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# Four Hundred Ways to Avoid Responsibility

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Disordered, Disabled, Dispensed

There is probably never a physical injury without some measurable psychic trauma. . . . The past 30 years . . . have seen the exploitation of this truism in worker's compensation and personal injury litigation . . . resulting in a staggering number of physically fit, mentally competent individuals forever being relieved of responsibility for earning a living—on psychiatric grounds.

Barton J. Blinder, *Abuse of Psychiatric Disability Determination*,  
1979

## **TRADITIONAL FARCE RENEWED**

Psychological farce on the part of both claimant and clinician is hardly unique to injury claims made under recent recovered memory legislation. Oh, no. The first intense flowering of this poisonous blossom took place in the fertile soil of what might be called traditional torts. Recall that by 1989 damages paid out to compensate people for the "loss of the full enjoyment of life" approached \$14 million. Loss of "mental health," according to Jury Verdict Research, Inc., had reached one hundred times that amount by the 1990s.

Teen-age airplane passenger Jarret Halker says he screamed in panic, banged on windows and punched seats after waking up

on a commuter jet—semi-dark, empty and far from the terminal at Logan Airport last summer. . . . Halker . . . and his mother . . . are suing the company and its contract commuter carrier for \$21 million over trauma the [thirteen-year-old] boy says he suffered as a result of the July 15 flight. (Boston Globe, July 31, 1995)

Two residents of a Bronx condominium complex filed suit yesterday, charging they were injured when their newly installed toilets exploded. . . . One of them, 10-year-old Philip Garner, suffered "psychological injuries" when his toilet blew up November 20, said [attorney] O'Dwyer, who is seeking \$2 million for the boy and \$100,000 for his parents. (Mangan, Daily News, December 29, 1995)

A schoolboy was forced to wear a woman's wig, bra and skirt as punishment for talking in class while his teacher looked on and laughed, according to a \$22.5 million lawsuit. [The] punishment left seventh-grader Caleb Guerrier with psychological damage and other personal injuries, the lawsuit charges. (*Legal Intelligencer*, New York, May 25, 1995)

This is my favorite:

A student who accidentally shot a classmate during a law-enforcement class now is suing the community college, Aurora police, and others for \$1 million, claiming their alleged "reckless conduct" caused her emotional distress and mental injury. (Robey, Denver Post, August 18, 1994)

The tremendous growth of psychological injury compensation cases in standard torts led inevitably to a similar pattern of growth wherever the ground proved fertile. And nowhere in the American legal terrain has the ground proved more fertile or opportunities more plentiful than in the area of evolving social welfare law.

Consider race discrimination. Congress outlawed it in 1964 and the American Psychiatric Association has since pathologized it—not for the racist, quite yet, but certainly for the victim.

The Massachusetts Commission Against Discrimination yesterday ordered the town of Freetown to pay \$250,000 to a black police sergeant for emotional distress he underwent after he was passed up for promotion almost nine years ago. The award is the largest ever ordered by the commission for emotional distress in a racial discrimination case. The officer, Detective Sgt. Alan L. Alves, who is of Cape Verdean ancestry, also was awarded \$13,500 in back pay. (Hunger, *Boston Globe*, June 21, 1996)

So, over a nine-year period, the failure to be granted the promotion cost him \$1,500 a year before taxes in salary, but it also "cost" him almost \$28,000 a year in emotional distress? There seem to be no reasonable limits to calculating the incalculable.

Exactly the same pattern of payment occurs in sexual harassment and discrimination suits. The actual tangible damages—however wrongly inflicted—are often slight, but the alleged intangible damages like emotional and mental injuries are judged to be great indeed.

Still, however great the field of operation afforded the psychological injury evaluator by standard civil rights law touching on race and sex discrimination, nothing exceeds the expansion of opportunities created by the Americans with Disabilities Act. It cannot be denied that for the attorney and the clinical psychologist with active imaginations the growth of case possibilities in both scope and size of award has been, even by traditional tort standards, truly phenomenal.

#### **ANTI-DISCRIMINATION LAW AND DISPENSATION FOR THE DISABLED**

The Americans with Disabilities Act was signed into law by President George Bush in the summer of 1990. It represented both an expansion and an updating of the federal Rehabilitation Act of 1973 and of Title VII of the federal Civil Rights Act of 1964.

The intent of the law—if not its particulars and ramifications—was clear: Congress wished to end employment discrimination against the handicapped based not on genuine inability of workers to do the job but on negative attitudes of employers, and to open access for the handicapped in the arenas of public accommodations and