The Reptile Trial Strategy: Avoiding the Pitfalls of the Reptile

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Bios

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Perception=Reality

“"If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, the same victory gained will be a defeat. If you know neither the enemy nor yourself, you will surely lose every battle.”

— Sun Tzu, *The Art of War*
What is the Reptile
- Largest part of your brain
- The unconscious part
- Controls basic life functions
- Hold your breath
- It is amoral
- Survival is the ONLY thing that matters to the Reptile
- We are beings of logic and emotion
- Only if the REPTILE allows us to be

Trial Tactic?
- Based on the principle that community safety is enhanced by means of justice
- Goal: get juror’s minds into Reptile mode
- Frame the case in terms of Reptilian survival
- Is this a new idea?
Progeny of the Reptile
  What happens in 1992
  Stella Liebeck
  Buys a cup of coffee from an Albuquerque McDonalds
  What else do we really know about the case
  700 in 10
  Full thickness
  $20,000

The Birth of Tort Reform
  The defendants application of the Reptile
    Lawsuits affect quality and availability of health care
    Lawsuits ruin the economy which affect jobs and our ability to earn
    Lawsuits make things more expensive, less accessible
    Lawsuits suppress the development of new products

Methods to Overcome Defense Bias
  Use logic and emotion to educate the fallacies of tort reform
    But emotion and logic ALWAYS lose to the Reptile
    Survival first then emotion and logic
What is the Reptile

- It is a psychology of persuasion
  - Counter tort-reform decision making
  - Is either really based on the law of the case
  - Alleged juror nullification per tort-reform versus posturing the jury system in a defender of community safety
  - Both sides = you are next!

Reclaim the Reptile

- Plaintiffs goal is to turn the defense bias into a plaintiff’s bias
  - 2 Reasons
    - Reptile is about community safety
    - Courtroom is a safety arena

Example of the power of the Reptile

- Criminal Justice System
  - Purpose is to keep our community safe
  - Try a little social experiment
  - Show you a slide and I want you to remember the first thing that comes to mind
What is the first thing that came to mind

Many of you experienced the Reptile brain

After all of you heard about the evidence that was collected against Dahmer

What if it was all thrown out and you were asked as a juror to determine his guilt or innocence

How many of you would still find him guilty

WHY

Because you or your children may be next

Survival over logic

Might have done it is enough

How does an attorney representing an injured party wake up the Reptile

Safety rules and the reptile—specific versus general

Coal mining company cannot turn off oxygen while miners are still working

Do you care (or the reptile)?

An employer must not needlessly endanger its employees

Who does that statement connect with
The Safety Rule

- 6 characteristics:
  - It must prevent danger
  - Wide cloak of protection
  - Use plain English
  - Must say what you must or must not do
  - Indvertance/misjudgment/accident-it is chosen
  - Must be practical and easy for Defendant to follow
  - Defendant must look stupid disagreeing with

The Folger’s Test

- What is the premise of the commercial
  - What do you remember the first thing that happens in the commercial
    - The big whiff
  - Setting of the commercial
  - What is the Code for coffee?
    - Side note on olfactory senses

The Culture Code

- Clotaire Rapaille
  - One of the world’s foremost marketing experts
  - Key
    - KNOW YOUR AUDIENCE
  - Developed codes to connect with people who are total strangers
    - Determining our most common and fundamental connections
    - Usually with the use of one or a few words
For the adults among us…

- How many people drink coffee
- How many drink it with sugar and cream
- Flavored coffee
- Finish this sentence
  - The best part of waking up…

- How can “smell” be the code for coffee
  - The initial state in determining the code is to identify American’s very first association with the product
  - Earliest years association with coffee
  - House is filled with the smell of coffee
  - Parents pick you up and smell like coffee
  - Feel secure and protected
  - Coffee equals security and warmth
Negative Codes

- Do you recall the name of a fat substitute marketers assumed would revolutionize the food industry?

Trial Codes

- Hospital
- Meat Processing Plant
- Photos of hospitals and emergency rooms in medical malpractice cases
- Questions like “how long did you have to wait” and “how long did the doctor spend with you”
- Bad sights, smells, rudeness and waiting to be treated like a number
- Been to Children’s Hospital lately
  - Changing the code

Guess the Code

- Nurse
- Injustice
- Trial
- Family
- Home
- Loneliness
- Humiliation
Attack the Hypocrite

- Companies that brag about safety
- Hypocrisy when they endanger the public in spite of their “safety” claims
- IMEs
  - Google Earth of their expert’s homes to show lavish lifestyles “paid for” by insurance companies
- The Reptile swings into combat mode when she smells hypocrisy and releases pleasure when the hypocrite is brought down

Words of the Reptile

- Harms and Losses
  - Safety rule/“needlessly endanger the public”
- Mediation
  - The Use of a “Settlement Facilitator”
    - Press their fear button-threaten their employment survivability

The Reptile Applied