

MONEY, SEX, AND DEATH: GENDER BIAS IN WRONGFUL DEATH DAMAGE AWARDS

**JANE GOODMAN
ELIZABETH F. LOFTUS
MARIAN MILLER
EDITH GREENE**

Civil damage awards in wrongful death cases and experimental data from jury simulations reveal that male decedents are typically awarded substantially higher monetary damages than are similarly situated female decedents. These differences in treatment may arise because female decedents are perceived as worth less, female survivors are perceived as more needy, and/or male decedents are perceived to have a longer lost income stream than any female decedents. Mock jurors received written summaries of wrongful death cases stipulating to the liability of the defendant. They were asked to award an appropriate sum in damages and about the factors they considered in making these awards. Male decedents received higher awards in two separate studies. While mock jurors were sensitive to the perceived needs of the surviving spouse, the disparity in awards was primarily attributable to differences in the estimated lost income of the male and female decedents.

INTRODUCTION

Tom Morley, known to be a careful driver, is traveling home from work when a tragic and fatal accident occurs, killing him instantly. His wife, Sue Morley, the sole beneficiary of his estate brings a wrongful death suit. Under Washington law, in wrongful death cases, juries are instructed that the damages they may award can include pecuniary losses suffered by the survivor, such as loss of support, companionship, care, protection, advice, love, guidance,

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society, and consortium (*Parrish v. Jones* 1986). The jury awards Morley's estate the sum of \$800,000.

If, instead, it is Sue Morley who is the victim of the tragic accident, and Tom Morley, her husband, is the sole beneficiary, will the jury, all other things being equal, award the same sum? Recent studies show that jurors do not apply standards evenly to similarly situated male and female decedents. The sources of this distributive injustice are examined in a series of archival and experimental studies that look at gender effects on the magnitude of sums awarded in damages in wrongful death cases.

PAST RESEARCH ON CIVIL JURY AWARDS OF MONETARY DAMAGES

One major difference between the task of the jury in a criminal versus a civil case is that jurors in a civil case generally perform a double duty (Goodman, Loftus, and Greene 1990). First, by a preponderance of the evidence, the jury must decide whether the defendant is liable for the plaintiff's injuries.¹ If there is agreement that the defendant is liable, the jury then determines a reasonable sum of money to compensate the plaintiff for the damages incurred. In personal injury cases, damage awards are known to vary widely, even when the plaintiff's age, income and type of injury are similar (Broeder 1954). A common explanation for this wide variation is that juries receive few guidelines on how to determine appropriate damages and may even be informed that no guidelines exist (Kalven 1958; Greene 1989; Raitz et al. 1990; Diamond, Casper, and Ostergren 1989).

In the state of Washington, for example, the language of the wrongful death statute instructs that "the jury may give such damages as, under all the circumstances of the case, may to them seem just" (Revised Code of Washington 4.20.020). Courts have held that this language does not vest the jury with unfettered discretion. Rather, the trial judge must guide the jury by controlling the materiality and relevancy of evidence bearing on damages and by properly instructing them on the law (*Pancratz v. Turon* 1970). Nonetheless, the discretion of the jury to award damages is unlikely to be disturbed on appeal unless the damage award is clearly erroneous—a standard rarely met in practice.

Little is known about factors that influence jury damage awards in civil cases, although this topic has recently begun to receive some attention (Sonaik 1978; MacCoun 1987; Kaplan and Miller 1987; Hans and Ermann 1989; Horowitz and Bordens 1990; Raitz et al. 1990). Several investigators have focused on the identity of the litigants, suggesting that the latitude jurors have in determining damages in a civil case permits juror biases, prejudices, and stereotypes to enter into these decisions. In some early re-

¹ Unless the trial is bifurcated.

search, Nagel and Weitzman (1972a) speculated that the subjectivity involved in determining the magnitude of damages more readily permits prejudices to enter into these decisions than into liability determinations. Drawing on the distributive justice model, MacCoun (1987) posits that factors such as the perceived need of the plaintiff, the severity of the plaintiff's need, and notions of equality or equity/proportionality may account for variations in awards based on the identity of the litigants.

Reports indicate that deliberations by civil juries include references to the personal characteristics of the plaintiff and defendant, such as age, attractiveness, and gender (Kalven 1964). For instance, in one wrongful death case, jurors reported that the surviving widow was young and attractive and would be likely to remarry soon. The damage award was discounted on the ground that her future husband would take care of her. In the state of Washington, in an effort to prevent jurors from engaging in such speculation, courts have ruled that any evidence of remarriage or prospective remarriage of the surviving spouse must be excluded from the trial (*Stuart v. Consolidated Foods Corp.* 1972). In *Stuart*, the court, holding that evidence about surviving spouse's remarriage prospects should be excluded, stated: "The exclusion of such evidence leaves to the understanding and experience of the jury the possibility of remarriage and avoids excursions into collateral investigations which, even if allowed, would leave a jury in no better than a speculative position" (*ibid.*, p. 843). Thus, while the court adheres to the conclusion that such speculation is irrelevant, this comment makes it plain that jurors are *not* specifically prohibited from indulging in it.

In fact, when evidence about a surviving spouse's financial prospects is erroneously admitted and a verdict of no liability is returned, courts usually regard this as "harmless error" on the assumption that the jurors' decision on liability could not have been influenced by this evidence. "Such evidence should not have been admitted in any event, but when evidence is wrongfully admitted which is concerned solely with damages and the verdict reflects no liability, the error is harmless" (*ibid.*, p. 845).

