

Bomb Squad Boot Camp

Navigating Nuclear Payouts



Discussion Points

Trends

- Rise of Nuclear Payouts
- Statistics

Contributing Factors

- Social Trends
- Plaintiff Tactics
- Defendants Response to Plaintiffs' Tactics

Solutions

- Tips and Tricks Approaching Trial (to level set the case value)
- Tips and Tricks for Trial



WARNING

VIEWER DISCRETION IS ADVISED.

This Presentation:

- Contains real psychological perspectives
- Includes self deprecating humor
- Rewards participation!

Why Nuclear Payouts?



Verdicts

Settlements



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For the First F-Bomb Award--

What was your highest verdict?



What was your highest verdict?

The F Bomb
Goes to.....



Trends

- Rise of Nuclear Payouts
- Statistics



TRENDS:

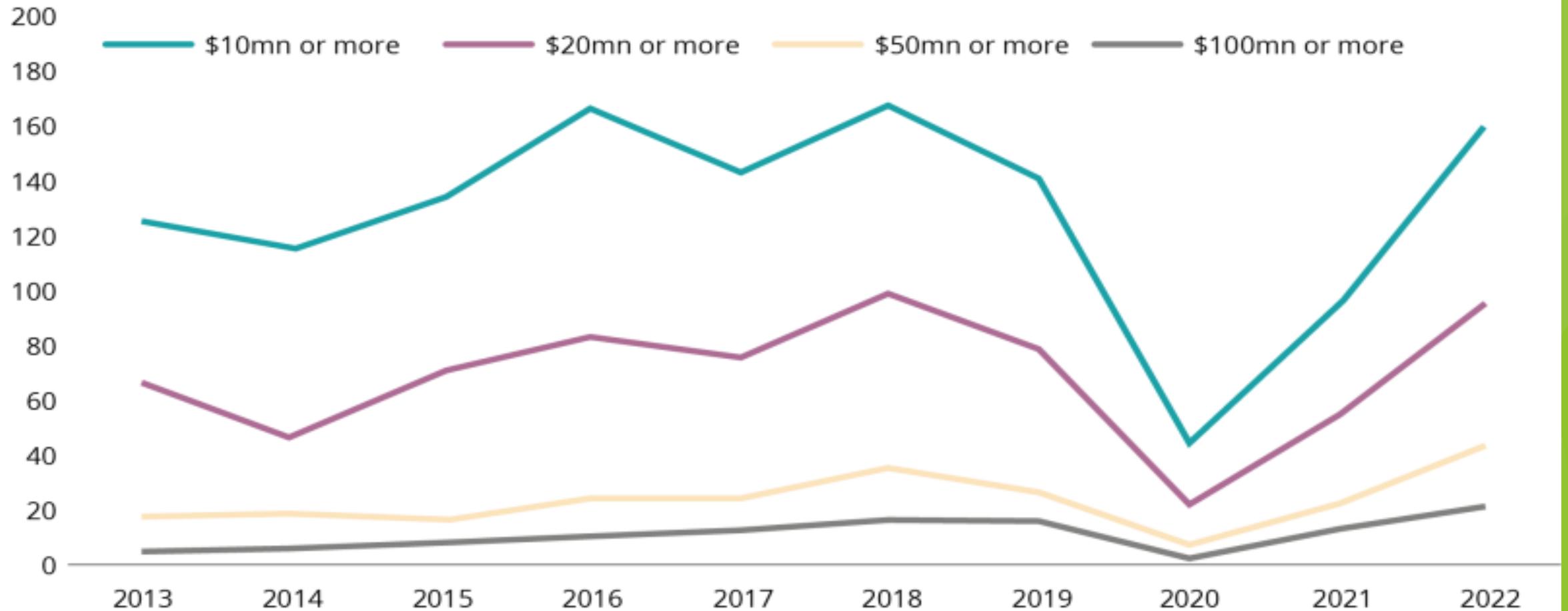
The Rise of Nuclear Payouts

- ▶ Defined: \$10M or more (or just disproportionate, like a \$1M verdict on a case valued at \$50k.)
 - ▶ In 2023 was defined as over \$10M
- ▶ Certain states see more nuclear payouts
- ▶ Certain case types see more nuclear payouts

Verdicts on post-pandemic tear

Number of reported nuclear verdicts

2013-2022



Source: US Chamber of Commerce Institute for Legal Reform

2023:



- 15-year high
- Up 23% from 2022
- 89 “nuclear” cases (over \$10 M)
- 27 “thermonuclear” cases (over \$100 M)



