

LEX CANIS

ANIMAL ABUSE IS VIOLENCE.

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Dr. Mary Lou Randour, a psychologist, is Senior Advisor, Animal Cruelty Programs and Training for the Animal Welfare Institute (AWI). In that role, she identifies programs, policy, and research projects—and builds coalitions to support them—on the topic of animal abuse and human violence. Founded in 1951, AWI has sought to alleviate the suffering inflicted on animals by people.

Since 2009, AWI has partnered with APA to provide training and other resources to prosecutors and other professionals engaged in addressing animal cruelty crimes. In the following interview, APA President David LaBahn talks with Mary Lou about her career history, her personal life, and her work at AWI. www.avionline.org

DL: I've heard great things about you and your work; please tell me a little about your background and education.

MLR: Having reached a mature age, my background grows longer; therefore, I have a lot of material from which to make selections. One of the first, and continuing, influences on my life was the working class culture into which I was born and raised. My grandparents and uncles were coal miners and steel mill workers in western Pennsylvania. My parents relocated to Washington, D.C. (a long time ago!) to accept jobs as Federal government workers. I received a Ph.D. in 1978 from the University of Maryland. Always the eager student, I continued my training after my Ph.D.

Some of this additional training included four years of psychoanalytic training at the Washington Psychoanalytic Institute; National Institute of Mental Health scholar at the Center for Research on Women at Wellesley College; and Clinical Fellow in Psychology, Cambridge Hospital, Harvard Medical School.

With my degrees and various training, I was a social worker for the D. C. government's Aid to Families with Dependent Children; served as a research analyst for the National Institute of Education; taught in public schools; maintained a clinical practice for 17 years; and for the last 15 years, I have been working for national animal protection groups, focusing on the connection between animal abuse and other forms of violence and its significance for individuals and society.

DL: What inspired you to look at animal abuse issues?

MLR: I hope this doesn't encourage direct mail campaigners, but it was direct mail. In the 1990s, I was living in Chevy Chase, Maryland, and for some reason I was inundated with direct mail pieces all depicting some horror of animal cruelty—animals beaten, animals on chains, animals confined to small pens in factory farms, animals in the circus, animals struggling in steel jaw leg hold traps, and animals hooked up to probes and other fiendish medical research devices. I looked at the direct mail before I threw it away. At times, I opened it and read the solicitation, taking in more information and, always, the photographs of suffering animals. At this time, I had been aware of Peter Singer's book, *Animal Liberation*, but had never read it. I went to a local book store, bought and then read it. And it changed my life. Immediately after reading it, I was besieged with nightmares of suffering animals. Fortunately, I lived in the Washington, D.C. area where a number of animal

protection groups operated, so I channeled that horror and sorrow into taking action and began to volunteer for a national animal protection group. Eventually, I made the transition from full-time clinical practice to full-time animal protection.

DL: What if anything have you seen change? Have your efforts been assisted by your work with us here at the Association of Prosecuting Attorneys?

MLR: Since I work on animal cruelty and other forms of violence, the changes I notice are more likely to be those that are related to that topic. One marked change is the increased number of states that have passed animal cruelty legislation with felony provisions; in 1990 there were seven states with such provisions, now there are 48. Also notable are the number of states with pet protection orders and the increased awareness among domestic violence advocacy groups and law enforcement of the significance of the link between animal cruelty and other forms of violence. Not just intellectually, but in practical ways. For example, AWI developed a national list of safe havens for pets programs, which is posted on our website, so that any domestic violence victim, or someone who is helping that person, can locate the closest safe haven program. APA is training prosecutors so that more animal cruelty defendants are being prosecuted successfully. My professional organization, the American Psychological Association, has a Section on Human-Animal Interaction in Division 17, Society of Counseling Psychology.

Another definitive change is our working relationship with the Federal Bureau of Investigation. In 2003, we initiated an effort to have the FBI include animal cruelty crimes included in the agency’s crime data base. At that time, we employed a federal legislative strategy and the initial response of the FBI was somewhat reactive. In the intervening years, however, we have developed a direct working relationship with the FBI and we are cooperatively exploring the “nuts and bolts” of how to make this important change in the FBI’s national crime data base.

DL: Where do we need to go from here?

