Prosecutorial decision making in the face of changing norms: an exploratory study of animal cruelty prosecution in New York

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PROSECUTORIAL DECISION MAKING IN THE FACE OF CHANGING NORMS: AN EXPLORATORY STUDY OF ANIMAL CRUELTY PROSECUTION IN NEW YORK

By
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Abstract

Societal norms regarding the treatment of animals are evolving. This is reflected in part in nationwide changes in criminal justice policy regarding animal welfare. These changes, however, are not likely embraced by all nor do they necessarily result in changes in the practices of decision-makers in the criminal courts. Prosecutorial decision-making in animal cruelty cases may be especially varied due to evolving norms regarding the treatment of animals and conflicting views on the seriousness of the offense, along with the classification of animal cruelty as a relatively low level offense. Research to date has failed to examine how these cases are being handled by those assigned to prosecute them. This research relies primarily on interviews with prosecuting attorneys, and also includes interviews with other criminal justice actors and limited case data, to better understand these types of cases. Prosecutors’ thoughts on and experiences with animal cruelty cases are explored, providing information on how these cases are handled by the criminal justice system. This research also examines whether or not general theories of prosecutorial decision-making apply to animal cruelty cases. Results indicate that overall, cruelty cases are handled by prosecutors in a manner similar to other types of cases; however some notable differences do exist.
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And finally, thank you to my husband, Weston Griffin, for listening to all of my academic frustrations and complaints, for helping me with all my computer problems, for putting in extra childcare duty after a day of work so I could focus on school and for encouraging me to keep going when I was ready to quit. I appreciate all you did to help me out in this quest and all that you continue to do.
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Chapter One: Introduction and Justification for Proposed Research

As the 20th century came to a close legislatures across the nation began paying more attention to the crime of animal cruelty and a majority enhanced existing anti-cruelty statutes by increasing penalties and/or implementing felony legislation (Otto, 2005). New York joined this trend in 1999 after the intentional torching death of Buster, a friendly orange tabby cat living in Schenectady. A good deal of media coverage, several decades of research suggesting animal abusers had increased potential for other forms of violence, and the nationwide movement towards the toughening of animal abuse statutes created an environment in which the time was ripe for the passage of felony animal cruelty legislation. In 2005 New York additionally elevated misdemeanor cruelty to a Class A offense.¹

These statutory changes by no means ensure that offenders are being prosecuted or receiving the maximum charges and/or punishment for offenses committed against animals. In fact theory suggests, and research demonstrates, that legal reforms do not lead to overnight changes in the criminal justice system, and evaluations of the system consistently instruct that law-in-action is rarely the same as law-on-the-books. An extensive body of research confirms that many criminal cases are dismissed by prosecutors and a large majority of those that remain end in a plea negotiation with few defendants receiving the maximum statutory sentence. Research also confirms that charging, bargaining and sentencing practices vary widely between courts. According to established theory prosecutors are influenced in their decision-making by a desire to both win and efficiently process their cases. These goals lead to the dismissal of potentially

¹ Misdemeanor animal cruelty had previously been an unclassified offense. Unlike a classified misdemeanor, a defendant charged with and/or convicted of an unclassified misdemeanor is not fingerprinted or photographed and has no criminal record after the case is adjudicated.
“unwinnable” cases and a general preference to avoid time and resource consuming trials. These concerns are also responsible in part for deviations from written legislation and for variability across courtrooms.

Because animal abuse arrests are relatively rare and beliefs surrounding both the seriousness of animal abuse and its potential as a “gateway” crime are conflicting, it may be especially difficult for prosecutors to decide how to prosecute such cases. They may not be sure of the best strategy to take and may encounter conflicting opinions regarding case processing decisions amongst their peers, apathy by others in the legal community, pressure from interest groups and varying resources. These challenges may lead to even greater variation across cases and courtrooms than found in other types of cases, and may hinder the explanatory ability of theory relating to prosecutorial decision-making. Moreover, subjectivity in the statutory language, and the classification of cruelty as a lower level offense, may further complicate the ability of established theory to explain case processing decisions. Animal cruelty is also a topic about which the public is very passionate and for which there are constant calls for increasingly harsh legislation and criminal justice response. Despite these unique pressures and concerns research to date has not empirically addressed how the courts are handling animal cruelty cases at either the felony or misdemeanor level.

Relying primarily on interviews with prosecuting attorneys, in addition to other data, this research explores the thoughts and experiences of prosecutors who have worked on cruelty cases as well as factors that influence prosecutorial processing and outcome decisions in animal cruelty cases. It also contributes to the limited literature that exists on prosecutorial decision-making in the advent of changing and conflicting norms regarding
the criminality of and proper legal response to a particular behavior. Additionally, this research explores whether established theory on prosecutorial decision-making can explain the handling of these cases in the New York court system or if alternative theories are needed.

Why Study Prosecution of Animal Cruelty

An Opportunity to Observe Prosecutorial Response Under Changing and Conflicted Norms

Although animal cruelty has been illegal for centuries early legislation was very limited and rarely enforced, and cruelty was not considered a serious crime by most people. As further discussed in Chapter Two, beliefs and practices are changing, as evidenced by increasing research on the potential link between animal cruelty and human violence, wide familiarity with the alleged link, increasing media coverage of animal issues, increasing support for pro-animal legislation and widespread changes not only in legislation but in the practice of law. Despite evidence of increased concern about animal cruelty it cannot be assumed that the opinions and practices of the entire general public, and more specifically, of those charged with prosecuting such offenses, are in broad agreement with these changing conceptions of animal cruelty. Many people may not think of animals as legitimate victims and therefore may not agree with high fines or an incapacitative sentence for a crime committed against an animal, legally classified as “property”. Prosecutors’ personal opinions or the anticipated reactions of the public or co-workers may lead some to disagree with the legislation, while others may be pushed to support it by pro-animal interest groups.

Although not always taken into consideration by those who draft legislation, in
most situations prosecutors have a great deal of discretion in the filing and pursuit of criminal charges. This discretion allows for wide latitude in the pursuit of prosecution, and the effects of this discretion may be especially pronounced when there are conflicting and evolving opinions on the seriousness of the offense. Indeed, as further discussed in Chapter Three, examination of other “norm-altering” reforms suggest that there is reason to believe that legislative change does little to alter the opinions and practices of court personnel.

Research into Prosecutorial Decision-Making is Overshadowed by Research on Other Criminal Justice Actors

Both police and prosecutors have been described as controlling the “gateway to justice”. The initial decision to arrest, made by the police, brings a case into the criminal justice system. Prosecutors decide whether or not to keep the case in the system and may determine the final charges that are filed. Despite their mutual importance in case identification and retention, academic research strongly favors the practices and policies of the police over those of prosecution. In fact, a somewhat recent review of literature found that for each empirical journal article examining the prosecutor, there are eighteen examining the police (Worrall, Ross & McCord, 2006). Similarly, while prosecutors are considered to be highly influential in adjudication and sentencing decisions, research on prosecutorial decision-making is strongly overshadowed by research on judicial decision-making in sentencing.

Research on Lower Level Felony and Misdemeanor Decision-Making is Overshadowed by Research on Serious Felonies

Much of the well regarded theoretical and empirical literature explaining
decision-making in the courts focuses on the processing and outcome of serious felony cases (e.g.: Albonetti, 1987; Eisenstein & Jacob, 1991). There has been a limited focus on lower level crimes in the criminal justice system in general, and on prosecutorial decision-making in such cases, despite the fact that much of the prosecutorial workload is comprised of lower level offenses. Some research suggests that prosecutorial discretion is even greater in lower level offenses (Gottfredson & Gottfredson, 1988; Spohn & Cederblom, 1991). That is, in cases involving serious crimes, prosecutorial decision-making is subject to greater scrutiny and is more constrained by legal criteria, whereas, in lower level cases court personnel are able to operate without much oversight.

_There Have Been No Empirical Studies of Animal Cruelty Prosecution_

While there is a good deal of literature bemoaning the infrequent prosecution of animal cruelty cases (Flynn, 2000; Rackstraw, 2003; Ramsey, 2005; Rosa, 2000), most of this literature is in editorial form, at best relying on anecdotal descriptions of specific cases in which the accused were not brought to justice. Empirical research has failed to address the prosecution of these cases, although rudimentary statistics do exist. The New York State Department of Criminal Justice Services (DCJS) tabulates aggregate statistics on animal cruelty cases in New York.\(^2\) According to DCJS, in 2008, 233 individuals were charged with animal cruelty offenses in New York State.\(^3\) Of the 233 charges, 53

\(^2\) Beginning in mid-2005, when misdemeanor cruelty became a Class A misdemeanor, DCJS began collecting county-level data on misdemeanor prosecutions as well as felony prosecutions, however, based on an examination of the statistics submitted over time, media coverage of cases, and conversations with prosecutors, it appears that many counties are still reporting only felony arrests and prosecutions. While DCJS provides the number of arrests and prosecutions by county it does not offer a breakdown of specific charges by county, only an aggregate count of cruelty cases. DCJS does not provide a breakdown of the number of misdemeanor and felony arrests in their data. The data also do not indicate if the convictions reported are specifically for cruelty related offenses, or if the case merely resulted in a conviction for something (e.g.: a defendant charged with spousal assault and animal cruelty pleas guilty to the assault in exchange for the prosecutor dropping the animal cruelty charge).

\(^3\) In 2009 there were 276 arrests; nearly two thirds remain unresolved as of February 2010.
were for felony, aggravated cruelty, 161 were for misdemeanor cruelty and the remainder were for an assortment of offenses related to fighting animals. As of February, 2010, 109 (47%) of those charged with animal cruelty in 2008 had been convicted, although it was not possible to discern the top conviction charge. There were 50 (21%) dismissals, two acquittals (.01%) and 66 cases for which DCJS had not yet received disposition data. These purely descriptive statistics for animal cruelty cases do not tell us how these cases were processed, and are not much more than a tally of the prosecuted cases for the state.

In Sum

Existing misdemeanor anti-cruelty legislation in New York was enhanced in the past decade, and felony animal cruelty legislation was adopted. Despite this, the prosecution of these cases has never been studied, in New York or elsewhere. In addition to providing seminal research on the prosecution of animal cruelty, this research provides an opportunity to study oft-neglected prosecutorial decision-making in lower level felony and misdemeanor cases, as well as prosecutorial practices in the face of changing and conflicting norms. Established theories on prosecutorial decision-making have most often been tested on more serious and/or established crimes. Because animal cruelty it is a lower-level offense, the statutory language is ambiguous and the legislation is being implemented in a time when norms are conflicted and evolving, established theory may have less explanatory power. This research will explore both prosecutors’ thoughts and

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4 The remaining six cases were noted as having a disposition of “other”.
5 These statistics do not provide information on how many complaints do not result in arrest. Publicly available statistics from Erie County in New York indicate approximately.008% of calls to the SPCA end up in court (www.yourspca.org). These statistics are similar to those reported from other states. In Ohio, in 1996, animal control agencies answered 25,564 complaints of cruelty. Of these, 2% resulted in prosecutorial charges (Lord & Wittum, 1996). Even more dismal, over a 20 year period, the 80,000 complaints investigated by the Massachusetts SPCA lead to a mere 268 (.003%) prosecuted offenses (Arluke & Lake, 1997). Of course, these numbers tell us nothing about the legitimacy of the calls, nor do they explain anything else about these cases, but they do suggest that in the past few decades the prosecution of alleged cruelty cases may have been the exception, not the norm.
experiences with cruelty cases and whether theories of prosecutorial decision-making are applicable under such circumstances.
Chapter Two: Animal Cruelty Legislation

On June 28, 1999 New York Governor George Pataki signed into law a bill, often called Buster’s Law, which created a felony level provision for the intentional, aggravated abuse of specific animals. Individuals convicted of the Class E felony are eligible for a prison or jail sentence of up to two years and fines up to $5000. This legislation was added to existing misdemeanor legislation with an associated maximum penalty of one year incarceration and/or a $1000 fine.

6 353a. Aggravated cruelty to animals.

1. A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, "aggravated cruelty " shall mean conduct which:
   i. is intended to cause extreme physical pain; or
   ii. is done or carried out in an especially depraved or sadistic manner.

2. Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, as provided in article eleven of the environmental conservation law, the dispatch of rabid or diseased animals, as provided in article twenty-one of the public health law, or the dispatch of animals posing a threat to human safety or other animals where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by the commissioner of health pursuant to section three hundred fifty-three of this article.

3. Aggravated cruelty to animals is a felony. A defendant convicted of this offense shall be sentenced pursuant to paragraph (b) of subdivision one of section 55.10 of the penal law provided, however, that any term of imprisonment imposed for violation of this section shall be definite sentence, which may not exceed two years.

7 353. Overdriving, torturing and injuring animals; failure to provide proper sustenance.

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations, involving the use of living animals, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health. The state commissioner of health shall prescribe the rules under which such approval shall be granted, including therein standards regarding the care and treatment of any such animals. Such rules shall be published and copies thereof conspicuously posted in each such laboratory or institution. The state commissioner of health or his duly authorized representative shall have the power to inspect such laboratories or institutions to
This chapter will discuss the development of New York’s anti-cruelty legislation and evaluate the current legislation. First, however, this chapter will provide a historical overview of the legal protections afforded to animals as well as a review of the more recent social and legal changes relating to animal welfare.

The Evolution of Animal Welfare

Early History

The earliest written legal code in America, that of the 17th century Massachusetts Bay Colony, included a prohibition against the cruel treatment of domestic animals (Lockwood, 2006). While legislation regarding the treatment of animals can be traced back to colonial America the motive behind the criminalizing of animal cruelty in early America had less to do with concern for the suffering of animals, or concern regarding one’s potential for greater violence, than it did with the destruction of property and/or the moral failings of the population. Indeed, early case law indicates that charges of “malicious mischief” towards an animal could only be filed if the animal were the property of another (Favre & Tsang, 1993). Additionally, a good deal of the early legislation was restricted to commercially useful farm animals, especially horses (Favre and Tsang, 1993). In 1821 Maine drafted legislation prohibiting the abuse of livestock, 

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8 This research is focused only on misdemeanor and felony animal cruelty. There are separate statutes that deal with actions such as animal fighting and poisoning as well as animal transport, farming practices etc. Industrial and agricultural practices are beyond the scope of this research and I decided to exclude fighting and poisoning due to the very limited number of arrests statewide. Over the past five years DCJS has recorded an average of 16 arrests per year for fighting offenses – with most occurring in the past couple of years - and less than one case per year for poisoning. In my research I only encountered one prosecutor who prosecuted a fighting case and none who prosecuted a poisoning case. The prosecutor who handled the dog fighting case specifically noted these cases were very different from general cruelty cases and should be treated by researchers as a completely separate topic.
regardless of ownership, and New York followed suit in 1829 (Lockwood, 2006). Over the next thirty years several states drafted legislation protecting working animals from cruelty at the hands of their owners and concern began to focus on what cruel acts said about the human beings committing them. This was evidenced by the placing of such legislation amongst legal codes relating to other morality issues, such as adultery, blasphemy and the like (Lockwood, 2006). Concern for the well being of animals was not given much consideration and lack of enforcement was common.

Contemporary United States cruelty laws were highly influenced by legislation that existed in Great Britain. English jurist and philosopher Jeremy Bentham was the first to write on the subject of animals and the legal system. In his late 18th century writings, he argued that animals ought to be acknowledged due solely to their sentience. The final sentence of his famous observation “a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old…. The question is not, Can they reason? nor Can they talk? but, Can they suffer?” (Bentham, 1823, in Francione, 1995) serves to summarize the philosophy of the animal welfare movement to this day (Lockwood, 2006). Four decades later, the first comprehensive animal protection law was introduced in England by Richard Martin, and two years after that the first Society for the Prevention of Cruelty was created (Lockwood, 2006).

United States legislation was born out of the work of late 19th century New York philanthropist Henry Bergh. After spending time in London and observing their anti-cruelty laws he used his connections to approach the legislature of New York with his concerns regarding cruelty towards animals. Bergh stressed his belief that the issue of
animal welfare crossed party lines and class boundaries arguing "(t)his is a matter purely of conscience; it has no perplexing side issues. It is a moral question in all its aspects." (Dracker, 1996). Bergh was a dramatic, dynamic and convincing speaker. He helped bring attention and credibility to the issue of animal welfare, and helped to place it on the public agenda. In 1866, the New York Times ran an article encouraging well-to-do citizens to establish organizations dealing with animal cruelty. In 1866, and 1867, under Bergh’s guidance, the New York legislature drafted expanded misdemeanor anti-cruelty legislation that served as the basis for our modern day legislation. The provisions of the legislation applied to all living creatures regardless of ownership, negligent acts as well as intentional acts were covered in detail, and the list of illegal offenses was expanded to include a prohibition against all forms of animal fighting (Lockwood, 2006). The revised legislation granted Bergh and his fledging organization, the American Society for the Prevention of Cruelty to Animals (ASPCA), enforcement powers and Bergh himself the power of prosecution (Bresch & Zawiatowski, 2005). Giving the ASPCA ability to enforce these laws and acknowledging that police might not have the time or inclination to enforce such legislation was unique and instrumental. Independent SPCA’s quickly sprouted in other parts of the country (Favre & Tsang, 1993). By the time of Bergh’s death in 1888 thirty-seven of the thirty-eight states in the Nation had passed some form of anti-cruelty legislation (Dracker, 1996).

Twentieth and Twenty-First Century Legal and Social Changes

In the mid-20th century, animal welfare entered the congressional agenda. Several important laws were passed, including the 1958 Humane Slaughter Act and the 1966
Laboratory Animal Welfare Act, however cruelty legislation has primarily remained in the domain of the individual states.

Some of the more significant advancements in animal welfare in the twentieth and twenty-first centuries have occurred in a social context. A defining moment for the animal welfare movement came with the social upheaval and protest movements of the 1960s and 1970s. According the Allen (2005), “(t)hese protest movements produced an intellectual environment and a new ‘rhetoric of rights’ that challenged the conventional political and moral institutions at the time” (p. 2). People were motivated to question long held beliefs, practices and perceived injustices. The 1975 publication of Peter Singer’s *Animal Liberation* was read by millions, educating people on the horrors of factory farming, animal experimentation and the like. The book became something of a “bible” for the animal welfare social movement (Allen, 2005). Yet another landmark moment came in 1980 with the birth of People for the Ethical Treatment for Animals (PETA). The animal rights organization began with a core of eighteen members. Their aggressive tactics and targeted campaigns caught the attention of the general public. Three decades later PETA has approximately one million official members, including numerous celebrities, has chapters in over twenty countries, and a multi-million dollar budget (www.peta.org). While it is often the target of criticism and controversy, its successes and its contribution to the arena of animal welfare and animal rights are indisputable.

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9 Both of these Acts have been modified several times. The Laboratory Animal Welfare Act is currently named the Animal Welfare Act, and it regulates a broad range of topics including the treatment of laboratory animals, animal transport and dog fighting. Both Acts are mainly regulatory and fall under the jurisdiction of the United States Department of Agriculture.

10 Ideological differences exist between those who subscribe to an animal rights versus animal welfare framework. Broadly speaking, advocates of animal rights believe animals have innate value and should not be used for human purposes at all; animal welfare advocates believe that animals can be used for human benefit so long as they are treated humanely.
In addition to a large number of well-established and influential national groups such as PETA, the ASPCA, the Humane Society of the United States (HSUS) and the Animal League Defense Fund (ALDF) there are thousands of small, localized groups. As they have become more established, animal rights and welfare groups have made several efforts to sway public opinion on animal welfare related issues. Through public campaigns, financial contributions and other activities, these groups increase issue salience, mobilize grass root activity and attempt to influence voting behavior of legislators and the general public. Prior to the 2006 mid-term elections HSUS, for example, spent $2.8 million promoting animal-friendly state ballot measures and the Humane Society Legislative Fund spent close to $250,000 in October 2006 alone on media advertisements encouraging the defeat of two “anti-animal” lawmakers (Brasher, 2006).

Public interest polls and voting behavior suggest that the views of a large portion of the general public are supportive of pro-animal interests. Two 2000 Gallup polls found that 61% and 72% of the public somewhat or strongly agree with the goals of the animal right movement (Dunlap, 2000). This support has carried over into the voting behavior of the public. According to Wayne Pacelle, president and chief executive officer of the Humane Society, opposition to animal cruelty is now a universal value in American culture. He observes “Congress has passed more than fifteen laws to protect animals in the last decade, and there are now hundreds of bills introduced every year in the States to halt certain forms of animal abuse…. Since 1990, animal advocates have prevailed in more than a dozen statewide ballot initiative campaigns—halting cockfighting, hound hunting and baiting, and the use of steel-jawed leghold traps” (2005:
3). More specifically, between 1940 to 1990 there were a half dozen “animal-friendly” ballot measures introduced nationwide of which only one was successful; conversely, between 1990 and 2006, twenty-six of thirty pro-animal related ballot initiatives were passed by voters (Post-1990 Initiative, n.d.). This 87% success rate is markedly higher than the 40% success rate for ballot initiatives in general (Allen, 2005). Recently, in the 2008 election, ballot initiatives led to the termination of greyhound racing in Massachusetts and the banning of gestation crates, veal crates and battery cages in California (www.hsus.org).

Along with an increase in pro-animal voting behavior, media coverage of animal related issues has increased. While media coverage of animal rights-related issues have ebbed and flowed over the latter part of the twentieth century and early twenty-first century (Herzog, 1995; Jones, 1997), Allen (2005) demonstrated a consistent upward trend in the coverage of animal welfare over the past twenty-five years. Looking at solely the New York Times, Allen found 150 references to the animal welfare movement in 2002 alone, suggesting public interest in the topic.

Turning to the legal system, animals are increasingly represented in the fields of criminal and civil law. In recent years, and with escalating frequency, courts across the nation have been called upon to determine post-divorce pet-custody (Bennett, 2007), to draft orders of protection for four-legged victims of abuse and to award large financial sums in civil suits involving harm to an animal. The legal profession has expanded to make animal law a legitimate field of specialization. In 2007, approximately half of the 190 accredited law schools in the United States offered animal law courses, something virtually unheard of a mere decade ago (Bennett, 2007). Additionally, the American Bar
Association and eighteen state bar associations currently have animal law sections or committees (www.aldf.org). Several of these organizations publish state-specific handbooks, and/or offer direct assistance to prosecutors who are working on cruelty cases.

In addition to publishing several articles about the link between animal abuse, child abuse and future or concurrent violence, the American Prosecutors Research Institute (APRI) also offers a general handbook advising prosecutors on the proper handling of animal cruelty cases. The authors of this handbook provide prosecutors with a checklist of tasks, including who to interview and what types evidence to gather when prosecuting a cruelty case. They also note that several task forces have sprung up around the country. As a local example, the Rensselaer County District Attorney’s office established a task force in 2007 with the goal of providing information and resources to those who work on cruelty cases. Additionally, there are currently several not-for-profit organizations that provide training and assistance to police, prosecutors and others who are tasked with a cruelty case. According to a board member with one of these organizations (personal conversation, 11/09), the organization provides day long training sessions throughout the state three times a year. In addition to the estimated 20-50 individuals who attend each session she noted they get approximately a half dozen calls a week from legal system personnel requesting advice or assistance.

**Legal Changes – General Rationale and Statutory Overview**

While the above section discusses several important legal and social changes surrounding animal welfare, arguably the most notable change in recent years has been the nationwide movement towards felony level sanctions for those who abuse animals.
While these novel statutes have been criticized for their narrow scope and relatively slight penalties (Otto, 2005), they are very important for animal welfare.

The Importance of a Felony

Felony legislation offers additional protection for animals, provides a basis for the development of more stringent law, and raises awareness of the issue of animal cruelty (Otto, 2005; Rackstraw, 2003). The stigma and consequences of a felony conviction are much more severe than for a misdemeanor, and stipulations such as counseling or a prohibition from owning further animals may attach (Ramsey, 2005). Finally, the severity of a statute is important in the altering of social norms. As Favre (2004) states, “while education and enlightenment will change the conduct of some, only by altering the law can we force changes of behavior upon the unwilling”. Legislation provides the criminal justice system as well as the public with a measuring stick by which they can judge the seriousness of a given crime (Camoes, n.d.). Although it is the police, prosecutors and judges who decide the charges and sentence that are levied against a particular defendant, their decisions are constrained by legislatively adopted state level statutes. If our elected officials deem animal cruelty to be a felony this sends out a message that we as a society place value on the humane treatment of animals and are willing to devote government resources to those who harm them.

Of course, concern for the well being of animals was not the only, or even the primary, motivation for the toughening of cruelty laws. While many supporters of strengthening animal cruelty legislation are motivated by concern for the welfare of animals, the reasons behind the creation of nationwide legislation are motivated in large part by concern not for animals, but for the alleged potential of animal abusers to turn
their rage towards human victims.

*The Cruelty Connection*

The notion that there is a link between violence towards animals and violence towards humans is well-established in the minds of much of the public. The FBI first observed a correlation between human and animal violence when analyzing serial killers in the 1970’s (Ramsey, 2005), and in the 1990’s the HSUS began its First Strike campaign, with the goal of educating the public on the alleged link. There is intuitive logic in the concept: if an individual brutally and intentionally harms an innocent animal, this would seem to indicate lack of empathy, disregard for social constraints and a propensity towards aggression (Livingston, 2001). A growing body of empirical research explores the relationship between animal cruelty and other forms of violence. Two general theories have evolved to explain the relationship between animal abuse and other criminal activity. The violence graduation hypothesis and the deviance generalization hypothesis are, respectively, concerned with the prediction of future crime and the identification of current criminal offenders (Bickerstaff, 2003).

The violence graduation hypothesis suggests that animal abuse is a gateway crime, and that individuals who abuse animals in childhood and adolescence are more likely to progress to other criminal acts as they enter adulthood. This hypothesis derives popular support from studies and commentary that reveal that serial killers (Ramsey, 2005; Ressler et. al., 1998) and, more recently, school shooters (Verlinden, 2000) often have several gruesome incidences of animal cruelty in their pasts. Although childhood animal cruelty is not considered an absolute predictor of adulthood violence, a substantial amount of research has indicated the presence of a link between the two (Ascione and
Arkow, 1999; Becker, Stuewig, Herrera, & McCloskey, 2004; Kellert & Felthous, 1985; Merz-Perez and Heide, 2004; Tallichet and Hensley, 2004).

The deviance generalization hypothesis suggests that animal abuse is often part of a cycle of concurrent violence (Arluke et al., 1999), and the hypothesis derives most of its support from research into family violence. This literature suggests that individuals who abuse animals are often simultaneously engaging in other forms of violence, family violence in particular, suggesting animal abuse is one symptom of “deteriorating interpersonal relationships and family dysfunction” (Bickerstaff, 2003). Research has consistently found concurrent animal abuse in families with reported incidences of child abuse (DeViney, Dickert and Lockwood, 1983) and domestic violence (Ascione, 1998; Ascione, 2000b; Flynn, 2000).

The research on the link between animal cruelty and human violence is far from definitive and indeed many weaknesses exist in research methods; however, considerable support is found to exist for the argument that animal cruelty is not an isolated crime. Perhaps, more importantly, many people believe that this link exists. The fourth edition of the Diagnostic and Statistical Manual of Mental Disorders includes acts of animal cruelty as one of the criteria to consider in the diagnosis of conduct disorder, the FBI instructs its agents that animal abuse should be considered in identifying violent criminals, and legislators across the nation have been motivated by this alleged link in their support for the strengthening of anti-cruelty laws (Coxwell, 2005)

An Overview of Current Animal Cruelty Legislation

As of 2009, forty-six states mandated felony charges for certain forms of animal cruelty and all have misdemeanor legislation. While a large majority of states offer the
option of felony prosecution, the statutes vary widely. According to HSUS, of the forty-six states that have felony legislation five states, for example, only allow one to be charged with a felony on their second or third offense. The maximum sentence on a cruelty conviction varies from a low of six months to a high of ten years while maximum financial penalties range from $1000 to $500,000 (www.hsus.org). And although the maximum sentence nationwide is ten years in length, only four states allow for a sentence of that length and in reality few defendants will likely receive and serve the maximum available sentence. The mean maximum sentence nationwide is less than four and half years with seven states having a maximum of one year or less (www.hsus.org).

According to Bickerstaff’s nationwide examination of media reported cases the most common sentences included fines, probation and community service with a mere one quarter of the cases ending with any jail or prison time (Bickerstaff, 2003).11

In several states mandated counseling may be a component of sentencing. Four states always mandate a psychiatric evaluation and/or counseling for an individual convicted of animal abuse, another eight states only require counseling if the defendant meets certain criteria, the remainder leave it up to the discretion of the court either stating that it may be ordered or staying silent on the matter (www.hsus.org). Of the states that do allow for counseling, some distinguish between juvenile and adult offenders, some only require it for repeat offenders and others require it for those convicted of offenses involving torture. Counseling and/or psychological evaluation may be especially relevant in cases of animal cruelty. Unlike individuals who severely assault or kill another human

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11 Bickerstaff relied on media accounts of animal cruelty in her research and it is probable that the media only reported on the more severe cruelty cases (even more so several years ago). It is therefore very likely that significantly fewer than one quarter of all of those convicted of animal cruelty served time in jail or prison.
being, individuals convicted of animal abuse will not spend many years behind bars. Most of these individuals will be incarcerated for a relatively brief period, if at all. As discussed above, individuals who commit violent offenses against animals may eventually commit violent offenses against humans or may simultaneously be abusing family members. Counseling may provide much needed intervention or at the very least sensitize family members to the potential for future troubling behavior.

In addition to incarceration (or probation) and counseling several states require convicted offenders to forfeit current animals, prohibit them from owning animals in the future, and/or require them to make financial restitution to the individuals and organizations who provided care to animals they abused.

Criticisms of Anti-Cruelty Legislation

Despite remarkable progress in legislative advances, animal cruelty legislation has been subject to much criticism. Most of the criticism revolves around vague definitions and statutory exclusions. The definition of “animal” varies widely across the nation, leading to limited legal protection in some states. Several states encompass all animals under the spectrum of law, applying their anti-cruelty statutes to every non-human creature. A common distinction, though, is often made between vertebrates and non-vertebrates, with the latter often excluded from statutory protection; in some states only domestic animals are protected (Livingston, 2001). While narrowly defining the animals subject to protection is problematic for obvious reasons, using an overly broad definition has lead to criticism as well. It is suggested that the broadest definitions equate, for example, a housecat with a housefly and trivialize the crime of animal cruelty (Livingston, 2001).
Cruelty cases can be divided into three overlapping categories: significant neglect, cruel mistreatment, and unjustified killing (Livingston, 2001). While most statutes are uniform in their prohibition of unnecessary pain and suffering, and unjustified or malicious killing, many have carved out additional, and sometimes unusual, exceptions. Exceptions sometimes exist for the killing of one’s own animal, or an animal that is trespassing and destroying property (Livingston, 2001). Neglect may or may not be criminalized, and is often categorized as a lesser offense. These exclusions and exceptions lead to limited protection for certain animals and sometimes provide hard-to-disprove avenues of defense.

Another component of the statutes that varies is the requisite state of mind for the defendant. A majority of states require a culpable state of mind, often stating the acts must be done “intentionally” or “knowingly”, although states are increasingly allowing prosecution for reckless and/or negligent acts (Livingston, 2001). Proving an act was committed “intentionally” or “knowingly”, can be problematic in many situations, sometimes raising the bar too high for legal intervention.

**Animal Cruelty Legislation – History in New York**

Until the late 20\textsuperscript{th} century anti-cruelty legislation in New York had remained virtually unchanged, but for slight increases in financial penalties, since its draft in the mid-19\textsuperscript{th} century. Prior to the 1990’s an individual who committed an act of animal abuse in New York was more likely to be given a summons than to be formally arrested, and at most, be charged with a misdemeanor. In all likelihood (s)he would plead to a violation, pay an inconsequential fine and retain his or her “property” (Article 26, 2006). In line with social and legislative changes occurring across the nation, the movement to
create felony anti-cruelty legislation and to increase enforcement of the legislation began to gather steam in New York State in the mid-1990’s. In 1995 an anti-cruelty task force was formed in New York City. The task force focused on promoting the effective prosecution of animal cruelty cases and included the five City district attorneys, the NYPD, the SPCA and the Center for Animal Care and Control (Article 26, 2006). Shortly thereafter the New York State Legislature increased its efforts relating to the passage of felony legislation.

Following the brutal death of Buster, the cat, Republican Assemblyman James Tedisco spearheaded the drive towards passage, quickly gathering 118,000 signatures and knocking down hurdles set up by lobbyists opposed to the legislation (1999, B1). While Buster’s Law was drafted by Tedisco, he was not the first New York congressman to propose felony level animal cruelty legislation in New York. Democratic Assemblyman Pete Grannis had drafted legislation that languished for years, primarily stymied by pro-hunting and farming interests (Caher, 1998, p. A1). After Tedisco drafted Buster’s Law the two legislators worked together with both animal welfare organizations and the hunting and farming lobbies to create a bill acceptable to all (Caher, 1998, p. A1). According to Tedisco bringing in advocates from opposing interest groups was key to getting agreement among legislators (Personal Conversation, 4/07). At the “11th hour” however, Assemblyman and House Speaker Sheldon Silver introduced his own bill, effectively killing the legislation for 1998 (Gardiner, 1998, B4). In the next year a slightly modified version of Buster’s Law passed and was signed into law.

News articles, memoranda and the like lead to the identification of several motives influencing support for the legislation. In a legislative memorandum relating to
the felony cruelty legislation, concern is expressed that innocent animals have been subjected to horrendous actions. Additionally, the legislature acknowledged growing public recognition of the rights of animals to be treated in a humane fashion and observed that, at that time, seventeen states had enacted felony cruelty laws. Tedisco further suggested law enforcement would be less likely to devote scarce resources to a misdemeanor with minor consequences upon conviction than they would to a felony offense (Caher, 1998, p. A1). As discussed above, all of the aforementioned reasons pale in comparison to the belief that animal abusers have increased propensity to engage in other criminal activity, especially violent criminal activity directed towards human beings. The legislative memoranda note that virtually every serial killer has had a history of abusing animals and in newspaper interviews Tedisco and other legislators make frequent mention of the alleged link. According to Assemblyman Prentiss, "(w)hat happens when animal abusers run out of pets to attack? They turn to humans. These are acts of sick and depraved individuals. So if you can catch it when the abusers are young enough, you are helping to protect humans, too" (Caher, 1998, p. A1). In discussing his thoughts on the legislation Tedisco claims "Buster died. I was upset but I was more angered when I found out that this crime was only a misdemeanor. And I was livid when I learned about the links between animal cruelty and crimes against human beings. So I drafted Buster’s Bill ...” (Caher, 1998, p. A1). In the animal welfare/rights community, it has been observed that "these new laws are clearly not the beginning of a trend to criminalize mistreatment of animals resulting from any increased sensitivity to animals' rights” (Rosa, 2000). While not denying animal suffering as a motive, an examination of reasons behind legislation do strongly suggest other motives played a greater role.
Despite the frequent assertions regarding the link between animal cruelty and other violent offenses, and the subsequent need for psychological intervention (Caher, 1998, p.A1; Gardinier, 1998 p. B4, Article 26), the bill that finally became law did not include this provision.\textsuperscript{12}

\textbf{Animal Cruelty Legislation – Current Status, Legal Challenges and Peculiarities in New York}

As discussed throughout this paper New York currently has both misdemeanor and felony legislation prohibiting cruelty to animals. The legislation specifies fines of up to $1000 and $5000 respectively and jail terms of up to one year and two years respectively. Animal cruelty, including felony cruelty, is classified as a non-violent offense. Under the current legislation, there are no enhanced penalties for recidivist abusers, despite the fact that New York has enhanced penalties for predicate felons. If, however, one is convicted of felony cruelty, the conviction can serve as a predicate felony for a second felony based in penal law (Article 26, 2006).

In addition to financial and/or incarcerative penalties, an individual charged with animal cruelty in New York may be required to pay a bond for the care of his or her animals. After arraignment, the shelter holding the animal(s) can petition the court for security. For those convicted of animal-related offenses, there is a forfeiture allowance for the both defendant and any cohabitants that were aware of, or should have been aware of, the suffering of the animal victim(s) (Article 26, 2006). This legislation is often enforced by the police, however in New York City, and other locations in the state, SPCA officers actively enforce cruelty legislation as peace officers.

\textsuperscript{12} Each year a bill to amend the legislation and require psychiatric evaluation is referred to the agriculture committee, where it has yet to garner the necessary interest and support.
Subjectivity and Other Problems with the New York Statutes

The placement of the anti-cruelty legislation in Agriculture and Markets Law instead of Penal Law can potentially lead to difficulties with enforcement. Because it is not included in Penal Law police are not routinely given training in enforcement and indeed may be unaware the legislation even exists. Although several organizations regularly conduct training seminars for law enforcement, training is not mandated by the state and many police are still uneducated as to the specifics of the legislation. While police enforcement is not investigated in this research its potential influence is worth a mention. If this initial hurdle to enforcement is overcome, if police do indeed arrest an individual for committing an act of cruelty, there are still several criteria that must be met prior to that individual being eligible for prosecution under the misdemeanor or felony legislation.

An obstacle with both the misdemeanor and felony legislation is its requirement that the abuse be unjustified, a common prerequisite across the nation. A frequent defense to prosecution containing such language is, of course, that the accused actions were justified based in defense of themselves or their property, or needed discipline. Courts across the nation have upheld such defenses (Sauder, 2000).

In order for an individual to be prosecuted under the felony statute, the criteria are much more restrictive: The victim must be a cat, dog or other recognized companion animal; The abuser must not have a justifiable purpose for his or her actions; The abuser

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13 Unlike New York, the majority of states have their animal cruelty legislation contained in their criminal law statutes, often placing it amongst statutes that regulate morality or public decency. New York, however, is by no means the only state that has its cruelty statutes included with legislation governing the agricultural business. Idaho, Illinois, Nevada, South Dakota and Washington maintain cruelty statutes in a separate location than that in which they keep criminal law.

14 Legislation was passed in New York on October 28, 2009 that allows the Municipal Police Training Council to develop procedures and training materials for police on animal cruelty investigations and to provide this training to law enforcement officers.
must have intended to cause extreme physical pain to the animal and/or the abuse must have been administered in an especially depraved or sadistic manner; and The animal must have been killed or suffer serious physical injury as a result of the actions of the abuser. Definitions of “extreme physical pain”, “depraved and sadistic” and “companion animal” are left up to the court.

It is not unreasonable to assume that different people have different thoughts as to what constitutes extreme pain, sadistic abuse or a companion animal. Different people also likely have different concepts of the severity of an injury or whether or not a particular behavior meets the criterion for being depraved or sadistic. The subjectivity, in combination with broad prosecutorial discretion, particularly in these lower level cases, may allow for the insertion of personal feelings on the matter.  

Both the misdemeanor and felony cruelty legislation have survived challenges at the state level. In People v. Bunt (1983) the defendant alleged that the misdemeanor legislation, section 353, was unconstitutional due to its vagueness, specifically, he alleged that it did not clearly inform him that his actions – severely beating a dog with a baseball bat – were unjustified and cruel. The court disagreed. In another misdemeanor case involving a First Amendment challenge (People v. Voelker, 1997), the court similarly upheld the interests of the state, and of relevance, acknowledged that the United States Supreme Court has recognized that the states have a legitimate government interest in protecting animals (Church of Lukumi Babalu Aye v. City of Hialeah, 1993). Voelker

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15 Ambiguity in the statutory language is in fact one of the major criticisms of anti-cruelty legislation across the nation. Experts in animal law suggest that vagueness be removed and terminology clarified in order to remove some of the discretion afforded prosecutors.

16 In this case the defendant videotaped the decapitation of three live iguanas. Due to the fact that his acts only came to the attention of the criminal justice system after they were televised on the show “Sick and Wrong” he claimed his freedom of speech was trampled upon.
additionally argued that his actions were not unjustified. In response to this assertion, the court concluded that assertions regarding justification were to be left to the trial court.

The felony statute survived an appellate challenge regarding vagueness as to the definition of “companion animal”. The defendant in this particular case stomped to death a goldfish belonging to his girlfriend’s children during a domestic incident. The defendant challenged his felony cruelty conviction, arguing that the definition of “companion animal” is vague, and that goldfish were not companion animals. The appellate court judge disagreed, quoting statutory language that specifies a companion animal as “any other domesticated animal normally maintained in or near the household of the owner”. (People v. Garcia, 2006). The ruling in this case should presumably allow for the severe, intentional abuse of a wide range of animals to be prosecuted as felonies.

While many more challenges may arise, thus far the courts of New York appear to be unconcerned about vagueness and potential ambiguities in the statutory language.

In Sum

Animal cruelty legislation has evolved from a patchwork of weak, rarely enforced and relatively ignored legislation to stronger laws enacted with broad public support. New York’s existing misdemeanor legislation was enhanced and felony legislation was passed, motivated in large part by broad belief in the alleged link between animal cruelty and human-directed violence. Whether or not these strengthened statutes and increased public interest have resulted in increased legal actions against alleged abusers is unknown.

17 He claimed that because he cooked and ate the iguanas, this imposed a justifiable purpose.
Chapter Three: Court Research

Criminal cases begin their journey through the courthouse if and when a prosecutor decides to file criminal charges, and end with the imposition of a sentence. At any point in this journey charges can be dismissed, or greatly altered through plea negotiations.

This research examines the factors that influence prosecutors in their decision-making, using animal cruelty cases as the context within which to study this process. Animal cruelty cases are somewhat different than the conventional or routine crimes that are often the subject of criminal justice research, and which have provided the basis for the formation of several well-explored theories of decision-making by prosecutors. More specifically, because animal cruelty is a lower-level offense, and the statutory language is somewhat ambiguous, prosecutors may have increased discretion in their decision-making. Furthermore, as discussed throughout this paper, these cases involve an act for which there is wide variability in opinions as to how offenders should be treated, and there is evidence that these opinions are changing. It is expected that this broad discretion, in combination with variable norms regarding cruelty, will lead to wide variation in the decisions made by prosecutors regarding charging and bargaining. This research seeks to understand if empirically established theory is able to explain decision-making in these types of cases.

