

What's New in Nuisance

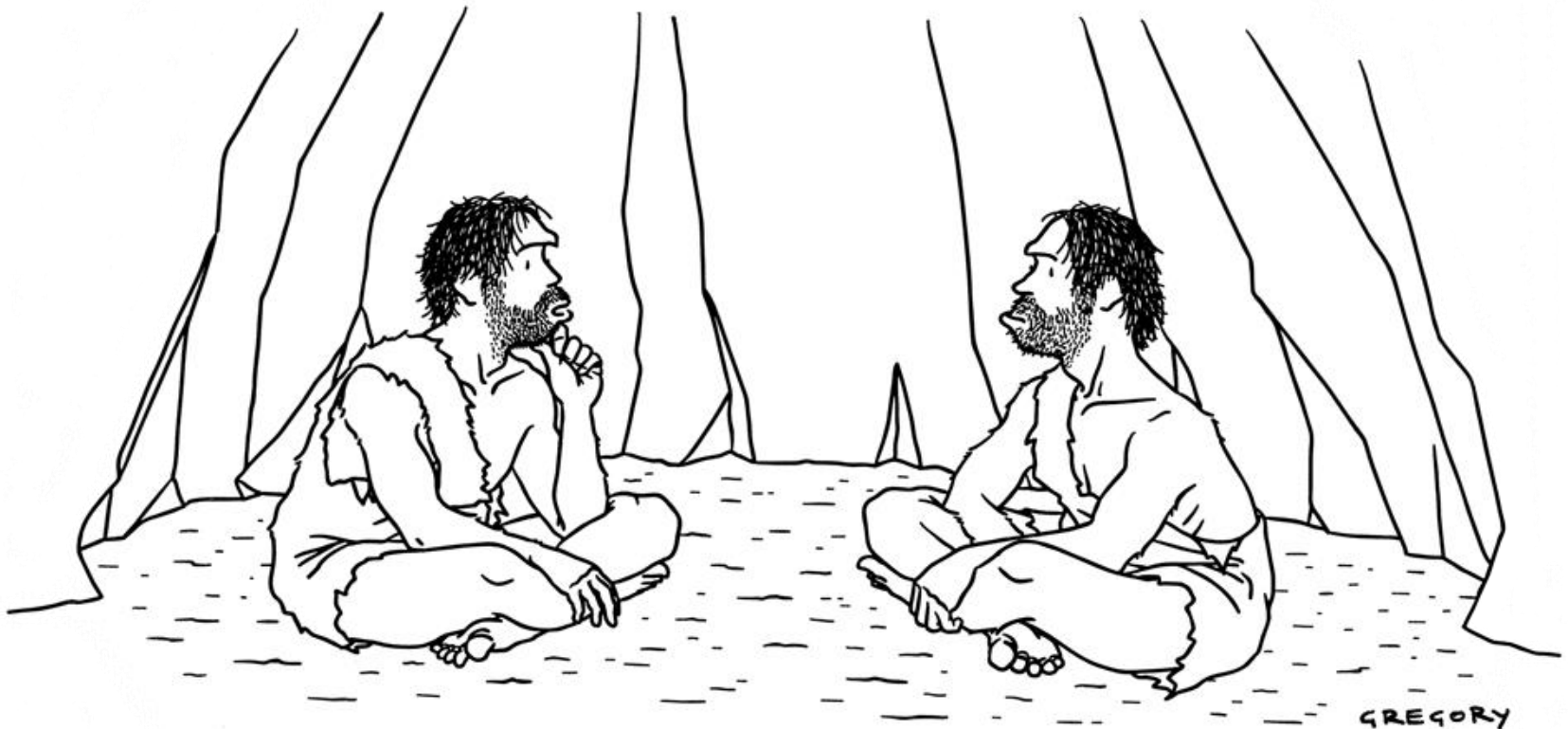
Michael J. Mazzone

30th Annual Energy Law Institute
South Texas College of Law

August 30-31, 2017

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Context is Important



“Something’s just not right—our air is clean, our water is pure, we all get plenty of exercise, everything we eat is organic and free-range, and yet nobody lives past thirty.”

