# The Great Montgomery Monkey Trial

by John B. Scott, Jr.

The late Norman Rockwell was one of the best-loved artists of his time and justly famous for his ability to capture on canvas the ordinary aspects of American life. If he had come to Montgomery back in the 1950s looking for a real down-home Southern neighborhood to paint, he couldn't have done better than the 1200 block of South Lawrence. The quiet, shady street with its ample sidewalks and neat houses would have met everybody's idea of a proper middle class southern community.

However, if Mr. Rockwell had chanced to check out the Marks home at No. 1222 he would have found something considerably more flamboyant than outside appearances would warrant. The owner, Charles Marks, and his wife, Jeanne, were true bon vivant and cut a wide swath on the Montgomery social scene. Along with their two small daughters, Fairlie and Jean, they occupied the main part of the house. Below, in a small basement apartment, lived the family cook, Rosie Simmons and her husband, John Lee Simmons The final member of the household was Cheeta, a full-grown spider monkey owned by the Simmons.

Things upstairs were lively, but life in the basement was downright exotic. To begin with, Rosie Simmons was a remarkable looking woman, standing 6'4" and weighing well over 200 pounds. Her husband, John Lee, was much smaller with large melancholy eyes and a balding head. Mr. Simmons was a part-time handyman and a part-time blacksmith but mainly he liked to drink. The Simmons had no children and Cheeta became almost like a son to them. Rosie Simmons made various outfits for him to wear - of which his favorite was a policeman's uniform complete with a miniature pistol. Mr. Simmons took Cheeta along on some of his forays around town and occasionally the Simmons would let him join them in a glass or two of wine.

Cheeta in his policeman's costume

Cheeta had a mischievous nature but was an affable creature and generally well regarded in the neighborhood - where he was allowed to wander at will. True, he had gotten into a few minor scrapes, such as getting wined up and picking all of the Whites' camellias. Or, waking up the Sedburys by making a terrific racket while rocking in a chair on their front

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porch at four o'clock in the morning. But never anything serious.

Then, one September day in 1950 Cheeta got into big trouble. Maybe he had a hangover or just woke up on the wrong side of the bed but, in any event, he fell into a mean mood and attacked an attractive young housewife, Mrs. Sarah Blake Jones, as she was walking down Perry Street. Mrs. Jones was naturally very put out and felt that somebody was definitely to blame for letting an animal such as Cheeta loose in the neighborhood. She engaged young Ed Azar, who was just starting his law practice, to press her claim. After investigating the situation, lawyer Azar brought suit against Charles Marks on the theory that he was the head of the household where Cheeta resided and therefore responsible for Cheeta's misdeeds. The complaint sought $1,000 in damages and made demand for a jury trial. Thus began one of the most unusual - and memorable - cases ever tried in the Circuit Court of Montgomery County.

Mr. Marks' liability insurance carrier engaged the prestigious firm of Rushton, Stakely & Johnston to defend the claim and the case was assigned to the late Jimmy Garrett and his young colleague, Bill Moore. Another stalwart of the Montgomery Bar, the late Sam Rice Baker, was appointed to act as special judge. In due course, the case came to trial on April 16, 1951, in the stately old county courthouse on Washington Avenue. This was still the era of all male juries, but there were many women among the spectators that packed the courtroom.

In qualifying the jury panel, Judge Baker made the usual inquiries as to whether any of the prospective jurors were kin to the lawyers or the parties in the case. At the request of the defense attorneys, he then asked further if any of the jurors were related by blood or marriage to Cheeta. To the titters of the spectators, several of the jurors stood up. Judge Baker looked them over carefully and announced that, although he could discern some family resemblance, the relationship did not appear close enough for disqualification. After a few such diversions, a jury was duly empanelled and the trial began.

The first witness to take the stand was the plaintiff, Mrs. Jones. Lawyer Azar eased into his direct examination: "Mrs. Jones, on or about the ninth day of September, were you walking along Perry Street?"

"I was."

With a look of profound sympathy, Mr. Azar continued: "Mrs. Jones would you tell the court what, if anything, out of the ordinary happened to you on that afternoon?"

"Yes." Mrs. Jones took a deep breath and gasped a little at the memory of it. "I looked up and saw this big monkey in a tree. Then as I walked on down the sidewalk, something hit me and knocked me down. It was the monkey biting me on the back of the leg."

