



Preparing The Cross (Examination)

Emily Nicklin keeps it
simple, believable and fun

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Nicklin often receives gifts
that reflect her reputation:
figurines of Rosie the Riveter
and Wonder Woman, and a
real baby shark.

Chicago trial attorney Peter King sometimes stops by a courtroom to watch Emily Nicklin take witnesses apart on cross.

“Emily has the rare combination among trial lawyers of being intelligent, hardworking and practical,” says King, a Canel, Davis & King partner, who has been both an opponent and colleague. “She is able to laugh at herself and understand that juries have a limited attention span: They need to be both convinced and entertained. If a witness makes a mistake, she’s all over it, and yet she’s someone jurors think they could have a beer with.”

Nicklin has an impressive record—no major losses at trial—since she joined Kirkland & Ellis in 1979. She attributes her success to a commitment to knowing every fact in every case before her. It’s a commitment that, at 55, keeps her working 18-hour days and looking forward to the next trial.

“Every case is about getting to the simplest presentation of the core facts of your client’s case,” says Nicklin. “It’s also about good cross-examination. Cross is the most fun, but you have to have worked hard enough to know what the real truth is and then draw it out for the jury to see.”

In the case of *Coram Health Care v. PricewaterhouseCoopers* in 2006, for example, an auditing expert had written a derogatory report about Nicklin’s client, Pricewaterhouse, and testified about it. On cross, she gently and with humor pointed out inconsistencies between transcripts of his deposition and his testimony and, in so doing, provoked his hostility. “So many times, people get on the stand and sound like what they are saying is going directly to God’s ears,” she says. “If you are empathetic, you try to think all the time about how the jury is perceiving what is going on.”

The witness’s hostility and inconsistency, she says, won the jury to her side. And although *Coram* won \$145 million on much the same facts in a California court and was seeking \$265 million from Pricewaterhouse, this jury spent less than eight hours delivering a full judgment for Pricewaterhouse.

Judge Ronald F. Bartkowicz of the Circuit Court of Cook County remembers the case as one of the most pleasant he’s presided over. “Her questioning technique can be folksy and, if necessary, fierce. But the perception is that she’s a real person. She’s always herself. It makes juries want to be more attentive and observant, which can lead to a favorable result.”

“The most important thing, what has lit me up as a lawyer, has been the inspiration and satisfaction of representing people and making a difference in their lives,” Nicklin says. “I spend a lot of time representing professionals like accountants, and it’s hard to overstate how important it is that [the cases] come out well. Many times, huge amounts of money and potential ends of careers are riding on the presentation of the client’s story. As Johnnie Cochran once said, ‘A trial is not a battle between two lawyers. It is a battle between two stories.’”

Just ask the accountants at what was once Arthur Andersen. In the wake of the Enron scandal, the firm was being sued by Frederick’s of Hollywood for breach of contract, professional malpractice and fraud. According to the counsel representing Frederick’s, Bruce Simon of Pearson Simon Soter Warsaw

Penny in San Francisco, each side had merit and the case hung on whose story the jury would believe. “[Emily] didn’t get wrapped up in the numbers,” he says. “I thought we had a great story, but they [Nicklin and co-counsel Walter Lancaster] took every part of our story and presented independent evidence to challenge it.”

Although the verdict favored Andersen and its audit staff, Simon admires Nicklin for being “very classy” afterwards. “We apparently didn’t meet the burden of proof in the jury’s eyes and yet she said their clients were lucky. Those were exactly the right words to say.”

Even her first billion-dollar case, in 1991, when she represented corporate client Navistar, could be considered a victory for the little guy. Navistar wanted to cancel its retiree health benefits plan. Nicklin, in an unusual use of the federal rules of civil procedure, asked the judge for a declaratory judgment against a defendant class of retirees that would not result in their total loss of benefits. “The innovation was both in the form of the lawsuit [we joined the defendants into a class] and that we weren’t looking for a shootout at the O.K. Corral,” Nicklin remembers. “We decided to propose a level of benefits that was sustainable for the company versus going bankrupt. This was not about losing the golden eggs but killing the goose.”

Her argument won the day. The defendants settled. Navistar is still paying them benefits.

BORN IN COOPERSTOWN, N.Y., and raised all over New York state, Nicklin comes from a family where helping those in need was a core value. Her father, an agnostic before World War II, was severely wounded at the Second Battle of the Rhineland while serving as a medic, and came out of the war a committed Quaker. He finished college and became a doctor of psychiatry. Her mother, Kate, was a social worker.

