”Good Humor” on The Bench: Just Desserts in a Judicial Diet

Rodger L. Hochman*
"Good Humor” on The Bench: Just Desserts in a Judicial Diet

Rodger L. Hochman

Abstract

Lawyers, long the subject of jokes, are themselves often portrayed as humorless.
Lawyers, long the subject of jokes, are themselves often portrayed as humorless. Given the special and often puzzling legal terminology and structured form of most legal drafting, and that much of legal writing requires the attorney to avoid qualities of ornamentation, it is easy to see why attorneys are perceived as humorless. The historic view of judges as omniscient, stern and sober, with powdered wig, staring down from a lofty bench has further contributed to this perception. Rare, however, is the attorney who has never encountered judicial humor.

Judicial opinion writing, as any form of legal writing, requires precision, conciseness, simplicity, clarity and forcefulness. With the possible exception of the United States Circuit Judge.

1. Lawyer jokes would seem to be even more common than lawyers themselves. One dependable source of lawyer jokes is Playboy Magazine's monthly "Party Jokes" section. In addition, a collection of cartoon illustrations lampooning attorneys can be found in, BILL BERGER & RICARDO MARTINEZ, WHAT TO DO WHEN A DEAD LAWYER DIES (1985).


3. Many organizations have campaigned against the over-legalization of American society, and some nonlawyers (such as paralegals) have begun to offer legal advice. The legal profession, not surprisingly, has responded by charging these non-lawyers with an unauthorized practice of the law.


5. For more on the court's exposure to legal prose, see WILLIAM L. FLORESER ET AL., CASES AND MATERIALS ON TORTS (7th ed. 1988) contains the case Coedas v. Peerless Transp. Co., 17 N.Y.S.2d 198 (1941) (where the court considers whether a taxi driver's actions while at gunpoint constitute negligence). The case is an excellent example of the" style of a would-be pulp novelist or wannabe playwright and it is presented in a single paragraph and is written in the style of a would-be pulp novelist or wannabe playwright.

6. The case of the furtive porcupine, was made to stand on end by the bue and cry of the man despoiled accompanied by a clamorous conourse of "stop thief," to which the pater of persistent feet did maddeningly beat time, ring in his ears as the pursuing posse all the while gained on the receding cab with its quarry therein contained.
exception of the Bible, no writing is subjected to greater scrutiny than is judicial writing. Even so, judicial humor can be found interspersed throughout legal opinions in nearly every area of law. It can be found as metaphors, imagery, puns, poetry, humorous headings, popular songs, and many other forms. Moreover, considering the popularity of such television programs like Night Court, the American public seems comfortable with a practical joker turned judge. Yet, it is unlikely that society ever expects humor from a judge. Between the weighty responsibility of dispensing "justice" and the public perception of judicial power and solemnity, there is an "unexpectedness" of judicial humor which makes it so funny and such a curiosity in the legal landscape.

Like humor in general, judicial humor varies greatly in form and potency. The most lighthearted attempts at humor have been prompted simply by the case names themselves. For example, the first sentence of the opinion in Plough v. Fields, reads as follows: "In spite of its title, this case does not involve the age old struggle of mankind to wrest a living from the soil . . . ." In Short v. Long, another opinion making use of the litigants names, the appellate court ends with: "The judgment of the trial court is affirmed, and that is the long and the short of it."

Some opinions are even more blatant in their use of humor and even announce their intention to call attention to themselves. For example, in Aaron v. Life Insurance Co. of Georgia, a foreclosure case involving property owned by legendary baseball great Hank Aaron, Judge Clark added his own comments in a special concurrence. Although in full agreement with the majority opinion, he confessed that he was motivated to add his comments in order to "pay tribute to baseball's home-run champion" and to fulfill his intention "to make appellate opinions more interesting." The concurring opinion then proceeds to analogize the facts of the case to the action in a baseball game, referring to the appellate judge as umpire, with the power to reverse, in this "television replay." Judge Clark completes his opinion by reciting the last stanza of Ernest Lawrence Thayer's poem

