Accounting for Awards: An Examination of Juror Reasoning behind Pain and Suffering Damage Award Decisions

Krystia Reed
*University of Texas at El Paso*

Valerie P. Hans
*Cornell Law School, valerie.hans@cornell.edu*

Valerie F. Reyna
*Cornell University, vr53@cornell.edu*

Follow this and additional works at: [https://scholarship.law.cornell.edu/facpub](https://scholarship.law.cornell.edu/facpub)

Part of the Civil Law Commons, and the Legal Remedies Commons

**Recommended Citation**

ACCOUNTING FOR AWARDS: AN EXAMINATION OF JUROR REASONING BEHIND PAIN AND SUFFERING DAMAGE AWARD DECISIONS

KRYSTIA REED, VALERIE P. HANS & VALERIE F. REYNA†

ABSTRACT

What do civil jurors think about when they are asked to make damage award decisions? Given the secrecy of the jury deliberation process, often we are unaware of jurors’ thought processes. This Article presents the results from three studies in which mock jurors explained the reasoning behind their damage awards for pain and suffering. We highlight the most common explanations and distinguish between reasons justifying high and low pain and suffering awards. We conclude with a discussion for what this means for attorneys during trial.

TABLE OF CONTENTS

INTRODUCTION ................................................................. 841
I. JUROR REASONS ............................................................ 842
   A. Heuristics and Biases .............................................. 843
   B. Fuzzy-Trace Theory ............................................... 845
II. PRESENT STUDIES .......................................................... 848
   A. Plaintiff ....................................................................... 855
   B. Defendant .................................................................... 857
   C. Court Actors ............................................................. 859
   D. Juror .......................................................................... 861
III. IMPLICATIONS ............................................................... 863
   A. Summary and Caveats ............................................... 863
   B. Consequences for Trial Attorneys and the Legal System .... 864
CONCLUSION ................................................................. 867

INTRODUCTION

In 2011, a thirteen-year-old student identified as “Chantay M.” was supposed to be on a school bus for special education students; instead, a

† Cornell University. Authors would like to thank Rebecca Helm for her contributions to the research program, and Sarita Benesch, Luke Gillman, Halle Jaffe, Peter McKendall, Shaye Miller, Maren Ogg, Addison Rodriguez, Rachel Soderstrom, Carly Sappern, and Divya Sriram for their research assistance. Preparation of this Article was funded by National Science Foundation grant SES-1536238: “Quantitative Judgments in Law: Studies of Damage Award Decision Making” to Valerie P. Hans and Valerie F. Reyna. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the Authors and do not necessarily reflect the views of the National Science Foundation.
fellow student offered her a ride but then sexually assaulted her. Several
months later, three female students attacked Chantay M. in the school’s
locker room, leaving her with a concussion and traumatic brain injury. At
a jury trial in 2018, Chantay M.’s lawyers convinced the jury that the high
school was negligent because of its failure to adequately monitor Chantay
M., making her vulnerable to both attacks. The jury awarded $28 million,
with $8 million for past pain and suffering and $20 million for future pain
and suffering.1

Chantay M.’s record-breaking damage award for pain and suffering
might lead people to wonder, “How did the jury decide on this award?”
However, this question generally cannot be answered in the American
justice system given the secrecy of jury deliberations. Although the
increasing use of post-verdict interviews by trial consultants and the media
can provide some insight into the reasons that jurors offer to justify their
decisions in some trials,2 in most instances we are unaware of the
reasoning behind jury verdicts. Plaintiffs, defendants, attorneys, judges,
and the general public are often in the dark in terms of understanding the
basis for a jury’s damage award.

Empirical studies on jury decisions offer one opportunity to
understand the jury’s reasons for damage award decisions. This Article
reviews the insight empirical researchers can provide. Part I discusses
what we know about juror reasoning; it focuses on the legal and
psychological background. Part II presents the results from three studies
in which we asked mock jurors to explain the reasoning behind their pain
and suffering damage awards. Part III concludes with a discussion of what
the jurors’ responses mean for trial attorneys and the legal system.

I. JUROR REASONS

One essential principle of the American justice system is that jury
deliberations should remain secret under almost all circumstances.3 As
Justice Cardozo once wrote, “Freedom of debate might be stifled and

---

1. Andrew Denney, Westchester Jury Awards $28M in Physical, Sexual Assault of High


3. Under the no-impeachment rule, jurors are prohibited from testifying about deliberations except as it relates to improper attention to extraneous prejudicial information, outside influence, or mistake on the verdict form. FED. R. EVID. 606(b). The Supreme Court has held that the exceptions should only apply in the gravest and most important cases. United States v. Reid, 53 U.S. 361, 366 (1851); see also Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 878 (2017) (reiterating the holding in Reid and finding that verdicts based on racial stereotypes may be exceptions to the no-impeachment rule given the importance of protecting the Sixth Amendment). Although these cases involve postverdict impeachment efforts, some scholars argue that courts are increasingly emphasizing preverdict secrecy. Alison Markovitz, Jury Secrecy During Deliberations, 110 YALE L.J. 1493, 1493–94, 1515 (2001) (arguing that secrecy restrictions pre-verdict should be relaxed).
independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world." The American system has opted out of encouraging jurors to provide reasons for their verdicts, whereas other countries are increasingly requiring juries to justify their decisions.\(^5\) This Part outlines what psychological research tells us about the reasoning behind jury decisions about damage awards.

A. Heuristics and Biases

Asking jurors for the reasoning behind their damage awards relies on what psychologists refer to as metacognition. Metacognition is a person's "awareness and understanding of [a person's] own thought processes."\(^6\) People with better metacognitive abilities are often better at problem solving\(^7\) and are better at providing justification for their decisions because they understand their own thought processes better.

Extensive research on the process of human cognition and decision-making confirms that people do not make decisions purely based on logic.\(^8\) Certain heuristics\(^9\) and biases may consciously or unconsciously influence jurors, and many of these are unlikely to be reflected in their metacognitive reasoning. Consider three common and well-studied heuristics: the availability heuristic, the recency effect, and the phenomenon of anchoring.\(^10\) The availability heuristic refers to the fact that people assess the frequency of an event, in part, by how easily instances of the event come to mind.\(^11\) In the recency effect, information heard more recently

\(^4\) Clark v. United States, 289 U.S. 1, 13 (1933).
\(^6\) Metacognition, OXFORD LIVING DICTIONARIES (2019).
\(^8\) See DANIEL KAHNEMAN, THINKING, FAST AND SLOW 4 (2011); see also Antoine Bechara & Antonio R. Damasio, The Somatic Marker Hypothesis: A Neural Theory of Economic Decision, 52 GAMES & ECON. BEHAV. 336, 346, 368 (2005) (finding that damage to brain regions in charge of emotions results in slower or worse decisions).
\(^9\) Heuristics are principles that reduce the difficulty of complex decision-making by using simpler judgmental operations. See, e.g., Amos Tversky & Daniel Kahneman, Judgment Under Uncertainty: Heuristics and Biases, 185 SCIENCE 1124, 1124 (1974). Using heuristics can be efficient, but on occasion can produce systematic errors in judgment. Id. at 1130.
\(^10\) See id. at 1127.
\(^11\) The traditional availability heuristic is when people assess the probability of an event based on the ease with which they can think of instances of that event. Id. The more retrievable, relevant, or salient information is, the more people focus on that information. Id. The availability heuristic could lead jurors to rely more on evidence that comes easily to mind and less on evidence they do not think of as readily.
tends to have a greater impact than information heard earlier in time. Thus, jurors might be more likely to mention factors that come to mind easier or were heard most recently than other factors that, in reality, equally influenced their decisions. Additionally, the provision of a numerical anchor tends to influence people’s judgments—an influence that can operate without conscious awareness. A suggested dollar value (whether relevant or irrelevant to the case) might strongly influence jurors’ damage award decisions even if jurors do not recognize that the value affected their decision.

Moreover, post hoc justifications, made after a decision has already been reached, might not fully capture the emotional, intuitive dimensions of the judgment jurors are making. In response to research supporting both the benefits of metacognition and the unconscious influence of

12. “An order bias occurs when the order in which information is presented impacts the end decision made by the decision-maker. Recency is a specific type of order bias whereby the most recent information received has greater bearing on the [decision-maker’s] judgment than other available information.” Vicky Arnold, Philip A. Collier, Seward A. Leech & Steve G. Sutton, The Effect of Experience and Complexity on Order and Recency Bias in Decision Making by Professional Accountants, 40 ACCT. & FIN. 109, 110 n.1 (2000) (finding recency effects exist regardless of accounting experience). The Belief-Adjustment Model suggests that the recency bias applies in all complex decision domains. Robin M. Hogarth & Hillel J. Einhorn, Order Effects in Belief Updating: The Belief-Adjustment Model, 24 COGNITIVE PSYCHOL. 1, 7 (1992); see also James L. Farr & C. Michael York, Amount of Information and Primacy-Recency Effects in Recruitment Decisions, 28 PERSONNEL PSYCHOL. 233, 233 (1975) (finding many recency effects and some primacy effects in hiring decisions).


