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Recommended Citation

Marc Galanter, *The Conniving Claimant: Changing Images of Misuse of Legal Remedies*, 50 DePaul L. Rev. 647 (2000)

Available at: <https://via.library.depaul.edu/law-review/vol50/iss2/15>

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THE CONNIVING CLAIMANT: CHANGING IMAGES OF MISUSE OF LEGAL REMEDIES

*Marc Galanter**

INTRODUCTION

The contemporary joke corpus contain many stories that portray the lawyer cynically protracting and enlarging conflict in pursuit of gain.

Two friends, who hadn't seen each other for some time, met. One was on crutches.

"Hello," said the other man. "What's the matter with you?"

"Streetcar accident," said the man on crutches.

"When did it happen?"

"Oh, about six weeks ago."

"And you still have to use crutches?"

"Well, my doctor says I could get along without them, but my lawyer says I can't."¹

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The materials presented here are derived from an archive of jokes about lawyers, law and related matters that have been assembled from over one thousand (mostly) printed sources, spanning several centuries. The jokes presented here are representative texts of jokes told over a long period. They are presented verbatim and in their entirety as they appear in the original sources. By contemporary standards, and in some cases by the standards of their own day, many are offensive in their reference to African Americans, Jews, women and other groups. I proceed in the confidence that the readers of this publication deserve and prefer an unvarnished and uncensored view of our legal culture, past and present. The stories reprinted here tell us not only what struck (at least some) people as funny but what passed as sufficiently respectable to be publishable. We can assume that until the later part of the twentieth century the oral tradition imperfectly mirrored by these published materials contained other materials which could not pass this test of respectability.

Jokes provide a rough gauge of common attributions of traits to various social groups and perceptions of the stature of various sorts of behavior. And they give us a useful baseline by which to assess change. The jokes reprinted here should not be taken as revealing what their tellers or listeners "really" thought or think. Jokes are neither transparent nor univocal; they contain multiple and ambiguous ideas and they can be told in manners and settings that make them subject to very different interpretations. They may express sentiments that their tellers or listeners propound but, like songs and poems, they may contain content that does not correspond to the convictions of teller or listener.

1. BRAUDE'S HANDBOOK OF HUMOR FOR ALL OCCASIONS 131 (Jacob M. Braude ed., 1958). See CHARLES N. LURIE, MAKE 'EM LAUGH AGAIN! 188 (4th ed. 1930); see also BILL JOHNSTON'S JOY BOOK 199 (William T. Johnston ed., 1922); MORE TOASTS: JOKES STORIES AND QUOTATIONS 131 (Marion Dix Mosher ed., 1922); THE BEST OF THE WORLD'S GOOD STORIES 100 (Thomas L. Masson ed., 1923); MASTER BOOK OF HUMOROUS ILLUSTRATIONS 13 (Leewin B.

In the first third of the Twentieth Century, stories about lawyers' tendencies to exaggerate injury were outnumbered by stories of conniving claimants who seized the opportunity to "construct" or magnify actionable injuries.

A few of these "client" stories seem to predate the era of modern personal injury litigation:

A New York lawyer tells of an old and well-to-do farmer in Dutchess county who had something of a reputation as a litigant.

On one occasion this old chap made a trip to see his lawyers with reference to a lawsuit he intended to bring. He sat down with one of them and laid out his plan at great length. The lawyer said: "On that statement you have no case at all." The old fellow hitched his trousers nervously, twitched his face, and hastily added: "Well, I can tell it another way."²

* * *

The late Thomas B. Reed used to tell this story of an enterprising client by whom he was retained to prosecute an action. On talking with the plaintiff's witnesses, Mr. Reed found that their stories were far from consistent, so he reported the fact to his client, and advised that the suit be dropped. The client was somewhat perturbed, but told the attorney he would have a talk with the witnesses and let him know next morning what he had decided to do. True to his word he dropped in bright and early wearing the cheerful look of one who has fought the good fight. "I've seen those witnesses," he exclaimed, "and they say they must have been mistaken."³

But most stories about the fabrication and exaggeration of claims were clearly located in the setting of personal injury litigation.

Levi's son Abe was in a train going from Boston to New York; the train got wrecked, and about five hundred killed and wounded, but Abe escaped without a scratch. So he telegraphed home to his fa-

Williams, ed., 1938); THE GOOD HUMOR BOOK: A TREASURY OF CHOICE JOKES AND GAGS, CARTOONS AND COMIC DRAWINGS, PUNS AND PATTER, LIMERICKS AND DITTIES, ANECDOTES, RIDDLES AND REPARTEE, AND MANY OTHER TYPES OF HUMOROUS PROSE AND VERSE 299 (Robert Rango ed., 1944); HERE'S A GOOD ONE: STORIES OF JEWISH WIT AND WISDOM 99 (S. Felix Mendelsohn ed., 1947); FRANCIS LEO GOLDEN, LAUGHTER IS LEGAL 133 (1950); EDDIE DAVIS, LAUGH YOURSELF WELL 24 (1954); HARRY HERSHFIELD, HARRY HERSHFIELD JOKE BOOK 108 (1964); THE INTERNATIONAL JOKE BOOK #1 183 (R.T. Larkin ed., 1975); A TREASURE-TROVE OF AMERICAN JEWISH HUMOR 150 (Henry D. Spalding ed., 1976); LARRY WILDE, THE OFFICIAL LAWYERS JOKE BOOK 152 (1982); THE WORLD'S BEST LAWYER JOKES 13 (Edward Phillips ed., 1989); ELLIE GROSSMAN, LAWYERS FROM HELL JOKE BOOK 132 (1993) (broke arm instead of leg); G. S. MITAL & MANJU GUPTA, 1221 WORLD'S CHOICEST JOKES 113 (1995); JOEY ADAMS, JOEY ADAMS' COMPLETE ENCYCLOPEDIA OF LAUGHTER 410 (1996) (doctor informs patient he can walk and attorney says that he cannot). Cf. BILL ADLER, JEWISH WIT AND WISDOM 75-76 (1969) (lawyer tells victim "don't get up").

2. GUS C. EDWARDS, LEGAL LAUGHS: A JOKE FOR EVERY JURY 437 (reproduction of 2d ed. William S. Hein & Co. 1993) (1915).

3. *Id.* at 395.

ther and told him of his good luck in escaping from injury. When his father got the telegram he was wild, and exclaimed: "Abe in a railroad accident and not hurt! He must be crazy!" So he sent back this message: "Dear Abe, go and hire some Irish bummer to break your face—we must get some damages."⁴

* * *

Ikey came upon a crowd at the crossing, the wreckage of an automobile and two men gasping on the ground.

