

DANGEROUS DOG LAWS: FAILING TO GIVE MAN'S BEST FRIEND A FAIR SHAKE AT JUSTICE

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"Addressing the real issues of crime, poverty, animal abuse, ignorance, greed and man's lust for violence is far too daunting a task for most people, and so we blame the dogs for our societal ills."¹

"In Marion County [Florida], if a dog leaves [his] owners' property and [scares] somebody else, that dog *will* be declared dangerous."²

I. INTRODUCTION

It is estimated that 68 million domesticated dogs³ live in United States households.⁴ While dogs continue to assist humans as service or work animals as they have for thousands of years, today their primary role in the United States and most western civilizations is as companions to humans. This has led to dogs being deemed "man's best friend."⁵ Yet, despite this privileged status accorded to dogs as compared to other animals, the American legal system treats dogs as the property of humans.⁶ Regarding the best interests of dogs and the people who love them, there are both weaknesses and strengths in this designation as property.⁷

When humans and dogs--both species that can have violent tendencies--live in close proximity to each other, there should be no surprise when someone gets injured. Annually, approximately 800,000 Americans seek medical attention for dog bites⁸, and the majority of those bitten are children between the ages of five and nine⁹. Causation is varied and far-ranging, but data collected over the course of 36 years indicate that dogs who live their lives as "yard dogs" tethered to chains are far more likely to bite humans than dogs who run at large.¹⁰

The United States Department of Health and Human Services' Centers for Disease Control and Prevention cite the average number of people killed annually by dogs at 12.¹¹ Again, most are children, under age 12.¹² Fatal attacks constitute roughly 0.0002 percent of the annual total number of people bitten.¹³

Contemporary news reports have profiled various vicious dog attacks, particularly those resulting in human deaths. For example, in 2001 the brutal mauling death of a San Francisco woman received intense national media coverage.¹⁴ In 1989 in Florida a 73-year-old woman was bitten more than 300 times by three dogs and killed when she attempted to retrieve her newspaper from her driveway.¹⁵

These events are profoundly tragic and indicate serious problems with some animals--and more accurately, with their owners--that need to be addressed to ensure public safety.¹⁶

But what is not reported in these stories is the indisputable conclusion borne out by empirical statistical evidence: such incidents are extremely rare and unusual.

The fact is that far more humans are killed or injured annually by other animals, such as cattle¹⁷--a species most humans do not perceive as dangerous. Far transcending deaths or injuries to humans caused by dogs, cattle, or other animals are the intentionally inflicted deaths or injuries caused by other humans. Humans are far more likely to be killed by being intentionally

or unintentionally shot or stabbed by other humans than they are at being killed by dogs. In 2003 alone, 29,174 humans were killed by people shooting firearms.¹⁸

Sadly, children are more than 100 times more likely to suffer intentionally inflicted injuries or deaths at the hands of their parents or caregivers than they are by dogs.¹⁹ In 2003, at least 1041 children under age 14 were killed by their parents or caregivers.²⁰

Yet, heightened media reporting of dog attacks has resulted in a public perception of dogs as inherently vicious creatures likely to turn on their human house mates or other innocent victims at any moment. While caution is nonetheless necessary in any situation where one deals with any animal--especially interactions involving very young children--the media-inflamed hysteria over "vicious" dogs²¹ has resulted in innocent dogs merely engaging in normal dog behaviors, such as running and barking, being treated as abnormal, dangerous, or even vicious criminals deserving of lifelong confinement or even death.²²

Most states now prosecute dogs believed to exhibit or engage in violent behaviors under "Dangerous Dog" laws. In too many jurisdictions, the Dangerous Dog classification process is a constitutionally flawed, inherently subjective proceeding in which a dog--oftentimes one who is merely engaging in normal dog behaviors--is far more likely to be declared dangerous than not.²³ Often the dogs' human companions are not equated state and federal constitutional protection of their property rights commensurate with their property interests in their dogs.²⁴ Dog owners who at most should probably be cited for dogs running-at-large or violations of leash laws, are charged high fees and sanctions and are forced to confine their dogs to uncomfortably small enclosures for the rest of their lives. Worse yet, some have had to fight well-endowed local governments to ward off unwarranted death sentences imposed upon their canine friends.²⁵

The real story behind the average Dangerous Dog classification process is that too many local governments are declaring too many dogs "dangerous," probably because they fear being held liable in the future should the dogs at issue actually eventually attack a human.²⁶ In many cases there is no evidence that these dogs possess truly vicious propensities and are engaging in anything other than normal dog behaviors.²⁷ Subjective standards that accord overwhelming weight to the opinions of those who believe they were approached in "a menacing fashion" or in "an apparent attitude of attack" by a dog--terms used in some statutes or local ordinances--allow the liberal application of the "dangerous" classification to dogs who are merely engaging in normal dog behaviors that are not intended to--and do not--culminate in bites or attacks.

Irrefutably, such actions are an abuse of discretionary governmental power and a breach of justice.

With specific focus on Florida law, this Article explores the validity of non-breed-specific Dangerous Dog laws.²⁸ Part II of this Article discusses the development of the domesticated dog and his relationship with humans. Part III explores how dogs engage in particular behaviors to communicate with other animals, including humans, and also examines normal and abnormal aggressive dog behavior. Part IV analyzes fatal and non-fatal aggressive dog behavior. Part V reviews the development of the concept of dogs as the property of humans. Part VI explores constitutional protections available to humans as owners of dogs, and government's ability to intrude upon those rights under its police power. Part VII examines Dangerous Dog laws in general, while Part VIII provides a detailed historical review of Florida's state Dangerous Dog law including events that spurred its creation, legislative intent, constitutional flaws in the initial law, general content, process, and application. Part VIII also looks at selected Florida counties' Dangerous Dog ordinances. Part IX presents case studies that illustrate serious flaws in the construction and application of Florida's state and selected local governments' Dangerous Dog

laws. Part X analyzes the confusion resulting from the inartfully drafted state statute that attempts to instruct the parties on the legal procedure that is to follow a dog being declared "dangerous." Part XI discusses whether local government are classifying dogs "dangerous" who are not truly dangerous because they fear being held legally liable in the future should the dogs at issue eventually harm humans or other animals. Part XII offers recommendations for correcting problematic components of Dangerous Dog laws, and for addressing issues underlying most Dangerous Dog cases.

The Article concludes that too many dogs who are not truly dangerous are being classified "dangerous" for a variety of unfounded reasons ranging from the failure of local governments to understand the legislative intent underlying the law, to improper weighing of expert testimony on the dogs' true behavior as compared to the subjective opinions of the complaining parties, to local governments' speculative fear of being held liable in the future should the dogs eventually cause real harm to a human or other animal. The end result is that man's best friend is not receiving the fair shake at justice that he deserves.

II. EVOLUTION OF THE HUMAN-DOG RELATIONSHIP

A. Domesticated Dog Development and Early Life with Humans

Domesticated dogs, known by their Latin name of *Canis lupus (familiaris)*²⁹, are descended from wolves, *Canis lupus*.³⁰ This genetic conclusion was only recently determined³¹ but nonetheless significantly impacts the manner in which we humans must consider the "propensities and nature of an animal that is such an integral part of our society."³²

Wolves are predatory animals.³³ They have existed for thousands of years by tracking, stalking, running down, and killing prey, with special expertise in hunting in packs.³⁴

As early human populations increased and coagulated into communities, wolves foraged for food scraps and waste around these civilizations, which placed them in closer proximity to humans.³⁵ The closer contact between humans and wolves eventually eroded wolves' natural fearfulness of interaction with humans, and vice versa.³⁶ Wolves began to follow humans on hunts, aiding them with tracking and cornering stalked prey, and participating in the kill.³⁷

Humans recognized the benefit in receiving hunting assistance from creatures with swifter tracking capacities and an enhanced sense of smell, and the human-*Canis lupus* bond was formed.³⁸ By the time of the last Ice Age, around 12-14,000 years ago, true human domestication of *Canis lupus*, the first such domestication of any wild animal, became a common practice.³⁹

Separating these wild but recently domesticated *Canis lupus* from broader gene pools resulted in inbreeding and the emergence of physical and behavioral characteristics not seen comparatively in feral versions.⁴⁰ Traits essential to living in the wild, such as a high degree of alertness or sensitivity and quick reactions, were replaced over time through natural selection by behaviors such as docility and even temperament.⁴¹ Even these early humans did not want to live amongst vicious predators who could harm or kill them, and thus the developing wolf-dog who could not resist attacking humans would be killed or run out of camp.⁴²

Wolves function within their packs according to a social hierarchy that allows dominant members to be in charge, while subservient ones defer to stronger leaders.⁴³ Because wolves were accustomed to accepting such structure, when they assumed close cohabitation with humans they more readily allowed the thinking, dominant humans--who could wield weapons to hurt or kill wolves--to become the "alpha dogs" of the pack.⁴⁴

Wolves' physical traits also changed, and they developed smaller head shapes, brain capacities, and tooth size.⁴⁵ Consequently, *Canis lupus familiaris* genetically emerged due to changes in the dogs' environment because of living closely with humans in domesticated habitats.⁴⁶

Later, when most ancient human cultures became agriculturally based, dogs were used not only for the occasional hunt,⁴⁷ but, over thousands of years, for herding livestock, to carry heavy loads and pull carts or sleds, to guard people and possessions, as service animals, for the amusement of humans through activities such as baiting⁴⁸ and dog fighting, to control rodents, to assist on battlefields, sometimes as food themselves, and, in what has arguably become their most enduring role, for human companionship.⁴⁹

B. Changing Relationships, and Cohabitation With Good Dogs and Bad Dogs

As human civilizations advanced, cultures, such as the ancient Egyptians, began to collar and leash dogs, and keep them for companionship.⁵⁰ Around 1400 A.D. purebred dogs assumed an elevated role amongst the aristocracy and more privileged classes as status-symbol companions used for formal hunting, a "sport" reserved for the wealthy.⁵¹ However, just as they had for thousands of years, free-roaming mongrels lived intertwined with and alongside humans of all means.⁵²

The human-dog relationship continued to grow even more intermingled. Dogs continued to provide services and companionship to humans. Conversely, in most situations dogs received very little from humans in return for their services, subservience, and loyalty. Although select dogs might be permitted to sleep indoors and were provided food, most were expected to remain outside no matter the weather, and to find their own sustenance.⁵³

Because dogs were viewed as inferior creatures over which mankind has dominion, humans were usually free to viciously beat, injure, or kill them, whether the violence was justified or not.⁵⁴

Remarkably, beginning in the Middle Ages, some communities prosecuted dogs (and other animals such as pigs, cows, sheep, donkeys, birds, rats, and even insects) just as they would humans accused of crimes.⁵⁵ Animals were appointed legal counsel and tried for crimes such as killing, maiming, or injuring humans, or destroying property.⁵⁶ The animals themselves were held accountable for their actions as if they were capable of possessing the necessary *mens rea* to understand and choose to commit criminal acts.⁵⁷ The important point to note in relation to this Article, however, is that dogs generally received due process through a tribunal that took the proceedings seriously, appointed legal representation for them, and heard and weighed evidence before imposing a sentence (usually a violent one meant to instill retribution and act as a deterrent to future criminal acts being committed by other animals).⁵⁸ While the criminal prosecution of animals by a judicial tribunal might seem farcical and a mere relic of a less educated and conscious time period, it nonetheless continued into the twentieth century.⁵⁹

When the human population boomed, a transmogrification occurred regarding how humans perceived what constituted an acceptable lifestyle for dogs, who previously had had free reign to run--for thousands of years--through fields, forests, and open terrain. As human civilizations developed into urban and suburban communities, shedding small farms and rural living for citified centers, toleration of free-roaming dogs evaporated. "Dog catchers" were utilized to pick up stray dogs running-at-large who were usually killed en masse through barbaric methods such as clubbing in town squares, drowning, electrocution, and, as still utilized today in some

communities, gassing.⁶⁰ Metropolitan local governments instituted laws that required dog owners to have their dogs on leashes at all times while outside and off of their owners' property, and fined dog owners for allowing their dogs to run-at-large.⁶¹ Thus, dogs that were genetically designed and accustomed to partaking in large measures of physical exercise while traversing through undeveloped natural ranges now found their lifestyles radically altered when they were confined to backyards and tied or chained to trees, doghouses, and other anchors.

When cultures shifted from agrarian to industrialized societies, the household's father was absent from the home during the day.⁶² While some children attended schools, others were involved in the labor force until state or federal child labor laws were enacted prohibiting children less than various ages from working, and requiring mandatory school attendance.⁶³ In either event children also no longer remained at the family's residence during the day. While limited numbers of married women worked outside of the home, subsequent to the enactment of sweeping workplace reforms benefiting women's right to equal consideration to employment women entered the workplace in unprecedented numbers.⁶⁴ For the family dog this generally meant that the entire family left the home unattended for long periods of time at least five days of the week. The dog--still a pack animal--often spent his days leading a solitary and lonely life in the backyard.

Even though humans determined that dogs' unrestrained *modus vivendi* must end due to human needs, dogs did not necessarily agree with this decision. Following their natural instincts to run, explore, chase, forage, and otherwise live a dog's life, dogs dug under, leapt over, and squeezed through fences to run neighborhoods, chase milkmen, and wait on street corners for school children to come home. As human populations continued to increase and tolerance for dogs running at large further waned, dog catchers became better trained "animal control officers" with a mission to keep neighborhoods clear of loose dogs.⁶⁵

The surge in human population was accompanied by the introduction and growth of a new and deadly dog enemy--the automobile.⁶⁶ Now, for their own safety as well, dogs had to be confined to their owners' property.

C. Americans and Dogs Today

As noted *supra* in the Introduction to this Article, it is estimated that today approximately 68 million dogs live in some of the more than 115 million American households⁶⁷ (or somewhere on the property) which are inhabited by nearly 300 million Americans.⁶⁸ Most of these humans have dogs living with them for either companionship, protection, or both.

Of all the companion animals, dogs share a more privileged relationship with humans.⁶⁹ Generally, dogs in western cultures are seen as "loyal and faithful companion[s] who share[] our homes, our lives, and, not infrequently, our food and furniture as [] equal or near-equal member[s] of [] famil[ies]."⁷⁰ Dogs are named, touched affectionately, played with, and groomed.⁷¹ In return, most dogs provide unconditional affection which, recent studies have shown, positively benefits humans.⁷²

However, not all dogs experience such a rewarding relationship with humans. Millions are dumped at shelters and killed, or abandoned to the streets, each year.⁷³ Countless others are beaten, tortured, neglected, and killed by their owners or other humans.⁷⁴

James Serpell, Ph.D., section chief of the University of Pennsylvania's Animal Behavior and Human-Animal Interactions division, explains this schizophrenic human-canine relationship:

In symbolic terms, the domestic dog exists precariously in the no-man's-land between the human and non-human worlds. It is an interstitial creature, neither person nor beast, forever oscillating uncomfortably between the roles of high-status animal and low-status person. As a consequence, the dog is rarely accepted and appreciated purely for what it is: a uniquely varied, carnivorous mammal adapted to a huge range of mutualistic associations with people. Instead, it has become a creature of metaphor, simultaneously embodying or representing a strange mixture of admirable and despicable traits. As a beast that voluntarily allies itself to humans, the dog often seems to lose its right to be regarded as a true animal. . . . In our own culture, the dog has been granted temporary personhood in return for its unfailing companionship. But, as we have seen, this privilege is swiftly withdrawn whenever the dog reveals too much of its animal nature. In other words, we love dogs and invest them with quasi-human status, but only so long as they refrain from behaving like beasts.⁷⁵

Thus, our human culture both reveres and holds at arm's length our relationship with dogs. As with intra-human relationships, the essential ingredient to defusing conflict that predictably and understandably occurs with cohabitation of any species is to pay closer attention to what the other side is attempting to communicate, and to understand his or her motivation and needs. We cannot require dogs to study and understand our behavior before choosing to act on their perceptions; thus, we humans as the "higher species" must educate ourselves on the true nature of the dogs with whom we have lived for thousands of years, with the goal of better protecting ourselves and our canine friends.

III. DOG COMMUNICATION AND NORMAL AND ABNORMAL AGGRESSIVE BEHAVIOR IN DOGS

Humans and dogs communicate using very different systems. Consequently, both groups are likely to misinterpret or misunderstand what the other is attempting to communicate:

Because humans and dogs have different communication systems, misunderstandings may occur between the two species. A person may intend to be friendly toward a dog, or at least not threatening, but the dog may perceive the person's behavior as threatening or intimidating. Dogs are not schizophrenic, psychotic, crazy, or necessarily "vicious" when they display aggressive behavior.⁷⁶

The key to proper stewardship and management of dogs by people is to better understand how dogs communicate to us, and what they may perceive we are communicating to them through our actions and behaviors. This educated status will help to protect both humans and dogs from harm.

A. Dog Communication Behavior

Dogs communicate with other dogs, and humans, through auditory, visual, and olfactory methods.⁷⁷ The former two categories are the most relevant to understanding and properly assessing truly aggressive behavior in dogs.

Primary auditory communications fall into one of five categories:

1. Bark—communicates defense, play, greeting, lone call, call for attention, warning;
2. Grunt—communicates greeting, sign of contentment;
3. Growl—communicates defense warning, threat signal, play;
4. Howl—communicates need for assembly, other reasons unknown;
5. Whimper/whine—communicates submission, defense, greeting, pain, attention seeking.⁷⁸

According to one dog expert barking "is always a means of communication triggered by a state of excitement."⁷⁹ The bark is meant to sound the alarm and put all on notice to pay attention to what is happening.⁸⁰ A barking dog is usually not an attacking dog.⁸¹ While a dog may bark to warn humans he believes may be a threat to him, and may subsequently bite, it is the dog that is not barking that is more likely to bite: "[a] fearless dog that is intent on attacking is *silent*. It doesn't waste time barking, that is, sounding the alarm. It just rushes over and bites."⁸²

Some dogs emit vocal warning signals before they bite. Growling is more likely a pre-bite signal than barking.⁸³

Dogs also use visual communication via body movements and posture to display aggressive or nonaggressive behaviors.⁸⁴ An aggressive dog considering biting will have raised hackles, curled lips, and bared teeth.⁸⁵ He will also use facial communications, the most common of which is the direct stare.⁸⁶

B. Normal and Abnormal Aggressive Dog Behavior

Ancient humans weeded out aggressive dogs by killing them or running them off.⁸⁷ The remaining non-aggressive dogs bred and produced offspring who were likely also non-aggressive due to genetics.⁸⁸ At some point humans discerned that dogs could be intentionally bred to reinstitute aggressive behaviors which humans desired that dogs possess, for reasons such as fighting other animals to entertain humans;⁸⁹ to protect people and property;⁹⁰ and for image--that is, for humans to appear threatening and dangerous to other humans because they owned specific breeds with a reputation for being vicious⁹¹. When under the influence of humans who desired that such dogs act aggressively and who thus encouraged aggressive behavior and allowed them to act aggressively, these breeds developed a nasty reputation for being vicious animals.⁹²

The *Merck Veterinary Manual* ["*Manual*"], considered to be a reliable and comprehensive source of information on veterinary medicine and animal behavior, discusses aggression in dogs.⁹³ Importantly, the *Manual* emphasizes that some aggressive dog behaviors are *normal*, and even *desirable* by humans.⁹⁴

Aggression in dogs is manifested as dominance, fear, food-related, idiopathic, interanimal or interdog, maternal, pain, play, possessive, predatory, protective, redirected, and territorial aggressive behaviors.⁹⁵ One of the key conditions indicating that a dog is truly aggressive is that the aggressive behavior must be exhibited on more than one occasion.⁹⁶

The *Manual* explains that dominance aggression is an "abnormal, inappropriate, out-of-context aggression (threat, challenge, or attack) consistently exhibited by dogs toward people under any circumstances involving passive or active control of the dog's behavior or the dog's access to the behavior."⁹⁷ Notably, the *Manual* states that dominance aggression is difficult to diagnose due to "*human misunderstanding of canine social systems, canine signaling, and*

canine anxieties associated with endogenous uncertainty about contextually appropriate responses. This diagnosis [of dominance aggression] cannot be made on the basis of a one-time event. The behavior, once it begins, will become more visible and consistent"98

Fear and food-related aggressions are triggered when a dog feels that he or his food are threatened by a human or other animal.⁹⁹

Interanimal or interdog aggression are behaviors that do not comport with normal social hierarchy and communications between dogs.¹⁰⁰ Dogs simply seem to dispense with normal patterns and interactions establishing or respecting dominance and submission and move directly to violence. The *Manual* states that particularly in this category, aggressive behaviors are, to a point, *normal*.¹⁰¹

Possessive aggression applies to protection of non-food items that consistently occurs when a human or other animal nears or seeks to acquire a non-food object that a dog possesses or to which he controls access.¹⁰²

Predatory aggression is the behavior most consistent with the "silent" dog discussed *supra*; that is, the dog who is most likely committed to biting or to a complete attack. Predatory aggression consists of "[q]uiet, unheralded attacks generally involving at least one fierce bite and shake, that include staring, salivating, stalking, body lowering, and tail twitching, etc., consistently exhibited toward species-contextual prey items."¹⁰³ Such items may include human infants, young or ill animals, senior citizens, joggers, and bicyclists.¹⁰⁴ A dog may identify a human as prey if he or she exhibits uncoordinated movements or sudden sleep and wake cycles.¹⁰⁵

Protective aggression is aggressive behavior exhibited when a dog is approached by a human who does not present "an actual, contextual threat."¹⁰⁶ The dog continues to display aggressive behavior despite the approaching individual's desire to interact, or attempts made by the dog's caretaker to stop the behavior.¹⁰⁷ The *Manual* states that "[i]t is important to acknowledge that some degree of in-context, innate 'protectiveness' is desired in most pet dogs."¹⁰⁸

Territorial aggression consistently occurs when a dog is located in his or her environment and, as with protective aggression, the aggressive response is uncontrollable even though the approaching third party is not an actual threat.¹⁰⁹

Thus, some degree of aggressive behavior is normal in dogs. Due to humans and dogs possessing two radically different methods of communicating, the difficulty for the average, untrained human is in discerning what is normal and reasonable aggressive dog behavior from that which is truly threatening and dangerous to humans and other animals.

IV. AN EXAMINATION OF FATAL AND NON-FATAL AGGRESSIVE BEHAVIOR BY DOGS TOWARD HUMANS

What is clearly remarkable regarding the long history of humans and dogs cohabitating is that dogs--who are generally regarded as unsophisticated and intellectually inferior by human standards--have managed to reside amongst humans for thousands of years while by and large meeting our expectations that they behave themselves and be obedient to us as they live nonaggressively with us. They do so even though they are animals with natural tendencies and instincts to ensure their survival by engaging in aggressive behaviors that, for the most part, they manage to suppress.

A. Fatal Attacks by Dogs on Humans

Vicious dogs do exist and can cause serious, deadly harm to humans and other animals. Objective, empirical statistical data, studies, and reports indicate that the root causes of vicious dog attacks are almost always traced to the following categories:

- humans who have intentionally trained larger, stronger dogs to act aggressively and attack other animals or humans, or who have otherwise encouraged their dogs to act aggressively;¹¹⁰
- humans who have abused and/or neglected larger, stronger dogs, including chaining dogs in yards for extended periods of time (perhaps most of the animal's life), which has facilitated aggressiveness in them due to lack of socialization and increased territorialism;¹¹¹
- dogs who are reverting to instinctive behavior to protect either puppies, food, family or "pack" members, territory, or themselves;
- dogs who are ill;
- dogs who are chasing moving objects; or
- dogs who are unsterilized, particularly males, and near unspayed females, especially those who are in heat.¹¹²

Karen Delise, an author and licensed veterinary technician who spent more than a decade researching fatal dog attacks, writes that "[a] fatal attack is always the culmination of prior and present events that include: inherited and learned behaviors, genetics, breeding, socialization, environmental stresses, owner responsibility, victim behavior, victim size and physical condition, timing and misfortune."¹¹³

A review of United States Department of Health, Centers for Disease Control fatal dog attack data indicates that most fatal dog attacks occur on the property where the dog usually resides, and the victim is usually a child or elderly person.¹¹⁴ Although the public may perceive vicious, attack-prone dogs as free-roaming, the fact is that humans are far more likely to be attacked by approaching dogs who are chained or tethered on particular properties, rather than by dogs running at large.¹¹⁵ Delise notes that:

Many people may not view a chained dog as a potential threat by sheer fact that the dog's access is limited. This is a fallacy. Chained dogs have killed at least 98 people. Of the 98 people, 92 were children that either wandered into reach or attempted to play, tease, feed, or untangle a chained, tied, or similarly restrained dog and six were adults that approached or had an altercation with a restrained animal. An additional 11 people were killed when a dog straining against a chain[] broke free and attacked and killed a person nearby.

Chained dogs are not afforded the same opportunity to bond and socialize with the human members of a household as are dogs maintained within the home. Therefore, it is unreasonable to expect the same behaviors from dogs kept in such different environments. . . .

Chaining a dog creates an unnatural and unhealthy environment. Dogs require exercise, mental stimulation and social interaction with either other dogs or with humans who acquire them. None of these requirements can be met living at the end of a chain. Besides the negative impact chaining has on the well-being of the dog, it also increases the likelihood of a dangerous defensive response to a perceived encroachment on the dog's territory or possessions (food or water bowls).

Because dogs are territorial animals, chaining them only serves to exacerbate space issues, as space is limited and more clearly defined. Concurrently, the natural fight or flight response afforded to most animals in stressful situations is denied to a chained animal. The dog is cognizant of the fact that he can only retreat the length of the chain and will often opt to "stand his ground." Removing the option of flight for any animal will always increase the chance of a physical encounter (or fight response) to a perceived threat.¹¹⁶

Regarding dogs running-at-large and off of the property where they reside, a review of CDC statistics appears to indicate that between 1997 and 2001, 13 people were fatally attacked by dogs running loose.¹¹⁷ When dogs are running-at-large, pack mentality can play a role in fatal attacks on both humans and other animals.¹¹⁸ Statistically, however, such attacks occur far less often than those caused by chained dogs.

