

# The New Normal: Nuclear Verdicts and Juries in a COVID and Post-COVID World

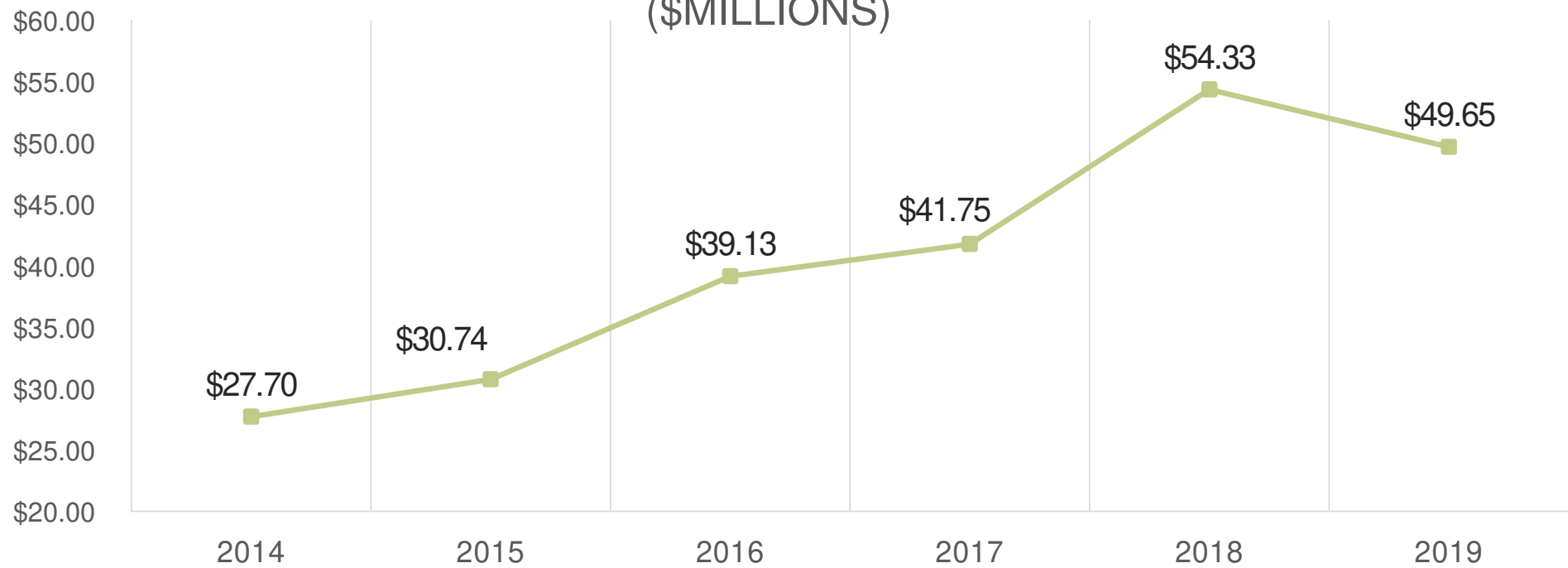
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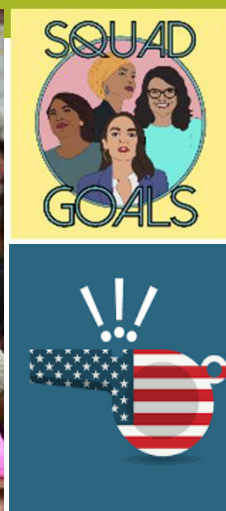
May 6, 2021



## MEDIAN TOP 50 U.S. VERDICTS (\$MILLIONS)







We use **facebook** to schedule the protests,



**twitter** to Coordinate,  
& **You Tube** to Tell the world.  
— Unknown Demonstrator



**Don't underestimate the power of a #Hashtag**





## JURY EXPERTS **UNCENSORED:** JURY PERSUASION, FRAMING & THEMES



**ARASH HOMAMPOUR**  
[HOMAMPOUR LAW FIRM]

2010 CAALA Trial Lawyer of the Year  
12 8-figure, 15 7-figure verdicts



**HARRY PLOTKIN**  
[JURY CONSULTANT]

Picked 35 8-figure verdicts  
Recipient of "Best Dad" mug



**"We must never stop  
putting more tools in our  
toolboxes and  
sharpening and cleaning  
the tools we already  
have."**

