

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Faculty Publications, Department of Psychology

Psychology, Department of

June 2001

The Effects of Limiting Punitive Damage Awards

Edith Greene

University of Colorado, Colorado Springs, egreene@uccs.edu


David Coon

University of Colorado, Colorado Springs

Brian H. Bornstein

University of Nebraska-Lincoln, bbornstein2@unl.edu

Follow this and additional works at: <https://digitalcommons.unl.edu/psychfacpub>

 Part of the [Psychiatry and Psychology Commons](#)

Greene, Edith; Coon, David; and Bornstein, Brian H., "The Effects of Limiting Punitive Damage Awards" (2001). *Faculty Publications, Department of Psychology*. 163.

<https://digitalcommons.unl.edu/psychfacpub/163>

This Article is brought to you for free and open access by the Psychology, Department of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Faculty Publications, Department of Psychology by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

The Effects of Limiting Punitive Damage Awards

Edith Greene,* *Department of Psychology, University of Colorado, Colorado Springs*

David Coon, *Department of Psychology, University of Colorado, Colorado Springs*

Brian Bornstein, *Department of Psychology, University of Nebraska, Lincoln*

*Corresponding author

Portions of this study were presented at the 1998 meeting of the American Psychology-Law Society in Redondo Beach.

In response to concerns that jury awards in tort cases are excessive and unpredictable, nearly every state legislature has enacted some version of tort reform that is intended to curb extravagant damage awards. One of the most important and controversial reforms involves capping (or limiting) the maximum punitive damage award. We conducted a jury analogue study to assess the impact of this reform. In particular, we examined the possibility that capping punitive awards would cause jurors to inflate their compensatory awards to satisfy their desires to punish the defendant, particularly in situations where the defendant's conduct was highly reprehensible. Relative to a condition in which punitive damages were unlimited, caps on punitive damages did not result in inflation of compensatory awards. However, jurors who had no option to award punitive damages assessed compensatory damages at a significantly higher level than did jurors who had the opportunity to do so. We discuss the policy implications of these findings.

THE EFFECTS OF LIMITING PUNITIVE DAMAGE AWARDS

Cries for reform first sounded in the 1970s and continue to the present day. The target of this attack is a tort liability system that many people (including insurance, medical, and pharmaceutical executives as well as legislators and judges) perceive as capricious, unpredictable, and out of control (see, e.g., Chookaszian, 1997; Ellis, 1989; Parliman & Shoeman, 1994). Much of the criticism centers on concerns about the perceived excessiveness and unpredictability of jury damage awards. This uncertainty is generally believed to produce inefficiency in terms of businesses' planning for risk-producing activities and in predicting the outcome of a case and negotiating a settlement (Baldus, MacQueen, & Woodworth, 1995).

Despite evidence that effectively undermines the concerns about extravagant awards (e.g., Daniels & Martin, 1995; Koenig & Rustad, 1993; Ostrom, Rottman, & Goerd, 1996; Saks, 1992), tort reformers have ushered in a number of reform packages that they suggest will rein in runaway juries and effectively reduce their awards. Indeed, nearly every state legislature has enacted some version of tort reform including measures that cap or limit jury damage awards, elevate the standard of proof necessary for the awarding of damages, bifurcate punitive damages trials, allocate a portion of the punitive damage award to the state, and amend the standard of review for excessive verdicts (Hurd & Zoller, 1994; Kershaw & Pernini, 1997; Koenig & Rustad, 1993).

For several years in the late 1980s and early 1990s, the tort reformers seemed to be winning the war. A second phase of the battle may now be underway, however. In the past few years, the highest courts in at least eight states have struck down all or parts of these tort reform measures (Glaberson, 1999), and dozens of new challenges are making their way to state supreme courts across the country. State courts are invalidating parts of the tort reform packages that did not pass state constitutional muster and, in particular, those that effectively enable the legislature to interfere in a jury's evaluation of the evidence and assessment of damages.

THE LAW OF DAMAGES

Damage awards are generally of two sorts: compensatory and punitive. Compensatory damages are intended to return the injured party to the condition she was in before she was injured (to the extent that money can do so). These damages, in turn, have two components: economic damages that are intended to compensate the injured party for her economic losses, including medical expenses and lost earnings, and noneconomic damages that repay the injured party for difficult-to-quantify losses, including pain and suffering, emotional distress, disability, and loss of enjoyment of life (American Law Institute, 1979). As Anderson and MacCoun (1999) note, the rationale behind compensatory damages is plaintiff-focused: the jury is to focus exclusively on the needs of the injured party and attempt to return her to a preinjury level of functioning.

The second kind of damage award—the punitive damage award—is based on a wholly different rationale. Its primary purpose is to punish the defendant for malicious, willful, or evil conduct and to deter that defendant and others from similar egregious misconduct in the future. (These awards serve several secondary purposes as well, including education, retribution, and law enforcement [Owen, 1994]. They may also serve to reimburse the plaintiff for losses that are not recoverable as traditional compensatory damages.)

Punitive damages are defendant-focused (Anderson and MacCoun, 1999): without regard to the plaintiff's needs, the jury is to determine what amount of money will effectively punish and deter the defendant. Although punitive damages are granted infrequently in civil cases (Daniels & Martin, 1995; Moller, 1996), they have captured a great deal of media attention (Bailis & MacCoun, 1996) and have been the target of numerous re-

form measures. The present study examines the impact of one of those reforms, namely capping the punitive damage award.

PROPOSALS TO CAP PUNITIVE DAMAGE AWARDS

Some states impose an absolute upper limit on the amount of money that can be awarded as punitive damages. For example, Alabama imposes a \$250,000 cap. Other states (e.g., Florida) impose a maximum permitted ratio under which punitive damages may be awarded in some ratio to the compensatory damages (typically two or three times, although punitive awards in Colorado may not exceed the compensatory award). Still other states (e.g., Nevada) simultaneously impose both kinds of limits. Finally, in some states, (e.g., Nebraska, New Hampshire, Louisiana, Washington), jurors are not allowed to award any punitive damages (Hurd & Zollers, 1994; Koenig & Rustad, 1993).

