

Declarations:

The Coverage Opinions Interview With Professor Andrew Jay McClurg, The Funniest Lawyer I Know

A lot of lawyers think they are funny. Of course it's easy to think you are a riot when there is a cadre of Summer Associates scared not to laugh at your jokes. But Professor Andrew Jay McClurg is the genuine article. No pun intended since Professor McClurg spent four years writing a humor column for the ABA Journal. In addition to his ABA Journal stint, Professor McClurg runs the very amusing website www.lawhaha.com, which looks at the lighter side of the law. He also uses humor as an effective teaching tool with his students at the University of Memphis Law School. But don't be fooled. This is also one serious law professor.

Despite all its seriousness, there is a lot of humor in the law. And people enjoy it. You know what happens when a judge writes a funny opinion. It goes e-mail viral. You receive it three times in one week by people telling you that you must check out this opinion. It could be a decision from a trial court in Wyoming, located in a county that doesn't have electricity, addressing a dispute over a game of checkers, but as long as it's funny, people will take the time to read it.

Humor in the law comes in many forms and Professor McClurg's website www.lawhaha.com is your one-stop shop. The website is divided

into very useful categories and subcategories that make it easy to find things. Interested in Strange Judicial Opinions? Just click on that tab and then choose from cases involving such things as bickering lawyers, cranky judges, frustrated judges and more. Another category on the site is Law School Stories, with subcategories including First Year Follies & Foibles, Exam Madness and Interview Faux Pas. You can also get a fix of Legal Oddities. And the offerings go on.

With Professor McClurg being an expert on tort law and products liability, it is not surprising that Lawhaha has a strong focus on these areas. This can be found in "Tortland," described as the website's "odyssey into that great body of mishaps, missteps, misdeeds, slips, falls, spills, chills, thrills, botched operations, vicious dogs, tainted food, falling ladders, collapsing reservoirs, defective products, slander, libel, and pain and suffering that collectively make up one of the world's most controversial and certainly most interesting adjudicatory systems: the American tort system." Professor McClurg acknowledges that there's nothing funny about torts because it involves people who were injured or even killed. But, as he says, the human element, combined with very unusual fact patterns, is what makes tort law so fascinating.

The two largest cities in Tortland are Spot the Tort and Warning Labels. Spot the Tort provides photographs of situations that appear to be just minutes away from becoming the basis for a personal injury suit. But more than just the pictures, Professor McClurg also provides a back



Photo Credit: Justin Burks

Professor Andrew Jay McClurg

story and commentary. Trust me. Check it out. Good luck not laughing out loud. Same goes for Tortland's section on warning labels and signs. While there are serious lessons taught here about the use of warnings, I nearly spit up my coffee reading some of the posts.

In addition to Lawhaha, Professor McClurg's claim to being the real deal in legal humor circles includes his four year stint as the author of the ABA Journal's humor column "Harmless Error: A Truly Minority View on the Law," which ran monthly from September 1997 to December 2001 for a total of fifty columns. The columns can be read at Lawhaha.

Professor McClurg also has a serious side. In addition to tort law, his teaching and research interests include legal education, privacy law and firearms policy. He has taught at several law schools and currently holds the Herbert Herff Chair of Excellence in Law at the University of Memphis Cecil C. Humphreys School of Law. He is the author and editor of several books, two dozen

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law review articles and numerous other publications. His scholarly articles have been cited/quoted by more than 500 legal scholars and courts.

Professor McClurg's book credits include 1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School. The just-published updated second edition provides a roadmap for academic and emotional success during the first year of law school. The book addresses such things as top student fears, the first-year curriculum, effective class participation, exam preparation and the impact of law school on outside relationships. The book is assigned as recommended or required reading at law schools throughout the country.

More information about "1L of a Ride" can be found [here](#).

Admittedly there is no real insurance angle to this Declarations column. But torts is a first cousin to insurance. And I like humor and the law – and you probably do too -- and Andrew McClurg is a master at it.

