

# The Rise of Nuclear Verdicts

## Speakers:

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# HEADLINES





NEWSOAP PHOTO / BRUCE GILBERT

Patrick S. Brady sued Wal-Mart and won a \$7.5 million award under the Americans With Disabilities Act.



**CARRIE MASON-DRAFFEN**  
STAFF WRITER

The case, Patrick S. Brady v. Wal-Mart Stores Inc., seemed like a long shot for the plaintiff.

Brady, after all, was suing the country's largest retailer and biggest private employer. Its fiscal 2005 sales totaled \$285.2 billion, more than the entire gross domestic product of Sweden.

And Wal-Mart is a company known for aggressively fighting litigation. In one lawyer's estimate, the company is sued at least 10 times a day but prevails most of the time.

"They appeal everything," said Lewis Laska, a Nashville, Tenn., personal-injury lawyer who heads the Wal-

Worker and his lawyer beat Wal-Mart and its huge firm

# A winning long shot

## Brady v. Wal-Mart

On paper, Patrick S. Brady's law firm, Thompson Wigdor & Gilly, was no match in size for the law firm representing Wal-Mart, Brown Raysman.


ational activities as long as they're legal. Wal-Mart had fired two employees because they violated the company's policy that banned dating between a married employee and another worker. The court held that the law didn't protect dating.

Brady, 21, sued Wal-Mart, because after just days on the job in August 2002, he went from working as a pharmacy assistant in the company's Centereach store to collecting carts and garbage in the parking lot, despite two years' experience as a pharmacy assistant. The head pharmacist, a co-defendant, took one look at Brady and told the store manager that the young man wasn't "fit for the job," according to the




\$35 MILLION  
PRODUCT LIABILITY –  
FAULTY MESH IMPLANT

KAISER V. JOHNSON & JOHNSON (COOK) (FEB 2018)

The background of the slide is a close-up, shallow depth-of-field photograph of several rolled-up newspapers. The papers are stacked and slightly overlapping, with the edges of the pages visible. The colors are muted, with greys, whites, and some hints of blue and red from the newspaper's design. The text is overlaid on this background.

\$54,155,900  
REAR END –  
HIT BY SEMI WHILE BRAKING FOR  
WRONG-WAY DRIVER

DENTON V. UNIVERSAL AM-CAN LTD ET AL (COOK)(SEPT 2017)

The background of the image consists of several rolled-up newspapers. The papers are white with various colored bands (blue, red, green) around them. The text is overlaid on this background.

\$49,000,000  
MEDICAL MALPRACTICE –  
MALE LOST A PORTION OF  
INTESTINES DUE TO ALLEGED  
FAILURE TO TREAT ABDOMINAL  
INFECTION.

BROWNING V. ADVOCATE HEALTH (COOK) (MAR 2022)

The background of the image consists of several rolled-up newspapers, likely from the 'Daily Herald' as indicated by the visible text on one of the rolls. The newspapers are stacked and slightly unrolled, showing the texture of the paper and the colorful mastheads. The lighting is soft, creating a sense of depth and focus on the central text.

\$97,400,000  
MEDICAL MALPRACTICE –  
BIRTH TRAUMA CASE.

KROMPHARDT V. MERCY HOSPITAL, ETAL.  
(JOHNSON CTY, IA) (MAR 2022)



\$2 BILLION  
PRODUCT LIABILITY—  
CANCER CAUSED BY WEED  
KILLER

PILLIOD V. MONSANTO COMPANY (CALIFORNIA) (MAY 2019)



18 Go to Question 15.

19  
20 **CLAIM OF DAMAGES**

21 If you answered yes to question 2, 7, 9, or 14, then answer the questions below about damages for  
2 Alberta Pilliod. If you did not answer or answered no to question 2, 7, 9, and 14, stop here, answer no  
3 further questions, and have the presiding juror sign and date this form.

15. What are Alberta Pilliod's damages? +

Past economic loss: \* \$ 201,166.76

Future economic loss: \$ 2,957,710

\* If liability is found, the amount stipulated by the parties for past economic damages is \$201,166.76

Past noneconomic loss: \$ 8 million

Future noneconomic loss: \$ 26 million

Go to Question 16.

**PUNITIVE DAMAGES**

16. Did Monsanto engage in conduct with malice, oppression or fraud committed by one or more officers, directors or managing agents of Monsanto acting on behalf of Monsanto?

Yes

No

If your answer to question 16 is yes, then answer question 17. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

17. What amount of punitive damages, if any, do you award to Alberta Pilliod?

\$ 1 billion

A background image showing several stacks of US dollar bills, with some individual bills scattered around. The bills are tied with yellow rubber bands. The text is overlaid on this image.

# WHAT CAUSES NUCLEAR VERDICTS?

# Reasons for Nuclear Verdicts

- ❖ Cashless Society
- ❖ Social Media Influences
- ❖ Lawyers–Get-A-Third Mentality
- ❖ Corporate Distrust
- ❖ Fear



WHAT CAN A  
MILLION DOLLARS  
GET YOU?

