

THE IMPORTANCE OF KEEPING IT SIMPLE (AND SHORT)

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Lawyers and judges, steeped in stare decisis and all too well-versed in the arcane language of the law, often speak in ways that impress only themselves. When, for example, a legal principle becomes so firmly established as to be indisputable, judges may write that “it is beyond cavil” or “it cannot be gainsaid” that it is “well-settled” in the lexicon of “black letter law.”

While it may sound nice, speaking (or writing) in legalese that is loaded with technical jargon, flowery phrases and dense, interminable meanderings is simply antithetical to clear, concise and persuasive communication. In plain English, less is usually better than more, short is better than long and straightforward beats confusing every time.

This is especially so when communicating with juries whom counsel is seeking to persuade to decide the case their way. By and large, jurors are, as sung by Sly and the Family Stone, “everyday people” who don’t much cotton to high-falutin lawyer lingo that condescends and confounds rather than clarifies and convinces.

Here then, are a few suggestions for effective communication with the finders of fact:

1. **START STRONG. HAVE A THEME, SPELL IT OUT IN SIMPLE, POWERFUL TERMS AND WEAVE IT ON THROUGH YOUR PRESENTATION.** (e.g. “THEY GOT THE WRONG GUY.” “IT WAS KILL OR BE KILLED.” “WHEN YOU RUSH TO JUDGMENT, YOU CAN OVERLOOK WHAT’S RIGHT IN FRONT OF YOU.”)
2. **SPEAK IN PLAIN ENGLISH.** (“HE EXITED THE VEHICLE.” vs “ HE GOT OUT OF THE CAR.” “THE EVIDENCE WILL ESTABLISH THAT MY CLIENT WAS LEGALLY JUSTIFIED” vs. “MY CLIENT HAD NO OTHER CHOICE BUT TO DO WHAT HE HAD TO, TO PROTECT HIS HOME AND FAMILY.”)
3. **USE SHORT, CRISP AND CLEAR SENTENCES.** (“WHEN THE INTRUDER WHO WAS ARMED WITH A LOADED WEAPON FORCED HIS WAY THROUGH THE FRONT DOOR OF MY CLIENT’S HOME, HE HAD NO CHOICE BUT TO SHOOT.” vs. “WHEN THE ARMED ROBBER BURST INTO HIS HOME, JOHN (client), KNEW HE HAD NO CHOICE BUT TO SHOOT.”)
4. **USE THE ACTIVE VOICE.** (“THE PEOPLE’S STAR WITNESS WAS SENTENCED TO 15 YEARS IN PRISON.” vs. “THIS GUY HAS SPENT THE BETTER PART OF HIS ADULT LIFE IN PRISON.”)
5. **USE POWERFUL, DESCRIPTIVE WORDS.** (“IT WAS A PEACEFUL, QUIET NIGHT ON SMITH STREET UNTIL THAT SHADOWY, MENACING FIGURE DARKENED MY CLIENT’S DOOR.”)

6. DEVELOP A RHYTHM AND PACE SO THAT YOUR WORDS FLOW LIKE GOOD PROSE.

7. KEEP THE ADVERBS (MODIFIERS LIKE "INCREDIBLY FAST," OR "PAINFULLY BORING"), TO A MINIMUM. (STEPHEN KING REPORTEDLY SAID THAT "THE ROAD TO HELL IS PAVED WITH ADVERBS," SO TAKE A DIFFERENT ROUTE).

8. USE RHETORICAL DEVICES LIKE COMPARING AND CONTRASTING, ASKING RHETORICAL QUESTIONS, ("DOES THAT MAKE ANY SENSE AT ALL?").

9. PAUSE WHEN YOU MAKE A POWERFUL POINT (AND LET THE JURY TAKE IT IN), BEFORE MOVING ON TO THE NEXT ONE.

10. MINIMIZE LINGUISTIC DETOURS SUCH AS PARENTHETICAL, "OH BY THE WAY," PHRASES.

11. RETURN TO KEY THEMATIC PHRASES BUT DON'T REPEAT THE SAME ARGUMENT OVER AND OVER. (IN THIS EXAMPLE FROM THE DEPARTMENT OF REDUNDANCY DEPARTMENT, THE PHRASE, "OVER AND OVER," WHILE SERVING TO EMPHASIZE THE IMPORTANCE OF NOT DRONING ON [AND ON], IS ARGUABLY REDUNDANT. PERHAPS "AD NAUSEAM" WOULD BETTER SERVE THE SENTENCE BUT COUNSEL SHOULD PROBABLY AVOID USING FOREIGN PHRASES LEST THE JURY MISS YOUR MEANING).

12. END STRONG.

In the classic, legal drama, "The Verdict," James Mason (as Ed Concannon, the wily, old trial lawyer defending the surgeon accused of medical malpractice for permitting the plaintiff to receive anesthesia shortly after she'd eaten a full meal), asks the doctor during witness preparation to describe what happened in the O.R.. When the stuffy, silver-haired surgeon responds that the plaintiff "aspirated vomitus," Concannon slapped him and said, "do you mean to say that she threw up in her mask?" The doctor said, "well, yes," and then Concannon replied, "then say it that way."

What is true for doctors and other experts is also true for lawyers whose words are the weapons of warfare. When trying to persuade, use the "KISS" method adopted by the Navy in the early 1960's: "KEEP IT SIMPLE, STUPID." Short and sweet is not a bad idea either.