Caps on punitive damage awards are widely perceived to be the most important of all legislative tort reforms (Weiler, 1991), yet they are also highly controversial. Galanter and Luban (1993) argue, for example, that punitive damages should be linked to the heinousness of the wrongful act and have nothing to do with the amount of compensatory damages awarded to an injured party. Thus, they oppose proposals that explicitly cap the punitive award at some multiple of the compensatory award. Owen (1994) suggests that such arbitrary methods of measurement deprive the decision maker of the ability to tailor the punishment to fit the particular wrongdoer and the wrongful act. Reform proponents, on the other hand, claim that these caps will reduce the size, variability, and unpredictability of punitive damage awards. Perhaps not surprisingly, little of this debate has been enlightened by empirical investigation.

By definition, of course, caps will effectively control the maximum amount that can be awarded in punitive damages (Robbennolt & Studebaker, 1999). However, we suspect that there may be a cost to this accomplishment in the form of higher and more variable compensatory damage awards in situations in which the punitive damage award is artificially limited. The present study examines that notion.

Why might jurors inflate their compensatory damage award when punitive damages are limited? The task of assessing damages involves multiple and seemingly conflicting goals. Jurors must first focus on the plaintiff and determine an appropriate compensatory award to that plaintiff regardless of its impact on the defendant.¹ Suppose, for example, that a plaintiff is injured in an accident because his car's brake pads—ostensibly repaired by the defendant—had failed. In theory, it should not matter whether the defendant is a small locally owned automobile repair shop or the Ford Motor Corporation. Jurors should

¹ A number of studies have shown that corporate defendants pay greater compensation than individual defendants in both actual (Chin & Peterson, 1985) and simulated trials (Hans & Ermann, 1989; Wasserman & Robinson, 1980) although what might appear on the surface as a deep-pocket effect may actually be a defendant-identity effect (MacCoun, 1996). Wealthy defendants were not necessarily at a disadvantage, unless they were corporations as well.

award compensatory damages that fully and fairly repay the plaintiff for his losses related to the defective brake pads. Jurors may then turn to the defendant and assess punitive damages against that defendant with little regard for the plaintiff or his needs. If the defendant opted to forego adequate testing in the interests of saving money, that defendant should be assessed a reasonable punitive damage award.

Unfortunately, jurors' instructions do not make these distinctions and directions clear (Greene & Bornstein, in press). Rather, the instructions tend to explain the intended function of each kind of award but tend not to clearly guide jurors in how to address these complementary functions. The instructions make no distinction, for example, between the plaintiff and defendant focus that implicitly underlie the two kinds of damage awards. Under these circumstances, defendant-focused concerns can cross over into the assessment of compensatory damages and plaintiff-focused concerns can cross over into the assessment of punitive damages (Anderson & MacCoun, 1999).

We suspect that this crossover might be especially likely to happen in situations in which punitive awards are capped and jurors' ability to adequately punish and deter the defendant is effectively thwarted. Anderson and MacCoun speculate that jurors manage such conflicts through a process of equifinality (Heider, 1958) whereby multiple pathways to a goal exist and when one pathway to a goal is obstructed, another is used. Thus, we suspect that when punitive damage awards are capped (or are not an option), jurors may use their compensatory damage award (the economic component of which is typically *not* capped) as a means of imposing punishment or promoting deterrence toward the defendant.

We further suspect that this crossover effect would be more prominent in situations in which the defendant's conduct has been especially malicious (as opposed to less reprehensible) and in which punishment and deterrence may be particularly appropriate. Jurors who hear evidence of egregious conduct on the part of the defendant and who have scant or no opportunity to award punitive damages would be especially likely to feel that their ability to punish and deter has been thwarted. These jurors might be likely to augment their awards for compensatory damages. The present study tested these hypotheses.

PARADOXICAL EFFECTS OF RESTRICTING PUNITIVE DAMAGE AWARDS

In the time since Baldus et al. (1995) observed that the effects of caps had not been thoroughly tested, at least two studies have examined the impact of restricting punitive damage awards (Anderson & MacCoun, 1999; Robbennolt & Studebaker, 1999) and one study has looked at the impact of capping damages for pain and suffering (Saks, Hollinger, Wissler, Evans, & Hart, 1997). We focus here on the studies of punitive damages.

Anderson and MacCoun (1999) had mock jurors read the summary of a product liability case. In one study, some jurors were allowed to make compensatory and punitive damage awards and others were instructed to award compensatory damages only. An-

derson and MacCoun found that jurors who did not have the opportunity to award punitive damages “compensated for this constraint” (p. 321) by inflating their compensatory damage award. In a second study, they found no effect of the egregiousness of the defendant’s conduct on the amounts of the punitive damage award or compensatory damage award in a case in which all jurors had the option to award punitive damages.

Robbennolt and Studebaker (1999) conducted a more direct test of the capping issue. Their participants read a summary of a personal injury lawsuit and awarded compensatory and punitive damages. Punitive damages were capped at a low level (\$100,000), a moderate level (\$5 million), or a high level (\$50 million), based on pretesting of their case. The level of the cap on the punitive award had a surprising and significant effect on the amount of the compensatory award; it acted as an anchor for the compensatory awards (as well as the punitive awards). As the level of the cap on punitive damages increased, the size and variability of the compensatory award increased as well. Thus, the compensatory award in the high-punitive-cap condition was higher than the compensatory award in the low-punitive-cap condition.

