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ROBERT S. MARX LECTURE: THE FACES OF MISTRUST: THE IMAGE OF LAWYERS IN  
PUBLIC OPINION, JOKES, AND POLITICAL DISCOURSE \*

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[\*805]

I. The Boom in Mistrust

A. The General Decline of Trust

Trust is widely acclaimed as a public good that enhances civic life, generates social capital, and  
lubricates the economy. n1 There is widespread agreement that trust (or, at least some forms of it)  
has declined dramatically in the United States over the past thirty years. Positive responses to the  
statement "Most people can be trusted" fell from 58% in 1960, to 37% in 1994. n2 Confidence in  
almost all political and social institutions has experienced a corresponding decline. n3 The portion  
of Americans who responded that "the government in Washington" can be trusted "to do what is  
right" most of the time or just about always fell from 76.4 % in 1964, to 28.9% in 1992. n4

The trust measured by the "most people can be trusted" statement does not exhaust the range of  
trust relationships that play a role in our [\*806] lives. A number of observers have introduced a  
useful distinction between the personal, particularized, or "thick" trust characteristic of communal  
society with its intense and constant interaction among the same people, and the impersonal,  
generalized, or "thin" trust that grows up alongside it in modern societies with their proliferation of

loose, distant, and secondary relations. In the world we inhabit, our thick trust in the loyalty of kin and friends is complemented by our reliance on the airline pilot, the restaurant staff, hospital personnel, and the other drivers on the road. Notwithstanding the decline in personal trust, our faith that we can count on things to work and on people to do their jobs is constantly replenished. Kenneth Newton characterizes this as a shift in social trust "from the thick towards the thin . . . . [P]ersonal trust between known individuals has been supplemented by impersonal or abstract trust, taught by education, enforced and monitored by public rules and agencies, and (perhaps) by the mass media." n5

## B. Lawyers as Producers of Mistrust and Trust

Critics of the legal profession untiringly point out that lawyers induce mistrust and suspicion in their clients. Many critics believe that lawyers deflect citizens' candid and humane responses into socially destructive gaming. Lawyers "encourage their clients to think with selfish defensiveness, to imagine and prepare for the worst from everyone else" n6 and "they add suspicion and unnatural caution to all our relationships, whether personal or professional." n7 It is indeed the lawyer's stock in trade to point out to clients the many things that can go wrong, the hidden contingencies, the frailty of unsupported promises, and the need for external guarantees. The lawyer also proffers a cure for the fragility of "natural" trust: the legal system's array of devices for stimulating what we might call "artificial" trust—the contract, the lease, or the license, whose provisions will be enforced (so we like to believe) by the lawsuit or the policeman. Like the provider of artificial hormones that supplement the diminished supply coursing through the body, the lawyer contrives enforceability to supplement the failing supply of reciprocity, moral obligation, and fellow-feeling.

### **[\*807]**

As our economy and society generate ever more dealings among those bound by thinning webs of reciprocities or reputational controls, we become more reliant on the law's channeling and on its enforcement (and especially the threat of it) to induce compliance, discourage defection, and inspire confidence. Criminal penalties and civil remedies (and the expense and obloquy that attends them) increase the cost of opportunistic violations of agreements or public standards of care. By raising the cost of defection from justified expectations, law lowers the cost of reliance on others.

Lawyers contrive to provide "artificial trust" in a number of ways, including inventing security devices, n8 devising lower transaction cost regimes, n9 and channeling transactions and bonding their clients. n10 Although much of the world's business involves reliance on a strong admixture of nonlegal controls, n11 these are increasingly interwoven with legal controls. Because lawyers are producers and vendors of impersonal "cool" trust, they are beneficiaries of the decline of its low-cost rival, thick personal trust. As the demand for their product increases, lawyers prosper at the same time that they themselves are increasingly distrusted.

## II. Changing Patterns of Trust in Lawyers

To examine the patterns of public trust and confidence in lawyers, I rely on several very different kinds of sources: perceptions of lawyers as revealed in public opinion surveys, in the presentation of lawyers in the popular media, in the folk medium of jokes, and in political discourse about lawyers.

**[\*808]**

#### A. Survey Data n12

Over half of American adults have used lawyers and most report themselves satisfied with the service provided. A 1984 Gordon Black/USA Today survey found that 32% of a national adult sample had used a lawyer's services within the previous two years; 51% reported themselves "very satisfied," and another 27% "somewhat satisfied." n13 In a 1986 National Law Journal (NLJ) poll, roughly half of American adults reported professional contact with a lawyer within the preceding five years. n14 Of these users, over half (54%) reported themselves "very satisfied" with the lawyer's performance and another quarter (29%) were "somewhat satisfied." n15 In the 1993 NLJ poll, the portion who had used a lawyer rose to 68% n16 and the level of satisfaction was in the same range (55% highly satisfied; 21% somewhat satisfied). n17 A contemporaneous American Bar Association (ABA) survey found a somewhat lower rate of use (67% reported using a lawyer in the last ten years), n18 and a slightly lower level of satisfaction. n19

When asked about lawyers in the aggregate, the public views them less favorably. Lawyers' ethical standards and practices are thought to be middling by most people, with a much larger contingent regarding them as poor (21%) than as excellent (3%). n20 Those who thought [\*809] lawyers less honest than most people rose from 17% in 1986, to 31% in 1993. n21 The ABA poll reports that "[h]alf the public thinks that about one-third or more of lawyers are dishonest, including one in four Americans who believe that a majority of lawyers are dishonest." n22 Over the past decades, general estimations of lawyers have fallen. n23 In the 1993 NLJ survey, 36% of the respondents said their image of lawyers had "gotten worse" and only 8% said it had "improved." n24

When, in 1991, a national sample was asked to volunteer "what profession or type of worker do you trust the least," lawyers were far and away the most frequent response. Almost as many (23%) spontaneously volunteered lawyers as the next two categories (car salesman, 13%; politicians, 11%) combined. n25

But other survey evidence suggests that these expressions of lack of trust in lawyers should not be taken at face value. In a 1984 survey in which majorities of a national sample of adults expressed their views that lawyers charge unreasonable fees (61%) and recommend more legal work than is actually required (56%), some 71% agreed that "lawyers generally work very hard to protect the interests of their clients" (20% disagreed) and 64% agreed that "lawyers generally follow very high ethical standards in their work for their clients" (28% disagreed). n26 What we see is not unqualified condemnation of lawyers, but approval for lawyers' care of their clients combined with deep distrust.

This tension, which is a central and prominent feature of public opinion about law and lawyers, surfaces in a different way in the 1993 ABA survey of public attitudes toward lawyers. Asked whether or not various qualities described lawyers, the strongest positive responses were that lawyers were smart and knowledgeable (73% to 9%) and know how [\*810] to solve problems (50% to 19%). The strong negatives were that they are greedy (59% to 19%) and make too much money (63% to 14%). Lawyers also get low ratings on being honest and ethical (22% to 40%) and caring and compassionate (18% to 46%). But when asked whether lawyers put their clients' interests first, the public is sharply divided. Some 31% say this does describe lawyers; 35% says it does not; and 34% are neutral (undecided). n27 This "indecision," I argue, reflects a prevalent tension in the perception of lawyers that helps us to understand the proliferation of jokes about lawyers, discussed below.

Most Americans believe that there are too many lawyers, that they have "too much influence and power in society," that they file too many lawsuits, and that these lawsuits hamper the U.S. economy. n28 Negative judgments of lawyers are not distributed uniformly, and there is a pronounced pattern to the disparities:

By and large, those who see lawyers in a more favorable light than average tend to be downscale, women, minorities, and young. . . .

. . . Americans who are more critical than average tend to be more establishment, upscale, and male. The higher the family income and socioeconomic status, the more critical the adults are. Pluralities of college graduates feel unfavorably toward lawyers, while pluralities of non-college graduates feel favorably. n29

## B. Popular Culture and Political Discourse

In reading the polls' story of declining regard for lawyers, we should be wary of assuming that opinion about the legal profession has fallen from its normal plane of respect to a historic low. This "historic low" reading comports with the scenario, favored by many lawyers, in which the profession has fallen from an earlier state of grace into an abject and debased condition. n30 Public estimation of lawyers was far lower at earlier points in American history. In the years following the revolution "there existed a violent universal prejudice against the legal profession as a class" n31 and its members "'were denounced as banditti, as blood- [\*811] suckers, as pick-pockets, as wind-bags, as smooth-tongued rogues. . . . The mere sight of a lawyer . . . was enough to call forth an oath.'" n32 In the Jacksonian era and in the years after the rise of industrialism, there were strong currents of hostility to lawyers that are not outdone by contemporary lawyer bashing.

What is singular about the current sense of decline is the high elevation from which descent is measured. The period around 1960 may well have been the historic high point of public regard for law and lawyers. It was certainly an era of favorable portrayal by the media. In movies (such as *Witness for the Prosecution* (1957), *Anatomy of a Murder* (1959), *Compulsion* (1959), *Inherit the Wind* (1960), *Judgment at Nuremberg* (1961), *To Kill a Mockingbird* (1962)), and on television (*The Defenders* (1961-65), *Perry Mason* (1966-1972)), lawyers ranged from the benign to the heroic. n33 Steven Stark regards the lawyers portrayed in shows like *The Defenders* and *Owen Marshall* (1971-74) as "television's great benevolent authority figures . . ." n34 To Anthony Chase, the portrayals in films like *To Kill a Mockingbird* "represent a complete integration of the virtuous-lawyer archetype in popular culture-an elaborated image unprecedented . . . [in] American mass cultural iconography." n35

In the real world, the civil rights struggle and its many progeny inspired many young lawyers to view law as a shining sword with which to vanquish the long-festered problems of exclusion, poverty, and oppression. Benign and inventive courts could thread their way to a solution of society's most intractable problems with the help of energetic public-spirited lawyers representing those who had been silent. Legal services for the poor burgeoned and the ideal of lawyers as valiant and dedicated warriors for justice ramified into environmental law, consumer law, and other "public interest" salients.

Lawyers were riding a wave of favorable regard of the whole panoply of social institutions. Looking back, Lipset and Schneider note that "the early 1960s turned out to be a high-water mark in the history of the American public's attitudes toward their key social, political and [\*812] economic structures." n36 As that wave broke up in the course of Vietnam war protests and the challenge to established authority in the early 1970s, scathing denunciations of the legitimacy and effectiveness of law gained prominence. The editor of a 1971 volume on *The Rule of Law* discerned "a full-scale assault on legal and political authority" and described as commonplace the view "that law in the United States is in bad shape both in theory and in practice." n37 The same year, another editor reported (with evident satisfaction) wide agreement that "the legal system . . . is collapsing and can no longer be saved in its present form," n38 and an establishment bar group sponsored an anguished examination of *Is Law Dead?* n39

The "death of law" was in turn a victim of Watergate (1972-74), which accelerated the decline of confidence in elites, and, in particular, discredited lawyers who figured so prominently among the Watergate villains. Yet, at the same time, it revived allegiance to the rule of law and the resolution of the crisis inspired appreciation that "the system worked." n40 Criticism of legal institutions for failure to serve the public interest was taken up by a section of the legal establishment. The "public interest law" n41 and "access to justice" n42 movements that flourished during the 1970s, seeking to give voice to underrepresented groups and to enlarge the modalities for securing justice, called for lawyers to embrace these neglected responsibilities. A decade of attacks on lawyers for abuse of ordinary clients, self-serving alliance with the powerful, and failure to implement equal justice n43 culminated in a remarkable address by President Jimmy Carter, who took the occasion [\*813] of the One-hundredth Anniversary dinner of the Los Angeles

Bar Association to declare that legal services were, more than any resource in our society, "wastefully [and] unfairly distributed." n44 Lawyers were particularly to blame for failing to make justice "blind to rank, power and position." n45 President Carter deplored that "lawyers of great influence and prestige led the fight against civil rights and economic justice." n46 The organizing theme of Carter's critique was betrayal of trust. Devoted to the service of dominant groups, lawyers had failed to discharge their "heavy obligation to serve the ends of true justice." n47 Although the president's observations did not elicit a warm reception from the bar n48 or the media, n49 his criticism of the bar met with general public approval. Two-thirds of a sample of registered voters polled by Yankelovich, Skelly and White thought the president's criticism of the legal profession was fair. n50 A Roper poll of a national sample of adults found 52% who thought his criticisms were justified and another 16% who thought them partly justified. n51

The public interest critique infused the work of the Kutak Commission, set up in 1977 to revise the rules of ethical conduct for lawyers. n52 The major theme of the new Model Rules proposed by the Commission was enlargement of the public duties of lawyers and limitation of their license for adversary combat. n53 The Commission sought to accentuate the duties of lawyers that transcended their responsibilities to clients—for example, by limiting confidentiality to [\*814] enable lawyers to blow the whistle on client wrongdoing, imposing a duty of fairness in negotiations by requiring disclosure of material facts, and requiring lawyers to devote a portion of their time to pro bono publico work. n54 The Commission's proposals aroused fierce opposition from various sectors of the bar and were vitiated at a series of ABA meetings in 1982 and 1983. n55

In the late 1970s, when Carter and the Kutak Commission were calling the profession to account for its failure to embrace justice as a public resource, the first murmurs were heard of what was to become a great roar of denunciation of the legal system. n56 Other sections of the legal elite, with Chief Justice Warren Burger at their head, began to express their unhappiness with the enlargement of the legal system and the multiplication of rights. n57 These two "reform" impulses—access to justice versus controlling the runaway legal system—were at loggerheads in the work of the Council on the Role of Courts (1979-1983). n58

By the early 1980s, lawyers became even more visible. The old system of professional reticence held in place by the restriction on talking to the press, collapsed and a new, more intrusive and aggressive legal journalism took hold n59 feeding an enlarged public appetite for material about the legal arena. Movies and television were increasingly free of the censorship that had barred unfavorable portrayals of the legal system. n60 In prime time television, LA Law arrived on TV screens in [\*815] 1986 and quickly became widely watched and a barometer of public appetite for lawyer stories. A great surge of lawyer shows on television n61 was accompanied by the emergence of the best-selling legal thriller, starting with Scott Turow's Presumed Innocent in 1987 and progressing with the meteoric ascent of John Grisham following the publication of The Firm in 1991.

