



Allowing canine behavior to guide advocacy in dog-bite litigation

UNDERSTANDING WHY AND HOW DOGS BITE ALLOWS US TO EFFECTIVELY COMMUNICATE OUR CLIENTS' STORIES WITHOUT POLARIZING JURORS IN A LARGELY DOG-LOVING SOCIETY

April 10-16, 2022, marked this year's National Dog Bite Prevention Week, an initiative founded in 1956 by U.S. Postmaster, Arthur J. Summerfield, after observing an alarming trend of mail carriers getting bitten by dogs while on the job. The approximate 600,000 dog-bite incidents per year in the United States in the year 1960 has since ballooned to approximately 4.5 million dog bites annually from the year 2000 and onward (out of an estimated 85 million dogs in U.S. households). The Insurance Information Institute reports that in 2020, insurance companies paid out an estimated \$853.7 million in compensation for 16,991 dog bite-injury claims.

During the COVID-19 pandemic lockdowns, dog and puppy adoptions surged nationwide as individuals and families sheltered in place, worked from home, and found solace and companionship in furry, four-legged bundles of joy. Eager dog and puppy adopters joined breeder waitlists, flocked to shelters and rescue groups, and willingly forked over thousands of dollars to purchase "designer" pups from fancy websites, often without knowing the puppies' origins, the health and behavior of the puppies' sires and dams (the fathers and mothers), and without receiving support or guidance from the breeders.

These purchases and adoptions were sparked by widespread loneliness and human isolation, newfound freedom from the office workplace and a renewed interest in outdoor activities. Sadly, these "impulse" decisions were often bereft of long-term plans for raising happy, healthy, well-adjusted dogs. This is a recipe for disaster as the "pandemic pups" reach maturity and families lose interest in the continued training and socialization of their dogs.

The basics of canine behavior

There are two primary forms of dog aggression: fear-based aggression and prey drive. A dog will also bite in response to physical pain, but this, too, is

rooted in fear. According to veteran Los Angeles dog trainer and behaviorist, Brian Lee, dog aggression largely stems from a dog feeling insecure or threatened in some manner. Prey drive, on the other hand, is when a dog expresses its hard-wired predatory instinct, as dogs – *canis familiaris* – are descended from *canis lupus*, the social apex predator commonly known as the wolf.

Ultimately, "[m]ost dogs are massively under-socialized. That's the number one cause of aggression I see," states Lee, founder of Way of the Dog. He continues, "You should have a thousand people pet a pup during its key socialization years – from two months of age to three years of age – and have six to seven hundred dogs appropriately socialize with the pup during those critical early years." Brian encourages dog owners to bring their fully vaccinated pups to places like the pier or boardwalk, where they can be exposed to countless people, including skateboarders, cyclists, roller skaters, and joggers.

Having worked with over 10,000 dogs and their families, spanning a period of 35 years, Lee further observes that dog owners often lack proper leadership, failing to enforce appropriate boundaries and rules with their dogs. Consequently, dogs lacking strong human leaders become insecure and take it upon themselves to defend their families and homesteads, acting aggressively or "unpredictably" to do so. As descendants of hierarchy-enforcing wolf packs, dogs not only desire human leadership, they often require it to settle down as well-balanced family pets. Without such leadership, dogs may become anxious, fearful, and aggressive.

Since California dog owners are strictly liable for dog bites under Code of Civil Procedure section 3342, subdivision (a) – with nominal exceptions for trespassers and dogs used in police or military work – understanding dog behavior may seem unnecessary. Why, then, is it important for dog-bite litigators to learn the basics of dog behavior?

Understanding a dog's behavior reveals the reason for its bite and may illuminate the path for victim treatment and attorney advocacy.

Prey-drive aggression and commonly ensuing bites

All dogs, from the tiniest of Chihuahuas to the most massive of Great Danes, directly descend from the gray wolf. They are such close genetic relatives that they can and do produce fertile hybrid offspring. Despite millennia of purposeful, selective breeding by humans, many domestic canids still possess a deeply ingrained drive to stalk, chase, bite, rip, tear, and kill.

Certain herding breeds, such as Border Collies and Bouvier des Flandres ("Bouvier"), were manipulated by humans to redirect this predatory instinct into something useful for animal husbandry, creating dog breeds that are incredibly adept at zeroing in on sometimes much larger livestock and directing their movements by stalking, nipping, and lunging to herd the sheep, cattle, goats, even geese, toward their shepherd's desired course.

In a modern urban setting, these primal instincts that were fostered and honed for the benefit of humans can result in devastating, inadvertent consequences. Imagine, for instance, the household Border Collie that nips at the heels of a young child visiting a friend's home. Arguably, the dog was only trying to "herd" the child, but the child screams and cries, his parents horrified at the visible scratch on the child's fragile heel.

