

The Judge, the Law Clerk, and the Hippogriff

by [Fred McGavran](#) (July 2021)



Angelique, Léopold Burthe, 1852

Arraignments were the most boring part of Judge Denton Cowlege's docket. When a defendant appeared before a United States District Judge for the first time, the judge had to read a set series of questions to be sure the defendant had a copy of the indictment, a lawyer, a general idea what was going on, and was pleading guilty or not guilty. Lub Swenson's arraignment was as dull as the others, except the crime alleged was a violation of the Endangered Species Act, and the endangered species was . . .

"A hippopotamus?" Judge Cowlege asked Charlie Cole, the U.S. Attorney, thinking his eyes were playing tricks on him with the indictment.

"No, your honor," Cole replied. "A hippogriff."

A gasp rose from the spectator seats.

The judge looked out over his enormous mahogany paneled courtroom, built three generations earlier to impress and intimidate with the rods and axes carried before a Roman consul carved into the woodwork behind his bench. The courtroom was filled with attorneys he recognized from the Sierra Club, the SPCA, the Animal Defense Fund, the Humane Society, and other well-known environmental and animal rights advocates sitting among people in black clothing with multicolored hair and wildly painted faces. Everyone was looking at him as if expecting to hear something profound.

The sixty-seven year old judge waved his twenty-something law clerk to his side and said, "What the hell's a hippogriff?"

"An animal with the head and wings of an eagle and the back end of a horse," Amy Peale replied as calmly as if he had asked her for the citation to a case.

All he knew about hippogriffs was in a fantasy movie he had seen with a grandchild and a long-running TV series his

wife wouldn't stop watching even after he had explained how unbelievable it was. Suddenly he spun around in his high backed black leather chair to face the wall and started laughing, the first deep gut shaking laugh he'd had since he entered law school.

"Are you alright?" Amy whispered, kneeling beside him.

The courtroom deputy bounded up onto the bench to see if the judge had had a heart attack.

"A hippogriff, a hippogriff, Lub Swenson shot a hippogriff," Denton Cowlege chanted, nearly choking with laughter, as if he were back in a college production of a Gilbert and Sullivan operetta. "And who shall report, if this be a tort, the remedy to give it?"

"Shall we call a recess, your honor?" the court room deputy asked.

"I'll be OK," he gasped. Drawing a hand over his face as if replacing a mask, he turned to face his courtroom.

"Who are the people in black?" he said to Amy.

"Goths, maybe," she replied. His face was blank. "You know, like fantasy people into dungeons and dragons, and maybe some video gamers."

Judge Cowlege didn't know. Although wearing a black robe himself, he knew he would not play well to them.

So he said, "Oh."

The people in the spectator seats were getting restless. Usually a glance from the iron gray judge was enough to quiet the courtroom, but not today.

"I didn't know we had any hippogriffs around here,"

he said to the lawyers to regain control and nearly cracked up again.

"We don't, your honor," defense lawyer Hamilton Durgeon replied. "There's no such thing."

The courtroom rumbled in angry condemnation.

"Of course they exist," Charlie Cole snapped back. "The body's at the zoo mortuary."

"I'm filing a motion to dismiss," Durgeon continued. "Mythical creatures are not protected by the Endangered Species Act."

The spectators exploded, some screaming, "No! No!" while others embraced and wept dramatically.

"Order in the courtroom," cried Judge Cowlege, banging his gavel. "Another outburst and I'll clear the courtroom."

As the spectators seethed into silence, the judge set a trial schedule with the lawyers.

"File your motion to dismiss," he said to Mr. Durgeon, hoping he could dispose of the case quickly without any more public proceedings.

As the lawyers returned to their seats, Lub Swenson said, "Damn thing was eating my pigs. I had to shoot it."

The spectators erupted. U.S. Marshals cleared the courtroom while Swenson stomped out after his lawyer. The judge called a recess.

Denton Cowlege started laughing again as soon as he was settled at his desk in his chambers. How could Lub Swenson have shot something that didn't exist? How could a hippogriff be in the zoo mortuary? How could impossibilities coexist? In

twenty years as a lawyer and fifteen as a United States District Judge, reason had never failed him. Had everyone else gone mad, and was he the only sane person left?

