The Effects of Defendant Conduct on Jury Damage Awards

Edith Greene, Michael Johns, and Alison Smith
University of Colorado at Colorado Springs

Laws of negligence dictate that jurors’ decisions about damages be influenced by the severity of plaintiffs’ injuries and not by the reprehensibility of defendants’ conduct. The authors simulated an automobile negligence trial to assess whether jurors’ decisions are in accord with those expectations. Conduct of the defendant and severity of the plaintiff’s injuries were manipulated. Juries listened to the evidence, completed predeliberation questionnaires, deliberated as a jury, and completed postdeliberation questionnaires. Severity of the plaintiff’s injury had a strong impact on damage awards, but evidence related to the defendant’s conduct was also influential, particularly when the plaintiff’s injuries were mild. Here, jurors with any conduct-related evidence gave larger damage awards than jurors with no conduct-related evidence. Findings suggest an effect of defendant conduct on damage awards that may be mediated by judgments that the defendant was negligent.

Juries in virtually all civil negligence trials are expected to abide by the unspoken rule that liability and damages are separate issues, each informed by a unique set of evidence. For example, judgments about the defendant’s liability are to be based on the actions that led to an accident, and not on the outcome of the accident. Several recent studies (e.g., Bornstein, 1998; Greene, Johns, & Bowman, 1999; Robbenolt, in press) have shown, however, that jurors do not neatly compartmentalize their decision making as the law presumes. Rather, on occasion, they base their determinations of liability on legally irrelevant factors related to the consequences of the accident.

The laws of negligence also dictate that if the defendant has been found liable, then the judge or jury is to assess damages to compensate for lost income, reasonable medical expenses, and any pain and suffering that is attributable to the injury. Kalven, writing about the University of Chicago Jury Project in 1958, stated the rule:

If the trier [of fact] is persuaded that a preponderance [of evidence], however narrowly, favors liability he is then to award the full damages proved. He is not, that is, to discount damages because of his doubts as to liability. And equally . . . he is not to increase damages because of his view of the degree of fault in the defendant’s conduct. (p. 165)

In theory, after finding the defendant liable for negligence, jurors are no longer to focus on the defendant’s actions but are to turn to the plaintiff’s injuries and attempt to restore him or her to a preinjury level of functioning. The rules of damages assume that compensation will be related to the extent of the plaintiff’s injuries and not to the manner in which he or she was hurt nor to sentiments about the defendant’s behavior. The purpose of this study was to evaluate that assumption. In particular, we assessed whether jury decisions about damages are influenced only by theoretically relevant evidence regarding the extent and severity of the plaintiff’s injury or whether theoretically irrelevant evidence related to the defendant’s conduct also plays a role.

Related Research

Data on the effects of the defendant’s behavior on jurors’ damage awards are mixed. Evidence from several studies suggests that damage awards may indeed be influenced by evidence of the defendant’s conduct. For example, Broeder (1959) varied the evidence relating to liability of the defendant in a mock negligence case. For half the juries, liability was very clear and for the other half, less clear. The injuries to the plaintiff were identical in the two groups. Evidence of the defendant’s liability influenced decisions about damages: The weaker the proof of liability, the lower the award. Chapman and Bornstein (1996) asked mock jurors to make judgments of compensation in a personal injury case. The strength of the evidence on liability influenced the compensation they awarded. In another experimental study, Feigenson, Park, and Salovey (1999) showed that the amount of damages awarded in comparative negligence cases was influenced by the blameworthiness of both the plaintiff and the defendant. Finally, in posttrial interviews with actual jurors, Vidmar (1995) found that jurors who had reservations about liability showed a preference for lower awards and that during their discussions about damages, jurors took note of defendants’ admissions of liability.

These studies suggest that in assessing damages, jurors may have difficulty ignoring irrelevant evidence pertaining to the defendant’s liability. However, at least two studies have shown that jurors are capable of determining damages without being unduly influenced by evidence related to the defendant’s conduct. In a jury simulation study, Cather, Greene, and Durham (1996) found that jurors’ decisions about compensation were appropriately influenced by the severity of the plaintiff’s injury but not by the
culpability of the defendant. More recently, Saks, Diamond, and Landsman (1999) found that jurors failed to recall, much less to employ, information about the defendant in situations in which such information was highly relevant, namely in assessing punitive damages.\footnote{Punitive damages are awarded infrequently. They are intended to punish the defendant and to deter others from similar behavior. They are not the focus of this article.}

The intent of the present study was to attempt to reconcile these inconsistent findings and to do so using a more realistic jury analogue methodology than has typically been employed in past research. We examined the effects of the defendant’s conduct on compensatory damage awards\footnote{Compensatory damages are intended to compensate the plaintiff for her or his losses, including lost wages and benefits; hospitalization and continuing medical costs; and emotional impairment, including pain and suffering.} in an automobile negligence case. We manipulated information about the defendant’s conduct by describing (a) mildly careless conduct, (b) very careless conduct, or (c) no conduct. We also manipulated the severity of the plaintiff’s injuries by describing either (a) mild injuries or (b) severe injuries. The key dependent variables involved judgments related to damage awards (i.e., whether and how much to award an injured plaintiff).

According to the law of torts, damages should be influenced only by the severity of the plaintiff’s injuries and not by the reprehensibility of the defendant’s conduct. However, we hypothesized that jurors may have difficulty disregarding information about the defendant’s actions. Thus, jurors with evidence of very careless conduct by the defendant might be more likely than jurors with evidence of mild carelessness to (a) determine that the plaintiff had been harmed, (b) determine that the plaintiff should receive monetary compensation, and (c) award more money. In addition, both groups would be more likely to assess harm and to award damages and would award more money than would jurors with no conduct-related evidence.

Why might jurors merge information about conduct into their judgments of damages? Saks and Kidd (1980) argued that jurors might be especially likely to rely on cognitive heuristics or rules of thumb to guide their decision making because their task involves a complex set of judgments about the weight, relationship, and probative value of discrete pieces of evidence. We propose that jurors’ judgments of damages in negligence cases may be affected by a particular heuristic known as the hindsight bias (Fischhoff, 1975). According to the hindsight bias, people find it difficult to disregard information that they already possess and to reproduce the judgments they would have made without that information. In terms of determining compensation, jurors are expected to decide on damages by considering the severity of the plaintiff’s injuries and not by considering, in hindsight, the conduct of the defendant. It may be unreasonable to expect that jurors who have heard evidence related to the defendant’s conduct can effectively ignore that information when making a judgment about damages.