Professor McClurg, thanks for sitting down (on a whoopee cushion) to yuk it up with Coverage Opinions. Why do you believe that humor is such an effective tool in your teaching?

Dozens of studies document the values of humor as a communication tool. They show that humor helps hold audience attention, enhances

audience perception of the speaker, increases interest in the subject matter, builds rapport between speaker and audience, and increases retention of the content. The key in professional settings is to use humor as a means to an end, as a tool for conveying serious information in an interesting, attention-retaining way, never just for its own sake.

How did you get the ABA Journal "Harmless Error" column. What are some of your favorites?

It was kind of a fluke. One afternoon back in 1995 I was in my office writing a law review article, frustrated by the requirement to document every sentence with a footnote. I exited the document and dashed off *The World's Greatest Law Review Article*, a parody that started out by footnoting every word. I didn't know what to do with it so I sent it to ABA Journal and they said they wanted to publish it. One thing led to another and next thing I knew I was writing Harmless Error.

A column your readers might enjoy is Insurance Deterrence (Mar. 2001), where I take aim at insurance companies for unilaterally altering their policies just by sending out a notice. I decided to rewrite my own policy in return. Fan favorites include Hogwarts Torts about all the torts inflicted on poor Harry Potter, and Santa Suit (Jan. 2000), a class action against Santa Claus by the children of the world. Caroline Kennedy republished that one in her *A Family Christmas* anthology.

My personal favorites are the Suzy Spikes columns, about a litigious preadolescent modeled after my daughter when she was that age who tried to solve all

childhood problems through legal means. I once tried to pitch it as a TV series to Disney and Nickelodeon. It didn't work out but it was a fun experience being involved in pitch conferences with television execs.

Links:

<http://lawhaha.com/wp-content/uploads/2012/12/The--Worlds-Greatest-Law-Review-Article.pdf>

<http://lawhaha.com/insurance-deterrence/>

<http://lawhaha.com/hogwarts-torts/>

<http://lawhaha.com/santa-suit/>

<http://lawhaha.com/harmless-error/suzy-spikes-columns/>

There are many categories of legal humor on Lawhaha. I know that you are particularly fond of ridiculous product warnings. Of course these can be very funny. But on a serious note, what advice would you give to a manufacturer of a product, that has some potential for causing harm, about preparing the warning for its package? [By the way, I state in every issue of Coverage Opinions that the publication is gluten free]

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but may contain peanut products (I'm not kidding. I really do.)]

It is easy to make fun of manufacturers for including "silly" warnings such as "Viagra is not for newborns" on the packaging, but most wacky warnings are included because someone has actually used the product that way. For example, it turns out that sildenafil, the active ingredient in Viagra, is useful for treating pulmonary hypertension in infants and some docs have used it for that purpose.

But we definitely are in an era of "over-warning," not to be confused with "global warming," which is also a problem. The danger of too many warnings is one of dilution; that is, diluting the impact of warnings consumers really need to know about. Nevertheless, I confess that when I consult with product makers, I always advise to over-warn rather than under-warn.

Two pieces of advice I would give to manufacturers about warnings: First, let other people make fun of product warnings. NEVER, as some manufacturers are doing, try to make funny warnings on your own products. Can you picture the cross-examination if something went wrong and a consumer was injured or died because of a defective warning? "So, Mr. Product Maker, are you saying to the jury that your company considers product warnings to be a joke?"

The other advice is to moderate attempts to convey complex warning information in graphical or pictorial (non-verbal) warnings. Those are some of the funniest warnings posted on Lawhaha.com. You can't figure out what the heck they are trying to say. I appreciate the reason for them, of course, which is to construct warnings that can be understood by people who speak different languages or who are not literate, but some of the results are pretty silly.

You suggested that your students take a date to Walmart and stroll the aisles, holding hands and reading product warnings. I proposed that to my wife. And now instead of getting a lesson in tort law I'm getting one in matrimonial law. Thanks. Any other great ideas for mixing legal education and dating that you care to share?

