

## CRITICAL THINKING AND THE McDONALD'S HOT COFFEE CASE: A PEDAGOGICAL NOTE

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This year marks the twentieth anniversary of the now legendary case of *Liebeck v. McDonald's Restaurants*.<sup>1</sup> A basic sketch of the case is well known. A jury awarded an elderly woman a large sum of money for damages she incurred as a result of spilling hot coffee on herself while seated in her car. Widely reported, the McDonald's case soon reached iconic status in popular culture as the epitome of a "frivolous lawsuit" in a society gone amok with hyper-litigiousness. Some commentators have speculated that the case may provide "more common knowledge about the United States civil justice system than any other single lawsuit."<sup>2</sup> Indeed, it seems rare to find a student taking a legal studies class who has not encountered the McDonald's hot coffee case prior to class and formed an opinion about it.<sup>3</sup>

The lead author of this pedagogical note has used the McDonald's hot coffee case to teach critical thinking skills in her legal studies classes. Partly because students come to class with preconceived notions about the case, it has proved an excellent vehicle for helping students critically examine their general views about the U.S. tort system. Students learn not only about applicable tort law, but also about how to apply critical thinking skills to legal anecdotes that they learn (or potentially mislearn) from the media. Most importantly, by becoming more educated about the facts and law of the hot coffee case the students reflect upon how their misconceptions about the legal system may impede their ability to make effective managerial decisions.

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<sup>1</sup> *Liebeck v. McDonald's Rest., P.T.S., Inc. and McDonald's International, Inc.* No. CV-93-02419, 1995 WL 360309 (N.M. Dist. Ct., August 18, 1994).

<sup>2</sup> Michael McCann, William Haltom, and Anne Bloom, *Java Jive: Genealogy of a Juridical Icon*, 56 *MIAMI U. L. REV.* 113, 114 (2001).

<sup>3</sup> This observation apparently holds true even for students who were not yet born when the case was litigated.

The following discussion proceeds in three parts. It begins by describing the development of the hot coffee case study at the University of Maryland University College (UMUC). It then discusses the goals of critical thinking generally. It closes with an assessment of the critical-thinking results achieved at UMUC through the use of the hot coffee case.

## I. DEVELOPING THE CASE STUDY

The MBA Program at UMUC employs an integrated cohort-model that consists of seven seminars worth six-credits each. The hot coffee case was developed for use in the first required seminar. The seminar is offered both online and in a combination online and face-to-face format. The legal environment of business, corporate social responsibility, and business ethics are three of the main topics covered in the seminar.

The initial seminar also introduces ten competencies required of high performing managers. These competencies include *critical thinking*, ethical leadership, systems thinking, decision making, executing decisions, information literacy/research skills, technology fluency, diversity and cross-cultural perspectives, communications skills, and team building skills.<sup>4</sup> The MBA program adopts the view that in order to lead effectively, managers must approach their responsibilities from a critical and strategic perspective, while keeping a firm grounding in ethical principles. It also assumes that their success will depend upon the exercise of sound critical thinking skills, which take into account the full ethical and social consequences of their decisions.

### A. *The Hot Coffee Assignment*

In both the online and combination online and face-to-face delivery sections for the course, the students complete the hot coffee assignment online, although in combination delivery sections, the discussion often spills over into the next face-to-face class session. The students perform the assignment in the sixth week of a thirteen-week semester, after they have completed introductory assignments in business ethics and the legal environment of business and after they have analyzed articles using the critical thinking method outlined in *Asking the Right Questions: A Guide to*

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<sup>4</sup> Students also begin to construct an electronic portfolio to assist in critical reflection on personal and professional goals. Students document their learning in the electronic portfolio throughout the MBA program.

*Critical Thinking* by M. Neil Browne and Stuart M. Keeley.<sup>5</sup> The assignment consists of three parts designed for completion in one week.

### 1. Reading the Winnebago Case and Posting Preconceptions about Stella

In the first part of the hot coffee assignment, students read a short newspaper column written under the pseudonym “The Mighty Quinn” and post their reactions in an online conference. The Mighty Quinn reprints an e-mail from a reader describing the story of Mr. Merv Grazinski, the purchaser of a Winnebago motor home. On his way home, Grazinski set the cruise control at seventy-miles-per-hour and proceeded to the kitchenette in the back of the vehicle to make a cup of coffee. The vehicle crashed and overturned, and Grazinski sued Winnebago for not providing adequate instructions in the vehicle’s handbook advising him that he could not set the cruise control and leave the wheel unattended. The email account reprinted in the paper states that Grazinski was awarded \$1,750,000 and a new Winnebago. In addition, the story states that “Winnebago actually changed its handbooks as a result ... just in case there are any other complete morons buying its vehicles.”<sup>6</sup> The email also states that the Winnebago case has recently won the “Stella Award” as an outrageous example of a frivolous lawsuit.

After reading the newspaper article the students engage in an online discussion based on the following guidelines from their instructor:

In 1994, there was a widely publicized lawsuit against the McDonald’s Corporation in which an elderly woman, Stella Liebeck, sued McDonald’s for damages from the third-degree burns she sustained from hot McDonald’s coffee that she spilled on her lap while she was seated in her car. The case received so much publicity that it is frequently referred to today as an example of a “frivolous lawsuit” that hurts American business. Indeed, the “Stella Award” for frivolous lawsuits referred to in the article by was named after Stella Liebeck.

Read the article by “The Mighty Quinn,” and by Tuesday midnight, post a brief initial reaction to the McDonald’s lawsuit described

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<sup>5</sup> This text contains the following framework of questions for analyzing issues and arguments: 1. What are the issue and the conclusion? 2. What are the reasons? 3. What words or phrases are ambiguous? 4. What are the value conflicts and assumptions? 5. What are the descriptive assumptions? 6. Are there any fallacies in the reasoning? 7. How good is the evidence? 8. Are there rival causes? 9. Are the statistics deceptive? 10. What significant information is omitted? 11. What reasonable conclusions are possible?

<sup>6</sup> Mighty Quinn, DAILY NEWS, June 25, 2002, at 3.

above. Had you heard about this lawsuit before? Do you think it is “frivolous”? Do you think the Winnebago lawsuit mentioned in the article is frivolous?

## 2. Writing a Research Paper

Based upon the knowledge acquired by reading the assigned tort chapters in the legal environment of business textbook<sup>7</sup> and their research on the actual *Liebeck v. McDonald’s* case, the students write a five to six page research paper. That paper must address nine questions:<sup>8</sup>

1. What are the facts of the case?
2. What are the issues?
3. What law applies?
4. What did the jury decide?
5. Did the jury make an appropriate decision based on the applicable law controlling the case? Why or why not?
6. What ethical norms were fundamental to the jury’s determination?
7. What happened after the verdict?
8. Who was hurt by this lawsuit? Who was helped? What could have been done to prevent it?
9. Regardless of how you feel about the lawsuit, if you owned a small restaurant, would you change any of your policies as a result of this lawsuit? Why or why not?

## 3. Sharing Insights through an Online Discussion with Classmates

After they submit their papers, the students are asked to share with their classmates their reactions to what they learned from the assignment. Specifically, the instructor asks the students to discuss whether their opinions about the McDonald’s lawsuit changed after researching the case and learning more about the applicable law. They are also asked whether they

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<sup>7</sup> NANCY K. KUBASEK, ET AL., *THE LEGAL ENVIRONMENT OF BUSINESS: A CRITICAL THINKING APPROACH* (3d ed. 2003).

