

Voice and delivery, Part 1

By: F. Dennis Saylor IV and Daniel I. Small ○ August 18, 2016



What you say in a courtroom is important. But so is how you say it. Your delivery, no less than the content, should help persuade the jury.

Confidence and conviction

A trial lawyer needs to appear confident in order to persuade. Note that we said “confident,” not “cocky” or “arrogant.”

Confidence, like laughter, is infectious. It will spread to your client, your witness, and even the judge and jury. And if the jury senses that you don’t have confidence in what you’re doing, it will undermine everything you are trying to achieve.

Inexperienced lawyers — if they’re normal human beings — will be quite nervous, or even terrified, at first. Worse yet, for many lawyers the terror never really goes away.

How can you possibly appear confident under such circumstances? Start by being prepared. The better prepared you are, the less likely you are to be nervous, and the more likely it is that your nerves will settle down once you get rolling.

Also, as one of Judge Saylor’s colleagues likes to say, don’t be nervous about being nervous. Showing a little bit of nervousness, particularly at the very beginning of a trial, is not a big deal — and may even provoke some sympathy. Over time, you’ll probably find a way to calm down, or at least mask your fright.

But confidence alone is not enough. It is difficult, if not impossible, to persuade a jury unless your words carry the force of your convictions. Say it like you mean it. Your delivery, like your words, must convey your belief that what you are saying is true. If you don’t really believe it, why should the jury?

Even little things can betray a lack of conviction. For example, don’t say things like, “I submit to you that he was speeding” or “The weight of the evidence suggests that he was speeding.” If you believe it, and the evidence is there, just say it: “He was speeding.”

Your delivery has to be calibrated to match the issues in dispute. A delivery that is suitable in one context (say, representing an innocent defendant wrongfully accused of murder) would be overwrought in another (say, representing a utility company in a dispute over rates). Still, the basic principle remains the same: If you don’t believe it, no one else will.

2. The two basic voices

Every trial lawyer has to develop his or her own “voice” in order to be effective in the courtroom.

Just to be clear, the term “voice” in this context does not mean simply the pitch of the sounds made by your vocal chords. You have little choice as to whether you have a high soprano voice or a rich baritone or a rumbling bass. Rather, the term is used in its broader sense: the combination of tone, volume and other characteristics that together make up your spoken delivery. As to those issues, you have a great deal of choice and control.

While there are multiple variations, there are two basic types of courtroom voice: low-key and matter-of-fact, and forceful-but-controlled.

- **The low-key, matter-of-fact voice**

The low-key, matter-of-fact voice is a somewhat amplified version of a normal conversational voice. It is particularly useful in direct examination. Its principal advantages are:

It's easy to listen to; it rarely grates on, or annoys, the listener.

It conveys the sense that you are simply setting forth the facts; the facts speak for themselves, and there is no need to be argumentative about it.

It puts more emphasis on the witness and less on the lawyer.

It wears well over the course of a long trial.

Note that "low key" is not the same as "boring" or "soft" or "monotonous" or "ponderous." Make sure your voice is expressive and interesting, no matter how low key the presentation.

- **The forceful-but-controlled voice**

The forceful-but-controlled voice is more amplified and more powerful than a normal voice. It is the classic voice of cross-examinations in Hollywood courtroom dramas. Its principal advantages are:

It commands attention.

It conveys a sense of power and control.

It conveys drama and emotion.

Note that forceful-but-controlled is not the same as "angry" or "loud" or "blustery" or "bullying." Make sure your voice is under control. An examination or argument can quickly go off the rails if it's overwrought.

New lawyers often struggle with developing their courtroom voices. The more forceful voice, in particular, is not natural for most people and has to be learned.

Fortunately, there are many models to follow, both real-life and cinematic, and even a modest amount of training and practice can go a very long way.

Regardless of the voice you use, remember that you have to be in command of the room. And it's usually a pretty big room.

Previous installments of Tried & True can be found here. 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.