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Jury selection + money

HOW TO TALK ABOUT BIG NUMBERS WITHOUT SOUNDING LIKE A BILLBOARD

Let's be honest. If you try plaintiffs' cases for a living, you can talk liability all day long, you can talk safety rules, you can talk accountability, and you can still lose the case on one thing – money. Not because the jury is evil. Not because they're all "tort reformers" (although some are). But because money in our world is weird. It's emotional. It's political. It's personal. And when you say "millions," you're not just asking a question – you're triggering a lifetime of beliefs, resentments, fears, and headlines.

This article is about two things:

1. How to introduce money in voir dire in a way that actually helps you (and doesn't backfire).
2. How to handle common money responses (caps, "windfall," rich vs. poor, older plaintiffs, psych injuries, etc.) without automatically deciding someone is a "bad juror."

And I'm going to keep this in my voice – practical, courtroom-tested, with the kind of phrasing you can actually use in court. But first, in full disclosure, many of the concepts I now employ in jury selection are derived from either jury consultants Harry and Claire Plotkin, the many amazing trial lawyers we have interviewed on our *Picking Justice* podcast, and my own hits and misses after years of trying lots of cases.

The first rule: You have to talk about millions

I know some lawyers still try to dance around it. They'll say "significant damages" or "a lot of money" and hope the jury magically stays open-minded when they finally reveal the number during closing. That's a mistake.

You have to bring it up. You have to say it. You have to normalize it. Because if you don't, the first time the jury hears "many millions" is after they're sworn. At that point, it's not a question anymore – it's a gut punch. And the jurors who hate big numbers won't raise their hand in closing. They'll just punish you quietly in deliberations.

When to bring up money: Last third

of your voir dire

Most of us agree on sequencing: Money generally belongs in the last third of your time. Why? Because you need to earn the room first.

If you come out of the gate talking dollars, jurors will think what a lot of experienced folks say (and they're right): You haven't proven your case yet – why are you talking about money already?

So my basic order is:

1. Big picture biases (lawsuits, "everyone's faking," "jackpot justice," etc.)
2. Liability themes (what this case is really about)
3. Money (economic first, then non-economic)

How I introduce money (without scaring the room)

I like to start with what jurors already see in the world: "You hear about big verdicts – eight figures, nine figures. Does that rub anyone the wrong way? Does it feel excessive or unfair?" That opens the door without forcing a commitment yet. Then I go into economic vs. non-economic – but I don't use those terms first. I use human terms.

Step 1: "Checkbook damages" (economic)

I'll literally point to the jury rail and create a "two categories" physical space. "There are two types of damages in cases like this. One is what I call checkbook damages – medical bills, surgeries, care. If we prove negligence, the defendant is responsible for those reasonable costs." And then the key question: "Does anyone have a problem awarding those damages – even if the evidence shows it's hundreds of thousands... or millions?" Almost nobody raises a hand. And when nobody does, I say it out loud:

"I've been doing this a long time.

I've basically never seen anyone raise their hand to that." Now you've created momentum and credibility.

Step 2: "Quality of life damages" (non-economic)

Then I physically move to the other side. "The second category is different. It's not checkbook. It's what I call quality of life – the human losses."

This language matters. "Pain and suffering" has been beaten to death by decades of propaganda. Jurors hear "pain and suffering" and, for some of them, it automatically translates to "exaggeration" or "lawyer words." But "quality of life" lands differently. So, the question I like best – and this is one of the biggest things I've learned recently – is not: "Is \$10 million for pain and suffering excessive?" That question is a trap. They have no context yet. Instead, I ask a values question that makes them pause: "Do you think there's anything more valuable than someone's quality of life?" Then I follow it with something tangible: "More valuable than a lifetime of paychecks? A mansion? A yacht?" Now you've given them context. You've moved them toward the idea that big numbers might make sense because what was taken is big.