B. Non-Fatal Attacks

No one seems to know with certainty why some dogs stop at biting victims, usually for the same reasons that fatal attacks are committed, and why some dogs go on to inflict more extensive damage and actually kill humans. Factors indicate that:

[t]he extent to which [a lowered threshold for attack and higher pain thresholds] are genetically determined within the fighting breeds has been the subject of considerable controversy []. Although complex behaviors such as pointing, retrieving, herding and livestock guarding are generally accepted to have a strong genetic component, many fanciers of the fighting breeds attribute the comparatively simple lowering of the thresholds for aggression to purely environmental influences of irresponsible owners.¹¹⁹

While some experts believe that genetic history plays a role in inducing aggressive dog behaviors, as well as selective breeding,¹²⁰

[t]he likelihood that a particular individual will bite is also strongly influenced by many environmental barriers including the training of the animal, the extent of its socialization to people (especially children), the quality of the animal's supervision and restraint, and the behavior of the victim []. This multiplicity of interacting factors in dog bite makes it difficult and often meaningless to base predictions of a particular animal's aggressive behavior on a single characteristic, such as breed.¹²¹

What is known is that dogs that bite humans once or twice and stop at that often do so for the same reasons that dogs commit fatal attacks.¹²² In non-fatal attacks, children are again usually the victims, but here they are usually older children, and they are usually male.¹²³ Issues such as the provision of adult supervision during the dog-child interaction, behavior of the victim, condition of the dog including whether restrained or not and whether food was present, location of the animal at the time of the bite, and many similar factors play a role in facilitating dog bites.¹²⁴

While biting dogs is certainly a problem warranting examination and prophylactic treatment, it is important to remember that such encounters represent a very small fraction of the hundreds of millions of human-dog contacts that occur each day, most of which are deeply enjoyed. Likewise, the [] focus on the small fraction of dogs implicated in human fatalities should not obscure the fact that these 20 or so animals involved in such attacks each year represent an infinitesimal portion of the American dog population, less than .00004%! The proportion of American humans who kill other human beings is more than 200 times this fraction.

Humankind has made the dog in its image, and, increasingly, that image has become a violent one. The breeds of dogs that have been chosen to reflect our aggressive impulses have changed over the millennia. In the last 20 years the choice has moved from German shepherds, to Dobermans, to pit bulls, to Rottweilers to a current surge in problem wolf-dog hybrids.

Problems of irresponsible ownership are not unique to pit bulls or any other breed, nor will they be in the future. Effective animal control legislation must emphasize responsible and humane ownership of genetically sound animals, as well as the responsible supervision of children and animals when they interact.¹²⁵

This dog behavioral expert, and many others, believe that to protect against dog bites, legislation must be passed that strengthens and enforces laws prohibiting dog fighting and the cruel treatment of dogs, which makes them turn vicious; requires owners to act responsibly and humanely when caring for their dogs; and, through active enforcement, holds them accountable when they do not.¹²⁶ The public must also be educated about responsibly caring for dogs who live with them, including not chaining dogs for long periods of time and supervising small children any time they are near dogs, whether the dogs are tethered or not.¹²⁷

While owning a dog requires humans to meet certain obligations and responsibilities to ensure that dogs do not engage in truly violent, dangerous behaviors, as discussed *infra* dog ownership also provides humans with certain constitutionally protected property rights due to the dogs' current legal status as human "property."

V. DOGS AS HUMAN PROPERTY

A. Historical Development of the Concept of Animals as Property

At some point in ancient history, pre-humans decided that certain items, such as food, "belonged" to them, thus giving birth to the concepts of personal property and ownership that were later applied to right-of-possession of other tangible items, such as weapons and other useful tools, living animals, and even other humans.¹²⁸

Non-feral, domesticated dogs were treated as human personal property by particular ancient cultures.¹²⁹ For example, Pompeian mosaics depict dogs tethered on leashes,¹³⁰ while engraved stone tablets set forth laws decreeing that domesticated animals are to be treated as human property.¹³¹ Early written explanations justifying human ownership of animals explained that animals were created for mankind's use through what was designated the "Great Chain of Being."¹³² Later theorists developed various concepts to justify human ownership of animals such as "occupation"--the taking control of an animal which resulted in acquisition of title of the animal, and thus ownership¹³³; "labor"--the act of taming a wild animal which thus made the animal the property of the human due to human expenditure of labor¹³⁴; and the "right to use"

theory, which purported that animals were made by God or a Creator for man's use, and thus God or the Creator intended for humans to own animals¹³⁵.

Ownership concluded if the animal left the control of the human deemed to be its owner; that is, if the animal acquired its liberty by leaving the control of the human, the human no longer possessed legal property rights to the animal.¹³⁶ In this instance the animal could be acquired by another human through the aforementioned acts which resulted in property ownership of the animal in the first place. If, however, the animal indicated an intention or habit of returning to the original owner, then the original owner's property rights continued unabated.¹³⁷

For dogs, however, the rules were generally different. Under the common law, dogs were treated as though they had no "useful, social value . . . except for companionship"¹³⁸ which translated generally into the legal system as no compensable value when someone injured or killed another's dog.¹³⁹ In fact, a person who "stole" a dog could not be prosecuted for larceny "because of the base nature of a dog, which was kept for mere whim and pleasure and was unfit for food and of no intrinsic value; [thus] dogs were not administered as property" ¹⁴⁰ American jurisprudence began to grant human property status to dogs who were "not merely [] pet[s], but [who] serve[d] some valuable and useful purpose, such as guarding the premises of [their] owner[s]."¹⁴¹ Eventually, dogs came to be legally recognized as the personal property of humans, and courts allowed humans to be compensated for the market value of their dogs when they were hurt or injured by others.¹⁴²

B. Current Status of Dogs as the Personal Property of Humans

In the United States, dogs continue to be legally treated as human property.¹⁴³ For example, in *Kennedy v. Byas*, 867 So. 2d 1195 (Fla. 1st DCA 2004), the Florida appellate court reaffirmed its statement in *Bennett v. Bennett*, 655 So. 2d 109 (Fla. 1st DCA 1995), that "[w]hile a dog may be considered by many to be a member of the family, under Florida law animals are considered to be property." These and other court opinions that reach the same conclusion are based upon precedence written during much earlier ages when dogs were seen as unfeeling, basically valueless entities that resided outside and with whom most humans did not have an emotional attachment.¹⁴⁴

Currently, there is an undeniable philosophical shift emerging within the judicial system which is struggling with whether or not it should continue to treat dogs as the personal property of humans, and if not, just exactly how should they be legally treated. For example, in *Bass v. State*, 791 So. 2d 1124 (Fla. 4th DCA 2000), the appellate court analyzed whether a lower court erred by designating a police dog an "individual," a designation which resulted in a harsher penalty being imposed upon a convicted criminal who injured the dog. The appellate court concluded that "as much as dogs are loved and cherished by their owners, they are not persons or 'individuals' for purposes of the criminal law."¹⁴⁵ Obviously, the lower court recognized that dogs may be more than inanimate human property.

Perhaps the greatest reflection of the struggle over whether or not to continue to legally treat dogs as property appeared in a 2001 Wisconsin Supreme Court opinion:

At the outset, we note that we are uncomfortable with the law's cold characterization of a dog, such as Dakota, as mere "property." Labeling a dog "property" fails to describe the value human beings place upon the companionship that they enjoy with a dog. A companion dog is not a fungible item, equivalent to

other items of personal property. A companion dog is not a living room sofa or dining room furniture. This term inadequately and inaccurately describes the relationship between a human and a dog.

The association of dog and human is longstanding. Dogs have been a part of human domestic life since 6,300 B.C. Archaeologists have uncovered a 12,000 year-old burial site in which a human being and a dog lay buried together. The arm of the person was arranged on the dog's shoulder, as if to emphasize the bonds that existed between these two individuals during life. Dogs are so much a part of the human experience that we need not cite to authority when we note that dogs work in law enforcement, assist the blind and disabled, perform traditional jobs such as herding animals and providing security, and, of course, dogs continue to provide humans with devoted friendship.¹⁴⁶

As a result of the paradigm shift in how the public, and the more reactionary legislative and judicial branches of government, view dogs, a growing number of jurisdictions throughout the country are enacting laws to treat the human-dog relationship as one of a guardian caring for a ward, rather than humans possessing dogs as their personal property.¹⁴⁷

Nonetheless, the current status of dogs as human personal property continues to prevail in jurisdictions throughout the country.¹⁴⁸

VI. CONFLICT BETWEEN THE CONSTITUTIONAL PROTECTION OF DOGS AS PERSONAL PROPERTY AND GOVERNMENT REGULATION OF "DANGEROUS" DOGS UNDER ITS POLICE POWER

Because dogs are treated as the personal property of humans, humans are thus entitled to protection of this personal property interest under federal and state constitutions before government can interfere with an individual's property.¹⁴⁹ However, dog ownership is seen as a qualified or imperfect right, subject to significant or even intensive invasion by government under its broad police powers.¹⁵⁰ As *American Jurisprudence* succinctly explains, "[t]he police power of the state has been exercised to regulate and control dogs to a greater extent than it has for any other class of domestic animals, and . . . they may be subjected to peculiar and drastic police regulations without their owners being deprived of any federal rights."¹⁵¹

Despite government's ability to interfere with humans' personal property rights in dogs, federal and state constitutions require that, in the case of processing and possibly declaring one's dog "dangerous," the state must afford the dog owner due process of law.¹⁵² At a minimum, the state must provide an individual with notice and an opportunity to be heard before it deprives the individual of his or her property.¹⁵³ The "opportunity to be heard" must be meaningful, and the hearing must be fair.¹⁵⁴

Thus, while government can strictly regulate dogs as the personal property of humans, that regulation must follow constitutional requirements of due process. In this light this Article examines the most recent trend of regulating dogs through Dangerous Dog laws to analyze whether governments are adhering to these constitutional requirements and properly balancing the goal of protecting the public against the rights of dog owners. This Article concludes that, at least in some counties, too many dogs are being unjustly declared "dangerous," and their owners' constitutionally protected property rights are being violated, due to seriously flawed classification processes that deprive owners of their right to a fair hearing and due process. A

review of Dangerous Dog cases indicates that many of these classifications are likely motivated by local governments' fears of being held liable--financially, politically, and even morally--in the future should the dogs actually eventually harm someone.

VII. DANGEROUS DOG LAWS IN GENERAL

With the broad health, safety, and welfare police power standard in mind, it is easy to see why government's authority to enact Dangerous Dog laws would rarely, if ever, be called into question. Not only is it "well settled that the regulation of dogs is within the police power of the State and may be delegated to municipalities,"¹⁵⁵ dog attack and dog bite injuries are clearly a public safety concern. Armed with the well-established police power and concern for public safety, a majority of states have enacted Dangerous Dog laws.¹⁵⁶ Even those states that do not have statewide policies may have laws at the city or county level.¹⁵⁷

Although there is no uniform, nationwide Dangerous Dog law, there are some general, commonly shared characteristics. A typical Dangerous Dog statute or ordinance usually contains four components: (1) a definition of a "dangerous dog"¹⁵⁸ or "vicious dog,"¹⁵⁹ (2) a procedure for officially declaring a dog dangerous;¹⁶⁰ (3) restrictions applicable to those dogs officially declared dangerous;¹⁶¹ and (4) penalties for violating the restrictions, including penalties for when a dog injures someone after he has been declared dangerous.¹⁶² Procedures typically include an official complaint,¹⁶³ an investigation on the part of animal control or other local authority,¹⁶⁴ and a hearing at which the results of the investigation are presented.¹⁶⁵ Restrictions may include registration with the local authority,¹⁶⁶ permanent confinement,¹⁶⁷ sterilization,¹⁶⁸ permanent identification with a tattoo or microchip,¹⁶⁹ and liability insurance.¹⁷⁰ The penalties for violating the restrictions are often monetary fines,¹⁷¹ but if an owner whose previously-declared-dangerous dog injures someone, the penalties can be more severe. The owner may be guilty of a criminal offense¹⁷² and the dog will likely be confiscated and destroyed.¹⁷³

VIII. FLORIDA'S DANGEROUS DOG LAWS

A. History and Legislative Intent

Although the Florida Animal Control Association had lobbied for Dangerous Dog legislation for several years,¹⁷⁴ Florida's first Dangerous Dog law was enacted in 1990.¹⁷⁵ Legislators sought to address the issue of severe attacks by dogs on humans, especially after several particularly gruesome and brutal incidents occurred in their own districts.¹⁷⁶ For example, a major impetus for the legislation was the 1989 case of a 73-year-old woman who was killed after she went into her driveway to get her newspaper and was bitten more than 300 times by three neighborhood dogs.¹⁷⁷

Initially, the proposed legislation framed the planned designation of problem dogs as "vicious."¹⁷⁸ At the Senate Judiciary-Criminal Committee hearing, one senator expressed concern that his neighbors' pit bulls approached his fence when his children played in their yard.¹⁷⁹ The director of Leon County Animal Control discussed two attacks in Jacksonville, one on a four-year-old girl and one on the aforementioned 73-year-old woman.¹⁸⁰ The Florida Association of Kennel Clubs submitted position papers on all four proposed bills, noting an "unquestionable need" for a "'vicious dog' law" that would focus on dogs who "have exhibited

dangerous behavior."¹⁸¹ The Humane Society of the United States submitted a letter in which it noted the need for a statewide policy to address Dangerous Dogs.¹⁸²

Support for the bill was qualified by the assertion that it must be non-breed-specific. The Humane Society of the United States explained that focusing on a specific breed "fail[s] to take into consideration that serious aggressive behavior in dogs is invariably caused by irresponsible ownership and improper or inadequate training of the animal."¹⁸³ Similarly, the Florida Association of Kennel Clubs noted that the law should protect the public by "consequating irresponsible owners"¹⁸⁴ and said that they would withdraw their support if the law was breed-specific.¹⁸⁵ The law passed with an express ban on breed-specific regulations.¹⁸⁶

As originally contemplated the statewide policy would require a dog to exhibit certain characteristics before it would be declared dangerous.¹⁸⁷ A dog would be declared dangerous if it (1) injured or killed a human; (2) injured or killed an animal; or (3) was used in dog fighting.¹⁸⁸ But animal control officials and legislators were concerned that such a narrow definition would not be effective.¹⁸⁹ Leon County's Animal Control Director explained that the law needed to protect the public before the attack occurred and, for this reason, she supported the inclusion of "menacing fashion" or "apparent attitude of attack" language within the statute.¹⁹⁰ This language was subsequently incorporated into the final draft of the bill.¹⁹¹ Thus, in its current form, the Dangerous Dog definition includes a fourth "apparent attitude of attack" prong.¹⁹² A dog can be declared dangerous if it "has, when unprovoked, chased or approached a person . . . in a menacing fashion or apparent attitude of attack, provided such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority."¹⁹³ Florida's Dangerous Dog bill became law in 1990.

B. 1990 Law Declared Unconstitutional Due to Failure to Provide Due Process

In 1993, a Florida appellate court affirmed a lower court order permanently enjoining a county animal control agency from enforcing a Dangerous Dog classification because the state statute failed to provide due process--notice of the proceedings and a fair hearing--to the dog owner before declaring a dog "dangerous."¹⁹⁴

In its original form, the law required the person seeking to declare the dog dangerous to file a sworn affidavit and the governing animal control authority to investigate the reported incidents.¹⁹⁵ Animal control was not required to notify the dog's owner until *after* it determined that a dangerous classification was warranted.¹⁹⁶ Even after notification, the owner was given no opportunity for a hearing to present any objections or defenses to the classification.¹⁹⁷ Because of these infirmities, in *County of Pasco v. Riehl*¹⁹⁸ the Second District Court of Appeal held the statute unconstitutional because it violated constitutional due process requirements.¹⁹⁹ The court explained that because a Dangerous Dog classification "places many onerous restrictions on dog owners with so-called dangerous dogs," which "serve to deprive such owners of legal property interests[,] a dog owner must be given an opportunity to be heard *before* the restrictions could be enforced."²⁰⁰ The Florida Supreme Court later affirmed the appellate court's determination that the statute was indeed unconstitutional due to its failure to adhere to due process requirements.²⁰¹

Presumably in response to the ongoing litigation, the Florida legislature made substantive changes to the Florida Dangerous Dog statute in both 1993 and 1994. The 1993 amendments added an owner interview during the investigation process,²⁰² modified the definition of "severe injury,"²⁰³ and--importantly--gave the owner the right to request a hearing after county officials permanently classified a dog as "dangerous."²⁰⁴ Significantly, the statute still lacked a pre-

deprivation hearing.²⁰⁵ In 1994 the legislature finally added the required pre-deprivation hearing to the statute.²⁰⁶ Animal control's classification after its investigation is now characterized as "initial" and a dog owner may request a hearing before animal control makes its final decision.²⁰⁷

C. Florida's Current State Dangerous Dog Law

Sections 767.10 through 767.14, *Florida Statutes*, comprise Florida's state Dangerous Dog law.

Section 767.11(1) defines a Dangerous Dog as a dog that has exhibited one of four behaviors: (1) bitten, attacked, endangered, or inflicted severe injury²⁰⁸ on a person; (2) more than once severely injured or killed a domestic animal while off of the owner's property; (3) been used in or trained for dog fighting; or (4) "[h]as, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority."²⁰⁹

Section 767.12(1) sets forth the state's basic requirements for establishing whether or not a dog meets the requirements to be declared dangerous.²¹⁰ The process varies between counties; some require only a sworn affidavit setting forth the alleged facts underlying the incident, while others require more specific forms describing the incident to be completed and notarized under oath.²¹¹

The animal control authority that receives the affidavit or petition then investigates the alleged incident by speaking to the person who filed the affidavit or petition, notifying the dog's owner and offering him an opportunity to respond to the allegations, and possibly canvassing the neighborhood to contact neighbors who may have information on not only the alleged incident but on the general behavior of the dog.²¹² Importantly, beyond the information provided in either the sworn affidavit or sworn petition, as discussed *infra* in part IX.A.i., information provided through interviews of neighbors and other witnesses is not always required to be sworn. Nonetheless, this information is frequently used to make an initial determination of whether or not a dog is dangerous, and may be used to permanently classify the dog dangerous.²¹³

After compilation of the evidence that will be used to make a classification decision, the record is presented to the entity charged with making the initial determination of whether or not a dog should be classified "dangerous." The statute dictates that following "the investigation, the animal control authority shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and shall afford the owner an opportunity for a hearing prior to making a final determination."²¹⁴ This initial classification is generally determined by an authority within the animal control agency. For example, prior to 2005 in Leon County, Florida, a three-member Leon County Animal Control Classification Committee received the evidence and made the initial determination as to whether or not a dog would be declared dangerous or aggressive.²¹⁵ In 2005 the Leon County Board of County Commissioners amended Leon County Code section 4-93 to allow the Leon County director of animal control to singularly make the initial determination.²¹⁶ In Marion County, Florida and Miami-Dade County, Florida, the "animal control authorities" make the initial determination. In Marion County the authority is an animal control officer.²¹⁷ In Miami-Dade County, the initial determination is made by a code enforcement officer from the animal control department.²¹⁸

The animal control authority is required to provide written notice of the sufficient cause finding to the owner.²¹⁹ The owner may then file a written request for a hearing to contest the initial classification within seven calendar days, and the hearing must be held expeditiously.²²⁰

The entity hearing the matter varies between counties. For example, in Leon County, Florida, the three-member Leon County Animal Control Classification Committee, consisting of a licensed veterinarian, a Leon County Sheriff's Office representative, and "an informed citizen appointed by the Leon County Board of County Commissioners" hears the case.²²¹ In Marion County, Florida, the hearing is held before the Marion County Code Enforcement Board—a body comprised of residents with special knowledge in areas such as business management, construction, government administration, and even spiritual matters—one of the members is a minister.²²² In Alachua County, Florida, the hearing is held not before a board, panel, or committee, but before the county manager or a designee.²²³

During the investigation the subject dog can either be impounded—usually at owner expense—by the animal control agency, or the owner will be required to confine the dog in a securely fenced or enclosed area.²²⁴ The dog may not be relocated or ownership rights transferred.²²⁵

If the entity conducting the hearing issues a final determination of "dangerous," the owner may "file a written request for a hearing in the county court to appeal the classification within 10 business days after receipt of a written determination Each applicable local governing authority must establish appeal procedures that conform to this paragraph."²²⁶

If the owner does not appeal the decision to the county court within ten business days of notification or loses his appeal, the owner must comply with all state and local requirements.²²⁷

Sections 767.12(2)-(4) also provide penalties that must be imposed once a dog is permanently classified as "dangerous." At a minimum, a Florida Dangerous Dog owner must register the dog and pay any related fees; provide animal control with certification of the dog's rabies vaccination; permanently identify the dog with a tattoo or electronic implant; and permanently confine the dog in an approved enclosure.²²⁸ In counties requiring dog owners to obtain a license, the owner must renew the dog's license and pay any local Dangerous Dog renewal fees annually.²²⁹ Notably, in some states, such as Florida, the "Dangerous Dog" status remains with the dog for the rest of his life.²³⁰ The penalty for violating these restrictions is a noncriminal infraction with fines of up to \$500.²³¹

Section 767.14 permits local governments to implement additional penalties beyond those listed in the statute, as long as the additions are not breed-specific and weaker than the penalties provided in the statute.²³²

Additionally, home owners with dogs declared dangerous may have their homeowners insurance fees increased, or the insurance itself cancelled.²³³

Section 767.13 states that if a dog declared "dangerous" thereafter attacks or bites a person or domestic animal without provocation, the owner can be found guilty of either a first-degree misdemeanor or a third-degree felony, depending upon the severity of the injury, and the dog will likely be destroyed.

D. Local Government Codes and Ordinances

Local governmental ordinances adopting and expanding upon the state Dangerous Dog law vary.²³⁴ For example, in Leon County a dog can be declared "aggressive" rather than "dangerous" if he injures or kills "a domestic animal in a *first* unprovoked attack."²³⁵ The inclusion of "first" makes this ordinance more restrictive than the state statute, which allows

dogs to be classified "dangerous" only after more than two severe injuries on a domestic animal.²³⁶ The attack on the animal must take place off of the dog owner's property.²³⁷ The penalty is permanent confinement, just as if the dog were declared "dangerous."²³⁸

Marion County allows a dog to be declared "vicious" or "dangerous" depending upon whether a human or animal is the target of the attack.²³⁹ The governing Marion County ordinance requires that a dog declared "vicious" by the Marion County Code Enforcement Board be surrendered to animal control within 24 hours after classification, so that the dog can be killed.²⁴⁰ A dog can be classified as "dangerous" if it has killed a domestic animal or livestock.²⁴¹ A dog can also be declared "dangerous" if it injures a domestic animal or livestock more than once while off of the owner's property.²⁴² A final classification of "dangerous" will result in the dog being permanently confined.²⁴³

Several local governments now have online Dangerous Dog registries, complete with photos of dogs declared dangerous who reside within the local government's jurisdiction, and the addresses of where the dogs reside.²⁴⁴

Some local governments, such as Atlantic Beach, Florida, require that owners of dogs classified as "dangerous" obtain liability insurance in the amount of \$100,000, and also a \$100,000 surety bond.²⁴⁵ Other counties, such as Hillsborough, Florida, require dog owners to complete responsible pet ownership training.²⁴⁶

Despite evidence that confining or tethering a dog can induce biting or attacks, Port Orange, Florida, requires that dogs declared dangerous be kept in a locked cage or *tethered*.²⁴⁷

Alachua County presents an example of the harshest exercise of section 767.14's authorization that local counties may "plac[e] further restrictions or additional requirements on [dog] owners": On January 24, 2006, the Alachua County Board of County Commissioners enacted Ordinance Number 06-01, section 5, codified at Alachua County Code of Ordinances title 7, section 72.17.5, which authorizes Alachua County to seize any dog located within Alachua county that has been declared dangerous after February 1, 2006--not just by Alachua County but by *any* Florida county--and kill him.²⁴⁸

IX. CASE STUDIES

In theory, all dogs that are officially classified "dangerous" should display obviously vicious and truly threatening behaviors. In practice, such is not always the case. The authors believe that the following case studies illustrate and expose flaws in the structure and application of Florida's state statute and some local ordinances.