“What’s so funny now?” Amy Peale demanded.

Whenever she was introduced, Amy said, “No relation to Norman Vincent,” as if her dour expression were not enough to show she did not practice positive thinking.

“It’s ridiculous,” the judge gasped, trying to regain his composure. “How can adults act like this is real?”

“It isn’t any more ridiculous than the rest of your cases,” Debbie, his administrative assistant, interjected. With her own children grown, she was very protective of Amy and always intervened when Amy and the judge disagreed.

Judge Cowlege looked at a print-out of his docket: crimes so bizarre they seemed designed to scare little children; civil cases ransacking the United States Code and state law where the only thing anyone cared about was getting or keeping money from the other side. He started laughing again at the thought the universe was governed by fear of punishment and love of money.

“Somebody has to deal with it,” Amy said, repeating what he often said to her when she complained of facing a difficult legal problem.

Judge Cowlege wasn’t so sure.

* * *

“The hippogriff perched in a yum yum tree, and burbled as it farted,” the hippogriff sang as it lay in a stainless steel tank of formaldehyde in the large animal surgery center at the zoo that doubled as the mortuary. “Oh come not near, lest I fear thy love for me be thwarted.” After a delightful night sampling exotic delicacies from the Asian

animals exhibit, it had retired to its tank to digest. The formaldehyde erupted as it farted, rattling the tank's lid.

"It's outgassing," Susan Carrington, DVM, said to her assistant Gwen Twokely as the two white-coated women watched the shiny lid tremble.

Even for women who had surgically probed the bowels of elephants and gorillas, the odor was alarming. They hurried across the cement floor and out into the administration room, closing the two large metal doors behind them.

"I'm not going back until the ventilation is working better," Gwen said.

A stretcher crew arrived bearing the remains of the Asian animals exhibit.

"We have to catalogue these," Dr. Carrington said to her assistant. "But let's give the operating room time to clear."

So they spent the rest of the morning gossiping with the stretcher bearers about the bizarre images the security cameras had caught of something with the head of an eagle and the rump of a horse flapping over the fence and gobbling up the Asian exhibit's inhabitants.

"Sounds like a hippogriff to me," Dr. Carrington opined.

"Maybe they come in pairs," Gwen added. "Like vultures."

The air quality was only marginally better when they reentered the operating room. Dr. Carrington was adjusting her recording device and Gwen was laying out what was left of the Asian animals on a dissection table when the hippogriff burped up Lub Swenson's bullet. It shot through the stainless steel cover, bounced off the ceiling and onto the dissection table,

where it rolled to a stop by the head of a recently decapitated Komodo dragon.

“That’s lucky,” Dr. Carrington said. “We needed that bullet for my report to that guy at the courthouse.”

“I don’t think we have enough formaldehyde on the hippogriff,” Gwen said.

“Maybe add a few more gallons when we finish up here,” the doctor suggested.

“Who next, who next, will dine with me?” the hippogriff sang, stretching out in the tank like a child in a bath tub. “I’m quite discrete so let us we meet today in time for tea, for tea, today in time for tea.”

Thanks to the air conditioning, the formaldehyde felt cool and refreshing to a creature that had spent centuries in much more difficult environments. Besides, formaldehyde killed the myriad mites and parasites that had tormented it for generations. The hippogriff almost regretted having to rinse off with a hose on the wall to keep from scaring away its prey with a medicinal odor on its nocturnal adventures. That evening, after Dr. Carrington and Gwen had spent the afternoon inventorying body parts from the Asian animals exhibit and wrapping them in plastic to be cremated next morning, the hippogriff emerged from its tank. Carefully separating the parts from the plastic, it enjoyed a plate of hors d’oeuvres before showering up for its next nighttime outing.

* * *

“How many briefs in the Swenson case?” Judge Cowlege asked Amy Peale when the hearing on Lub Swenson’s motion to dismiss was ten days away. He was only expecting the defendant’s main brief, the U.S. Attorney’s memorandum in opposition, and the defendant’s reply brief. With tan hair tangled as if she were still in college and a flair for worn

out clothes, Amy had been at the top of her law school class and was the best law clerk the judge had ever had.

“Sixty-seven,” she replied.

