Derailing the Reptile Safety Rule Attack: 
A Neurocognitive Analysis and Solution

Bill Kanasky Jr., Ph.D.
Introduction

“What happened?” your client barks over the phone. As you gather the words to impress upon your client the challenges your witness faced, you also wonder and search for an explanation. “I prepared him like any other witness by explaining he should remain calm, deliver confident answers, listen carefully, and only answer the question asked”; but thinking back on the deposition, you cringe. Your objections went unheard. Your “preparation” sessions were useless. Your “Deposition 101” speech had no impact. You then realize that plaintiff’s counsel used a new, sophisticated approach that is immune to your standard witness preparation efforts—a form of psychological warfare. You realize the case is now over. “We were Reptiled, weren’t we?” the client demands….

As your client asks why the key witness in the case just “gave away the farm,” with you defending the deposition right next to them, you flash back to what happened:

- Plaintiff’s counsel presents the defendant witness with a series of general safety and/or danger rule questions;
- The witness instinctually agrees to the safety and/or danger rule questions because it supports their highly-reinforced belief that safety is always paramount and that danger should always be avoided;
- The witness then continues to agree to additional safety and/or danger rule questions that link safety and/or danger to specific conduct, as it aligns with their previous agreement to the general safety and/or danger rules;
- The witness begins unknowingly and inadvertently entrenching themselves deeply into an absolute, inflexible stance that omits circumstances and judgment;
- Plaintiff’s counsel then presents case facts to the defendant witness that creates internal discomfort, as these facts do not align with the previous safety and/or danger rule agreements;
- Plaintiff’s counsel then illuminates that the safety and/or danger rules, which have been repeatedly agreed to under oath, have been violated and that harm has been done as a result;
- The defendant witness regrettably admits to negligence and/or causing harm, as the perception of hypocrisy has been deeply instilled.
- The emotionally-battered defendant witness further admits that if they would have followed the safety and/or danger rules, harm would have certainly been prevented.

Rest assured your witness was not the first, nor will he be the last to fall victim to Reptile manipulation tactics because traditional preparation techniques are not sufficient for the emotional and psychological manipulation witnesses endure during Reptile style questioning. The four devastating psychological weapons that were used against your defendant witness are known as:

- Confirmation Bias
- Anchoring Bias
- Cognitive Dissonance
- The Hypocrisy Paradigm
The combination of these powerful psychological weapons doesn’t influence witnesses; rather, it CONTROLS witnesses. These psychological weapons are precisely what the Reptile plaintiff attorney uses to destroy defendant witnesses at deposition.

The well-known “Reptile Revolution” spearheaded by attorney Don Keenan, Esq. and jury consultant David Ball, Ph.D. is now a ubiquitous threat to defendants across the nation. Keenan and Ball advertise their tactics as the most powerful approaches available for plaintiff attorneys seeking to attain favorable verdicts and high damage awards in the age of tort reform, and they boast more than $6 billion in jury awards and settlements. Ball and Keenan’s tactics have been called “the greatest development in litigation theory in the past 100 years.” Although the theory developed within medical malpractice cases, Ball’s and Keenan’s seminars, held nationwide, now cover specific topics related to products liability and transportation. While the Reptile theory has been shown to be invalid, the specific Reptile tactics have proven deadly, particularly during defendant depositions.

Generating damaging witness deposition testimony creates the foundation for Reptile attorneys. Reptile attorneys accomplish high value settlements by manipulating defendants into providing damaging deposition testimony, specifically by cajoling them into agreement with multiple safety rules. Once these admissions are on the record, and often on videotape, the defense must either settle the case for an amount over its likely value, or go to trial with dangerous impeachment vulnerabilities that can severely damage the defendant’s credibility. Witnesses cannot be faulted for damaging testimony because Reptile tactics employ emotional and psychological tactics to manipulate witnesses into admitting fault. Witnesses’ mistakes are 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. Preventing Reptile attorneys from gaining leverage through damaging witness deposition testimony is the critical first step in combatting reptile tactics.

Most papers and presentations from defense attorneys and jury consultants about the plaintiff Reptile theory merely describe the theory and provide rudimentary suggestions to defense counsel.
who may face a Reptile attorney. While these efforts provide basic descriptions of the Reptile Theory, they fall woefully short on providing in-depth analysis and scientifically-based solutions. Suggestions such as “better prepare your witnesses” and “tell a better story during opening” do not provide defense attorneys with the neuropsychological weaponry needed to defeat the plaintiff Reptile approach. The Reptile attack during deposition is specifically designed to exploit the defendant witness’ cognitive and emotional vulnerabilities. As such, a neurocognitively-based training system and counter-attack strategy is necessary if defendant witnesses are to defeat the Reptile attorney during deposition. This paper will serve to a) expose the step-by-step psychological attack orchestrated by Reptile attorneys, b) identify and analyze the cognitive breakdowns that lead to witness failure, and c) provide neurocognitive interventions to prevent witness failure. Benekeen and Ball have recently expanded their Reptile tactics past medical malpractice to target transportation and product liability litigation, we offer examples of Reptile questions commonly found within these three areas of litigation.

Understanding Reptile Safety and Danger Rule Questions

The Reptile attorney uses four primary “rule” questions to lure unsuspecting defendant witnesses into their psychological trap. The four questions are classified as:

1. General Safety Rules (Broad Safety Promotion)
2. General Danger Rules (Broad Danger/Risk Avoidance)
3. Specific Safety Rules (Safe conduct, decisions and interpretations)
4. Specific Danger Rules (Dangerous/Risky conduct, decisions, and interpretations)

“Preventing Reptile attorneys from gaining leverage through damaging witness deposition testimony is the critical first step in combatting reptile tactics.”

Manipulating defendant witnesses into agreeing with these four types of questions is the linchpin of the Reptile cross-examination methodology, as the agreement creates intense psychological pressure during subsequent questioning of key case issues. Generating and intensifying this psychological pressure over the course of the questioning is essential to the Reptile attorney’s success. Absent this psychological pressure, the Reptile attorney’s odds of success drop exponentially. Therefore, the Reptile attack requires painstaking effort to both construct and order the questions in a manner which fully capitalizes on the natural biases and flaws of the witness’ brain. The attack plan consists of four phases that build off of each other to ultimately force the defendant witness into admitting fault and accepting blame.
**Anatomy of the Reptile Cross-Examination Method**

**Phase One**

**Confirmation Bias: Forcing Agreement to General Safety Rule Questions**

Confirmation biases are errors in witness’ information processing and decision-making. The brain is wired to interpret information in a way that “confirms” an existing cognitive schema (i.e., preconceptions or beliefs), rather than disconfirming information. This means that during testimony, most witnesses quickly accept information which confirms their existing attitudes and beliefs rather than considering possible exceptions and alternative explanations. Essentially, witnesses struggle to say “no,” to, or disagree with a line of questioning because of emotional and psychological challenges. Reptile attorneys rely on these cognitive challenges to entice defendant witnesses into a dangerous agreement pattern.

Cognitive schemas, the mental organization of knowledge about a particular concept, are powerful because they often relate to our identity as people. The safety movement in many industries (healthcare, trucking, products, etc.) has strongly conditioned witnesses to automatically accept any safety principle as absolute and necessary, while simultaneously rejecting danger and risk. Specifically, years of repeated safety seminars, safety publications, and continuing education classes provided by employers have created powerful and inflexible cognitive schemas about safety. Therefore, when Reptile attorneys ask witnesses about safety issues during deposition, automatic agreement occurs as a function of the brain working to confirm its cognitive safety schema. Reptile attorneys have discovered that they can use a witness’ confirmation bias tendency to their advantage, because it virtually guarantees agreement to safety and danger questions.

