
Differential Treatment of Corporate Defendants by Juries: An Examination of the “Deep-Pockets” Hypothesis

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Evidence that juries treat corporate defendants less favorably than individual defendants is often cited in support of the widely held view that juries are biased against wealthy “deep-pocket” defendants. Such evidence confounds defendant wealth and defendant identity. In two juror simulation experiments involving citizens on jury duty, these factors were separated by manipulating whether the defendant was described as a poor individual, a wealthy individual, or a corporation; the defendant’s assets were described identically in the latter two conditions. In Experiment 1, liability was significantly more likely, and awards were significantly greater, for corporate defendants than for wealthy individual defendants, but verdicts against poor versus wealthy individuals did not differ. In Experiment 2, awards were larger against wealthy individuals who engaged in commercial rather than personal activities, and awards in the personal activity condition were larger against corporations than wealthy individuals. There was little evidence for a defendant wealth effect on juror judgments. While juries do appear to treat corporations differently, the explanation may have more to do with citizens’ views about the special risks and responsibilities of commercial activity.

Under the “deep pockets” theory favored by many juries, big companies end up subsidizing consumers and lawyers.

—Barbara Hackman Franklin, then U.S. Secretary of Commerce (1992)

The only answer I wouldn’t believe is one that says they didn’t [take defendant wealth into account]. I can’t imagine that people wouldn’t think about that.”

—G. Marc Whitehead, Director of the ABA Litigation Section, *National Law Journal* (1993)

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Because decisions are the major product of the legal system, *bias* is a core concept in sociolegal theory and research. The absence of bias serves as a benchmark in social-scientific evaluations of the quality of legal decisionmaking (e.g., Hans & Vidmar 1986; MacCoun 1989) and in lay evaluations of procedural and distributive fairness of the police and the courts (Lind et al. 1990; Tyler 1990). Thus, perceptions of bias play a key role in establishing and maintaining the legitimacy of the legal system, and protests of legal injustice are commonly couched in the language of bias. Indeed, citizens appear willing to tolerate some error in legal decisions so long as legal procedures are perceived to be unbiased (MacCoun & Tyler 1988).

Bias is conventionally defined as a systematic (i.e., non-random) departure from some standard (Hastie & Rasinski 1988). In many instances, a normative theory provides an explicit standard. Thus, psychologists and economists have identified numerous biases in human judgment and choice using baselines provided by mathematical models of rational choice; for example, people underutilize base rates relative to Bayes's Theorem and routinely violate the axioms of subjective expected utility theory (see Hogarth & Reder 1987; Kahneman, Slovic, & Tversky 1982). Since the advent of the Legal Realist movement (e.g., Frank 1949), sociolegal scholars have contrasted actual legal decisionmaking to the norms embodied in the common law of evidence and of procedure. Because the common law lacks the unambiguous character of mathematical theories, legal scholars have formalized some common law concepts in rational choice theoretic terms (e.g., Lempert 1977; Tillers 1991), using those as reference points for identifying systematic cognitive biases in legal judgments (MacCoun 1989, 1993b; Saks & Kidd 1980).

But arguably, citizens (including sociolegal scholars) generally base claims of legal bias not on comparisons of absolute outcomes to a normative standard but on comparisons of *relative outcomes across different cases or groups*; for example, outcomes for females versus males, or for African Americans versus Anglo Americans. The ultimate basis for such claims might be a normative standard—such as equal treatment or due process—but the bias is usually inferred from, and articulated using, relative outcomes.

Successfully articulating such claims is made difficult by the inherent analytical difficulty of ensuring that the cases under comparison are truly comparable in all respects except the alleged source of bias (e.g., race). Thus, claims are often advanced and disputed using sophisticated statistical methods (Monahan &

Walker 1994). Because such analyses are rarely definitive, mock jury simulations are often used to provide more rigorous tests by experimentally controlling extraneous factors (MacCoun 1989, 1993b). Such studies have been used to identify numerous extralegal biases, including effects of pretrial publicity, inadmissible evidence, and defendant characteristics such as race and physical attractiveness (Dane & Wrightsman 1982; Hans & Vidmar 1986; MacCoun 1990).

As illustrated by the quotes that open this article, there is a widespread perception that America's tort system is biased against so-called deep-pocket defendants—defendants with extensive financial resources, like corporations, governments, and wealthy individuals. Critics (e.g., Huber 1988) believe that deep-pocket actors are treated differently at several points in the tort process. According to this view, everything else being equal, injured parties are more likely to blame and sue deep-pocket targets; attorneys are more likely to accept cases against deep-pocket targets; and juries are more likely to find liability, and award more money, when cases involve deep-pocket defendants. Statistical comparisons of the treatment of corporate versus individual defendants are usually cited as evidence for these bias claims (e.g., Chin & Peterson 1985).

But using comparisons of individuals and corporations to substantiate a claim of bias against deep pockets is problematic on two grounds. The first is common to most bias claims: the difficulty of controlling for the natural confounding of case characteristics in trials involving individual versus corporate defendants. But the second problem is less common and perhaps more profound: It is by no means clear that persons and corporations are meaningfully comparable. Indeed, a recognition of the many differences between persons and corporations led to the evolution of organizational behavior as a distinct academic discipline separate from psychology. The formal social control of corporations continues to pose a major challenge for the courts, regulatory agencies, and sociolegal scholars (Coleman 1989; Lempert & Sanders 1986; Schelling 1974). The evolution of a distinct legal status for corporations has been a major impetus for the dramatic growth in their number and scope in recent history (Coleman 1989).

This article empirically examines claims of jury bias against deep-pocket corporations by using the mock jury paradigm. Though this approach has its limitations (see MacCoun 1993b for a comparison and appraisal of jury research methods), its strength in this context is that it can be used to explicitly “parse” financial wealth from other factors that might distinguish corporations from individual persons. The findings presented here do substantiate the claim that corporations are treated differently than individuals but dispute the deep-pocket account for this dif-

ferential treatment and raise the question whether this pattern should be construed as a bias relative to the normative standards of existing tort doctrine.

Implications of a Deep-Pocket Bias

The concerns of deep-pocket actors are understandable, particularly since they are often repeat players in the tort system. But there are more fundamental reasons why these biases, if they exist, might be troublesome for the system as a whole. If the tort system treated wealthy defendants differently (whether favorably or unfavorably) solely because of their wealth, the linkage between conduct and its consequences would be weakened. As a result, the tort system's objectives of just compensation and deterrence would be undermined. In a standard-based system, it is unjust to allow the defendant's ability to compensate an injured party to influence the evaluation of whether the appropriate standards were met. Similarly, it is unjust to award compensation in excess of true losses solely because the plaintiff is needy and the defendant can afford to pay. Moreover, if wealth mattered more than conduct in determining tort outcomes, the system would provide ambiguous signals as to the definition of negligent conduct in contemporary society, making the system's deterrence function operate less effectively. Thus, the existence of significant deep-pocket biases would suggest that the tort system is not working properly.¹

Many of the proposed tort reforms that are currently under debate are seen as mechanisms for mitigating deep-pocket biases. For example, some argue that statutory ceilings (caps) on noneconomic and punitive damages, more extensive judicial review, or more widespread adoption of itemized "special verdicts" should be used to adjust for possible deep-pocket biases in jury awards. Others would modify or eliminate the joint and several liability rule. According to this rule, a single defendant can be required to pay the total cost of injurious actions, even when multiple actors are at fault. Unlike the other biases discussed above, the joint and several liability rule is one mechanism by which some deep-pocket effects are explicitly built into the tort system. But critics complain that it is unfair to ask deep-pocket defendants to shoulder more than their share of responsibility for compensating injured parties.

¹ Arlen (1992) argues that, normatively, jurors *should* take defendant wealth into account in order to achieve optimal deterrence. But this provocative argument has not yet received widespread attention or acceptance, and since it applies only to compensatory damage awards, it cannot justify differential liability rates by defendant wealth. Note that many jurisdictions do allow jurors to consider defendant wealth when determining *punitive* damages.

The perception that deep-pocket biases exist is pervasive. Indeed, as in Marc Whitehead's quote at the beginning of this article, many view the existence of these biases as a truism. The deep-pocket notion is consistent with widespread stereotypes about the tort system; for example, caricatures of claimants who are greedy and opportunistic and jurors whose sympathy overcomes their common sense. For many in the business community, it accords with perceptions that nonmeritorious suits are common (see Bailis & MacCoun in press). But an evaluation of the functioning of the tort system, and calls for its reform, should be based on systematic empirical evidence, particularly in light of the vested interests of commentators on both sides of this debate. What is the evidence that deep-pocket effects actually exist?

Is There a Deep-Pocket Bias in Jury Verdicts?

At least two conditions must be met to demonstrate a deep-pocket bias in jury verdicts (MacCoun 1987): (1) verdicts in similar cases should be less favorable to deep-pocket defendants, and (2) this effect must be attributable to defendant wealth *per se* rather than to some other factor that is merely correlated with wealth.

Statistical analyses of verdicts in civil jury trials provide support for the first condition. Chin and Peterson's (1985) highly publicized analysis of 20 years of verdicts in Cook County, Illinois, revealed that, after controlling for injuries and other case characteristics, juries awarded significantly more money in cases with corporate or government defendants than in cases with individual defendants. Moreover, in cases involving serious injuries, these deep-pocket defendants were also more likely to be found liable. Other archival analyses (Bovbjerg et al. 1991; Ostrom & Rottman 1991; Wittman 1990) have found a similar pattern.

On the face of it, this differential treatment would appear to indicate a deep-pocket bias, in which corporations pay more because juries think they can afford it. But one limitation of archival analyses is that it is never possible to compare exactly identical cases involving individual versus corporate defendants. Although Chin and Peterson used statistical methods in an attempt to compensate for this limitation, they could not rule out the possibility that the observed pattern was actually attributable to some unmeasured difference in the type of cases that involved individual versus corporate defendants (e.g., differences in pre-trial settlement patterns or trial strategies) (MacCoun 1989, 1993b; Saks 1992; Vidmar 1993, 1994).

