Attorney and Judge Experience in Torts Litigation:
An Empirical Study†

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Abstract

The effect of attorney and judge experience in litigation has not been fully explored, as detailed measures of jurist experience are not available. Using a unique data set from Taiwan, we measure attorney (judge) experience by the total number of civil cases they have represented (rendered) from 2000 to 2014. Combining these data with another unique data set we compiled from pain and suffering damages lawsuits regarding personal injury in a structural equation model, we find that both district court judges and plaintiff attorneys follow the recent changes in damages assessment practice in high courts. Court awards were subject to the anchoring effect cast by plaintiffs’ claims. In addition, the more experienced the plaintiff attorneys were, the more the plaintiffs’ claims deviated from the historical trend of court-adjudicated pain and suffering damages. Thus, through the indirect effect of higher claims, experienced plaintiff attorneys earned their clients higher amounts of pain and suffering damages. Whether defendants hire attorneys and whether defendant attorneys and judges

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are experienced do not affect whether court-adjudicated pain and suffering damages deviated from the historic trend.

Keywords
Pain and suffering damages, compensation percentage, court fee, deviation from historic trend, structural equation model (SEM)

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When you get involved in a legal dispute and the case is going to court, would you rather hire an experienced attorney than an inexperienced one, assuming you can afford to pay the fee charged by the former? If yes, why? Senior lawyers charge more, but what is the added value of their experience? In the long debate on the issue of “have versus have-not” in litigation, the premise is that the haves (i.e. the rich) are better able to mobilize litigation-useful resources, including hiring more expensive attorneys (Huang, Lin, and Chen 2014; Boyd 2015b: 296; Chen, Huang, and Lin 2015). From intuitions of ordinary people to the legal literature, the often implicit assumption is that experienced attorneys are better. Nonetheless, very few empirical works have been able to demonstrate the differences between experienced and inexperienced attorneys.

A study on attorney experience would be incomplete if the role of judges (in a jurisdiction without juries) is ignored. The effect of attorney experience could vary according to the sitting judges’ experience. The effect of judge experience also has independent interests. Judges follow precedents that settle questions of law, but whether they follow precedents that deal with questions of facts, such as how to assess damages, has not been rigorously examined. To what extent judges’ experience affects their decisions to follow higher courts regarding assessment of damages has also not been studied, either. Powered by a unique data set that contains detailed measures of multiple facets of the experience of all attorneys and judges in Taiwan as of 2014, this article sets out to fill the gap in the empirical literature.

The legal issue used to examine the import of jurist experience is the assessment of pain and suffering damages for personal injuries incurred in car accidents. The effect of jurist experience can be better isolated when the judicial decisions are neither formulaic nor rule-based. Pain and suffering damages are

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1 This article does not directly fit in the “have versus have not” literature itself. First, in pain and suffering damages litigation in Taiwan, the central or local governments will not be a party, and corporations can be defendants only when they are vicariously liable. Most natural-person plaintiffs and defendants in car accident cases are “have-not”—our data on parties’ income can support this claim—as the rich is unlikely to care enough to sue (the “have” has insurance or perhaps does not need insurance), and would settle to avoid being sued. As a result of the lack of variance, party capability and courts’ ideological preference would be a minor concern, if at all, in this study, so that the effect of jurist experience can be identified better.
highly discretionary in Taiwan, and thus judges may be affected by extra-factual factors, including attorney “manipulation.” Albeit discretionary, the amount of pain and suffering damages is, to a certain extent, predictable. Two prior empirical studies (Chang et al. 2014; Chang et al. 2015) have demonstrated that pain and suffering damages can be captured by simple regression models—this is important, as attorney experience would not matter if the amount of non-pecuniary damages is arbitrarily decided.

Assessments of pain and suffering damages provide a streamlined setting to examine judicial behaviors. A vast empirical literature is devoted to show that judges are ideological (for a recent review, see Epstein, Landes, and Posner 2013: 77–85). On the other hand, as Posner (2008) points out, easy cases can be determined by statutory texts. Assessing the amount of pain and suffering damages is neither a legalist nor an ideological exercise. Following the pragmatic labor-model of judges (Posner 2008; Epstein, Landes, and Posner 2013), this article empirically examines whether the career judges in Taiwan demonstrated “effort aversion” and “audition (desire for promotion),” without the confounding influence of ideology and legalistic pressure, and whether the judges’ experience on the bench affects their behaviors.

This streamlined setting is also suitable for testing the effect of attorney experience, as attorneys’ ideology can be ignored. Granted, lawyer skills are not singular: Threading the statutory texts together to make an innovative and convincing argument is a hallmark of good lawyers. Nevertheless, this skill is largely useless in the assessment of pain and suffering damages. Thus, our finding regarding the effect of attorney experience is not readily generalizable to other legal contexts where statutory interpretation is critical. Yet, in terms of identifying the effect of attorney experience, perhaps it is better that the legal issue we study enables us to ignore other aspects of attorney skills and focus on the added value of experience when attorneys makes numeric claims based on facts.

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2 No statute or supreme court precedent has provided clear guidance on how to assess this type of non-pecuniary damages.
3 The R-squares of the multiple regression models used to predict these two types of pain and suffering damages rendered by courts in Taiwan between 2008 and 2012 are between 0.50 and 0.85.
We find that district court judges detect the changing trend in high courts and dutifully follow the latest way high courts assess pain and suffering damages. Consistent with Chang, Chen, and Lin (2016), we again find that judges were influenced by the amount of plaintiffs’ claims. Judicial experience does not affect whether judges deviate from the historical trend or not. Senior plaintiff attorneys tend to over-claim, and through the anchoring effect, win more pain and suffering damages for their clients. Whether the defendant hired an attorney and how experienced defendant attorneys are do not matter.

The structure of this article is as follows: Part II provides an overview of Taiwan law. Part III explains the research questions and summarizes the prior literature. Part IV lays out our OLS and SEM models. Part V describes the pertinent data. Part VI discusses the implication of our findings. Part VII concludes.

II. PAIN AND SUFFERING DAMAGES LAW AND LEGAL PRACTICE IN TAIWAN

Pursuant to Articles 193 and 195 of the Taiwan Civil Code, victims of a tortious act can request the tortfeasor to pay pecuniary damages and pain and suffering damages. No formula exists for courts to determine the amount of pain and suffering damages. The civil code provides no guidance. A few leading cases rendered by the Supreme Court of Taiwan in the 1950s and 1960s declared that the following factors should be considered: the socio-economic status, total asset, annual income, age, educational background, etc. of both sides, the plaintiff’s level of pain and harm, the victim’s negligence, the defendant’s repentance, and so on. Other than this, to date, no conventional wisdom or rules of thumb exist for quantifying pain and suffering. In practice, plaintiffs simply claim an amount and contend that it is just, with little supporting evidence. Court decisions typically start with a template discussion that carbon-copies the list of

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4 Part of this section is adapted from Chang et al. (2014).
5 Taiwan Civil Code art. 193I promulgates: “If a person has wrongfully damaged to the body or health of another, and caused the injured person to lose or decrease his laboring capacity, or to increase the need in living, the tortfeasors shall be bound to make compensation to the injured person for any injury arising therefrom.” Taiwan Civil Code art. 195I prescribes: “If a person has wrongfully damaged to the body, health, reputation, liberty, credit, privacy or chastity of another, or to another’s personality in a severe way, the injured person may claim a reasonable compensation in money even if such injury is not a purely pecuniary loss.”
factors emphasized by the leading cases, then summarize the facts of the case at hand, and conclude by awarding an amount. As judges have never elaborated on their formulas and rarely provided concrete information regarding the factors, it is doubtful to what extent those factors listed in the template arguments affect the final amount of pain and suffering damages.

Courts in Taiwan will review the receipts of all pecuniary expenses and only grant plaintiffs with reasonable expenses. Due to the mandatory national health care system that covers most medical treatments and medication, only medical expenses that are not covered by the health care plans (such as co-payment, certain special medicines and operations, and domestic nursery cares) can be recovered by the victim from the tortfeasor.

Plaintiffs do not have an incentive to claim unrealistically high amounts of pain and suffering damages. First, court fees are proportional to the amount of claimed total damages (roughly, around 1% of the total claimed damages). Second, the losing party has to pay court fees. In a tort lawsuit, a plaintiff usually has to pay part of the court fee if the court does not grant all her claims. The plaintiff generally has to pay \[1-\text{(court award/plaintiff's claim)}\] \times \text{court fee}. So claiming a high amount of pain and suffering damages increases both the amount of court fees and the probability of bearing a higher percentage of court fees. One important caveat: when a plaintiff makes pain and suffering damages claims as part of the criminal proceedings against a defendant, and the defendant was found guilty, the plaintiff does not have to pay court fees for her civil lawsuit in the court of first instance.