There are Recent Developments in Nuisance Law



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Nuisance is a Legal Injury



Nuisance is Mysterious



Many Things Can Be a Nuisance



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But Not Aesthetics Alone



There Are Three Kinds of Nuisance



Intentional Nuisance Requires “Intent” or “Knowledge”

- Texas Pattern Jury Charge (2016):

JURY QUESTION NO. 1

Did Titan Operating, LLC intentionally create a private nuisance?

“Intentionally” means that Titan Operating, LLC acted with intent with respect to the nature of its conduct or to a result of its conduct when it was the conscious objective or desire to engage in the conduct or the result.

Answer “Yes” or “No.”

Answer: Yes

- Texas law:
 - A defendant acted with intent if he (1) actually desired or intended to create the interference, or (2) actually knew or believed the interference would result. *Crosstex*, 505 S.W.3d at 605.

Offender's Knowledge Must be Fairly Specific

REVERSE and RENDER; and Opinion Filed February 1, 2017.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01285-CV

ARUBA PETROLEUM, INC., Appellant

LISA PARR, IN
DAUGHTER

o

B

Aruba Petroleum
found that Aruba intent
individually and as next
damages caused by the
legally or factually suffi
recovered for disclaim
Pharmaceuticals, Inc. v.
by admitting expert testi

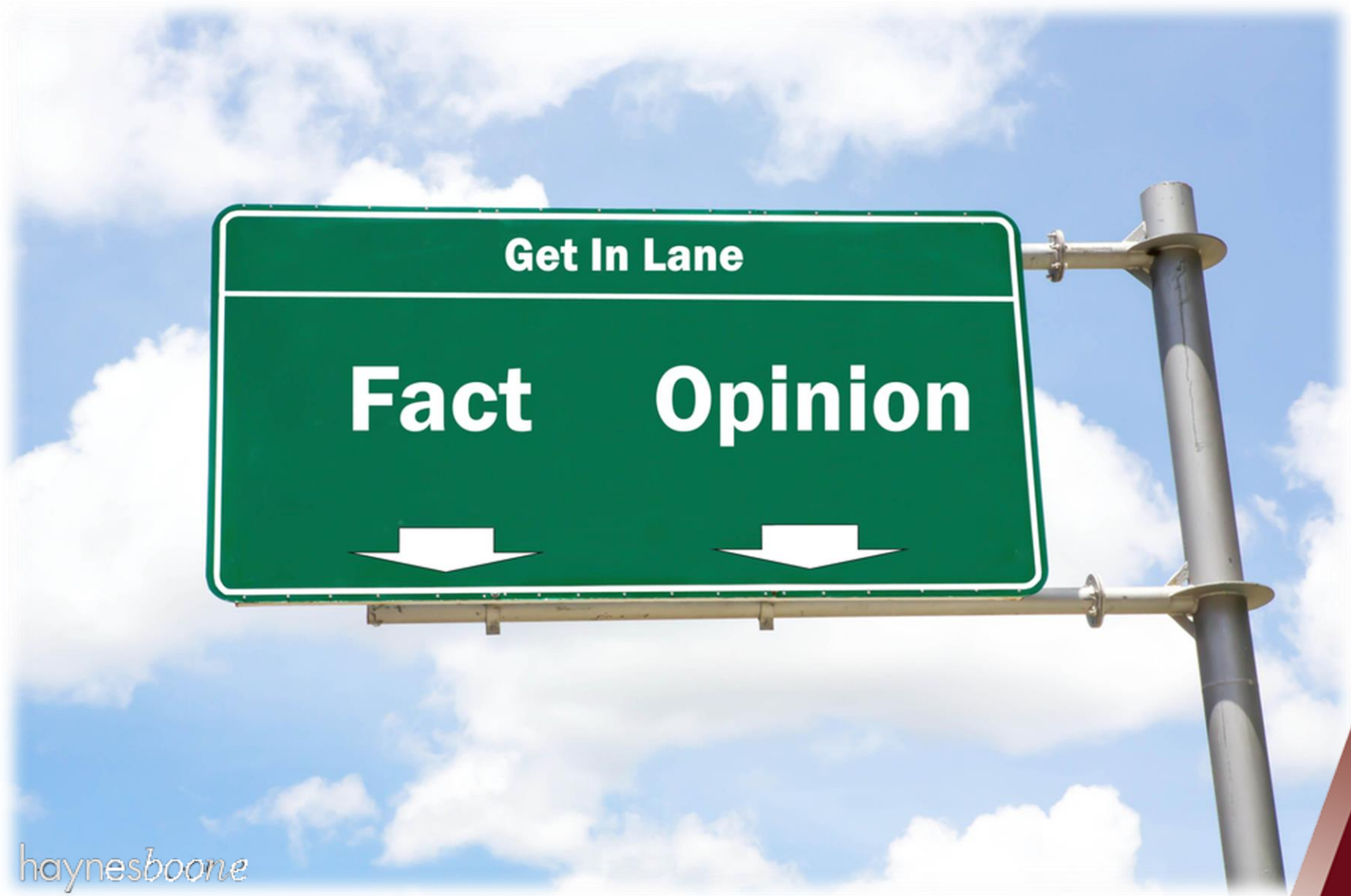
Although there is evidence that Lisa Parr spoke by phone with someone at Aruba's business office to ask about drilling activities in the Decatur and Allison area, spoke by phone with Aruba's public relations firm, and spoke with individuals who she said were either Aruba's employees or contractors at or near well sites, and there is evidence that the Parrs submitted complaints to the TCEQ concerning Aruba's operations, the Parrs have not cited any evidence that Aruba knew who placed these calls and made these complaints or that they were specific to the Parrs or their property.