Here is how it works:

- The Reptile attorney illuminates the defendant witness’ cognitive safety schema regarding safety within their question, relying on the psychological principle of confirmation bias to ensure agreement;
- The defendant witness has no choice but to agree to safety questions, as cognitive schemas are strongly related to an individual’s self-value and identity. In other words, disagreement with a cognitive schema is burdensome, if not impossible, as deviating from their internal value system proves uncomfortable for witnesses—no one likes to view themselves or their actions as anything but “safe.”
- The Reptile attorney asks additional general safety and/or danger rule questions to the defendant witness, which forces further agreement and momentum.

Examples of General Safety and Danger Rule Questions (any case type):

- Safety
  - “Safety is your top priority, correct?”
  - “You have an obligation to ensure safety, right?”
  - “You have a duty to put safety first,
correct?”

- Danger
  - “It would be wrong to needlessly endanger someone, right?”
  - “You would agree that exposing someone to an unnecessary risk is dangerous, correct?”
  - “You always have a duty to decrease risk, right?”

These repeated agreements lock the defendant witnesses into an inflexible stance, allowing the Reptile attorney to move to Phase Two of the attack—linking safety and/or danger issues to specific conduct, decisions, and interpretations.

**Phase Two**

**Anchoring Bias: Linking Safety and/or Danger to Conduct**

Anchoring bias refers to the cognitive tendency to rely too heavily on early information that is offered (the “anchor”) when making decisions. Anchoring bias occurs during depositions when witnesses use an initial piece of information to answer subsequent questions. Various studies have shown that anchoring bias is very powerful and difficult to avoid. In fact, even when research subjects are expressly aware of anchoring bias and its effect on decision-making, they are still unable to avoid it. The Reptile attorney cleverly uses the initial agreement to general safety and/or danger rule questions to form an “anchor” that forces defendant witnesses to continue to agree to subsequent questions that are designed to link safety and/or danger to specific conduct, decisions, or interpretations. This sophisticated psychological approach manipulates the defendant witness by forcing them to repeatedly focus on their cognitive schema alignment, rather than effectively processing the true substance (and motivation) of the question.

Examples of Specific Safety and Danger Questions (Medical Malpractice Case):

**Safety**

- “If a patient’s status changes, the safest thing to do is call a physician immediately, right?”
- “If a patient is having chest pain and shortness of breath, the safest thing to do is to send them to the ER immediately, correct?”
- “If a patient’s oxygen saturation drops to 82%, and you are on-call, the safest thing to do to protect the well-being of the patient is to come to the hospital ASAP, right?”

**Danger**

- “Documentation in the medical chart must be thorough; otherwise a patient could be put in danger, right?”
- “You would agree with me that when a Troponin value is elevated, that the patient is in imminent danger, correct?”
- “Doctor, when you order a test or labs, you’d agree with me that you should review the results immediately, because any delay would put the patient at risk, right?”

Examples of Specific Safety and Danger Questions (Transportation Case):
Safety

- “To ensure safety, as a commercial truck driver, you must follow the federal rules governing hours of service, correct?”
- “Another safety rule requires daily inspection of the truck and trailer, such as brakes, correct?”
- “And you agree that if someone violates those safety rules and causes an accident, then they should be held responsible for their actions, correct?”

Danger

- “Commercial drivers must maintain daily log books, to ensure other drivers on the road are not put in danger, right?”
- “You would agree with me that when a commercial driver has exceeded the speed limit, other drivers on the road are put in danger, right?”
- “A commercial driver who places others in danger should be held responsible for the harms and losses caused, right?”

Examples of Specific Safety and Danger Questions (Product Liability Case):

Safety

- “Product manufacturers must make consumer products that are safe and free from defects, correct?”
- “To ensure consumer safety, authorized dealers must follow the product manufacturer’s policies when selling, servicing, or repairing a product, correct?”
- “A product’s operating manual ensures consumers know how to safely use a product, correct?”

Danger

- “Product testing should be thorough; otherwise consumers could be put in danger, right?”
- “When a product is mislabeled, you would agree with me that the consumer is in real danger, correct?”
- “Any defect discovered in the manufacturing process should result in an immediate recall of a product, because any delay could put the consumer in danger, right?”

These subsequent agreements to specific safety and/or danger rule questions accomplish two key Reptile attorney goals: a) it forces the defendant witness to become deeply entrenched in an inflexible stance on safety issues and b) it sets the stage to introduce case facts in a powerful manner to create psychological discomfort.

Phase Three
Cognitive Dissonance: Creating Psychological Distress

Cognitive dissonance is the mental discomfort people experience whenever beliefs or attitudes they hold about reality are inconsistent with their conduct, decisions, or interpretations.10 Cognitive dissonance can occur in many areas of life, but it is particularly evident in situations where an individual’s behavior conflicts with beliefs that are integral to his or her self-identity and profession. The Reptile attorney purposely generates cognitive dissonance
by highlighting case facts which show the defendant witness’ conduct, decisions or interpretations contradict his or her cognitive schema regarding safety and danger. Repeated contradictions result in the defendant witness experiencing psychological distress. Importantly, the amount of cognitive dissonance produced depends on the importance of the belief: the more personal value, the greater the magnitude of the cognitive dissonance. Additionally, the pressure to reduce cognitive dissonance is a function of the magnitude of said dissonance. Hence, the Reptile attorney purposely lays out multiple safety and/or danger questions in an effort to increase the magnitude of dissonance between the safety and/or danger admissions and the witness’ conduct, decisions, or interpretations in the actual case.

During a deposition, there is a clear transition from general and specific safety and/or danger questions to case specific questions. Once the defendant witness has agreed to the safety and danger rule questions, the Reptile attorney starts to present case facts that do not align with the safety and danger rule answers. Here is how the question sequence works:

- General Safety Rule Question
- General Safety Rule Question
- General Danger Rule Question
- General Danger Rule Question
- Specific Safety Rule Question
- Specific Safety Rule Question
- Specific Danger Rule Question
- Specific Danger Rule Question
- Case Fact Question
- Case Fact Question
- Case Fact Question

As you can see, the Reptile plaintiff attorney strategically places the case fact questions directly behind several safety and danger rule questions. As the case fact questions are delivered to the defendant witness, his or her brain senses the contradiction between the case facts and their previous testimony, leading to cognitive dissonance. The ordering of the questions is crucial, as presenting case fact questions too early in the sequence will not produce cognitive dissonance. Therefore, the Reptile attorney will purposely delay the delivery of case questions to ensure that the safety and danger rule questions have been agreed to first.

**Phase Four**

**The Hypocrisy Paradigm: Forcing an Admission of Fault**

By repeatedly introducing case facts that contradict the defendant witness’ previous testimony regarding safety and/or danger, the Reptile attorney intensifies the amount of psychological distress the witness experiences. The final and most powerful Reptile attack is the use of the hypocrisy paradigm. By getting people to advocate positions they support but do not always live up to maximizes the level of cognitive dissonance an individual will experience. During a Reptile deposition, when the reptile attorney directly accuses the witness of putting someone else in danger and causing harm, the attorney’s questioning generates shame and threatens the witness’ sense of integrity. Hypocrisy is an intense threat to one’s identity and self-esteem, and creates intense psychological discomfort. Therefore, the Reptile attorney, as a form of manipulation,
repeatedly points out that the defendant witness has failed to live up to his or her own professional standards. The hypocrisy fuels further cognitive dissonance, often generating feelings of shame and embarrassment.

Examples of Hypocrisy Paradigm Questions:

Medical Malpractice Case

- “Failing to call a physician at 4pm was a safety rule violation, correct?”
- “It exposed my client to unnecessary risk and harm, right?”
- “And if you would have called a physician, it would have prevented my client’s stroke, right?”
- “Nurse Jones, failing to call a physician immediately at 4pm was a deviation of the standard of care, wasn’t it?”

Transportation Case

- “Failing to perform a complete vehicle inspection prior to your travel was a safety rule violation, correct?”
- “It endangered my client and other drivers, correct?”
- “If you would have performed a vehicle inspection, it would have prevented my client’s injury, right?”
- “By failing to perform a vehicle inspection prior to your travel, a violation of the safety rule, and endangering other drivers, including my client, you were negligent weren’t you?”