Some early archival research also indicates that litigant gender influences civil damage awards. Snyder (1971) examined the liability determinations and the magnitude of damages awarded by juries in personal injury cases (automobile accident, employee-employer disputes, etc.) that came to trial in Richland County, South Carolina, in 1966 and 1967. Prior to 1967, women were not permitted to serve as jurors, so this study included a comparison of the treatment of plaintiffs by all-male juries versus juries of mixed gender. Female litigants were included in a category of socially inferior litigants along with minorities and minors. The addition of women to the jury increased the likelihood that socially inferior litigants would prevail but did not increase the likelihood that so-

cially superior (white male adults) litigants would prevail.² The pattern for damage awards was less clear because the average amount sought from male-only juries in 1966 was substantially less (\$62,451) than the average amount sought from the mixed-gender juries in 1967 (\$131,433). The earlier male-only juries awarded about 52 percent of the damages sought. By comparison, mixed-gender juries awarded only 20 percent of the damages sought. Snyder concluded that because women have historically been more economically conservative than men, the addition of women to juries increased the number of prevailing female plaintiffs but diminished the damages awarded to both male and female plaintiffs.

Other researchers have suggested that since women are usually less favored in economic matters in our society, women will be disadvantaged in personal injury cases irrespective of the gender of the jurors (Nagel and Weitzman 1972a). They based this conclusion on a study of Michigan automobile injury cases tried in the early 1960s which showed disparities in the average damage awards to male versus female plaintiffs. In similar cases involving comparable injuries, males received awards 6 percent above the average award while females averaged 2 percent below this figure. In a subset of wrongful death cases, the same pattern was evident. The researchers found that in civil cases, females were less likely than males to file suit, to establish liability, and to receive a relatively high award, especially for certain types of injuries. They concluded that male victims were clearly valued more highly than female victims.

Drawing on these data, Nagel and Weitzman (1972b) set forth four testable hypotheses that could produce the observed financial discrimination in damage awards in civil cases: (1) male jurors favor female plaintiffs and female jurors favor male plaintiffs, based on the principle that "opposites attract"; (2) male jurors favor male plaintiffs and female jurors favor female plaintiffs, based on the principle that "likes attract"; (3) both male and female jurors favor female plaintiffs because women need special treatment (chivalry principle); and (4) both male and female jurors favor male plaintiffs because all jurors have been socialized or indoctrinated to believe that males are more valuable. A fifth hypothesis was that, based on the principle of equality, male and female jurors favor neither sex, in which case no systematic disparity in damage awards would occur.

In a follow-up study, Nagel and Weitzman (1972b) analyzed

² When a superior status litigant's claim was presented to an all-male versus a male-female jury, there was a decrease in the likelihood that the male plaintiff prevailed (74 percent all-male jury vs. 50 percent male-female jury). The author noted that the likelihood that the socially inferior litigant would prevail increased to a statistically significant degree when women were included in the jury (26 percent all-male jury vs. 50 percent male-female jury, $\chi^2=12.5, p < .01$).

data collected by the Jury Verdict Research Company in 364 personal injury cases. They examined the gender composition of the juries who served on these cases and the magnitude of damage awards to prevailing plaintiffs. These archival data showed that male-dominated juries awarded more to male plaintiffs (12 percent above the average award for that type of injury) and less to female plaintiffs (17 percent less than the average award). Female-dominated juries favored female plaintiffs, but to a lesser extent (3 percent above the average award) than male-dominated juries favored male plaintiffs. Thus, they found some support for the hypothesis that jurors favor plaintiffs of their own gender. However, one limitation of this archival study the researchers acknowledged was the absence of any controls for case type or injury severity. Moreover, a serious confounding appeared to exist: Injuries to male plaintiffs were more serious than those to female plaintiffs. This alone could account in part for a greater award to male plaintiffs.

Recent research on sex roles and gender stereotypes has shown that differences in male and female behavior are no longer quite so large or prevalent as they were in studies conducted in the 1960s and 1970s, possibly due to cultural and social changes leading to increased gender equality. For example, a comprehensive meta-analytic review of ninety-nine studies of sex roles and helping behavior revealed larger differences in the helping behaviors of males and females in earlier versus more current research (Eagly and Crowley 1986). Included in this analysis were several studies in which males and females awarded or donated money to a victim. Findings of this sort raise the question whether the "double standard" in American justice that Nagel and Weitzman identified in civil cases filed in the 1960s still exists. Causes of the gender disparities they identified included the subordination of women in the family, employment and educational discrimination, the rationing of scarce monetary resources, and sexual anxieties. The present research examines the viability of their hypotheses today and assesses the extent to which litigant gender and juror gender account for gender disparities in recent experimental and archival studies of jury damage awards in wrongful death cases in the state of Washington.

ECONOMIC CONSEQUENCES OF GENDER IN WRONGFUL DEATH CASES

In 1987, following the lead in several other states, the Washington State Supreme Court announced that the state legislature was appointing a task force to study gender and justice in the courts (Washington State Task Force on Gender and Justice in the State Courts 1989). One of the mandates of the task force with respect to aspects of distributive justice was to examine the status of women as litigants in order to assess the suspected impact of gen-

der bias toward women and men in the interpretation and enforcement of the law. To accomplish this goal, three task force subcommittees were formed. The first studied the economic consequences of divorce and the second examined women and violence. The third subcommittee, whose investigations were most pertinent to this article, reviewed the economic consequences of gender in civil litigation that did not involve issues related to divorce or violence against women.

Because of numerous confounding influences in many areas of civil litigation, the Washington Task Force on Economic Consequences of Gender in Civil Litigation limited its review to three topics: wrongful death cases, loss of consortium, and awards of attorneys' fees in employment discrimination cases (*ibid.*). The subcommittee hypothesized that plaintiffs seeking monetary awards for the wrongful death of women received lower sums than plaintiffs seeking awards for the wrongful death of males. Three questions were paramount. First, were there more cases brought on behalf of male than female decedents? Second, were there proportionally more verdicts favoring male decedents than female decedents? Third, did the amounts awarded in damages to male versus female decedents vary significantly? To answer these questions, the committee analyzed archival data in the form of jury awards in ninety-eight wrongful death cases tried in twenty (from a total of thirty-nine) counties in the State of Washington over a five-year period between 1984 and 1988.