The Present Study

This study examined the possibility that jurors use evidence of the defendant’s conduct in their decisions about compensation for the plaintiff. We presented a condensed automobile negligence case in which we varied the conduct of the defendant and the severity of the plaintiff’s injuries. After hearing an audiotape of the trial, mock jurors first completed an individual predeliberation questionnaire and then deliberated with other jurors to reach a verdict on liability and damages. Finally, after deliberations, jurors completed individual postdeliberation questionnaires.

We were particularly interested in examining the notion that deliberations would serve as a curative or debiasing technique. In theory, juries may be less likely than individual jurors to attend to inappropriate evidence. When publicly airing their judgments, jurors might be more likely to rely on relevant evidence and avoid use of irrelevant information. In addition, during discussion, jurors can correct each others’ misuse of evidence. Indeed, other researchers (e.g., Kaplan & Miller, 1978; Kerwin & Shaffer, 1994) have shown that deliberation can reduce biases that operate at the individual juror level.

To assess the possibility that jurors and juries fuse evidence of conduct with evidence concerning the plaintiff’s injuries in determining compensatory damages, we examined jurors’ predeliberation damage awards and judgments of harm (“To what extent was the plaintiff harmed by the defendant’s action?”) as well as considerations underlying these judgments. We also examined jury awards and, to gauge the effects of deliberation, evaluated postdeliberation damage awards, judgments of harm, and other considerations.

Method

Participants

The participants were 561 jury-eligible adults drawn from a moderately sized city. They ranged in age from 18 to 87 (mean age = 45.42 years). Gender was split nearly evenly between men (51%) and women (49%). All participants were screened for jury eligibility by meeting the following criteria: (a) They were either registered to vote or had a valid state driver’s license, (b) they were able to write and understand English, and (c) they were at least 18 years old. Advertisements soliciting participation were placed in local newspapers, periodicals, and weekly entertainment guides and were broadcast as public service announcements on local radio stations. After respondents contacted our office and were screened for jury eligibility, they were randomly assigned to one of the six cells of the design. Because some scheduled participants failed to appear, cell sizes ranged from 86 to 100 mock jurors (15 five- to eight-person juries per cell).

Materials

Trial Summaries

A negligence case was chosen based on the following criteria: (a) only one plaintiff, (b) a noncorporate defendant, (c) the plaintiff did not bear any responsibility for the accident (i.e., no comparative negligence), and (d) conduct and outcome manipulations that were feasible and realistic. Trial summaries were developed from the case of Jeantonne v. Landau (1997).

The trial summaries described a situation in which an automobile driver (plaintiff) sued the driver of a semi truck (defendant) for compensatory damages. The facts of the case are as follows: The driver of the semi truck was forced to negotiate road conditions created by a construction area. The construction area forced the lanes on a four-lane highway to merge into two lanes, with the two remaining lanes diverted around the construction site. In this area of the highway, the defendant lost control of his truck and
crashed through the guardrail. The cab of the semi truck crossed into the oncoming lanes of traffic and struck the plaintiff’s automobile. The plaintiff suffered injuries when the truck collided with his automobile.

On the basis of these facts, and for purposes of pretesting, we created four 500-word trial summaries that manipulated the conduct of the defendant and the severity of the injuries sustained by the plaintiff. The defendant’s conduct was manipulated by varying his speed, the number of lane changes, the braking action he undertook before the accident, and the results of a breath analysis test. The speed limit was designated as 65 miles per hour (104.61 kilometers per hour) on the highway preceding the construction zone and 50 miles per hour (80.47 kilometers per hour) in the construction zone. In the very careless conduct scenario, the truck was traveling near the speed limit with one lane change witnessed before the accident. In the very careless conduct scenario, the truck was traveling approximately 10 miles per hour (16.09 kilometers per hour) over the speed limit for both sections of the highway. In this condition, two lane changes were witnessed before the accident, and a Breathalyzer test revealed that the defendant had consumed alcohol but was not legally intoxicated at the time of the accident. These speeds and lane changes were supported by both lay- and expert-witness testimonies in the trial summaries.

The injury sustained by the plaintiff was varied as well. In the mild injury condition, the plaintiff suffered a fractured parietal bone. This trauma resulted in the plaintiff receiving a concussion as well as soft-tissue injury to the cervical spine, which caused recurrent back and neck pain. In the severe injury condition, the plaintiff received a serious head injury, a broken leg, and bruised ribs. The plaintiff also suffered complications while recovering from these injuries. Written summaries of these facts were pretested to ensure that the manipulations of injury severity and defendant conduct were being perceived as intended.

**Manipulation Check**

The manipulations were pretested on psychology students from a moderately sized university. Participants were given questionnaires pertaining to either the conduct or the injury manipulations. Forty-one participants were randomly assigned to one of the two conduct conditions (mildly careless conduct or very careless conduct) and read a conduct summary. After reading the summary, the participants rated the perceived recklessness of the defendant's conduct by answering these questions: “How reckless was the defendant’s driving?”, “To what extent was the defendant driving defensively?”, “To what extent did the defendant take safety precautions?”, and “Overall, how reprehensible was the defendant’s conduct?” Respondents used an 11-point rating scale (1 = not at all to 11 = extremely) to judge the conduct manipulations.

Ratings for reckless were higher in the very careless conduct condition (M = 6.68, SD = 1.42) than in the mildly careless conduct condition (M = 4.14, SD = 2.10), t(39) = 4.48, p < .01, d = 1.4. Ratings for safety precautions were higher in the mildly careless conduct condition (M = 4.64, SD = 2.01) than in the very careless conduct condition (M = 2.84, SD = 1.17), t(34.4) = 3.55, p < .01, d = 1.1. Ratings for driving defensively were not significantly different (p > .3). Ratings for overall reprehensibility of the defendant’s conduct were higher in the very careless conduct condition (M = 7.95, SD = 2.20) than in the mildly careless conduct condition (M = 4.82, SD = 2.42), t(39) = 4.30, p < .01, d = 1.38.

We also tested the manipulations of injury severity. Thirty-nine participants were randomly assigned to one of the two injury conditions (mild injury or severe injury) and read an injury summary. After reading the summary, the participants rated the perceived severity of the plaintiff’s injuries by answering three questions: “To what degree was the plaintiff permanently disabled?”, “How much physical pain has the plaintiff suffered?”, and “Overall, how serious are the plaintiff’s injuries?” The same 11-point rating scale was used for these questions.