"Vat was it; an engine?" he asked one of the victims.

"Yes," he answered feebly.

"Did they blow der whistle?"

"No."

"Did dey ring the bell?"

"No."

"Has der claim-agent been here yet?"

"No."

"Do you mind if I lie down here mit you?"⁵

Fake victim jokes reflect public awareness of accident faking for purposes of gain, an undertaking that descended from earlier schemes that accompanied the rise of fire and life insurance.⁶ The faking of accidents to collect compensation is a distinctively American contribution which arose in the last quarter of the Nineteenth Century.⁷

When faking flourished in the early years of the Twentieth Century, it was often associated in the public mind with Jews.⁸ The two jokes just above depict what Ken Dornstein, in his book, *Accidentally, On Purpose*,⁹ describes as a prevalent type of fraud involving professional accident fakers or just random passersby who would insert themselves

4. THEODORE R. ERNST, *LAUGHTER* 43 (1925). See also GEORGE MILBURN, *THE BEST JEWISH JOKES* 64 (1926) (regarding a Jewish claimant in railway accident who "had der presence of mind to kick my wife in der face"); J.H. JOHNSON, ET. AL., *THE LAUGHTER LIBRARY* 279 (1936) (a man tells a motorist that he can have another go at his wife if she was not injured); MARTHA LUPTON, *THE TREASURY OF MODERN HUMOR* 1079 (1938) (a woman volunteers to hit her husband who was in an accident if the defendant has a deep pocket); DES MACHALE, *THE WORLD'S BEST SCOTTISH JOKES* 94 (1988) (Scot kicks wife in teeth to increase damages).

5. JAMES SCHERMERHORN, *SCHERMERHORN'S STORIES: 1500 ANECDOTES FROM FORTY YEARS OF AFTER DINNER SPEAKING* 397 (1928). See also, STEWART ANDERSON, *SPARKS OF LAUGHTER: FIFTH ANNUAL COMPILATION* 271 (1923) (Jew); FRANCIS LEO GOLDEN, *JEST WHAT THE DOCTOR ORDERED* 256 (1949); *LAUGH BOOK MAGAZINE* (July 19, 1951) (tramp); MACHALE, *supra* note 4, at 26 (Scot); MARC BARRY, *JOKES MY MOTHER NEVER TOLD ME* 184 (1990) (Jew); JAMES FERGUSON, *THE TABLE IN A ROAR OR, IF YOU'VE HEARD IT, TRY AND STOP ME* 303 (1933) (a similar opportunism in making claims is attributed to Scots: in this a collision of two taxis leads to a score of injuries).

6. KEN DORNSTEIN, *ACCIDENTALLY ON PURPOSE: THE MAKING OF A PERSONAL INJURY UNDERWORLD IN AMERICA* 60 (1996).

7. *Id.*

8. *Id.* at 93.

9. *Id.* at 60-62, 107.

into genuine trolley accidents and then pretend to be injured.¹⁰ Dornstein recounts an early instance of “this basic, unorganized fraud” in the aftermath of an 1893 trolley accident in the Italian Market section of South Philadelphia. Under the headline “Foreigners Feign Trolley Injuries,” the *Philadelphia Press* reported that when two trolley cars crashed:

The glass in both cars was broken and the passengers were thrown from their seats to the floor Within two or three minutes, the wrecked cars were filled with a crowd of men, all of whom appeared to have received some injury. But as there were several times as many of the injured as there has been passengers in both cars, the trolley men did not give them any encouragement and tried to put them off the cars. The foreigners resisted, and a lively fight was breeding when a couple of policemen appeared and drove the foreigners off.¹¹

Accident faking appeared on the scene at the same time as, and was often confused with, ambulance chasing, i.e., lawyers’ unethical solicitation of genuine claims.¹²

Even where the injury is genuine, it might form the basis for malingering:

“When will your father’s leg be well so he can come to work?”

“Not for a long time, I think.”

“Why?”

“Cause compensation’s set in.”¹³

The malingering theme has recently reappeared in a new joke:

[Jesus walked into a bar]. He approached three sad-faced gentlemen at a table, and greeted the first one: “What’s troubling you, brother?” he said. “My eyes. I keep getting stronger and stronger glasses, and I still can’t see.” Jesus touched the man, who ran outside to tell the world about his now 20-20 vision. The next gentleman couldn’t hear Jesus’ question, so The Lord just touched his ears, restoring his hearing to perfection. This man, too, ran out the door, probably on the way to the audiologist to get a hearing-aid refund. The third man leapt from his chair and backed up against the wall, even before Jesus could greet him. “Don’t you come near me, man! Don’t touch me!” he screamed. “I’m on disability.”¹⁴

10. *Id.* at 107.

11. *Id.* at 108.

12. 1 THE OXFORD ENGLISH DICTIONARY 391 (2nd ed. 1989) (The term “ambulance-chaser” was current by 1897.).

13. POWERS MOULTON, 2500 JOKES FOR ALL OCCASIONS 480 (1942); PHILLIP ADAMS & PATRICE NEWALL, POCKET JOKES 120 (1996).

14. THE JEWISH HUMOR LIST, (Sept. 23, 1999); MEL GREENE, THE GREATEST JOKE BOOK EVER 338 (1999) (Democrat); DAVID SOUTHWELL & SAM WIGARD, THE BEST PUB JOKE BOOK EVER! BOOK 3 320 (1999) (same story except in an English setting); A PRAIRIE HOME COMPANION PRETTY GOOD JOKE BOOK 176 (2000)(redneck).

II. INGENUOUS VICTIMS, CONNIVING DEFENDANTS

Not all victims are connivers. Some victims, especially ethnic and racial outsiders, may be so naive or intimidated that they perceive themselves as subjects of claims rather than as claimants.

Up in Minnesota Mr. Olsen had a cow killed by a railroad train. In due season the claim agent for the railroad called. "We understand, of course, that the deceased was a very docile and valuable animal," said the claim agent in his most persuasive claim-a gentlemanly manner, "and we sympathize with you and your family in your loss. But, Mr. Olsen, you must remember this: Your cow had no business being upon our tracks. Those tracks are our private property and when she invaded them, she became a trespasser. Technically speaking, you, as her owner, became a trespasser also. But we have no desire to carry the issue into court and possibly give you trouble. Now then, what would you regard as a fair settlement between you and the railroad company?"

"Vall," said Mr. Olsen slowly, "Ay bane poor Swede farmer, but Ay shall give you two dollars."¹⁵

Not all connivers are claimants. Potential defendants may engage in denial, ruses, or intimidation to avoid liability:

After standing in front of the store for several minutes, seemingly undecided what to do, he entered and asked for the proprietor, and then began:

"My ole woman was gwine 'long yere las' night an' fell down on your sidewalk and busted her elbow."

