

DISTORTING THE LAW

Politics, Media, and the Litigation Crisis

WILLIAM HALTOM AND MICHAEL MCCANN

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From Michael,
to Donna, with love and devotion always

From Bill,
to three women who agreeably but insistently speak their minds:
Patricia Anderson, Carolyn Haltom, and Karen Porter

CHAPTER SIX

Java Jive: Genealogy of a Juridical Icon

Woman Burned by Hot McDonald's Coffee Gets \$2.9 Million

AP WIRE HEADLINE

When Stella Liebeck fumbled her coffee cup . . . she might as well have bought a winning lottery ticket. . . . This absurd judgment is a stunning illustration of what is wrong with America's civil justice system.

SAN DIEGO TRIBUNE

Oh, I can be quite litigious.

SEINFELD'S COSMO KRAMER, SUING FOR HOT COFFEE BURNS

Top Ten List—Blizzard Safety Tips . . . 8. Clear snow off driveway with just one scalding hot cup of McDonald's coffee.

THE LATE SHOW WITH DAVID LETTERMAN

"Dude!"

TELEVISION AUTO AD SHOWING YOUTHS HOLDING CUPS OF HOT COFFEE IN A VEHICLE TRAVERSING BUMPS

On Sunday, January 2, 2000, the front page of the *New York Times* "Arts and Leisure" section featured a long article in which comic Steve Martin ruminated about his dilemma of just "exactly what to celebrate on December 31, 1999." Martin's witty meditation, titled "The Third Millennium: So Far, So Good," began with a "A Short History of Thought," in which the author urged readers to "think of poor Socrates, with his simple answer to the question 'What is justice?'" There was no way for him to have foreseen a jury's \$3 million payout to a McDonald's customer who spilled a cup of too-hot coffee in her lap" (Martin 2000). Martin's joke turned on the

absurdity that the legal damages awarded to octogenarian Stella Liebeck in 1994 for injuries resulting from an everyday occurrence represented twenty-five hundred years of human progress in thinking about justice. The wry juxtaposition worked, of course, only to the extent that Martin's reference to the jury verdict over five years earlier still resonated clearly among readers of the newspaper.¹

Martin had a sure bet. The case involving burns from McDonald's coffee is likely responsible for more of the everyday knowledge about the U.S. justice system than any other lawsuit. This chapter addresses how constructions in the courtroom, the press, and mass culture transformed the complaint of a badly burned plaintiff into a personification of runaway litigiousness. We illustrate in particular the institutional propensities and power of the media, which almost single-handedly made this story into a mass cultural symbol of the lawsuit crisis. Initial media reports of the coffee case were not merely homologous in form and content to tort tales, as discussed in the preceding chapter; news coverage from the start was ready-made, needing little trim and spin, to launch the most infamous of all tort tales. We recognize as well the instrumental role of tort reformers in the larger process, although they were more the beneficiaries of the media phenomenon than its agents. Finally, we develop further the ideological dimensions of the story that focused on the suspect character and motives of plaintiff Stella Liebeck and her attorney. Our analysis makes clear how the travails of a low-income retired woman were rendered as a pithy homily condemning individual recklessness, blame avoidance, and greed.²

The aim of our inquiry is not to argue that the trial judgment, award, or even settlement were, in fact, more just than the conventional media wisdom dictated. Rather, our point is that media coverage and analysis made any rational discussion of the dispute and the policy issues it raises virtually impossible, while providing a powerful boost to the dubious general claims of a partisan political reform movement (see chapter 2). Our analysis begins with a detailed narrative outlining the facts, evidence, and arguments made available by reports of the trial. We then track the story's simplification and amplification in subsequent newspaper coverage, from initial spot news reporting of the award through coverage and commentary in subsequent phases, to show how journalism and jocularly made

1. Martin's assertion about a "\$3 million payout" highlights the type of popular misinformation that has circulated about this case, as we document below.

2. There is no small irony in the fact that the same legal logic that individualizes responsibility and commodifies the mechanisms of relief for injury can be turned toward characterizing rights claimants as rapacious and irresponsible individuals. See Abel 1989.

Stella an icon and her lawsuit a tort tale. Along the way, we look at how initial print news coverage primed increasingly satirical editorials, television and radio news, television talk shows and late-night comedy shows, sitcoms, movies, corporate advertisements, and the like. The case study provides a fuller picture about how media constructions spread throughout mass culture and became available, accessible, adaptable, and actionable apocrypha.

THE DEVELOPMENT OF A LEGAL DISPUTE

The disputing framework outlined in chapter 3 is useful here for organizing our review of the actual legal dispute. We thus begin with the initial incident and then trace the evolution of the dispute through the stages of grievance, claiming, lawyer involvement, filed claims, trial, and post-trial settlement. Along the way, we emphasize the key facts and interpretive accounts by which the dispute was waged among the growing list of actors (see Miller and Sarat 1980-81; Mather and Yngvesson 1980-81).

A Grievant Becomes a Claimant: Stella Liebeck Seeks Recompense

On February 27, 1992, seventy-nine-year-old Stella Liebeck purchased a cup of coffee from a drive-through window at an Albuquerque McDonald's. She was sitting in the front passenger seat of a Ford Probe driven by her grandson, Chris Tiano, who had pulled away from the window and fully stopped by a curb in the parking lot. Liebeck tried to remove the cup's lid to add sugar and cream. Lacking a flat surface inside the small car, she placed the coffee between her legs to free up both her hands for prying off the lid. As the lid came off, the Styrofoam cup tipped, spilling all the coffee into her lap, where it was rapidly soaked up by her sweatpants.³ Ms. Liebeck screamed in pain, but Mr. Tiano did not understand, later relating that it at first seemed to be "no big deal." "When it happened, I thought, well, you know, we spilled a cup of coffee; it's basically our fault. You know it was our clumsiness that spilled the coffee." After all, spilling coffee or some other hot liquid on oneself is a relatively common occurrence; "it was just a scald," he said repeatedly in his deposition.⁴

The grandson then proceeded to drive out of the parking lot, until a minute later when his grandmother became quite nauseous, and he suspected she was in shock. Now realizing that the incident was serious, he

3. Liebeck's letter to McDonald's estimated that the spill took place less than four minutes after the coffee was served to her. Authors' files.

4. Authors' files.

pulled over to the side of the road, helped her out of the car, aided her in removing the sweatpants, and covered her with a sheet from the car's trunk. Mr. Tiano headed for the nearest hospital, which was full, and then made his way to a second hospital, where Liebeck was admitted. Doctors determined that the hot coffee had caused third-degree burns on her thighs, buttocks, genitals, and groin area—about 6 percent of her body—and lesser burns that eventually left permanent scarring over 16 percent of her body. Third-degree burns are extreme injuries in that they penetrate through the full thickness of the skin to the fat, muscle, and bone. Stella Liebeck stayed in the hospital for over a week, where she was treated by a vascular surgeon and eventually subjected to a regimen of very painful skin grafts. The surgeon, Dr. Arredondo, reported that her injuries added up to one of the worst burn cases from hot liquids he had ever treated. Due to the mounting medical costs, Liebeck left the hospital earlier than recommended and had to be driven back to the doctor for medical treatment many days by her daughter, who was forced to take time off from work. Liebeck suffered great discomfort, lost over twenty pounds, was permanently disfigured, and was partially disabled for up to two years following the accident.

A recently retired department store salesclerk and member of a long-time Republican family, Stella Liebeck had never filed a lawsuit in her life and did not immediately seek relief with the aid of a lawyer, judge, or jury. But she also was aware that a simple coffee spill should not have caused such extensive injuries. Liebeck turned her *injury* into a *grievance* with a letter sent to the corporate offices of McDonald's Restaurants on March 13, 1992, two weeks after the incident. She wrote:

It seems to me that no person would find it reasonable to have been given coffee so hot that it would do the severe damage it did to my skin. Obviously, it was undrinkable in that it would have burnt my mouth. It seems that the reasonable expectation for a spilling accident would be a mess and a reddening of the skin at worst. . . . Although I did the spilling, I had no warning that the coffee was that hot. It should never have been given to a customer at that temperature.

In terms familiar from our Disputing Pyramid in chapter 3, Liebeck acknowledged that she was responsible for the accident but translated her *grievance* into a *claim* about a dangerously defective product that caused severe injuries for which, she averred, the McDonald's Corporation was at least somewhat liable. Liebeck's initial letter made it clear that she had "no intention of suing or asking for unreasonable recompense." Instead, she asked the corporation (1) to check the coffee machine and coffee-making

process to see if they were faulty; (2) to reevaluate the temperature standards for coffee served to customers, for others must have been severely injured as well; and (3) to cover medical, recuperation, and incidental costs related to her injuries that were not covered by Medicare, which initially were left unspecified because the medical treatment at that time was far from over. Later estimates for incurred costs have varied in different accounts, but they hovered around \$10,000 to \$15,000 for medical bills, plus other directly related expenditures, for a total of around \$20,000. After six months of claiming without the counsel of a lawyer, however, Liebeck's request for a change in policy on McDonald's part was rejected, and the company offered only \$800 for personal compensation. In terms of the Disputing Pyramid, Liebeck's *grievance* was now a *dispute*.

A Claimant Becomes a Litigant: Lawyers Attempt to Settle the Dispute

Frustrated by her inability to secure compensation for the physical and financial harm wrought by the scalding accident, Liebeck moved up the pyramid and sought counsel. In the fall of 1992, she retained Kenneth R. Wagner and Associates, an Albuquerque law firm. Through a legal assistant at the firm, Wagner learned of S. Reed Morgan, a Houston attorney who had settled a similar case against McDonald's involving scalding coffee (for \$27,500) in the late 1980s. Morgan was contacted and agreed to take on Liebeck's cause, in part because he had been angered by what he saw as callous indifference displayed by the corporation in the previous dispute. Morgan quickly issued a formal request for \$90,000 to cover Liebeck's medical expenses as well as pain and suffering. His amended claim fared no better than Stella's original claim, however, and was dismissed by McDonald's.

Morgan *filed a formal complaint* on behalf of Stella Liebeck in the Second Judicial District Court, County of Bernalillo, New Mexico. The complaint alleged that the coffee that Liebeck purchased from McDonald's in 1992 was excessively, dangerously hot and that inadequate warnings were provided regarding the risks posed by the hot coffee. The key legal claim was that the coffee breached warranties of fitness for its intended purpose of consumption under the Uniform Commercial Code. Along with the claim for compensatory damages, punitive damages were requested on the reasoning that McDonald's sold the coffee with reckless indifference to the safety and welfare of its customers. Once the trial date was set, Morgan offered to settle the case for \$300,000, with no success. He later acknowledged that he would have settled for rather less, perhaps half as much.

Just a few days before the trial, Judge Robert H. Scott ordered the disputing parties to participate in a mediation session. Based on earlier cases

and a projection of what a jury would likely award, the mediator recommended a settlement at \$225,000.⁵ Once again, however, the McDonald's mega-corporation refused the opportunity to negotiate a settlement. The trial commenced in the second week of August 1994.

A Litigant Becomes a Plaintiff: The Legal Contest to Define Reality

The trial produced relatively few important disagreements regarding the facts of the case. McDonald's did not contest that the coffee was very hot or that hot coffee can scald customers. For her part, Stella Liebeck did not contest that she spilled the coffee on herself or that she was responsible for the accident. While the adversaries disagreed about some details, those issues by themselves could not determine a just outcome. Rather, the case turned on contending interpretive arguments, or narratives, devised by each side to select, support, and make sense of the evidence in a coherent, compelling way. Indeed, civil disputes typically can be understood in terms of contending "causal stories" that attempt to identify different levels of responsibility or fault among different parties (Stone 1998; Conley and O'Barr 1990). The two interpretive accounts formulated by opposing counsel in Stella's lawsuit against McDonald's were as follows.

Attorneys for Liebeck systematically sought to present the jury with a coherent and compelling interpretation of the accident that focused on the inordinately hot coffee produced and sold by McDonald's. This *defective products liability narrative* combined basics of products liability law with supporting legal themes suitable to the circumstances surrounding the accident. The relevant products liability law came straight from the Uniform Commercial Code's implied warranties of merchantability and fitness. Attorney Morgan confirmed that the plaintiff had relied on fundamental business law: "The heart of the case [was that] the product was defectively designed. . . . It wasn't a negligence case. We didn't even plead negligence. Just products liability. . . . The individual responsibility is not the issue. The product is unreasonably dangerous."⁶ Media coverage would consistently state that Liebeck contended that the spill was McDonald's fault. In fact, she claimed instead that McDonald's had failed to abide by standards that many or most businesses must meet.

