



**THEMIS ADVOCATES GROUP**



# **UNMASKING THE JURY:** **How 2020 is Shaping the Future of Jury Trials**

John Shaffery, Esq. – *Poole Shaffery & Koegle*

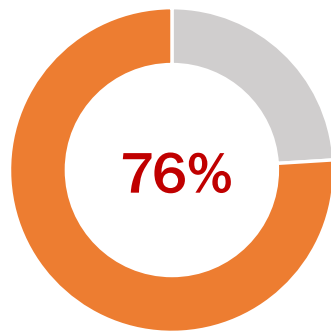
Rachel Colangelo, Ph.D. – *Magna Legal Services*

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LEGAL SERVICES

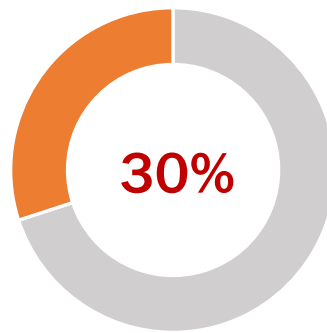


# **PRE-PANDEMIC JUROR ATTITUDES**

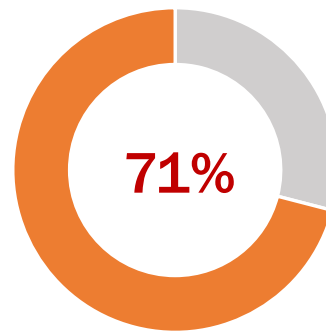
# JUROR PREDISPOSITIONS



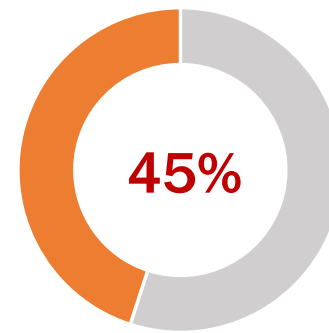
**Believe corporate executives lie and cover up**