Taiwan can generally be considered a civil-law country. Almost all judges are career judges who may or may not have (most have not) practiced law before serving on the bench. A top law graduate can become a judge at 25 years old or

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6 Not all courts use the same template. The factors that a court explicitly claims to take into account slightly differ.
7 In unreported tables, we explored the factors that Taiwanese courts purport to have considered in determining pain and suffering damages. The tables, however, suggest no clear pattern.
8 Pursuant to Article 77-13 of Civil Procedure Code of Taiwan, the court fee is assessed in the following way: “1,000 NTD on the first NTD100,000 of the price or claim's value, and an additional amount shall be taxed for each NTD10,000 thereafter in accordance with the following rates: NTD110 on the portion between NTD100,001 and NTD1,000,000 inclusive; NTD99 on the portion between NTD1,000,001 and NTD10,000,000 inclusive; NTD88 on the portion between NTD10,000,001 and NTD100,000,000 inclusive; NTD77 on the portion between NTD100,000,001 and NTD1,000,000,000 inclusive; and NTD66 on the portion over NTD1,000,000,000. A fraction of NTD10,000 shall be rounded up to NTD10,000 for purposes of taxing court costs.”
so (the average in recent years is 28 years old). Most jurists in Taiwan major in law as an undergraduate, and only a minority of jurists are trained in a JD-like graduate program. Jurists who pass the bar exam and finish six months of practical training are qualified to practice law. Jurists who pursue a career as judges or prosecutors have to take the “court officer” examination. Those who pass the examination receive training in the Academy for the Judiciary for two years. At the end of their training, based on their grades, preferences, and openings, they will become judges or prosecutors. Judges are tenured, and thus presumably less influenced by external political influences. For civil matters, there are three levels of courts: district courts, high courts, and the supreme court. The former two can determine both questions of fact and questions of law, while the supreme court only deals with questions of law. Appealing to the court of second instance (for non-small claim cases, the high courts) is as of right, whereas large-stake cases represented by attorneys can be appealed to the supreme court, subject to its discretion (Eisenberg and Huang 2012; Chen, Huang, and Lin 2015).

As for attorney fees collected by plaintiffs’ and defendants’ lawyers, contingent fees and hourly fees in this type of tort litigation are very rare, though not prohibited. Flat fees are mainstream. Thus, attorneys do not necessarily have incentives to select cases that are more likely to win, as they could receive similar amounts of fees. Also, according to the attorneys we interviewed, small law firms and solo practitioners, who handle tort cases, do not have stable and wide clientele; thus, they are generally unwilling to turn down clients who are willing to pay a flat fee.10 Attorneys often adjust the fees ex ante according to the

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9 Zamir and Ritov (2010) provide a convincing behavioral account of why plaintiffs in tort litigation opt for the contingent fee structure while defendants do not. According to the Taiwanese attorneys we interviewed, however, fixed fees have been dominant in Taiwan. The contingent fee arrangement was used in the few cases where clients request it, and it was often used when the probability of winning is not high. The contingent fee percentage is 20%–30%. Also, the attorney fee arrangement is seldom purely contingent-based; usually attorneys will still charge a small amount of flat fee; small firms, rather than big firms, are more willing to consent to a contingent fee arrangement. More importantly, and strikingly opposite to the practice in the U.S. market, our interviewed attorneys believe that it is unethical to take contingent fees in car accident cases, as attorneys would be taking away money to compensate for the pain and injury of their clients. If tort victims cannot afford the usual attorney fees, attorneys may charge a lower fee rather than entering into a contingent fee arrangement. Legal aid is another way for poor plaintiffs to seek legal representation without resorting to contingent fee arrangements.

10 Two very senior attorneys we interviewed (one of them recently became a justice in Taiwan’s Constitutional Court) told us that they would refuse to represent meritless cases. They admit that
complexity of the cases. Senior attorneys generally charge a higher fee. Case selection may be in the form of poor parties in search of attorneys who charge a lower flat fee. Charging low fees is not a good indicator of the effectiveness of the attorneys. Some attorneys may be cheap because they are incapable, while other attorneys may charge a lower fee because their marginal case-handling cost is lower.

It should be worth noting that in Taiwan, insurance companies have a very minor role in torts litigation. Insurance companies are rarely, if ever, a party in such litigation (no observation in our data set features an insurance company as a party). Even when tortfeasors have bought liability insurance policies, in addition to the mandatory motor vehicle insurance, tort victims sue the tortfeasors, not the latter’s insurance company.

Finally, Abrams and Yoon (2007) have raised the issue of the difficulty to evaluate the contribution of an individual attorney. This is not a problem in our study. While the prior literature mostly examines the effect of law firms, this research focuses on that of individual attorneys. Big law firms in Taiwan mostly practice in corporate law and IP law and usually charge by the hour. Seldom do they take car accident cases, mostly because plaintiffs who cannot afford the fee charged by big law firms will not seek their representation in the first place. After interviewing with several experienced attorneys, we identified 12 big law firms in Taiwan and coded the attorneys who work there as of September 2014. Only 5 observations in our database contain attorneys affiliated with these big law firms. Outside big law firms, most attorneys practice solo—sometimes hiring a few associates and sharing office space and secretaries with other attorneys. In other words, litigation outcomes can be attributed to individual efforts by attorneys, not law firms.

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they enjoy this privilege because they are not short of clients.

11 Health insurance companies can subrogate victims to sue the tortfeasors, but it is very rare. Insurance companies may be sued if they refuse to indemnify an insured person. These are not the torts litigation we study here, as judges in those cases do not have to assess pain and suffering damages.
III. RESEARCH QUESTIONS AND PRIOR LITERATURE

A. Judges

Our examination of judicial behaviors focuses on whether judges’ experience affects the way they follow precedents. As pointed out above, in assessing pain and suffering damages, neither text nor ideology is the judges’ guiding posts. The role of precedents presumably looms large. It is not breaking news that lower court judges largely stick to legal doctrines expounded by higher courts. The precedents under discussion here, however, refer to the pattern of how higher courts or district courts in prior cases have assessed damages according to case facts. More specifically, lower court judges may all refer to the same article in the civil code and all cite the same Taiwan Supreme Court cases that laid out the key factors to be considered. Nonetheless, judges may give different weights to these factors. Following precedents in our empirical project means that judges give similar weights to factors such as injury level, medical expenses, and the length of declared incarceration.

We hypothesize that district court judges will follow the assessment pattern of appellate courts. In general, judges are averse to their decisions’ being reversed. Overruling may tarnish the judges’ reputation, embarrass them, affect their chance of being promoted to higher courts, and reduce their year-end bonus. In Taiwan, according to our interview with judges, the aforementioned concerns do exist and district court judges thus strive to follow the immediately supervising courts.

In addition, leisure preference (or effort aversion) also leads district court judges to follow precedents. Indeed, the information costs of following the assessment pattern are higher than those of employing the correct doctrine. A good hornbook or handbook and a serviceable legal source website could provide the most updated doctrines and legal interpretations. By contrast, without the help of regression models, ordinary judges are unlikely to accurately

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12 Cf. Choi, Gulati, and Posner (2012: 518)’s empirical work that finds that judges in Federal District Courts in the U.S. “adjust their opinion-writing practices to minimize their workload while maximizing their reputation and chance for elevation to a higher court.”

13 Taiwan High Court even literally graded the District Court decisions appealed to the High Court. In each judge’s personal web account, she can see the grades of all her cases that were appealed as well as the average grade of her fellow judges in the same district court. This rule was abolished as late as July 2015.
identify the assessment patterns. Fortunately for district court judges, appellate court judges are unlikely to detect the deviation of lower-court decisions from high court precedents unless the deviation is salient. Perhaps it is not surprising that judges delegate the task of locating precedents to their clerks, who shoulder the labor-intensive duty, so that judges can follow precedents and reduce their workload at the same time. We are not the first to empirically test whether lower courts follow higher court precedents.\textsuperscript{14} But, to the best of our knowledge, we are the first to empirically examine whether lower courts mimic the way higher courts evaluate facts to assess damages.

Whether judges’ experience affects the pattern of following precedents has yet to be studied extensively. Chang, Chen, and Lin (2016) report that experienced judges in real-world cases were not subject to the anchoring effect, while inexperienced judges were strongly influenced by anchors. Nonetheless, by counter-claiming, defendants can weaken, even fully erase, the anchoring effect created by plaintiffs’ claims. Judges’ experience, therefore, is useful in debiasing. As judges have incentives to follow higher court precedents throughout their tenure, we expect that experience does not matter. Still, a rigorous empirical testing is warranted.

