The Judicial Humorist (Ed. William L. Prosser, 1952)

George John Miller
University of Florida

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Legal humor has four major sources. The first is introspection, the process by which we lawyers poke fun at ourselves. The second is vituperation, our petulant misnomer for the same thing when done by laymen. The third is the unconscious humor that inheres in clumsy performance of a task seriously approached by jurists. The fourth is those antics and aspirations of laymen that we try to mirror accurately as law.

The last source, though prolific, is seldom publicized; amusement at another's misfortune ill becomes us when that person is before us in the flesh and we are striving either to extricate him from his predicament or to evaluate his conduct honestly. As members of our profession we are expected to do something besides chuckle—even though in retrospect a chuckle would at times be less harmful than what we do. The attorney that laughs at his client will soon find himself on a diet of old jokes; and, with rare exceptions, the judge that regards his official immunity from an action for defamation as an opportunity to smirk publicly at unfortunate litigants is as devoid of character as he is of good breeding. Humor in judicial opinions, as Dean Prosser observes in his meaty and witty Preface (p. vii), is properly a scarce commodity.

The editor cautiously eschews unconscious legal humor, although it constantly flashes upon anyone with a command of both law and rhetoric. For the practitioner to point out illustrations in a light vein, however, is at best untactful; and for the professor to do so consistently is downright brutal, especially inasmuch as he can normally dissect at leisure.

Fortunately we legal eagles still realize the inevitable imperfection of our product and still laugh at our own struggles; and a goodly number of us can enjoy the jests of laymen. On occasion the implement is the stiletto of understatement, but more often it is the battle-axe of overstatement, reductio ad absurdum, meticulous injection of the superfluous, or ponderous elaboration of the obvious. And at times, of course, it is just plain slapstick. Our foredoomed efforts to make human actions appear logical, our ingrained distrust of allegedly omniscient prediction, and our resultant slow, faltering approach and cautious, reluctant finality are all broad targets for satire.

The editor's selection and arrangement indicate a passion for research and a capacity for organization that would do credit to a
law review board—let alone a professor or a dean—and the collection as a whole exhibits just that light touch of reputed mental depravity for which honest jurists in general and Dean Prosser in particular are justly famous. There are the physicians on the lawyers (p. 30), the lawyers on the medical experts (p. 122), and even the touching lament of the law student's wife (p. 40). The stage hero explains his amazing brand of law, pursuant to which all property of an intestate goes to the nearest villain and mortgages are normally foreclosed in ten minutes (p. 95); a successful business lawyer ruefully recounts his first display of oratorical genius in court and the disastrous results (p. 52). The Supreme Court of New Mexico reverses an award to a disgruntled member of the communal Faithists in the Land of Shalam, where, according to the New Bible of Oahspe, the grissly EEUghehabakax, king of bears, held sway before the great flood and where the prickly Thuazhoogallakhoomma brought forth its delectable pearshaped fruit (pp. 195, 204, 205). A disgrusted attorney, wearied by four weeks of one patent infringement suit, gets thoroughly inebriated and lets himself go on cross-examination of a learned zoology professor boasting an ability to converse with the beaver and the skunk—with a resultant eleven days in jail for contempt (p. 139). A rural venireman seeks escape from jury duty for a reason that has to be read in detail to be appreciated (p. 138).

Some bits are in rhyme and some in prose; some are authentic opinions or pleadings, while others are realistic fiction. Some treat of law and lawyers generally; others concentrate on specific branches of the law. One revisits briefly such old friends as Martial, Dickens, Finley Peter Dunne, of Mr. Dooley fame, Mark Twain, and that renowned Punch contributor and perhaps keenest of all legal humorists, A. P. Herbert, whose Fardell v. Potts (p. 105) presents the Reasonable Man with deft touches that no serious analyst has yet mastered. The devotee of Rabelais will hugely enjoy both the official report of the 1622 slander action (p. 104) and the modern amended answer of Missouri-Kansas-Texas Railroad Company in the personal injury action brought by an energetic madame (p. 180). No one should overlook the judgment for the witch, with opinion by Mr. Justice Humperdinck, in Hansel and Gretel (infants) v. Pumpernickel (p. 84), or the formal opinion of an exhausted Texas attorney that 573 other people plus the illegitimate heirs of a prison inmate could convey equally as good a title (p. 213), or the Massachusetts letter to a tax collector still badgering an indigent deceased for an income tax deficiency (p. 253), or T. R. Powell's lovely review of Beck, The Constitution of the
United States (p. 98).

The modern self-styled liberal can see his philosophy of government at its zenith in the typical Rent Control Office memoranda in the complex yet spicy *File on Sigrid Olson* (p. 259); the budding practitioner will get a cold chill from *The Eclipse of a Legal Light (A Tragedy in Business Cards)* (p. 50); and counsel for any comely female plaintiff will find the key to success against a corporate defendant in the succinct and forthright basis of liability propounded in *Daisy Whiffle v. Twitter Bird Seed Company* (p. 20). The will of Herman Oberweiss, written by Herman himself in dialect and actually offered for probate in 1934, is a true classic (p. 248); and all lay cynics should note that Herman's grim determination to see that one of his brothers, "the schlaimial Oscar dont nothing get," leads him into the bog of future interests without any prompting from those evil legal technicians that all of us in the profession are reputed to be.

But enough of analysis; good humor deserves a better fate than exposition. The book is delightful. Only a few passages seem labored, probably because most of the selections have so much more sparkle than one expects from a "dismal trade" (p. viii). The Judicial Humorist as a type may well remain on Koko's list but, despite the omission of the mordant wit of *Trial by Jury* and of the brilliantly satirical lines of the Lord Chancellor in *Iolanthe*, Sir William Gilbert himself, who understood the law only too well, would have enjoyed this collection. And so should any jurist, even if he wears a mortarboard or a robe.

George John Miller
Professor of Law, University of Florida


This is a work prepared especially for publication in the United States, the original English edition having appeared in 1948. Its author, an English lawyer of note, analyzes the development of warfare from the Stone Age through the Korean conflict against a background of solid knowledge of jurisprudence.

This analysis discloses a gradual twentieth-century reversion to