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Have a Dog in the Fight: Re-thinking Dangerous Dog Cases

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Every day in courtrooms throughout the country, prosecutors are faced with the agonizing challenges inherent in certain capital cases. The accused do not even understand their actions are criminal. They are not given the benefit of legal counsel, and if convicted of their crimes will face certain death by lethal injection. They are guilty of being dangerous or vicious dogs. One should say they are guilty of being dogs. This article will provide prosecutors information to assist them in making life and death decisions in dangerous and vicious dog cases and to consider alternative remedies.

The Law

Every state or local government has statutes or ordinances that define what constitutes a dangerous or vicious dog and the punishments that apply. There is a complete lack of uniformity as to these definitions and some dogs earn the stigma simply by being born into a certain prohibited breed. Some, but not all, prosecutors may be called upon to represent their local animal control agency at a dangerous or vicious dog hearing.

Some states are referred to as "one-bite states" meaning that the state still relies on the common law "one-bite rule."

The "one-bite rule" protects dog owners from liability, criminal and civil, as to the first injury caused by the dog unless liability can be established on other grounds. The first injury does not necessarily have to result from a bite; it can be caused by other actions of the dog, like knocking a person down.¹ After the first "bite," the owner is placed on notice of the dangerous propensity of his/her dog and will be held liable for further incidents involving that dog. A total of sixteen states currently fall under the category of a "one bite state."²

Other states delineate between what constitutes a dangerous dog and a vicious dog. For example, in Virginia, a "dangerous dog" is a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person, or injured or killed a companion animal that is a dog or cat.³ A "vicious dog" is a canine or canine crossbreed that has either: (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to ex-

Note: The breeds of dogs mentioned in this article refer to the commonly known breed names and do not refer to the AKC, UKC or any other breed specific designation. For example, the term Pit Bull refers to American Pit Bull terrier as recognized by the UKC. German shepherd refers to German Shepherd Dog as recognized by the AKC.

hibit the behavior that resulted in a previous finding that it is a dangerous dog, provided that its owner has been given notice of that finding.⁴ Virginia does not have breed specific legislation, but many municipalities across the United States have designated entire breeds of dog as “dangerous” or “vicious.”

The legal classification of a dog as either “dangerous” or “vicious” varies greatly from jurisdiction to jurisdiction. Although the classifications may vary, each definition focuses on the actions of a particular dog, a specific breed, or the acts and omissions of the dog’s owner. Generally speaking, the term “dangerous” refers to the potential risk of harm by any action of the dog, while the term “vicious” refers to a dog that has done or specifically communicated through its actions in the past the propensity to do something harmful. A dog can be labeled as dangerous through no fault of its own, but rather because his owner violated animal control rules, or simply because the dog is a certain breed considered dangerous by society. Once a dog has been classified as dangerous, a court hearing must occur for the purpose of determining whether or not the dog in question should be declared vicious.⁵ The specific law of the jurisdiction generally will lay out this procedure, which usually involves a decision by a hearing board after a complaint has been filed against a specific dog. Once designated as a dangerous dog any further issues relating to the dog, such as injury cases, will involve a prosecutor.⁶

Repercussions of Dangerous and Vicious Dog Laws: Alternatives to Consider

Dangerous dog laws differ widely from jurisdiction to jurisdiction, but all attempt to define the characteristics of dangerous dogs and set forth the procedures for declaring a particular dog to be dangerous or vicious. These laws also establish what will become of a dangerous dog and its owner. Pursuant to the law of the jurisdiction, a dog classified as dangerous or vicious is subject to being confined, kept pursuant to strict rules, or even euthanized.⁷ Owners may be subject to punishments ranging from fines to jail.⁸

In recent years there have been many calls for laws that would classify entire breeds of dog as dangerous because of a perception that certain breeds, such as the Pit Bull and the Rottweiler, cannot be controlled. Such legislation is referred

to as “breed specific law.”⁹

On April 26, 2012, the Court of Appeals for Maryland chose to adopt a strict liability standard where there is sufficient proof that a dog involved in an attack is a Pit Bull or pit bull mix and that the owner knows or has reason to know that the dog is of such a breed.¹⁰ This strict liability was extended to landlords who have the right and/or opportunity to prohibit such dogs from leased premises.¹¹