<sup>8</sup>The legal reasoning questions were adapted from the traditional FIRAC Method (Facts, Issues, Rule of Law, Application of Law to the Facts, and Conclusion). *See id.* (suggesting also the ethical norms question).

will react differently the next time they read about a situation similar to the Winnebago incident mentioned by The Mighty Quinn.<sup>9</sup>

### B. *The Objectives of the UMUC Seminar*

Two seminar objectives<sup>10</sup> directly relate to the above assignment. The first asks students to apply models of critical thinking and systems thinking to address complex organizational issues. The second seeks to apply the “language of law” and legal concepts in the business environment to managerial decision-making. These objectives would be achieved by students whose research discovered a comprehensive and accurate version of the facts and legal issues of case; and who demonstrated an understanding of the products liability and negligence law that applied to the case, including the law related to compensatory and punitive damages, an understanding of the role of judge and jury in determining damage awards, and the ability to apply the law to management decisions. Students should also be able to take a broader systemic view of how the case affects the legal system, businesses, and the society. In addition, students should demonstrate the ability to critically evaluate the information obtained in their research.

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<sup>9</sup> The Winnebago case is a fabrication. The Stella Awards website admits that many of the supposed cases that win the award are fabricated. See <http://www.stellaawards.com/> and <http://www.stellaawards.com/bogus.html>. See also Patrick S. Ryan, *Revisiting the United States Application of Punitive Damages: Separating Myth from Reality*, ISLA J. INT’L & COMP. L. 10, 69 (2003) (discussing “the unfortunate tendency to believe urban legends”).

<sup>10</sup> At the conclusion of the seminar, student should be able to: 1. Apply models of critical thinking and systems thinking to address complex organizational issues. 2. Construct an electronic portfolio that develops the ability to reflect upon and apply management knowledge by relating individual student personal and career goals into seminar assignments. 3. Apply the “language of law” and legal concepts in the business environment to managerial decision-making. 4. Analyze the relationship between the function, purpose and structure of an organization and its environment. 5. Apply the principles of organizational design and change to maximize organizational effectiveness. 6. Analyze the link between ethics and organizational effectiveness. 7. Construct a research project on a specific organizational issue and present the results to the appropriate stakeholders. 8. Assess ethical dilemmas that occur in organizations and develop constructive resolutions based upon application of ethical theories, principles and models. 9. Analyze alternate approaches to corporate social responsibility. 10. Analyze the challenges of managing organizations in a changing global and technological environment. 11. Assess the qualities of an effective leader. 12. Assess the relationship of organizational structures and organizational processes and goals.

## II. CRITICAL THINKING AND CRITICAL REFLECTION

According to the broad definition of Scriven and Paul,<sup>11</sup> “critical thinking is the intellectually disciplined process of actively and skillfully conceptualizing, applying, analyzing, synthesizing and/or evaluating information gathered from, or generated by, observation, experience, reflection, reasoning, or communication, as a guide to belief and action.” Successful completion of the essential management tasks of decision-making and problem solving would not be possible without critical thinking, which “refers to the use of those cognitive skills or strategies that increase the probability of a desirable outcome.”<sup>12</sup> Accordingly, critical thinking has assumed a prominent position in business school curricula, and, specifically, in Business Law and Legal Environment courses, where careful reading and reasoning are needed to understand and interpret legal opinions.<sup>13</sup> The traditional FIRAC Model of identifying facts, issues, reasons and conclusions has been expanded by Kubasek, Brennan and Browne<sup>14</sup> to include additional steps that involve searching for ambiguity in the text, understanding the ethical norms underlying the judge or jury’s decision, evaluating the aptness of legal analogies and determining whether there is any missing information that would contribute to understanding and evaluating the opinion.

Scholars have recognized that critical thinking has cognitive and attitudinal dimensions.<sup>15</sup> The critical thinking models provide a rational cognitive method that assists students in developing effective skills for analyzing cases, articles, and arguments. The attitudinal component relates to the development of a “critical spirit,” an inclination or habit to approach content with a “skeptical, inquiring attitude that challenges prevailing worldviews and assumptions.”<sup>16</sup> However our ability to apply rational schemes of analysis may be impeded by underlying ingrained misconceptions and/or biases. Scriven and Paul note that critical thinking “entails the examination of those structures or elements of thought implicit in all reasoning: purpose, problem, or question-at-issue; assumptions; concepts;

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<sup>11</sup> Michael Scriven & Richard Paul. *Defining Critical Thinking*. in THE CRITICAL THINKING COMMUNITY, available at <http://www.criticalthinking.org/aboutCT-definingCT.shtml>.

<sup>12</sup> Diane F. Halpern. *Teaching Critical Thinking for Transfer Across Domains: Dispositions, Skills, Structure, Training and Cognitive Monitoring*, 53 AM. PSYCHOLOGIST 1, 4 (1998).

<sup>13</sup> See, e.g., J. David Reitzel, *Critical Thinking and the Business Law Curriculum*, 9 J. LEGAL STUD. EDUC. 1 (1991); Nancy Kubasek & M. Neil Browne, *Integrating Critical Thinking into the Legal Environment of Business Classroom*, 14 J. LEGAL STUD. EDUC. 34 (1996).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> See, e.g., Scriven & Paul, *supra* note 11; Kubasek & Browne, *supra* note 13; Gerald F. Smith, *Beyond Critical Thinking and Decision Making: Teaching Business Students How to Think*, 27 J. MGMT. EDUC., 1 (Feb. 2003).

<sup>16</sup> Smith, *supra* at 28.

empirical grounding; reasoning leading to conclusions; implications and consequences; objections from alternative viewpoints; and *frame of reference*.<sup>17</sup>

According to Jack Mezirow, “transformative learning is the process of effecting change in a *frame of reference*,”<sup>18</sup> which he defines as a “meaning perspective”<sup>19</sup> through which individuals filter their experiences. It is the context through which adults construct meaning from experience. Adult students come into our classes with well-developed frames of reference acculturated over the years from influences of families, previous education, and local and popular culture. Frames of reference form as a result of the preferences we develop in interpreting experience and may be outside of our conscious awareness. Mezirow notes “our values and sense of self are anchored in our frames of reference. They provide us with a sense of stability, coherence, community, and identity. Consequently, they are often emotionally charged and strongly defended.”<sup>20</sup>

Mezirow further notes that learning for adults is “the process of using a prior interpretation of the meaning of one’s experience to construe a new or revised interpretation of the meaning in order to guide future action.”<sup>21</sup> Transformative learning is a process of helping adults free themselves from distorted or constrictive frames of reference that impede their ability to think autonomously and guiding them toward discovery of revised frames of reference that are “more inclusive, discriminating, self-reflective, and integrative of experience.”<sup>22</sup> Critical reflection is a methodology that guides students to examine assumptions and values. Mezirow regards critical reflection as “principled thinking; ideally, it is impartial, consistent, and non-arbitrary.”<sup>23</sup> Critical thinking is an essential aspect of critical reflection in that it provides universal criteria for evaluating reasons. In addition, context specific principles, such as the principles of legal reasoning, must be applied.

### A. *Frames of Reference: The “Jaundiced View”*

Business students approach the study of Business Law and the Legal Environment from the vantage point of a firmly embedded frame of reference replete with assumptions and attitudes concerning the American legal

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<sup>17</sup> Scriven & Paul, *supra* note 11 (emphasis added).

<sup>18</sup> Jack Mezirow, *Transformative Learning: Theory to Practice*, in NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION 43 (1997) (emphasis added).

<sup>19</sup> Jack Mezirow, *Learning to Think Like an Adult*, in LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVE ON A THEORY IN PROGRESS 16 (2000).

