

# Preparing Sensory-Based Direct Testimony Using Neuro-Linguistic Programming

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*While our justice system restricts the advocate from directly asking jurors to put themselves in the victim's shoes, everything he or she does at trial is toward that end. Explore here the use of the principles of neuro-linguistic programming in preparing witnesses for direct testimony that reaches the heart of the jury.*

**A**t trial, we don't have a videotape of the incident or a time machine to bring the jury directly back to the scene. Jurors can't witness the incident of the injury, the surgery, or the treatment of the injury in order to personally and physically experience these events. What we have to present are witnesses who remember bits and pieces of the action. Therefore, with witnesses and words, the advocate must paint the picture so that the jurors may then imagine, and recreate in their own minds, the experience. We have all heard the stock phrase "paint the picture," and we all know great lawyers who are able to do just that. The questions become: What are they actually doing? Do they know *how* they are doing it so that they don't experience *off* days? Is it just a gift, or can it be learned?

In our system of justice, we are constrained from directly asking jurors to place themselves in the position of the victim. Yet everything a good

advocate does in presenting a case is designed to get the jury to think of the catastrophe from the victim's point of view: to feel the fear and terror of the accident, to feel the deep depression which comes from the realization that one's life has been irrevocably changed for the worse, and that all or many of one's dreams have been lost, without hope, forever.

A really high award does not come from the logic of the case, however artfully it is presented. Rather, it comes from the heart of the jury. The head of the juror must be lost in his or her feelings.

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Clearly, the logic has to be correct, it is best if the voice of reason supports the emotional response, but it is primarily necessary that the voice of reason not interrupt the emotional response. Communicating in a way that supports that process is the subject of this article.

The principles and patterns of neuro-linguistic programming (NLP) originally were discovered by Richard Bandler, Ph.D., an information scientist, and John Grinder, Ph.D., a linguist. Bandler and Grinder first described the most basic of these principles in their books, *The Structure of Magic, Volumes I and II*, in the mid-1970s. The NLP model has been further developed and refined by these men and others since that time.

The application of NLP to the preparation of witnesses, as presented here, is original to us, but we may not be the first to apply it in this way. What we present here will suggest things to be done during other parts of the trial as well. These other applications will be touched on, but a complete treatment of those areas will be reserved for future articles on each of those specific areas. Suffice it to say that it is clear to the authors that these principles lend themselves to all of the other parts of the trial, particularly in voir dire and argument.

At the end of a trial complicated by many factors, it is difficult to say that there was any one part of the preparation and delivery that made the greatest difference. All we know is that the principles, as applied in this article, work. They provide the greatest possibility of placing the jury in the victim's seat during the accident, in the hospital bed during recovery, and alone with the pain and the major life changes long after the accident has become a recurrent nightmare.

### WHAT IS NEURO-LINGUISTIC PROGRAMMING?

*Neuro:* refers to the brain; in this context, to a model of how the brain receives, stores, creates, connects, and remembers information.

*Linguistic:* refers to both verbal and nonverbal elements of communication.

*Programming:* refers to the recognition and control of human patterns of thought, communication, and behavior.

In general, neuro-linguistic programming presumes that an appropriate model for human

*Table 1. Sensory Submodalities*

Visual	Auditory	Kinesthetic	Olfactory	Gustatory
brightness	sounds	internal	sweet	pungent
distance	words	external	sour	intensity
size	location	location	salty	location
shape	pitch	weight	bitter	aromatic
location	tone	duration	specific taste	specific smell
direction	voice (who?)	size		
contrast	distance	pressure		
clarity	rhythm	proprioceptive		
color	timbre	shape		
focus	internal	temperature		
slide	external	movement		
motion picture	direction	intensity		
movement/speed	tempo	moisture		
associated	volume	texture		
disassociated	duration	frequency		
depth 3D/flat	other?	tactile		
frame/no frame		rhythm		
other?		balance		
		emotion		
		other?		

thought should be sensory based (i.e., based upon the five senses). Each thought stored in the brain contains visual, auditory, kinesthetic, olfactory, and gustatory (in English, seeing, hearing, feeling, smelling, and tasting) components.

