

LEX CANIS

ANIMAL ABUSE IS VIOLENCE.

ASSOCIATION OF PROSECUTING ATTORNEYS QUARTERLY NEWSLETTER | SPRING 2012 VOLUME 4 ISSUE 1



If you have questions regarding the ALDF, or would like to request assistance, please contact Scott as follows:

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The Animal Legal Defense Fund (ALDF), founded in 1979, is a national, nonprofit organization of attorneys specializing in the protection of animals and working to ensure the enforcement of animal protection laws within the United States. ALDF has staff in California, Colorado, Florida, Oregon, Texas, and Wisconsin, with a nationwide membership of more than 100,000 contributors and 1,000 attorney members who provide pro bono legal work in animal law cases throughout the nation. Scott Heiser runs the ALDF's Criminal Justice Program, in Portland, OR. As legal awareness of the plight of non-human animals continues to heighten, the law is evolving to afford these silent victims more protections from abuse and neglect. It is against this backdrop that ALDF's Criminal Justice Program operates, providing free prosecution assistance in animal neglect and cruelty cases throughout the nation. In the interview below, APA President David LaBahn talks with Scott about his career history, his position at ALDF, and how the ALDF assists prosecutors.

DL: *Scott, prior to your work with ALDF, how did you become involved in the criminal field?*

SH: After three years with a large Portland law firm, I left to work as a deputy DA. This change was the direct result of my participation in my old firm's "DA for a day"

program, where green associates get trial experience by taking a piece of the local DA's massive misdemeanor caseload (e.g., DUI, DV, bar fights, theft). Each week I would walk over to the courthouse and grab a stack of files (5-15) for cases all set for trial in the same courtroom the next day. I'd spend that night preparing each file because you were never sure which case would actually try. The next day, I'd go try a case in a somewhat sleep-deprived state. It was true "in the trenches" work and I loved it.

DL: *Tell us more about your work with the District Attorney's Office. Were you involved with animal cruelty from the start?*

SH: I worked just over nine years as a DDA and handled everything from shoplifting to aggravated murder cases. The animal cruelty cases struck a chord with me and I would take special pains to ensure that those cases got the full attention that they deserved. When my boss announced that he would not be running for re-election, I decided I'd have to run. I won a three-way contested race in the May 1998 primary and took office at the age of 38.

DL: *How did your position as District Attorney evolve into your current position with ALDF?*

SH: I decided to resign my post as DA in 2007, after growing profoundly frustrated with a local trial judge who had manifested an anti-state bias so severe that my office had to affidavit her off of our caseload—a crippling blow to a small jurisdiction. Thus, I decided to leave, fully intending to take a sailing sabbatical, but the same day I finished my letter to the Governor informing him of my decision to move on, I received word that ALDF was looking for an attorney with substantial criminal prosecution experience in animal cruelty cases. Having done some training for ALDF as DA, I jumped at the chance and got the job. (The sailing sabbatical is still on hold five years hence.) I work with two other former career prosecutors; among the three of us, we have over 60 years of prosecution experience. We haven't seen it all, but we've seen a lot.



DL: *So what does your workload with ALDF encompass?*

SH: I now spend my days working with police and prosecutors from all over the country on animal cruelty cases, from abandonment to organized animal fighting, even RICO. I also do some appellate work: We are expecting an opinion shortly from the Oregon Court of Appeals on an interesting issue: Do animals neglected by their owners qualify as “victims”? One would think that the answer is an obvious yes, but the trial court didn’t see it that way, so we filed an amicus brief in support of the state’s appeal to correct this.

DL: *Do you still try or assist with cases in the Portland area?*

SH: Occasionally, a local prosecutor will be so short-staffed that he or she will invite me to come take the case for the office pro hac vice admission followed by an appointment as a special prosecutor is the norm outside of Oregon. These are fun cases, but experience has shown that often times, once the defense realizes that the state really does have the staff to try the case, the case will settle. Nevertheless, while each jurisdiction is unique, it’s quite interesting to see prosecutors from all over the country grappling with many of the same issues I saw as the elected DA; whether a case is pending in Oregon, Nebraska, or Florida, the issues tend to run in common themes (e.g., budget constraints, law enforcement training, relations with the local bench/bar). The contrasts are telling too: Oregon is a very “pro defendant” state where the state constitution has been repeatedly construed to afford the accused far more “protection” than is required in the federal system. Working in states where the federal rules are in play proves to be a treat every time—who knew that the ability to impeach a defendant with evidence otherwise subject to exclusion or having the option of invoking the “good faith” exception to the exclusionary rule could be such fun!

