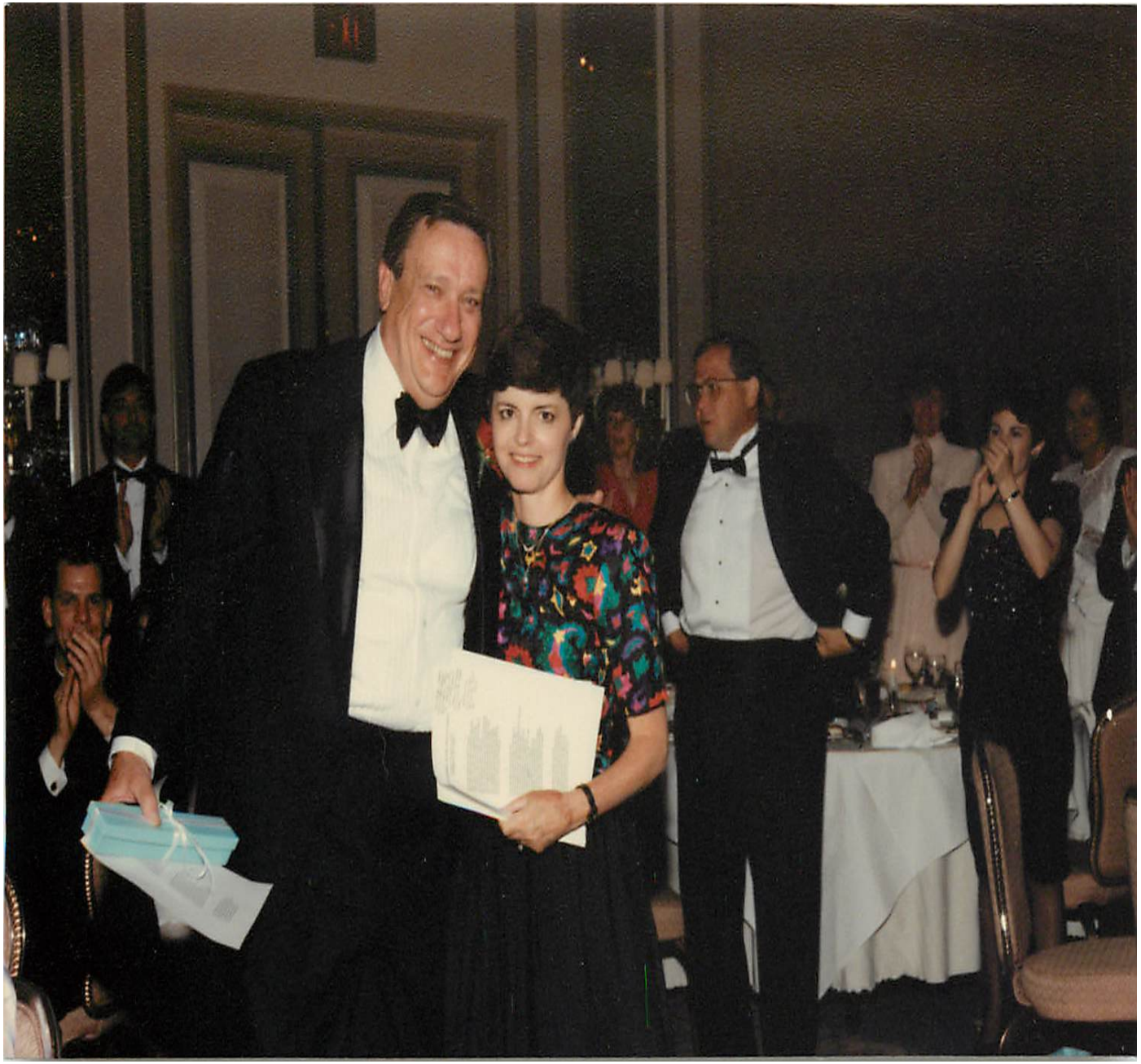
SILENT ADVOCACY: PRACTICAL POINTS FOR THE TRIAL ATTORNEY

Chilton Davis Varner
King & Spalding LLP
Atlanta, Georgia

IADC Trial Academy
July 29, 2018



THE LAVIN METHOD

"The method will not be suitable for those lawyers

(a) whose knowledge of the subject matter of the litigation is less than comprehensive;

(b) whose mastery of the technical aspects of the case is shallow;

(c) Whose willingness to work very hard and prepare meticulously has any limits; or

(d) Whose confidence in their ability to deal authoritatively with *whatever* the witness may offer is not profound.

In all respects, the Lavin system is the precise opposite of the much more prevalent shoot from the hip style of trial lawyering."

- Litvin & McHugh, §24.9

SILENT ADVOCACY

- Appearance

SILENT ADVOCACY

- Appearance
- Demeanor

SILENT ADVOCACY

- Appearance
- Demeanor
- Professional preparation

SILENT ADVOCACY

- Appearance
- Demeanor
- Professional preparation
- Helpfulness

SILENT ADVOCACY

A jury consists of twelve persons chosen to decide who has the better lawyer.

