"MILKING THE CASH COW" AND OTHER STORIES: MEDIA COVERAGE OF TRANSNATIONAL WORKERS' RIGHTS LITIGATION

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"[T]he law and the media are inescapably intertwined."[1]

"Whoever tells the best story wins."[2]

INTRODUCTION

Law is a storytelling enterprise, I learned early on in my legal career.[3] It is one of the most important lessons an aspiring trial lawyer can learn.[4] "Weave, weave, weave me the sunshine, out of the pouring rain," a former colleague used to sing smilingly to me when we were faced with a particularly challenging set of facts. The ability to craft successful stories out of a jumble of law and facts was so important to our daily work that we challenged each other by weaving together unlikely strands of stories pasted together from newspaper clips and attempting to pass them off as authentic "news." On one memorable occasion, we successfully convinced a senior partner that an especially conservative member of the local bar had been exposed as a Communist spy. "I knew it," the partner reading the "news" exclaimed in triumph as we doubled over laughing in the adjacent room, "he had 'liar' written all over him."

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1. Deborah L. Rhode, *A Bad Press on Bad Lawyers: The Media Sees Research, Research Sees the Media*, *in* SOCIAL SCIENCE, SOCIAL POLICY, AND THE LAW 139, 139 (Patricia Ewick et al. eds., 1999).

2. Former President and Counsel for Abolitionists John Quincy Adams (Anthony Hopkins) in the movie Amistad. AMISTAD (DreamWorks SKG 1997).

3. *See generally* ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW (2000) (exploring the legal processes of categorization, storytelling, and persuasion); Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073 (1989) (exploring the tradition of telling stories in the law).

4. *See* Lee L. Bennett, *Defense Community Issues: New Liabilities and How to Respond to the Plaintiffs' Bar*, 69 DEF. COUNS. J. 273, 280 (2002) (noting that the ability of a trial lawyer "to simplify a mass of evidence and weave it into a coherent storyline cannot be underestimated"); Joseph William Singer, *Persuasion*, 87 MICH. L. REV. 2442, 2442 (1989) (discussing the many ways lawyers use persuasion).

It is axiomatic that a great trial lawyer must also be a gifted storyteller. As John Quincy Adams explained to abolitionists in the movie *Amistad*, the conventional wisdom is that "whoever tells the best story wins."[5] And yet, in recent years, the plaintiff's bar—home to some of the greatest legal storytellers in the country—has been on the losing side of debates in the public relations arena, particularly on issues of tort reform.[6] In the late 1990s, I listened to Joan Claybrook, one of the nation's leading consumer advocates, admonish a room full of demoralized plaintiff's lawyers, battered by increasingly hostile demands for tort reform, to "tell your stories."[7] It was some time before the plaintiff's bar began to heed Claybrook's advice.[8] Once they did, however, they did not retake control of the policy agenda as Claybrook and so many others had anticipated.[9] Instead, they found that simply *telling* a good story was not enough, as certain types of stories seemed to have more salience outside the courthouse doors than others.[10]

The problem is that legal proceedings produce multiple and often conflicting stories. Inside the courtroom, lawyers, judges, and juries play important roles in determining which of these stories take prominence.[11] However, many legal stories spill out of the courtroom and into the public

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5. AMISTAD, *supra* note 2; *see also* William Allison, *Tell Your Story Through Opening Statement*, TRIAL, Sept. 1998, at 78, 82 ("The magic of the detailed opening exists in telling an interesting story."); Bennett, *supra* note 4, at 280 ("One of the basic rules of litigation is: 'Whoever tells the best story wins.'").

6. *See generally* THOMAS F. BURKE, LAWYERS, LAWSUITS, AND LEGAL RIGHTS: THE BATTLE OVER LITIGATION IN AMERICAN SOCIETY 46–51 (2002) (analyzing the Association of Trial Lawyers of America's (ATLA) efforts to stop tort reform); WILLIAM HALTOM & MICHAEL MCCANN, DISTORTING THE LAW: POLITICS, MEDIA, AND THE LITIGATION CRISIS 142–43 (2004) (documenting the flaws in ATLA's response to tort reformers and ATLA's general failure to influence public perception of the plaintiff's bar).

7. Joan Claybrook, President, Public Citizen, Remarks at the Tenth Anniversary of the Trial Lawyers for Public Justice Conference: Building Bridges to the Twenty-First Century (Fall 1992).

8. *See* HALTOM & MCCANN, *supra* note 6, at 122–23 (noting that in the 1980s, Joan Claybrook and other public-interest leaders "constantly chided ATLA for not joining in the effort to shape public opinion of both the general population and targeted groups," but ATLA did not adopt that approach until the 1990s).

9. *See id.* at 124 (explaining the "limited value" of ATLA's efforts in the 1990s).

10. *See id.* (discussing the failure of ATLA's effort to "offset two decades of misinformation from tort 'deformers'" through a fact-based response to tort reform advocates).

11. *See* AMSTERDAM & BRUNER, *supra* note 3, at 110 ("Clients tell stories to lawyers, who must figure out what to make of what they hear. . . . [And] [i]f circumstances warrant, the lawyers retell their clients' stories in the form of pleas and arguments to judges and testimony to juries."); RONALD DWORKIN, LAW'S EMPIRE 228–38 (1986) (comparing the development of law to the writing of a "chain novel," an "artificial" literary genre where authors, like judges in the legal sense, are asked to write a novel based upon their interpretation of previous chapters in a book written by other authors).

domain, especially when the case raises an issue of broad public interest.[12] When this happens, narratives that work quite well in the courtroom sometimes meet a very different fate outside the courthouse doors.[13]

There is perhaps no better example of media distortion of courtroom proceedings than the McDonald's coffee case, in which a jury's decision to award damages to a badly burned, elderly woman was met with derision and ridicule in the broader public domain.[14] The jury in that case heard evidence indicating that the plaintiff, Stella Liebeck, was severely burned when she spilled hot McDonald's coffee on herself while sitting in a parked car.[15] The burns were so bad that she had to undergo skin grafts and spent over a week in the hospital.[16] The jury also heard a McDonald's safety consultant testify that although over seven hundred people had complained of burns from McDonald's coffee that fact was "statistically irrelevant."[17]

According to the jurors in the case, these facts were key to understanding the nearly $2.9 million verdict that they issued.[18] Most news accounts of the litigation, however, ignored these aspects of the case and focused instead on the size of the verdict, which was later reduced considerably by remittitur—a fact that most news accounts also chose to ignore.[19] In short, the stories that circulated *outside* the courthouse about this case were quite different than the stories that had been told *inside* the courthouse.

Clearly, the media played an important role in this process.[20] By retelling the story in ways that downplayed Liebeck's injuries and ignored other important aspects of the case, the media not only swayed public opinion against Liebeck and her attorney but also helped to establish the

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12. *See* HALTOM & MCCANN, *supra* note 6, at 2–6 (discussing the evolution of a legal story from the court order to its sensationalized portrayal in the news media).

13. *See id.* at 20 (identifying the various institutional constraints, including "the sheer length, complexity, and uncertainty of legal proceedings," that compromise the quality of the media coverage).

14. *See* Michael McCann, William Haltom & Anne Bloom, *Java Jive: Genealogy of a Juridical Icon*, 56 U. MIAMI L. REV. 113, 114, 117 (2001) (examining how a case "over hot coffee evolved into a cultural icon and staple of shared knowledge about the inefficiency, inequity, and irrationality of the American legal system").

15. *Id.* at 119–20. According to testimony in the case, Liebeck was injured while she was attempting to take the lid off the coffee while parked in the McDonald's parking lot. *Id.* at 119. *Contra* Editorial, *In Brief: Java Hijack*, SAN DIEGO UNION TRIB., Aug. 20, 1994, at B6 (reporting that the car was moving).

16. McCann, Haltom & Bloom, *supra* note 14, at 120 ("The surgeon . . . reported that [Liebeck's] injuries added up to one of the worst burn cases from hot liquids he had ever treated.").

17. *Id.* at 124–25.

18. Andrea Gerlin, *How Jury Gave $2.9 Million for Coffee Spill: McDonald's Callousness Was Real Issue, Jurors Say, in Case of Burned Woman*, PITTSBURGH POST-GAZETTE, Sept. 4, 1994, at B2.

19. McCann, Haltom & Bloom, *supra* note 14, at 137, 155.

20. *See id.* at 135, 137–39, 155 (analyzing the reconstruction and fragmentation of the case and verdict by newspapers and media).

case as a widely recognized icon for the movement to reform tort law.[21] Even today, more than a decade after the case concluded, the case is frequently cited as an example of what is wrong with the civil justice system.[22]

The media's significant role is hardly surprising. The American media is literally saturated with stories about law, both fictional and real. It seems nearly inevitable that these stories should influence public perceptions about the law and ultimately play a role in setting the legal-policy agenda. Research in other contexts shows quite conclusively that the media play a powerful role in shaping perceptions of political reality.[23] Preliminary research on the role of the media in influencing public discourse on legal matters has reached similar conclusions.[24]

Stories circulated by the mass media can have these effects because of the relationship between discourse and political consciousness.[25] Clifford Geertz referred to this relationship as the role of discourse (or stories, if you will) in "imagining the real."[26] Legal narratives—in legal rulings, media reports, and everyday conversation—influence how we "imagine the real," because stories about legal tactics, like other forms of discourse, send a

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21. *See* HALTOM & MCCANN, *supra* note 6, at 225 ("[T]he hot coffee case virtually jump-started the stalled movement to reform tort law . . . .").

22. *See id.* at 220 ("In 2001, one of us learned that a Mexican restaurant in Burlington, Vermont, featured a sign in the women's restroom reading (in English and Spanish): CAUTION: WATER MAY BE HOTTER THAN A MCDONALD'S COFFEE."); *cf.* Gordon R. Broom, President, Ass'n of Def. Trial Lawyers, Remarks at a National Summit hosted by the American Board of Trial Advocates and the Federation of Defense & Corporate Counsel: The American Jury Trial - Do We Allow its Death or Lead its Rebirth? (Apr. 2, 2005) (citing the McDonald's coffee case as part of a broader argument that the current tort system has worked but juries should be more focused on compensation rather than punishment).

23. *See, e.g.*, SHANTO IYENGAR, IS ANYONE RESPONSIBLE?: HOW TELEVISION FRAMES POLITICAL ISSUES 1 (1991) ("As the dominant form of mass communication, television is said to have contributed to . . . reduced voter turnout, discounting of substantive issues in political campaigns, . . . and other fundamental changes in the political system."); Rhode, *supra* note 1, at 140 ("Journalists' profiles of legal institutions affect . . . policy agendas."); Robert M. Entman, *Framing: Toward Clarification of a Fractured Paradigm*, J. COMM., Autumn 1993, at 51, 55 (arguing that the media's decision not to publicize certain alternative views about the Persian Gulf War would prevent the views from gaining supporters or engendering debate); William A. Gamson & Andre Modigliani, *Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach*, AM. J. SOC., July 1989, at 1, 1 (1989) (showing how media shape public perception and public discourse of nuclear power).

24. *See* HALTOM & MCCANN, *supra* note 6, at 177 (illustrating how media coverage "seeps into readers' consciousness subtly and steadily").

25. SALLY ENGLE MERRY, GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS 9 (1990) (discussing how one's consciousness is created by one's "interpretation of the cultural messages provided by discourses").

26. CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY 184 (1983).

"cultural message[]" about how the world is constituted.[27]

Legal rulings tell us something about what counts as a legal claim and what does not. Similarly, most news stories about the law have something to say about who is entitled to make particular kinds of legal demands and who is to blame for particular wrongs.[28] And in precedent-setting cases involving issues of broad public interest, media coverage of litigation can catapult previously unknown individuals and issues onto the policy agenda.[29] Lawyers, judges, and other legal professionals are especially vulnerable to these stories, but they are not the only ones who are influenced by legal narratives.[30] Policy makers, litigants, political activists, and even ordinary citizens are regularly exposed to news stories about legal rulings and other legal tactics that shape their legal consciousness as well.[31]

Because of the likely relationship between media coverage and legal consciousness, analyses of how the media cover different types of litigation can provide us with important information about how and why some cases become catalysts for broader policy change and others do not. Greater attention to media coverage of law and legal tactics may also tell us how Americans view litigation more generally and why litigants and their lawyers conduct themselves in particular ways.[32] In short, analysis of media coverage is important because it provides us with a window into the myriad of ways in which the law and the media may be "inescapably intertwined."[33]

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27. MERRY, *supra* note 25, at 9 (citing Jean Comaroff & John Comaroff, *The Madman and the Migrant: Work and Labor in the Historical Consciousness of a South African People*, 14 AM. ETHNOLOGIST 191, 205 (1987)).

28. *See, e.g.*, McCann, Haltom & Bloom, *supra* note 14, at 116–17 (describing how media coverage of the McDonald's coffee case placed the blame on the plaintiff, even though the jury found in her favor).

29. *See id.* at 162–63 (showing the McDonald's coffee case as a classic example of the media's agenda-setting power and how the media can make a plaintiff an "icon").

30. *See* Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 WASH. & LEE L. REV. 405, 444–45 (2000) (stipulating how judges may be even more susceptible than jurors to narratives and stereotypes).

31. *See* HALTOM & MCCANN, *supra* note 6, at 5–6 (explaining how certain stories or narratives "permeat[e] contemporary mass culture"); MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 58 (1994) (describing how legal rulings inform political activists); MERRY, *supra* note 25, at 62 (describing how legal consciousness is formed through everyday experiences); STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE 135 (1974) (stating that court orders are "powerful shapers of perceptions" (quoting Murray J. Edelman, POLITICS AS SYMBOLIC ACTION MASS AROUSAL AND QUIESCENCE 101 (1971))).

