



Groucho Marx can make you a better lawyer

GROUCHO DID SOMETHING WE SHOULD ALL HOPE TO DO:
BE BRILLIANT AND STAY RELEVANT

In my room, growing up, was a poster of the Marx Brothers. They would become silent mentors to me, teaching me through their films and writings, to communicate better, to entertain, and to make an impact. There was Harpo, with his clownish wig, his harp, his huge eyes, his gift of mime, and his bits of wisdom which made surrealist Salvador Dali a fan. There was Chico, with his mock foreign accent, forever sporting non-sequiturs which later became a model for future clueless characters with a secret agenda. There was Zeppo, the straight man, who left the brothers early on to work on the business end of Hollywood. But the strongest memory and influence was Groucho. Whether it was the painted mustache, the slouching walk, or the rapid-fire repartee, it was Groucho who I remember most.

Groucho Marx should be an inspiration for any lawyer because of his films, his long running television show “You Bet Your Life” (1950-1961), and his non-conformist spirit. Groucho Marx did something that we should all hope to do: be brilliant and stay relevant. If you watched early Marx Brothers films – *Cocoanuts* (1929) *Animal Crackers* (1930), *Monkey Business* (1931), *Horse Feathers* (1932) *Duck Soup* (1933), *A Night at the Opera* (1935), or *A Day at the Races* (1937), you would be struck by the lightning speed of the comic dialogue, the sparkling wit, and a brilliant word that even awed comic film genius Charlie Chaplin.

Groucho Marx’s words still have relevance today. His words were recently quoted in the Marriage Equality Act lawsuit in *Perry v. Brown* (9th Cir. 2012) 671 F. 3d 1052, 1078. The late United States Circuit Judge Stephen Reinhardt quoted Groucho Marx’s pithy comment “Marriage is a wonderful institution ... but who would want to live in an institution?” In a sly manner, the Ninth Circuit Judge added a measure of lightness and an alternative way of looking at marriage, from Groucho Marx, the master of observational humor.

Groucho Marx has had a personal impact in my life three times. The first was through my adolescence – watching the films – and seeing his glorious sneer from the poster of the Marx Brothers in my room, which influenced my thinking, my attitude, and my approach to life.

The second was when I took a class on filmmaking immediately before law school from Nat Perrin (1905 -1998) a screenwriter and producer who began as a lawyer but switched careers when he became one of the writers of the Marx Brothers’ most critically acclaimed film, “Duck Soup” (1933).

Finally, as a deputy district attorney assigned to the courtroom of the late Judge Jacqueline Weisberg, I observed the post-trial hearings of a lawsuit involving the estate of Groucho Marx involving the personal secretary/confidant of Groucho Marx, Erin Fleming, who was successfully sued for taking assets from the Groucho Marx estate.

A lawyer can benefit by having Groucho Marx silently trail you in court, analyzing your arguments, giving you a viewpoint, helping you connect with the jury and having at your disposal his pithy lines.

Groucho Marx captured a madcap freshness that can be persuasive, instructive, and, in a comic manner, be instantly accessible to the jurors, to persuade them to a lawyer’s point of view.

First, I talk about how Groucho Marx’s career can be a model any lawyer can learn from. Then, I offer quotes from Groucho Marx and his films that are instructive and can humorously make a point.

Success doesn’t happen overnight

The Marx Brothers were hardly an overnight success. For over two decades, they worked in vaudeville first as singers, and then as comedians, before they ever got near a Hollywood sound stage.

Lawyers can learn from Groucho Marx that professional competence happens after years of experience. So often, I discover that a lawyer in my court who

has been practicing law for 20 or 30 years, has only tried one or two jury trials. Many mistakes made by counsel would never have been made had that lawyer gone through the necessary preparation from years of training before persuasively arguing a case in front of a jury.

Surround yourself with people smarter than you

Contrary to trying to be the smartest person in the room, Groucho Marx surrounded himself with people smarter than him including George S. Kaufman, T.S. Elliot, S.J. Perelman, Carl Sandburg, Frederico Fellini, and many others. They provided him with knowledge, encouraged him to become an author, and kept his humor sharp. Lawyers have many organizations such as the Inns of Court, the County Bar, ABOTA, among many others, where they can learn from those who are more knowledgeable to become more educated about the legal landscape and its challenges.

