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The Legal System: The Veterinarian's Role and Responsibilities

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Without justice, there can be no peace. He who passively accepts evil is as much involved in it as he who helps to perpetrate it.

Martin Luther King

INTRODUCTION

There is a growing societal awareness about cruelty to animals. The veterinary community is no exception. There is an expectation that perpetrators of animal cruelty and neglect be held accountable. It has been long recognized that there is a link between cruelty to animals and violence toward humans, and that animal abuse is often one of the indicators of family violence and child abuse. The law enforcement community now recognizes that early and aggressive intervention in animal cruelty cases has a positive and proactive impact on public safety and human welfare.

To effectively prosecute those who harm animals there must be a collaborative effort among agencies and individuals. Animal cruelty cases are unique because none of the victims are able to tell the authorities what happened. Therefore, there is a need for the expertise of a veterinarian or other animal health care professional in nearly every case. According to Neumann (2005), society already sees veterinarians as animal welfare advocates, and there is an expectation that veterinarians will fully cooperate in the investigation and prosecution of a cruelty case. Veterinarians are perceived of as a caregiving profession and members of the public expect them to be at the forefront of setting the highest standards for animal welfare. "Research and

professional experience provide compelling evidence that the veterinarian is not only a public health authority, but a type of "family practitioner" with a potential for preventing several forms of family violence"(Arkow).

Most veterinarians have not received formal training in recognizing animal abuse as part of their primary education; rather, they have gained the knowledge through continuing education or textbooks. Veterinary forensic medicine has been part of the veterinary college curriculum in other countries, such as Scotland and Brazil, whereas in the United States it has only recently begun to be incorporated into the curriculum or offered as an elective course. Even with some training veterinarians tend to hesitate to act because they are concerned about being incorrect in their suspicions. There is an increasing trend in legislation regarding the veterinarian's role in reporting animal cruelty. Most of the provisions in the United States are found in either the state's Veterinary Practice Act or their animal cruelty statute. The laws address both the requirement to report and the civil and criminal immunity and protection given to the practitioner who does file a report. The Animal Legal Defense Fund (www.aldf.org) maintains a current list of the states with some type of duty to report and those that provide some type of immunity.

DEFINING ANIMAL CRUELTY

Cruelty to animals can involve anything from act to omission, from teasing to torture, and from intentional to negligent. It also includes animal fighting, animal hoarding,

and animal neglect. A determination of whether or not a given instance constitutes animal cruelty is made on a case-by-case basis. This decision may be made by an animal control officer or law enforcement officer at the time of the incident or it may be made later by a prosecutor. It is important for the veterinary professional to familiarize him or herself with local statutes and ordinances. For example, the term ‘animal’ is not universally defined and varies from state to state and city to city. Some statutes and ordinances may exclude certain species.

“The diagnosis of non-accidental injury is not an exact science either in children or in the family dog or cat” (Munro and Thrusfield 2001) and is covered extensively in the following chapters. Several tools are available to assist the veterinarian in evaluating whether or not an animal (particularly a companion animal) has suffered non-accidental injury (NAI). One of the earliest studies on this topic was a 2001 series by Munro and Thrusfield, “Battered Pet Syndrome.” Care should be taken to recognize cases in which a failure to act has resulted in an animal’s pain and suffering. For example, veterinarians should check with their local animal cruelty investigator or prosecutor to determine if failing to seek timely veterinary care can constitute cruelty.

GOVERNING LAWS

Veterinarians should be mindful of the fact that numerous legal principles may be relevant to an incident involving an animal.

1. Federal and State Constitutions: A veterinarian who is employed by a law enforcement agency or humane society that has agents with law enforcement authority should be knowledgeable about constitutional protections afforded to all citizens. According to the Bill of Rights, for example, all individuals in the United States have the right to be free from unreasonable searches and seizures (Fourth Amendment). If at all possible, when seizing animals, it is preferable to have a search warrant signed by a judge. Veterinarians can play an important role in providing information for the affidavit, articulating why an animal(s) must be seized. They also can assist law enforcement by setting forth why certain items other than the animal(s) should also be collected during the execution of a warrant.

One of the primary reasons a veterinarian must testify in a criminal case is due to the defendant’s constitutional right to confront the witnesses against him or

her (Sixth Amendment). The defendant has the right to subpoena witnesses and to cross-examine the prosecution witnesses in person and in the presence of the judge or jury.

- 2. Federal Statutes, State Statutes, and Municipal Ordinances:** These are typically the laws that define animal cruelty, neglect, hoarding, and fighting. They also set forth the criteria for search warrants, arrest warrants, and restraining orders, and govern the practice of veterinary medicine.
- 3. Federal and State Rules of Evidence:** These rules set forth the guidelines for the admissibility of evidence and testimony, including expert testimony. They also give the judge guidelines regarding relevancy, the admissibility of documentary evidence, and whether or not a statement is hearsay or if it is hearsay, whether or not it is admissible as an exception to the hearsay rule.
- 4. Case Law:** Certain cases set a precedent and set forth guidelines for the admissibility of specific types of evidence.

HOW VETERINARIANS BECOME INVOLVED

Veterinarians can become involved in a case in a number of ways. Most commonly, an injured or deceased animal will be brought to the hospital, clinic, or shelter for evaluation and treatment. The animal can be brought in by an animal control officer, a good Samaritan, an established client, a stranger, etc. All animals should be treated in the same manner regardless of the circumstances. On occasion, a veterinarian may actually respond to the crime scene. This usually occurs if the veterinarian is an employee of a local law enforcement agency or has a contract with the local law enforcement agency. This is the optimum case scenario because the veterinarian becomes a “direct” witness to the crime scene and the animal(s) (see Chapter 2). Regardless of how veterinarians becomes involved it is critical to remain objective and to document their findings in an impartial and unbiased manner. It is important to be aware of the fact that it is as important or more important to exonerate the innocent suspect as it is to dispassionately substantiate the circumstances of a crime.

Reporting

Laws regarding the veterinarian’s role in reporting animal cruelty and animal fighting vary state by state. Because there is an emerging trend toward mandatory reporting, the veterinarian is well advised to be prepared to act in the event the situation arises.

Factors that inhibit reporting

One of the primary concerns expressed by veterinarians regarding reporting is that they do not feel competent to recognize animal abuse. They feel a need to know and understand the exact provisions of the local cruelty laws. They mistakenly believe that it is their responsibility to apply that law to a particular set of circumstances. Most “reportable” cases will distinguish themselves and will be obvious to the veterinary professional. It is the responsibility of the law enforcement authority—animal control, the police, or the prosecutor—to make the ultimate determination as to whether or not criminal charges will be filed. It is *not* the responsibility of the veterinarian. A working knowledge of the law is all that is necessary.

For some veterinarians the hesitation to report is simply because they do not know where to report, what to say, and how to document their observations. These concerns can best be addressed by being proactive. The veterinarian should become familiar with the local cruelty laws and should cultivate a relationship with a local law enforcement agent before there is a need to contact them with an actual report (see *Handling Suspected Abuse Cases and Developing an SOP*). It is a common misperception that an animal abuser will not seek veterinary care for the injured animal, so it is far better to be prepared in the event the situation arises.