Product Liability Case

- “Failing to perform an immediate recall after learning of a product’s defect endangered consumers, right?”
- “Recalling the product immediately would have prevented my client’s injury, correct?”
- “By failing to order a recall and allowing your product to harm consumers, you were negligent correct?”

After fostering shame and embarrassment through hypocritical behavior, the Reptile attorney has emotionally battered the defendant witness to a point in which he or she understandably concedes defeat and admits negligence. While some defendant witnesses attempt to fight and defend their conduct, the Reptile attorney often aggressively reminds them of their previous testimony about safety and danger rules, typically forcing the witness into submission.

Witnesses generally attempt to decrease intense cognitive dissonance by either admitting to fault or attempting to change previous testimony, neither of which prove successful when a video camera captures a clear admission, or credibility eroding back-pedaling.

1. Admitting Fault – Admitting fault reduces cognitive dissonance and relieves psychological pressure. When the defendant witness realizes that he or she is trapped and has no chance at escape, admitting fault is a fast way to decrease the intense cognitive discomfort that has been created by the Reptile attorney. Admitting fault is a low-road cognitive processing survival response that represents a “flight” (vs. fight) reaction. Specifically, admitting fault is a version of
“playing dead” in an effort to decrease exposure to an aggressive negative stimulus (i.e., a Reptile Attorney). While this flight response may relieve psychological discomfort within the defendant witness, it obviously increases psychological discomfort within the defense attorney since both strategic and economic leverage in the case have been severely compromised.

2. Attempt to Change Previous Testimony – Some witnesses attempt to “back up” and try to change the conflicting belief so that it is consistent with their behaviors. Specifically, the defendant witness can try to explain to the Reptile plaintiff attorney that they were mistaken on their previous answers in an effort to escape the safety and/or danger rule trap. However, this is rarely effective as any attempt to reverse previous testimony is characterized as dishonesty by the Reptile plaintiff attorney, who will remind the defendant witness that he or she was under oath during the previous safety and danger rule questions. Even though the defendant witness may never admit fault in this circumstance, his or her credibility becomes severely damaged.

Regardless of how the defendant witness decides to decrease the psychological distress created from the hypocrisy paradigm questions, they both result in the Reptile plaintiff attorney gaining extraordinary strategic and economic leverage in the case. Table 1 illustrates the tactical use of each psychological weapon against the defendant witness and the subsequent result.

**Derailing the Reptile Attack at Deposition: Rebuilding Cognitive Schemas**

The foundation of the Reptile attack during testimony is to take advantage of the defendant witness’ distorted cognitive schema related to safety and danger issues. Again, the witness’ flawed cognitive schema results from years of conditioning and reinforcement regarding workplace safety rules, which foster powerful and inflexible preconceptions absent circumstance and judgment. The Reptile attorney preys upon these cognitive flaws.

Table 1 illustrates how the Reptile attorney heavily relies on the initial agreement to safety and danger rule questions to implement subsequent psychological weapons that will effectively force agreement from the defendant witness. Importantly, without this initial agreement to safety and danger rules, the ensuing questions become impotent and ineffective because confirmation bias and anchoring bias cannot occur. In other words, if a defendant witness can be properly trained to identify safety and danger rule questions and avoid absolute agreement, the powerful effect of cognitive dissonance can be completely neutralized.
<table>
<thead>
<tr>
<th>QUESTION TYPE</th>
<th>QUESTION FORM</th>
<th>PSYCHOLOGICAL WEAPON</th>
<th>RESULT</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Safety Question</td>
<td>“Nurse Jones, you’d agree with me that ensuring patient safety is your top clinical priority, right?”</td>
<td>Confirmation Bias of Cognitive Schema</td>
<td>Agreement; Psychological Comfort</td>
</tr>
<tr>
<td>General Danger Question</td>
<td>“Because, you wouldn’t want to expose your patient to an unnecessary danger, correct?”</td>
<td>Confirmation Bias of Cognitive Schema</td>
<td>Agreement; Psychological Comfort</td>
</tr>
<tr>
<td>Specific Safety Question</td>
<td>“You’d also agree with me that if a patient becomes unstable, the safest thing to do would be to call the physician immediately, right?”</td>
<td>Anchoring Bias to General Safety Agreement</td>
<td>Agreement; Psychological Comfort</td>
</tr>
<tr>
<td>Specific Danger Question</td>
<td>“Because hemodynamic instability can be dangerous, and even lead to death, right?”</td>
<td>Anchoring Bias to General Danger Agreement</td>
<td>Agreement; Psychological Comfort</td>
</tr>
<tr>
<td>Case Fact Question</td>
<td>“Nurse Jones, isn’t it true that my client’s blood pressure was 174/105 at 4pm?”</td>
<td>Cognitive Dissonance</td>
<td>Agreement; Psychological Distress</td>
</tr>
<tr>
<td>Case Fact Question</td>
<td>“And you could have picked up the phone to call the physician, but you decided not to, correct?”</td>
<td>Cognitive Dissonance</td>
<td>Agreement; Psychological Distress</td>
</tr>
<tr>
<td>Case Fact Question</td>
<td>“At 5:30pm, my client suffered a hemorrhagic stroke, correct?”</td>
<td>Cognitive Dissonance</td>
<td>Agreement; Psychological Distress</td>
</tr>
<tr>
<td>Hypocrisy Question (Conduct)</td>
<td>“Failing to call a physician at 4pm was a safety rule violation, correct?”</td>
<td>Intensified Cognitive Dissonance / Hypocrisy</td>
<td>Regretful Agreement or Reversal Attempt</td>
</tr>
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<td>Hypocrisy Question (Conduct)</td>
<td>“It exposed my client to unnecessary risk and harm, right?”</td>
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<td>Regretful Agreement or Reversal Attempt</td>
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<tr>
<td>Hypocrisy Question (Conduct)</td>
<td>“Nurse Jones, failing to call a physician immediately at 4pm was a deviation of the standard of care, wasn’t it?”</td>
<td>Intensified Cognitive Dissonance / Hypocrisy</td>
<td>Regretful Agreement or Reversal Attempt</td>
</tr>
<tr>
<td>Hypocrisy Question (Prevention)</td>
<td>And if you would have called a physician, it would have prevented my client’s stroke, right?</td>
<td>Intensified Cognitive Dissonance / Hypocrisy</td>
<td>Regretful Agreement or Reversal Attempt</td>
</tr>
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</table>
Properly training a witness to withstand Reptile attacks requires a sophisticated reconstruction of the original cognitive schema, followed by a rebuilding of a new, adjusted schema built upon an understanding of the role of circumstance and judgment. Once the new cognitive schema is firmly in place with no signs of regression, the defendant witness will be immune from the Reptile attorney’s safety and danger rule attacks (see Table 2).

