

TALES OF JUSTICE

VOLUME 3, NUMBER 1, 2013

National District Attorneys Association's NATIONAL CENTER FOR PROSECUTION OF ANIMAL ABUSE

Animal Protection Advocacy — A Moral Imperative

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Introduction

In 2008, Allie Phillips¹ authored a brilliant and inspiring article called “The Few and The Proud: Prosecutors Who Vigorously Pursue Animal Cruelty Cases.”² This article—one of the reasons I chose to devote my legal career to the protection of non-human animals³—recognized the relative embryonic status of animal protection prosecutions and described the prosecutors of animal abusers as strong and confident and, by inference, courageous. A mere five years ago, being one of those few and proud prosecutors was a novelty. That, thankfully, is no longer the case.⁴

Animal protection is no longer the purview or responsibility of only a few, brave prosecutors. More and more prosecutors are giving a voice to those who are victims of crime regardless of species. The wealth of psychological and sociological research that links animal abuse to a host of other criminal activities makes failing to prosecute these cases not only a dereliction of duty but immoral as well.

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For what more noble purpose does the State exist than protection of the weak from the strong, the shelter of those politically disenfranchised from those in power, and the defense of the vulnerable against the tyranny of bullies? That is what prosecutors do, or at least what they should do. After all, our oath of admission to the bar requires our pledge to “...never reject, from any consideration personal to [ourselves], the cause of the defenseless or oppressed.” It seems to me that this is the most important justification for a prosecutor’s existence. Prosecutors are the valiant defenders of victims’ rights no matter what the reason for the victim’s vulnerability – be it poverty, race, gender, age, physical or mental weakness or, I suggest, species. Violence is violence. Abuse is abuse. It

has been proven beyond all doubt that the violent crimes of domestic battery, child abuse, elder abuse, hate crimes and animal cruelty are inextricably intertwined at both practical and philosophical levels.⁵ A prosecutor who aggressively prosecutes crimes involving violence to animals will be prosecuting many of the same criminals s/he might otherwise be prosecuting for domestic violence, child abuse, and elder abuse. Furthermore, instead of an increase in case load, an aggressive animal cruelty prosecutor will likely enjoy a reduction in the number of violent crimes coming across his or her desk.

The empirical data supporting this prediction is compelling.

- Animal abusers are five times more likely to commit violent crimes against humans;⁶
- 75% of all violent offenders have prior records of cruelty to animals;⁷
- 25% of all “aggressive inmates” have committed five or more acts of animal cruelty as children;⁸
- In families investigated for child abuse, 60% revealed pet abuse;⁹
- Childhood cruelty to animals is an important predictor of later antisocial and aggressive acts and children showing these behaviors, without intervention, are at risk for enduring disorders in conduct and mental health;¹⁰
- In three surveys conducted in women’s shelters in Wisconsin and Utah, an average of 74% of pet-owning women reported that a pet had been threatened, injured or killed by its abuser;¹¹
- A 1995 Utah survey found that children witnessed animal abuse in over 60% of the cases, and 32% of women reported that one or more of their children hurt or killed a pet.¹²

As Science and Communication Improve, So Does Our Awareness

Improvements in technology, coupled with the proliferation of social media, has made ignorance obsolete. One can no longer hide one's head in the sand. There is no more "plausible deniability." In non-animal contexts we know, for example (when we might not have 40 years ago), that nicotine is addictive, that seat belts save lives, that drinking and driving kills, that texting and driving causes crashes, and that too much bad cholesterol leads to heart attacks. We are inundated by information unlike any time in the past. It is inescapable and, if there is any upside to the bombardment of data we now experience, it should be that it changes our behaviors for the better. We evolve.

So as technology evolves, so does our understanding of animals. It is no longer possible to deny that animals are sentient, feel pain, socialize, raise families, feel emotions; that animals who are abused, neglected and tortured feel the physical and emotional pain that a human does; and that we have these understandings and have laws to prevent the abuse of animals, as we do people. We know, for example, that dogs continuously left chained lose the will to live and may die, that some animals who are abused suffer from post-traumatic stress disorder and are terrified for the rest of their lives, and that animals in puppy mills and hoarding situations have lifelong health and socialization issues.

