

GENESIS®

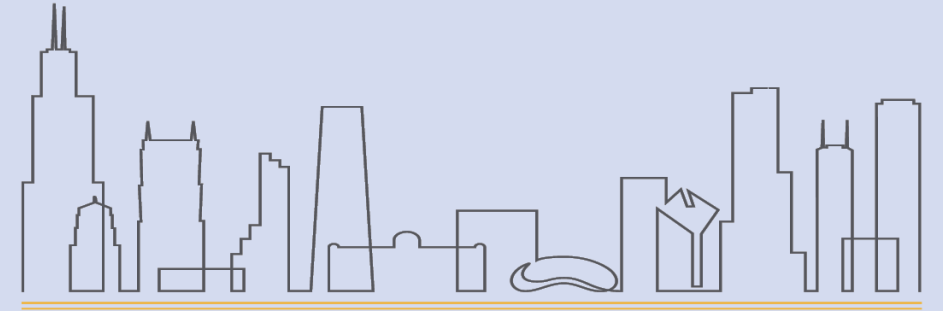
GENESIS® 2024 CLIENT FORUM

BUILDING CONNECTIONS



A Member of the Berkshire Hathaway Family of Companies

BUILDING CONNECTIONS



Jill Huntley Taylor, Founder and CEO Taylor Trial Consulting

“Today’s Juries: Why the Big Verdicts and Strategies to Avoid Them”

Today's Juries: Why the Big Verdicts and Strategies to Avoid Them

Current Climate: What can a Trial Consultant Offer?

Jury Research

- Understand juror predispositions
- Develop juror profiles
- Develop trial themes
- Test trial themes
- Listen to jurors talk about the issues
- Gauge juror reactions to arguments, issues, themes, witnesses, damages
- Lessons on how to retool the case for trial

Jury Research

Focus Groups

Mock Trials

Additional Consulting

Witness preparation

Voir dire questions

Jury selection

Review openings/closings

WHY?

BECAUSE JURIES DECIDE CASES





\$25M for OK Man Defamed in Newspaper

Jury Hits Penn Medicine With Record \$182.7M Verdict

\$135M for CA Students Abused by Teacher

Sexual Abuse, Assault, & Molestation

\$25.5M for CA Man After Electrocution During Work

Personal Injury

\$20M for CA Hotel Concierge After Incomplete Paraplegia
was Not Fully Accommodated