THE PRESENT STUDY

Our study borrowed elements from both of these previous studies. Like Robbennolt and Studebaker, we manipulated the cap on punitive damages. However, our manipulations were simultaneously more restrictive and looser than theirs. Whereas those researchers examined hypotheses related to anchoring by selecting caps at the 10th, 50th, and 90th percentile of punitive damages awarded in pilot testing, our manipulations were more legally driven and arguably more realistic.

One-fourth of our mock jurors had punitive damages capped at \$200,000 (a low limit imposed in at least one state) and another fourth were told that their punitive damage award could not exceed their compensatory award (the rule used in Colorado). A third group had less restriction on their decisions than did participants in Robbennolt and Studebaker’s study: they had no cap whatsoever on the amount of punitive damages they could award (as is true in approximately half of the states). A final fourth of our mock jurors were not given any option to award punitive damages (as is the case in a handful of states). We predicted that compensatory damage awards would increase as limits on punitive damage awards became more restrictive.

Like Anderson and MacCoun, we manipulated the reprehensibility of the defendant’s conduct by describing either highly reprehensible conduct by the defendants or less reprehensible conduct. Neither Anderson and MacCoun (1999) nor Cather et al. (1996) found any effect of defendant egregiousness on compensatory awards when punitive damages were allowed, but we wondered if the defendant’s conduct might affect the compensatory judgment in situations in which punitive damages were severely restricted or completely disallowed.

Finally, unlike either of the other studies, we examined the effects of limiting punitive damages across three different causes of action (personal injury, products liability,

and insurance bad faith). Punitive damages are awarded considerably more often in business/contract cases and intentional tort cases than in other types of cases (Eisenberg, Gorderdt, Ostrom, Rottman, & Wells, 1997) so our use of the insurance case is legally realistic. Although we did not predict case-related effects on damage awards, the use of different cases contributes to our ability to generalize from these data.

METHOD

Participants

Participants were 320 undergraduate students at the University of Colorado in Colorado Springs. Mean age was 24 years ($SD = 7$ years). Twelve percent of participants had previously served on actual juries, half in civil cases, and half in criminal cases. They were given either course credit or payment in exchange for their participation.

Materials

Juror questionnaire packets contained a consent form, preliminary instructions, one version (Reprehensibility [low, high] \times Punitive Damage Limit [no limit, dollar limit, proportional limit, no punitive award]) of each of three trial summaries (personal injury, products liability, insurance bad faith) presented in the same treatment combination, and a verdict form for each case.

Trial Summaries

The trial summaries were approximately 1200 words long and consisted of opening statements, direct examination and cross-examination of witnesses, closing arguments, and jury instructions. They were based loosely on actual cases (e.g., the insurance bad faith case was tailored after *Pacific Mutual Life Insurance Company v. Haslip*, 1991).

To control for order effects, the order of presentation of the case summaries was counterbalanced. There were eight versions of each trial summary. As outlined below, we described the defendant's conduct as highly or mildly reprehensible and paired that manipulation with one of four limitations on punitive damages.²

Personal Injury Case. This summary described a case in which the driver of an automobile had been injured when her car was struck by a truck on which the accelerator pedal had jammed. The plaintiff suffered shattered hip and pelvic bones, underwent multiple surgeries, nearly died from an intestinal infection while hospitalized, and was advised by her physician not to have any more children. In the Low Reprehensibility condition, the defendant trucking company had equipped a majority of its trucks with safety monitoring devices that recorded speed and times of operation, required frequent status reports, and

² Trial summaries are available from the authors. The manipulations of defendant reprehensibility were pretested and published in a previous study (Cather, Greene, & Durham, 1996). Thus, we are confident that these manipulations were perceived as intended.

performed regular safety inspections. In the High Reprehensibility condition, only a minority of trucks had been outfitted with safety monitoring devices, reports were seldom required, and drivers were indirectly encouraged to break safety rules regarding speed and time spent on the road.

Products Liability Case. This summary described the case of a 12-year-old boy who was severely injured while operating a lawnmower. The boy's left arm had been severed and his right arm had sustained extensive nerve damage. In the Low Reprehensibility condition, the defendant manufacturer had conducted considerable safety testing on the mower and had been notified of only a few similar incidents. In the High Reprehensibility condition, the manufacturer had done little safety testing, had rejected the installation of an inexpensive "kill switch" on the product, and had received numerous reports of similar incidents.

Insurance Bad Faith Case. This case involved the cancellation of a woman's health insurance policy without her knowledge while she continued to pay the premiums. The plaintiff became aware of the cancellation only after she submitted hospital bills to the insurance company for reimbursement. (She had been hospitalized for 15 days for a kidney infection that resulted in kidney failure.) In the Low Reprehensibility condition, the insurance company had cancelled her policy 2 months prior to her hospitalization, and the company's computer system generated a report every 3 months listing checks received for cancelled or non-existent policies. In the High Reprehensibility condition, the policy had been cancelled 5 years previously and the checks received were monitored only once a year.

The trial summaries also informed participants that the defendant had previously been found to be liable and that their task was to determine appropriate damage award(s). They received pattern jury instructions outlining the purposes of both compensatory and (where appropriate) punitive damage awards and the general factors that they could consider in determining these awards. The instructions were as follows (Colorado Jury Instructions 3d:Civil, 1988):

Compensatory damages are awarded to compensate the plaintiff for losses incurred as a result of the defendant's actions. In determining such damages, you shall consider the following:

- (1) any noneconomic losses or injuries incurred to the present time, or which will probably be incurred in the future, including pain and suffering, inconvenience, emotional stress, and impairment of the quality of life.
- (2) any economic losses incurred to the present time, or which will probably be incurred in the future, including loss of earnings or impairment of earning capacity, and reasonable and necessary medical, hospital, and other expenses.

Punitive damages are awarded for the sake of example and by way of punishment. In arriving at an award of punitive damages, you are to consider (1) the reprehensibility of the conduct of the defendant, and (2) the amount of punitive damages that will have a deterrent effect on the defendant in the light of defendant's financial condition.

