

Opening the Black Box of Civil Jury Behavior

A Summary of
Research Results

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OPENING THE BLACK BOX OF CIVIL JURY BEHAVIOR

N-2671-ICJ, *Getting Inside the Black Box: Toward a Better Understanding of Civil Jury Behavior*, by Robert J. MacCoun, 49 pp., \$4.00.

Recent controversy over the tort liability system raises troubling questions about jury performance. Do civil juries carefully consider the merits of the cases brought before them without bias and in accordance with judicial instructions or are they often swayed by passion? Are juries capable of dealing with complicated legal issues?

The simple answer is that we don't know. Previous studies focusing on jury trial outcomes have told us little about why and how civil juries arrive at their decisions. The jury deliberation process is hidden in a "black box," producing outcomes that we can count and classify but that tell us virtually nothing about how juries sift the evidence, what case characteristics they pay the most attention to, or how they calculate awards.

Is there a way to open this black box and investigate what's inside? *Getting Inside the Black Box: Toward a Better Understanding of Civil Jury Behavior* maps possibilities for greater insight. Drawing on social and cognitive psychology and on criminal jury research, Robert MacCoun outlines a variety of approaches that can provide data essential to legislative and judicial policymakers. In doing so, he lays the foundation and provides a blueprint for future research.

WHY STUDY CIVIL JURIES?

Debate over civil jury performance has relied heavily on anecdotal evidence. Many recent reform proposals are based on guesswork about jury behavior and the effects that new rules and procedures might have on it. For example, if—as some have suggested—we require juries to itemize their compensatory damage awards, they may calculate damages one item at a time or they may start with a total award and then "work backward" by dividing the lump sum among

the items. In this and other cases, the decisionmaking process that juries follow may determine whether a policy change has its intended effect.

Despite the attention that juries receive, many fundamental questions about civil jury behavior are currently unanswerable. For example:

- How do jurors decide who is liable?
- How do juries calculate damages?
- What's behind "deep-pocket" awards? Why do juries tend to grant larger awards against corporate and government defendants than against individuals?
- How do jurors cope with highly complex cases? How do "common-sense" mental processes affect the legal fact-finding process?

WHAT PREVIOUS JURY RESEARCH DOES AND DOES NOT TELL US

Fortunately, the study of civil jury decisionmaking needn't start from scratch. Although previous research focuses almost exclusively on criminal rather than on civil juries, results do offer insights applicable to both. For example, contrary to what some "scientific jury selection" methods claim, studies show that jurors' demographic and personality characteristics have only weak and unreliable effects on verdicts.

Civil juries, however, face a more complicated task than criminal juries because liability decisions often involve tracing extremely intricate chains of causality. And when a civil jury finds a defendant liable, the jurors face a number of additional decisions.

- How much compensation is needed to "make the plaintiff whole again"?
- Should punitive damages be awarded?
- If punitive damages are awarded, what is an appropriate amount for "punishment"?

Compensatory damage awards involve complex economic valuation and computation, processes that criminal jurors rarely encounter and previous studies seldom addressed.

HOW CAN WE LEARN MORE ABOUT JURY BEHAVIOR?

To understand what really goes on during jury deliberation, we need to conduct systematic empirical research focused specifically on civil jury deci-

sionmaking. MacCoun reviews the relevant methodologies and explains what each can contribute to understanding civil juries.

- *Statistical analyses of jury verdicts* can predict verdicts and trends over time.
- *Posttrial juror interviews* and *shadow jury studies* can provide insights into the deliberation process.
- *Field and mock jury experiments* can allow researchers to test how different factors affect jury behavior.

Mock jury experiments, in which multiple groups of citizens “try” a simulated case, could provide information especially useful to policymakers. Legislation prohibits observing real jury behavior, but mock jury deliberations can be observed or even videotaped to permit systematic analysis of the decisionmaking process. In addition, the mock jury method allows almost unlimited variation in the legal procedures and rules, testimony, or characteristics of trial participants under study. Thus this method can test and predict the effects of proposed reforms *before* policies are implemented.

MacCoun examines the relative merits of these and other research approaches, stressing that a mix of methodologies will produce the most useful results.

CONCLUSION

Civil jury research will have wide-reaching implications. By demystifying jury decisionmaking, researchers can uncover the “hows” and “whys” of deep-pocket awards. They can test procedures for facilitating more predictable and equitable verdicts. Powerful methodological tools, such as mock jury studies, have already proven their value in criminal justice research. To open the black box of civil jury behavior, these tools need only be applied. *Getting Inside the Black Box* explains how this can be accomplished.

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