

News Media's Impact on Perceptions of the Civil Justice System

By Hugh M. Robert

When I have asked someone to name an example of a frivolous lawsuit, commonly, people's first response is "that McDonald's case where the lady spilled coffee on herself and won millions." The media portrayed the case in such a way that left many Americans shaking their heads in dismay. They couldn't believe a woman who ordered coffee at McDonalds, put the coffee between her legs and burned herself could walk away with millions. One illustration of the public sentiment of the case is reflected in popular culture. Late night television hosts Jay Leno and David Letterman both used the case in their material. Even the popular television show *Seinfeld* had an episode, "The Maestro"¹, where Kramer spilled coffee on himself by trying to sneak coffee into a movie theatre where the lid came off the cup and burned his skin. Kramer decides to consult with an attorney, Jackie²:

Kramer: Well, you know uh, they don't allow outside drinks in the movie theater, so I had to put it in my shirt and sneak it in. Is that going to be a problem?

Jackie: Yeah, it's going to be a problem. It's going to be a problem for them. It's a clear violation of your rights as a consumer. It's an infringement of your constitutional rights. It's outrageous, egregious, preposterous.

Kramer: So uh, what do you think, Mr. Chiles-- we got a chance?

Jackie: Do we have a chance? You get me one coffee drinker on that jury, you're going to walk out of there a rich man.

¹ *Seinfeld: The Maestro* (NBC Broadcast, Oct. 5, 1995).

² *Id.*, transcript as quoted, Mark B. Greenlee, *Kramer v. Java World: Images, Issues, and Idols in the Debate over Tort Reform*, 26 Capital University Law Review 701 (1997).

Stopping by Jerry's apartment after his appointment, Kramer discusses his case with Jerry and Elaine:

Kramer: Well I uh, just came from a meeting with my lawyer.

Jerry: Oh yeah, how's that looking?

Kramer: Oh I'll tell you how it's looking. My lawyer Jackie says if there's one coffee drinker on that jury, I'm gonna be a rich man.

Elaine: That's despicable. How does he know how all coffee drinkers will vote? I'm a coffee drinker, if I was on that jury, I wouldn't give you a nickel, Kramer.

Kramer: Well, you wouldn't be on that jury. He would've weeded you out.

Jerry: Frankly, I'm surprised you're so litigious.

Kramer: Oh, I can be quite litigious.

Elaine: I mean, who ever heard of this anyway? Suing a company because their coffee is too hot. Coffee is supposed to be hot.

Later, Kramer meets Jerry and George at their regular restaurant:

Kramer: Yeah. Java World wants to settle and I'm gonna be rich!

Jerry: Why are they settling?

Kramer: Because they're afraid of bad publicity.

Jerry: All this because you spilled coffee on yourself?

Kramer: Yep, that's right.

The show demonstrates what I believe the majority of Americans felt when they heard about this case. How could someone sue because coffee is too hot, after all, coffee is supposed to be hot.

However, the true facts paint a very different picture of the situation. Stella Liebeck was a 79 year old grandmother who was the passenger in her grandson's car³. She was served coffee that was around 190 degrees, which can cause third degree burns within two to seven seconds of contact with the skin⁴. Stella was wearing cotton jogging pants, and the 190 degree liquid soaked into her pants. She received third-degree burns to her thighs and genitals. She was hospitalized for eight days and had disabilities for two years after the accident⁵.

McDonalds admitted that the coffee was not fit for human consumption at the temperature they served it. A good deal of the testimony at the trial dealt with the temperature of the coffee and the injuries that would be caused by coffee served at various temperatures⁶. During the trial, Christopher Appleton, McDonald's quality assurance manager, testified:

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

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

Q: It is hazardous at this temperature?

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

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

A: Yes, under those conditions, if they could get the coffee in their throat, that could happen, yes⁷.

