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## THE KITTLES CASE AND ITS AFTERMATH

## By

## Joshua Marquis\*

If the Animal Legal Defense Fund had not existed, I do not know if I would have been able to do much with the *Kittles* case.<sup>1</sup> If you live in Oregon, you probably know that Clatsop County and Astoria has had its share of controversy. I have my job because my predecessor was caught trying to frame two police officers; she was indicted, recalled, sent to jail, and I was appointed by the Governor to replace her. When I was appointed, people asked me what I was going to do about the *Kittles* case. For those of you who do not know, Vickie Kittles is a woman who is an animal collector.<sup>2</sup> I had never heard the term, actually, until Randy Lockwood, a psychologist from the Humane Society of the United States, sent me some materials. Animal collectors are people who pathologically collect dozens, even hundreds, of dogs and cats in unbelievably filthy conditions, claiming to be animal lovers, but they really are just lunatics. In fact, psychiatrists tell me that it is very much akin to drug addiction in the sense of the same denial, with the same pathologies.

Vickie Kittles had 115 dogs on a school bus. They had been kept in the school bus for at least three weeks without ever going out. That means they obviously did their business in there; the stench was so bad that the animal control officers had to use gas masks to go on board. Animal control became aware of the situation only because one of the dogs was having an epileptic seizure, called *status epilepticus*, which is like a continuous epilepsy and usually results in death. One of the neighbors saw this dog and called the sheriff's office. It turns out Ms. Kittles has been doing this all over the United States—in Florida, Mississippi, Colorado, Washington—and in each place some law enforcement agent or some district attorney, had given her a tank of gas and told her to get out of town. Nobody wanted to prosecute this woman.

She was arrested in April of 1993 and did not go to trial until February of 1995. She represented herself after going through eight court-appointed lawyers, none of whom was satisfactory to her. She went through six judges. I was the third prosecutor.

Ms. Kittles also managed to legally tie up all the animals, so that none of them could receive medical treatment. For instance, sixteen of her

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<sup>&</sup>lt;sup>1</sup> State v. Kittles, No. 93-6346 (Clatsop County (Oregon) Dist. Court 1995).

<sup>&</sup>lt;sup>2</sup> Woman Who Lived in Bus with 115 Dogs Gets Jail Term, ORLANDO SENTINEL, Feb. 5, 1995, at A22.

dogs had heartworm, a devastating parasitic infestation, unusual in Oregon but quite common in the Southwest. The court initially refused to allow us to treat the dogs because they were evidence, and we would be altering the evidence. We finally got over that hurdle, but the only way to describe the experience of prosecuting this case is like the world's longest root canal with no anesthetic.

Vickie Kittles has a lot of experience, and, for a *pro se* defendant, she knew an awful lot about the law. The only saving grace was that she was insane, so it made it a little more difficult for her. From an ego standpoint, of course, a prosecutor dreads prosecuting cases against *pro se* defendants because if you lose, you have lost to someone who is not even a lawyer.

The trial took five weeks. She would cross-examine people for three days at a time and ask the same question hour after hour; she would berate the jurors, shrieking at them. She was held in contempt seventeen times and given seventy-one additional days in jail by the judge. She was charged under two relatively benign provisions called "Animal Neglect in the First Degree and Animal Neglect in the Second Degree,"<sup>3</sup> which in Oregon means failing to provide adequate medical care or food for the animals. Her defense was that we were just a bunch of middle-class. stodgy people who did not appreciate her lifestyle; if she wanted to live among animal feces, that was her right. My argument, which the jury accepted in about five minutes, was that her lifestyle may be her choice, but it was not the animals' choice. She basically condemned these living creatures to this awful existence. Critical to winning this case was the help of Sharon Harmon of the Oregon Humane Society, as well as other people across the state. Almost miraculously, we were able to save virtually all of the dogs. They are now happily living in vastly improved conditions all over the state of Oregon.

