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BEST LEGAL DEPARTMENTS 2017

PASSION PREVAILS

**FROM ORCAS TO ELEPHANTS, PETA FOUNDATION'S
LANDMARK LITIGATION LEADS TO BANNER YEAR.**

PETA

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BEST LEGAL DEPARTMENTS 2017
PETA

BY KRISTEN RASMUSSEN

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PETA FOUNDATION'S LANDMARK LITIGATION LEADS TO BANNER YEAR

IT MAY NOT HAVE BEEN UNTIL 2017 THAT CORPORATE COUNSEL named the team behind People for the Ethical Treatment of Animals Inc. one of the best legal departments, but the award is decades in the making. After all, that's about as long as it took to bring down a nearly 150-year-old institution, the fabled Ringling Bros. and Barnum & Bailey Circus.

As if that win weren't enough, PETA also recently defeated SeaWorld San Diego's request before a California regulator to expand its orca tanks, forcing the tourist attraction to announce that it will no longer breed orcas, a David-and-Goliath battle whose outcome was far from certain.

Regardless of one's opinion of PETA's crusade against Ringling Bros. and SeaWorld, it would be difficult for even their fiercest opponent to ignore that it was the activist group's attorneys' tough legal minds that have fundamentally shifted the animal law landscape in this country.

PETA and its operations are supported by the separate PETA Foundation, the 19-attorney legal department of which handles all legal issues for the world's largest animal rights organization. While that work includes groundbreaking litigation and other action to enforce or extend legal protection to animals, it also includes what most legal departments do—protect intellectual property, ensure compliance, negotiate property acquisitions and sales, and other corporate functions.

And for a group whose activist-members are at times militant and provocative—think protesting the American Kennel Club's annual Westminster Dog Show dressed in white sheet-like clothing designed to evoke the Ku Klux Klan—its lawyers are down-to-earth and genial, motivated by a fierce love of all animals.

"I've worked for a lot of major movements, and the animal rights people are the nicest," says PETA's chief outside counsel, Phil Hirschkop, the famous longtime civil rights litigator perhaps best known as one of the attorneys who successfully defended the Loving couple in the landmark 1967 U.S. Supreme Court case that struck down Virginia's ban on interracial marriage.

"They care about animals, but they care about people, too. A lot of lawyers I work with just say, 'Go win.' But [PETA Foundation lawyers] truly care about the people they work with."

This abundance of heart that led to the historic decisions about orcas and the circus, as well as to more than a dozen other significant developments in animal law and cutting-edge animal-free science, made the PETA Foundation legal department a clear choice for Best Legal Department of 2017 honors—only the second nonprofit and first animal protection organization to receive the award since Corporate Counsel bestowed its inaugural one in 2006.

Jeff Kerr, general counsel and senior vice president of corporate affairs, leads the legal team at the PETA Foundation. Kerr has been with the group since 1993—just 13 years after it was formed. Given PETA's role as an activist organization "with all sorts of ideas and plans," the PETA Foundation legal department is "vital" to the group's success, says Ingrid Newkirk, PETA president and co-founder.

"We are attacked constantly by our opponents, who are rather well-heeled, and we need protection," she says. The PETA Foundation lawyers "do an admirable job digging into the research and giving us solid advice. They are very committed [advocates] who care about the cause



From left: Katherine Beasley, Emily von Klemperer feeding Billy, John Seber (seated in background), Brittany Peet, Corey Mishler and Jeff Kerr

and are determined to leave no stone unturned to give us the advice we need.”

The PETA Foundation’s legal department has two divisions—the 15-attorney animal law division, which includes the captive animal law enforcement team, and the four-attorney corporate division. While most of the lawyers went to school with the aim of practicing animal law, they are well-rounded attorneys with experience in a number of areas, Kerr says. Their backgrounds run the gamut and include former prosecutors, other nonprofit or in-house lawyers, longtime Big Law litigators with sophisticated practices, and graduates of the PETA Foundation’s one-year fellowship program in animal law that launched in 2009, he adds.

The commonality, Kerr says, is a strong commitment to working for animals, which often includes not only legal work but volunteerism in other PETA areas as well. It’s not uncommon, for example, for a PETA Foundation lawyer, donned in costume, to hold a sign at a circus demonstration, to deliver goods at any time of the day or night to dogs chained outside, and man PETA’s 24/7 national animal cruelty hotline, he says.