**Believe it takes "billions" to send a message to corporations**

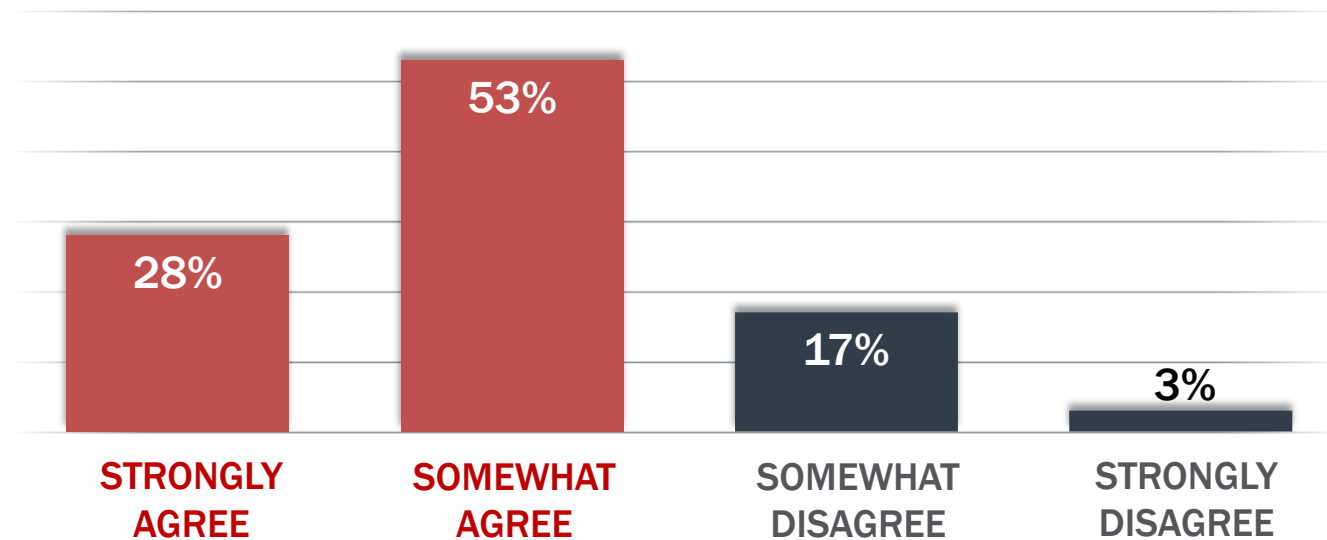


**Do not believe there should be caps on jury awards**

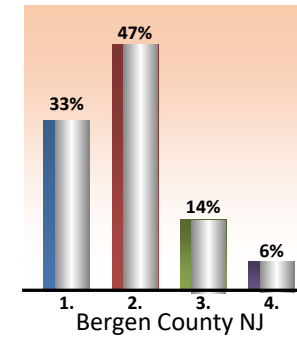
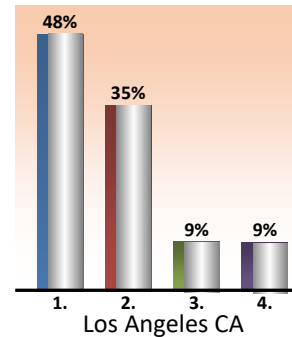
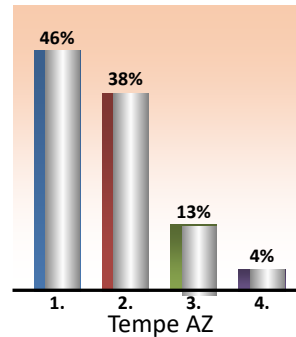
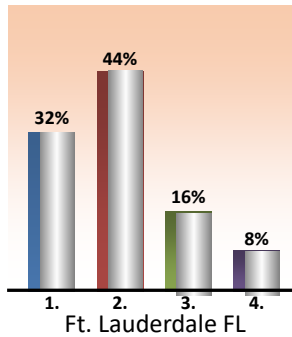
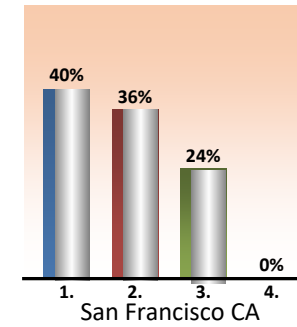
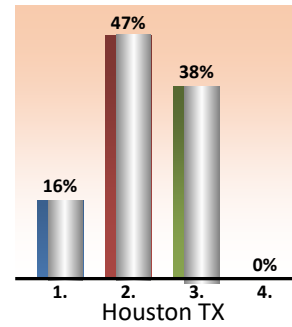
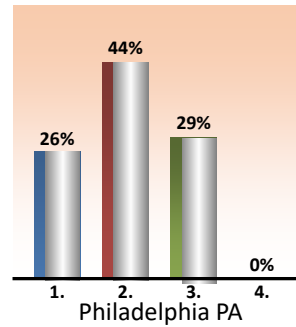
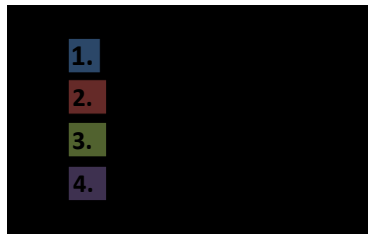


