A RAND NOTE

PUNITIVE DAMAGES:
PRELIMINARY EMPIRICAL FINDINGS

Mark A. Peterson

August 1985

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The Institute for Civil Justice, established within The Rand Corporation in 1978, performs independent, objective policy analysis and research on the American civil justice system. The Institute's principal purpose is to help make the civil justice system more efficient and more equitable by supplying policymakers with the results of empirically based, analytic research.

Rand is a private, nonprofit institution, incorporated in 1948, which engages in nonpartisan research and analysis on problems of national security and the public welfare.

The Institute examines the policies that shape the civil justice system, the behavior of the people who participate in it, the operation of its institutions, and its effects on the nation's social and economic systems. Its work describes and assesses the current civil justice system; analyzes how this system has changed over time and may change in the future; evaluates recent and pending reforms in it; and carries out experiments and demonstrations. The Institute builds on a long tradition of Rand research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

The Institute disseminates the results of its work widely to state and federal officials, legislators, and judges, to the business, consumer affairs, labor, legal, and research communities, and to the general public.
This Note presents preliminary information on punitive damages awarded between 1959 and 1984 by juries in two jurisdictions, Cook County, Illinois, and San Francisco County, California. The information is presented in the form of briefing slides used to present data to lawyers, judges, and business persons. Each slide is accompanied by brief comments.

Our analysis of these data is not yet completed. However, there is an immediate need for empirical information about punitive damages. Concerns about punitive damages have led to lawsuits and legislative proposals for changing procedural and substantive laws. The Institute for Civil Justice research is one of the few sources of careful, systematic information about this topic. Release of these empirical findings should inform public discussions and contribute to our own further analyses.

Copies of earlier versions of these slides have been distributed to members of a subcommittee of the Litigation Section of the American Bar Association that is studying punitive damages and to other interested persons. Some findings shown on the earlier slides have been superseded by more recent analyses.

A more comprehensive discussion of the issues and empirical findings described here will be released shortly as an Institute for Civil Justice Report, *The Growth of Punitive Damages: Trends and Incidence over 25 Years*, R-3311-ICJ.
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INTRODUCTION

The following slides and comments are presented in pairs, the comments appearing on the left-hand page, facing the appropriate slide on the right.
Interest in punitive damage awards has increased greatly in recent years, fueled by perceptions that such awards are now more frequent and far larger. Courts have expanded the areas of conduct that can lead to liability for punitive damages; plaintiffs seem more frequently to demand punitive damages; and juries seem more willing to impose punitive awards.

The perception that punitive awards are growing has generated increased concerns by some about the expanded legal bases for such awards and the fairness of legal procedures for trials in which punitive liability is an issue. Others welcome the apparent growth of punishment damages claiming that this growth is needed to deter and punish dangerous or antisocial actions. Despite these claims and concerns, no hard empirical information has been available to examine any of these issues, even to validate perceptions of growing awards.

Punitive awards have also been highly unpredictable, making it difficult to anticipate whether particular actions might result in the imposition of punitive damages. Proponents of punitive damages argue that this uncertainty increases their deterrent effect: Business and individuals might refrain from a broader range of socially undesirable activities for fear that punitive damages might be imposed.

But this uncertainty can also be problematic: Businesses and individuals might refrain from socially desirable actions if they fear (even mistakenly) that those actions create an exposure to punitive damages. Alternatively, uncertainty could reduce the deterrent value of punitive damages: Businesses and individuals might ignore the risk of punitive damages if they cannot reasonably assess the likelihood of their imposition.

Uncertainty could also increase the cost of litigation, if defendants overinvest in litigation out of concern that a large, unpredictable punitive award might be imposed. Also, plaintiffs may pursue litigation that has little payoff because they cannot accurately assess the low probability of an award.
GROWING CONCERNS ABOUT PUNITIVE DAMAGES

Perception of change
- More frequent
- Larger
- New areas of imposition

Unpredictability

Uncertainty about collateral effects
- Productive activity
- Litigation activities and expenses
- Deterrence

Concerns about legal procedures and principles
- Bases of liability
- Procedures

Need for empirical information
The Institute for Civil Justice has undertaken a series of studies to help provide critical information about punitive damages. Analyses of our data might also have broader uses, if continuing data collection and analysis can help reduce uncertainty about exposure to punitive damages so as to sharpen deterrence and reduce litigation costs.

