

5-1-1992

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### Recommended Citation

Paul A. LeBel, *Legal Education and the Theatre of the Absurd*, 1992 BYU L. Rev. 413 (1992).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1992/iss2/11>

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# Legal Education and the Theatre of the Absurd: "Can't *Anybody* Play This Here Game?"\*

*Paul A. LeBel*\*\*

## I. INTRODUCTION

When the Law Review first contacted me about participating in this symposium, I thought for a moment that the topic was "Hubris and the Law," to which my reaction was, "Boy, have they got a lot of nerve!" On discovering that the subject of the symposium would actually be "Humor and the Law," my concerns were not immediately put to rest.

At the outset, I was struck with horror at the idea that a group of law professors would attempt to do to humor what we have frequently done to so much else of the worthwhile material that lands in our path. Within the confines of this symposium, I could anticipate a considerable risk that humor would be triangulated, deconstructed, rethought, disengendered, and (what has always been to me the most baffling maneuver of all) reconfigured into a Mobius strip. Of course it went without saying that humor would be subjected to the principal professional obligation of legal academics, which is to divide any subject matter into a taxonomy of three parts. Nevertheless, the opportunity to "do whatever you want," as the invitation was expressed in the initial discussion about the symposium, proved to be irresistible in this context, in large part because it is a license that is so rarely encountered in other settings.

At the risk of sounding like a guest who stands in the corner all evening with a sour look on his face and complains that he doesn't much like parties anyway, I probably ought to

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\* R. CREAMER, STENGEL: HIS LIFE AND TIMES 299 (1984).

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confess right off the bat that I don't find much humor in the aspect of the practice of law with which I most frequently come into contact, which is the body of reported opinions written, for the most part, by judges who sit on appellate courts. Years ago someone should have told judges who write opinions that try to be too cute to just write the opinions. Still, I guess that it's difficult to bring a little balance into the perspective of someone whom everyone calls "your honor," especially when that person has the power to put you in the slammer for contempt.

Even failed or overly-strained humor can be forgiven, as long as the attempt is made in good will and with some instructive aim in mind. What cannot be forgiven is the use of humor by judges in circumstances in which the struggle for a chuckle is carried on at the expense of those who are unable to respond in kind. In those settings, the practice of making fun of the less educated or the less articulate is virtually indistinguishable from outright abuse. When someone in power ridicules or demeans those who are powerless, labelling what is being done as "humor" does not make the practice any less repulsive.

While I am uncomfortable in the presence of much that passes for judicial humor, I can think of no riper ground for the employment of the tools of the humorist than the professional fields in which I toil.<sup>1</sup> For the satirist, legal education is, in the words of some Department of Defense phrase-maker during last year's conflict in the Persian Gulf, a "target-rich environment."

Of course, there exists in this setting the same potential for abuse of a power relationship between faculty member and student, and such abuse should be met with disdain whenever it surfaces. There is neither a need nor an excuse for picking on the students, however, when the richest vein of ore for the mining of humor in legal education runs through the ranks of the educators. This hybrid of professional training and university education in which some of us spend our professional lives virtually cries out for parody and satire. My

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1. By referring to what I do for a living as "toil," I realize that I may already have slipped into a metaphorical realm that others find difficult to accept. I admit that I would not be able to justify that description with any compelling force, particularly to my grandfather and father who worked in factories for much of their lives. Perhaps I ought to confess as well to a deep-seated yearning to be engaged in a professional life in which my greatest occupational risk was a rotator cuff injury rather than hemorrhoids.

contribution to this symposium thus consists of some reflections on the current state of legal education, presented in the form of a "Socratic" dialogue and a fable.

## II. LEGAL BOOT CAMP

One sometimes encounters references to the law school experience, and especially to its first year, as the boot camp or the basic training of the legal profession. I can bear witness to the fact that this metaphor is wrong. To borrow the cadence of the only memorable communication of the 1988 election year,<sup>2</sup> I have been to basic training, I know what basic training is like, and, law school, you are no basic training.

For one thing, no one is required to give up his hair on entering law school. Today, all we ask is that you give up your shirt.<sup>3</sup> That is a difference that matters—I still cannot attend the Association of American Law Schools annual meeting when it is held in San Antonio because twenty-one years ago that was the place where they shaved my head and spent seven weeks (yes, I know it was only supposed to last for six weeks; don't ask) screaming at me.<sup>4</sup>

But what if there were a resemblance between the indoctrination into the military and the first period of acculturation into the legal profession? I don't mean the Kingsfieldian notion of the first year professor as drill sergeant whipping the minds of raw recruits into an acceptable analytical shape. That is an image with which law professors ought not to be terribly comfortable—remember, for instance, which character gets shot at the end of the first half of *Full Metal Jacket*.

