



REPRESENTING
"ROCKY RACCOON"

WHEN THE
"TAXMAN" COMES
KNOCKING

"WE CAN WORK
IT OUT"

VOL. 50 NO. 2
WINTER 2024

Litigation

A PUBLICATION OF THE AMERICAN BAR ASSOCIATION
LITIGATION SECTION



Litigation Road
Magical Mystery Tour

Representing “Rocky Raccoon” Animal Law by the Beatles

BRUCE WAGMAN

The author is of counsel at Riley Safer Holmes & Cancila LLP, San Francisco.

I am an animal lawyer and have been for over 30 years. Most people, including most lawyers and judges, still don't know what “animal law” means. That's no surprise, because even for us animal lawyers, it means something different depending on whom you ask. At this point, the field has certainly developed a number of subspecialties, including lawyers who focus on one or more of the following: companion animals, animal cruelty, farmed animals, wildlife, entertainment, and biomedical research. I've been lucky enough to get involved with aspects

of each of those areas, but my focus has always been on making things better for animals—whether it's one animal with its owner who will be affected or one million animals whose lives will change. For me, that is what “animal law” is all about: using the law as a tool to benefit animals, through litigation, negotiation, consultation, or legislation.

Somewhat fittingly, my life as an animal lawyer started decades ago, when I attended an ABA conference in San Francisco and learned about the treatment (and mistreatment) of animals



in America. My wife and I exited the room where we had just been shocked and saddened by what we had seen and heard. We stopped, and I saw that she too was crying, and I just said, “It's over, isn't it?” She nodded. From that moment to this one, we just couldn't “let it be.” And so began my “long and winding road” as an animal lawyer. As the anecdotes below reflect, fighting for “Rocky Raccoon” and other animals in the courtroom can be tough work, but it's also immensely fulfilling and sometimes even downright fun.

“Rocky Raccoon”

The title of this piece is a fitting introduction to my animal law practice. The Rocky case was a “wild” one. My clients had found a tiny, unweaned baby raccoon in the snow outside their house in another state. They carried him into their house, bottle-fed him, and kept him warm, and he grew up into a young raccoon pet who was completely trained. In addition to using a litter box and sitting patiently at the table, he went in and out of the house

whenever he wanted, though he always came home at night to sleep. A few years ago, they were going to be spending some time in Marin County, California, and my clients took him with them on the plane. Everything was fine in California until they let him out one day and he did not return. It turns out, much to their dismay when they called me, that you cannot have a pet raccoon in California, and so the authorities picked him up when he was roaming the streets. The California authorities informed my clients that Rocky could only be transferred, in a sort of reverse-extradition proceeding, to a state where raccoon ownership was allowed. You learn something new every day in my field!

“Dig a Pony”

A core pillar of my practice involves one of nature’s most majestic quadrupeds: the horse, of course. I’ve worked on three different types of horse cases—cruelty and neglect cases in which we have gotten the horses away from their owners, efforts to prevent the slaughter of American horses for human consumption, and challenges to the federal government’s (mis)management of wild horses across the American West. And while it is obvious that the subject matter of much of this work is dark and grim, my colleagues and I have had a lot of fun litigating these cases, in part because of colorful opposing counsel and defendants—and also because we have won most of them.

Many of the horse slaughter cases took place in New Mexico, and the first plant that we fought to prevent from opening was in Roswell, of UFO-sighting fame. (Given the location, we knew we were in for some exciting times.) Horse slaughter cases brought us—in addition to the sheer satisfaction of being on the right side of the fight by working to prevent the horrific slaughter of horses for food—so many laughs. First, opposing counsel signed every email in large (16-point) “Bleeding Cowboy” font. If you harbor any doubt that this font exists, I’d encourage you to search for it online. Second, opposing counsel once stood up in court and asked the judge (twice) to remove me from the courtroom because I was passing sticky notes to co-counsel during a hearing. “He’s passing notes again, Your Honor.” (True story!) Third, believe it or not, opposing counsel twice sued me, my firm, and another lawyer in the firm for winning all those cases against his client. But perhaps our favorite part was reading his briefs to each other for a humorous interlude, like his insistence on misusing the word “salacious” (and many others on a regular basis) in a large number of his briefs—as in “the animal welfare advocates’ salacious opposition to horse slaughter. . . .” We never did figure out what he meant or what word was intended, but he kept us laughing—through five lawsuits. These cases resembled run-of-the-mill civil litigation: There were motions, hearings and oral arguments, discovery disputes. But in many other ways, these cases revealed the special nature of animal law cases: We had

human clients, of course, but each of those human clients was fighting a battle on behalf of another species. In this respect, I was privileged to collaborate and work closely with Hilary Wood at Front Range Equine Rescue, a highly principled and highly effective horse advocate with a relatively small nonprofit, who fought tirelessly to prevent the federal government from approving horse slaughter. She was (and still is, a decade later) a valued partner and client in the effort to make horses happy.