Empirical tests of common theories of courtroom decision-making suggest that prosecutors strive to avoid future uncertainty, leading them to often consider judicial or jury receptivity to their decisions. They are also constrained by the concerns of other members of the courtroom. It is expected that these theoretical perspectives detailing
uncertainty avoidance and courtroom dynamics will have explanatory power in prosecutorial decision-making in cruelty cases, however, the wide discretion and variable norms in animal abuse cases will lead to significant contribution from extra-legal factors, prosecutors’ individual beliefs and the values of the community in which the cases are prosecuted.

This chapter will begin with a brief overview of prosecutorial charging and bargaining. It will then review theory and research that give clarification to prosecutorial decisions regarding case processing and discuss how this theory and research may apply to the decisions made by prosecutors in animal cruelty cases.

**Description of Charging and Plea Bargaining**

The decision to file formal charges against an individual charged by the police with a crime is one of the most powerful decisions made by a criminal justice actor, and has been characterized as the “gateway to justice”. After the police file initial charges, the District Attorney’s Office must review the evidence submitted by police, evaluate the charges and the evidence and assess whether or not charges should be upgraded, downgraded, dismissed or otherwise altered. Due to overlapping and sometimes subjective criminal codes, the prosecutor may be able to select from a number of different offenses with which to charge an individual. He or she can also decide how many counts to file, and at times, whether or not to seek sentence enhancements. According to Misner, “(i)n the area of charging, prosecutorial decisions--such as whether to prosecute, how to prosecute, how long to sentence, and whether to dismiss charges--all contribute to the creation of the prosecutor as the real policy-maker within the criminal justice system. At best the legislature is a lesser partner whose role is to set the outer parameters of
criminal law policy and to fund prisons” (Misner, 1996). In fact there are few legislative or judicial guidelines on charging and the charging decision is generally immune from review.

A series of state and federal court cases, beginning in the 19th century, have affirmed these broad and relatively unreviewable powers that are held by the prosecutor.\textsuperscript{18} So long as the prosecutor is able to establish with probable cause that the offense in question occurred and the defendant likely committed the offense, (s)he may file charges in the manner (s)he sees fit, or alternately, (s)he may decline to file charges. While some prosecutors maintain a “lax” charging policy, filing charges in the majority of cases that meet the minimal probable cause criterion, other prosecutors are much more stringent in the criteria they use (Flemming et. al., 1992, Jacoby, 1979, Neubauer, 1974), thus, in some offices the failure to file charges is far from an obscurity. For example, in research on drug diversion, Albonetti and Hepburn (1996) found that prosecutors deemed almost 20% of drug cases unfit for prosecution, while Spohn, Beichner and Davis-Frenzel (2001) found that 41.4% of rape cases they examined were rejected early on in the screening process, and an additional 11.4% were dropped later. In New York State 23% of felony arrests and 30% of misdemeanor arrests were dismissed in 2006 (DCJS, 2007). Based on statistics provided by the New York State Department of Criminal Justice Services, prosecutors do appear to be filing charges in most cruelty cases where the police make an arrest: in 2008, of 233 reported arrests for animal cruelty, fifty cases, 21%, were reported as dismissed prior to adjudication. If these statistics are correct it would appear that prosecutors statewide are moving forward with many cases.

\textsuperscript{18} In 1979 the Supreme Court, in \textit{United States v. Batchelder} (1979), affirmed that the decision of “whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor's discretion”. 

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There are reasons, however, to view these statistics with caution. If prosecutors do consistently fail to file charges, this can have serious consequences for future cases that are similarly situated. As observed by Worden (2007), “(w)hen court actors agree that certain types of cases do not merit prosecution, or merit it only under unusual conditions, that agreement may have important consequences: it may discourage police from making arrests, and may send signals to complainants and defendants that some offenses are beneath the court’s notice” (p. 188).

If a prosecutor chooses to proceed with a case, the case will advance towards trial, however, it is well accepted that very few cases will be resolved by a trial. Although little is known about the processing of animal cruelty cases, this research began with the assumption that the majority of those cases that were adjudicated would leave the courthouse as a result of a plea negotiation. In plea negotiations the discretion of the prosecutor is somewhat constrained by the input and decisions of the defense attorney, his client, and the judge, however, he or she still holds considerable power in regard to case processing decisions. He or she determines if and to what extent charges and/or counts are to be reduced or modified and is considered to have substantial sway in sentencing decisions as well.

The practice of plea bargaining has been subject to considerable criticism and debate since its pervasiveness came to light in the 1950’s. The most common concerns are that it violates defendants’ Fifth Amendment right against self-incrimination, Sixth Amendment rights to a jury trial and to confront one’s accusers and Fourteenth Amendment right to due process. Despite concerns about constitutional issues

19 The statistics provided for each county are incongruent with other information provided to the author via interviews and data available from media and other on-line sources.
surrounding plea bargaining, the Supreme Court has consistently upheld the constitutionality of the practice, suggesting prosecutors can offer both incentives (Brady v. U.S., 1970) and threaten defendants with additional penalties (Bordenkircher v. Hayes, 1978) in the pursuit of a plea. Plea bargaining has additionally been criticized for depriving crime victims, and the greater community, of justice by allowing offenders to escape legislatively mandated punishment. Despite these criticisms it is a deeply entrenched part of our criminal justice system.

Theory and Research on Charging and Plea Bargaining

The remainder of this chapter will review empirically established theories regarding prosecutorial decision-making, and discuss how decision-making in cruelty cases may be explained by these theories.

Uncertainty Avoidance

Albonetti (1986, 1987) contributed significantly to the study of prosecutorial decision-making with her theory of “uncertainty avoidance”. This theory explains how and why prosecutors rely on legal and extra-legal factors, and other environmental cues, in making charging decisions. Albonetti posits that in the initial charging decision (1986), as well as in the decision to continue with a case after indictment (1987), prosecutors organize their strategies around their need for a high ratio of courtroom wins to courtroom losses as well as their beliefs regarding which factors will lead a judge or jury to convict a given defendant. If they are quite certain a case will result in conviction, they will be likely to proceed towards a trial; in the absence of such certainty, there is an increased likelihood that they will choose to nolle a case. The desire to reduce future uncertainty influences plea bargaining and other case processing decisions as well; in the
absence of certainty as to judicial or jury response, prosecutors may attempt to secure a “win” through negotiation (Albonetti, 1987; Eisenstein & Jacob, 1991).20

This concern with the convictability of a case in the face of uncertainty as to how others will respond in the courtroom leads to a reliance on factors that “absorb” some of the uncertainty, such as previous experiences with similar cases and stereotypes about defendants and victims who are similarly situated to those involved in the case at hand. Legal factors, primarily related to the case, and extra-legal factors, primarily focused on victim and defendant characteristics, may guide prosecutorial decisions based on their association with outcomes in past cases.

In animal cruelty cases, prosecutors may be lacking past experience from which to draw conclusions about the response of other decision-makers. Information about factors affecting convictability may be virtually non-existent due to both the rarity and evolving conceptions of such cases, making it especially hard to make predictions about cause and effect relationships. Furthermore, factors that may influence the “typical” judge or jury are not constant and may be especially prone to vary across the counties of New York, more so than in other cases, due to conflicting views on the criminality of such acts. Whereas a jury drawn from a community that is predominantly rural and dominated by farming interests may understand, for example, the logic of a farmer who shoots a trespassing dog, jurors in Manhattan may not. This is not to say that those in a farming community will sanction such actions; they may think it is wrong, just not

20 Many court scholars (Frohmann, 1997; Neubauer, 1974; Spohn et. al., 2001) echo Albonetti’s (1986, 1987) assertion that convictability is a foremost issue in the prosecutorial decision-making. According to Frohmann (1997) this concern creates a “downstream” orientation, or an anticipation of how others will see the case, and leads to reliance on past experiences, and those of their colleagues, as prosecutors orient towards a “composite” of a typical jury or judge.
worthy of a felony charge or any serious sanction. Despite these caveats, legal and extra-legal factors that may affect cruelty cases are considered below.

**Legal Factors**

Legal factors including the seriousness of the offense (Eisenstein & Jacob, 1991; Feeley, 1979; Schmidt & Steury, 1989; Worrall et. al., 2006), 21 the prior criminal record of the offender (Adams & Cutshall, 1987; Albonetti, 1987; Feeley, 1979; Schmidt & Steury, 1989) and the strength of the evidence (Albonetti, 1987, Heuman, 1981) are all consistently associated with charging decisions, as well as bargaining and sentencing decisions. As such they are expected to be relevant to this research. The degree of injury suffered by the victim and the culpability of the defendant can affect prosecutorial perceptions of case seriousness. The defendant’s prior criminal record may be judged by both the number of prior arrests and/or convictions as well as the gravity of these prior offenses while witnesses, expert testimony, photographs and physical evidence all affect evidentiary strength.

Research has found legal factors to be influential in charging decisions in both serious and less serious criminal cases. Albonetti’s (1987) research, involving prosecutorial charging of felony defendants, indicates that statutory severity and prior record, as well as exculpatory, corroborative and physical evidence, all influence the probability of a prosecutor filing charges. In research on lower level offenses, legal factors have similarly been found important. Feeley (1979) determined that the decision not to prosecute in misdemeanor and low level felonies relied primarily on legal factors,

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21 Several of these articles define seriousness as the severity of one type of crime as opposed to another (e.g: rape vs. burglary), others look at the seriousness of a particular offense within one offense typology. For example, Adams and Cutshall (1987) examined shoplifting and considered certain cases more serious based upon the number of offenses charged. This research relies on the latter approach.
including prior criminal history, seriousness of the offense and number of charges filed. 
Adams and Cutshall (1987) observed that, in shoplifting cases, the prior record of the 
defendant and the number of charges filed against him or her, were the most influential 
variables in charging decisions. Research on plea bargaining has similarly found legal 
factors to be important in the decisions made by prosecutors (Eisenstein & Jacob, 1991; 
Meyer & Gray, 1997). When deciding whether or not to engage in negotiations and/or the 
terms of the negotiations, a prosecutor may be compelled to offer the defendant a good 
deal, rather than risk a trial where he or she cannot fully defend the charges filed 

Variation on legal dimensions and subsequent variation in case decision-making 
is expected in animal cruelty cases. The degree of harm inflicted on the animal, the 
number of animals abused, and the motivations and intent of the accused can affect the 
perceived seriousness of the case. Obviously a case in which an animal suffers bruises, 
or a broken bone, will be deemed less serious than a case in which an animal dies as a 
result of its injuries. The Legislature reserved felony charges for cases in which abuse 
leads to serious injury or death but, as previously discussed, the terminology is somewhat 
subjective, and in misdemeanor cases the requisite degree of harm is not specified. As the 
degree of harm increases, charges will be less likely to be dismissed and more likely to be 
filed at or upgraded to the felony level. A case in which a defendant subjects multiple 
animals to abuse may be deemed more serious than one in which a single animal abused. 
Motivation and intent may also impact case processing. If the accused was lacking intent 
to harm the animal, this will likely be deemed less serious than a case in which harm was 
intentional. The law recognizes this by only allowing felony charges in cases where the
harm is intentional. At the misdemeanor level, however, harm may result from intentional abuse or may be a negligent crime of omission. A situation in which the owner regularly “forgets” to feed the animal, yet the animal has no notable injuries, may be considered less serious than one in which an animal is intentionally starved as punishment.

If the defendant has a prior record, this, in general, shows that (s)he has not been rehabilitated or deterred from past experiences and this therefore worthy of an enhanced sanction. Conversely, if the offense is the first for the defendant, it can be argued that the criminal incident was an aberration, not a true marker of the character of the defendant (Feeley, 1979).

Evidence may take many shapes – the testimony of lay and expert witnesses, and photographic evidence and physical evidence from the crime scene can help establish the degree of harm inflicted and otherwise affect the strength of the prosecutor’s case, thus influencing his or her decision-making. The presence of evidence may be especially relevant in these cases due to the fact that the animals abused may be deceased, and if living, cannot describe their suffering. The New York State Humane Association produced a manual on the processing of animal cruelty cases in New York State. The manual emphasizes the importance of gathering quality evidence, in the form of carefully documented photographs and testimony from expert witnesses. The manual emphasizes that cases are difficult to prosecute without the input of such experts, primarily veterinarians. The manual more strongly calls for photographic evidence, advising that “it is critical that a judge or jury see the poor condition the animals were in on the day they were seized. No amount of verbal testimony can convey the suffering as well as
photographs which clearly depict emaciation, injuries, filthy conditions, etc. They validate all the written documents you have accumulated” (McDonough, 1996).

Extra-Legal Factors

Research has explored the influence of several extra-legal factors on case decision-making. The gender, race, and age of the victim and defendant as well as the relationship between them, have all been subject to empirical examination, receiving the most attention in research on sentencing. The extra-legal factors, however, are often found to be only weakly related to case processing and outcome decisions, and are often dominated by legally relevant factors. Furthermore, while certain legally relevant factors stand out as being consistently significant in prosecutorial decision-making, research does not identify extra legal factors that consistently impact decision-making. It has been suggested that in the most serious cases (e.g.: murder, armed robbery) prosecutors are subject to greater oversight and have less discretion, and therefore are less likely to rely on extra-legal factors, while the opposite is true in cases involving offenses deemed less serious (Gottfredson & Gottfredson, 1980; Spohn & Cederblom, 1991), although at least two studies examining the processing of lower level offenses failed to find support for strong influence of extra-legal factors (Adams & Cutshall, 1987; Feeley, 1979). As described above, Feeley (1979) and Adams and Cutshall (1987) both found legal factors to dominate prosecutorial decision-making in lower level offenses. There is, however, reason to believe extra-legal factors may have stronger predictive potential in cruelty cases.

Although extra-legal factors often lag behind legal factors in terms of their ability to influence case outcome, studies on the influence of extra-legal factors on case
decision-making usually examine conventional crimes (e.g.: murder, “typical” felonies, shoplifting). It is possible that it is not the relative seriousness of a criminal act that is of importance, but a different crime distinction that may make a difference in the weight given to extra-legal factors. There is one realm in which somewhat consistent findings are found for the influence of extralegal factors: crimes that are, for lack of a better word, emotionally divisive. It is possible that it is not lower-level crimes per se, but behaviors that are not always defined as crimes, or are considered minimal transgressions, in the minds of some, where relevant extra-legal factors may have greater impact. As discussed throughout this paper, there may be conflicting views surrounding the criminality of animal abuse and prosecutors may expect potentially divergent opinions from the judge or jury when they are considering the convictability of a case. In this situation, strong evidence may not be enough. In situations where beliefs and norms about one important legal factor – seriousness – may be doubted by some who sit in judgment, extra-legal factors may become especially relevant. The extra-legal factors potentially relevant here exploit emotions and as such may serve as “insurance” that a case is convictable at trial, which may reduce some of the uncertainty about convictability. There is some support for these assertions based in research on other emotionally divisive crimes such as rape and domestic violence. In cases involving domestic violence, Worrall et. al. (2006) found gender to have statistically significant influence, with charges more likely filed when the victim is female. Similarly, research on rape law reform found that, despite a repeal of corroborations and resistance requirements, prosecutors continued to believe these victim behaviors to be necessary for conviction, and their charging and bargaining practices reflected this (Beichner & Spohn, 2005; Largen, 1988; Spohn & Horney, 1992). In fact,
Spears and Spohn (1997) found victim characteristics, such as behavior and moral character to be most important in prosecutors charging decisions, regardless of evidentiary strength.

In cruelty cases, normal conceptualizations of many of extra-legal factors will not apply (e.g.: race and gender). There are, however, others that are uniquely important. In particular, the type of animal harmed, and the relationship between the victimized animal and the accused may impact the processing of animal cruelty cases. Although all animals are protected under the misdemeanor statute and all domestic animals are protected under the felony statute, cruelty against cats and dogs, based on their popularity as pets, may be deemed more serious than cruelty against other types of animals. Additionally, if the animal harmed is the pet of another (as opposed to one’s own pet, or a stray) the presence of a human victim to advocate for more severe sanctions could be significant. Victim input can have important consequences for prosecutorial decision-making, and the victim’s preference for prosecution may influence prosecutors’ charging decisions (Eisenstein and Jacob; 1991; Worrall et. al., 2006). Eisenstein and Jacob (1991) found that prosecutors are less likely to drop cases if the victim remains involved, while Worrall et. al. (2006) found felony charges are more likely to be filed than are misdemeanor charges if the victim presses for prosecution. Therefore, if the victimized animal is a pet, and the accused not the owner, the prosecutor may be less likely to drop or reduce the charges and may file them at a higher level.

**Courthouse Culture Theory**

Courthouse culture theory has been used to explain both charging and bargaining decisions. This theory conceives the court as an organization (Eisenstein & Jacob, 1991),
a community (Eisenstein et. al., 1988) or a system (Feeley, 1979). The judge, defense attorney and prosecutor are the central members of this group, referred to as the courtroom elite or courtroom work group.

Courthouse culture theory calls for the integration of individual, contextual and environmental factors (Eisensten & Jacob, 1991; Nardulli et. al., 1988). All of these factors affection decision-making in the court organization. Despite this, most research focuses primarily on the infrastructure and working conditions that affect the key members of the courtroom workgroup. In cases with variable norms, such as cruelty cases, individual and environmental variables may have stronger power than they do in routine cases so it is especially important to consider these factors. This research, therefore, will consider the influence of many factors beyond the dynamic between the courtroom workgroup. More specifically, it will consider the individual beliefs of prosecutors, the role of sponsoring organizations and exchange relationships, and the influence of the environment. Literature on these many facets of courthouse culture theory and its application to this research will be discussed below.

Individual Beliefs

The existence of broad prosecutorial discretion allows for individual attitudes and beliefs to potentially impact decision-making. While prosecutors’ personal beliefs are not supposed to be any more relevant to their decisions than are the extra-legal factors discussed above, one cannot ignore the fact that decision-making is principled and as such prosecutors’ attitudes and values must be examined to fully understand how decisions are made in the court (Feeley, 1979). Unlike most people, court actors have the opportunity to test their beliefs and to implement them in their decision-making (Worden,
Prosecutors may use their discretion to dismiss charges when they disagree with legislation as the legislation “must be interpreted and applied by decision makers who may not share the goals of those who championed (its) enactment (Spohn & Horney, 1992: p. 167).

The influence of individual values on case processing has been subject to little empirical scrutiny. While limited research has assessed the influence of extra-legal factors in prosecutorial decision-making, as well as the impact of prosecutors general attitudes on punishment, due process and the like (see Eisenstein et. al., 1988; Worden, 1990), research has rarely investigated how decision-making may be influenced by individuals’ beliefs regarding specific categories of offenses. Limited research into other emotionally divisive crimes has indicated that personal beliefs about the legitimacy of criminalizing (or enhancing the criminalization of) a particular offense may affect critical decisions. For example, in regard to rape shield legislation, Spohn and Horney (1992) found that prosecutors – with the consent of the judges - often overlooked procedures to be followed prior to the admittance of evidence regarding a prior victim-defendant relationship and instead conceded the matter. The authors suggest that this happened in part because the exclusion of such evidence conflicted with beliefs regarding the relevance of the information. Similarly, research into the limited early success of driving while intoxicated reforms found that a principle motive for shielding a substantial number of recidivist drunk drivers from mandatory imprisonment lay in the view of justice system personnel that drunk driving was not the serious matter the statute presumed it to be (Ross & Foley, 1987). Attitudinal influence may similarly be apparent in crimes like...
animal cruelty where beliefs regarding its legitimacy as a crime are expected to vary as they did in sexual assault and drunken driving cases.

We do not know much about prosecutorial opinions on animal welfare issues. As discussed in Chapter Two, there have been broad social and legal changes relating to animals in the past several decades. The publications of the APRI and the establishment of Animal Law Chapters in several State Bar Associations speak to prosecutorial support for anti-cruelty legislation. While many people, prosecutors included, appear to support animal welfare, there is also significant resistance pro-animal legislation.

Large farming corporations often oppose animal interests because they do not want government regulation of their business practices. Organized farm interests such as the Farm Bureau actively engage in lobbying activity and encourage members to vote in a manner that protects profit over animal welfare. While actions such as branding a herd of cows and/or slaughtering them for food are exempt from felony animal abuse laws, agribusiness interests still fear a “slippery slope” of legislation from which their activities will become increasingly scrutinized and profits will suffer. For example, while there were only three “equine processing” facilities in the United States, and most Americans do not consume horse meat, the U.S. Farm Bureau strongly opposed the (successful) Horse Slaughter Prevention Act because “it would set a negative precedent for extreme animal rights activism” (http://www.fb.org).

Individuals who hunt may also object to animal cruelty laws in a given state. Like farmers, hunters fear that limited legislation protecting animal welfare may snowball into more comprehensive legislation that will ultimately impinge on their right to hunt prey and manage their hunting dogs. The literature and websites of pro-hunting organizations
routinely condemn the animal rights movement claiming that “(b)branches of these national lobbying groups are active in every state legislature. Influenced legislators sponsor outrageous bills….that have placed onerous or impossible federal restrictions on hundreds of thousands of responsible home pet breeders, rescuers and hunting dog owners” (http://saova.org/threat.html). Pro-hunting organizations also encourage members to contact legislators in opposition of pro-animal legislation. Additionally, one only need read op-ed pieces in the paper, or mention animal welfare in order to encounter individuals who are opposed to assorted protections for a mere animal.

It is likely that some prosecutors share these beliefs. According to Joshua Marquis, an Oregon District Attorney, and NDAA vice president, animal cruelty crimes are frequently not prosecuted due to the perception that the victim in just an animal, and therefore not worthy of time and resources, and the notion that such cases are “sissy” (Rackstraw, 2003).

Prosecutors’ feelings about the legislation, and their beliefs regarding both the seriousness of animal cruelty, as well as their beliefs regarding whether or not it is a gateway crime may be relevant to prosecutorial decision-making in cruelty cases. The distinction between criminal actions that are serious as opposed to minor is relatively clear for many offenses, for example, in most situations it is easy to distinguish between manslaughter and marijuana use. Animal abuse is much less clear-cut. Some may see it as a violent offense; others may see it as a property offense, perhaps even a minor property offense. If a prosecutor does not view animal cruelty as a serious offense, he or she may dismiss charges or offer the defendant significant leniency in exchange for a guilty plea. If a prosecutor believes animal cruelty is a serious offense that should be
subject to criminal justice intervention, (s)he is more likely to believe a defendant should be prosecuted, and prosecuted at the highest level possible. Similarly, if a prosecutor believes there is a link between animal cruelty and other forms of violence, they may see criminal justice intervention as a means of needed assistance.

*Office Policy*

Each of the three key members of the courtroom workgroup brings his or her own resources to the courtroom workgroup from their sponsoring organization. Of the sponsoring organizations, the District Attorney’s Office is the most bureaucratic and hierarchical in nature (Nardulli et. al., 1988), and the responsibilities of the District Attorney grant him, or her, a place of prominence in both the courthouse and the greater community. In the courthouse, the District Attorney has the authority to control the flow of cases into the court. Through this screening function he or she shapes the workload and workgroup of the prosecutors (Flemming et., al., 1992: 24). As discussed above, probable cause may be too low a yardstick in the eyes of some decision-makers, and informal or formal office policy regarding charging decisions may reflect this. The District Attorney may also directly regulate the bargaining decisions of his or her subordinates (Albonetti, 1987; Eisenstein & Jacob, 1991; Flemming et. al., 1992; Worden, 1990), encouraging or prohibiting plea-bargaining in certain types of cases.

Worden (1990) observes that research “has largely overlooked chief prosecutors’ administrative and political uses of discretion in making policies that structure their assistants’ day-to-day decisions” (p. 335). District Attorneys vary in the degree of oversight, as well as in their concerns regarding case convictability and efficiency, which in turn impact the criteria they and their subordinates use to evaluate cases (Eisenstein et.
Some District Attorneys grant their assistants wide latitude in decision-making, while others closely dictate and monitor the decisions of their assistants. The management styles a District Attorney takes can have serious consequences for the amount of discretion held by prosecutors (Flemming et al., 1992).\footnote{The management practices of the District Attorney recently came under the scrutiny of the United States Supreme Court. In 2009 the Court heard the case of Van de Kamp vs. Goldstein, in which it was claimed that the District Attorney’s alleged failure to manage his prosecutors lead to a false conviction. The falsely convicted individual claimed that the “absolute immunity” from prosecution granted to prosecutors (Imbler v. Patchman) should not extend to District Attorney’s and other supervising prosecutors who fail to adequately manage and train their staff as they are acting in an administrative role. The Court disagreed.}

This affects the development of “going rates” or informal norms within a particular courtroom.\footnote{Flemming et al. (1992) found subversive resistance to the policies of the District Attorney by some prosecutors. This was more common when the prosecutor was part of a stable workgoup. In these groups, other members sometimes assisted an Assistant District Attorney in disposing of a case in a way that would benefit the workgroup, while not costing the ADA his job (Flemming et al., 1992).} The District Attorney may sanction assistant prosecutors who make decisions that are contrary to established policies (Emmelman, 1996; Flemming et al., 1992). So, while an individual prosecutor may want to proceed with an animal cruelty case, if his or her office deems such cases not worthy of office resources, his or her behavior may be severely constrained by policy. Alternately, media or police “crack-downs”, and/or the sensitivity of the District Attorney as to a specific offense may influence office policy. If there is increased environmental attention paid to a particular category of offense or the District Attorney believes a particular offense is especially heinous the likelihood of policy dictating charging or plea negotiation decisions may exist.

\textit{Courtroom Workgroup}

Courthouse culture theories tend to focus their theory and research largely on the contextual, or courtroom, domain and as such a large part of the discussion on courthouse culture theory will focus on the courtroom workgroup. At a minimum the courtroom
workgroup includes a regular group of actors, who keep abreast of “community news”, gossips and norms via a social grapevine (Eisenstein et. al., 1988, Nardulli et. al., 1988). As mentioned above, the judge, prosecutor and defense attorney are the key members of this group. Workgroup members participate in exchange relationships and their decisions reflect shared goals, common incentives, resources and constraints. Consensus and the reliance on established norms among members offer a reduction in uncertainty, and contribute to a sense of community in the workgroup (Eisenstein & Jacob, 1991; Eisenstein et. al., 1988; Nardulli et. al. 1988). New members of this community are informally socialized to the courtroom workgroup and learn which cases are worthy of a plea bargain and what constitutes an acceptable plea (Eisenstein & Jacob, 1991; Eisenstein et. al., 1988; Heumann, 1978; Nardulli et. al. 1988; Sudnow, 1965). Those who “rock the boat” by taking an adversarial stance may be subject to informal, internal sanctions (Eisenstein & Jacob, 1991; Heumann, 1978).

According to Eisenstein and Jacob (1991) and other adherents of courthouse culture theory (e.g.: Eisenstein et. al., 1988) familiarity amongst courtroom workgroup members is of great importance for case processing and outcome.²⁴ Familiarity gives rise to mutual understanding of the constraints and resources that each member brings to the group, and leads to informal, friendly discussion, and to the development of shared norms and courtroom-specific “going rates.” That is, familiarity breeds a common understanding of how certain case typologies are to be handled, in terms of both the mode

²⁴ Familiarity may arise out of the assignment practices of the District Attorney’s Office, or other sponsoring organizations. If prosecutors (and defense attorneys) are given stable assignment to the courtroom of a particular judge the establishment of shared norms becomes more likely. The size of the community may also impact familiarity among workgroup members. In a small community there will be considerably fewer prosecutors, defense attorneys and judges than there would be in a large metropolitan area, therefore there will be increased opportunity for interaction both at work and outside of work (Eisenstein et. al., 1988). According to theory, if workgroup members frequently interact cooperation becomes more likely.
of disposition and the acceptable sentence. This in turn leads to a reliance on plea-bargaining as a mode of case settlement. Eisenstein and Jacob (1991) found that the relationship among the courtroom workgroup was the most important predictor of plea bargaining rates across the three court communities they studied. In the courtrooms where members had regular interaction, processes that were more cooperative marked the negotiation of cases, and trials were very much the exception. On the contrary, in courtrooms where the workgroup members were virtually strangers, the trial rate was considerably higher.

While the above research suggests that unfamiliar workgroups may have a higher trial rate, other research suggests that mere familiarity does not necessarily guarantee a cooperative process, and even in the context of a familiar workgroup, differential norms and/or an adversarial relationship may exist. In fact, it has been suggested that in attempting to rebut the concept of the adversarial system “social scientists may have overlooked aspects of the process in which real – as opposed to purely formal – conflict is present” (Church, 1985: p. 452). While previous interactions may familiarize members of the courtroom workgroups with one another, actors’ attitudes on core concepts, such as the value of punishment, or in this specific situation, the seriousness of defendants’ actions, may differ. Despite the inference that familiarity and “community” breed contentment, Eisenstein and Jacob (1991) found a more formal, “bureaucratized plea bargaining” in one jurisdiction they studied, and Eisenstein et. al. (1988) and Flemming et. al. (1992) identified a good deal of conflict between workgroup members in some of the communities they studied. This led Nardulli et. al.(1988) to suggest that plea negotiations may be consensus based and implicit or may instead be explicit, the result of
haggling and concession. Farr (1984), taking issue with the notion of the association between familiarity and friendship, found a highly formal and somewhat contentious relationship amongst familiar adversaries, as did Emmelman (1996). Church (1985) found significant variability between and within the four court communities that he studied. He inquires, “might not one element (of court culture) be the existence of norms that support an adversarial stance, at least in particular circumstances?” (p. 453).

Church’s (1985) argument may be of particular relevance to animal cruelty cases in which courtroom workgroups, even those marked by familiarity and relative cooperation, may see enhanced adversarialism due to the expected rarity of these cases, in conjunction with mixed and changing norms. In these cases perceptions of offense seriousness are likely to vary and established “going rates” are less likely to exist, possibly making plea bargaining more contentious.

In order to explore the role of courtroom workgroup relations in cruelty case negotiations, one must examine the role of the “going rate” in such cases. Courtroom specific “going rates” are necessary for a smooth bargaining process. They “provide a measure of predictability to sentencing that renders the machinations implicit in the concessions model unnecessary, even futile, for most cases” (Nardulli et al, 1988, p. 206). Research suggests that the process of establishing “going rates” is something that young attorneys learn on the job and after repeated dealings with particular case “typologies” make such cases routine matters. In the courtroom context, familiarity leads to the development of shared “going rates” among stable workgroups. In cruelty cases, even if familiarity and cooperation exists, it is expected that prosecutors will likely have had little experience with such cases and therefore they will not have developed pre-existing
“going-rates” to guide their negotiations. Even if “going rates” are found to exist for cruelty cases they may be in flux, as conceptualizations of the seriousness of these cases continue to evolve. From the above research one might conclude that, in addition to familiarity and repeated exposure to case “typologies”, workgroup members must share similar norms in order to establish courtroom specific “going rates”; in the absence of shared norms, plea bargaining may still dominate, but it will involve conflicted negotiation. This is echoed by Eisenstein et. al. (1988) who suggest that even in the absence of “going rates”, a majority of cases will still be resolved via plea negotiation.25 In these situations, however, the process will involve increased attention and haggling by the attorneys in line with the “concessions” based model of plea-bargaining, as opposed to the more implicit “consensus” based bargaining that is the basis for the concept of the “going rate.”

Exchange Relationship

Prosecutors’ decisions are influenced by criminal justice actors not only inside the courtroom, but by their relationships with the police and the greater community. Limited resources, market-like relationships and the organizational needs of the system, lead to prosecutorial decision-making that emphasizes accommodations made to the needs of other criminal justice actors who operate outside the courthouse (Cole, 1970). While the prosecutor may participate in a working relationship with many individuals and organizations, an important client in this exchange relationship is the police. While not

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25The authors make this assertion while discussing bargaining in small vs. large communities. They suggest that in larger communities, “going rates” will be much more common than in communities that are smaller, where “going rates” will be unlikely to exist for almost every offense due to the general rarity of criminal activity. That is, most crimes are rare in small communities, so courtroom workgroup members will frequently encounter situations that are new to them. Accordingly, given that animal cruelty cases uncommon, one would not expect to see “going rates” for the sentences in such cases, either in large or smaller courts.
all offices give weight to the practices and preferences of the police, (see for example, Neubauer, 1974), police still have influence over prosecutorial workload, while prosecutorial practices impact police decision-making.

The District Attorney’s Office is dependent upon the police for the input of many of their cases, and the quality of the initial investigative work. The police, meanwhile, are dependent upon the District Attorney’s Office for legitimizing the work they do. The police-prosecutor relationship may be especially important in cruelty cases. Because police do not automatically receive formal training in Agricultural and Markets Law, their training is likely to occur “on the job” and in response to their experiences with such cases. Since they have no formal training on how to respond to such cases, their behavior may be especially susceptible to prosecutorial shaping, that is, through previous charging practices, the prosecutor’s office may “train” police in which cases are/ are not worthy of the time and resources of the system. The above suggests that, because there is a relationship between the two, and there is a possibility that prosecutors may have molded the police response, cases that come to the attention of the District Attorney’s Office via the police may be accorded more weight than those that come to the attention of the Office via other means. Animal welfare literature of both the academic and “public interest” genre encourage “self-prosecution” of animal cruelty in cases where the police are hesitant to take action (Rackstraw, 2003). Animal cruelty cases may be brought directly to the prosecutor’s attention by the police or by a concerned citizen or animal welfare group, however it is expected that much less weight will be given to these types of cases than to those that originate with law enforcement.

*Environmental Factors*
The norms, values and other characteristics of the greater community may impact prosecutorial charging and bargaining decisions as well. Including an environmental aspect in studies of court room decision-making allows for greater understanding of “the flow of cases and personnel into a court system, the types of expectations to which actors within the court community must respond, and the types of constraints with which the actors must contend” (Nardulli et. al., 1988: p. 30). There are several features in the environment that may influence prosecutorial decision-making. These include the size of the court community, community expectations and the extent of media coverage on a particular case.

Eisenstein et. al. (1988) devote significant attention to the size of the external community and its influence on a broad range of factors. They suggest that there is a relationship between the size of a community and the size of the District Attorney’s office, with larger offices existing in larger communities. Large offices tend to have more formal policy in place, and may have more serious cases with which to contend. In larger communities, with a broader range of serious offenses, lower level cases may receive less attention and be handled with greater leniency than in smaller communities (Eisenstein et. al., 1988). Additionally, in smaller communities, the performance of individual actors may be subject to greater scrutiny, while those who practice in larger communities are afforded more anonymity. If prosecutors are working under greater scrutiny their actions may mirror the values of the community in which they practice.

Community expectations and constraints may influence decision-making. People hold different opinions about what behaviors should be subject to criminal sanction, and at what level sanctions should apply. Research on the impact of community sentiment on
courtroom decision-making is not well developed, however there is evidence that community sentiment has impacted decision-making in criminal cases in the past. For example, following the implementation of “three strikes” legislation, researchers found variation in decision-making between counties, and this variation appeared to be related to the extent of public desire for the legislation (Harris & Jesilow, 2000). In regards to animal cruelty, if a community has strong farming or hunting interest’s prosecutors may be discouraged from handling cruelty cases as severely as may be desired by a community without these interests. An additional and related source of environmental influence may be that of community organizations and/or the media. Court research overall has indicated that media do not have much influence on cases decision-making (Nardulli et. al., 1988), but this may deviate with cases that engender significant media scrutiny. A run-of-the-mill robbery or drug arrest will not likely attract much media coverage; an emotionally laden arrest for aggravated cruelty may provide a powerful human-interest story. The willingness of the media to devote attention to animal cruelty cases is expected to vary across counties. Factors such as the size of the community and preferences of both the editor and consumers may affect the degree of coverage. Newspapers and news channels serving larger communities may have issue of greater significance to cover, and the beliefs and interests of the editors and consumers regarding animal cruelty may direct the extent of coverage. These particular variables are beyond the scope of this paper, however, as the degree and possibly direction of coverage is expected to be variable, and this may impact prosecutorial decision-making, the relationship between media coverage and charging and bargaining decisions will be explored.
In Sum

The prosecutor has considerable power in charging and plea bargaining decisions. Research indicates that prosecutorial decision-making is a complex process informed by a multitude of factors. Legal and extra-legal factors, the dynamic between the courtroom workgroup, as well as policies of the District Attorney’s Office are relied on in charging and plea bargaining decisions as the prosecutor strives to avoid uncertainty and secure a conviction. In cases such as animal cruelty, where emotions can be manipulated, the influence of extra-legal factors may be especially relevant. Individual and environmental pressures may also inform prosecutorial charging decisions. The influence of all these factors has never been explored in the prosecution of animal cruelty cases, and in other types of crime few studies have comprehensively examined the multitude of variables that impact decision-making. Literature is especially lacking on the impact of individual values and environmental pressures. This research seeks to explain and understand the charging and plea bargaining practices of prosecutors in animal cruelty cases and suggests that the above variables will be of relevance to them.
Chapter Four: Research Methods

Research to date has not empirically addressed how the courts are handling animal cruelty cases at either the felony or misdemeanor level. While empirical research has examined the link between violence towards animals and violence towards humans, and law journals have explored various facets of legislation dealing with animal law, empirical research examining the actual application of this law has been neglected. This project seeks to understand and explain factors that may affect prosecutorial decisions regarding the charging and prosecution of animal abuse cases in the courts of New York. This chapter will present the research questions and hypotheses that were explored in this research. In addition it will describe the research methods utilized.

Research Questions & Hypotheses

Research Questions

This research has two primary, interwoven goals: It seeks to understand how prosecutors make decisions where norms and practices regarding the action in question are varied and evolving and it seeks to understand how prosecutors process cases involving animal cruelty.

Some of the questions I hope to answer include:

- Do prosecutors individual feelings about a topic (eg: animal cruelty) influence the decisions they make?
- Do any “going rates” exist for misdemeanor or felony cruelty cases?
- How do prosecutors establish “going rates” (or modify existing “going rates”) when there may be broad disagreement amongst the courtroom workgroup
regarding the role of the criminal justice system in these cases?

- Do prosecutors consider public opinion and if so, what do they do if the publics’ idea of justice is different from theirs?
- In cruelty cases how frequently are cases dismissed?
- What influences decisions regarding if and at what level to charge a cruelty case, if to offer a plea and if so, what type of sentence to negotiate?
- How often do these cases proceed to trial? If they do not proceed to trial, how are they being resolved?

Although no empirical research exists on the prosecution of animal cruelty cases, well-developed theory on the courts leads to the formation of several hypotheses as to how prosecutors may handle these cases. As discussed in the literature above, prosecutors are expected to weigh legal factors, extra-legal factors, individual perceptions, workgroup norms, office policy, exchange relationships, and environmental pressures in making decision on animal cruelty cases.

**Legal Factors**

Legal factors including the seriousness of the offense, the strength of the evidence and the prior record of the defendant have consistently been found to influence case processing decisions and as such are expected to impact decision-making in cruelty cases. It is expected that prosecutors will strongly rely on legal factors in their decision-making. As the seriousness of a cruelty cases increases, it is expected that there will be a similar increase in the likelihood of felony charges and the likelihood of the case remaining in the system through disposition. While trials are expected to be rare, they are expected to be more likely in cases that are of the more serious nature. Similarly, the presences of
strong evidence, and the presence of a prior record for the defendant, are expected to increase the likelihood these outcomes.

*Extra Legal Factors*

While extra-legal factors have been found to have less predictive power than legal factors, in emotionally laden cases, such as animal cruelty, there is reason to believe certain extra-legal factors may be influential. It is anticipated that prosecutors will consider the type of animal harmed and the relationship between the animal and the offender. Cases involving harm to pets and common household animals, especially cats and dogs, will be treated more seriously in charging and bargaining decisions and more so if the victim is the pet of someone other than the accused.

*Individual Factors*

The influence of prosecutors’ beliefs regarding the utility of punishment for particular criminal offenses is not well informed by theory and research. One should not assume, however, that personal opinions never influence prosecutors in their decisions. It is hypothesized here that if a prosecutor believes that animal abuse should be treated as a serious offense and/or is a “gateway” to violent crime, (s)he will more likely to file charges, and to file more cases at the felony level, will be less likely to drop or reduce charges in plea negotiations, and more likely to seek a more severe sentence.

*Office Policy*

Prosecutors, at times, are limited in the decisions they make by formal or informal office polices regulating charging and plea bargaining. General policies may exist or policies may exist surrounding a particular case or type of case. If the District Attorney establishes such policies and regulates and monitors the actions of his or her prosecutors,
it is expected that their decisions in charging and negotiating disposition will reflect these policies.

Courthouse Norms

It is well accepted that prosecutors’ decisions are influenced by their interaction with other members of the courtroom workgroup. In particular a relationship that is both familiar and cooperative is thought to facilitate quicker and more harmonious case processing and resolution; therefore, it is expected that in courtrooms where cooperation is the norm, there will be less adversarial case processing, with plea bargains arrived at more quickly and trial less frequent. The absence of “going rates”, however, is expected to complicate this process. In courtrooms where members are familiar, if they have opposing beliefs regarding the prosecution of such cases, plea negotiations will based in “concession” rather than “consensus”, and the likelihood of a case going to trial will increase.

Exchange Relationship

Research indicates that prosecutors do not make their decisions in a vacuum, and engage in mutually cooperative relationships with others criminal justice actors such as the police. In particular, they may be more likely to file formal felony charges if the police have filed such charges upon arrest. Because of this, if the original charges are filed by the police as opposed to a “concerned citizen”, cases will be more likely to be charged, and charged as felony offense.

