

The *Journal of Forensic Economics*: Revisiting Its Perspective and Agenda for Research

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Abstract

This issue of the *Journal of Forensic Economics (JFE)* begins the 25th volume of that publication. As the first Editor of the *JFE* and the co-author of the first paper published in that journal, “Forensic Economics: A Perspective and an Agenda for Research” I have been asked to offer comments on the role that the *JFE* has had in the development of the field of Forensic Economics over the past 25 years. This paper examines the evolution of the journal in terms of the focus of papers published by field of investigation and presents the results of a survey of subscribers on their views on the quality of the *JFE*, its strengths and its shortcomings. Finally, a new agenda for the *JFE* is offered that will discuss the primary problems the journal will likely face in the next 25 years and the areas of research to be addressed.

I. Introduction

In the 1987 inaugural issue of the *Journal of Forensic Economics (JFE)*, Gerald Olson and I wrote a paper, “Forensic Economics: A Perspective and an Agenda for Research” (Ward and Olson, 1987). The National Association of Forensic Economics (NAFE) was a year old and the *JFE* filled an important role in that organization’s development.¹ Since the founding of the *JFE*, forensic economics has evolved into a distinct subfield of economics (*JEL* Code K13), with a research literature and institutional structure that has balanced the academic and professional interests and goals of its members. Prior to 1987, research material on damages analysis in torts was limited to occasional papers published in such journals as the *Journal of Risk and Insurance* and the *Journal of Human Resources*, university law reviews, and trade periodicals such as *Trial* and *For the Defense*. The *JFE* has provided economists with an outlet for research dedicated to a variety of damages analysis such as personal injury and wrongful death, employment litigation, and commercial disputes.

This issue of the *JFE* represents the first in the 25th volume and it is the 67th overall published issue of the *JFE*. From 1987 through the summer of

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¹NAFE stood for the National Association of Forensic Economists until the organization’s name was changed to the National Association of Forensic Economics in 1990.

2013, 530 papers have been published in the *JFE*, not including book reviews, notes, letters and abstracts. That literature has formed a substantial part of the foundation for what we call Forensic Economics.² The objectives of this paper are to

1. offer a hindsight appraisal of the *JFE*'s success in addressing the agenda for research we outlined in the first issue of the journal,
2. present the results of a survey of NAFE members on their views of the contributions of the *JFE* to the field of forensic economics, and
3. offer an updated agenda for research as the *JFE* begins the next 25 volumes of publication.

The founding of NAFE and its publication of the *JFE* represented the formalization of a discipline that evolved not from theoretical study but from the largely part-time consulting activity of economists. Since the formalization of the field of forensic economics has occurred in a relatively short time, most of the items identified as needing research in the inaugural issue of the *JFE* are still being debated today.

II. Agenda for Research

As stated in our “Agenda for Research” paper in the first issue of the *JFE*:

The primary focus of the research of the forensic economist is the measurement of market loss (damages) arising from market failures, contract disputes or Torts. Taking the law as given, the forensic economist applies economic theory to problems of valuation presented in litigation. This does not mean that the forensic economist is a passive agent in the legal process—simply an expert. Through the application of more rigorous tools of measurement and prediction of damages in litigation, the forensic economist complements the research of the welfare economist. (Ward and Olson, 1987, p. 2)

It was suggested that forensic economics could be separated into two divisions. The first division consists of economic analysis in public interest disputes such as public utility rate disputes, anti-trust and environmental law violations arising from market failures. The second division involves the measurement of damages arising from private interest disputes such as commercial litigation, employment litigation marital and property disputes and personal injury and death litigation. The second division became the primary focus of research published in the *JFE* and specific areas of needed research included:

²In 1991, the Academy of Economic and Financial Experts began publication of the *Journal of Legal Economics (JLE)* and 54 issues of that journal have been published to date. NAFE began publication of a second journal, *The Legal Economic Digest* in 1995, which was renamed the *Litigation Economic Review* in 2001 and focused on the publication of applied research in forensic economics until 2003. These journals have contributed over 400 published papers to the literature of forensic economics.

1. the determination of worklife expectancies and appropriate retirement ages for forecasting lifetime earnings,
2. the development of econometric techniques to replace simple arithmetic projections of economic parameters to forecast damages,
3. the appropriate measure of self-consumption to deduct from lifetime earnings in wrongful death litigation,
4. the methods to forecast growth and the selection of discount rates in determining the present value of future lifetime earnings, and,
5. the measurement of the value of home services as a damage in personal injury and wrongful death.

In addition to the above, predictable areas of research, we identified other topics for investigation such as the valuation of economic loss to parents from the wrongful death of a child and the unique valuation of earnings losses to the self-employed. No mention was made of research into hedonic damages and little discussion was included on commercial damages.