14. Anchoring and adjusting occur when people make a final judgment adjusted from some initial value (the anchor). Tversky & Kahneman, supra note 9, at 1128. The source of the initial value can be provided by the individual or by an outside source and can also be relevant or irrelevant to the decision. In most cases, adjustments are typically insufficient, resulting in judgments that are close in value to the anchor. Id.


16. Jonathan Haidt, The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment, 108 PSYCHOL. REV. 814, 814 (2001) [hereinafter Haidt, The Emotional Dog and Its Rational Tail]. Haidt argues that people assess their gut reaction to determine whether their evaluation of the moral dilemma is positive or negative; however, deliberative reasoning—the kind of careful, slow, step-by-step evaluation that we might anticipate of legal fact finders—is only infrequently a causal factor leading to a morally based decision. Id. at 818–19. Haidt asserts that moral emotions such as anger and disgust directly lead to the moral judgment and that reasons for judgment tend to emerge mainly when individuals are asked to explain or justify their moral decisions. Id. at 830. In one experiment, Haidt and colleagues had participants read stories about acts that appeared to be intuitively immoral but were not, in actuality, harmful. Jonathan Haidt, F. Björklund & Scott Murphy, Moral Dumbfounding: When Intuition Finds No Reason 5 (Aug. 10, 2000) (unpublished manuscript, University of Virginia). Participants evaluated whether the acts were moral or immoral and were asked to explain the basis for their judgments. However, participants often had great trouble explaining why apparently immoral but not harmful acts were immoral. They generated reasons for their judgments, but the reasons followed rather than preceded the quick intuitive judgment of immorality. The experiment shows how reasons might well follow, rather than precede, a person’s judgment. At the least, Haidt’s research suggests that we should be mindful of the post hoc nature of some reason-giving for legal decisions.
heuristics, researchers have argued that people actually use a "hodge-podge of self-management techniques picked up from our culture and our individual experience." Psychological research indicates that individuals who are asked to make a moral decision often form a quick and intuitive judgment about what should be the right outcome in the case. If asked to explain themselves, people can generate reasons post hoc, even though the proffered reasons may not include all the influences on their moral judgments. Under this perspective, people can metacognitively explain their reasoning and decisions, but only partially. Thus, jurors may be able to identify some—but probably not all—of the factors that influence them.

Given these limitations, is it a fool's errand to ask mock jurors to provide accounts of their reasons for their awards? We think not. First, it allows our participants to offer justifications for their decisions, giving us the opportunity to learn from them directly how they subjectively experience and respond to the request for damage awards. They may generate reasons we have not considered as possible rationales. In turn, these accounts may help lawyers develop more effective advocacy regarding damage award requests. Second, reason-giving is an inherent part of jury decision-making. Jurors reflect on their own evaluations of evidence as they consider appropriate damage awards. And, jury decisions are inevitably filled with deliberative, reason-based assessments and judgments because jurors are required to justify their evaluations of the evidence to other jurors during the jury deliberation. Nonetheless, we should keep the limitations of self-reports in mind in assessing the reasons jurors give for their award judgments.

B. Fuzzy-Trace Theory

Fuzzy-trace theory (FTT) provides a useful framework for understanding jurors' rationales for damage-award judgments. FTT is a theory of memory, reasoning, and decision-making that is evidence-based. The word "memory" is intended in the broad sense, in that it refers...
to the mental representation of information, either while information is present or minutes, hours, or days after presentation. Hence, while a juror is viewing an exhibit or recalling it days later in the jury room during discussion of that exhibit, memory is used in both instances to store and think about that information.

Scholars have long debated whether memory is more like a tape recorder that reflects objective reality or a story that weaves facts together to reflect subjective meaning and inferences that go beyond objective facts.23 Copious and contradictory evidence seems to support both views.24 However, FTT reconciles these contradictions by assuming there are two types of memories that are encoded roughly simultaneously: verbatim memory (like a tape recorder, but one that degrades and becomes unreadable over time) and gist memory that interprets, infers, and connects facts into stories or narratives (and degrades much more slowly).25

Thus, as jurors listen to evidence, they encode mental representations of verbatim facts and gist interpretations in parallel. As Nancy Pennington and Reid Hastie suggested,26 jurors construct plausible causal narratives that account for the facts, which then inform their judgments, such as damage-award judgments. The narratives are part of gist memories of presented information.27 The retrieval of verbatim versus gist memories depends on such factors as delay from the time the information was presented (longer delays favor gist), cues in questions (e.g., re-presenting the information exactly cues verbatim memory), and who is doing the remembering (e.g., younger adults are better able to remember verbatim representations compared to older adults).28

The influential story model of Pennington and Hastie describes the construction of stories as producing tentative predeliberation decisions.29 Many contemporary dual-process theories similarly assume a nondeliberative or intuitive process that contrasts with a deliberative process, but those theories assume that intuitions are thoughtless “knee-jerk” associations rather than meaningful gist as FTT does.30 Both FTT

25. See, e.g., Reyna et al., supra note 20, at 1–2.
27. Gist memory is sometimes referred to as schematic memory, although key weaknesses of schema theories are avoided in FTT. See V.F. Reyna & C.J. Brainerd, Fuzzy-Trace Theory: An Interim Synthesis, 7 LEARNING & INDIVIDUAL DIFFERENCES 1, 7 (1995).
29. Pennington & Hastie, supra note 23.
and other dual-process theories assume that people often rely on intuitive processes in judgment and decision-making. However, the legal system rests on the foundational assumption that jurors engage in rational deliberation. Trust in the legal system, and in juries, turns on the ability of jurors to rationally deliberate and to persuade other jurors using rational arguments.

In FTT, gist-based judgments are intuitive whereas verbatim-based judgments often underlie analytical deliberation—and human judgment and decision-making typically revolve preferentially around gist. Research on FTT suggests that gist-based intuition supports advanced judgment and decision-making, an alternative view of "rationality" that differs from traditional detail-oriented analysis. Gist-based judgments include ordinal judgments, such as those posited in the Hans-Reyna model of jury damages: once liability has been determined, jurors categorize pain and suffering as low, medium, or high. One of the central tenets of that model, grounded in FTT, is gist-verbatim independence. In particular, jurors can have a firm, intuitive sense of the gist of damages, but they are unlikely to have a firm grasp of the exact number of dollars that corresponds to that gist. Nevertheless, FTT expects that gist-based judgments form a coherent basis for dollar damage awards, and, thus, these reasons for awards could be communicated in qualitative terms to other

37. Reyna & Brainerd, supra note 27, at 15–16.
jurers or to judges (or, in this case, researchers). In sum, keeping in mind the potential limitations of relying on jurors' post hoc reasoning about their award decisions, this Article examines the extent to which jurors' gist-based reasoning for damage awards matches their verbatim judgments.

II. PRESENT STUDIES

Data for this Article come from a larger empirical research project designed to test a new model of damage-award decision-making. The three specific studies we draw on in the present analysis are mock juror experiments conducted to examine how anchoring and other factors influence juror damage awards. In these studies, we had 763 mock jurors read a summary of one of two personal injury negligence cases. Munroe v. Rumson involved an inattentive driver who swerved to avoid an accident and struck an eighteen-year-old female pedestrian. The plaintiff, Munroe, spent two nights in intensive care with vertebrae injuries. She had back pain and mobility problems that completely resolved two years after the accident. Jeansonne v. Landau involved a driver who lost control of his semi-truck in a construction area and struck an oncoming vehicle, injuring an older male. The plaintiff, Jeansonne, suffered a concussion, a fractured parietal bone, and soft tissue injury to the cervical spine, which resulted in recurring back and neck pain that

40. In this Part, we discuss the stimulus materials used in this study, including the case information participants read and information about the questions that participants answered. In this Part, we also provide quotations from participants' descriptions of the justification for their awards. Both the materials used in the studies and the open-ended responses are available from the Authors upon request.
41. The research project, "Quantitative Judgments in Law: Studies of Damage Award Decision Making," is supported by a grant from the National Science Foundation to Valerie P. Hans and Valerie F. Reyna and has resulted in several publications.
42. The three studies varied in the specific elements they were investigating. Study 1 manipulated the size, context, and meaningfulness of numerical anchors. Valerie F. Reyna et al., The Gist of Juries: Testing a Model of Damage Award Decision Making, 21 PSYCHOL. PUB. POL'Y & L. 280, 284 (2015) [hereinafter Reyna et al., The Gist of Juries]. Study 2 manipulated the presence, size, and meaningfulness of a numerical anchor. Valerie P. Hans, Rebecca K. Helm & Valerie F. Reyna, From Meaning to Money: Translating Injury into Dollars, 42 LAW & HUM. BEHAV. 95, 97–98 (2018). Study 3 manipulated the presence and meaningfulness of an anchor and also examined the influence of the participant's numeracy. Rebecca K. Helm et al., Numeracy in the Jury Box [hereinafter Helm et al., Numeracy in the Jury Box] (under review) (on file with authors).
43. Mock jurors were recruited from the undergraduate research participant pool. Mock jurors were primarily female (74.2%) and white (56.7%; 15.7% Asian, 9.0% mixed ethnicity, 6.1% black, 4.7% Native American/Pacific Islander, 10.6% Hispanic/Latino) with an average age of 20.12 (SD = 2.27, range: 18–53). Eighteen participants declined to provide a reason for their award, leaving 745 participants in our analyses.
44. Although the studies varied in the specifics, all three used one or two of these cases.
45. The case description is based on the actual case of Abbinante v. O'Connell, 662 N.E.2d 126 (Ill. App. Ct. 1996). It has been used in previous research.
46. Id. at 127–28; Bradley D. McAuliff & Brian H. Bornstein, All Anchors Are Not Created Equal: The Effects of Per Diem Versus Lump Sum Requests on Pain and Suffering Awards, 34 LAW & HUM. BEHAV. 164, 167 (2010); Reyna et al., The Gist of Juries, supra note 42.
48. Id.
never resolved. Thus, *Jeansonne* involved a more severe and persistent injury than *Munroe*; however, in both cases, the negligent defendants did not engage in any intentional wrongdoing.

