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*Trends in Punitive Damages: Preliminary
Data from Cook County, Illinois and
San Francisco, California*

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Preface

This paper presents preliminary results of an Institute for Civil Justice analysis of trends in punitive damage awards. This research is part of a larger study of trends in civil jury outcomes, which is still underway. This draft has not been peer-reviewed, and some numbers and text may be revised before final publication. These results may be cited as preliminary findings, subject to revision.

**TRENDS IN PUNITIVE DAMAGE AWARDS:
PRELIMINARY DATA FROM COOK COUNTY, ILLINOIS
AND SAN FRANCISCO, CALIFORNIA**

The RAND Institute for Civil Justice is currently updating its jury verdict database. The database includes information on civil jury outcomes, including punitive damage awards, for Cook County, Illinois, and San Francisco, California, from 1960 - 1994. Previous ICJ publications reported these data through 1984 (Peterson, *Civil Juries in the 1980s: Trends in Jury Trials and Verdicts in California and Cook County, Illinois*, RAND, 1987; Peterson, Sarma, and Shanley, *Punitive Damages: Empirical Findings*, RAND, 1987). This paper presents the preliminary results of our analyses of trends in punitive damage awards in these state trial court jurisdictions. The data are drawn from *Jury Verdicts Weekly*, which reports verdicts in California Superior Court jurisdictions, and *Cook County Jury Verdict Reporter*, which monitors jury verdicts in Cook County, Illinois. Previous Institute for Civil Justice reports describe these publications and examine their completeness and accuracy, and detail the process of assembling the jury verdict database (Peterson, 1987).

In interpreting all jury verdict data, it is important to keep the following in mind:

- Civil cases reach juries as the result of a lengthy litigation process. Attorneys settle some cases to avoid anticipated adverse awards, and settle others because the difference between a proffered settlement and the expected award does not justify additional litigation expense. Hence, there is good reason to believe that cases tried to verdict are not representative of the total population of all claims filed.
- The pattern of civil jury outcomes in any year reflects the mix of cases tried to verdict that year, as well as jury decisions on those cases. The mix of cases tried to verdict, in turn, may reflect changes in court jurisdiction, changes in legal rules that influence incentives to file, settle and try cases, and changes in litigation behavior. Over time, the number and mix of cases tried to verdict has changed significantly in most metropolitan trial court jurisdictions: trial rates have declined dramatically, and the composition of the trial court caseload has shifted towards high-value cases.
- A substantial fraction of jury awards are reduced after verdict, as a result of trial or appellate court action or settlement. Previous ICJ research (Shanley and Peterson, *Posttrial Adjustments to Jury Awards*, RAND, 1987) found that, on average, about 70 percent of dollars awarded were paid out. In cases in which punitive damages were awarded, payouts were, on average, about 57 percent of the dollars originally awarded.

- The size of jury awards varies substantially across jurisdictions. The value of the Cook County and San Francisco database is that it allows us to observe trends in jury verdicts over a very lengthy period. We do not know whether the trends in punitive damage awards shown in the tables below have been matched in other jurisdictions.

For all of these reasons, jury verdict data may be a more useful indicator of the signals that attorneys and potential claimants receive from the civil justice system, than of the underlying dynamics of jury behavior.

Table 1 shows trends in the number and likelihood of punitive damage awards by five-year intervals, from 1960-1994, in San Francisco and Cook Counties. The upper panel of the table shows the actual number of awards, by jurisdiction and case type; the middle panel shows the percentage of all cases reaching verdict in which punitive damages were awarded; and the lower panel shows the percentage of all plaintiff verdicts in which punitive damages were awarded. As shown in Table 1, the actual number of punitive damage awards in each of the jurisdictions was quite modest. The number of awards grew during the 1980s, but fell back considerably within the most recent five-year period.

Changes in the number of awards reflect, in part, changes in the number of cases tried to verdict in each of these jurisdictions; these changes, in turn, reflect changes in court jurisdiction, statutory and case law, and -- likely -- litigation strategies. Changes in the percentages of cases in which punitive damages were awarded are, therefore, a better indicator of the likelihood of punitive damages being awarded over time. As shown in Table 1, the likelihood of such awards has varied over time, rising significantly during the 1980s, and falling back more recently.

Table 1 also shows that punitive damages are awarded more frequently in some types of cases than others. Over the 35-year period, from 1960-1994, punitive damages were most likely to be awarded in intentional tort cases and business and contract disputes. Just what explains the changes in frequency of punitive damage awards within case types that are shown in Table 1 is not yet certain. However, we suspect that changes in case law may be partially responsible for the changing proportions of punitive damage awards in business/contract cases.

