



Criminal Liability for a Horse at Large

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Criminal Justice

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Introduction

Okay, this is a different topic than usual for the *Criminal Justice* column. We have been discussing the over criminalization of business, the death penalty, over crowded jails and prisons, sentencing reform, the required use of investigators in criminal litigation, the ethics of the Public Defender's Office and the like. But in this column, we will talk about what happens if your horse gets out.

I had a case in Napa Superior Court last year having nothing to do with horses. However, when I was leaving after one of the court appearances, the road a few miles from my hotel was blocked and all traffic was diverted to an alternate route. The cause of the road closure was all over the news. Five horses had gotten out of their pasture and come onto Highway 121 just east of Old Sonoma Road. In the middle of the night, a motorist hit the horses, killed all five of them and died himself in the crash.[\[1\]](#)

Having a small ranch myself and representing fellow ranchers from time to time, this accident caused me once again to think about the problems associated with horses or

cattle at large. In rural areas, including large parts of the County of Santa Barbara, there are horses and livestock fenced next to country roads, state highways and even freeways. Many of us have seen livestock that breached the fence and we have called 911 if they were in danger of getting onto a roadway. The Sheriff and California Highway Patrol generally respond and contain the loose animals until someone can be called.

We know that allowing a large animal to escape creates potential civil liability. We advise our clients to have good fences and adequate liability insurance. But, it turns out, there are circumstances arising out of a horse at large situation that might result in criminal liability. And, yes, Justices of the California Court of Appeal happen to have authored the leading case in the *country* on this very subject.

Animal at Large and law Enforcement

In Santa Barbara County, when a horse or other livestock breaches a fence in the vicinity of a roadway, the Sheriff or California Highway Patrol often gets involved. Passing motorists may call in to report loose animals. The Santa Barbara Sheriff has a Rural Crime Unit which includes a mounted component and they also try to maintain relationships with ranchers. The California Highway Patrol generally does the same. The agencies have access to a branding book so they can locate the owners of lost horses or livestock.

Law enforcement is also aware of the danger that large animals can pose to people on the roads and highways. Seldom is there such an horrific disaster as occurred in Napa on Highway 121 last year. But horses or livestock, particularly at night or in limited visibility, can cause a serious, even fatal automobile crash. This is true of deer and other wild animals as well. The difference, of course, is that the domestic horses and livestock are owned and under the control of humans. And where there is injury or death and a human to blame, there is the potential for litigation.

Law enforcement generally takes the approach of containing the situation. Many officers in this area have ranch experience but even those who do not have some minimal training on how to contain cattle or horses while locating the owners. Sometimes they are able to get the animals back to the other side of the fence, sometimes they can corral them while back up and the owner responds and sometimes they just have to shut down the highway until everything is under control.

Santa Barbara witnessed a bizarre event in 2002 where CHP Officers shot and killed six head of cattle that had broken out. The heifers were grazing in a lettuce field a between 50 and 200 yards from Highway 1 near the Oso Flaco Ranch in Guadalupe. The officers did not consult with the Sheriff's Rural Crime Unit, check the branding books or call State officials who could have located the owner. Instead, after three hours, the CHP Officers shot and killed the heifers with rifles and hand

guns while they were grazing in a lettuce field.^[2] But this type of response is unusual.

In other situations, of course, the ranch employees or owners become aware of the fact that the horse or livestock have gotten out and they go about retrieving them without involving law enforcement. And, unlike the tragic situation in Napa or Guadalupe, no one is injured or killed and the animals live to try to escape another day. If there is injury to person or property, there may be civil claims and litigation but that is generally the manner in which the situation is resolved.

Criminal Liability

It turns out that, in California, there is precedent for a criminal prosecution of the owner of a horse for allowing it to escape the pasture if it results in death. This appears to be a novel application of the law and apparently there are no other cases in the country extending criminal liability in this fashion for not keeping a horse contained.^[3]

The case, *Sea Horse Ranch v. Superior Court of San Mateo County* (1994) 24 Cal.App.4th 446, is still good law although the issue has not been addressed by the California Supreme Court. While it is precedent, there is every reason that it should be strictly construed since it breaks new ground and involves fairly aggravated and specific facts.

