



# Avoiding Nuclear Verdicts

*Presented by Cogent Legal:*

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20  
24

# Agenda

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- 1 Verdict Trends
- 2 Recent Case Studies
- 3 How to Avoid Nuclear Verdicts
- 4 Witnesses
- 5 Mock Trials & Focus Groups
- 6 Trial Preparation
- 7 Plaintiff Strategies
- 8 Jury Selection & Voir Dire

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1 Verdict Trends

2 Recent Case Studies

3 How to Avoid Nuclear Verdicts

4 Witnesses

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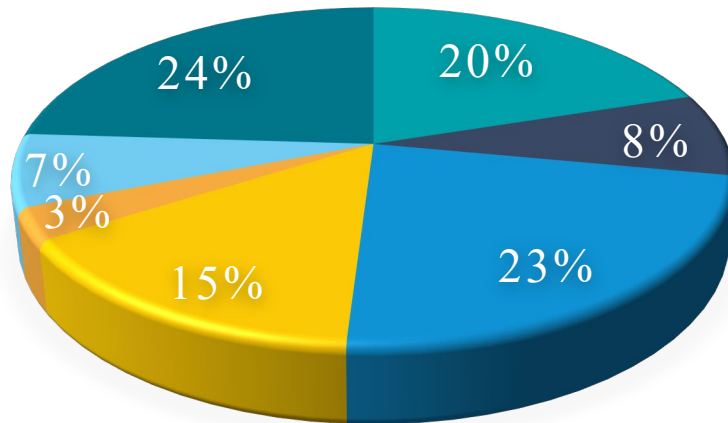
6 Trial Preparation

7 Plaintiff Strategies

8 Jury Selection & Voir Dire

# LARGE VERDICTS

By Case Type (2010 – 2019)

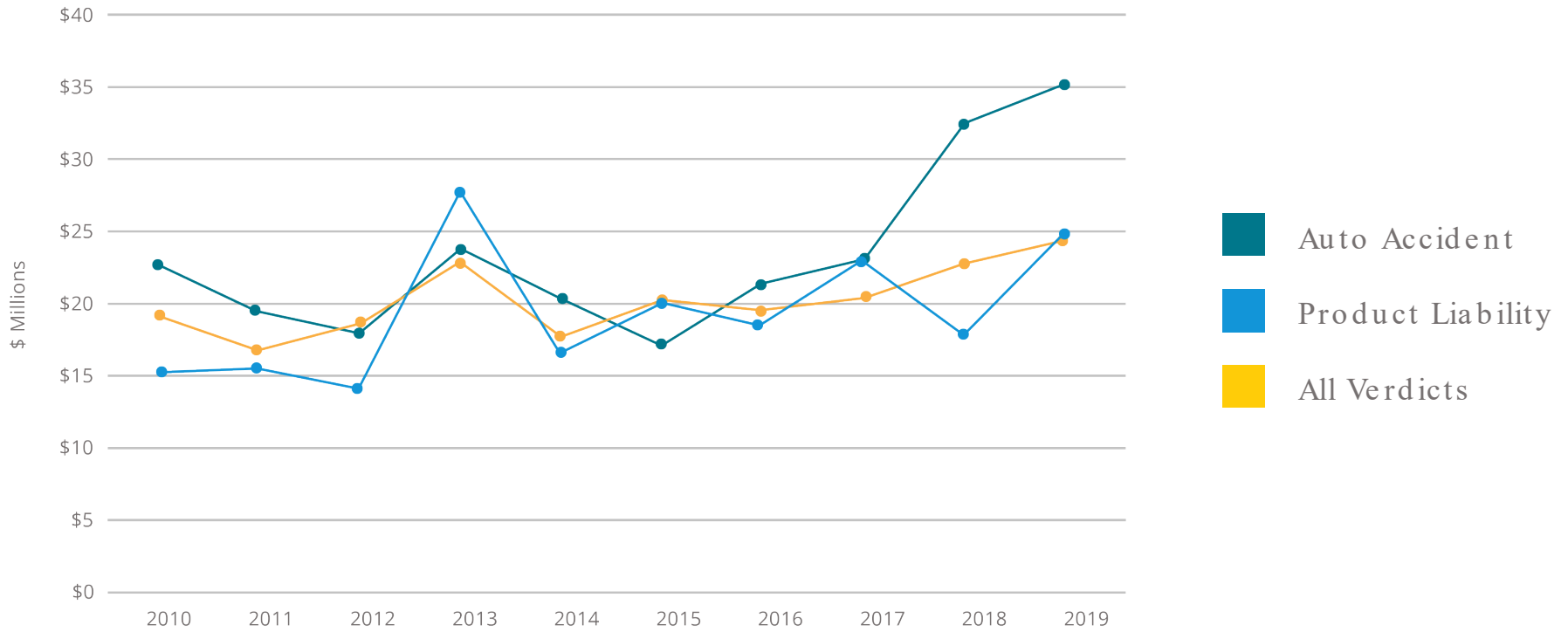


- Medical Liability
- Other Negligence
- Auto Accident
- Premises Liability
- Miscellaneous
- Intentional Tort
- Product Liability