**Nick Rowley**

**Running With The Bulls**

## TRIAL BY HUMAN

Nicholas Rowley and Steven Halteman



DAVID BALL DON KEENAN



**RESEARCH TEAM**  
DAVID BALL  
JAMES E. FITZGERALD  
GARY C. JOHNSON  
DON KEENAN

## REPTILE

THE 2009 MANUAL OF  
THE PLAINTIFF'S REVOLUTION

8 DISC AUDIO BOOK

## POLARIZING THE CASE

Exposing & Defeating the Malingering Myth

RICK FRIEDMAN

## DON'T EAT THE BRUISES

How  
to Foil  
Their Plans  
to Spoil  
Your Case

Keith Mitnik



## VOIR DIRE



## AND OPENING STATEMENT

Nicholas Rowley, Courtney Rowley,  
and Wendy Saxon



## TRIAL LAWYER MARK LANIER

MEET THE LEGEND IN PERSON AS HE  
PRESENTS "FOLLOW YOUR CALLING: JURY  
LAW AS SERVICE TO SOCIETY"

Presented by Drake ADD. Free Events at  
[www.drakeadd.com/events](http://www.drakeadd.com/events)

Co-sponsors: Drake Legal Group, LLC, 2400  
University Ave., Des Moines, Iowa 50319

