



NATIONAL CONSTRUCTION DEFECT CONFERENCE



The Roosevelt New Orleans | November 14-15, 2024

The Impact of Social Media on Jury Pools and Settlements



Moderator
Kelly Behrens

*Vela Insurance Services
Omaha, NE*



James J Orland, Esq.
*Orland Law Group APC
Manhattan Beach, CA*



Richard L. Righi, Esq.
*Righi Fitch Law Group
Phoenix, AZ*



Sabrina Rochelle
*North American Risk Services
Altamonte Springs, FL*



Jannea Rogers, Esq.
*Adam and Reese LLP
Mobile, AL*

THE IMPACT OF SOCIAL MEDIA ON JURY POOLS AND SETTLEMENTS



**NATIONAL CONSTRUCTION
DEFECT CONFERENCE**

The Roosevelt New Orleans | New Orleans, LA
November 14-15, 2024

SPEAKERS

- Kelly Behrens, CRIS (Moderator)
 - Vela Insurance Services, (Omaha, Nebraska)
- Sabrina Rochelle, Senior Unit Manager
 - North American Risk Services (Altamonte Springs, Florida)
- Jannea Rogers, Esq.
 - Adams and Reese, LLP (Mobile, Alabama)
- Richard Righi, Esq.
 - Righi Fitch Law Group, LLP (Phoenix, Arizona)
- James Orland, Esq.
 - Orland Law Group, LLP (El Segundo, California)

DISCLAIMER

Nothing contained in this presentation qualifies as legal or professional advice. Please note that just because a panelist has a degree (or two) and an opinion does not mean they know what they are talking about. To the extent the person speaking is an attorney, the discussion here is not privileged and does not rise to the level of legal representation. Therefore, if you hear something today or read something on the power point or in the paperwork for this program, take some action because of it, and then things go south, please note no one will take responsibility. This is an educational seminar with an aim toward enlightenment and entertainment. While the descriptions of cases and opinions discussed today are taken from real cases, certain liberties are taken to accommodate a level of entertainment to supplement the actual educational value of the discussion. If you wish to rely upon any actual case ruling, please review the case under less entertaining circumstances with your actual attorney.

AGENDA

I. Social Media's Impact on Jury Pools and How it Impacts Verdicts

- A. Pre-Trial Publicity and Juror Bias
- B. Misinformation and "Fake News"
- C. Legal Responses to Social Media Influence
- D. Solutions & Best Practices for Attorneys

II. Effectiveness of These Social Media Claims

- A. Introduction to Social Media Claims in Legal Contexts
- B. Reach and Influence of Social Media Claims
- C. Accuracy and Credibility of Social Media Claims
- D. Evaluating the Effectiveness of Social Media Claims in Court Outcomes

III. Social Media's Impact on Settlement Efforts, Including Expectations to Settle

- A. Introduction to Social Media's Role in Legal Settlements
- B. Shaping Public Perception and Pressure to Settle
- C. Heightened Expectations for Larger Settlements
- D. Social Media's Impact on Confidentiality and Future Settlements

