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Excessive Personal Injury Awards; A Problem and a Recommendation

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Excessive Personal Injury Awards; A Problem and a Recommendation

*by Anthony R. Nardi**

THE ONE millionth American war fatality occurred in Korea, and the one millionth American auto fatality happened in the United States—both in December 1951.

An apparently odd coincidence assumes tragically fantastic proportions when we pause to consider that this giant killer accomplished in less than fifty years what it took all wars 176 years to do. This monstrous by-product of a civilization on wheels finds the combined genius of America perplexed. What have men of ability been able to resolve when added to these thousands of instant and wanton deaths are over 1,300,000 individual disabling bodily injuries yearly? Further, when we superimpose on this increasing, ever-alarming frequency of destruction, attendant higher and higher jury bodily injury awards, the American public faces a dilemma. We are on the ascent of a vicious spiral of indeterminable consequences.

Thus, this query is an appropriate one: Are the rules of law applicable to this situation productive of justice, protection, and progress for its citizens? It should be demanded of the legal profession that it provide immediate, proper, and certain remedial measures. In one area of this comprehensive social perplexity, it is pertinent to analyze the question of "excessive" personal injury awards and perhaps to evaluate where they are taking us. No individual is spared from the highly probable cruelties of this by-product.

When we review the fundamental rules of law applicable, it is found that they have come to us from legal antiquity. They arose out of needs not anticipated as in such a present-day society wherein the average man of the masses has such a potent daily opportunity to ruin life and property at the risk of his own personal liability! Heretofore the commoner of the multitudes by-and-large was circumstantially prevented from civilly risking his meager aggregation of worldly possessions. This situation is

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unique in the history of civilization. Diagnosis and prognosis must find relevant material coming from circumstances other than those born of the necessity of the present day.

Generalities for Computing the Correctness of the Award.

Generally speaking, it is well established in the law that a tort-feasor is legally liable for all harm proximately caused by his negligent act. Also, the party so injured is entitled to such an amount of money as will compensate him for all physical disabilities, pain and suffering, loss of time, inconvenience, impairment of earning capacity, and expenses incurred as a direct, necessary, and probable result of that injury. However, the plaintiff in an automobile accident has the burden of establishing his damages by a fair preponderance of the evidence and to a reasonable certainty. Equally well adopted in our courts is the recognition of the delicacy attending the measuring of a money compensation for bodily injury and pain and suffering. All are agreed that the amount awarded must be within reason. Failure to do so would bring on the greatest "give-away" program of all time and result in re-distributions of property repugnant to firmly established laws and human conduct.

In the state courts the test of what is "excessive" has been reviewed under the application of many and varied rules. Here it is of value to take only those States illustrating timely, general or varied rules, all chosen at random to illustrate diversity.

> *Ohio*: A verdict should not be set aside unless the damages awarded are so excessive as to appear to have been awarded as a result of passion or prejudice, or unless it is so manifestly against the weight of the evidence as to show a misconception by the jury of its duties.[1]
>
> *Ohio*: Damages awarded by a jury must be flagrantly excessive and extravagant, or the court hearing an appeal will not disturb the verdict.[2]
>
> *Ala.*: In determining adequacy of damages assessed by jury, the court need not inquire and declare what wrongful influence or failure of duty in the consideration of the case has wrought a miscarriage of justice, but the internal evidence, the verdict itself, in the light of the facts clearly disclosed by the evidence, usually furnishes the determining data.[3]

[1] Toledo, C. & O. R. R. Co. v. Miller, 108 Ohio St. 388, 140 N. E. 617 (1923).
[2] Immel v. Richards, 91 N. E. 2d (Ohio App.) 548 (1949).
[3] Code 1940, Tit. 7, Sec. 811; Alabama Gas Co. v. Jones, 244 Ala. 413, 13 So. 2d 873 (1943).