Data were gathered from two sources: the Superior Court Management System (SCOMIS) and Jury Verdicts Research, Inc. (JVR). Neither source had a complete record of all wrongful death cases tried in the target five-year period, but both were used to cross-check entries and maximize coverage.³

The data revealed that more than twice as many cases involved deceased males as females (68 vs. 30). However, of the cases brought on behalf of male decedents, the plaintiff prevailed only 47 percent of the time, whereas of those brought on behalf of female decedents, the plaintiff prevailed in 63 percent. In the 51 cases in which the plaintiff prevailed, damage awards were analyzed by gender of decedent and relationship of plaintiff to decedent. Overall, in the 32 cases in which the decedent was male, the

³ JVR collects and analyzes jury verdicts on a national basis, using information provided by a network of clerks of courts, attorneys, legal reporters, and newspaper reporters. JVR indicated it reports between 65 and 80 percent of the jury verdicts in the state.

The Washington State Gender Task Force final report does not describe how the data from JVR versus SCOMIS were combined. Gloria Honimen, Staff Liaison for the Office of the Court Administrator (personal communication, 19 June 1991), explained that she started by selecting cases from SCOMIS coded as "WD" for wrongful death. Then she went to JVR and discovered that they had more cases because some wrongful death cases were coded on SCOMIS as other types of cases. Her conclusion was that JVR included all the cases on SCOMIS, but these were not always coded as WD.

Table 1. Mean Awards, Decedent Gender, and Relationship to Plaintiff in Wrongful Death Cases, Washington State, 1989

Plaintiff-Decedent Relationship	Gender of Decedent					
	Male Decedent			Female Decedent		
	Mean Award	<i>n</i>	%	Mean Award	<i>n</i>	%
Spouse-spouse	\$436,980	14	44	\$276,415	4	21
Parent-minor child	152,303	6	19	130,142	7	37
Parent-adult child	500,000	1	3	466,000	2	11
Adult child-parent	154,312	2	6	54,405	2	11
Minor child-parent	1,248	1	3	239,000	2	11
Female other-NA	388,489	6	19	477,000	1	5
Male Other-NA	379,028	2	6	80,000	1	5
All awards (<i>N</i> = 51)	\$332,166	32	100	\$214,923	19	100

SOURCE: Washington State Task Force on Gender and Justice in the Courts, *Final Report* (Olympia, WA: Office of the Administrator for the Courts, 1989). Reproduced with the permission of the Office of the Administrators for the Courts, 1206 South Quince, Olympia, WA 98504.

mean award was \$332,166. In the 19 cases in which the decedent was female, the mean award was \$214,923. The maximum amount awarded to a female decedent was \$503,000; the maximum awarded to a male decedent was \$1,047,117. Analyses revealed that the median and mean awards to male decedents and the range of money awarded were all greater in the case of males than females (see Table 1).

Cases in the Washington Task Force Study on Gender in which the plaintiff-decedent relationship was spouse-spouse accounted for 44 percent of the male wrongful death cases studied and 21 percent of the female decedent cases. In these cases, the same pattern of differences in mean awards emerged—a mean award of \$436,980 to spouses of male decedents and substantially less, a mean award of \$276,415, to spouses of female decedents.⁴ The Washington subcommittee concluded that while plaintiffs for male decedents did win greater awards, there was “no evidence that gender was the determining factor in the size of the verdict award” (*ibid.*, p. 111).

In summary, the Washington archival data suggest that jurors

⁴ To place the absolute value of these awards in national perspective, it is useful to consider another study commissioned by the local Seattle press in 1989. From the records kept by JVR, jury verdicts were examined in 290 wrongful death cases tried in the State of Washington and King County in the years 1985–88 (Lewis 1989). While that study did not examine the magnitude of damage awards in light of the gender of the litigants, it provided a further bench mark to evaluate the task force findings, since it involved a larger number of cases. Washington median verdicts in wrongful death cases were compared with median verdicts in wrongful death cases in metropolitan areas in other states. The median award in Washington was \$243,000; in King County, \$115,140. Washington verdicts were considerably lower than median verdicts in comparable cases in California (\$425,000), Florida (\$600,000), Massachusetts (\$1.06 million), Minnesota (\$406,202), and Pennsylvania (\$625,964). Washington jurors are reputedly among the most conservative in the nation.

respond differently to male and female decedents in wrongful death cases, but they provide few insights on the exploration for the difference. The jury simulation method of research is well suited to explore the factors that may account for variability observed in jury damage awards. Results of some jury simulation studies that bear on these issues are presented next.

EXPERIMENTAL DATA ON ECONOMIC CONSEQUENCES OF GENDER IN WRONGFUL DEATH CASES

While the Washington task force on gender in civil litigation was at work, an experimental research program to investigate civil jury damage awards was under way in the King County Superior Court in Seattle, Washington.⁵ The study used simulated wrongful death cases presented to potential jurors on call at the King County Superior Courthouse. To maximize the proportion of damage awards, the jurors were informed that liability was undisputed. To simplify their task, the jurors were told that the decedent had experienced no pain or suffering. Jurors reviewed one of three written case summaries (product liability, automobile negligence, and medical malpractice) describing the wrongful death of a male (Kevin Klemmer) or female (Karen Klemmer), survived by his or her spouse. In each case, the decedent was 30 and self-employed, with an annual income of \$25,000.

