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Prosecuting the Youthful Offender

By Jennifer Rallo

If you have men who will exclude any of God's creatures from the shelter of compassion and pity, you will have men who will deal likewise with their fellow men.

- St. Francis of Assisi



Introduction

As prosecutors we become accustomed to seeing the dark side of human life on a daily basis. It is the nature of our profession. Most attorneys who have chosen to become prosecutors are caring people who have answered a "call" to join our profession to fight against violence and cruelty and make our world a better place. Prosecutors share a desire to be the lone voice of victims who have been silenced and broken by violence.

All prosecutors are regularly exposed to the horrible acts that humans do and to the pain of the broken victims. When confronted with so much cruelty, violence, and indifference to pain and human life on a daily basis we develop a shell of professional detachment to cope. Professional detachment is not a bad thing, however. It is this same shell of professional distance, the professional dichotomy to suffering we see daily, which allows us to function at our peaks in the courtroom setting. It allows us to argue points of evidence and pre-trial motions in brutal murder trials for both humans and animals.

The best prosecutors are able to reconcile the dichotomy between professional detachment and emotional sensitivity when it is critical to the presentation of the case and to inspire pathos in the trier of fact, whether a jury or a judge. This is true of all criminal cases and it is especially important in animal cruelty

cases. Prosecutors of animal cruelty cases need to establish the burden of proof but they also need to inspire the trier of fact to care about the animal who was killed or mistreated. In a society where violence against humans often goes unpunished this can be a difficult task.

Children who hurt animals

Acts of animal cruelty committed by children challenge our prosecutorial ability to maintain the balance of the prosecutorial dichotomy necessary to be effective professionals. Children are supposed to love animals, to have a special bond with them. However the sad reality is that approximately thirty percent of animal cruelty cases are committed by juvenile offenders.¹ It makes us wonder what broke that bond?

A few years ago I prosecuted a disturbing animal cruelty case where three young children beat and stabbed a beautiful eight-week old puppy to death on a golf course. While working on the case I kept finding myself thinking about my own relationships with animals from my childhood. I grew up on a small farm, and have always had a love and respect for animals. At times, our family dog was my closest friend and confidant. I can remember running in the fields with her and playing. How, how could a nine-year-old and two ten-year-olds come together and choose to viciously harm such a young and innocent puppy? The case made the media and the public outcry was strong and angry. At times I struggled with being overcome with anger towards the children charged and

found it difficult to conceal how deeply their act had disturbed me on a personal and professional level.

What helped me through the challenging case was to remember my role as a juvenile court prosecutor. My role was to prove that they had committed the act and given their tender age and lack of priors, to ensure that they received services to rehabilitate them. But to make sure I knew the right services to ask the court to impose I needed to understand why. I needed to go to that dark place and explore the reasons. This was achieved through a court ordered psychological evaluation after I had my guilty finding. The evaluation was helpful and revealing. All three children came from homes where they had witnessed domestic violence against family members and pets. This is consistent with the research studies that tell us that witnessing violence in the home can increase the likelihood of a child abusing animals.² As a prosecutor I began to focus on the case as an opportunity to truly make a difference in the lives of these three children so this would never again happen. I also began to seek out other animal cruelty cases, other cases where I could make a difference.

Changing the way we look at children who harm animals

When a child has committed an act of animal cruelty the case must be taken very seriously by prosecutors, no exceptions. The presence of animal cruelty within a juvenile's history is a significant finding. A large and growing body of scientific research has uncovered a strong link between the commission of acts of animal cruelty in youth and a future propensity towards violence against humans.³

In 1963 J.M. MacDonald published, "The Threat to Kill" in the American Journal of Psychiatry describing how his studies had identified the presence of three behavioral characteristics in childhood: animal cruelty, fire setting, and enuresis (bed wetting) as indicators of future violence.⁴ This triad has been widely established as indicia that juvenile prosecutors should look for when screening delinquent youth for those in need of more extensive treatment and services. As further evidence of the connection, examinations of the childhoods of serial killers, such as Jeffrey Dahmer, Albert DeSalvo, and Carroll Edward Cole, revealed that many had engaged in childhood acts of animal cruelty. A similar examination of mass school shooters also revealed many had begun by harming animals. For example, Luke Woodham who murdered his mother and two students wrote gleefully in his diary about how he had killed his own dog with friends by beating her, setting her on fire, and then throwing her in a pond.⁵ The common thread appears to be that these violent individuals enjoyed torturing animals as children.

