



HUMOR

I N L A W *Teaching*

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ONCE AT A CHURCH MEETING B.H. Roberts spoke for nearly an hour, leaving J. Golden Kimball only five minutes. Elder Kimball arose and said, "B.H. Roberts is the president of the Seventy and has taken all the time. Someday he will be dead, and I will be president. Then I will take all the time." Then he sat down.²

J. Golden Kimball stories like this one play a valuable role in LDS culture. Elder Kimball's use of wit in serious settings created incongruities that were somehow both startling and refreshing. The stories persist not only because they are

delightfully amusing, but also because they reveal Elder Kimball's genuine humanity in a colorful and memorable way. They teach us that although he was a church leader, he was very much like the rest of us. He too struggled with weaknesses and frustrations. Despite his apparent imperfections, the Lord obviously loved and approved of J. Golden Kimball enough to use him in remarkable ways. If that was true of J. Golden Kimball, the stories tell us, perhaps there is hope for us as well.

Like religion (although not nearly as important), the study of law is a serious enterprise. It is difficult, frustrating,

¹ Professor of Law, J. Reuben Clark Law School. I have not shown this article to the Dean. He would have urged me not to publish it, and I'm already in trouble with him. He says that I never listen to him (or something like that—I don't remember). Apologies and thanks to Dave Barry, Gyles Brandreth, Johnny Carson, Redd Foxx, Bruce C. Hafen,

Jeffrey R. Holland, Gregory Husisian, Jay Leno, Michael W. McConnell, Douglas H. Paiker, Bud Scruggs, Barry G. Silberman, Steven Douglas Smith, John S. Tanner, Mark Twain, Gerald R. Williams, and others.
² T. Madsen, *Defender of the Faith: The B. H. Roberts Story* 350 (1980).

and often intimidating. It constantly reminds us of our own inadequacies. There is exhilaration in discovering new ways of thinking,³ in learning about the world,⁴ and in feeling our understanding and abilities grow. However, there are also uncertainty, unease, and even fear. Law school has been compared⁵ to one of those movies in which somebody wearing a hockey mask terrorizes people at a summer camp and slowly and carefully slashes them all to pieces. Except it's worse, because the professors don't wear hockey masks, and you have to look directly at their faces.

Most students initially find the Socratic method intimidating, if not potentially humiliating.⁶ Students struggle as they learn about stare decisis,⁷ precedent,⁸ and legislation.⁹ They sometimes feel that their professors are being condescending¹⁰ or are out to get them.¹¹ The competitiveness of law school and the fear of failure¹² can create debilitating anxieties. Students are sometimes terrified by the possibility of getting poor grades,¹³ and when final exams¹⁴ approach they can feel about as happy as a nine-lived cat run over by an eighteen wheeler. These things explain why law school has been compared to a besieged city: everybody outside wants in, and everybody inside wants out.

³ Straight thinking is generally preferred, based on the assumption that we live in a Euclidean universe. Cf. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (implicitly assuming that every point on the surface of a sphere is unique). But cf. Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics*, 103 Harv. L. Rev. 1 (1989).

⁴ I have always enjoyed learning about the world. When I was 18, I told my father that I wanted to join the Navy so I could see strange lands and meet strange people. My father replied, "You want to meet strange people? Go to St. Louis. Meet your mother's people."

⁵ By me. The passive voice is a remarkable device for avoiding responsibility. Cf. President Richard Nixon's announcement during the Watergate investigation that "justice would be pursued fairly, fully, and impartially, no matter who is involved." Bowers, *Using and Misusing the Passive Voice*, California Lawyer 63, 64 (Sept. 1984). Unfortunately for him, people did pursue it, and he was the one involved.

⁶ The Socratic method is the reason that law school is the only place where YOU LEARN TO HATE YOUR OWN NAME.

⁷ Latin, for "We stand by our past mistakes." Seventy percent of all legal reasoning is the logical fallacy of appeal to authority. The other forty percent is simply mathematical error.

