

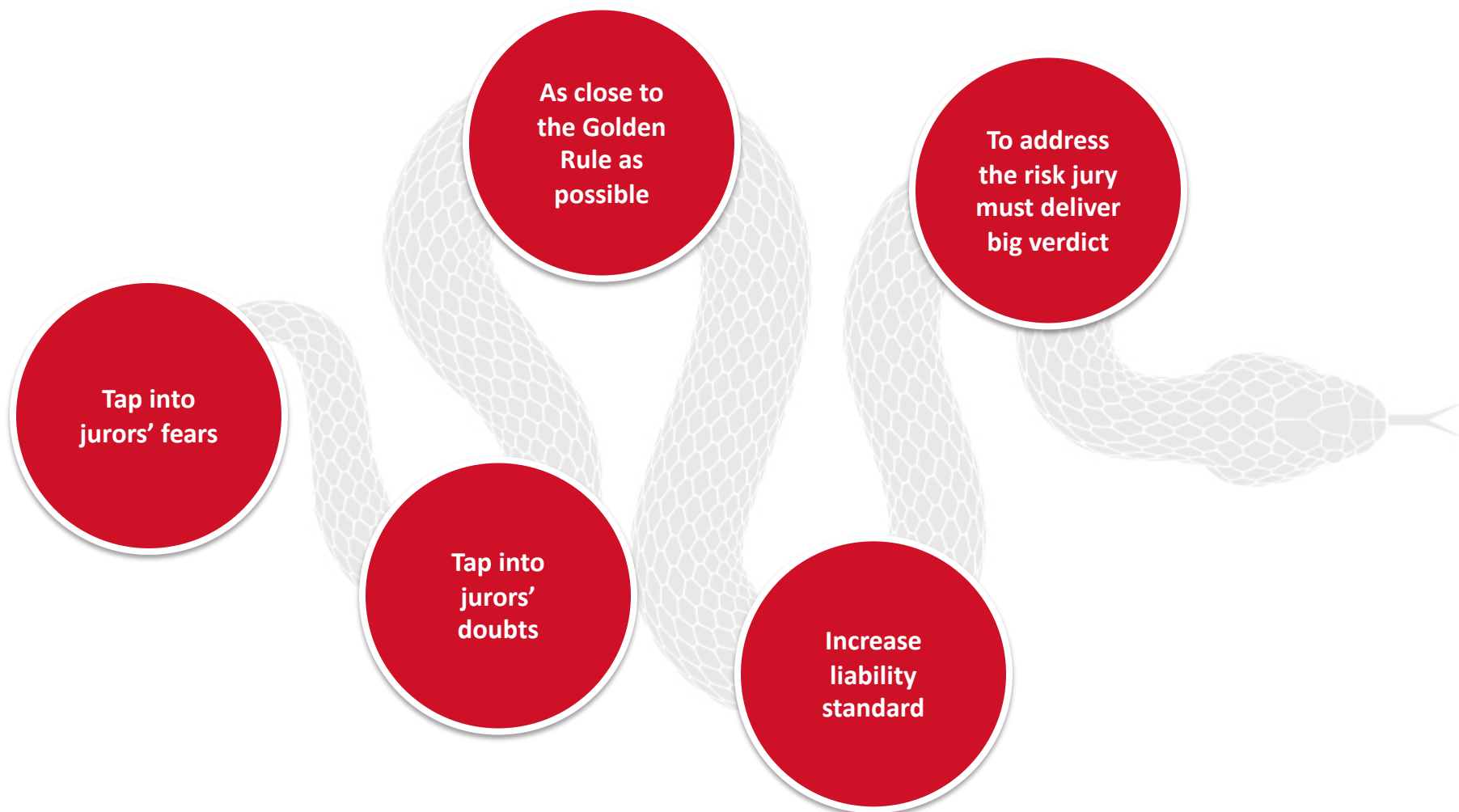
Is The Reptile Slithering Into Your Commercial Case?

David Genender, Jessica Pulliam, Tom O'Brien,
Jordan Kazlow

Safety First



What is The Reptile?



What Scares Jurors?



