

Episode 1: Animal Instincts
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Jeff Polish: So I'm running and I actually lowered the brim of my hat, and about 20 seconds later I felt a scratch on my head and then my hat disappeared. So I turned around just to pick up my hat and to note the branch that I had just grazed, and there was no branch and there was no hat. I actually thought that maybe wind from a storm had lowered a branch and it'd got caught on another tree and maybe it was up higher, so I looked around. There were no trees with branches that were candidates for that happening. It was a dense woods. And for about six or seven minutes, I looked everywhere I possibly could, and I couldn't find my hat.

Phoebe Judge: That's Jeff Polish from Chapel Hill, North Carolina. He didn't know it at the time, but he may have just had a brush with death. I'm Phoebe Judge, and this is Criminal.

A woman lying dead on the floor in a pool of her own blood, at the bottom of a staircase. There's blood everywhere. A lot of blood. On her hands and feet and splattered up the walls of the stairwell. Her name was Kathleen Peterson. She was 48 years old. She worked as an executive and was described as very successful. Her husband, Michael Peterson, was a novelist. Together, they lived in a very large historic home at 1810 Cedar Street in Durham, North Carolina.

Michael Peterson says that the night before his wife's death, they'd been drinking wine by the pool late into the night. He says Kathleen went upstairs to go to sleep, leaving him alone out by the pool. The next time he saw her, she was bleeding to death and unconscious at the bottom of the stairs. He called 911 just before 3:00 a.m.

Speaker 1: Durham 911. Where's your emergency?

Michael Peterson: 1810 Cedar Street. Please.

Speaker 1: What's wrong?

Michael: My wife's had an accident. She's still breathing.

Speaker 1: What kind of accident?

Michael Peterson: She fell down the stairs. She's still breathing. Please, can-

Speaker 1: Is she conscious?

Michael Peterson: What?

Speaker 1: Is she conscious?

Michael Peterson: No, she's not conscious. Please-

Speaker 1: Okay. How many stairs did she fall down?

Michael Peterson: Huh?

Phoebe Judge: However, the medical examiner said the cause of death was not a fall from the stairs, but blunt force trauma to the back of her head, as though she'd been beaten repeatedly with something heavy, like a fireplace poker. Michael Peterson was indicted for his wife's murder.

From the start of the trial, it was clear the odds were against Peterson. Back in the '80s, Michael Peterson had been the last person to see a different woman who had died from blunt force trauma and was found at the bottom of a staircase. He wasn't charged with that murder, but the parallel was a key part of the prosecution. His motive to murder Kathleen, they argued, was that she'd found out he was having affairs with men. Plus there was a $1.5 million life insurance policy at stake. A blood analyst testified that Peterson had attempted to clean up the scene. After a five month trial, Peterson was convicted and sentenced to life in prison without parole.

Michael Peterson's next door neighbor had been following the trial very, very closely. His name is Larry Pollard. You'd think after a trial like this Peterson's neighbors might try to keep their distance, to disassociate themselves from the story. Not Larry Pollard. Larry Pollard lived on the same street as the Petersons and was a good friend. He's also a lawyer. So as evidence was presented in court, and subsequently entered the public record, Larry Pollard began studying it. Why? Partly out of curiosity, partly because he thought he might see something other attorneys had missed. He was looking at a list of items from the crime lab. On that list, items of clothing, blood samples, and something jumped out at him. An owl feather. A microscopic owl feather had been found in a wad of bloody hair Kathleen Peterson had in her hand.

Larry Pollard went to the police and said he had a theory. Here's how it works. Kathleen Peterson went outside for some reason, maybe to take out the trash, and was attacked on the head by an owl. She reached up to touch the part of her head where the owl had dug in with its talons, and a chunk of her scalp and hair came out in her hand. She rushed inside and fell, just as she reached the foot of the stairs, knocking her unconscious. That's where her husband found her bleeding. Larry Pollard was laughed out of the station. Two local newspapers somehow got wind of his theory and ridiculed him, but he didn't give up. And at his insistence, some of the evidence was reexamined, and he says they found not one but three microscopic owl feathers.

I asked Larry Pollard if we could meet. I didn't see him at first, as he was walking down the hallway. All I saw was the stuffed owl he was carrying, its wings spread four feet wide, mounted on a woodblock. And then I saw the styrofoam head.