Two studies have circumvented this difficulty by using mock jury experiments in which college students evaluated fictitious tort cases that manipulated whether the defendant was an individual or a corporation, while holding other features constant

(Hans & Ermann 1989; Wasserman & Robinson 1980). Wasserman and Robinson (1980) asked students to determine awards for a case in which liability was stipulated by the defendant; they found that jurors awarded significantly more money when the defendant was characterized as "Holden Industries, Incorporated, . . . an average corporation, with assets totaling about \$2 million at the end of the last fiscal year" than when the defendant was characterized as "Jack Holden, . . . an average man with a family of three [who] holds no insurance policy and earns about \$30,000 a year." Similarly, Hans and Ermann (1989) found that students were more likely to find liability, and awarded significantly more money, when told that the defendant was "the Jones Corporation" rather than "Mr. Jones." Two other studies in non-jury contexts provide additional support. Smigel (1956) found that respondents were significantly less disapproving of stealing when the victim was a government or large business rather than a small business. Greenberg (1986) found that participants in a psychology experiment were more likely to keep an inequitable overpayment when it came from a large manufacturing firm than when it came from an individual experimenter.

Thus, the first condition for a deep-pocket account has been met: Both archival analyses and mock jury experimentation indicate that in similar cases, juries do treat corporations differently from individuals. This convergence should increase our confidence in both methods; it suggests that the archival pattern is not artifactual, but also that the mock jury method is reproducing a basic pattern in actual jury outcomes.

What about the second condition: Is this effect attributable to defendant wealth, and not to some other factor? One source of evidence comes from posttrial interviews with jurors. For example, a recent *National Law Journal*/Lexis poll of former jurors indicated that 35% of those who served in civil cases thought that other members of their jury took the defendant's ability to pay into account (National Law Journal 1993). But as Vidmar (1993) points out, since these jurors did not report that they themselves considered defendant wealth, such an inference might be unwarranted. And other posttrial interview studies have not found evidence of a deep-pocket effect (Guinther 1987:57; Hans & Lofquist 1992).

A second source of relevant evidence comes from research on the influence on liability judgments of evidence regarding plaintiff injuries. Logically and legally, these issues should be independent, but psychologically, their linkage might be conditional on distributive justice norms (Deutsch 1975). A norm of equity or proportionality would suggest that resources should be allocated in proportion to fault; a pure comparative negligence standard can be thought of as a proportionality model. But a competing norm calls for allocation by need, suggesting that con-

cern for the plaintiff's injuries might influence liability judgments. Thus, those who postulate a deep-pocket bias generally argue that it occurs because jurors allocate by need, taking advantage of the defendant's wealth to provide more money for the plaintiff. Attribution research in nonlegal settings does suggest that judgments of blameworthiness are influenced by the severity of an action's consequences (Tennen & Affleck 1990). But jury research conducted to date provides mixed evidence. While some studies have found an association between injury severity and liability (Bovbjerg et al. 1991; Horowitz & Bordens 1990; Howe & Loftus 1992), others have not (Green 1968; Peterson 1984; Taragin et al. 1992; Thomas & Parpal 1987). A meta-analysis might resolve this issue by establishing whether these inconsistencies are attributable to statistical error or perhaps the moderating influence of some third variable.

For a more direct test, we need to distinguish two different possibilities: A *deep-pocket effect*, in which jury verdicts vary according to defendant wealth, versus a *defendant identity effect*, in which jurors treat corporations differently from individuals when wealth is held constant. Since these two effects are not mutually exclusive, we can further distinguish a *pure defendant identity effect*, in which jurors treat corporations differently but are indifferent to defendant wealth; that is, a significant defendant identity effect but no deep-pocket effect.

In the two experiments reported here, these three possibilities were tested by experimentally disentangling defendant wealth and defendant identity. Realistic but fictitious personal injury cases were constructed in which the facts of the case were held constant; the defendant on trial was characterized as a corporation, a wealthy individual, or a poor individual. The manipulations were designed to ensure that the wealthy individual and the corporation were perceived as being significantly wealthier than the poor individual but approximately equivalent to each other.

Previous research indicates that extra-evidentiary factors are more likely to influence juror and jury verdicts when evidence is ambiguous (see MacCoun 1990). Thus Experiment 1 also examined whether the strength of the evidence moderates juror reactions to corporate versus individual defendants.

Experiment 1

Method

Design and stimulus cases. A 3×2 (Defendant Identity \times Ambiguity of Fault) repeated-measures factorial design was employed. Each juror evaluated six different personal injury cases. In order to implement this design, it was necessary to develop personal

injuries cases that were realistic, yet involved scenarios in which the plaintiff's injuries could plausibly be attributable to either a blue-collar individual, a wealthy individual, or a corporate defendant. In some cases this was done by relying on the doctrine of vicarious liability, which holds employers liable for the negligent, on-the-job conduct of their employees. The stimulus cases were loosely based on actual cases reported in the *Jury Verdict Reporter*, published in Cook County, Illinois. However, these cases were significantly modified and, as a result, are mostly fictitious. The cases were developed in collaboration with an experienced personal injury attorney, with expert advice provided by two physicians, a hospital administrator, and an automobile mechanic. The cases were extensively pretested to establish the plausibility and effectiveness of the experimental manipulations. The cases and experimental case variations appear in Appendix A. Each juror received a booklet with general instructions and a set of six personal injury cases: one of each of the six cases in one of each of the six experimental combinations of defendant identity and ambiguity of fault. A computer program was used to produce counterbalanced story-by-condition-by-order booklet configurations.

Jurors received the appropriate legal instructions for the cases, adopted verbatim from patterned jury instructions used in the State of California. A separate questionnaire followed each case. The case questionnaires assessed liability and itemized damages, plus ratings of defendant wealth and conduct; these questionnaires were necessarily short, and certain potentially reactive questions were not asked (e.g., about insurance, about attitudes toward corporations) because of the repeated-measures design. A final questionnaire assessed juror demographics and verdict goals (compensation, deterrence, punishment, proportionality).

Subjects and procedure. Two-hundred and fifty-six members of the Ventura County (CA) Superior Court jury pool served as mock jurors. Participation was strictly voluntary. Forty-eight percent were female, and the sample was 88% Anglo American, 6% Latino, 4% Asian American, and 2% African American. Forty-one percent were college graduates, 70% were employed full time, and the median income was in the \$50,000–\$59,999 range. The booklet required about 30–60 minutes to complete; jurors reported no difficulties understanding and completing the survey. Fifteen case booklets contained a typographic error that referred to an individual defendant and a corporate defendant in the same case; these booklets were dropped from the analyses of variance reported below but retained for the descriptive statistics regarding juror goals.

Results

Analysis plan. The principal dependent measures were analyzed using repeated-measures analysis of variance (ANOVA). The interaction comparison procedure described by Jaccard et al. (1990:12–13) was used to provide focused comparisons pertaining to the deep-pocket and corporate identity hypotheses. First, a full 3×2 repeated-measures ANOVA was conducted to obtain omnibus error terms and to test for a main effect of the Fault manipulation. Second, the 3×2 design was decomposed into two 2×2 repeated-measures ANOVAs; a 2 (Poor vs. Wealthy Individual) \times 2 (Ambiguous vs. Clear Fault) ANOVA to test the effects of *defendant wealth*, and a 2 (Wealthy Individual vs. Corporation) \times 2 (Ambiguous vs. Clear Fault) ANOVA to test the effects of *defendant identity*. *F* ratios for defendant wealth and defendant identity effects were then computed using the error terms from the omnibus ANOVA. This procedure provides direct hypothesis tests with greater statistical power than the three-level defendant identity factor in the omnibus ANOVA.²

Because some jurors failed to provide a response to a given dependent measure in all six of the personal injury cases, listwise deletion of missing values was used.

Wealth manipulation check. The effectiveness of the defendant wealth manipulation was assessed using the five-point rating of the defendant's financial ability to compensate the plaintiff. There was a significant defendant wealth effect ($F(1,420) = 325.40, p < .0001$); as expected, the wealthy individual ($M = 3.70$) was perceived to be significantly more able than the poor individual ($M = 2.43$) to compensate the plaintiff. Unexpectedly, the defendant identity effect was also significant ($F(1,420) = 29.22, p < .0001$). To determine whether this latter effect simply reflected the influence of the poor individual defendant, the means for the two deep-pocket defendants were compared; contrary to intentions, the corporate defendant ($M = 4.04$) was perceived to be significantly more wealthy than the wealthy individual ($M = 3.70$) ($t(233) = 6.29, p < .0001$). Nevertheless, the intended poor versus wealthy effect ($r = .67$) is almost three times the size of the unintended wealthy versus corporation effect ($r = .24$).³ This difference in perceived wealth between the wealthy individual and the corporation would preclude a clear distinction between the effects of defendant wealth and defendant identity, but only if all three defendant conditions differed significantly from each

² An additional decomposed 2×2 ANOVA might compare the poor individual and the corporation, but this would confound defendant identity and defendant wealth. The defendant wealth and corporate identity comparisons described in the text provide less ambiguous tests.

³ Cohen (1987:79-80) suggests that *r*'s of .10, .30, and .50 can be characterized as "small," "medium," and "large" effects.

other on the dependent measure of interest. As will be seen below, this did not occur.

Liability judgments. Dichotomous liability ratings were combined with 7-point confidence-in-verdict ratings to create a 14-point liability scale, where 1 = complete confidence in a “not liable” judgment and 14 = complete confidence in a “liable” judgment. Unlike the dichotomous verdict, this 14-point scale can be analyzed using parametric repeated-measures statistics; moreover, by indicating degree of confidence, this measure is more predictive of juror voting during jury deliberation (see Stasser & Davis 1981). Cell means appear in Table 1. There was a significant main effect for defendant fault ($F(1,206) = 362.23, p < .0001$), with greater liability perceived in the clear fault condition ($M = 11.34$) than in the ambiguous fault condition ($M = 6.97$). There was a significant defendant identity effect ($F(1,412) = 4.74, p = .030$), with greater liability for corporate defendants ($M = 9.59$) than for wealthy individuals ($M = 8.99$). Contrary to the deep-pocket hypothesis, there was no observable difference between liability in the poor and wealthy individual conditions ($M = 8.90, 8.99$, respectively) ($F(1,412) = 0.03, p = .865$).⁴

Table 1. Mean Liability Ratings, Experiment 1

	Poor Individual	Wealthy Individual	Corporation	Mean
Ambiguous fault	6.66	6.69	7.67	6.97
Clear fault	11.14	11.28	11.60	11.34
Mean	8.90	8.99	9.59	

NOTE: Listwise cell $n = 227$.