After reading the summary, we assessed the effect of anchoring\(^{49}\) by manipulating whether the participant saw a number that was meaningful to the case,\(^{50}\) a number that was meaningless to the case,\(^{51}\) or no number.\(^{52}\) Mock jurors were then told that the defendant had already been found liable,\(^{53}\) all medical bills had been resolved, and that it was now their responsibility to determine what dollar amount was necessary to compensate the plaintiff for pain and suffering damages. After providing their damage award for pain and suffering, mock jurors then provided their reasoning for the pain and suffering award. Participants were instructed: “Please briefly describe how you arrived at this award amount. Be specific. For example, if there were particular aspects of the plaintiff’s case, the defendants’ case, the lawyers’ arguments, or the judge’s instructions, that swayed you one way or the other, please elaborate on those aspects.”\(^{54}\)

To assess the open-ended reasoning mock jurors provided for their verdicts quantitatively, we developed a coding scheme to identify reasons that jurors might give to justify their verdicts.\(^{55}\)

---

49. *See infra* Section II.A.

50. The meaningful number was median income. In Study 1 and Study 2, we manipulated the size of the anchor so participants either saw the median *lifetime* income (high anchor condition—$1.5 million) or median *annual* income (low anchor condition—$50,000). In Study 3, we used only median *lifetime* income ($1.5 million). The studies also varied in how the anchor was presented. Study 1 presented the anchor as a statement from the jury foreperson. Studies 2 and 3 presented the anchor as part of the questionnaire. For example, in the high meaningful anchor condition, participants were told that the median lifetime income was $1.5 million and were asked if they thought the award in this case should be above or below this amount.

51. The meaningless number was the cost of courtroom renovations. This manipulation was successful: a one-way analysis of variance (ANOVA) indicated that participants in the meaningful condition rated the anchor as significantly more meaningful ($M = 4.09$, $SD = 1.69$) than participants in the meaningless condition ($M = 2.49$, $SD = 1.63$), $F(1, 343) = 79.69$, $MSe = 2.76$, $p < .001$, $R^2 = .19$.

52. In the no-anchor control condition, participants were asked to make a decision immediately.

53. We asked participants whether or not they agreed with the liability conclusion, and 91% of participants agreed. The 9% who did not believe the defendant was liable were excluded from the analyses unless otherwise noted, because they likely would not be providing an award in a real trial except under certain circumstances. *See infra* note 62.

54. Participants answered several other questions about their perceptions of the case, the parties, the injuries, and the legal actors, completed scales measuring numeracy and cognitive style, and provided demographic information. *See supra* note 40.

55. *See Table 1, infra*, for the list of the twenty-one variables that were coded and their definitions. Four trained undergraduate students coded the responses blind to the manipulations. Overall, interrater reliability was high (Cohen’s $K M = .80$, range: .60 (plaintiff’s age) – 1.00 (judicial instructions, legal costs)). Table 2 presents the interrater reliability measure (kappa) for each item, the overall frequency of mentioning each item, and the frequency of mentioning based on award categorization. Note that only participants from Study 2 and Study 3 were asked to categorize their awards. Therefore, frequencies based on award categorization exclude participants from Study 1.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plaintiff Factors</strong></td>
<td></td>
</tr>
<tr>
<td>Injury – Bad</td>
<td>Mentions how bad or severe the injury is.</td>
</tr>
<tr>
<td>Injury – Long</td>
<td>Mentions how long the injury will last or affect the plaintiff’s life.</td>
</tr>
<tr>
<td>Injury – Interfering</td>
<td>Mentions how much the injury interferes with the plaintiff’s life (e.g., ability to attend work or school).</td>
</tr>
<tr>
<td>Pain &amp; Suffering</td>
<td>Mentions pain and/or suffering of the plaintiff.</td>
</tr>
<tr>
<td>Plaintiff’s Age</td>
<td>Mentions plaintiff’s age as a factor in the decision.</td>
</tr>
<tr>
<td>Plaintiff Responsibility</td>
<td>Mentions the plaintiff’s liability or responsibility (or lack thereof) for the injury.</td>
</tr>
<tr>
<td>Medical Bills</td>
<td>Mentions the plaintiff’s medical costs.</td>
</tr>
<tr>
<td><strong>Side Response Favors</strong></td>
<td>Coded as favoring the defendant, favoring the plaintiff, or neutral (offers no explanation or discusses the merits of both sides).</td>
</tr>
<tr>
<td><strong>Defendant Factors</strong></td>
<td></td>
</tr>
<tr>
<td>Defendant Responsibility</td>
<td>Mentions the defendant’s liability or responsibility (or lack thereof) for the injury.</td>
</tr>
<tr>
<td><strong>Court Actor Factors</strong></td>
<td></td>
</tr>
<tr>
<td>Plaintiff’s Argument</td>
<td>Mentions the plaintiff’s attorney’s argument or case.</td>
</tr>
<tr>
<td>Defense’s Argument</td>
<td>Mentions the defendant’s attorney’s argument or case.</td>
</tr>
<tr>
<td>Judge’s Instructions</td>
<td>Mentions the judge’s instructions.</td>
</tr>
<tr>
<td>Anchor</td>
<td>Mentions the specific number provided in the case.</td>
</tr>
<tr>
<td>Legal Bills</td>
<td>Mentions the legal costs or costs of attorney.</td>
</tr>
<tr>
<td><strong>Mock Juror Factors</strong></td>
<td></td>
</tr>
<tr>
<td>Math</td>
<td>Provides a specific mathematical equation or calculation used.</td>
</tr>
<tr>
<td>Fairness</td>
<td>Mentions the award being a fair, right, or accurate amount.</td>
</tr>
<tr>
<td>Confusion</td>
<td>Mentions being confused, having difficulty, randomly generating, guessing, or being unsure about the award.</td>
</tr>
<tr>
<td>Award Comparison</td>
<td>Compares award amount to another number (e.g., higher, bigger, lower, smaller, equal).</td>
</tr>
<tr>
<td>Award Classification</td>
<td>Makes a judgment about the size of the award that is not a comparison (e.g., large, huge, small, tiny).</td>
</tr>
<tr>
<td>Other Case</td>
<td>Compares case or award to another case.</td>
</tr>
</tbody>
</table>
Table 2. Frequency of mentioning concepts based on award classification.

