

TALES OF JUSTICE

VOLUME 3, NUMBER 3, 2013

National District Attorneys Association's NATIONAL CENTER FOR PROSECUTION OF ANIMAL ABUSE

The Hierarchy of Anti-Cruelty Laws: Prosecuting the Abuse of Stray and Feral Cats

By Allie Phillips



Introduction

I have been in the prosecution world since 1993, working and volunteering in animal protection since 2000, and spent my entire life surrounded by animals, especially cats. Although slow, I have noticed a shift amongst prosecutors and investigators to where some animal abuse cases are being taken more seriously and where anti-cruelty laws are becoming more expansive. It is exciting to see the creation of specialized animal abuse prosecutors and animal abuse prosecution units. At NDAA, this shows us that the tide is shifting as prosecutors recognize that the abuse of animals is tied to the abuse of humans, and that the abuse of animals on its own, and with its own set of laws, is unacceptable in a civilized society.

As outlined by Geoff Fleck with the Animal Legal Defense Fund in his recent *Tales of Justice* article entitled "Animal Protection Advocacy – A Moral Imperative," he discussed how animal victims are *the* most innocent victims a prosecutor will encounter.¹ This article will discuss the hierarchy of animals that are protected by law and in the courtroom, specifically the plight of abused stray and feral cats, and why it is important to not be dismissive of abused and neglected animals that society may deem as "unsympathetic" or "less worthy" of protection under the law.

Stray and Feral Cats

According to Alley Cat Allies, the leading organization in the United States on the protection and care of feral cats, there may be as many as 90 million feral cats in the United States, equal to the number of pet cats living in U.S. homes.² Feral cats are un-owned

stray cats who are domesticated but have not been socialized by a human. A stray cat is often a socialized former family pet who ran away, was tossed away, or became lost outside. Stray cats are often friendly and struggle to survive outdoors. My cat Jacob was rescued from rural West Virginia after his family lost their home and simply tossed all of the cats outdoors to fend for themselves. Jacob was lucky to have been rescued by a kind citizen. His friendly, laid-back demeanor would have been challenging for him to survive outdoors. He still shows signs of encountering some abuse, such as cowering and slinking away every time he hears the crinkling of a plastic bag. What happened to him and the other cats was in violation of W. Va. Code §61-8-19 for animal abandonment, a six month misdemeanor. Yet there was no investigation or prosecution of the former owner(s).

Some cats thrive outdoors, in warehouses or in barns and assist with rodent control. And while they do not have owners, per se, many feral and stray cats live in colonies that are monitored by citizens who feed the cats, spay and neuter them, and provided medical care. Some people believe that animal anti-cruelty laws do not apply to stray or feral cats because there is no believed owner to file a police complaint. It is interesting how society overall condones the mistreatment of stray animals, in the laws and in actions, similar to how society has been dismissive to the plight of homeless people. But there are situations where the abuse of feral cats and other "unsympathetic" animals are pursued.

Mama Cat: The Killing of a Stray Cat

Paige Santell has been an Assistant Prosecuting Attorney in Texas for eight years (four years in Galveston County and now she works in Brazoria County). She specializes in child abuse and sex

crimes cases. In 2007, she volunteered to handle a case in Galveston County that changed how stray cats are viewed under Texas law. A man had been caring for a colony of stray and feral cats living underneath a bridge. He provided food, water and took them to the veterinarian for spaying/neutering and medical care. A bird enthusiast began to shoot at the cats under the bridge and several died. A cat named Mama Cat was shot and suffered immensely before she died. The bird enthusiast was charged with animal cruelty because there was a witness to him shooting Mama Cat.³

During the case, the defense raised the issue that Mama Cat was not owned. Under Texas law at the time, there was a requirement to prove that the harm caused was without the consent of the owner. So the case turned on whether the kind man using his own money to care for the colony of cats was the owner of Mama Cat.