8. JOYCE GEORGES, JUDICIAL OPINION WRITING HANDBOOK 145 (2d ed. 1986) (describing what litigants expect from judges and why humor is inappropriate).
9. 422 F.2d 824 (9th Cir. 1970).
10. 87 S.E.2d 776 (Va. 1955).
12. Id. at 97.
13. Id. at 98.
14. Id.
15. 47 T.C.M. (CCH) 238 (1983).
16. Id. at 247 n.14.
exception of the Bible, no writing is subjected to greater scrutiny than is judicial writing. Even so, judicial humor can be found interspersed throughout legal opinions in nearly every area of law. It can be found as metaphors, imagery, puns, poetry, humorous headings, popular songs, and many other forms. Moreover, considering the popularity of such television programs like Night Court, the American public seems comfortable with a practical joke turned judge. Yet, it is unlikely that society ever expects humor from a judge. Between the weighty responsibility of dispensing "justice" and the public perception of judicial power and solemnity, there is an "unexpectedness" of judicial humor which makes it so funny and such a curiosity in the legal landscape.

Like humor in general, judicial humor varies greatly in form and potency. The most lighthearted attempts at humor have been prompted simply by the case names themselves. For example, the first sentence of the opinion in Plough v. Fields, reads as follows: "In spite of its title, this case does not involve the age old struggle of mankind to wrest a living from the soil ...." In Short v. Long, another opinion making use of the litigants names, the appellate court ends with: "The judgment of the trial court is affirmed, and that is the long and the short of it."

Some opinions are even more blatant in their use of humor and even announce their intention to call attention to themselves. For example, in Aaron v. Life Insurance Co. of Georgia, a foreclosure case involving property owned by legendary baseball great Hank Aaron, Judge Clark added his own comments in a special concurrence. Although in full agreement with the majority opinion, he confessed that he was motivated to add his comments in order to "pay tribute to baseball's home-run champion" and to fulfill his intention "to make appellate opinions more interesting." The concurring opinion then proceeds to analogize the facts of the case to the action in a baseball game, referring to the appellate judge as umpire, with the power to reverse, in this "television replay."

Judge Clark completes his opinion by reciting the last stanza of Ernest Lawrence Thayer's poem "Casey at the Bat" and substituting for the last line the conclusion that "Mighty Aaron has struck out," the ultimate ruling. The saying "Nothing is certain except death and taxes" certainly communicates a somber resignation to the immutable character of nature and taxes. The Internal Revenue Service. However, the Tax Court offered an uplifting note. The Tax Court offered an alternative to this otherwise universally accepted prophesy. In Jenkins v. Commissioner, a case involving country music star Conway Twitty's bankruptcy, the Tax Court suggested the opinion in verse of its own writing. Finding in favor of the plaintiff, the Tax Court paid tribute to him with an "Ode to Conway Twitty:"

Twitty Burger went belly up
But Conway remained true
He repaid his investors, one and all
It was the moral thing to do.
His fans would not have liked it
But he could not let his fame
Had investors sued him
Like Merle Haggard or Sonny James.

When it was time to file taxes
Conway thought what he would do
Was deduct those payments as a business expense
Under section one-sixty-two.

In order to avoid those deductions
He wrote the argument of the Commissioner
The payments must be ordinary and necessary
To a business of the petitioner.
Had Conway not repaid the investors
His career would have been under cloud,
Under the unique facts of this case.
Held: The deductions are allowed.

The Internal Revenue Service, in an "Action on Decision" disagreed with the Tax Court, and added its own "Reprise:"

Harold Jenkins and Conway Twitty
They are both the same
But one was born
The other achieved fame.

14. Id. at 27.
16. Id. at 29, 31.
The man is talented
And has many a friend
They opened a restaurant
His name he did lend.
They are two different things
Making burgers and song
The business went sour
It didn’t take long.
He repaid his friends
Why did he act
Was it business or friendship
Which is fact?
Business the court held
It’s deductible they feel
We disagree with the answer
But let’s not appeal.
RECOMMENDATION
Nonacquiescence. 17

Here it would seem the taxman was not only uncharacteristically merciful, but displayed a sense of humor too!