Contemporary consideration of the "MacDonald triad", or "triad of sociopathy", puts less emphasis on the presence of the acts themselves as indicators standing alone. Instead the presence of the triad is seen as an indicator of children who are in stressful environments and have developed maladaptive behaviors as a result. Psychological research has shown that thirty percent of children who have been the victims of abuse or witnessed domestic violence have gone on to perform acts of animal cruelty on their pets.⁶ Neuropsychological research is also revealing that a childhood lack of empathy is often an inherited quality with an eighty percent probability of being inherited from a carrier parent. Brain scans of children who inherited the trait showed distinct differences from the brain scans of children with normal levels

of empathy.⁷ Societal inhibitors guide the behavior of individuals lacking in empathy to conform to social norms. Researchers also believe that with early treatment and cognitive therapy, sociopathic children's brains can be re-wired so that they will be able to experience greater empathy and no longer be at risk for future violence.⁸

There are thousands of juvenile court prosecutors who work with law enforcement partners every day to secure rehabilitative services for young offenders. The role of a juvenile court prosecutor has unique attributes that set us apart from typical prosecutorial roles in a non-juvenile setting. Juvenile court prosecutors are concerned with public safety like all prosecutors are but we are also concerned with trying to rehabilitate and hold accountable youthful offenders through the juvenile court system. To say there is a single juvenile justice system is a misnomer.

Within the United States alone there is a network of fifty-one separate juvenile systems with their own internal structure of procedural rules and accompanying case law.⁹ Juvenile courts are carved out by state statutes and typically share a commonality of an aim in the provision of rehabilitative services to youth who commit criminal acts. How these juvenile systems administer rehabilitative services also varies by jurisdiction. Only twelve states have a centralized statewide executive agency which implements juvenile programs.¹⁰ The remaining thirty-eight states provide services to delinquent youth solely through local programs or a combination of locally run programs and overarching state agencies. Some of these programs are further divided under the responsibility of executive and judicial branches of government.¹¹ In addition to these inherent complexities is the reality that these mini justice systems themselves are constantly in flux and changing both through case law and statutory changes.

Considering these sometimes competing issues and interests, and fighting for the best rehabilitative interests of the youthful offender, is a daily challenge and duty of the juvenile court prosecutor. The mandate of the juvenile court prosecutor is to prosecute where it is in the best interests of both society and the child. The juvenile court prosecutor needs to be able to navigate complex juvenile systems and be knowledgeable in what rehabilitative services are available in their locale and on a national level if they are part of a jurisdiction that provides children with broader rehabilitative services. Dependent on the jurisdictional construct of treatment oversight, the juvenile court prosecutor may also need to be cognizant of separation of powers issues in the implementation and ordering of rehabilitative services.

Holding child offenders accountable: A team approach

As prosecutors, we are tasked with ensuring that youth who commit acts of animal cruelty are held accountable. Accountability is a critical first step to securing meaningful treatment for a juvenile offender. The anthropologist Margaret Meade highlighted the importance of accountability for youthful offenders: "*One of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it.*"¹² Furthermore, a long term study of at-risk children reported that children who exhibited animal cruelty between the ages of six and twelve were two times more likely to be referred for a subsequent violent juvenile delinquency offense.¹³ If the child offender is unwilling to admit committing the act of cruelty it must then be proven by the prosecutor in a court

of law beyond a reasonable doubt. When a child is accused of harming an animal, dismissing the charges or allowing the child to admit to a non-animal abuse offense is not in the best interests of the community or the child offender. These are cases where a solid stance is necessary.

To ensure that the youthful offender is held accountable prosecutors need to partner with law enforcement to ensure the strength of their cases. This is especially difficult in a juvenile context because juveniles are more likely to commit intentional violent acts of animal cruelty and torture rather than to be charged with animal neglect.¹⁴ This is true by virtue of their age and typically non-emancipated status. Consequently, a juvenile case is unlikely to be the product of a lengthy investigative process. The most critical time in most animal cruelty investigations is the “golden hour” after the crime has occurred. This is the essential time to gather and preserve physical evidence, photograph the crime scene, and collect witness statements so that there is a viable case.