MLR: We go forward—relentlessly, persistently, and smartly.

DL: Can you offer some insights into your more private life that would help us get to know you better?

MLR: I seem to be happier when I have a project in my life. For the past two years, I have been helping organize spay/neuter campaigns in Santo Domingo. The first one was held in July 2011 under the auspices of a partnership between Casa de Orientacion y Desarrollo Real (CODR), a local Dominican nonprofit; World Vets; and the Veterinary School of the Universidad Autonoma in Santo Domingo. This year the same partners held another clinic in July at which 231 dogs and cats were spayed or neutered in three days. Now our goal is to develop a sustainable spay/neuter campaign in Santo Domingo that will complement the annual three-day campaigns. We are helping Dr. Rafael Rodriguez, a Dominican veterinarian and a participant in the spay/neuter campaigns, to open a clinic that will spay or neuter approximately 15 dogs and cats a week.



Mary Lou in the Dominican Republic in July helping with the spay/neuter program.

Horse Show Cruelty: Enforcement Shortcomings & Options for Prosecutors



PETE MAROVICH/FOR THE HSUS

by Keith Dane,
*Director of Equine
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the United States*

I. Enforcing the Horse Protection Act

Recent footage
released by the
Humane Society of

the United States and ABC Nightline and increased enforcement of the federal Horse Protection Act (HPA) [15 U.S.C. §§ 1821 et. seq.] by the U.S. Department of Agriculture (USDA) have sparked more public scrutiny of the issue of “soring” in the Tennessee Walking Horse industry. Likewise, interest in prosecuting violations of the HPA is also on the rise. Unfortunately, meaningful prosecutions of such violations face serious obstacles. USDA’s ability to detect violations is seriously hampered by the lack of funding and by the efforts of offenders to disguise soring injuries and pain. State prosecutors may also have difficulty pursuing charges beyond the misdemeanor level in states without strong cruelty laws that may be applied to the act of soring.

The Horse Protection Act was enacted in 1970 with the intention of ending the practices collectively known as soring, i.e., painfully altering the gait of Tennessee Walking Horses through such practices as the application of caustic chemicals and

chains to the pasterns, excessively trimming a horse’s hooves and nailing on tight shoes, or putting pressure on sensitive parts of a horse’s feet to cause pain upon standing or walking. Congress declared that the soring of horses is cruel and inhumane, and that sored horses, when shown or exhibited, compete unfairly with horses who are not sore. The Act prohibits the showing, sale, auction, exhibition, or transport of sored horses. [15 USC §1824]

HPA enforcement is the responsibility of USDA’s Animal and Plant Health Inspection Service (APHIS), which assigns Veterinary Medical Officers (VMOs) to work on the HPA part-time. A 1976 HPA amendment provided for a system of industry self-regulation: Horse Industry Organizations (HIOs) could attain certification to license Designated Qualified Persons (DQPs) to enforce the HPA at horse shows. [15 USCA §1823] However, that self-regulation has proved ineffective. While some HIOs do hire unbiased inspectors who effectively enforce the Act, and the shows run by those HIOs attract participants showing “sound” (i.e., not sored) horses, there are many HIOs that run highly performance-focused shows and hire DQPs with

ties to the industry and a more tolerant attitude toward soring.

The underenforcement endemic to the industry self-regulation scheme is made all the more problematic by USDA budget constraints, which have historically limited VMO attendance to about 30 shows annually, or roughly 6 percent of the total. The enforcement problem connected to industry self-regulation is illustrated by a USDA Office of the Inspector General audit of HPA enforcement, which found that while APHIS VMOs oversaw only 6 percent of DQP inspections of shows between 2005 and 2008, those few APHIS-attended shows accounted for a full 49 percent of the violations found. This indicates a direct correlation between the presence of APHIS employees and enforcement of the



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Chains and “stacks” are commonly used to intentionally inflict pain to horses’ hooves, a practice known as soring.

law—a troubling correlation when APHIS employees are present at so few events.

