

## Goal Conflict in Juror Assessments of Compensatory and Punitive Damages

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*Recent tort reform debates have been hindered by a lack of knowledge of how jurors assess damages. Two studies investigated whether jurors are able to appropriately compartmentalize compensatory and punitive damages. In Study 1, mock jurors read a trial summary and were asked to assess compensatory and punitive damages in one of three conditions: (a) compensatory damages only, (b) punitive damages for the plaintiff, or (c) punitive damages for the state treasury. Results suggest that jurors who did not have the option to award punitive damages inflated compensatory damages via pain and suffering awards. Jurors were marginally more likely to award punitive damages when the plaintiff was the recipient. Mock jurors in Study 2 read a similar case summary and were asked to assess compensatory and punitive damages. Two factors were varied in Study 2: (a) egregiousness of the defendant's conduct, and (b) the recipient of any punitive damages (the plaintiff vs. a consortium of state funds). Jurors were more likely to award punitive damages when the defendant's conduct was more egregious and when the plaintiff was the recipient. The results suggest leakage between compensatory and punitive damage judgments, contrary to the law's mandate.*

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"In 1967, when I first walked into a classroom, the only word associated with tort reform was 'arcane,'" reports one tort reform lobbyist, "[n]ow cab drivers know about the McDonald's case." (Goldman, 1996, p. 4)<sup>4</sup>

Punitive damages are awarded in only a small fraction of civil jury trials (Daniels & Martin, 1995; Galanter, 1996; Moller, 1996; Ostrom, Rottman, & Goerd, 1996). Nevertheless, punitive damage awards have received enormous media attention (Bailis & MacCoun, 1996), and concerns about their magnitude and variability have

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<sup>4</sup>The McDonald's case was a case in which a woman spilled hot coffee on her lap and won an initial judgment of \$2.7 million (Goldman, 1996, p. 4).

made punitive damages the focus of many tort reform efforts, including, most recently, the *Fairness in Punitive Damage Awards Act*, which would have limited the amount of punitive damages to the greater of three times the amount awarded to the claimant for economic loss or \$250,000 (S.1554, 1997).

Those jurists and legislators who have formulated existing tort law and tort reforms, however, have had little information about how jurors actually assess damages. Our concern is whether jurors are able to compartmentalize compensatory and punitive damages as the law and many tort reform efforts require.

### CAN JURORS COMPARTMENTALIZE?

A major concern for both legal policy and psycholegal research is that the law requires jurors to compartmentalize information and judgments in ways that they may be unwilling or unable to achieve (MacCoun, 1989). For example, jurors are asked to isolate their reactions to extraevidentiary information from their evaluation of trial evidence, to use certain items of evidence for some purposes but not others (e.g., for credibility rather than guilt), or to reach multiple verdicts independently in a single trial. And jurors are asked to postpone certain judgments until others have been reached, and to prevent considerations of the former from influencing the latter; e.g., criminal jurors' views regarding sentence severity should not influence their evaluation of defendant guilt.

Our concern in the present paper is with compartmentalization in civil trials. A growing body of evidence suggests leakage between jurors' liability verdicts and their compensatory damage judgments (see reviews by Greene, 1989; Horowitz & Bordens, 1990; MacCoun, 1996). Less is known about leakage between compensatory and punitive damage judgments.

Tort law does not require an absolute independence of compensatory and punitive damage calculations; it is commonplace for both decisions to be made during the same trial phase, and some jurisdictions (e.g., California) instruct jurors that the size of the punitive award should have some relationship to the size of the compensatory award. However, these awards have different objectives and are to reflect different factual concerns. *Black's law dictionary* (1983) defines compensatory damages as damages that will compensate the injured party for the injury sustained and nothing in excess of this. Conversely, punitive damages, sometimes referred to as exemplary damages, are damages awarded to the plaintiff over and above what will compensate the plaintiff where the wrong done to the plaintiff was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant. Thus the rationale behind compensatory damage judgments is *plaintiff-focused*; given defendant liability, the jury's assigned goal is to determine what award would "make the plaintiff whole" irrespective of the impact that the award would have on the defendant. Punitive damage judgments, on the other hand, are intended to be *defendant-focused*; the jury is intended to use the punitive award to influence the defendant (retribution and/or specific deterrence), and perhaps other potential defendants (general deterrence).

Cather, Greene, and Durham (1996) present an encouragingly optimistic view

of juror compartmentalization in the sphere of civil damage judgments. Their recent mock jury simulation examined the issue of leakage between compensatory and punitive damage judgments directly and provides an important first step in establishing that jurors do sometimes compartmentalize civil damage judgments. Cather et al. (1996) found that, as intended by law, defendant reprehensibility influenced punitive damages, but not compensatory damages. Injury severity failed to influence compensatory damages as intended by law; however, consistent with legal standards, it had no influence on punitive awards.

Nevertheless, we believe that in some circumstances, the existence of multiple goals creates intrusions where defendant-focused concerns will leak into the assessment of compensatory damages, and plaintiff-focused concerns will leak into the assessment of punitive damages.

