

# **Issues About Animal Behavior Relevant to Dog-Bite Statutes**

**By Richard H. Polsky, Ph.D.**

**Expert / Consultant in Dog & Cat Behavior**  
*Certified Applied Animal Behaviorist*  
**President, Animal Behavior Counseling Services, Inc.**  
**2288 Manning Avenue Los Angeles, CA 90064**

**Tel: (310) 474-3776; (800) 605-2227**  
**Fax: (310) 475-9659**

Twenty-eight States, including California, have a codes imposing strict liability for dog-related injuries. In essence, these laws makes an owner liable, without having to prove fault or negligence, if the actions of their dog causes injury to a person (see M. Randolph, *Dog Law*, 3rd ed. 1998, Nolo Press). The specific language used in the codes varies from state to state. In California, for example, the statue (California civil code, section 3342) can be invoked only if the plaintiff was bitten. The California statue further stipulates that an owner must take reasonable steps to remove the danger their dog presents if its has tendency to bite people.

Other States have more encompassing statutes which specify the owner is labile if their dog causes any kind of injury. The Wisconsin statue states: "any dog which has injured or caused the injury of any person or property." In Alabama the statue reads: "any dog which without provocation bites or injures any person." The statue in Massachusetts reads: "any dog which damages the body or property of any person". Statutes written in this fashion expand the basis on which an owner can be found liable. Thus in some States liability may exist even when there is no bite or no direct contact between the injured person and dog. Statutory laws, regardless of the language used, usually do not protect trespassers, people who assume the risk of being bitten because of their profession (e.g. veterinarians, dog groomers, dog trainers), people bitten by police dogs used in the line of duty, or people injured because in some fashion they have tormented, provoked or harassed the dog .

If an attorney plans to file a lawsuit under a State's statutory dog-bite law, then

certain behavioral issues might arise during the course of litigation. I will review these issues in this paper. The discussion will be most germane to statutes which require physical evidence of a bite, such as those found in California, New Jersey and Michigan.

First, there is the issue of whether a bite occurred. Second, if a bite occurred and if there was more than one dog involved then one has to be certain of the dog which did the biting. In other words, one must place the blame on the correct dog. Third, one needs to ascertain if the dog was provoked to bite. Last, one needs to know if the plaintiff assumed the risk of being bitten. In regard to the latter two issues, provocation and assumption of risk, I distinguish between them because there is a behavioral basis for their separation. In published case law the terms have been used interchangeably, however (1993) 11 ALR5th 127.

### **Issue #1: Did a Dog-Bite Actually Occur?**

This usually a simple question to answer; hence, it is not common to find this issue being debated in personal injury lawsuits. On the other hand, arguments about this issue may come forth if there is uncertainty about whether the plaintiff was actually bitten.

From the technical perspective of an animal behaviorist, a bite may be defined in terms of the motor patterns involved to complete the response (e.g. closing of a dog's teeth on a person's body) or the consequences of the response (puncture wounds or bruising to the victim's flesh due to closure of the dog's teeth, or tearing of clothing due to the ripping action of the dog's teeth). This kind of technical definition has never been incorporated into any appellate decision, however.

Therefore attorneys and judges must stick with what common sense tells them; namely, it's likely a bite happened if there were teeth marks on the victim's flesh, or if the flesh was actually broken. However, problems with this common sense approach arise if one speculates what probably happened as opposed to having concrete physical evidence indicating a bite. An example follows:

A German shepherd escaped into the backyard of the owner's home and aggressively charged the plaintiff who was standing on a ladder making a repair on a roof. The dog had previously been placed inside the house when the plaintiff arrived. The plaintiff testified that the dog repeatedly jumped at him and snapped at him, causing him to fall and sustain serious injury.

Circumstantial evidence introduced during litigation suggested that the dog was definitely aggressive by nature and that the dog's charging behavior towards the ladder should have been anticipated by the owner. The only evidence of a dog bite was the assertion by the plaintiff that his trousers were ripped by the dog's teeth. The plaintiff foolishly discarded his trousers shortly after the incident. Since there was no physical damage to his flesh, or physical evidence available suggesting a bite, defense counsel argued that liability did not apply under California's dog-bite statute. Partially for this reason, as well other evidence introduced at trial (evidence mitigating the owner's awareness of the dog's aggressive nature because it was still a puppy), the defense prevailed in this case.

