



When Animal Hoarding is Warehousing for Profit / Part 1

By Sandra Sylvester and Curtis W. Baranyk



Hoarding and the Current State of the Law

Animal hoarding and abuse presents unique challenges for prosecutors. Judges are often sympathetic or lenient toward these defendants because of the psychological issues associated with hoarding (e.g., obsessive compulsive disorder (OCD)) and due to the lack of

criminal laws that specifically proscribe and punish animal hoarding.¹ Patronek notes that "animal hoarding is not widely appreciated by government agencies" and that "[a]nimal hoarding cases tend to fall . . . into the jurisdictional cracks between state and local government agencies and departments."² Without specific laws criminalizing hoarding, prosecutors must pursue convictions under the umbrella of animal cruelty or property destruction.

Animal abuse and neglect statutes vary from state-to-state and often require a minimum standard of care pertaining to medical care, food, water, and shelter.³ Although certain types of animal abuse constitute felonies in most states, the majority of animal neglect and maltreatment laws are only misdemeanors. Currently, only Hawaii and Illinois have specifically criminalized animal hoarding.⁴ Many states define animal cruelty as overworking an animal, inflicting unnecessary pain upon an animal, depriving the animal of necessary food, water, shelter or proper veterinary care, or otherwise inflicting unnecessary suffering upon an animal.⁵

Although the Diagnostic and Statistical Manual (DSM-IV-TR) does not recognize hoarding as an official diagnosis, there is a

movement to make hoarding a distinct diagnosis in the upcoming DSM-V because hoarders often have different symptoms than persons with OCD and other diagnoses associated with hoarding (e.g., personality disorders, paranoia, delusional thinking).⁶ The Hoarding of Animals Research Consortium (HARC) notes that hoarders "have much greater impairment of insight, potentially reaching delusional levels of impairment, compared to OCD patients."⁷

Notwithstanding the fact that a universal definition of animal hoarding does not exist, hoarders often have large numbers of animals that "overwhelms the ability of the hoarder to provide acceptable care" resulting in a failure to provide adequate water and food, veterinary care, or a sanitary living environment for animals.⁸ Deteriorated living conditions and property destruction are often associated with hoarding.⁹ The American Society for the Prevention of Cruelty to Animals (ASPCA) states that some hoarders perceive themselves to be "rescuers" and "claim that any home is better than letting [an] animal die."¹⁰ However, Dr. Randall Lockwood, ASPCA Senior Vice President, Forensic Sciences and Anti-cruelty Projects noted, "Being kept by a hoarder is a slow kind of death for the animal. Actually, it is a fate worse than death."

Profiles of the average hoarder have recently emerged. Sixty-seven percent of animal hoarders are female, unmarried, and live alone.¹¹ Forty-six percent of animal hoarders are sixty years old or older.¹² In nearly seventy percent of the cases studied, animal feces and urine accumulated in living-areas and dead or sick an-

imals were discovered in eighty percent of the cases studied.¹³ These hoarders often “fail to acknowledge the extent of the lack of sanitation and animal suffering” and tend to limit their hoarding to one or two types of species.¹⁴