Literary themes and devices like the ones above take many forms in judicial opinion writing. In one Florida case, *Chemical Specialties Manufacturers Ass’n v. Clark*, 18 a detergent manufacturer successfully sued Dade County over a local labeling ordinance. Fully agreeing with the majority opinion which found that the ordinance was superseded by federal labeling requirements, Chief Judge John R. Brown sprinkles soap powder throughout his concurring opinion:

Clearly, the decision represents a *Gamble* [Proctor was used in preceding sentence] since we risk a *Cascade* of criticism from an increasing *Tide* of ecology-minded citizens. Yet, a contrary decision would most likely have precipitated a *Niagara* of complaints from an industry which justifiably seeks uniformity in the laws with which it must comply. Inspired by the legendary valor of *Ajax*, . . . we have *Boldly* chosen the course of uniformity . . . . 19

After including at least a dozen more references to detergents, the opinion ends with: "It is as plain as *Mr. Clean* the proper *Action* is that the

---

21. Judge Learned Hand once commented that he liked to think that the work of a judge is an art, a bit of craftsmanship. See H. SHANKS, THE ART AND CRAFT OF JUDGMENT: THE
22. DECISIONS OF JUDGE LEARNED HAND, at flyleaf (1968).
23. 903 F.2d 659 (9th Cir. 1990).
24. No citation reference is given in order that readers may find these and the other two-
25. hundred or so movie titles on their own.
26. Specialty, 903 F.2d at 666 n.10.
28. Id. at 396.
The man is talented
And has many a friend
They opened a restaurant
His name he did lead.
They are two different things
Making burgers and song
The business went sour
It didn’t take long.
He repaid his friends
Why did he act
Was it business or friendship
Which is fact?
Business the court held
It’s deductible they feel
We disagree with the answer
But let’s not appeal.
RECOMMENDATION
Nonconquest.29

Here it would seem the taxman was not only uncharacteristically merciful, but displayed a sense of humor too!

Literary themes and devices like the ones above take many forms in judicial opinion writing. In one Florida case, Chemical Specialties Manufacturers Ass’n v. Clark, a detergent manufacturer successfully sued Dade County over a local labeling ordinance. Fully agreeing with the majority opinion which found that the ordinance was superseded by federal labeling requirements, Chief Judge John R. Brown sprinkles soap powder throughout his concurring opinion:

Clearly, the decision represents a Gamble [Proctor was used in preceding sentence] since we risk a Cascade of criticism from an increasing Tide of outraged citizens. Yet, a contrary decision would most likely have precipitated a Niagara of complaints from an industry which justifiably seeks uniformity in the laws with which it must comply. Inspired by the legendary value of Ajax, we have Boldly chosen the course of uniformity.29

After including at least a dozen more references to detergents, the opinion ends with: “It is as plain as Mr. Clean the proper Action is that the

18. 462 F.2d 323 (5th Cir. 1973).
19. Id. at 328.
21. Judge Learned Hand once commented that he liked to think that the work of a judge is an art, a bit of craftsmanship. See H. WOODCOCK, THE ART AND CRAFT OF JUDGES. (1955).
22. 493 F.2d 429 (5th Cir. 1974).
23. 293 F.2d 459 (9th Cir. 1960).
24. No citation reference given in order that readers may find these and the other
hundreds or more ideas on their own.
25. Smith, 493 F.2d at 430.
Night Live episode. Finally, explaining that the defendant had waived its right of removal (in a paragraph with the heading "A Schwing and a Miss"), and deeming the belated attempt of removal "way" improvident, the court stated the defendant's "most bogus attempt at removal is not worthy and the Defendant must 'party on' in state court." 28 Some say that the use of such humor adds a refreshing touch to an already over-serious and hyper-sensitive profession. 29 Arguably, where litigants attempt to "pull a fast one" on the court, such humor may be well deserved and likened to court "sanctions" for frivolous or otherwise obvious improper actions by litigants. Thus, humor may have utility in its ability to bring not only the issues, but the litigants themselves, "down to earth." A good example of such use can be found in a court order by United States District Court Judge Jose Gonzalez, Jr. in Venezuela International de Aviacion, S.A. v. International Ass'n of Machinists and Aerospace Workers. 30 The defendant, in apparent disregard for Rule 11(e) and 7(b)(2) of the Federal Rules of Civil Procedure calling for pleadings and motions to be "simple, concise and direct" submitted a motion entitled:

"IAM's Motion to Dismiss Complaint for Reasons of Mootness or, Alternatively, Motion to Strike Visa's Prayer for Relief Requesting Court Approval of the Use of Self Help in the Form of the Implementation of Its Collective Bargaining Proposals Despite the Fact that the Mandatory Bargaining Provisions of the Railway Labor Act (Meeting and Concurring in Good Faith Regarding All Parties' Proposals) Have Neither Been Concluded nor Exhausted." 8

In response, the District Court, alarmed that the defendant tried to argue its motion in the title, amended, sua sponte, the above named motion to read "IAM's Motion to Dismiss Complaint, or Alternatively, Motion to Strike." 92 Borrowing from A. Pope's "Essay on Criticism," the court added:

28. Id. at 367.
29. Brooks C. Miller, a senior associate at Kelley Drye & Warren in Miami and one of the lawyers involved in the case reacted with amusement: "I thought it was a refreshing change from most orders. I showed it around the office, and it got a few chuckles." Wendy Bourland, "Venezuela's World," Califorms, Palm Beach Rev., May 17, 1985, at 81. Not everybody got it, though. The litigator representing the plaintiff, unfamiliar with the movie, thought the judge was making light of the situation. Id.
32. Id.

Hochman

1993

Words are like leaves; and where they
most abound,
Much fruit of sense beneath is rarely found. 9

There can be no mistaking the Court's message to the defendant and the
tsensat of its use of poetry to make its point.
It may be said that judicial opinions, humorous or not, are written for
many reasons: for posterity, for the bar, for future judges, for the legislature,
for law students, for newspaper readers, for voters, for the losing lawyer, for
other judges, and for the writing judge himself. 94 Whoever the intended
Audience, judges have taken "poetic license" in many other ways. In
1993, Judge J. H. Gillis, in an action for damages
caused when the defendant's car struck the plaintiff's tree, pressed his
version of "Trees."

We thought that we would never see
A suit to compensate a tree.
A suit whose claim in tort is plain
Upon a mangled tree's behalf.
A tree whose barked trunk was pressed
Against a Chevy's crumpled crest.
A tree that faces each new day.
With bark and limb in disarray.
A tree that may forever bear
A lasting need for tender care.
Flora lovers though we three,
We must uphold the court's decree.
Affirmed. 95

The court explained in a footnote that summary judgment for the
defendant was affirmed because of the operation of the state No-Fault
Insurance Act. West Publishing, conforming to the opinion's poetic form,
printed the headings and subtitles in the same style. 96

93. Id.
96. West Publishing has often printed both the headings and the text in a style
conforming to the underlying opinion. See, e.g., Halsell v. States, 218 Ill.2d 396 (Ill.
Night Live episode. Finally, explaining that the defendant had waived its right of removal (in a paragraph with the heading "A Schwing and a Mise"), and deeming the belated attempt of removal "way" improvident, the court stated the defendant's "most bogus attempt at removal is not worthy and the Defendant must 'party on' in state court." 30 Some say that the use of such humor adds a refreshing touch to an already over-serious and hyper-sensitive profession. 31 Arguably, where litigants attempt to "pull a fast one" on the court, such humor may be well deserved and likened to court "sanctions" for frivolous or otherwise obvious improper actions by litigants. Thus, humor may have utility in its ability to bring not only the issues, but the litigants themselves, "down to earth." A good example of such use can be found in a court Order by United States District Court Judge Jose Gonzalez, Jr. in Venezolana Internacional de Aviacion, S.A. v. International Ass’n of Machinists and Aerospace Workers. 32 The defendant, in apparent disregard for Rule 8(e) and 7(b)(2) of the Federal Rules of Civil Procedure calling for pleadings and motions to be "simple, concise and direct" submitted a motion entitled:

IAM’s Motion to Dismiss Complaint for Reasons of Mootness or, Alternatively, Motion to Strike Visa’s Prayer for Relief Requesting Court Approval of the Use of Self Help in the Form of the Implementation of Its Collective Bargaining Proposals Despite the Fact that the Mandatory Bargaining Provisions of the Railway Labor Act (Meeting and Conferring in Good Faith Regarding All Parties’ Proposals) Have Neither Been Commenced nor Exhausted. 33

In response, the District Court, alarmed that the defendant tried to argue its motion in the title, amended, sua sponte, the above named motion to read "IAM’s Motion to Dismiss Complaint, or Alternatively, Motion to Strike." Borrowing from A. Pope’s "Essay on Criticism," the court added:

We thought that we would never see
A suit to compensate a tree,
A suit whose claim in tort is pret
Upon a mangled tree’s behest;
A tree whose battered trunk was pressed
Against a Chevy’s crumpled crest;
A tree that faces each new day
With bark and limb in disarray;
A tree that may forever bear
A lasting need for tender care.
Flora lovers though we three,
We must uphold the court’s decree.
Affirmed. 34

The court explained in a footnote that summary judgment for the defendant was affirmed because of the operation of the state No-Fault Insurance Act. West Publishing, conforming to the opinion’s poetic form, printed the headings and syllabus in the same style. 35

28. Id. at 397.
29. Brooks C. Miller, a senior associate at Kelley Drye & Warren in Miami and one of the lawyers involved in the case reacted with amusement: "I thought it was a refreshing change from most orders. I showed it around the office, and it got a few chuckles."
30. "Wayne’s World" Collides with District Court, PALM BEACH REV., May 8, 1992, at A17. Not everybody got it, though. The litigator representing the plaintiff, unfamiliar with the movie, thought the judge was making light of the situation. Id.
32. Id.
33. 1993 NSUWorks 32.
34. See ALDEBERT, supra note 4, at 25-26.
Another poetic parody, *In re Love*, written by United States Bankruptcy Judge A. Jay Cristol, traces the language of Edgar Allan Poe's "The Raven:

Once upon a midnight dreary, while I pondered weak and weary
Over many quaint and curious files of chapter seven lore
While I nodded, nearly napping, suddenly
There came a tapping
As of some one gently rapping, tapping at
My chamber door,
"Tis some visitor" I muttered, "tapping at
My chamber door—
Only this and nothing more."

The court went on to deny a *sua sponte* motion to dismiss, stating:

Upon consideration of § 707(b), in anguish, loud I cried
The court's *sua sponte* motion to dismiss under § 707(b) is denied. 38

Another case, *Mackensworth v. American Trading Transportation Co.*, is entirely in rhyming couplet, including all but one of its eleven footnotes, which apologetically states: "The words of the statute are overly terse, still we will quote them, though not in verse...." 40 Still another case, *United States v. Ven-Fuel, Inc.*, introduces the case with original verse, then continues with a normal writing style divided by the following headings: "The Procedural Background Is Easily Stated," "But The Facts Are More Complicated—," "Applying The Law Is Even Worse," "But For Reasons Stated We Must Reverse." 45

Finally, no treatment of judicial humor would complete without the reference to cases involving animals. In both the following examples, judges who authored the opinions also made use of the lowly respected pun, probably the most widely used humorous device whether it be in legal or lay arenas. In *Bazzini v. Garrani*, which involved a civil suit by a pet store customer who bought a toucan which died three weeks later, Judge Colaneri remarked that it was "a sad tale (or is it tail) of the noble, but late [bird],


Another poetic parody, *In re Love,* written by United States Bankruptcy Judge A. Jay Cristol, traces the language of Edgar Allan Poe’s “The Raven.”

Once upon a midnight dreary, while I pondered
weak and weary
Over many quaint and curious files of
chapter seven lore
While I nodded nearly napping, suddenly
there came a tapping
As of some one gently rapping, rapping at
my chamber door,
“Tis some debtor” I muttered, “tapping at
my chamber door—
Only this and nothing more.”