“Abnormal and Out of Place” is Out – “Abnormally Dangerous” is In



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Lay Testimony Is Sometimes Enough to Prove Causation

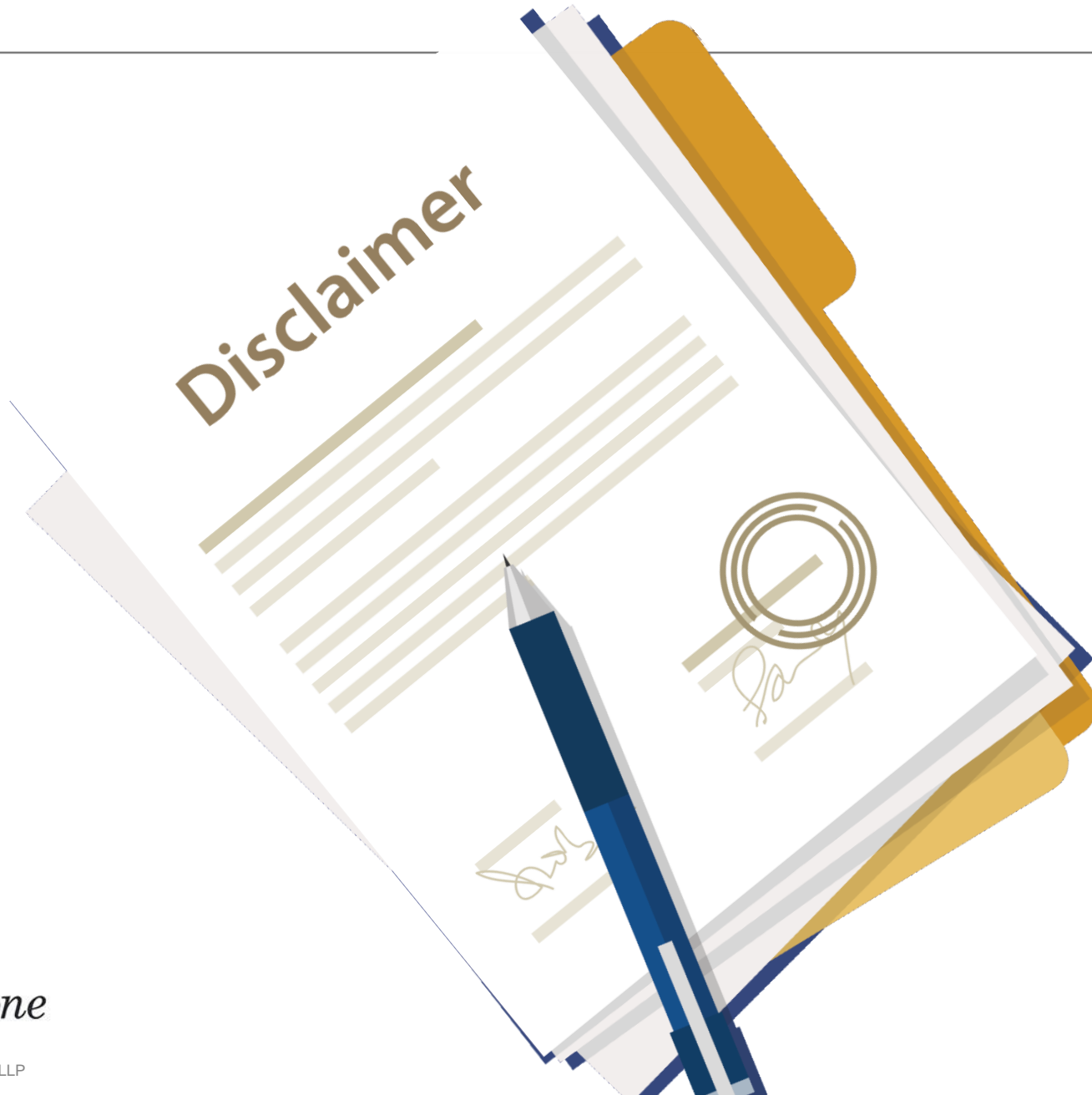


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Plaintiffs Are Disclaiming Their Causation Requirements



Case Management (“Lone Pine”) Orders are Cut Back



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Damage Theories – Plaintiffs Have a Number of Ways to Win Money



Discomfort and Annoyance Damages – Neither This Nor That



“Stigma” Damages are Hard to Get



Using Injunctive Relief to Get Around Damage Caps



Limitations – When Does the Clock Start



Quasi-estoppel: You Can't Have Your Cake and Eat it Too



Preemption – Not a “Get Out of Tort Free” Card

RULES AND REGULATIONS

Adopted by the Local United States Food Administration for the season of 1918, pertaining to the harvest and threshing of grain.

RULE I.

That the local U. S. Food Administration deputize the man in charge of each threshing machine operating to act as their agent, to see that all ways and means be observed, so as to prevent the waste of grain in any manner.

RULE II.

It shall be in his power to direct all men who are working about the machine or on the job of threshing, and see that they give efficient service, and in any event any one is disloyal he shall be reported to the United States Food Administration and dealt with according to the rules laid down by the Government.

RULE III.

It shall be the imperative duty of every man in charge of a threshing machine to see that his machine is in perfect running order before he shall attempt to do any work at threshing and in case he is unable to correct the defects, he is allowed the privilege of seeking aid of the U. S. Food Administrator who will report his troubles to the manufacturer of his machine, and get his troubles adjusted.

RULE IV.

As it is an order to save grain, the man in charge of the machine and farmer are to arrange to have a man to attend to the cleaning up around the machine, and help where needed, to keep the machine running correctly, and not allow bundles to be run over by teams and wagon; also it is recommended that they shall arrange to have a sufficient number of racks to haul bundles on, which will be built with tight floor and a 2 x 4 around edge for the express purpose to save grain.