Every day we are offered new evidence that animals are intelligent, sentient and feel emotion:

- A cockatoo can be seen showing off its tool-making skills by biting long splinters from a piece of wood with which to reach his food.¹³
- A wild bird on YouTube can be watched making a sled from a twig and repeatedly sliding down a snow-covered roof apparently for the pure joy of it.¹⁴
- New research shows that baboons are able to pick up the first step in reading.¹⁵
- An orangutan paints on a computer using "paint" software. The conservation group Orangutan Outreach has begun to supply certain zoos with I-Pads - "The apes seem happy when they recognize images of other apes."¹⁶
- A chimpanzee at an English zoo was filmed using sign language to communicate its desire to be released from its cage.¹⁷
- Dogs have the ability to "fast map" just like a three-year-old child and have the ability to make inferences based upon studies from dogs like Rico the Border Collie.¹⁸
- The African grey parrot Alex knew over 100 words.¹⁹
- New studies demonstrate that animals have cognitive capacities far greater than previously understood. For instance, dogs have an understanding of fairness and lack of equity.²⁰
- Dogs have been found to be smarter than two-year-olds in vocabulary and basic math skills.²¹

As a result, even the law, notoriously slow to respond to social change, has responded:

- A judge in Georgia in 2012 appointed a lawyer to defend a pit bull dog that was at risk to be euthanized for attacking a neighbor's five-year-old child.²²

- In 2011, a California Court of Appeals ruled that pets are more than inanimate property and that recovery cost for treatment and care of wrongfully injured animals is worth more than market value.²³
- Some courts are explicitly recognizing that animals are sentient beings. In August 2012, the Oregon Court of Appeals ruled in a neglect case that animals could be classified as victims of a crime and, therefore, the trial court erred in merging defendant's convictions.²⁴

On July 7, 2012, a prominent international group of cognitive neuroscientists, neuropharmacologists, neurophysiologists, neuroanatomists, and computational neuroscientists gathered at the University of Cambridge to reassess the conscious experience of non-human animals. They authored a treatise entitled "The Cambridge Declaration on Consciousness"²⁵ and concluded:

The absence of a neocortex does not appear to preclude an organism from experiencing affective states. Convergent evidence indicates that non-human animals have the neuroanatomical, neurochemical, and neurophysiological substrates of conscious states along with the capacity to exhibit intentional behaviors. Consequently, the weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Non-human animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates.

Why is this important to prosecutor, investigators and those professionals involved in animal abuse cases? It is time to admit, to each other and to ourselves, that the non-human animals with which we share our planet have a lot more in common with us human animals than differences. We no longer enjoy the luxury of turning a blind eye. We are accountable for what we do to animals. We are also accountable for what we fail to do. This includes what we do for animals in the courtroom.

Ready to Move Beyond the "Difficult to Prosecute" Mindset

While acknowledging that both cultural and legislative failings in many places are not conducive to animal abuse prosecutions, contrary to conventional wisdom, popular belief, and prevailing myth, prosecuting felony animal cruelty cases is not difficult. It is certainly no more difficult than prosecuting most any other case, and it is a lot easier than many. It lacks the intricacies of racketeering crimes²⁶, continuing criminal enterprises²⁷, or online crimes against children²⁸. Ninety-nine percent of the time, it is not even an issue of "who-did-it?" In fact, animal cruelty cases offer several distinct prosecutorial advantages:

- The victims are particularly vulnerable and defenseless and are, therefore, sympathetic. (Lots of times they are actually very cute.)
- The victims are usually (a lot) smaller than the abuser and are never armed.
- The victims do not recant their accusations (unlike some abuse victims have been known to do, calling the day before trial to say they have reconciled with their abusers and will no longer cooperate), and they always show up on time for their doctor's appointments.

- The victims do not have their own agendas.
- The victims are blameless²⁹ and will never be impeached.

Juries throughout the country are instructed that the State has to prove two things: a crime was committed, and the defendant did it. These are some of the more common cases that are seen: You have an animal with a bullet or knife wound. You have a horse that is 300 pounds underweight because he has not been fed decent hay, or fed anything at all. You have a dog that is dying of heartworms and has not ever been taken to a veterinarian for treatment. You have a cat so dehydrated that she is near death. You have a puppy gradually losing his mind tied to a tree on a six-foot logging chain and wearing a six-inch deep circle into the ground. You have a hoarder with hundreds of filthy, sick and dead animals in little wire cages with little food, insufficient shelter, no water and no medical care. Additionally, you have an owner or a person responsible for the care of the animal. Most animal cruelty trials, in my experience, take no more than a day or two to prosecute. There is seldom a burdensome amount of physical evidence, and there is usually a manageable number of witnesses.