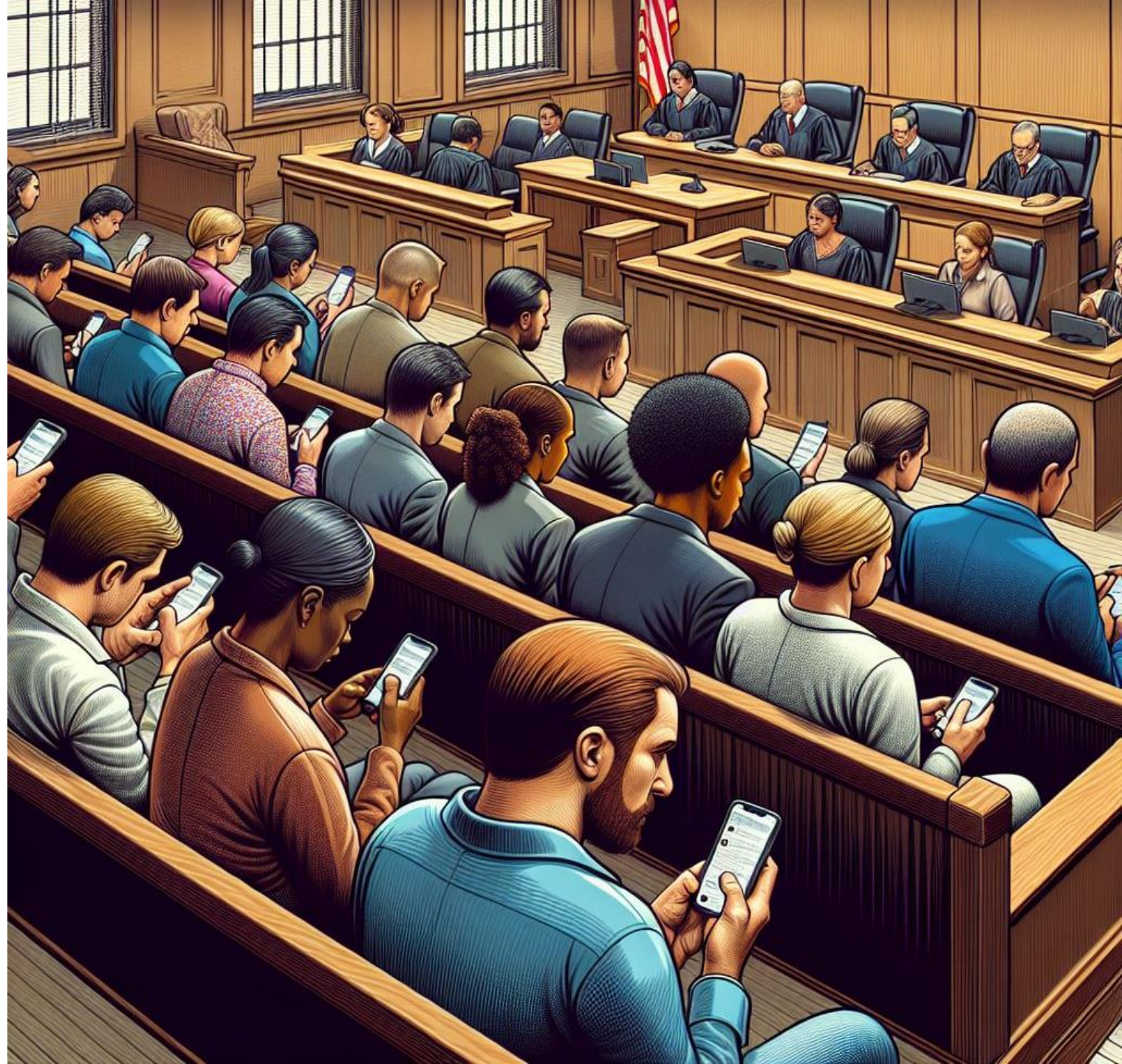
IV. Reptile Theory

- A. The Court's Definition
- B. introduction to Reptile Theory
- C. How Reptile Theory Works in Practice
- D. Examples of Reptile Theory in Action
- E. Criticisms and Legal Responses to Reptile Theory
- F. Motions in Limine and the Reptile Theory

