Abstract

When asked to make quantitative decisions in novel situations, people use available numbers as a starting point or anchor for their reasoning. Tversky and Kahneman (1974) found that even a randomly chosen number can serve as an anchor. In civil cases, the *ad damnum* or amount of damages sought by the plaintiff often seems to function as an anchor, with higher *ad damnums* producing larger awards from juries. To determine whether randomly selected *ad damnums* can affect jury awards, participants read details of a civil case and then watched as the experimenter spun a wheel of fortune device to select an *ad damnum*. When subsequently requested to state damages they would award in the case, participants’ dollar amounts were significantly affected by the randomly selected *ad damnums*. The results may have implications for courtroom procedures, including the practice of setting caps on jury awards.

The Effect of Random Anchors on Damage Awards

In civil cases jurors typically are required to determine monetary damages awarded to the plaintiff. Often this determination proves to be difficult because jurors have never done this before. In this and similar situations, people often resort to a “mental shortcut” known as the anchoring and adjustment heuristic.

For example, assume that you are interested in buying a piece of jewelry such as a necklace. You go to a flea market and select one that you like, not knowing how much it costs. The clerk informs you that the asking price is $40. This price becomes the anchor or starting point for negotiations. In most cases, only small adjustments from the anchor are made and, in the example, the actual sale price will probably be close to $40. If the clerk had stated an asking price of $60, then he/she would probably have sold the item for more money.

In some respects the plaintiff’s attorney in a civil case is in a situation similar to the clerk. In many jurisdictions, he is allowed (or even required) to state a monetary amount of damages sought by his/her client; in legal circles this number is known as the *ad damnum*. The attorney who supplies a large *ad damnum* establishes a higher anchor for jurors that will influence their deliberations. As in most research, Chapman and Bornstein (1996) found that increasing the requested compensation in simulated civil trials significantly increased damages awarded by juries. They even entitled their article “The more you ask for, the more you get.”

There are exceptions to this typical finding. If the *ad damnum* is grossly large and completely unreasonable, a “boomerang effect” has occasionally been reported. For example, Marti and Wissler (2000) found that a $25 million *ad damnum* resulted in a lower damage award than a $15 million request in a simulated case involving a longshoreman injured by the actions of a shipping company.

Extremely large damage awards have led many jurisdictions to institute the use of caps or limits upon the amount of money that juries can award. While imposing a cap
will eliminate huge, multi-million dollar awards, this procedure may actually increase the damage awards in more common cases. In some courts, a cap is presented without an *ad damnum*; the cap may serve as an anchor to jurors and thereby significantly increase the damage award compared to a situation where no cap was provided.

Research has consistently supported this contention. Robbenholt and Studebaker (1999) had participants read a narrative involving a plaintiff who contracted HIV from blood supplied by a medical company. Damages were sought by the plaintiff with varying cap amounts provided. As the cap amount increased, so did the damage awards. The researchers concluded that the cap became an anchor for the participants.

Other studies have yielded similar results. Hinsz and Indahl (1995) had three conditions (no cap, $2 million cap, and $20 million cap) in a wrongful-death case. Median awards for the three conditions were $37,500, $775,000, and $1 million, respectively. Clearly, utilizing caps can backfire in that they often raise damage awards, especially in cases where the awards would normally be low.

Little research has been conducted on the joint effects of utilizing caps and *ad damnum*. However, the bulk of the evidence indicates that caps increase jury awards even when an *ad damnum* is also provided (e.g., Diamond, Ellis, Saks, & Landsman, 2000 as cited in Greene & Bornstein, 2003).

Even a randomly chosen anchor can affect people’s cognition. In a classic article, Tversky and Kahneman (1974) reported an experiment in which participants were asked to estimate the percentage of African countries in the United Nations. Prior to giving the estimate, the participants watched the experimenter spin a “wheel of fortune” containing numbers ranging from 0 to 100. The participants were then asked whether the actual percentage was higher or lower than the number provided by the wheel and then to give a specific percentage. The results indicated that the random number provided by the wheel functioned as an anchor for the participants’ estimates. For example, those participants who saw the wheel stop at 65 had a median estimate that 45% of African countries were UN members; those who saw the wheel stop at 25 gave a median estimate of 10%. Clearly, the number from the wheel functioned as an anchor around which participants adjusted their responses.