Ratings for permanently disabled were higher in the severe injury condition (M = 8.25, SD = 2.17) than in the mild injury condition (M = 5.53, SD = 3.55), t(29.5) = 2.87, p < .01, d = 0.95. Ratings for physical pain were also higher in the severe injury condition (M = 8.20, SD = 1.54) than in the mild injury condition (M = 6.79, SD = 2.64), t(37) = 2.05, p < .05, d = 0.67. Ratings for serious were higher in the severe injury condition (M = 8.90, SD = 1.17) than in the mild injury condition (M = 7.05, SD = 2.82), t(23.7) = 2.65, p < .01, d = 0.88.

Six separate trial summaries were then scripted that included significantly more detail (e.g., testimony from a police officer, eyewitnesses, the defendant, expert accident reconstructionists, and medical experts) and that involved different actors playing different roles. Four of these summaries combined evidence related to conduct and injuries (mildly careless conduct—severe injury, very careless conduct—severe injury, mildly careless conduct—mild injury, and very careless conduct—mild injury). Two summaries served as control conditions (no conduct evidence—mild injury, no conduct evidence—severe injury) to assess whether damage awards would be augmented when evidence of the defendant’s conduct was provided.

The following pattern jury instructions were included at the end of every trial:

Negligence means a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect others from bodily injury. (Colorado Jury Instructions, 1988, p. 24)

The burden of proof is on the plaintiff to establish his case by a preponderance of the evidence. A fact or proposition has been proved by a "preponderance of the evidence" if, considering all the evidence, you find it to be more probably true than not. If a party fails to meet his or her burden of proof or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must resolve the question against the party who has the burden of proof and in favor of the opposing party. (Colorado Jury Instructions, 1988, p. 57)

In determining damages, you should consider the following: a. any noneconomic losses or injuries incurred to the present time or which will probably be incurred in the future, including: pain and suffering, inconvenience, emotional stress, and impairment of the quality of life; and b. any economic losses incurred to the present time, or which will probably be incurred in the future, including: loss of earnings or impairment of earning capacity; and reasonable and necessary medical, hospital, and other expenses. (Colorado Jury Instructions, 1988 pp. 31–32)

The final versions of the trial summaries were approximately 10 single-spaced pages in length.

The trial summaries were presented both by audiotape and in written format so participants could read along as various witnesses testified. Because this simulation was based on an actual case, we were able to show photographs of the plaintiff’s and defendant’s vehicles before and after the accident. As in an actual case, we also prepared a pictorial reconstruction of the accident scene to allow jurors to see where various events occurred. The diagram depicted the manner in which the lanes of traffic were forced to merge, the location of the construction zone, the skid marks left by the defendant’s vehicle, and the point where the defendant’s truck impacted the median divider and the plaintiff’s vehicle.

**Questionnaires**

All jurors completed individual predeliberation questionnaires. The first question for participants in the conduct conditions asked for a judgment of the defendant’s liability. The second question for these jurors (and the first

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2 These materials are available from the authors.
for jurors in the no-conduct conditions) asked the extent to which the plaintiff had been harmed. Subsequent questions asked whether the plaintiff should receive damages and in what amount. We also asked mock jurors to rate the extent to which, when deciding on the amount of damages, they were motivated by various factors (e.g., punishing the defendant, compensating the plaintiff for pain and suffering). Finally, we asked several questions about the plaintiff and his injury (e.g., “How much sympathy do you feel for the plaintiff?”), “How much physical suffering has the plaintiff endured?”). After deliberations, each juror completed a jury verdict form that asked for a negligence judgment (this question was asked of juries in the conduct conditions only), a decision about whether the plaintiff should be awarded damages, and the amount of damages the jury wished to award.

Finally, each juror completed an individual postdeliberation questionnaire that repeated many questions from the predeliberation questionnaire. This procedure allowed us to examine the impact of jury deliberations on judgments of damages. Participants were instructed that they were free to give any response they wished to questions on the postdeliberation questionnaire and need not endorse the responses they had given earlier or the verdict delivered by their jury.

**Procedure**

On arrival, participants were asked to complete an informed consent form. Between 10 and 16 jurors read and listened to one of the six trial summaries as a group. After the participants had heard all the trial evidence and viewed the supplementary material, they heard instructions from the judge and were then randomly assigned to smaller groups (juries) ranging in size from 5 to 8. The mock jurors then filled out the individual predeliberation questionnaire. When this questionnaire was completed, the participants were instructed to deliberate as a jury for up to 1 hr. The deliberations were videotaped for subsequent analysis. After deliberating, the individual jurors answered the postdeliberation questionnaire, were debriefed, and were paid $25 for participating.

**Results**

**Predeliberation Juror Questionnaire**

**Negligence Judgments**

To replicate actual courtroom procedures, we first asked jurors who had received conduct evidence (either mildly careless or very careless) to decide whether the defendant should be found negligent (yes or no). These decisions were analyzed with a log-linear analysis for multidimensional contingency tables. The model of best fit between observed and expected frequencies revealed a significant effect of conduct, $G^2(4, N = 377) = 1.66, p = .8$. As expected, participants were more likely to find the defendant negligent when his conduct was very careless (91%) than when his conduct was only mildly careless (53%), $\chi^2(1, N = 377) = 7.38$, $\gamma = 7.38$. This pattern of results is important in establishing that participants who received different levels of conduct evidence perceived the conduct manipulations differently.

**Damages-Related Decisions**

In an actual negligence case, only those jurors who find the defendant negligent have the opportunity to determine damages. Accordingly, our analyses of various measures related to damages (e.g., “To what extent was the plaintiff harmed?”), “Should the plaintiff be awarded damages?”, “In what amount?”) were predicated on a finding of negligence. In other words, we report data on damages only from those jurors in the two conduct conditions who found the defendant negligent (as well as all of the jurors in the no-conduct control conditions). As a result, 91 participants in the mildly careless conduct condition and 17 participants in the very careless conduct condition were excluded from these analyses. Resulting cell sizes are shown in Table 1.

**Judgments of harm.** This set of analyses examined whether mock jurors’ decisions about the extent to which the plaintiff was harmed were influenced by evidence related to the defendant’s conduct. Would jurors with evidence of very careless conduct by the defendant perceive the plaintiff as more seriously harmed than would jurors with evidence of mildly careless conduct or no conduct-related evidence?

