LIEBECK V. FRIVOLITY: THE CONTEMPORARY INFLUENCE OF AN ICONIC CASE

Kaitlyn Filip & Kat Albrecht

CONTENTS

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Kaitlyn Filip[*] *& Kat Albrecht*[†]

Abstract

In 1994, the Liebeck v. McDonald's "hot coffee" case became a significant social, legal, and political touchstone. In many ways, it has been the defining case in contemporary consumer protection and a flashpoint of tort reform rhetoric. This article explores the ways in which this case has come to be an "iconic case," a case that we define in terms of its ongoing collective importance and persuasive power. In this article, we conduct a survey experiment of 400 participants in order to understand the impact of an iconic case in defining frivolity. We position our survey participants as prospective jurors presented with the facts of a case analogous to those in Liebeck v. McDonald's. We manipulate the definitions of "frivolity"—giving half of our survey participants a common language definition and half a legal language definition—and add facts to suggest frivolity to half of our participants. Overall, we found that participants with the common language definition of frivolity and no additional imputed facts were less likely to find the case frivolous. Furthermore, we measured participants' recollection of Liebeck v. McDonald's, finding that a substantial portion of them remember the case in great detail and that such recollections predict their contemporaneous perceptions of fairness and frivolity. We conclude with an argument that iconic cases have substantial impact on future analogous cases, but that the direction of that impact is nuanced and varied.

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INTRODUCTION

In 1994, Stella Liebeck spilled a fresh cup of McDonald's coffee on herself while seated in the passenger seat of a parked car with her grandson.[1] What ought to have been a minor inconvenience was anything but minor. The coffee was abnormally and dangerously hot, 30 to 40 degrees hotter than coffee served by other companies. The spill resulted in Liebeck suffering third-degree burns on more than 15 percent of her body.[2] The burns resulted in eight days of hospitalization, requiring extensive treatment, and two years of recovery.

Liebeck offered to settle the case for $20,000 to cover the cost of her medical bills. McDonald's refused, offering only $800. Consequently, the case went to trial, where the jury learned that McDonald's had an official policy of keeping its coffee abnormally hot and that, more importantly, the company knew that it was dangerous: they knew that hundreds of other people had been seriously burned by their coffee before, but they did not change their policy. The jury quickly found in favor of Liebeck and initially awarded her nearly $3 million in damages: $160,000 in compensatory damages and $2.7 million in punitive damages.[3] The trial judge reduced the amount of punitive damages to $480,000, awarding Liebeck $640,000. The parties eventually privately settled for an unknown amount.

The case was a legal, political, and cultural flashpoint, the subject of everything from countless news stories to comedy, including a parodic storyline across two episodes of hit sit-com *Seinfeld*. Some news outlets distorted the facts of the case, misreporting Liebeck's location in the vehicle, the status of the vehicle's movement, and even the amount of damages she ultimately won. Many have argued that this case, and the resultant media backlash, was a pivotal moment in defining public perception of consumer protection lawsuits as frivolous and led to a cultural perspective that helped shepherd in an era of tort reform that limited the ability of consumers to make claims against corporate malfeasance.

In this paper, we empirically test and measure those conclusions for the first time, using a dynamic survey experiment patterned on the facts of *Liebeck v.*

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[1] Allison Torres Burtka, *Liebeck v. McDonald's: The Hot Coffee Case*, AM. MUSEUM OF TORT LAW, https://www.tortmuseum.org/liebeck-v-mcdonalds/ (last visited Oct. 24, 2022).

[2] The coffee was served between 180 and 190 degrees. Liebeck's lawyer said that many home coffee makers produce coffee between 135 and 150 degrees. Coffee that other restaurants serve can be 160 degrees; taking much longer to cause the third degree burns that Liebeck suffered. *See id.*

[3] The compensatory damages were initially reduced from $200,000 because the jury found her 20 percent responsible. *Id.*

McDonald's. From this experiment, we draw several conclusions about perceptions of frivolity: we conclude that our participants, situated as potential jurors, find cases that use common language, rather than legal language, definitions of frivolity and that do not make specific arguments in favor of the defense results in more perceptions of legitimacy (less frivolity). Furthermore, we establish that *Liebeck v. McDonald's* remains an iconic case in the cultural imagination, with knowledge of *Liebeck* predicting contemporaneous decision-making.

In this paper, we first situate our argument within existing scholarly literature in the literature review. Next, we introduce our experiment in two parts: defining and explaining our research questions and elaborating on the methods. Finally, we analyze the results of our survey, elaborating on the quantitative results, doing a comprehensive thematic analysis of open-ended questions, and then conclude by discussing the theoretical implications of those results.

I. DEFINING ICONIC CASES

Here, we bring together several existing literatures to build a comprehensive review of the scholarship and develop our own theoretical framework. In this section, we discuss scholarship on tort reform, the *Liebeck* case itself, legal consciousness, jury importance and behavior, and literature on popular trials. From this, we argue that some popular trials have ongoing rhetorical, social, legal, and political significance. We develop the category of the "iconic case" to fully capture their ongoing cultural importance.

A substantial body of scholarship exists on tort reform—the policy of limiting monetary damages in personal injury lawsuits—in the United States, although much of it focuses not on consumer protection but on medical malpractice.[4] Some of the scholarship generally addresses the role of the civil jury,

[4] *See generally* Anthony C. Gabrielli & Roger Chapman, Tort Reform, CULTURE WARS: AN ENCYCLOPEDIA OF ISSUES, VIEWPOINTS, AND VOICES, 566 (Roger Chapman ed., 2nd ed. 2010); Bernard Black, et al., MEDICAL MALPRACTICE LITIGATION: HOW IT WORKS, WHY TORT REFORM HASN'T HELPED (2021) (analyzing the impact of tort reform on medical malpractice litigation); Molly Colvard Harding, et al., *Resolving Malpractice Claims after Tort Reform: Experience in a Self-Insured Texas Public Academic Health System,* 51 HEALTH SERVICES RESEARCH 2615 (2016) (arguing that litigation risks reduced following the implementation of tort reform measures); Charles L. Baum, *The Effects of Medical Malpractice Tort Reform on Physician Supply: An Analysis of Legislative Changes from 2009 to 2016*, 87 SOUTHERN ECON. J. 540 (2020) (finding minimal effects of tort reform on physician supply); Martin F. Grace & J.T. Leverty, *How Tort Reform Affects Insurance Markets*, 29 J. OF L., ECON., & ORG. 1253 (2013) (arguing that research into the effects of tort reform needs to consider how the law will work in the future);

citing controversy on jury bias or competence, jury extravagance, and compensatory awards.[5] Some scholars emphasize the history of tort reform and its role in the law.[6] In thinking about consumer protection, contemporary scholarship has also specifically addressed fast food, beyond and after *Liebeck*, although primarily, again, focusing on "health" claims.[7]

Particularly in the immediate aftermath of the case, *Liebeck* itself was a popular topic for scholarly inquiry. *Liebeck* has been frequently used as an example of an extraordinary litigation event.[8] Others have looked at the construction of the

Patricia H. Born & J. Bradley Karl, *The Effect of Tort Reform on Medical Malpractice Insurance Market Trends*, 13 J. OF EMPIRICAL LEGAL STUD. 718 (2016) (arguing that, although tort reform lowers levels of medical malpractice insurance losses, it does not seem to be a method for softening the market); Alexander Volokh, *Medical Malpractice as Workers' Comp: Overcoming State Constitutional Barriers to Tort Reform*, 67 EMORY L. J. 975 (2018) (comparing tort reform limitation on damages to administrative limitation of damages); Sabrina Safrin, *The C-Section Epidemic: What's Tort Reform Got to Do With It?*, 2018 UNIV. OF ILL. L. REV. 747 (2018) (arguing that tort reform damage caps explain a recent influx in cesarean procedures).

[5] Felicia Gross et al., *Jury Awards for Medical Malpractice and Post-Verdict Adjustments of Those Awards,* 48 DEPAUL L. REV. 265, 265 (1998).

[6] *See generally* Mary Nell Trautner, *Tort Reform and Access to Justice: How Legal Environments Shape Lawyers' Case Selection*, 34 QUALITATIVE SOC. 523 (2011) (arguing that tort reform constitutes an environment which influences lawyers' decision-making); Yiling Deng & George Zanjani, *What Drives Tort Reform Legislation? An Analysis of State Decisions to Restrict Liability Torts*, 85 J. OF RISK AND INSURANCE 959 (2018) (arguing that, between 1971 and 2005, the level of litigation activity was the most important determinant of tort reform adoption); Kenneth S. Abraham & G. Edward White, *Rethinking the Development of Modern Tort Liability*, 101 B.U. L. REV. 1289 (2021) (arguing that the use of insurance to pay out tort claims was instrumental in the expansion of tort liability and reform); Thomas Koening & Michael Rustad, *His and Her Tort Reform: Gender Injustice in Disguise*, 70 Wash. L. REV. 1 (1995) (arguing that tort reform measures have a disproportionate impact on mass tort remedies sought by women).

[7] *See generally* Ronald Adams, *Fast Food, Obesity, and Tort Reform: An Examination of Industry Responsibility for Public Health,* 110 BUS. AND SOC. REV. 297 (2005) (discussing tort reform in the context of advocating for anti-fat policies); Christopher S. Carpenter & D. Sebastian Tello-Trillo, *Do Cheeseburger Bills Work? Effects of Tort Reform for Fast Food*, 58 J. OF L. & ECON. 805 (2015) (discussing the relationship of consumer consumption acts on tort reform). These pieces generally suggest that anti-fatness is meaningful consumer protection or contemplate bills that suggest that fast food companies ought to be held liable for causing fatness without a critical examination of the ways in which these policies contribute to anti-fat stigma, bias, and discrimination.

[8] *See e.g.,* J. Mark Ramseyer & Eric B. Rasmusen, *Are Americans More Litigious? Some Quantitative Evidence* (Jan. 8, 2010), https://papers.ssrn.com/sol3/papers

case narrative as frivolous.[9] Still others have interrogated the impact of the case on the law and society.[10] Some scholars have made efforts to exonerate Stella Liebeck in the public consciousness, reframing her as a reasonable person.[11] Furthermore, in the years since the case, the media has weighed in on the enduring cultural legacy of the *Liebeck* case.[12] In our study, we work beyond the theoretical underpinnings of this work, empirically establishing that perceptions of frivolity are subject to narrative intervention and that the case has had a lasting impact and enduring legacy. As yet, no work exists on empirically measuring the social, legal,

.cfm?abstract_id=1907203 (arguing that the idea of the notoriety of American lawsuits comes from peculiar cases, such as *Liebeck*); Elizabeth Sherowski, *Hot Coffee, Cold Cash: Making the Most of Alternative Dispute Resolution in High-Stakes Personal Injury Lawsuits*, 11 OHIO ST. J. ON DISP. RESOL. 521 (1996) (using the case to illustrate how ADR may have made a difference in award amount); Felicia Gross, et al., *Jury Awards for Medical Malpractice and Post-Verdict Adjustments of Those Awards,* 48 DEPAUL L. REV. 265 (1998) (citing *Liebeck* as an example of extraordinary post-verdict jury award adjustment); Samuel R. Gross & Kent D. Syverud, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1 (1996) (noting that the *Liebeck* case was extraordinary and presents a difficult case study).

[9] *See generally* Caroline Forrell, *McTorts: The Social and Legal Impact of McDonald's Role in Tort Suits,* 24 LOY. CONSUMER L. REV. 105, (2011) (arguing that McDonald's as a company is uniquely suited to be involved in cases of tremendous cultural importance, explaining the proliferation of media on the case in terms of the company's fame); Samuel R. Gross & Kent D. Syverud, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1 (1996) (telling the story of the *Liebeck* case as one characterized from frivolity to righteousness).