Table 2: Effective Responses to General and Specific Safety and/or Danger Rule Questions

<table>
<thead>
<tr>
<th>General Safety Questions</th>
<th>Rebuilt Cognitive Schema Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>“You have an obligation to ensure safety, right?”</td>
<td>Option 1: General Agreement (not absolute)</td>
</tr>
<tr>
<td>“Safety is your top priority?”</td>
<td>• Safety is certainly an important goal, yes.</td>
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<td></td>
<td>• We strive for safety, of course.</td>
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<td></td>
<td>• In general, yes.</td>
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<td></td>
<td>Option 2: Request Specificity</td>
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<td></td>
<td>• Safety in what regard? Can you please be more specific?</td>
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<td></td>
<td>• In what circumstance are you referring?</td>
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<td></td>
<td>• Safety is a broad term, can you be more precise?</td>
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</tbody>
</table>

<table>
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<tr>
<th>Specific Safety and/or Danger Rule Questions</th>
<th>Rebuilt Cognitive Schema Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>“If you see or experience A, B, and C, the safest thing to do would be (Conduct or Decision X), correct?”</td>
<td>• It depends on the patient’s specific circumstances.</td>
</tr>
<tr>
<td>“(Conduct or Decision X) must be (ADJECTIVE), otherwise someone could be put in danger, right?”</td>
<td>• It depends on the full picture.</td>
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<td></td>
<td>• Not necessarily, as every situation is different.</td>
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<td></td>
<td>• That is not always true.</td>
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<td></td>
<td>• I would not agree with the way you stated that.</td>
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<td></td>
<td>• That is not how I was trained.</td>
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<td></td>
<td>• That is not how (INDUSTRY) works.</td>
</tr>
</tbody>
</table>

<table>
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<th>General Danger Rule Questions</th>
<th>Rebuilt Cognitive Schema Responses</th>
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<tbody>
<tr>
<td>“If you see or experience A, B, and C, the safest thing to do would be (Conduct or Decision X), correct?”</td>
<td>• I don’t understand what you mean by “needlessly endanger.”</td>
</tr>
<tr>
<td>“(Conduct or Decision X) must be (ADJECTIVE), otherwise someone could be put in danger, right?”</td>
<td>• That is a confusing question; can you define “needlessly endanger?”</td>
</tr>
<tr>
<td></td>
<td>• I don’t understand what you mean by “unnecessary risk;” can you please be more specific?</td>
</tr>
</tbody>
</table>
| | • That is a very broad question, what specific circumstance are you referring to?
The cognitive schema reconstruction process is no easy task and requires advanced training in neurocognitive science, communication science, personality theory, learning theory and emotional control. As such, the following steps are only intended to provide general knowledge to defense counsel about how to identify and reconstruct a witness’ cognitive schema.

10 Steps to Rebuilding the Cognitive Schema

1. Education: scientifically define cognitive schemas and how they work
2. Identification: identify and discuss the witness’ personal Safety and Risk schemas
3. Demonstration: demonstrate cognitive flaws regarding safety and danger (live, video, written)
4. Education: scientifically define confirmation bias and anchoring bias
5. Education: scientifically define cognitive dissonance and hypocrisy paradigm
6. Simulation: create cognitive dissonance and force failure (i.e., the witness must fail repeatedly, proving that their current cognitive schema is flawed and ineffective, in order to ingrain successful communication patterns and behavior)
7. Operant Conditioning: positive reinforcement of correct answers (see Table 2)
8. Operant Conditioning: punishment (criticism) of incorrect agreement
9. Repeated Simulation: attempt to force cognitive dissonance and agreement from varying angles
10. Solidify New Cognitive Schema: repeat simulation until cognitive regression is minimal to none

Conclusion

The ultimate goal of the Reptile attorney is simple: create economic leverage. They have no interest in truth, justice, or even prestige in the courtroom. Rather, the Reptile attorney is only interested in fast cash. They strive to force clients to settle a case for far more than the realistic case value by manipulating the defendant witness into delivering damaging testimony. The economic impact of being “Reptiled” is staggering, resulting in millions of dollars of unnecessary payouts to undeserving plaintiffs and their attorneys. The plaintiff Reptile methodology is pure psychological warfare designed to attain the plaintiff attorney’s economic goals. As such, defense counsel and clients need to supplement their traditional witness preparation efforts with sophisticated psychological training to specifically derail the perilous Reptile attacks.

“The plaintiff Reptile methodology is pure psychological warfare designed to attain the plaintiff attorney’s economic goals.”

Advanced neurocognitive witness training can completely stymie a savvy Reptile attorney from controlling a defendant witness’ answers and
steering them towards admissions to negligence and causation. The problem is that merely warning a defendant witness about these sophisticated tactics is grossly inadequate. Well-prepared defendant witnesses have repeatedly failed at deposition because the preparation program did not include training to diagnose and repair the neurocognitive vulnerabilities where the Reptile attorney attacks. Proper training can not only protect the defendant witness from Reptile attorney safety rule attacks at deposition, but it can substantially decrease the economic value of the case. To no surprise, many corporate clients, particularly insurance companies, put great emphasis on decreasing annual legal costs and expenses. Claims specialists and corporate counsel routinely question whether they can afford the cost of advanced deposition training for their defendant witnesses. However, as Reptile settlements and damages continue to mount into the billions, the real question becomes: Can they afford the cost of NOT training witnesses?

About the Authors

Bill Kanasky Jr., Ph.D. is the Vice President of Litigation Psychology at Courtroom Sciences, Inc., a full-service, national litigation consulting firm. He is recognized as a national expert, author and speaker in the areas of witness preparation and jury psychology. Dr. Kanasky specializes in a full range of jury research services, including the design and implementation of mock trials and focus groups, venue attitude research, and post trial interviewing. Dr. Kanasky’s success with training witnesses for deposition and trial testimony is remarkable. His systematic witness training methodology is efficient and effective, as it is designed to meet each witness’s unique needs, while concurrently teaching core principles of persuasive communication. Clients benefit from Dr. Kanasky’s ability to transform poor or average witnesses into extraordinary communicators. He can be reached at 312.415.0600 or bkanasky@courtroomsciences.com.

Ryan Malphurs, Ph.D contributed to this article.
**Endnotes**


2. See www.reptilekeenanball.com for promotional material.


5. See note 1 for list of prior articles addressing the Reptile Theory.


A Neurocognitive Approach

By Bill Kanasky Jr. and Melissa Loberg

Rehabilitating the Defendant in the Reptilian Era

Reptilian adverse examination of defendant witnesses often represents the most stressful, vulnerable time of a trial for both witness and defense counsel. For the witness, surviving the cognitive and emotional chess match of a reptile plaintiff attorney’s manipulative pattern of safety and danger questions is often a daunting task. For defense counsel, feelings of helplessness and powerlessness are common, particularly when their witness is getting pounded with textbook reptile attacks on the stand. If the defense witness is well-trained and survives the reptile attack, the ability to rehabilitate the witness is now crucial to ensuring his/her credibility and believability at the jury level. Because so much attention and worry has been directed toward halting or derailing the reptile attack during adverse examination, witness rehabilitation is now (erroneously) perceived as a relieving, non-threatening, “easy” part of the trial for both witness and defense counsel. This is because the witness and attorney now possess total control of the information that is presented to the jury, free of manipulative influence from opposing reptile counsel. Unfortunately, this false sense of security can lead to unbalanced witness preparation efforts that result in ineffective defense testimony at trial. Specifically, the intense focus on defeating the plaintiff’s reptile attack during witness preparation has led to an unusual and counter-intuitive phenomenon in civil litigation: defense witnesses performing better on adverse examination than they do during rehabilitation.

There is no denying that defense witness performance during rehabilitation testimony has suffered since the rise and spread of Ball and Keenan’s reptile trial methodology. Ball, D. and Keenan, D. Reptile: The 2009 Manual of the Plaintiff’s Revolution, 2009. After several highly publicized

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and high-dollar verdicts, the defense bar has finally started to take Ball and Keenan’s reptile tactics seriously. Defense attorneys are realizing that witness preparation requires a greater time investment than it has in the past, as teaching witnesses how to avoid falling victim to the reptile attack takes considerable time and effort, even with experienced and highly intelligent witnesses. Unfortunately, by the time the defendant witness is thoroughly prepared for the impending reptile attack, many defense attorneys are running out of time or simply considering the job done. Thus, the needed preparation for rehabilitation of the witness is neglected. This lack of preparation has led defendant witnesses to make avoidable mistakes during what should be the time for the witness to provide critical testimony necessary to combat the plaintiff’s themes of safety and danger. Now that a scientifically based counterattack has been constructed to derail the reptile attack on defense witnesses effectively, solutions to new problems with defendant rehabilitation must be discussed.

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cognitive and strategic errors during rehabilitation efforts that can inadvertently set up their witness for disaster. Neither witness nor attorney is safe during rehabilitation questioning, as both are vulnerable to committing key errors. This paper is designed to (a) educate defense attorneys about the three common errors that can damage witness credibility during rehabilitation efforts, and (b) provide defense attorneys with a plan to prepare for and conduct rehabilitation questioning more effectively.