³ Greenlee at 718-719.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

There were over 700 other reported incidents to McDonalds of other consumers being burned by their extremely hot coffee, yet they did nothing.⁸ After all, coffee is supposed to be hot. Stella offered to settle the case with McDonalds if they would just cover her medical bills. They denied her request. She then hired an attorney who requested her medical bills be covered and a small amount for her pain and suffering; they again denied the request. A third attempt at settling the case came from a mediator who recommended a settlement amount of \$225,000⁹. McDonalds still would not accept the offer. After going to trial, the jury awarded Stella an amount equal to two days worth of coffee sales for McDonalds and subtracted the percentage they felt she contributed to her own injuries. After the reduction by the trial court and appeals, the case settled for less than half the original jury award. However, these are not facts traditionally covered by the media. Rather, they covered the sensational portion of the story as most Americans heard, a woman was awarded millions for spilling hot coffee on herself.

An Examination of the Media's Influence

“The information presented in the media about the civil litigation system is critical because citizens report that the news media is their primary source of information about the court system, an even more important source than contact with the courts themselves.¹⁰” With the general public relying primarily on the news media as their source of information, it is necessary to examine what is being reported and the frequency of covering both sides to the story. However, “journalists must select and report stories from the large universe of civil cases and

⁸ *Id.*

⁹ *Id.*

¹⁰ Jennifer K. Robbennold & Christina A. Stedebaker, *News Media Reporting on Civil Litigation and Its Influence on Civil Justice Decision Making*, 27 *Law and Human Behavior* 5, 6 (Feb. 2003).

other information about the civil justice system that they think will capture news consumer's attention.¹¹”

In the selection of what the media should cover, a journalist will not typically select stories that report on “business as usual,” or the many cases that are dismissed, settled, or where as in most instances, the defense prevails. In examining what is typically covered by the media, studies have found that “coverage of a case was more likely when the plaintiff prevailed and when the award included a punitive component. While most cases that go to trial obtain defense verdicts, only 3% of defendant wins received any media coverage; compared to 41% of plaintiff wins and 63% of punitive damage awards that received media coverage.¹²” One can then begin to understand why the few cases that are reported in the media become the reference point for which the public bases their opinions of the civil justice system. If the public were to hear about the 96% of cases that do not involve punitive damages, the perception might be very different about the civil justice system.¹³

News Media's Influence on Perceptions of Jury Competency

“In 1986, a civil jury in Philadelphia awarded Judith Richardson Haines \$986,000 in compensatory damages after she claimed she lost her psychic powers as a result of a CAT scan.¹⁴” This story, made popular by then Vice President Dan Quayle, is an example of a case he used in an attempt to show how broken our civil justice system is and the need for change. Most Americans, upon hearing a story such as this would feel the same way if the story contained no

¹¹ *Id.* at 9.

¹² *Id.*

¹³ Christine M. Shea Adams et al., *Separating Compensatory and Punitive Damage Award Decision by Trial Bifurcation*, 30 *Law and Human Behavior* 11 (Feb. 2006).

¹⁴ *Id.*

other facts. Again, the true facts of the case reflect a much different story. The case involved a forty-two year old woman who entered the hospital and was diagnosed with tumors on her left ear. She suffered an allergic reaction to contrast dye administered in connection with a CAT scan and went into anaphylactic shock. She testified that before the test, she told the neuroradiologist that she knew from prior experience she was allergic to the dye. He indicated she was being ridiculous and embarrassed her into consenting to the procedure. After fewer than a dozen drops of the dye were injected into her, she experienced a severe reaction.¹⁵

As the general public continues to rely on the media to provide information about the courts, one cannot blame them for believing our juries are out of control when you hear the sensational stories they are telling. It makes one believe their characterizations that “[j]uries really are ‘out of control’ and ‘runaway,’ making irrational and emotional decisions. The verdicts often being described as winning the ‘lottery,’ ‘hitting the jackpot,’ ‘crapshoot,’ and ‘windfall.’¹⁶”

“Juries have been criticized extensively for how they award damages, and because of media coverage, public concern is often focused on the extreme amounts of money that are awarded in what often seem like minor cases. However, public concerns may be very disparate from typical jury practices.” In examining the median compensatory awards, the study found that “the norm is far below the colossal cases that make headline news. Yet, a minority of cases that have resulted in extremely large awards do call the public’s attention to and give researchers

¹⁵ Carl T. Bogus, *Why Lawsuits are Good for America: Disciplined Democracy, Big Business, and the Common Law*. (New York University Press 2001). The judge allowed testimony about her profession of being a psychic, how she had helped the police department apprehend criminals on a number of occasions, and that when she tried to use her psychic powers, she got headaches. Upon appeal, the court held that the testimony of her profession should not have been allowed in and when the case was re-tried, she was unsuccessful.