The biggest money mistake I used to make: mislabeling "caps"

Here's the trap I've fallen into (and I see others fall into constantly): You ask a cap question too aggressively, and a juror gives you a number... and you assume they're poison. I had a trial where a juror – a really decent person, compassionate, the kind you'd normally like – hesitated and said something like: "I don't know... maybe one to two million would be my cap." My instinct was to immediately challenge for cause. But I got pushed (in a good way) by a jury consultant I trust: People have no concept of the value of anxiety, depression, chronic pain, loss of joy. Most jurors have never sat around thinking, "What is that worth?"

And here's the kicker – sometimes that "cap" juror ends up being the juror who wants to award the most once the evidence gives them a framework. So, the lesson is, don't treat every "cap" answer as a confession of bias. Sometimes it's just a juror trying to participate without any framework.

Jury Selection *continues*

What to do with “caps” the right way

When a juror throws out a number, the next move isn't to pounce. It's to find out:

- Are they committed to that number no matter what?
- Or are they uncertain and open to learning?

A simple follow-up: “When you say that number – do you mean that no matter what the evidence shows, you could never go above it? Or is it more that you've never thought about this before and you're just trying to give me an honest answer?” Then I watch body language and tone. If they're dug in, now you've got a legitimate cause record. If they're uncertain, you may have found someone who can become your best juror once they understand what “quality of life” really means.

The “windfall” juror: Don't panic – use it

When a juror says “windfall,” my brain lights up. That word is a gift because it tells you what they're really thinking: “I don't think someone should profit off an injury.” A lot of these jurors see money as “profit” because, in their mind, it already happened, so anything after feels like a bonus.

Reframe it as an exchange, not a prize

One of the best ways I've heard it framed is: It's not the lottery, it doesn't fix the injury, it's the system we have to simply place a value on what was taken. And I love the “appraiser” framing:

“Does everyone know what an appraiser of homes does?” Most will raise their hands. “Yeah, they are supposed to objectively *value* a property without considering who is buying and who is selling. We all agree they should be objective, right? Meaning if a sweet old grandmother is trying to sell the house, the appraiser shouldn't double the price just because he wants her to get more, right? Do you think that would be fair to the buyer?” Then you bring it back to your case.

“Here it is no different: you are all going to be appraisers, but instead of a house, you will appraise the value of someone's quality of life, you cannot consider where the money is coming from or where it is going, just value it. Does

anyone have any feelings about that kind of responsibility?”

“If we prove that the value of the loss of quality of life is in the many millions of dollars, would you still struggle placing that amount on a verdict form to hold the defendant fully accountable for the harm it caused?”

The “would you trade it?” question

Another way to expose windfall thinking: “When someone says ‘windfall,’ it can sound like they'd happily trade their health – or their loved one – for a few million dollars. How do you feel about that?”

Most normal human beings recoil from that idea. And if someone doesn't, you've learned something important.

The bank analogy: Why money feels different for “human harm”

This is one of my favorite ways to get jurors to reveal their double standard without them feeling attacked: “Let's pretend this case has nothing to do with injuries. It's a bank case. The bank proves it's owed \$10 million. Would anyone have a hard time awarding the \$10 million if the evidence proves it?” Nobody has a problem with that. Then I ask: “So, why does it feel different when the loss is someone's health, their ability to sleep, walk, work, parent, live without pain?” That question forces them to articulate the bias instead of hiding behind “I can be fair.”

Post-COVID jurors: They want specifics, not slogans

This is real. Pre-COVID, you could say “human losses” and move on. Now jurors want context and specifics. They don't want generalities. They want you to connect the dots. So, when I talk about non-economic damages now, I slow down and put it in plain language:

- Economic: Returns money already spent, pays for future care.
- Non-economic: Doesn't “fix” anything. It values what was taken.

And if I don't do that in voir dire, I've seen it hurt the verdict later – jurors think they “gave all they could give” because they never understood the lens we were asking them to use.

Rich vs. poor plaintiffs: The hidden bias that shows up in deliberations

This one comes up constantly in focus groups and real deliberations: “This is more money than he'd ever make in his whole life.” Jurors want to tie value to income. So, you have to deal with it head-on in voir dire, but you can't start by accusing them of class bias.

