

## **Determining Damages**

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A Review of *Determining Damages: The Psychology of Jury Awards*.

By Edie Green & Brian H. Bornstein.

American Psychological Association, 2003.

206 pp., \$49.95

This book presents in narrative form individual empirical research study results – rather than a mere summary of study results – regarding how juries determine their awards of compensatory and punitive damages. This review will be limited to compensatory damages because punitive damages are capped in Indiana and because in Indiana a plaintiff receives only twenty-five percent of any punitive damage award.

The authors are psychologists. They are a professor and an associate professor of psychology at different universities. Despite the academic background and reliance on empirical data, trial lawyers should find the book remarkably easy to read. The authors do not assume that the reader is familiar either with law or with psychology. There is a brief introduction to the legal procedures and to the law regarding damage awards. There is a minimum use of terms-of-art, and those that are used are defined in easy-to-understand language.

### I. Overview

The book concludes that, overall, juries do remarkably well in determining damages, given the vague law and arcane instructions with which they are provided. The book ends with suggestions for helping juries do a better job of rationally and predictably determining damages. Some of these suggestions have long been available in Indiana, such as Indiana's Medical Malpractice Act, caps on damages against governmental units, and no punitive damages being allowed against governmental units. Some others, such as trial bifurcation, also exist in Indiana,

although they are not as frequently the subject of appeals. Still others have relatively "recently" been adopted in Indiana, such as the "new" punitive damages "reform" statute or the "new" Indiana Jury Rules. Finally, some of them are still disallowed or are only infrequently used.

The authors predict that their suggestions, based on jurors' and mock jurors' explanations for their damage awards, will result in jury awards that are more rational and predictable. The book also provides empirical support for other issues faced by both plaintiffs' and defendant trial lawyers. This support includes empirical evidence for and against different types of "tort reform," for motions to bifurcate the issues of liability and damages, and against the fallacy that a typical admonishment instruction can be presumed to "un-ring" the bell. In keeping with an academic publication, the book gives specific references to all the studies on which the authors rely. The references are very useful for those interested in the published source information on which many jury consultants rely, and for those interested in finding out more about what research is available on other aspects of trial presentation.

These resources include *Law and Human Behavior*; *Behavioral Sciences and the Law*; *Journal of Risk and Uncertainty*; *Journal of Personality and Social Psychology*; *Law and Psychology Review*; *Applied Cognitive Psychology*; *Journal of Applied Social Psychology*; *Journal of Applied Psychology*; *Psychological Bulletin*; *Journal of Legal Studies*; *Journal of Experimental Social Psychology*; *Law and Society Review*; *Journal of Criminal Law and Criminology*; *Law and Contemporary Problems*; *Personality and Social Psychology Bulletin*; *Advances in Experimental Social Psychology*; *Psychology, Public Policy, and Law*; *Journal of Experimental Psychology: Human Perception and Performance*; *American Journal of Forensic Psychology*; *Forensic Reports*; *Jurimetrics*; *Journal of Health Politics, Policy and Law*; *Handbook of Psychology and Law*; *Justice System Journal*; *Risk Analysis*; *Journal of Family*

*Law; Journal of Experimental Psychology: Applied; Journal of Social Behavior and Personality; Journal of Personality; Journal of Products Liability; Journal of Safety Research; American Psychologist; Sociology and Social Research; Journal of Communications; and the American Bar Foundation Research Journal.*

## II. Methodology

The authors start with the success or failure rate of particular types of cases. They then provide the mean, median, and mode (all defined) of jury compensatory and punitive damage awards from the recent past, for different types of cases.

The authors also recognize certain limitations to the research used. First, only about two percent of all cases involve jury trials. Civil cases are a subset of that percentage and personal injury cases are a subset of the civil cases. The authors also note that case selection by plaintiffs' lawyers and pretrial settlements most probably eliminate the weakest, strongest, least risky, and most risky of all personal injury cases.

Nevertheless, there still are about 50,000 civil jury trials in the United States each year. There is no national reporting system for *all* civil jury damage awards. In addition, a jury's damage award may not be the final amount of damages determined: there may be new trials, additur or remittitur, post-trial settlements, and reversal or reduction of awards on appeal.