**Car manufacturer ordered to pay nearly \$1 billion
in damages after New Hope man's paralysis**

**Philadelphia jury awards \$2.25 billion to man who
claimed Roundup weed killer gave him cancer**

\$857M for WA Parents and Students After PCB Exposure

Environmental & Toxic Torts

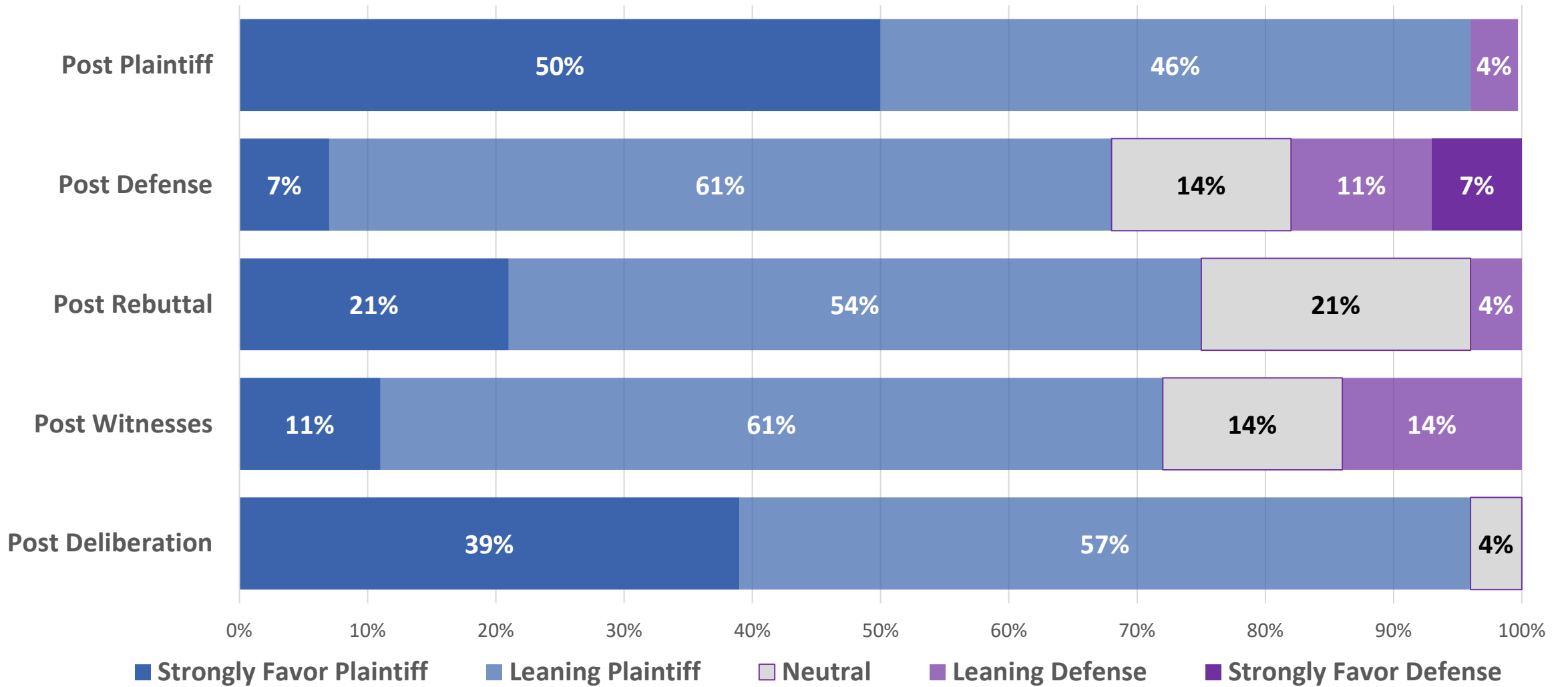


TAYLOR TRIAL
— CONSULTING —

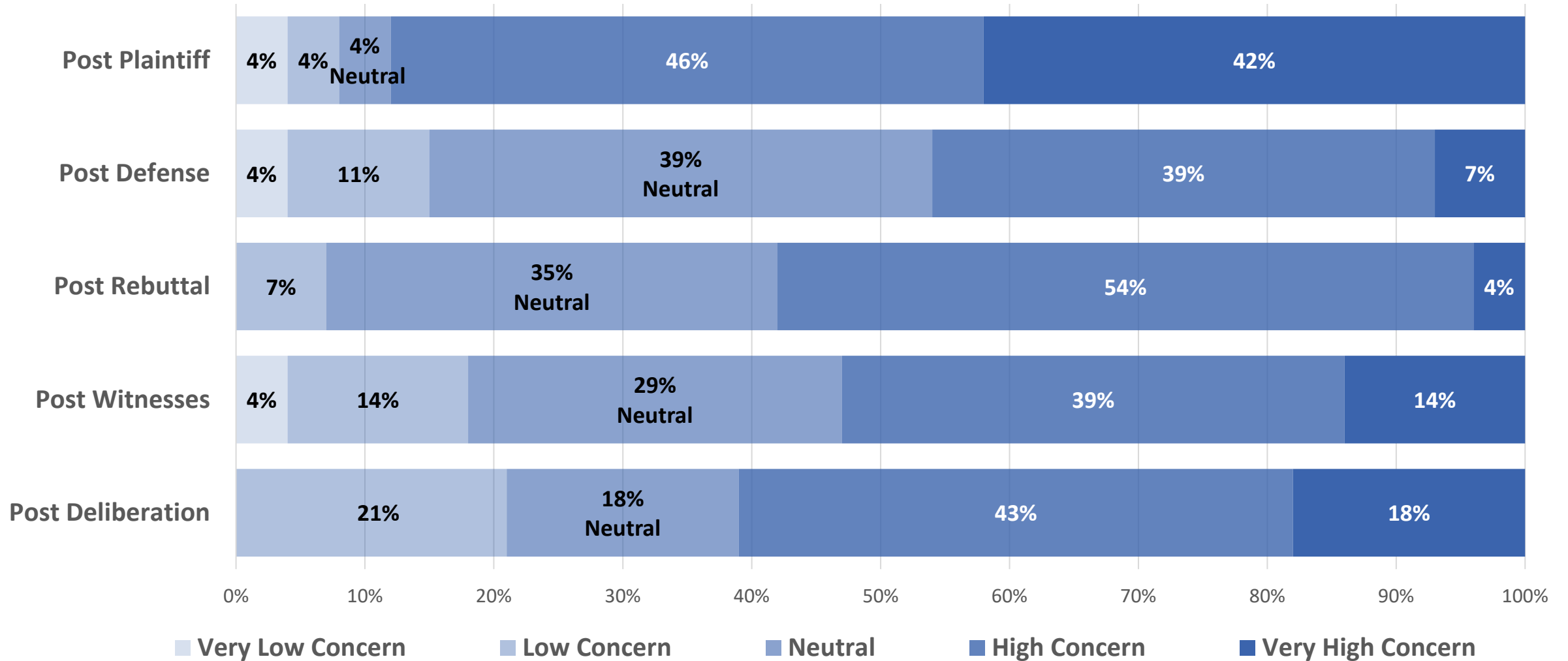
A close-up photograph of several hands of different skin tones raised in a fist, symbolizing solidarity and protest. The hands are positioned in a way that they appear to be part of a larger group, with some hands in the foreground and others slightly behind. The background is a plain, light gray color.

