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Giving a Voice to the Voiceless

A Prosecutor's Efforts to Combat Animal Cruelty

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Animal cruelty . . . is not a harmless venting of emotion in a healthy individual; this is a warning sign that this individual is not mentally healthy and needs some sort of intervention. Abusing animals does not dissipate those violent emotions, instead it may fuel them.¹

3.1 INTRODUCTION

Who are the victims of animal cruelty? There is the short-haired dog shoved outside in below freezing temperatures with no access to shelter, food, or water, and left for hours. There is the ferret sent through the mail in a box who languished for days before chewing his way out. There is the pigeon that was attacked in the local park and hit over and over with a stick until its life drained away. There is the dog bludgeoned to death with a bat for no apparent reason and then put back in his kennel as if he were just peacefully sleeping in a pool of blood. There is the puppy who has suffered more blunt force trauma in her short life than most humans or animals will ever experience. There is the cat thrown against a tree and killed in a fit of anger. And another cat who is repeatedly beaten, kicked, strangled, and left for dead in the dumpster. There is the dog hung from the tree and decapitated. And the dog repeatedly stabbed out of spite. And the dog (or horse) who is sexually abused. Victims of animal cruelty range from companion animals to livestock to wild animals. Unfortunately, no species is safe from human cruelty. Examples are, regrettably, far too many to list, but those are just a few.

Animals are intelligent and sentient beings and, just like human victims, warrant both the protection of our laws as well as the pursuit of justice. Those who abuse

This chapter is dedicated to Sam, who was my exuberant and beloved black lab husky mix; we rescued each other.

¹ 104 CONG. REC. S12,338 (daily ed. Oct. 3, 1996) (statement of Supervisory Special Agent Alan C. Brantley, FBI).

animals should be confronted and held accountable. One way of doing this is through the levying of criminal charges and prosecution.

Prosecutors have a tremendous amount of power, discretion, and responsibility – the intended exercise of which is to advance justice. Fundamentally, justice is defined as the fair and proper administration of laws.² Despite a seemingly straightforward definition, the term “justice” has myriad interpretations, and in modern society its applicability has expanded outside the criminal justice system to intertwine with social and economic justice as well. Prosecutors work within the confines of the criminal justice system and the laws that legislators have passed, and a prosecutor’s view of justice is thus appropriately tailored to the criminal justice realm. Prosecutors have the responsibility and challenge of pursuing “justice” in every case – striking a balance between the interests of the state (the citizenry they represent) and the accused, fairly and rationally considering what consequences are appropriate, repairing harm done or at least bringing closure to victims, and promoting future adherence to the social contract and laws that govern a cohesive, orderly, and peaceful society.

These are the reasons I became a prosecutor. I believe in the ideals of law and order, in the value of acknowledging right from wrong and in enforcing penalties when an individual’s actions harm others. I became a prosecutor to stand up for and give a voice to those who may not have the words, strength, or desire to stand up for themselves; or for those who cannot speak because they have lost their lives at the hands of others. I humbly but proudly serve on behalf of society’s most vulnerable members, and that includes animals – intelligent and sentient beings – who cannot speak for themselves. Whoever (or whatever) the victim, I, along with those in my profession, strive for the administration of justice in each and every case. And it is through this work that I try to instill in others that respect for the dignity and life of others – animals included – is necessary for a functioning society and cannot be overlooked.

Animals are everywhere in our lives. It is estimated that at least 67 percent of US households, or about 85 million families, own a pet.³ And it’s no wonder why. Animals – both wild and domesticated – enrich us in so many ways. Pets provide not only companionship, but also encourage us to be more physically active and to get outdoors. They increase opportunities for socialization and can be helpful in managing loneliness and depression. They teach responsibility and other practical skills to kids, provide laughter and entertainment for the whole family, give love unconditionally, are loyal, and will never share your secrets or betray your confidence. Research shows animals can reduce stress, high blood pressure, and anxiety and even make you and your family feel safer at home.

² *Justice*, BLACK’S LAW DICTIONARY (9th ed. 2009).

³ American Pet Products Association, https://www.americanpetproducts.org/press_industrytrends.asp (last visited Sept. 20, 2020).

It is because of these and other attributes that many people consider pets to be part of the family. They really can be a human's best friend. Unfortunately, in addition to being perfect companions, animals are also the "perfect" crime victims. The power dynamic between perpetrator and victim is vast, and animals are usually ill-equipped to defend themselves against human aggression. Additionally, animals lack the ability to report the wrongs done to them, no matter how egregious. Thus, there is a very narrow window of opportunity for holding animal abusers accountable. The prosecution of these crimes relies heavily upon observant citizens coming forward to law enforcement when an act of cruelty is committed in public, the cooperation of friends and family when the cruelty happens within the home, and the keen awareness of veterinarians and other professionals when neither members of the public nor friends or family members are in a position to be able to report the abuse. Animals can't talk – at least not in a language that we speak. Because of this, they are among the most vulnerable and voiceless victims in the criminal justice system.

