




TYSON & MENDES

PREVENTING NUCLEAR VERDICTS®: STRATEGIES EVERY PUBLIC AGENCY AND THEIR COUNSEL SHOULD USE

February 22, 2024



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OVERVIEW

- ➔ **NUCLEAR VERDICTS® ARE ON THE RISE**
- ➔ **SPOT THE PATTERN**
- ➔ **CAN WE FIX IT? YES, WE CAN!**



NUCLEAR VERDICTS® ARE ON THE RISE



**FIRST THINGS FIRST...
WHO ARE WE?**

**We are the Anti-Nuclear
Verdicts® Firm!**

**AND STOPPING NUCLEAR VERDICTS®?
KIND OF OUR THING!**

- ▶ What is a Nuclear Verdict®?
 - ▶ Verdict in excess of \$10M OR
 - ▶ Where noneconomic damages are disproportionate to the economic damages/injuries/facts

**NUCLEAR VERDICTS®
ARE ON THE RISE!**

- ▶ 2010 - 2018
 - ▶ Average of verdicts exceeding \$1M rose from \$2.3M to \$22.3M
 - ▶ Nearly 1000% increase!

**NUCLEAR VERDICTS®
ARE ON THE RISE!**

- ▶ 2019: 300% spike in verdicts of \$20M compared to prior decade

Verdict Amount	% in 2018	% in 2019
...\$20M	~0.5%	~3.5%
...\$30M	~1.5%	~2.5%
...\$50M	~1.0%	~1.5%
...\$100M	~0.5%	~0.5%

Note: Based on a database of more than 200,000 U.S. cases reported to CourtViewSearch.

HOW BAD IS IT?

- ▶ Well, the number speaks for itself
- ▶ In 2023... **\$13,521,090,000** in Nuclear Verdicts® were awarded!
- ▶ Let's put that into perspective


HOW BAD IS IT?

You could buy:

- ▶ 13 Mona Lisas
- ▶ 27 Boeing 747s
- ▶ 2 NFL Teams

Or 3, if you want to buy the Lions, Bengals, and Bills


https://www.proccos.com/min/awards/po.html#tab=2023-18-Report%20Nuclear%20Verdicts%20Awarded%20Most%201/25/21/




HOW BAD IS IT?


- ▶ How long would it take the average person to earn \$13B?
- ▶ At the US median household income.... 220,339 YEARS!

Source: US Census Bureau




SPOT THE PATTERN!





THE PATTERN DRIVING NUCLEAR VERDICTS®?



Plaintiffs' Counsel

Plaintiffs' tactics Angry jury Defense fails to defuse jury anger Nuclear Verdict! Verdict sends a message to future jurors Nuclear Verdict® normalized

More and higher Nuclear Verdicts®

THE DEFENSE IS NOT BREAKING THE PATTERN, AND THE VERDICTS JUST DON'T STOP

- \$2.3B for CA Woman after Childhood Sexual Assaults and Silencing
- \$23.8M for CA Mother After Son Killed by Police
- \$26M for CA Special Needs Student After Sexual Assault by Classmates
- \$13.5M for CA Man's Daughter After Police Restraint Led to Death
- \$33.85M for CA Man's Family After City Employees Used Unnecessary Force
- \$102M for CA Students After Teacher Molestation

WHAT IS CAUSING THESE VERDICTS?

▶ QUIZ:

- ▶ BAD JUDGES!
- ▶ SYMPATHETIC PLAINTIFF!
- ▶ JUDICIAL HELLHOLE!
- ▶ ANGER!

WHY DO PLAINTIFFS' LAWYERS GO FOR ANGER?

Anger is a powerful motivator!

Psychology tells us anger is a means of exercising control

WHY DO PLAINTIFFS' LAWYERS GO FOR ANGER?

Anger is:

- "...a learned means of neutralizing anxiety."
- "...[an] automatic human response... [to]... protect us from harm."
- "...a signal we may need to do something"
- "...a feeling of power that can compensate for underlying feelings of anxiety"


Source: Bingham Young University, Counseling and Psychological Services

Anger is more powerful than sympathy!

WHAT IS THE DEFENSE'S CHALLENGE?

- ▶ Defuse juror anger by validating it!
- ▶ Get creative!

CAN WE DO IT? YES, WE CAN!