Source: U.S. Chamber of Commerce Institute for Legal Reform

# LARGE VERDICTS

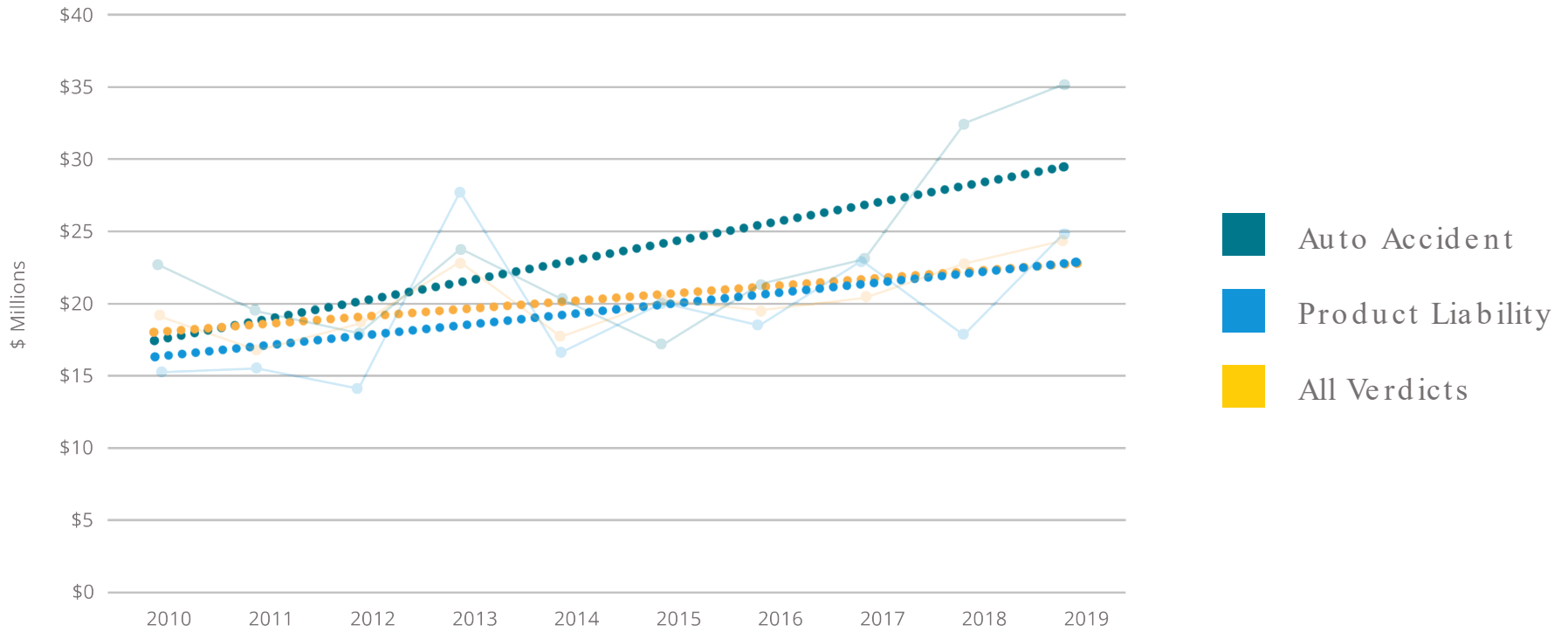
— Median Trend Line (2010 – 2019) —



Source: U.S. Chamber of Commerce Institute for Legal Reform

# LARGE VERDICTS

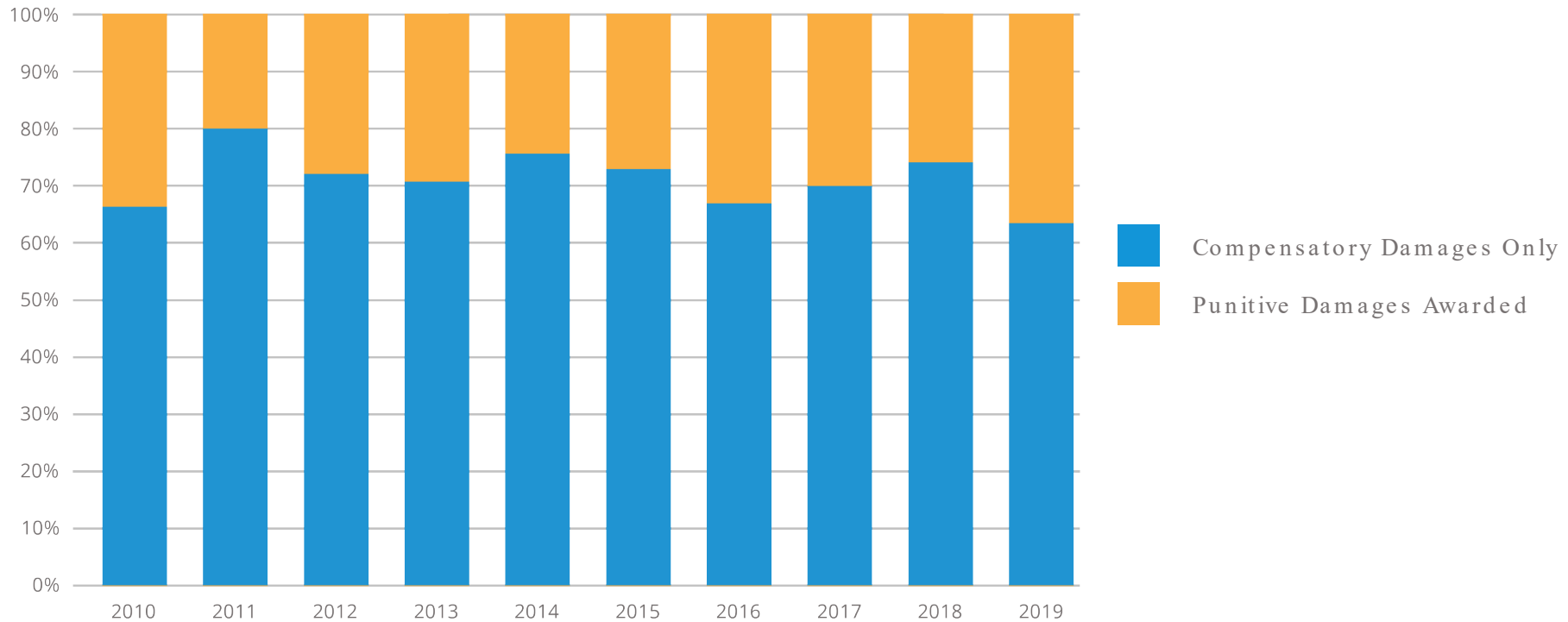
— Median Trend Line (2010 – 2019) —



Source: U.S. Chamber of Commerce Institute for Legal Reform

# LARGE VERDICTS

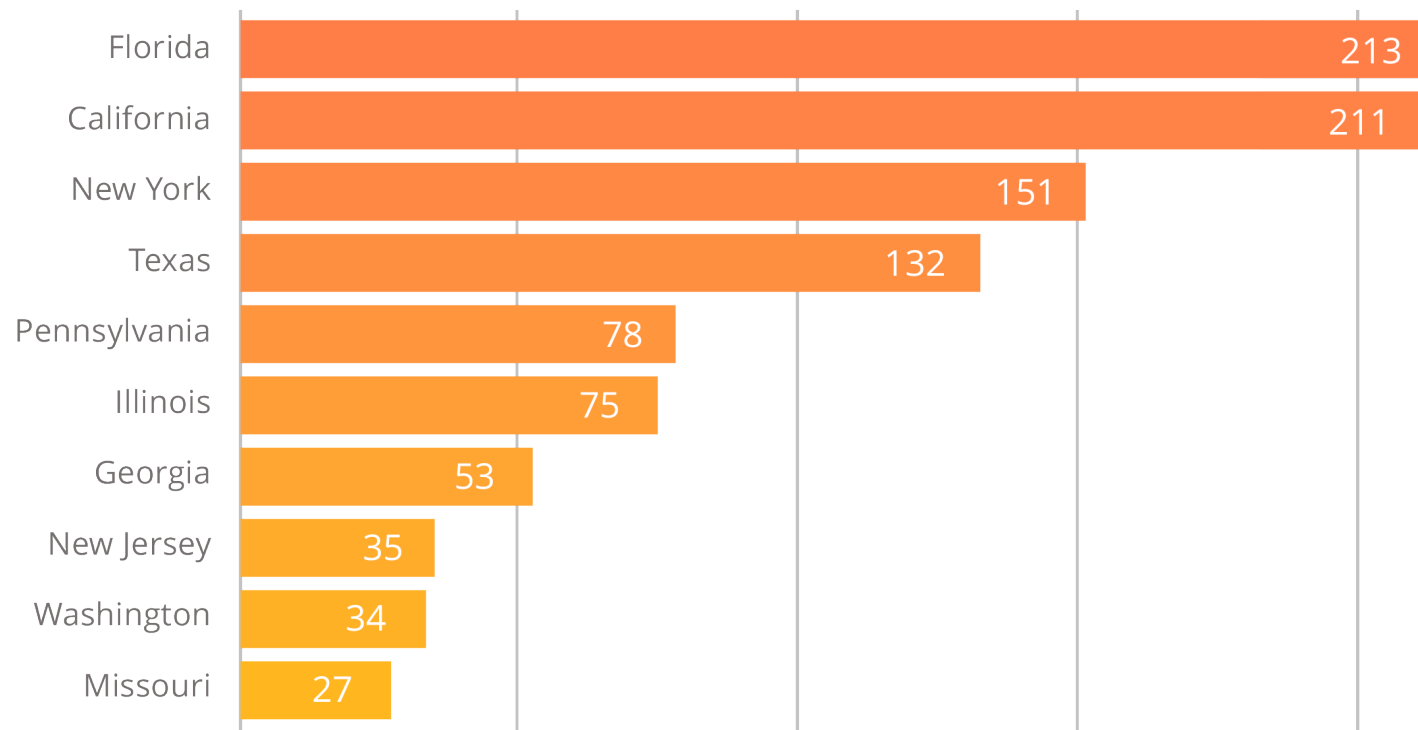
% of Large Verdicts Including a Punitive Damages Award