# Negligent Security Case: Placing Fault on the Criminal Is “Raping Plaintiff Again”



# Product Case: Plaintiff Should Collect If There Is **Any** Danger





# Massive Damages Are the Only Way to Influence Corporate Behavior



# How Does COVID Impact Jury Trials?

**N = 26,000+**



# Attitudes, Experiences and Activism that Drive Nuclear Verdicts Persist

*BUT*

## Jury Composition Benefits Corporate Defendants

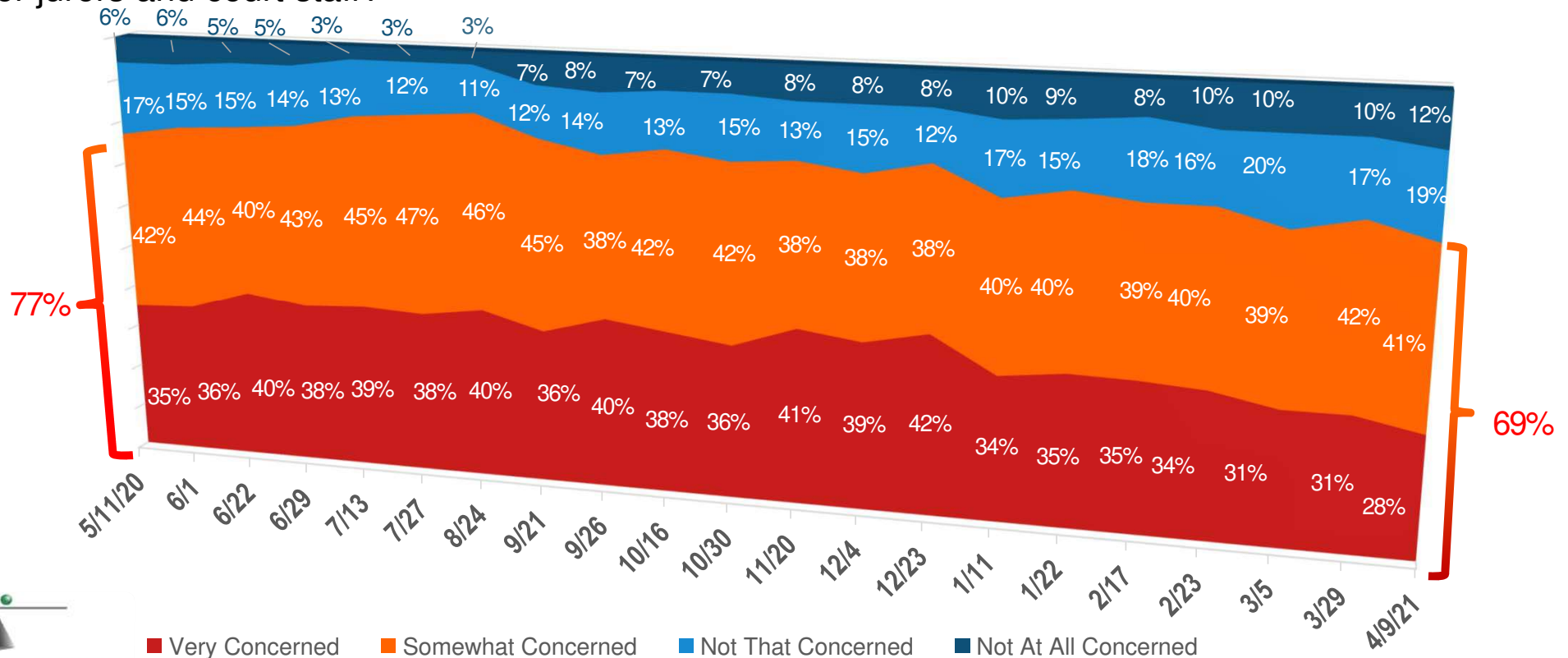