Paige Santell tackled this case head on. She argued that the colony caretaker was the owner of Mama Cat (after all, Mama Cat was one of his favorites). She also argued that there was no open season on hunting cats. Paige stated, "People cannot simply pull out a shotgun or other device to harm or kill a stray animal just because they feel like it is okay." Experts from Texas Parks and Wildlife Department testified that feral cats are not a different species but are domesticated cats that just live outside. The director of the Houston Humane Society also explained what makes a cat a feral cat and testified that Mama Cat did not fit the profile of a feral cat.

Paige struggled to select a fair jury because most people simply did not care about what happened to a stray cat. She offered scenarios during voir dire to determine the jury panel's fairness to an outdoor cat. She also focused on the possibility that Mama Cat was a former family pet who was lost and took up residency in the colony. She wanted to know whether the jurors believed in a hierarchy of laws that protect some cats but not others.

The jury hung (8 guilty, 4 not guilty) because of the flaw in the law regarding ownership. However, Mama Cat did not die in vain. That law has since changed and the owner-consent provision removed because of what happened to Mama Cat. This case grabbed the attention of the media, including being featured in People magazine⁴ and the New York Times⁵. Paige shared with me that she received support from the community in prosecuting the case, but also received some push back because it was "just" a stray cat.

Why did Paige volunteer to take this case that would be an uphill battle against a flawed law? She told me, "The cat deserved better treatment and respect than what was being shown. No animal should be treated that way. No one should be allowed to take the law into their own hands and just shoot an animal because the animal is not owned. I just knew that it was the right thing to do."

The Unsympathetic Animal Victim: Moral Disengagement Theory

I do not believe that any animal victim is unsympathetic and all are worthy of being protected from intentional cruelty by people; but I know of many who feel differently especially as it relates to cats. I am not sure what it is about cats, whether a family cat or a stray cat, but I hear and see so many negative attitudes about cats. Too many people feel that cats are unworthy of living or of being protected by laws; yet ironically there are more cats than dogs in American homes today. I have spent most of my animal protection career helping cats and have found them to be incredibly smart, each one having a different personality. So this attitude has always baffled me.

So what is an unsympathetic animal? It is an animal that we have rationalized as not being worthy of legal protection from

harm inflicted by humans, as not contributing in a valuable way to society, or we have justified the institutional harmful practice as beneficial to overall societal progress. These unsympathetic animals often include stray/un-owned or feral animals, wildlife, birds, rodents, fish, insects, companion animals who have been raised to be vicious, farm animals, and animals in research laboratories.⁶

As a society, why have we categorized which animals deserve our protection and others that do not? Why have we decided that one life is worth protecting over another? Why did the Texas law at the time of Mama Cat's death not protect her, yet it would have protected my cat Jacob from harm?

The moral disengagement theory, proposed by Dr. Albert Bandura in 1999, sheds light on how we place animal protection in a hierarchy, as well as disregard or minimize the injurious effects of our actions, including blame to those that are victimized.⁷ "The disengagement may center on (a) the reconstrual of the conduct itself so it is not viewed as immoral, (b) the operation of the agency of action so that the perpetrators can minimize their role in causing harm, (c) the consequences that flow from actions, or (d) how the victims of maltreatment are regarded by devaluing them as human beings and blaming them for what is being done to them."⁸

Moral disengagement occurs when we act contrary to our moral standards (which for most people is to do no harm). We see this occurring in military situations, religious wars, capital punishment, and so on. While Dr. Bandura published his theory in relation to how humans treat other humans, the principles that he set forth can be applied to how humans treat animals. In a subsequent study, the moral disengagement theory was applied to the abuse of animals. "In regard to attitudes about animals and animal cruelty, such processes of moral disengagement ... foster and perpetuate beliefs and values conducive to a society in which violence against animals persists. He further suggests that certain cultural and structural conditions in a society foster ignorance of the harm that animals suffer as the result of human behavior as well as beliefs and attitudes that justify violent or abusive treatment of animals."⁹

The *New York Times* article about the prosecution of Mama Cat's killer quoted a Colorado State University professor as saying, "'You're trading a feral cat, an exotic animal that doesn't belong naturally on the landscape, against piping plovers, which evolved as natural fits in that environment,' reasons Holmes Rolston III, a Colorado State University professor who is considered one of the deans of American environmental philosophy. 'And it trades an endangered species, piping plovers, against cats, which as a species are in no danger whatsoever. Suffering — the pain of the cat versus the pain of the plover eaten by the cat — is irrelevant in this case.'"¹⁰ That is moral disengagement.