Concern and Anger

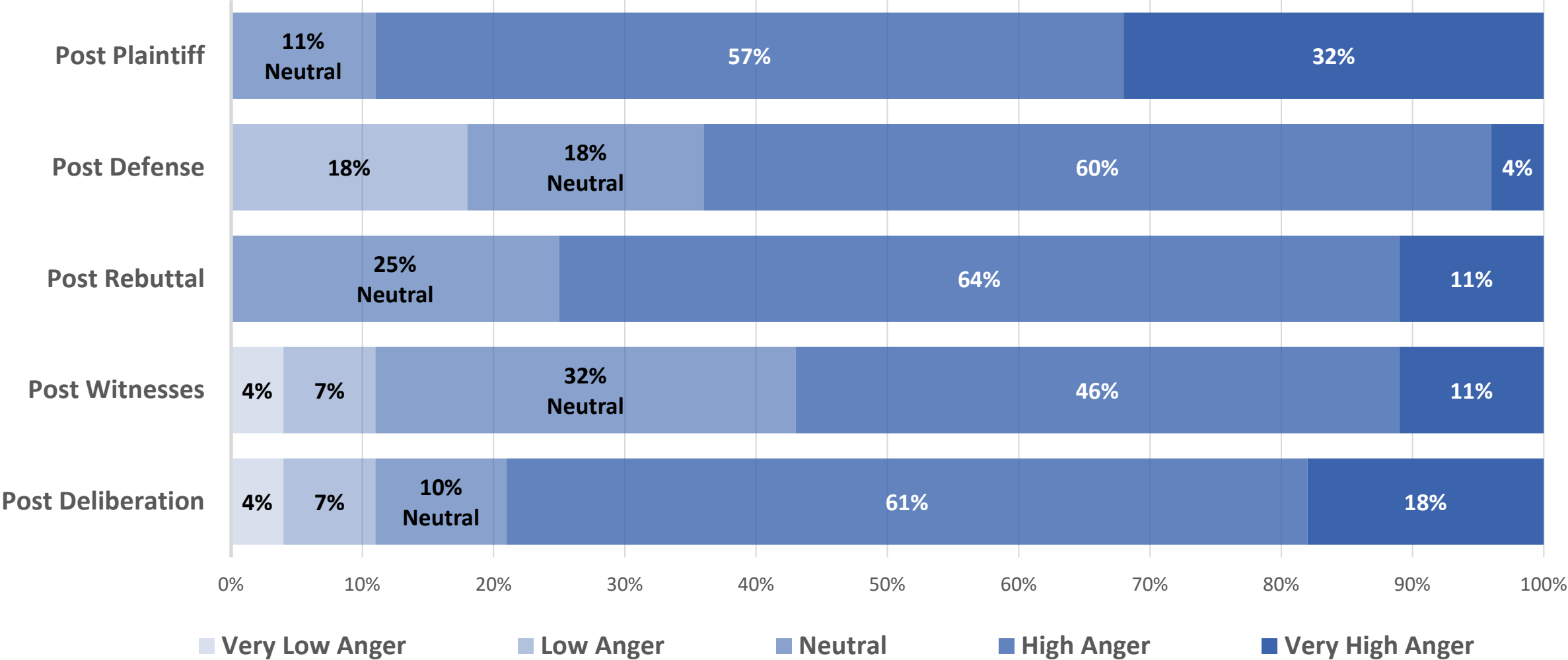
JUROR LEANING



JUROR CONCERN FOR PLAINTIFF



JUROR ANGER TOWARD DEFENDANT



Why?

Views on Money

Victimization

Mental Health

Discontent

Activism

Social Media

Racial Reckoning

Plaintiff Lawyers



MONEY & INFLATION

60%
Americans

73% Black
73% Parents < 18 *
72% Gen Z
72% Millennials
70% BIPOC Women

“I want to become a
billionaire one day.”

60%
Americans

“I look up to billionaires.”

vs. “I despise billionaires.” 40%

44%
Americans

71% Crypto investors
66% Gen Z
58% Millennials
56% LGBTQ
51% Men

“I believe I have the
available tools to
become a billionaire in
the future.”



Case-in-Point

**Taking care of someone who is significantly harmed:
Cost Considerations and Concerns**

Peek into the jury room



Recommendations

- Acknowledge the challenges
- Empower the plaintiff as someone who has met the challenges
- Embrace the fact that plaintiff has a strong family and support

Case-in-Point

Minimal and unprovable harms can be compensable:

Concern for possible harm

Peek into the jury room



Recommendations

- Causation timeline to distance the injuries from the accident and insert other causes both before and after the accident
- Choose language to diminish the incident; incident vs. accident/accident vs. crash; “less than a fender bender”
- Show photos of the vehicles with no damage
- Drop/minimize expert testimony that was contrary to jurors’ attitudes and experiences
- Surveillance or social media of plaintiff doing things claim they cannot do

VICTIMIZATION



2014

Whites think discrimination against whites is a bigger problem than bias against blacks

White people think racial discrimination in America is basically over



By Michael A. Fletcher

October 8, 2014 at 1:39 p.m. EDT

Majority Of White Americans Say They Believe Whites Face Discrimination

OCTOBER 24, 2017 · 1:35 PM ET



Don Gonyea

2017

2023

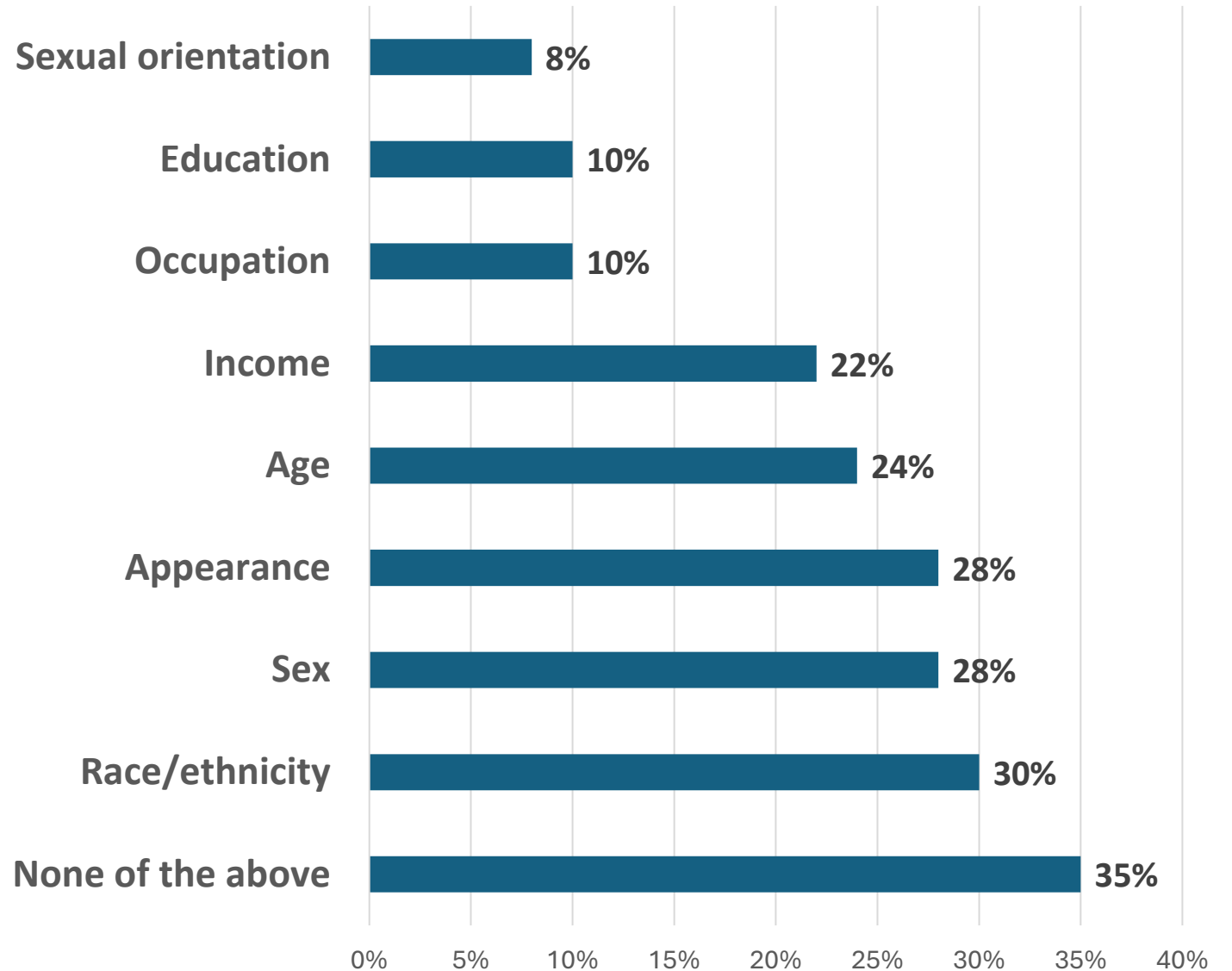
DEI under siege: Why more businesses are being accused of 'reverse discrimination'



Jessica Guynn

USA TODAY

Have you ever felt you were the victim of mistreatment based on any of the following?