Ala.: There is no limitation on the amount of an award of damages for personal injury so long as the principle of compensation is not violated.[4]

Ark.: In determining whether jury's verdict awarding damages for personal injuries is excessive, each case must rest on its own peculiar facts.[5]

Missouri: In determining reasonableness, consideration should be given to economic conditions, current costs, the purchasing power of the dollar at the time the verdict is rendered, and the failure of the Trial Court to set aside the verdict as excessive, and in days of inflation, a higher level of maximum damages is warranted.[6]

Ark.: Ordinarily it is necessary to determine what a given sum of money put out at interest will earn in considering the present value of future income, but local conditions must also be considered, and that amount of interest to be earned would vary from time to time.[7]

Calif.: A verdict cannot be held excessive as a matter of law simply because amount may be larger than is allowed ordinarily in such cases.[8]

Mo.: When facts as to injuries inflicted and wrongfully sustained are similar to other cases, although never identical, there should be a reasonable uniformity as to amount of verdicts and judgments.[9]

N. J.: An award for prospective damages is similar to a payment in advance, and, in fixing sum, amount should be reduced to its present net worth.[10]

Texas: An excessive verdict does not necessarily indicate that trial was unfair or that verdict was influenced by passion or prejudice, but if the verdict is grossly excessive, that fact may be regarded to some extent as reflecting the jury's mind in arriving at the verdict.[11]

Va.: Though much weight should be given to verdict in personal injury cases, and no standard measure of damages can be arrived at for pain and suffering, jury's finding is still subject to control of the courts, if amount thereof bears no reasonable relations to the damages suggested by the facts.[12]

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[4] Castleberry v. Morgan, 28 Ala. App. 70, 178 So. 823 (1938).

[5] Chicago, R. I. and P. Ry. Co. v. Houston, 209 Ark. 217, 189 S. W. 2d 904 (1945).

[6] Arl v. St. Louis Public Service Co., 243 S. W. 2d (Mo. App.) 797 (1951).

[7] Missouri Pac. R. Co. v. Henderson, 194 Ark. 884, 110 S. W. 2d 516 (1938).

[8] Power v. California Steel Cable R. Co., 52 Cal. App. 2d 289, 126 P. 2d 4 (1943).

[9] Philbert v. Benjamin Anschel Co., 132 Mo. 1239, 119 S. W. 2d 797 (1938).

[10] Noa v. Le Gore, 131 N. J. L. 229, 35 A. 2d 691 (1944).

[11] Texas and N. O. R. Co. v. Haney, 144 S. W. 2d (Texas Cir. App.) 677 (1940).

[12] Glass v. David Pender Grocery Co., 174 Va. 196, 5 S. E. 2d 478 (1939).

Ariz.: The size of a verdict in a personal injury action is not alone sufficient evidence of prejudice and passion on part of jury.[13]

Ill.: Comparisons of damages awarded by jury in personal injury case with amount which would be awarded for such injuries under Workmen's Compensation Act would not prove that verdicts were exorbitant or excessive.[14]

Mo.: The ultimate test of whether verdicts awarding damages for personal injuries is excessive or inadequate is amount which will fairly and reasonably compensate injured party for his injuries.[15]

N. Y.: The court should not substitute its opinion for that of the triers of the facts respecting amount of damages unless the verdict lacks proper support in the evidence or is so large that its excessiveness is clearly apparent.[16]

Fla.: It is within the province of the court to consider the relative degree of negligence of the parties in passing upon the reasonableness of amount awarded.[17]

Penna.: It is the duty of the Law Court to control the amount of the verdict; it is in possession of all the facts as well as the "atmosphere" of the case, which will enable it to do more even-handed justice between the parties than can a Court of Review.[18]

Thus, in summary it may be said that the most frequently adopted test of excessiveness is whether the verdict was the result of a calm and conscientious deliberation of the jury, not influenced by passion, prejudice, or corruption. However, state courts are now beginning to recognize the troublesome application of this rule and are using other measures.

In some jurisdictions, in determining reasonableness, the question will depend on local economic conditions and the current purchasing power of the dollar,[19] but in others this principle admittedly is not applicable.[20] Some courts attempt to maintain a uniformity as to prior adjudicated cases,[21] while others have held that verdicts previously held excessive on approximate injuries

[13] Keen v. Clarkson, 56 Ariz. 437, 108 P. 2d 573 (1941).

[14] Crane v. Railway Express Agency, 293 Ill. App. 328, 12 N. E. 2d 672 (1938); *modified*, 15 N. E. 2d 866, 369 Ill. 110 (1938).

[15] Summa v. Morgan Real Estate Co., 350 Mo. 205, 165 S. W. 2d 390 (1942).

[16] Kazdin v. Cooley, 23 N. Y. S. 2d 484 (1942).

[17] Florida Seaboard Airline Ry. Co. v. Culbreath, 96 Fla. 15, 117 So. 703 (1928).