The many examples of juror failure to compartmentalize are probably overdetermined, involving miscomprehension of legal instructions, active attempts to nullify the law, and nonconscious interference effects involving associative memory. But others appear to involve conflicts among juror goals. Jurors, like other legal fact-finders, attempt to satisfy multiple objectives, both normative (e.g., deterrence, retribution) and nonnormative (finish the trial and go home; avoid fighting with other jurors; avoid the wrath of the defendant, plaintiff, or community). But the judge's instructions, trial evidence, and/or verdict format may constrain jurors' abilities to meet these goals in a normatively appropriate fashion. We suggest that jurors manage goal conflict through a principle of *equifinality* (e.g., Heider, 1958). By *equifinality*, we mean that actors can pursue goals through multiple pathways; if one pathway is thwarted, another is used (Carver & Scheier, 1981; Read, Vanman, & Miller, 1997). Thus compartmentalization may fail because when jurors are unable to meet a goal via one judgment, they may do so via another. Jurors can use punitive damage judgments to provide further compensation for needy plaintiffs, and they can use compensatory damage judgments to seek retribution or promote specific or general deterrence.

### LEAKAGE INTO COMPENSATORY DAMAGES

In some states (New Hampshire, Louisiana, Nebraska, and Washington; see DeFrances, Smith, Langan, Ostrom, Rottman, & Goerd, 1995), jurors are blocked from awarding punitive damages; in others, trials may be bifurcated so that jurors are unaware when awarding compensatory damages that they will later have the opportunity to award punitive damages; and even in jurisdictions that do permit punitive damages, jurors are given the option in only a fraction of all civil trials. The implicit assumption seems to be that preventing jurors from awarding punitive damages thereby prevents punitive sentiments from influencing verdicts. The equifinality principle suggests otherwise, and indeed many legal commentators take issue with this assumption, suggesting there is leakage into compensatory damages. For example, in *Wangen et al. v. Ford et al.* (1980), the Supreme Court of Wisconsin stated that "it is generally recognized that if punitive damages are not allowed, juries give vent to their desire to punish the wrongdoer under the guise of increasing the compensatory damages, particularly those awarded for pain and suffering" (p.

277). Indirect support for this hypothesis comes from two studies by Darley and Huff (1990), in which mock jurors inflated their estimates of the physical damage done by an actor when the damage was intentionally inflicted as opposed to negligently inflicted.

In keeping with the equifinality principle, our *first hypothesis* is that when jurors feel motivated to punish the defendant but are not given the option to do so, they will resolve this conflict by inflating compensatory damage awards, contrary to their instructions from the bench. Our *second hypothesis* is that the component of compensatory damages most likely to reveal this effect will be the award for “pain and suffering,” because this is the portion that is least constrained by evidence regarding damages.

### LEAKAGE INTO PUNITIVE DAMAGES

In the present study, we also examined the possibility of a second kind of intrusion: leakage into punitive damages. We reasoned that a punitive award of the magnitude necessary to meet jurors’ defendant-focused goals (retribution and/or deterrence) would provide the plaintiff with an unjust “windfall profit,” especially considering that the jurors would have already attempted to make the plaintiff whole via compensatory damages; as Justice Harlan put it, “from the standpoint of the individual plaintiff [punitive] damage awards are windfalls” (*Rosenbloom v. Metromedia, Inc.*, 1971, p. 74). From an equity-theory perspective (e.g., Austin, Walster, & Utne, 1976), any award to the plaintiff in excess of the amount needed to make the plaintiff whole may be seen as creating a new injustice. Many in the legal community appear to hold this view, often proposing that a portion of punitive damages judgments be awarded to the state. For example, Chief Justice Rehnquist has suggested the following: “Punitive damages are generally seen as a windfall to plaintiffs, who are entitled to receive full compensation for their injuries—but no more. Even assuming that a punitive fine should be imposed after a civil trial, the penalty should go to the State, not to the plaintiff—who by hypothesis is fully compensated.” (*Smith v. Wade*, 1982, p. 59)

Indeed, several states have passed legislation mandating that a portion of any punitive damage award be awarded to the state treasury or specific funds; such statutes are sometimes called “state extraction” statutes, “restricted recovery plans,” or “split-recovery” statutes. As of this writing, at least eight states have adopted and continue to enforce such statutes and several other states have at least considered such legislation (Blum, 1993; Burrows, 1992; *BMW v. Gore*, 1996). For example, in Georgia, 75% of any punitive damage award, less a proportionate part of litigation costs, including counsel fees, is allocated to the state treasury (Ga. Code Ann., 1995), whereas in Illinois, the court is permitted to apportion punitive damages among the plaintiff, plaintiff’s attorney, and the Illinois Department of Human Services (Ill. Comp. Stat., 1994).<sup>5</sup>

<sup>5</sup>Legal commentators have raised several concerns regarding split-recovery statutes, including the possibility that they create a disincentive to sue (*Gordon v. State*, 1992, p. 802; see also Breslo, 1992; Burrows, 1992), encourage forum-shopping (Turner & Houghton, 1996), or influence settlement patterns (Breslo, 1992 “Note, an economic analysis,” 1992).