The authors also caution that a retrospective analysis of jury damages awarded in actual trials is plagued by various confounding factors including: the skill and experience of the attorneys involved; the litigation budgets available to the plaintiff and defendant; the strength or weakness of particular lay and expert testimony; whether the case is comparative fault or not (such as cases against governmental entities or medical malpractice cases); the particular evidence that is admitted or excluded within the broad discretion of the trial judge; the

idiosyncrasies of a particular trial judge; different demonstrable economic losses; different law in different venues; and different juror pools in different venues.

Perhaps for these reasons, the majority of the research on which the authors rely involves experimental methodology. However, not all studies follow the same methodologies. The methodologies range from mock "jurors" simply reading short summaries of facts, to viewing the videotape of an actual trial, to sitting as jurors while a mock trial is presented. The methodology also differs in whether the results are from individual mock jurors or from individual mock *juries*. Only in the latter is the group dynamic brought into play.

Therefore, the reader must look at the methodology used for a particular study, in addition to its results, when considering the predictive value of the study. However, in defense of experimental studies it must be remembered that such studies are the only way to hold all other variables constant and test for a single variable. Examples of single variables include a particular demographic characteristic of a plaintiff, the degree of a plaintiff's own culpability, or aggravating circumstances of a defendant's liability (such as intoxication in an auto accident case). For some variables, there are studies reporting conflicting results. Sometimes this can be explained by the difference in the methodologies used. Sometimes it cannot. In addition, the authors admit that for some of the variables that are reviewed there really is a "paucity of data." Finally, although the book was published in 2003, some of the studies relied on are far from being "recent." The reader should also consider the date of the study in determining whether the study is still applicable to an American culture that seems to be homogenizing while simultaneously changing as a whole at a geometric rate.

### III. The Participants

The first variable reviewed is the plaintiffs themselves. Five characteristics of plaintiffs are reviewed: race, income level, gender, age, and the number of plaintiffs. There are few studies on which to rely regarding race, but from those few it appears as though African-Americans generally received less damages than White plaintiffs for the same injuries.

There is no empirical support for the assertion sometimes made that plaintiffs perceived to be poorer or needier receive higher awards than plaintiffs who appear better off financially.

Awards for injured and deceased men were generally higher than awards for injured and deceased women. Similarly, awards to husbands who sued for losses related to their wives' injuries generally collected more than wives who sued for losses related to their husbands' injuries. Reviewing jurors' written explanations for the differences revealed that jurors were more likely to consider exponential factors related to salary and inflation in awards to men. They also revealed the apparent anomaly that juries fail to understand that a particular wife may lose as much or more than a husband when the injury to the spouse is loss of future earning capacity.

The book reports only one study regarding the age of the plaintiff. It involved a mock wrongful death claim for a decedent, who in one scenario was 30 years old and in another was 60 at the time of death. All other variables were held constant. Not surprisingly, the awards were greater for the younger decedent. But what was interesting was that mock jurors tended to focus on lost earnings and the needs of surviving children, rather on the needs of the surviving spouse. Studies based on the number of plaintiffs showed that there was no substantial effect regarding total compensatory damages, but punitive damages increased significantly as the number of plaintiffs increased. A study with a varying number of plaintiffs of two, four, six, or ten was

interesting. The awards were lowest for one plaintiff, highest for four plaintiffs, then decreased in the six member and ten member plaintiff configurations. Another type of numbering study showed that aggregating plaintiffs decreased the award for the most severely injured plaintiff but increased the award for the less severely injured plaintiff.

The next variable studied was the characteristics of the defendant. Mature looking defendants paid more in compensation than did "baby-faced" defendants, but only when opposed by baby-faced plaintiffs. Black defendants were required to pay somewhat less than White defendants. Businesses and the governments tended to pay more than individual defendants under the same or similar circumstances; and corporate defendants, while less likely to be found liable (perhaps a function of greater defense resources), paid more damages than individuals or other types of businesses – even when liability, injuries, and special damages were held constant.

There was no difference noted in liability or compensatory damages based on an individual defendant's perceived wealth. However, awards were higher when an individual defendant's conduct was professionally related. This might be because comparative fault usually does not apply in medical malpractice cases, which make up the majority of cases based on professional misconduct. On the other hand, awards against professionals were less than average when the conduct was not professionally related.

The authors then looked at the jurors' characteristics in influencing damage awards. Again, care must be taken to further distinguish the methodology of studying individual jurors and studying juries as a whole. Some studies show that jurors with higher household incomes awarded modestly more for noneconomic compensation (pain and suffering), while other studies found no relationship between income level and award size.

