters, the veterinarians provide startling accounts of the shelter conditions. They echoed the common complaint that management interfered with their rendering medical care to the shelter animals.

Dr. Iris Biely-Furlong, the veterinarian hired to perform spay or neuter operations on the shelter and private clinic animals from September 1994 to December 1998, described the shelter as "depressing," with severe overcrowding in the dog runs. She stated that no one kept a daily record in the clinic of the drugs that were stored or administered.

Dr. Cynthia Rockafellow was hired from September 1994 through April 1998 as the veterinarian for both the shelter and private clinic animals. She accused Bernstein, who usually visited the facility about twice a week, of constantly chastising her for treating so many of the shelter animals and keeping them alive at too high of a cost. She stated, "He faulted me so many times for treating so many animals." Bernstein often told her that she was spending more money to treat the shelter animals than she was bringing in from the private clinic. When he "screamed" about this, she retorted that she was taking care of the Lacey facility and that he should take care of the other AHS locations. The routine was the same each month when Bernstein reviewed the medical department bills. complained that she was spending too much money on medical supplies and the care of the animals. When she responded that the clinic was generating a lot of money, he responded that it was not enough and that the facility was costing far more to operate. Dr. Rockafellow opined that Bernstein was more concerned with "the bottom line" than with the care of the shelter animals. In response to his constant harangue. Rockafellow told Bernstein that she would work harder to produce more income. She then began to work additional hours, but Bernstein soon complained that she was accumulating too much

time. In addition, compensatory Dr. Rockafellow found that the medical department was inadequate for the treatment of the animals. Of prime concern was the insufficient number of cages for animals to recuperate. Her complaints about needing more space and more cages went unheeded. Further, there was no isolation room for the quarantine of animals. Repeated complaints to Bernstein finally resulted in his allowing her to utilize a donated trailer as the isolation ward.

Dr. Sambhu Ghosh, the veterinarian from May 1998 to February 1999, found that the managers at Lacey interfered with his treatment of the shelter animals. They did not want him to treat or medicate certain animals or, in some cases, to save an animal's life because of the cost. In addition, the clinic had inadequate supplies and equipment and purchased "cheap" medicines.

When Dr. Ariana Finkelstein began her employment in February 1999, she found that no care was provided to injured or very sick animals that were picked up during the night. Although she was available by telephone for consultation at night, she was not always contacted and, more importantly, did not examine the animals until the following day. She offered to go to the shelter at night to render immediate care, but declined to do so when AHS refused to pay her overtime or to allot her compensatory time. As a result of AHS's policy not to test incoming dogs for heartworm and incoming cats for leukemia and immunodeficiency virus, Dr. Finkelstein discovered that animals that she tested at the time of their adoption were too sick to be treated and, therefore, the adoptions had to be cancelled. In a meeting with the three top administrators and one of the Board members, she proposed that the testing be done on all incoming animals. She advised them that the testing for heartworm, for instance, was very inexpensive, but its treatment cost was in excess of \$100. If the condition were treatable, individuals were charged \$90. Her request to have the tests performed was granted, but was rescinded on the following day without explanation. In an interview, Trezza advised that Bernstein barred the use of the test because of its cost. Dr. Finkelstein resigned in June 2001.

In April 1999, Dr. Lisa Levin became Director of Veterinary Services and assumed responsibility for all three facilities. initial visits to the Lacey shelter, she found that dogs were facing cats, a configuration that caused stress for the animals and further depressed their immune systems. She corrected the situation. Even more disturbing to her was the discovery that shelter animals did not receive appropriate care because Bernstein told Dr. Finkelstein that her priority was the private clinic animals, which brought in the money. Although Dr. Levin advised her that her priority was to be the shelter animals when she was the only veterinarian there. Bernstein nevertheless admonished her that she was not responsible for the shelter and, in fact, praised her for building up the private practice. Because of the priority placed on the private clinic business, individuals who adopted shelter animals had to wait three to four months to have their animals altered. Dr. Levin was appalled to learn of this, but she was unable to persuade Bernstein to change the clinic's focus. Dr. Levin also was horrified that sick animals had to wait several days to be treated because Dr. Finkelstein was too busy client animals. with Shelter managers complained to Dr. Levin about animals not being treated. Dr. Levin opined to Commission staff that there was "a deliberate clouding of my responsibility by Bernstein."

In an April 24, 2000, letter to Bernstein, Dr. Levin documented her concerns and prior conversations with Bernstein about the inadequate staffing at the Lacey clinic and his overruling of her directives. She concluded, "Due to these restrictions, . . . my obligation to AHS" to supervise the clinic "is impossible to

fulfill" and, consequently, the "Lacey Medical Department management will be in your purview." In an addendum to the letter, she stated,

> I have maintained, for a long time, that it is abhorrent to run private practices (Newark and Lacey) at the expense of AHS shelter animals. I believe that the private practices are potentially terrific financial enhancements for AHS, but their existence is dependent on adequate staffing and ability to address our primary concern, shelter animal issues. My contract reflects this belief. While I disagree with your order to maintain the private practice at Lacey, given the veterinary problems we have experienced at that facility with regard to shelter animal care. I have nonetheless tried to create a balance (private practice/shelter) for [the veterinarian there]. These efforts have been unsuccessful, due to the reasons outlined in my attached letter. Each of those reasons must be resolved, before the Lacey Medical Department will run well.

Dr. Laney Baris was hired in July 2000. She devotes most of her time to performing spay or neuter surgeries on animals selected for adoption. Only a small portion of her time is spent on staff requests for the examination of shelter animals. From January 2001 until her resignation in September 2002, Dr. Rockafellow worked part-time in the clinic and did not treat any shelter animals. A veterinarian was hired immediately to replace Dr. Rockafellow.

# GOVERNMENTAL INSPECTIONS OF THE SHELTERS

The Commission reviewed the reports of inspections conducted of the Newark, Tinton Falls and Lacey animal shelters by the state

Department of Health and Senior Services (hereinafter DOH) and the local inspecting authorities. The reports detail the substandard conditions that existed, especially at the Tinton Falls shelter, and AHS's frequent failure to remedy the deficiencies in a timely manner. The inspection history also discloses weaknesses in the inspection system. Local health authorities failed to conduct an annual inspection every year. Municipalities issued the shelter license even though no annual inspection was conducted or no inspection immediately preceded the issuance to determine whether the shelter was in compliance with all applicable regulations. Officials also issued licenses in months other than by the end of June, as required by statute. Even when inspections disclosed substandard conditions, inspecting officials at times did not conduct the necessary follow-up inspections, conducted perfunctory ones or did not pursue enforcement action in the face of AHS's continued failure to take corrective measures. The absence of proper recordkeeping for the controlled dangerous substances maintained at each of the shelters, a serious problem at times, was never discovered in any inspection. vast majority of inspection reports did document the name of the supervising veterinarian. However, no effort was made by any inspector to question the veterinarian at the Newark or Lacey facility to ascertain whether adequate medical care was rendered to the animals at any of the The most glaring failure of the inspection program occurred with respect to the Tinton Falls shelter. The Commission's overall findings concerning the shortcomings in the inspection system are consistent with the conclusions drawn in its report on the Societies for the Prevention of Cruelty to Animals.

The DOH has promulgated regulations for the operation of animal shelters<sup>81</sup> that specifically mandate an annual inspection by the local health authority, a program of disease

<sup>&</sup>lt;sup>81</sup> See footnote 68 above.

control and adequate veterinary care.<sup>82</sup> Under N.J.A.C. 8:23A-1.2(b), the local health authority must issue an annual "certificate of inspection" to indicate the shelter's compliance with all applicable rules and regulations and the certificate must be "prominently displayed at the facility in an area visible to the public." It is a prerequisite for the municipality's issuance of the shelter license.<sup>83</sup> Pursuant to N.J.A.C. 8:23A-1.9(a), "Programs of disease control and adequate health care shall be established and maintained under the supervision and assistance of a doctor of veterinary medicine" and the supervising veterinarian annually must sign and date a Certificate of Veterinary Supervision indicating that "such a program is in effect at the facility." The form must be "posted in the facility in an area clearly visible to the public"84 and must be executed by the veterinarian "prior to the licensing of the facility in June" by the local health authority.85 The shelter license expires on the last day of June of each year.86

Despite these clear mandates, inspections were not conducted every year or prior to the issuance of the shelter license. In addition, officials with both the DOH and the local inspecting authority failed to notice that a Certificate of Veterinary Supervision was never posted at the Tinton Falls shelter or to request production of the document. If they had, they would have discovered that there was rarely a supervising veterinarian and, therefore, no "[p]rograms of disease control and adequate

health care" for the vast majority of time. Even after Dr. Levin authored a letter, dated October 11, 2000, to advise the DOH and the Monmouth County Regional Health Commission No. 1 that she was resigning her supervisory position with respect to the Tinton Falls shelter, no official pursued the issue to ascertain her reasons or whether she was being replaced. Finally, the inspection report, which consists of a DOHissued data form listing the areas to be inspected and a continuation data sheet for handwritten notations, was not always completed properly. Of the 38 reports of the inspections conducted of the three shelters from 1993 through 2002, the supervising veterinarian was not identified in 29% of them, the veterinarian who provided the euthanasia training was not identified in 84% of them and the method of euthanasia was not noted in 76% of them. If inquiry into these issues had been made, the inspectors would have discovered the irregularities that existed at times with respect to each area.

### **Newark Animal Care Center**

The City of Newark repeatedly failed to fulfill its responsibilities. Its Division of Tax Abatement & Special Taxes, License Unit, issued the license at times even though no inspection had been performed. Its Department of Health and Human Services did not conduct any inspection of the shelter in some years and, in other years, conducted an inspection but did The February 6, 1996, not issue a rating. inspection report by the DOH indicates that the city department had failed to issue an inspection certificate to the shelter since 1991.87 According to the veterinarian in charge of the Newark clinic during the late 1980s and early 1990s. certificates were issued even though the local health inspectors who arrived at the facility did not conduct inspections of the animal enclosures. During this period, Bernstein told the inspectors

<sup>&</sup>lt;sup>82</sup> N.J.S.A. 4:19-15.14 mandates that the DOH "promulgate rules and regulations governing the sanitary conduct and operation of kennels, pet shops, shelters and pounds, to preserve sanitation therein and prevent the spread of rabies and other diseases of dogs within and from such establishments." Further, the DOH and local boards of health must enforce the rules and regulations.

<sup>&</sup>lt;sup>83</sup> See *N.J.S.A.* 4:19-15.8(a).

<sup>&</sup>lt;sup>84</sup> *N.J.A.C.* 8:23A-1.9(a).

<sup>&</sup>lt;sup>85</sup> Requirements for Veterinary Supervision of Disease Control and Health Care at Licensed Animal Facilities, previously entitled Guidelines for Veterinary Supervision. The document is issued by the DOH.

<sup>&</sup>lt;sup>86</sup> *N.J.S.A.* 4:19-15.8(b).

 $<sup>^{87}</sup>$  It is noted that the city issued a certificate in 1995, but the shelter failed to post it.

that they could bring their pets to the clinic for services free of charge.

The inspection reports reviewed by the Commission from 1993 through 2002 reveal a pattern in the mid and late 1990s of facility disrepair, improper recordkeeping, lack of proper cleaning methods and the housing of healthy animals with sick ones. Further, it was not until January 1996 that DOH officials were apprised that animals were located in an area in the basement, which had escaped inspection to this point.

The earliest inspection report discovered by the Commission is dated May 2, 1975, concerning an inspection that had been conducted by the state on April 23. It revealed a variety of "unsanitary conditions." The inspector found that the pallets in the dog runs were in need of repair and/or replacement, the flooring of the outside runs was cracked and in need of repair, and the paint on the walls was peeling. Sick animals were not segregated from healthy ones. They included dogs with severe diarrhea, which was not diagnosed as to the cause, and dogs infected with distemper. There were rodent droppings in the feed storage area and the improper use of damaged and rejected cans of fish products for feeding. Bodies of dead dogs that were piled in the cremation chamber were incompletely burned, thereby resulting in the seepage of blood and body fluids from the chamber to the outside ground and attracting rodents and other insects.

