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WHAT'S IN A NAME? THE IMPLICATIONS OF STRATEGIC NAMING CHOICES IN LEGAL ADVOCACY

*Kristin Gerdy Kyle**

*Descriptions. Names. Labels. Seemingly innocent choices that lawyers make while writing every document and arguing every motion. Do we think about the power of those choices? Does the collective wisdom and historical practice that we learn in law school or practice lead us to make the best choices for our clients when it comes to decisions about what to “call people”? To quote Shakespeare, does “[t]hat which we call a rose, by any other [name] [really] smell as sweet”?*¹ *This Article aims to inform and enrich our persuasive work as advocates by building on theory from psycholinguistics and the linguistic field of socio-onomastics, as well as their insights into the use of names and descriptions in human culture and communication. After summarizing and illustrating the traditional advice given by legal writing experts and professors about the use of names and descriptions, the author explains psycholinguistic findings related to name use. She then introduces the relevant theory and application from other relevant subfields of linguistics, explains why such naming practices matter, and analyzes how they can help lawyers make more informed and strategic choices when writing and speaking about clients and other people. The author concludes with a series of overarching guidelines for the use of naming/descriptive principles in law practice.*

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1. WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 2, sc. 2, l. 43-44.

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I. INTRODUCTION

In October 2021, during the criminal trial of Kyle Rittenhouse, the teenager who shot and killed two protestors in Kenosha, Wisconsin, the world stopped for at least a moment to consider the power of words. The trial judge made what was, for some, a strange ruling: prosecutors could not refer to the people Rittenhouse shot as “victims,” while defense attorneys could continue to refer to them as “arsonists” and “looters.”² With the world watching, these lawyers argued about the power of

2. Becky Sullivan, *Prosecutors Cannot Call Those Shot by Kyle Rittenhouse “Victims.” But “Looters” is OK*, NPR (Oct. 26, 2021, 7:02 PM), <https://www.npr.org/2021/10/26/1049458617/kyle-rittenhouse-victims-arsonists-looters-judge-ruled>.

language, the power of words, and, ultimately, the names and descriptions used in legal proceedings. The lawyers also debated the impact those labels have on those who make decisions. In the Rittenhouse case, the judge decided that “[t]he word ‘victim’³ [was] a loaded, loaded word.”⁴ As such, he asked that the prosecution use “complaining witness” or “decedent” instead.⁵ Yet, despite the prosecution’s argument that “arsonist,” “looter,” and “rioter” were also “loaded,” the judge ruled that the descriptions were allowed as long as they were accurate—meaning that the people described took part in those activities.⁶ But with all of this discussion, no one mentioned, at least publicly, why the lawyers were failing to use what seemed like the most obvious reference for these people—their names.

Descriptions. Names. Labels. Seemingly innocent choices that lawyers make while writing every document and arguing every motion. Do we think about the power of those choices? Does the collective wisdom and historical practice that we learn in law school or practice lead us to make the best choices for our clients when it comes to decisions about what to “call people”? To quote Shakespeare again, does “that which we call a rose, by any other [name] [really] smell as sweet”?⁷

How can theory from psycholinguistics and the linguistic field of socio-onomastics⁸ inform and enrich our persuasive work as advocates? This Article explores these questions and others as it seeks to answer the age-old question, “What’s in a name?”

I had been pondering this question in one form or another for a long time, but when the news of the Rittenhouse trial judge’s word-choice ruling came out in October 2021, the disparate pieces suddenly coalesced into a coherent idea. Coincidentally, the ruling came down around the time that I was teaching my first-year

3. For another view of the word “victim,” see Jamie R. Abrams & Amanda Potts, *The Language of Harm: What the Nassar Victim Impact Statements Reveal About Abuse and Accountability*, 82 U. PITT. L. REV. 71, 73 n.4 (2020). Describing the conundrum of what to call the gymnasts abused by elite doctor Larry Nassar, the authors wrote, “It was a complex matter for us to select the appropriate language usage in referring to those who testified in the Nassar case. We have elected to use the word ‘victim’ here because that is the most legally accurate to the analysis of victim impact statements. While in some instances, the term ‘survivor’ might be more appropriate to subjectively articulate the lived experiences of these witnesses, that was not the term used in the Nassar case. Our study here is focused on the use of language in these victim impact statements, so we remain authentic to the use of the word ‘victim’ in this Article. These women are surely survivors as well. We do not use ‘victim’ to define them by their victimhood, but rather to maintain authenticity to the study. Where possible, identifying names are used instead.” *Id.*

4. Sullivan, *supra* note 2.

5. *Id.*

6. *Id.*

7. SHAKESPEARE, *supra* note 1.

8. Socio-onomastics is the subfield in linguistics that studies names, their use, and social perceptions of them. See discussion *infra* Section IV.

students about case descriptions and applications in their 1L memos, and our discussion turned to the descriptions we choose as we label actors in cases and as we write about our clients. Suddenly the questions started leaping into my mind almost faster than I could process them. I knew there had to be neurologic and psycholinguistic reasons for the advice we give and have been given about using descriptive labels rather than procedural designations or names when writing about cases. But at the same time, I knew there were also psycho-social dimensions to the descriptions we choose when we refer to our clients, our adversaries, and others when we speak and write persuasively. Moreover, what influences us when we choose to use names rather than descriptions? So, I began to dig. What I discovered is that an understanding of psycholinguistics and a new area I had not then heard of, socio-onomastics, can help attorneys make more informed and persuasive decisions when naming. What I found was that science largely supports conventional teaching about names with a few surprising exceptions. Using this new lens, we can develop informed guidelines for the use of referential principles rather than merely following intuition or anecdotal advice. Thus, when we, as legal writing professors or supervising attorneys, suggest that junior lawyers “describe” rather than “name,” or name rather than describe, we do so with solid grounding rather than with mere tradition to back us up.