# **Vast Majority of Respondents Concerned about Jury Duty – and Many Hesitant or Unwilling to Serve**



# Persistent, Widespread Concern about Proximity to Other Jurors and Court Staff

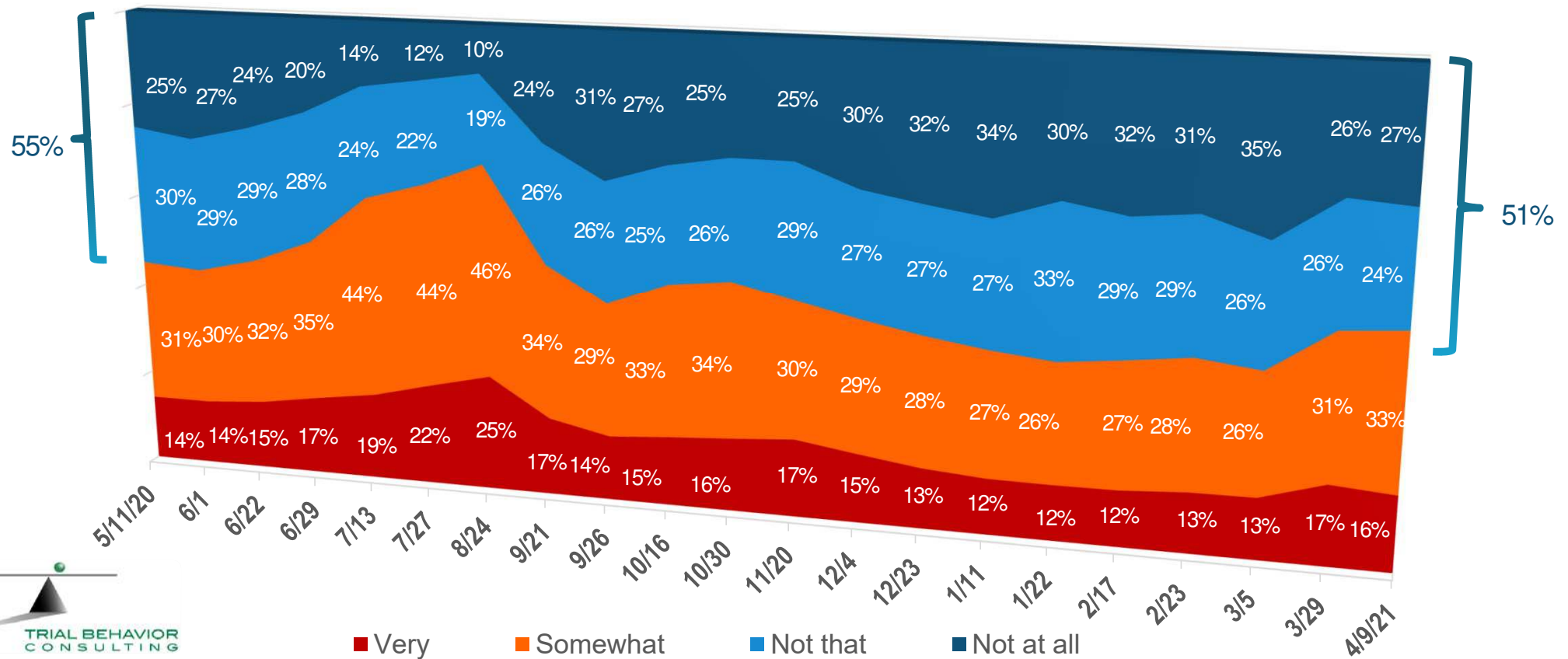
If called to serve as a juror later this year, how concerned will you be about being in close proximity to other jurors and court staff?





# Willingness to Serve Has Rebounded Somewhat

How likely are you to ignore a jury summons because of the coronavirus outbreak?

