

“How to Ask a Leading Question”

by Elliott Wilcox

During cross-examination, would you like to prevent witnesses from dodging your questions? Would you like to tell a compelling story? Do you want jurors to look to YOU for the answers during cross-examination? If so, you need to develop your skill of asking leading questions.

This past summer, I taught a Trial Advocacy class at one of our local law schools. It's always interesting to go back to law school because, among other things, you realize that you take certain skills and principles for granted. But when you go back to the beginning, back to that time before you started to "think like a lawyer," you realize how much your thought processes have changed.

One of the things I was taking for granted was the cross-examination skill of asking leading questions. Most trial lawyers who have been practicing for any length of time know that you're supposed to ask leading questions on cross-examination. Your job is to control the witness and tell your client's story, right? Ideally, you want to tell reduce the witness to a bobble head doll, silently nodding his head "yes" to each statement as you tell your client's story through leading questions.

But do you remember how you learned to ask leading questions? Do you ask them as well as you would like? Can you tell an effective story through leading questions?

During my class, one of the students was having difficulty asking leading questions. You can't blame him - it's unnatural to ask leading questions. If you went out to a bar, you wouldn't walk up to someone and ask them leading questions, would you? ("You'd like a drink, *wouldn't you?*" "You'd like my number, is that not true?") Asking leading questions outside of the courtroom is not just rude... it's weird.

But that's how we're expected to ask questions during cross-examination. How can you master the art of asking a leading question when you've been conditioned to think and ask questions differently your entire life?

I gave this student an idea that worked for him. I hope that it might work for you, too. Here's how it went.

I started by telling him, "Ignore the case we're working on. Ignore the witness you're cross-examining, too. Instead, I want you to tell me a story. Do you remember the Wile E. Coyote and Road Runner cartoons from when you were a kid? Good. I want you to tell me one of the Wile E. Coyote stories, but I want you to do it in a new way. You're going to tell me the story through cross-examination. We won't hear anything but 'yes' or 'no' from the witness. Our attention is going to be focused on you. You won't ask any questions like, 'Why?' or 'How?' Instead, you're going to 'ask' short, simple statements that the witness either agrees with or disagrees with, but the witness won't say anything more than 'yes' or 'no.' Can you do that?"

He said that he could. With the pressure of performance lifted from his shoulders, he started to tell us the story of Wile E. Coyote:

- "Your name is Wile E. Coyote, isn't it?"
- "On March 23rd of last year, you placed an order with the Acme Co, right?"
- "Three days later, a package arrived, didn't it?"
- "A box from the Acme Company."
- "You opened the box."
- "You looked inside."
- "It contained a jet rocket."
- "And roller skates."
- "You removed the jet rocket."
- "You strapped the jet rocket to your back."
- "You strapped the roller skates to your feet."
- "You saw the Road Runner."
- "You pointed yourself towards the Road Runner."
- "You lit the rocket..."

It was fascinating to watch. A few moments earlier, he hadn't been able to ask leading questions during his cross-examination of the witness. But then, once the pressure of the witness was removed, he quickly mastered the art of telling a story using leading questions.

Would you like to apply the same skills to your cross-examinations? Here are a couple of guidelines.

Tell a story. You will be using leading questions to tell a story. It might be your client's story, the story of missed opportunities (what else could the witness have done or should the witness have done?), or the story of impediments to observation (what did the witness misread, fail to observe, or neglect to observe?) There are numerous stories you can tell - pick your story, and then tell it with leading questions.

Practice by telling the stories you already know. You represent the Three Bears, and you have the opportunity to cross-examine Goldilocks. What story will you tell through your leading questions? Cross-examining the Big Bad Wolf, can you tell a story from the Three Pigs perspective? Or cross-examine your favorite movie villain. Practice telling stories with leading questions until it becomes second nature.

Narrate your drive. As you drive to work, use leading questions to narrate your travels. Look out your window - what do you see? Describe it with leading questions:

- "I'm driving."
- "On Elm Street."
- "Heading southbound."
- "To my left is a car dealership."
- "A Ford dealership."

- "Their parking lot is filled with vehicles for sale."
- "New vehicles are parked to the left."
- "Used vehicles are parked to the right."
- Etc...

Cross-examine your dog. As I mentioned earlier, it's not normal to ask leading questions. You need to practice. One of the best ways to do that is to cross-examine your dog or something else that won't understand what you're doing. If you attempt to practice by asking your husband or your girlfriend leading questions, do NOT hold me responsible for the inevitable breakup that follows! Practice on your dog, an inanimate object, or anything else that won't get upset by this style of questioning, because the witness would only respond "yes" or "no" to your questions anyway.

One fact per question. Only ask for ONE fact per question. Look at the Wile E. Coyote example or the driving examples. Examine each question. How many facts does each question request? If you ask for too many facts per question, it gives the witness room to escape. If you ask for only one fact with each question, you will tell a more effective story. Limit your questions to ONE fact per question.

Drop the taglines. Most attorneys add taglines to their questions ("...didn't you?" "...is that not true?" "...correct?"), but you probably don't need to use them. You can use the tone of your voice to indicate that the statement is really a question.

Although some judges require you to add taglines to create a "proper" leading question, most will not. If they do, consider using taglines for your first few questions, but then dropping them once you and the witness get into the proper rhythm. Here is the rhythm you want to develop: You ask a question, the witness says "yes" or "no," and then repeat as necessary.

Once you develop your command of leading questions, something amazing will happen. You will stop witnesses from evading your questions. You will tighten your cross-examinations. Best of all, jurors will look to YOU for the answers during cross-examination.