

## Effective trial language: weeding out the legalese

*The second of a multi-part column.*

By: F. Dennis Saylor IV and Daniel I. Small ◉ May 26, 2016

Chances are you didn't grow up speaking like a lawyer. But from the time you started law school, and especially since you began working with lawyers, you have been immersed in legalese.

And whether you realize it or not, all kinds of legalistic words and phrases have probably crept into your speech:

- "subsequent to" (instead of "after")
- "prior to" (instead of "before")
- "held a meeting with" (instead of "met")
- "on that occasion" (instead of "then")
- "with regard to" (instead of "about")

If you want to try cases effectively, you have to weed all that out of your vocabulary. Use plain English. Don't use more words, or words that are any more complicated, than you really need.

Legalese isn't just pompous and unnecessary; it's also confusing. Here's an example from an actual trial:

"Under what circumstances did the defendant come to give you this check?"

[Witness looks confused] "Do you mean, why did he give me this check?"

[Lawyer looks sheepish] "Yes."

[Witness gives answer]

If the witness is correcting your questions, it's probably not a good sign.

Sometimes, legalese and occupational jargon come together, for a one-two punch. Here's an example from the trial of a construction case:

"Did you invoice the surety for partial payment pursuant to the ratified subcontract?"

Consider instead: "Did you send a bill for your work? Where did you send it?"

Some people view the bar as a form of mystical priesthood, with its own special language and rituals. They may feel that an important part of being a lawyer is knowing the right incantations to be trotted out at the right times.

For example, instead of simply offering a document as Exhibit 7, a lawyer might say that she is offering "at this time" a document "that was previously marked as Exhibit 7 to this proceeding for inclusion in the record."

Not all set phrases can or should be eliminated; some are necessary or serve as important signals to the judge. For example, the lawyer may ask a witness whether there is something that might "refresh his memory (or his recollection)," rather than asking if there is something that would "help him remember," in order to make sure that the judge understands exactly what the lawyer is trying to do.

Nor is all ritual language undesirable. For example, because a trial is a highly formal event, the use of formal language to open court or to take a jury verdict lends an air of gravity and dignity to the proceeding. Similarly, the use of phrases such as "your honor" or "may it please the court" serves to show respect for and deference to the court.

But don't incant set phrases or legal words or phrases just because they sound lawyerly. Most of them serve no real purpose, and at best they waste time. What they really do is distance you from the one group you want to be closest to: a jury of your peers.

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