Unlike the earlier waves of imaginary lawyers, many of those who have arrived since 1980 are both more deeply flawed and more three-dimensional. They are seen not only in the courtroom/counseling "frontstage" of lawyering, but in the backstage areas as well; their advocacy for clients is enmeshed in a setting of tactical maneuver, political constraints, and career strategy, not to mention a personal quest for fulfillment or redemption. They encounter complex questions with few blacks and whites but lots of grays and ethical dilemmas that often have no satisfying resolution. The lawyer is portrayed not as an unalloyed hero, but as the occupant of a crucial but morally ambiguous and precarious role. n62

The imaginary lawyers on television are not a likely source of the public's negative picture of lawyers. n63 The portrayal of lawyers on television series is more favorable than the public's perceptions-or even than the perceptions of lawyers themselves. n64 A 1992 study of network prime time found that television depictions of attorneys' character, composure, physical attractiveness, and presence was significantly higher than the public's perceptions. n65 Television depictions and public estimation attributed to lawyers significantly more power than did lawyers themselves. n66 Indeed, the researchers suggest that the favorable television image of attorneys, "especially their prowess in arguing cases in court" may result in inflated and unfulfillable public expectations of [\*816] attorneys. n67 Similarly, surveys provide no support for the belief, widespread among lawyers, that lawyer advertising is an important cause of lawyers' declining image. n68 As an ABA commission that assessed the evidence on this pointed out, "those who are most likely to have received information about lawyers through advertising have a relatively high impression of the legal profession." n69

### C. A Folk Medium: Lawyer Jokes

Lawyer jokes, much in evidence in recent years, provide a valuable supplement to these other sources of public perceptions. n70 Lawyer jokes have been around for a long time. Beginning in the mid-1980s they have gained rather extraordinary prominence. Hundred of jokes about lawyers circulate. A legal journalist recently reported the results of an Internet search that turned up 227 sites devoted to doctor jokes, 39 to accountant jokes, 17 to jokes about salesman and 3,473 to lawyer jokes. n71 Compared with the lawyer jokes of an earlier day, the contemporary corpus of lawyer jokes contains more overtly and aggressively hostile material. As our journalist summarizes, the premises of the jokes are that "lawyers are hard to understand; they charge too much; they are miserable people; they lie all the time; and they should die." n72 The volume of lawyer jokes precludes comprehensive treatment here. Rather than attempt a general overview, I will focus on one small part of the corpus of lawyer jokes, jokes that deal directly with lawyers as betrayers of trust.

Because the effort to extract social knowledge from this lowly ore may encounter some skepticism, I want to briefly state the case for jokology. Do these jokes give us a reliable reading of what Americans think about lawyers and legal institutions? Obviously they are only one source among many and it is a source that has its own biases. Jethro Lieberman and Tom Goldstein

observe that the image of lawyers in [\*817] books, dramas, and daily reports is systematically biased toward critique rather than appreciation. n73 This is particularly so of the joke corpus because jokes, by their nature, focus on flaws, weaknesses, and pretensions. This should pose no particular disadvantage because we are looking for evidence about public mistrust.

Jokes do not have a single fixed meaning. They can be told with very different intonations. In different contexts, the same story may convey hostility, self-mockery, or grudging admiration. What people make of them varies greatly: lawyers and nonlawyers, men and women, educated and uneducated, rich and poor encounter very different bundles of jokes and may hear very different messages in a given joke.

But other aspects of jokes make them a good indicator of patterns of sentiment, even though there remains some fuzziness about what that sentiment is. First, because jokes may carry messages that are not fully apparent to teller and listener, they may evade the censorship that would screen out open expression of scandalous and reprehensible views. Second, the sentiments they express have to be shared rather than idiosyncratic; they register not transient and individual perceptions of law and lawyers, but shared perceptions that have been ratified and confirmed by successive tellings. The persistence of jokes is a useful indicator of enduring patterns of sentiment because jokes are labile social productions, remade at each telling and neither controlled nor supported by organizational sanctions or authoritative text. Thus they represent a shared and enduring collective representation, even if that may be subject to different readings.

Third, jokes remain the possession and voice of individuals. Movies, television programs, and political speeches are team efforts that have been carefully distilled to maximize acceptability. Songs and even fairy tales are now engineered by formal organizations. There is no Time Warner or Disney of jokes, no network counsel or political consultant to vet them. The small scale and cheapness that makes them unattractive as a profit center leaves jokes as one of the unregulated redoubts of individual expression. For this reason the perspective on lawyers in jokes differs from that in media more subject to corporate packaging and corporate control. I conclude that jokes do tap a vein of genuine shared sentiment even though some themes that are important in other manifestations of public opinion may be poorly represented in the joke corpus.

## **[\*818]**

### 1. Lawyers as Betrayers of Trust

In the world of jokes much is made of lawyers' lying, trickiness, cleverness (often not so clever as they think), contentiousness, and unremitting economic exactions; until recently, however, the joke corpus had little to say directly about the trustworthiness of lawyers. Opponents might be tricked and clients fleeced, but there were no jokes specifically branding lawyers as betrayers of trust. But in the last ten years or so, a whole set of jokes has appeared that focuses on the lawyer's proclivity to betray those who trust and rely upon him-clients, partners, friends, and family. I will briefly review the most prominent of these.

The lawyer's duplicity may be manifested in connection with the expectations of trust and reciprocity generated in casual encounters between strangers:

The lawyer was hurrying home one night and ran a stop sign, smashing into a car driven by a little old man. Jumping from the car, the lawyer helped the old man from the wreck. "You nearly killed me, sonny!" the elderly fellow was screaming. "Where the hell were you rushing?" "I'm so sorry," said the attorney as he helped the man to the curb. "You look shaken-let me get you something." Running back to his car, the lawyer made a call from his car phone, then opened the glove compartment and took out a flask. He brought it over to the old man. "Here, have a sip of this." Trembling, the old man took the flask and slugged down a shot. "Feel better?" "A little," said the old man. "Have another. It'll calm you." The old man did so, then had another. After his fourth drink, he looked cross-eyed at the lawyer. "You isn't havin' any?" "No," said the lawyer. "I'm just going to sit here until the police arrive." n74

In the guise of making a compassionate gesture, the lawyer is bettering his position by acting strategically. What appears to be a magnanimous gesture of fellowship is really part of a strategy to fasten responsibility on the other motorist. The lawyer remains cool and calculating in adverse circumstances and bests his victim by superior guile. The lawyer is not just trying to nudge an ambiguous situation in his favor, but baldly to shift the blame to the innocent party. The "victim" is not a professional peer but a distracted old man; the lawyer is correspondingly more solicitous and manipulative, urging the old man to "have another. It'll calm you."

This story started out (sometime between the popularization of the automobile and 1917) as a simple celebration of the gamesmanship of [\*819] the clever driver, who was not necessarily solely at fault. It later became a joke about the sturdy rustic outwitting the arrogant "smart" tourist, preppy, or ethnic outsider. From the time this joke joined the lawyer joke corpus in 1982, lawyers have been the principle protagonists and it has reverted to its original "smart guy wins" theme. But this time around the con artist manages to gain the advantage even though he is at fault.

A lawyer named Sam and his accountant are backpacking in the woods. Suddenly, they spot a cougar 20 yards away. They stand there stunned for a moment, then Sam starts removing his pack. His accountant whispers, "What are you doing?" "I'm going to run for it." "But you can't outrun a cougar!" "I don't have to," Sam says. "I just have to outrun you!" n75

This story, first spotted about 1980, has been a favorite of speech-making executives seeking to dramatize the exigencies of competition. It surfaces as a lawyer joke in 1991. There is a "two lawyers" version n76 as well as the professional rivalry version given here. In both, fellowship quickly dissolves into single-minded self-preservation and indifference to the other. The lawyer displays not only selfishness, but superior resourcefulness. Penetrating beyond the apparent hopelessness of the situation, he comes up with a strategy for escaping from a tight spot by

reconceiving the situation to discern a way out-as it happens, at the expense of his companion. Although the lawyer may violate the canons of fraternity, he is a winner who reassures us that we may justifiably pursue our claims even if the rightness of our cause is only relative, for if someone has to lose, it might as well be the other guy.

An ancient, nearly blind old woman retained the local lawyer to draft her last will and testament, for which he charged her two hundred dollars. As she rose to leave, she took the money out of her purse and handed it over, enclosing a third hundred-dollar bill by mistake. Immediately the attorney realized he was faced with a crushing ethical question: Should he tell his partner? n77

This old and widely-circulated story depicts the lawyer's unhesitating victimization of the trusting client-here, one specified as particularly vulnerable, an old woman and nearly blind. The neat twist is that he completely misses the ethical violation against the client while sensing an ethical problem in concealing this rip-off from his partner-implying [\*820] that the latter, as a fellow vulture, would happily share these ill-gotten gains.

This became a lawyer joke only in 1990 after a long career as a joke about the (usually Jewish) merchant instructing his son in business ethics. But where the merchant's advice was hypothetical (suppose a customer overpaid), the lawyer joke from the start has been a narrative of past events; what is depicted is not just a larcenous inclination but a history of betrayal of the vulnerable.

As The Extra \$ 100 Bill suggests, it is touch and go whether the bonds of partnership can restrain the lawyer's inclination to take advantage of the vulnerable. Once this trait is acknowledged, fellowship is tinged with suspicion:

The two partners in a law firm were having lunch when suddenly one of them jumped up and said, "I have to go back to the office-I forgot to lock the safe!" The other partner replied, "What are you worried about? We're both here." n78

Again, this is an old joke, recorded as early as 1922, about (usually Jewish) business partners that first appears as a lawyer joke in 1989.

Even where there is generosity and sharing, it cannot withstand the imperative of self-interest:

John and Joe had been law partners for many years, sharing everything, most especially the affections of their libidinous secretary, Rose. One morning, an agitated John came to Joe with the bad news, "Rose is pregnant! We're going to be a father!" Joe, the more reserved of the two, calmed his partner and reminded him that things could be much worse. They were both well-off, and could easily afford the costs of raising the child. Rose would have the best care available, her child would

attend only the finest schools, and neither would want for anything. The child would have the benefit of having two fathers, both of which [sic] were caring and well- educated. Gradually, John got used to the idea of fatherhood. When the big day came, both were at the hospital awaiting the news of their offspring's birth. Finally, John could take no more and went outside to take a walk. When he returned an hour later, Joe had the news. "We had twins," said Joe, "and mine died." n79

Again, this first appears as a lawyer joke in 1988 after at least sixty years as a story about business partners (again often Jewish). This version is distinctive in its buildup of the generosity and sharing of the lawyers which is rudely punctured by the individualistic shift from "we" to "mine." The bonds of partnership and intimacy fail to constrain the lawyer's selfishness and opportunism.

