

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

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UNITED STATES OF AMERICA :
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 :
 -against- : 3:07-cr-00274-HEH-4
 :
 MICHAEL VICK, et. al. :
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BRIEF OF AMICI CURIAE

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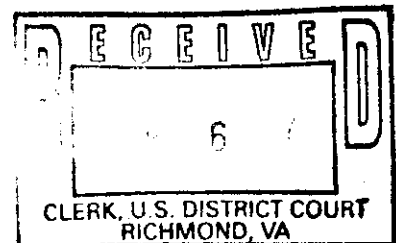


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INTEREST OF AMICI CURIAE

Amici are organizations concerned about animal welfare and responsible dog ownership. The work of a number of the amici is directly related to the atrocities which give rise to this lawsuit: it includes providing shelter and rehabilitation to abused and neglected animals in general. Others have specialized expertise in the assessment and rehabilitation of dogs rescued from the fighting pits. Other organizations are engaged in educational efforts to combat breed specific legislation and to promote responsible dog ownership. Still others represent groups dedicated to the promotion of the American Pit Bull Terrier, once known as the all-American dog, through programs focused on responsible breeding and training.

They represent diverse groups and interests from the East Coast to California, from the State of Washington to Texas. Yet all are united in this brief in a single purpose to speak for the voiceless victims of the cruel world of dogfighting so that the sentence imposed on the defendant will truly hold him accountable for the atrocities he financed and committed against these defenseless animals. Amici believe that this pending criminal action against Michael Vick and the other defendants named in the indictment is a step towards justice for the thousands of dogs trapped in the hellish world of dogfighting. It is hoped that this brief will provide the court with insight as to the suffering endured by the victims so as to impose sanctions severe enough to

discourage such atrocities from recurring. Providing a means of redress is of singular importance to the victims of this particular enterprise, because the truth is that after having survived a life of brutality and unspeakable cruelty at the hands of those who gamble on their deaths, betrayal and death await these dogs once they are "rescued". More than 90% of dogs rescued from fighting pits are summarily euthanized because the shelters to which they are entrusted have neither the expertise nor the resources to properly assess and rehabilitate dogs who have been used in dogfights. Amici offer the Court an alternative to this tragic end.

In addition, amici offer their insight in order to assist the Court in understanding the impact of defendant's conduct on responsible owners of American Pit Bull Terriers and American Staffordshire Terriers throughout the country.

Amici also seek to provide the court with an understanding of the defendant who will appear before the bench at sentencing in order to assist the Court in imposing a just and fair sentence which adequately reflects the harm done by the defendant. To that end amici offer a sentencing recommendation which urges the Court to impose a non-guideline sentence within the statutory maximum consistent with 18 U.S.C. §3553. Finally, the Court is urged to order sufficient restitution for the care and rehabilitation of the victimized dogs; to impose the maximum statutory fine to be used for education of the public as to the evils of dogfighting and to dispel the myths which criminalize the

victims instead of the perpetrators; and to dedicate the forfeited property identified as 1915 Moonlight Road, Smithfield as a shelter for neglected and abused animals.

Signatories are listed in alphabetical order, by the name of the organization:

The American Dog Owners' Association (hereinafter "ADOA") The American Dog Owners Association was originally established in Detroit, Michigan in 1970 to combat illegal dog fighting and promote responsible ownership. Today, the American Dog Owners' Association, or the ADOA, has grown over the years to become the nation's oldest and largest member-based organization representing dog owners. The ADOA advocates for the protection of the public health and safety, the protection of dogs, and the right to own, keep and enjoy dogs.

The Animal Adoption Center is a no kill shelter in Lindenwold, New Jersey. The Animal Adoption Center has taken in dogs in need of rehabilitation ever since its inception more than 15 years ago, including Pit Bulls and other dogs used in dog fighting. The Shelter has agreed to take in two of the dogs and to provide expert training and rehabilitation.

Best Friends Animal Society and Sanctuary runs the nation's largest sanctuary for abused and abandoned animals. Located on 33,000 acres in Utah Best Friends Sanctuary provides shelter for approximately 1,500 dogs, cats and other animals who have come to the sanctuary for special care from shelters and rescue groups all across the country. Many are placed in new homes and others find lifetime care at the nation's largest sanctuary. Best Friends has offered and continues to offer its resources to provide assessment and rehabilitation for the dogs seized from the Bad Newz Kennels.

The Cape Fear APBT Club has a membership drawn from the entire East Coast. The Club is dedicated to promoting a positive image for the American Pit Bull Terrier, to combat breed specific legislation, to encourage intelligent breeding practices that accent the finest aspects of the breed such as loyalty, intelligence, adaptability, courage, heart and an affectionate disposition. In addition, the Club is committed offering an alternative breed rescue program in areas in which rescue organization do not place, but simply euthanize American Pit Bull Terriers irrespective of health, disposition or age.