JURORS' QUESTIONS

- Do we trust these people before us?
- Do we even like these people?
- Are these people prepared, so they don't waste our time?
- Are these people knowledgeable?
- Are these people helping us do our jobs?
- Are these people trying to see that justice is done?

Optimus est enim orator qui dicendo animos audientum et docet et delectate et permovet.

-Cicero

CICERO'S THREE GOALS

- To teach
- To charm
- To move

OPENING STATEMENT

- Check local rules and practice – in advance

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”
  - “The purpose of an opening is to preview what we think the evidence will be. . . .”

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”
  - “The purpose of an opening is to preview what we think the evidence will be. . . .”
  - “There are two sides to any story. . . .”

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”
  - “The purpose of an opening is to preview what we think the evidence will be. . . .”
  - “There are two sides to any story. . . .”
  - First impressions matter.

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”
  - “The purpose of an opening is to preview what we think the evidence will be. . . .”
  - “There are two sides to any story. . . .”
  - First impressions matter.
  - Know what you are going to say.

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”
  - “The purpose of an opening is to preview what we think the evidence will be. . . .”
  - “There are two sides to any story. . . .”
  - First impressions matter.
  - Know what you are going to say.
- Never make a promise you cannot keep.

OPENING STATEMENT

- Check local rules and practice – in advance
  - Can you show actual evidence?
  - Can you label your slides?
  - Can you use an easel?
  - Where can you stand/walk?
  - What are the rules for entering the “well”?
- Do not throw away the Golden Moment
  - “What I say is not evidence. . . .”
  - “The purpose of an opening is to preview what we think the evidence will be. . . .”
  - “There are two sides to any story. . . .”
  - First impressions matter.
  - Know what you are going to say.
- Never make a promise you cannot keep.
- Use signal phases to help jurors move from one subject to another.

SIGNAL CHANGES FROM ONE TOPIC TO ANOTHER

- We will hear
- You will learn
- I expect you will find
- You will come to know
- You will soon realize
- The evidence will show
- You will not hear
- Make sure you pay careful attention
- Now don’t miss this

DIRECT EXAMINATION

- Initial planning

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines?

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses
  - Goal: clear and understandable presentation of the facts

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses
  - Goal: clear and understandable presentation of the facts
- Are experts different?

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses
  - Goal: clear and understandable presentation of the facts
- Are experts different?
  - Believability/credibility are key.

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses
  - Goal: clear and understandable presentation of the facts
- Are experts different?
  - Believability/credibility are key.
  - CV

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses
  - Goal: clear and understandable presentation of the facts
- Are experts different?
  - Believability/credibility are key.
  - CV
  - Prior testimony, including *Daubert* challenges

DIRECT EXAMINATION

- Initial planning
  - The theme(s): who can best present it?
  - Witness order: first and last are most important, particularly for the defendant.
  - Substance: an offer of proof.
- Preparation of witnesses
  - Prior testimony
  - Effect of Rule of Sequestration
  - Outlines
  - Prepare for cross-examination
- Presentation of witnesses
  - Goal: clear and understandable presentation of the facts
- Are experts different?
  - Believability/credibility are key.
  - CV
  - Prior testimony, including *Daubert* challenges
  - Trial testimony

Dr. Fiona Scott Morton


Fiona M. Scott Morton

EXHIBIT
1093

Employment:

2006-present	Senior Associate Dean for Faculty Development, Yale School of Management
2002-present	Professor of Economics, Yale School of Management
2005-2006	Adam Smith Visiting Fellow in Economics, University of Edinburgh, Scotland
2000-2002	James L. Frank '32 Associate Professor of Private Enterprise and Management, Yale School of Management
1999-2000	Associate Professor of Economics and Strategy, Yale School of Management
1997-1999	Assistant Professor of Strategic Management Graduate School of Business, University of Chicago
1994-1997	Assistant Professor of Strategic Management Graduate School of Business, Stanford University
1991-1992	Instructor for Economics 10, Prof. Martin Feldstein, Harvard University

Education:

1994	Massachusetts Institute of Technology, PhD. Economics
1989	Yale University, B.A. Economics, *magna cum laude*

Dr. Fiona Scott Morton Awards

Fiona M. Scott Morton

Joint with Mark Duggan, University of Maryland
"The Impact of Term Assistant in Auto Transactions"
Joint with Sharon Oster, Yale SOM
"The Business for Asset Reallocation: Efficiency or Agency?
Joint with Gayle Gretzschmar, Univ. of Edinburgh
"Dying for a Discount"
Joint with Judy Chevalier, Yale SOM, and David Harrington, Kenyon College

Other Publications:

"Why Economics has been Essential for Strategy"
Financial Times, Mastering Strategy Series, 4 Oct 1999
"Strategic Complements and Substitutes"
Financial Times, Mastering Strategy Series, 8 Nov 1999
"The Economics of Price Controls"
Regulation 24:1, Spring 2001
"Consumer Benefit from Use of the Internet"
AAUP International Policy and the Economy, 2003