Finally, where appropriate, they were informed about any cap or limit that had been placed on their punitive damage award. The limits we used were as follows: (a) Dollar Limit, in which punitive damages were not to exceed \$200,000;³ (b) Proportional Limit, in which the punitive damage award could not exceed the compensatory damage award; and (c) No Limit. (In reality, caps can be either *explicit*, e.g., jurors in Colorado are explicitly instructed that their punitive damage award cannot exceed their compensatory award or *implicit*, e.g., jurors in Florida are not told about limits imposed on their awards. We suspect that even if jurors are not directly instructed that punitive damages are capped at a certain level, they may nonetheless have this expectation from information available in the media, conversations with others, or from general knowledge of tort reform legislation.) Jurors in a fourth condition (No Punitive Damages) served as a control condition and were not given the opportunity to award punitive damages. These jurors were neither instructed nor questioned about punitive damages. We were particularly interested in comparing the compensatory awards from the three conditions in which punitive awards were allowed (including the two conditions in which they were capped) to the compensatory awards decided by this control group.

Verdict Forms

We asked mock jurors to assess compensatory and (except in the control conditions) punitive damages for each case immediately after reading the case summary and the judicial instructions for that case. Where appropriate, jurors were reminded of limits placed on their punitive awards. There were no caps on compensatory awards. After determining the award(s) for each case, jurors answered two sets of questions about the intended objectives of these awards. We wanted to examine the extent to which jurors intended their awards to meet various objectives related to damages. We asked participants to select a number on a 1–10 scale to reflect the extent to which they intended each award (compensatory and punitive) to (a) make up for the losses incurred by the plaintiff; (b) punish the defendant; and (c) deter the defendant and others from similar behavior in the future: 1 (*Not at all*) and 10 (*Very much*). They answered these questions in reference to their awards in each case. (In the No Punitive Damages condition, jurors answered these questions only in relation to their compensatory damage awards.)

³ This amount is statutorily imposed on punitive damage awards in Texas (although Texas juries also have the option to award twice the amount of economic damages plus an amount equal to noneconomic damages if that sum is more than \$200,000, Texas Civil Practice and Remedies Code, 1999) and is apparently the lowest upper limit at which punitive damages are capped. We also note that this amount is considerably lower than the mean punitive damages awarded when these case materials were used for a different purpose (Cather et al., 1996). Thus, we were fairly certain that by using this low ceiling, we would cause jurors to feel that their ability to effectively punish and deter the defendant had been restricted. This situation would allow us to test the possibility that limiting punitive damages would affect judgments of compensatory damages. To what extent our data are dependent on the low cap we opted to impose is, of course, an empirical question.

Design and Procedure

The design was a 2 (Defendant Reprehensibility) \times 4 (Punitive Damage Limit) \times 3 (Case Type) mixed factorial. Defendant Reprehensibility and Punitive Damage Limit were between-subjects factors and Case Type was a within-subjects factor. There were 40 mock jurors in each of the 8 cells.

Participants were run in groups of 8–12. They completed informed consent forms, read the three trial summaries, and completed the verdict forms after each case. They were allowed to refer back to the case summary and jury instructions when deciding on their awards.

RESULTS

Because the distribution of damage awards was positively skewed, we normalized the data with a log-10 transformation. All subsequent analyses were conducted on the transformed data, although both transformed and nontransformed data are reported for ease of interpretation.

To improve generalizability, we examined the effects of capping punitive damages across three cases. We did not intend to systematically evaluate these different causes of action and further, did not anticipate any main effects of case type or interaction effects with case type. Indeed, separate three-way analyses of variance (ANOVAs) using compensatory and punitive awards as dependent variables and Case Type, Reprehensibility, and Punitive Damage Limit as independent variables indicated no main effects or interactions involving Case Type (all p 's $> .90$). Therefore, to clarify the results, we collapsed our data across the three cases and subjected them to various 2 (Reprehensibility) \times 4 (Punitive Damage Limit) ANOVAs.

Punitive Damage Awards

Caps on punitive damages would obviously be expected to have their most direct effect on assessments of punitive damages. We examined these awards by conducting a 2 \times 3 ANOVA on the mean awards. There was a main effect of Punitive Damage Limit, $F(2, 234) = 12.42$, $p < .001$, $\eta^2 = .10$ and a main effect of Defendant Reprehensibility, $F(1, 234) = 8.51$, $p < .01$, $\eta^2 = .04$ on these data. The interaction was not significant ($p = .16$).

As expected, the mean punitive damage award in the No Limit condition (transformed = 5.38, nontransformed = \$1,579,000) was significantly higher than both the Proportional (transformed = 4.86, nontransformed = \$261,000) and the Dollar Limit conditions (transformed = 4.88, nontransformed = \$107,000; $p < .001$ by post hoc pair wise comparisons using Tukey's test) that did not differ from each other.

Also as expected, the mean punitive award assessed against a defendant whose conduct had been highly reprehensible (transformed = 5.18, nontransformed = \$662,015) was greater than the punitive award assessed against a defendant whose conduct was only mildly reprehensible (transformed = 4.90, nontransformed = \$636,166).

Compensatory Damage Awards

We wondered if jurors would augment their compensatory awards when punitive damages were limited or disallowed, particularly in a situation in which the defendant's conduct had been portrayed as highly reprehensible.

Mean Compensatory Awards

We conducted a 2 (Reprehensibility) \times 4 (Punitive Damage Limit) ANOVA on the mean transformed compensatory damage awards. There was a significant effect of Punitive Damage Limit on compensatory awards, $F(3, 312) = 6.37, p < .001, \eta^2 = .06$ but no effect of Reprehensibility ($p = .45$) or significant interaction ($p = .59$). Pairwise comparisons (Tukey's) for the effect of Punitive Damage Limit showed that the mean compensatory award in the No Punitive Award condition was significantly higher than the mean award in all the other three conditions (all p 's $< .01$) and that those three means did not differ from each other. These data are shown in Table 1.

