

From their words to your verdict

Using the jury to frame damages by weaving jurors' values into your case

By Brian J. Kim

In July 2016, I sat for a job interview in a high-rise office overlooking Wilshire Boulevard, in Beverly Hills. Across the table from me was John Carpenter – a partner at a prominent personal-injury trial firm. A firm where verdicts weren't just numbers, but statements. A place where I wanted to be.

Then came the question that changed everything.

John described his upcoming trial and his client's injuries. He leaned in. "What do you think Antonio's general damages are worth?"

The room fell silent. My mind searched for something profound, something that would prove I belonged. I eventually looked up and said "How much are the medical bills? You just double or triple them, and that's the number."

John leaned back. "What do his medical bills have to do with the pain he lives with every day? With the quality of life that's been destroyed? With his suffering as a human being?"

I had no answer.

Before I walked into that office, my entire career had been spent as a defense lawyer. And that's how I had been trained to evaluate a plaintiff's noneconomic damages – cold, calculated, reduced to a formula. It was all I knew. But in that moment, sitting in that chair, I realized something unsettling – I had been kissed by the machine, and in the process, conditioned to see loss through a spreadsheet instead of through human eyes.

This illustrates a fundamental truth about noneconomic damages – pain and suffering cannot be neatly measured or assigned a dollar figure. There's no formula or multiplier that can truly capture the depth of human suffering or the loss of one's enjoyment of life. And yet, as trial lawyers, it's our job to convey that loss in a way that resonates, in a way that demands justice.

Noneconomic damages are famously difficult to quantify, precisely because they deal with the intangible – the stolen moments, the lost joys, the decline in health, and the diminished quality of life that no medical bill or pay stub can reflect. But if we allow them to be reduced to arbitrary numbers, if we fail to make them real, we risk letting our adversaries turn human suffering into just another cheap calculation. This is the challenge we face every time we stand before a jury. And it's one we cannot afford to lose.

Beyond striking jurors: An overlooked opportunity

For many trial lawyers, voir dire is seen as only an exercise in striking unfavorable jurors and eliminating threats to our case. Lawyers often joke about "jury de-selection," as if its purpose is only to remove as many potential landmine jurors as possible, leaving behind a panel of jurors who will be most favorable to our case. This single-minded approach reduces voir dire to a simple numbers game – how many strikes do we get? How many bad apples can we get rid of? How many good jurors can we keep?

But, what if instead of viewing jury selection solely as a process of elimination, we also saw it as an opportunity for construction? What if it could be used as a chance to coalesce a room full of strangers who, by the end of trial, will share a collective purpose. A collective purpose defined by them – but led by you.

I believe that voir dire is more than just an exercise in subtraction – it is the foundation for constructing your damages story. By allowing the damages themes of your case to be built – not by you, but by the very people who will decide its outcome – you ensure that the jurors' own values dictate the measure of justice, compelling them to return a verdict that fully honors the depth and magnitude of your client's loss.

Why should you let the jury lead the way?

There is a problem that awaits each of us every time we step inside a courtroom. The jury knows. They know why we are there. They know our job is to persuade. And they know, inevitably, that we are there to ask for money. And so, the walls go up.

People who know someone is trying to persuade them are not easily persuaded – especially when there are lawyers and money involved. So how do we deliver a message that will break through those walls once they are raised?

Maybe we don't.

Maybe the answer isn't in breaking down their walls – it's in making sure they never put them up in the first place.

Instead of imposing a narrative about the plaintiff's damages, consider allowing the jury to discover and help shape that narrative themselves. People do not like being told what to believe, but they will fight fiercely for a truth they have discovered on their own.

If we allow jurors to express what they hold most dear in their own lives, then we have the blueprint for what loss truly means to them. And once they have defined those values, once they have given voice to what makes life meaningful and worth living, that framework becomes more than just their perspective – it becomes the springboard for us to launch our client's damages case.

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From that moment forward, our role is no longer to impose a structure of loss, but to hold up a mirror. To show them that the plaintiff valued the very same things they do. That those things were ripped away not by fate, but by negligence.

How to create connection through collective meaning and purpose in voire dire

I recently picked a jury on a car-crash case. I was moving the discussion toward the concept of damages and seeing if any jurors could understand and appreciate the impact of losing one's quality of life. I asked a young man on the panel if there was something in his life so valuable that he couldn't live without it. Without hesitation, he said, "My two children." I asked him how he enjoyed spending time with them. He shared how he loved playing soccer, surfing, and running – always moving, always outdoors, always active with his children. I then asked him to share why it was important and what made it special. He thought about it for a moment, and then said, "*It's my peace. It makes me feel free. It's like therapy for me.*" Many jurors nodded in agreement. It was a simple, but powerful response.