The judge shuddered. He didn't like reading briefs on his computer, so they would all have to be printed out along with the cases the parties cited.

“Sixty-four are friend of the court briefs,” she said. “Of course you can deny them permission to file their briefs,” she continued, offering him an attractive out. She watched him clinically to see how he would respond.

Denton Cowlege was not pleased. Denial risked inflaming the constituencies of the friends of the court and infuriating ideological judges on the Court of Appeals, who could reverse his decision, lowering his stature with other judges and lawyers.

“Prepare orders allowing the friends of the court to file their briefs and print them all out,” the judge said. “I'll come in Saturday to read them.”

That Saturday should have been one of the longest in his life. When he arrived in his chambers, he found a mountain of papers on his work table, but no summary from his law clerk to help him through them. He never had to ask her to summarize the briefs; she just did. Was she as troubled by the inanity of it all as he was? Now he would have to read briefs on every side of every issue and say something about each to show he understood their arguments and agreed or disagreed.

Limericks swirled through his head, and he started to laugh again.

*Around and around and around they danced,
The briefs in such profusion,
Can anyone say at the end of the day,*

How to end all this confusion?

He started with the defendant's motion to dismiss on the grounds hippogriffs did not exist and the U.S. Attorney's memorandum in opposition arguing that they certainly existed because one was in the zoo mortuary.

He hoped the Court of Appeals or the Supreme Court had already decided the case for him. No such luck. In their statements of facts both sides relied on a few lines from the Roman poet Virgil's *Eclogues*, a medieval Spanish bestiary, and two cantos in Ariosto's epic poem *Orlando Furioso* for the little known about hippogriffs. They were created through a carnal union induced by Satan between a griffin and an eagle. Citing a nineteenth century paper by French investigator Paulin Poulin that proved scientifically that they did not exist, the defendant ridiculed the U.S. Attorney's claim by asking rhetorically whether they were born live or hatched from an egg. No one, apparently, had witnessed either event.

Judge Cowlege was intrigued by the defendant's argument it was logically impossible to charge him with killing a hippogriff, because hippogriffs by definition were either mythical and nonexistent or mystical and immortal and thus could not be killed. How, the judge wondered, could something be alive and dead at the same time, mortal and immortal?

None of the cases cited even addressed that subject. Stymied, the judge started on the friend of the court briefs, thinking he would be stuck in his chambers all day. The Sierra Club found evidence for hippogriffs in strange claw marks on a cliff face in the Grand Canyon, and the SPCA and the Animal Defense Fund argued regardless whether they existed, the violent death of any rare creature at human hands was an offense against the Endangered Species Act.

The most heated exchanges were between the

evangelicals, who argued it would be sinful to hold that an animal created by Satan was protected under the Act, and the Goths and gamers, who argued hippogriffs had to exist to balance the natural world with its mystical counterparts. Despite the evangelicals' taunting, however, none of the Goths could explain why a hippogriff had suddenly burst from the mystical dimension into the real. The arguments reminded Judge Cowlege of his own dreams, where madmen argued points of law that did not exist, and he had to choose between them. So, like everything else he did not understand, the judge set the briefs aside.

Through the twisted logic and personal attacks that made legal briefs as ugly as op-ed pieces, however, he saw every argument hinged on a single issue: did the hippogriff exist? If it existed, it may or may not be protected by the Endangered Species Act, but if not, he could dismiss the case. So he decided to take the time-honored escape for every judge confronted with dueling briefs on a question of fact: he would withhold ruling on all the motions until the jury had determined the issue.

Monday morning, when he told Amy to draft the order denying the motions, she frowned.

"Is something the matter?" he asked.

"You told me a judge who denies all motions doesn't have any friends."

Judge Cowlege hated being quoted to himself.

"Amy, there are some cases where both sides can be right. That's why precedents are overruled."

"There isn't any precedent here," she countered. "You'll have to create one."

Nevertheless, by 10:30 AM she had presented him with

the order, and by noon it had been entered in the clerk's office for all the world to see.

Tuesday morning he drove into the courthouse underground parking garage past TV trucks lined up at the curb. Demonstrators with microphones and placards crowded the courthouse steps, where reporters were shoving microphones into screaming faces while cameramen filmed the melee.

