In recent years, business and insurance groups have mounted a campaign to convince the public that the civil justice system is “broke” and needs to be “fixed” by reigning in sue-happy “victims,” greedy plaintiffs’ lawyers, and unpredictable juries. One of the ironic results of this campaign is that individuals seeking compensation may have come to expect compensation well beyond what the civil justice system actually delivers. This was expressed clearly by contingency fee lawyers interviewed in Wisconsin:

It is amazing how many clients come in and say that they are not trying to get rich off this case, but think they should get $100,000 for a whiplash or a slip and fall. I just had a case where a woman had some soft tissue injuries which were even questionable and she kept insisting it was worth $700,000, I told her maybe somebody else can get you that, I really don’t think they can, but, if you want to try... 1

Lawyers frequently told me that they routinely dealt with calls from potential clients who had extremely inflated perceptions of what an injury might be worth.

Various public opinion surveys over the last 15 or more years have asked the public whether jury verdicts are too high. 2 As the surveys summarized in Table 1 show, the public is more likely to say that awards and settlements obtained through the civil justice system are too large than that they are either about right or inadequate. When asked specifically whether juries are “out of control” as compared to “generally reasonable,” the public is evenly split. While many of the surveys were funded by groups interested in reforming the civil justice system, they probably are a fairly accurate measure of public perceptions.

That the public should think that civil juries routinely award large and excessive verdicts to injury victims is not surprising. Two studies comparing verdicts reported in the media to actual populations or true random samples of jury verdicts more generally show that the typical (median) media-reported verdict is on the order of 10-20, or more, times the size of the typical actual verdict. Specifically, Chase examined verdicts reported in two major New York newspapers to verdicts in New York state for the period 1988 through 1993 and found that the typical reported verdict was more than $5 million while the typical actual verdict for 1988-1992 was about $213,000 for New York state overall and $252,000 for the New York metropolitan area. 3 Bailis and MacCoun examined verdicts reported in several national media and found that the median verdicts reported was $1.75 million; 4 in comparison, studies of
jury verdicts in 75 large counties in 1992 and 1996 found medians of $51,000\(^6\) and $31,000 respectively.\(^6\)

While there is evidence, both anecdotal and systematic, that the public believes that typical jury verdicts are large, and possibly out of line with appropriate levels of compensation, we actually do not know whether the public has any specific idea of what this means, or what they believe juries typically award. The brief analysis that follows reports on survey results that sought to determine whether there was any specificity to the public’s perception of typical personal injury jury verdicts.

**Data and results**

A national telephone survey conducted in 2000-01 by the University of Wisconsin Survey Center included the following open-ended question:

In addition to deciding guilt and innocence in criminal trials, juries are used in the U.S. to determine liability and the amount of money to be paid in compensation for damages in noncriminal cases. From what you know, can you give me an estimate of the typical or average amount of money that juries award as compensation in a personal injury case of the type that arises from auto accidents, injuries from defective products, medical negligence and the like?

A total of 1,524 respondents answered this question in some way, with 40 percent replying that they did not know what the typical or average amount was. The high “don’t know” rate was detected early enough that it was possible to add a set of close-ended follow-up questions for the last 638 respondents. The first of these close-ended questions was:

Would you say that the typical verdict is more than one hundred thousand dollars or less than one hundred thousand dollars?

and then was followed by a sequence of questions going up or down from $100,000 as appropriate. A total of 230 respondents were asked the follow-up; 24 percent replied “don’t know” to the initial question in the sequence (or refused to answer the question).

Looking only at the responses to the open-ended question, the median estimate of the typical or average verdict provided by the 60 percent of respondents who gave a value was $100,000. Only 36 percent gave an estimate of $50,000 or less (the approximate median for the 75 large counties in 1992) and only 23 percent gave an estimate of $30,000 or less (the approximate median for the 75 large counties in 1996). At the other end of the spectrum, 23 percent gave estimates of $1 million or more, almost 5 percent gave estimates of $10 million or more, and about 1 percent gave estimates of $10 million or more. Of those who responded to the close-ended follow-up, 56 percent said that the typical verdict was more than $100,000, 41 percent said it was less than $100,000, and about 3 percent volunteered that $100,000 sounded about right.\(^7\)

