

# **NOT GUILTY v CERBERUS; Beating Intox Manslaughters**

**The Thiessen Law Firm**

**Mark Ryan Thiessen**

**733 E. 12 ½ Street**

**Houston, Texas 77008**

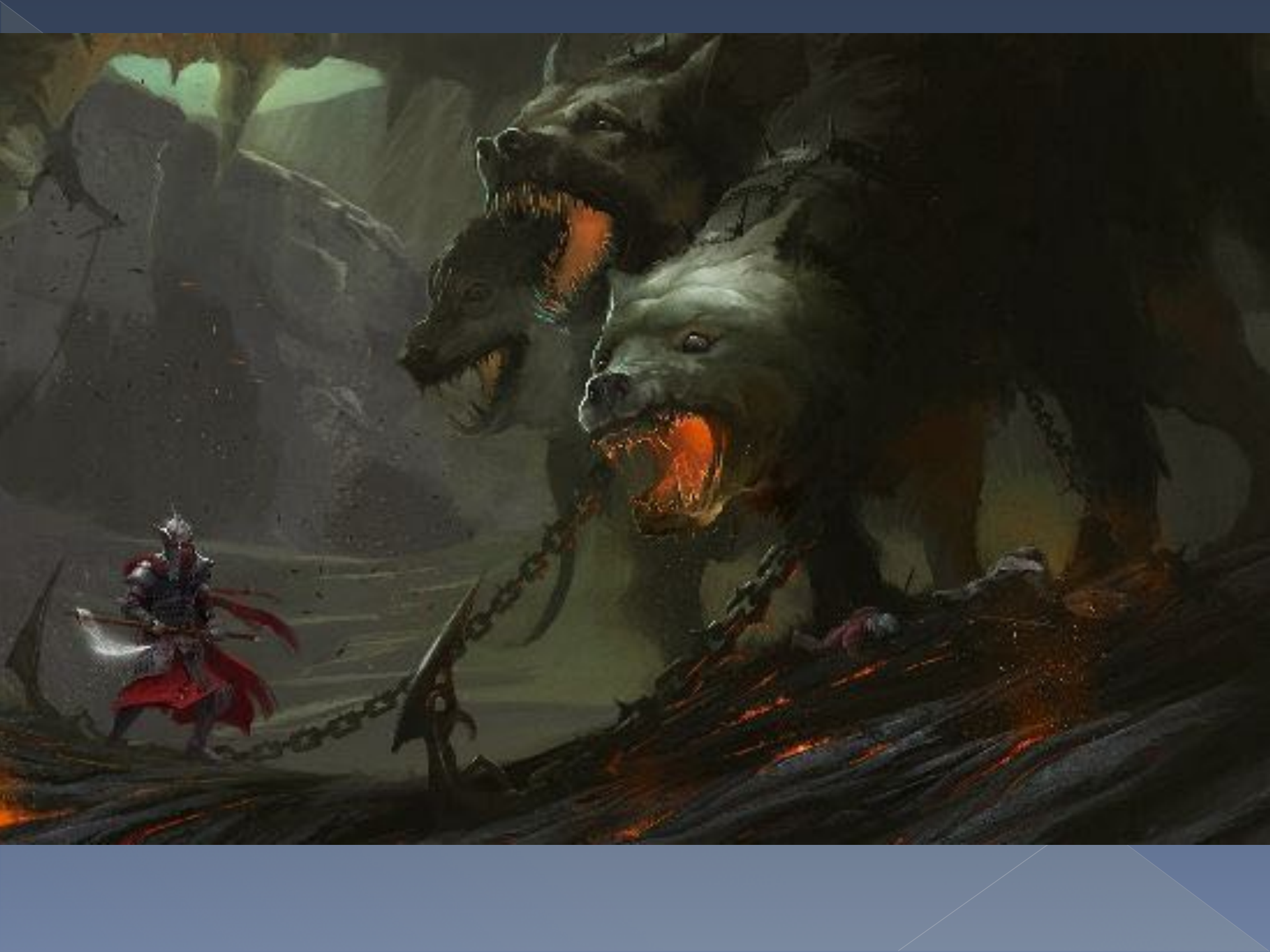
**(713) 864-9000**

**Cell: (832) 654-3058**

**mark@thetexasrialattorney.com**

**5<sup>th</sup> Annual Lonestar DWI Seminar**

**January 26, 2018**



# CERBERUS

- ◉ Father: Typhon-fire breathing dragon
- ◉ Mother: Echidna – 1/2 snake, 1/2 woman
- ◉ Employment: Hades' Hound of Hell
  - > River Styx
  - > Prohibits the Dead from Escaping
  - > Prohibits the Living from Entering



# THE STATE

- ◉ HEAD 1: DRIVING WHILE INTOXICATED
- ◉ HEAD 2: ACCIDENT
- ◉ HEAD 3: DEAD BODY

# HERCULES

- ◉ Father: Unknown (ZEUS)
- ◉ Mother: Mortal
- ◉ Crime: Murder – wife and child
  - > insanity defense – Hera: wife of Zeus
- ◉ Punishment: 12 Labors in 12 years
  - > King Eurystheus/ Hera
  - > Impossible/ Each More Difficult
  - > 12<sup>th</sup>: Bring Cerberus to King Eury



**Farnese Hercules**  
By: Glykon/Lysippos  
216AD/1546 Naples



**Getty Hercules**  
By: Hadrian  
125AD LA



**MET Hercules**  
By: Unkown  
69-96AD NYC

# YOU

- ◉ Father: Lawyer/Scientist
- ◉ Mother: Compassion/Heart
- ◉ Job:
  - > Protect the People
  - > Demand Quality Evidence
  - > Follow the Law
  - > Hold the State to Their Burden
  - > Fight and Never Quit





**David**  
**By: Bernini**  
**1624**

**Rome**



**David**  
**By: Michelangelo**  
**1501-04**

**Florence**



**Farnese Hercules**  
By: Glykon/Lysippos  