Rehabilitation Errors

Error #1: Juror Cognitive Saturation
Both defense witnesses and attorneys vastly overestimate how much information jurors can process during testimony. Thanks to the persistent growth of portable technological gadgets (PDA’s, tablets, etc.) that provide people with constant and near instantaneous information, juror attention span has declined from poor to atrocious. Specifically, the human brain has become so reliant on technology to provide multiple sources of information that sustained attention and concentration to a single source of information has become difficult for most people. Attentively listening to a witness testify and effectively processing that information now creates a unique neuropsychological challenge for jurors that was absent before the tech age. Therefore, both defense attorneys and witnesses need to understand jurors’ neurocognitive limitations and ensure that information is being presented to them in the correct fashion. Otherwise, valuable information may be missed, lost, or forgotten.

Jurors struggle to maintain focus during witness testimony, particularly during long, complex answers. Therefore, the goal of rehabilitation should be to promote juror cognitive digestion and prevent cognitive saturation. Cognitive “digestion” refers to the maximum amount of information that a juror can process without becoming overwhelmed, while cognitive “saturation” refers to information that exceeds the brain’s processing limits and is ultimately lost. To avoid cognitive saturation, defense attorneys must ensure that their witnesses are delivering information in a way that does not exceed jurors’ cognitive capacity limitations.

Specifically, when information is delivered to a jury, it can either be “chunked” or “streamed.” The human brain is designed to process smaller “chunks” of information effectively, rather than long, continuous streams of information. The best examples of chunking include phone numbers, social security numbers, and combination locks. All of them have numbers being “chunked” together in groups, rather than one long stream of numbers. This results in enhanced memory capacity as the dash allows the brain to digest before processing the next chunk of information. This pause, even if only for a second, allows the brain to digest the information and prepare for subsequent information. In contrast, serial numbers and product identification numbers are good examples of information streaming, as these numbers are presented as long, continuous strings of data with no dashes or spaces. Trying to memorize such numbers is nearly impossible, as the continuous stream of information causes short term memory (STM) to become quickly saturated.

In testimony, answers can be delivered in digestible chunks if the length of answers persistently stays under five seconds (“the five-second rule”). Answers that exceed five seconds are considered a form of information streaming, and therefore overwhelm short-term memory (cognitive saturation), resulting in information being lost rather than being appropriately processed and transferred into long term memory (LTM) (see Figure 1).

When information is streamed, short-term memory becomes saturated, or “full,” preventing subsequent information from being processed and stored. Instead, the overflow information is lost and cannot be recovered. Consider the following examples of information chunking and streaming.

Case Example: Medical Malpractice

Question: Doctor, would you please explain to the jury what Heparin is?

Answer: Heparin is an anticoagulant that prevents the formation of blood clots. It is used to treat and prevent blood clots in the veins, arteries, or lung. Heparin is also used before surgery to reduce the risk of blood clots. You should not use this medication if you are allergic to heparin, or if you have uncontrolled bleeding or a severe lack of platelets in your blood. Heparin may not be appropriate if you have high blood pressure, hemophilia or other bleeding disor-

![Figure 1](image-url)
der, a stomach or intestinal disorder, or liver disease.

“Chunking” Information (effective)

Question 1: Doctor, would you please explain to the jury what Heparin is?
Answer: It is a medication used to thin a patient’s blood.

Question 2: How exactly do physicians use Heparin?
Answer: We use it to treat and prevent blood clots in the veins, arteries, or lung, particularly before surgery to reduce the risk of blood clots.

Question 3: Is Heparin safe for all patients?
Answer: No. If a patient has uncontrolled bleeding or a severe lack of platelets in their blood, Heparin can be dangerous.

Question 4: Are there other instances in which the use of Heparin may be inappropriate?
Answer: Yes, Heparin may not be appropriate if a patient has high blood pressure, hemophilia or other bleeding disorder, a stomach or intestinal disorder, or liver disease.

Long, complex answers by witnesses may be authentic, truthful, and important, but they can be highly ineffective at the jury level. This may result in critical information being lost or forgotten, which can have dramatic effects in the deliberation room. However, jurors usually process more concise answers (under five seconds) very effectively, resulting in maximum information retention. Additionally, the slower pacing that is achieved when witnesses provide information to jurors in digestible chunks allows the attorney to work with the witness to ensure defense themes are repeated, further increasing juror retention of the key arguments in support of the defendant’s case.

Chunking of testimony is particularly important in courtrooms that allow and encourage note-taking, as this activity can distract jurors from effectively processing information during rehabilitation questioning. If witnesses persistently adhere to the five-second rule, it allows jurors to listen and take notes simultaneously without becoming overwhelmed. Therefore, it is critical for both the witness and defense attorney to undergo juror cognitive training to gain a better understanding of the capabilities and limitations of the juror brain, and how to formulate questions and answers properly to enhance juror comprehension.

Error #2: Emotional Volunteering of Information

A savvy attorney should have his/her questions strategically ordered, providing both the witness and the jury with a road map, or blueprint, to the case. The ability to stick to that plan and present jurors with the proper order of information helps jurors effectively understand the defense story. However, defense witnesses often develop the burning desire to jump ahead of the attorney and bring up important information that has not been asked for yet, particularly after surviving a treacherous reptile attack on adverse examination. This problem is emotionally based, as many witnesses are highly motivated to “win” the case during their testimony.

When a witness jumps ahead of the questioner, it has three detrimental effects on the jury. First, it appears that the witness is over-advocating the defense position, thus potentially damaging credibility. Second, the witness-attorney team appears disorganized, as the witness is not directly answering the actual question the attorney asked. Finally, it can confuse jurors and inhibit proper comprehension of key case information. This ultimately results in frequent interruptions from the attorney to get the witness back on track, which can damage jurors’ perceptions of the entire defense team.

An example of how a witness can jump ahead of the questioner and bring in information that the questioner intended to come out later in the questioning is as follows.

Question: How many air traffic controllers are required to be in the tower at any given time?
Answer: In higher traffic situations it is ideal to have more than one, but in this case the traffic had just picked up when the incident occurred and the controller on duty was very experienced, plus another controller was on his way back from a required break.

In this example, while the information about who was in the tower during this incident is indeed very important to the case, the witness has delivered it to the jury at the wrong time. This not only can confuse jurors, but also can create the appearance of disorganization within the attorney-witness team. The attorney’s plan was first to educate the jury about laws and requirements for staffing of the tower, then educate them about the experience
nesses. Additionally, witnesses must also understand jurors’ cognitive needs, and develop the motivation to improve juror comprehension, rather than fulfilling their own emotional needs during rehabilitation testimony.

Error #3: Failure to Use the Primacy Effect
The first three minutes of a witness’ testimony is more valuable to jurors than testimony that is delivered toward the middle and end of the examination. This important neuropsychological timing effect is precisely why attorneys should not start their witness rehabilitation by covering the witness’s education and work history, as that information is better placed in the middle or end of the testimony. Rather, the most effective way to examine a witness during rehabilitation questioning is to start with questions that go right to the heart of the case, as jurors will value that information more than subsequent information. This is known as the primacy effect, meaning jurors perceive information presented early in an examination as more valuable and meaningful than information presented in the middle or at the end. This is a very powerful neurocognitive tool that few defense attorneys utilize because they erroneously assume that primacy and recency effects are similar. While recent information tends to be better remembered by jurors, it is certainly not valued similarly as the juror brain places great significance on early information (vs. later information). As shown in Figure 2, the primacy effect only impacts juror memory recall, while the primacy effect improves both memory and meaningfulness of the information. Kanasky, Jr. B., “The Primacy and Recency effects: The Secret Weapons of Opening Statements,” Trial Advocate Quarterly, Summer 2014.