CHAKO (Coalition of Human Advocates for K9s & Owners) is a national Dog Owners' Education and Advocacy Group which lobbies in support of the rights of responsible dog owners of all breeds of dogs across the United States. CHAKO opposes breed specific legislation and discrimination. In addition CHAKO offers canine good citizen testing, educates the public about responsible dog ownership and promotes the rights of persons with disabilities to own and be accompanied by service dogs.

The Maryland Dog Federation is a statewide organization committed to presenting a balanced, rational approach to dog ownership; preserving the special, historic relationship between people and dogs; encouraging and promoting the welfare of dogs; promoting, protecting and defending the rights of responsible dog owners.

The National American Pit Bull Terrier Association is a national association whose purpose is to encourage and promote responsible breeding and ownership of American Pit Bull Terriers so as to enhance the qualities of the American Pit Bull Terrier, to present the American Pit Bull Terrier to the public in a positive light, to educate and make known to the public the high standard of excellence of the United Kennel Club, Inc. registered American Pit Bull Terrier.

The Real Pit Bull Foundation for Advocacy and Rescue has as its purpose to act on behalf of the American Pit Bull Terrier by educating the public, humane/rescue workers, and others; rescuing when possible abused and neglected Pit Bulls, combating animal abuse and fighting breed specific legislation.

Spindletop Refuge located in Houston Texas, has for the past 18 years been dedicated to the successful rehabilitation and rehoming of homeless, abused and neglected dogs, specializing in American Pit Bull Terriers and American Staffordshire Terriers. Leah Purcell has been qualified as an expert witness on the breed in several court cases and courts nationwide have entrusted the care of seized dogs to Spindletop. Spindletop has extensive experience in retraining, rehabilitating, and rehoming former fighting dogs and abuse cases. Spindletop has successfully rehabilitated more than 200 fighting dogs referred from shelters and by the courts. Several of the court ordered fighting dogs have gone on to

earn titles in Agility and Obedience. They are loving family members and great ambassadors for the breed. Spindletop is the National Rescue for the National American Pit Bull Terrier Association, the parent club for the breed in the United Kennel Club. Spindletop has offered to take 5-10 of the dogs for rehabilitation.

Villalobos Rescue Center is a rescue, rehabilitation and placement facility for abused and abandoned Pit Bulls. It is the largest Pit Bull rescue, rehabilitation and adoption center in the country. Home to an average of 150 – 200 Pit Bulls, the environment is a “Pit Bull Paradise” in that dogs are exercised daily, turned out to play and trained on the now 20 acre ranch. Villalobos is also partners to L.A. City Animal Services and for the past eight years, has been conducting their Pit Bull training classes, offered free to the public on a weekly basis. Villalobos is the organization that is called upon to take in confiscated fighting dogs and the worst of the worst abuse and behavioral cases. During the Katrina disaster, Villalobos was asked to take the last of the Pit Bulls left behind, deemed the worst due to their behavior. Villalobos trainers carry several certifications, along with being named “Trainer of the Year” and “Most Important Person of the Year” by L.A. Weekly Magazine during two separate years. The Center also trains dogs for the film industry as well as have certified narcotics detection dogs and therapy dogs, some of which were at one time fighting dogs. Villalobos also networks with the State of California Department of Corrections to put their parolees to work here with the hope of breaking the cycle of violence by teaching these men compassion and love for something other than themselves. Villalobos has the proper kennel zoning, licensing, acreage, manpower and knowledge/expertise to take the remainder of the dogs that other organizations are not able to handle or provide for.

Worthy Companions Domestic Animal Rescue is a New Jersey based rescue group specializing in dogs who need medical or behavioral rehabilitation before being placed in loving, competent permanent homes. All of the associates of Worthy Companions have both personal and professional experience with Pit Bulls, own their own Pit Bulls and/or Pit mixes and have a special interest to promotion of the breed and to responsible dog ownership.

SUMMARY OF THE ARGUMENT

The Amicus brief speaks for the voiceless victims of the defendant's criminal conduct and in that way seeks to assist the court in imposing a just and fair sentence. The Victim impact statement is submitted on behalf of the 54 American Pit Bull Terriers seized from the Bad Newz Kennels and for those dogs which were brutally slaughtered by Vick and his cohorts. The brief includes a description of the systematic abuse and torture which is inherent to the business of dogfighting as well as the collateral effects of dogfighting which criminalizes a noble breed of dog and tarnishes the reputation of responsible pit bull owners everywhere.

In addition, amici offer an alternative to killing those victims which survived the defendant's cruelty. Accordingly, offered for the court's consideration is a process to conduct assessments to determine which of the survivors can be saved and a plan to place as many dogs as possible in specialized care where they can be rehabilitated and to provide sanctuary and special care for those who have any potential quality of life. To this end, the amicus brief includes a demand for restitution to cover the cost of assessment and rehabilitation.

Finally, Amici seek to provide the Court with a sentencing recommendation which urges the Court to impose a non-guideline sentence within the statutory maximum consistent with 18 U.S.C. §3553 which adequately reflects the abhorrent

nature of the defendant's conduct and serves as a deterrent to others. In addition, the court is urged to impose the maximum statutory fine to be used for the education of the public as to the evils of dogfighting and to dispel the myths which criminalize the victims instead of the perpetrators.