<table>
<thead>
<tr>
<th>Award Classification</th>
<th>K</th>
<th>Overall</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>N</strong></td>
<td>673</td>
<td>69</td>
<td>295</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td><strong>Plaintiff Factors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injury - Bad</td>
<td>.72</td>
<td>11.1%</td>
<td>12.5%</td>
<td>10.8%</td>
<td>7.6%</td>
</tr>
<tr>
<td>Injury - Long</td>
<td>.85</td>
<td>41.5%</td>
<td>37.7%</td>
<td>40.3%</td>
<td>31.8%</td>
</tr>
<tr>
<td>Injury - Interfering</td>
<td>.81</td>
<td>46.7%</td>
<td>33.3%&lt;sup&gt;a,b&lt;/sup&gt;</td>
<td>46.8%&lt;sup&gt;a&lt;/sup&gt;</td>
<td>48.5%&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>Pain &amp; Suffering</td>
<td>.88</td>
<td>44.3%</td>
<td>42.0%</td>
<td>40.7%</td>
<td>47.0%</td>
</tr>
<tr>
<td>Plaintiff's Age</td>
<td>.60</td>
<td>11.6%</td>
<td>15.9%</td>
<td>9.5%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Plaintiff Responsibility</td>
<td>.88</td>
<td>3.6%</td>
<td>5.8%</td>
<td>4.1%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Medical Bills</td>
<td>.99</td>
<td>26.3%</td>
<td>24.6%</td>
<td>23.1%</td>
<td>27.3%</td>
</tr>
<tr>
<td>Response Favor Plaintiff</td>
<td>.69</td>
<td>45.6%</td>
<td>20.3%&lt;sup&gt;c&lt;/sup&gt;</td>
<td>42.0%&lt;sup&gt;c&lt;/sup&gt;</td>
<td>57.6%&lt;sup&gt;c&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Response Neutral</strong></td>
<td>.69</td>
<td>51.0%</td>
<td>72.5%&lt;sup&gt;d&lt;/sup&gt;</td>
<td>54.9%&lt;sup&gt;d&lt;/sup&gt;</td>
<td>40.9%&lt;sup&gt;d&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Defendant Factors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response Favor Defendant</td>
<td>.69</td>
<td>3.4%</td>
<td>7.2%</td>
<td>3.1%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Defendant Responsibility</td>
<td>.92</td>
<td>38.0%</td>
<td>53.6%&lt;sup&gt;e&lt;/sup&gt;</td>
<td>35.3%&lt;sup&gt;c&lt;/sup&gt;</td>
<td>28.8%&lt;sup&gt;f&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Court Actor Factors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plaintiff's Argument</td>
<td>.83</td>
<td>9.1%</td>
<td>7.2%</td>
<td>7.1%</td>
<td>10.6%</td>
</tr>
<tr>
<td>Defense's Argument</td>
<td>.83</td>
<td>7.1%</td>
<td>7.2%</td>
<td>7.8%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Judge’s Instructions</td>
<td>1.00</td>
<td>3.3%</td>
<td>1.4%</td>
<td>2.7%</td>
<td>3.0%</td>
</tr>
<tr>
<td>Anchor</td>
<td>.78</td>
<td>8.0%</td>
<td>5.7%</td>
<td>10.2%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Legal Bills</td>
<td>1.00</td>
<td>0.3%</td>
<td>0%</td>
<td>0.3%</td>
<td>1.5%</td>
</tr>
<tr>
<td><strong>Mock Juror Factors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Math</td>
<td>.93</td>
<td>9.7%</td>
<td>5.8%</td>
<td>9.2%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Fairness</td>
<td>.82</td>
<td>13.4%</td>
<td>11.6%</td>
<td>13.2%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Confusion</td>
<td>.66</td>
<td>13.4%</td>
<td>13.0%</td>
<td>16.3%</td>
<td>21.2%</td>
</tr>
<tr>
<td>Award Comparison</td>
<td>.72</td>
<td>9.2%</td>
<td>15.9%</td>
<td>10.5%</td>
<td>6.0%</td>
</tr>
<tr>
<td>Award Classification</td>
<td>.67</td>
<td>7.8%&lt;sup&gt;g&lt;/sup&gt;</td>
<td>0%&lt;sup&gt;g&lt;/sup&gt;</td>
<td>4.7%&lt;sup&gt;h&lt;/sup&gt;</td>
<td>10.6%&lt;sup&gt;g,h&lt;/sup&gt;</td>
</tr>
<tr>
<td>Other Case</td>
<td>.81</td>
<td>2.1%</td>
<td>0%</td>
<td>3.9%</td>
<td>4.8%</td>
</tr>
</tbody>
</table>

Note: Only participants who agreed the defendant was liable are included. Interrater reliability is measured based on Cohen’s kappa (K). Percentages indicate percent of mock jurors who mentioned the concept. Percentages of mock jurors broken down by award categorization do not include participants from Study 1. Variables that share the same superscript are mentioned at significantly different rates based on award classification, p < .05.
We then assessed the relationship among the coded reasons and the other variables we measured.56 Next, we determined which reasons predict damage awards by putting all of the coded reasons into a multiple regression along with the specific study, the particular negligence case, and the presence and meaning of the anchor.57 Controlling for all other variables, mention of the degree to which the injury interfered with the plaintiff’s life, mention of the anchor, and the side the response favored significantly predicted damage awards.58

Table 3. Correlations among variables.

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Study</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meaning</td>
<td>-0.01</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liability</td>
<td>0.01</td>
<td>-0.03</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Award (ln)</td>
<td>0.12**</td>
<td>0.12**</td>
<td>-0.20**</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Award Confidence</td>
<td>-0.07</td>
<td>0.06</td>
<td>-0.03</td>
<td>0.09*</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Award Categorization</td>
<td>0.03</td>
<td>0.09*</td>
<td>-0.23**</td>
<td>0.50**</td>
<td>0.19**</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injury Bad</td>
<td>0.02</td>
<td>-0.02</td>
<td>-0.02</td>
<td>0.02</td>
<td>0.01</td>
<td>-0.08</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injury Long</td>
<td>-0.09*</td>
<td>0.03</td>
<td>-0.14**</td>
<td>0.07</td>
<td>0.05</td>
<td>0.01</td>
<td>0.12**</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injury Interfering</td>
<td>-0.08*</td>
<td>0.08*</td>
<td>-0.14**</td>
<td>0.11**</td>
<td>-0.12**</td>
<td>0.14**</td>
<td>0.02</td>
<td>0.15**</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>Pain &amp; Suffering</td>
<td>0.04</td>
<td>-0.06</td>
<td>-0.05</td>
<td>-0.01</td>
<td>0.04</td>
<td>0.02</td>
<td>0.12**</td>
<td>0.07*</td>
<td>-0.11**</td>
<td>1.00</td>
</tr>
<tr>
<td>Plaintiff’s Age</td>
<td>-0.04</td>
<td>0.02</td>
<td>0.05</td>
<td>-0.01</td>
<td>0.04</td>
<td>0.02</td>
<td>0.12**</td>
<td>0.07*</td>
<td>-0.11**</td>
<td>1.00</td>
</tr>
<tr>
<td>Plaintiff Responsibility</td>
<td>0.05</td>
<td>0.09*</td>
<td>0.02</td>
<td>0.02</td>
<td>0.00</td>
<td>0.02</td>
<td>0.05</td>
<td>0.04</td>
<td>0.04</td>
<td>0.04</td>
</tr>
<tr>
<td>Medical Bills</td>
<td>-0.01</td>
<td>0.04</td>
<td>0.02</td>
<td>0.03</td>
<td>0.01</td>
<td>0.02</td>
<td>0.01</td>
<td>0.10**</td>
<td>0.13**</td>
<td>0.05</td>
</tr>
<tr>
<td>Side Response Favors</td>
<td>-0.12**</td>
<td>-0.02</td>
<td>-0.21**</td>
<td>0.31**</td>
<td>0.12**</td>
<td>0.32**</td>
<td>-0.06</td>
<td>0.16**</td>
<td>0.23**</td>
<td>0.10**</td>
</tr>
<tr>
<td>Defendent Responsibility</td>
<td>0.00</td>
<td>0.01</td>
<td>0.10**</td>
<td>-0.09*</td>
<td>0.06</td>
<td>-0.18**</td>
<td>0.04</td>
<td>0.07</td>
<td>-0.10**</td>
<td>0.03</td>
</tr>
<tr>
<td>Plaintiff’s Argument</td>
<td>-0.03</td>
<td>0.06</td>
<td>0.03</td>
<td>0.06</td>
<td>0.01</td>
<td>0.03</td>
<td>0.03</td>
<td>0.05</td>
<td>0.09*</td>
<td>0.07</td>
</tr>
<tr>
<td>Defense’s Argument</td>
<td>0.01</td>
<td>0.05</td>
<td>0.05</td>
<td>-0.04</td>
<td>-0.01</td>
<td>0.06</td>
<td>0.03</td>
<td>0.01</td>
<td>0.06</td>
<td>0.01</td>
</tr>
<tr>
<td>Judge’s Instructions</td>
<td>-0.04</td>
<td>0.05</td>
<td>0.02</td>
<td>0.00</td>
<td>0.03</td>
<td>0.04</td>
<td>0.03</td>
<td>0.03</td>
<td>0.03</td>
<td>0.05</td>
</tr>
<tr>
<td>Anchor</td>
<td>0.02</td>
<td>0.20**</td>
<td>0.03</td>
<td>0.12**</td>
<td>0.07</td>
<td>0.06</td>
<td>0.02</td>
<td>0.04</td>
<td>0.06</td>
<td>0.06</td>
</tr>
<tr>
<td>Legal Bills</td>
<td>0.05</td>
<td>0.00</td>
<td>0.02</td>
<td>0.05</td>
<td>0.06</td>
<td>0.06</td>
<td>0.02</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>Math</td>
<td>-0.04</td>
<td>0.05</td>
<td>-0.05</td>
<td>0.07</td>
<td>-0.01</td>
<td>0.07</td>
<td>0.01</td>
<td>0.11**</td>
<td>0.06</td>
<td>0.01</td>
</tr>
<tr>
<td>Fairness</td>
<td>-0.05</td>
<td>0.05</td>
<td>-0.04</td>
<td>-0.01</td>
<td>-0.03</td>
<td>-0.03</td>
<td>0.06</td>
<td>0.06</td>
<td>0.06</td>
<td>0.03</td>
</tr>
<tr>
<td>Confusion</td>
<td>0.17**</td>
<td>-0.02</td>
<td>-0.08*</td>
<td>0.04</td>
<td>-0.05</td>
<td>0.10*</td>
<td>-0.07</td>
<td>0.02</td>
<td>0.05</td>
<td>0.08*</td>
</tr>
<tr>
<td>Award Comparison</td>
<td>0.01</td>
<td>0.04</td>
<td>-0.03</td>
<td>0.03</td>
<td>0.04</td>
<td>0.01</td>
<td>-0.04</td>
<td>-0.09*</td>
<td>-0.08*</td>
<td>0.00</td>
</tr>
<tr>
<td>Award Classification</td>
<td>-0.16**</td>
<td>0.04</td>
<td>0.07</td>
<td>-0.02</td>
<td>0.05</td>
<td>0.08</td>
<td>-0.02</td>
<td>-0.04</td>
<td>-0.01</td>
<td>-0.01</td>
</tr>
<tr>
<td>Other Case</td>
<td>0.14**</td>
<td>0.07</td>
<td>-0.01</td>
<td>0.05</td>
<td>0.07</td>
<td>0.08</td>
<td>-0.02</td>
<td>-0.03</td>
<td>0.00</td>
<td>-0.02</td>
</tr>
</tbody>
</table>

