

# **GARDEN STATE CLE LESSON PLAN**

**A 1.5 credit course**

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LESSON PLAN AND EVALUATION**

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## **THE LAW IS NO LAUGHING MATTER: THE FUNNY STORY OF VINCE AUGUST**

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**With**

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**And**

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Former Municipal Court Judge  
for South Hackensack, NJ**

### **Program description**

We all have to make choices in life in order to pursue our passion. Here is your choice: You can be a Judge or a professional comedian, but you can't be both. Now choose and do it quickly.

## **I. Introduction**

- **Famous in annals of New Jersey judiciary**
- **Not a disciplinary case**
- **Played by the rules, disagreed with the opinion, filed an appeal**
- **In re Advisory Letter No. 3-11, 215 NJ 495 (2013) – case does not have his name**
- **In re Inquiry of Broadbelt, 146 NJ 501 (1996)**
- **In re Application of Gaulkin, 69 NJ 185 (1976)**
- **Not a disciplinary case**
- **No mention in the case or analysis of rights under the 1<sup>st</sup> Amendment of US Constitution or NJ Constitution**

## **II. Story of Vincent August**

- **On stage Vincent August, “The Judge”**
- **Wanted to be entertainer since a kid – wanted to be an actor**
- **Learned to do voices and impersonations and accents**
- **At age 11 asked parents to be an actor – parents did not agree**
- **Watched HBO and stand up shows in early days of cable television**
- **Andrew Dice Clay’s opener cancelled at the last minute for a show in New York City and he got a call to come in – from then on – closed every show**
- **Didn’t begin comedy until after law school**
- **Took the bar exam**
- **Went to Fordham University as a last resort – wanted to go into military and decided against it**
- **Business law professor in college recommended him to go to law school**
- **Took a year off between college and law school**
- **Accepted to Whittier Law School (California) –went out but decided to come back to east coast**
- **Returned to New York and went to New York Law School – working part time for family business**
- **Participated in Moot Court competition**
- **Advocacy is a performance – preparation to convince yourself that this is the right answer**
- **Acting – believe you are this person, believe in this argument**

## **III. Legal Career and Stand Up Comedy**

- **First job in worker's compensation – tried cases**
- **Falling out with one of the partners of the firm – left office and handed out resumes to law firms on Main Street in Hackensack**
- **Walked into Frank Lucianna's office and he was hiring and got a job – returned to old firm and resigned and started new job that Monday**
- **Started doing criminal defense work – had a bout of consciousness with some cases**
- **Comedy taking off (1999-2000)**
- **Practicing law during the day**
- **Did a tape from his house – and gave to a friend who played it for a few friends and encouraged him to do the set**
- **Took a comedy class in New York City**
- **Comedy changes as you are on stage v. legal argument/jury – you are stuck with your strategy and more constrained**
- **End result of comedy and legal argument are the same – winning them over**
- **Similar skills – keep attention of audience**
- **Always waive juries because with juries you are bound to have people that don't want to be there – easier to win over the one person who has to be there, i.e. the judge, as opposed to a jury**
- **Practicing law during the day and going to NYC at night**
- **All original work – writes everything**
- **Never watched another comedian – didn't want to be swayed by what worked for others**
- **All of material is original – not swayed by what is hot in clubs or what comedians have as hot in clubs**
- **Can't try to do what other comedians can do – everyone has different skill set**
- **Quit job with Lucianna and opened own practice – criminal defense and worker's comp – also doing per diem – then divorce law practice, then real estate closings – did everything to make money**
- **Still going to NYC – initially 100 shows per year, then 2001 getting auditions so running in and out of NYC, to/from work/office**
- **Need to know your audience – NYC audiences are smarter, then mix of locals and tourists**