The damages awarded in these hypothetical cases were similar to those awarded in the actual cases reported in the foregoing archival studies. The overall median award was \$410,000. Median damage awards for male decedents were significantly higher than those for similarly situated female decedents. The median award for male decedents was \$750,036, while the median award for female decedents was \$251,607. The observed difference in awards by gender of the decedent was apparent across all three case types.

To assess whether juror gender influenced the pattern of damage awards obtained in this courthouse study, data were analyzed by gender of the mock juror. Both male jurors and female jurors awarded substantially less in damages to the female decedent. Results of this analysis indicated that juror gender was not a determining factor in producing the disparate awards to male and female decedents. Thus, these data provided no support for three of the principles proposed by Nagel and Weitzman (1972b), that "likes attract," that "opposites attract," or that the principle of equality determines damages. Why, then, did female decedents get less? Are females perceived to be worth less than males? Or are female surviving spouses perceived to need more money than their male counterparts?

Some insights came from the mock jurors. In addition to de-

⁵ For a full description of the method, see Goodman, Greene, and Loftus 1989. That report focuses on strategies used in determining civil damages.

termining damages, they provided written explanations describing why they awarded the damages they determined to be appropriate. Analysis of the written qualitative responses showed that some subjects focused more on the decedent, while others focused more on the surviving spouse. The following sample written explanations illustrate concerns expressed by jurors about the decedent in determining damages:

Decedent Focus:

Twenty-five thousand a year for thirty years. Her earning potential had she been able to continue working.

Took average life expectancy of 78 times yearly income.

Each person who dies in an accident has a different value.

Karen Klemmer made \$25,000 in 1983. She was only 30 years old and had many productive years ahead of her. Maybe \$20,000 would be sufficient.

Kevin has probably another 30 years of earning potential remaining. His survivor should be compensated for that loss, even though she may be employable.

Knowing that no dollar amount could ever compensate for the loss of life of a loved one, I would assume that Karen might have ten "good" working years and that they (the couple) somewhere in that ten-year span might have or adopt a child. Based on her salary at the time of death, I would award \$250,000.

By comparison, the following responses show that the focus of concern is the surviving spouse:

Survivor Focus:

At the age of 30, Mrs. Klemmer the widow is still quite eligible for (1) marriage again; (2) able to enter the work world. Two years of compensation would be adequate for either course of action.

His wife will probably remarry or find suitable employment, and this amount should carry her through her adjustment period. If there were children my decision would have been for more money.

I took into account that her husband was probably employed and that there were no children who lost a mother.

Two years' average wages—spouse not dependent on support and no children.

These responses reveal the variety of assumptions and inferences that jurors make about male and female roles as participants in marriage and in the workplace. From these data, however, we could not determine which of the competing hypotheses about the relative treatment of male and female litigants had more support. As Nagel and Weitzman (1972a) pointed out when they observed disparities in awards to male and female decedents in wrongful death cases, "where a wife-plaintiff is seeking to collect for a killed

husband rather than a husband-plaintiff seeking to collect for a killed wife, one is mixing favoritism as to the victim's sex with discrimination as to the plaintiff's sex." In other words, whether mock jurors awarded more because they perceived the financial needs of a surviving female spouse to be greater than those of a male spouse, justifying some special treatment of female spouses, or seeing male decedents as worth more than female decedents, leading to higher damage awards for males, remained an open question.

From a legal standpoint, the financial status of the surviving spouse should not influence the measure of damages. Nonetheless, responses from about 11 percent of the mock jurors indicated that concerns about the financial status of the survivor dominated their determination of damages. When the surviving spouse was female, juries expressed concerns about vocational rehabilitation, but these same concerns did not arise when the decedent was male. The following comments by mock jurors explaining how they determined what damages to award illustrate the focus on the financial status of the surviving spouse:

The person should be able to educate or train for some job within six years to be self-supporting.

It didn't state if Karen Klemmer was employed or not, so I based my amount of four years worth of wages so that it would give Karen four years to go to college and get a degree if needed.

She may work now and should work to support herself. Even though defendant is at fault, she's an adult, and responsible for herself.

A wealth of prior psychological research has shown how gender stereotypes can influence people's judgments (Bodenhausen 1988; Deaux 1984; Eagly 1983). Gender stereotypes define what behaviors are "appropriate" for males and females (Deaux and Major 1987). Research on the content of gender stereotypes has confirmed that such traits as independence, competence, and intelligence are significantly associated with male gender, while such traits as dependence and emotionality are significantly associated with female gender. These stereotypes are held by both male and females (Ward and Balswick 1978). Thus, for example, if jurors were influenced by stereotypes of independent males and dependent females in awarding damages, then damage awards to surviving female spouses should exceed those to surviving male spouses.

However, other gender stereotypes would predict different results. For example, since males are often regarded as more competent and more intelligent than females, researchers have found that skills and products associated with males are often valued more highly than those associated with females. Goldberg (1968) found that ratings of writing quality and professional skill were lower when subjects were informed that the author was female

than when they were informed that the author was male. Jurors influenced by stereotypes of this nature should award more in monetary damages for male decedents than for female decedents if the jurors focus on the decedent rather than on the survivor.

A third set of predictions regarding jurors' damage awards in civil cases comes from commonly held gender stereotypes with respect to helping behavior and reward allocation. Paradoxically, while females are often regarded as helpless or dependent, requiring protection from males, a competing stereotype is that females are more helpful and equitable than males (Piliavin and Unger 1985). If this behavior was demonstrated in the context of awarding civil damages, then awards by female jurors might exceed those of male jurors, and perhaps the gender differential in awards might come primarily from male jurors.