Google

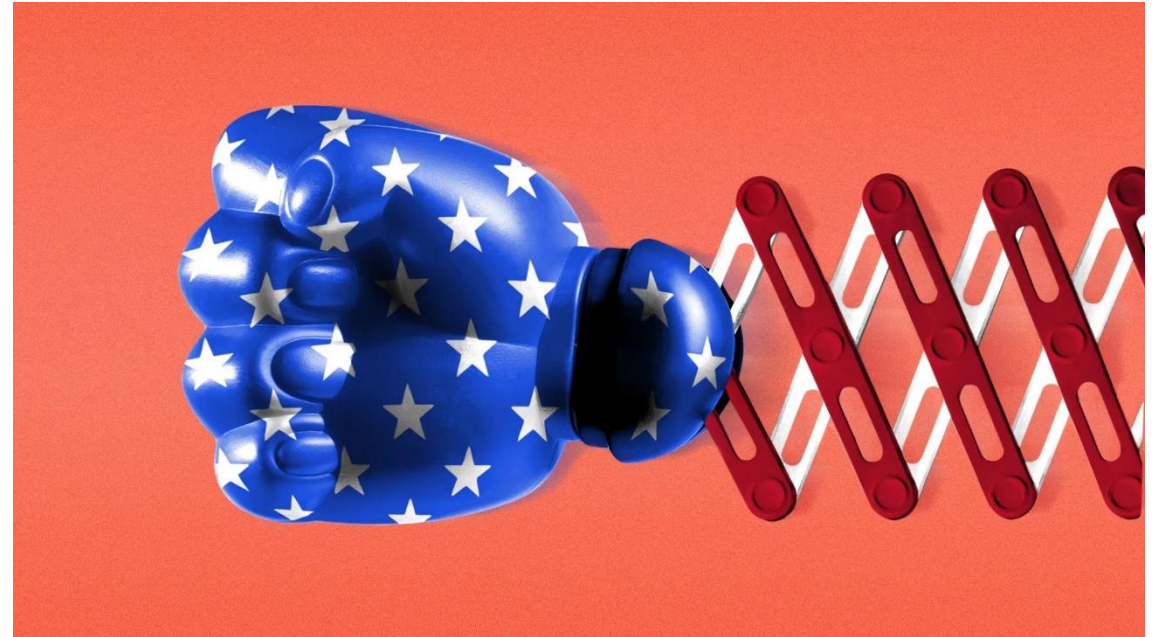


I.
SOCIAL MEDIA'S
IMPACT ON JURY
POOLS AND HOW IT
IMPACTS VERDICTS



Who are today's jurors?

- Skeptical, distrustful
- Get hurt, get paid
- Elevated expectations
- Anti-corporation
- Polarized
- Feel neglected



Jurors are angry.

90% believe America is "on the wrong track"

So what can you do? (during jury selection)

- Questionnaires and social media audits even more crucial, since jurors aren't always forthcoming – especially in a group setting

Juror #	Rating	Notes	Race	Occupation	Spouse Occupation	Age	Education	Kids	LinkedIn
8	4	Too common of a name to find accurate information, ex-wife would say that he could get along with anybody and could see both sides, broke arm skateboarding	w	Nursing assistant			BA		
9	3	Been supporting friend for friend in court, either of two best friends knows her best and would say her best quality is ability to be empathetic with people and still articulate people's emotions in the way they're expressing it to me; especially when it comes to individuals versus orgs, orgs will be better organized in deciding whether to take lawsuit to trial	w	Postbacc at Portland State University studying speech and hearing sciences	Cousin works for Toast, partner is wine club manager	20s-30s (looks young)	pursuing masters		https://www.linke
10	2	Was juror 18 years ago, shook her head that mentally ill should get a pass, family member would say she goes out of her way to make sure everybody is happy and okay, if somebody says they feel discriminated against, who am i to say those aren't valid feelings, volunteer for schools	w	Retired teacher reading spec	Retired math teacher	60s	MA		
		had a black out for profile picture in 2020 (June) for BLM; parents would say he has a good sense of humor, generally dislike corporations, would give employee benefit of the doubt				30-40			https://www.linke

SOLUTIONS & BEST PRACTICES FOR ATTORNEYS

- Monitoring social media for misconduct.
- Crafting specific jury instructions tailored to the age of social media.
- Effective *voir dire* (jury selection) that addresses potential social media bias.
- Sequestering jurors or limiting their access to technology in high-stakes cases.

Voir Dire Example

- **Judge/Attorney:**

How many of you actively use social media? This includes platforms like Facebook, Twitter, Instagram, TikTok, Reddit, and LinkedIn.

Follow-up questions for those who use social media:

- How frequently do you use social media—daily, weekly, or occasionally?
- Do you post or share news articles, opinions, or updates related to current events?
- Do you follow any accounts, groups, or pages frequently discussing legal issues, court cases, or high-profile trials?

- **Judge/Attorney:**

This case involves matters that may have been discussed in the media or online, either recently or in the past.

- Have you heard or read about this case before today, either through news outlets, social media, or personal conversations?

- **For those who answer 'Yes':**

- Can you describe what you recall about the case?
- Did you form opinions or conclusions based on what you read or saw?
- Would anything you read or heard prevent you from being completely impartial in this case?