Case-in-Point

**Plaintiff's narrative resonates with victims:
Jury selection and the identification of victims**

Peek into the jury room



Recommendations

- Identify victims in jury selection; Focus on finding jurors who carry a victim narrative
- Build up the plaintiff's assertiveness and willingness to raise complaints; demonstrate she was unafraid
- Also show no adverse actions following complaints
- Timeline of promotions, pay raises, employment following complaints

MENTAL HEALTH



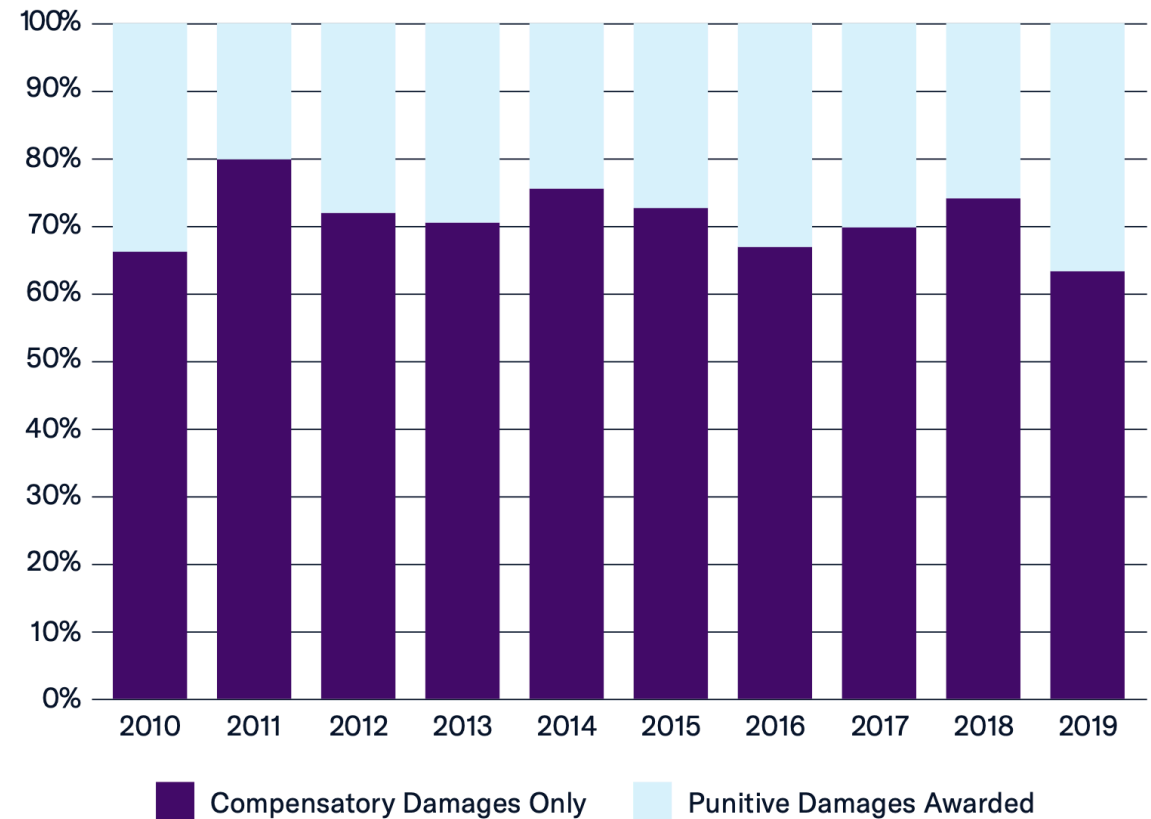


Nuclear Verdicts are not all punitive

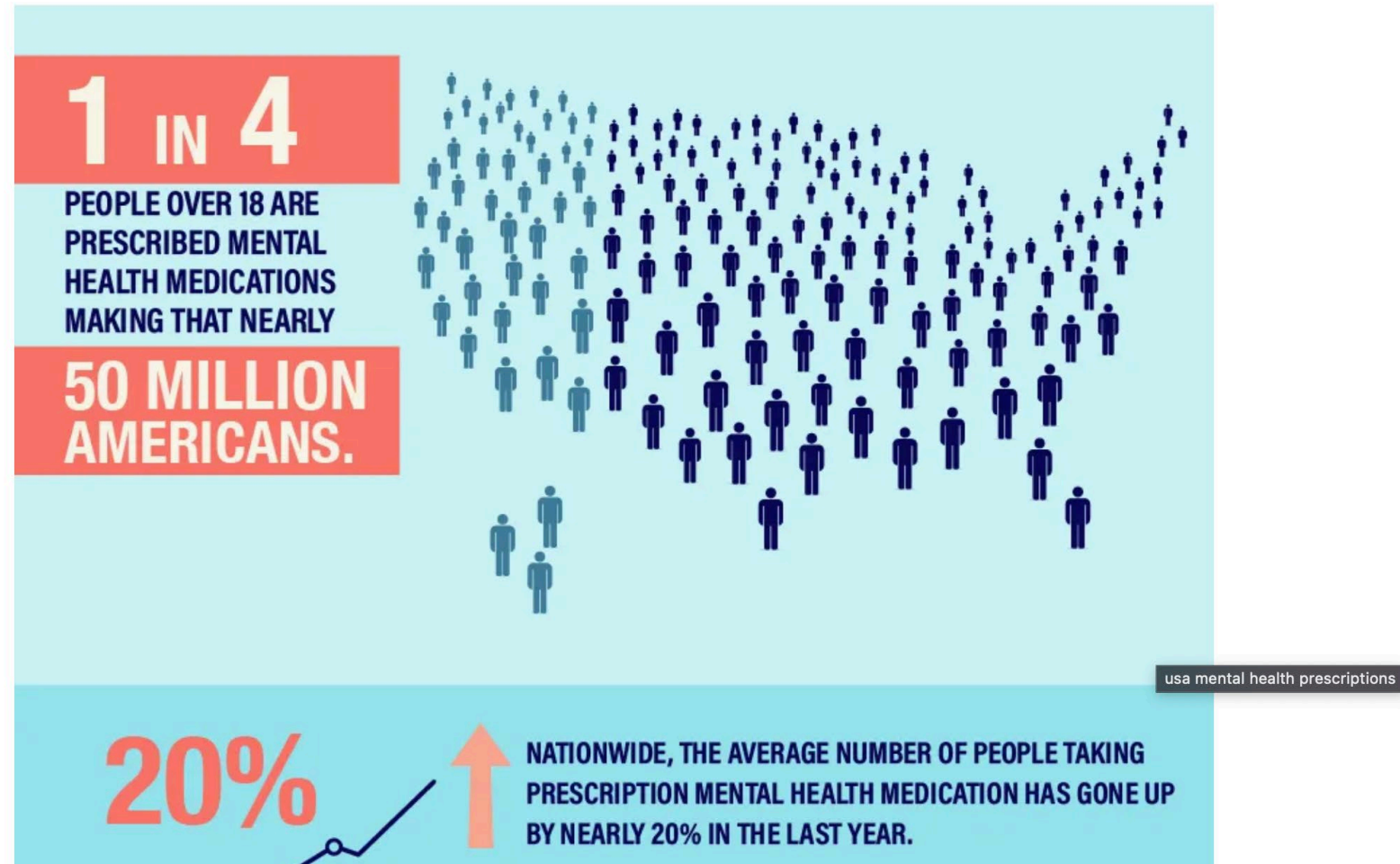
Non-economic damages are significant in many big verdicts

“As litigators have observed, pain and suffering awards are ‘the biggest component of most nuclear verdicts’ because ‘[t]he plaintiffs’ bar knows how to successfully argue for large non-economic damages.’”

Figure 4: Percentage of Nuclear Verdicts Including a Punitive Damages Award, 2010 – 2019



