

LEX CANIS

ANIMAL ABUSE IS VIOLENCE.

ASSOCIATION OF PROSECUTING ATTORNEYS QUARTERLY NEWSLETTER | SUMMER 2010 VOLUME 2 ISSUE 2

ON APRIL 20TH, WITH ONLY JUSTICE ALITO dissenting, the U.S. Supreme Court struck down the federal statute (18 U.S.C. §48) that criminalized the creation, sale, and possession of so-called “crush videos” and other depictions of animal cruelty. Congress is already poised to take corrective action.

The opinion spends considerable time focusing on a variety of hypotheticals, such as hunting videos, (which have never come up under §48), instead of on the specific facts of the case. The case (*United States v. Stevens*) involved the conviction of Robert Stevens for possession and sale of dog fighting videos. While dog fighting itself is illegal by statute in all fifty states, the conviction was based solely on the possession and sale of videos depicting animal cruelty. Stevens challenged the constitutionality of the law, and the Supreme Court agreed, holding that the statute was “substantially overbroad, and therefore invalid under the First Amendment.” The court refused to create an exception

for depictions of animal cruelty as it has for child pornography. Overturning a statute for being overbroad is rare, but the Supreme Court justified its holding by expressing a deep concern for the hypotheticals it had raised, which set the stage

for the statute to be held unconstitutional. However, the court explicitly left open the question of whether a law tailored to affect depictions of extreme animal cruelty, specifically including “crush” videos, would be constitutional.

Soon after the Supreme Court’s decision was announced, Representatives Elton Gallegly (R-CA) and Gary Peters (D-MI) introduced H.R. 5092 and H.R. 5337, respectively. These bills more narrowly addressed

the criminalization of depictions of animal cruelty. H.R. 5092 garnered a great deal of bipartisan support, with 339 cosponsors. At a recent hearing on the Stevens decision before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, Rep. Gallegly observed that immediately following the 1999 law’s enactment, the crush video market disappeared but quickly reemerged after the Court’s ruling, hence the need for Congress to act quickly.

As a result of input from that hearing, Reps. Gallegly and Peters introduced a new bill, H.R. 5566, which was narrowly written to prohibit interstate and foreign sales and distribution of only “crush videos” as obscene depictions of illegal acts. On June 23, the House Judiciary Committee unanimously approved H.R. 5566. The new bill attempts to meet the Supreme Court’s concerns by (1) limiting itself exclusively to crush videos, (2) adding findings supporting the restriction of speech regarding crush videos, (3) addressing conduct that is illegal under federal or state law prohibiting animal cruelty, and (4) expressly excluding depictions of hunting, trapping or fishing, or of veterinary or agricultural husbandry practices. While the court did not address whether such a narrowly constructed law would be constitutional, many briefs filed in support of Stevens (e.g. The Reporters Committee for Freedom of the Press, 13 news media organizations, and the National Rifle Association) stated or implied that such a law would not raise constitutional questions. Passage of H.R. 5566 would not foreclose the possibility of future laws targeting dog fighting or other depictions of animal cruelty, but such laws will have to overcome separate constitutional challenges. Although the new bill does not reach as far as the 1999 law, it should provide the appropriate threat of criminal prosecution to end once again the market for crush videos.

Thanks to our authors Sherry Ramsey and Ken Shapiro, and to Nancy Blaney and Cameron Creinin of AWI and Alex Dempsey and Syrita Simpkins of APA for their editorial and production assistance. And be sure to see page 6 for early information about our next training conference.

-David LaBahn, President and CEO, APA



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ENFORCING STATE ANIMAL CRUELTY LAWS:

INTERPRETING THE LAWS TO OBTAIN SUCCESSFUL PROSECUTIONS

By Sherry Ramsey, Esq.

(Part 1 appeared in the Spring 2010 Issue of Lex Canis.)

PART 2 – WORKING WITH THE LAWS WE HAVE

Prosecuting animal cruelty cases can offer a number of unique challenges to prosecutors. Animals are considered property in all 50 states, yet no other type of property is protected by law in the same way as animals. In most states they have rights whether they are “owned” or not. It is a crime in every state to abuse or mistreat animals. Yet as “property,” animals cannot be protected to the extent that we protect people. Historically, we have numerous examples of laws that treated humans as property. Slaves, women, and children were once treated as property or had diminished rights under our laws. Classifying animals as property can make it more difficult to prosecute the laws enacted to protect them. However, as our laws evolve, we are starting to recognize the importance of creating a special classification for animals. Some civil courts have created special classifications through cases that have recognized the unique qualities of animals and their value beyond mere property value. Many state criminal laws have also evolved to understand that cruelty to any animal should be a crime whether that act impacts a human or not. By doing so, we recognize that animals are deserving of special rights and considerations.