DL: *What have been some of the most positive aspects of your work with ALDF?*

SH: I feel more than fortunate to have this job. It is such a treat to help a haggard prosecutor whose case is on the ropes because the state can’t afford to hire an expert witness or cover the travel costs of an out-of-state witness. Due to the generous support of our donors, ALDF can easily solve these very real logistical problems and ensure that these cases get to a jury by providing prosecutors with grant money to pay expert witness fees or secure the attendance of a key witness who lives out of state. We have even chipped in on extradition costs to prevent the dismissal of an animal cruelty case where the defendant skipped to another state. And, of course, we are always ready to help with lab work and forensics costs as well. However, we don’t just write checks:

we write search warrant affidavits, pre-trial motions/memos, indictments, trial memos, sentencing memos, and (as noted above) appellate briefs. In short, our job is to help the state get the best possible outcome in any animal cruelty case.

DL: *When assisting prosecutors, what would you say is your most common request for help?*

SH: I’d have to say it’s the classic hoarding case. The State, faced with the logistical nightmare of seizing hundreds of animals and paying for their care, is always looking for ways to minimize the costs of these cases. Most prosecutors don’t spend a lot of time on the quasi-civil issues attendant to the pre-conviction transfer of ownership of the victim animals (aka the “live evidence”). We have and, as a result, we’ve got substantial experience with pre-conviction forfeiture litigation and perfecting/foreclosing possessory chattel liens. Sadly, not every state allows use of these procedural options, but in the states that do, we can certainly help. Just yesterday, I met with a deputy sheriff who is working on a 200+ animal hoarding case. He needed help with the basic issues of finding care and housing for the animals once they are seized, but he also needed guidance with drafting the search warrant/impound affidavit and the pre-conviction forfeiture pleadings as well. That’s what I’ll be spending the rest of my morning working on.

DL: *Are there additional ways the ALDF seeks to serve the legal community?*

SH: In addition to casework and related direct support of law enforcement investigations, we provide free training to law enforcement, judges, and prosecutors on the unique issues

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SAVE THE DATE

THE ASSOCIATION OF PROSECUTING ATTORNEYS, IN PARTNERSHIP WITH THE U.S.
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WINNING A CRUELTY CASE:

The Essential Role of the Veterinarian

By Karen Halligan, DVM



As in any criminal case, animal abuse cases require solving the forensic triad: link the victim to a suspect and connect them to a crime scene. Animal abuse cases are unique, however, because the veterinarian functions not only as the medical examiner but also as the crime scene investigator who, like her counterpart in

many child abuse cases, will testify on behalf of the victim. But standard veterinary medical practice pursues only one goal and that is to return the animal to good health while keeping the client happy and informed. The veterinary medical evaluation and management of abuse victims differ from standard medical practice because, in addition to returning the animal to good health, the vet must also provide medical answers to legal questions, i.e., veterinary medical forensics. This application of veterinary medicine in a legal setting is foreign to most veterinarians.

Since animal victims cannot testify, it is up to the veterinarian to establish the cause or nature of the injuries or death, the severity of the animal's injuries or illness, and the duration of the animal's injuries or death (*e.g., was death instantaneous or protracted?*). Also, proving and describing the extent to which the animal suffered or experienced pain or harm at the hands of the suspect or defendant is essential to supporting the elements of a crime. Since only the veterinarian can answer these questions, she is the most important witness in prosecuting animal cruelty and neglect. A physical examination of the animal by a vet and a written report of her findings are necessary in all criminal cases involving animal cruelty and neglect.

When conducting the physical exam the veterinarian must:

- Be thorough. (*For example, be sure to check paws for signs of burns.*)
- Use all five senses in describing the animal's condition.
- Document her findings in writing and visually (*photos, video*).
- Rule out innocence: Could there be reasons that this animal is dead, sick, or injured other than cruelty or neglect by the owner or keeper?

The written report should be descriptive, avoid fancy medical terms, and contain the following:

- Identification of the animal: species, breed, sex, age, color, etc.
- Summary of physical examination findings that indicate cruelty and/or neglect.
- Diagnostic tests performed and results.
- Treatments provided or recommended.

- A conclusion articulating the vet's expert opinion as to what caused the animal's condition.