Bandura further described how humans can be cruel to other humans when they "de-humanize" the other person as not having feelings, hopes, and concerns. "The process of dehumanization is an essential ingredient in the perpetration of inhumanities."¹¹ In the context of animals, when someone classifies an animal species as unworthy of value, or *not-as-cute-as* other animals, or even believes that the animal does not feel pain or emotions, we disengage from that species which can lead to overlooking abuse of that species. When someone says *I don't want to know*, that is an indication of moral disengagement. We see this in those who do not wish to know where their meat-based diet comes from, or for animals being experimented upon in laboratories so that we can have cleaning products that warn us to not squirt drain cleaner in our eyes.¹²

On the other hand, people who anthropomorphize (humanize) animals operate at the other end of the moral continuum: they engage in what Dr. Bandura calls proactive moral engagement. “In the exercise of proactive morality, people act in the name of humane principles when social circumstances dictate expedient, transgressive, and detrimental conduct. They disavow use of valued social ends to justify destructive means. They sacrifice their well being for their convictions. They take personal responsibility for the consequences of their actions. They remain sensitive to the suffering of others.”¹³ This is where we see people risking their lives to save others, including animals. This is where we see caring people disregarding lack luster laws in order to save animals in abusive situations or to expose criminal conduct towards animals (such as the current influx of “ag-gag” legislation that is seeking to end undercover videotaping of farming practices that may expose abuse). This is where we see vigilante justice on behalf of animals because complaints are not taken seriously. It is where we see people, like the caregiver of Mama Cat and the witness who saw her shot, coming forward to speak on behalf of our voiceless animal victims. We are currently seeing both moral engagement and disengagement play out all cross the United States and in other countries.

Moral Disengagement in the Courtroom

Moral disengagement can occur in many ways in the courtroom: from a prosecutor not pursuing an animal abuse case to its fullest or prioritizing an animal victim as less than another victim; from a defense attorney who minimizes the value of the animal and the pain suffered as a defense that the abuse should be sanctioned or overlooked; from a judge who views animal abuse cases as unimportant and a waste of time; from a jury who believes that animals should not be protected by law.

Moral justification of actions is often heard from a defendant, especially in animal abuse cases. “People do not ordinarily engage in harmful conduct until they have justified to themselves the morality of their actions. In this process of moral justification, detrimental conduct is made personally and socially acceptable by portraying it as serving socially worthy or moral purposes.”¹⁴ In the context of animal abuse, we may hear defenses such as: *The cat came onto my property and was a nuisance so I poisoned it; it’s just a squirrel so who cares if I captured it, skinned it alive and ate it for dinner; or so what if I shot/stabbed a farm animal, it was going to be someone’s dinner anyway.* Does the justification of harm give a free pass to someone who harms or kills an animal? Does the animal’s hierarchical status condone the conduct or allow for laws and people (including prosecutors who are sworn to uphold laws) to discriminate? For most people, they would say *it depends on the situation.* Hence, the moral justification of how harming/killing some animals is permissible in certain situations.

We see these justifications in chronic abuse situations such as puppy mills, hoarding, and even farm animal abuse. How often have we heard, *it only happened one time?* Dr. Bandura theorizes, “When harmful practices are publicized, they are officially dismissed as only isolated incidents arising from misunderstandings of what had been authorized, or the blame is assigned to subordinates, who are portrayed as misguided or overzealous.”¹⁵ For situations of animal neglect, we often find chronic conditions and not single incidents of harm with just one animal.

