Make it as Simple as You Can

By Paul S. Teranes

During my years as a trial judge, I was impressed by trial attorneys' wealth of knowledge. Medical malpractice attorneys are veritable doctors. Attorneys who try products liability cases have the knowledge of an engineer. Those who try personal injury cases know the human anatomy inside and out. The only problem is that the ordinary juror is not a doctor, an engineer, or an anatomy expert.

Often, an attorney knows all there is to know about his or her case, but is unable to convey that knowledge to the jury in terms a layperson can understand. A classic example of this is when an attorney or witness uses a term commonly used in a profession or field of science but not understood by the average person.

Soon after I became a judge, I had a medical malpractice case in which the plaintiff claimed that a doctor committed malpractice when he performed a tracheotomy too close to the larynx and damaged the vocal cords, resulting in the plaintiff's inability to speak much above a whisper. In the opening statements, both attorneys stated that the plaintiff had a stenosis of the vocal cords. The expert witness for the plaintiff testified that the incision in the wrong location resulted in a stenosis of the vocal cords. It was not until a couple of days into the trial that a vocal therapist testified that the plaintiff had scarring on her vocal cords that left her unable to speak much louder than a whisper. When the jurors heard the word "scarring," a light bulb went on, and they understood the injury to the plaintiff's vocal cords. When I talked to the jurors after the verdict, they said they didn't know the meaning of stenosis nor what was wrong with the plaintiff's vocal cords until the vocal therapist used the word "scarring."

This is an example of laypersons not understanding a doctor's everyday language. It could have been avoided if the attorneys had explained stenosis in their opening statements or asked the expert witness to define the word.

Confusion among jurors occurs not only when technical jargon is used, but also when everyday words are used without sufficient explanation. I had a case in which the term "panic mode" was used without the jury ever understanding its meaning. The case involved a plaintiff doctor carrying a heavy briefcase full of x-rays rushing to catch a plane at Detroit Metro Airport. As he approached the airport's automatic double doors, one of the doors did not open and the briefcase hit the unopened door, giving the doctor's shoulder a real jolt. During the flight, the doctor experienced pain in his neck, which worsened with time. The pain was later diagnosed as a dislocated disk caused when the briefcase hit the unopened door as the doctor rushed into the terminal.

The airport's defense was that the automatic door was put into "panic mode" shortly before the doctor rushed into the terminal and the airport did not have reasonable time to correct the situation. The automatic doors are designed for entry into the terminal, but for safety's sake, each door also must open outward—if someone pushes hard enough on the door from the inside, the door opens outward. When this happens, the door goes into "panic mode," meaning it won't open inward until its automatic opening mechanism is reset. The term "panic mode," which referred to the status of the door before it was reset to automatically open properly, was used by attorneys and witnesses for both sides throughout the trial. At the end of the trial, the foreman told me that none of the jurors understood what "panic mode" meant.

This is another example of terminology well understood by attorneys and witnesses, but not sufficiently explained to the jury. Attorneys should never presume jurors understand a term that is common jargon within a profession or discipline. Instead, an attorney should interrupt the testimony and have the witness explain the word or phrase. If a physician witness refers to the anterior and posterior, ask him or her to use simple words like front and back. If the plaintiff is described as having contusions and abrasions, clarify that this means cuts and bruises. Ask the chiropractor witness to explain the meaning of subluxation. If your witness is an accountant, take him or her step by step through the testimony to make it as simple as possible. Do not let accountants testify without your assistance; they will lose the jury almost every time. Jurors have told me they didn't understand the testimony of either the plaintiff's or defendant's accountant, so they simply awarded

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damages in the amount testified to by the plaintiff's accountant. On the other hand, I've had jurors tell me they could not follow the testimony of either the plaintiff's or defendant's accountant, so they disregarded the testimony of both.

Don't be reluctant to clarify terms even if you think you are boring or insulting the intelligence of the jury. Attorneys wouldn't think twice about asking each of six expert witnesses in a medical malpractice case what it means to be board certified, so they should not hesitate to ask what a witness means by "stenosis" or "panic mode."

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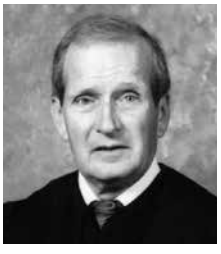
Attorneys may spend more than a year preparing for and learning every aspect of a case. When attorneys come before a jury, they must impart this knowledge in a matter of days or weeks to jurors who know nothing about the case before they enter the courtroom. This is particularly difficult if the case deals with medicine, engineering, or other disciplines requiring expert testimony. Attorneys must act as teachers and should present the case to a few friends to get an idea of how it will be heard and understood by the laypeople of the jury. The key to understanding is to make it as simple as you can. ■



Paul S. Teranes served as an assistant prosecuting attorney for Wayne County from 1962 to 1982. He was appointed to the Wayne County Circuit Court in May 1982 and was elected to three six-year terms. Since retiring from the bench in 2001, he has been a visiting judge, arbitrator, and facilitator. Teranes received his JD from the University of Michigan Law School in 1961.