While my client didn't have children, the man's answer was nevertheless a great answer for us because my client was an athlete, an adventurer, and an explorer. Rock climbing, summit hiking, scuba diving, black diamond skiing – these weren't just hobbies, they defined who she was. Every dollar she earned went toward the next ascent, the next dive, the next adventure. These experiences gave her something no amount of money could buy: a sense of purpose, fulfillment, and freedom.

And in that moment, that juror had shared something that unwittingly connected him to my client. He wasn't just describing hobbies or pastimes; he was describing something deeper, something fundamental to who he was. But the worst thing I could have done was immediately latch onto his words and try to force a connection to my client's loss, to say something like, "That's exactly what my client is going through. She lost the ability to do what she loves, just like you. So, you understand how she must feel, don't you?" This could only be perceived as a lawyer with an agenda – someone who wasn't even listening and only intent on twisting words to benefit his case.

Instead, I let the moment breathe. In letting the juror's words settle, I hoped that others would find the space to reflect on what was important in their own lives. Because the real purpose was not to extract agreement from them, but to allow the jury to feel the reality of loss in a way that was personal to them. We often believe it's our job alone to craft the story of loss, but in reality, jurors already understand it. They don't need us to explain it; they just need the space to say it themselves.

So how do we do this?

Here are three frameworks to consider that are in no way exhaustive, but rather, springboards to get you started.

The "most valuable possession" framework

People assign value to things based on what they mean to them, not based on a market price. This discussion gets jurors to talk about what is most valuable to them in their own lives – laying the foundation for them to later recognize the depth of the plaintiff's loss.

Start by prompting jurors to think beyond material wealth, steering the conversation toward health, passions, relationships, and purpose:

- "What's important in your life?"
- "What is something in your life that is so valuable to you that no amount of money could replace it?"
- "Think about the things in life that bring you the most joy. What's one thing you couldn't imagine living without?"
- "Tell me more about that. Why is that so important to you?"

Once they answer, explore their emotional connection:

- "How do you think that loss would change you as a person?"
- "If someone took that away from you and you could never get it back, what would that loss mean to you?"
- "If you were to assess its worth to you, would it be minimal or substantial?"
- "Have you ever had a time in your life where you couldn't enjoy that the way you normally do? What was that like?"

These types of questions accomplish two things: (1) they establish the concept that the most valuable things in life – our health, passions, and time with our loved ones – aren't possessions or things you can buy, yet their significant worth is undeniable, and (2) it allows jurors to express, in their own words, what universal values make life meaningful to us all.

The "value of health and mobility" framework

Since many injury cases involve physical limitations, get jurors to express how much they value health, movement, and independence in their own lives.

- "How many of you enjoy an active lifestyle? What kinds of things do you love to do? How does it make you feel when you're doing it?"
- "What's the first thing you do when you get home after a long, hard day?"
- "Is there an activity or routine in your life that you look forward to every day?"
- "How many of you have a sport or hobby that makes you feel alive? What is it?"

Then shift the focus:

- "How would you feel if, starting tomorrow, you could never do those things again?"
- "What if you could do them, but every time you did, you felt pain?"
- "Have you ever had an injury that kept you from doing something you love, even for a short time? How did that affect you?"
- "Has anyone here ever had to sit out of an activity or event because of a health issue? What did that feel like?"
- "How many of you take pride in being independent – being able to

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drive, work, take care of your home, and move through life without needing help?"

By guiding jurors to define health, independence, and mobility as essential, you are creating a framework that makes it natural for them to later connect and understand the magnitude of the plaintiff's losses that can often be overlooked and minimized.

The "loss of purpose and identity" framework

Some injuries don't just take away activities or physical abilities – they take away a person's sense of purpose and identity. This framework is designed to get jurors talking about the roles purpose and identity play, the things that give their life meaning, and what it would feel like to lose them.

- "If you had to describe yourself in just a few words – not what you do for a living, but who you are – what would you say?"
- "What's something in your life that gives you a sense of purpose?"
- "What's something that people count on you for? Something that makes you feel as if you matter?"

Once they have expressed what gives them fulfillment, guide them toward imagining what it would feel like if that were taken away:

- "What if, starting tomorrow, you woke up and that part of your life was gone? What would that feel like?"
- "Would you feel like the same person?"
- "Do you think that losing one's sense of purpose could be just as devastating as a physical injury?"