Compounding the problem of infractions presumably missed or ignored at shows not attended by APHIS employees is the fact that the evidence of soring is not always apparent. After passage of the Scar Rule in 1979 (and amended in 1988; 9 CFR Chap. 1, Subchapter A, §11.3), which disqualifies horses from competition if they have visible scarring or irritation indicative of soring, or evidence of abuse including hair loss or excessively curly hair on the pasterns, sorers found new ways to avoid detection. One of the more abusive ways of getting around the scar rule involves saturating a horse’s pasterns with a mixture of alcohol and salicylic acid, which painfully erodes the damaged tissue. Now government and industry inspectors must look for signs of this treatment or any indications of soring remaining after damaged tissue has sloughed off. Scarring that is visible to the spectators at shows is now almost nonexistent, but more subtle evidence of soring and of the effects of the scar-removal treatment has been documented by USDA VMOs through such methods as thermographic scans and chemical swabbing.

Though thermographic scans and chemical swabbing are being used more often, they are costly and their use is limited by budget constraints. The most frequent method of soring detection is digital palpation—putting pressure on a horse’s pasterns with the thumbs and observing for a pain response. However, the use of topical pain numbing sprays and lotions, which provide enough relief to prevent reactions during inspections but fade before a horse enters the ring, allows sorers to thwart this method as well. The much more shocking way of avoiding detection during digital palpation is called “stewarding,” a system for training horses not to respond to digital palpation by beating, burning, or otherwise punishing a horse who exhibits a pain response, or causing more pain to a different, sensitive, and obscure part of a horse to distract him during inspection (tight bands around the gums, or alligator clips on sensitive genital areas, for example). DQPs may be inclined not to look for these ways of distracting horses from the pain in their pasterns because of their tolerant approach to violations.

If all else fails, exhibitors may simply leave shows if they anticipate they’ll be issued a ticket: under the HPA, exhibiting a sore horse, not the act of soring a horse, is prohibited. [15 USC §1824] This behavior has been observed by APHIS VMOs and has led to the cancellation of entire shows in some instances where VMOs, rather than only industry DQPs, are present. Unless bona fide, consistent, and frequent inspections become the norm, exhibitors may continue simply to cut their losses, pack up their horses, and cancel shows when actual—but infrequent—rigorous inspections are imminent. Developing a precedent of meaningful prosecution will be impossible if no genuine inspections can be made without threats to APHIS VMOs, or without exhibitors simply leaving.

In the 40-plus year history of the Horse Protection Act (HPA), there have been only three criminal prosecutions for soring. Two of the cases involved multiple defendants.

NOVEMBER 2011 Chris Zahnd was sentenced to two years’ probation in connection with a 2009 case in which a horse Zahnd trained and stabled was determined to be “bilaterally sore.” He continues to work with horses and “probation officers and USDA officials are authorized to visit Zahnd’s barn to monitor” the animals’ welfare. (<http://www.ratemyhorsepro.com/news/alabama-horse-trainer-sentenced-for-soring.aspx>)

APRIL 2011 U.S. Attorney William Killian indicted Paul Blackburn, Barney Davis, Christen Altman, and Jeffrey Bradford for HPA violations. In January 2012, Blackburn was convicted on charges of conspiracy to violate the HPA as well as substantive violations of the HPA, including transporting sore horses and falsifying documents. Davis also pleaded guilty to conspiracy to commit witness tampering. In January 2012, Blackburn was fined \$1000 and sentenced to 12 months’ probation, as a condition of which he must “write an article describing horse soring methods...the effects soring has on horses, and the scope of horse soring in the industry.” In February 2012, Davis, who was sent to jail for violating his bond conditions when he was videotaped soring a horse, was sentenced to one year in prison, three years’ supervised release, and a \$4000 fine, and was required to participate in producing an educational video about the extent of soring. Altman



FRIENDS OF THE SOUND HORSE

This is what a "sored" leg looks like after trainers have applied painful, caustic chemicals.

II. HPA Prosecution Strategies

Both civil and criminal penalties are available under the HPA. [15 USC 44 §1825 (2011)] Only three known criminal cases have been pursued based on violations of the HPA. (See sidebar.) USDA has carried out civil penalties through the administrative enforcement system and recently published a rule establishing mandatory minimum penalties to be applied by HIOs when soring violations are found. [9 CFR Part 11, Docket No. APHIS 2011-0030] In publishing that rule, USDA also indicated its intention to initiate decertification procedures for HIOs failing to apply the mandatory minimum penalties. However, without increased funding for and monitoring by USDA, many violations will continue to go undetected and, therefore, unpunished regardless of minimum penalties.

