

Breed Profile: *The German Shepherd*



The German Shepherd dog was originally developed in Germany as a sheep herding dog in the late 19th century. Early members of the breed were straight back and long legged and generally

had a square or more upright build than the modern day German Shepherd dog, whose spine has a distinct sloping feature. The breed was ranked number three in registrations for 2008 by the AKC. Despite their popularity, German Shepherds, because of strong protective tendencies, continue to be disproportionately involved in incidents involving dog bites. This finding has been noted frequently in epidemiological studies and confirmed in a well-known animal behavior study. German Shepherds, however, do not appear to be over-represented in fatal dog attacks, leaving that distinction to Rottweilers and Pit bull Terriers. It is extremely important to note that tremendous variability exists in the temperament between individuals. Generally, individuals belonging to this breed, particularly if they are male, left unaltered, and not maintained properly, need to be socialized and obedience trained from an early age to dampen aggressive tendencies.

How can the animal behavior expert help the dog bite attorney?

1. Opine about breed behavioral proclivities;
2. Opine about the dangerous or vicious nature of the dog in question;
3. Determine the behavioral capabilities of the dog at the time the incident happened;
4. Determine if provocation was a factor in causing the dog to bite;
5. Opine about the care and maintenance of a dog, and if these factors influenced the dog's behavior;
6. Determine if the incident was foreseeable;
7. Identify the dog which did the biting if multiple dogs are involved in an incident;
8. Determine if the alleged gross misconduct of an owner had impact upon the dog's behavior;
9. Reconstruct how the incident must have happened for the purposes of discounting or supporting testimony in the case.
10. Conduct a behavioral examination to determine if the dog was dangerous by nature, or if it had the potential to engage in the behavior that led to injury of the victim.

Dr. Polsky is available nationwide for both civil and criminal matters. www.dogexpert.com

Dog Behavior & the Law

Published by
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Dog bite statute does not apply to chimp mauling in Connecticut

When Travis, a 200 pound chimpanzee, brutally attacked 55-year-old Charla Nash in Stamford, Connecticut in February 2009, lawmaker's across the country were on notice about the potential danger non-domesticated animals, kept as pets, present to people. Not unexpectedly, shortly thereafter, a \$50 million lawsuit was filed against the owner of Travis, Sandra Herold.

The lawsuit may very well affect animal bite law in Connecticut and other states, and revision of the Connecticut law, which currently states that a bite inflicted by a wild animal, such as a chimpanzee, is not encompassed by strict statutory liability, as in the case with dog bites. Thus, given the law as it currently stands, the owner of Travis will be liable only if she knew that Travis possessed dangerous propensities prior to the incident, or if her negligent handling of Travis was the proximate cause of the attack on the plaintiff.

Given the publicity and concern this incident generated, lawmakers in Connecticut may be moving to the position that attacks by wild animals kept as pets are treated like dog bites: strict liability barring any mitigating circumstances such as provocation or assumption of risk. Owners need not know about any prior dangerous propensities in the animal to be liable for the injury inflicted by an animal they own or keep. On a national level, the attack also engendered concerns of Congress: shortly after the incident, the House of Representatives

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received his academic training at the The Ohio State University (B.Sc. 1970 and then at the Univ. of Leicester (England) where he earned the doctorate in animal behavior in 1976. After finishing his doctoral studies, he served for two years as a Research Associate in animal behavior at the University of Birmingham (England). From 1976-1981, Dr. Polsky was a post-doctoral fellow in animal behavior at UCLA. During his five years at UCLA, Dr. Polsky engaged in further studies and research in animal behavior. Dr. Polsky is a member of the American Psychological Association, the Animal Behavior Society, the American Assoc. for the Advancement of Science, and an associate member of the American Society of Veterinary Behaviorists. He is certified as an applied animal behaviorist by the Animal Behavior Society. Since 1981, Dr. Polsky's practice in Los Angeles has focused on the treatment of canine and feline behavior problems (www.drpolksky.com). He has published over 50 papers, many peer-reviewed, in veterinary and animal behavior journals. Dr. Polsky has served as an expert on many occasions for both plaintiff and defense attorneys throughout the United States. He resides in West Los Angeles with his family and several dogs. Available nationwide.