216AD/1546 Naples



**Getty Hercules**  
By: Hadrian  
125AD LA



**MET Hercules**  
By: Unkown  
69-96AD NYC

# THE 12 LABORS

*The goddess Hera, Zeus' wife, made Hercules lose his mind. In a confused and angry state, Hercules killed his own wife and children.*

*When awakened from his "temporary insanity," Hercules was shocked and upset by what he'd done. He prayed to Apollo for guidance, and the God's oracle told him he would have to serve King Eurystheus, for 12 years, as punishment for the murders.*

*As part of his sentence, Hercules had to perform 12 Labors, feats so difficult that they seemed impossible.*

# PROTECT THE PEOPLE

- ◉ You Must Invest Your Heart/Soul
- ◉ Fear Losing
- ◉ Recognize Your Weaknesses
  - > Rubber band
- ◉ KNOW YOU CAN WIN

# THE 12<sup>th</sup> LABOR

*Before entering the Underworld, Hercules needed some extra precautions before embarking on a journey from which no mortal had ever returned. Hercules went to Eleusis and saw Eumolpus, a priest who began what were known as the Eleusinian Mysteries. The mysteries were sacred religious rites. The ancients believed that those who learned the secrets of the mysteries would have happiness in the Underworld. Eumolpus initiated Hercules into the mysteries.*

# DEMAND QUALITY EVIDENCE

- ◉ Manuals: SFST, BTO 5000/9000, DRE
- ◉ CLE: TCDLA, DUIDLA, AXION, TLC
- ◉ STUDIES: Dubowski, Widmark, Jones, Gullberg, (Cowan)
- ◉ TEXT: Garriott's *Medicolegal Aspects of Alcohol, Disposition of Toxic Drugs and Chemicals in Man*

