

Maybe Taylor Swift Can Help? Defense Lawyers Turn To Tay-Tay for Tips on Addressing Nuclear Verdicts

By Ross Todd

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Outsized verdicts. Nuclear verdicts. Thermonuclear verdicts. Whatever you call the upsurge in \$10 million-plus damages awards, it's clearly got the defense bar's attention. According to data from insurance defense firm **Tyson & Mendes**, the total amount of such verdicts since January has already topped \$8 billion. So litigators **Ashley Fetyko** and **Cayce Lynch**, both based in the firm's San Diego office, looked to an inspired source from some strategies dealing with the phenomenon: Taylor Swift.

You read that right. Tay-Tay. The stadium-filling, chart-topping, marathon-concert-performing wonder has some things to teach defense lawyers if Fetyko and Lynch are to be believed.

In a webinar directed at insurance claims professionals and defense-side lawyers yesterday, the Tyson & Mendes pair unabashedly sported sequins and sparkles and dropped a remarkable 68 references to Swift and her music over the course of two hours. But, on a more serious note, they urged the defense lawyers to learn from Swift's embrace of nostalgia, emotions and vulnerability when it comes to connecting with jurors.

(This being a legal webinar, Lynch did offer a disclaimer that Swift had "neither reviewed nor signed off" on any of the material that the pair presented.)



Photo: Chris Pizzello/AP

Taylor Swift performs during "The Eras Tour," Monday, Aug. 7, 2023, at SoFi Stadium in Los Angeles.

Fetyko and Lynch, as others have, pegged the initial surge in verdicts that topped 8 digits to around 2009 in the wake of the recession caused by the housing crisis. Around the same time banks were receiving huge bailouts from the government, the plaintiffs bar was adopting a new approach driven by psychology—the so-called reptile theory. Rather than tapping jurors' sympathy for plaintiffs, the reptile-theory approach attempts to harness juror anger to get them to punish the defendant.

"On our side of the table, we developed some litigation guidelines and cut some costs," said Lynch of corresponding moves around that time in the

insurance defense bar. “We went into very, very different directions.”

Fast-forward to today, and another marked uptick in big verdicts has landed since the pandemic.

OK, enough throat-clearing. What does any of this have to do with Taylor Swift? Well, Fetyko and Lynch asked the audience what they like about Swift and her music. Given how quickly audience members were flagging the references Fetyko and Lynch were dropping throughout the presentation in the chat function, this was a very pro-Taylor crowd. They mentioned things such as Swift’s authenticity and vulnerability.

“A lot of it comes from her willingness to reveal herself and to really share pieces of herself that probably would be typically reserved for private conversation with your best friend,” Fetyko said. “That willingness to be vulnerable and to be accessible and to let people in ... it is so relatable and so honest.”

Can that approach actually work for defense lawyers? “When you are standing in the well giving a closing argument, you may not feel like Taylor Swift, right? You may not have a 70,000-person audience that’s paid thousands of dollars to see you,” Fetyko said. But Fetyko said those jurors who are sitting in the box are much like those Swifties in the stands—human beings who have their own life experiences that they bring with them to the case. “In order to connect with the jury, you have to use the same methods that plaintiff’s counsel is using,” she said. “They are vulnerable. They are emotional. They share with the jury. They come across on the

whole much more human and relatable and trustworthy than—I hate to say this—we do.”

Lynch went on to suggest drawing from three of the storytelling methods that Swift has talked about: her “quill style,” “fountain pen style,” and her “glitter-gel pen style.” With the quill, think Jane Austen, romance and nostalgia. Lynch said that defense lawyers shouldn’t just leave it to plaintiff’s lawyers to harken back to the Founding Fathers and make literary parallels. “Take a moment as you’re preparing your openings, your closings: How can you tell a story drawing on some kind of book, historical figure, someone something that’s going to give some nostalgia and some meaning?” she said.

The fountain pen style involves modern stories told with some sort of poetic twist. Give jurors a scene or situation that leads to certain feelings. Here Lynch invoked the image of “dancing around the kitchen in the refrigerator light” that Swift employed in her song “All Too Well.” She said you can think about such telling details of the case either from the plaintiff’s or the defendant’s perspective. “How can you hone in on those details and vividly describe them in a way that’s going to connect with the jury and play into your themes for the case?” she said.

The glitter-gel pen? Well, that’s allowing yourself to be your true self, even during the heat of trial. “Embrace how you show up authentically and be true to your own personality at trial,” Lynch said.

“Shake It Off.”

That works as a song and as a trial philosophy.