More frequent pursuit of criminal penalties for violators is one way of providing meaningful disincentives to soring, but the HPA does not offer great latitude for significant criminal prosecutions. First offenses are only misdemeanors; felony convictions are only available for repeat offenders and those who falsify

documents or conspire to violate the statute. [15 USC 44 §1825 (2011)] Given the extremely low rate of prosecutions, offenders falling under the expanded penalties for recidivists could be few and far between, and even if a repeat offender were to be convicted multiple times, the maximum jail time afforded under the Act is only two years. [Id.]

However, exhibitors' attempts to conceal soring could actually work in prosecutors' favor by increasing the available penalties under the HPA. For example, lenient industry DQPs have been known to substitute the names of others, such as stable employees or even family members, for the trainer's name on "tickets" issued for detected HPA violations. This amounts to falsification of records, which can subject an offender to felony penalties under the HPA. Conspiracy with other trainers or stable employees can also expose a violator to felony prosecution. Barney Davis, sentenced for felony violations of the HPA in 2011, pled guilty to conspiring to violate the Act and falsifying related forms, as well as conspiring to commit witness tampering. Trainer Jackie McConnell admitted to conspiring with other trainers to violate the Horse Protection Act while he was on suspension from showing horses due to previous violations.

The mandatory minimum penalty enforcement promised by the USDA's new administrative rule is a step in the right direction, but identifying the repeat offenders and bringing criminal charges against them will send the message that incessant slaps on the wrist and disqualifications that are easily sidestepped are not the only responses at the government's disposal.

III. State Cruelty Laws

Prosecutors may have another resource in states with stringent animal cruelty statutes or even statutes directed specifically at

and Bradford were sentenced to one year of probation and each must pay a \$1,000 fine as well as also write articles on soring.

FEBRUARY 29, 2012 A federal grand jury in Chattanooga, TN, returned a 52-count indictment against John Mays, Jackie McConnell, Jeff Dockery, and Joseph Abernathy. A Humane Society of the U.S. undercover investigation yielded a videotape of the men applying mustard oil and other caustic substances to the horses' pasterns. All pleaded guilty to a single count of conspiracy to violate the HPA. In May, the National Celebration, the premier Tennessee Walking Horse competition, imposed a lifetime ban on McConnell, even barring him from attending the event. In August, Mays was sentenced to time served and a special \$25 assessment, and was also ordered to write an article about horse soring as a condition of his one-year supervised release. On September 18, in a plea agreement, McConnell was fined \$75,000, sentenced to three years' probation, and ordered to write a letter about horse soring. McConnell could have been fined as much as \$250,000, and without the plea agreement he faced as much as five years in prison. Dockery and Abernathy were also given probation. All three will appear in court again in November on 31 counts of violating Tennessee's state animal cruelty statute.

soring, especially when a felony conviction or more stringent penalties are being sought. In other states, the laws directed at soring offer fewer or weaker penalties than the remedies under the Horse Protection Act. For this reason, state laws need to be considered on a case-by-case basis for soring investigations; in some states, the act of soring itself is illegal, while in others only exhibiting a sore horse will be prohibited. Allowable penalties and the definition of punishable offenses will also vary.

In Tennessee, for example, a new Aggravated Animal Cruelty law came into effect in July 2012. [Tenn. Code Ann. 39-14-216 (2012)] The amended law provides for a Class E Felony for aggravated cruelty to livestock, including “[a]pplying acid or any other caustic substance or chemical to any exposed area of an animal or forcing the animal to ingest the substance.” [Tenn. Code Ann. 39-14-216(c)(7) (2012)] Making the soring of horses a felony should create a stronger deterrent in Tennessee, especially if state prosecutors utilize these stronger

tools to protect horses. Kentucky is another state strongly associated with horse events of all kinds; however, state law only provides for a minimum \$10.00 fine and a maximum fine of \$100.00 and the potential for ten days in jail for first soring offenses. [KY Rev. Stat. Ann. Sec. 436.185(2011)] Second and subsequent offenses could result in 30 days in jail at most. [Id.] As an example of yet another approach, the act of soring itself for any purpose is a Class 1 misdemeanor in Virginia, and soring resulting in the death or necessary euthanasia of a horse is a Class 6 felony. [VA Code Ann. Sec. 3.2-6570(A)(iii)(2011)]

These differences in state laws highlight both the opportunity presented to prosecutors in states with strong laws against soring, as well as the need in some states for a push for stronger animal cruelty legislation.