Humor can relieve some of these tensions. It reminds students not to take everything (including themselves) so seriously, and to find more enjoyment in what they are doing. The ability to laugh at oneself and to find absurdities in everyday life can help a person cope with stressful situations and difficult challenges. Psychologists say that laughter makes people feel better both physically and psychologically.¹⁵

Several years ago Norman Cousins, an editor of the *Saturday Review*, wrote a now famous account of how he contracted an incurable and life-threatening disease of the body's connective tissues, which he believed was precipitated by adrenal exhaustion. In his article, *Anatomy of an Illness (as Perceived by the Patient)*,¹⁶ Cousins recounted how he decided to introduce more hope, faith, and laughter into his life. His theory was that laughter and other positive emotions could affect his body chemistry for the better. He obtained films of classic *Candid Camera* television shows and had a nurse read to him out of a trove of humor books. He discovered that the laughter sessions enabled him to get a few hours of sleep without pain. The nurses took sedimentation-rate readings (blood tests indicating infection levels) just before as well as several hours after the laughter episodes. Each time, there was a drop of at least five points. Cousins wrote, "I was greatly

⁸ Which is important because, in the law, anything that has been done before may legally be done again. J. Swift, *Gulliver's Travels* 242 (J. Ross ed. 19th printing 1964).

⁹ Congress's Gramm-Rudman deficit-reduction law has been described as a law saying, "Stop me before I kill again."

¹⁰ "Condescending" means when you talk down to people.

¹¹ This view may seem paranoid. However, just because you're paranoid doesn't mean that people are not out to get you. Also, some forms of mental illness are not so bad. For example, schizophrenia beats dining alone.

¹² My first-semester grades were four F's and a D. The dean called me into his office and said, "Kid, you've got to stop spending all your time on one subject."

¹³ It is alleged that law school grades have no predictive ability on success in law practice. Psychics have no predictive ability, either. If they do, why do you never see a headline that says "Psychic Wins Lottery"?

¹⁴ Law schools give only one exam at the end of the semester, the FINAL EXAM OF THE LIVING DEAD.

¹⁵ Talan, *Laughing on the Outside: Sick Humor May Be a Way We Release Our Tensions*, *Deseret News Magazine*, May 4, 1986, at 8.

¹⁶ *Saturday Review*, May 28, 1977, at 4.

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elated by the discovery that there is a physiologic basis for the ancient theory that laughter is good medicine¹⁷

Although laughter was not the only treatment used, it was a major part of the therapy. Eventually the connective tissues stopped deteriorating and began regenerating, and Cousins recovered. One endocrinologist was convinced that creativity produces brain impulses that stimulate the pituitary gland, triggering effects on the whole endocrine system.¹⁸ Humor's beneficial effects on a person's emotional and physical health¹⁹ can improve his or her ability to meet challenges and perform in stressful situations.

Humor can also improve the students' receptivity in the classroom. While humor helps students to feel more at ease, it also encourages them to listen more closely so that they don't miss the fun. Students are likely to be more alert if they enjoy what they are doing, and humor can make dry material more palatable. A study²⁰ at Stanford University has found that laughter causes significant increases in catecholamines, the so-called alertness hormones that include adrenaline.²¹ Humor's effect on alertness has been widely recognized. When President Francis Lyman complained about J. Golden Kimball's style of speaking, Elder Kimball answered, "Well, you see, Brother Lyman, you talk to send them to sleep and I have to talk to wake them up."²²

Humor can also help us to look at situations in new ways, break free of ordinary thinking, and challenge conventional wisdom. For example, humor has long been an effective tool of social and political commentators.²³ Writers such as Jonathan Swift, Mark Twain, H. L. Mencken, Art Buchwald, and Dave Barry have used satire to help us take critical and fresh looks at ourselves and our society. Their message would probably fall on deaf ears if they simply said, "Listen up, I think such-and-such-a-thing is dumb." Instead, they delightfully show us the sillier side of things.

For instance, although economic analysis is a powerful tool for evaluating legal rules, it does have critics. The allegation that some economic analysis rests on unrealistic assumptions is a standard one, almost perfunctorily made. However, the lesson is more memorable if illustrated with a story: An economics professor was walking across campus

¹⁷ *Id.* at 48.

¹⁸ *Id.* at 51.

¹⁹ Scientists have shown that a laugh a day is worth a pound of fiber.

²⁰ The study compiled lots of data. "Data" is a Latin word meaning "the plural of anecdote."

²¹ *Id.*

²² C. Richards, *J. Golden Kimball* 97-98 (1966).

