Debunking and Redefining the Plaintiff Reptile Theory

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Introduction

The well-known "Reptile Revolution" spearheaded by attorney Don Keenan, Esq. and jury consultant Dr. David Ball is now a ubiquitous threat to defendants across the nation. It is advertised as the most powerful guide available for plaintiff attorneys seeking to attain favorable verdicts and high damage awards in the age of tort reform. Reptile books, DVD's, and seminars instruct plaintiff attorneys on how to implement these strategies during the entire litigation timeline, from discovery to closing argument. Most papers about the Reptile theory merely define the theory itself, describe the various tactics, and provide rudimentary advice to defense counsel on how to "tame" or "beat" the Reptile. However, few authors have attempted to directly challenge the Reptile theory's validity or provide alternative explanations to why these reptile tactics often work. This paper aims to accomplish both goals, as well as provide scientifically-based solutions for defense attorneys to use at all points of the litigation timeline.
To date, the best attempt at debunking the Reptile theory is Allen, Schwartz, and Wyzga's (2010) article "Atticus Finch Would Not Approve: Why a Courtroom Full of Reptiles is a Bad Idea." First, the authors immediately attack the reptile theory, stating that Ball and Keenan's neuroanatomical assumptions are incorrect. They claim that reptiles can't experience fear, as the reptile brain lacks a limbic system (emotional center of the mammalian brain). Second, the authors state that fear responses in humans are unpredictable, thus using fear in the courtroom is a risky gamble at best. Finally, they claim jurors "recoil" when they are treated disrespectfully (i.e., like reptiles), and that using fear in the courtroom ultimately backfires. They go on to offer a solution to the reptile formula that focuses on constructing an effective narrative to persuade jurors.

This article is important as it is the first to challenge the neuroanatomical foundation of the Reptile theory. The authors quickly point out that fear responses in humans are controlled by the higher-level limbic system, not the more primitive reptile brain. Specifically, they state that reptiles cannot respond to fear because they lack a limbic system, which eliminates emotion from the equation. Since the limbic brain actually controls survival responses in humans, not the reptile brain, the authors believe the theory is fundamentally flawed. While they are partially correct in this analysis, the authors fail to recognize that danger is a threat, while fear is a complex emotion in response to danger. In other words, danger is a stimulus while fear is an emotion. Ball and Keenan clearly sell danger, not fear. Their goal is to tap into the deepest part of the brain where danger is detected, which by definition is the reptile brain. Interestingly, their goal may be to bypass fear altogether and simply go directly to jurors' automatic survival instincts, as a juror has the cognitive capacity to decrease a fear, whereas it is impossible for them to deactivate an instinct. In sum, Ball and Keenan's neuroanatomical assumptions are accurate in relation to what they are claiming (danger), and would only be inaccurate if they were claiming a fear response. As such, the authors' attack on the reptile theory is minimally effective, as they are comparing apples to oranges to some degree.

Allen, Schwartz, and Wyzga's (2010) article also provides a strategic solution to the Reptile approach that is fairly inadequate: the use of narrative. While it is well-known that a persuasive narrative is an effective way of educating and influencing jurors in any type of case, it only addresses one of the multiple areas in which the Reptile approach attacks. Ball and Keenan's tactics begin very early in the litigation timeline (deposition testimony) and extend to other parts of a trial in which narrative is irrelevant (voir dire/jury selection). Additionally, while the authors generally define why narratives are so effective, they fail to inform the reader how to best construct the story to specifically derail the Reptile story provided by plaintiff's counsel. Generalized "tips" for how to tell a better story are no match for Ball and Keenan's precision attack methods.

For defense attorneys to persistently succeed against the Reptile approach, they need a clearer understanding of how the Reptile tactics really work and a blueprint of how to counter attack (rather than defend) at all points on the litigation timeline. Therefore, the current paper will focus on three areas: a) why the overall Reptile theory is invalid, b) why the specific reptile tactics work, despite the invalidity of the overall theory, and c) scientifically-based solutions to defuse these tactics.