[18] Clark v. Horowitz, 293 Pa. 441, 143 A. 131 (1928).

[19] Ranum v. Swenson, 220 Minn. 170, 19 N. W. 2d 327 (1945).

[20] Palmer v. Security Trust Co., 242 Mich. 163, 218 N. W. 677, 60 A. L. R. 1392 (1928).

[21] Goslin v. Kurn, 351 Mo. 395, 173 S. W. 2d 79 (1943).

and circumstances do not imply the necessity of similar awards.[22] Widely held but often disregarded is the point of view that the presumptions are all in favor of the correctness of a verdict, and on appeal, such inferences are aided by the decision of the trial court in denying a motion for a new trial.[23] *Yet we find the final responsibility of determining whether the award is excessive or not rests with the appellate court,* subject to the rule that the jury is accorded wide latitude and elastic discretion in assessing the amount of damages.[24] Becoming more prevalent, however, is the thinking that the court's only method of measuring a verdict to determine whether or not it was influenced by passion or prejudice is by comparing it with the evidence rather than with amounts involved in other cases more or less practically the same. In essence, then, courts are concluding that adjudicated cases are of little help.

It would seem that the clearest principle that can be derived from the cases on the subject of inadequate and excessive damages is that the courts are very slow to interfere with the jury in such matters.[25]

Remittitur.

The principle of "remittitur" is closely allied to the problem of excessive damages.

When the damages awarded by the jury for personal injury are felt to be excessive, the trial court may grant a new trial unless the plaintiff exercises the option to remit the excess and consents to take judgment for such an amount as the court may believe an unprejudiced jury would, under the evidence, probably find.[26] However, the general rule is that neither the trial court nor a Court of Review is authorized to enter an absolute judgment for any sum other than that assessed by the jury where the damages are unliquidated unless the parties give their consent for the purpose of preventing a new trial.[27]

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[22] Power v. California Street Cable Ry. Co., 52 Cal. App. 2d 289, 126 P. 2d 4 (1942).

[23] Typical of such cases are *Hamilton v. Hammond Lumber Co.,* 13 Cal. App. 2d 461, 56 P. 2d 1257 (1936).

[24] Gladstone v. Fortier, 22 Cal. App. 2d 1, 70 P. 2d 255 (1937).

[25] Isley v. McClandish, 299 Ill. App. 364, 20 N. E. 2d 890 (1939).

[26] Rudnick v. Jacobs, 7 W. W. Harr (Del.) 348, 183 Atl. 508 (1936).

[27] Campbell v. Sutliff, 193 Wisc. 379, 214 N. W. 374, 53 A. L. R. 771 (1927).

Such an order, it is generally held, would, if permitted, invade the province of the jury and deprive one or perhaps both of the parties of the constitutional right to a trial by jury. Therefore, neither the trial court nor the Court of Review has the power to do more than to give the parties the option of waiving their constitutional right, and if such consent is not given, the sole power is to order a new trial.[28]

For example, where the factual questions being considered by a jury are in near equipoise, improper argument of counsel should be closely scrutinized, and where the damages awarded are excessive and appear to have been given under the influence of passion or prejudice, the resulting prejudice cannot be corrected by remittitur; the only recourse is the granting of a new trial.[29]

Allowable Awards.

The foregoing answers the original query of what are the tests and status for determining "excessiveness." It is now appropriate to look at some of the results, to analyze the well established rules of law and to indicate where they are taking us. The following Table is indicative of recent awards made and positive amounts declared not excessive. It affords some insight by graphic representation into how the courts are treating cases on review.

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[28] Lemon v. Campbell, 136 Pa. Super. 370, 7 A. 2d 643 (1939).

[29] Book v. Erskine & Sons, Inc., 154 Ohio St. 391, 96 N. E. (2d) 289 (1951).