The present study was designed to determine whether a randomly chosen *ad damnum* would affect participants’ damage awards. Participants observed a “wheel of fortune” device indicate one of four possible *ad damnuns* in a simulated civil case. The general hypothesis was that damage awards would increase as a function of the amount requested. Because the largest possible *ad damnum* was moderately small ($80,000), a boomerang effect was not anticipated.

**Method**

**Participants**

Forty six undergraduate psychology students (33 females and 13 males) volunteered to participate. Participants received extra credit points in courses they were taking. Students in these classes who chose not to participate were given the opportunity to earn an equal amount of extra credit points by completing another assignment.

All participants were informed of their rights through a letter of informed consent and in the instructions given by the experimenter.

**Apparatus**

The research required that a device be used that would randomly select set dollar amounts. To do this, a revolving table server was used. The server consisted mainly of two wooden parts; a square platform and a large circle which spun freely when pushed.
The circle was covered and fitted with paper that was quartered. In each quarter section was written one of the given dollar amounts: $20,000; $40,000; $60,000; $80,000. In addition to this, an arrow was drawn midway across one side on the square. This was used to indicate the randomly chosen amount.

The table server was propped at eye level against the wall that every participant faced. To use the server, the experimenter would simply turn the wheel and allow it to stop on its own. The dollar amount that the arrow pointed to became the randomly selected dollar amount to be used as the *ad damnum* with that particular participant. If the arrow pointed to the line between two numbers, the wheel was spun again until a number was selected.

**Procedure**

Participants were asked to read the details of a court case as if they were a juror. The case was set up so that all participants would presumably award monetary compensation to the plaintiff. The actual case details read by participants are presented in Appendix A.

When the participant had finished reading the case details, the experimenter read aloud instructions (presented in Appendix B) to the participant. The instructions asked the participant, if he/she found in favor of the plaintiff (Mrs. Jones), to set a monetary damage award which would compensate her for economic and noneconomic losses and injuries.

The experimenter then spun the wheel in front of the participant. This was to ensure that the participants were fully aware that the dollar amount used in the case was randomly selected. The participants were then told that, “Mrs. Jones and her attorney are seeking ‘X’ (the randomly chosen dollar amount) dollars in damages. As a member of the jury, you are asked to determine a fair dollar amount that Mrs. Jones will be awarded.” Participants were allowed to look over case details and then state the monetary award Mrs. Jones would receive as if they were real jurors in an actual court case.

To conclude the session, the experimenter debriefed the participants and explained the reasons for the experiment.

**Results**

Mean damage awards for the 20K, 40K, 60K, and 80K conditions were $21,364, $38,938, $32,500, and $42,778, respectively; standard deviations were $5, 590, $18, 900, $14, 870, and $10,600, respectively. As shown in Table 1, a one-factor analysis of variance indicated that varying *ad damnum* amounts had a significant effect on damages awarded with $F(3, 42) = 4.31, p < .01$. The effect size was determined by computing $\eta^2$ (eta squared) using the formula $\eta^2 = (SS_{\text{effect}} / SS_{\text{total}})$. For these data, $\eta^2$ was .21, indicating that 21% of the variance in the dependent variable (the damage awards) was accounted for by the independent variable.

A Tukey HSD (also known as Tukey a) multiple-comparison test was used to determine which condition means significantly differed from each other. The formula for
Tukey’s HSD is $\sqrt{\frac{MS_{\text{error}}}{N}}$

where q symbolizes the Studentized Range Statistic. Because of the unequal $n_i$ in the experimental conditions, the harmonic mean of the sample sizes was used. The harmonic mean, $N$, was calculated with the formula $N = \frac{k}{n_1 + n_2 + n_3 + n_4}$ where k is the number of conditions and $n_1 - n_4$ represent the number of participants in each condition.

The critical values for HSD were calculated to be 16.98 for $\alpha = .05$ and 21.06 for $\alpha = .01$. Comparison of the four group means revealed that the 20K mean was significantly smaller than both the 40K mean ($p < .05$) and the 80K mean ($p < .01$). All other pairwise comparisons indicated nonsignificant differences ($p > .05$).

