



## Media distortions in the public liability debate

**M**arshall McLuhan, the Canadian commentator on popular media culture, argued that the message was determined by the medium used to convey it. It was a radical and difficult idea when first propounded, but his 'the medium is the message' claim has stood the test of time as a profound insight into the workings of mass media. Media is a jungle in which 'yarns' briefly compete, in true Darwinian fashion, with each other for life.

But not just any yarn will be permitted to crawl out of this primal soup! Oh no, the yarn must first twang an emotional chord in the reader and must not contain tedious facts that detract from that tune. If it is for print media, it must be capable of being summarised in the headline, or at least the first paragraph, because many people read no further. If it is for TV, it must have a strong visual element, must be even pithier than the printed version, and (above all) must not be too 'old'. Old, for TV, means already covered in the print media. Old for the print media

means already covered on TV.

Little wonder then that Joe Hockey's vacuous claims about people 'falling off chairs', 'greedy lawyers' on 'no-win, no-fee' terms, and plaintiffs trying it on to win a 'jackpot' in common law damages, got a run. Indeed, a run that would have done Phar Lap proud. Little wonder also that it took a struggle of Herculean proportions to convince the media that there was another side to this story.

Admittedly, a less emotional and much more mundane angle, namely that the Hockey sired yarns galloping around the paddock were simply untrue. But be assured, the truth has never spoiled a good myth and the Hockey yarns are now out there nuzzling into the 'conventional wisdom' of millions of readers outraged by the fact that greedy lawyers are the real threat to 'our way of life.' It must be true, the headlines say it is!

What then is the reason for so much superficiality and triviality in 'news'? Why do urban myths, like the 'litigation explosion' and 'greedy lawyers on contingency fees' prove so resistant in the face of ordinary truth? Some claim it is

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because the force of truth and justice (us) are out-gunned by the limitless propaganda resources of the evil empire (such as insurers, multi-national corporations and Colombian drug barons, Darth Vader, etc). I think this explanation also trivialises reality. I believe reality is stranger by several orders of magnitude again.

Richard Dawkins, the famous English biologist, argues that attractive ideas - he calls them *memes* - spread within society and infect individuals like viruses. To Dawkins, memes define myths, fashions, concepts, mission statements, logos and even prejudices. I wonder what McLuhan would have made of Dawkin's memes? Would he consider them to be a cause or an effect of McLuhan's 'medium'?

I for one am convinced Dawkin's memes exist. More than that, I think I now know how they work. They function like mass-produced software that we use to drive our brains when on autopilot. Memes are the routines that make us think we are profound when we drink too much at barbecues. From time to time we all use memes instead of knowledge, just like all law students employ headnotes instead of actually reading the cases!

Memes are coping strategies that enable us to unconsciously sync with the herd mentality of modern society. They are what we use for thought when original thought is too hard to do. It is 'thought-free-ware' we download into our RAM-starved brains to fill them with easy, off-the-shelf, consumer oriented, pre-packaged, fast-food thoughts. They are Clayton's thoughts - the thoughts we have when we are not really thinking at all.

The good news is that not everyone is equally susceptible to every meme. They hunt in packs and form ensembles with other compatible memes. 'Like attracts like', 'birds of a feather stick together', 'blue and green should never be seen' and 'oil and water don't mix' (all memes in themselves) encapsulate this

group behaviour. New memes must fit in with those that are already out there. Some memes inoculate us against others, just as being a Liberal inoculates us against Labour and being Catholic provides some protection against conversion to Zoroastrianism.

If APLA is to counter lawyer-bashing anti-citizens rights memes then it must breed some catchy little memes of its own. It must fight fire with fire (oops, sorry - that's another meme). Being both right and principled is, as the philosophers say, a necessary but not sufficient condition for the task we face.

Citizen's rights are something that most of us think we understand. As lawyers we have all been exposed to the 'give me liberty or give me death' and the 'price of liberty is eternal vigilance' genre. But are these the building blocks that ordinary people still use to construct their thoughts on freedom and civil rights? If so, are these concepts buried too deep beneath the detritus of the everyday banality of work and last night's episode of *Survivor* to be easily accessible? Does the public really give a toss about their rights? We need to know, because if they don't, the Clapham omnibus is headed for a bad neighbourhood and there are no stops in between!

Civil rights really do keep everyone safe and comfortable in our society, just as a cabin in the snow country keeps its occupants warm in winter. At the moment the occupants of the cabin are reacting badly to the temporary cold-front that has hit. They think it might be nice to prise up a couple of floorboards and build a nice fire to warm their pinkies. It seems so easy to do. Small business anticipates the nice warm glow the fire will bring them, while the insurance industry sits on their shoulders like Jiminy Cricket (or Lucifer to Faust) whispering 'just do it'.

But they are blind to the fact that when the warm embers die down, the freezing wind will blow through the hole in the floor and turn their toes

blue. The temperature will drop, and all the occupants will start to shiver. The only solution they will see will be the wrong one. They will widen aforesaid hole by ripping up some more floorboards to fuel yet another fire. Before long, the floor and walls of the cabin will all be gone, consumed in an orgy of gluttony, the fire will go out, and the occupants will then be exposed to the harsh reality of a world without rights!

So is it a lost cause? Is there anything we can do to stop this from happening? How can we fight the misconceptions and untruths that have infected the public consciousness so completely?

Well for one thing, we have the increasingly strong lobbying power of APLA itself. As detailed in the *Activate* feature at the end of this issue, APLA has been achieving fantastic success in reaching all the key groups involved in this debate. APLA has briefed journalists all around the country, and the media tide has undoubtedly turned in our direction as a result. The blatant lawyer-bashing by the Insurance Council of Australia and some other groups has stopped, and miraculous as it may seem, some recognition of the *real* factors driving up public liability insurance premiums has started to slowly filter through.

But there's still a long way to go.

The debate is unlikely to go away and the criticism of lawyers will no doubt continue. But plaintiff lawyers will not allow name-calling by politicians, insurers and the media to deter us from our pursuit of justice for our clients and to contribute to keeping society safe for everyone. We'll keep fighting on behalf of the public to keep their civil rights - even if they don't know quite yet just how important those rights are.

Lets hope they learn before we're all left out in the cold. ■

Rob Davis