56. See Table 3, infra, for correlations.
57. Because damage awards are not normally distributed, the dependent variable was the natural log of the damage awards rather than the raw damage awards. This procedure is commonly used with non-normally distributed data so as not to violate the assumptions of the statistical test. See, e.g., Helm et al., Numeracy in the Jury Box, supra note 42. The model significantly predicted damage awards, $F(23, 602) = 4.62, p < .001, R^2 = .12$. See infra Table 4.
58. See infra Table 4. Again, these were natural log damage awards. Study and case were also significant predictors. Results are discussed in more detail below.
Table 3. Continued.

<table>
<thead>
<tr>
<th></th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
<th>16</th>
<th>17</th>
<th>18</th>
<th>19</th>
<th>20</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Plaintiff's Age</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Plaintiff Responsibility</td>
<td>-.02</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Medical Bills</td>
<td>.05</td>
<td>.00</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Side Response Favors</td>
<td>.06</td>
<td>-.03</td>
<td>.08*</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Defendant Responsibility</td>
<td>-.02</td>
<td>.08*</td>
<td>-.03</td>
<td>-.17**</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Plaintiff's Argument</td>
<td>.01</td>
<td>.04</td>
<td>.04</td>
<td>.17**</td>
<td>.10**</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Defense's Argument</td>
<td>-.07</td>
<td>.08*</td>
<td>-.04</td>
<td>-.13**</td>
<td>.12**</td>
<td>.18**</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Judge's Instructions</td>
<td>.01</td>
<td>.00</td>
<td>.01</td>
<td>.01</td>
<td>-.03</td>
<td>.13**</td>
<td>.09*</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Anchor</td>
<td>-.00</td>
<td>.00</td>
<td>-.06</td>
<td>.00</td>
<td>-.05</td>
<td>-.04</td>
<td>.00</td>
<td>.02</td>
<td>1.00</td>
</tr>
<tr>
<td>20</td>
<td>Legal Bills</td>
<td>-.02</td>
<td>-.01</td>
<td>-.03</td>
<td>.01</td>
<td>-.04</td>
<td>-.02</td>
<td>-.02</td>
<td>-.01</td>
<td>-.01</td>
</tr>
<tr>
<td>21</td>
<td>Math</td>
<td>.13**</td>
<td>-.06</td>
<td>.05</td>
<td>.11**</td>
<td>-.10**</td>
<td>-.02</td>
<td>-.06</td>
<td>.07</td>
<td>.07*</td>
</tr>
<tr>
<td>22</td>
<td>Fairness</td>
<td>.06</td>
<td>-.03</td>
<td>-.02</td>
<td>-.01</td>
<td>-.07*</td>
<td>-.02</td>
<td>-.06</td>
<td>.04</td>
<td>.06</td>
</tr>
<tr>
<td>23</td>
<td>Confusion</td>
<td>-.02</td>
<td>-.01</td>
<td>-.06</td>
<td>-.09*</td>
<td>-.05</td>
<td>.01</td>
<td>.02</td>
<td>.04</td>
<td>.09*</td>
</tr>
<tr>
<td>24</td>
<td>Award Comparison</td>
<td>-.02</td>
<td>.01</td>
<td>-.04</td>
<td>.08*</td>
<td>-.03</td>
<td>.03</td>
<td>.01</td>
<td>.01</td>
<td>.13**</td>
</tr>
<tr>
<td>25</td>
<td>Award Classification</td>
<td>-.02</td>
<td>-.00</td>
<td>-.03</td>
<td>-.03</td>
<td>.11**</td>
<td>.04</td>
<td>.09*</td>
<td>.03</td>
<td>.00</td>
</tr>
<tr>
<td>26</td>
<td>Other Case</td>
<td>.08*</td>
<td>-.03</td>
<td>-.06</td>
<td>-.08*</td>
<td>-.08</td>
<td>-.01</td>
<td>-.00</td>
<td>.08*</td>
<td>.09*</td>
</tr>
</tbody>
</table>

| 21  | Math | 1.00 |
| 22  | Fairness | .00 | 1.00 |
| 23  | Confusion | .01 | .02 | 1.00 |
| 24  | Award Comparison | -.02 | .02 | .11** | 1.00 |
| 25  | Award Classification | -.07 | .04 | -.03 | .05 | 1.00 |
| 26  | Other Case | .06 | .03 | .19** | .05 | -.04 | 1.00 |

Note: *p < .05; **p < .01.
Table 4. Multiple regression analysis of open-ended responses on natural log damage awards.

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>S.E.</th>
<th>t</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>7.74</td>
<td>.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Study</td>
<td>.39</td>
<td>.12</td>
<td>3.36</td>
<td>.00</td>
</tr>
<tr>
<td>Case</td>
<td>1.01</td>
<td>.23</td>
<td>4.45</td>
<td>.00</td>
</tr>
<tr>
<td>Anchor Meaning</td>
<td>.30</td>
<td>.13</td>
<td>2.39</td>
<td>.03</td>
</tr>
</tbody>
</table>

**Plaintiff Factors**
- Injury - Bad: .48 (.32, 1.48, .14)
- Injury - Long: .15 (.21, .70, .48)
- Injury - Interfering: .48 (.22, 2.24, .03)
- Pain & Suffering: -.12 (.21, -.60, .55)
- Plaintiff’s Age: .05 (.31, .16, .87)
- Plaintiff Responsibility: .28 (.54, .52, .60)
- Medical Bills: -.42 (.23, -1.83, .07)
- Response Favorability: .97 (.19, 5.08, .00)

**Defendant Factors**
- Defendant Responsibility: -.20 (.21, -.93, .36)

**Court Actor Factors**
- Plaintiff’s Argument: -.08 (.35, -2.24, .01)
- Defense’s Argument: .51 (.39, 1.32, .19)
- Judge’s Instructions: -.54 (.54, -1.01, .31)
- Anchor: .64 (.30, 2.10, .04)
- Legal Bills: 1.82 (1.75, 1.04, .30)

**Mock Juror Factors**
- Math: .11 (.33, .33, .75)
- Fairness: -.10 (.28, -.35, .73)
- Confusion: -.02 (.30, .01, .99)
- Award Comparison: -.08 (.33, -.25, .80)
- Award Classification: -.29 (.36, -.79, .43)
- Other Case: 1.03 (.71, 1.45, .15)

Note: Only participants who agreed the defendant was liable were included in the model. All variables are dichotomous (no mention/mention), with higher values indicating mentioning item, except response favorability (defense, neutral, plaintiff), with higher values indicating more plaintiff favorability. Beta weight and standard error are unstandardized. Bolded items are statistically significant (p < .05).

In the following Sections, we discuss each of the reason categories by providing examples of responses that exemplify the category and quantitative data on how the mentioning of that reason relates to damage awards and other determinations. Specifically, we separate results by case (less severe, more severe) and the participants’ categorization of their
awards as low, medium, or high. We have divided this Part into four themes, based on the party most related to the reason category, including the plaintiff, the defendants, the court actors, and the mock juror.

A. Plaintiff

Perhaps unsurprisingly, the majority of responses and categories of reasons coded included discussions of the plaintiff.\(^{59}\) Overall, 43.4\% of responses favored the plaintiff. The two most mentioned reason categories across all studies were how much the injury interfered with the plaintiff's life (mentioned by 46.7\% of mock jurors) and how much pain and suffering the plaintiff experienced (mentioned by 44.3\% of mock jurors).\(^{60}\) Other plaintiff elements were mentioned from 3.6\% to 44.3\% of the time.\(^{61}\) The majority of mock jurors (75.8\%) included at least some consideration of the plaintiff's injury in their responses.\(^{62}\)

Although factors related to the plaintiff were the most mentioned, only plaintiff favorability and injury interference were related to the given award.\(^{63}\) Responses favoring the plaintiff were associated with higher damage awards than neutral responses or responses favoring the defendant.\(^{64}\) Moreover, mock jurors who mentioned the injury interfering with the plaintiff's life ("injury interfering") gave higher damage awards than mock jurors who did not.\(^{65}\) There were differences between cases though, with mock jurors mentioning injury interference significantly more in the Munroe case than the Jeansonne case.\(^{66}\) Interestingly, while mentioning injury interference was associated with the decision that the mock jurors reached, mentioning pain and suffering was not.\(^{67}\) Therefore, it appears that mock jurors are paying more attention to the gist of injury

---

59. Reason codes for plaintiff-related variables include mentioning how bad the injury was, how long the injury lasted, how interfering the injury was, pain and suffering, medical bills, plaintiff's age, and plaintiff's responsibility. See Table 2, supra, for percent of mock jurors who mentioned each variable and the interrater reliability scores.

