



# FABLES IN LAW, CHAPTER 8

## LEGAL LESSONS FROM FIELD, FOREST, AND GLEN

*D. Brock Hornby*

We are pleased to present the second installment of the hoped-for (see 19 GREEN BAG 2D 95 (2015)) third trilogy of Aesopian legal fables by Judge Hornby.

— *The Editors*

### THE DAY THE WOODCHUCK BECAME A RAT

Advocates Fox and Woodchuck were attempting to settle a dispute between their respective clients, employer Muskrat and her employee Otter. Fox explained to Woodchuck that, regardless of the dispute's merits, Muskrat simply could not afford to pay what Otter wanted. Woodchuck thought that was plausible, but asked Fox to provide financial statements from Muskrat to support her asserted resource limitation. Muskrat was reluctant to provide them because she did not want her financial affairs to be public, especially to the creatures that worked for her gathering mollusks. Woodchuck assured Fox that he would not disclose the financial statements to Otter if he could see them himself and then advise Otter what he

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thought Muskrat could pay. On that basis Fox disclosed the financial statements. When Woodchuck saw them, he lowered Otter's demand and the parties were very close to settling. In a settlement conference in front of visiting arbiter Condor, the advocates and clients were all present, and Woodchuck decided to try to get a bit more for his client. In supporting his request for more, he said to Fox in front of everyone, "I see that Muskrat is taking 1,000 surplus mollusks out of the business each quarter. She should be able to pay more in settlement." Muskrat was outraged at the breach of confidence and the fact that now her employees could know her financial affairs. She withdrew her previous offer, asked for the return of her papers, and refused to settle the case. Fox vowed to herself never to accept Woodchuck's promise of confidentiality in the future.

*Moral: A lawyer's vow of confidentiality is sacred. Breaking it causes damage that is almost impossible to repair.*



### PROFESSOR BEAVER'S AUTOBIOGRAPHIES

Academy law student Gophers regularly asked Professor Beaver for letters of recommendation as they sought employment with an arbiter or advocate. Professor Beaver saw the requests as part of his job, and was willing to oblige. But when arbiters and advocates received such letters from Professor Beaver, often the letters told them more about Professor

Beaver – the courses he taught, his teaching techniques, his research interests – than about the Gopher who was seeking employment. On the other hand, arbiters and advocates learned over time that when Professor Beaver was truly enthusiastic about a Gopher, he sent a quite different type of letter, or even called directly, and spoke then only of the Gopher's qualities and diligence, not Beaver's own pursuits. The difference was even more substantial when Professor Beaver was furnishing the reference to a personal friend.

*Moral: There are references, and then there are references. When the professor writing a letter of recommendation has little to say about the student, the letter tends to fill up with information about the professor. Convincing references are far more focused on the candidate, particularly if the professor cares about his or her relationship with the person receiving the reference.*



## THE BEMUSEMENT OF THE COYOTES

Coyotes – legislative staffers on the Pine Forest's Capitol Hill – labored long into the night trying to draft language that would satisfy both sides of the aisle in the House and the Senate on important environmental legislation for the Forest. But many of them were young and inexperienced. Even those who had been at the job longer often had difficulty assessing the complex economic and social forces that motivated the denizens of the Forest Glen, what the new rules they were drafting would cost, or how they would actually play out in real time. Various lobbyists suggested language, but they were not always candid about how it would work in practice. So Coyotes crafted language as best they could, often with inadequate appreciation of how varying interpretations could affect

its consequences. Sometimes after consulting their bosses, they chose language that was intentionally ambiguous so as to avoid a floor fight over the legislation. Other times some of them drafted legislative history that would support an interpretation that their particular boss preferred but that was not obvious from the statute's language. The Senators and Representatives ultimately voted the statutory language into effect. Months or years later, Owl was compelled to interpret the statute, with Fox and Snake arguing vehemently over what the words actually meant. Owl consulted dictionaries, considered what the legislators had meant the last time they used such language (even though they were different legislators and different staffers), sometimes consulted the legislative history, and used other interpretive devices to finally produce a decision. The Three Vultures did the same on appeal. When Coyotes reviewed Owl's and the Three Vultures' decisions in a Pine Forest Capitol Hill pub late in the evening, they were alternately thrilled, aghast, or bemused at the interpretation that Owl and the Vultures had come up with.

*Moral: In language – especially in statutes – all is not always what it seems to be.*

## THE RISE OF THE DOE<sup>1</sup>

Doe became an advocate when many creatures in the Forest still considered that a novel idea, and she faced initial prejudice in securing work. Yet not only did Doe prove to be a skilled and able advocate, but she also became a leader in developing and promoting better ways for other advocates to organize their practices efficiently. Doe practiced her own advocacy in a distant and beautiful place, and championed her better practices throughout the Forest. She became so well-regarded for her leadership, organizational skills, and ability to inspire and motivate others, that she became the first Doe ever to be elected President of the Forest-wide Association of Advocates. Later she became the first Doe ever to be Presi-

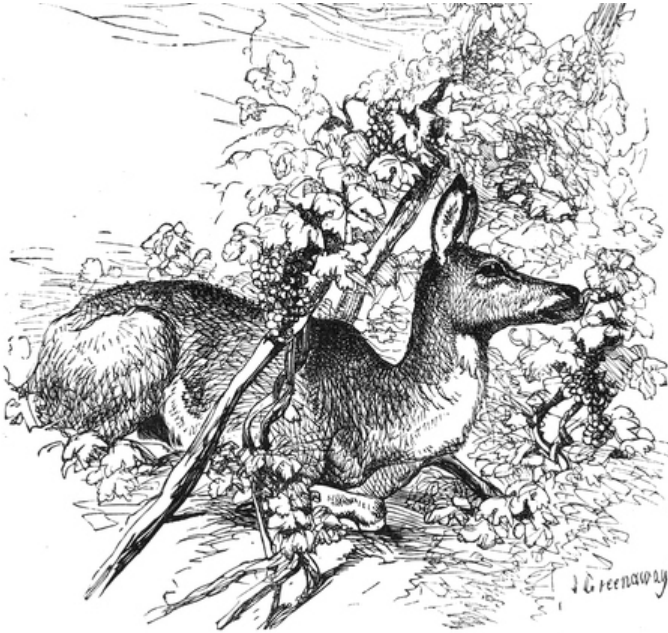
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<sup>1</sup> *Editor's note:* Judge Hornby originally composed this fable to honor Roberta Ramo, and included this inscription: "Dear Roberta, as you complete your outstanding tenure as President of the American Law Institute, please read this Hornby Fable of Forest and Glen as a mark of my esteem for you. Do not be surprised if it turns up in a forthcoming issue of the *Green Bag* and gets reprinted in the *ALI Reporter*. Thanks for all you have done for the ALI."

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dent of the Forest's preeminent law reform organization. Throughout her career, Doe ran the organizations over which she presided with unflagging energy and diligence, but also kindness and understanding of how her words could motivate and affirm. As a result, she was recognized and welcomed wherever she traveled. The creatures of the Forest were unanimous in their view that the Forest benefited greatly from Doe's personality, character and skills.

*Moral: When someone overcomes prejudice, works diligently, rises to the top of the organizations where she devotes her energies, and does the job right, the world becomes a better place.*



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