A. Debunking Ball and Keenan's Reptile Theory

The Reptile theory is now well-known to the defense bar. The highlights of the theory include:

- The "reptile" is a primitive, subcortical region of brain that houses survival instincts
- When the reptile brain senses danger it goes into survival mode to protect itself and the community
- The courtroom is a safety arena
- Damages enhance safety and decrease danger
- Jurors are the guardians of community safety
- "Safety Rule + Danger = Reptile" is the core formula

The "Safety Rule + Danger = Reptile" formula states that the reptile brain "awakens" once jurors perceive that a safety rule has been broken by the defendant, resulting in jurors awarding damages to the plaintiff to protect themselves and society (survival instinct). Ball and Keenan claim that use of their Reptile strategy has resulted in nearly $5 billion in settlements and damage awards since 2009.

To debunk any theory, one must show that the theory's core principles and formulas are flawed. The lynchpin of Ball and Keenan's Reptile theory is the brain's stimulus-response reaction to danger. They claim that exposing a safety rule violation (stimulus = danger) triggers jurors' automatic survival instincts to protect themselves and the community (response = award damages). The fatal flaws of the Reptile theory are two-fold. First, plaintiff's counsel can only "suggest" danger to the jurors, rather than actually expose them to a true threatening stimulus that would trigger survival instincts. In other words, the core foundation of the Reptile theory is that danger triggers survival responses, but in reality, jurors are never exposed to any direct

danger. Therefore, without an immediate threat, awakening the reptile brain in the manner in which Ball and Keenan describe is physiologically impossible.

Secondly, Ball and Keenan fail to mention that the reptile brain (called the "brainstem" in modern science and medicine) is not the sole brain region responsible for survival behaviors in humans. In fact, the reptile brain only plays a limited role in human survival instincts, whereas higher-level brain structures play a much larger role. Specifically, the reptile brain or brain stem is responsible for multiple automatic and involuntary functions that are necessary for basic physiological survival such as cardiac function, respiration blood pressure, digestion, and swallowing. It is also responsible for alertness and arousal, key factors for protective survival from dangers. While the reptile brain or brain stem in humans plays a key role in detecting danger, the limbic system actually processes the dangerous information and can activate the sympathetic nervous system to trigger the fight or flight survival response. As such, Ball and Keenan's theory is invalid because true protective survival responses are not even triggered by the human reptile brain or brain stem, but rather by the more advanced limbic system.

Now, Ball and Keenan claim that even a mild threat can trigger the survival reaction. They claim that exposure of a safety rule violation is an adequate stimulus powerful enough to shift jurors into survival mode. Again, the suggestion of a danger or potential threat is never enough to activate the brain's survival instincts as the nature of the threat must be intense and immediate. If survival instincts could be tapped so easily, our behavior would be totally irrational throughout the day, hence the reason why an intense, immediate threat is required to activate these strong instincts. To understand survival responses, it is important to comprehend the different classifications of threats and the types of subsequent survival reactions. Consider the examples below:

- Example A: You hear reports of a recent robbery in your neighborhood. This is indeed a potential threat, but survival functions do not take over because the threat is not direct or imminent. Instead, when a potential threat is suggested, people actually become more logical and make an action plan (i.e., have a family meeting to discuss what occurred, make a plan to check door and window locks, be more vigilant, speak with neighbors, etc.). This type of survival reaction is known as "high road" cognitive processing, in which one carefully assesses many options and makes a careful choice.

- Example B: You hear an intruder entering your house. This constitutes a direct threat which triggers the fight or flight instinctual survival response. In other words, you will either quickly attack the intruder to protect yourself and your family or you will run and call for help as there is no time to make a logical plan due to the imminent threat. This type of survival reaction is known as "low road" cognitive processing, in which cognition is very limited.

- Example C: You walk around the corner and your 5-year old jumps out of nowhere and screams "Boo!" resulting in you automatically jumping back and dropping the glass you were holding. This constitutes an intense, immediate threat which triggers a brain stem reflex which includes jumping backwards, muscle tension (causing the drop of the glass),

dilated pupils, and increased heart and respiratory rate. This type of survival reaction is known as a "brain stem reflex" or "startle response" that is automatic, involving no cognition.