While much has been written by legal scholars on the issue of a windfall profit, we know of no empirical studies which directly address this issue.<sup>6</sup> It seems reasonable to expect that jurors might react the same way tort critics have reacted, viewing large punitive awards as an undeserved “windfall profit” to the plaintiff. Thus our *third hypothesis* is that jurors will be more likely to award punitive damages when that award will go to the state or a consortium of noncontroversial state funds than when the money will be awarded to the plaintiff. Our *fourth hypothesis* is that jurors will award more money in punitive damages when the award will go to the state or a consortium of noncontroversial state funds than when the money will be awarded to the plaintiff.

## STUDY 1

### Method

#### *Participants*

The participants were 91 university students, 36 of whom participated as part of a public policy class session, and 55 of whom were recruited from various undergraduate courses, paid 5 dollars, and given chocolate to participate in the experiment after class. There were 55 female and 34 male participants; 36 were White, 6 were African American, 8 were Latino, 32 were Asian American, and 4 reported other ethnicities; 2 did not report their ethnicity.

#### *Stimulus Trial and Questionnaire*

Participants were given an 8- to 10-page trial booklet containing a summary of a products liability lawsuit followed by jury instructions and a questionnaire. Participants were instructed that they had previously found the corporate defendant liable for the defective design of the product which injured the plaintiff and that their task was to assess any compensatory damages, and in two of the three treatment conditions, any punitive damages as well.

The trial summary was loosely based on a 1992 nail-gun injury product liability case whose details were published in a federal reporter. Our scenario presented a 31-year-old male carpenter who was injured when the nail-gun his coworker was operating fired a nail, piercing the plaintiff's skull. The plaintiff alleged that the “contact trip” model nail-gun in question was a defective product for sale and use.

The evidence presented by both sides was summarized; the participants knew whether each piece of evidence, including witness testimony and documents, had been presented by the plaintiff or the defendant. Participants read short summaries of evidence involving the actual injury-causing incident, the design of the nail-gun

<sup>6</sup>A possible exception is Baron and Ritov (1993), who found that respondents awarded more compensation when a single award would be paid by the injurer to the victim, compared to a condition in which the injurer would pay the state and the state would pay the victim. But their case involved a compensatory situation without strong punitive issues.

in question, the design of a purportedly safer model, common nail-gun use, and information on the instruction manual, label, and warnings for the nail-gun in question. Next they read a summary of the evidence presented regarding the defendant's conduct. For example, the plaintiff called representatives from the defendant company who testified that the defendant had produced and marketed this model nail-gun with knowledge of the serious injuries which had resulted from the use of these nail-guns and that the defendant had manufactured such nail-guns over the objection of its safety engineer.

A summary of the evidence produced regarding the plaintiff's injuries was presented, including brain damage resulting in seizures, an inability to work at heights, and adverse personality changes. Each side then gave separate compensatory damage figure recommendations for five compensatory damages categories. Four were economic: "Medical and psychiatric bills to date of trial," "Estimated future medical and psychiatric bills," "Lost earnings from date of injury to date of beginning of trial," and "Future lost earnings based upon discounted earnings of average person with a disability." The final category—"pain and suffering"—was noneconomic.

For those conditions allowing punitive damages, the summary included a paragraph in which the defendant argued that its behavior was reasonable and thus far from the outrageous conduct required for punitive damages. In addition, participants read a summary of the company's net sales, net profit, and net assets over the 3 years prior to the trial. As of 1995, 39 states and the United States had case law allowing the plaintiff to present evidence of the wealth of the defendant in a punitive damages claim to aide the jury in assessing punitive damages that will punish and deter (Ghiardi, 1987). These net figures were loosely based upon publicly reported financial information for a company analogous to the defendant company used in the case scenario.

Participants then read jury instructions adapted to fit the case from standard California civil jury instructions (Committee on Standard Jury Instructions, 1994). Recall that participants were told that in a previous phase of the trial they found the defendant liable for any injury the plaintiff may have suffered resulting from the accident in question. Thus, they were instructed on compensatory damages. They were then asked to recommend either "no award" or to specify an amount for each of the damage categories for which the parties had given recommendations.

Those participants given the option to award punitive damages were instructed on the requirements of punitive damages, on the need to apply a higher level of proof than for compensatory damages, and on the definitions of "malice," "oppression," and "fraud." They were asked whether or not (yes/no) punitive damages should be assessed against the defendant and later asked to check "no award" or to fill in an amount as to how much punitive damages should be assessed against the defendant.

#### *Experimental Manipulations*

Participants were randomly assigned to one of the three treatment conditions. Thirty-one participants in the "no-punitives-option" condition were asked to assess

compensatory damages only; they were neither instructed nor questioned regarding punitive damages. In fact, their trial booklet included the following jury instruction: "You may not include as damages any amount that you might add for the purpose of punishing or making an example of . . . the defendant, for the public good or to prevent other accidents. Such damages would be punitive and they are not authorized in this action."