It may also be argued that what appears to be an injury from a dog bite was in fact caused by something else. In another lawsuit, the plaintiff claims that a German shepherd bit him on the hand as he was walking on the sidewalk adjacent to the yard in which the dog was kept. The plaintiff was on his way home from a bar at about 10 pm. The dog's yard was enclosed by iron bars positioned on top of a 2 ft. high stucco wall. The bars were spaced 4 in. apart. At the time of the incident the plaintiff says his arms were swinging freely by his side just inches from the bars. He claims the dog, without warning, stuck his head just far enough through the bars to inflict the bite. Was the dog capable of doing this? Given the context in which the incident happened and the way the dog was maintained by its owners, it appeared that the dog was motivationally capable of biting. The animal behavior expert for the plaintiff opined that the dog was highly territorial and aggressive. The opposing expert for the defense opined that regardless of the dog's motivational state or territorial inclinations, it was nevertheless physically impossible for the dog to fit its head through the bars. Defense argued that the dog's head was simply too large. They also argued that the nature of the injury was not consistent with a dog bite. The defense believed that the plaintiff sustained his injury as a result of somehow being cut at the bar. Based on all the facts and opinions that were available to the arbitrator at the time of the hearing, a decision was rendered in favor of the defense.

In the above mentioned case opinions from the animal behavior experts were important because medical records indicating a dog bite were lacking. Accordingly, expert behavioral opinion address issues relevant to: (a) the size, shape and length of the dog's head relative that of the bars; (b) whether the dog was physically capable of placing snout far enough through the bars to contact the plaintiff; and (c) the temperament of the dog and his willingness to respond aggressively towards an unfamiliar person walking past its yard at night. If

testimony from behavioral experts is conflicting, like it was in the above case, and in the absence of conclusive medical documentation indicating a bite, then expert testimony from an emergency medical physician familiar with the treatment of dog bites would be beneficial. This assumes that photos of the plaintiff's injury are available for the medical expert to review.

## **Issue #2: Which Dog Did the Biting?**

If more than one dog is proximate to the victim when the bite happens, it may not be clear which dog inflicted the bite. This may happen, for example, if a dog escapes from its property and attacks a dog who is being walked nearby on leash. As a result, the person walking the dog (i.e. the plaintiff) finds himself in the midst of two fighting dogs and consequently gets bitten. In a case like this the dog bite statute cannot be used to specify liability if the bite was inflicted by the plaintiff's own dog.

Two approaches can be taken if liability is questioned because of uncertainty of which dog did the biting:

(a) *DNA Analysis*. This approach was recently used to help Texas authorities state with certainty that a suspected Rottweiler was the dog responsible for mauling a 77-year old lady. The victim sustained 22 serious puncture wounds and had a 5 square-inch piece of flesh torn from her scalp. DNA analysis was done by taking the dog's saliva which remained on the victim's clothes and matching that with a blood subsequently taken from the dog.

(b) *Behavioral Analysis*. Information gleaned from each of the options mentioned below can be used independently or collectively to infer the dog most likely to have caused the injury.

1. The temperament of each dog and the kind of relationship each dog had with its owners and other caretakers can be assessed to determine the likelihood each would have of redirecting its aggression towards a human during a dog fight.

2. The width between the dog's upper canine teeth and the width between the two lower ones could be measured and matched against the width between the puncture wounds on the victim's flesh. This approach necessitates that the measurements be taken of the bite wounds on the plaintiff before they are completely healed.

3. Determine if the injury to the plaintiff was consistent with the kind of injury each dog was capable of inflicting. For example, compared with many other breeds, dogs of the pit bull breed are capable of causing relatively great damage to a person because of the crushing power of their jaws.

### **Issue #3: Was the Dog Provoked?**

Due to the way dog-bite statutes are written, attorneys may form the impression that provocation is not a viable defense to counter liability. This is a faulty assumption, however. For example, in *Gomes v. Byrne* (1959) 51 Cal 2d 418, 333 P2d 754 the court stated: "In adopting section 3342 of the (California) Civil Code, the legislature did not intend to render inapplicable such defenses as assumptions of risk or willfully invited injury. Therefore those defenses are available in all proper cases." In *Smythe v. Schacht* (1949) 93 Cal App 2d 315, 209 P2d 114 the court likewise ruled: "In adopting the statute the legislature did not intend to make the liability of the owner absolute and render inoperative certain principles of law such as assumption of risk or willfully inviting injury."