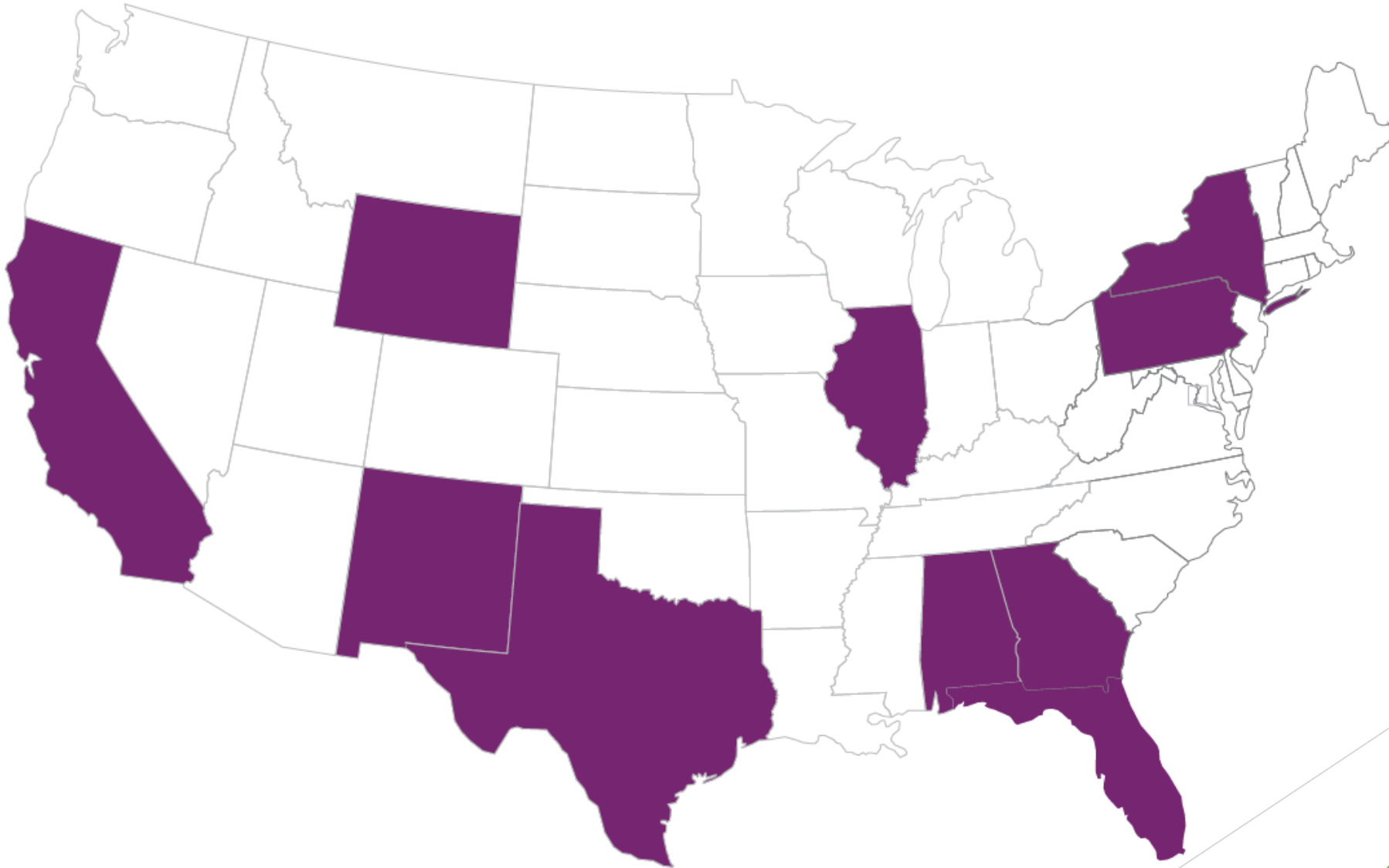
2023:



- \$14.5 Billion
in nuclear
verdicts



Top 10 States for Nuclear Verdicts



Top 10 States for Nuclear Verdicts



VOLATILE CASE TYPES:

Historically

- ▶ Trucking Cases
- ▶ Med Mal
- ▶ Products liability
- ▶ Police/government

Recently

- ▶ Products liability
 - ▶ Auto accidents
 - ▶ Medical liability
 - ▶ Premises liability
-
- ▶ But any case is a candidate

Contributing Factors

- Social Trends
- Plaintiff Tactics
- Defendants Response to Plaintiff's Tactics

Causes of Nuclear Payouts:

- ▶ Societal trends
- ▶ Matters within Plaintiffs' control
- ▶ Matters within Defendants' control



Why are Non-
Economic
Damages Fueling
Nuclear Payouts?

Amorphous

Subjectivity invites
manipulation

Anchors- intentional
or tangential

Sending a message



Societal Trends

- ▶ Social Inflation
- ▶ Safety Concerns
- ▶ Bias and Anger
- ▶ Waning Trust
- ▶ Generational Differences or Public Sentiment

Social Inflation

- ▶ Anchoring at society level
- ▶ Greater exposure to large numbers
 - ▶ Athlete contracts
 - ▶ Fines and pay
- ▶ Increased comfort with large numbers
- ▶ Less "sticker shock"





