Adams v. Murakami—New Judicially Made Rules Affecting Punitive Damages in California

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Awards of punitive damages, damages beyond those required to fully compensate a party for his or her injuries, have long been a part of the common and statutory law in England and the United States. Recently, punitive damages have come under increasing scrutiny both in the political arena and in the courts of the United States.

Punitive damages were originally conceived as a public way to punish a defendant's improper behavior. By making an example of the defendant, the defendant and others would thereby be deterred from committing future malicious, oppressive or fraudulent conduct of a similar nature. Critics of the punitive damage system have commented that, in the past, punitive damages were requested only in cases in which the defendant had a "quasi-criminal intent to harm the plaintiff." Now, critics contend, "plaintiffs in civil lawsuits routinely ask juries to award..."
punitive damages." With juries more willing to award them, punitive damages have become more of a lottery for the plaintiff than a way to deter future wrongdoing by punishing the defendant.

Some have argued, and some serious consideration has been given to the supposition, that the common-law method of awarding punitive damages may be unconstitutional under the Eighth Amendment or the Fourteenth Amendment. Although "all nine participating Members of the Court [have] noted concern" about the constitutionality of punitive damages, the United States Supreme Court has nonetheless refused to hold the common-law method of assessing punitive damages "per se unconstitutional" under the Due Process Clause. This holding is consistent with the holding of virtually every federal or state court that has considered the question.

In an effort to spare defendants from what some believe to be excessive punitive damages, some courts have resorted to fashioning rules designed to limit punitive damages. In such an effort, the California Supreme Court, in Adams v. Murakami, ruled that when a plaintiff asks for an award of punitive damages, evidence of the defendant's financial condition must be introduced at trial and is a prerequisite to receiving that award.

This Note reviews the history of punitive damages, including their development in California. It then critically analyzes the California Supreme Court's reasoning in Adams. This Note concludes that the court incorrectly interpreted relevant California statutes and prior precedent, unnecessarily discussed constitutional considerations irrelevant to the case at hand, and, by compelling pretrial discovery of the defendant's financial condition, created a rule that potentially burdens both plaintiffs and defendants. Finally, this Note examines the effects of the decision on California law and proposes means to otherwise limit onerous punitive damage awards and to prevent the adverse effects this case may have.

6. Id.
7. Id. at 5-6.
10. Id. at 1038.
11. Id. at 1043.
12. Id.
15. Id. at 109, 813 P.2d at 1349, 284 Cal. Rptr. at 319.
II. BACKGROUND

A. History of Punitive Damages

Punitive damages, in the form of multiple damages,16 have been allowed since the origin of law.17 Professor Owen notes that “[m]ultiple damages were provided for in Babylonian law nearly 4000 years ago in the Code of Hammurabi, the earliest known legal code.”18 Multiple damages were also awarded in the Hittite Laws of 1400 B.C.,19 “in the Hebrew Covenant Code of Mosaic law of about 1200 B.C.,”20 and in the Hindu Code of Manu of about 200 B.C.,21 which “provided for multiple damages in at least one case.”22 Early Roman Civil Law was punitive in nature, and in several cases called for “double, treble, and quadruple damages.”23

Provisions for multiple damages in English statutory law first appeared in 1275, when awards of double damages were permitted from trespassers against religious persons.24 Punitive damages “first received explicit recognition by the English common law”25 in Huckle v. Money,26 decided in 1763.27 “The doctrine was rapidly transported to America and by the middle of the nineteenth century had gained substantial acceptance in this country.”28 Since its inception in the United States, the doctrine of punitive damages has been, and continues to be, criticized but nonetheless has become deeply rooted in both federal and state common law.29

16. “Since multiple damages are awarded to a plaintiff in an amount equal to a legislatively prescribed multiple of his actual damages, they are plainly a form of punitive damages.” Owen, supra note 1, at 1262 n.17.
17. Id. at 1262 & n.17.
18. Id. at 1262 n.17.
19. Id.
20. Id.
21. Id.
22. Id.
23. Id.
24. Statute of Westminster I, 3 Edw. 1, ch. 1 (1275) (Eng.), reprinted in 1 STATUTES AT LARGE 40, 41 (Owen Ruffhead ed., 1763); see Owen, supra note 1, at 1262, 1263 n.18 (discussing punitive damages under English statutory law).
25. Owen, supra note 1, at 1262-63.
27. Owen, supra note 1, at 1263 n.19.
28. Id. at 1263 (footnotes omitted).
29. Id. at 1263-64, 1267. See also Pacific Mut. Life Ins. Co. v. Haslip, 111 S. Ct. 1032, 1041 (1991), where Justice Blackmun, writing for the Court, observed that “[p]unitive damages have long been a part of traditional state tort law.” Id. (quoting Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 255 (1984)).
B. Constitutionality of Punitive Damage Awards

The United States Supreme Court has reviewed the constitutionality of punitive damages on several occasions. Recently, the Supreme Court has effectively avoided reaching the issue of constitutionality in punitive damages cases by deciding cases on other grounds or by declaring the record not sufficiently developed for constitutional adjudication. Perhaps realizing that it would soon have to decide the constitutionality of punitive damage awards under the Excessive Fines Clause or the Due Process Clause, the Supreme Court in Bankers Life & Casualty Co. v. Crenshaw suggested some less intrusive alternatives that would be preferable to the high Court ruling on the constitutionality of punitive damages:

[T]he . . . State Legislature might choose to enact legislation addressing punitive damages awards . . . ; failing that, the . . . state courts may choose to resolve the issue by relying on the State Constitution or on some other . . . non-federal ground; and failing that, the [state] Supreme Court will have its opportunity to decide the question of federal law in the first instance.

1. Examining punitive damages under the Excessive Fines Clause: the Browning-Ferris decision

Finally, in 1989, the United States Supreme Court, in Browning-Ferris Industries v. Kelco Disposal, Inc., decided a punitive damages case


32. See, e.g., Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71, 79-80 (1988) ("[W]e believe that the more prudent course in this case is to decline to review appellant's [Eighth and Fourteenth Amendment] claims" because record is not fully developed).

34. Id. amend. XIV, § 1.
36. Id. at 80.
under the Excessive Fines Clause of the Eighth Amendment. The Court extensively explored the history of the Eighth Amendment and the framers' intent. The Court concluded that the Excessive Fines Clause could apply only in cases where the government is seeking monetary retribution. Although the Court did not decide whether the Eighth Amendment applied only to criminal cases, the Court declared that the Eighth Amendment did "not constrain an award of money damages in a civil suit when the government neither ha[d] prosecuted the action nor ha[d] any right to receive a share of the damages awarded."

2. Examining punitive damages under the Due Process Clause: the Haslip decision

Justice Brennan's concurrence in Browning-Ferris expressed hope that in the future the Court would consider the possible constraint the Due Process Clause imposed on punitive damage awards. In Pacific Mutual Life Insurance Co. v. Haslip the Court addressed its "concern about punitive damages that 'run wild,'" by initially investigating the common-law history of punitive damages and then by formulating procedural parameters sufficient to satisfy the mandates of the Due Process Clause when awarding punitive damages.

Examining the long common-law history of punitive damages, the Court stated: "So far as we have been able to determine, every state and federal court that has considered the question has ruled that the common-law method for assessing punitive damages does not in itself violate due process." Common-law punitive damages assessment predated the

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38. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend. VIII, § 1 (emphasis added).

39. Browning-Ferris, 492 U.S. at 259. Although the Court ruled on the constitutionality of punitive damages under the Eighth Amendment, U.S. Const. amend. VIII, § 1, it refused to consider the issue under the Due Process Clause of the Fourteenth Amendment, id. amend. XIV, § 1. The question was not raised in the district court or the court of appeals, nor was it raised in the petition for certiorari. Browning-Ferris, 492 U.S. at 276-77.

40. Browning-Ferris, 492 U.S. at 262-78.
41. Id. at 263-64 & 264 n.4.
42. Id. at 264.
43. Id. at 280 (Brennan, J., concurring).
45. Id. at 1043.
46. Id. at 1041-43.
47. Id. at 1044-46.
48. Id. at 1041-43. See supra notes 25-29 and accompanying text for a discussion of punitive damages under the common law.
49. Haslip, 111 S. Ct. at 1043.
Fourteenth Amendment,50 and "[n]othing in that Amendment's text or history indicates an intention on the part of its drafters to overturn the prevailing method."51 Given this tradition, only an extraordinary case could invoke due process protection.52 In fact, in his concurrence Justice Scalia indicated that common-law tradition alone provided due process: 
"[I]f the government chooses to follow a historically approved procedure, it necessarily provides due process . . . ."53

The majority, however, believed it "inappropriate to say that, because punitive damages have been recognized for so long, their imposition is never unconstitutional."54 Instead, the Court looked at Alabama's system for awarding and reviewing punitive damages and concluded that the punitive damages award was constitutionally acceptable under the Due Process Clause.55

The Court expressed concern that "unlimited jury discretion . . . in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities."56 However, upon examination the Court found that although the jury instructions in this case gave the jury substantial discretion in awarding punitive damages, the discretion was not unlimited.57 In fact, the Court approved of the trial court's jury instructions because they specifically explained the purpose of punitive damages and limited the jury's discretion in awarding punitive damages to purposes of deterrence, punishment and example.58

50. Id.; see Day v. Woodworth, 54 U.S. (13 How.) 363, 371 (1852) (holding that punitive damages were "well-established principle of the common law," with amount of award traditionally "left to the discretion of the jury [depending] on the peculiar circumstances of each case").
51. Haslip, 111 S. Ct. at 1043.
52. Id.
53. Id. at 1050 (Scalia, J., concurring).
54. Id. at 1043.
55. Id. at 1044.
56. Id. at 1043.
57. Id. at 1044.
58. Id. The instruction given to the jury was, in pertinent part:

"[I]f you find that fraud was perpetrated then in addition to compensatory damages you may in your discretion . . . you don't have to even find fraud . . . but you may, the law says you may award an amount of money known as punitive damages. This amount of money is awarded to the plaintiff but it is not to compensate the plaintiff for any injury. It is to punish the defendant . . . [I]t is also called exemplary damages, which means to make an example . . . [I]f you are reasonably satisfied from the evidence that the plaintiff [is the victim of a fraud] and as a direct result [suffered injury,] in addition to compensatory damages you may in your discretion award punitive damages.

"The purpose of awarding punitive or exemplary damages is to allow money recovery to the plaintiffs, . . . by way of punishment to the defendant and for the added purpose of protecting the public by deterring [sic] the defendant and others
In addition to approving the jury instructions given in Alabama’s punitive damages cases, the United States Supreme Court approved of the Alabama Supreme Court’s procedures for post-verdict review of punitive damage awards both at trial and on appeal. Before the Haslip trial began, the Alabama Supreme Court, in Hammond v. City of Gadsden, recognized that a jury award “may be flawed because it results, not from the evidence and applicable law, but from bias, passion, prejudice, corruption, or other improper motive.” To assist in ascertaining a reasonable figure for punitive damages awards and to make appellate review of the awards easier, the Alabama court found that the trial court should take into consideration, among other things, “the culpability of the defendant’s conduct, . . . the desirability of discouraging others from similar conduct . . . and the impact upon the parties [and] innocent third parties.”

The United States Supreme Court found that Alabama’s method for appellate review of punitive damage awards guarantees that such awards are “reasonable in their amount and rational in light of their purpose to punish [and] deter.” In addition, the Court stated, “Alabama plaintiffs do not enjoy a windfall because they have the good fortune to have a defendant with a deep pocket.” Thus, because the Haslip jury was instructed adequately, because the trial court’s post-verdict hearing conformed to the factors set forth in Hammond, and because the Alabama Supreme Court appropriately reviewed the punitive damage award on appeal, the award did not violate the Due Process Clause.

from doing such wrong in the future. Imposition of punitive damages is entirely discretionary with the jury . . . .

