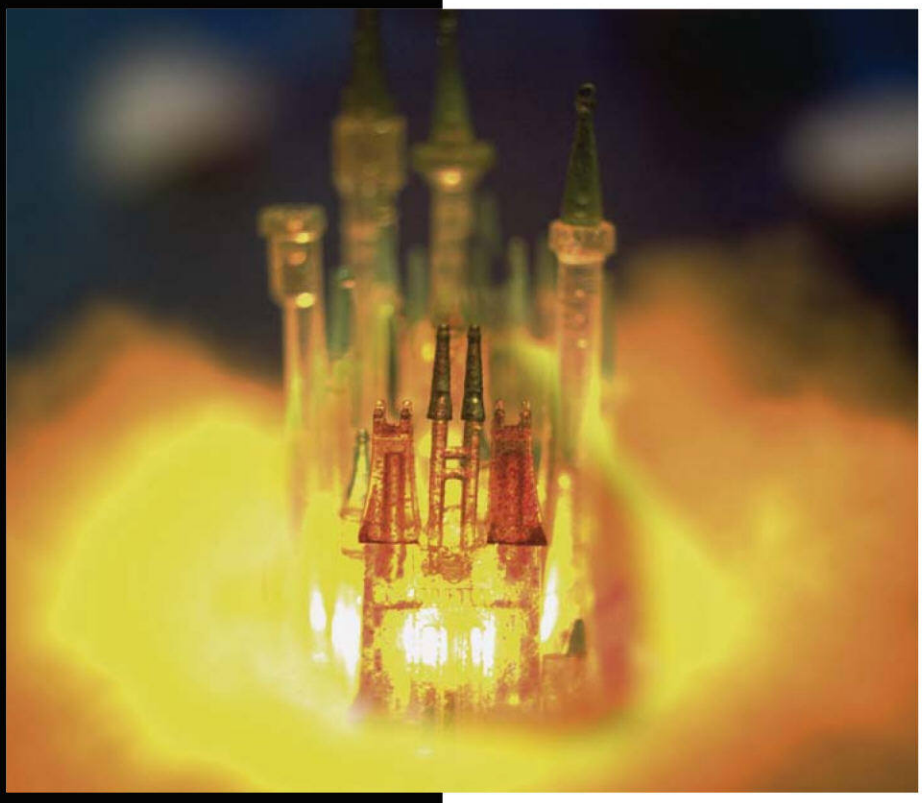


Too Bad to Be True

When someone tells a story about an outrageous jury decision, check it out. Odds are it may never have happened.

By Steven A. Meyerowitz

What is it about the people who serve on Pennsylvania's juries? One group recently decided that a Philadelphia restaurant should pay more than $100,000 to Lancaster's Amber Carson after she slipped on a wet floor and broke her tailbone. The award was not necessarily unreasonable — except when one considers that the floor was wet because the plaintiff, fighting with her boyfriend, had tossed a drink at him seconds before she fell!

A different collection of peers decided that Bristol's Terrence Dickson was entitled to about $500,000 to compensate him for mental anguish. The jury's award in this dispute might have been supportable, but the plaintiff claimed that he had suffered his injuries after robbing the home of a family on vacation — and getting locked in the garage for more than a week, surviving only on soda and dog food!

Relax, reader. Although the use of plaintiffs' names and hometowns and the addition of just enough interesting detail give the stories at least a slight smell of truth, they are fake, fake, fake! Fiction. False. These two cases *never* happened.

Of course, that fact alone does not necessarily stop people from passing them along to friends, family members and coworkers, usually with a comment to the effect that "This is what's wrong with the world." or "Can you believe this?" or "Shouldn't the laws be changed?" A Google search of "Bristol's Terrence Dickson" yields about 220,000 results, many of which treat the story as true.

Lawyers have long been the subject of jokes and put-downs, but apocryphal anecdotes demeaning lawyers, the courts or the legal system particularly irk Karen M. Balaban, a Harrisburg attorney and one of three chairs of the PBA's Public Relations Task Force. Lawyers, she says, "should not allow these urban legends to proliferate" to the detriment of lawyers and judges and the public's opinion of the profession. Instead, Balaban says that lawyers, who are trained to help adjudicators find the truth, "should be more conscious about getting at the facts of the matter." Balaban emphasizes that faux facts make all lawyers look bad, asserting that lawyers should investigate and, if they discover that a story is false, should say, "These things are not true."

Basic Legends

Urban legends about the law come in a variety of shapes and sizes and cover a broad range of subjects. Some are relatively harmless, or at least relatively harmless to the profession. For example, Steven F. Baicker-McKee, a shareholder in the Litigation Services Group and Technology Services Group at Pittsburgh's Babst, Calland, Clements and Zomnir P.C., notes that one of the things that has always amused him is that at the beginning of many depositions, one attorney will say, on the record, "I assume we are using the usual stipulations." Baicker-McKee observes that many attorneys just agree with this but points out that "the truth is that there is really no single set of usual stipulations," adding that no one

Lawyers "should not allow these urban legends to proliferate" to the detriment of the public's opinion of the profession.

really knows what this means! Baicker-McKee assumes that most attorneys are too uncomfortable saying, "I don't know what the heck the usual stipulations are," so they just go along as if they know what is intended.

Another attorney, who works for a broadband voice and data communications provider, points out that the general public has many misconceptions about the law. "I think one of my favorites that I remember from law school is that it is not illegal to yell 'fire' in a crowded movie theater," he recalls. "What you cannot do is yell 'fire' when you know there is no fire."

He says people also have faulty views about intellectual property law, from "when and how copyrights, trademarks and patents are triggered" to "distinctions between protection and notice."

