HUMPTY-DUMPTY'S
TYRANNY OF WORDS REVISITED

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In the first part of this book published in 2002, in the chapter titled "Humpty-Dumpty and the Semantic Scalpel" I examined utilization of the devious Judicial tool called a "semantic scalpel." Judges being possessed by an arrogant nature transcending that of other people tend to gain personal satisfaction by engaging in retaliatory conduct against people who disagree with them. This is not limited to situations where litigants disagree, but applies equally when other Judges reject their misguided beliefs. One technique used by Judges to retaliate against each other consists of exposing Judicial deception. The concept is basically, "since you are refusing to adopt my opinion, I'm going to expose how we do things deceptively." Their perspective is that if other Judges will agree with them, they will allow continuation of deceptive Judicial conduct. However, if other judges won't agree, they will resort to honesty as a last resort tool of retaliation and expose the invidious nature of Judicial opinion writing.

In State ex rel Frohnmayer v Oregon State Bar, 307 Or. 304 (1989) former Oregon Chief Justice Wallace Carson, a pervasive practitioner of the semantic scalpel throughout his tainted judicial career, found himself in the rare position of being in the Dissent. He thus utilizes truthfulness as a last resort and exposes the devious nature of Judicial opinion writing. Justice Carson states in Footnote 2 of his Dissent:

> "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 means so many different things."
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> "The question is, "said Humpty-Dumpty, "which is to be master -- that's all." [228]

The foregoing is Judicial decision-making in a nutshell. Justice Oliver Wendell Holmes summed up the theory in his historic and often cited passage in Towne v Eisner, 245 U.S. 425 (1918) writing:

> "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." [229]

Similarly, U.S. Supreme Court Justice Harlan wrote in Cole v Richardson, 397 U.S. 238, 240 (1970):

> "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." [230]

When I first quoted Chief Justice Humpty-Dumpty's passage in the first part of this book, I had not yet read Stuart's Chase's book "The Tyranny of Words" published in 1938. It addresses the manner in which people, including Judges particularly, use word definitions to mislead others. One of the most interesting facets of his often-cited work is the fact that Mr. Chase was an Accountant, not a lawyer. This fact supports the commonly accepted belief that Accountants possess superior intelligence compared to the inferior mental faculties of lawyers. On page 167, of his book, Mr. Chase presents basic rules for interpreting words. Some of these rules are as follows:

1. Words are not things. Identification of words with things, however, is widespread, and leads to untold misunderstanding.

2. Words mean nothing in themselves, they are as much symbols as x or y.

3. Meaning in words arises from the context of the situation in which they are used.

4. No two situations or events are exactly similar.

5. Abstract words are especially liable to spurious identification. The higher the abstraction, the greater the danger.

6. To improve communication new words are not needed, but a better use of the words we have. [231]

The point is that Judicial opinions purport to rely on logic and rationality to arrive at conclusions. However, a careful reading of many Judicial opinions reveals nothing more than manipulative, dishonest logic by Judges. This gives rise quite often to absurd consequences. Mr. Chase points out in "Tyranny of Words" that "logic" is the manipulation of words and can be used to

intentionally distort understanding. He presents the following example on page 227 of his book:

1. **No cat** has eight tails.

2. Every cat has one more tail than **no cat**.

3. Therefore, every cat has nine tails. [232]

On its face, the foregoing example applies principles of logic. But, everybody knows the conclusion reached is totally untrue. This is notwithstanding that (3) above, seems to flow logically from (1) and (2). The distortion of rationality occurs because of the phrase "No cat." It is easy to see from this simple example, arrogant Judicial contentions of logic and rationality can give rise to false premises, false principles and deviant conclusions of law.