Now imagine a young girl zooming down the street on her scooter, the fast movement triggering a nearby Bouvier's instinct to chase. The Bouvier's owner, despite holding onto the dog's leash, is caught off guard and woefully unprepared for the 80-pound dog's sudden lunge toward the child. The Bouvier grabs the small child by the torso and does what canids (canines), both wild and domestic, do when they get their mouths on smaller

prey: shake violently to efficiently sever their prey's spinal column.

These are two hypothetical scenarios with very different outcomes and treatment requirements. The former bite can be disinfected and treated quickly at a local urgent-care facility. The latter bite may result in the death or grave injury of a child who likely requires immediate transport to an emergency room for life-saving surgical intervention.

Indeed, children, given their small size, quick and unpredictable movements, often trigger dogs' prey drive. The Humane Society estimates that 51% of dog-bite victims are children. While not all these bites against children are the result of prey drive, children are much more likely to trigger a dog's hard-wired predatory instinct than adults. Their smaller size and propensity to utilize fast-moving recreational toys and vehicles causes them to move like prey and spark a dog's innate desire to pursue and catch.

The chase-and-kill instinct

When large, under-socialized dogs observe smaller dogs, their instinct to chase and kill may also kick in. One scenario is when a dog owner walks his 10-pound toy poodle in the neighborhood and a larger dog (for the sake of this hypothetical, an American Bulldog) escapes from a backyard nearby or dashes out its front door. The bulldog makes a beeline for the poodle, assuming it is prey. If the poodle's owner rapidly processes his lapdog's impending demise, he may manage to lift the dog up and protect it from attack. However, the bulldog, in its relentless attempt to secure its "prey," may latch onto the poodle owner's arm or thigh instead, giving rise to puncture wounds and lacerations.

Alternatively, an unlucky poodle whose owner is unaware of or unprepared for the approaching threat may wind up locked in the bulldog's jaws, his owner subsequently struggling frantically to free the screaming dog from a vicelike grip.

When humans attempt to intervene in a dog attack, they often wind up bitten as the dogs redirect their attention from

the object of their aggression to the human trying to break up the attack.

Sadly, a small dog in a large dog's jaws has seconds to live before its spine is severed via the "kill shake." Quick, effective thought and action by the intervening adult is critical. Unfortunately, few know how to intervene in a dog attack effectively and safely, and an even smaller number will react methodically amidst the chaos and stress of such an incident.

Ultimately, these dog bites may result in a varying degree of injuries – from multiple puncture wounds and contusions to deep, widespread lacerations, even broken phalanges or severed arteries. This could result in treatment varying from basic wound irrigation and stitching to nerve repair, the utilization of splints, or even finger amputation.

The strict-liability nature of these dog bites is understandable and necessary, considering the reality that dog owners are often in denial or they simply do not understand their own dogs' behavior. Owners profess their utter shock when their dogs bite, proclaiming that their dogs are friendly, cuddly, adoring pets, and they have no idea what momentarily "possessed" their beloved pooches. Their dogs may very well be affectionate companions with their owners, but this attitude is ignorant of the fact that *all dogs descend from wolves and their predatory drive to chase, attack, and kill may be alive and well.*

Fear-based aggression and the treatment of resulting dog bites

The most common form of dog aggression perpetuated against humans arises out of fear. Fear-based aggression can manifest in myriad ways – from the dog that cowers in the corner and snaps at the human who refuses to back off (a situation well-meaning veterinarian technicians or dog groomers might find themselves in), to the dog who charges toward and attacks a human it perceives to be a threat.

Children are particularly susceptible to bites from fearful dogs because they

often fail to read a dog's body language and the dog's visual cues of discomfort and anxiety. Moreover, dogs that have not been extensively socialized with children may view children as loud, unpredictable, miniature tyrants with no respect for physical boundaries. (It is incumbent upon adults to supervise interactions between dogs and children, inform children of what respectful interactions look like, and protect dogs from uncomfortable situations with children.)

Unfortunately, not all fear-based aggression is detectible by humans; dogs don't always demonstrate clear "warning" signals before they bite. For example, a dog that is stirred from its slumber may react defensively, suddenly lunging and biting the person who disrupted it. Often, this results in a bite directly to the unlucky individual's face. Trainer and behaviorist Lee strongly discourages pet owners from allowing their dogs to sleep on human beds; this type of devastating bite being one of the reasons for his admonition.

