

LEX CANIS

ANIMAL ABUSE IS VIOLENCE.

ASSOCIATION OF PROSECUTING ATTORNEYS QUARTERLY NEWSLETTER | SUMMER 2011 VOLUME 3 ISSUE 2

WELCOME TO THE SUMMER ISSUE of *Lex Canis*, the APA's quarterly newsletter dedicated to the investigation and prosecution of animal abuse and animal fighting crimes. As the temperatures rise and court officials are having fun in the sun, it is my hope that you do not see many "hot dog in car" cases—please work with your local media to educate the public about risks to their pets' lives. This issue focuses on helping prosecutors, law enforcement officers, and advocates deal with a national problem, namely, animal hoarders. Madeline Bernstein did such a fantastic presentation at last year's national conference that I asked her to follow-up with this article.

During the past two years, the APA has become increasingly involved with issues relating to the link between animal abuse and interpersonal violence. This summer, APA, AWI, and the HSUS will be giving presentations on both policy and practice relating to animal abuse and related criminal behavior to the Pennsylvania Bar Institute and the National Council of Juvenile and Family Court Judges. The presentations will show that animal abuse is frequently indicative of spousal abuse, elder abuse, and child abuse. By combating animal violence early and rehabilitating offenders, we can reduce future incidents of violence. Recognizing the serious implications of animal violence can also go a long way toward protecting the victims of linked crime.

While developing the presentations, it was amazing to see all of the good work being done in state legislatures across the country. The most fluid example is legislation relating to protective orders. In the last quarter alone, five new states have added laws—making a total of 21 as of this writing, plus D.C. and Puerto Rico—specifically allowing courts to include companion animals in domestic violence protection orders (see News in Brief). Other states have bills pending. This expansion is an acknowledgement that when victims seek protective orders, many times their pets become the next opportunity for abusers to attempt to exert control over their victims. Including pets in these orders protects them from domestic violence with the same legal force protective orders have for other members of families.

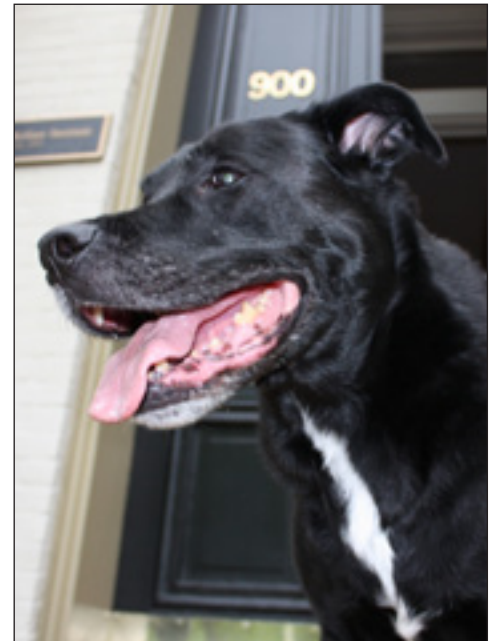
If you want to know more about these issues, check out our website, www.APAInc.org, for presentations and materials.

Final Fridays, the APA's ongoing webinar series, have been going strong. Our June webinar, presented by Don Cocek from the Los Angeles City Attorney's Office, focused on cockfighting. Don familiarized prosecutors with the various facets of the practice, what to look for in cockfighting investigations, and how to prosecute the offenders. We have another webinar coming up on veterinary forensics, so make sure to sign up on our website. These presentations not only educate prosecutors on issues surrounding animal abuse, they also provide MCLE credit.

I would like to thank Madeline Bernstein, a former prosecutor and current president of spcaLA, for her work on this issue's main article. spcaLA was established in 1877 and has been instrumental in reducing pet overpopulation in Los Angeles. As always, special thanks to Nancy Blaney and Cameron Creinin at AWI for their continued support and work on Lex Canis.