AWARDS HELD NOT EXCESSIVE

Injured Person	Age	Life Expectancy	Annual Earnings	Date	State	Citation	Damages Awarded	Injuries
R. R. Employee	32	36.01	$4,900	'51	Ill.	Dauns v. Baltimore & O. R. Co., 102 N. E. 2d 537, 345 Ill. App. 118	$ 75,000	Fracture of 3 vertebrae, sacrum & zygomatic arch, and permanently incapacitated him from following his usual vocation.
Male Adult	—	——	——	'51	N. Y.	Loerzel v. Carnwright, 109 N. Y. S. 2d 400, 279 App. Div. 825	75,000	Seriously injured.
Brakeman	40	29.25	$3,600	'51	Penn.	Durry v. Montour R. Co., 101 F. Supp. 735	80,000	Severely crippled & compelled to wear a brace.
Male Adult	—	——	——	'51	N. Y.	Hanaman v. New York Tel. Co., 104 N. Y. S. 2d 315, 278 App. Div. 875	75,000	Permanent damage to brain & central nervous system.
Grinder and Chipper	44	26.01	——	'51	Penn.	Traubridge v. Abrasive Co. of Philadelphia, 190 F. 2d 825	150,000	Permanently and totally disabled from pursuing a gainful occupation.
Married Woman	28	39.49	——	'50	Cal.	Duvall v. T. V. A., 219 P. 2d 463	85,000	Brain concussion, right leg 1½" shorter than other; permanent distortion pelvic area & steel wire in leg.
Switchman	—	——	——	'50	Mo.	St. Louis Dortchester Ry. Co. v. Ferguson, 182 F. 2d 949	150,000	Loss of left leg; loss of right arm.
Rigger	39	25.5	$4,000	'52	Mass.	Mack v. U. S., 105 F. Supp. 149	85,000	Permanent and total disability from leg infection. **Reduced 20% because of contributory negligence.**
R. R. Engineer	59	15.13	$5,169	'49	Ariz.	Southern Pac. Co. v. Guthrie, 180 F. 2d 295	100,000	Loss of right leg.

AWARDS HELD NOT EXCESSIVE

Injured Person	Age	Life Expectancy	Annual Earnings	Date	State	Citation	Damages Awarded	Injuries
Bank Cashier	42	27.62	$4,380	'50	Cal.	McNalty v. Southern Pac. Co., 216 P. 2d 534	$100,000	Loss of both legs.
Oil Field Worker	—	——	$4,800	'49	D. C. Texas	Rules of Civil Procedure, Tex., rule 440. Allbritton v. Sunray Oil Corp., 88 F. Supp. 54	125,000	Comminuted fracture through body of 4th vertebra, fracture of 3 ribs and punctured lung, permanently disabled.
Fireman	21	45.66	$3,120	'50	Cal.	Sullivan v. City and County of San Francisco, 214 P. 2d 82	125,000	Four fractures of the pelvis and transverse process of the 5th lumbar vertebra resulting in impotency and psychoneurosis.
Boy	12	53.68	——	'49	Cal.	Higgens v. Southern Pac. Co., 207 P. 2d 864	91,000	Crippling & disfiguring injuries including loss of left leg below knee and major portion of right foot.
Housewife	55	17.78	——	'46	N. J.	Greenberg v. Greenfield-Passaic Bus Co., 48 A. 2d 389, 134 N. J. L. 371	50,000 35,000	Amputation of both legs. To husband for expenses & loss of wages.
Housewife	68	9.97	——	'50	Ill.	Runmueller v. Chicago Motor Coach Co., 93 N. E. 2d 120, 341 Ill. App. 178	45,000	Loss of one leg.
Toolmaker	48	22.88	$3,700	'46	Ill.	Orban v. Stall, 66 N. E. 2d 316, 328 Ill. App. 398	50,000	Fracture of pelvis, neck, & pubic bone, concussion of brain & permanent shortening & shrinkage of leg.
Laborer	—	——	$2,500	'46	Ill.	Raimondi v. Ziffrin Truck Lines, 70 N. E. 2d 221, 329 Ill. App. 650	35,000	Shortened leg, dizzy spells and permanent inability to do manual labor.