There must be a hearing today on Judge Liepzig's abortion case, he thought, relieved he didn't have to deal with such a highly publicized matter. Entering his chambers, he caught Amy Peale reading an on-line newspaper on her computer. As soon as she saw him, she returned to his docket.

"What were you reading?" he asked.

"You won't like it," she replied, opening an op-ed piece in the *New York Times*.

The judge bent over and read a savage attack on himself for failing to deny the defendant's motion to dismiss. Now he had invited the wholesale slaughter of hippogriffs and denied all other mythical creatures equal protection of the law.

"Are there others?" he asked, pulling up a chair beside his law clerk.

Without answering, she started showing him dozens of angry blog posts by the Sierra Club, the SPCA, the Humane Society, the Animal Defense Fund, and every major evangelical church, not to mention every special interest group that believed hippogriffs were more real than federal courts. Cartoons of him ranged from the comic to the demonic. Writers only agreed on one thing: he was the worst federal judge in the country. Without speaking he stood up and went to his desk.

Judge Cowlege always looked forward to his second cup of coffee reading *The Wall Street Journal* to reaffirm his conservative convictions and calm his mind before plunging into the day's business. This morning, however, he was still nervously shuffling through the first section when Debbie brought the coffee. From her expression, things were not going well.

"Monsters Invade Federal Court" screamed the caption of the *Journal's* lead editorial. Once again, the editors raged, a left-leaning federal judge was so out of touch with reality he allowed a monster more dangerous than the snail darter to run away with the Endangered Species Act and threaten to bring down the capitalist system with it. What would this liberal judge protect next? Unicorns? Satyrs? Dragons? Judge Cowlege folded up the paper and dropped it into the waste basket beside his desk. Like most judges he hated sarcasm directed toward himself, and like all federal judges appointed by President George W. Bush, he hated being called a liberal.

* * *

The months before the trial were the most difficult in Judge Cowlege's life. For security a U.S. Marshall drove him from home to the courthouse and back, accompanied him if he went out for lunch and on his evening walk and trips to the dry cleaner and the wine store. He was advised not to play golf because of the danger of snipers. Worst of all, he had to cancel his subscription to *The Wall Street Journal* to avoid livid reports on the case and op-ed pieces questioning his judgment and his sanity.

Amy Peale was affected by the turmoil, too. He could not say her work had slipped, but her unwavering analyses of facts and icy summaries of law in other cases had acquired a more distant tone, as if she were handling the facts with latex gloves and the law sometimes tainted rather than

illuminated the issues. To counteract her doubt, Judge Cowlege became sharper and testier in his opinions, cutting through the arguments with brutal logic and deciding every issue set before him.

"What's going on with Amy?" he asked Debbie when Amy had taken an afternoon off, something she had never done before.

"I'm not sure," she replied, meaning she knew but didn't want to tell him. "She likes to go to the zoo to relax."

"I didn't know she liked animals so much," he continued, trying to draw her out.

"You have to like somebody," Debbie said returning to her computer.

Like the arraignment, the final pretrial conference in the Swenson case should have been a set piece: the lawyers would submit an agreed statement of facts for the jury, identify witnesses and exhibits, and the judge would review proposed jury instructions and any legal issues he and the lawyers thought might come up during the trial. Instead, the lawyers were at each other's throats as soon as they entered his chambers.

He's withholding evidence!" Hamilton Durgeon screamed at the U.S. Attorney.

"What evidence?" Judge Cowlege asked.

"The autopsy report!"

"The report on an animal is called a 'necropsy,'" Charlie Cole replied, placing his fingertips together and smiling.

Judge Cowlege glanced at Amy. She nodded.

“So where is it?” Durgeon demanded.

Cole slid the necropsy across the table to the defense attorney.

“You might be interested in this, too,” he said, rolling the hippogriff’s bullet like a marble to Durgeon. “Forensics matched it up with your client’s gun.”

Durgeon wasn’t listening.

“You can’t do a post mortem on something that doesn’t exist!” he exclaimed. “Your honor, I demand a dismissal.”

“It has to be dead,” Cole argued pointing to the report. “Look at all the formaldehyde they’ve used.”