**[\*821]**

One morning at the law office, one attorney looked at the other and said, "Wow, you look really terrible this morning." The other lawyer replied, "Yeah, I woke up with a headache this morning and, no matter what I try, I can't seem to get rid of it." The first lawyer told him, "Whenever I get a headache like that, I take a few hours off during the day, go home, and make love to my wife. Works every time for me." Later that afternoon, the two lawyers met again. The first told the second, "You know, you look 100% better." The second replied, "Yeah, that was great advice you gave me. You've got a beautiful house, too." n80

From early in the century through its first appearance as a lawyer joke in 1993 to the present, this was a "dumb" joke about the fellow worker who misunderstood the helpful advice and asked "is your wife home now?" The 1994 lawyer version given here is the first in which the protagonist actually betrays his benefactor.

There once was a mobster who established a corps of loyal and dedicated employees, chief among whom were a deaf-and-dumb accountant and his brother, a lawyer. Both of them served the mobster for a number of years, and everything was fine until the chief decided to double-check the books. Finding himself some two million dollars short, the boss flew into a rage and sent out a couple of thugs to round up the accountant and his brother, who could speak sign language and serve as interpreter. "You tell this son-of-a-bitch I want to know where my two million is!" he yelled. After a quick exchange with his brother, the lawyer reported that his brother had no idea what his employer was talking about. The mobster jumped to his feet, held a gun to the accountant's temple, and screamed, "You tell this bastard that if he doesn't sing, pronto, I'm going to blow his brains out-after I have a couple of my boys work him over!" This was duly translated to the quaking accountant, who explained to his brother in frantic sign language that the bills were hidden in three shoeboxes in his closet. "So whaddid he say?" interrupted the gangster. The lawyer turned back to him with a shrug. "He says you haven't got the balls." n81

In this betrayal tale the lawyer is not only engaged in dirty business to start with, but he proceeds to betray both his "client" and his brother by taking advantage of their dependence on him. The story is resonant with clients' anxieties about whether lawyers are really doing what they say

they are doing. Here the lawyer rips off both antagonists by exploiting his monopoly on the channels of communication to falsify messages and aggravate conflict for his own economic advantage. n82 [\*822] Betrayal here is coupled with economic predation. It is also a tale about the lawyer's moral obtuseness and lack of ordinary human attachments. This shows up as a lawyer joke in 1990 a dozen or so years after its appearance as a joke about the faithless translator.

Pete and Jerry had been law partners for many years. One day, Pete fell ill, and grew progressively worse. Medical specialists were called in from the world over, but no one could diagnose Pete's illness. The only thing that seemed certain was that Pete's death was imminent. As Pete lay in his last hours, he felt obligated to reveal a few secrets to Jerry. "You know that million dollar settlement we got from Morgan last year? I never told you this, but it was really three million. I kept the other two million, and eventually gambled it away. Can you forgive me?" Jerry said that he would, without question. Pete then told him, "Well, you remember when your wife divorced you and got the big alimony judgement? It was me that gave her the inside information on your finances. I had been screwing her for years. How can you forgive me?" Jerry told his friend, once again, that it was forgotten. After Pete had told of several other transgressions, all of which Jerry forgave, Pete began to look at Jerry as saintly. "How can you be so forgiving, after the way I have cheated and lied to you for so many years?" Jerry answered, "For two reasons, Pete. First, because you will soon be dead, and there's no reason to hate you in the grave. And, secondly, because I poisoned you." n83

The lawyer appears long-suffering and forgiving; he "turns the other cheek," but it is only appearance. Behind the scenes he responds forcefully and lethally to punish those who injure him. He feigns forgiveness while silently doing in his partner just as the partner feigned loyalty and exploited him. Tit for tat: what they share is treacherous infliction of ruinous damage. n84

In many of these stories the lawyer's betrayal has a phallic component, the lawyer has literally screwed someone he shouldn't have (the secretary or the partner's wife), or metaphorically screwed his partner or his client. The conflation of economic and sexual predation is condensed in the following riddle:

[\*823]

Q: How does a lawyer say, "Screw you?"

A: "Trust me." n85

Endowed with power, the lawyer is unrestrained in using it for his own pleasure or gain, at the expense of those who have reason to trust in him. Of course, in *I Poisoned You*, the trusting victim strikes back with his own treacherous power.

## 2. Betrayal as Virtue

Is the lawyer's treachery and proclivity to defect entirely negative? The earliest betrayal joke to be switched to lawyers, and one of the most popular, portrays the lawyer's trickiness as not entirely without redeeming qualities:

A very wealthy man, old and desperately ill, summons to his bedside his three closest advisors: his doctor, his priest, and his lawyer. "I know," he says, "they say 'you can't take it with you.' But who knows? Suppose they're mistaken. I'd like to have something, just in case. So I am giving each of you an envelope containing one hundred thousand dollars and I would be grateful if at my funeral you would put the envelope in my coffin, so that if it turns out that it's useful, I'll have something." They each agree to carry out his wish.

Sure enough, after just a few weeks, the old man passes away. At his funeral, each of the three advisors is seen slipping something into the coffin. After the burial, as the three are walking away together, the doctor turns to the other two and says, "Friends, I have a confession to make. As you know, at the hospital we are desperate because of the cutbacks in funding. Our CATSCAN machine broke down and we haven't been able to get a new one. So, I took \$ 20,000 of our friend's money for a new CATSCAN and put the rest of it in the coffin as he asked."

At this the priest says, "I, too, have a confession to make. As you know, our church is simply overwhelmed by the problem of the homeless. The needs keep increasing and we have nowhere to turn. So I took \$ 50,000 from the envelope for our homeless fund and put in rest in the coffin as our friend requested."

Fixing the other two in his gaze, the lawyer says, "I am astonished and deeply disappointed that you would treat so casually our solemn undertaking to our friend. I want you to know that I placed in his coffin my personal check for the full one hundred thousand dollars." n86

First surfacing as a lawyer joke in 1967, *The Check in the Coffin*, in its several versions, became one of the most widespread of the longer narrative jokes about lawyers in the 1980s. n87 It is the consummate [\*824] lawyer joke in which the lawyer combines greed, formalism, manipulation, and betrayal. The lawyer is a too-clever deceiver who betrays his client and outdoes his friends by a kind of crazy literalness. The betrayal is done in good form, but form is employed to undermine substance. On the surface, the lawyer complies fully with the request. But his compliance is achieved by a daring extension of the conventional equation of a check with cash that sabotages the intent of the promise- at the same time that it extends the zany logic of the deceased- for why should an afterlife where American dollars are honored lack facilities for negotiating a check?

The lawyer's abysmal performance as a trustee is combined with adroit gamesmanship and moral pretension. The doctor and the priest divert part of the money for unimpeachably good causes, but they are guilt-stricken and apologetic. The lawyer appropriates it all for himself rather than for charitable purposes, and he makes no apologies-in fact, he reproaches them for betrayal and presents himself as the one who faithfully honored the old man's trust. Ironically, the arch deviant uses his formal compliance to claim the most complete fulfillment of duty.

Still, I think this joke is permeated by admiration for the lawyer. The doctor and the priest are hesitant, inhibited do-gooders who end up wasting a lot of human treasure. If they believe the deceased's crazy premise, they are perpetrating an awful betrayal. If they don't believe it, they are foolish, wasteful, crippled by their sentimentality. In contrast with their hesitant virtue, we have the lawyer's clear, decisive assertion of self-interest. He doesn't believe the deceased's crazy premise and he is free of the inhibiting sentimentality of the others. They really don't believe it either, but they can't face up to the virtue of betrayal.

It is the lawyer's unblinking rationality, beneath the guise of compliance, that stuns us. Forty years ago, David Riesman observed:

[Lawyers] are feared and disliked-but needed-because of their matter-of-factness, their sense of relevance, their refusal to be impressed by magical "solutions" to people's problems. Conceivably, if this hypothesis is right, the ceremonial and mystification of the legal profession are, to a considerable degree, veils or protections [\*825] underneath which this rational, all too rational, work of the lawyer gets done. n88

So, the lawyer deviates where the others should have. He is at once a disastrous failure as a trustee, an adroit con artist-and a model of how to deal with irrational demands in contrast to the megalomania of the deceased and the sentimental paralysis of the other advisors. n89 The deceased, by denying death, would destroy resources that should be left to the living. Where the doctor and the priest "balance" the claims of the deceased and the living, the lawyer embraces the claims of the living. But, ironically, his unabashed assertion of the claims of the living benefits only himself, while the hesitant assertion of the doctor and the priest benefit others.

The verdict on the lawyer here is complex: it is the lawyer that has the wit to see through sham, the courage to ignore it, and the resourcefulness to figure a way to do it adroitly. At the same time, he lacks a saving common sentimentality, ignores obligations to others, and acts solely to his own advantage. The lawyer is someone with qualities we would want on our side. He is a very desirable ally, but the betrayal jokes remind us that he is one with a dangerous propensity to abandon those who rely upon him.

I regard the "take it with you" version of the The Check in the Coffin as the most complex and sophisticated of current jokes about lawyers. Driven by the dying man's heroic denial of death, its

basic premise is one that is engaging, immediately recognizable, has a long historic pedigree, and that, at some level, tempts us into wishing there was something to it. The other friends' diversion of some of the funds to altruistic uses introduces the possibility that there may be some virtue in [\*826] betrayal. The lawyer then outdoes them in diversion but makes no attempt to match their rationale of an offsetting obligation. The theme of escalating altruistic diversion provides the perfect foil for the depiction of the lawyer as supplied with an excess of penetrating rationality and a deficiency of fellow-feeling. We are presented with two competing but incomplete forms of exemplary deviance: the friends act on a vision of higher uses for the treasure, but stumble because they are sentimental; the lawyer fully surmounts the irrationality of the deceased and the sentimentality of the friends, but disappoints because his clear-sighted rationality is entirely devoid of the benevolence that makes the friends endearing. We are shown a world in which the components of an exemplary response to the megalomania of the deceased-rationality and benevolence-are separately embodied in flawed carriers. All the needed pieces are present, but an optimum solution eludes us because of the deformation attendant to each specialized virtue. The lawyer embodies part of what we want, but he brings it to us fused with the self-centeredness we embrace and reject.

### 3. What Do the Jokes Tell Us?

This set of jokes is one of several newcomer categories that have recently swollen the already ample corpus of lawyer jokes. None of these betrayal jokes is originally or exclusively a lawyer joke. This category does not contain a single joke that is "indigenous" to law in the sense that it arises from or depends upon distinctive features of the legal setting and is told originally, only, or mainly about lawyers. n90 Every one has been switched from a story about some other kind of protagonist. One or two generations ago almost all of these jokes were in circulation, but they were not connected to lawyers. They were jokes about friends, companions, spouses, or business partners.

These betrayal jokes have been refashioned as lawyer jokes and re-peated because they contain characterizations that tellers and listeners wanted to attach to lawyers. The jokes are not a direct reflection of people's experience with lawyers, but a screen on which they project their feelings and judgments and anxieties about lawyers and law in a world in which lawyers are increasingly prominent and increasingly inescapable. Like iron filings that reveal the presence of an unseen magnetic force, these jokes enable us to locate a powerful current of unease about lawyers in which appreciation of their cleverness, potency, and [\*827] resourcefulness accentuates anxiety about their trustworthiness and loyalty.

A large portion of the jokes in the betrayal cluster are adapted from jokes that were predominantly told about Jews. n91 Lawyers have joined (or displaced) Jews as objects of these stories about clever, tricky, greedy and untrustworthy operators who do not hesitate to betray intimates, dependents, and benefactors. n92 The lawyer, like the Jew, is a liminal figure, who is defined as proficient at self-serving and insufficiently loyal to outsiders. In the lawyer setting, the

question arises of what is included in the self-interest that is being served? Are lawyers going to exercise their cleverness on behalf of their partners and clients? Are these intimates exempt from the lawyer's proclivity for betrayal? Or are they likely to be targets of the lawyer's treachery?

These switches are recent: *The Check in the Coffin*, which appeared as a lawyer joke by 1967, and *The Collision and the Flask*, which appeared as a lawyer joke by 1982, surface in print only rarely until they were joined by the eleven others noted here in the late 1980s and 1990s. Assuming that there is some lag between the time a joke circulates in the oral tradition and its appearance in print, we might estimate the arrival of this cluster as at most a few years earlier. Yet we are talking about the late 1980s.

Why did this cluster of jokes emerge at this time? Before we embark on explaining the lawyer-betrayal joke connection, we may want additional assurance that such a connection in fact exists. We have to deal with an alternative hypothesis: could it be that with the general decline of trust, betrayal jokes are spreading to many kinds of protagonists and lawyers are just one of many targets? Then, the jokes would reflect only the general lack of trust rather than something specific to law and lawyers. To test whether the spread of these jokes has been general and, therefore, cannot be taken as specifically registering perceptions of lawyers, I have examined the publication history of each of the betrayal jokes noted in the text. <sup>n93</sup> Although for the most recent switches there is little evidence from which to draw conclusions, the overall pattern is clear. These betrayal jokes have been switched to lawyers; lawyers have become the principal protagonists of [\*828] these stories in some cases and important protagonists in others; jokes about the original protagonists usually continue; but the appearance of other new protagonists like doctors, businessmen, or politicians is infrequent and sporadic. Of course it is possible that there is another set of betrayal jokes that have attached themselves to members of other groups. All I can say is that as an observer of the joke scene I have never encountered them.