"Should you award punitive damages, in fixing the amount, you must take into consideration the character and the degree of the wrong as shown by the evidence and necessity of preventing similar wrong."

Id. at 1037 n.1 (alteration in original). See infra note 70 for the California jury instruction involving punitive damages.

59. Haslip, 111 S. Ct. at 1044-45.
60. 493 So. 2d 1374 (Ala. 1986).
61. Id. at 1378.
62. Id. at 1379 (citations omitted). See infra notes 339-41 and accompanying text for other criteria considered when reviewing punitive damage awards in Alabama.
63. Haslip, 111 S. Ct. at 1045.
64. Id. Interestingly, by this statement, the United States Supreme Court seemed to indicate that the financial condition of a defendant should not be considered by a jury and should, if at all possible, be avoided.
65. Id. at 1046. The Supreme Court found that the amount of punitive damages, even though more than four times the amount of compensatory damages, was nonetheless based on objective criteria and did not "cross the line into the area of constitutional impropriety." Id.
C. Overview of California Statutes Relevant to Punitive Damages

California statutorily authorized punitive damage awards when the California Legislature enacted section 3294 of the California Civil Code in 1872.66 Today three statutes are central to proving a punitive damage award in California: sections 329467 and 329568 of the California Civil Code and section 500 of the California Evidence Code. In addition, the jury instruction given in punitive damages cases, from the California Book of Approved Jury Instructions (BAJI) No. 14.71,70 has direct rele-

66. California established its Civil Code in 1872, and § 3294 was included. CAL. CIV. CODE § 3294 (West 1970 & Supp. 1992); see Adams v. Murakami, 54 Cal. 3d 105, 125, 813 P.2d 1358, 1361, 284 Cal. Rptr. 318, 331 (1991) (Mosk, J., dissenting) (explaining origins of statutorily authorized punitive damages in California); infra notes 72-75 and accompanying text (discussing CAL. CIV. CODE § 3294).
67. CAL. CIV. CODE § 3294 (West 1970 & Supp. 1992); see Adams, 54 Cal. 3d at 122-23, 813 P.2d at 1359-60, 284 Cal. Rptr. at 329-30 (discussing relevant sections of civil code); infra notes 72-75 and accompanying text (discussing CAL. CIV. CODE § 3294).
68. CAL. CIV. CODE § 3295 (West Supp. 1992); see Adams, 54 Cal. 3d at 121-23, 813 P.2d at 1358-60, 284 Cal. Rptr. at 328-30 (discussing application of relevant California Civil Code sections); infra notes 76-80 and accompanying text (discussing CAL. CIV. CODE § 3295).
69. CAL. EVID. CODE § 500 (West 1966); see Adams, 54 Cal. 3d at 119-23, 813 P.2d at 1357-60, 284 Cal. Rptr. at 327-30; infra notes 81-83 (discussing CAL. EVID. CODE § 500).
70. The 1989 revision of the jury instruction, which is essentially identical to the 1986 instruction existing at the time of the Adams trial, provides:

If you find that plaintiff suffered actual injury, harm, or damage as a [proximate] [legal] result of the cause of action, you may then consider whether you should award punitive damages against defendant ... for the sake of example and by way of punishment. You may in your discretion award such damages, if, but only if, you find by clear and convincing evidence that said defendant was guilty of [oppression] [fraud] [or] [malice] in the conduct on which you base your finding of liability.

The law provides no fixed standards as to the amount of such punitive damages, but leaves the amount to the jury's sound discretion, exercised without passion or prejudice.

In arriving at any award of punitive damages, you are to consider the following:
(1) The reprehensibility of the conduct of the defendant.
(2) The amount of punitive damages which will have a deterrent effect on the defendant in the light of defendant's financial condition.
[[105. That the punitive damages must bear a reasonable relation to the injury, harm, or damage actually suffered by the plaintiff.]]
If you find that plaintiff is entitled to an award of punitive damages against defendant, you shall state the amount of punitive damages separately in your verdict.

In addition, California law now allows for a bifurcated trial where punitive damages are requested. See infra notes 76-80 and accompanying text for a discussion of CAL. CIV. CODE § 3295 (West Supp. 1992). In bifurcated proceedings, a separate jury instruction is given at the portion of the trial where punitive damages are to be awarded (after it is found that the defendant is liable for compensatory and punitive damages):

You must now determine whether you should award punitive damages against defendant ... for the sake of example and by way of punishment. Whether punitive
vance to the California Supreme Court's decision in Adams v. Murakami.\textsuperscript{71}

At the time of the Adams trial, section 3294(a) of the California Civil Code provided that a plaintiff could be awarded punitive damages, in a non-contract civil action, "where the defendant has been guilty of oppression, fraud or malice," in order to punish the defendant.\textsuperscript{72} In addition, subsection (c) of section 3294 defines the terms malice,\textsuperscript{73} oppression\textsuperscript{74} and fraud.\textsuperscript{75}

At the time of the trial, section 3295(a) of the California Civil Code provided that, in a punitive damages case, before the plaintiff could introduce evidence of the defendant's financial condition\textsuperscript{76} or profits gained by the defendant's wrongful act,\textsuperscript{77} "[t]he court [could], for good cause, grant any defendant a protective order requiring the plaintiff to produce evidence of a prima facie case of liability for [punitive] damages."\textsuperscript{78} After the prima facie case was established, subsection (c) provided that the court could enter an order permitting pretrial discovery by the plaintiff to establish the defendant's financial condition.\textsuperscript{79} It allowed the plaintiff to subpoena relevant documents or witnesses "for the purpose of establishing the [defendant's] profits or financial condition."\textsuperscript{80}

\begin{footnotes}
\item[71] Vance to the California Supreme Court's decision in Adams v. Murakami.\textsuperscript{71}
\item[72] At the time of the Adams trial, section 3294(a) of the California Civil Code provided that a plaintiff could be awarded punitive damages, in a non-contract civil action, "where the defendant has been guilty of oppression, fraud or malice," in order to punish the defendant.\textsuperscript{72} In addition, subsection (c) of section 3294 defines the terms malice,\textsuperscript{73} oppression\textsuperscript{74} and fraud.\textsuperscript{75}
\item[73] Malice is defined as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." \textit{Id.} \textsuperscript{73}§ 3294(c)(1) (West 1970 & Supp. 1992).
\item[74] Oppression is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." \textit{Id.} \textsuperscript{74}§ 3294(c)(2) (West 1970 & Supp. 1992).
\item[75] Fraud is defined as "intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." \textit{Id.} \textsuperscript{75}§ 3294(c)(3) (West 1970 & Supp. 1992).
\item[76] \textit{Id.} \textsuperscript{76}§ 3295(a)(2) (West Supp. 1992).
\item[77] \textit{Id.} \textsuperscript{77}§ 3295(a)(1) (West Supp. 1992).
\item[78] \textit{Id.} \textsuperscript{78}§ 3295(a) (West Supp. 1992).
\item[79] \textit{Id.} \textsuperscript{79}§ 3295(c) (West Supp. 1992).
\item[80] \textit{Id.} In 1987, subsequent to the Adams trial, the California Legislature enacted subsec-
\end{footnotes}
Section 500 of the California Evidence Code assigns an obligation to “a party to produce a particular state of conviction in the mind of the trier of fact as to the existence or nonexistence of a fact.” It provides: “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” As the Law Revision Commission noted in its comment, section 500 of the Evidence Code “has been criticized as establishing a meaningless standard” because deciding who has the burden of proof as to a particular fact is not clearly settled.

D. Prior California Appellate Decisions Regarding Punitive Damages

The traditional function of California appellate courts in reviewing an award of punitive damages was set forth in *Neal v. Farmers Insurance Exchange*. Relying on its decision in *Bertero v. National General Corp.*, the court in *Neal* held that appellate “review of punitive damage awards rendered at the trial level is guided by the ‘historically honored standard of reversing as excessive only those judgments which the entire record, when viewed most favorably to the judgment, indicates were rendered as the result of passion and prejudice.’” The central question then is how to determine which decisions were “rendered as the result of passion and prejudice.”

A brief summary of California punitive damages law may be helpful. Although there is authority to the contrary, in California “punitive damages . . . are allowed only in addition to recovered actual damages.” This “is based on the principle that [the] defendant must have

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81. CAL. EVID. CODE § 500 law revision commission comment (West 1966).
82. Id. § 500 (West 1966).
83. Id. § 500 law revision commission comment (West 1966).
84. 21 Cal. 3d 910, 582 P.2d 980, 148 Cal. Rptr. 389 (1978).
87. Bertero, 13 Cal. 3d at 65, 529 P.2d at 624, 118 Cal. Rptr. at 200.
88. E.g., RESTATEMENT (SECOND) OF TORTS § 908 cmt. c (1977).
89. See e.g., Mother Cobb’s Chicken Turnovers, Inc. v. Fox, 10 Cal. 2d 203, 206, 73 P.2d 1185, 1186 (1937) (disallowing punitive damages award in unfair competition case where no actual damages were shown).
committed a tortious act before [punitive] damages can be assessed.”

In addition, there is no fixed standard for measuring punitive damage awards; after consideration of all the circumstances, the discretion of whether to award damages and in what amount is left to the sole discretion of the jury. Of course, upon review all awards are subject to rejection or reduction if not supported by the evidence. In any case, jury discretion aside, there is a general rule that the punitive damage award must have some “reasonable relationship” to the compensatory damage award.

The court in Neal found three factors “all of which [were] grounded in the purpose and function of punitive damages” which courts should take into consideration when reviewing an award of punitive damages. First, “the particular nature of the defendant’s acts in light of the whole record” should be considered, and “the more reprehensible the act, the greater the appropriate punishment.” Second, the amount of the compensatory damages in relationship to the punitive damage award should be taken into account. Third, the financial condition of the particular defendant should be weighed against the amount of punitive damages. In this way, the purpose of punitive damages was served: the greater the

91. E.g., id. at 801, 197 P.2d at 720 (granting or withholding punitive damage award within control of jury; trial judge must let jury make decision for itself); Wetherbee v. United Ins. Co. of Am., 18 Cal. App. 3d 266, 271-72, 95 Cal. Rptr. 678, 681-82 (1971) (holding that properly instructed jury has reasonable discretion to determine whether to award punitive damages and their amount).
93. See, e.g., Zhadan v. Downtown L.A. Motors, 66 Cal. App. 3d 481, 496, 136 Cal. Rptr. 132, 142 (1976) (finding $175,000 punitive damage award excessive in light of $4000 compensatory damage award). But see Finney v. Lockhart, 35 Cal. 2d 161, 164, 217 P.2d 19, 21-22 (1950) (approving punitive damage to compensatory damage award ratio of 2000 to 1) and Wetherbee, 18 Cal. App. 3d at 271, 95 Cal. Rptr. at 681 (affirming punitive damages of $200,000 with only $1050 in compensatory damages), which prove “there is no fixed ratio by which to determine the proper proportion between the two classes of damages.” Finney, 35 Cal. 2d at 164, 217 P.2d at 21-22.
95. Id.
96. Id.
97. Id.
98. Id. See supra notes 92-93 and accompanying text for a discussion of the relationship between the amount of compensatory damages and punitive damages.
99. Neal, 21 Cal. 3d at 928, 582 P.2d at 990, 148 Cal. Rptr. at 399.
defendant's wealth, the greater the amount of punitive damages required to effectively punish and deter; conversely, the lesser the defendant's wealth, the lesser the amount of punitive damages required to effectively punish and deter future similar behavior.

Prior to 1989, California was in accord with "the vast majority of [its] sister jurisdictions" and, like most modern decisions, held that a plaintiff need not introduce evidence of a defendant's financial condition as a prerequisite to an award of punitive damages. In these prior California cases, either the plaintiff or the defendant could have introduced evidence of the defendant's financial condition if the evidence helped his or her case, but neither was required to introduce the evidence. However, the court of appeal decisions of *Dumas v. Stocker* and *Storage Services v. Oosterbaan* held that to enable appellate courts to meaningfully review an award of punitive damages, the record must contain information of the defendant's financial condition. The California Supreme Court granted review in *Adams v. Murakami* to resolve the authoritative split in the appellate courts.