“Everybody’s Got Something to Hide Except Me and My Monkey”

Over the past four years of this practice, I’ve seen things done to monkeys I can’t even repeat without crying. But on the brighter side of primate law, I’ve learned some very important lessons while visiting and working with the people and the chimpanzees (chimpanzees are not monkeys!) at Project Chimps in Georgia. First, if I ever need to smile, I watch the *Chimpanzee Ball Pit Adventure!* video on YouTube—highly recommended. Second, I learned quickly that you don’t wear your good clothes when visiting chimpanzees. Doing my first big chimpanzee facility inspection in 2005, I learned that they may throw things at you that have recently come out of their bodies, or take a big drink of water and then shower you with it with a smile. Third, they love to fake humans out, and why not—after all the years that we have made them do what we want, it seems it’s their time to turn the tables on us. One of their favorites is, probably, “make the humans go somewhere for no reason.” The chimpanzees will move to one part of their bedrooms inside their villas, acting as though there is something very interesting there. And so you walk across the facility to see what is going on, and by the time you get there, they are back where you started, very clearly laughing at you. Then repeat, for as long as it takes you to figure out that you are playing “chimp tag.” Fourth, if you want to see yourself mirrored by a different species, chimpanzees are a good place to start. Over my desk hangs a picture of two chimpanzees named Jacob and Panielle, smelling a rose together—just as my wife and I did.

But mostly the Project Chimps experience taught me about common ground. In 2014, we had the crazy idea to approach leadership for a private biomedical research laboratory that housed nearly 250 chimpanzees to see if they would let us take their chimpanzees and put them in sanctuary. It was a notion with just about no chance of success; just the fact that they let us in the building was sort of hard to grasp, but why not try? We spent two days there, in many meetings (including with the chimps), breaking bread with those who had been on the opposite side for years. We left with a mutual understanding and a handshake deal to transfer all the chimps to a sanctuary that we had not yet formed. Almost 10 years later, a few months ago, I walked

around Project Chimps and saw the current residents living a life of luxury, good food, play, and forested habitat, and a team of caregivers who love them every day.

Birds, Birds, Birds

Were enough Beatles songs about birds? “Blackbird,” “And Your Bird Can Sing” and “Blue Jay Way” come to mind without much thought, to keep me humming and singing as I learned another important trait as an animal lawyer—persistence. For two decades, we tried, and lost, the fight for birds’ protection under federal law. Despite a congressional mandate to provide them with protection and federal oversight, birds in commercial enterprises were left without any regulations under the Animal Welfare Act. But every time I walked by a pet shop and heard the birds inside, or I talked to the client, I wanted to try again because any neglect or abuse of those birds was supposed to be addressed at the federal level. For almost 20 years we tried, meeting with regulators, filing lawsuits, until in 2023, the American Anti-Vivisection Society and the Avian Welfare Coalition finally prevailed, resulting in quite a lot of feathers flying and happy winged celebrations.

“Hey Bulldog”

Another big part of my practice involves companion animals—an issue near and dear to my heart. In fact, I often look around my house, address my seven “associates” (OK, they are rescued dogs and cats who don’t bill many hours), and tell them, “I’m doing this for your people.” There are really four big areas that comprise my companion animal work, each of which is completely separate and distinct from the others: animal shelter matters, animal cruelty work (hoarding cases and prosecution support), dog bite cases, and pet custody disputes.

The animal shelter work is the most varied and impactful, and typically involves animal shelters contacting me with factually complicated issues relating to their legal obligations. (Some of these inquiries have left me convinced that their employees sit around just thinking of new and convoluted factual scenarios for me to weed through.) This work derives in large part from the San Francisco Society for the Prevention of Cruelty to Animals’ Shelter PALS program (“PALS” stands for “Policy and Legal Services”), which is a unique legal aid service for any California animal shelter that wants to sign up as a client. Visits and virtual calls with these clients are more fun as the air is often peppered with the sounds of dogs barking. After all, the whole point of what I’m doing is to improve the lives of California’s domestic animal population (including the millions of outdoor-living “community cats”), increase access to veterinary care, and elicit a figurative, and often literal, tail wag, dog lick, or cat purr.

The Beatles were prescient with “Hey Bulldog”: When John Lennon sang “[s]ome kind of innocence is measured out in years,” he summed up those animals we share the most time with, spend our excess dollars on, and who are for many people the “gateway animals” to start thinking about other animals that we interact with in different ways. Surely, the connection I have always had at home with my dogs and cats got me thinking about all those animals in all those fields and barns across America—and I have been fortunate enough to spend meaningful time scratching pigs’ bellies and getting to know the cows and hens and turkeys in the animal sanctuaries I have represented. Some great interspecies friendships have formed.

Pet custody cases always involve high emotions and careful civil litigation strategy—they are a complex mash-up of a property theft case and a child custody case.