Compensatory damage awards. As in actual trials, jurors only provided compensatory damage awards when the defendant was found liable. It was very unusual for jurors to provide awards in all six cases, making repeated-measures analysis infeasible. This

⁴ Recall that respondents inferred somewhat greater wealth for the corporate defendant than for the rich individual, despite receiving identical wealth information. After I controlled for perceived wealth in an analysis of covariance on verdicts, the corporate identity (corporation vs. rich individual) effect was no longer statistically significant ($F(1,199) < 1$). On its face, this would seem to support a deep-pockets account, but several lines of evidence make this implausible. First, additional analyses showed that controlling for perceived wealth did not universally eliminate the corporate identity effect; it persisted for two of the six cases, either as a main effect or in interaction with the fault variable. Second, as noted earlier, the perceived difference in wealth between the poor and rich individuals was three times the size of the rich-corporate difference, and yet the rich and poor individuals received identical treatment. Third, a similar analysis of covariance in Experiment 2 (see note 9 below) found that the corporate identity effect persisted after controlling for perceived wealth. And fourth, an unpublished experiment by Hans (1994) has replicated Experiment 1 by showing that verdicts vary with defendant identity but not manipulated defendant wealth. An alternative interpretation of the analysis of covariance result is that the wealth ratings, which were provided after the verdict ratings, are endogenous—i.e., respondents may have inflated ratings of the defendant’s ability to pay in an attempt to help rationalize their verdicts.

was not a problem for *expected* awards; that is, awards including zero values when liability was not found.⁵ None of the experimental contrasts were significant for these expected awards; however, these measures were highly skewed by occasional very large awards, with skewness coefficients ranging from 1.19 to 7.16 ($5.46 < t < 42.14$, all p 's $< .01$). Thus, an adjusted award measure was computed, which equaled a log transformation of the award (e.g., Tukey 1977) or zero if no award was given. Cell means for this adjusted award measure appear in Table 2; note that with the adjustment, they are no longer interpretable as dollar values. Analyses of these adjusted awards revealed two significant effects. First, a main effect for the fault factor ($F(1,200) = 335.78$, $p < .0001$) indicated larger expected awards in the clear fault condition ($M = 10.75$) than in the ambiguous fault condition ($M = 5.59$). Second, the defendant identity contrast ($F(1,400) = 7.14$, $p = .008$) indicated larger awards for the corporate defendant ($M = 8.74$) than for the wealthy individual ($M = 7.81$). Again, the comparison between the poor ($M = 7.97$) and wealthy ($M = 7.81$) individuals provided no support for the deep-pocket hypothesis ($F(1,400) = 0.06$, $p = .800$).

Table 2. Mean Transformed Compensatory Damage Awards, Experiment 1

	Poor Individual	Wealthy Individual	Corporation	Mean
Ambiguous fault	5.38	5.07	6.31	5.59
Clear fault	10.56	10.54	11.16	10.75
Mean	7.97	7.81	8.74	

NOTE: Listwise cell $n = 222$.

Scenario and order effects. Recall that six different personal injury scenarios were developed to implement the repeated-measures design. Between-subjects Scenario \times Defendant \times Fault ANOVAs were conducted to test for possible moderating effects of specific scenarios on juror verdicts. There was a significant defendant wealth by scenario interaction ($F(1,163) = 2.51$, $p < .05$) for the wealth manipulation check. Story-specific tests indicated that the rich individual was perceived to be significantly wealthier than the poor individual ($2.65 \leq t \leq 7.04$) in every scenario ex-

⁵ Expected award analyses are common in archival analyses of actual jury verdicts (Chin & Peterson 1985; MacCoun 1993b), but it should be noted that they are not statistically independent of liability analyses. On the other hand, when independent variables have been shown to affect liability judgments, analyses of awards conditioned on liability (i.e., excluding jurors voting "not liable") are vulnerable to a sample selection bias (Heckman 1990). This problem has generally been overlooked in both the archival jury and mock jury research literatures. In this repeated-measures experiment, nonzero awards can be examined on a between-subjects basis, either case by case or across cases for the first case encountered by each juror—in essence, a between-subjects design. However, no differences in awards were detected using these approaches, most likely because of the high variability and small number of available observations at the between-subjects level.

cept the second one (the slip and fall involving Kevin Drucker; see Appendix A) ($M = 3.1$ vs. 2.5 ; $t(26) = 1.29$, $p = .209$). Significant scenario main effects were found for both liability ($F(5,201) = 9.33$, $p < .0001$) and awards judgments ($F(5,201) = 8.52$, $p < .0001$), which simply indicate that the scenarios differed in their overall evidence for liability and damages.

There was only one interaction effect involving the scenario factor, a defendant identity \times fault \times scenario interaction ($F(5,123) = 2.32$, $p = .047$) on transformed awards. Separate scenario-by-scenario tests indicated that in scenarios 1 and 6, the simple defendant identity effect was significant under ambiguous fault but not clear fault (p 's $< .01$).

Tests of an order-of-presentation factor in the repeated-measures analysis of juror verdicts indicated that the counterbalanced booklets produced no significant order effects. Similarly, between-subjects analyses of variance on juror verdicts by case revealed no reliable interactions of presentation order with the experimental variables.

Other ratings. Jurors provided several additional case ratings.⁶ Two five-point items assessed the likelihood that the plaintiff's injuries were caused by the defendant and plaintiff, respectively. The mean defendant causation rating was significantly greater in the clear fault condition ($M = 3.56$) than in the ambiguous fault condition ($M = 2.70$) ($F(1,202) = 150.32$, $p < .0001$). There was also a significant defendant identity effect ($F(1,404) = 10.87$, $p = .001$) such that greater causation was attributed to the corporate defendant ($M = 3.30$) than to the wealthy individual ($M = 3.04$). For the plaintiff causation item, the only significant effect was a main effect for the fault manipulation ($M = 2.34$ and 2.11 for ambiguous and clear fault) ($F(1,195) = 14.37$, $p < .001$).

Four other four-point items assessed whether the defendant acted with reasonable care, was reckless, or intended to do harm, and whether the harm was foreseeable. The main effect for the fault manipulation was significant for all four items in the expected direction ($17.03 < F < 321.00$, all p 's $< .0001$). There were no significant effects involving defendant identity. The only significant effect involving the wealth contrast was an interaction with the fault manipulation on perceptions that the defendant intended to harm the plaintiff ($F(1,414) = 4.44$, $p = .036$); decomposition of this interaction indicated that greater intent was perceived for the wealthy individual defendant in the clear fault condition ($M = 1.56$) than for the wealthy defendant/ambiguous fault ($M = 1.34$; $t(221) = -4.26$, $p < .0001$) or poor defendant/clear fault ($M = 1.42$; $t(219) = -2.82$, $p < .005$) conditions. This pattern provides somewhat dubious evidence for a deep-pocket

⁶ Because these items did not form acceptable factors in a principal components analysis, they are analyzed separately.

effect: The low ratings suggest that attributions of intent were generally viewed as implausible in this case, the effect did not influence liability judgments, and it was not replicated in Experiment 2 (see below).

Juror goals. Jurors were asked to rate the importance of each of four possible objectives for juror participation in a civil trial. Table 3 displays juror ratings for these goals for jurors from both this experiment and Experiment 2, described below. Although jurors perceived all four goals to be important, there was strongest endorsement for the notion that verdicts should be based upon fault, so that the agent at fault should bear the cost of the injuries; this goal is consistent with both traditional tort doctrine (Keeton 1984) and the pervasive lay norm of equity (Deutsch 1975). Helping needy plaintiffs obtain compensation was the second most popular goal, followed by the goal of deterrence, and punishing the defendant, which was seen as a lesser goal by almost all jurors.

Table 3. Juror Goal Ratings

	Mean Rating (5 = Extremely Important)		Most Important Goal (%)	
	Exp. 1	Exp. 2	Exp. 1	Exp. 2
Helping injured plaintiffs to get compensation	3.3	3.6	20.3	25.8
Punishing defendants who cause accidents	3.0	3.3	4.3	3.8
Teaching negligent defendants to be more careful in the future	3.4	3.9	15.6	13.9
Making sure that the one at fault is the one who pays for the damage	4.0	4.3	46.5	47.4

Interestingly, endorsement of the compensation, deterrence, and equity/fault goals was completely unexplained by juror demographics, with age, race, gender, education, employment status, occupation, family income, political ideology, and prior jury experience accounting for a negligible and nonsignificant fraction of variance. However, juror demographics accounted for about 11% of the variance in the punishment goal ratings ($F(10,112) = 2.50, p < .01$). The only significant coefficient was for occupation (beta = $-0.2183, t = -2.06, p = .042$), indicating that managers and professionals viewed punishment as a less important goal than did unskilled and skilled workers.

Discussion of Experiment 1

Experiment 1 conceptually replicates the pattern observed in prior mock jury studies (Hans & Ermann 1989; Wasserman & Robinson 1980) and in statistical analyses of actual jury verdicts (Bovbjerg et al. 1991; Chin & Peterson 1985; Ostrom & Rottman

1991; Wittman 1990); specifically, jurors treated corporate defendants differently from individuals, even given identical factual evidence regarding liability and damages. Note that while statistically significant, this effect was fairly small ($r = .11$ and $.13$ for liability and awards, respectively). This may indicate that the effect is also small in actual jury verdicts once confounding factors are adequately controlled, but this is not necessarily the case; the mock jury method is appropriate for verifying and explaining effects, but it cannot provide definitive estimates of the magnitude of effects in actual jury trials (MacCoun 1989, 1993b; also see Cooper & Richardson 1986).

But Experiment 1 also calls into question the conventional interpretation for differential treatment of corporations: the deep-pocket hypothesis. Contrary to the deep-pocket hypothesis, Experiment 1 suggests that some factor other than wealth is responsible for the differential treatment of corporations. There was no evidence that jurors' verdicts treated deep-pocket individuals any differently from poor individuals. Is it possible that the deep-pocket bias exists but that Experiment 1 somehow failed to detect it? Perhaps, but a Type II statistical error seems unlikely. The repeated-measures design and relatively large sample size provided a high level of statistical power.