III. *Adams v. Murakami*: Statement of the Case

A. Facts

Appellant and defendant Clifford Murakami was the attending physician of respondent and plaintiff Lonnetta Ree Adams, a female resident of View Heights Convalescent Hospital. Adams was a "shy, reserved,"

100. Id.
101. Id.
104. For examples of California decisions, see *infra* note 252. For examples of decisions in other jurisdictions, see *infra* note 236.
108. *Id.* at 516, 262 Cal. Rptr. at 700-01; *Dumas*, 213 Cal. App. 3d at 1267, 262 Cal. Rptr. at 314.
110. *Id.* at 115, 813 P.2d at 1354, 284 Cal. Rptr. at 324.
111. *Id.* at 109, 813 P.2d at 1349, 284 Cal. Rptr. at 319.
[and] cooperative" patient diagnosed as a chronic schizophrenic of low intelligence. When Adams voluntarily entered View Heights, she was placed on four potent psychotropic drugs. She was examined by Murakami, at which time Murakami learned that Adams had recently had an abortion.

View Heights treated both male and female patients, and the hospital's policy allowed the patients free access to one another and "consensual sexual relations between the patients." Adams's "medical chart indicated she was seen in bed with men." Adams asked Murakami for birth control, and some of the nurses asked Murakami to prescribe birth control for Adams. Yet Murakami did not, even though he had prescribed it for other patients in the hospital.

From October through December of 1980, Adams showed numerous symptoms of pregnancy, however Murakami did not conduct an examination of the patient until three months later when a nurse informed Murakami that she believed that Adams was pregnant, in what was Adams's seventeenth week of pregnancy. Without counselling Adams, Murakami ordered an abortion to be performed, but it was not done because Adams's brother-in-law, one of the seven men with whom Adams had sexual relations, threatened the hospital. After this, Murakami did not inform Adams that the medication she was taking could be harmful to a baby, that childbirth could exacerbate Adams's own mental illness, or that the child could genetically inherit Adams's mental illness.

Adams's son was born severely retarded and autistic, and it was highly probable that he inherited his problems from one or both of his parents. Subsequent to her son's birth, Adams "experienced two acute psychotic breaks . . . totally lost touch with reality, . . . and had

113. Id.
114. Id.
115. Id. at 468-69.
116. Id. at 469.
117. Id.
118. Id.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
124. Id.
125. Id.
126. Id. at 469-70.
B. Case History

Adams brought suit against the hospital and Murakami for medical malpractice, battery and intentional infliction of emotional distress. Adams settled with the hospital, but the case against Murakami proceeded to a jury trial. Judgment was entered in the total sum of $1,024,266, of which $750,000 were punitive damages. Murakami appealed from the judgment claiming, in part, that the punitive damages award was improper because Adams had shown no evidence of Murakami's financial status, even though Murakami made no attempt to show his own financial condition.

The court of appeal rejected Murakami's argument, finding:
Calculating the amount of punitive damages is a fluid process. The reprehensibility of the defendant's conduct, the defendant's wealth and the actual damages [citing Neal v. Farmers Insurance Exchange] are all considered in light of the objective of punitive damages, i.e., to punish the offender and to deter future similar acts. Each of these factors takes on different significance, depending on the underlying circumstances. Thus, if the defendant's actions are sufficiently reprehensible, the relationship between actual damages and punitive damages is less important.

The court further held that the defendant's financial condition was not a requirement for an award of punitive damages.

IV. THE CALIFORNIA SUPREME COURT'S RULING

After losing in the court of appeal, Murakami appealed to the California Supreme Court, which held that an award of punitive damages required the plaintiff to show evidence of the defendant's financial condition. Further, the burden of proving the defendant's financial condi-
tion at trial was placed on the plaintiff.\textsuperscript{136}

\textbf{A. Evidence of Defendant's Finances}

The California Supreme Court reversed the court of appeal decision\textsuperscript{137} because, at trial, the jury was not shown evidence of the defendant's financial condition prior to assessing punitive damages.\textsuperscript{138} The court found that two factors compelled introduction of a defendant's financial condition. First, the court maintained that prior California decisions, the instructions given to trial juries, and effective appellate review required that the financial condition of the defendant be revealed.\textsuperscript{139} Second, because of federal constitutional considerations, such as due process concerns, the court favored the introduction of evidence of the defendant's financial condition.\textsuperscript{140}

1. Prior California decisions, jury instructions and effective appellate review of punitive damages

\textit{a. the majority}

The California Supreme Court found that the three criteria set forth in \textit{Neal v. Farmers Insurance Exchange}\textsuperscript{141} established a three-part test by which punitive damages must be measured.\textsuperscript{142} By applying this test, the court found that it could fulfill its traditional function in assessing punitive damages and "determine whether the award [was] excessive as a matter of law or raise[d] a presumption that it [was] the product of passion or prejudice."\textsuperscript{143} The court in \textit{Neal} was guided by "certain established principles, all of which [were] grounded in the purpose and function of punitive damages,"\textsuperscript{144} which "punish[ed] wrongdoers and thereby deter[red] the commission of wrongful acts."\textsuperscript{145} The three factors set forth in \textit{Neal}, relied on by the court in \textit{Adams}, were (1) to examine the "particular nature of the defendant's acts in light of the whole record,"\textsuperscript{146} (2) to scrutinize the amount of punitive damages awarded in

\begin{footnotes}{
\footnote{136. \textit{Id.} at 123, 813 P.2d at 1360, 284 Cal. Rptr. at 330.}
\footnote{137. \textit{Id.}}
\footnote{138. \textit{Id.} at 115-16, 813 P.2d at 1354-55, 284 Cal. Rptr. at 324-25.}
\footnote{139. \textit{Id.} at 109-16, 813 P.2d at 1350-55, 284 Cal. Rptr. at 320-25.}
\footnote{140. \textit{Id.} at 116-18, 813 P.2d at 1355-57, 284 Cal. Rptr. at 325-27.}
\footnote{141. 21 Cal. 3d 910, 928, 582 P.2d 980, 990, 148 Cal. Rptr. 389, 399 (1978).}
\footnote{142. \textit{Adams}, 54 Cal. 3d at 110, 813 P.2d at 1350, 284 Cal. Rptr. at 320.}
\footnote{143. \textit{Id.} at 109-10, 813 P.2d at 1350, 284 Cal. Rptr. at 320.}
\footnote{144. \textit{Neal}, 21 Cal. 3d at 928, 582 P.2d at 990-91, 148 Cal. Rptr. at 399-400.}
\footnote{145. \textit{Id.} at 928 n.13, 582 P.2d at 990 n.13, 148 Cal. Rptr. at 399 n.13.}
\footnote{146. \textit{Id.} at 928, 582 P.2d at 990, 148 Cal. Rptr. at 399.}
}\end{footnotes}
relation to the compensatory damages awarded, and (3) to consider the wealth of the defendant.

The court in *Adams* found that all three factors espoused in *Neal* were necessary for a "reviewing court to make an informed determination of whether an award is excessive." The court explained that "[e]ven if an award [were] entirely reasonable in light of the other two factors in *Neal*, [nature of the misconduct and amount of compensatory damages], the award [could] be so disproportionate to the defendant's ability to pay that the award [would be] excessive for that reason alone." The court explained its concern that without evidence of a defendant's financial condition, an appellate court may be precluded from "deciding whether an award might, for example, bankrupt the defendant." The court, therefore, agreed with appellate court decisions following *Dumas v. Stocker*, which required evidence of a defendant's financial condition before awarding punitive damages, rather than those following *Vossler v. Richards Manufacturing Co.*, which allowed consideration but did not require evidence of the defendant's financial condition.

The court determined that for a jury to make informed decisions about the amount of punitive damages to award, it must have knowledge of the defendant's financial condition. The court observed that "absent financial evidence, a jury [would] be encouraged (indeed, required) to speculate as to a defendant's net worth in seeking to return a verdict that [would] appropriately punish the defendant." Another reason juries would be encouraged to speculate was because, when awarding punitive damages in California, they were routinely asked to consider "[t]he amount of punitive damages which [would] have a deterrent effect on the defendant in the light of [the] defendant's financial condition."
The court expressed its concern that a jury would be asked to base a decision on "a factor as to which there was no evidence [and found that sound public policy should preclude awards based on mere speculation.]"159

b. the dissent

Justice Mosk, in his dissent, objected to the majority's characterization of the decision in Neal as a hard and fast three-pronged analysis.160 Justice Mosk asserted that the Neal court "did not set forth 'criteria' that must be examined to determine whether punitive damages should be awarded; instead, [the court] simply recognized factors to guide an appellate's [sic] court['s] determination of whether the jury's award was a result of passion and prejudice."161 Justice Mosk contended that Neal simply helped trial and appellate courts determine whether first, the jury was justified in awarding punitive damages by examining the evidence to ascertain if it supported a finding of malice, oppression or fraud162 and second, whether the jury's result was motivated by passion or prejudice.163 The dissent conceded that "evidence of the defendant's financial condition may be relevant to the [second] determination,"164 but contended that neither Neal nor any other California Supreme Court case suggested "that evidence of the defendant's financial condition must be introduced to sustain an award of punitive damages."165 Furthermore, the dissent found that the jury instruction given in punitive damages cases was intended to give guidance to the jury.166 Likewise, the Neal holding established principles which would guide a reviewing court in determining whether punitive damages awarded were excessive.167 According to the dissent, neither the jury instruction nor the Neal decision required information of the defendant's finances.168

159. Adams, 54 Cal. 3d at 114, 813 P.2d at 1353, 284 Cal. Rptr. at 323.
160. Id. at 127, 813 P.2d at 1362, 284 Cal. Rptr. at 332 (Mosk, J., dissenting).
161. Id. (Mosk, J., dissenting).
162. Id. (Mosk, J., dissenting).
163. Id. (Mosk, J., dissenting).
164. Id. (Mosk, J., dissenting).
165. Id. at 127, 813 P.2d at 1362-63, 284 Cal. Rptr. at 332-33 (Mosk, J., dissenting) (emphasis added).
166. See id. at 126, 813 P.2d at 1361-62, 284 Cal. Rptr. at 331-32 (Mosk, J., dissenting) (explaining process by which jury awards punitive damages). See supra note 70 for the text of the jury instructions in punitive damages cases.
167. See Adams, 54 Cal. 3d at 126, 813 P.2d at 1362, 284 Cal. Rptr. at 332 (Mosk, J., dissenting).
168. See id. at 126-27, 813 P.2d at 1362, 284 Cal. Rptr. at 332 (Mosk, J., dissenting).
The dissent argued that sections 3294\textsuperscript{169} and 3295\textsuperscript{170} of the California Civil Code supported the conclusion that punitive damage awards did not require a showing of a defendant's financial condition.\textsuperscript{171} Justice Mosk observed that at the time section 3295 was added, the application of section 3294 was "governed by case law providing, 'the plaintiff has the burden of proof, that proof is by a preponderance of the evidence, and \textit{permits} the consideration of various factors in determining the amount of the award.'"\textsuperscript{172} The Legislature, then, intended that the plaintiff be "\textit{permitted, but not compelled, to introduce evidence of the defendant's profits and financial condition.}"\textsuperscript{173} According to Justice Mosk, "whether punitive damages should be awarded and the amount of such an award are issues left to the jury's discretion."\textsuperscript{174} The plaintiff must only introduce evidence proving punitive damages are warranted and may introduce "evidence bearing on the amount of the award," but need not do so.\textsuperscript{175}

2. Constitutional considerations which require evidence of the defendant's financial condition

\textit{a. the majority}

As discussed above, the United States Supreme Court, in a few recent cases, has examined the constitutionality of punitive damages under the Eighth and Fourteenth Amendments of the United States Constitution.\textsuperscript{176} Although the California Supreme Court did not explicitly decide \textit{Adams} on constitutional grounds,\textsuperscript{177} Justice Baxter's majority opinion

\begin{footnotes}


\footnote{171} \textit{Adams}, 54 Cal. 3d at 125, 813 P.2d at 1361, 284 Cal. Rptr. at 331 (Mosk, J., dissenting).