Another common misconception is that the veterinarian must be positive that an animal has been the victim of cruelty before reporting it to the authorities. All that is generally legally necessary is for the veterinarian to have a reasonable or good faith belief. Additionally, many veterinarians mistakenly believe that the cruel or neglectful act or omission must be deliberate or intentional. Many cruelty statutes cover reckless and negligent conduct as well. It is ultimately up to the law enforcement authorities to determine whether there is a provable mental state—it is only necessary for the veterinarian to report the suspected acts or omissions resulting in cruelty.

Many veterinarians are uncomfortable accusing another individual of what amounts to criminal conduct. In certain situations, the suspected perpetrator may be an established client. The client often does not look like a criminal or act like a criminal. The veterinarian must recognize the fact that like all other crimes, the offender may be of any socioeconomic, racial, ethnic, age, gender, or other category.

In rural and smaller communities there is a fear of the loss of the relationship with the client, the client's family, and the client's friends. There is also a fear of an adverse effect on the veterinarian's reputation in the community.

In actuality, the reverse may well be true. Veterinarians who demonstrate a willingness to report animal cruelty may experience an increase in their client base because this is perceived by existing or potential clients as an attractive altruistic aspect of the practice.

In some situations the veterinarian fears being sued by the client. In most, if not all, of the states that mandate reporting, there is built-in immunity from civil and criminal liability. There are some states without mandatory reporting that specifically provide this immunity. Civil and criminal immunity means that if veterinarians report a case of cruelty in good faith they should not be able to be sued. Additionally, veterinarians should be protected from allegations that they violated confidentiality requirements. Whether or not the veterinarian can release patient records varies state by state and is usually found under the Veterinary Practice Act. In some states the veterinarian must turn over the entire record and in others they are prohibited from turning over the records without a court order.

In states that require reporting, veterinarians who fail to report when they should have may be legally accountable under the law and may face serious consequences. Additionally, there may be circumstances when a veterinarian fails to report cruelty and the conduct may be perceived as aiding and abetting the perpetrator. If this is the case, the veterinarian could face criminal charges for being a complicitor to animal cruelty.

If the abuse was particularly heinous or was committed in the context of family violence, there may be a concern for the safety of the veterinarian, the employees, and other clients and patients. There also may be a concern that the situation will escalate. Law enforcement officers are equipped to handle these types of concerns and are able to afford protection to the reporting veterinarian. This is another example of why it is important to cultivate a relationship with local law enforcement agents before the actual need arises. If the veterinarian is concerned about safety during the pendency of a case, he or she should ask the prosecutor to get a restraining order against the defendant and list the veterinarian as a protected person, including the veterinarian's home and clinic as restricted places.

There are a number of veterinarians who simply do not want to get involved or invest the time. This is typically based on the lack of awareness of the importance of reporting. Some have concerns that law enforcement agents or the prosecuting authority will not advise them about what to expect, protect them, or prepare them for court. Some simply have a generalized fear or distrust of police, lawyers, and the court system.

Factors that support reporting

There are several compelling reasons to report. It is encouraged by the professional associations and it improves the welfare of the abused or neglected animal. Intervention in a particular case may break the cycle of violence, therefore preventing additional harm to other animals and humans. The veterinarian may well be making the community safer. Most importantly, it is the right thing to do. In 2010, The American Veterinary Medical Association's Executive Board took a bold step when it amended the Veterinarian's Oath to include animal welfare. The oath reads as follows: "Being admitted to the profession of veterinary medicine, I solemnly swear to use my scientific knowledge and skills for the benefit of society through the protection of animal health and welfare, the prevention and relief of animal suffering, the conservation of animal resources, the promotion of public health, and the advancement of medical knowledge" (AVMA).

Following is the American Veterinary Medical Association (AVMA) position statement regarding animal abuse and animal neglect: "The AVMA recognizes that veterinarians may observe cases of animal abuse or neglect as defined by federal or state laws, or local ordinances. The AVMA considers it the responsibility of the veterinarian to report such cases to appropriate authorities, whether or not reporting is mandated by law. Prompt disclosure of abuse is necessary to protect the health and welfare of animals and people. Veterinarians should be aware that accurate, timely record keeping and documentation of these cases are essential. The AVMA considers it the responsibility of the veterinarian to educate clients regarding humane care and treatment of animals" (AVMA). Regarding animal fighting: "The AVMA condemns events involving animals in which injury or death is intended. The AVMA supports the enforcement of laws against the use and transport of animals and equipment for fighting ventures. Further, the AVMA recommends that animal fighting be considered a felony offense. The AVMA encourages veterinarians to collaborate with law enforcement with respect to recognition, enforcement, and education" (AVMA).

In addition to their position statement regarding abuse and neglect, the AVMA has set forth eight integrated principles for developing and evaluating animal welfare policies, resolutions, and actions. Two of these principles may assist the veterinarian in determining whether an animal has been abused or neglected. First, "animals must be provided water, food, proper handling, health care, and an environment appropriate to their care and use, with thoughtful consideration for their species-typical biology and behavior," and second, "animals

should be cared for in ways that minimize fear, pain, stress, and suffering" (AVMA).

Following is the American Animal Hospital Association (AAHA) position statement regarding animal abuse reporting: "The American Animal Hospital Association supports reporting of suspicions of animal abuse to the appropriate authorities when education is inappropriate or has failed. The association also supports the adoption of laws requiring veterinary professionals to report suspicions of animal abuse, provided such laws include provisions for immunity from civil, criminal or professional liability when filing such reports in good faith. Veterinary professionals are likely to encounter many forms of animal abuse, ranging from minor neglect and animal hoarding to intentional and malicious harm. While some acts can be addressed through education, other forms of animal abuse can be related to other forms of violence. Studies have shown there is a link between animal abuse and other forms of violence, including child, spousal and elder abuse. In order to encourage veterinarians and practice team members to be responsible leaders in their communities and to assist in the detection and reporting of animal abuse, the profession should educate its members to recognize, document and report animal abuse, develop forensic models, promote legislation concerning reporting by veterinarians and collaborate with other animal and human welfare groups and professionals within communities to eliminate the incidence of animal abuse" (AAHA).

Veterinary records

It is essential to realize that everything a veterinarian does, writes, and says will be disclosed to the police, the prosecutor, the defense attorney, and even perhaps the perpetrator. All documentation needs to be objective, honest, and thorough and will serve as the basis for the veterinarian's courtroom testimony. A veterinarian must not use any terminology that may be perceived as unprofessional. Although it is not necessary, it may be beneficial to consult with another veterinarian (or other witness) who may document their independent observations and assessments which may support or contradict the original findings. Either way, this process can help reach a well-documented, objective conclusion.

Each jurisdiction has rules that govern discovery. Most states require that the prosecutor turn over every statement, report, and record of an expert. Compliance must be timely and continue throughout the pendency of the case. Failure to comply may result in sanctions that may severely affect the case. Of particular significance is any evidence that is favorable to the defense. Such evidence is characterized as

exculpatory (tends to negate the guilt of the defendant) and is governed by the U.S. Supreme Court case *Brady vs. Maryland*, 373 U.S. 83 (1963). If, after producing a report, the expert changes his or her view on any material matter, this change must be communicated to all the parties as soon as possible. Veterinary records include but are not limited to: written records (electronic and handwritten), photographs, radiographs, imaging, laboratory tests (raw data and results), and medication information.

