

THE “REPTILE” IN A DIVIDED NATION

The Sports and Fitness Lawyers Team
Presents: Zone Defense

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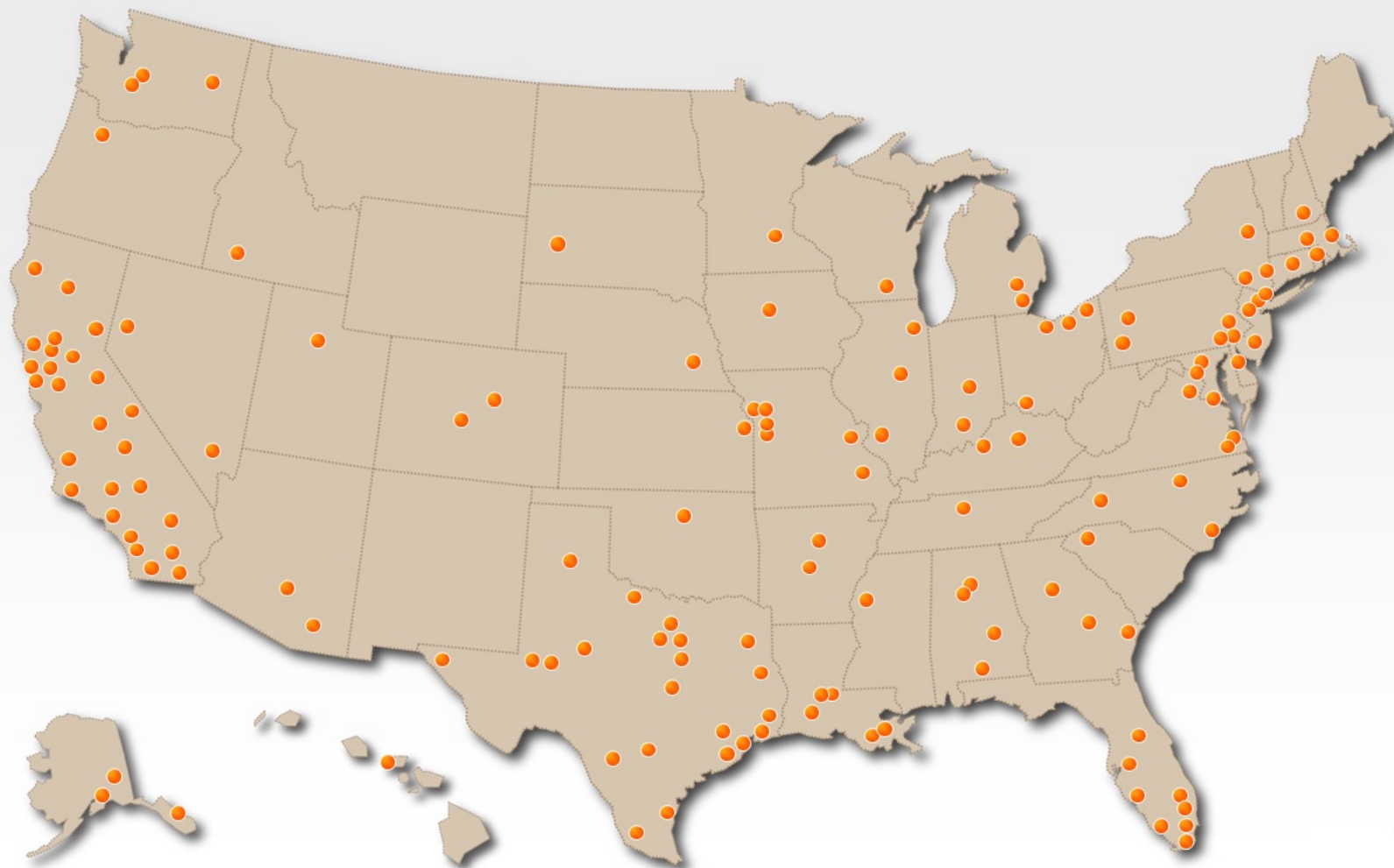


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Trials Around The Country

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Trial Partners, Inc.

- National trial consulting and jury research firm
- Experience in well over 5,000 cases, including over 1,500 jury selections in 44 states, District of Columbia and Puerto Rico
- Juror database: 60,000+ jurors
- Experience in all types of civil and criminal cases (both federal and state courts)
- Work includes jury trials, bench trials, and national and international arbitrations

