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# Threading the Needle: Are We Modeling Inappropriate Use of Humor for our Students?

By Emily Grant<sup>1</sup>

*Emily Grant is a Professor of Law at Washburn University School of Law.*

As law professors, we are tasked primarily with educating students on the substantive knowledge and skills needed to practice law. It's a serious challenge but that doesn't mean we should overlook the use of humor to better help our students learn. Deftly employed, humor can break down learning barriers in an otherwise intimidating environment, help students retain information, and foster an atmosphere that embraces the joy of the challenge. However, professors also have a responsibility to impart professional values by modeling appropriate professional behaviors. Students look to the front of the classroom in the earliest stages of forming their understanding of what it means to be a legal professional.

How can professors strike the right balance between these competing goals? To analyze that question, this piece surveys several different bodies of literature for relevant findings: On the one hand, humor can be an effective pedagogical tool. On the other hand, practicing attorneys are generally cautioned against using humor in the professional setting. Further, professors have a responsibility to model professionalism, in addition to teaching the substance of the law. Taken together, these findings reveal a tension in the choice to use humor as a professor.

Are the strictures of a formal profession fundamentally at odds with using humor as a pedagogical tool in the law school classroom? Does a jocular classroom atmosphere undermine the professionalism we must model for students as they make the transition from the schoolhouse to the courthouse? One quick resolution to this tension is simply to caution students to “do as I say, not as I do.” This retort, however, is not fully satisfying. Instead, I submit this essay as a more thorough defense of humor, which, when delicately woven into the fabric of the classroom experience, can be consistent with modeling professionalism. Humor can also be a valuable, and perhaps underutilized, resource for professors and aspiring lawyers.

## I. Humor in the Classroom

Humor as a communication tool is the subject of much theoretical conversation, having been studied by researchers in fields from psychology to communication to business.<sup>2</sup> More than whatever academic conclusions researchers draw, however, humor is a type of communication intended to evoke laughter. Laughter, in turn, is the best medicine in many contexts, an integral part of human nature, and the contagious universal language.

If skillfully employed, laughter-producing humor can be a valuable pedagogical strategy in a law school classroom because, among other reasons, it reduces student anxiety, creates an instant connection between speaker and audience, lowers inhibitions, and reduces the power imbalance inherent in the classroom. Indeed, it can be a “catalyst for classroom

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<sup>2</sup> See Kevin Bruthirds, *The Impact of Humor on Mediation*, 61 DISP. RESOL. J. 33, 34 (2006).

‘magic,’ when all the educational elements converge, and teacher and student are both positive and excited about learning.”<sup>3</sup>

#### A. Benefits

**Improved learning atmosphere.** Humor in the classroom can bridge the gap between professors and students in a way that emphasizes shared experience and builds group rapport. Professors display their humanity with appropriate use of humor, which in turn makes them more approachable and appealing. Using humor to build and strengthen the classroom community breeds mutual confidence, respect, and trust.

**Physical benefits.** Humor also provides tangible physical benefits. “Physiologically, humor and laughter can aid learning through improved respiration and circulation, lower pulse and blood pressure, exercise of the chest muscles, great oxygenation of blood, and the release of endorphins into the bloodstream.”<sup>4</sup> Additionally “laughter causes significant increase in catecholamines, the so-called alertness hormones that include adrenaline,”<sup>5</sup> which may lead to increased retention of information.

**Stress reduction.** Psychologically and emotionally, humor in the classroom can reduce student stress and anxiety. Law school is, by its nature, a stressful environment, and a humorous interlude in class can help students relax a bit and remind them not to take things too seriously. Indeed, laughter triggers a physical response in the body that decreases stress hormones, thereby reducing physical stress.

<sup>3</sup> Neelam Kher et al., *Using Humor in the College Classroom to Enhance Teaching Effectiveness in “Dread Courses,”* 33 COLLEGE STUDENT J. 400, 400 (1999). Humor is an “immediacy behavior,” a communication device “that improve[s] the physical or psychological closeness and interaction of two or more individuals.” Lance Askildson, *Effects of Humor in the Language Classroom: Humor as a Pedagogical Tool in Theory and Practice*, 12 ARIZ. WORKING PAPERS IN SLAT 45, 47 (2005).

<sup>4</sup> R.L. Garner, *Humor in Pedagogy: How Ha-Ha can Lead to Aha!*, 54 COLLEGE TEACHING 177, 177 (2006).