We asked jurors “To what extent was the plaintiff harmed?” using an 11-point scale (1 = not at all and 11 = extremely). Responses were analyzed with a $2 \times 3$ between-subjects analysis of variance (ANOVA) that revealed a main effect of conduct, $F(2, 447) = 13.72, p < .001, \eta^2 = .06$, a main effect of injury, $F(1, 447) = 218.32, p < .001, \eta^2 = .33$; and an interaction, $F(2, 447) = 3.32, p < .05, \eta^2 = .02$. The interaction was further analyzed with a Tukey’s honestly significant difference (HSD) pairwise comparison test, revealing that mean harm ratings were highest when mock jurors heard evidence of severe injuries, across all levels of conduct evidence. Conduct evidence had the greatest impact on harm ratings when jurors heard evidence that the plaintiff’s injuries were mild. In these conditions, jurors who heard evidence that the defendant’s conduct was very careless ($M = 7.32$) and mildly careless ($M = 7.28$) assessed more harm to the plaintiff than did jurors who had not received any information about the defendant’s conduct ($M = 6.29$). This pattern indicates that as predicted, information about the defendant’s conduct was inappropriately factored into jurors’ assessments of harm to the plaintiff, most notably when the plaintiff had been mildly injured. These means and standard deviations are shown in Table 2.

**Judgments of whether to award damages.** This set of analyses examined whether jurors’ judgments about awarding damages were influenced by evidence pertaining to the defendant’s conduct. Would jurors with evidence of careless conduct by the defendant be more likely to award damages than jurors without conduct-related evidence? As in an actual case, we asked jurors whether the plaintiff should receive a monetary award to compensate him for his injuries. This yes-or-no judgment was analyzed with a three-way log-linear model for multidimensional contingency tables. Responses came only from participants who determined that the defendant was negligent.

Although nearly all of these participants decided that the plaintiff was entitled to damages, the model of best fit between ob-

<table>
<thead>
<tr>
<th>Defendant’s conduct</th>
<th>Level of injury</th>
<th>No conduct evidence</th>
<th>Mildly careless</th>
<th>Very careless</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>94</td>
<td>55</td>
<td>88</td>
<td></td>
</tr>
<tr>
<td>Mild</td>
<td>90</td>
<td>47</td>
<td>77</td>
<td></td>
</tr>
</tbody>
</table>
served and expected frequencies revealed significant main effects of conduct and injury, $G^2(4, N = 453) = 1.15, p > .08$. Of the jurors who received any conduct evidence, 99% decided that the plaintiff should receive a damage award, as did 96% of jurors who did not hear conduct evidence, $X^2(2, N = 453) = 6.61, p < .05, \chi^2 = 1.77$. Among the jurors who received evidence of severe injuries, 99% decided that the plaintiff should receive damages, as did 96% of jurors with evidence of mild injuries, $X^2(1, N = 453) = 4.38, p < .05, \chi^2 = 1.45$.

**Amount of damages.** Mock jurors who decided that the defendant was negligent and that the plaintiff should receive damages were then asked how much money should be awarded. They chose a number on an 11-point dollar amount scale. Past research has shown that monetary awards often result in positively skewed distributions that require either transformations or deletion of extreme values or both. The scale that we developed for this question was essentially a pretransformed scale. The dollar amounts in the scale (1 = nothing; 2 = $1-$12,000; 3 = $12,001-$25,000; 4 = $25,001-$50,000; 5 = $50,001-$100,000; 6 = $100,001-$250,000; 7 = $250,001-$500,000; 8 = $500,001-$1 million; 9 = $1 million-$2 million; 10 = $2 million-$4 million; 11 = more than $4 million) are approximately interval when converted to logarithmic values (Stevens, 1958). These data were analyzed with a 3 (conduct) × 2 (injury severity) between-subjects factorial ANOVA.

The ANOVA revealed an effect of conduct, $F(2, 445) = 15.87, p < .001, \eta^2 = .07$; an effect of injury, $F(1, 445) = 126.20, p < .001, \eta^2 = .22$; and a Conduct × Injury interaction, $F(2, 445) = 4.73, p < .01, \eta^2 = .02$. The interaction was further analyzed with an HSD pairwise comparison test. Analysis of the interaction revealed that as predicted, mean monetary awards were highest when mock jurors heard evidence of severe injuries, across all levels of conduct evidence. Conduct evidence appeared to have the greatest impact on monetary awards when jurors heard evidence that the plaintiff’s injuries were mild. Jurors who heard evidence that the defendant’s conduct was very careless ($M = 5.63$) and mildly careless ($M = 5.96$) gave larger monetary awards to the plaintiff with mild injuries than did jurors who received no information about the defendant’s conduct ($M = 4.24$). This finding suggests that jurors who hear any conduct evidence factor that information into their damage award and give larger monetary awards, as compared with jurors who have no evidence related to the defendant’s conduct. The extent of the defendant’s carelessness is apparently irrelevant. Means and standard deviations are displayed in Table 3.

### Table 3

**Means and Standard Deviations for Predeliberation Monetary Damage Awards**

<table>
<thead>
<tr>
<th>Injury</th>
<th>No conduct evidence</th>
<th>Mildly careless</th>
<th>Very careless</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe ($M = 7.27$)</td>
<td>7.06 (2.01)</td>
<td>7.58 (2.02)</td>
<td>7.31 (1.78)</td>
</tr>
<tr>
<td>Mild ($M = 5.13$)</td>
<td>4.24 (1.78)</td>
<td>5.96 (1.72)</td>
<td>5.63 (1.71)</td>
</tr>
<tr>
<td>Total</td>
<td>5.69</td>
<td>6.83</td>
<td>6.51</td>
</tr>
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</table>

**Note.** Ratings were on an 11-point scale, where 1 = nothing and 11 = more than $4 million. Means with different subscripts are significantly different ($p < .05$).

**Secondary Analyses.** A secondary set of analyses explored the process by which mock jurors’ decisions about damages were influenced by evidence related to the defendant’s conduct. In particular, we examined the independent effects of conduct evidence and injury evidence on questions related to motivations for awarding damages and perceptions of the plaintiff.

**Motivations for awarding damages.** To assess the possible motives underlying their damage awards, we asked jurors to rate the extent to which they considered six different factors when deciding on the amount of damages to award the plaintiff. These factors included four questions related to the defendant’s conduct: “To what extent did you consider punishing the defendant?”, “To what extent did you consider deterring others from similar conduct?”, “To what extent did you consider making the defendant take responsibility for his actions?”. In theory, these issues should be irrelevant to damage award decisions and should not have been considered by jurors in determining an award. However, if damage awards had been motivated by inappropriate considerations related to the defendant’s conduct, then jurors might have given higher ratings to conduct-related items when the conduct was careless.