There are two noteworthy points to be found in this pattern. First, the public as a whole has an inflated view of what juries do in typical cases. Second, however, the typical level of that inflation is not as great as one might expect given the newspaper reports. Clearly there is some at least implicit understanding among many, if not most, people that news reports are not typical, otherwise one would expect that a typical response to my question would be well over $1 million. One can also see that the nature of the range of responses to my survey is consistent with the pattern of responses shown in Table 1 from surveys asking about whether jury verdicts are too high, about right, or too low. Typically 25-40 percent of the respondents in those surveys said that verdicts were about right or too low, while I find that 23-36 percent of those who can give an estimate of the amount of the typical verdict put it at or below the median verdict found in the studies of verdicts in large counties in the U.S.

**Variables**

Are there variables that correlate in a substantial way with what the public knows and believes about jury verdicts? I examined the relationship between whether the respondent gave an answer to the initial question, the “typical” amount in that answer, and whether the typical amount was $1 million or more with a number of demographic and political variables:

- Education
- Level of interest in local political affairs
- Level of interest in national political affairs
- How closely the respondent followed local news
- How closely the respondent followed national news
- How frequently the respondent discussed politics
- Party identification\(^8\)
- Self-reported ideology\(^9\)

The relationships can be summarized briefly because they were few and modest.\(^10\)

**Education:** There is a clear relationship between education and whether the respondent answered “don’t know” to the open-ended question; more than 55 percent of those with less than a high school education said “don’t know”, versus 40-45 percent of those with a high school diploma but no college diploma, and 30-35 percent of those

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\(^7\) Combining the open-ended and close-ended responses did not affect the overall median; however, there tended to be fewer relatively extreme values when the open-ended responses were included.

\(^8\) For purposes of analysis the party identification measure included independents who leaned toward one party or the other with persons who identified with a party.

\(^9\) Ideology was measured on a 10-point scale running from very liberal (1) to very conservative (10); for purposes of analysis I collapsed the scale into liberal (1-3), moderate (4-7), and conservative (8-10).

\(^10\) I omit from the following some very modest, although statistically significant, relationships. In looking at the amounts provided by respondents, I compared subgroup medians rather than means because of the skewed nature of the responses; I employed statistical tests appropriate for comparing medians (i.e., the Kruskal-Wallace k sample test and the medians test).
with a bachelor’s or advanced degree. The only relationship between education and the estimated amount of typical verdicts was that those with less than a high school education had a median estimate of $50,000 while those with an associate degree had a median of $150,000; all other educational groups had medians at or near $100,000.

Interest in local political affairs: No relationships.

Interest in national political affairs: Those who reported a lower level of interest were more likely to respond “don’t know,” 50-53 percent for those not very interested or not at all interested, compared with 42 percent for those somewhat interested and 35 percent for those very interested.

Follows national political news: Those who report that they follow national political news “very closely” have a median estimated typical verdict of $150,000 compared with only $80,000-$100,000 for those who pay less attention to local political news.

Follows national political news: Those who report that they follow national political news “very closely” have a median estimated typical verdict of $150,000 compared with only $100,000 for those who pay less attention to national political news. Only 35 percent of those who follow national political news replied “don’t know” compared with 56-58 percent of those who pay less attention to national political news.

Talk about politics: Responding “don’t know” was strongly related to how frequently the respondent reported discussing politics with other people: 29 percent for those who have such discussions every day, 32 percent for those discussing politics for several days a week, 38 percent for those reporting discussions once or twice a week, 49 percent for those less than once or twice a week, and 58 percent for those who say that they never discuss politics.

Party identification: Republicans tended to report higher verdicts; the median for Republicans was $122,500 compared with $100,000 for both Democrats and Independents; furthermore, Republicans were more likely (27 percent) to give an estimate of $1 million or more than were Democrats (19 percent) or Independents (21 percent). Independents were more likely to reply “don’t know” (58 percent) than were Democrats (38 percent) or Republicans (36 percent).

Ideology: The likelihood of providing an estimate of $1 million or more was highest for conservatives (26 percent) and lowest for liberals (16 percent); 23 percent of moderates provided an estimate of $1 million or more.