¹⁶ Greenlee at 709.

reason to examine the process of making these decisions.¹⁷” One aspect of the cases that is often forgotten are the individual circumstances of the cases¹⁸. The individual circumstances that brings each cases to trial are often overshadowed by the coverage of large awards. Criminal trials often raise one’s emotions to stay connected with the victim while punishing the criminal. However, it seems the victims of the negligent and sometimes wilful acts of civil defendants are forgotten.

Both the McDonalds and psychic cases have “led critics to claim that civil juries are unable to comprehend evidence and that they are incompetent at making decisions.” The same critics and commentators describe civil juries as “incompetent, capricious, unreliable, biased, sympathy prone, confused, gullible, hostile to corporate defendants and doctors, and out of control when awarding punitive damages.¹⁹” However, when considering the actual facts of these cases rather than their sensational aspects, one can deduce that “many of these claims are anecdotal and unrepresentative of actual juries.²⁰”

What the News Media Doesn’t Tell the Public

The media’s focus has primarily been on the extreme cases with large jury awards and, as previously described, often overlooks or neglects any focus on the victims. In instances of wilful action or inaction on the part of the defendants, the juries award punitive damages. In cases where punitive damages are awarded, the juries put defendants on notice that they cannot factor litigation cost as part of doing business but rather truly produce safe products and services.

¹⁷ Adams at 12.

¹⁸ Robbenold at 14.

¹⁹ Adams at 11.

²⁰ *Id.*

Leslie Bender describes the only way “we can only eliminate the liability crisis [is] by eradication [of] the conditions for mass harms. If we truly mean that health and safety are most important, we must not permit them to be part of any economic calculus toward ‘progress.’ They must be non-negotiable. If these values are our first priority or our first principle, then we really must begin there and reorganize all else around them.²¹”

The tort system has “had a positive impact on public safety, such as the removal of flammable children’s pajamas, asbestos, and intrauterine devices from the marketplace.²²” Additionally, other positive reforms as a result of tort actions include the correction of automobile design defects, such as exploding gas tanks, unsupported roll bars, faulty door latches, and illusory park features as examples of the greater public safety.²³” Without such available recourse for consumers, it is not likely the changes would have occurred as there would have been no incentive to correct the unsafe product features.

Impacts of News Media Reporting on the Civil Justice System

While the media presents these extreme cases of jury awards as examples of how the system typically metes out rewards, such practices have led to a distorted view of the civil justice system. Adoption of these views have resulted in commentators and public policy makers touting the need for serious reform or limitations on the kinds of damages juries can award. As previously discussed, we can see how the media can affect the public perception, which in turn impacts public policy.

²¹ Greenlee at 715.

²² *Id.* at 712.

²³ *Id.* at 715.

A recent study was performed in which both the general public and policy makers viewed a target program on television to gauge the impact on their opinion on the subject presented. “Overall, the data suggest strongly that watching the target program influenced public views of issue importance, which supports the concept of the agenda-setting function of the media among members of the general public. Using an experimental design built around a single media event, we conclude that media presentations influence general judgments of problem importance.²⁴”

A. Civil justice reform

“Media reporting on civil litigation can have important influences on the extent to which policymakers focus their attention on reforming the civil litigation system and on the direction of any reform efforts.²⁵” Policy makers are facing a growing public concern for the civil justice system and supposed need for reforms. These concerns are based on the aforementioned flawed perceptions of how the civil justice system functions.

One of the misconceptions that has followed the reasoning outlined, and contributing to the call for reform, is that medical malpractice suits are a large contributor of our “broken” civil justice system. The doctors and media are encouraging the public to call for reforms as the current state of the civil justice system is driving them to retire early or restructure their practices to not take certain types of cases. However, studies have found that medical malpractice cases are relatively infrequent, yet the news reports disproportionately report on them, excluding the

²⁴ Fay Lomax Cook et al., *Media and Agenda Setting: Effects on the Public, Interest Group Leaders, Policy Makers, and Policy*, 47 *Public Opinion Quarterly* 16, 25 (Spring, 1983).