It is particularly important that the veterinarian document what the client says when explaining the animal's condition. The veterinarian or staff member should note the client's relationship to the patient such as owner, neighbor, pet-sitter, good Samaritan, animal control officer, etc. What the client says is often as important as what is observed. In some situations, the person's behavior may be a factor for the veterinarian to consider and document, such as the appearance of genuine concern or apathy. Remember, however, that people may not act or react in an expected manner in any given situation, particularly a stressful situation. It is also significant to ask where the incident happened because this can affect which law enforcement agency has jurisdiction.

The client in the office or suspect at the scene may admit incriminating conduct. It is essential to write down exactly what is said and by whom. The client's account may change as the conversation proceeds. There may be more than one person accompanying the animal and it will be important later for law enforcement to note if one individual's account is inconsistent with another's. It may be apparent to the veterinarian that one or more than one account is at odds with the medical findings. It is important to be aware that a client may be fearful of telling the truth—he or she may simply want to avoid accountability or may be the victim of violence at home. The client may give the veterinarian a truthful account, embellish what happened, fabricate a story, or any combination of the above. If the patient is an established patient there should be a treatment history that will assist the veterinarian with the ultimate findings.

It is not uncommon for the veterinarian to be confronted with an instance in which a very young child is responsible for the act or acts which resulted in the injury. If the circumstance allows, the veterinarian may attempt to communicate concerns to the child's parent or guardian. However, one should not presume that the parent or guardian will follow up with appropriate intervention. On the contrary, the parent or guardian often minimizes or denies the seriousness of this type of conduct. The act of animal cruelty by a child, regardless of age, may be an indicator of problems within the home. Even if the

perpetrator is younger than the statute allows for criminal charges, veterinarians must abide by the laws governing reporting in their jurisdiction. It should be noted that some jurisdictions have mandatory cross-reporting laws for animal cruelty and child abuse or family violence.

It is essential for the veterinarian to conduct a thorough examination of the animal and perform appropriate laboratory and diagnostic tests. These findings should be fully documented, and chain of custody protocols followed (see Chapter 3). Diagrams are available for most species and are invaluable when recording the location and nature of all injuries, current, recent and older. In animal hoarding, animal fighting, and puppy mill investigations there may be seizures of several animals that will need to be examined. It is critical to prepare and maintain a separate and distinct identifying photograph and medical record for each individual animal. Concern for expenses should not be a consideration. The veterinarian may find that the money spent on exams and tests may be priceless in the long run. In many jurisdictions, if the individual responsible for the abuse is convicted, it is likely that the prosecutor can ask the court to order reimbursement as part of any restitution order (see compensation section below). If the case is unusual or peculiar, such as some types of poisonings, additional research or consultation with a specialist may be necessary. This is also true when the veterinarian is evaluating an animal species that he or she does not treat on a regular basis.

In nearly every cruelty case it is important for the veterinarian to note whether the animal was in pain or was suffering (see Chapter 4). It should be noted if the delay of seeking veterinary care resulted in additional pain, suffering, or the inability to successfully treat the animal. Although an individual animal's response to pain varies with many factors (age, sex, health status, species, breed), what is important is whether the animal experienced pain. "Unless the contrary is established, investigators should consider that procedures that cause pain or distress in human beings may cause pain or distress in other animals" (USDHH).

Any evidence of prior trauma or injury should be noted. Most states have a rule of evidence [Federal Rule 404(b)] that allows evidence of other acts and transactions. Similar acts, for example, may be introduced to show motive, intent, and absence of mistake or accident. That is why it is so important to note any previous healed or healing injuries to the abused animal. It is also important to note whether there are or were other animals in the household or under the control of the same suspect that may have been abused.

If an animal is euthanized the veterinarian must note the reason for euthanasia (see Chapter 3). For cruelty

investigations, some states have guidelines that allow a veterinarian to euthanize an abused animal without a court order if the animal is experiencing “extreme pain and suffering” or is “injured past recovery.” Alternately, the lead investigator or prosecutor may grant permission. After euthanasia, the body should be properly handled, including storage, transported for necropsy if indicated (usually by animal services), and the chain of custody procedures followed (see Chapter 3).

Where to report

In an emergency, dial 911. As stated earlier, it is important for the veterinarian to be proactive and establish a relationship with law enforcement before they are needed. It is advisable for the veterinarian to establish a protocol for his or her clinic or hospital (see Handling Suspected Abuse Cases and Developing an SOP). All associates and employees must be trained to use the protocol. Essential phone numbers should be posted in a place where they are readily available to staff members. In Colorado, a magnet was distributed to veterinarians shortly after reporting became mandatory.

Depending on the jurisdiction, a veterinarian should be able to report suspected cruelty to one of the following agencies: police; sheriff; animal control; humane societies or rescue agencies (if they have authorized cruelty investigators); district, county, or city attorney; and in some states, the state veterinarian, Department of Agriculture, or Bureau of Animal Protection.

Handling suspected abuse cases and developing an SOP

Numerous situations qualify as animal cruelty and it is important that veterinarians have an understanding of their animal cruelty laws and veterinary practice acts so they can respond appropriately and assist the investigators and prosecutors in a potential case. Reporting suspected abuse does not mean the alleged perpetrator will be arrested; it means that an investigation will be initiated.

It is very difficult for veterinarians to realize and accept the fact that animals who are victims of abuse will be brought into their practice. The Munro and Thrusfield 2001 article demonstrates how common this actually is. The person who brings in the animal may or may not be aware that the animal has been abused. That person, or a child, may also be a victim of abuse in the home. Often, the person bringing in the animal has a close relationship with the abuser. It is very important for veterinarians to realize that their discussions with the client may elicit important information, including possible confessions. Regardless of

whether a client’s statement about the cause of an injury to or death of a patient is truthful or not, the statement is beneficial for a thorough evaluation of the case and a detailed investigation into what occurred.

The study by Munro and Thrusfield reported that in several cases a family member was implicated by the client. In twenty-five of the cases the client admitted to committing the abuse. It is of particular interest that in five of the cases, the admission came after the veterinarian had merely discussed the possibility of abuse as the cause of the injuries. Another common scenario is hoarders who bring animals into the hospital (see Chapter 11). Some of the veterinarians surveyed during the study reported that they were less likely to report abuse if the owner showed contrition (Munro and Thrusfield 2001). Such a determination based on the owner’s behavior does not fall within the veterinarian’s purview. It is important for veterinarians to understand that their duty is to report so that an investigation can be conducted.

It is important to have a standard operating procedure (SOP) for a veterinary hospital to handle and report suspected abuse cases. After mandatory reporting laws were enacted in Colorado, the Colorado Veterinary Medical Association in collaboration with the Denver District Attorney’s Office, the Colorado Association of Certified Veterinary Technicians, and the Animal Assistance Foundation developed a guide for veterinarians to use in suspected cruelty case (see Appendix 1). Depending on the jurisdiction and the type of crime, the location of the crime, or the species involved, there may be one or more agencies responsible for investigating animal cruelty cases. The agencies may include, but are not limited to, law enforcement, animal services, and agents with the department of agriculture. The prosecutor responsible for animal cruelty cases should also be identified, which may vary depending on the level of crime. All staff should be trained on the SOP, the animal cruelty laws, and the veterinary practice act affecting the reporting of suspected abuse. Some areas have mandatory reporting requirements, liability protection, and/or clear rules for record confidentiality. These should be part of the staff training and SOP.