In some studies, jurors who were better educated tended to give smaller awards; while in other studies the opposite effect or no effect was found.

In a study from 1970, mixed gender juries tended to award twenty percent of what was requested, while juries of men awarded fifty-two percent of the damages requested. More recent studies indicate that damage awards are not significantly different based on gender of the jurors. In what appeared to be the most comprehensive study reported, mock jurors watched a taped products liability trial. Researchers varied jurors' age, gender, race, politics, education, income, and prior jury service. The considerable variations in the damages awarded could not be explained by any demographic predictors. The conclusion was that if individual demographics exert an influence on damage awards it is small and inconsistent. Even then, the effect was thought to be case-specific.

Other studies show that jurors favor plaintiffs of their own gender. Awards from male dominated juries were twelve percent above average if the plaintiff were male and seventeen percent below average if the plaintiff were female. Women-dominated juries were three percent above average when the plaintiff was male but seventeen percent above average when the plaintiff was female.

Approximately four-fifths of jurors agreed that there are far too many frivolous lawsuits, and that people are too quick to sue, rather than to solve disputes in some other way. More jurors agreed than disagreed that jury damage awards are too high. Jurors who believe in a just and predictable world in which people get what they deserve tended to discount concerns about a litigation crisis. Not surprisingly, most studies showed that jurors who perceived a litigation crisis or supported tort reform gave smaller damage awards, although there were studies to the contrary.

#### IV. The Injuries

The book then changed from studies regarding the participants to studies regarding the severity and nature of the injuries, and the conduct of the litigants that resulted in those injuries. Not surprisingly, the single best predictor of the size of compensatory damage awards was injury severity, except that awards for death claims were less than awards for the most severely injured plaintiffs who survived.

In one study, seven specific variables accounted for seventy-five percent of the variance in ratings of overall severity. The extent of the plaintiff's disability contributed most strongly to perceptions of overall severity, followed by the amount and duration of mental suffering. The remaining variables of visibility, amount and duration of pain, and disfigurement were relatively weak contributors to pain and suffering awards. Injuries that did not result in long-lasting effects or disability led to lower awards. Further studies indicated that except for cases involving relatively minor injuries, compensation tended to lag behind the past and anticipated future costs incurred by plaintiffs.

One interesting study looked at the effect of a single instruction on juries' damage determinations. Half the mock jurors were given an instruction that their compensation was to be in an amount to make the plaintiff "whole." The other half were instructed that the amount of compensation should be the amount of money *the jurors themselves* would take to incur the injuries plaintiff incurred. Again, and not surprisingly, mock jurors awarded significantly more if they were given the second instruction.

The variables next reviewed in the book were the cause of the claimed injury and the time elapsed between the appearance of the injury and the event that allegedly caused it. Mock jurors are more likely to find liability, regardless of wrongdoing, when the alleged cause of the injury

matched their own notions about what typically causes that type of injury. The studies go both ways on whether jurors tend to award more or less damages when the injury was atypical. However, when jurors *did* believe a defendant caused an atypical injury, they were more likely to find the defendant liable, regardless of wrongdoing, and to award even larger and less predictable noneconomic damages.

## V. Conduct and Liability

Jurors' determination of whether a defendant's conduct caused a plaintiff's injury is strongly affected by their ability to imagine how the defendant might have acted otherwise. In addition, results of research consistently show juries are more likely to find liability when an injury results from an act rather than from an omission.

As to timing, the likelihood of finding liability and causation decreases as the delay between event and result increases. However, this relationship is not linear. Similarly, defendants have been found to be more liable and greater damages were awarded if the time between an event and the claimed injuries was atypically brief rather than atypically long.

Studies consistently support the long-held belief among lawyers and judges regarding compromise verdicts. Across various studies, mock jurors consistently attributed greater responsibility for a car accident to the defendant as the severity of the injuries increased. Plaintiffs who were badly hurt aroused greater sympathy in jurors, and defendants who allegedly caused more severe injuries were less sympathetic and aroused more anger in jurors.