Environmental Factors

Limited research suggests that factors external to the courthouse have some influence of prosecutorial decision-making. If the prosecutor perceives there is public
demand for harsh prosecution in animal cruelty cases (s)he will be less likely to dismiss or reduce charges, more likely to file felony charges and more likely to argue for a severe sentence in bargaining and sentencing. Case processing decisions are also expected to be similarly influenced by the extent and direction of media coverage. Additionally, the size of the community and the prevalence of farming interests, are expected to influence the prosecutor in his decision-making. In larger communities and in communities with heavier farming interest’s cruelty cases are expected to be handled with greater leniency.

Methods

This research takes a multi-pronged approach to understanding the decision-making process in animal cruelty cases. It relies primarily on interviews conducted with prosecutors across the state, focusing in their thoughts on and experiences with cruelty cases. It also includes their responses to hypothetical scenarios as well as an analysis of case processing in two counties. This county examination includes a review of a small sample of prosecutor case files, observation of a plea negotiation in a cruelty case and interviews with other criminal justice actors who have been involved with cruelty case processing.26 While any of these approaches could provide some answers to several of the specified research questions and test some of the hypotheses, none on its own can adequately explain how cases are actually being handled by prosecutors nor can any one approach on its own answer all of the research questions specified.

Site Selection

By necessity, courthouse culture theory calls for an examination of the court system at the local level. Whether focusing on the courtroom alone, or in consideration

26 Approval was obtained by the Institutional Review Board at the University at Albany prior to commencing these research activities.
with the environment in which it operates, courthouse culture theory posits that variation in decision-making results from the unique incentives and pressures that impact the actors in each court. It is suggested that “while the broad outlines of the criminal process are sketched by state lawmakers, the substantive details are filled in at the local level by the court actors themselves, in the form of norms, practices, and customs that prescribe how these actors do their jobs, and what constitutes justice” (Worden, 2007: 182). It was therefore necessary to conduct this research at the local level in order to explore the unique pressures and incentives that impact prosecutors.

This research relied on prosecutorial interview data gathered from twelve counties in New York, with additional data gathered from two of these counties for an in-depth examination of the broader influences on cruelty cases. Examining the processing of cruelty cases in multiple counties allowed for consideration of differences between offices and locales. Attempts were made to gain access to prosecutors who worked in counties that differed on theoretically important dimensions. Dimensions considered included the size of the county, the size of the District Attorney’s office and the prevalence of the farming industry. The size of the community is theorized to impact case processing (Eisenstein et. al., 1988). Similarly, the size of the District Attorney’s office is theoretically and empirically related to prosecutorial decision-making in that larger offices are often more bureaucratized (Flemming et. al., 1992). A related dimension, the percentage of the population that is employed by the farming industry, may also impact prosecutorial decision-making. Farming interests are supported by powerful interest groups, groups that were instrumental in delaying legislative advancements, so variation in the farming population is also relevant. While the selected counties did have
significant variability on the above dimensions, access to the requisite data also influenced county selection.

**Interview Research**

Research on decision-making in the courts has often indicated that reliance on official statistics alone fails to explain much of the variance in case processing and outcome. In his own research on the processing and outcome of cases in lower level courts, Feeley (1979) came to realize that, “organization and attitude affected the handling of cases, factors which are not easily captured in quantitative analyses” (p. 123).

This research, therefore, relied mainly on data obtained from interviews with the prosecutors who handled animal cruelty cases.

**Sample**

This research is focused primarily on the prosecutor, and his or her experiences with and perceptions of the influence of a multitude of factors on case processing. As such, the focus of the interviews was the thoughts and experiences of these individuals. Financial and time constraints are a valid concern in the collection of interview data, and necessarily limit the amount of data that can be collected. That said, large samples are not required, or even desirable in interview based research designs. According to Kemper et. al. (2003), researchers “seek to focus, and where practical, minimize the sample size…so as to select only those cases that might best illuminate and test the hypotheses of the research” (p. 279).

One gauge for sample size in qualitative research is that of saturation, that is, interviews continue until the information provided “is redundant or peripheral, and … adds too little … to justify the time and cost,” (Weiss, 1994:21). In other words the
researcher continues to interview subjects until they are not garnering any new data or insight. I continued to add prosecutor interviews until I felt that I was not garnering much new information from these interviews. I ultimately conducted interviews with 19 prosecutors.

Data Collection Strategy and Interview Instruments

I began my county selection by contacting District Attorneys who were known to peers and committee members. After conducting initial interviews I sent letters to a number of randomly selected District Attorneys. While this method led to a few viable interviews it proved relatively unsuccessful. One of the people with whom I spoke directed me to one of his acquaintances who is on the board of an organization that provides assistance to prosecutors and others who are handling cruelty cases. This individual contacted several prosecutors who were known to her; I obtained several of my prosecutor interviews through this method. The pool of prosecutors with whom I spoke differed on many dimensions. While I did not ask detailed demographic questions, I garnered some information on the prosecutors and their counties which illustrates the diversity of the sample.\(^{27}\) Of the 19 prosecutors, eight were female and eleven were male. They had varied tenures in their prosecutorial careers, with experience ranging from one year to 25 years. The majority of the prosecutors with whom I spoke were current or former Assistant District Attorney’s, however two served as the District Attorney in their county. The size of the offices in which they worked varied as well. The prosecutors worked in offices with fewer than five prosecutors to offices with over 150 prosecutors; their estimates of the number of cruelty cases they had personally

\(^{27}\) While I realize a table of data might be useful here, I worry that presenting data in such a format could lead to the identification of particular prosecutors and/or counties.
prosecuted were varied as well, with answers ranging from three to approximately fifty. The counties in which these prosecutors practiced ranged from very rural with a population density of fewer than 100 residents per square mile to relatively urban with a population density of over 2000 residents per square mile. Farming density ranged from fewer than .01 farms for every 1000 residents in a county to over 12 farms for every 1000 residents.

Eight prosecutor interviews were conducted in person while nine more were conducted over the telephone. Two were completed in writing, with the prosecutors answering a written survey with follow-up over email. One of these two prosecutors was serving abroad with the military at the time the surveys were being conducted and another did not feel she could give me 60 or more consecutive minutes of her time but instead requested that I mail the questions for her to answer as she had the time.

While alternate methods of data collection, such as surveys, were considered, semi-structured interviews are preferable for a topic that is relatively uninformed by previous research (Aberbach & Rockman, 2002; Leech, 2002). In-person and telephone interviews allowed me to fully explore the material covered, using probes as necessary, and to be further informed by non-verbal cues (e.g.: body language, laughter, long silences etc.). The interviews were semi-structured, relying on an interview instrument to guide the questions asked of participants, however most questions were open-ended, as such they did not force or encourage the interview subjects to select any particular option. See Appendix One for a list of interview questions.

The interviews were used to explore the research questions and hypotheses specified above. Subjects were asked about the significance of case, victim and
defendant criteria as well as the influence of individual, environmental and contextual data. Interview subjects were not asked directly about specific cases, but were instead asked to recall cases they had worked on in a general sense and to discuss their decision-making overall as well as general factors that have influenced their case processing decisions in cruelty cases. Despite this, prosecutors often chose to share case data. While case references were included in the data analysis if appropriate, all identifying factors were removed. Interviews examined what factors influenced the prosecutors in their decisions regarding these cases, in what way they were influential and why certain factors were important. Prosecutors were also asked about their personal views on animal cruelty legislation and case processing, the alleged link between animal cruelty and future violence, and the role of the criminal justice system in such situations.

The prosecutor interviews also delved into the role of the prosecutors in sentencing. Although sentencing is considered to be a reflection of judicial decision-making, many factors are considered to impact the decisions judges make. Social and demographic characteristics (Myers, 1988; Worden, 1995) Victim Impact Statements (Davis & Smith, 1994) and Pre-Sentencing Investigation reports (Worden, 1995) have all been theorized to impact judges in their sentencing decisions. Findings, in general, have limited predictive power. Additional influences on sentencing are the decisions and recommendations made by the prosecutor. Research indicates that prosecutors influence sentencing decisions through their plea bargained negotiations and sentencing recommendations. Judges are rarely involved in plea bargaining and instead often accept negotiations worked out amongst the prosecutor and defense (Ryan & Alfini, 1979; Worden, 1995). This ratification of negotiated sentences is crucial if the prosecutor is to
maintain any credibility in sentence-based negotiations (Worden, 1995). The prosecutor also impacts sentencing by reducing charges and/or counts in exchange for a guilty plea. It was not a purpose of this study to explore the assorted factors that may impact sentencing, but instead to explore the impact of prosecutors on judicial sentencing decisions.

The establishment of rapport with interview subjects is very important and may assist in obtaining more in-depth and honest answers. While some sources advise “playing dumb”, this researcher adhered to the suggestions of Leech (2002). Leech recommends that an interviewer seem professional and generally knowledgeable, but less knowledgeable than the respondent on the particular topic of the interview so as not to make the interview subject feel as though his or her time is being wasted nor the need to explain the very basics of their job. The order of the questions can similarly assist with the ease of rapport (Leech, 2002). Questions progressed from simple and “non-threatening”, to those that might be perceived as more sensitive. Thus, early questions focused on general information about the prosecutors’ work. Probes were used as needed to encourage the interview subjects to delve more deeply into the topic of discussion. In order to increase the likelihood of honesty and full disclosure the interviewer promised anonymity and approached each interview and interview subject with an open mind. A concerted effort was made to present the topic as one of empirical, and not personal, interest.

Data Analysis

The majority of the in-person and telephone interviews were recorded with a voice recorder and then transcribed. One prosecutor was not comfortable having the
conversation recorded and when I went to conduct another – my last prosecutor interview – I discovered my recorder to be broken. A third interview was conducted in a noisy locale where recording proved futile. I took extensive notes during these three interviews instead.

A theoretical thematic analysis was utilized to analyze the interview data. Thematic analysis is a flexible method of identifying, analyzing and reporting observed patterns in qualitative research (Braun & Clarke, 2006). Theoretical thematic analysis is driven by a researcher’s theoretical and/or analytic interest in a particular topic, and coding may be done for specific research questions (Braun & Clarke, 2006). The responses to the interview data were coded and analyzed using the following procedure described by Braun and Clarke (2006).

According to Braun and Clarke, thematic analysis is a multistep process that begins with a close, active reading of the transcribed text. During this initial reading, I noted general ideas and thoughts on the data. During a second reading of the interview data, I began initial coding of the data. Coding involved identifying interesting and relevant segments of data and extracting them from the transcripts. These themes were then refined – some were collapsed but most were further broken down into different codes or sub-codes. In the final phase themes were defined and explained. The themes were then woven together in a presentation of the subjects’ thoughts and experiences.

The qualitative software program, NVivo, was used to assist with the analysis of the interview data. This software program is specifically designed for use with qualitative research and assists with organizing and categorizing data. More specifically, NVivo allows one to import data – interview transcripts in this instance – and search the data for
themes. It allows one to easily view entire transcripts, and allows themes from the data to be extracted from each interview and placed into “nodes”, which are basically separate theme-specific documents. Nodes can later be collapsed or further divided into subsections. For example, I was interested in factors prosecutors relied on in making their decisions. After transcripts were uploaded into NVivo I could read through each one and extract into a “node” any statement a prosecutor made that related to a factor affecting a decision he or she made. I could later read through the node and divide it into subcategories (e.g.: “legal factors” which could then be further divided into “evidence”, “injury” and so on). It was also possible to view each interview and see exactly what node, or nodes, each portion of the interview was coded in to, as well as data that remained un-coded. NVivo further also allows its users to create “memo’s” that are linked to sections of the data. Questions, ideas to further pursue, overviews of the themes and the like can be recorded and easily recalled with the use of these memos.

**County Research**

Although this research focuses on prosecutorial decision-making, the literature clearly indicates that prosecutors’ decisions are shaped by the context in which they are made. In two counties, this context was further explored. In these selected county others, including judges, law enforcement, SPCA personnel and defense attorneys were interviewed in addition to prosecutors. Speaking with others who interact with and impact the prosecutor helped to clarify the resources, constraints and other influences with which the prosecutor must contend. The accounts of others also served to confirm (or dispute) the accounts of the prosecutors. In addition to interviews with other individuals involved with cruelty cases, I was able to examine a small number of
prosecutor case files from each of the two counties, obtain spreadsheet data on cases from one county and observe a cruelty case plea negotiation in the other county.

A combination of snowball sampling and “cold calling” – or more frequently “cold mailing” followed by phone calls to request interviews from other persons of interest - was utilized in order to obtain access to non-prosecutor interview subjects. Case files and the prosecutors themselves served as another source for identifying other interviewees. My interviews with other criminal justice personnel did not continue to saturation but were instead used to supplement the prosecutor interviews. I ultimately interviewed four judges, one public defender, two SPCA personnel and two law enforcement personnel, as well as a board member with an organization that provides training on animal cruelty investigations and prosecutions to criminal justice personnel, and Assemblyman Jim Tedisco.

The research also included the examination of a small number of prosecutorial case files in each of the two selected counties. It was originally my intent to obtain all files for the past three years for each of these counties and use the data in a variety of statistical analyses but problems locating them limited the number available in one office and problems finding someone to locate them proved problematic in the other county. In the end I obtained five files from the first county and nine files from the second county. The files from the second county, a small rural county, actually comprised a large number of their cases. The files from the first county only comprised a small number of their cases, however, in addition to this limited number of files I was provided with spreadsheet data detailing the charging and disposition of 69 of their cases.

28 Based on DCJS statistics for 2002-2007 this county averaged three cases per year. Prosecutors with whom I spoke reported approximately five cases per year in the county. I examined files from a four year period so I am assuming I examined files from at least half of the cases that occurred in that time period.
In Sum

This research examines prosecutorial decision-making under evolving and conflicting norms using the processing of animal cruelty cases as a vehicle with which to do so. It sought to provide answers to basic questions about the manner in which cruelty cases are prosecuted in New York, questioning prosecutors about the number of cases they’ve worked on, how often cases are dismissed, how often the proceed to trial and what types of sentences are levied against defendants. It also sought to explore how theories and research on prosecutorial decision-making apply to cruelty cases, asking prosecutors about the factors that impact their decisions, if they have established going rates for these cases and how they are affected by the media and public attention that so often surrounds cruelty cases. Major theories of prosecutorial decision-making – Uncertainty Avoidance and Courthouse Culture theories – are explored, as are theories surrounding prosecutors personal feelings, office policies exchange relationships and environmental factors. This project relied on prosecutorial interviews and a review of a small sample of case files as well as interviews with others who theoretically impact prosecutors’ decisions. This multi-method approach allowed for a more thorough understanding of the factors that impact prosecutors as they deal with these types of cases.

The following chapters will describe the findings of this research. Chapter Five provides a detailed representation of cruelty case processing across the state, and offers answers to research questions regarding the particulars of cruelty case processing. Chapter Six focuses specifically on the hypotheses presented above. Chapter Seven offers a broader depiction of cruelty cases by exploring how two different counties handle such
cases and offering insight provided by criminal justice personnel outside the prosecutors’ offices.
Chapter Five: Processing of Cruelty Cases

This chapter will explore the process cruelty cases undergo based on the experiences, thoughts and perspectives of the prosecutors who handle them. It will examine prosecutors’ early involvement with cruelty cases – how and when they find out about them, their experiences with arresting agencies, and the manner in which cases are assigned to individual prosecutors in various offices. Prosecutors’ thoughts and experiences with plea bargaining, sentencing and with other courthouse actors will also be explored. Additionally, this chapter will examine prosecutors’ decisions in a series of hypothetical cruelty cases. The chapter will begin, however, with a discussion of prosecutors’ thoughts on how cruelty cases differ from other types of lower level (Misdemeanor and Class E Felony) cases with which they have had experience.

The Uniqueness of Cruelty Cases

Prosecutors were asked if and how animal cruelty cases differed from other types of lower cases they had encountered in their careers. While several prosecutors immediately listed a litany of differences between cruelty cases and other misdemeanor and/or lower level felonies just as many at first remarked these cases were not at all different; as the interview progressed however, these same prosecutors would stop while addressing another question and remark “oh, I guess that’s one way they differ”. As expected, there were multiple dimensions that made animal cruelty cases rather different from other cases which with the prosecutors dealt. Routinely mentioned differences included the time and effort involved in prosecuting a cruelty case, the difficulties in
dealing with animal victims, the public and media attention that often accompanied cruelty prosecutions, and difficulties with the other actors involved in these cases.

The most frequently mentioned difference prosecutors observed when working on cruelty cases was the time involved. Two thirds of the prosecutors interviewed indicated that animal cruelty cases took more time and more effort than did other similarly charged cases. Prosecutors described the difficulties in dealing with unfamiliar legislation and with cases that involved extensive pre-trail preparation.

Some prosecutors found themselves learning the law from the bottom up. Because cruelty cases were relatively rare in the majority of offices, and the cases differed so much from one another, prosecutors often had to educate themselves on the legislation and how it applied to the case at hand with each case they worked on. In many offices they did not have experienced colleagues they could turn to for advice and assistance; there was no training on the legislation or typical case preparation. Even prosecutors who had experience with animal cruelty noted that they often had to hit the books to review the legislation and associated procedures each time they were handed a new case. As they explained:

- I think every time it comes up whether it be judge, prosecutor, defense attorney you’re going back to read the law again because you don’t see it very often (8/2).  

- The one’s I’ve had have fallen under Agriculture & Markets law so I’ve had to familiarize myself with that – it’s not a statute that we come across routinely. That was something interesting that I had to look up and try and learn it as I was prosecuting the cases – find out what type of behavior fits under this law (1/4).

The time-consuming nature of cruelty cases also manifested itself in the actual

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29 The numbers following each statement and used in charts throughout this work are unique identifiers that allow me to ascertain the source of each statement or response.
preparatory work prosecutors had to do as they developed their cases. In several offices prosecutors became involved with the cases as soon as, or even before, an arrest was made, overseeing investigations and interviewing witnesses. Prosecutors also spoke of meeting with veterinarians and/or SPCA officials in order to understand the specifics of the injuries inflicted on the animal, or to obtain help interpreting a necropsy. They also sometimes had to invest time and effort into finding qualified experts who were willing to assist with cases. According to those interviewed, these time-consuming activities are not routine with other lower level cases. One prosecutor noted that in cruelty cases, one would often have to consider things that would often be considered in a homicide; however, the resources available in a homicide case were not available for a low level offense involving an animal. Some prosecutors’ spoke of the intricacies and efforts involved in a cruelty case in detail:

The unusual aspect of the animal cruelty cases, and not many people realize this, is that it’s so detail oriented….If the sheriff’s office or SPCA finds that there’s a large number of animals that they believe are being abused or it seems to be a very intense investigation we will immediately be involved before any arrests are made so that we can assist with search warrants, we can oversee the investigation, we can make sure all the evidence is documented properly, we can make sure all the potential defendants have been interviewed and all the evidence is gathered properly so it’s admissible in court. Unlike your typical misdemeanor, let’s say it’s John Doe assaults Jane Doe behind closed doors, the investigation is done by usually one or two police officers and it’s completed but essentially with these animal cruelty cases we have to treat them as felony investigations because there’s so much more evidence that needs to be gathered in order to prove the case at trial (8/1).

(Using a specific case to illustrate): I’m gonna need necropsies done on these dogs and stuff, I have dead rotting carcasses in the middle of the summer. If it was a dead body we’d have a procedure, it would go right to the morgue, we’d know what to do. Now I’m in the position of ‘what am I doing with these dead dogs’ so I had to reinvent the wheel, try and get some coroner to let me use a refrigerator and have the
dogs in there with the dead bodies. So everything takes so much more work because it’s just not (unintelligible). It’s not as if there is a Medical Examiner who does autopsies on dogs so now we have to contact some major university that has the staff so somebody can do a necropsy in the dogs and find the cause of death…. (And) if you want to prove the case Beyond a Reasonable Doubt I gotta have some medical corroboration and that’s really, really tough in an animal cruelty case because unlike ER docs, that under the law have to cooperate from subpoena from the DA’s office, and the Medical Examiner who gets paid to do that, I don’t have any veterinarians on staff and I don’t know how many I called who wanted no part of it, were not doing any free work, weren’t going to look, weren’t gonna examine live or dead animals. They knew it would take their time and they wouldn’t get paid…. So in that way it’s much more complicated. Your every step requires much more time and much more imagination and creativity to be able to prosecute (6/1).

A second difference mentioned by just under half of the prosecutors was the obstacles and issues surrounding the management of surviving animal victims. These concerns included caring for seized animals, and properly prosecuting a case with a victim who cannot speak.

Animals, legally classified as property, have maintenance issues that “normal” property does not have. If a bicycle is vandalized as part of a crime, and is seized for trial, it can be tossed into a police locker until needed. Seized animals, at a minimum, need food, shelter and guardians. Many need extensive veterinary care. Several prosecutors asserted that the financial and logistic concerns involving animal victims created many problems for their office. From a financial viewpoint, properly prosecuting a cruelty case can be cost prohibitive due to the care required of animal victims. Procedures for animal care varied a across the different counties, and even within towns in each county. In many counties, the SPCA provided housing and veterinary and other care; however some places boarded seized animals with veterinarians or in private shelters. While animal welfare organizations sometimes footed the bill, oftentimes costs were picked up by the
county or town in which the case originated. In all cases, the town could ask the defendant to post bond to cover the care of the animals, however, in many cases the defendant could not or would not do so. Aside from costs, an animal might require months of boarding. Animals were generally not released for adoption until a case was resolved; while the animal spent months in a shelter it was often taking up much needed space, and possibly suffering from boredom and stress in a shelter environment. While subsidizing and finding space for a couple of cats or dogs could be problematic, finding space for a dozen horses or animals coming from a hoarding situation could be a nightmare:

*(In one hoarding case) there were so many animals they were spray painting numbers on their sides to keep them ordered. You also need to follow up where they go. You must show they jury how the state is caring for them whereas the defendant didn’t. It can be overwhelming in these cases with large numbers of animals (4/1).*

*(H)ousing the animals was an issue and resources – having other agencies and private shelters taking in these animals, financially a lot of these private shelters just can’t do it because it’s such a big burden for them. Typically these cases are litigated for a long period of time. The discovery process takes a long period of time and everyday those animals are housed in these private shelters its more money these shelters are losing (8/1).*

*Somebody’s gotta take care of these animals. It’s costly. Say they’re being held in a shelter – what happens when you put a dog in a shelter and you keep him in a cage for a month. They become more aggressive; they become harder to place (3/2).*

Two prosecutors pointed out that, unlike damaged property that would remain damaged until trial or plea negotiations commenced, many abused and neglected animals would heal after receiving appropriate care and would therefore appear perfectly healthy before a judge or a jury. While the same might be true of a human victim of assault, most human victims can detail their injuries and any physical or emotional suffering. Animals
cannot. Several prosecutors spoke of the difficulty they encountered in proving how and to what degree animals had suffered harm. They had to rely much more than they otherwise would on other sources of information in order to prove that a crime had even occurred. Cases were built around photographs, veterinary reports and the testimony of witnesses and expert witnesses. Proper evidence collection was extremely important in establishing case. As they explained:

(M)ost of the time the victim can’t really speak to you. Obviously a dog doesn’t talk or a cat doesn’t talk so you have to look at it sort of – what does the physical evidence tell you? The physical evidence is what gives you the case, the physical evidence is often the animal itself. I mean, what does the animal look like, what are the physical characteristics of the animal, is the animal similar to what another animal of like-size would be, and you look at what was around the animal – how was the animal kept, was the animal groomed, and what other physical evidence did you find with the animal (7/1).

Well, I would say (these cases differ) in the sense that animals can’t speak for themselves. It’s not like you can bring them in and interview them and find out from their perspective what happened….You’re relying on things like photographs, speaking with a vet, speaking with reps from the SPCA as to the animal’s condition. If it’s a matter of living conditions you’d speak with someone from the SPCA or other agency or the conditions of the horse or the living conditions the animals in, so it’s different in that sense – that you’re relying on others and the circumstance surrounding the offense (1/4).

The intensity of the media and public attention that often surrounds cruelty cases was another factor unique to these prosecutions. Just under half of the prosecutors interviewed noted that the public and media attention surrounding cruelty cases was not something they generally encountered in other cases they prosecuted, especially misdemeanor or low level felony cases. In most counties some level of media coverage was the norm for animal cruelty cases, and prosecutors came to expect calls, and letters and petitions from individuals and groups concerned with the welfare of the animal and
the outcome of the case. Often these individuals desired a specific outcome and
prosecutors routinely received calls from animal advocates who wished to speak with
them regarding the case. While other cases sometimes received media and public
attention as well, the extent of the attention and the persistence of the public was not
something prosecutors often encountered in their work. Several remarked that they
received more feedback on these cases than any other type of case they handled,
including murder cases and cases with child victims. Prosecutors explained:

I think something very unique and specific to animal cruelty cases is
the amount of public outrage. You’re always dealing with – I’ve never
gotten petitions on any other cases and when animal cruelty cases are
pending they’re always in the newspaper, always on TV, I’m always
getting hundred’s of emails, letters, petitions, all sorts of public
interest in the cases (9/1).

There’s a lot more advocates from a social standpoint, you have the
SPCA and other people from groups like that that want to be involved
in the case and tell you how they want to see it turnout whereas you
get a case where someone’s abused their children down the road
nobody’s coming into court advocating for them, there’s no groups
out there (2/2).

Also mentioned by just under half of the prosecutors interviewed was the lack of
understanding of cruelty cases by other criminal justice actors. Prosecutors encountered
confusion on and resistance to the legislation from multiple actors with whom they dealt,
including police, defense attorneys and judges. Several remarked that they often had to
offer more guidance to criminal justice colleagues than they otherwise would.

Prosecutors remarked that in situations where arrests were made by law
enforcement, the personnel were not always aware of proper procedures to be followed.\textsuperscript{30}

Law enforcement, for example, were sometimes unaware that they had to preserve
deceased animals and/or send them out for necropsies. One prosecutor spoke of digging

\textsuperscript{30} As discussed later, in a several counties many of the cruelty arrests were made by SPCA officers.
through the city dump for a cat corpse after the arresting agency tossed it in the garbage.

In some cases, especially misdemeanor cases, officers were not aware that they had to fingerprint defendants.\textsuperscript{31} One case file that I was able to review included multiple reminders about needing to get fingerprints on the alleged offender. As one explained:

\begin{quote}
Normally if the detectives have an investigation of child abuse or a homicide they know what to do with it – they know who to interview, they know the standard they need to rise to the level of arrest and then after the arrest somebody else will arraign the person and all that, but there’s just not enough of these cases – they haven’t been around long enough and there’s no accepted practice on how to handle that (6/1).
\end{quote}

Prosecutors also remarked on the lack of knowledge of cruelty cases of the defense bar, and of the judges with whom they dealt. Unlike other cases, prosecutors often found themselves having to educate other members of the courtroom workgroup – sometimes unsuccessfully - as to the complexities of the legislation and the definitions of some of the terminology. As is further discussed later, the misdemeanor/Class E felony status of the cases lead some courtroom workgroup members to view cruelty cases as minor, easily resolved, offenses, and prosecutors sometimes encountered judicial confusion on sentencing and other matters.

\begin{quote}
(One difference is) how clueless the judges are and how clueless the defense bar is and how clueless our local ADAs are – not to knock on them, I think if I was given a case when I first started in the office I’d have the same kind of response ‘what the heck does this word mean, what do you mean by this’ (10/1).
\end{quote}

A few prosecutors noted that it was the response of the defendants that made these cases different; in some counties defendants were routinely adamant that they did not commit any crime whatsoever. Other differences that were mentioned by a couple of

\textsuperscript{31} Fingerprinting was not required for misdemeanor cruelty cases until late 2005. Pre-2005 misdemeanor cruelty was an unclassified misdemeanor.
prosecutors included the bond hearing that was often held in attempt to recoup expenses, and having to individually craft each disposition due to the infrequency of and variation in cases.

Although no-one specifically mentioned it when discussing how cases differ, one very obvious difference was the way these cases originate – unlike traditional cases that originate with an arrest made by a police officer or sheriff’s deputy, a large number of cruelty cases originate not with traditional law enforcement but with peace officers employed by the local SPCA.32

The SPCA

When I developed my interview questions they were designed around the belief that traditional law enforcement personnel (police officers, sheriff’s deputies) were responsible for the arrest and initial investigation of alleged perpetrators of animal cruelty. It did not take me many interviews to realize that this assumption was incorrect. In the many of the counties in which I conducted interviews the Society for the Prevention of Cruelty to Animals (SPCA) were solely or partially responsible for the initial processes in a large number of cruelty cases. In counties where the SPCA had the power to arrest, prosecutors estimated they were responsible for the arrest and investigation of 75% - 95% of cases. Nine counties had an SPCA, and in five of these counties the SPCA employed one or more peace officers. Peace officers, like other law enforcement personnel, receive extensive training; they are authorized to carry weapons, use deadly force, make arrests and conduct investigations. Peace officer duties are authorized under Criminal Procedure Law with additional responsibilities authorized

32 In one county the Humane Society of the United States (HSUS) employed peace officers and provided the same services that the SPCA provided in the remainder of the counties. Unless otherwise specified, statements made about the SPCA and its investigators include this HSUS agency as well.
under Agriculture and Markets Law for those peace officers who deal with animal cruelty. Powers of arrests are generally limited to their geographical area of employment. Unlike other law enforcement personnel the powers of SPCA peace officers are limited to cases involving animal cruelty. Also unlike other law enforcement personnel they receive extensive training on issues relating to animal welfare and crimes against animals.

Four counties had SPCAs, yet the SPCAs did not employ peace officers. In these counties SPCA personnel still assisted prosecutors and traditional law enforcement by responding to possible crime scenes and offering advice and assistance on evidence collection. In SPCAs both with and without peace officers, SPCA personnel offered testimony in court and often showed up at court appearances as advocates for the animals. They were also often responsible for housing and Rehabilitating seized animals.

A few prosecutors mentioned that one of more of the law enforcement agencies with which they dealt had an animal control officer (ACO), but noted that he or she was rarely involved in cruelty cases. ACOs are generally employees of law enforcement agencies, but typically hold peace officer status instead of being fully sworn personnel. It appears that the majority of the time ACOs serve more as dog catchers or issuers of summons – writing up tickets for loose dogs and other animal related violations. In only two counties were ACO’s sometimes involved with cruelty cases.

Differences Between the SPCA and Traditional Law Enforcement

In the counties in which some arrests were made by law enforcement and some by SPCA investigators, the majority of prosecutors expressed a preference for working with the SPCA on animal cruelty cases. Unlike law enforcement personnel, who have many diverse functions, and oftentimes limited training and/or interest in cruelty cases, SPCA
officers (or SPCA employees in counties without peace officers) are well-equipped to handle cruelty cases. They have specific training in matters pertaining to animal cruelty so they are knowledgeable about the legislation and understand the types of evidence that should be collected and the charges that can be filed. They are also knowledgeable about animals and can tell better than most law enforcement if the conditions of the animal or its surroundings are indeed indicative of neglect or abuse. Additionally, they have a specialized interest in cruelty cases and are therefore motivated to assist the prosecution in any way possible. One prosecutor explained:

I think the SPCA is very thorough when they make an arrest or when they investigate because that’s what they do – they’re going to document, photograph, they’re gonna lay out what happened there. They’re also good because they do this so much they can speak to you, you can have a conversation about what was going on where if you just read a report you’re just looking at evidence but they can get a little deeper with you and show you how this is happening or why this is happening. That’s not to say another police agency wouldn’t be thorough but it might not have that extra layer of knowledge and experience (1/4).

Although most prosecutors seemed to have a positive, collaborative relationship with the SPCA, this was not always the case:

They look at animal cruelty cases in the eye of a lay person trying to care for this animal and we look at it as evidence gathering for a prosecution. So when those two perspectives meet and they disagree it’s very difficult to come up with a good investigation so that’s been our problem over the years and it continues (8/1).

While traditional law enforcement handled some cases for an assortment of reasons, in most counties that had an SPCA with peace officers prosecutors noted that even if law enforcement were the initial responders to a cruelty case, they would usually involve the SPCA immediately and hand over the case to them:
These cases are a big pain in the ass and nobody wants to deal with them. If the cops can call someone to do it they’re happy to go do it (3/2).

Case Distribution

When I conceived this research plan it was my intent to limit my research to three to five offices and interview as many prosecutors in each office as I was able. I expected that animal cruelty cases would be distributed throughout the ranks. While this was sometimes the case, especially for misdemeanors, in many counties distribution was more specialized.

District Attorneys Offices used a variety of systems to assign cruelty cases within the office (see Table 1).33 Across the counties in which I interviewed one or more prosecutors, none distributed cruelty cases across their entire staff of assistant prosecutors. In four counties one prosecutor was assigned to handle all or almost all of the animal cruelty cases that came into the office, regardless of whether they were misdemeanor cases or felony cases. In the remainder of the offices, felonies and misdemeanors were handled differently. In these counties each town (misdemeanor) court had a particular prosecutor or prosecutors that were permanently assigned to cover it; in less urban jurisdictions one prosecutor might be responsible for multiple courts. In some counties the prosecutors who covered these town courts were either part-time prosecutors or relatively new to the office. In these counties the prosecutor for a particular court would handle all misdemeanor cruelty cases that were prosecuted in his or her court(s). The felony cruelty cases were handled by more experienced prosecutors assigned to felony courts. In these counties there were two different methods by which

33 I did not obtain a clear answer to this question from one prosecutor so I only have data on eleven counties.
the felonies were distributed. In four counties felony cases were assigned to a particular unit or bureau and within that unit or bureau were distributed randomly. The unit of bureau under which cruelty fell varied, and included Investigations, Special Victims and Violent Felonies. In one county with few full-time prosecutors felonies were distributed among those employed full-time. In the remainder of counties one particular prosecutor prosecuted all felony cruelty cases, and often offered guidance on misdemeanor cases as well.
Table 1

Cruelty Case Distribution

<table>
<thead>
<tr>
<th>Case Distribution Method</th>
<th>County</th>
</tr>
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<tbody>
<tr>
<td>One prosecutor handles all animal cruelty cases, felony and misdemeanor.</td>
<td>County 5, County 6, County 9, County 12</td>
</tr>
<tr>
<td>One prosecutor handles all felony cruelty cases, misdemeanor cases are distributed to</td>
<td>County 1, County 2, County 10, County 3*</td>
</tr>
<tr>
<td>prosecutors assigned to the originating court.</td>
<td></td>
</tr>
<tr>
<td>Felony cruelty cases randomly distributed in a particular bureau, misdemeanor cases are</td>
<td>County 3*, County 7, County 8, County 11</td>
</tr>
<tr>
<td>distributed to prosecutors assigned to the originating court.</td>
<td></td>
</tr>
</tbody>
</table>

*This County used to have one prosecutor who handled all of the felony and many of the misdemeanor cases. When he left the felony cases were randomly distributed in a specific Bureau.

In the counties in which a “specialist” handled all cruelty cases or all felony cruelty cases, only two prosecutors specifically requested to be assigned the cruelty cases; the remainder stumbled into the work, prosecuting cruelty cases either because they were randomly assigned to them or had handled a few cases, often complicated or well-publicized cases, in the past and were then given the cases from that point forward. While most of these prosecutors did not comment on their tenure as the go-to cruelty specialist, some noted that they had not sought out the work but grew to enjoy it, choosing to continue handling cruelty cases after they switched bureaus or were given the opportunity to pass them on to someone else:

(About five years ago the DA asked if I would be the liaison to the Humane Society of (my) county as an additional responsibility and I took on that role…. I think that if every time I switched (bureaus) they put someone new or with less experience in I think it would send a message that they weren’t taking them serious. I think the consistency of having me there was the reason why I stayed with that position. And I liked the work. There was a couple of times where they said ‘ok, you can move on’ but I really liked the people I worked with at the Humane Society, I really liked the veterinarian, and I really did feel that these were important cases that needed serious
attention that I didn’t know – I know I would always give it serious attention – but I didn’t know if my office by passing it on to someone else would always have that serious attention (10/1).

Charging, Dismissals, Arraignment and the Bond Hearing

Charging decisions were usually made by the arresting agency, sometimes in conjunction with the prosecutor’s office. Prosecutors, overall, noted that they did not often change the original charges filed by the arresting officer. This was in part a function of the SPCA having involvement in a large number of these cases. SPCA investigators possess specialized knowledge regarding animal cruelty legislation and procedure and therefore were well-suited to determine the proper charges to file or to advise traditional law enforcement on the appropriate filing of charges. Additionally, in several counties or cases prosecutors were involved at the start of case so initial charges were sometimes filed with some prosecutorial input:

(U)sually what happens is I’m dealing with the SPCA so my cases are usually solid. They’ll come in and say “this is the situation we have” and I’ll ask a few questions ‘what do you think, why do you think that’ and I’ll tell them what I’m thinking and why and then we’ll usually come to an idea together (1/1).

The limited number of cruelty related charges may also simplify the charging process. While there are assorted violations that may be filed, most cruelty cases are limited to a misdemeanor or felony. There are no levels, nor subcategories, and therefore the charging entity is left only to decide between filing the case as a misdemeanor or felony, and the stringent criteria for a felony often leave little room for doubt as to the proper charge. One prosecutor claimed that charging was not a function of the prosecutor and that altering charges could lead to legal problems. All of the prosecutors noted that it was relatively rare for them to upgrade or downgrade the charges initially filed outside of
plea negotiations. Also uncommon were complete dismissals. All but three prosecutors stated that cruelty cases were rarely dismissed; of the three who claimed dismissals were common, two claimed it was almost always an action by the bench:

(Prosecutor): Unfortunately most of the misdemeanor cases the judges take too hard of a stance on. A lot of those cases do get dismissed, we re-file and the judges still put up enough hurdles that it becomes difficult for us to prosecute.

(ALK): When you say the judges are dismissing all these cases, what are their grounds for dismissing them?

(Prosecutor): The law – unfortunately there’s not a lot of good case law to describe what is needed or not needed …. The local misdemeanor judges don’t take the cases the serious so they dismiss it on a facial deficiency (10/1).

Offices were mixed in their practices relating to arraignment of the defendant. As discussed above, in some counties prosecutors were involved with cruelty cases almost immediately, conferring with the arresting officer on charges and sometimes even going to the scene. Other times prosecutors learned about cases at arraignment, in others still they found out after arraignment when paperwork was sent to their office. Sometimes variation was measured not by the office but by the case. For example, while in most cases a prosecutor might learn about the case in paperwork sent to his or her office, a case that was expected to draw media or public scrutiny might be brought to their attention immediately. Prosecutors who covered multiple town courts noted that if a case was scheduled to be arraigned on a night they were to be at the court, they would arraign the defendant and get the information at the court. If they were not scheduled to be in the court for some time they might learn about the case when paperwork arrived at their office instead.
In some cases in which surviving animals were seized the agency tasked with caring for the animals would make a petition for a bond. This is a procedure unique to cruelty cases and the prosecutors who handled them. In cruelty cases in which an animal is seized, the agency providing care for the animal is able to petition the court for a security bond to cover the anticipated costs. If the judge approves the bond request, the defendant must either pay it or relinquish the animal to the impounding agency for adoption, sale or euthanasia. According to prosecutors few defendants are able or willing to pay the bond; the majority of those ordered to pay bond forfeit their ownership rights.

**Trials and Plea Bargains**

It is a well-known and well-verified fact that a large majority of cases are resolved via plea negotiation. Theory and research have provided several explanations for this: the system would collapse if every case went to trial, defendants – defendants in lower level cases in particular – just want their experience with the criminal justice system to be done and over with, defendants fear a they will suffer a “trial penalty” if they go to trial and lose. Interview data do provide some support for the above theories, as well as additional reasons for the propensity of such cases to routinely end with a plea bargain. The following section will discuss the frequency of and the reasons for plea negotiations in cruelty cases. It will also explore how plea negotiations in cruelty cases differ from negotiations in other types of cases, how consensus and going rates – or the lack thereof – influence prosecutors’ decisions in these cases and briefly discuss prosecutors’ experiences with trials in cruelty cases.

*Frequency of Plea Negotiations*

In one particular county three prosecutors were interviewed and all three
remarked that defendants charged with animal abuse were more likely to demand a trial than were defendants in cases charged at similar levels.\(^3^4\) A prosecutor in a different county believed that cruelty cases were more likely to end up in trial than other lower level cases but only if the prosecutor insisted on a maximum charge and/or sentence. These two counties, however, deviated from the norm. In the remainder of the counties in which interviews were completed, prosecutors stated that most if not all cruelty cases were resolved prior to trial. Six prosecutors reported they had never taken a cruelty case to trial; the remainder had very few trials. Several prosecutors did not or could not report exactly how many cases had gone to trial, giving estimates of “a handful” or “less than one a year” during their tenure as prosecutors, and no-one reported personally trying more than five cases in the course of their career.\(^3^5\)

**Reasons for Plea Bargaining Cruelty Cases**

While no one spoke of the systemic effect frequent trials would have on the criminal justice system, other reasons emerged as to why so many cases end in plea negotiations, some relating to the goals and desires of the prosecution and others to the goals and desires of the defendants.

For prosecutors, several issues arose as to why cruelty cases were frequently resolved via plea bargain. In two counties it was expected that prosecutors would first try

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\(^3^4\) This county, discussed in Chapter Seven, had a significant farming population and many of their cases related to farm animal neglect. They noted that much of the public, including jurors, often sympathized with the defendants. These attitudinal norms were thought to affect defendants’ reluctance to resolve the case by any means other than a dismissal.