Awards:

2007	Yale School of Management Alumni Association Teaching Award: the only teaching prize awarded at Yale SOM for the academic year 2006-7
2007	Green Award, *Journal of Marketing Research*, for the paper "How the Internet Lowers Prices: Evidence from Matched Survey and Automobile Transaction Data"
2005 - 2008	National Science Foundation Research Grant 0518858 "The Effect of Government Procurement of Pharmaceuticals" Joint with Mark Duggan, University of Maryland
2001 - 2003	National Science Foundation Research Grant 0111885 "The Effect of Internet Car Shopping on Prices and Discrimination" Joint with Florian Zettelmeyer, UC Berkeley
1998 - 2002	National Science Foundation Research Grant 9810178 "Studies of Competition"
1995	Distinguished Teaching Commendation: One of three "second prizes" given by Stanford MBA students for excellence in teaching during the academic year 1994-1995
1993 - 1994	Program on the Pharmaceutical Industry, MIT, grant for full tuition and stipend

Teaching:

Competitive Strategy: Elective MBA course covering topics in I.O. such as price and quantity competition, entry and antitrust, as well as strategy concepts such as industry analysis, competitive advantage, and sustainability.

Electronic Strategy: Elective MBA course applying microeconomic principles to understand the sources of profit in information technology-based businesses.

3

EXHIBIT
1093

Awards:

2007	Yale School of Management Alumni Association Teaching Award: the only teaching prize awarded at Yale School of Management for the academic year 2006-7
2007	Green Award, *Journal of Marketing Research*, for the paper "How the Internet Lowers Prices: Evidence from matched Survey and Automobile Transaction Data"
2005-2008	National Science Foundation Research Grant 0518858 "The Effect of Government Procurement of Pharmaceuticals" Joint with Mark Duggan, University of Maryland
2001-2003	National Science Foundation Research Grant 0111885 "The Effect of Internet Car Shopping on Prices and Discrimination" Joint with Florian Zettelmeyer, UC Berkeley
1998-2002	National Science Foundation Research Grant 9810178 "Studies of Competition"
1995	Distinguished Teaching Commendation by Stanford MBA students for excellence in teaching during the academic year 1994-1995
1993-1994	Program on the Pharmaceutical Industry, MIT, grant for full tuition and stipend

Dr. H. Scott Baldwin – Education and Training

- M.D. University of Virginia School of Medicine
- Residency, Pediatrics, Strong Memorial Hospital, University of Rochester
- Sr. Chief Resident, Pediatrics, Strong Memorial Hospital, University of Rochester
- Research Fellow, Pediatric Cardiology, University of Iowa
- Post Doctoral Research Scientist, Dept. of Biology, University of Iowa
- Board Certified Pediatric Cardiologist with Active Clinical Practice

Dr. H. Scott Baldwin – Organizations

- American College of Cardiology
- American Heart Association
  - Council on Cardiovascular Disease in the Young
  - President of the Board of Directors, Nashville Affiliate, 2004-2005
  - Currently a Member of the National Research Committee
- Member, Scientific Board of the Stanley Sarnoff Foundation for Cardiovascular Research, 2004-present
- Society for Pediatric Research

Expertise in Cardiac Development

- Published 56 Peer Reviewed Articles and 28 Book Chapters or Editorial Reviews on the Cardiac Development
- Director of Research Laboratory - NIH/AHA/March of Dimes Funding on Cardiac Development Research (20+ years)
- Invited Presentations Both Nationally and Internationally
- Peer-Reviewer for Over 18 Journals (New England Journal of Medicine, Cell, Science, Nature)
- Editorial Board of the Journal, Developmental Dynamics
- Organized National and International Meetings on Cardiac Development

Dr. Anthony Scialli

- Obstetrician / Gynecologist
- Reproductive Toxicologist
- Teratologist
- Professor / Teacher
- Health & Environmental Consultant
- Senior Scientific Advisor
- Advisor to Government Agencies
- Member of Professional Organizations
- Editor of Medical Literature
- Author of Medical Publications
- Consultant & Lecturer to FDA

Overview of Assignment

- Describe how prescription drugs are priced and distributed.

- Examine the way Alabama Medicaid pays pharmacies for prescription drugs, including what information Alabama Medicaid had about prices and when.