Find a mentor

In Hollywood, the Marx Brothers had one mentor willing to take a chance on their chaotic brand of humor, Irving Thalberg. At 26, he became the head of production at Metro-Goldwyn Mayer. After Thalberg died at age 37, the Marx Brothers then had Louis B. Mayer take his place. Mayer never saw the potential greatness in the team, so their films faltered, causing them to leave the studio with their greatest films behind them. While surrounding yourself with people smarter than you is important, having one person focused on your career can have a lasting significance.

The Marx Brothers tested their material before it was committed to film – Lawyers should do this too.

Generally, we think of films being pitched, written, shot, marketed, and then released all without an audience.

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By contrast, the Marx Brothers would take proposed scenes from their upcoming film and perform them live on stage. Before a foot of film was shot, they would know what jokes worked, where to pause for a laugh, and when to condense the material.

Lawyers can do just what the Marx Brothers did with the same positive results. While lawyers can use costly mock juries to critique previews of opening statements, closing arguments, and a condensed version of the trial, more modest versions of this previewing process can also be done. Performing portions of your case to colleagues and even to family or friends, and listening with a thick skin to evaluations, can greatly improve your work before it is presented to a jury.

Often, I have a lawyer tell me they wrote their closing argument the night before, that no one has ever heard, but they proceeded with the argument. This practice deprives counsel on several fronts. First, a closing argument should be written before jury selection. Second, not showing an argument – or opening statement to others before it is presented – robs counsel of honest evaluation, before the relative permanence of a jury verdict. Take advantage of your colleagues and ask them to tell you the truth about what you have planned for your case, before it is too late.

In his films, Groucho Marx was always willing to attack convention – much like a lawyer – arguing against a decision, a statute, or conventional wisdom. A lawyer has the talent to see through the superficial and look more deeply into the case, how the law applies to the facts, and sense what is important to a jury.

Humor can resolve a potential lawsuit

Sometimes humor can dispel a legal problem. In *A Night in Casablanca* (1946), which began as a spoof of the Warner Brother's classic wartime romance *Casablanca* (1942) Warner Brothers investigated the similarities of their film to the film being made. Groucho Marx learned they were gathering information. Rather than wait for a lawsuit, Groucho Marx used the classic "the best defense is a good

offense" with a well-placed letter that was likely intentionally leaked to the public. The letter poked fun at the threat of a lawsuit, the idea that the city of Casablanca belonged to Warner Brothers and suggested the public would hardly mistake Ingrid Bergman for Harpo Marx. Finally, he concluded that Warner Brothers should not be to blame for considering a lawsuit, but rather the lawyers, which he described as "some ferret-faced shyster serving an apprenticeship in their legal department. I know the type – hot out of law school, hungry for success and too ambitious to follow the natural laws of promotion..." Whether Warner Brothers was simply doing due diligence as to the plot and character similarities of *A Night in Casablanca* and their classic film, Warner Brothers pursued no legal action. The lesson from Groucho Marx's letter is that humor can sometimes help resolve a problem before it occurs, particularly when humor is mixed with logic and commonsense.

Generally, I see more success with this approach when lawyers deal with each other face to face rather than through the netherworld of texts, emails, and letters. But Groucho Marx's gift for a well-crafted letter is one we can all learn from. In closing argument, against humor and sometimes pushing toward gentle exaggeration can often make points better than a traditional argument.

I have given you reasons from the life and career of Groucho Marx. Now I would like to give quotes and examples that can inspire you or even to consider borrowing to make you a more effective lawyer.

Groucho Marx pokes fun at draconian rules and encourages individuality

In *Duck Soup* (1933), a critical favorite with antiwar messages, Groucho Marx plays a ruler who is incompetent and inflexible. He sings a song, which contains the refrain: "Whatever it is. I'm against it." That line could easily be quoted to poke holes in an argument in court that refuses to consider all the facts and defenses. This line of argument

could show a jury how they shouldn't be swayed by positions that are rigid and fail to consider the entire case.

