

TALES OF JUSTICE

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When Animal Hoarding is Warehousing for Profit / Part 2

Part One addressed the definition of animal hoarding and the state of the law.

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THE PROSECUTION OF ANIMAL ABUSE AND PROFITEERING CASES

An Interdisciplinary Approach

Prosecutors should consider establishing multidisciplinary teams to deal with abuse, hoarding, and profiteering cases. Tufts University sponsors HARC, an excellent resource for prosecutors who wish, or need, to become educated on the multifaceted public-safety issues attendant to hoarding.²⁴ Air-quality, sanitation, pest infestations, and zoonotic disease proliferation are often associated with abuse or hoarding and may necessitate conferring with public health officials, zoning personnel, fire marshals, and mental health and veterinary professionals prior to addressing a hoarding or profiteering case. In addition, ascertaining if children are in the house may necessitate child protective services presence at the crime scene as well as adult protective services.

The Search Warrant and Its Execution

Before executing a search warrant, coordinating with animal control personnel to determine if there is a history of complaints pertaining to the target of the investigation is prudent. Prior complaints of noise violations, offensive odors, and barking may demonstrate a pattern of behavior or be indicative of a long-term problem. Search warrants should include taking crates, pads, and cushions from furniture to show the trier-of-fact the living conditions of the animals. In Prince

William County, Virginia, search warrants also specify that all animals, including carcasses, will be seized.²⁵ The search warrant should also include taking food and water bowls and authorities should document a lack thereof. Receipts for animal food, medicines, supplies, and veterinary records are essential to show poor care of the animals.

Search warrants should also include animal ownership records. These documents are critical in ascertaining how the perpetrator acquired the animals and may prompt the prosecutor to pursue a tax evasion or profiteering investigation. When an abuse case also becomes a profiteering case, search warrants should include any and all records regarding the acquisition, ownership, and care of animals. These warrants should contemplate financial documents such as bills, credit-card receipts, papers pertaining to the purchase of supplies (e.g., food and medicine), veterinary records, and pedigree records.

Electronic devices should not be overlooked and, if possible, items such as desktop computers, laptops, mobile phones, printers, scanners, cameras, external drives, thumb-drives, tapes, CDs, DVDs, flash-cards, and other items capable of storing electronic data should be seized. Prosecutors and police should also consider seizing any and all computer hardware and software that is used in the operation of the computers to view or create data and the instructional material used in the operation of the specific computer's hardware and software programs. Because computers and data storage devices are capable of storing enormous amounts of data, these items must be sent to a law enforcement laboratory or other controlled environment to be searched by a qualified forensic computer evidence examiner for

evidence, fruits and instrumentalities of crimes, and any bank account information.

Prior to entering a hoarder's property, prosecutors, police, and other personnel, should consider consulting with relevant professionals because protective measures (e.g., "hazmat" suits) may need to be taken to safely enter the property. Ammonia levels in the hoarder's property should also be measured as a safety precaution and to document the poor air-quality in the dwelling. HARC states that the ammonia levels attributed to animal waste in an unventilated area can exceed 150 parts per million, which greatly exceeds the Occupational Safety and Health Administration's exposure threshold of fifty parts per million.²⁶ Because ventilation can compromise an accurate assessment of ammonia levels, measurements should be taken early-on in the execution of the search warrant, before persons repeatedly enter and exit the premises.²⁷ During a recent execution of a search warrant, a local fire marshal deemed a dwelling to be uninhabitable and prohibited admittance to anyone not using protective gear and air packs, after first responders had already been inside the residence for several hours.

Keep the Jury and Your Evidence in Mind from the Start

Once the decision to enter the property is made, the prosecutor should have an idea of how to make the horrors of the dwelling's confines come to life in the sterile environment of a courtroom. Animals should be photographed as they were found in the home and photographed individually as they are removed from the dwelling. The former photos will highlight the condition of the animals in their "natural" environment and proactively eliminates a defendant's claim that authorities caused damage to property and/or injured animals during the removal process. Further, prosecutors should consider serial photographs of the animals taken while they are in the custody of the animal control bureau pending trial. Visually capturing the nature of the dwelling is also important. Videotaping the crime scene in a condition with the animals in their natural habitat is powerful evidence if that can be done safely. Placing a clean white towel at the entrance of the home creates contrast and is a powerful visual display of the conditions and allows a jury to imagine the smell of the environment.