In reaction to preliminary presentations of these results, some have suggested that no deep-pocket effect was found because jurors believed that insurance coverage provided *each* defendant with deep pockets, or perhaps only extremely wealthy corporations trigger a deep-pocket effect. While one or the other of these conjectures might be valid, both cannot be correct, since they contradict each other, and neither explains the results of Experiment 1. First, unlike the other two defendants, the poor defendant was rated significantly below the midpoint of the item assessing the availability of financial resources to compensate the plaintiff ($t(249) = -11.00, p < .001$). Second, neither account explains why a corporate identity effect was found; that is, why corporations were treated differently than wealthy individual defendants. Thus, the deep pocket hypothesis is difficult to reconcile with the results of Experiment 1.

Experiment 2

Rationale

Experiment 2 had two objectives. The first was to assess the reliability and generalizability of the corporate identity effect, by (a) attempting to replicate the basic pattern of Experiment 1, and (b) conceptually replicating and extending the Hans and Ermann (1989) experiment by using their basic stimulus case but distinguishing the poor and wealthy individual defendant condi-

tions. The second objective was to examine the role of commercial activity in accounting for the differential treatment of corporate defendants.

Specifically, one feature that distinguishes corporations from individuals is that the majority of corporations are organized for, and primarily engaged in, commercial activities; while many individuals also engage in commercial activities, many do not, and none do so exclusively. There are a number of reasons why jurors might treat actors engaged in commercial activities differently. First, business executives might be seen as more willing to “cut corners” and less likely to take precautions when engaged in commercial pursuits. This notion is common in fictional media portrayals, and is illustrated by many well-known actual incidents (Hills 1987; Jenkins & Braithwaite 1993). Thus, in a 1992 Harris poll (American Enterprise 1993), 66% of a national sample rated the “moral and ethical standards of business executives” as “fair” or “poor.” Second, commercial activities may invoke specific norms and expectations that are distinct from the norms and expectations that govern other social contexts, as suggested by Mills and Clark’s (1982) research on exchange versus communal relationships or Fiske’s (1991) evidence that individuals categorize social relations in terms of four fundamental schemata—communal sharing, authority ranking, equality matching, and market pricing—each with its own applicable norms and standards. Third, commercial activities by their very nature tend to expose a greater number of people to the actor’s actions and the products of that action.

If jurors are reacting primarily or exclusively to the commercial aspect of corporate conduct, then *individuals* who are engaged in commercial activities should be treated differently from individuals who are not. Similarly, corporations that are engaged in commercial activities should be treated differently than corporations that are not. To explore this possibility, Experiment 2 used a 3×2 factorial design. The first factor was the same basic defendant identity manipulation used in Experiment 1; the defendant was described as a corporation, a wealthy individual with identical assets, or a poor individual. The second factor involved the purpose of the activity that allegedly produced the harm. In one condition, a commercial, customer-targeted activity was described; in the other, the activity was motivated by a noncommercial, internal purpose that did not involve customers.⁷

⁷ In an unpublished study, Hans (1994) recently found that nonprofit corporations received verdicts intermediate in magnitude between those of individual defendants and for-profit corporate defendants. Experiment 2 was designed independently and differs in several ways from Hans’s experiment. First, in Experiment 2, the corporation was identical in the commercial and noncommercial activity conditions; the only variation involved *the purpose* of the defendant’s conduct. Second, Experiment 2 also manipulated whether *individuals* were engaged in commercial activity when the alleged harms took place.

The preceding discussion suggests three alternative models of juror reactions to Experiment 2. Under a *pure defendant identity* model, jurors would treat corporations differently from comparably wealthy individuals, regardless of defendant wealth or purpose; thus, Experiment 2 would simply replicate the corporate identity effect observed in Experiment 1. Under a *pure commercial purpose* model, jurors would react exclusively to the commercial nature of the activity, resulting in a main effect for the purpose factor while eliminating the corporate identity effect observed in Experiment 1. Under an *additive* model, jurors would respond to the purpose manipulation but would continue to respond to defendant identity, suggesting that commercial activity is relevant to jurors but is not sufficient to explain their differential treatment of corporations. Though the deep-pocket model was not supported in Experiment 1, the design of Experiment 2 provides a second opportunity to test the prediction that corporations and wealthy individuals would be treated less favorably than poor individuals.

Design and stimulus case. Experiment 2 used a 3×2 (Defendant Identity \times Defendant Purpose) between-subjects factorial design. The defendant identity factor consisted of the same three levels used in Experiment 1: Poor Individual, Wealthy Individual, and Corporation. The defendant purpose factor consisted of two levels: Commercial Activity and Personal Use. The stimulus case was an adaptation of the case developed by Hans and Ermann (1989); the generic case and experimental variations appear in Appendix B. In all six versions, a worker becomes ill after landscaping some property for the defendant, who is either developing the property for commercial use or for personal use. In the personal use condition, the defendant would be presumably at risk of exposure to any toxic substances on the property.

Subjects. Two hundred and nine members of the jury pool of the Ventura County Superior Court served as volunteer mock jurors. Demographically, the sample was 84% Anglo American, 10% Latino, 4% Asian American, and 2% African American; 67% held full-time jobs, 14% were retired, 9% worked part time, and 2% were unemployed; and 51% were female.

Results

Wealth manipulation check. Dependent measures were analyzed using the same strategy described in the previous experiment, except the purpose manipulation (own use vs. commercial use) replaced the fault manipulation and between-subjects analyses were used. As intended, the comparison of the poor versus rich individual defendant conditions was significant ($F(1,193) = 65.68, p < .0001$). As in Experiment 1, there was also an unintended significant difference between the wealthy individual and

the corporation ($F(1,193) = 4.96, p < .027$), although the former effect was over five times larger in magnitude ($r = .88$ and $.16$, respectively). The mean perceived ability to compensate the plaintiff was 2.88 for the poor individual, 4.03 for the wealthy individual, and 4.34 for the corporate defendant.⁸

Liability judgments. As in Experiment 1, dichotomous liability verdicts were combined with verdict confidence ratings to produce 14-point liability scale ratings; means appear in Table 4. However, in Experiment 2, there were no significant effects involving liability.

Table 4. Liability Ratings, Experiment 2

	Poor Individual	Wealthy Individual	Corporation	Mean
Own use	9.86	9.68	11.71	10.42
Commercial use	10.65	11.66	11.51	11.28
Mean	10.25	10.67	11.61	

Awards. Unlike Experiment 1, in Experiment 2 it was possible to analyze damage awards both with and without zero values; means for both measures appear in each cell of Table 5. There were no significant effects for awards when zero values were excluded; that is, among the subset of jurors who found the defendant liable. For the expected award measure, there were no significant effects involving the deep-pocket comparison between the poor and wealthy individual defendants; thus Experiment 2 again failed to support the deep-pocket model. The main effect for defendant purpose was not significant ($p = .35$), contrary to the pure commercial purpose and additive models. The overall defendant identity comparison (rich individual vs. corporation) was marginally significant ($F(1,187) = 2.93, p = .089$), with larger awards against the corporation ($M = \$127,352$) than against the wealthy individual ($M = \$103,746$). However, there was a significant Purpose \times Defendant Identity (wealthy individual vs. corporation) interaction ($F(1,187) = 5.86, p = .016$).⁹ Decomposition of this interaction revealed two significant effects. First, in the personal use condition, awards were significantly larger against the corporate defendant ($M = \$142,052$) than against the wealthy individual defendant ($M = \$85,000$) ($t(123) = 2.72, p = .017$). But contrary to the pure defendant identity model, the wealthy individual and the corporation were treated identically in the commercial activity condition ($t(62) = 0.54, p = .591$). Second, in

⁸ In both experiments, the means for the wealthy individual and the corporation differed in the experimental data but not in pilot data. This may reflect the greater statistical power of the experiments relative to their pilot tests.

⁹ This interaction remains significant after partialing out the wealth manipulation check ($F(1,176) = 4.48, p = .0356$), indicating that the interaction is not attributable to a difference in perceived wealth between the wealthy individual and the corporation.

the wealthy individual condition, awards were significantly larger when the wealthy individual had developed the property for commercial use ($M = \$124,306$) rather than personal use ($M = \$85,000$) ($t(63) = -2.03, p = .047$). But contrary to the pure commercial purpose model, the nature of the activity had no effect on awards against the corporate defendant ($t(60) = 1.23, p = .223$).¹⁰ Thus, Experiment 2 suggests that commercial activity significantly influences reactions to wealthy defendants but is not sufficient to account for differential treatment of corporations, since noncommercial activities failed to mitigate reactions against corporate defendants.

Table 5. Mean Compensatory Damage Awards and Expected Awards (in \$), Experiment 2

	Poor Individual	Wealthy Individual	Corporation	Mean
Mean compensatory damage award				
Own use:	\$109,280	\$114,461	\$159,463	\$128,378
Commercial use:	120,846	137,625	128,643	129,223
Total	115,176	126,472	143,242	
Mean expected damage award				
Own use:	\$80,353	\$85,000	\$142,052	\$100,428
Commercial use:	98,188	124,306	114,433	112,206
Total	89,000	103,746	127,352	

Other ratings. An exploratory principal components analysis with oblique rotation was used to screen a set of additional ratings for possible scales. Three scales were constructed. A Relative Fault scale consisted of four items assessing causation and fault for the plaintiff and defendant, respectively (coefficient alpha = .68). Analysis of this scale revealed only one significant effect, the defendant identity contrast ($F(1,184) = 7.07, p = .008$), indicating that the corporate defendant was seen as relatively more blameworthy than the wealthy individual defendant ($M = 3.85$ and 3.47 , respectively).