According to DOH records, on October 11, 1990, a state inspector was dispatched to the Newark facility to conduct an inspection because of the receipt of "two complaints concerning potential violations of New Jersey sanitary code regulations." When he arrived, the official "was refused permission to do so by Mr. Bernstein. . . . Basically, his refusal to allow inspection is due to criticisms he has concerning the Department of Health's handling of other matters

unrelated to his facility." The DOH deemed his refusal a violation of N.J.S.A. 4:19-15.18, which provides that "[n]o person shall hinder, molest or interfere with anyone authorized or empowered to perform any duty under this act" and carries a penalty provision.<sup>88</sup> An internal DOH memorandum, dated October 29, noted "Mr. Bernstein's consistent attempts to challenge the Department's actions and authority in recent and previous years (permission for state personnel to inspect this facility was also refused by Mr. Bernstein in 1983)" and stated that "he is violating the law and liable for potential penalty actions." By letter dated January 2, 1991, a DOH official notified Bernstein that his actions were "in direct violation of state statutes," that an inspection would be conducted within two months and that any subsequent "refusal to permit official inspection of this facility will result in actions to be taken as provided by law." Pursuant to the letter, an inspection was conducted on February 6, 1991, and a satisfactory rating was issued.

The City of Newark failed to conduct inspections in 1992, 1994 and 1998. Satisfactory ratings were given for inspections conducted in August 1993 by the state; November 1993 by the city; March 1995 by the city; May 1996 by the state; July 1997 by the city; November 1997 by the city; October 1999 by the city; August 2000 by the city, and April 2002 by the city. However, some of these ratings are suspect in light of the violations uncovered during many of the inspections. Equally disturbing is the fact that officials failed to conduct follow-up inspections to ascertain whether the deficiencies corrected. Further, even though deficiencies were discovered during some of the inspections, only one conditional rating was issued, and that was by the DOH on February 6, 1996. Moreover, two of the inspection reports authored by the city failed to assign any rating.

<sup>&</sup>lt;sup>88</sup> *N.J.S.A.* 4:19-15.19.

Although the inspection conducted by the DOH on August 3, 1993, resulted in a satisfactory rating, the official found the following deficiencies:

- Housing unsound or in poor repair: The facility was in need of painting. The floor had chips and cracks.
- Unsafe primary enclosures: The chain link fencing in the dog runs had sharp edges.
- Improper disease control methods: The medical treatment of animals was not documented.
- Incomplete records and administration: The inspection report noted simply that the records were not complete, without elaborating.

There was no follow-up inspection to determine whether these problems were corrected. A city inspector performed an inspection on November 24, 1993, but did not address the areas of deficiency cited by the state official. His report did not include the data sheet itemizing the areas to be reviewed. The continuation sheet indicated that he was escorted "through kennel area and areas where cats and kittens stored" and that he "found no gross sanitary violations."

On February 6, 1996, the DOH conducted an inspection that yielded a conditional rating of the facility. The state official found that the facility did not have a current certificate of local inspection or a certificate of annual fire inspection and that it had been operating without a local inspection certificate since 1991. In addition, the following violations were uncovered:

• Dirty or hazardous buildings and grounds: During the cleaning

operations, the floors in the dog kennel area were "very slippery." There were cracks in the cinder block walls and concrete floors in the same area.

- Surfaces not impervious to moisture: Some of the dog pens contained wood beds that were not impervious to moisture.
- Improper handling of injured animals: There was no veterinary supervision of the diagnosis and treatment of sick animals. Although a veterinary technician was treating animals, she did not record the treatments and was "confused about treatments." The last medical treatment record was dated January 1995.
- Improper quarantine or segregation of sick animals: Sick animals were housed together with healthy animals. In the basement area, sick animals were located with pregnant dogs and healthy pit bulls.

The inspection was followed by a letter, dated February 15, 1996, from the DOH to Bernstein. The letter stated that a reinspection would occur within 60 days. The city conducted the reinspection on April 9, 1996, but failed to issue a rating. The report advised that the shelter should "[c]omplete repairing (scraping) and painting the walls of the kennel" and "[c]ontinue segregating sick animals from the healthy animals." The DOH official returned on May 31, 1996. Although he issued a satisfactory rating, he noted the following deficiencies:

 Nuisance created by the location or layout: Bags of food and cat litter were stacked in the aisles.

- Surfaces not impervious to moisture: Some of the dog pens contained wood beds that were not impervious to moisture.
- Improper sanitation: Animal enclosures were not properly sanitized.
- Improper procedures for holding and reclaiming animals: The facility set unreasonable requirements for the public to reclaim their impounded animals. No one was allowed into the basement to determine whether their lost pets were housed there. [AHS never changed the procedure in this regard.]

Significantly, the report failed to note the continuing inadequacy of records regarding the tracking of animals and their medical treatment.

Although a city inspector assigned a satisfactory rating for the inspection conducted on July 3, 1997, he found that the cleaning of the animal enclosures was substandard and needed improvement. He also noted the accumulation of debris in the lunchroom, a dirty microwave and the need for a proper garbage receptacle in the cleaning room. The city conducted a reinspection on November 19, 1997. Despite another satisfactory rating, the inspector again found serious deficiencies. The cleanliness and sanitation of the facility continued to be problematic. The official recommended that an extermination company be hired; that there be a general cleaning throughout the kennel area; that the medical areas be cleaned and sanitized on a regular basis, and that food items be removed from the floor.

The inspection conducted by the city on October 6, 1999, resulted in a satisfactory rating, but continued to find that cleanliness was a problem. The report noted the instruction to

clean the "incinerator exterior" and to clean the "female catery [sic]," "all cages" and "all walkways as often as is necessary."

On August 9, 2000, the city conducted an inspection and issued a satisfactory rating. The inspector again determined that proper cleaning methods were lacking. His report contained instructions to clean the floor of the holding room, to cover the barrels of exposed animal food and to paint areas of the kennel "where necessary."

On November 7, 2001, the city inspected the shelter, but the inspection report did not include the check-off data sheet or indicate any rating. The continuation sheet noted only that in the main kennel area, the staff must "clean [the] walkway and cages as often as is necessary."

The inspection conducted by the city on April 1, 2002, resulted in a satisfactory rating. Although the cover sheet to the report is marked as a "reinspection," there are no records to indicate an earlier inspection. The report included only a continuation sheet with the inspector's notes of his observations. However, it did not reflect all of the categories contained on the check-off data form.

### **Tinton Falls Animal Care Center**

The Tinton Falls Board of Health issued the facility a license for every year. However, no inspections were conducted in two of the years when a license was issued. Indeed, the Board of Health individual, who has signed the licenses since 1999, admitted that she has never reviewed an inspection report to ensure the shelter's compliance with all applicable regulations before issuing the license.

Inspections of the shelter were conducted in each year since 1989, except 1991 and 1993. During the 14-year period from 1989 through

2002, the DOH and/or the Monmouth County Regional Health Commission No. 1 conducted a total of 20 inspections, seven of which were follow-up inspections. One inspection necessitated four reinspections before the deficiencies were brought under control to a satisfactory degree. Eight of the 20 inspections, or 40%, yielded conditional ratings. Six of them were issued between October 1996 and June 1998, while both the inspection and reinspection conducted in December 2000 resulted in Despite findings of conditional ratings. violations on many occasions, follow-up inspections were not always conducted. deficiencies that were cited by the inspectors provide yet another layer to the history of neglect and substandard conditions that plagued this facility.

The shelter was the subject of numerous complaints filed with the DOH from as early as 1992. The complaints cited the filth throughout the facility, the overwhelming stench and the severe overcrowding of the dogs. The Commission's findings regarding the conditions of the shelter and the lack of proper care and treatment of the animals is consistent with the inspection findings made by the DOH.

According to the nine inspection reports that were filed from 1989 through 1997, shelter staff identified as the supervising veterinarian of the shelter either the veterinarian who operated the Newark clinic or the one who was located at the Lacey clinic. Only the report of the October 1996 inspection noted that the staff was unable to identify the responsible veterinarian and that the Certification of Veterinary Supervision was not on file. However, even in this instance, there was no follow-up to ensure that a veterinarian was assigned to the shelter. In the other instances, the inspectors failed to notice that the certification was not posted and never demanded that one be produced. Thus, they were not alerted to contact the veterinarians at the Newark and Lacey shelters. If they had done so, they

would have learned that the two Newark veterinarians never had established or maintained any program of disease control, never had provided health care to the animals and never had conducted any educational sessions with the staff on infectious disease control. Further, they have discovered that the Lacev veterinarian had visited the shelter only on four occasions and had deemed it to be completely proper medical procedures. Moreover, although staff members identified the veterinarian Lacey as the supervising veterinarian during the state's September 1997 inspection, the official determined that there was a lack of veterinary care for the sick animals. Nevertheless, there was no follow-up action to ensure that AHS remedied the problem. During the inspections conducted in March, May and August 1998 and in February 1999, the staff identified Dr. Levin as the responsible veterinarian. Although she had been hired in December 1997 for the Newark and Tinton Falls animals, she was stationed at the Newark clinic and visited the Tinton Falls shelter, at first, once a week and, later, not even every month. The inspecting official never contacted her to ascertain the level of veterinary care. If he had done so, he would have learned of the severe problems that she encountered and was unable to Further, after receiving Dr. Levin's remedy. October 11, 2000, letter announcing her resignation as the supervising veterinarian of the Tinton Falls shelter, not only did the state and county inspecting authorities fail to take any action, but the county office continued to list her as the responsible veterinarian on the inspection reports.

The inspection conducted by the DOH on March 8, 1989, resulted in a satisfactory rating. However, it contained no comments or even markings regarding the conditions of the shelter.

On June 13, 1990, the DOH conducted an inspection and issued a conditional rating because of insufficient space for the animals.

The report noted that "some cages still have to[o] many dogs." Although the official had assigned a satisfactory rating on the prior inspection, she noted in this report that "[c]onditions improved since last visit." In response to a letter from Bernstein that there was sufficient room in the enclosures for the dogs, the official revisited the shelter on June 18. On this inspection, she issued a satisfactory rating. Her report recorded significantly lower numbers of dogs and cats than appeared on her prior report, indicating that euthanasia was used to reduce the overcrowded conditions.

On October 23, 1992, the Monmouth County Regional Health Commission No. 1 conducted an inspection of the shelter. Although issuing a satisfactory rating, the official found that the doors to the outside runs were in poor repair, that the well had high coliform bacteria counts, that the septic system was not operating properly and that there was an infestation of insects in the facility. Despite the satisfactory rating, the DOH official who reviewed the county's report considered it to be conditional because of the findings and expected that a follow-up inspection would be conducted to ensure full compliance. However, the county did not inspect the shelter during the remainder of 1992 or at any time in 1993.

During 1994, three citizen complaints were filed with the county inspecting authority. Two of them triggered visits by a county inspector, but only one resulted in a full inspection. The visit made on March 9 was in response to a complaint that the shelter was very dirty, that dogs were lying in water and that there was severe overcrowding. The inspector found that there had been water in the inside runs on the prior day, but that the problem was rectified on the day of his inspection. He also noted that the overcrowding of dogs was reduced at the time of his visit. A second complainant charged that on April 6, feces, urine, blood and water were on the kennel floors, the smell was

"sickening" and dogs were being trapped between the glass doors and frames. When the inspector visited the shelter on the following day, the only allegation that he was able to confirm was the malodor. He directed that the shelter install larger fans and deodorize the kennel area. The third complaint was filed on October 13 by an individual who had observed a dead cat in a dog house, another cat "dying" on the grass and workers drinking coffee and reading newspapers. A county inspector, who went to the shelter on October 17 and performed an inspection, observed no infractions and issued a satisfactory rating. However, the staff provided him with the name of the veterinarian located at the Newark facility as the responsible veterinarian. Not only did the staff incorrectly spell the name, but the veterinarian had nothing to do with the Tinton Falls shelter. A simple telephone call to her by the inspector would have uncovered the misrepresentation.

Throughout 1995, the Monmouth County Regional Health Commission No. 1 received five complaints, which primarily concerned dirty conditions and the accumulation of feces in the dog runs. Each complaint prompted a visit by the county inspector, who confirmed the allegations in only one of the complaints. The inspector visited the shelter on July 6, after receiving concerning complaint an accumulation of dog feces in the dog runs. His findings impelled a letter to Bernstein, dated July 7, in which he advised that "a large accumulation of dog feces was observed in the outside pens" and admonished that "[t]he removal of dog waste must be done as often as necessary to maintain a sanitary condition. Failure to maintain may result in a summons." Despite this finding, no follow-up inspection was performed. The next full inspection by the county occurred on November 15. The official, who found only that the area around the dumpster was dirty, issued a satisfactory rating.

