



ALFA International Transportation Southwestern Regional Seminar

Repelling the Reptile

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What is the “reptile theory?”

According to the theory, the human brain consists of three levels of functioning:

1. Reptilian Complex
2. Paleomammalian Complex
3. Neomammalian Complex



What is the “reptile theory?”

Neomammilian Complex –

Largely comprised of the cerebral cortex, it is the most recent addition to the human brain and is understood to govern our logic and higher reasoning functions.

It is the part of our brain that allows us to do math and science and solve complex problems through reason.



What is the “reptile theory?”

Paleomammalian Complex –

The next most recent development in the human brain.

Consists of aspects that we share with other mammals (limbic system and hippocampus).

This complex governs our higher emotions, such as separation distress and playfulness – grants our ability to communicate and socialize.



What is the “reptile theory?”

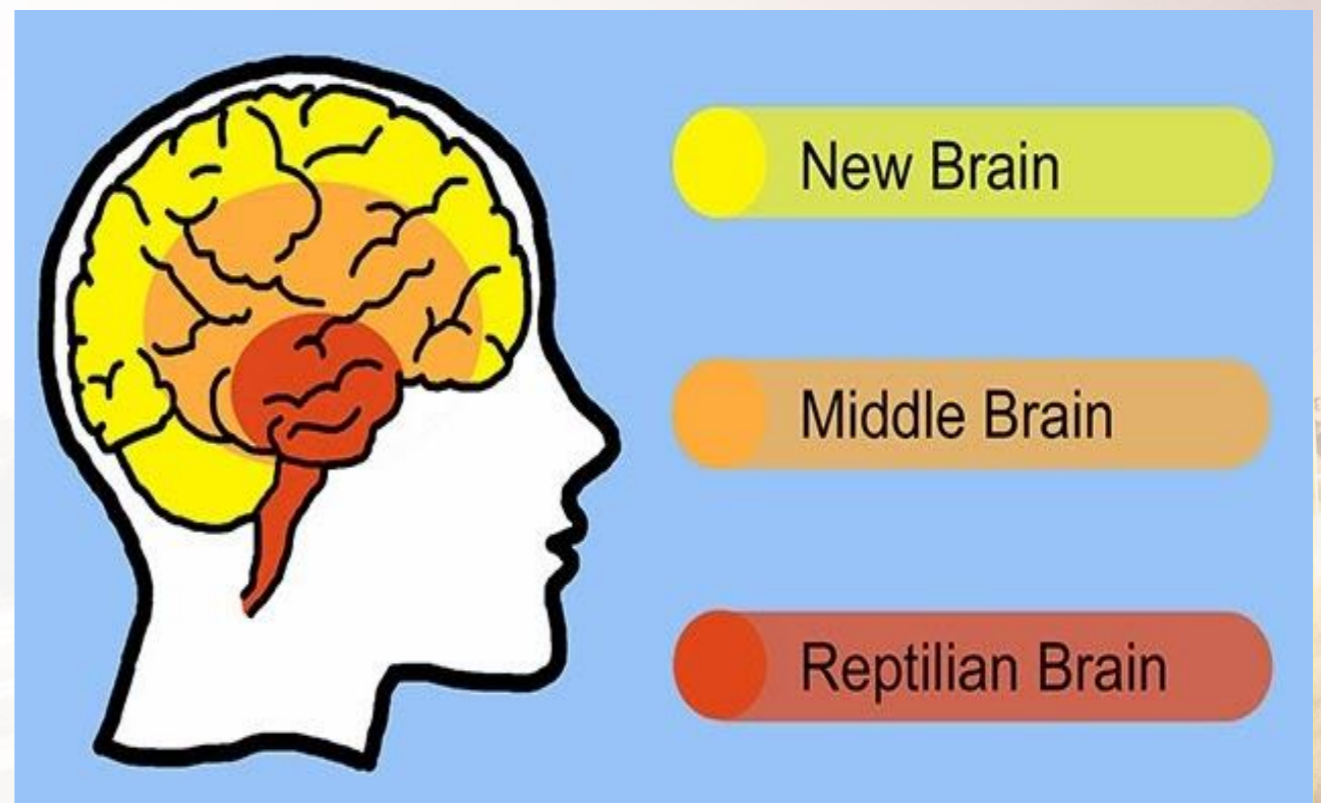
Reptilian Complex –

Earliest portion of the human brain
Brainstem, cerebellum,
hypothalamus.

We share these aspects with other
animals, including reptiles.

These portions of the brain govern
our most basic life functions
(hunger, breathing) and primitive
survival instincts (fight or flight).

When survival becomes threatened,
this part of the brain takes over and
can overpower logic and reason.



What is the “reptile theory?”

The Reptile Theory Strategy aims to influence a jury’s thought process by appealing to the reptilian complex of the juror’s brains.

