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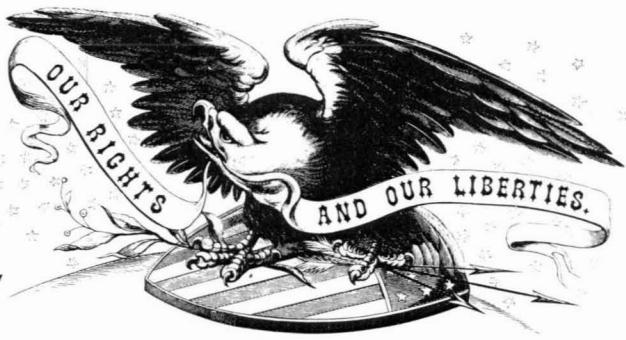
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"LAW FOR THE BIRDS"

by Edwin E. Lawrence
Attorney, Woodland Hills, Calif.



MR. & MRS. A.V. CULTURE AND NEWCASTLE DISEASE

DISCLAIMER:

(The following hypothetical case is a fictionalized attempt to deal with a clear and present danger to avicultural interests.)

Mr. & Mrs. A.V. Culture are familiar to regular readers of this column, but to introduce them once again, this happy, wholesome couple has as their avocation and part-time business a variety of bird raising pursuits — in short, the A.V. Cultures are established, successful and avid bird people. A few months ago they purchased an Ashy-headed Phoenix bird from XYZ Exotics, Inc., a well-known commercial bird dealer that advertises nationally — "No bird too big/too small" — "All our birds are inspected and have

feathers"

The A.V. Cultures, who ordinarily use quarantine precautions when new birds enter their premises do not do so on the date that they receive this long-awaited specimen, feeling that the bird had little chance of having problems since it had reportedly already lived nearly a decade in the U.S., and besides, they were very bushed the day that the bird arrived, so it was placed in a pen by itself and they went on about their chores — chores that have been going on for the 15-20 years that they have been raising exotic species and building up their bloodlines.

Comes the dawn bright and sunny, and Mr. Culture looks in the pen and notes that the Ashy-head had bitten the dust. He knew that the old boy was some-

Not a shipping box but a death chamber.



Photo by Michael A. Valente, Fallbrook Enterprise, Fallbrook, CA.

thing of a geriatric case among birds, but even though death is expected it often comes as a shock to use. He mutters something about you win some and lose some, and goes on about his business.

The next day he finds several very expensive gamebirds and peacocks dead in nearby pens. He can think of no explanation for their deaths — the weather has been mild and they all appeared to be without problems one day and the next day they were dead in their pens. He bundles up the carcasses and sends them off to the State veterinary inspection service. Each morning Mr. & Mrs. A.V. Culture find more dead birds and they become both frightened and agitated because they have now lost nearly \$20,000.00 worth of breeding stock. There is some delay in getting a diagnosis from the State lab, however, when it comes back it is definite and succinct: exotic Newcastle.

The A.V. Cultures are advised that there is no cure for exotic Newcastle, that it is highly infectious, and speedily kills larger birds such as chickens, pheasants, peacocks, turkey, tragopans, and assorted gamebirds. If left unchecked, the

disease could wipe out the entire poultry industry in the U.S. in very short order, destroying an essential food supply and an investment that is enormous, not to mention leaving all those Colonel Chicken franchises with nothing to sell but barbecued ribs.

Due to the obvious danger to the national economy, the federal authorities investigate — and destroy all the remaining stock that the A.V. Cultures have. A rough estimate is that there were about \$60,000.00 worth of infected/exposed birds destroyed by the federal authorities in an effort to check the spread of the disease.

Mr. & Mrs. A.V. Culture feel thus far that they have been treated properly by the federal authorities. An inventory was taken of the stock prior to killing, and a panel of three experts has been set up to evaluate their loss in order to come to a figure for compensation. The law is clear that when private property is taken for a public benefit there must be compensation paid by the taker to the takee. Question — should the taker pay for the \$20,000 worth of birds that died prior to the condemnation in addition to the

\$60,000 worth of birds that were killed by federal authorities? If the taker tries to avoid paying the additional \$20,000 would it make any difference if it could be established that the taker and its agents were neglectful and sloppy in not making a more prompt diagnosis of Asiatic Newcastle when the A.V. Cultures first sent in their dead birds? Since the A.V. Cultures admittedly did not follow even their own practice of suitably quarantining a new bird to their premises should the amount they received be reduced by some figure by way of a penalty or should they be cut off entirely — or should we just forgive and forget; after all, we have all made mistakes like that and anyway they have certainly suffered in ways that no amount of money will ever be able to compensate in the loss of their unique stock and bloodlines.

