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PERSPECTIVE

Can Taylor Swift help prevent Nuclear Verdicts®?

By Cayce Lynch

Are you ready for it? We are in the Nuclear Verdicts® Era. Since January, juries have awarded more than \$8 billion, a staggering figure that continues to climb. Defense counsel may be surprised to learn taking pages out of Taylor Swift's playbook can turn this into *a fight that someday we're gonna win*.

Nuclear Verdicts® are those where the award far exceeds the facts and economic damages of the case, generally to the tune of \$10 million or more. These outsized awards are putting companies out of business, driving up consumer costs and harming the economy.

While the plaintiff's bar has long tapped into juror anger to *mind twist* juries into these massive verdicts, the defense bar has not sufficiently adapted. It's important for insurance professionals and their counsel to be creative with trial strategy. Facts alone do not win the hearts and minds of jurors. Let's face it – plaintiffs' counsels have *big reputations* for storytelling. Appealing to humanity is one of their most effective tools – and one that defense counsel must add to their arsenal. Jurors must see humans on both sides of the courtroom, and they must sense the defendant actually *cares* about the plaintiff, outcome, and community. Humanity is shown by appealing to common sense, reasonableness and responsibility. If a verdict is awarded based on these values, it is *sweet like justice*.

In 2009, the plaintiffs' bar was revolutionized by the "Reptile The-



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ory." Rooted in psychology, the Reptile encouraged plaintiffs' counsel to frame the defendant as a threat, or *anti-hero*, and appeal to juror anger. When the defense fails to defuse that anger, the *tilted stage* is set for a disastrous outcome. The good news: we can make *the whole place shimmer* if we try cases differently.

Here are four anti-Nuclear Verdicts® methods defense attorneys must use to prevent a jury from seeing Red:

Accept responsibility. Plaintiffs can easily seize on a defense's failure to accept responsibility. Be proactive and state at the outset that the defendant accepts responsibility for something (*anything!*).

This validates and defuses juror anger, knocking the wind out of plaintiff's counsel's sails. An important note: accepting responsibility does not mean admitting liability. It can be as simple as taking responsibility for creating a safe product, for example, and putting safeguards in place to protect consumers.

Personalize the corporate defendant. Making the defendant relatable is key to getting a jury to *calm down*. If the defendant is a company and not an individual or group of individuals, tell the company's story – its inception, history and purpose. Highlight if they have made investments in the community. It is much harder to punish someone you know! Let the

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jury know *your* client! It is critical to choose a corporate representative who is present throughout the trial, who embodies the company's ideals, and is ready to testify. Their presence will underscore the defendant's acknowledgement of the gravity of the case while putting a face to the corporation.

Give a number. The defense must give a number in every case, even when seeking a defense verdict. Give it early, often, and never let it increase. As early as possible (ideally during voir dire), sponsor a defense number that is rooted in evidence and based in common sense. Contrary to common belief, giving a defense number actually *increases* the chance of a defense verdict. Your figure reorients jurors to your story and provides them a framework when filling out the *blank space* on the verdict form.

Argue pain and suffering.

Band-aids don't fix bullet holes, so before plaintiffs' counsel *puts the money in the bag*, you must argue pain and suffering. This may not sit well with some, but it is crucial. There are two components to arguing pain and suffering:

1. The impact of the *accident* or *incident* on plaintiff's life
2. The impact of *money* on the plaintiff.

Plaintiffs' counsel predictably focuses on the plaintiff's losses as a result of the incident or accident. Their doom and gloom story can be countered by the defense. Tell the good news and offer hope to the plaintiff's story.

Explain what the plaintiff could do with the money defense is suggesting. Could they travel, support their grandkid's college education or buy that new RV to continue their passion for camping?

Now, let's talk *style*. Taylor Swift

is known for her songwriting and performance style. In discussing her songwriting process, Swift uses what she has dubbed quill, fountain pen and glitter gel pen style. Consider applying some of her methods to your trial strategy.

"Quill" style refers to her penchant for using historical figures (Machiavelli in *Mastermind*) or books (Jane Eyre in *Invisible String*) for inspiration. We have all heard it: a plaintiff's counsel harkens back to our founding fathers during closing arguments. They do this because it is a powerful tool! Defense counsel can make use of the same tools by seeking out references that are related to the case and evoke an emotional response.

"Fountain pen" style is modern storytelling with a poetic twist. Swift often paints a vivid picture of a scene or situation. In "All Too Well," for example, she sings about

dancing 'round the kitchen in the refrigerator light. These few words appeal to the senses and transport you to a time and place. Bring the jury inside the case when crafting your defense narrative.

Lastly, do not be afraid to show your personality by using a "glitter gel pen," like bowing when you trip and fall in court as my colleague once did. Think of this style, too, as permission to wear a bright color instead of a drab dark suit. Everyone appreciates authenticity and vulnerability! Be real and jurors will *like you for you*.

Ultimately, the defense bar should feel empowered to deliver justice for all by embracing creativity and sharing the defense's stories with jurors authentically! The power of sharing successful strategies and takeaways from our defense wins with one another—think of it as *fighting dragons* together.