Government/B
usiness
Corruption



Family
Illness/Death

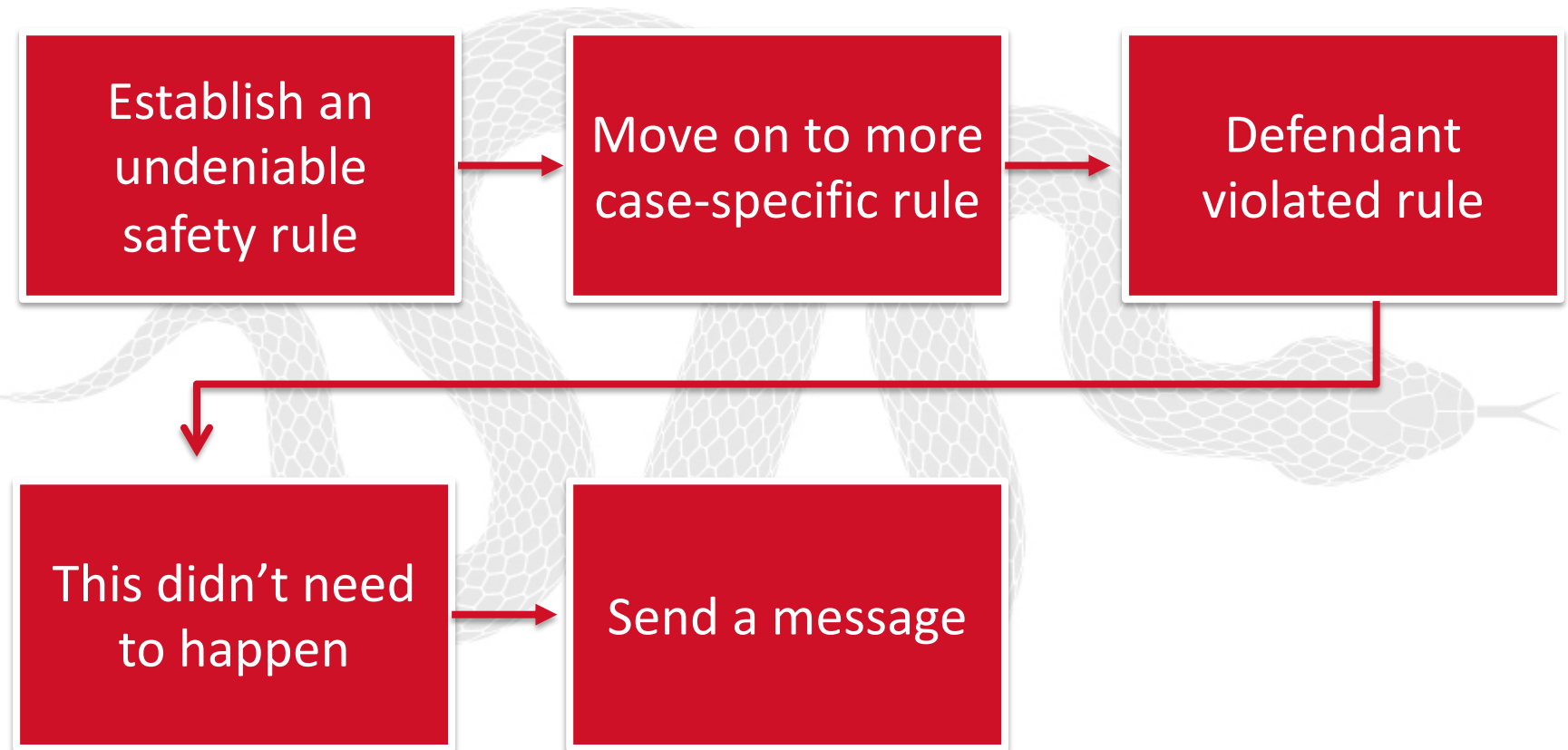