In *JFE* 1:1, reference was made to the need for forensic economics to address the legal framework of torts when we perform damages calculations. We suggested that:

Economists must continue to pursue the issues regarding the differences between what is legally permissible and what is economically correct. By so doing, the profession can contribute significantly to the theory of economic welfare and to the application of that theory to practical problems in litigation. (pg. 8)

The issue raised was whether forensic economists should address the legal parameters within which we perform our calculations. Should we advocate the elimination of damages caps on non-economic damages, the inclusion of some collateral sources of income as offsets to loss, reduction of lost earnings for taxes or the admissibility of utility-based categories of damages such as hedonic damages or lost values of advice, counsel or companionship? The *JFE* record of publication in a wide variety of areas reveals the interests of its readers as fulfilled by authors who often formalize in articles the debates occurring at NAFE conferences or in its electronic forum NAFE-L. Many articles have been framed by issues that developed during the course of the author's practice of forensic economics—how would you forecast damages in a specific instance?

III. Record of Publication

In the 25 years following the first issue of the *JFE*, 31 papers were published with hedonics in the title, 34 papers with consumption in the title, 40 papers with discount or discounting in the title, 31 with worklife in the title, and 21 with household services in the title. In Table 1, the number of papers published in the *JFE* by decade and, by subject area to present, are shown, along with all papers published in the *Legal Economic Digest (LED)* and the *Litigation Economic Review (LER)*.

Table 1

Subject areas	Published <i>JFE</i> Papers by Subject				<i>LED</i>	Grand
	1987-96	1997-06	2007-13	Total	<i>LER</i>	Total
Divorce	4	5	0	9	1	10
PI/Death	195	144	44	383	38	421
Commercial	29	16	2	47	21	68
Employment	10	21	1	32	4	36
Other	27	24	8	59	17	76

The great majority of papers published have been in the area of personal injury and death damages. The *JFE*, in an attempt to broaden its focus, has published a number of Symposia papers since 1987 in the subject areas of ethics in 1991 and 2013; commercial damages in 1993; whole time and hedonic damages in 1990, 2000, 2001 and 2008; forensic decision analysis in 2005; fringe benefits in 2002, and; employment law in 2003. The State series has covered personal injury and wrongful death controlling statutes and case law in 28 states and the Commonwealth of Puerto Rico.

The *JFE* has had four Executive Editors over its 26-year existence, John Ward, Michael Piette, Steven Shapiro and James Ciecka. Each would agree that soliciting and selecting papers for publication has become more difficult with the passage of time, even though the quality of papers published has generally remained high. Kurt Krueger, as Managing Editor of the *JFE* has assisted in bringing the *JFE* into the modern electronic publication world and Production Editor Nancy Eldredge has worked to keep the *JFE* consistent, accurate, and professional. The major expenditures of NAFE involve the publication of the *JFE*. In 1987 the annual membership cost of NAFE was \$60, and entitled the member to three issues of the *JFE*. Now, annual membership costs \$215 and entitles the member to two issues per year. The cost per issue of the *JFE* from 1987 to the present has increased at a nominal annual rate of 7%, which is consistent with general publishing cost. Certainly the success of producing the *JFE* has been due to the efforts of its editors, board of editors, associate editors, but the quality of the journal mostly rests with the efforts of our paper referees. Since Volume 14, 235 persons have served as *JFE* referees.

Judging the quality of a journal is complicated. Certainly the *JFE* (along with the *JLE*, *LER* and the *LED*) has developed an impressive quantity of literature and that literature has served the NAFE membership well. But, submissions have declined in the past decade and the primary focus of the journal has remained on personal injury and death issues. The aging of the NAFE membership and the fact that new members increasingly come from non-academic, consulting backgrounds, suggests that submissions may well continue to decline. It should be noted that 194 of the 530 papers published in the *JFE* since its beginning were authored by just nine individuals.³

³Those authors in order of number of papers were Tom Ireland, Frank Slesnick, James Ciecka, Robert Thornton, Michael Brookshire, Michael Piette, Kurt Krueger, John Ward and Frank Tinari.

To address the views of NAFE members about the quality, balance, strengths and weaknesses of the *JFE* a survey of members was taken in the Fall of 2013.