A number of studies have examined helping behavior and reward allocation by males and females to assess the validity of these stereotypes (Eagly and Crowley 1986). When the helping behavior involves an award of money, and when reward allocation involves money for work performed, the picture is more complex, and it is not a straightforward matter to extend these findings to the conduct of a civil jury in determining damages. A consistent finding in studies of reward allocation behavior is that females pay themselves less than males (Mikula 1974), perhaps because women's self-concepts have long been tied to tasks that are not remunerated by money (Chesler and Goodman 1976). As a result, females may perceive money as a less salient reward for the work they perform while males may see money as a measure of their worth because it is a symbol for them of how their work is evaluated (Callahan-Levy and Messé 1979). On this basis one might predict that female jurors will award less in damages to a female decedent than they will to a similarly situated male decedent.

The hypothesis that women expect lower monetary rewards for work than men do was examined in research by Callahan-Levy and Messé (1979) on the allocation of pay to males and females for performance of the same work. Male and female subjects paid either themselves or another male or female for a given period of work, and two payment scores were gathered. The first was a measure of "fair" pay. The second was the amount paid to the target (self or other). Women paid themselves less than males paid themselves and also less than other women paid them in both categories. These data appeared to support the hypothesis that females expect less monetary reward for the work they do than do males. From the standpoint of the civil jury, the second measure in their study is more relevant, since jurors do not allocate pay to themselves. Both women and men paid other women more than they paid other men. On the basis of this finding, one might predict that allocations of lost income for female decedents will exceed those of similarly situated males.

To explore how these issues affect the allocation of monetary awards in the context of a civil lawsuit, we conducted a series of experiments. This article reports the results of two juror simulation studies that bear on these questions.

STUDY 1

Information about the financial status of the surviving spouse was ambiguous in the Goodman, Greene, and Loftus (1989) study. While specific facts about the decedent were provided (age, occupation, and annual income), no parallel information was supplied about the surviving spouse. There was no mention of whether the spouse was employed or any clues as to his or her occupation or educational background. The materials did not specify whether the couple had children. Given this uncertainty, mock jurors were free to operate on the basis of wide-ranging and divergent assumptions about the circumstances and needs of the surviving spouse. Unanswered was the question whether jurors given specific information about the financial status of the surviving spouse would still favor male decedents in awarding damages, particularly if the spouse did not appear so needy or dependent. If jurors knew that the surviving spouse was college-educated, gainfully employed, and capable of self-support, thus reducing likely perceptions of differential need, the difference in awards to male versus female decedents would disappear if the differences were attributable to differences in perceived need.

Method

Subjects

Ninety-nine undergraduates, sixty-nine females and thirty males, at the University of Washington participated on a voluntary basis. They were randomly assigned to one of four conditions.

Procedure

A 2×2 between subjects design was used in which the first variable was decedent gender (male, female) and the second was information about the surviving spouse (no information/ambiguous need; spouse employed since leaving college/little need). Subjects received experimental booklets containing instructions, one of four case synopses, and a written questionnaire. The case synopses described a wrongful death case in which a fatal automobile accident occurs when the accelerator pedal of the car malfunctions. In all conditions, the decedent was described as married, self-employed, and earning \$25,000 at the time of the accident. See Appendix A. The surviving spouse was the sole beneficiary of the decedent's estate. Subjects were informed that liability had been determined and their task was to award an appropriate sum in damages.

Table 2. Study 1: Awards to Male and Female Decedent by Survivor Employment Status

Survivor Employment Status	Gender of Decedent		
	Male	Female	Overall
No information:			
Mean	\$839,533	\$668,851	\$758,684
Median	\$753,000	\$255,000	
<i>N</i>	30	27	57
Employed:			
Mean	\$720,952	\$627,380	\$674,166
Median	\$537,000	\$449,000	
<i>N</i>	21	21	42
All cases:			
Mean	\$790,707	\$650,707	\$722,800
<i>N</i>	51	48	99

Results and Discussion

When the financial status of the surviving spouse was ambiguous, mean awards for male decedents were significantly higher than those for female decedents: \$839,533 versus \$668,851 (see Table 2). When jurors learned that the spouse had been employed since college, the overall magnitude of the awards was less and differences between the mean awards to male versus female decedents were less, although still in the same direction. Mean awards to the male decedent were \$720,952; mean awards to the female decedent were \$627,380. A $2 \times 2 \times 2$ analysis of variance of damages (gender of decedent by financial status of surviving spouse by gender of mock juror) yielded an overall main effect of gender of decedent ($F(1,98) = 4.29, p < .05$). The main effect of the financial status of the surviving spouse and the interactions were not significant. While awards by male mock jurors were higher on the average than those by female mock jurors, the difference was not significant ($F(1,98) = 2.87, p < .10$).

Thus, these data indicated that the gender of the decedent effect was quite robust, but there is some indication that subjects were also sensitive to the financial need of the surviving spouse.⁶ Once again we examined verbal reports from subjects. These indicated that even when the female survivor was employed, mock jurors assumed that a female earned little or was more likely to remain unemployed than a male surviving spouse.

In spite of the fact that she works, she is used to living on a higher salary (his and hers) and now it is cut in half. Maybe her job doesn't pay well.

It doesn't say how much Karen Klemmer earns, so I don't know how much money she makes. But if she doesn't

⁶ We have found, as have others, that the variability in damage awards makes comparisons insensitive to all but the most dramatic differences.

make that much, an equivalent of \$25,000 a year for 10 years until she can earn as much.

By comparison, when a male surviving spouse was reported to be employed, these responses were received:

Enough money to cover funeral expenses, replace a car that was wrecked, with enough money for a mental health vacation. Money will not bring her back to life and her husband needs no extra money to survive without her income.