FOUR \$250K HOUSES  
28 \$35K CARS  
100 \$10K VACATIONS  
4000 WEEKS OF  
GROCERIES - \$250/WK

**ONE MILLION DOLLARS**

# SOCIAL MEDIA INFLUENCERS



# Salaries of Top Social Media Influencers

(Business Insider, April 2018)

- ❖ YouTube gaming star DanTDM \$16.5M per year
- ❖ Evan Fong/VanossGaming \$15.5M per year
- ❖ PewDiePie \$12.5M per year
- ❖ Gamer Mark Fishbach \$12.5M per year
- ❖ Selena Gomez \$550,000 per sponsored post
- ❖ Kylie Jenner \$400,000 per sponsored post
- ❖ Kendall Jenner \$400,000 per sponsored post
- ❖ Kim Kardashian \$500,000 to share a post
- ❖ Kourtney Karadashian \$250,000 per sponsored post

# LAWYERS GET A THIRD





# CORPORATE DISTRUST AND FEAR



# Strategies for Defending Against Nuclear Verdicts BEFORE Trial



# Strategies for Defending Against Nuclear Verdicts BEFORE Trial

- Recognize Catch Phrases
- Effective Communication - Insurer, Defense Counsel and Insured
- Be Proactive
- How to Handle Depositions
- Mock Trials
- Mediation

# Catch Phrases

- ❖ “Unnecessary Risk”
- ❖ “Needlessly Endanger”
- ❖ “Safety”
- ❖ “Policies and Procedures for Safety/Designed to Protect”
- ❖ “Risk Management Policies”
- ❖ “Safety Training”
- ❖ “Safety Assessment”

# EFFECTIVE COMMUNICATION



expect  
make things  
**proactive.** adj  
controlling  
ready befo  
ating a im

# DEPOSITIONS



What was plaintiff's life like before the incident

What did plaintiff spend his money on for enjoyment before the incident

What are the positives following the incident

How will money allow plaintiff to do things he couldn't do without it



# Questions to Ask Plaintiff - Personal Injury

- What kind of activities did you do before the incident? Did you go to concerts, sporting events, museums? Have you done any of those things since the incident? Why not? If you want to but can't, what exactly would it take for you to enjoy these activities?
- Did you take vacations before the incident? With whom? Where did you go? How often? Have you taken any vacations since the incident? Do you want to? Who would you take with you? Where would you go? For how long?
- Do you have any hobbies? Can you still enjoy them since the incident? What did you do for fun before the incident? How much would it cost you to do the hobby or fun things?
- Since the incident, have you experienced financial hardships? Explain how money will help you.
- Why did you file the lawsuit? What do you hope to get out of this lawsuit?

# Questions to ask Plaintiff - Wrongful Death

- What was the decedent like before the incident?
- What are the things the decedent enjoyed doing? with whom? How often?
- Did the decedent help plaintiff or the family financially? In what ways?
- What role/impact did the decedent have in the lives of their family?
- What does plaintiff miss most about the decedent?
- How did the family spend time together before the death? Activities? Vacations?

Listen for “always”, “never”,  
“safest”.

Never say “yes” or “no”.

When asked about “safest” ways,  
bring it back to “reasonable”

“I don’t understand” is a great  
answer.

# Few Suggested Answers

- ❖ Safety is certainly an important goal, yes
- ❖ We strive for safety.
- ❖ It depends on the circumstances
- ❖ This is not necessarily true in every situation
- ❖ Not always
- ❖ Sometimes that is true, but not all the time.
- ❖ I would not agree with the way you stated it
- ❖ Safety is a broad term, can you be more precise?
- ❖ I need more information to answer the question.
- (Nuclear Verdicts, Robert Tyson, Jr, p143-144)

# Sample Medical Malpractice Q&As

- Q: During your education and training, you were taught that physicians should do no harm to their patients? A: We were taught not to harm patients to the extent that it's possible.
- Q: During your education and training, you were taught that physicians should take steps to prevent injury to their patients? A: Yes, I was taught to take all reasonable steps to prevent injury to my patients but not all injuries are preventable.
- Q: Do you hold yourself out to your patients as a physician who takes all necessary care and caution? A: I hold myself out as a physician who takes reasonable steps to care for my patients.
- Q: Safety is your number one priority? A: Safety is one of my priorities, but all procedures have risk; and patients may decide the benefit of the procedure outweighs the risk.

# MOCK TRIALS



# MEDIATIONS



# Strategies for Defending Against Nuclear Verdicts DURING Trial





# Strategies for Defending Against Nuclear Verdicts DURING Trial

- ✓ Motions in Limine
- ✓ Admission of Liability – Friend or Foe
- ✓ Voir Dire
- ✓ Openings
- ✓ Witnesses
- ✓ Closings

# MOTIONS IN LIMINE





ADMIT  
LIABILITY?