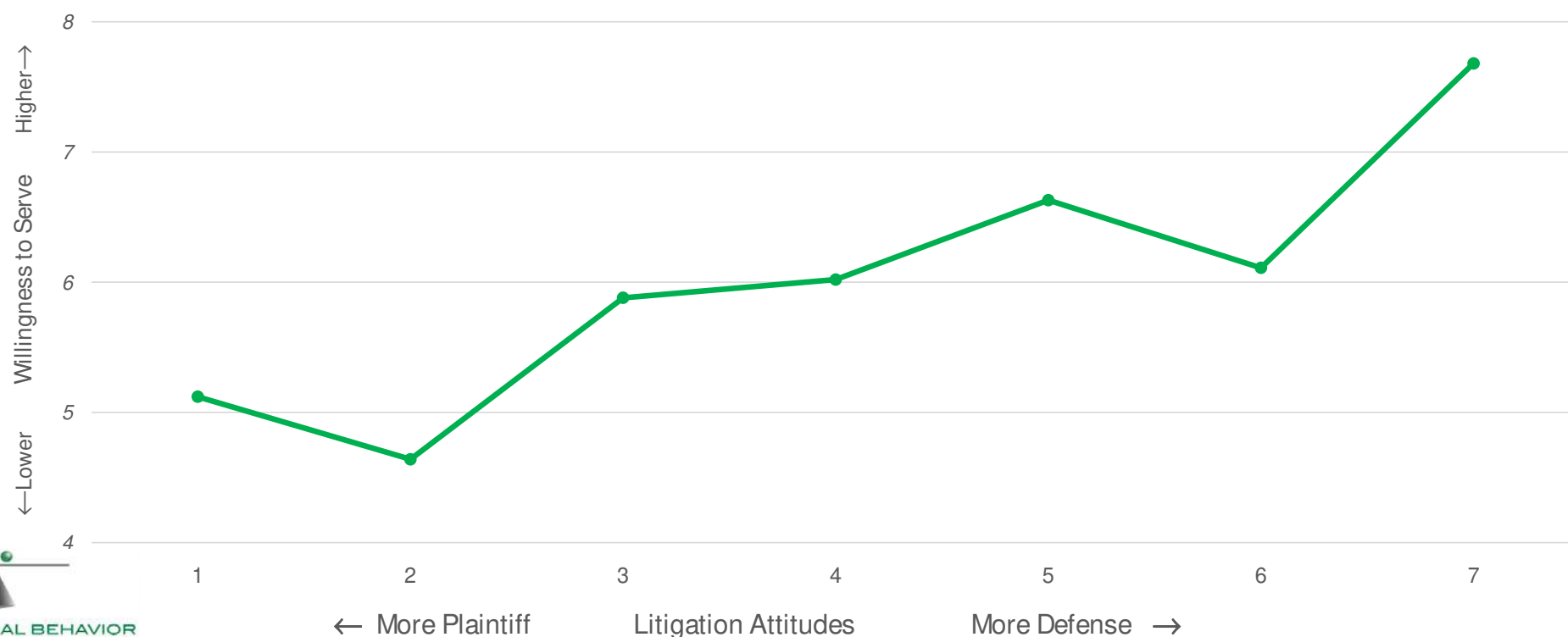


# What Type Of Juror is Willing to Serve?



## Notable Relationship Between Defense-Oriented Litigation Attitudes and Willingness to Serve

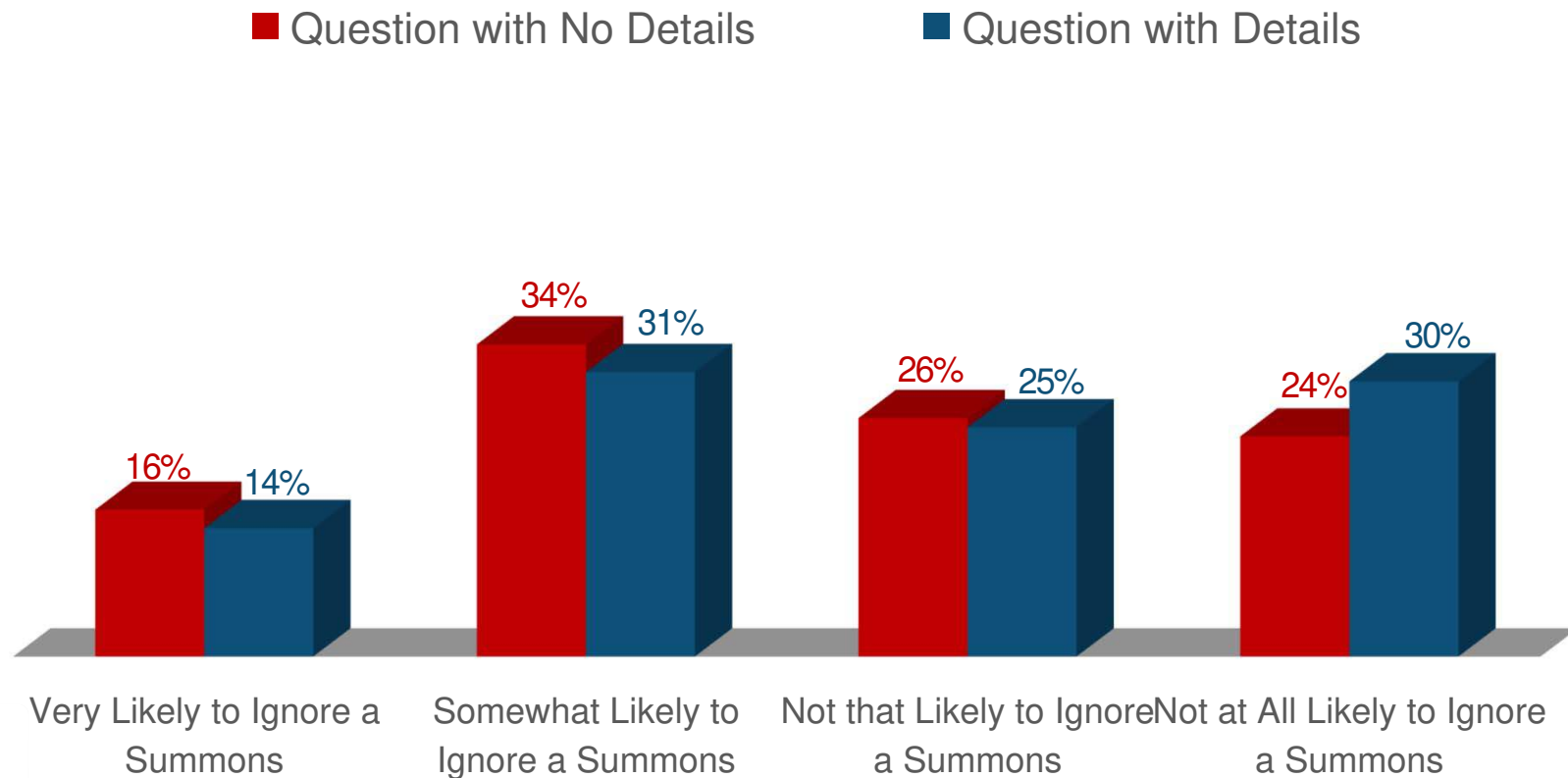
*Composite Data from Multiple Questions Regarding Lawsuit Attitudes and Willingness to Serve*