A. Leon County, Florida

Leon County, Florida's, Dangerous Dog ordinance states:

Dangerous animal shall mean an animal that has, when unprovoked,

- a) Bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property; or
- b) Has more than once severely injured or killed a domestic animal while off the owner's property; or
- c) Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion, or an apparent attitude of attack[;]

d) Provided that such actions as set forth and described in paragraphs a), b) and c) above are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority; []

*i. Ortega v. Leon County*²⁴⁹

Patricia Ortega, a single-mother with a then-teenage son, lived with a female Labrador retriever named "Angel." During her first heat Angel became pregnant by Ms. Ortega's adult son's dog, Duke, while the two were visiting Ms. Ortega.²⁵⁰ Angel gave birth to several puppies, and Ms. Ortega kept two, naming them "Buster" and "Buck."²⁵¹ Less than a year later, Angel, Buster, and Buck escaped from Ms. Ortega's back yard, although she had installed an electric fence, and allegedly ran onto the property of the neighbor who lived across the street, Ms. Marion Hammer--the 1995-98 president of the National Rifle Association.²⁵²

Leon County Animal Control records indicate that Ms. Hammer's daughter, Ms. Sally Hammer, who resided with Ms. Hammer, had called Leon County Animal Control in September and October 2001 to report the dogs running loose and on Ms. Hammer's property.²⁵³ Ms. Hammer stated that an animal control officer told her that he could not issue a citation to Ms. Ortega for dogs running loose unless an animal control officer witnessed the dogs off of her property.²⁵⁴ According to Ms. Sally Hammer, to assuage the Hammers' complaints the animal control officer gave her a petition for classification of a dangerous or aggressive animal to complete and submit to Leon County Animal Control to begin the process of having the Labrador retrievers investigated under the county's Dangerous Dog ordinance.²⁵⁵ Both Hammers submitted statements; Ms. Hammer wrote that she was "not willing to mediate with the Neighborhood Justice Center or anyone else."²⁵⁶

Ms. Sally Hammer wrote in the petition that the dogs ran loose in the neighborhood "on a daily basis."²⁵⁷ She stated that the dogs charged her and her two children.²⁵⁸ She did not claim that the dogs bit, attacked, or injured in any way her or her children.²⁵⁹

Ms. Hammer, however, wrote that her grandchildren were "charged and attacked" by the dogs, and that the dogs "were attacking with bared teeth."²⁶⁰ However, no evidence was offered that the dogs bit, attacked, or injured either of the Hammers or the children. Ms. Hammer further wrote that because the dogs continued to run loose, Leon County Animal Control and its governing entities would be guilty of "gross culpable negligence and complicity in any injury that may result, in the future, from this pack of dogs being allowed to roam and terrorize our neighborhood."²⁶¹

A Leon County animal control officer canvassed the neighborhood seeking witnesses.²⁶² The officer left notices on some of the residents' doors that stated that Ms. Ortega's dogs were under investigation and which requested that residents contact Leon County Animal Control if they had any knowledge of the dogs' behaviors or their running at large.²⁶³ At least two neighbors contacted Animal Control and verbally reported that either the dogs were running at large, or that the dogs were not a problem.²⁶⁴ These unsworn statements were presented to the three-member Leon County Animal Control Classification Committee.²⁶⁵

The Committee considered the Hammers' petition and reviewed the written information provided to them by Animal Control. By a vote of 2-1 the Committee applied an initial classification of "dangerous" to Angel and Buster, but chose to not declare Buck dangerous.²⁶⁶

Ms. Ortega requested a hearing and obtained an attorney. On March 1, 2002, the Classification Committee held a hearing. Besides Ms. Ortega and her attorney; a few of her

witnesses; Richard Ziegler, the director of Leon County Animal Control; an animal control staff member; the Hammers; two of their witnesses; and the Classification Committee, the hearing was attended by several members of the public who were not affiliated with the case but who apparently had an interest in animals.²⁶⁷

Leon County Code section 4-93(d)(3) dictates that "[i]n hearings before the animal classification committee, formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings."

Mr. Ziegler announced the general ground rules for the hearing, but neither Mr. Ziegler nor any member of the Classification Committee acted as chairperson and took control of the hearing.²⁶⁸ No witnesses were sworn before giving testimony.²⁶⁹ Hearsay testimony against Ms. Ortega's dogs, not only offered during the hearing but provided earlier by neighbors via phone calls and written communication to Animal Control, was again introduced into evidence.²⁷⁰ Members of the audience--who had no personal knowledge of the case--interrupted what was, due to the ordinance's direction that formal rules of evidence will not apply, essentially a discussion of the allegations, to voice their mere opinions.²⁷¹

Regarding the testimony itself, two Leon County animal control officers testified to their experiences with the dogs, and opined that, in both of their opinions, the dogs were not "dangerous."²⁷²

Nonetheless, the Classification Committee--again, by a vote of 2-1--declared Angel and Buster "dangerous."²⁷³ Buck was not classified "dangerous," although Ms. Hammer tried several times to have the Classification Committee reconsider its decision.²⁷⁴

Ms. Ortega timely filed a notice of "appeal" with the Leon County County Court.²⁷⁵ She argued that she was entitled to a de novo hearing because the process before Animal Control and the Classification Committee failed to comport with due process.²⁷⁶ The county court, faced with inartfully drafted statutory language that referred interchangeably to an "appeal" and a "hearing" before the county court, issued an opinion stating that because the Florida Constitution does not award appellate court jurisdiction to county courts, and because county courts are courts of original jurisdiction, that the hearing must be de novo.²⁷⁷

Thousands of dollars in salaries, court costs, attorney's fees, impoundment costs, and boarding fees later, Ms. Ortega and Leon County settled the matter out of court, with Ms. Ortega agreeing to keep her dogs confined to her property.²⁷⁸ No further problems have been reported.

*ii. Moore v. Leon County*²⁷⁹

Shrek, a Johnson-bred American bulldog who was eight months old at the time of the event at issue, was classified "dangerous" by the Leon County Animal Control Classification Committee based upon a one-time incident in which he and a companion mixed-breed dog momentarily escaped from their yard through a hole in a fence, and ran into a neighbor's yard after the neighbor's grandchildren called the dogs to come to them.²⁸⁰ The neighbor and her son excitedly chastised the children for calling a neighbor's dogs, and the children turned to run to the porch.²⁸¹ The neighbor shouted to the children to stop running and stand still.²⁸² Because he was beckoned Shrek ran to the neighbor's yard.²⁸³ He passed by one child who had stopped running, and according to the neighbor, continued to run after the second child, who did not stop running.²⁸⁴ The neighbor claimed that Shrek was going to bite the second child but that her son intervened from the porch and shouted at Shrek, who stopped.²⁸⁵ The son threw hot coffee in Shrek's face.²⁸⁶ Shrek turned and went back to his home, where he was immediately let into the

house by the family's visiting grandmother, who had stopped by to feed him and who was unaware that the two dogs had momentarily escaped through a hole in the fence.²⁸⁷

The neighbor filed a petition for classification of a dangerous or aggressive animal with Leon County Animal Control to have both dogs classified "dangerous."²⁸⁸ Animal Control launched an investigation, seeking information from other neighbors.²⁸⁹ One neighbor named "Stephanie" phoned Animal Control to state that she had no knowledge of the incident detailed in the form that Animal Control left on her door, but that she knew that the dogs lived with the Moores and that she was "afraid of them."²⁹⁰ A second neighbor reported that she had seen the dogs out of their yard, which she said was unusual, but she witnessed them returning immediately to their property.²⁹¹ She added that, in her opinion, because Shrek was a puppy he likely wanted to play with the children and that the matter should have been handled by the complaining neighbor discussing the incident with the Moores rather than by filing a petition with Leon County Animal Control.²⁹²

After a public hearing, the Classification Committee voted 2-1 to classify Shrek as "dangerous"²⁹³ although the veterinarian committee member--the only dog behavioral expert on the panel, and the only member who voted not to declare Shrek dangerous--noted that "[all] [d]ogs run with their mouths open[.]"²⁹⁴ that the evidence indicated that the behavior could have been play-related,²⁹⁵ and that there were no "earmarkings of true aggressiveness"²⁹⁶. The veterinarian further noted that if Shrek were truly intent on attacking, that throwing hot coffee on him would have only served to further incite him rather than ward off an attack.²⁹⁷

The Moores "appealed" the case to the Leon County County Court.²⁹⁸ As in *Ortega*, after thousands of dollars in taxpayer-funded county attorney salaries²⁹⁹, expenses, costs, and fees, following mediation the Moores and Leon County settled the case out of court.³⁰⁰ No further problems with Shrek's behavior have been reported.

*iii. Sullivan v. Leon County*³⁰¹

Deuce, a pit bulldog mix, was allegedly allowed by the family with whom he lived to run loose in his neighborhood.³⁰² A neighbor who lived across the street from Deuce's family, Warren Head, reported that Deuce twice approached him when he was outside playing with his children.³⁰³ Mr. Head filed a petition for classification of a dangerous or aggressive animal with Leon County Animal Control because he wanted Deuce removed from the neighborhood.³⁰⁴ Mr. Head stated that he had "every intention to kill the dog the next time it comes in our yard."³⁰⁵

Ten days later Mr. Head wrote that he wished to drop the petition.³⁰⁶ He stated that he chose to drop the petition because the dog's owner told him that he had placed an advertisement in the local newspaper seeking a good home for the dog.³⁰⁷ Deuce was given to another owner, but was subsequently picked up by Animal Control while he was running at large and placed in the city shelter.³⁰⁸ The shelter called Deuce's original owners, who retrieved him from the shelter.³⁰⁹

On February 1, 2005, Deuce's teenage owner arrived home in her vehicle and pressed the garage door opener to park her car inside.³¹⁰ Deuce ran out of the garage and, seeing Mr. Head across the street, ran toward him.³¹¹ Deuce was hit by a car, survived the crash, got up, and limped back home.³¹²

Mr. Head claimed that Deuce ran at him and his children "full blast, very aggressive, hair raised on his back, ears back, growling and barking."³¹³ However, an indifferent third party witness stated that he did not hear Deuce growl or bark, or see him bare his teeth or have the hackles on his back raised.³¹⁴ The witness also stated that in his opinion Deuce was not about to

attack the Heads but instead, because he had been "cooped up" in the garage, Deuce was merely "running to the direction of activity."³¹⁵

Subsequent to this incident, but before Mr. Head could file a second petition for classification of a dangerous or aggressive animal, Deuce's owners gave him to Tracy Sullivan, a person more experienced with managing pit bulldog mixes.³¹⁶ Mr. Head filed a second petition against Deuce's original owners³¹⁷, but when he learned that Deuce had been given to someone who lived in another neighborhood, he filed a third petition against Deuce's new owner, Ms. Sullivan³¹⁸. Leon County's animal control director, Richard Ziegler, made an initial determination to classify Deuce "dangerous."³¹⁹ Ms. Sullivan requested a formal hearing.

Ms. Sullivan had Deuce examined by her veterinarian, who stated that Deuce did not show any aggressive tendencies whatsoever.³²⁰ Ms. Sullivan also had Deuce evaluated by a behavioral specialist who concluded that Deuce was merely engaging in normal dog behaviors and needed training.³²¹ By the date of the formal hearing, Ms. Sullivan had devoted a significant amount of time having Deuce evaluated and training him.³²² However, the Leon County Animal Control Classification Committee said this information was irrelevant and that they were only concerned about the incidents that led to the filing of the petitions.³²³ Deuce was declared dangerous by unanimous vote.³²⁴

Ms. Sullivan appealed to the county court.³²⁵ She filed a motion for summary judgment arguing that the Dangerous Dog classification should be dismissed because the law was intended to hold accountable irresponsible dog owners, that she did not own Deuce at the time of the incidents, and that she had assumed ownership of Deuce before Mr. Head had filed the second petition.³²⁶

Once again, after several thousands of dollars in boarding, evaluation, training, lawyer's fees, filing costs, and taxpayer dollars to fund the Leon County Attorney's Office and Leon County Animal Control staff to prosecute the case, Ms. Sullivan and Leon County mediated the matter and settled out-of-court.³²⁷ There have been no subsequent complaints about Deuce's behavior.

B. Marion County, Florida

Marion County defines a Dangerous Dog as

any domestic dog, *Canis familiaris*, and any genetic hybridization thereof, whether alone or as a member of a pack, any dog that [sic] according to the department of code enforcement:

- (1) Has aggressively bitten, attacked, or endangered, or has inflicted on a human being lawfully on public or private property; or
- (2) Has killed a domestic animal or any livestock, or has more than once, injured a domestic animal or livestock while off the owner's property; or
- (3) Has been used primarily or in part for the purpose of dog fighting, or is a dog trained for dog fighting; or
- (4) Has, when unprovoked, chased or approached a person while off the premises or property of the owner in a menacing fashion or apparent attitude of attack; provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

*i. Marion County Animal Control Authority v. Delp*³²⁸

Beth Delp found Marion County, Florida's, spacious horse country an enticing place for a second home where she could enjoy peace and quiet and where she could be more involved with the large number of owners and breeders of show dogs. She also wanted a place where her four champion Weimaraner show dogs could have a yard in which to stretch their legs. In addition to showing the dogs, Ms. Delp bred some of them, and they provided a substantial income to her.³²⁹ Immediately after moving into the new property Ms. Delp contracted with a fence company to have a fence erected around the parameter of the property, and construction commenced at once.³³⁰ On November 10, 2005, the next-door neighbors, Robert and Lois Mulligan, left their house to walk their dog and take out the trash can.³³¹ Mr. Mulligan noticed that two of the Weimaraners were out of their yard, and he stated to Ms. Mulligan that "[t]hey [the dogs] are out."³³² Although neither neighbor reported that the Weimaraners first engaged in any aggressive behavior toward them or were doing anything other than standing near the end of the Mulligan's driveway, Mr. Mulligan threw the garbage can at the dogs.³³³ Ms. Mulligan picked up her Dachshund. The Mulligans stated that then two Weimaraners charged at them, barking and growling.³³⁴ Mr. Mulligan stamped his feet and shouted at the dogs.³³⁵ The Mulligans claimed that they backed into the house, yelling and stomping at the dogs, until they were inside their home.³³⁶ Neither stated that they had been bitten or otherwise touched by the Weimaraners.³³⁷ Mr. Mulligan stated that "he was so upset and scared for his wife that he thought he was going to have a heart attack."³³⁸

The Mulligans telephoned 911.³³⁹ Some time later Code Enforcement Officer Kathleen Decker arrived at the Delp residence.³⁴⁰ Officer Decker later wrote in a report that "4 large dog[s] tried to attack [the neighbors' dog and] complainant [and] his wife."³⁴¹ The report made no mention that Mr. Mulligan first threw the garbage can at the dogs before the dogs allegedly acted. Officer Decker wrote that when she arrived at Ms. Delp's residence and parked at the end of the driveway the dogs were circling her vehicle and charging at the driver's side door.³⁴² She slid a catch pole out of the window to try to catch one of the dogs.³⁴³ She wrote that the dogs began to lunge at her open window.³⁴⁴ She then "closed [her] window and cracked the door and began to yell at the dogs at which point they climbed back through a hole in the fence."³⁴⁵ She wrote that she then "chased all four of the dogs back through the hole and patched the fence using a sliplead."³⁴⁶ She next went to the Mulligan's home, where they allegedly stated to Officer Decker that Ms. Delp had told them that "she has had to move several times because of the dogs and that because of her dogs that she was in the newspaper in Melbourne Fl[orida]."³⁴⁷ Officer Decker stated that she "posted" Ms. Delp's property requesting that Ms. Delp contact her.³⁴⁸ There was no mention that Officer Decker attempted to telephone Ms. Delp although she listed a phone number for Ms. Delp on her incident report.³⁴⁹ Officer Decker "advised" the Mulligans to fill out sworn affidavits on the incident, and she obtained one from Mr. Mulligan.³⁵⁰

On November 16, 2005, Marion County Animal Control Dangerous Dog Investigator Jennifer Kelly telephoned Sarasota and Brevard counties to research whether she could locate any previous complaints about Ms. Delp's Weimaraners.³⁵¹ Investigator Kelly later wrote in the sworn affidavit that "[b]oth counties indicated that they had previous complaints regarding Beth Delp's Weimaraners."³⁵² She wrote that "in this information there were eight separate complaints involving one or more dog[s] on each occasion the violations ranging from control to bites. Names of the dogs involved are [] Elwood, Steele, Banner, Liberty, Secret."³⁵³

On November 29, 2005, Investigator Kelly reinterviewed Lois Mulligan about the November 10th incident.³⁵⁴ Investigator Kelly wrote that Ms. Mulligan reported that Mr. Mulligan first threw the garbage can at the two dogs, who then "clicked" their teeth, barked, growled, were low to the ground, and allegedly charged the Mulligans.³⁵⁵ Ms. Mulligan did not state that she or Mr. Mulligan were bitten or physically harmed.³⁵⁶ Investigator Kelly wrote that Ms. Mulligan said that Ms. Delp had stated to her that "if her dogs were under investigation for Dangerous Dog [sic] she would just move again."³⁵⁷

Investigator Kelly sought and received an administrative warrant from the court to take the four dogs into custody, based upon the Mulligans' assertion that Ms. Delp said she would move if her dogs were under investigation.³⁵⁸ In the affidavit Investigator Kelly also wrote that the neighbors were "attacked" by Ms. Delp's Weimaraners.³⁵⁹ She wrote that "the dogs were extremely aggressive" and that they ran back into their yard only after Officer Decker got out of her vehicle with the catch pole and "went after the dogs charging and yelling at them."³⁶⁰ Investigator Kelly received the warrant³⁶¹ and went to Ms. Delp's residence to pick up two of the dogs identified by the Mulligans--Secret and Liberty.³⁶² Investigator Kelly told Ms. Delp that Secret and Liberty were being impounded because the County "wanted to ensure that she did not leave the County until the investigation was completed."³⁶³ Ms. Delp stated that she would not have moved out of the county.³⁶⁴ Investigator Kelly told Ms. Delp that she had researched Brevard and Sarasota counties' records and found that there were "numerous complaints" in the file against Ms. Delp's dogs.³⁶⁵ Ms. Delp denied that she left the two prior counties "because of the dogs."³⁶⁶ Investigator Kelly nonetheless took Secret and Liberty to the Marion County Animal Center.³⁶⁷ Ms. Delp was later allowed to move them to her veterinarian's office.³⁶⁸

Investigator Kelly sent Ms. Delp a letter notifying her that there was sufficient evidence to classify "two gray Weimaraner type canines as dangerous."³⁶⁹ Ms. Delp requested a formal hearing before the Marion County Code Enforcement Board on Animal Control's intent to permanently classify Secret and Liberty "dangerous."³⁷⁰ Ms. Delp hired an attorney.

On December 21, 2005, the Marion County Code Enforcement Board³⁷¹ presided over Ms. Delp's Dangerous Dog classification formal hearing.³⁷²

Investigator Kelly read from her Summary of Investigation.³⁷³ She stated that when Officer Decker arrived at the Delp residence she spotted four dogs in the roadway.³⁷⁴ Officer Decker pulled her vehicle into the Delp residence's driveway and parked it.³⁷⁵ The dogs circled her vehicle while it was parked on Ms. Delp's property.³⁷⁶ Investigator Kelly stated that Officer Decker reported that the dogs charged at her door.³⁷⁷ She tried to catch one of the dogs by sliding the catch pole out of the window, but was unsuccessful.³⁷⁸ She then cracked her door and yelled at the dogs.³⁷⁹ The dogs retreated based upon her voice commands.³⁸⁰ She then secured them behind the gate.³⁸¹ Officer Decker went to the Mulligans' residence, where they advised her that Ms. Delp had told them that she had to leave several counties because of her dogs.³⁸²

Investigator Kelly then detailed her phone calls to Sarasota and Brevard counties, and stated to the Code Enforcement Board that "there were eight separate complaints involving one or more dog[s] on each occasion the violations ranging from control to bites."³⁸³

A review of the Sarasota County documents in the record of the hearing indicate that there may have been two separate bite incidents that occurred in Sarasota County; one incident involved two dogs (Banner and Steele) allegedly biting someone on or about January 16, 2001 (no details on this bite were provided at the hearing or in the record), and the second incident involved only one dog (Banner) allegedly biting a deliveryman who came onto Ms. Delp's property and left a package at the door.³⁸⁴ The Brevard County document in the record indicates

that Anthony Lombardo stated that five Weimaraners ran out of Ms. Delp's home when she opened the door, ran to his property where he was talking outside on the phone, and Steele bit him on the calf.³⁸⁵ The document indicates that when a police officer went to investigate the bite report the next day, he believed that the bite mark indicated that the bite had occurred more than 24 hours earlier because there was "dried," "white flaking skin around scabs."³⁸⁶ Nonetheless, the officer issued four citations to Ms. Delp.³⁸⁷ The remaining three Brevard County incidents involved dogs running at large; one 2002 incident involved one dog, a 2003 incident--marked "disregard"--appears to have involved one dog, and a 2004 incident involved three dogs.³⁸⁸

Investigator Kelly did not explain to the Marion County Code Enforcement Board that the Brevard and Sarasota counties records indicated that Secret and Liberty had never bitten anyone.³⁸⁹ This information was not noted until Ms. Delp's attorney questioned Investigator Kelly.³⁹⁰ Officer Kelly then stated that the information was being provided to the Code Enforcement Board to establish Ms. Delp's "control of the dogs."³⁹¹ No one from Brevard or Sarasota counties was present for questioning on the records. Notably, neither Brevard nor Sarasota counties classified the dogs as "dangerous."

Mr. Mulligan testified next. He described how the dogs bark "every time" he and his wife are outside of their residence.³⁹² He described how he yelled at the dogs and stomped his feet until he and Ms. Mulligan and their dog reentered their home.³⁹³ He stated that he "was panicking," and "was really upset."³⁹⁴ He stated that he went inside and telephoned 911; the operator asked if anyone had been bitten and Mr. Mulligan replied that no one had been bitten but it was "something close to that effect."³⁹⁵ He concluded his testimony by stating that he "feared for [his] life."³⁹⁶

Neither Investigator Kelly nor Ms. Delp's attorney questioned Mr. Mulligan about the statement in his wife's November 29 interview or in Officer Kelly's Summary of Investigation in which Ms. Mulligan reported that Mr. Mulligan first threw a garbage can at the dogs before they started barking and charging at him.

Ms. Mulligan spoke next.³⁹⁷ She stated that "every day the dogs are very agitated by any activity in our yard."³⁹⁸ She stated that during the alleged incident she felt "very, very frightened for all of us."³⁹⁹ She stated that she "started to get tunnel vision" when two of the dogs approached them during the incident.⁴⁰⁰ She described an October 26 visit at Ms. Delp's home, the first time the two spoke as new neighbors. The dogs had not yet been brought to Ms. Delp's new residence and the Mulligans had not yet seen the dogs.⁴⁰¹ Ms. Mulligan stated that Ms. Delp told her that she was going to put in a gate at the back of her fenced property so that the dogs could run and exercise in the woods.⁴⁰² Ms. Mulligan stated that she was very concerned about the dogs running in the woods because at the time the Mulligans did not have a fence around their property, and she believed that she and her husband and dog would be "appetizers" for Ms. Delp's dogs.⁴⁰³ She stated that Officer Decker told her and her husband that they "needed to fill out an affidavit right then and there."⁴⁰⁴ She stated that Officer Decker told them "what to put in the affidavit."⁴⁰⁵

Ms. Mulligan was also not asked by anyone about whether or not Mr. Mulligan threw the garbage can at the dogs before they allegedly started barking and charging.

Officer Decker then spoke.⁴⁰⁶ She stated that the dogs responded to her command to retreat to the yard.⁴⁰⁷ When questioned by Ms. Delp's attorney, she stated that she had not been attacked by the dogs, although their behavior toward her was the same as that described by the Mulligans, and the incident involving them was labeled by Officer Kelly as an "attack" in her Summary of Investigation.⁴⁰⁸ Officer Decker described her previous experience with animals as consisting of

more than two years with Marion County Animal Control, and several years as a dog groomer, showing dogs, and working at the race track training horses.⁴⁰⁹

Officer Suzanne Ericson spoke next.⁴¹⁰ She stated that she had heard Ms. Delp state that she had previously left two areas "because of her dogs."⁴¹¹ When questioned by Ms. Delp's attorney she admitted that she was standing a distance away from Ms. Delp and that Ms. Delp may have made the comment in the vein that she had left the prior area because her neighbors did not like dogs, and not because she had difficulties with the prior counties' animal control agencies.⁴¹²

Ms. Delp spoke and refuted that she had moved to Ocala to escape difficulties with any prior animal control agencies.⁴¹³ She noted that she still owned her home in Brevard County.⁴¹⁴ She described how she found Officer Decker's posted notice on her fence, and how she spent several days telephoning Marion County Animal Control to figure out what had happened, because she was not home at the time of the alleged incident.⁴¹⁵ She stated that Officer Decker had told her that she did not "have a problem" with the dogs' behavior when she was at the Delp residence because Officer Decker was parked in Ms. Delp's driveway and that the dogs were simply "protecting their property."⁴¹⁶ Ms. Delp stated that one of the fence workmen did not secure the gate when he left.⁴¹⁷ She testified that she went through the back yard gate to get to her car because the front gate had just been painted, and that she did not leave the gate unsecured.⁴¹⁸

Ms. Mulligan spoke again and stated that although she did not see Ms. Delp leave she was certain that she did not leave through the back gate and that Ms. Delp was the last person to leave the property.⁴¹⁹

The Code Enforcement Board members began to participate in the discussion.⁴²⁰ One stated that these hearings usually involved testimony from veterinarians, professional handlers, and owners regarding the dogs' good behavior, but what he needed to hear was that the incident did not happen.⁴²¹ A Board member noted that Ms. Delp's life was "built around dogs," so there were more likely to be incidents concerning dogs.⁴²² A Board member stated that Ms. Delp had a responsibility to keep her dogs on her property, and to not allow them to "put someone else in fear."⁴²³ This same commissioner then stated that "in Marion County if a dog leaves their [sic] owner's property and does that to somebody else, that dog *will* be declared dangerous."⁴²⁴

The Marion County Code Enforcement Board voted unanimously to find that competent, substantial evidence existed to permanently classify Secret and Liberty "dangerous."⁴²⁵ In its Final Order the Code Enforcement Board wrote that based upon the sworn testimony and documents provided that there was substantial, competent evidence to support Marion County Animal Control's initial determination that Secret and Liberty should be classified "dangerous."⁴²⁶ However, in the Final Order the Board made no findings of fact to support its dangerous classification.⁴²⁷ The Final Order further stated that in accordance with Marion County Code section 4-13(e), an appeal "shall be by petition for writ of certiorari under the traditional record review applicable to other types of appeals from quasi-judicial decisions of administrative bodies."⁴²⁸

Due to appeal costs and fees, and confusion over the appeal process, Ms. Delp chose to not appeal the code enforcement order to the County Court. Ms. Delp was forced to have Secret and Liberty spayed and neutered.⁴²⁹ She paid a \$1000 fee to Marion County Code Enforcement, an annual charge.⁴³⁰ As required by Marion County ordinance, she also had Secret and Liberty implanted with microchips that identify them as dangerous.⁴³¹ Because she still owned a residence in Brevard County, Ms. Delp paid an additional \$600 Dangerous Dog fee--another annual payment--to register the two dogs there as well.⁴³² Brevard County required Ms. Delp to obtain \$200,000 in liability insurance to cover both dogs, and to name Brevard County Animal

Services and Enforcement as a certificate holder.⁴³³ Ms. Delp is also subject to unannounced inspections to ensure her compliance with the Dangerous Dog regulations.⁴³⁴

X. "APPEALING" A DANGEROUS DOG CLASSIFICATION TO A FLORIDA COUNTY COURT

A. Statute Language is Contradictory

Section 767.12(1)(d), *Florida Statutes* (2005), sets forth the process of how the Dangerous Dog classification case may move into the county court:

Once a dog is classified as a dangerous dog, the animal control authority shall provide written notification to the owner . . . and the owner may file a written request for a hearing in the county court to appeal the classification Each applicable local governing authority must establish appeal procedures that conform to this paragraph.