\footnote{172} \textit{Id.} (Mosk, J., dissenting) (quoting LEGISLATIVE COUNSEL'S DIGEST S. 227 (1979-80 Reg. Sess.) (emphasis added)).

\footnote{173} \textit{Id.} (Mosk, J., dissenting).

\footnote{174} \textit{Id.} at 126, 813 P.2d at 1361, 284 Cal. Rptr. at 331 (Mosk, J., dissenting).

\footnote{175} \textit{Id.} (Mosk, J., dissenting).


\footnote{177} "We need not decide, and do not decide, whether evidence of a defendant's financial condition is a \textit{constitutional} prerequisite . . . ." \textit{Adams}, 54 Cal. 3d at 118, 813 P.2d at 1356, 284 Cal. Rptr. at 326.
\end{footnotes}
The court observed that, although the question in *Adams* was primarily one of state law, "it ha[d] recently acquired a federal constitutional dimension, which . . . weigh[ed] strongly in favor of requiring evidence of a defendant's financial condition." After noting the United States Supreme Court's concern in *Pacific Mutual Life Insurance Co. v. Haslip*, about punitive damages that "run wild" and potentially violate the Due Process Clause, the California Supreme Court applied due process analysis to the California system for awarding punitive damages.

The court emphasized that Alabama's system for assessing punitive damages was found constitutional in *Haslip* because of the "'detailed substantive standards' " employed by the Alabama courts when reviewing punitive damage awards on appeal. The Alabama Supreme Court stated that a "defendant's financial condition is 'a consideration essential to a post-judgment critique of a punitive damages award.'" The California Supreme Court interpreted this to mean that consideration of defendant's wealth was an important step in satisfying the due process requirements of the Fourteenth Amendment. The court concluded that *Haslip* "made clear a constitutional mandate for meaningful judicial scrutiny of punitive damages awards. This requirement weigh[ed] heavily in favor of [requiring] evidence of a defendant's financial condition . . . ." The constitutionality of a punitive damages award cannot be assured absent such evidence.

**b. the concurrence and the dissent**

Both the concurring opinion of Justice Kennard and the dissent of Justice Mosk found the discussion of the constitutional sufficiency of the California punitive damage review procedures irrelevant to decid-

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178. *Id.* at 116-18, 813 P.2d at 1355-56, 284 Cal. Rptr. at 325-26.
179. *Id.* at 116, 813 P.2d at 1355, 284 Cal. Rptr. at 325.
181. *Haslip*, 111 S. Ct. at 1043. See *supra* notes 43-65 and accompanying text examining the constitutionality of punitive damages awards under the Due Process Clause.
183. *Id.* at 117, 813 P.2d at 1355, 284 Cal. Rptr. at 325 (quoting Pacific Mut. Life Ins. Co. v. Haslip, 111 S. Ct. 1032, 1045 (1991)).
184. *Id.* (quoting Green Oil Co. v. Hornsby, 539 So. 2d 218, 222 (Ala. 1989) (emphasis added)).
185. See *id.* at 118, 813 P.2d at 1356, 284 Cal. Rptr. at 326 (discussing constitutional requirements for meaningful appellate review of punitive damage awards).
186. *Id.*
187. *Id.*
188. *Id.* at 124, 813 P.2d at 1360-61, 284 Cal. Rptr. at 330-31 (Kennard, J., concurring).
189. *Id.* at 128-29, 813 P.2d at 1363-64, 284 Cal. Rptr. at 333-34 (Mosk, J., dissenting).
ing the case. In her concurrence, Justice Kennard stated: "California courts have long adhered to the policy that constitutional questions ordinarily should be reached only if the matter at hand cannot otherwise reasonably be resolved."\textsuperscript{190} Moreover, in dissent, Justice Mosk accused the majority of "engag[ing] in creative lawyering when they attempt[ed] to employ"\textsuperscript{191} the opinion in \textit{Haslip}, noting the significant differences between the punitive damages schemes of California and Alabama.\textsuperscript{192}

Justice Mosk asserted that the California and Alabama systems differed in two significant ways. First, in Alabama "the jury [was] not allowed to consider the defendant's financial condition; rather, the information [was] introduced at a post-judgment 'critique' of the award."\textsuperscript{193} Alabama's system recognized that jury knowledge of the defendant's financial condition was not necessary in assigning a constitutionally proper award of punitive damages.\textsuperscript{194} Second, the dissent noted that "the defendant in \textit{Haslip} argued that its financial condition should not be considered even on postjudgment review."\textsuperscript{195} Because of the significant differences between the California and Alabama systems, the dissent contended that the United States Supreme Court's decision in \textit{Haslip} did not support the position that introduction of the defendant's wealth was necessary to satisfy the Due Process Clause.\textsuperscript{196}

\textbf{B. Burden of Proof}

\textbf{1. The majority}

Having established that evidence of a defendant's wealth at trial was necessary for an award of punitive damages, the California Supreme Court had to decide who was to bear the burden of proving the defendant's wealth. The court decided that the burden should be placed on the plaintiff because section 500 of the California Evidence Code\textsuperscript{197} and fundamental fairness compelled it,\textsuperscript{198} because the plaintiff faced no risk in

\begin{itemize}
  \item \textsuperscript{190} Id. at 124, 813 P.2d at 1360, 284 Cal. Rptr. at 330 (Kennard, J., concurring).
  \item \textsuperscript{191} Id. at 128, 813 P.2d at 1363, 284 Cal. Rptr. at 333 (Mosk, J., dissenting).
  \item \textsuperscript{192} Id. at 128-29, 813 P.2d at 1363-64, 284 Cal. Rptr. at 333-34 (Mosk, J., dissenting).
  \item \textsuperscript{193} Id. (Mosk, J., dissenting) (quoting Green Oil Co. v. Hornsby, 539 So. 2d 218, 222 (Ala. 1989)).
  \item \textsuperscript{194} Id. at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).
  \item \textsuperscript{195} Id. (Mosk, J., dissenting); see also \textit{Arguments Before the Court}, 59 U.S.L.W. 3315, 3316 (U.S. Oct. 30, 1990).
  \item \textsuperscript{196} \textit{Adams}, 54 Cal. 3d at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).
  \item \textsuperscript{197} Evidence Code § 500 states: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." \textit{CAL. EVID. CODE} § 500 (West 1966).
  \item \textsuperscript{198} \textit{Adams}, 54 Cal. 3d at 119-22, 813 P.2d at 1357-59, 284 Cal. Rptr. at 327-29.
\end{itemize}
introducing this evidence\(^{199}\) and because the legislature assumed, when enacting section 3295 of the California Civil Code,\(^{200}\) that the burden of proof would be placed on the plaintiff.\(^{201}\)

Because section 500 of the California Evidence Code requires that "a party has the burden of proof as to each fact . . . essential to the claim for relief,"\(^{202}\) the majority asserted that the plaintiff should bear the burden of showing the defendant's wealth at trial.\(^{203}\) Furthermore, the court stated "[f]undamental fairness must be the lodestar for [its] analysis."\(^{204}\) Placing the burden on the plaintiff was the just result, recognizing that the plaintiff received the benefit of punitive damages, even after fully recompensed with an award of compensatory damages.\(^{205}\) Additionally, trial practice reality made this the only fair result--a plaintiff had nothing to lose in introducing this evidence, but compelling a defendant to do so introduced inherent prejudice\(^{207}\) and placed the defendant in a "'damned if you do, damned if you don't'" position.\(^{208}\) The jury could regard a defendant's introduction of financial evidence as an admission that some amount of punitive damages was an appropriate remedy, thus causing the jury to ignore the merits of the case.\(^{209}\) The court found that a plaintiff desiring not to introduce a defendant's financial information could only be motivated by a defendant's meager financial resources.\(^{210}\) In this case, "the plaintiff would be deliberately seeking an award disproportionate . . . to the defendant's ability to pay,"\(^{211}\) which is contrary to the purpose of punitive damages.\(^{212}\)

Lastly, the court found that the wording of section 3295 of the Cali-

\(^{199}\) Id. at 122, 813 P.2d at 1359, 284 Cal. Rptr. at 329.

\(^{200}\) See supra notes 79-80 and accompanying text for the relevant portion of § 3295.

\(^{201}\) Adams, 54 Cal. 3d at 122-23, 813 P.2d at 1359-60, 284 Cal. Rptr. at 329-30.

\(^{202}\) CAL. EVID. CODE § 500 (West 1966).

\(^{203}\) Adams, 54 Cal. 3d at 119, 813 P.2d at 1357, 284 Cal. Rptr. at 327.

\(^{204}\) Id.

\(^{205}\) Id. at 120, 813 P.2d at 1357-58, 284 Cal. Rptr. at 327-28.

\(^{206}\) Id. at 120, 813 P.2d at 1358, 284 Cal. Rptr. at 328.

\(^{207}\) Id.

\(^{208}\) Id. at 121, 813 P.2d at 1358, 284 Cal. Rptr. at 328.

\(^{209}\) Id.; see Guy O. Kornblum et al., CALIFORNIA PRACTICE GUIDE: BAD FAITH § 11:236 (1990). The court also noted that because this case was tried before bifurcated punitive damages proceedings could be compelled upon application of the defendant, the potential prejudice in this case was particularly more likely. See CAL. CIV. CODE § 3295(d) (West Supp. 1992). Dr. Murakami would be forced to reveal his own financial status even before the jury made an award of compensatory damages. Adams, 54 Cal. 3d at 121, 813 P.2d at 1358-59, 284 Cal. Rptr. at 328-29.

\(^{210}\) Adams, 54 Cal. 3d at 122, 813 P.2d at 1359, 284 Cal. Rptr. at 329.

\(^{211}\) Id.