**Will ignore the judge's instructions**

# Do you believe that corporations care more about profits than people (individual safety)?



# Corporations Prioritize PROFITS OVER SAFETY



# ANTI-CORPORATE BIAS



# **POST-PANDEMIC JUROR ATTITUDES**

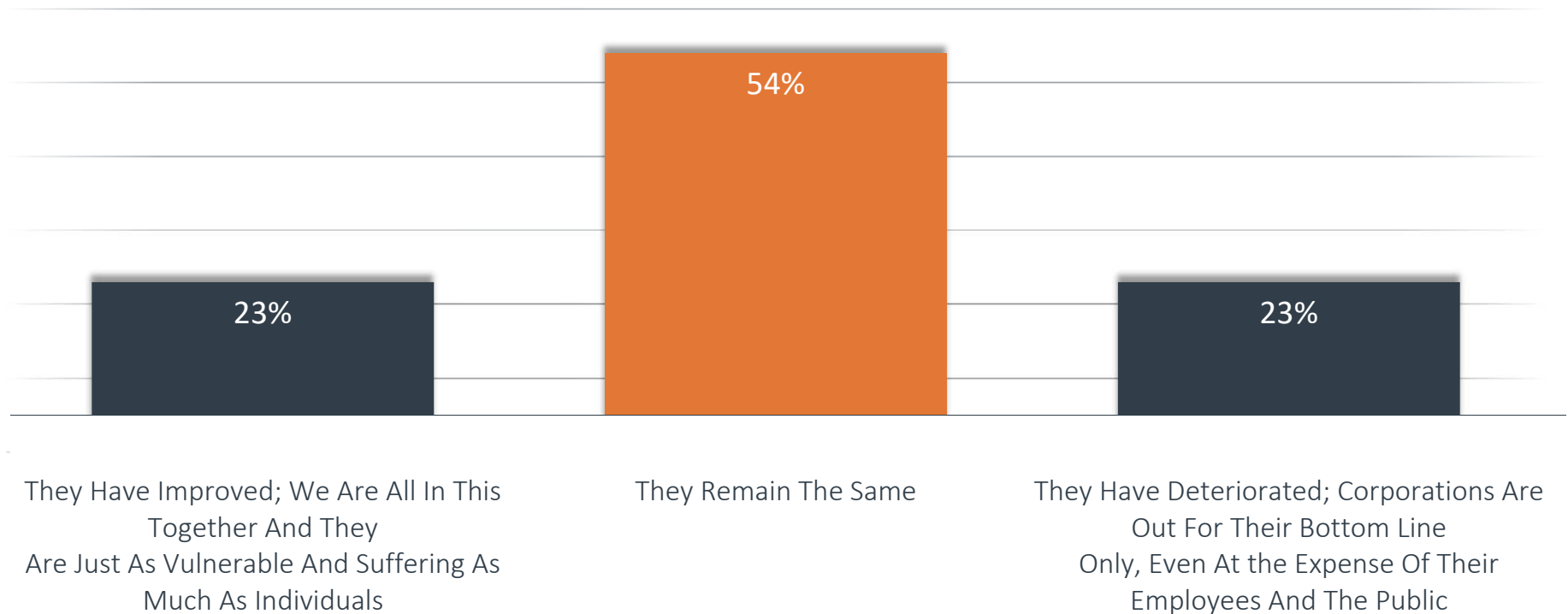


# NATIONWIDE (U.S.) SURVEY DATA

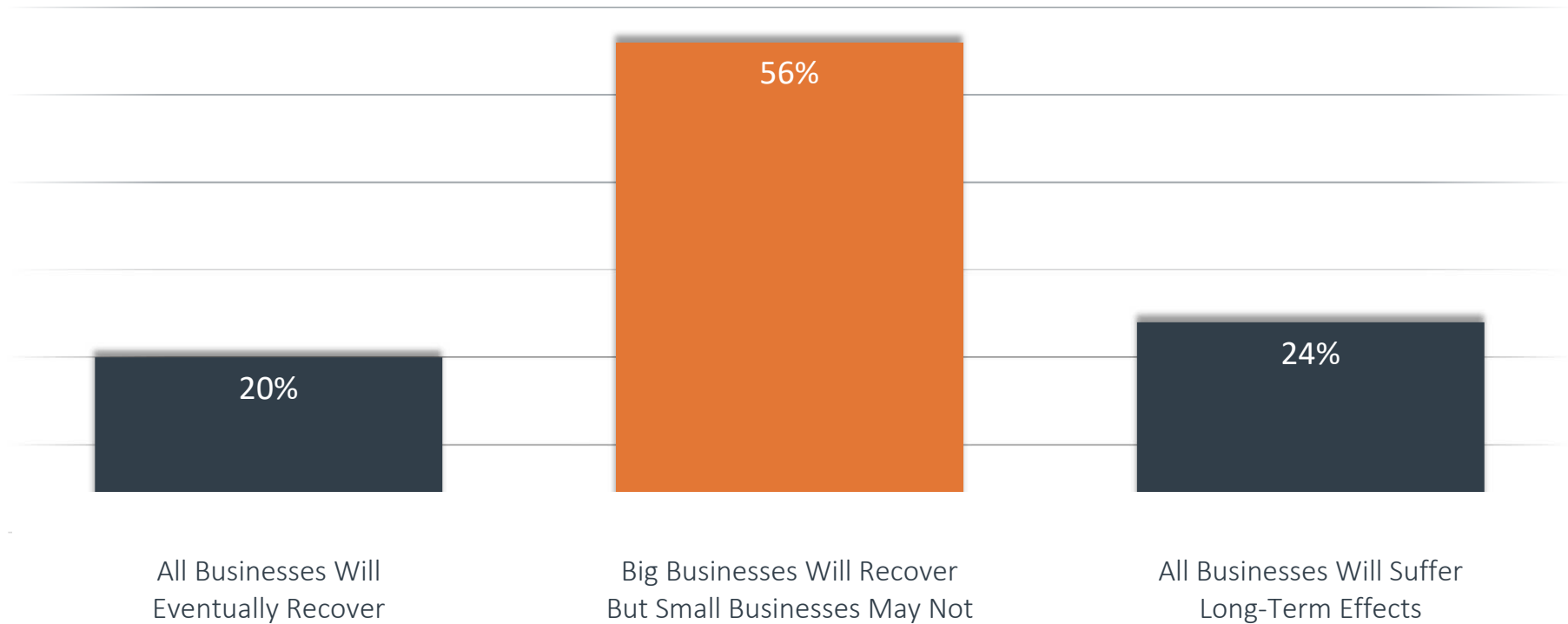
## **4 SURVEYS:**

- 1) Mid-March - Present – Over 3,000 respondents**
  - a) Jury service issues
- 2) June – 500 respondents**
  - a) Jury service issues
  - b) Impact of COVID-19 on jury decision-making
- 3) August – 500 respondents**
  - a) Impact of COVID-19 on specific juror attitudes
  - b) Industry sector issues
- 4) October – 500 respondents**
  - a) Impact of COVID-19
  - b) Patents, Technology, Manufacturing

