

Effective trial language: dispense with the jargon

The third of a multi-part column.

By: F. Dennis Saylor IV and Daniel I. Small ◊ June 9, 2016

Every profession and occupation has its own specialized language, or jargon. Within limits, jargon can be helpful, and especially so to those within the field.

For example, lawyers may use phrases such as “substantive due process” or “Chapter 93A letter” because they are useful shorthand expressions for concepts that normally do not need further explanation (to lawyers, anyway). Physicians may use “patella” instead of “kneecap” or “myocardial infarction” instead of “heart attack” for the sake of precision and to ensure clear communication with other medical professionals.

But jargon often obscures rather than enlightens. Sometimes, people deliberately want to obscure their meaning. And all too often, people use it pretentiously or condescendingly, because they want to sound important or superior.

Whatever the reason, jargon in the courtroom creates two dangers: (1) jurors may not understand it, and (2) jurors may dislike it (and dislike the person using it).

When a witness or a lawyer lapses into jargon, a juror typically does one of the following things:

1. The juror tries to puzzle it out, which (at best) distracts him or her from the trial.
2. The juror ignores whatever the speaker might have said.
3. The juror tunes out the speaker altogether.

None is a good option. Worse, the juror may become irritated with the witness and the lawyer. As a general matter, people don’t enjoy feeling lost, confused, intimidated or stupid. And they don’t usually react well to people who make them feel that way.



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To some extent, jargon is unavoidable. To paraphrase the old Yellow Pages advertisements, if it’s out there (the real world), it winds up in here (the courtroom).

But that doesn’t mean you can’t do anything about it. You can work with your witnesses to try to recognize jargon and reduce its use. You can ask your witnesses to explain themselves (“When you say ‘outcome optimization,’ what do you mean?”). You can use charts and graphics to help explain jargon when you can’t avoid it.

You also have to recognize it when it occurs. Consider one small example (actual, but modified for confidentiality):

Q: What management position did you hold?

A: I was responsible for all the R&D projects for BASU for filler metals.

Those words mean something to someone, obviously. The witness thinks he has given his job description. The lawyer probably knows what it all means. But the next few questions out of the lawyer’s mouth should require the witness to explain himself (“Would you please explain that; what are ‘filler metals?’”).

If the lawyer doesn't take the time to do that, as far as the jury is concerned, the witness may as well be speaking in Urdu or Czech.

Not all jargon is alike; some is worse than others, and how jurors react to it depends somewhat on the subject matter. Medicine is filled with jargon, but jurors are more likely to understand some of it and be somewhat forgiving to the witness when they don't. (There is, however, a real danger that medical jargon may make the witness seem cold and unfeeling, particularly if the witness is describing injury or death in purely clinical terms.)

Jurors may not understand engineering or scientific jargon, but are less likely to think the witness is showing off for no reason. Are they likely to be forgiving of business and management jargon? Social science jargon? Not so much.

And not all jurors are alike. Computer terminology, for example, may be absolutely impenetrable to older jurors, even if some of the younger ones understand it. Nonetheless, you should never assume that jurors understand any witness jargon.

One common version of jargon is "cop talk" — the peculiar way that law enforcement officers express themselves when they're in court ("I exited my vehicle, whereupon I proceeded southwesterly in pursuit of the suspect"). It's usually not incomprehensible, but it isn't helpful, either.

Unfortunately, if you're a prosecutor, it's pretty much a hopeless task to get officers to drop that kind of language. You'll have to help the jury yourself ("So after you got out of the car, where did you go ... ?").

When it's not possible to avoid jargon, be listening carefully enough to the speaker — including yourself — to recognize it, stop, and turn an obstacle into an advantage. Jargon often provides an opportunity to linger over an important subject to talk about its history, meaning and significance. Sometimes the origin of the jargon word itself is helpful. Avoid jargon when you can, but take advantage of it when you can't.

So beware of jargon. Make sure that you yourself are speaking clearly. Prepare your witness as best you can to speak in plain English. If your witness uses jargon, have the witness explain it immediately.

The point, as always, is to communicate effectively — not to show off or dazzle the jury with big vocabulary.

Find previous installments of Tried & True here: "Effective trial language: clearing away the noise" and "Effective trial language: weeding out the legalese." 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.