The APA continues to fulfill our role as a think tank, advancing the practice of prosecuting animal abuse, and to support prosecutors in the field. Visit us on the web if you have not already done so at www.APAInc.org. You can keep track of the latest prosecutorial news by following us on Twitter, @APAInc, or becoming a fan on Facebook.

-David LaBahn, President and CEO, APA



CHRIS HEYDE

CLEANING UP AFTER HOARDERS

BY MADELINE BERNSTEIN, President spcaLA

COMPULSIVE HOARDING, often labeled disposophobia, is a syndrome that affects approximately 3 million Americans in the United States. (www.compulsivehoardingcenter.com) The basic hoarding syndrome is the pathological need to acquire things, with an inability to discard, return, care for, or make rational decisions about them, to



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Madeline Bernstein, Esq.
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the point that the syndrome interferes with day-to-day functions, home, health, family, work, and social life. The accumulation of these things causes safety and health hazards—and, when this compulsion involves animals, cruelty as well. (www.mayoclinic.com; www.la4seniors.com/hoarding.htm)

Every animal hoarder is an object hoarder, but not every hoarder collects animals. As the number of animals increases, the ability to care for and fund their needs decreases. Hoarders often live without running water, light,

air conditioning and heat, and grow more fearful that someone will come and take their pets away. They become isolated, blocking their windows and remain alone with their stuff. The problem with “animal objects” is that they are alive and therefore eat, defecate, urinate, vomit, ooze, suffer, and die. This, mingled with the other clutter, creates a nightmare landscape for all involved.

HOARDER PROFILE

Since many people suffering from this disorder are isolated, don't perceive that they have a disorder, and won't let others into their homes, there is a great concern that the number of known cases is highly under reported.

Hoarders were formerly referred to as “collectors.” However, legitimate collectors of antiques, arts, coins, stamps, snow globes, etc. are perceived to be knowledgeable about their treasures, meticulous about their care, and willing to sell or part with these items. “Hoarding” connotes a pathological problem and is a negative characterization. In fact, hoarders have actually begun suing law enforcement and media outlets for characterizing them with that term. In *Shipkovitz v. Washington Post Company, et al.*, (No. 08-7126, 2010 U.S. App. Lexis 22093 D.C. Cir. Oct. 22, 2010) Shipkovitz was upset at being described as a “hoarder” with its attending discussion of mental health issues surrounding such accumulation of possessions. The court ruled that the statements were “substantially true or nondefamatory.”

The typical hoarder is a white female over sixty living alone, intelligent, shrewd, educated, secretive, and primarily interested in dogs and cats. However, this profile focuses on the end point rather than the beginning. In other words, it documents data at the moment of intervention, but the mystery of its origins is yet unsolved. The most famous hoarders, Homer and Langley Collyer, began this journey when they were children. Langley began hoarding as a youth and totally lost control when his parents died. When the authorities entered the brothers' New York brownstone, they found floor to ceiling piles of furniture, newspapers, pianos, a Ford Model-T—and the corpses of the brothers, which were not located until a hundred tons of debris had first been removed.

For decades, the hoarder will choose objects to the exclusion of family and friends until completely isolated. It is usually a crisis, such as fire, animal cruelty reports, or property redevelopment, that alerts the authorities to their presence. While the most common animals hoarded are dogs and cats, it is not uncommon to find rabbits, birds, horses, sheep, pigs, and reptiles as well. No real profile exists that can warn, predict, or guess who will end up over sixty, alone, with one hundred cats. Whether this condition is genetic, acquired, a form of OCD, an addiction, or an attachment disorder is also not yet confirmed.

Recent thinking supports the notion that this cognitive condition is both genetic and, unfortunately, hereditary, as well as a behavior that can be learned by children growing up in a hoarding household.