<sup>5</sup> James D. Gordon III, *Humor in Legal Education and Scholarship*, 1992 BYU L. REV. 313, 316; see also John J. Capowski, *Evidence and the One-Liner: A Beginning Evidence Professor’s Exploration of the Use of Humor in the Law School Classroom*, 35 ARIZ. ST. L.J. 877, 879–80 (2003).

**More effective learning.** Humor can make a particular concept or idea more memorable, thus increasing student retention of information. Humor in the classroom also inspires students to pay attention in class, to remain alert lest they miss something funny, and to engage with the class and the material. Students tend to take a more active role in a classroom that includes humor, and they perceive that they have learned more. As a result, humor is linked with an increase in attendance and a sustained interest in the subject matter that extends beyond the classroom itself.<sup>6</sup>

Humor can also increase the depth of analysis and understanding in a classroom. It creates an environment in which defenses are lowered so students may be more open to other views or values. Humor can challenge students’ usual mode of thinking in a way that can encourage dialogue, critical evaluation, and new perspectives. Students may be more receptive to difficult material, reflective of their own viewpoints, and better able to analyze contradictions or inconsistencies.

**More rewarding teaching.** Using humor in the classroom can also have some benefits for professors. Besides enjoying the class more, professors can get instant feedback from the laughter and reaction of students. Humorous professors are seen as more likeable and often receive higher ratings on student evaluation forms.

#### B. Risks

Incorporating humor into a classroom can be a double-edged sword. If done poorly, it can be really, really terrible. Students and professors, and people in general, have different senses of humor so that one person’s joke is another person’s affront. For that reason, use of humor is complicated and highly subjective, and professors cannot always predict how a particular joke or funny remark will be interpreted.

<sup>6</sup> “The positive environment of a humor-enriched lecture has even been shown to increase attendance in class.” Garner, *supra* note 3, at 178; see also Zak Stambor, *How Laughing Leads to Learning*, 37 MONITOR ON PSYCH. 62 (2006); Askildson, *supra* note 2, at 55–56 (discussing results of a study showing “increased levels of interest as a result of humor usage by the teacher. This was true for both student and teacher respondents . . .”).

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At best, overdone and overused humor can be distracting and can feel to students like a waste of time. Such excessive use of humor can negatively impact student motivation and, naturally, their learning also. Humor may also be superficial, signaling to a learner that the material or the professor are not to be taken seriously.

### C. How to be Funny

A typical classroom presents a variety of opportunities for injecting humor. “Humor in the classroom can take many forms . . . jokes, riddles, puns, funny stories, humorous comments and other humorous items . . . cartoons, top ten lists, comic verse, and phony or bogus experiments.”<sup>7</sup> Many conferences will feature presentations about incorporating games or other fun and/or funny activities into a law school classroom. One easy way to start is to use topically relevant cartoons or memes as part of a PowerPoint slideshow—a meme from Facebook, for example, illustrating the importance of the serial comma, or a Calvin and Hobbes cartoon about how “verbing weirds language” in our class discussion about clarity in your writing. In one of my classes, I have students create memes about cases or rules we discuss, which serves dual purposes—humor for the other students in the class and comical material I can use in future semesters.

Professors should frequently examine, however, the goals and impact of humor they hope to incorporate. Humor should be “specific, targeted, and appropriate to the subject matter.”<sup>8</sup> And humor should never be used to degrade or belittle any individual or group.

## II. Humor in Law Practice

As a general rule, the more formal the professional setting, the more formal the professional should be, and the legal profession tends to be fairly formal. The physical spaces in which lawyers practice (e.g.,

courtrooms, conference rooms, law offices) tend to be solemn. Hierarchies are clear (e.g., partner/associate; judge/attorney) and reinforced in ways both obvious and subtle. It is no surprise practicing law can be stressful, almost like combat.

But humor can be an effective force for reducing stress and lightening the load. “[T]hose steeped in serious and complicated legal work need an outlet for expressing intellectual and emotional strain, and humor can provide a chance for release.”<sup>9</sup> The benefits of humor are similar to those discussed in the pedagogy realm, but humor in practice also carries the same risks in terms of offending, alienating, or distancing other people. And in a legal context, that can have drastic consequences for clients. Representing client interests, in whatever context, is serious business, and attorneys should be wary of trivializing that situation with humor.

For lawyers who wish to inject humor into their practice, the advice is “planned spontaneity”—make it feel like jokes and clever witticisms are extemporaneous but in actuality have been thought through in advance.<sup>10</sup> But specific strategies for employing or avoiding humor may depend on the context in which the attorney is working.