We also asked two questions related to the plaintiff’s injuries: “To what extent did you consider compensating the plaintiff for his economic losses?” and “To what extent did you consider compensating the plaintiff for his pain and suffering?”, and these issues are highly relevant to damage assessments. For all motivation questions, jurors responded using a 7-point scale (1 = not at all, 7 = a lot). Data from each of the six questions were analyzed with a 2 (injury) × 3 (conduct) between-subjects ANOVA.

The mean responses to the four conduct questions were in the 2 to 4 range, indicating that jurors perceived themselves as giving only moderate consideration to these issues when awarding damages. Analyses of variance for the four conduct-related questions all revealed main effects of conduct: punishing, $F(2, 443) = 9.88, p < .01$; deterring, $F(2, 440) = 9.67, p < .01$; blaming, $F(2, 442) = 30.46, p < .01$; and responsibility, $F(2, 441) = 23.78, p < .01$. These effects were further analyzed with an HSD test for pairwise comparisons. The analyses revealed identical mean patterns for each question: Jurors rated the four conduct-related considerations higher when they had evidence of the defendant’s conduct than when no conduct evidence was presented. Means and standard deviations are presented in Table 4.
Table 4

<table>
<thead>
<tr>
<th>Defendant’s conduct</th>
<th>Injury</th>
<th>No conduct evidence</th>
<th>Mildly careless</th>
<th>Very careless</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1. Punishing the defendant</td>
<td></td>
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<tr>
<td>Severe (M = 2.56)</td>
<td>2.20 (1.53)</td>
<td>2.82 (1.82)</td>
<td>2.80 (1.67)</td>
<td></td>
</tr>
<tr>
<td>Mild (M = 2.32)</td>
<td>1.88 (1.28)</td>
<td>2.60 (1.60)</td>
<td>2.66 (1.70)</td>
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</tr>
<tr>
<td>Total (M)</td>
<td>2.04s</td>
<td>2.72s</td>
<td>2.73s</td>
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<tr>
<td></td>
<td>2. Deterring others from engaging in similar conduct</td>
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<tr>
<td>Severe (M = 2.94)</td>
<td>2.61 (1.88)</td>
<td>3.16 (1.86)</td>
<td>3.17 (1.92)</td>
<td></td>
</tr>
<tr>
<td>Mild (M = 2.85)</td>
<td>2.27 (1.52)</td>
<td>3.07 (1.86)</td>
<td>3.38 (2.05)</td>
<td></td>
</tr>
<tr>
<td>Total (M)</td>
<td>2.44s</td>
<td>3.12s</td>
<td>3.27s</td>
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<tr>
<td></td>
<td>3. Blaming the defendant for his actions</td>
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<tr>
<td>Severe (M = 3.18)</td>
<td>2.43 (1.57)</td>
<td>3.48 (1.78)</td>
<td>3.80 (1.91)</td>
<td></td>
</tr>
<tr>
<td>Mild (M = 3.00)</td>
<td>2.28 (1.47)</td>
<td>3.33 (1.48)</td>
<td>3.64 (1.88)</td>
<td></td>
</tr>
<tr>
<td>Total (M)</td>
<td>2.35s</td>
<td>3.41s</td>
<td>3.73s</td>
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<tr>
<td></td>
<td>4. Making the defendant take responsibility for his actions</td>
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<td></td>
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<tr>
<td>Severe (M = 3.96)</td>
<td>3.25 (1.91)</td>
<td>4.66 (1.63)</td>
<td>4.29 (1.94)</td>
<td></td>
</tr>
<tr>
<td>Mild (M = 4.08)</td>
<td>3.37 (1.80)</td>
<td>4.24 (1.84)</td>
<td>4.82 (1.72)</td>
<td></td>
</tr>
<tr>
<td>Total (M)</td>
<td>3.31s</td>
<td>4.46s</td>
<td>4.56s</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Compensating the plaintiff for pain and suffering</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severe (M = 5.67s)</td>
<td>5.48 (1.36)</td>
<td>5.67 (1.19)</td>
<td>5.85 (1.32)</td>
<td></td>
</tr>
<tr>
<td>Mild (M = 5.08s)</td>
<td>4.58 (1.59)</td>
<td>5.22 (1.43)</td>
<td>5.56 (1.28)</td>
<td></td>
</tr>
<tr>
<td>Total (M)</td>
<td>5.04s</td>
<td>5.47s</td>
<td>5.71s</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6. Compensating the plaintiff for economic losses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severe (M = 5.84)</td>
<td>5.77 (1.23)</td>
<td>5.87 (1.20)</td>
<td>5.87 (1.23)</td>
<td></td>
</tr>
<tr>
<td>Mild (M = 5.41)</td>
<td>5.01s (1.57)</td>
<td>5.39s (1.37)</td>
<td>5.89s (1.13)</td>
<td></td>
</tr>
<tr>
<td>Total (M)</td>
<td>5.40s</td>
<td>5.65s</td>
<td>5.88s</td>
<td></td>
</tr>
</tbody>
</table>

Note. Ratings were on a 7-point scale, where 1 = not at all and 7 = a lot. Means with different subscripts are significantly different \(p < .05\).

Ratings of the injury-related items were higher (about 5), indicating that jurors correctly put more weight on these issues when assessing damages. Analysis of the two injury-related questions revealed effects of both conduct and injury. ANOVA on the question related to compensating the plaintiff for pain and suffering revealed an effect of conduct, \(F(1, 443) = 10.66, p < .001, \eta^2 = .05,\) and an effect of injury, \(F(1, 443) = 16.52, p < .001, \eta^2 = .04\). The effect of conduct was further analyzed with an HSD test for pairwise comparisons. This analysis revealed that jurors who heard evidence that the defendant’s conduct was very careless \(M = 5.71\) and mildly careless \(M = 5.47\) were more likely to consider compensating the plaintiff for pain and suffering than were jurors who received no information about the defendant’s conduct \(M = 5.04\). ANOVA on the question related to compensating the plaintiff for economic losses also revealed an effect of conduct, \(F(1, 443) = 6.09, p < .01, \eta^2 = .03\); an effect of injury, \(F(1, 443) = 10.51, p < .01, \eta^2 = .02\); and a Conduct \times\ Injury interaction, \(F(1, 443) = 3.94, p < .05, \eta^2 = .02\). Further analysis of the interaction with an HSD pairwise comparison test revealed that the lowest mean rating came from jurors who did not receive any conduct evidence and who heard that the plaintiff had been mildly injured \(M = 5.01\). These means and standard deviations are also shown in Table 4.