What if the influence ran the other way? What if the drill instructor whom the new recruits meet as they get off the bus

2. Or at least the only memorable communication that turned out to be true. Cf. "Read my lips. . . ."

3. Even that might be an improvement. Those of us who attended law school in the Seventies were led to believe that we were being asked to give up our souls.

4. This San Antonio phobia also prevents me from applying for the only law school job for which I would otherwise seem naturally to be suited; if I were hired by the law school in San Antonio, wouldn't my wife and I become LeBels of St. Mary's? I mentioned this one time to a former dean of that law school, who immediately began to look over my shoulder for someone to rescue him, as he mumbled something along the lines of he didn't think that they were going to be doing any hiring that year. For some reason, I find that to be an observation that is frequently dropped into conversations with deans of other schools.

at basic training were our Socrates, not the actual Greek philosopher but the misappropriated Socrates who casts such a pall over contemporary legal education? A dialogue depicting this initial encounter with a foreign and somewhat threatening culture might go something like this:

SOCRATES: I think it's just about time to get started, isn't it? My watch usually runs a little slow, and the clocks around here don't always agree with each other, but it's probably close enough to the right time that we could go ahead and begin, shall we? Why don't we all be seated?

[The recruits drop to the ground as one.]

Now, why don't you tell me, as a way of getting things rolling, what quality do you suppose is most important of all in the make-up of a good military person?

[One hand shoots in the air.]

Yes, let me see what your name is. Bubba? Have I pronounced that correctly?

BUBBA: (jumping to his feet and shouting) Sir, what makes a good soldier is the ability to kill for his country, sir!

SOCRATES: Yes, well, that's an interesting proposition. Let's pursue that in a moment, shall we? But first, consider this question, if you would. Suppose that we were all marching down a road, and I were to say to you, "Column half-right, harch." What do you think I would mean?

[No hands are raised.]

Let's get someone to start us off, shall we? I'll generally use volunteers, but from time to time, you ought to be prepared to be called on. Where's my roll, I know I had it when I came in here, okay, here it is, let me just pick a name at random. Junior, are you here? Why don't you give us something to work with? What do you think?

JUNIOR: Could you repeat the question, please, sir?

SOCRATES: Well, what do you suppose "right" is? How would you define it to someone who was dropped into our midst after being raised on a desert island?

JUNIOR: (thinks for a moment) Right's the way a switch-hitter would hit if he was facing a left-handed pitcher.

SOCRATES: Well, that's an interesting answer, although my first reaction is that I think you're assuming some things that I'm not sure we are justified in assuming, at least not yet, or at least not without further work, so let's postpone that line of inquiry for a little while and we'll come back to it after we've

laid a better foundation.

Let's move on to something else, albeit not a complete shift of gears. Who can tell me the difference between "parade rest" and "at ease"? Well, before you answer that, let me put the question in a slightly different way. How many different positions can you assume when you're standing in a formation? I mean, of course, when you don't have a weapon. I should limit the question, to be more precise, I guess, to make it clear that I'm talking about the situation where the weapon that you do not have is not a weapon that you have to hold. Wearing a sidearm doesn't interfere with the ability to assume any one of the three positions of attention, parade rest, or at ease, so that's not a problem. When you're holding a rifle, that's another matter, because then the way that you hold the rifle depends on what order you've been given, and of course there are some orders that you would only be given if you had a rifle, but we'll get to that later.

Okay, with that by way of preface, let's get back to my original question. I think that it went something like this. What if we were going out to the rifle range and I handed you a rifle and told you to load the clip. How many rounds would you be able to load? [Points to Bubba.] Yes. Your name was Bob, wasn't it?

BUBBA: Sir, the clip would hold nine rounds, sir.

SOCRATES: Anyone else have an idea? [Looks at Junior.] Would you like to take a crack at this one?

JUNIOR: I think it would be around fifteen rounds.

SOCRATES: Around fifteen. Interesting. That could mean more, or it could mean less, but if I understand what you're saying, fifteen would be, so to speak, the paradigmatic load. Is there a competing paradigm that we might consider? [Pointing at a recruit who has raised his hand] Yes?

VOLUNTEER RECRUIT: Twelve rounds?

SOCRATES: Are you asking me or telling me? [Looks at the recruit sitting next to the previous speaker.] What about you? What do you think?