A dangerous dog law sets forth what conduct of a dog and



its owner shall be illegal, establishes consequences for dog and owner, and provides reasonable rights of notice and hearing before the imposition of penalties. This type of law can exist at all levels of government and can cover a wide range of unacceptable behavior as deemed appropriate by a jurisdiction.¹² Unlike an irresponsible dog owner law, dangerous dog laws result in the categorization of dogs, which have significant ramifications for the dog for events often outside the dog’s control.

An irresponsible dog owner law attempts to identify and penalize chronically irresponsible dog owners. The penalties under an irresponsible dog owner law can include the loss of one’s dogs as well as the imposition of a substantial fine. This type of law punishes repeat human offenders of animal control laws and not the animal.

Irresponsible dog owner laws are in keeping with humane principles such as *punish the deed, not the breed*, and *put responsibility on the other end of the leash where it belongs*. Dog owners need to understand that their actions usually are the cause of a dog being declared dangerous. No matter what breed of dog is involved, the dog can present a substantial danger to one’s family, friends, and community if the dog is mistreated, not cared for properly, not socialized, chained, injured, or ill. The dog owner, harbourer, or keeper (except for a temporary keeper) bears the responsibility for these condi-

tions.¹³ Considering most dogs act in response to an environment they cannot control, irresponsible dog owner laws appropriately address the source of the problem and allow for the opportunity of adoption and rehabilitation for the dogs involved.

The Prosecutor's Role

As prosecutors, we often find ourselves overwhelmed with ever-increasing criminal dockets and ever-decreasing budgets. It is easy for us to think these cases are routine and do not require consideration beyond the facts. It is even easier to overlook the big picture and succumb to the rationalization that *it is just a dog*. If we work out a resolution that does not include euthanasia, and the dog attacks again, we are faced with defending our decision. Should a dog bite a second time, media coverage could create significant repercussions for a prosecutor's elected State or District Attorney.

Despite pressure to maintain the status quo in prosecuting these cases, prosecutors should consider each case individually. A good example involves the seizure of the Pit Bulls from Michael Vick's home in Virginia. Following the seizure, questions were raised regarding the disposition of the animals. Many of these dogs had been in the fighting ring and had been abused and tortured. Forty-seven of the fifty-one Vick dogs were saved.¹⁴ Initially, some animal advocacy groups urged the euthanasia of all the Vick dogs.¹⁵ This would have been a tragic decision because several of the Vick dogs went on to become ambassadors of the breed earning Canine Good Citizen recognition and even becoming certified therapy dogs.¹⁶ The steps taken to individually assess each dog's behavior and temperament saved the lives of dogs that would have been routinely euthanized because they were labeled as fighting dogs. It also brought good will and positive publicity to those organizations who took the time to assess each dog.

Understanding Canine Behavior

Prosecutors are faced with becoming quick studies on a variety of topics in order to be prepared for court. When it comes to issues involving animals, especially dangerous dog cases, we often do not have advance notice or time to truly understand canine behavior. Opposing counsel usually hire animal behavior experts to evaluate a dog who is the subject of a dangerous or vicious dog case to testify that the dog is not aggressive. The prosecutor should be prepared to properly handle this witness and evaluate the facts of the case in a

thorough manner.¹⁷

In the past, dog behavior was categorized as dominant and submissive. Such categories have been misunderstood and often mean different things to different groups.¹⁸ Dominance and aggression are treated as the same, but have distinct meanings. Dominance is a reflection of the dog's social status. It can become an issue, but it is not always a behavioral concern. However, aggression is an inappropriate response by the dog to normal stimuli.

