



FABLES IN LAW, CHAPTER 11

LEGAL LESSONS FROM
FIELD, FOREST, AND GLEN

D. Brock Hornby[†]

THE DONKEY WHO KNEW HIS KNACK

Donkey was an advocate with abundant jury trial experience. He was not strong on his legal learning; instead he hired Gophers straight out of law school to do his research and to sit next to him at trial and whisper legal advice to him when Owl asked him a question or the opposing advocate challenged him on something he had done or said. But Donkey had a knack for relating to the jury creatures, speaking in ways familiar to them, and appealing to them through his apparently bumbling manner (which they soon realized was not bumbling at all). Donkey took advantage of any willingness by an opponent to give him a break on procedural issues, but blithely refused to return the favor. He did not hesitate to antagonize Owl, something most advocates avoided at all costs. Somehow at the end of a trial, Donkey could spin together the evidence in his closing argument into a compelling case for his client, and he developed a reputation as a very

D. Brock Hornby is a Senior District Judge on the U.S. District Court for the District of Maine. His “Fables in Law” have been appearing in the Green Bag since 2013.

D. Brock Hornby

successful trial advocate. In later years, hard living impaired some of his skills. But fear of his repeated successes with juries still led many opposing advocates to settle rather than risk a trial.

Moral: Being a legal scholar is not the same as being able to persuade a jury. The latter is a skill in which the esteem of the judge and opposing counsel plays little role.



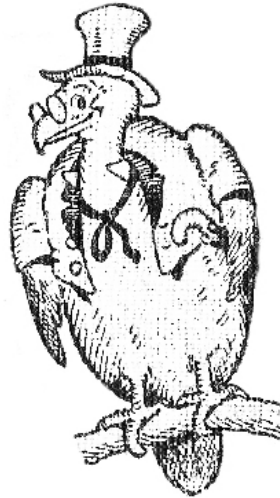
THE RACCOON'S
ADMIRABLE REPRESENTATION

Parties appearing before Owl were often mentally or emotionally challenged. Even in a criminal case they sometimes declined the assistance of an advocate, or “fired” successive advocates provided to them, because they could not get along with the advocates or rejected their advice. Mole was just such a creature. Mole had been convicted earlier of internet fraud, but Owl had taken pity on Mole’s mental challenges and sentenced him to probation rather than confinement, hoping that Mole would behave under supervision so as to avoid custody. But Mole was unable to comply with the conditions of probation, and engaged in further online fraud, and so he was back before Owl for revocation of probation and assignment to custody. After irreconcilable differences between Mole and his first two advocates, Owl appointed long-suffering Raccoon to represent Mole, knowing that no one had more patience and kindness with clients than Raccoon. Raccoon

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went to Mole's distant burrow to bring him to the tribunal, argued for the minimum confinement possible, helped move his furniture to storage when Mole was incarcerated, rescued Mole's companion animals and arranged for their care during Mole's custody, spending hours for which she could not seek compensation. Mole showed no gratitude, but tribunal personnel recounted the tale as an example of how advocates of integrity and goodwill pursue the highest goals of the legal system.

Moral: There still are lawyers who practice law as a matter of public service and assistance to the afflicted, even when not well remunerated. Their service provokes admiration on the part of those who observe it, but in the end it must be its own reward.



THE VULTURE'S GLAMOROUS ADJUDICATION

One of the Vultures was previously a law professor like Beaver. As a law professor she was popular for making provocative statements both in class and in law review articles. Several of her writings were very influential. In fact, the rest of the Academy viewed her as a “cutting edge” legal scholar. When she became an appellate arbiter, this Vulture maintained her provocative writing style. It continued to be a hit within the Academy, and Beaver and his colleagues lauded her opinions. Even the journalist Magpies flocked to write about them. Other Vultures and trial arbiters like Owl and Condor

were less enthusiastic about her attention-getting approach (especially when their decisions were the topic). But this Vulture became enamored of the acclaim for her legal pronouncements, and arrogance inclined her to sloppiness in dealing with the factual basis for what she wrote. Fox and other advocates came to distrust how fairly she would treat the record on appeal, and what she might add to it by her own online research that they could not challenge. But the Magpies and the Academy, oblivious to these concerns, continued to laud this Vulture's influence unqualifiedly.

Moral: Journalists and law professors have different appreciations of an appellate opinion than do trial judges and lawyers, and therefore different assessments of the opinion's quality. Acclaim is for royalty and Hollywood; it seldom improves a judge.



THE SNAKE'S UNFORTUNATE NEED FOR SECRECY

Snake prosecuted crimes committed in the Forest Glen. Snake learned over time that, in order to prove illegal red currant importation – a crime committed in secret and without obvious victims – he needed some of the involved creatures to cooperate and provide evidence against the others. To that end, in exchange for their cooperation Snake offered leniency to some guilty creatures in how they were charged or sentenced. However, among the criminal kind of creatures, there was great animosity against these

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“snitches” and it sometimes resulted in great violence to them or their broods. In response to these threats, Snake and other prosecutors, and Raccoon and other defense advocates, tried to keep the cooperation hidden. They asked Owl to seal the cooperation agreements and, when the cooperating creatures were sentenced, to close the tribunal to the reporting Magpies and the public, at least when the cooperation was discussed. As a result, the rest of the creatures in the Forest Glen did not learn the true rationale for many punishments, did not understand the role of cooperation and secrecy in the criminal justice process, and were unable to offer informed criticism of the practice.

Moral: When risk of physical harm leads courts to conduct operations in secret, the community is deprived of important information about the justice process.