In Section II, I summarize the current advice from legal experts on referential choices in legal practice. In Section III, I summarize what I’ve learned from neuroscience and psycholinguistics about our ability to recall proper names and descriptions, including, most interestingly, the “Baker-baker paradox.” In Section IV, I dive into the socio-onomastic theories that inform referential choice. Then, in Section V, using the information gleaned from psycholinguistics and socio-onomastics, I present a set of guidelines we can use to make intentional decisions about referential choice in legal practice. In Section VI, I conclude.

II. CURRENT VIEWS ON NAMES AND DESCRIPTIONS: ADVICE, INSTRUCTION, AND OBSERVATIONS FROM THE EXPERTS

Having set the stage, let’s now delve into the current expert opinions on the use of names and descriptions in legal writing. Language is “a system of choices from which to choose.”⁹ The words we choose to describe what we think, see, or experience largely define who we are and what others think of us. As lawyers, the words we use are our stock in trade. And as such, we take great care in considering those words—or at least we should. When asked why lawyers should “be fastidious with their use of language,” Chief Justice John G. Roberts Jr. replied,

9. Krisda Chaemsaitong, *Naming as Doing: Identities, Positioning, and Ideologies in Capital Trials*, 57 POZNAŃ STUD. IN CONTEMP. LINGUISTICS 195, 216 (2021).

Language is the central tool of our trade. You know, when we're looking at a statute, trying to figure out what it means, we're relying on the language. When we're construing the Constitution, we're looking at words. Those are the building blocks of the law. And so if we're not fastidious, as you put it, with language, it dilutes the effectiveness and clarity of the law. And so I think it's vitally important — whether it's a lawyer arguing a case and trying to explain his position, whether it's a legislator writing a law, whether it's a judge trying to construe it. At every stage, the more careful they are with their language, I think, the better job they're going to do in capturing in those words exactly what they want the law to do; in persuading a judge how to interpret it; and as a judge, in giving a good, clear explanation of what the law is.¹⁰

Writing to the Arizona Bar, Professor Susie Salmon observed that whether we are preparing an oral argument or a brief, “[g]reat lawyers craft every sentence—written or spoken—with care . . . select[ing] each word . . . thoughtfully, considering every nuance and connotation.”¹¹ But as we think about such words, do we look at all words the same? Or do some words simply fall into categories that we process almost as placeholders without thinking strategically about their power or the choices we could make? One such category that is often overlooked is the use of names, another the use of definite descriptions,¹² and yet another the use of indefinite descriptions.¹³

This Section looks at some specific advice and instructions judges, academics, and other legal writing professionals have given about referential choice. I start by summarizing the overall perspectives and practices advocated by leading experts. Next, I examine their guidelines for using names and descriptions when referencing the parties to ongoing litigation or transactions. I conclude this Section with their guidance on referencing parties in precedent.

A. Perspectives and Practices: Differing Views from the Experts

Writing on the importance of “[n]ame choices in legal writing,” Professor Amy Bitterman argues that such choices “can be as significant as nomenclature in

10. Bryan A. Garner, *Chief Justice John G. Roberts Jr.*, 13 SCRIBES J. LEGAL WRITING 5, 5 (2010).

11. Susie Salmon, *Use Your Words*, ARIZ. ATT'Y MAG., Jan. 2017, at 12.

12. In semantics, a “definite description” is a description preceded by the article “the,” indicating that there is one and only one entity with the given description. *See generally* Andrée Bazzoni, *Names in Philosophy*, in THE CAMBRIDGE HANDBOOK OF THE PHILOSOPHY OF LANGUAGE, 249 (Piotr. Stalmaszczyk Ed., 2021).

13. An “indefinite description” is a description preceded by the article “a,” indicating that there is at least one entity with the given description. *See generally id.*

literature.”¹⁴ The result of such choices can highlight a legal argument or lead the audience to create greater empathy.¹⁵ Legal writing expert Bryan Garner says that the specific choices we make about how to refer to people in legal documents, be they the parties themselves, other actors in the case, or those involved in the cases we use to illustrate and argue our case, are as fundamental to our success as a golfer’s grip to their swing.¹⁶ And just like many amateur golfers look to the course pro (or more seasoned friends, or even self-help tips on the internet) to help improve their grip, lawyers look to others—experts, mentors, or documents they read every day—to improve their writing. And, just like golf grips, the advice is anything but consistent. Professors Mary Barnard Ray and Jill J. Ramsfield capture the tension between the two schools of thought: “The first school holds that names are appropriate because they focus the reader on the specific outcome of the case being analyzed. The second school prefers using more general terms because the reader can get a concept of the legal question being analyzed”¹⁷

Despite the seeming inconsistency, the “experts” do come together at times, specifically on how to reference the parties in the current case and how to refer to parties in precedent cases.

*B. Guidelines for Parties in Ongoing Cases*¹⁸

One fairly consistent guideline given by judges, lawyers, and legal writing professionals alike refers to how parties in the current case should be referenced in documents presented to the court. The Honorable Robert E. Bacharach of the Tenth Circuit summarizes the oft-repeated advice as follows:

14. Amy Bitterman, *What’s in a Name: The Power of Names in Literature and Legal Writing*, 33 SECOND DRAFT 15, 16 (2020) (citing KAMALA BRIDGES & WAYNE SCHIESS, *WRITING FOR LITIGATION* 38 (1st ed. 2011); RUTH ANNE ROBBINS ET AL., *YOUR CLIENT’S STORY* 245-46 (1st ed. 2013)).