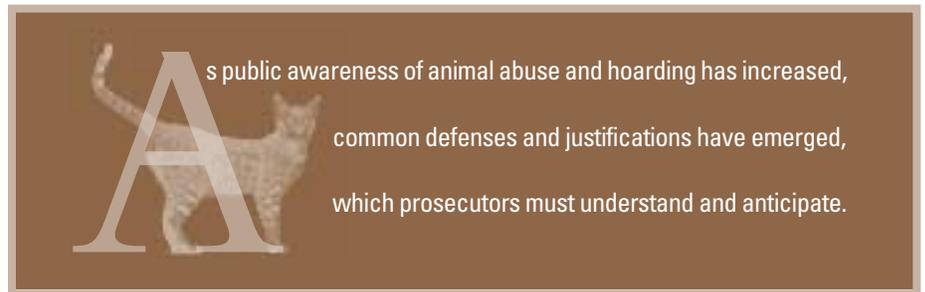
All of the animals seized pursuant to a search warrant should have a veterinary examination. Hoarded animals will often suffer from poor hygiene, parasitic infestations, ocular and nasal discharge from exposure to ammonia, poor grooming (resulting in matted fur and feces caked around limbs), dirty ears, and dental issues. Documenting the amount of staff-time required to care for these animals can further demonstrate neglect and can be used to seek restitution to the jurisdiction for the animals' care.

Regular communication with the veterinarian/s that receive these animals is prudent and prosecutors should consider keeping some of the objects used to clean the animals (e.g., the swabs used to clean

ears) for trial purposes; such items are powerful exhibits.²⁸ Veterinary testimony regarding the hazards associated with poor hygiene, overcrowding, shared resources, stress, lack of exercise, lack of quarantine when introducing new animals into a pack, and exposure to the odors from cat urine is powerful testimony.

Trial Preparation and Defenses

In preparation for trial, prosecutors may wish to have investigators canvas the neighborhood and identify potential witnesses to determine if the hoarder has acknowledged being overwhelmed with respect to animals under his/her control. A history of complaints by



neighbors to the hoarder, animal control personnel, or even a homeowners' association (HOA) can demonstrate that the perpetrator had notice and was aware that living conditions were unacceptable. If possible, detectives and prosecutors should determine if the HOA knew about the problem and if so, whether or not they communicated with the resident about the problem.

The trial itself also presents unique and new problems for prosecutors. As public awareness of animal abuse and hoarding has increased, common defenses and justifications have emerged, which prosecutors must understand and anticipate. There are three categories of defenses.²⁹ First, defendants sometimes submit a factual argument where s/he will simply deny that living conditions are injurious to the animals. A factual defense of this nature can be undermined with photographic evidence that accurately captures deplorable living conditions taken during the execution of a search warrant.

Second, a defendant may also argue that s/he is simply a "Good Samaritan" or a "rescuer" of animals. This argument is akin to a necessity defense and the hoarder will claim that s/he was simply saving the animals from certain euthanasia. Last, a hoarder may also posit that s/he is a "victim of the system" or the "true" victim. Here, the hoarder argues that s/he is simply the victim of a vindictive government official (e.g., police officer, zoning personnel, etc). The prosecutor may wish to use animal behaviorists or even certified dog trainers to educate the jury about the deleterious effects of the conditions on animal behavior. This kind of evidence seriously undercuts the defense that they are trying to save the animals when they are actually contributing to the problem.

Prosecutors should be cautioned, the common defense in the tax evasion aspect of these cases is the lack of intent to defraud. Defendants will often claim that their expenses greatly exceeded the in-

come generated. Defendants may also use tax exempt status of other organizations to circumvent tax ramifications. If defendants use another organization's tax exempt status, prosecutors may wish to ascertain whether the tax exempt organization is properly documented with state and federal authorities. The evidence seized from computers showing e-mail dialogues about avoiding tax implications, a thorough examination of expenses showing the income exceeded the expenses along with any receipts for cash donations, lying on applications about tax status and lying to high kill shelters about the tax status can show a pattern of deceit and support the prosecution theory that this is a criminal enterprise.