<sup>20</sup> *Id.* at 18.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.*

<sup>23</sup> Jack Mezirow, *On Critical Reflection*, 48 ADULT EDUC. Q. 186 (1998).

system, lawyers, and tort law, in particular. This frame of reference is developed largely based on upbringing and culture, particularly the popular culture, since most students have not had prior legal education. Older adult business students, such as the MBA students in this study, are also influenced by the cultures where they work. Assimilation of attitudes affecting frames of reference can be conscious or unconscious. As Mezirow, notes, frames of reference are often collectively held “cultural paradigms” that are “unintentionally assimilated” from our culture.<sup>24</sup> Business law and legal environment professors are familiar with the tendency of students to harbor a cynical view of the American legal system. This cynical view is a taken-for-granted frame of reference that has implications for students’ ability to assess legal cases critically and, as business managers, to assess litigation risk effectively.

Legal scholars have commented on what Marc Galanter has termed the general public’s “jaundiced view” of the American civil justice system.<sup>25</sup> Generally, this is the widespread, oft-heard view that expresses some or all of the following opinions about the contemporary legal system: the system is awash in “frivolous” lawsuits; juries are uneducated and incompetent, anti-business, pro-plaintiff and award enormous sums in damages to greedy, undeserving plaintiffs and their lawyers; the system is driving up the costs of products and services and forcing doctors and businesses to close up shop; fear of lawsuits inhibits product innovation and foreign trade; lawyers and judges are untrustworthy -- all of this leading to the conclusion that the legal system is crazy and corrupt and needs to be “fixed.”

Why is the jaundiced view so prevalent and persistent? The evolution of the common conceptions about the legal system is a fascinating study of how collective frames of reference are developed. Galanter traces the genesis of the jaundiced view to the 1970s and the simultaneous trends of expanding legal remedies and the increased power of large organizations, such as corporations, to shape the law and the public’s view of the legal system.<sup>26</sup>

In the law review article, *Java Jive: Genealogy of a Juridical Icon*, McCann, Haltom, and Bloom<sup>27</sup> identify “three dimensions of power” that

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<sup>24</sup> Mezirow, *supra* note 19, at 16.

<sup>25</sup> Marc Galanter. *An Oil Strike in Hell: Contemporary Legends About the Civil Justice System*, 40 ALA. L. REV. 717 (1998). See also Shari Seidman Diamond, *Truth, Justice, and the Jury*, 26 HARV. J. L. & PUB. POL’Y 143 (2003); Lynn A. Baker & Charles Silver, *What We Know and Do Not Know About the Impact of Civil Justice on the American Economy and Policy* 80 TEX. L. REV. 1537 (2002) (providing an introduction to a symposium issue); Kimberlianne Podlas, *The Monster in the Television: The Media’s Contribution to the Consumer Litigation Boogeyman*, 44 GOLDEN GATE U. L. REV. 239 (2004); Mark B. Greenlee, *Kramer v. Java World: Images, Issues, and Idols in the Debate Over Tort Reform*, 26 CAP. U. L. REV. 701 (1997); McCann, et al., *supra* note 2.

<sup>26</sup> Galanter, *supra*.

<sup>27</sup> McCann, et al., *supra* note 2.



shape Americans' views of the civil legal system. The first dimension consists of the tactics that advocates such as tort reformers, personal injury lawyers and academic social scientists employ to muster support for their positions. Of these three advocates, the authors find that the tort reformers are by far the most effective in disseminating their view of a hyper-litigious American society. Legal scholars have refuted the claims of the "jaundiced view"<sup>28</sup> with empirical evidence and sophisticated argument,<sup>29</sup> but these arguments have little impact in the realm of political discourse and popular media where public opinion evolves.<sup>30</sup> Indeed, a recent *Business Week* article dubbed the tort reform debate "war by anecdote," noting that the lack of reliable government studies contributes to a rhetoric rife with distorted interpretations of questionable statistics and dubious horror stories.<sup>31</sup>

The second dimension McCann et al. identify as influencing views of the legal system is institutional practices of the mass media, particularly newspapers, in reporting civil litigation activity.<sup>32</sup> They found that news coverage of tort law emphasized dramatic cases with large monetary awards and bizarre, unusual situations; focused on individuals and their actions and moral character rather than on larger social, political, or historical contexts; and "normalized" the stories by applying familiar references for easy understanding and offering some reassurance after disturbing reports.<sup>33</sup> The media plays a powerful role in proliferating the view of the hyper-litigious society<sup>34</sup> with distorted coverage that focuses on products liability cases, filings before trial and judgments after trial, cases where the plaintiff wins, unrepresentative sensational cases with jury trials, unusual or amusing fact patterns, and large awards, thus giving the erroneous impression that these

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<sup>28</sup> Galanter, *supra* note 25.

<sup>29</sup> See *id.*, Seidman, *supra* note 25; Baker & Silver, *supra* note 25; Podlas, *supra* note 25. See also Carl T. Bogus, WHY LAWSUITS ARE GOOD FOR THE AMERICAN ECONOMY: DISCIPLINED DEMOCRACY, BIG BUSINESS, AND THE COMMON LAW (2001).

<sup>30</sup> See, e.g., Marc Galanter & Charles R. Epp, *A Beginner's Guide to the Litigation Maze*, in BUSINESS ECONOMICS (1992); McCann, et al., *supra* note 2 (noting that studies social scientists academics remain mostly unknown to both the public and to its political representatives).

<sup>31</sup> Lorraine Woellert, *In This Debate, It's War By Anecdote*, BUS. WK., Mar. 2005, at 39 (noting that at the signing of the Class Action Fairness Act, George W. Bush stated that "junk lawsuits have driven the total cost of America's tort system to more than \$240 billion a year – greater than any major industrialized nation"). Woellert points out that the \$240 billion figure is misleading, because it includes "everything from no-fault fender bender claims to the salaries of insurance company CEOs to calculate the tort system as a whole." *Id.* Similarly, Galanter, *supra* note 25, at 740, notes that there is not a "fund of systematic social knowledge about the working of the civil justice system."

<sup>32</sup> McCann, et al., *supra* note 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

types of unusual cases are the norm.<sup>35</sup> Galanter adds that this effect is heightened by a common cognitive bias (the “availability heuristic”<sup>36</sup>) that results in overemphasizing the frequency of sensational, vivid, information because it is more easily recalled.<sup>37</sup> In addition to selecting sensational cases, commentators note that the media falsely reports the facts of cases and/or distorts the facts by decontextualizing cases and selecting only those facts that emphasize large awards, irresponsible plaintiffs, and deep-pocket defendants.<sup>38</sup> McCann, et al. further note that news stories of tort law over-represented coverage of “experts who rail against specific claims and judgments for plaintiffs or the overall legal system.”<sup>39</sup>

Critical thinking is not a natural activity for humans. Rather, we are “pattern-seeking, story-telling animals” who try to make sense and order out of our lives by seeking simple and familiar narratives and patterns,<sup>40</sup> and the media thrive on providing those stories. Unlike court opinions, statistical studies, and law review articles, the stories about frivolous lawsuits that are circulated in the popular press and on the internet are easy-to-understand, entertaining, and provide immediate gratification in that they confirm and reinforce commonly held views and values.<sup>41</sup> Other commentators question whether “the most important cause of suspicion about the American civil justice system may not be the system itself but the frequency with which its detractors say that something is seriously wrong with it.”<sup>42</sup>

The third dimension recognized in the *Java Jive* study as contributing to the contemporary negative view of the legal system is “ideological propensities in American society,” specifically the powerful norms of “individual responsibility and suspicion toward formal state intervention in socio-economic life.”<sup>43</sup> This view is consonant with Galanter’s belief that the jaundiced view flourishes, because “it is a set of legends that are resilient and that resonate with many of the basic themes of our legal culture, such as individual responsibility and self-reliance.”<sup>44</sup> The *Java Jive* study finds that “both popular news accounts and conservative pundits together have

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<sup>35</sup> See, e.g., Galanter *supra* note 25; Baker & Silver, *supra*, note 25; and McCann, et al., *supra*, n. 2.