What We Do

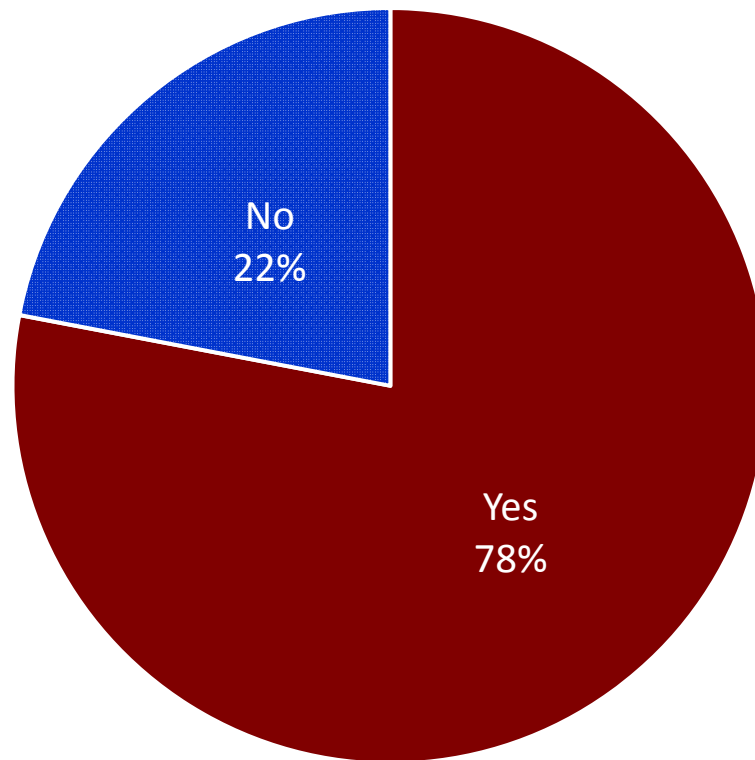
- Jury research (mock trials, surveys, focus groups, etc.)
- Jury selection
- Witness preparation (fact and expert)
- Trial monitoring and shadow juries
- Private trials
- Assist in writing openings and closings
- Post-trial juror interviews
- CLEs and other training

Introducing “The Reptile”

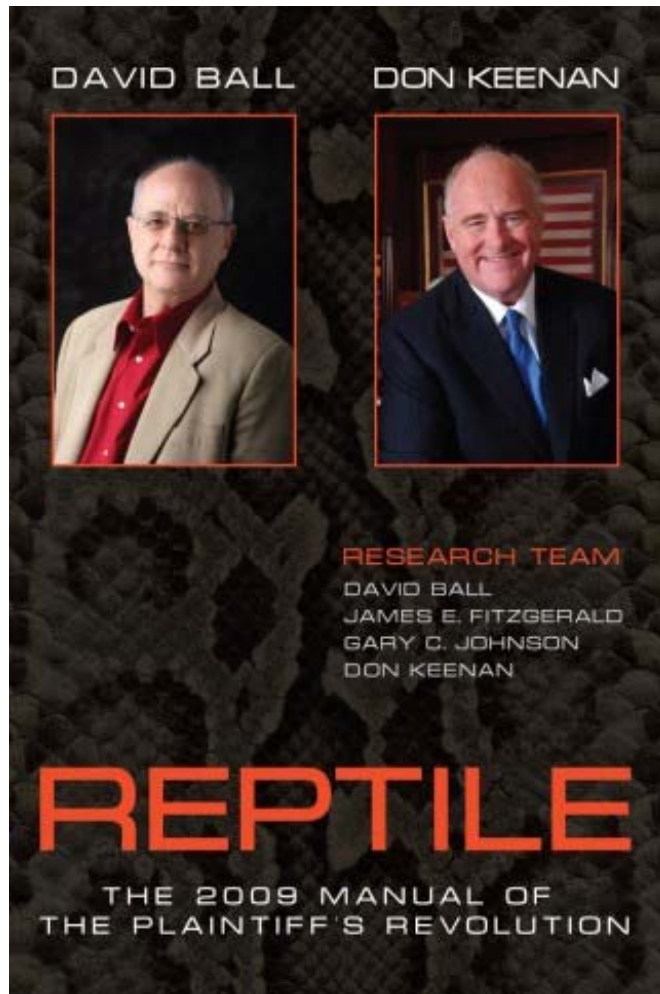
“The Reptile” Defined

- Survival instinct for yourself and your genes
- Major Axiom: When the Reptile sees a survival danger, even a small one, she protects her genes by impelling the juror to protect himself and the community

Do you find yourself worrying often about the safety and well-being of your loved ones?



The Reptile: The “Plaintiff’s Revolution”



- Beginning in 2006, plaintiff lawyer, Don Keenan, and plaintiff trial consultant, David Ball, began “researching the inner workings of jurors’ minds.”
- In 2009 they introduced “The Reptile,” which they characterized as a “plaintiff’s revolution.”

How Plaintiffs Get The Reptile To Work

- The Reptile is about community safety, which is the plaintiffs' "exclusive domain."
 - The defense almost never has a way to make the community safer; the defense mantra is almost always to "give danger a pass."
- The purpose of trials is to make the community safer.
- The Reptile gives priority to immediate dangers over medium- or long-term dangers.

How Plaintiffs Get The Reptile To Work

- Say they are only interested in fairness and justice.
- Don't want anyone biased for or against either side.
- Don't want jurors to decide case based on sympathy (but give lots of reasons to do so).
- Minimize the plaintiff's burden of proof.