The slides reproduced here summarize preliminary information for the first two of these studies, an examination of (1) punitive awards in jury trials in San Francisco, California, and in Cook County, Illinois, and (2) what happened to those awards after trial.

Subsequent studies will look in depth at selected other areas, including some "mass tort" litigation, such as that over asbestos and Dalkon Shield, and at litigation based on claims of bad faith by insurance companies.

In studying punitive damages, the Institute is collaborating with a subcommittee of the Litigation Section of the American Bar Association formed to investigate this area. The Committee has helped identify issues and potential areas for productive research. In turn, we have shared research plans and preliminary results with the Committee. However, the Institute for Civil justice is solely responsible for the empirical research described here.
ICJ STUDIES OF PUNITIVE DAMAGES

Describe incidence and trends in punitive awards
• Comprehensive look at two jurisdictions
• Based on ICJ jury verdict data
Determine final outcomes of punitive awards
Examine determinants/procedures for specific areas of litigation
Examine litigation effects from exposure to bad faith
Collaboration with ABA committee
The preliminary information drawn from the Institute's data on 15,000 federal and state court jury trials in San Francisco, California, and Cook County, Illinois, represents all jury trials in these jurisdictions between 1959 and 1980 and includes information about the type of case, factual and legal bases of liability, the nature of plaintiffs' injuries and economic losses, characteristics of both plaintiffs and defendants, and the outcomes for each trial. The data were taken from jury verdict reporters published in each jurisdiction. Previous Institute reports describe analyses of other issues in these trials (Peterson and Priest, 1982; Shanley and Peterson, 1983; Peterson, 1984; Chin and Peterson, 1985).

Because of the interest in current trends in punitive damage awards, the ICJ supplemented these data, collecting information about all jury trials in each jurisdiction between 1980 and May 1984 that produced punitive damage awards. Most analyses in this Note describe trends for the 25 years from 1960 through May 1984.

The Note also describes a study that examined what happened after trial in recent cases. Information about post-trial motions, appeals, settlements, or satisfaction of judgments was collected in questionnaires sent to all lawyers of record for trials ending in 1979 through 1984.
INCIDENCE AND TRENDS IN PUNITIVE DAMAGES

Based on ICJ jury verdict data
- Cook and San Francisco Counties
- Obtained from Jury Verdict reports
- Broad information
  - Type of case
  - Injuries
  - Characteristics of parties
  - Liability information
- 1960-1979—all trials

Supplemented by data on trials with punitive damages
- 1980-May 1984
SLIDE 4

Our analyses confirm the widespread perception that punitive awards have become both more frequent and larger in recent years. But these trends differ among three different types of cases in which punitive damages might be awarded. Punitive awards occur frequently in trials involving claims of an intentional tort—i.e., assault, discrimination, and defamation. Punitive awards are not as frequent in cases involving claims of business torts or breach of contract, but the number and size of punitive awards in contract and business cases have grown even larger than in intentional tort cases.

Punitive awards have not been frequent for personal injury cases based on negligence or strict liability (which will be referred to simply as personal injury cases). This continues to be true in San Francisco up to the present time. However, Cook County had rapid growth in both the frequency and size of punitive awards in personal injury cases.
CHANGES IN PUNITIVE DAMAGES

Becoming larger and more frequent
Still infrequent, except for
- Intentional torts
- Contract/business cases

Changes differ between San Francisco and Cook County
SLIDE 5

This slide shows the number of jury trials in which punitive damages have been awarded and the total amount of punitive damages for each five year period between 1960 and 1984. All dollar figures are adjusted for inflation and shown in terms of the 1984 dollar.

Punitive damages increased greatly in Cook County during the 1980s. The number of punitive awards more than doubled and the total amount of punitive damages increased 700 percent. Punitive awards had increased steadily in Cook County during the previous 20 years, but the rate of increase exploded during the last five years.

Increases in San Francisco paralleled those in Cook County during the 1960s and 1970s, if we ignore one large award by a San Francisco jury in the late 1970s. That award of $13.4 million (in a defamation case that was overturned on appeal) was not representative of punitive awards generally.¹ The effect of this one award indicates the volatility of punitive awards; there is a slight chance that a jury might return an extraordinary award. This possibility not only creates uncertainties and risks for litigants, it also complicates our statistical analyses.

In recent years, trends differed markedly between the two jurisdictions. In contrast to the situation in Cook County, the number of punitive awards has remained stable in San Francisco for the past 15 years. Similarly, total awards increased far less in San Francisco during the 1980s, by 265 percent even when we exclude the $13.4 million in the late 1970s, compared with the 700 percent increase in Cook County.