\(^3^5\) County trial rate would be the ideal way to report this; however, it was not possible to calculate county trial rate. Very few attorney’s could recall the exact number of cruelty cases that they had been involved with, and just gave general estimates; similarly, many could not tell me how many times they had taken a cruelty case to trial, but could report it had not been very often. Furthermore, in several offices one prosecutor handled all the cruelty cases, in other offices they were split amongst multiple prosecutors. In this latter situation some prosecutors could give me figures or estimates for their entire office, others could not. Additionally, some prosecutors had worked for more than one county, and while I asked them to focus on their current county on questions pertaining to topics like the manner in which cases were handled, in providing background information some spoke of their entire career.
to resolve all of their cases, including cruelty cases, at routinely held pre-trial conferences. In these counties the system was designed to promote case resolution by way of plea negotiation. In other situations evidentiary problems encouraged plea negotiation. Prosecutors’ who spoke of cases they had handled years ago when prosecutions were much less common, and those who worked in counties where cases were still relatively rare, noted that there were cases in which evidence was not properly collected or not collected at all. And even when cases were properly investigated defense attorneys could and did downplay the level of harm, especially in cases with farm animals, where potential jurors might not clearly see that an animal was underfed or that shelter was inadequate, even with photographic and other evidence. Another factor that influenced speedy case resolution for the prosecution was the cost involved in these cases. Depending on the county and/or the case the District Attorney’s office/county might have to pay to house and care for seized animals, and might also have to pay for the testimony of veterinarians should the cases go to trial. After the case was resolved, however, seized animals were returned or made available for adoption, relieving the office or county of the financial burden and perhaps even acquiring restitution for the care provided:

When we plea bargain a lot of times it’s like ‘we’ll give you this if you’ll relinquish the animals’. The defense attorneys aren’t stupid - they know that you’ll dismiss the case if they’ll give you the animals. So a lot of times you end up getting crappy plea bargain because you want the most important thing – getting those animals into safe hands. Unfortunately a lot of times that’s what you’re bargaining for. Otherwise you can have animals sitting in a cage for a year waiting for trial and somebody’s gotta pay for that and that a huge financial pain in the butt. Sometimes to cut to the chase and get done with it we say forget about it – we’ll dismiss the case, you give us your animals.... (If you go to trial and win) it’s not over. The defendant is going to appeal. You’re going to have to worry about that, you have to
worry about holding the dog pending the appeal. It gets longer and longer and more costly and more costly. It’s a lot. I think that holding these animals – the financial aspect of these crimes really, really pushes a quick resolution if the prosecution is smart. Somebody’s gotta take care of these animals. It’s costly. (3/2).

I don’t know how many (veterinarians) I called who wanted no part of it, were not doing any free work, weren’t going to look, weren’t gonna examine live or dead animals. They knew it would take their time and they wouldn’t get paid. I got one vet in the area that was very cooperative and he would help me out sometimes, completely unpaid, voluntary. He’d write reports for me, he’d testify for me…. (H)ow many times could I call in a favor from a veterinarian that is volunteering for me? It’s gotta be only the really serious (6/1).

Similarly, prosecutors did not have much to gain by taking a case to trial; if the defendant were to be found guilty the sanction he or she would receive was likely not much higher than a sanction resulting from a plea negotiation. A trial would consume both time and resources for little additional gain.

Additionally, prosecutors worried that certain types of somewhat common cases might not fare well at trial – most offices dealt with hoarders, and prosecutors pointed out that many of these individuals were elderly and/or suffered from mental health issues. These individuals might appear sympathetic to judges or jurors, leading to a hesitancy to convict or offer anything more than a minimum sentence by some. Domestic violence situations could prove difficult as well, as in many cases the witness would refuse to cooperate as the case moved forward.

Defendants had many reasons to seek out a resolution by plea negotiation as well. The first reason relates to the limited penalties available in animal cruelty cases. The maximum sentence a misdemeanor defendant can receive is a year in jail; very few will actually receive any jail time. According to interviews with prosecutors and a review of the data that I did obtain, one of the more common outcomes for plea bargained
misdemeanor cruelty cases is forfeiture of the animal(s) and restitution for veterinary and other care. Even in felony cases, the maximum sentence is two years in jail; although most prosecutors noted that standard penalties do not exist in cruelty cases, vignettes and interview data suggest that many felony defendants are offered plea bargains to probation or a very short jail-term followed by probation. If a defendant takes a case to trial he or she risks receiving a “trial penalty” – a disposition up to and including the maximum available sentence. There are other risks as well – a trial takes time and during this time the defendant may have to pay attorney fees, he or she may miss work, there will be the hassle of repeat visits to the court or lawyers office. A plea negotiation offers a quick resolution with minimal consequence. For defendants, especially misdemeanant defendants, it may be preferable to plead to the relatively minor punishment offered instead of dealing with the hassle and inconvenience of a drawn out proceeding as well as additional penalties:

(T)here’ll always be the penalties after trial – jail time, increased fines, instead of being convicted of one count, you may be convicted of one count for each animal, or the threat of increasing the charge to a felony – if he doesn’t plead he may have to go to trial on a felony and go to state prison (1/4).

In addition to securing a quick resolution, prosecutors theorized that defendants were also motivated to plea due to the stigma associated with cruelty cases. Most defendants and defense attorneys were aware, or quickly became aware, of the public disdain for animal cruelty. If a case proceeds towards trial it may garner media attention and subject a defendant to unwanted public attention. According to prosecutors most cruelty defendants are embarrassed and desire a quick resolution their cases:

A lot of people will plead guilty because they know that they’re gonna lose. They’re embarrassed (1/1).
Depending on the case people are pretty receptive – they see the public outcry, they understand that there is public interest in something like this (2/3).

Related to stigma is the “sympathy factor”. The public is sensitive to animal issues, and this of course extends to jurors. Although some defendants raise defenses for their actions, if the prosecution has evidence, it is not common for jurors to be sympathetic to the defense. Several prosecutors who had taken cases to trial remarked that they easily won all of their cruelty cases. Defendants and/or defense attorneys are aware that, so long as the prosecution has good evidence, especially photographic evidence, if their case goes to trial there is a good chance that they will lose and if they do they may suffer conviction to a higher charge and/or increased sanction:

(I)f you commit a violent crime towards an animal you’re never going to find a jury who is sympathetic to your client. I mean, at least here you’re just not. That’s why they don’t roll the dice. The two cases where we had a problem reaching a plea bargain, in the end they took my offer (5/1).

Negotiating a Cruelty Case

Prosecutors were split on whether plea negotiations were more difficult or different in any way in cruelty cases as opposed to other types of cases, with just over half stating they were indeed different. Of the prosecutors who stated these cases were different, six noted that a major difference was the need to “educate” the defendant and/or defense attorney as to the seriousness of the offense. Many came into negotiations with the assumption that the crime was a very minor one, and would be treated accordingly. Many expected cases, especially misdemeanor cases, would end
with an ACOD\textsuperscript{36} or be plead down to a violation (and while this certainly did happen at times, it was not a routine outcome). Due to this assumption, negotiations sometimes took longer than did negotiations in other lower level types of cases; in most cases the prosecutor claimed he or she maintained a tough stance – perhaps ultimately reducing the original offer but not immediately and not to the level the defendant and defense attorney expected. Prosecutors explained their experiences as follows:

(I)t’s been my experience and I think the experience of our office, many of the persons charged with animal cruelty in our county over the years are persons that do not believe they’ve committed any crime whatsoever…. because of that alone, it makes it difficult for us to even approach a defense attorney with any types of plea offer because the defense attorneys themselves have difficulties communicating with their clients and explaining to them ‘you are facing up to a year in jail if you are convicted of this’ and many of these defendants don’t realize the seriousness of their crimes because they look at it as ‘I am doing the best I can for these animals and if they weren’t fed or given water at the proper time it wasn’t my fault’ (8/1).

(C)ertain times you get defendants who couldn’t comprehend the penalties that they faced and then you get attorneys who recognize that this is a new area of law and they seize on that moment, so yah, you could have more issues (3/3).

(Prosecutor): Sometimes when you’re asking somebody to give up their right to own future pets or at least for some period of time, or making them give up their pets that they currently own – sometimes that makes it a little more difficult to reach disposition. Especially in those cases where you’ve got – the people have 37 cats – sometimes it’s very hard for them to agree to give them up.

(ALK): How do you resolve that ultimately?

(Prosecutor): You just have to work at it, and keep working at it and hopefully the defense attorney will be able to persuade the people to plead. There really is no patent way to ensure that it gets worked out. You just have to keep working at it (11/1).

\textsuperscript{36} An ACOD or adjournment in contemplation of dismissal refers to an outcome in which a case is adjourned, postponed, for a period of time. If the defendant stays out of trouble during this adjournment the case is dismissed.
Three prosecutors noted that they often encountered resistance to their somewhat routine requirement that the defendant forfeit his or her ownership rights. In cases involving farm animals, or less commonly, breeders, the defendants relied on animals for their livelihood and were especially opposed to forfeiture. As discussed later, judges too, were sometimes opposed to sanctions including forfeiture of current animals or bans on future animals.

The remainder of the prosecutors saw no difference in the plea negotiation process for cruelty cases, stating negotiations were no more or less difficult than were negotiations in other misdemeanor or lower level felony cases.

**Matters of Procedure**

In almost every case, including misdemeanor cases, the defendants were represented by counsel. While several prosecutors noted that plea negotiations in cruelty cases were sometimes more difficult or drawn out, in most cases negotiations followed a predictable routine. Prosecutors would assess the information, evidence and other relevant factors and would make an offer to the defense attorney. The defense attorney would sometimes offer a defense for the actions of his or her client. Defenses varied but included self-defense, “mercy killing” and denial that the treatment or condition of the animal amounted to criminal activity. In two courts, judges routinely held pre-trial conferences in which the defense attorney, prosecutor and judge would come together and attempt to work out a mutually acceptable disposition. In another court, judges were completely removed from plea negotiations and always allowed the prosecutor and defense attorney to determine the conviction charges and sentence to be imposed. In most courts, however, the prosecutor and defense attorney usually attempted to work out
a disposition and then presented it to the judge, sometimes with a sentence recommendation, other times without, leaving the final sentencing decision to the discretion of the judge.

Consensus and Cruelty Case Negotiations

As mentioned by prosecutors above, plea negotiations were sometimes made more difficult due to conflicting opinions on the seriousness of animal cruelty as an offense. It would likely be easier to execute a plea negotiation in a situation where all parties are in general agreement as to whether they are dealing with a minor offense, a major offense or something in-between and in agreement as to the acceptable range of dispositions. If the prosecutor believes that he or she is dealing with a crime of greater seriousness than does the defense attorney or judge, this can lead to a more difficult and drawn out process. Prosecutors were questioned about the level of consensus regarding crime seriousness and disposition in cruelty cases. Only three prosecutors felt that there was generally a consensus across members of the courtroom workgroup as to the seriousness of animal cruelty. The remainder of the prosecutors felt that at least some of the judges and/or defense attorneys with whom they worked viewed the crime as one of insignificance.

Just under half of the prosecutors noted that they often encountered problems with defense attorney’s viewing animal cruelty as a very minor offense. I tried to tease out whether they believed defense attorneys were being antagonistic due to their job or due to their actual beliefs regarding the seriousness of animal cruelty. While it was expected that

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37 It should be noted that this question was not asked with the presumption that prosecutors would feel they were dealing with a serious offense whereas others might not feel this way. Prosecutors were only asked if those in the court community felt similarly about how serious, or not serious, the offense was. That said, most prosecutors took the position that if there was disagreement, they took the offense more seriously than did others.
defense attorney’s would advocate for their clients, I was interested in whether they approached negotiations with the belief that they were dealing with a minor offense. The prosecutors who reported that defense attorneys had differing opinions seemed to believe that the defense attorneys were truly surprised if the prosecutor refused to reduce the charges or sought anything more than a minor penalty in misdemeanor cases. This was perhaps due to the relative infrequency with which defense attorneys handled these cases. Because of the relatively rare nature of these cases and the fact that, unlike prosecutors who were all based in a single office, defense counsel came from a variety of places, it does not appear that most counsel handled more than one or two cases. While prosecutors dealt with the same defense attorney’s repeatedly, oftentimes when handling a cruelty case it was a first for the defense. Prosecutors, therefore, generally dealt with a different attorney on each cruelty case they handled and oftentimes encountered attorney’s who expected lenient outcomes, for example, ACODs in misdemeanor cases and significant reductions in felony cases. Prosecutors noted they often had to “educate” defense attorneys repeatedly as to the fact that they would require certain concessions from the defendant, such as a plea to the charges, or that they would only negotiate to a certain point:

I think initially the defense attorney comes in with the ‘this really isn’t the case of the century’ type mode and I readjust their view to say ‘ok, so it’s not a murder, it’s not perhaps the case of the century but it’s a case we’re going to handle very seriously and treat it very seriously. An arrest is made and people have to be held accountable for their actions’ so I think that happens more often (10/1).

There was a level of understanding that we thought it was serious, that the DA’s office thought it was serious. And that we were adhering the certain office standards and we wouldn’t come down and that we wouldn’t plea negotiate past a certain point. That understanding of seriousness did not extend to a defense attorney and a judge before
trial. Because when we would sit down to negotiate they would be like ‘c’mom. You’re cheating me, it’s an animal case’, y’know (6/1).

Perhaps highlighting the fact that some defense attorneys failed to see cruelty cases as serious was the attorney in one misdemeanor trial who failed to challenge a single juror during voir dire, including a woman who operated an animal shelter. The prosecution not only won the case but the judge sentenced the defendant to lengthy jail term, something virtually unheard of in misdemeanor cruelty prosecution.

One prosecutor pointed out that while defense attorneys often seemed genuinely surprised at the stance of prosecutors in plea negotiations, genuinely believing they were dealing with a minor offense that deserved a minimal disposition, it was not always possible to tease out their actual feelings. Because animal cruelty is officially a lower level offense, and viewed as such by some of the public, entering negotiations with a presumption of leniency may be part of the defense strategy. She explained:

I don’t know if they agree (animal cruelty is a minor offense) when they go home at night and shut their doors. There’s a defense attorney who represents a lot of these people free. He does a lot of these for free and it’s because you get a lot of publicity. He doesn’t – you know – he charges a crap load of money, he won’t do it for free unless he gets something out of it. He loves animals, but he goes into court and argues for these dirtbags and I think a lot of times (defense attorneys) do look at these cases as if they’re not as important. But it’s hard to say because maybe they’re just doing their job and they’re doing it well (3/2).

While the dismissive stance of some defense attorneys may be a function of their job, this concern does not apply to judges, yet prosecutors repeatedly spoke of problems they encountered with the judiciary. Seven prosecutors noted that one or more of the judges with whom they dealt could be difficult to deal with in animal cases. Perhaps due in part to the nature of the job of judge, as opposed to that of the defense attorney,
prosecutors tended to be more vocal about obstacles raised by judges. Several attorneys noted that some judges failed to treat cruelty cases seriously. Some of these judges, prosecutors noted, were trying to be evenhanded, and did not feel comfortable imposing sentences that went above what they might sentence for other misdemeanor or non-violent class E felony offenses:

The judges are stuck because a lot of judges are very – they’ll look and say ‘ok, what did I sentence my first time offenders to an E felony before’ and this is equivalent to an E felony so they do have legitimate concerns in regards that they – a judge tries to be – well, most try to be even handed and if a judge is to sentence even handedly, and this is not categorized as a violent felony it’s not their fault (1/1).

Others felt animal cruelty received too much attention when considering crimes against people. Some of these judges, in some cases, disregarded prosecutorial sentencing recommendations or would not consent to plea negotiations that they considered to be too severe:

(W)e still experience problems with persuading judges to handle the animal cruelty cases in a serious fashion. And there are times when we will ask for a specific sentence or ask for a case to be handled in a more serious light and there’s many judges out there that don’t agree. They say ‘how can your office be justified in handling this case in a specific way when we also have child abuse cases on our docket’ and definitely some of the judges look at them like ‘we wont handle these cases any different than others’ and sometimes it’s unfortunate…. (W)e have to do what the judge says, the person who wears the robe is the most powerful (8/1).

I’ve presented felony animal cruelty cases, gone into Grand Jury to take their vote and gone in and they’re crying, they want the person responsible hung, they want the max, it’s just interesting – people really treat their pets as part of their family but yet convincing the judges to do the same was an uphill battle that we waged quite a bit in my tenure doing these cases…. It’s been very slow but it’s been such an uphill battle to get out judges to treat these cases seriously. They’re starting to but I still don’t think they take them as seriously as they should (10/1).
Prosecutors’ experiences with judges are further discussed below.

The Absence of Going Rates

In many cases, prosecutors are thought to rely on “going rates”, or standard sentences, when they engage in plea negotiations. Prosecutors were asked about the prevalence of “going rates” for routine crimes in their counties. When asking about “going rates” I used driving while intoxicated and shoplifting as examples. All but two prosecutors agreed that “going rates” did exist in their counties for some types of cases. The other two did not disagree but hedged at explicitly stating that some offenses received a routine penalty. Not surprisingly, none of the prosecutors interviewed believed that “going rates” were in existence for animal cruelty cases. Aside from lack of consensus regarding the seriousness of cruelty cases in some counties, there were other reasons that prosecutors believed “going rates” have not been established in these types of cases. Several prosecutors noted that these cases included a huge amount of variation. Whereas a large number of shoplifting cases involve young adults pilfering relatively inexpensive items, and a lot of DWI cases involve individuals who are simply on their way home from an extended happy hour, cruelty cases involve a lot more variability. While felony cases had some variation, they all had the common denominator of a defendant inflicting severe, intentional harm. Misdemeanor cases, however, ranged from failing to provide proper shelter, to having too many animals to provide proper care, to allowing an animal to starve to death or even torturing a non-companion animal. Some defendants engaged in intentionally malicious behavior, others had good intentions that went astray. This is not to say that some shoplifting and DWI cases do not involve aggravating or mitigating factors that affect disposition, just that there are a large number
of similar, uncomplicated cases for these offenses. Going rates rely on several things to develop – among them familiarity, consensus and repetition. While familiarity amongst workgroup members existed in most counties, consensus and repetition were absent. Because cases are few and far between, and because there is so much differentiation across cases, prosecutors generally crafted individualized sentences based on things like conduct, criminal history and evidence:

(E)very single case is different in terms of animal cruelty and they’re so few and far between in our county. When you only have 5-10 a year in your county you can’t really develop a policy so to speak because out of those 5-10 cases you’re gonna have one or two of the defendants who are gonna have some sort of mental illness, one may involve a domestic violence case where it’s connected to something else, one may involve a hoarder who has good intentions but can’t keep up with all the animals so you can’t develop a consistent policy when the defendants themselves are so different (8/1).

You couldn’t really say a first time animal abuse case it gonna be this. It’s not similar to a DWI because there’s such a variety of different ways to commit these crimes and a variety of criminal histories (3/3).

Although prosecutors did not feel “going rates” existed, several prosecutors noted that most defendants received certain dispositions at a minimum, but that the entire “package” varied from case to case.

Some of the literature on “going rates” suggests that in their absence, plea negotiations will take more time – they will be based on concession rather than consensus (Eisenstein et. al., 1988). Several prosecutors noted that negotiations in cruelty cases sometimes took longer. They noted, however, that they would not go below a certain minimum and that in the majority of cases defendants would eventually accept a plea. In some cases, however, plea negotiations were unsuccessful and cruelty cases proceeded to trial.
Trials

When prosecutors have brought cases to trial they have found, in most instances, that the jury is very receptive. All of the prosecutors who took animal cruelty cases to trial stated that they won the majority, if not all, of the cases they tried. Prosecutors repeatedly noted that so long as they had good photographic evidence, it was relatively easy to convince a jury to convict:

I’ll tell you what – as prosecutor we kind of have this joke – if you’re gonna have a victim of a crime as far as sympathy goes the order of priority is this: 1) babies or infants 2) animals 3) adult humans. So I think a jury would be more sympathetic if I had a cat that was beaten with a bat than it would if I had a 25 year old beaten by a bat (8/2).

Not unexpectedly, when picking jurors, prosecutors attempted to get individuals who have pets on the jury. One prosecutor noted that the defendant need not have the same type of animal injured but that any animal would do:

Most people feel their pet is part of their family and I’ve found in my experience that people say you’re either a dog lover or cat lover. Doesn’t matter. If you have an animal as a pet I want you on my jury because it doesn’t matter if you’re a dog lover and don’t really like cats. If you see what a person does to a cat, its equivalent enough that that person is a good juror (10/1).

While most prosecutors found jurors sympathetic to the prosecution, there were exceptions. In two of the more rural counties, prosecutors noted that it was difficult to assemble a jury that did not involve individuals who were farmers or who had famers in their immediate familial and social networks. These individuals tended to view animals differently than individuals not accustomed to farm work, and therefore would sometimes view evidence differently or sympathize with the defendants. As one prosecutor explained, while discussing a case of alleged neglect by a dog breeder:
Knowing that I work in a rural area I made the comment to (my assistant) that I’m gonna have a bunch of farmers on the jury. She took somewhat of an offense to that ‘what do you mean – they don’t know what they’re doing’. I said ‘no, just the opposite’. Farmers are to me, some of the best business people out there (praises farmers skills). The problem is farmers look at animal different than non-farmers. You may have a dog who comes into your house, you feed him dog food you buy at the store. You buy him dog toys, you get a doggie bag, maybe let your doggie sleep on your bed. Farmers don’t bring their cows into the house. Now a good farmer knows that ‘that’s my source of income so I’m gonna take good care of it’, but they also raise the animals to be slaughtered, they realize that an animal that has lost its productivity may be of no value, they may put the animal down prior to its natural age. So they don’t look at animals the same way…. (T)he farmer is going to look at a dog breeder and say ‘so he had some dogs covered in poop. Whoopee do’ and that was my concern. To finish the story, once I explained it to (my assistant) she understood my fears - that I might have someone who says ‘so what. These dogs were healthy, they had some shots, they were in an enclosed space where he allegedly went once a day’. The bigger problem was he wasn’t getting rid of the volumes of poop quick enough and it was stinking up the neighborhood so neighbors complained. But in the end result, these were functioning healthy dogs’ (2/2).

Experiences with the Judiciary

Prosecutors had mixed experiences with the judiciary, finding some judges knowledgeable about the law and agreeable to sentencing recommendations and others less so. Before further discussion of prosecutors’ thoughts on and experiences with judges and cruelty cases, it should be noted that several prosecutors – primarily those assigned to smaller, rural courts – brought their cases before magistrate judges.38 I had not included questions about magistrate judges in my interview; however, several prosecutors (and other members of the legal community) with whom I spoke made

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38 Magistrate judges are locally elected lay judges. They are not required to have a law degree, or any other special education or training prior to appointment. After appointment they are required to complete a brief training program. Magistrate judges practice in small towns and villages throughout the state. They are involved with arraignments and other preliminary matters in all types of cases and are the primary decision-makers in cases involving misdemeanors and violations in their jurisdiction.
reference to their experiences with these lay judges. While some prosecutors noted that there were no significant differences trying a case before a “lawyer” judge as opposed to a magistrate judge, others felt differently. Three prosecutors who worked in predominantly rural counties noted that these judges were sometimes farmers themselves, or had farmers in their families or social networks. This, prosecutors perceived, made them somewhat more sympathetic to farmers charged with misdemeanor neglect. In addition, prosecutors noted that these lay judges had a harder time understanding the complexities in the animal cruelty legislation. They were therefore more likely to rule in favor of defense attorney’s challenges and less likely to be comfortable with non-traditional sentencing options (e.g.: bans on animal ownership). One prosecutor felt especially passionate about the abilities- or lack thereof - of magistrate judges:

*We have a large percentage of our justice courts in our county that are non-lawyers. That is a difficult hurdle when you’re involved with such a complicated case involving these types of investigations, putting the case in front of a non-lawyer judge is difficult. You have two lawyers who have years of higher education arguing legal points and case law in front of an individual who has trained for three or four days at the traditional training center and then is given a robe (8/1).*

When considering their experiences before judges – magistrate and not - just over half of prosecutors stated that the judges with whom they worked handled cruelty cases professionally, and considered them to be appropriately serious offenses, although, as discussed above, several stated they dealt with at least one judge who did not do so and made this known through his or her actions and decisions. Aside from encountering judges who were sometimes more lenient with cruelty cases than prosecutors’ desired, prosecutors stated that several judges experienced confusion regarding the dimensions of the legislation. A particular area of frustration for prosecutors stemmed from judicial
confusion regarding sentencing bans or limitations on future ownership of animals. In the majority of counties, prosecutors sometimes sought to impose a limit or ban – temporary or permanent – on the ownership of future animals as a condition of sentencing; in hoarder cases they might seek to limit ownership to a specific number of animals, in other cases, especially farm cases, they might seek to impose a ban on the ownership of a specific type of animal. In three counties prosecutors reported that most of the judges with whom they worked refused to allow ownership limits or bans for reasons that they did not understand. These counties were in three very different locations within the state, although all three were large and primarily urban, with outlying rural towns. In these counties the judges did not seem to believe that such a sanction was one they were allowed to impose. One prosecutor, who oversaw the prosecution of misdemeanor cruelty cases, claimed that multiple town court judges would not believe assistant prosecutors who sought limits on animal ownership:

I’ve had local judges, where I’m not involved with the case, demand that I show up in court and show them where they’re allowed to have this ban on animals because they just don’t believe it exists. I’m glad to do that but it falls on deaf ears and I don’t know why. Like I said in the years I’ve handled these cases I’ve yet to have a judge explain not having that ban on possession (10/1).

Sentencing Recommendations

While several prosecutors noted that some judges could be difficult in some cases, in terms of judicial receptiveness to prosecutors’ recommendations or plea negotiations, all but three prosecutors noted that in the majority of cases the judges routinely signed off on negotiations that were worked out between the prosecutor and defense attorney. A few mentioned that most of judges with whom they worked were especially receptive to
negotiated dispositions in cruelty cases, due primarily to their own inexperience with the legislation. They tended to concede to prosecutors sentencing suggestions or negotiated dispositions in these cases as there was no standard on which they might otherwise rely; they were happy to take the backseat and allow the prosecutor and defense attorney to work out the details of the disposition.

As discussed above, in three of these counties the judges were directly involved in crafting the disposition, mandating pre-trial conferences in which the judge, prosecutor and defense attorney strove to work out an acceptable resolution to the case. And two prosecutors noted that while the judges routinely accepted their negotiations, they had worked with the judges long enough to generally know what the judges would or would not accept. They crafted dispositions that they were relatively certain would be accepted. For example, as discussed above, some judges were not agreeable to sentences that involved prohibitions against the ownership of future animals; in these counties prosecutors knew that they would be met with resistance if they included this condition so they learned not to include it (although all stated that they would raise the issue from time to time). As one prosecutor noted:

(T)here’s one in particular who will reject my plea offers occasionally, another less so but sometimes, but the rest (sign off). Though I know what they’re looking for too, so I try to make an offer that won’t be rejected. If that will be more severe offer than the defense wants, then I say to the defense counsel ‘look, you gotta get to by the judge too, I’m not gonna offer something that I know they’re gonna reject because it’s too easy going’ or whatever (2/2)

In the remainder of the counties, the prosecutors noted that judicial receptivity to negotiated dispositions varied from judge to judge and case to case.

Sentencing
When it came to the sentencing of defendants convicted of animal cruelty, judges – often in conjunction with prosecutors – levied a wide assortment of penalties. The two most frequently cited cruelty dispositions were forfeiture of currently owned animals and probation, each were mentioned as commonly used dispositions by six prosecutors in six different counties. Restitution and a short jail term were the next most commonly mentioned dispositions with three prosecutors each reporting that they commonly used these as penalties. Other penalties commonly assigned by at least one prosecutor included community service, bans on future animal ownership and completion of a cognitive-behavioral program known as AniCare. It should be stressed that all the prosecutors stated that standard dispositions did not exist, this question only asked about dispositions that were commonly used; most prosecutors noted using a variety of penalties across their cases and within their cases. So, for example, while six prosecutors mentioned that they often made probation a part of their plea negotiations, they were not the only six to include probation in plea negotiations, and probation was not the only penalty they would levy. They did however state that it was something they regularly included in cruelty case dispositions.

Vignettes

39 I had never heard of AniCare until I spoke with one urban prosecutor. The prosecutor relayed that for several of her felony cases she mandated that the defendants complete a program known as AniCare. AniCare is the first, and to my knowledge, the only psychological intervention program for individuals who engage in cruelty to animals; there are treatment models for both juvenile and adult offenders. It is an individual course based on cognitive behavioral psychology and it is composed of 10 exercises that revolve around the themes of accountability, respect/freedom, reciprocity, accommodation, empathy, attachment, and nurturance (www.societyandanimalsforum.org). Counselors can order a manual and the associated lesson plans from the developers. To my knowledge there are no studies on the effectiveness of this program. The prosecutor who used this program did not work with any one practitioner, instead she would order probationers to find a practitioner of their choice who would be willing to administer the sessions as a condition of defendants’ probation.
In the absence of detailed statewide case data, vignettes were developed to further explore how prosecutors might respond to the animal cruelty cases they encounter. All of the prosecutors were presented with four vignettes depicting various hypothetical defendants who have been charged with animal cruelty (see Tables 2 through 5 below). They were asked to presume that the defendant was anxious to resolve the case and asked what final conviction charge and sanction they would like to see. The vignettes are not based on actual cases, and were created by this author. They do however present scenarios that are not atypical in a review of cruelty cases. They all deal with animals that could be construed as “companion animals” – cats, dogs and a ferret – and involve situations ranging from neglect to intentional physical abuse. They were presented in random order to the prosecutors with whom I spoke.

Table 2

_Hoarder Outcome_41

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1</td>
<td>Misdemeanor</td>
<td>Forfeit all but two pets (pets must be fixed)</td>
</tr>
<tr>
<td>1/4</td>
<td>Misdemeanor -&gt; Violation*</td>
<td>Forfeit pets; Ban on future pet ownership; Fine/restitution</td>
</tr>
<tr>
<td>2/1</td>
<td>Misdemeanor</td>
<td>Forfeit all but two pets; Probation – three years</td>
</tr>
<tr>
<td>2/2</td>
<td>Misdemeanor</td>
<td>Forfeit pets – would consider letting her have a few pets if she could be monitored</td>
</tr>
<tr>
<td>2/3</td>
<td>Misdemeanor -&gt; ACOD*</td>
<td>Forfeit all but three pets</td>
</tr>
</tbody>
</table>

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40 One prosecutor ended the interview early due to time constraints. She completed nearly all of the questions with the exception of the hypothetical scenarios.

41 At the very first interview the prosecutor wanted an age, and several other early interview subjects asked as well. I continued to offer the first age I gave (mid-seventies) and included it routinely as interviews progressed.
<table>
<thead>
<tr>
<th>Date</th>
<th>Charge</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/1</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Temporary ban on pet ownership; Consider probation</td>
</tr>
<tr>
<td>3/2</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Ban on future pet ownership; Psychological evaluation</td>
</tr>
<tr>
<td>3/3</td>
<td>Misdemeanor</td>
<td>Ban on future pet ownership; Monitoring – maybe probation</td>
</tr>
<tr>
<td>4/1</td>
<td>Misdemeanor</td>
<td>Probation; Forfeit all pets only if she won’t accept help</td>
</tr>
<tr>
<td>5/1</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Probation; Counseling</td>
</tr>
<tr>
<td>6/1</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>6/2</td>
<td>Misdemeanor</td>
<td>Mental Health treatment</td>
</tr>
<tr>
<td>7/1</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Probation only if she wanted one pet (no more)</td>
</tr>
<tr>
<td>8/1</td>
<td>Misdemeanor</td>
<td>Temporary ban on pet ownership; Probation; Mental Health treatment</td>
</tr>
<tr>
<td>8/2</td>
<td>Misdemeanor</td>
<td>Forfeit all pets</td>
</tr>
<tr>
<td>9/1</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Ban on future pet ownership; Restitution</td>
</tr>
<tr>
<td>10/1</td>
<td>Misdemeanor</td>
<td>Referral to Mental Health Court</td>
</tr>
<tr>
<td>11/1</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Mental Health evaluation; Involve family or adult protective services if family unwilling/unavailable to assist</td>
</tr>
<tr>
<td>12/1</td>
<td>Misdemeanor</td>
<td>Forfeit all pets; Ban on future pet ownership; Probation; Counseling</td>
</tr>
</tbody>
</table>

*The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.

** I was unable to complete the vignettes with this prosecutor due to time constraints.

All of the prosecutors noted that this case would initially be charged as a misdemeanor offense and almost all would initially seize all or most of the current cats. Other than this there was variation in how prosecutors would like to see this case proceed. While several prosecutors would proceed with the misdemeanor charge, one would reduce the charge to a non-criminal violation and four would offer an ACOD so long as certain conditions were met. Five prosecutors noted they would ban her from any future pet ownership and two other would impose a temporary ban. Five prosecutors
would allow the woman to have cats but would limit the number and would impose
monitoring to assure the cats were properly cared for:

(W)e’ll make an agreement in writing that she’s allowed to have two
animals on her property. She cannot own, harbor, possess or have
anywhere on her property – not in the yard, not in the basement, not
in the attic, not in the barn, not in the shed, not in the garage – and I
know this sounds silly but I learned the hard way that I’ve got to
word it this way. Anywhere on her property she can only have two
animals and they must be fixed. We would do that, if I’m assuming
that she has the resources to take care of two animals. I’m not going
to rob this individual of having any animals if I think she’s got the
resources to properly take care of a couple (1/1).

The others, while prescribing forfeiture, did not address future pet ownership.

Several prosecutors noted that the actions of this woman were not akin to those of
many other abusers, seeing instead a good-hearted individual who perhaps has some
mental health issues:

You have to differentiate between people who are collectors and really
are good hearted and think they’re helping these animals with people
who are flat out abusing them (2/1).

In line with this, seven prosecutors would recommend mental health counseling or a
psychological evaluation. In one county with a mental health court the prosecutor stated
he would likely refer her there.

Probation was mentioned by eight prosecutors, although several mentioned that
they would suggest probation mainly to assure that she received counseling and/or to
monitor cats that she was allowed to keep. A few mentioned they would consider
probation but noted that it might not be worth taxpayer money in this situation as she was
not likely to engage in behaviors that probation officers often monitor:

Either probation or some kind of conditional plea where there are
conditions set that give you the comfort level that you’re looking for –
for example I said no other pets. Probation might not be appropriate
because you’re not really worried about her getting drunk, leaving the house and going out. So some kind of plea that has conditions so if she violates the conditions there’s a hammer (3/3).

Table 3

Dog Killers Outcome

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1</td>
<td>Felony - tentative</td>
<td>Shock probation</td>
</tr>
<tr>
<td>1/4</td>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>2/1</td>
<td>Felony</td>
<td>Jail</td>
</tr>
<tr>
<td>2/2</td>
<td>Felony</td>
<td>Probably probation</td>
</tr>
<tr>
<td>2/3</td>
<td>Felony</td>
<td>Probably jail</td>
</tr>
<tr>
<td>3/1</td>
<td>Felony</td>
<td>Jail followed by probation</td>
</tr>
<tr>
<td>3/2</td>
<td>Felony</td>
<td>Jail – maximum term</td>
</tr>
<tr>
<td>3/3</td>
<td>Felony</td>
<td>Jail followed by probation</td>
</tr>
<tr>
<td>4/1</td>
<td>Felony</td>
<td>Jail – significant term</td>
</tr>
<tr>
<td>5/1</td>
<td>Felony</td>
<td>Jail – six months – followed by probation five years</td>
</tr>
<tr>
<td>6/1</td>
<td>----*</td>
<td>----*</td>
</tr>
<tr>
<td>6/2</td>
<td>Felony</td>
<td>Jail</td>
</tr>
<tr>
<td>7/1</td>
<td>Felony</td>
<td>Jail</td>
</tr>
<tr>
<td>8/1</td>
<td>Felony</td>
<td>Jail – six months – followed by probation – five years</td>
</tr>
<tr>
<td>8/2</td>
<td>Felony</td>
<td>Jail – six months – followed by probation – five years</td>
</tr>
<tr>
<td>9/1</td>
<td>Felony</td>
<td>Jail – one year</td>
</tr>
<tr>
<td>10/1</td>
<td>Felony</td>
<td>Jail - nine months to one year</td>
</tr>
<tr>
<td>11/1</td>
<td>Felony</td>
<td>Jail followed by probation</td>
</tr>
<tr>
<td>12/1</td>
<td>Felony</td>
<td>Jail – two years – followed by probation</td>
</tr>
</tbody>
</table>

*I was unable to complete the vignettes with this prosecutor due to time constraints.

While several prosecutors seemed hesitant to levy significant penalties against an elderly hoarder, all would demand a felony plea and most would request some jail time in
the case involving the two young men who killed the family dog. All of the prosecutors felt this was a serious offense and the perpetrators had to receive a serious punishment:

**Due to the nature and the extreme cruelty to that animal, I would charge them with a felony and that would be a case that I would probably push pretty hard for the felony. That goes above and beyond. The hitting of the dog with the bat is pretty brutal but to go the one step further, killing the dog by lighting it on fire is in need of a felony and perhaps that would be a case where I would say ‘you’re going to plead to the felony and I’m gonna ask for jail and if the judge wants to put you on 5 years probation the judge can have that option, I’m asking for jail on a felony plea’ (10/1).**

Five prosecutors expressed concern that these individuals were likely to engage in other criminal activity. They felt that criminal justice system intervention was necessary in large part for its ability to monitor these defendants and possibly address underlying mental issues:

**There’s all kinds of red flags there. The response is not commensurate with the action of the dog. That’s my first worry. Setting the dog on fire – covering up a crime is one thing – that’s something that would cause me grave concern. I would be looking to charge them with a felony; I would be looking to put them in jail.... I’d be more concerned with making a point with the jail and then beyond that I’d want to see them supervised.... That’s the type of people you want to keep an eye on. They’re the ones you know are capable of anything (3/3).**

Only two prosecutors – both in the same county and both of whom did not handle felony cases – equivocated on jail with one saying he would probably request jail and the other saying he would probably request probation. Two prosecutors noted they would request the maximum of two years and jail and the others requested an lesser jail sentence, often followed by felony probation. Several prosecutors who noted they would request some jail time also stated that they would leave the length of time up to the judge.
Two prosecutors remarked that if it had not been for the fire they likely would have plead the case as a misdemeanor, and several others mentioned the importance of the fire in their decision. Prosecutors felt that by setting the dog on fire, in addition to killing the dog, proved that the two knew what they did was wrong. Because they took steps to hide their actions, neither alcohol nor age obscured their judgment:

*Listen, aside from the defense of being drunk which legally that could be a defense, the fact that they were trying to cover it up negates the alcohol intoxication defense so that kind of negates that and the fact that they set the animal on fire that’s extremely sadistic and cruel (7/1).*

While there was not a great deal of variability in the charging and sentencing of the hoarder and the dog killers, there was more variation in the other two cases.
A 17 year-old girl is arrested for throwing rocks at two chained dogs who have been barking incessantly. One of the dogs is hit hard in the head; she requires 40 stitches to close the wound and a lengthy stay at the vet. The girl has no criminal record.

### Table 4

**Rock Thrower Outcome**

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1</td>
<td>Misdemeanor</td>
<td>Probation – three years; Anger management; Restitution, Order of Protection for dogs; Consider a ban on future animal ownership</td>
</tr>
<tr>
<td>1/4</td>
<td>Misdemeanor -&gt; ACOD*</td>
<td>Restitution; Community service</td>
</tr>
<tr>
<td>2/1</td>
<td>Misdemeanor</td>
<td>Probation, Mental Health evaluation</td>
</tr>
<tr>
<td>2/2</td>
<td>Misdemeanor</td>
<td>Community service</td>
</tr>
<tr>
<td>2/3</td>
<td>Misdemeanor</td>
<td>Restitution</td>
</tr>
<tr>
<td>3/1</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
<tr>
<td>3/2</td>
<td>Misdemeanor</td>
<td>Probation; Mental Health evaluation; Community service, Ban on future pet ownership</td>
</tr>
<tr>
<td>3/3</td>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>4/1</td>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>5/1</td>
<td>Felony</td>
<td>Probation; Anicare</td>
</tr>
<tr>
<td>6/1</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>6/2</td>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>7/1</td>
<td>Felony</td>
<td>Probation; Counseling; Community service</td>
</tr>
<tr>
<td>8/1</td>
<td>Felony</td>
<td>Interim probation; Restitution</td>
</tr>
<tr>
<td>8/2</td>
<td>Misdemeanor -&gt; Violation*</td>
<td>Restitution; Community service</td>
</tr>
<tr>
<td>9/1</td>
<td>Misdemeanor</td>
<td>Weekend jail; Probation; Restitution</td>
</tr>
<tr>
<td>10/1</td>
<td>Misdemeanor -&gt; Violation*</td>
<td>Community service; Consider one weekend in jail</td>
</tr>
<tr>
<td>11/1</td>
<td>Misdemeanor</td>
<td>Probation; Anger management</td>
</tr>
<tr>
<td>12/1</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
</tbody>
</table>

* The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.

** I was unable to complete the vignettes with this prosecutor due to time constraints.
This case seemed to cause the most confusion and deliberation for the prosecutors. Three factors – the seriousness of the injury, and the intentions and age of the defendant affected the decisions made by the prosecutors.

A few prosecutors felt the offense was a significant one, deserving of serious treatment, but they were unsure if the injury sustained by the dog was severe enough to qualify for felony treatment. A felony charge requires that an animal suffer a serious physical injury, and the injury suffered by the dog – 40 stitches – did not meet that criterion in the eyes of many:

It would have to be a misdemeanor; I don’t think 40 stitches to a dog’s head is a serious physical injury. Do you? I don’t think it would qualify (3/2).

A felony charge would also require the harm inflicted on the animal be intentional. No-one asked me if the defendant’s actions were impulsive or pre-meditated, but all made assumptions either way. These assumptions differed as to whether the defendant intended to harm the animals. A few prosecutors noted that they believed that she was being intentionally cruel, while others felt that she acted impulsively, out of frustration – a frustration that some jurors might relate to:

If you’re (throwing rocks) a couple times, to me it means this isn’t a spontaneous thing, it’s not a situation where the dogs bark all hours and you’ve just had it so you throw a rock at them. You’re probably trying to torment or injure the dogs (2/1).