**Perceptions of the plaintiff.** To assess whether conduct-related information influenced jurors’ perceptions of the plaintiff, we asked eight Likert-type questions about the plaintiff (e.g., “How much sympathy do you feel for the plaintiff?” “How much mental suffering has the plaintiff endured?” “How serious are the plaintiff’s injuries?”). Jurors responded with a number between 1 and 11.

Surprisingly, we found significant effects of conduct on responses to all of the eight questions. The pattern was strikingly similar: With one exception (i.e., “To what extent do you blame the plaintiff for incurring these injuries”), the mean responses from mock jurors with any conduct-related evidence were higher than were mean responses from jurors with no evidence about the
defendant’s behavior. So for example, jurors with evidence of
the defendant’s conduct deemed the plaintiff to be more permanently
disabled, disfigured, and seriously injured than did jurors without
knowledge of the defendant’s behavior. These means are shown in
Table 5.

**Jury Verdicts**

Although the juries varied in size from 5 to 8 individuals, there
were no effects of jury size on any of the analyses reported below.
Juries who heard evidence related to the defendant’s conduct were
first asked whether the defendant was negligent. Half of the juries
in the mildly careless conduct condition (15 of 30) determined that
the defendant was negligent, as did 93% of juries in the careless
conduct condition (28 of 30). The data on damages that we report
below come only from juries that found the defendant negligent as
well as from juries in the no-conduct condition.

The next question asked whether the plaintiff should be awarded
damages. All juries in the conduct conditions and 26 of the 30
juries in the no-conduct condition answered yes. Finally, the 69
juries who agreed that the plaintiff should receive damages (15
from the mildly careless conduct condition, 28 from the very
careless conduct condition, and 26 from the no-conduct condition)
were asked to determine the award amount. They gave responses
on an 11-point scale where 1 = nothing and 11 = more than $4
million.

We analyzed the mean responses with a $2 \times 3$ ANOVA and
found significant effects of injury, $F(1, 64) = 54.92, p < .01, \eta^2 = .47,$
and conduct, $F(2, 64) = 8.32, p < .01, \eta^2 = .21,$ as well as a
significant Injury $\times$ Conduct interaction: $F(2, 64) = 3.63, p < .05, \eta^2 = .10.$ These data are shown in Table 6.

Post hoc analyses (HSD pairwise comparisons) revealed a now-
familiar pattern: Awards were highest in the severe-injury condi-
tions, and the effect of the defendant’s conduct was most apparent
in the mild-injury conditions. Here, juries with any evidence
regarding the defendant’s actions awarded more money than did
juries without such evidence. (The mean award in the no-conduct/
mild injury condition was approximately $25,000, whereas the
awards in the mildly careless conduct/mild injury and very careless
conduct/mild injury conditions were approximately $100,000.)

There were no differences in awards as a function of the defendant’s
counsel in the severe-injury conditions.

There were also no differences in awards to mildly and severely
injured plaintiffs in the condition in which the defendant’s conduct
was described as mildly careless. However, because the small and
disproportionate cell sizes in the mildly careless conduct condi-
tions could compromise the inferential quality of the ANOVA,
we conducted a complimentary hierarchical multiple regression to test
the Conduct $\times$ Injury interaction for the mean jury damage awards
(Aiken & West, 1991). The results of the regression analysis
mirrored those of the ANOVA. The multiple-regression model
containing all higher order effects revealed a main effect of con-
duct, $\beta = .57, t(64) = 4.59, p < .001,$ and $\beta = .33, t(64) = 2.93,$
$p < .01;$ a main effect of injury, $\beta = .93, t(64) = 7.95, p < .001;$
and a significant interaction, $\beta = -.38, t(64) = -2.49, p = .01.$
Multiple $R$ for the full model was .762, $F(4, 64) = 22.16, p < .001,$
and the model accounted for more than 50% of the variance in
damage awards ($R^2 = .58$).

Post hoc analysis of the interaction comparing the simple slopes
of the regression equations also revealed a pattern that mirrored the
HSD pairwise comparisons conducted on the ANOVA results.
Monetary awards were highest when juries heard evidence of
severe injuries, across all levels of conduct evidence. In the mild-
iinjury conditions, juries who heard evidence about the defendant’s
conduct gave larger monetary awards than did juries who received
no information about the defendant’s conduct: for very careless
conduct, $\beta = -.51, t(50) = -4.01, p < .001,$ and for mildly careless

---

**Table 5**

**Mean Ratings (and Standard Deviations) of the Plaintiff as a Function of
Evidence Related to Defendant’s Conduct**

<table>
<thead>
<tr>
<th>Question</th>
<th>No conduct evidence</th>
<th>Mildly careless</th>
<th>Very careless</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much sympathy do you feel for the plaintiff?</td>
<td>6.65s (2.45)</td>
<td>7.89b (2.33)</td>
<td>8.59b (2.15)</td>
</tr>
<tr>
<td>To what extent do you blame the plaintiff for incurring these injuries?</td>
<td>3.02s (2.21)</td>
<td>1.73b (1.65)</td>
<td>1.61b (1.65)</td>
</tr>
<tr>
<td>How much physical suffering has the plaintiff endured?</td>
<td>7.40s (2.10)</td>
<td>8.24b (2.03)</td>
<td>8.54b (1.78)</td>
</tr>
<tr>
<td>How much mental suffering has the plaintiff endured?</td>
<td>6.98s (2.57)</td>
<td>7.93b (2.21)</td>
<td>7.97b (2.25)</td>
</tr>
<tr>
<td>To what degree is the plaintiff permanently disabled?</td>
<td>4.88s (2.79)</td>
<td>5.61b (2.67)</td>
<td>5.89b (2.77)</td>
</tr>
<tr>
<td>To what degree is the plaintiff disfigured?</td>
<td>3.22s (2.46)</td>
<td>3.81b (2.43)</td>
<td>4.09b (2.81)</td>
</tr>
<tr>
<td>How visible are the plaintiff’s injuries to other people?</td>
<td>3.13s (2.30)</td>
<td>3.74b (2.43)</td>
<td>3.94b (2.54)</td>
</tr>
<tr>
<td>How serious are the plaintiff’s injuries?</td>
<td>6.27s (2.49)</td>
<td>7.08b (2.24)</td>
<td>7.36b (2.28)</td>
</tr>
</tbody>
</table>

*Note.* Ratings were on an 11-point scale, where 1 = not at all and 11 = extreme. In each row, means with different subscripts differ significantly ($p < .01$).
Table 6
Mean Jury Damage Awards (and Standard Deviations)

<table>
<thead>
<tr>
<th>Injury</th>
<th>No conduct evidence</th>
<th>Mildly careless</th>
<th>Very careless</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe (M = 7.92)</td>
<td>7.79a (1.12)</td>
<td>7.33ab (1.03)</td>
<td>8.64a (1.39)</td>
</tr>
<tr>
<td>Mild (M = 5.25)</td>
<td>3.83a (2.04)</td>
<td>5.78a (1.39)</td>
<td>6.14a (1.23)</td>
</tr>
<tr>
<td>Total M</td>
<td>5.96</td>
<td>6.40</td>
<td>7.39</td>
</tr>
</tbody>
</table>

Note. Ratings were on an 11-point scale, where 1 = nothing and 11 = more than $4 million. Means with subscripts in common are not significantly different (p < .01).