"Ah! Well, being you are a poor man I'll make the charges as light as possible!"

"But dat hain't de case, sah. A lawyer tells me that you is 'sponsible fur dat slippery sidewalk, an' dat I kin git damages."

"Exactly; but you don't understand the matter. In the first place you must fee your lawyer and put up for court expenses. Then you prove that I own the sidewalk. Then you prove that your wife was not guilty of contributory negligence. Then you prove that your wife didn't bust her elbow by falling down stairs. Then I appeal the case and the higher court grants a new trial. By that time your wife and her busted elbow are dead and buried, and you are married again, and you offer to settle for five pounds of brown sugar."

"Fo' de Lawd! but has I got to wade frew all dat?"

"All that and more. The grocery business is cut so close that I shall probably be bankrupt by April, and then what good will a judgment do you?"

"Dat's so, dat's so."

15. MOULTON, *supra* note 13, at 162; EDWARDS, *supra* note 2, at 282. See also IRVIN S. COBB, A LAUGH A DAY KEEPS THE DOCTOR AWAY 246 (1923). Cf. LUPTON, *supra* note 4, at 1198 (injured Negro lying near a railway disaster asked about damages denies hitting train: "You cyain't git no damages out ob me.").

"Or the case may hang in the Supreme Court until both of us are dead."

"I see. And you would gin two pounds of brown sugar to settle de case now?"

"Well, yes."

"Den you may do it up, an arter dis de ole woman takes de oder side of de street or we dissolve partnership! I 'spected ebery minit you war gwine to tist it around to levy on my household goods, an' if I'm two pounds of sugar ahead I want to close de case to once afore you bring in a bill for contributory piracy."¹⁶

As these stories suggest, defendants may connive to deny injury and blame the victim.

A reporter on a Kansas City paper was among those on a relief train that was being rushed to the scene of a railway wreck in Missouri. About the first victim the Kansas City reporter say was a man sitting in the road with his back to a fence. He had a black eye, his face was somewhat scratched, and his clothes were badly torn — but he was entirely calm.

The reporter jumped to the side of the man against the fence. "How many hurt?" he asked of the prostrate one.

"Haven't heard of anybody being hurt," said the battered person.

"What was the cause of the wreck?"

"Wreck?" Haven't heard of any wreck."

"You haven't heard of any wreck? Who are you, anyhow?"

"Well, young man, I don't know if that's any of your business, but I am the claim-agent of this road."¹⁷

* * *

Son: Papa! Papa! The lid to our coal-shute was left open and a man fell down inside. What should I do?

Father: Quick! Put the cover on it. I'll call a cop and have him arrested before he can sue us.¹⁸

16. HEBREW YARNS AND DIALECT HUMOR: COMPRISING ORIGINAL AND SELECTED LAUGHABLE DIALECT STORIES, COMIC SITUATIONS, WITTY SAYINGS AND RARE ANECDOTES, WITH MANY HUMOROUS ILLUSTRATIONS 87 (1990); PEGGY EDMUND & HAROLD W. WILLIAMS, TOASTER'S HANDBOOK: JOKES, STORIES, AND QUOTATIONS 483 (1914) (battered man is railroad director); ROBERT RANGO, THE GOOD HUMOR BOOK: A TREASURY OF CHOICE JOKES AND GAGS, CARTOONS AND COMIC DRAWINGS 319 (1944) (railroad director).

17. EDWARDS, *supra* note 2, at 118-19.

18. Phillips (On file with author). As the coal chute and the working youngster suggest, this is a much older joke. I have seen, but am unable to locate, an earlier version. Cf. the pre-emptive strategy of the doctor:

Dr. Perlman was examining a patient when his nurse rushed into the room. "Excuse me, Doctor," she said, "but that man you just gave a clean bill of health to walked out of the office and dropped dead. What should I do?" "Turn him around so he looks like he was walking in," replied the M.D.

LARRY WILDE, THE OFFICIAL LAWYERS JOKE BOOK 183 (1982). See also BLANCHE KNOTT, THE VERY WORST OF TRULY TASTELESS LAWYER JOKES 132 (1990); RED STANGLAND, OLE & LENA JOKES - BOOK 8 47 (1994); BOB PHILLIPS, JUST ANOTHER GOOD CLEAN JOKE BOOK 175 (1996).

III. JEWS, SUING, AND FIRES

Swedish farmers and illiterate Blacks might be intimidated into forgoing just claims. But the heavy Jewish presence in these conniving claimant jokes reflect a (once?) widespread belief that Jews are overeager to pursue legal remedies and to invoke the legal system to obstruct remedy for others.

Two Jewish gentlemen were playing golf. They had wagered a dollar a hole on the contest and the battle was waxing fast and furious. One saw the other pick his ball up out of a bad lie and throw it out on the fairway.

"Moe," he yelled, "you can't do that."

"Vy can't I?"

"It gives in the rulebook that you can't pick your ball up."

"Vell, I did it, didn't I?"

"But vat if you should win this match and my money by such actions. Vat would I do then?"

"Sue me."¹⁹

In the first half of the century, Jews were widely regarded as only partly within the moral community, unconstrained by a common morality and inclined to opportunistic use of formal legal controls. Whether there was a basis for the perception of Jewish readiness to sue,²⁰ its shadow lives on in such items as:

What's a Jewish car accident?

No damage to the automobile, but everyone inside has whiplash.²¹

* * *

Q: Did you hear about the new Japanese-Jewish restaurant?

It's call So-sumi²²

19. JOHNSON, *supra* note 4, at 171.

20. When Douglas Rosenthal studied personal injury claimants in New York City, he found no religious difference in activity/passivity as clients. However, this does not speak directly to the propensity to bring claims. DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* 228 (1974). Nor does Matthew Silverman's finding that Jewish residents of the Detroit metropolitan area in 1967 were more likely to go to lawyers, but their small numbers in the sample did not support any firm conclusions. Silverman attributed greater Jewish involvement with the legal system to greater wealth and social integration rather than to religious or ethnic reasons. (These factors would not have been present during the period in which the conniving claimant jokes arose). MATTHEW SILVERMAN, *THE CIVIL JUSTICE PROCESS: A SEQUENTIAL MODEL OF THE MOBILIZATION OF LAW* 200 (1985). None of the studies of proclivity to claim have tested the religious/ethnic variable.

21. JAY ALLEN, *500 GREAT JEWISH JOKES* 171 (1990). A related story tells of a collision in the desert between Arab and Israeli tanks: the Arab driver leaps out shouting, "I surrender," the Israeli jumps out shouting "whiplash." BARRY, *supra* note 5; HENRY EILBIRT, *WHAT IS A JEWISH JOKE? AN EXCURSION INTO JEWISH HUMOR* 293 (1991).