The inspection conducted by a DOH official on October 10, 1996, resulted in a conditional rating and uncovered the following serious violations:

- Nuisance created by the location or layout: The treatment room for cats was cluttered with trash, cleaning supplies and other debris, which made it "very difficult" for anyone to enter the room.
- Dirty or hazardous buildings and grounds: The treatment room was "very dirty," with medical waste lying around. Animal food and other supplies, which were supposed to be stored in an outside shed, were strewn in the yard. Unused equipment and debris were stacked around the outside dog runs. The storage shed contained leaks, thereby allowing the food and supplies to become wet.
- Inadequate ventilation: The ceiling exhaust fans, which were located in the dog kennel, were clogged with dirt, thereby restricting airflow. Even though the dogs were in the outside runs, a stench permeated the indoor dog kennel.
- Primary enclosures not escapeproof: Several cats had escaped from their primary enclosure and were roaming outdoors, behind the facility.
- Lack of veterinarian responsible for disease control: A certificate of a veterinarian responsible for disease control at the facility was not on file. Staff members were unable to identify the responsible veterinarian.
- Improper quarantine or segregation of sick animals: Sick

animals were not separated from healthy animals. For example, one of the dogs housed in a particular run had diarrhea.

- Lack of treatment for sick animals:
  The treatment of sick animals was "disorganized." Staff members who were supposedly caring for them did not know what medical treatment to administer. There were no records indicating the examination of animals by a veterinarian or the prescribed treatment of any animals.
- Uncontrolled insects: A large number of flying insects was inside the building, particularly in the kitchen/food preparation area, which was located adjacent to the dog kennels.
- Inadequate euthanasia records:
  There was no documentation concerning the method of euthanasia used by particular staff members or identifying who trained them.
- Improper recordkeeping: The shelter manager was not familiar with the computerized recordkeeping system and was unable to retrieve data related to the intake and disposition of the animals.

The findings precipitated a letter from the DOH to Clark. The October 21, 1996, letter enumerated the violations discovered during the inspection and warned that "[f]ailure to take appropriate corrective measures to bring this facility into compliance will result in the initiation of enforcement procedures provided by law."

Although the October 10 inspection report contained a notation that a reinspection

would occur in one week and the October 21 letter also advised of a follow-up inspection, neither the state nor the county visited the shelter for more than nine months, and then only in reaction to a complaint filed with the DOH on July 29, 1997.

In 1997, the county continued to receive complaints about unsanitary conditions. Two were filed in March and one in June, but officials were unable to confirm the allegations. On July 29, a complaint reported that cats in the outside pens had diarrhea; that a cat that was lying in water was drooling; that there was severe overcrowding of cats; that there were no litter boxes for the cats; that there were flies in the animal food; that domestic and feral cats were housed together, as were sick and healthy ones; that cats with black drool emanating from their mouths were immersed in a water dish, and that there was no quarantine room. The complainant also advised that all of the cats and dogs were outdoors even though the temperature was 97 When she questioned one of the workers about this, he stated, "No one goes in there." This complaint sparked a joint inspection by state and county officials on July 31. Based upon the following violations, they issued a conditional rating:

- Unprotected food: Garbage was strewn around the sheds storing the animal food. Bags of food were not stored in insect and rodent-proof containers. Bags were broken, thereby allowing infestation by insects and rodents. Food was spilling out of the bags.
- **Dirty or hazardous buildings and grounds:** Weeds were growing uncontrolled in the rear yard area.
- Uncontrolled insects or rodents: Rodent burrows were found around

the rabbit pen and outdoor group cat cage.

- Dirty or porous interior surfaces: The outdoor cat cage accumulations of hair, dirt and feces, especially in the cracks and corners. All surfaces of the cat cage, including the door between the indoor and outdoor sections, were not made of impervious material. All surfaces of the cage were not cleaned and disinfected daily. The furniture, blankets and carpet contained in the cat cage were dirty and had to be either removed or cleaned daily.
- Primary enclosures not escapeproof and do not exclude predators: The rabbit enclosures were not escape-proof. The areas around the rabbit enclosures and the outdoor group cat cage contained rodent burrows.
- Improper segregation of animals in primary enclosures: Male and female cats were housed together. As a result, a cat that had arrived in October 1996 delivered a litter of kittens in July 1997.
- **Dirty animal enclosures:** Animal hair, leaves and dirt accumulated in the outdoor fencing, particularly the fencing located in the outdoor cat cage.
- Improper handling of sick animals: A seriously ill cat, which arrived only two days prior to the inspection and was "almost dead," was not receiving any veterinary care.
- Improper quarantine or segregation of sick animals: Sick

cats were housed with healthy ones in the outdoor cat cage.

- Improper issuance of rabies certificates: Non-veterinary staff members signed rabies certificates that were issued to individuals adopting animals.
- Improper recordkeeping: Animal intake and disposition records were incomplete. There were no records for numerous cats in the facility.

The DOH followed the inspection with a letter, dated August 5, to the shelter manager. In addition to reciting the violations, the letter noted that non-veterinarian staff members were signing rabies certificates that were issued to individuals adopting animals and admonished that this was not proper procedure. It further advised that a reinspection would be conducted within 30 days and warned that enforcement action would be pursued by the DOH for failure to take corrective measures.

On September 16, 1997, the DOH conducted a reinspection and again issued a conditional rating. The deficiencies included the following:

- Housing in poor repair: Some of the doors in the outdoor runs needed repair.
- **Dirty or hazardous buildings and grounds:** The areas along the sidewalks in the back of the building required cleaning.
- **Dirty or porous interior surfaces:** The couches and carpets in the cat courts were filthy and had to be removed or sterilized daily. The door to the cat court was not of a non-porous material.

- Inadequate drainage: The outdoor runs drained into a dirt trough, resulting in the accumulation of animal waste and foul odors.
- Lack of veterinary care for sick animals: Sick animals were not receiving veterinary care.
- Improper quarantine or segregation of sick animals: Sick animals were housed in the same enclosures with healthy animals.
- Improper recordkeeping: Some of the cages and dog runs lacked cards identifying the animals housed there.

Significantly, although the report contained the name of a veterinarian provided by the staff, the official found that sick animals were not receiving proper care. Nevertheless, he made no attempt to contact the veterinarian to ascertain her role at the shelter. Despite the serious violations and conditional rating, DOH's files do not contain any letter that usually was sent to AHS concerning its findings.

Shortly after this reinspection, volunteer at the shelter wrote a letter of complaint about the conditions to the state. In a responding letter, dated October 29, 1997, the Commissioner of Health and Senior Services noted the recent inspection, which "documented several violations," and stated, "Reinspections of the facility will be conducted to ensure that it meets state and local standards. The local health department will periodically monitor this facility to ensure that it remains in compliance." Despite pattern of deficiencies Commissioner's representations, there were no inspections of the facility by either the local inspection authority or the DOH until March of the following year.

On March 20, 1998, the DOH conducted an inspection that also resulted in a conditional rating. Only a couple of days earlier, on March 17, the county inspector had made an obviously perfunctory visit to the shelter and had found it to be "in satisfactory sainitary [sic] condition." Indeed, his report termed the visit a "[w]alk through" with Bernstein and simply noted that construction was underway, that "major changes and improvement" were taking place and that the new kennel was near completion. The more thorough inspection by the state official cited the following deficiencies:

- Location or layout creates a nuisance: Because of ongoing construction that is scheduled for completion in May, areas were in disrepair, including the rear sidewalk, the rear door of the kennel, the septic system and the office.
- Dirty or porous interior surfaces: The couches, chairs, pillows, blankets and wooden shelves in the two grouptype cat enclosures (cat courts) were soiled with dirt, feces and purulent material and were not impervious to moisture. During the inspection, the couches were removed from the enclosures, but the other material The DOH letter remained. admonished that these items had to be removed or rendered impervious to moisture in order for them to be cleaned and sanitized daily.
- **Inadequate drainage:** The runoff from the two group-type cat enclosures drained directly onto the ground, resulting in the accumulation of animal waste.
- Improper quarantine or segregation of sick animals:
  Animals displaying signs of

- infectious diseases were housed with healthy animals.
- Lack of veterinary treatment of sick animals: Animals afflicted with infectious diseases were receiving no medical treatment.
- Absence of a responsible veterinarian: The facility had no form on file certifying that a licensed veterinarian established and was maintaining a disease control program.

The DOH documented its findings in a letter, dated March 25, 1998, to Clark. Although the inspection report indicated that a reinspection would be conducted upon the completion of the construction, the letter noted simply that a reinspection would occur, but did not indicate a time frame. The DOH again admonished that enforcement procedures would be instituted for failure to take corrective action. responded to the DOH in a letter dated April 1, He advised that remedial steps were underway to address the specific points raised in the letter. His statements that the "[a]nimals are checked on a daily basis and sick animals are removed from enclosures where healthy animals are" and "[t]hese animals receive medical attention or are euthanized" were not borne out by the extensive accounts of inadequate veterinary care that were received by the Commission. Clark further advised that a new veterinarian, Dr. Levin, would be overseeing the facility, would be on the premises "at least twice a week when the medical department is completed, but makes short visits several times a week now" and "has written a new protocol" for the staff. As detailed above, Dr. Levin never visited the shelter twice a week. Further, she encountered continuing problems with the staff's care of the animals.

A letter to the state Attorney General's office by another volunteer complaining about the shelter conditions was referred to the DOH for response. In a letter dated March 31, 1998, the Senior Public Health Veterinarian advised of the recent inspection and the conditional rating. Specifically, he noted "the lack of documentation of a responsible veterinarian" and stated that when the shelter is reinspected "shortly," "[w]e will ensure documentation of veterinary supervision both by certification and by contacting the veterinarian directly."

On May 19, 1998, the DOH, accompanied by the Monmouth County Regional Health Commission No. 1, conducted a reinspection. The inspectors approved the new kennel for occupancy. A conditional rating again was issued as a result of the following findings:

- **Dirty or porous interior surfaces:** The outdoor shed containing animal food and supplies was dirty. The area housing the wild cats contained porous material.
- Uncontrolled insects or rodents: Insects were prevalent in the areas of the freezer and where waste was stored.
- **Inadequate drainage:** The drainage system was clogged in the area housing the cats.

However, despite the prior finding of the absence of a responsible veterinarian, the state official's representation that he would document veterinary supervision by both certification and veterinarian contacting the and Clark's representation concerning the hiring of a veterinarian, the state official, although provided with Dr. Levin's name, did not contact her to ascertain her role.

The county inspecting authority followed up with a reinspection on June 15, 1998. The facility again received a conditional rating. The health official was advised that as soon as the municipality approved the plans, the cat dwelling would be razed and a new structure built.

On August 27, 1998, the county authority conducted another reinspection. Although the inspector found deficiencies, he issued a satisfactory rating this time. The check-off data sheet, which had no markings with respect to the conditions of the facility, listed Dr. Levin as the responsible veterinarian. However, there was no attempt to contact her. The detailed data sheet contained the finding that all of the cats were not identified with cards. It also noted that the cats were housed in a temporary trailer pending construction of a new cattery, completion of which was expected in three months. The inspector was not able to confirm a recent complaint of overcrowding.

In early September 1998, the DOH forwarded to the county health commission a complaint charging that sick cats were housed with healthy ones, that workers were not washing their hands when handling sick animals and that workers were using on the animals needles and syringes that were dropped on the The county inspector confirmed the floor. allegations during his visit on September 10, 1998. He instructed the shelter manager to post hand-washing signs, which he provided, and to keep a daily log on the cats to "keep track" of their health status and the reasons for their removal from the cattery. He also contacted Dr. Levin at the Newark facility and "advised her to give staff instruction on proper proceedures [sic] of operation in handling animals."

The inspection of the facility conducted by the county on February 17, 1999, yielded a satisfactory rating. Nevertheless, the report noted that the animal waste in most of the dog runs had not been scooped and that animal enclosures were improperly sanitized. The inspector recommended the regular use of bleach and disinfectant. The report again indicated that Dr. Levin was the responsible veterinarian. Obviously, the inspector did not contact Dr. Levin or he would have learned of the problems regarding veterinary supervision at the shelter. A couple of weeks prior to the inspection, an individual complained to the county that he had observed puppies sitting in their waste and a worker dropping a puppy onto the floor from a crate.