# FOLLOW THE LAW

- ◉ Presumption of Innocence
- ◉ Burden of the State
- ◉ Beyond A Reasonable Doubt

# THEORY OF THE CASE

- ◉ Not Every Accident Is a Crime
- ◉ Not Intoxicated At The Time of Driving (Retrograde)
- ◉ Number Defies the Laws of Science (Disconnect)
- ◉ Iced Tea v. Long Island Iced Tea (Causation)
- ◉ Mere Precense v. Psychoactivity (DRE)



# YOUR ANGLE/ YOUR SHOW

- ◉ Intoxication?
  - > Retrograde
  - > Result Inaccurate
  - > Drugs v Alcohol
- ◉ Operating?
- ◉ Causation?
- ◉ Punishment?

# THE 12<sup>th</sup> LABOR

*Hercules entered the Underworld and found Hades. Hercules asked Hades permission to take Cerberus from the Underworld to King Eury.*

*Hades replied: You may take Cerberus only if you can defeat him with nothing more than you have on.*



**Be nice, until it's  
time to not be nice!**

*- the name's "Dalton"*

# THE 12<sup>th</sup> LABOR

*Hercules entered the Underworld and found Hades. Hercules asked Hades permission to take Cerberus from the Underworld to King Eury.*

*Hades replied: You may take Cerberus only if you can defeat him with nothing more than you have on.*



# THE 12<sup>th</sup> LABOR

*Hercules found Cerberus. Using his lion skin, he covered the Beast's heads and strangled them one by one until the Beast was unconscious.*

# THE APPROACH

- ◉ VOIR DIRE
  - > PAUSE
  - > SERIOUS
  - > HEARTFELT
  
- > NIGHTMARE
  
- > INTERSECTION OF TWO LIVES

# DWI v. INTOX MANSLAUGHTER





**ACCIDENTS**

**NOT DELIBERATES**

# RIGHT TO AN ATTORNEY

- ◉ 6<sup>th</sup> Amendment
- ◉ What kind of attorney would you want?
- ◉ Adversarial system – objections, hard questions, etc.

# DRINKING

- Drink, Drive, Go to Jail
- Drive Sober or Get Pulled Over
- Going Out Tonight, So Are We