B.\textit{ Attorneys}

The effect of attorney experience has not been thoroughly studied, perhaps for lack of good data and due to the problem of selection effect. Most existent literature has found that senior attorneys perform better in litigation than unseasoned colleagues. Abrams and Yoon (2007) study almost 12,000 felony cases in which public defenders were randomly assigned to clients, and find that experienced attorneys, measured by their tenure in the public defender office, achieve substantially more favorable outcomes for their clients than less experienced attorneys. Harris, Peeples, and Metzloff (2005: 235–36, 241) measure experience of medical malpractice attorneys by the year of practice and the number of cases an attorney has handled within the 348 sampled cases, and

\textsuperscript{14} For instance, Boyd (2015a)’s recent empirical study identifies the critical factors in enhancing the hierarchical influence of federal courts of appeals on federal district courts in the U.S.
find that attorneys who had handled more medical malpractice cases, had more trial experience, and went to better law schools performed better than attorneys without these attributes. Harris, Peeples, and Metzloff (2008: 267, 280), using “years since admitted to practice” and “number of med-mal cases handled during the study period” as a measurement of attorney experience, find that plaintiffs’ attorneys who have handled at least four cases were more likely to obtain money for the plaintiffs. Krishnan, Davidoff, and Thomas (2014) and Hyman et al. (2015) find that top law firms are better at winning lawsuits. Sloan (1993: 196–201) finds that “specialist” plaintiff attorneys in medical malpractice fared better than “non-specialist” plaintiff attorneys in receiving court-awarded monetary recovery. Specialist attorneys were defined as attorneys who have handled four or more cases regarding medical malpractice (based on court records available in county courthouses in Florida), attorneys who designated themselves as experts, and those who were listed by others as experts (Sloan 1993: 170). Lederman and Hrung (2006) use years of experience to measure attorney expertise and find that in tax litigation against the IRS, plaintiffs with attorney representation fare better than those pro se, and plaintiffs with more experience attorneys have higher recovery ratios. Feldman (2015) tallies the number of cases an attorney represents before the U.S. Supreme Court and finds that briefs of more experienced attorneys are more widely adopted by SCOTUS in its opinions. Note, however, that Greiner and Pattanayak (2011: 2125), using data from real-world randomized experiment on legal representation, find that they “could come to no firm conclusion regarding a use-of-representation effect on the win rate”. Goodman-Delahunt et al. (2010) survey 481 sampled litigating attorneys in the U.S. and find that they are overconfident in predicting the outcome of their own cases and calibration does not increase with years of legal experience.

Random assignments of public defenders in Abrams and Yoon (2007) avoids the selection effect—attorneys aim to accept the strongest case whereas litigating parties aim to hire the best attorneys they can afford. Other prior empirical works on civil lawsuits, however, suffer from the problem of selection effect, as plaintiffs’ and defendants’ attorneys are rarely randomly assigned to clients in civil cases.¹⁵ Studies of plaintiffs’ attorneys found that they routinely

¹⁵ See the long list of literature cited and critiqued as “unworthy of credence” (for lack of random
turn away more than half of the potential clients seeking representation, as lawyers who take contingency fees risk a lot in handling meritless cases (Sloan 1993: 77; Kritzer 2004: 73; Harris, Peeples, and Metzloff 2008: 257). In the litigation setting studied in this article, attorneys were not randomly assigned to cases, either:

We contend that the selection effect is ameliorated, as compared to the prior literature, for two major reasons. First, the detailed court decisions enable us to control for the key factors of the personal injury cases, including the severity of injury and the medical expenses. We are thus able to compare cases of the same strength to tease out the effect of attorney experience. Second, plaintiff and defendant attorneys in Taiwan received flat retainers for their service in ordinary torts litigation. This fee structure does not motivate Taiwan attorneys to turn down cases as aggressively as their American colleagues do (see Part II). Moreover, as elaborated below, propensity score techniques were applied to match cases, to further ensure that our empirical findings are not derived from case selection by attorneys.

1. **Plaintiff Attorneys**

Plaintiff attorneys in Taiwan mostly charge fixed fees for tort damages cases, and their incentives are thus different from those in, for instance, the U.S. and Israel who charge contingent fees. The incentives of contingent-fee attorneys are weakly aligned with the interests of their clients. As long as it is cost-justified, attorneys work harder to win larger amount of damages, as they take home a third or so of the damages. The principle-agent problem is more acute among fixed-fee attorneys. The financial income of these attorneys is independent of case outcomes. Attorneys may still care about their winning rate, but in civil cases, particularly tort cases, case outcomes are seldom dichotomous and what counts as winning is obscure. Plaintiffs who were injured would usually be awarded with some damages, while their claims were rarely granted in full. Partial wins are the norm.

Due to the rise of legal service providers (e.g. http://pingluweb.com) that
use big data composed of all court cases since 2000, “fee percentages” (the central statistics in PingLuWeb16) may become the more salient indicator of attorney skills. Fee percentage is the fraction of court fees plaintiffs have to pay based on the extent of granted claims (see Part II). The attorneys who can better predict case outcomes ex ante and make claims accordingly enable their clients to pay lower percentage of court fees. Fixed-fee attorneys who care more about their fee percentages qua winning records would tend to make conservative claims, so that courts would grant most of their claims, keeping their fee-percentage statistics low and the clients’ costs low.

Conservative claims, however, do not necessarily maximize client interests. Courts cannot award more than the amounts plaintiffs claim, and court fees are about 1 percent of the claimed amount. When claiming 100 dollars more would lead to an increase in expected awards of more than 1 dollar or so, rational attorneys who care solely about the interest of their clients should and will do so. If the expected increase in awards is, say, 5 dollars, however, the attorney’s fee percentage is quite likely to increase, unless less than 5% of the other part of the claim is granted. Provided that judges were unbiased, claiming more than the attorneys’ best estimates of court awards based on what higher courts have recently allowed is unlikely to sway judges. As a result, over-claiming is irrational for the attorneys and their clients. Nonetheless, if judges were subject to the anchoring effect, over-claiming makes economic sense for the clients, but attorneys who are sensitive to their winning records may be inclined to be conservative. Without systematic understanding of whether plaintiff attorneys view judges as easily coaxed, it is hard to predict whether attorneys will over-claim (in the sense of surpassing the historical award).

Our hypothesis is that experienced attorneys tend to over-claim. Experienced attorneys are more likely to have a firmer client base and retain new clients through words of mouth. With a longer track record and reputation, their business is less likely to be influenced by an increase in average fee percentage. In other words, experienced attorneys are willing to take more risks. Experienced attorneys are also more likely to be confident in their own skills. Whether they are aware of the anchoring effect or not, senior attorneys are more likely to over-claim as they believe that judges will be persuaded. Beating the average might be a way to demonstrate to their clients that senior attorneys are worth the higher fees. Sometimes, according to attorneys we interview, winning an improbable claim would lead to a bonus (“red envelope”) given by the client to

16 PingLuWeb literally means the website for evaluating attorneys in Mandarin Chinese.
Finally, one experienced attorney we interviewed advanced an interesting theory: for plaintiff attorneys, each case has a reasonable range for pain and suffering damages. Experienced attorneys tend to claim an amount that is at the upper echelon, because their higher income and other aspects of their life experience make the higher figure more “natural.” In addition, experienced attorneys are also better able to eloquently argue for the case of high damages. Moreover, more experienced attorneys, our interviewees claim, are better at settling disputes, if they also have a reputation for being trustworthy; a high claimed amount within the reasonable range is part of the strategy to push for settlement.

Another hypothesis is that plaintiffs who do not have to pay court fees (see Part II) are more inclined to over-claim, as there is almost no downside for plaintiffs to over-claim, unless an outrageous claim angers the judge.

2. Defendant Attorneys

Defendant attorneys are expected to prioritize dismissing cases against their clients. As cases in our data set are limited to those in which defendants were found liable. We are not able to test whether hiring (experienced) attorneys increase the chance of case dismissal.

Defendant attorneys are also expected to reduce the amount of damages. Pecuniary damages are typically formulaic. Defense attorneys can greatly reduce the amount of compensation usually by proving that plaintiffs are comparatively negligent. As pain and suffering damages are discretionary, we conjecture that defense attorneys would challenge this claim. In practice, some defendants countered a specific amount of damages, some simply objected that the claimed damages are too high, and some failed to make any objection. We hypothesize that the counter-claiming pattern is affected by several factors including how much plaintiffs’ claimed amount deviates from the historic trend, whether defendants or plaintiffs hire attorneys and how experienced they are, whether defendants include corporations, and defendants’ income.

It is also worth noting that in the Taiwan cases we study, no defendant is an
insurance company, and corporate defendants are only vicariously liable. In other words, defendants are the real tortfeasors who drove a mobile vehicle while injuring the plaintiffs/victims.

IV. MODELS

A sophisticated structural equation model is specified to closely approximate a real-world decision-making process. Formally and informally, we interviewed many attorneys and judges of all experience levels in Taiwan in private and in focus groups. The core insight is that before the plaintiffs’ attorneys formulate the requested amount of pain and suffering damages, and before district court judges make their decisions, both have searched in the official court case database (http://jirs.judicial.gov.tw/Index.htm) for similar cases previously decided in district courts and high courts, to be consistent with precedents. Therefore, the basic set-up of our regression model is to test whether district court judges at time T would deviate from the assessment pattern at the district court level at time T-1 if the assessment pattern at the high court level at time T-1 is different from that at the district court level at time T-1. Case facts (including victims’ severity of injury), judges’ and attorneys’ experience, etc. are added to the regression models.