The Preponderance Rule [video clip]



Plaintiff Goals

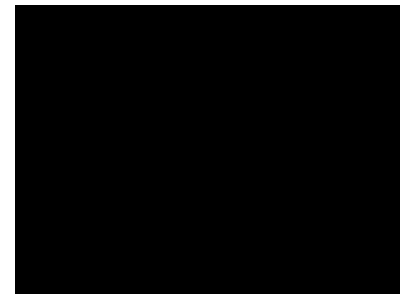
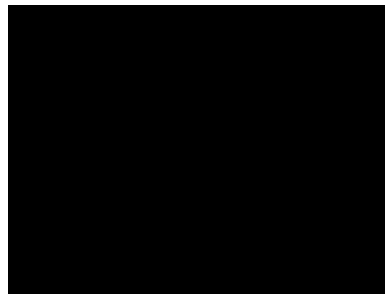
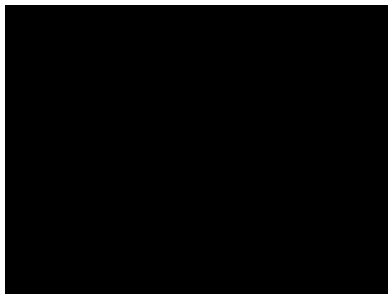
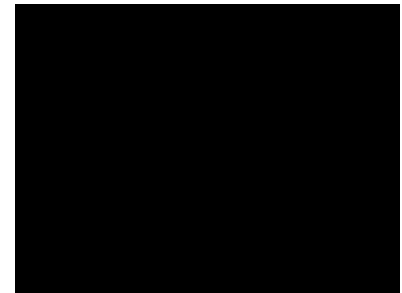
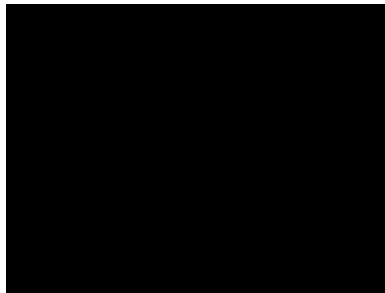
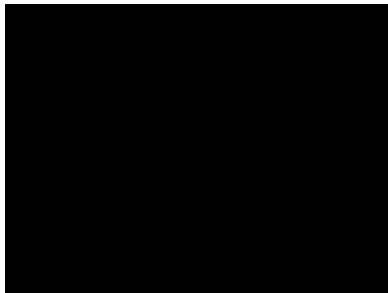
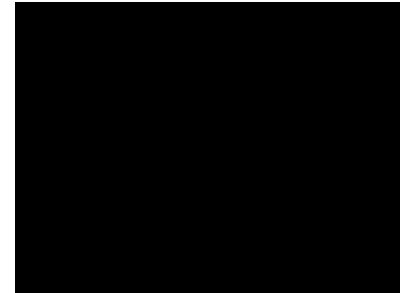
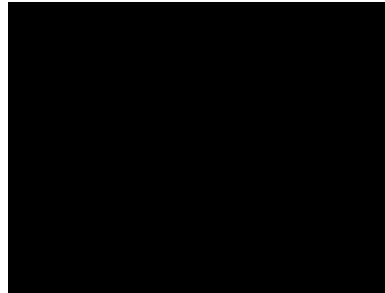
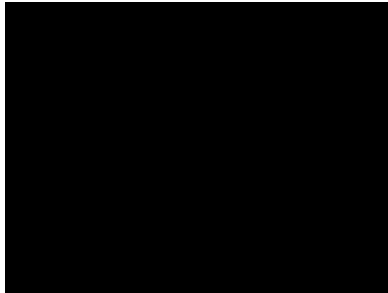
- Keep the jurors' brains in "survival mode."
- Use anxiety and fear to get jurors to do what you want.
- Portray Defense as trying to "give danger a pass."
- Show the immediate (or short term) danger of the defendant's conduct and how fair compensation can diminish that danger within the community.
- Position jurors as the "guardians of the community" that have the power to make the community safer.

Making Jurors Feel Good About A Plaintiff Verdict

- A verdict in favor of plaintiff(s) tells companies to be more careful and to do more to protect members of the community.
- A verdict in favor of plaintiff(s) will make the community safer because companies are held accountable.