When jurors reflect on what gives their lives meaning, they begin to understand that some losses go beyond physical pain – they reshape identity and purpose. By guiding them to articulate what gives their own lives purpose, they create an emotional framework that allows them to connect to the impairment of the most important right we all possess: the right to live life *our way*.

Sealing the values into your case

Once a juror hits on a meaningful value or purpose, it falls on you to ensure that their words are not lost into the wind. They must be highlighted, emphasized, and sealed into your case. Otherwise, all your efforts were for nothing. Use that one juror to spark the conversation and then try to get other jurors to buy in. Here are some ways to reinforce and solidify those values in the discussion:

- I suppose you may not be the only one that feels like that…perhaps (I or someone else here) feels like that too. Is there anyone else who also feels like that?
- Did we all hear that?
- Would you be willing to repeat that again so that everyone hears it?

If the judge permits it, write these values on a white board or large butcher paper. Otherwise, you can write them down on a piece of paper or order a rough copy of the transcript from the court reporter for reference later. Put these shared values into your pocket to later provide momentum to drive your damages case forward. By preserving them now, you ensure that when the time comes, you can reconnect the jury to the very principles they already expressed as meaningful.

Weaving the jurors' shared values and purpose throughout trial

Once the jury has settled on a shared value and purpose, weave those principles into every pivotal moment of trial. It is the heartbeat of your case. Pump these shared values into your opening statement, where the jury first learns what your case is about. Incorporate them into witness examinations, where the jury can feel your client's loss in a personal way that will resonate. And return to it in closing argument, at the finish line, when the jurors must be reminded that the case is not just about the plaintiff – and whether they will uphold the values that they swore mattered.

Opening statement

During your preview of damages in opening statement, repeat verbatim what jurors said about what the impact would be to them in losing something important in their own lives.

Using my car-crash case as an example, our opening statement referred back to what our juror had shared. "You will hear from her and people in her life that she lost her active lifestyle ever since the crash. And it's not for lack of trying. But she has a lifelong, forever injury that has dislocated these things of value from her life. And ever since that day, she lost a part of herself. You see, these things in her life were what gave her peace. They made her feel free. They were her therapy."

By grounding the damages story in what the jury already said, you are reinforcing to the jury that your client's loss is something they themselves have already acknowledged would be devastating.

Witness examinations

We are forbidden from explicitly asking jurors to put themselves in the plaintiff's shoes and decide what they would want if they had suffered the same harm. This would violate the "Golden Rule." But an artful trial lawyer doesn't need to ask jurors to imagine themselves as the plaintiff. Because when done right, the jurors will do it on their own.

This is not about sympathy; it is about recognition. It is about helping jurors see that the things the plaintiff lost are the same things they value in their own lives. It is about creating an undeniable commonality of human experience – one that makes a just verdict feel not like an act of charity, but a call to action in response to what has been taken. By connecting to the shared values the jurors have themselves identified, we invite a verdict that will be the product of empathic identification with the plaintiff.

In my car-crash case, the plaintiff's injuries were not *just* medical conditions. They represented the loss of something essential that defined her. During witness examinations in our case in chief, those

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same values resurfaced – not as abstract concepts, but as lived experiences that have been stolen through the eyes of the plaintiff, close family members, and friends who knew her well. The key was to pull them into moments that tied back to the shared values identified by jurors in voir dire.

When the plaintiff testifies

- "Let's talk about who you were in the years leading up to the crash. How would you describe yourself as a person?"
- "Where do you think your love for living an active life came from?"
- "What did being an athlete mean to you? Why was that important to you?"
- "What was your perfect day before the crash? Walk us through it."
- "Tell us about what made you feel most alive before the crash."
- "What kind of thoughts go through your mind when you are at the summit of Mount Olomana?"
- "What was it about those experiences that made you want to chase the next one?"
- (Using a photograph from before the crash) "When you look at this photo, who do you see? How does it feel to look back at that person?"

When family members or close friends testify

- "How would you describe who [Plaintiff] was as a person before the crash?"
- "What kind of daughter/sister/friend was she?"
- "If you had to describe her in just three words before the crash, what would they be?"
- "What was the one thing she always looked forward to every week?"
- "When she came home from work, what was the first thing she always did?"
- "What was the one thing that could always put a smile on their face?"
- "When she was out there in her element – climbing, diving, skiing – what was she like in those moments? What did her body look like when it was in movement?"
- "If she was ever stressed or overwhelmed, how did she reset? What was her therapy?"