The use of the words "hearing" and "appeal" indicate two different proceedings that occur in courts. *Black's Law Dictionary* defines a "hearing" as "[a] judicial session, usu[ally] open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying."⁴³⁵ *Black's Law Dictionary* defines an appeal as "[a] proceeding undertaken to have a decision reconsidered by a higher authority; esp[ecially] the submission of a lower court's or agency's decision to a higher court for review and possible reversal."⁴³⁶ Often it is a review of the record to determine if competent, substantial evidence supports the decision of the lower tribunal which considered the facts and weighed the evidence to determine, for example, whether the prosecuting animal control agency met its burden to prove by a preponderance of the evidence that the subject dog could be declared "dangerous" in accordance with state and local laws.⁴³⁷ The arguably offhand use of the word "appeal," however, appears to be unconstitutional because, for the reasons in the subsequent section of this Article, Florida county courts do not have appellate jurisdiction.

B. County Courts Do Not Have Appellate Jurisdiction

The Florida Constitution does not award appellate jurisdiction to county courts, but instead states that "[t]he county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state."⁴³⁸ The general law is that which is enacted by the Legislature, and not by local governments; otherwise, there would not be uniform jurisdiction throughout the state.⁴³⁹

The *Florida Statutes* direct that "[c]ounty courts shall have original jurisdiction . . . of all violations of municipal and county ordinances."⁴⁴⁰ The statute also explains that "[a] county court is a trial court."⁴⁴¹

The *Florida Rules of Appellate Procedure* also do not confer appellate jurisdiction upon county courts. For example, Rule 9.030(a) sets forth appellate jurisdiction of the supreme court, Rule 9.030(b) addresses appellate jurisdiction of the district courts of appeal, and Rule 9.030(c) describes circuit court appellate jurisdiction. The *Rules* are silent on county court appellate jurisdiction.

The Florida Constitution, the *Florida Statutes*, and the *Rules* also do not award county courts certiorari jurisdiction.

It cannot be concluded that section 767.12(1)(d)'s inartfully drafted language, which refers to both a "hearing" and an "appeal," constitutionally awards appellate jurisdiction to a county court to conduct a traditional, record-review type of appeal of a Dangerous Dog classification case that originated at the local government level. Thus, the authors believe, dog owners who wish to move their cases to their county court are constitutionally entitled to de novo hearings.⁴⁴²

C. Some Courts Interpret Section 767.12(d) to Achieve Unconstitutional Results

While some Florida courts have reached the conclusion that dog owners are entitled to a de novo hearing in the county courts, others have determined that dog owners are only entitled to a traditional record review of their Dangerous Dog classification cases, or worse yet, that owners must file a petition for writ of certiorari--a discretionary writ--in the county court to initiate the "appeal" process.

For example, in *Dorsch v. Marion County Code Enforcement Board*,⁴⁴³ the county court, relying upon *Pinellas County Animal Control v. Sabates*,⁴⁴⁴ concluded that the dog owner was required to proceed to the county court via a petition for writ of certiorari. *Sabates*, however, was flawed. In *Sabates*, the circuit court opined that the county court erred by finding that the dog owner was entitled to a de novo hearing because the Dangerous Dog statute did not expressly state (*expressio unius est exclusio alterius*) that the hearing was to be de novo.⁴⁴⁵ The court looked at two unrelated cases--one concerning an appeal from a state agency to a governing commission (not a constitutionally derived court) which was specifically directed by statute,⁴⁴⁶ and the other concerning a lemon law case in which the governing statute expressly provided for an appeal to a circuit court⁴⁴⁷--for examples of statutes which either expressly required traditional record-review types-of-appeals or de novo hearings. Conspicuously absent is the *Sabates* court's failure to conduct a review and analysis of the absence of a constitutional or statutory award of appellate jurisdiction to county courts, and how this absence should be applied to an interpretation of section 767.12(1)(d).

D. Informal Procedures Require De Novo Hearing in the County Court Due to Lack of Due Process and Fair Hearing

Although chapter 767 does not address how the Dangerous Dog classification formal hearing at the pre-county court level is to be handled, other than to state that after the animal control authority has determined there is sufficient cause to classify a dog "dangerous" that it "shall afford the owner an opportunity for a hearing prior to making a final determination[.]" some local governments have passed ordinances that provide more direction on how the hearing is to be conducted. Unfortunately, as discussed in some of the case studies cited *supra* in Part IX, these hearings often fall far short of ensuring that dog owners' constitutionally mandated rights to due process and fair hearings are upheld.

For example, Leon County, Florida's, ordinance governing Dangerous Dog classification formal hearings before the Leon County Animal Control Classification Committee states that "formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings."⁴⁴⁸ Despite this pronouncement the Classification Committee continues to accept and consider unsworn evidence collected through neighborhood canvassing, which

sometimes elicits calls such as "I don't know anything about the incident you described, but I know the dogs are there, and I'm afraid of them."⁴⁴⁹ The Classification Committee is free to base its decisions solely upon these out-of-court statements in the petitions or investigation records gleaned from phone calls and notes consisting of non-witnesses' mere opinions. The Committee also does not list findings of fact in its orders informing dog owners of the evidence the Committee believes demonstrated by a preponderance that the animal control director properly initially classified the dogs as "dangerous." Moreover, regarding the weighing of the evidence, the Committee frequently appears to place more weight on the subjective interpretations submitted by the persons filing the petitions, over the testimony of its own animal control officers, Committee veterinarians, and behavioral specialists, who presumably have much more extensive training and experience with assessing animal behavior than at least most of the petition filers.

Some counties deny dog owners *any* significant formalities at the formal hearing. At a 2005 Orange County, Florida, Classification Committee hearing the Committee chair emphasized that the Committee hearing was not being conducted in a court of law and affidavits and animal control interviews would substitute for witnesses.⁴⁵⁰ Witnesses who were present at the hearing and who had direct knowledge of the incident were allowed to speak, but only at the discretion of the Committee.⁴⁵¹ In response to the attorney for the dog owner's⁴⁵² repeated requests for live witnesses to be placed under oath and for an opportunity to cross examine them, the Committee chair simply re-emphasized that it was not a court of law and such formalities would not be engaged.⁴⁵³

The dog owners' interests at stake also extend beyond the dogs themselves. As noted in *Riehl*, a Dangerous Dog classification imposes "many onerous restrictions on dog owners with so-called dangerous dogs."⁴⁵⁴ Constructing a proper enclosure, registering with the local government entity, paying to spay or neuter their dogs, obtaining liability insurance, and permanently identifying their dogs through tattoos and tags, all come at a cost to dog owners. These costs do not even include an "appeal" to the county court, which will trigger filing and attorneys' fees, and costs. Shrek's owner estimated her costs to be at least \$1500, and this was before she initiated an appeal to the final classification in the Leon County county court.⁴⁵⁵ Fifteen thousand dollars is probably a conservative estimate regarding what a dog owner will pay in fees and costs, especially if a dog owner hires counsel and pursues an appeal. In Osceola County, Florida, for example, registration alone costs \$1000 for the first year and \$500 for each year thereafter.⁴⁵⁶ If a dog owner does "appeal," the case can rack up legal fees for months or years. One Palm Harbor, Florida, dog owner accumulated approximately \$80,000 in legal bills during the first four years of her appeal process.⁴⁵⁷

As in the *Delp* case, a county may also require a dog owner to purchase liability insurance, which will tack on another financial burden.⁴⁵⁸ The dog owner can be subjected to scrutiny or even harassment by his or her neighbors, and may be required to pay higher homeowner's association fees, especially if the county has an online Dangerous Dog registry. Yet, too many local governments fail to recognize these significant costs to dog owners whose dogs are unjustly declared "dangerous."

Most significantly, in counties such as Alachua, a Dangerous Dog classification can mean a death sentence for the dog declared dangerous. A dog owner is faced with being forced to pay legal fees and costs to appeal the classification to the Alachua County county court if he or she wants to save the life of his or her dog.

The next section of this Article reviews what the authors believe is likely the true underlying motivation for most of the classification designations.

XI. LOCAL GOVERNMENTS MAY BE CLASSIFYING DOGS "DANGEROUS" TO PROTECT THEMSELVES FROM POSSIBLY BEING HELD LIABLE IN THE FUTURE

Local governments may be erring on the side of declaring dogs dangerous because they are concerned about potential liability for future attacks if they do not declare a dog dangerous. In too many cases in which dogs are classified "dangerous," the facts indicate that the subject dogs were simply engaging in normal dog behaviors such as running and barking. In *Ortega* and *Sullivan*, for example, neighbors obviously were frustrated because dogs were continuing to run at large and bark at them. If these dogs intended to attack, they had ample opportunity to do so, yet they never did. It is certainly arguable that in some cases animal control officers have provided petitions for classification of a dangerous or aggressive animal as a means to assuage the neighbors' frustrations rather than citing the dog owners for dogs running at large or violating leash laws.⁴⁵⁹

It is notable that some presiding authorities ignore the testimony of their own officers, who state that they do not believe the dogs are dangerous. Additionally, in *Moore* two Classification Committee members ignored the statements of the only animal behavioral expert on the panel--a licensed, practicing veterinarian who was placed on the committee for his expertise and knowledge of dogs--who stated that there was insufficient evidence to show that Shrek was doing anything other than engaging in behaviors normal for an eight-month-old puppy, and that the county did not show by a preponderance of the evidence that Shrek qualified for being permanently classified "dangerous."

Local governments should not fear being held liable for not classifying dogs "dangerous" when the evidence obviously does not support the classifications or the legislative intent underlying the law. Under Florida law, discretionary government actions that involve basic policy or planning decisions are immune from tort liability.⁴⁶⁰ When a decision is made pursuant to government's police power, it is a discretionary policy decision that is immune from liability.⁴⁶¹ For example, a Florida appellate court has concluded that a local government was immune from liability after it did not classify a dog "dangerous." In *Metro Dade County Public Works Department, Animal Care & Control Division v. Browd*⁴⁶², a citizen filed a complaint with the Dade County Animal Control Division after her neighbor's dog bit her own dog on two separate occasions.⁴⁶³ Although the division investigated the incident and concluded that the dog did commit the attacks, it concluded that the dog was not dangerous.⁴⁶⁴ The Third District Court of Appeal rejected the petitioner's argument that the county ordinance required the division to declare the dog dangerous.⁴⁶⁵ The court concluded that the decision "was a discretionary executive action not amenable to control, superintendence, or review by the judiciary."⁴⁶⁶

Additionally, in *Carter v. City of Stuart*⁴⁶⁷ the Florida Supreme Court confirmed that a city's decision to not enforce its animal control ordinance is a discretionary policy decision.⁴⁶⁸

It is particularly important that local governments adhere to the original intent of the Florida Legislature when it passed the Dangerous Dog Bill: that the "dangerous" classification only be applied to dogs who are truly dangerous or vicious because they have attacked humans or other animals, or who undoubtedly possess the propensity to attack a human or another animal. Running up to and barking at humans, while likely to be annoying to many, is more often than not *normal* dog behavior, as noted in the *Merck Veterinary Manual*. However, engaging in

annoying behavior does not justify the use of taxpayer-funded animal control services to prosecute dogs and their owners through local government dangerous dog programs.

Moreover, not only does an unfounded Dangerous Dog classification create serious hardships for dog owners, it imposes inhumane confinement or even death for the dogs at issue. With counties such as Alachua County, Florida, instituting a death sentence for dogs classified "dangerous," local governments must refrain from classifying dogs "dangerous" when the evidence does not support such a classification, simply because of speculative fears that they may be held legally liable in the future.

XII. RECOMMENDATIONS

A. Cite Owners for Their Dogs Running at Large or Violating Leash Laws Rather Than Classifying Dogs Dangerous When There is No Evidence that the Dogs are Truly Dangerous

When dogs are running-at-large and are in violation of local leash laws, in appropriate situations dog owners should receive citations, and the citations should be issued upon a graduated scale of fee increases if the violations continue. There are too many cases in which dogs are simply running-at-large and engaging in normal dog behaviors such as barking, yet, as in the case studies cited above, local governments allow or even encourage neighbors to initiate Dangerous Dog cases against dog owners. Not only is this unjust, it wastes limited local government resources that are required to investigate and prosecute the complaints at the animal control level, and subsequently at the county court level or beyond if the dog owner chooses to pursue appeals.

If a local ordinance requires an animal control officer to witness a dog running at large before a citation can be issued, local governments should amend their ordinances to allow citations based upon a minimum of two sworn affidavits provided by adult citizens not residing in the same household.

B. Cease Handling Cases Before Animal Control Authorities and Move Directly into County Court

As discussed above, the governing state statute simply does not provide the due process required to be provided to dog owners by the federal and state constitutions. By not addressing evidentiary standards, section 767.12(1)(c) allows local governments to implement and follow laws that allow for "informal"⁴⁶⁹ and "non-adversarial"⁴⁷⁰ procedures that permit the introduction of unsworn, and in some cases hearsay, evidence and allow the classification review entity to decide who will be permitted to speak as witnesses and who will not. The informal evidentiary standards do not ensure a fair balancing and weighing of the totality of the evidence. Moreover, the parties cannot subpoena witnesses, which has been an impediment to the presentation of cases for not only dog owners but also animal control authorities prosecuting Dangerous Dog cases.

Requiring Dangerous Dog cases to be handled from the initiation of the case in county courts will provide the structure and process to both dog owners and animal control authorities to which they are entitled under federal and state constitutions. It will also protect against waste of local government resources when they conduct an initial classification and formal hearing which is then followed by a de novo appeal in a county court.

Some may argue that courts are already overburdened and that Dangerous Dog cases will further tax the system, but moving directly to county court removes the duplication of conducting two hearings or trials, whether informal or formal. If a party is not satisfied with the decision reached by the county court judge, the party may seek a traditional, record-review type of appeal in the circuit court. Through this scheme government resources are conserved and both parties have a better chance of receiving due process and a fair hearing.

When citizens receive traffic tickets, they are generally permitted to have their cases heard at least in traffic court. Given the interests at stake in "Dangerous Dog" cases--in which many humans love their dogs as equal or near-equal family members--these matters should be heard at their origin by county courts who are far better equipped to provide the due process and fair hearings mandated by our constitutions. Chapter 767 should be amended by the Florida Legislature to expressly require that animal control authorities proceed with the prosecution of Dangerous Dog cases in county courts. The current process which allows Dangerous Dog cases to be handled by animal control authorities--many of whom fear being held liable in the future should they fail to declare a dog dangerous--is simply too fallible.

Additionally, the internally structured process--which, for example, allows an animal control officer to classify a dog "dangerous," and then requires that an animal control director conduct a formal hearing to consider permanent classification--is without sufficient safeguards to ward against decisions motivated by collegiality and a desire to support the decisions of co-workers.⁴⁷¹ Such structure undeniably smacks of incestuousness.

In lieu of proceeding with a Dangerous Dog classification in the county court, at a bare minimum Dangerous Dog classifications should be handled by persons specially trained in dog behavior. For example, Brevard County requires that after the animal services and enforcement director finds that there is sufficient cause to institute an initial determination of dangerous, the matter proceeds to the Animal Services and Enforcement Council.⁴⁷² The Council consists of one veterinarian and one alternate veterinarian, one dog behavioral trainer and one alternate dog behavioral trainer, and one kennel worker and one alternate kennel worker.⁴⁷³ The Council is required to adopt rules of procedure.⁴⁷⁴ A copy of the rules is provided to the dog owner requesting a hearing.⁴⁷⁵ If a dog is declared dangerous the Council must provide the basis for declaring the dog dangerous.⁴⁷⁶ A committee comprised of individuals with no allegiance to the local government over the dog owner, and which has members who possess quality training, education, and experience with animal behavior, is far more likely to provide a fair assessment of the dog and the alleged incident than a committee comprised of local government employees or others with little or no training, education, or experience in dog behavior and a collegial relationship with animal control agencies.

C. Modification of "Menacing Fashion" and "Apparent Attitude" Language

Section 767.11, *Florida Statutes* (2005) states that:

- (1) "Dangerous dog" means any dog that according to the records of the appropriate authority:
 - (d) Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack

Until the legislature modifies or better explains the definition of "menacing fashion" and "apparent attitude of attack," this Dangerous Dog law cannot provide dog owners with adequate due process. Citizens are able to misuse the Dangerous Dog law because the definitions of "menacing fashion" and "apparent attitude of attack" are not clear enough to exclude improper complaints. Coupled with obvious local government fears of being held legally liable in the future should they choose to not classify a dog "dangerous" and the dog later hurts someone, the failure to define how "menacing fashion" and "apparent attitude of attack" will be determined results in an evidentiary standard easily met by the complaining party. Oftentimes this is someone who knows little or nothing about basic dog behaviors and how dogs use these behaviors to communicate, and who may personally fear dogs in general. These parties are permitted to subjectively assess the behavior of the dogs as approaching them in a "menacing fashion" or "apparent attitude of attack," even when the dogs are truly not engaging in such behavior. The subjective assessments are usually given great weight by the boards, committees, or other authorities hearing the cases. A particularly illustrative example is the statement made by the Alachua County code enforcement board member who said that a dog who is off of his property and who "scares" someone is going to be classified "dangerous" in Alachua County.⁴⁷⁷

Although there is a valid concern that making the definition more stringent will exclude some truly dangerous behaviors, if the definitions are carefully crafted they will include all Dangerous Dogs and exclude all non-Dangerous Dogs who are merely engaging in normal dog behaviors that are not truly dangerous.

Shrek's case also provides an illustrative example of the difficulty the average person has in understanding normal dog behavior. Although the legislature intended the language in the statute to mean a *true* threat, and believed that the average citizen would understand when such a true threat is present,⁴⁷⁸ the practical application to real-life cases has proven otherwise. The average citizen, especially one who has a general fear of dogs, is unable to distinguish between a dog running toward a person in an excited, playful manner--in this case, an eight-month-old puppy--and a dog running toward a person in a vicious manner. The only evidence of Shrek's "dangerousness" was the neighbor's petition that described a single incident in which the dog ran to those who beckoned him, and who never bit or otherwise injured anyone although, as the veterinarian committee member noted, throwing hot coffee on him would have incited rather than deterred Shrek if he were truly intent on attacking.⁴⁷⁹

To resolve the difficulty of interpreting what "menacing fashion" and "apparent attitude of attack" mean, more weight should be given to qualified experts such as veterinarians or animal behaviorists. The "menacing fashion" and "apparent attitude of attack" prong should be redrafted to state "as determined by a qualified animal behaviorist or veterinarian." All counties should have access to at least qualified veterinarians, so this clarification and redrafting should not impose a severe hardship on animal control authorities.

Section 767.11(1)(d) should also be amended to require a display of the alleged behavior on more than one occasion, and to include a statute of limitations. Several states have enacted such provisions. For example, in Nevada, a Dangerous Dog is defined as a dog who "*on two separate occasions within 18 months . . . behaves menacingly . . .*"⁴⁸⁰ In Louisiana, a dog who "*on two separate occasions . . . engages in any behavior that requires a defensive action by any person*" may be declared dangerous.⁴⁸¹ Both California and Louisiana also have statutes of limitations requiring that the dog exhibit the dangerous behavior within the "prior 36-month period."⁴⁸²

D. Enact an Intermediate "Potentially Dangerous Dog" Category

Section 767.11 should also be amended to include a "potentially Dangerous Dog" category.⁴⁸³ Minnesota's statute, which includes a potentially dangerous category, can be used as a model.⁴⁸⁴ The statute retains its Dangerous Dog classification, but only those dogs who have inflicted "*substantial* bodily harm" are included in the definition.⁴⁸⁵ A "potentially Dangerous Dog" is then defined as a dog who has engaged in behavior causing less severe injury or has exhibited an "apparent attitude of attack."⁴⁸⁶

Applying this model to the Florida statute, the fourth prong of the current Dangerous Dog definition should be moved into a "potentially dangerous" category. A dog who approaches a person in an apparent attitude of attack only once would be "potentially dangerous," while a dog who approaches a person with an apparent attitude of attack on more than one occasion would be "dangerous." Notably, California requires the dog to display the threatening behavior more than once even in the "potentially dangerous" category.⁴⁸⁷ Distinguishing between dangerous and potentially dangerous classifications is a compromise that recognizes concerns that the public should be protected from a dog who exhibits dangerous behavior only once. A fifth prong, providing for "potentially Dangerous Dogs" who display threatening behavior after classification, would then be added to the Dangerous Dog definition.

Even though one instance of behavior will still subject the dog owner to regulation, the compromise is also in the dog owner's best interest. A potentially Dangerous Dog owner is subject to less severe restrictions and costs than a Dangerous Dog owner. Under the Minnesota model, a potentially Dangerous Dog owner must permanently identify the dog⁴⁸⁸ and is subject to other regulations on a county basis,⁴⁸⁹ but is not subject to the criminal penalty, confiscation, or euthanasia provisions.⁴⁹⁰

Notably, the California statute provides that any potentially Dangerous Dog who does not display new "instances of [threatening] behavior . . . within a 36-month period from the date of designation . . . shall be removed from the list . . ." and any dog may be removed from the list at any time if the owner shows that "changes in circumstances or measures taken . . . , such as training of the dog, have mitigated the risk to the public safety."⁴⁹¹ This removal provision is a logical conclusion that recognizes the potential for some dogs' behavior to be misjudged, and that inclusion in even the potentially Dangerous Dog category imposes hardships on the dogs' owners and the dogs which may not be justified. Providing the ability to remove the dog from the potentially Dangerous Dog category provides a fair and reasonable option that respects the property rights of dog owners while also protecting citizens and making better use of government resources. Florida's potentially Dangerous Dog category should also include a removal provision.

E. Evidentiary Standards and Administrative Procedure During the Classification Process

Amending the statutory definition and adding an intermediate classification is a good start, but animal control authorities should also be held to a stricter evidentiary burden. Although federal and state laws of evidence only apply directly to courts of law⁴⁹², a county may follow them at its quasi-judicial hearings when doing so would best serve interests of justice. For example, a local zoning commission will frequently place witnesses under oath, allow for cross-examination, and limit witness testimony to those with direct knowledge.⁴⁹³ Like these zoning commissions, the Dangerous Dog classification committees should recognize the property rights

at stake and allow for the basic rules of evidence to be followed, even if the proceeding is not held in a court of law.

Animal control authorities should also adhere to administrative procedure. Although local governments are not statutorily bound by the Florida Administrative Procedure Act ("FAPA"), the legislature may expressly make a local agency subject to FAPA.⁴⁹⁴ A local agency may also voluntarily choose to follow the procedures set forth in FAPA.⁴⁹⁵ At least one Florida county has an administrative hearing officer issue a formal order of final classification under section 767.12(1)(c).⁴⁹⁶ The administrative hearing officer must clearly set forth the findings of fact and explain the final order.⁴⁹⁷ Given the dog owners' interests at stake, due process and fair hearing requirements demand this degree of structure, at a minimum. Unfortunately, most Florida counties do not even begin to implement this minimal degree of structure in their Dangerous Dog proceedings.

Once an agency is subject to FAPA, it must follow certain procedures set forth by the *Florida Statutes*. If there are disputed issues of material fact, an administrative law judge must conduct the hearing⁴⁹⁸ and the hearing is to be a "trial type proceeding."⁴⁹⁹ Parties must be given an opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence.⁵⁰⁰ Moreover, hearsay alone cannot support the ultimate decision; it may only be used to supplement or explain other evidence.⁵⁰¹ Thus, following the administrative process should ensure that facts truly supporting the classification are present and will result in better defined and preserved ruling should the owner decide to proceed to the county court under section 767.12(1)(d).

F. Outlaw Chaining Dogs for Prolonged Periods of Time

As discussed *supra* in Part IV of this Article, research undeniably indicates that chaining dogs for prolonged periods of time is a primary cause of dog bites. Throughout the country a growing number of communities have either banned chaining or tethering of dogs for prolonged periods of time, or they are about to ban this practice.⁵⁰² Local governments who do not already have such chaining bans in place should enact them immediately. Not only do these chaining bans successfully prevent situations in which dogs are likely to bite, they better ensure humane treatment of dogs.⁵⁰³

G. Public Education

While public education is not a solution in and of itself, it is a valuable part of any public safety program. Some counties already have certain education programs in place and others are planning to implement them.⁵⁰⁴ Public education should include both responsible pet ownership and responsible parenting. Approximately 79% of the victims of fatal dog attacks are children under the age of 12.⁵⁰⁵ Many of these fatal attacks occur when a child is trying to play with a dog while he is eating.⁵⁰⁶ If parents are aware of these factors, it can prevent the death or serious injury of a child as well as the initiation of the Dangerous Dog classification process.

