

CROSS EXAMINATION — the Battleground!

Basic Prosecutor Course

Utah Prosecution Council

August 17-21, 2015

Logan, Utah

WHY?



What to cross-examine?

Objectives?

Objectives of cross-examination -

- Strengthen your witness/case.
- Highlight consistent facts.
- Weaken opponent's witness/case.
 - Impeach.
 - Expose bias.
 - Explore ability to perceive.

To Cross or Not to Cross . . . That is the question.

Evaluate each
witness.

- Will they help you with your objectives?
- Did they hurt your case?
Even so, can you fix it?
- Will you mention them in closing?

Irving Younger's X Commandments of Cross-Examination



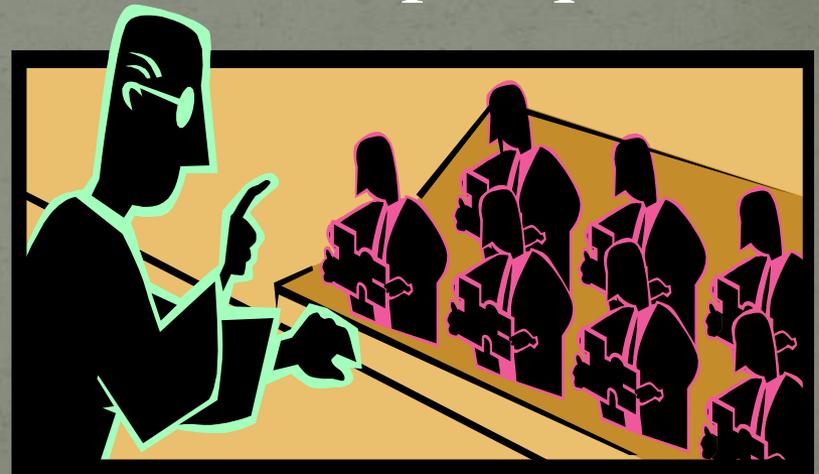
I



Thou
shalt be
brief.

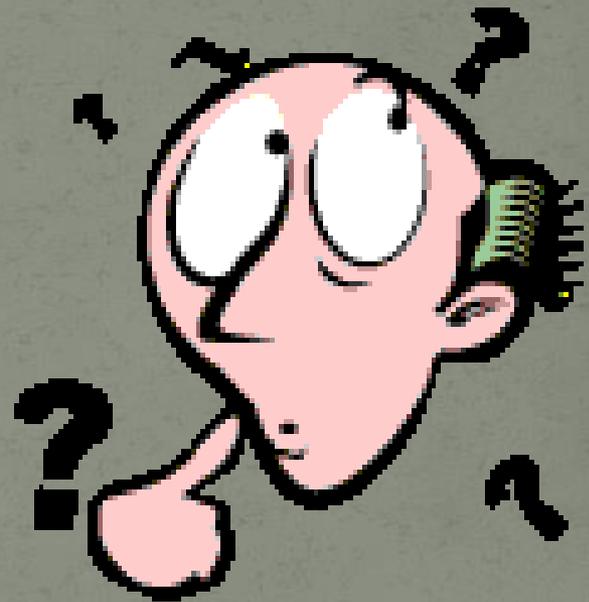
Think of the jurors.

- Never more than 3 points.
- 2 points are better than 3.
- 1 point is better than 2.
- The longer the question the longer the answer.
- One fact per question.