And then there is the animal cruelty work with “bulldogs” of the canine and human varieties. It has left me with so many stories about how a team can keep “eyes on the prize” and use levity to try to prevent a descent into darkness. In that dark side of the world, I’ve done my share (20-plus) of cases of “animal hoarding,” also known as animal collecting, which involves situations where large numbers of animals are suffering because the hoarders have collected far more animals than they can care for and are in denial about the conditions and health of the animals. Intervention in the form of rescue groups and lawyers is then necessary to save the animals from the kind of slow deaths that occur in those circumstances. And my first big hoarding case almost 20 years ago—350 dogs and 21 birds in North Carolina—also led to the kind of relationships that develop when they are forged in that fire.

On a cold and rainy December 23 in 2004, I used the early internet and the phone book and called yet another on my list of random North Carolina veterinarians I did not know, desperate to get someone to testify about the conditions of the dogs we had discovered at the hoarder’s home in Sanford. Dr. Lauren

Bartfield answered the phone—and to this day, she says with a smile, she will never answer another call from California. That night she volunteered her heart, her mind, her veterinary practice, and almost her life (she had a shotgun pointed at her by the hoarder). For the next six months, Dr. B. had to deal with me daily by phone, almost a tougher job than delivering care for the animals and testifying at trial. When she put me up in her guest room during the case, her property looked as though Noah’s Ark had stopped at her house—so many species, so many bodies—but all the animals were doing much better than on the Ark or in most homes, thanks to Dr. B. She taught me about rescue at the highest level, while also running a mobile spay-neuter clinic that addresses the pet overpopulation throughout the state. We still talk regularly and offer shoulders to cry on for the ones gone by, and I consult her on new cases.

In that same hoarding case, I met Bernie Hansen in a coffee shop in Cary, North Carolina—a potential expert witness. Bernie, who ended up being the most compelling expert at trial (walking to the stand with his canvas Whole Foods tote bag full of the depositions I had him read), is a critical-care veterinarian at North Carolina State and an international expert on pain and suffering in animals. He gave objective testimony at trial about animal sentience and then became a lifelong friend and consultant. (He is to this day “Uncle Bernie” to my own never-ending immediate family of adopted cats and dogs.) And Kelli Ferris, also from North Carolina State, provided her expertise specifically on hoarding and, just as importantly, set up an aviary to take in two of the long-living, and no more long-suffering, birds from the dark basement in which they had been living. All this time later, those relationships—true friendships—from that case continue to influence my life and work.

“Martha My Dear”

Let’s not forget that “Martha My Dear” was written solely about Paul’s dear sheepdog, who at some point certainly could have been one of my animal clients, because most of the almost 100 dogbite cases I have done involved someone’s wonderful pet who had a single incident in which things went awry and somehow, somebody (human or animal) received a bite that caused some harm. These cases are some of the most rewarding because they often carry the threat of death for the offending dog, and so a successful case literally saves a life. These animal capital cases are usually as important to my human clients (and certainly to the canine ones) as any case could be. At the end of every case, I send a biscuit care package to the dog. And sometimes I get something in return. Surely one of my favorite souvenirs from a case is the cup that Bob (the dog) sent, with his picture on the side and a message that says, “Thank you for saving me, Uncle Bruce!” It makes me smile with every cup of tea I drink from it.

The pet custody cases are increasing in number and intensity, and they always involve high emotions and careful civil litigation strategy—they are a complex mash-up of a property theft case and a child custody case, with the law and the courts slowly adapting to the vagaries of these situations. But one of my favorite litigation stories came in one of these lawsuits, in which the defendant refused to return my client’s dog, Ezra, after a mutually agreed pet sitting. The defendant’s possession lasted over a year, and in order to show his dedication to Ezra, he produced (at his deposition) about 30 invoices from six months of dog training classes, from a notable Bay Area trainer, that he had taken with Ezra. The receipts were itemized with all of the behaviors that were addressed at each class session. I naturally subpoenaed the trainer, who called me to ask why I had sent the subpoena. When I explained, and sent her the invoices, she told me she had never trained Ezra; that the receipts were made up, didn’t even have the right logo; and that she had met the defendant once, in a dog park. About three days later, defense counsel turned the dog over to me.

“Piggies”

The “piggies” are last in this article but certainly not least. I suspect that the Beatles were singing about another type of “pig,” but the fact is I have been working for *real* pigs for over two decades now in the social debate about how we should treat the animals we rely on to supply us with what we eat. And the case that gave me the opportunity to learn the most about pigs, and to engage with one of the greatest teams of lawyers I could imagine, was the lawsuit we recently won in the U.S. Supreme Court. Fighting for pigs in the nation’s highest court (and in all the courts leading up to that case), in between the hard work, just gave us all no end of chuckles at how unexpected it was, what a long and strange trip it had been, to find ourselves given this opportunity to use our law degrees in this way. The Supreme Court case was brought by a pork industry trade group in their effort to strike down the California law that prohibits the sale of certain products of animal cruelty (including pork, veal, and eggs) on California shelves. Twenty-seven amicus curiae briefs demonstrating bipartisan support from around the country were filed in favor of our position in bettering the living conditions of the pigs who are creating our bacon. You had to laugh at the marvel of this issue playing out on a national scale.

Just like we can still marvel at how those four guys from England wrote so many songs about animals. ■