To complement the implied warranties, plaintiff Liebeck marshaled supporting themes. The *first* theme acknowledged that, while coffee spills were routine events, Liebeck's injuries were extremely atypical due to Mc-

Donald's dangerously hot coffee. This factual contention challenged McDonald's adherence to the implied warranties discussed above, a challenge that was established by several points. Liebeck's attorney presented as evidence a McDonald's manual specifying that coffee should be made at temperatures between 195 and 205 degrees, and served at temperatures between 180 and 190 degrees. Morgan then introduced testimony by two renowned experts—Dr. Kenneth Diller, chairman of the Department of Mechanical Engineering and Bio-Mechanical Engineering at the University of Texas, and Dr. Charles Baxter of Southwestern Medical School and the Baxter Wound Center—regarding the severe burns that such hot coffee inflicts. Specifically, they confirmed that liquids between 180 and 190 degrees cause full thickness, third-degree, highly painful and disfiguring burns in less than seven seconds, which in many cases is before spilled coffee can be wiped off or clothing can be removed. The time that it takes for liquids to burn skin with equal severity increases greatly as the temperature descends. Liebeck testified about the extent of her painful injuries to illustrate this point, and graphic pictures of her severely burned and scarred skin were introduced along with her doctor's statements to show the damage that the extremely hot coffee caused in only a few seconds—four minutes, Liebeck stated, after purchase. In addition to the testimony by the plaintiff and her experts, a McDonald's quality assurance supervisor admitted that McDonald's served coffee that would scald:

REED MORGAN: [Y]ou know, as a matter of fact, that coffee is a hazard, selling it at 180 to 190 degrees, don't you?

CHRISTOPHER APPELTON: I have testified before, the fact that this coffee can cause burns.

MORGAN: It is hazardous at this temperature?

APPLETON: At that high temperature the coffee is a hazard.

MORGAN: If customers attempt to swallow that coffee, isn't it a fact that it will scald their throat or esophagus?

APPLETON: Yes, under those conditions, if they could get the coffee in their throat, that could happen, yes.⁷

A *second* theme in the products liability frame was that most customers are not aware of the danger posed by coffee as hot as McDonald's serves. This theme was important to underscore the contention that McDonald's was vending an unfit product to customers who could not be presumed to know about or make provision for the coffee's extreme temperature. Morgan used two studies—one by a restaurant services consultant show-

5. Morgan had provided evidence of a California woman scalded by coffee who was awarded \$280,000.

6. Interview with S. Reed Morgan. Authors' files.

7. Trial transcript, authors' files. See Nader and Smith 1996, 719.

ing that home coffeemakers brew coffee at 158–68 degrees and hold it at 150–57 degrees after three minutes; the other from his earlier case showing that McDonald's served their coffee at temperatures well above most other fast food restaurants—to demonstrate that McDonald's coffee was significantly hotter than most coffee that consumers make for themselves or purchase elsewhere. This was critical, for while Liebeck admitted to spilling the coffee on herself, she had no reasonable expectation that it would be so unusually hot and dangerous. Another expert for the plaintiff testified in support of this contention.⁸

The *third* critical theme used to complement plaintiff's interpretive account of the event was that McDonald's knew their customers were unaware of the dangers posed by its hot coffee. Evidence was submitted that McDonald's had received over seven hundred complaints about hot coffee in the previous decade and had paid out nearly three quarters of a million dollars to settle such claims, including some payments of up to \$66,000. The case settled by Reed Morgan in the late 1980s, in which graphic evidence of third-degree burns was presented, was just one of such complaints. To rebut this contention, Dr. Robert Knaff, a safety consultant for McDonald's, testified that seven hundred complaints of burns were statistically tiny relative to the large number of customers served.

Finally, counsel for the plaintiff alleged that McDonald's displayed reckless indifference to their customers' safety by doing nothing either to reduce the heat of coffee known to be dangerous or to provide adequate warning to customers. Morgan noted that a message (CAUTION: CONTENTS HOT) appeared on the cup, but pointed out that it was difficult to read because it was the same color and size as the ornamental trim on the cup.⁹ McDonald's admitted that the message was intended more as a "reminder" than as a warning. What is more, the plaintiff urged, the motive that trumped the corporation's concerns for safety was well documented: the desire to lure more customers, to sell more coffee, and to earn greater profits. By emphasizing this pecuniary motive, attorneys for the plaintiff thus sought to strip the mega-corporation of its family-friendly marketing hype and to expose a fearsome Goliath that the David-like plaintiff was challenging.

More than plaintiff's arguments alone supported this final theme.

8. The deposition by Chris Tiano, Stella's grandson, is evidence that most consumers do not know of the dangers at stake. He indicated he could not imagine the severity of injury suffered by his grandmother even while witnessing her screams of pain. Author's files.

9. Chris Tiano said in his deposition that there was no warning on the cup, underlining how difficult it was to see and read the words. Author's files.

Christopher Appleton, having testified that McDonald's coffee was not "fit for consumption" when served, further admitted that he had been shown the injurious effects of hot coffee in the earlier case presented by Reed Morgan, but the company still did nothing.

REED MORGAN: Isn't it a fact that back in 1988, when I showed you the pictures of the young lady that was burned in that situation, that you were appalled and surprised that coffee could cause that kind of burn?

CHRISTOPHER APPLETON: Yes, I had never seen photographs like that before.

MORGAN: All right. In those six years, you still have not attempted, yourself, or know of anyone within the corporation that has attempted to find out the rate of speed, the lack of margin of safety in serving coffee at this temperature right . . .

APPLETON: No, we have not.¹⁰

Appleton further acknowledged that the McDonald's corporation did not have a systematic mechanism for keeping track of the severity of injuries caused by its products or for determining when a sufficient number of people were injured to justify lowering the heat of the coffee they serve; most such information was only known by the company's insurance agency. He unabashedly acknowledged that "there are more serious dangers in restaurants" than hot coffee and "there is no current plan to change the procedure [for making coffee] that we're using in that regard now."

Reed Morgan presented all such testimony to support his request for punitive damages in light of McDonald's callous indifference to the safety of its customers. The closing argument by the plaintiff's lawyers noted that McDonald's sells over a billion cups of coffee a year, which generates daily revenues of \$1.35 million; payment of two days' revenue from coffee might constitute a reasonable basis for punitive damages. As attorney Ken Wagner later summarized, "We said in order to send a message, you have to penalize them financially before the message will get to corporate headquarters in respect to serving coffee at this temperature."

Defendant McDonald's conceded many facts at the core of the plaintiff's products liability frame but countered by emphasizing different facts framed in an alternative interpretive story about the incident. The company responded that people spill coffee on themselves all the time but don't expect others to take responsibility for the outcomes, however ter-

10. Nader and Smith 1996, 720.

rible. In short, a commonplace event like a coffee spill merited a common-sense response, the same one Chris Tiano immediately had: the spill was the fault of his grandmother, not the McDonald's Corporation.

The defense organized its own evidence to support this narrative. *First*, the defense appealed to the ethic of individual responsibility deeply rooted in American culture. Stella Liebeck, not McDonald's, spilled the coffee that resulted in injuries; she must accept the blame. It was relevant that Liebeck's own letter of March 13 admitted that she had spilled the coffee on herself. Noting that the placement of a cup of hot coffee between her knees while sitting in the car and the failure to remove her clothes immediately were "unwise," defense attorneys insisted that Stella should accept responsibility for the lamentable accident.

A *second* theme was directly aimed at challenging the plaintiff's key scientific point regarding proximate cause of the injury. McDonald's presented an affidavit from Turner M. Osler, a burn specialist, contending that Liebeck might have received the same burns if the coffee had been less hot, even as low as 130 degrees.¹¹ Major reasons for the bad burns in this case, the expert testified, included Liebeck's advanced age and her failure to remove in a timely fashion her clothing soaked with the coffee.

A *third* theme turned on the question of "Why pick on us?" The attorneys for McDonald's argued that systematic marketing studies, presented as evidence, showed that customers prefer their coffee very hot. In fact, this was one of the most appealing traits of McCoffee. Most customers don't drink the coffee immediately after purchase at drive-through windows, but typically wait until they arrive at the office or home. At the same time, it was shown that some other restaurants, and especially those leading in coffee sales, tend to serve their coffee at nearly the same high temperature as McDonald's. Indeed, McDonald's provided evidence that their specifications followed industry standards. Experts for the defense also testified about the highly quality of insulation in their cups and the special plastic tab on the tops of coffee cups that reduce the chance of spilling. Far from being insensitive to customers, the defense contended, McDonald's hot coffee served in state-of-the-art containers was just what the public wanted.

Finally, the defense attorneys played on a theme at the heart of the tort reform campaign, implying that Stella Liebeck's claim was an example of a litigious plaintiff seeking damages for harms that she, however unfortu-

nately, caused to herself. Attorney Tracy McGee summarized this assessment of her lawsuit to *Newsweek* reporters. "The real question . . . is how far you want our society to go to restrict what most of us enjoy and accept." McGee fended off the plaintiff's attempt to introduce evidence from previous scalding litigation by deriding the claims: "First person accounts of sundry women whose nether regions have been scorched by McDonald's coffee might well be worthy of Oprah. . . . But they have no place in a court of law" (Gerlin 1994, A1, A4). Each theme of the defense's interpretive narrative used notions of fairness and common sense to support its key assertion of individual responsibility, as opposed to the strict letter of business law.

A Plaintiff Becomes a Victor: Jurors Accept Most of Stella Liebeck's Account

After a tedious trial over seven days, the jurors took but four hours to reach their verdict: McDonald's Restaurants owed Ms. Liebeck \$160,000 in compensatory damages and about \$2.7 million in punitive damages. In calculating compensatory damages, the jury synthesized the contrasting claims and frames into a slightly mixed verdict. The jury agreed with the defense that Stella Liebeck was responsible for her accident, but only to a degree—namely, 20 percent. Assessing the expenses, pain and suffering, disfigurement, and immobility consequent to the accident, jurors awarded compensatory damages of \$200,000 for the accident. Since they held Ms. Liebeck to be 20 percent responsible for her accident, the jury then discounted the compensatory award by \$40,000 (one-fifth of \$200,000), which left the plaintiff \$160,000 in compensatory damages. Jurors had come to see McDonald's coffee as a product made hazardous by extreme heat, a dangerous brew for which the corporation had to bear primary liability even if Ms. Liebeck was partly responsible for her own injuries.

Beyond specific damages, jurors had come to see the Liebeck episode as an example of a stream of dangerously hot coffee flowing from drive-throughs and across counters. Jurors accepted the plaintiff's characterization: McDonald's and other outlets that serve steaming coffee were recklessly indifferent to consumers' safety. To dissuade McDonald's and others from continuing their willful indifference, the jury granted the punitive award—damages designed to deter a wrongdoer from continued wrongful conduct—that Liebeck's lawyers had recommended: \$2.7 million, based on an estimate of two days' revenues from coffee sales at McDonald's restaurants nationwide. Remarkably, the award that would set off alarms among editorialists and other professional chatterers had been scaled back from

11. The plaintiff's attorney challenged Osler testimony, arguing that he left out of his account the significantly varying amounts of exposure time required for extreme burns by liquids at different temperatures.

several jurors' arguments for awarding a full week's coffee grosses at McDonald's, around \$9.6 million (Gerlin 1994)!

