MondayMonday

Mad Hatter for the Defense

November 4, 2013

For all these years, the only Snowdon we had to be concerned with was Antony Armstrong Jones, the 1st Earl of Snowdon, former husband of Princess Margaret. Now, we have to contend with another, not as photogenic and without the tabloid libido of the other. We speak of His Self-Righteousness, NSA bad-boy, Edward Snowden.

We put this in perspective instantly. Lord Snowdon never needed a shave; Edward Snowden always does. Oh, and while Lord Snowdon had a wandering eye, Edward Snowden has a self-centered and traitorous mouth.

Putting the morals of the Crown at issue is not the same as putting the security of your fellow Americans at risk. We are not surprised, or even concerned, that the United States listens to telephone conversations of allied Prime Ministers. This is the 21st Century; they should only be having cellphone conversations with their mistresses. "Hello Schatzi? Meet me in the back of the Bundestag at 5:30." Everything of moment is encrypted and everyone listens to everyone. As the CEO of Sun Microsystems said: "You have zero privacy anyway. Get over it."

That's the way it has always been, since even before the XYZ Affair. Codes and ciphers keep secrets, not forms of communication. As far as listening in on Americans, we always assumed that happened anyway. Want it private? Keep your mouth shut. Edward Snowdon? Enjoy the caviar.

Plaintiff was walking in the crosswalk, crossing an intersection in Brooklyn, when he was hit by defendant's vehicle making a left into the intersection. At the time of his crossing, plaintiff was obeying a crossing signal showing a "walk" icon and was halfway through the intersection when struck. On his motion for summary judgment, plaintiff supported his application with his own affidavit, the affidavit of an eyewitness, and a certified copy of the police report which contained the defendant's admission that he never saw the plaintiff walking "in the intersection."

Summary judgment granted? Of course not; not in Wonderland. Defendant, the AppDiv holds in *Brown v. Pinkett*, 2013 NY Slip Op 07005 (2d Dep't 10/30/13), effectively countered that proof with his own affidavit which stated that plaintiff, dressed in some sort of uniform, was in front of defendant, far beyond the intersection, when he held up his hand as if he were a police officer. Defendant, believing him to be such, stopped, at which point plaintiff approached defendant's vehicle, laid down in front of it and feigned the accident. Why did defendant give an opposite story to the responding police officers? Because he was only reacting to the plaintiff's claim that defendant struck him in the intersection.

Supreme Court, concluding that defendant's affidavit effectively raised triable issues of fact, denied summary relief. Now, on appeal, the AppDiv agrees, noting that defendant, in disputing the import of his statement on the police report, plaintiff's veracity and that of the eyewitness, did all he had to do to send the matter to a jury to determine. Makes sense, right?

In Wonderland, it's not so much what you say, but who you are when you say it. Plaintiff's problem here is just that: He was the plaintiff. Had he been the *defendant*, then his mere affidavit would have been enough to carry the day. Apparently, the law of pedestrian knockdowns depends upon which direction of the rabbit hole you're headed in. Head's up!