In *Sea Horse Ranch*, a motorist was travelling on Highway 1 near Half Moon Bay at about 7:00 p.m. in the month of March. It was dark and there were no street lights or other illumination immediately outside the fence or gates to the Ranch. The motorist hit a horse and the resulting accident caused the death of the passenger, a 76 year old woman. When the CHP arrived they found eight horses running on the highway.

What made this a more aggravated case, however, was what the government contended was actual criminal negligence above and beyond the accidental escape of horses or livestock from a fenced area. The decision in *Sea Horse Ranch* is premised on these kinds of aggravating factors being present.

First, according to the government witnesses, the horses had been contained in corrals and the corral fencing was atrocious. The fence posts were old and rotting. Where the horses got out, the cross boards were knocked off the posts. The boards were broken out from the inside, with no sign of vandalism. The cross boards were mounted improperly making them more easily pushed out by animals on the inside. The fence was so dilapidated that when the officer leaned on a cross board, it fell off. There was no reinforcement or electrical deterrent to keep the horses in. In

addition, there was no perimeter fencing to keep animals on the larger property and off of Highway 1.

Second, there was evidence, though contested, that there had been increasing escapes of horses from the ranch after the ownership changed to the current people who had taken over the premises. There was also testimony that escapes had resulted in horses coming on to Highway 1 on four separate occasions within the prior two year period.

Third, the Court emphasized that there was no lighting at or near the fence or gate abutting Highway 1. It is hard to determine how much weight the Court put on this fact. It seems that it is more likely to be the case that there is not lighting on rural highways and it is hard to imagine a rule that ranch owners would have to keep all fences abutting roadways lit. In addition to the incomprehensible environmental cost of lighting all ranchland fences abutting highways, such a statewide requirement, if met, would probably make California uniquely visible from space.

The *Sea Horse Ranch* case, though is still fairly limited in scope. It was heard by the Court of Appeal on a Writ of Prohibition based on a denial of a Motion pursuant to 995 of the Penal Code. That means that the Court was deciding only if there was probable cause for the magistrate to hold the defendants to answer at the end of a preliminary hearing. The findings of the magistrate hearing the preliminary hearing were given deference and the standards, including admission of hearsay, are much different than trial. The Court reversed the holding order as it pertained to a misdemeanor charge of keeping a mischievous animal under Penal Code 399. But it held that there was sufficient evidence adduced that the named individual defendant, who was also president of the corporation owning the property, had personal knowledge and involvement. This was enough to allow the case to go to trial for involuntary manslaughter against the individual and the corporation.

What to Do?

For those advising ranch owners, this is one more reason to remind them that compliance with regulations and common safety practices is critical. As with all operations, there are seemingly endless rules and regulations promulgated by federal, state and local entities. Where there are no regulations, adherence to common practices will help avoid liability. In *Sea Horse Ranch* there were several things that could have been done regarding the fence itself. They could have lined the wooden fence with no-climb wire fencing; they could have nailed the cross-boards to the inside of the posts to keep them from being pushed out; they could have used an electric wire inside the fence; they could have maintained the wooden fencing or replaced it with vinyl or metal; and they could have had a perimeter fence between the property and the highway.

But, as we know, fences are not impenetrable. They can break down due to unforeseen causes. And fences have gates - they open and animals can get out. There is no substitute for having a truly experienced ranch hand inspect the fences and gates to try to avoid escape risks. And there is no substitute for constant inspection regarding this and all other potential hazards around the property.

If faced with a potential criminal investigation, you have to look closely at the *Sea Horse Ranch* case. First, it was merely a denial of a Writ of Prohibition on a 995 Motion on the issue of probable cause. Second, it involved pretty egregious allegations of facts that tended to indicate that the particular ranch owner was not maintaining his horses safely and that he knew of the danger from prior escapes.

Conclusion

In the end, although the *Sea Horse Ranch* case is cited as an anomaly in the law of the United States as creating criminal liability for a horse at large, it is pretty well confined to its facts. But, to be forewarned is to be forearmed.

[1] Marsh Dorgan, “*Driver, Horses, Killed in Crash that Closed 121,*” Napa Valley Register, March 11, 2009.

[2] Karen White, “*CHP Shoots Cows,*” Santa Maria Times, June 3, 2002.

[3] See, e.g., Corpu Juris Secundum, Animals § 303.