The amount stated should be enough to cover the funeral costs and any outstanding bills she may have had. Her husband is employed and could support himself with her now gone.

No conclusions as to whether the financial status of the surviving spouse made a difference were possible. The manipulation about the status of the survivor was probably too weak to adequately test this issue, given the variability of damage awards.

STUDY 2

Study 2 sharpened the comparisons between conditions in which the surviving spouse was perceived as more or less financially secure by providing more specific information about the employment status of the surviving male or female spouse. Once again, a 2×2 between-subjects design was used in which the first variable was decedent gender (male, female) and the second was financial need of the surviving spouse (spouse employed as a clerk (high need); spouse employed as a judge (low need)).

Method

Subjects

One hundred sixty-seven commuters on the Washington State ferry participated on a voluntary basis. Of this group, 80 percent were registered voters, making them eligible for jury service.⁷ There were more male respondents (64 percent) than female respondents (31 percent). Subjects were randomly assigned to one of four experimental conditions.

Procedure

Subjects received experimental booklets containing instructions, one of four case synopses, and a written questionnaire. The case synopses described a wrongful death case in which a fatal accident between a transport truck and a car occurs caused by negligent loading and substandard safety procedures on the part of the defendant truck company. See Appendix B. In all conditions, the decedent was described as age 41, married, self-employed, earning

⁷ While only the responses of the jury-eligible subjects are analyzed here, the full data set is available on request.

\$30,000 at the time of the accident. The surviving spouse, employed either as an accounting clerk or a judge, was the sole beneficiary of the decedent's estate. Subjects were informed that liability had been determined and their task was to award an appropriate sum in damages.

In conformity with the State of Washington law that requires subjects to designate awards for economic losses separately from other pecuniary damages, we asked subjects to provide a total damage award and then to designate what portion of that sum was allocated for lost wages of the decedent. Finally, we asked them what factors they considered in determining an appropriate damage award.

Results and Discussion

The damages awarded in total are presented along with the sums awarded strictly for the lost wages of the decedent in Table 3.⁸ The grand mean for total damages awarded in all four conditions was \$1,107,909; the median total damages award was \$1,000,000. Total damages awarded when the decedent was male exceeded those to female decedents irrespective of the socioeconomic status of the surviving spouse—whether the female surviving spouse was a clerk or a judge (\$1,191,514 vs. \$1,020,053), but the difference was not significant. A $2 \times 2 \times 2$ analysis of variance of damage (gender of decedent by status of surviving spouse by gender of subject) revealed no significant main effects or interaction on total damages awarded.

The picture with respect to lost wages of the decedent was quite different. When the decedent was male, most lost income awards exceeded the median of all income awards. Conversely, when the decedent was female, most lost income awards were less than the median. The difference in mean wages awarded for male and female decedents was significant ($F(1,119) = 4.2, p < .05$).⁹ There were no other significant main effects or interactions.

Thus, this study further substantiated the gender of the decedent effect. These data were also helpful in resolving the question whether differences in awards for male and female decedents were based on the estimated future earnings of female decedents. Examination of the total damages awarded did not reveal this difference. Only when we asked a specific question about lost future income did the disparity in projected income for similarly situated male

⁸ The 16 "outliers" who awarded total damages exceeding \$4 million and lost wages exceeding \$2 million were excluded from this analysis, and analyses were performed on the data from the remaining 121 registered voters eligible for jury duty. In an actual jury trial, it is likely that through the deliberation process extreme awards by individual jurors will be moderated by the influence of more conservative jurors.

⁹ Two subjects who failed to disclose their gender were excluded from this analysis.

Table 3. Study 2: Awards to Male and Female Decedent by Financial Need of Surviving Spouse

Financial Need of Surviving Spouse	Total Damages			Lost Income		
	Male Decedent	Female Decedent	Overall	Male Decedent	Female Decedent	Overall
Low need (judge):						
Mean	\$1,155,793	\$1,074,369	\$1,115,081	\$716,687	\$591,270	\$653,979
Median	\$1,000,000	\$ 938,500	\$ 994,000	\$771,000	\$612,500	\$643,500
N	32	32	64	32	32	64
High need (clerk):						
Mean	\$1,229,617	\$ 955,679	\$1,099,857	\$737,467	\$559,333	\$653,088
Median	\$1,000,000	\$ 924,000	\$1,000,000	\$792,000	\$600,000	\$682,000
N	30	27	57	30	27	57
All cases:						
Mean	\$1,191,514	\$1,020,052	\$1,107,909	\$726,742	\$576,655	\$653,559
Median	\$1,000,000	\$ 924,000	\$1,000,000	\$792,000	\$600,000	\$660,000
N	62	59	121	62	59	121

and female decedents emerge. The fact that the gender differential did not appear in the total damage awards but it did appear in the estimated lost future income suggests that jurors compensate for the lower projected lost wages for females by increasing damages awarded to a female plaintiff in some other category.

Once again, subjects' written explanations of how they determined an appropriate sum in damages were revealing. Some subjects focused on the surviving spouse, while others focused on the decedent. Some examples of responses in each condition are given below. Note that focusing on the female surviving spouse did not necessarily mean that damages were higher or that some special treatment was accorded. For example, respondents mentioned the wife's employment and the absence of children as reasons both to decrease and to increase the damages.

Survivor Focus, Spouse Employed as a Judge:

[Male decedent]: Mrs. Morley is employed in a good paying position. They have no children to support. Mrs. Morley can take care of herself, although some damages are due.

[Male decedent]: Mrs. Morley's position in job was significant. No children was also a significant point.

[Male decedent]: The most important thing in my decision was the amount of money used by the couple to live their lifestyle, house, cars, vacations, etc. Since they haven't any children yet at that age, I only assume that it was not a factor in their marriage.