In many states, felony animal cruelty requires proof of only one element. In Florida – where I prosecuted offenders for almost 15 years – this element is that the defendant “commits *an act to any animal* which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done”.³⁰ You do not even have to prove that the defendant intended to cause the pain or death, only that he intended the act. And the act can be one of omission, like failing to provide shelter, food, water or veterinary care.³¹ While some states have felony laws that are written poorly, or there is no felony law for the crime that occurred³² – file at least a misdemeanor. If there are issues that your investigating agency has not resolved or uncovered, this can be said for other cases as well, and many of those still go forward. If you have in-house investigators, ask them to assist on the case. Be a squeaky wheel and be vocal to anyone who does not return your phone calls. I know plenty of prosecutors who do this on “more serious” cases such as homicide, rape, robbery and child fatalities.

For your evidence, in most cases you have a complaining witness (unless there was an anonymous report), you have the animal control officer(s) or law enforcement officer(s) who responded, you have a veterinarian and, of course, you have an abused animal. Prosecutors should be educating all investigators in their jurisdiction on best practices so that cases are properly handled and ready for the courtroom.³³ Do not be shy about advising your investigating officer to always interview the accused as soon as possible – you will likely get a valuable plethora of both admissions and refutable lies. Make it standard practice in all cases, including animal abuse cases, that photographs and/or videotaped footage are taken. Have the photos printed in 8”x10” (or poster sized) color for the judge and jury. It will be surprising if your jury is not crying when they see an emaciated and bloodied three-month-old Fido tied to a tree with a 20-pound logging chain in HD-Technicolor spread in front of them.

If you need tax records to show who owned the property where the animal was found, make a call to your local tax assessor. A subpoena *duces tecum* can be your best friend if a polite request does not suffice. If you need a necropsy, ask your veterinarian

for help or to help locate a veterinarian who is skilled to provide this service. If you need a warrant, sit down with your affiant and draft one. If you need forensics completed, contact NDAA for recommendations. There is no need to be intimidated for forensic evidence – you do not have to be an expert on DNA to present a winning DNA case – you just have to know the right questions to ask. So what’s the best way to prepare them? Ask your expert for a list of the right questions, and your expert will carry the ball from there. If you need to refute the defendant’s excuse that s/he wasn’t near the scene, call Verizon and get his cell phone “ping records.” Have your investigator talk to neighbors. You can get as sophisticated as you want, but the point is you do not have to. Take cushions from furniture in hoarding cases and preserve them to capture the smell. Do the same thing with matted, feces encrusted fur. A clean white towel can be photographed and collected to show how dirty the hoarding house was and may contain the smell from the urine and feces. Seize the crates that may be in horrible condition. Do not let yourself get paralyzed because you cannot see the forest for the trees. Sometimes the most effective presentation is the most straightforward. In other words, do not hesitate to K.I.S.S. (keep it simple stupid) and keep the focus on your victim(s).

Remember, you do not ever have to reinvent the wheel. There are many resources available to you if you simply ask for help. NDAA is the organization dedicated to being of service to the nation’s frontline prosecutors. Through their National Center for Prosecution of Animal Abuse, they have partnered with ALDF³⁴ and ASPCA to help you handle these cases. Gone are the days for you to go this alone.

Conclusion

So why is it important to take animal abuse cases as serious as other crimes? You are going to be pleasantly surprised. Most judges (again acknowledging that there are exceptions) will respect your dedication to the prosecution of violent crimes. If you do your homework and prepare these cases like other crimes, juries will vindicate your efforts by their consistent guilty verdicts (and, in my experience, big smiles and “thank you’s” as they leave the courtroom). Animal control and animal shelter workers will love you and support your efforts. You will educate everyone who even hears about your case on the horrors of animal abuse, which can contribute towards lower crime rates. The media will pick up on the fact that animal cruelty is a grave and violent crime that is being taken seriously. You will receive unsolicited letters of praise from like-minded citizens. You will inspire other prosecutors to follow your lead. Even the judges who once thought animal cruelty cases were a “waste of time” will come around. You will even, if you care about such things, increase your conviction stats. And, most important—you will feel really good about what you have done because it was the moral and ethical thing to do.