IV. Going Forward

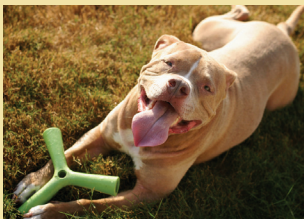
In order to bring to justice those who engage in horse soring and finally end

the practice, federal and state prosecutors will have to explore all of the tools at their disposal to improve enforcement. At the federal level, a key factor will be achieving a level of funding for USDA's HPA enforcement program that allows for greater oversight and the development of more civil and criminal cases. Increasing prosecutions of HPA violations could help keep the soring issue in the spotlight and highlight the need for stronger enforcement. Similarly, prosecutions under state anti-soring and animal cruelty statutes will both raise public awareness of the pervasiveness of this ongoing problem and provide another level of deterrence. Protecting horses from this abuse permanently will require a concerted effort among creative prosecutors pursuing aggressive charges under the HPA and state laws, the USDA, Congress, state agencies, and the public pressing for more enforcement of the laws.

Additional resources on this topic are available at www.apainc.org/horsesoring

UPDATE ON TRACEY V. SOLESKY

BY JOAN SCHAFFNER



As reported in *Lex Canis* (Spring 2012), the Maryland Court of Appeals held all pit bulls and cross-bred pit bulls inherently dangerous and imposed strict liability on any person who owns, harbors, or controls such a dog. The impact of the decision on approximately 95,000 dogs and 77,000 renters was immediate: Landlords refused to allow pit bull dogs, owners were forced to move or surrender their dogs, and shelter adoptions of pit bulls came to a near halt.

On May 25, 2012, Tracey filed a motion for reconsideration, which suspended implementation of the decision. Advocates worked with legislators to draft a bill that would effectively reverse the decision while maintaining public safety.

In a special session, the Maryland Senate approved a bill imposing strict liability on all dog owners independent of breed, but the bill failed to pass the Maryland House. On August 21, 2012, the court issued its decision limiting the holding to only “pit bulls.” The court explained that the issue of cross-bred pit bulls was not raised, nor discussed, and thus was “gratuitous.” Moreover, greater certainty in defining cross-bred pit bulls is necessary before imposing strict liability.

Joan E. Schaffner is an associate professor of law at George Washington University Law School.

Prosecuting Intimate Partner Violence & Animal Cruelty

by John Wilkinson, JD



Most perpetrators of intimate partner violence seek to exert control over their victims and will utilize any means necessary to gain that control. Abusers will employ tactics that range from emotional abuse and isolation to threats, intimidation, and physical violence. And while control of the victim is the ultimate goal, victims themselves are not the only targets of these tactics. Abusers may also threaten and commit acts of violence against the victim's children, family members, and even their pets. According to the American Humane Association (<http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html>):

- 71 percent of pet-owning women entering women's shelters reported that their batterer had injured, maimed, killed, or threatened family pets for revenge or to psychologically control victims; 32 percent reported that their children had hurt or killed animals.
- 68 percent of battered women reported violence toward their animals; 87 percent of these incidents occurred in the presence of the women, and 75 percent in the presence of the children, to psychologically control and coerce the women.
- 13 percent of intentional animal abuse cases involve domestic violence.
- Between 25 percent and 40 percent of battered women are unable to escape abusive situations because they worry about what will happen to their pets or livestock should they leave.

Importance of Cooperative Response

These alarming statistics demonstrate the connection between animal cruelty and intimate partner violence. Prosecutors and allied professionals must work together to protect victims of abuse and their pets and hold offenders accountable for their actions. Such coordination allows them to better identify, investigate, and prosecute acts of animal cruelty. It also facilitates the investigation into other related crimes—specifically domestic violence, which may co-occur with animal cruelty.