60. The number 42.6\% is a high rate for spontaneously mentioning a concept; however, it is important to note that people are being told the one thing they are meant to consider is how much pain and suffering the plaintiff experienced. See supra Table 2. Therefore, it is somewhat concerning from a legal perspective that fewer than half of the mock jurors mention pain and suffering.

61. See supra Table 2.

62. There were four codes that focused on the injury—bad, long, interfering, and pain and suffering. Looking at mentions of these variables combined, on average participants mentioned 1.38 factors related to the injury (31.7\% mentioned 1; 29.0\% mentioned 2; 12.8\% mentioned 3; 2.4\% mentioned all 4). However, 24.2\% of responses included no mention of the injury. See id.

63. See supra Table 4; see also supra Table 3.

64. For every 1-point increase in favorability, natural log awards increased by .97, \(t = 5.08, p < .001\). See supra Table 4.

65. Mock jurors who mentioned interference gave natural log awards that were .48 higher than mock jurors who did not, \(t = 2.24, p = .03\). See supra Table 4.

66. Mock jurors were significantly more likely to mention interference in Munroe (56.1\%) than Jeansonne (31.3\%), \(X^2(1) = 43.46, p < .001\). This is most likely due to the Munroe case facts highlighting the interference of the injury more, even though Munroe involves an injury of shorter duration overall. See supra note 40.

67. See supra Table 4; see also supra Table 3.
how interfering it is) than the verbatim legal concept (pain and suffering) when determining their award.

In concert with this view, as shown in Table 2, mock jurors frequently articulated reasons for their judgments that included a categorization of the award or a comparison of their award amount to another number. Other qualitative-gist categories such as whether injuries were long lasting or interfering, along with “fuzzy” intangibles such as pain and suffering, were articulated by over 40% of mock jurors. Consistent with the Hans-Reyna model, responses favoring the plaintiff increased more than 37% as judgments progressed in perceived magnitude from low, to medium, to high.

Many participants struggled with placing a monetary value on pain and suffering. Some participants determined a monthly or yearly amount, others based it on the cost of tuition or income, while others determined that pain and suffering was priceless. Mock jurors who referred to pain and suffering being incalculable often discussed the consequences of the accident being terrible but noncompensable, leading them to award low damages. For example, one mock juror justified:

I think I chose $1000 because it is a substantial sum of money that doesn’t break the bank. I lean towards a lower sum of money because I am not convinced that pain and suffering can ever have a dollar price, especially when it was caused on accident. [Everyone] is dealt a different hand in life. I’m not convinced that people should be compensated for bad luck.

Similarly, a second mock juror explained:

68. In other words, participants would either say their award was large (award classification) or say it was more than another number, such as college tuition (award comparison). See supra Table 2 (“Award Classification” and “Award Comparison”); see also Table 1, supra, for definitions.

69. See supra Table 2.


71. See supra Table 2. It is worth noting that overall, gist interpretations of the information about the case elicited more comments than attorneys’ arguments or the judge’s instructions. See infra Section II.C.

72. The exact amount varied, though. For example, two participants said pain and suffering is $200/month while two other participants said it is $1,000/year. See supra note 40.

73. Eleven participants based their calculation on some portion of college/community college tuition, understandable given the participant pools were composed of current college students. See supra note 40.

74. Thirty participants based it on income. However, it is important to note that income measures were used as anchor numbers. See supra note 40.

75. Over ten participants concluded there was no amount that could make up for what the plaintiff lost. See supra note 40.

It is unfair to punish Mr. Rumson through monetary means when it would not achieve what it is supposed to: truly compensating for Rebecca’s lost time.77

And a third mock juror concluded:

Emotional pain sucks but you can’t put a price on it. It sucks what happened to her, but giving her money now isn’t going to make it any better. It will just make his life worse. She is better [now]. Move on with life.78

While a fourth one summarized the sentiment stating:

Money will not erase “pain and suffering.”79

B. Defendant

In the two cases employed in these three mock juror experiments, mock jurors were told that the defendant had been found legally responsible, and their task was solely to determine a damage award. Therefore, only 3.4% of the reasoning responses favored the defendant.80 These responses were distinctive, however. Mock jurors who favored the defendant were 1.96 times more likely to disagree with the conclusion that the defendant was liable.81 Moreover, mock jurors whose reasons favored the defendant gave lower damage awards.82

The only substantive reason that was primarily linked to the defendant was defendant responsibility. Overall, 39.5% of mock jurors discussed the defendant’s responsibility.83 However, mentioning the defendant’s responsibility was related to less agreement that the defendant was liable.84 It was also associated with lower award categorizations.85

77. Krystia Reed, Valerie P. Hans & Valerie F. Reyna, Study 1 [hereinafter Study 1] (unpublished transcript) (on file with authors).
79. Study 1, supra note 77.
80. See supra Table 2.
81. Although mock jurors were told that the defendant was liable, we also asked them whether or not they agreed with this conclusion. Overall, 91% of mock jurors agreed that the defendant was liable. Mock jurors who provided justifications favoring the defendant were significantly more likely to say the defendant was not liable (36.1%) than participants who were neutral (10.4%) or favored the plaintiff (4.1%), \(X^2(2) = 43.10, p < .001\). See supra note 40.
82. Mock jurors who gave responses favoring the defendant had natural log damage awards that were .97 lower than the awards given by mock jurors whose responses were neutral, \(t = 5.08, p < .001\). See supra Table 4.
83. See supra Table 2.
84. Mock jurors who mentioned the defendant’s responsibility were significantly more likely to disagree with the liability judgment against the defendant (12.3%) than mock jurors who did not mention the defendant’s responsibility (6.7%), \(X^2(1) = 6.85, p < .01\). See supra note 40.
85. \(X^2(2) = 10.44, p < 0.1\). See supra Table 2. There were no differences in the natural log damage awards when focusing on only participants who agreed the defendant was liable. See supra Table 4. Across all participants, though, mentioning defendant responsibility was negatively correlated with natural log damage awards, \(r = -.09, p = .01\). This is interesting to note because in civil cases, liability determinations do not have to be unanimous, and in some cases the jury is told the defendant
Mock jurors who mentioned defendant responsibility were significantly more likely to classify the award as low (53.6%) than medium (35.3%) or high (28.8%). This is likely because most mock jurors who discussed the defendant’s responsibility focused on the accidental nature of the event. For example, one mock juror reasoned:

The most compelling aspect about Rumson which guides me not to award her an excessive amount is that he was trying to [avoid] another accident when he hit Rebecca. He was quick to admit his faults, had his insurance pay for all her illnesses as proper, and he obviously did not hit her on purpose.

Another juror stated:

Mr. Rumson needs to pay because he [is] the one who caused these medical issues, however it was stressed that his actions were unintentional. Because he did not intentionally hurt her, this should be taken into account when deciding how much he should pay her.

Nevertheless, there were some exceptions, such as the mock juror who stated:

I [thought] the defendant tried to claim as little responsibility as possible, which turned me off from [his] argument and made me want to charge him more.

These sentiments indicate the importance of how the defendant is perceived in juror damage award calculations. Defendants who are perceived more favorably often have to pay less, while defendants who are perceived less favorably have to pay more. This occurs even when the injury is the same and no punitive damages are requested.

Participants’ comments on an absence of intentionality would be understandable if they were asked to determine liability, because a key element of judgments of legal responsibility is the intention of the perpetrator. However, the defendant’s level of responsibility is legally irrelevant in damage award determinations. This surprising focus on defendant’s responsibility in reasons mock jurors provided in these studies

86. See supra Table 2.
87. Study 1, supra note 77.
88. Study 3, supra note 78.
89. Study 1, supra note 77.
90. See supra Table 2.
suggests the influence of the phenomenon of fusion. That is, jurors are supposed to determine liability and then determine damages. Because contributory negligence was not at issue in these cases, once participants knew that liability had been determined, the plaintiff should have received an amount that compensated the entire injury. Unless punitive damages are involved, the effect of the damages on the defendant should not be considered. Therefore, because the defendant was completely at fault, he is legally responsible for compensating the plaintiff for all her injuries. The fact that the incident was a result of a negligently-caused accident and not intentional behavior should legally only influence initial determinations about liability (and potentially punitive damages), not compensatory damages.