The court went on to deny a *sua sponte* motion to dismiss, stating:

... Upon consideration of § 707(b), in anguish, loud I cried
The court’s *sua sponte* motion to dismiss under § 707(b) is denied.

Another case, *Mackensworth v. American Trading Transportation Co.,* is entirely in rhyming couplet, including all but one of its eleven footnotes, which apologetically states: “The words of the statute are overly terse, still we will quote them, though not in verse...” Still another case, *United States v. Ven-Fuel, Inc.,* introduces the case with original verse, then continues with a normal writing style divided by the following headings: *The Procedural Background Is Easily Stated,* “But The Facts Are More Complicated—,” “Applying The Law Is Even Worse,” “But For Reasons Stated We Must Reverse.”

---

38. *In re Love,* 61 B.R. at 559.
40. Id. at 375 n.5.
41. 602 F.2d 747 (5th Cir. 1979).
42. Id. at 747, 749-50, 752-53.

Another case utilizing humorous headings is *City of Houston v. FAA,* 679 F.2d 1184 (5th Cir. 1982). The headings, which parody air traffic regulations, airlines and their advertising slogans, include: “One If By Land, Two If By Sea, And Three If By Air,” “Pre-Flight Procedure,” “We’ve Only Just Begun,” “The Friendly Skies—Filled with Litigants,” “Scope
right, we see no need for the appellants to assert his right \textit{jus tertii}. Blackie can clearly speak for himself.\textsuperscript{47}

Clearly, the humorous analysis is impeccable in its logic.

While many critics say humor has no place in a legal adjudication,\textsuperscript{48} Justice Richard Wallach of the Supreme Court of New York has noted, humor, carefully controlled, can properly find a place in judicial writing.\textsuperscript{49} Furthermore, the Appellate Judges’ Conference in 1966 reflected a mood that a judge should not flinch from the use of color or figures of speech if they add clarity and force to his writing.\textsuperscript{50} As any artistic device, it can be overdone, if not misused. Fortunately, abuse of judicial humor would seem to be only a minor flaw in our legal system and in many instances it is used stylistically and artfully without becoming distracting or insulting. Measured, prudent doses of figurative language and humor in judicial opinion enlivens the law, enabling it to avoid becoming bland, commonplace recitation and prevents it from becoming too confusing or overbearing to the general public who is most affected by its application. Hopefully, it can also change the stereotype of the humorless lawyer. Of course, sometimes that requires that lawyers have the ability to laugh at themselves.

\textsuperscript{47} Id. at 1544 n.5.
\textsuperscript{50} B.E. Witkin, \textit{Appellate Court Opinions—A Syllabus for Panel Discussion}, 63 F.R.D. 515, 567 (1973).

The Best of PALS
Arnold B. Kanter

Prospective lawyers are not the only ones who lack role models, these days. Equally serious is the lack of role models that young lawyers find, once they arrive at the firm. Acutely aware of this problem, the Fairweather, Winters & Sommers (FWS) Committee on Associate Retention and Evaluation (CARE) sprang to action recently with this memo from CARE Chair Stephen Falderall.

To: All Partners
From: Stephen L. Falderall, CARE Chair
Re: Membership

Our young associates are floundering. If you doubt this, step outside your office and watch them flapping about in the hall. Not a pretty sight, especially at what we’re paying them.

CARE has determined that the major reason for associate floundering is the lack of mentoring that our young associates receive today. Forty years ago, when our firm was ten lawyers, mentoring took place naturally. For the last thirty-five or so years, it hasn’t taken place at all.

Recognizing this, CARE adopted the following resolution, 4-3:

"RESOLVED that there’s no time like the present to do something about the firm’s mentoring problem." (Two of those voting 'nay' agreed that it was time that something be done about the problem, but could not in good conscience support the resolution because of their belief that there might yet prove to be another time like the present.) This memo sets forth our new Partner-Associate Liaison Strategy (PALS).

INTRODUCTION

Some partners may approach mentoring with a certain skepticism. "Why," they might ask, "is this necessary? I was able to make it in this