By contrast, to give an example of Groucho Marx's individualism, in *Annie Hall* (1977), Woody Allen begins the film with a quote from Groucho Marx. When he was offered a membership at a country club, he turned it down, saying, "I would never want to belong to any club that would have me as a member." This quote gives us a broader view of Groucho Marx as an iconoclast who sticks up for his beliefs and is not afraid to battle the status quo, just like an exceptional lawyer.

Lawyers are often placed in a position where they have to stand up against some wrong caused by the opposing side. Whether it is an individual, a corporation, or a government entity, often a lawyer must walk up to the podium and speak on a position that may be unpopular. If you watch any film by the Marx Brothers, you will see this moment and, in standing up to his adversaries, Groucho Marx is a striking mentor.

Beware of opening the door and know the probable answer of a question before it is asked

There is a scene in the film *Copacabana* (1947), where Groucho Marx flirts with an attractive woman who rejects him because she would rather be with another man. Exasperated, Groucho asks "Let me ask you something. What's he got that I haven't got?" She quickly replies, "He's young, he's handsome, he's strong ...," to which Groucho cuts her off with "Stop it, I withdraw the question!"

Most lawyers know the problem of "opening the door." Generally, lawyers are careful to instruct their witnesses not to bring up something harmful that counsel worked so hard, in a successfully granted motion in limine, to keep out. The problem seems more apparent when in the rush of questions on cross-examination, a lawyer will ask a question that opens the door to harmful questions. Rehearsing questions and sticking closely to the script is a helpful way of avoiding a question with an answer you don't want.

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Don't be afraid to state the obvious – if it is true

A courtroom scene in *Duck Soup* echoes a phrase used frequently in closing arguments. You will hear many lawyers give an unwitting nod to the Marx Brothers when they tell the jury they should not believe the evidence even though it has been properly presented and reliable. In most courts, a lawyer will argue to the jury “if it walks like a duck and talks like a duck, then it probably is a duck.” This makes the point, but it pales next to Groucho Marx referring to Chico Marx on the witness stand stating, “He may look like an idiot and talk like an idiot but believe me – he is an idiot!” Unmasking an argument of opposing counsel and presenting the obvious is sometimes just what the jury needs to convince them.

There is another example from *Duck Soup* where a person is asked to ignore the obvious. Groucho Marx is seen in a woman's bedroom. Later, Chico Marx, dressed as Groucho Marx, emerges from under the bed. The woman insists that she just saw him, but Chico denies it by saying “Who are you going to believe? Me or your own eyes?” A variation of this quote was employed by Daniel Petrocelli in the civil trial for wrongful death in the O.J. Simpson case in 1997 when he rejected Simpson's statements in court with the line, “Who you going to believe, me or your lying eyes?” As humorous as this quote is, it effectively restores power in each juror to judge the case for herself or himself, and to trust their own intelligence.

Even Groucho did not always have to have the last word – neither do lawyers

Groucho Marx didn't always have to top someone else with one last comment. The temptation to have the last word infects comedians and lawyers all too often. I am amazed how often redirect examination doesn't clarify or correct anything brought out in cross-examination – it simply repeats in a condensed form what already came out clearly in direct examination. There is always a

temptation to “gild the lily” by adding to a position that often has the opposite effect by showing a lawyer's insecurity in his or her own position. Groucho said it best: “Years ago, I tried to top everybody. I don't anymore. I realized it was killing conversation. When you're always trying for a topper, you aren't really listening. It ruins conversation.” In court, lawyers should listen to the other side and consider what is important to bring up, to not repeat information already brought out in court, and to not insult the jurors by mindless repetition.

How to convince a jury the importance of their role – Groucho style

A standard voir dire question in civil trials is: “Do you have a belief that this case should be tried by a judge rather than a jury?” Many jurors in my court have said that a judge would always be better to handle a complicated civil case than a jury. I have heard many lawyers give responses to a jury but none better than Groucho Marx. Talking about marriage, and he was married three times, said “I got married by a judge. I should have asked for a jury.” While this might get a quick laugh, it is a great point of departure for an examination of the jurors why it is important to get different points of view from people with a variety of life experiences, not saddled with a perceived professional bias, and view a case with fresh eyes. If this quote is given during voir dire, the message of it will resonate with jurors long after the laughter has stopped.