Jokes about betrayal are only a small part of a great tide of lawyer jokes that washed over American life starting in the mid-1980s. In 1987, the leading student of joke cycles noted the onset of a wave of lawyer jokes. <sup>n94</sup> Observers noted the "spate of lawyer jokebooks," <sup>n95</sup> "[r]adio talk shows across the country . . . feeding the frenzy, vying with each other in barrister-bashing," and "the emergence of a virtual mini-industry in legal humor." <sup>n96</sup>

It was a time of falling trust and of declining confidence in institutions, including the legal system. Public estimation of the honesty and ethical standards of lawyers fell after 1985. It was a time of great expansion of the legal profession. Lawyers were younger and more often female, less like the sage and benign counselors of *The Defenders*, for example. There was increasing resort to lawyers and they were increasingly visible in public life, an exposure that was magnified by an explosion of imaginary lawyers in the media.

The jokes were overshadowed by a mounting tide of "serious" criticism of lawyers and the legal system for unraveling public morality and depressing the national economy. A popular columnist

warned the public that "[a]cross 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." n97

This reading was neither confined to superficial observers nor was it short-lived. Six years later, a former chair of the President's Council of Economic Advisors, lamenting slow growth, complained that "[l]aw schools have been flooding the nation with graduates who are [\*829] suffocating the economy with a litigation epidemic of bubonic plague proportions." n98

Starting in the 1970s, elite unease about the expansion of the legal system joined with interest group concern to curtail liability in campaigns deriding law and lawyers which intensified in the mid-1980s. Media, corporate, and political voices tell us that Americans, lured by the chimera of a "risk-free society" sue too readily, "at the drop of a hat." Egged on by avaricious lawyers, they overwhelm our congested courts with mounting numbers of suits, including many frivolous claims. Irresponsible juries, biased against deep-pocket defendants, bestow windfalls on undeserving plaintiffs, particularly arbitrary and capricious damages for pain and suffering and random mammoth awards of punitive damages. Not only are the untold billions that the system costs an alarming drain on national wealth, but the system stifles enterprise and innovation, depriving society of useful products and services and undermining the international competitiveness of American business. In a sustained campaign to reduce the level of confidence in law and lawyers, n99 a battery of highly placed critics blasted the legal system as "crazy" "demented," n100 and "spun out of control."

The drop in public trust of lawyers accelerated after 1991, n101 the year in which the attack on lawyers escalated, symbolized by Vice President Dan Quayle's charge that America was overrun by 70% of the world's [\*830] lawyers. Anti-lawyer incantations were inscribed in the 1992 Republican platform, played a role in the 1992 campaign, n102 and reverberated in the 1994 and 1996 Republican electoral campaigns.

These betrayal jokes (along with many others) joined the corpus of lawyer jokes at a moment at which people, less trusting of others and increasingly involved in transactions with strangers, need to rely more on lawyers for the assurance that the legal system can provide. They are less trusting of lawyers and more fearful that lawyers will not serve them well.

The combination of evidence that lawyers are highly distrusted with the appearance of a new set of jokes about lawyers as betrayers of trust led me initially to assume that this reflected a heightening of anxiety among clients and potential clients about whether lawyers could be relied upon to be loyal to them. However, re-examination of the jokes themselves suggests that there is both more and less involved than fear of unfaithfulness to clients. Who is the lawyer betraying in these jokes? We can discern the relation of the figures in twelve of the thirteen jokes discussed here. In two (Flask, Greeting Spurned) they are strangers; in eight, they are partners (Safe Unlocked,

Payoff in Robbery, Beautiful House Too, Mine Died, Poisoned You) or other professionals involved in the same enterprise (Partner Undoes Fantasies, Sign Language, Outrun Bear). That leaves only two in which the primary victim is the lawyer's client: in The Extra \$ 100 Bill, the victim is a trusting client; in The Check in the Coffin, the deceased is a trusting and vulnerable client, although the service requested is personal rather than specifically professional. In The Extra \$ 100 Bill, the rip-off has no connection with the lawyer's service to the client; it is in connection with the fee, joining the older and larger pool of stories about the lawyer overcharging, taking everything the client has, and so forth. The only betrayal joke that involves the lawyer thwarting the client's wishes is The Check in the Coffin, in which the requested personal service strains the bounds of loyalty even for devoted and unselfish friends. Indeed, the lawyer's disloyalty there, although discredited by his unabashed self-serving, wavers toward the laudable.

Even in the few jokes that depict faithlessness to clients, there is also "betrayal" of professional peers-not only the lawyer's partner who will not receive a share of the ill-gotten extra one-hundred dollar bill, but the conscientious and altruistic doctor and priest outdone by the lawyer in The Check in the Coffin. n103 Overall, the prime target of the betrayal is the [\*831] lawyer or professional peer. And the damage wreaked on them tends to be far more serious as professional intimacy increases. Where the client can ill afford to lose the hundred-dollar bill, the lawyers (or other professionals) in Outrun a Bear, Poisoned You, and Sign Language are exposed to mortal danger. To the great fund of stories about lawyers' economic exploitation of their clients, betrayal jokes make a quite minor addition, but they add to the jokes corpus a theme almost entirely new in joking about lawyers: the propensity to betray partners and other professionals who are not opponents but on the "same side." I conclude then that these jokes point less to the anxiety of clients dealing with professionals than to the anxiety of professionals dealing with one another.

It is not surprising that such concern should appear at a moment when the legal profession, and in particular its upper reaches, was undergoing a massive transformation. During the 1980s, the number of lawyers increased dramatically. The world of staid clubby law firms-a world of assured tenure and little lateral movement, shrouded in confidentiality, with retainers from loyal long-term clients- dissolved. It was replaced by a world of rapid growth, increased competition for clients, mergers and breakups, movement from firm to firm, fear of defection, and pervasive insecurity. n104 Collegiality was replaced by wariness. Increasingly, lawyers were competitive not with lawyers in other firms, but "with their own partners and even the associates coming up the ladder." n105 Established partners might be "pushed off the iceberg." No longer shrouded in confidentiality, a new intrusive legal journalism exposed the stratagems of lawyers and the operations of law firms. Lawyers lamented the loss of collegiality within firms and the decline of civility in the bar. An outpouring of books and articles bemoaned descent of the profession from civic virtue to commercialism. n106 Our betrayal jokes, I conclude, reflect tensions within the profession at least as much as the anxieties of its customers.

To confirm this, it would be helpful to know who tells these jokes. We know that a very significant part of the telling of lawyer jokes is done [\*832] by lawyers themselves. Professor A.W.B. Simpson even asserts that, "although other people get into the act too, it is principally

lawyers who tell jokes against lawyers." n107 Although Simpson offers no support for this observation, a scatter of evidence suggests that there is more than a little truth to it. Although some lawyers profess outrage at lawyer jokes, the press coverage of the lawyer-joke phenomenon contains numerous references to the interest of lawyers in lawyer jokes. For example, the proprietor of Nolo Press, which operates one of the longest-running and best-known sites for lawyer jokes, reports "most of the jokes come from lawyers." n108 The embrace of lawyer jokes includes law firms using them in brochures, newsletters, and web sites and law schools using them in alumni promotions. n109

Lawyers are not unique in consuming and producing jokes about themselves. There is abundant evidence that "minorities" (including Jews, American Blacks, Polish-Americans, the Irish in England, Druze and Arabs in Israel) are important producers and consumers of jokes about their own groups. n110 One explanation of this phenomenon involves intra-group differentiation. In this view, "the 'better' members of the ridiculed group" enjoy jokes that display the inferiority of their less educated, less emancipated, less assimilated, and less respectable cousins. n111 Thus the point of dialect stories told by second-generation American Jews "is precisely that the subject does not stand for all Jews. Rather than being anti-Semitic it is anti-greenhorn, anti-immigrant, anti-Old-World, and possibly anti-poor." n112 That is, such jokes reflect the situation of the uneasy "second generation American Jew . . . who wished to separate himself sharply from the unassimilated immigrant, whose ways he viewed not only as old fashioned and irrelevant but, most important, as an obstacle to his own efforts toward acceptance by the majority culture." n113 Another student of Jewish jokes interprets this as [\*833] exploding the notion that Jewish humor is self-mocking or masochistic, arguing that "invariably the object of ridicule is a group with which the raconteur disassociates himself. Joke-telling is a verbal expression which manifests social differentiation." n114

This has a ready applicability to lawyers. The more diverse and internally conflictful the lawyer category, the more occasion for lawyers to employ jokes to disassociate themselves from others. My small stock of direct information here points in this direction. I interviewed a lawyer whose four-person California firm has distributed handouts of lawyer jokes with its newsletters and at meetings with potential clients. Convinced that "a big percentage of the profession are a bunch of schmucks . . . trying to take advantage of clients," he reports that he personally uses lawyer jokes in presentations and conversations with clients to disarm the endemic suspicion of lawyers: "by telling jokes about lawyers you show that you are not one of those crooks, but one of the good guys." n115 Differentiation is similarly stressed at the outset in a beautifully illustrated brochure, entitled "We Are Not the Enemy," distributed by a large multi-city firm based in New York that depicts a series of lawyer jokes:

Lawyer jokes. Why are they so popular? We have a theory. Too many clients today do not get the representation they want and deserve. It doesn't have to be that way.

Anderson Kill Olick & Oshinsky is different. Since our founding in 1969, we have never wavered from our principal objective-being responsive to clients' needs.

Every lawyer at Anderson, Kill, Olick & Oshinsky is committed to ensuring client satisfaction. We take that responsibility seriously-and that's no joke. n116

Jokes are used by lawyers to tell clients they are the good guys. I suspect that they are told among lawyers themselves to similar effect, identifying [\*834] those present as above the antics and shenanigans of the lawyers in the jokes. n117

But differentiation does not exhaust the function of lawyer jokes for lawyers. Gershon Legman observed that telling jokes acts "to absorb and control, even to slough off, by means of jocular presentation and laughter, the great anxiety that both teller and listener feel in connection with certain culturally determined themes." n118 Stanley Brandes, applying this to the case of Jewish dialect jokes, finds them an expression of "the collective Jewish-American uncertainty about its ethnic identity, and its fear of committing cultural suicide." n119 Similarly, lawyers' engagement with lawyer jokes can be imagined as an expression of anxiety about the fragility of their professional identity threatened both by massive structural changes and by unrelenting attacks from other high-status groups. Hoisted by the increasing legalization of society into an uneasy ascendancy, lawyers wonder whether they can retain the privileges of professionalism along with the rewards of affluence. Jokes lend themselves to this exercise because, in Davies's words, they

are ambiguous comic utterances without a single clear meaning, and their relation to aggression or fear is variable and problematic . . . . Tendentiousness is not a quality of a joke as such but a quality of the teller. It is the teller who decides by choice of tone and context whether he or she is playing at or with aggression and whether the play is rough or friendly. n120

Jokes enable us to "construct safe mock versions of real fears both to amuse [ourselves] and to amuse others . . . . Depending on context, one and the same joke can either inflame fears or else domesticate and master them." n121

Although they attack lawyers, many lawyer jokes are infused with the sense that lawyers are clever, powerful, and important. Lawyer jokes offer a particularly appealing way of displaying these things because of [\*835] a curious glitch in the culture that directs joking up the status scale rather than down. It has frequently been observed that lawyers are one of the groups that can be attacked without worry about offending norms of political correctness. The Economist recently observed that "the level of hostile humour" directed at lawyers "has increased noticeably since racist jokes went out of fashion. The sorts of jokes which, in less enlightened time, were directed at ethnic groups are now more commonly aimed at lawyers, particularly in America . . . ." n122 But this realignment has a curious effect. "[T]hose who are fair game for . . . ridicule" are those at the high end of the status ladder: "men, WASPs, the vocationally successful, the physically slim, beautiful women, and

handsome men." n123 Because it is incorrect to ridicule down, being singled out as an acceptable target of jokes is a sign of high status and has the ultimate effect of boosting rather than lowering status. So lawyers' affable self-disparagement translates into an assertion of status; that is, we have so much status we can endure a firestorm of jokes.