Counsel for the defense always needs to question whether provocation was the impetus behind an attack by a dog in a lawsuit that invokes the dog-bite statute. Willfully invited injury because of a provocative act by the plaintiff is one of the strongest defenses to counter liability under the law. In California, for example, if provocation can be established then a plaintiff's recovery may be reduced in proportion to their contributory fault. What constitutes provocation, however, is often unclear. It is here where the animal behavior expert can be effectively used by an attorney. An animal behaviorist knows the kind of situations which might be provocative to a dog, given the temperament of the dog and the circumstances under which the injury happened.

#### *Definition of Provocation*

Provocation may be defined as *any action by a person which causes the dog to immediately engage in a response that is motivationally different from the response it was engaged in just prior to the action of the person*. In other words, the person's actions must immediately cause a radical change in the dog's behavior. Causation may be inferred by the immediacy of the change. A dog's motivational state is derived from what animal behaviorists refer to as a motivational analysis. The analysis of a dog's motivational state is based on factors which include assessment of its temperament, the behavior of the dog immediately before and after the incident, the context in which the incident took place, and factors related to the dog's past experience (e.g. has the dog

ever display this kind of behavior in the past?) or its current medical condition (e.g. did a painful medical condition exist?).

In personal injury lawsuits, provocation frequently centers around issues dealing with a dog's aggressive nature: accordingly, attorneys frequently wrangle over the question of whether the plaintiff's actions caused a dog to bite or display aggressive intent. Note, however, some dogs are also capable of being provoked into other kinds of potentially dangerous behavior which could easily cause injury to a person (e.g. a large dog jumping on a person; a small dog walking between a person's legs ).

Examples of lawsuits I have been involved in as an expert where the issue of provocation has been raised include:

The first case involves a 30 y.o. man who abruptly placed his face directly in the face of a resting German shepherd dog. The plaintiff who was an invited guest at the owner's home, approached the dog to greet him. He did not know the dog that well. The dog was lying on the floor next to his owner. He was instantly bitten in his face when it was only inches from the face of the dog. A good portion of his nose was severed. The dog, who remained in the proximity of the plaintiff after the bite, proceeded to eat the plaintiff's nose after part of it had fallen to the floor. Testimony was that the dog had never displayed behavior like this before. Despite the plaintiff's horrific injury, damages awarded him were substantially reduced (comparative fault in California) because of what was believed to be his contributory negligence via way of his provocative actions.

Another case involved a 4 y.o. male pit bull who was feeding from his food bowl when a 8 y.o. boy approached the dog. As the child came within reach of the dog, it turned and bit him severely in the face. The owners claimed that the dog actions were out of character and that he was of good temperament. Based on the supposedly non-aggressive temperament of the dog and the fact that this dog was quite familiar with this child and had played with the child on previous occasions, the defense argued that the child must have provoked the dog by startling him while his was feeding. Behavioral testing conformed this belief. Results showed a relatively passive dog. This pit bull did not display any tendency to guard his food bowl even when hungry. Despite this finding, settlement was made in favor of the plaintiff for reasons that were independent of the behavioral analysis.

Another case demonstrates that the plaintiff does not necessarily have to make

an action immediately directed to the dog in order for a defense of provocation to be raised. In this case the plaintiff, who was probably under the influence of alcohol, came charging into the defendant's home upset because she believed her son was dealing drugs from that location. The dog, a pit bull, was housed in a pen adjacent to a porch which abutted the front of the house. A fight ensued between the plaintiff and defendant. Much screaming was heard. The fight carried the plaintiff and defendant crashing through the front screen door. The plaintiff landed on the porch. Just as she fell, the dog who was in the nearby pen, jumped out of its pen and immediately attacked her. The defense successfully defended this case by arguing that the erratic behavior on part of the plaintiff incited the dog thereby provoking it to attack.

### *Court Rulings on the Issue of Provocation*

Verdicts rendered in various Superior Court throughout California demonstrate the use of provocation as a successful defense to counter liability under the dog-bite statute (*Roeser v. Collole*, San Fernando Case No. NV 08512; *Clark, et.al. v. Damien, et. al.* San Mateo County Case No. 269411; *Quan v. Reicken*, Sacramento County, Case No. 282252; *Anderson v. Fuglestad*, Ventura County, Case No.102176; *McQueen v. Butler*, San Joaquin County, Case No.159230).