¹Because it was awarded, the $13.4 award is included in tables that show the total amount, but because it was not representative, tables that show averages exclude it.
PUNITIVE DAMAGES ARE MORE FREQUENT AND LARGER

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of Punitive Awards</th>
<th>Total Amount of Punitive Awards ($ million, 1984)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>1960-64</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>1965-69</td>
<td>18</td>
<td>19</td>
</tr>
<tr>
<td>1970-74</td>
<td>36</td>
<td>25</td>
</tr>
<tr>
<td>1975-79</td>
<td>32</td>
<td>39</td>
</tr>
<tr>
<td>1980-84</td>
<td>45</td>
<td>90</td>
</tr>
</tbody>
</table>

<sup>a</sup>Figure includes one punitive award of $13.4 million. When this case is excluded, total was $6.5 million.

Greatest increases have been in Cook County since 1980.
SLIDE 6

The median reflects the typical value of punitive awards--i.e., the value of the middle or 50th percentile award. Typical punitive awards were modest in both jurisdictions, between $10 and $20 thousand in Cook County, between $20 and $30 thousand in San Francisco, until the 1980s.

The averages were far greater because of a few very large awards. As a result, few punitive awards were as great as these averages. The averages increased steadily in both jurisdictions (if we ignore the $13.4 million San Francisco award in the 1970s).

The average in Cook County increased greatly in the 1980s (more than trebling), because the size of the largest awards increased. The size of most punitive damage awards remained constant, as indicated by the stable median.

In San Francisco, recent increases in the size of punitive awards are not restricted to the largest awards. Both the size of the median and average punitive award doubled in the 1980s.
PUNITIVE DAMAGES INCREASED IN SIZE IN BOTH JURISDICTIONS

<table>
<thead>
<tr>
<th>Years</th>
<th>Median Punitive Award ($1,000, 1984)</th>
<th>Average Punitive Award ($1,000, 1984)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>1960-64</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>1965-69</td>
<td>29</td>
<td>13</td>
</tr>
<tr>
<td>1970-74</td>
<td>31</td>
<td>29</td>
</tr>
<tr>
<td>1975-79</td>
<td>23</td>
<td>13</td>
</tr>
<tr>
<td>1980-84</td>
<td>62</td>
<td>20</td>
</tr>
</tbody>
</table>

<sup>a</sup>Excludes one award of $13.4 million. Mean is $623 thousand when that award is included.

San Francisco awards were larger, but rate of increase was similar.

Big awards increased more than typical (median) awards.
SLIDE 7

Jury verdicts are not the last word in cases involving punitive damages. Remittiturs, post-trial motions, appeals, and even settlements may reduce the amount of punitive awards. In both jurisdictions we surveyed all lawyers of record in trials that were concluded after 1979 to determine the effect of such actions in these trials. We received responses for over 90 percent and obtained information about the final disposition for approximately 60 percent of trials concluding after 1979.

Post-trial action reduced the award in almost half of the trials that had been fully concluded. The size of the original jury verdict was far greater (an average of $932,000) in cases where the original verdict was reduced than in cases where the trial verdict was paid (an average of $102,000). The final payment in cases where the verdict was reduced was, on average, 45 percent of the original verdict.

Across all closed cases, both those that had been reduced after trial and those where the original judgment was satisfied, the final award was 50 percent of the original verdict.

Because post-trial actions are most likely to reduce the largest awards, recent trends in the total and average punitive awards might overstate changes in the amount actually paid by defendants. In both jurisdictions, but especially in Cook County, the average punitive verdict increased because of the growth of a few very large awards. Therefore, payouts by defendants might not increase as much as our data suggest.
### POST-TRIAL ACTIONS REDUCE MANY LARGE PUNITIVE AWARDS

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Jury Award</th>
<th>Amount Paid</th>
<th>Paid/Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced</td>
<td>33</td>
<td>932</td>
<td>416</td>
<td>.45</td>
</tr>
<tr>
<td>Unchanged</td>
<td>35</td>
<td>102</td>
<td>102</td>
<td>1.00</td>
</tr>
<tr>
<td>Increased</td>
<td>1</td>
<td>7</td>
<td>16</td>
<td>2.29</td>
</tr>
<tr>
<td>All terminated cases</td>
<td>69</td>
<td>498</td>
<td>251</td>
<td>.50</td>
</tr>
</tbody>
</table>

Average, $1,000 (1983)
SLIDE 8

Despite recent increases, punitive awards in general remain infrequent, particularly for product liability and other personal injury suits. Punitive damages were awarded in only eight product liability suits in both jurisdictions over the 25-year period.