The conclusion must state either that:

- The act or omission of the owner or keeper of the animal **ENDANGERED THE ANIMAL'S LIFE OR HEALTH**
– or –
- The act or omission of the owner or keeper of the animal caused or could have caused **HARM TO THE ANIMAL** that was not life threatening.

The vet's conclusion should restate the problem; for example:

- "This dog was suffering from a life threatening collapsed lung due to blunt force trauma caused by a beating, and the owner did not seek treatment for the dog."
- "Although the condition (*e.g., a broken leg*) was not life threatening, this cat experienced unnecessary pain and suffering due to lack of care by the owner."

In addition to testifying about the facts, the veterinarian can, as an expert witness, render an opinion on the evidence that falls within her area of expertise. Any testimony given based on a review of evidence collected by others, the veterinarian, police officers, etc., will also be considered expert testimony.

Veterinarians must continue to be the voice and advocate for animals and embrace their vital role in animal cruelty and neglect cases.

Note: APA's "Final Fridays Webinar" on July 29, 2011, was titled, "Veterinary Forensics in an Animal Cruelty Case." Visit www.APAInc.org for more information and access to the webinar.

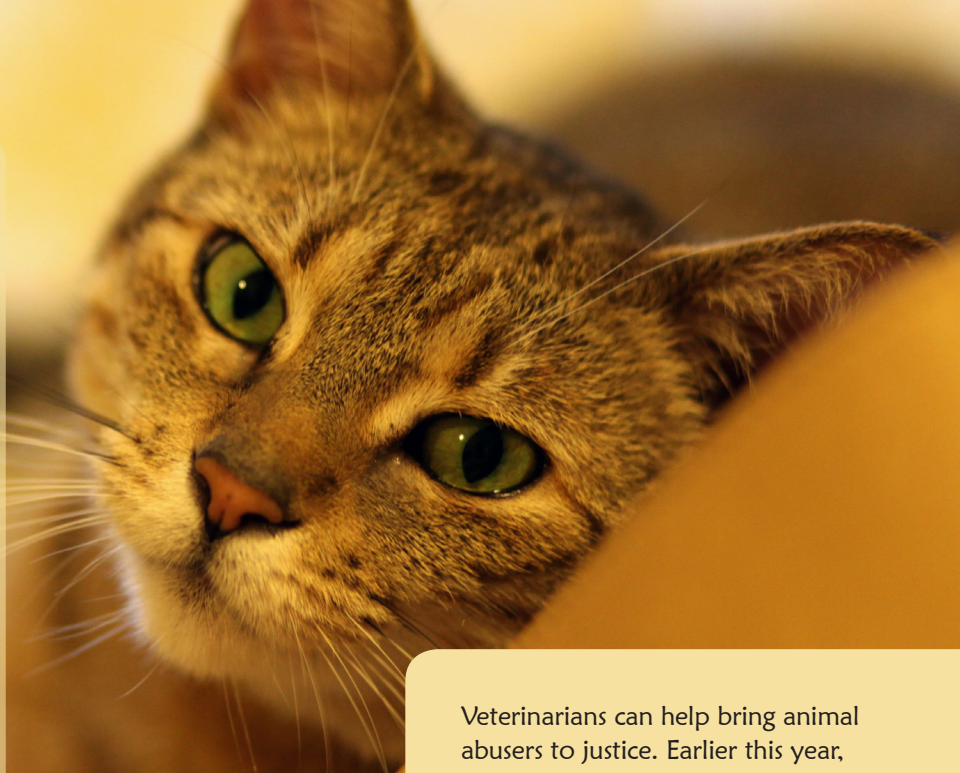


Karen "Doc" Halligan, DVM (www.dochalligan.com), is currently the Director of Veterinary Services at the Society for the Prevention of Cruelty to Animals, Los Angeles (spcaLA), where she oversees the health and well being of all the shelter animals. She is an expert in

animal cruelty, having prepared in excess of over 100 cases for trial as well as testifying as an expert witness. Additionally, she has presented lectures to law enforcement on the successful use of forensics in animal cruelty prosecution. Doc Halligan is the author of the award-winning book *Doc Halligan's What Every Pet Owner Should Know: Prescriptions for Happy, Healthy Cats and Dogs* (HarperCollins, 2007).