One must appreciate that all canines exist in a dynamic and orderly social system. We often misinterpret or ignore canine communication that occurs within this social order. Misconstruing undesirable behaviors like resource guarding,¹⁹ which can lead to violent incidents, often results from this misunderstanding of a dog's social order. We need to fully understand any display of canine violence before we can suggest a solution.

Other factors that influence aggression in dogs include learned behavior, genetics, hormones, social development periods, stress, fear, physiological factors, resilience and trauma.²⁰ Territory, personal distance, previous encounters, age, sex, and size also factor in to the aggression equation.²¹ In a dog's mind, many aggressive encounters reflect competition over resources or attempts to enhance genetic survival.²² Approximately one out of five aggression problems brought to a veterinarian's attention relate to dominance aggression.²³ A variety of actions can stimulate a display of dominance aggression in a dog and include approaching his food or favorite person, staring at the dog, or may simply be due to the dog's perceived elevated social standing.²⁴

Fear aggression exists opposite dominance aggression in dogs.²⁵ Fear aggression, the most common type of aggression exhibited by pet dogs, stems from the animal's defense drives.²⁶ While it is normal for dogs to bite when frightened, it becomes a concern when a dog's behavior threshold results in a reactive bite to a slight stimulus.²⁷

When analyzing a bite case a prosecutor needs to take into account the natural aggressive behavioral responses of canines. In a 2012 well-televised news story, an Argentine Mastiff bit the face of a news anchor.²⁸ The bite was so severe that she required seventy stitches. A careful viewing of the circumstances preceding the bite shows a dog under great stress. The dog exhibited signs associated with stress like panting, lip licking, and averting his eyes. The news anchor was sitting very close to the dog which had just been rescued

from an icy lake. He kept moving away from her in an effort to get some space. She misread his signals, and the bite was a normal reaction by a scared and stressed dog. A careful viewing of the news reel also shows the owner holding the dog's collar with a tight grip. Subsequently, the news anchor acknowledged her actions contributed to the incident. Understanding the basics of animal behavior in making a determination that a dog is dangerous or vicious will allow the prosecutor to fashion a disposition that takes into account the circumstances surrounding the behavior and determine whether the dog reacted normally under those circumstances.

The Pedigree

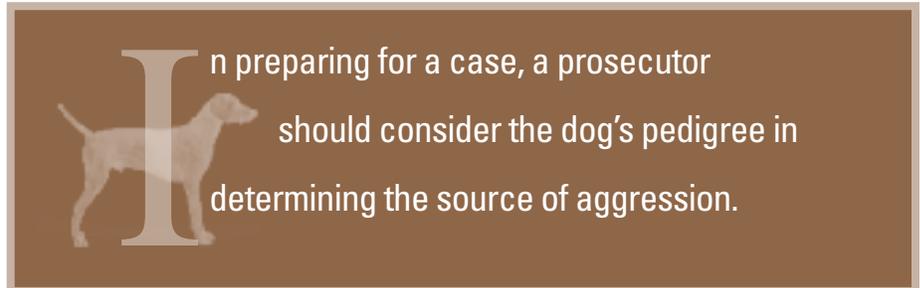
In preparing for a case, a prosecutor should consider the dog's pedigree in determining the source of aggression. In a recent case, a German shepherd severely bit a household member in the face two times and once on the arm. The household member had tried to take a bone away from the dog. At first blush, it appeared as though the dog was resource guarding. The organization that quarantined the dog was provided his entire pedigree. An examination of the pedigree revealed the dog was highly trained and had received his BH, an acronym for Begleithund, a German title indicating the dog passed temperament and obedience testing prior to advancing for Schutzhund titles.²⁹ His behavior was nonetheless concerning, and further investigation into his pedigree revealed that he came from a long line of French ring champions. His brother was the 2011 French Ring Champion. Ring titles are indicated on a pedigree as Brevet (certification test needed to progress on to Ring I, Ring II, and Ring III titles). The significance of this finding in his pedigree was staggering. He was trained to object protect. Like other French ring dogs, he was trained for protection, bite work, and object guarding.³⁰ Ring dogs are trained to bite without warning.³¹

This dog was bred to object guard, came from dominant German working dog lines and French ring lines, and was taught to behave exactly the way he responded when "provoked." During an assessment, he was calm, obedient, and confident. It was determined that fully disclosing the dog's pedigree to an adopter, requiring the adopter to meet certain criteria such as experience handling a high drive working dog, and requiring certain restrictions, would have allowed this dog to lead a normal and productive life.³² While no one can guarantee this dog's

future behavior just through a personality assessment, certainly the manner in which the dog conducted himself was an indication that he was not aggressive.