In any other pretrial conference, the judge would have threatened both attorneys with contempt. Now, however, he leaned back in his chair and laughed.

*They yammered yammered yammered and never said a thing.
Oh tell me sir, if you’re so wise,
Can a hippogriff perch on a swing, a swing?
Can a hippogriff perch on a swing?*

The pretrial conference broke up without anything being decided except they would take the jurors to view the hippogriff as soon as they were empaneled.

Despite the judge’s misgivings, Amy handled the trial preparations brilliantly, even drafting an order rotating the reporters through the courtroom so all of them could spend a few hours in the trial. The order was written so well it only drew a few objections, which the Court of Appeals dismissed so quickly the trial began on schedule.

It took three days to empanel the jury. As in many controversial cases, potential jurors soon learned which biases to express to be dismissed and escape from a courthouse

ringed by protesters and guarded by U.S. Marshalls. U.S. Attorney Charlie Cole and defense attorney Hamilton Durgeon attacked the remaining potential jurors with the subtlety of psychoanalysts and the savagery of op-ed writers to discover hidden biases and force their removal.

On the fourth day the jury was finally impaneled, and Cole and Durgeon gave their opening statements. Spectators and press listened open-mouthed to a dazzling battle of wits to be repeated on countless talk shows and blogs until every sentence had an army of proponents and detractors. Jurors reacted as if they were watching a stand-up comedy act, alternately holding their breaths for the punch line and then guffawing as one or the other lawyer ridiculed his opponent's finest points. As the jurors filed out for the noon recess, several were snickering. The judge overheard one say, "What bull shit."

"I'm afraid we've lost the jury," he said when he and Amy were safe in his chambers.

"It's very difficult to litigate ontology," Amy replied.

Debbie looked at them as if both of them had lost their minds.

"What next?" Debbie asked.

"The mystery is about to be solved," the judge replied.

After the noon break, Judge Cowlege ordered the courtroom deputy to take the jurors to a bus in the underground garage and escort them to the zoo to view the hippogriff. Reporters would follow in their own busses and TV trucks. Amy had drafted another brilliant order allowing the media to enter the zoo mortuary after the jurors to view and film the remains.

Leaving the downtown, Judge Cowlege thought the line of cars and busses going to the zoo was as long as President Bush's cortege when he had visited the city during his reelection campaign. He had signed Amy's orders bringing in marshals from other courts, some over 200 miles away to assure order at the most closely watched trial in the country.

The zoo, too, had carefully prepared for the oddest visitation in its history. There was more interest in the hippogriff than in the birth of a baby hippopotamus that had electrified the animal loving world several years earlier. Dr. Carrington supervised her operating crew as they raised the hippogriff out of the tank on a lift and laid it on the steel operating table. Everyone except the hippogriff was wearing a bio-hazards suit and face masks to protect them from the smell.

"Whew," Gwen said. "Pretty ripe, isn't it?"

"Wheel it over to the hose and rinse it off," Dr. Carrington ordered. "And give it a good shampoo."

The team hosed the hippogriff off and then lathered up the horse end with the latest biodegradable soap and the eagle end with Woolite. Half way through the procedure, the hippogriff awakened, but it was so pleasant to be stroked and massaged by so many latex-gloved fingers that it lay back and relaxed. Its last encounter with human beings in Thebes four thousand years before had not gone so well.

"Doctor, I can't find the bullet hole," Gwen said, feeling around the hippogriff's neck.

"They've got the bullet," Dr. Carrington replied. "That ought to be enough for them."

In the parking lot marshals piled out of cars to separate the jurors from the usual visitors and a mob of placard waving and chanting demonstrators. Judge Cowlege and Amy, followed by the

two lawyers, Dub Swenson, a marshal and the court reporter, led the procession of jurors and reporters between two lines of marshals to the surgery center and mortuary. Inside an almost silent air conditioner chilled them with air tinged with formaldehyde. Two women in white lab coats met them.

“Judge Cowlege?” one asked. The judge stepped forward to shake her hand, while the court reporter set up her stenotype machine to take down every word. “I’m Dr. Carrington.”

Reporters at the back were holding up cell phones and cameras to film the scene.

“You won’t all fit in the mortuary at the same time,” Dr. Carrington continued.

