

“The Proper Use of Notes During Opening Statement”

IF YOU'RE NOT CAREFUL, YOUR NOTES WILL DISTRACT THE JURORS

By Elliott Wilcox

How many notes do you use during trial?

It's a delicate balancing act. Too few notes, and you run the risk of forgetting to address an important element of your case. Too many notes, and you risk sounding scripted.

Here are a couple of quick tips for improving your use of notes during trial.

When Speaking Directly to the Jury

The importance of eye contact in the courtroom can't be overstated. The visible (sometimes *barely* visible) reactions of your jurors can help you decide whether or not to pursue an argument, whether to follow up on a line of questioning, and whether you need to return to a line of questioning to clear up potential misunderstandings. You'll need to pick up on the small non-verbal clues that they're sending you, and you can't do that if your head is buried in your notes. Are they telling you to speed up? To slow down? Are they confused? Bored? Do they need part of the testimony repeated? If you don't look at them and read those clues, you'll never know.

Make sure that you're making eye contact with who you want to persuade. Since you're trying to persuade the jurors, rather than your legal pad, try to

minimize how much time you spend looking at your notes.

When Speaking to a Witness

Jurors take their clues from you about how they should treat witnesses. If you act like a witness is important, jurors are more likely to think the witness is important. If you act as if the witness's testimony doesn't matter, they're more likely to dismiss what he says, regardless of its actual importance.

When you look at your notes instead of making eye contact with the witness, it's not only rude, it sends a message that you don't care what he has to say and that his answers don't matter. To avoid sending the wrong message to your jury, look up from your notes and make eye contact with the witness before asking your question, and finish listening to his answer before you look down at your notes for your next question. You can even hold eye contact with the witness for an additional moment after he finishes answering, to show that you're paying close attention to what he's saying and encourage the jury to pay more attention, too. Just don't stare at him, because it will make him feel uncomfortable and he'll look uneasy on the stand.



No eye contact makes jurors feel left out of the conversation

Keep your eyes on the jury as much as possible so you don't miss any of the visual clues they're sending you.

Minimizing Your Notes

It's okay to write out your arguments or questions word-for-word when you're preparing for trial, so that you know what you want to accomplish. But don't make the mistake of bringing those scripts up to the lectern. Those notes will become a mental crutch, and your eyes will never leave the page.

Anyone can read from a script. With a well-scripted direct or cross-examination, you could pick someone off the street, send him into court with the script, and let him conduct the examination. He'd do fine, right up until the point when one of the witness's answers went off-script. Then he'd be completely lost, and would have no idea what to do next.

Unlike trials on TV or in the movies, **real** trials don't stick to a script. Trial lawyers who depend on scripted examinations don't always react very well when the unexpected happens. That's why, the fewer notes you bring to the lectern, the more freedom you enjoy.

When preparing the notes that you'll bring to court, instead of writing out a word-for-word script, write down only what you need. Rather than full sentences, use brief phrases or single words. Besides, when you're in the heat of trial, your eyes won't easily focus on full sentences like "Mrs. Johnson, would you please tell us how you know the defendant?" All you'll really need is

a quick reminder, like "RELATIONSHIP?" or "KNOWS DEFENDANT?" to prompt the correct question.

Make it Easy on the Eyes

Finally, if you want to minimize your time spent looking at the page and maximize your eye contact with the jury, it will help if your notes are easy to read. To reduce how much time you need to look at the page, don't rely on your chicken scratch handwriting. Instead, type up your notes (preferably in 18pt or 24pt type) with a simple sans serif font. You'll be able to glance down at your notes for an instant, absorb the idea, and then immediately return to making eye contact with your jurors or your witness. With a little practice and preparation, the jurors won't even notice your use of notes, they'll just focus on the strength of your case! ■

WANT TO USE THIS ARTICLE IN YOUR NEWSLETTER, WEBSITE, OR BAR ASSOCIATION PUBLICATION?

You can, as long as you include the following blurb with it: "Elliott Wilcox publishes *Trial Tips Newsletter*. Sign up today for your free subscription and a copy of his special reports: "How to Successfully Make & Meet Objections" and "The Ten Critical Mistakes Trial Lawyers Make (and how to avoid them)" at www.TrialTheater.com"



Want more FREE trial practice tips? Go to www.TrialTheater.com right now to get your FREE copies of my special report, "How to Successfully Make & Meet Objections," "The 10 Critical Mistakes Trial Lawyers Make (and how to avoid them)", and Francis Wellman's *The Art of Cross-Examination*. You'll also receive a free subscription to *Trial Tips Newsletter*. If you're serious about improving your trial practice skills, then you'll want to find out without delay if *Trial Tips* can do for you what it's done for thousands of other trial lawyers in every state, every Canadian province, and on every continent around the world (except Antarctica!) So please go to www.TrialTheater.com, and we'll start serving you immediately.