More specifically, under our model, district court judges would ask, given the facts of the cases at hand, how much pain and suffering damages the high courts and the district courts would award. To predict what judges would estimate as the two hypothetical damages awards, we use hedonic regression models to predict the amount of pain and suffering damages for each district court case in our main research period (Sep. 5, 2013–Sep. 2, 2014), based on the high-court or district-court cases decided within the past 3 months of each case. That is, the hedonic regression model was run 102 (=51*2) times, two for each week.

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17 In sharp contrast, defendants in personal injury cases elsewhere are often large firms or insurance companies (Zamir and Ritov 2010: 276).
18 We assume (based on interviews) that judges would search the most recent cases as references. Choosing three months as the scope is a somewhat arbitrary decision, though. We have tried to use 2.5, 3.5, and 4 months as the cut-off, and the results are essentially the same. If we use a period shorter than 2.5 months, there will be too few observations in each hedonic regression models.
19 There are in total 51 weeks in our main research period (defined in Part V). 51 models use
Therefore, each district court case in the research period is paired with two estimates of pain and suffering damages: one is what the high court would have rendered, and the other is what the district court would have awarded. These estimates are hereinafter referred to as the trend (of pain and suffering awards).

More concretely, to estimate the pain and suffering damages for a district court case rendered in the first week of April, we used the cases decided in the first three months of the year rendered in the high court in a hedonic regression model. The coefficient of the model and the facts of the said case can provide estimated pain and suffering damages—the best estimate of what the high court would have done had this case come before it in January, February, or March. We then repeated the same procedure on district court cases, to get hold of the best estimate of what the district court would have rendered had this case come before it a few weeks earlier.

After further computations, we run structural equation models (SEM) to test whether the ruling on pain and suffering damages by district court judges and those claimed by plaintiffs were affected by the trend, and whether the deviation from the trend can be attributed to jurist experience and case facts. We expatriate the empirical strategy in the following:

A. OLS Models to Predict District Court and High Court Awards

Our parsimonious OLS hedonic regression models take the following form:

\[ \text{PSD} = \beta_0 + \beta_1 \text{INJURY} + \beta_2 \text{MED} + \beta_3 \text{JAIL} + \beta_4 \text{DUI} + \beta_5 \text{HITRUN} + \beta_6 \text{DCORP} + \varepsilon \]

where \( \text{PSD} \) is the natural log of the judge’s pain and suffering damages award; \( \text{INJURY} \) are two variables representing three levels of injuries; \( \text{MED} \) are three variables presenting four levels of court-adjudicated medical-related expenses; \( \text{JAIL} \) are three variables presenting four levels of court-adjudicated medical-related expenses; \( \text{DUI} \) are three variables presenting three levels of injuries; \( \text{HITRUN} \) are three variables presenting three levels of injuries; \( \text{DCORP} \) are three variables presenting three levels of injuries.

district court cases as observations, whereas the other 51 models use high court cases.

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\( \) One of us has collaborated in joint research projects on pain and suffering damages for personal injury (Chang et al. 2014), wrongful death (Chang et al. 2015), and defamation (Chang, Ho, and Hsu 2016). Those works explore the determinants of court-adjudicated pain and suffering damages in Taiwan. Chang et al. (2014) in particular finds that the level of injury and medical expenses alone can explain more than half of the variation from the average amount. Thus, in this article, we also use the level of injury and medical expenses as the major determinants in the hedonic regression models (Section A).
already incurred and expected to incur; \textbf{JAIL} is the natural log of months criminal courts have sentenced the defendants to be incarcerated; \textbf{DUI} is a dummy variable that equals 1 if the defendant drove under the influence of alcohol; \textbf{HITRUN} is a dummy variable that equals 1 if the defendant hit the plaintiff and ran away without assisting the injured plaintiff; \textbf{DCORP} is a dummy variable indicating whether any of the defendants is a corporation (which is vicariously liable for its employees). The coefficients to be estimated are $\beta_n$; $\varepsilon$ is an error term.

More specifically, \textbf{INJURY} captures whether the plaintiff has suffered from minor injuries, grave injuries, or vegetative states. We distinguish the former two according to Article 10 of the Criminal Code of Taiwan.\textsuperscript{21} We have coded the exact amount of the total court-adjudicated medical expenses, which include the costs of medicines, doctor’s visits, hospital expenses, medical devices, nursing care, and nutritious food. In order to create a model that reflect the decision-making process by judges and attorneys, the \textbf{MED} represents 4 categories by the 25\textsuperscript{th}, 50\textsuperscript{th}, and 75\textsuperscript{th} percentile of the medical expenses.\textsuperscript{22} We doubted that attorneys and judges make decisions like regression models; rather, they make rough categorizations of injuries and medical expenses to compare the prior cases with the case they have at hand.

Utilizing the comprehensive, official court case website, we are able to find whether the civil defendants have been convicted before the civil court rendered its decisions (most of them were). We chronicled the declared sentences (\textbf{JAIL}), among others, from the criminal court decisions. Our conjecture is that the length of the declared sentence might affect the amount of pain and suffering damages as civil court judges could have taken it as another measure of the severity of the tortfeasors’ acts. The declared sentences, however, are not a good measure of how long the tortfeasors have suffered in prison. Tortfeasors whose declared sentences are six months or shorter can avoid being

\textsuperscript{21} A serious injury is one of the following conditions: 1. Destruction of or seriously damage to the sight of one or both eyes; 2. Destruction of or serious damage to the hearing of one or both ears; 3. Destruction of or serious damage to the function of speech, taste, or smell; 4. Destruction of or serious damage to the function of one or more limbs; 5. Destruction of or serious damage to the power of reproduction; and 6. Other serious injury to body or to health that is either impossible or difficult to cure.

\textsuperscript{22} We have tried to divide the medical expenses into 3, 5, and 6 categories, and the results are largely the same.
jailed by paying criminal fines instead, and 91% of our cases fall into this category. Many of the rest of the cases could still be appealed.

Both driving under the influence of alcohol (DUI) and hit-and-run (HITRUN) are crimes in themselves. We collect information regarding these two crimes in both the civil and criminal decisions.

DCORP tries to capture the effect of the deep pockets of corporate defendants. Prior literature has shown that the deep pocket effect has its presence in Taiwanese court (Chang et al. 2014; Chang, Ho, and Hsu 2016).

When all district court cases were put into this OLS model, the R-square is 0.58. See Appendix A for regression results.

B. Structural Equation Model on Deviation of Court Award from Trend

Judges in district courts surveyed recent similar cases (the historic trend) and then evaluated the cases at hand based on the historic trend in the previous period. Their main decisions are therefore how much the adjudicated pain and suffering damages ($R$) for the current case should deviate from the trend. The deviation ($R-b_i$) from the trend in district court ($b_i$) is called “intra-court deviation.” The intra-court deviation, as hypothesized, might be based on the “inter-court deviation” ($b_h-b_i$)—that is, the historic trend in high courts minus that in district courts. For example, assume that the district court at time T-1 awarded 1 million dollars to a victim in a certain type of case and the high court at time T-1 awarded 1.5 million dollars, we conjecture that district court at time T would deviate from 1 million dollars and move toward 1.5 million dollars. Simultaneously, the deviation of the plaintiffs’ claim ($P$) from $b_i$ might serve as an anchor to the judges’ decisions. Note that in this paper, $R$, $b_i$ and $b_h$ are measured as the natural logarithm of the original values to promote normality. For the sake of brevity, the words “natural log” or “ln” will be omitted.

To ascertain the values of the aforementioned variables, we first construct hedonic estimates of the historic trend set in the previous period by using the cases adjudicated 1 to 12 weeks before the verdict of the case at hand, as described in Section IV.A. We then plug in the characteristics of the current case to assess the best estimate of pain and suffering damages in that case. Finally, we
calculate the intra-court deviation \((R-b_i)\), inter-court deviation \((b_{hi}-b_i)\), and plaintiff-claim deviation (the plaintiffs’ claims minus the historic trend in district courts; \(P-b_i\)).