We drew upon our data for all jury trials during the 1960s and 1970s to determine the frequency of punitive awards for various types of suits. Punitive awards occurred at a higher rate of frequency in San Francisco trials, where far fewer civil cases were tried by juries.

In both jurisdictions, punitive damages were most likely to be awarded in intentional and contract/business tort cases. San Francisco juries awarded punitive damages in almost half of all intentional tort cases where they awarded compensatory damages and in one-sixth of contract/business cases with liability. Cook County juries awarded punitive damages most often in intentional tort cases and in one-sixth of cases with liability.

In personal injury cases based on negligence or strict liability, few juries awarded punitive damages. Under 1 percent of such trials produced punitive awards in Cook County; in San Francisco, punitive awards were made in between 1 and 3 percent of trials involving claims of injury on property, product liability, and common carrier.
PUNITIVE DAMAGES ARE INFREQUENT, EXCEPT FOR INTENTIONAL TORTS AND CONTRACT/BUSINESS CASES

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Number of Punitive Awards, 1960-1984</th>
<th>Percent of Trials, 1960-1979</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>Intentional</td>
<td>72</td>
<td>89</td>
</tr>
<tr>
<td>Business/contract</td>
<td>52</td>
<td>34</td>
</tr>
<tr>
<td>Auto accident</td>
<td>3</td>
<td>64</td>
</tr>
<tr>
<td>Injury on property</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Malpractice</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Product liability</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Common carrier</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Street hazard</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Work injury</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Dramshop</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>
SLIDE 9

In both jurisdictions, punitive damages occur most frequently in intentional tort trials, but the mix of cases producing punitive awards still differed markedly. In San Francisco awards were made almost as often in business and contract cases, but very rarely in personal injury trials not based on claims of intentional injury. Personal injury cases were a more frequent source of punitive awards in Cook County, and business and contracts cases were somewhat less important.

The amount of money awarded for different types of actions also differed markedly between the jurisdictions. Personal injury cases produced the greatest amount of punitive damage awards in Cook County and the least, by far, in San Francisco. San Francisco trials for business and contract cases produced far more money than either intentional tort cases (if the $13.4 million award is ignored) or personal injury cases.
SAN FRANCISCO AND COOK COUNTY JURIES AWARDED PUNITIVE DAMAGES FOR DIFFERENT TYPES OF CASES

<table>
<thead>
<tr>
<th></th>
<th>Number of Punitive Awards</th>
<th>Total Amount of Punitive Awards ($ million, 1984)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>Intentional</td>
<td>68</td>
<td>82</td>
</tr>
<tr>
<td>Business/contract</td>
<td>65</td>
<td>56</td>
</tr>
<tr>
<td>Personal injury</td>
<td>11</td>
<td>40</td>
</tr>
</tbody>
</table>

\(^a\)Figure includes one punitive award of $13.4 million. When this case is excluded, total was $8.0 million.
SLIDE 10

Historically, punitive damages were intended to increase punishment and deterrence of intentional torts such as assault and defamation. This traditional area of punitive damages remains both the most frequent and most stable in both jurisdictions.

The typical (median) punitive award was modest, remaining between $10,000 and $25,000 in both jurisdictions throughout the entire period. Even the size of the largest awards remained generally stable during the 1960s and 1970s, except for one San Francisco award of $13.4 million in the late 1970s for a defamation case.

However, this stability did not continue into the 1980s in Cook County. Both the number of punitive awards in intentional tort cases in Cook County and the average size of those awards doubled between 1980 and 1984. As a result, the total amount of punitive damages increased by 400 percent, from $1.6 million in the late 1970s to $6.1 million in the 1980s.
# PUNITIVE AWARDS IN INTENTIONAL TORT CASES

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of Punitive Awards</th>
<th>Total Amount of Punitive Awards ($ million, 1984)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>1960-64</td>
<td>10</td>
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<tr>
<td>1965-69</td>
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<td>10</td>
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<tr>
<td>1970-74</td>
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<td>12</td>
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<tr>
<td>1975-79</td>
<td>20</td>
<td>19</td>
</tr>
<tr>
<td>1980-84</td>
<td>9</td>
<td>37</td>
</tr>
</tbody>
</table>

<sup>a</sup>Includes one award for $13.4 million.