State of Mental Health in America



Pandemic Fuels Rise in Mental Health Prescriptions

Updated January 6, 2022 Quote Wizard (Nick Vinzant) <https://quotewizard.com/news/mental-health-prescriptions>

Concept Creep

In “Concept Creep: Psychology's Expanding Concepts of Harm and Pathology,” Haslam argues that concepts like abuse, bullying, trauma, mental disorder, addiction, and prejudice, “now encompass a much broader range of phenomena than before,” expanded meanings that reflect “an ever-increasing sensitivity to harm.”

Mental Health Concepts are Creeping and Intensifying

Trauma

Anxiety

Depression

Although anxiety and depression can both be transient and functional everyday mood states, they are increasingly cast as disorders.

So the concepts of anxiety and depression may have broadened, intensified and pathologized simultaneously.

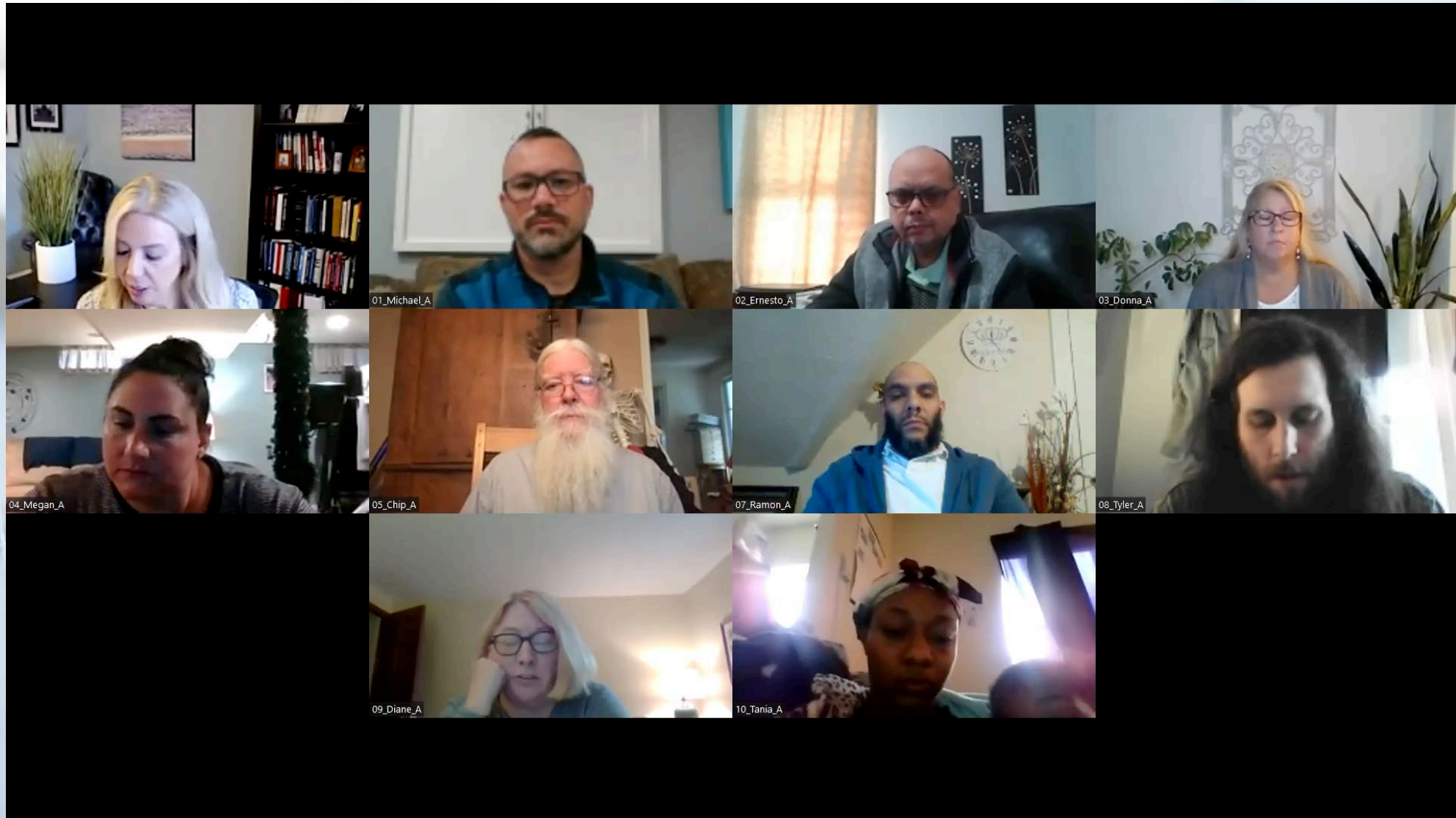
NeuroscienceConcept Creep: How Our Concepts of Anxiety and Depression Are Changing. · July 5, 2023