It’s something that was borne out of frustration. She wasn’t trying to be deliberately cruel to the animals; she was frustrated so she started throwing rocks (11/1).

Her conduct is not appropriate nor legal but there’s mitigating facts. You have to think about what a jurys gonna think. You always have to have that in your mind. And what a jurys gonna think is ‘that’s probably what I would’ve done if they’re barking all day’ (3/3).
Five prosecutors noted that the age of the defendant factored strongly into their decision, leading them to charge and/or recommend sentences at lower levels than they would if she had been a few years older. The age of the defendant was significant due to the fact that if she were to be charged with a misdemeanor she would be assigned Youthful Offender status. In New York State, first time misdemeanant offenders are automatically treated as youthful offenders; as such they receive lesser sanctions than other offenders and have their records cleared. If she were to be charged with a felony she would not automatically be considered a youthful offender. One prosecutor who believed this case would be a felony had she been an adult decided that he would charge a felony but still seek youthful offender status if she successfully completed probation and made restitution for the offense:

I would say that’s probably a felony because that’s pretty wanton, it’s pretty serious behavior, throwing an object at an animal….Let’s just say it’s a difficult decision given the age of the defendant, but I think she should be charged and the proper sentence would probably be probation to prevent her from doing this type of behavior in the future. Obviously I would ask that the defendant be required to pay for any veterinary bills for the expense to help the dog get on its two-feet – its four-feet again. The defendant is 17 and has no priors we’d probably recommend what’s called interim probation – if she pleads guilty to a misdemeanor charge and is placed on interim probation for a year and successfully completes interim probation we would ask that the court grant her youthful offender treatment so that this crime would not be on her record for the rest of her life and affect her ability to get into college and get a job in the future, then she would serve the remaining two years of probation as a youthful offender (8/1).

After much debate four prosecutors determined that the teenager in this case should be charged with a felony, the remainder felt the case should be charged as a misdemeanor. Two of these would reduce the case to a violation if conditions were met and another would ask for an ACOD. Nine prosecutors who would prosecute the case as
a misdemeanor would request the teenager be placed on probation, as would the four prosecutors who would charge the case as a felony. One of the felony-charging prosecutors would ask for shock probation, which would include a short stint in jail. Two others, who would plead the case as a misdemeanor would request a weekend in jail. Six prosecutors would request some sort of psychological intervention, ranging from an evaluation to anger management to the Anicare program. Eight prosecutors would require her to pay restitution for the dog’s veterinary care, and another six would require her to complete community service. Two would request that she be banned from having any animals, although one noted this might be difficult to do if the family had pets due to her status as a minor.
A 32 year-old man is mad at his girlfriend. In retaliation he breaks the neck of her beloved pet ferret. The defense is arguing this is a first offense and this is an otherwise good guy – good job, good family – who needs anger management counseling. PETA has gotten wind of the case and your office has received a slew of letters arguing for jail time. You are expecting a news crew or two at sentencing.

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1</td>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>1/4</td>
<td>Felony</td>
<td>Probation; Anger management</td>
</tr>
<tr>
<td>2/1</td>
<td>Misdemeanor -&gt; Violation*</td>
<td>Counseling</td>
</tr>
<tr>
<td>2/2</td>
<td>Misdemeanor</td>
<td>Counseling</td>
</tr>
<tr>
<td>2/3</td>
<td>Maybe a felony -&gt; Misdemeanor</td>
<td>Fine</td>
</tr>
<tr>
<td>3/1</td>
<td>Felony</td>
<td>Jail – short term – followed by probation</td>
</tr>
<tr>
<td>3/2</td>
<td>Felony and Domestic Violence charge</td>
<td>Jail – six month – followed by probation - five years, but only if the girlfriend cooperates; Counseling</td>
</tr>
<tr>
<td>3/3</td>
<td>Felony</td>
<td>Jail followed by probation</td>
</tr>
<tr>
<td>4/1</td>
<td>Felony and Domestic Violence charge</td>
<td>Jail followed by probation</td>
</tr>
<tr>
<td>5/1</td>
<td>Felony – reduce to misdemeanor if girlfriend ceases to cooperate</td>
<td>Jail followed by probation but only if the girlfriend cooperates.</td>
</tr>
<tr>
<td>6/1</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>6/2</td>
<td>Felony</td>
<td>Jail</td>
</tr>
<tr>
<td>7/1</td>
<td>Felony - tentative</td>
<td>Jail</td>
</tr>
<tr>
<td>8/1</td>
<td>Felony</td>
<td>Jail followed by probation; Counseling</td>
</tr>
<tr>
<td>8/2</td>
<td>Felony – tentative -&gt; Misdemeanor*</td>
<td>Interim probation – one year, then reduce to misdemeanor with misdemeanor probation; Counseling</td>
</tr>
<tr>
<td>9/1</td>
<td>Misdemeanor</td>
<td>Jail – six months – followed by probation – five years; Counseling</td>
</tr>
<tr>
<td>10/1</td>
<td>Felony -&gt; Misdemeanor*</td>
<td>Probation – three years; Anger Management</td>
</tr>
<tr>
<td>11/1</td>
<td>Felony</td>
<td>Probation; Anger Management</td>
</tr>
<tr>
<td>12/1</td>
<td>Felony</td>
<td>Weekend jail; Probation</td>
</tr>
</tbody>
</table>

* The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.
** I was unable to complete the vignettes with this prosecutor due to time constraints.
This case also caused significant reflection and uncertainty for a number of prosecutors. The type of animal, and the fact that the incident happened in the course of a personal dispute lead several prosecutors to waiver on the appropriate outcome.

A few prosecutors were not sure a ferret would qualify for a felony charges due to its rodent-like qualities:

So, and again, this is where it gets interesting. What of it were a pet mouse or a goldfish. Are you still allowed to swallow goldfish live? So where do you draw the line? Goldfish to mouse to ferret to dog. I had a guy who snapped a pet ducks neck (describes case). What do you do? It’s a duck. You see what I mean – on one hand what was done, on the other, it’s a duck. You know, that’s how you kill ducks, you snap their neck. So did he do something cruel? I don’t know. If the way you might slaughter a duck for dinner is to snap his neck and that’s all he did – is it credible. I don’t have an answer to that question. The act is what we’re talking about, not the motivation (2/2).

Several prosecutors felt this case had as much, if not more, to do with domestic violence than it did with cruelty to animals and considered this in their charging and sentencing decisions:

I would be dealing more with the domestic violence aspect than the animal cruelty. The animal cruelty would be “plead guilty”, now let’s talk about the domestic violence”. That’s not an animal cruelty but a domestic violence case (2/2).

Two prosecutors, in fact, noted that due to the fact that the incident was domestic in nature, they feared the girlfriend would refuse to cooperate and this would affect their decision-making. Three prosecutors would charge this case as a misdemeanor; the remainder would charge it was a felony. Three prosecutors extensively debated whether or not they would insist on a felony charge, ultimately deciding they would although they were not very firm in this assessment. One prosecutor who would charge it as a misdemeanor would allow the defendant to plead to a violation; two would offer a plea to
a misdemeanor. Two would reduce the charge to a misdemeanor if the girlfriend would not testify, while another would reduce the charge to a misdemeanor with misdemeanor probation after the defendant successfully completed a year of felony probation with counseling. Three others would request regular probation as well while nine would require a split sentence of some (from a weekend to six months) jail time followed by probation (including the two who would only include jail time if the girlfriend testified and allowed for a felony prosecution). Two would require a straight jail term. Nine prosecutors would order counseling or anger management for this defendant. One prosecutor would only sentence the defendant to a fine.

While I had included the presence of the media and public anger in this vignette few prosecutors mentioned it. I asked several about it after they had provided a conviction charge and sentence and all indicated it did not affect the decision they made.

Vignette Discussion

The vignettes provided some insight into prosecutors’ actions in cruelty cases. While prosecutors were nearly unanimous in their assessment of the case involving the teenagers who beat and burned a pet dog, overall there was significant variability in the handling of the cases, illustrating the discretion afforded prosecutors and the lack of “going rates” or consistency in case outcomes (see Table 6 below).

The findings from the vignettes indicate that prosecutors are consistent in their handling of the most egregious cases, seeking the highest charges and most severe sanction (jail); there is much less consistency in other types of cases - and in general it is these other type of cases that make up most of the prosecutors cruelty-related case loads. In two of the cases – the ferret and the dogs hit by rocks – there were some prosecutors
who stated they would like to see the case plead as a felony, others who stated they saw it as a misdemeanor and others still who saw it as a violation or ACOD. There was also broad variability in the sentences in all but the case involving the deceased dog. One finding of interest was the prosecutors’ general emphasis on rehabilitating the defendants through counseling, probation and/or community service. While these rehabilitative sanctions were not mentioned in response to the case involving the killing of a family pet, in the other cases the prosecutors were less likely to seek incarceration and if they did it was often in concert with another sanction with a rehabilitative component.

For the most part sentences involved multiple elements, for example, probation and forfeiture. Outcomes appeared to support prosecutors’ assertions that probation and forfeiture were typically used in case outcomes. Probation – alone, or in concert with incarceration – was often mentioned in case outcome. Forfeiture was mentioned by a large number of prosecutors in the case involving the cats, but not elsewhere, however, in the other vignette’s there was no mention of the defendant having any living animals in his or her possession.

In Chapter Six, the vignettes will be further examined in relation to individual and external factors thought to impact decision-making.
Table 6

Vignettes

<table>
<thead>
<tr>
<th></th>
<th>Hoarder (18)</th>
<th>Rock Thrower (18)</th>
<th>Ferret (18)</th>
<th>Dog Killers (18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misdemeanor</td>
<td>13</td>
<td>11</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>4</td>
<td>12</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Violation/ACOD</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Jail or jail/probation*</td>
<td>3</td>
<td>11</td>
<td>17</td>
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<td>Probation**</td>
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<td>1</td>
</tr>
<tr>
<td>Ban</td>
<td>7</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeit</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine/Restitution</td>
<td>2</td>
<td>7</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Community Service</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counseling/Anger Management/Anicare</td>
<td>7</td>
<td>6</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

*In this chart I included all sanctions levied by a prosecutor so totals will not add up to the number of prosecutors (e.g.: If a prosecutor would request a sentence of probation, counseling and forfeiture, all three components were checked off.

** If individual said he or she would consider a sanction I included it, with the exception of the individual who said he might consider one weekend in jail in the case with the teenage girl. One weekend did not seem equivalent to a jail sentence of several months or multiple weekends. If they indicated they would only levy a sanction under specific circumstances (e.g.: the girlfriend refused to cooperate in the ferret case) I did not include it.

Prosecutors Perceptions of Changes Overtime

Over the past several years changes have been made to the legislation and there have been changes in social norms relating to animals. Prosecutors were asked if they perceived changes in the way the criminal justice system responded to cruelty cases overtime. Two prosecutors had not been practicing for very long and therefore were not in the position to answer this question. Of the remaining prosecutors, six did not believe much had changed, while eleven felt the response of the system had improved, noting
that more procedures were in place for dealing with cases, the criminal justice system took them more seriously and that the felony provision provided them another tool with which to work:

They’re taken more seriously. People are starting to understand why these cases are just as important as others. And on that guy who burned the dog – I got $100,000 bail. You don’t get that very often on cases with human victims. That was pretty cool (5/1).

The laws have changed; there is more awareness of animal cruelty, more funds, more animal cruelty officers, a network of veterinarians who assist. There is NYSHA with strong lobbying for enforcement. This culminates in more enforcement (4/1).

Several prosecutors noted that they were of the belief that the system was more responsive to cruelty cases and treated them more seriously; however, it was not legislative changes driving this progress, but media attention:

I think that there has been more media attention in the last few years, probably in the last five or six years so that tends to make the – because people care more about these cases – I think everybody is a little more careful with them then they used to be (11/1).

The question becomes are the cases taken more seriously now because of the media attention or because this is the right thing to do (8/2).

In Sum

There has been very limited examination or prosecutors’ experiences with animal cruelty cases. This research provided a detailed overview of the processes these cases undergo after they are brought to the attention of the prosecutor. It also explored the thoughts and experiences of individual prosecutors across the state of New York and documented the actions they stated they would take in series of hypothetical animal cruelty cases.
In many ways animal cruelty cases did not differ from other lower level cases. In most cases the defendant is represented by counsel and the prosecution and defense resolve the case via plea negotiation - while the occasional case goes to trial a majority are otherwise resolved. Prosecutors consistently stated that “going rates” were non-existent with several prosecutors claiming that negotiations might take a little longer but were overall no different than negotiations in other types of cases. Judges sometimes proved disagreeable but more often than not accepted negotiated dispositions and sentencing recommendations.

In other ways, the interviews suggested notable differences in prosecutorial processes and perceptions. While traditional law enforcement is responsible for the arrests and investigation of some cases, it is just as likely that these cases will originate, at least in part, with the SPCA. Furthermore, the complexities of evidence collection and potential for intense public scrutiny lead some prosecutors, in some cases, to respond to the scene of the incident – something not likely to happen in other misdemeanor or class E felony cases. Prosecutors also have to contend with the management of living property – they must find an organization that will care for the animal(s) until the case is resolved; they also must locate professionals to provide services such as medical care and documentation or perform a necropsy. Because the victims of these crimes cannot speak, and the crimes are often committed out of public view it is vitally important that prosecutors properly document and thoroughly detail the abuse. Photographs are extremely important, but veterinary testimony is equally important. Sometimes funding for such services is limited or non-existent and prosecutors must scramble to acquire these important resources. Lack of familiarity with the legislation – personally and by
others in the criminal justice system with whom the prosecutors work - also makes these cases more complicated and time consuming. Additionally, media and public scrutiny, further discussed below, were, at minimum, noticed by most prosecutors.

Hypothetical scenarios were presented to prosecutors in order to gauge their potential responses to cruelty cases. Responses indicated that, as expected, mild neglect cases were treated much more leniently than cases involving intentional, physical abuse. Intermediary cases – where motive and degree of injury were less clear and the animal victim was not a traditional household pet – proved more complex, with prosecutors less certain of their decisions and with more variation in outcome.
Chapter Six: Criminal Justice Theories and Animal Cruelty Cases

In addition to providing an initial exploration of the processing of animal cruelty cases in New York State this research sought to examine if general theories relating to prosecutorial decision-making applied to cruelty cases. While I expected that major theories of decision-making would apply to these cases, there was reason to believe that there might be some differences. A majority of theory on criminal justice decision-making was developed using data from routine and relatively serious offenses. Because cruelty cases are relatively rare lower level offenses – offenses that have also undergone relatively rapid legal and social changes in recent years – this research sought to explore if traditional theory would apply. As discussed in this chapter, results indicate that prosecutorial decision-making in cruelty cases is not markedly different from decision-making in other types of cases; however, there are some differences. Two of the main theories of decision-making, uncertainty avoidance and courthouse culture-courtroom workgroup theory, will be addressed first and followed by a discussion of exchange relationships, office policy, individual beliefs and environmental influences.

Uncertainty Avoidance and the Influence of Legal and Extra-legal Factors

Research on courtroom decision-making has found that when prosecutors make decisions regarding cases – whether to dismiss charges or to offer concessions to the defense – they look to certain factors that they believe will increase their odds of winning should the case go to trial. Legal factors - the seriousness of the offense, the strength of the evidence and the prior record of the defendant – have consistently been found to influence case processing decisions and were expected to be influential in cruelty cases as
well. Extra-legal factors including characteristics of the victim and defendant, have been found to have less predictive power. In emotionally laden cases, such as animal cruelty, I had hypothesized that certain extra-legal factors might be influential. Specifically, I had anticipated that cases involving harm to pets and common household animals, especially cats and dogs, would be treated more seriously in charging and bargaining decisions and more so if the victim was the pet of someone other than the accused. Interview data supported the assertion that legal factors dominate decision-making by prosecutors. There was less support for the influence of extra-legal factors. This section will explore the factors that prosecutors indicated were influential to them as they made case related decisions.

Prosecutors make multiple decisions when prosecuting a case – they must decide whether to continue with a case after a defendant is arrested, in some cases they must decide what charges to present to a Grand Jury, they must decide whether to ask for bail and what amount to ask for, and perhaps, most importantly, they must decide whether they will offer a defendant any concessions in exchange for a plea and if so, what charges and oftentimes what disposition they will accept. Prosecutors were asked what types of factors they relied on to make these decisions. As discussed elsewhere, prosecutors were generally less involved with charging than I had expected and so the discussion primarily focused on factors that might lead to a dismissal or affect plea negations.

Prosecutors mentioned numerous factors that they take into account when dealing with cruelty cases. Consistent with much of the research, legal factors dominated decisions made by prosecutors. Evidence, such as photographs and veterinary statements, eye witness or expert witness testimony, the degree of injury and the intent of the
accused, and the prior record and life circumstances of the accused were all reported by several prosecutors as influencing their decisions. With the exception of the media (an extra-legal factor, though addressed in this research under environmental factors), extra legal factors were reported by some prosecutors but were much less common and less influential than were legal factors.

The most commonly reported and strongly emphasized factor was the presence of quality evidence. All but two prosecutors mentioned evidence as being important in their decisions, with one pointing out that you could have the most horrific case imaginable but without good evidence your options were limited. In cases where evidence was lacking, several prosecutors stated that they were forced to plea bargain cases down to lesser, often non-criminal, offenses or even ACODs, however, they would often attempt to have the defendant forfeit the animal(s), or provide a mechanism whereby the SPCA or other agency could monitor the defendant’s care of his or her animals:

(I)f it’s a well developed case, we go as charged. If it is not, the evidence is not present, then I will plea bargain the case with conditions to address the possibility of recidivism (6/2).

Evidence took many forms – photographs and veterinary reports or necropsies were the two most common form of evidence cited as being useful. For the most part, prosecutors stated that they were provided with photographic evidence in almost every case. In the cases that went to trial photos helped the judge and jurors to understand the extent of the harm the defendant inflicted upon the animal. Several prosecutors noted that good photographic evidence basically made their argument for them:

You can describe (the abuse) but it’s so much more vivid to stretch out a chain with a dead dog on the end of it showing (evidence of severely neglectful conditions)…. I, through my years of experience, have learned to ask them to describe the scene, show them the
photograph ‘is this accurate, is this what you described’ ‘yeah’ and ask them to point out in the photograph what they described, and in doing so I’ve just told that story three times (10/1).

In cases that were resolved through plea negotiations, photos were used to impress upon the defendant the criminality of his actions, and help him or her to understand that if the case were to go to trial the photos might negatively affect the outcome of his or her case. Several prosecutors stated that defendants who were adamant they did not commit a crime and/or insisted on an AOCD or a plea to a violation often chose to accept the prosecutors offer after seeing the photos the prosecutor possessed:

(W)hen you start showing the photos (and then say) ‘you plead now I give a fine’ and that sort of thing - I don’t know that they really want to get into the details about the actual facts of the case because when they do they start to realize there are victims here (1/4).

If I were a person charged with one of these I don’t think I would want to take it to trial, especially if there are photos. It’s very – I don’t want to say prejudicial because that’s not the right word – it’s very damning (11/1).

Veterinary reports based on examinations of living animals and necropsies of deceased animals provide prosecutors with an additional, important tool. First, the reports were used to provide added verification of abuse – often in support of photographic evidence. Occasionally, photographic evidence alone is not enough. In one case, where I had the opportunity to sit in on the final plea bargaining session of a case that had dragged on for nearly a year, the prosecutor had several photographs of farm animals that were supposedly underfed and not provided adequate shelter, resulting in sunburn. The animals had not received any veterinary care after they were seized and the defense attorney argued that a lay person would not be able to discern malnourishment or sunburned skin from the photographs. Without veterinary records asserting neglect, the
prosecution had to concede, and agreed to a plea to a violation. Veterinary reports are also used to prove cause of death or injury and to demonstrate that the harm was not accidental or attributable to something benign. In abuse cases, oftentimes defendants would claim that injuries were accidental. Veterinary examinations and the resulting reports could sometimes be used to prove that, based upon the type of injury and/or the discovery of older injuries, the abuse was not an accidental, or isolated, incident. They were additionally used to document the conditions of the animal at seizure, prior to it being rehabilitated:

*The focus on the case as a prosecutor has to be what the veterinarian reports consist of, what are the actual conditions of the animal immediately after the crime or can it be shown through the veterinary reports that the abuse was on-going. And sometimes it’s very difficult to prove and that’s the key to most of these cases. If you have the veterinary reports up front and a very detailed investigation they’re much easier to prosecute (8/1).*

The seriousness of the offense - the degree of harm inflicted upon the animal and/or the intent behind the harm - was also mentioned by a majority of the prosecutors (15) as being influential to their decisions. Cases in which animals were physically harmed, as opposed to neglected, were seen as more serious in most situations. Individuals who caused severe injury or death, with the intent to do so, were viewed very differently than were individuals who acted out of ignorance – a hoarder or a farmer who failed to provide proper shelter for instance:

*You take a risk with less proof if the defendant caused serious injury. You tell the jury or court that ‘because of the nature of the injury we must go forward’. If there was no injury caused you don’t want to take the risk (4/1).*

Several prosecutors were influenced solely by the suffering endured by the animal, although many expressed concern that individuals who caused intentional suffering were
likely to engage in other harmful behaviors and it was primarily this factor motivated them to seek more severe sanctions. They felt that if the individuals were not monitored by the criminal justice system their behavior would get worse:

\begin{quote}
(I)f you see something that is so violent, that defies imagination – and many of these cases did – you have to be concerned about what’s next (3/3).
\end{quote}

The criminal record of the defendant was cited by a majority of prosecutors as being influential as well. Although all but one prosecutor claimed that, to their knowledge, they had never dealt with a repeat animal abuser, many dealt with defendants who had arrests for other types of criminal behavior. As expected, this did influence prosecutors in their decision-making, especially their decisions regarding dispositions in plea negotiations. Many prosecutors were mindful of the alleged link between animal abuse and other criminal activity and were especially interested in criminal histories that indicated that an individual might have a propensity for violence:

\begin{quote}
I’ll also look at the persons record and social history to see ‘is this something that is an anomaly or is this a person that hates everything and is a criminal and this is just one of the criminal acts that they’re gonna commit’ (10/1)
\end{quote}

On the other hand, many were sympathetic to first time offenders, although most who expressed that they would treat a first time offender more gently were careful to point out that this was not unique to cruelty cases but the norm in general:

\begin{quote}
Is this a first time thing and as it is with any case you have to give some level of understanding to them and by that I don’t mean let them go, but maybe not make them plead to the max charge (3/3).
\end{quote}

When considering extra-legal factors it was hypothesized that several factors relating to the “victim” might impact case processing decisions. Support for these hypotheses was modest at best, although would be better explored with case file data than
interview data due to the fact that prosecutors might be less likely to admit that such factors influenced their decisions or, perhaps, might not even be consciously aware of biases in decision-making.

It was hypothesized that prosecutors’ decisions might be impacted by the type of animal harmed. While felony charges can only be filed in cases involving companion animals, the term “companion animal” is open to some interpretation. And regardless of whether a case is filed as a misdemeanor or a felony, prosecutors have the discretion to dismiss the case, reduce the charges and/or select from an assortment of penalties. Common companion animals - cats and dogs - might generally prove to be more sympathetic and therefore be treated with a greater level of seriousness by the prosecution.

The majority of prosecutors claimed that the type of animal harmed did not impact any of their decisions in case processing although one quarter of the prosecutors admitted that they did consider the type of animal that was harmed when they were making case related decisions. According to these prosecutors dogs and cats, as expected, proved most sympathetic, and were therefore treated more seriously than were cases involving less common types of pets:

Whether it was worth it to go to a jury and try a case with (the rabbit) there as opposed to having a “normal” domestic cat or dog…. The arguments are obviously well, you don’t eat a cat or dog but you can kill and eat a rabbit. When my boss first realized that I was (going to trial on) the case with the rabbit he was a little bit surprised. I didn’t say he was disappointed but he was a little surprised (8/2).

Well, it’s the dogs and cats that people really hate. The jury won’t cut as much slack if it’s a dog because they can relate to it (4/1).

(ALK) Is, say a cat, different than a rabbit?
(Prosecutor) Absolutely, absolutely. When you get a companion animal it’s a little bit different than certain other kinds of animals. We’ve had cases with horses and cows and goats, we even had a goldfish one time. And quite honestly nobody really thought that the goldfish case was all that concerning so much as it would have been had it been a dog, a cat, a horse, that type of thing. So I mean I do think that it depends on the type of animal (11/1).

None of the prosecutors with whom I spoke believed that the relationship between the animals and the offender was at all influential in decision-making. One prosecutor noted that in most of the cases he prosecuted individuals were harming or neglecting their own animals. The limited case files which I reviewed, discussed in Chapter Seven, along with anecdotal case information shared by prosecutors seemed to lend support to this statement – but only in misdemeanor level cases. The felony cases primarily involved animals belonging to others. This would appear to lend credence to the hypothesis that prosecutors were more likely to pursue felony charges (and harsher sentences) when dealing with a case in which an individual harmed the pet of another, however, there was a noticeable distinction among the cases. The misdemeanor cases primarily involved neglect, the felony cases primarily involved torture and/or death of an animal due to physical abuse.

The most influential extra-legal factor was the public attention and media attention surrounding these cases. As discussed in greater detail later in this chapter, prosecutors had a good deal to say about the public interest in animal cruelty cases; some noted that while it was influential, it did not influence them directly or in case specific ways. That is, they claimed it influenced other criminal justice actors, or the system response to animal cruelty as a whole. Others admitted that it lead them to be more conscientious of following procedure. In terms of direct impact on individual decision-
making, just over half of the prosecutors interviewed stated that the media or public response directly impacted their decision-making in at least one cruelty case. Most of these prosecutors did not think public attention should influence decision-making, but felt it was impossible to ignore. They were primarily motivated to consider this by fear that if they did not they would be personally ambushed:

(ALK): When you’re deciding what type of resolution to come to in a case what types of things affect your decisions?

(Prosecutor): The press.

(ALK): Okay.

(Prosecutor): The press.

(ALK): Okay.

(Prosecutor): And the press….I don’t think DA’s should factor that in in a case but do they -yeah they do (3/2).

You gotta keep in the back of your mind the fact that if you don’t get what can be perceived as a just disposition that you’re going to hear about it publicly. Nothing is swept under the rug with an animal cruelty case (2/1).

(We consider) the reaction of the community if this decision is made to offer a plea to this particular defendant, we like to test the waters so to speak and feel the temperature of the animal community before a decision like that is made because sometimes these cases are very divisive in the community…. (Is the case) one that the community is extremely upset about it, is it one that we need to send the message to the community that we will not tolerate this type of behavior in our community (8/1)?

Courthouse Culture – Courtroom Workgroup

A good deal of research on the court has supported courthouse culture theory – that is, decisions, especially the decision to plea bargain a case or take it to trial, are influenced by the relationship that exists amongst the courtroom workgroup. This
research sought to explore the effect of varying degrees of familiarity and cooperation within the legal community on case processing and outcome. This hypothesis was harder to test than expected due to the fact that almost all the attorney’s described legal communities that were both familiar and cooperative. Additionally, very few cases went to trial. This low trial rate, however, seemed to be a function of the type of case – a lower level case with limited penalties – as much as it was a function of routine case processing or courtroom relationships. It was also hypothesized that when cases were resolved via plea negotiation, negotiations would be more difficult than they would in most other cases, due to the absence of consensus and “going rates”. There was moderate support for this hypothesis. The below section describes prosecutors’ relationships with other courtroom workgroup members and their experiences in processing cruelty cases.

All of the prosecutors interviewed, but for one, stated that they routinely dealt with the same judges. Many, in fact, were assigned to a particular courtroom or courtrooms so they had very familiar relationships with the judges with whom they worked. Four attorneys – two from within one county - noted that while they dealt with the same judges, there was more variety in the defense bar. Despite this, they claimed they knew most the defense attorneys, just not very well. Even in larger cities, most prosecutors reported that public defenders and/or a small set of criminal defense attorneys handled the majority of the cases they prosecuted, making for a small sub-group of co-workers.

When asked about the overall relationship amongst the courtroom workgroup, two prosecutors – both from the same county – emphasized adversarial nature of the system without adding a positive spin, but they were the exception. While many of the
prosecutors noted that the system was adversarial, they also noted that disagreement was a part of the job, and then went on to express overall respect for and collegiality with the others:

\\begin{quote}
We try to resolve cases and come to just resolutions but there are times when our minds do not meet and we have to go to trial and that’s why we have trials so I would say our relationship with the defense bar is an extremely good one (8/1).
\\end{quote}

\\begin{quote}
It’s a lot of fun. You shoot the shit and when court is done you go out with the defense attorney and the judge for a beer – that’s the way it is. That’s how it’s always been (3/2).
\\end{quote}

In discussing their peers, several prosecutors pointed out the benefits of a positive working relationship, noting that it made it things easier and was advantageous to everyone involved. Echoing the words of Eisenstein and Jacob (1991) prosecutors routinely pointed out that a cooperative relationship was beneficial to all parties and helped them achieve quick and fair resolutions to their cases. Several attorneys also noted that if a lawyer were to make things difficult, he or she would experience difficulties later on:

\\begin{quote}
(A friendly relationship) makes it more pleasant but it also makes it more productive. If you know people, not necessarily on a personal level but outside the courtroom, you do learn who you can trust so I find it easier to work with them because let’s say they tell me something that might be mitigating for their client… if I know who its coming from I can judge it better (5/1).
\\end{quote}

\\begin{quote}
Well everybody understands everybody and you have to remember that – well, first of all, a lawyer’s word is supposed to be his or her bond. That’s not always the case, especially in larger areas or where you have lawyers that come in for out of town for one case but when you deal with someone daily or weekly you can’t be screwing them. If you do you’re gonna live to regret it because maybe you brought a fandango for this client, but guess what – you screwed every other client you’ll get because I’m never gonna trust you again. We tend to be honest with one another (2/1).
\\end{quote}
Despite the general consensus that the legal communities in which these prosecutors worked was cooperative and familiar, when asked about cruelty cases, several prosecutors expressed frustration with other actors, noting that other members of the courtroom workgroup were unfamiliar with the legislation and/or had very different expectations for cases. There was also broad agreement, as expected, that neither going rates nor consensus on the overall level of seriousness of animal cruelty existed for these cases. I had theorized that the lack of going rates would lead plea bargaining to be more difficult and time-consuming, based in concession instead of consensus. Interview data provided some support for this hypothesis. Nine prosecutors agreed that animal cruelty cases were more difficult and/or time consuming to negotiate. In all but one county, however, prosecutors noted that these case were no more (or less) likely to go to trial than were other types of cases. Instead they would repeatedly negotiate the terms of the case. Most stated they had a bottom line, an offer they would not go below. When faced with the evidence and the prospect of a trial, defendants and defense attorneys would almost always ultimately agree to a negotiated disposition. Most prosecutors had little to say on the topic, indicating that negotiations often took longer but that very few cases went to trial:

There’s no cut and dried method because with an animal cruelty case, as I mentioned earlier, sometimes the investigations themselves will take a month and even after an arrest is made we’re not in a position right away to even address the defense attorney as to any kind of a disposition. It’s been our experience in our county that most of the defense attorneys when they see an animal cruelty case they’re reluctant immediately to try to negotiate right away, they want to see what sort of evidence we have and they will go through the discovery process and find out what sort of vet report we have, what sort of photos we have, what sort of documentary proof there is of animal cruelty before they agree to any plea bargain arrangement. They’re just doing their job, we understand that, but it typically may take
months for the discovery process to end and for each party to understand what evidence is out there to prove the case… I think once the discovery process is over, once each side realizes their strengths and weaknesses and once each side realizes what the judge is likely to do if a particular plea offer is made what the judge is likely to do in terms of a sentence then I’d say it’s easier to come to a conclusion on a case but it takes, it can take months (8/1).

Perhaps the fact that most respondents reported positive relationships within their courtroom workgroup is in part responsible for this finding – that is, their shared history and friendship lead to an amicable, relatively efficient negotiation process even in the absence of going rates. It is also likely that the relatively insignificant penalties add some level of ease to the process. The plea bargaining negotiations are constrained by statutory penalties; these penalties do not leave much for the prosecutor (and defense attorney) to negotiate.

Moving beyond the above two “major theories”, this research also sought to explore the effects of an exchange relationship with the police, office policy, personal beliefs and environmental factors on case decision-making.

Exchange Relationship

Some research indicates that prosecutors engage in mutually cooperative relationships with other agencies, such as law enforcement. That is, they require assistance from law enforcement to do their jobs well and vice versa and so they support each other in their career related endeavors. It was hypothesized that, due to this relationship, prosecutors would not frequently modify charges filed by law enforcement, especially if the arresting officer had an interest in the case, and they would treat cases that originated with law enforcement more seriously than cases brought by “concerned
citizens”. These hypotheses were not supported, though this lack of support was due to the practices of prosecutors with whom I spoke.

As discussed in Chapter Five, a large percentage of cruelty cases originate not solely with law enforcement but with the SPCA. Even if law enforcement makes the actual arrest, they are often partnered with the SPCA. Prosecutors do not have the same mutually dependent relationship with the SPCA that they have with other law enforcement. They do depend on them to gather quality evidence in cruelty cases (and the SPCA depend on the prosecutors to put this evidence to good use), but due to the function of the SPCA, they are usually proficient at what they do. Furthermore, charging decisions in cruelty cases were sometimes made with prosecutorial input; SPCA and/or law enforcement were not always investigating and charging cases and then sending the case to the prosecution; instead, in several counties, the prosecution was involved from the start and therefore would be unlikely to disagree with and alter initial charges. When cases did originate with law enforcement, the interest of the arresting officer varied from one officer, or office, to another. One prosecutor pointed out that the level of the case mattered as well, with many officers following felony cases, but not misdemeanors.

Surprisingly few cases originate via a citizen complaint. A review of the literature written by scholars who advocate for animal rights, as well as an examination of websites and literature produced by animal rights and animal welfare organizations, turned up several suggestions that citizens directly contact prosecutors when they encounter ambivalence in law enforcement. The prevalence of commentary on inadequate law enforcement response and the encouragement of citizen initiated complaints lead me to include this variable in my interview instrument and hypothesize
as to how a citizen originated complaint might be handed as opposed to those complaints that originate with law enforcement. I soon realized that very few district attorney offices actually investigate such complaints. In a majority of offices, prosecutors claimed that they rarely, if ever, received citizen complaints in animal cruelty cases. When told that some animal welfare organizations encouraged this process one ADA voiced her opposition to this process at length, noting that the District Attorney’s Office did not have the time, resources or knowledge to complete cruelty investigations. Of the seven prosecutors that did sometimes field calls from citizens, most stated that they referred these cases back to the police or SPCA. Several prosecutors noted that most were unfounded:

(W)e have a lot of people from the city that are relocating up here. And they’re used to lap dogs and cats that are declawed and never leave the house – when they see animals outside they get freaked out. When they see a little snow falling and horses out in the field getting wet they make a phone call saying these animals are being mistreated and they’re not (2/1).

(R)emember there’s also a lot of crazy animal people out there in the world. They find every little action egregious….there are a number of people out there who call the police often to complain that an animal is being abused and it doesn’t rise to the level of anything so the police don’t do anything about it so they would call my office directly and then we’d investigate it….They’re not criminal offenses, they’re things that that you might, that an ACO might give a ticket like an animal needing proper shelter, a proper dog house but they’re not criminal prosecutions (6/1).

Only two large, urban offices stated that they actually investigated such cases using their own investigators; both claimed such investigations were not common and were handled no differently than were cases that originated elsewhere.

Office Policy
It was hypothesized that formal or informal office polices surrounding charging and bargaining might affect the practices of prosecutors. This research found that polices did not exist to regulate these actions in cruelty cases. In one office the District Attorney mandated all cruelty cases be placed on a list of major cases of which she carefully monitored but she did not have any specific policies regarding the handling of the cases.

As noted above, prosecutors were not often involved with charging and when they were they often made decisions in concert with SPCA officers. In situations where prosecutors assisted in the filing of charges or altered them, prosecutors reported that there were no official policies in place; a few prosecutors claimed they would alert their superior to their decisions, but they were generally given the autonomy to handle their cases as they wished. In several offices, the prosecutor with whom I spoke served as the resident “expert” on cruelty cases, so his or her decisions were rarely challenged. In offices in which one prosecutor handled felony cases and misdemeanors were distributed across the office, the felony prosecutor would often offer his or her thoughts and opinions to those handling misdemeanor cases but did not formally approve charging decisions.

Not unexpectedly, similar results were found for plea bargaining. Some prosecutors noted that their office had policies for certain types of cases – DWI was most commonly cited – but no official policies existed for cruelty cases. The majority of prosecutors noted that they would usually inform supervisors of any plea negotiations before they were finalized. Three prosecutors noted that the public attention and controversy surrounding cruelty cases lead them to always make sure the District Attorney was aware and accepting of any deals that were made. All noted, however, that in the majority of cases, their decisions were not called into question. In addition to
seeking District Attorney approval, a few prosecutors noted that they often sought the approval of the SPCA of other humane organizations, or at a minimum, made them aware of decisions prior to finalizing them.

**Individual Beliefs**

I think everyone has their own personal feeling about animals one way or the other and I think that it’s near impossible for people to leave those biases out of their plea negotiations or how they view a case….I think that it’s impossible for anybody – whether me or the defense attorney to leave out their personal biases whether they like cats or they don’t like cats and I think that unfortunately those things view whether they think the offers fair or not (9/1).

It was hypothesized that prosecutors’ personal opinions about animal cruelty as well as their thoughts on the link between animal abuse and violence against human beings would influence decisions they made in cruelty cases. Specifically, if a prosecutor believes that animal abuse should be treated as a serious offense and/or is a “gateway” to violent crime, it was hypothesized that (s)he would be likely to ask for a more severe conviction charge and sentence. Results provided some support for these hypotheses.

I did not directly ask prosecutors about their thoughts on animal cruelty as an offense. I instead relied on the proxy measure of satisfaction with the legislation and criminal justice system response in order to understand how prosecutors’ beliefs might impact their decisions. Literature on animal welfare legislation across the nation, as well as literature specific to New York State, is overwhelmingly critical of cruelty legislation; the weaknesses are many. It is thought that if a prosecutor believes animal abuse is a serious offense and should be treated as such he or she will be more cognizant of the weaknesses in the
legislation and/or criminal justice system response that lead to a relatively non-serious response to offenders. In this section I will first present prosecutors' thoughts on the adequacy of the legislation and criminal justice response and will then compare these thoughts to prosecutors’ decisions in two of the hypothetical cases presented above. It is predicted those who see problems with the legislation and/or system response will be more likely to ask for felony conviction charge instead of misdemeanor charges and to ask for more severe sentences than will those who believe no changes are needed.

I will also review prosecutors’ experiences with and thoughts on the presence of a link between animal cruelty and other forms of violence and will examine the relationship between prosecutors’ belief in “the link” and their hypothetical decisions. It is expected that those who have a stronger belief in the alleged link between animal cruelty and other forms of violence will ask for more severe charges and more severe sentences than those who have a lesser level of belief.

*Changes Desired by Prosecutors*

As a concluding question in the interviews prosecutors were asked what, if anything, they would like to see changed in relation to cruelty cases. There was not any one response cited by a majority of prosecutors, but most prosecutors mentioned one or more things that they would like to see changed. Prosecutors suggested multiple changes involving both resources and the legislation itself.
One prosecutor felt that animal cruelty cases received too much attention and too many resources. He believed that there were other crimes of greater importance that were neglected and that were more deserving of time and resources than were cruelty cases:

_**I think that a lot of resources have been devoted to it and I would just like to see the same fervor and the same attention to resources being devoted to other types of offenses, for some reason it seems that a lot of attention is given to the animal abuse cases….We don’t have the same devotion of resources to other types of cases, for instance computer crimes now are enormous. The state police recently just expanded their computer crimes unit but they’re still woefully understaffed. The problem in computer crimes are now triaged (continues about this for a bit). So sometimes I think that our priorities are a little mixed up but that’s because the squeaky wheels get the grease (2/1).**_

This opinion, however, was exclusive to this one prosecutor. To the contrary nine prosecutors suggested that greater resources were needed for various aspects of animal cruelty. Prosecutors criticized the lack of resources provided to cover the housing and medical expenses associated with caring for seized animals. These details were worked out on a case-by-case basis in some places and often caused problems from shelters being unable to take the animals, to no resources for veterinary care for living animals or necropsies for deceased animals:

_Housing the animals was an issue and resources – having other agencies and private shelters taking in these animals, financially a lot of these private shelters just can’t do it because it’s such a big burden for them. Typically these cases are litigated for a long period of time. The discovery process takes a long period of time and everyday those animals are housed in these private shelters its more money these shelters are losing so I would say, there are not adequate resources to house animals when you’re dealing with a large scale cruelty case (8/1)._

Prosecutors also believed that additional resources were needed for better law enforcement training. While most prosecutors were pleased with the investigative work
done by the SPCA, prosecutors who dealt with traditional law enforcement were not always happy with the investigation or level of attention paid to cruelty cases.

Prosecutors noted that some law enforcement personnel failed to devote adequate attention to cruelty cases, while others failed to recognize abuse or neglect when confronted with it. When they did make an arrest, some traditional law enforcement personnel were not always judicious in evidence collection, thereby potentially affecting the strength of the prosecution’s case:

(We need) better trained investigators in local law enforcement in terms of identifying and investigating animal cruelty cases, more resources should be put into that because that’s how these cases can be prosecuted. If the investigation is not done properly everything is done for naught, there’s no viable prosecution and the abuser is not going to be held accountable and will be able to do it again (8/1).