The SOP should include several key components:

- Agency(s) and individual(s) responsible for abuse investigations
- Contact information including after hours and emergencies
- Chain of command within the hospital, clinic, or shelter for authorization and approval to report suspected abuse
- Protocol for handling and treatment of the living or deceased animal after a report has been filed, including but not limited to documentation, chain of custody,

photographs, and records. Additionally, the investigating officer and prosecutor should provide input on legal protocol for retention and protection of the animal and for protection of the veterinary staff

- Protocol and secure area to maintain other evidence collected from the animal

The key is to establish a relationship early with the investigating agency/officers and the prosecutors. They should be invited to the hospital to provide training for the staff on the law, liability, reporting, and response.

SEARCH AND SEIZURE

The United States Constitution set forth guidance regarding search and seizure. The Fourth Amendment states that individuals have the right to be free from unreasonable searches and seizures. It further states that any search warrant must be based on probable cause. The warrant must be accompanied by a sworn affidavit setting forth the details about the place being searched and the items being searched for. An evaluation of whether or not a search or seizure is reasonable turns on whether or not the individual had an "expectation of privacy." This is most often claimed when the person's residence or place of business is the place to be searched. Only a law enforcement agent may apply for and execute a search warrant.

Under some narrowly defined circumstances no warrant is necessary. For example, if a person consents to a search of their premises no warrant is needed. Consent must be made freely and voluntarily. Another exception is "exigent circumstances." If there is an articulable emergency and an immediate need to seize property then the authorities do not need to get a warrant. However, care should be taken in cases involving numerous animals to only remove animals in dire need of immediate veterinary care. Other animals at that scene may be seized later pursuant to a search warrant. It is important for law enforcement authorities to secure the premises pending the issue of a search warrant to ensure that no evidence is lost or removed.

Often law enforcement authorities will rely on a veterinarian to articulate why an animal or animals should be seized. The veterinarian's statement and opinion become part of the affidavit supporting the search warrant. It is important for the veterinarians to be clear and accurate in their assessment of the circumstances. It is also necessary for the veterinarian, together with law enforcement authorities, to know the elements of the crime for which the animal evidence is being sought.

In animal cruelty cases, especially large scale seizures, it is essential to describe the property to be searched. It is

important to include all aspects of the relevant property and include, for example: outbuildings, automobiles, curtilage, gardens, and fields. In some jurisdictions it may be important to include unborn animals as part of the warrant. In cases involving animal fighting, puppy mills, or hoarding, a search warrant should also include searching for clandestine graves or other areas where deceased animals may be found.

HANDLING THE MEDIA IN ANIMAL CRUELTY CASES

Cruelty cases, especially violent or large scale cases, generate a tremendous amount of media attention. Once a case is reported and a criminal investigation has begun, it is important to resist the temptation to grant an interview with media representatives or to allow media personnel access to the crime scene or to the animals. It is advisable to have a media spokesperson that is trained to handle these matters. There will be ongoing pressure from the media for updates. The veterinary personnel should defer to law enforcement authorities to make any public statements or release any photographic or video footage. If law enforcement allows or directs the veterinarian to make a public statement, he or she should remain professional and objective. There should be clarification before the interview what prior media statements have been made or released by authorities and what can and cannot be discussed with the media. There should also be awareness that if the scene is outdoors the media may be videotaping the scene and activity via hand-held cameras or by helicopter with long-range lens and audio capabilities. There should be a presumption that everything that is said and done may be monitored by uninvited third parties, including by cell phone cameras, audio, or video recording. Everything that is done and said can and may be used in court. After a case is reported the best practice is for the veterinarian to refer all media inquiries to the law enforcement agency or prosecuting authority. Pre-trial publicity can have an impact on the successful prosecution of a case and can affect the jury selection process. Once a case is filed there are strict ethical rules that govern what a prosecutor or law enforcement agent can release to the media.

CONFIDENTIALITY

Regardless of whether the veterinarian is working for the prosecution or the defense, it is important to be aware of the confidential nature of the relationship. The veterinarian's photographs, videos, and records belong to the agency that brought them into the case. Only specifically assigned

personnel may collect evidence or take still or video photographs at the scene or of the animals. The use of private cameras (including cell phones) must be strictly prohibited. In addition, personnel associated with the case may not tweet, text, post, or in any other manner share information gained, and this includes family members and friends. Caution should be taken to communicate only with authorized personnel. A careless mistake could result in sanctions against the veterinarian or against the inviting agency.

FILING CRIMINAL CHARGES AND HEARINGS

The filing of criminal charges is a decision made by law enforcement officers (including animal control officers) and prosecutors. The basic standard for arrest and for the filing of criminal charges is probable cause, which means that it is more probable than not that a crime was committed and it is more probable than not that the authorities have arrested the person or persons responsible.

After criminal charges are filed, there are often court hearings that take place in advance of the trial. A veterinarian may have to testify during a financial bonding or cost of care hearing, which is critical in a large scale case. During this type of hearing the veterinarian may be asked to state why it was necessary to remove the animal(s). He or she may also be asked to testify regarding how much money the defendant should have to pay for the cost of care of the animal(s) while the case is pending. It is helpful to use a case status form to keep a record of the legal proceedings including but not limited to: the names and contact information for the parties (including the attorneys); the assigned courtroom and judge; the dates of any depositions, hearings, or trials; and the ultimate outcome (see Appendix 2).

The defendant may also request a hearing for the court to order the prosecution to allow an independent examination of any seized animals or other evidence. If the defense requests an independent evaluation it should be allowed if at all possible with any necessary safeguards put in place. For example, the prosecutor may ask to be present or have another veterinarian present. As a safety measure, the defendant should not be allowed to be present during any independent evaluation of the animal. Depending on the exact nature of the request, a veterinarian may be needed to advise the court as to whether or not the requested testing could jeopardize the animal's health or if there is an inherent danger to the animal that overrides any possible benefit.

It should be noted that in cases in which animal abuse is associated with family violence, a growing number of jurisdictions now include animals in protective orders or restraining orders. In some states, the imposition of a

protective order protecting a human victim is discretionary, and in other states it is mandatory. These types of orders are used in virtually all pending family violence and other victim-based cases. They are court-issued orders designed to protect victims from their alleged abusers while awaiting trial or other disposition of the case. The individual against whom the order is entered is commonly ordered to have no contact directly or indirectly with the victim. The intent is to protect victims from further injury or intimidation.

In many states animals are now recognized as protected property in a restraining order. These orders can exist in civil and divorce proceedings in addition to criminal proceedings. Veterinarians may be called upon as expert witnesses in various types of hearings. The addition of a no-contact-with-animals clause is a substantial step toward protection of animal victims in family violence cases. Several jurisdictions issue animal protective orders even when family violence is absent, thereby recognizing animal cruelty as an autonomous and serious crime. On occasion the testimony of a veterinarian may be key in seeking a court order to protect an animal.