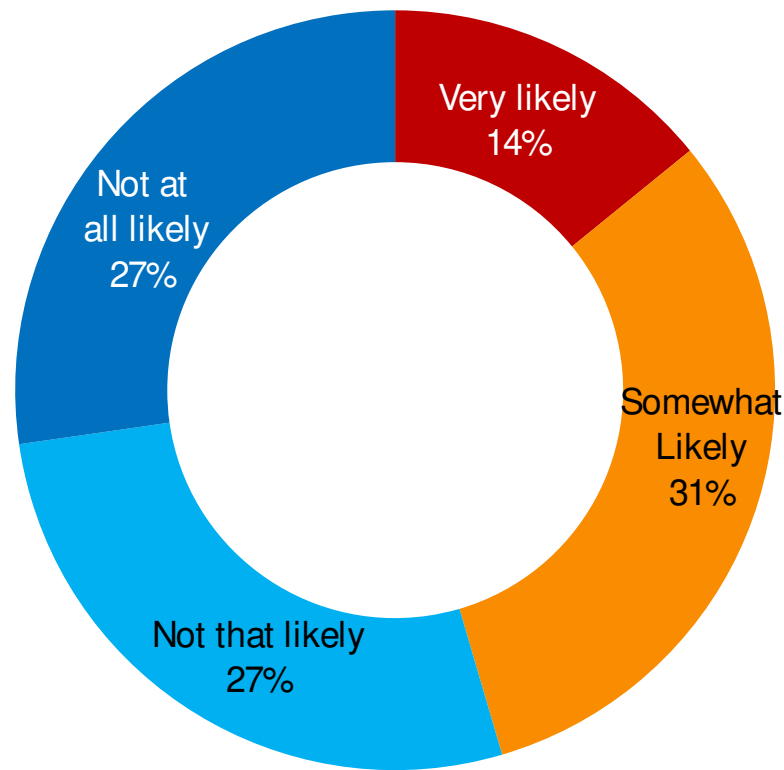


## More Information = No Substantive Increase in Willingness to Serve



## Almost Half Likely to Avoid Jury Duty After Vaccines Are Widely Available

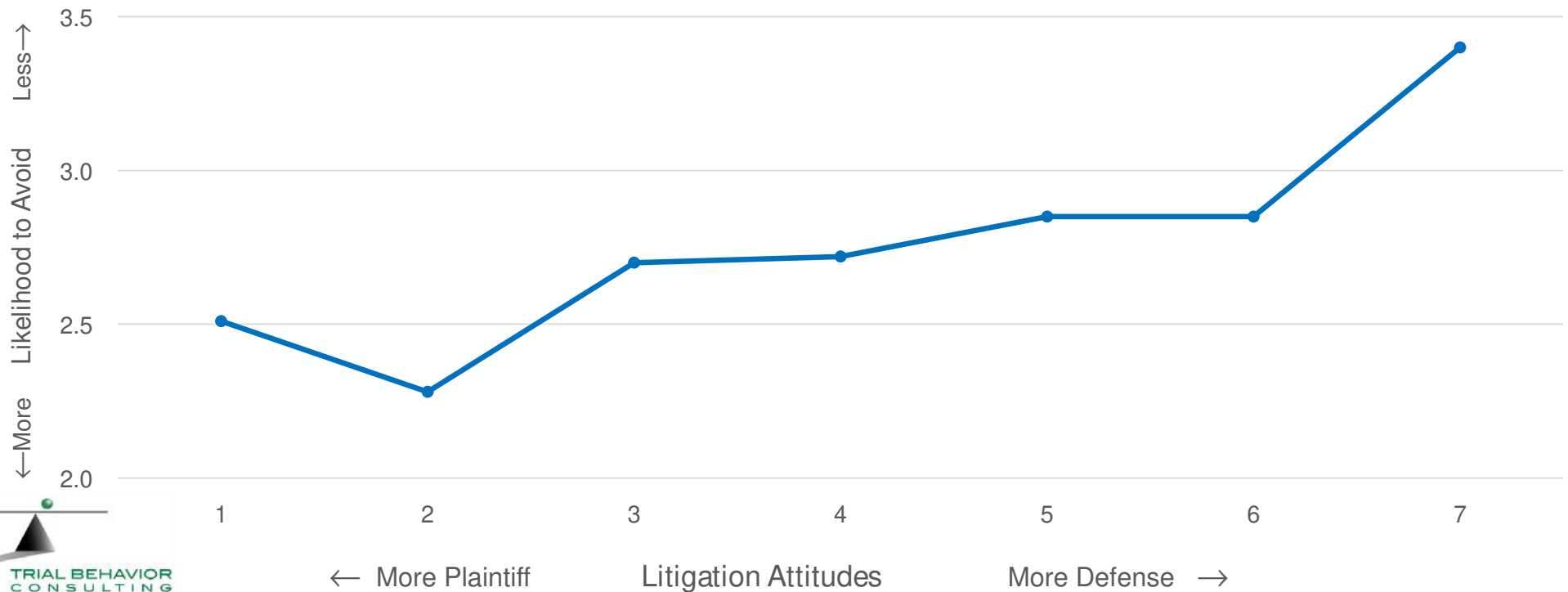
If you were called for jury duty shortly after a COVID-19 vaccine becomes widely available, how likely are you to avoid jury duty because of the risk of Coronavirus?