The second and third treatment conditions each had 30 participants who were given the option of awarding punitive damages. The second and third treatment conditions differed only in their description of who would receive any punitive damage award. Respondents in the second condition were told that the plaintiff would receive any punitive damage award, while respondents in the third condition were told that the California state treasury would receive any punitive damage award.

## Results

### *Manipulation Check*

There was no manipulation check for the Punitive Option variable; the questionnaire either did or did not give respondents the opportunity to award punitive damages. The manipulation check for the Recipient variable asked, "Who would be the recipient of any punitive damage award in this case?" with three alternatives: the plaintiff, the state treasury, or a private charity. In the Plaintiff condition, 27 of 30 respondents correctly selected the plaintiff, 2 selected the treasury, and 1 selected the private charity. In the State condition, 21 of 28 respondents correctly selected the state treasury, 1 selected the private charity, and 6 selected the plaintiff (the recipient in traditional trials). For reasons discussed below, we believe this pattern might indicate a misunderstanding of the manipulation check rather than the manipulation itself.

### *Compensatory Damages*

Damage awards were analyzed in a one-way analysis of variance with two *a priori* contrasts. The first contrast, *Punitive Option*, compared the two punitive option conditions to the no-punitive condition. The second contrast, *Punitive Recipient*, compared the "state as recipient" condition to the traditional punitive damage condition, where the plaintiff would receive any punitive award.

As seen in Table 1, Hypothesis 1 received marginal support. Total compensatory damages were marginally influenced by the Punitive Option contrast, with a mean of \$1,650,500 in the no-punitive-option condition, but only \$1,301,717 across the two punitive option conditions;  $t(88) = 1.95$ ,  $d = .43$ ,  $p = .054$ .<sup>7</sup> As predicted by Hypothesis 2, the pain and suffering component of compensatory damages was significantly influenced by the Punitive Option;  $t(88) = 2.20$ ,  $d = .48$ ,  $p < .04$ . Mock jurors in the no-punitive-option condition awarded more pain and suffering damages

<sup>7</sup>Cohen's  $d$  equals the difference between two means divided by their shared standard deviation. Cohen (1988) suggested the following benchmarks:  $d = .80$  is a "large" effect,  $d = .50$  is a "moderate" effect, and  $d = .20$  is a "small" effect.

Table 1. Compensatory and Punitive Damage Judgments, Study 1

	No punitive option	Punitive option		
		Plaintiff recipient	State recipient	Combined
Mean total compensatory damages (\$):	1,650,500 (801,508)	1,274,500 (757,116)	1,328,933 (861,212)	1,301,717 (804,404)
Mean pain and suffering component (\$)	1,083,710 (686,180)	745,000 (631,821)	777,500 (672,436)	761,250 (647,100)
Mean economic component (\$)	566,790 (220,685)	529,500 (265,318)	551,433 (341,044)	540,467 (303,138)
Percentage recommending punitive damages	—	76.7%	53.3%	—
Mean award for punitive damages (\$)	—	2,480,333 (9,193,473)	1,635,167 (4,844,583)	—
Excluding zero values (\$)	—	4,133,889 (11,702,281)	3,270,333 (6,548,808)	—
Log-transformed punitives	—	7.92 (6.78)	6.71 (6.98)	—
Mean total award (\$)	1,650,500 (801,508)	3,754,833 (9,305,998)	2,964,100 (5,037,080)	3,359,467 (7,429,463)
Cell size	31	30	30	60

Note: Standard deviations in parentheses.

( $M = \$1,083,710$ ) than mock jurors in the “punitive option” conditions (pooled  $M = \$761,250$ ). As anticipated, this effect was limited to the noneconomic component of compensatory damages; the Punitive Option contrast had no significant effect on the sum of economic damages (for past and future medical or wage losses);  $t < 1.00$ . Neither the economic nor the noneconomic components of compensatory damages were influenced by the Punitive Recipient contrast;  $t_s < 1.00$ .

#### Punitive Damages

There was a marginal effect of the Punitive Recipient contrast on the decision to recommend punitive damages;  $\chi^2(1) = 3.59$ ,  $p = .058$ ; gamma = .484,  $p = .051$ . However, this difference was in the direction opposite to Hypothesis 3. Specifically, mock jurors were marginally more likely to award punitive damages when the recipient was the plaintiff (76.7%) rather than the California state treasury (53.3%).<sup>8</sup> In a hierarchical logistic regression analysis, this effect remained marginally significant when the Recipient factor was entered alone ( $p = .076$ ), but became significant ( $B = 1.54$ ,  $p < .04$ ) when respondent age, gender, and ethnicity (White–non-White) were entered into the equation. Age was unassociated with the punitive

<sup>8</sup>Dummy variables for each of the three manipulation check options (plaintiff, treasury, private charity) were unrelated ( $ps > .78$ ) to the decision to award punitives. This latter finding, plus additional results in Study 2, led us to conclude that the manipulation check item was probably misinterpreted as asking what would have happened in an actual or typical trial.