### A. Legal Writing

The permanency of writing suggests attorneys might want to avoid memorializing attempts at humor in their written word because they live forever. This is especially true in the electronic age and the ever-present risk of virality. That said, if done carefully and well, humor can inject levity in an otherwise mundane brief or memo. It can convey

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<sup>7</sup> Kher, *supra* note 2, at 400.

<sup>8</sup> Garner, *supra* note 3, at 178. “The type of humor to use should be determined by the content of what the teacher teaches. It should be related to the subject matter, it should be topic related so that students can quickly make connections for effective retention of what is taught.” Jacob Omede & Noah Jimba Daku, *Teachers’ Perception of Humor and Laughter as Pedagogical Tools for Promoting Learning in Kogi State College of Education, Ankpa, Nigeria*, 4 J. EMERGING TRENDS IN EDUC. RES. & POL’Y STUDIES 706, 711 (2013).

<sup>9</sup> LAURA LITTLE, GUILTY PLEASURES: COMEDY AND LAW IN AMERICA 143–44 (2019). “[L]ighten up, lawyers! You will live longer and live better. Weighty as your legal responsibilities may be, you will enjoy your work, your life, your colleagues, your adversaries, and yourself more if you exercise your sense of humor.” Art Stroyd, *Lighten Up!*, 6 LAW. J. 4, 4 (2004).

<sup>10</sup> Andrew J. McClurg, *Risky Business: The Dangers of Using Humor*, 45 ORANGE COUNTY LAW., June 2003, at 32, 34. Following that dictate, a number of attorneys have pursued successful comedy careers. See Whitney Meers, *The Funny Thing About Mediation: A Rationale for the Use of Humor in Mediation*, 10 CARDOZO J. CONFLICT RESOL. 657, 665–66 (2009) (discussing Paul Mercurio, Karen Bergreen, Demetri Martin, and Sean Carter). Indeed, even noted jurist Abraham Lincoln was known for “his reliance on humor, anecdotes, and stories to strengthen his relationships, to relieve stress, to strengthen an argument, and for avoidance.” Mark Withers, *Lessons from Lincoln: Including Humor in Your Law Practice*, 58 ADVOC. 45, 45 (2015).

the confidence of the writer, thus improving that attorney's status and power in the legal relationship. For example, in a motion to dismiss a copyright infringement case involving a photo that a monkey took while handling a camera, an attorney noted that "[m]onkey see, monkey sue is not good law."<sup>11</sup> The court apparently appreciated the levity, citing the language in its decision granting the motion.

#### B. Trial

A trial necessarily represents a serious matter for clients. Nonetheless, humor can be an effective tool for trial attorneys. Trial attorneys are not stand-up comedians, but they often assume the role of thespian or storyteller to convey their client's position. Humor can "defuse tension, evoke a shared humanity, [and] engage a jury or judge."<sup>12</sup> It can even strengthen the arguments the attorney is presenting.

On the other hand, of course, humor used during a trial can go horribly awry. The judge and the jury may not enjoy the same sense of humor as the attorney, in which case humor may anger or confuse those an attorney is hoping to persuade. "Worst of all are jokes that—purposefully or inadvertently—target either the vulnerable or the victimized, or that somehow denigrate the gravity and importance of the proceeding itself (especially to the litigants)."<sup>13</sup> For example, one criminal defendant argued ineffective assistance of counsel applied to his trial when his attorney

failed at humor in his opening statement: "I am a local attorney who has been appointed by the Court to represent an indigent defendant . . . . I am happy to announce that this appointment will help me with my indigent problem."<sup>14</sup>

#### C. Oral Argument

Humor in oral arguments is more common than in written work, but the conventional wisdom remains that any possible benefit may not be worth the risk. The United States Supreme Court Guide for Counsel admonishes that "[a]ttempts at humor usually fall flat."<sup>15</sup> Indeed, Justice Scalia, in his book with Bryan Garner, admonishes: "Never tell prepared jokes. They almost invariably bomb."<sup>16</sup> The classic example comes from oral arguments in *Roe v. Wade*, during which the Texas attorney general referenced his female opposing counsel with this opening joke: "It's an old joke, but when a man argues against two beautiful ladies like this, they are going to have the last word."<sup>17</sup> Stunned silence followed.

#### D. Judicial Opinions

The use of humor in judicial opinions is increasing. Although some decry judges' attempts to be funny as inappropriate, humor can make an opinion more readable and easier to understand.<sup>18</sup> Indeed, judges can employ humor helpfully to explain and clarify portions of the legal system or the ruling in a particular case, or just to exercise their creative writing flair. For example, in a litigation involving Kentucky Fried Chicken, the judge wrote that "[t]his case presents us with something mundane,

<sup>11</sup> LITTLE, *supra* note 8, at 149.