Environmental
Issues

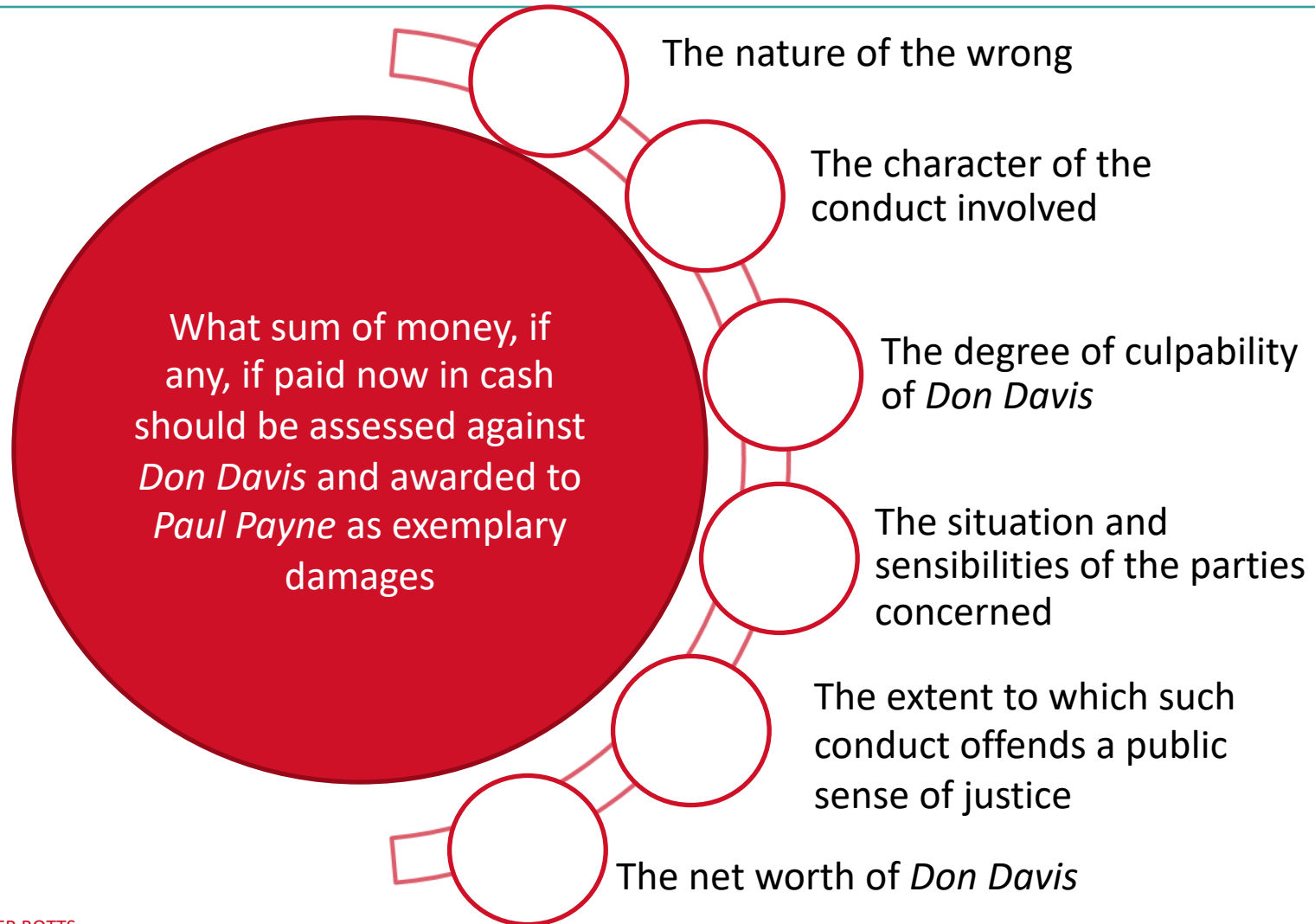


Financial