As always, public indications of the logic behind the jurors' judgment were sparse. Still, we know that jurors were convinced by the key themes of the plaintiff's narrative about corporate liability for a defective product. Jurors who spoke to interviewers frankly admitted that they initially thought the case was a waste of their time. For example, jury foreman Jerry Goens told a reporter that he "wasn't convinced as to why I need to be there to settle a coffee spill," implying his predisposition toward the "individual responsibility" narrative of the defense before the trial (Gerlin 1994). Another juror felt insulted. "The whole thing sounded ridiculous to me" (Press 1995, 35).¹² But the plaintiff's attorneys' construction of the case changed their minds. Several jurors commented on the strength of the scientific evidence regarding how quickly 180-degree coffee burns skin as well as the graphic photos of Liebeck's injuries. Juror Jack Elliott concluded from the testimony by a McDonald's quality assurance executive that McDonald's was profoundly indifferent to burns and suffering (Gerlin 1994, A4). Juror Betty Farnham was so unimpressed by the defense's claim that seven hundred complaints were trivial relative to the millions of cups that McDonald's served that she began to doubt that the corporation could see the human suffering underlying the statistics. "The facts were so overwhelmingly against the company. They were not taking care of their customers" (Gerlin 1994, A1). Another juror justified the punitive damages as a way to "get McDonald's attention. Their callous disregard was very upsetting" (Nader and Smith 1996, 270). Indeed, the plaintiff won over the jury to such an extent that their judgment was meant to extend beyond the immediate defendant. Juror Richard Anglada stated that the punitive damages were aimed at all restaurants that served too-hot coffee: "The coffee's too hot out there. This happened to be McDonald's." Juror Roxanne Bell echoed the point, recalling "It was our way of saying, 'Hey, open your eyes. People are getting burned'" (Press 1995, 34).

Not surprisingly, the attorneys for McDonald's promised to appeal the case. There is evidence, however, that some in the corporation took the verdict to heart, at least initially. An Albuquerque news investigator reported that the temperature of coffee at a local McDonald's shortly after the trial fell to 158 degrees. Moreover, the lids of coffee cups began to carry the clear warning "HOT! HOT! HOT," and admonitions that "Coffee, tea, and hot chocolate are VERY HOT!" soon were routinely posted at most McDonald's drive-throughs.

12. Attorney Reed Morgan confirmed this in an interview. "The first thing they [the jury] had to get over was they thought it was a silly case." Authors' file.

A Victory Becomes Less Spectacular: Judge Reduces the Punitive Damages

Trial judge Robert H. Scott on September 14, 1994, reduced the punitive damages from nearly \$2.7 million to \$480,000, somewhat ironically using the tort reformers' own formula of "three times the awarded compensatory damages" as the upper limit. He did not set aside the verdict or adjust compensatory damages, however. Instead, he agreed with the jurors on key findings. Judge Scott concurred that testimony and evidence showed that McDonald's knew or should have known that its coffee was too hot and unfit for consumption, that McDonald's and its employees were indifferent to consumer safety, and that McDonald's undertook inadequate efforts to warn its customers. He stated that the punitive damages were an appropriate means to deter, punish, and warn McDonald's (Nader and Smith 1996, 272). Judge Scott then ordered another conference (as he had done before the trial) that produced a final confidential settlement for an undisclosed amount, after Morgan's appeal challenging the reduced damages was denied.

In sum, the legal narrative of Stella Liebeck's grievance and claim regarding a defective, dangerous coffee product won hands down in a court of law, even though the award she received was less than one-fifth of that initially authorized by the jury.

THE PRINT MEDIA CONSTRUCT A LEGAL LEGEND: INITIAL ACCOUNTS

Evidence presented in chapter 5 gives us reason to expect that newspapers would reconstruct the McDonald's coffee dispute to match standard understandings of *news worth*: easy-to-understand specifics, personalized conflict, and sensationalized results would garner far more coverage than insightful observations about the complexities of events, of disputing case history, of multicausal relations, and of the legal process. As a result, important facts and interpretations critical to the jury would be slighted or left out altogether. Moreover, we had reason to expect that less familiar story lines would receive little attention while well-known scripts would serve as defaults for journalists and readers alike. Specifically, we anticipated that the subtle elements of the plaintiff's legally successful but technically complex product liability narrative would take a back seat to the culturally pervasive narrative of individual responsibility that jurors largely rejected as less apt. Finally, we surmised that fragmentary accounts and misleading factoids would facilitate intercessions by reform-oriented and reform-influenced commentators to spin the case as another instance

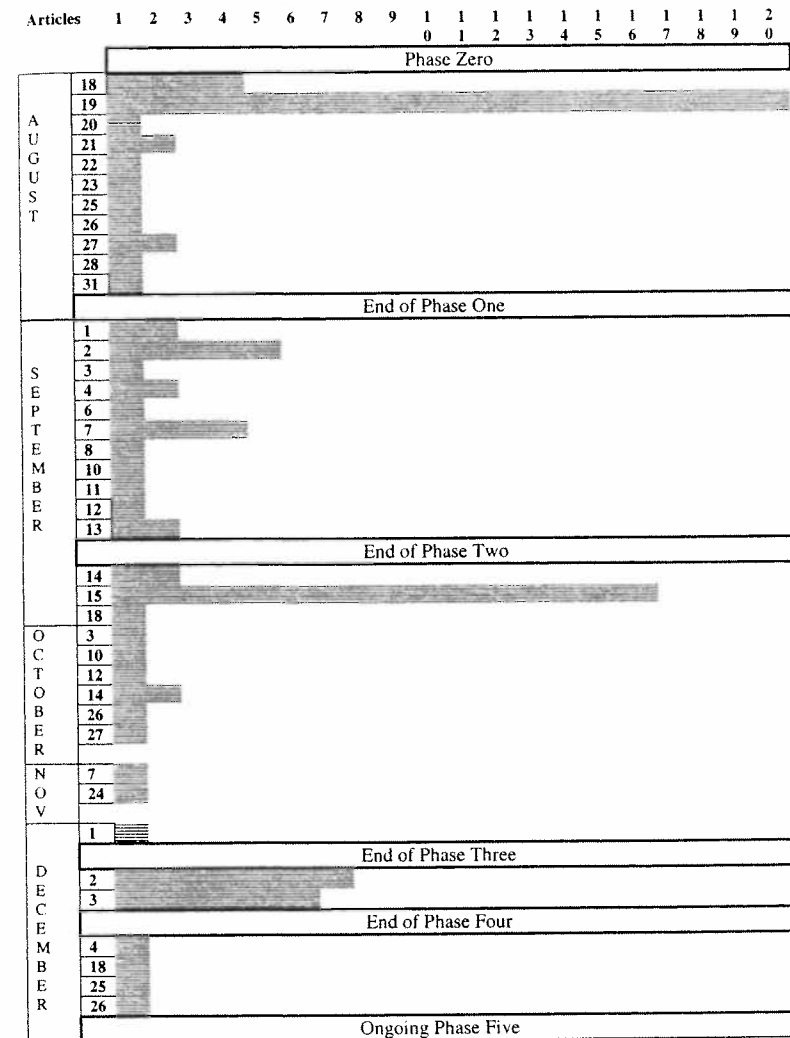
of frivolous litigation. If so, media constructions would make the Liebeck legend a principal source of skewed, misleading, and often inaccurate knowledge about the civil legal system routinely disseminated to ordinary Americans. With only a few exceptions, our expectations proved extremely well founded.

Phases of Newspaper Construction of the Coffee Case

The first point to note about the hot coffee case is that it was widely covered in the print media; the jury award was immediately reported in at least twenty-six leading newspapers, and many scores of articles followed in subsequent years. As we show below, the case was widely covered because of its easy fit into prevailing press conventions. Moreover, the McDonald's case affords the close observer valuable insights because it generated multiple waves of coverage (Haltom 1998, 201-4). Figure 5 shows how and why we separate *Liebeck* news coverage, gathered through a systematic search of "Academic Universe,"¹³ into five discrete phases. The *initial* and largest spate of spot coverage followed the announcement of the jury verdict on August 18, 1994. After the first two days, the *Liebeck* case was in the public domain and the pundit domain, as we shall show. Two subsequent events might have elicited corrective coverage of the case around September 1, so we treated these events and their spotty coverage together as a *second* phase. When Judge Scott reduced the jury's punitive award by over 80 percent to three times the compensatory award, he inaugurated a *third* phase of coverage. This phase stretched from September 14 until December 1, when final case settlement piqued a brief *fourth* phase of coverage. These developments in the dispute occasioned spot coverage and commentaries throughout the final months of 1994. Together with a modestly covered but substantial article correcting initial reports, spot articles and opinion pieces in phases 1-4 reveal the process by which legally successful narratives and constructions of fact yielded to factoids and default "commonsense" frames, transforming Litigant Liebeck into Symbolic Stella. After spot reports of the settlement ended (December 2-3, 1994), an ongoing *fifth* phase reinforced dissemination of the symbolic case while ignoring the actual case the plaintiff and jurors decided.

13. In June of 2000, we searched Lexis-Nexis "Academic Universe" from August 1, 1994, until December 31, 1994. Under "News," we searched both in "General News" and in "U.S. News," the latter to pick up regional newspapers not accessible in the former. Our primary keywords included "court," "courts," "burn," "burns," "jury," "jurors," "coffee," "million," and "award." We then narrowed this far-flung search with the demand that all articles contain some spellings of both "McDonald's" and "Liebeck."

FIGURE 5 1994 newspaper articles related to *Liebeck v. McDonald's Restaurants* (wire reports excluded)



Phase 0: Omission of Coverage Prior to the Verdict

While much of our account turns on omissions in coverage during the five phases just identified, we first note a practically total absence of coverage before the jury verdict was announced. The dearth of coverage prior to the jury award made the results seem even more surprising than might other-

wise have been the case. Had trial testimony and evidence been widely available—as has been the case in many instances of tobacco litigation, for example—Liebeck's victory might have seemed less inexplicable and the claims she actually advanced more understandable. In noting omitted coverage, we do not presume that the *Liebeck* case merited coverage before its denouement. We merely remind readers that, as we previously suggested, the scarcity of pre-verdict coverage left much of the evidence and testimony underdeveloped and unlikely to become developed, given demands on the press for alacrity and conciseness. The failure of reporters to witness the trial or scrutinize the trial record greatly increased the chances that a substantial judgment would generate sensational but incomplete, misleading, and even erroneous coverage shaped by media conventions and prevailing cultural norms. This first omission thus may have been as significant as any of the others considered below.

Phase 1: Newspapers Selectively Report the Verdict

Despite unavailability of the story prior to the verdict and concomitant omissions from coverage, print reports during phase 1 covered the verdict in a predictable, professional manner, repeating the standard emphases of mainstream media. Basics of the specific accident and particular judgment—the answers to “Who?” “What?” “Where?” and similar questions—were featured prominently in reportage. At the same time, consistent with our general findings, the most dramatic and personalized elements were reported simplistically in a way that would be familiar to readers, while subtle and complex dimensions of the trial record that did not fit prevailing formulas were left out. This reconstruction and fragmentation to suit newspapers' standards became accentuated when editorialists and commentators filled in the gaps in reporting with spin and factoids.

We begin with the Associated Press morning wire-service report for three related reasons: it was the longest and most detailed national account; it became a basis for coverage by most newspapers in our sample; and it reported major developments in later phases as well. The initial news account on August 18 is reprinted below in its entirety as replicated on “Academic Universe.”

Woman Burned by Hot McDonald's Coffee Gets \$2.9 Million

A woman who was scalded when her McDonald's coffee spilled was awarded nearly \$2.9 million—or about two days' coffee sales for the fast-food chain—by a jury.

Lawyers for Stella Liebeck, who suffered third-degree burns in the 1992 incident, contended that McDonald's coffee was too hot.

A state district court jury imposed \$2.7 million in punitive damages and \$160,000 in compensatory damages Wednesday.

Ken Wagner, Liebeck's attorney, said that he had asked the jury for punitive damages equal to two days' worth of McDonald's coffee sales, which he estimated at \$1.34 million a day.

Testimony indicated McDonald's coffee is served at 180–190 degrees, based on advice from a coffee consultant who has said it tastes best that hot, Wagner said Thursday.

The lawsuit contended Liebeck's *[sic]* coffee was 165–170 degrees when it spilled. In contrast, he said, coffee brewed at home is generally 135–140 degrees.

He said McDonald's expressed no willingness during the trial to turn down the heat or print a warning.

Defense attorney Tracy McGee already has said the company will appeal. McGee also said the jury was “concerned about an industrywide practice” of selling hot coffee.

Juror Richard Anglada confirmed the jury was trying to deliver a message to the industry. “The coffee's too hot out there [in the industry]. This happened to be McDonald's,” Anglada said Wednesday.

Liebeck's lead counsel, Reed Morgan of Houston, said there have been several lawsuits nationally over the temperature of McDonald's coffee but that he believes the Liebeck case was the first to reach the verdict stage. A California case was settled out of court for \$235,000, he said.