ADJACENT RECRUIT: Eight? I mean, eight.

SOCRATES: Okay, we've covered most of the options, and I think we've spent enough time on this for now. It's getting to be close to supper time, and in fact, I see that I've run a little longer than I was supposed to talk in this session, but that's all right, I'll make it up to you later on by letting you go early some day. The next thing you'll do is march over to the mess hall and

have some dinner. After you eat, you'll have three hours before lights out. For tomorrow morning, I want you to make sure that you get all of your uniforms issued, tailored, and pressed, and place all your gear in your locker in exactly the right way, you'll see the diagram in the handout that's coming around. Oh, and you also need to wax the floor in the barracks, and go ahead and learn the first twelve pages of the recruit handbook. Any questions?

JUNIOR: We haven't gotten the handbook yet.

SOCRATES: Well, that's going to be a problem, I can understand that, but let me emphasize that getting the books in is not my responsibility. The supply office is in charge of ordering books. I know I gave them the order in plenty of time, although I'll admit that there are probably a few more of you here than we would have expected to see. I suppose that before we pat ourselves on the back for that, though, we ought to make sure that the greater numbers are a testament to our quality and not the result of a declining economy. All I can say for now is that what you need to do is find someone who has a book, there are plenty of people who have been through basic training, and do the best you can. I'll see if we can get some photocopies made of the pages that you need until the books come in. Okay? Are we through? Any questions? Comments? Complaints?

[Recruits begin to stand, look at each other, a few start to walk away.]

All right. I think this was a pretty good session, don't you? See you tomorrow.

Oh, one other thing, I have to be out of town two weeks from Friday, so we'll have a double day of training to make up for that. I'll give you the exact date of the make-up later on, if we find that we need it.

Both sets of drill sergeants whom I had in my basic training (yes, I know there's only supposed to be one set; I asked you not to ask) were no more like the Socrates of this fantasy than are most of the law professors I know like the boot camp model of the law school fantasy. And that is undoubtedly a blessing on both fronts.

### III. JACQUES GOES TO LAW SCHOOL

Before I got waylaid by a double-digit draft lottery number when the selective service system required triple-digit lottery

number inductions to maintain troop levels, my career plans had been to go on to graduate school in English, get a Ph.D., and spend the rest of my life teaching at a little liberal arts college where I could sit under the trees, smoke a pipe, and read everything that I wanted to read. While I was in the military, I became convinced that if the opportunity presented itself to go through life as a professional, one ought not to pass it up. Accordingly, I went to London and took the Law School Admission Test, applied to all the law schools that would let me start without making me wait until the fall semester following my February discharge, and began teaching law soon after graduation. As a result of that profound change in my life plans, I now find myself teaching at a little liberal arts college, sitting under the trees, and reading everything I want to read. The pipe was abandoned, with no regrets at all, a couple of days after first trying it.

I suspect that I am not alone among my generation of legal educators in having made an initial commitment to teaching and then found myself carrying through on that commitment after being diverted to law school. There is a multi-disciplinary phenomenon in legal education today that, if not new, is at least more widespread than I suspect it has been in previous decades. While my entry into law school was a substitute for graduate education in another discipline, many of my colleagues in this profession have the benefit of a legal education in addition to, rather than instead of, advanced study in other fields.

Sometimes this multiple expertise enriches one's insight. Sometimes it doesn't. Consider the following fable:

#### *Deconstructing the Emperor's Clothes*

Once upon a time, an emperor used to visit each part of his empire at least once every year. The imperial visits were events of great interest and excitement for the subjects of the emperor, but no group paid more attention to the visits to one large city located a considerable distance from the imperial capital than a group who were known as the contemplators.

The contemplators were a curious group of citizens. They were not noticeably smarter than their fellow citizens, nor were they particularly well-regarded by the general citizenry. Furthermore, few would consider the contemplators to be especially well-paid. What they lacked in the regard and reward of their fellow citizens was more than made up in the luxury that



they enjoyed, which was, as their name suggests, to sit and think about the subjects that they wanted to think about. Occasionally, smaller groups or factions would form within the circle of contemplators. The longest-lived of these groups was known as the Parsley League. The members of the Parsley League saw themselves as the elite of the contemplators, perhaps never appreciating the fact that they were named after a plant that was purely decorative and utterly without nutritional value.