Source: U.S. Chamber of Commerce Institute for Legal Reform

# LARGE VERDICTS

Top 10 States by Cumulative Nuclear Verdicts



Source: U.S. Chamber of Commerce Institute for Legal Reform



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## ***Jury Awards \$135 Million to 2 Men Molested by Teacher in the 1990s***

A California jury found that the Moreno Valley Unified School District had endangered children when it hired a child predator with a history of molestation complaints.

Share this article



Vista Heights Middle School in Moreno Valley, Calif. Google Maps

By **Edmundo Medina**  
Oct 11, 2023

Two men who were sexually abused by a teacher when they were boys in the 1990s won a \$135 million judgment against a Southern California school district and their abuser on Tuesday after a jury determined that school officials had failed to protect them from a predator.

The jury in Riverside County Superior Court found that the Moreno Valley Unified School District had endangered children when it hired Thomas Lee West, a child predator with a history of molestation complaints, and retained him as an employee for two decades, lawyers for the plaintiffs said.

The plaintiffs, Brady Blair and Justin McGregor, were both

## KEY FACTORS



General anger by jury



Sexual harassment of minors



Ignoring history of sexual misconduct

LOCAL NEWS

## School District To Pay \$102M To 2 Women Sexually Assaulted By Music Teacher While Students At San Jose Middle School



MARCH 25, 2025 / 7:48 PM PST / SAN FRANCISCO



SAN JOSE (CBS SF) - A jury awarded a total of \$102.5 million to two women who sued their local school district after they were both molested by a popular music teacher years ago while they attended a San Jose middle school.

The two victims sued the Union School District after they were sexually assaulted by band teacher Samuel Neipp from 2009-2017. The lawsuit accused the school district of ignoring numerous warnings about Neipp's behavior and prioritizing the reputation of the school band.

"These young women are the true heroes in this story. This verdict proves that members of our community will not tolerate school districts that put the image and reputation of the school over the safety of children from sexual abuse," said Lauren Cerrit, who represented one victim who was awarded \$65 million. The other victim was awarded \$37.5 million.

The two plaintiffs were students at Dartmouth Middle School when Neipp, a music teacher in his late 20s, began grooming them "by sending text messages, emails and regularly spending time alone with each of them in his classrooms," according to a statement from the plaintiffs' attorneys.



Samuel Neipp (Santa Clara County Sheriff's Office)

"This escalated to sexually suggestive remarks, holding their hands, and kissing and touching them while they each were alone on separate occasions in his classroom," the statement read.

## KEY FACTORS



General anger by jury



Sexual harassment/grooming




Ignoring complaints/reputation over safety

Sections **Los Angeles Times** SUBSCRIBE LOG IN Q

CALIFORNIA

## Jury awards over \$460 million to 2 ex-Edison employees in lawsuit over sexual harassment and retaliation



Two men who alleged they were forced out of their jobs at Southern California Edison after reporting repeated sexual and racial harassment at a South Bay office were awarded \$440 million in punitive damages and \$24.6 million in compensatory damages. Above, power lines at Edison Trails in Monterey Park. (Allen J. Schaben / Los Angeles Times)

BY RICHARD WINTON | STAFF WRITER  
JUNE 2, 2022 8:42 PM PT

[f](#) [t](#) [+](#)

A Los Angeles jury awarded \$440 million in punitive damages Thursday to two men who alleged they were forced out of their jobs at Southern California Edison after complaining about repeated sexual and racial harassment at a South Bay office, attorneys said.

That decision came after jurors awarded \$24.6 million in compensatory damages Wednesday to plaintiffs Alfredo Martinez and Justin Page, bringing the combined verdict to more than \$464.6 million, said David deRubertis, one of the attorneys who represented the men.

Martinez alleged that after 16 years at Edison, he had been pushed out of his supervisor job in April 2017 by constructive termination — a claim accusing the employer of creating or permitting intolerable working conditions in order to force out a worker — after reporting widespread sexual harassment and racist language.

## KEY FACTORS



General anger by jury



Sexual / Racial harassment



Ignoring complaints / Retaliation

The New York Times

See more headlines from our [Daily Business Briefing](#)

## Jury orders Tesla to pay \$137 million to a former worker over racist treatment.

A jury agreed with Owen Diaz that Tesla had created a hostile environment at its factory in Fremont, Calif.

 Give this article  



Owen Diaz, right, with his son, Demetric, at their home in Vallejo, Calif. Ryan Christopher Jones for The New York Times



By Niraj Chokshi

Published Oct. 4, 2021 Updated Oct. 13, 2021

A federal jury in San Francisco has ordered [Tesla](#) to pay nearly \$137 million to a Black elevator operator who accused the carmaker of ignoring racial abuse he faced while working at the automaker's factory.

The plaintiff, Owen Diaz, said he worked at the factory in Fremont, Calif., for about a year in 2015 and 2016. There, he said, a supervisor and other colleagues repeatedly referred to him using

## KEY FACTORS



Abuse of power by supervisors



Unaddressed company culture issues



Downplaying racism concerns

TESLA

Menu

## Regarding Today's Jury Verdict

October 4, 2021

\*Sharing this recent note to employees from Valerie Capers Workman, VP People:

Hi Team,

Earlier today, a jury in San Francisco decided that in late 2015 and early 2016 Tesla one contract employee (Owen Diaz) was not racially harassed while he worked at factory. I heard the testimony of every witness. I was at the defense table for Tesla trial because I wanted to hear firsthand what Mr. Diaz said happened to him. It's the facts of this case. Here is what the jury heard:

- Mr. Diaz never worked for Tesla. He was a contract employee who worked for Citistaff.
- Mr. Diaz worked as an elevator operator at the Fremont factory for nine months from 2015 to March 2016.
- In addition to Mr. Diaz, three other witnesses (all non-Tesla contract employees) testified at trial that they regularly heard racial slurs (including the n-word) on the Fremont factory floor. While they all agreed that the use of the n-word was not appropriate in the workplace, they also agreed that most of the time they thought the language was used in a "friendly" manner and usually by African-American colleagues. They also told the jury about racist graffiti in the bathrooms, which was removed by our janitorial staff;
- There was no witness testimony or other evidence that anyone ever heard the Diaz.
- Mr. Diaz made written complaints to his non-Tesla supervisors. Those were well months he worked at our factory. But he didn't make any complaints about the not hired full-time by Tesla - and after he hired an attorney.
- The three times that Mr. Diaz did complain about harassment, Tesla stepped in and timely action was taken by the staffing agencies: two contractors were fired and one was suspended (who had drawn a racially offensive cartoon). Mr. Diaz himself testified that he was "very satisfied" with the results of one of the investigations, and he agreed that there was follow-up on each of his complaints.
- Even though Mr. Diaz now complains about racial harassment at Fremont, at the time he said he was being harassed, he recommended to his son and daughter - while they were all living together in the same home - that they work at Tesla with him.