decision, but female students ( $B = 2.13, p < .004$ ) and non-White students ( $B = 1.61, p < .03$ ) were more likely to award punitive damages.<sup>9</sup>

Because not all eligible jurors made punitive awards, Table 1 presents means both including and excluding zero values. Analyses of jury awards that exclude zero values for nonawards are vulnerable to self-selection bias, creating differential “attrition” across conditions (MacCoun, 1996). On the other hand, awards including zero values preserve random assignment to condition, but are not statistically independent of the decision to make an award. To circumvent these problems, we analyzed awards with zero values in a hierarchical analysis of covariance, analyzing the recipient manipulation after first controlling for the dichotomous award decision. This analysis revealed no effect of the recipient contrast on the size of punitive awards,  $F(1, 57) = .003$ . Because these awards were highly skewed, we repeated the analysis, substituting natural log-transformed means; again, there was no effect of the punitive contrast on the magnitude of awards,  $F(1, 57) = 1.80$ . Thus Study 1 failed to support Hypothesis 4.

#### *Total Award*

The total award for each juror consisted of the sum of compensatory and punitive awards in the punitive conditions, or compensatory awards alone in the no-punitive-option condition. At best, the difference between the no-punitive-option condition and the punitive option conditions was only marginally significant,  $t(47) = -1.75, d = .28, p < .09$ , assuming unequal variances.

### **Discussion**

#### *Spillover of Punishment into Pain and Suffering Awards*

Consistent with our first two hypotheses, mock jurors who did not have the option to award punitive damages “compensated” for this constraint by inflating compensatory damages: specifically, the pain and suffering award component. When jurors are interested in deterring or punishing, but are prevented from doing so via punitive damages, the noneconomic portion of compensatory damage awards appears to provide a flexible means of pursuing such defendant-focused goals, despite the law’s intention that such damages be used solely to compensate the plaintiff. This suggests either an inability of jurors to distinguish compensatory goals from punitive goals (punishment and/or deterrence) or a conscious disregard for the law which calls for such compartmentalization.

#### *Recipient Effect on Punitive Awards*

Our punitive recipient manipulation did influence juror decisions to recommend punitive damages, but in a manner opposite our expectations. Recall that we reasoned that jurors would be more likely to award punitive damages, and recommend larger punitive awards, when the recipient was a neutral party other than the plaintiff. This would allow jurors to meet the goals of punishment and/or deterrence without providing the plaintiff with a “windfall profit”—an amount exceeding the

<sup>9</sup>As reported below, these gender and ethnicity effects were not replicated in Study 2.

plaintiff's combined monetary and nonmonetary losses covered by compensatory damages. Neither prediction was supported. Indeed, jurors were marginally more likely to award punitive damages to the plaintiff than to the California state treasury.

The lack of a windfall effect on the *size* of punitive damage awards may be due to a failure to create a salient "windfall" risk. If jurors are indeed concerned about a windfall profit to the plaintiff, then a case that more strongly calls for punishment and/or deterrence would make windfall profit concerns more prominent. Accordingly, in Study 2 we varied the egregiousness of defendant's conduct, creating an alternative version of the case with further evidence of egregious conduct by the defendant. In order to focus on the "windfall profit" concern, all participants in Study 2 were given the option of awarding punitive damages. We also revised the identity of the alternative recipient for punitive damages, using a consortium of California state funds rather than the California treasury. We reasoned that jurors may prefer to award punitive damages to a group of specific, noncontroversial state programs rather than the state treasury in general, given the recent history of citizen hostility toward many aspects of government spending in the state of California.

## STUDY 2

### Method

#### *Participants*

The participants were 139 university students who participated in the study for undergraduate introductory psychology course credit. There were 67 female and 60 male participants; 2 did not report their gender. Forty-five were White, 8 were African American, 30 were Latino, 42 were Asian American, and 12 reported other ethnicities; 2 did not report their ethnicity.

#### *Stimulus Trial and Questionnaire*

The trial booklet was 14 pages long. As in Study 1, participants read a summary of the same products liability lawsuit followed by jury instructions and a series of questions. As in Study 1, participants were instructed that they had previously found the corporate defendant liable for the defective design of the product which injured the plaintiff and that their task was to assess any compensatory and punitive damages. Outside of the revised manipulations (described below), there were few differences between the participant packets for Study 1 and those used in Study 2. We made the defendant's product more clearly responsible for the injury than in Study 1. While participants in both studies were told they had previously found the defendant liable for the defective design of a product for sale and use, to reduce the likelihood that participants would focus on the issue of defendant's liability, we made the defendant's product more clearly defective. In Study 1 the plaintiff accidentally raised his head up into the nail-gun with the faulty safety device held by his work partner, piercing the plaintiff's skull. In contrast, in Study 2 the plaintiff

was working approximately 2 feet in front of his work partner when his partner's nail-gun fired a nail through the air, piercing his skull. In addition, we made small changes to the compensatory damages figures recommended by each attorney to accentuate the differences in each attorney's recommendations.