Step-by-step question structure

Start with a non-inflammatory question: “When you're appraising someone's loss of quality of life, do you think that value should be tied at all to how much money they make?” Then, once they're talking, bring in the billionaire comparison: “If a billionaire suffers the same injury, should their pain be worth more because a million dollars means nothing to them?” Some jurors will actually say yes (those are usually not your people). And the jurors you want will get offended by the idea that justice depends on your paycheck.

Another framing I like (because it's simple and fair-sounding) is: “The law doesn't distinguish between rich and poor on the value of human loss. What I'm trying to find out is whether anyone personally feels like it should.” That gives them permission to admit it without feeling shamed – so you get truth instead of “I'll try.”

Older plaintiffs and “golden years”: You must ask it, but you must ask it right

If you represent someone in their 70s or 80s, you already know the defense is thinking: “How much time do they really have left?” And some jurors think that too.

I like starting with a show of hands a question that gets people talking about their lives: “How many of you are looking forward to retirement or your golden years? What are your plans?” Then I contrast it: “How many of you kind of dread your 70s and beyond and aren't expecting your quality of life to be worth much?”

The key is you're not calling them ageist – you're giving them a safe place to admit a belief. And if you ask it in a polite, reasonable way, jurors will tell you. If you ask it confrontationally (“Anyone have a problem giving damages to someone in their 80s?”), you'll shut them down.

Use a spectrum so they don't feel judged

I love the “some people feel...” structure:

- Some people feel it's worse to be injured young (more life disrupted).
- Some people feel it's worse to be injured older (you don't bounce back; it steals the golden years).
- Some feel it's equal value.

That lets younger jurors speak honestly without getting jumped on by older jurors in the room.

Psychological damages and “everybody suffers”: The stoic juror issue

Some jurors have a worldview like: “Everybody suffers. Suck it up. That's life.” One of the best ways to handle this – without sounding like you're lecturing – is to validate the existence of that viewpoint while still inviting honesty: “Some people believe intangible harm is just part of life, and you can't compensate it. Some people would award zero for it. I'm not judging it – I just need to know if anyone feels that way.”

That approach does two things:

1. It makes them feel safe enough to tell the truth.
2. It makes you look reasonable (not a salesman).

Then you can find out who truly cannot follow the law on non-economic damages, and who just needs context.

The practical “how-to” section: Language you can steal

Here are a few scripts I've used or built from what I've learned over the last few years.

1) The clean “millions” question (with context)

“At the end of this case, if we prove negligence and causation, we will be asking for many millions of dollars. I know you haven't heard the evidence yet, and I get why that might sound like a lot. I'm asking it now because I won't get another chance to ask: Is there anyone who, no matter what the evidence shows, could not award many millions?”

2) The “quality of life is the point” question

“Do you believe the loss of quality of life can be worth more than a lifetime of paychecks?”

3) The “windfall” follow-up (get to the real belief)

“When you say ‘windfall,’ is what you mean that you disagree with the system of awarding money for quality of life because money doesn't fix it?”

4) The rich/poor fairness question (step one)

“Should the value of someone's quality of life be tied in any way to what they earn?”

5) The golden years “uphill battle” question

“If I'm asking you to put a significant

value on someone's quality of life in their late 70s and 80s, am I facing an uphill battle with you?”

Final point: Money voir dire is not just about strikes – it's about your closing

This is the biggest shift I've made. I used to see money questions as purely “get cause” questions.

Now I see them as:

- Cause + preconditioning + theme building
- Laying groundwork for closing
- Giving jurors a vocabulary they will use later (“quality of life” instead of “pain and suffering”) in deliberations

And it changes everything.

Because if the only time you talk about the value of human loss is after the jury is sworn, you're too late. But if you start the conversation early – carefully, respectfully, in a way that doesn't shame people – you'll get more honesty, better cause records, and a jury that's already thinking in the right frame when you finally stand up and ask for the number. And that's the whole game. 

Daniel Kramer is the founder of Kramer Trial Lawyers APC, where they annually try many cases to verdict throughout California. He is a proud board member of CAALA, CAOC, and ABOTA, and is the co-host of the Picking Justice podcast covering all things jury selection.