<sup>36</sup> See MAX H. BAZERMAN, JUDGMENT IN MANAGERIAL DECISION-MAKING (5th ed. 2002).

<sup>37</sup> Galanter, *supra* note 25, at 743.

<sup>38</sup> See, e.g., Galanter *supra* note 25; Greenlee, *supra* note 25; McCann, et al., *supra* note 2.

<sup>39</sup> McCann, et al., *supra* note 2, at 132.

<sup>40</sup> Tim van Gelder, *Teaching Critical Thinking: Some Lessons from Cognitive Science*, 53 COLLEGE TEACHING 1 (2001).

<sup>41</sup> See Bazerman, *supra* note 36 (discussing the confirmation trap where people look for and tend to credit information that confirms existing beliefs even when contradictory information is more powerful).

<sup>42</sup> Baker & Silver, *supra* note 25, at 1537.

<sup>43</sup> McCann, et al., *supra* note 2, at 116.

<sup>44</sup> Galanter, *supra* note 25, at 722.

reinforced inherited inclinations to focus on individual irresponsibility, negligence, and greed of plaintiffs rather than on corporate accountability, state obligations to secure citizen welfare, or the limits of our regulatory/social insurance systems as the key issues at stake in civil legal contests.”<sup>45</sup>

### B. *Contextual Framing and the Hot Coffee Case*

The McDonald’s hot coffee case has become a legal legend, because the simple outline of the case creates a perfect image of a frivolous lawsuit that constellates the greatest fears of the jaundiced view: an individual makes a foolish mistake and is injured as a consequence, but refuses to accept responsibility, finds a deep pocket to blame and is inexplicably awarded vast sums of money by a dimwitted jury. McCann, et al. suggest that the “cartoonish construction of the legal dispute ... rendered virtually impossible any intelligent deliberations about the case’s inherent reasonableness or justice, much less its larger policy significance for legal reform”<sup>46</sup> In a detailed study of press coverage of the case, the authors demonstrate that media accounts effectively “reversed official legal findings” in that they presented the “individual responsibility narrative” of the case presented by the defendant at the trial rather than the plaintiff’s products liability narrative that prevailed with the jury and the judge.<sup>47</sup>

The somewhat abbreviated facts, findings and conclusions of law in the hot coffee case are as follows:<sup>48</sup> On February 27, 1992, Stella Liebeck, a 79-year old retired department store salesclerk, was in the passenger seat of a Ford Probe driven by her grandson, Chris Tiano (a college graduate and assistant golf pro). Chris pulled into the drive-thru at an Albuquerque McDonald’s, and Stella ordered an Egg McMuffin value meal and a cup of coffee. Chris pulled the car away from the window and fully stopped by a curb in the parking lot. Stella tried to remove the lid on the Styrofoam cup to add cream and sugar. There was no cup-holder or flat surface to put the cup on, so Stella put the cup between her legs and attempted to remove the lid. The coffee spilled onto her lap and was rapidly absorbed by her sweatpants. Stella screamed in pain, but at first Chris did not understand what was wrong. He stated that at first it seemed not to be a “big deal.” He testified in his

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<sup>45</sup> McCann, et al., *supra* note 2, at 116-17.

<sup>46</sup> *Id.* at 118.

<sup>47</sup> *Id.*

<sup>48</sup> The official opinion of the District Court of New Mexico is unpublished and contains only an outline of the jury’s findings and the judgment. Unless otherwise noted, additional facts are derived from McCann, et al., who consulted the trial transcript. *See generally id.*

deposition: "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."

Chris started driving out of the parking lot when Stella became nauseated. Chris suspected she might be in shock. He pulled over to the side of the road, helped her out of the car, helped her remove the sweatpants, and covered her with a sheet. He then headed for the nearest hospital, and finding it full, proceeded to another hospital where Stella was admitted. Doctors determined that the hot coffee was the cause of third degree burns on her thighs, buttocks, genitals, and groin area totaling six percent of her body, with lesser burns over sixteen percent of her body. Third degree burns are extreme injuries that penetrate the skin down to the subcutaneous fat, muscle, and bone. Stella was in the hospital for over a week where she was treated by a vascular surgeon and had painful skin grafts. The surgeon reported that her injuries constituted one of the worst burn cases from hot liquids that he had ever treated. Stella did not have medical insurance, and, attempting to reduce hospital costs, she left the hospital earlier than recommended. Her daughter, with whom she lived, had to take off from work to drive Stella back to the hospital for treatments on subsequent days. Stella lost over twenty pounds, was permanently disfigured, and was partially disabled for up to two years.

Stella was a long-time Republican who had never filed a lawsuit before. She did not immediately seek a lawyer but instead sent a letter to McDonald's two weeks after the accident. In the letter, she contended that she should not have been served coffee that was so hot that it could cause such severe injuries. She acknowledged that she spilled the coffee, but expected only minor injuries, not the serious injuries she sustained. Nonetheless, she indicated that she did not intend to sue McDonald's. Rather she asked them to check the process of making the coffee to see if it was defective in some way; to reevaluate the temperature standards for serving coffee; to cover the costs of her medical care, recuperation and incidental costs related to her injuries. (These costs were not fully known and thus unspecified at the time she wrote the letter, and later estimates vary in different accounts from \$10,000-\$15,000 in medical bills, plus additional expenses for a total of approximately \$20,000.) McDonald's refused her request for changes in policy and offered only \$800.

Stella then sought legal counsel and was directed to Reed Morgan, a Houston attorney who had settled a similar case against McDonald's involving scalding coffee. Morgan requested \$90,000, which McDonald's refused, and he then filed a formal complaint in the Second Judicial Circuit Court in New Mexico alleging that the coffee was defective because it was excessively, dangerously hot, and because adequate warnings were not provided regarding the risks of the coffee at that temperature. The claim was based on products liability law, specifically, the Uniform Commercial Code,

alleging breach of warranties of fitness for a particular purpose and merchantability. The complaint requested compensatory and punitive damages (on the grounds that McDonald's exhibited reckless indifference in selling the coffee). When a trial date was set, Morgan offered to settle for \$300,000. McDonald's refused. A few days before the trial, the judge ordered the parties to mediate. The mediator recommended a settlement of \$225,000. McDonald's refused, and the case went to trial.

The facts of the case were largely undisputed at trial. McDonald's did not dispute that the coffee was very hot and could severely scald customers. The McDonald's manual specified that coffee should be made at 195-205 degrees and served between 180 and 190 degrees. Morgan introduced two experts who testified that liquids at this temperature cause third degree burns within two and seven seconds. McDonald's quality assurance supervisor admitted that McDonald's coffee would scald. McDonald's also did not dispute that it had received over 700 complaints about hot coffee over the previous ten years and had paid out nearly three quarters of a million dollars to settle the claims, including some payments as large as \$66,000. A safety consultant for McDonald's testified that 700 complaints were "statistically insignificant" relative to the billion cups of coffee McDonald's served over a year.<sup>49</sup> In closing argument, plaintiff's lawyers noted that McDonald's generates revenues of over \$1.35 million per day based on coffee sales, and that payment of 2 days' revenues would constitute a reasonable basis for computing punitive damages for reckless conduct on the part of McDonald's.