POINT I

A VICTIM IMPACT STATEMENT ON BEHALF OF THE BAD NEWZ KENNEL DOGS

The only difference in the lives of the thousands of pet pit bull dogs living happily with their families and the lives of the dogs suffering in dire circumstances is the hands into which they fell. A cruel twist of fate or a blessing from above, all depending on in whose yard the dog sits.¹

A. If The Dogs Could Speak

Unlike most forms of sports gambling, dog fighting is not a victimless "sport". During the period covered by the Indictment (annexed hereto as Exhibit A), with funds supplied by Defendant Vick, Bad News Kennels acquired at least 15 dogs and 10 puppies including a puppy named Magic (Exhibit A at ¶¶7-9). Of these dogs, four were shot to death by Vick and his cohorts and one was doused with water and electrocuted, others were drowned and yet others were slammed to the ground until they were dead

¹Viewpoint: Criminalizing the Victim Is No Road to Justice" by Animal Farm Foundation, August 20, 2007 (Exhibit B)

(Exhibit A at ¶¶13, 15, 16,17, 53 and 83). For Magic and the other survivors, the future was just as grim.

The rearing process for fighting dogs is about as ugly as the event itself. Dogs who are condemned to live in this underworld spend their lives on 10-12 ft heavy metal chains or locked in crowded cages, far away enough not to kill each other, but close enough so that their lives are spent in a constant state of agitation. They are pumped full of steroids and are conditioned by spending hours on a treadmill or tied to the back of a moving car - all to develop aggression and stamina for the "pit". Since fighting dogs tend to be owned by the most sadistic members of human society, abuses such as starvation, kicking/beating, burning, especially when a dog is a perceived loser, are common. The United States Congress, having heard testimony regarding dogfighting concluded the following in the congressional commentary to 7 U.S.C. §2156:

Dog fighting itself is a grisly business in which two dogs either trained specifically for the purpose or maddened by drugs and abuse are set upon one another and required to fight, usually to the death of at least one and frequently both animals. The testimony indicated that a fight between two trained dogs would often continue for over an hour and that the dogs would literally chew out each others' eyes and break or chew off each others' feet and legs, bloodying each other extensively, all to the cheers and goading of handlers and on-lookers. H.R. REP. 94-801

In addition to the fate which awaits a poor fighter or even dogs likely to become

poor fighters, there are other animal victims of this sadistic enterprise. "Bait" animals are used to test a dog's fighting instinct. Often "bait" animals are stolen pets, puppies, kittens, rabbits, small dogs and even stock (Pit Bulls acquired by the dogfighting ring which appear to be passive or less dominant). *Id.*

B. Collateral Victims

The stigma related to the American Pit bull Terrier didn't always exist. In fact, in the early 1900's, the Pit Bull was considered an American icon and was the most popular and most highly regarded family dog. Breed traits such as friendliness, tolerance towards humans, bravery, and intelligence allowed Pit Bulls to serve in the military, work as service dogs, and stand beside some of our nation's most respected leaders.

Pit Bulls of today face a far different set of circumstances. Severe prejudice against this breed has been brought on by decades of poor training, mistreatment, and neglect. Because of their great strength and bravery, these animals have been exploited for the most gruesome form of entertainment: dog fighting.

In a sad twist of fate, when it comes to dog fighting the emphasis all too often shifts from the perpetrator to the victim. As a result of the atrocities inflicted on these dogs by men like Vick, every responsible Pit Bull owner is eyed with suspicion, every

responsible breeder is suspected of breeding "fighting dogs", every household companion which belongs to a "bully breed" becomes the victim of a media blitz in which they are portrayed as the dangers to society as opposed to the criminals who have misused and so badly abused them.

Vick's reprehensible conduct has not only harmed the obvious victims in this case, but he has done irreparable harm to the reputations of responsible owners and breeders throughout the country. It will take years to wash the stain of the blood that he has spattered on each and every responsible Pit Bull owner.

POINT II

THE EXECUTION OF THE VICTIMS IS NOT A JUST END TO A CRIMINAL PROCEEDING

*"Ironically, while Michael Vick has pled guilty to killing dogs because they wouldn't fight, these same dogs will likely be killed because someone thinks that they might. They will have been "saved" only to fall victim once again, this time to a system that places little value on their lives. Although their method of execution will certainly not be as horrific, the end result is death just the same"*²

"Fighting dogs" have few friends. They live lives of brutality and unspeakable cruelty at the hands of those who gamble on their deaths, while betrayal and death

await them at "humane" societies if they are "rescued". After they are no longer needed as "evidence", approximately 90% of the victims generally suffer a similar fate to the dogs that were tortured and killed. They will also die alone and afraid.²

However this result is not inevitable. Each fighting dog is a unique blend of breeding, training and for lack of a better word, personality. Many if not all of these dogs can be successfully rehabilitated. Because of their traumatic experiences, these dogs require a highly specialized form of assessment which few shelters are equipped to provide. Only a trainer with substantial experience in handling and training pit bull type dogs and aggressive dogs is qualified to make the assessment.