A.W.B. Simpson observes that "all these jokes and criticisms make indirect reference to the supposed ideals of the legal profession. They presuppose these ideals; indeed they are indirect statements of them, coupled with the claim that lawyers in reality do not live up to them." n124 The "ideals" in question in our betrayal jokes are the collegiality and faithfulness of lawyers in their dealings among themselves, a matter of low visibility and salience to others. This doesn't mean that these jokes are told by or appreciated only or mostly by lawyers. For others they can add to their sense of the quirks and transgressions of lawyers. One message that could be extracted is that these are people you have to watch out for, for they have no compunction about doing in their own. If lawyers are such tricky and unprincipled people, with a proclivity to turn on those close to them, it may justify a certain wariness. But it strikes me as significant that when imagination ranges freely, it envisions lawyers betraying other professionals rather than clients. Hearers may be appalled and amused at this portrait of ruthless instrumentalism, but it is less clear that they are threatened by it.

[\*836]

### III. An Excess of Loyalty?

The Check in the Coffin should remind us that faithfulness to clients is a respectable virtue, but not necessarily the summum bonum. Students of legal ethics engage in intense debate about the extent and boundaries of the lawyer's obligation of loyalty to the client. n125 In a discussion of the contemporary wave of lawyer jokes, Roger Cramton suggests that, in the eyes of the public, the profession's problem is not disloyalty to clients, but excessive loyalty. Although he views public antipathy as unavoidable because it is a lawyer's role to be the bearer of the bad news of "society's internal dissonance and division," n126 he assigns part of the blame for the current upsurge of hostility to the ethos of the profession: "[t]he dominant professional view has a normative structure that gives highest priority to loyalty to clients and abhors betrayal of clients." n127 Cramton thinks that the bar's "self-centered and immoral position" against disclosure of client fraud is "at variance with general morality" and leads to "problems of overrepresentation and excessive zeal that properly concern the public." n128 Is the public actually exercised about this problem? The jokes that Cramton discusses do not raise the issue and the joke corpus as a whole supplies only faint evidence of concern. There is a long line of jokes ridiculing the lawyer's eager and easy embrace of the client and his cause, but such jokes have been a sleepy backwater hardly disturbed by the great flood of contemporary joking about lawyers:

Prisoner: "Before I plead guilty or not guilty I would like to ask the court to appoint a lawyer to defend me."

Judge: "You were caught in the actual commission of a crime, with the merchandise on you, a gun in your hand and your victim on the floor. What could a lawyer possibly say in your defense?"

Prisoner: "That's it- I'm curious also to hear what he could possibly say!" n129

Mocking the lawyer's tendency to come up with something, however far-fetched, on behalf of the flagrantly guilty client, this story also salutes the lawyer's eloquence and resourcefulness. Other frequent themes, the tendency of the lawyer to go "over the top" for the client and to be [\*837] carried away by the momentum of his own argument, are displayed in a popular story that circulates throughout the English-speaking world and beyond:

A businessman had to leave town before a lawsuit brought against him by a competitor was ended. So he told his lawyer to wire him the outcome as soon as it was over. Several days later he received a telegram: "Justice has triumphed." He hastened to wire back immediately: "Appeal at once!" n130

The joke (which has been in circulation since before 1931) is permeated by a feeling that law ought to be the institutionalized pursuit of justice and that the lawyer is implicated in its divergence from this ideal. The lawyer is a proficient advocate who has managed to persuade a court in favor of a cause that the client himself recognizes as unjust. This is a story about the extravagance and hyperbole of advocacy, but it is also a story about clients knowingly using the legal system to advance morally dubious interests; lawyers are not in charge, but are willing tools of clients. Here the lawyer is not only a devoted and uncritical ally of the client, but a hired gun who deludes himself that he is a devoted champion of principle. The lawyer is scorned not for being disloyal to the client, but for being excessively attached to him and insufficiently self-aware.

This portrait of hypocrisy or self-delusion is located in a specific practice setting. It is one of the very few contemporary jokes in which the lawyer is depicted in the service of large business clients. Various versions identify the client as a "businessman," a "financier," a "billionaire" or the firm's "richest client" who has been involved in dealings that resulted in charges of fraud, tax evasion, or insider trading and depict the law firm as putting forth Herculean efforts. It is exactly the scenario that public opinion visualizes as the lawyer going all out to bend the law to protect the wealthy and powerful.

Although wide publics buy into much of the "litigation explosion" lore promulgated by corporate, media, and political elites, there is a widespread and abiding popular perception that the law's departure from justice is not random, but systematically favors the rich and powerful. People feel that lawyers work harder for wealthy and powerful clients. Twenty years ago, 60% of Americans disbelieved that lawyers will "work as hard for poor clients as for clients who are rich and important" n131 and 59% agreed that "[t]he legal system favors the [\*838] rich and powerful over everyone else." n132 When asked in 1985 whether "[t]he justice system in the United States mainly favors the rich" or "treats all Americans as equally as possible," 57% of respondents chose the "favored the rich" response and only 39% the "equally" response. n133

In a 1995 survey conducted by U.S. News & World Report, fully three-quarters of the respondents thought that the American legal system affords less access to justice to "average Americans" than to rich people-and four out of five of these thought "much less." n134 The same poll shows the public placing responsibility for this imbalance squarely on lawyers:

Here are some things that people say about lawyers. Which one of the following comes closest to your views?

Lawyers have an important role to play in holding wrongdoers accountable and helping the injured.

Lawyers use the legal system to protect the powerful and get rich.

Fifty-six percent affirmed the "protect the powerful and get rich" response; only 35% affirmed the "helping" response. The fact that ordinary people are deprived of the benefits of the legal system is attributed to lawyers. But is it "overrepresentation and excessive zeal" that is perceived as the problem?

The notion that public animus against lawyers stems from their unqualified devotion to clients might seem to gain support from the 1997 film *Devil's Advocate*, which updates the image of the lawyer as a confederate of the Devil by promoting that worthy to managing partner of the Wall Street firm. What is it about lawyers that makes them so [\*839] devilish? The film's answer is clear: greed is subsidiary, the distinctive sin of the lawyer is the love of winning which leads him to defeat justice by placing his preternatural cleverness at the service of the guilty. Lawyers' indiscriminate embrace of clients' unjust causes to feed the passion for winning is the sin of vanity. Pursuing victory for the loathsome client leads the brilliant young lawyer into the embrace of the Devil, who is also, it turns out, his father. (The way out of his grasp is unclear. The ambiguous ending of the film suggests that the young lawyer's dramatic abandonment of the detestable client may be a more subtle pursuit of vanity, equally pleasing to the Devil.)

On another screen at the local multiplex, you can see John Grisham's *The Rainmaker* (1997) in which a novice lawyer working out of a sleazy office develops an intense familial intimacy with his poor, vulnerable, and misused clients and becomes their guardian angel. n135 The lawyer's heroic role is built not on his untried and uneven skills, but on the intensity and purity of his identification with his clients. Utterly loyal to them, he is willing to lie, cheat, and steal where necessary to vindicate their rights, opposed by (equally unscrupulous) lawyers knowingly abetting a cruel and avaricious insurance swindle. n136

It is no easier to extract an unambiguous message from a film than from a joke and it is at least equally questionable how adequately it represents public opinion. Nevertheless, let me venture that the two films, taken together, seem to say that it is commendable for lawyers to go "over the top" for clients who are genuinely deserving victims, but abominable to do so for bad guys. Survey evidence shows people are aware that villains are entitled to lawyers and that "somebody has to do it," but many have reservations about the zeal of such representation. n137 People are distressed about lawyers' willingness to defend the guilty, but they are reluctant to condemn lawyers for going all out for their clients, even sleazy ones. n138 These movies concur with the survey evidence that [\*840] the characteristic of lawyers that most engages Americans is lawyers' loyalty, zeal, and commitment to the client. But public estimation of the level of commitment that is present and that is desirable depends at least in part on the characteristics of the client. n139 The problem of the lawyer's level of engagement shades into the problems of disparities in the distribution of legal services.

Is the distrust manifested in these surveys and jokes a danger sign? Does it portend a general erosion of people's confidence in the legal system and its functionaries? Proponents of the jaundiced view often adduce the surge of lawyer jokes as popular validation and endorsement of their attacks on the justice system. n140 Thus the chairman and CEO of the Chrysler Corporation proclaims in Newsweek that "lawyer jokes . . . just keep going and going and going because the stereotype rings true." n141 Reciting the horrors of civil juries and their outlandish awards, ever-sillier cases, contingency fees, joint and several liability, the immense "tort tax" and the decline of civility in "our litigious society, that has changed the way we relate to one another as human beings" he laments the dangerous public cynicism expressed in the jokes. This attempt at rhetorical appropriation proceeds indifferently to the fact that most of the public looks with favor on institutions such as civil juries and contingency fees, that few jokes target these institutions, n142 and that the messages of the jokes are far more ambiguous and complex than simple condemnation.

Citizens (and organizations) resent their increased dependence on lawyers and regret the increased legalization of life. But ordinary Americans remain optimistic about law as a useful if clumsy tool to solve problems, both individual and collective, even though they are sanguine about the possibility that the system is biased in favor of the wealthy and powerful. Those who aspire to use the law to build a more just society [\*841] should not worry about lawyer jokes. It is not the jokes or popular mistrust that threaten the system, because that mistrust is balanced by acceptance and support. While ordinary people remain skeptical about, but supportive of, the legal system, a wide section of American elites, who benefit most from it have turned against it, withdrawing their support and opting to "downsize" and "outsource" it. The real danger to the system comes from mythology promoted and sometimes believed by many of those who occupy its commanding heights.

#### IV. Appendix: Switching of Betrayal Jokes to Lawyers

##### A. A Note on Switching

The transmission of jokes involves more than simple reproduction of an existing text; it may involve entrepreneurial "switching" in which a joke about Texans or mothers-in-law or politicians is refurbished as a joke about lawyers. Switching may be less systematic and pervasive in the case of extended narrative jokes than the gags and routines of performance comedy, but it is an element in the publication of jokes. It is particularly present in topical collections of jokes, where the compiler, editor, or author may enlarge his stock by "switching" jokes about other topics or groups to insert the desired element. It should be emphasized that switching is selective rather than indiscriminate. Some attempted switches just don't "take" and disappear from view; others flourish and may grow more prominent than the original version. What "takes" is not controlled by the teller or writer; it has to strike a responsive chord in the listeners and readers. Just which items negotiate the transition from their original subjects to new ones tells us something about social perceptions.

## B. Chronology

The following chronology records the first known appearance in print (or other recorded media) of the betrayal jokes discussed in this Article. Because presumably they circulated in the oral tradition prior to that appearance, the date of appearance as a lawyer joke is actually somewhat earlier in each case. On the basis of the pattern observed with other jokes, I would estimate that the period between oral circulation and appearance in print or on line is at most a few years.

1967: Check in the Coffin

1982: Flask

1988: Mine Died; Greeting Spurned

**[\*842]**

1989: Safe Unlocked

1990: Extra \$ 100 Bill; Sign Language

1991: Poisoned You; Outrun Bear

1992: Trust Me

1993: Payoff in Robbery; Beautiful House Too

1996: Partner Undoes Fantasies

### C. The Specificity of the Switch to Lawyers

In assessing the significance of the emergence of a set of jokes about lawyers as betrayers of trust, it is necessary to eliminate the possibility that these jokes have spread to all or many kinds of protagonists and that they cannot be taken as specifically registering perceptions of lawyers. To test this alternative hypothesis, I have examined the publication history of each of the betrayal jokes noted in the text. They are listed here in the chronological sequence in which they were switched to lawyer jokes. For the most recent switches, there is little evidence from which to draw conclusions. But the overall pattern is clear: these betrayal jokes are switched to lawyers; lawyers become the principal or important protagonists of these stories; jokes about the original protagonists usually continue; but no other important new categories of protagonists are added.

The Check in the Coffin (1967). I have located 55 instances published or collected in the 1990s: in 40 the protagonist is a lawyer, in 8 a Jew or rabbi. The others are scattered: 2 Irishmen, a bartender, 2 accountants (in England), and two individual tycoons (the late Robert Maxwell and Australian Kerry Packer). In several cases, the identity of the protagonist may owe to the exigencies of editing a topical collection of jokes. We can conclude that although it continues as a Jewish joke (it was once predominantly that: of the 12 instances from the 1970s, 8 involved Jews or rabbis), it has become predominantly a joke about lawyers and has not really been switched to any other group.

The Collision and the Flask (1982). Since its appearance as a lawyer joke in 1982, of the 15 instances I have identified, 9 involve lawyers, 3 rabbis (who had appeared earlier), one Scot (also an earlier protagonist), one farmer, and an unidentified driver. Again, there is no pattern of switching to any other kind of protagonist.