Discussion

Although there was some inconsistency in the data, overall the results corroborate previous experiments in finding that anchoring does occur in a juror’s decision making process. The research further indicated that the jurors used the *ad damnum* as a foundation for making their decisions even though they were fully aware that the *ad damnum* was a randomly chosen number.

A possible factor in the nonsignificant differences among the 40K, 60K, and 80K conditions is the fact that $20,000 is closest to the actual sum of money it would take to cover the economic losses incurred by the plaintiff. In Georgia, where this research was conducted, the average cost of the plaintiff’s car is $15,287.50 (carmax.com & usedcars.com). Possibly, participants in the three highest conditions comprised between the *ad damnum* and the actual cost to the plaintiff.

Also, the number of participants in this experiment was relatively low. Because assignment of participants to conditions was determined randomly (by the wheel spin), one condition had only nine participants in it. Further research with more participants would increase the power of the statistical tests and perhaps yield statistically significant results.

The reliance of jurors upon numbers presented in the courtroom cautions against the use of caps on damages awards. Caps may often function as anchors and “pull” jury awards toward much higher awards than would have been given otherwise, thereby having the opposite effect that they were designed to produce.

References

Carmax.com. Carmax is an online forum dedicated to displaying new and used cars in specific regions of the country. ([http://carmax.com](http://carmax.com))


Table 1

Analysis of Variance

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<th>Source</th>
<th>df</th>
<th>F</th>
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<tr>
<td>Between groups</td>
<td>3</td>
<td>4.31*</td>
<td>.21</td>
</tr>
<tr>
<td>Within groups</td>
<td>42</td>
<td>(221.23)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
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Note: Value enclosed in parentheses represents mean square error.

*p < .01

Appendix A

On the afternoon of February 26, 2006 Mr. William Smith parked his car in the main parking lot of LaGrange College where he is a part time student. Later in the evening at approximately 5:00 PM his car rolled down the hill and hit another car traveling on Vernon St. Apparently Mr. Smith left his car in neutral which was the cause of his car rolling down the hill. The car he hit belonged to Mrs. Linda Jones. Mrs. Jones was on her way home from work when her vehicle was hit by Mr. Smith’s car.
paramedics and police were called to the scene, and fortunately no one was seriously hurt. The extent of Mrs. Jones’ injuries was a few cuts and bruises and a stiff neck. For precautionary reasons the paramedics took Mrs. Jones to the local hospital where she was examined for further injury or complications. Mrs. Jones had a mild case of whiplash which resulted in her having to wear a neck brace for a week. Also, as a result of the pain and the neck brace, Mrs. Jones was unable to work for four days.

Mrs. Jones works as a full-time secretary for a local elementary school. She is married and has two young children. Her husband is employed at a local carpet factory. On the day of the accident Mrs. Jones was driving her personal vehicle, a 2003 Volkswagen Jetta. It was later determined by Mr. Smith’s insurance company that the car was totaled. Mr. Smith is a small business owner. On the day of the accident he was also driving his personal vehicle, a 1999 Dodge Ram which was not totaled but had to be towed. The police at the accident reported that it was Mr. Smith’s fault that the accident occurred. Fortunately no other persons were injured during the accident. The only other damage involved landscape work at the college, but none of the repairs were extensive enough to have reparations sought.

Mrs. Jones is bringing Mr. Smith to court seeking damages for her totaled vehicle and compensation for her having to seek medical attention and being absent at work. Mrs. Jones is basing her claim on the notion that Mr. Smith neglected to properly and safely park his car.

Appendix B

If you find in favor of the plaintiff, you shall award as actual damages, insofar as they have been proved by the preponderance of the evidence and insofar as they were caused by the defendant’s negligence, an amount which will reasonably compensate the plaintiff for her injuries, if any. In determining such damages, you shall consider the following:
1. Any noneconomic losses or injuries incurred to the present time, or which will probably be incurred in the future, including: pain and suffering; inconvenience; emotional stress; impairment of the quality of life; and
2. Any economic losses incurred to the present time, or which will probably be incurred in the future, including: loss of earnings or impairment of earning capacity; reasonable and necessary medical, hospital, and other expenses.

Mrs. Jones and her attorney are seeking “X” (the randomly chosen amount) dollars in damages. As a member of the jury, you are asked to determine a fair dollar amount that Mrs. Jones will be awarded.