IV. Survey Responses

In August of 2013, NAFE members were asked to express their views on the strengths, weaknesses, and future direction of the *JFE* by participating in a survey using Survey Monkey. We received 124 responses from 550 e-mail invitations to NAFE members. The survey consisted of 13 questions covering members' use of the *JFE*, reliance on subject matter published in the *JFE*, and views about the quality, strengths and shortcomings of the journal. The last question focused on the background of the member. We also asked members to offer comments on the survey questions

1. How often do you rely on papers published in the *JFE* as foundation for your own forensic economic opinions?

Answer Options	Response Percent	Response Count
Nearly always	19.6%	24
Often	59.3%	73
Infrequently	20.3%	25
Never	0.8%	1

- Especially helpful in such areas as the personal consumption allowance and LPE.
- I provide a written report to my clients. The reports have numerous *JFE* references for the valuation approach and data sources.
- I always rely on the papers published by Skoog, Ciecka and Krueger regarding worklife expectancy and the Ajwa, Martin & Vavoulis paper regarding personal consumption in wrongful death cases.
- I am often asked in deposition whether there exists peer-reviewed support of a certain methodology and often cite papers published in the *JFE*.

2. How often have you used papers published in the *JFE* to critique the methodologies used by other forensic economists?

Answer Options	Response Percent	Response Count
Nearly always	4.8%	6
Often	42.7%	53
Infrequently	46.0%	57
Never	6.5%	8

- These papers have been essential in critiquing experts who refuse to stay current in [the] field.
- *JFE* papers sometimes attempt to see how many angels can dance on the head of a pin. Life in depositions and court rooms is less complicated.

3. How would you rate the contribution of research published in the *JFE* to the development of the field of forensic economics?

Answer Options	Response Percent	Response Count
Of critical importance	49.2%	60
Important	47.5%	58
Minimal importance	3.3%	4
Unimportant	0.0%	0

- The annual update as to the methodology employed by fellow practitioners has been extremely useful in backing up my positions during cross-examination.
- I think that published research has shaped our methodologies.

4. How often do you read “State Series” articles to discover damages law in the various states?

Answer Options	Response Percent	Response Count
Nearly always	17.7%	22
Often	33.9%	42
Infrequently	38.7%	48
Never	9.7%	12

- I hope *JFE* continues this series, because it is the only reputable source that provides this aggregated data.
- I don't trust legal evaluations from other forensic economists. The expert I rely upon is the attorney who retains me.

5. In what areas of personal injury/death damages has research published in the *JFE* been most helpful to you?

Answer Options	Unimportant	Sometimes Important	Somewhat Important	Very Important	Rating Average*	Response Count
Worklife expectancy	5	12	14	91	3.57	122
Household services	17	24	38	42	2.87	121
Growth and discounting	13	37	42	29	2.72	121
Self-consumption	11	28	30	54	3.03	123

*To compute the Rating Average the number 1 was assigned to Unimportant, 2 was assigned to Sometimes Important, 3 was assigned to Somewhat Important, and 4 was assigned to Very Important.

- The area of worklife expectancy has been the most “settled” of these four issues, and it was the research over the years that made everyone use modern worklife expectancy analysis.
- I think that I have received more help from the email lists than from the published articles.

6. How would you rate the amount of pages in the journal devoted to each research topic?

Answer Options	Not Enough	Enough	Too Much	Rating Average*	Response Count
Personal injury/death	10	106	5	1.96	121
Commercial	38	73	10	1.77	121
Employment/discrimination	32	86	2	1.75	120

*To compute the Rating Average the number 1 was assigned to Not Enough, 2 was assigned to Enough, and 3 was assigned to Too Much

- Commercial damages seems to be the biggest growth area in the field and could encourage more professionals (CPA's) to join NAFE.

7. How much advocacy is contained in volumes of the *JFE*?

Answer Options	Response Percent	Response Count
Most articles advocate plaintiff or defendant viewpoints	7.4%	9
Plaintiff and defendant viewpoints are equally represented	21.3%	26
Few articles contain advocacy	65.6%	80
No articles contain advocacy	5.7%	7

- The notion that *JFE* papers are either plaintiff or defendant oriented is nonsense. The editors have made an effort to stay clear of being either plaintiff or defense oriented.
- Subtle advocacy—usually plaintiff—can be found in some articles.

8. Rate the controversial level of each area of research:

Answer Options	Not Controversial	Sometimes Controversial	Always Controversial	Rating Average*	Response Count
Worklife expectancy	40	64	17	1.81	121
Household services	32	71	16	1.87	119
Growth and discounting	20	53	49	2.24	122
Personal consumption	14	78	27	2.11	119
Lost profits	24	56	29	2.05	109
Business valuation	18	55	31	2.13	104

*To compute the Rating Average the number 1 was assigned to Not Controversial, 2 was assigned to Sometimes Controversial, and 3 was assigned to Always Controversial.

- Sometimes controversial relates to differing opinions, such as using current and historic discount rates. Neither is incorrect. In lost profits, there tends to be more advocacy and incorrect conclusions.

9. Compared to other related forensic economic journals, how would you characterize the *JFE*?

Answer Options	Response Percent	Response Count
Higher quality than other related journals	73.7%	87
Same quality as other related journals	24.6%	29
Lower quality than other related journals	1.7%	2

- The other forensic economic journal I am thinking of is very good but is more practice-oriented. Each journal has its place.