Another “Link”: Working with the Veterinary Medical Community to Find and Prosecute Offenders

By Teresa Lazo



The link between violence against animals and violence against humans has been explored by health care, social science and criminal justice researchers. Twelve states (CA, CO, CT, IL, LA, ME, MA, NE, OH, TN, VA, and WV) and the District of Columbia mandate some form of cross-reporting of domestic violence against humans and animals. These laws require that officials in the state’s department of children and families act when, in the course of their duties, they encounter information that indicates that animals may be the subjects of abuse; they are required to report the abuse to state animal welfare officers at the department of agriculture or local humane society. These laws also require animal welfare or humane law enforcement officials who encounter information indicating that children may be the subject of abuse to report the abuse to the state’s department of children and families. Veterinarians are mandatory reporters under these cross-reporting statutes in only a few states.

With or without a mandatory reporting requirement, however, it is possible, and even

desirable, for prosecutors to work together with the veterinary community. A first step could be to approach the state board of veterinary medicine. In every state, the practice of veterinary medicine is governed by a veterinary medicine practice act, which is administered by the state’s board of veterinary medicine. As an administrative agency, the state boards implement their authorizing statutes in part by setting standards for the practice of the profession. Standards are set when the boards promulgate regulations. Organizations of prosecuting attorneys are in an excellent position to approach these regulatory boards with requests to promulgate regulations that will assist in identifying and prosecuting offenders. The approach may be formal, following the procedures set forth in the state’s administrative procedures act for petitioning an agency for rulemaking, or informal, by requesting to address a board at one of its public meetings. Forging a relationship with the state veterinary medical association and approaching the board as a group would enhance the prosecutors’ position.

Veterinarians can help bring animal abusers to justice. Earlier this year, a Saratoga County, NY, man was charged with animal cruelty “after a veterinarian reported...that a cat being treated had injuries consistent with being abused,” according to The Leader Herald (February 2, 2012). Police investigated and learned that the owner of the cat suspected that her former boyfriend was responsible. Police concluded that the abuse occurred as part of a “domestic dispute” with the former girlfriend. The man was charged with aggravated animal cruelty.

Their expertise can also establish that injuries are the result of abuse and not other causes. In a Texas case, a veterinarian was able to confirm that a cat who was found dead had been mutilated by a human and not another animal. Moreover, according to the Dallas Police Department, that same veterinarian reported that recently another client had brought in a similarly mutilated cat.

There are several areas of regulation that might be suggested to a state board. Because most state veterinary medicine practice acts do not mandate that veterinarians report either suspected animal abuse or suspected child abuse, prosecutors might request that the board consider regulations that would mandate reporting. Prosecutors should be aware that the state veterinary medical association might oppose mandatory reporting unless veterinarians who make reports in good faith are immunized from civil liability. Organizations of prosecuting attorneys, working with the state veterinary medical association, could approach legislators to enact a civil liability shield for such cases.

Veterinarians are crucial not only to the reporting of suspected abuse but also to documenting and explaining it to make a case. Because it may be difficult to find veterinarians with specific expertise in forensic practice, prosecuting attorneys can work with the state veterinary medical

association to offer continuing veterinary medical education courses in this subject area at local and state conferences.

Veterinarians are required to complete a certain number of hours of continuing education to renew their licenses. In some states, the board places limits on the types of courses that may be counted toward meeting the continuing education requirement. While forensic examination will most certainly be an approved area, courses related to serving as expert witnesses in abuse cases might not be approved for licensure renewal. Working with the state board is again a potential solution, as the board would have the authority to permit its licensees to take a certain number of hours of continuing education in these related areas and use those credits toward license renewal.

By establishing relationships with their state veterinary medical associations and state veterinary boards, prosecutors will discover ways to promote their mutual interests.



Teresa Lazo, Esq., received her A.B. from Bryn Mawr College and her J.D. from Widener University School of Law. She has served as counsel to

the Pennsylvania Board of Veterinary Medicine since 1999. Ms Lazo is a member of the Pennsylvania Bar Association Animal Law Committee and is an Adjunct Professor at Penn State Dickinson School of Law, where she teaches Animal Law. Ms Lazo lectures frequently at state and national meetings on legal issues related to nonhuman animals and veterinary medicine.

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And Now for Some Really Good Newz...

By Tamira Ci Thayne



As a short-term solution, DDB is rescuing, housing, and training 14 dogs at a time at the home itself, so far rehabbing and adopting out 25 dogs from the property.