We see this moral justification and disengagement occurring in our legislative chambers, courtrooms, investigative agencies, and

throughout society in general. Dr. Bandura tells us, “The task of making violence morally acceptable from a utilitarian perspective is facilitated by two sets of judgments. First, nonviolent options are judged to be ineffective to achieve desired changes, thus removing them from consideration. Second, utilitarian analyses using advantageous comparisons with actual or anticipated threats by one’s adversaries affirm that one’s injurious actions will prevent more human suffering than they cause.” For the latter, this is how many justify the treatment of animals in research laboratories; yet the same “research” methods conducted in someone’s basement would no doubt be in violation of state anti-cruelty laws.¹⁶

Prosecutors, like all attorneys, are sworn to uphold the Constitution and the law of our state and country. In addition, prosecutors are the voice of victims. And while there are a growing number of prosecutors effectively handling animal abuse cases, can there be any greater duty than to speak for a victim who cannot call 911, file a complaint, seek therapy, and testify? Being the voice for all victims is the ultimate duty and honor for a prosecutor.

The Hierarchy of Laws for Animal Victims

In the United States, animal cruelty protection laws overwhelmingly protect companion animals; the cats, dogs and other family pets that grace our homes. All 50 states and territories have anti-cruelty laws to protect primarily companion animals, and 49 states (excluding South Dakota) have felony laws. Illinois, for example, only protects intentional harm to companion animals, thus leaving vulnerable the protection of stray and feral animals.¹⁷ Moreover, 31 states exempt farming practices from anti-cruelty statutes¹⁸ and 40 states and the District of Columbia exempt animals in research from protection¹⁹. There are also hundreds of federal laws that protect animals, particularly endangered species.²⁰

Researchers have found that we are more likely to protect animals (through laws and other means) who are similar to humans.²¹ And we have seen this in the passage of laws that protect, at a minimum, companion animals because they live in our homes and are often members of the family. But the protection of all animals is an important step in the field of criminal justice because it will hold offenders at all levels of species harm accountable. Researcher Piers Beirne “argues that animal cruelty should be drawn into the realm of criminological inquiry as it has importance on multiple levels:

1. Animal cruelty may signify other actual or potential interpersonal violence;
2. Animal cruelty is, in many forms, prohibited by criminal law;
3. Violence against animals is part of the utilitarian calculus on the minimization of pain and suffering;
4. Animal cruelty is a violation of rights; and
5. Violence against animals is one among several forms of oppression that contribute, as a whole, to a violent society.”²²

For prosecutors and allied professionals there are two actions that must be taken for our animal victims. First, if your anti-cruelty law is unclear in what animals are protected, challenge those laws in court with a case with good facts to get clarity. And second, if your laws discriminate against certain species, work with your state prosecutor’s association or national animal protection organizations to change your laws. Some animal anti-cruelty laws were written over 100 years ago and contain archaic language that is ill

suited for today's society. When laws are poorly defined, vague, or blatantly exclude certain species, this makes the work of investigators and prosecutors more difficult than it needs to be. Poorly written animal protection laws allow the abuse of animals to continue and abusers to continue in their conduct. So we need to be proactive from the legislature to the crime scene to the courtroom to ensure that laws are well written and effective. For when laws are effective, communities are safer.

Prosecuting the Unsympathetic Animal Abuse Case: Kitten Killing

Jill Deegan is an Assistant Commonwealth Attorney in Botetourt County, Virginia, a rural community north of Roanoke. Jill is a champion for animal victims in Virginia and she teaches about feral cats and how they are not differentiated under the law. In 2010, Jill prosecuted a defendant for decapitating the heads of baby kittens who were living outdoors and were born to a feral cat. The property owner was angry that the kittens were outside and that a lady renting a house on the property was feeding them. The landlord's nephew used the property to hunt so he caught the very young kittens and decapitated them with a shovel. The lady reached out to a local rescue group for help who then contacted Jill. Jill charged the nephew with four counts of felony animal cruelty, one count for each kitten.

This was a challenging case for Jill since the bodies of the kittens were never recovered. However, the nephew confessed to the killings. His defense was that the baby kittens would disturb wildlife on the property so he killed them. The defense attorney was indignant about the case and did not think there was anything wrong with the actions of his client. He told Jill, *it was just feral kittens*. Had the decapitation victim been the beloved family cat named Lucy who was a champion breed winner, you can bet that no comments would have been made that Lucy was *just a cat*. Hence, the moral disengagement between a beloved family cat and kittens who did not chose to be born outdoors. There is no difference in the pain felt by a family cat or a feral/stray cat.