H. Implement Licensing Requirements for Those Who Own Large Dogs

Ironically, the one characteristic that many dogs classified "dangerous" *do* share is the one characteristic that the legislature expressly rejected as a component of the Dangerous Dog law--a

common breed. Local governments and citizens frequently express specific concern with pit bulls and ignore the effect of irresponsible ownership.⁵⁰⁷ Although Florida local government officials recognize that they cannot expressly enact a breed-specific ban,⁵⁰⁸ many are applying their ordinances to reach the same effect.⁵⁰⁹ An inordinate number of dogs classified "dangerous" are pit bulls, Rottweilers, Akitas, and other breeds usually targeted by breed specific legislation.⁵¹⁰

One probable reason for this application of the dangerous dog proceedings to these specific breeds of dog may be human perception. For example, if two cars--one a Honda Civic and one a red Corvette--are speeding down a highway at an identical rate of speed, more often than not it will be the driver of the Corvette who is pulled over for ticketing rather than the Honda's driver. Image and reputation flavor perception. A pit bull running up to and barking at someone--in other words, engaging in normal dog behaviors--is much more likely to be seen as "attacking" than a host of other dogs who do not carry the same negative reputation as pit bulls. Coupled with many local governments' obviously politically motivated fears of being held liable in the future should a dog with a bad breed reputation actually cause harm to someone, it is easy to understand why local animal control authorities classify an inordinate number of "bad-reputation" breeds "dangerous" based on facts which indicate that the dogs are doing nothing more than engaging in normal, non-dangerous dog behaviors.

Rather than more freely apply Dangerous Dog classifications to pit bulls and other dogs perceived to be dangerous due to their reputations, local governments can require citizens who own large to complete responsible dog owner courses as a precursor to owning the dogs or receiving a dog license.

This requirement is for the good of the dogs as well as the public. It is well known that people usually fear large dogs rather than small ones.⁵¹¹ Requiring big dog owners to complete responsible owner classes prior to ownership, or soon thereafter, ensures in the least that these humans are exposed to concepts of humane treatment of the dogs, as well as the knowledge that other humans are more likely to perceive the actions of these dogs as "menacing" or as engaging in an "apparent attitude of attacks" if the dogs approach others. It informs good owners of the need to be vigilant about keeping watch over, and controlling, their dogs. Requiring completion of such a class also informs owners that undertaking the care of such a dog is a serious responsibility. Owners who are willing to complete the required class will generally indicate that they are capable of acting as responsible owners. The outcome should be a win-win situation for all involved.

Local governments need not fear violating constitutional restrictions against imposing such requirements because owners of large dogs are not a suspect class, and governments have a valid public safety interest in imposing such requirements.

Of course, such requirements would trigger the need for enforcement by local governments, which thus becomes a resource allocation issue. However, this preventative measure is a reasonable--and probably more cost effective--alternative to the current provision of animal control services investigating and prosecuting dog bite incidents, dogs running at large, and animal cruelty cases.

I. Institute Better Training for Animal Control Staff

While some animal control staff members are trained to control and confine dogs, some have received no training on normal and abnormal dog behaviors. It is important to note that some

rural Florida counties, and other rural counties throughout the country, have no animal control divisions. Animal control matters in these locales are generally handled by local police or sheriff departments.⁵¹² These entities are usually even less likely to be trained in normal and abnormal dog behaviors.

Currently there is a shift taking place in this country to move from "animal control" to "animal care and control."⁵¹³ These animal control agencies are taking seriously the charge that many animal control agencies pledge to uphold--to ensure the humane treatment of animals, including dogs, within their communities, in equal measure to making sure companion animals' behavior is reasonably controlled and that the animals are not a public safety threat.⁵¹⁴

Animal care and control divisions should work with citizens who are experiencing dogs running-at-large to assuage the problem before it rises to the level of citizens believing that they must file documents to institute Dangerous Dog classifications. Animal care and control officers should work with dog owners to educate them on how to contain their dogs on their properties, and not simply show up at their doorstep to issue citations. Many of these citizens, such as the dog owner in *Ortega*, are good citizens trying to keep their dogs on their properties but having difficulty doing so for understandable reasons that simply need adjustment.⁵¹⁵ Counseling and instruction from trained animal care and control officers who recognize the need to avoid unnecessary Dangerous Dog classifications should be capable of heading off unfounded Dangerous Dog classification filings through these more holistic, preventative measures, while also protecting the general public. Dangerous Dog cases are stressful for both dog owners and complaining citizens, and they quickly tax limited government resources. Logical, holistic measures that can be taken by animal care and control officers to solve problems with dogs who are truly not dangerous but who nonetheless are a nuisance because they are running-at-large, should be employed whenever possible.

J. Pass Legislation Requiring Owners of Dogs Repeatedly Running-at-Large to Complete Responsible Owner Classes

In addition to requiring dog owners who allow their dogs to run at large, or who violate leash laws, to pay financial penalties, local governments should require that the owners pay for and complete a responsible dog owner course. Dog owners should have the option of completing the course in lieu of paying a monetary fine. Proof of successful completion of the course provided to the animal control authority should result in a refund or abatement of any running-at-large or leash law violation fees that were or could be imposed.

K. City and County Attorneys Should Properly Advise Animal Control Directors on Liability Exposure

Some animal control directors appear to be unfamiliar with concepts such as government sovereign or qualified immunity regarding discretionary decisions. City and county attorneys should issue memoranda of law to animal control directors and the entities within their governments that consider Dangerous Dog cases, explaining that governments generally cannot be held liable for reasonable decisions in discretionary acts. Dangerous Dog classifications should not be based upon speculative, possible future behavior, or for political motivations. Hopefully better informing animal control agencies and Dangerous Dog

classification decision-makers on this matter will result in only dogs who are truly dangerous being classified as such.

L. Under the Current Scheme, Dog Owners of Dogs Truly Not Dangerous Should "Appeal" to Their Jurisdiction's County Court

For the reasons discussed *supra*, dog owners who truly believe their dogs have been unjustly classified "dangerous" should appeal their cases to their county courts.⁵¹⁶ Using the arguments set forth in this Article, dog owners in counties that are currently requiring "appeals" of Dangerous Dog classifications to be conducted as traditional record reviews of the proceedings below, or through petitions for writ of certiorari, should argue that they are entitled to de novo hearings. A de novo hearing will afford the dog owner with formal structure more likely to focus on the totality of the circumstances rather than simply the subjective opinion of the complaining party. Formal rules of evidence will be applied: witnesses can be subpoenaed and sworn before testifying, hearsay evidence should be excluded, documents will need to be authenticated, and non-witnesses sitting in the galley will not be allowed to interject their mere opinions. The presiding judge will be much better educated on the evidentiary burden that the prosecuting county must meet--usually a preponderance of the evidence--and far better schooled in properly weighing all of the evidence. In short, dogs are far more likely to get a fair trial in court than they are before many local government animal control committees, code enforcement boards, or county managers.

M. Consider Extracting the Root of the Problem

Based upon traditional and historical practices, humans have adopted, and continue to subscribe to, the mindset that the only way to deal with most dogs who bite is to kill them.

Dogs generally cause harm by using their elongated snouts and numerous sharp teeth to bite.⁵¹⁷ In the wild, the extended canine teeth are used to catch, stab, and hold prey.⁵¹⁸ Behind the canine teeth, the premolars are designed for cutting and shearing.⁵¹⁹ The molars, located at the very rear of the jaw, are used to chew and grind.⁵²⁰ The small incisors, located in the front of a dog's mouth, are used to gnaw.⁵²¹ A dog also can engage crushing power with his jaws to bear down on and contain prey, or in the case of small animals, to kill them.⁵²² The roots on a dog's teeth are very long.⁵²³ Nearly all of the harm caused by vicious dogs is created by their teeth and the crushing power of the jaws.⁵²⁴ Dogs can kill small prey by grasping the prey in their jaws and vigorously shaking their heads from side to side, which can break the neck of the prey.⁵²⁵ Grasping the throat of prey and pressing it to the ground can cause suffocation.⁵²⁶

Rather than impose a death sentence on some dogs who have bitten and harmed or killed other animals, or who have caused relatively non-serious injuries to humans, animal control authorities should consider allowing some dog owners to pay to have their classified-"dangerous" dog's teeth extracted. Removing the teeth at least in the front of a dog's mouth should render him far less dangerous and far less likely to cause harm in the future.⁵²⁷ While the dog will still have some crushing power, he definitely will be much less of a threat to most humans and other animals.⁵²⁸

If the goal of killing a "dangerous" dog is ensure that he will never cause harm again, then extraction of his teeth should serve that purpose in most situations as well.⁵²⁹ Of course, if the goal of killing the dog is to exact revenge upon him, then removal of teeth is irrelevant.

XIII. CONCLUSION

When drafting Florida's Dangerous Dog law, the legislature's focus was on a very specific class of dogs--those with vicious propensities--and the groups who supported the legislation did so with the understanding that the goal was to control vicious dogs before they could attack. A review of several Dangerous Dog cases from around the state of Florida, some receiving treatment in this Article, clearly indicates that some local governments are enforcing the statute outside of the original intent of the legislature. Some of these local government entities are classifying dogs who are simply engaging in normal dog behaviors "dangerous" because they fear being held legally liable in the future should the dogs actually eventually hurt someone. Such fear is unnecessary because local governments are immune from liability for making discretionary decisions when the decisions are reasonable.

A statewide remedy is necessary because the broadly written statute allows counties to circumvent due process, impose excessive penalties upon dog owners, and to treat inhumanely dogs who are not truly dangerous and who are merely engaging in normal dog behaviors.

As the human population continues to increase,⁵³⁰ and people live closer together than ever, the issue of dogs running at large and those involved in Dangerous Dog classification cases will become an even greater problem. Local governments must deal reasonably with owners who have dogs who are not truly dangerous but who run loose, first to counsel and educate them, and if the problem continues, to fine them.

In Florida, Dangerous Dog classifications should only be applied as the Florida Legislature intended--to dogs who are truly dangerous. Local governments must realize that they serve the parties who complain about dogs who are allegedly dangerous to the same degree that they serve owners of dogs who are accused of behaving in dangerous behaviors. To classify dogs who are not truly dangerous, "dangerous," as a means to circumvent deficient running-at-large laws, to avoid future liability, or even to assuage aggressive citizens' complaints, means that local governments are failing to meet their responsibility to serve *all* citizens in a professional, fair, and legally responsible manner.

The need for impartial and fair treatment of Dangerous Dog cases is even more punctuated by the fact that counties such as Alachua, Florida, are putting to death dogs classified "dangerous." The authors believe it is foreseeable that before long other counties will change their Dangerous Dog policies and follow suit.

Over the course of thousands of years most dogs have loyally served man's needs above their own. Justice requires that in return for their long-term and unequalled commitment to bettering our human lives, that dogs receive a fair shake when they are embroiled in Dangerous Dog classification cases. The U.S. and Florida Constitutions require that dog owners receive due process and fair hearings. Unfortunately, in too many Dangerous Dog classification cases, such is not the standard practice.

* Citations to the *Florida Statutes* and cases reported in the *Southern Reporter Second* are formatted in accordance with *The Florida Style Manual*. Cynthia McNeely has a J.D., The Florida State University, 1998; 1997-98 editor-in-chief, The Florida State University College of Law Law Review; adjunct professor of animal law, The Florida State University College of Law. The author dedicates this Article to Professor Phil Southerland, Judith Dougherty, and Carol Clark, true friends to animals. She also dedicates this Article to Richard Ziegler, the Director of Leon County Animal Control, with whom she does not always agree but who she nonetheless considers to be a true gentleman. Finally, she dedicates this Article to the dogs who have blessed her life, and the lives of others. Sarah A. Lindquist has a J.D., with highest honors, Florida State University College of Law, 2006; B.S., with honors,

University of Florida, 2003. Thanks to my family members for their continued guidance and support. May this article inspire all who read it to advocate for our faithful, furry companions.

¹ KAREN DELISE, *FATAL DOG ATTACKS: THE STORIES BEHIND THE STATISTICS* 87 (Anubis Press 2002).

² See Audio tape: Hearing before the Marion County Code Enforce. Bd. (Dec. 21, 2005), Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) [hereinafter Delp Hr'g Tape] (statement made by unidentified member of the Code Enforcement Board).

³ The authors refer to domesticated dogs throughout this article as simply "dogs." There are feral, or wild, dogs that continue to exist in certain areas of the United States and throughout the world, but this Article focuses upon domesticated dogs. Although the authors believe "guardian" is a more accurate term to describe the human role in the relationship, because American jurisprudence treats dogs as human property the authors will use the term "owner" throughout this Article.

⁴ See U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Morbidity and Mortality Weekly Report*, July 4, 2003, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5226a1.htm> [hereinafter "MMWR"].

⁵ James Serpell, *From paragon to pariah: some reflections on human attitudes to dogs*, in *THE DOMESTIC DOG: ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE* 252 (James Serpell ed., Cambridge Univ. Press 1995); Part II.C (discussing the human-dog relationship and the special consideration generally accorded to dogs, while also holding dogs to a high standard to behave in a heightened manner although they are animals).

⁶ See, e.g., *Kennedy v. Bias*, 867 So. 2d 1195 (Fla. 1st DCA 2004) (explaining that although some humans in contemporary society may view dogs as more than property, that the law nonetheless continues to treat them as simply human property); Harold W. Hannah, *Animals as Property, Changing Concepts*, 25 S. ILL. U. L.J. 571 (2001).

⁷ For example, as discussed *infra* in Part VI, humans are accorded constitutional protections before government can summarily deprive them of their property interests in their dogs. However, dogs not accorded self ownership are subject to the whims of those who own them.

⁸ See U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Dog Bite Prevention*, available at <http://www.cdc.gov/ncipc/duip/biteprevention.htm> [hereinafter Dog Bite Prevention].

⁹ See MMWR, *supra* note 4.

¹⁰ See DELISE, *supra* note 1, at 23.

¹¹ See Dog Bite Prevention, *supra* note 8. This statistic is calculated using data gathered from 1965 through 2001. The average number of humans killed by dogs between 1996 and 2001 is closer to 20. See DELISE, *supra* note 1, at 116. The reason for the increase is not clear, but speculatively can be attributed to better reporting of events, and/or human population increase. Between 1965 and 2001, the United States' human population increased from approximately 191.25 million to approximately 282 million. See Frank Hobbs & Nicole Stoops, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, *Demographic Trends in the 20th Century*, available at <http://www.census.gov/prod/2002pubs/censr-4.pdf>; U.S. Census Bureau, American Factfinder, http://factfinder.census.gov/servlet/SAFFPopulation?_submenuId=population_0&_sse=on (last visited Nov. 13, 2006).

¹² See DELISE, *supra* note 1, at 14-15 (noting that infants and males between the ages of 2 and 4 constitute the majority of those killed). DELISE notes that toddlers are generally not capable of recognizing or understanding the "significance of an aggressive display by a dog." *Id.* at 15. DELISE states that:

[a] probable scenario is; [sic] upon approaching a dog, particularly a chained dog, the child is given a warning, displayed as either a stiffened posture, raised hackles, and/or a growl. The toddler, not realizing the implications, continues his approach, and the dog may consider this a challenge or a threat. Chained dogs, having no option to retreat, may lash out at this perceived threat or encroachment.

Id.

Comparatively, in 2003 (the most recent year for which CDC data are available on the CDC website for the following categories) the number of children under the age of 14 reported to have died in specified categories are: drownings-834; falls-122; fires-527; firearms-380; machinery-24; poisonings-184; struck by/against-61; suffocation-1149; vehicle-related-2553. One thousand and forty-one of these deaths were classified as "homicides;" i.e., that the mode of death (e.g., drowning-32; fire-37; firearm-235; suffocation-80) was intentionally employed to kill these children. See U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *WISQARS Injury Mortality Report 2003*, available at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html [hereinafter HHS Mortality Report]. The United States

Department of Justice reports that five infants, in most cases newborns, are killed or left to die each week by their mothers or guardians. See DELISE, *supra* note 1, at 45. DELISE notes that:

[s]tatistically, parents or human guardians of children (aged 1-day-old to 12-years-old) pose an incredibly greater threat to children than dogs. An estimated three children die every day in the United States due to abuse, neglect or maltreatment at the hands of their human caretakers.[] In 1995, there were 1,248 children that died at the hands of their parents or caretakers, according to the National Child Abuse & Neglect Data System. In 1996, at least 1,046 children died from abuse, maltreatment, and/or neglect from their human guardians (parents or caretakers), according to NCPCA's 1996 Annual Survey.[]

Over the last 37 years, there have been 342 children from 1 day to 12 years old killed by dogs, or approximately nine children per year.

A child in the United States is over 100 times more likely to be killed by his/her parents or human caretaker than by a dog.

In unabashed defense of dogs, it cannot be denied that dogs exhibit far more tolerance towards infants and children than many of their human counterparts. Statistically speaking, the family member to be most feared and guarded against as it relates to fatally inflicted injuries in newborns and children is not to be found in the species *Canis lupus familiaris*.

DELISE, *supra* note 1, at 45 (internal citations omitted).

¹³ See Dog Bite Prevention, *supra* note 8.

¹⁴ See *Nation in Brief*, WASH. POST, May 30, 2001, at A20; Evelyn Nieves, *A Bizarre Dog Attack Shakes San Francisco*, N.Y. TIMES, Feb. 1, 2001, at A14; *The Attack-Dog Killing*, NEWSWEEK, Feb. 12, 2001, at 27.

¹⁵ See DELISE, *supra* note 1, at 104; *infra* Part VIII. This attack was one of the primary impetuses for Florida passing its Dangerous Dog bill in 1990.

¹⁶ This Article offers some suggestions in this regard in Part XII.

¹⁷ See DELISE, *supra* note 1, at 26 (citing Dino Drudi, *Are Animals Occupational Hazards?*, in COMPENSATION AND WORKING CONDITIONS 15-22 (2000)).

¹⁸ See HHS Mortality Report, *supra* note 12.

¹⁹ See *supra* note 12.

²⁰ See *id.*

²¹ See, e.g., Serpell, *supra* note 5, at 252-53 (discussing the British media's and public's "national spasms of horror and outrage" over seven dog attacks that were "grossly out of proportion to the actual risks"). Serpell notes that "in a nation of 50 million people and 7.4 million dogs--perhaps half of which are large and potentially dangerous--it is in some respects astonishing that so few people are seriously injured or killed." *Id.*

²² See, e.g., *infra* Part IX.

²³ See, e.g., Aetna Smith, *Local Family's Dog Deemed Dangerous*, TALLAHASSEE DEM., Dec. 12, 2003, at B1 (stating that in 2003 Leon County Animal Control initially classified dogs "dangerous" in 18 cases, but only two cases were overturned during the final hearing stage). Notably, when the authors made a public records request for the number of petitions for classification of dangerous or aggressive animals filed from 2000 through 2005, and the number of dogs permanently classified "dangerous," Leon County Assistant County Attorney Cherry Shaw responded that their records indicated that in 2003, Animal Control received eight petitions, and four dogs were classified "dangerous." See letter from Cherry A. Shaw, Leon County Assistant County Attorney, to Cynthia A. McNeely, Esq., (Oct. 16, 2006) (on file with authors).

²⁴ While the authors do not agree with the concept that dogs can be owned by humans and are thus human property, they recognize that American jurisprudence classifies dogs as such. Thus, for purposes of legal analysis, dogs are treated as human property in this Article. See, e.g., *Bennett v. Bennett*, 655 So. 2d 109 (Fla. 1st DCA 1995) ("While a dog may be considered by many to be a member of the family, under Florida law, animals are considered to be personal property."). For a detailed discussion on human ownership of nonhuman animals, see STEVEN WISE, *RATTLING THE CAGE--TOWARDS LEGAL RIGHTS FOR ANIMALS* (2000); Gary L. Francione, *Animals, Property, and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 RUTGERS L. REV. 721 (1994); Thomas G. Kelch, *Toward a Non-Property Status of Animals*, 6 N.Y.U. ENVTL L.J. 531 (1998); Derek W. St. Pierre, *The Transition from Property to People: The Road to the Recognition of Rights for Non-human Animals*, 9 HASTINGS WOMEN'S L.J. 255 (Summer 1998).

²⁵ A particularly illustrative example of such a situation is the case of Beans, an Oklahoma City bulldog. See *Oklahoma City Animal Welfare Div. v. Corrales*, No. 97012618X (Okla. City Mun. Ct. 1997); Jennifer Jackson, *Rehabilitated pit bull gets new leash on life*, THE OKLAHOMAN, July 10, 2003, at 65. In 1997 an oil company employee was checking a home gas pump at a residence next to the home where Beans lived when Beans jumped

his fence and ran to the employee, who was behind a fence on the other property. *See* Telephone Interview with Carole A. Wangrud, Attorney for Hector Corrales (and Beans), in Oklahoma City, Okla., Nov. 14, 16 (2006) [hereinafter Wangrud Interview]. Beans barked at the employee, who had in his possession a large flashlight which he used to hit Beans with through the gate. *See id.* After being hit on the head Beans retreated to his yard, without injuring the employee. *See* Gregory Potts, *Pit bull finally may find new life beyond death row*, THE OKLAHOMAN, Aug. 27, 2001, at 59; Wangrud Interview, *supra*. The employee finished his work and went to his truck, where he called animal control to report Beans for barking at him through the fence. *See* Wangrud Interview, *supra*. Animal Control confiscated Beans, and a local judge imposed a death sentence upon Beans for barking. *See* Potts, *supra*; Jackson, *supra*.

Carole Wangrud, a local attorney, refused to accept the sentence and challenged it all the way to the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals. *See* Wangrud Interview, *supra*. In the interim, Beans sat at the local shelter for nearly six years. Finally, with the appeal still pending, a volunteer arranged for an agreement in which Beans was transferred to the Best Friends Animal Sanctuary in Kanab, Utah. *See* Jackson, *supra*. In 2006 Beans was adopted by a family who resides in Louisiana. *See* E-mail from Michele Besmehn, Dog Care Manager, Best Friends Animal Society, to Cynthia A. McNeely, Attorney (Nov. 9, 2006, 12:21 EST) (on file with authors). Unfortunately, Beans is suffering from a number of health ailments that a veterinarian determined resulted from Beans being caged at the animal shelter for so many years, which did not allow his muscles to develop properly, despite a cadre of dedicated volunteers who regularly walked him on a leash. *See id.*; Potts, *supra*.

While Beans's story has a mostly happy ending, for far too many good dogs their stories do not end on a positive note. Local governments routinely sentence dogs to death for doing nothing more than engaging in normal dog behaviors, such as barking, running, and protecting what they believe is their own property.

Until dog owners (guardians) are willing to stand firm and fight for their dogs' lives, unjust atrocities, such as those experienced by Beans, are undoubtedly going to continue--and even increase in number, as the human population increases and people live closer together than ever, which will naturally result in increased contact with neighbors' dogs.

²⁶ *See, e.g., infra* Part IX.

²⁷ *See id.*

²⁸ Many courts and legislatures are willing to concede that Dangerous Dog laws are questionable when they are breed-specific, but few are willing to question the validity of laws that equally regulate all breeds. *See, e.g.,* FLA. STAT. § 767.14 (2005) (prohibiting local governments from enacting breed-specific regulations); *Am. Dog Owners Ass'n v. City of Lynn*, 533 N.E.2d 642, 646 (Mass. 1989) (finding an animal control ordinance that regulated "pit bulls" was unconstitutional because it was "not sufficiently definite to meet due process requirements"); *Ferrar v. Marra*, 823 A.2d 1134, 1137-38 (R.I. 2003) ("Although we recognize that some states and municipalities successfully regulate certain breeds of dogs such as pit bulls our Legislature has not, as yet, chosen to create a species-specific standard of care.") (internal quotations omitted). For a discussion of the debate on breed-specific regulation, see Karyn Grey, *Breed-Specific Legislation Revisited: Canine Racism or the Answer to Florida's Dog Control Problems*, 27 NOVA L. REV. 415, 439-43 (2003). This Article does not explore in detail the issue of breed-specific legislation.

²⁹ In 1993, taxonomists from the American Society of Mammalogists reclassified the domesticated dog from the zoological classification of *Canis familiaris* to that of *Canis lupus (familiaris)* after a contemporary analysis of mitochondrial DNA indicated a minute (.2%) difference between domesticated dogs and the Gray Wolf. Although some experts disagree with this reclassification, it is now widely accepted that the domestic dog descended from the wild wolf. *See* DELISE, *supra* note 1, at 1-2.

³⁰ *See* Juliet Clutton-Brock, *Origins of the dog: domestication and early history*, in THE DOMESTIC DOG, ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE 8 (James Serpell ed., Cambridge Univ. Press 1995).

³¹ *See* DELISE, *supra* note 1, at 1.

³² *Id.* DELISE further notes:

[w]hat this reclassification means is that we now recognize what nature knew all along; that the wolf and the domestic dog are the same species, *Canis lupus*. The domestic dog is now recognized as a subspecies of the wolf, rather than a separate species; the Golden Retriever nestled comfortably in an old stuffed armchair is *Canis lupus (familiaris)* just as the Alaska Wolf bracing against the cold tundra winds is *Canis Lupus (tundrarum)*.

³³ *See id.* at 2.