"Safetyist" Attitudes

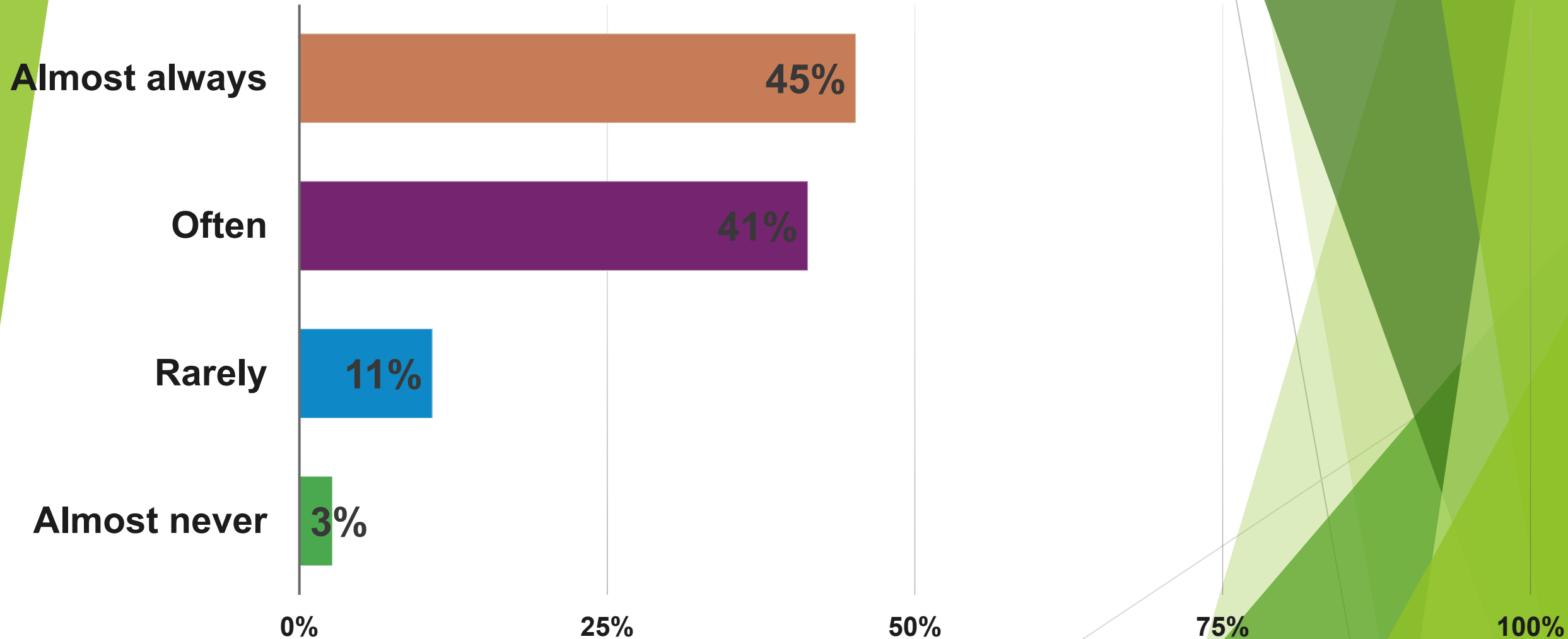
- ▶ Low to no risk tolerance
- ▶ Elevated expectations towards safety
- ▶ Characteristics:
 - ▶ Worse-case scenario
 - ▶ Emphasis on feelings
 - ▶ Us v. Them world view



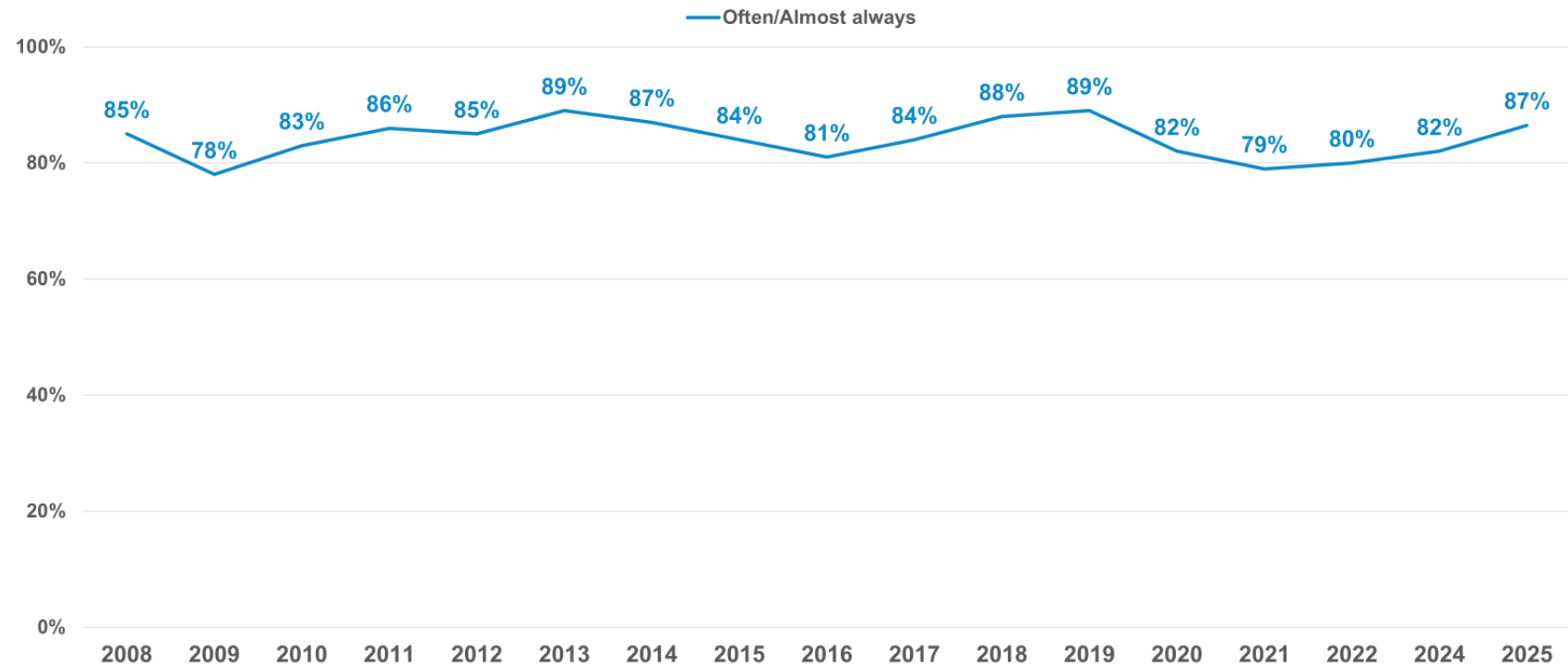
Anti-Corporate Attitudes

- ▶ Most hold them
- ▶ Stable over time
- ▶ But more pronounced overtime

A large corporation would lie _____ if it could benefit financially from doing so?

