

A SUMMARY OF RESEARCH RESULTS:
TRENDS AND PATTERNS IN CIVIL JURY VERDICTS

Mark A. Peterson

March 1986

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PREFACE

This Paper is an edited transcript of testimony delivered on March 13, 1986 by Mark A. Peterson before the Subcommittee on Oversight, the United States House of Representatives Committee on Ways and Means.

The work described in this Paper is part of the continuing research program of The Institute for Civil Justice. The author draws on his analysis of civil jury verdicts rendered between 1960 and 1979 in Cook County, Illinois, and San Francisco, California. His testimony focuses on trends and patterns over time, and how the type of liability, nature and circumstances of injury, and characteristics of plaintiffs and defendants affect the outcomes of civil jury trials.

**A SUMMARY OF RESEARCH RESULTS:
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Testimony by Mark A. Peterson
Presented to the Subcommittee on Oversight, Committee on Ways and Means
United States House of Representatives

March 13, 1986

Mr. Chairman and members of the Ways and Means Committee, my name is Mark Peterson. I am a lawyer and senior psychologist on the staff of The Institute for Civil Justice at The Rand Corporation. Rand is a private, nonprofit corporation that conducts public policy research. The Institute for Civil Justice was established in 1979 within Rand and is supported primarily by corporate and foundation grants.

My testimony deals only with one issue involved in the current concern about availability and cost of liability insurance: How have lawsuits and civil jury verdicts changed in recent years? Most lawsuits and civil claims settle without reaching trial, but those settlements are presumably influenced by the outcomes of lawsuits that are tried to juries. Consequently, as jury verdicts change, outcomes are likely to change not only for cases that go to trial but also for cases that settle.

My testimony will draw primarily on the Institute's research on civil jury verdicts. The Institute has assembled a data base on the results of all civil jury trials in cases for money damages held in Federal and superior state courts in Cook County, Illinois, and San Francisco, California, between 1959 and 1984.¹ The Institute has published five reports describing trends in civil jury trials between 1960 and 1979² and will shortly publish two more. Most of my testimony will draw upon these seven reports to describe trends and patterns in

¹ The data were obtained from jury verdict reporting services that are published in both jurisdictions. The Institute has also expanded the data base to include all verdicts in the State of California from 1980 through 1984.

² Peterson and Priest, 1982; Shanley and Peterson, 1983; Peterson, 1984; Chin and Peterson, 1985; Peterson, 1985.

jury awards through 1979.³ I will note when my testimony is based on other data.

Our research shows two very different trends in the size of verdicts awarded by juries. For the bulk of lawsuits tried to juries, verdicts did not increase during the 1960s and 1970s. After adjusting for inflation, the median (or 50th percentile) jury award remained almost constant in both Cook County and San Francisco -- less than \$20,000 during both decades.⁴ Most jury trials involved slight or moderate injuries (e.g., strains, sprains, bruises) suffered in vehicle accidents or slips and falls. Jury awards in these cases were virtually the same in the late 1970s as they had been in the early 1960s.

In contrast to this stability for most cases, large jury awards increased greatly, more than doubling during the 1970s. The average jury award and the total amount of money awarded by juries also doubled in the 1970s, but these increased only because large awards increased in size.

These differing trends seem to occur, in part, because jurors react differently to different types of suits. Plaintiffs in product liability, malpractice, street hazard, and workplace accidents -- types of lawsuits that we describe as "high stakes" cases -- received larger awards for the same type of injury. In Cook County in the 1970s, a plaintiff who was injured by medical malpractice received 3-1/2 times as much as a plaintiff with similar injuries from a slip and fall; in San Francisco, a product liability plaintiff received twice as much as a plaintiff with similar injuries from a slip and fall. Differences in compensation between high stakes and routine lawsuits have increased in recent years.

These differences also arose in part because juries made bigger awards against "deep pocket" defendants -- businesses, professionals, and government agencies -- who were usually the defendants in product liability, malpractice, street hazard, or workplace injury lawsuits. Government or business defendants were assessed 30 to 50 percent more than individual defendants when plaintiffs had similar injuries and

³ Data for the 1980s were added recently and only preliminary analyses of these data are now available.

⁴ All amounts are in 1979 dollars unless otherwise noted.

brought the same type of lawsuit. This "deep pocket" effect was even greater if plaintiffs were seriously injured: Businesses then paid 2-1/2 times as much as individual defendants did in similar cases.

Observers who view the civil justice system from different perspectives might reach different conclusions about what is happening because they focus on these differing trends. Those who participate in the system on a day-to-day basis, such as trial judges and lawyers, may see little change in jury verdicts, because awards in most cases have not in fact changed. But insurance companies or self-insured companies that are frequently involved in litigation see great increases. They have to pay jury awards and the total (and average) of these awards has increased, driven by the increasing size of very large awards.