I discern three patterns from the relationships described above. First, not surprisingly, those most engaged and interested in politics were most likely to give an estimate while those least engaged were most likely to respond “don’t know” to the open-ended question. Second, those who follow political affairs more closely have a slight tendency
to estimate a higher figure for typical verdicts, perhaps reflecting more attention paid to news reports, which as noted previously emphasize large cases. Third, those respondents associated with political positions most supportive of placing limits on the civil justice system (Republicans, conservatives) have a modest tendency to believe that typical verdicts are higher than do other respondents.

Interpreting the patterns

As suggested in the introduction, it comes as no surprise that the public believes typical jury verdicts are higher than they actually are. Nor is it surprising that there is some relationship between whether respondents feel able to give an estimate of typical verdicts and political engagement, or that respondents who align politically with conservatism or Republicanism, which have forcefully advocated that verdicts are excessive, have a measurable tendency to believe typical verdicts are higher than to respondents not aligned with this perspective. However, the magnitude of the distorted image held by most people is less than one might expect given what we know about the nature of verdicts reported in the media, and the different perceptions among groups, while measurable, are not particularly large.

There are several ways of interpreting the patterns found. First, it may be that the real distortions come not in the general patterns, but rather in more specific patterns of awards for particular kinds of injuries. That is, it might be the case that many respondents may be thinking about the most minor cases when they give their estimates. If I had included more specific questions about awards for specific injuries (e.g., whiplash, a broken leg, paraplegia, etc.), I might have found more distortion; however, to determine the degree of distortion, I would need to have good comparative data by nature of injury, and that is difficult to obtain, either in terms of what the media reports or what jury verdicts look like.

Second, it may be that both the advocates of civil justice reform and the defenders of the current system simply have overestimated the extent of the tort reform movement’s impact on public perceptions, once those perceptions are measured in specific terms. Lawyers talking to a researcher about their interactions with clients are most likely to recall the comments of clients whose expectations are the most exaggerated. In fact, during three months of observations in lawyers’ offices, I never heard a client state a wildly unrealistic expectation about the amount of compensation they were due; I did observe telephone conversations with potential medical malpractice clients where the prospective client did not understand the economics of handling such cases (i.e., that lawyers would not take such cases unless damages were quite high), or the principles that governed liability (i.e., that a “bad result” was not malpractice). It may be that the greater impact on the public is not with regard to the amount of compensation that can be obtained but with regard to what is and is not compensable. It is much more difficult to measure these kinds of perceptions than perceptions of typical jury verdicts.

Finally, it may simply be the case that the elite and mass perceptions of the civil justice system diverge. Many elites have a direct stake in change in the civil justice system, either in terms of accomplishing change (corporate executives) or blocking change (plaintiffs’ lawyers). Plaintiffs’ lawyers want to broadcast their success in order to attract clients, and corporate executives want to broadcast the supposedly outlandish results of the civil justice system to garner support for change. Just as lawyers are likely to emphasize the wild expectations of their clients, elites are likely to remember and amplify the large and atypical. In their zeal on either side of the issue, the elites may have come to believe their own distortions. This tendency may have been amplified by the fact that the now many-year campaign for civil justice “reform” by corporate and insurance interests has generated its own group of interested parties. As Marc Galanter has observed, “A host of professionals, consultants, and publicists thrive by magnifying the sense of crisis and touting their ability to exorcize the menace of enhanced liability.”

In reviewing the pattern described above, the old aphorism attributed to Abraham Lincoln comes to mind, “You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time.” Have researchers and interest groups come to have an exaggerated expectation of the malleability of public opinion, both in response to major events and in response to planned efforts to shape opinion? In an analysis based on different questions from the same survey that contained the verdict question, I found (1) that the public’s level of knowledge of the Supreme Court was higher than is commonly thought to be the case by political scientists and (2) that the impact of the Supreme Court’s action in the 2000 presidential election controversy had only a relatively modest impact on the public’s evaluation of the Court, which was in contrast to the drastic consequences for the Court’s legitimacy predicted by commentators.

The public’s views do move in response to events or publicity campaigns, but that movement may be constrained, whether by skepticism of information sources, some fundamental stability, or a reluctance to change views without some direct and immediate experience or consequence. Researchers probably need to take more account of the importance of the combination of the drag of inertia and the pull of reality on public opinion. This does not mean that shifting public opinion is unimportant, but rather it probably means that even the small shifts that can and do happen may have important consequences for public action.


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