RULE V.

It is also demanded of the managers of threshing machines to provide canvass, size not less than 10 x 14, to be put under the feeder of the machine and to avoid all leaks; and the men who are pitching to the machine must observe these rules:

1. That bundles must be pitched head first into the machine which is the correct way of feeding a machine. Also the bundles must be pitched at a uniform speed, and in no case pile them upon the feeder.
2. It is demanded by the Government that the fall wheat and rye shall be threshed first. Spring wheat to be threshed at time of threshing oats.
3. In regard to time for a day's work, we would recommend that as the Government asks us to save all the grain possible, we think it advisable to use all the day time that is available and it shall be expected that the people will be loyal and work the best hours of the day; owing to the morning's dampness and the difficulty in doing good work in the early morning, we would recommend that the hour of quitting shall not be before 7 p. m., new time.

RULE VI.

It shall be the duty of the machine man to avoid all waste for the following reasons:

- A. Threshing grain when it is tough (damp and un-ripe.)
- B. Loss from shattering in bundle wagons.
- C. Carelessness in keeping threshing cylinder up to speed, and in adjustment of blower, etc., dull and bent teeth.
- D. Carelessness in feeding bundles or loose grain into the machine.
- E. Carelessness in allowing grain to leak on the ground around and under the machine and haste in cleaning up at close of operations.
- F. Improper adjustment of concaves and other parts of machine.

RULE VII.—Pertaining to Farmers.

It shall be the duty of the farmer to see that all wagon boxes are tight. Also to see that there is no waste at the bins due from scooping and at the machine while changing the conveyor from one wagon to another. We will also recommend that if it is impossible to rake the wheat field before the finish of the wheat threshing: it be raked after, and threshed on the return of the machine for the oats threshing, also to see that no grain is left by the man who pitches on the shocks; “Always scrape up after each shock and pick up all bundles lost or dropped from wagons by the wayside.”

Every effort should be given with the object of getting the grain into proper channels of trade and not permit so great a percentage to be distributed upon the ground or into the straw pile to be fed later to the stock on the farm. The practice of overlooking the leaks with the excuse that the stock will get the benefit when turned in, should be discouraged this year, when no wheat should be fed to animals.

Suggestions and mention of instances where wastes during threshing has occurred in the past will be appreciated.

We are all soldiers of the Home Guard fighting to win the war, and the first duty of a soldier is to obey orders.

A. F. PADEN**F. H. FAULKNER****W. H. MACHIN**

Threshing Committee of the U. S. Food Administr'n for Knox Co.