\(^{212}\) Id.
fornia Civil Code\textsuperscript{213} and the legislative history showed that the California Legislature intended to compel the plaintiff to produce the defendant's financial information at trial.\textsuperscript{214} The plaintiff's power under section 3295, to subpoena documents and witnesses to establish the defendant's financial condition,\textsuperscript{215} showed legislative intent, the majority reasoned, to place the burden of proof on the plaintiff.\textsuperscript{216} In addition, the 1988 amendments to section 3295, subsequent to the \textit{Adams} trial, allowing for bifurcation of punitive damages proceedings upon motion of the defendant,\textsuperscript{217} reinforced legislative awareness that the plaintiff rather than the defendant would seek to introduce the defendant's financial information.\textsuperscript{218} “If defendants had that burden, the provisions regulating plaintiffs' introduction of the evidence would be meaningless. We do not presume that the Legislature engages in idle acts.”\textsuperscript{219}

2. The dissent

The dissent believed that placing the burden of proof on either the plaintiff or the defendant should not be necessary because evidence of the defendant's finances should not be necessary.\textsuperscript{220} It did, however, criticize the majority's reasoning which led to the conclusion that the burden of proof was properly placed on the plaintiff.\textsuperscript{221}

First, Justice Mosk felt that the burden of proof discussed in section 500 of the Evidence Code\textsuperscript{222} was only relevant to the elements of the plaintiff's cause of action.\textsuperscript{223} In other words, the plaintiff only had to prove “that the defendant acted with oppression, fraud, or malice” to support an award of punitive damages.\textsuperscript{224}

Second, the dissent accused the majority of being disingenuous when

\begin{itemize}
\item \textsuperscript{213} See supra notes 76-80 and accompanying text for a discussion of § 3295.
\item \textsuperscript{214} \textit{Adams}, 54 Cal. 3d at 122-23, 813 P.2d at 1359-60, 284 Cal. Rptr. at 329-30.
\item \textsuperscript{215} \textsc{Cal. Civ. Code} § 3295(c) (West Supp. 1992).
\item \textsuperscript{216} \textit{Adams}, 54 Cal. 3d at 122, 813 P.2d at 1359, 284 Cal. Rptr. at 329.
\item \textsuperscript{217} \textsc{Cal. Civ. Code} § 3295(d) (West Supp. 1992). See infra note 267 for the text of § 3295(d).
\item \textsuperscript{218} \textit{Adams}, 54 Cal. 3d at 123, 813 P.2d at 1360, 284 Cal. Rptr. at 330.
\item \textsuperscript{219} Id.
\item \textsuperscript{220} Id. at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).
\item \textsuperscript{221} See id. at 129-30, 813 P.2d at 1364-65, 284 Cal. Rptr. at 334-35 (Mosk, J., dissenting).
\item \textsuperscript{222} \textsc{Cal. Evid. Code} § 500 (West 1966).
\item \textsuperscript{223} See \textit{Adams}, 54 Cal. 3d at 129-30, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting) (arguing that burden of proof only applies to plaintiff's substantive cause of action); see also \textsc{Cal. Civ. Code} § 3294 (West 1970 & Supp. 1992) (allowing punitive damages for defendant's oppression, fraud or malice).
\item \textsuperscript{224} \textit{Adams}, 54 Cal. 3d at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334; see \textsc{Cal. Civ. Code} § 3294 (West 1970 & Supp. 1992) (defining elements to be proven in punitive damages cases).
\end{itemize}
it construed the wording of the statute and the legislative history as supporting the conclusion that the burden of proof was properly placed on the plaintiff. The dissent contended that section 3295(a) of the Civil Code, instead of reflecting an intent to force the burden of proof upon the plaintiff, reflected a legislative concern that a defendant should be protected from a plaintiff’s pretrial discovery abuse. Additionally, similar to section 500 of the Evidence Code, the portion of section 3294 of the Civil Code which stated that “the burden of proof” was on the plaintiff simply referred to the plaintiff’s burden of proving that the defendant was guilty of oppression, fraud or malice, rather than the burden of proving the defendant’s financial condition.

Finally, Justice Mosk took aim at the argument that it was “fundamentally fair” to compel the plaintiff to introduce evidence of the defendant’s financial condition. Justice Mosk assumed that, since the majority used a defense-oriented practice guide, the majority was more concerned about fundamental fairness to defendants than plaintiffs. Justice Mosk noted, however, that this requirement actually was unfair to both the defendant and the plaintiff. The dissent asked, was it “fundamentally fair not merely to permit, but actually to compel, the plaintiff to probe into and to expose to the world the finances of the defendant?” The dissent reasoned that this new requirement would “result in increased pretrial discovery of the defendant’s finances, with all its attendant burdens on the defendant.”

V. Analysis

The California Supreme Court decision in Adams v. Murakami

225. Adams, 54 Cal. 3d at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).


228. Adams, 54 Cal. 3d at 130, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).

229. Id. (Mosk, J., dissenting).

230. Id. (Mosk, J., dissenting); see KORNBLUM et al., supra note 209, § 1:1 (“[M]ost of this Practice Guide is devoted to . . . cases against insurers, and defenses thereto.”).

231. Adams, 54 Cal. 3d at 130-31, 813 P.2d at 1364-65, 284 Cal. Rptr. at 334-35 (Mosk, J., dissenting).

232. Id. at 130, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).

233. Id. at 130, 813 P.2d at 1365, 284 Cal. Rptr. at 335 (Mosk, J., dissenting) (citations omitted).

was probably an attempt to limit punitive damage awards. Nevertheless, the court's reasoning was flawed, and the decision was ill-advised for a number of reasons: (1) the court misinterpreted previous California decisions and California statutes in reaching its decision; (2) the court misplaced the burden of proof on the plaintiff because it misinterpreted the intent of the legislature when applying relevant statutes; and (3) the court attempted to support its decision by relying on the United States Supreme Court's interpretation of the Due Process Clause, when in fact these cases were totally irrelevant to the case at hand and were unnecessarily considered.

A. The Adams Court Misinterpreted Prior California Case Law and California Statutes

The California Supreme Court mainly relied on the reasoning in Neal v. Farmers Insurance Exchange to establish that proof of a defendant's wealth is necessary when awarding punitive damages. The court in Neal was “afforded guidance by certain established principles” when reviewing punitive damage awards. These included the nature of the defendant's acts, the amount of compensatory damages awarded in comparison with the amount of punitive damages awarded, and the wealth of the defendant. Yet, nowhere in the Neal decision

235. See id. at 124-25, 813 P.2d at 1361, 284 Cal. Rptr. at 331 (Mosk, J., dissenting) (“No doubt there are those whose high hopes of ridding the world of what they apparently perceive to be a social menace were dashed when the Supreme Court recently upheld the constitutionality of punitive damages . . . .”); see also Victoria Slind-Flor, Court Takes Hit at Punitives; May Presage More Action, NAT'L L.J., Sept. 2, 1991, at 3 (explaining that most lawyers agree Adams decision portends greater future restrictions on punitive damages); Lisa Stansky, Court Swipes at Punitives, RECORDER, Aug. 16, 1991, at 1 (“The decision may mark the start of a new trend” to limit jury discretion in awarding punitive damages).


238. See Adams, 54 Cal. 3d at 109-16, 813 P.2d at 1350-55, 284 Cal. Rptr. at 320-25.

239. Neal, 21 Cal. 3d at 928, 582 P.2d at 990, 148 Cal. Rptr. at 399.

240. Id.

241. Id.
was it held that evidence of a defendant’s financial resources was a pre-
requisite to an award of punitive damages.

Instead, the court in Neal held that the wealth of the particular de-
fendant was to be considered when determining if the punitive damages
award was excessive.242 As Justice Mosk pointed out in his dissent, in Neal
the court “did not set forth ‘criteria’ that must be examined”; in-
stead it simply recognized factors that help in determining whether the
award “was a result of passion and prejudice.”243 The Fifth District
Court of Appeal wrote in Vossler v. Richards Manufacturing Co.:244

“Neal holds only that in determining whether a punitive damages award
was excessive as a matter of law, the court should consider the wealth of
the defendant. Neal did not hold that a punitive damages claim would
fall if [the] plaintiff did not introduce evidence of [the] defendant’s
wealth.”245

In fact, in a Neal footnote that explained the purpose of punitive
damages,246 the court cited Fletcher v. Western National Life Insurance
Co.,247 which held that although the defendant’s financial condition is
relevant in assessing an award of punitive damages it is not a require-
ment.248 Neal, although relying on Fletcher a number of times, did not
take issue with the part of the Fletcher holding that Adams later criti-
cized.249 If the court in Neal had intended the defendant’s financial in-
formation be shown, it seems reasonable that the court would have
pointed out the inconsistent holding in Fletcher.

242. Id.
243. Adams, 54 Cal. 3d at 127, 813 P.2d at 1362, 284 Cal. Rptr. at 332 (Mosk, J., dissent-
ing) (emphasis added); see Vossler v. Richards Mfg. Co., 143 Cal. App. 3d 952, 961, 192 Cal.
Rptr. 219, 224 (1983), overruled by Adams v. Murakami, 54 Cal. 3d 105, 813 P.2d 1348, 284
Cal. Rptr. 318 (1991) (introducing defendant’s wealth not required under Neal); see also Fen-
to overturn punitive damages when evidence of defendant’s net worth not on record), overruled
244. 143 Cal. App. 3d 952, 192 Cal. Rptr. 219 (1983), overruled by Adams v. Murakami, 54
245. Id. at 961, 192 Cal. Rptr. at 224.
246. The footnote stated: “The purpose of punitive damages is to punish wrongdoers and
thereby deter the commission of wrongful acts.” Neal, 21 Cal. 3d at 928 n.13, 582 P.2d at 990
n.13, 148 Cal. Rptr. at 399 n.13 (citing Evans v. Gibson, 220 Cal. 476, 31 P.2d 389 (1934);
by Adams v. Murakami, 54 Cal. 3d 105, 813 P.2d 1348, 284 Cal. Rptr. 318 (1991)).
247. 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970), overruled by Adams v. Murakami, 54
248. Id. at 404, 89 Cal. Rptr. at 96.
249. See Neal, 21 Cal. 3d at 925, 928 & n.13, 582 P.2d at 988, 990 & n.13, 148 Cal. Rptr. at
397, 399 & n.13 (apparently agreeing with Fletcher in not requiring evidence of defendant’s
wealth).
The court in Adams, by relying on a Fourth District Court of Appeal case, Dumas v. Stocker, which stated that evidence of the defendant's wealth is necessary to sustain a punitive damages award, deviated from the rule in the vast majority of California decisions and from the rule in most other jurisdictions. Before the Dumas decision, the California rule, which followed the modern trend, was "[e]vidence of wealth, though discoverable and admissible . . . , is not essential to an award . . . . The plaintiff may offer such evidence, but need not; if the defendant wishes to establish inability to pay a large penalty, he may meet his burden by introducing such evidence."

Sound policy reasons exist for not compelling the plaintiff to introduce evidence of a defendant's wealth in trials asking for punitive damages. First, if the defendant feels that such evidence would help in reducing the amount of punitive damages, the defendant always has the choice of introducing the evidence. This would enable the defendant to preserve the claim on appeal that an award of punitive damages is excessive in light of the defendant's net worth. Furthermore, the defendant has the best access to his or her own financial information and the ability

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250. 213 Cal. App. 3d 1262, 262 Cal. Rptr. 311 (1989); see Adams, 54 Cal. 3d at 114, 813 P.2d at 1354, 284 Cal. Rptr. at 324 ("Dumas states the correct rule."). See also supra notes 106-08, 152 and accompanying text for a discussion of Dumas.

251. Dumas, 213 Cal. App. 3d at 1269, 262 Cal. Rptr. at 316.


253. See supra note 236 for examples of decisions in other jurisdictions. See also Adams v. Murakami, 54 Cal. 3d 105, 128, 813 P.2d 1348, 1363, 284 Cal. Rptr. 318, 333 (1991) (Mosk, J., dissenting) (explaining traditional California rule in accord with modern decisions); 6 WITKIN, supra note 226, § 1377 (same).

254. 6 WITKIN, supra note 226, § 1377 (citations omitted); see Vossler, 143 Cal. App. 3d at 963-64, 192 Cal. Rptr. at 225-26.

255. See generally Fenlon, 216 Cal. App. 3d at 1182-83, 265 Cal. Rptr. at 328-29 (suggesting policy reasons for not compelling plaintiff to introduce defendant's financial information); Fossler, 143 Cal. App. 3d at 964-65, 192 Cal. Rptr. at 226 (same).

256. Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328 (1989); Fossler, 143 Cal. App. 3d at 964, 192 Cal. Rptr. at 226; see also Adams, 54 Cal. 3d at 127, 813 P.2d at 1363, 284 Cal. Rptr. at 333 (Mosk, J., dissenting) (advocating position taken in Fenlon).
to provide more accurate data. In general, it is contrary to the principles of an adversarial legal system to force a litigant to preserve a record that could help his or her opponent on appeal.

Second, although a plaintiff will often find it advantageous to introduce evidence of the defendant’s net worth, requiring a plaintiff to do so is unfair both to plaintiffs and defendants because of the unnecessary time required in discovery. This is especially true when one of the litigants lacks the resources to engage in extensive discovery. Furthermore, “[a] wealthy defendant . . . will ordinarily be delighted to have [the] plaintiff omit proof of its net worth and permit the jury to determine the amount without information on the subject.” The defendant would still retain the option of having the punitive damages award reviewed as excessive in comparison to the compensatory damages award and by examination of the defendant’s conduct in the particular case.