Expert qualifications

If criminal charges are filed, it is likely that the veterinarian will be endorsed as an expert witness. All experts should prepare a curriculum vitae (C.V.), keep it current, and furnish a copy to the prosecutor. It does not have to be lengthy or detailed. It should contain information about the expert's educational background including but not limited to date and location of undergraduate degree, veterinary degree, licensure, any specialized degrees, or board certification; experience in the field and any special expertise; employment (present and past); any publications; and whether or not he or she has testified before as an expert witness.

Rules of evidence and laws regarding expert witnesses

The basic standards regarding the admissibility of expert testimony are as follows:

1. Is the testimony reliable?
2. Is the expert qualified?
3. Is the testimony relevant?

The Federal Rules of Evidence contain the general guidelines for expert testimony, which are followed by most courts in the United States.

Rule 702 states: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified

as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.”

Rule 703 states: “The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect.”

Rule 704 states: “Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.”

Courts subject veterinarians to the same scrutiny as all other expert witnesses when deciding whether to allow their testimony. The United States Supreme Court and the Court of Appeals of the District of Columbia created formulas for measuring the admissibility of expert testimony in two significant cases: *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *United States v. Frye*, 293 F. 1013 (D.C. Cir 1923). Because the standards in each case differ, most states either follow *Daubert* or *Frye* or portions of both in their determination of expertise. Following is a brief summary of each case.

Courts using *Daubert* hold that general acceptance of the underlying principle of the scientific evidence is not required. Instead, they consider:

1. Whether the theory or technique can be and has been tested
2. Whether the theory or technique has been subjected to peer review and publication
3. The known or potential rate of error
4. The existence and maintenance of standards controlling its operation
5. The degree to which the theory or technique has been generally accepted by the relevant scientific community

Courts using *Frye* require general acceptance of the principle underlying the scientific evidence for it to be admissible, stating: “Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this grey zone the evidential force of the principle must

be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs. Scientific publications, judicial precedent, practical applications, or testimony from scientists as the beliefs of their fellow scientists are suggested methods to prove this acceptance.”

Types of experts

Fact witness

The veterinarian is a fact witness if she has personal, direct, first-hand knowledge of either the incident or the involved individuals. This knowledge is based on what she saw, touched, heard, smelled, read, felt, or did.

Opinion expert

All licensed veterinarians should be able to be qualified to testify as an expert based on their specialized training and experience. Following are the common areas of veterinary expert witness testimony: determining the cause of death; sequence of injuries and timing of premortem or postmortem wounds; distinguishing between death and injury resulting from human vs. non-human causes (for example predation) or intentional vs. accidental injury; identifying evidence that may link the injuries to a particular suspect or particular weapon; commenting on reasonably prudent actions that could have been taken to prevent disease, injury, or death; offering opinions regarding the speed of unconsciousness and/or death, including the degree of pain and suffering; and commenting on reports provided by other veterinarians or investigators.

Consulting expert

The veterinarian may also be a consulting expert. A consulting expert may also be a fact witness if he is able to make direct observations of the evidence, including the animal. The consultant may or may not testify in a case and may or may not be made known to the opposition. He has specialized knowledge, training, and experience that assists in analyzing and evaluating the evidence in a given case. Several types of situations give rise to this need. For example, a consultant may be contacted in a criminal case in which the animal was not evaluated or treated by a veterinarian, and in some instances where the animal itself was not or is not available for examination. In some cruelty cases the animal may have been cremated, may have been disposed of by one of the parties, or may have run away. The consultant’s expertise is also valuable in complex

veterinary medical cases or those involving exotic or rare species. Some cases require expertise in unique animal features, complex diseases of an animal, or cases that involve unusual issues related to the cause and manner of injury or death.

In some instances an attorney or law enforcement agent may seek an analysis of the records and findings of a veterinarian who has been hired by the opposition. It is critical for the consulting expert to be provided with every document and report attributable to the other veterinarian as well as relevant information, evidence, and photographs related to the case. The consulting veterinarian must have context to accurately evaluate the case.

The consulting expert may be asked to prepare a report regarding his or her analysis. As a result, the expert may be endorsed as an expert witness in the case. In a criminal case, if the expert (retained by the prosecution) reaches an opinion that the suspect was not involved, or that no crime was committed or that the suspect should otherwise be exonerated, then the prosecuting authority is under an affirmative obligation to disclose the information to the defendant or his or her defense attorney.

A consulting veterinarian also may be used in a different manner. An attorney may ask the veterinarian to attend a portion of a court proceeding to observe an expert testifying for the opposition. This type of consultant should also be familiar with the facts of the case and with any expert opinions that are already a part of the case file. In this scenario, the consultant is called upon to assist the attorney in the preparation of the cross-examination of the expert they are observing. On occasion these consultants may be asked to testify in rebuttal. In other words, they may be called to rebut what the observed expert said on the witness stand. This procedure is permitted under Rule 703 of the Federal Rules of Evidence which states that the expert may base his or her opinion or inference upon facts or data made known to the expert during a court hearing.

Social media

In the present electronic age all witnesses must be aware that the parties and lawyers in a pending case will do an Internet search about them, including their practice, clinic, or hospital. Like all expert witnesses, veterinarians need to be very careful about what they post on Facebook, MySpace, Twitter, or any other social media sites. Whatever is posted may be used against them when they testify. No one should have a false sense of security merely because they must “friend” someone before that person gains access to their information. Additionally, anything that is put on a C.V. will be investigated.

In addition to social media sites, veterinarians should be aware that attorneys have resources readily accessible that contain information about expert witnesses. Transcript banks contain prior testimony and prior depositions. If a veterinarian has testified on a previous occasion on a topic relevant to the current case, the opposing side will likely have a copy of the veterinarian’s earlier testimony. Any conflicts may be used to impeach the veterinarian during the current case proceedings.

Credibility

The actual jurors who are sworn in to hear a case are the jurors who remain after both the prosecution and defense have excused the jurors that they believe cannot be fair and impartial to one or both sides. During the jury selection process (known as “*voir dire*”) jurors may indicate that they simply are not able to sit on a case involving animal cruelty. The jury pool may also include some individuals who have never owned pets, do not like animals, and/or do not believe that animal cruelty should be treated the same as other types of crimes. During the jury selection process the prosecution and the defense will seek to elicit responses from the potential jurors that will assist the attorneys in determining who to excuse. Each side has a limited number of jurors that they can release from the case.

Prior to deliberating, the court will give the jury guidelines regarding the credibility of witnesses. The credibility of an expert is just like that of any other witness. The jury is told that they should carefully consider all of the testimony including each witness’ knowledge, motive, state of mind, demeanor, and manner while on the stand. They are also instructed to take into account the witness’ means of knowledge, ability to observe, and strength of memory. They are to reflect on any relationship each witness may have to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. They may believe all of the testimony of a witness, or part of it, or none of it.

NON-CRIMINAL CASES

There are several types of cases in which the veterinarian may be called upon as an expert. In some of these cases the veterinarian may have to testify in court proceedings.