The nephew pled guilty to four misdemeanor counts (since not having the kitten bodies would have raise an issue at trial). However, the sentence was merely community service and a fine. Jill shared, "I feel that the sentence was related to the cats being feral and having no owner coming to court. If it had been a family cat, it would have been a felony conviction and jail time. Where we live, people think it is okay to kill an outdoor cat. It makes a huge difference if the animal does not have a family in the courtroom." Regardless of the outcome, Jill still feels that pursuing the case was important.

Conclusion

As a society, we must stop being ignorant about what really happens to animals. When we remove the veil of ignorance, that is when laws will change and society will see that all living creatures should be entitled to some basic protections under the law. It is when we will see the protection hierarchy of animals, and even within species, begin to fade. Then, prosecutors and investigators will face fewer obstacles in the courtroom.

While I do not believe any animal is unsympathetic, our laws and attitudes are still evolving on this subject. So if you are given a case that involves an animal that is seen as unsympathetic under the law or by community standards, as a prosecutor it is your duty to follow the law and do what is right. After all, victim's come to us

in all different forms and the law says that we must accept them as they are. It is not ethical for us to discriminate against our victims.

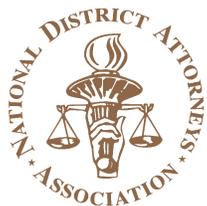
Paige Santell and Jill Deegan did the right thing on behalf of their stray cat victims and by doing the right thing they both sent a message to their communities that harming or killing stray animals would not be tolerated. That message changed the law for Texas. Paige shared, "I'm glad that I gave Mama Cat her day in court." So what is Paige's advise for prosecutors who may be faced with a case involving an unsympathetic animal? "Your job as a prosecutor is not to just win case; your job is to do the right thing. It's not the easiest thing. Take a challenge and stand up for an animal that needs you."

Allie Phillips is the director of the National Center for Prosecution of Animal Abuse and deputy director of the National Center for Prosecution of Child Abuse at the National District Attorneys Association in Alexandria, Virginia. Previously she was the Vice President of Public Policy and Vice President of Human-Animal Strategic Initiatives for American Humane Association. She was also a prosecuting attorney in Michigan and has been educating prosecutors and allied professionals since 1997. Allie is nationally recognized for her work to protect animals and vulnerable victims, has been featured on *The Today Show* and is a frequent contributor on numerous animal-related radio shows. She has authored two books on animal protection issues (*How Shelter Pets are Brokered for Experimentation: Understanding Pound Seizure* and *Defending the Defenseless: A Guide to Protecting and Advocating for Pets*) and has co-authored chapters in the *International Handbook of Theory and Research on Animal Abuse and Cruelty* and other professional publications.

Endnotes

- 1 Geoff Fleck, *Animal Protection Advocacy – A Moral Imperative*, NDAA's NATIONAL CENTER FOR PROSECUTION OF ANIMAL ABUSE TALES OF JUSTICE 3(1) (2013).
- 2 Wendy Anderson, "Who Speaks for the Animals," *American Bar Association Animal Law Committee*, Spring 2007.
- 3 "Attorney argues expert mistakenly shot feline," Associated Press (November 15, 2007), available at http://lubbockonline.com/stories/111507/sta_111507081.shtml.
- 4 Susan Schindehette, "He killed a cat to save a bird," *People Magazine* (October 1, 2007), available at <http://www.people.com/people/archive/article/0,,20160990,00.html>.
- 5 Kate Murphy, "Birder Admits Killing Cat, but was it Animal Cruelty?" *The New York Times* (November 14, 2007), available at <http://www.nytimes.com/2007/11/14/us/14cats.html?pagewanted=print> and Bruce Barcott, "Kill the Cat that Kills the Bird?" *The New York Times* (December 2, 2007), available at http://www.nytimes.com/2007/12/02/magazine/02cats-v--birds-t.html?pagewanted=all&_r=0.
- 6 I have excluded hunted animals since most hunters kill animals for food and do not hunt for the sole pleasure in being cruel.