Security

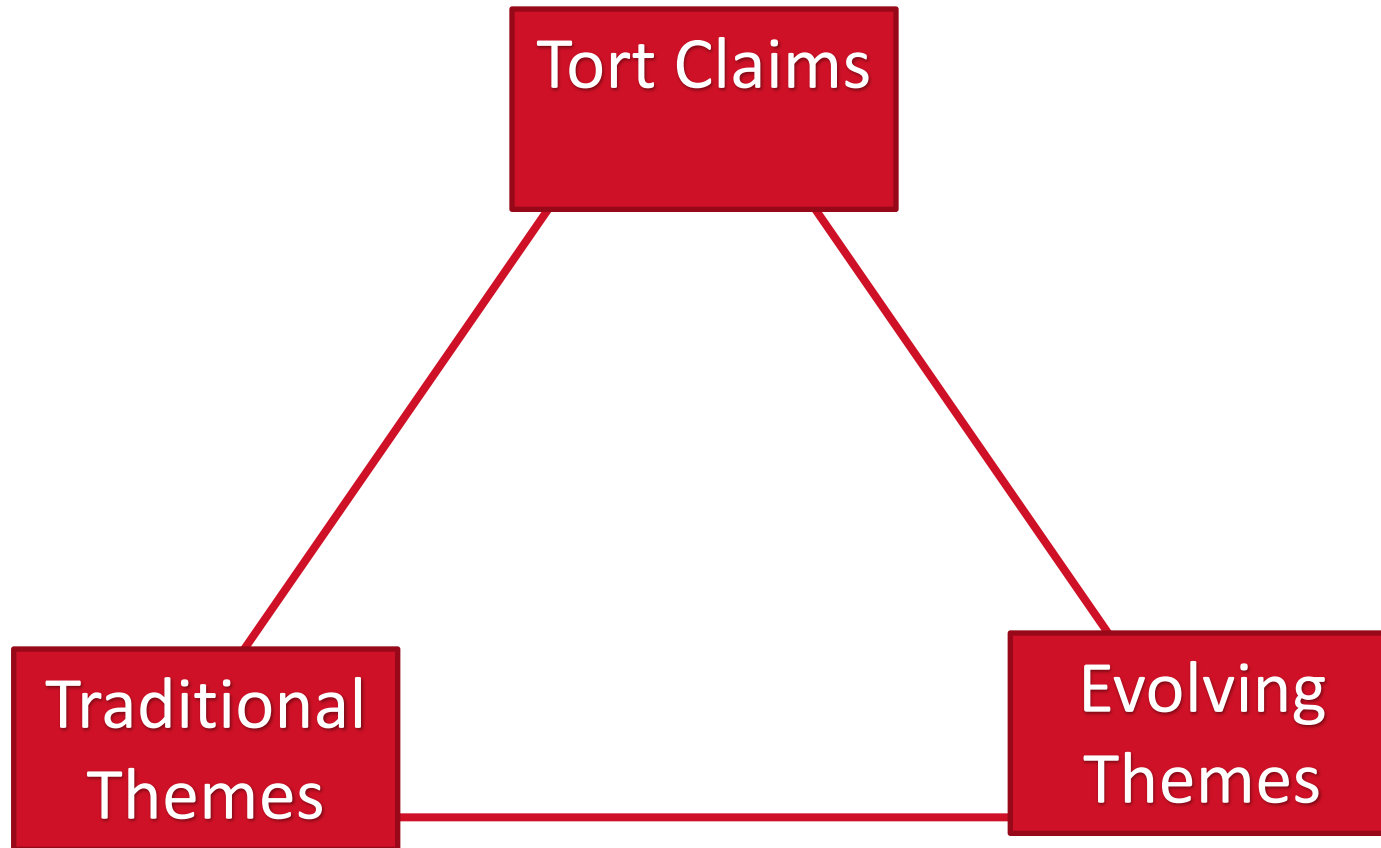
What Does The Reptile Look Like?



