

Getting rid of clutter in closing argument

By: F. Dennis Saylor IV and Daniel I. Small ◉ March 22, 2018

The two principal enemies of effective closing arguments are disorganization and clutter. We've talked a bit already about the importance of a tightly organized presentation; now let's talk about clutter.

Closing arguments tend to be filled with "noise"— excess words that add nothing to the presentation and get in the way of the words that do. Here's a real-life example:

Ladies and gentlemen, you heard that evidence, and you can judge it with your own eyes and ears. Don't rely on just my assessment of it. Your memory, not mine, controls. But I submit to you that [Witness X] was telling the truth, trying to tell the truth as best he could, and he testified that [Event Y] happened, and that's corroborated by [Documents A and B] and the other evidence we have put before you, and I suggest to you that in fact [Event Y] happened.

That's 87 words, and more than half of them are filler words that don't really perform any function at all.

What's the point of those extra words? It's hard to say. Maybe the lawyer was taught that that is how you're supposed to do it. Maybe he's worried about coming on too strong.

But whatever the reason, the lawyer's actual argument winds up buried under an avalanche of words. In effect, the lawyer is making the jury sort through all those words, ignore the ones that don't matter, and focus on the ones that do. All that extra work he's making the jury go through — all that "noise" that they have to ignore — blunts the force of his argument, and for no real reason.

But the harm doesn't stop there. The lawyer has wasted time — maybe no more than 15 seconds or so, but it's wasted nonetheless. The cumulative impact, over the course of the whole argument, is probably pretty substantial. Did he have to leave something on the cutting-room floor to make room for that?



Don't say things like "I submit to you that ..." or "I suggest to you that ..." Those are lawyer words that detract from the force of your argument.

The lawyer has also wasted another finite resource: the patience and attention span of the jurors. He's making them perform unnecessary work, making it more likely that some will start to tune out. And some of the noise words actually undercut what the lawyer is saying ("Don't rely on my memory!").

Why not just make it simple and get to the point:

[Event Y] happened. How do we know that? Because [Witness X] was there; he saw it. Because [Document A] shows that it happened. Because [Document B] shows it, too.

That approach is better in every way: It's cleaner, easier to follow, and more effective. And it frees up precious time to focus on other things, or maybe just to sit down and stop talking.

It's true that most "noise" happens in small increments, not all at once. Here are some other real-life examples:

I submit to you that there are multiple ways you can find, based on your assessment of their testimony, that the witnesses were credible.

I would put it to you like this: [argument]

You've heard, and I'm sure you remember, that there was testimony concerning [X].

But it doesn't matter whether you're adding extra words a few shovelfuls at a time, or unloading the whole dump truck at once. Don't do it.

Remember these basic principles:

1. Get rid of extra words.

Every single word you utter adds to the length and complexity of your argument. If it doesn't help, or it doesn't matter, get rid of it. All of it.

2. Don't use legalese.

Don't say things like *"I submit to you that ..."* or *"I suggest to you that ..."* Those are lawyer words that detract from the force of your argument. If you have something to say, just say it.

Not: *I submit to you that the evidence doesn't add up.*

Instead: *The evidence doesn't add up.*

3. Don't belittle your own argument.

Don't say, *"What I say is not evidence ..."* Let the judge say it, not you. It adds nothing to your argument and may well detract from it. And don't say, *"Your memory controls, not mine."* It suggests that you're not sure what the facts are or that you haven't bothered to figure it out. Simply state the facts, confidently and accurately.

In short, time is precious. So is patience. If you really want to persuade the jury, get rid of the clutter of unnecessary words.

Previous installments of Tried & True can be found at [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.