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Effective trial language: clearing away the noise

By: F. Dennis Saylor IV and Daniel I. Small May 12, 2016

Too many lawyers talk too much. Judges and jurors are, metaphorically speaking, drowning in words. Some of these words are helpful, but many are completely unnecessary. Those unnecessary words make your case longer to try and harder to win.

Every word you utter adds to the length and complexity of the trial. Every unnecessary word — every word of "noise" — detracts from your presentation and obscures your meaning.

Why? Because it requires effort to listen to unnecessary words (and to extract what actually matters). Because no one likes having his time wasted. Because everyone has a limited attention span and a limited amount of patience. Because the more time you waste on things that don't matter, the less time (and attention) will be available for things that do.

Strunk and White in "The Elements of Style" make a similar point:

"Omit needless words … . A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his subjects only in outline, but that every word tell."

It's your job to eliminate as many unnecessary words are you can. The most obvious place to eliminate noise is with your questions. You can't do too much about the witnesses' answers, but you can control what comes out of your own mouth. Don't festoon your questions with words and phrases that add nothing but length and complexity.

Consider, for example, these alternative ways of asking the same question:

Not: Would you please tell the ladies and gentlemen of the jury what is your current residential address? (17 words)

Instead: Where do you live? (4 words)

Not: Can you please describe, if you would, and using your own words, just what you observed on that occasion? (19 words)

Instead: What did you see? (4 words)

Not: To the best of your memory, if you can, what if anything happened at that point? (16 words)

Instead: What happened next? (3 words)

Not: At this time, your honor, the defense would like to offer into evidence what has been previously marked for identification as Exhibit 14 to this proceeding. (26 words)

Instead: I offer this as Exhibit 14. (6 words)

The same principle applies to openings and closings:

Not: Ladies and gentlemen, I expect that the evidence that we will put before you

will show that Ms. Smith was generally considered to be an excellent employee. (27 words)

Instead: Ms. Smith was an excellent employee. (6 words)

Not: I suggest to you that the weight of the evidence demonstrates beyond any doubt that Mr. Jones is not a credible witness. (22 words)

Instead: Mr. Jones is not telling the truth. (7 words)

A few extra words here and there may not seem like much. But they matter. In the short term, they obscure your message. Over time, the cumulative effect is deadening. Unnecessary words may add hours, even days, to a long trial.

Being short, direct and effective is not as easy as it sounds. It takes time and attention — and hard work. President Woodrow Wilson was once asked how long he spent preparing his speeches. His answer:

"That depends on the length of the speech. If it is a 10-minute speech it takes me all of two weeks to prepare it; if it is a half-hour speech it takes me a week; if I can talk as long as I want to it requires no preparation at all. I am ready now."

So pare away relentlessly at the length and complexity of every question and every statement you make in court. Getting rid of extra words requires constant vigilance and careful discipline. No one will get it exactly right. But it is one of the basic elements of effective communication.

Previous installments of Tried & True can be found at masslawyersweekly.com. Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.

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