²⁵ Robbenold at 22

most common suits.²⁶ A recent New England Journal of Medicine study found that “portraits of a malpractice system that is stricken with frivolous litigation are overblown.”²⁷

The same group calling for reform in order to protect the doctors, also claim that people are getting large payouts when they have not actually sustained injury. However, the same study found that “the number of claims without merit that resulted in compensation was fairly small; the converse form of inaccuracy- claims associated with error and injury that did not result in compensation- was substantially more common. One in six claims involved errors and received no payment.”²⁸ Based on the results of the study, it is more common for one who is injured to not be compensated—a far stretch from the outcries to the public that people are playing the lottery with the civil justice system and winning on a regular basis. Therefore, if changes are made to the civil justice system in the interest of curbing frivolous litigation, “it will have a relatively limited effect on the caseload and costs of litigation. [Based on the findings of the study,] the vast majority of resources go toward resolving and paying claims that involve errors.”²⁹

The most common initiative in civil justice reform is limitation of punitive damages. Again, it is very likely the media’s promotion of such verdicts as the McDonalds case (which was eventually reduced to half the size of the initial verdict,) and the psychic case (who ended up getting nothing for her injury) that make the public and policy makers believe juries are out of control. However, “statutory initiatives to limit punitive damages set arbitrary thresholds barring punitive damages over a specified amount. I believe we are better served by the exercise of

²⁶ *Id.* at 7.

²⁷ David M. Studdert et al., *Claims, Errors, and Compensation Payments in Medical Malpractice Litigation*, 354 *The New England Journal of Medicine* 2024, 2031 (2006).

²⁸ *Id.*

²⁹ *Id.* at 2032.

judgment by a jury of our peers after presentation of all the facts, than by judgment of legislators far removed from the people involved with personal injury disputes.³⁰” After all, if we trust the same twelve jurors to decide whether someone guilty of a crime should be put to death, should we not instill the same faith in the jury to decide the monetary awards for damages caused by a negligent party?

B. Litigant decision making

One of the jobs of the plaintiff’s attorney is to counsel and manage the client’s expectations. “Because of the availability of vivid or salient information about big verdicts in frivolous-sounding suits, plaintiffs are likely to overweight their probabilities of success in frivolous litigation.³¹” As the media primarily focuses on large plaintiff’s verdict cases, it makes it more difficult to explain to clients that it is the extreme exception.

The difficulty raised by the inflated client expectations of awards also make it more difficult for the attorney to advise the client on good settlements. Often, the client believes that if they could get their case to the jury, they could “win big.” Thus, the media publication of such isolated cases and outcomes could be argued to paradoxically contribute to the advancement of cases to trial as opposed to fair settlements.

Conclusion

“Clearly, the media [has] the potential to act as a powerful influence on the civil justice system, influencing decision making in the particular cases and on the system more generally as the media shape the perceptions and decision making of participants in the system. Overall, the research suggests that media reporting of civil litigation presents a systematically distorted

³⁰ Greenlee at 738.

³¹ Robbenold at 21

picture of civil litigation.³² The impact of the media's portrayal of the civil justice system extends beyond public perception and administration of civil justice. These effects extend to the public policy arena where consumers and the general public could be left without recourse for even the most blatant and wilful negligence.

There can always be room for improvement and streamlining of the system. However, in order to effectively implement reform or change, it is necessary for policy makers and the public to examine the true facts, rather than inflated claims as portrayed in the media. Upon close review of the facts of cases that have been sensationalized, it would likely change the public's perception. It is ironic that many people believe that plaintiffs in cases should be held responsible for their own negligence, yet do not want to hold the same for the defendants. It is likely the result of the media's reporting of such incidents. After all, why should someone be able to sue for spilling coffee on themselves and getting burned, "coffee is supposed to be served hot."

³² *Id.* at 22