The jurors' perception of liability also affected their damage awards. Jurors awarded less in *total* damages when the plaintiff was more blameworthy, even when the jurors separately assessed the plaintiff's comparative fault. The book refers to this as the "double-discounting" effect. However, again, the relationship is probably not linear. One study controlled all

variables but manipulated plaintiff's liability three ways: zero percent fault, twenty percent fault, and forty percent fault. Mock jurors awarded significantly higher damages to the zero-percent-fault plaintiff, but the awards were not consistently different for the twenty-percent-fault and forty-percent-fault plaintiff. Ironically, the studies indicate that the double-discounting effect is steepest when the plaintiff was severely injured.

A study done in 2001 found that when mock jurors were instructed to apply contributory as opposed to comparative fault, they were more likely to ignore the instruction so that plaintiffs with fault were still able to recover damages, although the damages were less than for plaintiffs with no fault. Similarly, jurors who did not have an opportunity to award punitive damages inflated their compensatory awards in cases of aggravating circumstances by the defendant.

These studies regarding double-discounting show that compromise verdicts occur in comparative fault cases as well as in non-comparative fault cases. They also support an argument that retrials limited to damages are problematic, even in comparative fault cases where the jury has found defendant 100% at fault. There is some evidence that this pattern of double-discounting occurs more frequently in automobile cases than in other types of cases involving comparative fault.

Another interesting study had the mock jurors itemize damages as lost earnings, medical expenses, pain and suffering, and bodily harm other than pain and suffering (*e.g.*, scars, loss of function, etc.). The result was that the plaintiff's degree of fault had no consistent effect on the economic damages. However, the double-discounting consistently continued to affect the noneconomic damages.

## VI. Jurors' Biases and Shortcuts

The authors referred to jurors fusing thoughts of liability and damages, even in comparative fault cases, as reflecting a form of the common cognitive behavior called "hindsight bias." This means that a juror's perception of foreseeability and negligence depended on the outcome. One variable of an outcome that could cause hindsight bias is the severity of injury. Another is from studies regarding civil suits for trespass or false arrest. A finding of liability consistently varied depending on whether the jurors were told that the inappropriate conduct, such as use of a particular profile to detain and search, was seldom successful or highly successful.

Hindsight bias is just one type of "heuristic" or cognitive shortcut. Different types of mental shortcuts are common and expected by psychologists where a situation forces decision makers to consider a great deal of complex information concerning events in which the decision maker has little or no expertise. These mental shortcuts increase in magnitude the less familiar the decision makers are with the task and as the complexity and amount of the information increases. Examples of what affects the number of mental shortcuts are complexity of the issues; the number of parties involved; the number of claims, counterclaims, or cross-claims; the amount of evidence or number of witnesses; the technicality of the evidence; the amount of damages involved; the length of the trial; and the number and complexity of the instructions.

The result of mental shortcuts is a holistic-and thus largely unpredictable-approach to jury decision making. Studies indicated that jurors were able to award predictable damages commensurate with a plaintiff's injuries only when less complex language was combined with low information load. However, data here are scarce. All but the most elaborate and expensive studies condense the presentation of evidence and deliberative experience. Thus, they are of

limited use in providing information about decision making in highly complex cases. Post-trial interviews of actual long, complex trials suffer from jurors' inability to accurately describe their decision-making process in ways that identify their reasons, and from the confounding variables found in each real trial.

A holistic approach by jurors makes ineffective the instructions they have been given to ignore information to which they have already been exposed. Thus, there are empirical research results to support what trial lawyers have long assumed. Curative admonishments or limiting instructions are ineffective and probably only emphasize what jurors are asked to compartmentalize or disregard.

For example, studies indicate that bad pretrial publicity about a defendant's conduct consistently raised damage awards, despite explicit instructions to not consider it. Another example came from a simulated damage phase of a bifurcated trial where jurors had been told that liability already had been established. Defendants who expressed remorse for the result (but still without admitting wrongdoing) had consistently smaller damage awards against them than defendants who did not express remorse; but this advantage was lost once defendants changed positions from denying fault in the liability phase to admitting it in the damages phases.

## VII. Calculating Awards

Finally, the authors come to what the reader has most wanted: What is the reasoning by which jurors turn intangibles into specific amounts of money? Do the arcane, seemingly conflicting, and very vague instructions help jurors, hinder their task, or have no effect on what they do? The authors recognize that instructions about damages are vague because the law of damages is vague. Supporters of this vagueness claim that it is necessary to grant juries the flexibility and discretion to achieve justice based on the individual facts of a particular case.

Critics of vagueness argue that it allows jurors to subvert justice by relying on their own biases, and allows the merging of evidence admitted for one purpose (liability) to be used for another (damages).

