

Pamela Hobbs, "Lawyers' use of humor as persuasion", *Humor 20–2* (2007), 123–156

Summarized by Dr. Kareen Seidler

Pamela Hobbs shows how humour plays an important role in American court rooms. It is particularly used by lawyers for two reasons: to show their expertise and knowledge through wit and wordplay and to ridicule their opponents by making them the butt of jokes.

In her article, Hobbs enumerates several general uses of humour. For instance, humour has a team-building effect. It increases "group solidarity" (126). Secondly, following the theories of Sigmund Freud, aggressive humour can be used to belittle an opponent by ridiculing him. Thirdly, an individual can use humour to display his talent, wit and creativity. And, last but not least, humour can be used for educational purposes: people are more likely to understand and remember facts that are presented in a humorous fashion.

In the American legal system in particular, "competitive humorous wordplay is the conversational norm" (126). That is to say, lawyers continually participate in verbal jousting, using wordplay and wit to measure their skill and intelligence. Hobbs summarizes: "I found joking and humor to be universally accepted as highly-reliable indicators of a lawyer's professional efficacy" (126).

The power of persuasion is extremely important for lawyers. They need to convince their audience, the jury and the judge of their case. They are, in a way, "professional performers" (149), showcasing themselves and their argument.

One way of using humour in a courtroom is to ridicule the opponent or his case. Every case in law has a topic, a theme, a motto. Hobbs presents two instances where this motto was: "The opponent's case is a joke." The lawyer belittled the claimant's case to the point of ridicule. The message was: This is a joke, I can't even begin to take this seriously. If the opponent were taken seriously, this would legitimize his claim. Moreover, humour adds an element of surprise to the case.

Humour, Hobbs concludes, has a very serious function in these cases, it is "far from frivolous; rather, it is a calculated strategy to discredit frivolous claims, and is uniquely suited to doing so, because it is the only strategy that does not, by appearing to take them seriously, implicitly endorse them" (149).

Here is one of her examples in more detail:

The Carpenter Case (1998)

A man tore his meniscus (kneecap) because he slipped on three banana peels while getting out of his car in the parking lot of the drug store Arbor. He claimed that he was unable to have sex with his wife due to the injury and that she divorced him as a consequence. (After he was operated, the two remarried.) The man knew that the parking lot was usually full of trash and admits that he would have seen the banana peels if he had looked down. Hobbs

was defending the drug store. She wrote a summary of the case for mediation¹ in verse, inspired by the style of a limerick, which ridiculed the plaintiff. Despite its new form, the mediation summary still met all legal requirements. Here it is:

(Facts)

There once was a man named Mark Carpenter
Who slipped in the parking lot at Arbor
He said three banana peels caused his fall
And claimed he couldn't see them at all
Because they were as black as they could be,
So he slipped on them and injured his knee.

(Liability)

In Michigan, there is no liability
For a danger open and obvious for all to see.
And for conditions not caused by the defendant or his employee
Defendant must have notice, actually or constructively.
If the peels were obvious, plaintiff can't prevail;
If they weren't, there's no notice and his claim will fail.

(Damages)

The plaintiff claims that he blew out his knee
And had to undergo arthroscopic surgery,
That his wife divorced him because they couldn't have sex,
Though when his surgery cured his pain, he remarried his ex.
But with symptoms beginning a year after the fall,
Plaintiff can't prove proximate causation after all.

(Wherefore)

The exhibits attached will tell all the rest.
Based on the foregoing, defendant's request
Whatever award that this panel feels
Is just for a fall on three banana peels
Respectfully submitted,
BY: Pamela Hobbs P37954

Slipping on a banana peel is a standard routine in slapstick comedy. The mediation summary showed that one did not even have to exaggerate the facts for them to be ridiculous. This resulted in an easy settlement for the drug store.

More law fun can be found here: <http://www.duhaime.org/LawFun/LawArticle-40/The-Dumbest-Things-Ever-Said-In-Court.aspx>

¹ "A mediation hearing is an out-of-court proceeding in which three disinterested attorneys appointed by the court convene to consider the relative strengths and weaknesses of the plaintiff's claims and the defendant's defenses" (131).