Dog bites to the face are also common when an individual hovers over a dog that wishes to be afforded space and respectful distance. The dog's body may tense up; its tail may tuck; the dog may demonstrate "whale eye" (when the whites of a dog's eyes become visible as the dog averts his head but fixes his eyes on something or someone, a sign commonly associated with stress); or the dog may emit a low growl and even curl its lip in a snarl.

These signs may be barely perceptible, except to the most experienced dog behaviorists. Ultimately, when a dog wants its space, an unwelcome kiss or hug from a human is perceived as a threat and the dog may retaliate in kind, snapping at the offending body part, most notably the face.

Fear aggression may also manifest as an "offensive" attack, rather than a defensive one. This includes dogs that lunge at, charge, or attack others. While this behavior may appear to be product of pure, unbridled anger, dogs behave this way when they feel threatened. This is the type of aggression that has plagued mail

carriers since the 1950s, when Dog Bite Prevention Week was founded.

Dogs inside their homes or in gated front yards may perceive passersby as threats to their territory and safety. Consequently, anyone who “trespasses” into said territory to deliver mail may be met with dangerous aggression from the resident dog(s). This type of aggression is manifesting more frequently with the proliferation of delivery services like Amazon Fresh, Uber Eats, and Postmates. Dogs that freely range front yards or “door-dash” when their owners open the front door to retrieve deliveries may attack delivery personnel in defense of their owners and homes. To avoid the occurrence of such incidents, Lee instructs owners to train their dogs to wait politely at open doors until they are given the “release” command to exit.

Fear aggression also manifests as fights between dogs. An insecure dog may feel the need to posture around other dogs, asserting its dominance and creating a façade of strength. Not all dogs tolerate such behavior from fellow canines and are quick to retaliate, potentially leading to dangerous scuffles.

This is relevant because, as mentioned, humans are commonly caught in the fray, getting bitten as they attempt to break up the fight. For this reason, dog parks are breeding grounds for dog bites; dogs bully one another while their owners are preoccupied with their cell phones. By the time a fight breaks out, owners panic and charge into the melee without an effective plan of action, exposing them to bites as the combating dogs frantically redirect their attention.

Interestingly, a dog’s sex hormones can trigger fear-based aggression. Intact males and females emit pheromones that may trigger aggression in other dogs, leaving owners shocked because they believe their dogs were “sociable and friendly,” but they had never previously observed their neutered dogs socialize with intact males. Again, the ensuing dog fights often lead to strict liability dog bites when owners attempt to intervene.

Sadly, dog fights are a common occurrence within households as well. Dogs may be protective of their resources, which include but are not limited to toys, food, and human attention. Fights may break out between dogs belonging to roommates, cohabiting partners, and family members, again opening the dog owner to strict liability dog-bite claims when ill-conceived intervention is attempted.

Dog-bite mechanics

It bears repeating that *every* dog’s jaw is built to kill. The Dogo Argentino (“Dogo”) is a powerful Argentinian breed, developed to hunt ferocious, dangerous quarry, including wild boars and mountain lions. The Dogo’s bite force is approximately 500 PSI. This means when a dog of a Dogo’s size and strength bites a human, it exerts *500 pounds of pressure per square inch of area* delivered through crushing incisors, canines, and premolars – a total of approximately 42 teeth – designed to rip and tear through animals sometimes weighing several times its own size.

While the Dogo weighs between 80 and 100 pounds, dogs don’t need to be enormous and imposing to do incredible damage; Chihuahuas can exert a bite force of an estimated 100-180 PSI. This devastating power means a dog bite can do significant damage beneath the surface of the skin – crushing bones, ripping ligaments, tearing tendons, and destroying delicate nerves. The bite force can be so powerful that a dog may even break its teeth off inside the tissue of its victim, lodging foreign material into the wound. Occasionally, other foreign objects, including the bone fragments of the dog’s recently indulged meal, are dislodged into the bite wound and must be carefully extracted.

To make matters worse, people bitten by dogs usually recoil automatically, reflexively attempting to free their hands, arms, and faces from attack by pulling away. Given the design of a canid’s teeth and jaws, however, the act of pulling away from a bite often leads to *more* damage as the victim’s flesh rips away.

Additionally, dogs instinctively grip tighter and shake when the object of their attack attempts to pull away (anyone who has played tug-of-war with a dog understands the mechanism of this reaction). Easier said than done, but when a dog bites, the best way to avoid an exacerbation of damage is to press the bitten body part *toward* the dog’s mouth until it releases its grip.

It goes without saying, most dog-bite victims do not do this, potentially leading to profuse bleeding, and the loss of swaths of skin and tissue as it is ripped away. Thus, a key question to ask your dog-bite victims is how they reacted when they were bitten. If they pulled away (as most do) and the dog did not release its grip, you know you are likely dealing with greater damage (externally and internally) than if the dog had snapped and released.