In humans, the reptile brain/brainstem only detects danger via attentiveness and alertness, and then the thalamus (the brain's "switchboard") usually takes over and decides whether the danger is worthy of a survival response or a more thoughtful response. Thus, Example A illustrates high road cognitive processing, which is a slower road because it also travels through the cortical parts of the brain before a thoughtful and logical response is formed. Example B illustrates low road cognitive processing as a neural pathway transmits a signal from a dangerous stimulus to the thalamus, and then directly to the amygdala (triggers fight/flight response), which then activates a quick survival response. Example C is more of a survival reflex from the reptile brain, as the response is almost instantaneous from such an intense and direct threat.

As you can see above, suggested or potential threats simply cannot activate the survival responses in the reptile brain that Ball and Keenan suggest. If they could, society would be in survival mode nearly constantly causing logic to be extinct. The "Safety Rule + Danger = Reptile" formula is erroneous, and should be replaced with "Imminent Danger + Intensity = Reptile" and/or "Suggested Danger + Logic = Planning." In conclusion, Ball and Keenan's Reptile theory is invalid, as the type of threat necessary to awaken the reptile brain is not conducive to the courtroom. However, disproving the Reptile theory in its entirety does not necessarily eliminate the effectiveness of the theory's individual tools and methods. Ball and Keenan's Reptile tactics can be very effective, but for a much different theoretical reason than they claim.

B. Redefining the Reptile Theory

The Reptile methodology can indeed influence juror decision-making, yet in a different way than advertised by Ball and Keenan. While "Reptile" is somewhat of a misnomer, it is important for defense attorneys to comprehend how and why the tactics are effective. Without understanding those reasons, defense attorneys can be outmaneuvered in four primary areas when facing a Reptile plaintiff attorney:

1. Defendant's Deposition Testimony: Plaintiff attorneys have figured out that the fastest way to a profit is to settle a case for much more than its actual economic value. They accomplish this by manipulating defendants into providing damaging testimony, specifically by cajoling them into agreeing with multiple safety rules. Once these admissions are on the record, often on video tape, the defense must either settle the case for an amount over its true value or go to trial with dangerous impeachment vulnerabilities that can severely damage the defendant's credibility. This problem is caused by inadequate pre-deposition witness preparation that focuses exclusively on substance and ignores the intricacies of the Reptile strategy. In other words, if defendants are not specifically trained to deal with Reptile questions and tactics, the odds of them delivering damaging testimony is high.

2. Voir dire: Plaintiff attorneys use a psychological technique called "priming" during voir dire by establishing terms, language and definitions early in the process, resulting in those stimuli being processed more quickly by jurors throughout the trial. Rather than fight fire with fire, defense attorneys instead tend to ask questions to identify stereotypical plaintiff jurors. By the end of jury selection, plaintiff's counsel "primes" the jury for their opening statement, resulting in easier cognitive digestion and acceptance of the plaintiff's story. Asking key questions to identify pro-plaintiff jurors is critically important in voir dire, however not taking the time to "strip and re-prime" jurors with defense terms, language and definitions can give the plaintiff a sizable advantage entering opening statements.

3. Opening Statement: Perhaps the most apparent area of defense attorney weakness is construction of the opening statement. Know thy enemy: Dr. Ball is a professional storyteller with a Ph.D. in Communications and Theater. He is a master of words and themes. Dr. Ball uses strategic ordering of information within the story to place the defendant in the spotlight of blame from the start. Dr. Ball understands that the better story wins, not necessarily the better science or medicine. Defense attorneys don't have Dr. Ball's training, and often resist the assistance of a jury consultant to develop their opening statement. The result is often a simple, understandable plaintiff story that immediately connects with the jury going up against a complex, confusing defense chronology that focuses on science rather than jury-friendly themes.