James Crosby has been qualified as an expert on canine aggression in both federal and state courts. He has advised shelters and rescue organizations across the United States in the assessment and rehabilitation of aggressive dogs and dogs which have been used for dog fighting. A copy of his declaration and credentials are annexed hereto as Exhibit C.

The typical animal shelter is neither qualified nor set up to properly assess the temperament of dogs rescued from dog fighting rings. Animal shelters seldom rehabilitate dogs. The average shelter selects easily adoptable dogs from the intake

²*Viewpoint: Criminalizing the Victim Is No Road to Justice by Animal Farm Foundation, August 20, 2007 (Attached as Exhibit B)*

population and euthanizes the rest according to the space they have available. The shelter typically does not make the determination of which dogs can be rehabilitated.

A dog which has been used in fighting cannot be evaluated in the noisy environment of a kennel surrounded by a chorus of barking dogs in open view cages. This environment is usually too stressful and almost guaranteed to provoke either fear or aggression in a dog which has been traumatized. As a result the outcome is almost predetermined. The dog will react badly and will fail the temperament test and will be put to death (Exhibit C at ¶6). Neither is simply facing two fighting dogs off in a closed area a reasonable predictor of future behavior. An aggressive display towards another dog in close proximity is a behavior that has been reinforced in these dogs prior to intervention. Such a display, initially, is almost guaranteed, and confirms nothing but the previous reinforcement of this behavior pattern (Exhibit C at ¶7).

Done properly, the assessment of a fighting dog makes a distinction between aggression toward other dogs and people. A dog that still tends to view humans positively is much more likely to be successfully rehabilitated. However, it takes time to build enough trust between the trainer and a traumatized dog in order to make such an assessment. The assessment process should take place in multiple sessions spread out over time. The goal of the assessment is to make a determination of the likelihood

the dog can be rehabilitated to the point its behavior is predictable and the dog can be managed in order that trusted humans can interact with it safely on an ongoing basis (Exhibit C at ¶8).

In making the assessment, the trainer must spend time with the dog in a low stress environment. The trainer must work with the dog in both confined space, as well as open areas. This allows the trainer to assess the dog's natural "fight vs. flight" tendencies rather than simply the conditioned fight response trained into fighting dogs. Any assessment done simply by interacting with the dog while confined in a cage is not valid. Therefore the assessment must be conducted over a period of weeks during which time the dog is progressively introduced to varying stimuli and is assessed and reassessed as he adjusts. Such assessment must address the following topics:

Human interaction and display of human directed aggression.

Acceptance of human-set boundaries and limits to behavior.

Acceptance of behavioral modification and training input from humans.

Decrease in animal directed aggressive display and acceptance of alternate, safely directed behavior (Exhibit C at 8)

The elements of a successful rehabilitation program are based on the assessments and will vary depending on the dog. Rehabilitation of fighting dogs

includes careful re-socialization, obedience training, and desensitization/counterconditioning in which new boundaries are set and periodically readjusted as the dog's progress is assessed. The ultimate goal of such rehabilitation is to enable the dog's reintegration into positive human society as a dependable companion animal (Exhibit C at ¶13).

Rehabilitation of a fighting dog starts with creating a trusting relationship between the trainer and the dog. Everything of value the dog receives should come from the trainer. The trainer decides when the dog will receive food, water, exercise, a walk and affection. At first this means the dog is confined in a crate or cage, and the trainer controls all movement in and out of the small space. As they develop a trusting relationship, the dog may be moved to a larger kennel or even a homelike environment. Aerobic exercise and proper calorie intake is a big part of the training in the beginning. These dogs typically have been subjected to various strength training. As part of the rehabilitation process, the dogs must lose muscle. Their bodies must return to normal muscle mass and tone. This is done by running and playing with the trainer multiple times a day in a large secure run.

Once the dogs trust one or two trainers and return to a normal physical condition, they will require extensive socialization, again in a controlled environment.

This socialization includes long walks in areas that are populated, but still controlled and secure. The dogs are positively reinforced when they show proper attention to people.

When the dogs have demonstrated that they can interact positively with people, work begins on the dogs' aggression toward other animals. The trainer will again socialize the dog, only this time the dog will be safely introduced to other dogs in a safe environment. When the dog exhibits natural or friendly behavior, the dog is consistently rewarded. This process continues until the dog is allowed to socialize with a single dog, usually a trained "control" dog. From a single dog, the trainer will allow the dog to start interacting with a group of dogs in a controlled environment.

This rehabilitation can take as little as six months but can take as long as two years. After the initial crate or cage training, each dog must live alone in a specialty run that is secure and has adequate indoor and outdoor access - 10 by 20 feet of outdoor space attached to at least 5 by 10 feet of indoor space is a minimum.