- Animals in restraining orders
- Fatal dog attacks
- Accepted animal husbandry practices
- Animal custody disputes in divorce proceedings
- Disciplinary hearings against a veterinarian

- Administrative hearings regarding kennels and shelters
- Zoonotic diseases and other public health issues

TRIAL

When the case proceeds to trial, the jury is reminded that the defendant is presumed innocent and that the burden of proof is upon the prosecution to prove the case beyond a reasonable doubt. The jury is instructed that a reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative, or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

Subpoenas

A subpoena is a court order directing the witness to appear in a particular courtroom on a specific date at a specific time. There are two types of subpoenas: one is a subpoena to testify, and the other is a subpoena *duces tecum*, otherwise known as a subpoena to produce evidence and to testify. Both are official court orders and require compliance. The prosecution has the obligation to arrange for every one of their witnesses to testify in person during a trial. A trial is scheduled to begin on a certain date and may last from several hours to several weeks. Subpoenas are issued for a start date and starting time. Many if not most of the witnesses will be called to testify later that day or on a subsequent day. Testimony does not begin until the jury selection process has been completed. In complex cases, jury selection may take several hours or even days.

Often the prosecutor and the defense attorney subpoena every veterinarian to testify even if only one is necessary to prove their theory. This is a common practice and is designed to allow the attorneys some flexibility as the court date approaches. The attorney that subpoenas a witness should call that witness and let him or her know, in advance, if he or she will be called to testify. If the attorney does not initiate a call, the veterinarian should call the attorney and arrange a meeting in advance to go over any expected testimony and anticipated cross-examination.

Most witnesses are subpoenaed by mail. If the prosecution is dealing with a "hostile" witness or a witness that they fear will not show up in court, then that witness will be personally served with a subpoena. Remember that a subpoena is a lawful court order and the veterinarian must appear in court at the time and place on the subpoena. Often cases do not proceed as originally scheduled. The case may be postponed or may be continued by the defense, the pros-

ecution, or the judge. Additionally, it is not uncommon for more than one case to be set on the same date in the same courtroom and only one can proceed to hearing, resulting in delays for the other cases. Most prosecutors have victim/witness coordinators to advise the witnesses of any scheduling changes. The attorneys should try to accommodate the veterinarian and consider the witness' schedule and commitments. The lawyers are routinely able to place the witness "on call" and give him or her enough notice to travel to the courthouse, find a place to park, and get to the courtroom.

If a veterinarian is subpoenaed by the defense, he or she must comply with the subpoena and understand that the prosecutor has no authority to release him or her from that subpoena or place him or her on call for that subpoena. The veterinarian should let the prosecutor know that the defense has subpoenaed him or her so that perhaps the lawyers can work on scheduling the testimony to be most convenient for the witness.

If a veterinarian receives a subpoena and realizes that he or she will not be able to appear on the date set in the subpoena, the veterinarian must let the attorney know as soon as possible. The attorney may be able to rearrange witnesses to allow for some flexibility and, if it is essential, the attorney may be able to ask for a postponement or to reschedule the case. If it is not possible to reschedule the case, the expert may have to work with the lawyers to facilitate his appearance in court during the time required.

When the witness arrives at the courthouse it is important to be aware that there will be numerous individuals in the building that are or may be involved with the case. There will be other witnesses (including other experts), possible co-workers of the witness, law enforcement, attorneys, friends and relatives of the parties, courtroom observers, media, and jurors. It is critical to be professional, respectful, and courteous at all times. It is advisable to turn off cell phones.

In most court hearings and trials, the judge will impose a sequestration order. That means that there can be no conversations about the case with other witnesses who are waiting to testify or with witnesses who have already testified. If a sequestration order has been entered, witnesses may not watch the proceedings before they testify and most likely after they testify. The exception to the sequestration order is that the witness may talk to the lawyers or the lawyers' advisory witness. An advisory witness is a witness that assists the prosecution or the defense during the trial. He or she usually sits at the attorney's table throughout the trial. In most cases the assigned investigating detective is the advisory witness.

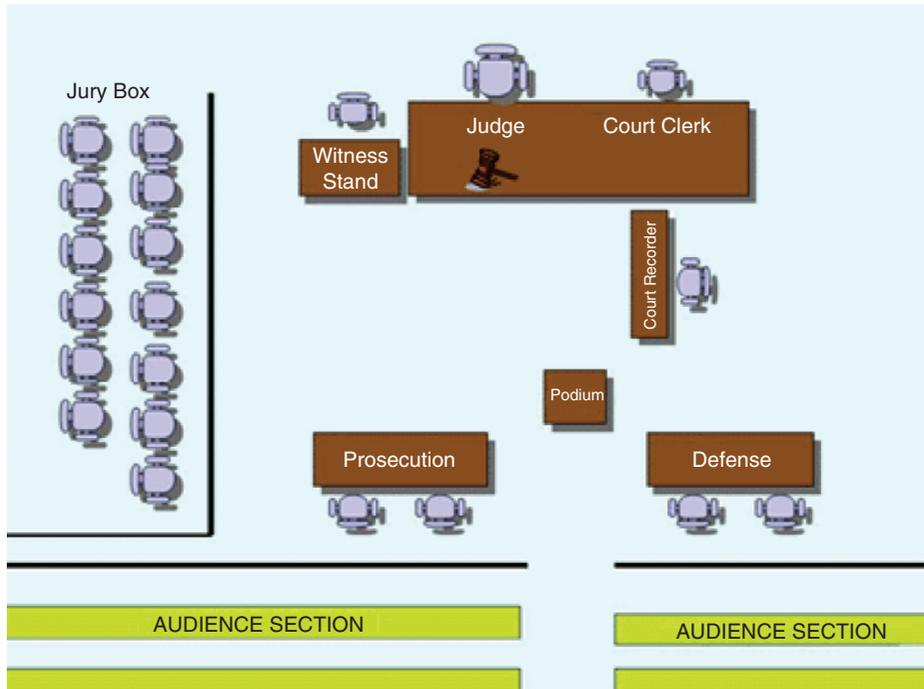


Figure 1.1 Courtroom diagram. (Photo courtesy of Diane Balkin.)

If the veterinarian is unfamiliar with the courthouse it is advisable to arrive early to survey the landscape and the parties (Figure 1.1). It is advisable to use the restroom prior to testifying. It is best to use a restroom on a floor other than the floor with the courtroom in order to avoid any interaction with potential jurors or other witnesses. It is important for the witness to follow courtroom decorum and avoid behavior that can be distracting or perceived as unprofessional including chewing gum, overtly sighing, or making facial expressions such as rolling one's eyes.

If a veterinarian receives a subpoena to produce, it also must be honored. On occasion an attorney may already have the basic information relevant to a case but may choose to serve a subpoena to seek additional information that may or may not be relevant. The veterinarian should contact the party who sent the subpoena to clarify the matter if there is any confusion. Be aware that these subpoenas are a court order directing the witness to appear in court with the requested documents. The witness should take care not to simply turn over the requested documents to the party who has subpoenaed them. Also, if the subpoena directs the veterinarian to produce items over which he or she has

no custody or control the veterinarian needs to so advise the attorneys.