The same standard California civil jury instructions used in Study 1 were used in Study 2, with minor changes to improve clarity. The same set of questions from Study 1 was used with a few changes. In particular, after recommending a punitive award, participants were asked how they would have allocated a punitive award across five potential recipients (the plaintiff, a consortium of state funds, a private charity fund, the state treasury, and/or the plaintiff's attorney) if they had been allowed to divide their award.

### *Experimental Manipulations*

Subjects were randomly assigned to one of four conditions in a  $2 \times 2$  between-subjects factorial experiment. The first factor was Defendant Egregiousness (high vs. low). The more egregious case contained additional evidence about the defendant's flagrant conduct. For example, evidence of a memorandum was presented in which defendant's upper management stated that "after consulting with our attorneys about the potential costs of settling future personal injury cases and with our economists about recall and replacement costs for the contact trip nailers, we conclude that it will be less costly to settle future cases rather than to recall and replace our product." In addition, evidence was presented in which the defendant advertised the product as being injury-free since its inception even after defendants had received notice of misfirings of the nail-gun. Moreover, a former safety engineer testified that he had been fired after he refused to stop expressing his concerns about the dangers of the nail-gun in question, though the defendant argued that the engineer had been fired because of inadequate job performance.

The second factor was Punitive Recipient, referring to whether the recipient of any punitive damage award would be the plaintiff, as in traditional cases, or a consortium of California state funds. Jurors in the latter condition were told that any punitive award would be distributed equally among the members of the following consortium of California state funds, adapted from the tax donation charities listed on the 1995 California state income tax form: State Children's Trust Fund for the Prevention of Child Abuse, California Breast Cancer Research Fund, California Firefighters' Memorial Fund, California Public School Library Protection Fund, and California Infectious Disease Research Fund.

## **Results**

### *Manipulation Checks*

The manipulation checks for the Egregiousness manipulation consisted of eight 4-point scales assessing perceptions that the defendant acted with reasonable care, was reckless, did not intend to do harm, acted with oppression, and acted without malice, and that the defendant's actions were fraudulent, the defendant's conduct was despicable, and the harm to the plaintiff was unforeseeable. These items were

recoded so that higher scores corresponded to more negative evaluations. In a principal components factor analysis with varimax rotation, a first factor accounted for 38% of the variance. Every item but the "malice" item loaded greater than .58 on this factor. Malice loaded .94 on a second factor accounting for 13% of the variance. The malice item and the average of the seven Factor 1 items were analyzed in a  $2 \times 2$  (Egregiousness  $\times$  Recipient) multivariate analysis of variance. As expected, there was a significant multivariate Egregiousness effect,  $F(2, 132) = 11.27$ ,  $p < .001$ , and the Recipient variable and the two-way interaction were not significant,  $F_s < 1.0$ . The univariate tests indicated that Egregiousness had its intended effect on the 7-item scale,  $F(1, 133) = 22.67$ ,  $p < .001$ , but not on the Malice item,  $F(1, 133) < 1.0$ . We speculate that many respondents were unfamiliar with the latter term.

The Recipient manipulation check asked, "Who would be the recipient of any punitive damage award in this case?" with the options "Mr. Williams, the plaintiff," "A consortium of California state funds," "A consortium of private charities," and "The California State Treasury." In the Plaintiff condition, 56 of 68 respondents identified the plaintiff, and 4, 2, and 6 respondents incorrectly chose the other three options, respectively. In the State Funds condition, 28 respondents selected the correct "consortium of California state funds" condition, 6 chose the consortium of private charities (a partial match), 4 chose the California State Treasury (a partial match), and 29 incorrectly chose the traditional "Plaintiff" option—a much higher mismatch rate than in Study 1. It is possible that the Recipient manipulation was frequently misunderstood, especially in the nontraditional State Fund condition. But in hindsight we believe that many participants simply interpreted the wording of this item as a question about what would have happened in an actual trial, rather than the simulated trial. In support of this interpretation, the basic effect of the Recipient manipulation (presented below) was unqualified by the manipulation check when it was added to our logistic regression equations as either a "correct/incorrect" dummy variable or a series of dummy variables for each manipulation check option (plaintiff, charity, etc.).

#### *Compensatory Damages*

We did not predict any differences in compensatory damage awards as a function of either the punitive recipient manipulation (see Study 1) or the defendant egregiousness manipulation (Cather et al., 1996). As seen in Table 2, these compensatory awards were quite similar across conditions; in a  $2 \times 2$  ANOVA, all  $F_s < 1.10$ . (An analysis of log-transformed awards also revealed no significant differences.)

