

'Looping,' 'bookends' in direct examination

By: F. Dennis Saylor IV and Daniel I. Small ◉ May 11, 2017

In an ideal world, every direct examination would be perfectly coherent: a clear story, told in chronological order, with no digressions, and with all the important things emphasized to just the right degree.

In real life, of course, the pieces don't always connect up so neatly. Plus, the jury is being bombarded with information. You as counsel know how it's supposed to fit together. But the jury doesn't know and may not be able to follow where your presentation is going.

Two devices that help mitigate that problem are "looping" and "bookend" transitional statements.

Looping

Looping is a technique in which the examiner adds a portion of a previous answer to a question. It has two principal purposes: It can help tie the narrative together, and it can help underscore helpful testimony.

Looping may be very simple; most lawyers use it routinely. For example:

What happened next?

[We held a meeting in Chicago to work out the details.]

Who was present at that meeting in Chicago?

[Mr. Smith, Mr. Jones and me.]

Or it could be dramatic:

What did you see next?

[I saw the car hit the baby carriage.]

After the car hit the baby carriage, what happened next?

[I saw the driver get out and run away.]

Used in moderation, looping is a useful technique. However, if you overdo it, it can quickly become less effective. If everything is important, then nothing is important. Repetition can also quickly become tedious.

Where did you go to college?

[I attended Northwestern University.]

When did you graduate from Northwestern?

[In 1977.]

After your graduation from Northwestern in 1977, what did you do?

[I attended Harvard Law School.]

After you graduated from Northwestern in 1977 and attended Harvard Law School, what did you do?

After a few hours of this, most jurors will be pleading inwardly for mercy. Use the technique from time to time, but don't overdo it.



Looping and bookends are not found in any rule book or case law. Yet they can be important aids to an effective direct examination.

Bookends

Bookends are the transitional statements that mark the end of one phrase or chapter in your story and the beginning of another. Think of your narrative as having chapters, like a book, with chapter headings that alert the reader to a new subject.

Although technically not a question, lawyers are almost always permitted to use short transitional statements to help the jury understand when the topic of questioning is about to change, or when you've left the main story line and want to return.

I've been asking you some questions about your background, and I now want to turn to the day of the accident.

Let's return to the May 16 meeting.

These statements are generally quite helpful and therefore generally allowed. Just don't make them argumentative:

You've been telling us about the devastating injuries that you suffered at the hands of the defendant, and I now want to ask you about your severe financial loss.

These two concepts, looping and bookends, are not found in any rule book or case law. Yet they can be important aids to an effective direct examination. Like all tools, though, use them only for the proper purposes, and only in moderation. Don't spoil their value.

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.

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