Holding animal abusers accountable and pursuing justice on behalf of animal victims is a worthwhile and important endeavor. From my perspective, the prosecution of animal cruelty offenders is essential for three primary reasons: (1) the pursuit of criminal charges can be the impetus for the removal of the victim animal from the offender's custody; (2) the levying of criminal charges sends a strong message to both the offender and society as a whole that the proper and humane treatment of animals matters (whether wild, livestock, or pet); and (3) the imposition of a sentence upon conviction – whether it be punitive, rehabilitative, or a combination thereof – aims to ensure that there is an intervention and the offender's conduct is not repeated. Additionally, the victimization of animals often coincides with other crimes, such as intrafamily and intimate partner violence, child abuse, elder abuse, sexual abuse, and organized crime, to name but a few. Accordingly, the prosecution of animal cruelty offenders is beneficial to ensuring that our communities continue to value and respect the lives of animals and humans, and to uncovering other crimes and enhancing community safety as a whole. In this chapter, I do not pretend to speak for all prosecutors. The comments, thoughts, and discussion that follow are based upon my experience and observations, and my personal professional journey.

3.2 THE LEGAL FRAMEWORK: COLORADO ANIMAL CRUELTY LAWS

Prosecutors and members of the law enforcement community who investigate and prosecute acts of animal cruelty have the difficult task of being the voice of these voiceless beings in the courtroom and criminal justice system. Fortunately, Colorado prosecutors have a fairly broad statutory scheme under which we can charge animal cruelty offenses, and thus have many tools at our disposal to try to ensure that animal abusers are held accountable. Conduct constituting cruelty to animals is broadly defined and is not limited to companion animals, but rather

extends its protections to “any living dumb creature.”⁴ An individual can be charged with cruelty to animals, a class one misdemeanor,⁵ or aggravated cruelty to animals, a class six felony.⁶ In the event that an individual has sustained a prior conviction for either cruelty to animals or aggravated cruelty to animals, the penalty increases and a second or subsequent conviction becomes a class six felony or a class five felony, respectively.

The broadest provision and that which is most widely used in charging these types of offenses prohibits a person from knowingly, recklessly, or with criminal negligence overdriving, overloading, overworking, or tormenting an animal; depriving an animal of necessary sustenance; unnecessarily or cruelly beating an animal; allowing an animal to be housed in a manner that results in chronic or repeated serious physical harm; carrying or confining an animal in or upon any vehicles in a cruel or reckless manner; engaging in a sexual act with an animal; otherwise mistreating (whether by act or omission) or neglecting an animal; or, abandoning an animal.⁷ It is also unlawful to intentionally abandon an animal, or to recklessly or with criminal negligence torture, needlessly mutilate, or needlessly kill an animal.⁸ In addition, there are also specific provisions under Colorado law that make it a misdemeanor for an individual to commit cruelty to a service animal or a certified police working dog.⁹ Any of the above-described conduct results in a class one misdemeanor (assuming it is a first offense). Aggravated cruelty to animals, which is a class six felony offense, prohibits a person from knowingly torturing, needlessly mutilating, or needlessly killing an animal.¹⁰ The difference between misdemeanor and felony acts of cruelty, thus, is the *mens rea* – or mental state – required for the offense, coupled with the degree of harm done to the animal.

In addition to providing a host of theories under which prosecutors can charge individuals for acts of cruelty to animals, Colorado’s animal cruelty statute also equips prosecutors with other tools to ensure the safety and continued well-being of the animal victim during the pendency of the criminal case and beyond. Under Colorado law, peace officers who have probable cause to believe an animal is a victim of an act of animal cruelty can lawfully take possession of and impound that animal if the officer believes the animal is or will be endangered if left in the household.¹¹ In other words, an officer may remove an animal from an abusive situation at the very initial stages of investigation – even before charges are presented to or filed by the district attorney. This provision is paramount to ensuring the

⁴ COLO. REV. STAT. § 18-9-201(2) (2019).

⁵ COLO. REV. STAT. § 18-9-202(2)(a) (2019).

⁶ COLO. REV. STAT. § 18-9-202(2)(c) (2019).

⁷ COLO. REV. STAT. § 18-9-202(1)(a) (2019).

⁸ COLO. REV. STAT. § 18-9-202(1)(b); (1.5)(a) (2019).

⁹ COLO. REV. STAT. § 18-9-202(1)(b); (1.5)(c) (2019).

¹⁰ COLO. REV. STAT. § 18-9-202(1.5)(b) (2019).