## How Has the COVID-19 Outbreak Impacted Your Views of Corporations?

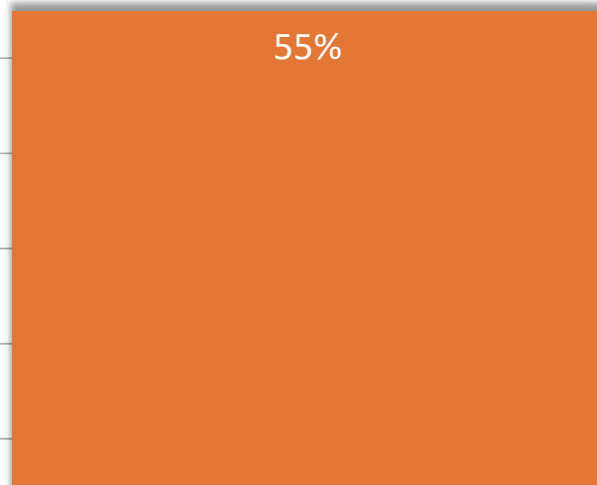


## How Well Do You Feel Most Businesses and Corporations Will Recover From the Economic Toll of COVID-19?

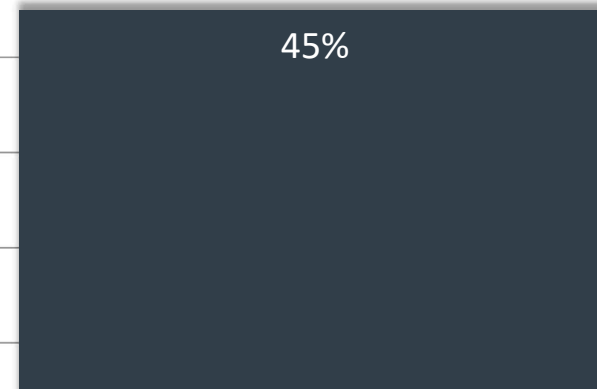




## If You Were a Juror in a Civil Lawsuit With a Corporate Defendant, Would How They Handle Their Business and Employees During the COVID-19 Outbreak Affect Your Views of the Corporation?

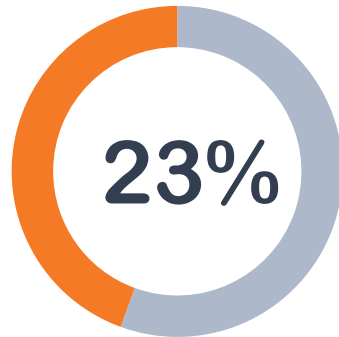


Yes, I Could See That Affecting The Amount Of Damages I Assessed Against Them

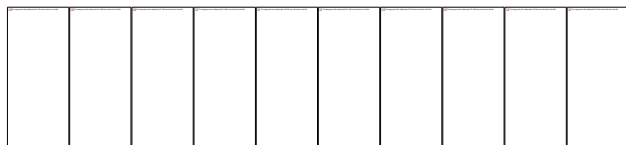


No, I Would Be Able To Put That Information Aside And Not Let it Impact My Views On Damages