Cook County awards increased in 1980s

San Francisco trends stable throughout
SLIDE 11

Exposure for punitive damages in business tort and breach of contract cases changed greatly between 1960 and 1985. The sharp upward trends in both the number and amount of punitive awards reflect in part the growing number of jury trials involving business tort or contract actions, an area of greatly expanding litigation in both jurisdictions (Peterson and Priest; Shanley and Peterson). In addition, the trends seem to reflect increased availability of punitive damages for bad faith in insurance contracts, wrongful termination of employees, and unfair business practices.

Availability of punitive damages may have contributed to the growing number of jury trials of business and contract disputes: For example, law suits against insurance companies for improper claims handling became worthwhile only when appellate courts allowed punitive damages for bad faith.

Punitive damages were rarely awarded for business tort or contract actions in the 1960s—only four cases between 1960-1964 in both jurisdictions and eight cases between 1965-1969. Between 1980 and May 1984, punitive damages were awarded in 60 business tort and contract actions, 30 in each jurisdiction.

Increases in the total amount of punitive damages have been even greater. During the 1960s juries in both jurisdictions awarded only $738,000 (in 1984 dollars) of punitive damages in business and contract cases. Since 1970 juries in the two jurisdictions awarded over $41 million, more than the total amount awarded for either personal injury or intentional torts cases. Most of this, $27 million, was awarded in the first four and one-half years of the 1980s.

Trends were almost identical in the two jurisdictions, although the total amount of punitive awards was 60 percent greater in San Francisco.
**PUNITIVE AWARDS IN CONTRACT/BUSINESS TORT CASES**

<table>
<thead>
<tr>
<th>Year</th>
<th>San Francisco</th>
<th>Cook County</th>
<th>San Francisco</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>3</td>
<td>1</td>
<td>.2</td>
<td>.008</td>
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<tr>
<td>1965-69</td>
<td>5</td>
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<td>.3</td>
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<td>1970-74</td>
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<td>5.6</td>
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<td>1975-79</td>
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<td>2.3</td>
<td>3.1</td>
</tr>
<tr>
<td>1980-84</td>
<td>30</td>
<td>30</td>
<td>16.2</td>
<td>11.3</td>
</tr>
</tbody>
</table>

*Increased in number and in total awards*
SLIDE 12

Recent trends in punitive damages for personal injury cases differed sharply between San Francisco and Cook County. Both the number and total amount of punitive awards in personal injury actions increased sharply in Cook County; the total amount increased 2000 percent in the early 1980s. The $26.5 million awarded between 1980 and May 1984 represent half of all money awarded by Cook County juries over the entire 25 years.

San Francisco juries rarely awarded punitive damages for personal injuries caused by defendants' negligence or based on strict liability. Although punitive damages were awarded in more cases during the 1980s than in the previous 20 years, only $700,000 was awarded in six cases.

This contrast for recent years reflects differences in the statutes that authorize punitive damages. The Illinois statute permits punitive awards against plaintiffs who acted in gross negligence, but the California statute does not. Negligent tort feasors are subject to punitive damages in California only if their actions imply malice.

But this statutory difference does not explain the recent expansion of punitive damages in Cook County, because the statute was not changed in recent years. Rather, the recent trend seems to reflect a general expansion of punitive damages for all types of conduct by defendants. Although greater, the increases in the number and amount of punitive awards for personal injury cases are similar to trends for intentional tort and business and contract cases.
TRENDS IN PERSONAL INJURY CASES DIFFERED SHARPLY BETWEEN SAN FRANCISCO AND COOK COUNTY

<table>
<thead>
<tr>
<th>Year</th>
<th>San Francisco</th>
<th>Cook County</th>
<th>San Francisco</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-64</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1965-69</td>
<td>3</td>
<td>6</td>
<td>1.9</td>
<td>.2</td>
</tr>
<tr>
<td>1970-74</td>
<td>1</td>
<td>5</td>
<td>.5</td>
<td>.2</td>
</tr>
<tr>
<td>1975-79</td>
<td>1</td>
<td>6</td>
<td>.01</td>
<td>1.3</td>
</tr>
<tr>
<td>1980-84</td>
<td>6</td>
<td>23</td>
<td>.7</td>
<td>26.5</td>
</tr>
</tbody>
</table>

Trends were stable until the 1980s.