# Voir Dire

- If the evidence shows, in your opinion, our client was not responsible for the plaintiff's injury, would you be able to give no money to the plaintiff and award a defense verdict?
- If the plaintiff is asking for more than \$10M in damages but you believe the evidence supports an award of \$250K or less would you be able to put aside sympathy for the plaintiff and award \$250k or less?
- Does anyone believe just because plaintiff was injured that we should pay the plaintiff whatever she asks for
- Would you agree sometimes there can be a bad outcome even if the physician does everything right
- Anyone feel that just because a lawsuit has been filed and is going to trial there must be some merit to the allegations being made by the plaintiffs?
- Defendant Doctor has a right to be in the courtroom. He has a right to defend himself. He says he didn't do anything wrong. Does anyone have some difficulty with that?
- The defendant always goes second in every aspect of the trial. Do you have any problem with waiting to hear from us before you make up your mind?

# Openings

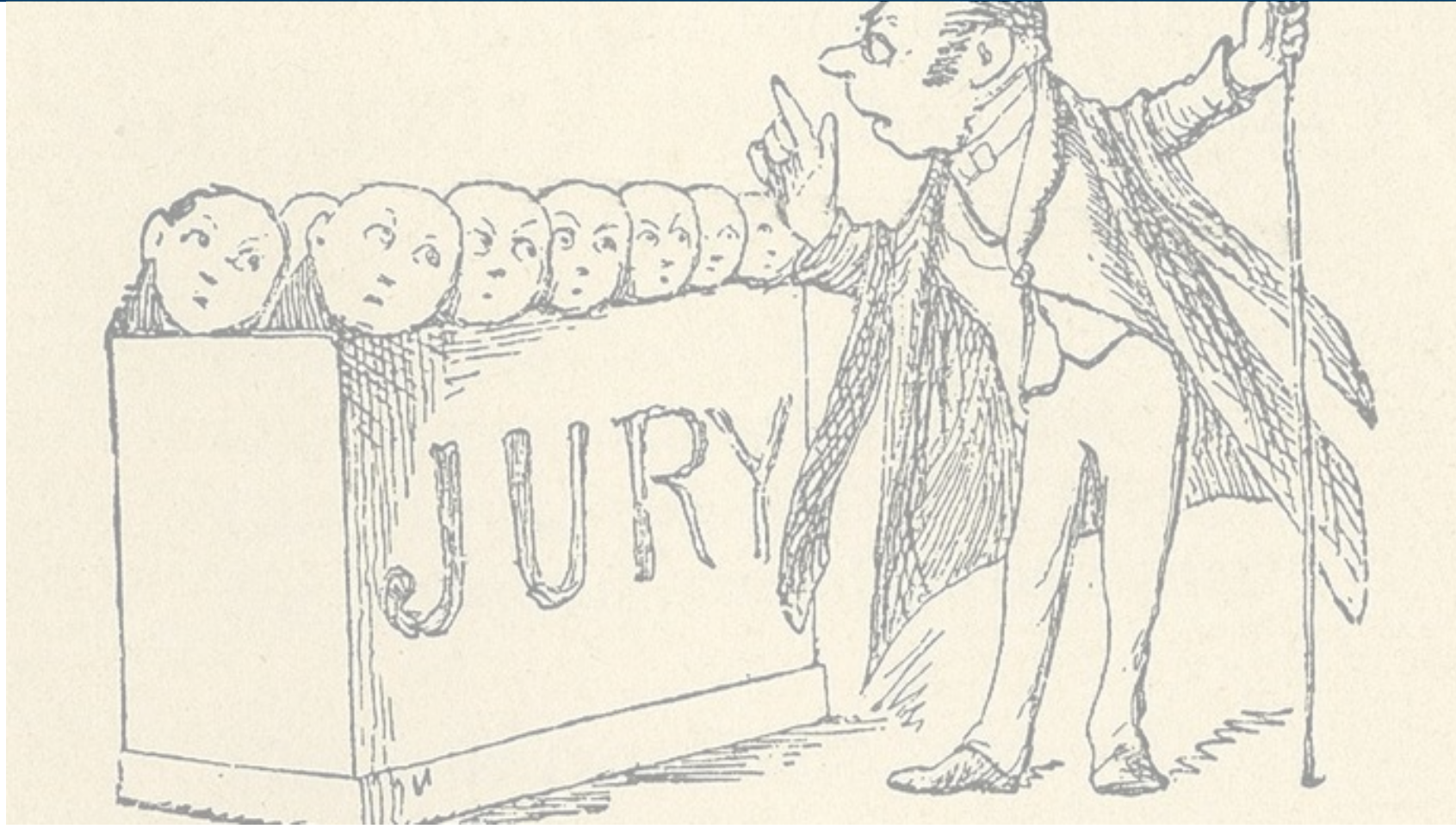
- Humanize Corporate Defendants
- Acknowledge Sympathy



# WITNESSES



# CLOSINGS



# Use the Verdict Form

- ❖ Loss of normal life
- ❖ Pain and suffering
- ❖ Loss of society
- ❖ Disfigurement
- ❖ Emotional distress
- ❖ Reasonable medical expenses
- ❖ Future lost earnings



# Takeaways

- Three things we hope you learned
  - 1) Always take responsibility for something during a trial
  - 2) Show empathy and sincerity during your case
  - 3) Give an anchor number, even if you are seeking a defense verdict
    - ❖ Early
    - ❖ Often
    - ❖ and Never Go Up!

# Contact Information

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