Amici recognize that some dogs even after proper assessment may be found to have been too badly damaged and are simply not candidates for rehabilitation because they display human aggression. However, there may also be dogs which, although they are not aggressive towards humans, are not suitable for placement because they

are simply too animal aggressive. Many of these dogs may still be able to be placed in suitable environment where they, along with other animals who are not adoptable, can live the rest of their lives in a safe healthy environment (Exhibit C at ¶15) .

The process of evaluation and rehabilitation is time consuming and labor intensive. But amici are willing to dedicate the time, energy and resources to give these victims of Vick's unspeakable cruelty and inhumanity a chance at life.

To this end, amici seek an order (1) preventing any of the Vick dogs from being destroyed except by order of the court; (2) permitting amici's expert, James Crosby an opportunity to assess the dogs; (3) providing amici an opportunity to be heard regarding viable alternatives before any of the Vick dogs are destroyed.

POINT III

VICK'S SENTENCE SHOULD REFLECT THE SERIOUSNESS OF HIS CONDUCT

The Committee considers the practice of dog fighting, and the setting of one dog upon another or upon other animals as bait, etc, in the training of dogs for fighting to be dehumanizing, abhorrent, and utterly without redeeming social value. H.R. REP. 94-801

On August 17, 2007, defendants Purnell Peace and Quanis Phillips pled guilty pursuant to a cooperation agreement with the Government. According to their Plea Agreements both Peace and Phillips stipulated to a statement of facts for purposes of

Section 1B1.2(a) of the Guidelines. (See Exhibit D: Peace Statement of Facts and Exhibit E: Phillips Statement of Facts).

Peace and Phillips both stipulated that Bad Newz Kennels was a gambling enterprise which operated in violation of Virginia law (Exhibit D at ¶4 and Exhibit E at ¶4); that Vick was involved in starting the business (Exhibit E at ¶8); that he was involved in acquiring the dogs (Exhibit E at ¶7); that The Bad Newz Kennels was almost solely funded by Vick (Exhibit E at ¶4).

Both Peace and Phillips told the Government that Vick participated in “rolling” or testing the dogs to determine their fighting potential and that Vick participated not only in selecting which dogs would die but that Vick personally participated in killing at least 8 dogs by various methods including hanging and drowning. (Exhibit D at ¶46; Exhibit E at ¶46).

Ten days later, faced with the mounting evidence against him, Vick plead guilty to Count I of the indictment which alleged a §371 conspiracy to Travel in Interstate Commerce in Aid of Unlawful Activities in violation of 18 U.S.C. §1952 and to Sponsoring a Dog in an Animal Fighting Venture in violation of 7 U.S.C. §2156(a). (Exhibit F: Vick Plea Agreement at ¶1).

The factual predicate for the Plea was carefully crafted to avoid any direct admission of engaging in gambling so as not to prejudice Defendant Vick’s multi-

million dollar football career. Having acknowledged that the Bad Newz Kennels was a business enterprise involved in gambling activities involving thousands of dollars in violation of Virginia law (Exhibit G: Vick Statement of Facts at ¶¶4-5) and that he financed the gambling and the dogfighting operation (Exhibit G at ¶4), Vick denied that he placed any side bets or that he participated in the purses won by the Bad Newz Kennels (Exhibit G at ¶4). Based on his own admissions, the only remaining inference to be drawn is that with no financial stake in the outcome of these dogfights, Vick organized, funded and operated this grisly enterprise for the sheer joy of watching two dogs tear each other apart and for the sadistic pleasure of torturing and slaughtering those which did not meet his expectations (Exhibit G at ¶32).

As part of his Plea and Cooperation Agreement, Vick stipulated to an upward to reach a base offense level of 15 acknowledging that the “underlying facts relating to the victimization and killing of Pit Bull dogs as described in the Statement of Facts creates aggravating circumstances not adequately taken into account by the Sentencing Commission” (Exhibit F at ¶2). Pursuant to the agreement, this sentencing level may be further adjusted downward by three levels for acceptance of responsibility resulting in an adjusted offense level of 13 which carries a range of 13-18 months imprisonment (Exhibit F at ¶2). Furthermore, depending upon the value of his cooperation the Government agreed to move for yet another downward departure pursuant to Section

5K1.1 of the Sentencing Guidelines or for a further reduction in the sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. (Exhibit F at ¶13).

The parties agreed that neither side would move for departure above or below the guidelines and the Government agreed to recommend to the court sentencing at the low end of the applicable guideline range (13 months) (Exhibit F at ¶2).

Amici, however, are not bound by this agreement and as the Government and the defendant both acknowledged, neither is this Honorable Court. (Exhibit F at ¶¶2, 4).

After *United States v. Booker* , 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), the discretion of the district court is no longer limited to the range prescribed by the sentencing guidelines. However, the Court must determine, after making appropriate findings of fact, the applicable sentencing range. *United States v. Hughes*, 401 F.3d 540, 546 (4th Cir.2005). Next, the court must “determine whether a sentence within that range ... serves the factors set forth in §§ 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.”” *United States v. Green*, 436 F.3d 449, 456 (4th Cir.2006). The court must articulate the reasons for the sentence imposed, particularly explaining any departure or variance from the sentencing range. *Hughes*, 401 F.3d at 546 & n. 5. The explanation of a variance sentence must be tied to the factors set forth in §§ 3553(a) and must be accompanied by findings of fact. *Green*, 436 F.3d at 455-56.