On the other hand, in the few published California appellate decisions where the issue of provocation was reviewed, rulings have favored the plaintiff (crouching over and petting a dog, *Symthe v Schacht*, supra; (1949) 93 Cal App 2d 315, 209 P2d 114; reaching down to pet a dog, *Ellsworth v. Elite Dry Cleaners* (1954) 127 Cal App 2d 479; feeding a dog, *Burden v. Globerson* (1967) 252 Cal App 2d 468, 60 Cal Rptr 632). These rulings should not be interpreted as a dictum against provocation as a triable issue. Instead, they indicate that the circumstances of the particular case did not warrant a judgment indicating that provocation occurred.

Rulings from appellate courts in other States have sided with the defense, however. Examples are as follows:

(a) *Palloni v. Smith*, (1988) 431 Mich 871, 429 NW 2d 593. A Michigan court ruled that hugging a dog by a 2 year old was sufficient provocation to cause the dog to bite. The court ruled that although the plaintiff did not intend to provoke the dog, the act nevertheless was sufficiently provocation to justify a ruling in favor of the defense.

(b) *Nelson v. Lewis*, (1976) 35 Ill App 3d 130, 344 NE 2d 268. An Illinois court ruled that the stepping on the tail of a normally non-aggressive dog by a 2 y.o. girl was provocative despite the fact that the girls actions were non-intentional.

(c) *James vs. Cox* (1981)130 AZ 152, 634 P2d 964; *Toney v. Bouthillier* (1981) 129 Ariz 402, 631 P2d 557. These courts ruled that even if provocation is unintentional it still is a defense under the Arizona dog-bite statue. The courts viewed provocation as dependent on whether the actions caused the animal to react rather than the intent of the actor.

(d) *Reed v. Bowen* (1986) Fla. App. D2 503 So 2d 1265, 11 Fla. 2254. In Florida, the dog-bite statute requires that provocation must be committed "mischievously" or "carelessly". Based on this premise, the court ruled in favor of the defense in a case involving the intentional pulling on a dog's chain by a 4 y.o boy. Shortly before the incident happened, the boy had been instructed not to bother the dog. The boy also testified that he was "bugging" the dog.

### *The Liability of Children*

In *Reed v. Bowen* the court also ruled that the boy's age was not a bar to his contributory negligence. Likewise, in Illinois, Michigan and Arizona (*Nelson v. Lewis*, supra 1976, 35 Ill App 3d 130, 344 NE 2d 268; *Palloni v. Smith*, supra 1988, 431 Mich 871, 429 NW 2d 593; *Toney v. Bouthillier* , supra 1981, 129 Ariz 402, 631 P2d 557) appellate courts have ruled that a child can be contributory negligent. However, in California, a young child may not be capable of assumption of risk or contributory negligence (*Green v. Watts* 1962, 210 CA2d 103). In *People v. Berry* (1991) 1 CA4th 778) the court ruled that a minor under the age of five cannot be capable of acting with reasonable care towards a dog.

### *Questions About Provocation*

Ruling that the plaintiff's behavior was provocative depends on whether the act could foreseeably elicited an aggressive response from the dog. In the cases cited above, *foreseeability* appears to be the key element influencing a court's decision. The question of foreseeability is essentially a question about animal behavior. It is here where the interests of the animal behaviorist overlap with that of the attorney. The animal behaviorist is knowledgeable about the kinds of behavior from people that could foreseeably elicit aggression in a dog. The attorney needs this knowledge to either support or refute the notion of provocation.



Certain questions need answering before concluding that the dog's aggression was a foreseeable event given the plaintiff's behavior. I will list these questions below. The relative weight given to each question in determining if provocation occurred will vary from case-to-case.

(a) *What did the plaintiff do to the dog?*

What were the exact actions of the plaintiff towards the dog the moment the incident occurred? The behavior of the plaintiff hours or minutes prior to the incident also needs to be assessed. Was the reaction of the dog something one would have expected given the temperament, breed characteristics, or its past experience? Did the dog overreact in response to the plaintiff's actions?

Certain acts, whether they are intentional or not, have the potential of provoking a dog into a display of aggressive behavior (*Polsky*, 1990, *Veterinary Practice Staff*, Vol. 2. No. 2. pp. 37 - 39). Often the motivational basis of a dog's aggression is one of dominance, fear, predation, or protection. In other cases, pain may be involved. Animal behaviorists know that pain can immediately trigger aggressive responding in a dog. Moreover, this type of reaction can readily be conditioned to previously neutral features in the dog's environment, such as a person, thereby causing the dog to respond with aggression for no apparent reason. This is what happened in the case of *Pentz v. Zimenthal* (1994, Alameda County Case No. H-170261-9). The plaintiff was awarded \$290,000 at a mandatory settlement conference for a bite that ripped-off the right side of her nose. The dog did not know the plaintiff that well. She was a guest to the owner's home on Christmas day. Significantly, earlier that day, the dog had experienced a painful event (caused by the defendant's foot accidentally falling on the dog) when in very close proximity to the plaintiff (the plaintiff was talking to the owner who was seated in a chair). The attack, which occurred several hours later, happened as the plaintiff started to engage the dog in social interaction (bending down to touch the dog). This apparently unprovoked attack was probably the result of the earlier negative association formed by the dog towards the plaintiff.