²³ See Note *Humor, Defamation and Intentional Infliction of Emotional Distress: The Potential Predicament for Private Figure Plaintiffs*, 31 *Wm. & Mary L. Rev.* 701, 723 (1990).

²⁴ J. Jones & W. Wilson, *An Incomplete Education* 125 (1987).

²⁵ *Id.* at 124.

²⁶ I will explain the objection to you slowly, because that's the way people always explain things to me.

²⁷ Cf. *The National Enquirer*. Calling the *Enquirer's* articles

with a student "Look," said the student, pointing at the ground, "a five-dollar bill." "It can't be," responded the professor. "If it were there, somebody would have picked it up by now."²⁴ One could add, "Economics is a closed system; internally it is perfectly logical, operating according to a consistent set of principles. Unfortunately, the same could be said of psychosis."²⁵

On the other hand, this example raises an objection to the use of humor:²⁶ humor can present unfair and distorted pictures.²⁷ However, reasonable listeners realize that a humorous observation is not intended to be taken completely at face value. Temporarily blowing things out of proportion sometimes helps us focus²⁸ on a particular aspect of a problem, much like looking at one area of a painting with a magnifying glass temporarily exaggerates that area and distorts the painting as a whole. Similarly, sometimes we are so busy scrutinizing details that we need to put the whole painting in a broader perspective; humor can help us step back and question the work's overall importance.

Humor also serves other analytical functions. It permits people to roam more freely, to be iconoclastic without being threatening, to express frustration, and to speak their mind without having to resolve all of their feelings on a subject. Humor can also remind us that the contradictions, contrasting viewpoints, and subtle ironies in a particular problem might not be ultimately resolvable, and that it is permissible for the world to be that way. It is not completely surprising that researchers have found a connection between a well-developed sense of humor and problem solving.²⁹ Each might cause the other: creative thinking can produce humor, and humor can help people to think more creatively.

Of course, humor can stop people from thinking, too. It can be derisive, mocking, or dismissive. It can be used to reinforce our own views by belittling the views of others, to exalt ourselves by tearing others down. The people in the great and spacious building in Lehi's dream were "in the attitude of mocking and pointing their fingers" at others.³⁰ Their scoffing and scorn caused some people to feel ashamed.³¹ The great and spacious building "stood as it were in the air, high above the earth,"³² making

"distorted" is much like calling winters in northern Alaska "cool." Recently the *Enquirer* published a diet that is supposed to raise one's IQ. This was pretty brave of the tabloid, since it risked losing most of its readership. However, the *Enquirer* doesn't know the meaning of the word "fear." It doesn't know the meaning of a lot of other words, either.

²⁸ Cf. the Hubble telescope, which cost a billion and a half dollars to build and send into orbit, but which, because of a design flaw, makes everything look fuzzy. However, perhaps there is no design flaw at all. Perhaps the universe really is fuzzy.

²⁹ Machan, *What's Black and Blue and Floats in the Monongahela River?*, *Forbes*, Nov. 2, 1987, at 216.

³⁰ 1 Ne. 8:27.

³¹ 1 Ne. 8:28, 33.

³² 1 Ne. 8:26.

it a particularly fitting image of human pride³³ Its inevitable fall was, said Nephi, "exceeding great"³⁴ While many human activities can foster pride, humor can present special dangers. It must therefore be used carefully and sensitively, and we should frequently examine both the purposes of our humor and its effects on ourselves and those around us. Like many other tools, it can be used in the service of both good and bad causes

Humor in the classroom must be used gently and responsibly, not in ways that inflict emotional injury or damage reputations.³⁵ Professor Kingsfield's³⁶ demeaning humor was designed to get a laugh at the expense of some poor victim in the class³⁷ His use of humor was selfish³⁸ and callous; humor must be used more lovingly, with a delicate touch Jokes based on racial or sexual stereotypes are also inappropriate; they injure people and relationships, reinforce uncharitable attitudes, and promote bigotry Similarly, vulgarity debases both the speaker and the listeners Before using humor, we must consider whether it will offend reasonably sensitive people To mix a couple of metaphors, offensive humor can find us skating on hot water, and that's when the sacred cows come home to roost with a vengeance.³⁹ Like other aspects of human relations, the boundary between appropriate and inappropriate humor is not always easy to discern;⁴⁰ one person's good-natured humor can be another person's offense.