Problems arise for prosecutors when these laws are not well drafted or are inconsistent in how they protect animals. These problems can often only be corrected by state legislatures. However, it can be useful for prosecutors to understand the problems in order to use these laws most effectively.

PROBLEMS PROVING THE CASE BECAUSE OF VAGUE OR POORLY DRAFTED STATUTES

Another problem that often arises is confusion over the applicable “mens rea.” Most state cruelty laws contain crimes of both commission and omission, and yet these elements are often not adequately defined. Humane officers would agree that many of the most severe crimes are of neglect, such as



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failing to provide food, water and shelter; but those often have light penalties under state criminal laws. In a 2000 New Jersey criminal prosecution against an egg farm, the defendants were charged after discarding live chickens in a barrel of dead chickens. The Municipal Court judge found the defendants guilty, noting that the discarded chickens could have lingered and suffered for days before dying. On appeal, the Superior Court judge overturned the conviction, ruling that since no mental state is mentioned in the statute, the appropriate state would be “knowingly” pursuant to New Jersey law. The judge ruled that the state had not proven that the defendants knowingly violated the criminal statute. [State of New Jersey v. ISE Farms, Inc., Transcript of Sup. Ct. Warren Co., (March 8, 2001)] The Municipal Court correctly noted that discarding live animals in a pile of dead animals is “wrong” and stated that the company should better train its employees and “get somebody who knows the difference between a live chicken and a dead chicken.” Id. at 59. The lower court focused on the act

of cruelty, while the Superior Court focused on the intent of the defendants. Under this theory, no cases could be effectively brought for animal neglect. Should there be a “reasonable person” standard that is applied in these kinds of cases? If someone does not feed his dog, is it not reasonable to assume the dog will suffer and die? Accordingly, should that be enough to show the defendant knowingly committed the crime? Many courts have so concluded and many states have drafted cruelty laws that address these problems.

WEAK FELONY STATUTES

Some state felony cruelty statutes have limited provisions requiring intentional, specific conduct. Others require serious harm to the animal, providing little effective protection as a result.

For example, New York’s felony law applies if a person, “with no justifiable purpose...intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty,” adding that it must be intended to cause “extreme physical pain” or be done in an “especially depraved or sadistic manner.” [NY AGRIC. & MKTS. Art. 26, 353-a 1.] This provides limited protection, and may in fact cause uncertainty in cases of severe neglect or even severe cruelty, as in a case where a man attempted to cut a dog’s throat then tossed the animal out of a car window. Here, a felony charge was not brought since the dog survived without “serious injury,” due to a Good Samaritan.

In Pennsylvania, slowly starving a dog to death does not fall under the state felony provisions. Title 18, Section 5511(a)(2), only applies to zoo animals, and under Title 18, Section 5511(a)(2.1)(ii), a felony occurs only upon a second or subsequent offense for “killing, maiming, mutilating, torturing or disfiguring any dog or cat.”

Some states focus on the methods of the cruelty rather than the act itself. For example, in Maryland, a landlord took a shotgun, went into his tenant’s apartment, took her two cats outside and shot and killed them. Although the prosecutor charged him with felony cruelty, the judge found him not guilty, ruling that the case did not rise to the level of felony aggravated cruelty. The decision hinged on the definition of “cruelly kill.” [MD Code Article 27, section 10-606.] The judge determined that the cats were not “cruelly killed” and the defendant was acquitted.

These examples clearly demonstrate that many state animal cruelty laws must be improved or better understood to be effective.

DISAPPOINTING SENTENCES

From the perspective of many who promote animal welfare, the criminal sentences given to abusers are unsatisfactory. Even though judges and prosecutors receive numerous letters and phone calls demanding justice, penalties involving cruelty to animals are seldom proportional to the punishments for other violent crimes. This is frustrating to humane officers,

since without harsh sentences there is limited deterrent for abusers. Likewise, early intervention in juvenile abuse cases is important given that it has been deemed an important indicator of future violence. [Kellert, S.R., and Felthous, A.R. 1985. Childhood cruelty toward animals among criminals and noncriminals. *Human Relations* 38:1113–1129.]