While we strongly believe that these facts don't justify the verdict reached by the jury in San Francisco, we do recognize that in 2015 and 2016 we were not perfect. We're still not perfect. But we have come a long way from 5 years ago. We continue to grow and improve in how we address employee concerns. Occasionally, we'll get it wrong, and when that happens we should be held accountable.

The Tesla of 2015 and 2016 (when Mr. Diaz worked in the Fremont factory) is not the same as the Tesla of today. Since then, Tesla has added an Employee Relations team, dedicated to investigating employee complaints. Tesla has added a Diversity, Equity & Inclusion team dedicated to ensuring that employees have the equal opportunity to excel at Tesla. And Tesla now has a comprehensive Employee Handbook (replacing the Anti-Harassment Handbook) where all of our HR policies, employee protections, and ways to report issues are published in one easy-to-find online document.

- Mr. Diaz never worked for Tesla. He was a contract employee who worked for Citistaff.
- Mr. Diaz worked as an elevator operator at the Fremont factory for nine months, from June 2015 to March 2016.
- In addition to Mr. Diaz, three other witnesses (all non-Tesla contract employees) testified at trial that they regularly heard racial slurs (including the n-word) on the Fremont factory floor. While they all agreed that the use of the n-word was not appropriate in the workplace, they also agreed that most of the time they thought the language was used in a "friendly" manner and usually by African-American colleagues. They also told the jury about racist graffiti in the bathrooms, which was removed by our janitorial staff;

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### NUCLEAR VERDICTS



A verdict of **\$10 million** or more



Increasing in amount and frequency



**Jurors' anger** is typically a key factor



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Witnesses are what set trials apart from each other.





Witnesses are one of the major reasons that past verdict data is difficult to rely on.





Two witnesses  
testifying on very  
similar facts often  
lead to completely  
different results.





# AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Witnesses



WITNESS NAME:

Dr. Francisco

67%



30%



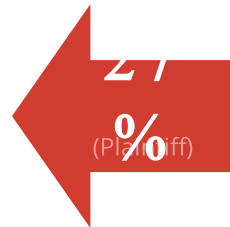
3%



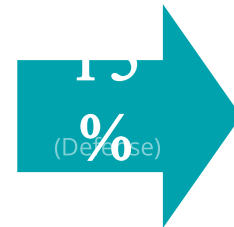
Credible

Neutral

- MOVED JURORS TOWARD -



58% (N/A)



- LIKED BY JURORS -



6 (N/A)





## AVOIDING NUCLEAR VERDICTS



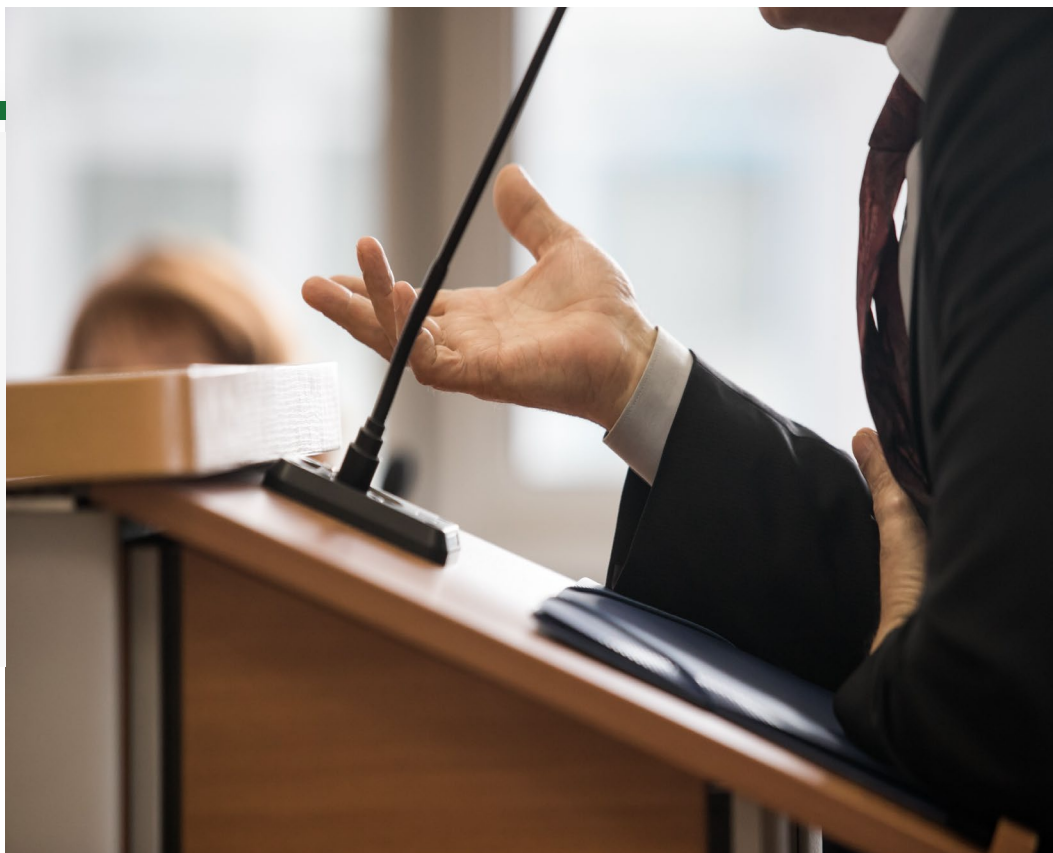
## KEY FACTOR: Witnesses

4



### TAKE ACTION

Depositions should **always be video recorded** for every witness. Regardless of who is paying the videographer, make sure all witnesses are recorded.





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Witnesses

4



### TAKE ACTION

Consider witness coaching and preparation. A poor witness must **see their issues on video** to change. Sometimes this takes time and effort, but improvements can usually be made.





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Witnesses

4



### TAKE ACTION

Where possible, use actual video depositions during your mock trials.

**Direct feedback from jurors** can often help stubborn witnesses see the light.







## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Witnesses

4



### TAKE ACTION

**Don't rely on your own interpretation** of your witnesses. You will get to know them throughout the litigation process and often see them in a better light than others.