When Judges reach absurd conclusions by manipulating word meanings they are doing nothing more than subjecting the public to the adverse results of a devious Judicial sham. When this occurs, they function as Judicial scam artists. They're running a "Semantic Shell Game" and the general public is the "Pigeon." Words must be subjected to reasonable interpretation as accepted by the general public. Mr. Chase states on page 231 of his book:

> "When a physicist says that an atom is "free," he does not mean in this context that Atom, is a rugged individualist with a mind of his own prepared to tolerate no nonsense from an interfering government. He means that the motions of atoms are subject to chance." [233]

> On page 233, Mr. Chase writes:
>
> "How much misery has flowed from holding a person strictly accountable for what he said, rather than for what he meant?" [234]

It is irrefutable that numerous U.S. Supreme Court opinions, which once purported to constitute "rational law," have since been overruled and the principles they stood for determined to be despicable. Obvious examples are the Dred Scott decision and Plessy v Ferguson. This gives rise to the equally incontestable premise that any opinion of the U.S. Supreme Court on any issue may change in the future. Thus, we always need to remember to take Judicial

opinions with "a grain of salt" so to speak. We need to realize the Court may be wrong or it may be right.

The mere fact that the U.S. Supreme Court decides an issue does not necessarily mean its decision should be supported. Instead, irrational U.S. Supreme Court opinions should always be peacefully and rationally opposed for the purpose of finding and promoting the greater truth. The truth is not necessarily embodied in opinions of individual Justices, who may have arrived at a mentally impaired conclusion. If it is not, their opinions should be opposed. Notably, the concept of declining to "support" a U.S. Supreme Court opinion does not necessarily entail violating it. There are many ways to oppose Judicial rulings and violation is just one.

Certainly, if this premise applies to U.S. Supreme Court opinions, it is even more applicable to Court Orders emanating from lower Courts. Any given Court Order or Judgment may ultimately be found to embody nothing more than misguided belief at best, and criminal Judicial corruption at worst. There have been too many reversals of trial court judgments, criminal convictions of innocent people, or reversals of long-standing and widely accepted irrational Judicial beliefs to justify blind support of Judicial decisions from any Court. It has been repeatedly shown that dishonest Judges exist. There is no evidence demonstrating Judges possess better moral character than the average citizen. As such, the misguided judicial opinions, irrational beliefs, and unconstitutional illegal Court Orders of dishonest Judges should be vigorously and aggressively opposed on a regular and persistent basis. This ultimately will give rise to attainment of a higher moral purpose and character for society as a whole. As the Great Justice William O. Douglas stated quite properly and correctly, albeit in Dissent, with the support of Justices Warren, Brennan and Fortas in Walker v City of Birmingham, 388 U.S. 307 (1967):

> "The right to defy an unconstitutional statute is basic. . . .
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> . . .
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> A court does not have jurisdiction to do what a city or other agency of a State lacks jurisdiction to do. . . . An ordinance -- unconstitutional on its face . . . is not made sacred by an unconstitutional injunction that enforces it. It can and should be flouted in the manner of the ordinance itself. Courts as well as citizens are not free "to ignore all the procedures of the law," . . . . The "constitutional freedom" of which the Court speaks can be won only if judges honor the Constitution." [235]

A lamentable failure on the part of citizens and attorneys to respectfully oppose the unlawful acts of Courts and Judges would leave all blacks in this country as slaves today, according to the Dred Scott decision. We must always remember the U.S. Supreme Court has been proven wrong on countless occasions. In certain instances it has damaged our nation more than any other branch of government. The continuous flux of ever changing ideas and attitudes in society is embraced with virtual poetic beauty by the following passage of Mr. Chase on pages 240-241 in "Tyranny of Words" (emphasis added):

> "Plato condemned the logic of the Sophists as a sham. Aristotle convinced the Dialectic of Plato of formal inability to yield a demonstration. Bacon denounced the sterility of Aristotle's formal demonstration. Mill deplored the inadequacy of the Baconian induction method. The critics of Mill showed that his induction technique was as formal and as futile as anything hitherto attempted. Locked demolished Edward Herbert. Hume demolished Locke. Morris Cohen demolishes Hume, J.E. Boodin demolishes Descartes. Modern philosophers wipe their boots on Kant and Herbert Spencer. John Dewey makes mincemeat of his forerunners. Bright postgraduates in Columbia, Harvard and Chicago are now busily engaged in dismembering Dewey. . . . **In brief, the boys do not seem to be making much progress."** [236]