KEYS TO A SUCCESSFUL CROSS-EXAMINATION

1. Preparation
2. Control
3. Permission

HOW TO LOSE THE CROSS-EXAMINATION BATTLE: THREE STEREOTYPES

1. The Barger

HOW TO LOSE THE CROSS-EXAMINATION BATTLE: THREE STEREOTYPES

1. The Barger
2. The Borer

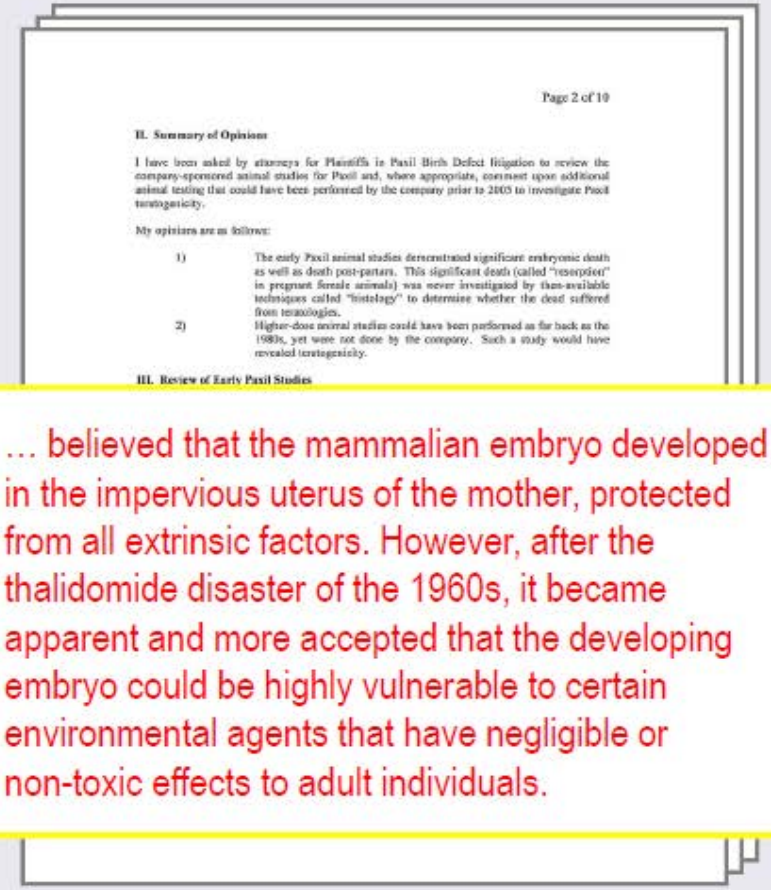
HOW TO LOSE THE CROSS-EXAMINATION BATTLE: THREE STEREOTYPES

1. The Barger
2. The Borer
3. The Buffoon

HOW TO WIN THE CROSS-EXAMINATION BATTLE: FIVE CATEGORIES

1. Peripheral

Dr. Schwartz's Report



Page 2 of 10

II. Summary of Opinions

I have been asked by attorneys for Plaintiffs in Paxil Birth Defect litigation to review the company-sponsored animal studies for Paxil and, where appropriate, comment upon additional animal testing that could have been performed by the company prior to 2005 to investigate Paxil teratogenicity.

My opinions are as follows:

1) The early Paxil animal studies demonstrated significant embryonic death as well as death post-partum. This significant death (called "resorption" in pregnant female animals) was never investigated by then-available techniques called "histology" to determine whether the dead suffered from teratologies.

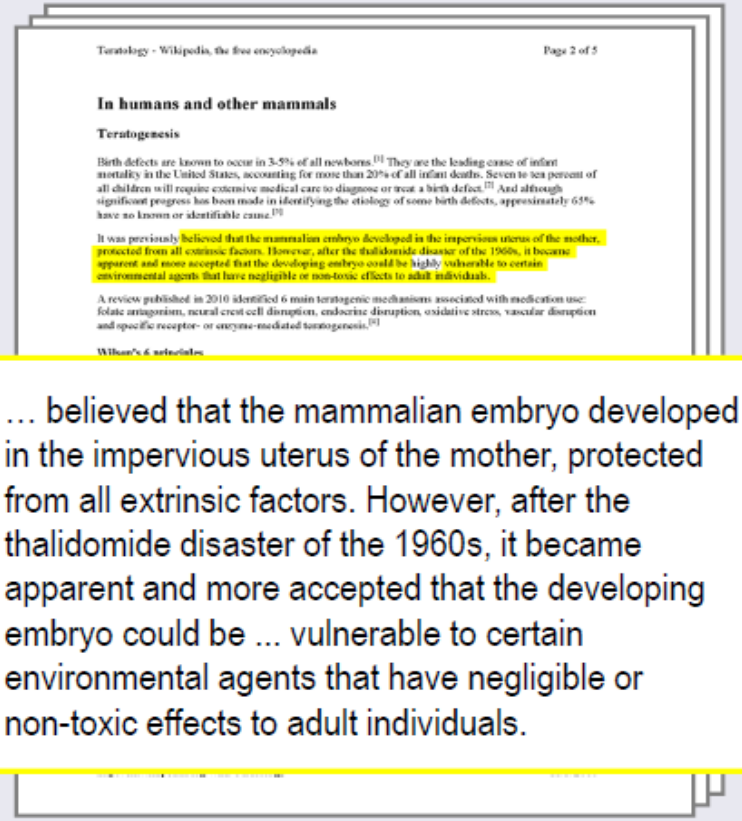
2) Higher-dose animal studies could have been performed as far back as the 1980s, yet were not done by the company. Such a study would have revealed teratogenicity.