WE CAN FIGHT BACK!

- ▶ They won't know what hit 'em!
- ▶ Read the book
 - ▶ ... and get ready for round two – the sequel comes out later this year!






Take your best tools into the ring
– ask your counsel to incorporate
four critical methods:

- ▶ **Accept responsibility**
- ▶ **Give a number**
- ▶ **Personalize the public entity defendant**
- ▶ **Argue pain and suffering**

UP YOUR GAME!
ROBERT E. MORAN, III



WHY DO WE ACCEPT RESPONSIBILITY?

- Makes the public entity look reasonable
- Shifts focus to others' comparative fault

IN EVERY CASE!

Even when going for a defense verdict


Helps defuse juror anger

WHEN DO WE ACCEPT RESPONSIBILITY?

Responsibility and liability are NOT THE SAME

WHY GIVE A NUMBER?

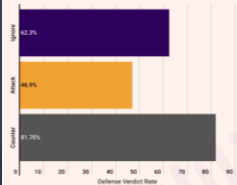
- If plaintiffs get to fight with the Reptile, we need to meet them at the same level – using psychology!
 - Early
 - Often
 - Never goes up!
- It works for us, too!




Source: Hirtzman, D.L. Memory & Cognition (2010) 38: 102.
Source: Karasky, Bill, Jr., Ph.D. (April 2014). Debunking and Redefining the Plaintiff Reptile Theory. For the Defense, IS-Session 3, Give a Defense Number.

CAN YOU GIVE A NUMBER WHILE GOING FOR A DEFENSE VERDICT?

- YES!
- Giving a number actually **LOWERS** damages
 - More effective than attacking/ignoring plaintiff's number



Source: Campbell, J., Chao, B., Robertson, C., & Yokum, D. (2018). Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments.



PERSONALIZE THE PUBLIC ENTITY TO MAKE JURORS RELATE!

- Public entities can feel like faceless names, with big government bank accounts
- Lower damages are awarded when the jury can personally relate
- Corporate identity effect is real, and it is not your friend
 - May be even worse for public entities post-COVID!




HOW DO WE COUNTER MISTRUST

Plaintiff is:


- Ir
- D
- N
- D


Parks and Recreation, 2009-2015



CHANGE THEIR VIEW!


- Bring a public entity representative who will be present at every single day of trial
 - Let the jurors get to know (and like) them!
 - Select someone who is:
 - Likable
 - Trustworthy
 - Personable
 - Reliable
- Show that the public entity cares – and is there, showing up every day





WHY ARGUE PAIN AND SUFFERING?

- Biggest component of Nuclear Verdicts®
- Bring the jury back to earth!
 - Remind them the value of a dollar





HOW DO WE DO IT?

- Show them:
 - Impact of **accident** on plaintiff's life
 - Impact of **money** on plaintiff's life





HOW DO WE DO IT?

- Tell the good news!
 - Defense can show how they want to help plaintiff
 - Defense cares!



 **HOW DO DEFENSE ATTORNEYS USUALLY ARGUE PAIN & SUFFERING AT TRIAL?**

They don't!

Or, "fair and reasonable"

Ask your attorneys to do better!


 **THE QUESTIONS YOU MUST BE ABLE TO ANSWER BEFORE TRIAL**


 **Anger**
What could make a jury angry in this case?
How will plaintiff's counsel get this jury angry?

 **Theme**
What is the theme of the trial?
Where will you start your story in opening statement?
Hint: it better not be the same place where plaintiff starts!

 **Defuse Anger**
How will your attorneys defuse anger?
How will your attorneys show the jury your case?




 **ASK ABOUT THE FOUR METHODS!**




Responsibility

For what are you going to accept responsibility?




Give a number

What is the number your attorneys will ask the jury to award?
Remember: this anchor needs to come early, often, and never go up!



Personalize the public entity defendant

How are you going to personalize the defendant?
What should a jury know about defendants?



Argue Pain and Suffering

How are you going to argue pain and suffering to the jury?



This is **THE** biggest component of most Nuclear Verdicts®



NUCLEAR VERDICTS
DEFENSE INSTITUTE

Want your attorneys to learn more?



QUESTIONS?

Complete Session Surveys on the App

Find the App, Click on **Events**, Click on **Browse by Day**, Click on the **Specific Session**, Click on **Rate Event**