<https://neurosciencenews.com/anxiety-depression-concept-creep-23575/>

Case-in-Point

Money cannot buy mental health, but more money can help?

Peek into the jury room



Activism



Union activity

Campus protests

Employee activism

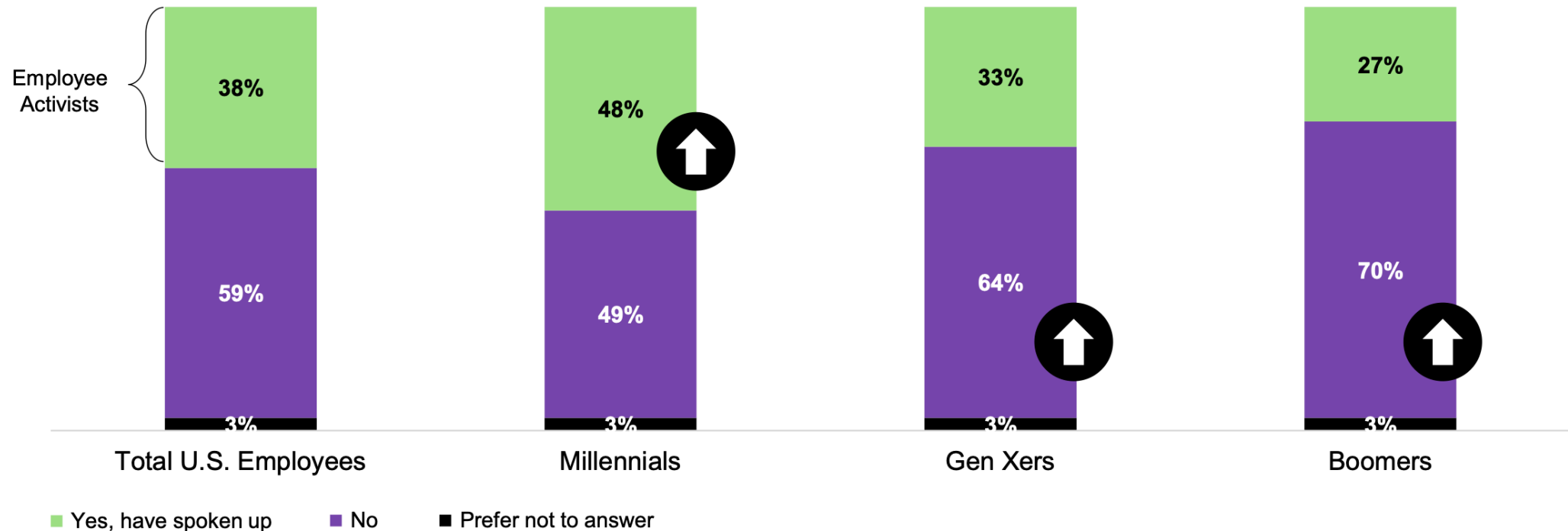
Consumer activism



Four in 10 employees are Employee Activists.

38% of American employees have spoken up to support or criticize their employer's actions over a controversial issue that affects society. Millennials are significantly more likely to be Employee Activists than older generations (48% vs. 33% of Gen Xers and 27% of Boomers).

Have spoken up to support or criticize employer's actions over a controversial issue that affects society



Ripe Audience for the Reptile Theory

“But whoever’s in charge of right and wrong in this world made the right choice. Because I’ve watched all of you through this trial. How closely you paid attention. How you’ve been taking notes. Your concern day after day about a total stranger. That’s not the kind of thing people do all the time. Something put you here for a reason”



Activist Jurors

The company also alleged that during closing arguments, Johnson's attorney sought to "inflammate prejudice" against Monsanto. Brent Wisner of [Baum Hedlund Aristei & Goldman PC](#) said if jurors found in Johnson's favor, they could "change the world" and be "part of history." Wisner also warned that if they didn't award significant damages, "champagne corks [would] pop" in the Monsanto boardroom.

But after Howard and nine other former jurors attended an October post-trial hearing where Judge Bolanos seemed poised to nix \$250 million in punitive damages, he was "a little devastated." So he sent the state court judge an email.

