

An Exploration of Unpacking Effects in Jury Decision Making

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INTRODUCTION

In civil lawsuits, jurors can award money for non-economic damages, which is a difficult task because there are no price tags for pain and suffering. These damages are subjective, which has led to jurors giving a wide range of money for non-economic damages. To help jurors think more systematically about non-economic damages, many states have started to itemize the non-economic damages category into more descriptive sub-categories. For example, instead of asking jurors to award money for “non-economic damages”, they will ask jurors to award money for “loss of enjoyment of life, mental suffering, and physical pain” among other sub-categories. Additionally, some states request one value for these damages next to the list of sub-categories, but other states will ask jurors to come up with a valuation for each sub-category listed. This increases the number of judgments jurors must make for non-economic damages. The goal is that these itemized versions of jury verdict forms will serve as a more understandable form of communication. We conducted two studies to examine how itemizing jury verdict forms affects awards for non-economic damages, and in particular, the role of typicality of categories.

STUDY 1

- **The unpacking effect** (Tversky & Koehler, 1994; Rottenstreich & Tversky, 1997), which is rooted in probability judgments, may explain the mechanism.
- Unpacked decisions can take two different forms. **Implicit unpacking** provides sub-categories of the overall judgment but still only *one* decision. **Explicit unpacking** provides sub-categories of the overall judgment *and* a separate judgment for each item.
- Research has shown that unpacking a jury verdict form increases judgments of awards (Poser, Bornstein, & Kiernan, 2003; Gregory & Winter, 2011).
- **Support theory** (Van Bover & Epley, 2003) posits that unpacked judgments are higher because they provide more description of the event, therefore, it becomes more accessible.
- As people are more able to think about the event, it becomes more realistic/probable to them
- Research has shown that typicality matters too – when atypical sub-categories are presented, judgments actually decrease (Sloman, Rottenstreich, Wisniewski, Hadjichristidis, & Fox, 2004). This is due to less attention being given to the typical/accessible sub-categories. Note that as a judgment is unpacked into more categories, it is more likely to have atypical categories presented.

HYPOTHESES

- **H1:** Unpacked jury verdict forms will lead to higher valuations for non-economic damages than packed communication conditions.
- **RQ:** How do different types of unpacked communication influence non-economic damages?

METHOD

- Online experiment, Amazon Mechanical Turk ($N = 229$)

5 Jury Verdict Form Conditions:

Packed:

Non-economic (pain and suffering) damages in US dollars:
\$ _____

4 Implicit Unpacked:

Loss of enjoyment of life, disfigurement, mental suffering, and physical pain:
\$ _____

10 Implicit Unpacked:

Loss of enjoyment of life, disfigurement, mental suffering, physical pain, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress:
\$ _____

4 Explicit Unpacked:

Loss of enjoyment of life: \$ _____
Disfigurement: \$ _____
Mental suffering: \$ _____
Physical pain: \$ _____

10 Explicit Unpacked:

Loss of enjoyment of life: \$ _____
Disfigurement: \$ _____
Mental suffering: \$ _____
Physical pain: \$ _____
Physical impairment: \$ _____
Inconvenience: \$ _____
Grief: \$ _____
Anxiety: \$ _____
Humiliation: \$ _____
Emotional distress: \$ _____

Between-Subjects Condition

229 participants randomly assigned to one condition

- Packed
- 4 Implicit Unpacked
- 10 Implicit Unpacked
- 4 Explicit Unpacked
- 10 Explicit Unpacked

Within-Subjects Condition

- 163 participants in the unpacked conditions then had a 20 minute distractor task, reminded of the case, and then filled out the packed jury verdict form.

Procedure

Subjects either read a texting while driving accident case or a medical malpractice case

- Accident case range: \$1,270,000 - \$1,900,000
- Medical case range: \$220,000 - \$850,000

DV: The amount of money awarded to the plaintiff

Control variables: Empathy (IRI), Subjective Numeracy, and Story

RESULTS

Between-Subjects (RQ – Explicit 4 increases awards)

Jury instruction condition affected the valuation

$$F(4, 213) = 2.56, p < .05$$

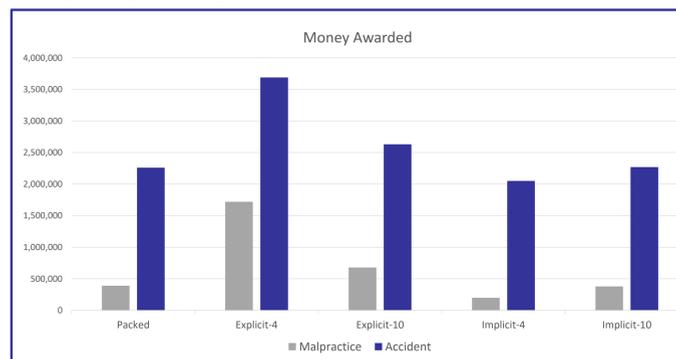
Packed condition was only lower than explicit-4 condition

$$p < .005$$

Within-Subjects (H1 - supported)

Unpacked jury verdict forms had higher valuations than packed jury verdict forms:

$$F(1, 153) = 4.34, p < .05$$



Discussion

- Only explicit unpacking increases judgments.
- Atypical items decrease judgments.

STUDY 2

- To further examine how atypical sub-categories influence overall judgments, we conducted a study tested two different mechanisms.
- One explanation is that atypical items serve as a low anchor and take attention away from the typical items and because the jurors do not think about them as much, these items will receive lower valuations (Sloman, et al., 2004).

- Therefore, sub-categories that are considered first will have a greater influence on the judgment than sub-categories that are considered later. **(H1a)**
- Conversely, there is evidence that when people make judgments about a list that contains atypical items, people use an averaging rather than summation technique (Kahneman, 2011; Hsee, 1998).
- Consequently, sub-categories are considered as a whole and the inclusion of an atypical items brings down the overall valuation, so order is not a factor. **(H1b)**

METHOD

Online experiment, Amazon Mechanical Turk ($N = 234$).

Same materials and procedures as the *4 Explicit Unpacked* condition from Study 1.

Half of the subjects had an atypical item presented first and half of subjects had the atypical item presented last.

Participants were instructed to answer in order presented.

DV: The amount of money awarded to the plaintiff

Control variables: Empathy (IRI), Subjective Numeracy, and Story

RESULTS

When the atypical item was presented did not significantly alter judgments, which lends support to H1b

$$F(1, 230) = 1.70, p = .19$$

DISCUSSION

- Unpacking jury verdict forms increases judgments of awards for non-economic damages.
- Specifically, explicit unpacking without atypical sub-categories leads to significantly higher awards.
- The presence of atypical categories seems to diminish the effects of unpacking a decision.
- Where the atypical item is presented does not significantly influence the judgment.
- This goes against support theory and suggests that *even* when the judgment task is set up to use a summation technique, people still utilize an averaging technique in which an atypical item lowers judgments but not through anchoring.