A recent *New York Times* article, “Children of Hoarders on Leaving the Cluttered Nest,” (www.nytimes.com/2011/05/12/garden/children-of-hoarders-on-leaving-the-cluttered-nest.html) discusses the pain, confusion, and embarrassment experienced by children who grew up in a hoarder home and who try to cope in an uncluttered world. They suffer anxiety and fear that they share the same disorder. In the article, Jack Samuels, an associate professor in the psychiatry department at John Hopkins University, suggests that hoarding has a genetic component and runs in families. A colleague of mine grew up in such a house and struggles day and night against the compulsion to hoard. In a piece she wrote (*Children of Hoarders Struggle with Possessions – A Personal Story*; www.Technorati.com), she describes that struggle and is very disturbed that her 22-year-old son is exhibiting these traits as well. It seems these victims might provide valuable insight needed to track the evolution of the disorder and its responses to different treatments at earlier stages of the problem.

INVESTIGATING AND PROSECUTING ANIMAL HOARDING CASES

Unlike a regular hoarder, the animal hoarder presents a greater challenge because of the often horrid condition of the animals, which in most states may constitute a felony or misdemeanor for animal cruelty and neglect. It presents more urgent logistical problems: Instead of allowing for a gradual acclimation to the idea of removal, the situation requires the immediate removal of the animals, which can upset the hoarder and render the situation dangerous to law enforcement.

Consequently, it is a most unique and difficult crime scene to process. First, the scene is not static. Everything inside is moving as animals are usually uncaged. Second, the hoarder, feeling threatened with losing his or her animals, can become violent and wild: In one spcaLA case, the hoarder had her son load a firearm as officers executed the search warrant. Third, simply navigating through the crime scene is treacherous, slippery, dark, and full of surprises, such as falling objects, giant cobwebs, and traveling rodents. Everything is drenched in urine, feces, and bodily fluids while decomposition odors from dead pets on scene add to the sensory assault.

Developing and prosecuting these cases is always a challenge. It is critical to take the veterinary forensics obtained from the animals and the environment and causally link them together to establish a cruelty case and to negate possible defenses. In other words, the more it can be shown that the hoarding environment contributed to the injuries, condition, and suffering of the animals, the less the hoarders can argue that their home was a hospice for sick and unwanted animals received in bad shape.

Entering the premises with a search warrant should be the norm absent a true surprise (such as knocking on a door to check for a



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Cat found in raid of a Los Angeles hoarder

license or other complaint and observing the situation). Properly preparing the warrant provides a

solid foundation for the case as those who intersect with the hoarder, such as veterinarians, volunteers, neighbors, postal workers, and utility inspectors, will provide the information needed to establish probable cause for the search as well as populate the trial witness list. Additionally, the scope of the search can be iterated, including computers, smartphones etc., and additional agencies or resources needed to assist can be included in the document. (Given the instability of the hoarder, proving valid consent to enter after the fact—rather than using a search warrant—will be difficult.)

Most often, the probable cause statements that provide the basis for the search warrant will describe putrid odors, excessive debris, yowling, barking, screeching sounds, rodent and insect infestations of neighboring homes or units, and descriptions of the hoarder as dirty, smelly, covered in sores and “odd.” These glimpses provide the forensic roadmap to the case as they outline the environment to which the medical conditions of the animals will be connected. It is necessary to relate the injuries to the husbandry. Therefore, fighting wounds; discharge from eyes, nose, and skin infections; maggots (age them); feces; ammonia burns on paw pads; long nails; blood; torn ears; matting; worms, parasites, and fleas; malnutrition; anemia; cannibalism, and more, must be documented and analyzed. Microchips, tags, tattoos, and data from seized computers will help establish the amount of time each animal resided at the site. Well-intentioned neighbors who brought animals to the hoarder for care can assist with establishing length of stay for those animals. Food, water, and the absence thereof; drugs; receipts; and necropsies of carcasses are also critical in deciphering mens rea, care habits, and, if applicable, the basis for additional charges such as possession of

controlled substances and/or practicing veterinary medicine without a license. Some animals will have diseases, such as cancer, not caused by the hoarder. The issue there will be failing to provide veterinary treatment and allowing the animal to suffer. This attention to forensic detail is important not only to establish that this environment was harmful, neglectful, and cruel, but to also negate the hoarder's assertion that this same scenario is consistent with non-criminal behavior and proper care of the animals.