22. H. AARON COHL, *THE FRIARS CLUB ENCYCLOPEDIA OF JOKES* 203 (1997); BLANCHE KNOTT, *TRULY TASTELESS LAWYER JOKES* X 9 (1990); JIM PIETSCH, *THE NEW YORK CITY CAB DRIVER'S JOKE BOOK* 2 (1986). Leo Rosten credits the popularity of "so sue me" to the 1950 musical *Guys and Dolls* and Damon Runyon's earlier stories on which it was based. LEO ROS-

The provenance of these stories suggests that their currency is now largely intra-ethnic, among Jews themselves. As we shall see, the notion that some people have inappropriate recourse to legal remedies has been de-ethnicized and generalized into worry about frivolous cases and the "litigation explosion."

The most pervasive and enduring of these Jewish claimant jokes alleged a propensity to set fires to commercial premises in order to collect insurance. The accusation is one with a long history. Trachtenberg recounts the lethal association of Jews with fires in medieval Europe:

Fire swept rapidly through the tinderbox towns of those days, and the populace was justifiably in dread of a conflagration, But the responsibility was so consistently laid upon the Jews—entire communities were time after time ravaged and expelled, even when the fire did not first break out in the Jewish quarter— that we cannot ascribe this circumstance solely to the cupidity or passion of the mob. If, as was often the case, it was asserted that the guilty arsonists were witches in league with the devil, then the Jews could not escape the taint of complicity, supported as this suspicion was by their purported intention to destroy Christendom by whatever means.²³

In the early Twentieth Century, jokes about insurance fires started by Jewish businessmen were common in both England and the United States:²⁴

Ikey saw his friend Jakey in the smoking-car when he entered, and sat down in the same seat.
 "How was that fire in your place last week, Jakey?" he inquired.
 Jakey started nervously.
 "Sh!" he whispered. "It vas next week."²⁵

* * *

A citizen who maintained a pawnshop took out a fire insurance policy. The same day a blaze broke out that destroyed the building and its contents.

The insurance company tried in vain to find sufficient grounds to refuse payment, and was obliged to content itself with the following letter appended to the check:

TEN, *THE JOYS OF YINGLISH* 502 (Penguin Books, 1990) (1989). The phrase serves as the title of James Yaffe's book about the Jewish Conciliation Court in New York City. JAMES YAFFE, *SO SUE ME! THE STORY OF A COMMUNITY COURT* (1972).

23. JOSHUA TRACHTENBERG, *THE DEVIL AND THE JEWS: THE MEDIEVAL CONCEPTION OF THE JEWS AND ITS RELATION TO MODERN ANTI-SEMITISM* 89-90 (2d ed., Jewish Publication Society 1983) (1943).

24. On these Jewish fire stories, see Christie Davies, *Jewish Jokes, Anti-Semitic Jokes, and Hebreonian Jokes*, in *JEWISH HUMOR* 75, 85-87 (Abner Ziv ed., 1986); Christie Davies, *Exploring the Thesis of the Self-deprecating Jewish Sense of Humor*, 4 *HUMOR* 189, 197-201 (1991).

25. *JOKES FOR ALL OCCASIONS: SELECTED AND EDITED BY ONE OF AMERICA'S FOREMOST PUBLIC SPEAKERS* 190 (Edward J. Clode ed., 1922).

"Dear Sir: We note that your policy was issued at ten o'clock on Thursday morning and that the fire did not occur until three-thirty. Why this unseemly delay?"²⁶

* * *

Cohen, walking along the street, met his friend, Isaacs, bound in the opposite direction.

"Ah, ha!" said Isaacs. "I know vat you are going dis vay for."

"You don't," said Cohen.

"Bet you ten dollars I do," said Isaacs.

The wager was accepted, and Isaacs went on:

"You're going to look around for a cheap looking building for rent that has a store. You'll take the place, stock it with goods, insure the whole thing, and then some day there vill be a fire."

Cohen looked thoughtful for a moment, and he pulled ten dollars from his pocket, handing it to Isaacs.

"You see, Cohen, I vas right, after all."

"No, Izzy, you vasn't right. But the idea is worth it."²⁷

* * *

A fire was started in a building in New York, and two Hebrews and an Irishman were arrested. They were brought before a judge. The Hebrews were questioned first; the judge says: "Mr. Goldstein, where do you think the fire started?" Mr. Goldstein says: "Judge, I tink dis fire started in de top loft from an incandescent light." The Judge says: "Mr. Cohen, where do you think this fire started?" "Judge," he replies, "I tink dis fire started in the second loft from an arc light." The Irishman being called, the judge says: "Mr. Murphy, where do you think this fire started?" And Mr. Murphy replies: "Judge, Oi think the foire shtarted in the cellar from an ISRAEL LOIGHT."²⁸

So well understood was this allegation that its deployment as defense was itself the subject of a story:

A fire engine on its way to a fire was very much delayed by a little Hebrew who was riding a bicycle zigzag just in front of the engine, evidently anxious to keep up with it and get to the fire in time to see it work. One of the firemen, exasperated, jumped off the engine, caught hold of the boy and pulled him to the side, at the same time saying, "You d—m little Sheeney, you ought to be arrested for getting in the way! I've a good mind to spank you."

The boy looked at the fireman in surprise and whimpered, "If it wasn't for the Jews you wouldn't have anything to do."²⁹

26. BILL JOHNSTON'S SECOND JOY BOOK No. 933 (William T. Johnston ed., 1925). See also MILTON BERLE, MILTON BERLE'S PRIVATE JOKE FILE 546 (1989). This story was possibly switched to Jewish protagonists from an earlier anecdote about the President of Oberlin College. THE MAN IN THE STREET STORIES FROM THE NEW YORK TIMES, item 431 (1901).

27. JOHNSON, *supra* note 26, at No. 929.

28. JOE KLEIN, GOOD THINGS 55 (1903).

29. HEBREW YARNS AND DIALECT HUMOR 41. See also WEHMAN BROS., HEBREW JOKES NO. 1 CONTAINING SIDE-SPLITTING JOKES, STORIES AND DIALECT HUMOR, AS DELIVERED BY

Another prototypical conniving claimant was the "golddigger," who sought "heart balm" from wealthy men for breach of promise to marry, seduction, or other misdeeds.

"Well, may I hope then, dearest that at some time I may have the happiness of making you my wife?"

"Yes, I hope so, I am sure," she replied. "I am getting tired of suing fellows for breach of promise."³⁰

* * *

"I have met a lovely girl, who tells me she will be perfectly satisfied with \$50 a week."