A Defendant Immorality scale consisted of three items assessing perceptions that the defendant's actions were morally wrong, selfish and greedy, and reckless (coefficient alpha = .75). The defendant wealth comparison was statistically significant ($F(1,147) = 4.03, p = .046$), indicating that the wealthy individual

¹⁰ A defendant identity effect might occur because jurors inflate awards against corporations or because they deflate awards against individuals. With the plaintiff's request as a baseline, the data suggest that the effect is one of deflation rather than inflation. Only 11 (6.8%) of the awards exceeded the plaintiff's request of \$193,000, and these were randomly distributed across the conditions ($\chi^2(5) = 4.87, p = .4322$). The mean award (excluding zero values) fell significantly below the requested figure ($p = .0993$ in the corporation/personal use cell and $p < .001$ in the other three cells). Of course, the plaintiff's request is not a neutral baseline; 55% of subjects rated it as "too high: asking too much for compensation." Endorsement of this sentiment did not vary significantly across conditions. A more direct test of the inflation/deflation question would require a "no defendant information" control group.

($M = 2.25$) was seen as less moral than the poor individual ($M = 2.05$). A marginal defendant identity effect ($F(1,147) = 3.75, p = .055$) suggests that the corporation ($M = 2.49$) was seen as somewhat less moral than the wealthy defendant.

A Defendant Impact scale (coefficient alpha = .67) consisted of two items assessing the likelihood that the defendant had no insurance coverage and that the verdict might bankrupt the defendant. The only significant effect was the defendant wealth comparison ($F(1,184) = 42.43, p < .0001$); as might be expected, jurors expected greater financial impact for the poor individual ($M = 2.36$) than for the wealthy individual ($M = 1.79$).¹¹

Two additional items assessed defendant intent to do harm and the likelihood that the defendant would be more careful in the future. The intent item revealed no significant effects; thus the defendant wealth effect for this item in Experiment 1 was not replicated. The carefulness item revealed marginally higher ratings for the own use condition ($M = 3.52$ on a 4-point scale) than in the commercial activity condition ($M = 3.34$) ($F(1,184) = 2.78, p = .097$) and marginally higher ratings for the wealthy individual ($M = 3.51$) than for the corporation ($M = 3.27$) ($F(1,184) = 3.59, p = .06$); the mean for the poor defendant was 3.52.

Effects of juror characteristics. The relationship between juror demographics and jury verdicts has long been of interest because of its obvious relevance to jury selection. Mock juror studies provide an opportunity to examine these relationships because verdicts are observed for all jurors, not just those that have been filtered by the voir dire process. Thus, the liability scale ratings and the expected award measure were each regressed onto a set of juror characteristics, including sex, age, race, family income, education, employment status, occupation, self-reported political ideology (liberal-conservative), prior jury experience, and the set of four juror goals described earlier. Neither equation even approached significance (for liability, adjusted $R^2 = -.0675, F(14,107) = 0.45, p = .952$; for awards, adjusted $R^2 = -.0293, F(14,96) = 0.78, p = .692$). This lack of predictive power for demographic variables is consistent with the results of many other mock jury studies (see Diamond 1990; Hastie, Penrod, & Pennington 1983; cf. Cutler 1990).

¹¹ Recall that some have suggested that jurors might infer that even poor individuals have deep pockets via insurance. Separate analysis of the insurance item indicates that the poor defendant ($M = 2.79$) was seen as significantly less likely to have insurance coverage than either the wealthy individual ($M = 3.35$) ($t(1,132) = -4.75, p < .001$) or the corporate defendant ($M = 3.44$) ($t(1,130) = -5.64, p < .001$); the latter means were not statistically different. Nevertheless, the poor defendant's likelihood of insurance was perceived to be significantly above the scale midpoint of 2.5 ($t(65) = 3.05, p < .005$).

General Discussion

The results of these experiments, in conjunction with other recent studies (Guinther 1987; Hans & Ermann 1989; Hans 1994; Vidmar 1993), cast serious doubt on the pervasive deep-pocket assumption. In two controlled experiments, jurors' verdicts were insensitive to reliable differences in perceived defendant wealth. Yet consistent with archival analyses of actual jury verdicts (e.g., Chin & Peterson 1985), corporations were indeed treated differently.

If not because of wealth, why *do* juries treat corporations differently? Previous publications (Hans & Ermann 1989; MacCoun 1987, 1993b) suggest several possibilities, each of which finds at least partial support in the findings presented here.

Distrust of commercial actors. Juries may hold hostile attitudes toward corporations, be more skeptical of the testimony of corporate witnesses, or believe that corporations are less cautious in regulating their own conduct. Experiment 2 found that individual defendants were treated more harshly if engaged in commercial activities; perhaps jurors may feel that the profit motive creates an incentive for actors to cut corners. This account can explain Hans's (1994) recent finding that nonprofit corporations were treated less harshly than for-profit corporations, though it is not sufficient to explain why her jurors in that study still treated nonprofits differently from individuals, or why Chin and Peterson (1985) found that governments were also treated less favorably than individuals. Another puzzle is why corporations, unlike individuals, were not treated more leniently when engaged in *noncommercial* activity. It appears that distrust of the profit motive may contribute to juror reactions but is not sufficient to account for differential treatment of corporations.

Impersonal nature of corporations. Perhaps jurors find it easier to impose costly sanctions against an aggregate, impersonal entity—either a corporation or a government—than against a real, flesh-and-blood individual.¹² This notion is captured by a familiar phrase in English jurisprudence, “no soul to be damned, and no body to be kicked” (see Coffee 1981). Theoretically, the social impact of a verdict—its monetary and reputational consequences—should vary inversely with the number of targets, resulting in a “diffusion of responsibility” (see Latané 1981; Schelling 1974). Trial lawyers appear to anticipate this possibility; defense lawyers attempt to personalize their corporate clients, while plaintiffs' lawyers try to depersonalize them. This might account for the differential treatment of both governmental and corporate defendants. However, this explanation cannot account

¹² Smigel (1956) raised this as an explanation for his finding that citizens were more tolerant of theft against larger corporations; Greenberg (1986) reported similar findings. But neither study disentangled target size from target wealth.

for the shift in treatment for the individual defendant engaged in commercial activity (Experiment 2).

Alternative standards. Perhaps juries hold corporations to a higher standard than individuals (Hans & Ermann 1989; Hans 1994; MacCoun 1987; Sanders, Hamilton, & Yuasa 1994). Note that this explanation differs from the “distrust of commercial actors” account in that it focuses on the standard against which conduct is judged rather than on the conduct itself. Jurors may be less forgiving of defendants engaged in endeavors that potentially expose a great many people to risk—*ex ante*, if not *ex post*. This account might explain why individuals are treated more leniently than corporations and governments, except when an individual actor is engaged in commercial activities that put others at risk. Such a pattern may not be limited to the tort context. Horwitz (1990:184) cites historical support for the proposition that “a greater amount of blameworthiness attaches to persons of higher status if they violate the trust placed in them.” Wheeler, Weisburd, and Bode (1982; Weisburd, Waring, & Wheeler 1990) present evidence that defendant socioeconomic status is positively associated with prison sentencing by federal district court judges.

If jurors do apply higher standards to corporate conduct, this may not constitute a bias—tort doctrine doesn’t clearly address the question of whether corporate and individual defendants should be held to a common standard. Indeed, tort scholars point out that the *reasonable person standard* should be adapted to the physical attributes of the actor in question; thus, a blind actor should be evaluated relative to what the jury would expect of a reasonable blind person (Keeton 1984:32). This suggests that jurors should apply a “reasonable corporation” standard when evaluating corporate conduct (MacCoun 1987).¹³ Tort law appears to give jurors the discretion to define this standard differently for different types of defendants. The alternative standard hypothesis is consistent with the argument that there has been a general social and legal trend throughout this century toward stricter standards of liability, especially for businesses (Black 1987; Priest 1985).

Hans and Ermann (1989; Hans 1994; also Sanders et al. 1994) have presented correlational evidence that standards might moderate these verdict effects. The findings presented here provide some additional support for that hypothesis. First, in Experiment 2, corporations were seen as less likely than individuals to behave more carefully in the future. Second, though not statistically significant, marginal trends ($p < .10$) in Experiment 1 suggested that jurors might view corporations as more

¹³ But see Gutek & O’Connor (1995) for a normative and empirical critique of a “reasonable woman standard” for sexual harassment cases.

reckless and more able to foresee the harm to the plaintiff than individual defendants would be. Since the described conduct was held constant across defendants, such patterns might imply higher standards for corporations.

But these studies also pose some difficulties for the hypothesis. Arguably, alternative standards would imply that the strength of liability evidence should moderate the defendant identity effect; that is, differential treatment of corporations should be more pronounced when liability is less clear. Experiment 1 failed to detect an evidence strength corporate identity effect, but this may simply indicate that both types of defendants fell above the alternative standards threshold. If jurors do hold corporations to higher standards, a better understanding of the specific content of those standards might permit a more precise experimental test.

Perhaps the most troubling evidence against the alternative standards notion is that the corporate identity effect on liability judgments was not significant in Experiment 2. A stronger effect for awards than liability renders somewhat implausible the implied causal chain: *identity* → *standards* → *liability* → *award*. Thus, rather than triggering higher standards of conduct, commercial activities and corporate identity might simply be seen as aggravating circumstances when setting “penalties.”

These different accounts of the defendant identity effect are not mutually exclusive, and none of them may be necessary or sufficient to produce the effect. The defendant identity effect is of both theoretical and policy interest, and merits further investigation. Of course, from a corporate executive’s perspective, differential treatment is cause for concern, whatever its explanation. But the conventional deep-pocket explanation appears to be incorrect, suggesting that it should not be seen as a compelling rationale for policy intervention.

As a caveat, it should be noted that jurors did not deliberate to a group verdict in these experiments. This is not a limitation from the perspective of understanding citizens’ attitudes toward corporate and individual responsibility, but it does raise a concern whether these findings generalize to actual jury trials. Although deliberation often attenuates juror biases (Kaplan & Miller 1978), under some conditions it can actually amplify them (see Kerr, MacCoun, & Kramer 1996; MacCoun 1990). For example, jurors might use “pocket depth” as a basis for compromise when deliberating about award size,¹⁴ but this hypothesis is speculative, and it appears superfluous; the evidence presented here indicates that defendant wealth is neither necessary to account for the observed patterns in actual jury verdicts nor sufficient to

¹⁴ I thank an anonymous reviewer for raising this hypothesis.

account for the individual juror preferences that are the primary predictors of the group's verdict (Hastie et al. 1983).