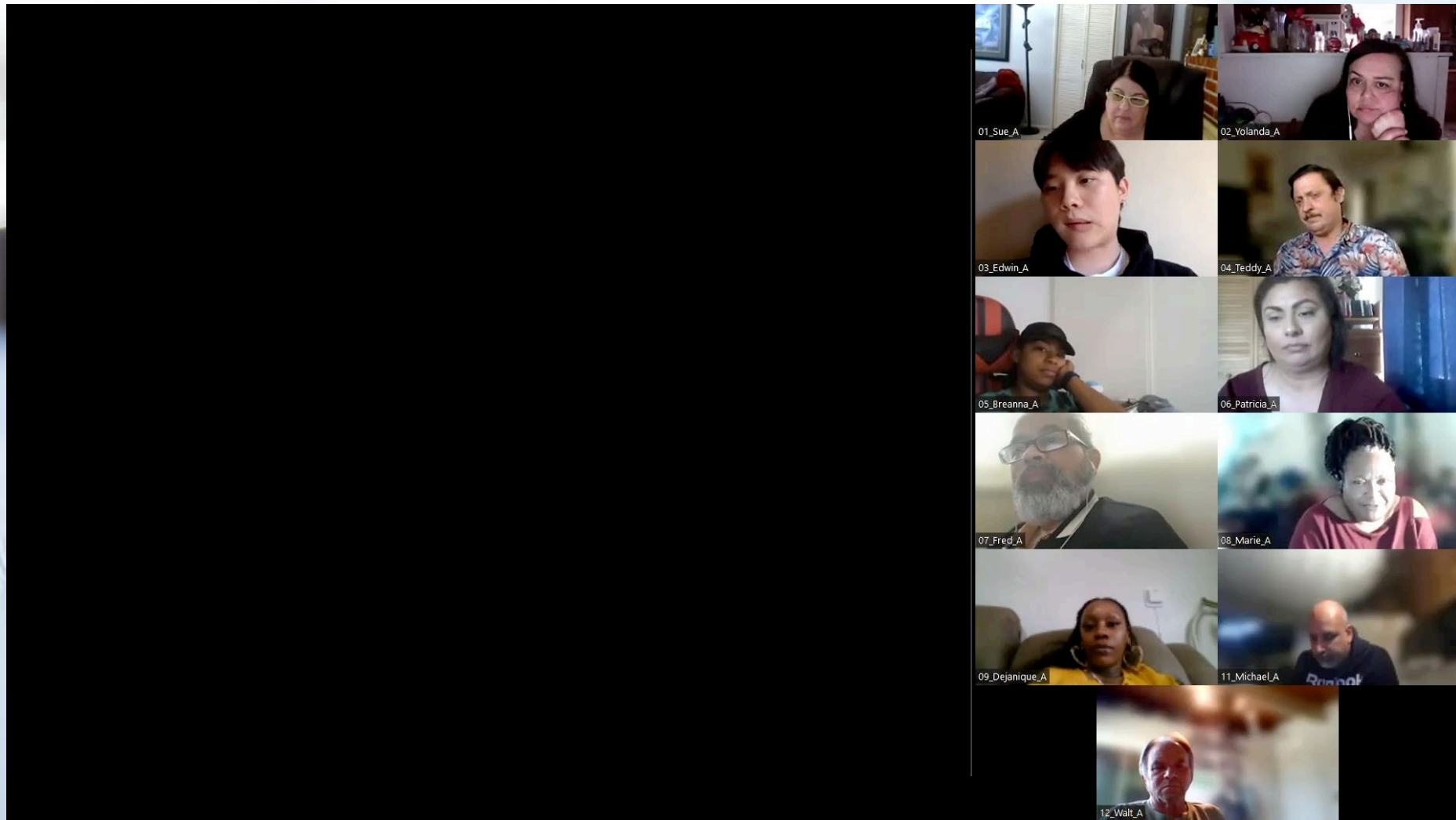
"I felt this was my civic duty, to speak up," he told Law360. "But, boy, it's frightening hitting that send button sometimes."

Now Howard blogs for an anti-Roundup website called "Glyphosate Girl," covering other litigation. He recently wrote that Monsanto "is literally using an entire planet as a guinea pig for a fraudulently tested weedkiller."

Case-in-Point

**Perceived mistreatment of a plaintiff:
Angry jurors are motivated to award damages**

Peek into the jury room



Recommendations

- Distinguish what plaintiff did well and where plaintiff had issues
- Allow that different supervisors are more or less hands on
- Opportunities and chances to improve
- Personality vs discrimination

Case-in-Point

**Perceived mistreatment of a plaintiff:
Angry jurors are motivated to award damages**

Peek into the jury room

She was coached and robotic

They didn't investigate, didn't involve psychologist, never spoke to parents, never spoke to her

She didn't do herself any favors with her testimony

People complained—they ignored it

She hid it from everyone

School really screwed up

She liked the attention

She should have been protected

1/3 of jurors awarded \$10M or more

Recommendations

- Hindsight, wish more was known sooner
- Did warn teacher about how things could look
- Did force teacher to resign
- Affirmatively, plaintiff had a strong support network
- Affirmatively, no one in the support network knew

Case-in-Point

**Anger at defendants plus concern for the plaintiff
Motivates high damages**

Peek into the jury room



Recommendations

- Acknowledge and empathize
- Apologize that this happened to plaintiff
- Demonstrate outreach to the community
- Anchor damages; psychological counseling