Haha. Well, Randy, it has to beat reading Coverage Opinions by candlelight. One of my students took me up on it and had such a good time she put together a PowerPoint presentation of her Wal-Mart warning date. You can find it on the Warning Labels section of Lawhaha (post date March 19, 2012).

You nicknamed your daughter Tortgirl. Any concern that she'll rebel and arrange for an anvil to fall on your head?

That came from teaching her to play "Spot the Tort" when she was a little girl.

It worked like this: We'd be sitting in a public place and I'd say, "Tortgirl, spot the tort!" Then I'd time her as she ran around trying to identify the nearest defective premises condition. She rebelled in a different way, by growing up to be a risk-seeking snow-boarder, mountain-biker and skydiver in Colorado.

Have you been able to use your talent for mixing humor and the law to do entertaining CLEs and other public speaking – or maybe appearances on cable news?

For a while I did a "stand-up" legal humor presentation for lawyer banquets, bar meetings and the like. It was fun but a bit daunting. I'd stare out at a hundred lawyers with their arms crossed saying, "Okay, funnyman, make me laugh."

You've tried your hand at stand-up, Randy, so you know the feeling. When it "kills," it's a huge rush, but all comedians bomb and when that happens it's a lonely place up on that stage. Most of the time, my shows went over well, probably because I had such a low baseline to compete against: all the coma-inducing speeches lawyers usually are subjected to at such events. I stopped doing the stand-up years ago, but always make it a point to incorporate humor in my public speaking.

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So much has been written these days about the difficulties facing newly minted lawyers and criticism of law schools for not sufficiently preparing students for actual practice. What's your take on these two important aspects of the current law school dialogue?

That's a great question. There's a definite tension. For decades influential reports have recommended more skills training for law students but it took the weak economy to start real movement. The push is all-out to convert law schools into practical skills training grounds.

I have mixed feelings about it. Law students need to develop a base of doctrinal knowledge and critical reasoning skills before they learn to draft leases or whatever. That takes time. I would argue law schools have always emphasized skills-training by training students to conduct legal analysis, the ultimate lawyering skill. If I were legal education czar, I would retain the traditional first and second year curricula and convert the entire third year into a pure practical skills curriculum.

What would you say to a college senior who asked you if she should apply to law school?

I get the question all the time from people who contact me after reading my law school prep book, 1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School. I tell them all the same thing. If you are truly committed to being a lawyer, go for it! I will always believe strongly that law is a noble, honorable and certainly interesting profession. But don't do it just because you can't think of anything else to do with your liberal arts degree in Things that Happened in England in 1208 A.D. That used to be a popular reason to go to law school, followed by many students, but it doesn't work in the new economy.

In a prior issue of Coverage Opinions I expressed my belief that the law school curriculum does not give insurance coverage enough attention compared to how important it is in real world practice. As a Torts professor, do share this view?

I absolutely do, even though I, like most law professors, am an offender. Part of the problem is that law schools keep cutting the credit hours for the traditional first-year doctrinal courses, including Torts, making it impossible to get through even the basic material. Another explanation is that most Torts professors probably don't know enough about the particulars of insurance coverage to feel comfortable teaching it. It definitely seems out of whack to omit something as important as insurance coverage when insurance drives the tort system.

Coverage Opinions is a bi-weekly (or more frequently) electronic newsletter reporting and providing commentary on just-issued decisions from courts nationally addressing insurance coverage disputes. Coverage Opinions focuses on decisions that concern numerous issues under commercial general liability and professional liability insurance policies. For more information visit www.coverageopinions.info.

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Professors tend to follow their casebooks. If insurance coverage is included, it's usually stuck in the back in a chapter professors never get to. The most effective way to integrate insurance coverage would be for someone to craft a casebook that integrated the relevant insurance issues from beginning to end.