Two prosecutors noted that they would like to see resources devoted to pet owner education; however one of these prosecutors, who primarily handled misdemeanor neglect cases, felt that owners needed education in proper animal care, while the other felt the public needed to be educated about penalties, prosecutorial constraints and so forth.

Nine prosecutors suggested that they would like to see improvements in the cruelty legislation. Changes desired included clarifying or changing the language in the statute, categorizing animal cruelty as a violent felony, placing it in penal law instead of Agriculture and Markets Law and providing for more severe penalties for those convicted of cruelty offenses. Several prosecutors felt that the statute was hard to read and interpret leading to confusion about how it should be applied. Prosecutors also expressed concern about the ambiguity in some of the terminology and the fact that terms were not clearly defined by the statute or case law. Prosecutors who dealt with less-than-receptive judges
felt that the wording in the statute allowed for too much discretion on the part of the
judges as well as the prosecutor:

There’s just so much wiggle room there for the judges. There’s so much for the prosecutors to look through. That law has been made almost – it’s not impossible to prove because I’ve done it but it’s awfully tough and they’ve done nothing because the judiciary – there is no case law saying this is acceptable, there's very few cases that deal with all those terms (justification, serious injury, depraved and sadistic). They’ve got to take out all three of those terms in the aggravated cruelty (10/1).

What I would like to comment on is Agriculture and Markets Law 353 and 356, they are extremely ancient statutes that were drafted in the late 1800’s and they haven’t changed much over the years and there are so many terms in there that have not been defined by case law and have not been defined by judges over the years and it leaves prosecutors and judges in the dark in terms of how these terms should be defined, what sort of evidence is needed to prove whether or not an animal has not been provided sustenance, to prove whether or not a defendant has to intentionally act under 353, it’s a very, very difficult statute to read. It’s a run on sentence; I think both of the statutes are drafted that way (8/1).

Several prosecutors were bothered by the categorization of animal cruelty as a non-violent felony. They perceived problems with sentencing; prosecutors believed that if it were categorized as a violent crime judges would assign greater penalties to those convicted. For those incarcerated, one prosecutor noted that as non-violent offenders, they would be more likely to receive early release and other benefits.

Of greater concern was the placement of animal cruelty legislation in Agriculture and Markets Law instead of Penal Law. Because the legislation is housed outside of Penal Law most criminal justice personnel, including law enforcement, prosecution, defense and judicial personnel, are not routinely exposed to it while in school. While training is becoming more common, many criminal justice personnel have not received instruction in handling cruelty cases. The fact it’s not housed in a Penal Law book means
that personnel do not casually come across it either. Prosecutors expressed concern that judges were unsure of the legality of certain prosecutorial sentencing recommendations for defendants convicted on an Agriculture and Markets offense. Prosecutors felt that if it was housed in Penal Law there would be more education in, knowledge of and comfort with applying the statute. One prosecutor expressed the additional concern that if an abuser was arrested on a different charge in the future, an Agriculture and Markets offense might not come up in a criminal history check and if it did, it might be disregarded, whereas a Penal Law offense would not.

A final and related issue was concern over the leniency of the maximum penalties. Prosecutors expressed multiple concerns regarding the available penalties. A few prosecutors felt that they were too lenient noting that these defendants, some of whom committed premeditated, violent offenses, suffered fewer consequences than did individuals convicted of non-violent offenses involving minimal harm or damage. As they observed:

*It’s not even like a regular E felony. That’s ridiculous. You get more time in prison for forging a check than for burning an animal alive. That’s ridiculous* *(3/2).*

*(D)efinitely the punishment has to be changed. Even though it’s supposed to be like E felony the punishment is two years imprisonment….That is something that really has to change because there are some really horrible cases out there that I can’t sufficiently punish with the tools that we have right now* *(5/1).*

Another felt that increasing the maximum penalties would not necessarily lead to tougher sentences and instead believed that mandatory sentences were needed in order to send a message to the judiciary that these crimes needed to be taken seriously:

*(W)hen I handled gun cases kind of the same thing. Judges were like ‘eh, so he possessed a gun’ and I’m like ‘judge, that’s a murder*
waiting to happen, someone possessing a loaded gun for protection – should I be threatened I will pull out my loaded gun and use it to protect myself’. Judges didn’t believe that was serious enough yet in my tenure doing gun prosecution cases they changed it to make it mandatory state prison to possess a loaded firearm and by doing that the judges had to step up to the plate basically and had to start imposing these sentences and had to start treating them as serious as they should be. And I think that’s the key here, is that the law, the legislation needs to change and then the judges will follow…. Make that mandatory, don’t let it be in the discretion of the judges because my judges won’t do it, period (10/1).

Prosecutors also expressed concern that the lenient penalties – especially restricting the maximum felony cruelty punishment to two years time - limited their power to engage in meaningful plea negotiations.

Four prosecutors felt that cases were handled appropriately and they could not think of any changes they wanted to see.

Prosecutors were divided into groups including those who indicated the law and response to it were adequate, and those who felt changes needed to be made. Of those who desired changes, the prosecutor who believed that cruelty cases might be getting too many resources was placed in a separate category than were those who desired other types of changes. The responses of those who felt the legislation and response were adequate and those who felt changes were needed were compared to the dispositions levied in the hypothetical scenarios involving the teenage rock thrower and the individual who killed the ferret. See Tables 8 and 9 and Appendix Two.

\(^{42}\) In the tables below I include five prosecutors that note the legislation is not in need of changes. I included the prosecutor in this category who indicated that the only change he would like to see would be education on proper animal care for those who own pets. I did not feel this response was truly indicative of a desire to see changes in the legislation or system response. 

\(^{43}\) I excluded the cases involving the hoarder and the dog killers from this section of the analysis due to limited variation in the responses. Similarly, the former case is almost certainly a misdemeanor and the
Hypothesis: Prosecutors who view animal cruelty as a serious offense will require defendants to plead to higher level charges and will ask for more severe sanctions than those who do not view animal cruelty as a serious offense.

Serious Offense Proxy Measure: Prosecutors who felt the legislation and/or criminal justice response was lacking were considered to be prosecutors who viewed animal cruelty as a serious offense.

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<th>Law/response is inadequate</th>
<th>Law/response is inadequate: too many resources</th>
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<td>The prosecutor believed that the legislation and/or criminal justice response was flawed and noted specific weaknesses.</td>
<td>The prosecutor believed that too many resources were dedicated to cruelty cases.</td>
<td>The prosecutor believed that the law and criminal justice response to cruelty cases were adequate and could not think of anything he or she would like to see changed.</td>
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<td>Fine/Restitution (3)</td>
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<td>Community Service Alone (2)</td>
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* The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor’s response was coded as latter a felony. I am seeking to see how several factors relate to decision-making and there is no decision to be made on the final charge in these cases.
“misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management and Community Service if they were the only sanctions levied. I did not count them if they were included as a condition of probation or in addition to restitution. I did not count restitution if it were in addition to probation. See Appendix Two to see detailed charts.

Table 8

Prosecutor Beliefs on the Seriousness of Animal Cruelty and Ferret Outcome

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<tr>
<th>Hypothesis: Prosecutors who view animal cruelty as a serious offense will require defendants to plead to higher level charges and will ask for more severe sanctions than those who do not view animal cruelty as a serious offense.</th>
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<td>Serious Offense Proxy Measure: Prosecutors who felt the legislation and/or criminal justice response was lacking were considered to be prosecutors who viewed animal cruelty as a serious offense.</td>
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<td>Law/response is inadequate - The prosecutor believed that the legislation and/or criminal justice response was flawed and noted specific weaknesses.</td>
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<td>Law/response is adequate - The prosecutor believed that the law and criminal justice response to cruelty cases were adequate and could not think of anything he or she would like to see changed.</td>
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<td>Probation (4)</td>
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<td>Fine (1)</td>
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<td>Counseling/Anger Management Alone (2)</td>
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*The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management if it was the only sanction levied. I did not count it if it was included as a condition of probation. Additionally, in this scenario a few prosecutors proposed different conviction charges or sanctions depending on the cooperation of the girlfriend. I used the maximum charge and sanction mentioned. See Appendix Two to see detailed charts.
As illustrated in the above Table 7, in the case with the teenage girl all four of the felony conviction charges were filed by prosecutors who believed changes were needed in the legislation. Ten of the twelve prosecutors who reported problems with the legislation and/or response levied a sanction involving jail or probation. Of those who fell into other categories, half chose to levy a sanction involving probation while half sentenced the teenager to pay restitution or engage in community service or some combination thereof.

In the case involving the ferret (Table 8), nine of the twelve individuals who felt the legislation/response was inadequate would ask that the defendant plead guilty to a felony and ten would request some jail time. This shows a higher proportion of individuals requesting these outcomes in the “inadequate” category than in other categories. Of those who proposed lesser punishment (fine, straight counseling) two felt the law was adequate and one felt too many resources were devoted to it. Only one prosecutor who felt the law was adequate requested jail time for this defendant.

The relationship between personal beliefs and decision-making was also tested using prosecutors’ beliefs regarding the alleged link between animal abuse and other types of violent behavior. I will first discuss prosecutors’ thoughts on the relationship between animal cruelty and other forms of violence and will then examine the relationship between these beliefs and vignette outcomes.

Belief in “the Link”

In light of the apparent legislative intent behind tougher animal cruelty legislation - to identify and stop individuals who may have violent tendencies towards human beings - this research explored prosecutors’ experiences with and thoughts regarding individuals
who progressed from animal abuse to violence towards humans. As research is also indicating that household violence may overlap into multiple categories (e.g.: there is simultaneous abuse of spouse, children and pets) prosecutors were also asked about this. Before discussing how prosecutor’s beliefs on this alleged link affect their decision-making, I will first review the data regarding prosecutors personal experiences (or lack thereof) with individuals who engaged in animal abuse and other violent acts.

Little support was found for the violence graduation hypothesis, the motivation behind the strengthening of cruelty legislation in New York State and elsewhere. Not surprisingly, not one prosecutor could recall an animal abuser evolving into a serial killer, or a serial killer with a history of animal abuse. In terms of animal abusers progressing in their criminal careers to violence against humans, only three could recall a specific instance where they had prosecuted an animal abuser later convicted of a violent offense towards humans, or prosecuted a violent offender with animal abuse in his or her criminal history. This, however, does not mean the link does not exist. There may be reasons why few prosecutors see this link in their prosecutorial careers. One thing that may hinder the identification of a link between animal cruelty and other criminal activity is the reporting of cruelty arrests and convictions in criminal history searches. During my review of case files I came across a few cases where I knew the offender had prior arrests and/or convictions for animal abuse. Criminal History record searches, located in the defendants’ files, however, had no mention of these prior incidents. This leads me to believe that this report does not report all arrests and convictions that occur outside of penal law. In addition to obscuring repeat cruelty offenders, this would prevent prosecutors from seeing a criminal progression when an individual is arrested for another
crime. For example, if someone is arrested for assaults a human victim, prosecutor may be unaware of previous cruelty arrests, even after obtaining a criminal history report. The link may be there but prosecutors may not see it unless they end up prosecuting the same individual themselves.

Furthermore, the motivations and actions of individuals who abuse animals vary quite a bit. If a link exists, it is likely that it is the relatively small percentage of individuals who engage in intentionally sadistic behavior who are going to be the ones who have end up having violent criminal careers. Individuals who commit the majority of cases - those involving neglect and less serious misdemeanor-level abuse - are likely different than individuals who commit especially heinous crimes against animals:

Farm abuse cases are more neglect than intentionally violent. That’s downplaying it and I don’t mean to do that but they weren’t necessarily people with criminal histories. They were just people who didn’t have a clue. I think their attitude was ‘they’re just animals’ and as I said before – you’d approach them, they’d be arrested for this conduct and they’d be beside themselves, ‘what do you mean’ so there is a distinction there between the domestic dog and cat abuse cases and farm (3/3).

This is not to say, however, that these non-felony-types of animal abusers do not engage in other criminal activity. Interviews turned up significant support for the hypothesis that there is overlap between animal abuse and family violence. All but four prosecutors could recall at least one specific case where an individual was arrested for both animal abuse and another family offense, usually domestic violence. While those hardened criminals who progress from animal to generalized human violence may also engage in family violence, many family violence offenders do not have prolific violent criminal careers – that is, their criminal activity is limited to the home where it may go undetected or where incidents may be resolved informally. These individuals are often
not the sadists, with whom legislative proponents of Buster’s Law were largely concerned; they are, in the words of one prosecutor just “dirtbags”:

If someone is going to beat the shit out of dog, they’re gonna beat the shit out of their kid. Absolutely I’ve seen it. In fact one case I went out with the police to execute a search warrant. The house was disgusting. It was total, absolute, disgusting mess. I wouldn’t let my dog in this house and the woman said ‘I’ll be able to feed my horses’ – she had six and three or four of them were starving – ‘when I get a couple more foster kids next week because I’ll have more money’.... she was waiting for more children to come in so she could get more money – not for the children but to feed the horses. I don’t want to say she’s a stereotypical defendant – people who are very wealthy and great citizens rape their children so I don’t like to say there’s a ever a stereotypical defendant, but a lot of times you see these like really, really major dirtbags. How do you say that nicely? You find people who don’t take care of their animals; they don’t care for life.... If there’s animals in the house you almost always find it – if they’re going to beat the shit out of a child they’re going to beat the shit out of an animal. They won’t have any trouble kicking an animal across the hall. That’s just the way it is. I think a lot of times (we don’t see this) because people don’t take the time to ask. There are a lot of times I didn’t ask because I didn’t think about it or know about it, but in the past few years since I got familiar with these cases that’s something I asked more of (3/2).

While not all prosecutors saw cases involving both familial violence and animal abuse, and few saw cases involving a progression from animal abuse to increasing generalized violence against humans, all but one prosecutor expressed some level of belief in, or acceptance of, the link. The one outlier did not express lack of belief, but instead said she did not know. For the others, the degrees of belief varied. Just under half stated that they believed in it (8), sometimes citing personal examples, others were less certain but stated that they believed it likely to be true (3). Five would not commit to saying they personally believed in it, but cited research and/or anecdotes they had read or heard about:

44 I did not obtain clear answers to this question from two interview subjects.
I have to trust the research that seems to support that. I’m not – that’s not my field so I don’t know. Just like I trust the weather man, my car mechanic – when an expert testifies before the state senate and assembly and says there’s this link I trust them. We have known serial killers, some more infamous than others (names a few) who we now know started out abusing animals (2/1).

Prosecutors’ level of belief in the link between animal abuse and other violent activity was hypothesized to influence their decision-making in cruelty cases; it was thought that those prosecutors with a stronger belief in the alleged link would treat cruelty cases more seriously. Prosecutors were sorted by their level of belief – those who strongly believed in the alleged link, those who felt it was probably true, and those who did not claim personal belief but cited research. These belief levels were then compared to decisions made in the cases involving the teenage rock thrower and the individual who killed the ferret, with the expected outcome that those who clearly believed in the link would treat cases more severely than those who were less certain.

Table 9

Prosecutor Belief in “the Link” and Rock Thrower Outcome

| Hypothesis: If prosecutor strongly believes there is a link between animal cruelty and other forms of violence he or she will require defendants to plead to higher level charges and will ask for more severe sanctions than will a prosecutor who is less certain that such a link exists. |
|---|---|
| **Definitely Believe – exists.** | The prosecutor unequivocally stated they believe a link exists. |
| **Probably Believe – exists.** | The prosecutor was less certain but believed a link probably exists. |
| **Cite Research/Anecdotes** | The prosecutor would not say they believed in a link but cited research/anecdotes that support it. |

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45 One of the prosecutors who cited research supporting the link was not able to answer the hypothetical scenarios due to time constraints.
**Prosecutor Belief in “the Link” and Ferret Outcome**

Hypothesis: If prosecutor strongly believes there is a link between animal cruelty and other forms of violence he or she will require defendants to plead to higher level charges and will ask for more severe sanctions than will a prosecutor who is less certain that such a link exists.

<table>
<thead>
<tr>
<th></th>
<th>Definitely Believe</th>
<th>Probably Believe</th>
<th>Cite Research/Anecdotes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(8)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Felony (4)</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Misdemeanor (9)</td>
<td>6</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Violation/ACOD (2)</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Jail or Jail/Probation (2)</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation (10)</td>
<td>6</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Fine/Restitution (2)</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Community Service Alone (1)</td>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor’s response was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management and Community Service if they were the only sanctions levied. I did not count them if they were included as a condition of probation or in addition to restitution. I did not count restitution if it were in addition to probation. See Appendix Two to see detailed charts.*
The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management if it was the only sanction levied. I did not count it if it was included as a condition of probation. Additionally, in this scenario a few prosecutors proposed different conviction charges or sanctions depending on the cooperation of the girlfriend. I used the maximum charge and sanction mentioned. See Appendix Two to see detailed charts.

In the case involving the teenage girl (Table 9), misdemeanor and felony charges were distributed across the spectrum of belief as were sanctions, although the only two prosecutors who suggested a jail term were in the category of “definitely believe”. Additionally, the only two prosecutors requesting a violation or ACOD were in the “research based” category as was the only prosecutor requesting community service was the main sanction. In the case involving the ferret (Table 10) many prosecutors levied a sanction that included incarceration. Of those who did not seek even a minimum jail term, only one was located in the “believe” category, the others were located in the other categories of belief. Additionally, but for one exception, all of the prosecutors who expressed a strong belief in the link asked for a felony conviction. Two of the three misdemeanor convictions and the only violation were categorized as lesser levels of belief.

While this exploration of individual beliefs and decision-making by no means shows a conclusive relationship between beliefs and case processing decisions it does hint at the possibility that a relationship may exist. Prosecutors who believed the legislation and/or system response were inadequate and those who believed most strongly in the alleged link between animal cruelty and other forms of violence often sought out tougher conviction charges and sentences. These results suggest that further exploration of this relationship would be worthwhile.
Environmental Factors

This research hypothesized that environmental factors including the size of the community, the prevalence of farming interests and the extent of public and media coverage would impact prosecutors in their decision-making. Specifically, it was thought that cases would be treated with greater leniency in larger communities and communities with strong farming interests. Significant media and/or interest group attention were expected to impact prosecutors as well, leading to more serious treatment of cruelty cases. As discussed in the below section, the data provide moderate support for the assertion that the size and farming density of a community are related to outcome. The role of the media and public in prosecutorial decision-making is complex, with several prosecutors reporting some level of influence.

In order to test the hypotheses regarding community size and farming interests, communities were first ranked by their population density and then farm density. The relationship between these variables and vignette outcome was examined using the cases involving the teenager who threw rocks at the chained dogs and the man who killed the ferret.

Population Density

There was significant variation in the size of the community. Community size was calculated using 2006 Census data. The population of each county was divided by its land area in square miles, resulting in a measure that included both the number of residents residing in a particular county and how close-together they resided. Population density ranged from under 100 residents per square mile to over 2000 residents per
square mile. It is reported below on a scale in order to protect the anonymity of the counties involved in this research.

Table 11

*Population Density and Rock Thrower Outcome*

Hypothesis: In smaller communities, with low population density, prosecutors will be more likely to require defendants to plead to higher level charges and will ask for more severe sanctions than will prosecutors practicing in larger counties.

<table>
<thead>
<tr>
<th>Population Density: The population of each county divided by its land area in square miles.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low – The county in which the prosecutor practices has a population density of less than 100 citizens per square mile to 500 citizens per square mile.</td>
</tr>
<tr>
<td>Medium- The county in which the prosecutor practices has a population density of 501 citizens per square mile to 1000 citizens per square mile.</td>
</tr>
<tr>
<td>High - The county in which the prosecutor practices has a population density of more than 1001 citizens per square mile.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Low (11)</th>
<th>Medium (4)</th>
<th>High (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony (4)</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Misdemeanor (11)</td>
<td>8</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Violation/ACOD (3)</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Jail or Jail/Probation (11)</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Probation (11)</td>
<td>7</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Fine/Restitution (3)</td>
<td>2</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Community Service (2)</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor’s response was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management and Community Service if they were the only sanctions levied. I did not count them if they were included as a condition of probation or in addition to restitution. I did not count restitution if it were in addition to probation. See Appendix Two to see detailed charts.
Table 12

Population Density and Ferret Outcome

<table>
<thead>
<tr>
<th>Population Density: The population of each county divided by its land area in square miles.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low – The county in which the prosecutor practices has a population density of less than 100 citizens per square mile to 500 citizens per square mile.</td>
</tr>
<tr>
<td>Medium – The county in which the prosecutor practices has a population density of 501 citizens per square mile to 1000 citizens per square mile.</td>
</tr>
<tr>
<td>High – The county in which the prosecutor practices has a population density of more than 1001 citizens per square mile.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Low (11)</th>
<th>Medium (4)</th>
<th>High (3)</th>
</tr>
</thead>
<tbody>
<tr>
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<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Misdemeanor (5)</td>
<td>4</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Violation (1)</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jail or Jail/Probation (11)</td>
<td>6</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Probation (4)</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Fine (1)</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counseling/Anger Management Alone (2)</td>
<td>2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management if it was the only sanction levied. I did not count it if it was included as a condition of probation. Additionally, in this scenario a few prosecutors proposed different conviction charges or sanctions depending on the cooperation of the girlfriend. I used the maximum charge and sanction mentioned. See Appendix Two to see detailed charts.

An examination of the sentencing charges and sanctions in the case of the teenage rock thrower, displayed in Table 11, reveals that variation in conviction charge is not at all associated with the size of the community. Those prosecutors deeming this a felony case practiced in counties that would be considered small, medium and large as did those
deeming it a misdemeanor or violation. The most severe sentences – probation and/or a brief jail term – were also distributed across the community size spectrum. Contrary to the hypothesis, less serious sanctions – those not involving probation and/or jail - were slightly more common in smaller counties than in larger ones.

The case involving the ferret (Table 12) found less serious sentences to be concentrated in the less densely populated counties. Sentences involving a jail term accounted for approximately half of the total sentences in the smaller counties while they comprised the majority of outcomes in the larger counties. Unlike the case with the teenager, conviction charges were associated with community size. While felony conviction charges were spread throughout counties categorized as being low, medium and high population density, the majority of the non-felony conviction charges were levied by prosecutors who practice in counties deemed to be low in population density.

These findings were contrary to the hypothesis that prosecutors in larger counties would treat cases with greater leniency due to their preoccupation with matters considered to be of greater concern and the greater anonymity that they are afforded. They were not, however, completely unexpected. It was also hypothesized that prosecutors’ decisions would mirror the community in which they practiced; Counties that had a lower population density also tended to have a higher farming density. As is explored below, higher farming densities were expected to be associated with more lenient case outcomes. It is very possible that the greater number of farms - and farmers – in smaller counties impacted the decisions made by prosecutors and account for the results above.
**Farming Density**

The prevalence of farming interests was measured by the number of farms per 1000 residents. The number of farms per 1000 residents ranged from less than .01 to more than 12. This was only a measure of farms in general, both animal and produce producing farms were included in this measure; it only included actual farms, not all of those individuals employed in the farming industry. It is thought, however, that despite these deficiencies, the percentage of the population involved in farming would track in the direction of the measures, that is – while the measure is far from exact, there would be many more animal-based farmers in the county with over 12 farms per 1000 residents than there would be in the counties with less than one farm per 1000 residents. The cases involving the teenage girl and the ferret are again used to examine the relationship between farming and cruelty prosecutions.
**Table 13**

_Farming Density and Rock Thrower Outcome_

Hypothesis: In counties with a lower farming density prosecutors will be more likely to require defendants to plead to higher level charges and will ask for more severe sanctions than will prosecutors practicing in counties with a greater number of farms.

_Farming Density:_ The number of farms in a county for every 1000 residents.

<table>
<thead>
<tr>
<th>Farming Density</th>
<th>Description</th>
<th>Low (3)</th>
<th>Medium (11)</th>
<th>High (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low –</td>
<td>The county in which the prosecutor practices has a farming density of less than one farm per 1000 residents.</td>
<td>1</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Medium-</td>
<td>The county in which the prosecutor practices has a farming density of one to five farms per 1000 residents.</td>
<td>1</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>High -</td>
<td>The county in which the prosecutor practices has a farming density of more than 5.1 farms per 1000 residents.</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

- Felony (4) 1 3
- Misdemeanor (11) 1 6 4
- Violation/ACOD (3) 1 2
- Jail or Jail/Probation (2) 2
- Probation (11) 2 7 2
- Fine/Restitution (3) 2 1
- Community Service (2) 1 1

* The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor’s response was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management and Community Service if they were the only sanctions levied. I did not count them if they were included as a condition of probation or in addition to restitution. I did not count restitution if it were in addition to probation. See Appendix Two to see detailed charts.
Table 14

_Farming Density and Ferret Outcome_

| Hypothesis: In counties with a lower farming density prosecutors will be more likely to require defendants to plead to higher level charges and will ask for more severe sanctions than will prosecutors practicing in counties with a greater number of farms. |

<table>
<thead>
<tr>
<th>Farming Density: The number of farms in a county for every 1000 residents.</th>
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<tbody>
<tr>
<td>Low – The county in which the prosecutor practices has a farming density of less than one farm per 1000 residents.</td>
</tr>
<tr>
<td>Medium - The county in which the prosecutor practices has a farming density of one to five farms per 1000 residents.</td>
</tr>
<tr>
<td>High - The county in which the prosecutor practices has a farming density of more than 5.1 farms per 1000 residents.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Low (3)</th>
<th>Medium (11)</th>
<th>High (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony</td>
<td>2</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Misdemeanor</td>
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<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Violation</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Jail or Jail/Probation</td>
<td>2</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Fine</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Counseling/Anger Management Alone</td>
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<td></td>
</tr>
</tbody>
</table>

The conviction charged used was the lowest one considered. If a prosecutor indicated he or she saw this as a felony but would accept a plea to a misdemeanor, the prosecutor was coded as “misdemeanor”. Many prosecutors included multiple sanctions. I only counted Counseling/Anger Management if it was the only sanction levied. I did not count it if it was included as a condition of probation. Additionally, in this scenario a few prosecutors proposed different conviction charges or sanctions depending on the cooperation of the girlfriend. I used the maximum charge and sanction mentioned. See Appendix Two to see detailed charts.

In the case involving the teenage girl (Table 13), all of the felonies charges were levied in counties with low and medium farm densities, although the lowest conviction charges (violation/ACOD) were also found in the counties considered to have low or medium farm densities. Sanctions were spread across farm densities.
In the case involving the ferret, displayed in Table 14, the counties considered to have medium farming densities had a high concentration of charges in the felony category, and the lowest density counties had more felonies than misdemeanors. In the high density counties we see fewer felonies than misdemeanors and the only violation levied against the defendant. When looking at sentences, in the counties with low and medium farm densities, all of the prosecutors chose to sentence the defendant to jail, probation or some combination. In the counties with the highest number of farms, none of the prosecutors chose a jail term, one chose probation and the remainder stated they would solely sentence the defendant to counseling or would make him pay a fine. Sanctions consisting of only counseling or a fine were not found in the counties with low and medium farming densities.

As with the relationship between individual beliefs and vignette outcome, these findings suggest that, while the relationships between community size and farming, and case processing decisions are not extremely robust, they nonetheless appear to exist. Prosecutors employed in counties in which there are a greater number of farms, and by extension, a greater number of farmers, treated cases with greater leniency than those prosecutors employed in counties with fewer farms. These finds are also supported by the interview data. Prosecutors in farm dense counties reported difficulties in finding jurors and judges who were sympathetic to cruelty cases.

Media and Public Attention

Research on the role of the media in criminal justice decision-making has generally failed to support the theory that criminal justice officials are influenced by such attention (Nardulli et. al., 1988). This research, however, hypothesized that both the
media and the desires of the public would be influential in decisions prosecutors made in these often highly publicized cases. That is, in cases with media and/or public attention it was hypothesized that prosecutors would be less likely to drop cases and more likely to take a hard line in plea bargaining.

In animal cruelty cases prosecutors may suffer a double punch: these cases have incurred an increasing amount of media coverage over the past several years; it is not uncommon to see these cases covered on the nightly news. Relatedly, these cases generate significant attention from interest groups. The general public may be sensitized to such cases by the media, but beyond the general public prosecutors are often confronted with animal rights activists. Sometimes these activists are part of well-funded, well-established interest groups. They regularly attend court hearings, and write and phone prosecutors asking for case updates and encourage the prosecutors to deal harshly with individuals charged with animal abuse. Not all activists are local citizens - national interest groups often circulate information and petitions on cruelty cases. Prosecutors receive calls and letters from across the globe. Because I was worried that the role of these external sources of potential influence might be a sensitive topic, I left questions regarding them until the end of the interview, at which point I hoped I would have established a comfortable rapport with interview subjects. I need not have worried. A majority of prosecutors themselves raised the topic of the media, or the public, mere minutes into the interview.

Prosecutors had mixed feelings on the media and public attention these cases garnered. While most were somewhat bothered by all the attention, a few found it to be primarily positive. They were similarly mixed on the influence of media and animal
supporters on them. Although some prosecutors claimed they never considered this external influence on their decisions, several admitted the media and public were difficult to ignore and a few felt they were one of the most important factors they considered when making decisions. The following section will discuss prosecutors’ thoughts on and experiences with the media and animal welfare activists.

*The Influence of the Media and/or Public on Decision-Making*

Interviews with prosecutors revealed that nearly two thirds of prosecutors consider the media and public opinion to be influential in cruelty cases. The extent and nature of this influence varied. Some prosecutors unambiguously claimed that they were influenced in their decision-making by all the attention surrounding these cases, other unambiguously claimed they were not. Still others stated that they were aware of the attention while not explicitly admitting that they considered it, or claimed that while they did not personally consider it, other actors, such as the district attorney or judge, did and it therefore indirectly influenced their decisions. Also, the influence went beyond specific cases with some prosecutors noting that it influenced the general handling of these cases. Two, one a former District Attorney, another a former prosecutor, pointed out that I should expect many prosecutors would downplay the effect of the media, but that if they did they were being less than honest:

*The press is huge. They were all over me for everything I did. I’ll bet if you talk to other DA’s they’ll tell you that and if they don’t tell you that they’re lying. You can’t ignore it (3/2).*

Several prosecutors admitted that media or public attention directly influenced their decisions in cruelty cases, mainly out of fear of repercussions if they dismissed cases or failed to argue for an adequate sentence. Eight prosecutors mentioned concerns
that they or their office would be berated by the public and press if they didn’t treat the case as a very serious offense:

You gotta keep in the back of your mind the fact that if you don’t get what can be perceived as a just disposition that you’re going to hear about it publicly. Nothing is swept under the rug with an animal cruelty case (2/1).

Public opinion shouldn’t affect a prosecutor’s decision-making process; that said, if there was a very public case, you didn’t want to lowball an offer and get excoriated in the public’s eye (3/1).

Several of these prosecutors noted that while they might not personally be impacted by the public attention, their boss, the District Attorney, could not afford to ignore it. Because he or she held an elected position, if they were not sensitive to public opinion they might lose their job come election time:

(T)he question is do you want to be re-elected (3/2).

Because it’s a political office you can’t ignore it (8/2).

Aside from directly or indirectly influencing decisions made in cruelty cases, prosecutors’ noted the media and public opinion impacted them in other ways. Two prosecutors pointed out that constant media coverage was generally a good thing, as it made them and their peers work harder. Due to the scrutiny they were very conscientious of their actions as they prepared the cases and were careful not to cut any corners:

I think scrutiny is better for the same reason I think there should be cameras in the courtroom. It can’t hurt because at the end of the day it does make you a better lawyer (3/3).

Four more prosecutors pointed out that the attention these cases engendered gave them an upper hand in plea negotiations with both defense attorneys and less than sympathetic judges – the attention sometimes sensitized these colleagues to the pressures under which
the prosecutors were working and/or allowed them to argue they were up against a wall if their offers were met with resistance:

(I)t gives you something more to work with – ‘you know I can’t give you a misdemeanor on this because there’s gonna be public outrage if I do.’ It makes it an easier sell to defense attorneys sometimes. Sometimes they could care less what the public thinks but it does make our job easier sometimes, to be able to say we’re under pressure (3/3).

People who maybe on their own didn’t have an interest – judges and attorneys – that on their own didn’t find these cases important – it kind of forces them to think about it (5/1).

Beyond influencing the prosecution of specific cases, a few prosecutors noted that media attention had more of a systemic influence of cases, driving changes in legislation and practices throughout the criminal justice system.

Regardless of whether they believed the media and/or public influenced them or others in their county, most prosecutors had strong feelings on all of the attention these cases garnered. As described above, a handful of prosecutors found the media helpful as they worked on their cases, making them better prosecutors and assisting them in plea negotiations; additionally, a few expressed appreciation for the recognition and assistance they received from the animal welfare advocates:

I can count the number of times the victim in a case has come back and said ‘thank you’. After (one particular case) I found a huge gift basket at my door from an animal rights group. Another group gave me an award. It makes me want to work with them. They’re a well oiled machine and I applaud them (4/1).

I actually brought the cat into the courtroom at trial as evidence and had the (witnesses) ID the cat. The activists sat there outside the courtroom with the cat, dealing with the cat, while I was in the courtroom. It was such a help. They’re so great in situations like that. They pool together (6/1).
A majority of prosecutors, however, expressed frustration. Reasons for this included the media not getting the facts right, or advocates not understanding how the system worked. Much of the frustration was directed towards the public attention the case garnered, with one recurring theme being the dominance of animal cruelty over cases of human abuse in the media and public interest. Half of the prosecutors interviewed expressed exasperation with the consistent propensity for the public to respond more aggressively to cases of animal cruelty than any other type of case:

I believe I get more emails and petitions and all that stuff on animal cruelty cases than you do towards abuse towards humans, even babies. We get more public outreach on animal cruelty cases than baby cases. It’s outrageous (9/1).

A small number of prosecutors expressed unprompted frustration with the types of letters they received on animal cruelty cases, noting that out of the dozens if not hundreds of letters they received, most were form letters sent from individuals with no specific knowledge of the case:

I told you about the (horse) letter right – I had a file of faxes and emails and there were like two or three different one’s and that was it, people just put their name on it and sent it out. There was no thought – just a letter writing campaign with one letter. To me that’s lazy, it’s hypocritical because all you’re doing is adding a number to the pile. It’s not an original thought, it’s not like you looked at this case, you are disturbed about this case and you want me to know how you feel about this case (2/1).

In Sum

As revealed in Chapter Five, animal cruelty cases differ from other lower level criminal cases in a variety of ways. According to many prosecutors these cases involve more work, complications arise with other courtroom workgroup members, they engender excessive attention. Legislative and social changes also surround cruelty cases.
This research explored the ability of established criminal justice theory to explain prosecutorial decision-making in cruelty cases. Some theories were not able to be fully tested due to differences in the manner in which cruelty cases are handled – for example, District Attorneys have not established policy relating to charging and plea bargaining in cruelty cases, and charging practices were rarely altered by prosecutors.

Similar to other types of cases, legal factors, especially evidence and seriousness, impacted prosecutors' case processing decisions. Contrary to expectations, extra-legal factors were reported to have little impact. I had initially hypothesized that extra-legal factors would have greater impact in cases that I deemed “emotionally divisive”. While only limited support was found for the influence of extra-legal factors in cruelty cases, it appeared that media and public attention, generally found to have little impact, were influential in cruelty cases. Perhaps it is this outside influence that becomes significant in emotionally divisive types of cases.

Little variation was found in the level of familiarity and cooperation levels of courtroom workgroups, however, as expected, going rates did not exist and many prosecutors reported that this lead to a lengthier negotiation process – although the majority of cases were still resolved via plea negotiation.

Modest support was found for the hypotheses that individual beliefs, community size and farming interests impacted prosecutorial decision-making. Measurement issues may have obscured the full extent of the influence of these sources. Media and public attention were considered directly or indirectly influential by a majority of prosecutors. This last finding was especially interesting as such attention is not thought to be especially relevant to prosecutors’ decisions.
Chapter 7: A Tail of Two Counties

This chapter provides a more comprehensive exploration of cruelty case processing in two counties. In these two counties, which I will call Municipal County and Bucolic County, I completed interviews not only with prosecutors but with others including law enforcement, SPCA personnel, judges and defense attorneys. I additionally examined a small number of case files and other case information from each of these counties and observed cruelty case plea negotiations in Bucolic County.

These additional interviews and the other data collected allowed me to better understand the experiences of the prosecutors and the context within which they make decisions. The interviews in the previous two chapters focused only on the experiences of the prosecutors. As we know, prosecutors do not make their decisions in a vacuum. While they were the focus of this research, interviewing the others who impact their decisions and examining the details of the places in which they work allows for greater insight into their thoughts and experiences, as well as insight into the outcome of their cases. In addition to adding clarity and depth to the experiences of the prosecutors in these two counties, these additional interviews served to confirm (or dispute) the information provided by the prosecutors. For example, most prosecutors noted that they had positive relationships with others who worked in the criminal justice community. Interviews with law enforcement and court personnel expanded on the prosecutors statements about those with whom they worked. Many prosecutors also spoke about the role of the SPCA in cruelty cases; conversations with SPCA personnel elaborated on their role in cruelty cases as well as their experiences with the prosecutors. Beyond the
interviews, case file and spreadsheet data, and the court observations, allowed me to 
examine the actual processes and outcomes that occurred in cruelty cases as opposed to 
relying on retrospective or prospective accounts of their actions or intended actions. As 
with the additional interviews, this data added clarification to the accounts of prosecutors 
and served to authenticate the information provided by them.

It should be noted that this chapter is not a direct comparison of these two 
counties due to differences in both the type and the amount of data I collected from each, 
and the availability of a larger number of more voluble subjects in the second county than 
in the first. Instead it is an examination of the thoughts and experiences of a range of 
individuals involved with cruelty cases as well as a review of actual case data.

This chapter will begin with an overview of each of the two counties and a 
description of the individuals with whom I spoke. It will then describe the thoughts and 
experiences of these individuals on case processing, and will conclude with a description 
of actual case data and court observation.

**Municipal County Overview**

Municipal County is a sizeable county dominated by a large urban center that is 
occupied by well over 100,000 residents. The county also includes a number of suburban 
and rural towns. The District Attorney’s office is well-staffed, employing approximately 
50 full-time prosecutors, and is divided into several Bureaus. This office has had many 
felony cruelty cases, some very high profile, in addition to numerous misdemeanor cases. 
One prosecutor is responsible for handling all of the felony cruelty cases and some 
misdemeanor cases as well, especially those cases that are more complex in nature. She 
has worked in multiple bureaus and, regardless of her bureau assignment, felony cruelty
cases are assigned to her due to both her interest and expertise. Routine misdemeanor cases are generally assigned throughout the office. Some prosecutors belong to specialized bureaus while others cover specific courts; in these courts the responsible prosecutor handles any cases that originate in his or her assigned court.

Municipal County has a large, well-funded SPCA that completes its own investigations, houses animals and is involved in advocacy work. The SPCA peace officers are responsible for a large portion of the arrests and investigations in cruelty cases. This county does not have a public defender’s office, and instead relies on a system of assigned counsel to represent defendants who are without private legal counsel. Both the felony prosecutor and a felony judge estimated that they usually dealt with about 40-60 defense counsel – a mix of assigned and retained - on a somewhat regular basis. Numerous small town courts handle misdemeanor cases that occur outside the city; there is also a misdemeanor city court and a large felony court in Municipal County.

In this county I spoke with the felony prosecutor and one prosecutor who had handled a number of misdemeanor cases, two felony judges and one SPCA investigator. I also reviewed five felony case files and obtained a spreadsheet detailing both felony and misdemeanor cruelty case charges and outcomes for a four year period.

One prosecutor, mentioned above, handled all of the felony and the well as the more complicated misdemeanor cruelty cases; she had been working as a prosecutor for over a decade. The other prosecutor was newer to the field, practicing for less than five years. While currently assigned to a specialized bureau, he had previously worked in a town court and been responsible for a number of misdemeanor cruelty cases. Both of the judges with whom I spoke practiced in the felony trial court. Both had been with the
court for over ten years; the second had spent close to ten years as a town court judge prior to his tenure in the felony court. The SPCA investigator had been with the agency for less than a year, but had been employed as a law enforcement officer for approximately two decades prior to becoming a SPCA officer. While the SPCA employed several cruelty investigators, the individual with whom I spoke was the only full-time investigator.

**Bucolic County Overview**

Bucolic County is a primarily rural county with a small city with fewer than 20,000 residents. A large percentage of the area is dominated by small farms and it is not uncommon to see Amish buggies making their way down the street. The District Attorney’s office is very small, employing fewer than five prosecutors. The Assistant District Attorneys all maintain their own private law practices and work out of their own offices; only the District Attorney himself is housed in a County Office Building. The District Attorney handles all felony cases in the county, including cruelty cases. The majority of the animal cruelty cases in this county, however, are misdemeanor cases involving farm animals. Misdemeanor cases are handled by the assistant prosecutors. One prosecutor is responsible for the all misdemeanor cases that originate in the city; the remainder of the prosecutors are permanently assigned to the multiple magistrate courts in the surrounding towns. They “ride the circuit” of these small, rural courts, generally appearing at each court one or two evenings a month.

There is an SPCA in the Bucolic County; however, this SPCA does not have any sworn peace officers. The main responsibility of the SPCA is the housing of seized (and other) animals. Although they are not peace officers, SPCA representatives usually
report to cruelty investigations. They assist local law enforcement by photographing evidence and transporting animals. They also provide information and support, as well as pressure, to the prosecutors. A review of case files revealed frequent communications between the SPCA and the prosecuting attorneys - I found mention of them in virtually every case file. They were often contacted by both prosecutors and judges for input on cases and representatives were present at the court hearings that I attended. Bucolic County has a small Public Defender’s Office with defenders rotating among the city and small towns. As mentioned above each town has a court, there is one city court that handles misdemeanor cases and one felony court.