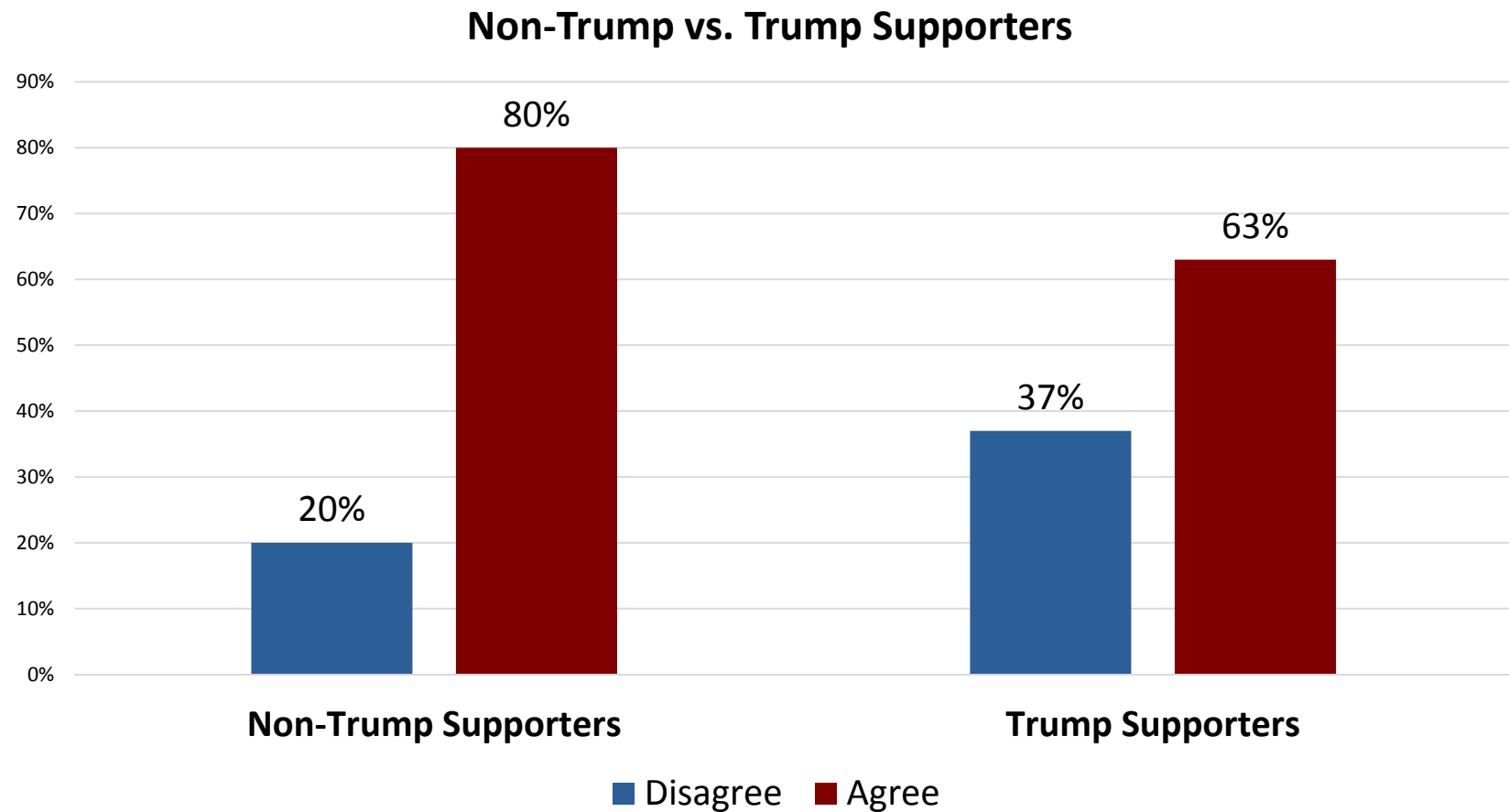
CORPORATE AMNESIA: “Can’t Recall” Can Destroy Credibility

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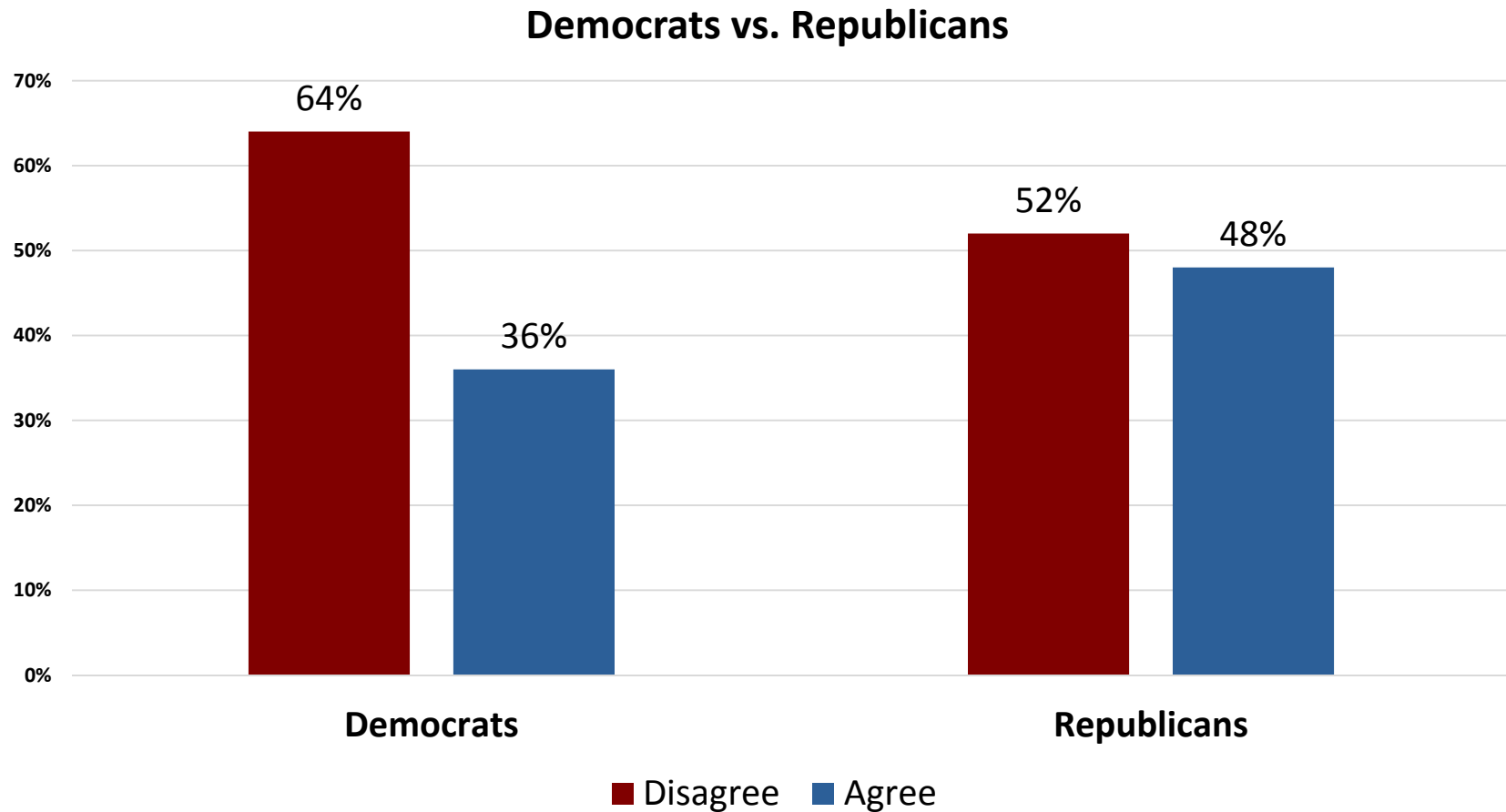