Morgan said Wednesday the woman's medical bills totaled nearly \$10,000.

According to testimony, Liebeck was a passenger in a car driven by her grandson outside a McDonald's in southeast Albuquerque when she was burned by a cup of coffee purchased at a drive-through window. The jury found, among other things, that the coffee was defective and that McDonald's engaged in conduct justifying the punitive damages.

The astute reader immediately should notice two characteristics of this account. For one thing, it is very short, simple, and thin—already well suited to become an anecdote. Moreover, the characteristically fragmented, disjointed presentation of information is familiar. Virtually no signs of carefully constructed legal arguments presented by the disputing parties, of debate over the basic legal issues at stake, or of contrasting evidentiary claims in the trial survive the AP reconstruction. Readers hoping

to find clearly demarcated themes or well-crafted legal positions are sure to be frustrated. The wire account offers few explicit cues to make sense of what principles were at stake, or even reason to believe that legal norms of right or justice mattered at all.

Beneath its surface randomness, however, the selection and prioritization of information in the AP story exhibit a logic that we have encountered before and will see repeated in news coverage of the hot coffee case. While little direct attention to substantive themes and arguments is apparent, the information presented in the wire report clearly displays the logic of news worth discussed above and the defendant's interpretive framing of the accident that stresses individual accountability.

The first and most extensively noted information in the article—namely, identifying the burn injury and the award—*dramatizes* the case. By far most prominent in the wire report are the monetary figures. The headline and the first, third, and fourth sentences each highlight either the \$2.7 million punitive damages award or the cumulative \$2.9 million award; the fourth mention (fourth sentence) disaggregates the total into two figures, followed by the calculus of two times \$1.34 million in coffee sales to determine the punitive damages. This is important, for journalistic norms privilege placing the most important information first, after which repetition highlights the message. Near the end of the report, other lesser but still large sums—an earlier settlement of \$234,000 and medical bills of \$10,000—are mentioned. In short, as any reader of wire-service stories might have predicted, “dollars holler” from the headline through to the end of the brief report.

The news account also is highly *personalized*. Indeed, it is filled with mentions of individual actors: Stella Liebeck; her attorneys Reed Morgan and Kenneth Wagner; McDonald's; one defense attorney, Tracy McGee; and one juror, Richard Anglada. Some synecdoche seems expedient and even efficient, but personalization deprived client newspapers and readers of contextual elements. Recognition that the dispute, for one thing, was between a retired seventy-nine-year-old, working-class woman with inadequate Medicare benefits and a huge multinational corporation, and for another thing that the legal duel was largely between a solo personal injury attorney and a battalion of corporate lawyers¹⁴ are almost entirely obscured by the individualized account, which casts each agent in his or her formal role. While “McDonald's” appears repeatedly, the AP report nowhere reminds readers of the vast size and wealth of the McDonald's cor-

poration; it is at most a “fast-food chain,” one player in a larger “industry.” Indeed, some readers might not have been certain that the corporation, rather than the Albuquerque franchise, was the defendant.

Moreover, the attention to the spill accident—although generally incomplete and misleading, and later often flatly erroneous—further tended to reconstruct the case to suit interpretations that stress individual responsibility far more than the plaintiff's case or the jury's rationale. Specifically, no mention is made that the car was parked motionless to the side rather than at the window or moving, or that there was little recklessness about the action leading to the accident, or that the injuries involved extreme pain, skin grafts, sustained disability, and large medical costs. In fact, the wire account notably omits the potentially sensationalistic details of the disfiguring injury that were prominent at trial; the language is anti-septic and unrevealing. That the accident was indeed ordinary but the injury extraordinary—Stella Liebeck's fundamental claim—is difficult, at best, to discern from the news account. Liebeck was portrayed only as a plaintiff who claimed, blamed, and won big. In sum, the slant of the AP wire story favored McDonald's interpretive narrative about consumer irresponsibility and disadvantaged Liebeck's story of a dangerous product.

Important items implicating the corporation in the accident were included in the AP report, but selective dramatization and personalization pared down details essential to the plaintiff's arguments and the jury's verdict. As we might expect, the wire service fragmented the coffee case by its inclusions and exclusions. The story notes that Liebeck, her lawyer, and a juror contended that the “coffee was too hot.” But the links to the defective product claim are indirect and implicit rather than explicit. The news account also specifies that the coffee temperature of 165–70 degrees was about 30 degrees hotter than most home-brewed coffee, and that complaints and lawsuits had been filed previously against McDonald's. These points, however, which were pivotal for the jury, are included only at the end of the news report. Conspicuously absent are the most important elements of the plaintiff's defective products narrative that convinced the jury and judge: (1) the scientific evidence from two noted experts about the celerity at which skin burns at 170–80 degrees, without which mere mention of coffee temperatures means little; (2) the details about the plaintiff's immense pain and disability; (3) the fact that a documented seven hundred complaints had been filed against McDonald's in recent years; (4) the fact that McDonald's administrators admitted the company knew about and ignored the palpable dangers of extremely hot coffee; and (5) the facts about the early stages of the dispute, including Liebeck's initial request for meager compensation, the plaintiff's multiple efforts over two years to

14. While Morgan had handled a couple of hot liquid cases, he was hardly a “repeat player” (Galanter 1974).

settle that McDonald's spurned, the mediator's recommended award, and the like. Our previous generalization about news coverage is evidenced here in wire reportage of *Liebeck v. McDonald's Restaurants*—large awards make news while crucial details are discarded to make stories concise and accessible.

Whether the discarded facts were unknown or regarded as irrelevant or too esoteric by journalists, we can only guess.¹⁵ But the inclusion of some key facts and the exclusion of others emphasized the large award to the plaintiff for a seemingly inconsequential mishap—a key contention in the narratives of individual greed disseminated by tort reformers—while obscuring essential elements of the legal argument that led jurors to find the corporation responsible for the painful injury in question. Failure to mention the legal grounding for that judgment in the Uniform Commercial Code or the plaintiff's multiple, amply evidenced arguments leaves readers to question whether the jury acted on either law or reason, much less both. The enigmatic final statement of the report underlined this question. Albeit “the jury found . . . that the coffee was defective” and “punitive damages” were justified, readers would have little idea why jurors decided as they did. That this case represented another incident of the litigation lottery would be a reasonable conclusion.

On balance, the concise spot news offered by the Associated Press thus conveyed much relevant information about the case, but it decontextualized the accident in ways that analysts of the news have led us to expect. The omissions and underemphases of the wire report repeated in many newspapers tended to discount the plaintiff's defective product narrative far more than McDonald's commonsensical frame stressing individual responsibility, which readers and journalists arguably had long been primed to presume in making sense of public events. While nothing in the wire report explicitly linked Stella Liebeck's suit to the alleged epidemic of silly suits afflicting the nation, the AP story reconstructed the case in such a way that left open, even invited, that linkage. The “man bites dog” angle of a person's being awarded \$3 million in a suit over spilled coffee made this item far more newsworthy and culturally resonant, but also far less accurate and informative.

15. We asked many journalists about this. Some confirmed that scientific evidence is often considered too esoteric or technical to print in spot news. We expect that there is a routine filtering bias at work in this regard, which is part of the newsworthiness framing process. However, the most obvious reason for the absence of such facts in the news reports of the case is that no journalists were present at the trial to hear such evidence or to obtain a clear version of it.

Initial Print Reports: More Concision, Less Precision

Reports in the twenty-four newspapers in our Lexis-Nexis “Academic Universe” sample emulated the AP report.¹⁶ As we expected, the AP stories were more copiously detailed than almost all stories run by clients who edited the wire copy.¹⁷ Thus, inclusions and exclusions by the wires prevailed in newspapers. As table 6 demonstrates, newspapers varied in the wire-service inclusions they printed, but they rarely added elements omitted by the wires.¹⁸

Three patterns in table 6 characterize what made it into reports of *Liebeck v. McDonald's* and what was filtered out. We can see that four elements of the Liebeck victory were included in reports in *every* newspaper in our sample: the severity of the injuries, the stupendous award, the claim that McDonald's coffee was too hot, and description of the coffee spill.

A second pattern consists in elements regularly excluded altogether. Scientific testimony about the swiftness with which very hot liquids inflict severe burns surfaced only in the tenth sentence of the *Bergen (N.J.) Record*, not in the AP stories and not in stories in larger papers. Details about the extent and severity of the burns or the infirmity they caused were almost completely absent from the accounts. The *Houston Chronicle* commented

16. The other wire services reprinted in “Academic Universe” tracked the AP story sometimes verbatim, sometimes more briefly. Because the newspapers in our sample cited the AP and because the AP story is expansive relative to the other wires, we used the AP's morning report.

17. Only the *Houston Chronicle* and *Albuquerque Journal* (the latter unavailable in “Academic Universe” and hence not in our sample)—ostensibly due to Reed Morgan's residence and local relevance respectively—ran articles that were longer and more detailed.

18. Table 6 gives an overview of relative emphases in both the AP reports and subsequent newspapers accounts. It breaks down reports of the *Liebeck* verdict according to the information mentioned in each sentence of each report. Rows feature every print report we were able to locate by “Academic Universe.” The morning and evening AP reports are highlighted for easy contrast with two dozen reports in newspapers. We array fifteen categories of information in an order determined by coverage. Having coded located articles published on August 18 or 19 in 1994 for the fifteen categories of data, we rearranged vertical columns (defined by categories of facts) and horizontal rows (defined by the news organs that published the articles) to maximize reproducibility. The advantage of a reproducible table is that newspaper articles range from the ones that covered the greatest number of categories of information (at the top of the table) to the ones that covered the fewest (“lower” rows of table 6), while the categories of information are ordered from the categories mentioned in at least one sentence in every report (the leftmost columns) to categories mentioned in not even one sentence of one article (the four rightmost columns). The large gray area on the right represents information that jurors heard and considered important during the trial but which was not covered in the news articles.

TABLE 6 Patterns of information in spot coverage of *Liebeck v. McDonald's*, August 18-19, 1994

	Liebeck's burn injuries	Jury award for damages	Allegations that coffee was too hot	Liebeck's spill of coffee	Reactions of parties to spill or judgment	McDonald's conduct and post complaints	Location of spill	Jury's reasoning or message on coffee cups?	Adequate warnings	Place in broader civil justice system	Sympathy for plaintiff	Initial claim, desire to settle or others	Uniform Commercial Code	Total sentences	Total words
Associated Press AM 8-18	0-2, 16-17	0-1, 3-4, 18	2, 5-7, 10-13, 18	6	9	8	17	10-11	8				18	341	
<i>Phoenix Gazette</i>	0-2, 15-16, 19	0-1, 3-4, 9, 17-19	2, 5-7, 10-12, 17	1, 19	8, 13-14	8	16	10-12	8				19	330	
<i>Charleston Daily Mail</i>	0-2, 12	0-1, 3-4	2, 5-7, 10	0-1	9	8		10	8				12	273	
<i>Houston Chronicle</i>	0-1, 16	3, 26-28, 33	2, 5-12, 17-24, 26	1, 14-15	4, 29, 33-34	13	14	30-32, 36, 38		37-39			39	621	
<i>Chicago Sun Times</i>	0-2, 5-10, 14	0-1, 3-4	2, 11-13, 17-18, 20-22	1, 5	19	14-15	1	17-18					22	340	
<i>Berlyn Record</i>	1, 11, 20-21	0-2, 6	4-5, 9, 12-18	1, 3, 20	8	3	6-7	10					21	324	
Associated Press PM 8-18	0-1, 6-7	0-1, 12-13	2-3, 9-10, 13	1, 5-6	11	3-4	5	8					13	205	
<i>Charleston Gazette</i>	0-1, 6-7	0-1, 12-13	2-3, 9-10, 13	1, 5-6	11	3-4, 13	5	8					13	205	
Greensboro News & Rec.	0-1, 6-7	0-1, 12-13	2-3, 9-11, 13	1, 5-6	11	3-4	5	8, 10					13	204	
<i>Memphis Com. Ap.</i>	0-1, 6	0-1	2-3	1, 5-6	7	3-4	5						7	132	
<i>Atlanta Jo. & Const.</i>	1, 6-7	1	2-3	1, 5	3-4	3-4	5-6						7	132	
<i>Louisville Cour. Jo.</i>	1-2	1, 3-4	0, 2, 6-7	1									7	127	
<i>USA Today</i>	2, 6-12	2-3, 20	0, 13-15, 17	2, 6	4, 16	18							20	256	
<i>Wall Street Journal</i>	0-2, 5	0-1, 3	2, 6-8	1	4								8	151	
<i>Des Moines Register</i>	1-2	0-1, 3-4	2, 6	1	5								6	116	
<i>New York Times</i>	0-2	0-1, 3	2	1	4								4	67	
<i>Dayton Daily News</i>	1-2	1	0, 3-4	1			2						4	78	
<i>The Columbian 8-18</i>	1, 5-6	0-1	2-3	1, 4-5			4						6	186	
<i>St. Petersburg Times</i>	0-1, 3	1-2	2, 4-6	0-1									6	117	
<i>Atlanta Jo. & Const.</i>	0-2	0-1, 3-4	2, 5-7	1									7	161	
<i>Chicago Sun Times 8-18</i>	1	1	2-3	1	3-4								4	85	
<i>Arkansas Dem. Gaz.</i>	1	1	1-2	1									2	59	
<i>Denver Post</i>	1-2	1, 3	2	1									3	71	
<i>Boston Herald</i>	0-2	1, 3	2	1									3	69	
<i>Seattle Post Int.</i>	1-2	1	2	1									2	49	
<i>Washington Post</i>	1-2	1	2	1									2	48	
Total headlines	14	14	3	2	0	0	0	0	0	0	0	0	0	---	---
Mean first mention	1.04	1.12	2.5	1.23	7.92	6.58	6.77	10.8	8	10	37	---	---	---	---
Total sentences	77	64	117	43	18	24	14	20	3	1	2	0	0	268	---