In this county I completed interviews with the District Attorney, two assistant district attorneys, the Public Defender, two judges – one who handled felony cases and another who handled misdemeanors, a sheriff’s deputy, a former state trooper who handled cruelty cases that originated in the county and the president of the local SPCA. I also reviewed nine case files and attended court twice with one of the prosecutors. During one visit I was invited to sit in on the final plea negotiations and resolution of a misdemeanor cruelty case that had been unresolved for approximately a year.

The first subject in Bucolic County, the District Attorney, had held his position for many years. He seemed to be well-respected by all of the other individuals with whom I spoke. He had a small number of assistant prosecutors, and gave his assistant prosecutors broad leeway in the misdemeanor cases they handled. His only policy was that he was to approve all ACODs. If a prosecutor wished to adjourn a case in contemplation of dismissal he or she had to obtain his permission first. Both of the assistant district attorneys with whom I completed interviews spoke highly of their boss,
describing him as “hands off” in general. One prosecutor handled all of the cases that originated in the small city while the other was responsible for cases originating in several of the surrounding towns and appeared at rural magistrate courts several evenings a month. In addition to working as a prosecutor, both maintained private practices elsewhere in the county. The former was young and relatively new to the legal field while the latter had worked as a Bucolic County prosecutor for well over a decade.

The first judge with whom I spoke was a county court judge. He had been assigned to the county court for many years, and before that served as both a city court judge and as a prosecutor. He was housed in the same building as the District Attorney and handled felony cases. He was very hesitant in all his responses, claiming he did not have that much experience with animal cruelty cases, having been involved with approximately a half dozen cases, all resolved via plea negotiation. The second judge with whom I spoke was a misdemeanor city court judge; he had been assigned to the court for well over a decade and had been a prosecutor previously.

The Public Defender had worked in criminal defense for over two decades; similar to the first judge he was very hesitant in all his responses, noting that he had handled very few cases – two had been prosecuted as felonies with one of those resulting in trial.

The president of the local SPCA had been with the organization for just under a decade and in addition to running a very busy shelter she usually responded to the scene of cruelty arrests and investigations, attended court hearings and was trying to coordinate and expand the response to animal cruelty complaints within the county by creating a task force to include members of the SPCA, the DA’s office, veterinarians and others.
Interviews were completed with a sheriff’s deputy and former state trooper, both of whom had significant experience with cruelty cases. The sheriff’s deputy was one of my more interesting subjects. Our telephone interview was interrupted several times and he always called me at 5:55am - the first time during a major ice storm to let me know that he got my interview request but could not talk at that moment. He was tasked with handling many of the cruelty cases in the county, often working in collaboration with SPCA employees. He spoke openly and at length about his thoughts on and experiences with animal cruelty cases; he was relatively knowledgeable about the legal system and spoke intelligently of the legislation and its weaknesses, although he was unaware that cruelty was no longer an unclassified misdemeanor, and in fact repeatedly expressed frustration over this.\textsuperscript{46} The state trooper was extremely knowledgeable about animal cruelty as well, having responded to several hundred cases throughout the state during her two-plus decades in law enforcement. She served as a resource for others and her name came up frequently in several of the counties in which I conducted interviews.

\textbf{Thoughts on Legislation and Practices}

As discussed in the preceding chapters, prosecutors noted many flaws in the legislation and general response of the criminal justice system in regards to animal cruelty cases. The following section reviews the thoughts of the prosecutors who practice in Municipal and Bucolic Counties, as well as the thoughts of their criminal justice colleagues. Responses were mixed, although most of the concerns detailed in Chapter Six were raised by at least one individual. Interestingly, while law enforcement are often the target of criticism by both animal welfare advocates and prosecutors, the law

\textsuperscript{46} Several subjects made statements regarding the legislation that were incorrect. I felt it would be inconsistent with my role as interviewer to correct the interview subjects so I did not do so.
enforcement personnel interviewed here expressed some of the stronger frustrations with the criminal justice system response.

In Municipal County, there were mixed responses regarding the adequacy of the current legislation and the criminal justice response. The felony ADA and the first felony judge believed the legislation was seriously flawed. The ADA was very bothered by the fact that the legislation was housed in Agriculture and Markets Law and classified as non-violent:

**Failure to provide proper sustenance, that’s an Agriculture and Markets offense. Maybe not taking care of your sick animal, maybe that’s Agriculture and Markets, but this felony cruelty statute – that’s a violent act and it should be treated as such and it should be in penal law and considered a violent offense. It’s classified as a non-violent felony which – I can’t remember the exact wording but it’s equivalent to an E felony in the penal law but it should be a violent felony because it’s clearly a violent (act), in fact its more violent than some violent felonies (1/1).**

She went on to note that this classification affected the response of the criminal justice system to animal cruelty cases because judges, defense attorneys and police were less familiar with it. In fact she noted that she often wanted to place felony defendants on five-year felony probation with five years of conditions relating to animals but found that some judges were hesitant to levy a penalty of felony probation as the maximum cruelty sentence of two years in jail was not equivalent to a the maximum sentence for E felonies based in penal law. She expressed additional concerns that an Agriculture and Markets conviction would not show up or would be disregarded in a criminal history search and that the vague wording in the statute might not even be legal. The first felony judge echoed her concerns about the legislation being housed in Agriculture and Markets and also strongly felt that the penalties should be increased.
The SPCA investigator was mainly concerned that all misdemeanor cruelty offenses were under the umbrella of a 353 instead of being separated into different offenses, but overall felt the legislation and response were adequate. The misdemeanor ADA and second felony judge felt the legislation and system were adequate overall.

In Bucolic County interview subjects were similarly mixed in their feelings on the legislation and overall response of the criminal justice system. The sheriff’s deputy was the most outspoken, noting that the legislation was antiquated, charges and penalties were too low and resources lacking. The SPCA president and trooper echoed the deputy’s concerns about lacking resources, and also noted that lack of training for law enforcement was sometimes problematic. Both the sheriff deputy and SPCA president believed that prosecutions sometimes weren’t handled as seriously as they would like. The deputy felt blame lay with both the prosecutors and the judiciary:

You get local Justice of the Peace’s who may have gone through a two week course on criminal procedure law and been a Justice of the Peace. A lot of them lack the education and experience on the animal cases. And that’s through the whole system though, it’s not just the judges but also the prosecutors, they don’t take the time to read and review the entire case and the statements and incident reports.... A lot of it is experience, lack of education, and everybody has good days and bad days so there’s a multitude of things (2/4 S).

The District Attorney had different, albeit thought-provoking, concerns. He was bothered by the fact that a person who humanely euthanized an ill or unwanted animal at home was guilty of a crime yet could bring that same animal to the veterinarian for the same service. He brought up this last point repeatedly, and was also very aware of inconsistencies in the legislation relating to different classifications of animals:

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47 The District Attorney did have a case in which a farmer shot an elderly dog. Despite his personal feelings, the District Attorney brought the case before a grand jury. The grand jury refused to indict.
If I wanted to catch a turkey or any other wild animal and mutilate it, my head I think is in the same place as the guy that mutilates a companion animal but I won’t be prosecuted for that so I don’t understand why we differentiate between companion animals and wild animals and of course certain animals that are pets don’t qualify as companion animals either. I don’t know about turtles but suppose if I was to smash my daughter’s turtle with a hammer, that wouldn’t qualify under felony animal cruelty (2/1).

One ADA, as well, pointed out the inconsistencies between types of animals, although the assistant district attorney’s and misdemeanor judge felt that there were no major changes needed overall and the felony judge did not feel he was well enough versed in the cruelty law to offer an opinion.

**County Relationships and Procedures**

Relationships between members of the courtroom workgroup, and with other criminal justice actors, are thought to affect case outcomes. The relationship amongst the prosecutors and others involved with cruelty cases appeared to differ between the two counties. Out of all twelve counties in which I conducted interviews, respondents in Municipal County seemed to express the least amount of familiarity and collegiality, while in Bucolic County there was broad familiarity amongst everyone.

In Municipal County the prosecutor’s office was about ten times the size of the prosecutor’s office in Bucolic County. Municipal County also relied upon an assigned counsel system instead of the small public defender system present in Bucolic County and had a judiciary many times the size of that found in Bucolic County. The number of law enforcement and SPCA personnel with which prosecutors dealt was also much larger in Municipal County than in Bucolic County. While not overtly critical of courtroom colleagues, interview subjects in Municipal County reported a basic working relationship with role related disagreements arising as part of the job:
People have different positions and attitudes based on where they’re coming from. I’d say it’s an adversarial system but it’s not always a constant argument, we do get along. Particularly in the defense bar you get some who are more amicable than others. You get the ones you can trust and the others you can’t. (1/4).

We have a job to do. They know I have a job to do, I know they have a job to do, we know we’re going to disagree sometimes and that’s just the way it is, whether it’s the judges or defense attorney (1/1).

We have our contentious moments – people disagree on the way a certain case should proceed or what the law is – you certainly have arguments – but I think for the most part everybody is pretty professional and pretty much it’s overall congenial (1/2 J).

When speaking with individuals in Municipal County it was very unusual for one subject to refer to a different subject employed in a different sector of the criminal justice system by name. One judge was aware that there was an ADA who specialized in cruelty cases but did not mention her name or anything else about her. On the contrary, individuals in Bucolic County all seemed very familiar with each other and often spoke at length about one another: 48

I can say over the years being that I’ve worked in (other places) that I have never worked with finer group of individuals whether it be through the court system or the DA’s office or other places. Somehow I guess I got lucky by coming out here that this bunch of people is a really, really nice bunch of people, we get along very well. And we work hard to keep that relationship as well; it’s not just something that happens routinely…. When we get a chance we’ll grab coffee or break bread or something and discuss what’s going on. It’s basically networking (2/4 S).

48 Due to confidentiality procedures, I did not divulge the name of any interview subject to another interview subject nor ask any one interview subject if he or she were familiar with another interview subject. In Bucolic County, each of the individuals with whom I spoke mentioned several other interview subjects during the interview. When the name of a previous subject was mentioned I never acknowledged that I had spoken with the person. When directly asked if I had spoken with a particular subject I stated that I was not allowed to disclose such information. The only exception occurred if I was certain both interview subjects were aware that the other had participated (e.g.: one interview subject provided me with the name and contact information of another interview subject and told me to use their name when requesting an interview). In this situation I might mention that I spoke with a certain person but did not disclose any details of the conversation.
If you got us on the golf course we’d all be friendly, they’re all nice guys (2/3).

While Municipal County interview subjects had little to say about their relationships - and indeed even seemed a bit confused when asked to describe the relationship amongst them - Bucolic County subjects often spoke at length about one another and factors that influenced the dynamic amongst them. The rural surroundings were repeatedly raised by interview subjects in Bucolic County. Subjects understood that, due to the fact that they were members of a small community, they had to interact with each other on a regular basis both in and out of the courthouse. This inspired them to work at maintaining positive relationships.

Despite speaking highly of one another overall, some criticism rose in regards to prosecutorial handling of cruelty cases. Both the SPCA president and the sheriff’s deputy felt that at times the office was less responsive than it could be, and expressed belief that they were much more likely to pursue cases if the media focused attention on them. They also levied some criticism against the efforts of specific prosecutors. The sheriff’s deputy, for example, believed that one prosecutor was not as aggressive as he could be:

(He) has had a few ups and downs with the animal cases. He’s a nice person; does he lack a lot of steam in getting things done? Yeah. But he’s spread pretty thin. So it’s just like everywhere – it’s resources. This guy’s got a full-time law practice and he’s doing this and he’s a town attorney somewhere else. Like I said, he’s spread thin, and then he’s faced with dealing with (cruelty cases) (2/4 S).

He went on to state that he heard others criticize this prosecutor’s actions on cruelty cases, but noted he would never say anything because he had to work with this individual regularly. The SPCA mentioned a different prosecutor, claiming he did not consult with them before making decisions, though noted he was newer and did not understand the
relationships between everyone yet. While the SPCA undoubtedly maintained very collaborative relationship with prosecutors, judges and law enforcement, the deputy felt that sometimes their involvement was excessive:

The SPCA in this county has become pretty helpful; they have become a resource that I’ve called on a few times. Unfortunately they don’t realize sometimes that their duty to act is only when I’m calling on them. They tend to overstep their boundaries (2/4 S).

Overall, though, criticisms were mild and qualified, and other criminal justice personnel generally expressed a belief that these cases could be very difficult for the prosecutors assigned to work on them. Several individuals thought these cases did involve more work and more challenges for the prosecution. They cited difficult defendants, more involved investigations and publicity as factors that made these cases more difficult for prosecutors than the average misdemeanor or low level felony. Several non-prosecutors believed these cases caused more work for them as well, than did other types of cases. While the judges and defense attorney did not note any differences from their respective perspectives, the sheriff’s deputy believed that for law enforcement cruelty cases were extremely complex:

It’s almost easier to do a burglary case than it is an animal abuse case. Certainly I would rank these animal abuse cases almost to a difficulty level as doing a sex case with an underage person that’s been forcefully abused. It’s to that degree of difficulty because you have to go above and beyond and prove everything Beyond a Reasonable Doubt using evidence and document and articulate just because there’s such a lack of understanding on most everyone …. And a priority is getting medical attention for a sick or injured animal. That’s one of my biggest problems, getting medical attention or someone who’s gonna pay for medical attention – to get a necropsy for an animal who’s dead – the sheriff’s department doesn’t want to pay for that because they don’t have money to go spending on things like that…. I have to juggle a lot – finding homes for the animals, finding someone who will pay for veterinary care. It’s hard. We do have a lot of really fixed resources I’ve got to juggle around. These cases are not
quick fix easy ones. A lot of them take a lot of time and a lot of resources and there’s a lot of stuff behind the plate going on (2/4 S).

Misunderstanding in the general public as to what qualified as a cruelty case also created additional work and frustration for criminal justice personnel. Several interview subjects expressed a shared frustration with former urbanites and suburbanites who had moved to the county. There seemed to be a general consensus that these individuals overreacted when confronted with standard treatment of farm animals, which led them to needlessly bother the law enforcement and prosecutors with their concerns:

We get a lot from the city slicker types that will call in and ‘oh, this horse looks like he’s being abused’ - the reality is the horse isn’t being abused. I get calls about gunshots during hunting season. I get calls about horse crap in the roads. I’m not kidding you on this, I have to go and investigate horse crap in the roads (2/4 S).

(W)e have a lot of people from the city that are relocating up here. And they’re used to lap dogs and cats that are declawed and never leave the house – when they see animals outside they get freaked out. When they see a little snow falling and horses out in the field getting wet they make a phone call saying these animals are being mistreated (2/1).

On the other hand, several interview subjects, including prosecutors and the deputy noted that when arrests were made in cruelty cases, especially those involving farm animals, picking a jury could be problematic as farmer/rural residents saw animals differently than others did. While these individuals may agree that certain practices are not right, they are also often hesitant to view them as being worthy of criminal charges.

Procedures and Practices

In addition to differences in relationships, differences were noted between the two counties in the handling of cruelty cases. As discussed below, Municipal County appeared to have a more organized response to cases than did Bucolic County.
While Municipal County did not have a specific funding source to pay for the costs of caring for seized animals, the prosecutor’s office usually required defendants to pay restitution and they had moderate success in collecting fees. The SPCA in Municipal County was responsible for a majority of the cruelty arrests and investigations. The investigator with whom I spoke noted that if the SPCA could not or did not become immediately involved cases were usually transferred to them:

My job is obviously doing the cruelty so we’ll get calls to our office or we’ll get calls from the police agencies since they know that’s what we are here to do. We’re not very big here so if there’s a time we’re unable to come out they have the same – being police – they can arrest and sometimes they will. Most of the time they’ll turn it over to our agency (1/3).

Despite strong SPCA involvement, training was still provided to law enforcement throughout the county on cruelty law, evidence collection and the like. Both prosecutors stated that they were always almost provided with excellent evidence and all of the case files contained photographic evidence, witness testimony and defendant statements.

One main difference between the two offices was Municipal County’s assignment of one office “expert” – someone familiar with the law, familiar with proper procedures, who had handled numerous cases – to cruelty cases. Having handled a number of complicated cases this individual with comfortable with the legislation and procedures involved and, if not personally handling a case, could serve as a knowledgeable resource for others in the office. In her own words:

The heinousness, especially with the torture type cases, is so bizarre, that it doesn’t occur to people which steps to follow. That’s why it’s good to have one person assigned (1/1).

In Bucolic County arrests were made and cases investigated by an assortment of actors including the sheriff, the state police and the city police. In Bucolic County photos
were present in only half of the case files that I reviewed, were not present in the two felony cases, and less than half of the case files held a statement from the defendant. The SPCA tried to get involved with most cases and while usually welcome, sometimes tensions did exist between SPCA personnel and traditional law enforcement. Bucolic County did not have any mechanism in place to pay for the veterinary care for seized animals; the not-for-profit SPCA instead assumed all costs relating to cases in which it was involved. As was the case in many other counties they did consult with a veterinarian who provided his services at a discounted rate, and they could and did ask that defendants pay bond or reimburse them for expenses but they rarely received payment.

Although the District Attorney handled all felony cases, these were few and far between and he was not all that familiar with the legislation; for example he was not aware that the intentional killing of a ferret could be prosecuted as a felony.

The involvement of the judiciary varied not from county to county but from judge to judge. In Municipal County both of the judges reported that they were relatively removed from plea negotiations, though they considered sentencing recommendations from prosecutors in making sentencing decisions. In Bucolic County, most misdemeanor cases were worked out between the defense and the prosecution and then brought to the judge. The city court judge noted that he considered sentencing recommendations but often rejected them – a sentiment echoed by one of the prosecutors. The felony judge and the District Attorney reported that they, along with the defense attorney, worked on case decisions together.
In both counties judges reported that defense attorneys often did not realize they were dealing with a potentially serious case, and that consensus did not exist between the prosecutors and defense attorney’s as to the level of seriousness of the case or they type of penalty that should be levied against the defendant:

"Generally the prosecution tends to be overzealous and the defense comes in with their head in the sand – the want a dismissal and an apology from the police. It’s my role to set a balance (1/5 J).

I can’t really say that there’s any real consensus so far that I’ve seen. It just, I can’t really say that there is. And I think the reason for that is because it’s so new and you know, there’s been some pretty awful things that have happened here. In the case that (we just discussed) there really wasn’t much of a consensus on what the attorneys could expect, what they were asking for … again because it’s basically new (2/5 J).

There was a general consensus amongst the prosecutors and judges that going rates – while in existence for some types of cases – did not exist for cruelty cases and sentences were crafted on a case-by-case basis.

There seemed to be an unspoken agreement, or shared sentiment, amongst most of the subjects in Bucolic County that the way to deal with the majority of cruelty cases was education, and that legal intervention was to be a last resort for misdemeanor level cases, and even some potential felony cases:

"There are many motivations in the criminal justice system, one is deterrence and obviously removing a dangerous person from society, but another is taking someone who might not be so dangerous and has the possibility of recovering, and lead them towards recovery (2/2) (discussing vignette involving the dog that was beaten and set afire).

The sheriff’s deputy, one of the prosecutors and the felony judge spoke repeatedly about the goal of the legislation being to intervene in the criminal career of a potential serial killer, or at least someone with the potential for future violence against human
beings. These individuals noted that most defendants were young, and/or uneducated in proper animal care, and as such had the potential to respond to intervention:

    You want to use the system to rehabilitate them, help them if you can. And I come back to the fact that most of these people are young and have mental health issues so that’s why probation is what I’m thinking of, to help the situation, and you’ve got your thumb on them with probation for five years so you’ve got a long time, you can work with them (2/5 J).

    I try to give people the benefit of the doubt and give them that 2\textsuperscript{nd}, 3\textsuperscript{rd} chance….There may be other times that it’s blatant and you’re gonna have to make an arrest but other times it may just be an educational thing (2/4 S).

This same sentiment was shared by the state trooper. While involved with hundreds of cases, she estimated that only about 5\% actually lead to arrests. In the majority of cruelty calls individuals were instead given needed assistance and/or information on proper animal care. Even the president of the SPCA did not mention incarceration or probation when asked about preferred case outcomes. She noted that seizure of current animals and prohibitions on future ownership would be the most desirable case outcome. This county, however, has mostly dealt with neglect cases; when presented with the hypothetical scenarios probation and/or jail were mentioned as the preferred outcome for certain cases.

    Both counties had experience with media attention. Bucolic County had a few cases that received media coverage, but not nearly to the same degree as Municipal County in which there were several extremely violent, high profile cases. All of the subjects in both counties noted that they were aware of the attention but differed in their perceptions of its effect. In Municipal County the felony prosecutor claimed she always disregarded it while the prosecutor who handled misdemeanor cases noted that it
motivated him to be cautious in his decisions. The Bucolic County prosecutors stated they were not personally impacted by the media and public attention when prosecuting a cruelty case – despite assertions from other subjects that their responses became more vigorous if the media were involved. All three claimed to be very aware of it and there was some discrepancy in comments about the impact. One respondent, for example, repeatedly brought up the media and public interest in cruelty cases without prompting, noting it could interfere with cases and was something they were very cognizant of, but when directly asked if it influenced him in any way he said it did not. The judges were similarly mixed in their responses with one from each county noting it didn’t affect them or the prosecutors, and the other suggesting that it might. In the words of the first felony judge from Municipal County:

You can’t ignore it but yeah, it’s just the nature of the beast. You hope that it doesn’t affect the way people react in cases of importance (1/2 J).

In Bucolic County the SPCA president, sheriff’s deputy, felony judge and defense attorney all felt this external attention had some level of impact, with the judge and public defense attorney noting that elected officials – both judges and prosecutors - are, to a certain degree, influenced by public opinion as part of their roles. In both counties the SPCA saw the media in a positive light – and was in fact often the source of media case facts. The SPCA interest in media attention, however, was different – for them, media attention was beneficial as it drew attention to their plight:

You see donations coming in a little more. Once you start getting these stories – there’s a case still pending involving (severe abuse) and we have calls and calls and all that. We’re still in the investigation but it’s just the fact of people hearing that – the flood of calls, people are really upset want to know what they can do (1/3 AR).
Case Data

The response of prosecutors, and others, in these two counties was explored via multiple mechanisms including interviews, case files, spreadsheet data and court observation. The following section will describe the case files to which I was given access in each county, as well as the spreadsheet data received from Municipal County and the court observation in Bucolic County.

Case File Data

In Municipal County the five cases\(^49\), all felonies, involved traditional domestic animals – two puppies and two cats.\(^50\) Three of the animals were beaten, one was burned. Three were killed, one survived. All five defendants were males in their twenties, three were white, and two were minorities. At arrest, the defendants criminal histories were varied; one had a previous felony conviction, two had previous misdemeanor convictions and two had no prior record. The motivations of the defendants were similarly mixed. One act was committed during a domestic incident, another was committed during a fight between friends, one was committed by two defendants who did it for kicks, and the final act of cruelty was committed by a mentally ill defendant with substance abuse issues who claimed it was a mercy killing. None of the animals involved belonged to the defendants. There was nothing in the files to indicate that any of the defendants had previous allegations or convictions relating to animal cruelty. In all of these cases the prosecutor was provided with extensive evidence. All of the cases had photographic evidence and witness testimony. Four had a confession (although the defendants all minimized their

\(^{49}\) I was provided five case files for Municipal County. These five defendants were involved in four separate cases. Two were co-defendants in one case.

\(^{50}\) I realize that a chart describing each of the cases, defendants and decisions would be useful here; however I fear that providing the information in that form would make it possible to identify specific cases, counties and prosecutors due to media coverage of many of the cases mentioned.
role and/or presented a defense). Only one file, that in which the animal survived, included a statement from a veterinarian. It does not appear any necropsies were done on the deceased animals, although there was forensic testing indicating the presence of a flammable liquid on the animal that was set afire. All five cases were resolved via plea bargain, wherein the defendant plead to the original cruelty charge. One defendant received felony probation, the remainder received jail time on the cruelty charge (two were convicted of additional felonies, but the sentences are listed as running consecutively). Incarcerative sentences ranged from six months to two years.

In Bucolic County, the nine files included two defendants charged with felonies and six charged with misdemeanors. The felony cases involved cats, both of whom were killed. Three of the misdemeanor cases involved dogs, two involved horses, one involved goats and another involved pigs and chickens. The chickens, a goat and several horses died. Both of the felony defendants were males in their twenties, one white, one a minority, one with an extensive criminal history, the other with no prior arrests or convictions. One plead guilty to felony cruelty, and other felony charges as well. He received one year for the cruelty conviction but it ran concurrent with the sentences for the other offenses. The other defendant was deemed unfit for trial, the case was not resolved. Of the misdemeanant offenders, there were three males and two females. Two of the males were minorities, one was white. One was in his twenties, one in his forties and one in his sixties. One defendant had a prior cruelty arrest and acquittal; another had been convicted of a felony for a white collar offense, while a third had an extensive

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51 Two defendants were involved with two separate misdemeanor cruelty offenses each. For the first defendant, the second arrest happened shortly after the first. The cases were very different involving different types of animals; they were however resolved simultaneously. The other defendant had second, similar, charges filed after the resolution of his first case. Both cases are included in this analysis as they both happened in Bucolic County in the time period for which I had records.
record with over 25 misdemeanor convictions. The women were both white; one in her forties and the other in her sixties. The first had no record; the second had a lengthy history with many misdemeanor convictions, including one for a nearly identical act of cruelty committed several years earlier in a different county. One of the misdemeanor defendants took his case to trial and was acquitted, the remainder accepted plea bargains (with one case still pending). Two plead guilty to misdemeanor cruelty and two plead guilty to disorderly conduct. One defendant received a sentence of misdemeanor probation during which she was banned from owning farm animals and the number of domestic animals she could own was limited. She was also ordered to pay restitution. Another was ordered to do community service and pay a fine. One defendant was ordered to pay restitution and the other simply had to allow the SPCA to enter his property to ensure he was properly caring for his animals. Photos were taken in four of the nine cases; in a fifth case there were emails from the prosecution requesting that a witness provide photos of the deceased animal that she took with her cell phone but it is not clear if they were able to obtain these photos - they were not located in the case file. Three of the cases included veterinary testimony and four included testimony from individuals who witnessed the abuse or neglect of the animals.

These findings do provide support for the contention made above that Municipal County had a more organized response to cases than did Bucolic County. Case files supported prosecutors’ assertions in Municipal County that they were usually provided with high quality evidence. They also generally mirrored the outcomes provided by the felony prosecutor in the vignette cases, whereby incarceration was a standard sanction

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52 It is possible the other cases had photos as well but they were not in the files nor was there any mention of them.
felony convictions. Bucolic County prosecutors were more lenient in their assessed conviction charges and sanctions in the vignettes than were those in Municipal County and their outcomes in the actual felony cases were more lenient than the felony case outcomes in Municipal County. When focusing solely on the felony cases from the two counties, there are similarities between each of the cases in Bucolic County and a Municipal County case. Each county had a case in which a mentally ill defendant killed a cat, and each had a felony case in which a cat was killed “for kicks”. In regard to the first case, in both counties the age and criminal history of the defendants were similar, yet the Municipal County defendant received shock probation while in Bucolic County it appears the case was never resolved due to the defendant’s mental health issues. In the second case the defendants were somewhat different – the two co-defendants in Municipal County were young adults with inconsequential criminal histories while the defendant in Bucolic County was an adult with several serious charges pending. Both were indicted on other felony offenses in addition to animal cruelty. The defendant in Bucolic County received a one year sentence on the cruelty charge to run concurrent with sanctions for other charges while the Municipal County defendants received two years to run consecutive with sanctions for other charges. While an assortment of other variables no doubt came into play, these cases provide some anecdotal evidence that Municipal County more aggressively dealt with those charged with animal cruelty.

Spreadsheet Data

In Municipal County, in addition to the five case files, I was provided spreadsheet data on 69 cruelty cases that occurred between 2005 and 2008. Of these 69 cases, 22 were filed as felonies, the remainder were misdemeanors. The manner of case resolution
was provided for 30 cases. Five cases were dismissed – two were simple dismissals, three were dismissed after the defendant satisfied certain conditions. Of these dismissals one had been charged as a felony, the remainders were misdemeanor cases. Of the 25 remaining cases, seven – all misdemeanor cases - were adjourned in contemplation of dismissal. Nine individuals were given a conditional discharge – for many the condition was not mentioned but for those in which it was, the individuals were prohibited from animal ownership for a period of time. Of those given a conditional discharge, five had been convicted of a felony offense. Additionally, one defendant received straight probation, two received shock probation in which they were sentences to six months in jail followed by five years of probation and six received an incarcerative sentence. Five of the six defendants given a straight jail term and all of the defendants sentenced to probation or shock probation were convicted of felony animal abuse. Due to formatting problems in the spreadsheet, the length of sentences cannot be stated with certainty, but it appears that two defendants received sentences of less than year, two received sentences of one year and two received the maximum sentence of two years.

The data from the spreadsheet conflict somewhat with the accounts provided by prosecutors. While not many cases were dismissed outright – in accordance with the assertions of the prosecutors – there were many ACODs and conditional discharges. All of the ACODs and all but one dismissal were misdemeanor defendants, and four of the nine conditional discharges involved misdemeanor defendants. These outcomes for misdemeanor cases are not unexpected based upon the statements of the misdemeanor prosecutor:

(O)ur purposes would be to monitor these people and make sure they’re not treating any other animals like this and as a punitive
Though my main priority is to get a plea and forfeiture of any rights to reclaim the animals (1/4).

While most of the felony cases received probation or incarceration, in concert with the actions of the prosecutors in the vignettes, and similar to the outcomes found in the case files I was able to review, the conditional discharge in five felony cases is surprising. Without any additional information on these cases I cannot form any conclusions as to why these cases were resolved in this manner.

A Trip to Court

In Bucolic County I was able to attend court with one of the prosecutors on two separate occasions. The court visits substantiated the comments I’d so often heard about Bucolic County being a small, rural community. In this particular town, in which the prosecutor had a misdemeanor cruelty case pending, court was held one evening a month. I arrived over a half hour early for my first visit and as I made my way down a dark, desolate, winding street occupied only by an occasional warehouse or trailer-type building I was sure I’d made a wrong turn. I stopped in front of a small, modular building to check my directions - the only building with a light on out front - and realized it was the not-yet-open town hall/town court. After I was permitted to enter I encountered a small table inside the door filled with literature relating to hunting. Eventually dozens of people filed in and sat on folding chairs. As the building filled up it was clear all the courtroom “regulars” were familiar and friendly. The guard operating the metal detector joked with the magistrate judges and other personnel as they came in for the evening. The prosecutor seemed to know all the defense attorneys – they asked about each others families and discussed mutual friends.
The case at issue involved an older gentleman with a lengthy criminal record (all non-violent misdemeanors) who was charged with neglecting his farm animals. The animals at issue included some deceased poultry as well as other farm animals living in very poor conditions. Photographs were taken of the animals and their living conditions. The defendant was originally charged with multiple counts of misdemeanor cruelty which he strongly disputed. The animals were seized and sold for slaughter while the case was pending and he felt he should be reimbursed. He also wanted his neighbors to face criminal charges for meddling in his affairs.

The first time I went to court the case was continued as the defendant had just recently hired a private attorney. By that point he had already turned down multiple offers, including one in which he would plead to a violation in exchange for a ban on farm animal ownership. In the second court appearance that I attended the prosecutor and new defense attorney met; I was invited to sit in on this meeting. When confronted with the photos the attorney noted – correctly – that while the conditions in which the animals were living were indeed poor, there was no veterinary exam to prove that they negatively affected the animals; even the deceased animals may have succumbed to natural causes. The prosecutor again offered a violation plea with a ban on future animal ownership but defense attorney felt this was unacceptable and was prepared to go to trial. The defendant ended up pleading guilty to a violation with the stipulation that the SPCA could visit his property to monitor the care he provided for future farm animals. When I spoke with the prosecutor about this outcome he stated that he feared that the opinion of the defense attorney was true – without veterinary proof that the conditions caused death and suffering he did not feel he could prove his case. He had lost a previous
misdemeanor cruelty trial and believed that the jurors – who were likely to be farmers or have friends and family members who were farmers – would not be likely to convict without extremely strong evidence that the defendant was directly responsible for the death or serious suffering of the animals.

On both visits I ended up spending several hours sitting with the prosecutor as he handled a parade of cases. In one case involving a felony charge – not even remotely related to animals – the prosecutor and defense attorney determined that the defendant would plead to a misdemeanor charge. The defense attorney wanted to be sure his client, an employee of the criminal justice system, could keep both their job and their pistol permit if they pled guilty. The prosecutor proceeded to grab a book of penal law to search for an adequate conviction charge but the defense attorney indicated he didn’t want a penal law violation, he wanted animal cruelty. He was adamant about this – he seemed to feel it was such a minor charge no-one would notice it and it would have no effect on the defendant’s life.

Two Counties

It is difficult to draw any firm conclusions regarding the relationship between county characteristics and cruelty case decision-making based on differences in the data. For example, I reviewed primarily felony cruelty case files in Municipal County and primarily misdemeanor case files in Bucolic County. Despite this, I can tentatively say that it appears that Municipal County treated cases more seriously and handled them with greater efficiency than did prosecutors in Bucolic County. In Municipal County the individuals with whom I spoke tended to take a harder stance on cruelty cases overall, and data from actual cases supported this. While there seemed to be a general sense that
rehabilitation, education and/or seizure of animals were preferable outcomes for most
cases in Bucolic County, those in Municipal County did not seem to share this belief.

While this suggestion – that a more severe stance was taken in Municipal County,
at least in regard to felony cases - is contrary to the theory that the anonymity afforded
prosecutors in a large county might lead to lesser sanctions, there may be other
explanations to account for this. Agricultural interests are also hypothesized to be
contrary to animal welfare interests. Bucolic County is rural with many individuals
employed in agriculture. Prosecutors in Bucolic County noted that both judges and jurors
were sometimes sympathetic to defendants charged with neglect of farm animals.
Relatedly, the prosecutors in Bucolic County also encountered more uncertainty as to the
actions of the judges and/or jury in cruelty cases. This uncertainty may have lead
prosecutors to take fewer risks due to fear that cases would not fare well if they were to
proceed to trial – and in Bucolic County cruelty cases were rarely resolved quickly with
most threatening to go to trial. Despite closer working relationships in Bucolic County
than in Municipal County, cruelty cases appeared to be resolved with greater ease in the
latter county than in the former. This appeared to be due as much if not more to the
attitudes of the defendants and other residents in the county than it did with the specific
attitudes of the courtroom workgroup. Multiple subjects in Bucolic County repeated the
assertion that defendants constantly felt they did nothing wrong and jurors tended to
sympathize with the defendants. These statements were quite contrary to statements made
in other counties where prosecutors noted that defendants often took a quick plea out of
shame and jurors were sometimes moved to tears when confronted with evidence.
Other factors may account for differences in outcome as well as attitude. In Municipal County prosecutors had dealt with a number of very aggravated, premeditated cases; Bucolic County prosecutors dealt mainly with neglect, often committed by down-on-their luck farmers. The different experiences of the prosecutors may have lead to the development of different general mindsets regarding individuals who commit animal cruelty. That is, based upon their many aggravated cases of animal cruelty, Municipal County prosecutors may have stereotyped those charged with cruelty as inherently dangerous individuals, while prosecutors in Bucolic County may have stereotyped those charged with animal cruelty as ignorant or pathetic individuals. These beliefs may have affected the vigor and effort a prosecutor devoted to a case. Municipal County also prosecuted many more cases than did Bucolic County. The difference in the raw number of cases may have lead to more case experience and case history on which to draw in Municipal County. Similarly, having one “cruelty specialist” likely allowed for the development of more efficient process. While standard “going rates” may not have been in existence in Municipal County, the main cruelty prosecutor may have been more comfortable with these cases, knowing their strengths and weakness, and in better position to gauge the reactions of the defense and judiciary.

**In Sum**

This chapter added clarity and depth to the experiences of the prosecutors in two New York State counties. By interviewing individuals with whom prosecutors interact in processing cruelty cases, and examining actual cruelty data, I was able to provide a comprehensive picture of the environment in which prosecutors handle cruelty cases and
to see how processes and outcomes in actual cases compare to interview and vignette data.

Interviews with other criminal justice personnel provide context on the environment in which a subset of prosecutors worked, illustrating the variation existing in the environment and practices of these two counties. Such diversity is likely responsible for differences in prosecutorial decision-making and outcome.

The examination of case file, spreadsheet and observational data provided information on actual case outcomes which supplemented the interview and vignette data. Examining outcomes in the context of the environment in which they were made allowed for a better understanding of these outcomes in two different locales.
Chapter 8: Conclusion

I think you’re gonna find unfortunately because of the differences in counties – a rural county, a small county versus a larger county – you’re gonna get a varied – responses are gonna go across the board. I think that your research is going to find that you’re going to have every answer imaginable to every question. And that’s because the law has allowed it and that’s also because it’s very different. Our cases are treated seriously because my direct supervisor told me he wanted them treated seriously. I gotta think that if you’re down in NYC in one of the boroughs, their DA’s probably don’t see these cases as being that serious because they’ve got enough other work. So I’d love to see the results of your dissertation or your work because I’ve gotta think you’ll have answers that are across the board because 1) the law is wide open and 2) I think the way offices handle these cases is very different (10/1).

The above prosecutorial prediction offers a concise and realistic conclusion to a portion of my findings. In regard to some questions – relationship amongst the courtroom workgroup, the influence of legal factors – there was not much variety in my findings. In other areas variation was the norm. Cruelty cases are not overly common, and as the above prosecutor noted, the law is very open to interpretation and in some domains practices were very different in each county. While I could often accurately predict latter interview subject’s answers to many questions, in each interview I found myself learning something new, in most interviews I found myself saying “you’re the first person to tell me that” at least once. While overall the prosecutor interviews were conducted to the point of “saturation”, nuances in attitude and practice lead some new revelations in each interview.

Contributions and Limitations of this Research

This research shed much needed light on cruelty case processing in New York. It provides an overview of the process cruelty cases undergo after an arrest is made, and a
review of the resources and constraints under which prosecutors operate as well as their thoughts on animal cruelty legislation and criminal justice system response. It also examines the applicability of established theory to these cases.

An Overview of Cruelty Case Processing

Despite increased interest in animal welfare and sweeping legislative changes across the nation, very little empirical attention has been devoted to the topic of cruelty case processing. The media report on incidents of animal cruelty and animal advocates offer advice to those who witness cruelty but no-one has explored how these cases are handled by the system, or how prosecutors perceive these cases. I began this research with a goal of garnering a basic understanding of how the court system handles animal cruelty cases – how do cases come to the attention of the prosecutor? How often are they dismissed? What do prosecutors rely on when deciding how to process cases? How often do they go to trial? I was surprised to find out that these cases do not always originate with traditional law enforcement; the SPCA is often involved and sometimes solely responsible for the arrest and investigation in cases involving animals. In some counties the SPCA employ peace officers who handle the cases on their own, in others SPCA personnel assist the police in the initial stages of case processing. Occasionally prosecutors themselves are involved from the beginning. In some cases, especially those that are exceptionally heinous and likely to be the target of public and media scorn, prosecutors may assist the police in determining the proper charges to file and may even respond to the crime scene. Also unexpected was the relatively low dismissal rate of cases and the rarity of charge alteration. A majority of prosecutors claimed that outright dismissals were relatively uncommon. Spread sheet data from Municipal County
supported the claim that outright dismissals were not common, although a number of cases were resolved by ACODs and conditional discharge. Prosecutors also stated they almost never altered the charges filed by law enforcement or the SPCA. The involvement of prosecutors in the charging decision, and more importantly, the involvement of the SPCA - an organization dedicated the animals and knowledgeable about cruelty law – likely impacted this.

After cases reached the desk of the prosecutor I wondered how he or she made decisions – how variables such as legal factors and extra-legal factors, thoughts on animal cruelty and external environmental factors impacted decision-making. As is further discussed below, prosecutors relied most strongly on traditional legal factors in their decision-making. Evidence was mixed as to the role of their personal opinions and external environmental variables, although results indicated that these variables may be influential. Prosecutors were also impacted by some unforeseen factors – such as the availability of the resources to manage and care for living “evidence” and to perform forensic examinations or necropsies. Several prosecutors noted that they had a difficult time securing the resources to care for seized animals and/or the cooperation of veterinary personnel for examinations or necropsies, with some noting that these factors could affect outcome.

I also hoped to shed some light on the manner of disposition for cruelty cases. It was expected that most cases would not proceed to trial and that “going rates” would not exist for cruelty cases. Interview and case file data supported this assertion. Several prosecutors noted that they had never taken a case to trial and those who had been involved in trials claimed they were the exception. The majority of cases were resolved
via plea negotiation with common outcomes including the forfeiture of animals, fines/restitution, and probation. Incarceration was generally reserved for the most disturbing cases.

Vignettes were used to add additional clarity to the dispositions prosecutors imposed in cruelty cases. Prosecutors were asked to provide a conviction charge and sanction for defendants in four hypothetical cruelty scenarios. While a felony conviction and straight jail time were handed down by nearly all of the prosecutors in the most egregious case, sanctions in other cases varied quite a bit and often included a rehabilitative component.

*Criminal Justice Theory and Cruelty Cases*

A second goal of this research was to explore the ability of established theory to explain prosecutorial decisions in cruelty cases. A majority of the well-established theories of prosecutorial decision-making were formulated based on data from offenses that would be considered serious and/or routine (e.g.: Part I felonies). While major differences were not expected in these lower level and somewhat rare cases, I was curious as to how well established theory would explain prosecutorial decision-making in cruelty cases. For the most part, interview data suggest that while the cases differ somewhat from other similarly charged cases, established criminal justice theory does apply to animal cruelty.