³⁴ *See id.*

- ³⁵ See Clutton-Brock, *supra* note 30, at 8-10; Chris Thorne, *Feeding behaviour of domestic dogs and the role of experience*, in THE DOMESTIC DOG, ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE 105 (James Serpell ed., Cambridge Univ. Press 1995).
- ³⁶ See Clutton-Brock, *supra* note 30, at 15.
- ³⁷ See Serpell, *supra* note 5, at 247.
- ³⁸ See *id.*
- ³⁹ See *id.* at 10; DELISE, *supra* note 1, at 5; Lynette A. Hart, *Dogs as human companions: a review of the relationship*, in THE DOMESTIC DOG, ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE 162 (James Serpell ed., Cambridge Univ. Press 1995).
- ⁴⁰ See Clutton-Brock, *supra* note 30, at 15.
- ⁴¹ See *id.*; Raymond Coppinger & Richard Schneider, *Evolution of working dogs*, in THE DOMESTIC DOG, ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE 35-44 (James Serpell ed., Cambridge Univ. Press 1995).
- ⁴² See Clutton-Brock, *supra* note 30, at 15-16.
- ⁴³ See John W.S. Bradshaw & Helen M.R. Nott, *Social and communication behaviour of companion dogs*, in THE DOMESTIC DOG: ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE 116-17 (James Serpell ed., Cambridge Univ. Press 1995).
- ⁴⁴ See *id.*
- ⁴⁵ See Clutton-Brock, *supra* note 30, at 15-16.
- ⁴⁶ See *id.*
- ⁴⁷ In the Middle Ages hunting as a sport rather than solely as a means to sustain human life became a popular pastime amongst the aristocracy. See *id.* at 18.
- ⁴⁸ Baiting consists of bears, bulls, lions or other large wild animals being tethered or put into pits or other enclosed areas with dogs, who then charge at and fight the larger animals. See JULIETTE CUNLIFF, THE ENCYCLOPEDIA OF DOG BREEDS 74-75 (Paragon Pub. 1999). Baiting became very popular in Europe in the Middle Ages. Spectators were often charged to watch the bloody combat between dogs and larger mammals usually fighting to the death. See *id.*
- ⁴⁹ See *id.* at 68-89, 92-93.
- ⁵⁰ See *id.* at 71, 132.
- ⁵¹ See *id.* at 95, 110. For example, King Charles II spent a great deal of time playing with his spaniel dogs, which resulted in the entire breed being renamed the "King Charles Spaniel." See *id.*; see also Clutton-Brock, *supra* note 30, at 16-17.
- ⁵² See D.W. MacDonald and G.M. Carr, *Variation in dog society: between resource dispersion and social flux*, in THE DOMESTIC DOG: ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE 200-15 (James Serpell, ed., Cambridge Univ. Press 1995).
- ⁵³ See, e.g., Clutton-Brock, *supra* note 30, at 15.
- ⁵⁴ Anti-cruelty laws originated in Great Britain in the early 1800s. See Mark J. Parmenter, Note, *Does Iowa's Anti-Cruelty to Animals Statute Have Enough Bite?*, 51 DRAKE L. REV. 817, 820-25 (2003). The momentum to protect animals against abuse in the United States was initiated in the mid-1800s by Henry Bergh, who was the first president of the American Society for the Prevention of Cruelty to Animals. See *id.* at 823-24.
- ⁵⁵ See Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENVTL. AFF. L. REV. 471, 505-13 (1996); Jen Girgen, *The Historical and Contemporary Prosecution and Punishment of Animals*, 9 ANIMAL L. 97 (2003).
- ⁵⁶ See Wise, *supra* note 55, at 505-13.
- ⁵⁷ See Serpell, *supra* note 5, at 246.
- ⁵⁸ See *id.*, Girgen, *supra* note 55, at 101, 111-12.
- ⁵⁹ See Girgen, *supra* note 55, at 122-30 (discussing 20th century cases in which a dog was executed for assisting two men in committing a robbery and murder (the men received life in prison); a dog was tried and sentenced to life imprisonment at the state penitentiary for killing the governor's cat; a monkey was arrested and fined for smoking a cigarette in public; and a dog was tried and incarcerated for bothering a neighbor's cat). Girgen also likens the current practice of vicious or dangerous dog classification proceedings to the historical practice of prosecuting animals as criminals. Notably, at a 2004 Leon County Animal Control Classification Committee hearing, one of the committee members asked the dog owner, "You do understand [that] the [Dangerous Dog] petition is not filed against the owner; it is filed against the dog?" See Audio tape: Hearing before the Leon County Animal Control Dangerous Dog Classification Comm. (Dec. 11, 2003), *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (on file with Leon County Animal Control).

⁶⁰ See Pune Dracker, The American Society for Prevention of Cruelty to Animals, *About Us, History*, http://www.aspc.org/site/PageServer?pagename=about_history (noting that dog catchers were often paid by the dog and thus frequently stole dogs to kill to increase their wages, and describing the practice of rounding up approximately 300 dogs per day, placing them in a cage, and throwing the cage into the East River to drown them); NATHAN J. WINOGRAD, *REDEMPTION: THE MYTH OF PET OVERPOPULATION AND THE NO KILL REVOLUTION IN AMERICA* (Almaden Books forthcoming summer 2007).

⁶¹ See Rebecca F. Wisch, *Does My State Have a Leash Law?*, Animal Legal & Historical Center, Michigan State University College of Law, available at <http://www.animallaw.info/articles/ovusdogleashlaws.htm#s1>.

⁶² See Cynthia A. McNeely, *Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court*, 25 FLA. STAT. L. REV. 891, 898 (1998).

⁶³ See Seymour Moskowitz, *Malignant Indifference: The Wages of Contemporary Child Labor in the United States*, 57 OKLA. L. REV. 472-87, 521-25 (Appendix A) (2004).

⁶⁴ See Diane L. Bridge, *The Glass Ceiling and Sexual Stereotyping: Historical and Legal Perspectives of Women in the Workplace*, 4 VA. J. SOC. POL'Y & L. 581, 587-91 (1997). Notably, unmarried women, and married women during World War II, were frequently employed for wages.

⁶⁵ Whether called dog catchers or animal control officers, these government employees were largely motivated to round up dogs in part due to fears of rabies transmission to humans. See, e.g., Rachel G. Castillo, *Canines Cry Out: Is Six Months in a British Quarantine a Necessity for Rabies Prevention?*, 16 DICK. J. INT'L L. 459, 462-69 (1998).

⁶⁶ See, e.g., *Automobile, History of the Automobile*, <http://www.answers.com/topic/history-of-the-automobile> (last visited April 18, 2007) (noting that in 1903 the number of cars in the United States numbered in the thousands); *Automobile*, <http://en.wikipedia.org/wiki/Automobile> (last visited April 18, 2007) (placing the number of automobiles in the United States in 2002 at roughly 140 million).

⁶⁷ See U.S. Census Bureau, American Fact Finder, <http://www.factfinder.census.gov> (last visited April 18, 2007).

⁶⁸ See *id.*

⁶⁹ See Serpell, *supra* note 5, at 252.

⁷⁰ *Id.*

⁷¹ See *id.*

⁷² See *id.*

⁷³ See *id.*

⁷⁴ Dogs pay a price for their privileged cohabitation with humans: "dogs are by far the most common animal victims of human negligence and abuse." See Serpell, *supra* note 5, at 252. No central organization collects data on the total number of dogs killed, abused, or neglected each year by humans, but due to mankind's well-documented propensity toward violence there can be no doubt that injuries to dogs perpetrated by humans vastly outnumber the damage dogs cause to humans. See, e.g., Pet-Abuse.com, <http://www.pet-abuse.com/pages/home.php> (reporting and discussing thousands of cases of human abuse and/or killing of pets). See also James Serpell, *The Hair of the Dog*, in *THE DOMESTIC DOG: ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE* 261 (James Serpell, ed., Cambridge Univ. Press 1995). Serpell states:

Unfortunately, the domestic dog's extraordinary contribution to human welfare is not invariably reciprocated. In what is euphemistically referred to as the ["pet overpopulation problem"], at least five million dogs are discarded and euthanized annually in the United States alone. . . . [D]ogs are also the most common animal victims of human abuse and cruelty. They are sometimes chronically deformed by our taste for strange or comical physical features, they are regularly subjected to painful and pointless cosmetic procedures in order to fit our capricious, aesthetic preferences, and they are still one of the most widely used species in biomedical research. Yet, although the science of animal welfare has significantly improved our understanding of the biological and behavioural needs of farm animals, or captive animals in zoos or circuses, we remain surprisingly ignorant of the basic welfare needs of the domestic dog. Perhaps because dogs are so amiable and obliging by nature, we seem to take it for granted that they are happy and contented regardless of how we keep them. The evidence reviewed here . . . suggests a different conclusion, and points to a need for additional research on aspects of canine welfare.

Serpell, *supra*, at 261.

Regarding "pit bulls," DELISE states:

For the past 20 years, Pit Bulls have been subjected to cruelty, abuse and mistreatment to a degree and on a scale that no other breed in recent history has ever had to endure.

The stories are brutal and sickeningly common. Dogs are tortured, teased and abused in hopes of making them mean. Dogs are pitted against each other in fights. Those refusing to fight

or who lose are horribly killed or left to die in alleyways. Dogs carry huge chains and padlocks around their necks and live in squalor. Inexorably intermingled in these cruel pursuits are drugs, guns[] and theft. People from the worst segments of our society seek these animals out to guard drug houses, intim[id]ate other gang members, thwart police action and enhance their vacuous self esteem. Any real or imagined viciousness on the part of the Pit Bull breeds pales in comparison to the brutality, callous disrespect for life, and inhumanity of many of their owners.

DELISE, *supra* note 1, at 85-86.

⁷⁵ Serpell, *supra* note 5, at 254-55.

⁷⁶ Dumb Friends League, *Understanding Aggressive Behavior in Dogs*, available at <http://www.ddfl.org/behavior/dog-agg.pdf>.

⁷⁷ See Bradshaw & Nott, *supra* note 43, at 117.

⁷⁸ *Id.*

⁷⁹ *Id.* at 118.

⁸⁰ *See id.*

⁸¹ *See id.*

⁸² *Id.* at 118-19.

⁸³ *See* DELISE, *supra* note 1, at 17.

⁸⁴ *See* Bradshaw & Nott, *supra* note 43, at 118-19.

⁸⁵ *See id.* at 118 (Bradshaw and Nott cite a study that examined wolves, which, as discussed *supra*, are closely related to dogs).

⁸⁶ *See id.* at 119.

⁸⁷ *See* Clutton-Brock, *supra* note 30, at 10.

⁸⁸ *See id.*

⁸⁹ *See* Cunliff, *supra* note 48, at 74-75.

⁹⁰ *See* OTTO H. SIGMUND, D.V.M., MERCK VETERINARY MANUAL 1176-77 (Susan B. Aiello, D.V.M., ed., Eighth Edition 1998) [hereinafter MERCK VETERINARY MANUAL].

⁹¹ *See* DELISE, *supra* note 1, at 26.

⁹² *See id.* at 65-88.

⁹³ *See* MERCK VETERINARY MANUAL, *supra* note 90, at 1175-78.

⁹⁴ *See id.* at 1176-77.

⁹⁵ *See id.* at 1175-78.

⁹⁶ *See id.* The only exception to the requirement that the aggression be consistently exhibited is idiopathic aggression, which can occur "in an unpredictable, toggle-switch manner." *Id.* at 1176.

⁹⁷ *Id.* at 1175.

⁹⁸ *Id.* (emphasis added).

⁹⁹ *See id.* at 1176.

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

¹⁰² *See id.* at 1177.

¹⁰³ *Id.*

¹⁰⁴ *See id.*

¹⁰⁵ *See id.*

¹⁰⁶ *Id.*

¹⁰⁷ *See id.*

¹⁰⁸ *Id.* at 1178.

¹⁰⁹ *See id.*

¹¹⁰ *See, e.g.*, DELISE, *supra* note 1, at 34, 85-88 (discussing how pit-bull type dogs, in particular, are "tortured, teased, and abused" by humans who seek to make them vicious). Regarding pit bull and pit-bull type dogs, DELISE notes: "How much easier it is to dismiss this as a breed problem! Addressing the real issues of crime, poverty, animal abuse, ignorance, greed, and man's lust for violence is far too daunting a task for most people and so we blame the dogs for our societal ills." *Id.* at 86.

¹¹¹ *See id.* at 23-24 (chaining); 43 (mother went out and left 6-day-old infant on floor with dog she had not fed in six days; the dog killed the infant).

¹¹² *See* DELISE, *supra* note 1, at 9-14. DELISE notes that unneutered males are 2.6 times more likely to bite than neutered males, and male dogs are 6.2 times more likely to bite than females.

¹¹³ DELISE, *supra* note 1, at 51.

¹¹⁴ See *id.* at 11, 97-112.

¹¹⁵ See *id.* at 23-24.

¹¹⁶ *Id.* at 23.

¹¹⁷ See *id.* at 108-12 (indicating that two attacks occurred in Texas, two in Arkansas, two in Arizona, and the rest in Kansas, Alabama, North Carolina, Oklahoma, South Carolina, California, and Missouri).

¹¹⁸ See *id.* at 36-39 (explaining that when a group of dogs is implicated in an attack, it is very difficult to determine which dogs actively participated and which did not). Notably, some ordinances allow for all dogs who are considered to be part of a pack to be classified dangerous, even if not all members of the pack bit or harmed a victim. See, e.g., MARION COUNTY, FLA. CODE § 4-2 (2006) (defining a Dangerous Dog as "any domestic dog . . . whether alone or as a pack . . . [who aggressively bites, attacks, endangers, or causes injury to a human being or who kills or more than once injures a domestic animal]. The same ordinance describes a pack as "two (2) or more animals that run together."

¹¹⁹ Randall Lockwood, *The Ethology and epidemiology of canine aggression*, in *THE DOMESTIC DOG: ITS EVOLUTION, BEHAVIOUR AND INTERACTIONS WITH PEOPLE* 133 (James Serpell ed., Cambridge Univ. Press 1995).

¹²⁰ See *id.*

¹²¹ *Id.* at 134 (citing Randall Lockwood, *Vicious Dogs*, in *THE HUMANE SOCIETY NEWS* 31 (1986)).

¹²² See *id.* at 132-36.

¹²³ See *id.* at 134.

¹²⁴ See *id.*

¹²⁵ *Id.* at 136-37.

¹²⁶ See *id.* at 137.

¹²⁷ See *id.* at 135, 137.

¹²⁸ See Wise, *supra* note 55, at 476-503; Hannah, *supra* note 6, at 572.

¹²⁹ See WISE, *supra* note 24; at 26; David Favre, *Equitable Self-Ownership for Animals*, 50 *DUKE L.J.* 473, 477-80 (2000); Wise, *supra* note 55, at 476-505.

¹³⁰ See Cunliffe, *supra* note 48, at 11.

¹³¹ See Wise, *supra* note 55, at 492-93.

¹³² *Id.* at 471-72.

¹³³ *Id.* at 530-31.

¹³⁴ *Id.* at 524.

¹³⁵ *Id.* at 523-27.

¹³⁶ See *id.* at 527-28.

¹³⁷ See *id.* at 528.

¹³⁸ Larry Cunningham, *The Case Against Dog Breed Discrimination by Homeowners' Insurance Companies*, 11 *CONN. INS. L.J.* 1, 43 (2004-05).

¹³⁹ See, e.g., *Henderson v. Lancaster & Wallace*, 2 La. App. 680, 1925 WL 3455, 4 (1925), stating that:

Dogs are not in the class of ordinary domesticated animals. From the standpoint of being property they are not even in the class with fowls, such as chickens, geese and turkeys. This is true in practically all of the states so far as we are able to ascertain.

Dogs are not property under Louisiana law today unless assessed. They cannot be made the subject of larceny unless carried on the assessment roll. We do not think of them ordinarily as property, and this is true not only in the state of Louisiana but everywhere. On the contrary, we always think of "stock" or "live stock" as property, that is, something of value intrinsically.

However, some jurisdictions treated dogs as "imperfect property," which allowed owners to recover their value when someone hurt or killed another's dog via a civil action, but which did not provide justification for criminal prosecution for larceny when someone stole a dog. See *Salley v. Manchester & A.R. Co.*, 32 S.E. 526, 526 (1899).

¹⁴⁰ *State v. Weekly*, 63 N.E.2d 558, 558-59 (1945).

¹⁴¹ *State v. Trapp*, 48 S.C.L. 203, 1 (14 Rich. 203, 1) (1867), 1867 WL 2696 (S.C.) (Report of the District Judge).

¹⁴² See *Salley*, 32 S.E. at 527 (citing numerous cases in which state courts found dogs to be the personal property of humans, which allowed civil actions to be pursued against those who had injured or killed humans' dogs).

¹⁴³ See Wise, *supra* note 55, at 538; SONIA S. WAISMAN, ET AL., *ANIMAL LAW* 91 (2d ed. 2002); *Bennett v. Bennett*, 655 So. 2d 109 (Fla. 1st DCA 1995). In *Bennett*, a divorce case, the trial court awarded custody of the family dog to the husband but granted the wife visitation rights for every other weekend. On appeal, the District Court held that the dog was property and thus a marital asset not subject to custody or visitation, but only ownership. Examples of cases and statutes that make this declaration: IDAHO CODE § 25-2807 (2005) ("Dogs are property"); 3 PA. STAT.

ANN. § 459-601(a) (2005) ("All dogs are hereby declared to be personal property . . ."); *Bennett v. Bennett*, 655 So. 2d 109, 110 (Fla. 1st DCA 1995) ("[U]nder Florida law, animals are considered to be personal property.") (citations omitted); *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1086 (Ill. App. Ct. 1987) ("In the eyes of the law, a dog is an item of personal property.") (citations omitted); *Corn v. Sheppard*, 229 N.W. 869, 870 (Minn. 1930) ("Dogs are personal property.").

¹⁴⁴ See, e.g., *Brown v. Hoburger* 52 Barb. 15 (N.Y. Sup. Ct. 1868) ("Dogs, in general, as is well known, have no fixed or general market value."); *Lawler v. Henderson*, 36 Kan. 754, 14 P. 164, 166 (Kan. Sup. Ct. 1887) (describing that the townspeople believed one dog residing in the community had rabies, and they thus decided to kill everyone's dogs; the jury was instructed "[t]hat, as a general rule, dogs have no value.").

¹⁴⁵ *Bass v. State*, 791 So. 2d 1124, 1125 (Fla. 4th DCA 2000).

¹⁴⁶ *Rabideau v. City of Racine*, 627 N.W.2d 795, 798 (Wis. 2001) (stating that "the argument concerning the distinction between companion animals and goods owned primarily for their economic value is set forth fully in Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33, 69-70 (1998)" (internal citations omitted)).

¹⁴⁷ See, e.g., Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Related to Companion Animals*, 73 U. COLO. L. REV. 181, 197-200 (2003).

¹⁴⁸ See Heather K. Pratt, *Canine Profiling: Does Breed-Specific Legislation Take a Bite out of Canine Crime?*, 108 PENN ST. L. REV. 855, 860 (2004) ("The modern view, however, is that dogs are property . . .). Despite continuing to classify dogs as property, some jurisdictions now allow compensation to humans beyond the market value of the dog, for noneconomic damages such as the intentional infliction of emotional distress, or less commonly negligent infliction of emotional distress, when dogs are injured or killed. See, e.g., *Harabes v. The Barkery, Inc.*, 791 A.2d 1142, 1144 (N.J. 2001).

¹⁴⁹ See *County of Pasco v. Riehl*, 635 So. 2d 17, 18-19 (Fla. 1994).

¹⁵⁰ See, e.g., 62 C.J.S. *Municipal Corporations* §124 (2006).

¹⁵¹ 4 Am. Jur. 2d *Animals* § 24 (2006).

¹⁵² See *County of Pasco v. Riehl*, 635 So. 2d 17, 18-19 (Fla. 1994).

¹⁵³ See *Rucker v. City of Ocala*, 684 So. 2d 836, 840 (Fla. 1st DCA 1997).

¹⁵⁴ See *id.*

¹⁵⁵ *King v. Arlington County*, 81 S.E.2d 587, 589 (Va. 1954); see also *American Dog Owners Assoc. v. City of Yakima*, 777 P.2d 1046, 1048 (Wash. 1989) ("Dogs are subject to police power and may be destroyed or regulated to protect citizens."); Lynn Marmer, Comment, *The New Breed of Municipal Dog Control Laws: Are They Constitutional?*, 53 U. CIN. L. REV. 1067, 1070 n.17 (1984) (listing some of the court decisions that have upheld dog regulation).

¹⁵⁶ See MARY RANDOLPH, EVERY DOG'S LEGAL GUIDE 12/2 (2005) (noting the widespread use of Dangerous Dog laws and stating that "[u]nfortunately, many of the laws are so vague that they invite arbitrary enforcement").

¹⁵⁷ See *id.* at 11/6. Because the police power is inherent in the state, the state must delegate its authority down to local governments before the local governments may enact ordinances and regulations.

¹⁵⁸ See, e.g., COLO. REV. STAT. § 18-9-204.5(2)(b) (2005); LA. REV. STAT. ANN. § 102.14(A) (2005); MD. CODE § 10-619(a)(2) (2005); MINN. STAT. § 347.50(2) (2005); NEB. REV. ST. § 54-617(3) (2005); NEV. REV. ST. § 202.500(1)(a) (2005); 4 OKL. ST. § 44(2) (2005); WASH. REV. CODE § 16.08.070(2) (2005); ORANGE COUNTY, FLA., CODE § 5-29 (2006); LEON COUNTY, FLA. CODE § 4-26 (2006).

¹⁵⁹ See, e.g., CAL. AGRIC. CODE § 31603 (2005); NEV. REV. ST. § 202.500(1)(c) (2005); S.D. CODIFIED LAWS § 40-34-14 (2005). Some regulations also contain a "potentially dangerous dog" definition. See, e.g., CAL. AGRIC. CODE § 31602 (2005); MINN. STAT. § 347.50(2) (2005); NEB. REV. ST. § 54-617(6) (2005); 4 OKL. ST. § 44(1) (2005); WASH. REV. CODE § 16.08.070(1) (2005); ORANGE COUNTY, FLA., CODE § 5-29 (2006).

¹⁶⁰ See, e.g., CAL. AGRIC. CODE §§ 31621-31624 (2005); 7 DEL. CODE ANN. tit. 7, §§ 1732, 1734, 1735(a); FLA. STAT. § 767.12(1) (2005); MD. CODE § 10-619(c) (2005); NEV. REV. ST. § 202.500(4)-(5) (2005).

¹⁶¹ See, e.g., CAL. AGRIC. CODE §§ 31641-31643, 31645 (2005); 7 DEL. CODE ANN. tit. 7, §§ 1735(b)-(c), 1737 (2005); FLA. STAT. § 767.12(2)-(4) (2005); MD. CODE § 10-619(d)-(e) (2005); NEB. REV. ST. §§ 54-618, 54-619, 54-621 (2005); 4 OKL. ST. § 45 (2005).

¹⁶² See, e.g. CAL. AGRIC. CODE § 31662 (2005); C.R.S.A. § 18-9-204.5(3)(a)-(g) (2005); 7 DEL. CODE ANN. tit. 7, § 1739; FLA. STAT. §§ 767.12(7), 767.13 (2005); NEB. REV. ST. §§ 54-620, 54-622, 54-623 (2005); 4 OKL. ST. § 47 (2003).

¹⁶³ See, e.g., LEON COUNTY, FLA. CODE § 4-93 (2006).

¹⁶⁴ See, e.g., FLA. STAT. § 767.12(1)(a)-(b) (2005).

¹⁶⁵ See, e.g., *id.* § 767.12(1)(c)-(d).

¹⁶⁶ See, e.g., CAL. AGRIC. CODE § 31641 (2005); FLA. STAT. § 767.12(2) (2005).

¹⁶⁷ See, e.g., CAL. AGRIC. CODE § 31642 (2005); FLA. STAT. § 767.12(4) (2005); LA. REV. STAT. ANN. § 102.14(C) (2005); SEMINOLE COUNTY, FLA., CODE § 20-28 (2006).

¹⁶⁸ See, e.g., ORANGE COUNTY, FLA., CODE § 5-32(e) (2006); VOLUSIA COUNTY, FLA., CODE § 14-40(f)(5) (2006).

¹⁶⁹ See, e.g., FLA. STAT. § 767.12(2)(c) (2005); ORANGE COUNTY, FLA., CODE § 5-32(g)(3) (2006).

¹⁷⁰ See, e.g., MINN. STAT. § 347.51 (2005).

¹⁷¹ See, e.g., CAL. AGRIC. CODE § 31662 (2005); LA. REV. STAT. ANN. § 102.14(F) (2005).

¹⁷² See, e.g., FLA. STAT. §§ 767.13(1), (3) (2005).

¹⁷³ RANDOLPH, *supra* note 156, at 12/2; see, e.g., ORANGE COUNTY, FLA., CODE § 5-32(1) (2006); MIAMI-DADE COUNTY, FLA., CODE § 5-6.2(m) (2006); SEMINOLE COUNTY, FLA., CODE § 20-27(d) (2006).

¹⁷⁴ See Cathy English, *Dangerous Dog Bill Passes*, FACA TRAX Q. REP. (Fla. Animal Control Ass'n), Aug. 1990, at 4.

¹⁷⁵ See Dave Bruns, *Bills Offer Controls for Dangerous Dogs*, TALLAHASSEE DEM., Mar. 8, 1990, at 4B.

¹⁷⁶ See *id.*

¹⁷⁷ See English, *supra* note 174; see also Bruns, *supra* note 175.

¹⁷⁸ Early versions of the bills were entitled "vicious dogs," and the staff analyses noted that ten percent of Florida's dog bite incidents "could be specifically attributed to situations involving *vicious* dogs." See Fla. H.R. Comm. on Judiciary, HB 413 (1990) Staff Analysis 1 (Feb. 26, 1990) (on file with comm.) (emphasis added); Fla. H.R. Comm. on HRS, HB 413 (1990) Staff Analysis 1 (Jan. 24, 1990) (on file with comm.) (emphasis added). Later versions changed the title to "Dangerous Dogs" and attributed the ten percent to "dangerous *or* vicious dogs." See Fla. H.R. Comm. on Judiciary, CS/HB 1345, 1021, 413 (1990) Staff Analysis 1 (Apr. 26, 1990) (on file with comm.); Fla. H.R. Comm. on Judiciary, HB 1021 (1990) Staff Analysis 1 (Feb. 28, 1990) (on file with comm.).