During 2000, the county continued to receive complaints. In a complaint filed on February 16, the individual related that a dog was vomiting blood, that puppies were housed with adult dogs and that the puppies that he On March 14, an adopted had parvovirus. individual complained that the dog that he had adopted died within a couple of days from parvovirus. The investigation report noted that there needed to be follow-up regarding the shelter's "response to parvo disease," increased "disease surveillance" at the shelter and "prevention activities such as disinfection, etc." An individual filed a complaint on August 15 that a cat that she adopted became very ill from feline leukemia that same night.

Despite the history of serious violations and the influx of complaints, there was no inspection of the facility for nearly two years. Inexplicably, Dr. Levin's October 11, 2000, letter advising both the DOH and the Monmouth County Regional Health Commission No. 1 that she was resigning her supervisory role over the shelter prompted no action by either agency. On December 2, 2000, the county inspecting authority conducted an inspection that resulted in a conditional rating. Oblivious to Dr. Levin's letter, the inspector documented her as the responsible veterinarian. In addition to admonishing the facility to improve the internal and external housekeeping, the inspection uncovered the following violations:

- Unprotected food: Both of the exterior food sheds contained thousands of mouse droppings.
- Uncontrolled rodents: Thousands of mouse droppings were found in the entire wing of one dog section in the kennel. The exterior walls of this section contained holes, which allowed the mice to enter the enclosures.

As represented in the December 2 inspection report, the county conducted a reinspection in two weeks. On December 16, the county inspector found that although there was some improvement in attempting to control the rodent problem in areas of the facility, it remained a significant problem so as to justify another conditional rating. The inspector determined that there were numerous opportunities for the invasion of vermin and that they, in fact, did invade several areas:

> Uncontrolled rodents: One of the kennel areas continued to be plagued by mice. Dozens of mouse droppings were found in the dog kennels and on utility lines over the dog runs. Dozens of droppings also were observed in the outdoor storage sheds where the bulk animal food was stored. Mice were found to have gnawed one bag of food. Some of the fan louvers in one kennel area did not properly and one completely missing, thereby allowing easy access for vermin. The weather stripping on the bottom of a kennel door had a gap, which also afforded access to rodents. A storage closet contained numerous mouse droppings. Droppings also were observed behind the equipment in the heating/maintenance room. obvious to the inspector that the

droppings were not cleaned on a daily basis and that a rodent control program was not implemented either in the facility or outdoors where the storage sheds were located.

 Dirty or hazardous buildings and grounds: Construction material and debris were lying alongside one of the storage sheds where animal food was stored. Debris also cluttered the heating/maintenance room.

Pursuant to the notation in the December 2 inspection report that a reinspection would be conducted in the second or third week of January of the following year, one was performed on January 27, 2001. The official issued a satisfactory rating, but continued to find a rodent problem and made recommendations directly to Bernstein on how to control it. Although he "[r]ecommend[ed]" that a reinspection be conducted in three to six months, no inspection was performed until December 4, 2001, when another official conducted the review and issued a satisfactory rating. The inspection report did not indicate that there was any follow-up to the rodent problem previously uncovered.

On December 4, 2002, the county conducted an inspection of the shelter. Although the inspector issued a satisfactory rating, she discovered "a significant mice problem in the feed sheds" and the lack of a thermometer "for the medicine refrigerator in the medical room." In addition, she recommended the "cleaning of any spilled food, open [food] bags and rodent droppings" and a reduction in the amount of surplus food stock because it was attracting

rodents. The inspector conducted a follow-up inspection on December 12, at which time she found that a thermometer had been installed, that the sheds had been cleaned and organized and that the food stock in a third shed had been removed.

#### **Lacey (Forked River) Animal Care Center**

The DOH conducted only one inspection of the Lacey facility. It occurred on January 24, 1990, at which time the inspector issued a satisfactory rating. The report, which contained no markings concerning the conditions of the shelter and did not include a continuation sheet, reflects a perfunctory inspection.

The Ocean County Health Department conducted an inspection of the shelter in every year from 1990 through 2002, except 1996. The inspections were not always conducted immediately prior to the issuance of a new shelter license. Each inspection resulted in a satisfactory rating. Although the reports of the annual inspections conducted in 1990 and 1991 included the data sheet, these sheets contained no markings as to the inspector's findings. continuation sheet that included notations accompanied only the 1991 report. Thereafter, every report included both sheets, with proper markings for the most part. Where problems were indicated, their correction also was noted. The report of the December 13, 2000, inspection noted that the recent renovations and construction improved the conditions in both the dog kennels and cat areas.

### ANIMAL CONTROL SERVICES

AHS has contractual arrangements with at least 70 governmental entities to provide animal control services. The vast majority of the services are documented in written contracts and rendered to municipalities in Essex, Hudson, Monmouth, Morris, Ocean, Passaic and Union Counties. AHS also provides services to the New Jersey Highway Authority, the Essex County Sheriff's Office, Monmouth County and the Union County Division of Parks and Recreation. AHS employees assigned to the Newark, Tinton Falls and Lacey facilities perform the animal control and deliver the stray animals to these shelters, as well as the one that AHS operates for Union Township. In general, AHS dictates the terms of the contracts with little or no input or interest by the governmental entities and implements the contracts with minimal or no oversight by government officials. Rarely is any effort made on the part of officials to assess the cost-effectiveness of the contracts or to review the invoices before issuing payment. Officials execute contracts even though they contain inconsistent and ambiguous language and handwritten cross-outs and inserted terms. Clearly, animal control services constitute a low priority for municipalities, which typically are unwilling to assume the responsibility of animal control and lack an alternative to AHS.

The Commission examined the contracts and verbal arrangements for animal control services for the years 1994 through 2005. Nearly all of the contracts are identical in form and text, with the primary, significant difference being the annual cost charged to the municipality. All of the contracts require AHS to respond to telephone calls from the municipality for animal control services. More than 90% of them charge an annual fee, which is prorated monthly and is not related to the number of telephone calls for service. The remaining contracts stipulate specific fees when services are rendered.

Beginning in 1996, AHS has executed slightly more multi-year than single-year contracts. Executive Director Lee Bernstein has been vigorous in urging municipal officials to enter into multi-year contracts in order to obtain a lower annual percentage increase. He has done so to the point that some officials felt intimidated by his tactics. There is no consistency in how AHS calculates the annual cost charged to municipalities, even when they select a multiyear contract. The contract price is not related to the municipality's human population, square mileage or animal population. The absence of a uniform approach also is evident in other provisions. AHS has charged sales tax to the residents of some towns for redeeming their pets, but has not charged residents in other municipalities. In addition, the contracts with most municipalities stipulate a boarding fee of \$4.00, but the boarding fee charged to the Union County Division of Parks and Recreation was increased to \$10.00 without justification. The increase may have been made to compensate for the relatively small fees paid by the division. The contract with Union County also places financial responsibility for the emergency treatment of animals on AHS, while the one with the Essex County Sheriff's Office places it with the county. Further, AHS charges Essex County for cremations, but does not charge Union County for them.

Not only do animal control services not constitute a priority for the governing bodies, but officials do not even handle them in a responsible manner. Typically, officials accept and sign the boilerplate contracts provided by AHS. Most of the time, the title of the official executing the contract does not appear. Since 1994, the annual contract with the Union County Division of Parks and Recreation has referred to it as a "municipal corporation of the State of New Jersey." Very few municipalities have

provisions added to the contracts to meet their particular needs. In many cases, AHS simply copies the prior contract, deletes the date and fee, inserts new ones and adds a new signature page. Some contracts are merely copies of prior ones with cross-outs and handwritten insertions. Rarely is there any review of the contracts by municipal attorneys or any changes made to them. Most municipalities do not even appear to challenge the contract price. In one case, the contract price increased even though the services provided by AHS were reduced and the municipality's population declined. In other cases, officials failed to notice that they were charged the new contract's higher rate a month before the prior contract was to expire. With some multi-year contracts, the actual percentage increase in the later years was different from that stated in the contracts. Some municipal officials seem pleased that the rate did not increase in the new contract, but failed to realize that other charges, such as ambulance fees, substantially increased. Officials generally appear unfazed by or oblivious to the substantial fee increases, which have been as high as 33% to 100%, in the new contracts. In cases where AHS provides the municipality with monthly invoices and control sheets related to the specific incidents, some officials did not compare them to ensure accurate One governmental entity paid the invoices for "on-call" services even though they were charged higher fees than were stipulated in the contract. There also are instances where AHS charged less than the fees allowed in the contract. Very rarely has a municipality deemed an invoice to be incorrect and refused to pay it. Many of the contracts contain ambiguous or contradictory terms regarding who has the responsibility for the cost of emergency care rendered to animals. The language of some contracts does not prohibit the potential double billing of both the governmental entity for an "on-call" service and the pet owner. Under ambiguous language in earlier contracts with the City of Newark, AHS double billed the city for some services until the city tightened the contract terms.

AHS also dictates the duration of the contract, which is usually for a one or five-year period. Although AHS provides a new contract well in advance of the prior contract's expiration date and although the services continue uninterrupted, many municipalities allow the contract to expire before executing a new one. other instances, both AHS municipality allowed the contract to expire and did not execute a new one until after the passage of many months. One municipality neglected to renew the contract for an entire year, but continued to pay for the services. It also is rare for municipalities to engage in any type of negotiations with AHS before entering into a new contract. However, there are instances where municipalities directed contract changes, but AHS failed to modify the contracts and the officials did not follow up. Very few municipalities draft their own contracts instead of accepting AHS's boilerplate form. However, even in these cases, for the subsequent contract term, the officials did not seem to notice that AHS replaced the contracts with its form contract. Very few contracts include a provision that the municipality will be held harmless for any act or failure to act by an AHS employee. Even when the clause has been contained in a contract, municipal officials did not appear to notice that it was omitted in the subsequent contract. The Commission's analysis of the contracts establishes that although a per-call fee is more cost-effective than the flat annual fee accepted by most municipalities, officials do not attempt to renegotiate the contract terms or to obtain a lower contract price. The inattention paid by municipal officials to the contracts also is reflected in their allowing their residents to be charged directly by AHS in instances where the municipality also is paying for the service. Beginning in about 1996, AHS included in many of the contracts a provision that where a stray is picked up, AHS will charge an additional fee to

any resident who fed that animal more than two meals. No municipality appears to have challenged this provision.

Even where statutory mandates have been placed on municipalities, officials have failed to address them in the contracts and to ensure their compliance. Although N.J.S.A. 4:19-15.16b requires that municipalities shall "appoint a certified animal control officer who shall be responsible for animal control within the jurisdiction of the municipality,"89 [Emphasis supplied.] municipalities generally have not demanded that the contract include a provision requiring AHS to provide certified animal control officers and no municipality has demanded proof of certification. There is documentation that only one municipality directed AHS to include the word "certified." In addition, all of the municipalities neglected to have the contracts address the responsibilities of AHS regarding potentially dangerous vicious dogs under N.J.S.A. 4:19-17 et seq.

The perfunctory approach taken by municipalities is evident further in the following examples. The council resolutions of several municipalities authorized a five-year contract with AHS, but the contracts themselves stipulated a six-year or other period. resolution of one municipality set forth a total contract price, but officials executed a contract allowing for a higher one. Some municipalities entered into a five-year contract that set the fees for only the first four years and not the fifth year. One municipality executed a contract that was dated, but reflected no time period or beginning or ending dates. Another signed a one-year contract that contained dates for a two-year duration. One contract was originally prepared for a one-year period, but included handwritten changes indicating dates for a six-year period and language specifying a five-year period. Another contract stipulated that the services

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would be provided six days a week and that emergency services would be rendered on Saturday and Sunday. Frequently, the fee schedule in the multi-year contracts did not correspond to the number of years the contracts actually called for. Neither AHS administrators municipal officials noticed miscalculations. Officials of one township executed the contract even though it contained the name of another municipality. In the few contracts that required AHS to credit the municipalities for fees paid by their residents to reclaim their lost pets, the credits were made only when raised by the municipalities. Moreover, the contracts did not address how the credits would be calculated. When, at the last minute, AHS substituted a proposed multi-year contract calling for a 1% annual increase with another contract stipulating a 2% increase, no municipal official challenged the increase. In authorizing the contract, one municipal council resolution listed the emergency treatment of ill or injured animals as one of the purposes of the contract, but the contract did not contain a corresponding provision. Of the contracts that provided that "[s]ick and injured animals, including wildlife, requiring immediate medical attention will be taken to an emergency veterinary clinic," some called for AHS to assume the cost, while others placed the financial burden on the municipality. In the latter case, only one municipality sought to set criteria or monetary limits for the emergency care. In only one instance did a municipality challenge as excessive the cost of treating two felines that died shortly thereafter. However, AHS never responded to the township attorney's letter. One contract contained a provision requiring AHS to absorb the cost and a conflicting provision requiring the municipality to bear it. When AHS changed the contract provision allocating the responsibility for payment of emergency treatment from AHS to the municipality, no official challenged the change or sought an adjustment in the contract price.

