

BY LAURA DEUTSCH

# Canine Court

All's fair in dog and parking disputes

Sparky the Airedale was my first client to stand trial. It was 1973 and I had just passed the bar. According to the lawsuit, the “aforementioned animal hereinafter referred to as ‘dog’” had collided with, knocked down and otherwise upset Alberto Gutierrez\*, next-door neighbor to Sparky and his owner, Mrs. Carmen Moreno. It was a far more innocent time for dogs then, but not for neighbors vying for parking.

Mr. Gutierrez, a grayed-out, retired Muni driver, 76, had rapped on Mrs. Moreno's door one late afternoon to request, as he frequently did, that she move her car from his spot on the street.

“It's not his spot! It's the street!” Mrs. Moreno, a rotund yet sprightly 78-year-old snapped, as she relayed the facts to me. “He thinks if he puts out those orange cones he bought at Goodman's that makes it his space. *Madre de Dios*. He just comes over to annoy me. Been doing it for 42 years.”

“She took the chain off the door so the dog could knock me down!” yelled Mr. Gutierrez in our heated pretrial settlement conference. “*Como un tigre, me atacó!*” Mr. Gutierrez lunged across my desk, his few remaining teeth bared, to demonstrate.

“Sparky's just friendly.” Mrs. Moreno's knitting needles clacked like Gene Krupa on speed as she purled a row of magenta yarn for Sparky's winter vest. “Besides, you were on my property.”

I hoped Mr. Gutierrez would drop his suit, since Mrs. Moreno lived on the edge of poverty. Our storefront law office in the Mission was representing her at no charge. Each time she came by, my grateful client brought a gift of eggs, laid by the ducks in her backyard. I never cracked

open the large, surreal eggs, imagining I'd find a downy duckling or maybe a pair of Hanes pantyhose.

“I want a trial!” Mr. Gutierrez told his lawyer, Johnny Martinez, who also happened to be his son-in-law.

“See you in court,” Johnny informed me.

I accompanied Mrs. Moreno to the scene of the alleged assault. From Mr. Gutierrez's recounting, I half-expected a chalk outline of his body on the sidewalk. Instead I saw a black cardboard sign, “Beware of Dog” in day-glow orange letters, hanging on the chain-link fence that surrounded Mrs. Moreno's hard dirt front yard.

“Stand outside the fence. Sparky gets very happy when he sees people.” She ushered me to the curb, closing the gate between us. “He's big.”

My lifetime pet experience consisted of a turtle the size of a silver dollar and a parakeet who never left his cage. I obliged.

When she unlocked her front door, Sparky tore out, a wiry blur of tan and black, truly unleashed. Barking with gusto, he threw himself against the fence.

“I thought you said he was friendly,” I shrieked.

“That's how he shows it.”

Our defense would rely on the posted warning, Mr. Gutierrez's knowledge of Sparky's “friendly” behavior, and Mrs. Moreno's testimony that Sparky was a harmless pup.

We had a decent shot until Sparky received a subpoena, ordering him to appear in court.

“What? You're going to make me cross-examine a dog?” I yelled through the phone at Johnny Martinez.

“I want the jury to see this beast with their own eyes,” he replied.

I opposed the motion. “Your honor,

I've consulted with a veterinarian. A dog is likely to get agitated if forced to appear at trial. It will be highly prejudicial.” I didn't mention that Dr. Scott, the vet, had informed me that Airedales could be exuberant.

“Sounds reasonable,” said the judge. I breathed. Then he added. “You will bring the dog to the park



across from City Hall where the jury will view him, solely to observe his size, not demeanor, to determine whether he could have knocked Mr. Gutierrez down.”

I envisioned Sparky across from City Hall, straining at his leash, yelping at terrified jurors.

“What can we do?” I asked Dr. Scott.

“We could tranquilize him to help him cope with the trauma of trial. I'll give Sparky a shot today, to make sure we get the dosage right for his appearance tomorrow.”

Johnny came to view Sparky that evening. Unfortunately, Dr. Scott had overshot the mark. When I arrived, Sparky lay in Mrs. Moreno's yard, four legs splayed out, eyes glazed, his grinning head lolling to one side.

“Have the dog stand up, so I can see his size,” Johnny demanded.

“Sorry,” I replied. “He can't just now.”

“What's going on?” Johnny's voice was so shrill, I was afraid it might set off other dogs in the neighborhood. “This dog is on something!”

The next morning in court, Johnny jumped up. “Your honor, she drugged the dog!”

“True, counselor?”

“Of course, your honor. The vet said it would be best for the dog to be medicated to deal with traumatic circumstances. Besides, you ordered Sparky to appear solely so the jury could see his size, not demeanor.”

“Yes. Let's proceed.”

The trial unfolded as smoothly as any based on a 42-year parking space battle where a dog is subpoenaed to testify.

Johnny entered Mr. Gutierrez's pants into evidence. “See how they ripped when the dog knocked him down!”

Later, the jurors marched down City Hall's steps to view the star witness. Leash held by my colleague, Sparky, model pet, stood motionless, calm and seemingly alert.

After a verdict for Mrs. Moreno, a miffed Johnny interviewed the foreman.

“We didn't believe Gutierrez,” he said. “No blood on his pants. And that dog was, well ... That dog was positively tranquil.” ♦

*\* Some names have been changed. Laura Deutsch's writing has appeared in the New York Times, The San Francisco Chronicle, More Magazine, San Francisco magazine and other publications. No dogs or humans were harmed in the writing of this article.*