4. Defendant's Trial Testimony: When the defendant agrees to a safety rule on the witness stand, gets trapped, and then tries to weasel out of it, the obvious contradiction quickly leads to juror dislike and distrust that is often incurable. Again, the main mistake is insufficient witness preparation that focuses on the science/medicine more than the manipulative Reptile process. The "gotcha moment," when the defendant gets boxed in by plaintiff's counsel and begins to respond emotionally (i.e., argumentativeness, defensiveness, or anxiety) typically results in a severe mess that is difficult to clean up during defense counsel's rehabilitation efforts. The irony here is it is the defendant that goes into survival mode cognitively, not the jury. Ball and Keenan claim that jurors award damages to protect themselves and the community from the dangers of the defendant. In reality, jurors award damages to punish the defendant who breaks safety rules, not to protect themselves or the community.

These tactics do not work because the jurors' Reptile brains are awakened and they strive to protect themselves and the community. Rather, these tactics work because plaintiff attorneys have taken a new strategic approach focusing on defendant conduct rather than sympathy and severity of injuries, and the defense bar has not yet adjusted. What at first appeared to be an innovative neuroscientific plaintiff "revolution" is simply a more aggressive plaintiff strategy that uses reliable and fundamental psychological tools to truly put the defendant(s) on trial.

C. The Solutions

Defusing Priming in Voir Dire

Priming is a technique used to influence (i.e. control) attention and memory, and it can have significant impacts on decision-making. Specifically, priming is an implicit memory effect in which exposure to a stimulus influences a response to a later stimulus. This means that later experiences of the stimulus will be processed more quickly by the brain. For example, if the trait description of "careless" is frequently used, that description tends to be automatically attributed to someone's behavior. In voir dire, plaintiff's counsel begins the priming process with the goal of exposing jurors to stimuli such as danger, risk, safety and protection so that those themes will resonate with jurors during their opening statement. Repetition is a form of priming which can make themes more believable. Therefore, the more jurors are primed with safety claims (danger, risk, violation of rules, etc.) in voir dire via repetition, the odds of jurors believing those claims during the opening statement significantly increases. This occurs because priming creates selective attention, causing jurors to reduce future information input so they can focus on the safety claims. Priming can essentially blind jurors from processing new information, which can spell deep trouble for defense counsel since they are always following plaintiff's counsel during trial.

Defense counsel can defuse plaintiff attorney priming efforts by indoctrinating jurors in voir dire with a cognitive "plan" that can spoil plaintiff's counsel's priming efforts. For example, a plaintiff attorney may attempt to prime jurors in voir dire with the notion that safety = priority ("Who here feels that physicians should always put safety as their top priority? Who feels the community deserves that?"), in an effort to later convey in opening that the only way a physician can be safe is to strictly follow the safety rules of medicine. Many defense attorneys counter with the ineffective response of asking the jurors to focus on the law or the science. The more effective strategy would be to strip the original priming and "re-prime" the jurors with the cognitive plan of "who here feels that a physician's real priority needs to be to treat every patient as a unique individual?" This tactic would weaken the plaintiff attorney's priming efforts and potentially create a defense priming effect for opening statement.

Again, the Reptile tactics in voir dire have little to do with activating survival instincts. Instead, priming jurors to accept plaintiff terms, definitions and language later on in the trial is the key psychological goal. Ball and Keenan would tell you that the safety language introduced in voir dire would represent the initiation of the awakening of the jurors' Reptile brain. That claim is incredulous, as this priming effect is more about effectively utilizing fundamental cognitive principals rather than triggering survival instincts. Defense attorneys can neutralize these priming tactics by stripping the original primer and applying their own.

Delivering the Right Opening

Before 2009, the majority of plaintiff attorneys heavily relied on sympathy-based stories to strike an emotional chord with the jury and drive them towards a high damages award. The classic defense response to such a strategy was to show how the defendant acted reasonably and defend their conduct. This plaintiff strategy became ineffective over time, as sympathy became a less

potent variable as newer, desensitized generations (particularly Gen X and Y) started to fill the jury box. In response, the Reptile revolution has generated a new story format that is far more effective for today's jurors: immediately putting the defendant's conduct on trial and NOT focusing on injuries and sympathy. This is where many defense attorneys have fallen behind and have failed to make the proper adjustments to their strategy. This origin of this failure is simple: you must know thy enemy.

