

Labrador saves man from sex conviction

'Lucy' found in Gearhart

By **ANDREW SELSKY**
Associated Press

SALEM — The discovery of a black Labrador named "Lucy" in Gearhart led to the unraveling of a criminal case Monday against an Oregon man who had begun serving a 50-year prison sentence.

Joshua Horner, a plumber from Redmond, was convicted on April 12, 2017, of sexual abuse of a minor.

In the trial, the complainant testified Horner had threatened to shoot her animals if she went to the police about the alleged molestation, and said she saw him shoot her dog and kill it to make his point.

Six months after a jury convicted Horner in a verdict that was not unanimous, he asked the Oregon Innocence Project for help. The group took up his case.

When the group raised concerns in April about the case with Deschutes County District Attorney John Hummel, he agreed to work with them.

Horner had insisted he never shot the dog. Finding the dog would show the complainant had lied under oath. But if it was alive, where was it?



Lisa Christon

The black Lab named 'Lucy' at McMenamans Gearhart Golf Links in Gearhart.

An Oregon Innocence Project volunteer and an official from Hummel's office searched for it. The black Lab had reportedly been given away. The investigators were sniffing on the trail, but they had trouble tracking down the purported dog's owner.

"They made a couple trips around Deschutes County; he was not there," said Steve Wax, legal director of the Oregon Innocence Project. "We heard he was in Seattle. Then we learned he had a place on the Oregon Coast."

It was there, in Gearhart, that the pair finally found Lucy

after her owners agreed to rendezvous at a golf course.

"She was drinking a bowl of water and sitting in shade underneath a porch. We played with her. Petted her. It was wonderful," said Lisa Christon, the Oregon Innocence Project volunteer.

Lucy was identified by an undisputed chain of custody and her looks.

"She's a very distinctive-looking black Lab; not purebred. She's got this adorable shaped head and really long ears," Christon said.

That key evidence showed the complainant had not been



Jenny Coleman/Oregon Justice Resource Center

Josh Horner with his wife, Kelli, after a hearing in Bend on Monday.

truthful when testifying, the district attorney said.

"Lucy the dog was not shot. Lucy the dog is alive and well," Hummel's office said in a statement.

Hummel told the court Monday he's not certain that Horner did not sexually abuse the complainant, but that he's now not convinced he did. The Associated Press is not naming her because it typically does not identify alleged victims of sexual abuse.

Deschutes County Judge Michael Adler dismissed the case.

Horner, in a statement

released by the Oregon Innocence Project, thanked the group, his family, friends and Hummel.

"Kelli and I are ready to pick up the pieces of our lives," Horner said, referring to his wife. The couple came out of the courthouse Monday holding hands and smiling.

Horner had walked out of a state prison in Pendleton in August after the Oregon Court of Appeals reversed his conviction and ordered a new trial. The appeals court said the defense had not been allowed to present certain evidence that was unrelated to the dog.

Now, Horner no longer faces that second trial. He declined a request for an interview, saying he is not ready to speak with the media yet.

After Lucy was found, the complainant failed to attend a meeting in August to discuss her testimony, Hummel said. Last Wednesday, one of his investigators heard she was at a home near Redmond. When he pulled up to the driveway, she ran away.

Horner had been indicted under a previous district attorney, but the trial and conviction came under Hummel's watch.

Hummel said in an email the issue of the dog being shot was raised for the first time

during the trial, so there was no investigation to be done regarding it prior to trial, "and we had no credible reason to question the statement after it was made."

He said exonerations are a reminder that while the U.S. has "the best system of justice in the world it is not perfect. Mistakes will be made and we should be judged by how we respond to them."

Wax, who was Oregon's former top federal public defender for 31 years before joining the Oregon Innocence Project, said the case is highly unusual.

"To be able to establish that a person should not have been convicted, you need something objective," Wax said. "In most child sex abuse cases, there is no evidence. Finding Lucy alive showed the complainant lied under oath in her testimony."

It was the first exoneration for the Oregon Innocence Project, launched in 2014 to exonerate the wrongfully convicted and promote legal reforms.

Wax praised Hummel for his willingness to re-examine the case.

"Nationwide, what Mr. Hummel did was unusual," Wax said. "It is to be commended. It should be the model."