Note: All articles appeared August 19, 1994, unless otherwise noted. Entries in cells are the ordinal numbers of sentences, counting from the headline (o). Italicized column headings mark information that jurors reported to be crucial to their verdict but reporters seldom relayed.

on routine civil justice cases in its thirty-seventh and thirty-ninth sentences; no other source in table 6 so contextualized the Albuquerque anomaly. Not even one source mentioned the Uniform Commercial Code or the initial inclination of the plaintiff to settle without filing suit or, later, to settle without trial. All sources avoided characterizing the plaintiff as litigious or either party as sympathetic.

A third pattern involves selective inclusions. Some elements in table 6 correlated with the length (in sentences) of articles. Only three articles (including the AP morning report) raised the presence or adequacy of warnings about the temperature of the coffee. About one-third of the reports listed in table 6 devoted one or more sentences to the jurors' reasoning, despite the quotation from juror Richard Anglada in the AP report. Slightly more papers and both the AP morning and evening reports placed the car at the side of the lot or Liebeck in the passenger seat, and the same number of sources mentioned the intransigence of McDonald's concerning past complaints and lawsuits. More sources than not mentioned reactions to the verdict, if only in single sentences in all but two instances.

These three patterns and other data in table 6 reveal much about reporting during phase 1. The four elements invariably covered—the burns, the awards, the temperature of McDonald's coffee, and the spill—also led the other elements in the total number of sentences that made reference to the element, in the priority (that is, how low the number) of the first mention of the element in the article, and in being part of headlines. These four provided a succinct, simple sequence: a woman spills coffee in her lap, sues McDonald's for making coffee so hot it severely burned her, and gets millions. This sequence preserved the perceived irrationality, if not absurdity, of an extravagant award in a case making a novel claim about an everyday occurrence.

If those four elements are all that the reader may learn about the story—and in about half of the newspapers sampled they are all or almost all of the crucial elements of the story that we found—then newspapers' reports were not merely fragmentary, as the wire stories were, but reductionist. The patterns discussed above and the totals below table 6 testify to the elements missing from most or many articles and scanted in most or all: past complaints about and lawsuits against McDonald's; the impassivity and indifference evident in the testimony of McDonald's officials; the low-ball offer extended to Stella Liebeck for her crippling injuries, extensive rehabilitation, and onerous expenses; the contrasting mindsets of plaintiff and jurors; the location of the car in the lot and of Liebeck in the car; and the presence and usefulness of warnings on cups. Each element that, by itself, would have made the story less bizarre—the science of burns; Ms. Lie-

beck's initial request for \$20,000 in expenses; and the Uniform Commercial Code—was filtered out of almost all reports.

In sum, table 6 shows how newspapers constructed the story of the McDonald's coffee case to suit news worth at considerable cost in precision and comprehensiveness. That the initial reports suited the defense's interpretive narrative stressing individual responsibility far better than the plaintiff's narrative of defective products liability or the jury's decision was an unintended boon for McDonald's and, as we shall see, for tort reform in the public relations battle that followed the case.

Phase 1 Features and Commentaries: Enter the Spin and Factoids

To be sure, pundits might have distorted the coffee case for partisan, ideological, policy, or satirical purposes no matter how well spot reports had conveyed the facts. Fragmentary or reductionist reportage, however, left editorialists and commentators free to fill in omissions with incorrect or misleading information. Even if the misinformation that saturated print media after August 18, 1994, were not a result of fragmentary coverage, the predominance of interpretations would probably still have assumed that Stella Liebeck was solely and personally responsible for the accident and that McDonald's was utterly blameless. Gaps in public knowledge about the specifics of the case simply made it easier to impute greater moral blame to Liebeck, the injured victim.

Features on reactions to the *Liebeck* verdict, editorials, and letters to the editor tended to gloss over the most technical information on which the plaintiff's case depended, thereby divorcing commentators' views ever further from the case the jurors actually heard. On the Web site accompanying this book (www.lawslore.info), we have systematically arrayed these data in a way that is similar to table 6, and here we just summarize and illustrate those findings. As with spot reports, burns and monetary awards drew widespread comment, albeit averaging only about two-and-a-half sentences per category. The heat of McDonald's coffee, Liebeck's allegation that its temperature was "too hot," and the specifics of the spill elicited even more sentences than information about the injury and award. That the car was parked to the side of the drive-through and was not moving remained matters for but passing comment. These differences are significant, for they display the alacrity with which the known facts and fact patterns were arrayed against the plaintiff. Most important, *information pertaining to the litigiousness of the plaintiff drew the most sentences of any category*, despite that category's having elicited not a single mention in spot coverage (see the column fourth from the right margin in table 6) and

despite the defense's having presented no evidence that an octogenarian who had never before sued anyone was trifling with McDonald's or trying to pull a fast one.

Spotty coverage left commentators and editorialists free to adopt differing perspectives on the case's justifiability and significance and to marshal information to suit their presuppositions. Some articles required no embellishing of the story to assail the jury for failing to use common sense and value individual responsibility. Diana Griego Erwin's editorial for the *San Diego Union-Tribune* recounted the facts of the case accurately and without unfair spin, but imputed litigiousness to Stella Liebeck and unfairness to the jurors (Erwin 1994). Far more commentators, however, fell back on stereotypes and shibboleths to accentuate apparent absurdities that had made the case newsworthy. An earlier brief comment in the *San Diego Union-Tribune* (1994) immediately sounded the tort reform refrain with the headline "Java Hijack" and gave short shrift to Liebeck's injuries, to her repeatedly spurned efforts to settle for modest compensation, to the litany of complaints and lawsuits against McDonald's, and to inadequate warnings about the dangers of hot liquids. The editorial read in its entirety:

When Stella Liebeck fumbled her coffee cup as she rode in the car with her grandson, she might as well have bought a winning lottery ticket. The spilled coffee netted her \$2.9 million in the form of a jury award. Liebeck had sued McDonald's for serving take-out coffee that her lawyer claimed was too hot. This absurd judgment is a stunning illustration of what is wrong with America's civil justice system. Ironically, it also may become a powerful spur to the cause of tort reform. Our guess is that other greedy copycats in restaurants throughout America soon will be happily dumping coffee into their laps in a bid to make a similar killing in the courtroom.

Amid hyperbole and misstatements, the *Union-Tribune* mischaracterized the events of the accident. It is untrue that Liebeck fumbled her cup "as she rode," a fact that was known to jurors but mangled in several instances of print reportage. Editorial writers for the *Arizona Republic* (1994) veered into a statement that contradicted their own coverage of the spot news: Ms. Liebeck "tried to open the cup in a moving car . . ." Just days after the verdict, in sum, misinformation began to alter the story in a manner that inaccurately highlighted the plaintiff's recklessness. The fact that commentators filled in often inaccurate details about the "reckless" nature of the accident underscores the inclination to focus on matters of individual responsibility and the opening left by fragmentary initial reports that emphasized the incongruities between coffee spilled and millions awarded.

Other commentaries were festooned with misleading factoids. Talk-show host Mike Rosen (1994) excoriated jurors' decisionmaking while minimizing the evidence on the basis of which the jurors had decided. Amid a welter of presumptions about lawsuit epidemics and what the economics of litigation would teach, Rosen acknowledged that Stella Liebeck was a passenger and did not say whether the car she was in was moving. Skipping over the multitude of complaints about McDonald's coffee and the science of burns and mentioning the issue of warnings in but one sentence, Rosen then attacked jurors who had issued "[t]he latest winner in the Stupid Lawsuit Sweepstakes."

Our nation's suing epidemic may enrich some plaintiffs and their lawyers, but it all shows up as overhead on society. Perhaps prospective jurors should be required to attend a seminar on the economics of litigation. Maybe, then, they wouldn't be so generous. Or better yet: if a ridiculous award like this is reversed on appeal, how about letting the defendants sue the jury.[sic]

Jurors were not educated in the economics of litigation, but they did learn about pertinent law. Had news reports similarly instructed Rosen about the relevant official law, he might not have dismissed the suit out of hand. The same could be said regarding systematic patterns of personal injury litigation over recent decades. Regular readers of the news would find there precious little reason for complex, much less skeptical thinking, about the alleged epidemic of lawsuits and the "litigation lottery."

The champion at twisting the case and, to some extent, the harbinger of conventional beliefs to come was Dave Rossie (1994). His column in the *Denver Post* glossed over other lawsuits and complaints about McDonald's coffee, the science of burns, the degree of treatment those burns required, and adequate warnings, all of which were integral to the products liability case advanced by the plaintiff. He then compounded these sins of omission with others of commission. Rossie began his commentary with the hackneyed non sequitur that the *Liebeck* decision proved that the United States was the most litigious society on the planet, then accused the Associated Press of having excluded inconvenient details about the case. He followed those broadsides with speculative details (number of physicians involved) and convenient factoids, including dramatic mischaracterizations regarding the coffee's heat, Liebeck's status in the vehicle, and the jury's punitive justification (rather than "pain and suffering") for the bulk of the award—all inaccuracies that could not have been derived from the AP report.

After snidely jabbing lawyers for "their fees," Mr. Rossie then slandered

civil jurors in general: “[M]ore often than not, when confronted by a giant, corporation of uncounted wealth on the one hand and the lone individual, especially a little old lady, on the other, the jury is going to come down on the side of the individual.” Rossie adduced no evidence to show that the Albuquerque jurors had merely punished the deep-pocketed fast-food corporation.¹⁹ Mr. Rossie concluded that the *Liebeck* case “should never have gone to trial. The judge should have tossed it before the first May it please the court.[sic]” Had the Associated Press provided a more complete account or had Dave Rossie researched the case, he might have discovered the latent truth of his first sentiment: the case should never have gone to trial because McDonald’s had multiple opportunities to settle. His comment that the judge should have thrown the case out was based on profound ignorance of the facts and law at issue in the case, an ignorance aided and abetted by selective news coverage.

To summarize: spot coverage of phase 1 featured few outright errors, but commentators filled in omissions in reporting with faulty inference and invention. In such a manner did concise, fragmentary coverage foster a flood of factoids and derisive spin about the accident, which quickly morphed into a fashionable fable about a civil legal system gone awry and the triumph of a predatory plaintiff and litigious lawyer.

THE LEGEND GROWS: SUBSEQUENT PHASES OF COVERAGE

Subsequent phases of print news coverage of *Liebeck v. McDonald’s* conjured a case increasingly distant from the one the jurors actually heard. Testimony the jurors had found significant was omitted, and misleading or inaccurate facts interjected. But there was more trenchant commentary berating the decline of individual responsibility in American society. We briefly summarize the trends.²⁰

Phase 2 Coverage in Newspapers: Second Chances

On September 1, 1994, two developments might have changed the evolving story of Stella Liebeck. First, trial judge Robert Scott directed the parties toward a mediator. Second, a front-page article in the *Wall Street Journal* revealed much about the *Liebeck* case that had been obscured in or

19. Lest we assist Rossie in misinforming the citizenry, we note that abundant scholarship undermines his facile claim that juries tend to side with underdogs or against corporations. See Hans 2000.