Many animal cruelty cases of the type committed by young offenders are likely to be best proven by forensic and trace evidence. Delays in crime scene processing can lead to the loss and contamination of critical evidence and may even result in lack of further access to the crime scene when the situs was within the perpetrators home, absent a search warrant. Well-meaning law enforcement officers may not have experience in investigating animal cruelty crimes and may require prosecutorial guidance. Some responding officers may not take animal cruelty crimes seriously if they have not received training in how to handle them. They may fail to preserve evidence of the crime that is critical to the prosecutor’s ability to prove the case. In some jurisdictions the responding officer may have to aggressively advocate to obtain mobile crime lab evidence collection services for a crime against an animal victim. This is another area where the prosecutor may also be able to assist the responding officer.

Additionally, there is also a danger that the crime will not be documented if the responding officer decides to treat it as an emergency psychiatric situation. This is more likely to become an issue with suspects most in need of intervention -- young child offenders who have abused or killed the family pet. It is emotionally difficult and disturbing for law enforcement personnel called to investigate brutal acts of animal cruelty to discover with horror that there is weighty probable cause that the act was committed by a child. The responding officer reasonably forms a belief that the child is in need of psychiatric care and subsequently follows his training for acute psychiatric situations, which is to immediately transport a youth to the local hospital emergency ward for an emergency psychiatric evaluation. Typically police officers are trained that this is the best way to get help and treatment for a mentally ill person. Unfortunately, despite the officer’s good intentions, the youth is unlikely to get the long-term treatment that they need by taking this strategy in dealing with the situation.

Most youth who commit acts of cruelty do not have overt psychiatric symptoms that will result in retention for inpatient psychiatric treatment. The youth is likely to be examined and released with a parental recommendation for counseling which may or may not be followed due to the absence of court oversight. It is unlikely to lead to the accountability and treatment necessary to address a serious indicator of future violence and is more likely to prevent or delay the youthful offender from getting appropriate

help. A critical opportunity for early intervention has been lost with this tactic. Additionally, once the primary officer leaves the scene to take the youth to the emergency room for the evaluation, the critical golden hour of evidence collection has been lost.

To ensure accountability, it is critical for the juvenile court prosecutor to be proactive in educating law enforcement officers in their jurisdiction about the importance of treating animal cruelty cases of youthful offenders as important crimes. Law enforcement officers need to understand that a juvenile court prosecution of an animal cruelty offender is the best way for the youthful offender to obtain meaningful treatment and rehabilitative services. They need to understand that it is always critical to gather evidence and fully investigate the case because it is a crime. Prosecutors will need this evidence to prove the case in court. Officers also need to know that they can call on the prosecutor for assistance when they are on the crime scene. Finally, law enforcement needs to understand that they can trust juvenile prosecutors to make decisions that act in the best interests of public safety and rehabilitative needs of the child.

In contrast to the importance of a speedy law enforcement investigation, once the case is sent to the juvenile prosecutor a short period of time can be the prosecutor’s friend. Charging decisions should not be rushed. It is important for the prosecutor to think carefully and make decisions as to what is in the best interests of the case by looking at the whole picture. The prosecutor should not allow themselves to be rushed by police or a public anxious to see the animal cruelty case charged immediately if a brief delay is in the best interests of a successful case.

The juvenile’s past history of charges and rehabilitative services received should be reviewed and their age considered. It may become clear that the best and most appropriate course of action is to pursue adult jurisdiction charges when the risks to public safety outweigh the possibility of rehabilitation. Also, many juvenile justice systems have very tight speedy trial rules for juvenile cases. If the prosecutor files charges too quickly they may not have time to locate a veterinarian to testify or time for the crime laboratory to finish their analysis of forensic evidence.

The processing of DNA evidence in particular is a long process. This is also the optimal time for the prosecutor to locate and consult with an expert in the psychology of animal cruelty for sentencing. An expert in this area can be of great assistance in educating the court as to the seriousness of the animal cruelty issues at the sentencing phase. The animal cruelty expert can direct the prosecutor and the court towards animal cruelty treatment programs which stand the best likelihood of success for the offender. This may be a challenging area for the prosecutor because there are few animal cruelty offender specific treatment programs and many juvenile services agencies are resistant to the programs because of their specificity and relative novelty. However, if you and your expert believe that it is the best program for your offender then the prosecutor should advocate for it. If the program is court ordered, the juvenile services agencies can be required to provide appropriate equivalent treatment. The psychologist’s testimony could also be utilized by the prosecutor if the decision is made to move the case to adult court.