Mr. Chase properly recognizes how difficult it is to be a good Judge, along with the correlative premise that since Judges are nothing more than humans, it is inescapable they will make wrong decisions. Sometimes their erroneous decisions will be a product of innocent, incorrect understanding. But, sometimes their irrational decisions are a product of an intentionally invidious judicial nature. Chase writes as follow on page 319:

> "Civilized living is impossible without machinery to settle disputes. If we accept this, and also accept the statement that legal decisions are always made by human beings, we can admire those who assume the difficult task of finding the facts and rendering decisions, and be grateful to them. But when we begin to think of them as priests, speaking not out of their own experience but sounding boards for a Law which is beyond human frailty, then this necessary machinery is converted into a branch of demonology. It is as though an umpire in a baseball game were regarded not as a fellow citizen doing the best he could, but as an automaton receiving a signal from on high before he cried "Ball!" or "Strike!" The irritated fan in the bleachers sometimes does not hesitate to throw a pop bottle at an umpire whose decisions appear to be biased or consistently out of line with the facts. I do not recommend throwing pop bottles at judges, but there is a lot in the pop-bottle point of view. A Supreme Court judge is just as human as a baseball umpire.

> Early in its history, legal machinery became entangled with the ghosts of divine sanction, and judges in their robes walked as solemnly as priests of the church in theirs. . . .
>
> . . . The early modes of trial - the ordeal, the judicial duel, the oath, . . . were considered to be uncontaminated by human elements. The judgment was the judgment of the super-natural. . . .
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> . . . The more we try to conceal the fact that judges are swayed by prejudices, passions, and weaknesses, the more likely we are to augment the fact. . . . These beliefs enhance the bad effects of the judges' prejudices, passions, and weaknesses, for they tend to block self-examination by judges of their own mental processes. . . .
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> Many factors affect judicial decisions, of which the rules of law constitute but one." [237]

Mr. Chase further writes on page 323 as follows:

> "But the violation of some laws is a normal part of the behavior of every citizen. During the unhappy period of alcoholic Prohibition, most of us were "lawless elements." [238]

For those who take offense or vigorously dispute the foregoing statement, I will place the matter in modern context. Who does not periodically exceed the speed limit on any given road by 5 miles per hour without giving the matter a second thought as to morality? It's my guess one would be hard-pressed to find any State Supreme Court Justice who hasn't occasionally exceeded the speed limit. How many people had even just one alcoholic beverage before reaching age 21? I'm not talking about teenage alcoholics. I'm talking about a college student who has one beer, or a kid who has a glass of wine during a family holiday. How many cigarette smokers have taken a puff in an area where smoking is prohibited? It is apodictic that lawbreaking is an accepted fact of society to the extent the violation is not "serious." The term "serious" is interpreted subjectively. Mr. Chase describes lawbreaking as, "the relativity of the term" to the purported evil intended to be abrogated by the enactment of any law. [239]

The importance of recognizing the danger in giving blind approval or support to the interpretations of words rendered by another, including Judges

particularly, is demonstrated in a closing passage of Mr. Chase's book. On page 360 of "Tyranny of Words," Mr. Chase writes:

> "Dictators can force a kind of duress agreement on the formula of "Agree with me or be shot."[240]

The above quote captures the ultimate drastic result of failing to oppose irrational Judicial decision, rulings, interpretations and absurd constructions of terms contained within the written law. We need to always be extremely cognizant of the human frailties, cognitive deficiencies, irrationalities and mental aberrations of our decision-makers and government officials. This principle applies equally to Judges and Legislators alike.

Legislators adopt words to be included in a law and Judges then interpret the law. The process of interpreting a law entails defining the individual words stated in the law. It is not an easy task to accomplish successfully. Thomas Hobbes, in his historic work Leviathan writes (emphasis added):

> "All Laws, written and unwritten, have need of Interpretation. . . . The written Laws, if they be short, are easily mis-interpreted, from the diverse significations of a word, or two. If long, they be more obscure by the diverse significations of many words. . . .
> . . .
> . . . **For all words, are subject to ambiguity; and therefore multiplication of words in the body of the Law, is multiplication of ambiguity**." [241]