"With or without?"

"With, or without what?"

"Attorney's fees."³¹

Jokes about the golddigger flourished from early in the century. In the 1930s, a great wave antipathy to these "heart balm" suits led to their legislative abolition in a number of states.³²

IV. THE SURVIVORS

Since the Second World War, the entire cluster of conniving claimant stories, including the Jewish fire stories and stories about golddiggers, have largely disappeared. There are only a few notable exceptions. One is the single fire-for-profit story that has survived:

Two Jews meet in Miami Beach. "Hello, Einhorn," says one. "How are you feeling? Everything okay? Or are you down here for your health?"

"Not exactly. You see, Finkelstein, by me in the shop there was a big fire. So when I collected the insurance, I thought I would come down here for a little rest, before I open again. But, Finkelstein, what are you doing here right in the middle of your busy season?"

"Well, it happened like by you. Except by us we had a big flood. While the insurance company is arranging to pay off, I thought I would come down here for a while."

At this point, Einhorn looks at him quizzically and asks, "Listen, how to make a fire we all know, but how do you make a flood?"³³

THE CELEBRATED HUMORISTS OF THE DAY 20 (1906); MASTER BOOK OF HUMOROUS ILLUSTRATIONS No. 584 (Leewin B. Williams ed., 1938).

30. COLE'S FUN DOCTOR: THE FUNNIEST BOOK IN THE WORLD, SECOND SERIES 86 (1902).

31. S.E. KINSER, IT IS TO LAUGH 233 (1927).

32. For a recent assessment of the "anti-heart balm movement," see Jane E. Larson, *Women Understand So Little. They Call My Good Nature Deceit: A Feminist Rethinking of Seduction*, 93 COLUM. L. REV. 374, 383-99 (1993).

33. HENRY EILBIRT, WHAT IS A JEWISH JOKE? AN EXCURSION INTO JEWISH HUMOR 71-72 (1991). See also JAY ALLEN, 500 GREAT JEWISH JOKES 79 (1990); JAMES T. WALKER, HAVE YOU HEARD? THE AFTER-DINNER SPEAKER'S GUIDE TO BEING FUNNY 163 (1980). Cf. ISAAC

This is no longer exclusively a joke about Jews:

A lawyer and an engineer were fishing in the Caribbean. The lawyer said, "I am here because my house burned down and everything I owned was destroyed. The insurance company paid for everything."

"That is quite a coincidence," said the engineer, "I'm here because my house and all my belongings were destroyed by a flood, and my insurance company also paid for everything."

The lawyer looked somewhat confused and asked, "How do you start a flood?"³⁴

In a switch that occurs with some frequency in contemporary joking, the lawyer takes the place of the conniving Jewish businessman.³⁵

Another survivor is the story of the claimant who is testifying about his impairment.

A somewhat similar story is told of the late Lord Birkenhead in his early days at the Bar. He was acting for a tramway company, one of whose vehicles had run down a boy. According to the statement of counsel the boy's arm was hurt, and when he entered the witness-box his counsel made him show that it was so much injured that he could no longer lift it above his head. In due course "F.E." rose to cross-examine, which he did very quietly. "Now, my boy," he said, "your arm was hurt in the accident?" "Yes, sir," said the boy. "And you cannot lift your arm high now?" "No, sir." "Would you mind," said "F.E." very gently, "just showing the jury once more how high you can raise your arm since the accident?" The boy lifted it with apparent effort just to the shoulder level. "And how high could you lift it before the accident?" asked "F.E." in the most innocent manner, and up went the arm straight over the boy's head.³⁶

ASIMOV, ISAAC ASIMOV'S TREASURY OF HUMOR 371 (1971) (disaster event is hurricane instead of flood); IRVIN S. COBB, MANY LAUGHS FOR MANY DAYS 86 (1923) (similar story except tornado used instead of flood and characters not explicitly Jewish though one is identified as a "proprietor of a small retail clothing store"); ABRAHAM HOCHWALD, THE HARPERCOLLINS BOOK OF JEWISH HUMOUR 45 (Engl. language ed. 1996) (1994) (hurricane and Jewish characters); EDWARD PHILLIPS, THE WORLD'S BEST AFTER-DINNER JOKES 74 (Harper Collins 1995) (1993). The joke also appears as a Hoja story, presumably at a much earlier date. IDRIES SHAH, THE EXPLOITS OF THE INCOMPARABLE MULLAH NASRUDDIN 95 (The Octagon Press 1983) (1966).

34. PHILLIP ADAMS & PATRICE NEWALL, THE PENGUIN BOOK OF JOKES FROM CYBERSPACE 294 (1995); COHL, *supra* note 22, at 280; *Randy's Favorite Lawyer Jokes*, at <http://rever.nmsu.edu/~ras/lawyer.shtml> (last visited Jul. 24, 1997).

35. This shift is documented for a series of jokes about betrayal and unworthiness. See Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes*, 66 U. CINN. L. REV. 805 (1998).

36. JOHN AYE, HUMOUR AMONG THE LAWYERS 91 (1931) (the story is told as an anecdote about Frederick Edwin Smith (1872-1930), First Earl of Birkenhead). See THE GOOD HUMOR BOOK, *supra* note 1, at 251; see also LANCE S. DAVIDSON, LUDICROUS LAWS AND MINDLESS MISDEMEANORS 46 (1998) (boy has grown into "young man"); STANLEY JACKSON, LAUGHTER AT LAW 84 (1961) (Birkenhead defending bus company); JEFF ROVIN, 500 GREAT LAWYER

I recall hearing this in law school in the early 1950s (the point was not the *chutzpah* of the claimant, but the cleverness of the cross-examining lawyer) and I believe it is current today in the law school setting.

A final "survivor" is a robust example of the conniving claimant that emerged by 1959, generations later than its companions, and is told with both Jewish and Irish protagonists.

