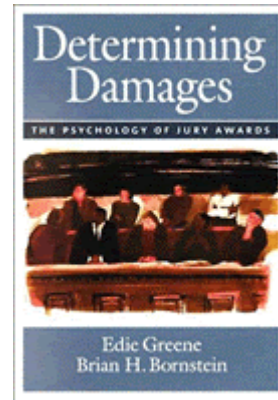


Book Review

Determining Damages: The Psychology of Jury Awards

By Teresa Rosado, Ph.D.

Edie Greene and Brian Bornstein's *Determining Damages: The Psychology of Jury Awards* is a comprehensive empirical analysis of the reasoning process behind jurors' complex task of deciding damage awards, and how those decision-making processes are sometimes impaired by the structural and procedural elements of civil jury trials. Greene (psychology, University of Colorado, Colorado Springs) and Bornstein (psychology and law, University of Nebraska) move seamlessly from the historical roots of damage awards, to concerns and critiques of jury damage awards, to potential system reforms.



The book is divided into three sections that cover the influencing factors in damage assessment. The first section explores "The Issue of Identity" or the extra legal factors of how plaintiff, defendant and juror characteristics influence damage award decisions. The authors waded through the research and, not surprisingly, conclude that demographic factors have not proven to consistently relate to jury awards. Greene and Bornstein also note that factors like "locus of control" and "authoritarianism" that have been shown to matter in criminal cases have not proven to be as powerful of predictors in civil cases. What does seem to matter, however, is jurors' specific beliefs about the system of tort litigation. The beliefs and cognitions that have implications for one's life (e.g., "What is the likelihood that I will be sued?" "What will an award do to escalating insurance rates?") tend to predict damage award behavior better than beliefs that are not personally relevant.

The second section considers "The Evidence" and how injury severity and litigants' conduct influence award decisions. The authors note that injury severity is clearly the main driving force in how jurors determine compensation. Also of interest, victims of atypical or unexpected injuries are often awarded greater compensation than those resulting from more typical or routine events. The final section of the book deals with decision processes and reforms. Specifically, how jurors reason about damages and how damage award decisions might be improved.

Determining Damages is not only an excellent primer on the body of historical and experimental decision making research, but it also provides a positive commentary on the capability of jurors today. Greene and Bornstein address the current criticisms that some jury decisions are "biased," "capricious," "unreliable," "hostile to corporate defendants," "excessively generous," and "out of control." But their analysis leads them to the conclusion that: jury awards are clearly tied to the severity of the injuries and the type of case, that these awards sometimes fall short of the economic loss sustained, and jurors decisions about damages are usually quite rational. As they write:

Our many years of conducting research on jury decision-making, and our recent immersion in the literature while writing this book, has given us a healthy respect and appreciation for how well jurors generally do their job. Do jurors always get it right? Of course not. Do jurors sometimes arrive at outlandish decisions that bear little relation to the evidence? Certainly. For the most part, however, jury damage awards reflect proper attention to the factors that are supposed to influence those decisions, and even when they do not, other objectives (e.g., equity or commonsense notions) may be at work.

Published by the American Psychological Association, *Determining Damages* provides comprehensive coverage of the body of research (both archival studies and jury simulation studies) conducted over the last 30+ years. It is definitely not a “quick read” and may be too abstract or academic for some trial lawyers who just want the “bottom line” on damages (although the authors provide excellent summary sections at the end of each chapter that highlight any research conclusions that can be drawn). The book is probably more appropriate for jury decision making researchers and trial consultants with a social science background who are familiar with experimental methodologies, problems of confounds in research, and theories of cognitive psychology.

Of particular interest to trial consultants is the reform section which highlights reforms that have been implemented in some states, research on compensatory and punitive caps, and the effects of bifurcation. Unfortunately, there are no clear cut answers or solutions. The authors do make some recommendations (e.g., special verdict forms and clearer jury instructions, essentially anything that will enhance jury comprehension and reduce jury confusion), but they also express the need for more research. The handful of empirical studies to date specifically dealing with reform issues do not provide enough evidence to make scientifically-supported recommendations for implementation in the courts.

For anyone interested in jury decision-making behavior, *Determining Damages* is an excellent resource and reference book to add to your library.