The Adams decision cites a practice guide for attorneys that says when the verdict is high, “[p]laintiff’s counsel has everything to gain and nothing to lose by . . . introduction of the defendant’s wealth.” However, this statement was taken out of context. The section referred to in the practice guide concerned corporations with millions of dollars in assets. In a subsequent section, the practice guide advises: “The defendant’s counsel should give serious consideration to offering evidence of the defendant’s lack of financial wealth in the appropriate case.” If the defendant is a modest wage earner, the defendant will probably want to

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257. Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328 (1989); Vossler, 143 Cal. App. 3d at 963-64, 192 Cal. Rptr. at 226; see also Adams, 54 Cal. 3d at 127, 813 P.2d at 1363, 284 Cal. Rptr. at 333 (Mosk, J., dissenting) (advocating position taken in Fenlon).

258. See Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328 (finding it untenable that plaintiff should have to preserve defendant’s record for appeal); see also Adams, 54 Cal. 3d at 127, 813 P.2d at 1363, 284 Cal. Rptr. at 333 (Mosk, J., dissenting) (“[T]o require the plaintiff to introduce evidence of the defendant’s financial condition to preserve meaningful appellate review for the defendant is unprecedented . . . .”); Vossler, 143 Cal. App. 3d at 963-64, 192 Cal. Rptr. at 226 (finding motivation for defendant to introduce financial evidence when plaintiff chooses not to do so).

259. Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328.

260. Id.

261. Id., 265 Cal. Rptr. at 329. The defendant’s conduct and the amount of compensatory damages awarded are two of the “established principles” from Neal v. Farmers Ins. Exch., 21 Cal. 3d 910, 928, 582 P.2d 980, 990, 148 Cal. Rptr. 389, 399 (1978).


263. Id. This section of the practice guide mainly discusses two cases, Bankers Life & Cas. Co. v. Kirtley, 307 F.2d 418 (8th Cir. 1962), and Fletcher v. Western Nat'l Life Ins. Co., 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970). Bankers Life and Casualty is one of the largest insurance companies in the United States, and Western National Life Insurance probably had “millions of dollars in assets.” Riley, supra note 262, § 9.15.

264. Riley, supra note 262, § 15.4(8).
offer his or her financial condition to the jury. However, if the defendant is a "relatively well-off individual or business firm, the defendant's counsel may not offer the evidence [of financial status] and chances are the plaintiff will do so." It is fairly obvious that evidence of a defendant's financial condition would be at times advantageous to the plaintiff and at times advantageous to the defendant; the decision of when or if to introduce such evidence should be left to the individual parties.

Third, as the law in California stands today, if the defendant requests it, his or her financial condition is not to be revealed to the jury until after the jury decides that the defendant's acts allow for an award of punitive damages. The court's contention in *Adams* that "[i]t is inherently prejudicial to require a defendant to introduce evidence of personal finances" because it implies that punitive damages are justified, is difficult to understand; the jury will have already found that the defendant is liable for punitive damages. The language of section 3295(d) of the California Civil Code "preclude[s] the admission of the defendant's profits or financial condition until after the trier of fact" finds a defendant is liable for punitive damages.

A better argument than that employed in the *Adams* case is found in a California court of appeal decision:

A defendant of modest means will, under current law, not hesitate in the punitive damages phase of the trial to present his financial situation . . . . He knows punitive damages will be

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265. *Id.*
266. *Id.*

The court shall, on application of any defendant, preclude the admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or fraud in accordance with Section 3294. Evidence of profit and financial condition shall be admissible only as to the defendant or defendants found to be liable to the plaintiff and to be guilty of malice, oppression, or fraud. Evidence of profit and financial condition shall be presented to the same trier of fact that found for the plaintiff and found one or more defendants guilty of malice, oppression, or fraud.

*Id.*

268. *Adams*, 54 Cal. 3d at 120, 813 P.2d at 1358, 284 Cal. Rptr. at 328. The court argued: *[R]equir[ing] a defendant to introduce evidence of personal finances . . . places a defendant in the position of bidding against himself. A defendant in that position is forced to tell the jury in effect that: "My conduct doesn't warrant punitive damages. But, by the way, if you disagree, please be gentle, I'm worth only the following amount." . . . T[he] jury is led to think, "This person must know he deserves a beating or else he would not be pleading poverty."

*Id.* at 120-21, 813 P.2d at 1358, 284 Cal. Rptr. at 328.

awarded and has an incentive to minimize the amount. He is not in the position of appearing to concede that his conduct merits punitive damages since that issue is now determined, at his option, in the first phase of a bifurcated trial before his net worth is considered by the jury.270

A party to the particular litigation, whether plaintiff or defendant, should be assumed to know whether introduction of the defendant’s wealth would help or hinder his or her case; each individual litigant should be given the option but should not be compelled to introduce this information.271

The California Legislature, in the 1989-90 session, considered a bill to compel the plaintiff to introduce evidence of a defendant’s wealth to the jury before awarding punitive damages, precisely as the California Supreme Court required in the Adams case.272 On December 20, 1988, Senator Lockyer introduced legislation which would have “require[d] the trier of fact to consider the net worth of the defendant or defendants when assessing an award for [punitive] damages”273 by amending section 3294 of the Civil Code.274 The bill was amended a number of times275 until all that remained in the final version, amended on September 1, 1989, was a definition of “despicable conduct.”276 The portion requiring introduction of a defendant’s financial condition never made it to a vote of the full house in either the Senate or the Assembly.277 This lends support to Justice Mosk’s contention, in dissent, that “to spare defendant in this case a punitive damages award that was deemed appropriate by a trial jury, a trial judge and a Court of Appeal, this court now indulges in

271. See id. (arguing that litigants should be allowed to choose whether to introduce defendant’s financial information); Adams, 54 Cal. 3d at 131, 813 P.2d at 1365, 284 Cal. Rptr. at 335 (Mosk, J., dissenting) (“[T]his court gives a defendant no choice in the matter: the plaintiff is required to make the defendant’s wealth a major issue . . . .”).
273. Id. legislative counsel’s digest.
274. See supra notes 72-75 and accompanying text for a discussion of § 3294.
275. 1 SENATE FINAL HISTORY 95 (Cal. 1989-90 Reg. Sess.). In fact, the April 18, 1989, amendment of the bill even had a provision that a punitive damage award “in excess of 10% of a defendant’s net worth is deemed to be excessive as a matter of law.” S. 106, Cal. 1989-90 Reg. Sess. (as amended Apr. 18, 1989).
276. S. 106, Cal. 1989-90 Reg. Sess. (as amended Sept. 1, 1989). The May 4, 1989 and September 1, 1989 versions of the bill, which defined the term “despicable conduct” passed in the Senate and the Assembly, respectively. However, the wording in the bills was slightly different, and the bill died in the inactive file on November 30, 1990, at the end of the regular session. 1 SENATE FINAL HISTORY, supra note 275, at 95.
277. See 1 SENATE FINAL HISTORY, supra note 275, at 95.
judicial legislating that will inevitably inure to the detriment of countless future defendants.”

By compelling that a defendant’s financial condition be revealed to the trier of fact, the court in Adams misinterpreted relevant state case law and ignored the vast majority of California cases and cases in other jurisdictions that have held to the contrary. While at least temporarily sparing one defendant from a punitive damage award found appropriate in the courts below, Adams may have harmed future defendants, especially those who for reasons of wealth, trial strategy or concerns about discovery, wish to withhold financial information.

B. The Court Misinterpreted California Statutes in Allocating the Burden of Proof

By relying on various sections of the California Civil and Evidence Codes and declaring “[f]undamental fairness [as] the lodestar for [its] analysis,” the court in Adams gave the plaintiff responsibility for introducing a defendant’s financial condition. The court supported its position by examining section 500 of the Evidence Code, which requires a party asserting a claim to prove each essential fact necessary to the claim. Since a defendant’s wealth was now required in evidence before punitive damages could be awarded, the court reasoned that this evidence was “essential to the claim for relief” as mandated by section 500 of the Evidence Code.

The real question, however, is whether the defendant’s wealth can honestly be considered an integral part of the plaintiff’s claim for relief when the plaintiff asks for punitive damages. A plaintiff asks for punitive damages under section 3294 of the California Civil Code, which states that for a plaintiff to be entitled to an award of punitive damages, the

279. See supra notes 236, 252 for a listing of these cases.
281. Adams, 54 Cal. 3d at 119, 813 P.2d at 1357, 284 Cal. Rptr. at 327.
282. Id. at 119-23, 813 P.2d at 1357-60, 284 Cal. Rptr. at 327-30.
283. “Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” CAL. EVID. CODE § 500 (West 1966).
284. Id.
285. Adams, 54 Cal. 3d at 119, 813 P.2d at 1357, 284 Cal. Rptr. at 327 (quoting CAL. EVID. CODE § 500 (West 1966)).
286. See supra notes 72-75 and accompanying text for a discussion of § 3294.
plaintiff must prove by clear and convincing evidence that the defendant is guilty of fraud, oppression or malice. Proving one of these elements, then, is what section 3294 of the Civil Code requires of the plaintiff because these are the elements of the plaintiff's own cause of action, as mandated by the California Legislature.

The court in Adams thought it would be unfair and inherently prejudicial for a defendant to introduce evidence of its own financial information. The Adams majority did not, however, consider an argument made by the Fifth District Court of Appeal in Vossler v. Richards Manufacturing Co. In Vossler the court drew an analogy, noting that in personal injury cases where liability is disputed, defendants regularly introduce evidence attempting to show that a plaintiff's injuries were not as severe as claimed. “Defendants have developed techniques which permit them to introduce mitigating evidence without diminishing the force of their contest as to liability.” A defendant introducing evidence of his or her own financial information, then, does not tacitly admit liability for punitive damages, but instead this evidence could be handled in the same way as mitigating evidence in a personal injury case. Considering this argument, the court in Adams could have allowed the defendant the opportunity to present the jury with information of wealth, setting a benchmark that could help the jury reasonably limit its punitive damages award but would not compel the plaintiff to introduce such information.

In placing the burden of proof on the plaintiff (and, in many cases, in requiring defendant’s financial condition at all), the court overlooked a number of practical considerations potentially making the whole litigation process more expensive and inconvenient for all involved. The

288. See id. (requiring proof by clear and convincing evidence of one of these elements); Adams, 54 Cal. 3d at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting) (“The governing statutes and case law make clear that a plaintiff has the burden of proof only on the elements of his own cause of action . . . .”).
289. Adams, 54 Cal. 3d at 120, 813 P.2d at 1358, 284 Cal. Rptr. at 328.
291. Id. at 965, 192 Cal. Rptr. at 226.
292. Id.
293. The Vossler case was decided before the California Civil Code was amended to allow for bifurcation of punitive damage awards proceedings. See CAL. CIV. CODE § 3295(d) (West Supp. 1992).
294. See Vossler, 153 Cal. App. 3d at 964-65, 192 Cal. Rptr. at 226 (explaining how defendant's financial information could be seen as mitigating evidence).
court overlooked the fact that the defendant has the best access to information concerning his or her own financial condition. If the plaintiff disagreed with the financial information presented by the defendant, the plaintiff would still have access to the traditional options predating the Adams decision. The plaintiff could engage in pretrial discovery and introduce his or her own evidence or could bring out inconsistencies through cross-examination. If the plaintiff agrees with the defendant's evidence of wealth or if the defendant would not have introduced the evidence anyway, a great deal of time would be saved and an enormous inconvenience to both parties would be avoided.

The Adams decision requires a plaintiff to engage in pretrial discovery of a defendant's finances, burdening both the plaintiff and the defendant. The President's Council on Competitiveness found that "[p]retrial discovery is frequently the source of needless delay and expense." Given this observation, it is difficult to understand why the court now compels the plaintiff to "probe into and to expose to the world the finances of the defendant" in an unnecessarily time-consuming procedure in which, in many cases, neither the plaintiff nor the defendant wishes to engage. Justice Mosk called this a fundamentally unfair "compulsory invasion of privacy."