#### *Punitive Damages*

The dichotomous (1 = yes, 0 = no) item assessing the juror's decision to award punitive damages was analyzed using hierarchical logistic regression. In the first equation, the punitive decision was regressed onto the two experimental variables (Egregiousness: 1 = high, 0 = low; Recipient: 1 = plaintiff, 0 = state funds). There were significant effects for Egregiousness ( $B = 1.20$ ,  $p < .004$ ) and Recipient ( $B = 1.24$ ,  $p < .003$ ), with a constant term of  $B = -0.27$ . In the second equation,

Table 2. Compensatory and Punitive Damage Judgments, Study 2

	Plaintiff condition		State consortium condition	
	Low egregious	High egregious	Low egregious	High egregious
Mean award for compensatory damages (\$)	1,375,210 (1,199,925)	1,552,250 (1,025,863)	1,729,364 (1,162,464)	1,706,794 (1,174,983)
Percentage recommending punitive damages	64.7%	97.2%	51.5%	63.6%
Mean award for punitive damages (\$) <sup>a</sup>	891,941 (2,751,368)	1,527,000 (4,160,121)	1,653,780 (4,691,234)	1,906,176 (12,830,583)
Excluding zero values (\$)	1,444,095 (3,413,695)	1,670,156 (4,328,352)	3,307,561 (6,291,183)	2,945,909 (5,474,397)
Log-transformed punitives	7.72 (6.39)	11.78 (4.66)	6.70 (6.95)	8.51 (6.86)
Cell size	34	36	34	35

Note: Standard deviations in parentheses.

<sup>a</sup>Winsorized means ( $g = 2$ ).

the interaction term was added to the model, resulting in a significant improvement in fit ( $\chi^2_{\text{difference}} = 5.88, p < .02$ ). In this model, the main effects for Egregiousness ( $B = 0.50$ ) and Recipient ( $B = 0.55$ ) were no longer significant. The interaction term was significant ( $B = 2.45, p < .04$ ), with a constant term of  $B = 0.06$ . As seen in Table 2, when the defendant's conduct was highly egregious, jurors were significantly more likely to award punitives when the plaintiff rather than the state fund was the designated recipient ( $\chi^2 = 12.70, p < .001$ ). There was no effect of the recipient manipulation in the low-egregiousness condition ( $\chi^2 = 1.20$ ). The interaction can also be characterized as a simple main effect of egregiousness when the plaintiff was the recipient,  $\chi^2 = 12.25, p < .001$ , but not when the state fund was the recipient,  $\chi^2 = .10$ . Adding respondent age, gender, and ethnicity (White/non-White) did not qualify these results, and, unlike Study 1, there were no significant demographic effects on the decision to award punitive damages.

The punitive damage awards—especially in the high egregiousness conditions—were highly skewed, even after we winsorized the means by replacing two extreme outliers with the third largest value (Winer, 1971, pp. 51–53). Thus we used a log transformation to eliminate positive skew in the punitive damage awards. Both the winsorized and log-transformed means appear in Table 2; we also report winsorized means excluding zero values. As in Study 1, we analyzed these means in a hierarchical analysis of covariance. After controlling for the dichotomous decision to award punitives, there was a marginally significant effect of the plaintiff recipient manipulation,  $F(1, 131) = 3.04, p = .084$ . Neither the egregiousness manipulation,  $F(1, 131) = 0.01$ , nor the two-way interaction,  $F(1, 131) = 0.02$ , was significant. An analysis of the log-transformed awards revealed no significant effects after controlling for the dichotomous award decision. Thus, like Study 1, Study 2 suggests that the recipient manipulation affects the decision to grant a punitive award, but does not appear to influence significantly the magnitude of that award.

## Discussion

As we noted in the Introduction, it is frequently argued that punitives sufficiently large to serve the defendant-focused goals of deterrence and retribution provide plaintiffs with a total award well in excess of the amount needed to “make them whole.” Based on this reasoning, we had predicted that in such situations jurors would prefer to award punitives, and would award more, to a neutral third party rather than to the plaintiff. Yet Study 2 replicated the unexpected finding of Study 1, demonstrating that respondents in our study population were more likely to award punitive damages when the plaintiff would be the recipient, rather than a neutral third party. We found this result regardless of whether the third party was the state treasury (Study 1) or a consortium of specific, noncontroversial state funds (Study 2). And we found this favoritism toward the plaintiff recipient despite adding an enhanced defendant egregiousness condition that successfully increased the magnitude of the potential plaintiff windfall by motivating jurors to award more money for retributive and/or deterrence objectives. Thus, our findings show little evidence of concern about the potential for a plaintiff windfall. Rather, subjects actually preferred awarding punitive damages when they believed that the plaintiff would be the recipient. We can offer two plausible explanations which are not mutually exclusive.