After a seven-day trial, and four hours of deliberation, the jury returned a verdict in favor of the plaintiff on the claims of product defect, breach of implied warranty of merchantability, and breach of implied warranty of fitness for a particular purpose. It further found that the plaintiff was twenty percent at fault. The jury awarded the plaintiff \$200,000 in compensatory damages, which were reduced by \$40,000 based on the finding of comparative negligence for a net judgment of \$160,000. It awarded the plaintiff \$2.7 million in punitive damages.

Although jurors commented after the case that they were not initially sympathetic to the plaintiff's case,<sup>50</sup> the evidence of the severity of burns, particularly the photos of the injuries and the 700 prior coffee burn complaints changed their minds.<sup>51</sup> Moreover, jurors viewed McDonald's

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<sup>49</sup> Andrea Gerlin, *How Jury Gave \$2.9 Million for Coffee Spill, McDonald's Callousness was Real Issue, Jurors Say in Case of Burned Woman – How Hot Do You Like It?* WALL ST. J., Sept. 1, 1994, at 1.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

experts' testimony as representative of "a callous disregard for the safety of the people."<sup>52</sup>

On September 14, 1994, the trial judge reduced the punitive damages to \$480,000, representing three times the compensatory damages. The judge did not disagree with the jury's findings or the determination that punitive damages were appropriate in this case. Morgan appealed the reduction in damages; the judge denied it and ordered a post-trial conference at which the parties agreed to settle for an undisclosed amount.

The facts of the case presented in full context portray a much more complex interplay of legal rights and responsibilities than the commonly accepted media-derived narrative. The *Java Jive* study<sup>53</sup> carefully documents five phases of media coverage of the hot coffee case that led to its iconic status. The first and largest phase occurred after the announcement of the jury verdict on August 19, 1994. The study finds that initial wire and subsequent news reports were factual overall, but sketchy, and in content and frequency, the stories emphasized the amount of the jury verdict, the severity of the injuries, the claim that the coffee was too hot and a description of the spill. The authors characterize this phase of the coverage as presenting a simple story: "a woman spills coffee in her lap, sues McDonald's for making coffee so hot that it severely burned her, and gets millions. This sequence preserved the perceived irrationality, if not absurdity, of an extravagant award generated by an everyday occurrence and novel claim."<sup>54</sup> However, the studies demonstrated that the following factual elements of the story were "missing from most or many articles and scanted in most or all: past complaints or lawsuits against McDonald's; the impassivity and indifference evident in the testimony of McDonald's officials; the lowball offer ...; the contrasting mindsets of plaintiff and jurors; the location of the car in the lot and of Ms. Liebeck in the car; and the presence and usefulness of warning on cups."<sup>55</sup> Moreover, scientific information about the severity of the burns or information about the legal basis of the plaintiff's claims, the Uniform Commercial Code or Liebeck's initial attempts to settle the claim before filing suit and again before trial were missing from almost all of the first phase reports.<sup>56</sup> The *Java Jive* study documents how, subsequent to the initial news coverage, commentators and pundits "manufactured factoids imputing greater moral blame to Ms. Liebeck."<sup>57</sup> Despite the fact that Liebeck had never filed a lawsuit previously, did not want to sue originally, and attempted

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<sup>52</sup> *Id.*

<sup>53</sup> McCann, et al., *supra* note 2.

<sup>54</sup> *Id.* at 142.

<sup>55</sup> *Id.* at 143.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

to settle the claim several times, the commentators portrayed her as “litigious.”

The *Java Jive* study identifies the second phase of coverage as commencing with two events that occurred in September 1994: Judge Scott’s order directing the parties to mediate and a front page article by Andrea Gerlin in the *Wall Street Journal* that explained how jurors found in favor of Liebeck, including the previous incidents of burn complaints against McDonald’s, testimony of McDonald’s experts that led to the jury’s determination that punitive damages were warranted, and the severity of the burns and the impact on the jury of burn photos and expert testimony on how quickly the liquid could cause severe burns.<sup>58</sup> The study notes that the order for mediation was not picked up by any of the 26 newspapers that had stories on the verdict, and the additional information included in Gerlin’s article was picked up by only 7 of the 26 newspapers, some adding editorial comments regarding Liebeck’s litigiousness.<sup>59</sup> McCann et al. found that in Phase 3, 37.5% fewer newspapers covered Judge Scott’s reduction of the punitive damages award than those reporting on the original verdict less than a month earlier, while distortion of the facts and charges of litigiousness increased in editorials and commentaries.<sup>60</sup> In Phase 4, after settlement of the case on November 30, 1994, coverage waned with only “spot coverage” of the settlement.<sup>61</sup>

The study defines Phase Five – the end of 1994 to the present. During this phase the *Individual Responsibility Narrative* favored by the defendant McDonald’s had obliterated the *Defective Products Liability Narrative* 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 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.<sup>62</sup>

The authors note that in Phase Five, the hot coffee case was often cited in news stories, and disputes over hot liquids received more attention. In addition, commentators, editorialists, humorists and gossip columnists frequently moralized and ridiculed the case and the plaintiff.<sup>63</sup> In this final phase, the transformation of Stella Liebeck into “the poster lady for the tort

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 160.

<sup>63</sup> *Id.*

reform movement”<sup>64</sup> was complete, as references and parodies of the case were featured in an episode of *Seinfeld*,<sup>65</sup> in corporate advertisements, and movies. The *Java Jive* study further reports that the hot coffee case was frequently cited in congressional hearings in 1995, and “just as the mass media had reconstructed a successful claim of legal right into a cartoon, so did politicians use that cartoon to justify reconstructing and righting the law itself.”<sup>66</sup>

### III. ASSESSING UMUC RESULTS

#### A. Summary of the Students’ Initial Views

The lead author of this note was the instructor of the sections of the course involved in this study, and she reviewed the pre and post research responses associated with the assignment for all 115 students in five sections of the course.<sup>67</sup> Students’ responses to the first conference topic that asked them to share their initial views on the McDonald’s hot coffee and Winnebago lawsuits prior to doing any research demonstrated that the case was widely recognized. Students were asked to post a brief initial reaction to the McDonald’s lawsuit described above. Had you heard about this lawsuit before? Do you think it is “frivolous”? The term “frivolous” was not defined intentionally to elicit responses based on the layperson’s interpretation of the term. Each of the 115 student responses were carefully classified as Frivolous, Not Frivolous, or Undecided based on the specific responses and comments.

If, as quoted earlier,<sup>68</sup> the hot coffee case supplies “more common knowledge about the United States civil justice system than any other single lawsuit,” what is the nature of that knowledge? The students’ familiarity with

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<sup>64</sup> *Id.* at 162.

<sup>65</sup> *Id.* See also Greenlee, *supra* note 25.

<sup>66</sup> *Id.* at 166.

<sup>67</sup> A recognized limitation of the study is that there was only one person, the course instructor, who interpreted and coded the student responses. In future studies, more raters could reduce subjectivity. Nonetheless, the initial responses generally left little to interpretation as students stated their initial views quite clearly, particularly the opinion that the lawsuit was frivolous. The most difficult aspect of interpreting the student responses was in deciding whether to code responses that expressed some reservation, such as an admission of lack of facts and understanding of the law, as “Undecided” or “Frivolous.” A response that expressed the view that the case was frivolous while expressing reservations was coded as “Frivolous.” Respondents that said they did not know for sure, but tended to think the case was frivolous, were coded as “Undecided.” Some students who responded that the case was “not frivolous” noted they had been exposed to the case in prior classes but that prior to that time, they did think the case was frivolous. These responses were coded as “Not Frivolous.”

