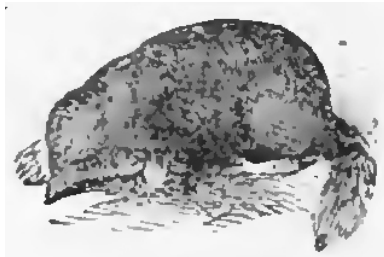




FABLES IN LAW, CHAPTER 16

LEGAL LESSONS FROM
FIELD, FOREST, AND GLEN

D. Brock Hornby



THE MOLE'S HEAVY SENTENCE

Creatures whom Owl sentenced often suffered from addiction, mental or emotional challenges, or a combination. Owl herself had no such afflictions and had grown up in an environment free of them. Nevertheless, she tried her best to understand their consequences and to sentence fairly in their presence. There came a time when Owl's favorite nephew – diagnosed with severe clinical depression – abused opioids and overdosed on

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them. His life was saved only by quick administration of Narcan. Owl was heavily involved in her nephew's recovery efforts. At a later sentencing in an opioid distribution conspiracy where Mole had become involved in distributing the opioids so as to obtain drugs to support its addiction, Owl listened more sympathetically and with less impatience than she previously had in such cases. She asked Mole to elaborate about its addiction, how it affected its brood, and steps it was taking to deal with the addiction. As a result, both Mole and its advocate felt that they had been treated respectfully in the proceeding. But despite Owl's greater insight into mental and emotional health and addictive behavior, no one, including Owl, could decide if her sentences differed as a result.

Moral: Greater empathy does not necessarily produce a different outcome.



THE TEMPTATION OF MAGPIE ATTENTION

Magpies, the Forest Glen journalists, could not resist their impulse always to seek out controversy and write about public figures who said or did outrageous things. Partly as a result of Magpie attention and his ability to manipulate that attention, Bull Moose came to prominence in the Forest Glen. Bull Moose did not always like the decisions Owl, Condor, and the Three Vultures made on the Forest Glen tribunals. From time to time he denigrated such decisions by coupling (disparagingly) the arbiter's identity with the leader who had appointed the arbiter. But the Chief Vulture, speaking to advocates about the importance of the impartial rule of law, characterized the Forest Glen tribunals as apolitical, with arbiters trying to treat the denizens of the Forest Glen fairly and in accordance with the laws that applied. Without mentioning Bull Moose, the Chief Vulture added that arbiters should not be defined by the leader who appointed them.

Fables in Law, Chapter 16

Magpies, who had come to dislike Bull Moose, treated the Chief Vulture's utterance as a major news story, characterizing it as the Chief Vulture taking on Bull Moose. In actual fact, for decades Magpies had been doing exactly what Bull Moose did, always referring to who had appointed the arbiter when covering a tribunal story. Arbiters had regularly complained about the practice, urging that attention should be devoted to their decisions' logic and soundness, not who had appointed the arbiter, but to no avail. Nevertheless, Magpies overlooked the longstanding complaints about their own past practices as they promoted their story that the Chief Vulture's comments amounted to an unprecedented direct challenge to Bull Moose.

Moral: Everyone is tempted to descend to ad hominem denigration of decisions with which they disagree rather than confront the decisions' soundness and logic, but we tend to notice that tendency only in others and to ignore it in ourselves.

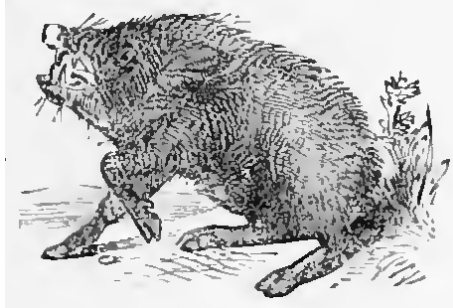


THE TEMPTATION OF DIGITAL SPEED

Digital technology was a great aid to Magpies in getting news to the Forest Glen creatures quickly. The added speed worked well in reporting simple events like who had won an athletic contest or an election. It was more challenging when matters of substance were at stake like explaining a policy position taken by a political party or a complex ruling by a tribunal. Back in the day, Magpies usually had some time before their print deadline to read and reread a tribunal ruling and seek help from advocates in understanding it. But with digital technology they were expected to issue a story virtually instantaneously once the tribunal handed down its decision. The resulting immediate story was sometimes incomplete, incorrect, or superficial in its understanding of the significance or rationale of the decision. Responsible Magpies tried to improve the piece as time went on, and

that process worked for decisions where there was ongoing public debate, but many decisions did not provoke that sort of continuing interest. For them, the original superficial or inaccurate story was the only story.

Moral: Speed and substance are often in tension in reporting on judicial decisions.



THE WILD BOAR'S LIGHT SENTENCE

Opioid addiction was a scourge within the Forest Glen; fentanyl was a powerful version killing some creatures. When Hare died, a blood alcohol test revealed both fentanyl and wood alcohol in its blood. But there was no autopsy and Hare was cremated. Hedgehog was later conclusively identified as the fentanyl distributor. At Hedgehog's sentencing, a medical expert testified that both substances acting together had caused Hare's death. Hedgehog's advocate, Woodchuck, pleaded for mercy, but did not contradict the expert testimony. Owl found that Hedgehog's fentanyl had caused Hare's death and as a result sentenced Hedgehog to twenty years confinement, a much longer prison term than otherwise.

A few months later, Hedgehog's supplier, Wild Boar, came before Owl for sentencing in the same connection. Wild Boar's advocate, Fox, obtained testimony from another medical expert. The new expert testified that the amount of wood alcohol in Hare's blood would alone have caused Hare's death, and Fox argued that there was no reason for Hare to have wood alcohol – a known poison – in its blood except as a suicide attempt. Prosecutor Snake was unable to rebut the new testimony. Owl concluded that wood alcohol, not the fentanyl from Wild Boar and Hedgehog, had in fact caused Hare's death.

Fables in Law, Chapter 16

Owl consulted her colleague Condor about how she could reconcile the two proceedings. As was his wont, Condor told Owl not to worry about it, that it was the advocates' problem, not hers. But Owl was distressed that she had sentenced Hedgehog earlier so harshly. She also feared that a much lower sentence for Wild Boar, the supplier, would look unfair to the Glen creatures. Under tribunal rules, however, Owl could do nothing to change Hedgehog's earlier sentence.

In the end, Owl concluded her earlier Hedgehog sentence had been wrong, although it was based on the facts as she understood them then. But she also concluded that to sentence Wild Boar to an equally harsh sentence in order to maintain parity would compound the wrong, now that evidence showed fentanyl had not caused Hare's death.

Owl gave Wild Boar five years confinement, a much shorter prison term than she had given Hedgehog.

Moral: A judge must determine an outcome based upon the record presented to her at the time. She does not have the luxury of waiting until all the information is in or changing her mind after the case is closed. As a result, she will sometimes regret an earlier decision. But two wrongs seldom make a right and she must not allow an earlier misjudgment to infect her later decision.