A structural model is warranted to handle the endogeneity problem inherent in the nature of our inquiry. First, the plaintiffs’ claims (or, for that matter, plaintiff-claim deviation) were affected by case facts but influenced court adjudication as well. The problem is accounted for in the structural model by using the plaintiff-claim deviation as one independent variable in the first equation and the dependent variable in the second equation. Second, some characteristics considered by judges and plaintiffs are not observed by researchers. Our structural model takes into account the correlations between the error terms of the two equations, thus controlling the endogeneity problem (Wooldridge 2010: 681). Specifically, we run the following structural equation model:

\[
R_i - b_{ij} = (b_{hi} - b_{ij})\gamma_1 + (P_i - b_{ij})\gamma_2 + E_i\gamma_3 + E^a_\gamma_4 + (b^*_i - b_{ij})\gamma_5 + X_i\delta_1 + W_i\delta_2 + e_{ui}, \quad (1)
\]

\[
P_i - b^*_i = E^a_\gamma_6 + (b^*_i - b_{ij})\gamma_7 + X_i\delta_3 + Z_i\delta_4 + e_{ui}. \quad (2)
\]

In equations (1), \(R-b_i\) is the intra-court deviation; \(b_{hi}-b_i\) is the inter-court deviation; \(P-b_i\) is plaintiff-claim deviation;\(^{23}\) \(E\) are whether plaintiffs retain attorneys and the natural logarithm of plaintiff attorneys’ civil experience; \(E^a\) represents the natural logarithm of judges’ civil experience; \(b^*\) is the historic change in district courts between estimated pain and suffering awards 1 to 12 weeks before the verdict \((b_i)\) and estimated pain and suffering awards 5 to 16 weeks before the verdict \((b^i)\).\(^{24}\) The common explanatory variables in equations

\(^{23}\) To be more exact, \(P-b_i\) is the difference between plaintiffs’ claims and estimated pain and suffering awards 5 to 16 weeks before the verdict. We deduct from the former the latter, rather than estimated pain and suffering awards 1 to 12 weeks before the verdict, because plaintiffs’ claims were on average made about one month before judges’ ruling. The new trend that happens 1 to 4 weeks before the verdict would be unbeknownst to the plaintiffs when they made the claims. See also footnote 24 for more explanation.

\(^{24}\) This variable itself is not of interest. We added this to adjust this potential time-inconsistency of the historic trend. More specifically, \(P-b_i\) is used as an independent variable in equation (1) and as the dependent variable in equation (2) to account for the endogeneity problem. Nonetheless, the anchoring effect created by the plaintiffs’ claims may not derive from the difference between the claim and the old trend (5–16 weeks before verdict), but between the claim and the new trend (1–12 weeks before verdict). To be able to ascertain the magnitude of the anchoring effect, \(b^*\) is added as adjustment. More specifically, equation (1) can be re-written as follows:
(1) and (2), \( X \), mainly capture the information or factors that could explain the decisions of the judges and plaintiffs. They consist of 7 dummy variables on levels of injury,\(^{25}\) and whether plaintiffs hire attorneys. \( X \) also includes 18 dummy variables that control for which district courts made the decisions. \( W \) represents variables that are only used in the first equation, including whether defendants hired attorneys, the civil experience of defendant attorneys, the length of defendants’ declared criminal sentences, and natural log of court-adjudicated medical expenses.

The specification in equation (1) examines the driving force of judicial decision-making, whereas that in equation (2) teases out what drove the plaintiffs’ decisions. As the plaintiffs’ claims were on average made about one month before judges’ ruling,\(^{26}\) we again construct hedonic estimates of the historic trends in high courts and district courts by using cases rendered 5 to 16 weeks before court verdict (that is, 1–12 weeks before plaintiffs made their claims to courts). Then, we plug in the characteristics of the cases in question to estimate the adjudicated damages. Thus, the dependent variable in equation (2) is the deviation of the plaintiffs’ claims away from the historic trend in district

\[
R_i - b_{i,j} = (b_{h,i} - b_{i,j})\gamma_1 + (P_i - b_{i,j})\gamma_2 + E_i\gamma_3 + E^*\gamma_4 + (b_{l,i} - b_{i,j})\gamma_5 + X_i\delta_1 + W_i\delta_2 + e_{i,j},
\]

where the variable in the second term \((p - b)\) measures the anchoring effect created by the deviation of plaintiffs’ claims from the new trend. As the above equation shows, \((p - b)\) and \((p - b^*)\) both have \(\gamma_2\) as its coefficient. That is, the regression coefficient \(\gamma_2\) can be regarded as the measurement of the anchoring effect. Conducting a regression of \(R-b\) on \(P-b\), \(b^*-b\), and other variable will result in the same coefficients (except that of \(b^*-b\)) as conducting a regression based on equation (1).

\(^{25}\) Here we classified the victims’ injuries into 9 levels based on NAIC (National Association of Insurance Commissioners) scale, as it is a more detailed classification of injuries. The NAIC scale has been used in prior empirical studies. See, e.g., Vidmar, Gross, and Rose (1998: 283); Sloan (1993: 23). The 9 levels are: 1. Emotional only (fright, no physical damage); 2. Temporary insignificant (lacerations, contusions, minor scars, rash; no recovery delay); 3. Temporary minor (infections, fracture, fall in hospital; recovery delayed); 4. Temporary major (burns, surgical material left, drug side effect, brain damage; recovery delayed); 5. Permanent minor (loss of fingers, loss or damage to organs; includes nondisabling injuries); 6. Permanent significant (deafness, loss of limb, loss of eye, loss of one kidney or lung); 7. Permanent major (paraplegia, blindness, loss of two limbs, brain damage); 8. Permanent grave (quadriplegia, severe brain damage, lifelong care or fatal prognosis); 9. Death. No victim in our cases suffered merely level-one injury. We exclude death cases as they are categorically and doctrinally different.

\(^{26}\) According to official summary statistics, the average handling time for a district court civil case is 30 days. As plaintiffs made the initial request for pain and suffering damages when they filed the first document, they were unlikely to consult cases that were determined 1 to 4 weeks before the court verdict, when the litigation was undergoing. Our model, therefore, assumes that plaintiffs took into account district court and high court cases rendered in the previous three months when they formulated their requested amount of pain and suffering damages. See also footnotes 23 and 24.
courts 5 to 16 weeks before court verdict. The difference of the estimated damages at district and high courts 5 to 16 weeks before court verdict \((b_h^* - b_l^*)\) is one of the major independent variables in equation (2).  

Due to the nature of our data and for identification purposes, specific explanatory variables, in addition to \(X\), are added for equation (2). These potential determinants of reactions \((Z)\) include the following independent variables: plaintiffs’ age in natural log; plaintiffs’ annual income in natural log;\(^{28}\) two dummy variables that equal one when an observation contains missing values in age and income; plaintiffs’ claimed amount of medical expenses in nature log; whether defendants drove under the influence of alcohol; whether defendants hit and ran; whether plaintiffs have to pay court fee; and whether defendants include a corporation vicariously liable for the natural person who caused the accident. Finally, we assume that the error terms \(e_{ki}\) \((k = 1, 2)\) are jointly normally distributed with a mean of zero.\(^{29}\)

Our main interest is in the values of the estimated coefficients \(\gamma_1\) to \(\gamma_7\), except \(\gamma_5\). If \(\gamma_1\) is statistically significant and positive, the district court tends to follow the latest trend in high courts. If \(\gamma_2\) is statistically significant and positive, there exists an anchoring effect created by plaintiffs’ claims. The statistical significances of \(\gamma_3\) and \(\gamma_4\) demonstrate whether the increases in attorney and judge experience lead to district courts’ deviating from their historic trends. \(\gamma_6\) informs whether attorney experience affects plaintiff claims. \(\gamma_7\) teases out whether plaintiffs take into account changes in trend when formulating their claims.

Finally, several technical and substantive checks have been done. Robust standard errors are used. Judge random effects are controlled in the first equation. The structural equation model is clustered by cases. Several different sets of variables have been added to unreported models to explore the relationship among case outcomes, judge experience, and attorney experience:

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\(^{27}\) In unreported models, a dummy variable capturing whether defendants explicitly counter plaintiffs’ claimed pain and suffering damages is included in the first equation. The result is not robust. Sometimes it is statistically significant (with the expected negative sign), while sometimes it is not statistically significant. This dummy variable is ultimately omitted due to potential endogeneity problem.

\(^{28}\) The annual income information was acquired by courts via the Ministry of Finance and reported in the court decisions.

\(^{29}\) We set the variance of \(e_{2i}\) to 1 to identify the parameters. Moreover, we allow for residual correlation between equations 1 and 2.
the supreme court representation experience of plaintiff and defendant attorneys; age differences between attorneys; the number of times the plaintiff attorneys has appeared before the judges; the number of times the plaintiff attorneys and the defendant attorneys have represented opposite parties in litigation; and the gender combination of the judges and the plaintiffs. None of these unreported variables are statistically significant.

V. Data

A legal service provider, Ping-Lu Web (www.pinguweb.com), provides us with a rich data set on the experience of all Taiwanese attorneys and all Taiwanese judges as of June 30, 2014. Ping-Lu Web downloaded millions of cases, freely available on the official court case database (http://jirs.judicial.govtw/Index.htm), and tallied the number of times any lawyer (judge) appears as an attorney (judge) of a case. The only drawback of this data set is that, as most cases before year 2000 are not available in the official court case database, the experience of judges and attorneys who started their careers before 2000 will be under-estimated.30

As summarized in Part III, no prior work, to the best of our knowledge, has a comprehensive, continuous and accurate measure of jurist experience. Most data measure the number of practicing years or the number of cases an attorney represented within the sample. Our data set allows us to gauge judges’ experience in terms of number of years on the bench and the total number of signed opinions regarding civil, criminal, and administrative matters. It also enables us to measure attorneys’ experience by the number of years since an attorney got her license; the number of years since an attorney first represented a client in a lawsuit; and the number of court cases in which an attorney is listed as a representative of either the plaintiff or the defendant. The percentages of cases in which an attorney represents an individual, a corporation, or the government is also known. See Figure 1, Figure 2, and Figure 3 for the distribution of attorneys’ and judges’ experience, as measured by the number of civil cases handled.