<sup>68</sup> McCann, et al., *supra* note 2.



the case over ten years after the decision supported claims of the cases' legendary status. Only one out of 115 students said he had not heard of the case before. Moreover, students mentioned that they had entered into discussions about the case in their workplaces and at parties. One student said that he had served on a jury where the jurors discussed the hot coffee case in the context of the personal injury case they were deliberating. He said that the hot coffee case aroused anger on the part of the jurors who decided in favor of the defendant.

Responses indicated that the vast majority of the students learned about the case from the popular news media or by word-of-mouth, although three had been exposed to the case in earlier classes. Some noted that their first exposure to the lawsuit was in the context of media personalities making fun of it. While most students admitted not knowing much about the case, this admitted lack of knowledge did not keep the majority of them from forming and expressing strong opinions initially. Some included incorrect factual information or unsubstantiated assumptions (such as that the plaintiff was driving, that the car was moving, that the car was going over bumps, that the severity of the burns was due to lack of prompt treatment, and that if McDonald's had known that the coffee was hot enough to cause severe burns, they would have reduced the temperature.)

Since most students admitted knowing little about the case initially, the response indicative of critical thinking would be "Undecided." However, despite introduction to the critical thinking model in *Asking the Right Questions*, which was introduced in the second week of class, only thirteen percent (fifteen respondents) were classified as "Undecided." Of the fifteen respondents who were expressly undecided and reserved judgment until learning more about the case, one was a law student, one had several years of experience on the insurance side of litigation management, and one had studied the case in a prior class. Two had experienced hot beverage spills as children, one at a McDonald's restaurant (although no complaint to the company resulted). Several of these students said that they were influenced by the earlier lessons in the course on critical thinking to reserve judgment until they had more facts and a better understanding of the law.

Only 6.1% (seven respondents), had initial opinions that the hot coffee case was not frivolous, classified as Not Frivolous. Among these students, one had studied in the case in a prior class, one had experience as an insurance adjuster, and one said that he had a prior discussion with someone claiming to be Stella Liebeck's attorney.

The vast majority of the students, 80.9% (ninety-three respondents), had initial opinions that the hot coffee case was frivolous, classified as Frivolous. Comments among this group echoed the "jaundiced view" of the legal system and the normative themes of personal responsibility and common

sense. Even though the discussion was conducted online, emotional reactions were evident, since many students used clearly strong affective language to describe emotions of anger and resentment toward the plaintiff and the legal system. For example, students characterized the case as “absurd,” “ridiculous,” dumb, a joke, an example of “how people beat the system,” “outrageous,” “ludicrous,” and “highly offensive.” The plaintiff was described as ignorant and a manipulator of the law. Some students saw the lawsuit as a “get-rich-quick” scheme in which they were the victims of lazy people who are taking advantage of a court system supported by their tax dollars.

The case elicited criticism of the American legal system and the litigious society. For example, one student characterized American culture as “sue-crazy.” The discussion included comments about the negative effects of the litigious society on businesses, physicians, the economy, and consumers who have to “pay the price for the stupidity” of the plaintiffs in frivolous cases. The students described the case as a prime example or “poster child” of the need for tort reform, and some thought that the case added substance to the negative image of lawyers giving the American legal system a bad name. Liebeck’s attorney was called an “ambulance chaser.” Lawyers were characterized as “greedy” and “money-hungry.”

Recurring normative themes throughout the discussion were “common sense” and “personal responsibility.” Many comments decried the lack of common sense of a person who would not expect hot coffee to be hot and called for limits on stupidity. Several thought that McDonald’s should not be responsible unless a McDonald’s employee spilled the coffee. The law, lawyers, and jurors were also criticized for lacking common sense. Several discussions centered on the perception of a growing tendency in American culture for individuals to place the blame on someone else for their own mistakes and problems, rather than accepting personal responsibility. Other comments noted jurors’ lack of common sense and their tendency to side with the plaintiff against a big corporation.

### *B. Summary of Post-Research Responses*

Basic descriptive statistics were generated to examine the differences between the pre and post responses given by the 115 students. In aggregate, the students’ opinions about the hot coffee case after doing research were dramatically transformed. The post reflection responses were classified as the following:

- 86.1% (99 respondents): Not Frivolous
- 4.3 % (5 respondents): Undecided

- % (11 respondents): Frivolous

The nonparametric cross tabulation procedure was used to examine the relationship between the pre and post responses. The following table was generated.

### Pre \* Post Response Cross-Tabulation

Pre-response	Post-response			Total
	Frivolous	Not Frivolous	Undecided	
<b>Frivolous</b>	<b>11</b> (9.6%)	<b>80</b> (69.6%)	<b>2</b> (1.7%)	<b>93</b> (80.9%)
<b>Not Frivolous</b>	<b>0</b>	<b>7</b> (6.1%)	<b>0</b>	<b>7</b> (6.1%)
<b>Undecided</b>	<b>0</b>	<b>12</b> (10.4%)	<b>3</b> (2.6%)	<b>15</b> (13%)
	<b>11</b> (9.6%)	<b>99</b> (86.1%)	<b>5</b> (4.3%)	<b>115</b> (100%)

After the students researched the case, wrote a paper, reflected and exchanged views with their classmates, the number of students who thought that the case was Not Frivolous increased dramatically from seven to ninety-nine students or about an eighty percent increase. There were eighty students who initially responded that the hot coffee case was Frivolous and changed their view to “Not Frivolous” after researching the case, writing a paper, and exchanging views with their classmates. Thus almost seventy percent of the students changed their minds from Frivolous to Not Frivolous. Of the fifteen students who were undecided or had mixed views of the case initially, twelve revised their view to “Not Frivolous” or a little over ten percent of the total number of students. All seven students who originally thought the case was “Not Frivolous” did not change their view.

The nonparametric McNemar test was performed on the data to test the statistical significance associated with the change from pre-Frivolous to post-Not Frivolous. This test was used due to the fact the data responses were nominal in nature along with paired. This test was run two times by first including the Undecided into the category of Not Frivolous and then removing the Undecided responses from the sample. There were no differences between the results. The null hypothesis that the probability of change from Frivolous to Not Frivolous is the same was rejected. Thus we can conclude that the probability of change from Frivolous to Not Frivolous

was not statistically equal across time periods, in fact it was much higher going from the pre response to the post response.

**Nonparametric McNemar Chi-Square Test Results**

<b>Pre vs. Post</b>	<b>Chi-square</b>	<b>Asymp. Significance</b>
Included Undecided with Not Frivolous	80.012	.000 <sup>69</sup>
Omits Undecided	78.013	.000 <sup>70</sup>

<b>Pre-Response</b>	<b>Post- Response</b>	
	<b>Frivolous</b>	<b>Not Frivolous or Undecided</b>
Frivolous	11	82
Not Frivolous or Undecided	0	22

As you can see from the table above, the students were definitely impacted by the assignment as evident in the higher switch to Not Frivolous on the post response.

*C. Analysis of Post-Research Responses: What Did Students Learn?*

Through guided research students learned the true facts of the case, the issues, and that the decision was based on products liability law. Their cognitive and attitudinal critical thinking skills were sharpened, and some students, through critical reflection on assumptions, achieved varying levels of perspective transformation regarding the American civil justice system. The following analysis based on students’ comments constitutes the lead author instructors’ views on what the students learned as well as the students’ own assessments of their learning.

1. The Facts

Students frequently cited the following reasons as influencing them to change their opinions from Frivolous to Not Frivolous or Undecided to Not Frivolous:

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<sup>69</sup> This is statistically significant at the .05 level of significance.

<sup>70</sup> This is statistically significant at the .05 level of significance.