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- 1 Director, National Center for Prosecution of Animal Abuse and Deputy Director, National Center for Prosecution of Child Abuse, programs of the National District Attorneys Association.
- 2 Allie Phillips, *The Few and The Proud: Prosecutors Who Vigorously Pursue Animal Cruelty Cases*, 42/3 THE PROSECUTOR (2008).
- 3 Because “the link” between animal cruelty and human violence is by now so irrefutably established, there is no question that a dedication to the eradication of animal abuse leads inexorably to a reduction of human abuse. See, Carter Luke, Jack Levin, & Arnold Arluke, *Cruelty to Animals and Other Crimes; A Study by the MSPCA & Northeastern University Study from 1975-1996*, available at <http://www.mspca.org/programs/cruelty-prevention/animal-cruelty-information/cruelty-to-animals-and-other-crimes.pdf>.
- 4 In 2008, as Ms. Phillips noted, there were 37 states with felony animal cruelty statutes on the books. Today, all but two states (North and South Dakota) have such statutes.
- 5 THE LINK FOR PROSECUTORS is one such resource. See, Allie Phillips, THE LINK FOR PROSECUTORS. (American Humane Association, 2010), available at http://www.ndaa.org/pdf/The%20Link%20for%20Prosecutors_NDAA_Logo.pdf.
- 6 Luke, Levin & Arluke, *Cruelty to Animals and Other Crimes*.
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- 12 Id.
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- 14 *Sledding Crow in Russia*, available at <http://www.youtube.com/watch?v=m-Rn14dhZZxQ>.
- 15 Jonathan Granger, *See Dan read: Baboons learn to spot words*, Associated Press, April 12, 2012, available at <http://phys.org/news/2012-04-dan-baboons-real-words.html>.
- 16 *Apps for Apes*, available at <http://redapes.org/multimedia/apps-for-apes/>.
- 17 *Chimp seeks help from zoo visitor in escape*, Associated Press, August 8, 2012, available at <http://www.dailymail.co.uk/health/article-4545057-Aug2012/>.
- 18 *Dogs Understand Human Language*, Reuters, June 10, 2004, available at <http://www.wired.com/science/discoveries/news/2004/06/63792>.
- 19 Joe Lertola, *Milestones September 24, 2007*, available at <http://www.time.com/time/magazine/article/0,9171,1661695,00.html>.
- 20 *Dogs as Smart as 2-year-old Kids*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, August 8, 2009, available at <http://www.livescience.com/5613-dogs-smart-2-year-kids.html>.
- 21 Stanley Coren, THE INTELLIGENCE OF DOGS (ATRIA BOOKS, 2006) (1994). Stanley Coren is a canine expert and professor emeritus at the University of British Columbia.
- 22 *Pro bono for pit bull; Judge appoints lawyer for dog* (NBC News broadcast, October 16, 2012).
- 23 *Martinez v. Robledo*, 210 Cal. App. 4th 384; 147 Cal. Rptr. 3d 921 (2012), *rev. denied* (Jan. 23, 2013) (amicus brief filed by ALDF).
- 24 *State v. Nix*, 251 Or. App. 449; 283 P.3d 442 (2012).
- 25 Written by Phillip Low and signed in Cambridge, UK, in the presence of Stephen Hawking, available at <http://fcmconference.org/img/CambridgeDeclarationOn-Consciousness.pdf>.
- 26 Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961–1968.
- 27 Continuing Criminal Enterprise Statute, 21 U.S.C. § 848.
- 28 The Protection of Children from Sexual Predators Act of 1998, 18 U.S.C. § 2425 et. seq.
- 29 See <http://www.aldf.org>, “We May Be the Only Lawyers on Earth Whose Clients Are All Innocent.®”
- 30 Fla. Stat. § 828.12(2).
- 31 Fla. Stat. § 828.02.
- 32 See, ALDF’s Animal Protection Laws of the United States and Canada, Seventh Edition, available at <http://aldf.org/article.php?id=259>.
- 33 NCPAA offers free live monthly webinars all of which are recorded and can be reviewed later. These webinars are offered to provide education and best practices on issues involved in animal abuse cases.
- 34 ALDF offers a host of free services to prosecutors, from investigative help to model voir dire questions to helping place seized animals. Email Action1@ALDF.org for more information.



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The National Center for Prosecution of Animal Abuse is a program of the National District Attorneys Association. This publication was prepared under a grant from the Animal Welfare Trust. This information is offered for educational purposes only and is not legal advice. Points of view in this publication are those of the author(s) and do not necessarily represent the official position of Animal Welfare Trust and NDAA.