



Cross-Examining the Impeccable Expert

Dan Stephenson
Dykema (Los Angeles, CA)

dstephenson@dykema.com | 213.457.1780
http://www.dykema.com/professionals-daniel_stephenson.html

Cross-Examining The Impeccable Expert

Dan Stephenson

DyKEMA

Exceptional Service. Dykema Delivers.

www.dykema.com

Why This is Important

- **Fewer Cases Going To Trial**
 - The ones that do are must-win
 - Less trial experience to spread around – fewer trial “masters”
- **The Cross-Exam Of Key Opposing Experts Can Make Or Break The Case**
 - A bad cross can make him/her look even better
 - A good examiner can neutralize or score points
- **Impeccable Experts Are The Truest Test Of Trial Skill Mastery**

“The only real lawyers are trial lawyers, and trial lawyers try cases to juries.”
Clarence Darrow

Importance

“Cross-examination is the greatest legal engine ever invented for the discovery of truth. You can do anything with a bayonet except sit on it. A lawyer can do anything with cross-examination if he is skillful enough not to impale his own cause upon it.”

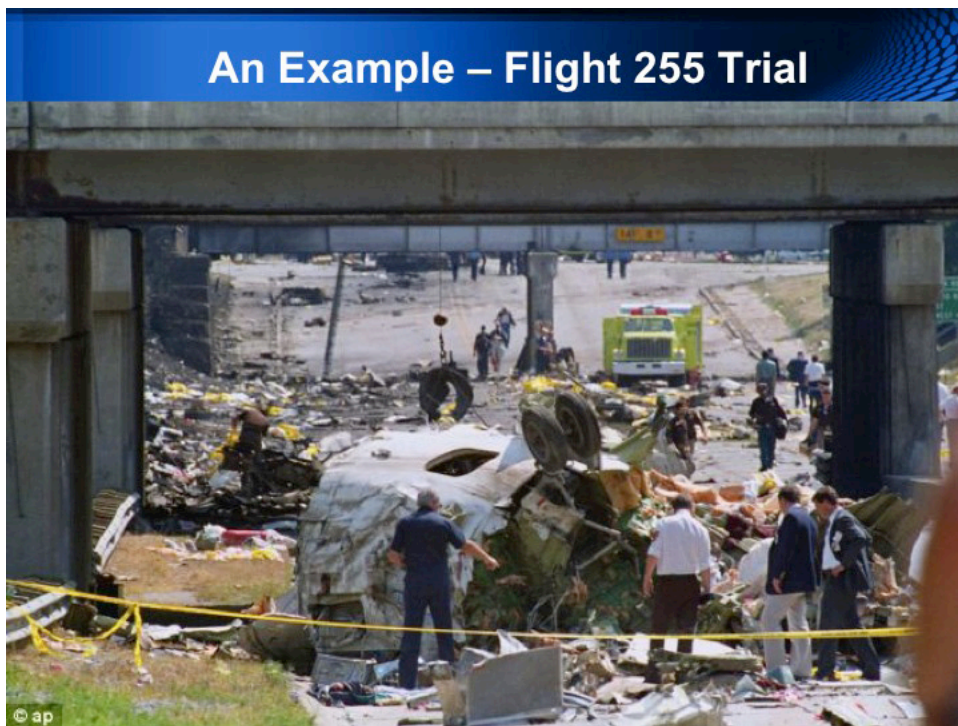
John Henry Wigmore



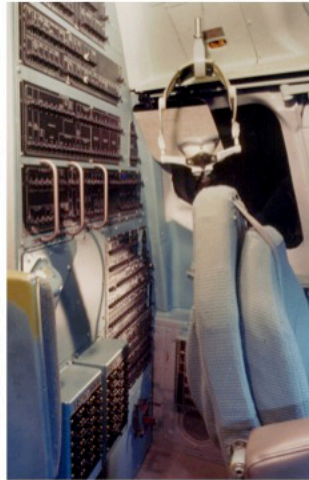
What The Impeccable Expert Looks Like

- Excellent credentials in the field – education, experience, positions held
- A true practitioner – someone who is eminent in the field and practicing in it
- Has testified before but is not a professional witness
- Is cautious, careful, reasonable – does not stretch too far
- Has done a thorough, independent job of researching the facts (not spoon-fed)
- Speaks with authority but is not arrogant – not full of himself – articulate
- No obvious bias – not the friend of the plaintiff or counsel – not personally interested in the case (treating doctor)
- Is being paid reasonably – no outrageously high rates or hours
- Central casting looks and likeability (star quality)
- *Has survived Daubert (or you lacked sufficient material to bring a motion)*