Assume that the case will go to trial and that years of parallel civil litigation will ensue. Hoarders love to testify, pronounce their love of all creatures, and accuse the authorities of being "out to get them."

Hoarders are usually articulate, sympathetic, media savvy, and very convincing witnesses. They portray themselves as rescuers of the lost and hopeless. They remind the court of how awful pounds can be and the certain fate of animals left there for too long. They explain that their animals, living in a herd, have the same usual colds and coughs found in the best animal shelters, and, most important, they often insist that they received the animals in bad condition. They openly bawl that they are running a hospice and no one else in the world cares enough to do that. Hence developing the forensics, establishing time lines, retaining the dead animals, and proving the omission of care are essential to a successful prosecution. One hoarder convicted of felony animal cruelty (sentenced to probation) argued the defense of necessity, in that she was saving 92 cats from euthanasia at the pound. (*People v. Suzanna Savedra Youngblood*, 91 Cal. App. 4766; 109 Cal. Rptr. 2d 776) The court refused to provide an instruction on the defense of necessity: In California, the legislature had specifically found that it was better to have public and private shelters, rather than private citizens, take in animals, and the court said the defendant could not impose her own will and declare "necessity" a public policy.

Finally, defense lawyers will argue that if the animals are fed, there should be no criminal charge at all for abuse or neglect. This was unsuccessfully asserted in a Petaluma cat hoarder case where the prosecutor, pointing to photos of the house and of cats with severe eye infections, retorted: "How can someone let something

go so far? How can someone miss that? This is not something that happened overnight and that she was not aware of." The irony of course is that failing to perceive, even in the face of dead animals, is a key component of the disorder and is also used as a defense! Again, because jurors are sympathetic to the hoarder and feel their time could be better used on a "serious" case, the forensics must be able to refute the "I fed the cat and he only had one good eye when I got him" defense. Often the theatrics work and the hoarder is acquitted—or not charged at all as in a case in Texas (name not released) where the sheriff did not charge a crime but merely extracted a promise from the hoarder to "seek help."

Since hoarders often win over juries and can slip out from under animal cruelty charges, it is best to also include all other violations

that apply. Doing so provides leverage to negotiate a plea bargain as well as a way to force intervention. Therefore, drug charges; practicing veterinary medicine without a license; consumer fraud; pretending to be a charity; nuisance; and violations of fire hazard codes, building codes, housing codes, hazardous hoarding codes, and health and safety codes may all apply and should be charged. In one Los Angeles case, the jury acquitted on animal cruelty but convicted on excess flies and dirt.

Getting a conviction is just part of the process. Despite the gruesomeness of the evidence, the extensive number of counts charged, the extreme level of suffering endured, convicted hoarders tend to receive very light sentences as it is always assumed that "they meant well," or "are not well," or just "oh well."

A survey of hoarding cases compiled by *petabuse.com* reveals that probation, restitution, full or partial ban on owning pets, and counseling are the prevailing sentencing choices. If incarceration is imposed, it is usually for a minimal amount of time if not actually suspended. For example:

- Gayle Allison Murad, Ohio, 2011, sentenced to 18 months' probation and counseling.
- Henry Queen, Pennsylvania, 2011, required to pay a \$400 fine.
- Robin Kitts Pfeifer and her husband, Virginia, 2011, banned from owning animals and required to pay \$3,500 in restitution;



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Dog found in raid of a Los Angeles hoarder

her 12-month jail sentence suspended. (Her husband is in the wind with an outstanding warrant.)