Resolution of the Problem and Public Perception

If the jurisdiction allows the perpetrator to relinquish custody of the animals seized in the search, the prosecutor may have to address allowing the shelter to place the animals for adoption. Prosecutors should have the animal shelter document the costs of care and the veterinarians should document the cost of treatment in order to request restitution. An overburdened animal shelter may seek to euthanize animals seized under these conditions. Such a decision plays right into the hands of the defense. Every effort should be made to save the animals and euthanization should be done only if medically warranted. The evidence of how many animals were saved and properly placed in good homes is powerful in front of jury. It also paints a picture of a callous individual who overburdened an already overwhelmed animal shelter. Care should be taken that the perpetrator will not have his/her supporters adopt the animals, only to give them back to the defendant. It is not uncommon for these perpetrators to use their supporters to retrieve seized animals, create a new organization, and start selling the seized animals; therefore, prosecutors should consider stipulations regarding the placements of the animals and require random inspection by animal control. Conditions of bond or release should include no contact with animals and also proscribe placing, adopting, giving, or selling of any animal pending trial.

The cost of maintaining a large number of animals seized can be exorbitant. An effective quid pro quo may be allowing the perpetrator to release the animals in exchange for a stipulation that the pictures of the animals may be used and that the animals may be placed in homes as soon as practicable. Kennel animals often develop behavioral issues and anti-social personality traits and are often exposed to a host of physical ailments such as kennel cough. Prosecutors should facilitate the process of placing these animals in good homes as soon as possible and use the restitution as a bargaining tool to encourage defense stipulations. Prosecutors should strive to give the seized animals a chance at a having a good life; the public will want to know what happened to animals seized during such an investigation. A prosecutor will have difficulty maintaining the public's support if seized animals are usually euthanized.

Effective Outcomes

Because hoarding has almost a 100% recidivism rate, probation

and counseling are necessary components of any disposition.³⁰ Without strict limitations and controls, the urge to hoard may be impossible to resist. Notably, felony tax-evasion or false pretenses convictions often allow a judge to impose several years of probation. A lengthy probation term permits a probation officer to ensure that any prohibition from owning animals and other court orders are abided by or enforced. Additionally, violations can also permit a prosecutor or probation officer to move to revoke all or part of a suspended-sentence. Due to the overwhelming impact that hoarding behavior has on the well-being of animals and humans, prosecuting these cases is a worthy endeavor. Further, because of the need to protect animals and an unsuspecting public from persons who seek to profit under the guise of a "rescue," prosecutors should be diligent in pursuing outlaw rescue organizations.

EXAMPLES OF HOARDING, ABUSE, AND PROFITEERING

Black Wolf Rescue

Robert Artois of Dumfries, Virginia, had an impressive website named "Black Wolf Rescue."³¹ He claimed to have the support of Robert Redford and President Clinton in his efforts to save wolf-hybrids. When local police received complaints of foul smells coming from the property, they contacted animal control who, in turn, provided police with a history of investigations into Black Wolf Rescue. Police and animal control executed a search warrant at Artois' home and found twenty dogs and nine wolf-hybrids in a single-family dwelling. The house had no electricity, no air conditioning, and was infested with rodents. The dogs' crates had thick layers of urine, feces-soaked newspaper, and jars with used condoms. A dead dog was found decaying on the property and everyone who entered the house during the search warrant was covered in fleas.

Despite these conditions, this "rescue" received significant donations by unsuspecting do-gooders. Unbeknownst to the donors, Artois was breeding wolf-hybrids for "adoption" for which he charged a significant fee. He also sold "pawtographs" to his supporters of wolf paw-prints. Following the seizure, a local animal shelter housed all of the animals pending trial. Unfortunately, several animals had to be euthanized due to health issues. Despite the best efforts of animal control, no sanctuaries would take the hybrids because they engaged in stalking behaviors in the shelter and were ultimately euthanized. During the trial, the court refused to hear evidence of financial gain, because the court felt that Artois was simply a hoarder. He was convicted of animal cruelty and sentenced to four years in prison.