On the day that the Ashy-headed Pheonix took its dive, the A.V. Cultures made a breeding loan of one of their un-mated exotics to their good friend Mr. N.O. Cent. The federal authorities have asked for and received a complete list of all bird-related activities that the A.V. Cultures have engaged in since the date

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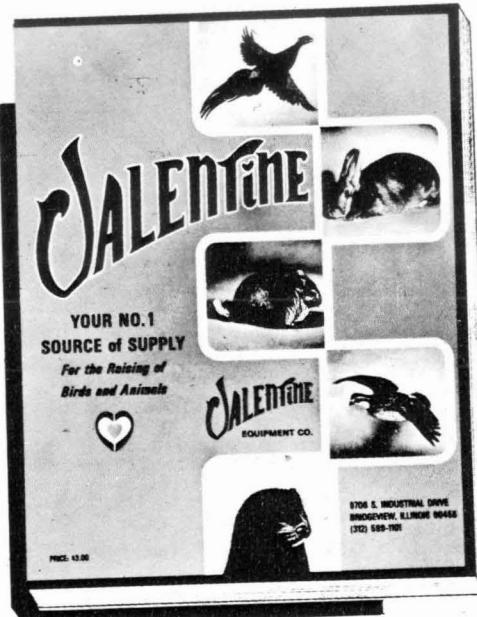
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that the Ashy-headed Phoenix arrived, and have quarantined all such premises including that of Mr. N.O. Cent. It has been the practice of the authorities to kill off all stock of feathered species that could have been exposed to the dreaded disease regardless of whether or not the birds involved actually have Newcastle disease. Mr. N.O. Cent will be compensated at fair market value for the destruction of his flock if it takes place, but some of his species are nearly impossible to replace at this time due to import restrictions.

Meanwhile, the authorities have determined that the primary source of the disease was from XYZ Exotics, Inc., and they have also, to use the euphemistic term, been depopulated. XYZ Exotics, Inc. will also be compensated. All this compensation (dollars) is coming out of money that all of the taxpayers have contributed to the federal treasury — in other words, all of us are paying for these losses.

There is widespread rumor and speculation, AND I WANT TO EMPHASIZE THAT IT IS JUST SPECULATION AT THIS TIME, to the effect that XYZ Exotics, Inc. has been dealing in some illegal smuggled birds, and these birds are the source of the exotic Newcastle disease in the United States. If it can be established by competent evidence that such illegal activity existed and was the source of the disease and the resulting losses, should XYZ Exotics, Inc. be compensated in any amount for the condemnation losses it has sustained? Should a wrongdoer be compensated by the taxpayers? Also, what about the claims of the other fanciers who have suffered losses — should they be able to claim damaged from XYZ Exotics, Inc.? And finally, should the U.S. government (us taxpayers) be allowed to recover from XYZ Exotics, Inc. for the vast sums that have been spent on the eradication program?

In determining what should and can be done we also have to take into consideration the practicality of who has the resources (dollars) to pay for all these damages. If XYZ Exotics, Inc. has no insurance, and goes bellyup and bankrupt as a result of this disaster, it really won't make much difference to any of the other injured parties as to how good their legal rights and remedies may be. Unless they can collect from the responsible party they are better off to take their losses and not go spending large sums in litigation trying to enforce a right that is economically meaningless.

These then are a few of the tantalizing

legal questions that arise from the foregoing make believe situation. An attempt to provide comprehensive legal answers would take considerable research and an unfair allocation of space for this column. I believe that two conclusions can be drawn right now which have application to all of us:

- Quarantine all new birds that you may acquire. I would think that it would be sound advice to quarantine any new birds at premises other than your own. Follow sound hygienic practices when visiting the aviaries of others or when others come to visit you.

AND NOW DEAR READER, HERE COMES MY EDITORIALIZING,

- Any person who deals in smuggled birds, either as a smuggler, dealer, or a buyer is a real and present danger to the entire feathered population. We in aviculture have been too complacent towards smuggling. We should stand behind tough laws and tough prosecutions of those involved in this quick-buck trade. At the same time, we should be pressing for a more intelligent import and quarantine procedure so that the economic conditions which make smuggling appealing to the smuggler, the dealer, and the ultimate buyer of smuggled birds, are removed. Tough laws and strong jails are not much of a deterrent to crime when there is an even stronger possibility of large financial rewards for the wrongdoer. The reform of import and quarantine procedures should be promptly undertaken; however, until that is done, they are the best protection we aviculturists have, and they should have our support. The smuggling of birds is the smuggling of disease. Smuggling is a clear and present danger to aviculture. If we do not control these people we will not long have aviculture in America.

I believe that as a result of this latest outbreak of Newcastle disease there will be an increasing clamor for restrictive legislation effecting the aviculturist. One demand that can be anticipated is a requirement that all persons dealing in any aspect of aviculture be licensed. Said licensed aviculturist would be further restricted by education, experience, testing procedures, financial ability to respond to damages, tight inventory controls, and a system of periodic on-site inspections — all of which the aviculturist would pay for by a system of fees, taxes, and other monetary contributions. This is a horrendum that none of us want. If it comes about, it will be because we have been proven incompetent to clean and govern our own activities. End of editorial.