

BENCH-BAR & ANNUAL CONFERENCE

Kline Draws on Lifetime of Experience in Courtroom for Tips to Litigators

■ By Julia Swain

LISTEN MORE THAN YOU TALK; MAGNIFY errors made by your opponent; state the worst facts for your client's case in *voire dire*; and use civil proceeding to effectuate change that improves safety for all were just some of the tips offered by legendary trial lawyer Thomas R. Kline at the Bench-Bar & Annual Conference.

In a matter where Kline had a bifurcated trial and damages were addressed first, the battle of the economic experts ensued. Although typically such testimony is dense for a jury, the opposing expert used a wrong percentage for calculating lost wages for a baby who died as a result of medical negligence. On the eve of trial, the opposing economic expert prepared a new report, correcting the error. However, on cross-examination, Kline used the original report that contained the error to show that the expert was not infallible, despite exemplary qualifications including teaching at Harvard. Not only did Kline point out the error, he continued to cross the expert on every other point in the original report that was incorrect due to the error. Magnifying the expert's error significantly undermined the expert's credibility, after which Kline asked the expert to grade himself. The expert felt

that he deserved a 95, which Kline pointed out to the jury was an "A" for an incorrect expert report, further attacking credibility.

Another technique Kline recommends is having a witness characterize results. In a medical malpractice case, where the expert misread a lab result which he believing to be the patient's whereas it was patient's husband's lab report, after pointing out the mistake on cross examination, Kline asked the expert – Are you embarrassed? So you missed it? Are you withdrawing your opinion? Once the expert was caught in making a mistake in reading the lab report, the expert had to agree with the unflattering characterizations.

Kline once tried a medical malpractice case on behalf of an intravenous drug user. During *voire dire*, Kline asked prospective jurors if they would not give a fair ruling for such a plaintiff, to which over half of the people raised their hands. In that case, Kline also focused on a defendant radiologist's curriculum vitae as an example of not overlooking the basics.



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The well credentialed and Yale educated radiologist listed his office address as being in Connecticut, although he read x-rays from his home office in India. The Connecticut office was essentially used to receive mail. Even the deposition was done via videoconference, with the radiologist in India and Kline in Philadelphia. Although this was

a small detail, the misleading nature of the CV served to undermine the radiologist's credibility.

Finally, and the most poignant of Kline's potpourri of war stories, dealt with a teenage girl suffering from various psychological conditions who was sexually taken advantage of by her unlicensed psychologist. Kline was outraged that Pennsylvania law permits unlicensed psychologists to treat patients and used this case to highlight the severe damage that could happen. Although the case settled after trial commenced, Kline structured the settlement to require a publicly read apology by the defendant, including an acknowledgement of the severe harm he caused the plaintiff, a promise never



Photo by Jeff Lyons

Thomas R. Kline

to practice again in Pennsylvania or any other state and a plea to encourage the Pennsylvania legislature to change the law.

Kline ensured that the settlement and defendant's statement were not confidential, which permitted media coverage of the case and public debate of the state of the law. Kline ended with this case as an example of how civil proceedings can be used to address change in our society and as an underpinning of the Bench-Bar Conference as a time to exchange ideas to improve our system of justice.

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