Hoarding Versus Profiteering

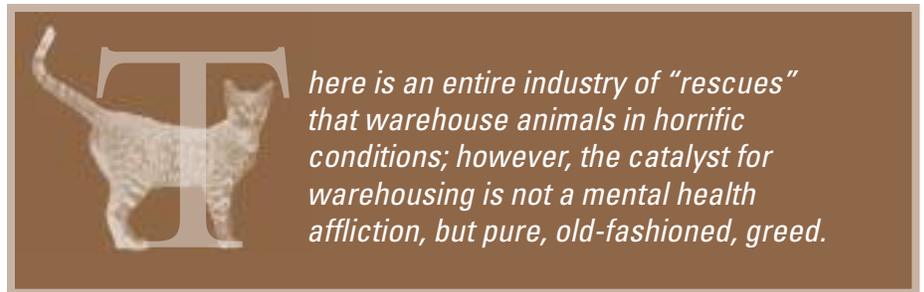
Prosecutors and police should not assume that mental health afflictions or obsessions are the sole cause of a defendant’s hoarding. Hoarding, animal abuse, and property destruction may be symptomatic of a larger criminal scheme: profiteering and tax evasion. The “exploiter hoarder” (see endnote 9 for discussion) is the most entrenched and difficult hoarder for the prosecutor and fits the profile of one who hoards for profit. There is an entire industry of “rescues” that warehouse animals in horrific conditions; however, the catalyst for warehousing is not a mental health affliction, but pure, old-fashioned, greed.¹⁵ These faux-rescues often operate without the appropriate tax-exempt status and are actually running for-profit business that should be properly claiming receivables. In such cases, prosecutors should consider contacting their state’s tax criminal investigation division to assist in the filing of felony tax evasion charges or seek help from a consumer affairs office in order to increase the public’s awareness of these enterprises.¹⁶ The prosecutor may wish to research the case law pertaining to state tax evasion however. In one recent case in Prince William County, Virginia, the court denied a Commonwealth motion in limine to preclude the defense from presenting evidence of “expenses” to offset income.¹⁷ The lack of state law forced the court to consider federal law as persuasive authority.¹⁸ While tax cases may be complicated, these types of felonies are valuable to prosecutors because animal abuse offenses are usually misdemeanors and a host of different sentencing options often become available for felony convictions. The prosecutor may wish to expand the investigation by considering larceny by trick or false pretense charges for everyone who made a donation payable by check to the “rescue” and declaring the deduction on their taxes. Without legitimate tax-exempt status, the “rescue” may be misrepresenting their status inducing the innocent citizen to donate. A jury may be more sympathetic to a citizen who is duped rather than the “tax man.”¹⁹

Some of these for-profit “rescues” frequent pet stores on weekends to hold adoptions and may even have websites that contain adoption contracts. These illicit organizations sometimes require home-visits before an animal can be adopted. Such requirements can fool the public into believing the intentions of these rescues are legitimate and altruistic.²⁰ However, sometimes

these animals are maintained in deplorable conditions, no different from a puppy-mill. In addition, some of these “rescues” may actively breed the animals in their care, resulting in overcrowding. The resulting overcrowding leads to fighting and stress for these animals and many animals may show evidence of scarring.²¹ Monitoring these adoption events may be necessary to ensure that funds are not being unlawfully solicited (e.g., the improper use of donation jars).

Instances of profiteering and tax evasion may also open the door to charging other crimes. The non-payment of sales tax is an offense in many states. Further, some venues may also proscribe the solicitation of charitable donations without having a proper tax-exempt status and have provisions for public censure.²²

Any bank account information seized during the execution of a warrant can prompt charging a party with zoning violations (e.g.,



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doing business without a license or running a business in an area not zoned). This information may also allow state tax investigators to get records of the checks deposited in the target’s accounts. Checks for “adoptions” may be placed in personal accounts and commingled with personal funds. The search warrant should also include all documentation of expenses to prepare for the defense that expenses exceeded income. All computers should be seized and forensically examined. These organizations boast about how many animals they have placed in homes (which is translated into sales). They maintain records of all “adopters” and will send out newsletters to these people asking for donations. If the “rescue” is participating in adoption fairs with national pet store chains, the stores often have an “adoption coordinator” who will have a lengthy questionnaire where the rescue may have claimed tax-exempt status.²³

Part Two will address prosecuting these types of cases and issues that arise.

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¹ Here, the term “hoarding” refers to the hoarding of animals, not the hoarding of inanimate objects.

² Gary J. Patronek, *Public Health Reports*, 114, 82 (1999).

³ Animal Neglect Facts, <http://www.aldf.org/article.php?id=1299>.

⁴ *Id.*; Animal Hoarding, <http://www.aspc.org/fight-animal-cruelty/animal-hoarding.aspx>

⁵ *See, e.g.*, Va. Code Ann. § 3.2-6570 (2010); Md. Code Ann. § 10-604 (2010); Fla. Stat. Ann. § 828.12 (2010).