Once the jury has lived through the plaintiff's *before*, show its stark contrast with the aftermath. When treating doctors, medical experts, close friends, and family members testify about her life post-crash, the reality sets in: This is not a temporary injury. This is a permanent dislocation from the very experiences that gave a human being a sense of self. They are front-row observers to the real-life impact of what happens when those things are taken away.

Further examination question for a treating doctor or medical expert

- "What kind of physical toll does a person with this injury experience on a daily basis?"
- "Can she still do the things she used to love, like [climbing, hiking, skiing]? Why not?"
- "We heard evidence of how important being active and an athlete was to [Plaintiff]. What is your medical opinion on whether she will ever return to being that person again?"
- "What happens with her body when she tries to move the way she used to?"
- "Will these conditions go away with time, or will she have to learn to live with it?"
- "Can you explain how this injury affects the ability to move, function, and live normally?"
- "Would you say this injury has taken away more than just physical movement?"
- "What does chronic pain do to a person's ability to work, socialize, and enjoy life?"
- "Will there ever be a day where [Plaintiff] doesn't feel the effects of this crash?"

Further examination questions for family members or close friends

- "Do you think that [Plaintiff] is the same person that she was before the crash?"
- "How has she changed since the crash?"
- "What is something she used to do effortlessly that is now a struggle?"
- "How has she changed emotionally since the crash?"
- "How has this affected her relationships with friends and family?"
- "How does she spend her free time now? Paint the picture for us."
- "If you could say one thing to the jury about what this injury has done to her, what would it be?"
- "What does she do now when she needs a reset? Does she have a new 'therapy' or has she lost that completely?"

Closing argument: Coming back full circle

Closing argument is the final opportunity to bring the jury back to where it all began – with the values they themselves expressed, the things that make life rich, meaningful, and whole. This is the moment to ask them whether those values still matter now, at the finish line, when it is their turn to speak through their verdict.

In closing, I might say something like this:

"We started this trial not by talking about the law, facts, or evidence in this case. We started by talking about you. I asked you to share a piece of yourself. I asked you to tell me what was important in your own life. Who are you? What makes your life rich? What makes your life matter? And in jury selection, you spoke. One juror told us: *Peace. Feeling free. Therapy.*

Three simple feelings. But they weren't random. They meant something. They told us what makes life worth living. And that's when we knew, before you ever heard a single piece of evidence, that this case wasn't just about the plaintiff sitting here. It was about all of us.

Now we have reached the end. And after hearing everything and witnessing firsthand the wreckage of a life that once was – you have seen what happens when those values are ripped away in an instant. So now I ask you – do those words still mean something? Do these values still matter? Or were they just words spoken at the beginning of a trial, only to be forgotten now, when it's time to give them weight? Because that's what this moment is about.

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The defense will ask you to keep things 'reasonable.' They will try to diminish what has happened to her. Minimize what she has lost. They would have you look at this woman's life and call it a small thing. But is it?

Is it a small thing to lose yourself? To wake up every morning and feel trapped in a body that no longer moves the way it once did? To reach for the thing that once brought you peace – whether it's the mountains, the ocean, a morning run – and find that it's gone?

Because if that isn't a small thing, then your verdict must reflect that. Because if we say those things are cheap in this courtroom, then we say they are cheap in our own lives, too. And today, you have the power to say that they matter. That the things that make ourselves 'us' are not things to be bargained with. And when they are taken away from us without our permission, they come at a great cost."

Conclusion

When jurors express in voir dire what they hold dear – whether it's their ability to play catch with their kids, take long walks with a spouse, or simply get out of bed pain-free – they are revealing their values. And in that moment, they are handing you the framework for how to present your damages case in a way that truly resonates.

What they have given you is more than just insight into their values. They have given you a vehicle to bring the plaintiff's damages case into the courtroom. And the beauty of this vehicle is that they are not just passive spectators to its arrival. *They are already inside, riding along with you*.

But your job doesn't end with voir dire. These values should be woven into every phase of trial – through opening statement, witness examinations, and closing argument – so that they become the heartbeat of your case. The jury should see, time and time again, how the plaintiff's loss is not an abstract legal claim, but a deeply human experience that mirrors their own understanding of what makes life meaningful. When jurors connect to the case in this way, they will walk into deliberations with a damages framework that *feels like their own*. And once they own it, they will fight for it.


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