 $<sup>^{89}</sup>$  The requirement for certification also appears in *N.J.A.C.* 8:23A-2.5(a) and (b).

The boilerplate contracts contain no mechanism for accountability and municipal officials failed to demand their inclusion. There are no provisions requiring that AHS drivers sign in or out at a municipal office when they are summoned to respond to a call, that AHS submit evidence of liability, automotive or worker's compensation insurance, or that AHS provide proof of its compliance with all applicable state and local laws and regulations governing the operation of animal shelters. In fact, as set forth in the chapter entitled *Violations of Law*, many of the employees assigned to perform animal control services have not been certified. Only a

few contracts require AHS to submit monthly reports of the number of stray animals picked up. Although the contracts typically include language that AHS "shall canvas[sic], tour and inspect the streets of the Municipality for licensed and unlicensed dogs running at large for the purpose of issuing summonses to the owners," there is no documentation to verify that the function is performed and most officials do not even know the meaning of the phrase. Even though a few municipalities stipulate a number of weekly hours for the performance of this task, they have not instituted any system of accountability.

### VIOLATIONS OF LAW

Executive Director Lee Bernstein has demonstrated a flagrant disregard for the state's strict laws and regulations governing the operation of animal shelters when convenient to facilitate their day-to-day operation. attempting to justify his conduct at various times, he either has pled ignorance of the law or has offered the rationalization that shelter animals belong to AHS and, therefore, he is free to do whatever he wants with them. He has directed non-veterinarians to perform surgeries, has allowed veterinary technicians and an unlicensed veterinarian to diagnose and to treat animals, has permitted non-veterinarians to administer rabies vaccinations and has condoned untrained personnel to euthanize animals. In addition. rather than pursue civil remedies, he has utilized the criminal complaints process to charge pet owners when they delayed in paying AHS for housing their escaped pets.

#### **RABIES**

Vaccinations. New Jersey has enacted an extensive statutory and regulatory scheme to protect the public from rabies infection and to prevent the spread of rabies and other communicable diseases among animals. particularly dogs, among which rabies at one time was prevalent. 90 Its two-prong approach is aimed at the owners of dogs and the establishments that house animals. First, all owners of dogs must have them vaccinated against rabies and license them with the municipality.<sup>91</sup> Second, all shelters, kennels, pounds and pet shops must be licensed.<sup>92</sup> The licensing of these establishments requires compliance with the state's "rules

regulations governing the sanitary conduct and operation of kennels, pet shops, shelters and pounds, to preserve sanitation therein and prevent the spread of rabies and other diseases of dogs within and from such establishments."<sup>93</sup> These rules and regulations are to be enforced by the state Department of Health and Senior Services [hereinafter DOH] and local boards of health.<sup>94</sup> Not only has AHS failed to comply with numerous provisions concerning sanitary conditions of shelters and disease control protocols, as set forth in the chapter entitled *The Animal Shelters*, but Bernstein also has flouted the provisions governing rabies vaccinations.

To ensure that dogs are vaccinated against rabies, the state has linked rabies vaccinations to the requirement for licensure of dogs. Specifically, anyone who owns, keeps or harbors a dog must obtain from the municipality a license and official metal registration tag, which must be fastened to the dog's collar or harness.<sup>95</sup> The municipality shall grant the license and tag only if the owner of the dog "provides evidence that the dog to be licensed and registered has been inoculated with a rabies vaccine." The rabies inoculation "shall be administered by a duly licensed veterinarian."97 Pursuant to its legislative mandate to promulgate regulations regarding rabies inoculations, 98 the DOH has directed that "[t]he vaccine used must be approved by the United States Department of Agriculture and administered to the animal at the dosage and route of administration in accordance with the specifications of the product label and

<sup>&</sup>lt;sup>90</sup> See *N.J.S.A.* 4:19-15.1 *et seq.*, *N.J.A.C.* 8:23-1.1 *et seq.* and *N.J.A.C.* 8:23A-1.1 *et seq.* 

<sup>&</sup>lt;sup>91</sup> N.J.S.A. 4:19-15.2 and 15.2a.

<sup>&</sup>lt;sup>92</sup> *N.J.S.A.* 4:19-15.8(a).

<sup>&</sup>lt;sup>93</sup> The DOH promulgated the rules and regulations pursuant to *N.J.S.A.* 4:19-15.14.

<sup>&</sup>lt;sup>94</sup> *N.J.S.A.* 4:19-15.14.

<sup>&</sup>lt;sup>95</sup> *N.J.S.A.* 4:19-15.2.

<sup>&</sup>lt;sup>96</sup> N.J.S.A. 4:19-15.2a. See N.J.A.C. 8:23A-4.1(a).

<sup>&</sup>lt;sup>97</sup> N.J.S.A. 4:19-15.2a.

<sup>&</sup>lt;sup>98</sup> Ibid.

package insert."99 In addition. veterinarian immunizing the animal shall issue and sign a National Association of State Public Health Veterinarians Form #51, Vaccination Certificate,' indicating the date of inoculation, the duration of immunity, the name and serial number of the product used, description of the animal and the full mailing address of the owner." The certificate must be given to the owner and must be exhibited "when application for a license is made."101 statutory requirement that only veterinarians may administer the rabies vaccine also is contained in the Requirements for Veterinary Supervision of Disease Control and Health Care at Licensed Animal Facilities, 102 which reads, "State statute requires rabies vaccine to be administered by a licensed veterinarian."

In clear violation of the law, a variety of individuals, including kennel workers, the shelter manager, office personnel and veterinary technicians. have administered the rabies vaccinations to animals selected for adoption at all three shelters. These unqualified individuals also issued the certificates, which frequently lacked all of the required information and typically did not contain the name of a Moreover, because the persons veterinarian. immunizing the animals were not veterinarians, they had no training on how to administer the vaccines. This unauthorized practice of veterinary medicine has been documented as early as 1972, has continued at the Newark clinic through late 1999 and has continued at the Tinton Falls shelter as recently as 2001. Both current and former AHS employees admitted to administering rabies vaccinations and issuing the certificates.

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Bernstein's knowledge of the law has been demonstrated repeatedly. Throughout the years, he has exhibited a keen familiarity with the laws and regulations that affect shelter animals and animal control services, has proposed and supported numerous legislative measures related to animal welfare and has testified before legislative committees in connection therewith. Further, an article in the March/April 1990 edition of *Humane News* contained the following statement in announcing the opening of an animal hospital at the Lacey facility:

Society Director, Lee Bernstein, stated that because of the imminent danger of rabies spreading throughout N.J., the Society felt that prompt inoculation against rabies of dogs and cats is a must. Inasmuch as the rabies vaccine can only administered by licensed a veterinarian, the Society decided to establish the Popcorn Park Animal Hospital to facilitate pet owners obtaining this service.

In a joint inspection of the Tinton Falls shelter on July 31, 1997, the DOH and the Monmouth County Regional Health Commission No. 1 issued a conditional rating based on violations that included the finding that non-veterinary staff members were signing the rabies certificates. The DOH documented the findings in a letter to AHS, dated August 5. According to the veterinarian who was appointed Director of Veterinary Services in April 1999, Bernstein frequently challenged her on why the workers at the Tinton Falls shelter could not administer the vaccinations, despite her standard response that it is illegal to do so. During the Commission's investigation, Bernstein admitted that he knew of the mandate that only veterinarians may inoculate against rabies and that non-veterinarian staff members administering the vaccinations.

<sup>&</sup>lt;sup>99</sup> *N.J.A.C.* 8:23A-4.1(b).

<sup>&</sup>lt;sup>100</sup> *N.J.A.C.* 8:23A-4.1(c).

<sup>&</sup>lt;sup>101</sup> *Ibid*.

<sup>&</sup>lt;sup>102</sup> The document, which is issued by the state Department of Health and Senior Services, was formerly entitled *Guidelines for Veterinary Supervision for a Program of Disease Control and Health Care at Licensed Animal Care Facilities*.

Observation period in suspected rabies cases. When a shelter receives a dog, cat or ferret that has bitten a human or suspects that a dog, cat or ferret in its custody of being rabid, it must hold the animal for a 10-day observation period or humanely euthanize it and submit it to the state Department of Health and Senior Services Laboratory for examination for rabies. A shelter also must comply with the reporting requirements to the local health department or DOH. 104

In late 1994. the DOH became "extremely concerned about two major lapses in rabies confinement procedures" at the Tinton Falls facility. At the direction of the Monmouth County Regional Health Commission No. 1 during the course of several months, two stray cats were impounded at the shelter after biting people. One of the strays was allowed to escape on the same day that it was brought to the shelter, thereby precluding testing for possible rabies infection. The other stray was euthanized "because of signs of illness" prior to the conclusion of the 10-day observation period. In neither case did shelter staff report the outcome to the county health department, as required by law. In a letter dated September 22, 1994, the DOH advised Bernstein of the seriousness of the two cases and "requested that you meet with us to discuss the implementation of corrective measures to insure that all animals are properly confined and observed in the future at all Associated Humane Society animal shelters." Although Bernstein responded by letter that he "would be very happy for you to schedule a training session at each of our branches," there was no follow-up.

The Tinton Falls shelter again mishandled a bite case in 2000. A stray cat that had bitten a woman on May 17 was taken there on May 22. Instead of holding the cat for the

requisite 10-day observation period, shelter staff euthanized the animal on May 23. The staff delayed in submitting the cat's head to the DOH laboratory for analysis and, consequently, it was too decomposed to test for rabies. The woman who had been bitten was advised to obtain the rabies post-exposure vaccination series. Further, AHS failed to notify the Monmouth County Regional Health Commission No. 1 when it received the cat.

# CONTROLLED DANGEROUS SUBSTANCES AND OTHER DRUGS

**Controlled dangerous substances.**Pursuant to the New Jersey Controlled Dangerous Substances Act, 105 the DOH has promulgated regulations governing controlled dangerous substances. AHS has failed to comply with numerous regulatory provisions.

Pursuant to *N.J.A.C.* 8:65-5.11(b), AHS, which is registered to use sodium pentobarbital to perform animal euthanasia, is required to complete a quarterly inventory report on a state form and to submit it to the Drug Control Unit, Division of Consumer Affairs, within seven days of the end of the quarter. However, AHS failed to file reports for some of the quarters and, for others, filed them well after the due dates, by as much as nine months. In addition, the vast majority of the reports were completed incorrectly.

Contrary to *N.J.A.C.* 8:65-1.2(j), there performing personnel have been shelter euthanasia who did not "train[] in, and demonstrate proficiency with, the use of sodium pentobarbital in animal euthanasia, to the satisfaction of a New Jersey licensed veterinarian." In further violation, with respect to employees who supposedly were properly trained, the shelters did not maintain on file the written certifications of veterinarians that these

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 $<sup>^{103}</sup>$  N.J.A.C. 8:23A-1.9(b) and (h) and N.J.A.C. 8:23A-1.10(a).

<sup>&</sup>lt;sup>104</sup> *N.J.A.C.* 8:23A-1.9(h)

<sup>&</sup>lt;sup>105</sup> N.J.S.A. 24:21-1 et seq.

individuals were trained and demonstrated proficiency.

In violation of *N.J.A.C.* 8:65-1.2(k), the shelters have not maintained "written procedures and protocol, approved by a New Jersey licensed veterinarian, for the administration of sodium pentobarbital in animal euthanasia." These documents "must be on file at the licensed premise."

In 1998, the theft of ketamine, a Schedule III controlled dangerous substance, occurred at the Tinton Falls shelter. AHS failed to report the theft to the Drug Control Unit and to complete the requisite state form, as required by *N.J.A.C.* 8:65-2.4(c).