Abraham Goldberg, a Chicago Jew, has a collision with the heavy limo of his Irish neighbor, the multimillionaire Jim McCormick. Goldberg claims that he's paralyzed from the waist down and is awarded damages of one million dollars. As McCormick makes the payment, he says: "Now look, Abe. Here is my check. But I warn you: Great pleasure you won't get from this money. I'm going to watch you like a hawk. The moment I see you taking a single step, you will not only have to return the money, but you'll go straight to jail." And so it was. Goldberg travels to the casino in Atlantic City. Who is staying in the room next to him? Jim McCormick. Goldberg travels to Tahiti. Who has the bungalow next to his on the beach? Jim McCormick. Goldberg travels to Switzerland and finds McCormick waving to him from the adjacent chalet. Until McCormick's private investigators inform him that Goldberg has purchased a ticket on Air France. No sooner has Goldberg been lifted out of his wheelchair and been installed in his first class seat, than he hears from behind the ironic voice of McCormick: "Hello, Abe, where to this time? To Paris? Les Follies Bergeres?" "No, Jim," answers Goldberg, "this time we're going to Lourdes. And there you will witness the greatest miracle of our time."³⁷

Life almost managed to match this scenario. In 1989, a Texas woman brought suit against the Steak & Ale restaurant, where a waiter dropped "a large tray of double-plated dinners on her," claiming that as a result she was confined to a wheelchair. In the midst of the trial in May, 1991, the parties agreed on a two million dollar settlement, which was orally approved by the judge. A month later, the victim was observed walking in high heels "without apparent difficulty" in another San Antonio restaurant. Steak & Ale hired private

JOKES 51 (1992) (same). Cf. HENRY D. SPALDING, A TREASURE-TROVE OF AMERICAN JEWISH HUMOR 44 (1976) (Jewish grandmother displays arthritic condition).

37. Benno Weiser Varon, *I made them laugh*, 41(4) MIDSTREAM 27, 28 (1995) (reported as told in the late 1960s). See also MILTON BERLE, MORE OF THE BEST OF MILTON BERLE'S PRIVATE JOKE FILE 355 (1993); BENNETT CERF, THE LAUGH'S ON ME 261-62 (1959) (Irish); GEORGE COOTE, THE POLITICALLY INCORRECT JOKE BOOK 251 (1996) (Irish); GEORGE COOTE, THE SERIOUSLY RUDE JOKE BOOK 201 (1995); HARRY GOLDEN, THE GOLDEN BOOK OF JEWISH HUMOR 20 (1972) (Jewish); JAMES C. HUMES, PODIUM HUMOR: A RACONTEUR'S TREASURY OF WITTY AND HUMOROUS STORIES 74-75 (1975); RALPH MARQUAND, JOKES AND ANECDOTES FOR ALL OCCASIONS 152-53 (1979); READER'S DIGEST, FUN & LAUGHTER: A TREASURE HOUSE OF HUMOR 74 (1967); READER'S DIGEST ASSOCIATION, THE READER'S DIGEST TREASURY OF AMERICAN HUMOR 322 (1972); LARRY WILDE, THE COMPLETE BOOK OF ETHNIC HUMOR 152 (1978) (Jewish).

detectives who videotaped her for five days, during which she neglected to use a cane, walker, or wheelchair. The trial court refused to allow Steak & Ale to withdraw its consent to the settlement agreement on the ground that it was final. However, the Supreme Court of Texas found that although the trial judge had approved the settlement at the time of the trial, he did not “render judgment” by preparing and signing the agreement until after Steak & Ale’s June 18 request to withdraw, even if “the trial court believed that he had rendered judgment during the May 14 hearing.”³⁸ The settlement was nullified and the plaintiff sent away empty-handed. There is surely a lesson here for claimants, in no case should Lourdes be omitted from the post-settlement itinerary!

How do we explain the survivors? *Lourdes* has the religious factor, making fun of miraculous cures and the Catholic belief in such cures, which provides cover for the con man. *Raise Arm* is a story about clever lawyer outwitting the conniving claimant. *How do you make a flood?* and *I’m on disability* both contain an element of *one-upmanship* (the fire victim outdone and the Savior rebuffed); it is not simply the contrivance or assertion of the claim that it is the deviance that is the target of the joke.

V. THE GENRE SHIFT: CLAIMANT JOKES REPLACED BY LITIGATION LEGENDS

The radical shrinkage of the entire cycle of stories about conniving claimants (and, less frequently, defendants) scheming for undeserved legal advantage does not mean that such activity has become less salient or worrisome. On the contrary, popular lore overflows with accounts of unfounded claims and malingering claimants. Twenty years ago, at the onset of concern about the “litigation explosion,” *U.S. News and World Report* reported that

Americans in all walks of life are being buried under an avalanche of lawsuits. Doctors are being sued by patients, Lawyers are being sued by clients. Teachers are being sued by students. Merchants, manufacturers and all levels of government— from Washington, D.C. to local sewer boards— are being sued by people of all sorts.

This “epidemic of hair-trigger suing,” as one jurist calls it, even has infected the family. Children haul their parents into court, while

38. *S & A Restaurant Corp. v. Leal*, 892 S.W. 2d 855, 856, 857, 858 (Tex. 1995). The strained distinction the court erected to reach this result was soon dismantled. In *Keim v. Anderson*, 943 S.W.2d 938 (Tex. 1997), decided by the El Paso Court of Appeals on Apr. 4, 1997, the court explained that judgment is rendered “when the trial court officially announces its decision in open court” *Case Summaries: Courts of Appeals Civil*, 13 TEX. LAW., Apr. 28 1997, at 11 (available on Westlaw).

husbands and wives sue each other, brothers sue brothers, and friends sue friends.³⁹

A few years later, columnist Jack Anderson reported that

Across the country, people are suing one another with abandon; courts are clogged with litigation; lawyers are burdening the populace with legal bills

This massive, mushrooming litigation has caused horrendous ruptures and dislocations at a flabbergasting cost to the nation.⁴⁰

In a similar vein, eminent judges, lawyers, and academics registered dismay at American litigiousness and warned about its consequences.⁴¹ Pundits and politicians retailed "horror stories" of outlandish claims and grotesque verdicts, tales of absurd and outrageous awards to coffee-spillers, burglars and psychic fakers, and stories of havoc visited on beleaguered little leagues and abandoned day care centers.⁴² These stories tell us that the system has "spun out of control" and America, or its substantial, productive citizens, are the victims of unchecked litigiousness. Upon examination by journalists and scholars, these resilient stories turn out to be complete fictions or embellishments.⁴³

The conniving claimant, once portrayed in stories that depicted bizarre deviations from the normal, is now presented as emblematic of a new and alarming normality. The notion that deviants or outsiders are misusing the legal system is generalized into the notion that frivolous cases are normal and typical within the legal system. John Lande interviewed senior executives in publicly held companies on their views about litigation and found "[t]hey were virtually unanimous that there has been a litigation explosion and the vast majority believed that most suits by individuals against businesses are frivolous."⁴⁴ The conniving claimant figure has departed the joke arena because in this

39. *Why Everybody is Suing Everybody*, U.S. NEWS AND WORLD REPORT, Dec. 4, 1978, at 50.

40. Jack Anderson, *U.S. Has Become a Nation of Lawsuits*, WASH POST, Jan. 25, 1985, at B8.

41. Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4, 6-8 (1983).