III. Review of Early Paxil Studies

... believed that the mammalian embryo developed in the impervious uterus of the mother, protected from all extrinsic factors. However, after the thalidomide disaster of the 1960s, it became apparent and more accepted that the developing embryo could be highly vulnerable to certain environmental agents that have negligible or non-toxic effects to adult individuals.

Dr. Schwartz's Report, Pg. 2

Comparison - Language Is Identical



Teratology - Wikipedia, the free encyclopedia Page 2 of 5

In humans and other mammals

Teratogenesis

Birth defects are known to occur in 3-5% of all newborns.[1] They are the leading cause of infant mortality in the United States, accounting for more than 20% of all infant deaths. Seven to ten percent of all children will require extensive medical care to diagnose or treat a birth defect.[2] And although significant progress has been made in identifying the etiology of some birth defects, approximately 65% have no known or identifiable cause.[3]

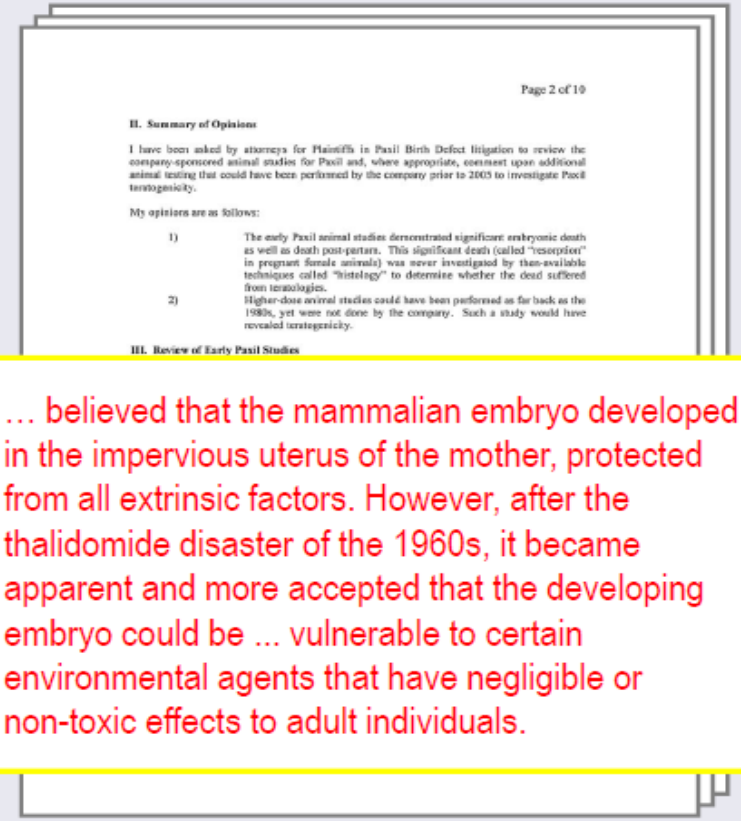
It was previously believed that the mammalian embryo developed in the impervious uterus of the mother, protected from all extrinsic factors. However, after the thalidomide disaster of the 1960s, it became apparent and more accepted that the developing embryo could be highly vulnerable to certain environmental agents that have negligible or non-toxic effects to adult individuals.

A review published in 2010 identified 6 main teratogenic mechanisms associated with medication use: folate antagonism, neural crest cell disruption, endocrine disruption, oxidative stress, vascular disruption and specific receptor- or enzyme-mediated teratogenesis.[4]

Wilson's 6 principles

… believed that the mammalian embryo developed in the impervious uterus of the mother, protected from all extrinsic factors. However, after the thalidomide disaster of the 1960s, it became apparent and more accepted that the developing embryo could be ... vulnerable to certain environmental agents that have negligible or non-toxic effects to adult individuals.

Teratology - Wikipedia
http://en.wikipedia.org/wiki/Teratology



Page 2 of 10

II. Summary of Opinions

I have been asked by attorneys for Plaintiffs in Paxil Birth Defect litigation to review the company-sponsored animal studies for Paxil and, where appropriate, comment upon additional animal testing that could have been performed by the company prior to 2005 to investigate Paxil teratogenicity.

My opinions are as follows:

1) The early Paxil animal studies demonstrated significant embryonic death as well as death post-partum. This significant death (called "resorption" in pregnant female animals) was never investigated by then-available techniques called "histology" to determine whether the dead suffered from teratologies.