[10] *See generally* Mark B. Greenlee, *Kramer v. Java World: Images, Issues, and Idols in the Debate over Tort Reform*, 26 CAP. U. L. REV. 701 (1997) (arguing for the impact of the case and its basis in idolatry); Denney G. Rutherford, *Lessons From Liebeck*, CORNELL HOTEL AND RESTAURANT ADMIN Q. 72 (1998) (testing the temperature of hot beverages from various fast food establishments and concluding that McDonald's, on average, were cooler than others).

[11] *See generally* Kevin G. Cain, *And Now, the Rest of the Story . . . The McDonald's Coffee Lawsuit*, 11 J. OF CONSUMER AND COM. L. 14, 17 (2007) (arguing generally that the case was not frivolous).

[12] *See, e.g.,* Hot Coffee (Susan Saladoff dir., 2011) (depicting the media response as inaccurate and instrumental in the tort reform movement); Andy Simmons, *Remember the Hot Coffee Lawsuit? It Changed the Way McDonald's Heats Coffee Forever*, READER'S DIGEST (Jul. 15, 2021), https://www.rd.com/article/hot-coffee-lawsuit/ (contextualizing and reframing the case in terms of its importance for consumer protection); Retro Report, *Scalded by Coffee, Then News Media*, N.Y. TIMES (Oct. 13, 2013), https://www.nytimes.com/video/us/100000002507537/scalded-by-coffee-then-news-media.html?playlistId=100000002148738 (contextualizing and reframing the case); Burtka, *supra* note 1.

and political impact of the *Liebeck* case or in empirically testing the competing discourses and their function on the case itself.

This work also builds upon the long lineage of legal consciousness literature. Legal consciousness "refers to the ways in which people experience, understand, and act in relation to law" including documenting the absence or presence of law in social understanding.[13] Chua and Engel break legal consciousness scholarship into scholarship about identity, scholarship about hegemony, and scholarship about mobilization.[14] Our work here on perceptions of frivolity aligns with their mobilization framework: understanding how the law—and understanding of the law—shapes people's sense of individual and collective empowerment before it.[15]

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[13] Lynette J. Chua & David M. Engel, *Legal Consciousness Reconsidered*, 15 ANNUAL REV. L. AND SOCIAL SCIENCE 335, 336 (2019); *see also* Patricia Ewick & Susan S. Silbey, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE (1998) (arguing that law is a kind of narrative, informing understandings of it); Sally Engle Merry, GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS (1990) (examining feelings of entitlement among lower class, mostly white, litigants); Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment*, 34 L. SOC. REV. 1055 (2000) (arguing that legal consciousness is varied and must be situated with respect to types of law, social hierarchies, and experiences of groups with the law).

[14] Chua & Engel, *supra* note 13.

[15] *Id*. at 340. Some pertinent examples include, *generally*, Catherine R. Albiston, INSTITUTIONAL INEQUALITY AND THE MOBILIZATION OF THE FAMILY AND MEDICAL LEAVE ACT: RIGHTS ON LEAVE (2010) (examining how institutions shape rights mobilization); Anna-Maria Marshall, CONFRONTING SEXUAL HARASSMENT: THE LAW AND POLITICS OF EVERYDAY LIFE (2005) (studying the legal consciousness of injustice and the relationship between social movements and the analytical frameworks people use to make sense of injustice); Nielsen, *supra* note 13; Margaret L. Boittin, *New Perspectives From the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China*, 47 L. SOC. REV. 245 (2013) (examining the legal consciousness of Chinese sex workers through their interpretations of abusive experiences); Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma As Barriers to Claims-Making for First and 1.5-Generation Immigrants*, 45 L. SOC. REV. 337 (2011) (studying the legal consciousness of undocumented immigrants, arguing that fear and stigma influence decision- and claims-making in varied ways); Diana Hernandez, *"I'm Gonna Call My Lawyer:" Shifting Legal Consciousness at the Intersection of Inequality*, 51 STUD. LAW POLITICS SOC. 95 (2010) (developing a framework of legal entitlement to better understand working class women's legal consciousness); Kathleen E. Hull, *The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage*, 28 LAW SOC. INQ. 629 (2003) (studying perspectives on marriage equality prior to *Obergefell*); Michael W. McCann, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (1994) (arguing that wage discrimination battles have raised legal consciousness); Lisa Vanhala, MAKING RIGHTS A REALITY? DISABILITY RIGHTS ACTIVISTS AND LEGAL

In this paper, we hone in on how a particular iconic case can shape legal consciousness and perceptions of analogous cases in the years following.

In our study, we examined the behavior of potential jurors in a hypothetical case—analogous to a known case—by positioning our participants as potential jurors. Scholarship on juries is rich and incredibly varied but we focus here on work that considers the perceptions of jurors. Scholars argue that the US legal system elevates the importance of juries and the people who serve on them as decision-makers.[16] We and others have argued elsewhere that jurors reflect elements of culture and society, bringing those elements into the courtroom.[17] In this paper, we specify this argument, focusing on juror's perceptions of frivolity in relation to an iconic case.

Beyond works that focus on the iconicity of particular cases, relatively little scholarly attention has been given to popular cases as a class.[18] The literature that

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MOBILIZATION (2011) (studying the political identity of disability and shifting rights discourses); Katharina Heyer, RIGHTS ENABLED: THE DISABILITY REVOLUTION, FROM THE US, TO GERMANY AND JAPAN, TO THE UNITED NATIONS (2015) (tracing the evolution of disability rights frameworks); Hadar Avaram, *Make Love, Not Law: Perceptions of the Marriage Equality Struggle Among Polyamorous Activists*, 7 J. OF BISEXUALITY 261 (2008) (arguing that mistrust of the law is a tool of shaping identities); Lynette J. Chua, *Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore*, 46 LAW SOC. REV. 713 (2012) (examining the decentering of law in particular activist practices; arguing that it is a strategy); Lynette J. Chua, MOBILIZING GAY SINGAPORE: RIGHTS AND RESISTANCE IN AN AUTHORITARIAN STATE (2014); Lynette J. Chua, *The Vernacular Mobilization of Human Rights in Myanmar's Sexual Orientation and Gender Identity Movement*, 49 L. SOC. REV. 299 (2015) (arguing that some activists de-center law as a strategic decision); Lynette J. Chua, *The Politics of Love: LGBT Mobilization and Human Rights as a Way of Life* (2019) (arguing that social movements show how human rights practices have evolved); Sandra R. Levitsky, *"What's Rights?": The Construction of Political Claims to American Health Care Entitlements*, 42 L. SOC. REV. 551 (2008) (arguing that pre-existing beliefs influence healthcare decisions); Sandra R. Levitsky, CARING FOR OUR OWN: WHY THERE IS NO POLITICAL DEMAND FOR NEW AMERICAN SOCIAL WELFARE RIGHTS (2014) (discussing how existing social policies shape political imagination).

[16] Meghan J. Ryan, *Juries and the Criminal Constitution*, 65 ALA. L. REV. 849, 850 (2013); Valerie P. Hans & Neil Vidmar, *The Verdict on Juries*, 91 JUDICATURE 226, 226 (2007).

[17] Albrecht, Kat & Kaitlyn Filip, *The Serial Effect*, 53 N.M. L. Rev. 28, 36 (forthcoming 2023); Ryan, *supra* note 16 at 854; Tania Tetlow, *Solving Batson*, 56 WM. & MARY L. REV. 1859, 1863 (2014).

[18] Robert Hariman (ed), POPULAR TRIALS: RHETORIC, MASS MEDIA, AND THE LAW (6th ed., 1990). In his introductory literature review, Hariman argues that minimal scholarly attention had been paid to the genre of popular trials. This remains an unfortunate

does exist often focuses on the O.J. Simpson or *Liebeck v. McDonald's* cases.[19] Newsworthiness scholarship tends to broaden the focus beyond the particular, but as it is concerned with what makes a trial, crime, or harm newsworthy, it is often less concerned with the ongoing cultural impact of newsworthy cases, taking the social construction of the news itself as the object of analysis.[20] Focusing on crime, newsworthiness scholarship takes into account that the construction of news matters because of its connection to stereotyping and public mis-perceptions.[21] In this paper, we build on the popular trials and newsworthiness scholarship by re-framing the *Liebeck v. McDonald's* case as an iconic case—as a result of media coverage—that captivated the public consciousness in ways that we can now quantify in their impact. Here we also borrow theoretical constructs from Hariman

oversight in the literature. For recent literature in this vein, *see, e.g.*, Lynn S. Chancer, HIGH-PROFILE CRIMES: WHEN LEGAL CASES BECOME SOCIAL CAUSES (2005) (arguing that high profile cases become conflated with larger social causes); Robert A. Ferguson, THE TRIAL IN AMERICAN LIFE (2007) (arguing that high-profile trials are indicative of cultural ideology).

[19] *See, e.g.,* Michael B. Salwen & Paul D. Driscoll, *Consequences of Third-Person Perception in Support of Press Restrictions in the O.J. Simpson Trial,* 47 J. COMM. 60 (1997) (finding that survey participants' perception of Simpson's guilt interacted with support for press restriction); Megan Foley, *Serializing Racial Subjects: The Stagnation and Suspense of the O.J. Simpson Saga*, 96 Q. J. SPEECH 69 (2010) (arguing that Simpson's case can be understood through cyclical understandings of whiteness).

[20] *See generally,* Michael Schudson, THE SOCIOLOGY OF NEWS (2011) (arguing that news is a social institution shaped by economics, technology, politics, culture, and organizational structures); Mark Fishman, MANUFACTURING THE NEWS (1980) (arguing, using a 1976 crime wave against elderly New Yorkers as a case study, that the news is, in fact, socially constructed—reporters, he argued, did not fabricate the news but gave it form).

[21] *See generally* Melissa Hickman, et al., *Economic Conditions and Ideologies of Crime in the Media: A Content Analysis of Crime News*, 41 CRIME & DELINQUENCY 3 (1995) (exploring the relationship between media portrayals of crime and real conditions); John G. Boulahanis & Matha J. Heltsley, *Perceived Fears: The Reporting Patterns of Juvenile Homicide in Chicago Newspapers*, 15 CRIM. JUST. POL'Y REV. 132 (2004) (arguing that individuals who receive crime information from newspapers report higher levels of fear of crime); Franklin D. Gilliam, Jr. et al., *Crime in Black and White: The Violent, Scary World of Local News*, 1 HARV. INT'L J. PRESS/POLITICS 6 (1996) (arguing that local news depicts crime as violent and non-white); Susan B. Sorenson et al., *News Media Coverage and the Epidemiology of Homicide,* 88 AM. J. PUB. HEALTH 1510 (1998) (arguing that some homicides are more newsworthy than others); Shelly Rodgers & Esther Thorson, *The Reporting of Crime and Violence in the Los Angeles Times: Is There a Public Health Perspective?*, 6 J. HEALTH COMM. 169 (2001) (showing that stereotyping of crime and violence are strongly present in the L.A. Times).

and Lucaites in shifting the terms from "popular trials" to "iconic cases," emphasizing the ongoing impact of the case's popularity and suggesting that a case can be iconic without being a trial. Hariman and Lucaites define iconicity in terms of "eloquence, signposts for collective memory, means of persuasion across the political spectrum, and a crucial resource for critical reflection."[22]

II. RESEARCH QUESTIONS

To test multiple elements of consumer perceptions of frivolousness, we conduct a dynamic survey experiment patterned after the facts from *Liebeck v. McDonald's*. We optimize this experiment by considering a number of targeted research questions designed to produce both quantitative and qualitative outcomes that reveal nuance in consumer perceptions of frivolousness. We list and explain each of those questions in turn below.