Even if there is no deep-pocket effect in jury verdicts, it is still possible that deep-pocket biases exist at other points in the tort process; for example, in decisions by claimants to file a lawsuit or in decisions by plaintiffs' attorneys about which cases to pursue and which to reject (MacCoun 1993a). A deep-pocket effect in claiming behavior would indicate that injured parties (and possibly some noninjured parties) differentially seek out wealthy targets for compensation. A deep-pocket effect in lawyer behavior would indicate that plaintiffs' attorneys are more likely to accept cases that involve deep-pocket actors who might be named as defendants. Unlike the jury case, it is unclear whether a deep-pocket effect in claimant or attorney behavior should be labeled a "bias." Arguably, it is normatively acceptable for claimants and attorneys to choose not to pursue litigation against "shallow pocket" defendants. MacCoun (1993a) argues that such effects are most clearly inappropriate when a suit is pursued despite dubious evidence for defendant fault.

At present, there appears to be little direct evidence on the question of deep-pocket effects on attorney behavior. With respect to claiming behavior, the Institute for Civil Justice national compensation survey (Hensler et al. 1991) provided some evidence suggestive of deep-pocket effects, but the findings are inconsistent and open to multiple interpretations (MacCoun 1993a, 1993c). Thus, while existing evidence argues against a deep-pocket interpretation of jury verdict patterns, the possibility of deep-pocket bias elsewhere in the tort system cannot be ruled out.

Appendix A

Stimulus Case Materials, Experiment 1

The six personal injury cases appear below. Experimental variations are shown in two- and three-column formats with additional variations in parentheses.

CASE 1 (Slip and Fall)

INDIVIDUAL:

James Perry v. Neil Rudell Snacks, Inc.

CORPORATION

James Perry v. Rudell's Gourmet Snacks, Inc.

Mr. James Perry is suing Mr. Neil Rudell (Rudell's Gourmet Snacks, Inc.) for negligent maintenance of a store. Mr. Perry, the *plaintiff*, is a 38-year-old office machine repairman. Mr. Perry entered the defendant's store to purchase a bottle of orange juice on his way home from work. He slipped on some yogurt which had spilled on the floor, fell, and hit his head on the edge of a counter.

POOR INDIVIDUAL	RICH INDIVIDUAL	CORPORATE DEFENDANT
<p>The <i>defendant</i>, Mr. Rudell, 52, owns the small snack shop where Mr. Perry fell. He runs the shop himself with no employees. The shop carries lunch and snack items such as soda, ready-made sandwiches, potato chips, yogurt, and candy.</p>	<p>The <i>defendant</i>, Mr. Neil Rudell, 52, owns a chain of five successful and profitable gourmet snack shops, including the store where Mr. Perry fell. The stores carry take-out lunch items, beverages, snacks, and desserts. Each store has a staff of 15 to 20 employees, but Mr. Rudell often fills in as a store manager when necessary, as he did on the day of Mr. Perry's accident.</p>	<p>The <i>defendant</i> corporation, Rudell's Gourmet Snacks, Inc., is a chain of five successful and profitable gourmet snack shops, including the store where Mr. Perry fell. The stores carry takeout lunch items, beverages, snacks, and desserts. Each store has a staff of 15 to 20 employees.</p>

Mr. Perry's attorneys argued that Mr. Rudell was negligent in that he did not sweep the floor or check for hazards frequently enough, even though such potentially dangerous spills are quite common in any food store. Mr. Perry testified that he never saw the spilled yogurt before he slipped on it.

 AMBIGUOUS FAULT

A witness, another customer who was near Mr. Perry when he fell, testified that he had not seen the yogurt spilled on the floor either, but that after Mr. Perry fell, the witness spotted a partially opened yogurt container under the counter.

 CLEAR FAULT

A witness, another customer who was near Mr. Perry when he fell, testified that he had been in the store for about 20 minutes before Mr. Perry slipped in the yogurt. During that period, the witness testified, he observed a customer drop the yogurt and immediately report it to Mr. Rudell, who took no action to clean up the spill until Mr. Perry slipped in it approximately 15 minutes later.

A medical expert for the plaintiff testified that as a result of hitting his head on the counter as he fell, Mr. Perry suffered a contusion to the frontal parietal region of the brain; that he was unconscious and in a coma for three days following the accident; that he permanently lost the hearing in his right ear, his sense of smell, and most of his sense of taste; that he has suffered two related seizures and may suffer more seizures for the rest of his life, which must be treated with anticonvulsants; and that he suffers from severe headaches, dizziness, and an inability to concentrate, and is able to work only part time.

Mr. Perry's attorneys submitted as evidence the following documents: medical bills totaling \$42,545; and a letter from Mr. Perry's employer stating that at the time of the accident Mr. Perry's salary was \$3,000 per month, that he was on unpaid medical leave for 10 months following the accident, and that he has returned to work only part-time earning \$2,000 per month. The attorneys are seeking \$42,545 for medical expenses, \$10,000 for future medical expenses, \$30,000 for wage loss, \$300,000 for future wage loss due to the inability to work full time, and \$500,000 for pain and suffering.

 AMBIGUOUS FAULT

The defendant's attorneys argued that their client maintains and cleans the store adequately; that Mr. Rudell sweeps the floor twice a day and maintains a log noting these sweepings, including a sweeping one hour before Mr. Perry's accident; and that Mr. Rudell had no prior knowledge of the spilled carton of yogurt so had no opportunity to correct the dangerous condition.

 CLEAR FAULT

The defendant's attorneys argued that their client was not negligent; that the store had been very busy following the report of the yogurt spill, preventing him from cleaning it up.

They claimed that the defendant was not responsible for Mr. Perry's injuries, wage loss, or pain and suffering.

CASE 2 (Slip and Fall)

INDIVIDUAL:

Kevin Drucker v. Charles Brock

CORPORATION

Kevin Drucker v. Chowdown Food Industries, Inc.

Mr. Kevin Drucker is suing Mr. Charles Brock (Chowdown Food Industries, Inc.) for negligent maintenance of a walkway. Mr. Drucker, the *plaintiff*, is a 40-year-old high school teacher. He slipped and fell on the walkway leading up to the defendant's food stand, the Chowdown Palace.

POOR INDIVIDUAL	RICH INDIVIDUAL	CORPORATE DEFENDANT
<p>The <i>defendant</i>, Mr. Brock, is the operator and owner of the Chowdown Palace, a small take-out fast food stand that serves hot dogs, chili dogs, corn dogs, french fries, and carbonated beverages. The fast food stand has been operating at the location of the accident for seven years. Mr. Brock runs the stand himself with no employees.</p>	<p>The <i>defendant</i>, Mr. Brock, is the operator and owner of the Chowdown Palace, a chain of take-out fast food stands that serve hot dogs, chili dogs, corn dogs, french fries, and carbonated beverages. The particular stand where the accident occurred has been operating at that location for seven years. Mr. Brock was operating the stand himself on the day of the accident; he occasionally runs one of his stands when an employee is ill.</p>	<p>The <i>defendant</i>, Chowdown Food Enterprises, owns the Chowdown Palace, a chain of take-out fast food stands that serve hot dogs, chili dogs, corn dogs, french fries, and carbonated beverages. The particular stand where the accident occurred has been operating at that location for seven years.</p>

Mr. Drucker's attorneys argued that Mr. Brock (Chowdown Food Industries) negligently maintained the walkway leading up to his (their) food stand. Mr. Drucker testified that he slipped on a puddle of an oily substance, and that he had not seen the substance prior to slipping on it.

CLEAR FAULT

A police officer who arrived at the scene of the accident testified that he observed the oily substance on the walkway. He also observed a series of oily puddles in the area between a garbage dumpster and the back door of the food stand, an area that included the walkway. The officer said that he believed the oily substance was deep-frying oil from the food stand.

A medical expert for the plaintiff testified that Mr. Drucker suffered a fractured left ankle and a fractured left hip. Mr. Drucker underwent a cemented hemiarthroplasty as treatment for the fractured hip, and would require a total hip replacement within five years.

Mr. Drucker's attorneys submitted as evidence the following documents: medical bills totaling \$28,243; and a letter from Mr. Drucker's employer stating

that at the time of the accident Mr. Drucker's salary was \$4,000 per month, and that he was unable to work for three months following the accident. The attorneys are seeking \$28,243 for medical expenses to date, \$30,000 for future medical expenses, \$12,000 for wage loss, and \$500,000 for pain and suffering.

The defendant's attorneys argued that their client maintains the stand and walkway adequately.

AMBIGUOUS FAULT	CLEAR FAULT
<p>They argued that the oily substance was probably mayonnaise that had been spilled by another customer immediately before the accident, and that Mr. Brock (IF CORP. DEF.: the employee on duty) could not have had prior knowledge of the spill because the walkway was not within the view of his takeout window.</p>	<p>An eyewitness for the defense, a nearby newsstand operator, testified that several teenagers on skateboards were squirting each other with sun-tan oil near the walkway about an hour before the accident. The defense attorneys argued Mr. Brock (IF CORP. DEF.: the employee on duty) could not have had prior knowledge of this hazard because the walkway was not within the view of his takeout window.</p>

They claimed that their client is not responsible for Mr. Drucker's injuries, wage loss, or pain and suffering.

CASE 3 (Auto Negligence)

INDIVIDUAL:

Jay Robinson v. Donald Hunter

CORPORATION

Jay Robinson v. Sampson Construction, Inc.

Mr. Jay Robinson is suing Mr. Donald Hunter (Sampson Construction, Inc.) for negligent operation of a motor vehicle. Mr. Robinson, the *plaintiff*, is a 45-year-old retail store manager. He testified that at the time of the accident, he was driving alone in his mid-size sedan, wearing his seat belt. As he headed south on a narrow road with no center line, a pickup truck driven by Mr. Donald Hunter, heading north, suddenly swerved into the southbound lane, colliding partially head on into the front left side of Mr. Robinson's car.