Although the owner above was aware of the dog's pedigree, he did not understand the significance of that pedigree when he adopted the dog. A responsible owner would want to understand the extraordinary significance of such factors in order to properly provide for the safety of the dog and other people.

The Assessment



In order to determine if a dog has aggressive tendencies, some shelters perform behavioral assessments through programs such as the ASPCA's Safety Assessment for Evaluating Rehoming program (SAFER).³³ These tools are helpful but too frequently they are conducted within just a few days of the dog being housed in a shelter so the results are often misleading. A dog placed in a shelter may be under a great deal of stress and may take several days to acclimate to the new environment. What initially may be viewed as aggression can often be attributed to other factors. Conversely, dogs housed in a kennel for too long develop behavioral issues such as fence fighting, excessive barking, and resource guarding because of the constant stimulation presented by other dogs.

As part of the dog's history, a diligent prosecutor must have a complete background on the dog. Interviewing the owner, checking for service calls from the police department, contacts with animal control bureaus, and the dog's veterinary history can provide valuable information. A history of inter-personal violence in the home, pedigree and the breed of the dog may also explain much of the dog's behavioral issues.

Breed Difference in Canine Aggression

There have been many studies analyzing which breeds are most aggressive. Those studies distinguish between pet to pet aggression and pet to human aggression. Pet to human aggression is divided further between strangers and owners.³⁴ In one

study, breeds ranking highest for dog-directed aggression included Akitas, Chihuahuas, Dachshunds, Jack Russell Terriers, and Pit Bulls. Although these breeds may rank highest for aggression, statutes usually define dangerous as potentially causing damage. If a large dog jumps on a person and causes a fall, some states will define that as a dangerous act, even though the dog was being friendly and jovial. Often, smaller dogs aren't considered dangerous even though they may bite more frequently. Prosecutors should be aware of this discriminatory application of the law to large breed dogs. The Beagle, Chihuahua and Jack Russell Terrier scored highest on the dog rivalry scale. Chihuahuas and Dachshunds scored highest on stranger directed aggression and with the addition of the Beagle, Cocker spaniel, and English Springer Spaniel, ranked highest in owner directed aggression. This study utilized the Canine Behavioral Assessment and Research Questionnaire (C-BARQ) which is considered a validated and reliable instrument for assessing a dog's typical and recent responses to stimuli.³⁵ This instrument may be an appropriate topic for cross-examination of a defense expert.

Other studies have determined the most aggressive breeds to be Chow Chows, Papillions, Old English Sheepdogs, Lhasa Apsos, Rottweilers, Chihuahuas, Toy Poodles, Jack Russell Terriers, and Cocker Spaniels.³⁶ Lessons learned from analyzing these studies from the prosecutor's perspective are that common held beliefs of the dangerous nature of certain breeds, such as the Pit Bull, may affect the way we approach a dangerous dog case. No consensus exists in the canine community as to the criteria used to determine what constitutes a dangerous or vicious dog. There is often very little known about the events leading up to the "attack." Prosecutors should obtain an accurate history of the events leading to an attack. The history will help the prosecutor determine if the dog's behavior was due to a possible medical condition or was a result of normal canine behavior. As seen with the Vick case, not every dog who has behaved aggressively is an aggressive dog.