Another significant difference in the role of a juvenile court prosecutor is that even after a case is successfully prosecuted and moved through sentencing, our connection with the case should

not end. Many jurisdictions permit juvenile cases to be reviewed regularly by the court to track how the youth is progressing in their treatment. When possible, prosecutors should request these reviews and continue to monitor the progress of the youth. Good progress should be acknowledged and rewarded, and inappropriate behaviors addressed. My own experience with cases where animal cruelty specific offender treatment has been ordered has been positive. In each instance the state juvenile services agency did not concur with my expert's recommendation of animal offender specific treatment; however, I was able to convince the court to order it in each case. I have been tracking a small group of my juvenile offenders for approximately three years and so far only one youth recidivated with a non-violent narcotics offense. The other youth have graduated from their treatment programs and so far have not re-offended. Only time will tell for certain, but my hope is that the intervention was successful for these children and that they will grow up to be responsible non-violent adults.

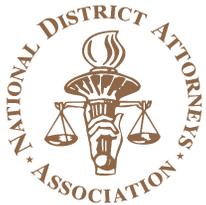
Conclusion

Holding children who commit animal cruelty crimes accountable through aggressive prosecution is crucial to their future well being. These children must receive intensive counseling services so that they may establish healthy relationships with humans and animals. It has been three years since the three young children killed the puppy on the golf course. Since then they have received intensive individual counseling, animal abuse offender treatment, and family counseling. It is my belief that some of their behavioral issues were being caused by the modeling of observed parental abusive behavior. The children are presently doing well in school, have positive family relationships, and have successfully graduated from their treatment programs. The court interventions have helped both the child offenders and their families establish healthier home environments.

- 1 Randall Lockwood, *ANIMAL CRUELTY PROSECUTION: OPPORTUNITIES FOR EARLY RESPONSE TO CRIME AND INTERPERSONAL VIOLENCE*, 33. (American Prosecutors Research Institute, July 2006).
- 2 C. L. Currie, *Animal cruelty by children exposed to domestic violence*, 30(4) *CHILD ABUSE & NEGLECT* 425-435 (2006); S. DeGue & D. DiLillo, *Is animal cruelty a "red flag" for family violence? Investigating co-occurring violence toward children, partners and pets*, 24(6) *JOURNAL OF INTERPERSONAL VIOLENCE* 1036-1056 (2009); F.R. Ascione, C.V. Weber, T.M. Thompson, J. Heath, M. Maruyama & K. Hayashi, K. *Battered pets and domestic violence: Animal abuse reported by women experiencing intimate violence and by nonabused women*, 13(4) *VIOLENCE AGAINST WOMEN* 354-373 (2007).
- 3 Linda Merz-Perez & Kathleen Heide, *Animal Cruelty: A Pathway to Violence Against People*, 6-7. (Alta Mira Press, 2004); J.C. Overton, C. Hensley & S.E. Tallichet, S.E., *Examining the relationship between childhood animal cruelty motives and recurrent adult violent crimes towards humans*, 20(10) *JOURNAL OF INTERPERSONAL VIOLENCE*, 1-17 (2011).
- 4 Merz-Perez at 6.
- 5 Merz-Perez at 32-33.
- 6 Joni E. Johnston, *Children Who are Cruel to Animals: When to Worry*, *PSYCHOLOGY TODAY*, April 27, 2011.
- 7 Jennifer Kahn, *Can you Call a 9-Year-Old a Psychopath?*, *NEW YORK TIMES MAGAZINE*, May 11, 2012.
- 8 *Id.*
- 9 Melanie King, *Technical Assistance to the Juvenile Court Bulletin, Guide to the State Juvenile Justice Profiles*, National Center for Juvenile Justice, April 2006.
- 10 *Id.* at 5.
- 11 *Id.*
- 12 Margaret Mead, (1963), *Problems of Criminology and Law in Different Cultures*, read at the 16th Annual meeting of the Mid-continent Psychiatric Meeting (14 September 1963)
- 13 Lockwood at 10.
- 14 Lockwood at 19-20.

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