15. *Id.*

16. Bryan A. Garner, *Are Legalistic Labels a Bad Habit or a Necessity?*, ABA (Apr. 1, 2015, 6:06 AM), https://www.abajournal.com/magazine/article/are_legalistic_labels_a_bad_habit_or_a_necessity.

17. MARY BARNARD RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* 294 (6th ed. 2018).

18. Although beyond the scope of this article, examining what criminal defendants choose to call themselves can shed light on the linguistic patterns of naming. See generally Amanda Potts & Siobhan Weare, *Mother, Monster, Mrs. I: A Critical Evaluation of Gendered Naming Strategies in English Sentencing Remarks of Women Who Kill*, 31 INT’L J. SEMIOTICS L. 21 (2018), for a linguistic analysis on such choices specifically related to the English sentencing remarks of women convicted of homicide between 2012 and 2015. Another area worthy of consideration but outside the scope of this article is how victims describe the defendant in criminal cases. See Abrams & Potts, *supra* note 3, for a comprehensive analysis of victim impact statements in the trials of elite gymnastics doctor Larry Nassar.

Many attorneys refer to parties by their role in the litigation: “plaintiff,” “defendant,” “petitioner,” “respondent,” “appellant,” or “appellee.” Sometimes this practice is useful. For example, if there are many parties joined as appellants, referring to all of them by name may tire both you and the reader. *But wherever feasible, refer to parties by their names rather than their litigation roles. Names are easier for the reader to remember¹⁹ and less likely to create confusion.* Some advocates use names for their clients but not for their adversaries, hoping to avoid personalizing them in the judge’s eyes. Resist this practice. The judge wants only to remember who the parties are. Helping the judge remember the parties does not personalize them, but it does help the judge understand what you are trying to communicate. Isn’t that what you want?²⁰

In his oft-referenced book on appellate brief writing, *The Winning Brief*, Bryan Garner gives advice that lines up closely with Judge Bacharach.²¹ He advises lawyers to “[p]opulate your sentences . . . [with] real names (not procedural labels)”²²

The advice to steer clear of procedural labels is ubiquitous. From judges to writing professors, everyone seems to agree that the one way lawyers should *not* refer to their own clients is by their status in the case.²³ Such generic, lifeless labels “drain all the humanity out of the case and . . . make[] the whole story harder for anyone to follow—even lawyers and judges who have been [reading court documents] for years.”²⁴

While advice about party name references is generally uniform, what is not so uniform is the purpose behind the use of (or, in some cases, the decision not to use) a party’s name. One major reason given for using names is the supposed ease of

19. With no disrespect to Judge Bacharach, psycholinguistic research disproves this theory. See discussion *infra* Section III.

20. ROBERT E. BACHARACH, *LEGAL WRITING: A JUDGE’S PERSPECTIVE ON THE SCIENCE AND RHETORIC OF THE WRITTEN WORD* 116 (2020) (emphasis added).

21. See BRYAN A. GARNER, *THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL AND APPELLATE COURTS* 243 (3d ed. 2014).

22. *Id.* Garner does give three exceptions to the rule that lawyers should refer to their client by name: “(1) [i]f your client is Adolf Hitler; (2) if you’re in a class action and a class noun is necessary; (3) if your criminal-defendant client’s name is Mersky and that also happens to be the judge’s name. In those situations, you’re executing a left-handed shot with an upside-down, right-handed club.” Garner, *supra* note 16.

23. See, e.g., Joe R. Greenhill, *Advocacy in the Texas Supreme Court*, 44 TEX. BAR J. 624, 628 (1981) (“It is easier for us, or at least me, to remember the parties by *name* I have difficulty in remembering who is petitioner, respondent, appellant, relator, and the like.”).

24. James W. McElhane, *Writing to the Ear: Clarity and Simplicity Help Readers to ‘Hear’ What You Have to Say*, 81 ABA J. 74, 77 (1995).

remembering them and the likelihood of avoiding potential confusion.²⁵ Another reason focuses on the ability to better “humanize” one’s client by a named reference while dehumanizing one’s adversary through generic references like procedural designation.²⁶ In her advice about writing an appellate brief’s facts section, Professor Linda Edwards tells lawyers to “[h]umanize your client.”²⁷ Edwards notes that the “most important way” to humanize the client is “by telling the story from the client’s perspective,” focusing on the theory of the case, and “[i]nclud[ing], where possible, a description of the client’s feelings, responses, and motivations.”²⁸ She reminds us that even corporate clients are, in the end, people and can be humanized and portrayed in a “sympathetic light by setting out the context for their actions.”²⁹ In a similar vein, Prof. Diana Donahoe gives this advice when referring to the facts section of an appellate brief: “Choose names and titles carefully . . . personalize your client For example, refer to your client as Mr. Jones or Michael Jones.”³⁰

Besides personalizing the parties, the use of titles and other descriptions combined with names can add depth. As Professor Amy Bitterman noted, “In both life and literature, titles are used to convey power, status[,] and/or expertise.”³¹ Such titles can be used to bolster one’s own client’s status or to “emphasize an adversary’s status to underscore a client’s vulnerability.”³² For example, when representing the victim in a police brutality case, counsel “might choose to use a defendant’s title to underscore the power afforded law enforcement officers in stop and search and/or arrest scenarios.”³³ Likewise, using a client’s honorifics can “paint a positive picture of a hard worker and/or achiever.”³⁴

As for referencing opposing parties, both Edwards and Donahoe advise that lawyers should “[g]enerally, . . . not humanize opposing parties.”³⁵ If isn’t necessary “to use the names of opposing individuals, consider using generic descriptions instead (‘the officer,’ ‘the insurance agent,’ ‘the electrician’).”³⁶ According to

25. See BACHARACH, *supra* note 20, at 116.

26. Bitterman, *supra* note 14, at 16.

27. LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* 228 (4th ed. 2015).

28. *Id.*

29. *Id.*

30. DIANA R. DONAHOE, *EXPERIENTIAL LEGAL WRITING: ANALYSIS, PROCESS, & DOCUMENTS* 171 (2011) (emphasis omitted).

31. Bitterman, *supra* note 14, at 18.

32. *Id.*

33. *Id.* (citing Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305, 327 (2010) (noting how descriptive details can be used to evoke emotional responses, such as surprise or anger, in a reader)).