¹¹ COLO. REV. STAT. § 18-9-202(1.8) (2019).

animal's well-being, and inherently recognizes and seeks to avoid the harm that can be caused by a slow investigative and filing process. Animal cruelty investigations can take days, weeks, or even several months to complete. By having this statutory authority to seize and impound animals immediately, prosecutors do not have to worry about making a hasty filing decision to ensure that an animal is removed from a dangerous situation. And, in the event that the animal seized and impounded is severely injured, Colorado law goes one step further and allows a licensed veterinarian to care for or, if needed, humanely euthanize an animal that has been seized and impounded if, in the veterinarian's opinion, the animal is experiencing extreme pain or suffering or is severely injured, disabled, or diseased past the point of recovery.¹²

The Colorado criminal code also has a statutory provision that governs impounded animals and the associated costs of care to continue to hold the animal throughout the pendency of a criminal case.¹³ The impounding agency (usually animal protection or a local shelter) has the authority to determine the appropriate disposition of an animal in its care if the owner or custodian of the impounded animal either voluntarily relinquishes the animal or if the court finds probable cause for impoundment but the owner or custodian elects not to pay for the animal's care while it is in the shelter. While there are fairly nuanced provisions that govern the cost of care and ensure that the owner or custodian has access to a court hearing and due process on the matter, these provisions provide law enforcement and prosecutors with a legal process to either temporarily or permanently remove animals from harmful situations. The levying of criminal charges and request for payment from the defendant to care for the seized animal often forces the defendant to evaluate whether he or she wants to retain ownership or surrender the animal to the care of the shelter. In the instance where a defendant wishes to retain ownership of the animal, the reality is that the animal will remain in the care and custody of the shelter (though sometimes in a foster placement) until resolution of the case and until a court orders the return or relinquishment of the animal. The wheels of justice often churn slowly, and this may result in the animal being at the shelter for a prolonged period of time. However, in the instance where an animal is surrendered, this means that animal can be cared for by a shelter until it is adopted out to a new family who, ideally, will love and care for the animal and not subject it to further abuse. In either scenario, there is some peace of mind that the animal has at least been removed from harm's way whether temporarily or permanently.

Colorado's fairly strong and comprehensive animal cruelty statutes have led to Colorado routinely ranking in the top tier of states for animal protection laws.¹⁴

¹² COLO. REV. STAT. § 18-9-202(1.8) (2019).

¹³ COLO. REV. STAT. § 18-9-202.5 (2019).

¹⁴ In 2019, Colorado was ranked third; in 2020, Colorado was ranked fourth among the fifty states. *Animal Protection: U.S. State Laws Rankings Report*, ANIMAL LEGAL DEF. FUND (2019), <https://aldf.org/wp-content/uploads/2020/02/2019-Animal-Protection-US-State-Laws-Rankings-Report>

However, despite being a fairly animal-friendly state with a host of favorable statutory provisions and laws that allow prosecutors to pursue justice in these types of cases, the investigation and successful prosecution of animal cruelty cases can be challenging due to resource constraints and sometimes, a lack of investigative know-how.

3.3 RESOURCE CONSTRAINTS

If you ask your typical local prosecutor or friends in law enforcement what constitutes a “serious” crime, the range of responses often includes homicide, sexual assault, aggravated robbery, human trafficking, child abuse, and the like. Most prosecutors are likely concerned, and rightly so, with what we refer to as “victim crimes” and those crimes which are perceived to have the most significant safety risk to the community. These are the cases where *human* lives are lost or changed forever. And they are some of the most gratifying cases to work on and present to a jury. But where does animal cruelty fall on that spectrum? I submit that, unfortunately, in many law enforcement agencies and prosecutor’s offices, it has historically fallen toward the bottom of the “severity scale.” Fortunately, that is starting to change.

While investigative agencies such as animal protection units, Pet Animal Care Facilities Act (PACFA) inspectors, and specially commissioned agents of the Department of Agriculture exist, many law enforcement agencies don’t have units dedicated to the investigation of animal cruelty offenses. In fact, some law enforcement agencies don’t have a single detective or officer trained to investigate these offenses. While this certainly varies from jurisdiction to jurisdiction, in Denver, for example, an animal cruelty investigation is usually initiated by an officer with Denver Animal Protection (a division of the Colorado Department of Public Health and Environment), but then must be turned over to the police department to pursue charges at the state level. Once in the hands of the police department, the case is usually assigned to a detective in a general assignment, who has likely never investigated an animal cruelty offense.

While I believe this is changing (thankfully!), the general attitude toward animal cruelty offenses has been that the time and effort needed to investigate or prosecute these offenses are difficult to justify. And from a strict return on investment perspective, that may be true. The “bang for your buck” that you often get with other offenses just doesn’t exist with animal cruelty offenses. There will never be a victim who can voice their thanks or appreciation for the work done on their case. No matter how heinous the act, if it is a first offense, the highest chargeable offense is a class six felony, which is a probation-eligible offense and carries a maximum penalty of up to and between twelve months’ and eighteen months’ incarceration. Animal

.pdf; 2020 U.S. State Animal Protection Laws Rankings, Animal Legal Def. Fund (2020), <https://aldf.org/project/us-state-rankings/>.

cruelty investigations are unique and can be a challenge to investigate; the more serious cases often require the expenditure of significant resources and energy. It is difficult to justify pulling a criminalist from a homicide or sexual assault scene to assist in the processing of an animal cruelty scene where the stakes (on paper, anyway) are much lower, and frustrating for a case that usually results in a misdemeanor filing, or the lowest level felony, at best.