<sup>12</sup> Philip N. Meyer, *Comedy in the Courtroom: Clowning Around Is Frowned Upon, but Don't Underestimate the Genre's Value*, 102 ABA J., Sept. 2016, at 22, 22. "Affecting the common touch is often effective, and the role of tasteful humor is of the utmost importance." *Humor and Zealous Advocacy in our Adversary System*, 184 F.R.D. 433, 434 (1998). "Perhaps the human mind needs a sweetener when being exposed to attempts at persuasion." Withers, *supra* note 9, at 45.

<sup>13</sup> Meyer, *supra* note 11, at 22. In fact, [s]tand-up comics are adept at "reading the room," and they exercise judgment in deciding what material will or won't resonate with the audience. Lawyers have to know their audience as well. Even an attempt at humor that is intended to establish rapport with a judge or jury through some shared social observation can come off as inappropriate, condescending or made at someone else's expense.

John G. Browning, *Humor in the Courtroom: No Laughing Matter*, ABA J., July 2019, available at <https://www.abajournal.com/voice/article/humor-in-the-courtroom-no-laughing-matter>.

<sup>14</sup> McClurg, *supra* note 9, at 33.

<sup>15</sup> GUIDE FOR COUNSEL IN CASES TO BE ARGUED BEFORE THE SUPREME COURT OF THE UNITED STATES 10 (2019), available at [https://www.supremecourt.gov/casehand/Guide%20for%20Counsel%202019\\_rev10\\_3\\_19.pdf](https://www.supremecourt.gov/casehand/Guide%20for%20Counsel%202019_rev10_3_19.pdf).

<sup>16</sup> ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 186 (2008). Occasionally an "unscripted witticism" can alleviate tension, but "[a]ll in all, the benefit is not worth the risk." *Id.* at 187; see also LITTLE, *supra* note 8, at 152–55 (providing examples, both effective and not, of humor in oral argument).

<sup>17</sup> LITTLE, *supra* note 8, at 152.

<sup>18</sup> Lucas K. Hori, *Bon Mots, Buffoonery, and the Bench: The Role of Humor in Judicial Opinions*, 60 U.C.L.A. L. REV. DISCOURSE 16, 33 (2012). "[J]udicial humor can be a useful tool, allowing a judge to add personality to an opinion and pique readers' interest." *Id.* at 19.

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something novel, and something bizarre . . . the facially implausible—some might say unappetizing—contention that the man whose chicken is ‘finger-lickin’ good’ has unclean hands.”<sup>19</sup> But some judicial humor, particularly that which seeks to differentiate judges from the litigants or the attorneys, seems to mock the proceedings and to disrespect the people involved, the bench, and the cause of justice itself.

### E. Negotiations and Mediations

Scholars have recognized recently the potential of humor to benefit mediations and negotiations.<sup>20</sup> Humor can help attorneys and parties achieve results, in part because it is a form of persuasion itself. Humor can bring participants together and calm those who feel threatened. For better or worse, humor can make an attorney the center of attention and thus the one who is dominating the negotiations.

But humor in mediations or negotiations, as in any other setting, runs the risk of falling flat. As always, attorneys are admonished to not use humor at the expense of the other party or to single anyone out. If humor is used unsuccessfully, it can undermine the attorney’s status and bargaining power, conveying lower competence.

### F. Conclusion

As a general rule, humor can certainly bring some benefits to various aspects of the practice of law.<sup>21</sup> But the risk can be great. Humor can fail, backfire, fall flat, or otherwise harm the lawyer’s work and therefore the client. Attorneys wishing to incorporate humor into practice should proceed with caution, know what they want to accomplish with humor, and be aware of the pitfalls in any given situation.

### III. Modeling Professionalism

The third body of literature relevant to this discussion includes articles that call on the academy to instill professionalism in our students. The practicing bar wants law schools to help develop and strengthen the profession, and not just by conveying knowledge of black-letter law. In general, there’s a sense of declining professionalism among attorneys, and so law schools are exhorted to offer practical advice for succeeding as an attorney and for developing professional identity.<sup>22</sup>

The law school experience should continually socialize students beyond minimal standards of ethical rules to larger issues of professionalism and soft skills. Law professors arguably have a duty to model for students the type of professional behavior that is desired in the profession.

Modeling is one way to teach the rules of being a part of the profession. Professors should demonstrate the specific behaviors, language, and attitudes we wish our students to internalize as a successful attorney. Every day, we have an audience for whom we are performing the desired behaviors of our profession. We model things like timeliness, preparedness, competence, teamwork, and professional judgment. In doing so, we shape our students and impact the kind of attorney they will become.