34. *Id.*

35. EDWARDS, *supra* note 27, at 228.

36. *Id.*

Edwards, these “[g]eneric descriptions can be especially helpful where the description has unsympathetic connotations, such as ‘the finance company,’ ‘the insurance company,’ or ‘the corporation.’”³⁷ Donahoe advises that lawyers be “more generic with names of the opposing party . . . [and] [r]efer to the other party with more generic terms such as the employer, the government, or the defendant.”³⁸

Bryan Garner, however, disagrees with this advice, urging lawyers to treat both parties consistently and to avoid the temptation to draw on the court’s sympathy with attempts at dehumanizing the other side:

[D]on’t try to personalize your client and dehumanize your adversaries by using the real name for the client and the procedural label for the adversaries. Instead, use real names for both parties and let your arguments do the talking. And if your goal is to cast a negative light on your opponent, you’ll have more success by using names anyway . . . bad facts don’t stick to neutral labels such as *Plaintiff* the way they do to real names.³⁹

Ultimately, the key is to remain consistent and to choose a naming format that is “most appropriate to the setting, such as *Mr. Jones*, *Theodore Jones*, or *Ted*, depending upon your familiarity with the party and the formality of the document you are writing.”⁴⁰ Also, “[c]hoose the form of name most favorable to your client.”⁴¹ For example, use the titular form, e.g., *Mr.*, *Mrs.*, *Ms.*, if your goal is to dignify your client, but in other contexts, you may be better off using only first names to avoid confusion that occurs when multiple parties share a surname.⁴²

Despite the general uniformity in favor of names, things change a bit when moving into the criminal courtroom.⁴³ Prosecutors often view the use of names as a means of “humanizing” the criminal defendant—something they would rather not do—and public defenders often agree because their clients are often unsympathetic.⁴⁴ Garner interviewed fifteen judges and lawyers about this issue and found mixed results. Jonathan Rosenberg, a former U.S. Attorney, stated,

As a former AUSA, for example, I can sympathize with a prosecutor’s desire to dehumanize those from whom he’s trying to strip liberties. But even a prosecutor will sometimes want to sprinkle the defendant’s name in

37. *Id.* at 228-29.

38. DONAHOE, *supra* note 30, at 171.

39. GARNER, *supra* note 21, at 244.

40. RAY & RAMSFIELD, *supra* note 17, at 294 (emphasis in original).

41. *Id.*

42. *Id.*

43. *See* GARNER, *supra* note 21, at 244-45.

44. *Id.* at 245.

certain contexts, such as when he's writing about a repeat offender, someone accused of particularly heinous crimes, or someone with a notorious reputation. And by the same token, there may be circumstances where I wouldn't want to bind myself to using a civil-litigation adversary's name, such as where that adversary is favorably viewed and is litigating in its home court.⁴⁵

Further, preferring names rather than legal roles is not limited to litigation documents.⁴⁶ Transactional documents are clearer, and the parties to these documents feel a stronger connection when such documents include their "actual names . . . instead of [merely] referencing . . . their legal roles . . . [and] 'their current obligations and future responsibilities.'"⁴⁷

So, the bottom-line advice from the experts when it comes to the parties in an ongoing case is to choose names augmented by titles or other descriptors when it helps to humanize your client but to choose mere descriptors if your goal is to dehumanize or impersonalize the other side.⁴⁸

C. *Guidelines for Referencing People in Precedent Cases*

Unlike the inconsistent advice about party names, the advice itself for referencing people in precedent cases is fairly consistent.⁴⁹ The typical advice, be it from legal writing professors, supervising lawyers, or judges, is to focus on material facts and reasoning when illustrating precedent cases and to present that information concisely.⁵⁰ Such information must be condensed so that the lawyer can emphasize the most critical facts and show the reader why those facts were important to the decision.⁵¹ As a result, the lawyer must decide whether the names of the parties in the cases matter or if what really matters is the party's status as, for example, a teacher, a student, or a parent.⁵² And, more often than not, names just simply aren't important.

But how does all of this advice from the experts function with real readers and real listeners? How do our brains process this information? Are names really easier

45. Garner, *supra* note 16.

46. See generally Bitterman, *supra* note 14.

47. Bitterman, *supra* note 14, at 16 (quoting Susan M. Chesler & Karen J. Sneddon, *Telling Tales: The Transactional Lawyer as Storyteller*, 15 LEGAL COMM'N & RHETORIC: 119, 128-29 (2018)).

48. See DONAHOE, *supra* note 30, at 171.

49. See TESSA L. DYSART ET AL., WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT 92 (3d ed. 2017).

50. See, e.g., *id.*

51. *Id.*

52. *Id.*

to remember as Judge Bacharach contends? While expert opinions provide practical advice, understanding the psycholinguistic underpinnings offers a deeper insight into why these strategies are effective or why they are not. In the next Section, I look at the psycholinguistic research to find some answers.