Mine Died (1988). From its appearance in 1928 this joke involved business partners, frequently Jewish. From 1988 when it appeared as a [\*843] lawyer joke, I have collected five instances of the lawyer joke and five of the original partners story. No other new protagonists have appeared.

Greeting Spurned (1988). For the sake of completeness, I note a betrayal story that has made a single print appearance as a lawyer joke. n143 Since at least 1971, a host of protagonists including

Knufes, Ole the Norwegian, Paddy the Irishman, and ambitious salesmen, executives, and advertising men have enlisted the help of super-celebrity politicians, tycoons, and entertainers and then rebuffed them.

Safe Unlocked (1989). Since its appearance as a lawyer joke in 1989, this continues to be told about nonlawyer partners, frequently Jewish ones, often in the garment trade. Apart from a couple of items involving Italian restauranteurs, no specific kinds of businesses appear other than law firms.

Extra \$ 100 Bill (1990). Of the 24 instances found from 1990, when it became a lawyer joke, the merchant and son format continues in 8 instances (6 explicitly Jewish and the others suggestively). Apart from a single Robert Maxwell item, the rest are all about lawyers. This has become predominantly a lawyer joke and has not switched to any other group.

Sign Language (1990). The protagonists in this joke from its appearance in 1978 were an assortment of translators between the threatened victim and such worthies as Mafia dons, Spanish conquistadors, Russian body-builders, and Texas Rangers. These still outnumber the lawyer version. The lawyer is the only professional identity given to the interpreter, apart from a single reference to a (Jewish) accountant.

Poisoned You (1991). This very popular story has been told about spouses since 1928 and about partners (often Jewish) since 1945. The first [\*844] lawyer poisoner appeared in 1991 (preceded by a client poisoning his lawyer (1987)). Since 1991, vengeance has been wreaked by five lawyers, four husbands, and two wives. Other sorts of partners seem to have dropped out and no other new kinds of protagonists have appeared.

Outrun Bear (1991). Since its appearance in the early 1980s, this story about the encounter of outdoorsmen (hunters, hikers, campers, fisher-men, occasionally identified as executives, bankers, or bureaucrats) with a cougar (or usually a bear) has been a favorite of speechmaking executives (including Ronald Reagan) wishing to dramatize the exigencies of competition. It surfaces as a lawyer joke in 1991, but continues to lead a vigorous life on the executive speaking circuit. The 8 lawyer instances I have found are far outnumbered by 58 nonlawyer versions since 1991. But the great majority of these are not attempting to make a point about the identity of the disloyal companion. The scatter of executives, wholesalers, company presidents, partners, and politicians are

outnumbered by the lawyers. Although the generic outdoorsmen versions remain more popular, this item is established as a lawyer joke but has not crystallized as a joke about any other occupational group.

Trust Me (1992). Earlier versions make the translation into Yiddish and Los Angeles talk. The lawyer versions from 1992 have been accompanied by a single instance about "agent talk."

Beautiful House Too (1993). From early in the century through its first appearance as a lawyer joke in 1993 to the present, this was a "dumb" joke about the fellow worker who misunderstood the helpful advice and asked "is your wifehome now?" The 1994 lawyer version given in the text above shifted it into the betrayal category: the lawyer actually betrays his benefactor. In this version he has been followed by a single Australian "bloke."

The two most recent items were switched to lawyers so recently it is impossible to trace their history subsequent to the switch.

Repayment during Robbery (1995). n144 From its earliest appearance in 1913, this was a joke about friends, usually Jewish. The appearance of a lawyer version in 1995 was preceded by a client pays the lawyer version [\*845] in 1993. No other new protagonists have appeared apart from "two bosses" in a topical collection in 1994.

Partner Undoes Fantasies (1996). n145 Again, this was primarily a dumb joke about the Pole or Irishman who undoes his mates' escape from a desert island. A 1993 version about a movie producer who wants his director and writer on the set is the model for our 1997 lawyer versions.  
n146

#### FOOTNOTES:

n1 See generally Eric M. Uslaner, Democracy and Social Capital, in Democracy and Trust (Mark Warren ed., forthcoming) (on file with author); Robert Putnam, Tuning In, Tuning Out: The Strange Disappearance of Social Capital in America, 28 PS: Political Science and Politics 664 (1995); Francis Fukuyama, Trust: The Social Virtues and the Creation of Prosperity (1995).

n2 See Uslaner, *supra* note 1, at fig.1.

n3 See generally Seymour Martin Lipset & William Schneider, *The Confidence Gap: Business, Labor and Government in the Public Mind* (Rev'd ed., Johns Hopkins University Press, 1987) (1983); Eric M. Uslaner, *The Decline of Comity in Congress 76-77* (1993).

n4 See Steven C. Craig, *The Malevolent Leaders: Popular Discontent in America* 11 tbl.1 (1993).

n5 Kenneth Newton, *Social and Political Trust*, Paper Prepared for the Conference on Confidence in Democratic Institutions: America in Comparative Perspective, in *Critical Citizens: Global Support for Democratic Government* (Pippa Norris, ed., forthcoming 1999). Presumably the meaning of trust to respondents may vary across times and settings: for example, it may mean confidence in others' competence, ability to help, or their allegiance and loyalty. Does trust mean I expect to be served, sustained, or cared for? Not interfered with? Not betrayed? Or some or all?

n6 Charles Peters, *How Your Lawyer Does It*, *Wash. Monthly*, Feb. 1974, at 33, 37.

n7 David Denby, *A Motion to Suppress*, *New York Mag.*, Aug. 1, 1994, at 52.

n8 See J. Willard Hurst, *The Growth of American Law: The Law Makers* 335-38 (1950).

n9 See Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *Yale L.J.* 239 (1984) (describing transactional lawyers as "transaction cost engineers").

n10 See Mark C. Suchman & Mia L. Cahill, *The Hired Gun as Facilitator: Lawyers and the Suppression of Business Disputes in Silicon Valley*, 21 *Law & Soc. Inquiry* 679 (1996).

n11 The classic text is Stewart Macaulay, *Non- Contractual Relations in Business: A Preliminary Study*, 28 *Am. Soc. Rev.* 55 (1963).

n12 Much of the survey data reported in this section are derived from three national sample surveys, each conducted by telephone. Two of these surveys were conducted for *The National Law Journal* (NLJ), the first in 1986 and the second in 1993. The third major survey was conducted for the American Bar Association in 1993. The first of the NLJ surveys (n=1004) was published in David A. Kaplan, *The NLJ Poll Results: Take Heed, Lawyers*, *Nat'l L.J.*, Aug. 18, 1986, at S-2. A second survey (n=815), which largely replicates the 1986 survey and thus provides a useful reading of recent changes, was conducted for the NLJ and the West Publishing Company by Penn & Schoen Associates, Inc. This survey was published in Randall Samborn, *Anti-Lawyer Attitude Up*, *Nat'l L.J.*, Aug. 9, 1993, at 1, 20.

n13 Gordon Black/USA Today Survey (1984), Search of Westlaw, Directories and Reference Materials, Statistical Data, Poll, Question ID: USGBUSA.84JUNE R29B 076.

n14 See Kaplan, *supra* note 12, at S-4.

n15 See *id.*

n16 See Samborn, *supra* note 12, at 20.

n17 See Randall Samborn, *Survey Data Worksheets* (July 1993) (unpublished worksheets, on file with the University of Cincinnati Law Review). "Somewhat dissatisfied" and "very dissatisfied" responses each increased from 8% to 10% and "don't know" responses increased from 1% to 4%. See *id.*

n18 See Hart Survey, *supra* note 12, at 25.

n19 See *id.* Some 66% of all those who used a lawyer expressed satisfaction with the way they were represented. See *id.*

n20 ABC News/Washington Post Survey (May 1989), Search of Westlaw, Directories and Reference Materials, Statistical Data, Poll, Question ID: USABCWP.352 R19E.

n21 See Samborn, *supra* note 12, at 20. Samborn reviews figures from Gallup and Roper polls that suggest a downward trend in estimations of the ethical character of lawyers since the mid-1970s. See *id.*

n22 See Hart Survey, *supra* note 12, at 5.

n23 See ABA, Lawyer Advertising at the Crossroads 64 *tbl.III(B)* (1995) (summarizing Gallup surveys from 1976-1993) [hereinafter Lawyer Advertising].

n24 See Samborn, *supra* note 12, at 1. The results in an April 1994 poll (n=400) conducted by Wiese Research Associates, Inc. are virtually identical: "Thirty-four percent reported their attitudes toward lawyers had declined, more than half of these indicating they had declined a lot. Only eight percent reported their attitudes toward lawyers had improved over the past five years." Lawyer Advertising, *supra* note 23, at 65- 66.

n25 Princeton Survey Research Associates, Great American TV Poll #5 (1991), Search of Westlaw, Directories and Reference Materials, Statistical Data, Poll, Question ID: USPSRA. 91TVO5 R66 055. This is certainly not a new phenomenon. Back in 1949, when a national sample of adults was asked which of a list of professions and occupations they trusted the most, lawyers came in at the bottom (3% as opposed to 32% doctors, 26% professors and teachers). See Gallup Poll (1949), Search of Westlaw, Directories and Reference Materials, Statistical Data, Poll, Question ID: USGALLUP. 439T QT11A O23 QT11A.

n26 Black, *supra* note 13.

n27 See Hart Survey, *supra* note 12, at *tbl.7*. This "clients interest first" item contains an interesting ambiguity, for it might mean favoring client's interests over the lawyer's own interest, or, it might mean resisting the notion that the interests of the public or the legal system should override those of the client—a quality often admired by outsiders if not by clients.

n28 See Samborn, *supra* note 12, at 20.

n29 See Hart Survey, *supra* note 12, at 4-5.

n30 On the literature of legal nostalgia, see Marc Galanter, Lawyers in the Mist: the Golden Age of Legal Nostalgia, *100 Dick. L. Rev.* 549 (1996).

n31 2 Anton-Hermann Chroust, The Rise of the Legal Profession in America 17 (1965). See also Maxwell Bloomfield, American Lawyers in a Changing Society 1776-1876 32-58 (1976); Gerald W. Gawalt, Sources of Anti-Lawyer Sentiment in Massachusetts, 1740-1840, *14 Am. J. Legal Hist.* 283 (1969); Charles Warren, A History of the American Bar 211-39 (1911).

n32 Chroust, *supra* note 31 (quoting 1 McMaster, History of the People of the United States 302 (1927)).

n33 Francis Nevins calls the late 50s-early 60s period the "first golden age of the law film." See Francis Nevins, *Law, Lawyers & Justice in Popular Fiction & Film*, Human. Educ. May 1984, at 4.

n34 Steven D. Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 *U. Miami L. Rev.* 229, 255 (1987).

n35 Anthony Chase, *Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys*, Am. B. Found. Res. J. 281, 284 (1986) (noting that this image coalesced in the period from 1957 to 1963, from the time of Sputnik to the Kennedy assassination). See also Michael Asimow, *When Lawyers Were Heroes*, 30 *U.S.F.L.R.* 1131 (1996).

n36 Lipset and Schneider, *supra* note 3, at 15.

n37 *The Rule of Law* 8, 12 (Robert Paul Wolff ed., 1971).

n38 *Law Against the People: Essays to Demystify Law, Order and the Courts* 15 (Robert Lefcourt ed., 1971).

n39 See *Is Law Dead?* (Eugene V. Rostow ed., 1971).

n40 See, e.g., John W. Sheppard, *Ethics*, 49 *Fla. B.J.* 184, 184 (1975). With the overflow of Watergate and the revelation that a great majority of the offenders were members of the legal profession, the public image of the Bar seems to have reached a low ebb. . . . There seems to be a rising tide of resentment to the entire profession who [sic] guides the legal system in our country. *Id.*

n41 See generally Burton A. Weisbrod et al., *Public Interest Law: An Economic and Institutional Analysis* (1978); Council for Public Interest Law, *Balancing the Scales of Justice: Financing Public Interest Law in America* (1976).

n42 See generally the multi-volume *Access to Justice* (Mauro Cappelletti et al. eds., 1978); *Access to Justice and the Welfare State* (Mauro Cappelletti, ed., 1981).

n43 See generally Abraham S. Blumberg, *The Practice of Law as a Confidence Game: Cooptation of a Profession*, 1 *Law & Soc'y Rev.* 15 (1967); Murray Teigh Bloom, *The Trouble With Lawyers* (1976); *Verdicts on Lawyers* (Ralph Nader & Mark Green eds., 1976); Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (1976); Jethro K. Lieberman, *Crisis at the Bar: Lawyers' Unethical Ethics and What to Do About It* (1978).