DDB's goal is to build a state of the art dog rehabilitation facility that will house, train, and adopt out 50 dogs at a time. Plans for a walking track on the second level, and an onsite vet hospital in the current house keep the staff excited and plugging away at making their dreams come true.

So far they have installed rubber flooring in the dog socialization area and doggie bedrooms, created three separate play areas, and fenced in eight acres for the dogs' twice-daily runs through the very same field where dogs were once shackled to trees.

It's a new day at the old Bad Newz Kennels, one where the *dogs* are the victors, and to the victors go the spoils of love, freedom, and new homes. All visitors are welcomed to the Good Newz Rehab Center and are invited to volunteer with the dogs. To pay a virtual visit, go to www.dogsdeservebetter.org.



All prosecutors and investigators

who closely followed the 2007 Michael Vick dogfighting case out of Surry County, Virginia, will want to know about the “we didn't see that comin'” ending that often brings a smile to even the most curmudgeonly of dog-lovers: The property, home to such unspeakable violence, has literally “gone to the dogs.” A nonprofit organization, Dogs Deserve Better, Inc. (DDB), has purchased the property and is transforming it into the Good Newz Rehab Center for Chained and Penned Dogs.

The nonprofit, now in its tenth year, works solely on behalf of chained and penned dogs, seeking to bring these unfortunate canines into homes and families instead of the backyards where they languished, suffered, and died alone—often with no laws to protect them.

But things are changing, slowly. Laws are now in place in over 200 cities, counties, and even a few states that limit the amount of time a dog can spend chained. DDB has been rescuing dogs from chains and fostering them in homes throughout the country but has longed for a center to call its own.

What better place than one with such an unfortunate background? One where each of its 60+ inhabitants lived chained or penned, with doghouses, thick logging chains, and buried car axles littering the wooded landscape of the 15-acre property.

To transform a place of such horror to one of beauty, love, and devotion to its canine residents, is truly the stuff of which big dreams are made. What DDB has lacked in funding it has made up for in guts and determination; having raised the down payment of \$180,000, it continues to keep up payments on the \$595,000 house and 15 acres.

Tamira Ci Thayne is founder and CEO of Dogs Deserve Better, which was the first place winner of the 2003 Chase/ASPCA Pet Protector Award. Thayne was a top ten finalist for the 2006 Animal Planet Hero of the Year Award, and in 2010, USA Today dubbed her the “Godmother of Anti-Tethering.”



BREAKING NEWS

TRACEY V. SOLESKY FINDS ALL PIT BULL MIX DOGS INHERENTLY DANGEROUS

BY JOAN SCHAFFNER

Associate Professor of Law,
George Washington University Law School

On April 26, 2012, the Maryland Court of Appeals, in a 4 to 3 decision, found that all pit bull mix dogs are inherently dangerous and changed the common law of Maryland by “modifying one of the elements that must be proven in cases involving pit bull attacks from knowledge that a particular dog is dangerous to knowledge that *the particular dog involved is a pit bull*.” Tracey v. Solesky, 2012 WL 1432263 (Apr. 26, 2012) (emphasis added).

This case involved Clifford, a pit bull who had escaped twice in one day from a small pen where he was confined and severely injured a young boy named Dominic Solesky. Dominic’s parents sued Dorothy Tracey, the landlord of the premises on which Clifford was housed, as well as the dog’s owners, who were discharged in bankruptcy prior to trial. The case proceeded to trial and at the close of the plaintiff’s case, the trial judge found insufficient evidence of Tracey’s knowledge that Clifford was dangerous. The plaintiff appealed to the Court of Special Appeals, which reversed the trial judge and found sufficient evidence for a jury to find that Tracey had knowledge of Clifford’s dangerousness. Both parties petitioned the Maryland Court of Appeals.

The majority reviewed all Maryland court cases involving pit bulls injuring humans since 1916, noted that seven cases involving severe injuries had reached the Maryland appellate courts in the past 13 years, cited multiple instances of pit bull attacks throughout the country, and held that “[b]ecause of its aggressive and vicious nature and its capability to inflict serious and sometimes fatal injuries, pit bulls and cross-bred pit bulls are inherently dangerous.” The court noted that under the common law of Maryland, owners of wild animals, deemed inherently dangerous, are held strictly liable. Moreover, since there is no Maryland statute addressing the dangerousness of pit bulls, the matter is left to the common law. Thus, as a prophylactic measure and to provide adequate compensation to those injured by inherently dangerous animals, the court determined that a change to the common law, imposing strict liability in cases involving pit bulls, was necessary. The court held “that upon a plaintiff’s sufficient proof that a dog involved in an attack is a pit bull or a pit bull mix, and that the owner, or other person(s) who has the right to control the pit bull’s presence on the subject premises (including the landlord who has the right and/or opportunity to prohibit such dogs on leased premises...) knows, or has reason to know, that the dog is a pit bull or cross-bred pit

bull mix, that person is strictly liable for the damages caused to a plaintiff who is attacked by the dog on or from the owner’s or lessor’s premises.”