# Relationship Between Defense-Oriented Litigation Attitudes and Avoiding Jury Service Post-Vaccines

*Composite Data Regarding Lawsuit Attitudes vs.  
Likelihood to Avoid Jury Duty Once Vaccines Widely Available*



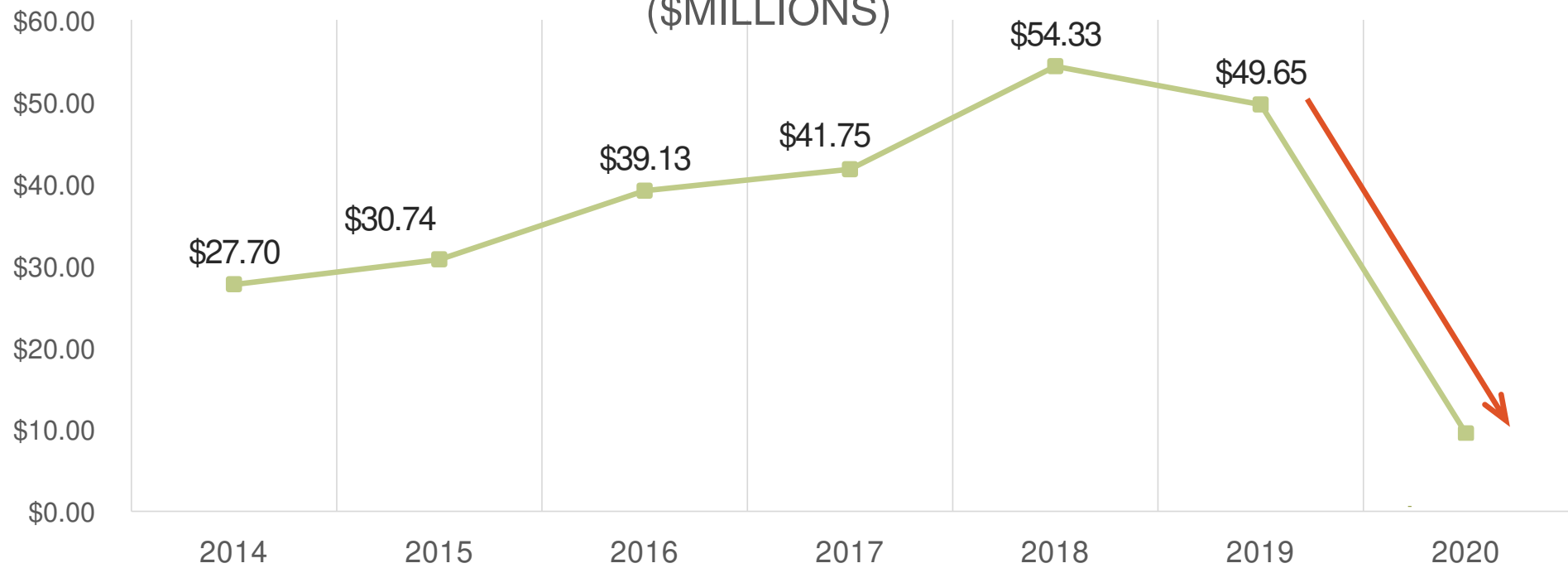
TRIAL BEHAVIOR  
CONSULTING

# Evidence Points to In-Person Trials Benefitting Defendants

- In-person mock trial = defense-oriented panel
- Verdicts in in person trials during COVID-19 have generally been defense-oriented



## MEDIAN TOP 50 U.S. VERDICTS (\$MILLIONS)





Online Trial	Hybrid Trial	In-Person Trial
<ul style="list-style-type: none"> <li>• Varying technical limitations of jurors               <ul style="list-style-type: none"> <li>- Age</li> <li>- Income</li> <li>- Disabilities</li> </ul> </li> <li>• Limited assessment of reaction, body language &amp; non-verbal affect</li> <li>• Potential to evaluate jurors based on home affects &amp; additional insights</li> <li>• “Snapshot” into their life</li> <li>• Varying views on quality of juror’s responses &amp; candidness</li> <li>• Difficulty for judge to be alerted to or deter inappropriate conduct</li> <li>• No platform is perfect – expect technical hiccups</li> </ul>	<ul style="list-style-type: none"> <li>• Initial screening of prospective jurors will take place online</li> <li>• Voir dire conducted in smaller groups person – in person off-site or via Zoom</li> <li>• Case presented live in-person to a panel or jurors</li> <li>• May take place in 2 courtrooms to follow social distancing               <ul style="list-style-type: none"> <li>- Judge, attorneys and litigants in one room</li> <li>- Jurors following by video link in another</li> </ul> </li> <li>• Some states using the hybrid method: Washington, Texas, New Jersey, Florida, Michigan</li> </ul>	<ul style="list-style-type: none"> <li>• Social distancing measures will be taken</li> <li>• Plexi-glass barriers around witness stand</li> <li>• Larger courtrooms, multiple courtrooms or alternative space may be needed during jury selection               <ul style="list-style-type: none"> <li>- i.e. Vegas Convention Center</li> </ul> </li> <li>• Masks worn by all in courtroom               <ul style="list-style-type: none"> <li>- Difficult to assess juror's facial expression and emotion</li> <li>- Difficult to assess and establish witness credibility</li> <li>- Jurors likely to be less talkative</li> </ul> </li> <li>• More jurors dismissed for hardship</li> </ul>

