



FABLES IN LAW, CHAPTER 14

LEGAL LESSONS FROM
FIELD, FOREST, AND GLEN

D. Brock Hornby

THE OWL AND THE SUBJECTS OF SENTENCES

Over the years, Owl received a lot of correspondence from creatures that had appeared before her, especially creatures she had sentenced. Sometimes they were Christmas cards, sometimes reports of progress in the prisoner's lives such as abstinence, education, children, etc. More often they were requests – for example, to lower a sentence, to intervene with prison authorities who were denying some privilege, or to obtain early release to a halfway house. Owl could usually do nothing about the requests because they were outside her power, although sometimes she would ask the tribunal's probation officer to call a defendant's case manager at the prison to inquire further. But Owl understood that the prisoners were generally powerless and abandoned, and she wanted them to know that their letters had been received and read. She always answered the letters,

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if only to explain that she could not intervene, and to offer congratulations where the defendant had shown progress in rehabilitation.

Moral: Sentenced defendants remain beings with dignity, and deserve to be treated as such.



THE OWL AND THE PREDICATE OF PUBLIC SERVICE

When Owl first became an arbiter, jury trials were abundant. Owl enjoyed interacting with the advocates, the witnesses, and the jurors, and managing the trials to see that justice was fairly applied. But as the years passed, Owl's caseload changed. Trials diminished in numbers, and in their place Owl faced increasingly complex criminal sentencings and very difficult motions in civil cases. As a result, she spent far more time outside the courtroom, but in her chambers, studying the law as the Vultures pronounced upon it, and then writing opinions to explain to the Vultures what she had done. Owl did the job conscientiously as it was assigned to her, but she took far less satisfaction in it than she had at the beginning, and the Forest Glen creatures had much less opportunity to observe their tribunal at work. Without an opportunity for trials, the younger advocates failed to

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develop the skills to try cases. The advocates and the arbiters all lamented these developments at their various meetings and debated how to bring back trials, but nothing seemed to work; the creatures of the Forest had become too risk averse and preferred settlement or mediation to trials.

Moral: Like everything else, judicial business changes with the passage of time, and its obligations may become less attractive to some; but the clock will not be turned back.



THE SURPRISING SQUIRRELS

When Squirrels joined Owl, Condor, or the Vultures as new law clerks, the arbiters often were surprised at Squirrels' limitations – even the brightest of them from the top of the Academy's class – in legal research and writing. Squirrels were excellent at digital research and from their online research produced dozens of cases that might bear upon a topic, but they were generally unfamiliar with treatises, Restatements of the Law, and academic writings in legal periodicals or how to use them effectively. The arbiters continually had to remind Squirrels to check those sources for guidance and to use them as critiques and as a way of organizing the cases. Moreover, the arbiters found that at the outset of clerkships, Squirrels were often lax at close analysis of statutes, regulations, arguments, and cases. Constant editing and mentoring generally produced dramatic improvement over the course of the clerkship.

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Moral: Law schools have become good at teaching legal research using digital technology, but attention to secondary sources seems to have suffered; attention to statutes and regulations was never strong. At least a year of intense mentoring by a practicing lawyer or judge helps immeasurably.



THE FROG ON FOOLISHNESS

Frog was mentoring the newest associate in his firm of advocates, a grey Squirrel who had recently ended its clerkship with Owl. New client Chipmunk wanted legal protection for an invention it was working on to increase the volume of nuts that the Forest Glen produced. After Frog and Squirrel met with Chipmunk to discuss his project and his legal needs, Squirrel talked to Frog:

Squirrel: “I really wanted to ask Chipmunk to explain why it thought there would be sufficient demand for more nuts to justify investment in the invention.”

Frog: “Why didn’t you?”

Squirrel: “I was afraid that the question would look too stupid.”

Frog then phoned Chipmunk and posed Squirrel’s question. The phone call quickly made apparent that Chipmunk had not developed an adequate

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business plan. Frog advised Chipmunk to revisit the proposal's economics and decide whether it really wanted to invest in the legal services that would be required. Frog then spoke again to Squirrel.

Frog: "No question is too stupid. It is your role as an advocate to plumb all assumptions. 'Stupid' questions sometimes lay bare important truths or unjustified assumptions."

Squirrel never forgot Frog's lesson.

Moral: Simple but probing questions posed by someone who has studied the problem may seem stupid at first glance, but often cut to the heart of the matter.