RQ1: *Do varying definitions of frivolousness change consumer perception?*

Here, we aim to investigate how definitions of frivolous alter consumer expectations. Importantly, legal definitions of common concepts are often quite distant from the popular meaning of that concept. For example, the common language meaning of the word 'reasonable,' and the legal standard of reasonableness are meaningfully distinct. In research question 1, we seek to quantify the importance of that difference on consumer perception applied directly to frivolousness using varying common and legal language definitions of 'frivolous.'

RQ2: *Does varying the specifics of the true underlying fact pattern of a case change consumer perception?*

Liebeck v. McDonald's was strongly characterized by anti-plaintiff corporate rhetoric.[23] We hypothesize that incorporating such rhetoric into the fact pattern, even subtly, will cause respondents to see the case as more likely to be frivolous. We test this by intentionally supplementing fact patterns with this same type of anti-plaintiff corporate rhetoric and measure its effects.

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[22] Robert Hariman & John Louis Lucaites, NO CAPTION NEEDED: ICONIC PHOTOGRAPHS, PUBLIC CULTURE, AND LIBERAL DEMOCRACY (2011).

[23] Michael McCann et al., *Java Jive: Genealogy of a Juridical Icon*, 56 U. MIAMI L. REV. 113, 117 (2001).

RQ3: *What is the relationship between perceptions of frivolousness, predicted likelihood of winning a case, and perceptions of fairness in consumer protection cases?*

Here we consider the relationship between changes to perceptions of frivolousness and other outcome variables. Theoretically, there should be significant conceptual overlap across frivolousness of a case, likelihood of winning a case, and fairness in case resolution, but the concepts are not necessarily identical. For example, cynicism about the protective capacity of the law might lead the same individual to endorse that a case is simultaneously not frivolous, but also not likely to be won. For this reason, we consider each concept separately, not assuming they are synonymous, but still with the intention of seeing how they affect each other.

RQ4: *Do people remember or know about Liebeck v. McDonald's?*

In their writing on the importance of *Liebeck v. McDonald's* in 2001, McCann, Haltom, and Bloom refer to the case as "[A] cultural icon and staple of shared knowledge about the inefficiency, inequity, and irrationality of the American legal system."[24] If this is true, there should be some continued stickiness to recall or knowledge about *Liebeck*, even over 20 years after their analysis. This research aim is relatively simple, to quantify how many people remember *Liebeck*, and what they recall.

RQ5: *If so, does knowledge of Liebeck v. McDonald's translate to decision-making about similar types of cases?*

This research question flows logically from the previous one. Beyond simply quantifying recall, we want to measure the effect of that recall on current decision-making schemas. If knowledge of *Liebeck* predicts different patterns in contemporaneous decision-making, it would provide strong support for McCann et al.'s cultural impact thesis, but would also usefully characterize the current climate of tort reform and corporate sentiment because *Liebeck* is considered such an important cultural touchstone for both. We optimize our experimental design to speak to all five of these research questions, using both quantitative and qualitative empirical methods.

[24] *Id.* at 114.

III. EXPERIMENTAL METHODOLOGY

The sections to follow describe the experimental survey methodology we use to dynamically test consumer perceptions of frivolity using a hypothetical legal case designed to mirror the facts and resolution of *Liebeck v. McDonald's*.[25] We offer a detailed rendering of the conceptualization and methodological design of our study to put the results of the study into accurate and sufficient context. First, we explain the rationale behind how we cued and measured frivolousness, including specific review of the hypothetical fact patterns. Second, we offer an overview of the survey design and its key questions. Third, we describe the deployment of the survey and the quality of the data. Fourth, we present descriptive results from the survey experiment.

A. Measuring Frivolousness

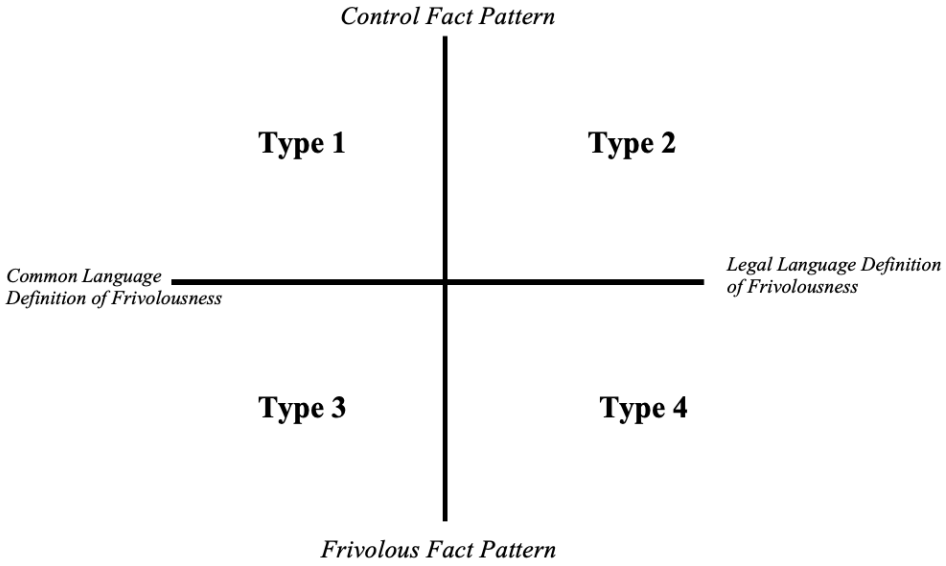
In designing the experimental vignettes and their conditions of variation, we consider our respondents much in the same position as hypothetical jurors, presenting them with 'jury instructions' and a corresponding hypothetical legal case about which to offer their judgements. Our task is then to design instructions and a hypothetical case that best addresses the research questions. In vignette design, it is important to intentionally craft the experimental vignette to be a reasonable representation of the reality you seek to test.[26] Here we solve that problem using pre-existing definitions, cueing a fact pattern from a real case, and then debriefing the participants after the experiment to see if the simulation was successful. We ultimately create two variations of definitions of frivolousness and two variations of the fact pattern used in the case. In order to properly measure the causal effect of the interventions, we test all four combinations of instructions and

[25] The survey experiment is designed as a vignette experiment. A vignette experiment consists of two parts: a short description of a scenario (a vignette) and a survey designed to collect respondent opinions or reactions to the vignette scenario. For a general overview of how vignette experiments work and the tradeoffs made with different vignette study structures, see Christiane Atzmüller & Peter Steiner, *Experimental Vignette Studies in Survey Research*, 6 METHODOLOGY: EUR. J. RES. METHODS FOR THE BEHAV. & SOC. SCI., 128 (2010).

[26] Cf. Kat Albrecht & Janice Nadler, *Assigning Punishment: Reader Responses to Crime News*, 13 FRONTIERS PSYCHOL., 1, 5-6 (2022) (advocating for close realism in scenario creation writing, "The scenarios are as similar as possible [to real-world news articles] in wording and keep offender and conduct characteristics constant excluding the key experimental manipulations.").

fact patterns, constructing a 2X2 matrix of conditions that we explain further below (see *Table 1*).

Table 1: 2X2 Matrix of Experimental Conditions



i. Varying Definitions of 'Frivolous'

We first craft two definitions of "frivolous," one designed to be a common language definition of the concept and the other a legal language definition that suggests a heightened legal standard. For the former, we use a common dictionary definition of frivolous: "Something is frivolous if it does not have any serious purpose or value." For the legal language definition of frivolous we employ the definition used in *Neitzke v. Williams*, the leading Supreme Court case on frivolity. A frivolous claim, often called a bad faith claim, refers to a lawsuit, motion or appeal that is intended to harass, delay or embarrass the opposition. A claim is frivolous when the claim lacks any arguable basis either in law or in fact.[27] The legal language definition provides significantly more detail, assigns specific intentions to the claim, and makes explicit that it is a legal standard.

[27] Neitzke v. Williams, 490 U.S. 319, 325 (1989).

ii. Varying Rhetorical Frames of Frivolousness

Next, we design a hypothetical case vignette patterned after key facts in *Liebeck v. McDonald's*. While the underlying scenario is the same, an elderly person being severely injured after spilling hot coffee, we change the names and basic setting. We name the hypothetical restaurant chain "Donut World" and make the subject an elderly man named Clarence instead of an elderly woman. We also slightly alter the details of the coffee spill.

The vignette closely tracks key facts from *Liebeck v. McDonald's* including the severity of injury (3rd degree burns on 15% of his body), attempts to recover only the costs of medical bills directly from the restaurant, and knowledge of previous harms to consumers with overly hot coffee. Other notable facts in the vignette include the knowledge that Clarence is a regular coffee drinker, that there was a warning on the cup, and the possible legal rationale under which Clarence could recover. The full text of the vignette is below in *Figure 1* and represents the control condition, which does not have a key experimental manipulation to cue frivolousness.

Figure 1: Control Condition Fact Pattern

The Case

Clarence has had the same morning routine every day, ever since he retired from his factory job. Every morning he gets the newspaper and walks down the street to a popular breakfast chain called Donut World, which is near his house. He always gets a black coffee and a donut and sits at a table in the restaurant to read the newspaper.

One morning Clarence gets his newspaper and makes his way down to the Donut World location to get his usual order. He is handed a coffee and a donut, just like always. He sits down at his usual table, but accidentally bumps the table and his coffee spills all over his lap.

The coffee was exceptionally hot, hotter than coffee you make at home, reaching temperatures between 180 and 190 degrees. The very hot coffee severely injures Clarence, giving him 3rd degree burns across 15% of his body, in only a few seconds. Clarence required urgent medical treatment from the incident and took many months to recover.

Clarence contacted Donut World and asked them to pay for his $20,000 medical bills, but the restaurant chain refused, saying that there was a warning on the

coffee cup and that Clarence should have known the coffee was hot and should have been more careful.

Clarence then contacts a lawyer, who suggests that he sue Donut World for negligence. His lawyer says that they could argue that the coffee was dangerously hot, tells Clarence that other people have also been harmed by hot coffee from Donut World, and says that the warning on the cup was not sufficient.

Clarence is considering suing Donut World for negligence.

****

We also designed a second version of the vignette, designed to cue frivolousness, that we refer to as the "frivolous fact pattern." This version of the vignette is identical to the control condition except for two new sentences that spell out an argument by Donut World that casts Clarence as lacking common sense, similar to the arguments made during the media blitz in *Liebeck v. McDonald's*. The second sentence ascribes agency to Clarence in procuring a lawyer to take his case. This version of the vignette is printed below in Figure 2, with the newly included frivolity facts in bold.

Figure 2: Frivolity Condition Fact Pattern

The Case

Clarence has had the same morning routine every day, ever since he retired from his factory job. Every morning he gets the newspaper and walks down the street to a popular breakfast chain called Donut World, which is near his house. He always gets a black coffee and a donut and sits at a table in the restaurant to read the newspaper.

One morning Clarence gets his newspaper and makes his way down to the Donut World location to get his usual order. He is handed a coffee and a donut, just like always. He sits down at his usual table, but accidentally bumps the table and his coffee spills all over his lap.

The coffee was exceptionally hot, hotter than coffee you make at home, reaching temperatures between 180 and 190 degrees. The very hot coffee severely injures Clarence, giving him 3rd degree burns across 15% of his body, in only a few seconds. Clarence required urgent medical treatment from the incident and took many months to recover.

Clarence contacted Donut World and asked them to pay for his $20,000 medical bills, but the restaurant chain refused, saying that there was a warning on the coffee cup and that Clarence should have known the coffee was hot and should have been more careful. ***Donut World also noted that millions of people drink their coffee every day without injury and pointed out that Clarence was a regular customer.***

Clarence then contacts a lawyer, who suggests that he sue Donut World. *Clarence is considering suing Donut World for negligence.*

****

The experimental manipulation is intentionally subtle. The goal of this analysis was to subtly influence the rhetorical frame in a way that mirrors realistic possibility rather than being only representative of outliers or so overt as to be easily noticed. That is, to change the frivolity rhetoric without it being obviously heavy-handed to participants. Importantly, both vignettes also only contain true facts. Keeping the same true fact pattern exactly while isolating the intervention to a small change makes it easier to quantitatively derive the source of the effect.