32. *See, e.g.*, Kimberlianne Podlas, *The Monster in the Television: The Media's Contribution to the Consumer Litigation Boogeyman*, 34 GOLDEN GATE U. L. REV. 239, 240 (2004) (arguing that television has become a "primary messenger" of litigation norms).

33. Rhode, *supra* note 1, at 139.

In the United States, the connections between law and the media have become so closely intertwined that one scholar has dubbed these interrelationships as the "juridico-entertainment complex."[34] Like the military-industrial complex after which it is named, the juridico-entertainment complex has the potential to play a significant role in influencing public attitudes and structuring the policy-making process.[35] Therefore, it is extremely important that we study and understand the ways in which the media influence public understanding of legal proceedings. Yet, to date, there has been very little research on how the juridico-entertainment complex operates or about its potential political and legal effects.[36]

My aim in this article is to address this deficiency through a study of how the print media covered three noteworthy cases that involved novel legal claims.[37] I refer to the cases as litigation involving the assertion of transnational workers' rights, because all three cases involve workers from other countries attempting to sue their multinational employers in U.S. courts.[38] In the typical case, foreign workers attempt to obtain compensation for injuries that they suffered while working on foreign soil

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34. Douglas S. Reed, *A New Constitutional Regime: The Juridico-Entertainment Complex*, *in* POPULAR CULTURE AND LAW 251, 253 (Richard K. Sherwin ed., 2006). The juridico-entertainment complex "transforms legal proceedings and legal conflict into consumable commodities that purport to educate and enlighten but simultaneously titillate, amuse, and otherwise entertain." *Id.*; *see also* Kelly L. Cripe, *Empowering the Audience: Television's Role in the Diminishing Respect for the American Judicial System*, 6 UCLA. ENT. L. REV. 235, 241–42 (1999) (showing a correlation between the entertainment-driven focus of media coverage for high-profile jury trials and a distorted public perception of the jury and how it is inadequate representation of the courtroom).

35. Reed, *supra* note 34, at 253.

36. *See* Kimberlianne Podlas, *Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry*, 39 AM. BUS. L.J. 1, 1 (2001) (showing that the effect of media on jurors is unknown). What little research there is has tended to focus on television and cinematic portrayals of the law rather than on the media's coverage of real cases. *See, e.g.*, Podlas, *supra* note 32, at 240 ("In the last decade, the syndicated television courtroom – television shows like The People's Court and Judge Judy – assumed the role as cultural messenger with regard to the norms and ways of law."). One important exception is a recent book by William Haltom and Michael McCann, which argues that the media play a powerful role in determining the types of legal stories that become dominant in the public discourse. *See* HALTOM & MCCANN, *supra* note 6, at 5–6 (discussing how certain narratives or stories have greatly influenced the mass public).

37. Labor Union of Pico Korea, Ltd. v. Pico Prods., Inc., 968 F.2d 191 (2d Cir. 1992); Dow Chem. Co. v. Alfaro, 786 S.W.2d. 674 (Tex. 1990); Mendoza v. Contico Int'l, Inc., No. 92-8751 (El Paso County Ct. No. 3).

38. *Labor Union of Pico Korea*, 968 F.2d at 192–93; *Alfaro*, 786 S.W.2d at 675; *U.S. Company Settles Lawsuit over Death of Women Working for Mexican Subsidiary*, DALLAS MORNING NEWS, Apr. 6, 1997, at 27A [hereinafter *U.S. Company Settles*]. The context is transnational because the foreign plaintiffs typically seek to apply U.S. laws extraterritorially to employment conditions in their home countries. The litigation is a form of workers' rights litigation because the plaintiffs are foreign workers claiming that they have the right to the same or similar employment-related protections as workers on U.S. soil.

for multinationals based in the United States.[39] In doing so, the foreign workers assert that they have both a right to sue in the United States and the right to the same or similar employment-related protections as workers in the United States.[40]

These cases are fascinating for a variety of reasons, including the novelty of the legal claims involved and the implications of the litigation for U.S. courts and American-based multinationals.[41] My interest in transnational workers' rights litigation, however, lies in the very different stories that were told about the cases in the newspapers that covered the lawsuits.

Although the three cases are facially similar—each involves an attempt by a foreign worker employed outside the boundaries of the United States to sue a U.S.-based multinational over conditions related to the worker's employment abroad—newspapers covered these stories in dramatically different ways.[42] In one case, the lawsuit was discussed primarily in terms of its impact on the local economy.[43] In the second, stories about the

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39. *See, e.g.*, *Alfaro*, 786 S.W.2d at 674–75 (exemplifying a case where Costa Rican employees were injured as a result of exposure to chemicals produced by Dow Chemical Company and furnished by their employer, the Standard Fruit Company).

40. *See id.* at 674 (arguing that the doctrine of forum non conveniens does not apply and seeking recovery under Texas law for wrongful death and personal injury claims); Anne Bloom, *Taking on Goliath: Why Personal Injury Litigation May Represent the Future of Transnational Cause Lawyering*, *in* CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA 96, 111–15 (Austin Sarat & Stuart Scheingold eds., 2001) (arguing, based upon a case study of *Dow Chemical Co. v. Alfaro*, that personal injury litigation may provide a new basis for combating multinational corporations on workers' rights issues).

41. Legal journals have reported on the filing of several transnational workers' rights cases in the last few years. *See, e.g.*, Winston Anderson, *Forum Non Conveniens Checkmated? The Emergence of Retaliatory Legislation*, 10 FLA. ST. J. TRANSNAT'L L. & POL'Y 183, 183–85 (2001) (discussing *Delgado v. Shell Oil*, in which 26,000 plaintiffs from developing countries and the Caribbean brought a personal injury claim against two large, American multinational corporations: Shell Oil and Dow Chemical); Malcolm J. Rogge, *Towards Transnational Corporate Accountability in the Global Economy: Challenging the Doctrine of Forum Non Conveniens in* In Re: Union Carbide, Alfaro, Sequihua, *and* Aguinda, 36 TEX. INT'L L.J. 299, 299–300 (2001) (discussing the details and policies involved in transnational, class-action, labor litigation, along with the legal and ethical implications of such civil litigation). Not infrequently, the lawsuits are brought on behalf of thousands and even tens of thousands of foreign workers at one time. *See, e.g.*, Delgado v. Shell Oil Co., 890 F. Supp. 1324, 1335 (S.D. Tex. 1995) (bringing a personal injury claim on behalf of 26,000 plaintiffs from twelve foreign countries who worked on farms in twenty-three countries). Although the lawsuits encounter a number of political and legal challenges, they are being met with increasing success, and many believe that the cases filed thus far are just the tip of the iceberg. Telephone Interview with David W. Robertson, University Distinguished Teaching Professor, University of Texas Law School, in Austin, Tex. (Aug. 16, 1998).

42. *Labor Union of Pico Korea*, 968 F.2d at 192–93; *Alfaro*, 786 S.W.2d at 675; *U.S. Company Settles*, *supra* note 38.

43. *See, e.g.*, Lis Wiehl, *Texas Courts Opened to Foreign Damage Cases*, N.Y. TIMES, May 25, 1990, at B6 (opening with the statement, "to the alarm of many corporations," and devoting a great

litigation emphasized broader concerns about global working conditions and, in particular, the possibility that "double standards" were being applied to workers in different countries.[44] And in the third case, the coverage focused on the specifics of the dispute between the workers and their employer.[45]

How did the stories about these three legally similar cases come to be told so differently? One likely explanation lies with the institutional interests of the media in reporting on particular types of stories. It is well known, for example, that the media prefer "official" sources.[46] In the context of litigation, this means that reporters are likely to favor stories that feature excerpts from a legal opinion. It is equally well known that the media favor stories that feature highly personal and dramatic themes.[47] Below, I argue that institutional interests such as these played an important role in shaping the print media's coverage of law and legal tactics in the three transnational workers' rights cases. However, I also argue that newspaper coverage of the litigation was influenced by narratives about other issues (such as globalization), which were dominant in public discourse at the time.

Armed with empirical findings, I make a normative argument about the need to pay better attention to both the media's institutional interests in "spinning" stories and the extra-legal narratives circulating in public discourse more generally. I then argue these circumstances influence how litigation is both interpreted and understood. Greater attentiveness to these processes would have both practical and institutional benefits for the legal profession. From a practical standpoint, an understanding of how stories that begin in the courthouse may be retold outside the courthouse might help practitioners to negotiate more successfully within the juridico-entertainment complex, which is an increasingly important part of the real-world legal arena. But it is also true that understanding the media's role in

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deal of discussion to *Dow Chemical Co. v. Alfaro* and its effect on Texas business).

44. *See, e.g.*, Bernadette Self, *Maquiladora Settles Lawsuit in Worker Death*, EL PASO TIMES, Apr. 5, 1997, at 1A (stating that the jury foreman in *Mendoza v. Contico* "believe[d] that a double standard of safety was used by Contico").

45. *See, e.g.*, *Korean Union Pickets in Upstate New York*, N.Y. TIMES, Apr. 26, 1990, at B8 (addressing comments by Pico officers directed at workers, calling them "terrorists").

46. *See* W. LANCE BENNETT, NEWS: THE POLITICS OF ILLUSION 253 (4th ed. 2001) (discussing how the easiest stories for journalists to write are those "based on familiar images" such as those that come from informed or official sources who they can lend more credibility too); Gamson & Modigliani, *supra* note 23, at 6–8 ("A number of students of American news organizations have argued that journalists unconsciously give official packages [or sources] the benefit of the doubt.").

47. BENNETT, *supra* note 46, at 35–36; *see, e.g.*, HALTOM & MCCANN, *supra* note 6, at 200 (noting the media's dramatization of the extent of the burn at issue and personalization of the parties involved in the McDonald's coffee case).

interpreting legal stories may shed some light on the factors that influence how the general public perceives litigation and the legal profession as a whole.[48]

Part I sets the stage for my analysis with a more extended discussion of why it is worth paying attention to newspaper coverage of litigation and a description of my methodology. Part II provides a brief case history and an analysis of the news coverage for each of the three cases. Part III compares the news coverage across the three cases and argues that the differences in news coverage were a product of two things: the institutional biases of the media and the importance of other political narratives circulating in public discourse, which effectively served as the backdrop against which legal stories were interpreted. Part IV offers a normative argument that we ought to pay much more attention to how the media interpret legal stories. This is important because adverse coverage has potentially negative implications for our clients and other cases, and because news stories influence how the general public perceives litigation and the legal profession as a whole. This Part provides suggestions for future research.

I. ON THE RELATIONSHIP BETWEEN MEDIA COVERAGE AND LEGAL CONSCIOUSNESS (AND A NOTE ON METHODOLOGY)

Why study how the media reports on litigation? The obvious answer is that the media likely plays some role in influencing public perceptions and opinions about the law. A wide body of scholarly work indicates that the texts of legal rulings play an important role in setting public policy agendas by providing a particular legal interpretation with an official imprimatur.[49] Favorable rulings may make local policy actors feel more confident about taking particular political actions. As a result, court orders are said to be "powerful shapers of perceptions."[50]

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48. *See generally* Marc Galanter, *The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse*, 66 U. CIN. L. REV. 805, 814–15 (1998) (stipulating how movies and television affected how the public perceived lawyers and how "[t]he lawyer is [no longer] portrayed . . . as an unalloyed hero, but as the occupant of a crucial but morally ambiguous and precarious role"); Austin Sarat, *Exploring the Hidden Domains of Civil Justice: "Naming, Blaming, and Claiming" in Popular Culture*, 50 DEPAUL L. REV. 425, 425–27 (2000) (discussing the role of popular culture in defining legal disputes, and disputes generally, in the context of *The Sweet Hereafter*, a film based upon actual litigation).

49. *See* HELENA SILVERSTEIN, UNLEASHING RIGHTS: LAW, MEANING, AND THE ANIMAL RIGHTS MOVEMENT 2 (1996) (explaining how the book was "inspired by social movement efforts to advance change through existing legal structures" and how the book plans to analyze the relationship "between law and the practical activism of social movements").

50. MURRAY EDELMAN, POLITICS AS SYMBOLIC ACTION; MASS AROUSAL AND QUIESCENCE 101 (1971), *quoted in* SCHEINGOLD, *supra* note 31, at 135.

Although there has been virtually no systematic research on the relationship between media coverage of litigation and perceptions of the law, it seems likely that the media play a role in this process.[51] Social scientists have shown, for example, that racially slanted news coverage influences the political views of white voters[52] and that what people watch will influence what they believe are the most important issues.[53]

Social scientists refer to the role of the media in shaping public perceptions as agenda setting.[54] Some preliminary research on the media's role in reporting on litigation provides important evidence supporting this theory. In *Distorting the Law: Politics, Media, and the Litigation Crisis*, Haltom and McCann argue that the media play a particularly powerful role in determining the types of legal stories that become dominant in public discourse.[55] Through an analysis of nearly twenty years of newspaper coverage of tort verdicts, they show how the mass media helped to popularize distorted understandings of tort litigation and framed the debate in ways that were sympathetic to corporate interests.[56] Widespread misreporting of the facts in the McDonald's coffee case, for example, helped create a policy environment in which the perception of a presumed litigation crisis was nearly ubiquitous.[57] Ultimately, Haltom and McCann

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51. *See* HALTOM & MCCANN, *supra* note 6, at 174–78 (arguing the media play a powerful role in determining the types of legal stories that become dominant in the public discourse and how this leads to distorted views of the law); Rhode, *supra* note 1, at 159 ("Misleading media coverage distorts decisions across a wide range of litigation, business, and policymaking contexts.").