AWARDS HELD NOT EXCESSIVE

Injured Person	Age	Life Expectancy	Annual Earnings	Date	State	Citation	Damages Awarded	Injuries
U. S. Army Sergeant	21	45.66	——	'49	Ohio	Babbitt v. Maher Rummage Co., 89 N. E. 2d 583, 152 Ohio St. 246	$ 40,000	Injuries which incapacitated him from following his vocation. One leg shorter than other, tilted pelvis.
Printing Press Operator	28	39.49	$3,900	'47	Fla.	McHugh v. Miami Transit Co., 32 So. 2d 735, 159 Fla. 762	40,000	Permanently incapacitated; unable to resume other work paying more than $25-$35 per week.
Machinist	—	——	$4,000	'50	N. Y.	Fitzgerald v. State, 96 N. Y. S. 2d 452, 198 Misc. 39	50,000	Brain concussion, multiple laceration, severance of supra-orbital nerve, and successive fracture.
Female Model	35	33.44	——	'50	N. Y.	Dwyer v. Dunn, 96 N. Y. S. 2d 728, 277 App. Div. 807	22,500	Scars and other injuries.
Lumberjack	31	34.63	$3,600	'45	Cal.	Mullaney v. Basich, 155 P. 2d 130, 67 Cal. App. 2d 675	38,000	Permanently incapacitated—back, spine & brain injuries.
Male Adult	23	43.88	——	'49	Ind.	Norwalk Truck Line Co. v. Kostka, 88 N. E. 2d 799	30,000	Loss of left arm & other arm injuries.
Young Boy	14	51.89	——	'46	Tex.	Alpine Telephone Corp. v. McCall, 195 S. W. 2d 585	32,500	Amputation of left arm above elbow, and other injuries resulting in 80% disability.
Male Adult	—	——	——	'48	Ohio	Dietsch v. Burnside Motor Freight Lines, 82 N. E. 2d 559	42,000	Serious injuries to back.
Boy	12	53.68	——	'49	Ill.	Trull v. Ralner, 84 N. E. 2d 843, 337 Ill. App. 45	30,000	Skull fracture, deformed thigh, and other injuries.
Business Man	44	26.32	17,000	'45	Ill.	Huyler v. City of Chicago, 62 N. E. 2d 574, 326 Ill. App. 555	100,000	Head injuries causing permanent insanity.

AWARDS HELD NOT EXCESSIVE

Injured Person	Age	Life Expectancy	Annual Earnings	Date	State	Citation	Damages Awarded	Injuries
Workhouse Guard	52	19.91		'46	Pa.	Broad v. Pennsylvania R. Co., 55 A. 2d 359, 357 Pa. 478	$ 20,000	Broken neck, fracture of spinous process of 4th & 5th vertebrae, fracture of outer skull, severe headache & serious concussions followed by degeneration of brain.
Garage Repair Man	22	44.77	2,000	'46	Cal.	O'Neal v. Kelly Pipe Co., 173 P. 2d 685, 76 Cal. App. 2d 577	25,000	Depressed comminuted fracture of cheek bone.
Superintendent building construction	40	29.25	125 per week	'49	U. S.	Wibye v. U. S., 87 F. Supp. 830	45,000	Permanent injuries including cerebral concussions, loss of vision left eye, and severe headaches.
Carpenter Foreman	41	28.43	100 per week	'49	U. S.	" "	60,000	Cerebral concussion & fracture of both hips & right knee.
Laborer	48	22.88	——	'49	Cal.	Pederson v. Carrier, 204 P. 2d 417, 91 Cal. App. 2d 84	45,000	A shortened & stiffened leg, and recurrence of insanity.
Young Girl	17	49.21	——	47	Conn.	Figlar v. Gordon, 53 A. 2d 645, 133 Conn. 577	40,000	Compound comminuted depressed fracture of skull with laceration of brain & destruction of brain tissue & a fracture of right tibula and fibula.
Male laborer	56	23.24	Unemployed	'50	Cal.	Gem v. City & County of San Francisco, 222 P. 2d (Cal. App.) 122	63,044.20	Compound fracture of both legs. Left leg 1½" shorter, unable to raise right arm more than 45 degrees from body

Many more recent cases could have been added to the above. However, no such Table can be constructed on modern cases where awards have been held excessive. Exhaustive research fails to find a single well-reasoned recent case in the United States wherein the award for a serious permanent disabling injury of a person with a fair degree of life expectancy has been held excessive!

Thus, we are in the process of arriving at a disturbing conclusion that there is no sound principle of determining "excessive" verdicts. There has insidiously crept into the law the feeling that courts and juries must restore and compensate the injured person in every instance and peculiarity of circumstance. For at the very heart of all these cases brought before the courts is the tenet that, "In determining whether jury's verdict awarding damages for personal injuries is excessive, each case must rest on its own peculiar facts." [30] We will all agree that cases are different and that this difference must be taken into consideration. But, if one is attempting to award proportionately and respectively for all shades of existing differences, then one is attempting to do the impossible. For, admittedly, our present tools for awarding amounts of money are very crude. Only a rough correspondence is possible.