An Example – Flight 255 Trial



An Example – Flight 255 Trial

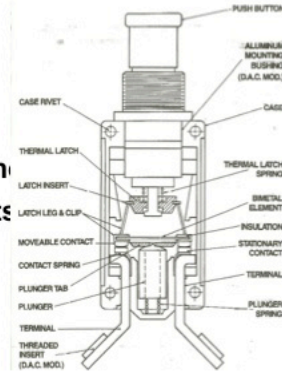


Impeccable Expert – Dr. Lee

- M.I.T. Professor of Electrical Engineering (tenured, dept. chair)
 - Founded the M.I.T. Center for Quality Management
- 27 years working for G.E. designing switching devices
 - Chief Technologist, power system sector
- 30 patents – including circuit breakers used in space program
- 60 articles and books
- Numerous awards, EE Society leadership positions
- Compelling personal story (table tennis champion!)
- 65 years old, polite and friendly
- *Had personally tested the P-40 circuit breaker components*

Impeccable Expert – Dr. Lee

- **Direct Exam Testimony:**
 - P-40 circuit breaker was defective
 - Pilots had not “pulled” the P-40
 - Casing gaps – persistent problem in the life of this brand of CB (bad documents)
 - As to P-40 contacts themselves:
 - Analogized to a boy going to the doctor
 - “Johnny is sick,” he’s not healthy
 - Emphasized his own testing (vs. NTSB “alive-or-dead” testing)



“In cross-examination, as in fishing, nothing is more ungainly than a fisherman pulled into the water by his catch.”

Louis Nizer



Cross-Exam Plan

1. Be Respectful

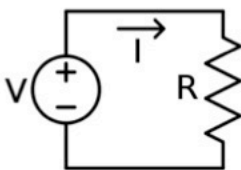


Cross-Exam Plan

2. Meet the Main Analogy Head On

- “healthy” vs. “sick”
- Dr. Lee’s personal testing
- Questions not asked in deposition

Ohm's Law



Ohm

Cross-Exam Plan

3. Do the Math

- Golden nugget from direct: “healthy” means less than 1/10th of an ohm (0.10 Ω) resistance
- Problems:
 - Rows and rows of handwritten numbers, barely legible
 - No numbers for resistance (R)!
 - Only voltage (V) and current (I) $V = IR$
 - Notes were ignored during deposition and direct exam
 - Would Dr. Lee admit to the math?
 - Would the jury understand Ohm’s Law?

The Cross-Exam of Dr. Lee

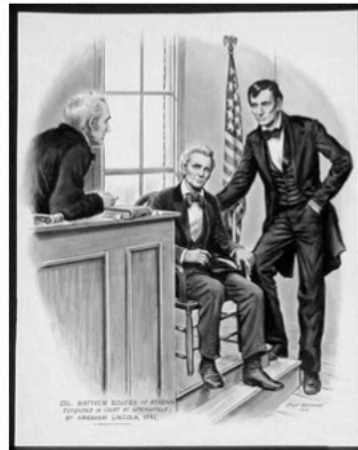
- A few compliments and easy questions
- Straight into Ohm’s law
 - Write the law on a flip chart
 - Re-acquaint jury with the 0.10 Ω standard – write on chart
 - Critical: have Dr. Lee identify the places of highest resistance
 - Critical: have him calculate the resistance measurements in those spots (he did this easily and quickly)
- Results:
 - Admitted that highest resistance was 0.05 Ω
 - Calculated gamble: “that’s a healthy contact?” (A: “Yes”) (!)
 - Admitted: every measurement indicated health, not sickness

“How To”

- How did we get
 - From: “Johnny is sick”
 - To: “That’s a healthy circuit breaker” ?
- Critical Witness, Central Issue In Monumental Case, Pivotal Day In An 18-Month Trial
- Answer:
 - Demeanor
 - Preparation
 - Calculated Risk

Demeanor

- Jury research: jurors are more likely to believe someone they like
- Witnesses are more likely to be forthcoming with guard down
- James Hoblit, a witness cross-examined by Abe Lincoln:



Demeanor

"I determined, when I took the stand, to say as little as possible. Well, as soon as I told Mr. Lincoln my full name he became very much interested, asking me if I wasn't some relative of his old friend John Hoblit who kept the house between Springfield and Bloomington; and when I answered that he was my grandfather,

Mr. Lincoln grew very friendly, plying me with all sorts of questions about family matters, which put me completely at my ease, and before I knew what was happening, I had forgotten to be hostile and he had the whole story."