Larry Pollard: I was getting my hair cut one day and I saw a mannequin of a head, that they had a wig on top of the mannequin, so I picked up the styrofoam head so that I could demonstrate. Then a little while later, I found out that 90% of all owl strikes to human beings are to the head, and they're to the right rear corner of the head. Now, why? We don't know. But they are to the right rear corner of the head, 90%. And that's where these ones were. So when you take raptor feet and you put them on a styrofoam head, it demonstrates what it looks like. And in this instance, the wounds kind of match up with where these, the right rear corner of the head, where this would have taken place.

Phoebe Judge: Remember, Larry Pollard isn't a scientist, he isn't a detective, he isn't even an owl expert. He's just a lawyer. Not even Michael Peterson's lawyer. He built an elaborate theory around microscopic owl feathers, and he's become kind of obsessed with it.

Larry Pollard: Owls are one of the only birds in the world that have microscopic feathers that go all the way down their legs, down their toes, on their feet, all the way to the talons, and they look like little fibers. Not feathers like you're thinking, but fibers. So when I found out, I said, "Well, maybe we should go back, see if there was any specimens or that if it left a kind of a calling card." And sure enough, when they attack, they will leave certain pieces of evidence behind them that can be readily identified.

Phoebe Judge: In addition to the feathers, Larry Pollard says the shape and depth of the wounds on Kathleen Peterson's head, thought to have been caused by a fireplace poker, could also have been inflicted by the sharp talons of an owl. He showed me on the styrofoam head. There's more. Cedar needles were found on Kathleen Peterson's hands and body, indicating she had fallen over outside her house. And footprints in her own blood indicate that she was already bleeding from the head before she reached the foot of the stairs.

Ro Hume: I have to say, it's hard to believe straight up that an owl can injure someone so badly they die. I'm sorry. That's hard to-

Larry Pollard: I certainly understand with you, and I shared that same feeling at the time. I said, "How could this possibly have happened?"

Phoebe Judge: Not everyone is ready to get on board with Larry Pollard. He was speaking there to writer, Ro Hume.

Larry Pollard: The public, a lot of times they will misjudge or rush to judgment or whatever, and you have to understand that as a lawyer. That was what motivated me to keep on looking and searching and trying to find out the real cause, and not be scared away by the people thinking that I was some kind of a nut. But nevertheless, it did hurt my feelings a little bit, but it only made me that much stronger and determined. It was surprising to me though, how quickly everyone wanted to label me as a bird man from outer space, so to speak.

Phoebe Judge: But the truth is, it does happen. Owls do attack people. There was a whole rash of attacks in Maine a few years ago. John Holyoke is the outdoor reporter for the Bangor Daily News in Bangor, Maine. He says some of the people who were hit had wounds on their scalps. They said they felt like they'd been hit over the head by something big and heavy.

John Holyoke: Well, it was really weird. We had never heard anything like it. What we found in 2009, was that there was a great horned owl that had nested near the trail and it was coming out at night. Nighttime cross-country skiing was a big hit that year, and there were people out there in perfect skiing conditions with headlamps, and when they got near where they determined that this nest must've been, the great horned owl would come swooping out of the darkness, silently, and hit them in the head. I think we had like eight reports in about a week span. Five of them in one day were skiers were out there and didn't hear anything, and all of a sudden their hats are off their heads and they're thinking they're being attacked by something, which they were. The biologists all said that it was owls. A couple of people did actually spot the owls as they swooped away. And then we had another report that same year of a mile away on the same path of another owl that was staking its claim and was attacking people.

Jeff Polish: I felt a scratch on my head and then my hat disappeared.

Phoebe Judge: And remember Jeff Polish? He was running not far from the Peterson home.

Here's Larry Pollard again.

Larry Pollard: There's instances in the literature of where owls have driven their talons into steel, believe it or not. There are other instances of owls having attacked wild deer and bringing a wild deer down, pulling them right down on the ground with their talons and their wings and force. So don't be misled into believing that these are sweet songbirds that are incapable of hurting you. They can hurt you.

Phoebe Judge: As far as we can tell, Michael Peterson's lawyers don't seem particularly interested in the owl defense. They declined to comment for this story. And it's hard to blame them. They're already up against so much, with the parallel murders and insurance policy issue. But if ever they were to consider the owl defense, the time might be now. After a series of appeals, it was determined last year that a key witness in Peterson's original case — the blood analyst who described how Michael Peterson tried to cover up the murder — that analyst had actually lied about his qualifications. He was fired. And after eight years in prison, Michael Peterson's life sentence was vacated. He's living at home again, awaiting a new trial. It's a complicated case, but if you're defending Michael Peterson, you don't have to prove that an owl did it. All you have to do is create the possibility that Michael Peterson didn't do it. So we may never know, but Larry Pollard is still talking about owls, convinced he solved the crime.