Each of the senses is made up of *submodalities* that define and determine the quality of the information in that sense. Visual submodalities include brightness, size, shape, color, and location. Auditory submodalities include volume, pitch, tone, etc. For our discussion, one of the most important visual submodalities is *associated versus disassociated*. In an *associated* image, the thinker is seeing the image as if he or she were present in the action. In a *disassociated* image, the thinker is looking at the image from an outside perspective. For a more complete list of all the sensory submodalities, see Table 1 at left.

Neuro-linguistic programming is a communication model in which the programmer, therapist, practitioner, or attorney uses a system of reframing, or restructuring, information so that the listener, or the reader, can absorb these thoughts in a new way. For our purposes, this means that whoever hears this reworked information is more likely to understand it from the point of view that we choose. If we choose wisely, it will be a point of view that gives the listener the kinesthetic response (in other words, the feelings) that will guide his or her judgment in our favor.

In general, ideas, images, and thoughts can be either remembered or constructed. When constructed, they can come either from direct experience or from information which is supplied by someone else. As we all know, it is not possible to give anyone truly complete information. From a practical point of view, all information is incomplete. So when information comes from someone else, it comes in pictures and sounds that are constructed into a thought along with the feelings generated by those components. The natural response of a listener is to fill in the missing information based on personal experience, beliefs, and values. The more complicated the message, the harder the listener or observer attempts to fill in the missing components. As a result, once the hard work of filling in the missing parts has been satisfactorily completed, the listener or observer will nearly always fight hard to keep his or her conclusions. It is an important part of our job to have the jurors draw the conclusion we support *before* they get the chance to construct one we have to fight to get them to give up. This has implications for

opening statements and voir dire which will not be covered here.

## Rapport

It is also important to consider and choreograph, if possible, the body language of both the advocate and the witness in order to establish rapport between the jury, the advocate, and the witness.

Rapport is a feeling of sharing something in common. It has been discovered that this sharing process can occur in many different ways and on many different levels. At best, when two people are in rapport physiologically, they are matching in many ways, including body language, voice tone and quality, breathing, posture, and even more subtle characteristics like heart rate and other metabolic functions. Two people in a heightened state of rapport will make similar images in their minds, hear similar internal messages, and experience similar feelings. They will share the same opinions and judgments. When two people in rapport are viewed from the outside by an interested third party observer over time, a natural response for that third party observer is to join in the rapport. Most of us "want to belong." If the two people in rapport are the advocate and the witness, then the third party is the juror.

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Everyone knows how it feels to have really good rapport established with someone else. But, like a lot of other naturally occurring experiences, most of us don't consciously understand the process we go through to establish rapport with another person. NLP has shown that there definitely is a system for this as well. Not all clients lend themselves to this approach. More importantly, training in the rudiments of creating rapport with your client can help to achieve the desired result without the appearance of insincerity. This is more than a couple of quick techniques. It takes practice and training.

In order to become trained in systematically developing rapport, it is necessary to learn to spot very subtle cues that people give regarding their state and their feelings. These are in addition to the standard cues in the popular literature on body language. They include eye movement, representational

systems in language, and very subtle postural and physiological cues. The only system we know that provides this training is NLP training.

We will talk about a few of the surface techniques to establish rapport. These will help, but be warned: There is much more to know. It should be pointed out here that establishing rapport is also very useful in voir dire and in judge trials.

The obvious way to establish rapport with your client is to get to know him or her well and to establish rapport over several visits and over time. Upon presentation in court, you should be able to match body posture, cadence and voice quality in speech, and kinesthetic response to the verbal information coming from the witness. Less obvious is the use of representational systems in language. A representational system in language is the use of language which reveals a particular sensory mode. This is found in the predicates of language: verbs, adverbs, and adjectives. Examples would be the words *view, see, picture, observe, find* or *show*, which clearly indicate visual processing. Examples of auditory processing words would be *listen, hear, ask, order, call*, and so forth. Examples of kinesthetic

processing would be *catch, grasp, get hold of, feel, handle, touch*, etc. (For a longer but not complete list, see Table 2 below.) To establish rapport with another person, it is useful to *match* the representational system of the other person. When the other person is using visual predicates, you use visual predicates. This matching process is called *pacing*.

