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HUMPTY-DUMPTY AND THE SEMANTIC SCALPEL

By Evan Gutman CPA, JD (2002)

The Oregon Judiciary Branch of Government including its' State Supreme Court, Court of Appeals and Marion County Circuit Court; and I have definitely had our differences of opinion. We have developed what I consider to be a very healthy intellectual friction with each other that promotes a diminishment of their judicial ability to circumvent the law and U.S. Constitution. It has undoubtedly been a learning process for both of us. For instance, they taught me that if I desire to challenge their power it would be best if I do not enter into the geographic boundaries of their State. I have taught them that the best way to adjudicate cases requires a strict adherence to the rule of law and the strength in judicial moral character to not simply render decisions merely for the sake of "going to get along" with popular local attorneys. The reason is that ultimately a Nonattorney comes along who understands the driving economic forces behind amateurish, transparent judicial deceptions, and outplays them.

More importantly, the Oregon Judiciary has educated me as to how Courts utilize what is known as a "semantic scalpel" to ensure that immoral judicial goals are attained. The semantic scalpel is an implement used by Judges to render judicial rulings by causing words to be defined in a manner extending beyond their common and ordinary usage. The technique has been summed up by its' main proponent Chief Justice Wallace Carson of the Oregon Supreme Court as follows:

> "When I use a word, "Humpty Dumpty said in rather a scornful time, "it means just what I choose it to mean -- neither more nor less."
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> "The question is," said Alice, "whether you can make words mean so many different things."
> "The question is," said Humpty Dumpty, "which is to be master -- that's all."
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> State ex rel Frohnmayer v Oregon State Bar, 307 Or. 304 (1989), Justice Carson, Fn2; [15]

A prime example of use of the semantic scalpel was when former President Bill Clinton on national television stated authoritatively, "I Did Not Have Sex With Monica Lewinsky." Ultimately, it was discovered that he got a "Blowjob" from her. I am not a particularly big fan of Bill Clinton. Nevertheless, he was arguably subjected to an immense degree of unjust criticism for making the foregoing statement. The reason is as follows. He relied on a definition of the term "Sex" that was formally adopted by the Court in his litigation.. That definition did not in fact, include "Blowjobs." The problem was that pretty much every American considers a "Blowjob" to be included in the term "Sex." The common and ordinary usage of the term adopted by virtually everyone includes "Blowjobs."

The general public always relies on the common usage of a term. Judges can't change that. That is why the general public condemned Clinton. As indicated previously, I don't like Bill Clinton. I thought he was a lousy President, and really nothing more than an exceptionally good actor. Nevertheless, I do believe the public's condemnation of Clinton's attempt to rely on a carefully worded definition of the term "Sex," that was in fact formally adopted by a Court of law was unjust. To put the matter simply, Clinton only did what Justices of State Supreme Courts do every single day.

Clinton was a lawyer. Throughout law school and his entire career, he had been educated to the fact that words can be defined in a limitless manner to suit one's immediate needs. Like all of the Judges and attorneys he had worked with during his career, he played a game of semantics with the term.

Games with semantics are the very heart and soul of the legal profession. However, when such games are exposed to the general public, people who play them appear as deceptive liars. The Judiciary of this nation is now faced with a major problem. Similar to how Clinton's attempted use of a semantic scalpel got him into trouble, Judges and State Bars are finding that their use of the tool is becoming less successful. Appellate opinions are now easily obtainable by members of the general public. That is a fairly recent phenomena. One can obtain appellate opinions at a very low cost on the Internet. As a result, the manner in which Judges and Appellate Courts play deceptive, clever little games with word meanings and definitions in accordance with Bill Clinton and Chief Justice Wallace Carson's "Humpty-Dumpty" technique can now easily be exposed to the general public.

In many respects, it is like the tricks used by a magician. Once a person discovers how the magician accomplishes his tricks, they are never fooled by such deceptions again. That is precisely what is occurring in this nation currently. The public is rapidly becoming educated to how Courts, State Bars and lawyers manipulate word meanings and the rules of procedure to frustrate fair and impartial adjudications. As a result, more litigants are opposing the Courts, rather than trusting them. Judges and State Bars are becoming less successful at accomplishing their self-interested goals, because the tricks they have relied on in the past are no longer working.

Litigants are starting to view Judges as one of their "opponents," rather than impartial decision-makers. As such, Judges are no longer considered to be honest people in whose hands you may trust your children, property or freedom. They are viewed as people you have to outmaneuver, outplay and outstrategize. Like everyone else in society, Judges are now simply viewed as people looking to do what's best for themselves. You have to play their game, better than they play it. Similarly, representations made by Courts to litigants during the pendency of a case are no longer viewed as necessary steps intended to resolve matters fairly. Rather, litigants are assessing judicial representations in light of the procedural "Trick," the Court is probably trying to play to frustrate fair resolution of the issue. Litigants are beginning to understand that they often have four opponents in a litigation. The opposing party, the opposing party's attorney, their own attorney, and the Judge.