The authors here introduce a well-recognized psychological phenomenon called "anchoring." People often rely on a salient numerical reference point, or anchor, when making quantitative judgments. Anchors provide a basis for simplifying judgments that involve uncertainty. Although new information may lead to adjustments away from the anchor, the resulting response will still have been influenced by the location of the anchor. When people reason this way, they are using the combined "anchoring and adjustment" heuristic.

This applies to *voir dire* and to final arguments where attorneys imply or request that damages fall in a certain dollar range. Studies have consistently shown that the more plaintiffs ask for, the more they receive. While the correlation of the amount asked for and the damage awarded lessened as the damages requested increased, the overall effect was still the same: the successful plaintiff who asked for more, got more.

The other aspect of this to consider is whether there is a boomerang effect when a plaintiff's request is obviously unrealistic. While some studies have documented such a boomerang effect, others have not. Studies also indicate that a counter-anchor set by the defense consistently reduces the amount of damages awarded. When jurors are not confident of their judgments they are more susceptible to an anchor and seem willing to take into account figures suggested by both the plaintiff and the defense.

Another type of anchor used by jurors is testimony from financial experts. There are studies that support and studies that contradict the premise that juries tend to split-the-difference between competing experts.

Still other types of anchors are damage caps and previous awards in similar cases, if they were made known to the jury. When the jury determined the cap was reasonable, the caps actually tended to raise the average damage award. However, when the jury considered the cap unreasonably high for a case involving small damages, the caps actually had the reverse effect and lowered the damages further. Providing such information reduced the variability of the awards in all cases, and did not consistently affect the size of the award in medium and high severity cases; but for both low and medium severity injuries, caps on pain and suffering actually increased both the size and variability of the awards.

Another approach to damage awards is for lawyers to ask for individual sums for each component or element of damages, then ask for the jury to total the amounts in arriving at the damage award. Does it work? What studies there are indicate that even when given special verdict forms requiring the jurors to separate their damage award into components, what juries do is work backward from a total award and then divide it up to make it fit into the individual components. Other studies confirm that the predominant strategy of juries in determining damages was to pick an amount that seemed fair, without doing any explicit calculations.

Again, this takes us back to the "holistic" approach to damage awards, which is in keeping with the studies supporting compromise verdicts and which contradict the presumption of the curative effect of admonishments.

As to the group dynamic of deliberations, there have been few studies of this effect on civil damage awards. Mock juries, as opposed to mock jurors, generally show greater comprehension of trial testimony and less reliance on irrelevant facts. Mock jurors who had to justify their views to other mock jurors, engaged in "preemptive self-criticism" by anticipating the counterarguments. Meanwhile, mock jurors who did not have to justify their views to other

mock jurors appeared to be "cognitive-lazy" and less able to explain the reason for their decisions.

Nevertheless, studies indicate a systematic inflation of award size as a result of group deliberations. Deliberations also increase jurors' sense that a defendant is liable.

Jurors who advocated a higher damage award were more likely than those who preferred a lower verdict to speak up at the beginning of deliberations. The early proposals in deliberations provided another reference or anchor point from which to adjust.

Foremen generally came to deliberations with an award preference higher than the average of the rest of the jury. Foremen with expertise in the relevant subject matter had greater influence on the size of the verdicts than did other jurors.

Although severe injuries consistently resulted in higher awards, studies indicate that the awards varied irrationally even for the same plaintiff, with the same injuries, and the same special damages. Depending on the study, the standard deviation of mock jurors' pain and suffering awards was between 179% and 313% of the mean. The standard deviation of economic awards was relatively more stable, but still high, at between 84 % and 138 % of the mean. This swing was somewhat diminished by the deliberative process of the jury as a whole. Juries, as opposed to individual jurors, somewhat lessened the variability to 78% for economic damages and 147% for pain and suffering. There is also research that twelve person juries award less on average than did six-person juries.

Do the assumptions of juries affect damage awards? Research shows that eight percent of jurors factor attorneys' fees into their deliberations and that more than one-third discussed defendant's insurance. The result is that when left "blindfolded" about these issues, jurors still

consider them, but do so only by engaging in speculation and conjecture. This may account for some of the great variability across mock awards when all variables are held constant.