Other common gestures or acts that could easily elicit an aggressive reaction from a dog include quickly invading the dog's personal space, kicking or bumping into the dog, intentionally thwarting an ongoing activity in which the dog is engaged, and even an apparently innocuous act like petting or kissing a dog. Not all dogs react in a similar fashion. Therefore the merits of arguing provocation will vary from case to case.

*(b) What was the temperament of the dog?*

Next, one needs to assess the temperament of the dog. Tremendous differences exist between dogs in terms of the likelihood of reacting with aggression as a result of a supposedly provocative act. Some dogs have a hair-trigger response while others do not. Individual differences might be due to genetic differences between breeds, internal changes caused by medical problems or the use of medications, or differing past experience. Whether an act can be construed as provocation therefore depends, in part, on the history of the dog and its hereditary make-up. Generally, the argument for provocation is stronger if the dog in question has a history of behaving non-aggressively and belongs to a breed not known for its aggressive tendencies (e.g. Golden retrievers, Labrador retrievers).

*(c) In what context did the incident occur?*

Last, the context in which the incident happened needs to be assessed. For example, many dogs are more likely to respond with aggression when they are in their own territory. Certain kinds of aggression in a dog may be enhanced if the dog is habitually chained, if it is in the presence of other dogs (e.g. mutual facilitation of aggression), if it is in the presence of the owner (e.g. protection of the owner), or if it is forced into a situation which it doesn't like (e.g. examining room in a veterinary hospital).

In sum, from a behavioral perspective, different criteria need to be assessed before stating with certainty that the plaintiff's actions were provocative. The nature of the act by the plaintiff, the nature of the dog, and the socio-environmental context in which the incident happened all have to be taken into account. In general, the dog's response has to be an immediate reaction to the plaintiff's actions. There should be no evidence of similar kinds aggression displayed by the dog in the past. In general, the plaintiff's actions have to be of the kind that caused a dog to experience pain, become threatened, irritated or frightened. The above mention factors interact with each other and have to be assessed on a case-by-case basis in order to determine if a dog's reaction to the plaintiff actions was foreseeable and predictable.

***Issue #4: Did the Plaintiff Assume the Risk of Being Bitten?***

Assumption of risk is not directly concerned with the plaintiff's behavior but rather with the plaintiff's actual knowledge about the behavioral propensities in

the dog. Used in this way, assumption of risk is secondary rather than expressed (e.g. liability waiver) or primary (e.g. inherent occupational risk, such as a veterinarian). Assumption of risk may apply if the plaintiff chooses to interact with a dog who is obviously in an aroused aggressive state (e.g. intervening in an ongoing dog fight) or if the plaintiff was warned not to go near the dog because of the dog's dangerous tendencies.

What sort of information does one need in order to state that the plaintiff had been put-on-notice about a dog's aggressive nature? Aside from obvious warnings, like a Beware of Dog sign, or being explicitly told that a dog could bite, the following criteria may apply.

### **Warning Based on the Dog's Behavior**

It is important to determine the extent of a plaintiff's knowledge about the dog's current or past behavior. This may come from the plaintiff's observations of the dog on prior occasions, or from the dog's behavior immediately before the incident happened. Growling, snarling, or previous displays of aggression by the dog in the presence of the plaintiff provide information about a dog's nature that is usually understood by most people regardless of race or culture. In *Gomes vs. Byrne.*, supra (1959) 51 Cal 2d 418, 333 P2d 75 the court ruled that a dog who was barking and chasing a stranger along a property line, imparted knowledge about its dangerous nature.

Concluding that a dog is dangerous becomes questionable if one only has knowledge that it barks excessively. It is common for dogs to bark for different reasons in different contexts and not necessarily because they are aggressive. Likewise, it would be behaviorally incorrect to argue that other common misbehaviors found in dogs, such as destructive chewing, escaping from the property, clawing at a fence, digging holes in a backyard, etc., suffice to place a person on notice about a dog's aggressive nature. These kinds of behaviors usually have nothing to do with a dog's potential for aggressive responding.