III. PSYCHOLINGUISTICS: NEUROLOGICAL INSIGHTS INTO READER RECALL OF PROPER NAMES

“Names are easier for the reader to remember and less likely to create confusion,”⁵³ so says Judge Bacharach.⁵⁴ But is it true? Does psycholinguistic research support that claim? In this Section, I delve into the cognitive and neuroanatomical challenges of recalling proper names.

Psycholinguistics generally divides research related to names into three main areas: 1) studies on how names are processed in the brain; 2) how naming is connected to memory; and 3) the specific areas in the brain responsible for recognizing names. What's notable is that when researchers look at the psychological and neurological aspects of names, they find that names are processed quite differently from other parts of language.⁵⁵

Over the past few decades, psycholinguistic and neuroscience research has revealed that proper names and other nouns “behave differently in the brain . . .”⁵⁶ Through empirical studies and functional imaging, neuroscientists have been able to prove what has been long suspected: our brains simply handle names differently than other pieces of information.⁵⁷

In this Section, I will explain the psycholinguistic theory related to how our brains process names and how that differs from how we process other words—particularly common nouns. Next, I will describe the research that shows how the different parts of the brain are involved in this process and explain why that matters. Then I will summarize the findings that explain why proper names are difficult to recall and introduce the Baker-baker Paradox.

53. BACHARACH, *supra* note 20, at 116 (emphasis added).

54. *Id.*

55. Carlo Semenza, *The Neuropsychology of Proper Names*, 24 MIND & LANGUAGE 347, 347 (2009).

56. *Id.*

57. *See, e.g., id.*

A. Psycholinguistic Theory

One reason why our brains process names differently from other words could be because unlike other nouns—known as “common nouns”⁵⁸—“proper names possess *reference*, but not (except perhaps in [a] minor role) *sense*...they may be considered ‘pure referring expressions’ . . . or . . . as loci of identifying ‘descriptions[.]’”⁵⁹ Proper names mainly point to specific individuals or groups, while common nouns refer to general categories.⁶⁰ Although the subject is hotly debated, neuropsychological research shows that the way we distinguish between common nouns and proper names depends on how many and what kinds of descriptions are linked to a name.⁶¹ Moreover, unlike common nouns, proper names refer to individual entities and do not depend much, if at all, on a set of attributes.⁶² Another way to put this is that proper names refer to specific instances (“tokens”), while common nouns refer to general types.⁶³ Perhaps the easiest way to think of it is that proper names are specific names of people, places, or things and are always capitalized in English. For example, Glenn, Philadelphia, and November are all proper names as they refer to specifics. On the other hand, common nouns are general names for types of people, places, or things and are not capitalized unless they’re at the beginning of a sentence. Here our examples could be husband, city, and month—unlike the specific proper names, these common nouns are merely types.

Brain researchers have looked into whether proper names and common nouns take different routes in the brain at any stage.⁶⁴ The real question was to determine whether these two categories of words, which serve different functions of categorization and individuation, are processed by neural systems that are at least partially independent.⁶⁵ It turns out that they are.⁶⁶

58. Linguists refer to common nouns as “common names.” See, e.g., Semenza, *supra* note 55, at 357. But, in order to avoid confusion, I will refer to these words as common nouns, because that’s really what they are.

59. *Id.* at 347 (citations omitted).

60. *Id.* at 347-48; see also Carlo Semenza, *Retrieval Pathways for Common and Proper Names*, 42 *CORTEX* 884, 884 (2006) [hereinafter *Retrieval Pathways*].

61. Semenza, *supra* note 55, at 347-48.

62. *Id.*

63. *Id.*

64. Serge Brédart, *The Cognitive Psychology and Neuroscience of Naming People*, 83 *NEUROSCIENCE & BIOBEHAVIORAL REV.* 145, 146 (2017).

65. *Id.*

66. *Id.* at 147-48.

Evidence of the different ways our brains process names is found in both empirical⁶⁷ and neuroimaging studies.⁶⁸ The exact brain locations responsible for the functional differences between proper names and common nouns are still not fully known.⁶⁹ Despite the clear differences, pinpointing where in the brain proper name production happens, compared to common nouns, is challenging.⁷⁰ At first, experts thought that the left anterior temporal areas, like the temporal pole, were key, especially for naming faces.⁷¹ But recent neuroimaging studies and reviews of individual cases suggest “much more cautious conclusions.”⁷²

The neurologic evidence, both in terms of function and anatomy, supports the view that the processing of proper and common nouns uses somewhat separate routes in the cognitive system and brain.⁷³ These separate routes present a clear case of what's called a “double dissociation”⁷⁴ in neuropsychology: some patients struggle specifically with proper names, while others have no trouble with them.⁷⁵ These findings can't be attributed to a general difficulty factor, especially when both patients are tested with the same materials.⁷⁶ What one patient finds difficult, the other finds easy, and vice versa.⁷⁷

In addition, neurological damage can cause a unique situation where only proper names are affected, leaving common nouns untouched and vice versa.⁷⁸ These two opposing conditions, which mirror each other, provide evidence that different mechanisms in the brain process proper names and common nouns.⁷⁹ Both conditions are uncommon and stand out from typical aphasia symptoms, where naming problems usually impact all semantic categories mostly equally.⁸⁰ The rarity of these syndromes indicates that proper names and common nouns generally use similar brain mechanisms.⁸¹ That said, the specific parts of these mechanisms

67. *Id.* at 148.

68. *Id.* at 147.

69. Semenza, *supra* note 55, at 365.

70. *Id.* at 360.

71. *Id.*

72. *Id.*

73. *Id.* at 363.

74. *Id.* A double dissociation occurs when two related processes are shown to function independent of one another. *See id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 350.

79. *Id.* at 350-51.

80. *Id.* at 351.

