

Opinion: N.J. texting ruling not what you think

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Text a driver and pay for their crash?

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CNN —

The headlines and blogs are all abuzz with the latest news: If a driver who's texting gets in an accident and you sent the text, you can be arrested! Terrible, right?

Actually, it's not true, despite what you may have been told by people who have seen two episodes of some lawyer show and think they are qualified to be legal analysts. Such ignorance about the law feeds misinformation that grows on itself, doubles back and makes us all dumber.

For people like me, lawyers, that is a wonderful thing. Why? Because people who have no idea what they are talking about wind up making simple legal situations complicated, ramping up the billable hours for all of us.



Marc Randazza

Remember the McDonald's hot-coffee lawsuit? That case, maligned from coast to coast, stands in the public mind as the one that says, "If you are stupid enough to spill hot coffee on yourself, you deserve hundreds of millions of dollars."

Anyone who knows anything about the law will tell you that the *real* ruling came down for the plaintiff because McDonald's had been warned time and again that it was going to hurt somebody if it didn't do something about the scalding temperature at which it served its

coffee. But, in the name of more profits, it ignored the warnings. Even thereafter, McDonalds had the opportunity to pay the 81-year-old woman's medical bills – she was seriously injured, with third-degree burns – but it acted arrogantly.

McDonald's did something wrong. When it was called to task for it, the punishment had to fit the defendant. Fining McDonalds \$1,000 just wasn't going to do it. Hitting McDonalds with a huge multimillion-dollar settlement? That did it. (The injured woman's \$2.86 million jury award was later reduced, however, by a judge to \$640,000.)

So what has that to do with the New Jersey texting case?

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The New Jersey texting case will likely lead to more boneheads who get their legal acumen from “My Cousin Vinny” expounding on its meaning. This chorus shrieks that the New Jersey decision makes you liable for sending a text. But the court actually held that the person doing the texting *was not* liable in this instance.



The court held that *theoretically*, someone could be held liable for sending a text to a driver. But the ruling was very clear, and very, very limited:

“We hold that the sender of a text message could potentially be liable if an accident is caused by texting but only if the sender knew or had special reason to know that the recipient would view the text while driving and thus be distracted.”

In other words, yes, you can be held responsible if you cause an accident by sending a text message. But only *if you knew* that the recipient would look at the text message while driving. If you had any reason to have any doubt in your mind, then you will likely not be held liable.

So if you send a text message to someone, you don't need to call your lawyer or your insurance company. But if you send someone a text message and they respond back "driving, leave me alone" and then you keep sending text messages, perhaps you might be found liable.

The only thing that is certain is that this case, which makes plenty of sense, will serve to continue to allow the common law to grow, while those who would like to bring ignorance to our knowledge of the legal system will continue to succeed.

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