Amy had even anticipated that.

“My law clerk and the court reporter and I and the defendant and the lawyers and a marshal will go in first, then the jurors with a marshal, and then the press in groups of six.”

The other white-coated woman opened the metal doors at the back of the room. As they entered the operating room and mortuary, the smell of formaldehyde mingled with Woolite met them. Facing them on the operating table was the rump of a horse lying on its side.

“This is it,” said Dr. Carrington.

The rump twitched, and the hippogriff farted.

The court reporter dropped her machine, buckled, and vomited onto the cement floor.

“I told someone in the judge’s office this wasn’t a good idea,” Gwen said. “Grass eating animals are plagued with gas.”

The odor was alarming. Nevertheless Judge Cowlege, Amy Peale, Charlie Cole, Hamilton Durgeon, Dub Swenson, and a U.S. Marshal followed the veterinarian around the body. It had the hind legs and tail of a horse, but a white wing was folded against its upper side and instead of front legs it had enormous talons. When Judge Cowlege hesitated, Amy Peale walked around him. He followed her. The hippogriff had the head and beak of a huge eagle with white feathers lying perfectly in place.

“Guess this proves it’s real, Hamilton,” Charlie Cole taunted the defense attorney.

“Damn straight!” exclaimed Lub Swenson. “If I had it to do over . . . Oh, shit!”

The eye facing up had popped open and was looking at him with the cold yellow stare of an eagle about to bolt down from the sky onto its prey. For the first time in fifteen years as a federal judge, Denton Cowlege was speechless. The eye winked.

Like a glacier about to crash into the sea, the hippogriff shuddered. Then a hind leg stretched out, nearly knocking the marshal down.

“It’s immortal!” Hamilton Durgeon yelled at the U.S. Attorney. “You can’t prosecute a man for killing something that’s immortal!”

The monster gripped the steel table with its talons as its horse’s legs slid onto the floor. Swinging around to face them, it dropped onto its talons, stretched out its wings, and shook like a dog getting out of a bath. Soap and water showered the onlookers. The court reporter was crying hysterically, and the U.S. Marshal was drawing his gun.

“No!” Amy screamed.

"Peace, brother," said the hippogriff with every good intent. "Now whom do I have to thank for this most bizarre event?"

"Bullets don't do much to it," Dr. Carrington said to the marshal. "Besides, it's against zoo policy to shoot a zoo animal without first trying non-lethal alternatives."

"There's a dispute whether you exist," Judge Cowlege addressed the hippogriff. "And whether you're immortal."

"How odd that you should ask," the hippogriff retorted. "So I'll fly away and leave you today no wiser than when you started."

"No!" Amy cried again. "You have to stay. We can't solve the problem of existence and nonexistence without you."

"Or decide the case," the judge pleaded.

"You'll be so alone," Amy anguished. "Where will you go?"

The hippogriff paced back and forth and leaned against the table. "Shall I speak to them of the nature of things? Or escape while I'm still able?"

"Alternatives can co-exist, and so can contraries," Amy argued. "Let me go with you, and we'll work things out together."

"Do you give rubdowns?" the hippogriff made a quite bizarre proposition. "I'm often stressed and cannot rest. Let's leave this inquisition."

Amy climbed up on the operating table and onto the hippogriff's back.

"Avaunt!" she cried, and the hippogriff burst into song:

*Mellow were the winds
That wafted me from Spain.
And if you'll go, Oh please say so;
We'll fly back there again.*

She bent over the hippogriff's back with her arms around its neck as it ducked under the door. Shrieks from the jurors awaiting their turn in the operating room were drowned by a roar from the crowd as it trotted outside. Judge Cowlege rushed out in time to see it crouch like a cat about to spring and leap into the air. Then it soared into the sky with Amy hanging on like a steeplechase rider soaring over a fence.

"Where does this leave the case?" a reporter shouted, shoving a microphone into the judge's face.

The hippogriff was a speck in the afternoon sun along with all law and rationality.

"Where, indeed?" Denton Cowledge answered, wondering what visions Amy would have and what mysteries she would see without him. Wrapped in his black robe, he was sealed inside the sterile biosphere of the law, unable to touch the wonders that flitted by outside.

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