Once you establish rapport with another person using any of these techniques, it is not necessary to continue to pace him or her (i.e., follow his or her lead). In fact, it becomes possible to take the lead. What makes this possible is the fact that once rapport is established, people tend to imagine the same things and are more willing to see them in the same light and to trust.

### Anchoring

An *anchor* is a stimulus that evokes a specific set of thoughts and feelings. A smell which *suddenly* takes you back to your childhood with a host of thoughts and feelings is an olfactory *anchor*. For our purposes as advocates, we emphasize the auditory or visual anchors. We all know that a well-explained graphic exhibit (a visual stimulus)

Table 2. Representational Predicates

Visual	Auditory	Kinesthetic	Unspecified
see	listen	bite	seem
view	hear	burst	be
observe	overhear	bend	aware
witness	sound	bind	have
sight	quiet	break	think
spot	order	fall	believe
look	ask	catch	allow
glimpse	beg	fight	become
glance	ring	go	be able
peer	chime	grasp	have to
peek	yell	grab	must
peep	scream	hold	want
survey	sing	hit	shall
eye	speak	climb	know
examine	talk	run	do
inspect	shout	struggle	make
gaze	whisper	throw	understand
stare	groan	walk	create
glare	moan	jump	contemplate
pale	whine	push	ponder
find	buzz	feel	desire
read	call	grip	appreciate
show	click	handle	sense

can create this effect in the mind of a juror. The same can be done with a word or a phrase (an auditory anchor).

Anchoring is already employed by great lawyers and is known as the “theme,” the “one-sentence telegram,” etc. Use of the theme allows the lawyer, in a few words, to recall to the jury the argument represented by the theme. This can also be accomplished using the NLP technique of placing an auditory anchor, usually a *single word*, which not only brings to mind the logic of the argument represented, but the kinesthetic feelings and the *associated* visual picture. (Note: *Associated* in this context is referring to the NLP definitions of the word as explained above, i.e., the point of view from inside the event in question.) The faster the anchor is “fired,” the more likely it will have effect. Therefore, a well-timed word or phrase is more manageable than an entire sentence.

## APPLICATION

We have explained the (re)framing tools of rapport, anchoring, and representational systems/submodalities. Now, how do we use these tools to control, as much as possible, how jurors absorb the pieces of information so that their visual, auditory, and even olfactory experience leads them to the kinesthetic response we need them to have? We know that it is the pictures, sounds, smells, and tastes that will drive the feelings of the jurors.

In order for the jury to be able to construct “the picture” that the advocate desires, the advocate must know, as well as can be known, what picture he or she wants the jury to see. Again, that sounds simple. You would almost always want jurors to see the incident from a vantage point in which the plaintiff was not at fault. You will invariably want the jury to feel that the plaintiff had suffered great pain as the result of *someone else’s* negligence. Unfortunately, those descriptions are *conclusory*. No pictures have been drawn for the jury.

## WHAT TO DO

### Step One

The witness must tell the story to the jury in a way that *eliminates all conclusory statements*. Conclusory statements would be, “It was not my fault,” or, “There was nothing I could do.” These don’t tell the jurors what to see or hear in their

minds. Compare the phrase, “I was struck from behind,” with the phrase, “I saw headlights coming at me in my rear-view mirror.” The first statement is conclusory; the second statement forces the juror to create an image. The only way for the juror to mentally understand the statement is to imagine headlights coming at him or her from the rear. The witness must use those words if we know that that image is part of what we need to create.

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Remember also that people generally give greater weight to the things they have thought of themselves than to what has been given to them by someone else. We shouldn’t try to give the jury an entire thought all at once. It is better to give them bite-sized chunks—to provide the building blocks for the conclusion—rather than to state the conclusion. By providing the necessary ingredients and leaving each juror to construct for himself or herself the complete thought, the probability that the conclusion drawn will closely match the image desired is enhanced.