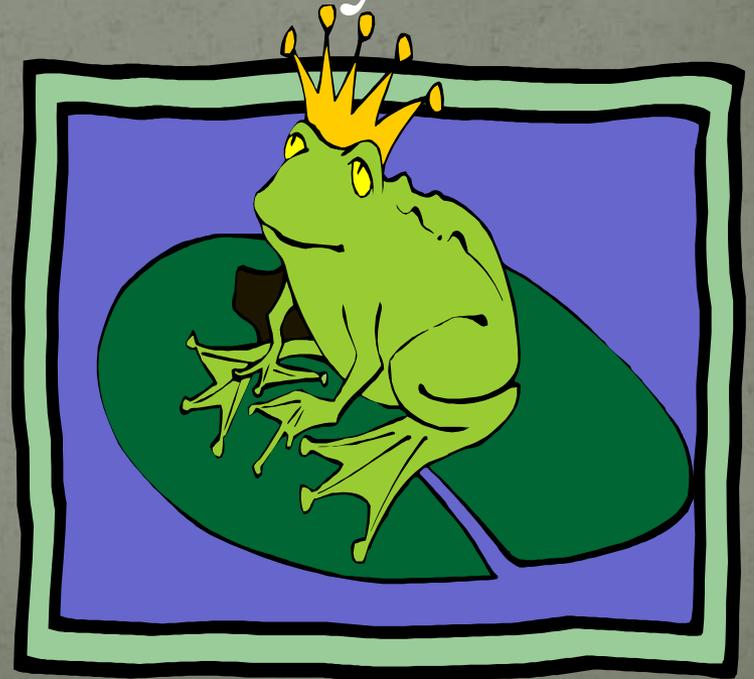
II

Thou shalt ask
short question,
using plain
words.



Think of the jurors.

If you were telling the story.



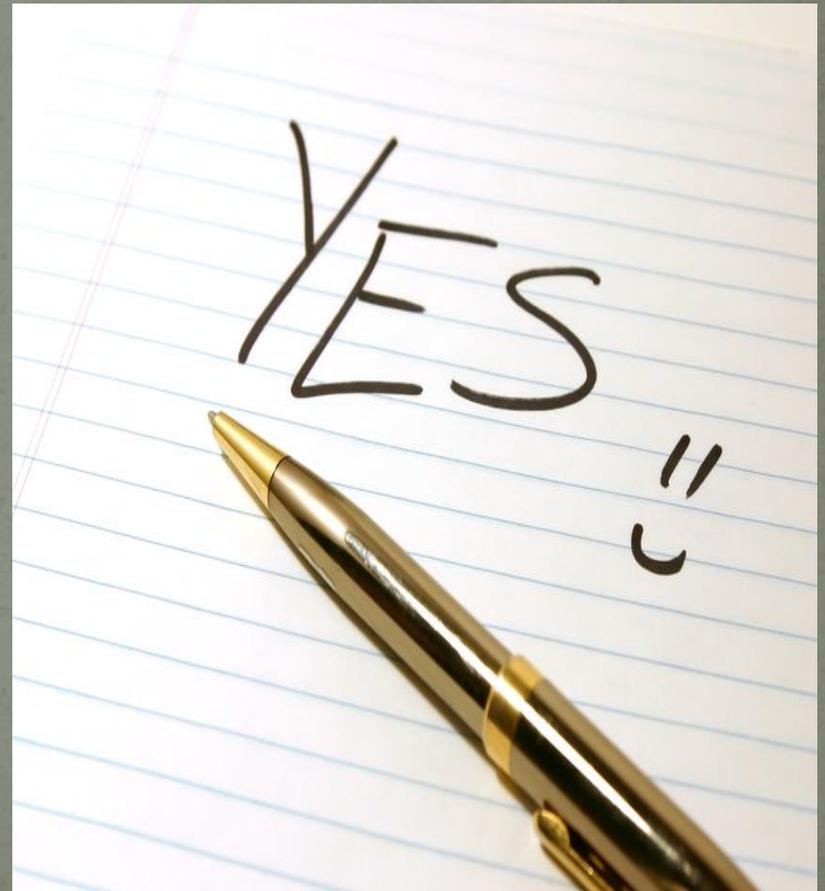
III

Thou shalt use leading
questions



Control the witness.

- Their only answer should be a continuing “Yes, Yes, Yes . . .”
- Tell your important points to the jury.
- Control techniques.



IV



Thou shalt **NOT**
ask a question to
which Thou
knowest **NOT**
the answer.

This takes preparation.

- Know their statements



Exception -

- Don't care what the answer is.
- Desperate.

V

Thou shalt
listen to the
answer.