¹⁷⁹ See Audio tape: Fla. S. Comm. on Judiciary-Criminal (May 14, 1990) (on file with comm.) (statement of Sen. Diaz-Balart) [hereinafter S. Judiciary-Criminal Tape].

¹⁸⁰ See *id.* (statement of Cathy English, Leon County Animal Control Director, on behalf of Florida Animal Control Association). Additionally, at the Senate Appropriation Committee hearing, a Dade County lawyer displayed graphic photographs of a young girl who was brutally attacked by pit bulls in her driveway. See Audio tape: Fla. S. Comm. on Approp., (May 22, 1990) (statement of Tom Logue) (on file with comm.).

¹⁸¹ Florida Association of Kennel Clubs, Position Paper on HB 1345/CS SB 312-Rep Sindler, "An Act Relating to Dangerous Dogs" (Mar. 1990) (on file with comm.) [hereinafter Position Paper on HB 1345/CS SB 312]; Florida Association of Kennel Clubs, Position Paper on HB 1021-Rep. King, "An Act Relating to Dogs" (Mar. 1990) (on file with comm.) [hereinafter Position Paper on HB 1021]; Florida Association of Kennel Clubs, Position Paper on HB 413-Rep. Mims, "An Act Relating to Dogs" (Mar. 1990) (on file with comm.) [hereinafter Position Paper on HB 413]; Florida Association of Kennel Clubs, Position Paper on CS/SB 1644-Sen. Gardner, "An Act Relating to Dangerous Dogs" (Apr. 1990) (on file with comm.) [hereinafter Position Paper on CS/SB 1644].

¹⁸² See Letter from Marc S. Paulhus, Dir., S.E. Regional Off. HSUS, to Rep. Bob Sindler (Mar. 6, 1990) (on file with comm.).

¹⁸³ *Id.*

¹⁸⁴ Position Paper on HB 1345/CS SB 312, *supra* note 181; Position Paper on HB 1021, *supra* note 181; Position Paper on HB 413, *supra* note 181; Position Paper on CS/SB 1644, *supra* note 181.

¹⁸⁵ S. Judiciary-Criminal Tape, *supra* note 179 (statement of Dr. Mary Birch, representing the Florida Association of Kennel Clubs).

¹⁸⁶ See FLA. STAT. § 767.14 (2005). The breed-specific prohibition only applies to local ordinances adopted after October 1, 1990. See *id.* This language was included as a result of a compromise between Senator Gardner, who proposed the bill, and Senator Diaz-Balart, who wanted to keep Miami's breed-specific ordinance. See S. Judiciary-Criminal Tape, *supra* note 179 (statement of Sen. Diaz-Balart, expressing his concerns for breed-specific legislation); Audio tape: Fla. S. (May 31, 1990) (presentation of the Dangerous Dog bill and explanation of the compromise) (on file with Secretary).

¹⁸⁷ S. Judiciary-Criminal Tape, *supra* note 179 (statement of Sen. Gardner, presenting his Dangerous Dog bill).

¹⁸⁸ See *id.*

¹⁸⁹ At the hearing before the Judiciary-Criminal Committee, for example, one senator remarked that "[d]ogs have more rights than human beings in [this] regard – they can bite you once and get away with it." S. Judiciary-Criminal Tape, *supra* note 179.

¹⁹⁰ See *id.* (statement of Cathy English, Leon County Animal Control Director, representing Florida Animal Control Association).

¹⁹¹ See Fla. H.R. Comm. on Judiciary, CS/SB 1644 (1990) Staff Analysis 2 (final July 24, 1990) (on file with comm.).

¹⁹² See FLA. STAT. § 767.11(1)(d) (2005).

¹⁹³ *Id.*

¹⁹⁴ See County of Pasco v. Riehl, 620 So. 2d 229, 230 (Fla. 2d DCA 1993), *affirmed by* County of Pasco v. Riehl, 635 So. 2d 17, 19 (Fla. 1994).

¹⁹⁵ See FLA. STAT. § 767.12(1) (1990).

¹⁹⁶ See *id.* ("The animal control authority . . . shall provide written notification . . . to the owner of a dog that *has* been declared dangerous") (emphasis added).

¹⁹⁷ See Riehl, 620 So. 2d at 230.

¹⁹⁸ 620 So. 2d 229 (Fla. 2d DCA 1993).

¹⁹⁹ See *id.* at 232.

²⁰⁰ *Id.*

²⁰¹ See County of Pasco v. Riehl, 635 So. 2d 17, 19 (Fla. 1994).

²⁰² See Act effective Oct. 1, 1993, ch. 93-15 § 3, 1993 Fla. Laws 116, 118 (codified at FLA. STAT. § 767.12(1)(a) (1993)).

²⁰³ See Ch. 93-15, § 2, 1993 Fla. Laws at 117 (codified at FLA. STAT. § 767.11(3) (1993)). The amendment changed the definition of "severe injury" from "physical injury that results in . . . multiple *punctures* . . . requiring sutures or *cosmetic* surgery" to "physical injury that results in multiple *bites* . . . requiring sutures or *reconstructive* surgery." Compare FLA. STAT. § 767.11(3) (1990) (emphasis added), with FLA. STAT. § 767.11(3)(1993) (emphasis added). One legislative committee noted that they thought this change would "make it easier to demonstrate severe injury." Fla. H.R. Comm. on Agric. & Consumer Servs., HB 103 (1993) Staff Analysis 2 (final Mar. 17, 1993) (on file with comm.). Arguably, this suggests that even though the dog owner has greater procedural rights, it is now easier for animal control to classify dogs as "dangerous."

²⁰⁴ See Ch. 93-15 § 3, 1993 Fla. Laws at 118 (codified at FLA. STAT. § 767.12(1)(b) (1993)).

²⁰⁵ The Second District Court noted this gap in *Riehl* when it recognized that although the legislature amended the statute in 1993 that the 1993 amendment "may be infected with the same infirmity described herein." Riehl, 620 So. 2d at 230 n.1.

²⁰⁶ See Act effective Oct. 1, 1994, ch. 94-339 § 3, 1994 Fla. Laws 2433, 2434 (codified at FLA. STAT. § 767.12(1) (2005)).

²⁰⁷ See FLA. STAT. § 767.12(c) (2005).

²⁰⁸ Section 767.11(3) defines a severe injury as "any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery."

²⁰⁹ *Id.* § 767.11(a)-(d). As discussed in Part IX of this Article, subsection (d) is the most problematic for dog owners because of its reliance upon an individual's subjective belief regarding what constitutes being approached by a dog in a "menacing fashion" or in an "apparent attitude of attack."

²¹⁰ See FLA. STAT. § 767.12(c), (d) (2005) (requiring each local government to establish specific hearing and appeal procedures to conform with the Florida statute).

²¹¹ *Id.* § 767.12(1)(a). Although the statute only requires a sworn affidavit "if possible," some county ordinances require a sworn affidavit from the person seeking to have the dog declared dangerous during the investigation. See, e.g., ORANGE COUNTY, FLA., CODE § 5-32(a) (2006); ALACHUA COUNTY, FLA., CODE § 72.16(a) (2006); MIAMI-DADE COUNTY, FLA., CODE 5-6.2(b) (2006). Other counties have even more particularized forms, such as a "petition for classification of a dangerous or aggressive animal." See, e.g., LEON COUNTY, FLA. CODE § 4-93 (2006).

²¹² See, e.g., *infra* Part IX.A.i. (discussing one animal control agency's neighborhood canvassing activities as part of its investigation).

²¹³ See, e.g., *infra* Parts IX, X.D.

²¹⁴ See FLA. STAT. § 767.12 (1)(c) (2005).

²¹⁵ If the dog owner requested a hearing, the hearing would be held before this same panel that made the initial determination of "dangerous" or "aggressive." See LEON COUNTY, FLA. CODE § 4-93 (2006).

²¹⁶ See LEON COUNTY, FLA. CODE § 4-93(c) (2006).

²¹⁷ See MARION COUNTY, FLA., CODE § 4-13(d) (2006).

²¹⁸ See MIAMI-DADE COUNTY, FLA., CODE § 5-6.2(b) (2006).

²¹⁹ See *id.*

²²⁰ See *id.*

²²¹ LEON COUNTY, FLA. CODE § 4-93(d) (2006).

²²² See MARION COUNTY, FLA. CODE § 4-13(g) (2006); List of Code Enforcement Board members and their category of expertise, revised 6/6/06 (listing seven regular members and two alternates) (available from the Marion County Office of the County Administrator).

²²³ See ALACHUA COUNTY, FLA, CODE § 72-16(d) (2006).

²²⁴ See FLA. STAT. § 767.12 (1)(a) (2005).

²²⁵ *Id.*

²²⁶ FLA. STAT. § 767.12(1)(d) (2005). As discussed *infra* in Part X of this article, this rather inartfully drafted language attempts to direct how a dog owner may seek a "hearing" in the county court to "appeal" the classification. The use of terms used to describe two distinctly different forms of procedural events--a hearing is usually an original or de novo proceeding, while an appeal involves a review of the record and an overturning of the lower tribunal's decision only if reversible error occurred--has caused confusion regarding the type of action that is to take place in the county court. Notably, county courts are courts of original jurisdiction and do not have appellate jurisdiction under the Florida Constitution. See *infra* Part X (discussing that Florida County Courts do not have appellate jurisdiction over Dangerous Dog classification cases).

²²⁷ See FLA. STAT. § 767.12(1)(d) (2005).

²²⁸ See *id.* §§ 767.12(2)-(4).

²²⁹ See *id.* § 767.12(2).

²³⁰ See *id.* § 767.12(3) (requiring someone who acquires a dog after it is declared dangerous to comply with all of the same requirements regardless of his or her location within the state).

²³¹ See *id.* § 767.12(7).

²³² See *id.*

²³³ See M.P. McQueen, *Personal Business: Snarling at Insurers*, WALL ST. J., July 16, 2006, at 2A.

²³⁴ Most of Florida's local government ordinances regarding regulating dangerous dogs can be found at <http://www.municode.com>, which offers a free online library.

²³⁵ LEON COUNTY, FLA. CODE §§ 4-26, 4-91 (2006).

²³⁶ See FLA. STAT. § 767.11(b) (2005).

²³⁷ See LEON COUNTY, FLA. CODE § 4-26 (2006) (defining an aggressive animal as one who has "injured or killed a domestic animal in a first unprovoked attack while off of the premises of the owner.").

²³⁸ See *id.* § 4-91(a).

²³⁹ See MARION COUNTY, FLA., CODE §§ 4-2, 4-13 (2006).

²⁴⁰ See *id.* § 4-13(f). Section 4-13(d) explains that if a dog is declared vicious (or dangerous) that the owner may "appeal" the final determination to the county court. However, section 4-13(f) states that a dog declared "vicious" must be turned over to the animal control authority for "expeditious" euthanasia. A dog owner may not understand that the dog may not be euthanized by the animal control authority if the dog owner "appeals" to the county court and possibly higher courts until all appeals are exhausted and these courts uphold the order requiring euthanasia.

²⁴¹ See *id.* § 4-2.

²⁴² See *id.*

²⁴³ See *id.* §4-13(g)(3).

²⁴⁴ See, e.g., Hillsborough County Animal Servs. Declared Dangerous Dogs List, <http://www.hillsboroughcounty.org/animalservices/programservices/dangerousdogregistry.cfm> [hereinafter Hillsborough Dangerous Dogs List]; List of Dangerous Classified Animals Located in Leon County, Animal Control Div.: Dangerous and Aggressive Animals, <http://www.leoncountyfl.gov/animal/dangerous.asp>. As more high-profile cases hit the media, more counties are considering similar options. See Jason Garcia, *The Fatal Mauling of a Child Inspires Commissioners to Tighten Rules About Dangerous Animals*, ORLANDO SENTINEL, Feb. 22, 2005, at B1.

²⁴⁵ See ATLANTIC BEACH, FLA, CODE §4-11(2)(d) (2006).

²⁴⁶ See HILLSBOROUGH COUNTY, FLA, CODE §4-34 (2006).

²⁴⁷ See PORT ORANGE, FLA, CODE §10-9 (2006).

²⁴⁸ See, e.g., Cindy Swirko, *Ban on dangerous dogs OK'd by County*, THE GAINESVILLE SUN, Jan. 25, 2006,

available at

<http://www.gainesville.com> (search for article title); Cindy Swirko, *County enforces euthanasia of dangerous dogs*, THE GAINESVILLE SUN, Apr. 26, 2006, available at <http://www.gainesville.com> (search for article title).

²⁴⁹ No. 2002-CC-001980 (Fla. Leon County Ct. 2002).

²⁵⁰ See Audio tape: Hearing before the Leon County Animal Control Dangerous Dog Classification Comm. (Mar. 1, 2002), Ortega v. Leon County, No. 2002-CC 001980 (Fla. Leon County Ct. 2002) [hereinafter Ortega Classification Hr'g Tape].

²⁵¹ See *id.*

²⁵² See James L. Rosica, *Ex-NRA president in dog dispute with neighbor*, TALLAHASSEE DEM., Dec. 31, 2001, available at <http://www.tdo.com> (search for article title); National Rifle Association, *Former NRA President Selected as Finalist for Florida Women's Hall of Fame*, available at <http://www.nra.org/Article.aspx?id=1224>.

²⁵³ See Petition for Classification of a Dangerous or Aggressive Animal, Nov. 16, 2001, Ortega v. Leon County, No. 2002-CC 001980 (Fla. Leon County Ct. 2002) (on file with authors) [hereinafter Ortega Dangerous Dog Pet.].

²⁵⁴ See Ortega Classification Hr'g Tape, *supra* note 250. Notably, Leon County Code section 4-36(e) states that following an initial warning to the dog owner that a dog has become a public nuisance by running at large, a subsequent violation must be supported by either personal knowledge of the animal control officer or law enforcement, or "at least two affidavits from different parties residing in close proximity to the alleged nuisance. . . ." Thus, according to this ordinance, the Hammers could have submitted two affidavits to support a citation for dogs running at large, rather than initiating what became an arguably suspect and unfounded petition for classification of a dangerous or aggressive animal.

²⁵⁵ See Ortega Classification Hr'g Tape, *supra* note 250; Letter from Richard H. Ziegler, Dir., Leon County Div. of Animal Control, to Ms. Pat Ortega (Nov. 16, 2001), Ortega v. Leon County, No. 2002-CC 001980 (Fla. Leon County Ct. 2002) (notifying Ms. Ortega that the Hammers had filed a "Dangerous Animal Petition" against Ms. Ortega's dogs, and attaching a copy of the petition to the letter).

²⁵⁶ See Ortega Dangerous Dog Pet., *supra* note 253, at 4.

²⁵⁷ See *id.* at 2. Leon County Animal Control conducted a review of their records and determined that no one other than the Hammers had contacted them regarding the Ortega dogs running loose in the neighborhood, and that they had only received two complaints from the Hammers. See Ortega Classification Hr'g Tape, *supra* note 250.

²⁵⁸ See Ortega Dangerous Dog Pet., *supra* note 253, at 2.

²⁵⁹ See *id.*

²⁶⁰ *Id.* at 3.

²⁶¹ *Id.*

²⁶² See Ortega Classification Hr'g Tape, *supra* note 250.

²⁶³ See *id.*

²⁶⁴ See *id.*

²⁶⁵ See LEON COUNTY, FLA. CODE § 4-93(d) (2001); Ortega Classification Hr'g Tape, *supra* note 250.

²⁶⁶ The veterinarian and the sheriff's designee voted to classify Angel and Buster "dangerous," while the citizen-appointee voted against classifying all three dogs dangerous. See Initial Classification Voting Forms of Leon County Animal Control Classification Committee Members, Mar. 1, 2002, Ortega v. Leon County, No. 2002 CC 00-1980 (Fla. Leon County Ct. 2002) (on file with Leon County Animal Control).

²⁶⁷ See Ortega Classification Hr'g Tape, *supra* note 250.

²⁶⁸ See Appellant's Resp. to Appellee's, Leon County, Florida's, Mot. to Dismiss, Mar. 25, 2002, Ortega v. Leon County, No. 2002-CC-001980 (Fla. Leon County Ct. 2002) [hereinafter Ortega Appellant's Response].

²⁶⁹ See *id.*

²⁷⁰ See *id.*; Ortega Classification Hr'g Tape, *supra* note 250.

²⁷¹ See Ortega Appellant's Response, *supra* note 268; Ortega Classification Hr'g Tape, *supra* note 250.

²⁷² Ortega Classification Hr'g Tape, *supra* note 250.

²⁷³ See Request for Hr'g and Notice of Appeal of Dangerous Dog Classification, Mar. 15, 2002, Ortega v. Leon County, No. 2002-CC-001980 (Fla. Leon County Ct. 2002) [hereinafter Ortega Req. for Hr'g].

²⁷⁴ See Ortega Classification Hr'g Tape, *supra* note 250; Audio tape: Hearing before the Leon County Animal Control Dangerous Dog Classification Comm., Hammer Mot. for Reh'g (Mar. 22, 2002), Ortega v. Leon County, No. 2002-CC 001980 (Fla. Leon County Ct. 2002) (on file with Leon County Animal Control).

²⁷⁵ See Ortega Req. for Hr'g, *supra* note 273. Notably, during the appeal stage of the case, Ms. Hammer contacted the Classification Committee and the Leon County Board of County Commissioners by sending them several emails detailing various gruesome dog attacks that had taken place around the country. See, e.g., E-mail from Marion Hammer to Judith McMurty, Leon County Animal Control Classification Comm. member (Mar. 15, 2002 12:27 PM EST) (forwarding a New York Times March 15, 2002, article entitled *Dog Mauling Prosecution Ends with Bold Letter on Neighbors*, which reported on the trial of Marjorie Knoeller, the San Francisco dog owner whose Presa Canario brutally attacked and killed a neighbor) (on file with Leon County County Attorney's Office). Ms. McMurty told Ms. Hammer that "[u]nless you have specific information pertaining to your petition filed against Ms. Ortega's dogs, please remove me from your mailing list." See *id.*

²⁷⁶ See Ortega Req. for Hr'g, *supra* note 273; Ortega Appellant's Resp., *supra* note 268.

²⁷⁷ See Order, Ortega v. Leon County, No. 2002-CC-001980 (Fla. Leon County Ct. Aug. 28, 2002).

²⁷⁸ See Order Adopting and Incorporating Joint Stipulation, *Ortega v. Leon County*, No. 2002-CC-001980 (Fla. Leon County Ct. Feb. 27, 2003) [hereinafter *Ortega Joint Stipulation*]. The Leon County County Attorney's Office subsequently directed Leon County Animal Control to provide more structure to the Classification Committee hearings. Witnesses are now sworn, and a chairperson is appointed to preside over the taking of evidence. There have been no complaints of Ms. Ortega's dogs running at large after the incidents alleged in November 2001.

²⁷⁹ No. 2003-CC-8411 (Fla. Leon County Ct. 2003).

²⁸⁰ See Letter from Richard H. Ziegler, Dir., Leon County Div. of Animal Control, to Rick and Tiffany Moore (Dec. 1, 2003), *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (on file with Leon County Animal Control) (notifying the Moores of the Classification Committee's initial classification of Shrek as "dangerous"); Petition for Classification of a Dangerous or Aggressive Animal, filed by Brenda Mundy, Oct. 14, 2003, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (on file with Leon County Animal Control) [hereinafter *Shrek Classification Pet.*].

²⁸¹ See *Shrek Classification Pet.*, *supra* note 280, at 3.

²⁸² See *id.*

²⁸³ See *id.*

²⁸⁴ See *id.*

²⁸⁵ See *id.*

²⁸⁶ See *id.*; Leon County Div. of Animal Control, Incident Report, Oct. 17, 2003, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (reporting that the neighbor admitted her grandchildren called Shrek off of his owners' property).

²⁸⁷ See Defendant's Narrative, Statement of Dorothy Saudo, mother of Tiffany Moore, undated but with a facsimile transmission date of Feb. 13, 2004, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003).

²⁸⁸ See *Shrek Classification Pet.*, *supra* note 280.

²⁸⁹ See Leon County Div. of Animal Control Incident Report, Nov. 3, 2003, at 1, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (on file with Leon County Animal Control).

²⁹⁰ See *id.* at 2.

²⁹¹ See Dangerous Animal Investigation, Statement of JoAnn Mullarkey, Oct. 28, 2003, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003).

²⁹² See *id.*

²⁹³ See Letter from Richard H. Ziegler, Dir., Leon County Div. of Animal Control, to Rick & Tiffany Moore (Dec. 11, 2003), *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (on file with authors and Leon County Animal Control) (providing the Moores with notice that Shrek had been permanently classified "dangerous").

²⁹⁴ Aetna Smith, *Panel to Classify Canine*, TALLAHASSEE DEM., Dec. 11, 2003, at B1.

²⁹⁵ See *id.*

²⁹⁶ Smith, *supra* note 23.

²⁹⁷ See Audio tape: Hearing before the Leon County Animal Control Dangerous Dog Classification Committee (Dec. 11, 2003), *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003) (on file with Leon County Animal Control).

²⁹⁸ See Request for Hr'g to Appeal Dangerous Dog Classification, Dec. 16, 2003, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003).

²⁹⁹ Additionally the Moores lost some of their income due to time spent on case preparation and attendance at hearings, meetings, and mediation.

³⁰⁰ See Order Adopting and Inc. Jt. Stip., Aug. 27, 2004, *Moore v. Leon County*, No. 2003-CC-8411 (Fla. Leon County Ct. 2003). Shrek remains in the Leon County Animal Control Dangerous Dog database because the Moores have not yet completed a Canine Good Citizenship program as required in the Joint Stipulation.

³⁰¹ No. 2005-CC-2466 (Fla. Leon County Ct. 2005).

³⁰² See D. Penton, Leon County Animal Control Officer, Leon County Div. of Animal Control Incident Report, Feb. 8, 2005, *Sullivan v. Leon County*, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control) [hereinafter *Deuce Incident Rep.*].

³⁰³ See Petition for Classification of a Dangerous or Aggressive Animal, Dec. 7, 2004, *Sullivan v. Leon County*, No. 2005-CC-2466 (Fla. Leon County Ct. 2005).

³⁰⁴ See *id.*

³⁰⁵ *Id.* at 1.

- ³⁰⁶ See Letter from Warren K. Head to Richard H. Ziegler, Dir., Leon County Div. of Animal Control (Dec. 17, 2004), Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control).
- ³⁰⁷ See Affidavit of Warren K. Head, June 24, 2005, Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control) [hereinafter Head Aff.].
- ³⁰⁸ See Deuce Incident Rep. *supra* note 302, at 2.
- ³⁰⁹ See *id.*
- ³¹⁰ See Deposition of Jim Ellison, June 9, 2005, at pp. 7, 20, Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors) [hereinafter Ellison Depo].
- ³¹¹ See *id.*; Head Aff., *supra* note 307, at 2.
- ³¹² See Head Aff., *supra* note 307, at 2; Ellison Depo, *supra* note 310, at 7-12.
- ³¹³ Head Aff., *supra* note 307, at 2.
- ³¹⁴ See Ellison Depo, *supra* note 310, at 24.
- ³¹⁵ *Id.*
- ³¹⁶ See Deuce Incident Rep., *supra* note 302, at 2.
- ³¹⁷ See Petition for Classification of a Dangerous or Aggressive Animal, Feb. 8, 2005, Sullivan v. Leon County, No. 05-CC-2466 (Fla. Leon County Ct. 2005).
- ³¹⁸ See Petition for Classification of a Dangerous or Aggressive Animal, Feb. 23, 2005, Sullivan v. Leon County, No. 05-CC-2466 (Fla. Leon County Ct. 2005).
- ³¹⁹ See Richard H. Ziegler, Dir., Leon County Div. of Animal Control, Dangerous/Aggressive Animal Initial Determination, Mar. 17, 2005, Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control).
- ³²⁰ See Letter from Jay Summit, D.V.M., to Leon County Animal Control Classification Committee (Feb. 28, 2005), Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control). Notably, Dr. Summit rated Deuce's disposition as "excellent."
- ³²¹ See Audio tape: Hearing before the Leon County Animal Control Dangerous Dog Classification Comm. (Mar. 31, 2005), Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control).
- ³²² See *id.*
- ³²³ See *id.*
- ³²⁴ See Letter from Leon County Animal Control Classification Comm. to Tracy Sullivan (Mar. 31, 2005), Sullivan v. Leon County, No. 2005-CC-2466 (Fla. Leon County Ct. 2005) (on file with authors and Leon County Animal Control). The veterinarian who served on the Committee reviewing the Shrek case had resigned by this time.
- ³²⁵ See Notice of Appeal/Pet. for De Novo Hr'g, Mar. 31, 2005, Sullivan v. Leon County, No. 05-CC-2466 (Fla. Leon County Ct. 2005).
- ³²⁶ See Motion for Summ. J., Sullivan v. Leon County, June 22, 2005, No. 2005-CC-2466 (Fla. Leon County Ct. 2005). Section 767.12(1)(a) forbids ownership transfer of a dog once an investigation has commenced. Mr. Head had withdrawn his original petition but not yet filed his second petition with Leon County Animal Control before "ownership" of Deuce was transferred to Ms. Sullivan.
- ³²⁷ See Order Adopting and Incorp. Jt. Stip., Sullivan v. Leon County, Aug. 3, 2005, No. 2005-CC-2466 (Fla. Leon County Ct. 2005).
- ³²⁸ No. 05-18 (Marion County Code Enforce. Bd. 2005).
- ³²⁹ See Delp Hr'g Tape, *supra* note 2. As part of her sworn testimony Ms. Delp stated that she had been offered \$30,000 for her dog, Liberty.
- ³³⁰ See *id.*
- ³³¹ See Animal Center/Code Enforce. Servs., Marion County, Fla., Interview with Lois Mulligan, Nov. 29, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 43558JK) (Marion County Code Enforce. Bd. 2005).
- ³³² *Id.*
- ³³³ See *id.*; Jennifer Kelly, Dangerous Dog Investigator, Marion County, Summary of Investigation, Dec. 21, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control) [hereinafter Kelly Summary].
- ³³⁴ See Kelly Summary, *supra* note 333.
- ³³⁵ See *id.*
- ³³⁶ See *id.*
- ³³⁷ See *id.*

³³⁸ *See id.*

³³⁹ *See id.*; Jennifer Kelly, Dangerous Dog Investigator, Marion County, Aff. for Admin. Warrant, Dec. 12, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control) [hereinafter Kelly Admin. Warrant Aff.].