- 7 Albert Bandura, *Moral Disengagement in the Perpetration of Inhumanities*, 3(3) PERSONALITY AND SOCIAL PSYCHOLOGY REVIEW 193-209 (1999).
- 8 Bandura at 194.
- 9 Scott Vollum, Jacqueline Buffington-Vollum & Dennis Longmire, *Moral Disengagement and Attitudes about Violence towards Animals*, 12(3) SOCIETY & ANIMALS 215, citing to R. Agnew, *The causes of animal abuse: A social-psychological analysis*, 2(2) THEORETICAL CRIMINOLOGY 177-209 (1998).
- 10 Barcott, *Id.*
- 11 Bandura at 200.
- 12 If you want to learn more about animals, particularly companion animals in shelters who are used in research experimentation, check out my book *How Shelter Pets are Brokered for Experimentation: Understanding Pound Seizure* (2010).
- 13 Bandura at 203.
- 14 Bandura at 194.
- 15 Bandura at 197.
- 16 Bandura at 196.
- 17 See, 510 ILCS 70/3.02(a) "No person may intentionally commit an act that causes a companion animal to suffer serious injury or death. Aggravated cruelty does not include euthanasia of a companion animal through recognized methods approved by the Department of Agriculture unless prohibited under subsection (b)."
- 18 The ASPCA lists these 31 states as exempting farm animal ("animal husbandry") practices from anti-cruelty statutes: Alaska AS § 11.61.140; Alabama Ala. Code 1975 § 13A-11-14 and § 2-15-5; Arkansas A.C.A. § 5-62-105; Arizona A.R.S. § 13-2910; Colorado C.R.S.A. § 18-9-201.5; Connecticut C.G.S.A. § 53-247; Georgia Ga. Code Ann., § 4-11-13; Idaho I.C. § 25-3514; Illinois 510 ILCS 70/13; Indiana IC 35-46-3-5; Kansas K.S.A. 21-6412; Maryland MD Code, Criminal Law, § 10-603; Maine 17 M.R.S.A. § 1031; Michigan M.C.L.A. 750.50b; Missouri V.A.M.S. 578.007; Montana MCA 45-8-211; Nebraska Neb.Rev.St. § 28-1008; New Mexico N. M. S. A. 1978, § 30-18-1; Nevada N.R.S. 574.200; North Carolina N.C.G.S.A. § 14-360; North Dakota NDCC, 36-21.1-01; Pennsylvania 18 Pa.C.S.A. § 5511; Rhode Island Gen.Laws 1956, § 4-1-5; South Carolina Code 1976 § 47-1-40; Tennessee T. C. A. § 39-14-202; Texas V.T.C.A., Penal Code § 42.09; Utah U.C.A. 1953 § 76-9-301; Vermont 13 V.S.A. § 351b; Washington RCWA 16.52.185; West Virginia W. Va. Code, § 61-8-19; and Wyoming W.S.1977 § 6-3-203.
- 19 Animal Law Coalition, *available at* <http://www.nabranimallaw.org/Content.aspx?id=101>.
- 20 For a comprehensive listing of animal laws, visit the Michigan State University College of Law Animal Legal & Historical Center at <http://www.animallaw.info/>.
- 21 S. Plous, *Psychological mechanisms in the human use of animals*, 49(1) JOURNAL OF SOCIAL ISSUES 11-52 (1993).
- 22 Vollum at 210, citing to P. Beirne, *For a nonspeciesist criminology: Animal abuse as an object of study*, 37(1) CRIMINOLOGY 117-147 (1999).



National District Attorneys Association

The National Center for Prosecution of Animal Abuse
99 Canal Center Plaza, Suite 330

Alexandria, Virginia 22314

www.ndaa.org

National Center for Prosecution of Animal Abuse is a program of the National District Attorneys Association. This publication was prepared under a grant from the Animal Welfare Trust. This information is offered for educational purposes only and is not legal advice. Points of view in this publication are those of the author(s) and do not necessarily represent the official position of Animal Welfare Trust and NDAA.