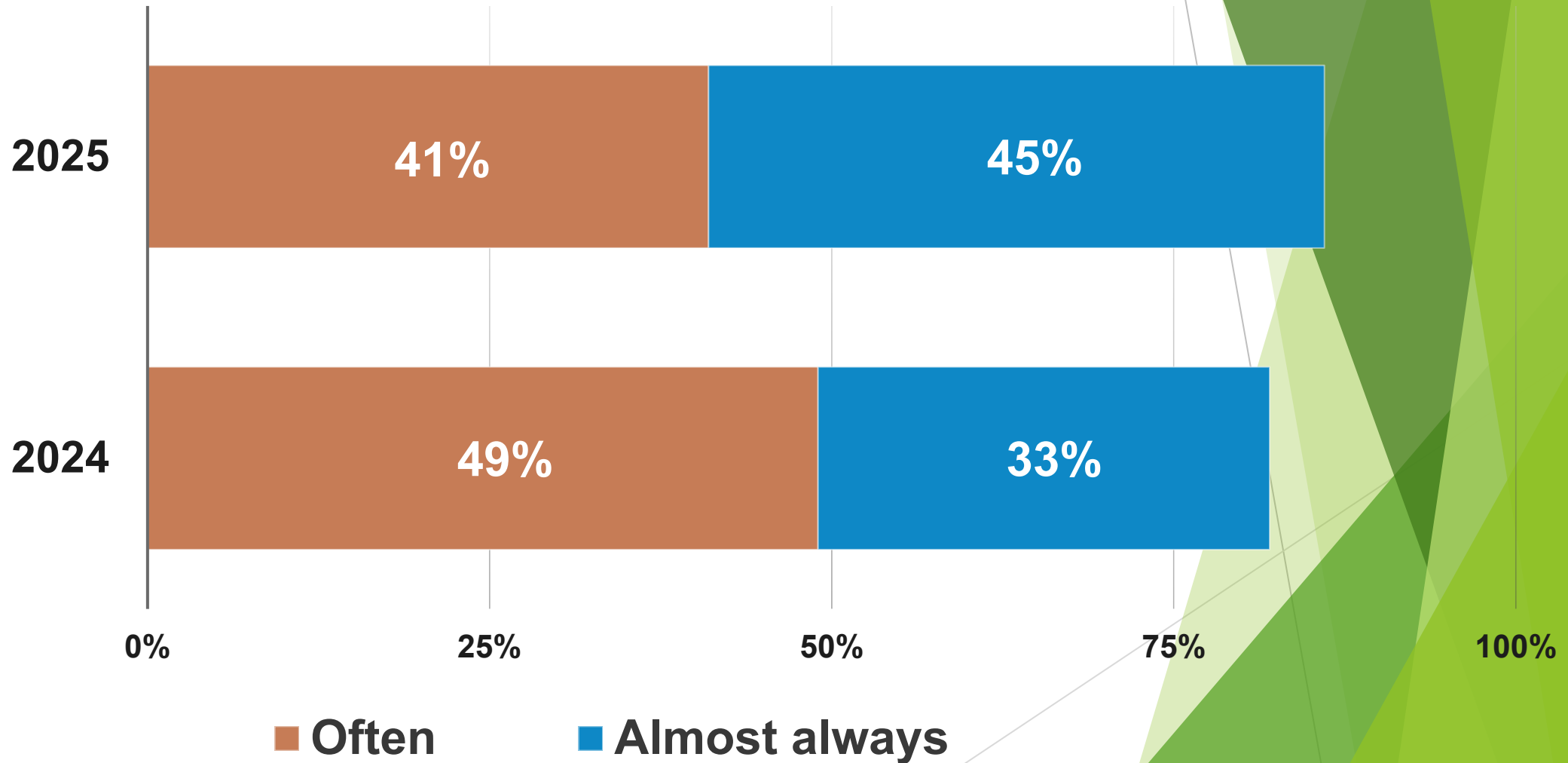


How often do you believe a large corporation would lie if it could benefit financially from doing so?



Source: Persuasion Strategies, National Juror Survey 2008 - 2025 N = 8,066

How often do you believe a large corporation would lie if it could benefit financially from doing so?

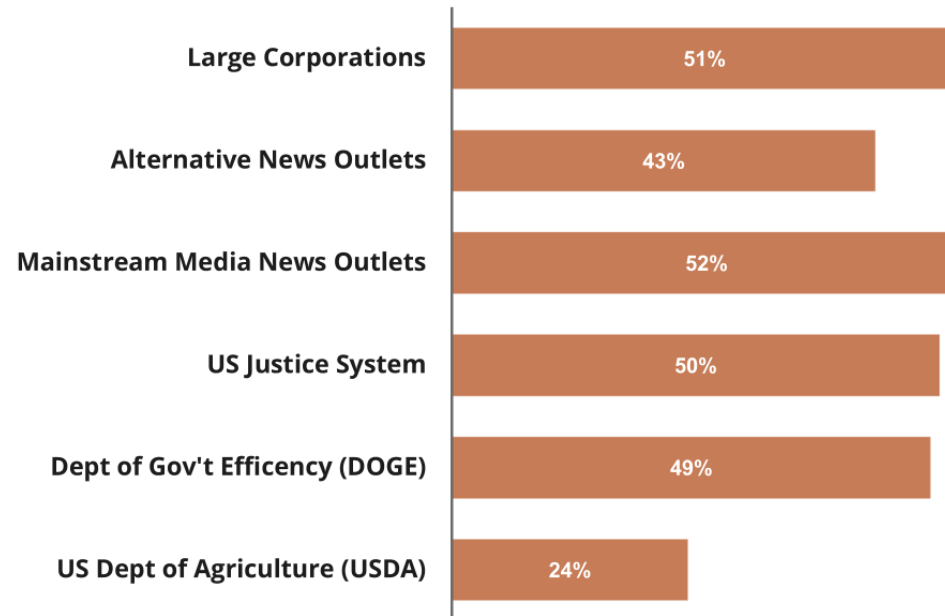




Growing Distrust in Institutions

- ▶ Fake News era,
fueled by:
 - ▶ Misinformation
 - ▶ Conflicting
information
 - ▶ Echo chamber