The absence of a Punitive Damage Limit \times Reprehensibility interaction suggests that mock jurors were apparently not more likely to augment their compensatory award to offset limitations in their punitive awards when the defendant had acted egregiously. More generally, the lack of difference in compensatory awards in the No Limit condition (where jurors could award any amount of punitive damages) and the Dollar and Proportional Limit Conditions (where punitive damages were capped) suggests that mock jurors did not augment their compensatory awards when punitive damages were explicitly capped.

Variability in Compensatory Awards

A justification for imposing caps on punitive damages is that it will reduce the variability of jurors' damage awards (Zoebel, 1996). But we wondered if a cap on punitive awards would actually increase the variability in compensatory damage awards. To test this notion, we calculated a deviation score for each compensatory award by determining the absolute distance between that particular award and the mean award for that ex-

Table 1. Mean Compensatory Awards as a Function of Punitive Damage Limit, Transformed and Nontransformed Amounts^a

Punitive damage limit	Mean compensatory award	
	Transformed	Nontransformed (in thousands)
No limit	5.47 ^a (.73)	\$1,015 (2,241)
Proportional limit	5.38 ^a (.78)	\$732 (988)
Dollar limit	5.33 ^a (.65)	\$489 (613)
No punitive award	5.79 ^b (.72)	\$1,630 (2,487)

Note: Analyses were conducted on transformed awards only. Means with different superscripts are significantly different ($p < .01$).

^aStandard deviations are given in parentheses.

Table 2. Mean Deviation Values for Compensatory Awards as a Function of Punitive Damage Limit and Defendant Reprehensibility, Transformed and Nontransformed Amounts^a

Condition	Mean deviation value	
	Transformed	Nontransformed (in thousands)
Low reprehensibility		
No limit	5.89 ^a (.29)	\$1,124 (1,991)
Proportional	5.88 ^a (.36)	\$1,007 (828)
Dollar limit	5.59 ^b (.34)	\$526 (478)
No punitive award	6.32 ^c (.26)	\$2,598 (2,535)
High Reprehensibility		
No limit	6.01 ^a (.28)	\$1,427 (1,961)
Proportional	5.70 ^b (.27)	\$595 (351)
Dollar limit	5.56 ^b (.26)	\$439 (325)
No punitive award	5.98 ^a (.24)	\$1,095 (633)

Note: Analyses were conducted on transformed deviation scores only. Means with different superscripts are significantly different ($p < .01$).

^aStandard deviations are given in parentheses.

perimental condition. (See Levene, 1960, and Saks et al., 1997 for a description of this technique.) These data were also collapsed across case type and normalized with a log-10 transformation before being subjected to a 2×4 ANOVA.

There were main effects of both Punitive Damage Limit ($p < .001$) and Reprehensibility ($p < .001$) on the deviation scores but these were subsumed by the Punitive Damage Limit \times Reprehensibility interaction, $F(3, 312) = 9.37$, $p < .01$, $\eta^2 = .08$. These data are shown in Table 2.

If, as Zoebel (1996) suggests, capping the punitive damage award is effective in reducing award variability, then we would expect to find significant differences between the conditions where punitive awards were capped and those in which they were not. We found evidence of this pattern in the High Reprehensibility conditions (where the variability in awards in the Dollar Limit and Proportional Limit conditions was significantly less than the variability in the No Limit condition) and a hint of the pattern in the Low Reprehensibility condition (where the variability in the Dollar Limit condition was less than that of the No Limit condition). Additional pairwise comparisons (Tukey's) revealed that the condition with the greatest variability in compensatory awards was the No Punitive Award/Low Reprehensibility condition and that the variability in this award was significantly larger than any other award.

Total Award

The highest compensatory awards came from jurors who were not given the opportunity to award punitive damages. This finding suggests that jurors may not make the distinctions between compensatory and punitive damages that the law intends (Greene, 1989) but rather, that they may reason more holistically and award amounts that they believe constitute a sufficient *total* award. By this reasoning, when jurors are unable to punish

Table 3. Mean Total Award as a Function of Punitive Damage Limit, Transformed and Nontransformed Amounts^a

Punitive damage limit	Total award ^b	
	Transformed	Nontransformed (in thousands)
No limit	5.81 ^a (.73)	\$2,593 (7,379)
Proportional	5.53 ^b (.78)	\$993 (1,296)
Dollar limit	5.53 ^b (.51)	\$597 (640)
No punitive award	5.79 ^a (.72)	\$1,630 (2,487)

Note: Analyses were conducted on transformed awards only. Means with different superscripts differ significantly, $p < .02$.

^aStandard deviations are given in parentheses.

^bTotal award in No Punitive Award Condition consisted of compensatory award only.

and deter the defendant by way of a punitive damage award, they may do so by increasing the size of the compensatory damages they award to the plaintiff. Thus, the compensatory award in the No Punitive Award Condition would approximate the total (compensatory plus punitive) award in the No Limit Condition.

To test this notion, we conducted a 2×4 ANOVA using, as the dependent variable, the total award from the conditions in which punitive damages were allowed and the compensatory award from the condition in which they were not. We found a significant effect of Punitive Damage Limit, $F(3, 312) = 4.04, p < .01, \eta^2 = .04$. Post hoc pairwise comparisons (Tukey's) revealed that, as expected, the mean compensatory award in the No Punitive Award condition did not differ from the mean total award in the No Limit condition ($p = .26$) and that these awards were both significantly larger than the total awards in the Dollar Limit and Proportional Limit conditions. These data are shown in Table 3. There was no effect of Defendant Reprehensibility or a Defendant Reprehensibility \times Punitive Damage Limit interaction on the mean total awards.