Uncertainty avoidance theory states that when prosecutors make decisions they rely on information that allows them to minimize uncertainty about case outcome - in the absence of certainty as to case outcome they may dismiss a case or attempt to secure a win via plea negotiation (Albonetti, 1986; Eisenstein & Jacob, 1991). Certain legal
factors, such as the evidence available to them, the seriousness of the offense and the
criminal history of the defendant are often considered valuable to prosecutors in their
decision-making. It was expected, and was found, that these same factors are important
in cruelty cases. A large majority of the prosecuted cited the quality of the evidence, the
seriousness of the case, and the criminal record of the accused as the most important
things they considered when making case related decisions.

Overall extra-legal factors, such as victim and offender demographics, have been
found to have less predictive power. I had hypothesized that extra-legal factors would
have greater influence in cruelty cases due to the emotionally divisive nature of these
cases. Limited support was found for the hypotheses that the type of animal harmed
would factor into prosecutors decisions and no support was found for the hypothesis that
decisions would be impacted by the relationship between the animal and the offender.

Courthouse culture theory (Eisenstein & Jacob, 1991; Eisenstein et. al., 1988)
holds in part that the relationship amongst those who work in the courthouse affects
decision-making in cases. In courthouses where this workgroup is familiar and friendly,
cases are expected to have a smoother, more efficient resolution. I had hypothesized that
this would indeed be true – in cruelty cases, the case would be resolved more quickly,
and be less likely to end in trial, in counties where a positive relationship was reported.
The rarity of these cases, however, was expected to cause complications regardless of the
courtroom relationship. Even in friendly and familiar courtrooms I expected to find a
process more complicated than that found in more common types of cases. It was
expected that in these “friendly” courtroom workgroups cases would not often go to trial
but would be resolved via a lengthier process involving concessions instead of one
grounded in the consensus based “going rates”. This hypothesis was hard to test in part due to very limited variability in the reported relationship. Almost all of the prosecutors interviewed spoke highly of their courtroom colleagues overall.

Everyone agreed that “going rates” were non-existent, however only half of those prosecutors with whom I spoke described a negotiation process that was more complicated than the norm. Even though each case was individually crafted, most prosecutors, and other subjects, reported a relatively smooth negotiation process. As one judge explained:

(Judge): It’s really handled the same way whether it’s a brand new kind of case – like this video voyeurism stuff we have now (talk a bit about this becoming illegal). It’s a little different only because you don’t know how to handle it but you look at the same factors, you really do, you break these cases down and you say ‘alright, is this person really a criminal, what’s their background, what’s their motivation, how serious is the conduct, do they have a job’ – it’s the same sort of thing. So if it’s a new thing it doesn’t really cause a problem for how we handle the case.

(ALK): Does it make it any more difficult to reach some kind of negotiation?

(Judge): Sometimes it might because you’re – it’s not a routine thing so I suppose in that way maybe it’s a little bit difficult because the lawyers don’t know what to expect. And I like to hear from the lawyers in terms of how they feel about the thing. So was your question does it take longer? Sometimes maybe but not to any kind of a serious extent (1/2 J).

Perhaps the fact that most respondents reported positive relationships within their courtroom workgroup is in part responsible for this finding – that is, their shared history and friendship lead to an amicable, efficient negotiation process. It is also likely that the relatively insignificant penalties add some level of ease to the process. Plea bargaining
negotiations are constrained by statutory penalties; these penalties do not leave much for the prosecutor (and defense attorney) to negotiate.

Also explored were hypotheses relating to prosecutors relationships with other individuals with whom they worked. One theory of criminal justice decision-making holds that prosecutors engage in a mutually dependent relationship with law enforcement, whereby they will consider the input of the police when making decisions (Cole, 1970). I had hypothesized that prosecutors would be less likely to alter charges if they reported a positive relationship with local law enforcement. This hypothesis could not be tested as expected due to the practices of the prosecution and the role of law enforcement in cruelty cases. For the most part, prosecutors reported that they rarely filed charges that differed from the original arrest charge. When discussing animal cruelty several prosecutors also mentioned the lack of variability or gradations in the available charges. This may have affected the lack of charge alteration, especially considering that a majority of the cases the prosecutors handled were clearly misdemeanor in nature (e.g.: involved farm animals, defendant actions were neglectful and did not involved physical abuse). More importantly, in several offices, prosecutors noted that they sometimes assisted the arresting agency with determining the arrest charge and therefore would be less likely to alter it, and/or the SPCA was solely or partially responsible for the arrest and/or investigation of cruelty defendants. The special knowledge the SPCA brings to cases may have lead prosecutors to defer to them in determining the appropriate charge in situations where there was ambiguity.

Research also suggests that prosecutors’ actions are constrained by the policies and practices of their office (Nardulli et. al., 1988). No support was found for the
hypothesis that in offices where the District Attorney maintained strict oversight of his or her assistant prosecutors, the actions of the prosecutors would reflect the District Attorney’s formal or informal policies. This lack of support was not due to prosecutors violating office rules. Instead, interview data revealed that there were no formal or informal policies in place that would affect prosecutorial decision-making in cruelty cases.

While theory on the effects of individual and environmental influences on prosecutorial decision-making is scarce, I explored the effects of these variables on prosecutors’ decisions. I hypothesized that if prosecutors believed animal cruelty was a serious offense and/or they believed a link existed between animal cruelty and other violent behaviors they would treat offenders more severely. Modest support was found for these hypotheses. Prosecutors who believed that legislation and/or system response was inadequate and those who expressed a stronger belief in the relationship between animal cruelty and other forms of violence often, though not always, sought tougher conviction charges and sentences in the vignettes.

I also hypothesized that prosecutors’ decisions would be impacted by the environment in which they worked. I specifically suggested that in communities that were larger and in communities where there were more persons involved in farming prosecutors would be more lenient in their decisions. I also hypothesized that prosecutors would be influenced by media and/or public attention, with their actions mirroring the desires of the community in which they worked. Support for the assertion that there is a relationship between community characteristics and decision-making was not strong but was found to exist. In counties with lower population densities prosecutors tended to
treat cases with greater leniency. This was contrary to the proposed hypothesis but not altogether unexpected due to the co-location of farms and low population densities. Farming density was expected to impact decisions as well with a negative relationship expected between sentencing severity and the number of farms in a given county. The vignette data provided some support for this hypothesis but it was overall not very strong. The limited data and/or measurement issues may have had some impact on the findings relating to individual and environmental hypotheses. As discussed below, these are areas ripe for further exploration.

Some of the more interesting findings were related to the role played by the media and/or public. Many prosecutors reported that the public attention these cases generate did indeed impact them and/or their colleagues. Some prosecutors noted they were merely aware of the public and media attention, while others noted it made them work harder and still others noted that they consulted with interest groups, such as the SPCA, before making a decision.

Limitations

Using interview data to explore this topic was beneficial. Interviews allowed for an in-depth examination of a little-explored topic. A purely quantitative analysis of case file or other data would have failed to uncover many of the more significant and/or interesting findings; for example, the role of the media or the impact of lacking resources for animal care in case processing decisions. While I believe that interviews were the best method with which to begin an initial exploration of this topic, an in-depth quantitative evaluation of actual case data would have provided a more comprehensive understanding of animal cruelty cases in the criminal justice system. When I began this
research, I had intended to supplement the interview data with a greater number of case files than I ultimately did. I anticipated using case file data to explore the influence of several variables on case outcomes. Unfortunately, even with pre-planning, gaining access to these files proved to be an insurmountable task. Prior to beginning this research project I secured the cooperation of the Municipal and Bucolic County District Attorney’s offices – both stated that they were willing to provide me with access to both their prosecutors and to several years’ worth of their cruelty case files. In Bucolic County, as mentioned above, office staff had no way to identify which of their old files were cruelty cases and could only find cases for which I provided a defendant name. In Municipal County the individual tasked with pulling the files for me ultimately refused to do so. The limited number of files that I did obtain were informative but obtaining files for all cruelty cases that occurred in the past three or four years would have enabled me to better compare case responses in the two counties, allowed for statistical analysis to examine how certain factors affected case processes and would have provided a better understanding of the types of cases and evidence that are presented to prosecutors.

There are other limitations and caveats to this project which must be acknowledged. In order to fully understand the processing of animal cruelty cases, one needs to look at other participants in the criminal justice process. This research was focused on the examination of one party in a process that involves many. Although the SPCA were active in many counties, the police still often control the flow of cruelty cases into the office of the District Attorney. It is likely that numerous factors, internal, environmental and contextual, impact the police decision to investigate a cruelty complaint and/or arrest a suspect. Within the courts it is well accepted that many
decisions are made within the courtroom workgroup. Practical considerations, namely time and money, necessarily limited the scope of this project.

The method by which prosecutors were selected for interviews may have lead to some bias in the results. A handful of prosecutors were contacted based upon their interactions with my committee members or co-workers, or through randomly sent letters requesting their cooperation. Many, however, were located with the assistance of an organization that provides training and assistance to prosecutors who are handling cruelty cases. Prosecutors located with the assistance of this organization were sometimes prosecutors who had contacted the organization at some point for information and assistance in prosecuting a cruelty case. The fact that they reached out for or accepted help may mean that they had more interest in securing a conviction than did a prosecutor who did not receive assistance. I do not believe there were significant differences in attitude and actions of these prosecutors as compared to those located through other means but cannot say that with certainty.

There were issues that arose during data collection. I had intended to speak with several defense attorneys in Bucolic and Municipal counties. Despite an intense search which involved calling local bar associations, asking other respondents for referrals and sending out several interview request letters to individuals whose names I obtained from case files and media coverage, I only succeeded in formally interviewing one defense attorney, the head Public Defender from Bucolic County (and he did not have much at all to say). 53 I found out that most attorneys had only handled one, maybe two cases, and did not feel they could contribute anything.

53 I spoke informally with the defense attorney who handled the case I observed in Bucolic County; she would not however, consent to a formal interview.
An oversight occurred in the development of the vignettes. In the counties with a significant rural population farm neglect cases were not at all uncommon. In fact, I would say underfeeding of horses was mentioned by prosecutors more frequently than any other offense. Ideally, I should have included one or more vignettes that involved farm animals. Conversations with prosecutors, and others, lead me to believe that these cases were not aggressively pursued – charges were filed but often not until the defendant was given multiple warnings, and penalties appeared to be very minor in all but the most severe cases. Several prosecutors sympathized with defendants who were charged with neglect of farm animals, noting many were hurting financially and could not afford to properly care for their animals, while others were uneducated in proper animal care. In many cases prosecutors believed that defendants needed education and/or assistance more so than punishment:

Farm abuse cases are more neglect than intentionally violent. That’s downplaying it and I don’t mean to do that but they weren’t necessarily people with criminal histories. They were just people who didn’t have a clue (3/3).

Including a vignette involving farm animal cruelty would have provided me a better sense overall of how prosecutors deal with these often routine cases.

A final caveat relates to my interview instrument. I promised prosecutors that I would take an hour of their time (I upped this to “at least an hour, depending on how much you have to say” as interviews progressed). Several prosecutors built only an hour into their schedule for me. With a few exceptions, primarily involving prosecutors who did not handle any felony cases, interviews were rarely completed in an hour. I found myself rushing to get in as many answers as I could if I sensed (or was told) that the prosecutor had other pressing matters to attend to. This did not allow me to delve as
deeply into some issues as I would have liked. I was, for example, especially interested in
the prosecutors’ personal thoughts on animals and animal abuse and how these thoughts
did or did not impact their decisions but could not find a way to briefly delve into this
somewhat sensitive topic. I am left with many additional questions. Due to this I
concluded that I should have more narrowly tailored the interview instrument in a way
that would have allowed a more thorough examination of certain topics.

**Future Direction**

As discussed above, it would be beneficial to include a larger number of case files
in future research if possible, and to broaden the scope of the research to other criminal
justice actors outside the prosecutor’s office as well as to other states. Within the
prosecutor’s office it would be beneficial to examine certain parts of the process in
greater detail. For example, this research alludes to the fact that variables outside of case
characteristics and courtroom dynamic may influence prosecutors in these cases. The
role of individual beliefs and external environmental factors on the decision-making of
prosecutors is an area in need of further research. The influence of these variables has not
been rigorously explored in studies of prosecutorial decision-making.

In this examination of individual beliefs all of the prosecutors were at least
loosely aware that some research indicted the possibility that animal cruelty might be a
pre-cursor to other criminal acts. It would be interesting to expand the pool of
prosecutors in hopes of finding some who have not heard of or do not believe that there is
an association and see how this correlates to decisions. I also did not have a direct
measure of prosecutors’ personal thoughts on the seriousness of animal cruelty. Ideally
this topic should be further explored with interview data that are supplemented with
additional measures. It would be advantageous to devise an instrument to better measure individual beliefs. Use of vignettes in which characteristics of the same story are altered would be useful as well. For example, it would be interesting to see if and how outcomes would change if the ferret were changed to a kitten or the dog in the case with the two boys was changed to a hamster.

In regards to environmental influences it would be beneficial to expand the sample of counties and to delve more deeply into county characteristics and prosecutors assessments of those characteristics. For instance, a few prosecutors practicing in rural farming counties specifically mentioned the difficulties they encountered with judges and jurors who were themselves farmers or had friends and family who farmed, however, I did not ask prosecutors about their external environment; I obtained this information while discussing other matters. Developing questions relating to specific county characteristics such as farming density could shed light on how and to what extend certain county characteristics affect prosecutorial decision-making.

**Conclusion**

Legislation relating to animal cruelty and the response of criminal justice actors to these offenses has evolved significantly over the past several decades. Despite advancements in legislation, practices, and public attitude towards animal cruelty, this research still supports the often heard argument of animal welfare advocates that there is a long way to go. A majority of prosecutors noted problems with the legislation and system response, including its placement outside of penal law, vague statutory terminology, the absence of adequate sanctions, and lack of cooperation from other criminal justice actors. Amongst the prosecutors themselves, the response to animal
cruelty cases did not seem overly fervent, yet this research clearly indicates that prosecutors are not ignoring or marginalizing these cases. At worst they appear to be treated no differently than other misdemeanor or E felony cases and in many offices the time and attention they receive appears to go beyond that dedicated to cases of a similar level.

While this project focused solely on New York State, and I have limited knowledge of animal cruelty legislation and response in other states, it is likely that the findings of this research do extend to places other than New York State. While many states place their animal cruelty legislation in penal law, other common concerns of prosecutors in this state would likely be concerns of prosecutors in other states as well. The maximum available sentence in New York is below the mean nationwide sentence of approximately 4.5 years, however, seven states have penalties of a year of less and another 36 states have penalties of five years or less. It is therefore likely that prosecutors across the nation deal with the frustrations of sentencing limitations as do those in New York. Also a nationwide concern is statutory language that is less than clear at best. Anecdotal evidence further indicates that prosecutors often deal with other criminal justice actors that are not sympathetic to animal welfare, and encounter issues relating to adequate support, financial and otherwise. As in New York, the legislation is in a state of flux across the nation.

Animal cruelty legislation is constantly evolving. There are currently over two dozen unique bills pending in the New York State Assembly and Senate alone relating to animal cruelty, and countless bills pending across the nation. Public interest and awareness continues to grow along with media coverage of abuses perpetrated not only
on domestic animals, but also on animals used for food and research. As the law continues to evolve there will be countless opportunities to examine the evolution in the responses of those who enforce it.
References


Appendix A

Data Collection Instruments

Code Sheet

County: 1 2 3 4
Defendant Age: ________  Defendant Gender: M F  Defendant Race: C O
Original Charge Filed by Police: Y N  Original Charge: ______________________
Number of Animals Involved: _____
Indictment Charge: M F  Concurrent Charges: Y N
Photographs/Video: Y N  Expert Witness: Y N  Lay Witnesses (#): _____
Prior Record: Y N  Prior Animal Abuse: Y N
Defendant Owner: Y N  Pet or Stray  Other’s Pet: Y N  Cat/Dog: Y N
Degree of Harm: 1 2 3  Neglect or Abuse
Mode of Disposition: NP  ACOD  PB  T  Other: ________________________________
Animal Conviction Charge(s): 353 353-a  Other: ________________________________
Other Conviction Charge(s):
________________________________________________
Sentence: _______________________________________________________________
Notes:
Interview Questions for Prosecutors

General Background & Work

- How many years have you been working as a prosecutor?
  - How many years have you been working for this specific office?
- About how many cases does the office handle in a year?
- About how many cases do you work on in a typical year?

General Cruelty Questions

- How many animal cruelty cases have you worked on (an estimate is fine)?
- Can you describe what a typical case might look like (you can leave out names and any other identifying details)?
- Are these cases much different to work on than other types of cases?
- Do you do anything different to prepare for these cases (assuming they’re relatively rare)?
- How common do you think animal abuse is in this County? (Is it a relatively rare crime? Pretty common?)

Legislation

- When the legislature decided to toughen animal cruelty legislation they seemed especially motivated by concerns that animal abusers might go on to abuse human beings:
  - What do you think about research that suggests that a relationship between animal cruelty and other forms of crime?
  - Can you recall any cases – your own or others’ - where a defendant harmed an animal prior to engaging in other criminal activity?
- The felony legislation requires that there be no justification for the actions committed by the defendant, that the animals suffer serious injury and that the act...
be especially depraved or sadistic. How would you, personally, determine if a case:

- Is without justification - that is, under what circumstances might harming an animal be acceptable (prompts: self-defense or defense of another person? Defense of another animal? Defense of property? Discipline or training?)
- Involves serious injury (Bruises? Stitches? Death)
- Includes actions that are depraved or sadistic - that is, what types of actions on the part of the accused might elevate a case to the felony level? (Kicking a dog? Drowning unwanted kittens? Stomping on a hamster?)

- Can you tell me about how many felony cases have been prosecuted by this office? How many of these have you worked on?

- Could you tell me about a little more about the types of factors that might make you see a particular case as more or less serious? (Prompts: how about ..., quality of the evidence, motivation of the defendant, characteristics of the defendant such as prior record, relationship to animal...).

- In your opinion and/or experiences, do you believe that the passage of felony animal abuse legislation lead to any changes in charging and case processing decisions? (Things have/haven’t changed a lot in the past decade)

- Do you believe the criminal justice system is doing too little or too much to deal with animal cruelty, or do you believe the amount of attention devoted to animal cruelty is appropriate?

**CRWG Questions (Intro re: The next questions ask about the way things work in this particular office. The first few questions are general, not about animal cruelty, though feel free to include any examples relating to AC cases)**

- Do most arrests made by the police lead to the filing of criminal charges by this office?
  - If “no” – About how often do you decide not to file charges following arrest?
  - Are particular types of cases more likely to be dismissed? (expand)
  - Do the police pay attention to charging decisions made by this office? (expand)

- How are cases handled that are brought to your attention by “concerned citizens”? Are they treated in the same manner as those cases initiated by the police?
  - If “no” – what makes these cases different?
• How are charging decisions handled in this office? (e.g.: Does the DA sign off on all charges?)

• Does your office have official or unofficial policies regarding the filing of charges – (eg: probable cause, odds of conviction etc.)?

• In general, what might lead the DA’s office not to file charges?

• How are decisions regarding plea negotiations handled in this office? (e.g.: Does the DA sign off on all charges?)

• Does your office have official or unofficial policies relating to plea bargaining decisions?
  o If yes, are these polices strictly followed or is there some leeway?
  o If yes, Are there times when you have disagreed with the policy?
    ▪ Can you tell me a little more about how you dealt with this?

• Do you frequently work with the same defense attorney’s and judges?

• How would you characterize the relationship amongst prosecutors, judges and defense attorney’s in X county? (prompts: is it cooperative? Do you socialize personally or professionally?)

• In general, would you say that there is an overall consensus between you and your colleagues – including the bench and defense – regarding how cases should be handled? (If answers to above question indicate a poor relationship, instead ask if there is general disagreement?)
  o When there is disagreement, how does this affect negotiations?
  o Would you say these cases are more likely to go to trial?

• Thinking of the bench in this county, how would you characterize judicial receptivity to prosecutorial sentence recommendations?

• Returning specifically to animal cruelty cases - Do you feel that there is an overall consensus among your colleagues as to the appropriate outcome for these types of cases?
  o If not, how do you handle such cases?
  o Would you say more cruelty cases have gone to trial than other types of cases? Can you give me an estimate of how many have gone to trial?
In your experience, in terms of plea negotiations, would you say these cases are more difficult, less difficult or not much different than other types of cases?

**Environmental Influences**

- Thinking about specific animal cruelty cases that you have worked on, were you aware of any media coverage on the case?
  - If yes, do you recall the overall sentiment?
  - What did you think of this coverage?

- Thinking about specific cases you worked on, were you aware of any public reaction to the case? (prompts: do you recall any letters, protests).
  - If yes, do you recall the overall sentiment?
  - What did you think of this response?

- Do you believe a prosecutor’s decisions in charging and plea bargaining should reflect public opinion to any degree or do you believe that, as “experts” on the law and legal system, prosecutors should not be influenced by public opinion?

**Hypotheticals**

We’re about to wrap up here, but first I am going to read you four very brief hypothetical situations. Assuming the defendant wants to plead guilty and the “deal” to be offered is completely up to you, what type of charge would the defendant be convicted of and what sentence would you suggest?

1. An elderly woman is found to have over 40 cats in her house. She claims she began with a few neighborhood strays but they kept reproducing and she couldn’t afford to fix them. She claims to love and care for them, but most are emaciated, several are visibly ill and all have fleas and other parasites.

2. A 12 year-old girl arrested for throwing rocks at two chained dogs who have been barking incessantly. One of the dogs is hit hard in the head; she requires 40 stitches to close the wound and a lengthy stay at the vet. The girl has no criminal record, but is known as something of a neighborhood bully.

3. A 30 year-old man is mad at his girlfriend. In retaliation he breaks the neck of her beloved pet ferret. The defense is arguing this is a first offense and this is an otherwise good guy – good job, good family – who needs anger management counseling. PETA has gotten wind of the case and your office has received a slew of letters arguing for jail time. You are expecting a news crew or two at sentencing.
4. Two 16 year-old boys are drinking at the home of one of the boys and are intoxicated. One of them trips over the family dog and she nips at him. In response he grabs a baseball bat and beats her unconscious. They then take the dog out back and set her on fire. She does not survive. The boys have gotten into minor trouble in the past (trespass, underage drinking) but have never been charged with a violent or serious offense.

Possible follow-ups:
1. Does age matter in scenario 1 or 2?
2. Does gender matter in scenario 2?
3. Does intoxication matter in scenario 3?
4. Would your response be different if these folks weren’t first offenders?
5. Would your response to scenario 3 be different if it were a kitten or puppy?
6. What effect, if any, does PETA and the ensuing publicity have?
7. What makes your sentence in scenario XXX more severe/lentient than in scenario XXX?

Thinking of the folks in the court you work with and the community you work in, do you think these charges and sentences of XXX are close to what the defendant will actually get?
Interview Questions for other Courtroom Workgroup Members

General Background & Work

▪ How many years have you been working as a XXX?
  o How many years have you been working for this specific office?
▪ About how many cases do you work on in a typical year?

General Cruelty Questions

▪ How many animal cruelty cases have you worked on (an estimate is fine)?
▪ Can you describe what a typical case might look like (you can leave out names
  and any other identifying details)?
▪ Are these cases much different to work on than other types of cases?
▪ For Defenders: Do you do anything different to prepare for these cases (assuming
  they’re relatively rare)?
▪ Do you think prosecutors do anything different in handling these cases?
▪ How common do you think animal abuse is in this County? (Is it a relatively rare
  crime? Pretty common?)

Legislation

▪ When the legislature decided to toughen animal cruelty legislation they seemed
  especially motivated by concerns that animal abusers might go on to abuse human
  beings:
  o What do you think about research that suggests that a relationship between
    animal cruelty and other forms of crime?
  o Can you recall any cases – your own or others’ - where a defendant
    harmed an animal prior to engaging in other criminal activity?
▪ The felony legislation requires that there be no justification for the actions
  committed by the defendant, that the animals suffer serious injury and that the act
  be especially depraved or sadistic. How would you, personally, determine if a
  case:
Is without justification, that is, under what circumstances might harming an animal be acceptable (prompts: self-defense or defense of another person? Defense of another animal? Defense of property? Discipline or training?)

- Involves serious injury (Bruises? Stitches?)
- Includes actions that are depraved or sadistic, that is what types of actions on the part of the accused might elevate a case to the felony level? (Kicking a dog? Drowning unwanted kittens? Stomping on a hamster?)

- Could you tell me about a little more about the types of factors that might make you see a particular case as more or less serious? (Prompts: how about …, quality of the evidence, motivation of the defendant, characteristics of the defendant such as prior record, relationship to animal….).

- In your opinion and/or experiences, do you believe that the passage of felony animal abuse legislation lead to any changes in charging and case processing decisions? (Things have/haven’t changed a lot in the past decade)

- Do you believe the criminal justice system is doing too little or too much to deal with animal cruelty, or do you believe the amount of attention devoted to animal cruelty is appropriate?

- Do you think prosecutors give these cases too much attention, not enough attention or about the right amount of attention.

CRWG Questions (Intro re: The next questions ask about the way things work in this particular office. The first few questions are general, not about animal cruelty, though feel free to include any examples relating to AC cases)

- Do you frequently work with the same prosecutors and defense attorneys/judges?

- How would you characterize the relationship amongst prosecutors, judges and defense attorney’s in X county? (prompts: is it cooperative? Do you socialize personally or professionally?)

- In general, would you say that there is an overall consensus between you and your colleagues – including the bench and defense – regarding how cases should be handled? (If answers to above question indicate a poor relationship, instead ask if there is general disagreement?)

  - When there is disagreement, how does this affect negotiations?
  - Would you say these cases are more likely to go to trial?

- For Defenders: Thinking of the bench in this county, how would you characterize judicial receptivity to prosecutorial sentence recommendations?
• For Judges: Do you frequently receive sentencing recommendations from prosecutors? Do you usually consider these recommendations in your sentencing decisions?

• Returning specifically to animal cruelty cases – Do you feel that there is an overall consensus among your colleagues as to the appropriate outcome for these types of cases?
  o If not, how do you handle such cases?
  o Would you say more cruelty cases have gone to trial than other types of cases? Can you give me an estimate of how many have gone to trial?

• For Defenders: In your experience, in terms of plea negotiations, would you say these cases are more difficult, less difficult or not much different than other types of cases?

Environmental Influences

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  o What did you think of this coverage?

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  o If yes, do you recall the overall sentiment?
  o What did you think of this response?

• Do you believe a prosecutor’s decisions in charging and plea bargaining should reflect public opinion to any degree or do you believe that, as “experts” on the law and legal system, prosecutors should not be influenced by public opinion?

Hypotheticals
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4. Two 16 year-old boys are drinking at the home of one of the boys and are intoxicated. One of them trips over the family dog and she nips at him. In response he grabs a baseball bat and beats her unconscious. They then take the dog out back and set her on fire. She does not survive. The boys have gotten into minor trouble in the past (trespass, underage drinking) but have never been charged with a violent or serious offense.

Possible follow-ups:
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2. Does gender matter in scenario 2?
3. Does intoxication matter in scenario 3?
4. Would your response be different if these folks weren’t first offenders?
5. Would your response to scenario 3 be different if it were a kitten or puppy?
6. What effect, if any, does PETA and the ensuing publicity have?
7. What makes your sentence in scenario XXX more severe/lenient than in scenario XXX?

Thinking of the folks in the court you work with and the community you work in, do you think these charges and sentences of XXX are close to what the defendant will actually get?
Table B-1: Prosecutor Beliefs on the Seriousness of Animal Cruelty and Rock Thrower Outcome

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Animal Cruelty Law</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/4</td>
<td>Okay as is</td>
<td>Misdemeanor -&gt; ACOD*</td>
<td>Restitution; Community service</td>
</tr>
<tr>
<td>2/2</td>
<td>Okay as is</td>
<td>Misdemeanor</td>
<td>Community service</td>
</tr>
<tr>
<td>2/3</td>
<td>Okay as is</td>
<td>Misdemeanor</td>
<td>Restitution</td>
</tr>
<tr>
<td>6/2</td>
<td>Okay as is</td>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>11/1</td>
<td>Okay as is</td>
<td>Misdemeanor</td>
<td>Probation; Anger management</td>
</tr>
<tr>
<td>1/1</td>
<td>Needs Changes</td>
<td>Misdemeanor</td>
<td>Probation – three years; Anger management; Restitution, Order of Protection for dogs; Consider a ban on future animal ownership</td>
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<tr>
<td>2/1</td>
<td>Needs Changes - Less Attention</td>
<td>Misdemeanor</td>
<td>Probation, Mental Health evaluation</td>
</tr>
<tr>
<td>3/1</td>
<td>Needs Changes</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
<tr>
<td>3/2</td>
<td>Needs Changes</td>
<td>Misdemeanor</td>
<td>Probation; Mental Health evaluation; Community service, Ban on future pet ownership</td>
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<tr>
<td>4/1</td>
<td>Needs Changes</td>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>3/3</td>
<td>Needs Changes</td>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>5/1</td>
<td>Needs Changes</td>
<td>Felony</td>
<td>Probation; Anicare</td>
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<tr>
<td>6/1</td>
<td>Needs Changes</td>
<td>----*</td>
<td>----**</td>
</tr>
<tr>
<td>7/1</td>
<td>Needs Changes</td>
<td>Felony</td>
<td>Probation; Counseling; Community service</td>
</tr>
<tr>
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<td>Needs Changes</td>
<td>Felony</td>
<td>Interim probation;</td>
</tr>
<tr>
<td>Date</td>
<td>Status</td>
<td>Charge</td>
<td>Restitution</td>
</tr>
<tr>
<td>--------</td>
<td>----------------</td>
<td>-----------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>8/2</td>
<td>Needs Changes</td>
<td>Misdemeanor -&gt; Violation*</td>
<td>Restitution; Community service</td>
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<tr>
<td>9/1</td>
<td>Needs Changes</td>
<td>Misdemeanor</td>
<td>Weekend jail; Probation; Restitution</td>
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<td>10/1</td>
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<td>Misdemeanor -&gt; Violation*</td>
<td>Community service; Consider a weekend in jail</td>
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<tr>
<td>12/1</td>
<td>Needs Changes</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
</tbody>
</table>

* The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.
** I was unable to complete the vignettes with this prosecutor due to time constraints.

Table B-2: Prosecutor Beliefs on the Seriousness of Animal Cruelty and Ferret Outcome

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Animal Cruelty Law</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/4</td>
<td>Okay as is</td>
<td>Felony</td>
<td>Probation; Anger management</td>
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<td>2/2</td>
<td>Okay as is</td>
<td>Misdemeanor</td>
<td>Counseling</td>
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<td>Fine</td>
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<tr>
<td>6/2</td>
<td>Okay as is</td>
<td>Felony</td>
<td>Jail</td>
</tr>
<tr>
<td>11/1</td>
<td>Okay as is</td>
<td>Felony</td>
<td>Probation; Anger Management</td>
</tr>
<tr>
<td>1/1</td>
<td>Needs Changes</td>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>2/1</td>
<td>Needs Changes - Less Attention</td>
<td>Misdemeanor -&gt; Violation*</td>
<td>Counseling</td>
</tr>
<tr>
<td>3/1</td>
<td>Needs Changes</td>
<td>Felony</td>
<td>Jail – short term – followed by probation</td>
</tr>
<tr>
<td>3/2</td>
<td>Needs Changes</td>
<td>Felony and Domestic Violence charge</td>
<td>Jail – six month – followed by probation - five years, but only if the girlfriend cooperates; Counseling</td>
</tr>
<tr>
<td>4/1</td>
<td>Needs Changes</td>
<td>Felony and Domestic Violence charge</td>
<td>Jail followed by probation</td>
</tr>
</tbody>
</table>
3/3  | Needs Changes | Felony | Jail followed by probation
---|---|---|---
5/1  | Needs Changes | Felony – reduce to misdemeanor if girlfriend ceases to cooperate | Jail followed by probation but only if the girlfriend cooperates.
6/1  | Needs Changes | ---- | ----
7/1  | Needs Changes | Felony - tentative | Jail
8/1  | Needs Changes | Felony | Jail followed by probation; Counseling
8/2  | Needs Changes | Felony – tentative -> Misdemeanor | Interim probation – one year, then reduce to misdemeanor with misdemeanor probation; Counseling
9/1  | Needs Changes | Misdemeanor | Jail – six months – followed by probation – five years; Counseling
10/1 | Needs Changes | Felony -> Misdemeanor | Probation – three years; Anger Management
12/1 | Needs Changes | Felony | Weekend jail; Probation

* The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.
** I was unable to complete the vignettes with this prosecutor due to time constraints.

Table B-3: Belief in the “the Link” and Rock Thrower Outcome

<table>
<thead>
<tr>
<th>Belief Level</th>
<th>Prosecutor</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Believe</td>
<td>3/1</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
<tr>
<td>Believe</td>
<td>3/2</td>
<td>Misdemeanor</td>
<td>Probation; Mental Health evaluation; Community service, Ban on future pet ownership</td>
</tr>
<tr>
<td>Believe</td>
<td>3/3</td>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>Believe</td>
<td>4/1</td>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>Believe</td>
<td>5/1</td>
<td>Felony</td>
<td>Probation; Anicare</td>
</tr>
<tr>
<td>Believe</td>
<td>9/1</td>
<td>Misdemeanor</td>
<td>Weekend jail; Probation;</td>
</tr>
</tbody>
</table>
Believe | 11/1 | Misdemeanor | Probation; Anger management
Believe | 12/1 | Misdemeanor | Probation; Restitution
Probably | 1/1 | Misdemeanor | Probation – three years; Anger management; Restitution, Order of Protection for dogs; Consider a ban on future animal ownership
Probably | 2/3 | Misdemeanor | Restitution
Probably | 7/1 | Felony | Probation; Counseling; Community service
Research Based | 1/4 | Misdemeanor -> ACOD* | Restitution; Community service
Research Based | 2/1 | Misdemeanor | Probation, Mental Health evaluation
Research Based | 6/1 | --- | ---
Research Based | 8/1 | Felony | Interim probation; Restitution
Research Based | 10/1 | Misdemeanor -> Violation* | Community service; Consider a weekend in jail

* The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.
** I was unable to complete the vignettes with this prosecutor due to time constraints.

Table B-4: Belief in the “the Link” and Ferret Outcome

<table>
<thead>
<tr>
<th>Belief Level</th>
<th>Prosecutor</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Believe</td>
<td>3/1</td>
<td>Felony</td>
<td>Jail – short term – followed by probation</td>
</tr>
<tr>
<td>Believe</td>
<td>3/2</td>
<td>Felony and Domestic Violence charge</td>
<td>Jail – six month – followed by probation - five years, but only if the girlfriend cooperates; Counseling</td>
</tr>
<tr>
<td>Believe</td>
<td>3/3</td>
<td>Felony</td>
<td>Jail followed by probation</td>
</tr>
</tbody>
</table>
The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.

* I was unable to complete the vignettes with this prosecutor due to time constraints.

Table B-5: Population Density and Rock Thrower Outcome

<table>
<thead>
<tr>
<th>County</th>
<th>Population Density</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Less Than 100</td>
<td>Misdemeanor</td>
<td>Probation; Anger management</td>
</tr>
<tr>
<td>2</td>
<td>100 - 150</td>
<td>Misdemeanor</td>
<td>Probation, Mental Health evaluation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Misdemeanor</td>
<td>Community service</td>
</tr>
<tr>
<td></td>
<td>100 - 150</td>
<td>Misdemeanor</td>
<td>Restitution</td>
</tr>
<tr>
<td>8</td>
<td>151 - 200</td>
<td>Felony</td>
<td>Interim probation; Restitution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Felony -&gt; Misdemeanor</td>
<td>Probation – three years; Anger Management</td>
</tr>
<tr>
<td>Case No.</td>
<td>Range</td>
<td>Offense</td>
<td>Sentence</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
<td>---------</td>
<td>----------</td>
</tr>
<tr>
<td>1</td>
<td>551-600</td>
<td>Misdemeanor</td>
<td>Probation – three years; Anger management; Restitution, Order of Protection for dogs; Consider a ban on future animal ownership</td>
</tr>
<tr>
<td>2</td>
<td>100-150</td>
<td>Misdemeanor</td>
<td>Counseling</td>
</tr>
<tr>
<td>3</td>
<td>100-150</td>
<td>Misdemeanor</td>
<td>Counseling</td>
</tr>
<tr>
<td>4</td>
<td>551-600</td>
<td>Misdemeanor</td>
<td>Shock probation</td>
</tr>
<tr>
<td>5</td>
<td>1601-1650</td>
<td>Felony</td>
<td>Probation; Anicare</td>
</tr>
<tr>
<td>6</td>
<td>2151-2200</td>
<td>Felony</td>
<td>Probation</td>
</tr>
<tr>
<td>7</td>
<td>451-500</td>
<td>Felony</td>
<td>Probation; Counseling; Community service</td>
</tr>
<tr>
<td>8</td>
<td>151-200</td>
<td>Felony</td>
<td>Jail followed by probation; Counseling</td>
</tr>
<tr>
<td>9</td>
<td>151-200</td>
<td>Misdemeanor</td>
<td>Jail – six months – followed by probation – five years; Counseling</td>
</tr>
<tr>
<td>10</td>
<td>1101-1150</td>
<td>Misdemeanor</td>
<td>Community service; Consider a weekend in jail</td>
</tr>
<tr>
<td>11</td>
<td>Less Than 100</td>
<td>Felony</td>
<td>Probation; Anger Management</td>
</tr>
<tr>
<td>12</td>
<td>701-750</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
</tbody>
</table>

* The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed. ** I was unable to complete the vignettes with this prosecutor due to time constraints.

Table B-6: Population Density and Ferret Outcome
<table>
<thead>
<tr>
<th>County</th>
<th>Farm Density – Farms per 1000 Residents</th>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Less Than 0.01</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td></td>
<td>Less Than 0.01</td>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>5</td>
<td>.1-.9</td>
<td>Felony</td>
<td>Probation; Anicare</td>
</tr>
<tr>
<td>10</td>
<td>.1-.9</td>
<td>Misdemeanor -&gt; Violation</td>
<td>Community service; Consider a weekend in jail</td>
</tr>
<tr>
<td>12</td>
<td>1-3</td>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
<tr>
<td>1</td>
<td>1-3</td>
<td>Misdemeanor</td>
<td>Probation – three years; Anger management</td>
</tr>
</tbody>
</table>

*The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.

**I was unable to complete the vignettes with this prosecutor due to time constraints.
Restitution, Order of Protection for dogs; Consider a ban on future animal ownership

<table>
<thead>
<tr>
<th>Charge</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misdemeanor -&gt; ACOD*</td>
<td>Restitution; Community service</td>
</tr>
<tr>
<td>Felony</td>
<td>Shock probation</td>
</tr>
<tr>
<td>Felony</td>
<td>Probation; Counseling; Community service</td>
</tr>
<tr>
<td>Felony</td>
<td>Interim probation; Restitution</td>
</tr>
<tr>
<td>Misdemeanor -&gt; Violation**</td>
<td>Restitution; Community service</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Probation; Restitution</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Probation; Mental Health evaluation; Community service, Ban on future pet ownership</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Probation</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Weekend jail; Probation; Restitution</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Probation; Anger management</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Probation, Mental Health evaluation</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Community service</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Restitution</td>
</tr>
</tbody>
</table>

* I was unable to complete the vignettes with this prosecutor due to time constraints.
** The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.

Table B-8: Farming Population and Ferret Outcome

<table>
<thead>
<tr>
<th>County</th>
<th>Farm Density – Farms per 1000 Residents</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Less Than 0.01</td>
<td>----</td>
</tr>
<tr>
<td></td>
<td>Less Than 0.01</td>
<td>Felony</td>
</tr>
<tr>
<td>5</td>
<td>.1-.9</td>
<td>Felony – reduce to misdemeanor if girlfriend ceases to cooperate</td>
</tr>
<tr>
<td>10</td>
<td>.1-.9</td>
<td>Felony -&gt; Misdemeanor**</td>
</tr>
<tr>
<td>12</td>
<td>1-3</td>
<td>Felony</td>
</tr>
<tr>
<td>1</td>
<td>1-3</td>
<td>Felony</td>
</tr>
</tbody>
</table>

* I was unable to complete the vignettes with this prosecutor due to time constraints.
** The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Felony and Domestic Violence charge</th>
<th>Jail followed by probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>1-3</td>
<td>Felony - tentative</td>
<td>Jail</td>
</tr>
<tr>
<td>7</td>
<td>1-3</td>
<td>Felony</td>
<td>Jail followed by probation; Counseling</td>
</tr>
<tr>
<td>8</td>
<td>1-3</td>
<td>Felony – tentative</td>
<td>Interim probation – one year, then reduce to misdemeanor with misdemeanor probation; Counseling</td>
</tr>
<tr>
<td>3</td>
<td>3.1-5</td>
<td>Felony</td>
<td>Jail – short term – followed by probation</td>
</tr>
<tr>
<td>9</td>
<td>3.1-5</td>
<td>Felony</td>
<td>Jail – six months – followed by probation – five years; Counseling</td>
</tr>
<tr>
<td>11</td>
<td>7.1-9</td>
<td>Felony</td>
<td>Probation; Anger Management</td>
</tr>
<tr>
<td>2</td>
<td>11.1-13</td>
<td>Misdemeanor - Violation**</td>
<td>Counseling</td>
</tr>
<tr>
<td>11.1-13</td>
<td>Misdemeanor</td>
<td>Counseling</td>
<td></td>
</tr>
<tr>
<td>11.1-13</td>
<td>Maybe a felony - Misdemeanor*</td>
<td>Fine</td>
<td></td>
</tr>
</tbody>
</table>

* I was unable to complete the vignettes with this prosecutor due to time constraints.

** The prosecutor would initially like to see defendant charged with the first charge listed but would allow the defendant to plea to the second charge listed.