Chapter Two

How to Think Like a Lawyer

I have found that people do not like "lawyers" as a group. *(I'm pretty sure it's the clothes – what right-thinking person wears a belt and suspenders?)* But when faced with a person who is waving a very impressive piece of paper jumping up and down and saying "Lawyer! Lawyer! Me! Me! Me!" people are – *dare I say it* – awed, impressed, and amazed.

Well, fearless reader, here's the deal: People do not like what they do not understand. When people think about "lawyers in general" and try to understand why some criminal went unpunished, or someone lost visitation rights, or see a slumlord do what slumlords do, the natural reaction is to be angry. How lawyers do what they do is, indeed, a mystery, especially to doctors, who really don't get it. People are impressed by credentials (M.D.; Ph.D; J.D., etc.) A *J.D. – Juris Doctor* – is the name of the piece of paper lawyers get. *(*The same *Juris* everyone else is all *ignorantia* about.)

I don't know why they started using "Esquire" as a synonym for lawyer. How did that happen? *(You say most emphatically: "*I don't care." While I am staring off into space, *stuck in silent contemplation of the magical world of words.* You may need to say, "*Snap Out Of It!"* Thinking about *lawyers,* frankly, I am more impressed by a C.D.L. *(Commercial Driver's License).* Drivers of those 18-wheelers can back up a 10' wide trailer into an 11' dock; whereas, I could not back my way out of a paper bag with a small U-haul trailer. Some might say I should not be backing up at all. Those back-up cameras are really nice. Unfortunately, my car, which doesn't have a trailer hitch anyway, doesn't have one.

Anywho... (Sometimes I snap out of it on my own.)

Once upon a time there was a very odd law professor. The class was called Legal Process. I understood the words, because they were all in English (my primary language); "Law" and "Process." Yet, the *meaning* escaped me. It was a first-year class. The other section of my class got a normal professor who talked about stuff like how, when, and where to file documents – deeds, lawsuits. You know, legal stuff.

But on day one, Odd-Guy put this on the blackboard: "*The tigers of truth are swifter than the horses of justice."* What did *that* mean?

Another thing he put on the board finally made sense just in time to take the dreaded First Year Exams. *(Everything you did, the way your future would unfold depended on three days of exams.)* X is a Y for the purpose of Z. He said, "All you ever needed to know about being a lawyer is X is a Y for the purpose of Z." We were talking about some case that had to do with dead chickens on the road. *(Bears, dogs, horses, tigers and dead chickens – bet you didn't see that coming.)*

Another first-year law class was Constitutional Law; the subject immediately understandable – the law, not so much. The professor looked like Barnaby Jones (think Jed Clampett of *Beverly Hillbillies* in a three-piece suit and bow tie, doing some kind of investigation thing.) One day Constitutional Law Guy bee-bopped or shuffled *(doesn't matter)* into the classroom chuckling. He said, "Guess what. Bears are dogs in New York" in the1980s. *(Once again, the guys in my section were like: Tigers, Horses, Chickens plus Dogs and Bears? This can't be good.)*

Happily, Constitutional Law Guy went on; *to wit:* (lawyers are always using *to wit,* which means "like this.") Once upon a time in New York in the 1980s, a guy had a circus bear in his basement, complete with costume and unicycle. Another guy was out in the neighborhood minding his own business – tending the lawn; walking the car; washing the dog; whatever. The bear got

out of the house – *without costume and unicycle,* because I made that part up *(I do that sometimes).* The bear was shambling by and happened upon Oblivious Guy. Oblivious Guy, understandably, tried to run away. *It was the 1980s in New York; there was no such thing as "Nat Geo: Save Yourself from Rampaging Bears" to recommend otherwise.* We now know that only prey animals run away from bears; bears which see prey animals run and chase them, catch them, and eat them for lunch, with leftovers for a midnight snack. Poor Oblivious Guy was *so ignorantia*. The bear chased Oblivious Guy down, as bears will when meat-sacks are running away. The bear mauled Oblivious Guy; whereupon Oblivious Guy changed his name to Limbless- Bleeding-Disabled Guy. The scene was horrific.

So far, we're buying this story. *(Made much more sense than Marbury v. Madison – you have to be a Supreme Court Justice to buy that one.)* The Constitutional Law Guy continues: So the citizenry were up in arms. "Prosecute the Bear-Owner Guy! Off with his head!" or something. The new young Prosecutor Guy really wanted to do the right thing and get Limbless-Disabled Guy some help and punish stupid Bear-Owner Guy and set an example for other would-be owners of circus and/or zoo animals. But he couldn't find a criminal charge that related to rampaging bears in New York in the 1980s. He was stymied *(stuck).*

Happily, an older, wiser prosecutor guy who'd been around the block a few more times said: *Easy peasy. That Bear is a Dog.* Naturally, our dumbfounded young Prosecutor Guy was confused. The old lawyer guy explained. "No, grasshopper, there is no Bear-Bite statute. But there is a Dog-Bite statute." The Dog-Bite statute read something like this: The title of the law was *A Law Against Owners of Dogs Who Allow Them to Roam Free and Maul People*.