Nonetheless, researchers have documented the occurrence of fusion in juror responses to liability and award judgments in civil cases. Judgments about liability can also influence award decisions: A defendant whose actions are reprehensible may wind up paying more in damages than a sympathetic but negligent defendant for the same injury. The reasoning responses here indicate that jurors might not be behaving consistently with the law. Instead, a substantial number indicate they are regularly considering the defendant’s responsibility not just for liability determinations but also as part of the damage award determination.

C. Court Actors

Overall, participants did not mention the court actors (attorneys and the judge) very frequently. Nor did mention of the court actors predict damage award amounts. The attorneys’ arguments and judge’s instructions did stand out for some mock jurors, though. Although some mock jurors mentioned the plaintiff’s attorney’s argument, jurors only directly referred to the defense attorney or the judge, not the plaintiff’s

93. ROBBENNOLT & HANS, supra note 91, at 153–57 (describing research on holistic justice and double-discounting).
94. Contributory negligence was not at issue here. The plaintiff did not do anything to contribute to the injury. Mock jurors recognized this as only 3.6% mentioned the plaintiff’s responsibility, while 39.5% discussed the defendant’s responsibility. Moreover, participants who discussed the plaintiff’s responsibility often focused on the event being an accident, or the plaintiff being “in the wrong place at the wrong time.” See supra note 40.
95. See SHERWIN & BRAY, supra note 92.
96. Id.
97. Id.
98. ROBBENNOLT & HANS, supra note 91, at 157–58.
99. This could potentially be a form of jury nullification. See infra Section III.A.
100. See Table 2, supra, for frequencies. The cases were limited in content though, so it is possible that more focus would be paid to the court actors if they were more involved in the case.
101. There were no differences in natural log damage awards based on mentioning the plaintiff’s attorney, the defense attorney, or the judge. See supra Table 4. However, other research demonstrates that perceptions of the attorneys can influence verdicts. See, e.g., Krystia Reed, Calls for Speculation: An Experimental Examination of Juror Perceptions of Attorney Objections, BUFF. L. REV. (forthcoming 2019) (manuscript at 11–15) (on file with authors).
attorney. For example, one mock juror balanced the defense attorney’s argument against the judge’s instructions:

*It is difficult to assign a monetary value to pain and suffering in this case, as price tags cannot be easily attached to things like missed soccer games and missed high school events. That being said, I would award $100,000 to Ms. Munroe for her pain [and] suffering. While the defense attorney asserted that his client’s culpability should be reduced because Ms. Munroe was merely in the wrong place at the wrong time when Mr. Rumson swerved onto the sidewalk to avoid a car accident, the judge made clear in [his] instructions that this award is not about punishing Mr. Rumson.*

Another mock juror considered the defense attorney’s argument, stating:

*If not for avoiding this accident, the defendant could have caused a more serious accident. However, the defendant still caused this, and [the] plaintiff should be compensated. However, as the defendant’s lawyer’s closing [argument] stated, it should not be excessive. The defendant did not act with intent or complete carelessness, and he should not have to be held liable for paying high costs . . .*

Not all mock jurors viewed the defense attorney’s argument positively, though. For example, one mock juror stated:

*Also, the closing argument by the defendant’s lawyer did not seem genuine. I agree money cannot compensate for all of Rebecca’s suffering; however, it should cover her medical bills, [physical] therapy bills, and some extra money should be awarded for her being unable to participate and do the things she loves.*

Another factor potentially relevant to court actors is the anchor, which can be brought up in many different ways. Consistent with previous research, the anchor significantly impacted mock jurors, such that jurors in the high-anchor conditions provided higher damage awards than jurors in the control condition. Jurors do not necessarily recognize

---

102. Study 1, supra note 77.
103. Study 2, supra note 76.
104. *Id.*
105. In these studies, the anchor was either provided by the jury foreperson (Study 1) or in the questionnaire (Study 2 and Study 3). However, attorneys can also be the source of the anchor, such as in their closing arguments.
106. A general linear model using anchor meaning as the independent variable and natural log damage awards as the dependent variable indicated there was a significant main effect of anchor meaning, $F(2, 686) = 10.74, MSE = 6.25, p < .001, R^2 = .03$. Natural log damage awards in the control condition were significantly lower ($M = 10.24, SE = .17$) than in the meaningless ($M = 11.26, SE = .16, p < .001$) or meaningful ($M = 11.10, SE = .16, p < .001$) conditions. There were no differences in damages between the meaningless and meaningful conditions ($p = .51$). See supra note 40.
the anchor is important to them, however. Overall, only 8% of mock jurors mentioned the anchor. For example, one mock juror who participated in a study that manipulated the anchor number through a foreman’s statement wrote:

I disagree with the jury foreman in that I do not believe the award should be based on the perceived upper limit of what the plaintiff would have earned had she been [employed] during the period of her injury.

Other mock jurors found that the anchor was instructive, such as the mock juror who explained:

As I do not have any experience with the amount of money typically awarded in these cases, I was swayed by the jury foreman’s suggested amount.

Mentioning the anchor was related to higher damage awards. There were no differences in mention of the anchor depending on who provided it; however, meaning of the anchor did make a difference. The anchor was mentioned more frequently when it was meaningful than when it was meaningless. Therefore, jurors seem to be affected by the anchor more than they admit but are more likely to admit they are influenced by the anchor when it is relevant to the case.

D. Juror

In addition to characteristics of the trial actors, there were several characteristics of the individual mock jurors that they said influenced their decisions. Specifically, responses sometimes included concerns about fairness, expressions of confusion, math equations, and classification of the award. However, none of these characteristics predicted damage awards.

Many of the jurors were concerned with fairness; 13% of mock jurors expressed the sentiment that the award they were giving was the “fair,”
“just,” or “right” award. Fairness cut both ways, though. Some participants focused on being fair toward the plaintiff, such as the mock juror who explained:

I believe this is a fair amount for the plaintiff’s pain and suffering based on the facts of the case. Although it is difficult to put a number to label “pain and suffering” it is a little less than the court [renovation] costs.

Other mock jurors focused on fairness toward the defendant, such as the mock juror who stated:

I think it is unfair to excessively punish a man for a mistake that is now [corrected].

Perhaps unsurprisingly, concerns about fairness were sometimes coupled with expressions of confusion about the award. For example, one mock juror explained:

I wasn’t given any background on how much is typically given for emotional pain/suffering so I didn’t have any idea where to start from – didn’t know what was reasonable. I was told average annual income is 50,000 and I thought her emotional suffering was pretty tremendous so I awarded her 20% of this number. I also was considering the average income because I didn’t want to be too unfair in what I made the defendant pay.

Some jurors turned to math or numerical comparisons to justify their awards. Nearly 10% of mock jurors used a mathematical equation to justify their award. For example, one juror explained:

I used a rough estimate of about $50 a day for 2 years, which came out to $36500. I chose $50 a day since this is in the range of how much a high schooler might make on any given work day at their part-time job (I am assuming the plaintiff was very [committed] to soccer and her other activities requiring physical mobility, similar to the amount of time put into a part-time job). While a part-time job may only be on a few days in a week, the plaintiff suffered more since she missed out on normal activities [that] she could have participated in had she not

115. These concepts were coded as “fairness.” See supra Table 2.
116. This is potentially why there is no significant impact on damage awards, because the dichotomous coding did not fully capture which side the mock juror was considering when thinking about fairness. Thus, this distinction might be captured better in the assessments of response favorability, which did significantly predict awards.
117. Study 3, supra note 78.
118. Study 1, supra note 77.
119. Overall, 13.4% of participants indicated some degree of confusion. See supra Table 2.
120. Study 2, supra note 76.
121. Overall, 9.7% of participants described a math formula. See supra Table 2.
been hit by the defendant. For this, I added an extra $15000 or so, just for a nice even-looking number.\textsuperscript{122}

Others attempted to characterize their award as large or small,\textsuperscript{123} or compare their award to some other number.\textsuperscript{124} For example, one mock juror explained:

\textit{I think the defendant should definitely be punished and [made] to pay the plaintiff a medium to high amount. I came to this conclusion because the accident seems to have been the defendant’s fault. He should have pumped the brakes, which he should know as a professional truck driver. But because he did not, he lost control and the accident occurred. While I concluded the amount should be medium to high, I was not sure at all what would constitute a “medium” or “high” amount.}\textsuperscript{125}

These comments underline that the jurors understand the gist of the injury and can categorize the award amount accordingly. It is assigning a verbatim dollar award amount to the injury that many mock jurors found to be difficult.

