

A YOUNG LAWYER'S RECOMMENDED READING LIST

A thought looming in the forefront of our brains upon graduating from law school is that we will never be stuck in a law library again, pouring through books to cram for exams on legal topics in which we have no interest. Though most of this is accurate, the part about never again having to read books on legal topics is not true, or at least it shouldn't be. There are several pieces of literature that every young plaintiff lawyer should read and commit their techniques to habit early in the practice of law.

*Rules of the Road: A Plaintiff Lawyer's Guide to Proving Liability*¹

At my first job out of law school, my boss handed me a copy of *Rules of the Road* by Rick Freidman and Patrick Malone and told me to learn it and apply it to my practice. In *Rules*, Freidman and Malone preach the application of basic rules in every civil litigation case from your first meeting with a potential client through closing argument. These rules will develop along the way and are different for each case, though the rules follow a simple formula: (1) a requirement that the defendant do, or not do, something; (2) easy for the jury to understand; (3) a requirement the defense cannot credibly dispute; (4) a requirement the defendant has violated; (5) important enough in the context of the case that proof of its violation will significantly increase the chance of a plaintiff's verdict. The formula is designed to combat the defense's most powerful weapons: complexity, confusion and ambiguity.

Rules is great reading for young plaintiff attorneys because the technique is simple enough for us to apply early on, but also powerful enough to turn a case in our favor or enhance our position if the case is already going our way. Unlike young defense attorneys who could spend years behind their desk before they attend a hearing or deposition – not to mention conduct a jury trial – we often have the privilege of advocating for our clients early on in our careers; as such, we should fully equip ourselves to do so. Freidman and Malone give us some excellent tools for doing so in *Rules of the Road*, and I am grateful I was pointed to this book so early on in my practice.

¹ Make sure you get the Second Edition as it provides updated strategies and materials.

Polarizing the Case: Exposing and Defeating the Malingering Myth

As powerful as *Rules* was to generically structuring nearly every civil litigation case in a winning format, Friedman's *Polarizing the Case* followed up by providing a clear strategy for a more specific, narrowly-tailored issue. In the face of a malingering defense posed by the defense attorney,² Friedman explains how to counter that tactic head-on, rather than ignoring it, as was once thought to be the solution. As a result, the defense will be forced to stop suggesting the plaintiff is malingering and either adopt that position wholeheartedly as part of their defense or drop it altogether and run the risk of looking foolish in the eyes of the jurors. If and when the defense outright claims the plaintiff is a malingerer, it forces the jury to decide whether or not to believe such a defense. If you use these methods throughout your case and during trial, the only logical conclusion for each juror to reach is that the plaintiff is not a malingerer, is truly suffering, and the defense team is causing the plaintiff further harm and frustration after already injuring the plaintiff to begin with. This is a powerful way to turn the attack being waged upon your client against the defense and in your favor.

David Ball on Damages: A Plaintiff's Attorney's Guide for Personal Injury and Wrongful Death Cases³

Considered to be the holy grail of damages advocacy, David Ball's book explains how to maximize recovery for our clients. Ball takes us through this process from voir dire through closing arguments, emphasizing to spend a third to a half of our time discussing damages (what he calls "harms, losses and money") in each part of a trial, for a case "is about what it spends its time being about".⁴ Ball has some brilliant approaches for appealing to the jury for each component of damages in ways that make sense and allow the jurors to quantify even those difficult-to-calculate non-economic damages,⁵ such as pain and suffering. He explains how to identify jurors' motives that are in your favor and how to capitalize on those as well as the

² This is where the defense attorney suggests and implies (rather than actually stating it outright) through various pieces of evidence that your client is a whiner and not actually injured, or not nearly as injured as he claims. The implication is that your client is trying to pull a fast one on the judicial system. Remember from *Rules*, the defense's most powerful weapons are complexity, confusion and ambiguity, so they need only throw this up to the jury through a few pieces of evidence that allow for it, and the jury can ponder it and ruin your case.