Jurors' Intentions in Awarding Damages

Recall that we asked participants to tell us, after they had assessed damages in each case, to what extent each award was intended to meet various goals related to damages. First, they noted to what extent their compensatory award was intended to (a) make up for the losses incurred by the plaintiff, (b) punish the defendant, and (c) deter the defendant and similar others. Second, they noted the extent to which their punitive award was intended to meet each of these three goals.

If their reasoning was consistent with the law's intentions, they would have said that the compensatory award was intended to make up for losses but not to punish or deter, and that their punitive award was intended to punish and deter but not to make up for the plaintiff's losses. If they felt that the cap on the punitive award restricted their ability to adequately punish and deter the defendant, then jurors in those conditions might have used the compensatory damage award to also serve those functions.

We analyzed the data with a 2 (Defendant Reprehensibility) \times 4 (Punitive Damage Limit) \times 3 (Question Type: Making up for losses; Punishing; Detering) mixed ANOVA. Defendant Reprehensibility and Punitive Damage Limit were between-participant factors and Question Type was a within-participant factor. We conducted separate analyses for responses in reference to compensatory damages and to punitive damages.

There were no effects of Defendant Reprehensibility or Punitive Damage Limit on responses to these questions for either type of award. Nor were there any interaction effects. The lack of an effect of Punitive Damage Limit partially complements the quantitative data on damages: jurors who have limitations on allowable punitive awards apparently do not use the compensatory award as a vehicle for meeting the punishment and deterrence objectives of punitive damages. Surprisingly, jurors in the No Punitive Award condition were not more likely than other jurors to say that their compensatory awards were intended to punish or deter and yet, relative to compensatory awards from other conditions, theirs were the highest (see Table 1).

There were effects of Question Type on responses in reference to both kinds of awards, however. We describe these below.

Intent of Compensatory Damage Awards

There were significant differences in ratings of intent relative to compensatory damage awards, $F(2, 624) = 64.66, p < .001, \eta^2 = .21$. Mock jurors said that their compensatory damage awards were more intended to make up for the plaintiff's losses than to punish or deter. The difference between mean ratings for the Punishment and Deterrence questions was not significant ($p = .34$). These means are shown in Table 4.

Intent of Punitive Damage Awards

There were also significant differences in intent ratings relative to punitive damages, $F(2, 468) = 3.72, p < .05, \eta^2 = .05$. Mock jurors said that their punitive awards were more intended to punish than to deter or to make up for losses. The mean ratings for these two questions were not significantly different ($p = .38$). These data are also shown in Table 4.

Table 4. Mean Ratings of Award Objectives for Compensatory and Punitive Awards, as a Function of Question Type on a 1–10 Scale^a

Question type	Award type	
	Compensatory	Punitive
To what extent is your (compensatory/punitive) damage award intended to:		
Make up for losses incurred by the plaintiff?	6.89 ^a (1.72)	5.86 ^a (2.01)
Punish the defendant?	5.90 ^b (1.91)	6.15 ^b (1.98)
Deter the defendant and similar others?	5.84 ^b (1.93)	5.98 ^a (1.97)

Note: Within each Award Type, means with different superscripts differ significantly ($p < .05$).

^aStandard deviations are given in parentheses.

Although the results for Question Type were significant, we note that the differences in mean ratings for the punitive damages questions were not large, for example, the rated effectiveness of the punitive award for punishing the defendant was 6.15 and for making up for plaintiff's losses, 5.86 (on a 10-point scale). Further, if mock jurors are really disregarding punishment and deterrence issues in their compensatory awards, then one would expect their mean ratings to be lower than 5.90 and 5.84, respectively. So, although jurors perceive the compensatory award (but not the punitive award) to be the appropriate vehicle for repayment and the punitive award (but not the compensatory award) to be a means of punishing the defendant, we are not particularly sanguine that jurors are adhering to the law's objectives. That the deterrence goal was not a prominent feature of the punitive damages decision is perhaps not surprising. Because we gave no information about the defendant's financial condition, it may have been difficult for mock jurors to use the punitive award as a means of deterrence. In addition, others (Hastie, Schkade, & Payne, 1999) report that punishment plays a much larger role in mock jurors' thoughts about punitive damages than does deterrence.

DISCUSSION

Much of the rhetoric concerning tort reform has occurred in the absence of empirical investigation. That situation has begun to change in the very recent past, however, as social scientists have begun to assess some of the effects of statutorily imposed attempts to reform punitive damages assessments (Anderson & MacCoun, 1999; Robbennolt & Studebaker, 1999). The present study complements the results of other recent studies in showing that there are unexpected effects of one important and highly controversial legislated reform: the limiting of punitive damage awards.

Our data show that jurors who were not given the opportunity to award punitive damages in three kinds of cases (personal injury, products liability, and insurance bad faith) augmented the amount that they awarded in compensatory damages. Jurors who had no option to award punitive damages apparently inflated their compensatory damage award to serve punitive ends.⁴ In fact, our data show that the compensatory damages awarded by these jurors were statistically equivalent to the total amount (compensatory plus punitive) awarded by jurors whose punitive damage awards were not limited in any way.

We found no effects of other limitations of punitive awards (absolute dollar limit or proportional limit) on compensatory damages. So, for example, the compensatory awards from jurors with a \$200,000 limit on punitive damages were not higher than those from

⁴Interestingly, jurors who had no option to award punitive damages did not tell us that they intended the compensatory award to punish and deter, however. It may be that they augmented their compensatory awards without clearly distinguishing compensatory goals from punitive goals. Perhaps they lacked awareness of the factors that influenced their awards (Wilson, 1985). Alternatively, their responses may be explained by demand characteristics. They may simply have inferred that compensatory damages are supposed to compensate and that punitive damages are supposed to punish.

jurors with no limit on punitive damages. This finding is especially remarkable given that the caps we imposed on punitive damages were more restrictive than is typically the case and would have, we suspected, resulted in *more* crossover into compensatory awards than is typically the case. And yet, we found no augmentation of compensatory awards even when punitive damages were restricted to \$200,000. It appears from these data that as long as jurors are given the opportunity to award *some money* for purposes of punishment and deterrence, they do not feel the need to increase their compensatory award to meet those objectives. One might test this hypothesis by lowering the cap on punitive damages even further to see if and at what point jurors start to augment their compensatory awards.