Conclusion

Instead of punishing a dog for natural behavior, perhaps owners should face the liability for not properly training their dogs or supervising them. As prosecutors, we should view the subject of a dangerous dog case as a victim and spend more time looking into the background of the dog and the conduct of the owner. Long term solutions include support of irresponsible owner legislation to address these concerns. For the present, conscien-

tious prosecutors must consider alternatives to euthanasia, such as requiring the pet caretakers to have a behavioral assessment of the animal, require obedience training and for the dog to complete a Canine Good Citizen Program, consider probation with random and frequent checks to determine if the caretaker is complying with other statutory requirements such as insurance, and dangerous dog registry. Creative solutions to dog behavioral problems are humane and certainly the least we can do for man's best friend.

¹ Dogbitelaw.com, The One Bite Rule, <http://dogbitelaw.com/one-bite-rule/the-one-bite-rule.html> (last visited February 15, 2012).

² Other "one-bite states" include: Alaska, Arkansas, Idaho, Kansas, Maryland, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, Texas, Vermont, Virginia, and Wyoming.

³ VA. CODE ANN. § 3.2-6540 (2012).

⁴ *Id.*

⁵ *Id.* (explaining that the dangerous/vicious dog proceeding is civil in nature, but the standard utilized is "beyond a reasonable doubt" and the code section specifically requires the Commonwealth to prosecute the matter; violations under this code become criminalized for repeat offenses or failing to comply with the requirements imposed by a court pursuant to the statute).

⁶ The following states have statutes that involve criminal liability with dangerous dogs: California, West's Ann. Cal. Food & Agric. Code §31601 - 31683; West's Ann. Cal. Civ. Code §3342 - 3342.5; West's Ann. Cal. Health & Safety Code §121685; West's Ann. Cal. Penal Code §398 - 399.5; Colorado, CO ST §18-9-204.5; CO ST §35-42-115; Connecticut, CT ST §22-327 - §22-367a; CT ST §26-107; Delaware, DE ST TI 9 §920 - 928 (formerly DE ST TI 7 §1730 - 40); Florida, FL ST §767.01 - 16; §705.19; §823.041; §823.15; Idaho, ID ST §25-2805; Indiana, IN ST 15-20-1-1 - 7; IN ST 35-47-7-4; Louisiana, LA R.S. 14:102.14; L.A. R.S. §2771 - 2778; Maryland, MD CRIM LAW §10-619; Michigan, MCL 750.66a; Nebraska, NE ST §54-617 - 624; Oklahoma, OK ST T. 4 §41 - 47; and Virginia, VA ST §3.2-6540.

⁷ Dogbitelaw.com (last visited February 15, 2012).

⁸ *Id.*

⁹ *Id.*

¹⁰ Tracey v. Solesky No. 53, September Term 2011, Opinion by Cathell, J.

¹¹ This opinion is a must read for animal activists and prosecutors who deal with dangerous and vicious dog cases. The decision makes the statement that the "pit bull's massive canine jaws can crush a victim with up to two thousand pounds of pressure per square inch-three times that of a German Shepphard (sic) or Doberman Pinscher, citing State v. Peters, 534 So. 2d 760, 764," (Tracey at p.15). A review of *Peters* shows no citation or reference for such a claim. Review of the literature of bite ratio calls this claim into question. Dr. Brady Barr of National Geographic measured bite force in a presentation which aired August 18, 2005 called "Dangerous Encounters: Bite Force" in which he measured the pit bull's bite force as less than a German shepherd's bite force. In her study "Cranial Dimensions and Forces of Biting in the Domestic Dog", Dr. Jennifer Lynn Ellis determined that bite force was controlled by the size and shape of the dog's head. Journal of Anatomy, Volume 214, Issue 3, pages 362-373, March 2009. The many studies done on bite ratios caution readers that there are many variables which effect the accuracy of these studies. Variables such as the location of the object in the mouth, whether the dog had training in bite work, whether the dog was biting at full potential, etc. are all uncontrolled variables. Dr. Stanley Coren, Ph.D. has disputed the claim that any dog could have a bite force of 2000 psi and determined that the researchers are reporting their data in a force measure called Newtons which equals .22 pounds of force. Coren, S. "Dog Bite Force: Myths, Misinterpretations and Realities", Psychology Today,

May 17, 2010. Reliance on this data to ban any breed should be reviewed with a demand for scientific reliability of the data.