Under Hobbes' theory, legislators are kind of damned if they do and damned if they don't. Short laws place too much emphasis on one individual ambiguous word. Attempts to clarify short laws by adding provisions, explanations, limitations and exceptions, necessarily use more words. Those additional words are then subject to further ambiguity. This concept is demonstrated by the U.S. Supreme Court's statement in Lamar v United States, 240 U.S. 60 (1916) where Justice Holmes wrote:

> "The same words may have different meanings in different parts of the same act, and, of course, words may be used in a statute in a different sense from that in which they are used in the Constitution." [242]

Fairly recently, on February 21, 2007 the so-called "liberal wing" of the U.S. Supreme Court in a 5-4 opinion adopted an absurd and ludicrous construction of the meaning of the term "Absolute" in Marrama v Citizen Bank

of Massachusetts, 127 S.Ct. 1105 (2007). It was not a particularly high profile case. However, the Majority's logic was so egregiously flawed that the case is quite important. The Majority's opinion stands for the ridiculous premise that the term "Absolute" means "Conditional." It's an absurd conclusion.

The facts of Marrama are briefly as follows. A debtor sought to convert a Chapter 7 bankruptcy to a Chapter 13 pursuant to Section 706 of the Bankruptcy Code. The applicable language of Section 706 states:

> "(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time. . . . Any waiver of the right to convert a case under this subsection is unenforceable." [243]

Both the Majority and the Dissent noted that the Senate Report pertaining to the statute stated (emphasis added):

> "Subsection (a) of this section gives the debtor the one-time **absolute** right of conversion."[244]

Some additional facts of the case are as follows. The debtor, in his bankruptcy petition made statements determined to be misleading and inaccurate. As a result, the lower Court determined he acted in "bad faith" and as a result denied him the "Absolute Right" to convert. The issue to be decided by the U.S. Supreme Court was whether there was a "bad faith exception" to the "Absolute Right." The Majority in a 5-4 opinion held that it was within the inherent power of the lower court to take appropriate action in response to fraudulent conduct. Thus, the Majority held the debtor could be denied his "Absolute" right.

From a cursory consideration of morality, the Majority opinion seems to make sense. After all, "Why should someone who has engaged in dishonest conduct be allowed to take advantage of an "Absolute Right?" Basic morality seemingly suggests people who engage in dishonest conduct should not be able to profit from their dishonesty.

But, there is a major problem with the foregoing perspective. It results in the Judiciary not doing what the Senate Report expressly states they should do. Instead, the Majority rewrote the Senate Report by redefining the meaning of the phrase "Absolute Right." They interpreted "Absolute Right" as being a right conditioned upon good faith. Thus, the term "Absolute" came to mean "Conditional." It was totally absurd.

For those who support the Majority's decision in this case on the purported ground it is rooted in sound morality, the question I pose is as follows. Then, why bother with a written bankruptcy statute or Senate Reports at all? If it is going to be left to the Courts to decide what is "fair" and what type of relief a debtor is entitled to based upon Judicial assessment of their morality, why not just have a really short, simplistic bankruptcy statute containing one provision. It would read as follows:

> "The Court shall provide relief from debts for any honest debtor to the extent the Court deems fair."

That's it. Solves everything. Certainly, it would seem to conform with well-accepted notions of morality. Of course, it does raise the issue of determining what is "fair" and what constitutes "relief." But, the bottom line is, according to the Majority, the determination of what is fair and equitable, is ultimately going to be left to the Judiciary anyway. The Majority asserts that even if Congress says a debtor's right is "Absolute," Judges don't have to recognize it as Absolute.

Wait, I've got another solution! Maybe, this will satisfy everyone. It's a way for Congress to enact numerous particularized provisions regarding what constitutes relief for a debtor. This suggestion will also allow Congress to determine what is fair. Additionally, this suggestion would allow the U.S. Supreme Court to interpret the provisions in a manner consistent with good morality. This suggestion will require only one minor change to our legal system, which is as follows. Nobody should regard congressional enactments as "Laws," required to be complied with. Instead, congressional enactments will be regarded as "Suggestions" that Courts should give serious consideration to. Then, the bankruptcy "statute," with all of its particularized provisions could remain as it is, but simply be prefaced as follows:

> "The following bankruptcy statute contains all provisions of relief for an honest debtor, which the Court should give serious consideration to as **our suggestions**, when rendering its determination as to what constitutes the law on a case by case basis."