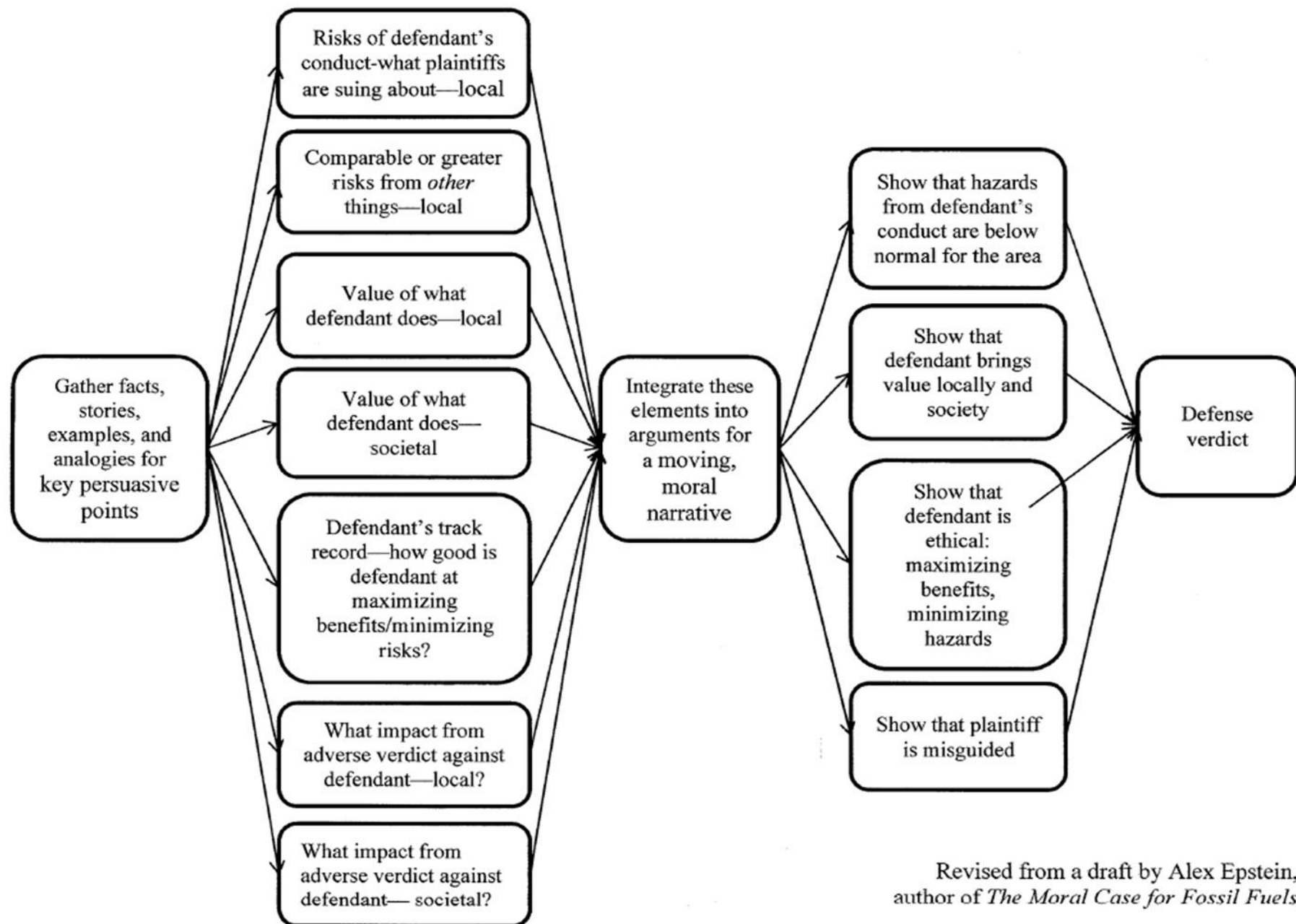
Recent Verdicts are Small

Case	Court	Complaint	Distance	Result
<i>Anglim</i> *	Tarrant Cnty., TX	Noise and odor from drilling	595 ft.	Defense verdict
<i>Crowder</i> *	Tarrant Cnty., TX	Noise and odor from drilling	329 ft.	\$20k property damages
<i>Marsden</i> †	Parker Cnty., TX	Noise and odor from drilling	<300 ft.	\$36k mental anguish
<i>Cerny</i> ‡	Karnes Cnty., TX	Emissions from drip station	“Short” distance	SJ granted for defense
<i>Parr</i> †	Dallas Cnty., TX	Emissions from condensate tanks	791 ft.	\$2.25m personal injuries \$400k mental anguish \$275k property damages
<i>Carnahan</i> ‡	Beckham Cnty., OK	Emissions from condensate tanks		\$234k property damages
<i>Hiser</i> ‡	E. D. Ark.	Vibrations from drilling		\$100k property damages \$200k punitive damages

* Vacated after settlement; † Reversed on appeal; ‡ Affirmed on appeal.

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Victory for Innocent Industrial Enterprises by Reframing the Moral Narrative



Revised from a draft by Alex Epstein,
author of *The Moral Case for Fossil Fuels*

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