II. EFFECTIVENESS OF THESE SOCIAL MEDIA CLAIMS



INTRODUCTION TO SOCIAL MEDIA CLAIMS IN LEGAL CONTEXTS

- **What Are Social Media Claims?**
 - Social media claims refer to the allegations, opinions, and narratives shared across platforms about legal cases.
 - These claims can be made by parties involved, public commentators, influencers, or general users.
- **Types of Claims:**
 - Claims of guilt or innocence/liability or lack of culpability.
 - Assertions about evidence or witness credibility.
 - Emotional appeals and public movements.

ACCURACY AND CREDIBILITY OF SOCIAL MEDIA CLAIMS

- **Misinformation & Fake News:**

- Social media often spreads unverified or incorrect information, leading to public misconceptions about a case.
- Example: Viral posts based on rumors can distort facts, influencing how potential jurors view the evidence.

- **Emotional Bias vs. Facts:**

- Claims on social media are often emotionally charged, bypassing factual or legal arguments.
- Example: Memes, simplified posts, and viral slogans can prioritize emotional reactions over objective truth.

- **Credibility of Sources:**

- Many social media claims lack credibility, as they may come from anonymous users or those without legal expertise.

EVALUATING THE EFFECTIVENESS OF SOCIAL MEDIA CLAIMS IN COURT OUTCOMES

- **Influence on Verdicts:**

- Studies suggest that jurors exposed to social media narratives may unconsciously factor those into their verdicts, especially in emotionally charged cases.
- Example: High-profile trials (e.g., Chauvin trial) demonstrated significant external pressure from social media discussions.

- **Judicial Responses:**

- Courts have responded by issuing gag orders, sequestering jurors, and giving stronger instructions about avoiding social media.
- Despite these efforts, social media continues to infiltrate legal proceedings, challenging the impartiality of jury decisions.

- **Final Verdict on Effectiveness:**

- While social media claims can be highly effective in shaping public narratives, their accuracy and fairness are often questionable, leading to concerns about their impact on judicial outcomes.

III. SOCIAL MEDIA'S IMPACT ON SETTLEMENT EFFORTS, INCLUDING EXPECTATIONS TO SETTLE



SHAPING PUBLIC PERCEPTION AND PRESSURE TO SETTLE

- **Amplification of Public Opinion:**

- Social media campaigns and viral content can pressure one or both parties to settle a case.
- **Example:** Hashtags such as #JusticeFor[Name] or #Boycott[Company] can create momentum, pushing parties toward early resolution.

- **Reputation Management:**

- Companies and individuals are more likely to settle when faced with reputational harm on social media, as public backlash can affect their business or personal brand.
- **Example:** Large corporations, particularly those in the public eye, may settle to avoid ongoing negative social media coverage, which could harm their long-term brand.

HEIGHTENED EXPECTATIONS FOR LARGER SETTLEMENTS

- **Social Media as a Platform for Expectations:**
 - Public narratives on social media often create inflated expectations for settlement amounts, especially in personal injury, employment, or high-profile civil cases.
 - Followers, activists, and supporters may pressure plaintiffs to demand larger settlements or reject offers seen as insufficient.
- **Risk of Unrealistic Settlement Demands:**
 - Due to online support, parties may overestimate the value of their case, leading to more drawn-out negotiations or the collapse of settlement talks.
 - **Example:** Plaintiff attorneys may leverage social media buzz to negotiate higher settlements, believing the negative PR will compel the other side to agree to higher terms.