James Hoblit, on being cross-examined by Abe Lincoln

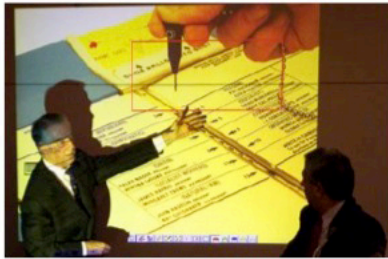
Demeanor

"When you look at David Boies and Phil Beck, you are looking at two of the greatest lawyers in the United States. Neither one of these guys are fire and brimstone. They don't invoke thunder and lightning and the Lord. They just cut away and cut away — and kill you with a thousand paper cuts."

Arthur Miller



Preparation



Fred Bartlit examining Judge Charles Burton, Chairman of Palm Beach Canvassing Board.

"Bartlit wakes every morning by 4—even earlier when he's in trial." *** "Most trials are not sprints, but are marathons," says Bartlit.

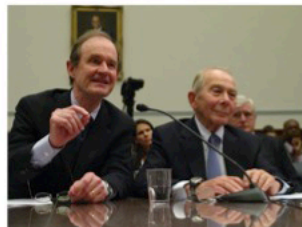
"Colleagues say Susman can digest mountains of information with unbelievable speed. During trial, he wakes up at 4 am to have four full hours to prepare for the day."



Preparation – Feeding the Memory Banks



What Quinn told us it takes to be a great trial lawyer: "[T]he ability to look calm and in control even when things are coming unglued" in the courtroom. Also, "all top trial lawyers have to have a good memory."



What's been said: "The Boies memory is one of the first things cited when people discuss his strengths. What's most impressive about that gift--focused as it may be by the intensified concentration that his dyslexia demands--is Boies' uncanny ability to recall a key fact, legal citation or piece of contradictory testimony at moments of the most intense pressure." -- *Time Magazine*

The Thing About Memory

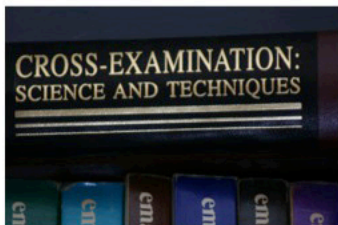
- **Boies' Wife:**
 - He only appears to have a prodigious memory
 - “All he's really doing is just remembering the important things”
- **This is, in fact, another element of preparation**
 - Separating out the key facts and studying them so deeply that they are committed to memory
 - Another level of preparation that the true masters practice



Calculated Risks – The 10 Commandments

“Never ask a question
that you do not know the
answer to.”

Irving Younger



“Certainly no
lawyer should ask
a critical question
unless he is sure
of the answer.”

Francis Wellman



Calculated Risks – One Question Too Many

From the Jerry Sandusky trial:

Attorney: “Didn’t you tell us that Jerry treated you like a son?”
Victim #4: “No, he treated me like a son in front of other people. Outside of that he treated me like his girlfriend.”

Abraham Lincoln, after getting the witness to admit that he never actually saw the defendant bite off the nose of the victim:

Lincoln: “If you didn’t see him bite off the nose of the victim, how do you know that he did?”
Witness: “That’s easy. Because I saw him spit it out.”

Risk:

Calculate – Minimize (Box In) – Use Judgment

Art? Science?

“Let me make this clear: There is no art to cross examination; it is a skill. A hard skill to master but a skill nonetheless. There is no reason to raise it to an art form except to unduly impress the uninitiated. I have spent my academic career teaching the skills of trial advocacy and know there are no genetically gifted trial lawyers. They are created, not born like Mozart able to play a symphony in court. It is a skill like all other trial skills learned through study, practice and performance.”