As with any kind of criminal offense, some cases are easy to solve, and others are quite challenging. Cases that are fairly cut-and-dry take minimal to no resources and thus are easy to get investigative buy-in. For example, in one case, dispatch was made aware that a citizen had observed an individual in a park punching his dog repeatedly in the head and had a cell phone video recording of the incident. In that instance, all that was required was for an officer to respond to the location, interview the witness(es), locate/identify the suspect, and review and collect the cell phone video footage. Similarly, another case involved a security guard at an apartment complex who reviewed security footage in an effort to help locate a tenant's lost cat. In doing so, he uncovered footage of his coworker (also a security guard) punching, kicking, throwing, and strangling the tenant's cat while walking the halls late one evening. The footage then showed the security guard toss the cat in the dumpster and leave it for dead. The security guard who uncovered this footage reported it to law enforcement and identified his colleague in the video. In these circumstances, the evidence is strong and speaks for itself, and the additional investigation required to prove that the criminal act happened is minimal. Most responding officers or detectives will not hesitate to wrap up these kinds of cases and submit them to prosecutors for acceptance of charges.

Often, however, these cases develop over time and require collaborative action between various agencies and consultation with experts external to the investigation. These more nuanced investigations can be time-consuming and costly, and not every jurisdiction has adequate resources or time to invest into such cases. The following example is a case that took roughly six months to fully investigate and bring to a point where charges could be filed.

A young couple, let's call them Amy and Bob,¹⁵ bought a six-week-old pit bull mix in August, and by the end of October of that same year, the previously perfectly healthy puppy was at an emergency veterinary hospital with numerous broken bones and on the verge of death. The veterinarian astutely called Animal Protection due to concerns of suspected animal cruelty,¹⁶ and law enforcement opened an

¹⁵ Names have been changed.

¹⁶ In Colorado, veterinarians are mandatory reporters of suspected animal cruelty pursuant to COLO. REV. STAT. §12-315-120 (2019), and must make available veterinary records in their custody to local law enforcement and the Bureau of Animal Protection in the connection with an investigation pursuant to COLO. REV. STAT. § 12-315-119(2)(c)(II) (2019). Similarly, veterinarians are mandatory reporters of suspected child neglect and abuse pursuant to COLO. REV. STAT. § 19-3-304 (2020).

investigation. Unlike the previous examples, where we had cooperative witnesses and/or video evidence of the person responsible for the act or acts of cruelty, here we had no readily apparent means to prove at whose hands the animal had suffered.

In this type of case, the first challenge is usually proving ownership and continuity of care for the period of time in which injuries could have been sustained. To do so, we consulted veterinary and shelter records and also looked to see whether Amy or Bob had any prior contact with Animal Protection. Once continuity of care for the months leading up to the veterinary visit had been established, we sought to determine the cause or causes of the puppy's injuries. To do so, we scrutinized the veterinary records and consulted an outside expert.

Reports indicated that upon presentation to the first veterinarian, the puppy was in great distress, cyanotic (bluish in color due to deoxygenation), dyspneic (breathing with great difficulty), and with noticeable petechia on the external pinna of the ears and ecchymoses (discoloration/bruising) on the ventral abdomen. The second veterinarian to see the puppy reported similar observations and through testing learned of additional injuries to include a pneumothorax, at least two acute rib fractures, several older rib fractures, and a fractured left femoral head.

One of the strongest indicators of nonaccidental trauma (i.e., abuse) in animals is the presence of multiple fractures in different stages of healing, which is what we uncovered here. However, to narrow down a suspect, we needed an approximate timeline as to when the injuries occurred. We consulted a forensic veterinarian,¹⁷ who did a comprehensive review of all records associated with the case and confirmed that the puppy had suffered multiple rib, spinal, and leg fractures, all in different stages of healing, which she opined indicated repeated and numerous episodes of blunt force trauma and animal physical abuse. Her findings also revealed that the puppy's blood work – which showed she was mildly anemic, had a very high white blood cell count, low eosinophils, and elevated liver enzymes – was consistent with acute trauma.

Once we determined we could prove that the injuries were consistent with abuse and had an approximate timeline, the next challenge was identifying the individual responsible for the injuries. We caught a break when additional witnesses came forward after the local shelter that was coordinating the treatment of and caring for the puppy posted her story on its social media page as part of a fundraising effort to pay for her surgeries. Three of Amy's coworkers divulged to investigators that a month or so prior, Amy had come into work upset because Bob had been abusing the puppy and had thrown her across the yard after she defecated on him, seemingly stunning or momentarily paralyzing the puppy. This admission to her coworkers and

¹⁷ Veterinary forensics is a fairly new and emerging field. Forensic veterinarians often assist investigators of animal cruelty cases with crime scene investigation as well as the examination of live and deceased victims and provide expert consultation and review of veterinary and other reports. They can be instrumental in an investigation.

the approximate timeframe of disclosure (mid–late September) was corroborated by an anonymous tip that Animal Protection had received in mid-October referencing a September incident of abuse, and aligned with the timeline of injuries we had established.