\textbf{III. IMPLICATIONS}

\textbf{A. Summary and Caveats}

This Article aimed to shed light on the reasons behind jury damage awards. When asked to provide the reasons that led them to a specific dollar damage award amount, our study participants reported considering a variety of factors when reaching their decisions.\textsuperscript{126} Interestingly, the factors varied across participants; there was no factor that even 50% of the mock jurors reported considering.\textsuperscript{127}

Ultimately, the only factors that related to damage awards were mentioning how interfering the injury was, mentioning the anchor, and the side the response favored.\textsuperscript{128} Most responses tended to favor the plaintiff and included comments about injury interference (which predicted damage awards) or pain and suffering (which they were specifically told to consider, but did not predict damage awards). Fewer responses favored the defendant, but those that did were associated with lower damage awards.\textsuperscript{129} Defendant responsibility was often mentioned as a reason to

\textsuperscript{122} Study 3, \textit{supra} note 78.
\textsuperscript{123} Overall, 7.8% of participants characterized their award as small, medium, or large when they provided an account of how they arrived at their damage award. \textit{See supra} Table 2.
\textsuperscript{124} Overall, 9.2% of participants compared their award to some other number, including the anchor. \textit{Id.}
\textsuperscript{125} Study 3, \textit{supra} note 78.
\textsuperscript{126} \textit{See supra} Table 2.
\textsuperscript{127} \textit{Id.} The highest mentioned factor was mentioned by 46.1% of participants.
\textsuperscript{128} \textit{See supra} Table 4.
\textsuperscript{129} \textit{See supra} Section II.B.
reduce damage awards to prevent a perceived harm to the defendant. Additionally, mock jurors recognized they were influenced by the anchor to some extent, particularly when the anchor was relevant or meaningful to the case, but mock jurors seemed to underestimate the extent to which the anchor influenced them.

It is important to note the limitations to these findings. First, the materials used were limited in content. It is possible that results would be different in a longer, more detailed trial. For example, in a real trial, more attention might be paid to the attorneys because they are presenting the case to the jury. Moreover, these were negligence cases that involved no intentional wrongdoing by the defendant. What jurors find important is likely to vary based on the type of case and facts involved.

Second, as we discussed earlier, there are limits to our metacognitive abilities. Research in psychology suggests that we are sometimes challenged in generating reasons for our judgments and decisions after the fact.

Third, we studied individual mock jurors' reasons for their damage awards rather than examining the reason-giving process during jury deliberations. Although it is possible that these factors mirror what the mock jurors would have said if they were in deliberation, it is not certain. Mock jurors provided anonymous, written justifications of their responses to a researcher. It is possible jurors would say something different when orally justifying their position in person to other jurors.

B. Consequences for Trial Attorneys and the Legal System

The law is based on an idealized notion that fact-finding is driven by logic and rationality. Fact finders are expected to follow a logical pattern and provide reasons for their decisions—judges in their written opinions and jurors in their deliberations with other jurors. However, all fact finders are potentially subject to human biases. The intuitive-override model of judging posits that trained judges are not purely rational actors. Instead, judges tend to make intuitive decisions based on human biases but can override their intuitions with complex, deliberative thought. Indeed,
research on FTT has shown that cognitive biases can be larger in experts than laypersons.

Jurors similarly do not fit the pristine ideal of the rational actor, influenced solely by logic and facts. In our studies, mock jurors were asked to give a dollar damage award for the plaintiff's pain and suffering in the case, but fewer than half of them specifically mentioned verbatim the words "pain and suffering" in their explanations of how they arrived at those dollar awards. In fact, a quarter of our participants made no mention of the injury at all. Although considering interference of the injury was related to pain and suffering awards, mentioning pain and suffering or other characteristics of the injury was not.

Instead, jurors seem to be operating at the gist level and some appear to be affected (consciously or not) by concepts that should be, as a strict legal matter, irrelevant. One of the primary factors related to awards was the side the mock juror's reasoning response favored, suggesting that jurors have a fuzzy idea of who they want to support, which is then translated into damage awards. Moreover, at this point in the trial, mock jurors should not be considering defendant responsibility because liability has already been determined. Yet, many mock jurors were concerned about the award not being too harsh for the defendant because the event was an accident, resulting in reduced damage awards. Legally, though, the defendant is responsible and the plaintiff deserves to be compensated for the entire injury caused by the defendant's negligence. Consistent with the research on both FTT and moral judgments, jurors went with their gist interpretation and not the law; apparently resulting in some discounting of the award. Discounting in this instance might be considered a mild form of civil jury nullification.

138. See supra Table 2.
139. See supra note 62 (showing that 24.2% made no mention of the injury in offering reasons for their award judgments).
140. See supra Table 1.
141. See supra Section II.B.
142. These cases did not involve punitive damages, just compensatory damages for the plaintiff's injuries with no issue of contributory negligence. Therefore, once liability is determined, the plaintiff should be compensated entirely. The consequence of the award on the defendant should not be considered. See supra text accompanying notes 90-99.
143. See supra Section I.B. This is a gist judgment of who deserves money (the defendant or the plaintiff), rather than focusing on the verbatim instructions of the law.
144. See supra Section I.A. Similar to Haidt's proposition, jurors seem to make an intuitive judgment about what should be the fair, moral, and just outcome and then match the award to the judgment. See Haidt, The Emotional Dog and Its Rational Tail, supra note 16. Even when justifying their moral decisions, jurors appear to be relying on their intuition about what is fair or right, rather than focusing specifically on the law.
145. As noted above, those who mentioned the defendant's responsibility appeared to have discounted the award to the plaintiff, a phenomenon that has been found in other jury studies. See ROBBENHOLT & HANS, supra note 91, at 155-57. It is also possible that jurors discounted their perceptions of injury severity.
146. Jury "nullification occurs when a jury—based on its own sense of justice or fairness—refuses to follow the law and convict in a particular case even though the facts seem to allow no other conclusion but guilt." Jack B. Weinstein, Considering Jury "Nullification": When May and Should a
the letter of the law, requiring full compensation to the plaintiff, jurors consider their own senses of fairness and morality to prevent a perceived injustice to the negligent defendant.

Another factor that influenced mock jurors was the anchor. Our research studies varied the presence and size of anchor numbers. However, only a handful of mock jurors explicitly reported relying on the meaningless anchor, suggesting that whatever effect it has is occurring mainly at an unconscious level. Mock jurors in the meaningful anchor condition were more likely to report using it, likely because they considered it relevant and, therefore, something they should consider.

These results indicate that the intuitive principle of judging seems to apply to jurors as well. It appears that jurors develop an overall intuition or gist about the severity of an injury, the culpability of the parties, and the general classification (size) of the award. This gist is likely to be informed by the legal context but can be influenced by extralegal factors as well. Moreover, jurors struggle with the verbatim judgment—turning the gist into a dollar award judgment.

We conclude that, when asked to provide a damage award amount, jurors rely on an overall gist assessment of the injury in context. Some of the elements that appear to be most relevant are consistent with the law’s strictures. Other elements of the context may go outside the law’s limits.

Attorneys on both sides would benefit from considering the full context of an injury to help jurors appreciate the gist of the relevant facts. That gist should capture, ideally, a deeper truth that goes beyond superficial facts—and lawyers could help jurors achieve that kind of meaningful insight into the facts. Thus, successful attorneys should see part of their task as helping jurors understand the gist of the injury. For a plaintiff’s attorney, this might mean developing a picture of a sympathetic plaintiff, explaining how much the injury has interfered with the plaintiff’s life, and offering meaningful anchors. A defense attorney might be more successful making the defendant appear sympathetic by highlighting the defendant’s lack of responsibility even in cases like these in which only monetary damages are at issue.

*Jury Reject the Law to Do Justice,* 30 AM. CRIM. L. REV. 239, 239 (1993); see also Caisa Elizabeth Royer, *Note, The Disobedient Jury: Why Lawmakers Should Codify Jury Nullification,* 102 CORNELL L. REV. 1401, 1402 (2017). Usually, nullification is thought of in the criminal context—juries nullify to protect a criminal defendant; however, nullification can also occur in the civil system. See, e.g., Ballard v. Uribe, 714 P.2d 624, 631 (Cal. 1986) (Mosk, J., concurring) (recognizing that nullification might occur but should not be considered misconduct); Lars Noah, *Civil Jury Nullification,* 86 IOWA L. REV. 1601, 1626–27 (2001) (considering whether nullification should occur in civil cases). There are debates over whether jury nullification is appropriate. See, e.g., id. at 1658 (considering the pros and cons of nullification, concluding that civil jury nullification is undemocratic and courts should act to minimize the risk of nullification); Weinstein, *supra,* at 244–45 (arguing that procedural safeguards should result in nullification that promotes justice and is done infrequently). But, given the secrecy of jury deliberations, in most instances it will likely be difficult to determine whether the jury is interpreting the law or overriding the law with their own moral judgments.
CONCLUSION

The present studies underscore that, although jurors might not be completely capable of identifying the full range of reasons for their award decisions, their accounts of the key reasons for their judgments offer important insights. More research with a broader range of cases and injuries will be required to understand the complex relationships between juror reasoning and damage award amounts. The request to provide reasons might reveal that jurors are engaging in a form of civil jury nullification, as suggested by some of our data. But it also could offer valuable information about what jurors think are the most significant consequences of an injury. One important open question is how attorneys might guide jurors’ gist development—and resulting awards—through the reasons they offer during opening or closing arguments. Although there are many questions left to investigate, these studies suggest that jurors could be influenced by, and perhaps even benefit from, such lawyer guidance in translating their gist judgments to verbatim awards.