A. The Agreed Upon Offense Level Does Not Adequately Reflect The Nature Of Vick's Conduct Nor His Role In The Offense

Although the plea agreement does not set forth an detailed guideline analysis, it appears that the parties consented to an upward departure of 9 levels from the minimum offense of 6 (U.S.S.G. §2E1.2.(Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise) resulting in a base offense level of 15.

This guideline analysis fails to take into consideration the vulnerable nature of the victims, Vick's leadership role in the conspiracy the unique position that he occupied and the degree of abuse and victimization suffered by the dogs in his care.

1. A Four Level Sentencing Enhancement Is Warranted Under U.S.S.G. §3A1.1(b)

U.S.S.G. §3A1.1(b) provides in relevant part:

- (1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.
- (2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.

In *United States v. Kum*, 309 F.Supp.2d 1084 (E.D.Wis.,2004), a case involving the illegal shipment of animals, the district court observed that the cruelty depicted in the

photographs, coupled with the evidence that many of the animals defendant shipped did not survive, may well have supported an offense level enhancement under §§ 5K2.0. Cf. U.S.S.G. §§5K2.2 (allowing upward departure for significant physical injury); §§ 5K2.3 (allowing upward departure for extreme psychological injury); §§ 5K2.8 (allowing upward departure for conduct that ““was unusually heinous, cruel, brutal, or degrading to the victim””). See also *United States v. Andersen*, 45 F.3d 217 (7th Cir. 1995)(upward departure may be warranted by the non-monetizable risk to human and animal health caused by the defendants' failure to follow FDA licensing regulations, failure to conduct required purity testing and intentional marketing of unapproved drugs.) Both cases appear to extend the term “victim” to embrace animals in the custody or care of the defendant.

The American Kennel Club advises prospective dog owners as follows:

Among companion animals, dogs are unmatched in their devotion, loyalty and friendship to humankind. Anyone who has ever loved a dog can attest to its hundred-fold return. The excitement your dog shows when you come home, the wagging tail at the sound of the leash being taken from its hook, the delight in the tossing of a tennis ball, and the head nestled in your lap-those are only some of the rewards of being a dog owner

Owning a dog is not just a privilege-it's a responsibility. These animals depend on us for, at minimum, food and shelter, and deserve much more. If you are considering taking a dog into your life, you need to think seriously about the commitment that dog ownership entails. If you already have a dog, you need to consider if you are fulfilling all your

obligations as its owner.

By his own admission, in or about 2001 Vick and his co-conspirators purchased ten dogs and six puppies (Exhibit G at ¶9). However these puppies never knew the excitement at the sound of Vick's footsteps ready to take them for a walk or out to play ball. They never knew the comfort of nestling their heads in his lap. Instead, these vulnerable victims, wholly dependent upon their owner for their very existence, were subjected to a grim world in which they were fodder for a grisly blood sport. The unconditional love and devotion that a dog gives his owner was repaid with brutality and death. Other than child abuse, it is hard to imagine a more vulnerable victim than the dogs who were trapped in the Bad Newz Kennels .

Therefore, in the event that the Pre-Sentence Report does not include an four-level enhancement for vulnerable victims, amici request that the court amend the PSR to include this enhancement.

2. A Four Level Enhancement Is Warranted for the Defendant's Role in the Offense Pursuant to U.S.S.G. §3B1.1(a)

U.S.S.G. §3B1.1(a) provides:

If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

Here, the Indictment names four co-conspirators (Peace, Phillips, Taylor and

Vick). In addition, Vick acknowledges at least one more identifiable co-conspirator (Cooperating Witness 3 who “traveled to Surry County Virginia with a male pit bull to participate in a dog fight against a male pit bull named “Tiny” owned by the Bad Newz Kennels. (Exhibit G at ¶25)) See also *United States v. Atkinson*, 966 F.2d 1270 (9th Cir. 1992) (Hunters involved in defendant's illegal hunting expeditions were qualified as “participants” under the Sentencing Guidelines provision permitting four level enhancement for criminal activity involving five or more participants).

Having proved that the conspiracy involved at least five participants, the only remaining issue is that of Defendant Vick’s role in the offense. The answer is virtually self-evident. Vick purchased the land. Vick provided the funds to build the dogfighting venue. He was present when the scheme began in 2001, only eight weeks after he signed his enormous NFL contract. He was still involved at the end, when the police raided his compound on April 25th. Without Vick, there would have been no Bad Newz Kennels. It was his money, his land, his leadership and his conspiracy.