30 In the regression models, we have tried adding dummy variables that indicate whether plaintiffs’ or defendants’ attorneys started to practice before year 2000, in order to capture the potential effect of under-estimating the experience of these senior attorneys. The dummy variables are not statistically significant.
To capture the civil-litigation experience of plaintiffs’ attorneys, defendants’ attorneys, and judges, we use the number of civil cases (attorneys represent and judges adjudicate) as the measure of their legal experience.\(^{31}\) When there are multiple attorneys hired by either party (sometimes one litigant hired multiple attorneys, and sometimes there were multiple plaintiffs or defendants in one case and they hired different attorneys), the experience of the most senior attorney is used. Usually, one judge sits on the bench for a district court trial. Nevertheless, when a junior judge with less than 2 years of experience on the bench is randomly assigned a case, two more senior colleagues would join him or her to form a panel. (There are 40 such cases in our data set.) In this scenario, we use the experience of the most senior judge (usually the presiding judge) to measure the judge experience of those cases.

Figure 1 Distribution of Plaintiff Attorney Experience

\[\text{Number of civil cases plaintiff attorneys have represented (log10)}\]

\(N=327.\) In 63 observations, plaintiffs did not hire attorneys.

\(^{31}\) Number of years of practice has been used in our regression models, with or without the variable on the number of handled cases. We found, however, that the former is not statistically significant in any model. This is an interesting contrast to the prior studies that used this as the measuring rod of attorney experience and found statistically significant results.
Figure 2 Distribution of Defendant Attorney Experience

N=201. In 189 observations, defendants did not hire attorneys.
To match with this unique data set, this project has coded pain and suffering damages cases between September 5, 2013 and September 2, 2014 (during which no judge was transferred to another court).\textsuperscript{32} To better control other facets of the cases and to isolate the effects of the experience of judges and attorneys, only cases involving pain and suffering damages for personal injury incurred in car accidents are included. In addition, only cases in which at least one party has hired at least one attorney-at-law are included in the database. Court decisions rendered in a previous period (T-1) were used to predict the current period (T); thus, pain and suffering damages cases between May 1 and September 4, 2013 were also coded. Both district court and high court cases during this 16-month research period were coded. The same selection criterion applies. The attorneys’ and judges’ experience as of June 30, 2014 will be used as their experience throughout the main research period without adjustment.

In total, we coded 484 civil district court cases (producing 546 observations)

\textsuperscript{32} Every year, judge transfers in Taiwan take place in one pre-specified date in the first week of September.
and all the criminal cases against the defendants of those civil cases. Among them, 390 observations were 1) rendered in the main research period; 2) without missing information in key variables; 3) not extreme outliers (we only exclude one such case). These observations were used in the structural equation model to tease out the effect of jurist experience. 164 appellant court cases have been coded in the same way as well. Major variables used in regression models are summarized below in Table 1, and the distribution of court-adjudicated pain and suffering damages and plaintiff-claimed pain and suffering damages are shown in Figure 4 and Figure 5.

This article focuses on district court cases rather than appellate court cases for the following reasons: first, almost all current studies focus on the appellate or supreme courts. The number of cases in appellate courts is limited; as a result, researchers have to include cases with different fact patterns to gain sufficient degrees of freedom. The advantage of this approach is to include plaintiffs and defendants with and without legal resources (the have and the have nots). The downside of this approach is that the effect of attorneys’ experience cannot be isolated if the controls for the nature of the cases are imperfect. Second, a majority of cases (about 60% of the torts cases in Taiwan) were not appealed. Researches on appellate cases may suffer from the selection bias.33 Third, to control and compare the effect of judges’ experience, examining district court judges is preferable, as appellate judges may be similarly senior, while district court judges are more diverse in terms of experience. In addition, under Taiwan’s hierarchical judicial system, district courts are more likely staffed with inexperienced judges (in the absolute sense), who may suffer from the anchoring bias (Chang, Chen, and Lin 2016) and other types of biases. Similarly, attorneys representing appellate cases, particularly supreme court cases, would not be novices. Had this project chosen to study appellate decisions, the variances of judges’ and attorneys’ experience would not be large.

Attorneys are not randomly assigned to civil cases in Taiwan. Nonetheless, as argued above, solo practitioners who take flat fees do not have strong incentives to turn down weak cases. To formally test our contention, we

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33 Adjudicated cases are biased in the sense that most disputes are settled. Nonetheless, we are interested in studying judicial behaviors and the influence of attorneys on judges. Thus, lacking information on settled disputes will not bias our results.
conducted a series of chi-square tests and Fisher’s exact tests. In these tests, we used, in rows, the variables used in the hedonic regression models and transformed continuous variables (such as months of declared incarceration and medical expenses) into ordinal variables. The column variables are either “hiring attorneys versus not hiring attorneys” or “hiring attorneys with above-median experience versus hiring attorneys with below-median experience.” We do these tests separately for plaintiffs and defendants.

Most unreported test results demonstrate that no statistically significant association exists between attorney experience (or attorney hiring) and case characteristics. The following statistically significant associations, however, do exist: 1) defendants were more inclined to retain (more experienced) attorneys when plaintiffs suffered from grave injury rather than minor injury; 2) defendants that include corporations vicariously liable, as compared to defendants that do not, are not more inclined to retain attorneys; however, among defendants who retain attorneys, cases with corporate defendants are associated with more experienced attorneys; 3) when defendants include corporations vicariously liable, as compared to when defendants do not, plaintiffs are more inclined to retain attorneys. As a whole, although our data are not produced by a (natural) experiment in which attorneys are randomly assigned to cases, thanks to the attorney fee structure, the selection effect appears to be minor. Put differently, the cases are homogenous between those represented by attorneys and those not represented by attorneys; the cases are also homogenous between those represented by experienced attorneys and those represented by inexperienced attorneys.

For robustness check, we also tried propensity score matching method based on whether attorneys have above- or below-median experience. Due to case homogeneity as mentioned above, however, the regression results are very similar to those reported in Table 2.

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34 We have tried to allot the observations equally into 2, 3, 4, or 5 groups.
Figure 4 The distribution of court-adjudicated pain and suffering damages


Figure 5 The distribution of plaintiff-claimed pain and suffering damages

### Table 1 Summary Statistics of Variables

<table>
<thead>
<tr>
<th>Continuous Variables</th>
<th>Obs</th>
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<th>Std. Dev.</th>
<th>Min</th>
<th>Max</th>
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<td>0.813</td>
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<td>inter-court deviation, 1 to 12 weeks before verdict (ln) = A</td>
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<td>Estimated PS damages in High Court, 5-16 weeks before verdict (ln)</td>
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<td>Estimated PS damages in District Court, 5-16 weeks before verdict (ln)</td>
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Categorical Variables

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<td>390</td>
<td>12</td>
<td>3.08</td>
</tr>
<tr>
<td>390</td>
<td>134</td>
<td>34.36</td>
</tr>
<tr>
<td>390</td>
<td>121</td>
<td>31.03</td>
</tr>
</tbody>
</table>

Note: Damages in New Taiwan Dollars. US Dollars: New Taiwan Dollars=1:30.