Dr. David Ball, co-author of the Reptile theory, is a brilliant scientist of storytelling. When he assists plaintiff counsel in developing an opening statement, he masterfully uses the tools of emphasis, information ordering and repetition to create a masterpiece of persuasion for the jury. Not only is he an elite expert in opening statement construction, he is also an expert at luring his adversary (defense counsel) into telling an ineffective story to the jury. Specifically, the organization of his Reptilian story ironically forces many defense attorneys into "survival" mode rather than adhering to effective defense strategy. As such, the top strategic mistake in response to a Reptile opening statement is to immediately go on the defensive (survival mode) and deny each of the plaintiff's allegations. This instinctual response makes psychological sense: plaintiff's counsel has bludgeoned the defendant with safety rules and danger threats for forty-five minutes, resulting in great temptation to immediately deny each allegation one-by-one. However, this strategy is notoriously ineffective, and is known as the "hey, we didn't do anything wrong and we are a good/safe person/company" approach. Addressing each claim immediately is a deadly mistake because it highlights and repeats the Reptile safety themes, thus validating them.

Instead of truly activating jurors' survival instincts, the Reptile approach is actually designed to "bait" defense counsel into fighting on the plaintiff's battleground. By reacting to the plaintiff's story immediately, the defense plays right into the Dr. Ball's hands and actually reinforces the Reptile issues to the jury. This effect is called the "Availability Bias," meaning jurors tend to blame the party that is most "available" (i.e., in the spotlight). If defense counsel takes the bait and illuminates safety issues relating to their client early in their opening, the Reptile attorney has won the opening round. Avoiding this tempting "Availability Bias" trap is essential to developing a persuasive opening statement that will neutralize the Reptile opening. Jurors only care about one thing: assigning blame. Therefore, immediately giving jurors something else to blame (besides your client) is imperative to derailing the Reptile attack. Defense counsel needs to arm jurors with the "real" story and immediately put the plaintiff and/or alternative causation on trial.

During the "opening" of an opening statement (i.e., the first three minutes), jurors form a working hypothesis that affects how they interpret the rest of the information presented to them. Therefore, attorneys can inadvertently stack the deck against themselves by beginning their opening statement with the wrong information (i.e., safety issues), which will taint the jury's perceptions from that point forward. Information presented early in an opening statement acts as a cognitive "lens" of sorts that all subsequent information flows through. This cognitive lens can drastically impact how jurors perceive information as the presentation progresses, so one must choose this lens very carefully in order to persuade jurors during opening statement. Dr. Ball specializes in creating a safety/danger lens for the jurors to perceive the case through, so defense

counsel must provide jurors with an alternative lens immediately. If this alternative lens does not get placed, then the entire case will revolve around safety and danger, which drastically increases the odds of a plaintiff verdict with damages.

It is essential to emphasize key themes related to plaintiff culpability and/or alternative causation immediately, as this is the time when the jurors' brains are most malleable. The defense story should only proceed after the "lens" has been placed, which should significantly influence jurors' perceptions and working hypotheses of the case. As Dr. Ball knows, this powerful starting strategy was adopted from the cinema big screen and is referred to as the "flash forward" start. Many movies don't begin at the "start" of the story, but rather begin at some other point in the story that no one expects. This creates immediate curiosity, suspense, and intrigue within the audience. This technique is often used by Dr. Ball to illuminate safety issues early in an opening, yet few defense attorneys know the proper way to defuse it and counter-attack.

The best way to counter-attack is by flash-forwarding immediately to culpability and/or alternative causation in the opening, and then start the defense story. However, many defense attorneys are inclined to start their opening statement by introducing themselves, the legal team, and their client, followed by reminding jurors how important their civic duty is to the judicial system and how much they appreciate the jurors' time. Then, many succumb to the temptation to a) tell the defense story in chronological order or, even worse, b) come out of the gate defending against each of the plaintiff's allegations. Both methodologies are weak and ineffective, and they certainly won't create any intrigue or curiosity. Instead, it represents a monumental missed opportunity as jurors will value that first three minutes of information more than any other part of the opening. Remember, jurors only care about one thing: assigning blame. Therefore, immediately giving jurors something else to blame is imperative to derailing the Reptile approach.