Among the subjects to which the contemplators would turn their attention, none was as steady or as recurrent a topic as the visits of the emperor to the city where they lived. For a full six months before each visit to their city, the contemplators would talk about what they thought the emperor would do and say during the visit, and for a full six months after each visit, the contemplators would recount and interpret what the emperor had done and said during the visit. The oldest of the contemplators developed a store of knowledge that extended across many visits and would often attempt to draw broad lessons about the role of the emperor's visits in the grand scheme of operation of the empire.

One year, on the morning of the day of the emperor's visit to the city where the contemplators lived, a crowd of people lined the streets that the procession would take from the city gates to the square at the center of the city where the emperor customarily addressed the people. Many of the contemplators arrived at the square early enough to secure good seats from which they could see and hear the emperor, but as was frequently the case, a few of the contemplators were late in departing for the square and found themselves caught in the crowd along the streets as the procession began.

As the emperor neared the square, a small and somewhat unruly child at the side of the road looked at his mother and said, "The emperor has no clothes." The mother reached down and cuffed the child on the ear, telling him to be quiet and just look at the emperor and let his senses take in all the impressive sights and sounds of the procession. His ear still smarting from his mother's blow, the child repeated over and over again, in a louder and increasingly more frantic voice, "The emperor has no clothes!"

As fortune would have it, this incident occurred near the spot where one of the newest applicants to join the circle of contemplators was standing. Instead of following the procession to the square and attending the speech of the emperor, this

novice contemplator decided to stop at a shop where sweet pastries and strong drink were served by a congenial host. This may have seemed like a foolish thing for the contemplator to do, because in fact this was a probationary contemplator whose admission to the circle of permanent contemplators was dependent on his successfully presenting to the circle an insightful explication of what the emperor would say on that day.

Sitting at a table and enjoying the feeling of contentment brought on by his food and drink, the contemplator began to reflect on what the child had said. The more he thought about it, the more he was convinced that perhaps the child was correct, and that the emperor had been naked during his procession. After all, he thought, what are imperial clothes but the outward manifestations of a state of hegemony that was illegitimately imposed on a population that lacked the will and the integrity to declare what they knew to be right and just. He, on the other hand, could modestly claim to be both clear-sighted and pure of heart enough to stand up in front of the contemplators and state with great conviction that, yes, it was true, the emperor had no clothes.

The next day, the contemplators gathered at their usual meeting place. As part of a tradition of civility and respect for each other, each contemplator shook hands with all of the others upon entering, beginning with the oldest of the group. The time for the probationary contemplator to appear and address the group came and went, and as the appointed hour drifted farther into the past, the talk among the contemplators turned from their comments on the previous day's imperial visit to expressions of concern for the fate of their absent friend. Just as the oldest contemplator was about to send a delegation to inquire about the well-being of their colleague, the probationary contemplator rushed into the meeting place, neglecting to offer the customary marks of civility and respect.

"There is no need for that," he said with disdain, as his breach of etiquette was pointed out to him. "We are all equal, and this ritual of greeting is both demeaning and patronizing. When we enter, a brief nod and a spoken 'Yo' are surely sufficient for us to acknowledge those whom we feel good about acknowledging, and if there are any among us who have offended others by their tyrannical attempts to stifle creativity and spontaneity, it is right and just that they should be deprived of the fellowship and the recognition of such a greeting."

The contemplators were surprised by this beginning, and a

few of the older looked at each other and shook their heads, for within their memory, there had been other incidents that resembled this one. In fact, one contemplator had to suppress a smile as he thought about his own first days as a contemplator, when he had been similarly much taken with his superiority to his older colleagues.

The probationary contemplator motioned for the others to be still, and directed them to take their seats so that he could deliver his address on the emperor's visit. Even before everyone was seated, and before the presiding contemplator could offer the appropriate remarks to introduce him, the probationer spoke.

"The emperor has no clothes," he said, and then he sat down with a smug expression on his face.

The presiding contemplator stared at the probationer for a few moments, and then said in a quiet voice, "I beg your pardon?"

The probationer stood up and said firmly, "The emperor has no clothes," and seated himself again.

The presiding contemplator gave a puzzled look at a senior contemplator who was acknowledged by the others as being particularly adept at guiding contemplators through their probationary period. This senior contemplator stood and spoke very slowly and carefully.

"It is customary for one who is seeking to join the circle of contemplators to deliver an explication of the address that the emperor has given. As some of you have pointed out from time to time, the addresses of our probationers have tended to become rigidly patterned after the efforts of a few of the better known talks that have lived on in our memories. Indeed, we have sometimes discussed the desirability of introducing innovative alternatives to the rite of passage that the probationers' lectures have become. On this occasion, therefore, we ought to be willing to pursue in some detail the remark that our friend has made. Perhaps it would be good for us to stop and consider in greater depth than we customarily have what it means to be clothed, and what demands of costume it is appropriate to place on an emperor, and whether the emperor's dress on this occasion has satisfied those demands. Therefore, I propose that our learned friend begin the discussion with a fuller explanation of the point that he would have us take up."

