

5 Cringe-Worthy Things Attorneys Say

By **Jeff Zalesin**

Law360, New York (January 19, 2016, 9:33 PM ET) -- If you see someone wince at your next court appearance or law firm meeting, it might be because you've repeated one of the all-too-common gaffes that plague the legal industry, attorneys say.

Lawyers are far from the only professional group whose words can seem awkward, illogical or even offensive. But ill-considered remarks can be especially damaging for attorneys, whose careers depend on their ability to win the respect of clients, colleagues, judges and juries.

Here, lawyers name five things you should never say if you don't want your audience to be embarrassed for you.

"Let me explain why I'm late"

Showing up to a courtroom behind schedule is bad enough, but some lawyers compound the error by trying to justify it to the judge and opposing counsel, said Harley Lewin, an intellectual property partner at McCarter & English LLP.

"The worst thing that you can do is walk into the courtroom and start apologizing for being late," he said.

Lewin said that in his litigation career, he has seen attorneys try to excuse their tardiness by claiming that they couldn't find a parking space, got stuck in the courthouse security screening line or had to wait longer than expected for an elevator.

Instead of explaining those problems after the fact, attorneys should seek to avoid them in the first place by allowing extra travel time and learning any quirks of the courthouse, such as a slow elevator system or suboptimal parking options. After all, you're not doing yourself or your client a service by running late, and the delay is "really annoying" for the other side, Lewin said.

"Especially if it's your motion, you should be there early, not even on time," he said.

"Remind me whether you're Jane or Karen"

Many law firms have made progress toward diversity, but the U.S. legal industry is still largely dominated by white men. Attorneys who don't fit that description sometimes get confused with one another, leading to some truly cringe-worthy moments.

Evan Tager, a partner at Mayer Brown LLP who focuses on appellate litigation, recalled that some attorneys used to confuse Justice Ruth Bader Ginsburg with Justice Sandra Day O'Connor while they served together as the first two women on the U.S. Supreme Court. Justice Ginsburg would be addressed as Justice O'Connor during oral argument and vice versa.

"The Supreme Court's not going to decide the case on the basis of that," Tager said. "It's just going to get written up in the legal newspapers, and it's going to be embarrassing."

Such errors are not a thing of the past, he added.

"You hear stories about people who assume that one African-American lawyer is a different African-American lawyer," he said. "It never dawned on them that there's more than one."

"Come to my office right now"

In addition to being demographically homogenous, some law firms have rigid hierarchies embedded in their cultures, giving many senior partners a "sense of entitlement," according to Randy Katz, a corporate partner at BakerHostetler. That haughtiness can be reflected in how the partner approaches a lower-ranking colleague for a conversation.

Years ago, Katz observed a partner at another law firm who wanted to speak with an associate — call him "Fred" — on the same floor of the same building. Instead of walking over to Fred's desk, the partner shouted his name down the hall, told him "come here" and threw in two condescending hand claps.

The implication of such behavior is that the partner sees himself as more important than his associates and believes his own time is far more valuable, Katz said.

"Just go find Fred and talk to him," he advised. "Fred's as much of a human as you are, for crying out loud."

"With all due respect"

Attorneys often start their sentences with these four words during court hearings, hoping to soften the blow of whatever comes next. But the phrase does more harm than good, especially when it's attached to something less than respectful, attorneys said.

Lewin called "with all due respect" one of his least favorite courtroom sayings.

"That's such malarkey," he said. "The judges know it, the juries know it, and it's transparently stupid. If you're going to disagree with me, disagree with me. You don't have to countenance it with 'with all due respect.'"

Katz said he remembered one mediation in which an attorney said "with all due respect" repeatedly and disingenuously. Eventually, that lawyer got a bench slap from the mediator, who saw through the charade and told him to stop.

"If you have to say that, then you really don't mean it," Katz said of the phrase. "If you are actually showing the other party with whom you're having a conversation appropriate respect, you don't have say it."

Another example of phony respect is the practice of calling your adversary's lawyer "learned counsel" or "my friend" even as you attack that lawyer's argument, Tager said.

"It's sort of this false politeness," he said. "It's probably not intended to be sarcastic, but it almost sounds like you're being sarcastic."

"This draft stinks, and I won't explain why"

Everyone produces subpar work sometimes, and law firm associates are no exception. But it's counterproductive for partners to berate their associates over a lousy work product if they don't offer guidance on how to improve it, Katz said.

Experienced lawyers are responsible for training and mentoring their younger peers, he added. That role encompasses constructive criticism but not unexplained outbursts.

"Merely saying, 'It sucks,' without any other guidance leads the younger person to think that the older person is being a bit of a jerk because in those circumstances, he or she clearly is," Katz said.

Much like refusing to make the walk to an associate's office, taking an associate to task without providing advice shows a lack of respect, he added.

"People are not in the caste system, although many times it appears, certainly in BigLaw, that they are," he said.

--Editing by Christine Chun.

All Content © 2003-2016, Portfolio Media, Inc.