## AVOIDING NUCLEAR VERDICTS



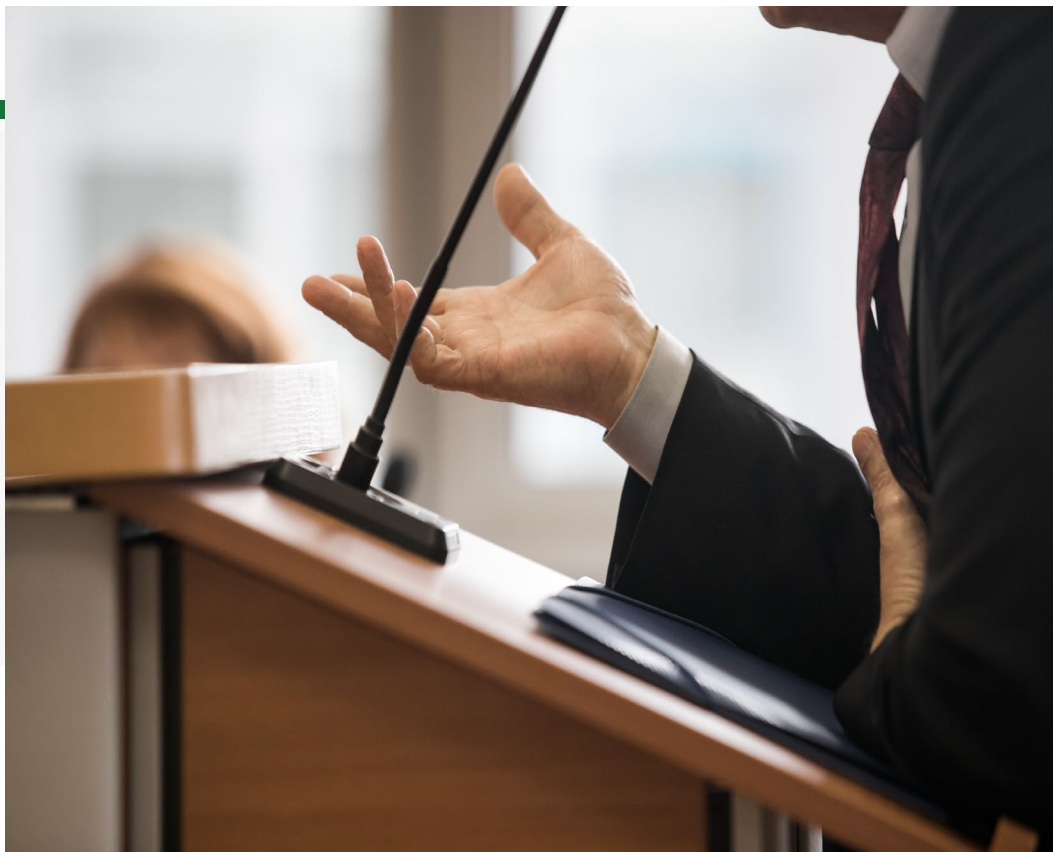
## KEY FACTOR: Witnesses

4



### TAKE ACTION

Arm expert witnesses with additional graphics. **Don't assume that what they use is the best.** Certain companies will work with experts to enhance their graphics to better convince jurors.



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AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Mock Trials

5

Trial involves so many choices. You need to ensure you make the right ones.





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Mock Trials

4

Don't rely on past verdict data. Every case, jury, venue, attorney, and witness is so different – making that data extremely deceiving.





You get out what you put in. The reliability of data gained from a mock trial is closely related to the amount of effort that goes into crafting the mock trial.





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Mock Trials

5

Easy is not the goal. This is major prep work for the big game





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Mock Trials

5

It is also a great opportunity to train and give intensive, real-world experience for your associates or partners with no trial experience.







AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Mock Trials

5

The adversarial component is important. Ensure that your Plaintiff's presentation is as strong as possible to maximize reliability.





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Mock Trials

5

It's important to get out of the line of thinking that mock trials are primarily about predicting the result of the actual trial.





Prediction is certainly a facet, but we consider preparation, testing, and discovery to be the true goals of a mock trial.

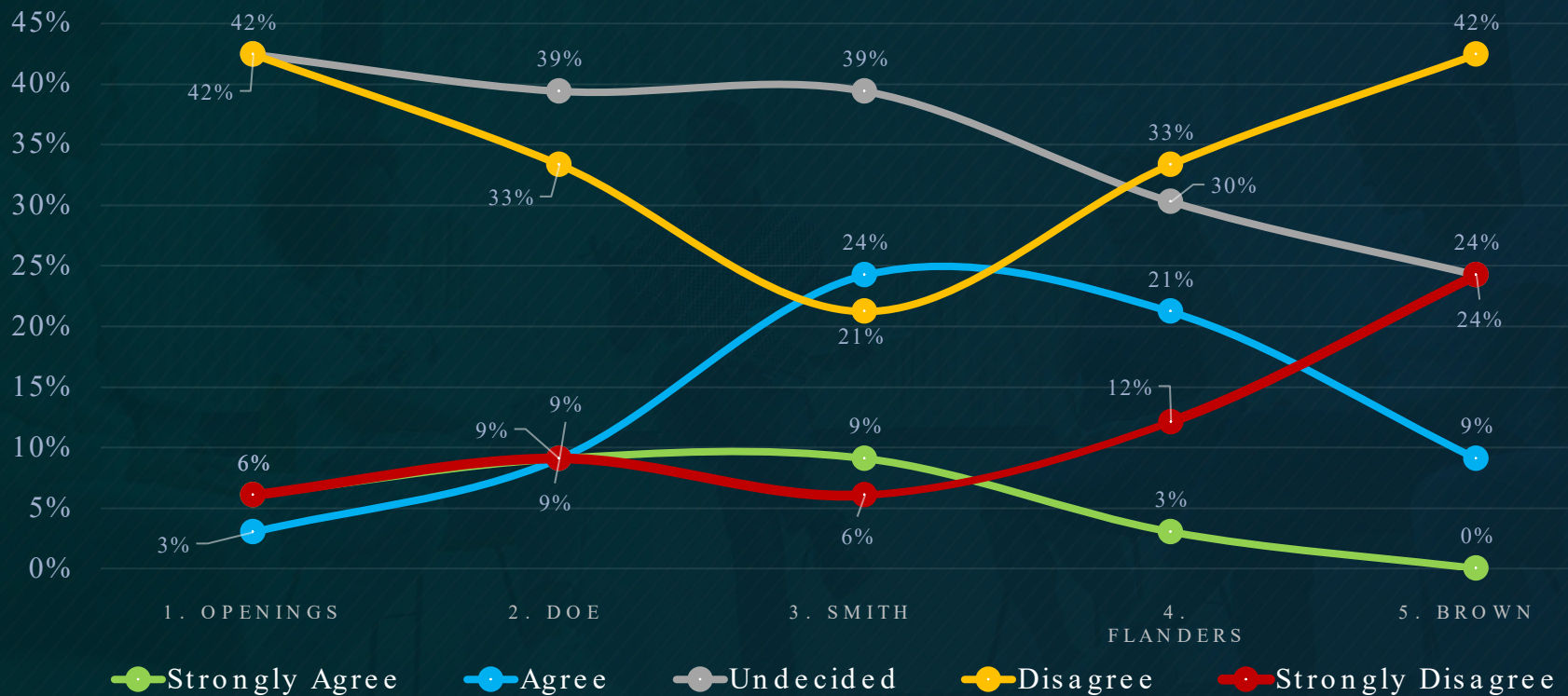


KEY FACTOR:

THEORY AND WITNESS ANALYSIS

# Mock Trials

► POLL: "Reasonable paramedics placed in the same situation would have handled it better."