The front left side of Mr. Robinson's car was crushed, and emergency personnel had to extract him. A medical expert for the plaintiff testified that Mr. Robinson suffered injury to his neck, left arm, left hip, and low back, with nerve root impingement; that he received physical therapy for one year; that he eventually underwent three surgeries for his back injury; that he is partially disabled, able to work only part time because of residual physical limitation, which includes the inability to stoop, bend, lift weight, climb stairs, or sit for any extended period of time; and that he is expected to suffer chronic back pain for the rest of his life.

POOR INDIVIDUAL	RICH INDIVIDUAL	CORPORATE DEFENDANT
<p>The <i>defendant</i>, Mr. Hunter, is a 38-year-old construction worker.</p>	<p>The <i>defendant</i>, Mr. Hunter, owns a construction contracting business with many concurrent projects and a large crew of construction workers. He was driving his own pickup truck when the collision occurred.</p>	<p>The <i>defendant</i> corporation, Sampson Construction, Inc., is a construction contracting business with many concurrent projects and a large crew of construction workers. It owned the pickup truck which was driven by its employee, Mr. Hunter, in the scope of his employment.</p>

Mr. Hunter suffered only minor injuries, requiring no treatment.

AMBIGUOUS FAULT	CLEAR FAULT
<p>He [Mr. Hunter] testified that while he was driving, a large dog suddenly ran into the road in front of the truck. As Mr. Hunter swerved to avoid hitting the dog, he crossed into the other lane and collided with Mr. Robinson's car.</p> <p>The plaintiff's attorneys argued that Mr. Hunter should have risked hitting and injuring a dog rather than swerve into oncoming traffic.</p>	<p>He acknowledged that after the accident, he told a state highway patrol officer that while he was changing the cassette tape in his car stereo, he crossed into the other lane and collided with Mr. Robinson's car.</p> <p>The plaintiff's attorneys argued that it was unsafe and grossly negligent for Mr. Hunter to change cassette tapes while driving if doing so required him to look away from the road or not to be in control of his car for even a moment.</p>

The plaintiff's attorneys submitted as evidence the following documents: medical bills totaling \$74,468; and a letter from Mr. Robinson's employer stating that at the time of the accident Mr. Robinson's salary was \$4,000 per month, that he was on unpaid medical leave for 10 months following the accident, and that he has returned to work only part time earning \$3,000 per month. The attorneys are seeking \$74,468 for medical expenses, \$20,000 for future physical therapy, \$40,000 for wage loss, \$300,000 for future wage loss due to the inability to work full time, and \$500,000 for pain and suffering.

AMBIGUOUS FAULT	CLEAR FAULT
The defendant's attorneys argued that their client (client's employee, Mr. Hunter) was driving at a safe speed for the conditions, and that when the dog ran into the road in front of his truck, Mr. Hunter swerved instinctively to avoid hitting it, as any driver might, and that the road was very narrow, with no center line, so that even a very slight swerve resulted in collision.	The defendant's attorneys argued that their client (client's employee, Mr. Hunter) was driving at a safe speed for the conditions; that the use of a cassette player in a vehicle is common and not unsafe; that Mr. Hunter only swerved slightly; and that a collision occurred only because the road was extremely narrow.

They claim their client (Sampson Construction, Inc.) is not responsible for Mr. Robinson's medical expenses, wage loss, or pain and suffering.

CASE 4 (Auto Negligence)

INDIVIDUAL:

Paul Spires v. Gary Costigan

CORPORATION:

Paul Spires v. Kellet Marsh, Inc.

Mr. Paul Spires is suing Mr. Gary Costigan (Kellet Marsh, Inc.) for negligent operation of a motor vehicle. Mr. Spires, the *plaintiff*, is a 33-year-old accountant. He was crossing the street at a crosswalk when he was struck by an automobile driven by Mr. Costigan.

POOR INDIVIDUAL	RICH INDIVIDUAL	CORPORATE DEFENDANT
The <i>defendant</i> , Mr. Costigan, 42, leases the automobile, a Cadillac. He is an independent chauffeur, and he had just dropped off his passenger at a nearby tennis club when the accident occurred.	The <i>defendant</i> , Mr. Costigan, 42, owns the automobile he was driving, a Cadillac. He is a businessman who owns a chain of department stores, and he was driving home from his tennis club when the accident occurred.	Mr. Costigan, 42, drives the Cadillac as a chauffeur for the <i>defendant</i> corporation, Kellet Marsh, Inc., a chain of department stores. The car is owned by the corporation. Mr. Costigan had just dropped off the executive at his tennis club and was returning to the corporate office when the accident occurred.

AMBIGUOUS FAULT	CLEAR FAULT
<p>Mr. Costigan testified that at the time of the accident, about 7:30 p.m., it was completely dark and raining heavily, and he was unable to see the plaintiff, who was wearing dark clothing.</p>	<p>Mr. Costigan testified that he never saw the plaintiff in the crosswalk until the moment of impact.</p>
<p>The plaintiff's attorneys argued that the defendant was driving too fast for the prevailing conditions and that if his vision were so impaired by the rain and darkness he should have stopped the car.</p>	<p>The plaintiff's attorneys argued that the defendant was driving too fast for the prevailing conditions, and that the defendant was inattentive or he would have seen Mr. Spires in time to stop.</p>

The plaintiff's attorneys argued that Mr. Costigan was familiar with the area, having made many trips to the nearby tennis club, he knew there was a crosswalk at that point and should have been watching for pedestrian traffic.

A medical expert for the plaintiff testified that as a result of the accident, Mr. Spires suffered a ruptured disc in his back and suffers from residual pain and physical limitations, including the inability to lift, stoop, or bend; that both right wrist and right elbow were shattered and have required three surgeries for repair, will always have limited strength and range of motion, and will be susceptible to premature arthritis; that his jaw was broken, had to be wired shut for several weeks, and will continue to cause pain and headaches; and that he suffered a serious concussion which has caused and will continue to cause severe headaches.

Mr. Spire's attorneys submitted as evidence the following documents: medical bills totaling \$69,548; and a letter from Mr. Spire's employer stating that Mr. Spire's salary at the time of the accident was \$4,000 per month, and that he was on unpaid medical leave for a total of ten months including the surgeries following the accident. The attorneys are seeking \$69,548 for medical expenses, \$40,000 for wage loss, and \$500,000 for pain and suffering.

The defendant's attorneys argued that the accident was not the result of negligence by the defendant but simply an unfortunate happening. They argued that their client should not be held liable for Mr. Spire's medical expenses, wage loss, or pain and suffering.

 AMBIGUOUS FAULT

The defendant's attorneys argued that Mr. Costigan was driving at a safe speed for the conditions, and that he did not see the plaintiff in the crosswalk due to the combination of the darkness, the heavy rain, and the plaintiff's dark clothing. A witness who was driving the car directly behind Mr. Costigan's testified that Mr. Costigan was driving slowly, that the visibility was very poor, and that he had not seen the plaintiff in the crosswalk either.

 CLEAR FAULT

The defendant's attorneys argued that Mr. Costigan was driving at a safe speed for the conditions, and that he was simply unable to see, react, and stop his auto in time to avoid the accident.

CASE 5 (Medical Malpractice)

INDIVIDUAL:

George Taylor v. Michael Stevens, M.D.

CORPORATION

 George Taylor v. Pacifica
 Medical Clinics)

Mr. George Taylor is suing Dr. Michael Stevens (Pacific Medical Clinics) for medical malpractice. Mr. Taylor, the *plaintiff*, is a 44-year-old janitor. He testified that he went to the defendant for treatment of abdominal pain. Dr. Stevens diagnosed the pain as diverticulosis and irritable bowel syndrome. (Diverticulosis is the presence of saclike protrusions in the intestinal lining, a fairly common condition.) Six months later, Mr. Taylor suffered an attack of acute cholecystitis (inflammation of the gallbladder) and obstructive pancreatitis (acute inflammation of the pancreas) which resulted in his hospitalization and two surgeries.

POOR INDIVIDUAL	RICH INDIVIDUAL	CORPORATE DEFENDANT
<p>The <i>defendant</i>, Dr. Stevens, 36, is an internal medicine specialist. He is currently working as a doctor for the U.S. Army, fulfilling his agreement to do so in exchange for the Army having paid his medical school expenses. At the time Mr. Taylor was his patient, Dr. Stevens was working for a medical clinic on a temporary basis during the period between the end of his medical residency and the beginning of his work with the Army.</p>	<p>The <i>defendant</i>, Dr. Stevens, 36, is an internal medicine specialist. He owns 3 outpatient medical clinics in the city, each of which has full-time physicians employed by him. Dr. Stevens sometimes sees patients at the clinics in addition to overseeing the business.</p>	<p>The <i>defendant</i> corporation, Pacific Medical Clinics, Inc., owns three large outpatient medical clinics in the city. Dr. Stevens, 36, is an employee of the corporation.</p>

AMBIGUOUS FAULT	CLEAR FAULT
<p>Mr. Taylor's attorneys argued that the defendant should have diagnosed Mr. Taylor as having gallstones; that he should have ordered follow-up tests; and that he fell below the standard of care in not doing so. A medical expert for the plaintiff testified that Mr. Taylor's episodes of abdominal pain were caused by symptomatic gallstones rather than diverticulosis or irritable bowel syndrome.</p>	<p>. . . or irritable bowel syndrome; that Dr. Stevens' failure to order routine follow-up tests fell below the standard of care; and that had those tests been ordered, gallstones would have been diagnosed and Mr. Taylor could have been referred for an elective cholecystectomy, a relatively simple operation which would have prevented the later obstructive pancreatitis. The hospital pathologist testified that the surgery indicated that a gallstone had lodged in the pancreatic duct, causing Mr. Taylor's illness.</p>

Another medical expert for the plaintiff testified that as a result of the obstructive pancreatitis, Mr. Taylor is now an insulin-dependent diabetic, and that at the time of the surgeries, his condition was life threatening.

Mr. Taylor's attorneys submitted as evidence the following documents: medical bill totaling \$48,922; a letter from Mr. Taylor's physician stating that future medical bills related to this condition could total \$70,000; a letter from Mr. Taylor's employer stating that Mr. Taylor's salary was \$2,000 per month, and that he was on unpaid medical leave for seven months for this condition. His attorneys are seeking \$48,922 for past medical expenses, \$70,000 for future medical expenses, \$14,000 for wage loss, and \$500,000 for pain and suffering.