Based on the above calculations, the revised offense level computation is as follows: The Guideline for Count One, a violation of 18 U.S.C. §371 is U.S.S.G. §2X1.1 which directs that the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. In this case, the underlying offenses 18 U.S.C. §1952 and 7 U.S.C. §2156(a) yields a base offense level of 23 including the

upward departure to which the defendant has stipulated³ as follows:

Base Offense Level: The guideline for this 18 U.S.C. §371 conspiracy is 2E1.2. ⁴ based on the underlying offense 18 U.S.C. §1952 ⁵	6
Victim Related Adjustment per Guideline §3A1.1(b)(2)	4
Adjustment for Role in the Offense: The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive per Guideline §3B1.1(a)	4
Stipulated Upward Departure as per Guideline §5K.20 Adjusted Offense Level	<u>9</u> 23
Adjustment for Acceptance of Responsibility Per Guideline §§3E1.1(a) and 3E1.1(b)(2)	<u>-3</u>
Total Offense Level	20

Based on a total offense level of 20 and assuming that the Defendant falls with

Criminal History Category I, the guideline imprisonment range is 33-41 months.

B. A Variance From The Guidelines Is Warranted Based On An Analysis Of Defendant's Conduct In Light Of The Sentencing Purposes Set Forth In 18 U.S.C. §3553(a)

If the court finds that the departure range of the Guidelines is still inadequate to

³Exhibit F at ¶2

⁴ Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise

⁵The second offense charged as part of the underlying conspiracy is a violation of 7 U.S.C. §2156(a)(1) for which the corresponding Guideline is 2X5.2 which provides that where there is no sufficiently analogous offense guideline, the provisions of 18 U.S.C. §§ 3553 control

achieve the goals of sentencing , the court may impose a variance sentence. *United States v. Green*, 436 F.3d 449, 560-61 (4th Cir.), *cert. denied*, --- U.S. ----, 126 S.Ct. 2309, 164 L.Ed.2d 828 (2006) .

Pursuant to 18 U.S.C. §3553(a) the Court “shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection”. Paragraph 2 identifies the following factors which the Court must consider in imposing sentence: (1) the nature and circumstance of the offense and history and characteristics of the defendant; (2) the need of the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence and protect the public; (3) available sentences; (4) Guidelines ranges, and (5) the need to avoid sentencing disparities.

1. The Nature and Circumstance of the Offense and the History and Characteristics Of the Defendant

Even in the grim world of the dogfighting pit, Vick’s sadistic conduct can only be described as ghastly. How many times did Vick have to slam the broken body of a 45 pound dog to the floor before it stopped whimpering and found escape in death? For how long it did Vick have to submerge a dog’s head in water before it stopped struggling to take its last breath? Did he hear the dog’s neck snap as it struggled, twisting and dangling from the hangman’s noose?

Like the majority of violent criminals, the defendants in dog-fighting cases, as a

rule, reflect the brutal environment from which they come. Their lack of empathy for the dogs is merely a reflection of the lack of empathy shown to them as human beings. However, Michael Vick is not a poverty-stricken youth, himself the victim of a society which has brutalized and rejected him. On the contrary, Vick is a college graduate, a national sports hero with a multi-million dollar contract who was idolized by fans from Maine to California. Vick had everything and instead of using his money and prestige to contribute something to society, he chose instead to dedicate himself to the reprehensible crimes committed by the Bad Newz Kennels.

Shortly after he pled guilty before this Court, the defendant made a public statement to the press, the text of which is annexed hereto as Exhibit H in which he apologized to the Falcons and to Commissioner Goodell. In addition he apologized to "all the young kids out" there for his immature acts characterizing his conduct as very immature and indicating that he needed to grow up. Other than a cursory statement rejecting dog fighting, he evinced no understanding whatsoever of the crime that he committed. In fact, he dismissed his conduct as "bad judgment".

Amici respectfully suggest to the Court that getting arrested for joyriding in your father's car is the result of immaturity and bad judgment. The torture and slaughter of helpless animals for fun and profit is not reflective of "immaturity" or "bad judgment". It is an indicia of a psyche devoid of empathy, compassion or decency. That the defendant should dismiss his conduct as an immature error in

judgment, demonstrates that while he may truly be sorry that he was apprehended, he is incapable of feeling remorse for the crimes he has committed. He appears to be one of those thankfully rare individuals who lacks empathy for other living creatures. He appears to be a man without a moral compass.

2. The Need of the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment, Afford Adequate Deterrence and Protect the Public

Dog-fighting has been with us for decades - deep in the woods, in the back alleys and basements of our urban ghettos. It is a cancer hidden in the shameful underbelly of society. But this case is different, not only because the conduct of the defendants in this case is shocking even to the grim world of dog-fighting, but because it has the potential to send a public message that as a people we believe that all life is sacred and that we reject the senseless brutalization of other living beings.

Imposition of a sentence of 57 months will send a compelling message that the risks of engaging in this blood sport involve more than a slap on the wrist. It will also provide sufficient punishment so that the defendant may develop an appreciation of the wrongfulness of his conduct and hopefully deter him from committing the same offense once he is released.