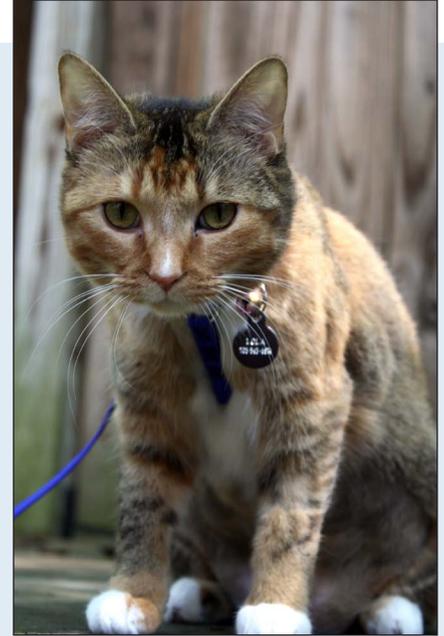
Further, attention to specific and unique sentencing requests by the court is vital. Forfeiture of the mistreated animal or others in the defendant’s care, prohibition of future possession of animals, mandatory inspections, and restitution are all important parts of sentencing dispositions. Allowing a defendant to continue to possess or breed animals once he has been deemed an abuser does not constitute justice. It is important for prosecutors to push for sentences that not only punish the abuser for the crime but also ensure that the abuse does not continue.

COMPREHENSIVE PROTECTION

Understanding the laws in each state and any specific problems associated with specific laws is essential to prosecuting a cruelty case successfully. Obtaining training for prosecutors and law enforcement is also important to ensure appropriate understanding of both how to handle these cases effectively, and why it is important to enforce cruelty laws aggressively. The more we learn about the link to violent behavior associated with animal abusers, the more we realize that these cases must be taken seriously.

Domestic violence was once treated as a minor offense, but efforts to shed light on the consequences; strengthen laws; and educate police, prosecutors, and judges have served to better protect these victims and society as a whole. Given the same commitment, animal cruelty laws can also more effectively protect animals and society.

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MORE THAN ANGER: A DIFFERENT APPROACH NEEDED FOR ANIMAL ABUSERS

By Kenneth Shapiro, Ph.D.

In 1998, California became the first state to pass legislation that required counseling for persons convicted of animal abuse. At that time, there was no therapeutic intervention specifically for this population, which was the impetus for the creation of AniCare, now a program of the Animals and Society Institute (ASI; www.animalsandsociety.org). AniCare, the adult version, emphasizes accountability and the development of alternative, more prosocial ways of relating to others. For juveniles between the ages of 7 and 16, AniCare Child focuses on empathy, emotional intelligence, and self-management skills, using indirect techniques such as puppetry, drawing, and story-telling. AniCare remains the only published treatment approach devoted to the presenting problem of animal abuse.

AniCare treatment:

- is not meant to be in lieu of incarceration;
- is appropriate both for misdemeanor and felony cases and for neglect;
- addresses psychological issues inherent in those who mistreat animals, as opposed to teaching “anger management,” and
- is not animal-assisted therapy, although when appropriate, animals are used in therapy sessions.

Since 1998, the Animals and Society Institute has presented 48 workshops in 21 states (AZ, CA, CO, CT, DE, FL, ID, IL, MA, MD, ME, MI, NH, NM, NY, OH, PA, TN, TX, WA, WI), attended by about 550 counselors

(psychologists, social workers, guidance counselors, psychiatrists, and case workers); instituted an online course (through Arizona State University); and developed a cadre of 17 certified AniCare trainers in 11 states (AZ, CA, CT, FL, GA, MD, NH, NM, PA, TN, and TX). Counselors typically specialize in working with adults or juveniles and only learn the respective AniCare skills.

Twenty-seven states now have laws that allow, and in some instances require, the judge to order counseling as part of the sentence of a person convicted of animal abuse. To date, in 12 cases in 6 states (CO, MA, MI, NM, VT, WA), the judge has stipulated that the convicted individual, in all cases adults, undergo AniCare treatment at his or her own expense. In these cases, we worked with the prosecuting attorney or probation officer to locate a counselor familiar with AniCare. ASI maintains a database of counselors who have taken a workshop or completed an online course. In instances where a local professional is not available, we offer to consult with a counselor who agrees to take the case, typically someone whose practice involves working with violent perpetrators (domestic violence, sexual offenses, or child abuse). The number of individual sessions ranges between 10-12.

It is important to note that AniCare is most suitable for individuals whose severity of disorder is in the mid-range, between conditions requiring residential treatment and those needing only psycho-education. (Although the approach does not currently include treatment of hoarders, we are updating the adult version to include that population.) AniCare Child has proven most appropriate for children and adolescents diagnosed with Conduct Disorder, Oppositional Defiant Disorder, Attention Deficit/Hyperactivity Disorder, and Post-Traumatic Stress Disorder.

Because AniCare always includes an assessment component, more seriously disturbed individuals (psychotic and borderline) are referred to other appropriate treatment settings.

AniCare is adapted from a validated treatment for domestic violence perpetrators that combines psychological concepts of intimacy with some ethical concepts, such as accountability and reciprocity.* AniCare Child is adapted from proven interventions in related childhood disorders. A preliminary validation of AniCare Child is in process.