San Francisco trends remained stable, but trends increased greatly in San Francisco in 1980s.
SLIDE 13

Punitive damage awards differ considerably between business and individual defendants. Punitive awards against businesses are larger absolutely and as a ratio of the size of compensatory damages in the same case. These differences seem to have increased in recent years and help account for the increasing size of punitive awards.

Varying treatment of business defendants might also explain differences between San Francisco and Cook County. Punitive awards are greater in San Francisco in part because businesses represent a greater proportion of defendants liable for punitive damages and also because San Francisco business defendants are assessed larger punitive damages than those in Cook County.

However, in recent years the average award against business defendants was greater in Cook County, because the largest awards increased more rapidly. Recent large awards in Cook County against businesses and against nonprofit hospitals in malpractice cases help explain the dramatic increase in punitive damages during the 1980s.
Differing treatment of business defendants explains differences in jurisdictions

Punitive awards against business defendants are larger in San Francisco

Punitive awards against business defendants occur in different mix of cases

Punitive awards against businesses are far larger than against individuals

Ratio of punitives/compensatory awards

- Greater for business defendants
- Increasing
- Greater in San Francisco
SLIDE 14

Punitive damages are assessed most often against individual defendants in both jurisdictions, although businesses in San Francisco are liable for punitive damages almost as frequently as individuals.

But although most defendants liable for punitive damages are individuals, businesses are liable for the bulk of money awarded as punitive damages, 89 percent of punitive damages in San Francisco and 56 percent in Cook County.

Nonprofit organizations were rarely assessed punitive damages in either jurisdiction, but several nonprofit hospitals have recently been found liable for large punitive awards in Cook County. Although they represented only 3 percent of defendants liable for punitive damages in Cook County, nonprofit organizations were assessed 32 percent of all punitive damages. Nonprofits in San Francisco were not subjected to unusually large punitive liability.
<table>
<thead>
<tr>
<th>Defendant</th>
<th>San Francisco</th>
<th>Cook County</th>
<th>San Francisco</th>
<th>Cook County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals</td>
<td>98</td>
<td>174</td>
<td>5.4</td>
<td>6.6</td>
</tr>
<tr>
<td>Businesses</td>
<td>89</td>
<td>94</td>
<td>42.2</td>
<td>29.7</td>
</tr>
<tr>
<td>Nonprofit</td>
<td>6</td>
<td>7</td>
<td>1.4</td>
<td>16.7</td>
</tr>
</tbody>
</table>

Most are individuals, but businesses pay most.
SLIDE 15

The relative size of punitive awards against business and individual defendants is similar in the two jurisdictions: The typical awards against businesses are greater than those against individuals, but the typical punitive award against both types of defendants is quite modest. However, businesses are more likely to be hit with liability for very large punitive awards. As a result, the average punitive awards against businesses are far larger than those against individual defendants.

Businesses are subject to even larger awards in San Francisco than in Cook County. The average in San Francisco is 150 percent of the Cook County average, although the median punitive awards are almost identical.
PUNITIVE AWARDS AGAINST BUSINESSES ARE GREATER

<table>
<thead>
<tr>
<th>Defendant</th>
<th>Median punitive award ($1,000, 1984)</th>
<th>Average punitive award ($1,000, 1984)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>Individuals</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Businesses</td>
<td>25</td>
<td>28</td>
</tr>
</tbody>
</table>

Both typical awards and very large awards
In both jurisdictions individual defendants are most likely to be liable for punitive damages in intentional tort cases, while business defendants are liable most often in contract or business tort cases. An appreciable proportion of business defendants are liable for intentional tort cases, but the nature of those cases usually differs from those involving individual defendants. Businesses are more often found liable for defamation and discrimination, but individuals are most often found liable for assault.

The proportion of both individual and business defendants who were liable in personal injury cases was greater in Cook County than San Francisco, reflecting the greater frequency of punitive damages in such cases in Cook County. Within Cook County, businesses seem to be a greater target for punitive damages in personal injury cases: 22 percent of punitive damages in Cook County occur in personal injury cases, but 29 percent of punitive damages against businesses occur in personal injury cases.
### BASES OF PUNITIVE LIABILITY DIFFER AMONG DEFENDANTS