How to dismantle a seemingly airtight case – Groucho style

By analogy to Groucho Marx's quote about politics, a lawyer can effectively take an open-and-shut case and show it to be subject to a closer look. His critique of politics was “Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and supplying the wrong remedies.” This quote can be taken apart to make the argument that the other side's motivation was questionable, the methods used to investigate were indiscriminately done, that the

conclusions were wrong, and everything being requested to the jury contradicts the facts. While most lawyers follow this formula in court in challenging the other side, having Groucho Marx put it together in such an easy to understand form can make counsel's message even stronger.

How to attack a witness who changes his or her story – Groucho style

Groucho Marx was a master at making himself the butt of jokes and he would often paint himself as greedy, stingy, or even a pathological liar. By putting himself at the center of the joke, his messages are stronger than if he were simply attacking someone else. An example of this is: “Those are my principles, and if you don't like them ... well I have others.” Again, through humor, a jury can understand how to analyze a witness's credibility and their changed testimony.

On credibility, Groucho Marx looked at people's claims with scrutiny. For example, he said, “The secret of life is honesty and fair dealings. If you can fake that – you've got it made.” I cannot think of a stronger quote to show how many people can say whatever they believe will work. Also, Groucho believed that people's actions were stronger than their words. For example, he pungently stated, “[T]here's one way to find out if a man is honest – ask him. If he says, ‘Yes,’ you know he is a crook.” Funny line, yes, but to a jury the words could have a great impact.

How Groucho (and lawyers) can learn from their mistakes and others' mistakes

Looking back on his life, Groucho Marx reflected, that one should: “Learn from the mistakes of others, you can never live long enough to make them all yourself.” Every mistake is a learning experience. Every reversal is filled with helpful lessons. I am always impressed when lawyers from an upcoming case will sit in my court and watch the current trial I am presiding over. Reading advance sheets, watching lawyers in

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court, and reading verdicts and settlements from the *Daily Journal* can teach lessons that others have gone through that you can learn to avoid.

How Groucho explains legal documents

In *Duck Soup*, Groucho, as the incompetent head of the country Freedonia, looks at a treasury department's report and one of his subjects says, "I hope you find it clear." To which he responds, "Clear? Why a four-year-old child could understand this report." To another of his aides, he commands: "Run out and find me a four-year-old child. I can't make heads or tails of it." So often in court, a lawyer will say the case is simple and then spend a great deal of court time trying to explain it. It isn't simple, certainly not for the jury. I believe that, with the proper explanation and a great deal of thought, everything can be made understandable to the jury. There is an old quote, which my father always referenced, generally but not necessarily accurately attributed to Albert Einstein, that "if you can't

explain it to a barmaid, you don't understand it yourself." This quote places the burden on the speaker to explain a fact or principle and takes away any burden from the receiver, the jury.

Conclusion

In the end of *Manhattan* (1979), Woody Allen's masterpiece, he dictates into a tape recorder what is in his life that makes it worth living. He hesitates at first, but then states the first thing that makes life for him worthwhile: Groucho Marx. I would urge you all to discover or rediscover the films, words, and writings of Groucho Marx and considering using them in court and take his individual spirit as a goal for each of us. After some practice, I trust you will find he is an ideal mentor.

Judge Gregory W. Alarcon has been a judge for over 25 years. Before that, he was a deputy attorney general for the State of California, a deputy district attorney for Los Angeles County, and an assistant United

States Attorney for the Central District of California. Judge Alarcon received a J.D. from Loyola Law School in 1981 and a B.A. from UCLA. For the past 28 years, he has been an adjunct professor at Pepperdine University School of Law teaching trial practice and related subjects. He is also active in training and educating new judges and teaching ethics to all judges throughout the state. He is a frequent lecturer on various topics on trial issues including subjects such as "Lessons from Landmark Trials," "Judicial Personalities," "Creative Solutions for Keeping and Motivating Jurors," "Coping With Judicial and Lawyer Stress," "Civility in Court," "Hamlet for Lawyers," "Ideal Mentors for the Courtroom" and many others. He has written numerous articles on legal issues for lawyers and judges. In 2013, Judge Alarcon was given the 2013 Constitutional Right's Foundation "Judge of the Year" award and a Judicial Excellence award from the Mexican American Bar Association. He has co-written a C.E.B. Action Guide instructing lawyers how to present evidence at trial.