The PETA Foundation’s headquarters are in Norfolk, Virginia, but Kerr says most of its lawyers work in the group’s Washington, D.C.,

office, which is a collaborative, open-space environment that houses a “collegial close team” and, naturally, welcomes animals.

Kerr says he tries to keep most of the work in-house, although he does outsource specialty matters and some litigation. In addition to Hirschkop, the department has a good relationship with Zuckerman Spaeder in Washington, D.C., and uses Fross Zelnick Lehrman & Zissu for IP work and K&L Gates for some litigation. These outside legal services generally are provided pro bono or at a reduced rate, Kerr says.

PETA’s top lawyer describes his department’s mission in just a few words: pushing the legal envelope.

We aim to “establish appropriate fundamental legal rights for animals in their own right and not in relation to their utility to human beings,” Kerr says. To do so, he adds, PETA’s lawyers use existing laws and regulations—animal cruelty statutes in the states and, at the federal level, the Animal Welfare Act, Endangered Species Act and the regulations governing those. And Kerr is quick to point out that PETA’s dedication extends to the “very aggressive” defense of people’s rights to expose animal abuse and give voice to the animals’ plight.

The lion’s share of that work lies with the PETA Foundation’s animal law division. And nowhere did it push the envelope further than in its



legal battle on behalf of orcas forced to perform at SeaWorld. In 2011, PETA filed the first lawsuit seeking to apply constitutional protections to nonhumans, arguing that orcas imprisoned at SeaWorld are enslaved in violation of the 13th Amendment's prohibition on slavery. (The group also sued to establish and protect the copyright of the so-called selfie monkey, who used a photographer's camera to snap a photo of himself.

Shortly thereafter, SeaWorld decided to end the orca shows at its San Diego property and went even further a few months later, announcing that it would end captive breeding not only in San Diego but at its other two parks in San Antonio, Texas and Orlando, Florida. This was a "historic breakthrough [that] means that this generation of orcas will be the last to suffer in SeaWorld's tanks," according to Kerr.

Around that same time, the company dropped a lawsuit challenging the commission's ruling, and last September, California Gov. Jerry Brown signed legislation outlawing orca breeding and captivity programs similar to those formerly run by SeaWorld.

"Being a lawyer is an admirable job whatever you're doing," says Goodman, whose deep interest in animal rights developed "at a very young age" and guided him to law school, then to the PETA Foundation's animal law fellowship in its inaugural year and then to his current "dream job." "But when you're going in and litigating on behalf of a solitary orca, you have so much more motivation to advocate zealously and do everything possible on behalf of your client."

Part of PETA's success in ending animal captivity, its lawyers say, is a culture change in which public opinion has shifted away from captivity—due largely in part to PETA's efforts to, as Kerr puts it, "shine a bright light into the dark corners of animal abuse wherever we find it." And when it comes to captive elephants, the PETA Foundation legal department certainly has taken the lead. PETA has spent the last 30 years, Kerr says, filing legal and regulatory complaints accusing Ringling Bros. of violating the Animal Welfare Act by abusing its circus animal-performers.

A federal judge dismissed the case on the basis of the monkey's lack of standing, and the suit is now pending before the U.S. Court of Appeals for the Ninth Circuit.)

Although PETA lost the battle to extend constitutional rights to orcas—a federal judge in 2012 tossed the claim, ruling that the 13th Amendment applies only to humans—it eventually won the war in SeaWorld San Diego's request to the California Coastal Commission for a permit to significantly expand its orca whale tanks, which was approved but with a ban on new orcas.

This game-changer for PETA began in July 2015, when animal law director Jared Goodman submitted to the regulatory body a nearly 12-page public comment. In part, it rebutted SeaWorld's contention that the Coastal Commission had no legal authority to condition its expansion approval on a determination that captive marine mammals would be affected by the proposal. Goodman, who works out of PETA's Los Angeles office, then took his show on the road, meeting with all but one commissioner.

The campaign culminated less than three months later when—after an hours-long hearing in which Goodman reiterated PETA's opposition—the commission approved SeaWorld's expansion but with the condition that it be prohibited from breeding or importing any new orcas as part of the project. In doing so, the commission agreed with Goodman's assertion that it has authority over captive marine mammals.