- Henry R. Deininger, New Jersey, 2011, banned from owning pets for 5 years and given a \$2,000 fine. (Deininger was charged with hoarding in April 2009 as well.)
- Jennifer Brooks, Virginia, 2011, a reoffender, given a 3-year jail sentence that was suspended in exchange for giving up all but 3 of her pets, undergoing a psychological evaluation, and paying restitution.
- Jennifer Leslie Wood, Iowa, 2011, sentenced to pay \$50 on each of 35 counts and restitution, and banned from owning animals without court permission.
- Ruth Barnett, Ohio, 2011, sentenced to 5 years' probation, a \$250 fine, and a ban on owning more than 3 animals.
- Steven Hock, New York, 2011, sentenced to 60 days in jail after being convicted of housing 69 cats in a parked U-Haul.
- Lauretta Nawaiski, Nevada, 2010, sentenced to 5 days of jail time, 48 hours of community service, and restitution. (She was re-arrested after failing to allow inspection in compliance with her sentencing conditions.)

Clearly, these sentences are a “slap on the wrist” considering the gargantuan efforts expended in managing these cases, though they illustrate the inability of the system to address the problem at its roots.

Though the hoarders remain free, often their animal victims are stuck in cages waiting, sometimes years, for the criminal case to resolve. As the criminal justice system and evidence codes were not written in contemplation of live evidence, there is, with all these cases, extensive agita and costs associated with housing and treating these abuse victims. As hoarders are extremely litigious and will litigate for years, caring for their animals, paying legal fees, and disruptions in operations can burn out animal welfare staff as well as place the assets of a private corporation at risk. This is a primary reason law enforcement doesn't want to get involved in the first place and is the hoarder's most successful and effective tactic to discourage prosecution.

Realizing that hoarders have a 99.9 percent recidivism rate is especially disheartening as stopping the cycle appears to be impossible. Absent a support system coupled with constant monitoring, extensive therapy, and in some cases medication, there is no hope. Because intervention usually occurs after everyone who could support the hoarder is gone, it falls to the community and its available resources to deal with the mess. Some communities employ task forces comprised of all the stakeholders, such as adult protective

services, spcas, mental health services, clean-up helpers, and, if the facts warrant, legal guardianships to monitor and support the hoarder. As the hoarder often does not admit to needing help and is uncooperative, the community often redirects its limited resources to someone who truly wants help. Most often, the hoarder simply moves to another jurisdiction and continues as before.

The best chance of successful intervention would be at the point where the hoarder just begins tipping over the edge. spcaLA is involved with such a situation at the time of this writing. The cats total about 200. The veterinarians treating some of them have reported the hoarder. The hoarder still has a couple of friends and possesses some awareness that she is in trouble. We are all working to move the cats, clear the home, and secure counseling for the hoarder while she can still perceive the nature of the situation. Unfortunately, this is a rare opportunity.



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Raiding a home of a Los Angeles hoarder

BREAKING NEWS

NEVADA HAS SUBSTANTIALLY STRENGTHENED its felony cruelty law. Where once even egregious acts did not rise to a felony until the third offense within seven years, now persons who “torture or unjustifiably maim, mutilate or kill” a dog, cat, and other animal “kept for companionship or pleasure...is guilty of a category D felony...” The law also makes it a category C felony to commit such acts “in order to threaten, intimidate or terrorize another person...” The legislation was a response to the brutal torture and death of Cooney, a rescue dog, at the hands of her owner, who could only be charged with a misdemeanor under the old law. As it happened, this individual had a history of violence towards both animals and people. In a letter to the Assembly Committee, his former wife explained that he had tortured the family hamster “as an example of what he would do to (her) if she left him.”

MISSISSIPPI BECAME THE 47TH STATE to enact a felony cruelty law, although it is a bit of a mixed bag. Even the sponsor of the bill, Sen. Bob Dearing (D-Natchez), acknowledges that what finally passed could be improved. “The bill signed into law, SB 2821, did not include ‘kill’ as a provision for aggravated cruelty; it also states that multiple abuse of cats or dogs is treated as a single offense, and, finally, aggravated cruelty is not a felony until the second offense.” In the next session of the legislature, Sen. Dearing plans to introduce a new bill to address these problems. In the meantime, though, there are several other important changes in Mississippi law. Courts may order psychological counseling for abusers and ban them from working with animals. Shelters that care for animals involved in abuse cases will be able to receive reimbursement for their expenses from the offender. Misdemeanor penalties for abuse and neglect of all animals are established, and, for the first time, confining dogs outside without adequate shelter is prohibited.

