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**Anchors Away: Combatting Jury Anchoring and Other Trial Tactics
Based on Psychology, Not Evidence**

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Jury Trends

Post-pandemic, jurors approach cases differently—they have greater distrust of corporations and stronger empathy for individuals. There is a general belief that many defendant corporations (and their behind-the-scenes insurance companies) are increasingly finding ways to profit at consumers' expense.

Common juror sentiment: In today's world, juries need to be the "guardians of the community" by forcing defendants to change their bad behavior with large damage awards.

Key jury trends:

- Science fatigue: Jurors struggle with complex causation data. Solution: simplify evidence into clear, visual storytelling.
- Humanizing plaintiffs: The rise of emotion-driven decision-making.
- Distrust of corporations: Jurors are more skeptical of companies hiding information or downplaying risks.

Factors that are driving up verdicts:

- Tunnel vision and lack of appreciation for volatility.
- Rising costs and uncertainty of the future.
- More millennials on juries.
- Increased notions of personal responsibility and accountability.
- Not setting a floor or offering alternative damages amount.
- Not addressing key issues and themes in jury selection/opening statements.

Juror attitudes by the numbers:

- 76% believe corporate executives lie and cover up.
- 30% believe it takes billions to send a message to corporations.
- 45% will ignore the judge's instructions.

Combatting Anchoring

The anchoring effect is a cognitive bias where individuals rely too heavily on a reference point or an "anchor" when making decisions. While anchoring is not new, the plaintiff's bar has increasingly been setting the anchoring number higher and higher.

Traditionally, the plaintiff's side "anchors" the jury, while the defense does not. The plaintiffs take the approach of developing damages early on and throughout the case. In contrast, the defendants focus on challenging liability. The defense's decision to offer a counter figure is discussed only as trial approaches. The defense may not discuss damages until the end, or they may not discuss damages at all. The defense has a concern over juror perceptions of a counter figure.

Research Results

However, research shows that defendants who offer a counter figure reduce jury awards:

- Campbell, J. et al. (2016) – The Defendant offering a counter figure did not impact participants’ assessment of liability but did reduce the overall award by 43% over ignoring damages and by 76% over attacking Plaintiff’s number but not offering their own.
- Decker, T. (2006) – Effects of a counter figure did not affect liability or damages awarded.
- Ellis, L. (2002) – Defense anchor reduced total jury award.

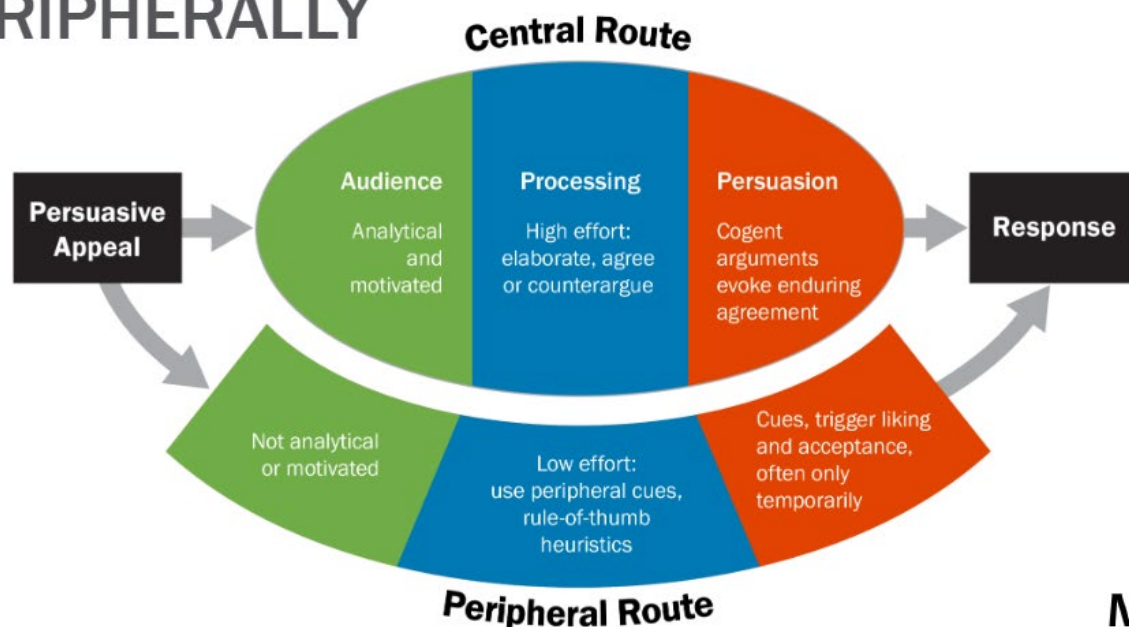
Thus, research indicates the defense should give jurors a low anchor to provide a counter figure to consider in the deliberation room.

How to Set an Anchor Number

How the defense arrives at its anchoring number should be based on juror value claims. Given often extreme numbers, there is a sense that jury verdicts are subjective and arbitrary, but research has demonstrated there is more consistency and rationale than expected. There are trends in non-economic damages among case type and research showing that the amount of non-economic damages awarded is tied to the amount of economic damages.

The defense should also consider how jurors process damages. Jurors tend to process damages peripherally:

PERIPHERALLY



Jurors use heuristics, which are short-hand rules of reasoning, to overcome uncertainty. For example, jurors do not necessarily think in numerical judgments but in “gist” judgments, *i.e. high value, medium value, low value*. When a juror is processing “gist” judgments, a juror may analyze the case as follows:



When actual verdict numbers vary wildly, it is not necessarily because of a lack of rational basis but because a jury’s effort to translate the gist of a case as low, medium, or high into actual numbers is highly dependent on individual perception and context.

In providing an anchoring number, the defense should show its work. The figure should be meaningful to jurors and it should be reasonable or the defense risks the boomerang effect.