By having the jurors create the sights and sounds of the accident in their own minds and determine for themselves that this case involves being hit violently and suddenly from the rear, rather than just hearing the plaintiff say so, the jury will give much greater weight to that conclusion. In addition, if that thought is actually experienced in an associated image, the emotions that go along with that thought will naturally follow. At that point you have crossed the bridge into the no man’s land of putting the jury in exactly the position of the plaintiff.

Done properly, the jurors are forced to accept the thoughts in the form they are presented: *associated*. Therefore, they will experience what the plaintiff experienced, to the extent that that is possible. This works far better than if you had simply asked them to imagine that the accident happened to them—which is not permitted. The better you provide building blocks, the more the jurors are going to feel that they are the ones who experienced the accident, who are cringing, who are feeling the fear and pain, and who continue to feel the pain when they are reminded to recreate that image by a well-placed anchor.

### Step Two

When preparing your client for trial, ask him or her for the story broken down into its sensory components. Have the client go back mentally to the time of the accident or to the surgery and remember the pictures in his or her mind. Then have the client describe those pictures to you in detail. Probe the client for visual information. Go through the submodalities (brightness, color, etc.). Visit the site and take pictures at the right time of day, at the right time of year—help jog the client's memory.

Then do the same thing for the auditory information. Ask the client to remember everything he or she heard. Go through the submodalities (pitch, volume, etc.) to elicit complete coverage of that sense. Do the same for the kinesthetic, olfactory, and gustatory components. You will come out with things like, "I felt a wet sticky liquid on my shirt," "I tasted blood," "I smelled gasoline," and "I heard a loud crash and felt a shooting pain on the left side of my neck."

Think of how important the smell of gasoline might be to the mental picture created by the jury in a case where there was no fire or explosion—but your client could not readily leave the vehicle! What image would you create when you heard the words "I smelled gasoline" in this set of facts? Is it really necessary for the plaintiff to say he was in deadly fear?

Often there are no smells remembered, but you must explore the possibility. Maybe the smell was only of cold, crisp air, but it helps paint a realistic and complete thought—a thought constructed with effort by the juror that he or she will fight to keep once it has all been put in place in his or her brain.

When you elicit information from your client at trial, use consistent representational verbs, adverbs, and adjectives in your questions. For example, when asking about the visual, use visual verbs, adverbs, and adjectives.

### Step Three

As discussed in Step One, it is important that the information be presented in small pieces. This reduces the possibility that an ingredient in the

picture will be missed while previous information is being incorporated into the mental image. It also allows for the kinesthetic response to keep up with the telling of the tale.

### Step Four

Set an auditory anchor—a word that brings the whole thing back to mind. It can be a word which describes a visual image (e.g., *headlights*), a sound (e.g., *screech*), a taste (e.g., *bitterness*), a smell (e.g., *gasoline*), or a feeling (e.g., *chill*).

Set a visual anchor with an exhibit or a gesture (i.e., body language), or set an anchor which provides a simultaneous word and gesture.

An anchor can be set by the witness: "Every time I see a set of *headlights* coming at me in my rear-view mirror, I taste blood, get a cold chill, and freeze. It takes me back to the feelings I had when the accident happened. I wonder, will it hit me again?"

It can also be set by the questioner: "Try to remember when you were first at the *hospital*. What did you see? At the *hospital*, what did you hear? At the *hospital*, . . ." etc. Repeating the anchor with the questions tags the thought pictures to the word *hospital*.

At the time of your closing argument, you can cause the jury to again re-experience what happened by using the anchor or a series of anchors. This is especially effective in jurisdictions where the time of argument is limited. It allows for pregnant pauses. This technique is coupled with the use of the exact (prepared) testimony of your client. That repetition, and the suggestion that jurors should remember the images with the feelings that they created earlier, will make it more likely that they will respond to your request—kinesthetically—when they evaluate your case.

We will rarely be able to use all of the techniques described in this article on a single witness. To make an effective presentation, the advocate must, during the preparation of each witness, be aware of the components of an effective presentation. This will allow him or her to prepare each witness to paint the most complete picture the available facts, and the intelligence of the witness, will allow.