Punitive Concepts for Actual Damages



Themes Shifting in Commercial Cases



The Reptile in Commercial Cases

Always wrong to lie

Always wrong to steal

Always follow internal policies

Never unnecessarily risk your client's money

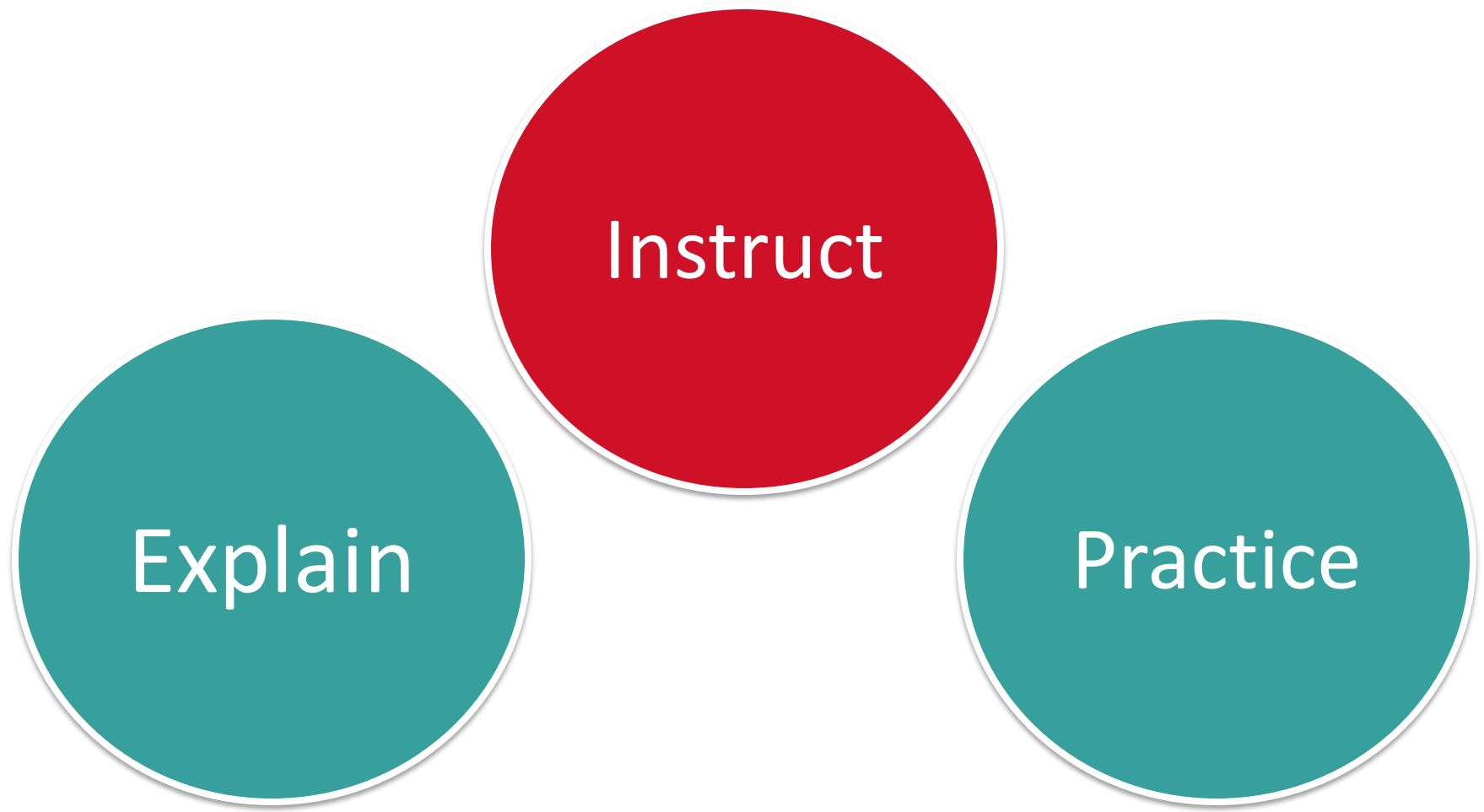
Always put your principal/ partner/ shareholders first

Always disclose as much information as possible

Combatting The Reptile

- Preparing for Depositions
- Written Discovery
- Motions in Limine
- Trial Objections
- Trial Themes

Preparing for The Reptile Deposition



Reptile Repellant

- ☐ Listen for absolutes (always/never; yes/no)
- ☐ Avoid one word answers
- ☐ “That’s just not a yes or no question”
- ☐ “It’s not always that simple”
- ☐ “X is important, but Y is important too”
- ☐ “That’s not the only consideration”
- ☐ “I’m not the right person to answer that question (risky)”
- ☐ Stick to your guns

Written Discovery

“Overbroad requests for irrelevant information are improper whether they are burdensome or not.”

- Request: Documents sufficient to show other times you’ve treated customers this way.
- Response: Defendants object to this request as overbroad, seeking irrelevant documents, and an improper fishing expedition. It concerns thousands of customers governed by hundreds of different agreements. In contrast, this case involves a single customer and one agreement.

Motions in Limine

Narrow requests may work

Trial courts have granted narrow requests to prohibit questions and argument appealing to “the conscience of the community”

Broad motions are premature

“The Court is being asked to rule on abstract and generalized hypotheticals. In the absence of something more specific, the Court is unable and unwilling to grant their motion.”

Trial Objections

Harm

“Such argument is an improper distraction from the jury's sworn duty to reach a fair, honest and just verdict according to the facts and evidence presented at trial.”

But not incurable

“This argument was not so inflammatory that a timely instruction from the trial court would not have alleviated the harm, if any, caused by the argument.”