#### **IV. Appointed as Municipal Judge in South Hackensack**

- **Called by Mayor of S. Hackensack – thought was for a fundraiser to do comedy – but wanted to nominate him for a judgeship – suggested that mayor look at comedy act before nominating – Mayor said he was honest and sincere and they wanted him**
- **Enjoyed being a judge**
- **Being a judge made a better lawyer and a person**
- **Thought making a difference**
- **Judges need to be careful what they say on the bench – not necessarily funny just because people are laughing**
- **Once put on the robe – he was a judge – did not need court forum to be funny because he had the other forum to exercise his comedy/to perform**
- **Being a judge - wanted to be the best – wanted to do better than the rest – wanted everyone to leave courtroom feeling that the experience was fair**
- **When people have perception that they had their day in court and that someone listened and cared, people are ok with that even when they lose**
- **Judges must listen and care**
- **Took extra yard to give people the benefit – help to educate people**
- **Judges need to maintain respect while still doing their jobs**
- **Mayor and municipal counsel knew that he was a comedian**
- **Kept separate “lives” – used different names**
- **Only way that anyone would know if comedian and a lawyer is if they saw him doing comedy in NYC**

#### **V. AOC “Inquiry”**

- **In judge school they said that judges cannot do charity work – left school and talked to member of AOC and said that he does charity work and that is something important to him – said that he cannot do it as a judge and he advised that he does it under a different name – said if people know you are a judge then people may donate just to gain favor when they come before you in court**
  - **But not part of the charity – just performing for charity event**
  - **Still said no because he is a judge cannot do this type of work**
  - **2008**
- **In 2007 Bergen Record did an article – lawyer by day comedian by night – no one cared**

- **Within 1 week after judge's school, Bergen Record wanted to do follow up incorporating the judge aspect of his job**
- **Sends letter to AOC – response says no charity work and no newspaper article – no further discussion**
- **Presiding judges are aware of issue and no further problems**
- **AOC wants transcript of comedy act – refused**
- **1<sup>st</sup> amendment issue??**
- **2008-2010 do not hear anything**
- **In North Arlington a judge releases a film of an Obama satire and gets into trouble and he resigns the bench**
- **Shortly after that, letter from AOC – question what happened with South Hackensack judge “told to resign” – never got a letter**
- **File an appeal – in Law Journal**
- **Letter from Advisory Committee on Extra Judicial Activity – taken position that can be comedian or judge but not both – conflict**
- **Appeal filed based on content issue, due process issue because never part of phone call or letter or hearing – no minutes of a meeting were available**
- **Judge McGeady at meeting with presiding judge – told PJ that finest judge that we have in Bergen County – did not need to show up and support him at that time**
- **File appeal and that year judgeship is up – Democrats take over in South Hackensack**
- **Case in Law Journal – gets approached by production company to do a judge show similar to “Judge Judy” – declined offer – reason kept life separate (don't want comedy community to think that comedy is a hobby; if law clients know that going to NYC at night to do comedy then thought that law is not important)**
- **Supreme Court case does not address constitutional issues**
- **Stayed on the bench as a hold over judge for 2011 – heard nothing from AOC**
- **Mayor in South Hackensack says that everyone wants him to be a judge – wants to reappoint – reappointed retroactive**
- **AOC then files 2<sup>nd</sup> complaint against him – for “What would you do?” – a TV show – not a reality show, hybrid news show/entertainment show – set up scenarios based on items in the news, actors acting out scenario and real people walk into the scene and see what their reaction is**

- **AOC has a problem – it is one thing that you are in a comedy club and someone buys a ticket, but this new show is national and everyone can see it and the characters he is playing are not “nice”**
- **AOC says now nationally recognized and cannot do it**
- **If “recognized” in court as person from the TV show – then the show is going to fail because the premise is that real people walking into scenario would realize it is a set up – likely that comedy show goers would recognize him on the TV show but unlikely that would recognize him as a judge**
- **Other TV appearances as well**
- **File 2<sup>nd</sup> appeal – listed for argument in November 2012, rescheduled to February 2013**
- **Still on the bench because presiding judges supported him**