# **DRIVE SOBER** OR GET **PULLED OVER**

**COPS ARE  
CRACKING DOWN.**



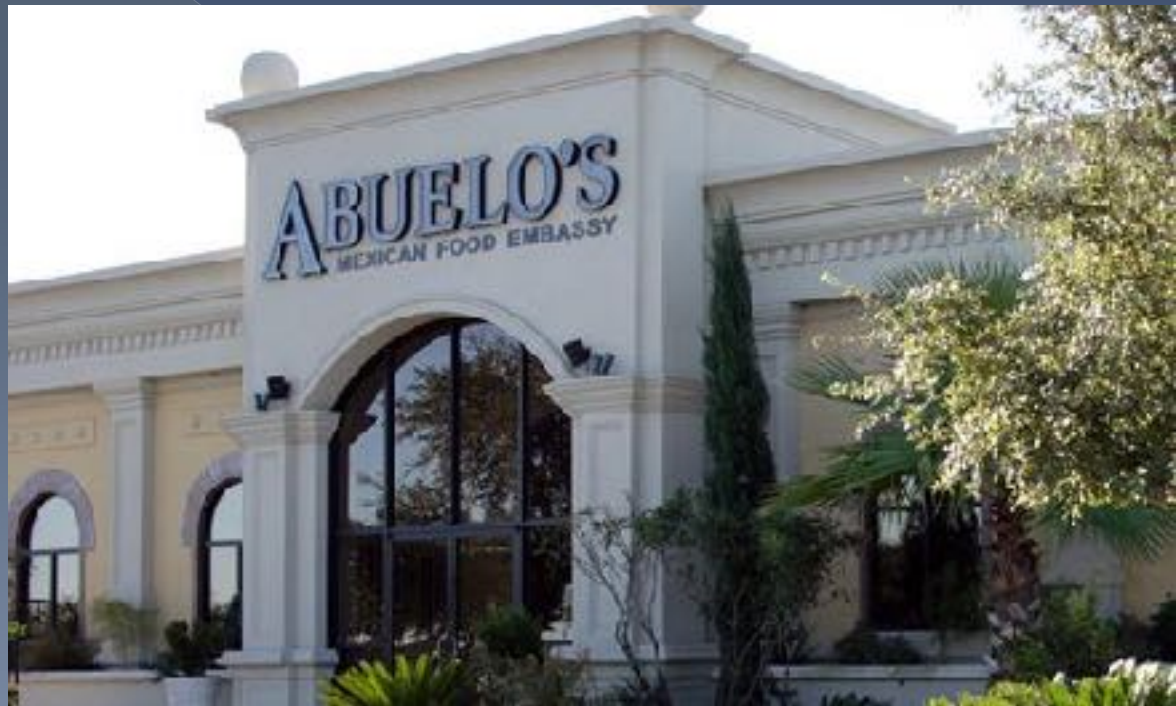
## **Going Out Tonight? So Are We.**



Think twice before you drink and drive.  
Officers all over Texas are out in force to get drunk drivers off the road.

**Drink. Drive. Go to Jail.** 

NOT ILLEGAL TO DRINK AND  
THEN DRIVE; as long as you're  
NOT intoxicated



BUT WHO STILL SAYS...



# DRINKING PATTERNS

**A. REGULARLY**

**B. OCCASIONALLY**

**C. RARELY**

**D. NEVER**

**E. NOT ANY MORE**

# ALCOHOL

- ◉ MEMBER OF MADD
- ◉ MEMBER OF AA
- ◉ STRONGLY AGREE WITH “NO REFUSAL” WEEKENDS
- ◉ ALCOHOLISM IN FAMILY
- ◉ NO ALCOHOL IN HOME
- ◉ INJURED/VICTIM OF ALCOHOL RELATED CRIME



# TRUE OR FALSE?

I BELIEVE THE DRINKING  
AND DRIVING LAWS ARE  
NOT SEVERE ENOUGH IN  
OUR STATE?

# TRUE OR FALSE?

IF SOMEONE HAS BEEN DRINKING AND THEN IS INVOLVED IN AN ACCIDENT WHERE SOMEONE DIES, THEY ARE **PROBABLY** GUILTY OF INTOXICATED MANSLAUGHTER?

# RELATED TO?



# SFSTs

- Not having the normal use of your mental or physical faculties
- AND
- Due to Intoxication
- Not "any loss"
- 0-----→10
- Sober Intox
- Where is 0.08???



# AT THE TIME OF DRIVING

- ◉ Retrograde Extrapolation
- ◉ Factors that Can Affect This?

# FACTORS THAT CAN AFFECT?

- Person:
- Eating:
- Drinking:
- Body:

# HOW DO YOU FEEL ABOUT POLICE LABS?

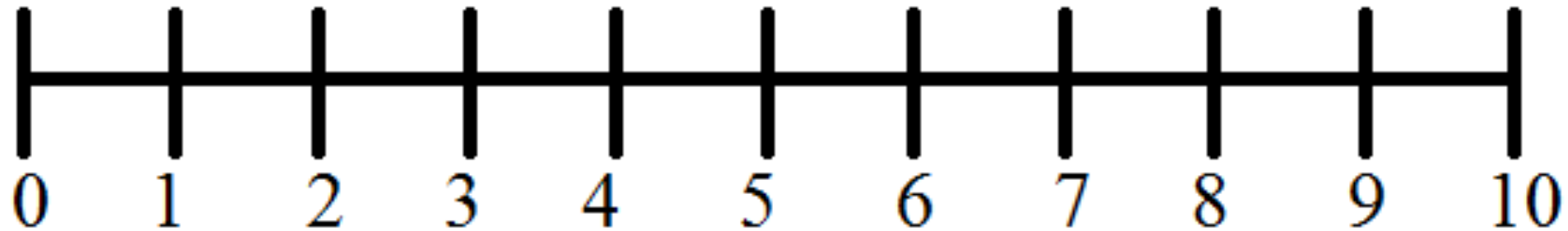


NEVER TRUST

ALWAYS TRUST



# PRESUMPTION OF INNOCENCE



INNOCENT

GUILTY

**ASSUME**

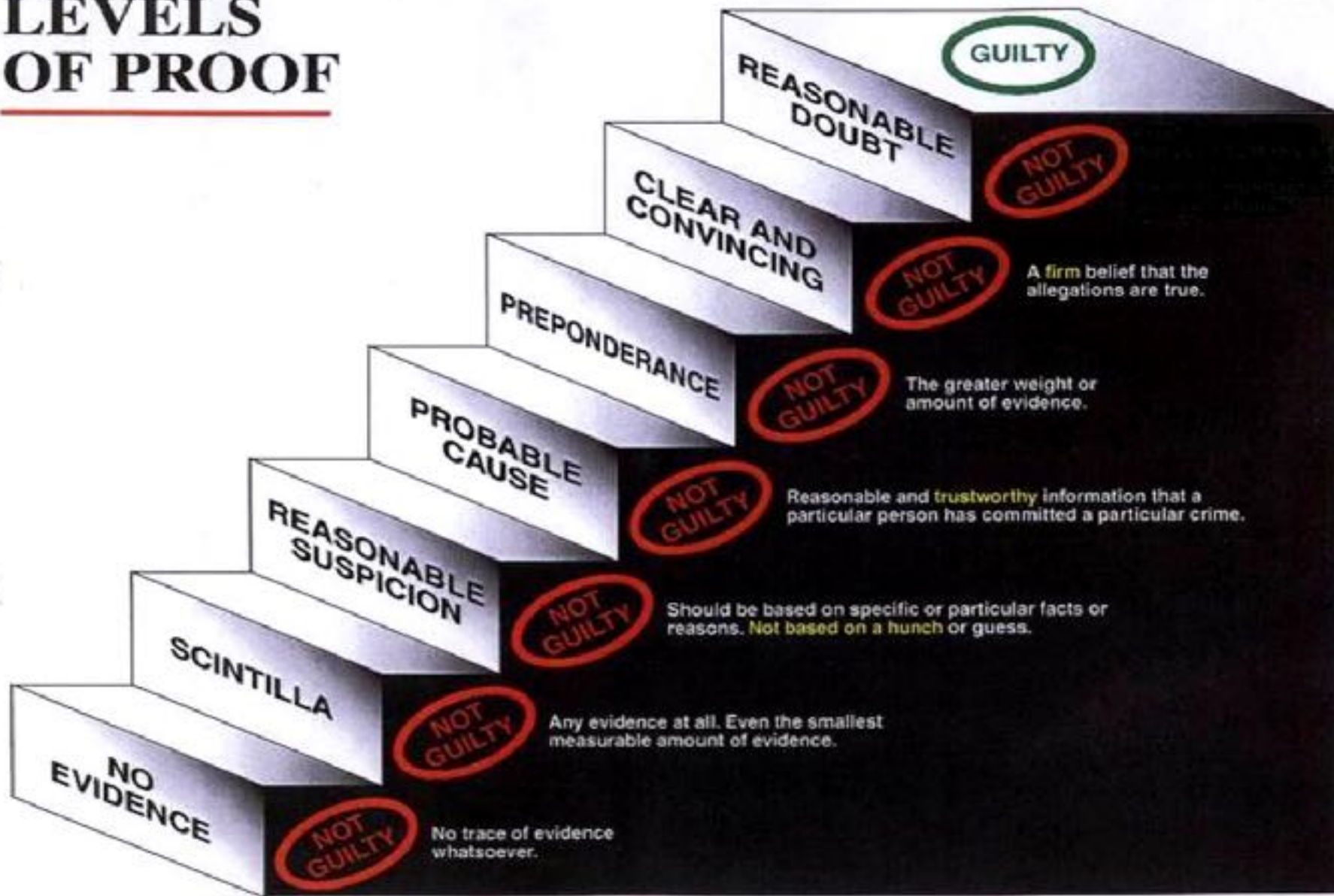
**V.**

**PRESUME**

# PRESUMPTION OF INNOCENCE



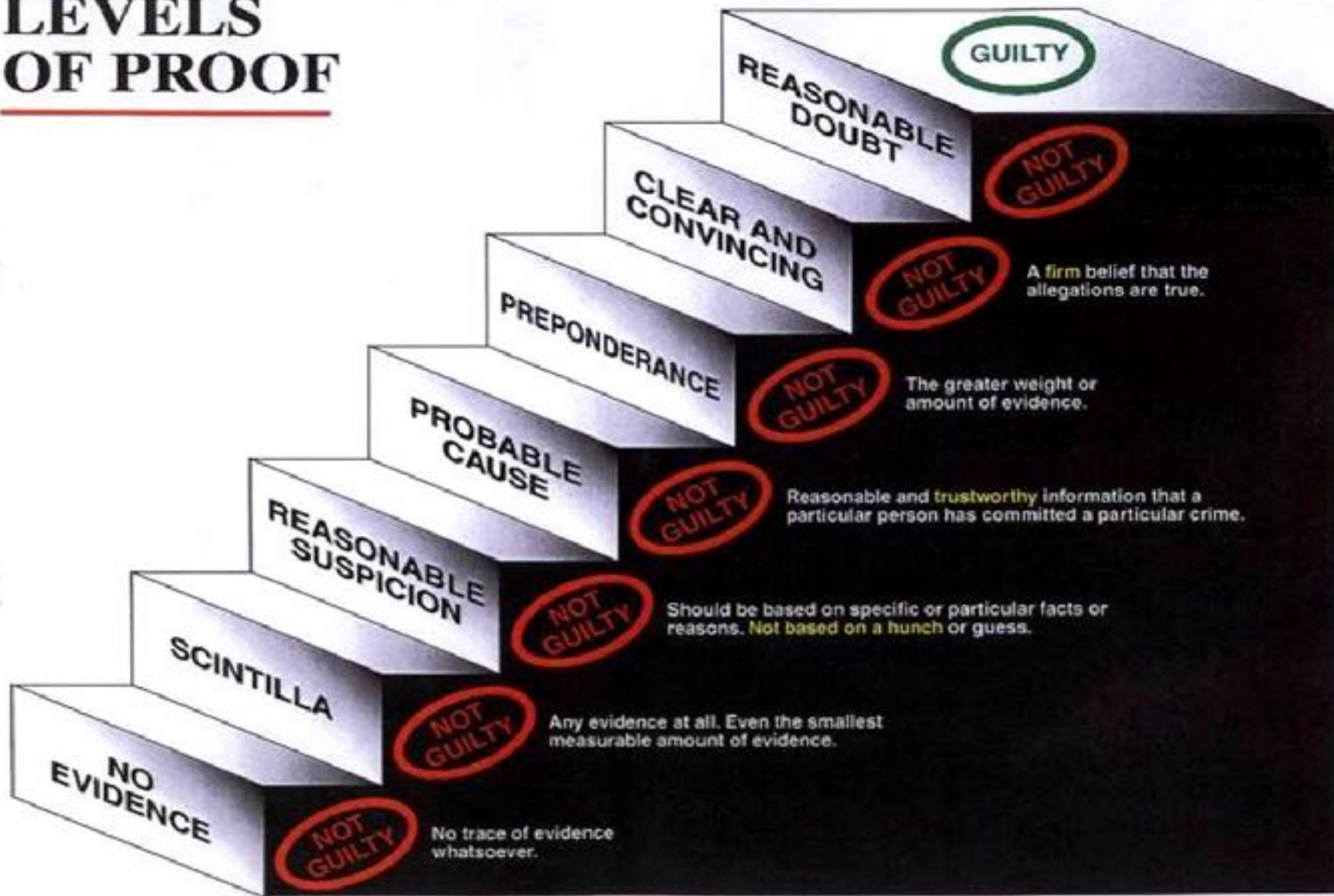
# LEVELS OF PROOF



# THE LAW

- “NOT GUILTY” if
  - > **Operation** not proven Beyond a Reasonable Doubt
- “NOT GUILTY” if
  - > **Intoxication** not proven Beyond a Reasonable Doubt
- “NOT GUILTY” if
  - > **Alcohol not proven to have caused** the death by accident or mistake beyond a reasonable doubt
- “NOT GUILTY” if
  - > **ANY of the elements** alleged not proven Beyond a Reasonable Doubt

# LEVELS OF PROOF



**HEAD 1**

# PURPOSE OF PICTURES OF DEATH

- ◉ Who would be bothered by seeing pictures of death?
- ◉ STIPULATE TO DEATH
- ◉ Now, what is the purpose of the pictures of death?



# “GOLDEN RULE QUESTION”

- ◉ *Is there ANY reason you do not believe you can be a fair and impartial juror in THIS case ?*