Defendant Trial Testimony

A black box analysis of how and why Reptile plaintiffs defeat defendants at deposition and trial reveals that the defendant witness is ultimately trapped by an agreement to one or more safety rules which creates a clear contradiction between the rule and their conduct in the specific case at hand. The perceptual impact of this dramatic "gotcha moment" is devastating, especially at trial. A trial is not a battle of science or medicine; it is a battle of perception. The party that looks and sounds correct is usually perceived as being more correct by the jury, regardless of the substance (often complex) of the case. Therefore, when the defendant witness is on the stand and appears to have broken his own safety rules in relation to the plaintiff, the perception of behavioral inconsistency has a powerful impact on jurors' decision-making. Behavioral consistency is highly correlated with honesty and truthfulness, so the Reptile plaintiff attorney's top motivation is creating and fueling the perception of inconsistency. For this reason, witnesses require special cognitive training to prevent the "gotcha moment" from ever occurring.

To create the perception of inconsistency, the Reptile attorney has two tiers of attack against defendants during adverse examination: (1) the safety rule attack and (2) the emotional attack. The safety rule attack is a "word game" in which the defendant needs to decide on whether to

accept or reject the plaintiff attorney's language. Baseball provides an excellent analogy to illustrate this process. An effective hitter carefully analyses each pitch coming in and classifies it (fastball, curveball, off-speed, too high/low, etc.), and that classification determines the timing of the hitter's swing or whether he even swings at all. The defendant witness is the hitter in this analogy, while the plaintiff attorney is the pitcher. In the safety rule attack, the plaintiff attorney (pitcher) is attempting to get the defendant witness (hitter) to swing at a bad pitch that is out of the strike zone. Therefore, defendant witnesses need special training to learn how to properly classify questions as they are delivered, as their baseline cognitive processing ability is too scattered to be able to effectively detect the elusive "curveballs." Keeping with the analogy, the Reptile plaintiff attorney (pitcher) will cleverly set up the defendant witness (hitter) by repeatedly delivering questions (pitches) that are benign and easy to answer (hit). The repetitive exposure to benign stimuli leads to the phenomenon of "cognitive momentum," in which the defendant witness' brain begins to assume that subsequent questions will also be benign and a tendency of automatic, rhythmic agreement begins to form. At this point the defendant witness (hitter) has been cognitively "set up" for the safety questions (curve balls), which usually results in continued automatic, rhythmic agreement. Once this occurs, the Reptile plaintiff attorney goes in for the kill: he begins to ask case specific questions (that are factual and must be agreed with) and dramatically points out the contradiction between the agreed upon safety rule and the defendant's conduct in the case. Hence, the "gotcha moment" is brilliantly set up by using the defendant's own cognitive patterns against them. Advances in technology have caused the brain to evolve into a multi-tasking organ, processing several stimuli simultaneously rather than isolating attention and concentration on a single stimulus. This cognitive pattern is hard-wired and very difficult to reverse, and is the top reason why the defendant witness is highly vulnerable to Reptile attorney precision attacks during adverse examination. In society, cognitive multi-tasking and quick thinking is very important as it leads to effective problem-solving and productivity. During testimony, it is a fatal flaw that can result in a defendant witness becoming trapped in a dangerous contradiction. Therefore, advanced cognitive training in the areas of attention, concentration, focus, and information processing are required for the defendant witness to avoid being defeated by the survival rule attack.