# Plaintiff's Bar is Currently Maneuvering to Identify and Excuse Defense Jurors

- **During COVID-19, some people have been more concerned with the economy, while others have been more concerned with the health and safety of people. Which is a greater concern for you?**
  - ☐ The economy
  - ☐ Health and safety
- **Which of these two statements best reflects your views regarding the coronavirus (COVID-19)?**
  - ☐ Too many people have blown this out of proportion
  - ☐ Not enough people are taking this seriously enough
- **Do you agree or disagree with local government ordinances requiring its citizens to wear masks?**
  - ☐ Agree strongly
  - ☐ Agree somewhat
  - ☐ Disagree somewhat
  - ☐ Disagree strongly
  - ☐ No opinion

# Plaintiff's Bar is Currently Maneuvering toward Bench Trials

**Brian Panish: January 2021 Bench Trial**

**\$23.8M verdict**

SANTA ANA, CA THURSDAY, MARCH 25, 2021  
DEPARTMENT CX101 HON. CRAIG GRIFFIN, JUDGE  
APPEARANCES:

REPRESENTING PLAINTIFF:

DEBORAH S. CHANG, ATTORNEY AT LAW

ZOE LITTLEPAGE, ATTORNEY AT LAW

CHARLA ALDOUS, ATTORNEY AT LAW

LISA BLUE, ATTORNEY AT LAW

CANDICE KLEIN, ATTORNEY AT LAW

SARAH S. KIM, ATTORNEY AT LAW

THE COURT: On the record.

MS. CHANG: Yes, your Honor. Just on the  
record, Plaintiffs waive the jury trial in this  
case.

THE COURT: You're waiving jury trial?

MS. CHANG: Yes.

THE COURT: Oh.



## Capitalize on Changes in the Jury Pool

- Take a hard line in mediation
- Embrace discovery deadlines
- Push for in-person trial dates sooner rather than later
- Do not agree to bench trials



# Preparing, not Pausing During the Pandemic





# Take Advantage of Preparing, Not Pausing

- Conduct virtual jury research – not in-person – to ensure pool not too defense-oriented
- Consider survey research to take the temperature of prospective jurors on key issues
- Facilitate sharing of materials and information between trial teams



# Capitalize on the Pivot to Remote Depositions

- Push for remote depositions with your key witnesses
  - Plaintiff counsel has a more difficult time bullying or cajoling witnesses in a remote depo – if the witness is well-prepared
- Conduct remote witness prep so you and the witness are comfortable and ready with the unusual format
  - Prep must focus extensively on avoiding the Reptile traps set by plaintiff counsel



# Don't Lose Your Case in Jury Selection

- Jury selection strategy must recognize sympathy, fear, and the threat of current polarization
- JQs are a valuable tool in cases involving sensitive political or personal issues
- Online juror research is essential to probe values and ideals that are not revealed by questionnaires or voir dire





- ✓ Age: 33
- ✓ Masters in Computer Science
- ✓ Software Engineer at Square
- ✓ Married to Former Business Data Analyst at AmTrust



## Calls himself a “leftist radical”

We're back in the proverbial desert, folks. It's time for us to start organizing, mobilizing, and building a progressive movement from the ground up. **They don't call it "grassroots" for nothing.** Trump is going to fail spectacularly, we're well aware. And yes, we're going to have to deal with all the hurt that's causing to real people, right now, in front of us. But we need to be working on the next 50-State Strategy.

**The rich have successfully driven a new wedge between us.** Those wedges used to be abortions, guns, God, and gays. This year the wedge was immigration and terrorism.

What we can't forget is that the true natural fault line is between the haves and the have-nots, the rich and poor. It comes down to class.

**And when the lower classes unite, we win. We just need to convince everyone that our struggle and their struggle are one and the same. Time to organize.**

Georgia folks? Let's turn Georgia blue in 2018. And let's not just hand it over to the Democratic party for its own sake, let's hold the Democrats' feet to the fire too so they really represent the interests of the vast majority of the population. Organize.



# Questions?



# THANK YOU

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