52. *See* TALI MENDELBERG, THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES, AND THE NORM OF EQUALITY 134–36 (2001) (discussing how the Republican Party used implicit racial appeals in their campaigning and communications to their advantage in the 1988 presidential election).

53. SHANTO IYENGAR & DONALD R. KINDER, NEWS THAT MATTERS: TELEVISION AND AMERICAN OPINION 24–25, 26 tbl.3.5 (1987).

54. *See generally* Maxwell McCombs & George Estrada, *The News Media and the Pictures in Our Heads*, *in* DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA 237, 237 (Shanto Iyengar & Richard Reeves eds., 1997) ("[E]lements prominent in the media picture become prominent in the audience's picture."); Maxwell E. McCombs & Donald L. Shaw, *The Agenda-Setting Function of the Press*, *in* THE EMERGENCE OF AMERICAN POLITICAL ISSUES: THE AGENDA-SETTING FUNCTION OF THE PRESS 1, 3 (Donald L. Shaw et al. eds., 1977) (hypothesizing that the press has power to establish political agendas).

55. *See* HALTOM & MCCANN, *supra* note 6, at 174–78 (describing how the media's "overcoverage" and "undercoverage" of certain issues has led to the divergence of what certain scholars and everyday citizens believe to be the case concerning law).

56. *Id.*; *see also* Marc Galanter, *Real World Torts: An Antidote to Anecdote*, 55 MD. L. REV. 1093, 1155 (1996) (explaining how the general public's lack of knowledge about the legal system allows the media's "selective reporting of apparently bizarre claims and excessive awards" to have greater effect). *See generally id.* at 1148 & n.220 (referring to a survey of corporate executives that revealed a widespread concern that tort litigation has a negative impact on industry (citing E. PATRICK MCGUIRE, THE CONFERENCE BOARD, RESEARCH REPORT NO. 908, THE IMPACT OF PRODUCT LIABILITY v, 6, 8, 20 (1988))).

57. *See* HALTOM & MCCANN, *supra* note 6, at 225 (describing how the McDonald's coffee

argue, this news coverage was so significant that the media must be recognized as an important institutional player in the legal and political process.[58]

This and similar studies illustrate how the stories told in the courtroom are transformed outside the courthouse. Still, we know relatively little about the process by which some cases become part of the broader public discourse about the law and others do not. Nor do we have much information about why journalists report on cases in particular ways.

In the next two Parts of this article, I analyze the media coverage of three cases involving assertions of transnational workers' rights. My analysis relies heavily upon an examination of newspaper articles on the litigation, although I also reviewed the transcripts of television coverage for the cases where available. Although it is likely that television coverage is more influential than newspaper stories in shaping the legal consciousness of everyday Americans,[59] an analysis of newspaper coverage is still valuable because of the uniquely important role that newspaper articles play in shaping public discourse more generally.[60] Most television reporters, for example, begin with a review of the daily headlines, as do many policy makers and their assistants.[61]

I obtained the news articles that I use in my analysis from LexisNexis and Westlaw searches, and from the files of lawyers, activists, and journalists who followed the cases. Articles that mentioned the cases only in passing, such as lengthy "case updates" in legal newspapers, were eliminated from the pool of articles for analysis, as were articles published outside the United States. The results represent a fairly complete set of all news articles that appeared in newspapers and weekly journals in the United States for each case.

My analysis focuses on four aspects of the coverage: (1) the amount of coverage each case received; (2) the timing of the news coverage vis-à-vis the litigation; (3) the types of news media covering the cases; and (4) the content of the coverage. The amount of coverage each case received was

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case reinvigorated the tort reform movement within the political establishment).

58. *Id.* at 225–26, 273.

59. PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2005: AN ANNUAL REPORT ON AMERICAN JOURNALISM (2005), http://digbig.com/4greh (stating that most Americans rely on local television as their primary source for news).

60. *See* LEONARD DOWNIE JR. & ROBERT G. KAISER, THE NEWS ABOUT THE NEWS: AMERICAN JOURNALISM IN PERIL 64 (2002) ("Television news depends on newspapers, as its practitioners freely attest."); HALTOM & MCCANN, *supra* note 6, at 18 (expressing how newspapers "are viewed as far more serious and reliable" than television news).

61. *See* DOWNIE & KAISER, *supra* note 60, at 64 (stipulating that most news on the radio comes right from newspapers and that many policymakers give any critical information to newspaper reporters).

determined by counting the number of articles covering each case. The timing of the news coverage was evaluated by comparing the number of articles that appeared at different points in time against a timeline of the key legal events in the three cases.

In assessing the types of news media covering the cases, I focused on whether the primary audience of the news publication was the general public or legal professionals. Publications such as *The Texas Lawyer* and *Legal Times*, which write primarily for a professional audience of lawyers and judges, were coded as legal publications. General publications such as the daily local newspaper or newspapers with a national distribution, like *The New York Times* and *The Wall Street Journal*, were coded as nonlegal. A comparison between the coverage that appeared in the two different types of media was then made for each case individually, and then across the three cases.

Each article for each case was analyzed for evidence of substantive bias in the framing of the litigation. This was done in two ways. First, the cases were analyzed in terms of the number of times that plaintiffs, defendants, and activists were quoted in each case. Second, each of the cases was coded for evidence of two broad themes about the potential impact of the litigation: (1) concerns about the implications of corporate liability, as evidenced by statements like "the lawsuit threatens to make Texas the courthouse of the world and drive corporate employers out of Texas"; and (2) concerns about the conditions of workers, as evidenced by statements like "the lawsuit draws attention to the problems with workplace safety experienced by farm workers worldwide."[62]

II. THREE TRANSNATIONAL WORKERS' RIGHTS CASES AND THE NEWS COVERAGE THEY GENERATED

The transnational workers' rights cases that are the focus of this article were brought within several years of each other in the mid 1980s and early 1990s.[63] In each case, workers outside the United States attempted to hold a multinational company accountable for employment-related conduct that occurred outside the territory of the United States.[64] These cases are

62. Many readers may also be curious to know why I chose to analyze these particular cases. The frank answer to this question is that I found these cases to be particularly interesting. In other words, the cases were not selected on the basis of statistical principles of random sampling and, as a result, it would be inappropriate to use my analysis to make statistically-based generalizations about news coverage of litigation in other cases.

63. Labor Union of Pico Korea v. Pico Prods., Inc., 968 F.2d 191, 193 (2d Cir. 1992); Dow Chem. Co. v. Alfaro, 786 S.W.2d 674, 675 (Tex. 1990); *U.S. Company Settles*, *supra* note 38.

64. *Labor Union of Pico Korea*, 968 F.2d at 192–93; *Alfaro*, 786 S.W.2d at 675; *U.S. Company*

fascinating for a variety of reasons, not the least of which include the novelty of the legal claims involved and the implications of the litigation for U.S. courts and American-based multinationals. My interest in transnational workers' rights litigation, however, lies in the very different stories that were told about the cases in the newspapers that covered the lawsuits.

A. Dow Chemical Co. v. Alfaro

The first case, *Dow Chemical Co. v. Alfaro*, was brought on behalf of eighty-two Costa Rican farm workers who alleged that they had been left sterile by their workplace exposure to pesticides that had been suspended in the United States after American farm workers complained of similar injuries.[65] After winning a precedent-setting ruling from the Texas Supreme Court that established the "absolute right" of the Costa Rican workers to sue in Texas, the workers settled for a confidential amount that was said to be in the range of tens of millions of dollars.[66]

The ruling of the Texas Supreme Court, however, was bitterly divided. The justices split 5–4 over the case and issued eight different opinions.[67] The lead opinion for the majority did not discuss the broader implications of the case but focused on a highly legalistic explication of a 1913 statute, which was deemed to be the controlling legal authority in the case.[68] In a concurring opinion, however, one justice went to great lengths to defend the Texas Supreme Court's ruling as an appropriate response to changing socioeconomic conditions that had made it more difficult for states to regulate the conduct of large corporations.[69] The majority's holding in *Alfaro* was necessary, Justice Doggett maintained in his concurrence, because U.S. courts might provide "the most effective restraint" on the misconduct of multinational corporations that relocate to countries with less developed legal systems.[70]

Settles, *supra* note 38.

65. *Alfaro*, 786 S.W.2d at 675; S. Agric. Insecticides, Inc., 42 Fed. Reg. 57,543 (Envtl. Prot. Agency Nov. 3, 1977). *See generally* Sonia Jasso & Maria Mazorra, *Following the Harvest: The Health Hazards of Migrant and Seasonal Farmworking Women*, *in* DOUBLE EXPOSURE: WOMEN'S HEALTH HAZARDS ON THE JOB AND AT HOME 86, 95 (Wendy Chavkin ed., 1984) (noting the 1976 discovery that the pesticide DBCP caused sterility in the men who manufactured it).

66. *Alfaro*, 786 S.W.2d at 675, 677–79 (citing Allen v. Bass, 47 S.W.2d 426, 427 (Tex Civ. App. 1932)); *see* Janet Elliott, *Arguments Sidestep* Alfaro, TEX. LAW., Oct. 12, 1992, at 1 (quoting plaintiff's counsel as reporting that the settlement amount was "well into eight figures").

67. *Alfaro*, 786 S.W.2d at 674, 679–80, 689–90, 697, 702, 708.

68. *Id.* at 677–79.

69. *Id.* at 689 (Doggett, J., concurring).

70. *Id.* ("When a court dismisses a case against a United States multinational corporation, it

The dissenting justices, in contrast, argued that denying the Costa Rican workers access to Texas courts was necessary to protect the state economy.[71] Their concerns were summed up in a widely quoted excerpt from one of the dissenting opinions, claiming that the majority's ruling would effectively make Texas the "courthouse for the world."[72]

Not long after the ruling, business interests approached the Texas legislature and asked them to overturn the holding in *Alfaro*.[73] Although the earliest attempts to legislatively overrule *Alfaro* failed, the Lieutenant Governor of Texas, Bob Bullock, called for a group of eight representatives from Texas industry and the Texas Trial Lawyers Association to meet in closed-door meetings and negotiate forum non conveniens legislation.[74] In the course of the negotiations, the *Alfaro* plaintiffs struck a compromise with the business groups that overturned the most precedent-setting aspects of the *Alfaro* ruling despite the protests of local labor organizations, consumer groups, environmentalists, and human rights activists.[75]

My research turned up fifty-nine articles on the *Alfaro* litigation. Of the fifty-nine articles, nearly sixty percent appeared in legal newspapers, such as *The Texas Lawyer*.[76] Articles on the case began to appear in September of 1988, when the case was pending before the Texas Supreme

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often removes the most effective restraint on corporate misconduct.").

71. *See id.* at 702 (Hecht, J., dissenting) ("[F]or this Court to give aliens injured outside Texas an absolute right to sue in this state inflicts a blow upon the people of Texas, its employers and taxpayers, that is contrary to sound policy.").

72. *Id.* at 707 ("As the courthouse for the world, will Texas entice employers to move here, or people to do business here, or even anyone to visit?").

73. *See* Charles B. Camp, *One Flew Under Courthouse Door*, DALLAS MORNING NEWS, Feb. 26, 1993, at 1D [hereinafter Camp, *Courthouse Door*] (discussing the attempts of David Augustin Aguilar to bring a transnational workers' rights claim before the new anti-*Alfaro* legislation takes effect); David Ivanovich, *Texas Legislature Gets Down to Business*, HOUS. CHRON., Jan. 25, 1993, *available at* 1993 WLNR 3256473 (noting the concern of Houston businesses in the aftermath of the *Alfaro* decision).

74. Russell J. Weintraub, *International Litigation and Forum Non Conveniens*, 29 TEX. INT'L L.J. 321, 344 (1994).

75. *See id.* at 344 (mentioning how representatives from industry and the Texas Trial Lawyers Association met and developed a bill that would restore forum non conveniens although the group was small and only included "specific factions"); Walter Borges, *Bill Seeks to Overturn Forum Ruling*, TEX. LAW., Mar. 18, 1991, at 14 (stipulating how "[a] coalition of Texas consumer groups, environmental activists and plaintiffs' lawyers" are hoping to defeat the bill).

76. A few examples of these are: Borges, *supra* note 75 (discussing the efforts of consumer groups and environmentalists to stop then-advancing legislation to overturn *Alfaro*); Walter Borges, *Foreign Plaintiffs Gain Leverage to Sue in Texas*, TEX. LAW., Apr. 2, 1990, at 6 (reporting on the then-recent opinion handed down by the Texas Supreme Court in *Alfaro*); Elliott, *supra* note 66 (reporting on the Texas Supreme Court's hearing of another case, *Exxon Corp v. Chick Kam Choo*, that involved legal issues similar to those in *Alfaro* and the court's treatment of arguments involving *Alfaro*); William Murchison, *Milking the Cash Cow*, TEX. LAW., Aug. 17, 1992, at 6 (discussing the impact of the *Alfaro* case and similar cases on litigation in Texas).