VI. FINDINGS AND IMPLICATIONS

A. Judges Pay Close Attention to High Court Decisions

The structural equation model shows that district court judges followed the historic trend set by high courts. The variable on inter-court deviation in the first equation in Table 2 has a positive sign and is statistically significant at the 0.05 level. This suggests that when, in the three months prior to the district court decisions, high courts have increased the amount of pain and suffering damages relative to district courts, district court judges in the current period tended to increase the awarded amount. Following the assessment patterns set by high courts could reduce the probability of reversal and in the long run increase judges’ chances of being promoted to high courts. Hence, our finding will not be very surprising.
## Table 2 SEM results

<table>
<thead>
<tr>
<th>Dependent variable</th>
<th>intra-court deviation (ln)</th>
<th>Deviation of plaintiff’s claim from district court cases 5–16 weeks before verdict (ln)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coef.</td>
<td>Std. Err</td>
</tr>
<tr>
<td>Inter-court deviation, 1–12 weeks before verdict (ln)</td>
<td>0.157</td>
<td>** (0.080)</td>
</tr>
<tr>
<td>Plaintiff-claim deviation (ln)</td>
<td>0.985</td>
<td>*** (0.076)</td>
</tr>
<tr>
<td>Judge’s civil experience (ln)</td>
<td>0.049</td>
<td>(0.049)</td>
</tr>
<tr>
<td>=1 if plaintiff hires attorney(s)</td>
<td>0.364</td>
<td>(0.337)</td>
</tr>
<tr>
<td>Plaintiff attorney’s civil experience (ln)</td>
<td>-0.086</td>
<td>(0.057)</td>
</tr>
<tr>
<td>=1 if defendant hires attorney(s)</td>
<td>0.117</td>
<td>(0.289)</td>
</tr>
<tr>
<td>Defendant attorney’s civil experience (ln)</td>
<td>-0.001</td>
<td>(0.049)</td>
</tr>
<tr>
<td>7 injury-level dummies (baseline: 2. Temporary insignificant)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Temporary minor</td>
<td>1.446</td>
<td>(0.917)</td>
</tr>
<tr>
<td>4. Temporary major</td>
<td>1.653</td>
<td>+ (0.918)</td>
</tr>
<tr>
<td>5. Permanent minor</td>
<td>1.730</td>
<td>+ (0.920)</td>
</tr>
<tr>
<td>6. Permanent significant</td>
<td>1.737</td>
<td>+ (0.949)</td>
</tr>
<tr>
<td>7. Permanent major</td>
<td>1.867</td>
<td>* (0.926)</td>
</tr>
<tr>
<td>8. Permanent grave</td>
<td>1.806</td>
<td>+ (0.928)</td>
</tr>
<tr>
<td>Court-adjudicated medical-related expenses (ln)</td>
<td>0.064</td>
<td>** (0.022)</td>
</tr>
<tr>
<td>Defendant’s length of declared incarceration (ln)</td>
<td>0.072</td>
<td>(0.063)</td>
</tr>
<tr>
<td>Estimated PS damages in district courts 5–16 weeks before verdict (ln) minus estimated PS damages in district courts 1–12 weeks before verdict (ln)</td>
<td>0.767</td>
<td>*** (0.161)</td>
</tr>
<tr>
<td>Inter-court deviation, 5–16 weeks before verdict (ln)</td>
<td>0.255</td>
<td>** (0.081)</td>
</tr>
<tr>
<td>=1 if defendants include a corporation which is vicariously liable</td>
<td>0.044</td>
<td>(0.092)</td>
</tr>
<tr>
<td>=1 if defendant drove under the influence of alcohol</td>
<td>-0.003</td>
<td>(0.160)</td>
</tr>
<tr>
<td>=1 if defendant hit and ran</td>
<td>-0.066</td>
<td>(0.436)</td>
</tr>
<tr>
<td>Plaintiff-claimed medical expenses</td>
<td>-0.037</td>
<td>+ (0.020)</td>
</tr>
<tr>
<td>=1 if plaintiff has to pay court fee</td>
<td>-0.034</td>
<td>(0.103)</td>
</tr>
<tr>
<td>plaintiff’s age (ln)</td>
<td>-0.228</td>
<td>* (0.090)</td>
</tr>
</tbody>
</table>
=1 if plaintiff’s age is missing & -1.063 ** (0.346) 
plaintiff’s income (ln) & -0.000 (0.007) 
=1 if plaintiff’s income is missing & 0.085 (0.102) 
18 court dummies & Yes & Yes 
Constant & -4.218 *** (1.035) & 3.790 *** (0.536) 
σ₁ & 0.688 *** (0.139) 
σ₂ & 0.83 *** (0.035) 
P & -0.531 *** (0.278) 

Robust standard errors in parentheses. Clustered by cases. Judge random effects apply. PS damages= pain and suffering damages. 
*** p<0.001, ** p<0.01, * p<0.05, + p<0.1.
Log likelihood=-821.88333

B. Attorney Influence on Plaintiff Claim

Whether plaintiffs hire attorney is significantly associated with how plaintiffs claim and how judges adjudicate. As for the former, Table 2 reveals that plaintiffs represented by attorneys with little experience claimed less than those self-represented or represented by non-attorneys \( p<0.05 \). Plaintiffs’ claims, however, increase with the experience of their attorneys \( p<0.05 \). This is consistent with our conjecture. In addition, inter-court deviation is positively associated with the deviation of plaintiffs’ claimed amount \( p<0.01 \), suggesting that plaintiffs in general paid close attention to the changing trend in high courts, too.

The experience of plaintiffs attorneys affects case outcomes, but attorney representation is close to random assignments. As Table B.1 in the Appendix shows, plaintiff incomes do not affect whether plaintiffs seek attorney representation. The major driver of plaintiffs’ decisions to retain attorneys is whether defendants include a corporation \( p<0.01 \). Perhaps plaintiffs hire attorneys when they identify a deep pocket. Due to technical constraints, we cannot use plaintiff attorney experiences (or representation) and defendant attorney experiences (representation) as dependent variables in additional
It is surprising that plaintiffs who did not have to pay court fees did not deviate more from the historic trend, as the relevant dummy variable in the second equation is not statistically significant. Chang, Ho, and Hsu (2016), using data on pain and suffering damages in Taiwan in 2008—2012, also finds that there is no empirical evidence to support the conjecture that economically rational plaintiffs who do not have to pay pro rata court fees will over-claim as compared to those who have to pay. As said above, the judges we interviewed sense that our conjecture holds water, and the attorneys we interviewed admitted that they tend to do exactly as we hypothesize. What explains the robust statistical insignificance needs to be studied further in future work.

C. Plaintiff Attorney Influence on Adjudication

More experienced plaintiff attorneys win higher pain and suffering damages for their clients. The plaintiffs’ claimed amounts created the anchoring effect. When plaintiffs’ claims are higher than the point estimates based on cases of the previous three months, district court judges tend to award higher pain and suffering damages ($p<0.001$). As discussed above, plaintiffs’ claims were further affected by attorney representation and attorney experience. Hence, through the anchoring effects, plaintiffs who hire senior attorneys were able to garner higher pain and suffering damages. For example, an increase of plaintiff attorney experience by 1% (3.45 cases) would on average lead to an increase of 0.122% ($50.67) in claim, which further results an increase of 0.120% ($49.84) in pain and suffering damages awards.

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35 When we added one or two more equations to the reported two-equation structural model, the model did not converge. We have tried excluding cases where plaintiffs were not represented by attorneys to focus solely on the effect of plaintiff attorney experience. Putting those cases into the reported model reveals a largely similar result. Our main story holds, though the $p$-values do shift a bit, sometimes crossing the threshold of statistical significance. We have also put those cases into a three-equation structural model—the reported model plus one equation to account for the defendants’ decision to retain attorneys. Again the main story reported in the text and Appendix B.2 remains intact.

36 The finding of the anchoring effect is consistent with our prior research on property disputes in Taiwan (Chang, Chen, and Lin 2016) and experimental results conducted by others (Chapman and Bornstein 1996; Campbell et al. 2014).

37 These numbers are calculated based on the sample averages of plaintiff attorney experience (345) and plaintiff’s claim ($41535). $0.122\% \times 0.985 = 0.120\%$. The exchange rate used is
This finding, however, does not imply that plaintiffs who seek higher pain and suffering damages have to retain senior attorneys to achieve this goal. As long as plaintiffs can identify the historical trends in high courts and district courts and are willing to gamble by over-claiming, they may be awarded with higher pain and suffering damages as well. As Table 2 suggests, plaintiffs not represented by attorneys tend to claim higher than those represented by attorneys ($p<0.05$). These unassisted plaintiffs received higher pain and suffering damages through the anchoring effects.

D. **Judge Experience Does Not Affect Deviation Pattern**

The judges’ own experience does not affect intra-court deviation. Unreported SEM models show that interaction terms of judge experience and other factors do not yield statistically significant results. This suggests that senior judges in district courts were not more or less inclined to deviate from historic trend set by high courts than junior judges. The interaction terms’ lack of statistical significance could be interpreted in the following way: district court judges of all experience have equally prepared to follow high courts.\(^{38}\) By doing so, district court judges expect to face lower reversal rates and thus increasing their chances of being promoted and receiving more year-end bonus.

E. **Defendant Attorney Has No Role**

As Table 2 shows, whether a defendant hires attorneys and defendant attorney experience do not affect the extent to which district courts deviate from the historic trend. The lack of effect is puzzling. Perhaps defendant attorneys work on dismissing the case altogether or arguing that plaintiffs are comparatively negligent. Our data do not allow us to test these hypotheses.

Defendants’ decisions to retain attorneys are mainly influenced by the

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\(^{38}\) In unreported models, we divided the samples into 2 equal-size groups according to the experience of judges. The same structural model reported in the text was run on the 2 groups separately. The results are consistent with Chang, Chen, and Lin (2016)—experienced judges were not subject to the anchoring effect, whereas inexperienced judges were.
compensation risk they were exposed to, as Table B.2 in the Appendix shows. More specifically, natural log of the amount of total claims made by plaintiffs is positively and statistically significantly associated with the binary decision of defendants’ hiring attorneys (p<0.01). This result is sensible, as defendants care more about how much they would have to pay than the categories of the damages. When defendants are more exposed to risks of high damages, they are inclined to seek legal representation. Besides, again, defendant incomes do not have statistically significant relation with defendant attorney representation.