Of all the rules applying to tests of excessiveness, the one held to be most substantial is that Courts of Review are able to determine the excessiveness of a verdict by comparing the amount with the evidence. But, after reviewing many such cases, the most troublesome questions are these: How shall it be made to appear that a verdict is "excessive"; can it be disclosed other than by the amount of the verdict? For after all, the amount of the verdict is the only method of expression by the jury.

Is There a Legal Test for Excessiveness?

What happens when the amount of the verdict is such that "excessiveness" is not inferable from its magnitude alone? The courts are not put in possession of any scale of measurement more substantial or more accurate than that given to the jury. The court cannot rely on adjudicated cases for reference. There is no stamp of "excessiveness" upon the facts in a case, and admittedly there is none on the magnitude of amount alone. After having analyzed many cases held excessive in various amounts—$2,000,

[30] Chicago R. I. & P. Ry. Co. v. Houston, 209 Ark. 217, 189 S. W. 2d 904 (1945).

$5,000, $10,000, $25,000 or $100,000—no forceful logic or noteworthy reason compelling such distinction can be found. And, furthermore, the issue is extended in complexity when it is recalled that the jury has already established plaintiff's factual right to damages by a fair preponderance of the evidence to a reasonable certainty.

The helplessness of this position is illustrated in the following instance. It offers no guide for future courses of conduct, but its syllabus reads as follows:

> That trial court required entry of remittitur did not indicate that trial court believed jury were influenced by improper motives which tainted their entire verdict with error, but rather than trial was fair and free from error, save that jury had mistakenly returned larger verdict than trial court felt that evidence justified.[31]

All too often, although expressly denied, judges are replacing the judgments of juries by those opinions they themselves hold, feeling, in all sincerity, that their experience and qualities of judgment must be thrown into the breach, or else naught is of avail. Yet when this is done, the court is in essence depriving one or perhaps both parties of the constitutional right to a trial by jury. For it is not yet within the province of judges to say that their experience and wisdom are superior to that of twelve men, selected to pass judgment upon their fellow men. And, as the past trend of events in cases determined as "excessive" is examined, one cannot help but feel that the courts have "interfered," for it appears that the juries by and large have built far better than they knew!

In the many automobile cases, today's juries are being made up of a sensitive public—uneasy in its awareness of the tragedies caused by this most lethal device. They are attempting to compensate for the horrible aftermaths. Yet, sums of money are not the equivalent of bodily harm or emotional disturbances. All too often their sense of righteous indignation and helplessness before the ever increasing crescendo of personal blight leaves them no alternative but to weigh the scales as heavily as possible in favor of the injured person. Without guides for determining equitable amounts, who is to say that they are in error?

Under our present conditions we can look forward to a continuation of the trends started over less than a half century ago.

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[31] Todd v. Libby McNeill and Libby, 110 S. W. 2d (Mo. App.) 830 (1937).

In a few recent cases, a Florida jury has awarded a train victim $300,000 for the amputation of part of one foot; $225,000 has been granted a California fireman injured when a truck struck his fire apparatus; and $40,000 was awarded in a New York case for ten hours of conscious pain and suffering.[32] A jury awarded $160,000 to an infant, 13 months old, at the time of the accident for loss of one arm above the wrist and one arm above the elbow.[33] In Arizona a $43,436.40 award to housewife, who as a result of injuries, had to hire help to perform her usual duties and whose loss of earning power resulting from injuries was nominal and whose pecuniary damages were less than $4,000, and whose injuries were not of such nature as to permanently impair her earning power should she at a later period endeavor to secure employment, when it appeared that the jury allowed almost $40,000 for pain and suffering alone, was excessive—$25,000 being adequate compensation for those elements.[34] In a recent Cleveland, Ohio, case with a most interesting factual background, the judge hearing the case without a jury awarded plaintiff $45,000. The injured plaintiff, a machinist, age 41, sustained two broken legs and head injuries.[35]

To summarize, in New York City, for instance, the average personal injury verdict has almost trebled since 1940, and is still rising.[36]

Organized forces push injury awards higher. Publicly agitating for higher verdicts, it is reported that one association of 1500 members conducts a post-graduate school pointing toward enabling lawyers to win the more generous award.[37] Although their purpose may be noteworthy, they are in existence only because of the failure to provide adequate and proper scales for determining the equitable award. This trend is indicative also of the fact that perhaps too much of a jury's award in personal injury cases may be based upon the skill and presentation by the plaintiff's Counsel. Common sense tells us that with poor scales of value, the door is wide open for the clever, emotional type court-room behavior.