Pro-Reptile and Anti-Reptile Attitudes in Current Political Climate

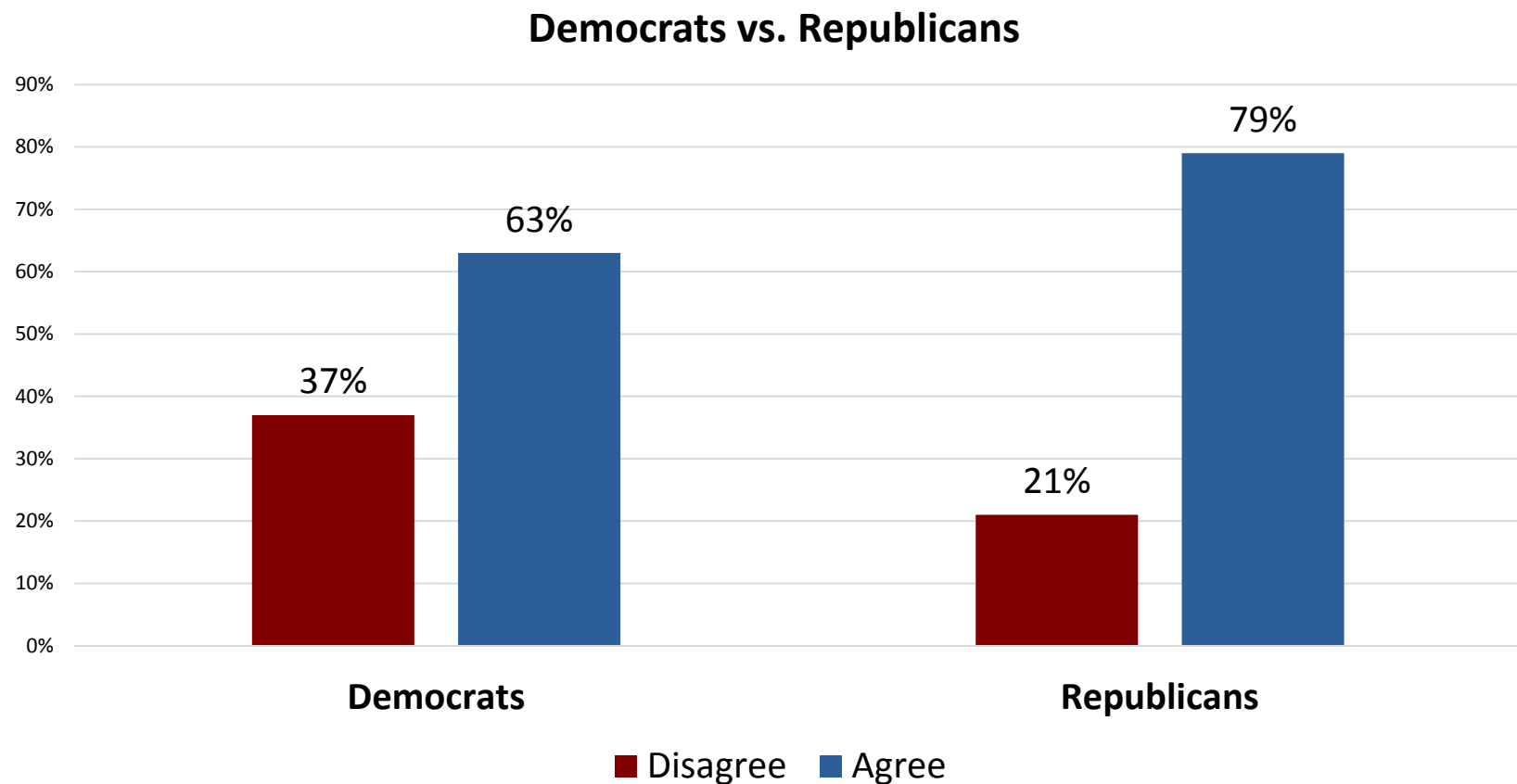
Lawsuits are a good way to protect the community and keep people safe