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Mock Trials

5

### TAKE ACTION

Watch out for themes/actions that are **offensive to jurors**. Don't disregard likability/sympathy factors or dangerous traits such as creepy, uncaring, etc.





## TAKE ACTION

Often, experts will cancel each other out. However, if we have an outstanding expert, **we want to know this** so that we can base our entire case around their testimony.





## TAKE ACTION

Deliberations provide insight on the most persuasive arguments used by defense jurors. You'll also discover which Plaintiff arguments are the most effective, so you can **develop strong counter-narratives.**





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Mock Trials

5

### TAKE ACTION

If you're dealing with a bad case, make sure you are very detailed in your own damages calculations and have strong experts to give jurors a **reasonable frame of reference**.







## TAKE ACTION

**Attorney likability matters in mock trials and the real trial.** Jurors see everything – from the moment you walk in, to the moment you leave. How do you treat your staff in front of the jury? Do you seem anxious or stressed?



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# Trial Preparation

WELCOME TO THE SUPER BOWL



## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Trial Preparation

6

Avoid last minute preparation. Firms may be busy and understaffed, but preparing an opening the night before trial doesn't make sense, given how much is at risk.





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Trial Preparation

6

Juries are diverse all over California. It helps to have a diverse trial team. When we talk about diversity, we're talking about age, race, and gender.





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Trial Preparation

6

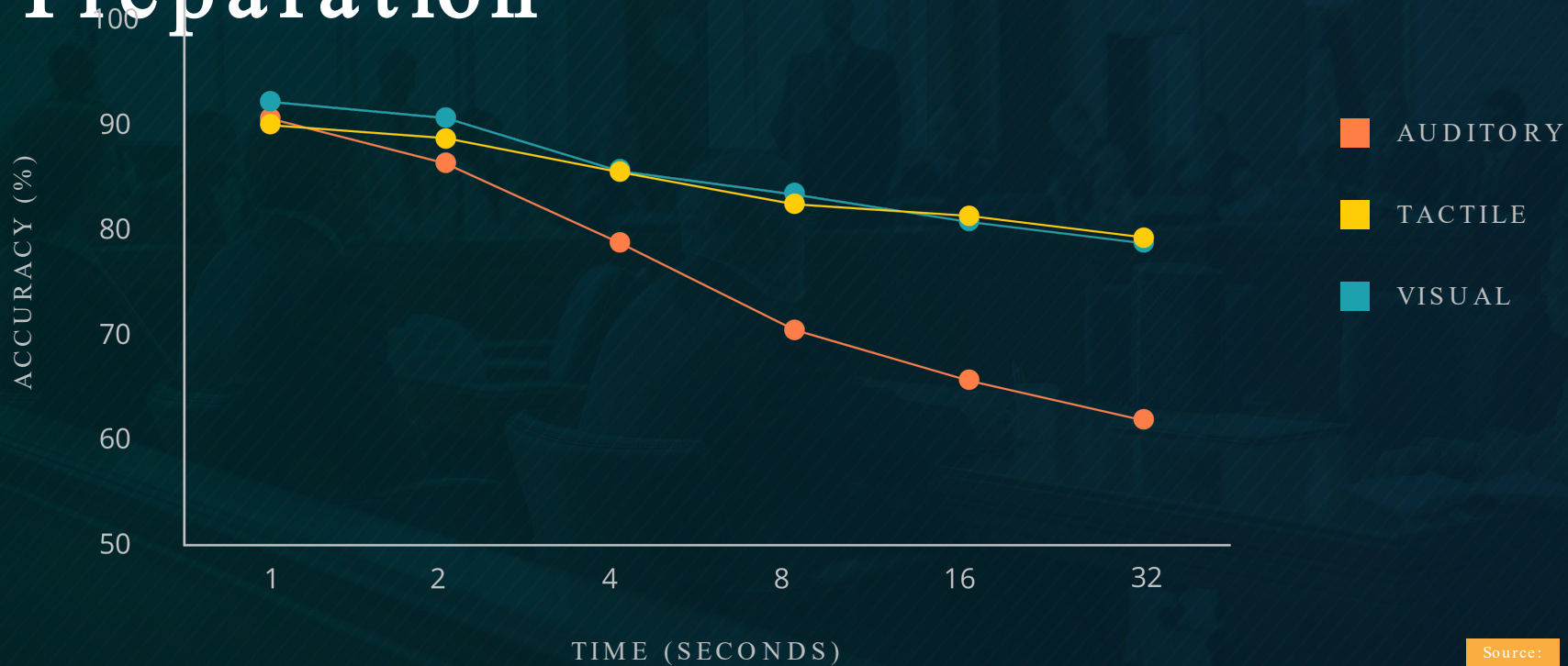
Make sure you hammer home your best facts with visuals and repetition, so the jury remembers the important details.



KEY FACTOR:

IN ONE EAR, OUT THE OTHER

# Trial Preparation



Source: PLOS



Visual timelines are essential to almost every case. Integrate these into your opening statement and reference them throughout your case.







Doe

v.