If the defendant witness has the cognitive skills to survive the safety rule attack, the Reptile plaintiff attorney must proceed with the emotional attack strategy. When the witness learns to detect and reject safety rules consistently, it puts the Reptile plaintiff attorney in a difficult position as they are now unable to show any contradictions or inconsistencies. The Reptile plaintiff attorney must now use a different strategy to establish the safety rule, otherwise the dramatic contraction is not possible and the case cannot be won. The emotional attack Reptile strategy attempts to force the defendant witness out of high road cognitive processing (patient, thoughtful, meticulous) and into low road cognitive processing (instinctual, spontaneous, survival). By forcing low road cognition, the Reptile plaintiff attorney can generate a response that will likely be negatively perceived by the jurors, thus hurting the defendant witness' credibility.

Three emotional attack methods can force defendant witnesses into low road cognitive processing: aggression, humiliation, and confusion. All three can represent direct threats to a defendant witness, causing them to depart high road cognition and regress into low road

cognition which will result in emotional and protective responses. Aggression occurs when the Reptile plaintiff attorney turns hostile towards the defendant witness and is characterized by a dramatic negative shift in volume, tone, and body language. This tactic is specifically designed to shock the defendant witness and activate low road cognitive processing (i.e., fight or flight), resulting in the defendant witness turning hostile (fight) or instinctually agreeing or pacifying (flight). Either response will significantly undermine the defendant witness' credibility and believability, and will create the perception that the Reptile plaintiff attorney is correct. Humiliation occurs when the Reptile plaintiff attorney displays shock, disbelief, and even laughter towards the defendant witness' answers. Low road cognitive processing in this circumstance results in a defensiveness survival response, characterized by "wait, wait…let me explain" types of responses that ultimately appear weak (i.e., excuses) in the eyes of the jury. Again, responding in a defensive manner creates the perception that the Reptile plaintiff attorney is correct and that the defendant witness is backpedaling and trying to talk their way out of the question. Finally, the Reptile plaintiff attorney can attack with a display of confusion or lack of understanding, which threatens the defendant witness by suggesting that their answers are not making sense. This is a very powerful emotional attack, as it makes the defendant witness feel like they are an inadequate communicator who struggles to answer questions in a straight-forward manner. This type of attack can force low road cognitive processing because the witness fears that their answers are insufficient and they should explain more to the Reptile plaintiff attorney in an effort to help them understand. This results in the jury perceiving the defendant witness as disorganized and unsure of themselves. Even worse, it allows the Reptile plaintiff attorney to extend his adverse examination and emotional attack methods.

Similar to the safety rule attack, advanced cognitive training is required to systematically desensitize the defendant witness to these emotional attacks and train them to remain in high road cognitive processing at all times. High road cognitive processing allows the defendant witness to persistently shoot down safety rule questions, as well as calmly and confidently repeat effective answers that will become the cornerstones of their subsequent examination from defense counsel. It is important to note, after a defendant witness persistently rejects safety rule questions, the jurors begin starving for information, deeply craving questions that begin with the words "what, why and how." However, the Reptile plaintiff attorney would never ask such questions, as they would allow a well-prepared witness to deliver a persuasive narrative answer to the jury. Therefore, it is important that defendant witnesses learn the proper responses to Reptile plaintiff questions and not force in their explanations during adverse examination.

There are two reasons why defendant witnesses agree with safety rule questions: cognitive momentum (as described earlier) and the brain's pre-programmed acceptance that safety is good and danger is bad. Specifically, the brain is pre-programmed to embrace safety and avoid danger, resulting in instinctual acceptance of these principles when presented in testimony. Safety rule questions are highly manipulative and come in all shapes and sizes. However, the answers to safety questions are pre-planned and very limited in nature. Before discussing the most effective responses to safety rule questions, it is important to first classify the various types of safety rule questions that exist. There are two general types of safety rule questions: big picture safety questions and hypothetical safety questions. The Reptile plaintiff attorney has become an expert at cleverly planting big picture safety questions that on the surface appear to be

"no-brainer" in nature. This is precisely why the brain's innate acceptance of safety principles becomes a major vulnerability for the defendant witness. These questions focus on the following big picture principles:

- Safety is always top priority
- Danger is never appropriate
- Protection is always top priority
- Reducing risk is always top priority
- Sooner is always better
- More is always better

Hypothetical safety questions are more specific and often take the form of an if-then statement, like "Doctor, you would agree that if you see A, B, and C symptoms, then the standard of care requires you to order tests X and Y, correct?" These questions are especially dangerous as the Reptile plaintiff attorney skillfully cherry-picks symptoms or factors and then suggests the safest course of action to the defendant witness. These deceptive questions are effective because they provide just enough information (compared to the big picture safety questions) to lure defendant witnesses into providing an absolute answer, thus setting the stage for the "gotcha moment." Therefore, the defendant witness' ability to persistently detect these precarious questions is vital to defense counsel's ability to effectively defend the client later in the case.