Roy Black



“Trial lawyers drink,
great trial lawyers drink a lot.”

F. Lee Bailey



Every good trial lawyer has had the pleasure of dismantling a bogus expert on cross-examination. The bigger challenge – the one that requires mastery of the craft – is in tackling what I call the “impeccable” expert. This is the well-credentialed practitioner who isn’t a professional witness and hasn’t been stretched past the *Daubert* breaking point. He or she looks the part, is careful and articulate, has no glaring bias. The stakes are high. If you can get key admissions from an impeccable expert, you’ll score big points. But if

you just muck around, he’ll eat you alive. This is what separates the true trial lawyers from the pretenders.

When it comes to the impeccable expert, you can’t just follow a formula. Take the rules or “commandments” of cross-examination and throw them out the window. Every impeccable expert is different. I’ve encountered a few and I’m here to tell you that you can get great admissions out of them. What it takes is bloody hard work, good judgment formed by experience, and guts.

Why This is Important

- *Fewer Cases Going To Trial*
 - *the ones that do are must-win*
- *Less Trial Experience to Spread Around*
 - *fewer trial “masters”*
- *Can Make Or Break The Case*
 - *bad cross can make expert look better*
 - *good examiner can score big points*
- *Truest Test Of Trial Skill Mastery*

Case Study – An Impeccable Scientific Expert

I encountered an impeccable expert in the course of a headline-grabbing airplane disaster trial. His name was Dr. Thomas Lee, an engineering professor at Massachusetts Institute of Technology (M.I.T.). What made Dr. Lee “impeccable”? He was:

- A professor at an esteemed institution
- A practitioner in the relevant field for 30+ years
- An inventor of devices like the one in issue, with 30 patents
- The author of 60 scientific journal articles
- The recipient of numerous awards
- The holder of engineering society leadership

positions

- A well-rounded person with a compelling personal story (table tennis champion!)
- 65 years old, polite, articulate and friendly

Dr. Lee testified for Northwest Airlines in the 18-month jury trial that determined liability for the nation's second-worst domestic airline disaster.¹ I was one of four lawyers on the trial team for McDonnell Douglas Corporation (MDC), the airframe manufacturer of the plane that crashed. Northwest Flight 255 crashed on takeoff in Detroit, Michigan, killing all but one person on board and two people on the ground. The lone survivor was a 4-year-old girl whose parents and brother perished in the crash. The crash and the trial were headline news for months.

The pilots of Flight 255 failed to set the wing flaps and slats for takeoff, resulting in minimal lift and an aerodynamic stall. The left wing clipped a light pole in a car rental lot, shearing off 18 feet of wing. The plane

rolled upside down, hit a building, crashed into an intersection and exploded into a ball of fire. There were several visual and aural cues to the pilots to alert them to their failure to set the flaps and slats. However, a takeoff warning in the form of an overhead voice saying "flaps ... slats ... flaps ... slats" failed to sound. The investigators determined that electrical power was not passing to the warning circuit and the interruption was isolated to a circuit breaker – the "P-40" circuit breaker in the cockpit. The main issue that was not decided by the investigators, and was therefore the most vigorously fought at trial, was whether the P-40 circuit breaker had malfunctioned or had been manually disabled ("pulled") by the flight crew. Both Northwest and MDC had experts on every aspect of this issue. Dr. Lee was Northwest's circuit breaker expert. He was eminently qualified. In addition to having impeccable credentials, he had physically examined and tested the P-40, or rather its constituent pieces, as it had been torn apart in the crash.

What The Impeccable Expert Looks Like

- Excellent credentials in the field
- A true practitioner, not a professional witness
- Cautious, careful, reasonable – not stretched too far
- Thorough, independent job of researching the facts
- Speaks with authority but is not arrogant – articulate
- Central casting looks and likeability (star quality)
- No Daubert / Frye vulnerability

Dr. Lee did an outstanding job on direct examination. The National Transportation Safety Board investigators had tested the pieces of the P-40 and determined that it was capable of passing electrical current. Dr. Lee described these as "alive versus dead" tests that didn't really tell us much. His own tests were "resistance" tests which would tell whether the P-40 was healthy or sick. He concluded that it was "sick." He hit this crescendo right at the end of the day so that it could soak into the jurors' heads overnight.