*N.J.A.C.* 8:23A-1.11(d) specifically cites the use of chloroform as one of the enumerated "[m]ethods not acceptable for euthanasia." Nevertheless, chloroform has been utilized routinely to euthanize bats.

At various periods of time, AHS veterinarians failed to maintain proper records with respect to the dispensing and administering of scheduled controlled dangerous substances. Such recordkeeping is required under *N.J.A.C.* 8:65-5.3. Violation of this provision also occurred at the Tinton Falls shelter, which has lacked a full-time veterinarian and where nonveterinarian employees typically have been in charge of the controlled substances.

**Outdated drugs.** The use of outdated or deteriorated medical drugs on animals is proscribed in this state. It constitutes the improper practice of veterinary medicine and has been the subject of disciplinary action by the State Board of Veterinary Medical Examiners.

Contrary to law, AHS staff members have administered expired drugs to shelter animals. Individuals at the Tinton Falls shelter, which has lacked the presence and oversight of a full-time veterinarian, have administered drugs from bottles bearing expired dates for use. As recently as October 2002, Commission staff confirmed the use of numerous such drugs, primarily antibiotic, antiparasitic and antiinflammatory drugs. The bottles of these drugs bore dates of expiration in every year from 1998 through 2002. On the label of one bottle containing an antiparasitic drug, which expired in May 2001, was the handwritten note "expireduse for shelter." According to the individual who was employed as the manager of the Lacey clinic's medical department from early 1998 to September 2000, the general manager used outdated drugs on zoo animals and veterinary technicians administered them to shelter animals. In contrast, properly dated drugs were reserved for the animals of the paying public.

### **VETERINARY TECHNICIANS**

The Veterinary Practice Law governs the practice of veterinary medicine, surgery and dentistry and is applicable to animal and veterinary facilities. Only individuals who hold a license issued by the State Board of Veterinary Medical Examiners and a certificate registration indicating the place of practice are permitted to practice veterinary medicine. person is regarded as practicing veterinary medicine, surgery and dentistry "who, either directly or indirectly, diagnoses, prognoses, treats, administers, prescribes, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound or physical condition of any animal, including poultry and fish, or who prevents or tests for the presence of any disease in animals..." Specifically excluded from the definition is a "properly trained animal health

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<sup>&</sup>lt;sup>106</sup> The federal Animal Welfare Act, 7 *U.S.C.* 54:2131 *et seq.*, requires that all regulated animals receive adequate veterinary care. Pursuant to regulations promulgated thereunder by the US Department of Agriculture, the use of expired medical drugs "is not considered adequate veterinary care." Policy #3, *Animal Care Resource Guide*.

<sup>&</sup>lt;sup>107</sup> N.J.S.A. 45:16-8.1.

technician" who is "under the responsible supervision and direction of a licensed veterinarian in his practice of veterinary medicine" and who "does not diagnose, prescribe, or perform surgery."

Bernstein's use of unlicensed individuals to practice veterinary medicine dates back to 1972. According to files of the Enforcement Bureau, the investigative arm of the State Board of Veterinary Medical Examiners, the use of such individuals was confirmed at the Newark clinic in November 1972 and at the Lacey clinic in July 1979 and September 1988.

Most of the individuals whom AHS has termed veterinary technicians were hired by AHS without any prior experience or training. Nevertheless, AHS never instituted a formal program for their education or training. In addition, the personnel files of individuals who claimed prior training or experience, including those who had been educated as veterinarians in their native countries, contain no documentation to substantiate their background or to indicate that AHS verified their claims.

Bernstein continually hired as veterinary technicians at the Newark clinic individuals who were trained as veterinarians in their native countries, including Pakistan, India, Cuba and Romania. In violation of the law, Bernstein has had them perform responsibilities that constitute the practice of veterinary medicine and surgery. To this day, these individuals are diagnosing illnesses, suturing wounds and treating conditions with medications without supervision by a licensed veterinarian at the Newark facility. The same situation has been occurring at the Tinton Falls shelter, except that the individuals operating there as veterinary technicians typically have had no training or education to qualify them for the designation. Although there has been more telephone communication between the Tinton Falls staff and the veterinarians at the Lacey clinic concerning sick and injured animals, these untrained individuals have been making many of the decisions on their own.

Bernstein has committed gross violation of the law by repeatedly directing veterinary technicians to perform spay and neuter operations on shelter animals. Despite being informed that such a practice was contrary to the law, he persisted out of convenience and with the rationale that shelter animals are the property of AHS. Bernstein's use of veterinary technicians to perform the surgeries dates back to at least the early 1990s, when he dispatched technicians from the Newark facility to the Tinton Falls shelter for a period of time on a weekly basis. From April 19 to April 21, 2001, while Dr. Lisa Levin was absent from the Newark facility, Bernstein directed one of the veterinary technicians to perform spay or neuter surgeries on a total of 12 shelter cats. Bernstein told him that it was legal for him to perform such surgeries. The technician obeyed out of fear of losing his job. The illegal procedure was discovered when the part-time veterinarian arrived at the clinic early one Saturday and observed the technician performing a spay operation on a shelter cat. When she later confronted him, he stated that Bernstein had directed him to perform the surgery. admitted that he also had administered the anesthesia. She admonished him that it was illegal for him to perform such procedures, notified Dr. Levin and documented the incident in a letter to her. She wrote that the incident "affected me drastically.... I cannot work like this if the law is being broken. With what I am seeing lately, I do not feel comfortable signing a contract...." She stipulated that she would continue to work on Saturdays provided that "[n]o more illegal acts are performed in my presence." Dr. Levin also received a letter, dated April 19, 2001, from the technician who performed the surgery and the other three technicians who were present when Bernstein

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<sup>&</sup>lt;sup>108</sup> N.J.S.A. 45:16-8.1(6).

ordered him to do so. All of them attested to the fact that Bernstein directed the technician to perform the operations on a total of 12 cats during a two-day period and that Bernstein stated that it was not illegal for him to perform them.

Dr. Levin confronted Bernstein about the illegal surgeries and memorialized their conversation in a memorandum, dated April 30, 2001, "about illegal activities ordered by you to AHS Newark Medical Department staff":

When [the technician] told me of his actions, I severely reprimanded him, advising him that such actions were illegal and constituted the practice of veterinary medicine without licensure. Further, I advised him that any future and similar actions on his part would result in my recommendation for his immediate termination and my report to the appropriate regulatory authorities.

Confirming Bernstein's oral representation that "such actions would not be repeated," the memorandum concluded, "I expect that this will be the case." Attached to Dr. Levin's memorandum was an April 30, 2001, memorandum that was signed by the four technicians attesting to the fact that Bernstein directed the one to perform the surgeries and repeatedly told him, in response to his reluctance, that it was legal for him to do so.

Despite the stern admonition by Dr. Levin, Bernstein continued to have veterinary technicians perform spay and neuter operations on shelter animals selected for adoption. The Commission confirmed that such practices occurred as recently as April 2002.

### ANIMAL CONTROL SERVICES

Effective January 17, 1984, the state has required that the governing body of a

municipality "appoint a certified animal control officer who shall be responsible for animal the jurisdiction of control within the municipality."109 Only individuals who successfully have completed the course of study for certification of animal control officers, as approved by the Commissioner of Health, will be issued a certificate. 110 During a three-year period from the effective date until January 17. 1987, individuals who were employed as animal control officers could apply for and be issued a certificate. 111 After this date, only individuals who have completed the approved course have been issued a certificate.

Although AHS has entered into contracts to provide animal control services since 1984, very few of the drivers providing the services have been certified as animal control officers. Uncertified individuals were employed at the Newark shelter as early as June 1994 and as recently as December 2002. During 2002, only two of the seven employees providing animal control services for the Newark shelter were certified. Of the four drivers performing the function for the Tinton Falls shelter in 2002, two were uncertified and two had been grandfathered under the statute. The employee who currently serves as the animal control officer for the Lacey facility became certified after attending the course at his own expense. His back-up is an individual who had been grandfathered. In 2000 and prior years, uncertified individuals had been providing the services.

Bernstein vehemently has opposed formal training and certification of AHS's drivers as animal control officers. Again, he has been motivated by his desire to minimize expenses. Even when individuals requested to attend the course, he refused. According to one trustee, when the issue was raised at a Board meeting and the trustees directed Bernstein to

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<sup>&</sup>lt;sup>109</sup> N.J.S.A. 4:19-15.16b.

<sup>&</sup>lt;sup>110</sup> N.J.S.A. 4:19-15.16a.

<sup>&</sup>lt;sup>111</sup> *Ibid*.

send the drivers to the course regardless of the cost, he failed to do so. In April 1996, Bernstein sought certification for AHS employees who had completed an out-of-state training course and/or had on-the-job experience, but was denied in light of the clear mandates of the law. It was not until 2002 that Assistant Director Terry Clark took it upon himself to register some of the drivers for the March certification course sponsored by the state. The weapon that he employed to force Bernstein to allow their attendance was the Commission's investigation. Assistant Director Roseann Trezza agreed that it was the Commission's examination of this area prompted Bernstein acquiesce. Nevertheless, not all drivers were registered for the course and drivers who failed the course were continued in their positions.

#### **EUTHANASIA PRACTICES**

DOH regulations define euthanasia as "the act of inducing painless death." 112 Pursuant to *N.J.A.C.* 8:23A-1.11(e).

> All persons administering animal euthanasia shall be a New Jersey licensed veterinarian or be certified by a licensed veterinarian in the acceptable euthanasia technique or techniques used at the facility, as delineated in [the regulations] above, in compliance with N.J.A.C. 8:65. Such documentation shall state the euthanasia substances and techniques certified for use therewith, shall be signed by the certifying veterinarian, and shall be kept on file at the facility for inspection by State or local Health authorities.

8:65-1.2(j) N.J.A.C.requires that individual who euthanizes

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<sup>112</sup> *N.J.A.C.* 8:23A-1.1.

shall be required to be trained in, and

As with numerous other areas, most of the violations with respect to the euthanasia of shelter animals have occurred at the Tinton Falls shelter. Not only have animals been euthanized by staff members who were never trained in proper euthanasia techniques, but there is no documentation for some of the individuals who supposedly were trained by a veterinarian. Further, when the DOH demanded production of euthanasia certificates. Bernstein had the staff veterinarian prepare certifications for individuals whom he had not certified. Moreover, the Commission received numerous accounts of personnel at the Tinton Falls shelter performing the euthanasia in such a manner as to cause visible and audible pain to the animals.

### REGULATIONS GOVERNING CHARITABLE ORGANIZATIONS

AHS engaged in extensive violations of the registration requirements for charitable organizations under New Jersey and New York laws. These violations are detailed in the chapter entitled A Financial Portrait.

#### ABUSE OF THE COURT SYSTEM

As recently as 2001, Bernstein has employed highly questionable tactics when pet owners have had difficulty in paying to reclaim

demonstrate proficiency with, the use of sodium pentobarbital in animal euthanasia, to the satisfaction of a New Jersey licensed veterinarian. Said New Jersey licensed veterinarian shall, in writing and filed with the registered incorporated humane society or licensed animal care facility, so certify the training and demonstrated proficiency of the in the use of sodium individual pentobarbital in animal euthanasia.

their animals at the Tinton Falls shelter. He has utilized the municipal court system to prosecute what is, in effect, a civil claim. Bernstein has threatened pet owners, even in hardship cases, that a criminal charge of abandonment would be filed against them for failure to pay the requested amount. If full payment was not made after a period of time, then the individuals were charged and the animals were placed for adoption or were euthanized. Owners who retrieved their pets, but failed to pay the full amount requested, have been threatened, and, in fact, charged with a criminal complaint for theft of services. 114 In both situations, Bernstein has allowed the charges to be dismissed after payment was exacted.

### MISUSE OF THE STATE SEAL

In violation of *N.J.S.A.* 52:2-3 and 4, some AHS employees, including Bernstein and the drivers who render animal control services, carry badges that carry a reproduction of the Great Seal of the State of New Jersey. Further, AHS never applied for authorization to reproduce the Great Seal, as required by *N.J.S.A.* 52:2-9, and does not satisfy the criteria to receive authorization.

<sup>113</sup> *N.J.S.A.* 4:22-20b.

<sup>&</sup>lt;sup>114</sup> *N.J.S.A.* 2C:20-8.