42. The careers of many of these tales are analyzed in Marc Galanter, *An Oil Strike in Hell: Contemporary Legends about the Civil Justice System*, 40 ARIZ. L. REV. 717 (1998).

43. See Steven Brill & James Lyon, *The Not-So-Simple Crisis*, 8 AM. LAW. at 1 (1986); Stephen Daniels, *The Question of Jury Competence and the Politics of Civil Justice Reform: Symbols, Rhetoric and Agenda Building*, 52 LAW & CONTEMP. PROBS. 269 (1989); Robert M. Hayden, *The Cultural Logic of a Political Crisis: Common Sense Hegemony, and the Great American Liability Insurance Famine of 1986*, 11 STUD. L. & POL. 95 (1991); Galanter, *supra* note 42, at 717; Fred Strasster, *Tort Tales: Old Stories Never Die*, NAT'L L. J., Feb. 16, 1987, at 39; ATRA Web Site <http://aaabiz.com/atrta/ath/htm>.

44. John Lande, *Failing Faith in Litigation? Survey of Business Lawyers' and Executives' Opinions*, 3 HARV. NEGOTIATION L. REV. 1, 51 (1998).

new and debased normality, unfounded or exaggerated claims are unexceptional. Since such stories do not deviate from the expected, they lack the element of surprise to function as jokes. As a result, stories of outlandish claiming flourish, no longer as jokes but as fables of decline.

For example, former Vice President Quayle, conveys our fallen condition in the following account:

We have become a crazily litigious country. Today a baseball comes crashing through a window, and instead of picking it up and returning it to the neighbor whose kid knocked it through — and who pays the glazier's bill in a reasonable, neighborly way — the "victim" hangs on to the baseball as evidence and sues the neighbor. (Or the baseball's manufacturer. Or the glassmaker. Or usually all three.) Several lawyers are soon billing hours, and the civil docket has been further crowded by one more pointless case that's probably going to be part of the 92 percent of cases that get settled before they come to trial — but not before a huge amount of time and money has been wasted on everything from "discovery" to picking a jury that will be discharged before it ever deliberates this case that shouldn't have gotten started in the first place. In America we now sue first and ask questions later.⁴⁵

Christie Davies observes that

jokes and legends are overlapping sets Whether we class a particular telling of a tale as a joke or as a legend presumably depends on the rather arbitrary and subjective question of what is in the mind of the raconteur at the time and how his audience perceive and classify his account. If he is knowingly purveying an amusing piece of fiction, albeit one that is initially plausible and which connects with the listeners' own experience and values, then it is a joke. Presumably legends begin at the point where there is some small degree of real belief in the truth of the entire narrative, including the final shocking and comic denouement.

Davies points out that it is "often quite impossible" to distinguish jokes and legends "on the basis simply of a particular written or recorded text."⁴⁶

Such fables feed on and give expression to popular concerns about litigation. The currency of such stories does not depend entirely on spontaneous welling up from the folk; rather, they are broadcast and disseminated by multi-million dollar campaigns spawned by a minor

45. DAN QUAYLE, *STANDING FIRM: A VICE-PRESIDENTIAL MEMOIR* 312 (1995). A massive anthology of such misreadings may be found in PATRICK M. GARRY, *A NATION OF ADVERSARIES: HOW THE LITIGATION EXPLOSION IS RESHAPING AMERICA* (1997), which observes that "Grievances are litigated in courts just as casually as one would order a sweater from a catalog." *Id.* at 145.

46. CHRISTIE DAVIES, *JOKES AND THEIR RELATION TO SOCIETY* 139 (1998).

industry of lobbyists, consultants, think tanks, and "tort reform" groups whose pronouncements are parroted by politicians and pundits.⁴⁷

VI. CLAIMING AS MORAL FAILURE OR SUCCESS

Paradoxically, the industrious projection of the image of unrestrained litigiousness and rampant overclaiming turns out to be a self-fulfilling prophecy. It encourages the bringing of claims.

One of the impacts of the now twenty-year campaign of corporate America and the insurance industry to convince the American populace that we are in the midst of a litigation explosion is to increase the calls that lawyers receive. This is probably most evident in the medical malpractice area The effect of this rhetoric is to make people think that if anything goes wrong they can get significant compensation. The result is the lawyers spend many hours explaining to potential clients that this is simply not true⁴⁸

This image reinforces the sense that the system is so routinely abused by exaggerated and deceptive claiming that one would be a sucker not to play the game.⁴⁹

But, even if this encourages claiming, it vastly overpredicts it. Formidable barriers continue to keep most potential claims from being brought. Many critics are convinced that Americans sue "at the drop of a hat," and that recourse to the courts is a first rather than a last resort for an increasing portion of the population. But in fact, rates of claiming, with the exception of automobile-related injuries, are low, and claims are frequently not pursued.⁵⁰ The Civil Litigation Research Project, studying claiming behavior in five states, found that for every one thousand grievances (perceived injuries of specific legally-relevant kinds that involved more than \$1,000 and that were blamed on some human agent) there were 718 claims and thirty-eight court

47. On these campaigns and their backers, see Kenneth J. Chesebro, *Galileo's Report: Peter Huber's Junk Scholarship*, AM. U. L. REV. 1637 (1993); Daniels, *supra* note 43, at 269; Stephen Daniels & Joanne Martin, *Punitive Damages, Change, and the Politics of Ideas: Defining Public Policy Problems*, 1998 WIS. L. REV. 71.

48. HERBERT M. KRITZER & MITCHELL PICKERELL, CONTINGENT FEE LAWYERS AS GATEKEEPERS IN THE AMERICAN CIVIL JUSTICE SYSTEM 22 (Inst. For Legal Stud., U. Wis., Working Paper No. DPRP 12-3 1997).

49. Dornstein concludes that the image of the personal injury faker "allows the honest claimant to believe that personal injury compensation is dirty in all its aspects . . ." and thus liberates him to discount the immorality of "exaggerating a claim or authorizing their attorneys to make outrageous demands on their behalf or conspiring with a garageman to inflate the damage estimate and split the difference . . ." DORNSTEIN, *supra* note 6, at 239.