B. Survey Design

The survey begins by offering participants one of the two available definitions of 'frivolous' and then gives them one of the two available fact patterns with the instruction to carefully read the instructions and vignette before answering a series of questions. This section of the survey has 4 key questions. First, participants are asked if they think the lawsuit would be considered frivolous on a 5-point Likert scale ranging from "Definitely Yes" to "Definitely Not." Participants are then asked to explain their reasoning in an open text box. Next, they are asked to judge how likely they think it is that Clarence would win the lawsuit, again on a 5-point Likert scale ranging from "Extremely Unlikely" to "Extremely Likely." Finally, participants are asked to assign monetary damages in the event that Clarence wins the lawsuit.

In the next section of the survey, participants are shown an outcome from the hypothetical case. The screen reads:

> *Clarence did decide to file a lawsuit. At trial, the jury sided with Clarence and awarded him $160,000 in compensatory damages. The judge also awarded him $480,000 dollars in punitive damages.*

Again, these facts carefully mirror the outcome in *Liebeck v. McDonald's*. These facts are based on the moderated version of the outcome, which is the revised damage amount.[28] Participants are then asked to comment on whether they think the monetary amount of damages is fair on a nominal scale: "Fair," "Unfair," "Unsure," and explain their reasoning in an open-text box.

The survey concludes with debrief and demographic questions. Importantly, participants are asked if the hypothetical case reminded them of a case they have heard about in real life and if so, to explain what they remember about that case. A variety of standard demographic questions are also asked, generally matched to U.S. Census categories for ease of interpretation.

C. Survey Deployment

We deployed the survey on Prolific.co, a human intelligence tasks platform optimal for hosting academic surveys and other digital tasks.[29] We recruited 400 participants to take the survey, 100 in each cell on the 2X2 matrix of conditions (refer back to *Table 1*). To be eligible for the study, participants had to be located in the United States and have a worker rating of 95% or above.[30] Participants were paid $1.25 for their participation in the 5-minute survey, for a compensation rate of 15 USD per hour.

i. Data Quality

We took a number of precautions in building the survey to ensure that the resulting data was sufficiently high quality. Both Prolific.co and Qualtrics, the platform where we built the survey itself, have a number of bot detection techniques that are able to be automatically imported into the survey. We also used

[28] We choose to use the moderated version of the outcome (i.e. the reduced damages) to measure the more conservative condition. This allows us to maximize variation in respondent damage perception rather than pushing perceptions to the tails of the distribution.

[29] For an overview on the strengths and weaknesses of non-probability digital surveying, *see generally* Vili Lehdonvirta et al., *Social Media, Web, and Panel Surveys: Using Non-Probability Samples in Social Science and Policy Research,* 13 POL'Y & INTERNET 134 (2020) (arguing that non-probability online surveys add to the "researcher's toolkit").

[30] Working ratings are calculated based on the percentage of approved worker tasks done by each worker. On Prolific, researchers are able to pre-screen responses for completion and quality, only compensating participants who adequately complete each task. All Prolific workers are 18 or older, so age conditions did not need to be screened for.

a variety of question types in the survey that make it easier to verify that responses are high quality. For example, we had several open-response questions in the survey, so we were able to audit those responses to make sure they were topically appropriate and consistently completed.

We also employed a two-stage attention check procedure that allowed us to increase data quality without punishing participants. We followed best practices as recommended by scholars Abbey and Meloy in including multiple types of attention checks while carefully balancing the potential obtrusiveness of attention checks in the survey flow.[31] We solved this problem using two types of attention checks. The first came after the vignette and key questions, asking participants to identify which definition of frivolous they were asked to use from a list of four plausible options. Participants who indicate the correct definition of frivolous are passed to the next attention check. Participants who fail the attention check are informed that they failed the attention check and are asked to re-read the instructions and re-answer the vignette questions before being passed to the second attention check. The second attention check is a topical one, asking participants to identify the main topic of the vignette from a list of plausible options. If a participant fails attention check 2, they are automatically removed from the survey and cannot continue.

The combination of bot protections, Prolific quality control, open-response validation, and attention check procedure makes us confident that the data used in this study is sufficiently high quality. The data was cleaned and verified manually after study completion.[32] No completed responses had to be removed from the sample for quality reasons, leaving the retained data sample at the original 400 responses.

ii. Descriptive Results

In this section we offer population-level descriptive statistics and variable correlations from the sample to contextualize who the respondents are. *Table 2* depicts the general demographics of the 400 respondents. A majority of the participants were in their 20s and 30s (72%). Roughly half (53.75%) of participants

[31] James D. Abbey & Margaret G. Meloy*, Attention by Design: Using Attention Checks to Detect Inattentive Respondents and Improve Data Quality*, 53–56 J. OPERATIONS MGMT. 63, 68 (2017).

[32] The sample had very little non-response, most significantly that 5 of 400 respondents did not indicate a political affiliation. However, there is no indication that the omission was systematic and it affects 1.25% of the data for one single question, so the omission does not constitute a significant data concern.

identified their gender as female, with 41.5% identifying as male, and an additional 4.75% identifying as transgender, non-binary, or something else. The most common highest educational levels were some college/vo-tech (32.5%) and bachelor's degree holding (36.5%). The sample was majority white, 75.54% and majority liberal identifying (on a sliding scale of political affiliation), 71.39%. These population numbers are not representative of the entire U.S. population, an important consideration in result interpretation. However, there is still significant variability across demographic groups.

To confirm that constructs were related in theoretically expected directions, we also ran Spearman correlations on key dependent variables.[33] We found that likelihood of winning the case and likelihood of the case being frivolous in the perception of participants were inversely correlated with a Spearman's Rho of -0.53, indicating a substantial negative correlation but not completely overlapping concepts. We also found a similar negative correction of -0.54 between perceptions of fairness and likelihood of a case being considered frivolous. Both of these findings are consistent with theoretical expectations, given that the fairness and likelihood of winning variables are reverse coded from the frivolousness variable. That is, we would expect there to be a negative relationship between frivolousness and likelihood of winning and a negative relationship between fairness and frivolousness, both of which are confirmed here.

Table 2: Participant Demographics

	N	(%)
Age		
Under 20	23	5.75
20s	159	39.75
30s	129	32.25

[33] Spearman's correlation measures both direction and strength of monotonic associations between variables, making it more adaptable to rank ordered variables (like those falling along Likert scales). We use a Spearman's correlation because our variables are ordinal (or rank ordered) and therefore might not increase or decrease at a constant rate like you would expect doing a linear correlation. Instead, Spearman's correlation looks for a monotonic relationship that predicts one of the two patterns: as the value of one variable increases, so does the other OR as the value of one variable increases, the other decreases. But it does not assume this relationship to be constant, which is more appropriate when the ordered categories are not necessarily strictly linear.

40s	48	12
50s	23	5.75
60s or older	18	4.5
Gender		
Male	166	41.5
Female	215	53.75
Other	19	4.75
Education		
High School/GED or less	57	14.25
Some college or vo-tech	130	32.5
Bachelor's degree	146	36.5
Graduate degree	67	16.75
Race		
White	247	75.54
Asian	33	10.09
Black or African American	19	5.81
Other	27	8.57
Political views		
Conservative	73	18.48
Moderate	40	10.13
Liberal	282	71.39

N=400, except for political views where N=395 due to non-response

IV. SIMULATION RESULTS

In this section we present the quantitative results of the survey experiment. We begin by looking at the univariate results including the responses to key dependent variable questions and variations across vignette types. Next, we examine the amount of recall or knowledge respondents endorsed about familiar cases with a closer look at how participants understand *Liebeck v. McDonald's*. We follow this analysis with a brief series of predictive models and a synthetic discussion of the quantitative findings

A. Key Dependent Variables

We first analyze general patterns across the key outcome variables of interest, by vignette type (*Table 3*). We see some measurable variation in participant perception of frivolity based on what definition and fact combination the participant received. Participants given the common language definition of frivolousness and the control fact pattern were the least likely to consider the case frivolous. Conversely, participants who received the legal definition of frivolous and the frivolous fact pattern were more likely to consider the case frivolous. These patterns hold across likelihood of winning the case as well, with participants in condition 1 (common definition and control facts) being the most likely to think Clarence could win the case and participants in condition 4 (legal definition and frivolous facts) being the least likely.

Table 3: Independent Variables by Vignette Type (%)

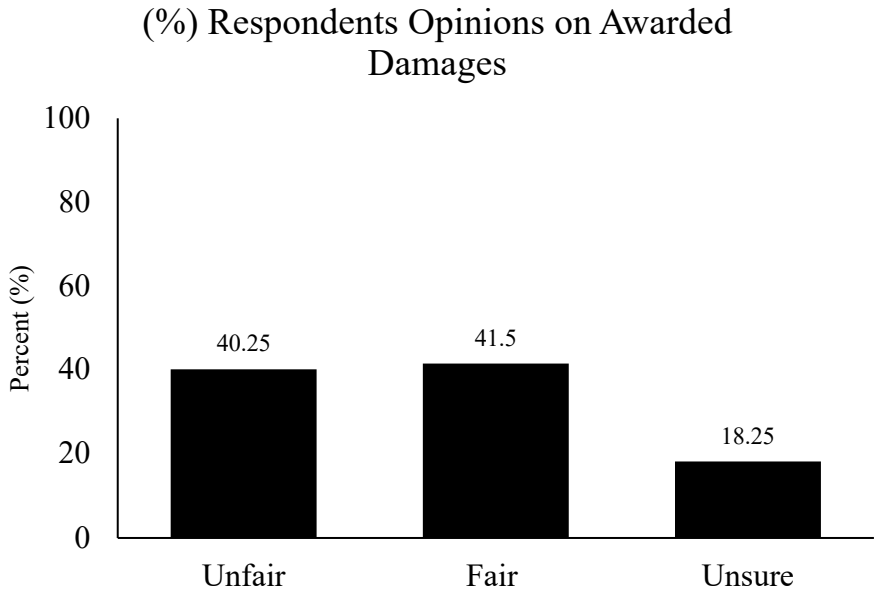
	Vignette type			
	(1)	(2)	(3)	(4)
	control facts, common def.	*control facts, legal def.*	*frivolous facts, common def.*	*frivolous facts, legal def.*
Frivolousness of case				
Not frivolous	60	57	55	48
Might/might not be	18	11	12	13
Frivolous	22	32	33	39

Likelihood to win case				
Unlikely to win	31	40	35	43
Neither likely/unlikely	12	11	13	17
Likely to win	57	49	52	40
Fairness of Damages				
Unfair	44	40	36	41
Fair	40	39	49	38
Unsure	16	21	15	21

Total N=400, 100 per vignette type

Interestingly, vignette type did not seem to have obvious patterning behavior across perceptions of fairness of the monetary damages ultimately awarded. Instead, perceptions that the damages are unfair seem fairly consistent, including among a substantial number of participants who thought Clarence was likely to win the case, but reported that they thought the awarded damages were unfair. *Figure 3* plots respondent perception across all vignette types, demonstrating that participants were nearly equally split when considering if the damages were fair or unfair. In later analysis, we turn to open-text responses to make sense of this seeming disparity.