81. *Id.*

that handle each type can be separated only by very rare and particular types of brain damage.⁸²

Thus, lawyers should consider the impact on reader perception when we use proper names and common nouns—knowing that they are processed differently in our audience’s brains means they are different from each other, and it ultimately matters which we use. And a large part of why it matters has to do with recall.

B. Neuroanatomical Basis and Brain Activation During Recall

Neurolinguistic research indicates that while language is generally linked with the brain’s left hemisphere, the left hemisphere of the brain also helps access proper names lexically, owing to its predominant function in language processing.⁸³ Through this pathway, we can access the word’s meaning—its dictionary definition—as opposed to its contextual meaning, which might change depending on sentence structure and surrounding words. The left anterior temporal lobe (ATL) is important for retrieving the lexical knowledge needed for producing words.⁸⁴ Lexical knowledge for producing words encompasses understanding their meanings, grammatical roles, formation and modification, sounds, spelling, context-specific usage, and frequency of use.⁸⁵ Studies using functional magnetic resonance imaging (fMRI) and positron emission tomography (PET) show increased activation in the left ATL and other brain regions during the recall of familiar names and faces.⁸⁶

But both the right and left ATL are involved in recognizing and retrieving names.⁸⁷ While most language processes occur in the left brain, proper names activate the right hemisphere, possibly due to their personal significance.⁸⁸ Studies using event-related potentials⁸⁹ have discovered distinct processing for proper names compared to nouns and for one’s own name, unlike other proper names.⁹⁰ Damage

82. *Id.*

83. Shane Fresnoza et al., *Modulation of Proper Name Recall by Transcranial Direct Current Stimulation of the Anterior Temporal Lobes*, SCI. REP., Apr. 6, 2022, at 1, 3 (2022).

84. *Id.*

85. See generally Mehmet Kilic, *Vocabulary Knowledge as a Predictor of Performance in Writing and Speaking: A Case of Turkish EFL Learners*, 57 J. LANGUAGE TEACHING & LEARNING THAILAND 133 (2019).

86. See Fresnoza, *supra* note 83, at 2.

87. Alberto Pisoni et al., *The Role of the Left and Right Anterior Temporal Poles in People Naming and Recognition*, 440 NEUROSCIENCE 175, 175 (2020).

88. Laurel MacKenzie, *What’s in a Name? Teaching Linguistics Using Onomastic Data*, 94 LANGUAGE 293, 303-04 (2018).

89. “ERPs are very small voltages generated in the brain structures in response to specific events or stimuli.” Shrivani Sur & V.K. Sinha, *Event-Related Potential: An Overview*, 18 INDUST. PSYCH. J. 70, 70 (2009).

90. MacKenzie, *supra* note 88, at 303-04.

to the right ATL can cause a loss of familiarity and person-specific semantic information, while damage to the left ATL leads to difficulties in retrieving proper names.⁹¹

Research into the specific brain functions associated with proper name processing shows that proper names and common nouns are processed by different brain mechanisms.⁹² Even so, the involvement of these distinct neural pathways does not, by itself, fully explain the greater difficulty (a quantitative difference) in recalling proper names compared to common nouns.⁹³

As Semenza aptly stated,

Even given two independent roads, it could be the case that one may be large and paved while the other narrow, unpaved[,] or very steep, and thus more difficult to negotiate. The problem thus remains of whether the independent pathways used to process proper [names] and common [nouns] pose the same burden to the cognitive system.⁹⁴

Thus, the part of the brain responsible for name processing can't be the only reason that names are harder to remember. There must be more.

In the study of naming and how we process language, it's not only that names are processed in a different part of the brain, but names, being specific identifiers for particular things or people, including ourselves, interact with our speech understanding and speaking abilities differently than other types of words.⁹⁵ Studies have shown some unique behaviors related to names.⁹⁶

First, research has shown a phenomenon researchers call the "name letter effect."⁹⁷ We tend to like the letters that are in our own names more than other letters.⁹⁸ Second, we are more adept at recognizing our own names compared to other words.⁹⁹ This happens in different situations, including amid background noise.¹⁰⁰ Known as the "cocktail party phenomenon," we can pick out our names better than

91. Fresnoza et al., *supra* note 83, at 2.

92. See Brédart, *supra* note 64, at 147.

93. *Id.*

94. Semenza, *supra* note 55, at 363.

95. MacKenzie, *supra* note 88, at 303.

96. See generally *id.*

97. *Id.* at 303 (quoting Josef M. Nuttin, *Narcissism Beyond Gestalt and Awareness: The Name Letter Effect*, 15 EUR. J. SOC. PSYCH., 353 (1985) (internal quotation marks omitted)).

98. *Id.*

99. *Id.*

100. *Id.*

other words when they are spoken in a noisy environment.¹⁰¹ We're also better at spotting our names when they are written down.¹⁰² Third, name recognition happens very early in human development.¹⁰³ Babies as young as five months old can start to recognize their names.¹⁰⁴ Being able to recognize their own name is a crucial step for children in learning how to understand and segment words.¹⁰⁵

But just because we can recognize names, learn them early, and pick them out amid chaos, does not mean that names are easy to remember. They are not.

