

Chronicling the high cost of our legal system

Overlawyered

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LA Weekly: The Mold Rush and the case of Sharon Kramer and Bruce Kelman

» by [Ted Frank](#)

Welcome LA Weekly readers; this website is mentioned and I am quoted in a less-than-entirely-coherent story about mold litigation in [this week's LA Weekly](#). The story focuses on Sharon Kramer, who has given up a full-time career to pound the drums over her fight with her insurer alleging mold harms after a remediation; and an unfortunate lawsuit brought by scientist Bruce Kelman against Kramer. Kelman only wants an apology from Kramer for her issuing a press release that falsely claimed he lied under oath; Kramer has refused, and Kelman is still stuck in litigation where he will likely come up with a Pyrrhic victory. (Kelman's work writing a [layperson's guide to the science of mold for the Manhattan Institute](#) is central to the libel allegations.) Kramer, meanwhile, blames her aging on exposure to mold, rather than, say, turning 56. The story suffers for treating [Erin Brockovich](#) as the archetype of a justified plaintiff; [Overlawyered readers know better](#).

The story is worthwhile for one new tidbit of information, the poetic justice facing Ed McMahon for his [bogus mold lawsuit](#):

In 2003, another raft of huge mold news stories broke nationwide, and Kramer paid close attention. The most famous, and strangest, was that of Johnny Carson's sidekick Ed McMahon, who took a \$7.2 million settlement after suing for \$20 million in his claim that mold made him and his wife sick — and killed his sheepdog, Muffin. ...

In the McMahon case, some see the tragic unraveling of a popular public figure egged on by an attorney, Allan Browne. No hard, scientific evidence was ever made public proving that McMahon or his dog suffered the specific mold allergies and immune-system problems that, in rare cases, can be set off by household mold.

Since then, McMahon has become a sad figure, with a series of new troubles, including his default this year on his palatial 7,000-square-foot home on Mulholland Drive, involving a \$4.8 million loan from the infamous lender Countrywide. And he just sued again, bizarrely accusing investment tycoon Robert Day of having in his mansion a poorly lit staircase on which McMahon says he fell during a party last year. McMahon is belatedly alleging he broke his neck but that doctors missed it.

The longtime TV pitchman spent years convincing the courts and the general public that his home contained rampant, poisonous, deadly mold strong enough to fell a large dog. McMahon talked it up for so long that he now faces the daunting task of selling a home he can no longer afford, that people believe is riddled with toxins.

Also interesting to me is the story's quote of me. I gave an e-mail interview to the author, Daniel Heimpel in February. It's interesting what gets used and what doesn't get used, so I am going to attach the entire interview.

Here's the full February 28 interview:

Why did the mold litigation blob form?

Entrepreneurial lawyers saw an opportunity to use junk science to blame deep pockets for a variety of idiopathic diseases. We saw it with powerlines, we saw it with Bendectin, we still see it with vaccines. Every once in a while, trial lawyers completely fool the legal system, and make billions with one of these theories, as they did with silicone breast implants. "Toxic mold" was just another stab at the litigation lottery.

Why has it ebbed?

Has it ebbed? I still see reports of an occasional verdict, including a [big \\$22 million settlement in 2005](#), and there were thousands of cases pending when I last saw it. Rep. Conyers just introduced legislation on "toxic mold" last year, so someone is still lobbying about it. Rationally, it **should** have ebbed, because the toxic mold suits are meritless. The most notorious for-hire plaintiffs' mold expert, [Gary Ordog](#), was disciplined in 2006, which likely ended his \$975/hour litigation consulting career, and likely a number of cases built around his testimony. Together with NIH, Institute of Medicine, and CDC reports, and insurance policies that more explicitly excluded recovery based on theories of injury from mold, and tort reforms in Texas, where mold litigation was the biggest business, plaintiffs' lawyers may have sought, er, greener pastures.

How does the fear of mold tie into our culture of fear?

What does this fear of an enigma say about our society?

Fascinating, isn't it? We coexist with mold for thousands of years. My friend, Walter Olson of the Manhattan Institute has said sarcastically "How unfortunate must we be to live in the twenty-first century, when plaintiffs' lawyers have discovered the terrible health effects!"

Economic incentives have a lot to do with it: trial lawyers have an economic incentive to describe something relatively innocuous—vaccines, mold, powerlines, silicone breast implants, Bendectin—as something deadly and fit it into the fictional Erin Brockovich paradigm, which appeals to jurors' preconceived notions. (Erin Brockovich herself has brought a number of bogus lawsuits trying to invoke this paradigm—including over mold.) Low-quality scientists of a variety of levels of sincerity are given the economic incentive to take the same position. Journalists have the economic incentive to tell a story that fits the paradigm whether or not it's true, because the victims-and-villains storyline that could affect the viewer attracts eyeballs. The three work together symbiotically: the expert witness feeds stories to the lawyer and vice versa; the lawyer feeds stories to the journalist with the expert; the journalist creates publicity that generates business for the lawyer and the expert witness, which in turn creates more stories for the journalist.

The culture of fear is a lot larger than that (others take advantage of it), but I think the reason it is so much larger in America is because only here do we make people millionaires for inventing new things to be afraid of.

Who has made the most money off the mold litigation blob?

Attorneys, though the "mold remediation" business may well have done pretty well for itself.

And here's how it was translated in the news story:

A lot of people are pulling for Kelman — to the great shock of Kramer, long accustomed to being the Brockovichesque heroine. Ted Frank, a lawyer and contributor at overlawyered.com, a Web site that tracks suspect litigation, says, "Entrepreneurial lawyers saw an opportunity to use junk science. ... We saw it with power lines, we saw it with Bendectine" — a discontinued drug used to lessen morning sickness in pregnant women. "Every once in a while, trial lawyers completely fool the legal system and make billions with one of these theories, as they did with silicone breast implants. 'Toxic mold' was just another stab at the litigation lottery."

I wasn't asked at all about Kelman and Kramer, but am portrayed as having an opinion about it. And my observations about Brockovich and vaccines were deleted. Note also that "Bendectin" was misspelled, though I spelled it correctly.

As mildly annoyed as I am about the story, Sharon Kramer is furious for being treated as anything less than a heroic martyr, and has had an army of supporters leaving angry comments at the LA Weekly website.