This decision had an immediate impact on all animal advocates, shelters, rescue organizations, owners and landlords in Maryland and surrounding communities as they scrambled to understand the decision and its implications. As the dissent states, the majority opinion delivers an “unworkable rule.” First, the strict liability will govern in any attack involving a “pit bull,” “pit bull mix” or “cross-bred pit bull mix” dog, apparently capturing all dogs who have even the slightest trace of “pit bull” ancestry. Second, “pit bull” is not a breed of dog, “DNA analysis cannot prove or disprove a dog to be a ‘pit bull’...[and] there is little consensus on what a ‘pit bull’ looks like.”¹ Third, strict liability extends broadly to owners, others who have control of the dog, and landlords, when they know or have reason to know that the dog is a pit bull mix. The result is that strict liability will often be imposed arbitrarily and without proper notice to the defendant.

Finally, strict liability applies when the plaintiff is attacked by the dog “on or from the owner’s or lessor’s premises.” The court explained in footnote 23 of the opinion that control over the location at which the attack takes place is not required; instead “liability follows a pit bull when it leaves its abode to launch an attack.” The court distinguished the situation where, for example, the owner takes the dog to the beach and the dog attacks someone. In this case, the court explained, “while the owner’s responsibility remains clear, liability, if any, on the part of the landlord...seems much more remote.” Interestingly, the court did not rule out landlord liability in this situation.

¹See *The Implications of the Maryland Court of Appeals Decision of Tracey v. Solesky for Dog Owners, Shelters, and Landlords* at http://www.animalfarmfoundation.org/files/Maryland-Court_Tracey-v-Solesky.pdf.



Joan E. Schaffner is an associate professor of law at GW Law School. She received her B.S. in mechanical engineering and J.D. from the University of Southern California and her M.S. in mechanical engineering from the Massachusetts Institute of Technology. In addition to her many other duties, Joan directs the GW Animal Law Program which consists of the GW Animal Welfare Project (AWP), a pro bono effort of faculty and students devoted to researching and improving animal welfare laws in the District of Columbia; seminars in animal law; and a student chapter of the Animal Legal Defense Fund (SALDF). She is the editor and a contributing author of *A Lawyer’s Guide to Dangerous Dog Issues* (ABA 2009) and has testified on behalf of non-breed-specific dangerous dog laws. Her most recent book is *An Introduction to Animals and the Law* (Basingstoke, UK: Palgrave Macmillan, 2010).



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 spcaLA

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attendant to these types of cases—e.g., the specifics associated with search warrants (e.g., what about the live animals born after the seizure?); what you’ll find in a puppy mill bust; working with veterinarians and other experts; preparing witnesses to testify; and how to write a wiretap affidavit for a RICO case (where dogfighting is the predicate offense).

DL: *Beyond your work with ALDF, any personal background or interests you’d like to share?*

SH: Well, when not slaving away for the benefit of animals who have fallen victim to abuse, you can usually find me either guest teaching at the Center for Animal Law Studies at Lewis & Clark Law School or out on the water—in either a whitewater kayak or a sailboat. My wife and I spend a lot of our free time sailing; we keep our boat on Lake Union up in Seattle and have grand plans of sailing down to San Francisco to watch the America’s Cup races next summer.

DL: *Thank you for your time and the great information Scott! We at the APA look forward to continuing to work with you and ALDF in the future.*

SH: Thank you! And in the meantime, should any member of APA need a hand with an animal abuse case, all they need do is call us for help. We’d be honored!

TERESA LAZO, COUNSEL
 Pennsylvania Board of Veterinary Medicine

TAMIRA CI THAYNE, FOUNDER/CEO
 Dogs Deserve Better

JOAN SCHAFFNER, ASSOCIATE PROFESSOR OF LAW
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