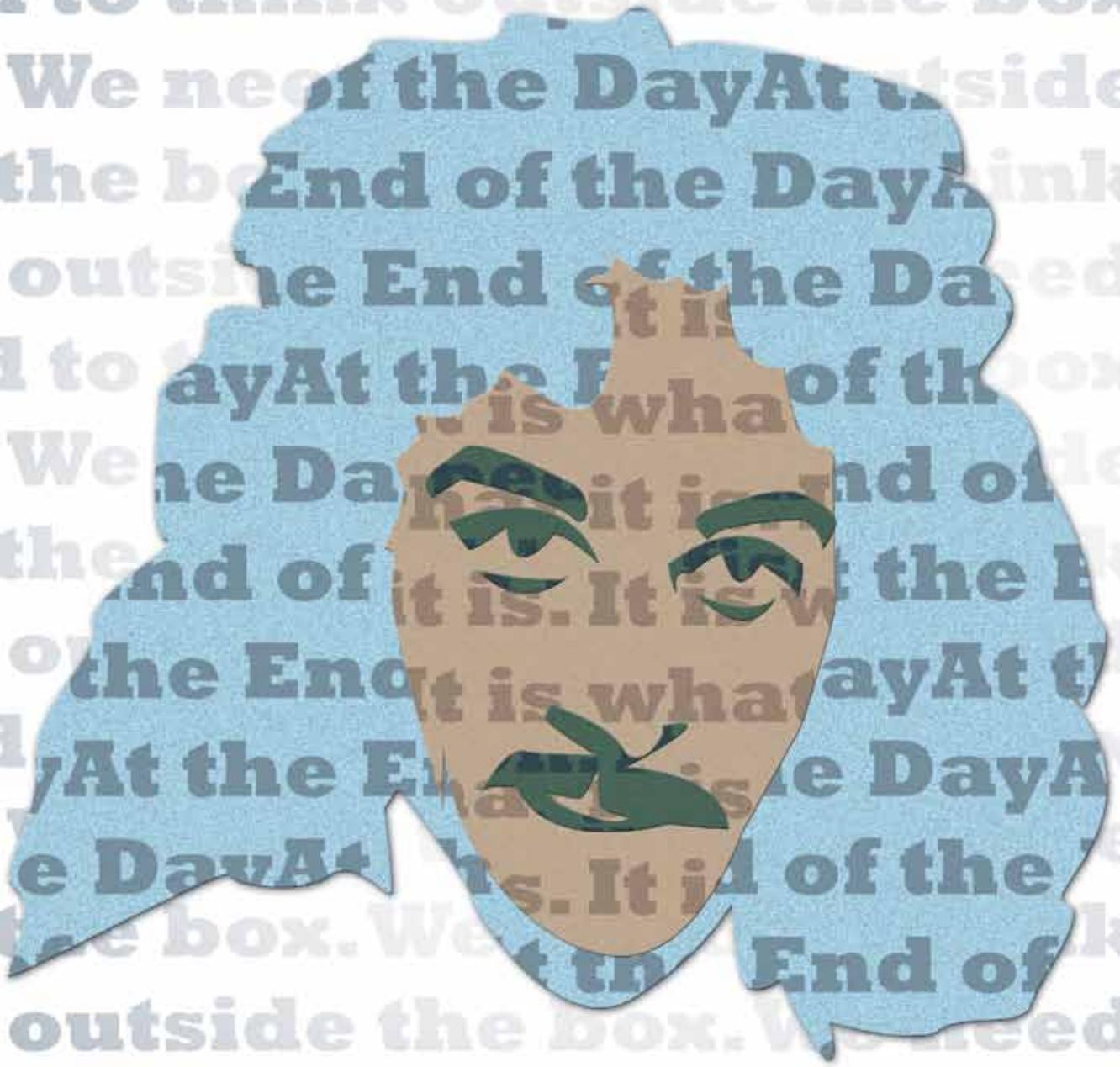


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STOP SAYING THAT!

Phrases That Even Inigo Montoya Would Tire of Hearing

BY TRACEY DOLIN WALDMANN

Those of us who have watched the comedy “The Princess Bride” can easily recite the following lines: “My name is Inigo Montoya. You killed my father. Prepare to die.” Inigo Montoya was on a quest to kill Count Rugen, who, yes, killed his father. When he finally meets Count Rugen, Montoya repeatedly recites his oath until Count Rugen screams “Stop saying that!”

and that you would rather bang your head against the wall for 20 hours straight than continue this pointless task. Either way, she won’t ask you to do work for her again.

“With all due respect.”

There are lines or phrases that are repeated so often that I hear the voice of Count Rugen in my head yelling “Stop saying that!” Used once, these phrases can be effective – sometimes. When used repetitively, the listener starts to count how many times you say the phrase rather than listen to your argument. The list below contains the five worst culprits of what I call “Legal Montoyisms.” They are phrases that either should never be used or should be used once and only in the right situation.

It is possible that actors on television have said this phrase more than actual lawyers. But, besides being grossly overused, the phrase drips of sarcasm. When you say, “with all due respect,” what you are really saying is, “I completely disagree,” “you’re wrong,” or “I think you’re an idiot.” At a minimum, you never, n-e-v-e-r, use this phrase when speaking to a judge. Judges do not like sarcasm, at least sarcasm directed at them. Even if you think what the judge is saying is so wrong it hurts your ears, an overused, sarcastic phrase will not help your argument.

“At the end of the day.”

We have all used this phrase at some point, and it is easy to see why it became so popular. In a profession where strident advocacy reigns, “at the end of the day” sounds like a soft, easy-chair, put-your-feet-up-and-relax kind of statement that can make you sound “reasonable.” It also signals to the judge or your opponent that this is a major point in your argument. If an attorney uses this statement once at the end of her argument, it can be effective. When the phrase is used multiple times and it is only 10:00 a.m., your listener is no longer keyed in that this might be your major point. The listener wishes it was the end of the day and that you would stop talking.

“It’s a fishing expedition.”

Next time you attend a discovery conference, draw a little table and keep tabs on how many times the lawyers in the room accuse their opposing counsel of conducting a “fishing expedition.” I once did this. I counted seven times in 49 minutes. I also noted a direct correlation between the words “metadata” and “fishing expedition.” Judges who hear discovery disputes have heard this phrase so many times that it has lost all meaning. Try describing your opponents’ document requests as a “space voyage” or an “undersea journey.” If nothing else, it might get the judge’s attention.

“We need to think outside of the box.”

Do not use this phrase – ever. If you do, you might as well wear a sign announcing that you are unoriginal, annoying, and trying to get other people to do your work for you.

This list of “Legal Montoyisms” is not meant to criticize the lawyer who finds himself on the hot seat in an oral argument and, frantically trying to save a dying argument while ignoring the sweat running down his shirt, relies on certain well-worn phrases. This list is to caution you against using them in everyday conversation or in a prepared oral argument. This list, unfortunately, is not exhaustive and new phrases will emerge only to be repeated so often that you’ll want to scream “Stop saying that!” ■

“It is what it is.”

This is a nonsense phrase, one that we all use when we run out of ideas. Voiced late at night after hours of fruitless research, you get a pass for using the phrase. For associates, however, you never get a pass to use this phrase with the assigning partner. If you are tempted to tell the partner “it is what it is,” why not just be honest and tell her through blood-shot eyes that you found nothing after five days of research

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