We wondered if jurors would be likely to inflate their compensatory award when punitive awards were disallowed (or severely limited) and when the defendant had acted in a highly reprehensible manner. We reasoned that jurors would want to punish the defendant for his egregious conduct and that the only means available to them was through the compensatory award. But, like other researchers (Anderson & MacCoun, 1999; Cather et al., 1996), we found no effect of defendant reprehensibility on the amount of the compensatory damage award. One explanation of this null finding is that our reprehensibility manipulation, although successful, was relatively weak: recall that the mean punitive awards in response to less reprehensible and more reprehensible conduct differed by only \$30,000. (Recall also that our manipulations were identical to those used by Cather et al. Finally, it is worth noting that there is no absolute standard that equates with egregious or reprehensible behavior; so our notion of reprehensible conduct may not have been perceived as such.) Had the defendant's behavior been *clearly* reckless or intentional, we might have seen an effect of defendant reprehensibility on compensatory awards when punitive awards were capped or disallowed. In those situations, jurors might feel especially desirous of condemning the defendant's conduct, yet they would have no vehicle *but* the compensatory award to allow them to do so.

Next, we turn to the variability in compensatory damage awards. Recall that Robbennolt and Studebaker (1999) found differences in compensatory award variability as a function of the cap on punitive damages. So did we. In fact, our pattern of results is very similar to theirs. We found that capping the punitive damage award generally reduced the variability in compensatory damage awards.

Finally, we examine the effects of our manipulations on the punitive damage awards. As expected, mock jurors assessed higher punitive damages against the more errant defendants and when their awards were not limited. These findings suggest that in setting punitive damages, jurors are indeed attentive to the egregious nature of the defendant's conduct and that limitations on punitive damages obviously result in reduced awards of that type.

Summarizing our quantitative findings, we find both good news and troubling news. The good news is that mock jurors in our study, like those in Cather et al. (1996), seemed to appropriately compartmentalize their decision making about compensation and punishment/deterrence in three civil tort cases. They did not augment their compensatory damage awards when their punitive awards were limited. They were also not more likely to

augment the compensatory award when the defendant's conduct was highly reprehensible (vs. less reprehensible), although this finding may be an artifact of a weak manipulation of defendant's conduct. By contrast, mock jurors were attentive to the reprehensibility of the defendant's conduct when they assessed punitive damages, as the law would intend them to be. Finally, limiting the punitive damage award reduced the variability in the compensatory award as well as the mean punitive award. These findings provide some tentative support to the notion that limiting the punitive damage award will decrease the size and variability of damage awards generally. We found no evidence for the hypothesized cross-over effect, at least in the conditions where punitive damages were capped. Mock jurors did not "compensate for the constraint" (Anderson and MacCoun, 1999) in their punitive damage decision making by inflating their compensatory award.

The troubling news is this: when jurors were not allowed to award punitive damages, they inflated the level of their compensatory awards. This finding, consistent with Anderson and MacCoun's data, suggests that jurors who have no option to award punitive damages may nonetheless find an alternative avenue for punishing the defendant. These findings support the notion that jurors may have an overall impression of what an injury is worth and, rather than concerning themselves with the damage components as an accountant might, instead search for a sum that is felt to be appropriate (Kalven, 1958).

There are obvious limitations to the conclusions of our study. Although we examined the impact of caps in three kinds of cases and found no differential effects of our manipulations in these three causes of action, all of our summaries were greatly abbreviated and lacked some degree of legal realism and vividness. We did not include some information that could have affected awards (e.g., concerning the defendant's financial status, the conditions that trigger liability for punitive damages). In particular, requests or counter-requests for damages by the parties in these cases might have moderated our findings by serving as anchors for resulting awards. Further, our mock jurors were college students. Although students and jury-pool subjects tend to make decisions in similar ways (Bornstein, 1999), we cannot be sure to what extent the effects of our independent variables would hold with a different population. Finally, our participants did not deliberate. Jury discussions about damages can be complex and motivated by subtle attempts at persuasion and compromise (Greene, 1989). Obviously, our mock jurors missed this opportunity.

With these caveats in mind, we briefly ponder the policy implications of our findings. Our data tentatively support the assumption that limitations on punitive damage awards may reduce the size of punitive awards and the variability of compensatory awards without simultaneously inflating the size of the latter. This sanguine finding, in conjunction with the fact that legislative caps simplify courts' review of the amount of the awards in *additur/remittitur* (Baldus et al., 1995), might argue for the implementation and continued use of damage caps.

However, we note the concerns of others (e.g., Baldus et al., 1995; Galanter & Luban, 1993) that legislative caps raise serious ethical and policy questions. Because of inconsistencies across states in laws limiting punitive damages, similarly injured plaintiffs

may receive radically different compensation in different locales. Further, serious inequities may exist in how tortfeasors are dealt with. Wildly malicious defendants may escape significant sanction in some jurisdictions but not others. Because legislative caps may bear little relation to the amount of money required to actually punish and deter, they may undercut the very premise of punitive damages (Baldus et al.). Therefore, we advocate for further empirical research along these lines, tempered by careful and thoughtful applications of the research findings in setting future policy.

