

# Introduction: Civil Litigation and Popular Culture - Sixth Annual Clifford Symposium on Tort Law and Social Policy

Stephan Landsman

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

---

## Recommended Citation

Stephan Landsman, *Introduction: Civil Litigation and Popular Culture - Sixth Annual Clifford Symposium on Tort Law and Social Policy*, 50 DePaul L. Rev. 421 (2000)

Available at: <https://via.library.depaul.edu/law-review/vol50/iss2/2>

This Front Matter is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact [wsulliv6@depaul.edu](mailto:wsulliv6@depaul.edu), [c.mcclure@depaul.edu](mailto:c.mcclure@depaul.edu).

## INTRODUCTION

*Stephan Landsman\**

It seems that just about everywhere one looks there are stories being told about civil litigation. The subject has been a favorite of television shows ranging from *Ally McBeal* and *The Practice* to *Judge Judy*. It has been a regular theme for moviemakers, who have produced such diverse films as *Erin Brockovich*, *The Verdict*, *A Civil Action*, *The Sweet Hereafter* and *The Fortune Cookie*. It has been both the superstar novelist's delight in such volumes as *The Rainmaker* and grist for the mill of brilliant non-fiction works like *A Civil Action*. It has even served as a source for advertising campaigns, jokes, and urban legends.

Virtually all of these narratives seem to be striving to tell us not only something about American law but about America. The messages being sent deserve careful scrutiny because they have the power to profoundly affect the attitudes of legal professionals, litigants, and jurors. They are also helping to define the terms of society's debate about the future direction of our justice system.

The Symposium begins with three articles exploring different aspects of one general theme: civil litigation and popular culture. The first is a piece by Professor Austin Sarat entitled *Exploring the Hidden Domains of Civil Justice: "Naming, Blaming, and Claiming" in Popular Culture*.<sup>1</sup> In this article, Professor Sarat takes a long and fascinating look at Atom Egoyen's film, *The Sweet Hereafter*. Egoyen's argument for an alternative to our tort strategy of "naming, blaming, and claiming"<sup>2</sup> forms the core of the film's sharp critique of the present system and a jumping-off place for Sarat's insightful analysis.

Stephen Daniels and Joanne Martin then shift our focus to a very different arena, where campaigns to "sell" tort reform have been

---

\* Robert A. Clifford Professor of Tort Law and Social Policy, DePaul University College of Law, J.D. Harvard University.

1. Austin Sarat, *Exploring the Hidden Domains of Civil Justice: "Naming, Blaming, and Claiming" in Popular Culture*, 50 DEPAUL L. REV. 425 (2001).

2. See William L.F. Felstiner, et al., *The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming*, 15 L. & SOC'Y REV. 631 (1980-81).

mounted.<sup>3</sup> Daniels and Martin explore the themes and images of such campaigns as well as their impact on the plaintiffs' lawyers who function as civil justice "gatekeepers." The success of such efforts to alter lawyer and citizen thinking may have as profound an impact on civil litigation as any set of tort reform proposals.

Next, Jeffrey Abramson considers media images of the jury in his article, *The Jury and Popular Culture*.<sup>4</sup> Professor Abramson describes "three great narratives by which civil litigation" is presently being depicted.<sup>5</sup> The first is a "Jacksonian" or populist vision in which common folk are portrayed as far wiser than the system's professional participants. The second is "Hamiltonian," and in contrast to the first, takes a jaundiced view of civil justice and the jurors who participated in it. Abramson finds a third narrative gaining ground today, one he calls "Wilsonian," because it celebrates at least some governmental and professional interventions. In the end, Abramson finds all three narratives wanting as compared to Tocqueville's vision of the jury as the heart of the civil justice system and as an expression of America's faith in participatory governance. These three articles are followed by a pair of comments from Professor Richard Weisberg.