California law traditionally protects the privacy of its citizens and their records containing personal information, including financial infor-

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296. Id.
297. See id.
298. See id.
299. See id. ("Requiring plaintiff to prove defendant's net worth is also unfair to a wealthy defendant and, under current law, potentially unnecessarily time-consuming as well as unfair to all defendants.").
300. Justice Mosk noted that it is one thing "merely to permit" the plaintiff to engage in pretrial discovery "but actually to compel" the plaintiff to engage in this behavior could hardly be called fundamentally fair. Adams v. Murakami, 54 Cal. 3d 105, 130, 813 P.2d 1348, 1364, 284 Cal. Rptr. 318, 334 (1991).
301. CIVIL JUSTICE REFORM, supra note 2, at 7. Undoubtedly pretrial discovery in the United States is expensive. The Council recommended a number of reforms to the discovery process. The most severe and ostensibly the most controversial was that, beyond an initial "free" round of discovery, the requesting party would have to pay any costs incurred in subsequent discovery. Id. (emphasis added).
302. Adams, 54 Cal. 3d at 130, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).
303. See Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328.
304. Adams, 54 Cal. 3d at 130, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting).
mation, through the state's constitution\textsuperscript{305} and statutes.\textsuperscript{306} For example, except in specific situations, the California Revenue Code prohibits discovery of either federal or state tax returns in "a judicial or administrative proceeding."\textsuperscript{307} The California Government Code greatly restricts access to and disclosure of the financial records of financial institutions' customers.\textsuperscript{308} When a party obtains a subpoena duces tecum,\textsuperscript{309} under the Civil Procedure Code the opposing party can move "to quash or modify the subpoena"\textsuperscript{310} for unreasonable "violations of a witness's or consumer's right of privacy."\textsuperscript{311} The California Supreme Court's decision, requiring a plaintiff to reveal a defendant's financial information, is, at the least, inconsistent with the considerable body of California law designed to protect personal and financial privacy. It is quite likely that a number of potential defendants, especially wealthy ones, worry about the prospect of a supreme court mandate to probe into their private financial affairs.\textsuperscript{312}

In \textit{Fenlon v. Brock}\textsuperscript{313} the court of appeal observed that requiring a plaintiff to discover information about a defendant's financial condition could lead to delays during the trial.\textsuperscript{314} Section 3295(c) of the Civil Code provides that no pretrial discovery of a defendant's financial condition

\begin{footnotesize}
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\item \textsuperscript{305} "All people . . . have inalienable rights. Among these [is] . . . privacy." \textit{Cal. Const.} art. I, § 1.
\item \textsuperscript{306} There are many California statutes protecting the privacy of financial and other personal information. A few examples are: \textit{Cal. Evid. Code} §§ 1156-1157 (West 1966 & Supp. 1992) (protecting privacy of medical research and contents of hospital reports and meetings); \textit{Cal. Civ. Code} § 1799.3 (West Supp. 1992) (prohibiting release of any customer record prepared or maintained by renter or seller of video cassettes); \textit{Cal. Penal Code} § 637.6 (West Supp. 1992) (prohibiting release of personal information gained from establishing or operating ridesharing program); \textit{Cal. Veh. Code} § 1808.21 (West Supp. 1992) (prohibiting disclosure of residence addresses contained in Department of Motor Vehicle files). See also \textit{infra} notes \textsuperscript{307-11} and accompanying text for examples of financial privacy statutes in California.
\item \textsuperscript{310} \textit{Id.} § 1985(g) (West Supp. 1992).
\item \textsuperscript{311} \textit{Id.} § 1987.1 (West 1983).
\item \textsuperscript{312} \textit{See} \textit{Slind-Flor, supra} note 235, at 3 (interviewing general counsel of Association for California Tort Reform who said that many members were daunted by this prospect).
\item \textsuperscript{314} \textit{Id.} at 1182, 265 Cal. Rptr. at 329.
\end{itemize}
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may take place until a prima facie case for punitive damages is estab-
lished.315 If the plaintiff cannot show this prima facie case for punitive
damages before trial and finds the information at trial obtained by sub-
poena is inaccurate, incomplete or misleading, the plaintiff “will be
forced to request a continuance during trial to obtain accurate infor-
mation which he was barred from obtaining earlier.”316 But, if the plaintiff
is not required and elects not to present evidence of the defendant's
wealth, this problem could be avoided.317

Finally, what would happen in a case where the defendant simply
decides not to show up? If a defendant simply ignores a lawsuit and does
not submit to discovery, the plaintiff would be unable to recover punitive
damages from the resulting default judgment because there is no proof of
the defendant's wealth.318

Requiring that the plaintiff prove the defendant's financial condition
was an improper decision. It forces the plaintiff to preserve the defend-
ant's record for appeal, an inequitable outcome for any litigant.319 It
impinges on attorneys' rights to exercise their professional judgment in
assessing trial strategy by requiring them to introduce evidence not re-
lated to the cause of action.320 It requires unnecessary prying into the
private financial records of defendants even if both parties wish to avoid
this,321 and it delays trials and otherwise further impedes the already
overburdened California court system.322

315. CAL. CIV. CODE § 3295(c) (West Supp. 1992). Although the plaintiff is not allowed
pretrial discovery until a prima facie case is shown, the plaintiff is allowed to subpoena docu-
ments or witnesses to be available at trial. Id.

316. Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 329.

317. Id.

318. See Stacy Adler, Financial Data Required for Punitive Damages, BUS. INS., Sept. 2,
1991, at 1 (interview with Adams's attorney) (“This can be an impediment to plaintiffs in
getting punitive damages.”).

319. See Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328; Vossler v. Richards Mfg.
Murakami, 54 Cal. 3d 105, 813 P.2d 1348, 284 Cal. Rptr. 318 (1991); see also Adams, 54 Cal.
3d at 127, 813 P.2d at 1363, 284 Cal. Rptr. at 333 (Mosk, J., dissenting).

320. The Adams majority did address this issue in their decision but summarily dismissed
it, stating: “The issue is not merely a question of trial strategy. . . . [A] law suit is not a game
where the spoils of victory go to the clever and technical regardless of the merits . . . .”
Adams, 54 Cal. 3d at 120, 813 P.2d at 1358, 284 Cal. Rptr. at 328 (quoting Simon v. City of
San Francisco, 79 Cal. App. 2d 590, 600, 180 P.2d 393, 399 (1947)). However, in “trial prac-
tice reality,” as the court termed it, id., decisions of whether to include or exclude evidence are
routinely made by lawyers on the basis of whether they think it would help or hinder their
case.

321. See Fenlon, 216 Cal. App. 3d at 1182, 265 Cal. Rptr. at 328-29.

322. This is especially true if the ruling is applied retroactively.
C. The Court Unnecessarily Reached and Improperly Applied Constitutional Analysis

To support the decision in Adams, the California Supreme Court used the recent United States Supreme Court holding in Pacific Mutual Life Insurance Co. v. Haslip.323 Justice Kennard, in her concurrence, wrote that a court should not resort to deciding constitutional questions "when other bases for decision [were] present generally."324 It is generally appropriate judicial restraint to refrain from ruling on constitutional issues when a case can be decided on other grounds.325 The California Supreme Court could have reached its decision without addressing the constitutionality of the California system for reviewing awards of punitive damages.326

In Adams the constitutional issues were not raised in the trial court,327 were never mentioned in the opinion of the Court of Appeal328 and were never briefed before Adams reached the supreme court.329 Given these facts, the court should have waited until "constitutional ramifications for California law were plainly at issue" and the constitutional issues were properly before the court.330

Despite these circumstances, utilizing the criteria from Haslip, the court in Adams performed a constitutional analysis of California's method of awarding punitive damages.331 Notwithstanding that the constitutional issues were not properly before the court, the issues addressed in Haslip were irrelevant because of the vast differences between the Cali-

323. 111 S. Ct. 1032 (1991). The court in Adams did not explicitly rule that the defendant's financial condition was necessary for punitive damage awards to be found constitutional, but did note the United States Supreme Court's concern about excessive punitive damages awards and states with lax standards for reviewing the awards. Adams, 54 Cal. 3d at 118 & n.9, 813 P.2d at 1356 & n.9, 284 Cal. Rptr. at 326 & n.9.

324. Adams, 54 Cal. 3d at 124, 813 P.2d at 1360, 284 Cal. Rptr. at 330 (Kennard, J., concurring).


326. Adams, 54 Cal. 3d at 124, 813 P.2d at 1360, 284 Cal. Rptr. at 330 (Kennard, J., concurring) (citing People v. Stankewitz, 51 Cal. 3d 72, 793 P.2d 23, 270 Cal. Rptr. 817 (1990), cert. denied, 111 S. Ct. 1342 (1991); Estate of Johnson, 139 Cal. 532, 73 P. 424 (1903)).

327. See id., 813 P.2d at 1361, 284 Cal. Rptr. at 331 (Kennard, J., concurring) (explaining that court should wait until constitutional issue raised in trial court).


329. See Adams, 54 Cal. 3d at 124, 813 P.2d at 1360-61, 284 Cal. Rptr. at 330-31 (Kennard, J., concurring) (explaining that court should wait until briefed and determined in lower courts before reaching constitutional issue).

330. Id. (Kennard, J., concurring).

331. Id. at 116, 813 P.2d at 1354, 284 Cal. Rptr. at 324.
In Alabama the jury, "in assessing punitive damages, . . . is not allowed to consider the financial position of the defendant." The defendant's financial condition is only revealed to the judge in a "post-judgment critique," but nevertheless the jury's award is "afforded a great deal of discretion." Therefore, Alabama's system recognizes that a jury need not know the financial condition of a defendant to properly award punitive damages in the amount appropriate to punish and deter the defendant.

In Haslip the United States Supreme Court did not resolve whether consideration of a defendant's financial condition was required when a trial or appellate court reviews the award. The Court found only that Alabama's review procedures were constitutionally sufficient, in which a number of factors "could be taken into consideration in determining whether the award was excessive or inadequate." Among these factors were a "reasonable relationship between the punitive damages award and the harm" caused by defendant's actions, the reprehensibility of the defendant's actions, and the defendant's "financial position." California has consistently used these same criteria to evaluate punitive damages on appeal since the California Supreme Court decided Neal v. Farmers Insurance Exchange.