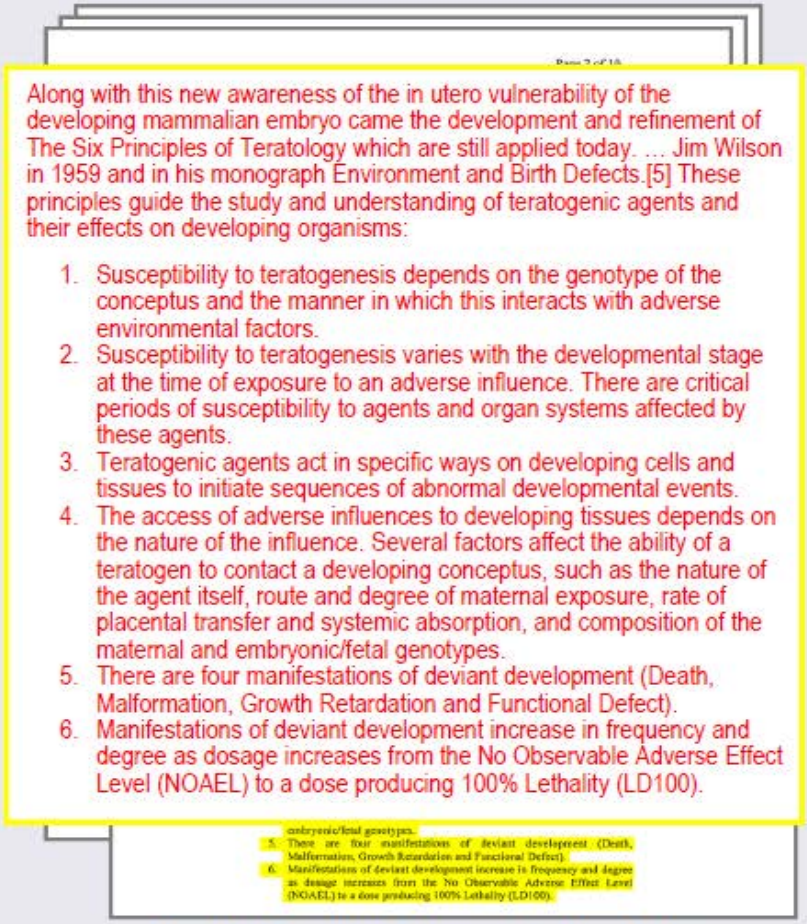
2) Higher-dose animal studies could have been performed as far back as the 1980s, yet were not done by the company. Such a study would have revealed teratogenicity.

III. Review of Early Paxil Studies

… believed that the mammalian embryo developed in the impervious uterus of the mother, protected from all extrinsic factors. However, after the thalidomide disaster of the 1960s, it became apparent and more accepted that the developing embryo could be ... vulnerable to certain environmental agents that have negligible or non-toxic effects to adult individuals.

Dr. Schwartz's Report, Pg. 2

Dr. Schwartz's Report



Along with this new awareness of the in utero vulnerability of the developing mammalian embryo came the development and refinement of The Six Principles of Teratology which are still applied today. … Jim Wilson in 1959 and in his monograph Environment and Birth Defects.[5] These principles guide the study and understanding of teratogenic agents and their effects on developing organisms:

1. Susceptibility to teratogenesis depends on the genotype of the conceptus and the manner in which this interacts with adverse environmental factors.
2. Susceptibility to teratogenesis varies with the developmental stage at the time of exposure to an adverse influence. There are critical periods of susceptibility to agents and organ systems affected by these agents.
3. Teratogenic agents act in specific ways on developing cells and tissues to initiate sequences of abnormal developmental events.
4. The access of adverse influences to developing tissues depends on the nature of the influence. Several factors affect the ability of a teratogen to contact a developing conceptus, such as the nature of the agent itself, route and degree of maternal exposure, rate of placental transfer and systemic absorption, and composition of the maternal and embryonic/fetal genotypes.
5. There are four manifestations of deviant development (Death, Malformation, Growth Retardation and Functional Defect).
6. Manifestations of deviant development increase in frequency and degree as dosage increases from the No Observable Adverse Effect Level (NOAEL) to a dose producing 100% Lethality (LD100).

Dr. Schwartz's Report, Pp. 2-3

Comparison - Language Is Identical

Along with this new awareness of the in utero vulnerability of the developing mammalian embryo came the development and refinement of The Six Principles of Teratology which are still applied today. ... Jim Wilson in 1959 and in his monograph Environment and Birth Defects.[5] These principles guide the study and understanding of teratogenic agents and their effects on developing organisms:

1. Susceptibility to teratogenesis depends on the genotype of the conceptus and the manner in which this interacts with adverse environmental factors.
2. Susceptibility to teratogenesis varies with the developmental stage at the time of exposure to an adverse influence. There are critical periods of susceptibility to agents and organ systems affected by these agents.
3. Teratogenic agents act in specific ways on developing cells and tissues to initiate sequences of abnormal developmental events.
4. The access of adverse influences to developing tissues depends on the nature of the influence. Several factors affect the ability of a teratogen to contact a developing conceptus, such as the nature of the agent itself, route and degree of maternal exposure, rate of placental transfer and systemic absorption, and composition of the maternal and embryonic/fetal genotypes.
5. There are four manifestations of deviant development (Death, Malformation, Growth Retardation and Functional Defect).
6. Manifestations of deviant development increase in frequency and degree as dosage increases from the No Observable Adverse Effect Level (NOAEL) to a dose producing 100% Lethality (LD100).