<table>
<thead>
<tr>
<th></th>
<th>San Francisco</th>
<th></th>
<th>Cook County</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Individual</td>
<td>Business</td>
<td>Individual</td>
<td>Business</td>
</tr>
<tr>
<td>Intentional</td>
<td>60</td>
<td>36</td>
<td>54</td>
<td>27</td>
</tr>
<tr>
<td>Business/contract</td>
<td>35</td>
<td>56</td>
<td>21</td>
<td>45</td>
</tr>
<tr>
<td>Personal injury</td>
<td>5</td>
<td>8</td>
<td>24</td>
<td>29</td>
</tr>
<tr>
<td><strong>Number</strong></td>
<td><strong>98</strong></td>
<td><strong>89</strong></td>
<td><strong>164</strong></td>
<td><strong>94</strong></td>
</tr>
</tbody>
</table>
SLIDE 17

Punitive awards against businesses increased steadily in San Francisco. This increase seemed to apply to almost all awards against businesses; the typical (median) award increased substantially throughout the entire period. But the average verdict outpaced this growth, indicating an even sharper increase in the size of the largest punitive awards against businesses.

Large punitive awards against businesses also increased in Cook County. This increase was particularly great in recent years, with the average award increasing 363 percent in the 1980s. During the 1980s large punitive awards against businesses in Cook County exceeded those in San Francisco. However, this increase was not general. The typical (median) award against business in Cook County remained between $20 and $30 thousand over the entire period.

Large awards against individuals also increased, most sharply in San Francisco during the 1980s. But most punitive awards against individuals were stable. Median awards were almost constant throughout the entire 25 years.
TRENDS IN THE SIZE OF PUNITIVE AWARDS DIFFERED BETWEEN DEFENDANTS AND JURISDICTIONS

Median Punitive Damage Award
$1,000 (1984)

<table>
<thead>
<tr>
<th>Years</th>
<th>Business Defendants</th>
<th>Individual Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>1960-64</td>
<td>15</td>
<td>--</td>
</tr>
<tr>
<td>1965-69</td>
<td>58</td>
<td>26</td>
</tr>
<tr>
<td>1970-74</td>
<td>66</td>
<td>21</td>
</tr>
<tr>
<td>1975-79</td>
<td>80</td>
<td>28</td>
</tr>
<tr>
<td>1980-84</td>
<td>90</td>
<td>32</td>
</tr>
</tbody>
</table>

Typical award against businesses increased in San Francisco. Otherwise, typical awards remained stable.

Average Punitive Damage Award
$1,000 (1984)

<table>
<thead>
<tr>
<th>Years</th>
<th>Business Defendants</th>
<th>Individual Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>San Francisco</td>
<td>Cook County</td>
</tr>
<tr>
<td>1960-64</td>
<td>65</td>
<td>--</td>
</tr>
<tr>
<td>1965-69</td>
<td>181</td>
<td>98</td>
</tr>
<tr>
<td>1970-74</td>
<td>296</td>
<td>69</td>
</tr>
<tr>
<td>1975-79</td>
<td>362$^a$</td>
<td>148</td>
</tr>
<tr>
<td>1980-84</td>
<td>477</td>
<td>538</td>
</tr>
</tbody>
</table>

$^a$Excludes $13.4$ million award. Average with $13.4$ million award included was $1.084$ million.

Large punitive awards against businesses increased greatly
SLIDE 18

Standards for judicial review of punitive damage awards often include comparisons between the punitive award and the plaintiff's injury, as measured by the amount of compensatory damages. Such comparisons are not an infallible test, because egregious behavior by a defendant might result in small compensatory damages, as in cases of defamation or discrimination. But the comparisons are helpful in understanding juries' decisions about damages, particular in the different treatment of individual and business defendants.

This slide shows the amount of compensatory and punitive damages assessed against individual defendants in both jurisdictions. Each point represents one verdict. The location of the point along the horizontal axis indicates the amount of the compensatory verdict. The location along the vertical axis indicates the amount of the punitive verdict. The diagonal line shows when compensatory and punitive damages are equal. If a point is below the line, the compensatory verdict is greater than the punitive. Points above the line indicate verdicts where punitive damages exceed compensatory damages.

The amount of compensatory and punitive damages are both shown on a logarithmic scale, in which equal distances indicate multiples. The distance between $1,000 and $10,000 (a ten-fold difference) is the same as the distance between $10,000 and $100,000 (also a ten-fold difference).