Medical treatment of dog bites

Of course, the mechanism and severity of a dog bite will dictate treatment. A “minor” dog bite still needs to be cleaned by a medical professional to prevent infection and victims must ensure they are up to date on their tetanus immunizations. Rabies transmission is rarely a concern in California, given vaccination mandates, but any individual bitten by a free-roaming dog should certainly consult with a medical provider about prophylactic rabies treatment.

Severe dog bites produce gaping, jagged wounds, but because a dog’s bite force is so damaging, a great deal of injury can be inflicted well beneath the surface. That said, scarring is common and may require a dermatological or plastic surgery consultation. Dermatology treatments range from cosmetic procedures such as lasers, steroid injections to control the development of hypertrophic scarring, and surgical scar revision. Skin and cartilage grafts may be required for facial reconstruction surgery. Moreover, bites to the face can destroy the delicate facial nerves and lead to permanent paralysis, facial asymmetry, and deformation of facial tissue.

Reconstructive surgery is indicated for the most severe bites, and sadly, California ranks second in the nation for dog-bite fatalities. In 2001, the nation was shocked by the gruesome, fatal mauling of Diane Whipple by two large Presa Canario dogs in the hallway of her San Francisco apartment building. The powerful dogs spent a good portion of their lives mistreated, chained, and unsocialized. The tragedy illuminated the risks associated with the confinement of large, powerful, poorly trained, unsocialized dogs dwelling within close proximity to others.

Survivors of bites not only suffer potentially grievous physical injuries with long-term or permanent scarring and deformation, but they often also suffer from psychological trauma. Children who are victims of dog bites may become paralyzed by a fear of dogs following an attack. Adults and children who suffer from permanent disfigurement or scarring may require psychological counseling and treatment, not only for post-traumatic stress, but also for depression and social anxiety as they cope with their post-injury self-image. Needless to say, the road to recovery may be arduous – physically, emotionally, and mentally.

Advocating for dog-bite victims

For a nation that spent approximately \$5.3 billion on dry dog food in 2020, dog bite cases are often emotionally triggering. Nearly 40% of American households have at least one dog. Thus, navigating dog-bite cases can be tricky as jurors grapple with the idea

that *they* may be held strictly liable if their dogs bite.

Understanding canine behavior and consulting with experts who can shed light upon not only the mechanism of dog bites but also the fact that life-altering, catastrophic attacks can and do occur instantaneously can garner victim sympathy from a dog-loving jury. It's my humble opinion that advocating for dog-bite victims should not only be about compensating victims for their injuries, but also educating a captive audience, the jury, on the realities of dog ownership.

As the proud owner of Thor, a 120-pound Rottweiler-Doberman Pinscher mix (two breeds that are often excluded from insurance coverage due to the breeds' "dangerous propensities"), I am ultra-aware of the polarizing issues at play in dog-bite cases. When Thor tugs on his leash, I am instantly reminded that I am the custodian of an enormously powerful animal descended from apex predators that survived for millennia as complex social mammals and efficient killing machines.

Although Thor has the physical capacity to destroy me within minutes, he respects my stewardship and command. We have a relationship founded in mutual respect that has developed through years of extensive, hands-on training and socialization. (While he is a good boy, Thor has been in training continuously since he entered my life at two months of age.)

As dog lovers, we may anthropomorphize our pets, referring to them as "fur babies," and I am certainly

no exception. However, I have witnessed the consequences of dog-owner denial, conferred with veteran dog trainers, and come to understand that human error and a failure to respect and understand the ancestry of our beloved pets can and does lead to injuries ranging from minor scratches and superficial punctures to catastrophic maiming and death.

Broadly understanding why dogs bite, how they bite, and the mechanism of injury allows us to effectively communicate our clients' stories without polarizing a largely dog-loving society.

We have co-evolved with dogs for thousands of years, and they are here to stay. Dog bites are the unfortunate and inevitable consequence of this otherwise enriching, symbiotic relationship. If we can turn the tide and move away from demonizing dogs that attack to understanding where and how the *owners* have failed in their guardianship, we may not only manage to effectively advocate for our clients, but we may also open a juror's eyes to the responsibility that comes with the privilege of dog ownership.

Diane Chang received her Juris Doctor degree from Loyola Law School, Los Angeles, in 2017. In 2020, she opened the doors to her own personal injury practice in Redondo Beach and founded The Law Office of Diane Chang, APC. She brings her dogs, Thor, and a 25-pound terrier mix, Toby, to the office whenever possible.