### *Punitives as Additional Compensation*

The recipient manipulation might be an additional example of “leakage” across award categories in accordance with the equifinality principle. Just as jurors used compensatory damages to serve their defendant-focused punitive objectives (Study 1), they may have used the option of punitive damages to serve their plaintiff-focused compensatory objectives. We see some problems with this explanation. In theory, the compensatory award judgments should have provided jurors with an opportunity to fulfill their plaintiff-focused goal of “making the plaintiff whole,” particularly since noneconomic pain and suffering awards were not formally bounded. Still, while compensatory assessments had no formal upper bound, jurors may have felt implicitly bound by the plaintiff’s and defendant’s recommended awards. The defendant’s recommendations did not appear to have such an effect; e.g., in Study 2, 88% of the economic and 71% of the noneconomic awards exceeded the defendant’s requested amounts. But many jurors did appear to use the *plaintiff’s* request as a ceiling; only 7% of the economic and 2% of the noneconomic awards exceeded the plaintiff’s requests. While it is still possible that jurors wanted to offer further compensation, it is puzzling why jurors would feel the plaintiff deserved more in compensation than he himself was requesting.

### *Punitives as a Restorative Act*

A second possibility is that jurors might have preferred to award punitives to the plaintiff because they intended the award to serve a *restitutive or restorative function*, rather than (or in addition to) purely deterrent or retributive functions. Deterrence and retribution are purely defendant-focused goals. Normative and descriptive theories of deterrence and retribution give considerable attention to

the question of the proper magnitude of the punitive response, but are largely mute about the *relational* nature of that response. Bazemore and Umbreit (1995; Umbreit, 1989) argue that many citizens feel that fair punishment for wrongdoing requires acts of restitution for restorative, rather than compensatory, purposes. The offender has torn the social fabric, and acts of restitution serve to repair that damage. Bazemore and Umbreit argue that this restorative function is not limited to offenses that occur in preexisting relationships; they document the importance of restoration in crimes involving strangers. This suggests that the restorative function may be symbolic, rather than instrumental (Tyler, Boeckmann, Smith, & Huo, 1997).<sup>10</sup>

## CONCLUSIONS

It seems prudent to be cautious in drawing strong policy conclusions from our studies. There are several limitations of our studies that might weaken the generalizability of our findings. First, our two studies examined variations on a single product liability case, and it is possible that the dynamic relationship between compensatory and punitive damage judgments varies as a function of case features not varied here. Second, our case scenario, though based on an actual case, was of course greatly abbreviated and may have exaggerated or attenuated the effects our independent variables might have in a true trial context. Third, our respondents were college students from the San Francisco Bay area. Most comparisons find that student and jury-pool populations reach legal judgments in qualitatively similar ways (see evidence reviewed in MacCoun, 1993). A more serious limitation may be geographic; there are pronounced regional differences in actual jury behavior (Daniels & Martin, 1996). Fourth, it was not feasible to recruit enough jurors to assemble groups to deliberate to a group verdict, which would have increased our sample size requirements 6- to 12-fold. Yet theory and evidence indicate that group judgments can differ from individual trends in complex ways (Kerr, MacCoun, & Kramer, 1996). Finally, in our study, 100% of any punitive damages would be awarded to the third party (or to the plaintiff), whereas most split-recovery statutes and proposals allocate only a portion to the third party—presumably with less extreme effects than we observed.

Thus we view our results as preliminary evidence regarding two important policy questions—the effects of preventing jurors from awarding punitive damages and the effects of changing the recipient from the plaintiff to a state treasury or consortium of state funds. With the above caveats in mind, we will briefly note the implications of our research. First, the frequent practice of barring jurors from awarding punitives in many tort cases may be justifiable on normative grounds, but our Study 1 suggests that jurors may nevertheless find ways to punish the defendant via compensatory damages, in particular, noneconomic damages. Second, in bifurcated and trifurcated trials, jurors sometimes are given the opportunity to award punitive damages, but they may not anticipate this when they assess compensatory

<sup>10</sup>This raises the hypothesis that a defendant's decision to offer a formal public apology might reduce the likelihood and/or magnitude of jurors' punitive damage assessments.

damages. A potential unintended consequence is that jurors may have already inflated compensatory damages to serve punitive ends. Third, attempts to place caps on punitive damages might similarly lead to inflated compensatory awards. The dynamic relationship between the two awards might resemble a water-filled balloon; if one pushes down on one end, the other pops up.

The results of our punitive recipient manipulation have obvious implications for recent debates about awarding any punitive damages to the state, a charity, or some other neutral third party. If our results are generalizable to other regions and other case types, this legal change may well result in a reduction in the awarding of punitive damage judgments—obviously not a neutral policy change. But much may depend on how such a change would be implemented. For example, we explicitly informed jurors about the identity of the award recipient. If jurors were “blindfolded” as to this change, we would expect little influence on punitive damage assessments, at least in the short run, until news of this intervention diffused into the general public. The policy’s effects may also differ depending on whether the plaintiff’s attorney would receive a percentage of the punitive award even when the plaintiff would not. A policy that blocks attorneys from profiting from punitive damages may well change the composition of the trial caseload in ways that would obscure the direct effects of the policy on jury judgments (Priest & Klein, 1984).

Finally, it should be noted that while our findings raise some doubts about juror compliance with tort rules, nothing in our analysis implies that judges are less vulnerable to these spillover effects. Considering the amount of attention that has been given to jurors’ ability to use legal evidence, it is remarkable how little we know about their professional counterparts.

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