The very best way to respond to Reptile safety rule or hypothetical safety questions is quite simple on the surface: be honest. If the witness can first develop the cognitive skills to consistently understand the true meaning and motivation of the Reptile plaintiff attorney's question, the honest answer will always be some form of "it depends on the circumstances." By definition, the safety rule and hypothetical safety questions are inherently flawed because they lack the proper specificity to allow for a specific answer. Therefore, the only honest answer to a vague, general question is a vague, general answer like:

- "It depends on the circumstances"
- "Not necessarily in every situation"
- "Not always"
- "Sometimes that is true, but not all the time"
- "It can be in certain situations"

These answers are highly effective for four reasons. First, they are honest and accurate answers. Again, questions that lack adequate specificity cannot be answered in absolute terms, so these "sometimes" type of responses are truthful. Second, these responses put intense pressure on the Reptile plaintiff attorney to ask the defendant witness "what does it depend on?" As stated before, the last thing the Reptile plaintiff attorney wants is to give the defendant witness an opportunity to deliver persuasive narrative to the jury. When the logical and expected "what" question does not follow these responses, jurors tend to become frustrated (and often suspicious) with the Reptile plaintiff attorney, as they instead proceed with an emotional attack. Third, they provide an excellent opportunity for defense counsel to ask the defendant witness to offer explanations to the jury, who is starving for information. This is the time in which the defendant

witness can really shine, as they can become a persuasive educator to jurors. Finally, and most importantly, jurors widely accept and understand these answers, as they perceive them as authentic and reasonable (particularly if defense counsel has properly primed the jurors for these responses in voir dire). On the face of it, persistently delivering these answers seems simple. However, it is a very difficult task for defendant witnesses because of their multi-tasking brains, the phenomenon of cognitive momentum, and the triggering of low road cognitive processing from emotional attacks. As such, the defendant witness must undergo advanced cognitive training in order to consistently detect trap questions, respond effectively, detect emotional attacks, maintain high road cognitive processing, and repeat answers with emotional poise.

Conclusion

In the end, the Reptile theory is simply a more aggressive plaintiff strategy that is cleverly packaged in neuroscientific wrapping. The authors are a veteran plaintiff attorney (Don Keenan, Esq.) and a non-psychologist jury consultant (David Ball, Ph.D. in Communications and Theater) who have no formal training in neuroscience or neuropsychology, yet take highly complex neuroscientific principals and erroneously apply them to jury decision-making. Despite the theory's invalidity, the individual Reptile tools can certainly be effective at all points in the litigation timeline and can lead to increased economic exposure. This is particularly true at trial, as these tactics are specifically designed to provoke punitive attitudes and decision-making (not protective) in the deliberation room.

Defense counsel should do three things when facing a Reptile plaintiff attorney. First, re-think your voir dire plan and develop a strategy to strip Reptile plaintiff attorney priming and re-prime with defense language and definitions. Priming works, so learn to use it to your advantage in voir dire. Second, tell the right story in your opening, and don't inadvertently reinforce the plaintiff's claims. Effectively reordering information can drastically impact jurors' perceptions. Finally, develop a new appreciation for witness training prior to deposition and trial, as this is the key area in which the Reptile plaintiff attorneys are sure to fiercely attack. Find a qualified consultant to provide your defendant witness with the advanced cognitive training necessary to overcome both safety rule and emotional attacks. Such a consultant should have doctoral level training in cognition (i.e., psychology and/or neuropsychology) and be intimately familiar with Reptile tactics.