20. Our summary here of phases 2–5 is presented in much greater detail in McCann, Halton, and Bloom 2001.

omitted from earlier coverage. These two events constitute a second stage in the *Liebeck* litigation.

The directed mediation had little impact on the general knowledge about the *Liebeck* case because, as far as we could find, only the Associated Press and the *Chicago Sun Times* carried the story. These reports were, predictably, sketchy and perfunctory, making for an even more fragmentary, decontextualized public account. The AP also added an important error by stating that Stella Liebeck spilled the coffee at the drive-through window, rather than nearly four minutes later once parked. But what is more important is the lack of any post-trial coverage whatsoever by any of the other twenty-two papers that covered the verdict. This omission is not merely a matter of concern for scholars who expect more of the news. Noncoverage of post-trial events facilitated misconceptions. It not only failed to educate, but also misled. When editorialists argued as if the McDonald’s coffee case ended in the Albuquerque courtroom on August 18 and letter writers seemed unaware that punitive damages are commonly reduced by trial judges and appellate judges, both may have been relying on spot reports that treated civil judgments as *faits accomplis*.

The other potential stimulus, Andrea Gerlin’s investigation of the *Liebeck* case as jurors saw it, had enormous potential for broadening and deepening understanding of the lawsuit and verdict. Gerlin (1994) explained in the *Wall Street Journal* how jurors reasonably could have reached judgments that pundits had ridiculed and editorialists had pronounced absurd or stupid. She found it easier to understand, if not agree with, the jury once she learned about major facts and legal arguments that had shaped their reasoning. Gerlin recounted McDonald’s long-standing and extensive record of scalding its customers. She reviewed testimony from McDonald’s officials and experts that made the corporation appear nonchalant and even callous. She reported on the severity of the burns, on the impact that photographs of Liebeck’s injuries had had on jurors, and on some scientific evidence regarding the celerity of burns. Gerlin uncovered reasons for sympathizing with Stella Liebeck, reasons that had hitherto received but the shortest shrift. To be sure, Gerlin’s piece glossed over some aspects of the case. Nowhere did she inform readers that the grandson was driving or that the car was parked away from the window. She also skimmed on how the science of burns suggested the urgency of reducing the temperature of hot liquids, on the legal basis for the judgment, and on the long history of the dispute prior to trial. But, overall, the account reflected the complexity of the trial and was well researched—but available and accessible nonetheless.

Despite the excellence of Andrea Gerlin’s report, any potential for at least some increased understanding about the case was not impressively

realized. Only seven additional news sources (of the twenty-four in table 6) produced articles that wholly or largely reprinted Gerlin's *Wall Street Journal* report. These articles generally repeated but supplemented phase 1 coverage by adding additional information about McDonald's record of past scaldings, complaints, and litigation; resistance and recalcitrance; and flaunting and flouting of standards for coffee in the fast-food industry. But even the slightly augmented and more balanced factual record did not inhibit editorialists from criticizing the case and chastising its principal actors. For example, a version of Gerlin's report in the *Cincinnati Enquirer* (1994) added these judgments:

Unfortunately, cases like these have destroyed the credibility of the justice system, giving Americans a picture of bone-headed jurors giving away millions for cuts and scrapes at the demand of greedy gold-diggers and their ambulance-chasing lawyers. . . . Personal responsibility has been scrapped for the notion that someone can be made to pay for any mistake—including opening a cup of hot coffee between your legs while driving.

Tort reformers could not have articulated the theme of individual responsibility at the heart of their moral crusade any better!

Why did Gerlin's correction appear to have made so little difference? Pundit Dave Rossie may be right that dailies choose not to recognize shortcomings and superficiality in their coverage.²¹ Having missed crucial details in the first place, most papers may have been averse to revisiting a matter no longer timely. Absent the factual update, commentators were left to fill in missing details as suited their moralistic spin. When journalistic omissions and commissions mutually reinforce one another, erroneous factoids result and familiar story lines (here echoing tort reformers) find implicit support.

Phase 3 Coverage in Newspapers: More Omissions and More Factoids

When Judge Scott inaugurated phase 3 by reducing the punitive damages by over 80 percent to three times the compensatory damages, the press had an opportunity to correct its previous omissions of details about the case and to educate the public about how the civil legal system routinely works. Instead, crucial omissions persisted and errors of commission proliferated.

21. Our interviews with journalists confirmed this point quite emphatically, especially regarding trying to "make up" for earlier omissions.

We found two wire-service stories that announced Judge Scott's action but only fifteen spot reports in newspapers, two of them in the *Chicago Sun-Times*. The good news is that about 61 percent of the papers followed the reduction of punitive damages—the sort of development often underreported. The bad news is that the 39 percent reduction in coverage exacerbated the original holler of the dollar. In many locales, even diligent readers would find no story of the decrease in their daily, making them more likely to remember only the original award but not its reduction. Indeed, attention to money increased in these accounts as attention to the original injury declined (see McCann, Haltom, and Bloom 2001). Little wonder that even well-informed commentators missed the reduction. This understandable omission conformed the story to *news* framing but deformed the *legal* frame that the jury had accepted.

Other omissions continued to track the original reports fairly closely. At the same time, errors of commission proliferated and distanced the case as reported even farther from the one the jury heard. For example, errors about the location and mobility of the Ford Probe dotted editorials and features during phase 3. Six of the nine editorials and letters we found between September 15 and December 1 once again made some reference to the drive-through window. Some comments were wildly inaccurate. The *Greensboro News and Record* accurately placed the plaintiff in the passenger's seat but distorted the locale of the accident: "Liebeck, who had put the cup of coffee between her legs while riding through the drive-thru, spilled it on her lap when she tried to pry off the lid" (Pressley 1994). A *Cleveland Plain Dealer* editorial (written by a high school student) made a similar error (Vakil 1994). In addition, five of the nine articles linked the case to excessive litigiousness, with the *Providence Journal-Bulletin* devoting numerous sentences to the charge (Martin 1994); none of the commentaries expressed sympathy or support for Stella Liebeck.

Phase 4: The Case Settles and the Legend Is Set

On November 30, 1994, McDonald's settled with Stella Liebeck for an undisclosed sum. Spot coverage about the end of the formal dispute marked a fourth phase and completed the story for most reporters. We located sixteen spot reports in fourteen newspapers, most on December 2. After news of the settlement, the *Liebeck* case surfaced in only a few articles in the remainder of 1994. Phase 4, then, represents a resolution of reportage, after which the case largely yielded to widespread factoids.

In phase 4, omissions—especially involving evidence about the effects of hot coffee and the response of McDonald's to complaints—increased again as spot coverage crystallized for a last time. The dollar continued to

holler even as Liebeck's "jackpot" actually shrank, perhaps because agreement on money resolved the dispute. Even coverage regarding the award was somewhat mixed: the only relevant headlines we found referred to injuries rather than money. Having hollered dollar awards to accentuate the absurdity of millions for an everyday mishap (and to increase the news value of the report), print media now alluded vaguely to how little Liebeck and her attorneys may have gotten, mainly because McDonald's made confidentiality legally binding. Papers lost the hype of the hollered dollar but could not provide an alternative to the gaudy figure of initial reports. As a result, editorialists and commentators continue to use wildly inflated figures for Stella's award. Other distortions, such as where Stella was when she spilled the coffee, ossified into accepted fact, further indicting the victim as responsible.

Phase 5 Begins: McDonald's Lost the Battle but Liebeck Lost the War

The end of 1994 formed a cusp between the first four phases of the story about Stella Liebeck and McDonald's and the extended fifth stage that began with the settlement and continues today. We located but four references to the *Liebeck* case during the remainder of 1994 after spot reports of the settlement. All four, in different newspapers,²² were Scott Montgomery's discourse on blame-avoidance (Montgomery 1994). Approximately 114 of his 1,600 words pertained to the McDonald's case. Tracking earlier editorials, Montgomery emphasized Liebeck's responsibility for the spill and the lamentable litigiousness that her case represented.

As was the case in commentaries during the third phase, the *Liebeck* case had been distilled in editorials, features, and comments to a very shallow account. This account related briefly elements indispensable for identifying the case: hollering dollars, burned skin, spilt coffee, and reaction from McDonald's Corporation or counsel. The overwhelming focus of the treatment, however, was on Stella Liebeck's failure to take personal responsibility for her clumsiness and her litigious inclinations toward blaming her misfortune on a corporation with deep pockets. In short, by the start of phase 5, the interpretive narrative extolling individual responsibility had obliterated the narrative about defective products liability that had motivated the plaintiff and persuaded the jury. To be certain, given its ideological pull in our society, the invocation of "individual responsibility" against the plaintiff's greed, adversarialism, and rights obsession might

22. Our search in "Academic Universe" did not turn up all references. See, for example, Pelling 1994.

have triumphed anyway. Emphasis on elements and interpretations that redounded to the benefit of the defendant and, far more important, omission of information and arguments crucial to the plaintiff's case, certainly assisted that triumph, however. Omissions from otherwise solid spot coverage in effect disguised and distorted the actual claims made by Stella that were assessed favorably by the jury and trial judge. We should not wonder, then, that "the McDonald's Coffee Lady" became a symbol for undeserved victory in the "litigation lottery."

Indeed, over the subsequent years newspaper references to the incident were common if widely variable in type (editorial, letter to editor, advice column, humor column, and the like) and location. Not only was the *Liebeck* case often recalled, but disputes over hot liquids in other settings increasingly received attention in the news (see Greenlee 1997, 738 n. 57). Moreover, invocations of Stella's saga proliferated in commentaries, with inaccuracies increasing in relative proportion to self-righteous moralizing. Closing out the year, Jeff Pelling wrote in the *San Francisco Chronicle* (1994) that "America has a victim complex," as witnessed by "such surreal cases as the woman who recently won a \$2.7 million verdict after spilling coffee on her leg in a McDonald's restaurant." A few months later, a *New York Times* editorial (1995) similarly invoked Stella Liebeck as a symbol for a society run off of its tracks. "Life used to be blissfully simple: the coffee hot, the drinker sitting and sipping. But now everyone's hither and yon, perching take-out coffee in mid-dash. And spilling it. And suing someone." Around the same time, an editorial in the *Oakland Tribune* (1995) began by making our own point quite concisely, but for a different purpose: "There is probably one in the paper today. . . . A numbing tale of a citizen hauling someone into court over something absurd." This rant continued:

The poster woman for this sort of ludicrous lawsuit is an 81 year old [*sic*] New Mexico woman who sued McDonald's after she spilled her hot McDonald's coffee in her lap. . . .

Is there any doubt in anyone's mind that our legal system is being badly abused? Greedy lawyers, victims out to make a buck, and a culture that encourages people to sue instead of accepting their own responsibility or working things out, have clogged with cases that don't belong there.

Humorist Dave Barry included inaccurate references to the hot coffee judgment on his list of major reasons for wonder about American society at the start of 1995; he titled his retrospective essay "A Great Year for Victims." Columnist Joseph Perkins of the *San Diego Union-Tribune* even

named an annual award “The Stellas.”²³ “The award is named for Stella Liebeck, the Albuquerque, N.M. woman who became an instant millionaire—and American icon—after spilling a cup of McDonald’s coffee in her lap and winning a judgment against the fast-food chain” (Perkins 1997). Ann Landers added the dispute to her own columns regularly dispensing “common sense” about moral responsibility to the American public. An angry reader is quoted as saying about Stella Liebeck that “she was a malingering old biddy who pumped up her alleged injuries to get more money. [E]ar from being a victory for the consumer, this case merely encourages unethical, greedy lawyers and their greedy clients to continue to perpetuate such frauds on gullible juries.”

