

# Meet the Lawyer Playing Traffic Cop in Waymo-Uber Showdown

By Ben Hancock

**S**AN FRANCISCO — In the furiously paced, headline-grabbing legal feud between Google's driverless car unit Waymo and rival Uber, there are huge sums at stake, big Silicon Valley egos, and armies of high-octane lawyers on either side.

And then there is John Cooper.

A lifetime litigator at the mid-size San Francisco law firm Farella Braun + Martel, Cooper was tapped in April to be the "special master" in Waymo's trade secrets case against Uber, putting him at the center of what could be seen as a battle for the future of the autonomous vehicle industry.

It's a role that is more common in complex civil cases, like anti-trust class actions, where there are dozens of parties and different types of claims, or patent cases involving sophisticated technology. In the multidistrict litigation targeting Volkswagen with claims over its diesel emissions scandal, former FBI Director Robert

Mueller III served in a similar role as "settlement master."

But in a sign of just how heated the Waymo-Uber spat has become, U.S. District Judge William Alsup of the Northern District of California appointed Cooper to be a neutral party who could head off fights over access to sensitive documents, and ensure that Uber, which has earned notoriety for bucking authority, is complying with the judge's orders.

Cooper's role is comparable, perhaps, to a glorified traffic cop. When Waymo's lawyers and experts need to inspect Uber's devices to gather evidence for their trade secrets theft claims, Cooper will stand by to ensure they're not abusing the opportunity to get up-close-and-personal with a competitor's technology. If Waymo's legal team says that Uber has failed to hand over relevant files, Cooper can look and make a first call as to whether Uber is permitted to keep them under wraps.



Courtesy photo

John Cooper of Farella Braun + Martel.

If either side still disagrees, they can bring the issue before Alsup or U.S. Magistrate Judge Jacqueline Scott Corley, who has been put in charge of handling the case's prolific discovery fights. But the idea is that Cooper commands enough respect from both sides that they will generally abide by what he says—and keep the judges' dockets from overflowing.

So far, that appears to be the case. At a discovery hearing in late May, Corley thanked Cooper for his work and said he had been “invaluable” in keeping the case running.

It’s not an altogether unfamiliar position for Cooper, a native Coloradan who speaks in a calm, friendly tone that seems removed from the hyperventilating pitch of Silicon Valley’s legal skirmishes. He served as special master before in the early 2000s in the civil antitrust cases against Microsoft Corp. that were brought as follow-ons to the Department of Justice’s anti-monopoly action.

More recently, Cooper was also called on by Alsup to represent an independent expert that the judge appointed in a billion-dollar copyright case between Oracle Corp. and Google Inc. Alsup, known for his pointed skepticism, didn’t trust the damages numbers that either side was pitching.

When asked why he had volunteered Cooper’s name again for the Waymo case—in fact, without consulting Cooper first—Alsup said in an email to The Recorder that Cooper is a “genuine trial lawyer of the highest caliber and, better still, a member

of the American College of Trial Lawyers.”

The judge added: “Those are his main qualifications but he’s also a IP lawyer, so he has all bases covered in serving as a special master in this case.” Alsup also said that he’s “proud to call [Cooper] a friend, dating back to the mid-1980s.” (Apparently not wanting too much to be made of that fact, the judge signed off his email: “WHATEVER.”)

Cooper declined to be interviewed for this article. But those who have interacted with the Farella partner characterize him as an old-school litigator, with a no-B.S., “get to it” attitude.

“I would characterize him as quietly confident,” said James Kearl, the Brigham Young University economics professor Cooper represented in the Google-Oracle case. “He was never a guy that needed to match ego with ego. But John is a confident guy, he knows where he stands.”

In that case, Cooper’s job was to help Kearl know what he had to prepare for the court and guide him through depositions, including by taking Kearl’s academic questions and putting them to the experts that Oracle and Google

had hired. He was also going to be the one to examine Kearl on the witness stand, although neither *Oracle v. Google* trial reached the damages phase where the expert would have testified.

There is a key difference between the Oracle case and the Waymo litigation: Cooper and his associates are getting paid this time around. Although Cooper worked pro bono in *Oracle v. Google*, he’s charging \$1,100 per hour in the driverless car case, split 50-50 by the companies.

At an April 13 hearing, Alsup made a point of noting that. “Everyone ought to know that Mr. Cooper pro bono did a huge thing in the *Oracle versus Google* case, and he did that without any compensation,” the judge said, according to a transcript. “[A]nd he’s a model of what lawyers are in this district, and so—but this time I want it to be clear, you get paid.”

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