Despite multiple interviews, neither Amy nor Bob ever provided a full account of what happened to the puppy. Nevertheless, after an extensive and protracted investigation, we ultimately moved forward with charging two counts of misdemeanor animal cruelty (for two distinct incidents we believed we could prove) against Bob.

In many respects, the time and attention required by these more complex animal cruelty cases parallels that of child abuse investigations involving young, nonverbal children. Those cases often require investigators to cast a broader net to eliminate possible suspects before they can identify the actual suspect, and to eliminate explanations of accidental injuries before they can definitively prove abuse. Just as medical experts are able to use their experience to determine whether a child's injuries are consistent with accidental trauma or indicative of physical abuse, so too are veterinarians well situated to assess an animal's injuries and often serve as the first line of defense for these animals. Puppies – just like children – are fairly resilient and heal quickly, and a careful examination of their injuries can tell you a lot about what they have been through even if they can't tell you themselves. While their injuries will rarely tell you exactly how they were sustained (e.g., whether the animal was hit with a bat or golf club, or just kicked), the type and location of injury can often tell you whether it was accidental or nonaccidental trauma.

Given the complexity of these types of cases, they are often difficult to pursue without significant interagency collaboration. Enlisting the assistance of various agencies and experts is time and resource intensive. Regardless of the challenges that these investigations may pose, we should be pursuing these offenses and doing whatever it takes to complete a thorough investigation because, simply put, these cases matter. They matter because animals are sentient beings who very much experience pain and are victims in and of their own right. There is much literature and research surrounding the link between animal cruelty and human violence and other crimes, and in that regard, the public policy argument for pursuing these cases is also strong: when an animal is being abused, human lives and community safety may also be at risk. From my perspective, however, regardless of whether there is a link to other crimes and regardless of whether there is a risk of additional violence, the harm done to an animal, in and of itself, justifies criminal prosecution.

3.4 PURSUING JUSTICE IN THE COURTROOM

Animals are often the smallest and most overlooked victims of intrafamily and intimate-partner violence. Oftentimes abusers intentionally target an intimate partner's animal to exert power and control over them. Sometimes abusers take their rage out on an animal simply because it's there, or they know that hurting the

animal will hurt their partner more than anything they could do to them. Other times abusers just go after whoever or whatever is closest. No matter the reason, it is important that we speak not only for the human victim, but also for the animal. Sometimes that means we speak for the animal victim even when the human victim does not desire that we do so. Oftentimes a human victim's desire for justice aligns with getting justice for a harmed animal, but in some cases, for myriad reasons, a human victim may not want the state to pursue charges at all, let alone for an act of animal cruelty. In these instances, prosecutors must exercise compassion and understand the varying dynamics at play and use their discretion in whether or not to pursue charges. From my perspective, it is often most appropriate to pursue animal cruelty charges regardless of what others involved in the case may desire, as we simply cannot ignore violence, whether done to a human or an animal. In other cases, there may not be a secondary victim or witness, but those cases too, remain worthy of our pursuit.

3.4.1 *Case Example 1: The Disgruntled Boyfriend Turned Arsonist and the Cooperative Human Victim*

One case example in which a human victim's desire to pursue charges aligned with the state's interest in pursuing charges involved a couple who had been in a relationship for approximately two years. At one point, the defendant started losing trust in his girlfriend and suspected her of cheating on him. Things came to a head late one evening, and the two started arguing. The defendant began drinking. At first it was just an argument, but the next morning it turned physical as the female attempted to leave for work. The defendant was frustrated that she would not stay to engage in the discussion and so he punched her in the face. Nevertheless, the female victim proceeded to leave her apartment. Shortly after she left for work, the defendant went to a gas station and filled a gas can. He then returned to the victim's apartment, where he broke in and started a fire in the master bedroom. At home at the time were the victim's two cats.

While at work, the female victim received a number of calls and text messages from the defendant, most of which continued to accuse of her cheating. She largely ignored them, but then received a text message from the defendant that stated something along the lines of "the house is burning." She didn't believe him and assumed he was just trying to get her attention. Then she got a call from a friend who told her that her apartment was on fire, and she realized it was true.

She rushed home to find her apartment almost completely destroyed by the fire. Tragically, her two one-and-a-half-year-old cats were unable to escape and died in the fire. Both cats suffered fur and skin burns to their extremities, tongue burns, and significant soot inhalation. When interviewed by police, the girlfriend was extremely emotional when talking about the loss of her cats. The investigating detective went so far as to note that she did not seem to care much at all about the loss of her

property or apartment, but rather was most concerned and upset by the loss of her two cats. To her, her abuser killing her cats was far more devastating and far more effective retaliation than the burning of her apartment.

