



OPINION | COMMENTARY

But Your Honor, It Was Halloween!

Legal tricks to avoid trouble and maximize the evening's treats.

By Randy Maniloff
Oct. 30, 2018 6:40 p.m. ET

0 Comments

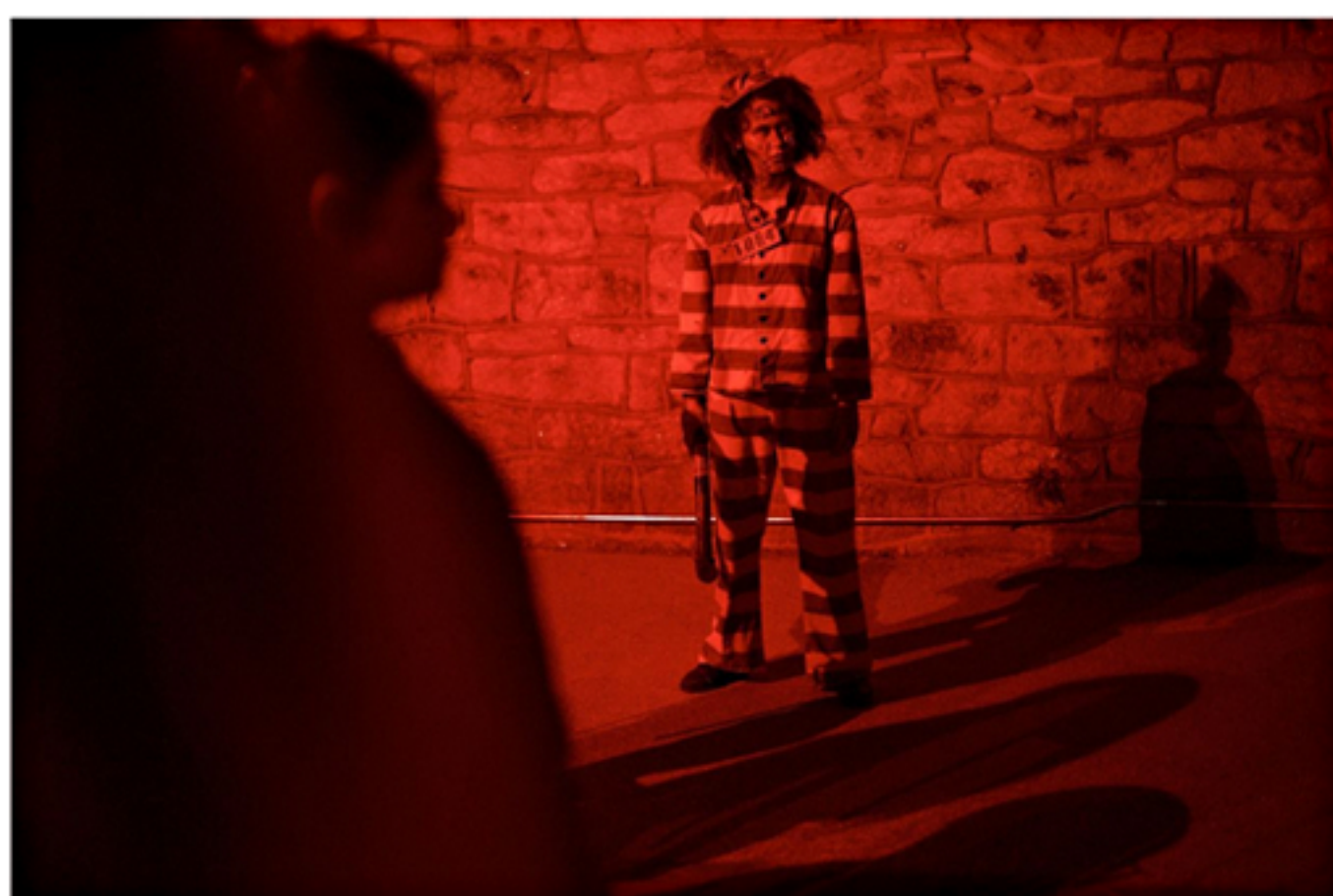


PHOTO: MARK MAKELA#478918#51B ED/GETTY IMAGES

One day a year parents suspend the cardinal admonition and allow their children to talk to strangers—and even accept candy from them. But Mom and Dad aren't the only rule makers who see things differently on Halloween. Judges do too. While predictability is a hallmark of the law, those costumed in robes have overlooked settled legal principles to account for the oddity of the night when Annas, Elsas and ax murderers stand on porches and demand Twizzlers. The consequences can be serious and far-reaching.

On numerous occasions, courts have been asked to decide if the operator of a haunted house is liable when a visitor's fright leads to injury. Think of the patron who sees a demon and scrambles into a brick wall.

Courts tend to follow *Griffin v. The Haunted Hotel* (2015). A California appeals court ruled: "Being chased within the physical confines of The Haunted Trail by a chain saw carrying maniac is a fundamental part and inherent risk of this amusement. [The injured person] voluntarily paid money to experience it. It is not the function of tort law to police such conduct."

Three-foot-tall yard signs displaying rhymes about killing your neighbors are frowned upon legally. But what if Halloween is at hand and the signs are shaped like tombstones? The permissibility of such poetry confronted a federal appellate court in *Purtell v. Mason*. (2008). Despite laws against fighting words, which can incite an immediate breach of the peace, the court ruled the signs were protected speech.

When it comes to hayrides, the law is more discerning. In 1995 an Ohio appeals court blessed them as a legitimate "agricultural purpose" in *Columbia Township Board of Zoning v. Otis*. But the court put the kibosh on using farm property for a "haunted hayride."

There may be no better example than *Bouton v. Allstate* (1986), a tragic case of trick-or-treating gone wrong. A teenager wearing fatigues and carrying a plastic model submachine gun was shot and killed by a frightened neighbor. The neighbor was acquitted of second-degree murder but lost his tort claim against the dead boy and a friend of his.

Articulating the Halloween Exception, a Louisiana appeals court ruled the boy's conduct was not assaultive: "On any other evening, presenting a frightening or threatening visage might be a violation of a general duty not to scare others. But on Halloween at trick-or-treat time, that duty is modified. Our society encourages children to transform themselves into witches, demons, and ghosts, and play a game of threatening neighbors into giving them candy."

Judges have recognized that legal rules must bend to account for Halloween's peculiar traditions. But not all the rules, according to a 2008 Massachusetts appeals court decision, *Zabin v. Picciotto*. It admonished a trial judge for detracting from "the seriousness and gravity of formal court proceedings" by allowing jurors to wear costumes in court on Halloween.

Mr. Maniloff is an attorney at White & Williams LLP in Philadelphia and an adjunct professor at Temple University Law School.

Recommended Videos

1. Apple iPad and Mac Event: The Highlights
2. Migrants Clash With Police on Mexico-Guatemala Border, One Killed
3. How the Desire for Change Might Not Be Just an American Experience
4. What the Election of Jair Bolsonaro Means for Brazil
5. Will Florida Measure Restoring Vote to 1.4 Million Ex-Prisoners Swing State?

Most Popular Articles

1. Trump Seeks to Curb Birthright Citizenship, Escalating Immigration Debate
2. GE Slashes Payout, Discloses Inquiry; Shares Tumble
3. The Yawning Divide That Explains American Politics
4. Americans Are Sticking With Their Old Phones
5. Trump to Increase Southern Border Deployment to 5,200