A NEW LAW IN HAWAII makes it a felony to attend or wager on a dogfight or to possess a device intended to train a dog for fighting; previously, only those who staged dogfights, trained or owned dogs for dogfighting, or allowed their property to be used for a dogfight could be charged with a felony. Unfortunately, cockfighting is still a misdemeanor.

AFTER 4 YEARS OF OPPOSITION from the Florida House of Representatives, a bill criminalizing the sexual assault of animals has become law. “Despite the efforts of prosecutors,” according to the Florida Senate’s Bill Analysis and Fiscal Impact Statement, persons “caught in the act of sexual intercourse with an animal [could not] be charged with or convicted of a sex-related crime.”



CHRIS EASON

It describes several such incidents in Florida, and noted that the lack of a specific statute and the particular requirements for felony cruelty meant the offenders were generally charged with far lesser crimes. The new law creates a misdemeanor offense for knowingly engaging in sexual conduct, or contact for the purpose of sexual gratification, with an animal, and also prohibits aiding and abetting such behavior.

THANKS TO RECENTLY SIGNED LAWS, Oregon and Texas become the 20th and 21st states (along with D.C. and Puerto Rico) to allow companion animals to be covered by domestic violence protection orders. In Oregon, courts had the power to include animals in these orders, but use of that power was not universal. SB 616 specifically authorizes courts to include companion animals in protective orders.

The new Texas law goes into effect in September. According to the bill analysis, S.B. 279, introduced by Sen. Wendy Davis, “allows a judge to prohibit a person from removing a pet, companion animal, or assistance animal from the possession of a party protected by a protective order,” and from “harming, threatening, or interfering with the care, custody, or control” of any such animal. The first violation of such an order would constitute a misdemeanor; a third or subsequent violation would be a third-degree felony.

CORRECTION: The Spring issue of *Lex Canis* (Vol. 3, #1) referred to California bill AB 117; it should have been AB 1117.



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FINAL FRIDAY WEBINARS

(Register at www.APAInc.org)

VETERINARY FORENSICS IN AN ANIMAL CRUELTY CASE

July 29, 2011 • 3pm-4pm EDT, 12pm-1pm PST
Carol Moran, Deputy District Attorney with the Animal Crimes Enforcement Unit, Kings County (NY) District Attorney's Office, and Dana Miller, DVM, Vice-President of Anti-Cruelty Initiatives for the Spartanburg (SC) Humane Society, will offer training in veterinary forensic issues in animal cruelty cases. Their presentation will cover working with veterinarians in cruelty cases, including educating them to recognize cruelty and to provide police and prosecutors with the necessary forensic documentation. Attendees will also learn the veterinary medicine that forms the basis of a cruelty charge and how to present that information to a judge and jury.

DOG FIGHTING

September 30, 2011 • 3:00 p.m. EDT
Michelle Welch, Assistant Attorney General,
Commonwealth of Virginia

DO YOU HAVE TRAINING NEEDS that you would like to see as a topic for a webinar? Please submit your ideas to *David. LaBahn@apainc.org*

CONFERENCE

Innovations in Criminal Justice Summit
The Palmer House Hilton, Chicago, Illinois
September 28th-30th, 2011
In partnership with the U.S. Department of Justice's
Bureau of Justice Assistance

This conference will highlight 10 innovative criminal justice practices: probationary strategies, community and intelligence-led prosecution programs, policing practices, judicial procedures, reentry, mental health courts, holistic defense (public defender initiative), homicide review commissions, and addressing chronic offenders.

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