At the end of this speech, there was silence while the probationary contemplator looked out over the heads of those

awaiting his remarks. Finally, shaking his head impatiently, he stood and said, in a petulant voice, with lower lip quivering, "The emperor has no clothes, and if you weren't stupid and corrupt, you would admit that I am right."

With that, he gathered his robe about him and swept out of the meeting place. After he had gone, the senior contemplator who had proposed that they take up the concerns of the probationer turned to address his colleagues.

"We are faced with a choice, my friends. We can agree that we are stupid and corrupt, as our probationer asserts, and we can spend the rest of our time dealing with the arrogance and folly of the course on which he would have us embark. Or we can decide on the other hand that there are expectations that we are entitled to enforce in our discourse and bounds we are entitled to place on our behavior.

"We draft no person into the ranks of contemplator. Indeed, for far too long our ranks have been restricted too narrowly to the wealthy and to those who are otherwise privileged in some way, through accident of birth rather than the quality of their thought. In recent years, we have been striving to include within our ranks those who would unthinkingly and automatically have been excluded in the not so distant past, and that has unquestionably added to the richness of our contemplative endeavors.

"Furthermore, we make a claim neither to perfection nor to exclusivity in our search for what is right and true. It is a feature of life in our world that one may say and do whatever one desires in our empire, as long as it does no harm to others. Such freedom unquestionably extends to the enterprise in which we engage. We have no monopoly either on engaging in the work or on obtaining the rewards of a contemplative life. But if it is to mean anything to be part of the circle of contemplators whose tradition lives on in us, we are obliged to recognize that a line should be drawn and to announce that our probationer properly remains on the outside of the circle demarcated by that line.

"Let there be no mistake about the nature of the line to which I refer. There are some who would say that admission to our circle should be conditioned on acceptance of certain ideas. One of the strengths of our endeavor, however, has been the willingness to reach out and include within our circle those who disagree with most of us in fundamental ways. We have not always been as diligent as we should be in seeking out

intellectual diversity, often preferring the comfort that comes with homogeneity. But at the very least, we acknowledge its value and remain committed to its fulfillment.

"The line I am suggesting needs to be drawn is not based on the content of the ideas which people hold. What characterizes our lives as contemplators is the reverence with which one approaches ideas. It is not overly pretentious to speak of our holding a sacred trust, living as we do in considerable luxury, the luxury to pursue ideas because they call out to be pursued. A concomitant demand on those who would be supported by our fellow citizens in this endeavor is a sense that ideas are to be cherished and treasured.

"Ideas are the coinage of our realm. That currency needs to be preserved. We must not let it be debased with the display of contempt for the contemplative endeavor to which we have been witnesses on this day."

The contemplators discussed the matter among themselves for some time and concluded that the speaker had expressed a view with which they agreed. They then instructed the presiding contemplator to revoke the probationary status of the one who would have been their newest initiate.

This former probationer did not disappear from the life of the city. In future years, he was seen from time to time gathering impressionable young people together and telling them with great fervor, "The emperor has no clothes." Indeed the former probationer now claimed to hold the rank of Duke, although no such claim had ever been asserted before his exclusion from the circle of contemplators. This Duke even had a small cadre of followers who could be found on many street corners distributing pamphlets containing the Duke's slogans "in bold capitals:

WAR IS PEACE  
FREEDOM IS SLAVERY  
IGNORANCE IS STRENGTH"<sup>5</sup>

Life continued much as before for those who made up the circle of contemplators. For six months after each imperial visit, the contemplators discussed what the emperor had said and done during the last visit, followed by six months of discussion of what they anticipated the emperor would say and do on

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5. GEORGE ORWELL, NINETEEN EIGHTY-FOUR 17 (1949)

the next visit. On each visit, more careful attention was paid to what the emperor was wearing, and on occasion, the contemplators would issue a statement about the appropriateness of the imperial costume. The emperor frequently responded favorably to the suggestions contained in these statements. The visits of the emperor continued over the years, with the emperor's wardrobe becoming increasingly more responsive to the standards announced by the contemplators. But the contemplators were firm in their conviction that, while they would give some of their attention to what the emperor wore, they could not in good faith deny that, whenever he appeared before them, the emperor did have clothes.