The goal is to trigger the jurors’ survival instinct and hope that decisions will be based on fear rather than logic or reasoning.

Two main points of focus:

1. Establish danger to community.
2. Jury has power to improve the community’s safety.



What is the “reptile theory?”



Recognizing the Reptile

- The best defense to the Reptile is simple: see it coming before it bites you.
- In some instances, the Reptile will be born during the pleadings phase, and in others it will be born during the discovery phase.

Recognizing the Reptile: Pleadings

- Looks for statements like:
 - “violations of safety rules” or
 - “unnecessarily endangering the public or community”
- These put you on notice to prepare your witnesses for Reptilian-type questions during depositions.

Recognizing the Reptile: Pleadings

- Also look for claims for: negligent hiring, retention, training, supervision, or entrustment
 - If permitted to stand, they often render evidence of prior accidents discoverable (and sometimes admissible) based upon knowledge or absence of mistake.
 - Under the Reptile theory a juror's sense of fear and threat is not evoked by a rare occurrence or accident. Instead, it is the systematic violation of a safety rule that compels a juror to act.
 - Try to eliminate through motions to dismiss or motions to strike.

Recognizing the Reptile: Written Discovery

- Reptile discovery is tailored to acquire as much information as possible on safety policies, protocols and records.
- Common requests might include:
 - Company handbooks;
 - Safety policies, procedures and protocol;
 - Document retention policies;
 - Accident investigation policies;
 - DOT audit results;
 - Unrelated prior accidents.

Recognizing the Reptile: Written Discovery

- Interrogatories requesting descriptions or lengthy responses, make sure they are as concise as possible and that a witness will be able to respond consistently during a deposition
- It is a good idea to get the potential corporate witness to review the answers before finalizing.

Repelling the Reptile



Repelling the Reptile

- To repel the Reptile, a witness must know:
 - 1. How to detect the Reptile questions and**
 - 2. How to respond.**

Repelling the Reptile: How to Detect

- Prepare witness for the big picture generalities.
- The Reptile will explore:
 - Safety is always top priority.
 - Danger is never appropriate.
 - Protection of consuming public is paramount.
 - Reducing or eliminating risk is always the goal.
- Remember, almost every Reptile question lacks one thing: **specificity**.

Repelling the Reptile: How to Detect

- Teach the witness to look for safety rule questions:
 - Broad, vague generic questions about safety or danger
 - Recognize buzz words and phrases:
 - Safety, danger, all reasonable steps, avoid danger, top priority, safest is always better, needlessly endanger
 - “Is it fair to say ...”
 - “Would you agree that ...”

Repelling the Reptile: How to Detect

- Prepare for general “safety” inquiries:
 - Does [company] believe in safety?
 - Should [company] put safety ahead of profit?
 - Do you agree that it is wrong to needlessly endanger others?
 - Do you agree safety should be your company’s top priority?
 - To ensure safety, as a professional truck driver, you must follow the federal rules concerning hours of service, correct?
 - You would agree that if someone violates this safety rule and causes an accident, then they should be held responsible for breaking the rules, correct?

Repelling the Reptile: How to Detect

- Questions may also focus on “danger”:
 - To ensure other drivers are not put in danger, professional truck drivers must follow the federal rules concerning hours of service, correct?
 - A professional truck driver who places others in danger should be held responsible for the harms and losses caused, correct?

