



## Use Your Words

Great lawyers craft every sentence—written or spoken—with care. The best trial lawyers select each word in *voir dire*, opening statements, witness examinations, oral motions, and closing arguments thoughtfully, considering every nuance and connotation. You can enhance the impact of your legal writing if you do the same.

Pretend that you are a criminal-defense attorney trying to select a jury. Consider the wording of these questions in jury selection:

- Who on the panel needs to hear from the defendant in this case?
- Who wants to hear what the defendant has to say?

We all probably recognize that few, if any, jurors will raise their hands in response to the first question. They have a general notion that the defendant has the right not to testify, and they do not want to seem ignorant of that fact or cross the judge. The law tells them they do not need to hear from the defendant; even if their guts tell them otherwise, their minds and their egos will not let them admit it.

The second question, however, might elicit some admissions. Sure! I'm curious. I want to know the defendant's side of the story. Answering "yes" to this question paints me as engaged and fair.

A careful lawyer considers purpose and audience in selecting each word and constructing each sentence. Some


lawyers may have studied rhetoric; Aristotle long ago counseled that word choice can and should change depending on the perspective of the speaker. One person's *offer of compromise* is another's *extortion*. One party might say that a man *took* an item; the opposing party would insist that the thief *plundered* the victim.<sup>1</sup>

Psychological research confirms that word choice has a powerful impact on how we perceive reality. In a 1974 study by Loftus and Palmer, for example, after subjects watched a film of a traffic accident, researchers asked subjects how fast the vehicles had been going. The wording of the question dramatically affected the reported speed. Subjects asked how fast the cars had been going when they *contacted* one another estimated a speed almost 10 miles per hour slower than those asked how fast the cars had been going when they *smashed* one another. The verbs *hit*, *bumped*, and *collided* each elicited different speed estimates. In a related experiment, participants who were asked how fast the vehicles were going when they *smashed* each other were significantly more likely to report having seen broken glass in the aftermath of an accident than those asked how fast the vehicles were going when they *hit* one another.<sup>2</sup>

Research also shows that vivid, concrete language makes facts more memorable—and therefore more influential—than pallid, generic language. In one study, researchers had subjects read trial arguments regarding a drunk-driving case. The pallid version of

the arguments described the defendant as having "staggered against a serving table, knocking a bowl to the floor." The vivid version stated that the defendant "staggered against a serving table, knocking a bowl of guacamole dip to the floor and splattering guacamole on the white shag carpet." The subjects who had read the "vivid" version were more likely to conclude that the defendant was drunk and therefore guilty.<sup>3</sup> The image of the guacamole marring the beautiful white shag burned in their brains; they could *see* defendant stumbling out of the party, three sheets to the wind, and they *knew* that he had been intoxicated when he climbed behind the wheel.

Think about a dog-bite case. A repair person entered your client's house through an unlocked door, startled the family dog sleeping on a pillow near the front door, and the dog bit the repair person on the hand, breaking the skin. Do you call the dog *the 60-pound German Shepherd mix* or a *guard dog*? Probably not. Instead, you call her a *family pet*, or *Lucy*. You paint an image of her, snoozing on her pink pillow, her head resting on her favorite stuffed tiger, when an intruder—a stranger—burst through her front door, and her split-second instinct is to protect her family.

Whether motivated by the principles of ancient rhetoric or the observations of modern psychology, great lawyers spend time and thought selecting their words because they know that the payoff justifies the effort. For the speaker, this requires significant preparation in advance and perhaps some memorization. For the writer, this simply requires time, thought, and revision. 

### endnotes

1. See Stephen E. Smith, *A Rhetorical Exercise: Persuasive Word Choice*, 49 UNIV. OF SAN FRANCISCO L. REV. FORUM 37-39 (2015).
2. See E. F. Loftus & J. C. Palmer, *Reconstruction of Automobile Destruction: An Example of the Interaction Between Language and Memory*, 13 J. OF VERBAL LEARNING & VERBAL BEHAV. 585-589 (October 1974).
3. See Robert M. Reyes, William C. Thompson & Gordon H. Bower, *Judgmental Biases Resulting from Differing Availabilities of Arguments*, 39 J. OF PERS. SOC. PSYCH. 2-12 (1980).

**A careful lawyer considers purpose and audience in selecting each word and constructing each sentence.**



*Susie Salmon*

Susie Salmon is Assistant Director of Legal Writing and Associate Clinical Professor of Law at The University of Arizona, James E. Rogers College of Law. Before joining Arizona Law, she spent nine years as a commercial litigator at large firms in Tucson and Los Angeles.