

## Humor in the Law

Some lawyers believe there's no room for humor in the courtroom. I disagree. Humor can be effective in making a point. It regains attention and builds rapport. It enhances speaker credibility, aids retention, and improves listening. Humor is less threatening than seriousness can be. When people laugh with you, they can relax and get to like you. Once that happens, they'll listen more to you and find you more interesting. All of these are good attributes of a trial lawyer!

Humor can help you persuade a jury, especially in long and boring cases. It adds a human element to the formality and rigidity of a trial. Perhaps the biggest danger in adding humor in the courtroom is the judge's reaction. You just have to be prepared to roll with the punches. If we step back from being only the *serious* lawyer in the courtroom, and become more human and relaxed and funny, we'll see that most people enjoy humor, even there.

I truly believe Robert Frost coined this phrase for us **lawyers**: "If we couldn't laugh we would all go insane."

Those of you who know me well know that laughter is a big part of my life. I've heard my share of lawyer jokes, and I haven't really heard one that's funny. But that's not what this article is about. Certainly, in our profession a good sense of humor keeps us from pulling out our hair, for instance, when dealing with the fourth iteration of a subpoena for medical records that still seeks "any and all records" on our clients "for any and all dates." A good sense of humor gets us through the day when we're faced with (hypothetically) cranky judges or obstreperous opposing attorneys.

Being the proud owner of a strong sense of humor got me wondering about other lawyers and judges and their senses of humor and how they used it to get through their days. These are just a few of the funny legal stories I found that I thought deserved honorable mention in this month's column:

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by Rebecca D. Lack



Rebecca Lack is a principal at Lack Law Firm and the 2013 President of Consumer Attorneys of San Diego. She's the seventh woman President of CASD. She practices civil litigation with an emphasis on insurance bad faith and personal injury law and is very proud to call herself an attorney. CASD has recently awarded Rebecca an "Outstanding Trial Lawyer" award. She currently shares her life with her two standard poodles.

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## Baby's Arrival

In a Kansas federal district court, the defendants' lawyer asked for a trial continuance because it conflicted with the date on which his wife was having a baby. The plaintiffs' lawyers opposed the continuance, which shocked and clearly irritated the judge. Judge Eric Melgren not only granted the motion for continuance, but chastised the objecting lawyers while ordering that the new parents be congratulated:

**Defendants seek a brief continuance, noting that one of their counsel..., along with his wife, is expecting their first child due on July 3. Given the proposed length of trial and the famous disregard that newborns (especially first-borns) have for such schedules, and given that the trial is scheduled in Kansas City while the new [baby's] arrival is scheduled in Dallas,**

## Defendants move this Court for a continuance.

This in itself would not be remarkable, but in reviewing the motion the court was more than somewhat surprised to read, "Plaintiffs have refused to agree to continue the trial setting and have indicated that they intend to oppose this Motion." Well, every party is entitled to file an opposition to a motion, and hoping that perhaps defendants had mischaracterized the vigor of plaintiffs' opposition, we have eagerly awaited plaintiffs' defense of its opposition. The Memorandum in Opposition arrived yesterday, and it was, sadly, as advertised.

First, plaintiffs make a lengthy and spirited argument about when defendants should have known this would happen, even citing a pretrial conference occurring in early November as a time when [plaintiffs' lawyer] "most certainly" would have known of the due date of his child, and even more astonishingly arguing

that "utilizing simple math, the due date for [the] child's birth would have been known on approximately Oct. 3, or shortly thereafter."

For reasons of good taste, which should be (though, apparently, are not) too obvious to explain, the court declines to accept plaintiffs' invitation to speculate on the time of conception of the child.

Finally, plaintiffs argue that surely [plaintiffs' lawyer] will have sufficient time to make it from the Kansas City trial to the Dallas birth, even helpfully pointing out the number of daily, non-stop flights between the two cities; and in any event complain of the inconvenience of this late requested continuance.

Certainly this judge is convinced of the importance of federal court, but he has always tried not to confuse what he does with who he is, nor to distort the priorities of his day job with his life's role. Counsel are

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encouraged to order their priorities similarly.

"Defendants' Motion is GRANTED. The Ermans are CONGRATULATED." *Jayhawk Capital Management, LLC v. LSB Industries, Inc.* (U.S. Dist. Ct., E.D. Kan., Apr. 12, 2011) Case No. 08-2561-EFM.

### A Comic Strip

An antitrust lawyer, who was ordered to limit his *amicus curiae* brief to five pages, instead submitted a cartoon strip. Appellate lawyer Bob Kohn opted for this unusual format after U.S. District Judge Denise Cote of Manhattan ordered that his brief was limited to five pages. "I thought of the idea of using pictures which, as we know, paint a thousand words," said Kohn to *Bloomberg* and the *New York Times Media Decoder* blog. He called the cartoon a "graphic novel-ette" and said it complied with court rules requiring 12-point or larger type and one-inch margins.

The U.S. Justice Department filed suit in April, 2012 against Apple and five publishers, claiming a conspiracy to address Amazon.com's low e-book pricing of \$9.99, that was often below its cost. The DOJ saw a price-fixing conspiracy, while supporters said Amazon's low prices were killing off competition and allowing it to gain market share.

Kohn's brief begins with a traditional table of authorities. The comic strip follows, with the first panel

showing Cote ordering a five-page limit. Kohn then tries to compose his brief at home, sitting in bed wearing a robe and working on his laptop. His daughter enters the bedroom and asks Kohn what he is working on. "Trying to explain why supply and demand does not operate normally on pricing of e-books," Kohn says. At the bottom of the picture is a rectangle with a two-word reference to one of the cases in the table of authorities.