A coordinated community response requires collaboration among all allied professionals who may be

working on these issues: e.g., police, prosecutors, advocates, domestic violence shelters, health care professionals, veterinary professionals, or humane society personnel. When these professionals collaborate, communicate, and cross-train each other, they improve their responses both collectively and individually. Because victims intersect the system in different places, this approach increases the likelihood of identifying and responding to animal cruelty and domestic violence. There are several questions communities can ask to assess the level of coordination:

- If a victim brings an injured pet to the veterinarian, does the vet know to ask questions regarding domestic violence indicators?
- Can the vet provide information about available resources for victims of domestic violence?
- When treating adults or children with injuries they suspect may be related to domestic violence, are doctors, nurses, and other medical professionals prepared to ask appropriate questions about the cause of their injuries and the possibility of other victims, including animals?
- If police or humane law enforcement personnel are investigating an incident of animal cruelty, do they know to ask questions regarding any abuse in the home—specifically domestic violence?
- If police are investigating an incident of domestic violence, do they know to ask questions regarding abuse of pets?
- Are all professionals aware of resources that may be available to provide temporary care for the victim's pets while she is in the process of relocating to a place of safety?

The coordinated community response not only increases awareness on the part of these allied professionals so they can effectively assist victims and their pets, but also educates victims so that they are able to report these incidents and take steps to protect themselves and their pets. Victims may be more willing to cooperate

with the prosecution and follow through with a safety plan when they are confident that their concerns about the well-being of their pets are being taken seriously.

Protection Orders

In several jurisdictions, the statutes concerning orders of protection specifically provide that a defendant may be barred from having contact with the victim's pets or harming them in any way. [See e.g., Ariz. Rev. Stat. ann. § 13-3602 (2012); D.C. Code § 16-1005 (2012); N.Y. Fam. Ct. Act. § 446 (Mckinney 2012); www.avionline.org/safehavens.] Even in jurisdictions with no specific provisions, however, pets are generally considered to be property and can be temporarily awarded to the victim like any other property. The court should order the abuser to refrain from injuring or damaging the pet, just as it would order the abuser to refrain from damaging other property belonging to the victim or jointly owned by the parties.

Need for Training

Police presence at a domestic violence crime scene is often the result of a 911 call made by the victim, a family member, or a neighbor. In a response focused on the immediate act(s) of domestic violence, it is possible for officers to overlook other, less obvious, signs of abuse such as ongoing stalking behavior or animal cruelty. Inquiring about such acts may provide important contextual evidence of domestic abuse in the relationship and may result in additional criminal charges. Victims may not know to report these behaviors to police or prosecutors, so it is important that officers and investigators ask victims about any history of animal cruelty or prior acts that might support a stalking charge. Training for law enforcement and allied professionals, including animal protection personnel, should include information on recognizing indicators of co-occurring animal abuse and domestic violence.

Evidence Collection

That training must also address the proper collection of evidence. Unfortunately, domestic violence victims face many negative consequences as a result of participating in the prosecution of their batterers—consequences that often cause them to recant their reports or to decide it is no longer safe to participate in the process. A coordinated community response that provides victims with access to advocacy and other support services may encourage continued victim participation. However, evidence-based

investigation will enhance the likelihood of a successful prosecution even without the victim's participation. An evidence-based investigation begins at the scene. Upon arrival at the scene, officers should—

- first, address any emergency concerns.
- thoroughly assess the situation to determine the location and status of all persons, weapons, and pets.
- seize any weapons used during the incident including any household objects used as weapons.

Once the scene is secure, officers should collect, record, or document the following evidence—

- statements made at the scene by the victim and other witnesses, including any age-appropriate children who may be present or neighbors who may have heard the incident;
- any statements made at the scene by the defendant;
- observations about the emotional demeanor of the victim and any children;
- description and photographs of visible injuries to all parties, including pets;
- complaints of pain or observation of signs of internal injury (such as limping or a raspy voice);
- photographs of the scene;
- recordings of 911 calls;
- releases for medical records of the victim and treatment records for the victim's pets; and
- a history of prior acts of domestic violence, including threats or abuse directed toward the victim's pets.

Neighbors and family members also may be able to provide critical evidence of the history of an abuser's treatment of the victim's pet in order to defeat a claim that the injury to the pet was by mistake or an accident.