SOCIAL MEDIA'S IMPACT ON CONFIDENTIALITY AND FUTURE SETTLEMENTS

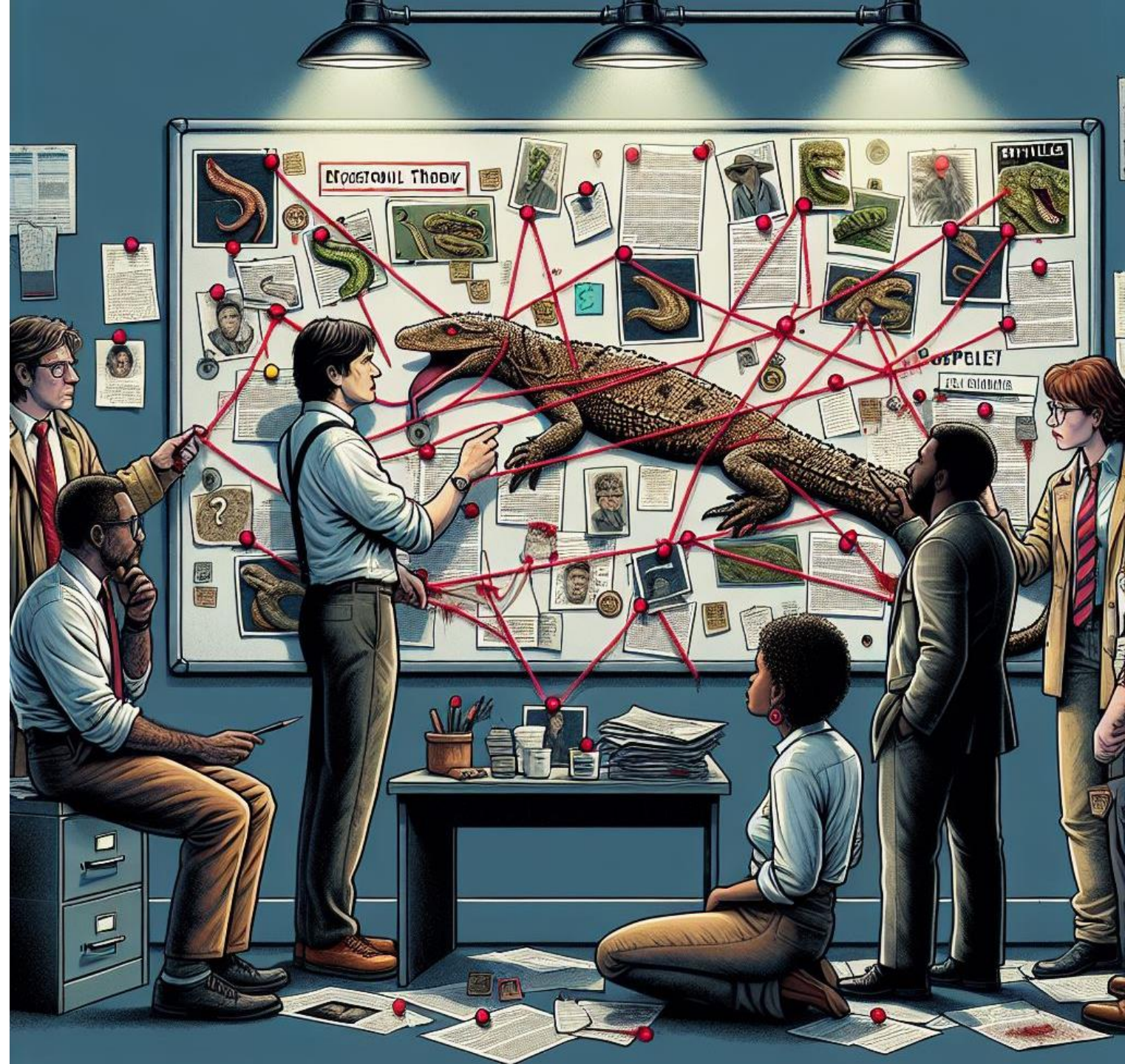
- **Risk to Confidentiality Agreements:**

- Social media complicates confidentiality agreements that are often part of settlements. Even after a settlement, parties may be tempted to post vague or indirect information online.
- Breaches of settlement confidentiality on social media could lead to further legal action.

- **Impact on Future Settlements:**

- The publicity of social media settlements can influence future cases, setting expectations for similar matters.
- **Example:** High-profile settlements that go viral may set precedents for how parties approach settlement in related cases, pushing for larger or quicker resolutions to avoid online controversy.

IV. THE REPTILE THEORY



THE COURT'S DEFINITION

- “‘Reptile Theory’ is a method of persuading jurors to find in a plaintiff's favor by invoking the primal (or reptilian) part of jurors’ minds, which drives them to act to protect themselves or their community.”

Ansari v. Jimenez, 678 F. Supp. 3d 926, 934 (E.D. Mich. 2023) (citing *Aurigemma v. Costco Wholesale Corp.*, No. 3:18-CV-1719, 2023 WL 197044 (D. Conn. Jan. 17, 2023)).

How jurors evaluate egregiousness of an error

Juror Feelings and Verdict Size

Not a
Mistake

Mistake in
Judgment

Mistake

Fell
Through
the Cracks

Egregious
Error

Bad
Motive

QUESTIONS?