

A Discussion of the Objectives of Cross Examination of the Defense Toxicologist

Donna L. Burden, Esq.

IADC Trial Academy
Palo Alto, CA
August 2015

DLB@BGHATTORNEYS.COM



**WHAT IS YOUR
GOAL?**

PREPARE

DEVELOP A PLAN

- Investigation
- Research the expert's qualifications, standing in his own field, and prior experience testifying
- Prior depositions and trial transcripts
- Prior cases including if he has been precluded from testifying following a *Daubert* challenge
- Know the expert's report inside and out, including every error
- Do not play chess with Bobby Fischer

CONTROL THE WITNESS

**ASK ONLY LEADING
QUESTIONS**

ESTABLISH ANY BIAS

Attacking the Credibility of Opposing Witnesses

- Recognizing that “professional witnesses are available to render an opinion on almost any theory, regardless of merit,” judges are directed to be “gatekeepers for all expert testimony.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 US 579 (1993)
- To determine whether expert testimony is admissible:
 1. the expert must be qualified; and
 2. the testimony must be relevant and reliable. The courts applying *Daubert* have broad discretion to consider a variety of factors.

Impeachment can be accomplished by demonstrating:

- **Bias, prejudice or clear partisanship;**
- **Prior inconsistent statements contained in reports, letters, prior deposition or trial testimony, articles, writings, etc;**
- **Testimony of the expert is contrary to recognized authorities;**
- **Testimony is unreasonable or improper; and/or**
- **Credentials or qualifications of the expert do not entitle his opinions to consideration.**