Any statements made at the scene—by victims, witnesses, or perpetrators—can be crucial to an officer's ability to ensure the safety of victims and responding emergency personnel. Such statements should be documented because they provide context to the incident and are critical to the prosecutor's preparation for trial. Additionally, any statements whose primary purpose is to aid





police to meet an ongoing emergency are considered to be nontestimonial [Crawford v. Washington, 541 U.S. 36 (2004)] and, therefore, not subject to a defendant's Sixth Amendment right of confrontation. [Davis v. Washington, 547 U.S. 813 (2006)] Where such statements also come within an exception to the hearsay rule (such

as excited utterances), they will be admissible at trial if the declarant is unavailable to testify.

Officers should also ask if the victim has spoken to anyone else about the incident (or any previous incidents). Such questions may reveal the existence of other nontestimonial statements the victim may have made to a family member, neighbor, or friend. If those statements also satisfy an exception to the hearsay rule, they will, likewise, be admissible at trial even if the victim is not available to testify.

Follow Up with Victim

Prosecutors and all allied professionals must keep victim safety at the forefront of their decision-making. Among the important questions to consider are:

- Does the victim have a safety plan that includes the safety of her pet?
- Do we inquire regularly of the victim how things may have changed since the original safety plan was created?
- Will your judge include pets in an order of protection?
- Are there domestic violence shelters in your area that will house pets?
- If not, are there no-cost animal shelters or rescue groups that will temporarily house a pet in a domestic violence situation?
- Do victims know about the services available to them and their pets?
- Does the community know that your office treats domestic violence and animal cruelty seriously?

Police and prosecutors should also regularly ask the victim about any efforts by the abuser to prevent the

victim from testifying, both in the past and as the case moves forward to trial. If a defendant intentionally makes a victim unavailable for trial, the prosecutor should seek to introduce the unavailable victim's statements under the doctrine of forfeiture by wrongdoing. Forfeiture by wrongdoing is a longstanding exception to a defendant's Sixth Amendment right of confrontation: where a defendant has intentionally made a witness unavailable through his own wrongdoing, he forfeits his right to confront and cross-examine the witness. [Fed. R. Evid. 804(b)6] Wrongdoing can include both intimidation and inducements not to testify. The history of the abusive relationship, including threats or acts of cruelty to the victim's pets, can provide evidence of wrongful conduct intended to dissuade the victim from testifying.

Educating the Court

While thorough investigations may allow prosecutors to proceed to trial without the victim's testimony, equally important is the task of educating judges and juries about the dynamics of domestic violence. Such effort is necessary if these fact-finders are to understand the evidence in its proper context so they can hold the offenders accountable. Voir dire may provide an opportunity for jurors who have some knowledge about domestic violence to educate other members of the jury. Many jurisdictions allow the prosecution to call expert witnesses to explain domestic violence dynamics and common victim behavior. And even though a judge or jury may be reluctant to convict a defendant of domestic violence without the victim's testimony, they may not have the same difficulty convicting a defendant of animal cruelty.

Conclusion

A coordinated community response to co-occurring animal abuse and domestic violence, together with the effective use of strategies to permit successful prosecution in the absence of active participation by the victim, will promote the safety and well-being of victims and their pets while holding offenders accountable for the abuse of all victims in the household.

Additional resources on this topic are available at www.apainc.org/intimatepartnerviolence

John Wilkinson is an Attorney Advisor at AEquitas: The Prosecutors' Resource on Violence Against Women. This project was supported by Grant No. 2009-TA-AX-K024 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of OVW.

BREAKING NEWS

THE OREGON COURT OF APPEALS has ruled that “animals can be considered victims of crime.” (*The East Oregonian*, August 2, 2012) The ruling came August 1 in an appeal by the state, argued by Assistant Attorney General Jamie Contreras, of the sentencing in *State v. Nix*. In that case, the defendant was found guilty of 20 separate counts of 2nd degree animal abuse involving 20 horses, but Circuit Court Judge Jeffrey Wallace merged all 20 counts into one, holding that the “defendant’s repeated violations of *ORS 167.325* did not involve ‘two or more victims’ because animals are not victims under *ORS 161.067(2)*.” This resulted in a sentence of 90 days in jail and three years’ bench probation. In its decision, the Court of Appeals addressed the question of “whether an animal described in *ORS 167.325* is a victim for purposes of *ORS 167.067(2)*. We conclude that it is. Accordingly, there are as many victims as there are violations of that statute in this case and the trial court erred in merging the guilty verdicts into a single conviction.” The court examined the legislative intent and found that “based on the text and context of *ORS 167.325*, it appears that the Legislature’s primary concern was to protect individual animals as sentient beings, rather than to vindicate a more generalized public interest in their welfare.” The court sent the case back for “the entry of separate convictions on each guilty verdict...and for resentencing.” (<http://courts.oregon.gov/publications/pages/index.aspx>)