Court, approximately four and one-half years after the case was initially filed.[77] The coverage peaked in January of 1991, when the Texas legislature first considered legislation to overturn the Texas Supreme Court's ruling in *Alfaro*.[78] However, no legislation was passed to overturn *Alfaro* during that legislative session and, consequently, the news coverage of the case tapered off. The news coverage peaked a second time when the next legislative attempt to overturn *Alfaro* happened in 1993.[79] The last articles on the case appeared in May and June of 1997, when the legislature passed new legislation overturning the compromise elements of the 1993 legislation that had been obtained by the attorneys for the *Alfaro* workers.[80]

Although *Alfaro* was, at least from one perspective, a precedent-setting, workers' rights case,[81] a content analysis of the articles reveals that only two and one half percent of the content discussed the conditions of the workers who brought the lawsuit, while nearly twelve percent of the content of the articles on the *Alfaro* case focused on the local economic impact of holding multinational corporations liable in Texas courts. Moreover, only one of the articles quoted a workers' rights activist and only a handful (about twelve percent) quoted the Costa Rican plaintiffs or their lawyers.[82] Instead, the overwhelming focus of the media coverage was on the perceived threat that *Alfaro* posed to the Texas economy.[83]

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77. A few examples of these are: *Alfaro*, 786 S.W.2d at 675; Diane Burch Beckham, *The Art of the Insult: Style Competes with Substance in 1990's 48 Cases with Impact*, TEX. LAW., Dec. 17, 1990, at 8 (identifying *Alfaro* as one of the year's cases "that mattered" in Texas); Gary Taylor, *Eyes of Lawyers upon Texas?*, NAT'L L.J., Sept. 12, 1988, at 3 (addressing the attention focused on Texas in light of the Texas Supreme Court's then-upcoming hearing of *Alfaro*); Wiehl, *supra* note 43 (discussing the then-recent news of the Texas Supreme Court's ruling in *Alfaro*).

78. Walter Borges, *At Last, Lawyers Not Session's Big Target*, TEX. LAW., Jan. 14, 1991, at 1, 6 (addressing the efforts by those in Texas business community to introduce legislation to overturn *Alfaro*). One such article is Barry Siegel, *Going an Extra Mile for Justice*, L.A. TIMES, Mar. 23, 1991, at A1 (discussing the issues inherent to the *Alfaro* litigation through the perspective of Roberto Chavez, Head Forensic Scientist for the Costa Rican judiciary, the man who initially wanted to help the workers).

79. A few examples of these are: Camp, *Courthouse Door*, *supra* note 73 (discussing the last-minute attempts of Costa Rican farm workers to bring transnational workers' rights litigation before the *Alfaro* legislation takes effect); Ivanovich, *supra* note 73 (discussing the legislature's second attempt to overturn *Alfaro* from the perspectives of both business and consumer advocacy groups).

80. *See* Janet Elliott, *Making Law*, TEX. LAW., June 9, 1997, at 1 (mentioning how "46,500 pending asbestos suits filed by out-of-state residents" would be dismissed under forum non conveniens when the new law takes effect).

81. Siegel, *supra* note 78 (focusing on the struggle of foreign workers who are employed by U.S. multinational corporations).

82. An example is: *id.* (quoting both Costa Rican worker–plaintiffs and their attorney).

83. Wiehl, *supra* note 43 (discussing the implications *Alfaro* could have for business in Texas, which is referred to as "a corporate powerhouse").

An editorial that appeared in the Dallas Morning News described the *Alfaro* ruling as "an economic disaster for Texas working people."[84] According to the editorial, "no company is going to want to have operations in a state where it can be sued by anyone in the world."[85] The editorial concluded that overturning the ruling was essential for "job creation (or salvation)" in Texas.[86]

Like this editorial, many articles focused specifically on the dissent's complaint that the ruling would result in Texas becoming "the courthouse of the world," raising the specter that workers from all over the world would respond to *Alfaro* by clogging Texas courts with claims against Texas-based multinationals.[87] Many articles also expressed fear that *Alfaro* would prompt multinationals to flee Texas for countries or states that shielded them from liability.[88] These concerns were closely linked with complaints about the Texas tort system and the general threat that personal injury litigation posed to the competitiveness of the Texas economy.[89]

For the most part, these articles ignored the majority opinion's arguments addressing the dissenting opinion. Most of the articles on the case simply did not report on the majority's opinion that *Alfaro* did little more than affirm existing practices in Texas courts.[90] News reports also gave scant attention to an important limitation of the *Alfaro* ruling. Under the provisions of the statute that served as the basis for allowing the Costa

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84. Editorial, *Court Overreaching: Alfaro Ruling Needs to be Fixed*, DALLAS MORNING NEWS, Apr. 23, 1991, at 12A [hereinafter *Court Overreaching*].

85. *Id.*

86. *Id.*

87. Wiehl, *supra* note 43 (quoting *Dow Chem. Co. v. Alfaro*, 786 S.W.2d 674, 707 (Tex. 1990) (Hecht, J., dissenting) ("[T]he courthouse for the world")). The article was also concerned that the ruling "would force Texas residents 'to wait in the corridors of our courthouses while foreign causes of action are tried.'" *Id.* (quoting *Alfaro*, 786 S.W.2d at 690 (Gonzalez, J., dissenting) ("[T]he courthouse for the world")).

88. *See* Gary Taylor, *Foreigners Given Right to Sue in Texas Courts*, NAT'L L.J., Apr. 16, 1990, at 7 ("State business leaders quickly criticized the decision, charging that it will hurt the state's efforts to attract new companies with international ambitions.") [hereinafter Taylor, *Right to Sue*]. Meanwhile, articles celebrated the Texas Legislature's response to these concerns. *See, e.g.*, Editorial, *Alfaro Compromise*, DALLAS MORNING NEWS, Jan. 27, 1993, at 11A (praising the Texas Legislature for overturning *Alfaro* because it "could deter companies from doing business here or relocating to Texas").

89. *Court Overreaching*, *supra* note 84; Murchison, *supra* note 76 (stating trial lawyers' perception of the Texas "court system as a cash cow to be milked by the man with the fastest fingers and quickest wits").

90. According to the court opinion in *Alfaro*, foreign workers had been permitted to sue in U.S. courts in border areas since at least 1913 and probably before then. *See Alfaro*, 786 S.W.2d at 677 (citing S. Pacific Co. v. Graham, 34 S.W. 135, 135 (Tex. Civ. App. 1896) for the proposition that trial courts may "refuse to entertain jurisdiction in a case involving foreign parties"). From the majority's perspective, the ruling in *Alfaro* simply affirmed existing law. *See Alfaro*, 786 S.W.2d at 679 (concluding that the legislature abolished the doctrine of forum non conveniens in 1913).

Rican farm workers to file their claims, the only foreigners who could bring suit in Texas were citizens of countries that had entered into a legal reciprocity arrangement with the United States.[91] According to the lawyer for the farm workers, such agreements had been reached with only about twenty percent of the countries in the world.[92] In effect, this meant that the claim that *Alfaro* would result in Texas becoming the "courthouse of the world" was simply not true.[93]

As more than one commentator on the case acknowledged, however, the problem was not really *Alfaro*, but trial lawyers (and their clients) more generally.[94] A good example of this appears in an article entitled *Milking the Cash Cow*.[95] In this article, the author began with the usual argument that the *Alfaro* ruling amounted to the Texas Supreme Court "invit[ing] the world to Texas—for the purpose of suing someone."[96] The writer then proceeded to quote from a letter that he claimed had been sent by a Houston attorney to Chilean lawyers, touting verdicts in Texas courts as "the highest in the United States and probably . . . the world."[97] The author of the article then attempts to explain "how [Texas] got to this point":

> [T]he problem preceded Alfaro. It is a problem of perception. Great numbers of trial lawyers—fortunately, not all!—perceive the court system as a cash cow to be milked by the man with the fastest fingers and quickest wits. . . .
>
> We could do with a whole new way of thinking about these things.[98]

In a similar way, article after article about *Alfaro* conveyed arguments for tort reform. Ultimately, this linkage was so strong that an extraordinary number of news articles about *Alfaro* included coverage of "other" tort reform issues, such as caps on punitive damage awards.[99] For example, a

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91. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 71.031 (Vernon 1986) (current version at TEX. CIV. PRAC. & REM. CODE ANN. § 71.031 (Vernon Supp. 2005)) ("An action for damages for the death or personal injury of a citizen . . . of a foreign country may be enforced in the courts of this state, although the wrongful act . . . takes place in a foreign state or country, if: . . . (3) . . . the country has equal treaty rights with the United States on behalf of its citizens.").

92. Interview with Charles Siegel, Counsel for the Plaintiffs, in Dallas, Tex. (Feb. 22, 2000) (on file with the author).

93. Wiehl, *supra* note 43 (quoting *Dow Chem. Co. v. Alfaro*, 786 S.W.2d 674, 707 (Tex. 1990) (Hecht, J., dissenting) ("[T]he courthouse for the world")).

94. Murchison, *supra* note 76.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. Charles B. Camp, *Business Interests Expect Victory on Tort Reform Bills*, DALLAS

1993 article in the Dallas Morning News combined coverage of the legislation to overturn *Alfaro* with a story on other legislation that would ban some product liability lawsuits in Texas and greatly restrict others.[100] The headline for this article was: *Business Interests Expect Victory on Tort Reform Bills*.[101]

Importantly, it was not just guest commentators and editorial page writers who cast the debate in this way; virtually all of the news articles on the litigation framed their coverage of *Alfaro* in what was essentially the rhetoric of the dissenting opinion. In fact, thirty-one percent of the nonlegal articles referenced the dissent's argument that the ruling would make Texas "the courthouse [of] the world" in the headlines.[102] An additional nineteen percent featured headlines that identified the case as a point of conflict in the tort reform debate.[103]

B. Labor Union of Pico Korea, Ltd. v. Pico Products, Inc.

The second case, *Labor Union of Pico Korea, Ltd. v. Pico Products, Inc.*, involved an attempt by a Korean trade union to sue a U.S.-based multinational after it abruptly shutdown its operations in Korea in violation of a collective-bargaining agreement.[104] The lawsuit sought to use federal labor law to force the employer, the Pico Corporation, to pay the Korean workers for their last weeks of work.[105] After successfully convincing a federal court in New York to allow the case to go to trial, the workers lost at trial and the ruling was upheld by the Second Circuit Court of Appeals.[106]

According to the trial court that issued the verdict in the case, the New York headquarters of the Pico Corporation should not be held liable for the actions of its now-defunct subsidiary in Korea, because it was unclear whether the New York headquarters had actual control over the working conditions in Korea.[107] The appeals court took a slightly different tack. In its view, the conditions of workers in other countries were simply not of concern to U.S. policymakers and U.S. courts.[108]

MORNING NEWS, Feb. 20, 1993, at 1A [hereinafter Camp, *Business Interests*].

100. *Id.*

101. *Id.*

102. Dow Chem. Co. v. Alfaro, 786 S.W.2d 674, 707 (Tex. 1990) (Hecht, J., dissenting). An example is: Wiehl, *supra* note 43.

103. An example is: Camp, *Business Interests*, *supra* note 99.

104. Labor Union of Pico Korea, Ltd. v. Pico Prods., Inc., 968 F.2d 191, 192–93 (2d Cir. 1992).

105. *See id.* at 193 (mentioning that "[t]he essence of plaintiffs' complaint is that the shutdown of [the company's operations in] Korea did not conform to the provisions of the labor agreement").

106. *Id.*

107. *Id.* at 192–93.

108. *See id.* at 194–95 (stipulating that there is a presumption against statutes applying

Before the case was filed, the plaintiffs began a daily picket outside Pico's headquarters in New York.[109] Shortly thereafter, the Pico Korean workers received endorsements and an outpouring of support from groups including the United Auto Workers, the Rainbow Coalition, and the American Friends Service Committee, as well as various labor rights groups, local unions, and individuals and groups in the Korean–American community.[110] In the week before the lawsuit was filed, the Korean union representatives engaged in a six-day-long fast that culminated in the hospitalization of their union president, who suffered from exhaustion.[111] After the lawsuit was filed, however, the workers returned to Korea and the protests ceased.[112]

As compared to *Alfaro*, the *Pico* case received relatively little attention in the press. My research turned up only twelve articles on the litigation and the protests surrounding it. The first article appeared in late April 1990, shortly after the protests against the Pico Corporation began and more than two months before the lawsuit was filed.[113] The coverage peaked in the week that the lawsuit was filed, then tapered off completely, and peaked again when the workers lost the case in the fall of 1992. Reporting on the lawsuit was nearly equal in both legal and non-legal publications.

Activists are quoted in a remarkable forty percent of the articles (although still less than the defendants), while the workers themselves (and their lawyers) are quoted in more than thirty percent of the articles.[114] The content of these quotes is also significant because they tend to describe the dispute in highly personal terms. Several quotes from activists mention the chief executive officer (CEO) of the Pico Corporation, Bernard Hitchcock, by name and note their desire to "bring [him] to the negotiating table" or

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extraterritorially and that "[i]f Congress want[ed] federal courts to enforce collective bargaining agreements between foreign workers and foreign corporations doing work in foreign countries according to the body of labor law developed pursuant to [federal labor law], such legislative purpose must be made unmistakably clear").

109. Ramsay Liem & Jinsoo Kim, *The Pico Korea Workers' Struggle, Korean Americans, and the Lessons of Solidarity*, AMERASIA J., Jan. 1, 1992, at 49, 57–59; Telephone Interview with Frank Deale, Counsel for Plaintiff, in New York City, N.Y. (May 5, 2000).

110. Liem & Kim, *supra* note 109, at 58.

111. *Id.* at 59; Interview with Frank Deale, *supra* note 109.

112. Liem & Kim, *supra* note 109, at 60; Interview with Frank Deale, *supra* note 109.

113. Liem & Kim, *supra* note 109, at 59; J. Michael Kelly, *No Sensitivity Here*, POST-STANDARD (Syracuse, N.Y.), Apr. 29, 1990, at B8 (describing the Korean workers picketing in front of Pico's headquarters).