There wasn't much dispute about the fact of Cheeta's assault or Mrs. Jones resulting in mental and physical trauma, so the real question in the case was Mr. Marks' legal responsibility for the monkey's actions. There was evidence to support a finding that Mr. Marks

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Cheeta prepares to attack

had the same responsibility as if he was Cheeta's owner, but Judge Baker explained that under the "one free bite rule" recognized in Alabama, the owner of a traditional domesticated pet such as a cat or a dog is not liable for an attack upon another person unless the evidence shows that the miscreant had done it before and was thus known to have a vicious streak. On the other hand, he continued, naturally wild animals such as lions, tigers or bears are considered under the law to be ferae naturae with an innately dangerous nature and their owners do not get the benefit of the one free bite rule even though the animal in question might be as much of a pet as a cocker spaniel. Judge Baker then told the jury that, after considerable research, he had concluded that it was unsettled in Alabama into which category a tame pet monkey would fall and that it was up to the jury to determine as an issue of fact whether Cheeta was an animal with a "wild and beastly nature" as charged in Mrs. Jones' complaint or just a civilized household pet that had gone wrong on this one occasion.

It was thus the task of defense attorney Bill Moore to bring out Cheeta's kinder, gentler and more civilized qualities, and he basically had to do this through the testimony of John Lee Simmons. When Mr. Simmons took the stand he was obviously very nervous and worried so Moore began the examination slow and easy, touching first on Cheeta's drinking habits.

"John, did your monkey slake his thirst, like a common, uncivilized jungle beast - on coconut milk and mango juice?"

"No, Sir! Cheeta didn't like nothing but port wine."

"Port wine, eh? Not exactly the drink of a ferocious animal. A very moderate drink, even among civilized people. John, would you inform the court how Cheeta drank his wine?"

"Out'n a cup, sitting with me across the table at the cafe, just like a lil' gentleman. He could smell a drink of wine a block off. He'd come up to anybody that was drinking and put his hand on their knee, or more likely on their bottle. He'd take the bottle and unscrew the cap and pour hisself a drink in his cup and set down at the table and sip it, just like a lil' gentleman."

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"And on these occasions," Moore continued, "was he dressed as a wild, jungle animal would be?"

"No, Sir. He wore his little policeman's uniform and the toy gun I bought for him."

"And he always wore this uniform with pride to himself and the police force?"

"Yes sir, he did that excepting when the police came after me for being what they called 'under the influence.' Then, Cheeta'd scream at 'em and draw his toy gun."

As the examination rolled along John Simmons' testimonials on Cheeta's virtues grew more eloquent. He described how Cheeta would guide him home some nights when he had had too much to drink and would stay in his cell on nights when he wound up in jail. It appeared that Cheeta would take on anybody who tried to give his friend and master a hard time. Mr. Simmons related how, on one occasion in municipal court Cheeta had climbed up on the Judge's desk and hissed at him "for convicting us." At the close of his testimony, John Lee Simmons, summed up his regard for Cheeta with the simple tribute that "He was always a perfect friend."

When the case was finally submitted to the jury, they were only out for a short while. Usually juries manage to look solemn and inscrutable no matter what they have decided but this time they came back in unable to suppress smiles. The judge asked if the jury had reached a verdict and the foreman, Mr. E. J. Meyer, announced, "Yes, Your Honor. We find for the defendant." Although the verdict only referred to his owner, Charles Marks, it was really Cheetah's character that had been on trial and by implication he had been deemed worthy to qualify for "one free bite." Thus ended the famous Montgomery Monkey Trial but the recollections of it would continue to bring laughter for many years to come.

Postscript: Many of those involved in the trial have now passed on but some are still going strong. The author is grateful to Churchill Marks, Fairlie Marks Odell, Ed Azar and Bill Moore for their help and recollections. Attorneys Azar and Moore have both had long and distinguished careers in the law. Ed still thinks that if he had been a little more experienced he could have kept the trial from getting off on a humorous bent, but given the circumstances and the characters involved, there is probably no lawyer alive who could have kept things on a truly serious plane.

The original case file is duly preserved in the basement of the Montgomery County Court House. The testimony at the trial was not transcribed, but a good portion of it is preserved verbatim in an account written by the able Montgomery reporter and free lance writer, Allen Rankin, that appeared in the September 1955 issue of the magazine. *Inside Detective*.

The house at 1222 South Lawrence was purchased from Charles Marks by the late John Englehardt Scott in 1958 and is still home to his widow, Mrs. June Scott.◆

[John B. Scott, Jr. is the author of a book, *Memories of the Mount,* filled with East Montgomery County history, humor and nostalgia. ED.]