REFERENCES

- American Law Institute (1979). *Restatement (second) of torts*. St. Paul, MN: American Law Institute.
- Anderson, M. C., & MacCoun, R. J. (1999). Goal conflict in juror assessments of compensatory and punitive damages. *Law and Human Behavior, 23*, 313–330.
- Bailis, D. S., & MacCoun, R. J. (1996). Estimating liability risks with the media as your guide: A content analysis of media coverage of civil litigation. *Law and Human Behavior, 20*, 419–429.
- Baldus, D., MacQueen, J. C., & Woodworth, G. (1995). Improving judicial oversight of jury damages assessments: A proposal for the comparative additur/remittitur review of awards for nonpecuniary harms and punitive damages. *Iowa Law Review, 80*, 1109–1267.
- Bornstein, B. H. (1999). The ecological validity of jury simulations: Is the jury still out? *Law and Human Behavior, 23*, 75–91.
- Cather, C., Greene, E., & Durham, R. (1996). Plaintiff injury and defendant reprehensibility: Implications for compensatory and punitive damage awards. *Law and Human Behavior, 20*, 189–206.
- Chin, A., & Peterson, M. (1985). *Deep pockets, empty pockets: Who wins in Cook County jury trials*. Santa Monica: Rand Corporation.
- Chookaszian, D. (1997, July 28). Tort reform: Reining in punitive damages will make American business more competitive. *Forbes, 7/28/97*, p. 166.
- Colorado Jury Instructions 3d: Civil* (1988). San Francisco: Bancroft-Whitney.
- Daniels, S., & Martin, J. (1995). *Civil juries and the politics of reform*. Evanston, IL: Northwestern University Press.
- Eisenberg, T., Goerdt, J., Ostrom, B., Rottman, D., & Wells, M. T. (1997). The predictability of punitive damages. *Journal of Legal Studies, XXVI*, 623–661.
- Ellis, D. D. (1989). Punitive damages, due process, and the jury. *Alabama Law Review, 40*, 975–1008.
- Galanter, M. & Luban, D. (1993). Poetic justice: Punitive damages and legal pluralism. *American University Law Review, 42*, 1393–1463.
- Glaberson, W. (1999). State courts overturn laws limiting suits and awards. *New York Times, 7/16/99*, p. A1.
- Greene, E. (1989). On juries and damage awards: The process of decision making. *Law and Contemporary Problems, 52*, 225–246.
- Greene, E., & Bornstein, B. (2000). Precious little guidance: Jury instructions on damages. *Psychology, Public Policy and Law, 6*.
- Hans, V. P., & Ermann, M. D. (1989). Responses to corporate versus individual wrongdoing. *Law*

- and *Human Behavior*, 13, 151–166.
- Hastie, R., Schkade, D. A., & Payne, J. W. (1999). Juror judgments in civil cases: Effects of plaintiffs requests and plaintiff's identity on punitive damage awards. *Law and Human Behavior*, 23, 445–
470. Heider, F. (1958). *The psychology of interpersonal relations*. Hillsdale, NJ: Erlbaum.
- Hurd, S. N., & Zollers, F. E. (1994). State punitive damages statutes: A proposed alternative. *Journal of Legislation*, 20, 191–212.
- Kalven, H. (1958). The jury, the law, and the personal injury damage award. *Ohio State Law Journal*, 19, 159–178.
- Kershaw, A. E., & Pernini, D. M. (Winter 1997). Geressy v. Digital—Using statistical analysis to curb excessive jury awards. *Employee Relations Law Journal*, 23, 55–65.
- Koenig, T., & Rustad, M. (1993). The quiet revolution revisited: An empirical study of the impact of state tort reform of punitive damages in products liability. *The Justice System Journal*, 16, 21–44.
- Levene, H. (1960). Robust tests for equality of variances. In I. Olkin (Ed.), *Contributions to probability and statistics* (pp. 278–292). Stanford, CA: Stanford University Press.
- MacCoun, R. J. (1996). Differential treatment of corporate defendants by juries: An examination of the “deep-pockets” hypothesis. *Law and Society Review*, 30, 121–161.
- Moller, E. (1996). *Trends in civil jury verdicts since 1985*. Santa Monica, CA: RAND Institute for Civil Justice.
- Ostrom, B. J., Rottman, D. B., & Goerdts, J. A. (1996). A step above anecdote: A profile of the civil jury in the 1990s. *Judicature*, 79, 233–241.
- Owen, D. G. (1994). A punitive damages overview: Functions, problems and reform. *Villanova Law Review*, 39, 363–413.
- Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1 (1991).
- Parlman, G. C., & Shoeman, R. J. (1994). Punitive damages: A discussion of judicial and legislative responses to excessive jury awards. *Employee Relations Law Journal*, 20, 177–188.
- Robbenolt, J. K., & Studebaker, C. A. (1999). Anchoring in the courtroom: The effects of caps on punitive damages. *Law and Human Behavior*, 23, 353–373.
- Saks, M. J. (1992). Do we really know anything about the behavior of the tort litigation system—and why not? *University of Pennsylvania Law Review*, 140, 1147–1292.
- Saks, M. J., Hollinger, L. A., Wissler, R. L., Evans, D. L., & Hart, A. J. (1997). Reducing variability in civil jury awards. *Law and Human Behavior*, 21, 243–256.
- Texas Civil Practice and Remedies Code (1999). Section 41.008. Retrieved from Lexis-Nexis on World Wide Web, 6/7/00.
- Wasserman, D. T., & Robinson, J. N. (1980). Extra-legal influences, group processes, and jury decision-making: A psychological perspective. *North Carolina Central Law Journal*, 12, 96–159.
- Wilson, T. D. (1985). Strangers to ourselves: The origin and accuracy of beliefs about one's own mental states. In J. H. Harvey & G. Weary (Eds.), *Attributions in contemporary psychology*. New York: Academic Press.
- Weiler, P. (1991). *Medical malpractice on trial*. Cambridge, MA: Harvard University Press.
- Zoebel, H. B. (1996, October 28). Settle, yes—but the “punitives”, well. . . . *Christian Science Monitor*, p. 19.