Figure 3: Respondent Perception of Fairness/Unfairness of Awarded Monetary Damages



We also calculate median and average damages awarded by participants for each vignette type. These patterns largely mirror the findings for other outcome variables (*Table 4*).[34] Interestingly, only Type 1 saw participants assign a median amount of damages higher than Clarence's $20,000 medical bills. In general, participants seemed to readily endorse exact compensation for medical bills across the vignettes. However, the average awarded damages to Clarence in Type 1 (common language definition of frivolous and control facts) was $116,356 compared to Type 4's (legal language definition of frivolous and frivolity facts) average of $73,276 awarded. This is a 45.44% difference in awarded damages across the vignette types. In general, conditions with legal language definitions of frivolous awarded lower average mean damages to Clarence, where conditions with common language definitions of frivolous awarded Clarence more money.

[34] Skewness can be interpreted as follows: a positive coefficient suggests the distribution is asymmetric such that the mean is higher than the median. A data distribution with no skew would have a skewness score of 0, demonstrating that this data is highly skewed. In common language, that means that many participants are awarding damages near the median, but others are awarding substantially higher damages.

Table 4: Damages Awarded by Vignette Type

	Damages awarded (USD)		
	Median	Skewness	Adjusted Mean
Type 1: Control facts, common language definition	25,000	4.62	116,356
Type 2: Control facts, legal language definition	20,000	7.64	83,108
Type 3: Frivolity facts, common language definition	20,000	5.87	107,770
Type 4: Frivolity facts, legal language definition	20,000	5.62	73,276

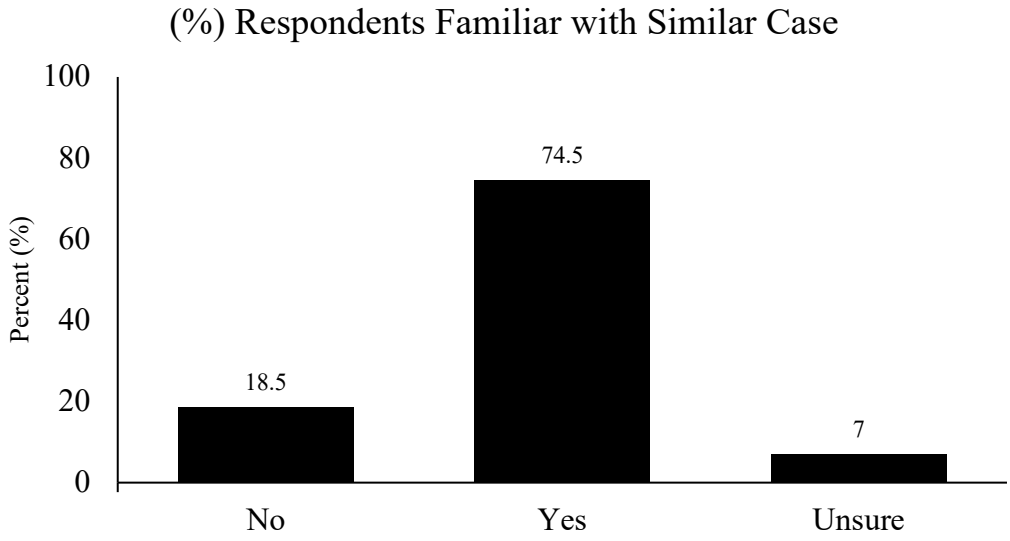
There are multiple potential explanations for these differences. This could be interpreted as the success of the experimental method. When given stricter criteria to make decisions (the legal standard) participants make a more bounded decision. However, this might also represent an important discrepancy between the common language definition of frivolous—likely to be representative of the general public's understanding of the term—and the legal definition of frivolous. This potentially suggests a wide discrepancy between ordinary and legal understanding. This might suggest that the law is not, in fact, enacting the beliefs of ordinary people but is, instead, protected by highly specialized knowledge. In the discussion, we further elaborate on how and why this disproportionately benefits corporate parties.

B. Participant Recall of Liebeck v. McDonald's

In the debrief section of the survey experiment, we asked participants if the hypothetical case reminded them of any real-life cases. For respondents that indicated that it did, they were asked to elaborate on what they recalled. 74.5% of respondents (see *Figure 4*) indicated that the fact pattern reminded them of another case. Moreover, at least 283 respondents (70.75%) specifically described *Liebeck v. McDonald's* with explicit reference to the facts of Liebeck.[35]

[35] Participants were generally quite accurate with their recollections of the facts in *Liebeck*, with the exception of knowledge of the awarded damages. Participants frequently said they thought Liebeck had won 'a million dollars or something,' indicating that they

Figure 4: Percentage of Respondents Who Recalled a Familiar Case



Participants demonstrated a variety of understandings of the salient points of Liebeck in their elaborations. Most common were responses articulating the generalities of the key facts, with reference to Stella Liebeck's injuries. One typical response read,

> "During the 90s an elderly woman spilled extremely hot coffee on her body and suffered terrible burns."

Participants often pin-pointed the time period, the elderly status of Stella Liebeck, noted the coffee was extremely hot, and that she was substantially injured. Participants also frequently credited Liebeck's victory to the absence of a sufficient warning of the temperature of the coffee. One respondent wrote,

> "A McDonald's customer spilled coffee on herself and won a lot of money because there was no warning about the coffee being dangerously hot."

knew it was a substantial amount, but without specific knowledge of the actual damages and reduced damages. This finding is consistent with the idea that people have heard of the case and are sharing their current recollections rather than finding specific facts to satisfy the survey question.

It is difficult to parse the accuracy of this interpretation. McDonald's did have a warning that the coffee was hot but did not have adequate warnings about the possibilities of severe burns as a result of company policy in heating the coffee to unusually high levels.[36] The respondent's use of the phrase "dangerously hot" is legally significant but it is unclear from the response if the issue the respondent remembers is the dangerousness of the temperature or the lack of warning. If the respondent remembers a lack of warning generally, that is not entirely accurate, but still suggests a depth of engagement with the case.

Participants also spoke at length about the cultural perception of the case, unprompted.[37] Below are three such exemplary explanations of the case, all of which identify the case as non-frivolous and describe the general affect toward Stella Liebeck at the time of the case.

> "Real life case, an old lady was [burnt] by McDonalds coffee from the drive thru. She had very severe burns, however was not taking seriously. The old lady was in trial for years with McDonalds, and the case was actually made fun of until everyone saw the pictures of the old lady's injuries. She won, plus pain and suffering, and McDonalds made their coffee cooler."

> "I remember that a woman was severely burned by a McDonald's coffee for the same reason as Clarence. It was excessively hot. While I think she did win the case, or it got settled, McDonalds used their PR to make her look like her claim was ridiculous."

> "An elderly lady went to McDonald's and got a coffee at the drive-thru. The coffee spilled on her, giving her third-degree burns across her legs even though she was wearing pants. She wanted the restaurant to pay for her medical bills, but the media made her seem like a greedy, frivolous-lawsuit-pursuing person."

All three of these responses indicate that there was a conscious effort by *someone* to ridicule Stella Liebeck, though participants explain who exactly that was, differently. The first participant recalls that 'everyone' made fun of her until

[36] *See* Ralph Nader & Wesley J. Smith, NO CONTEST: CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA 271–72 (1st ed. 1996) (quoting the *Liebeck* transcript where Judge Robert H. Scott criticizes McDonald's for their inadequate warning).

[37] Quotes are reported in their entirety, only being edited for typographical errors.

the severity of her injuries was made apparent. The second participant suggests that it was McDonald's themselves who orchestrated a campaign to discredit Stella Liebeck. The third commenter attributes much of the negative framing to the media. In all three cases we see the stickiness not of the original frivolity narrative, but of the refutation of the frivolity narrative as participants ultimately position themselves in opposition to that original framing.

Some participants also made reference to how the *Liebeck* case featured in other forms of media, with multiple references to its portrayal on the sit-com *Seinfeld*. One participant wrote,

> "Similarly, someone had sued over hot coffee. Also from the Seinfeld episode. Initially I thought it was frivolous as depicted on Seinfeld, until I learned that the coffee had been exceptionally hot and caused burns."

The episodes of *Seinfeld* in question aired in 1995, while then-Governor George W. Bush championed the cause of tort reform.[38] This popular media send-up of Stella Liebeck was common at the time, as "She was forced to endure a years-long misinformation campaign in the media and spoofs on television, designed to make her look as though she was simply a greedy customer looking for a payout, rather than an elderly woman seeking compensation after having been seriously injured due to a corporation's unsafe practices," but our results show that some media can continue to be impactful over two decades later.[39] Here we see that though the refutation of the frivolity narrative was relatively common across participants, the sticking power of the original frivolity message still carries significant weight, especially with the support of popular media.

C. Predictive Models

With the knowledge that participants do recall and understand *Liebeck v. McDonald's*, we leverage a series of predictive models to see how that recall influences decision-making in similar cases, such as the hypothetical vignette posed in our survey experiment. First, we run a duet of ordinal logistic regression models to predict two types of case outcomes: likelihood of the case being

[38] Joe Schwarcz, *The Right Chemistry: Science, Suits and Seinfeld*, MONTREAL GAZETTE (Jan. 1, 2016), https://montrealgazette.com/opinion/columnists/the-right-chemistry-science-suits-and-seinfeld.

[39] Aimee Lamoureux, *This Seinfeld Coffee Plot was Based on a Real Lawsuit*, MASHED (Nov. 9, 2021, 9:23 AM), https://www.mashed.com/591145/this-seinfeld-coffee-plot-was-based-on-a-real-lawsuit/.

considered frivolous and likelihood of winning the case. Both models control for knowledge of *Liebeck*, the vignette type, and age, gender, education, race, and self-identified political ideology (see *Table 5*). Ordinal logistic regression models work by comparing outcomes to reference categories for each variable. The reference categories in both models are the control fact pattern with common language definition of frivolousness and not recalling *Liebeck*.

Table 5: Ordinal Logistic Regression Models Predicting Case Outcomes, Controlling for Demographics

	Likelihood of the Case being Considered Frivolous	Likelihood of Winning the Case
Vignette Type		
Control language, legal def.	0.22	-0.47
	(0.26)	(0.27)
Frivolous language, common def.	0.18	-0.23
	(0.26)	(0.27)
Frivolous language, legal def.	0.39	-0.69*
	(0.27)	(0.27)
Recalls Liebeck v. McDonald's		
Yes	-0.66**	1.11***
	(0.25)	(0.25)
Unsure	-0.26	-0.24
	(0.43)	(0.41)

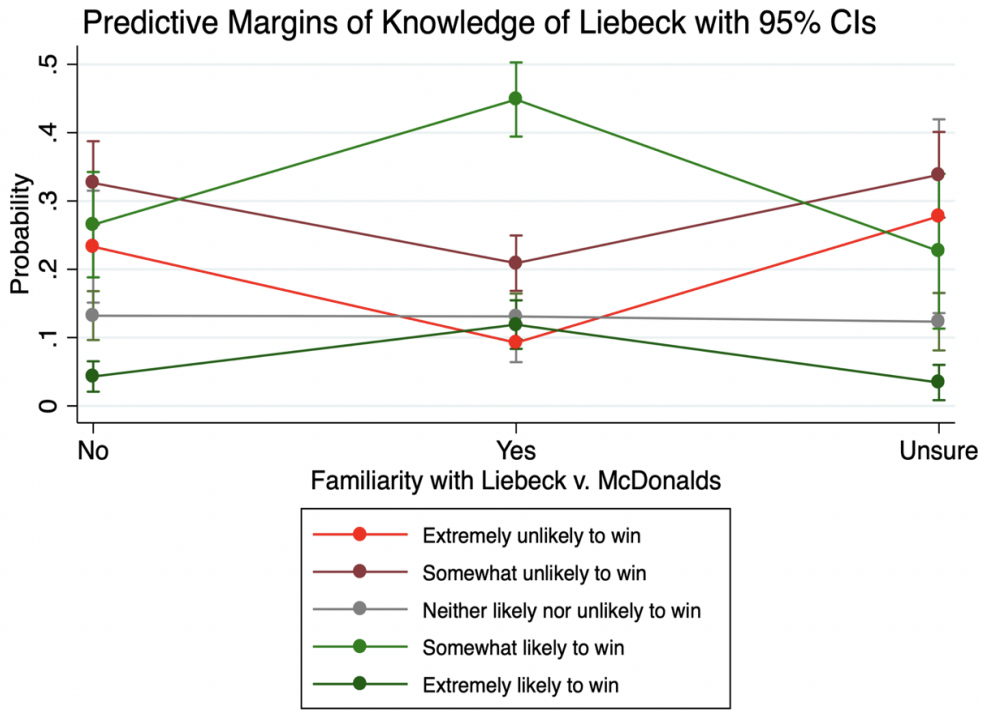
Observations	395	395
Pseudo R-squared	0.024	0.038

Notes: age, sex, education, race, and self-identified political ideology are controlled for in the model and are not statistically significant. They are redacted for visual clarity with full regression tables available from the authors on request. Standard errors are in parentheses. ***p<0.000, **p<0.01, *p<0.05

The results of this model indicate that participants who received the legal definition of frivolousness are significantly less likely to think that Clarence could win the case, when compared to participants who received the common language definition. However, the statistical significance of this effect is moderate. The results also suggest that there is a strong statistically significant relationship between knowledge of *Liebeck* and thinking the case is unlikely to be considered frivolous. There is an even stronger statistically significant relationship between knowledge of *Liebeck* and thinking Clarence is likely to win the case ($p<0.000$).