- Data related to the temperature of the coffee and its ability to cause third degree burns in 2-7 seconds
- McDonald's refusal to lower the coffee temperature after having knowledge of over 700 prior burn incidents
- McDonald's apparent "callousness" as reflected in their refusal to lower the temperature and in the testimony of the expert

Not surprisingly, the opinion of the class reflected the same pattern as that of the jury in the hot coffee case: initial reaction sympathetic to the defendant's "Individual Responsibility Narrative" as advocated by the defendant's attorneys and echoed in the media,<sup>71</sup> followed by a change of opinion in favor of the plaintiff's "Products Liability Narrative"<sup>72</sup> after exposure to a more robust version of the facts.

In addition, students reported that they were influenced by several additional factors, deemed "unnewsworthy" by the press, that mitigated against initial reactions that the plaintiff was litigious or greedy or that she received a windfall, namely, the fact that she had not been involved in tort litigation in the past; her initial attempts to settle the case; McDonald's refusal to settle or mediate; and the fact that the judge substantially reduced the damages. As one student noted, "this was not an attempt to get rich off a corporate giant."

Students commonly reported a transformed attitude toward Stella Liebeck. One student commented that Liebeck "showed concern for other restaurant patrons by asking that McDonald's check the adequacy of the coffee making process." Another student who initially thought the jury award was "outrageous," stated that she considered how she would feel if Liebeck were her grandmother and thought that in addition to monetary compensation, Liebeck deserved a public apology from McDonald's and free food for life.

## 2. The Law and the Justice System

In addition to learning basics of Products Liability law and comparative negligence, students gained a fuller understanding of the jury process, the process of bringing a suit to trial (including FRCP 11), the stages of a trial, and the purpose of punitive damages. Students commented that they were not aware that the legal basis of the hot coffee case was Products Liability Law, not negligence (an aspect of the case that was not covered by the media<sup>73</sup>).

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<sup>71</sup> See McCann, et al., *supra* note 2.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

They most frequently commented that up to this point, they were unaware that the judge often reduces extravagant punitive damages. Some students noted that their faith in the justice system was restored after getting all the facts and learning that judges can, and frequently do, change jury awards.

One student who initially commented on the number of people who try to get out of jury duty, leaving incompetent juries to decide cases, observed that the jury in the hot coffee case was “well-reasoned, listened to the arguments and formed their decision based on what was presented in the court, not in the media. They in fact did just what they were supposed to. Many of the comments from jurors before the trial show that they were as outraged at wasting their time on a trivial matter as many of my fellow classmates were, myself included, but they were able to put aside this and focus on the facts of the case and come to a verdict that I believe was fair and well deserved.”

Students, who initially thought the case was frivolous, expressed the opinion that the case “benefited millions of consumers.” Another student noted, “because of cases like this, companies are forced to be innovative and improve their products.”

Not all students who agreed that the case was not frivolous agreed with the punitive damages awarded. Some thought that a further reduction was warranted. It seemed that although students understood that punitive damages are designed to punish, they objected to the plaintiff receiving a windfall. Interesting discussions regarding alternative methods of awarding punitive damages took place in some classes. For example, in one class, students discussed an idea of giving some of the punitive damages to charities like the Shriner’s Burn Institute.

### 3. Critical Thinking: Cognitive and Attitudinal

In addition, to varying degrees, all students improved their ability to evaluate evidence and to approach news coverage critically. Students noted that the case and the earlier lessons in critical thinking in the course taught them to question representations in the media and to form their own unbiased opinions.

Students recognized that in their initial reactions they were “quick to make a judgment call ... without further investigation,” “viewing things as black and white,” and that researching the case underscored the importance of “reserving judgment until all of the relevant information is gathered.”

Students commented on the media’s distortion of the story and the power of the media to “mold and shape our thoughts and perceptions.” As one student put it, “As we’ve been learning throughout this course, a healthy dose of skepticism and critical thinking is very helpful in navigating the

realms of mass media that typically feed us our information” Another student noted the obligation of managers “not react to information that attempts to appeal to our emotions, or our core values before we have a chance to get all the facts, evaluate the credibility of the source, and then assess the validity of the information before deciding on how to respond or react to it”

#### 4. Students Who Still Thought the Case Was Frivolous

With the exception of one student who gave reasons that indicated a failure to do the required research, the small minority of students who still thought the case was frivolous in the post-research phase achieved much the same learning as the students whose opinions did change. The purpose of the assignment was not to have everyone agree at the end that the case was not frivolous or that the plaintiff should have prevailed, but to develop a broader, richer, and more critical view based on the facts and applicable law.

The reasons students gave for still thinking that the case was frivolous were consistent with aspects the defendant’s “Individual Responsibility Narrative” as discussed in McCann, et al.<sup>74</sup> They believed that Liebeck caused the accident, could have prevented it, and should be responsible for her own actions. One student thought that the jury wrongly based its decision on anger towards McDonald’s witnesses and empathy for Liebeck.

Nonetheless, even though the students had not changed their response, they did report changes in attitude toward McDonald’s and the media. They were critical of McDonald’s handling of the case in refusing to settle or mediate and in failing to lower the temperature of the coffee. Students further commented on the media’s sensationalizing of the story and failure to report the reduction in the award.

#### D. *Transforming Frames of Reference*

Learners transform their frames of reference by critically reflecting on assumptions that form the basis of their “interpretations, beliefs, and habits of mind or points of view.”<sup>75</sup> Reframing may be *objective*: critical reflection on the assumptions of others, or *subjective*: critical reflection on one’s own assumptions. Assumptions may be about: a narrative, a system, an organization, personal feelings and relationships, or the way one learns,

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<sup>74</sup> *Id.*

<sup>75</sup> "Habits of mind are broad, abstract, orienting, habitual ways of thinking, feeling and acting influenced by assumptions that constitute a set of codes. These codes may be cultural, social, educational, political, or psychological. Habits of mind become articulated in a specific point of view – a constellation of belief, value judgment, attitude and feeling that shapes a particular interpretation." Mezirow, *supra* note 18, at 6.

including one's own frames of reference.<sup>76</sup> Mezirow observes "when the object of critical reflection is an assumption or presupposition, a different order of abstraction is introduced, with major potential for effecting a change in one's established frame of reference. Assumptions upon which these habits of mind and related points of view are predicated may be epistemological, logical, ethical, psychological, ideological, social, cultural, economic, political, ecological, scientific, spiritual, or pertain to other aspects of our experience."<sup>77</sup>

The students' initial responses indicated that even though they had been exposed to an effective critical thinking model earlier in the class, the majority responded uncritically to news reports about frivolous lawsuits. Their opinions echoed the "jaundiced view" of the legal system. Post-research responses demonstrated marked changes both in students' opinions of the case and in their perspectives on the civil justice system. Students' comments indicated that many had not merely "changed their minds" about the case, and learned to be more critical about media reports, but that they had critically reflected on their own assumptions or presuppositions regarding a habit they had developed of receiving rather than constructing "knowledge" about the legal system. A number of students achieved a level of transformative learning involving new insights into how their frames of reference regarding the legal system had been constructed. They discovered not only a new view of the hot coffee case, a new understanding of frivolous lawsuits, products liability law, and the legal system, but, more importantly, an understanding that they had been unconsciously and uncritically identifying with a frame of reference created by external sources and that this frame of reference impeded their ability to form authentic, informed, critical reactions when exposed to narratives about frivolous lawsuits. The students who achieved transformative learning not only rejected assumptions they had assimilated from the culture and the media and uncritically had accepted, they also contemplated the implications of the source of their assumptions and rejected their "identification with these assumptions as truths."<sup>78</sup>

One student expressed recognition of received assumptions by saying "Instead of making up my own mind, I was simply reflecting the opinion already established." Many of the students gave vivid descriptions of the dramatic impact the assignment had on their awareness of the assumptions they take for granted about purported frivolous lawsuits. For example, one student whose responses moved from "Frivolous" to "Not Frivolous," noted

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<sup>76</sup> Mezirow, *supra* note 19, at 23.