3. Available Sentences And Guideline Ranges

The recommended sentence of 57 months is below the statutory maximum and

represents a three level upward departure from the Guideline range as calculated in Section A, *supra*. Amici submit that, based on the above analysis of the first two factors under §3553(a), the decision to impose a variance sentence is reasonable as is the three level divergence from the sentencing range. See *United States v. Hernandez-Villanueva*, 473 F.3d 118, 123 (4th Cir.2007) .

4. Need To Avoid Sentencing Disparities

Few cases involving dog-fighting rings have been prosecuted in federal court. Therefore, a 57 month term of imprisonment can serve as a sentencing benchmark against which future federal convictions may be judged.

POINT IV

A TRUST FUND SHOULD BE ESTABLISHED WITH THE PROCEEDS OF THE MONETARY PENALTIES TO PROVIDE RESTITUTION TO THE VICTIMS AND TO RIGHTING THE WRONGS COMMITTED BY THE DEFENDANT

Amici submit that the monetary penalties to which the defendant has already consented as part of his Plea Agreement should be set aside in a trust for the following purposes: (1) to provide for the care and rehabilitation of the victims; (2) to establish a no-kill shelter or sanctuary for the care of abused and neglected dogs; and (3) to promote responsible dog ownership and to educate the public as to the abhorrent nature of dog fighting.

Amici recommend that a trust be established at a Federal bank operating in the jurisdiction of this Court with authority to hold, invest, and distribute the funds from this trust. Income from the trust can be reinvested to pay for the increase in the cost of the sheltering, care and rehabilitation of the dogs as the cost rises over the lifetime of the dogs

A. Restitution

Pursuant to the Plea Agreement, Defendant Vick has agreed to:

...make restitution for the full amount of the costs associated with the disposition of all dogs which are currently the subject of *United States v. Approximately 53 Pit Bull Dogs ---*, [including] but not limited to, all costs associated with the care of the dogs involved in that case, including if necessary, the long term care and/or the humane euthanasia of some or all of those animals as may be directed by the court in that case.

Rehabilitation of fighting dogs is a time consuming, labor intensive effort which requires 4 to 6 hours each day per dog. Qualified trainers earn between \$50.00-\$75.00 per hour. At 5 hours a day, 30 days a month, this is \$9,750 dollars per month of training. To this, add food and veterinary care, and the price to rehabilitate a fighting dog is a little more than \$10,000 per month. If training and rehabilitating a dog takes 18 months, the cost rises to \$180,000 plus the run cost of \$10,000 or \$190,000 per dog. Multiplying this cost by 54 dogs results in a total of \$10,260,000 (approximately 50% of Vick's \$20 million contract with the Atlanta Falcons). To the extent that the Government has

calculated an amount in excess of that figure, Amici adopt the amount estimated by the Government.

B. Forfeiture

Pursuant to Paragraphs 15 and 16 of the Plea Agreement, Defendant Vick has waived all defenses to forfeiture of the assets used in the enterprise. Amici submit that the conversion of the asset known as 1915 Moonlight Road, Smithfield, Virginia to a no-kill shelter for abused and neglected dogs to be operated by a qualified rescue organization would be a major step in righting the wrong that the defendant has committed. In addition, amici suggest that as part of the forfeiture of his ill-gotten gains over a period of seven years of promoting dog fights, Vick be required to pay \$500,000 for the costs of conversion of the property to a 5,000 sq. ft shelter at a cost of approximately \$100 per sq. ft.

C. Fine

Amici respectfully suggest that the court impose the maximum fine of \$250,000 and that the proceeds of that fine be used as seed money to design a public education campaign combating the crime of dogfighting and to promote responsible dog ownership.

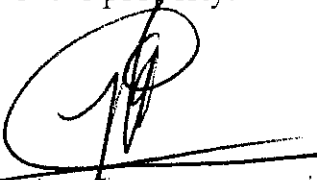
CONCLUSION

For the foregoing reasons, amici request a brief opportunity to be heard at sentencing. In addition, amici request an order:

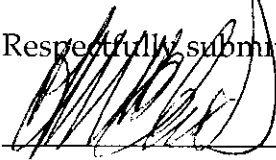
1. preventing any of the Vick dogs from being destroyed except by order of the court;
2. permitting amici's expert, James Crosby, an opportunity to assess the dogs;
3. providing amici an opportunity to be heard regarding viable alternatives before any of the Vick dogs are destroyed.

In addition, amici recommend that:

1. The Court impose a variance sentence of 57 months with a \$250,000 fine to be used for the design of a public education program combating the crime of dogfighting and to promote responsible dog ownership.
2. That the property known as 1915 Moonlight Road, Smithfield, Virginia be subject to forfeiture.
3. That a trust fund be established for the care and rehabilitation of the surviving Vick dogs and for the conversion of the 1915 Moonlight Road property into a no-kill shelter for abused and neglected dogs to be operated by a qualified rescue organization and that as part of the forfeiture order Vick be required to pay for the renovation and conversion of the property.


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