For example, in medical malpractice cases, defense attorneys usually ask the following question at the end of the rehabilitation testimony: “Doctor, was your care of Mr. Smith appropriate and reasonable in this case?” Of course, the physician delivers a firm, confident “YES” to the jury. Most defense attorneys do this because they want to end on a high note, assuming that placing this important information at the end will have a powerful influence on jury decision-making. However, this is not the best strategic approach, as this question is THE pivotal question in the case. Instead, this question should be the very first question out of the gate, with a few follow up questions allowing the witness to explain why the care provided to Mr. Smith was reasonable and within the standard of care. That is what the jury wants and needs immediately, rather than later in the examination. This is especially true in a reptile case, as jurors are starving for explanations after a well-trained witness shuts down multiple reptilian attacks on adverse examination. Defense attorneys often state “I want the jurors to get to know my witness, so I start with the biographical questions; I want to ‘wow them’ with my client’s impressive education and training.” In reality, jurors don’t care where the witness went to school or what honors they have attained. Jurors’ primary concern is about the defendant’s conduct and decision making, and asking those key questions immediately in the rehabilitation phase takes full advantage of the primacy effect. Kanasky, Jr. B., “The Primacy and Recency Effects: The Secret Weapons of Opening Statements,” Trial Advocate Quarterly, Summer 2014.

Reptilian questioning, characterized by leading, closed-ended questions focusing on safety and danger rules, allows for very little explanation, if any, from the witness. In that circumstance, jurors are craving explanations regarding the defendant’s conduct and decisions once the defense attorney approaches the podium to begin rehabilitation efforts. For example, in a lawsuit alleging negligence of a bus driver who was driving in the far left lane of a major highway at the time of the accident, the reptile attorney may spend considerable time asking the bus driver questions about whether it is safer to drive in the far left lane with higher speed traffic or the far right lane with slower traffic. If the witness answers by stating that it depends on the situation, he is unlikely to get the opportunity to explain his statement further. Thus, it would be up to the defense attorney to ask very early in rehabilitation, “Can you tell the jury why it was reasonable for you to be driving in the far left lane at the time of this accident?” By giving jurors what they desire immediately, the defense team can considerably increase the meaningfulness and influence of the defendant’s most important testimony.

Conclusion
Reptile plaintiff attorneys have been increasing the stakes in litigation by boldly requesting extremely high damage numbers and successfully convincing jurors that a high verdict is necessary, not to make the plaintiff whole, but to ensure the safety of the community. Ball, D. and Keenan, D., Reptile: The 2009 Manual of the Plaintiff’s Revolution, 2009. Defense counsel preparing to combat a reptile plaintiff attorney who is requesting tens of millions of dollars must make the client aware of the increased risk and take the necessary steps to mitigate that risk. The best way to mitigate the risk is to prepare all witnesses fully prior to testimony, as this must be at the core of
the defense team’s effort when large damages are on the line.

The need for advanced, scientifically based preparation of defendant witnesses is especially profound as reptile attorneys have been placing significantly greater attention on the defendant throughout trial. Rather than attempting to evoke sympathy from jurors by emphasizing the injuries of the plaintiff, reptile attorneys strive to anger and motivate jurors by centering the case on the actions and decisions of the defendant. See Kanasky, Jr. B., “Debunking and Redefining the Plaintiff Reptile Theory,” For The Defense, April 2014. With the plaintiff’s focus of the case on the defendant, the defendant’s testimony, which has always been of great importance to jurors, is even more critical during a trial against a reptile attorney. Thus, rigorous preparation of the defendant’s testimony, both on adverse examination and rehabilitation is imperative to a successful defense in the reptile era.

Some attorneys who prefer not to prepare their witnesses vigorously for rehabilitation questioning often state that they want to avoid the witness appearing “coached” while on the stand. Some trial attorneys tend to forget what it was like to have never stepped into a courtroom. Most witnesses do not have the litigation experience or the skill of thinking on their feet, like a trial attorney. Thus, nerves and emotion can take over and cause the witness to make numerous mistakes. If witness training is performed appropriately, with the same vigor and attention as adverse examination, the witness will not appear “coached,” but rather “confident.”

From the jurors’ perspective, rehabilitation of a defendant witness is arguably the most important part of a trial, as the party being accused of negligence or causing harm has the opportunity to explain their conduct and decisions. However, the three errors of juror cognitive saturation, emotional volunteering of information, and failure to use the primacy effect can significantly impair juror comprehension of key case issues, as well as negatively impact jurors’ perception of the defense team. To prevent these problems, and to enhance the quality of rehabilitation questions and responses, it is imperative that defense attorneys take a step back and reevaluate their trial preparation plans. In the short term, it is wise to retain a qualified litigation consultant to evaluate witness responses to promote juror cognitive digestion, as well as assess the attorney’s order of questioning to ensure proper use of the primacy effect. A qualified consultant should have advanced training in the areas of cognition, memory, attention and concentration, communication science, and emotion. In the long term, attorneys should receive training in these areas by attending CLE’s from litigation consultants who have expertise in the neurocognition behind jury decision-making.
Debunking and Redefining the Plaintiff Reptile Theory

The well-known “reptile revolution” spearheaded by attorney Don Keenan and jury consultant Dr. David Ball is now an ubiquitous threat to defendants across the nation. It is advertised as the most powerful guide available to plaintiff attorneys seeking to attain favorable verdicts and high damage awards in the age of tort reform. Reptile books, DVDs, and seminars instruct plaintiff attorneys on how to implement these strategies during an 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 have attempted to provide alternative explanations to why these reptile tactics often work. This article aims to accomplish both goals, as well as to 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 Produces Unfair Verdicts.” However, few authors have attempted to directly challenge the reptile theory’s validity or have attempted to provide alternative explanations to why these reptile tactics often work. This article aims to accomplish both goals, as well as to provide scientifically based solutions for defense attorneys to use at all points of the litigation timeline.

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invalid, yet potentially effective

By Bill Kanasky

Defense attorneys 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.

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tiles 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, the 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 that jurors “recoil” when they are treated disrespectfully, that is, as if they are reptiles, and 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 because 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.” As mentioned, specifically, they state that reptiles cannot respond to fear because they lack a limbic system, which eliminates emotion from the equation. Since the limbic system actually controls survival responses in humans, not the “reptile brain,” the authors believe that 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, and the instinctive aspects, often referred to as the “reptile brain.” Interestingly, their goal may be to bypass fear altogether and simply go directly to jurors’ automatic survival instincts because a juror has the cognitive capacity to decrease a fear, whereas it is impossible for a juror to deactivate an instinct. In sum, Ball and Keenan’s neuroanatomical assumptions are accurate as they relate to the arguments that they make about danger, and would only be inaccurate if they made a similar argument about a fear response. As such, the authors’ attack on the reptile theory is minimally effective because they have compared 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 to educate and influence jurors in any type of case, it only addresses one of the multiple areas that the reptile approach attacks. Ball and Keenan’s tactics begin very early in the litigation timeline with deposition testimony, and extend to other parts of a trial in which narrative is irrelevant, such as voir dire and jury selection. Additionally, while the authors generally define why narratives are so effective, they fail to inform a reader how best to construct the story to derail the reptile story provided by a plaintiff’s counsel specifically. Generalized “tips” on how to tell a better story are no match for Ball and Keenan’s precision attack methods.

For defense attorneys to succeed persistently 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, this article will focus on three areas: (1) why the overall reptile theory is invalid, (2) why the specific reptile tactics work, despite the invalidity of the overall theory, and (3) scientifically based solutions to defuse these tactics.

**While “reptile” is somewhat of a misnomer, it is important for defense attorneys to comprehend how and why the tactics are effective.**

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**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 following:

- The “reptile” or “reptile brain” 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 a defendant, awakening survival instincts, which results in jurors awarding damages to a plaintiff to protect themselves and society. Ball and Keenan claim that use of their reptile strategy has resulted in nearly $5 billion in settlements and damages awards since 2009.