<sup>77</sup> Mezirow, *supra* note 23.

<sup>78</sup> Robert Kegan, *What "Form" Transforms? A Constructive-Developmental Approach to Transformative Learning*. in *LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVE ON A THEORY IN PROGRESS* (2000).



that the assignment changed his thinking “hopefully forever.” He said that he was previously inclined to believe newspaper reports of frivolous lawsuits and was unaware that judges often reduce awards. Recognizing the distortions and omissions in media reports, this student said that he realized how “ignorant” he was about legal issues and that he intended to take corrective action in future.

Students who shifted from frivolous to not frivolous described their experience in transformative language. For example the change was described as “dramatic”; “a complete change of heart”; “180 degrees”; “what a difference a week makes”; and “Boy, was I wrong!”

In the reflection conference one student noted that the class initially was largely of the opinion that the hot coffee case was frivolous and asked how business could stop frivolous lawsuits. Noting information in the ATLA website that indicated that the “litigation explosion is a myth,”<sup>79</sup> and that safeguards already exist in the system, she said she would “rather have a legal system that will err on the side of entertaining an alleged wrongdoing rather than disregarding a lawsuit that may, in fact, have merit.”

### *E. Assignment Design: Conditions Supporting Transformative Learning*

The assignment contained several elements<sup>80</sup> demonstrated to foster transformational learning, including a learner-centered approach, student autonomy, participation and collaboration. The assignment provided guided, probing questions to frame issues and encourage critical reflection on assumptions. Students came to their own views based on their research and the dialogic process. The instructor guided the discussion, provided legal expertise, and answered questions after the discussion concluded. The instructor provided interpretations of the law and the evidence but did not voice personal views regarding tort reform.

The assignment incorporated a series of steps Mezirow identifies in the process of transforming frames of reference.<sup>81</sup>

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<sup>79</sup> See What is Frivolous? Available at <http://www.atla.org> Students also consulted the ATLA website for information about the Hot coffee case. Although the information on the cite regarding frivolous lawsuits, facts about litigation and the Hot coffee case were based on reliable sources and appeared accurate, students were cautioned to consider that this organization's position could be biased as well.

<sup>80</sup> See Edward W. Taylor, *Analyzing Research on Transformative Learning Theory*, in *LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVE ON A THEORY IN PROGRESS* (2000).

<sup>81</sup> *Id.* at 22.

1. *A disorienting dilemma* is the catalyst for transformative learning. Some students had long held unexamined beliefs about the hot coffee case and associated jaundiced view of the civil justice system. After learning the facts of the case, many expressed discomfort and consternation in having this belief system shaken.
2. *Self-examination with feelings of fear, anger, guilt, or shame.* Some students who experienced a disorienting dilemma also expressed embarrassment and shame regarding their gullibility in accepting the media's spin on the hot coffee case and in believing the Winnebago urban legend case actually happened.
3. *Critical assessment of assumptions.* In the Reflection conference students were asked to discuss if they had changed their opinions of the hot Coffee and Winnebago cases and to give reasons for their positions. Their discussion revealed that many critically considered the objective and subjective assumptions implicit in their initial reactions, rejected them as unreliable, and recognized previous habits of accepting media sources uncritically. Students were self-critical about their tendency to pre-judge cases and be "judge, jury, and hangman" without having all of the facts.
4. *Recognition of one's discontent and the process of transformation are shared.* The structure of the lesson into initial and reflection online conferences facilitated the process of sharing. The lesson was placed in the sixth week of class, so students had developed a comfort level and familiarity with each other and the instructor, which also facilitated sharing. Most students seemed uninhibited in their initial expressions of anger or contempt for the two cases. In addition, many students were very open in sharing their embarrassment about being "gullible," or "duped" into believing fragmented or distorted versions of case or accepting urban legends as real cases.
5. *Exploration of options for new roles, relationships and actions.* A student noted that products liability is important to her role as a manager and that she learned, in light of this assignment, that she needs to be proactive in handling customer complaints.
6. *Planning a new course of action.* Some students shared plans for new courses of action. For example, one said that he planned to defend Mrs. Liebeck when conversations about the case came up in the future.
7. *Acquiring knowledge and skills for implementing one's plans.* Students acquired knowledge of the law and the legal system and

enhanced critical thinking skills. The MBA program integrates critical thinking throughout the program. One student indicated that she would like to do more research on frivolous lawsuits to determine if they really were a problem in our legal system.

Transformative learning also involves a continuing process of taking insights gained from critical reflection and integrating them into life outside of the classroom. It is hoped that students will continue to reflect on the assignment outside the classroom, as one student who noted that while she was driving, she continued to reflect on lessons she learned. The following later steps in the transformative learning process would take place in the future as students apply their learning to their personal and professional lives.

8. *Provisional trying of new roles.*
9. *Building competence and self-confidence in new roles and relationships.*
10. *A reintegration into one's life on the basis of conditions dictated by one's new perspective.*

### F. *Lessons for Managers*

If, as noted above, the hot coffee case” probably supplies more common knowledge about the United States civil justice system than any other single lawsuit,<sup>82</sup> how reliable is that knowledge? What do managers learn about the civil justice system from impressions about the hot coffee case?

Legal scholars have noted that the over-emphasis on high-profile cases, like the hot coffee case, in the media creates an exaggerated fear of litigation that adversely affects management decision-making.<sup>83</sup> Both Podlas and Galanter<sup>84</sup> note studies of corporate executives who reported that fear of lawsuits increasingly impacted their decision making, that civil litigation impeded their ability to compete in global markets, and that fear of litigation influences their decisions for growth and product development, pursuing cost-saving technologies, and marketing new products. Podlas concludes, “business tends to overestimate the frequency of high-end litigation, the number of judgments, and the amount of verdicts. The result is that business unnecessarily pays claims when it should not, settles at dollar amounts that it

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<sup>82</sup> McCann, et al., *supra* note 2.

<sup>83</sup> See, e.g. Galanter, *supra* note 25; Podlas *supra* note 25; Diamond, *supra* note 25.

<sup>84</sup> Galanter, *supra* note 25; Podlas, *supra* note 25.

need not, and relinquishes control to insurance carriers who prey on fear to maintain inflated insurance premiums.”<sup>85</sup>

Regardless of one’s views on personal responsibility vs. corporate responsibility, or tort reform, a responsible manager should realistically assess risks, and realistic assessment of litigation risks is not possible if distorted media accounts, urban legends, and word-of-mouth are relied upon as sources. Attitudes about the legal system shape frames of reference, and frames of reference act as filters of information. Managers need to evaluate potential litigation in the context of their business goals, customer base, and the specific fact patterns and legal climate of each case, rather than on irrational fears of potential “loony lawsuits” lurking in a pool of imaginary litigious customers. Stakes have to be carefully weighed and not decontextualized, like the reporting of the McDonald’s hot coffee case.

The media-induced view of the McDonald’s case and the hyper-litigious society inflates the fear of high-profile litigation. Based upon a study of consumers influenced by court television shows, Podlas finds that businesses should focus on increases in pre-trial complaints and low-end disputes.<sup>86</sup> As opposed to the “tough guy,” stance of McDonald’s in the hot coffee case, Podlas recommends that businesses quickly respond to customer complaints, offering conciliatory gestures to offended customers, and settling low-end disputes before they reach trial.<sup>87</sup>

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<sup>85</sup> Podlas, *supra* note 25.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*