Preparing for court

A veterinarian who is expected to testify should be contacted by the prosecutor prior to testifying. Additionally, the veterinarian may be contacted by opposing counsel. All witnesses have the right to speak to or to refuse to speak to either or both. Prior to any pretrial or pre-deposition interviews the veterinarian should review all of the information he or she has about the case to refresh his or her recollection. The veterinarian should be aware of exactly who he or she is talking to and which side they represent. It is perfectly proper to ask for photo identification. It is also important to ask whether or not the interview is going to be recorded. The witness may also request that a representative from the prosecutor's office attend the interview. A deposition is recorded and typically attorneys from both sides are present. If an interview or a deposition is recorded, it is important for the witness to demand to be provided with an unredacted copy of the recording immediately after the interview or deposition has concluded. This request should be reflected on the

recording itself. All interviews and depositions should be reviewed prior to testifying at any court proceeding.

Testifying

First and foremost it is imperative for any witness to tell the truth. Veterinarians as a profession are respected, liked, and trusted. It is important for the veterinarian to listen closely to the questions and answer only what is asked. The jurors are not scientists so the expert must explain his or her observations and opinions in a manner that is easily understood and that relates to the elements of the charge. The veterinarian should be respectful to all parties and should not argue and should not interrupt. He or she should avoid saying "I believe" or "I think" or "I imagine" or "I guess." And if the veterinarian does not know an answer he or she should say they do not know.

The veterinarian should bring all notes, medical documents, and C.V. to any pretrial meetings to make sure that the attorney has everything. He or she may bring these notes and documents to court but it is not necessary to do so if the attorney has a copy readily available. It is important to be aware that anything that is used by the veterinarian to prepare for trial is discoverable.

During the testimony phase it is critical to listen closely to the question and to have it rephrased if the veterinarian is unable to answer it as it was stated. If an attorney raises an objection after a question is asked, the veterinarian should wait for the judge to rule on the objection before answering. If the objection is sustained the question may not be answered. If it is overruled it must be answered.

It is not necessary for the veterinarian to memorize all of the records ahead of time. He or she may refer to such documents in court to refresh recollection so long as the documents have been provided to opposing counsel. In cases involving several animals it is not unusual for the veterinarian to refresh his or her memory by looking at the records of a particular animal. This is a perfectly proper and understandable procedure.

Be aware that if the prosecutor writes some or all of his or her expected questions for the veterinarian during pre-trial preparation, and if the veterinarian responds to the prosecutor with written responses, then the document is considered discoverable and must be provided to the defense attorney. In some jurisdictions all communications authored by an expert, including e-mails, must also be turned over during the discovery process.

Qualifying the expert witness

Before the expert is allowed to give an opinion, he or she must first be accepted by the court as an expert. The parties

may stipulate that a given witness is qualified as an expert. If there is no agreement then the party offering the expert must lay a foundation for the judge. The opposing party may *voir dire* (or question) the witness's qualifications during this phase of the proceeding.

What sets one veterinarian expert witness apart from another can be a combination of factors including experience, training, specialty areas, and academic achievement. Aside from providing the prosecutor their C.V. as part of case preparation, veterinarians should explain their credentials in terms of the minimum requirements it takes to be a licensed veterinarian and what features they possess that are above and beyond minimum standards. The veterinarian should also point out any specialized training and experience. The expert's qualifications should be discussed with the prosecutor before testifying.

When the expert veterinarian finally takes the witness stand and is sworn in, the first order of business is to qualify him or her as an expert. Prosecutors lay the foundation by having the veterinarian describe his or her background including training and experience. Veterinarians typically have expertise in several aspects of medicine, including but not limited to anatomy, surgery, radiology, infectious diseases, and emergency medicine. This is not often the case for their human medical counterparts, who have subspecialties of expertise (board certification). The prosecutor should go through all the areas of the veterinarian's expertise that are relevant to the trial or hearing.

The following is a typical line of questions asked of the expert:

- Please state your name.
- What is your current occupation and where are you currently employed?
- Are you licensed to practice veterinary medicine? In what state(s)? For how long? What were the licensure requirements?
- Do you have any special certifications?
- What is your title and what are your responsibilities in general and specifically related to the field of _____?
- Briefly describe your educational background.
- Briefly describe any special training and continuing education you have received related to the field of _____.
- Describe any previous employment and experience you have had in the field of _____.
- Can you estimate how many cases you have handled involving _____?

- During your training and while on the job has your testing and findings been subject to administrative review? What's the purpose for this type of review?
- Do you belong to any professional organizations?
- Have you written any articles on topics related to _____?
- Have you delivered any presentations on the topic of _____ at professional meetings?
- Have you ever been qualified as an expert witness before? How many times and in what courts?
- Offer Dr. _____ as an expert in (veterinary medicine, veterinary forensics, veterinary radiology, etc.)

Depending on the field of expertise and the nature of the case, the prosecutor may ask that the witness be qualified as an expert in the general area of veterinary medicine or a specific area or areas such as veterinary forensic medicine, animal fighting, animal cruelty, or possibly a subspecialty such as radiology.

As soon as the witness is offered as an expert the judge will ask the defense attorney if they object. If they state that they have no objection, the witness will be accepted as an expert. If they object then they can simply object or they can *voir dire* the witness.

At this stage of the proceeding the *voir dire* is limited to the veterinarian's qualifications—it has nothing to do with the actual facts of the case. *Voir dire* may include but is not limited to questions about how long the witness has been licensed, whether or not he or she is board certified, if the witness has ever testified as an expert on any previous occasion, how many necropsies he or she has performed, or whether or not he or she actually has examined or treated a certain species.

At the conclusion of the attorney's *voir dire* the judge will decide whether or not the witness has been qualified as an expert and if so, in what area(s).

Demonstrative evidence

Most jurors and judges are visual learners. It is always advisable to use demonstrative evidence to assist them. Demonstrative evidence can be used in any type of a court proceeding. It includes actual evidence, such as a chain, knife, or bottle of poison as well as illustrative evidence such as photographs, charts, or diagrams. A courtroom is like a classroom and demonstrative evidence is a tool that can help educate the jurors and judge. The veterinarian may assist the prosecutor in selecting photographs that are most demonstrative and appropriate to illustrate relevant evidence (Chapter 3). In a case of self defense, it may be relevant that the animal was shot while retreating rather

than advancing. Demonstrative evidence in the form of a diagram showing the wound path can assist the jury in evaluating the case. In a case in which canine DNA is a critical piece of evidence, a chart showing the unknown canine DNA profile side by side with a known canine DNA profile that matches is a common type of demonstrative evidence.

Crime shows such as “C.S.I.” have had an incredible impact on jurors. They expect forensic, state-of-the-art evidence and expert crime scene technicians in every case. Prosecutors typically discuss this during the jury selection process. Veterinarians should be aware that jurors may have these unrealistic expectations of them as well.

If the animal was cremated, or was never found, a photograph of the animal can be introduced. If the weapon is missing, a weapon similar to the weapon or a photograph of the weapon that was used may be introduced. Body condition charts are valuable tools for both the clinic and the courtroom and are objective standards that the judge and jury can appreciate and accept. Sometimes the prosecutors need to be educated by veterinarians about the educational tools available for the courtroom. Admissibility, resources, and use in the courtroom may vary greatly among prosecutors and jurisdictions.