# HALO EFFECT



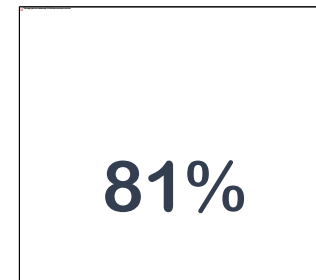
**23% IS OR KNOWS SOMEONE WHO IS A COVID-19 HEALTHCARE WORKER**



**80% VERY CONCERNED ABOUT COVID-19 HEALTHCARE WORKERS**



**60% WILL BE LESS CRITICAL OF HEALTHCARE WORKERS POST-COVID**

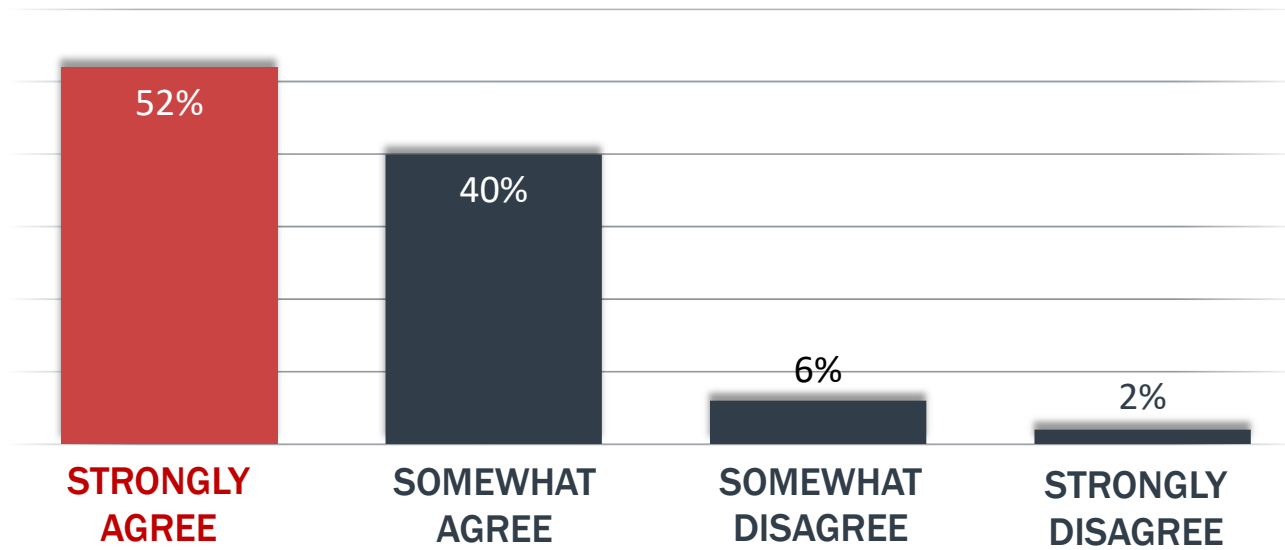


**81% HAVE GREATER SENSE OF COMPASSION FOR HEALTHCARE WORKERS**

## Which Industries Might Benefit from the Halo Effect?

- **What types of businesses are essential?**
  - Grocery stores – 82%
  - Hospitals – 80%
  - Doctors' offices – 78%
  - Pharmacies – 77%
  - Banks – 70%
  - Consumer delivery services – 62%
  - Big box stores – 53%

## People Often Blame Others for Their Problems Rather Than Take Responsibility for Their Own Actions

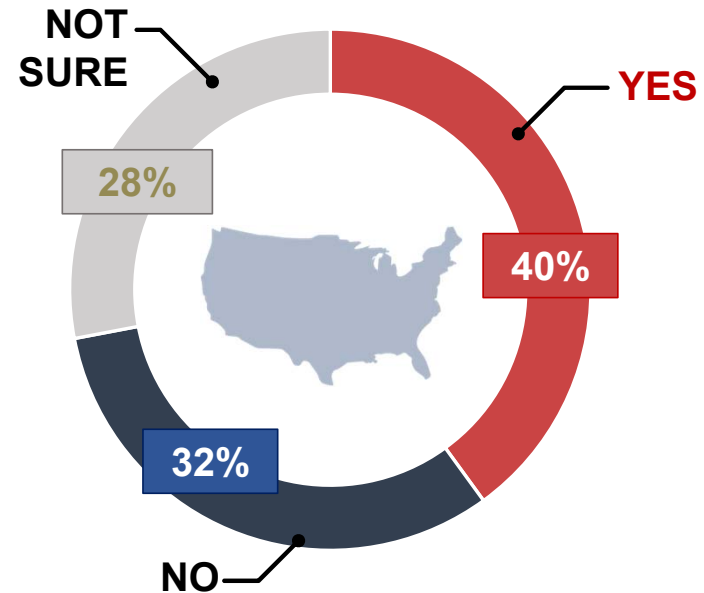


# **THE PANDEMIC'S EFFECT ON JURIES**



# WILL HEALTH CONCERNS AFFECT JURY SERVICE?

Following the COVID-19 outbreak, if you were called as a juror for a civil or criminal trial, **would health and/or safety concerns make you less likely to report for jury duty?**



## WHO IS *LESS* LIKELY TO SERVE ON A JURY CURRENTLY?

People most hesitant to report for jury duty include:

- Women
- Under the age of 34 (Millennials and Generation Z)
- Democrats and those with “other” political affiliation
- People with lower household income
- People with minor children
- Homemakers and students