114. A few examples of these are: *Pico Korea Workers Head Back Home*, POST-STANDARD (Syracuse, N.Y.), July 17, 1990 (quoting one of the leaders of a local group supporting the Korean Pico workers); *South Korean Union Leaders Fast Outside Pico*, UPI, July 5, 1990, LEXIS, News Library, UPI File [hereinafter *South Korean Union Leaders*] (quoting the union leader).

"appeal[] to his conscience and his humanity."[115] Similarly, in another instance, a protester was quoted as saying that Hitchcock behaved in a manner that was "racist and tending toward violence."[116]

Other quotes from the activists emphasize their commitment to the ongoing protest, but again, in quite personal terms. For example, referring to a fast for justice that took place in front of the Pico Corporation's New York offices, one protester was quoted as saying that the protesters would "be out here 24 hours a day, and they will be sleeping out here in front of Bernard Hitchcock's nose so that he can see us and realize that we are very serious about what we are doing."[117]

In contrast, very few of the quotes reference the broader cause of the workers' rights. Indeed, even when American workers' rights activists were quoted, they tended to refer to the conflict in terms of a highly personal dispute between the Korean workers and Pico president Bernard Hitchcock. For example, an American, workers' rights activist affiliated with the National Association of Letter Carriers, was quoted as saying that the activists would "never let Bernard Hitchcock get away with this injustice."[118] Moreover, while this activist identified himself as a "brother of the Korean workers," he did not seem to view the conflict in the context of a global, workers' rights agenda.[119] Instead, he suggested that, on the contrary, he was there because the uniquely egregious conduct of the Pico Corporation brought "disgrace to all of America."[120]

As compared to the *Alfaro* lawsuit, the content of the articles on the *Pico* case was significantly less skewed. The issues of corporate liability and workers' rights were covered about evenly, although neither topic took up much space in the articles—only about two percent of the total content for each. Instead, coverage of the *Pico* case tended to first focus on the protests and later on technical aspects of the lawsuit.[121]

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115. *South Korean Union Leaders*, *supra* note 114.

116. Steve Schaefer, *Protesters Thrown Off Pico Products Property*, UPI, July 11, 1990, LEXIS, News Library, UPI File.

117. *South Korean Union Leaders*, *supra* note 114.

118. Schaefer, *supra* note 116.

119. *Id.*

120. *Id.*

121. A few examples of these are: Kelly, *supra* note 113 (focusing on the manner of the Korean workers' protest in front of Pico's headquarters); Rick Moriarty, *Union Appeals Pico Ruling Attorneys for 294 Korean Workers Argue that the Electronics Company Owes the Workers $400,000 After Suddenly Closing Their Plant*, POST-STANDARD (Syracuse, N.Y.), June 9, 1992, at B8 (discussing the prior litigation in the federal district court from the perspectives of both parties).

Indeed, coverage of the *Pico* case seemed to proceed in two phases. Just before and shortly after the lawsuit was filed, the workers' complaints received substantial press in the New York papers.[122] Much of this coverage focused on the protests outside of the Pico headquarters and, to a lesser extent, the factual allegations underlying the workers' claims. For example, a photo in the New York Times during this time period had the caption headline *Korean Union Pickets in Upstate New York.*[123]

The text of these articles tended to lead with references to the protests and then provide some background on the Korean workers' factual allegations.[124] An article that appeared on the UPI Newswire the day before the case was filed focused on a confrontation between the protesters and local police where the protesters trespassed onto Pico property in an attempt to meet with the company CEO.[125] After noting that the Pico Corporation had "slammed a door" in the face of the activists, the article described the underlying dispute in one sentence and then returned to more coverage of the protests.[126] The impending lawsuit was not mentioned until several paragraphs later.[127]

Consistent with the fact-based, protest-oriented story line, the articles from this time period regularly quoted the Korean union officials and their supporters along with officials from the Pico Corporation. The quotes from the activists were highly personalized and targeted Pico CEO Bernard Hitchcock in particular.[128] The officials from the Pico Corporation, in turn, responded with specific attacks.[129] For example, a few of the articles quoted Pico CEO Bernard Hitchcock as saying the labor union leaders were "'terrorists . . .' who have links with the Communist Party."[130] In other articles, Hitchcock claimed that the Korean workers had "kidnapped" Pico representatives in Korea.[131]

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122. *See, e.g.*, Patrick Lakamp, *Korean Union Demanded 78 Paid Holidays from Pico, Executive Scoffs at 'Preposterous' Contract*, POST-STANDARD (Syracuse, N.Y.), July 13, 1990, at B1 (describing Bernard Hitchcock's reaction to the lawsuit filed by the Korean workers in federal district court).

123. *Korean Union Pickets in Upstate New York*, *supra* note 45, at B8.

124. An example is: *South Korean Union Leaders*, *supra* note 114.

125. Schaefer, *supra* note 116.

126. *Id.*

127. *Id.*

128. An example is: *South Korean Union Leaders*, *supra* note 114.

129. Lakamp, *supra* note 122.

130. *Id.*; *see also Korean Union Pickets in Upstate New York*, *supra* note 45 (quoting Hitchcock calling the Korean workers "terrorists").

131. An example is: *Korean Union Pickets in Upstate New York*, *supra* note 45.

Together, the headlines, the text of the stories, and the quotes framed the case as a highly personalized dispute between the Pico Corporation and the Korean workers. Although the filing of a lawsuit was usually mentioned, it was plainly secondary to the coverage of the protests and the particulars of the dispute, as was the broader question of workers' rights in a global economy. As the litigation proceeded, however, the media coverage began to take a different focus.

In later articles, the news coverage began to focus much more on the details of the litigation and, in particular, on the legal novelty of the Korean workers' position.[132] Moreover, in contrast to the earlier period, stories about the case appeared less often in the mainstream press and more frequently in legal journals and newspapers. Finally, rather than quoting activists and Pico officials, these articles tended to quote the lawyers and discussed the underlying dispute in only the broadest legal terms.[133]

For example, a *New York Law Journal* article stated that the workers claimed that they should be permitted to sue for breach of contract "without regard to the citizenship of the parties," while the company argued that U.S. law should not be applied extraterritorially.[134] Similarly, an article in *The American Lawyer* characterized the litigation as the "first attempt to apply the 1988 U.S. plant-closing notification law to overseas holdings of American companies."[135] Of course, from the workers' perspective, they were simply trying to obtain back pay and severance compensation after Pico Products shutdown the company.[136] However, none of the articles during this time period mentioned these details, nor did they mention the extensive protests that preceded the litigation. In short, the nature of the coverage changed over the course of the litigation with the content gradually becoming more focused on legal issues and less focused on the concerns of the workers and activists.

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132. An example is: Liem & Kim, *supra* note 109, at 59 (quoting a Pico Korean Union leader who said that "[t]he fact that we will even have a trial in the United States and have our case heard is a real victory for us and for all Third World workers").

133. An example is: Moriarty, *supra* note 121 (quoting the attorney for the Korean workers and broadly discussing American corporate liability for action by their foreign subsidiaries).

134. Deborah Pines, *U.S. Labor Law Not Applicable in Korean Plant: Foreign Subsidiary Held Not Covered by Statute*, N.Y. L.J., June 29, 1992, at 1, 2.

135. Evan Schultz, *Big Suits: Pro Bono*, AM. LAW., Sept. 1990, at 34, 34.

136. Liem & Kim, *supra* note 109, at 59.

C. Mendoza v. Contico

The third case, *Mendoza v. Contico*, was brought in Texas on behalf of the family of a Mexican maquiladora worker who was murdered while delivering the payroll for an American multinational in Juarez, Mexico.[137] Lorena Mendoza was an accountant for the Contico Corporation.[138] After the thieves robbed her of Contico's payroll, she was raped and burned alive.[139] The lawsuit focused on the company's refusal to provide the worker with an armored truck even though the roads were known to be dangerous and frequented by thieves.[140]

Following extensive legal arguments over whether the lawsuits of foreign workers could be heard in the United States and, if so, whether Texas or Mexican law would apply, the trial court judge ruled that the lawsuit would proceed in his court under Texas law.[141] In contrast to the rulings in *Alfaro* and *Pico*, the opinion consisted of only a few sentences and was written in the form of a letter.[142] It states in its entirety:

> Texas has the most significant relationship to the occurrence and the parties. The U.S. defendants allegedly committed acts of negligence in Texas which caused the deaths in Mexico. Mexico has no interest in protecting the U.S. defendants from excessive liability but has no objection to plaintiffs receiving compensation under Texas law.
>
> Therefore, Texas law will be applied in this case.[143]

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137. *U.S. Company Settles*, *supra* note 38. "Maquiladora" is a Spanish word that refers to the assembly plants set up by U.S. firms just over the border in Mexico, where Mexican workers are employed to assemble goods for export to the United States. *See* OXFORD SPANISH DICTIONARY 521 (3d ed. 2003) (defining the term as a "cross-border plant"); International Trade Data System, Maquiladoras, http://www.itds.treas.gov/maquiladora.html (last visited Mar. 29, 2006) (indicating that "maquiladora" refers to the assembly, processing, or manufacturing plants located in Mexico that are partly or entirely owned and managed by non-Mexicans).

138. Debbie Nathan, *Double Standards: Notes for a Border Screenplay*, TEX. OBSERVER, June 6, 1997, at 8, 9.

139. *Id.* at 12.

140. Interview with Jim Scherr and Sam Legate, Counsel for the Plaintiff, in El Paso, Tex. (Sept. 13, 1998); *see* Raul Hernandez & Larry Lee, *Maquilas on Trial: Case Could Decide U.S. Firms' Liability in Foreign Countries*, EL PASO HERALD-POST, Mar. 26, 1997, at A1 (describing the route as "the same well-known, and dangerous, route"); *U.S. Company Settles*, *supra* note 38 (stating that the reason the family said the company was negligent was because they failed to provide a security device or guard with the delivery of the payroll).

141. Letter from Judge Jack Ferguson, County of El Paso, Texas, to Attorney John McChristian and Attorney James F. Scherr (June 14, 1994) (on file with author); Interview with Jim Scherr and Sam Legate, *supra* note 140.

142. Letter from Judge Jack Ferguson to Attorney John McChristian and Attorney James Scherr, *supra* note 141.

143. *Id.*

Early in the litigation, the Mendoza family and its attorneys reached out to activists in the United States and asked for their assistance.[144] Among other things, these activists issued regular press releases on the case and assisted Mendoza's lawyers with obtaining the testimony of necessary experts, but they did not engage in any protest activities outside the courthouse or the defendant's headquarters.[145] After six days of trial, the employer agreed to an extraordinary settlement that included building a monument to workers' rights in Juárez and more than one million dollars in damages.[146]

Of the fifteen articles on the *Mendoza* case that my research located, nearly all appeared in nonlegal publications in late March and early April of 1997, when the case was tried and settled.[147] An analysis of the news articles on the *Mendoza* case showed that nearly twenty percent of the content of the articles focused on the broader issue of the working conditions in the maquiladora. In contrast, only about seven percent of the content focused on the possibility that the litigation could result in other U.S. companies being held accountable in Texas courts for their actions overseas.

While the articles did not ignore that the litigation could result in other liability lawsuits against U.S. companies, this aspect of the story tended to be secondary to other issues.[148] For example, the conservative *El Paso Herald-Post* described the case with headlines like *Maquilas on Trial* and *Jury Gets Wrongful-Death Case*, while noting in smaller type the implications of the case for local business interests.[149] Perhaps more significant, many articles provided detailed information about conditions in other maquiladora plants, including that workers' wages were as low as twenty dollars per week.[150] This was so despite the fact that the unsafe practice that had placed Mendoza at risk was not an issue at most maquiladoras.[151] Unlike the defendant in *Mendoza*, most of the plants used armored trucks to deliver their payroll.[152]

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144. Interview with Jim Scherr and Sam Legate, *supra* note 140.

145. *Id.*

146. Nathan, *supra* note 138, at 16; Interview with Jim Scherr and Sam Legate, *supra* note 140.

147. An example is: Thaddeus Herrick, *'Maquiladora' Cases Migrate North*, HOUS. CHRON., Apr. 17, 1997, at 1 (describing the background and nature of the lawsuit in a non-legal publication).

148. Raul Hernandez, *Jury Gets Wrongful-Death Case: Verdict Has International Implications for Maquiladoras*, EL PASO HERALD-POST, Apr. 4, 1997, at A1.

149. Hernandez, *supra* note 148; Hernandez & Lee, *supra* note 140.

150. Self, *supra* note 44. "[T]he lawsuit is the first time a U.S. jury heard testimony about maquiladora practices, including how workers' wages are as low as $35 a week in Juárez and from $20 to $30 a week in Palomas." *Id.*

151. Interview with Jim Scherr and Sam Legate, *supra* note 140.

152. *Id.*

The question of "double standards" was also a recurring theme in many articles.[153] For example, several articles on the *Mendoza* trial that appeared in the *El Paso Herald-Post* ended with a statement that reminded its readers that the jurors would be deciding whether "Mexican or American safety and health standards" should apply to people working at maquiladoras.[154]

Finally, the articles on the *Mendoza* case are notable for the extent to which they feature quotes from local activists and members of the Mendoza family. An impressive eighty percent of the articles on the Mendoza case included a quote from either the plaintiffs or their attorneys and forty percent of the articles quoted activists.[155] Invariably, these quotes were used to frame the case as about improving the conditions of workers in the maquiladoras and, indeed, worldwide. A quote from one activist states, "[t]here can be no artificial borders when it comes to justice. Workers have a right to a safe working environment regardless of the country the company is in and the low wages they earn."[156]

III. COMPARING AND CONTRASTING THE NEWS COVERAGE IN THE THREE CASES

As the case summaries make clear, the media covered the three cases in very different ways. These differences can be grouped into four general categories: (1) the amount of coverage each case received; (2) the timing of the news coverage vis-à-vis the litigation; (3) the types of news media covering the cases; and (4) the content of the coverage.