Percentage that Distrust:



Source: Persuasion Strategies, National Juror Survey 2025 N = 591



Generational

► Differences

Caution - the individual matters more

Matters Within Plaintiffs' Control:

These Include:

- Reptile tactics
- Damage Anchoring
- Testing and prep
- Communication
- Plaintiff Advertising
- Third Party Funding
- Consolidation

Plaintiffs' Advertising



- ▶ Misleading Television, Social Media, Billboards, Radio Ads
 - ▶ Focus on large verdicts and settlement
 - ▶ Focus on the total amount of money lawyers have obtained - i.e. received verdicts and settlements totaling hundreds of millions or billions of dollars
 - ▶ Create false impression that nuclear amounts are reasonable and every client should expect to receive astronomical payouts
 - ▶ Misleading because they disclose if courts reduced verdicts, or overturned on appeal
- ▶ Sponsoring Sports Teams - the official lawyer of the (fill in your professional or college team)
- ▶ Ads are not solely aimed at potential clients, they desensitizes potential jurors

Third Party Funding on the Rise

- ▶ Outside investors see lawsuits as an investment
 - ▶ Many of these "investors" see funding litigation as a lucrative opportunity that is not dependent on economic or market conditions.
 - ▶ In 2023, data showed that major litigation funders had invested \$15.2 billion in U.S. litigation
 - ▶ Studies show that amount could reach \$31 billion by 2028

Drawback to Consolidation

- ▶ Evidence used to prove one Plaintiff's claims may mask the weakness of another
 - ▶ i.e. One Plaintiff has significant injury/damages vs. Other Plaintiff minor damages
- ▶ Easier to hand over large amount of money to a group of people as opposed to one
- ▶ Allows for a jury to unjustly assume if multiple plaintiffs are making the same claim, the allegations must be true
- ▶ Cumulative evidence from multiple plaintiffs may generate greater jury animosity against defendant

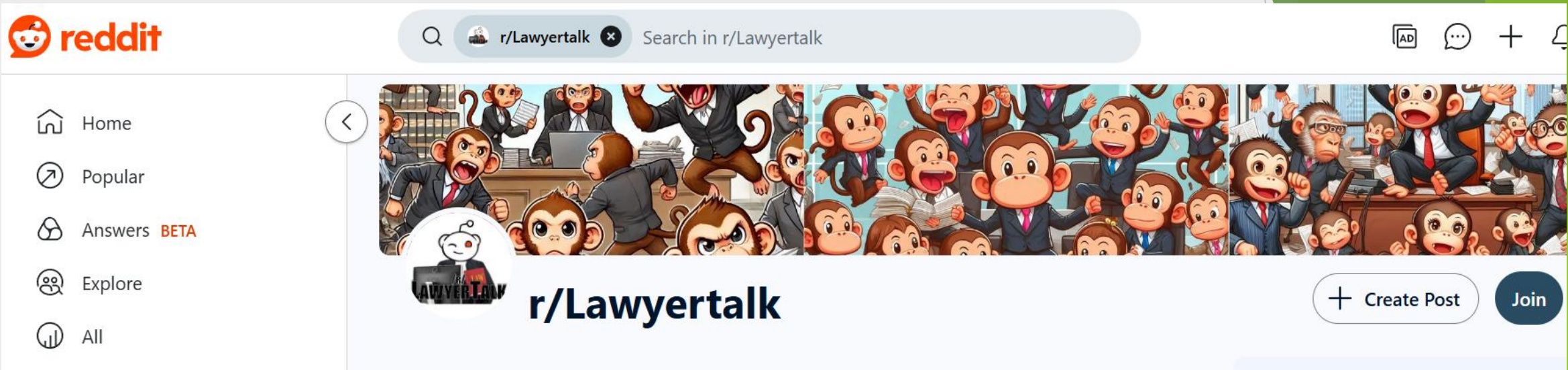
Matters within Defendants' Control:

These Include:

- ▶ Picking the wrong battle
- ▶ Poor Witness performance
- ▶ Poor Preparation
- ▶ Lack of Collaboration amongst defense bar
- ▶ Lack of Accountability

We will talk about these more later





Survey:

What are the barriers you encounter when trying to control the controllables?



What are the barriers you encounter when trying to control the controllables?

Solutions

- Tips and Tricks Approaching Trial (to level set the case value)
- Tips and Tricks for Trial

Tips and Tricks Throughout Litigation

- ▶ Day 1: Storytelling, sprinkled with data, science, technology and psychology
- ▶ Controlling the controllables
- ▶ Turn Down Tunnel Vision - Solicit Others' Perspectives
- ▶ Being Authentically You

Day 1: Storytelling, sprinkled with data, science, technology and psychology

From Day 1, start formulating the theme of your story.

