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The View From Here

## **Real begging of question takes experts**

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One of the things that irks me as a language buff is the frequent misuse of the expression "to beg the question." A lot of people use it to mean simply "avoid the question" or "not answer the question."

For a good example of true begging the question I refer you to the Appellate Division decision in the case of Jack Carroll, the Troy man I've been writing about lately.

You will recall that Carroll was accused of sexually molesting a young girl and that as part of their effort to ensnare him, the police induced the young girl to call him on the telephone and confront him with the charges while they ran a tape recorder.

You will also recall that Carroll did not incriminate himself but on the contrary reacted with stunned incredulity.

When the time came for the tape of the call to be considered as evidence in his trial, the question that had to be answered was the rather technical legal one of whether Carroll's end of the conversation constituted an "excited utterance," that is, whether he was caught off guard by the call and was speaking without opportunity for reflection.

The idea in the law is that you are more likely to be truthful under such circumstances. If it was an excited utterance, it would be admissible as evidence, and otherwise, no.

I'm not sure myself how valid that thinking is, but anyway that's the idea.

Well, the trial-court judge ruled against Carroll and did not let the tape into evidence, so the jury never heard it, and as we know, Carroll was convicted and sent to prison.

Then the matter went to a distinguished panel of judges on the Appellate Division, which reviews trial-court decisions, and those worthies had a crack at the matter.

On July 22 of this year they ruled as follows: "As defendant was alleged to have engaged in the sexual abuse of this victim for no less than seven years, we cannot agree that his protestations of innocence, upon confrontation by the victim, rendered his `normal reflective processes inoperative' " - which is the legal requirement for an excited utterance.

Well, first of all, it would not be his protestations of innocence that would render his normal reflective processes inoperative, it would be the confrontation itself, so the justices got a little tangled there.

But think of the basic ruling: that since Carroll was alleged to have been abusing this girl for seven years, he could hardly have been caught off guard by the charges when they finally surfaced.

Clearly that makes sense only if the allegations are true. It doesn't matter how long he was alleged to have been doing something if the allegations are false. I mean, the allegations themselves hadn't been going on for seven years. They were brand new.

What the judges were really saying was this: Since the defendant had been molesting the girl for seven years, he couldn't have been surprised when she confronted him with it.

That is a textbook example of begging the question, or assuming that which is to be proven, which in this case is the defendant's guilt. *Petitio principii* it's more formally called, for those who remember their Latin or their logic.

The author of that bit of legal reasoning, by the way, was Associate Justice Karen Peters. She was unanimously joined by her colleagues Anthony Cardona, Thomas Mercure, Edward Spain, and Anthony Carpinello.

Bless them all, and please call me at yard time. I need some exercise.

Time out

I hope I haven't been boring everyone with these reports and ruminations on one single legal case. The thing has gotten under my skin, I admit, and the more I work on it the more dismayed I get.

I promise now to take a break at least for a few days and find something else to write about - the towing of cars from the Van Dyke parking lot, the merits of psychological counseling, the endorsement of Web sites by the governor.

But only for a few days.