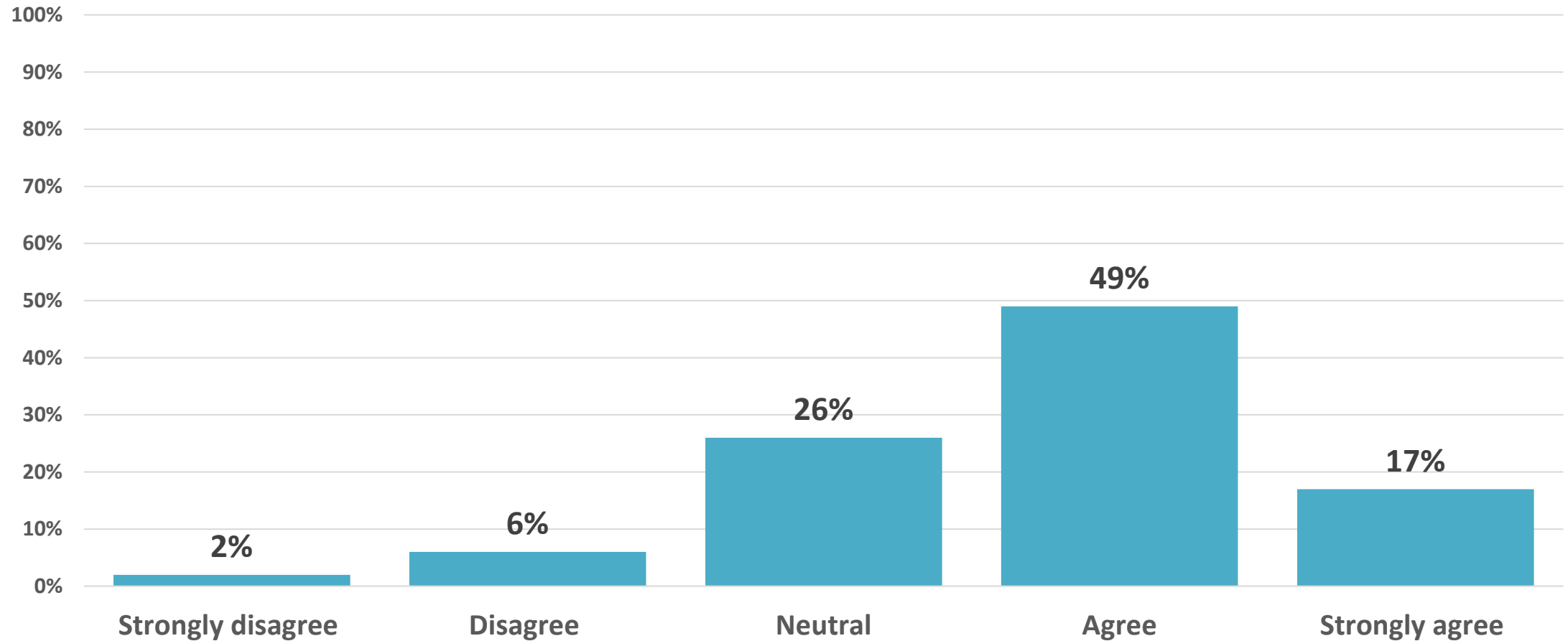


IT'S TIME TO TALK ABOUT RACE

RACE IS ON JURORS' MINDS

- 1,623% increase in the use of the word “systemic racism” in 2020; an Oxford word of the year
- Pew survey in June, 2020 found that nearly 70% of those polled had a conversation about race in the past month
- Pew reports 55% support BLM movement

People can engage in discrimination against certain racial/ethnic groups without intending to.



Plaintiff Attorneys



Reptile and other aggressive tactics



High anchors



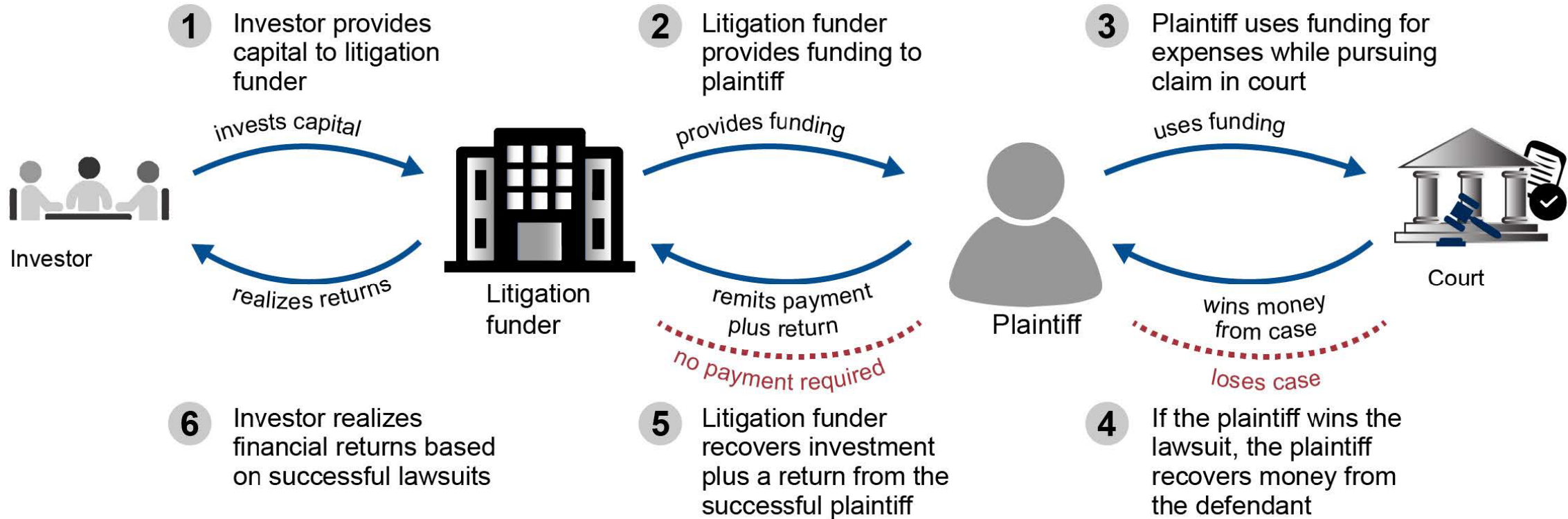
Litigation funding



Hopes of a big verdict



Advertising big verdicts



Source: GAO. | GAO-23-105210

RECENT RESULT

\$50 MILLION

AUSTIN • CORPUS CHRISTI • SAN ANTONIO



THOMAS J HENRY

TRUCKING ACCIDENT
BRAIN INJURY

\$27 MILLION
NET TO CLIENT

ATTORNEY'S FEES:
\$21,000,000
EXPENSES: \$1,126,381

The background of the image is a dense, overlapping collage of colorful sticky notes. The colors include shades of blue, green, pink, and yellow. Each sticky note has a large, black, hand-drawn question mark on it. The notes are scattered across the entire frame, creating a textured and busy visual effect.

NOW WHAT

AVOIDING NUCLEAR VERDICTS

Find and remove activist jurors

Identify victims in the pool

Diverse trial teams/Attorneys who are agile on issues of race

Motions and advisements to the court of plaintiff tactics

Facts not attacks on plaintiffs

Empower plaintiffs

Develop an affirmative case narrative (rather than responsive/defensive)

Prepare witnesses for depositions and trial

Offer an anchor to something meaningful

Assertive defense counsel

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