The *Kittles* case generated such publicity and public interest that a group of people associated with ALDF—primarily: a woman named Pamela Frasch, a lawyer with Stoél, Rives, Boley, Jones & Grey; Sharon Harmon from the Oregon Humane Society; and Charles Turner, a conservative Republican and former United States Attorney for Oregon—drafted House Bill 3377<sup>4</sup>, the "Kittles" bill, which was enacted by the Oregon legislature.<sup>5</sup> Although there are felony cruelty laws in fourteen other states, the Oregon law is now the toughest animal cruelty law in the United States. It was a battle getting the bill passed, mainly for political reasons that had nothing to do with the cruelty statutes. The bear and cougar hunters remain so bitter about Measure 18<sup>6</sup> that one legislator I met with threw the bill back in my face when he discovered the Humane

<sup>&</sup>lt;sup>3</sup> OR. Rev. STAT. § 167.330 (1995) (first degree animal abuse); Or. Rev. Stat. § 167.325 (1995) (second degree animal abuse).

<sup>&</sup>lt;sup>4</sup> H. B. 3377, 68th Legis., Reg. Sess., 1995 Or. Laws 1974.

<sup>&</sup>lt;sup>5</sup> The bill amended several provisions under Chapter 167 of the Oregon Code, most notably adding the provision for aggravated animal abuse. Or. Rev. STAT. § 167.322 (1995).

<sup>&</sup>lt;sup>6</sup> See Nancy Perry, The Oregon Bear and Cougar Initiative: A Look at the Initiative Process, 2 ANML. L. 203-206 (1996).

Society was involved, saying, "I don't care if this is a good bill; if the Humane Society is for it, I am against it." And, this guy was a Democrat. Only through the dedicated efforts of the people from the Oregon Humane Society, the ALDF, the local volunteers, and grassroots efforts with state legislators did the bill pass the legislature.

House Bill 3377, now the felony cruelty law, is important for a couple of reasons. First, it made serious animal cruelty a felony whereas before it was a misdemeanor.<sup>7</sup> Second, the law gave the state the right to treat and care for animals seized pending the resolution of the case.<sup>8</sup> The *Kittles* case was hardly unique; animal collectors love to drag things out. They are sociopaths, and they love the attention. If they can be in court for six months, they will be in court for six months. You may have heard about the ghastly case in Gladstone, Oregon, where cats were found with their heads cut off and legs tied with duct tape. Apparently, the police have arrested four people; they will be the first people prosecuted in Oregon under the felony cruelty bill.

Why is it important to have it a felony statute? In the legislature, people wanted to know the answer to this question. Opponents argued that animal cruelty is not as serious as beating a child, which is only a misdemeanor. This argument is specious; there are a lot of things that should be treated more severely than they are. Felonies are the only practical way to crack down on somebody in our system. We have so much crime in the United States now that the FBI no longer even reports misdemeanors. So if someone like Vickie Kittles travels across the country with only misdemeanor convictions on her record, we are not going to find out about it.

There is also a direct correlation between cruelty to animals and cruelty to kids, particularly with sexual sociopaths. I am no psychiatrist, but I am told that sexual sociopaths have three characteristics in common: 1) enuresis — bed wetting until their early teenage years; 2) pyromania setting fires; and 3) ailurophobia — a morbid hatred of cats. When you see something like what took place in Gladstone, it is a warning sign that you may have a sexual sociopath. That does not mean that everybody that ever tortures a cat becomes a sexual sociopath, but virtually every single sexual sociopath has that characteristic. These people are willing to abuse the most vulnerable living creatures in our society.

Oregon was not always so legally progressive. When I started as a prosecutor, animal cruelty was a Class B misdemeanor. The first case I ever prosecuted was a convicted murderer in Eugene who did six years on his life sentence and was released. He then trained his pit bull to attack and kill the neighbors' cats. He thought that was funny. The neighbors were terrified of this man. We prosecuted and convicted him, and the judge gave him the absolute maximum sentence of six months in jail, and ordered his dog to be forfeited. The Court of Appeals reversed the sen-

<sup>&</sup>lt;sup>7</sup> Or. Rev. Stat. § 167.322(b)(2) (1995).

