

Position and movement in the courtroom

By: F. Dennis Saylor IV and Daniel I. Small October 27, 2016



Where you stand and how you move around the courtroom aren't quite as important as the content and manner of your delivery. Still, they matter. Nothing about your physical presence should be distracting or irritating, and your movements should help support and reinforce your message.

Here are some basic points to keep in mind:

1. Know the judge's requirements

First, learn the judge's requirements. They can vary widely. For example, if the judge requires lawyers to examine from the podium, you don't have any real choice. Some judges are obstinate about this; others are a little more flexible, as long as they are confident that the trial will be orderly and that everyone can hear you.

2. Don't hide behind the podium

During openings and closings, the podium should be placed front and center before the jury. If you can, get out from behind the podium and stand alongside it. It is a more natural and open position and will normally make you look more relaxed. It is especially important to do this if you are physically small, for reasons that are probably obvious. You can still glance at your notebook from time to time.

Remember, the podium is not there to prop you up. Don't lean on it. And don't grab onto it with a death grip.

3. Give thought to where you stand

If you're allowed any movement, give it some careful thought. Every courtroom has its own special geography. Still, most of the time, you should stand in a conventional place:

- For openings and closings, you want to stand directly in front of the jury box — not too close and not too far.
- For direct examinations, the witness will always be looking at you; you want to make sure that you are more or less where the jury is. Stand at the end of, but not in front of the jury box — that is, speaking across the jury box to the witness.
- For cross-examinations, you should be the principal focus of attention. If the courtroom geography permits, you may want to take center stage from time to time.

4. Ask to approach the witness (or not)

Dan Small's advice is that if you want to approach the witness, ask permission first. Some might think it's petty to ask the court for permission just to approach the witness. But which is better for the jury to see: the judge barking at you for approaching without asking, like you don't know what you're doing, or the judge respectfully agreeing to your requests, and maybe eventually telling you, "That's OK, counsel, you don't have to keep asking."

Judge Saylor's advice is to learn the judge's requirements, but avoid involving the judge if you can. Most of the time, judges will accept a simple acknowledgment of the authority of the court: "With your honor's permission, I am showing you" It avoids interrupting the testimony, conveys confidence, and makes for a smoother presentation.

5. Don't move too much or too little

You probably know already whether you tend to be stiff when speaking in public. If so, work hard to fight it. Try to look as natural and composed as possible. Like many things, this is something you can improve with practice.

Some people speak more freely and comfortably when they are moving around. (In "Butch Cassidy and the Sundance Kid," the Sundance Kid, played by Robert Redford, is unable to hit a target with his revolver unless he's in motion. "I'm better when I move," he says.)

But don't move too much. It's distracting, or even annoying. Upper body movement (arms, hands, head, shoulders) is generally preferable to lower body movement. However, any kind of constant movement, whether pacing or simple nervous habits, is a problem.

It's natural to be nervous, and just as natural to have a nervous habit or two. But you're on stage, and you need to control yourself. Don't jangle your car keys, don't twist a paperclip, and don't play with your pen.

Like many things in court, movement can be most effective when it's done with contrast: If voices are raised, a near-whisper can be very effective; if there's a lot of movement, stop and stand still for a moment. Moving toward the witness can show interest (or aggression), moving away can show reflection (or disdain).

6. Keep your distance

Finally, be aware of distance. Don't get too close to the jurors. They will not like having you invade their personal space. Don't get too close to the witness. Except when absolutely necessary (such as when you have only one copy of an exhibit), don't stand next to the witness during your examination, and do so only with permission of the judge.

The principal problem on direct examination is that your heads will turn toward each other and both of your voices will drop, so it will be hard to hear you. The principal problem on cross is that the witness may feel intimidated. Either way, the judge won't like it and will tell you to back away.

Professional actors and directors understand the importance of movement. They spend a great deal of time conceiving, planning and practicing it. You are in court to persuade — and to win. Use all the tools you have for that purpose, including your position and movement in the courtroom.

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.

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