Teratology - Wikipedia
http://en.wikipedia.org/wiki/Teratology

Along with this new awareness of the in utero vulnerability of the developing mammalian embryo came the development and refinement of The Six Principles of Teratology which are still applied today. ... Jim Wilson in 1959 and in his monograph Environment and Birth Defects.[5] These principles guide the study and understanding of teratogenic agents and their effects on developing organisms:

1. Susceptibility to teratogenesis depends on the genotype of the conceptus and the manner in which this interacts with adverse environmental factors.
2. Susceptibility to teratogenesis varies with the developmental stage at the time of exposure to an adverse influence. There are critical periods of susceptibility to agents and organ systems affected by these agents.
3. Teratogenic agents act in specific ways on developing cells and tissues to initiate sequences of abnormal developmental events.
4. The access of adverse influences to developing tissues depends on the nature of the influence. Several factors affect the ability of a teratogen to contact a developing conceptus, such as the nature of the agent itself, route and degree of maternal exposure, rate of placental transfer and systemic absorption, and composition of the maternal and embryonic/fetal genotypes.
5. There are four manifestations of deviant development (Death, Malformation, Growth Retardation and Functional Defect).
6. Manifestations of deviant development increase in frequency and degree as dosage increases from the No Observable Adverse Effect Level (NOAEL) to a dose producing 100% Lethality (LD100).

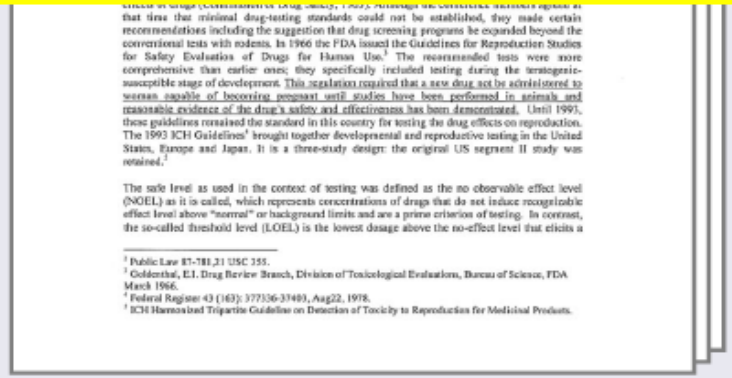
Dr. Schwartz's Report, Pp. 2-3

Comparison - Language Is Identical

Teratogens are those chemicals that lead to structural and/or functional birth defects. The effects of teratogenic compounds are time dependent … dose dependent. Time dependency is a function of the differences in development of particular organs and systems during pregnancy. The original definition of teratogens was narrow and referred to those chemicals, drugs, and diseases that led to structural and functional abnormalities observed in early life. The classic therapeutic human teratogen is thalidomide. This drug, a sedative developed in the late 1950s and early 1960s, induced serious birth defects in babies whose mothers had taken the drug during the critical period of organogenesis of the limbs (second trimester of pregnancy). The babies were born with several defects, including missing or stumped limbs (phocomelia), cleft palate and lip, and other defects. This abnormality affected over 10,000 babies worldwide and led to the testing of all new drugs (and eventually some pesticides and commodity chemicals) for teratogenic potential.

Answers.com
http://www.answers.com/topic/teratogen

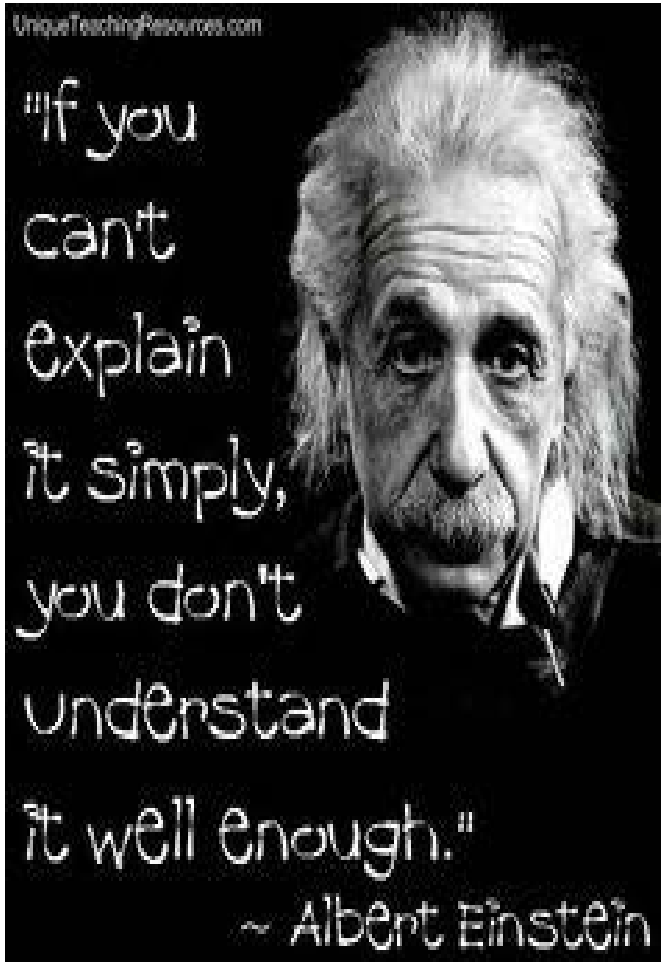
Teratogens are those chemicals that lead to structural and/or functional birth defects. The effects of teratogenic compounds are time dependent … dose dependent. Time dependency is a function of the differences in development of particular organs and systems during pregnancy. The original definition of teratogens was narrow and referred to those chemicals, drugs, and diseases that led to structural and functional abnormalities observed in early life. The classic therapeutic human teratogen is thalidomide. This drug, a sedative developed in the late 1950s and early 1960s, induced serious birth defects in babies whose mothers had taken the drug during the critical period of organogenesis of the limbs (second trimester of pregnancy). The babies were born with several defects, including missing or stumped limbs (phocomelia), cleft palate and lip, and other defects. This abnormality affected over 10,000 babies worldwide and led to the testing of all new drugs (and eventually some pesticides and commodity chemicals) for teratogenic potential.