 AMBIGUOUS FAULT

The defendant's attorneys argued that Dr. Stevens (their client's employee, Dr. Stevens) was not negligent in his care. A medical expert for the defense testified that Mr. Taylor had exhibited the classic signs and symptoms of diverticulosis and irritable bowel syndrome. The attorneys argued that Mr. Taylor's later diagnosis of acute cholecystitis and hemorrhagic pancreatitis was six months after his visit to Dr. Stevens, and that during those six months Mr. Taylor did not experience any symptoms which would have indicated a need for further testing. They claim that their client is not liable for Mr. Taylor's medical expenses, wage loss, or pain and suffering.

 CLEAR FAULT

The defendant's attorneys argued that Dr. Stevens (their client's employee, Dr. Stevens) acted in good faith and was not negligent in his care, and that their client is not liable for Mr. Taylor's medical expenses, wage loss, or pain and suffering.

CASE 6 (Product Liability)

INDIVIDUAL:

Paul Evans v. Edward Martin

CORPORATION

Paul Evans v. Martin Frames, Inc.)

Mr. Paul Evans is suing Mr. Edward Martin (Martin Frames, Inc.) for product liability in the negligent design of a picture frame. Mr. Evans, the *plaintiff*, is a 28-year-old computer programmer. He purchased a picture frame manufactured by the defendant to frame a poster. When he got home and attempted to assemble the frame, he found that no instructions were included. When he inserted one of the retention clips in the back of the frame, the clip sprang off the frame, striking his left eye. He was immediately taken to an emergency hospital, but the eye was already too badly damaged to be saved.

POOR INDIVIDUAL

The *defendant*, Mr. Martin, 39, has had a small picture frame business for several years. He manufactures and packages the frames in his garage, and sells them through a local art supply store.

RICH INDIVIDUAL

The *defendant*, Mr. Edward Martin, 39, is the owner of a business which manufactures and packages a high volume of frames which are then sold wholesale to art supply and poster stores throughout the country.

CORPORATE
DEFENDANT

The *defendant* corporation, Martin Frames, Inc., manufactures and packages a high volume of frames which are then sold wholesale to art supply and poster stores throughout the country.

Mr. Martin testified that while the frame purchased by Mr. Evans did not include instructions for assembly, there was a photograph on the label showing a person assembling the frame. He said that the frame was a popular style that sold well.

AMBIGUOUS FAULT

An expert witness, a design engineer hired by the plaintiff's attorneys, testified that the frame and clip were defectively designed because the clip could be inserted in two ways, one of which was dangerously unstable yet not apparently wrong to the consumer; that instructions should have been included; that the photograph did not clearly show the correct insertion of the clip and that a warning of the potential danger of an incorrectly inserted clip should have been included.

CLEAR FAULT

An expert witness, a design engineer hired by the plaintiff's attorneys, testified that the frame and clip were defectively designed because the clip could be inserted in two ways, one of which was dangerously unstable yet not apparently wrong to the consumer; that instructions should have been included; and that a warning of the potential danger of an incorrectly inserted clip should have been included. The owner of an art supply store testified that for several months his store had carried the Martin frame of the same style purchased by Mr. Evans, but that after he received many complaints from customers about confusion over assembly and the dangerousness of the product, he discontinued sale of the frame and informed Mr. Martin of the reason. He produced a copy of the letter he wrote to Mr. Martin in which he explained that he had received such complaints. The attorneys for Mr. Evans argued that the defendant was clearly aware of the potential for injury to a customer assembling the frame, but did nothing to prevent it.

A medical expert for the plaintiff testified that Mr. Evans is permanently blinded in the left eye as the result of the accident.

Mr. Evans's attorneys submitted as evidence the following documents: medical bills totaling \$11,428; and a letter from Mr. Evans's employer stating that Mr. Evans's salary at the time of the accident was \$4,000 per month, and that he was on unpaid medical leave for five months following the injury. The attorneys are seeking \$11,428 for medical expenses, \$20,000 for wage loss, and \$500,000 for pain and suffering.

AMBIGUOUS FAULT

The defendant's attorneys argued that their client's product was not defective and that thousands of the frames had been sold without any reported injuries or complaints about the lack of instructions. An expert witness, a design engineer hired by the defendant's attorneys, testified that the frame was simple to assemble, that correct insertion of the clip was obvious, and that by carefully examining the photograph on the label, the average consumer could safely assemble the frame.

CLEAR FAULT

The defendant's attorneys argued that their client's product was not defective, and that it was simple to assemble without instructions. They admitted that their client had received complaints from customers, but argued that because the complaints were not about actual injuries, no action on the defendant's part was required.

The attorneys claimed that their client is not responsible for the plaintiff's medical expenses, wage loss, or pain and suffering.

Appendix B

Summary of Stimulus Case Materials, Experiment 2

The stimulus case in Experiment 2 was adapted from the case developed by Hans and Ermann (1989). The adapted case was entitled *Hans Vidmar vs. Dennis Kerr*. The generic case and the experimental variations appear below.

Generic Case Summary

INDIVIDUAL:

Hans Vidmar v. Dennis Kerr

Dennis Kerr is the manager of a small motel. Kerr recently purchased a building and an adjacent lot in a rural area near a lake. He intended to convert the building into a summer cottage for his use during summer vacations and weekends when he is able to get away from the city.

The adjacent lot, an area about half the size of a football field, was covered with a considerable amount of debris. The real estate agent told Kerr that the adjacent lot had been vacant for years and that he did not know what it had been used for. From the debris on the lot, it had apparently been used as a general dump. However, Kerr made no effort to find out who had been dumping in the lot; nor did he try to discover what had been dumped there.

Kerr hired Hans Vidmar, a 43-year-old unskilled worker, to clear the lot, to till the soil, and to plant two dozen trees and bushes. At the end of the second week on the job, Vidmar complained to Kerr that he felt a little lightheaded and dizzy while he was clearing the debris. Kerr told Vidmar to continue working but to notify him if he felt worse. By the third week, Vidmar began to have visible tremors and difficulty breathing. He was subsequently hospitalized with severe respiratory problems, and remained in the hospital for a month. Under doctor's orders, Vidmar was unable to work for a month after his release from the hospital. Follow-up physical examinations revealed permanent damage to the lungs, placing Vidmar at chronic risk of serious respiratory illness.

City and federal inspectors analyzed the debris on the lot owned by Kerr and concluded that a highly toxic substance was present in significant quantities on the lot. Persons exposed to this substance often experienced dizziness and respiratory problems like those experienced by the worker hired by Kerr.

As a result of this incident, Hans Vidmar decided to sue Dennis Kerr in civil court to obtain compensation.

Now suppose that you have been called as a juror to decide this case in civil court. Vidmar is suing Kerr for compensation for his medical bills, his lost doctor bills, and his pain and suffering. Vidmar's attorney argues that Kerr should have foreseen that the lot might contain toxic waste and was reckless in failing to check the lot before hiring him. Kerr also should have checked out Vidmar's complaints before sending him back to work. Therefore, the attorney argues that Kerr is liable for Vidmar's hospital and doctor bills totaling \$40,000, plus an additional \$40,000 for future medical expenses associated with his lung damage. Furthermore, Vidmar's attorney argues that his client should be reimbursed for lost wages totaling \$3,000 for the two months he was unable to work, and \$10,000 for future wage losses associated with the lung damage. Finally, he argues that Kerr should also compensate his client for his pain and suffering. He says that Vidmar should receive \$100,000. Thus, he is asking Kerr to pay

CORPORATION

Hans Vidmar v. The Kerr Corporation

\$80,000 in past and future medical expenses, \$13,000 in past and future lost earnings, and \$100,000 for pain and suffering, for a total of \$193,000.

The attorney for Dennis Kerr says his client will pay the hospital bills of the worker, which amounts to \$40,000, and the lost wages, which amounts to \$3,000, but he disputes the other claims and says that his client should not be required to pay them. Furthermore, he says that although Dennis Kerr owns the lot on which they worked, Kerr did not dump toxic waste on the lot and is not responsible for the long-term ill effects on the worker. He also disputes that Vidmar's lung damage is entirely the result of exposure to the toxic waste, pointing out that Vidmar had admitted to have been a cigarette smoker when he was in his 20s, and that this might have caused his lung damage. Therefore, he argues that Kerr should not be required to pay anything except Vidmar's hospital bills and lost wages, a total of \$43,000.

Now consider how you, as a juror, might decide this civil case. Of course, in a real trial, you would have much more information. However, based just on the limited information that you have received, please answer the following questions about the civil suit against Dennis Kerr.

Experimental Variations

The five variations involve the very first paragraph (and the rest of the text was also varied to refer to either an individual or corporate defendant):

Corporation/own use. The Kerr Corporation owns a chain of 30 motels located throughout California. The corporation recently purchased a building and an adjacent lot in a rural area near a lake. They intended to convert the building into a summer cottage for the corporate management to use during retreats and vacations.

Corporation/commercial use. The Kerr Corporation owns a chain of 30 motels located throughout California. The corporation recently purchased a building and an adjacent lot in a rural area near a lake. They intended to convert the building into a new motel in order to attract the business of the many vacationers passing through the area every summer.

Wealthy individual/own use. Dennis Kerr owns a chain of 30 motels located throughout California. Kerr recently purchased a building and an adjacent lot in a rural area near a lake. He intended to convert the building into a summer cottage for his use during summer vacations and weekends when he is able to get away from the city.

Wealthy individual/commercial use. Dennis Kerr owns a chain of 30 motels located throughout California. Kerr recently purchased a building and an adjacent lot in a rural area near a lake. He intended to convert the building into a new motel in order to attract the business of the many vacationers passing through the area every summer.

Poor individual/own use. Dennis Kerr is the manager of a small motel. Kerr recently purchased a building and an adjacent lot in a rural area near a lake. He intended to convert the building into a summer cottage for his use during summer vacations and weekends when he is able to get away from the city.

Poor individual/commercial use. Dennis Kerr is the manager of a small motel. Kerr recently purchased a building and an adjacent lot in a rural area near a lake. He intended to convert the building into a single-unit cottage for rent to the many vacationers passing through the area every summer.

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