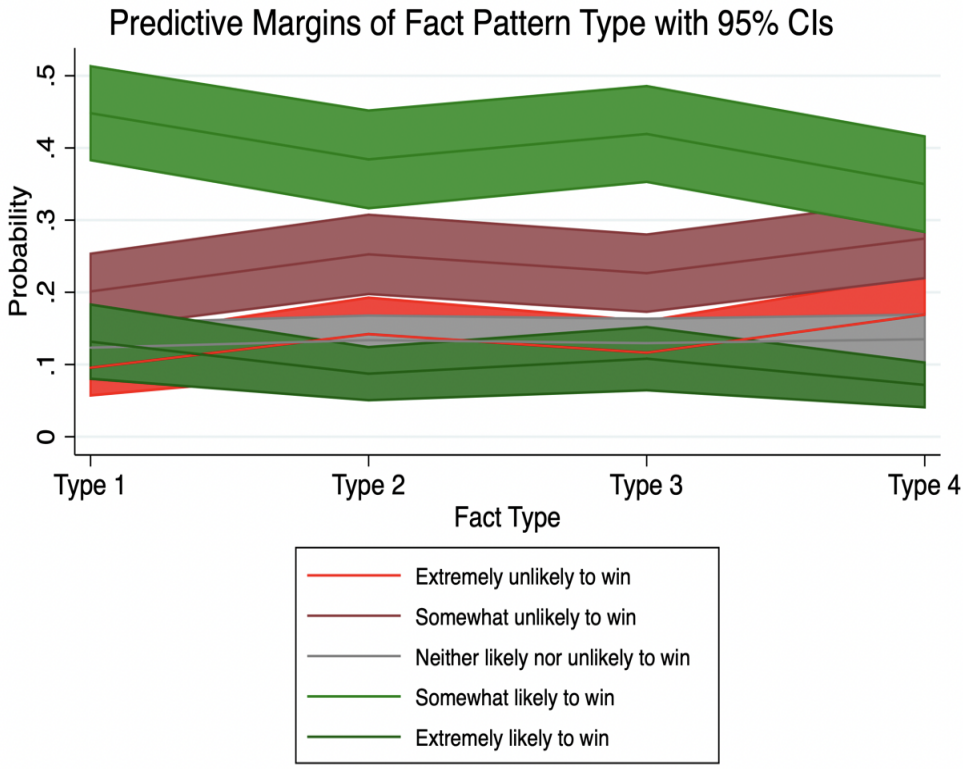
In *Table 6* (below) we plot the predictive margins of knowledge of *Liebeck* against likelihood of winning the case. This allows us to take a detailed look within the model (still controlling for other factors) to see how different responses to knowing about *Liebeck* predict participant perception of Clarence's likelihood of winning the case. The following margins plot makes it abundantly clear that participants who recall *Liebeck* (in the middle area of the graph) are substantially more likely to respond that Clarence is 'Somewhat likely to win' and substantially less likely to endorse either 'Extremely unlikely to win' or 'Somewhat unlikely to win.' This supports the hypothesis that the stickiness of *Liebeck v. McDonald's* on perceptions of consumer protection cases has continued effects on contemporaneous decision-making.

Table 6: Predictive Margins of Knowledge of Liebeck on Likelihood to Win



We also plot the predictive margins of the vignette type on perception of Clarence's likelihood to win. *Table 7* reveals results consistent with the descriptive results discussed in *Table 3*. Participants who got vignette types 1 or 3, both using common language definitions of frivolousness, were more likely to endorse Clarence as "Somewhat likely to win" or "Extremely likely to win" than their type 2 or 4 counterparts. The margins plot also shows that participants who received vignettes 2 and 4, those with legal standard definitions, were more likely to perceive Clarence as "Somewhat unlikely to win" or "Extremely unlikely to win" than their type 1 or 3 counterparts, who received common language definitions. The addition of frivolity facts to the fact pattern has similarly patterned effects, though they are less pronounced.

Table 7: Predictive Margins of Vignette Type on Likelihood to Win



Finally, we also specify an additional multinomial logistic regression model to analyze the relationship between vignette type, knowledge of *Liebeck*, and demographic factors on participant perceptions of the ultimately awarded damages as fair or unfair. The reference category is the perception that the damages are fair. The model indicates that compared to participants who believe the awarded damages are fair, participants who have heard of *Liebeck v. McDonald's* are significantly less likely to think the awarded damages are unfair. This again provides support for the hypothesis that *Liebeck v. McDonald's* successfully changed attitudes about frivolity and consumer protections cases. We also find that liberal political ideology is negatively associated with the perception that the damages are unfair, perhaps foreshadowing some of the anti-corporate sentiment revealed in the open-text responses to follow.

Table 8: Multinomial Logistic Regression Model Predicting Perceptions of Fairness of Monetary Damages

	Damages Unfair	Unsure if Damages are Fair or Unfair
Vignette Type		
Control language, legal def.	0.03	0.29
	(0.34)	(0.42)
Frivolous language, common def.	-0.49	-0.39
	(0.34)	(0.44)
Frivolous language, legal def.	0.03	0.31
	(0.34)	(0.42)
Recalls Liebeck v. McDonald's		
Yes	-1.07**	-0.79
	(0.35)	(0.41)
Unsure	-0.72	-1.40
	(0.54)	(0.76)
Political Ideology		
Moderate	0.01	-0.16
	(0.49)	(0.67)

Liberal	-0.74*	-0.20
	(0.34)	(0.46)
Observations	395	
Pseudo R-squared	0.082	

Notes: age, sex, education, and race are controlled for in the model and are not statistically significant. They are redacted for visual clarity will full regression tables available from the authors on request. Standard errors are in parentheses. ***p<0.000, **p<0.01, *p<0.05

D. Discussion

In sum, the weight of the quantitative evidence presented here has implications for many of the proposed research questions. We find support for the hypothesis that changing definitions of frivolity, and to a lesser extent, frivolity indicators in fact patterns affect consumer perceptions of frivolity and likelihood of winning a particular case. We find that the combination of a common language definition of frivolousness and a controlled fact pattern yield the highest average damages awarded to the hypothetical victim. We also find that the combination of a legal language definition of frivolousness and a frivolity cued fact pattern yield the lowest average damages awarded to the same hypothetical victim.

We also find that participants are quite likely to be familiar with *Liebeck v. McDonald's*. Further, we find that knowledge of *Liebeck v. McDonalds* predicts perceptions of frivolity, likelihood of winning the cases, and opinions about the fairness of ultimately awarded damages. These findings lend support to the thesis that *Liebeck* fundamentally changed public perception of similar consumer protection torts with impacts for present-day decision-making.

V. THEMATIC ANALYSIS

In the section to follow we report the qualitative results of the survey experiment. While the numerical results help quantify patterns and causal mechanisms across the data, they do not allow us to see how participants understood various elements of the simulation. For that, we turn to thematic analysis of the open response questions included across the survey. Open-ended questions have significant benefits that are relevant to this research. They allow for individuals to give answers the researchers have not considered and help guard

against suggestive response bias.[40] In this case, open-ended questions allow participants to explain their thought processes about why the hypothetical legal case is likely or not likely to be considered frivolous and to explain why they think the ultimately awarded damages are fair or unfair. We manually code all the responses, identifying themes across the text corpus. We discuss the most prevalent themes below, giving example quotations that characterize the thematic groupings. First, we examine participant understandings of frivolousness, followed by participant understandings of fairness.

A. What Makes Something Frivolous?

In the first open-text question, participants were asked to explain why they believed Clarence's case was likely to be considered frivolous or not. We examine common themes across two groups: the group of participants who thought Clarence's case was likely to be considered frivolous and those who thought Clarence's case was unlikely to be considered frivolous. We parse those two categories into several sub-themes, giving specific examples of common responses and discuss the meanings of those responses. We open each section with a quotation that encompasses multiple sub-themes before sharpening our analysis within each section.

i. Perceptions of Clarence's Case as Frivolous

> *Clarence couldn't just take responsibility for his own actions. It's a joke or 'embarrassing' for anyone to think they can sue any company or person on this scenario! I think this because every damn human(adult) living in this world, KNOWS coffee is hot, it's got to be, it's how people consume it! Nobody wants coffee to drink because it is cold, understand? So to me, Clarence is out right making a mockery to donut world like it's a sick sort of joke, extremely frivolous! Everyone with common sense knows coffee is hot, so the person handling should know to be careful, it's Clarence fault, not donut world, it's a joke, definitely a definable full context frivolous law suit!! Without a doubt!!!*

22-39% of participants reported that they believed Clarence's case was somewhat or extremely likely to be considered frivolous. Like the participant

[40] Urša Reja et al., *Open-ended vs. Close-ended Questions in Web Questionnaires*, 19 DEV. IN APPLIED STAT. 159, 161 (2003).

quoted above, many elaborations on this prediction were centered on ideas about general knowledge and personal responsibility. The tone of many of these responses were critical of Clarence and his actions, both in spilling the coffee and choosing to pursue legal action.

a. Everyone Knows Coffee Is Hot

Participants who believed Clarence's case would be considered frivolous frequently brought up ideas about common sense and general knowledge. In general, these participants indicated that they think Clarence's lack of common sense essentially made the case a frivolous lawsuit. As one participant wrote,

> "I think it would be frivolous because he knows coffee is hot. Everyone knows that. Its common sense. He had been going to the same place because it was his usual routine, so he wasn't unaware. The only reason he burned himself is because he bumped the table and spilled his own coffee on himself. His actions caused his injury and it was an accident. The negligence wasn't because of the donut shop. They didn't spill the coffee on him, and there was a warning on the cup. He is just looking for someone to pay his bills. So, the donut shop is not responsible and shouldn't have to pay anything for his mistake."

This response-type parallels some of the arguments utilized by McDonald's in arguing *Liebeck*, where they argued that everyone knows coffee is hot.[41] Many of these responses clarified their belief that Clarence was responsible for the accident and implied some moral constitution to Clarence's actions. In this vein, some participants more directly criticized Clarence for filing the lawsuit. One participant wrote,

> "Clarence made a mistake and is looking to blame someone other than his own clumsiness. With a warning on the cup, I do not think he has a case."