### RECOMMENDATIONS AND REFERRALS

Commission's examination of AHS's governance and operations revealed pervasive problems that have proved detrimental to the welfare of the animals under its care and to the contributing public. Accordingly, the Commission makes the following recommendations to improve the manner in which the governing body and management conduct the affairs of this organization. addition, the Commission also addresses the problems concerning the shelter inspection system, the statutory mandate that municipalities provide animal control services and the state's registration system for charitable organizations.

# RECONSTITUTION OF AHS'S GOVERNING BODY AND ADMINISTRATION

In order to revitalize the organization, to ensure continued and substantial progress and to fulfill the AHS mission, drastic but necessary changes must be made by the Board of Trustees and by management, chiefly Executive Director Lee Bernstein. First, the trustees must reconstitute the Board membership in order to create an active and vibrant body. They must put aside their personal attachments to organization and recognize that they have not been vigorous in attending to AHS's operation or mission and have contributed very little, if anything, to its well-being. Evidence of their failure to act with due diligence in the exercise of their duties is overwhelming. Trustees must realize that they are at the helm of a multimillion dollar operation and act appropriately. It is time for individuals who have been trustees for decades to step down. In addition, those trustees who also are employees must be replaced. The Board should consider allowing no employee to be a voting member or, at the very least, no more than one employee to hold a Board seat. The proper role of administrative staff is to bring issues before and to provide reports to the Board to assist in its decision-making function. In order to revamp the Board, the trustees must remove the stranglehold that the by-laws have placed on the ability of outsiders to penetrate the membership and open up the nominating process to persons in the public who will be dedicated and active in effectuating their responsibilities. It is imperative that the Board provide for an orderly transition and that it undertake this process immediately. By doing so, it will achieve its greatest accomplishment for the organization.

Second, Bernstein should step down as Executive Director. Clearly, the future of AHS, for the better or worse, reposes with him. No progress or change will be realized unless he relinquishes his position and control of the organization. He must accept the credit that he rightfully deserves for transforming a small urban shelter into a mammoth, multi-faceted operation. At the same time, he must acknowledge that AHS has grown at the expense of the very animals that form the foundation of its existence. It is time for him to prepare for an orderly transition in administration. He must fix a timetable for his retirement and succession, appropriate input from the with Board. proper management of organization should not wait for the Board's appointment of his successor. There should be immediate establishment of defined areas of responsibility for all staff and clear lines of authority for the administrators. A system of oversight and accountability in all areas, including shelter operations and financial issues, must be implemented.

Once the Board is reconstituted, the trustees must understand their proper role in governing and must establish the necessary

framework to effectuate its governance. Duties must be delegated to the officers, working committees must be formed, a schedule of regular meetings must be established and formal meetings must be conducted. The Board must assess AHS's operations, resources activities, set priorities, address immediate problems and formulate a long-term strategy. Further, in the future, the executive director should not be a voting member of the Board. Rather, the individual should be available for consultation with the president on a continuing basis and should be present at Board meetings to present reports on the operation and to provide information.

# ESTABLISHMENT OF FINANCIAL PROCEDURES AND CONTROLS

AHS's Board ofTrustees and management must address the numerous weaknesses in its fiscal operation. these areas were the subject of recommendations by AHS's auditors, but both the Board and the administration continually ignored them. Sound fiscal policies, procedures and controls are necessary to ensure the accurate receipt, deposit and disbursement of all funds, the ability to track them and the honest reporting of data to all interested parties, including the government, the Board and the public. The following should be implemented immediately:

- Establishment by the Board of a finance committee that actively oversees AHS's finances and investments;
- Appointment by the Board of a responsible treasurer;
- Preparation and approval by the Board of a budget;

- Proper allocation of expenses and revenues to the particular project or activity;
- Preparation and review by the Board of monthly or quarterly financial reports on expenditures and income;
- Adequate segregation of financial duties and review of supporting documentation for all disbursements, including those for staff reimbursement, in excess of predetermined amounts;
- Requirement that disbursements from the petty cash account be based upon documentation identifying the item purchased and the employee making the purchase;
- Requirement that disbursement checks contain two original signatures;
- A system for the receipt and accounting of contributions made by cash or check that includes the opening of mailed contributions by two persons and the daily deposit of receipts in the bank;
- Establishment of a formal investment policy approved by the Board of Trustees;
- Retention of a professional investment manager to assist with the allocation and investment of surplus funds in order to maximize returns;
- Approval by the Board of the professional investment manager's actions;

- Frequent and periodic review by the administration and Board of the cash and investments;
- Elimination of investments in taxdeferred instruments and bank balances in excess of limits insured by the Federal Deposit Insurance Corporation;
- Creation of an inventory list for all equipment and the periodic performance of a physical inventory;
- Assessment of the antiquated computer system and implementation of improvements in order to yield meaningful financial information and to incorporate the subsidiary records and supporting schedules;
- Obtaining several bids or quotations from contractors when seeking capital improvements;
- Comparison of the funds collected by independent fundraisers with the amounts distributed to AHS in order to ensure the accuracy of the amounts distributed;
- Ensuring that fundraising costs are reasonable, *viz.* not exceeding 35% of the related contributions;
- Execution of formal written contracts with all vendors and contractors, including independent fundraising professionals;
- Creation of accurate solicitation materials;
- Application of funds in accordance with a donator's, testator's or grantor's intentions, and

• Amendment of the by-laws to require an annual certified audit, not simply an audit.

Finally, it is crucial that the Board fully utilize the services that its auditors render to it and review, digest, discuss and implement their recommendations.

# IMPROVEMENT OF THE SHELTER CONDITIONS

In light of the fact that the welfare of the shelter animals lies at the core of AHS's *raison d'être*, it is essential that the Board of Trustees and management ensure the consistent implementation of the following:

- Training and oversight of the staff and managers;
- Proper cleaning and sanitation of the facilities, animal enclosures, feeders and water dispensers;
- Sufficient and appropriate food for the types and ages of the animals;
- Fixed fee schedules for the adoption, surrender, reclaiming, euthanasia, cremation and disposal of animals;
- Training and oversight of veterinary technicians or documentation of their prior training or experience;
- An adequate staff of veterinarians to ensure the medical diagnosis, care and treatment of all shelter animals, including those at the Tinton Falls shelter:
- Implementation of a disease control program;

- Establishment of procedures for the selection of animals to be euthanized to control overcrowding;
- Training and oversight of employees responsible for the euthanasia of animals;
- Sufficient space for the animals in relation to the number of contracts executed with municipalities for animal control services, and
- Full cooperation with rescue groups interested in finding homes for the animals.

# COMPLIANCE BY AHS WITH ALL APPLICABLE LAWS AND REGULATIONS

The Board of Trustees and administrators must take all necessary steps to ensure full compliance with all laws and regulations governing the operation of animal shelters, the rendering of animal control services and the control and use of dangerous substances and other drugs. There should be (1) an immediate cessation of the practice of having nonveterinarians administer rabies vaccinations and practice veterinary medicine; (2) the employment of only certified animal control officers to provide animal control services to governmental entities, and (3) compliance with all regulations for the maintenance, recordkeeping and reporting of controlled dangerous substances and for the use of other drugs.

If it has not already done so, AHS should discontinue the practice of filing criminal charges as a means to compel pet owners to pay the shelter fees. When such cases arise, AHS should pursue its civil remedies.

AHS should not engage any independent professional fundraiser that is not registered with

the Charitable Registration and Investigation Act of 1994, *N.J.S.A.* 45:17A-18 *et seq.* At the same time, the fundraisers currently engaged by AHS must comply with the mandates of the law. In addition, AHS should correct the inaccurate reports previously filed with the Charitable Registration and Investigation Section of the Division of Consumer Affairs, as well as those filed with the State of New York. In the future, AHS administrators should ensure the filing of truthful and complete reports.

AHS should cease utilizing the Great Seal of the State of New Jersey. It should remove immediately the Seal from employee badges.

# FULFILLMENT OF MUNICIPAL RESPONSIBILITY TO PROVIDE ANIMAL CONTROL SERVICES

Municipalities and other entities that contract with AHS for animal control services must handle their obligations in a responsible manner. Officials should better serve the public's interest by exploring the municipality's ability to provide the animal control itself or in conjunction with neighboring towns, by actively negotiating contract terms and fees with AHS to ensure adequate services and the lowest price and by reviewing the contracts before executing them to make certain that they adequately protect the residents and municipality. In particular, officials should demand proof of the certification of the employees providing the services and implement procedures for accountability to verify proper billing and services.

# STRENGTHENING THE SHELTER INSPECTION PROGRAM

This investigation revealed that the problems previously uncovered by the Commission concerning the inspection of animal

shelters have continued. Accordingly, the Commission repeats the recommendations set forth in its report on the Societies for the Prevention of Cruelty to Animals:

An aggressive and thorough shelter inspection program at the state and local levels should be implemented. At the same time, the rules and regulations governing shelters, as well as those pertaining to pet shops, pounds and kennels, should be vigorously enforced. The state Department of Health and Senior Services should increase its staff of trained individuals to conduct regular inspections and to assist and counsel local health offices.

The department should continue to strengthen the rules and regulations regarding the care and treatment of sheltered animals. For example, the department should provide more detailed guidelines on the infectious disease control program that shelter veterinarians are required to formulate and implement. addition, the inspectors should communicate with the veterinarians to ensure their involvement with the shelters and the shelters' compliance with the guidelines. Commission found that many veterinarians are not cognizant of the department's one-page set of guidelines. The department also should promulgate regulations concerning the oversight or supervision of veterinary technicians.

The inspection form promulgated by the Department of Health and Senior Services should be updated and expanded to include more detail as to shelter conditions. In addition, the form should indicate whether the review is an annual inspection or a reinspection and, if a reinspection, the number that it represents. County and municipal health offices should be required to utilize the state form, but should be allowed to supplement it.

Although it is generally the practice of local health offices to forward copies of their

inspection reports to the Department of Health and Senior Services, the practice should be mandated. By tracking the shelter conditions revealed in the reports, the department will be able to monitor the compliance of shelters with the regulations and, as a result, target those in need of scrutiny. In addition, the department would be able to assess the effectiveness of the local health offices and provide counseling and assistance where necessary. However, the department's receipt of inspection reports would be meaningless without sufficient staff to review and track them. Again, resources must be added to enable the department to meet fully its responsibilities in the area of animal welfare.

Inspecting authorities, whether state, county or municipal, must be scrupulous in conducting inspections of shelters. Inspections must be scrutinizing, not perfunctory, and both positive and negative comments should be documented. The Department of Health and Senior Services should provide training classes to the county or municipal employees who conduct inspections.

When an inspection results in a conditional or unsatisfactory rating, follow-up inspections should be conducted at regular intervals until deficiencies are remedied. If the violations are severe and remain unabated, then enforcement proceedings must be instituted.

The penalty provisions contained in *N.J.S.A.* 4:19-15.19 should be strengthened and expanded. Currently, the penalty for violation of the shelter rules and regulations range from \$5 to \$50 "for each offense," which is interpreted to apply to each day that an offense exists. The range of monetary penalty must be increased substantially. Further, there should be provision for a specified monetary range to apply for each day that an offense continues unabated after passage of a reasonable period of time.

The approach of the Department of Health and Senior Services to counsel and advise a shelter's management on how to remedy the violations and improve the conditions is However, such an approach is admirable. effective only when the management is amenable to making the improvements. When it becomes clear that such an approach is unsuccessful, then the department must be aggressive in pursuing legal proceedings. The threat of enforcement proceedings, which typically appears in letters from the department to a shelter's management, must be more than mere words. The failure to follow through leads to a loss of credibility for the department and reinforces the cavalier attitude of the shelter's management. inspecting and licensing authorities on the local level must conduct themselves in similar fashion. In the event of mounting fines and continued lack of responsiveness by shelter management, the municipality must be prepared to assume control of the shelter or entrust its operation to a suitable alternative.

The responsibility of the Department of Health and Senior Services to ensure full compliance with its shelter regulations requires that it have the authority to fill the void created by the inaction of a local licensing authority. Therefore, the Commission recommends that the department be empowered to suspend a shelter's license or revoke it and close down the facility.

In addition to the foregoing, the Commission makes the following recommendation. Local authorities must adhere to the statutory and regulatory mandates that shelter licenses be issued by the end of June of each year and only after an inspection has been conducted to verify full compliance with all applicable laws.