<sup>&</sup>lt;sup>8</sup> OR. REV. STAT. § 167.347 (1995) (forfeiture of animal to animal care agency prior to disposition of criminal charge).

tence, saying that there was no specific authority for depriving somebody of his property as part of criminal activity.<sup>9</sup>

As a result of that case, the legislature expanded the kinds of crimes we could prosecute. These now include animal neglect, animal cruelty, illegal acts of omission, as well as acts of commission.<sup>10</sup> Also, the legislature added provisions allowing law enforcement officers, as well as officers from the Oregon Humane Society accompanying law enforcement, to seize animals in emergency situations. The most recent evolution of the animal cruelty law in Oregon was the "Kittles bill," HB 3377.<sup>11</sup>

It is most important for there to be public support for these kinds of prosecutions. I am a politician because I am an elected prosecutor. I am a prosecutor first and, I like to think, a politician second, but that is the reality. All district attorneys in Oregon, and most in the Western United States, are elected. Thus, it must be politically advantageous to prosecute animal cases. Often the greatest publicity that a prosecutor can obtain is from animal cruelty cases. For example, I received international attention from the Victor the Lobster case.<sup>12</sup> Victor was the mascot of the Seaside Aquarium, a twenty-five pound lobster who had been at the aquarium for twenty years. A year ago, someone came in, grabbed the lobster, ran until he was caught by the manager. He threw Victor to the ground, breaking Victor's shell. Victor lingered for three days, but we could not find a vet who knew how to treat a lobster, so Victor died. The guy who killed Victor was charged with cruelty to animals and theft. CNN had the story on their international service. Even The London Times called. It turns out that the guy who did this crime had a long criminal record, including convictions for both cruelty to children and cruelty to animals. He once shot at a police dog in Sandy, Oregon, in 1986. I found out about this from a teletype from a police officer who said he had read about this guy and remembered him.

When I was a kid I wanted to be a lawyer when I grew up, and I used to watch a program called "The Defenders" which most of you are too young to remember. It was the first reality lawyer show. Unlike Perry Mason, they actually lost cases, but they did socially correct things. They were always defending the poor, the helpless, the indigent and the vulnerable, and I thought when I grew up, I would also help the poor, the helpless, and the indigent. As I went to college and eventually law school, I realized that if I wanted to help the poor, the indigent and the vulnerable, the best place to do that was from the prosecutor's office because that is where the victims—the true victims—come for help. That is not to denigrate my many friends on the criminal defense bar, who are much richer than I.

<sup>11</sup> See supra note 4.

<sup>&</sup>lt;sup>9</sup> State v. Griffin, 684 P.2d 32 (Or. Ct. App. 1984).

<sup>&</sup>lt;sup>10</sup> See, e.g., OR. REV. STAT. § 167.330 (animal neglect); OR. REV. STAT. § 167.322 (aggravated animal abuse); OR. REV. STAT. § 167.340 (animal abandonment).

<sup>&</sup>lt;sup>12</sup> Just a Shell of His Old Self, ATLANTA J. & CONSTITUTION, Feb. 23, 1995.

I find it enormously rewarding to prosecute the kinds of cases that I do. I am glad to be able to do animal abuse cases, and I think it is important that, as future lawyers, you involve yourselves and encourage local prosecutors to become involved as well.

Animal cruelty cases are hard to prosecute, because the are not considered very macho. When I started doing these cases fifteen years ago in Lane County, I was derisively called "the Dog Deputy," because people thought it was sort of demeaning and lowly. One of the ways I have been able to avoid this stigma is by primarily prosecuting murder cases. I am in the middle of a murder prosecution now and I have tried about a dozen other murder cases, starting in fact with the one I tried against Jerry Spence in 1985. That is how I have made my bones in the prosecution community, but I still get an enormous amount of flak.

For all these great laws you write, you have to find the prosecutor willing to prosecute; otherwise, these laws are absolutely meaningless. The District Attorney has enormous power in our legal system. It can be abused; it can be neglected. A prosecutor has to know whether he is going to receive community support and not just ridicule for doing those kinds of cases. You can lobby prosecutors in much the same way you do legislators. We are elected. If I have letters that come into my office, people that call me on the phone, and people that collar me in the grocery store, it sinks in. It will sink in to other prosecutors, too. Fortunately, Oregon is a place where there are a lot of people willing to pressure prosecutors and get them going.