Characterizing Clarence as searching for someone to blame was not uncommon, and this response was iterated often in response to other questions in

[41] James McMillan, Comment, *Contributory Negligence and Statutory Damage Limits-An Old Alternative to a Contemporary Movement?*, 42 IDAHO L. REV. 269, 270–71 (2005).

the survey experiment (fairness of monetary compensation) as well. Here we again see parallels with the original media frame of Stella Liebeck's litigiousness.

b. Clarence Assumed the Risk

A significant number of participants also responded with the opinion that Clarence assumed the risk in the situation by drinking the coffee, thus absolving Donut World of liability for any injuries resulting from the coffee. One participant explained why:

> "Donut World already placed a label on the cup stating that it was hot coffee. Clarence took an assumed risk by drinking the coffee and carelessly knocked it over on himself."

Here the participant uses the literal language of risk to defend their position, but participants also came to the same conclusion with less risk-language. This group of respondents suggested that by taking the coffee, with its warning label and expectation of being hot, Clarence engaged in a sort of pseudo-contractual relationship wherein he agreed to hold Donut World harmless. Another participant agreed citing Clarence's ownership of the coffee, familiarity, and a disrupted causal chain of events, writing,

> "It would probably be frivolous because once they handed Clarence the coffee it was now in his possession. He knew how hot the coffee could be because he was a daily drinker. He obviously sat there everyday reading the newspaper as his coffee cooled. It was his fault that he bumped the table and not the fault of an employee. It's like saying I'm going to sue the city because I was given a cup of coffee by a city worker and tripped on the curb. While attempting to catch the coffee I slipped and fell on the pavement burning myself and fracturing my arm. Now I'm suing. In this world, to save face, a business will likely offer some type of compensation."

This set of responses often drew parallels to other actions that the participant clearly believed were too distant from the source of injury to induce culpability. These responses also seemed to presume that Donut World is not liable after point of sale, since Clarence is the physical custodian of the item that injured him.

ii. Perceptions of Clarence's Case as Not Frivolous

> *"Given public opinion regarding the Stella Liebeck McDonald's case, people would likely believe that Clarence is just trying to get money out of the chain. I believe that his suit is not frivolous, however many Americans have conservative views regarding the filing of torts claims."*

Roughly half (48-60%) of participants believed that Clarence's case was somewhat or extremely likely to be considered frivolous.[42] The reasons cited for non-frivolousness were more variable than their frivolous counterpart. Participants said that harm to Clarence, insufficient precautionary measures by Donut World, and direct applications of frivolity definitions meant that the case was somewhat unlikely or extremely unlikely to be considered frivolous. Importantly, some participants, like the one quoted above, compared this case to *Liebeck* and the general climate of tort reform before being specifically instructed to consider comparison cases. In these responses, there is some evidence of belief in legal precedent (i.e. the case is less likely to be considered frivolous because the McDonald's case exists) and recognition of widespread frivolity framing that was applied to *Liebeck*. However, responses specific to the internal world of Clarence and Donut World still dominated the responses.

Furthermore, these participants are honing in on the material distinction in the *Liebeck* case: the unusually and dangerously hot coffee. This is a distinction that mattered both for the outcome of the case itself and its absence—and eventual re-discovery—from the popular discourse greatly informed public perception of the case. Here, the participants are underscoring that importance, illustrating its ongoing cultural salience.

a. Magnitude of Injury

Participants were particularly persuaded by the extent of Clarence's injuries and what they viewed as an unreasonable refusal by Donut World to cover the medical bills when originally asked. Two participants wrote,

> "He asked them to cover his medical bills and they refused. Coffee capable of giving third degree burns on 15% of the body is way hotter than it should be and no average person would assume a beverage would be that temperature."

[42] At the level of "somewhat likely" or "extremely likely."

> "Clarence suffered 3rd degree burns across 15% of his body, I am unsure as to how anyone could argue this claim to be frivolous."

Both participants pointed to the specific amount and magnitude of Clarence's injuries, with one saying directly that the severity of the injuries case alone refute any claim of frivolousness. Participants also pointed out that something that was merely 'hot' could not cause injuries that were so serious and extensive.

b. Insufficiency of Warnings

Where participants who thought the case might be considered frivolous cited the presence of a warning as defeating Clarence's case, other participants acknowledged that the warning existed, but deemed it insufficient. As one participant wrote,

> "I think the warning label on cup was not a sufficient warning"

Here participants indicated that the lack of warning *in general* was not the problem, rather it was a lack of a specific warning commensurate with the possible injuries. Another participant agreed, writing,

> "Regularly giving out a drink that can cause 3rd degree burns is reckless, regardless of warnings. A coffee should not need to be treated like a dangerous chemical in a lab."

Participants who made these types of comments were operating with logic that was actually rather similar to their counterparts, using a commonsense framework. However, they were attributing the commonsense burden to *Donut World* rather than Clarence. One participant succinctly summed up this important distinction, writing

> "I think businesses have a responsibility to not serve dangerously hot coffee"

Instead of casting Clarence as a hapless or careless actor who has assumed the risk of hot coffee, here the responsibility lies with the producer of the

potentially damaging item, essentially arguing that Donut World's negligence is the necessary condition for Clarence's injuries.

c. Applying Specific Definitions of Frivolousness

A common method of decision-making among participants who thought Clarence's case was not likely to be considered frivolous was to apply the specific verbiage of the frivolity definition to Clarence's case. For example, one participant wrote,

> "Clarence is not filing to harass the opposition, but to have his medical bills covered. He has substantial medical bills and is retired from his job, so he mostly likely cannot afford them. The coffee was far hotter than it needed to be and Donut World could easily serve their coffees at a lower temperature. There is also established precedent for such cases siding with the plaintiff rather than the business, so it has a legal basis."

Here the participant hones in on the 'harass' requirement of the legal definition of frivolity and goes on to explain at length why Clarence's case filing does not meet the definition of harassment by casting Clarence's need for funds as legitimate and Donut World's actions as easily correctable. Other participants also turned to the specificity of the definition to determine frivolity. Another participant wrote,

> "It's not to harass, delay, or embarrass Donut World. The coffee was significantly hotter than expected and he suffered major burns because of this."

Once again, the participant picked up the specific legal standard and explained that Clarence's actions and intentions do not fall within it. Importantly, we also see in this response another enduring pattern in participant responses. Participants often referred to Clarence's case as non-frivolous because he was only seeking reimbursement for medical bills. Exemplifying this pattern of responses, one participant writes,

> "The claim is in good faith, attempting to hold Donut World accountable for serving dangerously hot coffee to its customers which led to severe injury. Clarence clearly has no ulterior motives, as he only requested

> them to pay for his medical bills. He isn't intending to sue based on a lie or desire to harm Donut World or get money from them."

Here there was an ascription of morality to Clarence's lawsuit because it was bounded by medical costs. Participants differentiated between Clarence's case and a potentially frivolous case because Clarence was not trying to get any additional money from Donut World in his initial claim. Consistent with this interpretation, the median damages awarded to Clarence by participants in most versions of the scenario was the exact cost of his medical bills, $20,000.

iii. Uncertainty if Clarence's Case is Frivolous or Not

> *"The warning is written on both the cup and the station, so I'm not too sure if Clarence would win. However, due to the severity of the burns and the past experiences of other customers, I do not believe the case would be considered completely frivolous."*

Some participants were unsure about whether or not Clarence's claim would be considered frivolous, articulating arguments both for and against frivolity. Some participants, like the one quoted above, embodied multiple themes discussed previously. This participant thought the warning on the coffee cup might prevent Clarence from winning, but also wanted to weigh the impact of Clarence's injuries and the fact that it was not a completely isolated incident. Here the participant seems to have come to an uneasy compromise: the case might be frivolous, but Clarence still might not win. Other participants bounded their prediction with the caveat that if Donut World had done something wrong, then maybe Clarence has a case. For example, one participant wrote,

> "I don't know if the restaurant would be liable because the coffee has a warning label. On the other hand, if the coffee was hotter than it should've been then maybe there's a case for it."

The participant articulates the same concern about liability because of the warning label, but also makes allowance for possible improper conduct by Donut World in this particular instance. Here the participant is perhaps less persuaded by Clarence's injury and more persuaded by the possibility that Donut World acted against some sort of policy in this case. Responses that followed this pattern took a more individualistic perspective on the case: was the coffee too hot on this particular occasion, rather than arguing that the general policy of the company to serve coffee that was harmful upon contact makes the case non-frivolous.

B. Are the Amount of Awarded Damages Fair?

In the second set of open-text questions, participants were asked to evaluate the outcome, rather than predict what it ought to be. Regardless of their opinion on Clarence's odds or what damages they awarded, participants saw the same vignette outcome. They were told that Clarence filed a lawsuit and was awarded $160,000 in compensatory damages and $480,000 in punitive damages.

This outcome split participants substantially more than the question of frivolity, where participants were generally more likely to think the case was "somewhat" or "extremely" non-frivolous. When it came to fairness of awarded damages, 40.25% thought the amount was unfair while 41.5% found them to be fair. In the sections to follow we look at thematic patterns in responses across both groups, again opening each section with a respondent quote that encapsulates multiple themes.

i. Perceptions that the Awarded Damages are Fair

> *"Donut World failed to do the right thing and used their power and status as a means to deny Clarence compensation for their unsafe drink preparation methods. While suffering is not quantifiable, a precedent must be set where corporations should be fearful of mistreating people. Donut World got off easy."*

Participants who found the damages to be fair were generally not focused on exact financial remuneration to Clarence to mirror the exact monetary cost of his injuries. Rather, they considered financial compensation to be for Clarence's larger ordeal in recovery, including navigating the legal system, as well as stress. They also viewed monetary sanctions as a form of regulation, which would prevent such cases from happening again. The combined weight of these two goals seemed to convince this group of respondents that compensation far beyond Clarence's incurred financial cost from bills alone was merited.

a. Extent of Injury

A number of participants were particularly persuaded that the severity of Clarence's injuries and the need to penalize Donut World meant Clarence should receive more than his medical bills not only to make Clarence whole, but also to deter future harms. One participant wrote,

> "Although the amount is much more than the cost of Clarence's medical bills, I think the amount is fair given what Clarence has gone through. He will probably be in pain for some time and it's also important to send a message to Donut World that they need to better control the temperature of their products to avoid such future issues."

The participant is being very future-thinking in this response, as was frequent through the data. The participant explains that Clarence's compounded consequences from the incident were more than $20,000 and that he may continue to incur additional difficulties such that future thinking compensation is appropriate. The participant applied this same logic to Donut World, saying that the penalty needed to 'send a message' to Donut World about their own responsibility to customers. Some participants were also critical of Donut World's decision-making that led to litigation. Many participants indicated that they felt Donut World should have agreed to pay Clarence's medical bills originally, such that Clarence should not have had to pursue a lawsuit at all. One such respondent wrote,

> "First, Clarence's time off work, pain and suffering, and medical expenses need to be covered. Seems like $160K would adequately do that, although this is certainly higher than I would personally have awarded. Donut World also needs to be punished for 2 things: Knowingly serving too-hot coffee without adequate safeguards and fighting the suit in court instead of admitting their culpability and setting for a more reasonable amount in the early days of the incident."

This pattern of responses shifts responsibility for the lawsuit, frivolous or not, to Donut World rather than Clarence. This critique is also significant as an indictment of the inequality inherent to the consumer protections claim process, where Clarence is one injured individual and Donut World is a better resourced corporation The participant appears to feel little sympathy for Donut World, noting that they could have settled for a more reasonable amount earlier in the life course of the case.

b. Anti-Corporate Sentiment

There was also a significant amount of anti-corporate sentiment across the participant pool in general that was used to rationalize the damages awarded to Clarence. As one respondent stated simply,

> "Corporate malfeasance should be punished."

