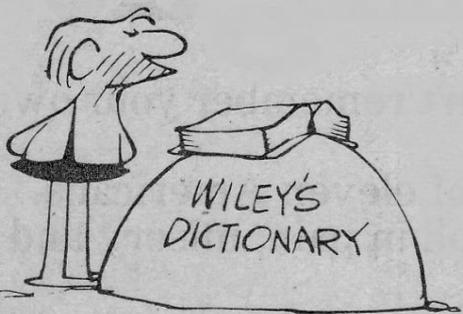


Everything is a Prerequisite
for
Everything Else

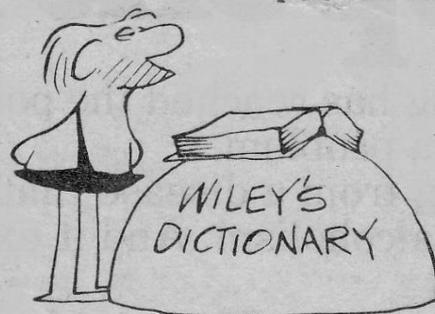
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a crafty creature that feeds on witnesses.



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B.
C.

THE LAWYER'S SYLLOGISM

1. The purpose of trial is to expose the truth.
2. The most powerful tool we have to uncover the truth is cross-examination.
3. Therefore the purpose of trial is cross-examination.

Conner's Rules

1. Do no harm.
2. Silence is not the enemy.
3. Be alert.

Pozner's Three Rules

1. Leading Questions only.
2. Add one new fact per question.
3. Cross-Examination is a logical progression to a specific goal.

The Art of War

1. Know the way of your enemy.
2. Win first, fight later.



Oh this is
bullshit...

The Difficult Witness

Frances Wellman “The Art of Cross Examination”

1. Did you hear my question?
2. Did you understand my question?
3. Then would you answer my question?

BE READY TO REPEAT THE QUESTION

The Hand

Functions of Cross-Examination

1. Add facts to help your case or hurt your opponent's case.
2. Take away facts to help your case or hurt your opponent's case.
3. Discredit this witness through bias, error, confusion. Impeach—don't quibble.
4. Discredit other witnesses with bias, error, confusion.

The Ten Commandments

1. Be brief.
2. Short questions. Plain words.
3. Ask only leading questions.
4. Never ask a question to which you do not already know the answer.
5. Listen to the answer
6. Do not quarrel with the witness
7. Do not permit the witness to explain
8. Do not ask the witness to repeat the testimony he gave on direct examination
9. Avoid one question too many
10. Save the explanation for the summation

Marcus Tullius Cicero to Titus Pom-ponius Atticus

“I do not refer to friendly cross-examination, in which the advocate questions a witness who, though called to testify by the adversary, supports the advocate’s side of the controversy. Nor do I refer to cross-examination of a witness who takes no position between the litigants, but who possesses information which the advocate, through his cross-examination, wishes to lay before the jury. I refer, rather to impeachment, cross-examination to discredit, cross-examination the purpose of which is to persuade the jury or the judge that the witness is not worth believing. That is the kind of cross-examination most commonly encountered and the kind most difficult to do competently.”

Impeachment

(subtitled: “Always be true to your case.”)

1. Bias
2. Prejudice
3. Interest
4. Inconsistency with other witness
5. Inconsistency with physical evidence
6. Inconsistency with things not done
7. Inconsistency with Common Sense

8. Inconsistent statement of witness or other witness

- a) Uncover the Inconsistency
- b) Establish the current Version
- c) Tie the witness to the current Version
- d) Expose the prior inconsistency
- e) Tie the Witness to the inconsistency
- f) Maximize the Effect

9. Omissions

10. Credibility.

a. Perception and Memory

b. Bias

c. Prior convictions

d. Acts of untruthfulness

e. Prior inconsistency

Jury Expectations

1. Rapport
2. Primacy
3. Recency
4. Immediacy

Mistakes

1. Don't make a point
2. Repeat the Direct examination
3. Fail to lead
4. Lose control over the witness
5. Solicit harmful information
6. Lose rapport with the jury
7. Lose the trust of the jury