- ◉ *Would you want 12 people who felt and thought the same way you do acting as jurors in a case where a friend or relative was charged with this offense ?*

# JURY SERVICE





# PUNISHMENT

- ◉ INTOXICATED MANSLAUGHTER (2nd Degree)
  - > 2-20 Years Prison  
and/or
  - > 2-10 Years Probation

**HEAD 2**

# CAUSATION

- ◉ Starts in Voir Dire
  - > Traffic Light/ Stop Sign
- ◉ Accident Reconstructionist
  - > Jacob Baker (New Mexico)
- ◉ Diagrams/ Calculations/ Pictures
- ◉ Know the Terminology
- ◉ Examine Everything
- ◉ NEWTON'S 3 LAWS

## **First Law**

Objects at rest remain at rest and objects in motion remain in motion in a straight line unless acted upon by an unbalanced force.

## **Second Law**

Force equals mass times acceleration  
(or  $f = ma$ ).

## **Third Law**

For every action there is an equal and opposite reaction.

**HEAD 3**



# CHEMICAL TEST

- ◉ Disconnect Defense
- ◉ Retrograde Extrapolations
- ◉ Unreliability of the Number/Lab
- ◉ DRE- Mere Presence v. Psychoactivity

# LUBBOCK LAB

- ◉ Culbertson – GC Audit
- ◉ Wimbish – Retrograde (Software)
- ◉ THOMAS - Validation Study/ No Blood Controls/ Argumentative Witness/ Trained to Testify
- ◉ BRUMMETT – Make Him Chase YOU!



# CLOSING

- ◉ Villain/ Righteous Indignation/ Power to the Jury
- ◉ Memorize 12 Names
- ◉ Waiting for YOU/ Need Help
- ◉ Theory of the Case
- ◉ Flip the Pictures Over/ Follow the Law
- ◉ Impossible Not Think of Remifications
- ◉ Be Proud of Your Verdict

# THE 12<sup>th</sup> LABOR

*Hercules took Cerberus to King Eury then returned Cerberus back to Hades.*

*When Hercules returned, King Eury was nowhere to be found.*

*Zeus granted Hercules his immortality.*





**Hercules and Cerberus**  
**By: Antonin Pavel Wagner**  
**1857-70**  
**Vienna**

# QUESTIONS???

[mark@thetexasrialattorney.com](mailto:mark@thetexasrialattorney.com)

cell: (832) 654-3058



**THIESSEN**  
LAW FIRM

**AGGRESSIVE CRIMINAL DEFENSE**