C. *Difficulty in Recalling Proper Names*

So why are people prone to forget proper names more easily than common nouns? Again, neuroscience can help lead us toward an answer. Proper names are thought to be more easily forgotten because they refer to unique, distinct entities, like specific people, places, buildings, or brands.¹⁰⁶ Unlike common nouns, which denote categories of objects and have meanings with synonyms, proper names are more individualized.¹⁰⁷ Various theories try to explain why learning and recalling names is challenging. Many theories focus on the semantics of proper names: their arbitrary nature, their function as purely referring items, and their lack of meaningful connections to other concepts or words.¹⁰⁸ Another theory suggests the difficulty is due to the large and phonologically diverse set of names, unlike more phonologically uniform words like those for occupations.¹⁰⁹ All these theories come together in what is known as the Baker-baker Paradox.¹¹⁰

1. The Baker-baker Paradox

In the late 1980s, several groups of linguists sought to explain why names were harder to recall than other nouns, descriptions, and, particularly, occupations.¹¹¹ They believed that simpler explanations for the difficulty of recalling names should

101. *Id.* (quoting Noelle Wood & Nelson Cowen, *The Cocktail Party Phenomenon Revisited: How Frequent are Attention Shifts to One's Name in an Irrelevant Audition Channel?*, 21 J. EXPERIMENTAL PSYCH.: LEARNING, MEMORY AND COGNITION 255 (1995)).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Semenza, *supra* note 55, at 347-49.

107. *Id.* at 348.

108. *See id.* at 347.

109. *Id.* at 364.

110. *Id.*

111. William Scott Terry, *On the Relative Difficulty in Recalling Names and Occupations*, 107 AM. J. PSYCH. 85, 85-86 (1994).

be considered.¹¹² Because they knew that names were already “less familiar, meaningful, [and] imageable” than occupation words that readily call to mind “detailed semantic memory representations,” these linguists sought to level the linguistic playing field by using “ambiguous words as names and occupations . . . [s]pecifically, homonyms that could” serve as both.¹¹³ In these studies, participants were shown pictures of faces labeled with name and occupation.¹¹⁴ Some faces had ambiguous names, while others had ambiguous occupations.¹¹⁵ What they found was that subjects learned the occupations better than the names.¹¹⁶ The findings, which have become known as the Baker-baker Paradox, revealed that it is harder to remember the name *Baker* than it is to remember that a person's occupation is *a baker*.¹¹⁷

After eliminating factors like “frequency, contextual clues, and imageability,” these linguists believed that the difficulty in remembering names should be understood using an earlier linguistic model.¹¹⁸ This model posits that recognizing a person involves a series of steps.¹¹⁹ First, perceptual information triggers a face recognition part, which then activates a part “where biographical and contextual information is stored.”¹²⁰ Names are kept separate and can be reached only through the biographical part.¹²¹ “There is no direct link from the face to the name.”¹²² So “biographical and context information . . . is . . . always accessed first and fastest, and the model predicts that” a person can't “remember a name without also” remembering information about the person's identity.¹²³ Supporting this, these linguists found very few cases where people remembered a name but couldn't “recall the occupation.”¹²⁴

112. *See id.*

113. *Id.* (internal quotation marks omitted). For example, Carpenter and carpenter, Baker and baker, Singer and singer, etc.

114. *Id.* at 86-87.

115. *Id.*

116. *Id.* at 87.

117. *Id.* at 86.

118. Gillian Cohen, *Why is it Difficult to Put Names to Faces?*, 81 BRIT. J. PSYCH. 287, 288 (1990).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

This study has been replicated and expanded upon many times since it was first produced, but the results remain essentially unchanged: names are simply harder to remember than occupations or other contextual nouns.¹²⁵

There are four main explanations for the Baker-baker paradox: (1) common nouns have a more detailed representation in semantic memory; (2) we learn common nouns differently than common names; (3) there are simply so many plausible and acceptable proper names out there; and (4) the connections in our brain that relate to proper names are weaker than those that relate to common nouns.¹²⁶ Let's explore each of these in turn.

First, the Baker-baker Paradox can be explained by the fact that common nouns have a more detailed representation in our semantic memories. The Baker-baker Paradox demonstrates the difference in recall between names and other common nouns isn't because of how the words sound or how often they are used, but because it's simply harder to recall a proper name than a common noun.¹²⁷ We can connect the common noun to other concrete information.¹²⁸ Unlike the common nouns used to describe occupations, proper names are "relatively meaningless, arbitrary and difficult to image."¹²⁹ For example, "baker" as a common noun brings to mind characteristics and attributes typical of the profession, like bread, cupcakes, rolling pins, and the like, while "Mr. Baker" as a proper name provides limited information, is not connected to anything meaningful about the person, and does not alone provide anything "imageable."¹³⁰ But if a person has enough knowledge tied to a name—enough biographical and contextual information—they will remember the name, and that name will trigger the story behind the name.¹³¹

Second, the Baker-baker Paradox can be explained by the fact that we learn names differently than we learn other nouns.¹³² When we learn names, we must go through two steps: first, we must learn the phonology of the name, and second, we must associate that phonology with the person bearing the name.¹³³ When we learn other nouns, only the second process is necessary.¹³⁴ Because of the extra step

125. *See id.* at 287-88.

126. Terry, *supra* note 111, at 86-93.

127. Semenza, *supra* note 55, at 364.

128. *Id.*

129. Cohen, *supra* note 118, at 289.

130. Tim Brennen, *The Difficulty with Recalling People's Names: The Plausible Phonology Hypothesis*, 1 *MEMORY* 409, 412-13 (1993).

131. *See id.*

132. *Id.* at 412.

133. *Id.*

134. *Id.*

required, we would expect that it would be harder to learn, and thus, to remember names.¹³⁵ Brennen hypothesized that people learn names “less well” than other “semantic facts associated to that same person, because the phonology associated to the name may have been less frequently encountered than the phonology of the common names describing facts about the person.”¹³⁶ In other words, merely because we are less familiar with the name itself than we are with the actual words used to describe the person, the name is more difficult to recall.