The legend of Stella has lived on in newspapers until the present. Spot news coverage of lawsuits for excessively hot liquids or pickles on hamburgers or a chicken head among the new fried chicken wings at McDonald’s provide one form of enduring reference keeping alive memory of the original case and what it represented. In the high-profile article with which we began this chapter, heralded entertainer Steve Martin satirized the hot coffee case as the epitome of justice in advanced Western civilization. One feature of phase 5 coverage is especially notable if, by this point, unsurprising. Whereas quoted reactions regarding the judgment in the first four phases were dominated by those sympathetic to the winning plaintiff (Liebeck’s attorney, juror, and so forth), by phase 5 cited authorities and experts were critical of the judgment and/or Stella by more than a two-to-one margin.²⁴

BLAMING THE VICTIM: STELLA LIEBECK IN MASS CULTURE

The transformation of the scalding coffee case into a classic tort tale and Stella Liebeck into the poster lady for tort reform burgeoned outside newspapers. Indeed, the diffusion of the inverted, factoid-riddled morality tale throughout the electronic media, mass culture, and political discourse was so rapid, dramatic, and sustained that every reader of this sentence must be familiar with some invocation of the symbol that Stella Liebeck has become.²⁵ In this section we briefly catalogue just some of the venues in which the story was replicated, usually in derisively cartoonish terms. In doing so, we not only elaborate on the dissemination of the McDonald’s

23. Compare “The True Stella Awards” available at www.stellaawards.com.

24. The data were derived from our data set of five top newspapers during 1995–98.

25. A quick Google search in December 2002, under the name “Stella Liebeck,” produced 1,280 citations.

coffee chronicle, but demonstrate through the case study the ways that representations by print media and other media of popular culture are continuously interrelated in constructing knowledge and lore about the law.²⁶

Television News Coverage

We found thirty-eight transcripts of spot news television broadcasts mentioning the verdict (fourteen national, twenty-four local) in the two days after the jury award was announced. For the most part, this coverage was similar to the newspaper coverage in what it did and did not provide for public consumption, although it was even less substantial and accurate in content than the print versions. Accounts were riddled with the same errors and, more important, omissions of critical elements heard at the trial, thus again emphasizing the recklessness of the accident over the dangerous product. One important difference from spot coverage in newspapers was that local television broadcasts often openly ridiculed the decision that they reported as news. One report joked with a pun about “burned buns” at McDonald’s.²⁷ Another sardonically reported that Liebeck (after “she spilled coffee on herself in a McDonald’s restaurant”) said, “hot coffee is terrible on the groin and buttocks.”²⁸ Yet another report quoted a customer and an attorney who both said they thought “the suit was stupid,” offered no parallel defenses of the suit, and ended by pointing to Liebeck “explaining how to get rich after spilling a hot beverage on their [sic] crotch.”²⁹

News magazines and Newsletters

News magazines also expanded public knowledge of the hot coffee incident, usually in similarly abridged, misleading, often inaccurate tort tale-like versions. Indeed, a quick search of “Academic Universe” identified numerous mentions for “McDonald’s and coffee and burn or scald” in *Newsweek*, *Time*, *Business Week*, *US News and World Report*, and *Forbes* between August 1994 and January 1, 2000.³⁰ Most such accounts echoed the

26. We take seriously the advice of media scholar Benjamin Page that “we need to pay attention to the totality of political information that is made available . . . to the public” (1996, 7).

27. See KABC 1994b.

28. See KABC 1994a.

29. See KTTV 1994.

30. One notable exception, providing balanced and sophisticated coverage, was Press 1995.

critical editorials in the newspapers—full of misleading errors, focused on the accident rather than the product, and again openly disdainful of what they saw as an irresponsible plaintiff and the capricious legal system.

TV News Features and Talk Shows

Stella Liebeck's saga played widely on television feature news and interview shows. For example, the case was mentioned, and Stella's daughter interviewed, shortly after the trial on *Larry King*. Perhaps the most incendiary treatment was on an ABC special, "The Blame Game: Are We a Country of Victims?" hosted by the controversial John Stossel (ABC John Stossel Special 1995). Like his later attack on the civil legal system, "The Trouble with Lawyers" (ABC John Stossel Special 1997), Stossel combined selected anecdotes, assorted facts, and a barrage of leading rhetorical questions into a mix of caustic casuistry and diverting entertainment. The show began provocatively by citing the McDonald's coffee case as one of several examples of business owners' complaints about "what's wrong with America?" In short, claims one interviewee, "everybody's a damn victim. . . . We have so much to give, and so many who take." The show later used a highly selective, simplified cartoon version of the story to illustrate what Stossel posed as a fundamental breakdown in Americans' individual responsibility, civil law, and culture. Roger Conner, of the American Alliance for Rights and Responsibilities, capped the sermon:

The word of these lawsuits spills out into society, enters into the national conversation. And people start thinking that this is the appropriate way to live. . . . It makes people think, I'd be a chump if I did otherwise. If I take responsibility for what I do and for what happens to me, I'm a fool. Now, when that idea gets loose, America's in trouble. . . . This whole victimization, it's like a—it's like a disease that's weakening America's moral fiber.

A host of other shows on virtually every major channel offered up similar invocations for responsibility that ripped the hot coffee case, the plaintiff, and the judgment. In fall of 2002, we heard commentator Andy Rooney conclude a *60 Minutes* broadcast by recycling clichéd rants that "suing has become a popular American pastime," using Stella Liebeck—"the woman who spilled coffee in her lap in a car and got big bucks when she sued McDonald's because the coffee was too hot"—as a prime example, among other tortured tales (Rooney 2002). Rooney surmised that he perhaps he could quit work and get rich just by suing people, but his last gambit for a chuckle was that lawyers would receive 90 percent of the awards. With populist pundits like this, reformers barely need tell any tales.

Late-Night Television

Given the ridicule that permeated ostensibly serious news coverage, it is not surprising that late-night talk show hosts appropriated Stella Liebeck's saga for their own comic routines. Most prominent among these was Jay Leno, who on several occasions joked about the case. Attorney Reed Morgan told us that he wrote Leno in protest, and Leno actually called him in response.³¹ However, Leno continued to make jokes about scalding spills of McDonald's coffee at least through February 9, 2001. David Letterman also made reference to the hot coffee liability issue a number of times over several years; one short, indirect, but very clear reference is included as one of the epigraphs to this chapter.

Prime-Time Television Comedy

Viewers who do not stay up to watch late-night television could catch a longer comic take on the dispute over spilled coffee on the wildly popular *Seinfeld* (1995) show. The specific episode, titled "The Maestro," initially ran October 5, 1995, and has been rerun many times. The show focuses on the aftermath of an incident in which the zany and socially inept Kramer spills coffee on himself when trying to sneak a cup of latte into a movie theater by stuffing it into his pants. After filing a lawsuit, he confronts his friend Jerry, who expresses surprise at Kramer's litigiousness. That prompts Kramer to reply "Oh, I can be quite litigious,"³² another epigraph for this chapter.

The Movies

A bit to our surprise, we have found the coffee incident to be alluded to in only one major movie—*Good Bye Lover* (1999), starring Ellen DeGeneres. Discarding a newspaper, DeGeneres's character exclaims, "See, now this just makes me sick. A woman spills coffee on herself and gets three million dollars. I do that every day and what do I get? Coffee stains!"

Corporate Advertisements

It took a while, it seems, but eventually the advertising industry appropriated references and images of the case for humorous promotions as well. We found national magazine advertisements for a major hot choco-

31. Interview with Reed Morgan. Authors' files.

32. For extensive analysis of this show and its implications, see Greenlee 1997.

late product (“Change is bad” is the caption under a cup with warnings about heat on it) and television commercials for both a major phone company and several automobile manufacturers that made explicit references to the hot coffee case. A quotation from an automobile ad serves as yet another epigraph to this chapter. In a like advertisement, a little girl says, “Here’s a scalding hot cup of tea, Grandma” in the back seat of a Mercedes-Benz careening over rough roads. The fact that corporations could so blithely appropriate the image to promote their products reflects both the dominant story line attached to the coffee case in mass-mediated culture and the privileged position of corporate producers in that culture.

The Tort Tale Endures

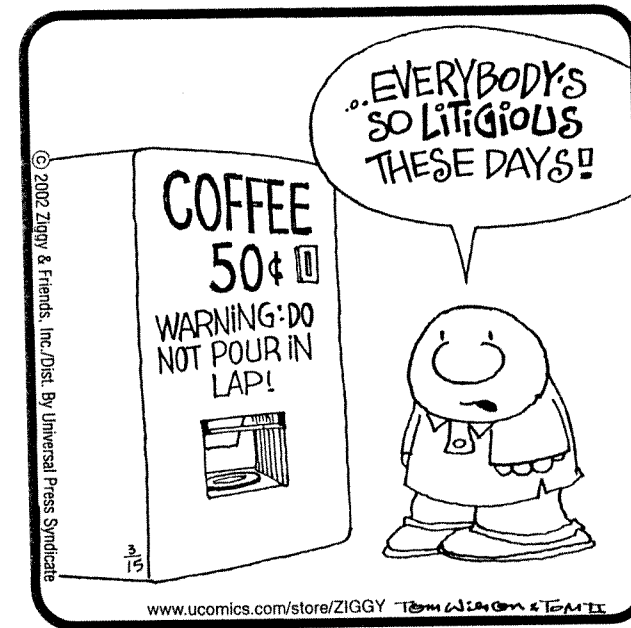
We have sampled merely a few of the many forums in which the McDonald’s coffee case has become a prominent part of the prevailing legal lore in America. In fact, as one of us sat writing an early draft of this chapter on July 13, 2000, National Public Radio reported that a man had sued after being scalded by a coffee in a restaurant. He insisted that ceramic cups should have warning labels on them. The judge denied the claim, asking, “What next? Warnings on steak knives?” Such a report obviously was intended as humorous fluff amid the serious news. But it would not be funny without the lingering legacy of *Liebeck*. A few months later, readers were bombarded with similarly derisive reports about a woman suing McDonald’s over a hot pickle (see *Seattle Times* 2000). Shortly thereafter, we saw a *Ziggy* cartoon showing a coffee machine with a sign reading WARNING: DO NOT POUR IN LAP! and Ziggy lamenting, “Everybody’s so litigious these days!” (fig. 6), confirming the familiar usage of the “L” word to convey a bold moral message in contemporary mass discourse. Regarding references to the hot coffee case, the *Oakland Tribune* had it nearly right: “There is probably one in the paper today.” But, again, the cultural references to the case far transcend the print news. In 2001, one of us learned that a Mexican restaurant in Burlington, Vermont, featured a sign in the women’s restroom reading (in English and Spanish): CAUTION: WATER MAY BE HOTTER THAN A MCDONALD’S COFFEE (fig. 7).³³

ANALYSIS: THE MEDIA CONSTRUCT A TALE, RECONSTRUCT LEGALITY

The story of Stella Liebeck’s being scalded by McDonald’s coffee demonstrates in great detail how ordinary news reporting practices choose particular types of events and construct them for the reading public in highly

33. We have not altered the Spanish version to correct a solecism.

FIGURE 6 The litigation crisis becomes cartoon common sense

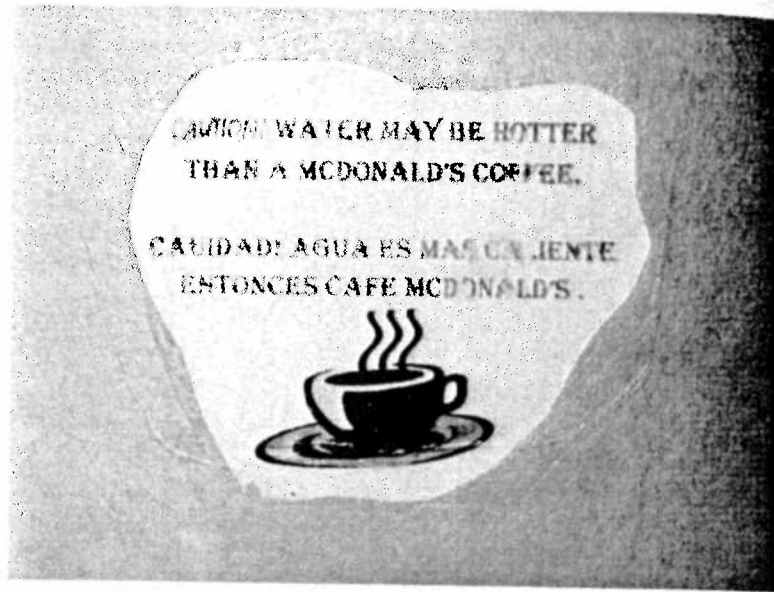


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selective and problematic ways. But why did this atypical legal case come to be so typically newsworthy? While many factors were involved, the juxtaposition of a familiar accident with a seemingly astounding award provided a perfect mix of the personal, dramatic, and normal that the press loves, all bound together in a discrete incident. Aspects of the case fit almost perfectly the standard conventions of news worth for infotainment coverage. For one thing, the disputing parties fit very familiar images: an elderly female claimant and the most familiar, ubiquitous family restaurant chain in the world. That nearly everyone has taken out food and beverages from a McDonald’s drive-through no doubt mattered also. Moreover, the fact that nearly all persons have spilled hot coffee, or hot chocolate or tea, on themselves likewise highlights the routine character of the case. What infotainment could *not* handle well—including those aspects of the defective products liability narrative that persuaded jurors—could be omitted from coverage without notice.