50. DEBORAH R. HENSLER ET AL., RAND INST. FOR CIVIL JUSTICE, COMPENSATION FOR ACCIDENTAL INJURIES IN THE UNITED STATES 120-21 (1991).

filings.⁵¹ In a massive national survey of claiming behavior, the Institute for Civil Justice estimated that claims were put forward in only about ten percent of all accidental injuries.⁵² Claims were made in forty-four percent of motor vehicle injuries, seven percent of work injuries, and three percent of other injuries.⁵³ Thus, “[c]laims associated with motor vehicle accidents accounted for almost two-thirds of the total.”⁵⁴ The Harvard study of medical malpractice in New York similarly estimated that “eight times as many patients suffered an injury from negligence as filed a malpractice claim in New York State.”⁵⁵ Richard Abel compiled data on low claiming rates and concluded that the tort system suffers from a chronic “crisis of underclaiming” that leads to failure to compensate needy, deserving victims and failure to discourage unreasonable risks.⁵⁶

Abel is not the first to decry underclaiming. More than a century ago, the view that there are too few claims was championed by Rudolph von Jhering, who viewed a stalwart reaction to the invasion of one’s legal rights a prime duty of citizenship and forbearance to assert one’s rights as morally reprehensible, a sign of weak character, and a dereliction of duty to the commonwealth.⁵⁷ He identified as the “two criteria of a healthy feeling of legal right: Irritability, that is the capacity to feel pain at the violation of one’s legal rights, and action, that is the courage and the determination to repel the attack”⁵⁸ Von Jhering extends his admiration for resolute seeking of vindication from public law to private law:

What is sowed in private law is reaped in public law and the law of nations. In the valleys of private law, in the very humblest relations of life, must be collected, drop by drop, so to speak, the forces, the moral capital, which the state needs to operate on a large scale, and

51. Richard E. Miller & Austin Sarat, *Grievances, Claims and Disputes: Assessing the Adversary Culture*, 15 *LAW & SOC’Y REV.* 525, 544 (1980-81).

52. *Id.*

53. *Id.*

54. *Id.*

55. PATIENTS, DOCTORS, AND LAWYERS: MEDICAL INJURY, MALPRACTICE LITIGATION, AND PATIENT COMPENSATION IN NEW YORK: THE REPORT OF THE HARVARD MEDICAL PRACTICE STUDY TO THE STATE OF NEW YORK 6 (1990). Analyzing data from California in the late 1970s, Patricia Danzon estimated that “[o]verall, at most 1 in 10 negligent injuries resulted in a claim, and of these only 40 percent received payment. In other words, at most 1 in 25 negligent injuries resulted in compensation through the malpractice system.” PATRICIA M. DANZON, *MEDICAL MALPRACTICE: THEORY, EVIDENCE AND PUBLIC POLICY* 24 (1985).

56. Richard Abel, *The Real Tort Crisis—Too Few Claims*, 48 *OHIO ST. L.J.* 443, 447 (1987).

57. RUDOPH VON JHERING, *THE STRUGGLE FOR LAW* 29-30, 54 (John J. Lalor trans. 2d ed. 1915) (1879). This much-republished and much-translated book was first published in 1872.

58. *Id.* at 63.

to attain its end. Private law, not public law, is the real school of political education of the people . . .⁵⁹

If there are occasional outcroppings of such commendation for claiming, standing up for one's rights, in American society today, there is a vastly greater quantity of suspicion of the claimant. Most Americans think there is too much claiming. In a recent survey, over half the public thought it a fair criticism of most lawyers that "[t]hey file too many lawsuits and tie up the court system."⁶⁰ Another survey found a resounding seventy-four percent who agreed that "the amount of litigation in America today is hampering this country's economic recovery."⁶¹ Litigants are portrayed not as Jheringite heroes, but as petty, oversensitive, obsessive, exploitative, and sociopathic. Certain kinds of lawsuits attract more condemnation than others. David Engel studied a rural Illinois county in which concern about litigiousness was high although there was relatively little litigation.⁶² Engel found that although contract actions were almost ten times as frequent as personal injury cases, it was the latter that provoked concern because they controverted the core values of self-sufficiency and stoic endurance.⁶³ Like many of the protagonists in the conniving claimant jokes, most of the personal injury claimants in Engel's county were newcomers and outsiders, not core members of the community.

The claimant is a troubling figure. While embodying the value of standing up for his rights, the claimant violates the ethic of self-reliance by becoming a suppliant, exposing his vulnerability and dependence, and admitting that he is damaged rather than whole. It is a position that invites moral suspicion⁶⁴ and self-doubt that may aggravate the original injury.⁶⁵ Quite apart from the moral hazard of unfounded claiming, even the "honest" claimant is in danger of being in the inauthentic position of putting a price on the priceless:

Mr. Green sued a lady for breach of promise. Her friends offered to settle it for two hundred dollars.

59. *Id.* at 99-100.

60. PETERS D. HART RESEARCH ASSOCS., A SURVEY OF ATTITUDES NATIONWIDE TOWARD LAWYERS AND THE LEGAL SYSTEM 16 (1993).

61. Randall Samborn, *Anti-lawyer Attitude Up*, NAT'L L. J. 1, 20 (Aug. 9, 1993).

62. David Engel, *The Oven Bird's Song: Insiders, Outsiders and Personal Injuries in an American Community*, 18 LAW & SOC'Y REV. 551 (1984).

63. *Id.* at 574-75.

64. VALERIE P. HANS, BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY 22-49 (2000) (describing jurors' critical scrutiny of plaintiff credibility).

65. KRISTIN BUMILLER, THE CIVIL RIGHTS SOCIETY: THE SOCIAL CONSTRUCTION OF VICTIMS (1988). For examples of stigmatization and punishment of claimants, see Marc Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3, 9 n.27-28 (1986).

“What!” cried Mr. Green, “two hundred dollars for ruined hopes, a shattered mind, a blasted life, and a bleeding heart! Two hundred dollars for all this! Never! never! never! Make it three hundred and it’s a bargain!”⁶⁶

The jokes express our unease that law is located in the world of the second best, where the sublime is an object of commerce. Just as jokes about lawyers reflect our reluctant realization that justice must be sought through fallible and self-regarding agents, jokes about claimants reflect our ambivalence about invoking the legal system. Early in this century, our sense of the moral hazards of claiming were projected on those at the periphery of the moral community. As the emphasis shifts from jokes about conniving claimants to legends about outrageous claims and undeserved awards, the location of perceived abuse of the system is more general and diffuse, and the miscreants are not outsiders and strangers, but rather, those who look like, and may be, us.⁶⁷

66. MARSHALL BROWN, *WIT AND HUMOR: A CHOICE COLLECTION* 223 (1879).

67. A recent search by Emily Gottlieb reveals that a number of vociferous critics of contemporary claiming, including correspondent John Stossel, Senator Rick Santorum, and President George W. Bush, did not allow their disdain for excessive claiming and advocacy of tort reform to deflect them from bringing suit to vindicate intrusions on their interests. Samborn, *supra* note 61, at 20; Emily Gottlieb, *Not in My Backyard - Hypocrites of "Tort Reform,"* CENTER FOR JUSTICE AND DEMOCRACY WHITE PAPER, January 2001.