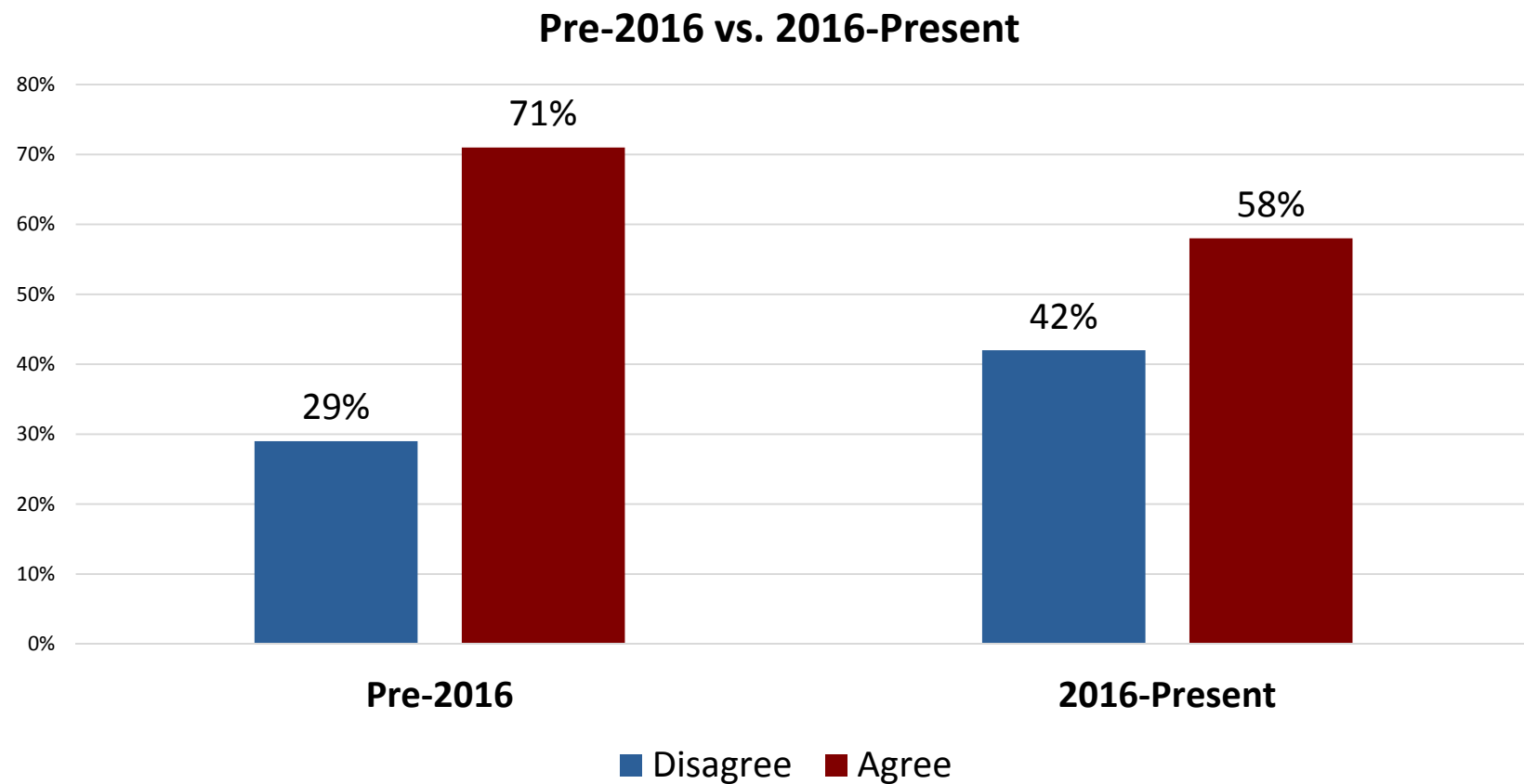
The best way to cut down on the number of frivolous lawsuits is to send plaintiffs home with no money