⁶ Common Questions About Animal Hoarding, <http://www.tufts.edu/vet/hoarding/abthoard.htm>

⁷ *Id.*

⁸ Patronek, *supra* note 2, at 82; <http://www.tufts.edu/vet/hoarding/abthoard.htm>

⁹ <http://www.aspc.org/fight-animal-cruelty/animal-hoarding.aspx> Prosecutors should become familiar with the three types of hoarders recognized by Patronek. The “rescuer” is but one typology. They believe they are the only ones who can save animals from euthanasia, will not refuse shelter to any animal, work in animal welfare and avoid authorities. They present as true believers and will try to convince the trier of fact that the conditions were a necessary result of trying to save these animals. This type of hoarder has a compulsion that is very entrenched. The “overwhelmed hoarder” actually began by taking good care of their animals, but suffered a change in circumstances. They are generally more receptive to authority and intervention. The “exploiter hoarder” will acquire animals to fulfill their own needs and are indifferent to the harm they are causing the animals. They are controlling, manipulative and will evade the law. They are true narcissists and when charged with animal cruelty, will start letter writing campaigns, smear campaigns and allege reprisal. These hoarders will often start up new “rescues” during the pendency of the case. See “Animal Hoarding: Structuring Interdisciplinary Responses to Help People, Animals and Communities at Risk,” (HARC), Patronek, Loar, and Nathanson.

¹⁰ *Id.*

¹¹ Patronek, *supra* note 2, at 81.

¹² *Id.*

¹³ *Id.*, at 85.

¹⁴ *Id.*, at 86.

¹⁵ Certainly, many legitimate rescues exist and are vital to the adoption process and helping families acquire cherished pets. It is not the authors’ intention to suggest that all rescue organizations are simply fronts for criminal enterprises.

¹⁶ The National Association of State Charity Officials (NASCO) is an excellent source for persons interested in communicating with state entities that specialize in charity and donation issues and is located at <http://www.nasconet.org/>. Another source of information to assist the prosecutor is PayPal because many rescues use this service to manage payments.

¹⁷ *Commonwealth v. Janet L. Hollins*, A10002934-3010, CR. 10003222- 10003227. Hollins was originally charged with seventy-seven counts of animal cruelty,

which is a class one misdemeanor. She had that many animals in her three level town-home. The conditions inside the home were horrific and the ammonia from cat urine was so offensive, the cats all suffered ocular and nasal discharge. However, because the animals were fed and had veterinary care, the general district court judge convicted her of seventy-seven counts of the class four misdemeanor of failing to properly care for animals. She appealed the finding to the 31st Judicial Circuit Court, but in the interim, the Commonwealth charged her with six felonies including tax fraud and false pretenses.

¹⁸ *See e.g., United States v. Kayser*, 488 F. 3d 1070 (Ninth Circuit, 2007), *Greenburg v. United States*, 280 F. 2d 472 (First Circuit, 1960), *United States v. Garber*, 607 F. 2d 92 (Fifth Circuit, 1979).

¹⁹ During the Hollins case, authorities found a number of individuals that wrote checks for considerable amounts of money to “Janet’s Rescue” and claimed the deduction on their taxes. Many still possessed receipts for the donations showing a tax ID number that belonged to another tax-exempt organization. When prosecutors advised the defense that the case would not end and that they would pursue embezzlement from the tax-exempt organization and larceny by trick and false pretense charges for the donation, the case settled.

²⁰ Prosecutors should consider community outreach to educate the public about these “rescues.” Information helping pet adopters identify the legitimate organizations may also put these bogus organizations out of business. Dr. Lockwood advises potential adopters to consider whether:

- The group is unwilling to allow anyone to visit the animals in the location where they are kept.
- The group refuses to disclose the actual number of animals in their care.
- Despite adverse conditions, they keep taking in animals.
- The group views authorities and other rescue organizations as the enemy.
- The group receives animals at remote locations.

²¹ In order to support animal cruelty prosecutions, the prosecutor may wish to consult with animal behaviorists to view the conditions the animals were maintained. Many are kept in crates for long periods and become cage-aggressive. The overcrowding may lead to resource-guarding and stress. The number one reason for high rates of euthanasia in the United States is behavioral problems and these conditions may produce animals that need to be rehomed due to such behavioral issues. This evidence defeats the claims that the “rescuer” is trying to prevent euthanasia; the conditions actually contribute to it.

²² *See, e.g.*, Va. Code Ann. § 57-49 (2010); Va. Code Ann. 57-52 (2010); Va. Code Ann. § 57-57 (2010).

²³ Prosecutors may wish to prepare for character witnesses from retail stores who defend these “rescues.” A review of sales on adoption days will reveal a very lucrative profit margin for the person who “saw the puppy in the window” and just had to take him home . . . along with dog food (often recommended by the rescue), dog bowls, leashes, collars, beds, etc. all purchased the same day of the adoption.



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