"Oh, because of illegal downloading," Katie says. "Right," Kohn replies. He goes with a short explanation of his argument. The comic then shifts to the next day, where Kohn is discussing the case with his daughter on a park bench. Kohn tells Katie his argument is backed by the U.S. Justice Department's own Supreme Court authority, to which his daughter replies, "I'm not a lawyer, but that sounds like a major screw-up." Later she concludes, "Wow! The DOJ really blew this one."

Despite Kohn's creative attack, the Justice Department's settlement was approved, but the comic strip received its noteworthy acclaim.

### "Guys and Dolls"

An appellate judge in Florida, Judge Farmer, wrote an opinion in storybook style based on a tune from *Guys and Dolls*. He was not able to get the other appellate judges on this panel to go along with his approach, so he decided to attach his creative

opinion to the back of the court's *per curiam* opinion together with a lengthy preface explaining his unique approach to writing it. It seems he didn't want to be pigeon-holed into the stuffy writing style appellate judges often have, or feel they must express themselves in, so he went out on a limb and wrote a story-like decision. Part of his opinion explains the latter, "One technique occurred to me. ... Good fiction is set in human experience. Good fiction illuminates."

The decision stemmed from the racehorse Funny Cide who, in 2003, won the Kentucky Derby and the Preakness. After the Kentucky Derby, the *Miami Herald* published an article implying that the jockey cheated by using some kind of illegal battery-powered device during the race. The *Herald* later admitted it made an error and retracted the story. Meanwhile, Funny Cide placed third at the Belmont, missing out on becoming the twelfth horse in history to win the Triple Crown. The lawsuit that followed was filed by the owners of Funny Cide, claiming the article caused substantial damage, including the chance to win the Belmont because "the article caused the jockey to override the horse in the Preakness in an attempt to vindicate himself." The case was thrown out on summary judgment and appealed. The *Herald* won on appeal. Here's an excerpt,

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inspired by the opening song of *Guys and Dolls*, Fugue for the Tinorns:

Then the horse won the Preakness Stakes. And it's not even close. Wins by nearly ten lengths. The horse is so far out front, looks like he could make it past the wire and into the barn before they can take the photo. Hardly anyone asked if the horse ran out of gas for the Belmont. Are you kidding? Racing was all stirred up about the Crown. The feedbox noise grew hot.

Was it a dream, or did I hear stories about a guy who read in the paper the horse wins it all by a half? About another guy who said it was no bum steer, it was from a handicapper that's real sincere? Even about a third guy who knew this is the horse's time because

his father's jockey's brother's a friend?

Whatever. It's a lock. Two jewels for the Crown. Make room for the third.

Only, wait a minute. Did I hear another story about this one guy who wasn't so sure? Said it all depends if it rained last night?

For what it's worth, I love a judge with a great sense of humor. It's nice to know they're human too. If anyone would like to read the entire opinion he wrote, you may find it at *Funny Cide Ventures, LLC v. Miami Herald Publishing Co.* (Fla. Dist. Ct. App. 2007) 955 So.2d 1241-47.

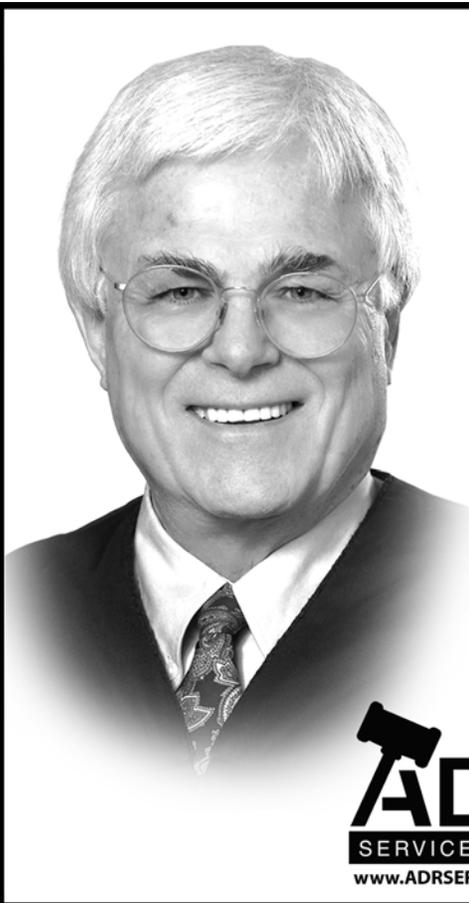
More recently, George West, the attorney representing George Zimmerman, told a joke in his opening statement of the murder trial of his now-acquitted client. During his

opening statement, West told the jury that the death of Trayvon Martin was a "sad case."

"Sometimes you have to laugh to keep from crying," he explained. "So, let me — at considerable risk — let me say, I would like to tell you a little joke. ... Knock, knock. Who's there? George Zimmerman. George Zimmerman who?" West said. "Alright, good, you're on the jury." Following the joke, West moved on to "the serious business" of the trial.

Was it appropriate? Did it even matter in the long run? Who knows and I'm not here to judge. I will say, though, he took a huge risk that not a lot of us would have had the guts to take, especially in a murder trial. For that I give him credit.

Michael Pritchard said, "You don't stop laughing because you grow old. You grow old because you stop laughing." I hope to never grow old. **TBN**



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- Daily Journal Judicial Profile, August 17, 2012

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