³ Make sure you get the Second Edition for this book as well.

⁴ Thus, emphasizing damages rather than liability ensures the jury will focus on the "harms, losses and money" rather than on whether the defendant should be held accountable.

⁵ Ball tells us never to use legalese like this in front of the jury.

jurors' motives that work against you and how to identify and avoid those jurors or prevent their adverse motives from controlling the outcome of your client's case. This is a must-read for any young lawyer involved in personal injury or similar cases, no matter how big or small the case.

Reptile: The 2009 Manual of The Plaintiff's Revolution

Reptile is a relatively new book by Ball and co-author Don Keenan on how a Plaintiff attorney can turn any case in his favor.⁶ The focus is on appealing to each juror's core values, the most basic of which resembles any species' (including a reptile's) most basic interest: passing on one's genes, or survival. This motivates other core values such as hygiene and protecting one's offspring. These motivate less core values, but which are still important, and so on, toward values each person may hold that are less at their core.

The key is to connect what happened in your case with the core values held by each member of the jury. Since you cannot always connect with a juror on the case's specific, surface-level facts,⁷ you must break down the alleged violations to show how these violated the more basic principles and rules. By doing so, you will demonstrate how the actions of the defendant in your case actually threatens that juror's survival, the most core value of all. That awakens his "reptile", and *that* leads to substantial jury verdicts, regardless of the juror's background or biases.

Ball and Keenan show plaintiff attorneys how to use their "reptilian" techniques through each part of a case and in many different types of cases. By forging a connection between your case and each juror in this way, you will avoid jurors' biases and concerns about tort "reform" that could destroy the case or substantially hurt its value and focus the juror on the wrongful acts of the defendant.

Over the summer, Don Keenan spoke at the FJA Annual Convention about how to use the "reptile" method. Though I missed that part of the convention, I was recently able to travel to Atlanta to attend a seminar on "reptile" where Dr. Ball spoke about using the technique. He and

⁶ Though *Reptile* and its ideas are dynamic and powerful, some of Gerry Spence's works predating *Reptile* already presented some of the same ideas: Spence says that all cases should be turned into stories of betrayal of trust because everyone has been betrayed and will connect with the plaintiff through this shared experience.

⁷ For instance, a childless, never-married, seventy-year-old male is less likely to connect with you and your client regarding your fetal abruption medical malpractice case simply through an explanation of the case's facts.

Mr. Keenan are also developing a series of seminars on the application of this method to a variety of specific types of cases and specific parts of litigation. The application of “reptile” is easy enough for young attorneys to understand, but it has also proved to be very powerful when used correctly at trial.

I also recently discussed with David Ball his feelings on the use of the “reptile” method by young attorneys and the importance of committing the technique to memory. He commented to me as follows in that regard:

This is an enviable time for young trial lawyers. Unlike their elders, they'll be able to incorporate the Reptile at the very foundation of their development, and they'll have the all-important task – the *privilege* – of carrying this powerful method of protecting clients and the public into the next generation. In the claws of our Reptile, tort-"reform" in the courtroom is dead. As I'm now watching the next generation of trial lawyers mastering the Reptile, I'm secure that tort-"reform" will never bring its ghastly self back from the grave.

Florida insurance companies have a powerful lobbyist presence in Tallahassee which constantly fight against our cause, the rights of the injured and consumers here in Florida. *Reptile* as well as the other readings above are excellent tools to build our artillery as we prepare to become the next generation of leaders in the battle against the larger, wealthier proponents of tort “reform”.

Of course, this reading list is by no means exhaustive and it is not suggested to be. Each of the books described above mentions a catalogue of other books that may be beneficial sources of information on plaintiff litigation practice and other related topics. Additionally, Trial Guides, the publisher of many of works relating to plaintiff practice, has a series of Podcasts on iTunes® that can be downloaded for free on similar topics. Many of the Podcasts are recorded by the authors discussed above or other trial attorneys widely considered to be authorities on the subjects they discuss.