# ENHANCEMENT OF THE CHARITABLE ORGANIZATION REGISTRATION SYSTEM

Under *N.J.S.A.* 45:17A-24d, when a charitable organization files a long registration form, it must also file an annual financial report. In such instances, the financial report "shall be accompanied by an audited financial statement prepared in accordance with generally accepted accounting principles which has been examined by an independent certified public accountant for the purpose of expressing an opinion thereon."

In order for the full intent of the Charitable Registration and Investigation Act to be realized, the Commission recommends that the charitable organizations that file an audited financial statement be required to submit the certified public accountant's management letter subsequent findings with and/or recommendations, together with any written responses by the organization's governing board and/or management. The state's Charitable Registration and Investigation Section should review the management letters to determine whether the organization is implementing the recommendations to correct the significant deficiencies in its internal control Appropriate remedies should be structure. established under the Act for the repeated failure by an organization to comply with the recommendations.

\* \* \* \*

#### REFERRALS

The Commission refers the findings of this investigation to the following governmental agencies for whatever action they deem appropriate:

- New Jersey Department of Health and Senior Services
- New Jersey State Board of Veterinary Medical Examiners
- Office of the New Jersey Attorney General, Division of Criminal Justice
- Office of the New Jersey Attorney General, Division of Consumer Affairs, Office of Consumer Protection, Charitable Registration and Investigation Section
- Office of the New Jersey Attorney General, Division of Consumer Affairs, Drug Control Unit
- New Jersey Division of Taxation
- Supreme Court of New Jersey, Office of Attorney Ethics
- Office of the New York Attorney General, Charities Bureau
- United States Internal Revenue Service

\* \* \* \*

This investigation was directed by Counsel Ileana N. Saros and conducted by Senior Special Agent Michael J. Dancisin, Special Agents Paul P. Andrews, F. Jack Caldwell and Peter J. Glassman, Investigative Accountant William Sweerus, Intelligence Analyst Betty R. Ransier and Secretarial Assistant Judith A. Krueger.

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# **APPENDIX**

## INTRODUCTION TO APPENDIX

*N.J.S.A.* 52:9M-12.2 provides that

[w]henever a proposed State Commission of Investigation report is critical of a person's conduct, a copy of the relevant portions of the proposed report . . . . shall be sent to that person prior to the release of the report. Upon receipt, the person criticized shall have 15 days to submit a written response of a reasonable length which the commission shall include in the report together with any relevant evidence submitted by that person.

The following are the responses to this report that were submitted pursuant to that statute. The reader should note that the responses were not made under oath and that one response is not even a statement by the affected individuals.

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February 14, 2003

James J. Morley
Executive Director
Commission of Investigation
PO Box 045
Trenton, New Jersey 08625-0045

Re: Associated Humane Societies

Dear Mr. Morley:

The Board of Directors of the Humane Society have reviewed the SCI Report and find it to be replete with outdated information, pervasive exaggeration, factual embellishments and intellectually impossible conclusions.

It is, in its final analysis, a character assassination of a single employee rather than a thoughtful, accurate presentation of reality. Much of the Report relies on innuendo, undisclosed sources and circumstantial statements loosely strung together which then serve as the basis for criticism. A curiously high percentage of the Report focuses on one individual who seems to have been targeted as the "root of all evil." The Board believes that this unconscionable focus on one individual characterized as little more than a maniacal tyrant undermines the credibility of the Report and points up its inherent bias.

A perfect example of this is the Executive Summary itself that hails the incredible efforts of the targeted individual (Lee Bernstein) and in the very same breath, lays the "sins" of the organization at his feet. There is an inescapable Irony in the conclusion reached in the Report. Of course Mr. Bernstein enjoys influence in the organization, he has earned it in over 35 years of devotion to its mission. Unfairly, the Report characterizes him as a despot as opposed to what he is, a strong, committed and guiding force who over more than 3 decades earned the capacity to influence.



James J. Morley February 14, 2003 Page Two

Before the Report is published, we are afforded a mere 15 days to respond; this makes it impossible to adequately address each and every assertion in the Report. To do so is a fool's task! A still further irony is the SCI has 6 years in which to prepare its 133 page Report, and we have a relative split second to respond. To our way of thinking, this does not advance any legitimate state interest and only serves to prove the existence of a "stacked deck."

We have however identified a group of particularly egregious examples of the misstatements contained within the Report.

The Report states that either there were no vets or they were inadequate, that is categorically denied. Worse still is the fact that there is absolutely no proof offered to corroborate this opinion, improperly presented as a fact. AT ALL TIMES THERE HAS BEEN ON STAFF FULL-TIME LICENSED VETERINARIANS UNDER CONTRACT WITH THE SOCIETY.

The Report suggests impropriety due to the relative small expenditure on food for the animals. The inference therefore is that the animals are hungry and abused. THE REPORT FAILS TO NOTE THAT MUCH OF THE FOOD FOR THE ANIMALS IS DONATED, ACCORDINGLY THE EXPENDITURE ON FOOD IS UNDERSTANDABLY SMALL AND DISAPPORTIONATE.

The Report criticizes the Society for its euthanasia practices. THE POLICIES AND PRACTICES OF THE SOCIETY REGARDING EUTHANASIA ARE CONSISTENT WITH REGULATORY GUIDELINES AND IN MOST INSTANCES ANIMALS ARE KEPT UNTIL ADOPTION. ONLY WHERE A VET DETERMINES OTHERWISE ARE ANIMALS DESTROYED.

The Report identifies fee increases of more than 33% to 100%. THERE IS ABSOLUTELY NO BASIS FOR THIS CLAIM. WHILE THERE HAVE BEEN INCREASES, IT IS A FUNCTION OF TOWN BY TOWN NEGOTIATION AND POPULATION GROWTH WHICH AFFECTS THE FEE STRUCTURE.

The Report relies in numerous instances on uncorroborated, anecdotal tales secured from terminated employees or disgruntled persons. NO ORGANIZATION IS FREE FROM FAIR CRITICISM HOWEVER RELIANCE ON SOURCES SUCH AS THESE IS UNRELIABLE, LACKING IN CREDIBILITY AND ARE INHERENTLY BIASED.

James J. Moriey February 14, 2003 Page Three

How could anyone presented with a Report of this girth adequately respond? Accordingly we have chosen not to. Instead we decided to use the Report as a vehicle for change identifying those areas of fair comment and implementing affirmative measures to improve the organization both operationally and structurally.

It is imperative to note much of what is proposed as our Action Plan was already in the development stages when the Report was served. Make no mistake, we do appreciate and recognize that the Report will be used as an agent of change. If reports such as this are intended to serve as a wake up call, then notwithstanding its harsh, factually inaccurate premise, there is good that can emerge.

Finally, were we given the time to fully digest and analyze the Report, be assured we would have provided a response to each and every allegation provided herein.

## ACTION PLAN OF THE ASSOCIATED HUMANE SOCIETY

1. The Board will accept Lee Bernstein's voluntary resignation as Executive Director and Director of the Society. Mr. Bernstein will however remain associated with the Society in the capacity of a non-employee consultant and will have his activities limited strictly to fund raising efforts closely monitored by the Board and an ad hoc committee that will oversee such efforts and provide an independent report at each Board meeting. Mr. Bernstein will be retained pursuant to a written Consulting Agreement with stated termination clauses.

While the Board acknowledges and appreciates the incredible dedication of Lee Bernstein over the years, it is apparent from the Report that much of what is the subject of criticism is attributed to Mr. Bernstein's management style. He is of course, firmly committed to the work and mission of the Society and will not let the Society continue to be criticized or its reputation disparaged as a consequence of his past actions or inactions and has decided to retire.

- 2. Ms. Rosanne Treza will serve as temporary Executive Director with the close administrative assistance of Terry Clarke.
- 3. The current Board will be reorganized for the purposes of identifying which members wish to continue to remain on the Board.

The departing Board members will be replaced with well-respected community and business leaders who have direct and extensive experience with management of Non-Profit organization and/or who have experience in the responsibilities of Board appointees. (The Board is hopeful in identifying a Veterinarian and a financial professional to serve.) The Board is prepared to increase the number of Board members to enhance the quality of the representation.

- 4. The Board will immediately retain the services of a lawyer: to serve as an advisor to the Board attending all Board meetings who shall fulfill the role of Board Secretary; and to perform a comprehensive review of the By-Laws and other corporate controls to ensure compliance with Non-Profit statutory guidelines and sound business practices, at the conclusion of which to provide the Board with a written report including recommendations to ensure statutory compliance in all areas. The attorney will also review all municipal contracts.
- 5. The Board will retain a new certified public accounting firm to perform an audit of its accounting and internal financial controls and provide recommendations for implementation in a written report. A subcommittee of the Board will be appointed to oversee the audit and implement the recommendations.
- 6. An Advisory Board will be created consisting of members of the community who express or who have demonstrated a particular interest in animal care to assist the Board and employees in the delivery of services.
- 7. The By-Laws will be amended to provide for mandatory monthly Board meetings to intensify the oversight of the Board and to ensure rapid attention to the success of this organizational revitalization.
- 8. The Board will immediately investigate sources of in-service training with the goal of requiring all Board members and executive employees to attend training sessions focusing on organizational management, regulatory compliance and legal and ethical responsibilities of Board members.
- 9. The Board will enhance its management of its monetary assets by consulting with an experienced financial professional to ensure the maximum return on investment while protecting the corpus.
- 10. The Board and its advisors will design and videotape a comprehensive orientation and training program which all employees and all new hires will participate. The program will include animal handling procedures, compliance with

James J. Morley February 14, 2003 Page Five

legal requirement, animal health/well being standards and general training on proper employee behavior. A separate human resource department shall be created, reporting directly to the Executive Director.

- 11. Complete, review and updating of all reporting and data collection techniques including consolidating data from all branches.
- 12. A policy will be implemented to ensure that before any and all legal action is begun it shall be submitted to counsel for a determination of propriety of filing an action.
- 13. The Society shall cease using a badge with the insignia of the state of New Jersey thereon and/or shall seek permission pursuant to the law to incorporate the seal.

The Action Plan described above is a beginning for the reorganization of the Society. The Society performs a critical service throughout the State of New Jersey. It is the Society's expectation that the SCI will applied the efforts undertaken as opposed to viewing them as admissions, which they are not. They are however, the good-faith intentions of persons who are dedicated to the welfare of animals.

Very truly yours,

**LEVIN & CYPHERS** 

Harry Jay Levin

HJL:mf

cc: Associated Mumane Societies

February 10, 2003

RECEIVED
2003 FEB 19 AH 10: 36
STATE COMMISSION OF INVESTIGATION

Andrew Commencer Commencer

State of New Jersey Commission of Investigation PO Box 045 Trenton, NJ 08625-0045

Attention: Ileana N. Saros

RE: Notice of Proposed Report Associated Humane Societies THE BAGGER THE BETTER

This letter is to serve as a response to the above proposed report regarding The Bagger the Better, Inc.

As to the matter of the percentage being forwarded to the Associated Humane Societies: Our company has been raising funds for the ARS for over 15 years. The percentage has always been the same and the ARS has always been appreciative of the funds sent to them on a weekly besis. They incure NO expense for the project. Not only do they receive the money for the initial donation, but the fact that the supporters are receiving something for the donation makes them support the cause repeatedly in order to receive either more garbage bags or to receive another t-whirt, eventshirt, total has, etc.

Over the years we have put 10's of thousands of these shirts in circulation in the State of New Jersey. I, personally have seen people wearing them at the movies, in the mall, at the foodstore, etc. Our supporters are constantly telling us that people stop them on the street to ask them about the zoo and get the phone number off the shirt so that they can visit to zoo themselves or get their own shirt. As in any business, volume is everything.

The value of the free advertising from the clothing items or the promotion for the 200 on the phone (8 hours per day, 5 days per week) is impossible to put a dollar figure on.

The Bagger the Better was formed on a shoe string budget over 15 years ago. Initially, myself and partner went into dobt just to start the operation. Over the years, it has become only myself as an officer. After years of learning, I am convinced that we have cut expenses in many areas and are finally able to be breaking even on the project.

My swerage yearly salary over the past 15yrs. has been

approximately \$30,000. This usually consists of a work week of at least 50 hours for myself. This is hardly an excessive income in today's world.

As to the registration issue, I have been advised several times in the past that only the non-profit organization itself was required to register. If this is not the case and The Bagger the Better is also required to do so, any instructions for expediating the matter will receive my immediate attention.

Sincerely,

THE BAGGER THE BETTER

Margaret Archer

President