The part under the title read, in relevant part:

> "Whomsoever shall allow to roam free an animal who subsequently bites a person causing puncture and/or other wounds or death shall be subject to a fine of

$10,000 or one year in prison, or both; and shall pay restitution of $500,000 to the injured victim."

Here we have: Bite? *Check*. Wound? *Check*. Death? N/A. Animal – *now, you see, there's a word we can work with*.

The old prosecutor guy explained. The title does say "Dog," and it is true that the legislature who enacted the law were *thinking* about dogs. But the *Title* is not part of the law. It doesn't *do* anything. It's just something that sits there looking cute. If the legislature really, really wanted it to be *only about dogs*, they would have said *Dogs.* Instead, they just said *Animals*. Legislatures are <u>never</u> *ignorantia*. So we must assume they knew exactly what they wanted to do and said so.

The word *Legislature* means the group of guys who choose what the law is and write it down.

These words make it illegal for a person to have an "animal," *any animal*, which roams about causing injury to people. (In New York, in the 1980s.) A bear is an animal; therefore, for the purpose of the Dog-Bite statute, the bear is a dog.

I have no idea if that's a true story. Would you believe Barnaby Jones (formerly Jed Clampett) if he told such a tale? Doesn't matter. It is a very good example of how lawyers think.

X = A bear in New York in the 1980s.
Y = Dog
For the Purpose of Z = the Dog-Bite statute.

Voilà. Magic. The Limbless-Disabled Guy's medical bills were paid out of the Victims of Violent Crime Fund; the Guy also got $500,000 *(as well as terrible scars, nightmares, a prosthetic hand and years of therapy)*. The Bear-Owner Guy paid a price for his callous disregard of the safety of others. The citizenry was content that justice was done. I'd like to think the bear escaped on its unicycle, in circus clothes, and became a vegetarian – but probably not. *(Right, I made that part up.)*

Here is another scenario. *(For the longest time, I had no idea what "*scenario*" meant. Finally, I realized it just means a made up story,* a basic fact pattern. *Is it too hard just to say that?*) Aggressive Guy and his Guy-Friend are hanging at the pool with little umbrella drinks; or beer. *(Safety first, no glass containers.)* Guy-Friend does something or says something, or even just thinks about saying something, or doesn't do something or say something, and Aggressive Guy explodes. This sunny day, unlike days of aggression past, Aggressive Guy picks up a lawn chair and performs mayhem/assault/almost-murder of the Guy-Friend.

There are bunches of different types of assaults. Assaults with "deadly weapons" are more serious offenses and have harsher penalties – prison instead of jail. Guy-Friend was messed up: coma, scars, broken facial bones. And our friendly neighborhood Prosecutor Guy wanted Aggressive Guy out of circulation for as long as possible, so … *(what? think-think-think)…* the prosecutor argued that **X**, *the lawn chair,* was a **Y**, *deadly weapon,* for *purposes of* **Z**, the deadly weapon crime. *Ok, it was a stretch.* But a decision for the jury to make.

Here, we will make YOU (X) into someone who is (Y) disabled

for the purpose of (Z), getting you Social Security Disability Benefits.

Anywho…

If you still don't understand why a bear is a dog, pull the chin strap on your lawyer-thinking helmet a bit tighter, read it a couple more times, phone a friend, whatever, so you feel like you kinda see it if you squint. *(I'd say call me, but I'm being Anonymous to avoid having people call me.)* (Of course, you really don't need to grasp it all. Find someone like me – see Appendix ___ – and that Guy can do the legal thinking.)

Moving on.

You will have heard the phrase "burden of proof" from somewhere; and no offense, you may be a bit *ignorantia* about this burden thing. In any kind of trial *(which, surprise!)* Social Security hearings are, someone has the burden of making the first solid step forward. Then someone else has a burden, so they can do the next step, and so on. This first step is called "the burden of going forward." Your step has to be big enough, or everything stops and you go home and go back to work.

Prosecutors always have to make the first move. If the Judge says, "Hey, no, a lawn chair cannot be a 'deadly weapon' in my courtroom," the case is over. Stop. Do not even think about placing that marker on Go. The jury is excused. The defendant goes home. If the Judge thinks, "Well, I might not think it is – but it is not so far out in La-La Land; a jury might decide that it is," only then can the prosecution go forward and show the jury any evidence. In criminal trials the jury has to be convinced "beyond a reasonable doubt." *(What is that noise at the beginning, with the title screens on Law and Order anyway?)*

In Social Security cases, the claimant has to have a "preponderance"[1] of evidence to prove specific things in a specific order – which *(joy and pass the hotdogs)* we will get to in perhaps not a zillion more words. If we don't have that proof, we're done. Period. You lose, and there is no lovely parting gift. Worse than no parting gift is you do get a *finding* about you. *That finding* will be on your permanent record for as long as you live, if not longer.

[1] Preponderance – more than a smidge, but less than full reasonable doubt; just enough so that a Reasonable Guy would think: *Yeah, that makes sense. I see it.*