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NOV 17 1964

NOV 19 1964

November 18, 1964

New York State Commission on
Revision of Penal Law and Criminal
Code
155 Leonard Street
New York 13, New York

Honorable Sirs:

There has been noted the phenomenon of an increased amount of cruelty to animals occurring in New York City. Newspapers have carried reports of numerous cruelties, to such an extent that letters to editors columns seemed at one point, saturated with the protests and demands for animal protection from disgusted readers. Cats roasted alive at a portable school site, animals tossed into incinerators and off roofs, kittens found with eyes gouged out and tails cut off were some of the cases reported.

Is the State of New York, at this period of its history, when all its decent law abiding citizens are crying out for a moral resurgence, willingly to abandon its code of behavior toward dependent animals, which has been acquired through necessary and tedious work through the years!

For, make no mistake as to the practical results of the proposed revision of the anti-cruelty penal law, such revision will in its effect, be tantamount to permission to pursue those cruelties which are omitted or transferred from the penal code, with relative impunity.

There are cogent and compelling reasons why the anti-cruelty laws of New York must be exempt, in toto, from any interference. The psychological deterrent to be derived from general public knowledge, that society considers the cruel and abusive treatment of an animal, within the category of criminal acts, needs scarcely be belabored.

The annals of criminology are replete with records of the most vicious criminals, who have had early reputations of cruelty to animals. Our anti-cruelty laws, remaining as they are within the penal code, constitute a direct source of apprehending and securing treatment for those individuals with possible psycho-criminal characteristics, long before they graduate to assaults against the person.

Moreover, by holding hearings in the Criminal Court, as would be done under the code of Criminal Procedure, a salutary effect against cruelty in general is achieved among the defendants, relatives, witnesses, and spectators who comprise the usual audience of a Criminal Court house. And certainly, easy access by newspaper reporters to the events of such hearings is of prime importance as a deterrent. Reporters of all papers are in almost daily attendance at the lower Criminal Courts, but it is almost a foregone conclusion, that a dog beating case would not be reported from the Attorney General's office. Thus the main and foremost objective of the anti-cruelty laws, i. e., the prevention of cruelty through warning of incrimination, would be vitiated by removing any of the anti-cruelty provisions from the penal code.

The Commission's proposal to transfer certain sections to various departments, would not appreciably simplify or reduce the work load of the Criminal Courts, since an actual count would certify to the extreme scarcity of anti-cruelty cases actually brought to trial.

Furthermore, the initiation of procedure under the Criminal Code has the most important advantage of stopping the cruelty immediately. An arrest, or the service of a summons or warrant, informs the perpetrator that he is in difficulty because of an act of cruelty, and its continuation generally ceases immediately. Within a short time thereafter, a hearing is held. The witnesses remain available, the events are still fresh in their minds, and the animal on whom the cruelty was practised can be brought before the Judge, if so ordered.

Under the cumbersome proceedings of the Agriculture and Markets Law, as outlined in Section 32, the cruelty could very well continue all through the long period during which a written complaint was made, during which an inspector was assigned, and then proceeded to investigate the particular cruelty, during which his report was drawn and submitted, during which the Commissioner of the Agriculture and Markets office considered it, during which it was referred to the Attorney General's office for action, and during which a lawyer for the Attorney General investigated and prepared the case for presentation.

Under such an involved procedure, it is very problematic as to how many perpetrators of cruelty to animals, would be sufficiently concerned, as to cease the cruelty. A case in point is *Mudge vs. State Court of Claims of State of New York*, where a State Trooper arrested a farmer whose barn

doors were frozen solidly open, and whose animals were in very bad condition due to neglect. This arrest was made by virtue of Section 185 of the Penal Laws anti-cruelty Section. Here the immediate arrest and hearing stopped the cruelty immediately. Under the procedure of the Department of Agriculture and Markets, the ice would have probably long since melted, and the advent of spring would have, quite naturally, conspired to make the suffering of freezing and neglected animals seem remote and insignificant.

The only exception to the aforesaid procedure of Section 32 in the Agriculture and Market law, is Section 116, which deals with the killing of a wild dog running loose, on order of a magistrate.

The futility of having any anti-cruelty laws at all, if they are to be transferred to the Agriculture and Market Laws, is best demonstrated by the example of the Commission's recommendation of transferring the Section dealing with sale of baby chicks. There is, of course, a Section in the Agriculture and Market Laws dealing with sale of chicks, but that law refers to labeling, health requirements, etc., in order to protect the consumer. The law of the anti-cruelty Penal Statutes is entirely different, and protects the fowl. Every Easter-tide, we observe numerous warnings and protests in letters to newspapers, discribing the cruel use to which infant fowl are subjected by indifferent human parents and the harmful influence this in turn exerts on the characterological development of children. As the law stands at present, not only the ASPCA, but individuals as well, may immediately act to stop such cruelties. If this were transferred to the Department of Agriculture and Markets, the evidence would long since have been converted into chicken soup, or otherwise dissipated, before legal machinery of that Department ground out a decision to prosecute.

Even the addition of an exception to the usual procedure of Section 32, whereby complainant could proceed directly by summon, would be ineffectual. Any practising attorney is fully cognizant of Jurists predeliction for referring elsewhere, matters which, unless specifically and exclusively categorized as belonging in the Penal Law, might be heard in other departments.

One might likewise designate as meaningless, as far as the prevention or discouraging of cruelty is concerned, the proposal to transfer the sale of disabled horses to the General Business Law, or the carrying of animals in a cruel manner to Railway Transportation. Would such transfers really curtail the work load of the criminal Courts? It would be interesting to know how few, if any, of such cases, "cluttered" the dockets of magistrate's courts.

The proposal to eliminate entirely the provision barring malicious injury to and distruction of property (i. e., the protection of birds and animals in parks), is especially distressing. The depredations to small animal life in the parks was the subject of several letters written to newspapers this summer. Heaps of bodies of squirrels and birds were to be seen in almost every park,

wounded by sling shot, or bow and arrow. Park Department employees find it sufficiently difficult to deal with this problem under the existing law. If this Section were to be removed from the Penal Law, the residents of New York City would shortly be deprived of every last vestige of nature with which to refresh their spirits.

The Commission's inclusion of the word "intentionally" in its proposed code for anti-cruelty, presupposes the same class and quality of testimony as is achieved in the usual assault case. This, of course, cannot obtain where an animal is involved. Instead of a Judge basing his decision on the statements and observation of both a complainant and a defendant, he hears only the protestations of defendant's innocence, in a cruelty case. As with abuses to infant children, the criminal act itself should be sufficient to warrant a hearing before a Judge. The act will then be evaluated in the light of surrounding events and circumstances as brought out by testimony. Certainly, the general preamble proviso in the proposed revision, requiring culpability as a necessary element in any criminal act, would adequately protect an innocent defendant.

Unless the Commission wholly exempts Article 16 of the present Penal Code from any revision whatsoever, and incorporates it verbatim within the revised Code, as was done with revision proposals in Minnesota, it will be doing an incalculable and lasting disservice to the historic humanitarian achievements of New York State, by retrograding and dissipating the very minimal protection for animals now operable.

Respectfully submitted,

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