It is common for photographs depicting deceased or mutilated animals to draw vigorous objections from the defense. Defense attorneys argue that these images are more prejudicial than probative and will likely inflame the jury. Prosecutors should anticipate such objections during trial preparation. The key to overcoming these objections is to honestly ask the veterinarian whether or not he or she needs the exhibit to assist him or her in explaining what happened to the animal or to explain the basis of his or her expert opinion. The prosecutor should argue that there is a legitimate purpose for showing the photograph because it will assist the expert in explaining a certain theory or finding to the jury.

Cross-examination and attacking the expert

Before testifying, the veterinarian should prepare for cross-examination. One of the most common attacks on the expert is that he or she is biased and that he or she always testifies for one side rather than the other. The opposition may also try to expose the expert's bias based on the fact that he or she received some type of compensation for his or her opinion. There may be cross-examination regarding postings on the expert's social media sites or questions about memberships in groups and organizations.

They may attack the veterinarian regarding the basis of his or her opinion. For example, they will try to suggest that critical facts exist that the veterinarian failed to

consider or that the veterinarian assumed the truth of facts that were not verified. Additionally, they may argue that the veterinarian's examination was incomplete, substandard, or defies common sense. Another common technique is to make the veterinarian agree that there is room for varying opinions.

Anticipating the defense

There is accuracy to the statement that "a chain is only as strong as the weakest link." The same is true with any criminal case. If the veterinarian is a witness for the prosecution, the best way to face this issue is to anticipate any potential defenses. Although this is the prosecutor's job it is prudent for the veterinarian to also be prepared.

Assuming identification of the perpetrator is not an issue, perhaps the most common defense in a cruelty or neglect case is that it was an accident and the defendant had nothing to do with the resulting injury. In some cases it may be difficult to definitively state one way or the other but the veterinarian must remain objective and unbiased. In many jurisdictions it is a recognized defense to animal cruelty that the acts or omissions were part of accepted animal husbandry which means practices generally recognized as appropriate in the care of animals consistent with the species breed and type of animal. The veterinarian needs to be aware of the accepted standards in the community if this defense is raised.

There is another group of defenses that are called confession and avoidance, meaning the defendant admits the act but tries to avoid accountability due to some type of recognized legal excuse. What they are saying is "I did it, but I was justified or I am legally entitled to be excused." Among these defenses are self-defense, defense of others, defense of property, and training or discipline. Also included in this group are the mental defenses, for example, intoxication, insanity, and impaired mental condition.

Prosecutors must also be aware that the defense may simply argue that an element or significant aspect of the case has not been proven beyond a reasonable doubt. This includes failing to prove the defendant's mental state; failing to rule out natural causes, predation, or accident; and failing to disprove a recognized defense. Another tactic that may be used by the defense is to hire an expert whose opinion is at odds with the prosecution expert's opinion. In this way the defense may argue that the jury simply cannot decide who to believe, thus establishing a reasonable doubt.

The veterinarian's opinion should not be affected whatsoever by who hires him or her or who subpoenas them to testify. A veterinarian's report and subsequent testimony should be based on facts and accepted scientific principles.

The simple fact is that all the expert needs to remember to do on the witness stand is tell the truth.

Sentencing recommendations

After a defendant is convicted by a jury or pleads guilty or pleads no contest, he or she will be sentenced. Often there is a stipulated sentence that is agreed upon with the prosecution as part of a negotiated disposition. Sentencing for a crime against an animal can range from probation to incarceration. The crime may be a municipal code violation, a misdemeanor, a felony, or a federal offense. If sentenced to probation, many states require a mental health evaluation and treatment. Depending on the facts of the case, family violence counseling or sex offender counseling may be required. Some courts impose a fine or some type of community or public service. In some cases when probation is ordered, the prosecutor should ask that the judge enter an order banning the defendant from any animal ownership and ordering that the defendant have no contact with animals. On occasion a veterinarian may be called upon to testify during the sentencing phase to assist the judge in understanding the dangerousness of allowing a particular defendant to own or be in contact with an animal.

COMPENSATION FOR THE VETERINARIAN

In many jurisdictions, if the individual responsible for the abuse is convicted, it is likely that the prosecutor can ask the court to order reimbursement to the veterinary hospital, clinic, or shelter as part of any restitution order. There is variation regarding whether or not and how much a veterinarian may charge as a fee for his or her services. Working with cruelty cases can be labor intensive and may include having to review voluminous records and then generate a report. Some cases require depositions, courtroom testimony, or out-of-state travel. Veterinarians should keep a record of time spent on a case and any attendant expenses. They can charge by the hour, half day, or full day for their time and may consider a minimum charge. Charging for their time may include travel time, casework (crime scene and/or examination time), report writing, depositions, interview, phone consults, courtroom preparation, and actual testimony. They can also charge by the case or procedure. In cases where the animal-investigating agency has a laboratory account for submission of diagnostic testing, the veterinarian may charge for his or her time for reviewing the test results. Consideration should be made for any out-of-pocket expenses such as supplies, diagnostics, etc. If there is a test or procedure that should be conducted for the veterinarian

to better evaluate the case, and if circumstances permit, the test or procedure should be conducted without regard to cost. The investigating and/or prosecuting agency that requested the veterinarian's assistance should be responsible for payment to the veterinarian. Ideally a fee structure and payment agreement should be established at the beginning with the responsible party. There may be situations where the veterinarian incurred expenses for the animal prior to the investigation which may be recovered from the defendant after conviction in the form of restitution. Some veterinarians do not charge for their time or services rendered. Others may have received public or private donations to offset the cost of care for the animal.

Veterinarians should be aware that if they are paid for their services this must be disclosed by the prosecution in a criminal case. This fact may be used in cross-examination of the veterinarian and the defense may argue that the veterinarian was paid for their testimony. The defense does not have to disclose this fact to the prosecution; however, most prosecutors will simply ask the expert in advance of their testifying.

CONCLUSION

The veterinarian's role is essential in the investigation, evaluation, and prosecution of suspected crimes against animals. His or her expertise is also invaluable to exonerate

those individuals who should not be prosecuted. The forensic veterinarian needs to be part of a collaborative effort to reach a fair and just resolution to a case of animal cruelty.

REFERENCES

- American Animal Hospital Association (AAHA). www.aahanet.org. Positions and Endorsements.
- Arkow, P. The Veterinarian's Role in Preventing Family Violence: The Experience of the Human Medical Profession. <http://www.animaltherapy.net/Vets-abuse.html>.
- American Veterinary Medical Association (AVMA). www.avma.org. AVMA Policy.
- Munro, H.M.C. and M.V. Thrusfield. 2001. Battered Pets: Non-Accidental Physical Injuries Found in Dogs and Cats. *Journal of Small Animal Practice*. 42:279–290.
- Neumann, S. 2005. Animal Welfare—the Need for a United Veterinary Voice. *Canadian Veterinary Journal*. 46(9): 834–836.
- U.S. Department of Health and Human Services (USDHHS). U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training. In: *Public Health Service Policy on Humane Care and Use of Laboratory Animals*. <http://grants.nih.gov/grants/olaw/references/phspol.htm#principle>.