### *Warning Based on the Dog's Breed*

The breed of a dog may provide knowledge to a person about its potential danger. My experience and research has shown that most people know that certain breeds are more aggressive than others. Over the years, this inference has been regularly disseminated onto the public via media reports about attacks on people by certain breeds (particularly pit bulls and rottweilers). If this be the case, then it could reasonably argue that a greater assumption of risk exists if

the plaintiff voluntarily chooses to initiate interaction with a dog belonging to one of these breeds. I know of no published appellate decisions that directly address this question, however. On the other hand, several distantly connected appellate decisions have ruled against this notion. For example, a landlord's knowledge of the dog's breed or name does not constitute adequate notice about a dog's dangerous nature (*Lundy v. California Realty* (1985) 170 Cal. App. 3d 813, 216 Cal Rptr 5750. In *Burden v. Globerson* (1967) 252 Cal App 2d 468, 60 Cal Rptr 632) the court ruled that regardless of the dog's breed, one does not assume the risk of being bitten simply by choosing to initiate interaction with a dog . This latter ruling is consistent with the philosophy that underlies many appellate court decisions on "man's best friend"; namely, unless proven otherwise, a dog is assumed to be friendly and non-aggressive.

### *Court Rulings*

Appellate decisions in California and elsewhere have favored both the defense and plaintiff with respect to assumption of risk arguments (Supra (1993) 11 ALR5th 127). Decisions appear to be based on the details of each case. Two noteworthy cases are *Nelson v. Hall* (1985) 165 Cal. App. 3d 709, 211 Cal. Rptr. 668) and *Green v. Watts* , supra (1962) 210 Cal App. 3d 36, 266 Cal Rptr 734). In the former, the court ruled that a veterinary assistant could not use the dog bite statute as a means of recovery. The "fireman's rule" was cited to support the court's ruling. In the earlier mentioned *Greene vs. Watts* decision, the court ruled that a child could not be held liable under the doctrine of assumption of risk. This California ruling conflicts with rulings in other States which assert that assumption of risk does not bar a child from liability (*Nelson v. Lewis*, supra (1976) 35 Ill App 3d 130, 344 NE 2d 268; *Palloni v. Smith*, supra (1988) 431 Mich 871, 429 NW 2d 593; *Toney v. Bouthillier* , supra (1981) 129 Ariz 402, 631 P2d 557).

Finally, a verdict rendered in a California court (*Malm, et. al v. Snell*, San Diego County, (1994) Case No. 656248) demonstrates the importance of the doctrine of assumption of risk. In this case the plaintiff was a 42 y.o. female. She owned 4 dogs, one of them being a Rottweiler. She allowed her daughter to take onto her premises a fifth dog, a Chow. The Chow, owned by the defendants, could not stay in the defendant's home because the dog's had recently attacked a neighbor. The defendant's son (boyfriend to the plaintiff's daughter) instructed the plaintiff's daughter keep the dog secure in a cage in the yard of her mother's home. The girlfriend's mother (e.g. the plaintiff) began caring for the Chow. After approximately 10 days, she let the Chow out of the pen, supposedly at the suggestion of the boyfriend. The defendant denied this.

A fight broke out between the Rottweiler and the Chow. The plaintiff shouted at the dogs to stop and the Chow turned and attacked the plaintiff causing numerous serious injuries. Plaintiff attorneys argued that the defendants were strictly liable under California Civil Code sections 3342 and 3342.5. The defense argued that the plaintiff was comparatively negligent because she knew of the Chow's aggressive tendencies and because she was told not to interact with the dog and not to let the dog out of the pen. The jury believed the defense. They found the plaintiff 85% contributory negligent, reducing her \$87,800 award to \$13,170. Subsequently, however, there was a directed verdict against the defendant on the issue of liability and a motion for a new trial and additur was granted. The case settled for \$120,000.

## **Conclusion**

Dog-bite statutes, like the one in California, clearly favors the plaintiff. In most cases they remove the burden from the plaintiff to prove the defendant's prior awareness of the dog's aggressive or dangerous nature (e.g. scienter law). Moreover, juries are often sympathetic to the victim, especially if the attack is severe and if it involves one of the so-called aggressive breeds. Difficulty defending these cases further increases if the victim is a child. Notwithstanding these biases, the issues mentioned in this paper should be raised provided discovery warrants their inclusion.