1. The Amount of Coverage Each Case Received

Alfaro received substantially more attention in the press (fifty-nine articles) than either *Mendoza* or *Pico*, which were the focus of only fifteen and twelve articles respectively. The reasons for this difference are unclear, but it seems likely that the large number of stories on the *Alfaro* case is a product of the extended battle in the Texas legislature over the reversal of *Alfaro*.[157] News coverage of the *Alfaro* case spanned a period of nearly ten years, beginning with the filing of briefs and the argument in the Texas Supreme Court, and concluding only after the Texas legislature both

153. An example is: Nathan, *supra* note 138, at 8 (comparing working conditions in maquiladoras with those found in the United States).

154. Hernandez, *supra* note 148.

155. An example is: Self, *supra* note 44.

156. *Id.*

157. An example is: Camp, *Business Interests*, *supra* note 99.

overturned the *Alfaro* ruling and the compromise was reached to achieve the legislative reversal.[158]

2. Timing of Coverage

In addition to the relatively longer period of time over which the *Alfaro* litigation was covered, the timing of the articles reveals a relationship between major legal (and legislative) developments and the quantity of coverage. In *Pico*, for example, the news reports cluster around three dates: (1) the filing of the lawsuit; (2) the ruling of the trial court; and (3) the ruling of the court of appeals, with the most coverage occurring just before and just after the lawsuit was filed. Similarly, the articles on the *Mendoza* case (which was not appealed) appeared in the space of a few weeks around the trial of the case.

The timing of the news coverage also reveals an interesting connection between the media coverage of *Mendoza* and *Alfaro*. In May of 1997, news coverage peaked in both cases, with Texas newspapers simultaneously reporting on the trial in the *Mendoza* case and the final legislative actions to reverse *Alfaro*. However, no connection was ever made in the reporting on the two cases even though the legislative reversal of *Alfaro*, in the minds of most legal observers, should have made litigation like *Mendoza* nearly impossible.[159]

3. Types of Publications

The three cases also substantially differed in terms of the types of publications reporting on the cases. Lawsuits are generally reported on in two types of publications: (1) legal publications, such as *The Texas Lawyer* and *Legal Times*, that write primarily for a professional audience of lawyers and judges and (2) nonlegal or general publications, such as the daily newspaper in the town where the lawsuit is brought or newspapers with a national distribution like *The New York Times* and *The Wall Street Journal*.[160]

Alfaro and *Pico* received much more coverage in legal publications than *Mendoza*. Indeed, about half of all the articles published on both the *Alfaro* and the *Pico* cases appeared in legal publications. Given the

158. Weintraub, *supra* note 74, at 344; Camp, *Courthouse Door*, *supra* note 73.

159. *See* Weintraub, *supra* note 74, at 349 (explaining how the new statute will make it much more difficult for plaintiffs to avoid the application of forum non conveniens).

160. One example of each in the *Alfaro* case is: Murchison, *supra* note 76 (discussing the possible impact of the *Alfaro* case in a legal publication); Wiehl, *supra* note 43 (discussing the potential effect of *Alfaro* on Texas business in a national newspaper).

precedent-setting potential of the *Alfaro* and *Pico* cases, it is not surprising that they received so much attention in the legal press. Nonetheless, it is surprising that *Mendoza* received so little coverage in legal publications.

One explanation for the difference is that the *Mendoza* court never issued a lengthy legal ruling that addressed the rights of foreigners to sue in the United States. Moreover, unlike *Alfaro* and *Pico*, the *Mendoza* case never went up on appeal. For both reasons, it is likely that legal reporters were less interested in *Mendoza* since it seemed to have less precedent-setting impact. This explanation also fits well with the distribution of articles in legal and nonlegal publications over time. As *Alfaro* and *Pico* made their way up the courts, a higher percentage of the articles on each case appeared in legal publications, suggesting a greater interest by legal reporters on appealed cases and their apparently greater impact.

4. Content of Coverage

A comparison of the media coverage content in each case also revealed substantial differences among the three lawsuits. Articles reporting on the *Pico* and *Mendoza* cases quoted activists in about forty percent of the articles in both cases. In *Alfaro*, by contrast, activists are quoted in only two and one half percent of the articles. However, it is much more significant that the *Mendoza* plaintiffs were quoted in a whopping eighty percent of all articles on the case, more than double the number of times the plaintiffs were quoted in the *Pico* articles and more than seven times the amount that the plaintiffs were quoted in the *Alfaro* articles. Perhaps it is even more important that the *Mendoza* plaintiffs were also quoted twice as much as the defendant in that case, suggesting a clear journalistic preference for quotes from the plaintiffs over those from the defendant. In this regard, it is also remarkable that of the three cases, *Mendoza* was the only one in which the plaintiffs were quoted in news articles more often than the defendant.

A comparison of the substantive content of the news articles also indicated substantial differences among the coverage of the three cases. As noted above, the articles provided evidence of concerns about two broad themes: (1) the impact of transnational corporate liability and (2) the conditions of workers. These themes received very little attention in the *Pico* case and quite a bit of coverage in both the *Alfaro* and *Mendoza* cases, although in opposite ways.

This differential coverage is dramatically illustrated by the very different ways in which the *Alfaro* and *Mendoza* cases were portrayed, even though both cases involved personal injury claims brought in Texas on

behalf of foreign workers who were injured while working for a U.S.-owned company outside the United States. In nearly twelve percent of the articles on the *Alfaro* case, the lawsuit was portrayed as a case that threatened to make Texas the "courthouse of the world."[161] In contrast, only seven percent of the *Mendoza* articles touched on this theme.[162] Instead, eighteen percent of the *Mendoza* articles discussed broader themes of workers' rights.[163] Although these numbers may not seem particularly high in the abstract, it is important to remember that the bulk of the articles focused on factual developments in the case, such as a recent ruling or the testimony of a particular expert.[164] Thus, for nearly one-fifth of the content of the *Mendoza* articles to report on the broader theme of workers' rights is quite noteworthy.

In sum, the media coverage in the three cases provided three alternative framings of transnational workers' rights litigation. In *Alfaro*, the lawsuit was framed as part of the tort reform debate. In *Pico*, the coverage focused on the protests of the Korean workers outside the courthouse and on the specifics of the dispute between the workers and their employers. And in *Mendoza*, the framing emphasized broader concerns about the working conditions in the maquiladoras and, in particular, the possibility that "double standards" were being applied for workers in the United States and Mexico.[165]

What explains the significant differences in the media coverage on these three ostensibly similar cases? One explanation clearly lies with the media, which have an institutional interest in reporting on particular types of stories.[166] The media preference for "official" sources, for example, is well-documented.[167] And even a casual observer is aware that the media

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161. An example is: Wiehl, *supra* note 43 (quoting Dow Chem. Co. v. Alfaro, 786 S.W.2d 674, 707 (Tex. 1990) (Hecht, J., dissenting) ("[T]he courthouse for the world")).

162. A few examples of these are: Jordan W. Cowman, *Employers Face Increased Exposure to Liability*, TEX. LAW., Feb. 7, 2000, at 61 ("[R]ecent Texas state court decisions demonstrate a trend toward allowing U.S. courts to hear cases brought by non-U.S. residents that are based on actions occurring in or arising outside the U.S."); Herrick, *supra* note 147, at 1 ("'[I]ndustry experts warned that the example set by the *Mendoza* lawsuit and subsequent settlement could trigger a rash of frivolous lawsuits from Mexican workers that could buffet the booming "maquiladora"' trade and further clog Texas courts." (italics added)).

163. An example is: Rene Romo, *Firm Settles Maquila Suit*, ALBUQUERQUE J., Apr. 5, 1997, at A1 (highlighting the dangerous working conditions involved in the *Mendoza* case and how it may cause maquila operators to improve safety).

164. An example is: Hernandez & Lee, *supra* note 140.

165. Nathan, *supra* note 138, at 8.

166. *See* BENNETT, *supra* note 46, at 35–36 (providing reasons why the media prefers personalization and dramatization).

167. *See* Gamson & Modigliani, *supra* note 23, at 7–8 (explaining that journalists usually give official sources the benefit of the doubt and favor them).

favor stories that feature highly personal and dramatic themes.[168] In the context of everyday reporting, these institutional preferences operate as framing biases in particular stories by giving greater attention to certain aspects of a story.[169]

Evidence of these institutional biases is widespread in the media coverage of the three cases. The bias in favor of official sources is most apparent in the timing of the news coverage on the three cases and in the prominence afforded to legal rulings throughout. Media coverage of each case was almost nonexistent until the lawsuit was filed or the court issued a ruling. Moreover, as noted above, the news coverage in each case peaked with the legal rulings, and the stories became more "legalized" as the cases went up the courts, with more quotes from "official" legal rulings and lawyers and less attention paid to the voices of activists.

Of the coverage on the three cases, *Alfaro* had the greatest emphasis on legal ruling. It was the only one that was litigated in a state or federal court of highest resort and then challenged in the state legislature.[170] However, it is interesting that the media's coverage of the *Alfaro* legal rulings was somewhat selective in that it placed a greater emphasis on a dissenting opinion that claimed the ruling would result in Texas becoming the "courthouse of the world" than it did on the majority opinion, which claimed that it was simply upholding existing law.[171] Essentially, the Texas Supreme Court's ruling provided reporters with competing official accounts of the litigation, and the reporters elected to emphasize the voice of the dissent.

The media's bias toward stories that are highly personalized is also evidenced in the news coverage on the three cases. This bias is perhaps most apparent in the *Pico* coverage, which, in early reporting, focused heavily on the ad hominem exchanges that took place between the workers and Pico CEO Bernard Hitchcock.[172] Bias is also apparent in the emphasis

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168. *See* BENNETT, *supra* note 46, at 35–36 (describing why the media favor personalization and dramatization).

169. Media scholars refer to the media's practice of emphasizing particular interpretations or understandings of an issue as "framing." *See* Entman, *supra* note 23, at 52 (stipulating how communicators use framing to emphasize certain problems, interpretations, evaluations, and recommendations). Although there are many different conceptions of how the media frame news coverage, one way is to "select some aspects of a perceived reality and make them more salient" such that particular ways of understanding a problem receive greater attention than others. *Id.* (emphasis omitted).

170. Dow Chem. Co. v. Alfaro, 786 S.W.2d 674 (Tex. 1990); Weintraub, *supra* note 74, at 344.

171. An example is: Wiehl, *supra* note 43 (quoting *Alfaro*, 786 S.W.2d at 707 (Hecht, J., dissenting) ("[T]he courthouse for the world")) (focusing on one of the dissenting opinions and its concern that the *Alfaro* decision would result in an overwhelming burden on Texas courts).

172. An example is: Karl Schoenberger & Nancy Yoshihara, *L.A. Firm Shuts S. Korean Unit*,

that was placed on the personal trials of Lorena Mendoza and her family in the *Mendoza* litigation coverage.[173] Among other things, the plaintiffs in *Mendoza* were quoted much more frequently than the plaintiffs in the other two cases. The media's institutional interest in producing highly personalized stories provides one explanation for why this was the case.

News reporting on all three cases also suggests the media's preference for tales with dramatic themes. In *Alfaro*, this is clearly evident in the media's overwhelming emphasis on a dissenting justice's claim that the litigation would turn Texas into "the courthouse of the world."[174] Because of the divided ruling in that case, the media could essentially choose between two official voices: the majority's conclusion that its ruling did little more than uphold existing law and the more dramatic claim in one of the dissenting opinions that the ruling would lead to economic and legal catastrophes.[175] The media's institutional interest in a more dramatic story line is evident in their consistent highlighting of the dissenting opinions.[176]

However, media coverage of the *Alfaro* litigation provided relatively little reporting on the Costa Rican farm workers' dramatic injuries even though, from an institutional perspective, we would have expected their injuries to receive extensive play. It is possible that the geographic distance between Texas and Costa Rica worked against framing the story in ways that emphasized the workers' injuries. Had the workers been located closer to the United States, the coverage might have focused more on the injuries of the workers and, perhaps, on the broader questions about the employment conditions of foreign workers outside of the United States.

As compared to *Alfaro* and *Mendoza*, the *Pico* case featured no dramatic injuries or colorful legal opinions. As a result, the dramatic elements in the *Pico* coverage are drawn almost entirely from the various fasts and pickets that occurred outside the courthouse, and the lively name-calling that took place between the workers and the Pico management.[177] Indeed, in the early stages of the litigation, the media's focus on this aspect of the dispute all but eclipsed reporting on the lawsuit itself. Perhaps for

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L.A. TIMES, Mar. 30, 1989, at B2 (describing various personal attacks on character mounted by representatives of the Pico workers' union).

173. An example is: Nathan, *supra* note 138, at 8–16 (giving Mendoza's side of the story).

174. *See, e.g.*, Wiehl, *supra* note 43 (quoting *Alfaro*, 786 S.W.2d at 707 (Hecht, J., dissenting) ("[T]he courthouse for the world")) (focusing on a dissenting opinion from *Alfaro* and the potential burden on Texas courts as a result of the ruling).