I knew nothing about Dr. Lee until five days before his testimony. Someone else had taken his deposition, and there wasn't much useful in there anyway – he'd performed just as well at his deposition as he had at trial. I knew I couldn't cross-examine him on his qualifications. But as I studied the handwritten notes from his tests of the P-40 pieces, a picture started to emerge. He had testified that one-tenth of an ohm resistance was the threshold of "health" for an electrical contact – below 0.10 Ω it was healthy. During his tests, he hadn't measured resistance directly. He had only measured current and voltage. At first his notes looked

like hieroglyphics – rows and rows of barely legible numbers. As I studied, I remembered "Ohm's Law." If you know voltage and current levels, you can calculate resistances. I did the calculations and discovered that every single resistance was well below 0.10 Ω . I triple-checked everything.

I decided to take a calculated risk with Dr. Lee when I cross-examined him. I gambled that he would agree with me about the resistance numbers from his tests and that the results would be understandable to the jury. In fact, this is how it played out on the stand – Dr. Lee, a consummate scientist, did not fight me on Ohm's law or the math leading to resistance calculations. He admitted that all resistances were less than one-tenth of an ohm. The next gamble I took was bigger. I reminded him of his own testimony that the threshold of health versus sickness was one-tenth of an ohm. Looking at the resistances calculated from his own measurements on the P-40, I asked "that's healthy, isn't it?" and he agreed. He continued to admit that every single measurement he took on every piece of the P-40 showed health rather than sickness. It was a

golden moment.

Elements of a Successful Cross-Exam

- Demeanor – Respectful But Firm
- Preparation – The 4 a.m. Wakeup Call
- Calculated Risk – Putting A Box Around It

Elements of a Turnaround

How did an eminent scientist go from calling the key piece of hardware “sick” to agreeing it was “healthy” 24 hours later? I guarantee you it wasn’t due to genius on my part. But it wasn’t luck, either. I believe it was due to three things: demeanor, preparation, and the taking of carefully calculated risks. I didn’t want this article to be one person’s war story. I did some research and made observations about how the masters of trial lawyering go about their craft. Their wisdom and methods confirm some common points that may be useful to others when encountering impeccable experts at trial.

Demeanor

There are times when you can bully a witness into submission. There are situations where it’s appropriate to yell at the witness “I WANT THE TRUTH,” as in the movie *A Few Good Men*. However, I can’t imagine this ever being a successful tactic with an impeccable expert. Part of what makes an expert “impeccable” is that he or she is rational, reasonable, even likeable.

In Dr. Lee’s case, it was an easy decision how to deal with him. He was many years my senior, for one thing. So I determined to be respectful and polite to him, even if I had to interrupt him or doggedly keep asking a question he wasn’t answering. And I did have to do that a couple times. But it can be done respectfully. When I was finished with Dr. Lee and he came down from the witness stand, I shook his hand and told him that I admired him as a scientist and a gentleman. He returned the compliment and told me I reminded him of his son.

Jury research shows what trial lawyers know instinctively: jurors are more likely to believe someone they like.² Also, a witness is more likely to be forthcoming with his guard down. Most people would agree that Abraham Lincoln was a master trial lawyer. There are

many great stories about his cross-examinations, but one story stands out because it was told by a witness that Honest Abe cross-examined, James Hoblit:

“I determined, when I took the stand, to say as little as possible. Well, as soon as I told Mr. Lincoln my full name he became very much interested, asking me if I wasn’t some relative of his old friend John Hoblit who kept the house between Springfield and Bloomington; and when I answered that he was my grandfather, Mr. Lincoln grew very friendly, plying me with all sorts of questions about family matters, which put me completely at my ease, and before I knew what was happening, I had forgotten to be hostile and he had the whole story.”³

Lincoln went up to Hoblit after the trial was over and told him he had done the right thing, that he shouldn’t feel ashamed or embarrassed.⁴ It was classic Abe, more personality than strategy, but it worked.