The Assisi Animal Rescue Case

For many years, authorities in Fairfax County, Virginia, tried to shut-down Assisi Animal Rescue Foundation (AARF). In January 2008, a judge in Fairfax County acquitted Sandra Cortes, executive director of AARF, of a charge of failing to care for animals.³² Cortes left Fairfax County and in March 2008, she rented a three-acre homestead in Prince William County, Virginia. As part of a "rescue" network, her

volunteers would drive to police kill-shelters in neighboring southern states and get sick dogs and cats. AARF would then charge \$300 to unsuspecting pet lovers for sick and diseased animals.³³

Prince William County Police were contacted by a displeased adopter and subsequently raided AARF in May of 2008. They found 116 animals. One dog was dying in her kennel and several dogs had been buried on the property. Cortes lied to police when asked if she had showed animal control all of the animals; police later found over twenty-five dogs piled on top of each other in crates, underneath a plastic tarp that concealed their presence and exacerbated the early-summer temperatures.

A subsequent examination of veterinarian records showed a pattern of fraud. Many veterinary professionals provided care for animals, but received checks drawn on accounts with insufficient funds. Seized records showed that Cortes and her co-defendant, Brenda Dodson, brought fifteen to twenty dogs across states lines on a weekly basis, many of which were in dire need of medical attention. Sick dogs were permitted to mingle with healthy dogs on the property.

The investigation into AARF included reviewing petfinder.com to document when the animals were acquired. In viewing the postings on petfinder.com, investigators identified an official county emblem on the shirt of someone holding an animal for adoption and determined that the defendants were regularly acquiring animals from a neighboring state. Documents obtained from the police kill-shelter made it clear that Cortes and Dodson were acquiring sick animals for free and selling them for profit. By compiling photos from petfinder.com, it was estimated that AARF accumulated over \$600,000 by selling sick animals. Further investigation revealed that AARF was using another rescue's tax exempt 501(c)(3) status.³⁴

Conclusion

Animal hoarding presents a significant challenge to the entire law enforcement community. These problems are compounded when there is a financial motive, which may not be obvious at first blush. Due to the fact that judges may be lenient in what they consider to be the classic hoarding case, prosecutors should be ever vigilant to ensure that defendants are not making money off of the backs of the innocent victims of abuse and neglect.

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²⁴ The Hoarding of Animals Research Consortium, <http://www.tufts.edu/vet/hoarding/>.

²⁵ In Virginia, persons are deemed to have a property interest in their animals under Va. Code Ann. § 3.2-6500 (2010) and dogs and cats are considered to be personal property pursuant to Va. Code Ann. 3.2-6585 (2010). As such, dogs and cats will be seized as evidence during a search warrant execution and a hearing must be held within ten business days of the seizure/s to determine whether an animal has been "abandoned, . . . cruelly treated, or has not been provided adequate care." Va. Code Ann. § 3.2-6569 (2010).

²⁶ <http://www.osha.gov/dts/sltc/methods/partial/id164/id164.html>; Animal Hoarding and Public Health, <http://www.tufts.edu/vet/hoarding/pubhlth.htm#A2>.

²⁷ Animal Hoarding and Public Health, <http://www.tufts.edu/vet/hoarding/pubhlth.htm#A2>.

²⁸ These pictures are the swabs used to clean the ears of the cats taken in one raid in Prince William County, Virginia.

²⁹ Maria Vaca-Guzman & Arnold Arluke, *Anthrozoos* 18 (4), 338-356.

³⁰ Animal Hoarding, <http://www.avma.org/onlnews/javma/oct02/021015a.asp>. This article provides an excellent recitation of characteristics of hoarders and suggestions to veterinarians on identifying hoarding behavior. Prosecutors may wish to consider reaching out to their veterinary community and lecture on this topic.

³¹ *Commonwealth v. Robert Artois*, Prince William County General District Court, GC04009142, 05003712-00, et al.

³² *Commonwealth v. Sandra Cortez (sic)*, Fairfax County General District Court, GC08013025 (2008), alleging of violation of Va. Code Ann. § 3.1-796.68.

³³ *Commonwealth v. Sandra Cortes*, Prince William County Circuit Court, Criminal Numbers: 73413-73439 (2009); Jonathan Mummulo, Washington Post, Oct. 5, 2008.

³⁴ The specific statute pertaining to 501(c)(3) status can be located at 26 U.S.C. § 501(c)(3). Generally, the requirements for acquiring 501(c)(3) status are enumerated at 26 U.S.C. § 501 – 26 U.S.C. §505.



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