

## Humor and anger in the courtroom

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It's easy to make missteps when navigating the complex environment of the courtroom. That's especially true for matters involving pure judgment calls, such as the right tone to adopt with witnesses and the jury.

Two potentially treacherous areas that require particular attention are (1) humor and sarcasm and (2) aggression and anger.

### Humor and sarcasm

Humor and sarcasm are dangerous weapons in the courtroom. Sometimes they're effective; sometimes they go horribly wrong. Use them with extreme caution, or not at all.

Don't make a joke or a wisecrack unless you are 100 percent certain that (1) it's entirely appropriate and (2) it's going to work. Nothing fails quite as spectacularly as an attempt at humor that falls flat. You may come off as foolish, disrespectful or both. Also, if you're going to try this, start out slowly; let the jury get to know you first.

Needless to say, though, you should always keep a sense of humor. Your witnesses will make mistakes, and so will you. Things will go wrong. Don't be afraid to laugh, especially at your own expense.

Sarcasm is likewise highly dangerous. It has its place, but in limited doses and (again) only when you are absolutely certain that it's going to work. Sarcasm is easily misunderstood and can grate on the nerves of the jury and judge if it isn't used effectively.

In particular, don't conduct a cross-examination by simply repeating the witness's testimony back to him in a sarcastic tone of voice, rolling your eyes, and shaking your head for effect.

*You claim that you were present at the meeting, right?*

*And that Mr. Jones was there?*

*And that you heard him say, "Destroy the documents"?*

*You expect this jury to believe your story is true?*

That will not normally be effective. Over long stretches, it may cause some observers to fantasize about strangling you.

Remember, too, that a transcript is being created of everything you say. That transcript will be entirely flat, without any indication of the tone of your voice, and what seemed clever in court can look ugly — or worse — in the appellate record.

### Aggression and anger

Aggression and anger are likewise dangerous and should be used sparingly and with great care. Sometimes, you have to be aggressive in the courtroom. Sometimes, too, you need an edge of anger.

But aggression and anger are dangerous tools, as likely to injure the lawyer (and the client) as the target, if not handled carefully. Some cautions therefore apply.

The first is to proceed carefully. The jury needs to understand that there's something worth being aggressive or angry about. You may have good reason to feel that way, but it may take time to set up and explain. Be careful about coming on strong right at the beginning, before the jury understands what the case is about. Later on, the jury may clearly see that a witness is being evasive or untruthful and will understand why you're doing what you're doing.

The second is to pick your spots. You can't go after everyone and everything. Consider the nature of the case and your client; if you represent a large corporation or the government, being unnecessarily aggressive may not sit well with the jurors. And be extremely cautious with sympathetic witnesses.

The third is not to overdo it. An aggressive cross-examination, executed properly, can be interesting, effective and even entertaining. But if you go on too long, or do it too often, the jurors may grow tired of it, or even hate it.

The fourth is not to let the wishes of your client cloud your judgment. Clients often have a strong emotional stake in the case and want fervently to see their opponent attacked aggressively in the courtroom. That may or may not be a good idea — but you, not the client, need to make that decision.

Again, the courtroom is a complex environment. To communicate effectively, trial lawyers need to be able to harness a wide spectrum of tone and delivery. That may include humor (or sarcasm), or anger (or aggression), but don't use them carelessly or without thinking through the risks and possible benefits.

*Previous installments of Tried & True can be found at [masslawyersweekly.com](http://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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