Repelling the Reptile: How to Detect

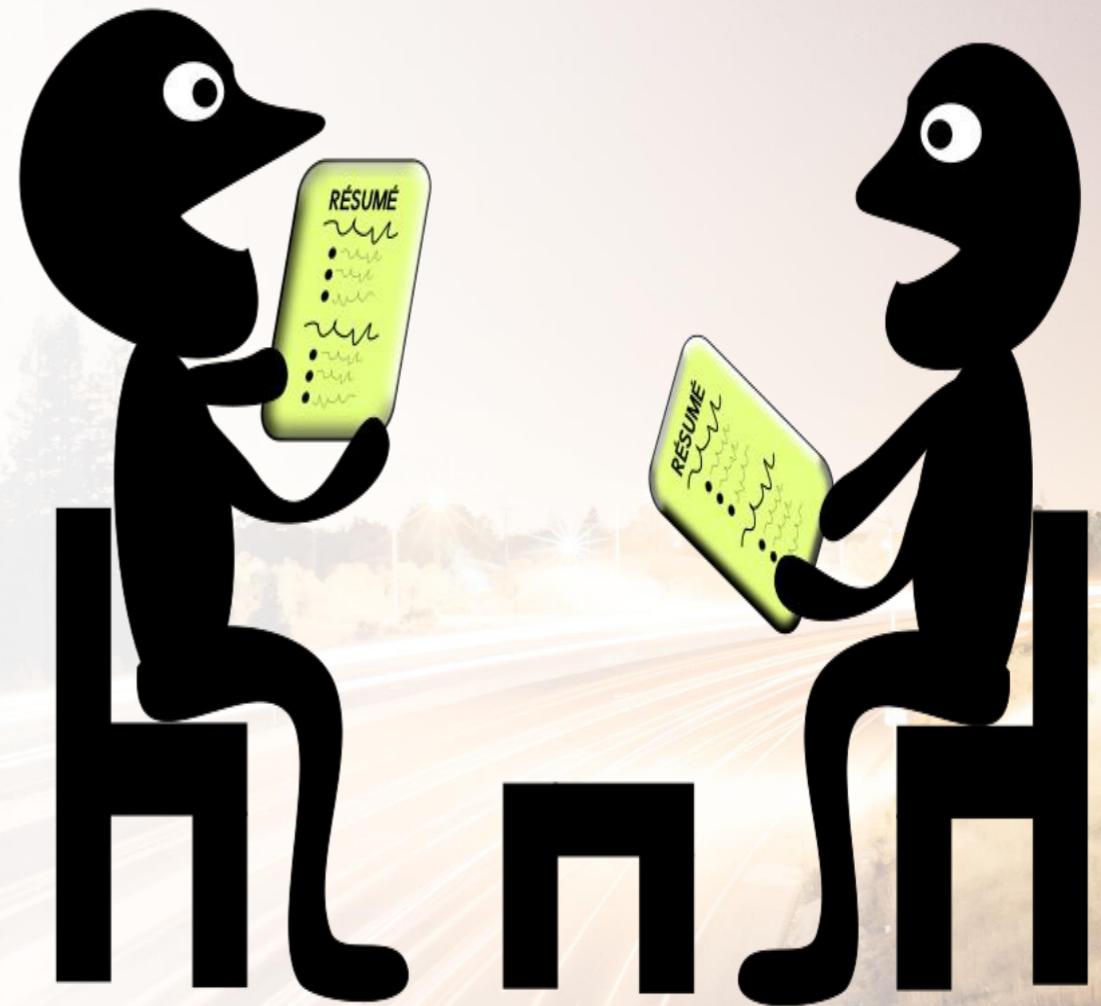
- The Reptile will then link any admission to show the safety rule was broken in their case:
 - Exceeding the hours of service rules was a safety rule violation, correct?
 - This endangered my client and anyone else on the road that day, correct?
 - Well, if your driver would not have exceeded the hours of service requirement on this trip, then the driver wouldn't have been on the road and my client would not be injured, correct?
 - Your driver's failure to follow the hours of service requirements before this trip was a violation of a safety rule and it put drivers and my client in danger; which was negligent?

Repelling the Reptile: How to Detect

- Witness must recognize the psychological game that is occurring in the deposition.
- Opposing counsel may assume:
 - Friendly posture
 - Aggression/hostility
 - Humiliation
 - Display of confusion/lack of understanding
 - Bored, casual
- May ask same question in many different ways, or at different times
- May needlessly extend deposition in hopes of getting a different answer later