³⁴⁰ *See id.*

³⁴¹ Kathleen Decker, Marion County Code Enforce. Officer, Action Order 453440-1, Nov. 10, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control) [hereinafter Decker Incident Report].

³⁴² *See id.*

³⁴³ *See id.*

³⁴⁴ *See id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *See Kelly Summary, supra* note 333.

³⁴⁹ *See Decker Incident Rep., supra* note 341.

³⁵⁰ *Id.*; Kathleen Decker, Marion County Code Enforce. Officer, Action Order 453440-1, Nov. 10, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) [hereinafter Decker Incident Rep.].

³⁵¹ *See Kelly Summary, supra* note 333.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *See Kelly Summary, supra* note 333; Jennifer Kelly, Marion County Dangerous Dog Investigator, Interview with Lois Mulligan, Nov. 29, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) [hereinafter Mulligan Interview].

³⁵⁵ Mulligan Interview, *supra* note 354.

³⁵⁶ *See id.*

³⁵⁷ Kelly Admin. Warrant Aff., *supra* note 339.

³⁵⁸ *See id.*

³⁵⁹ *See id.*

³⁶⁰ *Id.*

³⁶¹ *See State of Florida, County of Marion, Admin. Search Warrant (Fla. Marion County Cir. Ct. Dec. 12, 2005), Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control and Marion County Circuit Court).*

³⁶² *See id.*

³⁶³ Kelly Summary, *supra* note 333, at 1-2.

³⁶⁴ *See id.* at 2.

³⁶⁵ *Id.*

³⁶⁶ *Id.* (Investigator Kelly wrote later in the report that upon notifying Ms. Delp that there was sufficient cause to classify Secret and Liberty as dangerous that Ms. Delp stated that she had already had to leave two counties because of the dogs). *See id.*

³⁶⁷ *See id.*

³⁶⁸ *See Joseph Hooker, D.V.M., and Marion County Code Enforce. Bd., Temp. Maint. Agreement, Dec. 12, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control).*

³⁶⁹ Jennifer Kelly, Marion County Dangerous Dog Investigator, Notice of Sufficient Cause Finding, Dec. 13, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control).

³⁷⁰ *See Handwritten note from Beth Barnhart Delp to Marion County Bd. of County Comm'rs, Dec. 14, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control).*

³⁷¹ As noted *supra* in note 222 and accompanying text, the Code Enforcement Board consists of nine members appointed due to their expertise in business, government, and spiritual matters (one member is a minister).

³⁷² See Jennifer Kelly, Marion County Dangerous Dog Investigator, Notice to Appear, Dec. 14, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control).

³⁷³ See Kelly Summary, *supra* note 333; Delp Hr'g Tape, *supra* note 2.

³⁷⁴ See Kelly Summary, *supra* note 333.

³⁷⁵ See *id.*

³⁷⁶ See *id.*

³⁷⁷ See *id.*

³⁷⁸ See *id.*

³⁷⁹ See *id.*

³⁸⁰ See *id.*

³⁸¹ See *id.*

³⁸² See *id.*

³⁸³ *Id.*

³⁸⁴ See Sarasota County Incident Rep., Nov. 11, 2005 (compiled), Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) [hereinafter Sarasota County Incident Rep.]; Steve Fernald, Sarasota County Sheriff's Office Witness Statement, July 16, 2003, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control, Sarasota County Sheriff's Office) (reporting that Fernald stated that he had left a package at the front door and "then 1 of 4 dogs laying at [the] door bit [him] about the calf one time").

³⁸⁵ See Brevard County Animal Servs. and Enforce., Activity Rep., Additional Info., Oct. 21, 2004, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005) (on file with Marion County Animal Control, Brevard County Animal Servs. and Enforce.).

³⁸⁶ *Id.*

³⁸⁷ See *id.*

³⁸⁸ Sarasota County Incident Rep., *supra* note 384.

³⁸⁹ See *id.*; Delp Hr'g Tape, *supra* note 2.

³⁹⁰ See Delp Hr'g Tape, *supra* note 2.

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ See *id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ See *id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ See *id.*

⁴⁰² See *id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ See *id.*

⁴⁰⁷ See *id.*

⁴⁰⁸ See *id.*, Kelly Summary, *supra* note 333.

⁴⁰⁹ See Delp Hr'g Tape, *supra* note 2.

⁴¹⁰ See *id.*

⁴¹¹ *Id.*

⁴¹² See *id.*

⁴¹³ See *id.*

⁴¹⁴ See *id.*

⁴¹⁵ See *id.*

⁴¹⁶ *Id.*

⁴¹⁷ See *id.*

⁴¹⁸ *See id.*

⁴¹⁹ *See id.*

⁴²⁰ *See id.*

⁴²¹ *See id.* The Code Enforcement Board members do not identify themselves before they speak and thus because they are not individually identified they are not specifically identified in this Article.

⁴²² *Id.*

⁴²³ *Id.* This ordinance has been challenged by another dog owner in *Grunnah v. Marion County*, No. 42-2006-CC-000035 (Fla. Marion County Ct. 2006). Ms. Grunnah was successful in having the Marion County Circuit Court issue an order granting her petition for a writ of prohibition which sought to have the circuit court order the county court judge to cease acting in an appellate capacity. *See Grunnah v. Marion County*, No. 2006-CA-000699 (Fla. Marion County Cir. Ct. July 18, 2006). The circuit court determined that because neither the Florida constitution nor the Florida general laws award appellate or certiorari jurisdiction to county courts, that Ms. Grunnah was entitled to a de novo hearing. Marion County has appealed the circuit court's order to the Florida Fifth District Court of Appeal, and the appeal is still pending as of the date of publication of this Article. *See Marion County v. Grunnah*, No. 5D06-3700 (Fla. 5th DCA 2006).

⁴²⁴ *See Delp Hr'g Tape, supra* note 2.

⁴²⁵ *See id.*

⁴²⁶ *See Marion County Code Enforce. Bd., Final Order Dangerous Dog Classification*, Dec. 21, 2005, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005).

⁴²⁷ *See id.*

⁴²⁸ *Id.*

⁴²⁹ *See id.*

⁴³⁰ *See id.*

⁴³¹ *See Certificate of Registration for a Dog Classified as Dangerous*, Marion County Code, Chapter 4, Section 4-13, Jan. 12, 2006, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005).

⁴³² *See Brevard County Animal Servs. and Enforce., Receipt No. R06-006694*, Feb. 28, 2006, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005).

⁴³³ *See Brevard County Bd. of County Commissioners, Animal Servs. and Enforce., Letter to Prospective Insurance Carrier* (Feb. 24, 2006); *Dangerous Dog Liability Insurance Verification Form*, State Farm Ins., Mar. 2, 2006, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005).

⁴³⁴ *See Brevard County Animal Servs. and Enforce., Dangerous Dog Aff., section 2(o)*, Marion County Animal Control Auth. v. Delp, No. 05-18 (Marion County Animal Control No. 453558JK) (Marion County Code Enforce. Bd. 2005).

⁴³⁵ BLACK'S LAW DICTIONARY 737 (8th ed. 2004).

⁴³⁶ *Id.* at 105.

⁴³⁷ *See, e.g., PHILIP J. PADOVANO, FLORIDA APPELLATE PRACTICE* §§ 9.1, 9.6 (Thomson & West 2006).

⁴³⁸ FLA. CONST., art. V, § 6(b).

⁴³⁹ *See, e.g., City of Petersburg v. Pinellas County Power Co.*, 100 So. 509 (Fla. 1924); *Winn Dixie v. Ferris*, 408 So. 2d 650 (Fla. 4th DCA 1981) ("Only the Florida Constitution and the Legislature, where authorized by the Constitution, may confer jurisdiction on the courts of this State.").

⁴⁴⁰ FLA. STAT. §34.01(1) (2005).

⁴⁴¹ *Id.* § 34.01(5).

⁴⁴² *See, e.g., Order, Ortega v. Leon County*, No. 2002-CC-001980, at 3 (Fla. Leon County Ct. Aug. 28, 2002):

The steadfast rules of judicial statutory interpretation are that whenever possible a Court should interpret a statute so that its effect is constitutional and the Court should interpret a statute to give credence to legislative intent. Adhering to these two rules of interpretation, this Court finds first that the legislature intends for the remedy to the dog owner to be in County Court. This is clear by its directive. Because County Court lacks appellate jurisdiction to review the decision of the Animal Control Committee, the Court must assume and therefore finds that the legislature did not use the word "appeal" in F.S. 767.12 as a term of art but rather as a descriptive term to refer to the hearing to be held. If County Court is the proper forum for FS. 767.12 to avoid constitutional infirmity, the hearing in County Court must be a de novo hearing. Therefore, this Court holds that

a full evidentiary hearing in County Court must be held to determine if [the dogs declared "dangerous"] are "dangerous" as defined by ordinance and statute.

See also, Order, *Teuche v. Brevard County, Florida*, No. 05-2003-CC-045486, at 1 (Fla. Brevard County Ct. Aug. 19, 2003) ("Since the county court has no appellate jurisdiction by constitution, statute, or rule, such hearing must be a de novo evidentiary hearing appealable to the circuit court.").

⁴⁴³ No. 04-09-CC, 12 Fla. L. Weekly Supp. 411 (Fla. Marion County Ct. Feb. 11, 2005). Notably, for some reason the dog owner in this case stipulated that the proceeding in county court was to be handled via certiorari review. It is important to note that the authors believe that the Marion County Ordinance, section 4-13(e), is unconstitutional because it states that "[t]he appeal shall be the traditional record review applicable to other types of appeals from quasi-judicial decisions of administrative bodies."

⁴⁴⁴ No. 98-2563-CI-88B (Fla. 6th Cir. May 10, 1999).

⁴⁴⁵ *See id.* at 3.

⁴⁴⁶ *See Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831 (Fla. 1993).

⁴⁴⁷ *See Mason v. Porsche Cars of N. Am.*, 621 So. 2d 719 (Fla. 5th DCA 1993), *rev. denied*, 629 So. 2d 134 (Fla. 1993).

⁴⁴⁸ LEON COUNTY, FLA. CODE §4-93(d)(3) (2006).

⁴⁴⁹ *See, e.g., supra* text accompanying note 290.

⁴⁵⁰ *See* Audio tape: Hearing before the Orange County Dangerous Dog Classification Comm., Mar. 10, 2005, *Orange County Animal Servs. v. Wetherington*, No. 05-73-93 (Fla. Orange Co. Animal Serv. 2005) [hereinafter *Wetherington Hr'g Tape*].

⁴⁵¹ *See id.*

⁴⁵² Obviously, the parties are not required to be represented by attorneys at the hearing, but many dog owners recognize the significance of their interest and choose to have one.

⁴⁵³ *See Wetherington Hr'g Tape, supra* note 450.

⁴⁵⁴ *County of Pasco v. Riehl*, 620 So. 2d 229, 230 (Fla. 2d DCA 1993), *aff'd*, *County of Pasco v. Riehl*, 635 So. 2d 17, 19 (Fla. 1994).

⁴⁵⁵ *See Smith, supra* note 23.

⁴⁵⁶ *See Garcia, supra* note 244, at B1.

⁴⁵⁷ *See Joe Newman, County Adopts Tougher Dog Law*, ST. PETERSBURG TIMES, Feb. 17, 1999, at B1.

⁴⁵⁸ *See, e.g., BREVARD COUNTY, FLA. CODE § 14-49(f)(5)* (2006) (requiring \$100,000 in liability insurance to cover "any damage or injury which may be caused by the dangerous dog"); *JACKSONVILLE, FLA., CODE § 462.406* (2006) (requiring \$100,000 in liability insurance or, in the alternative, a \$100,000 surety bond "conditioned upon the payment of damage to persons and property caused by the dangerous dog"). It is not an easy feat for the owner of a dog classified dangerous to obtain liability insurance. *See, e.g., Bruns, supra* note 175, at 4B.

⁴⁵⁹ *See, e.g., Ortega v. Leon County*, No. 2002-CC 001980 (Fla. Leon County Ct. 2002).

⁴⁶⁰ *See Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010, 1022 (Fla. 1979).

⁴⁶¹ *See Carter v. City of Stuart*, 468 So. 2d 955, 957 (Fla. 1985) ("A government must have the flexibility to set enforcement priorities on its police power ordinances . . .").

⁴⁶² 679 So. 2d 1260 (Fla. 3d DCA 1996).

⁴⁶³ *See id.*

⁴⁶⁴ *See id.* at 1261.

⁴⁶⁵ *See id.* (noting that the local ordinance stated that such acts "shall" require the local government to classify the dog as "dangerous").

⁴⁶⁶ *Id.*

⁴⁶⁷ 468 So. 2d 955 (Fla. 1985).

⁴⁶⁸ *See id.* at 956 (stating that "certain 'discretionary' governmental functions remain immune from tort liability").

⁴⁶⁹ LEON COUNTY, FLA. CODE § 4-93(d)(3) (2006).

⁴⁷⁰ ALACHUA COUNTY, FLA. CODE § 72.16(e) (2006).

⁴⁷¹ *See, e.g. Jones v. City of Jacksonville*, No. 06-AP-75 (Fla. Duval County Ct. 2006). In *Jones*, an animal control officer initially classified the Jones' two pit bulldogs "dangerous" based upon an attack in which the Jones's pit bulls were allegedly identified as two dogs who bit a neighbor who intervened in a fight between the neighbor's dog and two other dogs. *See* Letter from Howard Gunter, Humane Investigator, Jacksonville Animal Care & Control, to Mr. & Mrs. Gary Jones (Sept. 6, 2006), *Jones v. City of Jacksonville*, No. 06-AP-75 (Fla. Duval County Ct. 2006). The next day, the Jacksonville Animal Care and Control Division Chief, David Flagler, imposed a death sentence on the Jones's dogs. *See* Letter from David R. Flagler, Div. Chief, Jacksonville Animal Care & Control, to Gary Jones (Sept. 7, 2006), *Jones v. City of Jacksonville*, No. 06-AP-75 (Fla. Duval County Ct. 2006). On September 27, 2006--

two days before he would preside over the formal hearing--Mr. Flagler wrote to the Jones Family that "[t]he bottom [] line is that I have determined that your dogs are too dangerous to the citizens of Jacksonville to be allowed back into the community." See Letter from David R. Flagler, Div. Chief, Jacksonville Animal Care & Control, to Juanita Jones (Sept. 27, 2006), No. 06-AP-75 (Fla. Duval County Ct. 2006) (on file with authors). On September 29, 2006, Mr. Jones issued a document upholding the initial classification and the destruction order he had imposed on the Jones's dogs on September 7. See David R. Flagler, *Dangerous Dog Appeal Hr'g*, Sept. 29, 2006, Jones v. City of Jacksonville, No. 06-AP-75 (Fla. Duval County Court 2006).

The Jacksonville local ordinance states that the Chief of Animal Care and Control shall preside over the formal hearing. See JACKSONVILLE, FLA. CODE § 462.404 (a)(1) (2006).

⁴⁷² See BREVARD COUNTY, FLA. CODE § 14-49(d) (2006).

⁴⁷³ See *id.*

⁴⁷⁴ See *id.*

⁴⁷⁵ See *id.*

⁴⁷⁶ See *id.*

⁴⁷⁷ See *supra* text accompanying notes 2, 424.

⁴⁷⁸ In a 2005 interview Laura Bevan, the Director of the Southeast Regional Office of The Humane Society of the United States, who helped craft the original statute, explained that the vague language was a result of compromise. See Interview with Laura Bevan, Director, S.E. Regional Office, HSUS, in Tallahassee, Fla. (Mar. 16, 2005) [hereinafter Bevan Interview]. Ms. Bevan explained that due to the fear that a single attack could be a fatal one, the drafters did not want to make officials wait until a dog actually attacked someone before they could declare it dangerous. They also did not want to define a dog's behavior too specifically because some behavior may then be inadvertently excluded. The hope was that people would understand what kind of behavior posed a "*real danger*." Ms. Bevan noted that in her opinion the drafters never intended for the law to be applied to some of the dogs who have been classified "dangerous" because the reported behaviors do not indicate that the dogs are truly dangerous. See *id.*

⁴⁷⁹ See *Shrek Classification Pet.*, *supra* note 280.

⁴⁸⁰ N.R.S. 202.500(1)(a)(2) (2005) (emphasis added). Similarly, in Delaware, a dog may be declared potentially dangerous if he "chased . . . a person . . . in an apparent attitude of attack *on 2 separate occasions within a 12-month period*." Del. Code Ann. tit. 7, § 1736(a)(3) (2005) (emphasis added).

⁴⁸¹ LA. REV. STAT. § 14:102.14(A)(1) (2005). California's *potentially* Dangerous Dog definitions include the same provision. See CAL. AGRIC. CODE § 31602(a) (2005).

⁴⁸² CAL. AGRIC. CODE § 31602(a) (2005); LA REV. STAT. § 14:102.14(1) (2005).

⁴⁸³ Laura Bevan, director of the Southeast Regional Office of the Humane Society of the United States, stated that she supports including an "intermediate" category in the statute. See Bevan Interview, *supra* note 478.

⁴⁸⁴ See MINN. STAT. § 347.50 (2005).

⁴⁸⁵ *Id.* § 347.50 (emphasis added).

⁴⁸⁶ *Id.* § 347.50. Minnesota's statute also defines a potentially Dangerous Dog as one that "has a known propensity . . . to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals. *Id.* A catch-all provision like this should not be included within the Florida statute. The general language would suffer from the same vagueness problems as the current apparent attitude prong.

⁴⁸⁷ See CAL. AGRIC. CODE § 31602 (2005).

⁴⁸⁸ MINN. STAT. § 347.551 (2005).

⁴⁸⁹ See *id.* § 347.53.

⁴⁹⁰ See *id.* § 347.54-56.

⁴⁹¹ CAL. AGRIC. CODE § 31644 (2005) (emphasis added).

⁴⁹² See FED. R. EVID. 1101(a); FLA. STAT. § 90.103 (2005) (Florida Evidence Code).

⁴⁹³ See Interview with Charlie S. Martin, Attorney, McLeod Law Firm, in Orlando, Fla. (Mar. 10, 2005) (following the Wetherington Dangerous Dog classification hearing).

⁴⁹⁴ See FLA. STAT. § 120.52(1)(c) (2005) (subjecting counties and municipalities to the Florida Administrative Procedure Act only if they are expressly made subject to it by general or special law).

⁴⁹⁵ See *Booker Creek Pres., Inc. v. Pinellas Planning Council*, 433 So. 2d 1306, 1308-09 (Fla. 2d DCA 1983).

⁴⁹⁶ For examples of these final orders, see *In re The Matter of Confiscation for Euthanasia of "Nina" and "Big Dog" Owned by Sara Ervin*, Nos. 03-CM-013850 & 03-CM-013849 (Hillsborough County Animal Control Feb. 23, 2005) (on file with Hillsborough County, Fla.); *In re The Matter of Classification of "Mystique" Owned by Taylor Hoeffner, as a Dangerous Dog*, No. HC 04-2606 (Hillsborough County Animal Control Feb. 16, 2005) (on file with Hillsborough County, Fla.); *In re The Matter of Classification of "Juno" Owned by Susan Marsian-Bolduc and*

Pascal Bolduc, as a Dangerous Dog, No. HC 04-3091 (Hillsborough County Animal Control Jan. 6, 2005) (on file with Hillsborough County, Fla.).

⁴⁹⁷ See Booker, 433 So. 2d at 1308-09.

⁴⁹⁸ See FLA. STAT. § 120.57(1)(a) (2005).

⁴⁹⁹ McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 577 (Fla. 1st DCA 1977).

⁵⁰⁰ See FLA. STAT. § 120.57(1)(b) (2005).

⁵⁰¹ FLA. STAT. § 120.57(1)(c) (2005).

⁵⁰² See Dogs Deserve Better, <http://dogsdeservebetter.com> (last visited April 18, 2007).

⁵⁰³ See *id.*

⁵⁰⁴ See Garcia, *supra* note 244.

⁵⁰⁵ See DELISE, *supra* note 1, at 14.

⁵⁰⁶ See *id.* at 11 (describing "possessive aggression" as a situation in which a dog is guarding his food or toys and noting that young children are the most susceptible to this kind of aggression).

⁵⁰⁷ See, e.g., Garcia, *supra* note 239 ("Pit bulls are the worst offenders, . . . They don't belong in a civilized society.") (quoting retired teacher Donald Simmonds).

⁵⁰⁸ See *id.* (noting that the Orlando City attorney thought that "any breed-specific action would be pre-empted by the legislature").

⁵⁰⁹ For example, five of the eight dogs listed as "dangerous" on the Leon County Animal Control Web site are pit bulls or bull dogs. See Leon County, Animal Control Div., Dangerous and Aggressive Animals, <http://www.co.leon.fl.us/animal/dangerous.asp>.

⁵¹⁰ See DELISE, *supra* note 1, at 65-80.

⁵¹¹ See *id.*

⁵¹² See FLA. STAT. § 767.11(5) (2005).

⁵¹³ See, e.g., Maricopa Animal Care and Control, Maricopa County, Ariz <http://www.maricopa.gov/pets>; Animal Care and Control of New York City, <http://www.nycacc.org/>; Palm Beach County Animal Care and Control, Palm Beach County, Fla. <http://www.pbcgov.com/pubsafety/animal/>; Ed Boks, *Care or Control?*, available at <http://www.bestfriends.org/nomorehomelesspets/pdf/careorcontrol.pdf>.

⁵¹⁴ See, e.g., Nathan Winograd, *Reforming Animal Control*, available at <http://www.nokillsolutions.com/pdf/Reforming%20Animal%20Control.pdf>.

⁵¹⁵ Ms. Ortega, a single, working mother, had installed an electric fence but it was not working properly despite several attempts to fix it. Consequently, the dogs were able to dig out of the yard. Ms. Ortega had also inadvertently left some items near a part of the fence that the dogs were using to climb over, but Ms. Ortega was not aware of this because she was not at home when the dogs escaped the yard, and they were always back in the yard when she returned home. Ms. Ortega also had a then-teenage son who was careless in not letting the dogs out of the front door when he opened it for friends to enter. Ms. Ortega was able to control the dogs from escaping by having the fence repaired by a professional, moving the items away from the fence, keeping the dogs in the house during the day, and keeping them supervised in the yard while they are outside. See Ortega *Jt. Stip.*, *supra* note 278.

⁵¹⁶ See FLA. STAT. § 767.12(d) (2005) (setting forth state "appeal" procedures). Each dog owner must check his or her local ordinances for more information on filing an "appeal" in his or her county court. Most local ordinances can be readily accessed at Municode's free library (<http://www.municode.com>).

⁵¹⁷ See Cunliff, *supra* note 48, at 14.

⁵¹⁸ See *id.*

⁵¹⁹ See *id.*

⁵²⁰ See *id.*

⁵²¹ See *id.*

⁵²² See Interview with Scott Pliskin, D.V.M., in Tallahassee, Fla. (Nov. 11, 2006) [hereinafter Pliskin Interview].

⁵²³ See *id.*; Cunliffe, *supra* note 48, at 14.

⁵²⁴ See Pliskin Interview, *supra* note 522.

⁵²⁵ See Diane Jessup, *Why do Some Dogs Bite? Chasing, Biting, Killing: Natural Behaviors*, <http://www.workingpitbull.com/whydogsbite.htm> (last visited April 18, 2007).

⁵²⁶ See *id.*

⁵²⁷ See Pliskin Interview, *supra* note 522.

⁵²⁸ See *id.* Dr. Pliskin noted that the removal of a dog's teeth can be a very complex procedure due largely to the root length of the teeth. However, Dr. Pliskin stated that "if we were to ask the dog whether he would rather be dead or without teeth, he would probably say 'pull those suckers.'" *Id.* Dr. Pliskin further noted that after the teeth were pulled the dog's diet would have to be softened so that it could be consumed. See *id.*

⁵²⁹ The authors suggest this procedure should be considered in cases in which dogs, such as Beans (profiled in footnote 25), have been declared "dangerous" but who have not bitten or harmed anyone yet nonetheless have been sentenced to death. Additionally, in situations in which a dog has been declared "dangerous" for attacking or biting another's animal, teeth removal may be a reasonable alternative to the death sentence. The decision of whether or not teeth removal is appropriate should be made on a case-by-case basis.

⁵³⁰ On the date the original draft of this Article was completed--October 17, 2006--the U.S. population was projected to reach 300 million. It is expected to hit 400 million by 2043. *See* Stephen Ohlemacher, *U.S. Population Passes 300 Million Mark*, Oct. 17, 2006, available at <http://abcnews.go.com> (search for article title).