[Pause]

Phoebe Judge: We don't always get along with the animals we're surrounded by, be it a deer running in front of a car or a dog biting a kid. It's hard to know what to think about it. Do we blame the animal or do we blame ourselves? Eric Mennel has this story, about when that question was much easier to answer.

Eric Mennel: Jehan Lenfant lived in France and he herded cattle for a living. He was a sort of sharecropper, working someone else's cattle on someone else's land. Jehan and his wife, Gillon, had a son, a baby. We never learned his name. It was the 1490s, and to be frank, the fact that they had a living, breathing child was a remarkable accomplishment. Nearly half of all children born in medieval Europe died before they turned five. So on the one hand, Jehan and Gillon must've been pretty proud of themselves. On the other, they were probably trying to avoid getting too attached because bad things happened, and back then they were almost sure to happen.

It was Easter morning. Gillon, the missus, was in another village. Jehan was out in the field herding the cattle, and their son was inside, lying in his cradle. What happened next isn't perfectly clear, but soon enough Jehan and Gillon were back in the house and they found their son dead and mangled. He hadn't just been killed. He had been mutilated. It was the kind of thing you couldn't imagine a human doing, but Jehan and Gillon didn't need to imagine a human murdering their son. They knew the identity of the killer right away. Just around the corner lay a pig, significantly larger than their baby, and fully capable of such a crime.

In September 2013, a woman in Oklahoma was attacked by her family dog. Her husband, in a gut reaction, shot and killed the dog. It seemed like a reasonable response, but in 1494 Jehan Lenfant and the community around him had a much different reaction to his son's murder. Just a few days after the attack, the suspect pig was arrested and formally charged with strangling and defacing the child. But the most remarkable part of this case is what happened next.

Throughout the middle ages, across Europe and into the new world, animals were routinely treated to the same forms of justice as human beings. In many instances, a suspect animal was given an attorney, paid for by the town where the animal was being tried. It was like a medieval public defender. And the lawyers took the job seriously. For example, when a hoard of rats was destroying the barley crop in several villages of Eastern France, a lawyer by the name of Chassenee was tasked with defending them in court. Now, though the judge had publicly requested the rats attendance, Chassenee argued that the rats couldn't possibly have known to arrive. A lot of them lived in adjacent villages, where the summons hadn't been publicly read. Each rat needed to hear firsthand that they were due in court. It was a persuasive argument. The trial was postponed.

Prosecutors in the case against the Lenfant's pig gathered evidence, they presented their case, and in the end were successful. The judge handed down this decision, "We, in detestation and horror of the crime, and that an example may be made and justice maintained, have said, judged, sentenced, pronounced and appointed that the porker, now detained as a prisoner, shall be hanged and strangled on a gibbet of wood near the gallows."

In his 1906 book, *The Criminal Prosecution and Capital Punishment of Animals*, historian E.P. Evans recounts dozens upon dozens of instances of animal trials. Cattle, goats, boll weevils, animals wild and domestic, could all be held culpable for their actions, at an expense that today seems nearly impossible to justify. There were plenty of reasons to do this. The simplest is not so far from the basis of our criminal justice system today: deterrence. If one pig was hanged or mutilated, the other pigs were expected to take note. See pigs, see what can happen to you if you commit a crime? Other reasons were more biblical in nature. An eye for an eye, that sort of thing.

But maybe it wasn't just simple justice. Maybe we humans were expected to maintain the natural order — God above us, us above them — without resorting to the same uncivilized violence that the animals were capable of. It's sort of quaint. If your laws are good enough for man, then they should be more than good enough for beasts. Presumably, the Lenfant's pig was hanged like the judge ordered. And animals would continue to stand trial into colonial America, with livestock being charged for seducing men into more than friendly relationships.

Eventually, people decided that criminal intent wasn't something you could ascribe to animals. Now, maybe that's where we are today, but you have to wonder, if we're willing to love the dog that dials 911 when its owner falls down, to parade it around town as a hero, what's to stop us from tarring and feathering that dog when he's the reason the owner falls? What's to keep us from saying, "That creature's no companion. It's a conspirator."

Phoebe Judge: That's Eric Mennel, who produces this show with Lauren Spohrer, and myself. I'm Phoebe Judge, and this is Criminal.