Modern trial lawyers are not much different. Harvard Law Professor Arthur Miller observed the cross-examination demeanor of David Boies and Phil Beck in the *Bush v. Gore* trial, which was largely a battle of expert witnesses:

“When you look at David Boies and Phil Beck, you are looking at two of the greatest lawyers in the United States. Neither one of these guys are fire and brimstone. They don’t invoke thunder and lightning and the Lord. They just cut away and cut away — and kill you with a thousand paper cuts.”⁵

The point is this: if you encounter an impeccable expert on the other side, don’t bring “fire and brimstone.” You can still ask tough questions, interrupt when necessary, and insist on responsive answers, but it must be done carefully and respectfully. Your goal should be that when you’re finished, the jury likes you – believes you – more than it does the witness.

“Yes, there’s such a thing as luck in trial law but it only comes at 3 o’clock in the morning.” – Louis Nizer

Preparation

When I built my plan to cross-examine Dr. Lee, I started

with a blank slate. After studying hundreds of pages of deposition transcripts, I still had no fodder for cross. There were no defects in his credentials, no obvious

Achilles Heel. It took me days and days of sifting sand in a windowless room before I found any gold nuggets. It takes relentless persistence to craft a cross-examination plan that can bring down an impeccable expert.

This isn't news to anyone. Being a trial lawyer is hard work. But I wonder if we know how hard the masters of the craft are working.

I've read a number of articles about great trial lawyers, including interviews. One was about Fred Bartlit, of whom it was said, "Bartlit wakes every morning by 4 – even earlier when he's in trial."⁶ I kept reading and discovered the following about Steve Susman: "During trial, he wakes up at 4 am to have four full hours to prepare for the day."⁷ Four o'clock in the morning is early, folks. And these guys try big cases, so they're

talking about waking up that early every day for weeks or months. As Bartlit says, "[m]ost trials are not sprints, but are marathons."⁸ Or to put it as bluntly as David Boies: "would you rather sleep or win?"⁹ It's no coincidence that trial masters are early risers.¹⁰ That's what it takes to do the necessary preparation.

I noticed another common thread in the interviews of great trial lawyers. David Boies has an amazing memory, honed by his dyslexia, which required him to develop strong powers of concentration. "The Boies memory is one of the first things cited when people discuss his strengths. What's most impressive about that gift . . . is Boies' uncanny ability to recall a key fact, legal citation or piece of contradictory testimony at moments of the most intense pressure."¹¹ Another great trial lawyer, John Quinn, says that "all top trial lawyers have to have a good memory."¹²

Memory

This is, in fact, another element of preparation – separating out the key facts and studying them so deeply that they are committed to memory. I call it "feeding the memory banks." It is another level of preparation that the true masters practice.

If memory is so critical, is it something you're born with or can it be developed? David Boies is a special case, because of his dyslexia, but is his memory really a "gift"? His condition gave him the platform to strengthen his memory like a muscle. You don't need dyslexia to do that. Boies' wife says he only appears to have a prodigious memory: "all he's really doing is just remembering the important things."¹³ This is, in fact, another element of preparation – separating out the key facts and studying them so deeply that they are committed to memory. I call it "feeding the memory banks." It is another level of preparation that the true masters practice.

Calculated Risks

Pundits will tell you not to take risks on cross-examination. Irving Younger, of "Ten Commandments" fame, says "you will on cross-examination only ask questions to which you already know the answer."¹⁴ Francis Wellman, the author of *The Art of Cross-Examination*, wrote "[c]ertainly no lawyer should ask a critical question unless he is sure of the answer."¹⁵ John Henry Wigmore, author of the classic treatise on evidence, said:

"Cross-examination is the greatest legal engine ever invented for the discovery of truth. You can do anything with a bayonet except sit on it. A lawyer can do anything

with cross-examination if he is skillful enough not to impale his own cause upon it."¹⁶

And famous trial lawyer Louis Nizer said: "In cross-examination, as in fishing, nothing is more ungainly than a fisherman pulled into the water by his catch."¹⁷

Stories abound concerning trial lawyers who went too far out on a limb or asked one question too many. Perhaps the most well-known of these in our generation is the prosecution asking O.J. Simpson to try on the glove found at the murder scene of his ex-wife. The resulting scene gave rise to the famous line by Johnny Cochran, "if the glove don't fit, you must acquit." Here's another one from the prosecution of Jerry Sandusky, the Penn State assistant football coach accused of molesting young boys:

Attorney: "Didn't you tell us that Jerry treated you like a son?"