Dog Behavior & the Law

A newsletter for attorneys litigating dog related injury cases

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Summer, 2009



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For electronic delivery or to be removed from this mailing, email Dr. Polsky
Please deliver this newsletter to attorneys handling premises liability/personal injury dog bite cases

Assessing pain aggression in dog bite cases

Occasionally, in personal injury lawsuits involving dog bites, the animal behavior expert needs to determine if a dog behaved aggressively because it experienced pain or discomfort. For example, this might happen if one suspects the dog was provoked to bite the plaintiff, or when the issue of negligence is involved, for instance, if the dog bites the plaintiff because of being mishandled during a veterinary examination.

The motivation behind a dog's aggressive reactivity needs to be carefully considered if one suspects pain to be the impetus behind an attack. Certain behavioral criteria should be used to make a differential diagnosis. Information about the following is usually relevant: (a) The context in which the incident happened; (b) The behavioral history of the dog; (c) Medical condition of the dog prior to and at the time of the incident; (d) The behavior of the plaintiff prior to and immediately preceding the attack; (e) The dog's reaction to the plaintiff's behavior.

The above information needs to be gathered and analyzed together to make the proper diagnosis of pain elicited aggression. Some aspects may be more significant than others, however. For example, when a dog experiences pain, vocalization may happen and then attack shortly thereafter, but not necessarily.

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Pain aggression, con't.

If the dog vocalizes, usually it's a high pitched sound, but a dog may only growl and then immediately bite if it anticipates similar interaction that earlier caused pain. Generally, an aggressive reaction caused by pain has a greater chance of occurring when several variables come into play simultaneously. The discovery needed to identify pain-elicited aggression is summarized below. In sum, it is important to ascertain the dog's history, relevant contextual variables at the time of the incident, and how the dog was behaving immediately before the painful stimulus was applied.

Variable of inquiry	Example of information needed
Context	Strange or familiar environment? Strange or familiar people?
Behavioral History	Previous history of displaying aggression, particularly in response to pain?
Medical Condition	Known medical condition, such as arthritis, recent injury?
Behavior of victim	How did the victim interact with the dog immediately before the attack?
Reaction of dog	What did the dog do in terms of its behavior, working forward in time up to the actual display of aggression?

In addition, a rating system can be used. At one extreme, without pain, a dog has a relaxed demeanor, the gait is normal and the dog shows no discomfort when handled. A dog experiencing severe pain displays a tense demeanor, often accompanied by shivering, and little or no body movement. A dog in severe pain frequently will not stand or walk. Breathing may be labored. Somewhere between these extremes is the dog experiencing mild pain, and when this happens, the dog may limp, general movement becomes restricted, and the dog may assume a quiet attitude. Dogs in moderate to severe pain may appear depressed and often show little interest in their surroundings. Such behavior is understandable because dogs usually behave in ways to minimize pain. In sum, differentially diagnosing pain from other kinds of aggression is needed to determine if pain was the impetus causing the dog to bite.

Chimp mauling, con't.

overwhelmingly passed a bill making it illegal to buy or transport primates across state lines to keep them as pets.

The incident happened when Travis escaped from the defendant's home, and according to news reports, she summoned Nash, a friend of some thirty years, to assist in capturing Travis. Travis knew Nash. Details of how the incident unfolded remain conflicting, however. Namely, if the attack commenced outside during the capture part of the sequence, or after the plaintiff came into the house of the defendant. Regardless, at some point, he viciously attacked Nash on her hands and face, and when police arrived, he tried to attack one of the officers, who in turn shot and killed Travis. The victim was severely mauled. She underwent several hours of surgery, suffered brain damage, lost her nose, sustained possible blindness, and for a time she remained in a medically induced coma.

The defendant probably made the mistake of blaming the victim for the attack by stating that the attack happened because Nash changed her hairdo or because she was driving a different car, thus causing Travis to become protective. Initially, it was uncertain if she medicated Travis

with xanax (a widely used short acting sedative) on the day of the incident, but subsequent lab reports confirmed that Travis was drugged.

Prior to the incident, Travis was somewhat of a celebrity around town. He was featured in television commercials for Coca-Cola and Old Navy. Those who knew Travis say he was treated like a person: he drank wine from stemmed glasses, ate at the table, dressed himself, and was computer literate.

However, there was also the dark side to this well-known chimp. Allegedly, in 1996 he bit a woman on her hand and then tried to drag her into a car. In 1998, he allegedly bit another person, and in 2003 he escaped from the defendant's car and wandered into downtown Stamford, disrupting traffic. In 2003, a former animal control officer says he warned the defendant about the dangerous nature of Travis.

Given the current law in Connecticut, the success of the plaintiff's lawsuit may hinge on proving that the owner knew of Travis' dangerous propensities, or that she acted in a negligent manner in the handling of Travis at the time of the incident.

