WORKSHOP SESSION: AN INSIDE LOOK AT HOW GREAT LAWYERS WIN AT DEPOSITION[1]

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In Read's latest textbook, *Winning at Cross-Examination*, he brings you innovative strategies and skills to use at your next deposition or trial.

WINNING AT CROSS-EXAMINATION

"As Shakespeare said, 'If you can't run with the big dogs, stay on the porch.' Not only does Read's *Winning at Cross-Examination* give you the tips you need to run with the pack, he gives you real life examples of cross-examinations by the big dogs."

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"In this brilliant analysis of spectacular trial successes, Shane Read persuasively focuses on the pivotal role of a unifying theme, a carefully crafted bottom-line message, rooted in virtue and woven creatively into a compelling story. From that indispensable foundation, the trial lawyer's entire house—particularly the all-important role of effective cross-examination—is built. No courtroom 'house builder' of our time is more skilled than Mark Lanier, the living embodiment of the author's 'how to' guidance, who repeatedly strides across the pages of this eminently readable, extraordinarily practical book."

—Ken Starr, Former U.S. Solicitor General

WINNING AT CROSS-EXAMINATION

A Modern Approach for Depositions and Trials

SHANE READ

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CHAPTER SEVEN

Mark Lanier Cross-Examines the President of DePuy

"Let's see if this document bears out your view of it or mine."
—*Mark Lanier*

Andrew Ekdahl, who was president of DePuy during the relevant time of this litigation, is the second witness whose testimony we will study from the DePuy hip implant trials. This witness presented many different challenges for Lanier than the ones we saw in the previous chapter. Ekdahl was obviously ranked higher in the company than Plouhar, which made the stakes very high. He also resisted answering Lanier's questions in a different manner than Plouhar. As a result, you will learn from the different techniques that Lanier used with Ekdahl. You will also see the different demonstrative exhibits that Lanier used, which highlight Lanier's versatility and effectiveness.

7.1 CROSS OF ANDREW EKDAHL

Andrew Ekdahl appeared at the trial via satellite. After he was sworn in and stated his name and where he worked, Lanier began his cross as follows:

Lanier Announces His Theme for Cross

Q. ***I want to get right into things with you****, and we will explore a little bit more about your qualifications as we go along, but let's start out with a general premise. And* ***this is my theme for my cross-examination*** *of you—and so the jury is clear, you are what we call an adverse witness. You work for the other side, don't you?*

A. Yes.

Q. We served you with a subpoena to force your testimony today?

A. I believe you served my attorneys with a subpoena.

CHAPTER ROAD MAP

- Draw pictures of your themes to give them more impact.
- Learn several phrases you can use when a witness does not answer a simple question.
- Learn how to make the complicated simple.

Q. They accepted it on your behalf, but it was a subpoena; — you are here under a court order to testify, aren't you?
A. Yes.

Lanier makes it very clear to the jury that Ekdahl is not a neutral witness. Ekdahl's motives are not aligned with Lanier's. Use this technique at your next trial. Imagine how happy the jury was to hear Lanier's words, "I want to get right into things with you," rather than the lengthy preambles that they hear from most other lawyers.

Q. All right. Here's my theme for you, sir: ***I want the jury to hear from you how marketing and sales ran the company during the relevant time periods, not science.*** *You understand what I mean when I say that?*
A. I disagree with it, but, OK.

As briefly discussed in chapter 3, Lanier does not make such subtle points on cross-examination with the hope that he can argue them more strongly in closing—as Irving Younger suggests you should do in his ten commandments. Instead, Lanier does just the opposite, and with great effect. He boldly tells the jury—as he did earlier when questioning Plouhar and as we will see him do later with Dr. Schmalzried—what his theme is for the cross.

Why will Lanier win this cross? You should know the answer to this question by now. But if not, here's the answer: He has chosen topics that he can win on because the documents (e.g., trial exhibits, such as prior statements by the witness) and common-sense reasoning will back him up. Cross-examination is really that simple. But Lanier executes these strategies very effectively.

In your next cross—whether it is in deposition or at trial—start it just the way Lanier did: "I want the jury to hear from you. . . ."

Q. I know you disagree with it, but you at least understand what I mean, right?
A. Believe so.

Q. All right. ***So let's put it to the test****. . . . Have you ever heard the expression* ***"Put your money where your mouth is"?***

Lanier links this line of questioning about budgets, a topic that tends to be rather dry, to a famous everyday saying, so that the jury can understand his theme and remember it during deliberations. The phrase also aligns him with the jury. That is, Lanier is going to ask common-sense questions, the jury is going to apply its common-sense reasoning, and the witness will need to answer using common sense or suffer the consequences.

A. Yes.

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