The bottom line is that the Majority opinion in Marrama, results in the Court treating the written Law as nothing more than a "suggestion." Substantively, the Majority ignored the enacted written law and rewrote the statute and Senate Report to meet its immediate goal by "creative" interpretation of the term "Absolute." The Dissenting opinion in Marrama written by Justice

Sam Alito and joined by Justices Scalia, Roberts and Thomas states (emphasis added):

> "Under the clear terms of the Bankruptcy Code, a debtor who initially files a petition under Chapter 7 has the right to convert the case to another chapter. . . . The Court, however, holds that a debtor's conversion right is conditioned upon a bankruptcy judge's finding of "good faith." Because the imposition of this condition is inconsistent with the Bankrtuptcy Code, I respectfully dissent.
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> The Bankruptcy Code unambiguously provides that a debtor . . . has a broad right to convert the case. . . .
> . . .
> **Nothing in 706(a) or any other provision of the Code suggests that a bankruptcy judge has the discretion to override a debtor's exercise of the 706(a) conversion right on a ground not set out in the Code**. . . .
> . . .
> . . . the Court points to 11 USC 105(a), which governs a bankruptcy court's general powers. Second, the Court suggests that even without a textual basis, a bankruptcy court's inherent power may empower it to deny a 706(a) conversion request for bad faith. Obviously, however, neither of these sources of authority authorizes a bankruptcy court to contravene the Code. On the contrary, a bankruptcy court's general and equitable powers "must and can only be exercised within the confines of the Bankruptcy Code." [245]

The process of interpreting law is not easy. Regrettably, it often portends to the supplementation of governmental power at the expense of justice for the citizenry. Sir Algernon Sidney in the 17th century wrote in his historically acclaimed work "Court Maxims" in the Ninth Dialogue as follows:

> "Court Maxim: The corruption of lawyers is useful to the king.
> . . .
> . . . They have found a way, by dexterously proposing business to the Parliament under several pretences, through the power and subtlety of their creatures in Parliament, to obtain a multitude of statutes by which the whole body of the law is brought into such a confusion that no man fully understands it. . . All questions in law are subject to a variety of interpretations, and the number of suits is infinitely multiplied. . . . The whole nation is hereby brought into such a dependence upon the lawyers . . . Thus the treasure of the nation with a full stream flows into their bosoms. . . They know the king is the author and preserver of their felicity, and must therefore as lawyers endeavour to maintain the government that upholds their profession. . . .
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> . . . Whatsoever the king now desires to do is found to be legal. . . . Everyone sees there is no safety but in the king's favour. . . .

. . .
. . . The justice therefore of all laws does necessarily and essentially depend on the plainness and clearness of them, that every man may understand them if he will. . . .

. . . The utmost deviation that can be from this rule in making laws is when through the multiplicity and intricacy of them they are rendered unintelligible. . . .
. . .
. . . That which lies in most direct opposition to this is when . . . a law which consists of various and heterogeneous parts, as statutes, customs, and precedents, or judged cases, comprehends an infinite number of particular laws, many of them thwarting one another, and not a few contrary to the letter and intent of the . . . constitutions. . . . The law itself is made a snare, and we, who should be protected, are destroyed by it. . . .
. . .
. . . The . . . law is so entangled with statutes and cases often unjustly judged, that no man can be said to understand it. . . . The intricacies are so various that those who are cunning in it make it speak what they please. They never fail to find something in their books to put a fair colour upon the most wicked and unjust acts that can be committed or imagined for their own gain. . . .These faults in the law introduce all manners of corruption into the administration of it. . . . By this means bar and bench are filled with a corrupt crew of mercenary persons. They who regarded their fees more than truth, when they were pleaders, will value bribes more than justice when they come to be judges. . . .
. . .
. . . by variations, explications, and additions they have so turned the point of the law that what was intended for the public good was brought to aim chiefly at their private good.
. . .
Whatsoever I say against our lawyers, I no ways blame the . . . study of law. I know the administration of justice to be one of the noblest works that can be done by man, and it is to be performed by those only who do study the law." [246]