



# MondayMonday

## He Who Barks Least, Barks Best

September 16, 2013

It has been 36 years since the Voyager I spacecraft made the front page of the New York Times, but there it was again last week, and above-the-fold at that. It was September 5, 1977, when we launched the 1600 pound spacecraft (it's not a "satellite" because it doesn't really orbit anything) and sent it out into the Solar System. For some 36 years its been doing just that, sending data to the Deep Space Network. Now, at the speed of 11 miles per second, it has reached the edge of our Solar System and is moving on.

Where? Who knows? By 2025, it will run out of power and become, in the truest sense, a benign emissary with no ability to do harm or give up any secrets which others determine should remain secret. And so, 40,000 years from now, Voyager I will arrive at the dwarf star, affectionately called "AC+793888." Sitting in the constellation Camelopardalis ("The Giraffe"), located near Ursa Minor in the northern sky, might be a planet. On the planet might be, well, it really doesn't matter. But what does matter is that something will take a golden record off the Voyager I sitting on that planet's



surface and scratch a fingernail along the grooves. What will happen to the future when the sound of Chuck Berry singing "Johnny B. Goode" echoes throughout that planet's thin atmosphere? Goodness gracious. Back to the future all over again.

When is a dog bite case not a dog bite case? When Fido is carrying a badge, evidently. In *Newsome v. County of Suffolk*, 2013 NY Slip Op 05805 (2d Dep't 9/11/13), plaintiff was a custodian at Amityville High School when the Suffolk County Police Department wanted to search the school. The police asked plaintiff to be there and open certain doors in order to conduct the search. Apparently, it was then that plaintiff was bitten by a four-legged member of the police department's canine unit.

The die was cast on defendant's summary judgment motion when the police department submitted its protocols relating to the operations of the canine unit. Rather than establish a prima facie case for SJ against plaintiff, "[a] question of fact with respect to whether the conduct of the

dog's handler was consistent with acceptable police practice was presented by the defendants' evidentiary submissions." The immunity of the professional judgment rule does not extend to a police officer who "violates acceptable police practice." That being the case, "summary judgment was properly denied, regardless of the sufficiency of the plaintiff's opposing papers."

Perhaps if the humans in the canine unit had been as taciturn as the dogs it would have gone better for defendants here.

### ***Fifth Amend. Assertion Means Complaint Dismissal***

Plaintiffs brought this action against defendant hospital alleging that their son had contracted a herpes infection upon his birth at the facility. However, when the hospital demanded discovery of the name of plaintiffs' mohel, an individual who performs ritual circumcision for those of the Jewish faith, they refused, taking the 5th Amend. instead. Defendants claimed that the mohel might have performed the ritual of metzitzah b'peh on the infant, which could have transferred the infection.

While the 5th Amend. is a shield, it is not a sword to be used to thwart discovery. Complaint dismissed. *Silberstein v. Maimonides*, 2013 NY Slip Op 05813 (2d Dep't 9/11/13).

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