Smith & Daniels

DEFENSE PRESENTATION

# John Doe

TIMELINE OF EVENTS

8:30

9:00

9:30

10:00

10:30

# John Doe

## TIMELINE OF EVENTS



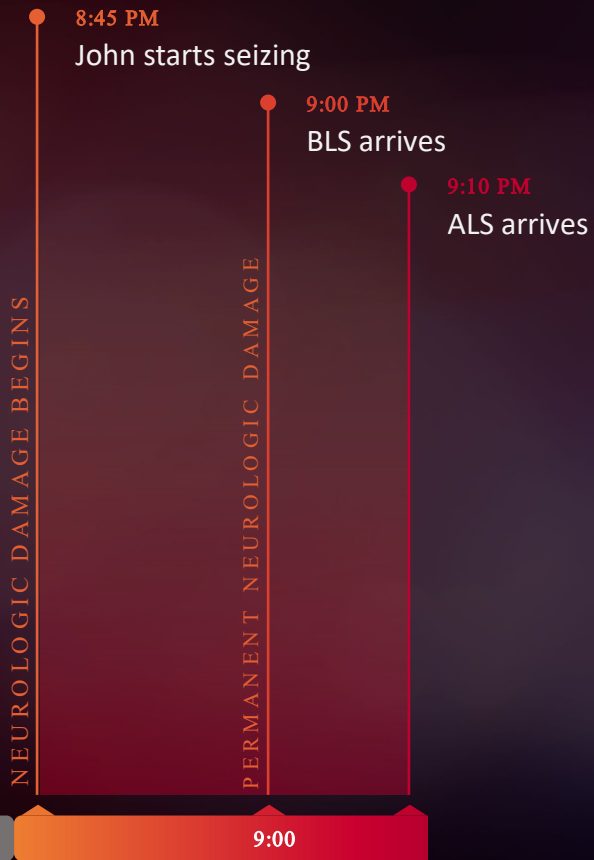
# John Doe

## TIMELINE OF EVENTS



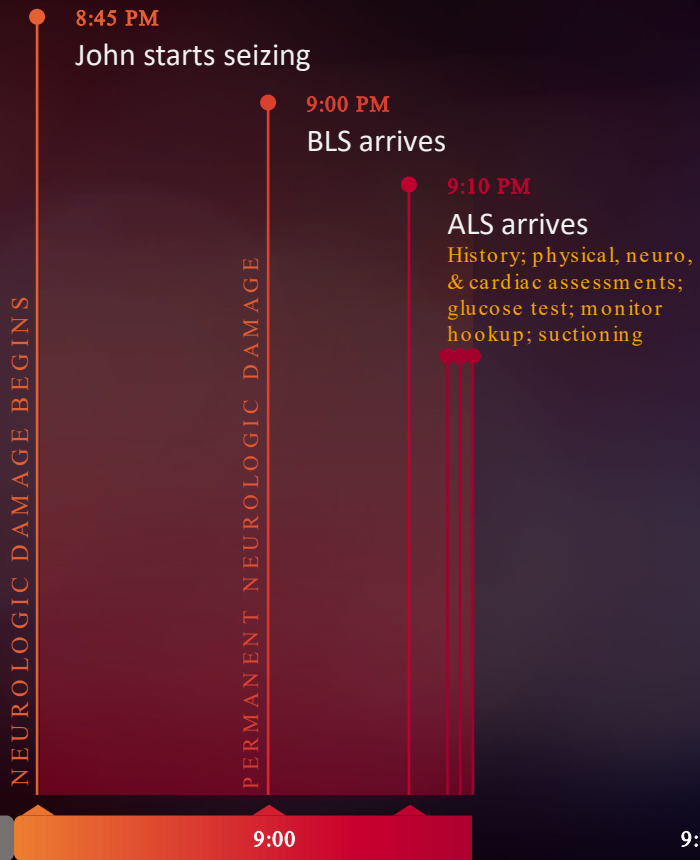
# John Doe

## TIMELINE OF EVENTS



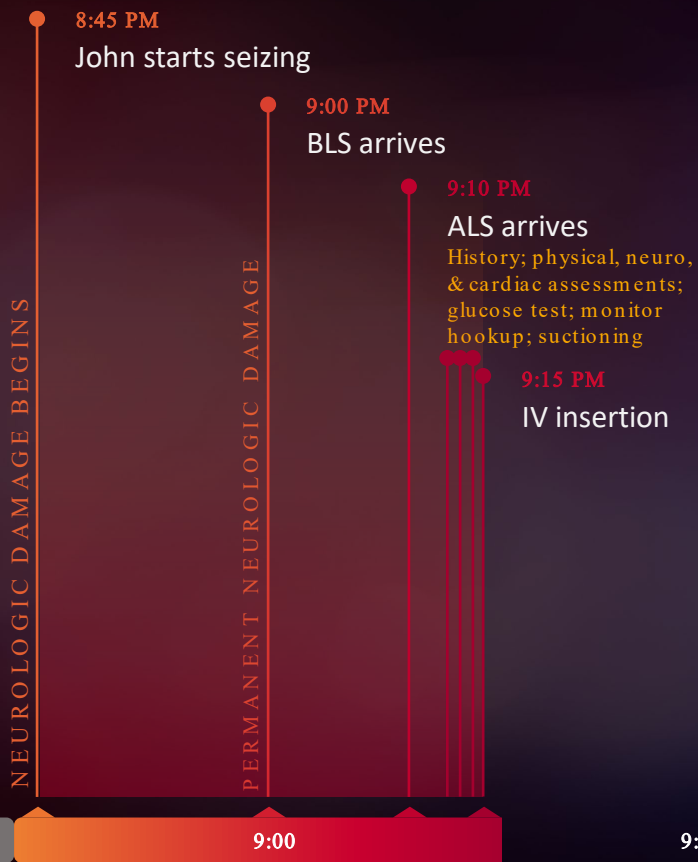
# John Doe

## TIMELINE OF EVENTS



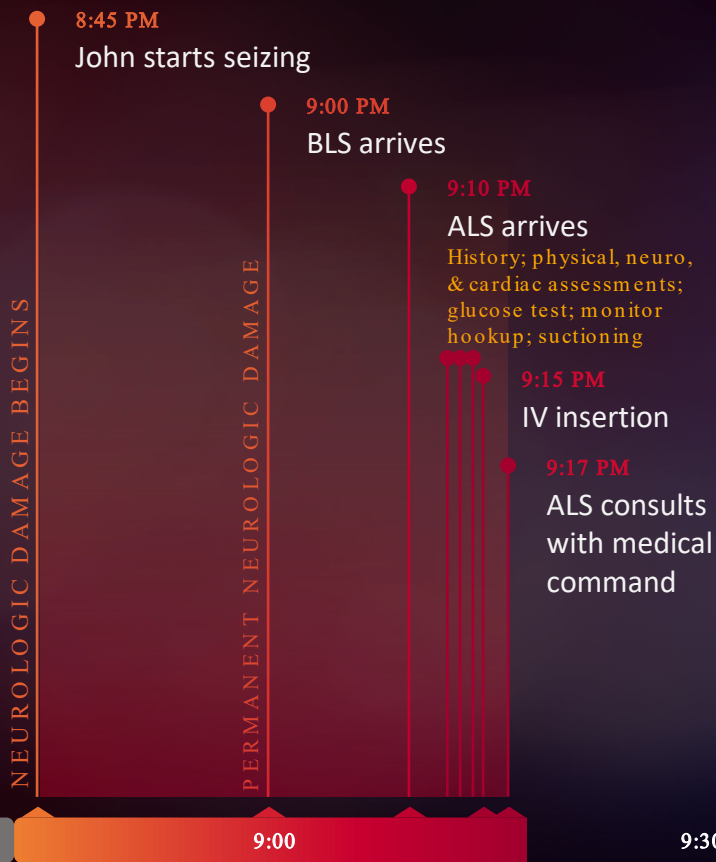
# John Doe

## TIMELINE OF EVENTS



# John Doe

## TIMELINE OF EVENTS



8:30

9:00

9:30

10:00

10:30



Once Medical Command is contacted, standing orders cease

## 8.41 – 8.2 APPLICABILITY AND RESTRICTIONS

(d) These standing orders shall not be interpreted as a requirement to administer ALS treatment prior to contact with the medical command physician. ALS crewmembers may elect to contact the medical command physician at any time during the provision of therapy. Unless otherwise provided in these rules, **standing orders cease to be operative once contact is made with the medical command physician.**