Million dollar verdicts provide a dramatic example of these trends. In San Francisco during the 1960s, only five cases had a value of \$1 million (in 1979 dollars) -- 0.3 percent of all cases in which plaintiffs received an award. The total amount of money awarded in these million dollar verdicts represented eight percent of all money awarded to plaintiffs. During the 1970s, 26 cases (2.3 percent of all cases in which plaintiffs received an award) produced awards exceeding \$1 million. These cases accounted for 30 percent of all money awarded in the first half of the decade and nearly half of all money awarded in the second half of the 1970s. Million dollar verdicts were less frequent in Cook County, but the trends were similar. While we have not yet completed our analysis of the data for 1980-1985, our preliminary results indicate that these trends are continuing: Although million dollar awards occurred in less than four percent of all cases won by plaintiffs during this period, they now account for roughly two-thirds of all money awarded to plaintiffs.

Our statistical analyses show that large jury awards increased at least in part because juries now award more money for certain cases. Jury awards to seriously injured plaintiffs -- those who lost a limb, were paralyzed, or suffered burns or serious eye or ear injuries -- doubled or tripled during the 1970s in both San Francisco and Cook Counties. The average (mean) award to plaintiffs who lost a limb increased three-fold in San Francisco (from \$321,000 in the 1960s to \$1.2 million in the 1970s). In Cook County, the average wrongful death award increased from \$125,000 in the 1960s to \$385,000 in the 1970s.

Furthermore, juries in both jurisdictions increased awards for high stakes types of lawsuits -- medical malpractice, product liability, street hazard, and work injury cases -- regardless of the seriousness of the plaintiffs' injuries in those cases. In both jurisdictions, malpractice plaintiffs in the 1970s received awards that were twice as large as malpractice plaintiffs received for similar injuries in the 1960s. Product liability and street hazard awards in San Francisco during the 1970s more than doubled awards for similar injuries in the 1960s. Cook County juries showed the same general pattern of change, but the rate of change was somewhat less.

Finally, large jury awards seem to be less predictable. Fewer large awards in the 1970s could be explained by our measures of the number, type, severity, or disability from injuries or the amount of medical expenses or lost income.

Our preliminary analyses of jury awards in the 1980s indicate that the two separate trends in jury awards are continuing. Most jury awards still remained modest. The median or typical jury award apparently increased in San Francisco in the 1980s, but the median award actually decreased in Cook County after adjusting for inflation. In contrast, the largest awards continued to increase in both jurisdictions in the 1980s, growing even faster than they had during the previous decade. Average awards and the total amount of money awarded by juries increased by 50 percent in San Francisco and almost doubled in Cook County in the early 1980s, again because the largest awards continued to increase greatly.

Increasingly, the civil justice system seems to be two different systems. One is a stable system that provides modest compensation for plaintiffs who claimed slight or moderate injuries in automobile and other accidents that have been the major source of litigation for 50 years.⁵ The second is an unstable system that provides continually increasing awards for claims of serious injuries in any type of lawsuit, and for all injuries, serious or not, in product liability, malpractice, street hazard, and workplace accidents.

⁵ See Selvin and Ebener, 1984, an Institute study of 100 years of litigation in Los Angeles County.

The number and size of punitive damage awards also increased substantially in both jurisdictions during the past 25 years. In Cook County, the rate of increase rose sharply during the 1980s: The number of punitive damage awards doubled and the total amount of money awarded increased by 700 percent during this period.

Although punitive damage awards were volatile, the typical award remained small throughout most of the period and the total number of such awards in both jurisdictions was less than 200. Most punitive damage awards were made in cases involving intentional torts or business disputes rather than ordinary personal injury cases. Punitive damages were awarded in only eight product liability suits in both jurisdictions during the entire 25-year period. But in the past few years, there has been a rapid growth in the number and size of punitive awards in personal injury cases in Cook County.

Punitive damage awards against businesses increased both in number and amount in both jurisdictions, and the rate of increase was particularly great in recent years. Both compensatory and punitive damage awards against business defendants were larger than awards against individual defendants. During the 1980s, juries increased the amount of punitive damage awards against business defendants relative to plaintiffs' losses.

A substantial number of punitive damage awards were reduced after trial as a result of settlement or judicial action. For 1980 trials resulting in punitive damage awards across all closed cases (including those in which the original judgment was satisfied and those in which it was reduced), plaintiffs received 50 percent of the original verdict.

The Institute's data describe trends in two major urban jurisdictions; we cannot be certain that these trends apply throughout the nation. Nevertheless, the findings do suggest that these trends might apply more broadly. Trends in Cook and San Francisco Counties were strikingly similar and our most recent data collection shows similarities in awards during the 1980s in other jurisdictions in California.

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