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ATTORNEYS MUST REGULARLY JUGGLE A NUMBER OF DIFFERENT MATTERS AT ONCE

In 2011, these efforts led to a \$270,000 fine, the largest civil penalty against a circus in the animal welfare statute's 50-plus-year history, resulting from the PETA Foundation animal law division's complaint that in a six-week period, Ringling Bros. so atrociously mistreated three of its animals that two died and another was severely beaten. The company denied any wrongdoing or violation of animal welfare regulations.

But PETA's lawyers' efforts have extended beyond Animal Welfare Act litigation. They have filed complaints stemming from the group's discovery of reactive blood tests indicating likely tuberculosis in several Ringling Bros. elephants, and regularly testified in support of banning bull hooks, the fireplace poker-type instruments used to beat circus elephants into performing tricks.

In 2015, Ringling Bros. announced that in response to growing public concern over its treat-



General counsel:
Jeff Kerr

2016 revenue: \$90 million

Number of lawyers (U.S.):
19

Number of lawyers (globally): 2 at PETA Germany, 1 at PETA Australia

Main law firms (or outside counsel): Phil Hirschkop, semiretired from his own firm, Hirschkop & Associates in Lorton, Virginia; Zuckerman Spaeder; Fross Zelnick.



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“One day I’m working on an investigation of the oldest private zoo in Canada, and the next I’m in Florida helping with a chimpanzee rescue,” says Peet, who, like Goodman, participated in the PETA Foundation’s first fellowship program in 2009 and has been with the group’s legal department ever since. Peet relies on a variety of negotiation tactics to rescue captive animals, including public pressure, regulatory complaints and filing lawsuits, which is what it took to save Joe, a chimpanzee. The

WE “SHINE A **BRIGHT LIGHT** INTO THE DARK CORNERS OF ANIMAL ABUSE.” —JEFF KERR

solitary chimp had been living in a Mobile, Alabama, roadside zoo for 17 years. After a public campaign failed to secure Joe’s release, PETA in January 2016 sued his owners in federal court, alleging violations of the Endangered Species Act. The litigation was the first brought on behalf of a captive chimpanzee, Peet says. A couple months later, the owners settled in an agreement that prohibited them from ever again owning a chimpanzee and allowed Joe to be retired to a sanctuary in Florida—where, Peet is proud to report, Joe is thriving, even having grown back his hair.

It also would be a mistake to assume that the PETA Foundation’s animal law division’s attorneys have all the fun. In addition to handling all the legal matters necessary to run an international charity, the lawyers in the PETA Foundation’s corporate division also negotiate—on behalf of the PETA International Science Consortium Ltd.—transactions for such cutting-edge projects as attempting to develop the first animal-free replacement for the diphtheria antitoxin made from the blood of captive horses, says Emily von Klemperer, director of corporate affairs. Also on the corporate side last year, PETA Foundation lawyers acquired property in LA that has been developed into a PETA empathy center that houses animal protection educational exhibits and classes to inform people about PETA’s work. It also will be the permanent home of PETA’s traveling seven-foot animatronic bear, which uses the voice of animal rights activist, vegan and Academy Award-winning actor Casey Affleck to highlight the mistreatment of captive bears.

“As you can see, we do a really wide variety of work, which makes it very interesting beyond the fact that we’re doing great work to help animals,” says von Klemperer. After all, adds Kerr, laughing, it’s not at every in-house gig where lawyers “are involved with [outside] counsel on things like, ‘How do you get an animatronic bear through customs?’” ■

ment of the animals, it would end elephant performances by 2018. The financially struggling circus did so in 2016. In January, Ringling Bros. announced that it was folding its tent for good, effective last month, citing the “transition of the elephants off the road [led to] an even more dramatic drop” in ticket sales as a reason.

The PETA Foundation legal department is not done yet, however, Kerr says. “There are a number of exhibitors who are still using elephants, and we are after every one of them,” he says. “We don’t let up. In fact, that is what the attorneys for PETA have to do. We have to be as tenacious as they are. If we get something, we’re not letting go of it until we win.”

The PETA Foundation’s tenacity extends beyond whales and elephants. In fact, the animal law division’s captive animal law enforcement team, which includes two veterinarians and wildlife specialists in addition to its three lawyers, has rescued hundreds of animals, including 17 bears and three chimpanzees last year alone. These animals are often used for entertainment, mainly in roadside zoos, says Brittany Peet, the group’s director. Their methods are as varied as the individual cases themselves, which is one of the reasons Peet says she “has the best job in the world.”