# John Doe

## TIMELINE OF EVENTS

Time	E.R.	S.S.	SNT	SOPD	SUCD	Activity			
						Resp	Rhythm	SpO <sub>2</sub>	
Method	Comment	Resp Effort	SpO <sub>2</sub>	SpO <sub>2</sub>	SpO <sub>2</sub>	SpO <sub>2</sub>	SpO <sub>2</sub>	SpO <sub>2</sub>	
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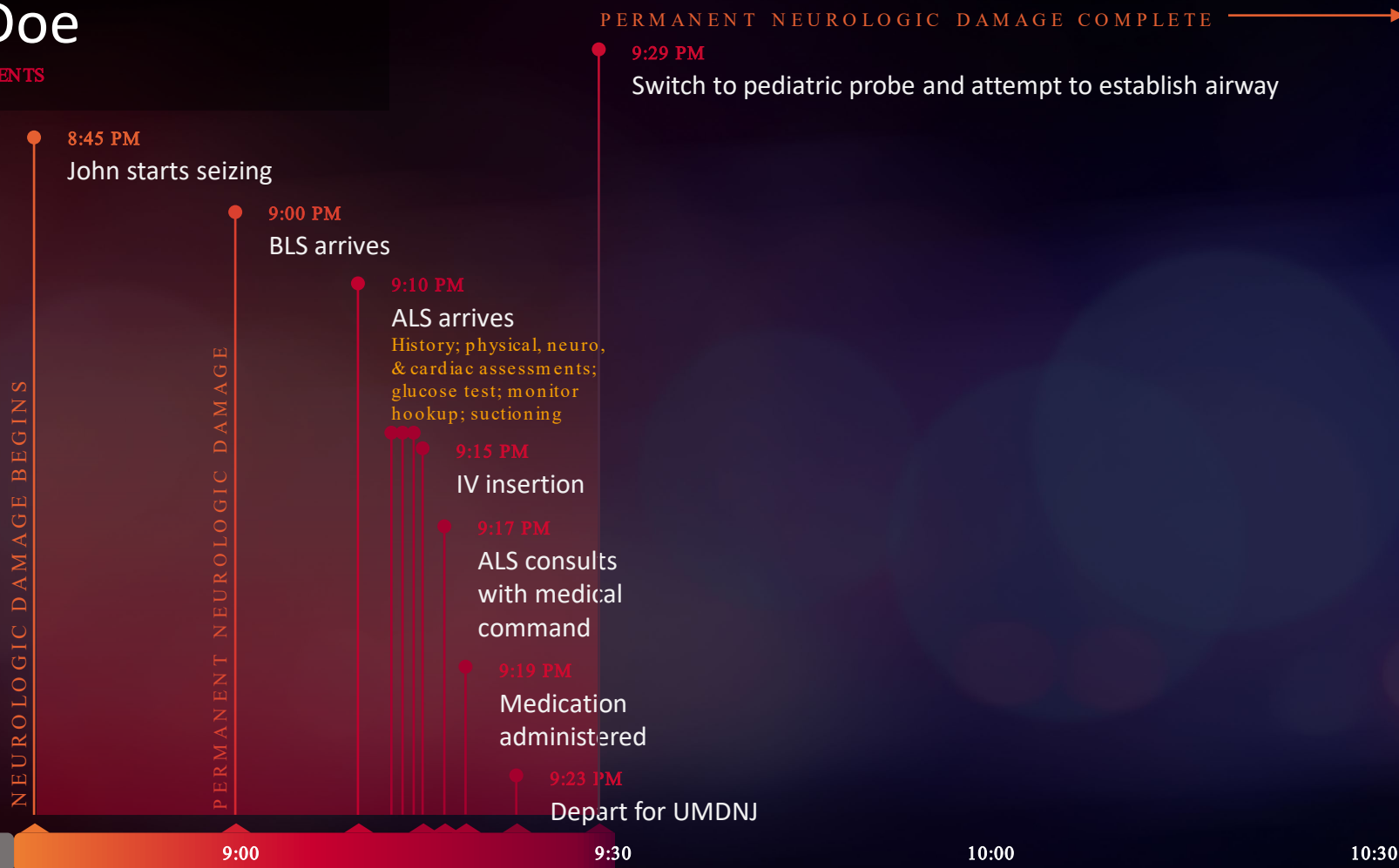
**21:29 158**  
**Airway** Unable to obtain SpO<sub>2</sub> with large probe- switched to pediatric probe. Pt's respiratory drive had decreased. Oral Pharyngeal Airway performed by [redacted] Able to open airway enough to insert oral airway. Large amount of fluid in the oral and nasal airways. Pt suctioned. Ventilations via BVM begun Authorization: [redacted] (OVH), MD 327. Pt. Response: Unchanged.

SpO<sub>2</sub> transferring to ambulance to transport to trauma center. Pt. always monitored via SpO<sub>2</sub>.  
 Pt. transferred to stretcher in trauma team 3. Tube kept in place and confirmed by trauma physician and respiratory therapist. CPR performed by trauma team. Pulse and blood pressure returned.  
 Transport Affixing: None, Ocular, Other:  
 Dispatch Factors: None  
 Turn-Around Factors: Clean-up

8/20/2013

# John Doe

## TIMELINE OF EVENTS



8:30

9:00

9:30

10:00

10:30



AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Trial Preparation

6

Don't fall for this excuse: 'Jurors aren't going to like me if I use technology or visuals, because they'll think we have a lot of money.'





These days high-quality trial graphics are expected. They will be far more upset if things aren't explained to them visually or if you expect them to grasp everything via an oral-only presentation.





AVOIDING NUCLEAR VERDICTS



KEY FACTOR: Trial Preparation

6

Everything matters.  
Dress well, get a haircut, consider  
outfit colors. Assume it all matters



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Reptile Theory:  
Strategy to encourage juror  
decisions based on fear and  
danger.







Non-economic & Punitive damages: Both are so variable and so easy for Plaintiff's attorneys to put out a big number that needs no justification.





Anchoring:  
Marketing/pricing strategy used to  
create a psychological baseline in  
jurors' minds.





Two growing trends:

- Billboards and advertisements with large verdict amounts
- Third-party litigation funding



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AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Organization and composure are essential. You don't need a magician or psychic.





AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Evaluate every fact you can gather on every juror. Ignore the urge to decide on jurors based only on their profession.





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Jury consultants:  
Use someone you trust. Avoid  
flying someone in that has never  
seen the case and having them  
'pick' the jury.





AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Jury consultants:  
Your consultant is going to leave  
after selection. Don't rely too  
much on their preferences; you  
have to ultimately try the case.







AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Judges are often in a rush. It's essential to not allow this process to be rushed, where we can prevent it.





AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Don't be afraid to use questionnaires, even if it means Plaintiff's counsel gets more information.





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Trending Plaintiff strategy: using as few peremptories as possible. Don't get caught up in this. Use your strikes, know who is coming.





AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Remember that the jury is bored and looking for cues. Jurors see everything.





AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Make friends with the bailiff and court staff. The jurors can tell who they like and who they don't.





AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Beware of "woke" themes in your case, which can turn off conservatives, who are usually reliable Defense jurors.





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Trump supporting conservatives often do not see the case the same way as a traditional Republican or Conservative juror. They can often be unpredictable, outspoken, and a dangerous juror to keep on the panel.





## AVOIDING NUCLEAR VERDICTS



## KEY FACTOR: Jury Selection & Voir Dire

8

Gen Z jurors can be unpredictable as well. They are generally aware and focused on injustice, can have limited understanding of money, many are distrustful of large entities, and can have unreasonable expectations of safety.







## AVOIDING NUCLEAR VERDICTS



NEW INITIATIVE:

## Evaluating the Potential for a Nuclear Verdict

In an effort to determine which cases present the greatest risk to our clients, we examine key factors during our Mock Trial debrief presentations.





## AVOIDING NUCLEAR VERDICTS



NEW INITIATIVE:

## Nuclear Verdict Factors : Mock Trial Results

BETA v1.0



Witness  
Performance



Prediction  
Accuracy



Anger &  
Punishment Factor



Individual &  
Group Verdicts

NUCLEAR VERDICT  
POTENTIAL:



85%

Questions?



Thank You!