The Symposium's second section is addressed to civil litigation as "circus." This section begins with an article by Professor Laurence Friedman entitled *Lexitainment: Legal Process as Theater*.<sup>6</sup> Friedman considers the seemingly accelerating American trend away from seeing courtroom proceedings as didactic and toward viewing them as "sheer entertainment." Where this trend may lead is not clear but it seems to have swept *Judge Judy* to the heights of television popularity, and threatens to undermine public appreciation of the adjudicative process. The second article in this section is by Professors Patricia Ewick and Susan Silbey. These careful observers of the American scene report on and analyze some of their findings regarding a set of lengthy interviews conducted with hundreds of "ordinary" Americans. In their sample, Ewick and Silbey found surprisingly few humorous stories about the law. What they did find seemed to suggest that despite Orwell's dictum that "every joke is a tiny revolution,"<sup>7</sup> Americans' humorous stories about the law seem to reaffirm the law's

---

3. Stephen Daniels and Joanne Martin, "The Impact That it Has Had is Between People's Ears:" *Tort Reform, Mass Culture, and Plaintiffs' Lawyers*, 50 DEPAUL L. REV. 453 (2001).

4. Jeffrey Abramson, *The Jury and Popular Culture*, 50 DEPAUL L. REV. 497 (2001).

5. *Id.* at 498.

6. Laurence Friedman, *Lexitainment: Legal Process as Theater*, 50 DEPAUL L. REV. 539 (2001).

7. Patricia Ewick and Susan Silbey, *No Laughing Matter: Humor and Contradictions in Stories of Law*, 50 DEPAUL L. REV. 559 (2001).

hegemony. Professor Susan Bandes follows these two pieces with a comment noting their common ground, despite diverse content, and urging us “as storytellers, judges, and activist scholars [to] find a new language of activism.”<sup>8</sup>

The third segment of the Symposium is devoted to articles and comments examining the thoughts and feelings of particular speakers in the dialogue between popular culture and the law. The section begins with a novelist/law professor’s thoughts about her work as a writer of fiction. Professor Marianne Wesson has published two wonderful mystery novels.<sup>9</sup> In her article, she considers the novelist’s two missions: to tell the truth and to create a powerfully engaging fiction. The obvious tension between the two presents a major challenge to the lawyer as artist. Professor Steven Lubet then provides a brief comment on this article. This segment of the Symposium is rounded out by, *Trademarks, Property, and Propriety: The Moral Economy of Consumer Politics and Corporate Accountability on the World Wide Web*.<sup>10</sup> In this piece, Professors Rosemary Coombe and Andrew Herman present an intellectually stimulating and visually exciting exploration of the contest between consumers and corporations over various manifestations of the corporate “persona,” such as trademarks, logos, and advertising slogans. The tug of war between members of the public and the owners of corporate identities is mediated by the law and has yielded a shifting landscape where consumers may indeed be capable of altering the boundaries fixed.

The final section of the Symposium is devoted to consideration of some of America’s cultural myths and archetypes. These may have a powerful influence whenever citizens become involved in civil litigation, whether as parties or jurors. Professors Gary Alan Fine and Patricia Turner, in their contribution, *Contemporary Legend and Claims of Corporate Malfeasance: Race, Fried Chicken, and the Marketplace*,<sup>11</sup> review several “rumor/legend cycles,” most particularly concerning the contamination of Kentucky Fried Chicken with rodent remains. These tales not only speak volumes about consumer concerns but present a striking racial divide, as members of different ra-

---

8. Susan Bandes, *Running Away With the Circus: Untapping the Subversive Potential of Civil Litigation’s Narratives*, 50 DEPAUL L. REV. 575 (2001).

9. See MARIANNE WESSON, *RENDER UP THE BODY* (1998); MARIANNE WESSON, *A SUGGESTION OF DEATH* (2000).

10. Rosemary Coombe and Andrew Herman, *Trademarks, Property, and Propriety: The Moral Economy of Consumer Politics and Corporate Accountability on the World Wide Web*, 50 DEPAUL L. REV. 597 (2001).

11. Gary Alan Fine and Patricia Turner, *Contemporary Legend and Claims of Corporate Malfeasance: Race, Fried Chicken, and the Marketplace*, 50 DEPAUL L. REV. 635 (2001).

cial groups transform the core legend into different variants reflective of special group preoccupations. Professor Marc Galanter brings us back to the law and to jokes in, *The Conniving Client*.<sup>12</sup> He explores the archetype of the cheating claimant, tracing it through its rise in the late Nineteenth Century and transmutation in our time into an all-pervading concern with excessive claiming. Professor Stephen Yeazell concludes the Symposium with an insightful comment that displays the continuity between the Fine/Turner and Galanter pieces.

---

12. Marc Galanter, *The Conniving Client*, 50 DEPAUL L. REV. 647 (2001).