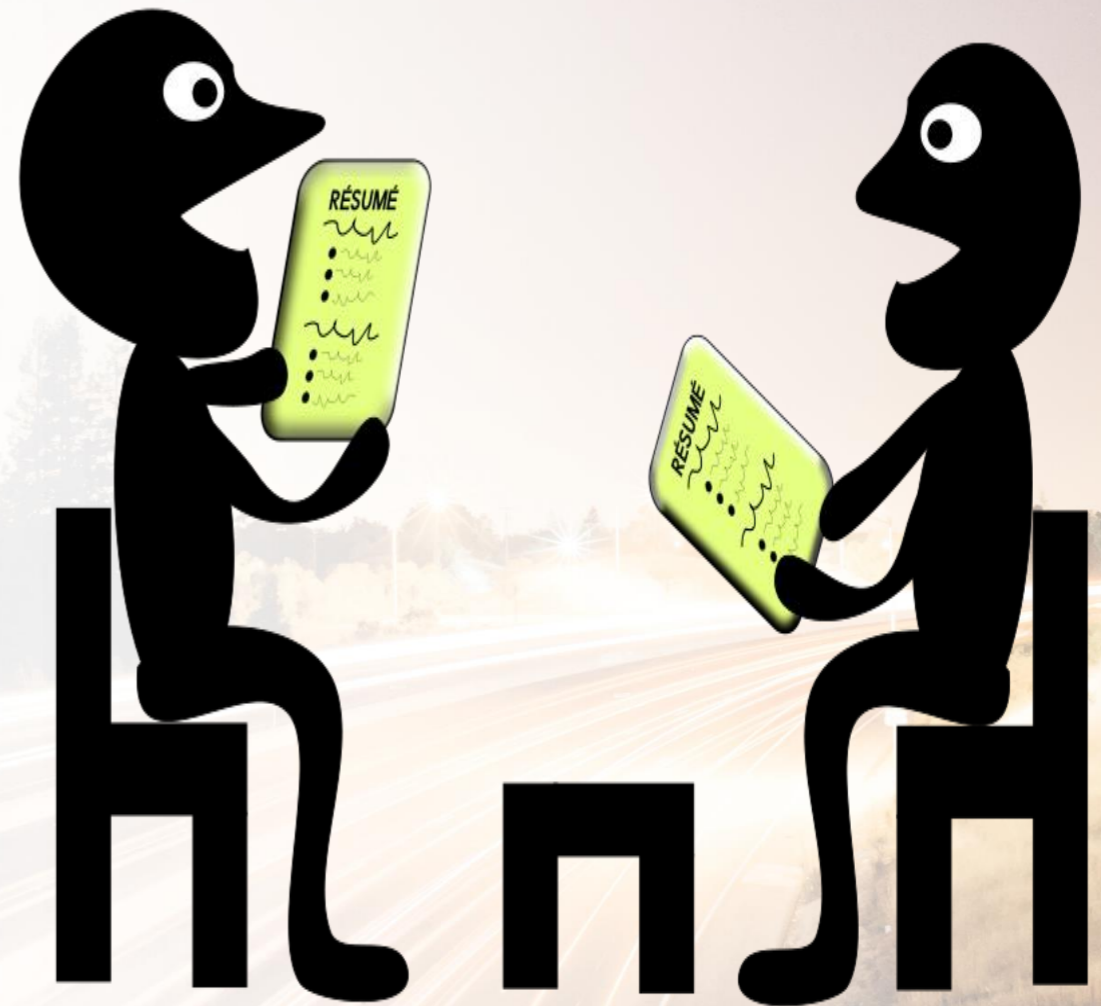
Handling the Reptile: How to Respond

1. Develop an early defense “theme” **with** the client.
2. Ensure that any and all company witnesses presented for deposition are well-versed and comfortable with the “theme.”
3. Preparation.
4. Preparation.
5. Preparation.
6. Practice/Mock Deposition (consider enlisting another attorney in the office to conduct a cross-examination)



Repelling the Reptile: How to Respond

- Don't "take an afternoon" to review the file with the witness on the day before the deposition; you'd much rather be over-prepared than under-prepared
- Don't "sugar coat" the witness' deposition preparation progress; overconfidence can be a killer
- Don't be afraid to "beat the dead horse;" the witness needs to be ready and capable of fending off the reptile approach
- Consider audio or video recording the mock deposition for review



Repealing the Reptile: How to Respond

CREATING A GENERAL SAFETY RULE

“Safety is your top
priority, right?”



Repealing the Reptile: How to Respond

CREATING A GENERAL SAFETY RULE

“Safety is important to our company. It is a priority and we factor safety in many of the actions that we take.”



Repealing the Reptile: How to Respond

CREATING A GENERAL SAFETY RULE

“A prudent person does not needlessly endanger anyone, correct?”



Repealing the Reptile: How to Respond

CREATING A GENERAL SAFETY RULE

“I’m not sure that I’d agree with that as phrased. I believe that a prudent person should act reasonably under the specific circumstances.”



Repealing the Reptile: How to Respond

CREATING A GENERAL SAFETY RULE

“Violating a safety rule is never prudent, correct?”



Repealing the Reptile: How to Respond

CREATING A GENERAL SAFETY RULE

“I wouldn’t use absolutes. Safety rules are important but there may be occasions where they are not followed.”



Repelling the Reptile: Reacting

- The witness is doing a very difficult job
- Attorneys do what you can to help; witnesses do what you need to do to help yourself
 - Take breaks;
 - Ask for clarification;
 - Take your time in responding;
 - Give a pep talk.
- If absolutely necessary, rehabilitate.

Repelling the Reptile: Reacting

- Objections can be helpful. They preserve the record and triggers the witness to be on alert:
 - Irrelevant
 - Intentionally confusing and misleading
 - Mischaracterizes the facts and law
 - Calls for inappropriate, inadmissible and irrelevant lay opinion testimony
 - Argumentative
 - Badgering
 - Oppressive
 - Intended to harass, embarrass and humiliate
 - Violates ban on Golden Rule arguments
 - Supplants legal standard with company's internal standard
 - Incomplete hypothetical
 - Reptilian

Ramifications of the Reptile

All it takes is one bad deposition:

- Corporate representative is speaking as your business. Testimony in one case is binding in subsequent cases.

Recapping the Reptile

- **Review:** understand its goal
- **Recognize:** see if there are clues that indicate a Reptile approach
- **Repel:**
 - **Detect:** safety; lack of specificity
 - **Respond:** Qualify, qualify, qualify!
- **React**
- **Understand the Ramifications**