Although focusing on damage awards by jurors and juries, there are several studies reported in the book that showed that juries generally found for defendants more, and generally awarded less damages to plaintiffs, than did judges – even when all case variables were held constant. However, the damages awarded by juries were far more variable than the damages awarded by judges.

## VIII. Tort Reform

At the end of the book the authors review the results of the studies to see whether or not they support certain types of "tort reform" currently being advocated. Tort reforms referred to in the book include caps, damage schedules (such as in workers' compensation), bifurcation, clarifying instructions, requiring some part of punitive damages to be paid to the state (such as Indiana now requires), removing punitive damage awards entirely from juries, statute of limitation changes (including more statutes of repose), pretrial screening panels (such as under Indiana's Medical Malpractice Act), provisions for arbitration, limitations on contingency fees (such as under Indiana's workers' compensation statute and for damages from the Patient's Compensation Fund), laws requiring the losing party to pay court costs and/or attorneys' fees (Indiana requires the "loser" to pay court costs but "costs" is narrowly defined to include only filing and non-expert witness fees; Indiana has a "qualified settlement offer" statute, but attorneys' fees are capped at \$1,000), and changes to the collateral source rule (Indiana no longer follows the common law but has a statute that allows evidence of collateral sources in certain limited circumstances).

Of all the possible changes frequently advocated, the authors discuss only damage caps, damage scheduling, bifurcation, clarifying instructions, paying punitive damage awards to the government, and eliminating juries altogether.

Obviously, juries must be told about the caps for the caps to have any effect on the damage award. The effect of caps on damage awards is discussed above. Specifically, caps on any one specific element of damages (*e.g.*, pain and suffering) actually had the reverse effect if told to the jury. Even when given special verdict forms and explicit instructions, the jury simply gave the same amount of money to the plaintiff through other uncapped elements.

There are significant practical difficulties in scheduling damages, unless a mathematical formula is simply passed by statute. The problems are the lack of a reliable database and the effect of the confounding factors affecting the size of the awards. Even in Indiana, we do not have system for recording and disseminating *all* civil damage awards. This would seem to be something that could easily be accomplished by requiring the trial court clerk to send a copy of all civil damage awards to a central depository, such as the Supreme Court Administrator. But what would these results reveal?

As discussed above, only about two percent of all cases involve jury trials. Civil cases are a subset of that percentage and personal injury cases are a subset of the civil cases. Case selection by plaintiffs' lawyers and pretrial settlements most probably eliminate most of the extreme cases. There may be new trials, additur or remittitur, post-trial settlements, and reversal or reduction of awards on appeal. Unlike the initial reporting, follow-up on the damage awards would not be easy.

The authors are in favor of bifurcation. The usual defense rationale for bifurcation is that it promotes judicial economy if the jury finds in favor of the defendant on liability. Defense

lawyers also argue that it enhances fairness, because the jury may incorporate the severity of the injuries into their determination of liability. The research consistently supports that jurors do just that. This is just another example of jurors misusing evidence intended for one purpose when making their decisions about other issues, again contradicting the fallacy of the curative admonishment. The authors approve of bifurcation also because it simplifies what the jury is asked to do. It increases juror comprehension by narrowing the range of issues and by lessening the amount of evidence and number of instructions with which the jury must deal.

Studies are mixed on whether damages in a bifurcated trial are generally higher once liability is found than in a non-bifurcated trial. Perhaps these differences are due to the differences in the studies' methodologies. However the majority of studies tend to indicate that the damages in bifurcated trials were higher, since the defendant's liability still increased the damages awarded.

Studies demonstrate that clearer jury instructions and special verdict forms improve the ability of jurors to base their decisions on legally appropriate factors. In addition, studies indicate that explaining the rationale behind certain instructions enhances that instruction's efficacy with the jury.

## IX. Conclusion

In the end, the authors ask the judiciary for help. They ask for research psychologists to be allowed to videotape and audiotape actual deliberations. They report that this has been allowed in some states and cite Arizona as an example. They emphasize the necessity of allowing this if legal policy is to be based on empirical data rather than unfounded assumptions. They write that policies that are enacted without empirical evidence are lucky if they turn out to be right and wasteful or harmful if they turn out to be wrong.

The authors provide a useful summary of the book on pages 200 to 204. Overall, this book seems to be a worthwhile resource for the experienced trial lawyer; but beginners should use it with caution, because what it really reveals is how much trial lawyers still do not know about the way juries determine damages.

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