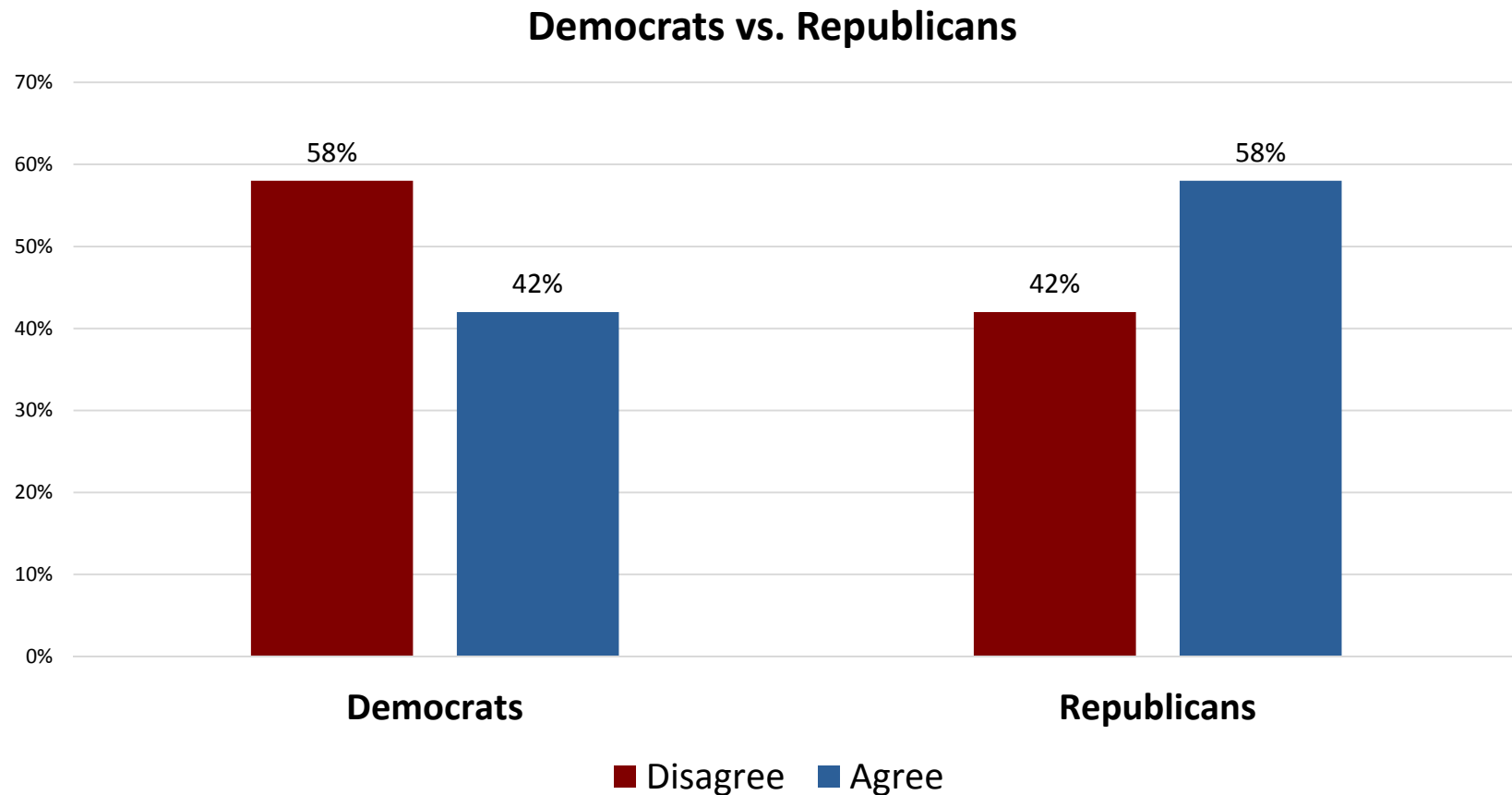
Lawsuits make everything more expensive for consumers



