

There Is A Cognitive Science Behind Big Jury Verdicts

By Dennis Stolle and Amit Patel



Every year, we see reports of shockingly large jury awards — awards of eight, nine and perhaps 10 figures. In some cases, the trial lawyers, especially the defense team, see the amounts as having little rational basis in the facts. And sometimes appellate courts agree.

Experts in human decision-making, including Nobel laureate Daniel Kahneman, have suggested that jury awards are unpredictable because jurors have difficulty translating their beliefs about harm into a monetary value, especially when jurors must map those awards onto an unbounded magnitude scale.[1] Anyone who has watched mock jurors deliberate in a high-value case has probably seen jurors struggle with large-dollar figures. This struggle with big numbers is not particular to jurors and not confined to dollars. For the vast majority of us, difficulty comprehending large numbers is simply part of being human.

The science supports that notion. There is a meaningful body of peer-reviewed cognitive science on how people perceive and estimate numbers. Such studies have looked at ability to conceptualize numbers ranging from tiny fractions to trillions.[2] For example, Dr. David Landy and his colleagues at Indiana University have developed various tests of people's understanding of large numbers. In one study, Dr. Landy had research participants plot values along a number line. The results showed systematic errors. Even where the values increased at predictable increments, such as 1,000, 10,000, 100,000, 1 million and so on, the research participants struggled with comprehending and depicting the differences among the larger numbers. Once numbers surpass a certain amount, the participants spaced numbers in a compressed fashion, as if 1 billion is about twice as much as 100 million. With numbers that large, most people simply have an underdeveloped frame of reference.

Life constantly teaches us lessons about numbers within a lower range. We all know lunch should cost around \$10, rather than \$100. Our comfort zone typically extends into the tens and hundreds of thousands because that is where our experience lies. For example, the U.S. median household income is currently about \$59,000, and the median home value is about \$180,000. But most of us have little exposure to "hundreds of millions" of anything, and conceptualizing such numbers can be difficult.

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One way to help people, jurors included, comprehend large numbers is to break them down into smaller, more familiar units or categories. For example, as of this writing the U.S. national debt is nearly \$21 trillion, an unfathomable figure. But if presented within the context of another number — the approximately 323 million people in the U.S. — one can present the figure as \$65,000 of debt owed for each person. This is a much easier number to comprehend. *CONTINUED*

Such a strategy obviously must be grounded in and proportionate to the case facts. Otherwise it may backfire. Further, the game changes in cases with punitive damages at issue. In a punitive damages case, in closing rebuttal plaintiff's counsel may compare that 35-story building to the corporate defendant's net worth or annual revenue. If those numbers are in the billions, the defendant's stack of dollars would reach miles and miles into the sky, effectively turning the defense strategy on its head.

In most trials with large verdicts, multiple factors combine to determine the award (such as facts, strength of evidence, bias, emotion, jury instructions, the particular jurors' attitudes, etc.). However, we should not disregard the effects of the cognitive limits conceptualizing large numbers on the amount of a jury award. It is of practical significance when jurors who perceive \$1 million as a tremendous amount of money also see an award of \$75 million as being only a little more than an award of \$50 million. This phenomenon presents a meaningful risk to defendants. A solution to consider is using the same types of magnitude comparisons typically seen on the plaintiff side. Such an approach can be effective, but defense trial counsel should carefully stress test any such strategy before trial, especially in cases involving the potential for punitive damages.

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[1] Kahneman, et al., "Shared Outrage and Erratic Awards: The Psychology of Punitive Damages," 16 JOURNAL of RISK and UNCERTAINTY 49 (1998)

[2] David Landy, et al., "Categories of Large Numbers in Line Estimation," 41 COGNITIVE SCIENCE 326 (2017)

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