As a result of both news worth conventions and routine exposure to

FIGURE 7 Sign on bathroom wall at the Coyote Café, Burlington, Vermont, 2001



Photograph by Candace L. Smith

parallel tort tale narratives, the widespread coverage of this case (1) privileged certain facts that fit the predilections for personalized and dramatized stories while omitting other information, issues, and story lines in ways that left the account highly fragmented and routinized; (2) provided little attention to the key facts and narrative logic that proved successful in the official trial phase; (3) failed to provide perspective for this particular, atypical case relative to broader patterns in civil disputing; and (4) represented an event in ways that were open to, and even invited, interpretations consistent with the tort reform agenda by elite news spinners and the mass audience. Thin, selective initial coverage quickly gave way to a simplistic anecdotal version of the story that has become a staple of American conventional wisdom about law, a notable chapter of “law’s lore.”

This case study also reveals parallels and interconnections between newspaper coverage and that of other media that participate in cultural knowledge production—especially television daily news, news features, talk shows, and comedy shows as well as radio, movies, and public forums

of official politics—in our infotainment-oriented society. Our evidence suggests that this broader complex of technologically mediated information production today may be even more conducive to legend production than that of newspapers alone. Moreover, attention to multiple media manifestations of the hot coffee story distinguishes its impact from familiar “big” stories in the news. The infamous story of Stella Liebeck did not hit the public over the head in one huge mass attack of front-page headlines. Rather, the repetition of short, thin accounts and brief allusions in multiple media over a sustained period of time quietly turned a real victim into a caricature familiar across the U.S. legal and political culture.

The argument in the previous section is not intended to suggest that sophisticated tort reformers contributed little instrumental influence in the rapid rise of Stella Liebeck as a symbol for a legal system gone awry. For one thing, the preceding fifteen or so years of concerted tort reform advocacy assaulting the legal system and personal injury lawyers conditioned the context of media reporting, elite discourse, and public understanding so that the McDonald’s coffee case attained such symbolic significance so quickly (rather than being regarded as an aberration). The tort reform movement and corporate campaign to impugn the legal system and celebrate norms of individual responsibility provided a public appetite and familiar menu that the McDonald’s case served very well (Galanter 1993b, 1998b; Daniels and Martin 1995). That the movement’s standard charges against the legal system found, or generated, allies among newspaper editors and columnists and credibility among letter writers is clear.

Moreover, tort reformers contributed directly to accelerating and sustaining the continuing familiarity of the story in the ongoing fifth phase of the story’s public life (since 1995). While the appointed spokespersons and spinners for tort reform did not influence the initial phases of the public interpretation, they subsequently had a field day with the McDonald’s coffee case. “Tort reformers . . . gleefully seized on the case as the epitome of frivolity,” confirms one observer (Torry 1995, F7). The incident became a staple on the list of “horror stories” maintained by the American Tort Reform Association (ATRA) and others. ATRA bought radio ads invoking the coffee case as a prime example of litigation run amok (Press 1995, 35). Reporters have told us in interviews that the McDonald’s coffee case quickly became a routine component in the standard tort reform literature regularly fed to the press. For example, Roberta Katz, a senior fellow at the Discovery Institute, made the case a lead item in a published and widely distributed address, “Is It Time to Reform the Adversarial Civil Justice System?” in late 1996. An ATRA press release decrying a lawsuit against toothbrush manufacturers as late as April 15, 1999, listed the McDonald’s

coffee case as the leading honoree in the “Crazy Lawsuit and Warning Label Hall of Fame.”³⁴

Corporations were also quick to get into the act of exploiting the high-profile case. Mobil Oil (1995) took out a substantial advertisement in the *New York Times* that cited the case, noting that “nearly \$3 million was awarded to a customer who spilled hot coffee on herself.” Echoing ATRA press releases and paid ads, the Chamber of Commerce sponsored its own ad on the radio: “Is it fair to get a couple of million dollars from a restaurant just because you spilled your hot coffee on yourself? Of course not. It’s ridiculous. But it happened” (cited in Torry 1995).

Conversely, the wider community of trial lawyers was relatively slow to recast the story in positive ways. Their attempts to react to misrepresentations of the case were neither widely available nor readily accessible. Gordon E. Tabor, president of the Indiana Trial Lawyers Association, just weeks after the jury verdict wrote the excellent account “McFacts, McMedia, and McCoffee,” which was not visible to the mainstream press and general public. As noted above, Ralph Nader attempted to present the overlooked facts and key issues to legislators in 1995, and he later wrote a detailed account of the case with Wesley Smith in their 1996 book *No Contest*. Likewise, the Association of Trial Lawyers of America Web site (www.atla.org) carried a defense of the case in the late 1990s, but that also came rather late and was aimed at specialized audiences. Again, this relatively tepid and delayed defense of the *Liebeck* case illustrates some of the general political limitations of the plaintiff’s bar as an advocacy group (see chapter 4).

In sum, instrumental political gambits and institutional news practices were interrelated parts of the process that constructed legal knowledge emanating from the case against McDonald’s, although practices of the media strike us as being far more important in producing the *Liebeck* legend.

Reconstructing Legality

Our case study of Stella Liebeck’s saga demonstrates a more general theme of our larger project—that mass media have played a relatively independent institutional role in the specific social construction of law, or *legality*, itself. By legality, we refer to Ewick and Silbey’s provocative, expansive concept regarding the “‘ideas, problems, or situations of interest’ to unofficial actors as they take account of, anticipate, or imagine ‘legal acts and behaviors.’” Legality thus operates “as both an interpretative framework and a set of resources with which and through which the social world (in-

cluding that part known as law) is constituted” (Ewick and Silbey 1998, 23, 273 n. 1). If our analysis is correct, routines of news worth largely defeated legal narratives that won at trial and constructed new legal knowledge for the citizenry to integrate into their reserve of “common sense.”

These reconstructions of legality entailed serious implications. On an individual level, they generated yet another, far more enduring source of anguish for Stella Liebeck, who already had suffered profoundly from severe burns and an anxious dispute culminating in trial. They also had an impact on Liebeck’s attorney, Reed Morgan, in emotional, financial, and professional ways. Both won in court, but lost to the prevailing consensus about civil law. In chapter 8 we take up the significant indirect influence of the hot coffee legend on countless other legal actors—injured victims, plaintiffs, attorneys, jurors, judges, to name a few—in subsequent years.

At a broader political level, the hot coffee case virtually jump-started the stalled movement to reform tort law in the mid-1990s. By 1994, the national tort reform movement seemed to be on the wane. A decade of failure to pass major national legislation in Congress had sapped reformists’ energies and nurtured frustration. The easy victories at the state level had been exhausted, and even these were being undone or undercut through effective litigation campaigns by trial lawyers. In short, the tort reform movement was on its heels, locked into an increasingly defensive battle. Then, along came the McDonald’s case—the perfect anecdotal antidote to the movement’s maladies. No better case could have been fabricated by the movement to provide an effective “We told you so” to skeptics in the media, the political establishment, and the general public. Stella Liebeck’s saga, reduced to factoids by ordinary news reporting routines and repeatedly respun by reformers, quickly hot-wired the currents of concern about our failing civil legal system and flagging ethos of individual discipline. It is hardly a coincidence that the next year the story circulated widely among congressional hearings and debates, leading to the first major national tort reform legislation passed by Congress. Although President Clinton vetoed that bill, it was clear that the movement had found new life in the aftermath of the scalding coffee story. Indeed, Clinton’s successor in the White House made his name as a Texas governor successfully leading the tort reform charge; the leading party presidential and vice-presidential candidates in 2000 were all open supporters, in varying degrees, of national tort reform.

More generally yet, prevailing popular constructions of the hot coffee case have at once reflected and reinforced cultural tendencies to view relationships and events in terms of individual responsibility and blame. The moralistic, individualizing, disciplinary logics of law have been reinforced by popular representations *about* law. The hot coffee case also il-

34. Authors’ files.

illustrates the very social costs and constraining implications of these logics, however. Consider first the consequences for political debate about the rationality of the existing tort law system. Specifically, the construction of the McDonald's case as a lightning rod for concern about the alleged litigation crisis has inhibited the emergence of alternative constructions that complicated issues of individual blame with attention to other integrally related public concerns (see Abel 1989). For example, the injuries suffered by Stella Liebeck and her frustrated resort to litigation could instead have highlighted the need for better consumer protection standards or regulatory oversight, or the need for expanded medical benefits for the elderly, or the inadequate medical insurance options for most citizens in the United States, or the lack of workplace leave compensation policies to deal with family emergencies. After all, the high costs of medical treatment and the loss of wages suffered by Stella's daughter, who had to take care of her, prompted the reluctant plaintiff to sue. But virtually nowhere—in the media, among any of the major players on either side of the dispute, or among the politicians and policy advocates who appropriated the symbolic case for partisan ends—were any of these policy concerns raised in connection to the incident. This is particularly striking, because just a short time before the incident President Clinton had unveiled proposals for radical transformation of health care and medical insurance in the United States.

Finally, the core challenge to the enormous discretionary power, pecuniary motives, and unaccountable practices of corporate producers identified by Liebeck's lawyers barely saw the light of media attention. Indeed, what media coverage, popular legend, and political debate all obscured was just how anomalous was Stella Liebeck's victory in court against a multinational mega-corporation. The motives of corporate-sponsored tort reformers in assailing this and many other cases are clear enough, of course. Plaintiffs of small means and low status who win substantial awards for challenging corporate recklessness destabilize the prevailing legal logic of distributing economic costs widely and generally supporting the structures of inequality that are a part of capitalist society. Nevertheless, political activists, lawyers, scholars—including those on the ostensible political Left—were drawn into defending the existing inadequate, inegalitarian, inaccessible tort law system and contesting the case's significance in the moralistic terms of "individual responsibility" and reckless rapacity defined by tort reformers. The social construction of the McDonald's coffee case thus illustrates the ways in which prevailing norms, institutional arrangements, and power relations reproduce themselves as law in mass culture.

CHAPTER SEVEN

Smoke Signals from the Tobacco Wars

The antitobacco litigation constituted a new problem definition and normative frame, new policy actors and alliances, and new rules of the game. At the same time the litigation caused an increase in media coverage, greater political opposition to tobacco, and legal uncertainty that hurt the tobacco industry.

LYNN MATHER, "THEORIZING ABOUT TRIAL COURTS"

Current polling finds Americans quite unsympathetic to the plaintiffs' arguments in these cases, ruling that smokers—not tobacco companies—are to blame for the consequences of their decisions to smoke. . . . A 1998 NBC/Wall Street Journal poll found practically no change in attitudes (from a decade earlier), with 16 percent indicting the companies and 72 percent the smokers.

LYDIA SAAD, "A HALF-CENTURY OF POLLING ON TOBACCO"

The size of the tort lawyers' fees was perhaps the most publicized and controversial feature of the settlement.

MARTHA DERTHICK, *UP IN SMOKE*

If *Liebeck v. McDonald's* afforded snapshots of how tort reform tactics, journalistic habits, and individualistic values converged to transform an idiosyncratic lawsuit into a sensationalized symbol, episodic battles that are part of the long-running "Tobacco Wars" provide a more panoramic and complex serial of the construction of legal knowledge. This litigation from the "third world" of torts¹ has involved a much larger scale of harmed

1. Recall from chapter 3 that third-world torts are class-action lawsuits over mass torts and latent injuries, often in pursuit of policymaking through civil courts and usually concerning legal rules that are not yet settled. This world of torts features suits concerning such products as asbestos, tobacco, and silicone implants.