¹² Dogbitelaw.com, Model Dangerous Dog Law, <http://dogbitelaw.com/model-dog-bite-laws/model-dangerous-dog-law.html> (last visited February 15, 2012).

¹³ *Id.*

¹⁴ Jim Gorant, *What Happened to Michael Vick's Dogs*, Sports Illustrated, Dec. 22, 2008. <http://sportsillustrated.cnn.com/2008/magazine/12/22/vick.dogs>; p. 5. (last visited February 15, 2012). (relaying that two dogs died in a shelter: one was euthanized because it was too violent and one was euthanized for medical reasons).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Prosecutors should always question the credentials of a defense animal behavior expert. A dog trainer may not have a background in canine behavior. Asking for a brief recess before questioning an expert to investigate credentials is essential.

¹⁸ Brenda Aloff, *Aggression in Dogs, Practical Management, Prevention and Behavior Modification*, Dogwise Publications, 2001, p. 30.

¹⁹ Dogs demonstrate resource guarding through aggression when eating and growling when someone approaches a toy or bone etc.

²⁰ *Id.* at 34.

²¹ Bruce Fogle, *The Dog's Mind, Understanding Your Dog's Behavior*, Howell Book House, 1992, p. 112.

²² *Id.* at 122.

²³ *Id.* at 113.

²⁴ *Id.* at 113.

²⁵ *Id.* at 119.

²⁶ *Id.* at 119.

²⁷ Aloff, at 101.

²⁸ 9 News.com, 9 News Anchor Kyle Dyer injured during morning show, <http://www.9news.com/news/story.aspx?storyid=247881&catid=222> (last visited June 14, 2012).

²⁹ German Shepherd Dog, Schutzhund and the German Shepherd Dog, <http://www.germanshepherd.com/schutzhund/index.htm> (last visited April 4, 2012) (explaining that Schutzhund is a German word meaning "protection dog". It

refers to a sport that focuses on developing and evaluating those traits in dogs that make them more useful and happier companions to their owners.

Schutzhund work concentrates on three parts. Many are familiar with the obedience work of the American Kennel Club's affiliates and will recognize the first two parts, tracking and obedience. The Schutzhund standards for the third part, protection work, are similar to those for dogs in police work).

³⁰ Shannon Nieuwkoop, NARA and John Bayreuther, CRA, Canadian Ring Sport Association Rules Book, Revision D, 2009. (France, North America, Belgium and Canada as well as other countries train dogs for Ring Sport. Schutzhund titles also have a bite work component, but does not test object guarding).

³¹ <http://www.canadianringsport.com/ringdescription.htm> (last visited March 1, 2012) (quoting that "Probably the best-known Ring exercise is the GUARD OF OBJECT. Here the handler leaves his dog alone with a large basket to guard from the decoy's attempts to steal it. The dog must stay with the object and only bite the decoy when the decoy comes within one meter of the object. When the decoy is bitten, he pauses as still as possible, for 5 seconds, after which he tries to go away from the object. The dog must automatically let go his bite within one meter and return to the object.").

³² <http://www.dpca.org/BreedEd/index.php/> (last visited April 4, 2012) (defining that a high drive dog is as a dog that shows certain behaviors such as pursuing prey at a high frequency and that it performs these behaviours with little inhibition).

³³ <http://www.aspcapro.org/aspca-safer.php> (last visited March 1, 2012). (American Society for Prevention of Cruelty to Animals SAFER (Safety Assessment For Evaluating Rehoming) program is one such assessment tool).

³⁴ Duffy, D.L., et al., "Breed Differences in Canine Aggression," APPL. ANIM. BEHAV. SCI., 114 (2008).

³⁵ *Id.*

³⁶ <http://www.dogcentral.info/worlds-aggressive-dog-breeds/>, World's Most Aggressive Dog Breed (last visited February 12, 2012).

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