The Animal Legal Defense Fund filed an amicus brief in this case, in which it concluded, “The statutory context of second-degree animal neglect...is clear and compelling evidence that the Legislature was not just mindful of the fact that animals are sentient beings with the capacity to experience emotions in response to pain, but that the Legislature intended that neglected animals, at least as to merger issues, be treated as victims rather than inanimate objects.”

ON AUGUST 2, Massachusetts Governor Deval Patrick signed a wide-ranging animal control bill, one provision of which allows the inclusion of pets in domestic violence restraining orders. According to a summary of the bill by the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA), “Current statutes do not specifically authorize pets to be included in these orders. Numerous judges and counsel for the courts have confirmed that most judges will not currently include a pet in a temporary restraining order. Judges have also expressed a desire to have this authorizing language included in the state’s statutes.”

A MEASURE ADDING FELONY PROVISIONS to its animal cruelty code will be on the ballot on November 6 in North Dakota. Ballot Measure 5, initiated by North Dakotans to Stop Animal Cruelty (www.ndstopcruelty.com), will make it a class C felony “to maliciously and intentionally burn, poison, crush, suffocate, impale, drown, blind, skin, beat to death, drag to death, exsanguinate, disembowel, or dismember any living dog, cat, or horse.” Punishment may include a fine of up to \$5000, imprisonment for up to five years, mandatory psychological or psychiatric evaluation and counseling, and a prohibition on owning or possessing “a dog, cat, or horse for up to five year after the date of the sentencing.” Specifically exempt are activities related to hunting, trapping, and fishing; “usual and customary” agricultural practices; veterinary procedures; medical and scientific research; defense of self or property; and other lawful activities exempt elsewhere in the law. Notwithstanding the very narrow construction of this language, farm groups oppose the measure. Only North and South Dakota continue to have no felony provisions for extreme acts of animal cruelty. (As materials from North Dakotans to Stop Animal Cruelty noted, it is a felony to cause \$2000 in damages by spray-painting a building, but only a misdemeanor to set a puppy on fire.) The ballot route was made necessary by the North Dakota legislature’s repeated failure to address deficiencies in the cruelty statute despite public support for reform.



THE SANTA BARBARA OFFICE OF THE DISTRICT ATTORNEY

THE SANTA BARBARA DISTRICT ATTORNEY’S OFFICE has joined a growing list of jurisdictions that have added four-legged members to their staffs to provide comfort for crime victims and witnesses. Malvern, a two-year old Labrador and Golden Retriever mix, started work on August 24 and has already assisted in a court case. DA Joyce Dudley recalled



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that Malvern helped sufficiently calm a young woman “nervous about recounting the events of a recent crime” that she was able to take the stand. (<http://www.independent.com/news/2012/aug/28/canine-consoler-warms-hearts-victims/>) It took three years to put the program in place, but the results so far have been encouraging. According to Dudley, Malvern “has a calming effect on not only the victims but also on our staff of secretaries and attorneys alike.” She will determine later whether to add other dogs to her Lompoc and Santa Maria offices.

IN APRIL, Idaho became the 48th state to add a felony provision to its animal cruelty statute. However, a person may be charged with a felony only if he has been found guilty of animal cruelty “involving the intentional and malicious infliction of pain, physical suffering, injury or death,” with each conviction counting as only one violation regardless of the number of counts, on two previous occasions within the preceding 15 years. The maximum penalty for the felony conviction is a \$9,000 fine or 12 months in jail. The new law also upgrades organizing cockfights to a felony when drugs or gambling is involved or upon the second conviction for the use of gaffs or similar implements or “performance enhancing” substances.

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MISSION

Support and Enhance the Effectiveness of Prosecutors in Their Efforts to Create Safer Communities.

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