



FABLES IN LAW, CHAPTER 15

LEGAL LESSONS FROM
FIELD, FOREST, AND GLEN

D. Brock Hornby

THE INCREDIBLE COUGARS

The denizens of the Forest Glen originally had little recourse for the small damages that others caused them, because the cost of engaging an advocate generally outweighed any amount they could recover in Owl's tribunal. But collectively they could be more of a threat to a defendant engaged in skullduggery, and the tribunal's rules were amended to allow "class actions" where an advocate was engaged to represent a collection of creatures that had suffered the same injury. Some advocates soon realized these cases were a good source of fees. Cougar Group was one such firm, and Cougar Group scoured the Web for leads, then recruited clients. For example, Hedgehog, who marketed Forest Glen seeds over the Web, sold them by volume. Over time, with transport and shaking, the contents settled, and no longer had the same volume in the container as when first packaged. Cougar Group read Possum's annoyed tweet complaining about the seeds not filling the container he had purchased, and contacted Possum.

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Possum agreed to be a class representative and Cougar Group filed a class action lawsuit against Hedgehog. During the course of pre-trial discovery it became apparent that with insignificant exceptions the containers did contain the advertised volume at the time of sale, and that there was no way for Hedgehog to avoid or prevent the settling process that made the contents seem of lesser volume later. Cougar Group obtained a settlement by which Hedgehog agreed to put on his label that the contents would settle, and pay \$100,000. Cougar Group then asked Owl to approve its attorney fees in almost the same amount, arguing that in fact it had expended far more in value in reaching that outcome. Possum got a token payment of \$1,000. The rest of the class received nothing. The Magpies were outraged, and decried the advocates' fees in the Forest Glen Gazette. The reputation of advocates generally suffered as a result. Other producers, however, noticing the lawsuit, began to put similar labels on their containers, and some confusion was avoided thereafter.

Moral: Class actions may deter some negative behavior. But they often appear primarily to benefit the lawyers, with resulting community cynicism about the law and lawyers.



THE UNPLEASANT SNAKE VERSUS THE UNIMPRESSIVE WOODCHUCK

Snake and Woodchuck were opposing advocates in a civil jury trial in the Forest Glen. Snake had flair coupled with an unjustifiably high opinion of himself. Woodchuck was a bumbler, unaware of his inadequacies. The creature jurors, who had to watch Snake and Woodchuck for three days of

trial, unavoidably studied the advocates' characteristics and behavior. After the trial, in responding to a questionnaire in which Owl asked for their assessments of the advocates and the tribunal, several jurors remarked that they tried very hard to see past Snake's and Woodchuck's skill discrepancy, and focus on the fair outcome. But they also commented negatively on Snake's personal hygiene habits while sitting at counsel table; Woodchuck's grimaces and other body language while Snake was examining a witness; Snake's unwelcome staring at the jurors during the trial; and Woodchuck's utter inattentiveness to them.

Moral: Jurors conscientiously try to see past the lawyers in order to judge the fairness of the cause, but they cannot avoid noting lawyers' peccadillos. Lawyers should be aware that they are the object of jurors' attention at all times.

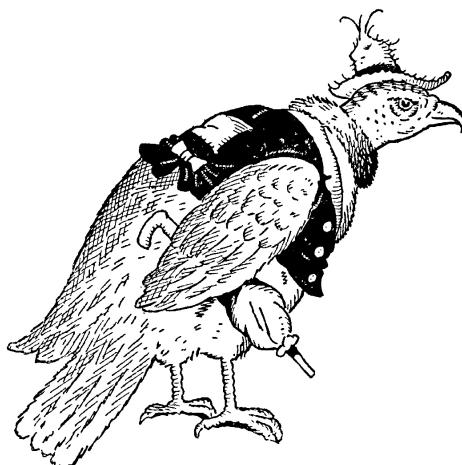


THE KINDNESS OF THE OWL VERSUS THE EFFICIENCY OF THE CONDOR

Owl spent a good deal of time with advocates in advance of tribunal proceedings like arraignments and jury selection. She brought them into her chambers, invited them to tell her how she should proceed, and let them know in advance pretty much everything that would happen in the courtroom. The advocates loved it because it reduced their courtroom anxiety of being embarrassed in front of their clients or the public. Their respect and affection for Owl as an arbiter grew as a result. Condor, on the

other hand, had little patience for all the meetings because they belabored what to him was simple and obvious. He simply went into the courtroom and conducted his proceedings; the advocates had to cope as best they could. They feared and resented Condor as a result. But Owl fell behind on her caseload partly because her proceedings took much longer due to her preparatory meetings with the advocates, whereas Condor was far more efficient and able to complete his cases more quickly.

Moral: Efficiency and kindness are not always good bedfellows.



AN AGE-OLD CONUNDRUM FOR OLD-AGE ARBITERS

Arbiters like Owl, Condor, and the Vultures were appointed for life. When they reached a certain age, they could take senior status so that a successor could be appointed, but the “senior” arbiter could continue to hear cases anyway. Many of them did so, for a variety of reasons – because they loved what they did; because there weren’t enough arbiters without them; because they had no hobbies to occupy their time; and so on. Their efforts were a great help in those parts of the Forest Glen where the caseload was high. But in those regions where the volume of cases was light, new arbiters sometimes struggled to have enough cases to learn and hone their own skills. Moreover, as senior arbiters aged, they tended to have less familiarity with the realities that advocates confronted in their practices,

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and their insight deteriorated as to how technology was affecting the lives and expectations of Forest Glen denizens.

Moral: There is much to be learned from elders and to be gained from their continued involvement in affairs, but it must be balanced against their decreasing familiarity with current technology and economic practices and the need to provide an adequate caseload for younger professionals to learn skills.