In this instance, the defendant was charged with first-degree arson, two counts of aggravated cruelty to animals, and assault in the third degree. The pursuit of the animal cruelty charges here did not serve the purpose of removing the victim animals from harm's way as they were already deceased and were not the defendant's animals in the first place. However, pursuing two counts of aggravated cruelty to animals presumably sent the message to the defendant that the cats were not simply viewed as collateral damage. Rather, we considered them intentional victims and took into account that he perpetrated a distinct offense by killing each cat. Accordingly, one count of cruelty was charged for each victim cat. Given the human victim's cooperation and the strength of the evidence, this case resolved with a plea bargain that included a plea of guilty to a lesser count of arson, and one count of the aggravated animal cruelty and resulted in the defendant being sentenced to prison.

3.4.2 *Case Example 2: Pursuing Animal Cruelty Charges in the Face of Opposition*

In another case, a mother and son (drunk and angry) were involved in a lengthy and heated argument one evening. At one point, the son went into his mother's room and tried to grab and throw her television across the room. His mother was able to grab on to it and prevent him from throwing it. However, he then moved on to grab something else – something far more meaningful than a television. He grabbed his mother's ten-year-old Chihuahua and threw the animal across the room. He threw the dog with such force that upon striking the wall, the animal suffered a comminuted fracture of the skull and brain hemorrhage. The dog was killed instantly. The police were notified via a call to 911 placed by the defendant's aunt, who had heard the incident unfold and was scared and concerned for her own dogs in the house.

This particular case went to trial, and perhaps not unsurprisingly, the People's primary witnesses – the defendant's mother and his aunt – both became uncooperative as neither wanted to see the defendant, their son and nephew, respectively, “in trouble.” Nevertheless, we were able to secure their presence for trial through legal process by having both of them personally served. And when their testimony on the witness stand varied dramatically from what they had originally told officers on scene, we were able to impeach (discredit) their trial testimony with their prior statements captured on body camera.

Despite the mom and aunt's best efforts to testify favorably for the defendant, we were able to secure a conviction. The jury returned a guilty verdict on the sole count of aggravated cruelty to animals. This case is a prime example of where prosecutors have an obligation to recognize that there may be two victims (the mother who lost her beloved pet and the dog who lost his life) and to speak for, and to seek justice for

the animal victim even when the human victim is not cooperative with prosecution. Prosecutors don't fault the recanting victim or the scared and uncooperative witness. The judicial process is slow and often unforgiving in the trauma it inflicts on victims and witnesses, who may be compelled to take the stand and talk in front of strangers about some of their worst experiences. And while at times we will respect a victim's wishes not to move forward with a case (for example, few prosecutors will ever force a sexual assault survivor to proceed against their wishes), a prosecutor sometimes has to – or at least should – move forward where there is an independent harm done to another living being. Just because a mother loves her son and has forgiven his transgression, that does not mean that the law should turn a blind eye. My colleague and I pursued this case because it was important; a life was lost, and our aim was to force the defendant to acknowledge his wrongdoing and to seek treatment. As he was unwilling to resolve with a plea offer, the alternative was to move forward with trial. Upon conviction, the defendant was sentenced to ninety days in jail and a term of probation – a forced but necessary intervention.

3.4.3 Case Example 3: *Speaking Up for the Hog-Tied Dog in the Bathtub*

In this case, an apartment manager and maintenance employee entered a tenant's apartment to look for a water leak. They did not locate a leak but were shocked at what they found. When they entered the bathroom, where they suspected they'd find the water leak, they encountered a Labrador-mix dog hog-tied in the bathtub. The dog was positioned partially on its side and back, in a U shape; her front limbs and hind limbs were pulled and tied together with rope at least seven times around, and then her limbs were pulled up and tied to the bathtub faucet such that if the dog moved or yanked hard enough, the cold water would presumably turn on. The dog's mouth was tied shut with rope functioning as a make-shift muzzle, and she was lying in her own feces. The apartment manager and maintenance employee described being able to hear the dog softly moan and whimper. They took photographs of the dog and scene as they found it, and immediately reported it to law enforcement, who then opened an investigation. Investigators were able to put a timeline together and determined that the dog was in that position for over two hours.

The owner was confronted by an animal protection officer later that day and denied doing anything wrong. When confronted with photographic evidence of the position his dog had been found in, the defendant admitted he had tied her up for only a "brief" amount of time while he went out because she had chewed his shoes on a previous occasion, but he still denied any wrongdoing. The dog was seized by the investigating officer and evaluated, and although there were no physical findings of injury, the defendant was charged with one count of aggravated cruelty to animals for needlessly torturing the dog.

In this case, we did not face opposition to pursuing charges, nor did we have any secondary victim or witness who advocated that we pursue the case. Nevertheless,

the fact that a living being had been placed in a position that made it difficult to breathe and self-regulate body temperature, and was undoubtedly uncomfortable and in pain for several hours, warranted the levying of criminal charges. Pursuing charges in this case resulted in the removal of the dog from the defendant's custody and took her out of harm's way (the defendant ultimately surrendered the dog and relinquished ownership) and impressed upon the defendant that this type of treatment would not be tolerated. Additionally, once the defendant pleaded guilty, we were able to get the court to order that the defendant not be the primary or sole caretaker for any animals for the duration of his sentence, which also helped to ensure (to the best of our abilities) that the defendant would not victimize another animal in that time frame.