...conduct, β = −.43, t(37) = −2.95, p < .001. The mean awards given by juries in the two conduct conditions did not differ significantly.

Postdeliberation Juror Questionnaires

To assess the possibility that deliberations would reduce the misuse of evidence, we asked jurors to complete individual questionnaires after they deliberated. We wondered if the fusion of evidence that was apparent before deliberations would persist after discussion. Participants who had conducted-related evidence were somewhat more likely to find the defendant negligent after deliberation than before. In the mildly careless conduct condition, 59% of participants determined that the defendant was negligent (vs. 53% before deliberation). In the very careless conduct condition, fully 95% of jurors deemed the defendant negligent (vs. 91% before deliberation).

Damages-Related Decisions

The data that we report below (on judgments of harm, the decision about whether to award damages, and the amount of damages) come only from jurors who decided, after deliberating, that the defendant was negligent. In addition, because jurors’ responses could have been influenced by the discussions, we analyzed all scaled items using a hierarchically nested design, with jurors nested in juries and juries nested in Conduct × Injury conditions (Anderson & Ager, 1978).

Judgments of harm. Jurors used an 11-point scale to answer the question, “To what extent was the plaintiff harmed?” We found a significant effect of juries nested within conditions, F(79, 383) = 1.44, p < .05, which suggests that jurors differed from each other within a given condition. Although the significant jury effect qualifies our interpretation of the results somewhat, as before, we found significant effects of both injury severity, F(1, 72) = 125.84, p < .01, and defendant conduct, F(2, 72) = 16.89, p < .01, as well as a significant interaction, F(2, 72) = 5.42, p < .01. The pattern of means exactly mirrors the predeliberation data on this question: Conduct evidence affected the ratings in the mild-injury conditions only (mildly careless conduct, M = 7.05; very careless conduct, M = 7.39; no conduct, M = 5.60). Jurors with any evidence related to the defendant’s conduct judged the harm to be more extensive than did jurors without conduct evidence. There were no differences in ratings of harm in the severe-injury conditions as a function of the defendant’s conduct.

Judgments of whether to award damages. In response to the question, “Should the plaintiff receive damages?”, all jurors who heard evidence related to the defendant’s conduct said “yes.” Jurors who had no conduct-related evidence were somewhat less certain: Whereas 96% of jurors with evidence of severe injuries decided that the plaintiff should receive damages, only 77% of jurors with evidence of mild injuries did so.

Amount of damages. Mock jurors who determined, after deliberating, that the defendant was negligent and that the plaintiff was entitled to damages were asked to assess a damage award on an 11-point scale. A significant effect of juries nested within conditions, F(79, 386) = 10.47, p < .01, qualifies the following results somewhat. These data also look much like the data gathered before deliberation: We found a significant effect of injury severity, F(1, 78) = 66.43, p < .01; a significant effect of defendant conduct, F(2, 78) = 11.22, p < .01; and a significant interaction, F(2, 78) = 3.72, p < .05. However, post hoc testing (HSD pairwise comparisons) revealed a slightly different pattern to the interaction. As before, we found that the highest awards came from the conditions in which jurors heard evidence of a severe injury to the plaintiff. After deliberating, however, jurors in the severe injury–very careless conduct condition gave significantly larger monetary awards than did jurors in all other conditions. When the plaintiff’s injury was described as mild, jurors with no evidence of conduct gave smaller awards than did jurors with evidence related to the defendant’s actions. These data are shown in Table 7.

Discussion

Jurors in civil negligence cases are expected to determine compensatory damages by assessing the severity of plaintiffs’ injuries and not by considering the conduct of defendants. Once a defendant’s liability has been determined, jurors are to fully and fairly compensate the plaintiff for his losses without regard to the defendant’s misdeeds in causing the injury. Do jurors reason in this manner?

Like other investigators (e.g., Feigenson, Park, & Salovey, 1997; Wissler, Evans, Hart, Morry, & Saks, 1997), we found that jurors’ decisions about damages were strongly influenced by the severity of the plaintiff’s injuries. On nearly every measure (e.g., harm to the plaintiff, the decision about whether to award damages, and the amount of damages), more severely injured plaintiffs were perceived and treated differently than their less seriously

Table 7
Means (and Standard Deviations) for Postdeliberation Monetary Damage Awards

<table>
<thead>
<tr>
<th>Injury</th>
<th>No conduct evidence</th>
<th>Mildly careless</th>
<th>Very careless</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe (M = 7.87)</td>
<td>7.53a (1.99)</td>
<td>7.50a (1.65)</td>
<td>8.57a (1.58)</td>
</tr>
<tr>
<td>Mild (M = 5.34)</td>
<td>3.80 (2.06)</td>
<td>5.98a (1.39)</td>
<td>6.23a (1.34)</td>
</tr>
<tr>
<td>Total M</td>
<td>5.67</td>
<td>6.74</td>
<td>7.40</td>
</tr>
</tbody>
</table>

Note. Ratings were on an 11-point scale, where 1 = nothing and 11 = more than $4 million. Means with different subscripts are significantly different (p < .01).
injured counterparts. Jurors and juries gave larger awards to more seriously injured plaintiffs.

What about the second demand, namely that jurors refrain from using evidence related to the defendant’s conduct when determining damages? Here, jurors fared less well when judged by implicit legal standards. On several measures related to damages (e.g., jury verdicts on damages, individual predeliberation and postdeliberation ratings of harm to the plaintiff and decisions about whether the plaintiff should receive damages and in what amount, as well as predeliberation motivations for awarding damages and perceptions of the plaintiff and his or her injury), we found differences as a function of the defendant’s conduct. These findings suggest that jurors are indeed using evidence related to the defendant’s behavior to inform their decisions about compensation for the plaintiff, a situation that the laws of negligence tacitly forbid.