To debunk any theory, someone must show that the theory’s core principles and formulas are flawed. The linchpin 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, a plaintiff’s counsel can only “suggest” danger to jurors, rather than actually exposing 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 exposing 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 because 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, which explains 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, such as having a family meeting to discuss what occurred, making a plan to check door and window locks, to be more vigilant, and to speak with neighbors. This type of survival reaction is known as “high road” cognitive processing, in which someone 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 because 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, processing in which cognition is very limited.

**Example C:** You walk around the corner and your five-year-old jumps out of nowhere and screams “boo!”, resulting in you automatically jumping back and dropping the glass that you were holding. This constitutes an intense, immediate threat, which triggers a brain stem reflex that 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,” which is automatic, involving no cognition. In humans, the reptile brain or 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 because a neural pathway transmits a signal from a dangerous stimulus to the thalamus, and then directly to the amygdala, triggering the fight or flight response, which then activates a quick survival response. Example C is more of a survival reflex from the reptile brain because 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 the way that Ball and Keenan suggest. If they could, society would be in survival mode nearly constantly, making logic extinct. The “safety rule + danger = reptile” formula is erroneous and should be replaced with “imminent danger + intensity = reptile” or “suggested danger + logic = planning.” In conclusion, Ball and Keenan’s reptile theory is invalid because the court room is not conducive to the type of threat necessary to awaken the reptile brain. 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.

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.

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.

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 a 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, a plaintiff’s counsel has “primed” a jury for his or her 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 during voir dire; however, not taking the time to “strip and re-prime” jurors with defense terms, language, and definitions can give a plaintiff a sizable advantage entering opening statements.

Opening Statement
Perhaps the most apparent area of defense attorney weakness is opening statement construction. Know thy enemy: Dr. Ball is a professional story teller with a Ph.D. in Communications and Theater. He is a master of words and themes. Dr. Ball uses strategic ordering of information within a story to place a 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 seeking the assistance of jury consultants to develop their opening statements. The result is often a sim-
Innovative neuroscientific plaintiff “revolution” is simply a more aggressive plaintiff strategy that uses reliable and fundamental psychological tools to put defendants truly on trial.

**The Solutions**

So what solutions does a defense attorney have? A defense attorney can defeat a reptile attack in three ways: defusing a plaintiff’s attorney’s voir dire priming, delivering a more effective opening statement, and preparing defense witnesses differently.

**Defusing Priming in Voir Dire**

Priming is a technique used to influence or control attention and memory, and it can affect decision making significantly. 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, a 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 the plaintiff’s attorney’s opening statement. Repetition is a form of priming that can make themes more believable. Therefore, the more jurors are primed with safety claims such as danger, risk, or violation of rules, among others, in voir dire through repetition, the odds of jurors believing those claims during opening statement significantly increases. This occurs because priming creates selective attention, causing jurors to reduce future information intake 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 always follow a defendant’s 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 understandable plaintiff’s story that immediately connects with a jury against a complex, confusing defense chronology that focuses on science rather than jury friendly themes.

**Defense Trial Testimony**

When a defendant or a defense witness agrees to a safety rule on the witness stand, it is a momentary putting a defendant’s conduct on trial. So what solutions does a defense attorney have? A defense attorney can defeat a reptile attack in three ways: defusing a plaintiff’s attorney’s voir dire priming, delivering a more effective opening statement, and preparing defense witnesses differently.

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Defense counsel can defuse plaintiff attorney priming efforts by indoctrinating jurors during voir dire with a cognitive “plan” that can spoil a plaintiff’s counsel’s priming efforts. For example, a plaintiff attorney may attempt to prime jurors during voir dire with the notion that safety = priority with statements, such as “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 an opening statement that the only way that a physician can be safe is to follow the safety rules of medicine strictly. Many defense attorneys counter with the ineffective response of asking jurors to focus on the law or the science. The more effective strategy would be to strip the original priming and “re-prime” jurors with a different cognitive plan. In a case using the physician example, the plan would focus on the following question: “Who here feels that a physician’s real priority needs to be to treat every patient as a unique individual?” This tactic would weaken a plaintiff attorney’s priming efforts and potentially create a defense priming effect that a defense attorney could build on during an opening statement.

Again, the reptile tactics that plaintiff attorneys use during voir dire have little to do with activating survival instincts. Instead, priming jurors to accept a plaintiff’s terms, definitions, and language later on in a trial is the key psychological goal. Ball and Keenan would tell you that the safety language introduced during voir dire would awaken jurors’ reptile brain. That claim is inaccurate because this priming effect is more about using fundamental cognitive principles successfully than about triggering survival instincts. Defense attorneys can neutralize these priming tactics by stripping an original primer’s power and applying their own.

**Delivering the Right Opening Statement**

Before 2009, the majority of plaintiff attorneys heavily relied on sympathy-based stories to strike an emotional chord with a jury and drive them toward a high damages award. The classic defense response to such a strategy was to show how a defendant acted reasonably and to defend a defendant’s conduct. This plaintiff strategy became ineffective over time as sympathy became a less potent variable as newer, desensitized generations started to fill the jury box, particularly Generation X and Y jurors. In response, the reptile revolution has generated a new story format that is far more effective with today’s jurors: immediately putting a 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. The origin of this failure is simple: you must know thy enemy.

Dr. David Ball, co-developer of the reptile theory, is a brilliant scientist of storytelling. When he assists a 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 a 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 a 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 go on the defensive immediately, and to deny each of a plaintiff’s allegations. This instinctual response makes psychological sense: a plaintiff’s counsel has bludgeoned a defendant with safety rules and danger threats for 45 minutes, resulting in great temptation to deny each allegation immediately 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 or safe person or 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 a plaintiff’s battleground. By reacting to a plaintiff’s story immediately, the defense plays right into the Dr. Ball’s hands and actually reinforces the plaintiff’s arguments to the jury. This effect is called the “availability bias,” meaning that jurors tend to blame the party that is most “available” or in the spotlight. If defense counsel takes the bait and illuminates safety issues relating to a client early in an opening statement, 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 a plaintiff or alternative causation on trial.

During the “opening” of an opening statement, meaning 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, such as information highlighting safety issues, which will taint a jury’s perceptions from that point forward. Information presented early in an opening statement acts as a cognitive “lens” of sorts through which all subsequent information flows. This cognitive lens can drastically affect how jurors perceive information as a presentation progresses, so one must choose this lens very carefully. Dr. Ball specializes in creating a safety-danger lens through which jurors perceive a case, so defense counsel must provide jurors with an alternative lens immediately. Without this alternative lens, then an 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 a plaintiff’s culpability, alternative causation, or both, depending on the case, immediately because this is the time when jurors’ brains are the most malleable. The defense story should only proceed after the “lens” has been placed, which should significantly influence jurors’ perceptions and working hypotheses of a 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 a story, but rather begin at some other point in the story that no one expects. This creates immediate curiosity, suspense, and intrigue. This technique is often used by Dr. Ball to illuminate safety issues early in an opening statement. Unfortunately, few defense attorneys know the proper way to defuse it and to counterattack.

The best way to counterattack is by flash-forwarding immediately to culpability, alternative causation or both in an opening statement, and then to begin to tell 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 tell the defense story in chronological order or, even worse, come out of the gate defending a client against each of a plaintiff’s allegations. Both methodologies are weak and ineffective, and they certainly won’t create any intrigue or curiosity. Instead, it represents a monumen
tal missed opportunity because jurors will value that first three minutes of information more than any other part of an opening statement. Remember, jurors only care about one thing: assigning blame. Therefore, immediately giving jurors something else to blame is imperative to derailing the reptile approach.