This sentiment was endorsed by participants in multiple ways. Some were less sympathetic to Donut World due to the power dynamic between them and Clarence as an individual. One respondent writes,

> "They paid his medical bills and compensatory damages; the money is coming from a large corporation, so I'm willing to endorse a fairly high upper bound on fairness."

In this collection of similar responses, participants were quick to note that damages incurred by an individual and a corporation were simply not comparable because the scale of resources is substantially different. This helped some participants reconceptualize the scale of the damages awarded and the amount Clarence actually asked for. Participants also considered Donut World's strategy in denying Clarence's initial request for compensation in their damages evaluation. Another respondent wrote,

> "Fuck corporate, if they didn't want to settle for 20k they deserve to get rained hell upon [them]."

Participants frequently expressed that they were happy to see Donut World punished substantially because they felt Donut World had acted in bad faith not considering the original, lower request. Participants were especially critical of this decision-making, again, because of the resource and power differences between Clarence and the corporation. Or as another participant put it,

> "Because fuck donut world, they have money to spare and they should take care of their customers if they cause injury."

ii. Perceptions that the Awarded Damages are Unfair

> *I think Clarence should have been rewarded some monetary amount for the injuries he sustained, but I believe this amount is way too much. He had been to Donut World before and knows the coffee is hot. He made a mistake and bump into the table, therefore, which is why the coffee spilled all over him. We all make mistakes and accidents but he should be more careful next time.*

An almost equivalent number of participants felt that the awarded damages were unfair. Interestingly, this was not universally because the respondent felt Clarence should not be compensated. Rather, a substantial group of respondents felt Clarence should be compensated but the damages awarded were simply too high. Despite this sizable population, there was still a significant number of individuals who felt Clarence should not be compensated at all.

a. Clarence Should be Compensated, but Not that Much

Participants often seemed adamant that Clarence received too much money from Donut World. These sentiments are supported again, by the median awarded damages by participants in most scenarios, which were exactly the cost of Clarence's medical bills. One participant expressed their incredulity, writing,

> "Over half a million dollars for hot coffee? Everyone knows that hot coffee is going to burn. He should have been awarded medical costs but not this exorbitant amount."

These participants endorsed some of the frivolity framing language found in the *Liebeck* case but moderated it by expressing that Clarence's medical bills should have been paid. This is a sort of allocation of blame across both Clarence and Donut World. This replicates what happened in the *Liebeck* case, where the jury attributed 20% of the fault to Stella Liebeck, lowering the compensatory damages by 20%. However, Stella Liebeck still recovered significantly more than just medical bills, which is at odds with a majority of participants who endorsed themes of mutual blame.

b. It was Clarence's Fault, He Should Not be Compensated

There were also a significant number of participants who maintained that Clarence should not recover anything. Many of these participants used language associated with frivolous legal frames and attribute blame to Clarence directly and exclusively. Typifying these types of responses, one participant wrote,

> "It is Clarence's fault for his accident. He bumped into a table and got himself in this mess. If he had paid more attention to his surroundings, this would not have happened. Just a waste of everyone's time."

This participant directly endorses the theory of the case as frivolous by calling it a waste of everyone's time. They point to Clarence as the response actor, explaining that a change in Clarence's behavior (paying attention) would have prevented the harm. They do not suggest that a change in behavior by Donut World would have similar effects. Other participants made *ad hominem* attacks against Clarence in their responses with comments like,

> "The bored man couldn't read and didn't have common sense so therefore, he got angry and won money. Not a surprise. That's the only way to get attention these days."

Such responses cast Clarence as a litigious, greedy, and unintelligent individual seeking attention. Participants who endorsed this framing of Clarence frequently made statements suggesting that this was a frequent or unsurprising turn of events. Participants also occasionally lamented the effects of Clarence's lawsuit on Donut World. One participant writes,

> "It's not fair because his injury was caused by his own carelessness. It was an accident that he caused. So the donut shop wasn't at fault because they didn't cause his injury, he did. So this judgment unfairly punishes the business."

In this group of responses participants stated that Donut World was being unfairly punished, with some participants suggesting that Donut World was being manipulated by Clarence and consumer instigated lawsuits more generally. Some participants combined personal insults directed at Clarence with this perceived manipulation of Donut World and the courts writing things like,

"Because if you're too stupid/clumsy to handle a cup of coffee you shouldn't be rewarded for it."

C. *Summary of Thematic Findings*

The open-text responses in this survey experiment revealed substantial nuances in how respondents made decisions. In general, these responses are very consistent with the statistical findings, but provide increased context and nuance to them. As a simple majority, participants were generally more likely to perceive Clarence's case as non-frivolous. These participants pointed to the magnitude of Clarence's injuries, insufficient warnings by Donut World, and methodically used the legal standard of frivolousness given to them in the vignette to ascertain frivolousness. A non-trivial number of participants disagreed, perceiving the case as frivolous. Participants in this group used rhetoric similar to the media framing *Liebeck v. McDonald's* and endorsed themes of common sense, personal responsibility and assumption of risk.

Participants were more split on whether or not they felt the ultimately awarded damages were fair or not, with a near equivalent number of participants taking either side and a substantial number remaining uncertain. Participants who thought the damages were fair generally felt that Clarence's injuries were worth more than the specific monetary value of his medical bills, that Donut World needed to be financially punished commensurate with their financial resources, and generally expressed anti-corporate sentiment related to power dynamics and corporate strategy. An equal number of participants were on the other side, but they did not necessarily agree on the magnitude of unfairness. Many participants felt Clarence should be compensated for his medical bills, but that the awarded damages were too high. This explains how, in general, people were sympathetic with Clarence but felt the awarded damages were unfair. Even beyond this population, there were a substantial number of participants who felt Clarence should not get any financial compensation. These participants endorsed themes consistent with opinions that the case was frivolous. They cited common sense and personal responsibility on Clarence's part. These responses were also characterized by negative assessments of Clarence's morality or intelligence.

VI. DISCUSSION AND CONCLUSION

In this paper, we have established that several factors can affect perceptions of frivolity in cases analogous to *Liebeck v. McDonald's* for potential jurors. These factors include what definition participants are primed with, whether they're given

arguments in favor of frivolity, familiarity with the *Liebeck* case, and political leaning or anti-corporate sentiment. In this section, we elaborate on the broader stakes of these findings.

Liebeck v. McDonald's is an iconic case that truly exemplifies how these cultural phenomena involve competing discourses. Our study measures the impact of them. Scholars have argued that the *Liebeck* case, and its enduring legacy in American culture, is determined and shaped by the media response to the case.[43] In this paper, we argue that this is, in fact, the case and argue that there are specific measurable ways in which the case has had an enduring impact. The case continues to be iconic by shaping public opinion and potential juror responses to future analogous cases.

To this end, we found a wide discrepancy of outcomes between ordinary, plain language meanings of frivolous and legal language meanings of frivolous and have suggested that this discrepancy of language disproportionately benefits corporations and here we argue why. Participants have different perceptions of the frivolity of the case depending on the framing of that case: they are more likely to say that Clarence's claim is frivolous when given the legal standard. As the legal standard is discursively constructed, it does not match what ordinary people might expect when they hear about a frivolous case. The term is, then, a lower hurdle for the defendant to clear but also more culturally damaging because it may suggest that the defendant has cleared a higher common language hurdle.

We also found conflicting narratives of personal responsibility working in a similar way to advantage corporate defendants. Ultimately, we found that personal responsibility narratives were used exclusively to bolster an argument that Clarence's claim was frivolous. The claims that Donut World had a responsibility, generally, were often more complicated. Some participants claimed that Donut World had a nebulous type of responsibility to their customers after an injury but not with the level of specificity that participants claimed that Clarence had responsibility for protecting himself from injury. In other words, participants overall claimed a *specific* responsibility only on the part of the individual. Fault, blame, and responsibility were more likely to be ascribed to the individual plaintiff than the corporate defendant.

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[43] *See e.g.,* Hot Coffee (Keith Kohn/ASCAP 2011) (depicting the media response as inaccurate and instrumental in the tort reform movement); Simmons, *supra* note 12; Retro Report, *Scalded by Coffee, Then News Media*, N.Y. TIMES (Oct. 13, 2013), https://www.nytimes.com/video/us/100000002507537/scalded-by-coffee-then-news-media.html?playlistId=100000002148738 (contextualizing and reframing the case); Burtka, *supra* note 1.

We learn from the open-ended questions above that the sympathy for the plaintiff sometimes hinges on anti-corporate sentiment, particularly when considering size of damages, suggesting that fair remedies are only considered fair against in an extraordinarily lopsided fight. In other words, the *size* of the corporation against an individual plaintiff seems instrumental in defending the fairness of an award beyond simple medical bills.

Furthermore, we argue that in considering the function of anti-corporate sentiment in light of the personal responsibility narratives, the persuasive challenge is more difficult for individual plaintiffs, who must overcome the presumption of personal responsibility. Plaintiffs, too, require strong anti-corporate sentiment from potential jurors in order to legitimate their claims against corporate entities. Basically, our study suggests a massive counterargument against tort reform: that litigation and juror perceptions may have been sufficiently chilled and, even, chilled to the point of a disproportionate burden for plaintiffs.

For example, one significant finding in our study is that our participants, on average, awarded substantially lower damages than the judge-reduced award in the *Liebeck* case. In fact, our survey design used the direct reduced monetary award from the case, $640,000. Accounting for inflation, this is roughly equivalent to $1.2 million 2022. The jury in 1994 awarded nearly $3 million—nearly $6 million in 2022 dollars. This discrepancy is stark.

There may be some reasons for this discrepancy beyond shifting sentiment around corporate responsibility, given that we were specifically testing remedies for the purpose of understanding fairness, not for the purpose of understanding *remedies*. The survey was not intended to perfectly replicate jury conditions for the purposes of calculating awards, as the damages questions mostly serve to underscore the perceptions of frivolity and quantify the perception of unfairness. We did not subject the participants to days or weeks of rhetorical framing of the main characters in the case or attempt to build specific sympathy for the plaintiff as the rhetoric of a trial might. Furthermore, as one of our participants pointed out above, the images of injuries that jurors would have seen would be impactful beyond the descriptions. Furthermore, our participants are aware that Clarence is fictional and are not tasked with giving him damages in his presence, potentially impacting the emotional resonance with Clarence. Our participants also did not consider attorney's fees or the role of insurance in handling payouts.

However, variance in the belief that the damages of $640,000 are fair underscores both that common perceptions of "fair" remedies in consumer protection cases may be substantially less than $1 million and, more importantly and specifically, that knowing and understanding the *Liebeck* case itself is not determinative of opinions. This underscores a couple of important points: first, that

legal consciousness or knowledge is not belief and that individual jurors can and do respond in complicated and varied ways when presented with familiar narratives and that the biases that they take into the courtroom are not necessarily dispositive in either direction. Three-quarters (74.5%) of our participants knew the *Liebeck* story; more than 25% of that group said that our case was frivolous. In other words, knowing *Liebeck* did not make it impossible for jurors to endorse the frivolity narrative, though it was statistically less likely, and neither did familiarity with *Liebeck* prompt participants to universally agree that the damages were fair in the hypothetical case.

Finally, and in conclusion, we found that people are still familiar with the *Liebeck* case, with some degree of depth. That nearly 75% of our participants were familiar with the case nearly 30 years after it first reached public consciousness speaks to its enduring legacy. Participants covered a range of narratives—from pro-plaintiff to pro-defendant—and among those perspectives had nuanced and varied perspectives on frivolity following their recollections. The legacy of *Liebeck v. McDonald's* is inextricably intertwined with the last several decades of tort reform and consumer protection cases. It is also exemplary of how such a legal, political, and cultural touchstone results in varied and nuanced opinions and perspectives.