Trial Themes



A
defense
Rule

It's not
that
simple

Reveal
the
Reptile

David M. Genender

Partner | Dallas



EDUCATION/HONORS

J.D., The University of Texas School of Law, 1994

Order of the Coif

Associate Editor, Texas Law Review
with honors

A.B., Politics, Princeton University, 1990
cum laude

David Genender represents plaintiffs and defendants in civil disputes relating to the energy, technology, private equity, professional services, real estate, and life sciences industries. Since beginning his career at Baker Botts in 1994, he has handled a wide variety of civil disputes, including antitrust, breach of contract, breach of fiduciary duty, fraud, environmental, product liability, misappropriation of trade secrets, patent infringement, post-acquisition accounting, royalty, and toxic tort matters. He has represented clients in class actions and multi-district litigation. In addition to representing clients in disputes, Mr. Genender routinely counsels clients regarding dispute resolution agreements, risk management, and other matters designed to minimize litigation risk and/or exposure.

Mr. Genender has served as first-chair trial counsel in cases in federal and state courts and in arbitrations. Mr. Genender's trial and arbitration results include a complete defense award (including attorney's fees) for a private equity firm in a bet-the-company arbitration in New York, an 8-figure verdict for an energy services firm in a patent infringement case in federal court in Dallas, a forfeiture and damages award against a disloyal fiduciary in arbitration in Oklahoma, and a complete victory (including attorney fees) for a national investor against its partner who had asserted dozens of counterclaims in state court in Houston. Mr. Genender has prosecuted appeals before state appellate courts in Texas and New York and before the United States Court of Appeals for the Fifth Circuit. He is also admitted to practice before the United States Supreme Court.

Mr. Genender has presented on topics including reasonable certainty in damages calculations, the use of staff counsel, lawsuit economics, electronic discovery, and best practices for minimizing litigation risk.

Jessica B. Pulliam

Partner & Department Chair – Litigation | Dallas



EDUCATION/HONORS

J.D., The University of Texas
School of Law, 2002

Order of the Coif

Member, Texas Law Review
with honors

B.A., Studio Art, The University of
Texas, 1999
with highest honors

Jessica Pulliam chairs the Trial Department in Dallas. In 2018, Chambers USA commented, “She has great savvy, a lot of courtroom experience and, most importantly, great experience when it comes to securities litigation.”

Ms. Pulliam has driven critical legal changes in the area of business torts. She defended Halliburton Company in one of the most closely watched securities cases of all time, handling the first evidentiary hearing of its kind following the Supreme Court's landmark ruling in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014). She also handled the defense in two take-nothing rulings for her clients by the Supreme Court of Texas. In *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913 (Tex. 2010), the Court set the standard for whether reliance on allegedly fraudulent statements was justified. The Court in *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648 (Tex. 2018), reh'g denied (June 15, 2018), held that the presence of red flags, including a contractual negation of warranty, negated any reliance as a matter of law.

Tom O'Brien

Partner | Dallas



EDUCATION/HONORS

J.D., The University of Texas School of Law, 2004

Order of the Coif

Chief Notes Editor, Texas Law Review

Outstanding Editor Award

Outstanding Constitutional Law Note Award

Outstanding Memorandum Award

with high honors

B.A., Government & International Studies, University
of Notre Dame, 2001

Phi Beta Kappa

summa cum laude

Tom O'Brien has a national securities, shareholder, professional liability, and commercial litigation practice. He has represented public companies, their officers and directors, and public accounting firms in litigation and investigations related to securities, mergers and acquisitions, corporate control, shareholder demands, financial reporting, and audits. He also has defended law, audit, tax, and advisory firms against a variety of claims, and has significant experience with other complex business-related disputes representing both plaintiffs and defendants.

Mr. O'Brien enjoys and thrives at representing companies and professionals in their most critical moments, such as when they face a major securities fraud case or a malpractice suit challenging their work. Two cases he has litigated have reached the Supreme Court of the United States, and one case he tried ended in a judgment described by the District Court as a "once in a lifetime result."

BAKER BOTTS

Jordan Kazlow

Associate | Dallas



EDUCATION/HONORS

J.D., The University of Texas
School of Law, 2016

Associate Editor, Texas Law
Review

with honors

B.A., Political Science,
Vanderbilt University, 2013

Jordan helps corporations navigate high-impact litigation. She is responsible for cases in state and federal courts across the country, from Delaware Chancery Court to Dallas County Court at Law. Her work spans a variety of legal issues, including securities regulation, tort liability, and complex contract issues.

Jordan previously served as a judicial law clerk to Chief Justice Nathan L. Hecht of the Texas Supreme Court. Working in the state's highest court honed her knowledge of both procedural barriers to obtaining review and substantive law on wide-ranging issues including oil and gas litigation, the Texas Citizens Participation Act, and employer negligence liability.

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