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Defense Trial Testimony

Black box analyses of how and why reptile plaintiffs defeat defendants during depositions and trials reveals that frequently a defense witness is ultimately trapped by an agreement to one or more safety rules, which creates a clear contradiction between a rule and a defendant’s conduct in the specific case at hand. The perceptual effect of this dramatic “gotcha moment” is devastating, especially during a trial. A trial is not a battle of science or medicine; it is a battle of perception. The party that looks
The very best way to respond to reptile plaintiff attorney safety rule or hypothetical safety questions is quite simple on the surface: be honest.

with honesty and truthfulness, so a 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, a 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 a witness needs to decide whether to accept or to reject the plaintiff attorney’s language. Baseball provides an excellent analogy to illustrate this process. An effective hitter carefully analyzes each pitch coming in and classifies it, and that classification—fastball, curveball, off-speed, too high, too low—determines the timing of the hitter’s swing or whether he even swings at all. A defense witness is the hitter in this analogy, while the plaintiff attorney is the pitcher. In the safety rule attack, the plaintiff attorney (pitcher) attempts to get a defendant’s witness (hitter) to swing at a bad pitch that is out of the strike zone. Therefore, a defendant’s witnesses need special training to learn how to classify questions properly as they are delivered because their baseline cognitive processing ability is too scattered to be able to detect the elusive “curveballs” effectively without it. Keeping with the analogy, a reptile plaintiff attorney (pitcher) will cleverly set up a defendant’s witness (hitter) by repeatedly delivering questions (pitches) that are benign and easy to answer (hit). The repetitive exposure to benign stimuli leads to “cognitive momentum,” in which a 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 a defendant’s witness (hitter) has been cognitively “set up” for the safety questions (curve balls), which usually results in continued automatic, rhythmic agreement. Once this occurs, a reptile plaintiff attorney goes in for the kill: he or she 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 a defendant’s conduct in the case. Hence, the “gotcha moment” is brilliantly set up by using a witness’ own cognitive patterns against him or her. Advances in technology have caused the brain to evolve so that it can process several stimuli simultaneously rather than isolating attention and concentration on a single stimulus. This cognitive pattern is hardwired and very difficult to reverse and is the top reason why a defendant’s witness is highly vulnerable to reptile attorney precision attacks during adverse examination. In society, cognitive multitasking and quick thinking is very important because it leads to effective problem solving and productivity. When testifying, it is a fatal flaw that can result in a defendant’s witness becoming trapped in a dangerous contradiction. Therefore, advanced cognitive training in the areas of attention, concentration, focus, and information processing are required so that a witness can avoid being defeated by the survival rule attack.

If a defendant’s witness can develop the cognitive skills to survive the safety rule attack, a reptile plaintiff attorney must proceed with the emotional attack strategy. When a witness learns to detect and reject safety rules consistently, it puts a reptile plaintiff attorney in a difficult position because he or she cannot show any contradictions or inconsistencies. Then a reptile plaintiff attorney must 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 a defendant’s witness out of patient, thoughtful, meticulous high road cognitive processing and into instinctual, spontaneous, survival low road cognitive processing. By forcing low road cognition, the reptile plaintiff attorney can generate a response that will likely be negatively perceived by jurors, thus hurting a defendant’s witness’ credibility.

Three emotional attack methods can force a defendant’s witnesses into low road cognitive processing: aggression, humiliation, and confusion. All three can represent direct threats to a witness, causing him or her to depart high road cognition and regress into low road cognition, which will result in emotional and protective responses. Aggression occurs when a reptile plaintiff attorney turns hostile towards a defendant’s witness and is characterized by a dramatic negative shift in volume, tone, and body language. This tactic is specifically designed to shock a defendant’s witness and to activate low road cognitive processing and fight or flight, turning the witness hostile (fight) or instinctually to agree or become passive (flight). Either response will significantly undermine a witness’ credibility and believability and will create the perception that a reptile plaintiff attorney is correct. A reptile plaintiff attorney then humiliates a witness by displaying shock, disbelief, and even laughter towards the witness’ answers. Low road cognitive processing in this circumstance results in a defensive, survival response, characterized by “wait, wait... let me explain” types of responses that ultimately appear weak excuses in the eyes of a jury. Again, responding in a defensive manner creates the perception that a reptile plaintiff attorney is correct and that a defendant’s witness has back pedaled and tried to talk his or her way out of a question. Finally, a reptile plaintiff attorney can attack with a display of confusion or lack of understanding, which threatens a defendant’s witness by suggesting that his or her answers do not make sense. This is a very powerful emotional attack because it makes a defendant’s witness feel like an inadequate communicator who struggles...
to answer questions in a straightforward manner. This type of attack can force low road cognitive processing because a witness fears that his or her answers are insufficient and that he or she should explain more to a reptile plaintiff attorney in an effort to help him or her understand. This results in a jury perceiving a witness as disorganized and unsure of him or herself. Even worse, it allows a reptile plaintiff attorney to extend his or her adverse examination and emotional attack methods.

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

There are two reasons why defense witnesses agree with safety rule questions: cognitive momentum, as described earlier, and the brain’s preprogrammed acceptance that safety is good and danger is bad. Specifically, the brain is preprogrammed to embrace safety and to 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, effective 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. A reptile plaintiff attorney has become an expert at cleverly planting big picture safety questions that on the surface appear to be “no-brainers” in nature. This is precisely why the brain’s innate acceptance of safety principles becomes a major vulnerability for a defense 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 such as “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 because a reptile plaintiff attorney skillfully can cherry-pick symptoms or factors and then suggest the safest course of action to a witness. These deceptive questions are effective because they provide just enough

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information to lure witnesses into providing an absolute answer, thus setting the stage for the “gotcha moment.” Therefore, a defense witness’ ability to detect these precarious questions persistently is vital to defense counsel’s ability to defend a client effectively later in the case.

The very best way to respond to reptile plaintiff attorney safety rule or hypothetical safety questions is quite simple on the surface: be honest. If a witness can first develop the cognitive skills to understand consistently the true meaning and motivation of a 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 a specific answer. Therefore, the only honest answer to a vague, general question is a vague, general answer such as the following:

- “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 a reptile plaintiff attorney to ask a defendant’s witness “what does it depend on?” As stated before, the last thing that a reptile plaintiff attorney wants is to give a defendant’s witness an opportunity to deliver persuasive narrative to a jury. When the logical and expected “what” question does not follow these responses, jurors tend to become frustrated with and often suspicious of, a reptile plaintiff attorney if he or she proceeds with an emotional attack. Third, they provide an excellent opportunity for defense counsel to ask a witness to offer explanations to jurors, who are starving for information. This is when a defense witness can really shine, can become a persuasive educator to jurors. Finally, most importantly, jurors widely accept and understand these answers because they perceive them as authentic and reasonable, particularly if defense counsel has properly primed the jurors for these responses during voir dire and opening statement. On the face of it, persistently delivering these answers seems simple. However, it is a very difficult task for defense witnesses because of their multitasking brains, the phenomenon of cognitive momentum, and low road cognitive processing due to emotional attacks. As such, a defense witness must undergo advanced cognitive training to learn to detect trap questions consistently, 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 an aggressive plaintiff strategy that is erroneously packaged in neuroscientific wrapping. The authors are a veteran plaintiff attorney (Don Keenan), and a jury consultant (David Ball), who have no formal training in neuroscience or neuropsychology, yet take highly complex neuroscientific principles and conveniently apply them to jury decision making. One thing is clear: Ball and Keenan have created a brilliant marketing campaign to (1) persuade plaintiff attorneys nationwide to attend their seminars and buy their DVDs, and (2) generate enough angst within the defense bar to get them to start brainstorming solutions.

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 for your client. Defense counsel should do three things when facing a reptile plaintiff attorney. First, rethink 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 during voir dire. Second, work with a qualified consultant to ensure that you will tell the right story in your opening statement, and not inadvertently reinforce a plaintiff’s claims. Effectively reordering information can drastically affect jurors’ perceptions. Finally, develop a new appreciation for training witnesses before deposition and trial appearances since this is the key area in which reptile plaintiff attorneys are sure to attack fiercely. Find a qualified consultant to provide your defense witnesses with the advanced cognitive train-