State sued for withholding proposed legislative concepts

Documents behind bills are typically released

By **PARIS ACHEN**
Capital Bureau

Portland business lawyer Greg Chaimov is suing the state to force the release of proposed legislative concepts that have routinely been released as a public record in years past.

Chaimov, who provides proposed legislative concepts to his business clients, claimed state officials are improperly denying release of the records based on a new state practice of claiming attorney-client privilege. He suggested that the new practice might be politically motivated by the gubernatorial election. Gov. Kate Brown is in a close race with state Rep. Knute Buehler, a Bend Republican.

The state Department of Administrative Services in May notified agencies that the legislative concept forms — a preliminary laundry list of legislation agencies might propose during legislative sessions — would be temporarily exempt from disclosure until legislative counsel submits bill drafts to Brown's office for final approval. The deadline for submission is Nov. 30, "well after the November general election," according to the six-page lawsuit filed Wednesday in Marion County Circuit Court.

Three officials with the Independent Party of Oregon announced Monday that they are considering joining Chaimov's lawsuit.

"We are concerned that this dramatic change in policy is primarily a political decision to prevent public disclosure of legislative concepts that could be damaging to the governor's re-election effort," said Rob Harris, co-chairman of the Independent Party. "Especially during an election, there is a strong public interest in disclosure of the administration's legislative priorities. We believe that good government practice should trump political considerations and call on the governor to reverse this decision."

Chris Pair, the governor's communications director, said that the advisory on release of the forms "was in no way influenced by the election."

"The assertion does not prohibit state agencies from discussing the legislative ideas they are proposing or releasing the public records, such as emails, associated with them," he said.

Asked which public official spurred the change, Liz Craig, a spokeswoman for the Department of Administrative Services, responded:

"This doesn't necessarily represent a change in practice (We have instructed agencies similarly in the past). As with any public records request, we treat them individually and make decisions about potential exemptions on a case-by-case basis. In this case, the decision was made by DAS in coordination with the governor's office

— it is not attributable to any one person."

The form requires agency officials to identify a problem or issue and propose a policy to address or resolve it. The governor then approves or disapproves the proposals. The concepts that are approved go to the office of legislative counsel for drafting into proposed bills.

This year's form includes a paragraph that states: "Although it is expected that agencies will have discussed legislative concept ideas with stakeholders, agencies are directed to treat this document as confidential and privileged and, accordingly, not to share the text of this form outside of state government before legislation is drafted and finalized."

Chaimov was the chief legislative counsel for the Legislature from 1998 to 2004. In that capacity, he oversaw the writing of proposed bills into legal language.

Since 2010, Chaimov, now an attorney with the firm Davis Wright Tremaine, has routinely received copies of the records. He provides copies of the forms to business clients and other interested parties, according to the lawsuit.

Chaimov requested the forms from the governor's office in July. The office responded by saying it did not have the records. He then submitted a public records request to the Department of Administrative Services, and that agency

denied the request, citing a state exemption based on attorney-client privilege.

He appealed the denial to Oregon Attorney General Ellen Rosenblum's office, which denied his appeal in August.

Craig said the advisory to state agencies to withhold the forms was based on attorney-client privilege. "This decision was recently upheld by the attorney general when she denied a petition for disclosure of these records," Craig wrote in an email to the

EO Media Group/Pamplin Media Group Capital Bureau on Monday.

In an opinion provided with the denial, Frederick Boss, deputy attorney general, wrote that attorney-client privilege requires three elements: expressing the intent that the information remain confidential, the client is in the process of seeking professional legal advice and the communication is between a client and their lawyer.

Chaimov asserted in the lawsuit that attorney-client privilege

is nonexistent between the legislative counsel and the governor's office and the Department of Administrative Services. He cited an Oregon statute that prohibits legislative counsel from representing any state agency other than the legislative branch. The attorney general is the exclusive legal counsel for the executive department of state government, Chaimov said.

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Nick Bond

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Nick Bond is a principal research scientist with the Joint Institute for the Study of the Atmosphere and Ocean of the University of Washington and affiliated with NOAA. A Climatologist for Washington since 2010, Nick's research focuses on the weather and climate of the Pacific Northwest and it's link between the climate and marine ecosystems of the North Pacific.

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