n44 President James E. Carter, *Address at the 100th Anniversary Dinner of the Los Angeles Bar Association* (May 4, 1978), in *President Carter's Attack on Lawyers, President Spann's Response and the Chief Justice Burger's Remarks*, 64 *A.B.A. J.* 840, 842 (1978).

n45 *Id.* at 843.

n46 *Id.* at 842.

n47 *Id.*

n48 See Tom Goldstein, *Carter's Attack on Lawyers*, N.Y. Times, May 6, 1978, at 11 ("[L]eading lawyers around the country reacted with anger, bitterness, frustration and sadness yesterday to President Carter's assertion that the legal profession has been an impediment to social justice.").

n49 See, e.g., *The Law's Delay*, Wall St. J., May 10, 1978, at 24 (noting that, because "Washington itself has become the fountainhead of unnecessary laws and litigation," the President

should "spend less time lashing out at lawyers in general and more time asking the government's lawyers just what it is they are trying to do"); Mr. Carter's Class Struggle, Wash. Post, May 7, 1978, at C6 (dismissing President Carter's remarks as "unfocused resentment").

n50 See Public Opinion Online, Roper Center, Apr. 8, 1989, available in LEXIS, News, Arcnws Library Accession No. 0132789.

n51 See *id.* at Accession No. 0116933.

n52 The American Bar Association's Special Commission on Evaluation of Professional Standards was known as the Kutak Commission. The impetus for a new ethics code came in part from the damage to the bar's public image occasioned by Watergate. See William B. Spann, Jr., The Legal Profession Needs a New Code of Ethics, *Bar Leader*, Nov.-Dec. 1977, at 2.

n53 See generally Ted Schneyer, Professionalism as Bar Politics: The Making of the Model Rules of Professional Conduct, 14 *L. & Soc. Inquiry* 677 (1989).

n54 See *id.*

n55 See Gerald J. Clark, Fear and Loathing in New Orleans: The Sorry Fate of the Kutak Commission's Rules, 17 *Suffolk U. L. Rev.* 79, 84-85 (1983).

n56 The signal event in the crystallization of the "too much law" critique was the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, held in April 1976, at the instance of Chief Justice Warren Burger. The proceedings are published at 70 *F.R.D.* 79 (1976). The Conference, known as the Pound Conference, commemorated Roscoe Pound's 1906 address of the same title; the participants (like Pound) propounded "popular" perceptions unaided by any discernable consultation of the broader public. See *id.*

n57 Early outcroppings of this critique are noted in Marc S. 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, 6-11 (1983); David Trubek, Turning Away From the Law, 82 *Mich. L. Rev.* 824 (1984).

n58 The Council on the Role of Courts, *The Role of Courts in American Society* (Jethro Lieberman ed., 1984).

n59 The restriction on the flow of information about the profession was supported and enforced by the Canons of Professional Ethics, which condemned as "unprofessional" various forms of advertising, solicitation, getting business through agents and "furnishing or inspiring newspaper comments," and its successor, the Code of Professional Responsibility. The abrupt turnabout in the late 1970s was a by-product of the Supreme Court's 1977 decision in *Bates v. State Bar of Arizona*, 433 *U.S.* 350 (1977), which ruled that sweeping restrictions on lawyer advertising violated the First Amendment and liberated lawyers to talk to the press about their practices. Within two years, media coverage of the law was transformed. On the swift arrival of the "new information order" of the law, see Marc Galanter & Thomas M. Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* 68-76 (1991).

n60 The Production Code of the Motion Picture Producers and Directors of America, included a General Principle that "[l]aw, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation." The text of the Code may be found in Garth Jowett, *Film: The Democratic*

Art, App. 4 (1976). The weakening of censorship, starting in the 1950s, is detailed in chapter XIII. See *id.*

n61 See Rorie Sherman, Small Screen Takes a Shine to Lawyers, *Nat'l L.J.*, Feb. 4, 1991, at 9.

n62 A similar "downward trajectory" reappears in the portrayal of Supreme Court justices in the novel, drama, and film. Over the past fifty years, Laura Krugman Ray finds that there are "two related tendencies: an increasing familiarity with the Court and a declining reverence for the figure of the Justice." Laura Krugman Ray, *Judicial Fictions: Images of Supreme Court Justices in the Novel, Drama, and Film*, 39 *Ariz. L. Rev.* 151, 153 (1997).

n63 Lest we be tempted to dismiss public impression of imaginary lawyers, it should be noted that some members of the public conflate imaginary and real lawyers. The 1993 *NLJ* survey asked people to volunteer the lawyer they most admired; the top ten included Perry Mason and Matlock. See Samborn, *supra* note 12, at 24.

n64 See Michael Pfau et al., *Television Viewing and Public Perception of Attorneys*, 21 *Hum. Comm. Res.* 307, 320-21 (1995).

n65 See *id.* at 321 tbl.1.

n66 See *id.*

n67 *Id.* at 325.

n68 See *Lawyer Advertising*, *supra* note 23, at 71.

n69 *Id.* at 66.

n70 Many assertions here are based on analysis of an archive of jokes about lawyers (and related jokes) compiled by the author. This collection is based on some six hundred books of jokes, anecdotes for speakers, etc., published over the last century and a half, other recorded media (disk, CD-Rom and on-line sources) for the period since 1980, and some material collected from informants. A full discussion of the methodological problems of assembling a relatively complete portrait of the "written record," of inference from that written record to the oral tradition, and from that oral tradition to public perceptions and sentiments about law and lawyers must await my book on the subject, presently in progress.

n71 See David L. Yas, *First Thing We Do is Kill All the Lawyer Jokes*, *Mass. Lawyers Weekly*, Oct. 20, 1997, at 11.

n72 *Id.*

n73 See Jethro K. Lieberman & Tom Goldstein, *The Popular Image of Lawyers in America* (May 31, 1990) (unpublished paper presented to the annual meeting of the Law and Society Association, on file with author).

n74 Jeff Rovin, *500 Great Lawyer Jokes* 140 (1992).

n75 Ellie Grossman, *Lawyers From Hell Joke Book* 11-12 (1993). In most versions of this popular story, the animal sighted is a bear. Hence in the subsequent discussion, this joke is referred to as *Outrun Bear*.

n76 This joke is from an unnamed collection of lawyer jokes, downloaded from the Internet and sent to me by Robert Diamond of Monsey, New York in September 1994.

n77 Blanche Knott, *Blanche Knott's Truly Tasteless Lawyer Jokes* 73 (1990).

n78 *Supra* note 76.

n79 *Supra* note 76 (substantially identical to Sid Behrman, *The Lawyer Joke Book* 16-17 (1991)).

n80 *Supra* note 76.

n81 Knott, *supra* note 77, at 27-28.

n82 The lawyer as sign-language interpreter perfectly embodies Maureen Cain's notion of lawyer as translator. See Maureen Cain, *The General Practice Lawyer and the Client: Towards a Radical Reconciliation*, in *The Sociology of the Professions: Lawyers, Doctors and Others* (Robert Dingwall & Philip Lewis eds., 1983). The joke also implies that the lawyer will end up with the entire stake over which the disputants are contending, an outcome celebrated in many jokes and in a famous print that depicts contending litigants pulling a cow in opposite directions while the lawyer milks it.

n83 *Supra* note 76.

n84 A "client" version of this joke appeared a few years before the partner version, but has not reappeared since: Fitzgerald was sitting beside the deathbed of his lawyer, Dolan. The attorney knew he was doomed and said with a sigh, "Dear friend, I've a confession to make. A year ago I robbed you of \$ 200,000 in your firm's merger deal, and I also put your firm's control in my possession. I talked your wife into divorcing you and-" "It's all right, old friend," said Fitzgerald, "I poisoned you." Larry Wilde, *The Ultimate Lawyers Joke Book* 124 (1987). The "partner" version presents treachery as the modus operandi of the legal profession; in the "client" version, the treacherous lawyer is repaid in kind by his client victim, joining the category of jokes in which the tables are turned on the arrogant lawyer.

n85 Rovin, *supra* note 74, at 56.

n86 Oral tradition (collected by the author, Madison, Wisconsin, 1990).

n87 In addition to this "take it with you" story, there are several other lines of The Check in the Coffin stories. In one, the deposit of the money is explained not as part of the deceased's plan for financing in the next world, but as a respectful gesture by the mourners, inspired by family tradition or cross-cultural experience. In a third version of the story, the mourners deposit money neither as agents of the dead man nor as a gratuitous prestation to him. Instead, they are responding to an explicit condition in his will. Yet another version involves a pact among friends that the survivors will place money in the coffin to assist the next-worldly finances of whomever should die first. All of these apparently descend from an older story, most frequently told about Jews, but also about other "canny" groups, such as Scots and Ibos, see Christie Davies, *Ethnic Humor Around the World: A Comparative Analysis* 112 (1990), which in turn descended from a medieval tale about the miser who wants to take his gold with him.

n88 David Riesman, *Toward an Anthropological Science of Law and the Legal Profession*, in *Individualism Reconsidered and Other Essays* 423, 450 (1954).

n89 The analysis that follows is inspired by Richard Raskin's exemplary *Life is Like a Glass of Tea: Studies of Classic Jewish Jokes*, in which he develops three "interpretive frameworks" that he finds "useful for understanding many classical Jewish jokes." Richard Raskin, *Life is Like a Glass*

of Tea: Studies of Classic Jewish Jokes 23 (1992). The first is role fiasco in which a character displays "outrageous incompetence in: a) performing or sustaining a given role; b) assessing what behavior or attitude a given situation calls for; or c) thinking logically and realistically." Id. A second comic perspective is tactical manoeuvre in which the character "is essentially a player who is out to get away with something, to pull some-thing off, to evade a responsibility, to get more than his share of something he wants, to get the better of, or turn the tables on, someone else, to get around a prohibition, etc." Id. at 24. The third framework is exemplary deviance in which "the comic behavior on display in the punch-line is seen as a positive model we are implicitly invited to admire and emulate, even though it marks a break with conventional codes." Id. Thus we have outrageous failure to perform, crafty gamesmanship, and admirable deviance. Most lawyer jokes invoke one of these directly or indirectly. Raskin thinks that jokes which can be "understood in two (or three) of [these] perspectives . . . are the very best of the classic[ ] [Jewish jokes]." Id. at 25. The Check in the Coffin is the only lawyer joke that invites analysis in all three of these perspectives.

n90 For examples of jokes indigenous to the legal setting, see *infra* notes 129-30 and accompanying text.

n91 Of the thirteen betrayal jokes listed in the Appendix to this Article, eight (The Check in the Coffin, The Collision and the Flask, Mine Died, Safe Unlocked, Extra \$ 100 Bill, Poisoned You, Trust Me, Repayment during Robbery) were predominantly or frequently told about Jewish protagonists before becoming lawyer jokes. See *infra* Part IV.C.

n92 The displacement of Jews in tendentious jokes is part of a larger post-Holocaust phenomenon of avoidance of joking about Jews, augmented by the more recent spread of "political correctness" taboos on ethnic and racial characteristics as objects of jokes.

n93 The results of this search are summarized in the Appendix. See *infra* Part IV.B-C.

n94 See Christopher Scanlon, That's Not Funny-That's Sick, *St. Petersburg Times*, Dec. 2, 1987, at 1D (interviewing Professor Alan Dundes about the serious side of sick jokes).

n95 Linda Shrives, There Oughtta be a Law against these Jokes-or Should There? *Chi. Trib.*, Aug. 3, 1989, at C1.

n96 Ken Ringle, Lawyer Jokes Abound, and the Defense Objects, *L.A. Times*, Sept. 4, 1989, at V1.

n97 Jack Anderson, U.S. Has Become a Nation of Lawsuits, *Wash. Post*, Jan. 25, 1985, at B8.

n98 Paul W. McCracken, Board of Contributors: The Big Domestic Issues: Slow Growth, *Wall St. J.*, Oct. 4, 1991, at A14. The scholarly counterpart of such rhetoric was the claim of an enterprising economist to ascertain the optimum number of lawyers and determine that each excess lawyer was costing the country one million dollars annually. See Stephen P. Magee et al., Black Hole Tariffs and Endogenous Political Theory: Political Economy in General Equilibrium 111-21 (1989). These claims were cited approvingly at the President's Council on Competitiveness, Agenda for Civil Justice Reform in America 1 (1991) and demolished by serious scholars. See also Frank B. Cross, The First Thing We Do, Let's Kill All the Economists: An Empirical Evaluation of the Effect of Lawyers on the United States Economy and Political System, *70 Tex. L. Rev.* 645 (1992); Charles R. Epp, Do Lawyers Impair Economic Growth?, *17 L. & Soc. Inquiry* 585 (1992).

