

Veterinary Forensic Evidence in Animal Cruelty Cases¹

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As of August, 2001, thirty three states and the District of Columbia have reclassified certain forms of severe animal cruelty as felony offenses, carrying the potential for large fines and prison sentences upon conviction. This represents part of a general trend toward growing intolerance of animal abuse and increased interest among law enforcement officials in bringing such cases to trial (Lockwood, 2000). As more animal cruelty cases are brought before the court, veterinary professionals will increasingly be called upon to provide testimony in these cases.

The veterinarian's role in the prosecution of cruelty cases may involve one or more of the following:

1. Assisting in determining the identity of the victim, including species and, in some cases, the individual animal.
2. Commenting on reasonably prudent actions that could have been taken to prevent disease, injury or death.
3. Determining the cause of death and the sequence of injuries and timing of pre-mortem or post-mortem mutilations or other treatment (e.g. hanging, burning or impaling). This may include observations at the scene of the injury as well as necropsy and laboratory analyses.
4. Distinguishing between death and injury resulting from human vs. non-human causes (e.g. predation) or intentional vs. accidental injury.
5. Identifying evidence that may link the injuries to a particular suspect. This would include recovery of trace materials (e.g. ligatures, adhesives, wax, paint, flammable substances) and analysis of injuries that might be linked to a unique source, such as stab wounds.
6. Offering opinions regarding the speed of unconsciousness and/or death and the degree of suffering the victim experienced.

In general, there are two types of witnesses who testify in criminal proceedings: factual witnesses and expert witnesses. A factual witness testifies only to what he or she saw, heard, felt, smelled, tasted, or did in association with an event. The factual witness is not generally allowed to tell what others have said (hearsay) or to offer opinions or responses to hypothetical questions.

A veterinarian who has examined a victim of animal cruelty can testify as a witness to the facts. In addition, any veterinarian associated with a case will likely be considered an *expert* witness, capable of rendering an opinion on the evidence that falls within her area of expertise. Any testimony she may give based upon review of evidence collected by others, such as another veterinarian, police officer or a cruelty investigator, will also be considered *expert* testimony.

A veterinarian may become involuntarily involved as a witness in the prosecution of an animal cruelty case, particularly if he examined at any time the animal who was the victim, even prior to the onset of abuse or neglect. For example, if a pet owner has been charged with starving their dog to death

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(criminal neglect), either the prosecution team or the defense may choose to subpoena any veterinarian who has previously examined that animal to attest to the level of care the dog was receiving at that time. In most cases, veterinarians are asked by either the prosecution or the defense to act as expert witnesses voluntarily, and may choose to be paid for their involvement in a case.

Expert testimony has come under much closer scrutiny in recent years as courts have tried to deal with accusations of expert testimony based on “junk science” or unqualified experts. Most states regulate such testimony under rules based on Federal Rules of Evidence, specifically Rule 702, which defines who is qualified to give expert testimony, and Rule 703, which identifies what the testimony may be based on.

In some cases, a veterinarian may be asked to provide testimony on topics outside the basic common practice of veterinary medicine. For example, he may testify regarding analysis of bite wounds, toxicological or serological evidence, or on issues of animal behavior. Other animal-related professionals may provide testimony in areas such as dog training, which do not have a well-defined body of scientific literature. In these cases, the court is viewed as having a “gatekeeping” role to insure that any such testimony be on “good grounds”. The accepted standards for admissibility of expert opinions was established by the U.S. Supreme Court in **Daubert v. Merrill Doe Pharmaceuticals (1993)**, a case that relied heavily on expert testimony regarding the possibility that birth defects were caused by the morning sickness drug Bendectin.

Testimony based on novel application of forensic techniques to an animal cruelty prosecution is likely to be subjected to a **Daubert** test. Under Daubert, a court should consider:

1. whether the expert’s hypothesis can be and has been tested;
2. whether the expert’s methodology has been subjected to peer review and publications;
3. how often the methodology yields erroneous results;
4. whether controls over the methodology exist and are maintained; and
5. whether the scientific community has accepted methodology

In general, scientific testimony has a disproportionate impact on jurors. In addition, veterinarians and others who care for animals may benefit from a “halo effect”, associated with their positive image as protectors of animal well-being, which can give them credibility outside their immediate area of expertise (Lockwood, 1985). Some judges, to guard against any bias this might produce, may set a higher standard for testimony from such professionals. The expert’s remarks should always be “probative” (i.e. they must address the truth of points being raised) and “non-prejudicial”, (i.e. they cannot be motivated by an attempt to place a suspect in a bad light.)