3.5 SENTENCING CONSIDERATIONS

It is our obligation as prosecutors to ensure that justice is done, and that those who perpetrate crimes against animals are not "given a pass" simply because their chosen victims can't talk and aren't considered victims in the truest legal sense (as animals are still considered property under the law). While many prosecutors are aware of and see evidence of the link between violence to animals and violence to humans, we should vigorously pursue animal cruelty crimes not just because a human might be at risk now or later on, but rather do so in recognition that animals are sentient beings who experience pain and suffering. We must pursue these crimes to ensure that the dignity of animals is protected and to reinforce that their lives have value in our communities.

Thus, the question becomes: What constitutes an appropriate sentence for an animal abuser? There is no "one size fits all" answer to this question, and when recommending a sentence, prosecutors typically take a number of different factors into consideration. In my experience, animal cruelty offenders run the gamut. Some offenders are simply uninformed and negligent, others have psychopathic tendencies and are cold, calculated, and intentional in their harm to animals. Others are encumbered with mental health diagnoses, substance abuse issues, or even a dearth of resources that contribute to the act or acts of cruelty. While the criminal justice system may not be fully equipped to address some of these more nuanced and complicated dynamics, it can provide direction and incentive toward more responsible behavior as well as access to resources that can help address these and other criminogenic issues, and thereby assist in protecting the current animal victim and animals in the future. After all, an animal doesn't suffer any less if its abuser has planned to cause it harm or if its abuser has just "snapped" out of anger or because they were under the influence of drugs or alcohol. The harm done doesn't change; the pain an animal feels or the loss of life suffered does not depend on the *mens rea* or intent of its abuser. From my perspective, criminal charges are appropriate where a crime has been committed. It is in the plea-bargaining stage or in the

recommendation of a sentence where a particular offender's culpability, needs, and specific characteristics ought to be taken into consideration.

In Colorado, the criminal code clearly sets forth the purposes of sentencing. In doing so, it provides judges, prosecutors, and defense attorneys various points to consider and argue. The purposes of sentencing are multifold and include: punishing a defendant in proportion to the seriousness of the offense; assuring fair and consistent treatment of all convicted offenders; preventing crime and promoting respect for law; deterring others likely to commit similar offenses; and promoting the defendant's rehabilitation.¹⁸ In light of these sentencing purposes, the case-specific facts and circumstances of every defendant must also be taken into consideration.

For most prosecutors, requests for sentences to jail or prison are reserved for the most heinous offenders who we feel cannot be safely managed in a community-based setting or those offenders who continue to offend repeatedly despite numerous prior attempts at intervention and rehabilitation. Animal cruelty can be an indication of mental illness, substance abuse, and other antisocial tendencies. Because of that, treatment-based sentences are often sought in an effort to address the underlying cause(s) of the animal cruelty behavior and interrupt the deviant thought-patterns and, thus, hopefully, rehabilitate the offender before they have the chance to victimize *other* animals or humans. Understanding the reason *why* someone harms an animal can be instrumental in determining the appropriate sentence. To that end, upon conviction at trial or by acceptance of a guilty plea, a court is required to order an evaluation to be conducted prior to sentencing to assist in its determination of an appropriate sentence.¹⁹ If the evaluation results in a recommendation of treatment, and if the court agrees, the person will be ordered to complete an anger-management treatment program and/or any other treatment program that the court deems appropriate. While this provision doesn't explicitly specify an offense-specific evaluation, many prosecutors have taken to requesting a Forensic Animal Maltreatment Evaluation or a similar evaluation. Such an evaluation helps identify behavioral, mental health, and trauma-based issues relevant to the emergence of animal cruelty behavior; provides an estimation of the likelihood and circumstances for continued abusive behavior; identifies community safety concerns; and provides recommendations for intervention, disposition, and supervision of the offender.

If asked in the abstract what sentence is commensurate with intentionally harming society's most vulnerable and truly innocent victims, my answer would almost always be incarceration. Acts of animal cruelty are abhorrent in their own right, and when done knowingly or intentionally, I believe such acts justify our system's most punitive sanction. There are indeed some (and perhaps many) cases of animal cruelty where prosecutors believe that incarceration is more in the interest of

¹⁸ COLO. REV. STAT. § 18-1-102.5 (2019).