*These are stereotypically plaintiff-friendly characteristics.*

## WHO IS *MORE* LIKELY TO SERVE ON A JURY CURRENTLY?

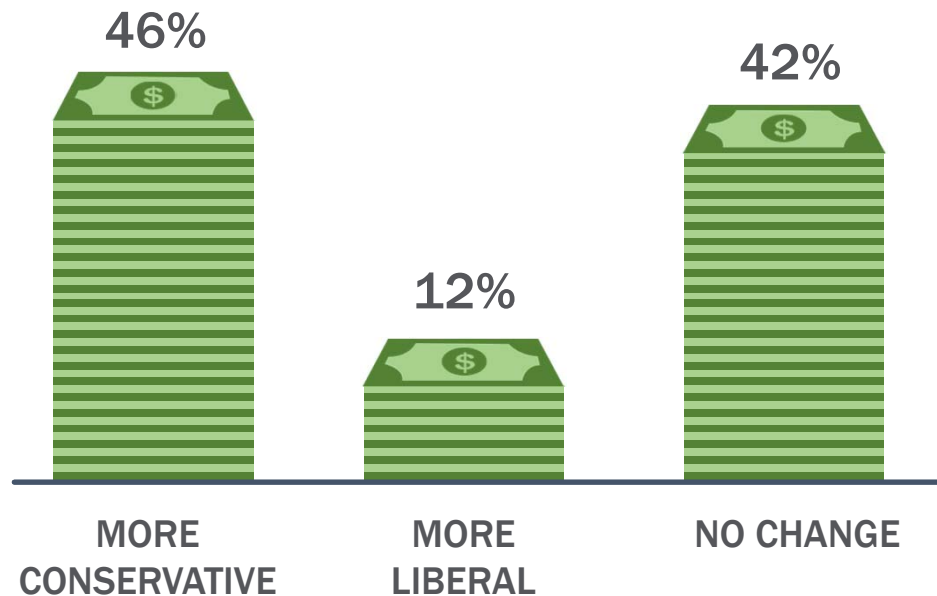
People least hesitant to report for jury duty include:

- Republicans and Independents
- People with adult children
- People employed full time or retired

*These are stereotypically defense-friendly characteristics.*

## COVID-19'S FINANCIAL IMPACT ON JURORS

After the COVID-19 pandemic subsides, I think I **will be the following with my money:**



# COVID-19'S EFFECT ON JURORS' VULNERABILITY

How has the COVID-19 outbreak affected your views of **your own safety/vulnerability**?