The most troublesome stories, however, are the ones that make the law look foolish. Maury D. Beaulier, a criminal and family law attorney with Hellmuth & Johnson P.L.L.C. of Eden Prairie, Minn., relates that this story of a "less-than-immaculate conception" has been circulating around the north land for quite some time: "A young woman, following a one-night stand, was impregnated and ultimately took the other party to court to establish paternity and get child support. The man did not contest the fact that they had had relations; however, the DNA tests came back clearing him. Under further questioning, he admitted that having had no condoms, he had taken a used prophylactic from his roommate, turned it inside out and re-used it. The roommate was deemed to be the biological father and was thus ordered to pay support for the child."

Stella! Stella!

Perhaps the mother of all legal myths is the "McDonald's hot coffee" case. This is

where the elderly grandmother, Stella Liebeck, supposedly spilled some coffee on herself and won millions and millions of dollars in damages from McDonald's. The "case" (which became a focal point for tort reformists) made news across the country; *The Orange County Register* headlined its story "Hot cup of coffee costs $2.9 million; Damages awarded to woman scalded at McDonald's."

The facts are less alarming.

As explained by Public Citizen, a national, nonprofit consumer advocacy organization, the temperature of the McDonald's coffee was 180 to 190 degrees Fahrenheit, about 40 degrees or more hotter than normal household coffee and too hot to drink. Indeed, coffee at that temperature that touches skin is sufficient to result in a third-degree burn in under three seconds. In other words, the coffee was not just hot, it was scalding.

Moreover, the company apparently conceded during the trial that it had been aware of the risk of injury for a decade or more. Evidence indicated that more than 700 people had been burned by McDonald's coffee over the years, with McDonald's paying out in excess of one-half million dollars in settlements. Despite these incidents, McDonald's apparently did not alert its customers to the problem and was unable to explain satisfactorily why it had not done so. In the particular case, Stella Liebeck was hospitalized for more than a week after she was injured and had to undergo vari-

ous sophisticated medical treatments, including skin grafts. When Liebeck told McDonald's about her accident and the care she thereafter required, she sought $11,000 for her medical bills; she was offered only $800. McDonald's later apparently rejected efforts to settle the case, turning up its nose at a mediator's suggestion that the case be closed for $225,000 and rejecting Liebeck's attorney's $300,000 settlement offer.

The jury in this case admittedly was not kind to McDonald's. It found that Liebeck was entitled to $200,000 in compensatory damages. Because the jury also found that Liebeck was 20 percent responsible for her injury, that amount was reduced to $160,000. In addition, the jury awarded Liebeck $2.7 million in punitive damages. Significantly, evidence indicated that McDonald's was making $1.35 million per day from coffee sales, so the punitive award amounted to two days' worth of such sales. The trial court rejected McDonald's request for a retrial, calling its actions "callous." However, the trial court reduced the punitive damages to triple the compensatory damages, or $480,000. The parties thereafter settled the case for an undisclosed amount.

The facts as reported by Public Citizen (and other independent analyses) indicate that McDonald's knew or should have known that its coffee was hotter than it needed to be, had resulted in injuries and had injured Stella Liebeck. Even with its "callous" behavior, though, the damages it was ordered to pay do not necessarily shock the conscience or suggest, as Mr. Bumble said in Dickens' *Oliver Twist*, that "the law is a ass."

Stella's Legacy

Stella Liebeck's claim to fame did not end with the McDonald's case. Her name has been taken for the Stella Awards, an annual list of particularly egregious court decisions.

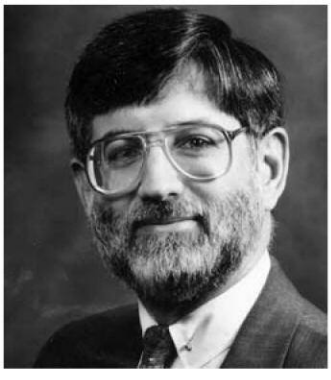
Unfortunately, as explained on the Web site of the Association of Trial Lawyers of America, these awards are "a collection of urban legends and fake legal cases." Thus, there has been no jury award to a woman who tripped over her own child in a furniture store. And a man did not successfully sue after supposedly putting his Winnebago motor home on cruise control so he could go to the back for something to drink and then was injured when the driverless vehicle crashed.

Harrisburg attorney Balaban hopes that lawyers can recognize the damage these legal myths can cause. Her suggestion is a good one: "Let's get to the truth."

Certainly that will not always be easy to do. Did you hear the one about the high school student who decided to pick up the lawn mower he was using to trim the hedges? He slipped and the mower mangled his arms. He sued the mower manufacturer for failure to warn and won millions. David M. Freedman, the president of Eminent Publishing Company in Chicago, says that a reporter investigated and found that "no such case ever existed." He believes this scenario derived from a speech given by an insurance company executive in which he used this case in a hypothetical way and it then "grew legs."

Yet there may be some kernel of truth here. There may have been a kid mowing a lawn, he may have been injured and he may have brought suit. And someone may say, "I know the guy, he told me the story himself," and he may claim that there was a defense verdict, which was upheld by a state appellate court (or perhaps by a state supreme court) on the ground that the fault was the plaintiff's, not the manufacturer's. That would be a far cry from a multi-million dollar jury award … if it even happened that way, of course.

Lawyers should recognize the damage these legal myths can cause and try to "get to the truth."



Steven A. Meyerowitz, a lawyer and freelance writer, is a regular contributor to The Pennsylvania Lawyer.

To comment on this article for publication in our next issue, please e-mail us at editor@pabar.org.