Dr. Schwartz's Report, Pg. 3

HOW TO WIN THE CROSS-EXAMINATION BATTLE: FIVE CATEGORIES

1. Peripheral
2. Fence



IADC
SUPERIOR ADVOCATES. GLOBAL PERSPECTIVE.

HOW TO WIN THE CROSS-EXAMINATION BATTLE: FIVE CATEGORIES

1. Peripheral
2. Fence
3. Agree

HOW TO WIN THE CROSS-EXAMINATION BATTLE: FIVE CATEGORIES

1. Peripheral
2. Fence
3. Agree
4. Attack

HOW TO WIN THE CROSS-EXAMINATION BATTLE: FIVE CATEGORIES

1. Peripheral
2. Fence
3. Agree
4. Attack
5. Home Run

LASSOING THE EVASIVE EXPERT

1. True or false?
2. This is one of those simple questions.
3. Then your answer to my question is [yes] [no]?
4. Is that another way of saying yes?
5. Does that answer mean yes?
6. Are you having trouble understanding my questions?
7. Didn't that question call for a 'yes' or 'no'?
8. [TO THE COURT REPORTER]: Would you kindly read that question to the witness; maybe he doesn't understand me.
9. I didn't ask why you didn't do it; I asked you whether you did it.
10. Do you understand the difference between 'why' and 'whether'?
11. Are you refusing to answer my question?

LASSOING THE EVASIVE EXPERT (cont'd)

12. That does not answer my question. Let me try it again.
13. "Your Honor, I move to strike everything after [yes] [no] as non-responsive." [Again, you must have full and repeated permission before saying this.]
14. That's a long way of saying 'yes'?
15. I understand what you're saying, but I would prefer that you answer my question.
16. With all due respect, you have not answered my question. Will you please answer my question.
17. I appreciate your [opinion] [answer], but that was not my question.
18. I understand that, [sir], but all I was asking you was [….]
19. I understand all that, but can you answer my question?
20. Here. I'll write YES and NO on this board. [Do so]. Now, which one should I circle? [Remember that you will need the jury's permission for this one.]

CLOSING ARGUMENT

1. Primacy: <u>your</u> case, not the rebuttal of your opponent

CLOSING ARGUMENT

1. Primacy: your case, not the rebuttal of your opponent
2. Did the opponent fail to deliver on any promises?

CLOSING ARGUMENT

1. Primacy: your case, not the rebuttal of your opponent
2. Did the opponent fail to deliver on any promises?
3. Review from opening the fact issues the jury must decide

1. Was Fosamax Appropriate for Ms. Glynn?
2. Did Merck Appropriately Test and Investigate Fosamax Before It Sold It?
3. Did Merck Monitor Fosamax Once FDA Approved It and Merck Began To Sell It?
4. Does Fosamax “Cause” Atypical Femur Fractures?
5. Did Merck Fail to Provide Adequate Warnings To Doctors About a Risk of Atypical Femur Fracture?

CLOSING ARGUMENT

1. Primacy: <u>your</u> case, not the rebuttal of your opponent
2. Did the opponent fail to deliver on any promises?
3. Review from opening the fact issues the jury must decide
4. Cover *legal* issues, carefully following the judge's instructions to the jury

CLOSING ARGUMENT

1. Primacy: <u>your</u> case, not the rebuttal of your opponent
2. Did the opponent fail to deliver on any promises?
3. Review from opening the fact issues the jury must decide
4. Cover *legal* issues, carefully following the judge's instructions to the jury
5. Be brief