



September 2008

The Power of Words: Simple Choices, Big Impact

Simple techniques can help you choose words that focus witness and juror thinking to your advantage. Powerful and subtle go hand-in-hand.

By Noelle C. Nelson

[See the author's ["Need to Know"](#) Q&A response.]

Words have tremendous power. That's nothing new. What may be less immediately apparent is how different words and the way those words are put together encourage not only jurors to view the case from your point of view, but also witnesses to think and respond in a manner more consistent with your interpretation of the facts.

It is surprisingly easy to make deliberate word and word-structure choices that better

focus witness responses and juror thinking to your advantage. The following four techniques can be used – from opening statement through direct/cross examination to concluding argument – to support and enhance the success of your case.

Technique #1: Choose words deliberately to focus witness responses and juror thinking

How you design your questions to witnesses has a great deal to do with how they are answered. Psychological research demonstrates that people respond very differently based on how a question is phrased. For example, in a study in which a group of people was asked to estimate a basketball player's height, the response varied. When asked, "How tall is he?" those in a study answered on the average, 79 inches. When the question posed was, "How short is he?" of the same player, subjects answered on the average, 69 inches – a difference of almost a foot.

Word choice also affects how jurors will think about the facts of the case. Choose words such as "fast" when you want to suggest speed, "far" for distance, "tall" to emphasize height, and "short" to minimize it. Such words affect juror response. "How fast was the car going?" suggests high speed, "At what speed was the car traveling?" suggests a more moderate speed. "How far was the intersection?" implies that the intersection was far away; "How near was the intersection?" implies the opposite.

Choose the word that presupposes your desired answer. "How long did that go on?"

denotes a situation went on a long time. "How soon was it resolved?" indicates the situation did not go on a long time. "How many people were involved?" implies many people were involved. "Who else was involved?" implies just a few people were involved.

Be aware of the differential meanings of "a" and "the." They may seem interchangeable, but they are not. They imply very different things. "A" refers generically to an undefined object. "The" refers specifically to a defined object. "Did you see a man with a limp?" does not focus a person's attention in the same way as "Did you see the man with the limp?" The use of "the" presupposes that the man exists, the limp exists, and that the only question is whether the person saw the man.

Thus, people will search their memory more assiduously given the unconscious message that the man with a limp exists, than if asked whether they saw "a man with a limp," which contains no such presupposition. This is true both of witnesses when questioned, and the jurors who are listening.

Similarly, notice the different impact of "frequently," "occasionally," "sometimes" and

"often." Studies show that when people were asked if they had headaches "frequently," they replied, on average, having had 2.2 headaches per week. Subjects asked if they had headaches "occasionally," stated, on average, that they suffered from headaches 0.7 times per week. The power of such words to elicit different responses is considerable. Don't throw this power away by using words in a haphazard fashion. Choose those words that reveal most clearly your point of view.

Technique #2: Use the present tense to help jurors and witnesses relate intensely to an event or situation, and the past tense to distance them

If you are to help the jurors connect emotionally to the events and circumstances that brought your client to court, you must somehow make jurors feel that the event is happening now, not at some time in the remote past. The farther away an event is in time, the less intensity is felt around its occurrence. By simply using the present tense to describe the event, you will greatly help jurors feel the event as if it were happening now – without resorting to hyperbole.

This principle also works in reverse. If you want an event to seem less immediate, less important, put it in the past tense. When you talk about the opposition's distress, for example, distance the jurors from that distress by putting it in the past tense. For example, "You were worried about the situation, you had some concerns," is less impactful than, "You're worried about the situation, you have some concerns."

You can also influence how witnesses will respond by framing your questions in past or present tense. Witnesses will generally respond to questions asked in the present tense with more vividness and intensity than to those cast in the past tense.

Technique #3: Use the positive and negative forms of speech to focus witness and juror thinking according to your point of view

You can easily keep the jurors' attention on a certain point simply by stating the point in the positive, and distract attention by stating the point in the negative. For example, if someone says, "Don't think of a pink elephant," 99 percent of us will immediately think of a pink elephant. Your mind does not distinguish between "do" and "do not," as it sorts through your memory to bring relevant material to your attention. Your mind simply attempts to bring to consciousness all elements included in the statement.

If you say, "On that day, my client wants the meeting to run smoothly," chances are the jurors will think "OK," and pick up information pertaining to "meeting run smoothly." If, however, you say, "On that day, my client doesn't want the meeting to get out of control," the jurors will pick up information on "meeting getting out of control." By using the negative, you have introduced the possibility that the meeting might have gotten out of control. Make your choice of the positive or negative form of speech deliberately to emphasize your points or elicit the answer you desire.

Technique #4: Use rhetorical questions to persuasively engage jurors

When asking a question you expect the person you are addressing to provide the answer. A rhetorical question is simply a question to which you provide the answer as well as the question. Rhetorical questions automatically engage the mind of those listening to you. This makes them inherently more persuasive than direct questions.

Questions such as "How is it that the company didn't know what Mr. X was up

to?" implies that the company should have known what Mr. X did; "What did the hospital staff do next?" implies that the staff should have done something next. "How do Ms. X's injuries affect her day-to-day life?" implies that they do. These are all excellent ways of introducing subjects or making points. The mind automatically seeks to respond to such questions, making jurors more receptive to the responses your witnesses will provide.

Lawyers have long known that jurors respond differently to different words. Whether addressing witnesses, the court or jurors, you can use the power of words and word structure to get across your point in a compelling yet subtle manner.

About the author: Noelle C. Nelson, Ph.D., is a California trial consultant who provides trial/jury strategy, witness preparation and focus groups for attorneys. She authored "Connecting With Your Client" (American Bar Association) and "A Winning Case" (Prentice Hall). Dr. Nelson conducts in-house seminars and often speaks before legal organizations. E-mail: nnelson@dr.noellenelson.com.