The defendant in Haslip argued that its financial condition should

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332. See id. at 128, 813 P.2d at 1363, 284 Cal. Rptr. at 333 (Mosk, J., dissenting) (accusing majority of engaging in "creative lawyering when they attempt[ed] to employ the [Haslip opinion because] it lacks all relevance").
334. Green Oil, 539 So. 2d at 222.
335. Id.
336. See id. ("[T]he jury is not allowed to consider the financial position of the defendant."); see also Adams, 54 Cal. 3d at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting) (recognizing that Alabama does not require jury to know defendant's wealth).
337. See Haslip, 111 S. Ct. at 1045 (holding that substantive review plan is required but setting no rigid criteria).
338. Id. (emphasis added).
339. Id.
340. Id.
341. Id. The other factors considered in Alabama's post-verdict review are the profitability to the defendant of the conduct giving rise to the punitive damage award, the total cost of litigation, the mitigating effect of criminal sanctions already imposed against the defendant and the mitigating effect of other civil awards against the defendant for the same conduct. Id.; see Green Oil, 539 So. 2d at 222-23 (listing what could be taken into consideration when reviewing punitive damages); see also Hammond v. City of Gadsden, 493 So. 2d 1374, 1379 (Ala. 1986) (listing criteria for post-judgment review of punitive damages awards).
342. 21 Cal. 3d 910, 928, 582 P.2d 980, 990, 148 Cal. Rptr. 389, 399 (1978) (setting "certain established principles" by which reviewing court assesses punitive damages). See supra notes
not be considered, even on review.\textsuperscript{343} The United States Supreme Court did not directly rule on whether the jury should see this financial information; however, it did give some guidance: "[T]he fact finder must be guided by more than the defendant's net worth. Alabama plaintiffs do not enjoy a windfall because they have the good fortune to have a defendant with deep pockets."\textsuperscript{344} This reasoning indicates that, contrary to the holding in \textit{Adams},\textsuperscript{345} the United States Supreme Court recognized that, especially in the case of wealthy defendants, the jury should not hear evidence of a defendant's wealth or at least that the defendant's wealth should not be emphasized.\textsuperscript{346}

Alabama's scheme only requires that liability for punitive damages be proven by a preponderance of the evidence.\textsuperscript{347} California, on the other hand, requires that liability be proven by "clear and convincing evidence."\textsuperscript{348} On this issue, the United States Supreme Court felt that "[t]here is much to be said in favor of a State's requiring, as many do, . . . a standard of 'clear and convincing evidence.'"\textsuperscript{349} Therefore, because of its proof requirements, California's punitive damages scheme would be constitutionally more favorable than that of Alabama.\textsuperscript{350}

The majority in \textit{Adams} should not have considered the constitutionality of California's system for awarding punitive damages. The differences between Alabama's system and California's system, in light of \textit{Haslip}, make it difficult to measure the constitutionality of punitive damage awards in California. However, because California before \textit{Adams} did not require showing the jury evidence of the defendant's wealth and because California's review procedures and higher standard of proof exacted stringent constitutional standards, the system existing before the \textit{Adams} decision was more constitutionally sufficient than the system now

\textsuperscript{94-101 and accompanying text for a discussion of the appellate review criteria established by the \textit{Neal} decision.}

\textsuperscript{343. See Arguments Before the Court, 59 U.S.L.W. 3315, 3316 (U.S. Oct. 30, 1990) (considering defendants' wealth "only insures that multi-million dollar awards will happen"); see also \textit{Adams}, 54 Cal. 3d at 129, 813 P.2d at 1364, 284 Cal. Rptr. at 334 (Mosk, J., dissenting) (discussing defendant's arguments).}

\textsuperscript{344. \textit{Haslip}, 111 S. Ct. at 1045.}

\textsuperscript{345. \textit{Adams}, 54 Cal. 3d at 118, 813 P.2d at 1356, 284 Cal. Rptr. at 326 (omitting evidence of defendant's financial condition raises doubt about constitutionality of punitive damage award).}

\textsuperscript{346. See id. (discussing jury's role in award of punitive damages).}

\textsuperscript{347. See \textit{Haslip}, 111 S. Ct. at 1046 n.11 (holding as constitutionally sufficient, "standard prevailing in Alabama—'reasonably satisfied from the evidence' ").}

\textsuperscript{348. \textit{CAL. CIV. CODE} § 3294 (West Supp. 1992).}

\textsuperscript{349. \textit{Haslip}, 111 S. Ct. at 1046 n.11 (citations omitted).}

\textsuperscript{350. See id. (favorably discussing standards of proof greater than preponderance of evidence).}
mandated by the *Adams* decision.351

VI. RECOMMENDATIONS

The California Supreme Court now requires evidence of a defendant's wealth at trial, finding that effective review of punitive damage awards cannot be accomplished without it.352 If the supreme court insisted on making a rule more appropriately left to the legislature,353 it should at least have attempted to have made its decision meaningful. Although requiring disclosure of a defendant's financial condition, the court failed to provide any better guidelines for the effective review of punitive damages.354 In large part, this is due to the difficulties inherent in measuring a defendant's ability to pay a punitive damage award. A defendant's financial status for the purposes of awarding punitive damages may be measured in several ways: net worth, income, liquid assets and profit derived from the defendant's conduct that resulted in the punitive damage award.355 The court refused, however, to establish a standard "for measuring a defendant's ability to pay."356 If *Adams v. Murakami* were meant to be meaningful, the court should have set con-

351. The court in *Adams* noted the high Court's concern about punitive damage schemes lacking detailed review procedures on appeal. Schemes in which an award would be set aside only when the award was "manifestly and grossly excessive" or showed "passion, bias, and prejudice" on the part of the jury were of particular concern. *Adams*, 54 Cal. 3d at 118 n.9, 813 P.2d 1356 n.9, 284 Cal. Rptr. at 327 n.9 (citing Pacific Mut. Life Ins. Co. v. Haslip, 111 S. Ct. 1032, 1045 n.10 (1991)). The California Supreme Court overlooked the existing detailed procedures for review, similar to those in Alabama, which address these concerns. See supra notes 84-108 and accompanying text (discussing California's review criteria for punitive damage awards). Similarly, the California court overlooked the United States Supreme Court's concern about juries considering the defendant's wealth when awarding punitive damages. See *Haslip*, 111 S. Ct. at 1045 (discussing how jury should not be guided by defendant's worth).

352. See *Adams*, 54 Cal. 3d at 110, 813 P.2d at 1351, 284 Cal. Rptr. at 321 (reviewing punitive damage award cannot be effectively accomplished absent evidence of defendant's wealth).

353. See infra notes 362-64 and accompanying text for a discussion of the legislature's role in making rules concerning punitive damages.

354. For example, assume a defendant engaged in a particularly despicable action which did not significantly benefit the defendant financially but which society has a definite interest in discouraging and punishing. Further, suppose this defendant has no net worth, perhaps is even in debt, and at the time of trial the defendant has been out of work for eight months. Is $1000 too much in punitive damages to punish him because he does not have the money? See *Adams*, 54 Cal. 3d at 111, 813 P.2d at 1351, 284 Cal. Rptr. at 321 ("[T]he award can be so disproportionate to defendant's ability to pay that the award is excessive for that reason alone."). If the same defendant has a net worth of $1 million dollars, is an award of $990,000 acceptable? Although the latter defendant would be left with some net worth, the punishment given the latter is arguably disproportionate to that given the former.

355. See id. at 116 n.7, 813 P.2d at 1355 n.7, 284 Cal. Rptr. at 325 n.7 (discussing means of measuring defendant's ability to pay).

356. Id.
crete criteria for measuring a defendant's wealth. Because the court
failed to do so, the legislature must establish such standards. Otherwise,
Adams will do little to curtail the jury speculation that it was meant to
eliminate because appellate courts still do not have a standard financial
measure of a defendant's wealth that can be compared to the amount of
punitive damages.\footnote{357}

Instead of attempting to limit the amount of punitive damages,\footnote{358}
the court should strive to make punitive damages more consistent. This
can be accomplished by improving jury instructions. Before awarding
punitive damages, a jury should clearly understand that punitive dam-
ages are not meant to destroy the defendant but only to punish and deter
future misconduct.\footnote{359}

A jury instruction that may be helpful is the "West Virginia instruc-
tion."\footnote{360} This instruction was designed to "lessen the possibility of juries
administering excessive punishment by overlooking a punitive effect that
a compensatory damage award may have."\footnote{361} With such an instruction,
the jury will at least contemplate the consequences of a large punitive
damage award when added to the compensatory damage award, and pu-
nitive damage awards may become more consistent.

The court in Adams acknowledged the California code provision
stating that punitive damages serve a public purpose to punish wrongdo-
ing and to deter future misconduct.\footnote{362} Because punitive damages do
serve the public, any attempt to limit the amount should be carefully
thought out and passed by the legislature.\footnote{363} In the future, the California

\footnote{357. See id. at 114, 813 P.2d at 1353, 284 Cal. Rptr. at 323 (disapproving of jury specula-
tion as to defendant's financial condition). Given the Adams decision, it may be best to simply
allow into evidence all factors relevant to a defendant's ability to pay.}

\footnote{358. See supra note 235 and accompanying text.}

\footnote{359. See Riley, supra note 262, § 15.4(9).}

\footnote{360. Id.}

\footnote{361. This instruction is especially effective in jurisdictions, like California, where, for rea-
sons of public policy, liability insurance does not cover awards of punitive damages. See Cal.
Ins. Code § 533 (West 1966). The text of the West Virginia jury instruction is:

  If, after the jury has assessed damages to fully compensate the plaintiff for injury,
such damages are still not sufficient in amount to punish the defendant . . . and . . . to
prevent the repetition of the same or the commission of similar wrongs, they may add
such further sum, in their judgment, as may be necessary for this purpose, but if the
damages assessed as compensatory are sufficient in amount to operate at the same
time as a punishment and a warning, the jury are not authorized to add still a further
and greater sum, and thus subject the defendant to a double punishment in the same
case for the same wrong.

Riley, supra note 262, § 15.4(9) (quoting Mayer v. Trobe, 22 S.E. 58, 63 (1895)).}

\footnote{362. Cal. Civ. Code § 3294(a) (West 1970 & Supp. 1992); Adams, 54 Cal. 3d at 110, 813
P.2d at 1350, 284 Cal. Rptr. at 320.}

\footnote{363. The purpose of punitive damages is to publicly deter future misconduct, and the pub-
lic's duly elected representatives are the legislators. Therefore, it should be the legislature's}
Supreme Court should refrain from any judicial attempts at fixing the amounts of punitive damages. The legislature should decide what is the best way to balance the public's interest in the punishment and deterrence of wrongful acts against the detrimental effects of large punitive damage awards.\textsuperscript{364}

VII. CONCLUSION

In \textit{Adams v. Murakami} the California Supreme Court unnecessarily compelled plaintiffs to produce evidence of a defendant's financial condition.\textsuperscript{365} The decision is questionable because of the court's failure to weigh the supposed benefits to appellate courts against the burdens shouldered by litigants and the California court system. As a result, the decision causes the following adverse effects: (1) the plaintiff is forced to prove the defendant's financial condition, which may be detrimental to the plaintiff's own case on appeal; (2) a plaintiff is not only permitted, but compelled to probe a defendant's financial records which could have remained private; (3) the California courts are further burdened through delays produced by increased discovery; (4) attorneys are not allowed to exercise their own professional judgment and discretion when deciding how to best handle their client's case; and, perhaps worst of all, (5) while increasing the burden on both plaintiffs and defendants, the decision still provides no better guidelines for effective review of punitive damage awards than existed prior to the decision.

Because the defendant's financial condition already is introduced in many cases, this decision may not have a great effect on many punitive damage cases heard in California,\textsuperscript{366} but it will undoubtedly place time and financial burdens on some litigants and on the civil justice system in general.\textsuperscript{367} Perhaps the most significant impact is "the message that the...

\textsuperscript{364} See supra notes 272-78 and accompanying text for a discussion of a recent legislative attempt to limit punitive damages in California. \textit{See also Adams}, 54 Cal. 3d at 131, 813 P.2d at 1365, 284 Cal. Rptr. at 335 (Mosk, J., dissenting) (accusing majority of judicially legislating).

\textsuperscript{365} See \textit{Adams}, 54 Cal. 3d at 123, 813 P.2d at 1360, 284 Cal. Rptr. at 330 (placing burden on plaintiff to produce evidence of defendant's financial condition).

\textsuperscript{366} Most punitive damage claims are a result of bad faith claims against large insurers. Most jurors perceive insurance corporations as having enormous wealth, and plaintiffs generally attempt to tell the jury about insurance corporations' wealth. \textit{See Stansky, supra note} 235, at 1 (interviewing plaintiff's lawyer who describes typical punitive damages trial).

The court may no longer show great deference to juries in awarding punitive damages and may show an increased willingness in the future to attempt to limit punitive damage awards.\textsuperscript{369}

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\textsuperscript{368} Stansky, \textit{supra} note 235, at 1.

\textsuperscript{369} Id. (speculating on court's decision); see \textit{Adams}, 54 Cal. 3d at 124, 813 P.2d at 1361, 284 Cal. Rptr. at 331 (Mosk, J., dissenting) (indicating willingness of court to rid "world of what [it] apparently perceive[s] to be [the] social menace" of punitive damages).

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