As in all phases of animal cruelty investigation, successful courtroom performance requires good record-keeping. The bulk of veterinary testimony will be based on case records. In addition to recording all clinical procedures, treatments, tests and analyses, those caring for or examining animal victims should also log all contacts with investigators, law-enforcement agencies and prosecutors in the case.

A forensic veterinary examination or necropsy will differ from procedures conducted in regular practice. The standards for recoding, storing, tracking and transporting any evidence must be beyond criticism. Each piece of evidence must be recorded in such a way as to preserve an unquestionable “chain of evidence”. All photos, samples, notes, etc. must have complete identifying case information and records must be kept of anyone who has examined, handled or transported the evidence.

In general, forensic procedures require extra effort and constant attention to minor details that may be of significance. Many times veterinarians assisting with animal cruelty cases make the mistake of only pursuing the obvious lesions during necropsy. They may retrieve the bullet, but fail to notice healing limb fractures or evidence of starvation. A thorough necropsy should be performed and carefully documented in every case, even when the cause of death is easily discerned. A judge and jury will expect a high quality of work. Ideally, full body radiographs of the victim should be taken, consisting of at least two views perpendicular to each other (lateral and ventrodorsal views, for example). This step often identifies previously undetected projectiles, metallic fragments within old projectile wounds, broken bones, healing fractures, enlarged or shrunken thoracic or abdominal organs, and other abnormalities. Each radiograph must bear legible permanent identification that includes the date, the name of the hospital where the radiograph was taken, the case number, and the animal's identification number. At minimum, fresh (frozen) and fixed samples of lymph nodes, intestines, lung, spleen, brain, heart, liver, and should be taken, as well as any tissues associated with lesions. Even the bag, box, towel or other container used to carry the remains being examined should be kept for samples of dirt, hair, feathers, fibers, vegetation, dried blood, insects or other material that may be important.

Cruelty investigators are often told by veterinarians that animal remains in a cruelty investigation are too badly decomposed for meaningful analysis. However necropsy of decomposed remains may yield evidence of pathogens or toxins linked to cause of death as well as other potentially useful information from non-pathogenic organisms (e.g. diatoms associated with drowning), marks on bone and other material.

Prior to testifying, the witness should compile and review records, paying attention to time tables and the history of contacts regarding professional involvement in the case. The witness will not be expected to have all of this in memory and will be allowed to refer to these records when testifying, but any written work product that may be entered into evidence can be reviewed by opposing counsel. The witness should review any prior testimony (e.g. deposition) she may have given in earlier proceedings to refresh her memory about what you have already said. If conclusions or interpretations have changed since the earlier prior testimony, counsel should be advised of these changes.

It is important to prepare counsel for using expert testimony effectively. The witness should provide an up-to-date c.v. and copies of relevant professional publications. She should review professional strengths and be forthcoming with the prosecutor or other counsel about potential weaknesses (e.g. "this is the first gunshot wound I have seen"). Make sure counsel understands any arguments that need to be made.

In dealing with a prosecutor, the expert witness must remember that this individual is *not* his attorney, so discussions and correspondence are not protected by attorney-client privilege. If the expert has concerns about participation in this process, he should consult with his own attorney.

Testimony from experts is generally first introduced through the process of direct examination by the counsel that retained your services, e.g. the prosecuting attorney. There should be few surprises during this process, but the witness should be sure she understands each question and pause briefly before answering. Statements should be confident, but should not appear rehearsed.

Expert witnesses in animal cruelty cases, particularly veterinarians, are often surprised by attacks on their expertise. Opposing counsel will attempt to characterize the expert as less than thorough, even incompetent and unfamiliar with the particular circumstances of this case. Since the standard for prosecution in serious felony cases is usually proof "beyond reasonable doubt", his role will often be to suggest that the evidence presented should be seen as not meeting this standard – to

exploit normal professional caution and make it appear as doubt. He may point to a lack of special training in the area in question, relevant experience with the species involved, or *direct* knowledge of the animal, suspect or circumstances involved. (e.g. “You never actually *saw* my client break the cat’s leg, did you?”).

Veterinary evidence gathered in the investigation of animal cruelty helps tell the story of a creature who may have suffered or died. The experience of providing testimony can be stressful and unnerving for anyone, regardless of experience and professional expertise. When the result is a just verdict that may prevent future animal or human suffering, the experience can also be deeply satisfying.

REFERENCES

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