[Male decedent]: Inability of wife to meet current bills as set by double income which was lost.

[Male decedent]: To be sure his widow has enough money in case she was unable to work later on in life.

[Female decedent]: Enough money for surviving spouse to continue same life style. Compensation for emotional

trauma. Expenses as a result of accident. Surviving spouse's liabilities (no children).

[Female decedent]: It is hard to put a value on a life, so I just took her income. If her husband is a federal judge he doesn't need the money anyway.

[Female decedent]: The husband is able to survive without Sue Morley—he earns an adequate income to support himself—as there are no children he does not need extra income for child care. I assume the husband is young enough to remarry, and as a judge, has enough money for any housekeeping chores the wife may have performed.

Survivor Focus, Spouse Is Accounting Clerk:

[Male decedent]: No children to put through college.

[Male decedent]: Mrs. Morley could get by on a lot less. If the Morleys had kids the amount would have been greater.

[Male decedent]: She could support herself, but no amount of money can replace a part of your life.

[Male decedent]: The wife had to be able to live in the style she had become accustomed.

[Female decedent]: Loss of a spouse cannot be replaced by money, but the survivor should be compensated to avoid financial hardship that may result from loss of income to the family. Mr. Morley with \$100,000 would have three years to adjust his lifestyle and make changes without the additional worry of financial problems, but he shouldn't be rewarded by receiving millions of dollars because his wife was killed.

[Female decedent]: The fact that she had no children. Axel was guilty and should pay more damages but not to a childless estate—perhaps some community project or charity.

Decedent Focus, Spouse Is a Judge:

[Male decedent]: The fact that he was in his prime years, in good health and had a potential for earning an increasing income of \$33,000 upwards to retirement.

[Male decedent]: His age and potential for earnings.

[Female decedent]: The most important thing I considered was she was 41 and in good health and she had a lot of time left.

[Female decedent]: Current age, projected life expectancy, salary from job, no children, husband has a well-paying job.

[Female decedent]: Victim's earning power—without children, her homemaking skills were not paramount.

Decedent Focus, Spouse Is an Accounting Clerk:

[Male decedent]: Because he was self-employed and was earning \$33,000 a year, he could have made over one million had he lived to be 61 years old.

[Female decedent]: Age at the time of death; work life remaining.

[Female decedent]: Although Morley might have worked at her present income (or more) for 20 years, it is also possible that illness or change in lifestyle would have intervened. Therefore, I halved the amount of \$30,000 per year times 20 to get the award. Huge money awards do not benefit society.

[Female decedent]: That is the total amount of money Sue Morley would have earned till retirement, plus a million dollars in punitive damages.

As some of these explanations indicate, a number of jurors awarded damages for reasons other than to replace the lost wages of the decedent, such as punitive damages and compensation for the emotional distress of the surviving spouse. In addition to designating a specific sum for the lost income of the decedent, we asked mock jurors how they allocated the balance of the damages awarded to comprise the total damages. In other words, were those sums allocated as punitive damages, pain and suffering damages, sums to cover funeral expenses, attorney fees, and the like? Not all the mock jurors awarded sums in categories other than lost wages of the decedent, but a sufficiently large number of awards were designated as either punitive damages or pain and suffering damages to permit further analysis. These analyses confirmed that one way in which jurors compensate for the wage differential that disadvantages a female decedent is to award larger sums in other damage categories.

For example, although jurors received no instructions informing them that punitive damages were permitted by law, 38 percent of the jurors spontaneously made awards designated as punitive damages. A higher proportion of those awards came from jurors who learned about a female rather than a male decedent (44 percent vs. 32 percent). Both mean and median damages awarded to punish the defendant when the female was the decedent exceeded those awards when the decedent was male. Evidently, the death of a female evoked both more, and more intense, punitive responses than did the death of a male.

Similarly, 57 percent of the mock jurors awarded damages for pain and suffering, and more jurors were inclined to make awards in this category when the decedent was female (64 percent vs. 50 percent). Since the case materials specified that the decedent was killed instantly, it is more reasonable to assume that the pain and suffering awards are intended to compensate the surviving spouse than the decedent. In other words, when the surviving spouse was male, more jurors allocated money on grounds of compassion for

his plight. A comparison of median pain and suffering awards revealed somewhat higher awards to male surviving spouses than to female surviving spouses employed as judges (\$200,000, $n=11$, vs. \$100,000, $n=9$). This pattern was reversed for surviving spouses employed as clerks; median awards were higher when the surviving spouse was female (\$200,000, $n=7$, vs. \$300,000, $n=11$). Overall, median pain and suffering awards to clerks (both male and female) exceeded those to judges (male and female) (\$210,500 vs. \$130,000).¹⁰ These data implied that at least some jurors used the pain and suffering category to increase the overall compensation to plaintiffs with lower incomes and more presumed financial need.

DISCUSSION

Rules of law in civil cases involving wrongful death and other personal injuries require jurors to focus on the wage-earning capacity of the plaintiff. In Washington, juries inevitably focus on economic losses because under the 1986 Tort Reform Act, jurors are instructed that they must report any damages awarded for economic losses, primarily lost wages, separately from any damages for noneconomic losses. The studies reported here indicate that jurors have different expectations or standards for the incomes of males versus females.

These results are consistent with our earlier analyses of the strategies that jurors used in awarding damages (Goodman et al. 1989). We found that different concerns were uppermost in the jurors' minds when the decedent was male versus female, notwithstanding the gender of the juror. For example, significantly fewer jurors said they considered the financial loss to the surviving spouse (57 percent vs. 75 percent) or the amount of money the spouse would need to support himself when the surviving spouse was male than when she was female (16 percent vs. 54 percent). When the decedent was male, twice as many jurors reported that they considered factors such as future salary increases and promotions the decedent might have received had he continued working than when the decedent was female (40 percent vs. 20 percent). Similarly, the impact of inflation on the decedent's salary was more likely to factor into the decision for male decedents than for female decedents (38 percent vs. 15 percent).