## **VI. Supreme Court Argument, Opinion and the Result**

- **DAG took it personally – did not like him for some reason – made it very personal**
- **No judges wanted to speak with him and no one made eye contact**
- **There were many questions asked that were not properly answered**
- **In re Mathesius, 188 NJ 496 (2006) – hired best 1<sup>st</sup> amendment attorney in NJ, everyone said that he had the case won, ACJC gave 6 month suspension (3 months with and 3 months without pay), but then he got up and had to say something and he turned the judges off**
- **Believes that Supreme Court was more offended by what DAG was saying as opposed to the argument that he was making**
  - **DAG said that basically if saw him on reality show cannot tell the difference between him as a person and him as an actor**
  - **Supreme Court asked that if you see someone playing a bad person as a character that people cannot discern that does not mean the person is a bad person – DAG would not let that argument go**
  - **Thought that stand up was the problem but attorney thought that acting part of it was the problem**
  - **General public will know it is an actor**
- **In re Smoger, 173 NJ 25 (2002) – from a very young age wanted to be a boxer, it was his passion, boxing referee – good at this job but**

- bad as a judge, AOC says no more boxing, he continued to do it – 31 matches and then lied about it, banned from judicial office**
- **Mathesius case – he had communicated with a jury, communicated with a colleague on the App Div regarding a wrong decision in a case that he had tried, main problem was the handling of post conviction relief in a notorious murder case in Mercer County – denied petition but then gave his opinion on a range of issues relating to the death penalty, wrote an opinion, and pointed out that the NJ Supreme Court will never allow the death penalty and therefore it is a futile effort; NJ Supreme Court spiked his opinion, did not allow it to be published, and then did a *de novo* review of the post conviction; asked for 1<sup>st</sup> amendment rights but they determined that they were severe circumscribed**
- **Broadbelt case – he used to appear on TV and was sought out and on weekly basis on cable to ask about legal issues of the day; 1<sup>st</sup> amendment took a back seat**
- **This case closer to Smoger case than the other cases – nothing he does as a comedian is related to what he is doing as a judge; different name and different persona; 1<sup>st</sup> amendment is pivotal in area of entertainment – should have protection of free speech; Smoger hurt him because Smoger did not follow the rules but if he had followed the rules then he would have won**
- **International – no where in the world where a judge did stand up comedy**
- **International impact because it has never happened anywhere before**
- **Gentile v. State Bar of Nevada, 501 US 1030 (1991) – 1<sup>st</sup> amendment case**
- **Argued 1<sup>st</sup> amendment – not speaking about law or judicial opinions; law not in his act**
- **Never going to talk about being a judge on stage – too much respect for law office and for job as a judge and for entertainment career to mix his careers**
- **In the end – there were no transcripts available**
- **Submitted video clips to Supreme Court**
- **Supreme Court wanted “Vinsanity” video – he refused because not fair representation of who he is at the time he was a judge – it was from 2004 – inferred that he is hiding something**
- **Opinion is based on Canon 5A of the Judicial Code**

- **Judges rely upon the fact that people will voluntarily obey their judgments and orders when perception is that they have their day in court, case is decided on law and evidence and nothing else, when people have that perception they will comply with judge's orders – without that then orders are not taken seriously**
- **Canon 5. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.**
- **Vital that people do not have even a hint that the case is being decided on anything other than law and evidence**
- **Supreme Court is the steward of this canon and the justice system of NJ**
- **Court said that yes this happens but now just stop doing it and it is ok – that is inconsistent! If it happened that how can people feel otherwise about prior court decisions that they were only based on law and evidence – there is a cloud now over the proceedings based on the ruling**
- **In the end, he could have stayed a judge – so arguably he “won”**
- **There is no hint of any wrongdoing in this case – played by the rules the whole way**
- **If you decide to be a member of the judiciary then your 1<sup>st</sup> amendment rights are circumscribed – In re Application of Ellen Gaulkin, 69 NJ 185 (1976) makes this clear**
- **International news – lots of attention**
- **Strive to be the best**