We wondered about the exact nature of this effect and, in particular, whether jurors who heard evidence of highly reprehensible conduct by the defendant would augment their awards to the injured plaintiff. We found a remarkably consistent pattern of results related to the effects of the defendant’s conduct on various damages-related questions: Evidence of the defendant’s conduct had little effect on damage awards when the plaintiff had been severely injured. However, when the plaintiff had sustained only mild injuries, any evidence related to the defendant’s conduct led to an increase in the frequency and size of awards to the plaintiff (compared with a condition including no evidence regarding the accident or the defendant’s role in that accident). So, for example, among jurors who heard evidence of a mild injury, the damages assessed against a defendant who had acted with only mild carelessness were no different than the damages assessed against a defendant whose conduct was clearly careless. This finding suggests that jurors are not attentive to the precise nature of the defendant’s wrongdoing but only to the existence of his wrongful conduct. Once convinced that the defendant acted improperly, jurors apparently do not attend to the details of that misconduct in assessing damages.

Why do jurors factor conduct-related evidence into their decisions regarding damages? We hypothesized that jurors would fall victim to the hindsight bias, whereby after hearing evidence related to the defendant’s conduct, they would have difficulty disregarding that information when making various judgments about damages. We suspect that the hindsight bias was operative in this case and that jurors had difficulty ignoring evidence of the defendant’s behavior—evidence that personalized (and apparently demonized) the offender. However, we suspect that there may be another explanation as well.

Recall that jurors who received conduct evidence were asked to think about and use that evidence to decide whether the defendant was negligent before determining a damage award. Evidence related to the defendant’s conduct could influence jurors’ damage awards indirectly, by way of their determinations of negligence. In other words, after a certain threshold is reached and the juror has decided that the defendant is negligent, the actual details of the defendant’s conduct (whether mildly careless or very careless) may become less salient to the damage award decisions. The influence of this negligence threshold might also account for the effect of conduct evidence on jurors’ responses to the four conduct-related motivation questions (e.g., “In deciding on the amount of damages, to what extent did you consider making the defendant take responsibility for his actions?”).

To assess the possible effect of negligence decisions on damage awards, we conducted an exploratory mediation analysis in line with the procedure outlined by Baron and Kenny (1986). The data for these analyses came from all jurors who had conduct-related evidence and not solely those who found the defendant negligent. (The mean damage award from the 108 participants in the conduct-related conditions who determined that the defendant was not negligent was 2.93, SD = 2.62.) This analysis was conducted with the amount of the damage award as the dependent criterion variable and with the type of conduct evidence (mildly careless or very careless) as the independent predictor variable.

Three regression equations were derived to test the mediating effect of negligence decisions on the conduct effect. In the first equation, negligence was regressed on conduct, \( \beta = .42, t(375) = 8.94, p < .001 \). In the second equation, the damage award was regressed on conduct, \( \beta = .19, t(375) = 3.78, p < .05 \). In the third equation, both conduct and negligence were regressed on damage awards. This regression equation yielded a mediation effect for negligence, such that the effect of conduct, \( \beta = -.02, t(375) = -0.35, p > .7 \), on damage awards was eliminated in the presence of the mediating variable negligence, \( \beta = .49, t(375) = 10.06, p < .001 \). The results of this analysis suggest that jurors’ negligence decisions apparently account for the effect of conduct on damage awards. It is also interesting to note that negligence and conduct together account for 20% more variance in damage awards (\( R^2 = .24 \)) than does conduct alone (\( R^2 = .04 \)).

A question of secondary interest in this study was whether the jury deliberations would serve a debiasing function, effectively undoing any inappropriate consideration of conduct-related evidence. We hypothesized that during deliberations, jurors might edit their own evidence usage and rely only on legally appropriate evidence to bolster their arguments. We also suspected that if one or more jurors alluded to conduct evidence in the discussions about damages, other jurors would correct this misuse and steer the jury back on track.

We found no support for the notion that deliberations would correct any improper use of evidence by individual jurors. On several measures (e.g., judgments of harm, amount of damages), the data that came from juries and from individual jurors after deliberations look remarkably like the data that were taken before discussion. They support the general findings that conduct-related evidence has a more powerful effect when the plaintiff has been mildly (as opposed to severely) injured and that for the most part, jurors do not attend to the degree of the defendant’s misconduct. However, the postdeliberation data also showed that when the plaintiff was severely injured, jurors awarded more when the defendant had acted very carelessly than when his conduct had been mildly careless. This finding points again to jurors’ reliance on evidence of the defendant’s conduct and suggests that jurors augmented their awards to severely injured plaintiffs to reflect the reprehensibility of that defendant’s conduct.

In general, then, we are not confident that the process of jury deliberation can correct jurors’ misuse of conduct-related information (a position consistent with findings from Greene et al., 1999). Diamond (1997) surmised that deliberations produce outcomes that are more consistent with legal norms only in situations in which the legal instructions present the norms clearly. That clarity
is lacking in instructions on damages (Greene & Bornstein, in press).

Our ability to generalize from these findings to actual jury trials is limited somewhat by the nature of the research. As Diamond (1997) correctly notes, any simulation that relies on a single case is potentially idiosyncratic in ways that could affect conclusions about the variables being studied. In addition, actual jurors may be more motivated than simulated jurors to attend to the trial evidence and to follow the judge's instructions. On the other hand, our simulation had many realistic elements, including a sample of jury-eligible adults drawn from the community, complex evidentiary facts and demonstrative evidence taken from an actual case, and tests of the effects of interest on individual jurors and deliberating juries. So although we acknowledge concerns related to verisimilitude, we suspect that our findings fit with the experiences of jurors in real-world negligence trials.

Are there practical implications of these findings? One obvious solution to the apparent fusion of context-related and injury-related information in the damages decision is to sever the presentation of evidence so that jurors who are awarding damages are not privy to details about the parties' conduct. Although this practice of bifurcation is used on occasion (primarily in cases where liability has been stipulated), the costs—in both time and money—prohibit its regular implementation. Clarification of the jury instructions (i.e., making explicit that certain evidence may not be considered) is another potential solution.

Finally, we note that jurors' use of extralegal information in assessing damages—although legally inappropriate—may produce verdicts that are, in their minds, more equitable or fair. Laypersons may use evidence of the defendant's conduct to set damages because it somehow seems intuitively appropriate to do so. This reasoning reflects the just-world belief that people who behave worse should be punished more severely. The present study sheds some empirical light on the process of decision making about damages and illuminates this reliance on context-related evidence; reliance that is, at least in the eyes of the law, inappropriate.

References


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Received August 6, 1999
Revision received March 20, 2000
Accepted March 23, 2000