- Pitfalls include:
 - Developing story too late
 - Letting your story get lost in the legal issues
- All of your witnesses help write your story
- Your theme must be rooted in reasonableness

Day 1: Storytelling, sprinkled with data, science, technology and psychology

Battle Psychology with Psychology

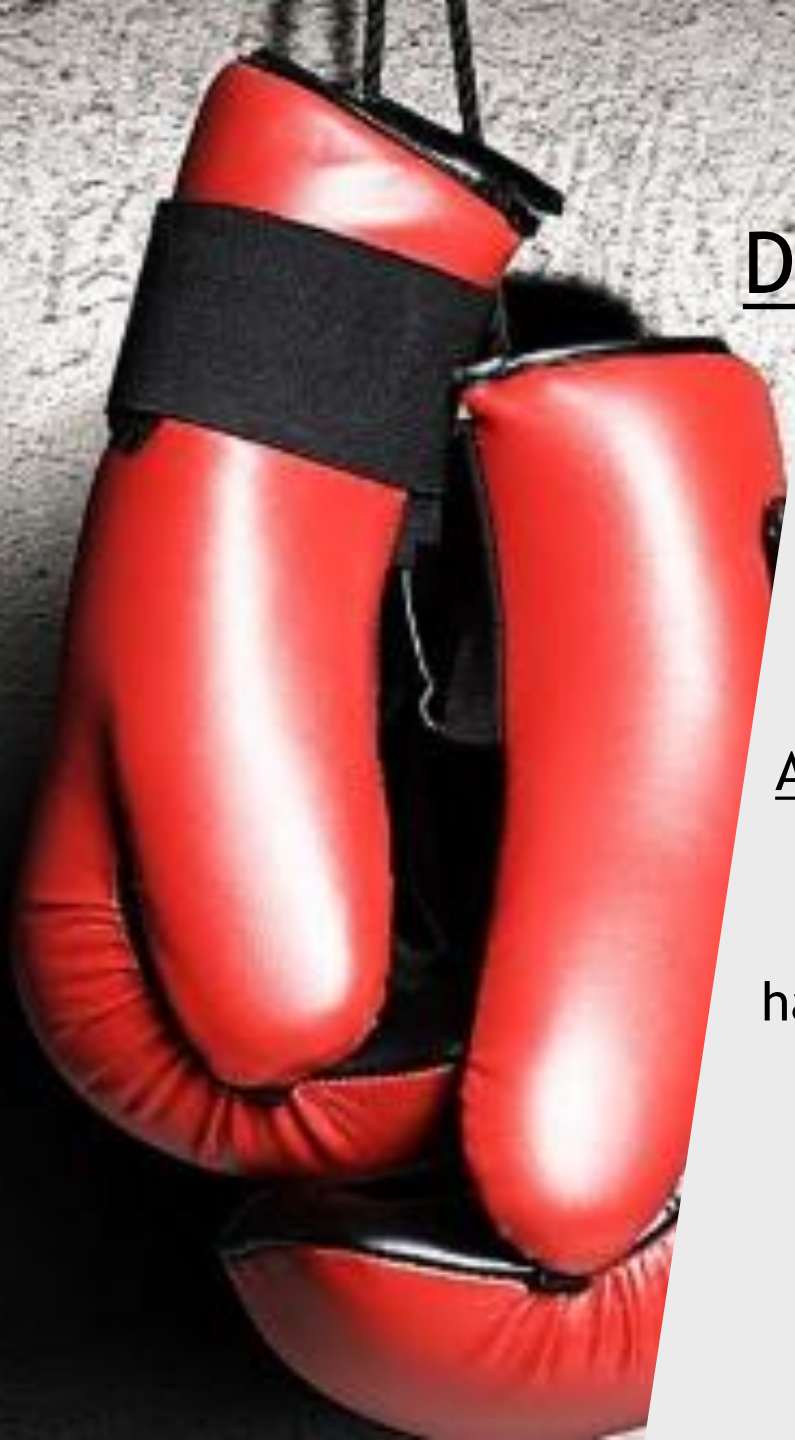
Historically, Plaintiffs sought to elicit empathy and sympathy

PRESENTLY—they elicit ANGER, followed by mention of BIG NUMBERS, early and often—to desensitize



Day 1: Storytelling, sprinkled with data, science, technology and psychology

- Old school response was for Defendants is to bury heads in the sand, don't admit fault, don't apologize
- That is insufficient to neutralize anger

A pair of red boxing gloves hanging on a wall. The gloves are made of red leather with black straps and laces. They are hanging from a dark cord against a light-colored, textured wall. The background of the slide features a green and white geometric pattern on the right side.

Day 1: Storytelling, sprinkled with data, science, technology and psychology

Put the boxing gloves away.

Accept Responsibility—which is NOT synonymous with
accepting liability

One example: “while we may disagree on how this
happened, I recognize how awful it is go through this,
and I’m sorry someone was hurt.”
(EVEN where your person did nothing wrong)

Research shows that apologies reduce verdicts and
diffuse anger

Day 1: Storytelling, sprinkled with data, science, technology and psychology

Learn the words that hit

- Plaintiffs are using data, science and research to determine the combination of words that resonate with jurors

- You can do the same

Day 1: Storytelling, sprinkled with data, science, technology and psychology

Refute Junk Science that misleads the jury

- Try to use neutral sources to combat the battle of paid experts
 - Think of groups that have taken a prevailing view on your issue, like respected studies and organizations
- Really dig into credentials and the Research