Halfway through high school, Nicklin was sent to a quiet Quaker boarding school in Pennsylvania. “My parents were having a hard time managing me,” she says. “I was hanging out with a tough crowd, although I still made National Honor Society.” But the transformative experience in Nicklin’s young life occurred when she traveled to Francisco Franco’s Spain as part of a study abroad program. “It was such a shocking experience to a girl from a small town in the U.S.,” she says. “I can remember going to the university one day and encountering student unrest connected with the Basque movement in Barcelona. The crowd I was in was blasted with high-pressure water cannons. What [my experience in Spain] really did was inform [me] about the human condition of others. ... Everyone in Spain in the ’70s, be they policemen, students or citizens, were the victims of Fascism. I had never seen this kind of society before. It was eye-opening.”

Her year in Spain was followed by admission to the University of Chicago, where she was thrown into the central core curriculum despite sometime active resistance. “What do you mean I have to take two years of science courses?” she remembers complaining. Nicklin also joined the swim team, which, she says, apparently had no talent requirements. She remains a committed swimmer today, crediting the exercise for her legendary trial stamina. (Example: In



Nicklin's mother was a social worker, her father a committed Quaker.



A young Nicklin had her eyes opened while living in Franco's Spain.

the 1980s, she gave birth to her third child two days after concluding a major trial for the city of Chicago.)

She remains grateful for what was instilled at the university: “The life of the mind,” she says, “rigorous and relentless inquiry and an ability to really learn. ... Today, for instance, I am able to intelligently represent accounting clients—even though I dropped out of accounting-for-lawyers in law school and can’t even balance my checkbook—because I know that it’s good for you to seek out what you don’t know.” She’s on the university’s board of directors now, helping to raise millions for undergraduate and law school education.

In her third year of college, Nicklin dropped out to marry her Chaucer professor. She had no thought of pursuing a law degree until a counselor suggested she shouldn’t waste her time with a final year of college, but apply to graduate programs right away. Without telling Nicklin, the counselor forwarded her academic file, which included a junior year Phi Beta Kappa designation, to the University of Chicago Law School. She began classes the following Monday, and, during her first year, completed her undergraduate degree.

Nicklin has worked exclusively for Kirkland & Ellis, save for a two-year clerkship in federal court and a two-year stint working for Mayor Richard M. Daley as deputy corporation counsel for litigation during his first, special-election term after the death of Harold Washington. “Once we talked to her, that was it,” says Susan Sher, formerly Nicklin’s boss in the office, now vice president for legal and government affairs at the University of Chicago Medical Center. “Emily has a way of summing up complicated issues in one clear sentence. When the city was sued by the artist for taking down a painting of Harold Washington wearing women’s underwear [which several aldermen had threatened to destroy], Emily said the city’s argument would be that it was ‘wrapping its arms around the First Amendment.’ In other words, she argued that the city had a free speech obligation under the First Amendment to take the painting down and protect the artist’s work.”

At Kirkland she had strong mentors, like Fred Bartlit, now of Bartlit Beck. After just three weeks at the firm, Bartlit gave her complete responsibility for finding expert witnesses for the antitrust case *Astroturf v. Monsanto*. “I told him, ‘I don’t really know how to find experts and I haven’t even read the case file completely.’ He said, ‘You can do this.’ And that was that. We won the case.” This is part of the reason she stayed at the firm. “They remove impediments for you. For instance, you are never told, ‘Third-years—or whatever—don’t do that.’ You are not hemmed in or limited; you can do what you’re really good at.” Nicklin is now the only woman on the 15-member firm committee, repeatedly re-elected to three-year terms.

Throughout her career, she says, she has “obsessed” about being both a good lawyer and a good mother. In particular, she insisted that the family always eat dinner together. Although her marriage did not survive, her children are all successfully out of the nest. Her oldest son, despite her insistence that he take a break after college, is pursuing a law degree. Her middle son, this past fall, served as a campaign staffer for Barack Obama in North Carolina. And her daughter started at the University of Chicago this fall, where she is on the swim team.

Photos of her children sit scattered on low shelves in her otherwise stark-white 61st-floor office overlooking the Field Museum and sailboats plying Lake Michigan. No surprise there. Then she shows you the other stuff—gifts that either reflect, or poke fun at, her reputation. Her kids gave her a baby shark, preserved in a jar by her desk. They also gave her a Wicked Witch of the West statue, which, when you flip a switch on its back, says, “I’ll get you, my pretty. And your little dog, too!” Wonder Woman is there, too, standing on a low bookshelf, along with Rosie the Riveter. All are good metaphors for a winning female trial attorney. But to Nicklin, they are just reminders to have fun. They are, in fact, a reflection of a self-deprecating sense of humor that is sometimes mistaken for weakness in the courtroom, to the lasting regret of her opponents.

As Judge Bartkowicz warns: “Witness, watch out.” ◀