While using humor in the classroom does present increased risks, I believe that this problem, like Wagner's music, is not as bad as it sounds⁴¹ The teacher can help control it by laughing at himself, by making it clear that he is only joking, by trying to avoid injuring people, and by presenting contrasting points of view Used appropriately,

³³ I Ne 11:36

³⁴ *Id*

³⁵ Cf slander ruining a law professor's reputation, which can usually be pursued in small claims court

³⁶ *The Paper Chase* is as accurate a depiction of law school as *Perry Mason* is of law practice I used to watch *Perry Mason*, but the ending was always predictable Mason would be brilliantly cross-examining a witness, and somebody in the courtroom would jump up and blurt out that he or she was actually the guilty party. I could never figure out why the murderers always attended the trial. Why weren't they halfway to Rio de Janeiro?

The long-running *Perry Mason* series left a generation of Americans believing that most criminal defendants are innocent, that district attorneys are whining incompetents, and that lawyers and private investigators have shoulders the size of sides of beef It also left them believing that lawyering is an exciting lifestyle, since Mason never answered interrogatories, supervised document productions, sat through endless depositions, or even spent much time at his desk Fortunately, these misconceptions were corrected by the *cinéma vérité* of *L.A. Law*.

³⁷ This can make students want to drop out, which would cause their student loans to become due The government has proposed withholding wages to recover student loan payments Under this program, for example, if you graduate with a Ph D in renaissance literature, every week the government can withhold some of the tips you earn as a waiter

humor can open minds, rather than close them In some cases, when a frontal assault would fail, humor can cause a person to open his mind voluntarily so he can come out and enjoy the sunshine with others. In a sermon that J Golden Kimball desired to be read at his own funeral, he asked what his general influence among his people was, and whether he had a special attraction for narrow⁴² and intolerant people.⁴³ Golden understood that most minds cannot be won by force, but instead must be gently led Humor can help people become more open to change.

While it may not be completely possible (or even desirable) to analyze something as spontaneous as a laugh, I believe that it is possible to identify some benefits of appropriate humor in the classroom Humor allows a professor to reveal his or her humanity to the students, which can improve teacher-student relations. It helps reduce tension and stress that can interfere with learning. It improves the students' receptivity and increases their alertness in class. In addition, as a form of provocative (and occasionally even outrageous) discourse, it can stimulate thinking in an imaginative and creative way All of these things make learning more enjoyable and can enhance the learning process

In some Hebrew schools a special ceremony occurs on the first day of class. The teacher places a drop of honey on the cover of a book and gives the book to the student, who licks the honey off The symbolic message is that learning is sweet Like anything that produces significant personal growth, legal education has both bitter and sweet elements I believe that a little humor in the classroom, and occasionally even a lot, can help law students savor the sweetness a little more

³⁸ Some people don't appear to care about self-interest Joe Louis said, "I don't like money actually, but it quiets my nerves"

³⁹ Cf *Sherbert v Verner*, 374 U S 398, 413 (1963) (Stewart, J, concurring) ("This case presents a double-barreled dilemma, which in all candor I think the court's opinion has not succeeded in papering over")

⁴⁰ However, "I know it when I see it" Justice Potter Stewart once joked that he thought that these words would be chiseled on his gravestone Cf the words on a hypochondriac's gravestone: I *told* you I was sick

⁴¹ Cf bagpipe music, which is Studies have shown that it is virtually impossible to distinguish the music of a world-class bagpipe band from the sound made by 300 cats and a blowtorch Hear also Yoko Ono's music (The Bluebook apparently left this signal out It also left out some other very useful signals, such as *read and weep and try to distinguish this one* For contrary authority, it omitted *disregard, ignore also, and for a really bizarre view, see*)

⁴² Some people are so narrowminded they can see through a keyhole with both eyes Cf my upper body, which is also too narrow. I once went to a gym to lift weights, but the laughter made it difficult to concentrate One weightlifter called me a wimp, which made me angrier than I have ever been in my entire life I was so angry that I almost said something I have concluded that the reason weightlifters wear those big leather belts is that, basically, they're invertebrates

⁴³ C Richards, *supra* note 22, at 136 What does this say about those of us who like him?