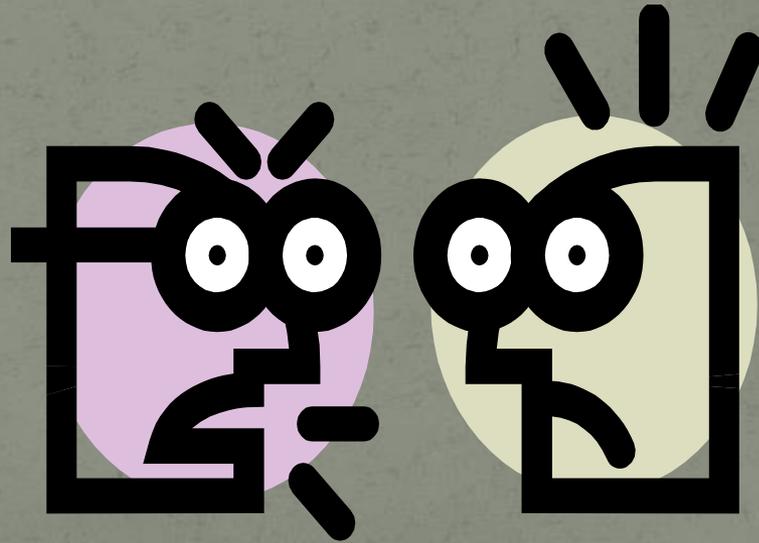


- Just as in direct – Be certain.
- Don't assume the answer.
- Don't be thinking about the next question.



VI

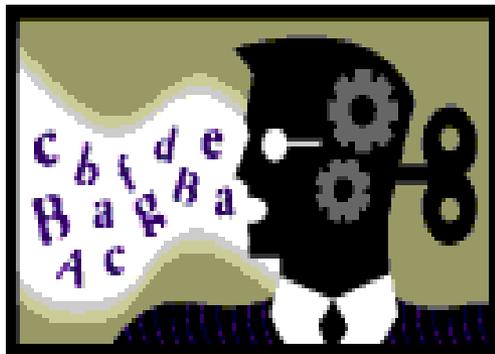
Thou shalt not quarrel with the witness.





- Jurors identify with witnesses – Not you.
- Be aware of your tone.
- Even when the answer is preposterous – Just stop and sit down.

VII



Thou shall
NOT repeat
the direct
examination.

The more times testimony is heard
the more it is believed.



Questioning should be distanced from direct.

VIII

Thou shalt NOT permit the
witness to explain the



Control the witness through quick questions; an explanation to be confirmed by the witness.



IX



Thou shall
NOT ask one
question too
many.

Stop when you have
made your point.

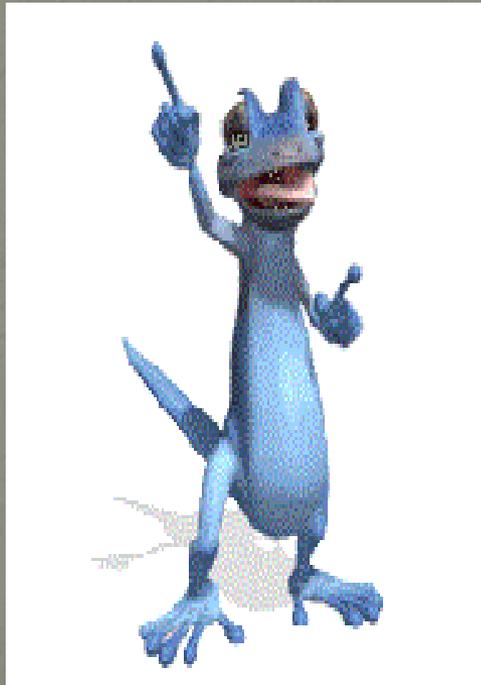


X – Thou shalt save the best for last.

- Point Made.
- Objective Achieved.
- Closing argument.



Use the ultimate point for summation.



Overall objective:

You are the witness!



You testify, the witness confirms.