Both compensatory and punitive awards against individuals tend to be moderate--most points fall between $1,000 and slightly more than $10,000 on both scales. Also most points fall on or below the diagonal line, indicating that most punitive awards against individual defendants are equal to or less than the compensatory award against the defendant. There are a few points far above the line, where punitive awards greatly exceed compensatory awards. The largest punitive award of about $1 million dollars was made in a case where the compensatory award was around $100,000. In seven cases punitive damages exceeded $10,000 when there were little or no compensatory damages.
RELATIONSHIP BETWEEN PUNITIVE AND COMPENSATORY AWARDS, INDIVIDUAL DEFENDANTS (SAN FRANCISCO AND COOK COUNTIES, 1960-84)
SLIDE 19

A similar comparison of compensatory and punitive awards against business defendants shows several interesting differences. Both compensatory and punitive awards are larger than those against individuals--most points are further away from zero. Also punitive awards are usually greater than compensatory awards against the same business defendant--most points are above the diagonal line.

The largest punitive award, over $10 million, was made in a case where the compensatory award was around $1 million. A punitive award of around $1 million was made in a case that had little or no compensatory damages.
PUNITIVE AWARDS AGAINST BUSINESS DEFENDANTS ARE RELATIVELY LARGER (SAN FRANCISCO AND COOK COUNTIES, 1960-84)
SLIDE 20

The previous slide compared compensatory and punitive awards that were made against business defendants over the entire 25 years. This slide compares awards for trials in both jurisdictions during the 1980s. For these recent trials, almost all punitive awards against businesses exceed the compensatory awards against the same defendant. Juries seem to have increased the amount of punitive awards relative to the plaintiffs' losses.
IN 1980s JURIES USUALLY AWARD PUNITIVES THAT ARE LARGER THAN COMPENSATORY AGAINST BUSINESS DEFENDANTS
(SAN FRANCISCO AND COOK COUNTIES, 1980-84)
SLIDE 21

This slide compares compensatory and punitive awards against businesses for trials in San Francisco during the 1980s. In virtually all trials, punitive awards exceeded compensatory awards. In only a few were compensatory awards equal to or slightly greater than the punitive award against the same defendant.

This series of slides indicates that not only are recent juries increasing the size of punitive awards against businesses relative to compensatory awards, but that this trend is stronger in San Francisco than in Cook County.
IN 1980s SAN FRANCISCO JURIES ALWAYS AWARD PUNITIVES THAT ARE LARGER THAN COMPENSATORY AGAINST BUSINESS DEFENDANTS
SLIDE 22

Although this Note has stressed changes in punitive damages, most punitive damages are modest awards against individual defendants who have intentionally injured plaintiffs. Punitive damages in these cases appear to be stable--there is little indication that they are changing or creating serious problems for the civil justice system.

But although the core of punitive damage awards is modest and stable, the frequency and size are increasing, particularly against business defendants. This change is occurring in all areas of litigation in Cook County, but only in business tort and contract cases in San Francisco.

Punitive damages remain rare in cases where defendants are sued for negligence or strict liability. But as the size of punitive awards increases in such cases, the uncertainties about liability for punitive damages make litigation increasingly risky and, presumably, expensive.
SUMMARY OF INCIDENCE AND TRENDS

Most punitive damages are:
- For intentional torts
- Against individual defendants
- Modest size

Exposure to punitive damages is expanding
- Cook County: all areas of liability
- San Francisco: contracts and business

Punitive damage awards are increasing in size

Business defendants are subject to increasing punitive awards

Punitive awards are rare and volatile
SLIDE 23

This Note provides preliminary results for two of the Institute's studies of punitive damages. Both studies examine jury trials in San Francisco and Chicago, drawing upon data previously collected for other Institute studies.

Although the present studies provide a detailed, systematic picture of punitive damage awards in two major jurisdictions, they have limitations. The Institute is conducting additional studies to deal with issues that cannot be addressed within the present data.

Several of these studies deal with the issues raised by "mass tort litigation," lawsuits that involve a limited number of defendants who have been sued repeatedly for compensatory and punitive damages by plaintiffs with similar injuries. The litigation of punitive damage claims in these cases raises particularly serious concerns about legal procedures, costs, and delays in litigation and the ability of defendants to pay both punitive and compensatory awards to multiple plaintiffs.
FURTHER STUDIES: EFFECTS OF LEGAL PROCEDURES AND DETERMINANTS OF PUNITIVE AWARDS

Examine homogeneous litigation
- Appreciable volume
- Similar issues/parties

Areas of study
- Asbestos
- Dalkon shield

Plan
- Identify all trials
- Send questionnaires to judges and lawyers

To examine
- Effects of legal procedures/rules
- Determinants of punitive damages
- Punitive litigation
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