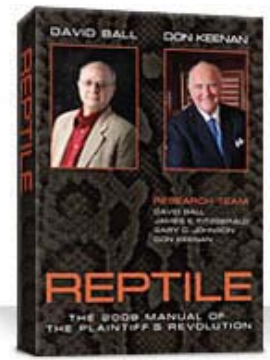




REPTILE—THE 2009 MANUAL OF THE PLAINTIFF'S REVOLUTION

By David Ball and Don Keenan
Reviewed by Anthony J. Skemp



This book is a compilation of the results of a series of jury-research sessions conducted by the authors; research sessions focusing on the “Reptilian brain” and how it plays a role in a juror’s decision-making process. The book specifically instructs the reader how to get “the Reptile,” in the era of “tort reform,” to work to the plaintiff’s advantage.

The “Reptilian brain,” or “R-complex,” is that part of everyone’s three-part, or “triune” brain that unconsciously drives most of what we do. As the authors explain, the Reptile is that part of the brain that is continually collecting new information and using it specifically to make survival decisions:

“We like to believe we are run by logic and emotion. Sometimes we are. But when something we do or don’t do can affect – even a little – our safety or the propagation and safety of our genes, the Reptile takes over. If your cognitive or emotional brain resists, the Reptile turns it to her will. The greater the perceived danger to you or your offspring, the more firmly the Reptile controls you.

...When survival is not at stake, the Reptile goes on auto-pilot and lets the rest of the brain fritter, free to do whatever it wants. But when our genes’ survival chances can be affected, the brain shifts into Reptilian survival mode and nothing else matters.”

Accordingly, the authors posit that the goal “is to get the juror’s brain out of fritter mode and into survival mode,” and the way to do this is “by framing the case in terms of Reptilian survival.” Because “[w]hen the Reptile sees a survival danger, she protects her genes by impelling

the juror to protect himself and the community.”

With this “science” as the background, the authors explore “the toxicology of tort-reform,” the psychological comfort mechanism known as “defense bias” and how the defense bar has successfully used the Reptile to terrify jurors by publicly portraying plaintiff’s lawyers as a menace to society. The “antidote” for this propaganda is to focus on safety. According to the authors, the Reptile leaves defense bias behind when it sees that a fair verdict will enhance safety. Hence the authors posit that the primary goal in any trial should be “[t]o show the immediate danger of the *kind of thing* the defendant did – and how fair compensation can diminish that danger within the community.” (Emphasis in original.) Accordingly, in order to wake up the Reptile you must establish that the defendant’s act or omission established a community danger.

While this certainly seems like it might run afoul of the “golden rule,” or that by enlisting the Reptile in this fashion you are somehow appealing solely to jurors’ emotions, the authors disagree:

“Our method and purpose is to get jurors to decide on the entirely logical basis of what is just and safe, not what is emotionally moving. Jurors are often emotionally moved, and we always want jurors to “feel” strongly that we should win. But the Reptile gets jurors to that point not on the basis of sentiment, but what is safe.”

To that end, safety rules are the starting point for enlisting the Reptile. When someone breaks a safety rule that is designed to protect us, the Reptile takes over. Since no one can prevent inadvertence, the authors make it clear that a

plaintiff should *never* refer to the conduct of a defendant as “accidental, a mistake, a misjudgment, or inadvertence.” Instead, a plaintiff should characterize the defendant’s behavior as a choice; a choice to violate a safety rule. This is because the Reptile ignores inadvertence but does not ignore a safety-rule violation that it can prevent people from doing in the future.

The authors then provide insightful and useful ways to enlist the Reptile at the various stages of litigation; including depositions, mediation, juror selection, opening, expert testimony and closing. There are also chapters focusing on Scripture and the Reptile, both small and stipulated cases; as well as a chapter focusing specifically on medical negligence. (The most extensive, and perhaps most interesting chapter is the one devoted to “Codes:” our most common and fundamental connections to particular concepts, products, words, roles, etc. as developed by Clotaire Rapaille in his book, *The Culture Code*, another book that I strongly recommend.)

In the end, I suspect that the methods suggested by the authors may not be beneficial to those “old school litigators” who are pretty much set in their respective ways. To those who are fascinated with juror psychology, however, and/or who are interested in learning new and potentially useful methods that could expand their litigation arsenals, I believe this book is “right up your alley.” It is an easy read that provides several useful examples; examples that I am sure the reader will be able to utilize to assist him/her in present and/or future personal injury matters. I recommend that if you choose to read the book that you have a pen and pad close by as I am sure that you will be taking copious notes; notes about how you can use “that” suggestion, in “this” particular case, and “this” suggestion in “that other” case, and so on.....