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[32] NATION'S BUSINESS, June '52—"And Then—Sudden Ruin"; Lester Velie.
[33] Armentrout v. Virginia Ry. Co., 72 F. Supp. 997 (1947).
[34] Standard Oil Co. of California v. Shields, 58 Ariz. 239, 119 P. 2d 116 (1941).
[35] Gniewkowski v. Walker & Dumas, Common Pleas Court of Cuyahoga County, Ohio, No. 624265; Judgment rendered Nov. 7, 1952.
[36] Nation's Business, op. cit., note 32 *supra.*
[37] *Ibid.*

This all too often has no direct bearing upon the enforcement of justice.

We have in the making a cynical disparagement by the public of the legal profession as a result of being unable to solve its proper problems. They are prone to believe seriously that this confusion in legal standards is deliberately brought about; that lawyers desire uncertainty because from it they derive their living; and that finally, the "best" lawyer will obtain the highest award.

Realistically, working against the defendant in "excessive" cases is not only the legal skill pitted against him, that has immeasurably aided a substantial award, but also his consideration of the aggravated cost, time, and effort expended in litigation. These factors coupled with the factor of uncertainty are not conducive to a reasonable exercising of the right of appeal.

Insurance.

The American public is purchasing bodily injury insurance protection to the sum of approximately a billion dollars annually. The limits of protection purchased are woefully inadequate in view of these higher verdicts. The trend of present insurance cost is to increase, and proper limits of liability would cost the American public a significant additional amount. To purchase insurance in this amount of premium and not have adequate protection is a national exigency.

How is this money being spent by the insurance companies? Hundreds of thousands of personal injury cases are settled outside of courts by the insurance companies, but their rules for determining a fair award are no better than those of courts of law, because the insurance companies must follow the legal concepts and levels of awards as determined by the juries of the locality. To expend such sums on such ephemeral, intangible grounds of ascertainment is certainly not the best way to conduct a billion dollar industry.

Although insurance companies are often willing to settle for a reasonable amount out of court, still in all too many cases by the time the plaintiff's attorney takes out the cost of his investigation plus his normal contingent fee percentage, there is hardly enough money left to make the settlement attractive. Invariably there follow vigorous, but bitter, fruitless, and needless suits in both trial and appellate courts. Increased litigation is also aided

by the fact that the insurance companies must constantly "try" cases in their attempts to determine the present level of a fair and equitable award. This arises, quite understandably, because no one is in possession of adequate scales for redressing bodily injuries. Thus, many cases clog our courts for no reason other than the one of unpredictability. *Summarily, in this respect we lack a most vital principle in our laws, and that is the element of predictability enabling us to carry on commerce in the most expeditious manner.*

Conclusion.

The foregoing material leads to the definite conclusion that an improved, workable, and sensible test for "excessiveness" must be established. It is fairly easy to confuse "excessive" with the concept of "large" or "high" awards. In some particular instances perhaps relatively larger or higher awards are proper in today's economy. But, the bulk of over a million injury cases is at a level fairly easy to classify and thereby to compensate properly. When proper standards are established, then awards become excessive when they go beyond this just and equitable measure. Classifications and guides for the vast majority of personal injury claims will save the American public millions of dollars yearly in insurance premiums. Also, prompt settlements and decreased litigation will help immeasurably in reducing the court work on trial and appeal.

It is fully believed that adequate rules can and will be worked out. Presumably, these changes should be made by the citizenry through acts of the legislatures in the various states. Some guides to these rules can be found in the Workmen's Compensation Laws, although these would have to be modified accordingly. Another present-day working example is that of pension payments to disabled military veterans based on their various classes of percentages of disabilities. Modified properly, their scales of value in civil cases could be resolved to commuted lump sums.

It is amazing that Americans are able to resolve the problem of the disabled veteran and the question of a "monetary compensation" for his injuries, pain, suffering, and yet are unable to do so in the courts of law for a party injured in a civil status. Why are we able to provide scales of measurements for a disabled veteran injured when society has placed him in a "known place of danger" involuntarily, and yet feel that we cannot or should not

interfere in civil cases wherein numerically greater personal injuries are being sustained yearly?

That all inequities and uncertainties cannot be resolved is well known. However, the time has arrived for introducing some element of stability in a system that is imponderable, inequitable, and uncertain.