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As ASI continues to expand the roster of Ani-Care-trained counselors, it is also working to increase familiarity with and demand for the treatment. Through the Rapid Response Program, we identify animal abuse cases and send letters to the media and to prosecutors urging prosecution of these cases; after conviction, we contact judges and probation officers to acquaint them with AniCare and to suggest that the sentence include completing the treatment program.

For example, we responded to a case that occurred, as is typical, in the context of a domestic violence incident. A young man was accused of killing his girlfriend's rabbit. When the incident was first reported, our letter to the editor was published in the local newspaper. Later, after conviction, we sent a letter to the judge, who did include AniCare treatment in his sentence.

In another case, a woman's dog was found starved to death in her apartment. The woman's sentence included AniCare and the therapist reports that she is responding well to therapy.

Anecdotally, we are finding that AniCare treatment is being ordered as part of probation. Thus, to expand the use of AniCare, we currently are exploring the feasibility of having it made a condition of parole, as a way of reaching those animal abusers whose sentences include incarceration.

We look forward to working with the Association of Prosecuting Attorneys on our mutual goal of ensuring that animal abuse is taken seriously. And we encourage all prosecutors and others involved in animal cruelty enforcement to contact us if we have not contacted you to explore the suitability of AniCare or AniCare Child in any cruelty cases with which you are involved.

*Intimate Justice Theory; Brian Jory et al; See: Journal of Marital and Family Therapy, Oct. 1997

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BREAKING NEWS

UNION Co., OH, LAW ENFORCEMENT AUTHORITIES have made one arrest so far in an investigation prompted by a video documenting animal abuse at Conklin Dairy Farms. Billy Joe Gregg, Jr., was charged with 12 misdemeanor counts of animal cruelty and one felony gun violation. He pleaded innocent on June 10; trial is set for August 16. Video shot by a Mercy for Animals undercover investigator showed employees stomping a calf's head, jabbing cows with pitchforks, and beating a cow with a crowbar, among other actions. State Veterinarian Tony Forshey told the Columbus Dispatch (May 26, 2010), "Everything on that video is just horrible... Clearly there is no debate that these acts are morally reprehensible."

ON JUNE 7, MAINE-BASED QUALITY EGG OF NEW ENGLAND (QENE) pleaded guilty to 10 civil counts of animal cruelty. In what is being called a "landmark civil settlement," QENE will pay over \$130,000 in fines, restitution, and reimbursement to the state for monitoring of egg producers, and will also allow unannounced state inspections for 5 years. According to state veterinarian Dr. Christine Frazer, who worked on the case, "I think [the video] basically portrayed what we found the day of the search warrant.... It was inexcusable. It wasn't just one bad day at the chicken farm. It was a chronic problem and it had just been allowed to slide to the point that it got to cruelty." Assistant District Attorney Andrew Robinson brought the case and retains the right to bring criminal charges if any of the terms of the settlement are violated over the next 5 years. Prosecutors in Santa Cruz, CA, declined to file charges in a similar case.

AS REPORTED IN THE SAN FRANCISCO CHRONICLE ON JUNE 3, the Second District Court of Appeals overturned a lower court ruling and determined that "a report of a dog crying in distress can constitute an emergency that justifies entering a home without a warrant..." thereby upholding the conviction and 16-month prison sentence of Keith Chung for animal cruelty.

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BREAKING NEWS

(CONT'D FROM P. 5)

In the 3-0 ruling, the court said that "although pets are considered personal property, protecting them is a legitimate government concern." Once in Chung's residence, police found one injured dog on the patio and one dead dog in the freezer.

NORTH CAROLINA HAS JUST UPGRADED ITS FELONY

animal cruelty law, making actions that were once an I felony an H felony. The change, which happened in a matter of months, was inspired by the case of Susie, a dog who was beaten, set on fire, and left for dead. Her attacker was arrested but because it was his first offense, the judge could impose only a 3-4 month suspended sentence. (The attacker is in prison on assault charges.). The upgrade will allow a judge to require jail time.

UPDATE: In the spring 2010 issue we reported that David Beers in Brunswick, MD, had pleaded guilty to aggravated animal cruelty, a felony, for throwing a dog off a bridge to retaliate against the dog's owners. On June 7, Mr. Beers received a three-year suspended sentence but will have to spend only four months in jail; he will also pay a \$1,000 fine, perform 300 hours of community service, and pay the owners \$318 in restitution.

APA announces that its 2nd Annual *Prosecuting Animal Cruelty and Fighting Cases* Training Conference will take place October 27-29, 2010, at the University of Denver. This two-and-a-half day conference is open to all members of law enforcement and related disciplines and nonprofit organizations with an interest in animal cruelty and fighting crimes. There is no registration fee. For additional information, visit our website, www.APAInc.org.

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