175. *Alfaro*, 786 S.W.2d at 679; *id.* at 707 (Hecht, J., dissenting).

176. An example is: Wiehl, *supra* note 43 (showing one example of the media focus on the dissenting opinions).

177. An example of each is: *Korean Unions Pickets in Upstate New York*, *supra* note 45 (focusing on the picketing outside Pico headquarters); Schoenberger & Yoshihara, *supra* note 172 (detailing the exchanges between Pico management and Korean workers).

similar reasons, the coverage also largely ignored the broader workers' rights issues that the case raised.

Of the three cases, the tragic and dramatic nature of the circumstances surrounding Lorena Mendoza's death (she was robbed, raped, and burned alive) provided the media with the most compelling story line.[178] As we might expect, the media gave extensive play to the gruesome facts of the case.[179] At the same time, much of the reporting on the *Mendoza* case focused on providing daily updates on the trial, suggesting that legal trials provide journalists with a dramatic appeal of their own.[180]

While the media's institutional tendencies to report on stories in particular ways appears to have played an important role in shaping the various stories that were told about these three cases, they do not fully explain why the cases came to be framed in such different ways. At best, the media's institutional interests suggest an inclination on the part of journalists to favor one story angle over another; they do not dictate particular themes.

In *The Lexus and the Olive Tree*, veteran *New York Times* reporter Thomas Friedman argues that globalization is currently the dominant "lens, the perspective, the organizing system," through which journalists, activists, politicians, and others "look at the world" and "make sense of events."[181] While Friedman's claim seems a bit overstated, his emphasis on the importance of globalization as a key narrative shaping political consciousness has particular import for understanding how one story gains prominence over another in the storytelling of these three transnational workers' rights cases.[182]

Globalization is, to be sure, about real political, economic, and social changes that are taking place around us.[183] But globalization is also a story, or more accurately, "several stories," that we tell about these transformations.[184] These stories are grounded in concrete realities such as increased foreign investment and sales of Internet technology.[185] But these

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178. Nathan, *supra* note 138, at 12.

179. An example is: *id.* (detailing Mendoza's rape and murder).

180. An example is: Hernandez & Lee, *supra* note 140. However, one problem with drawing such a conclusion is that the trial in the *Pico* case was virtually ignored by the media. The reasons for this are unclear, but may have been due to the fact that the harms faced by the workers in *Pico* were simply not sensational enough to capture the media's attention.

181. THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 5 (1999).

182. *See id.* at 7 (discussing how globalization shapes the politics of almost every country).

183. *See* Susan S. Silbey, *"Let Them Eat Cake": Globalization, Postmodern Colonialism, and the Possibilities of Justice*, 31 LAW & SOC'Y REV. 207, 211 (1997) (mentioning how "'globalization' signals several ongoing complex transformations").

184. *Id.*

185. *See id.* at 214–15 (noting the global circulation of goods and services and how it has helped

stories are also grounded in perceptions about those realities and in other discourses that intersect with globalization stories.[186]

For American workers, globalization tells two somewhat conflicting narratives about its impact on the possibilities for workers' rights.[187] In the first of these stories, the mobility of capital is viewed as posing a threat to the local economy and to the rights of local workers in particular.[188] The prevailing sentiment in this account is that globalization poses a threat to American workers because it leads to declining job opportunities in the United States.[189] In contrast, the second story emphasizes that the forces of globalization present opportunities to strengthen workers' rights and build transnational solidarity.[190] Both of these stories shape the extra-legal discourses of the broader political context in which transnational workers' rights litigation is brought. And, not surprisingly, they find their way into storytelling about the litigation.

In *Alfaro*, for example, the framing of the case appears to have been heavily influenced heavily by the broader political context in which concerns about the competitiveness of U.S.-based companies in the global economy were paramount.[191] This can be seen in both the content of the coverage and the linkage of the case with the tort reform debate, which is, in essence, a debate over the extent to which U.S. product liability law is weakening the U.S. economy.[192]

In *Mendoza*, by contrast, concerns about the impact of globalization on the local economy were largely absent from the news reports. However, the dominant framing did emphasize a global angle on worker health and safety issues by, among other things, describing the litigation in language that suggested that the fundamental issue in the case was whether workers in the

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encourage this "worldwide outsourcing").

186. *See id.* at 232 (commenting on the intersection between sociology and globalization).

187. These two stories are not the only stories about globalization and workers' rights but they are two of the most prominent.

188. *See* KENNETH F. SCHEVE & MATTHEW J. SLAUGHTER, GLOBALIZATION AND THE PERCEPTIONS OF AMERICAN WORKERS 17 (2001) (revealing how American workers believe that international trade pressures wages and destroys jobs).

189. *Id.*

190. *See* David Montgomery, *Labor Rights and Human Rights: A Historical Perspective*, *in* HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE 13, 13 (Lance A. Compa & Stephen F. Diamond eds., 1996) (noting the "possibilities for international action to improve the conditions and liberties of working people").

191. *See, e.g.*, Taylor, *Right to Sue*, *supra* note 88, at 7 (remarking that the *Alfaro* ruling would "place[] companies doing business in Texas at a severe disadvantage").

192. *See, e.g.*, James A. Lowery III, *Winning the Jurisdictional Shell Game: Forum Non Conveniens Makes a Comeback*, PRODUCT LIABILITY L. AND STRATEGY (Law Journal Newsletters, Phila., Pa.), Sept. 2001, at 6, 6–7 (relating the *Alfaro* case to U.S. tort reform policy).

United States and Mexico would be held to "double standards."[193] To a lesser extent, the coverage also emphasized the need to hold multinational corporations accountable in the increasingly global economy.[194]

In *Pico*, however, the "superstory" of globalization was less apparent in the reporting on the case, particularly in the early stories that focused largely on the protests and war of words between the workers and the Pico Corporation.[195] That said, some evidence of globalization acting as the interpretive lens began to emerge in the *Pico* news accounts after the case went up on appeal, and the focus of the reporting turned more to the legal issues that the litigation raised.[196] Several of the later articles noted that the litigation raised questions about whether the Korean workers should be permitted to sue in the United States and about whether U.S. law should be applicable to working conditions overseas.[197]

The correlation between legalization and globalization in the *Pico* case coverage raises a question about whether an emphasis on legal issues and concerns about globalization may go together. Journalists are more inclined to frame transnational workers' rights litigation with globalization as their interpretive lens when they are reporting on aspects of a dispute that are more plainly legal. From this limited set of case studies, however, we can draw no conclusions about such a relationship. What we can say is that in all three cases, the globalization "superstory" played some role in how the litigation was interpreted.

Both the media's institutional interests and its apparent interest in the "superstory" of globalization provide a great deal of insight into how and why the media framed these three transnational workers' rights cases so differently. Nevertheless, they do not fully explain what happened. At best, the institutional interests of the media suggest an inclination on the part of journalists to favor one story angle over another.

For example, the media's institutional interest in dramatic stories helps us understand the media's interest in the *Mendoza* case and perhaps why the plaintiffs in that case were quoted so much more frequently than in the other two cases. However, neither the institutional interests of the media, nor an interpretive lens that uses globalization as its "superstory," fully

193. An example is: Romo, *supra* note 163.

194. An example is: *id.* (quoting the *Mendoza* plaintiff's attorney, who said that corporations "are going to think twice about subjecting their workers in Mexico to extremely high degrees of danger").

195. An example of one of these early stories is: *South Korean Union Leaders*, *supra* note 114.

196. An example is: Moriarty, *supra* note 121 (discussing "pierc[ing] the corporate veil").

197. An example is: Lance Compa, *Labor Rights and Labor Standards in International Trade*, LAW & POL'Y INT'L BUS., Sept. 22, 1993, at 165 (discussing "[e]xtraterritorial application of U.S. labor laws [and its] growing . . . significance as an issue in the global economy" as related to the *Pico* case).

explains why the dominant framing of that lawsuit emphasized issues of workers' rights rather than corporate liability. Furthermore, they do not explain why the media took fundamentally different approaches in framing of the *Alfaro* and *Pico* litigation.

Instead, it is apparent that other factors play a role in influencing how journalists report on any particular transnational workers' rights case. As suggested, one such factor in *Alfaro* may have been the geographic distance between the reporters and the plaintiffs, which may have prompted reporters to focus more on story lines that were closer to home like tort reform. In other cases, factors as diverse as the political leanings of the reporter or the response of the defendants could influence the framing of the litigation in unexpected ways. And in cases involving political activism, the behavior and responses of activists are likely to play a role in how the media frames the case.[198]

Even under these circumstances, however, stories that meet the institutional interests of the media are likely to be favored by journalists as are particular themes, such as globalization, that have resonance in the broader political context. Legal rulings and the behavior of activists and others involved with the litigation then play a role in influencing the particular form that these biases take in any given case. In *Alfaro*, for example, the media's institutional interest in telling the story of the litigation in a dramatic way seems to have operated to make journalists particularly receptive to the more sensational claims of the dissenting opinions.[199]

Similarly, the media's interest in a personalized and fairly dramatic account of the *Pico* litigation was readily satisfied by the protests that took place outside the courthouse and by the highly personal way in which the litigants and activists characterized the dispute.[200] As a result, there was no need for the reporters to look elsewhere (neither the trial, nor the actual employment conditions of the Korean workers) to find the key elements for their story. As the *Pico* litigation continued, however, the protests tapered off and the litigants stopped providing quotes to the reporters that described the litigation in personal terms.[201] Not surprisingly, at that point, the

198. *See* William A. Gamson, *News as Framing: Comments on Graber*, 33 AM. BEHAV. SCIENTIST 157, 158–60 (1989) (using the "demonstration at Seabrook, New Hampshire," to show how different media can portray a single event in vastly different ways).

199. An example is: Wiehl, *supra* note 43 (focusing on the *Alfaro* dissenting opinion).

200. A few examples of these are: *Korean Union Pickets in Upstate New York*, *supra* note 45 (featuring a quote from the head of Pico and a photograph of the picketing protesters outside of Pico Product's headquarters); Schoenberger & Yoshihara, *supra* note 172, at 2 (quoting Korean workers as being "enraged").

201. An example is: Moriarty, *supra* note 121 (focusing on the foreign workers' choice to sue

overall tenor of the *Pico* coverage also changed direction.

In *Mendoza*, by contrast, the media's institutional interests seem to have been exploited by the litigants in ways that encouraged the media to frame the litigation to emphasize broad themes of workers' rights.[202] The plaintiffs in the *Mendoza* case were probably quoted more frequently than the plaintiffs in the other two cases because of the media's strong interest in presenting a highly personalized account of the dramatic facts of that litigation. Rather than expressing grief or horror at the manner in which Lorena Mendoza died, these quotes talk about the need to improve the working conditions for all workers in the maquiladoras.[203]

Mendoza's father was quoted saying, "[t]his was not just a personal fight, but a fight for all the workers of the maquilas so that conditions will become better and security will improve."[204] Thus, the dramatic and highly personal nature of Lorena Mendoza's death may have provided the family and the activists with an opening to frame the lawsuit in the media in ways that were ultimately more useful for placing the issue of the working conditions in the maquiladoras on the public agenda.

In the end, the institutional biases of the media and the interpretive framework of globalization may not dictate a particular way of framing transnational workers' rights litigation so much as create a setting in which journalists are more receptive to comments by activists and others that respond to these biases. In *Alfaro*, this setting gave extensive play to the dissenting justices' dramatic complaints about the impact of the litigation on the local economy and local courts.[205] In *Pico*, the media favored a dramatic and highly personalized exchange of words between the workers and their former employer.[206] In *Mendoza*, the media's interest in the dramatic nature of the underlying facts of the case was transmuted into dramatic reporting on the maquiladoras working conditions more generally, with the help of the plaintiffs and their lawyers.[207]

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the American subsidiary of Pico Products in the United States).

202. An example is: Romo, *supra* note 163 (focusing on the litigants' attorney's commentary on unsafe working conditions).

203. An example is: *id.* (quoting the plaintiffs' attorney, who stated that Contico should "think twice about subjecting . . . workers . . . to extremely high degrees of danger").

204. *U.S. Company Settles*, *supra* note 38.

205. A few examples of these are: Taylor, *Right to Sue*, *supra* note 88, at 7 (noting that local Texas companies are placed at a "severe disadvantage" as a result of the *Alfaro* ruling); Wiehl, *supra* note 43 (describing the *Alfaro* ruling as creating a "[b]ig [l]oad . . . for Texas [c]ourts").

206. An example is: Schoenberger & Yoshihara, *supra* note 172, at 2 (detailing the exchanges between Pico management and Korean workers).

207. An example is: Romo, *supra* note 163 (quoting the plaintiffs and the lawyers views on the dangerous working conditions involved in the *Mendoza* case).

IV. LESSONS FOR THE FUTURE

What are we to make of the variable news coverage of these three transnational workers' rights cases? What lessons can we draw from these cases for the future? From research in other contexts, we know that the media's framing of a story influences "not only what we know but also what sense we make of that knowledge."[208] Moreover, we would expect that this would be especially true with respect to stories about litigation because "most of what the public knows about the legal profession comes from the media."[209]

The potential significance of the differential coverage became especially apparent during interviews that I conducted several years after the conclusion of the lawsuits. In these interviews, most people spontaneously described the *Alfaro* case as being about "tort reform." On the other hand, the *Mendoza* lawsuit was routinely described as a case involving "double standards" or "workers' rights." Similarly, everyone interviewed in conjunction with *Pico* described that case as being about "workers' rights."