10. How has the existence of the *JFE* improved your work as a forensic economist?

Answer Options	Response Percent	Response Count
Greatly enhanced my work	58.1%	72
Somewhat enhanced my work	34.7%	43
Little impact on my work	7.2%	9
Has not impacted my work	0.0%	0

- Having the articles to refer to in the *JFE* greatly improves my abilities and knowledge as a forensic economist. It also gives me added credibility because of the knowledge I have garnered from it.

11. Have you authored a paper appearing in the *JFE*?

Answer Options	Response Percent	Response Count
Yes	27.0%	33
No	73.0%	89

12. Do you plan on submitting an article to the *JFE* in the future?

Answer Options	Response Percent	Response Count
Yes	27.4%	34
No	44.4%	55
Maybe	28.2%	35

13. How would you characterize your weekly working time?

Answer Options	Response Percent	Response Count
Fully academic	2.4%	3
Split my time between academics and professional work	21.0%	26
Retired academic, now 100% professional work	16.1%	20
100% professional work	47.6%	59
Other (please specify)	12.9%	16

If the above survey results are reflective of our members as a whole, a minority (23.4%) of our members are now full- or part-time academics and a large majority of members are full-time professional forensic economists (FE's). This is quite different than our members 25 years ago, when university faculty were in the majority. In a 1990 survey of NAFE members by Michael Brookshire, et al., members reported that 45.16% of their earnings came from faculty salaries on average, and 34.28% came from forensic economic consulting. (Brookshire, Slesnick and Lessne, 1990)

Only a minority of members reported authoring a paper for the *JFE* (27%) and a minority plan to submit a paper to the *JFE* (27%). Over 58% of responding members believe that the *JFE* has greatly enhanced the quality of their work and nearly all responding members (96.7%) rate the contribution of research published in the *JFE* to the development of the field of forensic economics as important to critically important. Most responding members (79%) often or nearly always use the *JFE* as foundation for their work.

The greatest contribution of the *JFE* to members has been in research on worklife expectancies and the most controversial area of research in the *JFE* has been in wage growth and discounting. The large majority of members be-

lieve that the *JFE* had been impartial in terms of advocating any positions for plaintiffs or defendants.

The survey suggests that NAFE members believe that the *JFE* needs to increase the publication of papers focusing on commercial and employment litigation and that an equal number of respondents use or do not use the State series on damages in their work. Finally, the majority of respondents (73.7%) rated the *JFE* as the highest quality journal in the field of forensic economics.

V. An Agenda for Future Research

Past published research in the *JFE* has undoubtedly enhanced the quality of our work as forensic economists. More accurate measures of worklife expectancy, discussions of alternative instruments for forecasting and discounting future damages and the development of methodologies for measuring lost household services and self-consumption in wrongful death litigation provide forensic economists with essential tools. The State series covering rules of recovery of damages and definitions of economic damages by State has provided forensic economists with a framework for extending our practices to new jurisdictions. The *JFE* has provided a forum for debating issues such as the appropriateness of providing testimony on hedonic damages and lost service and “family” time.

There have been shortcomings in the perceived evolution of the *JFE* from its beginnings especially in the areas of research on commercial damages, employment law damages and economic issues in public law such as environmental and public utility rate litigation. But, subscribers appear to be satisfied with the general direction of research in the *JFE* and the quality of papers published. Movement to electronic peer-review processes and online presentation of the journal have led to greater efficiency in producing the journal and increasing the exposure of NAFE and the *JFE*. The *JFE*'s electronic linkage to search engine websites has made access and use of the journal more efficient.

Issues involving the selection of growth rates of earnings, the selection of discount rates, self-consumption rates, and base wages seem to always be contested. No doubt papers on such issues will always be forthcoming.

In large part, issues involving the legal structures, rules and constraints within which we operate have been unexplored as areas of debate and publication. Should we undertake the discussion of reforms in the “calculation of damages” and the tort system and its rules in general to narrow the gap between what is legally permissible and what is economically correct? State caps on non-economic damages generate pressures on attorneys to seek inventive ways to categorize such damages as economic damages. Should we have positions on the distortions to the “make whole” principle or the principles of deterrence in product liability litigation caused by collateral source rules and the “non-treatment” of contingency fees? Based on our discussions at meetings and papers submitted to the *JFE*, it appears that forensic economists are content to limit our research to methodologies for calculating economic damages alone.

The real threat to the continued viability of the *JFE* is the decline in viable papers submitted to the *JFE*, the change in the membership in NAFE away

from academia, and the aging of the membership. The next 25 volumes of the *JFE* will test whether we can address those issues.

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