Nagel and Weitzman (1972a) predicted that contemporary pressures for societal and legal change would steadily erode factors causing the gender differential in damage awards and that victory rates and damages awarded in civil cases would equalize. However, the "double standard" in American justice persists, and it can be traced most directly to stereotypes about employment remunera-

¹⁰ These awards came from only 57 percent of the subjects. Because cell sizes were relatively small and the awards quite varied, mean awards are less meaningful.

tion, based on longstanding discrimination against women in the workplace. Since jurors approach the task of awarding damages with strong stereotypes about male and female roles in the home and in the workplace, when lost wages are the focus of the damages, female plaintiffs are most likely to be disadvantaged. Of course, the established legal measure for damages in a personal injury or wrongful death case may also disadvantage either a male or a female plaintiff who earns no wages.

The impact of a personal injury on a female homemaker who earns no wages may be just as significant as the impact of a similar injury on a male wage earner (Schafran 1987). However, few attorneys explore the value of unpaid work in the home to translate this into monetary recovery for the plaintiff. Similarly, some judges may restrict efforts by attorneys to present evidence at trial of the economic value of unpaid work in the home. Efforts to modify procedural biases against females have tended to focus on women who bring charges of domestic violence, sexual crimes, or violent crimes (Crites and Hepperle 1987; Berger, Searles, and Neuman 1988). The present studies suggest that inequities also arise from the gender differential in wrongful death and personal injury cases in which a lost stream of income is one of the elements of the damages claimed.

One potential way to reduce the gender bias favoring males would be to present evidence in the course of the trial by an expert, such as economist, concerning the reasonable value of household services. In this way, jurors can be informed of the monetary value of work performed by a homemaker. A second approach would provide jurors with a jury instruction that explicitly informs them that in determining the value of lost future income of the female plaintiff, they may assign a reasonable value to the work performed by the homemaker, notwithstanding the fact that no regular wages were paid for this work. The effects of these potential changes in current practice remain to be tested by future researchers.

APPENDIX A
SUMMARY OF TRIAL TRANSCRIPT: *KLEMMER V.*
FORD MOTOR COMPANY¹¹

Karen Klemmer, a self-employed 30 year old, was driving her newly purchased Ford Escort on a Los Angeles freeway at 4:00 A.M. on Monday, May 3, when she swerved into an embankment and crashed into a fence about 65 feet from the roadway. Karen suffered severe head injuries and died at the scene. A wrongful death suit was brought by her husband, Kevin Klemmer, against the Ford Motor Corporation.

The California Highway Patrol investigating the accident reached the following conclusion about what must have happened. Just prior to the accident, the car had been going slightly uphill, requiring acceleration. At the crest of the hill, the accelerator failed to return to the nondepressed position due to a broken spring. Upon further investigation, Ford admitted that indeed there had been a design flaw in the accelerator system. Therefore, the defendant's liability was established. The issue before the jury is to determine what dollar amount to award Karen Klemmer's estate to compensate for her death. Her annual income at the time of the accident was \$25,000. She is survived by her husband, Kevin Klemmer, who is the sole beneficiary of her estate/who has been employed since he left college and is her sole beneficiary. The Klemmers were childless.

APPENDIX B
SUMMARY OF TRIAL TRANSCRIPT: *MORLEY V.*
AXEL TRANSPORT CO.¹²

On February 10, 1986 at approximately 5:30 P.M., Sue Morley was driving home from her office in the city of Seattle. The traffic was moving well as she took her usual route, south on Interstate 5. Near Southcenter, she fell in behind a transport truck carrying nine new automobiles stacked three deep. According to a witness, both the transport truck and Sue Morley's car were traveling at the speed limit. As Sue rounded a corner about 40 feet behind the truck, a witness noticed that the top car at the rear of the truck was not properly secured and was beginning to slip and bounce loose from the stack. Before the witness had a chance to alert the truck driver to the danger, the loose car suddenly tipped backwards, smashing through Morley's windshield, crushing the front of her car. Sue Morley was killed instantly.

¹¹ No adverse inferences, real or imagined, concerning any parties named in this research scenario are intended. The case of *Klemmer v. Ford Motor Corporation* is entirely fictional.

¹² No adverse inferences, real or imagined, concerning any parties named in this research scenario are intended. The case of *Morley v. Axel Transportation Co.* is entirely fictional.

As a result of this accident, Axel Transport Company was sued for causing the wrongful death of Sue Morley. Sue Morley's estate filed a lawsuit against Axel Transport Company, claiming that the accident was caused by negligent loading and substandard safety procedures leading to the untimely death of Sue Morley through no fault of her own. Part I of the civil trial took place in early October in the King County Courthouse to determine whether Axel Transport Company, the defendant, was liable. The Washington State patrol officer who investigated the accident testified that Axel Transport Company had failed to observe safety regulations for transportation of heavy freight on public roadways. A key witness at the trial against Axel Transport Company was a bystander who witnessed the accident and testified that Sue Morley was driving in a safe and cautious manner at the time of the accident. The jury found Axel Transport Company was liable for Morley's death.

A separate trial, Part II of *Morley v. Axel Transport Co.*, is being conducted to determine an appropriate sum of money to compensate the estate of Sue Morley for her untimely and wrongful death. At the time of the accident, Sue Morley was 41 years old and in good health. She was self-employed, earning a yearly income of \$33,000. She is survived by her husband of ten years, Tom Morley, who is employed as a judge/accounting clerk. They had no children.

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