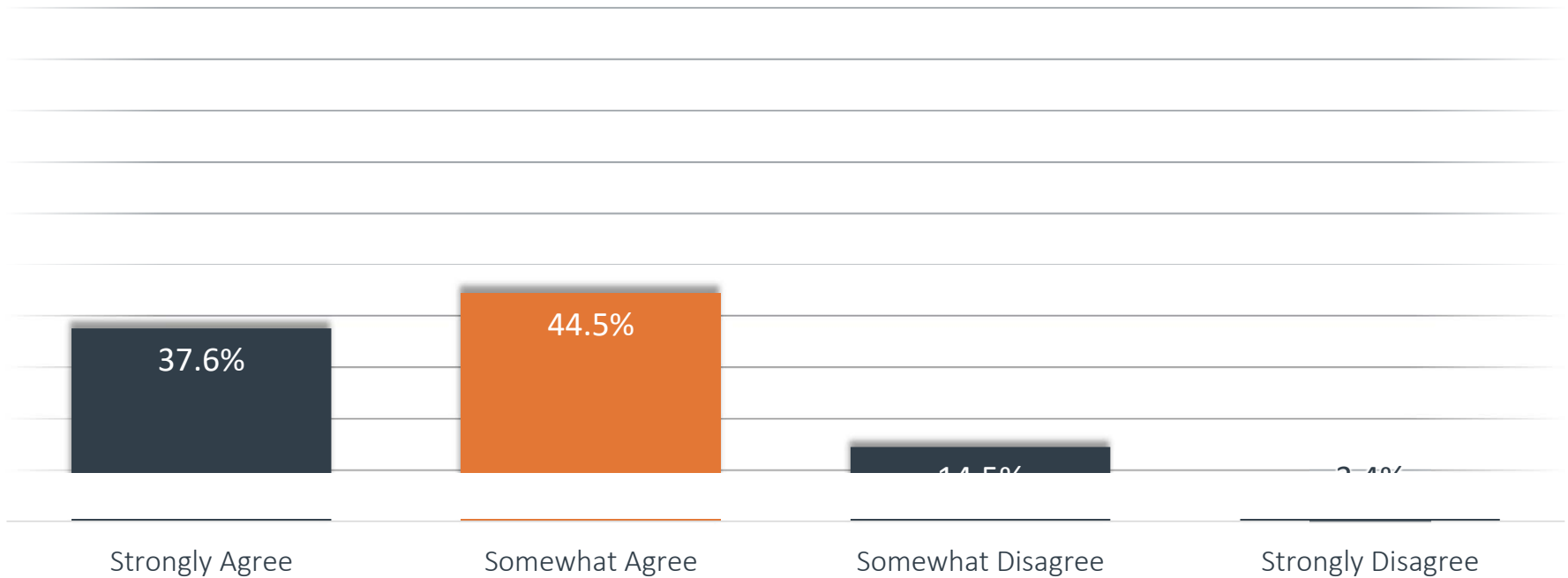
Reference: Q54

## “REPTILIAN” JURORS

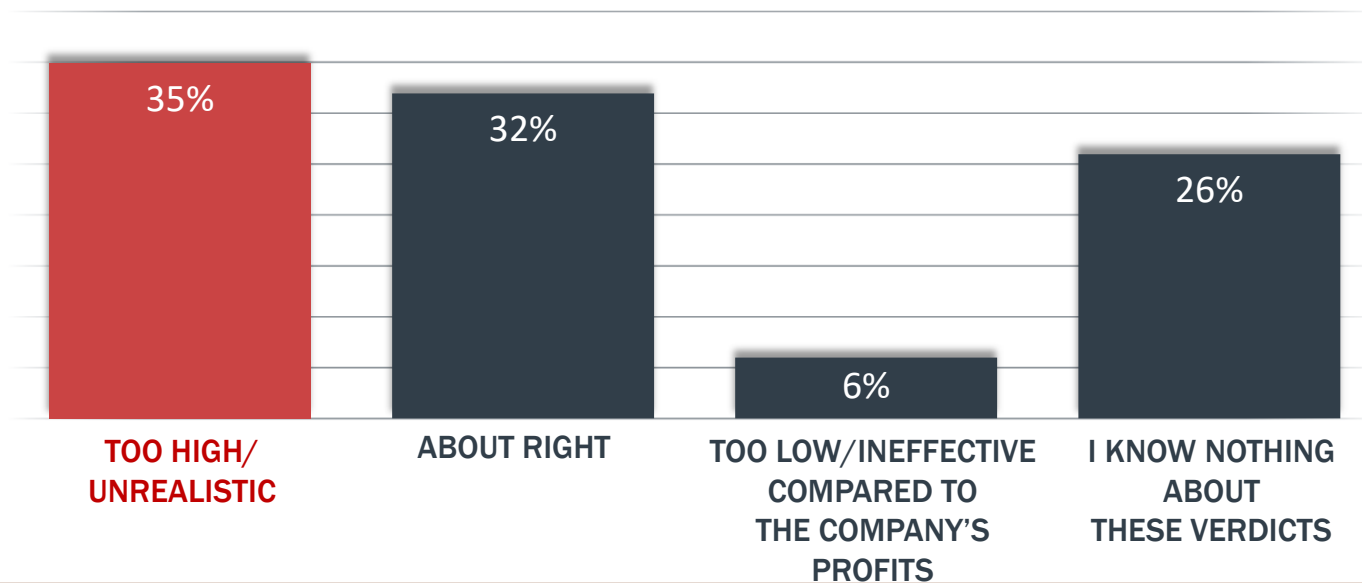
In today's world, juries need to be the "guardians of the community" by **forcing companies to change their bad behavior with large damage awards**



The primary purpose of awarding damages to a plaintiff (the party that is suing) in a lawsuit is to punish the defendant (the party being sued).



In Recent Months, Some Defendants Have Been Hit With Billion-Dollar Jury Awards. Do You Think These Billion-Dollar Awards Are:





## ANCHORING DAMAGES?

If defense counsel gives an alternative damages number, which of the following do you believe to be most true?