F. Other Factors Affecting Judicial Decisions

The statistical significance of court-adjudicated medical expenses and injury dummies is surprising. These factors have been taken into account in our hedonic regression models and are already considered in the trend we identified. This finding suggests that district court judges are prone to give more and more weights to severe injuries across our relatively short research period (16 months).

VII. Conclusion

The innovation and contribution of this article is using the most accurate measure of attorneys’ and judges’ experience to date in new and well-specified regression models to directly examine the effect of jurists’ experience, which has not been fully explored. The structural equation model reveals that in adjudicating pain and suffering damages, district court judges deviated from the historic trend in order to follow the recent changes in assessment patterns in high courts. Senior plaintiff attorneys win their clients more pain and suffering damages by claiming higher amounts of damages, which create the anchoring effect. Judge experience and defendant attorney experience do not affect whether district court judges deviate from the historic trend.

Plaintiffs’ ad damnum creates an anchoring effect, and senior plaintiff attorneys have exploited this judicial bias in tipping the case toward their clients’ favor. Policy makers in jurisdictions where ad damnum is a pre-requisite should seriously consider reform proposals that could reduce the undue bias creating by plaintiffs’ claims.
We have demonstrated the added value of plaintiff attorneys’ experience. Yet, this may not be the whole reason for the higher fee charged by seasoned attorneys. This study examines the impact of claim formulation by plaintiff attorneys, while they can change litigation outcomes in other ways as well.\(^\text{39}\) There are still a lot of empirical studies on attorney experience to be done!

\[^{39}\text{For discussions on how attorneys can change litigation outcomes via other ways, see generally, for example, Galanter (1974), Kritzer (1998), Aldisert (1992), and Haire, Lindquist, and Hartley (1999).}\]
**APPENDIX A: PREDICTING COURT-ADJUDICATED PAIN AND SUFFERING DAMAGES**

Table A.1 Hedonic Regression Models on Court-Adjudicated Pain and Suffering Damages

<table>
<thead>
<tr>
<th>Dependent variable</th>
<th>Court-Adjudicated pain and suffering damages</th>
<th>Coef.</th>
<th>Std. Err</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court-adjudicated medical expenses (baseline: low expenses)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>=1 if Medium low expenses (25–50 percentiles)</td>
<td></td>
<td>0.732</td>
<td>*** 0.121</td>
</tr>
<tr>
<td>=1 if Medium high expenses (50–75 percentiles)</td>
<td></td>
<td>0.881</td>
<td>*** 0.120</td>
</tr>
<tr>
<td>=1 if High expenses (75–100 percentiles)</td>
<td></td>
<td>1.393</td>
<td>*** 0.128</td>
</tr>
<tr>
<td>Levels of injury (baseline: minor injury)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>=1 if Grave injury</td>
<td></td>
<td>0.959</td>
<td>*** 0.095</td>
</tr>
<tr>
<td>=1 if Vegetative state</td>
<td></td>
<td>0.948</td>
<td>*** 0.165</td>
</tr>
<tr>
<td>=1 if defendant drove under the influence of alcohol</td>
<td></td>
<td>0.193</td>
<td>(0.118)</td>
</tr>
<tr>
<td>=1 if defendant hit and ran</td>
<td></td>
<td>-0.470</td>
<td>(0.311)</td>
</tr>
<tr>
<td>Defendant’s number of months jailed (ln)</td>
<td></td>
<td>0.217</td>
<td>*** 0.057</td>
</tr>
<tr>
<td>=1 if defendants include a corporation which is vicariously liable</td>
<td></td>
<td>0.191</td>
<td>** 0.074</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>11.222</td>
<td>*** 0.129</td>
</tr>
</tbody>
</table>

N=508

R²=0.527

Robust standard errors in parentheses. Clustered by cases.

*** p<0.001, ** p<0.01, * p<0.05, + p<0.1
APPENDIX B: ATTORNEY HIRING DECISIONS

Table B.1 Probit Regression Models on Plaintiffs' Hiring Attorney(s)

<table>
<thead>
<tr>
<th>Dependent variable</th>
<th>Coef.</th>
<th>Std. Err</th>
</tr>
</thead>
<tbody>
<tr>
<td>plaintiff's income (ln)</td>
<td>0.021</td>
<td>(0.017)</td>
</tr>
<tr>
<td>=1 if plaintiff's income is missing</td>
<td>0.325</td>
<td>(0.229)</td>
</tr>
<tr>
<td>plaintiff's age (ln)</td>
<td>-0.332</td>
<td>(0.226)</td>
</tr>
<tr>
<td>=1 if plaintiff's age is missing</td>
<td>-1.266</td>
<td>(0.843)</td>
</tr>
<tr>
<td>7 injury-level dummies (baseline: 2. Temporary insignificant)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Temporary minor</td>
<td>-0.897 +</td>
<td>(0.542)</td>
</tr>
<tr>
<td>4. Temporary major</td>
<td>-1.046 +</td>
<td>(0.549)</td>
</tr>
<tr>
<td>5. Permanent minor</td>
<td>-0.853</td>
<td>(0.563)</td>
</tr>
<tr>
<td>6. Permanent significant</td>
<td>-1.43 *</td>
<td>(0.662)</td>
</tr>
<tr>
<td>7. Permanent major</td>
<td>-0.986</td>
<td>(0.601)</td>
</tr>
<tr>
<td>8. Permanent grave</td>
<td>0.000</td>
<td>(.)</td>
</tr>
<tr>
<td>=1 if defendants include a corporation which is vicariously liable</td>
<td>0.674 **</td>
<td>(0.229)</td>
</tr>
<tr>
<td>=1 if defendant drove under the influence of alcohol</td>
<td>0.156</td>
<td>(0.358)</td>
</tr>
<tr>
<td>=1 if defendant hit and ran</td>
<td>-0.442</td>
<td>(0.427)</td>
</tr>
<tr>
<td>=1 if plaintiff is a male</td>
<td>0.102</td>
<td>(0.176)</td>
</tr>
<tr>
<td>18 court dummies</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>2.949 **</td>
<td>(1.047)</td>
</tr>
</tbody>
</table>

N=382
Pseudo R²=0.092

Robust standard errors in parentheses. Clustered by cases. PS damages= pain and suffering damages.

*** p<0.001, ** p<0.01, * p<0.05, + p<0.1.
Log pseudolikelihood=-155.2775
Table B.2 Probit Regression Models on Defendants’ Hiring Attorney(s)

<table>
<thead>
<tr>
<th>Dependent variable</th>
<th>Coef.</th>
<th>Std. Err</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plaintiff attorney's civil experience (ln)</td>
<td>-0.019</td>
<td>(0.098)</td>
</tr>
<tr>
<td>Plaintiff’s total claim</td>
<td>0.291 **</td>
<td>(0.108)</td>
</tr>
<tr>
<td>Defendants’ maximum income (ln)</td>
<td>-0.013</td>
<td>(0.019)</td>
</tr>
<tr>
<td>=1 if all defendants’ income are missing</td>
<td>-0.303</td>
<td>(0.250)</td>
</tr>
<tr>
<td>7 injury-level dummies (baseline: 2. Temporary insignificant)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Temporary minor</td>
<td>-0.175</td>
<td>(0.837)</td>
</tr>
<tr>
<td>4. Temporary major</td>
<td>-0.175</td>
<td>(0.832)</td>
</tr>
<tr>
<td>5. Permanent minor</td>
<td>0.049</td>
<td>(0.840)</td>
</tr>
<tr>
<td>6. Permanent significant</td>
<td>-0.053</td>
<td>(0.912)</td>
</tr>
<tr>
<td>7. Permanent major</td>
<td>0.111</td>
<td>(0.880)</td>
</tr>
<tr>
<td>8. Permanent grave</td>
<td>-0.119</td>
<td>(0.900)</td>
</tr>
<tr>
<td>=1 if defendants include a corporation which is vicariously liable</td>
<td>0.305</td>
<td>(0.190)</td>
</tr>
<tr>
<td>=1 if defendant drove under the influence of alcohol</td>
<td>0.206</td>
<td>(0.277)</td>
</tr>
<tr>
<td>=1 if defendant hit and ran</td>
<td>-0.615</td>
<td>(0.502)</td>
</tr>
<tr>
<td>18 court dummies</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-4.076 *</td>
<td>(1.778)</td>
</tr>
<tr>
<td>N=321</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pseudo R^2=0.127</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Robust standard errors in parentheses. Clustered by cases. PS damages= pain and suffering damages. Cases in which plaintiffs do not hire attorneys are excluded in this Probit regression because in our sample, defendants always hire attorneys in those cases; thus, there is no variance.

*** p<0.001, ** p<0.01, * p<0.05, + p<0.1.
Log pseudolikelihood= -190.1241
References