Victim #4: "No, he treated me like a son in front of other people. Outside of that he treated me like his girlfriend."¹⁸

Perhaps the most famous "one too many" in legal lore involves Abe Lincoln. He was cross-examining an eyewitness to a murder. Lincoln got the witness to

admit that the event occurred at 11:00 at night and he didn't have a candle. He then asked "how could you see from a distance of one-hundred fifty feet or more, without a candle, at eleven o'clock at night?" The witness responded, "The moon was shining real bright." If the story had ended there, it would have served as a cautionary tale – don't let the witness explain.

Being a great trial lawyer involves "anticipating the ways the examination of the witness can go wrong and having a contingency plan for all of them." – Phil Beck

And therein lies the rub. Most trial lawyers will agree that you shouldn't take wild, unbridled risks. But Lincoln didn't do that. He put what I call "a box around it." If it went south, as it did, he had a way to redeem it or to limit the damage. Phil Beck says that being a great trial lawyer involves "anticipating the ways the examination of the witness can go wrong and having a contingency plan for all of them."²⁰ Even Irving Younger granted an exception to his Fourth Commandment: he called it "escalating" or "closing doors" where a series of lead-up questions can reveal how the witness will answer the payoff question. Younger allows this exception only to very experienced trial lawyers.²¹

I took a calculated risk when I asked Dr. Lee about his resistance measurements on the accident circuit breaker. The risk was that he'd fight me or be obtuse enough to confuse the jury. But the downside of that risk was low. I felt that the concepts (simple math and Ohm's law) were plain enough for the jury to understand on its own. Thus, if he fought me, he'd look bad. I had a strong feeling that as a real scientist he'd agree to real science. He did.

The other risk I took was to ask Dr. Lee the concluding or ultimate question: "that's healthy, isn't it?" The downside was that if he had an explanation, this would be his opening to give it. But I had considered all the possible explanations and none of them held water. He was boxed in by his own measurements and Ohm's law. Once again, the downside risk was low but the upside potential was enormous. It didn't take a genius to figure out it was a risk worth taking.

Every good trial lawyer will take a calculated risk. The key is to calculate it. Measure the upside as well as the downside. Carefully lead up to it and box the witness in. When the stage is set, don't be afraid to pull the trigger.

Science? Art?

Whether cross-examination is a science or an art will

However, what Lincoln did next was masterful. He had the witness describe in great detail what he claimed to have seen, including the size (full) and position (high) of the moon. He then used an Almanac to show that the moon was merely a sliver and below the level of the trees at 11:00 pm. The defendant was acquitted.¹⁹

be debated until the cows come home. I don't care what you call it, but I do know this: hard work makes you better at it. Roy Black, a masterful criminal defense trial lawyer, hit the nail on the head when he said:

"Let me make this clear: There is no art to cross examination; it is a skill. A hard skill to master but a skill nonetheless. There is no reason to raise it to an art form except to unduly impress the uninitiated. I have spent my academic career teaching the skills of trial advocacy and know there are no genetically gifted trial lawyers. They are created, not born like Mozart able to play a symphony in court. It is a skill like all other trial skills learned through study, practice and performance."²²

Roy Black's point, and my point, is that being a masterful trial lawyer takes time, patience, practice, relentless hard work, discipline, learning from mistakes, and careful honing of judgment. It's not easy, but if you do these things you can become a master. Practitioners dedicated to the task can meet the toughest challenges thrown at them, including those of the impeccable opposing expert.

1 It was the second-worst in terms of fatalities at the time; it now ranks third. These rankings are for accidents and therefore exclude the events of September 11, 2001.

2 L. Kuslansky, "Like It or Not: Likeability Counts for Credibility in the Courtroom," A2L Consulting Blog (2014), www.a2lc.com/blog.

3 "Lincoln the Cross-Examiner," *Cross-Examination Blog* (2013), <http://www.crossx.blogspot.com/search/label/Demeanor%20of%20Cross-Examiner>.

4 *Id.*

5 E.G. Smith & G. Lubin, "11 Lawyers You Definitely Don't Want To See Across The Aisle," *Business Insider*, <http://www.businessinsider.com/10-lawyers-you-dont-want-to-see-across-the-aisle-2010-1>, January 20, 2010.