# WHAT DOES THIS ALL MEAN?

## CONS:

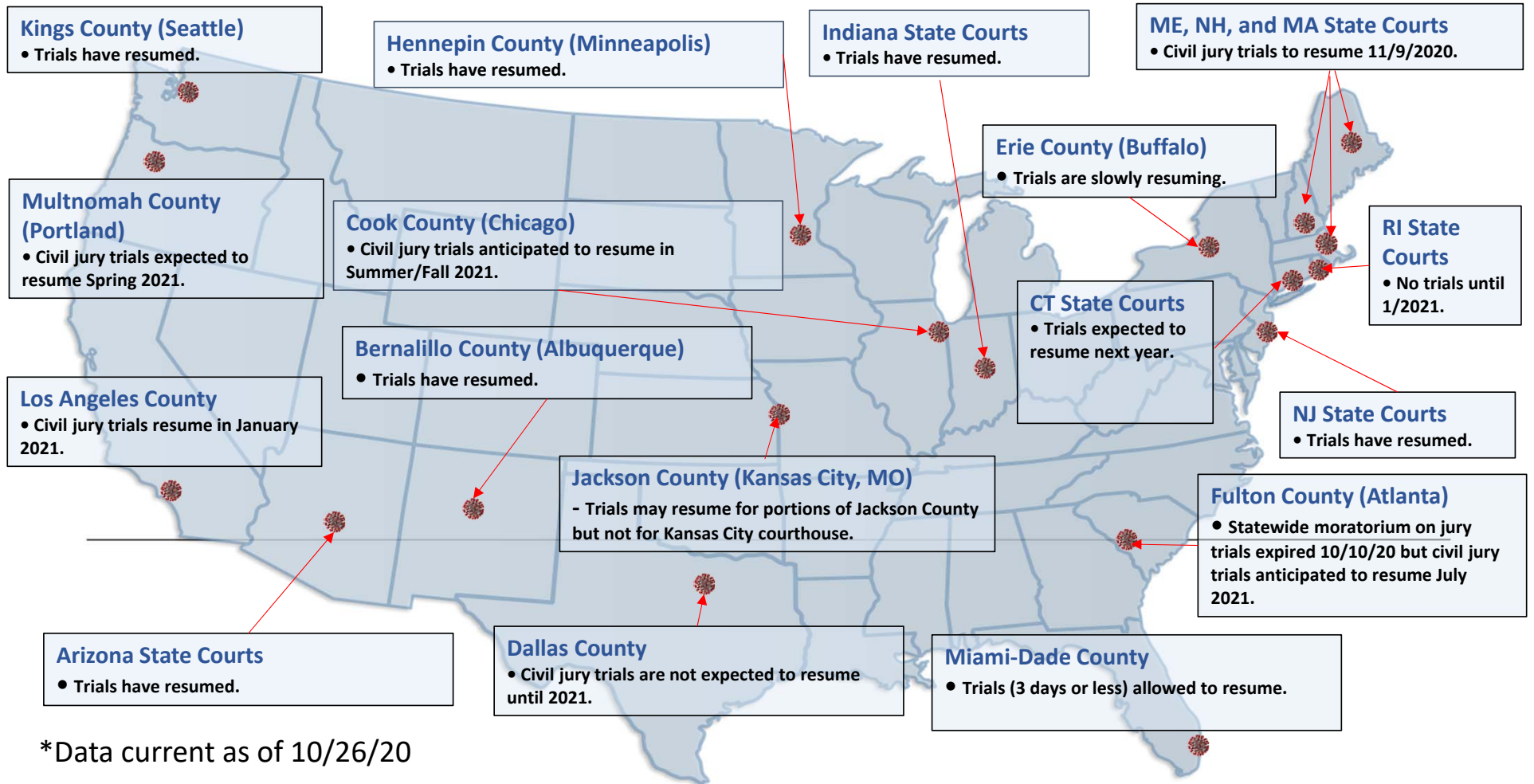
- In general, many potential jurors now are more vulnerable – both health-wise and financially – than pre-pandemic, which can make people more plaintiff-friendly.

## PROS:

- However, the most vulnerable, most risk-averse (i.e., most plaintiff-friendly) people are less likely to show up for jury duty or to be seated on a jury at present.

# **POST-PANDEMIC JURY TRIALS**

# Status of Civil Jury Trials





## How a Civil Jury Trial in Albuquerque, New Mexico Was Conducted During COVID-19

- **Juror Questionnaires**

The court proposed additional questions specifically addressing COVID-19 concerns. A hearing was held and after denying Plaintiff's request to include argumentative questions such as, "Would your concern regarding COVID-19 preclude you from awarding significant damages," the questionnaires were included as part of the summons package.

- **Voir Dire**

Conducted in a large room, with groups of 30 jurors at a time. Both parties were precluded from asking anything COVID-19 related, including whether the potential juror was concerned about anyone at home. The court believed such questioning would discourage other potential jurors.

- COVID-19 concerns were still brought up by the potential jurors during voir dire.
- Only those who claimed financial hardship (even for a 5-day trial) were excused.



## **Other Experiences with Civil Jury Trials During COVID-19**

- **Indianapolis, IN trial (Asbestos/Mesothelioma Oct 6, 2020)**
  - Supplemental juror questionnaires
  - In person voir dire and jury selection
  - COVID safety precautions
- **Other in-person trials in Texas (Intellectual Property) and Mississippi (Personal Injury)**
- **Virtual bench & jury trials in Texas, California, Delaware, and Florida**
- **Hybrid approaches—virtual voir dire, in-person trial**

## COVID-19 Virtual Trials = Record Nuclear Verdicts?

- Plaintiff Duane Washington injured on his motorcycle in July 2018 in a 45-car pileup on the I-10 in Tallahassee.
- Accident was reportedly caused by a combination of inclement weather and a speeding Top Auto commercial vehicle.
- Plaintiff sustained life-threatening injuries including a broken pelvis, colon damage and urethra damage and was hospitalized for 6 months.
- Prior to trial, defendant Top Auto rejected a \$1 million settlement offer.
- On October 2, 2020 a Quincy, Florida virtual jury returned a \$411.7 million verdict in favor of plaintiff.





## **Upcoming Themis Webinars**

*Mark Your Calendars*

- **Transportation: The MCS-90 Endorsement - Interstate Insurance Assurance Webinar**  
Thursday, November 5, 2pm ET
- **Biomechanics: Using all the Evidence with SEA LTD Webinar**  
Thursday, November 12, 2pm ET
- **Product Liability: Basics and Claims Handling Pointers Webinar**  
Thursday, December 3, 2pm ET
- **Women of Themis: Candid Conversations with a Decision Maker - Comcast NBCUniversal's Senior Director, Claims Management Global Risk Management's Deborah Saunders Webinar**  
Wednesday, December 16, 4pm ET