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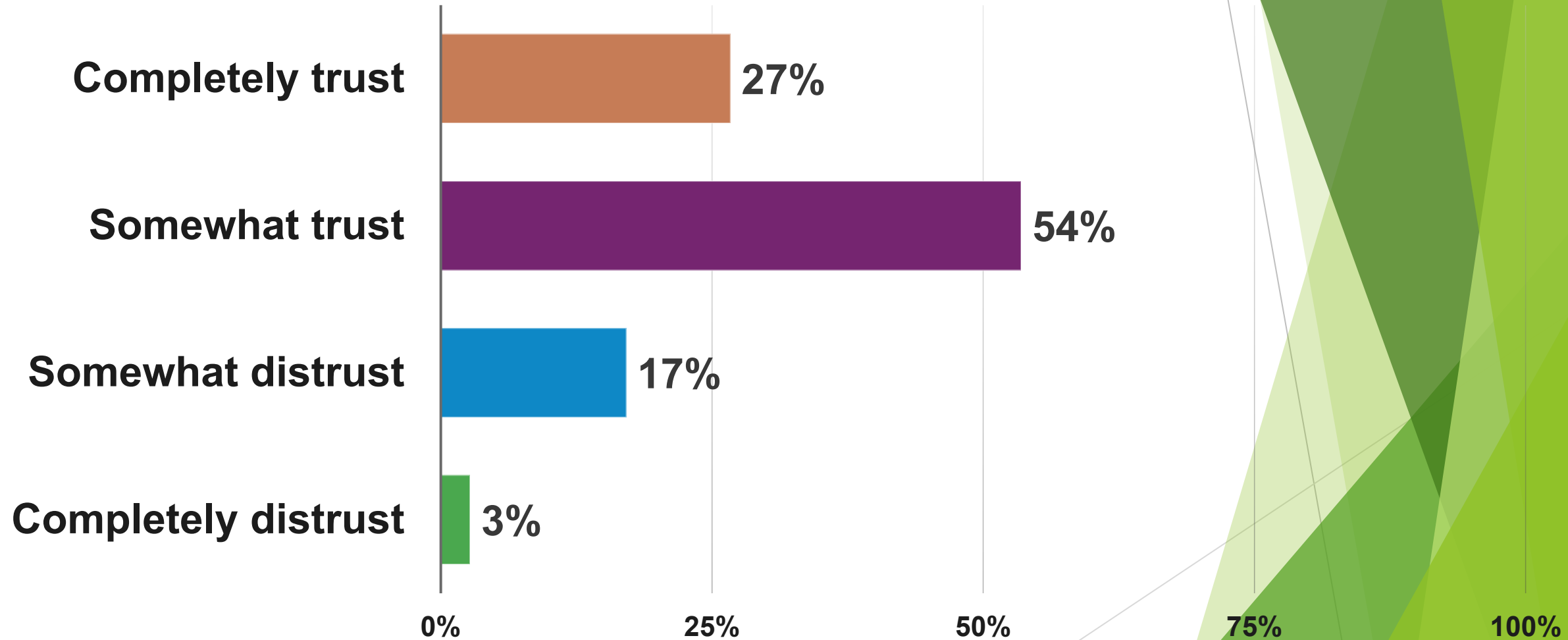
For an F-Bomb--

In a poll conducted by Persuasion Strategies,
what percentage of people COMPLETELY trust
science?



What percentage of people trust science?

To what extent do you trust or distrust scientific evidence today?





The F
Bomb Goes
to.....

Controlling the Controllables

Preparing the characters
in the story

Effective Deposition
preparation starts with
you



Controlling the Controllables

Turn Down Tunnel Vision -
Solicit other's Perspectives



gettyimages®
Credit: scott baldock

Controlling the Controllables

Be authentically you

Embracing your humanity in connecting with jurors.

Acknowledge your role as an advocate



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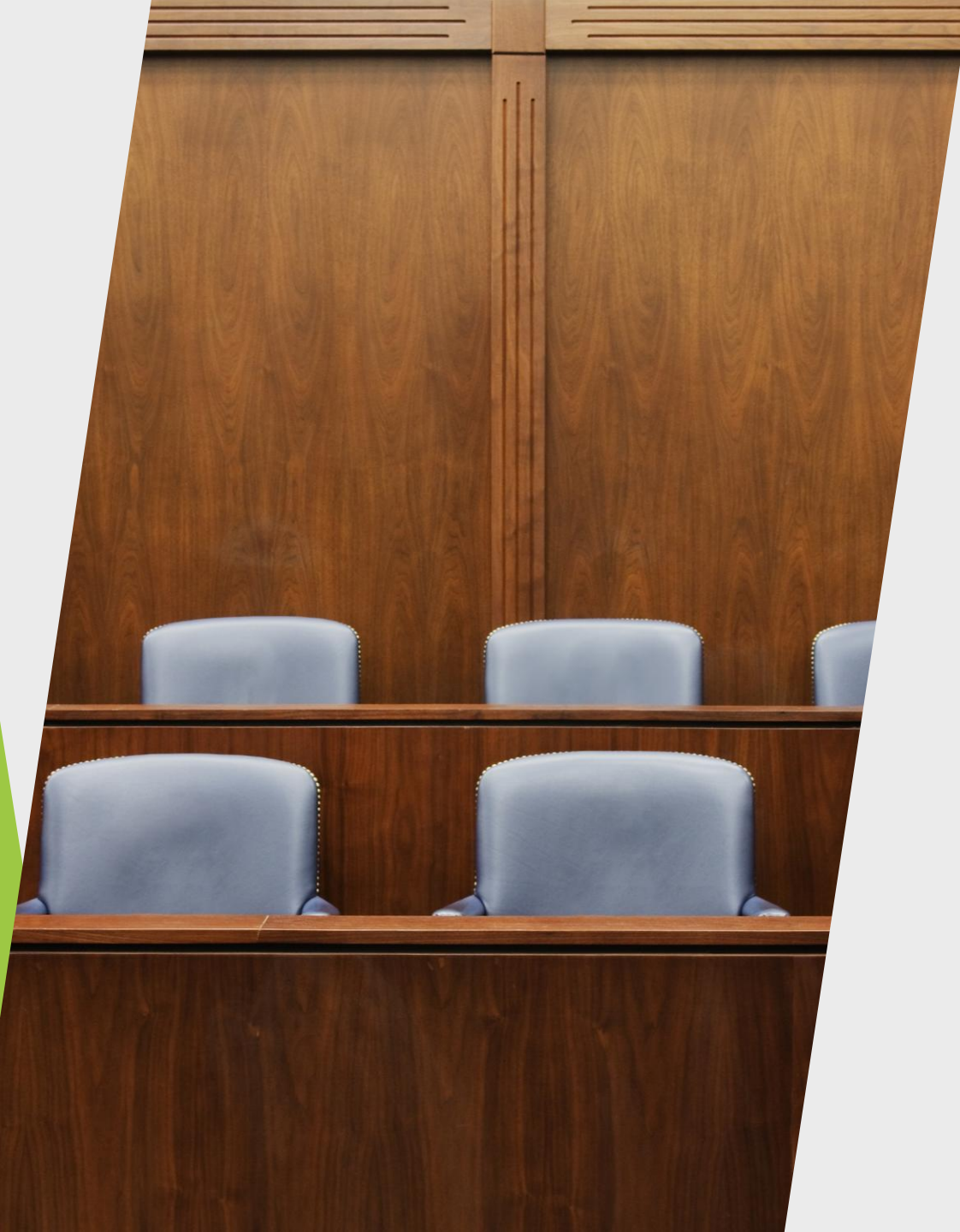
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War Story Time:

What is your advice from the trenches?

Tips and Tricks During Trial

- ▶ Know your Jurors
- ▶ Hot Take - Start exposing jury to the idea of a defense verdict or low amount
- ▶ Be Accountable
- ▶ Personalize Institutional Defendants
- ▶ In Opening & Closing, Address what Makes Plaintiff Whole Head On
 - ▶ Give a Defense Number in Opening AND Closing
 - ▶ Argue Pain and Suffering in Closing, and establish why your number makes the person whole



It starts with the
jurors!

Know your pool

Use Voir Dire to
flesh out life
experience

In Opening & Closing, Address what Makes Plaintiff Whole Head On—expose the jury to the idea of a low amount early

Give a Defense Number in Opening AND Closing
Compensatory damages are to make whole again—nothing less nothing more;

Argue Pain and Suffering in Closing, and establish why your number makes the person whole

Focus on outrageous numbers is not fair and equitable, explain why

Personalize Institutional Defendants

Put a face to the institution by telling the story about the human behind the institution.

Make the institution relatable and human, find ways to refute that it is a faceless institution with deep pockets.

Further values, missions, commitments of the institution that replace the narrative of profits come first

Build credibility in the same way that plaintiffs share every detail of their life with the jury, find a way to do the same, with a relatable story.

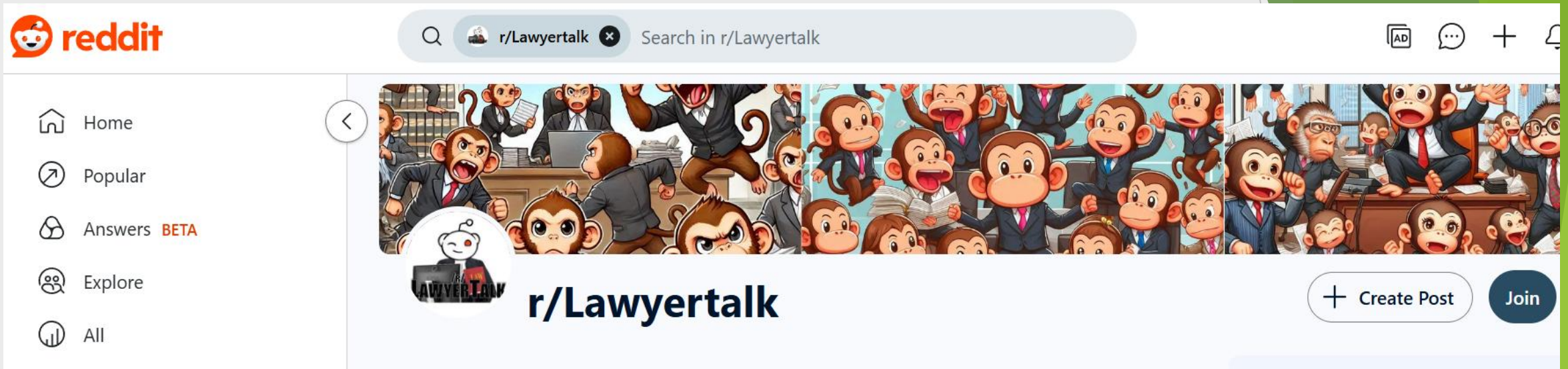
Take Accountability, while NOT accepting Legal Liability:

- The Control Lever
- The Time Lever
- The Legal Lever
- The Policy Lever

With these tools, it is possible to take accountability while still zealously defending your client's position!

Take Responsibility (Without Conceding Liability)

<https://www.jdsupra.com/legalnews/take-responsibility-without-conceding-6141493/>



For the final F-Bomb--

As of December, 2024, what was American Tort Reform's #1 Ranked "Judicial Hellhole?"

(Shout it out!)



The F
Bomb Goes
to.....

TAKEAWAYS: It's not about facts of the case anymore - must defend against Plaintiffs' narrative.

Coordinate with fellow defense warriors liberally

Use psychological principles in response to Plaintiffs' psychological tactics

Be a good human and be authentically you throughout litigation

Connect with all by demonstrating empathy, sympathy, and lessening the anger.

Adjust the levers of your case according to the facts.

Questions?



Thank you!

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