



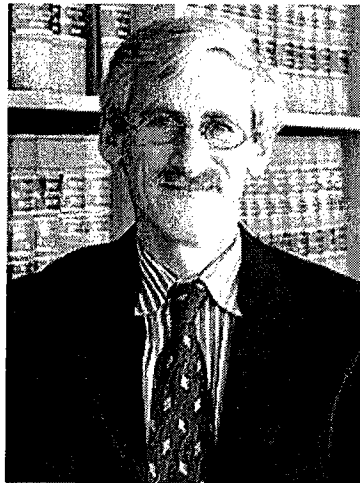
The Art of Appellate Advocacy - Questioned authority

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The first time I read John W. Davis' sixth commandment of oral advocacy, i.e., thou shalt rejoice when the court asks questions, I silently mused to myself that "rejoice" was the last word to come to mind whenever one of my law school professors would pluck me from my safe haven of anonymity to ask me questions in front of the whole world about whatever the case or legal principle of the day was. Others may have felt like rejoicing when called upon to participate in a Socratic tug of war with someone in possession of decades, if not centuries, of superior legal knowledge, but not me, pal.

Especially in my two-semester civil procedure class, where I spent the entire year avoiding eye contact with Professor Bernie Auerbach by, among other sophisticated and mature tactics, hiding behind the students in front of me whenever the death rays from his lethal gaze came within 10 feet of where I was sitting. Each day in that class I would silently pray, kill anybody but me, please, which apparently he did by the end of the second semester when no one in my immediate vicinity showed up for class, making me the lone survivor to be called upon to answer a series of questions about a dead cow.



By the time I was finished, that cow was looking pretty good. After I responded that the railroad would be presumed responsible for the cow's death if the cow was found on the train tracks within five feet of a breach in the railroad's fence, but that the farmer would be presumptively negligent if the carcass was within five feet of an open gate, the professor slowly proceeded to torture me by asking those classic slippery slope follow-up questions involving progressively longer distances.