### IV. Threading the Needle: Cautiously Using Humor

The sum of these three bodies of literature results in a pedagogical tension: if we use humor in class because there are sound educational reasons for

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<sup>19</sup> *Id.* at 30.

<sup>20</sup> “The negotiation and mediation literature builds on general research about positive contributions of humor in building connections and establishing community,” which can ultimately lead to more positive outcomes. LITTLE, *supra* note 8, at 146.

<sup>21</sup> Indeed, humor can even enhance legal scholarship. Gordon, *supra* note 4, at 319–20. In that vein, I offer you this joke:

Knock, knock.  
Who’s there?  
To.  
To who?  
To whom.

<sup>22</sup> “[L]aw schools’ stakeholders . . . have called on law schools to do more than merely teach doctrine. These stakeholders have asked (or demanded) that law schools do a better job of preparing their graduates for practice.” Martin J. Katz, *Teaching Professional Identity in Law School*, 41 COLO. LAW., Oct. 2013, at 45, 45. “The organized bar continues to look to the legal academy to be a major force in solving the professionalism problem, despite the different perspectives on professionalism and the growing perception of increased separation between legal practitioners and the legal academy.” Steven H. Goldberg, *Bringing The Practice to the Classroom: An Approach to the Professionalism Problem*, 50 J. LEGAL EDUC. 414, 417 (2000). “A legal educator’s duty goes beyond teaching the law and shaping analytical minds; one additional responsibility is to model behavior desired in the profession.” Christine Cerniglia Brown, *Professional Identity Formation: Working Backwards to Move the Profession Forward*, 61 LOYOLA L. REV. 313, 314 (2015).

“... it is incumbent upon us to make ... clear ... when practicing attorneys would not use humor.”

doing so, are we also risking sending the erroneous message to our students that humor is appropriate in practice when in fact it may not be? Are we doing a disservice to the professionals we are trying to educate and, as a result, to the profession in general?

One could resolve the tension by admonishing students to “do as I say and not as I do.” But as demonstrated in this essay, humor is too valuable and important a classroom tool to either casually excuse or dismiss. Instead, we should embrace humor as a pedagogical accelerant, not a detriment. But we should do so carefully, threading the needle just so, especially given that professional signaling is one of the responsibilities of the law professor.

When we are in the classroom, we are modeling (hopefully) good professional behavior for teachers and not necessarily lawyers. Certainly, we are modeling basic good professional behavior for working adults—respecting others’ time, engaging in healthy discussions, following institutional rules, etc. But our pedagogical choices, including the decision to use humor in the classroom, stem from our professional identity as teachers and not as practicing attorneys.

It may be difficult, however, for students to fully appreciate that distinction when we are using humor to teach them how to be lawyers. The divide between the choices we make as teachers and those we want our students as aspiring attorneys may seem clear to us. But I acknowledge that it may not be for students. Perhaps we should consider that when students are practicing whatever law we are teaching them, they may think back, at least initially, to the classroom experience and the tone that was set about the material there.

Perhaps then, it is incumbent upon us to make that difference clear by explicitly noting times when practicing attorneys would not use humor or similar classroom strategies. For example, when I teach trusts and estates, I use “stirpe” as a verb to describe the process of distributing a decedent’s estate according to the per stirpe method of representation. I also caution the students that it is not a real verb and not something they should say to anyone outside of

the classroom. But it provides an easy shorthand, and one that I have seen parroted back to me on exams, for explaining the next steps of analysis. Similarly, in my legal writing class, I very clearly and consciously shift my demeanor and attitude when we discuss preparing for oral argument. I explain that oral argument is a conversation, but in a formal setting, where jokes are not appropriate.

Similarly, I spend time in my classes advising students to know their audience and the setting in which they are practicing. They should be mindful of the content and tone of their conversations, writings, or other interactions if they wish to be effective attorneys. The use of humor in the classroom, but perhaps not in practice, falls squarely within that admonishment.

## V. Conclusion

Humor in the classroom depends on the personality of the professor. If successful, it can have very real and identifiable benefits on the students and their learning. In the practice of law, humor can sometimes help persuade people and develop rapport, but the risks of it going awry can be severe and often not worth taking. As we model behavior for our students in the classroom, we would be well served to keep in mind the standards of professionalism that will be expected of them as practitioners. But in doing so, we can still embrace our own humanity and style and look for opportunities to bring levity to a sometimes intimidating classroom experience.