The Bottom Line

Beeping noise from hearing aid causes dog to attack

The external stimuli eliciting dog attacks are often predictable, but in one instance in Florida the external stimulus causing a dog attack was rather unusual. The case in question was an attack on a 86-year-old lady whose hearing aid fell from her ear as she stooped over to attach the leash to her daschund. When the hearing aid hit ground, it started beeping with an amplified high-pitched shrill sound, and her nearby dog immediately attacked, biting her in the face. *The bottom line: High pitched shrill sounds can trigger dog attacks on humans because they mimic the sounds of prey species, such as rodents.*

Warm temperature, facial injury and dog bites

Findings published in the J. Otolaryngology - Head and Neck Surgery (2008, Vol. 140, pp. 354-357) found that dog attacks on children happen most frequently during summer. This is not surprising, since this is the time when children are outdoors, hence, more likely to encounter unfamiliar dogs. Facial wounds were very common. Moreover, the treatment outcome was noted, and wound healing was found to be excellent despite an earlier contaminated or infected wound. *The bottom line: Dog bites to children occur most frequently during summer, and when facial injuries occur, prognosis for injury repair is excellent.*

Blunt injury in dog bite cases

Blunt injuries from dog bites commonly occur (Journal of Pediatric Surgery (2001, Vol. 36, pp.1115-1117). Thirty-five children were studied at Denver's Children Hospital. All were hospitalized because of serious dog bite injury. From the population of thirty-five, 17% sustained blunt injury that was life-threatening. Blunt injury consisted of vascular damage, neurological damage and crush injuries. *The bottom line: When a child sustains a dog bite injury, lacerations, punctures, abrasions usually happen, but serious blunt damage to the body might also occur.*

Baby swings can trigger fatal dog attacks

Animal behaviorists know that various kinds of movement can trigger a predatory reaction in dogs. In this regard, a new predatory trigger has been identified: A child moving on a swing (J. Forensic Science, 2006, Vol. 51, pp. 403- 406). In 2003, in Baltimore, a two-week old infant was dragged from his swing and killed by a pit bull. The mother had left the child to answer the door. In another instance in Tampa in 2000, an 18-day old infant was killed in a swing after his mother had left the room to warm a bottle. *The bottom line: Caution is needed when children are on swings in the presence of unrestrained, medium to large size dogs.*

San Francisco Dog Mauling Update

In what might be the final word on the infamous San Francisco dog mauling case, defendant Marjorie Knoller had her second-degree murder conviction reinstated in a September 2008, ruling. In the jury trial, Knoller was convicted of second-degree murder in 2002 in Los Angeles, but subsequently the trial judge, James Warren, took the unusual step of overturning the conviction, and reducing the verdict to involuntary manslaughter. Warren reasoned that there was a lack of evidence to support second-degree murder, which also was the opinion of most legal experts following the case.

Subsequently, during the next six years, the case was reviewed at the appellate level, and then by the California Supreme Court, which ruled the case return to the Superior Court for resolution. When this happened, Superior Court Judge Woodlark determined that Knoller acted with "conscious disregard for human life". She felt that this was the legal standard needed for a second-degree murder conviction involving a dog attack. The incident happened when Knoller's two 120 lb. Presa Canaro dogs, Bane and Hera, attacked Diane Whipple, a 33-year-old lacrosse court coach in the mutually shared hallway of a Pacific Heights apartment building in January 2001. Woodlark noted that Knoller did little to stop the attack after it started, and felt that after the 7 minute attack stopped, Knoller disregarded Whipple as she laid dying in the hallway.

In the months preceding the trial and during the trial, the case received much publicity, and became rather bizarre because the defendants procured the dogs from San Quentin prison inmate, Paul Schneider, a ringleader in the Aryan brotherhood, who from prison was trying to establish a guard dog business on the internet called "Dog-of-War." Subsequently, the defendant and her husband, both practicing attorneys in San Francisco at the time of the incident, adopted Schneider as their son, only three days after Whipple's death. Shortly after the mauling, both defendants appeared on national television, defending themselves and their dogs, claiming that the victim might have been on steroids and her perfume provoked the dogs. Further, allegations were made that Knoller had sex with the dogs, but this was disallowed as evidence at trial. Many legal experts felt that the defendants were their own worst enemy, however. Throughout this ordeal, California appellate attorney Dennis Riordan, emphasized the remorsefulness of Knoller, that the second-degree murder conviction was unconstitutional, and that the case was politically driven. Visit <http://www.sfdogmauling.com> for more information on this case.