n99 These campaigns are described in 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 Hayden, *The Cultural Logic of a Political Crisis: Common Sense, Hegemony, and the Great American Liability Insurance Famine of 1986*, 11 *Stud. L., Pol. & Soc.* 95 (1991); Stephen Daniels & Joanne Martin, *Civil Juries and the Politics of Reform* (1995); Jean Stefancic & Richard Delgado, *No Mercy: How Conservative Think Tanks and Foundations Changed America's Social Agenda* (1996).

n100 Commenting on the performance of the criminal justice system in the Simpson trial, a prominent Washington lawyer and former United States assistant attorney general observed: The civil justice system seems equally demented, with freakish punitive damage bonanzas for persons who pour coffee on themselves or ricochet golf balls into their own foreheads. Immense class-action settlements benefit mostly lawyers, while actual victims of misfortune are further victimized by the system to which they turn for relief. *Was Justice Served?*, *Wall St. J.*, Oct. 4, 1995, at A16 (quoting Theodore B. Olson).

n101 See *Lawyer Advertising*, *supra* note 23, at 64-65.

n102 Evidence for this is summarized in Marc Galanter, *News from Nowhere: the Debased Debate on Civil Justice*, 71 *Denv. U. L. Rev.* 77 (1993).

n103 That the earlier foils in the series are victims is even more evident in the other versions of the joke, for example: At a cemetery outside of Buffalo three men—a contractor, a physician, and a lawyer—joined the grieving widow at the services for their dearest friend. The widow asked if each could place an offering in the casket, as this had long been a custom in her husband's family. The contractor nodded his head and then said a short prayer before placing a hundred-dollar bill in the casket. The physician, nearly in tears, also placed a hundred-dollar bill in the casket. Then the lawyer scribbled out a check for three hundred dollars, put it in the casket, and pocketed the two hundred dollars in cash. Jess M. Brallier, *Lawyers and Other Reptiles* 9-10 (1992).

n104 See Galanter & Palay, *supra* note 59.

n105 Cynthia Fuchs Epstein, *Book Review*, *Society*, May/June 1997, at 88, 89 (reviewing Sol M. Linowitz with Michael Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994)).

n106 On the literature of legal nostalgia, see Galanter, *supra* note 30.

n107 A.W.B. Simpson, *Legal Iconoclasts and Legal Ideals*, 58 *U. Cin. L. Rev.* 819, 825 (1990).

n108 Blair S. Walker, *Readers Find Something to Joke about in Lawyers*, *USA Today*, Apr. 1, 1992, at 4B.

n109 *Did You Hear the One About the Lawyer . . . ?* (Indiana University School of Law) (undated, c. late 1991 or early 1992); *We Are Not the Enemy* (Anderson, Kill, Olick & Oshinsky) (undated); *Lawyer Jokes* (Swanson & Gieser, Santa Ana, CA) (1993). A mail-order firm specializing in "products and gifts for lawyers" includes in its Holiday 1997 catalog a large assortment of items based on lawyer jokes for example, T-shirts depicting a shark and inscribed "Trust me/I'm a lawyer." *For Counsel: the Catalog for Lawyers* 24 (1997).

n110 See Christie Davies, *Exploring the Thesis of the Self-deprecating Jewish sense of Humor*, 4 *Humor* 189, 190 (1991).

n111 See D.J. Bennett, *The Psychological Meaning of Anti-Negro Jokes*, *Fact*, Mar.-Apr. 1964, at 55.

n112 Naomi Katz & Eli Katz, Tradition and Adaptation in American Jewish Humor, 84 J. Am. Folklore 215, 219 (1971).

n113 Id. But compare Bennett, who observes: [R]ace and nationality jokes are by far the most popular among the "better" members of the ridiculed group. No one feel the need to be superior to the thickly accented "ghetto" Jew more than the emancipated Jewish bourgeois, and nobody feel the need to separate himself from the ignorant, backward drawling Southern Negro more than the educated middle-class Negro. Bennett, supra note 111, at 56.

n114 Dan Ben-Amos, The "Myth" of Jewish Humor, 32 W. Folklore 112, 129 (1973).

n115 Telephone Interview with Brent Swanson, Esq., in Santa Ana, Cal. (Jan. 27, 1998).

n116 We Are Not the Enemy, supra note 109. The agency that produced this brochure received a special recognition award from the Washington Advertising Club for work that "pushed the envelope on creativity." Carolyn Myles, First-place awards start Addy-ing up for EPB, Wash. Times, Apr. 13, 1992, at B4. The jokes are also featured on the law firm's web site. An administrator at the firm estimated that half the firm's lawyers were offended by the use of the jokes, but they are retained because "clients love it." Telephone interview with Maxa Luppi, Administrator of Anderson, Kill, Olick & Oshinsky, in New York, N.Y. (Feb. 4, 1998).

n117 Christy Davies remarks on the capacity of members of a minority to laugh at their own group in many different ways including those favored by the majority because of the high degree of social . . . differentiation [within the minority] . . . and through the ability of each individual member of a minority group to manipulate and slide between his or her majority and minority reference groups in such a way that the jokes never applies to him or her personally. Davies, supra note 110, at 192.

n118 Gershon Legman, The Rationale of the Dirty Joke: An Analysis of Sexual Humor 13-14 (1968).

n119 Stanley Brandes, Jewish-American Dialect Jokes and Jewish-American Identity, 45 Jewish Soc. Stud. 233, 238 (1983).

n120 Davies, supra note 110, at 202.

n121 Id. Cf. Raskin, supra note 89, at 71-120 (tracing the transformation of stories that began as anti-Semitic jokes about Jews into classic Jewish jokes told by Jews).

n122 Laughing Matters: You Think That's Funny?, Economist, Dec. 20, 1997, at 23.

n123 Peter Shaw, Downward Mobility and Praise Inflation, 33 Society 59 (1996) (emphasis added).

n124 Simpson, supra note 107, at 825-26. This observation fits many sorts of lawyer jokes, including those discussed in this Article. I am less certain that it can be extended to other kinds of lawyer jokes, such as the "death wish" jokes (e.g., what do you call six thousand lawyers as the bottom of the sea) that are currently in vogue.

n125 For a masterful discussion, see generally David Luban, Lawyers and Justice: An Ethical Study (1988), especially chapter nine.

n126 Roger C. Cramton, What Do Lawyer Jokes Tell Us About Lawyers and Lawyering?, 23(1) Cornell L. F. 3, 9 (1996).

n127 Id. at 5.

n128 Id. at 5, 4.

n129 Joey Adams, *Son of Encyclopedia of Humor* 92 (1970). The joke has been current since before 1941.

n130 Evan Esar, *Esar's Joke Dictionary* 253 (1945).

n131 Barbara A. Curran, *American Bar Ass'n and American Bar Found., The Legal Needs of the Public: The Final Report of a National Survey* 234 (1977). A comparable skepticism is displayed by Canadian respondents, who agreed: [H]igher paid lawyers get better results for their clients; that lawyers are always finding loop-holes to get around the law; that lawyers get too many guilty people off; . . . [and] that lawyers do not work as hard for poor clients as for clients who are rich; that lawyers are more interested in making money than in helping their clients. Robert J. Moore, *Reflections of Canadians on the Law and the Legal System: Legal Research Institute Survey of Respondents in Montreal, Toronto and Winnipeg*, in *Law in a Cynical Society? Opinion and Law in the 1980s* 41, 53 (Dale Gibson & Janet K. Baldwin eds., 1985). Similarly, in England, most of those with a view of the matter agreed that "[t]he poor usually get the raw end of the stick in legal matters." Brian Abel-Smith et al., *Legal Problems and the Citizen* 250 (1973). Heavy majorities viewed lawyers as mercenaries: "'Lawyers are mainly interested in making money' and '[f]or a price lawyers will use every trick in the book to help their clients.'" Id. at 249, 250.

n132 Curran, *supra* note 131.

n133 ABC News/Washington Post Survey (June 1985), Search of Westlaw, Directories and Reference Materials, Statistical Data, Poll, Question ID: USACWP.196.R24. When asked which types of people were "not apt to be treated fairly by the law," respondents identified the poor (54%), uneducated (47%), and blacks (33%); only 5% thought "top business executives" were treated unfairly. Indeed, people felt that courts are not sufficiently severe with business offenders. When asked which types of persons "the courts are too lenient with," government officials and top business executives ranked, along with heroin users and frequent offenders, just below dope peddlers. Roper Report 87-7, July 1987 (on file with author).

n134 News Release, U.S. News & World Rep., Jan. 21, 1995 (on file with author).

n135 Much as did the woman lawyer in *The Client* (1994) who enfolds the endangered child client in maternal protectiveness.

n136 In this film too, there is an ambiguous turn away from law practice at the end when the hero decides that his ability to perform by identifying with his clients will eventually lead to his corruption.

n137 In the 1993 NLJ survey, people were asked if a lawyer should represent a client that the lawyer knows is guilty of a crime. Fifty-seven percent answered that the lawyer should undertake the representation and 35% said the lawyer should not. But 62% thought that it would be wrong for a lawyer to "use . . . a technicality to free a client he knows to have committed the crime" and only 31% thought it would be right. NLJ Survey worksheets, questions 20, 21.

n138 Cf. Benjamin Wittes, *Frustrating Targets: Juries Reluctant to Convict Lawyers Who Represent Bad Guys*, *Broward Daily Bus. Rev.*, Nov. 4, 1997, at A1 (explaining that prosecutors find juries unwilling to convict "private lawyers for getting too close to their clients' illegal

conduct"). According to one former U.S. Attorney General, "Juries expect lawyers to be manipulative, creative, and devious . . . . They have an appreciation of the role defense lawyers play. They take a long, deep breath and give these lawyers a wide berth-notwithstanding the fact that lawyers are held in ill repute and there are lawyer jokes." *Id.* at A7.

n139 Differentiation by type of client appeals to some students of legal ethics. Hence David Luban proposes that lawyers should have higher duties of protection toward individual clients than toward organizational ones. Luban, *supra* note 125, at 206-34.

n140 Of course, tendentious interpretation of lawyer jokes is not confined to the political right. A Yale law student, fresh from his summer job, who detects some resonance between the revilement in the jokes and his distaste for the anti-labor work into which he poured his energy and craft, reflects that "[l]awyer jokes . . . proliferate because the structure of the American legal system consistently encourages lawyers to perform work that is profoundly anti-humanist [sic!]." Jonathan Kay, *Behind Lawyers' Jokes*, *Nat'l L.J.*, Jan. 13, 1997, at A15.

n141 Bob Eaton, *No Joking Matter*, *Newsweek*, Sept. 23, 1996, at 20.

n142 For an analysis of jokes (and other expressions of public opinion) about the contingent fee, see Marc Galanter, *Anyone Can Fall Down a Manhole: The Contingency Fee and Its Discontents*, 47 *DePaul L. Rev.* 457 (1998).

n143 The lawyer joke is as follows: A young lawyer in a swank Beverly Hills restaurant spotted J. Paul Getty, the billionaire oil man. The lawyer went over to his table and said, "Mr. Getty, please forgive me for interrupting your lunch, but please Mr. Getty, I'm expecting two of my clients to come in and I would consider it an enormous favor if sometime during our lunch, you could stop by my table and say, 'Hello, Bernie.' You don't know what it would mean to me . . . ." The lawyer returned to his table, where his clients joined him. Getty and his guest were finished and were on their way out of the restaurant when Getty remembered the young lawyer's request. He went back to the lawyer's table and, tapping him on the shoulder, said, "Hello, Bernie." The lawyer said, "not now, Getty, I'm eating . . . ." Harry T. Shafter & Angie Papadakis, *The Howls of Justice: Comedy's Day in Court* 31-32 (1988).

n144 The joke is as follows: Two lawyers are in a bank, when, suddenly, armed robbers burst in. While several of the robbers take the money from the tellers, others line the customers, including the lawyers, up against a wall, and proceed to take

n145 The joke is as follows: A paralegal, an associate and a partner of a prestigious New York law firm are walking though Central Park on their way to lunch when they find an antique oil lamp. They rub it and a Genie comes out in a puff of smoke. The Genie says, "I usually only grant three wishes, so I'll give each of you just one." "Me first, me first," says the paralegal. "I want to be in the Bahamas, driving a speedboat, without a care in the world." Poof. He's gone. In astonishment, "Me next, me next," says the associate. "I want to be in Hawaii, relaxing on the beach with my personal masseuse, an endless supply of pina chelates and the love of my life." Poof. She's gone. "You're next," the Genie says to the partner. The partner says, "I want those two back in the library after lunch." Electronic mail message from Dan Steward (Feb. 28, 1997) (on file with author).

n146 See Milton Berle, *More of the Best of Milton Berle's Private Joke File 274-75* (Milt Rosen ed., 1993).