Table 2 displays the median, mean, and maximum punitive damage awards and the total dollars awarded in punitive damages, by five-year intervals, in San Francisco and Cook County. These data have been adjusted for inflation, and all amounts are shown in 1992 dollars. (The median award is the mid-point of the distribution of punitive damage awards. The mean is the statistical average. The maximum award is the highest amount awarded in a single case during the relevant period.) Consistent with previous research on civil jury verdicts, there is a large difference between median and mean values. In San Francisco, the median punitive damage award in the 1990-1994 period was \$97,000; in Cook County, the median award in the same period was \$250,000. In contrast, the mean punitive damage award, in the same period, was \$1.6 million in San Francisco, and about \$6.8 million in Cook County. The mean award shows the effect of a few extremely large punitive damage awards; the size of these awards is suggested by

the amounts indicated in the "maximum award" column. The largest punitive damage award topped \$12 million in San Francisco in 1990-1994, and \$128 million in Cook County in the same period. Total punitive damages awarded in San Francisco reached \$52 million in San Francisco in the late 1980s, declining to \$18 million in the most recent five-year period. In Cook County, the total dollars awarded in punitive damages in the most recent five-year period was just under \$200 million. In interpreting all these dollar amounts, it is important to recall that many large jury awards are reduced posttrial, as a result of settlement or judicial decision and that large awards sustain the largest reductions. Previous ICJ research (Shanley and Peterson, *Posttrial Adjustments to Jury Awards*, RAND, 1987) found that, on average, about 70 percent of all dollars awarded in civil jury verdicts were ultimately paid out. In cases in which punitive damages were awarded, payouts were, on average, about 57 percent of the dollars originally awarded.

Since 1965, the proportion of total dollars awarded to plaintiffs that is attributable to punitive damages has risen significantly. As shown in Figure 1, in 1990-1994, punitive damages accounted for about 12 percent of all dollars awarded in San Francisco, and 17 percent of all dollars awarded in Cook County. The proportion of all dollars awarded that is attributable to punitive damages varies by case type. For example, in intentional tort verdicts, in 1990-1994, punitive damages accounted for about 46 percent of all dollars awarded in San Francisco and 12 percent of all dollars awarded in Cook County. In business/contract verdicts, punitive damages accounted for about 10 percent of all dollars awarded in San Francisco, and 52 percent of all dollars awarded in Cook County.

In our ongoing research, we are examining the relationship between punitive and compensatory damage awards. Subsequent analyses will describe trends in compensatory and punitive damage awards in a larger set of jurisdictions.

TABLE 1

Number of Punitive Damage Awards

Intentional Torts	Business/Contract		Product Liability		Landowner Liability		Automobile PI		Total
	SF	Cook	SF	Cook	SF	Cook	SF	Cook	
1960-64	11	3	2	0	1	0	1	0	3
1965-69	10	10	5	0	3	1	1	12	23
1970-74	19	8	11	4	1	1	3	4	20
1975-79	13	11	8	4	0	0	0	8	29
1980-84	17	17	17	5	2	5	2	12	50
1985-89	17	18	26	13	3	6	0	6	51
1990-94	3	14	3	7	1	2	0	1	29

Percentage of All Verdicts in which Punitive Damages are Awarded

Intentional Torts	Business/Contract		Product Liability		Landowner Liability		Automobile PI		Total
	SF	Cook	SF	Cook	SF	Cook	SF	Cook	
1960-64	32	3	5	0	1	0	0	0	0
1965-69	19	9	9	0	2	1	0	0	1
1970-74	26	8	14	9	1	1	0	0	1
1975-79	19	12	14	4	0	0	0	1	1
1980-84	21	12	17	3	4	3	0	1	2
1985-89	22	12	18	8	3	3	0	0	7
1990-94	6	10	3	4	1	1	0	0	2

Percentage of Plaintiff Verdicts in which Punitive Damages are Awarded

Intentional Torts	Business/Contract		Product Liability		Landowner Liability		Automobile PI		Total
	SF	Cook	SF	Cook	SF	Cook	SF	Cook	
1960-64	65	7	8	0	1	0	0	0	0
1965-69	53	21	12	0	3	2	0	1	2
1970-74	49	19	23	15	1	1	0	0	4
1975-79	34	24	27	8	0	0	0	1	4
1980-84	35	21	28	5	6	6	0	1	10
1985-89	36	21	26	12	6	6	0	1	12
1990-94	10	14	5	6	2	3	0	0	4

TABLE 2
Punitive Damage Award Amounts
(\$1992)

PERIOD	MEDIAN AWARD		MEAN AWARD		MAXIMUM AWARD		TOTAL \$ AWARDED	
	San Francisco County	Cook County	San Francisco County	Cook County	San Francisco County	Cook County	San Francisco County	Cook County
1960-64	\$ 22,000	\$ 11,000	\$ 62,000	\$ 8,000	\$ 333,000	\$ 12,000	\$ 926,000	\$ 25,000
1965-69	38,000	9,000	211,000	19,000	2,051,000	52,000	4,009,000	433,000
1970-74	47,000	41,000	272,000	92,000	2,990,000	340,000	9,789,000	1,836,000
1975-79	30,000	15,000	975,000	142,000	17,492,000	2,079,000	21,443,000	4,131,000
1980-84	85,000	30,000	330,000	925,000	3,591,000	17,550,000	13,538,000	46,231,000
1985-89	78,000	29,000	1,111,000	1,856,000	26,080,000	33,386,000	52,202,000	94,665,000
1990-94	97,000	250,000	1,653,000	6,794,000	12,051,000	128,310,000	18,188,000	197,013,000

FIGURE 1

Punitive Damages as a Percent of Total Damages Awarded