Are these post hoc perceptions of the litigation, at least in part, a product of the media framing or did they exist before the coverage? Because there are relatively few documents that record how people perceived the litigation before the media began to report on the cases, it is difficult to determine whether perspectives changed in response to news reports on the litigation. However, evidence suggests that the media played some role in shaping how activists involved with the three cases perceived the lawsuits.

Early press releases issued by workers' rights activists in conjunction with the *Mendoza* litigation, for example, emphasized the facts of the case and, surprisingly enough, the potential impact of the case on "U.S. corporations doing business in Mexico" rather than workers' rights themes.[210] There is no mention of "double standards" until the end of the litigation, when workers' rights activists issued a press release using the phrase and one activist is quoted as describing the case in terms of "double

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208. Rhode, *supra* note 1, at 139 (citing JOHN FISKE, MEDIA MATTERS: EVERYDAY CULTURE AND POLITICAL CHANGE (1994); JIMMIE L. REEVES & RICHARD CAMPBELL, CRACKED COVERAGE: TELEVISION NEWS, THE ANTI-COCAINE CRUSADE, AND THE REAGAN LEGACY (1994); Stuart Hall, *Culture, Media, and the 'Ideological Effect', in* MASS COMMUNICATION AND SOCIETY (James Curran et al. eds., 1977)).

209. *Id.* (citing Karen Garst, *Reporting on Surveys, Part II*, OR. ST. B. BULL., December 1996, at 39).

210. An example is: Press Release, Susan Mika, Maquiladora Lawsuit Scheduled for Trial (Mar. 20, 1997) (on file with the author).

standards" in an interview about the settlement with the media.[211] However, between the filing of the lawsuit and the settlement, the media had framed the litigation in this way several times.[212]

It is also interesting to note changes in the press releases issued in the *Pico* litigation. In the early days of the litigation and, indeed, before the lawsuit was even filed, workers' rights activists described the litigation in terms of the workers' personal dispute with Pico CEO Bernard Hitchcock and the global struggle for workers' rights.[213] By the end of the litigation, there is no longer any mention of Hitchcock. Furthermore, the global struggle for workers' rights is defined much more narrowly, in terms of whether the workers will eventually win the lawsuit on appeal.[214] In other words, like the media coverage, the activists' perceptions became more legalized as the case dragged on.

No press releases were issued by activists in conjunction with the *Alfaro* litigation. One activist, however, wrote an op-ed about the case when it was pending before the Texas Supreme Court.[215] Contrary to what we might expect given the dominance of the tort reform perspective in the news coverage and the activists' own statements about the case several years after it was settled, this op-ed reveals that the activist writing the article was cognizant of the importance of the workers' rights dimension of the case at the time that the lawsuit was brought.[216] Among other things, the article argues that because of increasing globalization, the fate of the Costa Rican farm workers suing in the *Alfaro* case and farm workers in Texas were closely intertwined.[217]

Similarly, statements by activists before the Texas legislature suggest that the activists connected with the *Alfaro* case perceived it as a workers' rights case at the time that the case was receiving a lot of press attention.[218] AFL-CIO President Joe Gunn, for example, repeatedly emphasized in his

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211. An example is: Romo, *supra* note 163.

212. A few examples of these are: Nathan, *supra* note 138, at 8 (describing the "double standards" between Maquiladoras and U.S. companies); Romo, *supra* note 163 (framing the *Mendoza* case as a "loud message to American maquila operators that double standards will not be tolerated when it comes to the safety of foreign workers").

213. *E.g.*, *South Korean Union Leaders*, *supra* note 114.

214. *See, e.g.*, Moriarty, *supra* note 121 (focusing on the legal claims addressing corporate and labor law after the case was heard before the United States Court of Appeals for the Second Circuit).

215. James C. Harrington, *Ignoring the People's Business*, TEX. LAW., Feb. 22, 1993, at 8.

216. *Id.*

217. *Id.*

218. *See Hearing on an Act Relating to Lawsuits Arising Outside or Brought by Persons Who Reside Outside of Texas: S.B. 220 Before the S. Comm. on Economic Development* 66th Sess. (1993) (statement of Joe Gunn, Pres., Tex. AFL-CIO) (commenting on the implications the post-*Alfaro* legislation would have for workers' rights).

testimony before the Texas legislature that *Alfaro* was an important workers' rights case with implications for workers in both countries.[219] When asked about the litigation several years later, however, these same people spontaneously described the litigation in "tort reform language."

While difficult to establish definitively, the implication is that the media's coverage of the litigation had some impact on how the general public, and workers' rights activists in particular, perceived the litigation and the political opportunities that it presented. It is important to recognize, however, that the activists may have influenced how the media reported on the cases as well. In this regard, it is worth noting that there is a surprising amount of congruence between the media's framing of the litigation and how activists are quoted in the news articles. This can be interpreted as evidence of the activists themselves shaping the media's framing of the litigation.

One example of this is in the coverage of the *Pico* case. Consistent with the change in coverage from an emphasis on the protests to a greater focus on the legal issues in the case, quotes from both of the parties and the activists also move from being protest-oriented to legalistic. Indeed, even the quotes from the corporate defendant in that case focus on the activists' protests and, for the most part, do not speak to the broader impact of the litigation on multinational liability.[220]

Similarly, the quotes of the interested parties on both sides of the *Mendoza* case track the "double standards" theme in the coverage of that case. One example is a quote from the attorney for the plaintiffs in *Mendoza*, where the attorney states that multinationals "don't place the same standards for safety for people in foreign countries,"[221] while the attorney for the defendant argued to the press that there was no "double standard" because "[i]n order for there to be a double standard, you have to have the same set of rules."[222]

But are these instances of the coverage tracking the quotes or of reporters selecting quotes to fit a pre-selected theme? The answer probably lies somewhere in between. In light of the fact that even the lawyers for the defense were drawn into talking about the *Mendoza* case in terms of double standards,[223] it seems likely that the media played some independent, institutional role in the framing of the case as about double standards for

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219. *Id.*

220. *See* Liem & Kim, *supra* note 109, at 57 (quoting Bernard Hitchcock as referring to the South Korean union leaders as "criminals and terrorists," claiming the shutdown was a result of the workers refusal to work).

221. Hernandez & Lee, *supra* note 140.

222. Self, *supra* note 44.

223. *Id.*

workers in and outside the United States. In sum, while the activities of those seeking to influence the media's coverage of the case may have influenced how the media reported on the litigation, the media's interpretation of the case is also relevant to understanding the activists' perceptions.

Interestingly, nearly everyone involved in the three cases had little sense of how the media reported on the cases and denied that it influenced them to any degree. Nearly everyone I interviewed in conjunction with the *Alfaro* case, for example, described the media coverage of the litigation as "favorable" or "very favorable." Several claimed that the articles focused largely on the working conditions of workers outside the United States. Similarly, people connected with the *Pico* case said that they saw "no bias" in the reporting on that case. In contrast, those involved in the *Mendoza* litigation viewed the local reporters as quite "conservative" and, at least initially, biased against them. In fact, as I noted above, the trial did seem to have some impact on the coverage of the *Mendoza* case, as did the legal rulings and the actions of activists close to the case.[224] It is also apparent that the legal rulings played some role in influencing perceptions of the litigation.[225] All this does not diminish, however, the relatively independent role that the media played in influencing how the litigation was perceived.

Several implications follow from acknowledging the media's important role in storytelling outside the courthouse doors. One is that the media play an important role in shaping legal outcomes. Clearly, in the case of *Alfaro*, the plaintiffs won the battle but lost the war. Indeed, the case provides an excellent example of how news stories can influence not only how a particular piece of litigation is perceived, but also how the general public views the legal profession as a whole. As Deborah Rhode put it, "[t]he way journalists frame their coverage helps reshape the legal world that they claim only to represent."[226] Or, to put it more bluntly, the media play a role in both the definition of legal problems and in their resolution.

As a practical matter, understanding which narratives dominate the broader political context is important for understanding which legal stories are likely to gain prominence in the public domain. This is especially true in cases that raise an issue of broad public interest. Because of this, practitioners might want to rethink the stories that they tell inside the courthouse with an ear to how they might be interpreted (and reinterpreted) in light of the institutional biases of the media and political discourses (such

224. *See supra* notes 179–80 and accompanying text.
225. *See supra* notes 170–71 and accompanying text.
226. Rhode, *supra* note 1, at 139.

as tort reform and globalization) that dominate the broader public policy agenda. In doing so, we must acknowledge that once legal discourse moves beyond the courthouse doors, traditional legal actors, such as judges and lawyers, have less control over the trajectory and content of the stories that reporters tell about law.

A. Some Suggestions for Future Research

To speak of the role that the media play in shaping how litigation is understood is to recognize the contributions that the media make to the construction of legal stories and ultimately legal consciousness. In the context of transnational workers' rights litigation, the media produced dramatically different stories about ostensibly similar cases. Because of the relationship between discourse and consciousness, the expectation is that variations in these stories would have had some impact on how the litigation was perceived. In fact, as I noted above, evidence suggests that the stories had precisely this effect.[227]

Both the novelty of transnational litigation and the limitations of the case study method, however, suggest a note of caution. While the three cases examined here suggest that the media play an important role in shaping the stories that we tell about law and legal tactics, in other cases the media may play a considerably less prominent role in this process. It is important to remember that transnational workers' rights litigation is a relatively new legal development that asserts a new, transnational conception of workers' rights. Moreover, it is not insignificant that from the perspective of the business community, transnational workers' rights litigation threatens to make the United States the "courthouse of the world" for disputes between multinational corporations and labor.[228] For both reasons, the media may simply be paying more attention to transnational workers' rights litigation and therefore be especially influential in shaping how these new legal tactics are portrayed and understood.

More than anything else, this study suggests the need for more research on the media in legal scholarship. More research on the relationship between media coverage and perceptions of the law would further the understanding of how the media's institutional interests may affect both the legal and political outcomes in high profile cases such as those studied here.

Future research on the media and law could also examine the media's effect in the shaping of legal consciousness more broadly. A growing body of public law scholarship demonstrates that perceptions of law influence

227. *See supra* note 226 and accompanying text.

228. Wiehl, *supra* note 43.

community dynamics.[229] Whether this influence exists might be determined by examining the relationship between the media and the construction of legal consciousness in different community settings.

A separate line of research might also investigate the assumed utility of publicity for law-based political movements. Until now, the conventional wisdom has been that the media are an important tool for activists seeking to build their mobilizing capacity in virtually any setting.[230] The highly adverse framing of the *Alfaro* case and the increasingly legalized media framing of the *Pico* case, however, raise some important questions about this assumption. As the experience in those cases suggests, under some circumstances the increased publicity may be more harmful than helpful for political activists seeking to organize in conjunction with legal tactics. Finally, further research may reveal what role the media play in determining which types of stories have more salience in the courtroom.

CONCLUSION

Storytelling plays an important role in the law, both inside and outside the courtroom. On the one hand, successful lawyers must craft a compelling story on behalf of their client inside the courtroom to persuade a judge or jury to find in their client's favor. On the other hand, outside the courtroom the lawyers have considerably less control and the media play an important role in determining which stories are told and how. As a result, lawyers have less control in setting the broader, legal-policy agenda.

The three cases examined here show the media's important role as an institutional player in the legal agenda-setting process. They also show how institutional biases and narratives help constitute the stories that are told about litigation outside the courthouse doors, sometimes in unexpected ways.

Journalists covering the *Alfaro* case claimed that the connection between *Alfaro* and tort reform was a "natural" one. Similarly, for reporters writing about the *Mendoza* case, the linkage between the murder of Lorena

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229. *See, e.g.*, CAROL J. GREENHOUSE ET AL., LAW AND COMMUNITY IN THREE AMERICAN TOWNS 139–40 (1994) (demonstrating how "different meanings of law encode the complex relationship between the local and the outside world" in the context of individual communities).

230. *See generally* ROGER W. COBB & CHARLES D. ELDER, PARTICIPATION IN AMERICAN POLITICS: THE DYNAMICS OF AGENDA-BUILDING 141–50 (2d ed. 1983) (demonstrating how media function to provide a conduit for issues, which are represented by symbols, to be communicated to the public for the purposes of mobilization); William A. Gamson & Gadi Wolfsfeld, *Movements and Media as Interacting Systems*, ANNALS AM. ACAD. POL. & SOC. SCI., July 1993, at 114, 114 ("argu[ing] for the importance of organization, professionalism, and strategic planning" on behalf of movement actors who must use the news media as a mechanism for promoting a viewpoint).

Mendoza, a relatively well-paid accountant in the maquiladoras, and the working conditions of blue-collar employees in the maquiladoras was equally obvious.[231] But, in fact, the very different framing of these ostensibly similar cases was neither natural nor obvious. The same can be said for the highly personalized reporting on the dispute in the *Pico* case. As the analysis above suggests, media coverage of transnational workers' rights litigation, like media coverage of other political phenomena, is influenced heavily by the media's institutional interests in reporting on highly dramatic and personal stories. These stories feature official sources within thematic frames, such as globalization, that reflect the broader political context in which the litigation is brought.

In turn, these institutional biases impact, sometimes quite negatively, on how the public perceives litigation, legal tactics, and the profession as a whole. Because of this, we ought to be paying much greater attention to the role of the media in framing legal disputes, particularly in cases involving important questions of public policy. It is still true that "whoever tells the best story wins."[232] However, in the broader policy domain, the winners are determined not only by juries and judges, but also by the general public who read about the litigation in the daily news.

231. Nathan, *supra* note 138, at 11–12 (recognizing that Mendoza was paid more than the average factory worker while detailing the poor working conditions confronted by the factory workers).

232. Bennett, *supra* note 4, at 280.