¹⁹ COLO. REV. STAT. § 18-9-202(2)(a.5)(III) (2019).

justice than a sentence with a purely rehabilitative aim. But we also recognize the bigger picture. We understand that incarceration is finite, and these offenders will be back in the community in short order. Additionally, we understand that these offenders are potentially dangerous and without treatment, can and will likely victimize other animals (and/or humans) in the future. Given that the maximum exposure (under Colorado law) to incarceration for either a first-time misdemeanor or felony animal cruelty offense is eighteen months, it oftentimes makes the most sense to attempt to address the underlying issues that give rise to the offender's violence against animals. That generally means a sentence of probation. If we can address these issues early on – whether substance abuse, mental health, anger management, psychopathic tendencies, and so forth – perhaps we can steer the offender in a different direction and away from the path of continued violence. However, in those circumstances where an animal cruelty offender has already been given a probationary sentence and treatment to address their underlying criminogenic tendencies in prior cases, yet continues to escalate and reoffend, prosecutors often do – and should – request a sentence that is commensurate with their underlying offense and obtains a more appropriate level of justice for the animal victim. To that end, a sentence of incarceration may be the only effective way to guarantee that, for at least a period of time, the perpetrator cannot victimize another animal and perhaps will be more strongly deterred from reoffending.

Whether a sentence is negotiated via plea agreement or open to the court upon conviction at trial, it has been my experience that the majority of first-time animal cruelty offenders receive a sentence of probation, often irrespective of whether they have prior unrelated convictions. Still, there are times where incarceration is certainly appropriate for a first-time offender. At the end of the day, the intent and primary hope of every prosecutor is that whatever sentence is imposed, it will deter future criminal conduct and bring some sense of justice and a measure of closure to the victim and society.

Regardless of whether a defendant receives a sentence of probation or incarceration, prosecutors can negotiate additional terms in a plea agreement or ask the court, in its discretion, to order additional conditions as part of a sentence. Frequently requested additional provisions might include that a defendant agree to ongoing animal welfare checks by the local animal protection agency (if he or she has other animals in the home), or that a defendant not be allowed to own, possess, or care for animals at all for a certain period of time.²⁰ Negotiating these types of

²⁰ To that end, a provision enacted by the Colorado legislature in the summer of 2020 actually imposes a requirement on courts to enter an order prohibiting an offender convicted of aggravated animal cruelty from owning, possessing, or caring for a pet animal for a period of three to five years, and a juvenile adjudicated a delinquent for animal cruelty from owning a pet animal unless the defendant or juvenile's treatment provider makes a specific recommendation to the court not to impose the ban and the court agrees with the recommendation. COLO. REV. STAT. § 18-9-202(2)(a)(V)(V.5) (2019).

additional terms as part of a plea agreement, or asking the court to order such, is another mechanism by which prosecutors work to ensure a sentence is tailored to limit an offender's immediate and future access to animals to potentially prevent additional crimes.

3.6 CONCLUSION

As George Vest so aptly recognized in his closing argument over a century ago,

a man's dog stands by him in prosperity and in poverty, in health and in sickness. He will sleep on the cold ground where the wintry winds blow and the snow drives fierce, if only he may be near his master's side. He will kiss the hand that has no food to offer; he will lick the wounds and sores that come from encounter with the roughness of the world. He guards the sleep of his pauper master as if he were a prince. When all other friends desert, he remains. When riches take wing and reputation falls to pieces, he is as constant in his love as the sun in its journey through the heavens.²¹

Do we not owe it to these magnificent creatures (whether companion animals or wild) to learn to reciprocate and to treat them with the respect and dignity? Does not that responsibility extend to prosecutors and law enforcement professionals to uphold the laws that require the appropriate treatment of animals, and to impose appropriate consequences for violations? I submit that the answer to both of these questions is a resounding yes, and that while our criminal justice system may not be perfect (I have yet to find a human-crafted system that is), it is designed to ensure that those who violate laws are held accountable by the imposition of sentences that encourage renewed adherence to the social contract we all bought into when this country was founded with a respect for law and order.

No sentient being deserves to be victimized at the hands of a human, and it is up to us to collaborate with other agencies to do our best to ensure that these crimes are detected and reported and to ensure that animal cruelty offenders are subject to consequences and/or treatment as necessary. To that end, Colorado law provides animal protection agencies, law enforcement, and prosecutors with a significant number of tools to investigate these cases fully and strive to achieve justice for these vulnerable and voiceless victims. Wild animals, livestock, and companion animals alike enrich our lives in so many ways. Prosecutors should continue to advocate for the animals who suffer cruelty at the hands of humans and should encourage their fellow prosecutors and law enforcement colleagues to do the same. If we don't protect our most vulnerable populations, we are failing both the animals and our communities. The criminal justice system is often the last opportunity for intervention and the last chance that society has to encourage behavior to change or to

²¹ 148 CONG. REC. S3,592 (daily ed. May 1, 2002) (citing remarks made in the summation to the jury by George G. Vest, 1870).

remove the dangerous offender from the community. We, as prosecutors, cannot shy away from that responsibility. Most importantly, we must do everything in our power to mitigate the potential for it to happen again and put an end to the abuse of animals. We need to instill within our communities that the well-being and lives of animals matter in their own right, but also that these cases are serious and warrant adequate time, attention, and resources because a perpetrator of animal cruelty has the potential to be a threat to human and community safety.