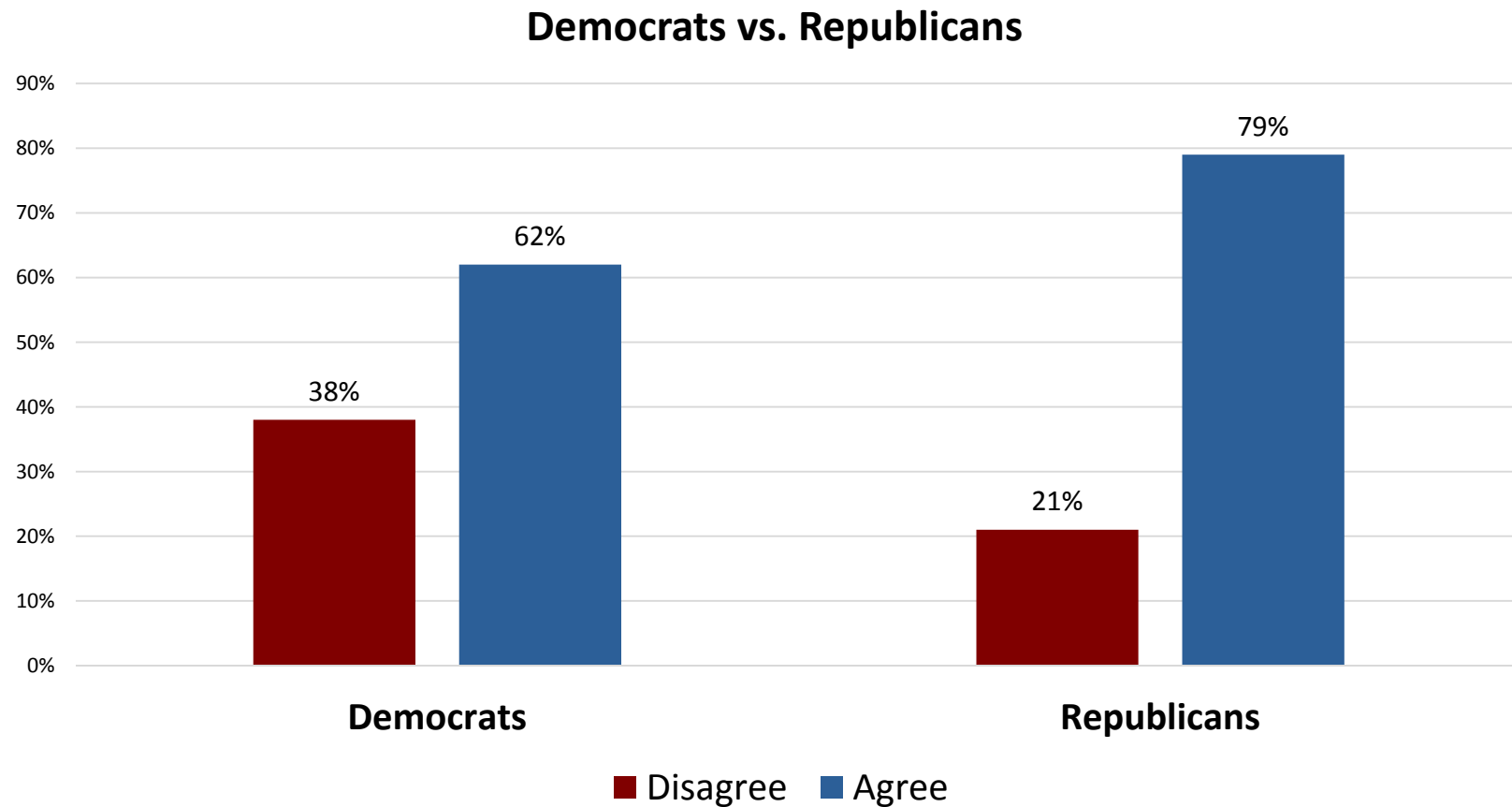
Most corporations put profits ahead of consumer safety



Our society has gone overboard with requiring warning labels on everything nowadays



Companies are often falsely accused in lawsuits because they have “deep pockets”



Defense Strategies and Techniques to Counter “The Reptile”

Defeating The Plaintiff Reptile: *The Honey Badger*



Reinforce Tort Reform Attitudes

1

Lawsuits undermine the quality and availability of healthcare for your family.

2

Lawsuits ruin the local economy, threaten jobs, and thus endanger your ability to feed and house yourself and your family.

3

Lawsuits make everything more expensive, taking money you need to care for your family.

4

Lawsuits suppress the development of new products that can keep you and your family safer.

The Honey Badger

- Be on the side of safety; keeping the community safe.
- Show that you “followed the rules,” and got better over time. A responsible company eliminates dangers to the community.
- Be on the side of telling the truth. Cite evidence/facts (not theories) to support your conclusions.

The Honey Badger (continued)

- Point out if plaintiff's case is based on fraudulent and fictitious fears or made-up evidence.
- Focus on this case and this Plaintiff.
 - Object to broad generalizations and violations of the "golden rule" (e.g., references to "these cases").
- Emphasize the plaintiff's burden of proof, and that it requires credible evidence.

The Honey Badger (continued)

- Explore Reptile concepts in voir dire.
- Embrace the system. Explain that, for justice to work, the law must be followed to the letter.
- Help the jurors see **the dangers of a plaintiff verdict.**
 - What happens if a verdict holds the wrong company responsible for something?

The Honey Badger (continued)

- “Manufactured” lawsuits against “deep pocket” big companies waste valuable time and hurt the economy.
- A very rare (e.g., one-in-a-million) occurrence does not usually awaken the Reptile.
- The company does not have to be perfect, just not be perceived as a threat to community safety.
- [*If possible:*] Direct attention to any empty chairs.

The Honey Badger (continued)

- For experts, describe the specific steps they took (e.g., to reach their conclusions).
 - The persuasive power of *doing* outweighs credentials, personality, looks, field experience, etc.
- Describe steps opposing experts or lawyers skipped, and explain why their methods are flawed.
- Use simple, non-technical language whenever possible.

Innovative Ways to Avoid the Reptile
and Resolve Cases:
Private Trials

Private Trial Considerations

- Location for private trial
- Binding vs. non-binding
- Agenda, including presentation time for attorneys
- Length of trial
- Presence of a judge or mediators/arbitrators
- Number of jurors recruited and juror incentives
- Should it include a jury selection component?
- Should it include live or videotaped witness testimony?

Thank You!

Questions?

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