6 Smith & Lubin, note 5 *supra*.

7 *Id.*

8 *Id.*

9 D. Okrent, "Get Me Boies!," *Time* Magazine, December 25, 2000, <http://www.cnn.com/ALLPOLITICS/time/2000/12/25/boies.html>.

10 Louis Nizer said that "there's such a thing as luck in trial law but it only comes at 3 o'clock in the morning." The context suggests that Nizer's practice was to stay up past 3:00 a.m. during trial, rather than waking up that early. I think this supports the main point, so I won't argue whether it's better to stay up late or wake up early during trial. The quote is found at http://en.wikiquote.org/wiki/Louis_Nizer.

11 Okrent, note 9 *supra*.

12 Smith & Lubin, note 5 *supra*.

13 Okrent, Note 9 *supra*.

14 I. Younger, "The Ten Commandments of Cross-Examination," presented at Hastings College of Law, <http://www.youtube.com/watch?v=dBP2if0l-a8>, accessed March 18, 2014.

15 F. Wellman, *The Art of Cross-Examination* (1904), www.trialtheatre.com.

16 5 J. Wigmore, *Evidence* § 1367, p. 32 (J. Chadbourn rev. 1974).

17 L. Nizer, *My Life in Court* (1961), p. 79.

18 Quoted in R. Black, "One Question Too Many," Black's Law Blog, <http://www.royblack.com/blog> (2012).

19 "Lincoln's Famous Cross-Examination," Gavel2Gavel (2004), <http://www.re-quest.net/g2g/historical/trials/lincoln/>.

20 Smith & Lubin, note 5 *supra*.

21 Younger, note 14 *supra*.

22 R. Black, "Cross Examination: The Sympathetic Yet Deadly Witness," Black's Law Blog (2014), <http://www.royblack.com/blog>.

About Dan Stephenson

Member | Dykema | Los Angeles, CA

213.457.1780 | dstephenson@dykema.com

http://www.dykema.com/professionals-daniel_stephenson.html

Daniel J. Stephenson leads the firm's National Trial Team, a group of nationally-prominent trial lawyers in ten offices across the country. From 2012-2014 he was the Director of the Litigation Department. Prior to 2012, he was the Office Managing Member of the Firm's Los Angeles office and a member of the Firm's Executive Board. Mr. Stephenson's litigation practice focuses on the defense of companies in the pharmaceutical, aviation and consumer product industries. His mechanical engineering degree, with an emphasis on aeronautical engineering, gives him the insight to thoroughly assess the technology aspects of airplane and helicopter disasters. He also represents clients on matters involving intellectual property litigation and commercial litigation.

With Dykema for 30 years in Michigan and California, Mr. Stephenson works with some of the largest companies in the world including Bayer, General Motors, Rolls-Royce and Procter & Gamble. His thorough research and understanding of the scientific and technical aspects of cases allows him to provide efficient and knowledgeable defense of clients and the ability to translate difficult and complex concepts to a jury. In addition to his current industry focus, he has also represented clients from the financial services, coal mining, computer, glass, telecommunications and energy industries.

Mr. Stephenson handles bet-the-company cases like the litigation surrounding the crash of Northwest Airlines Flight 255 crash that occurred after takeoff from Detroit. Dykema represented airframe manufacturer McDonnell Douglas in the high-profile, 18-month jury trial that resulted in a jury verdict in favor of the client. Coverage of the crash and the ensuing legal battles was so prominent in the media that it was named the top news story in Michigan during the 1980s.

Mr. Stephenson also headed Dykema's defense of Procter & Gamble in the 2001 Amway vs. Procter & Gamble litigation that became known as the "Satanism Case." He obtained summary judgment for Procter & Gamble in federal court on a claim for damages exceeding \$1 billion. The litigation stemmed from a false rumor that spread throughout Amway that claimed P&G was associated with the Church of Satan, and P&G's reaction to the rumor. Mr. Stephenson is the author of several articles on commercial damage claims and aviation litigation. He is a world champion masters swimmer.

Experience

- Aviation litigation
- Pharmaceutical and medical device litigation
- Intellectual Property litigation
- Internet speech litigation
- Securities litigation
- Technology litigation
- Commercial and contract litigation
- Complex and mass tort litigation
- Class action defense

Education

- University of Michigan, J.D.
- University of California, Los Angeles, B.S.M.E.