The most immoral application of the semantic scalpel occurs when Judges use it in a manner to allow a term's definition to not simply be modified, but instead to have the exact opposite meaning of its' common and ordinary usage. For instance, in Crocker v Crocker, in April, 2001 the Oregon Supreme Court determined that the term "child" includes "adults" within its' definition. The Oregon Court of Appeals had earlier used manipulative subterfuge to hold similarly. It seems to me that the common and ordinary usage of the term "child" is intended to specifically differentiate the individual from an "adult." Otherwise, there would be no need for either term. The Oregon Supreme Court in the same opinion concluded that the children of "any married person" only meant children of "married persons who are not cohabiting." Children of married persons who were living together, were therefore excluded. The court accomplished this deceptive subterfuge by using a semantic scalpel to arrive at the conclusion that the term "any" only meant "some." It was absolutely incredible. Within one single opinion, the Oregon Supreme Court had substantively concluded that the term "child" includes "adults," but excludes children. [16] The meaning of the term had been diametrically reversed. The Court's ultimate decision on the legal issue involved was obviously irrational since it was supported by irrational reasoning. Notably and commendably, the Great Justice Paul De Muniz of the Oregon Supreme Court did not sign on to such Nonsensical Judicial Trash, wisely choosing instead to not participate in the Court's ridiculous opinion. Ironically, only one month previously, the same Court wrote as follows in a different case:

""Any" is defined, . . . (in context, "any" synonymous with "every") [17]
Outdoor Media Dimensions v Oregon, SC S44590

It would seem to be the simplest term in the world. The word "Any." Yet, the Oregon Supreme Court in two different cases, less than two months apart, adopted two completely different definitions of this one simple word. In one case, "any" meant "some" and in another, "any" meant "every." Tomorrow, to meet their immediate goal, "any" will mean "none." It is nothing more than an amateurish game of judicial deception. Once exposed it diminishes the legitimacy of those who write such judicial opinions. Bill Clinton also was criticized for his response to another question. His response consisted of inquiring about counsel's use of the term "is" (What "is" is?) Undoubtedly, he was again playing a game with a semantic scalpel. Yet, in a recent Oregon case, the Court wrote as follows:

"Our construction of the rule is not impaired by the use of the word "or" as a connector between the terms. . . ."Or" does have a disjunctive meaning. . . . However, often "or" is used by the legislature to connect alternatives that are not mutually exclusive but, rather, may each cause a certain result or apply in a given circumstance. . . . Thus, the use of "or" as a connector between the two types of recovery simply acknowledges that an award of one does not require the award of the other. It does not suggest that, when both are awarded, they may be awarded in separate judgments. In fact, the reverse is true." [18]

I see absolutely no reason why we should politically criticize any President of the United States for questioning the meaning of the term "is," if Courts, Judges and attorneys have to engage in extensive litigation over the meaning of the term "or." Judicial support for utilization of the semantic scalpel is found in the historic statement of Justice Oliver Wendell Holmes who wrote:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought, and may vary greatly in color and content according to the circumstances and time in which it is used."
Towne v Eisner, 245 U.S. 418, 425 (1918)

Undoubtedly, there is merit to his statement. Depending on the context, words do mean different things at different times. By the same token however, Holmes' statement was not intended to create a carte blanche environment for Judges to drastically alter word meanings to accomplish judicial goals. Justice Harlan, Great Dissenter on the Warren Court of the 1960s wrote the following historic passage:

"Almost any word or phrase may be rendered vague and ambiguous by dissection with a **semantic scalpel**. . . . <But such an approach> amounts to little more than verbal calisthenics."
Cole v Richardson, 397 U.S. 238, 240 (1970)

As will be demonstrated later herein, Harlan was the strongest supporter on the U.S. Supreme Court for retention of the State Bar admission "good moral character" requirement. He wrote the foregoing statement at a time when the admission process was under heavy legal attack, specifically on the ground that the phrase "good moral character" was vague and ambiguous. His foregoing statement is a proper condemnation of judicial use of the semantic scalpel. It is also an admission on his part, that use of the semantic scalpel does render words and phrases vague and ambiguous. The State Bars and State Supreme Courts by utilizing the instrument known as the "semantic scalpel," have done precisely and exactly what Harlan warned them not to do. They have rendered the "good moral character" requirement totally vague and ambiguous. There is no doubt State Supreme Courts should stop using Humpty Dumpty Semantic Scalpel techniques in their opinions. Cause let's face it. Humpty Dumpty was a fairly clumsy guy who fell off a wall. And clumsy people shouldn't play with scalpels. Naturally, if you're ever accused of breaking the law in Oregon, just inform the Judge that the term "unlawful," actually means "totally legal." All you need is a semantic scalpel.