

Opinion

Legal Protection for Rats, Mice, and Birds: Long Overdue and the Right Thing to Do

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Despite recent claims to the contrary, last year's settlement between the Alternatives Research & Development Foundation (ARDF) and the USDA provides long-overdue legal protection for more than 95% of the animals routinely used in biomedical research, testing, and education. There is no confusion or ambiguity regarding Congress' original intent when it passed the 1970 amendments to the Animal Welfare Act (AWA) and stated that the law applied to "warm-blooded animals as the secretary may determine is being used or is intended for use, for research, testing, experimentation or exhibition purposes." Clearly the Secretary of Agriculture was given discretion to identify which species were being used, but not to exclude those same animals from AWA legal protection.

If anyone still doubts the original intent of Congress, a simple solution is to ask the individuals involved. In a recent letter to the ARDF, Senator Bob Dole (who is obviously not an animal rights activist) stated for the record, "As someone deeply involved with the process of revising and expanding the provisions of the AWA, I assure you that the AWA was meant to include birds, mice and rats. When Congress stated that the AWA applied to 'all warm-blooded animals,' we certainly did not intend to exclude 95 percent of the animals used in biomedical research laboratories."

One of the unusual and surprising consequences of ARDF's efforts to finally secure legal protection for rats, mice, and birds was the broad-based support (including major universities and colleges) of organizations not traditionally viewed as allies of the animal advocacy movement. For example, the American Association for Laboratory Animal Science (AALAS) noted that the "political and economic rationale that led to the exclusion in the AWA of the vast majority of animals in research is ethically indefensible." In addition, the American College of Laboratory Animal Medicine (ACLAM) stated that they could "identify no philosophical or scientific reason for excluding these species from USDA regulatory oversight." Along with the conditional support of organizations such as AALAS and ACLAM, there is also an unambiguous, random survey conducted by professionals on the attitudes of IACUC members, chairpersons, and animal researchers who specialize in using rats, mice, and birds. Fully two-thirds of the respondents supported the inclusion of these animals, with no significant differences between researchers and IACUC members. The authors of the survey observed that "it would be a distortion to present the debate as a conflict between animal researchers and animal protectionists."

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Even large commercial producers of laboratory animals seem unconcerned about this issue. Charles River Laboratories indicated last year that "we do not anticipate the addition of rats, mice, and birds to the Animal Welfare Act to require significant expenditures" and such actions "will not result in loss of net sales, margin or market share, since all producers and users will be subject to the same regulations." In other words, the ARDF/USDA settlement creates, for the first time, a level playing field for all warm-blooded species and producers and consumers of laboratory animals.

Despite such supportive comments, the ARDF/USDA settlement has received considerable opposition. Much of the media coverage has repeated verbatim the distortions of the content and consequences of our settlement. The National Association for Biomedical Research (NABR) and the Association of American Medical Colleges (AAMC) have indicated a willingness to manipulate information to create an irrational panic within the biomedical and patient advocacy communities and to promote a polarizing agenda to turn back the regulatory clock. We believe they will be hard pressed to justify their myths once the facts become more widely recognized. An editorial published in the October 12, 2000 issue of *Nature* (1) summed up their actions best by observing that "some of the research lobby's arguments verge on the reactionary."

What is most important to consider, from our perspective, are the positives that are gained from full inclusion of rats, mice, and birds under the provisions of the Animal Welfare Act:

1. Currently rats, mice, and birds have no minimal legal standards for care, no protection under the statute, no legal barriers to preventing abuse, and no records of use.
2. Currently by using only rats, mice, and birds, up to 2,000 facilities escape inspections as well as legal and regulatory accountability.
3. Currently an unknown portion of regulated laboratory animal industries are not in violation of the law—regardless of how they treat rats, mice, and birds.
4. Currently unregistered facilities and staffs escape requirements to consider humane alternatives for all uses of rats, mice, and birds. This is the fundamental reason the ARDF pursued the goal of including these animals in the AWA regulations.

Once the rule-making process resulting from the ARDF/USDA settlement is completed, there will be a number of firsts for laboratory animals in the United States. For the first time, there will be unannounced inspections for all facilities; real le-

gal consequences and sanctions for failures to adequately care for these animals; an accurate census of all species used in the laboratories; comprehensive information of the extent of pain and distress; an ability to track trends in the use of animals; universal consideration of alternatives; and a level playing field for all facilities and species.

From our point of view, the ARDF/USDA settlement has many positives and few negatives. It reverses 30 years of legal and regulatory neglect, finally fulfills a well-defined Congressional mandate, and promotes wider consideration and use of alternatives.

The biomedical research community has never been ignored by the ARDF or the USDA. The formal rulemaking procedures incorporated into the settlement agreement are still intact and represent the appropriate venue for all parties to have their input. It was the actions of the NABR and AAMC that prevented everyone from participating.

Many of the claims of dreadful consequences resulting from the ARDF/USDA settlement are identical to those offered nearly 20 years ago in opposition to the 1985 amendments to the AWA. Senator Dole noted that "I am aware of efforts by opponents of animal welfare to prevent coverage of birds, mice and rats as detrimental to research. This notion is preposterous. A similar strategy was employed by opponents of my 1985 amendments to the Act. I am happy to observe that none of their predictions about the dire consequences for research ever materialized."

The USDA still faces a financial crisis and will need substantial budget increases to cover the new responsibilities created by the settlement and other concerns. In recognition of this fact, a bipartisan coalition was created so that all sides of the controversy could work together to help secure increased funding for AWA programs. Unfortunately at the same time NABR chose to oppose the settlement, they also chose to withdraw from that coalition.

Perhaps the most disappointing consequence of the settlement, from our perspective, is the resurrection of old, long-extinct ideas about shifting regulatory responsibility for laboratory animals from the USDA to the NIH. This was originally proposed more than 30 years ago, discussed in Congress, and soundly rejected. Senator Dole commented on this as well by noting that "... with AWA regulations soon extended to these animals, I believe USDA, with its substantial experience in enforcement, is best suited to ensuring humane care for all laboratory animals. Moreover, neither NIH's policy nor voluntary accreditation includes legal consequences for failure to perform. The Animal Welfare Act does. That is the heart of the law." It is also apparent that the current animal advocacy movement, much larger and influential than was the case in 1985, would vigorously oppose any attempt to remove laboratory animals from USDA jurisdiction.

From our perspective, it has taken more than three decades to finally secure basic, minimal legal protection for all warm-blooded laboratory animals and the involvement of all facilities using these species. The direction to go from here is forward, through the rule-making process—not backward. That is not an animal rights tactic; it is the right thing to do.

Reference

1. Anonymous. 2000. In defence of animal research. *Nature* **407** (6805):659.