Third, the Baker-baker Paradox can be explained by the truth that people encounter so many proper names and the phonology for those names is vast in both plausibility and acceptability—meaning that because there are many both plausible and acceptable pronunciations for most names—recall becomes harder.¹³⁷ This range of both new common nouns (especially those referring to professions) as well as their plausible and acceptable phonology is much larger than the set size for actual names stored in the lexicon.¹³⁸ Therefore, a direct consequence of this difference is that people’s names may be less well-learned than other facts associated with the person.¹³⁹

Fourth, the Baker-baker Paradox can be explained by brain science itself. Node Structure Theory (NST) and the Transmission Deficit Hypothesis help to explain why it’s harder to remember proper names than other words.¹⁴⁰ NST suggests that our brain has a network of nodes for meanings and sounds, linked by a node for each word or name.¹⁴¹ When we think of something, it activates certain meaning nodes, which then activates the lexicon node, which then activates the word’s sound nodes, allowing us to say the word.¹⁴² But if the connections between nodes are weak, because of less use or aging, this process doesn’t work as well.¹⁴³ This is especially true for proper names, which have weaker connections than common nouns.¹⁴⁴ In NST, aging further weakens these connections, making it harder for older people to remember names.¹⁴⁵ Unlike common nouns, which have many connections, proper names often have just one, making them more prone to these

135. *Id.*

136. *Id.* at 413.

137. *Id.* at 414.

138. *Id.* at 413.

139. *Id.* at 409.

140. Lori E. James, *Meeting Mr. Farmer Versus Meeting a Farmer: Specific Effects of Aging on Learning Proper Names*, 19 *PSYCH. & AGING* 515, 515-17 (2004).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *See id.*

memory issues.¹⁴⁶ Names are also used less often than common nouns, increasing the difficulty.¹⁴⁷ For older adults, learning new names is particularly challenging because their weaker connections make it hard to establish new memory nodes.¹⁴⁸

Linguistic experiments show that it's harder to learn and recall names than occupations, even if they are the same word.¹⁴⁹ This is because, according to NST, names usually have only one connection in our memory, while common nouns like occupations have multiple connections.¹⁵⁰ This makes names more vulnerable to memory issues, especially as we age.¹⁵¹

NST explains these findings by suggesting that as we age, the connections in our memory network weaken, making it harder to form and retrieve memories, especially for things like names that have weaker connections to begin with.¹⁵² Older adults often remember an occupation without its corresponding name, highlighting their difficulty with names specifically.¹⁵³ This result supports the idea that the single connections for names are more affected by aging than the multiple connections for common nouns.¹⁵⁴

With a foundational understanding of psycholinguistics, we now turn to socio-onomastics to explore how social factors influence our strategic naming practices.

IV. SOCIO-ONOMASTICS: PRAGMATIC THEORIES OF NAME USE

As I said at the outset, language is “a system of choices from which to choose.”¹⁵⁵ Functional linguists would say that every time we use language, we make a series of “lexico-grammatical choices from sets of available options,” and the choices we make allow us to communicate with others in a specific context.¹⁵⁶

146. *Id.*

147. *Id.*

148. *See id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. Chaemsaitong, *supra* note 9, at 216.

156. Krisda Chaemsaitong, *Referential Practice and Contested Identities in Legal Narratives*, 212 LINGUA 44, 45 (2018) [hereinafter *Referential Practice and Contested Identities*].

Language's main role is to let people talk about the world around them.¹⁵⁷ To do this, language must connect with reality at some point.¹⁵⁸ This connection point is often called the "referential level."¹⁵⁹ Words used here are known as "referring terms."¹⁶⁰ Philosophers recognize a special group of these terms, distinct from "kind terms," which refer to general categories.¹⁶¹ These special terms don't just connect to reality but also refer to basic elements of reality, like individual objects or people, rather than general concepts like "water."¹⁶² The terms that fall into this special category are known as "singular terms," and the most typical examples of these are proper names.¹⁶³ So if we were to take the word "water" as our "referring term," it would be the broad term that refers to the general concept or substance of water. We would use this term to talk about water in any form or context. Next, we could use "freshwater" as our "kind term." This term is a more specific category within the general concept of water. Freshwater refers to a particular type of water, distinguishing it from other types like saltwater. Then, most specifically, we could use "the Pacific Ocean" as our "singular term." While not exclusively about "water" in a narrow sense, this term refers to a specific, singular body of water, making it a singular term in this context. It refers to a unique and individual element of reality that contains water.

Along with making references, language choices help us understand the context.¹⁶⁴ Understanding the use of language in a social context is the realm of sociolinguistics.¹⁶⁵ Just as words help us describe the world around us—the reality we perceive—sociolinguistic research reveals that language and, specifically, the choice to use particular words, impacts "how we perceive reality."¹⁶⁶ Sociolinguists have proven that the words used to describe "facts" or to elicit responses about perceived "facts" influence the perception of those "facts."¹⁶⁷ For example, in one famous study, participants viewed film of a car accident.¹⁶⁸ Afterward, they were asked questions about the vehicles' speed.¹⁶⁹ Their answers varied markedly

157. Bazzoni, *supra* note 12, at 249.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 256.

165. DIANA EADES, *SOCIOLINGUISTICS AND THE LEGAL PROCESS* 4 (2010).

166. Salmon, *supra* note 11, at 12.

167. *Id.*

168. *Id.*

169. *Id.*

depending on whether the question prompt used the word “contact,” “smash,” “hit,” “bump,” or “collide.”¹⁷⁰

Words carry not only a descriptive meaning but also a social one.¹⁷¹ While different terms might refer to the same thing, they can convey very different messages about the speaker or their view on the subject.¹⁷² For example, in the context of abortion, the words “baby” and “fetus” both refer to the same entity, but socially, these two terms are vastly different.¹⁷³ The words may describe the same thing, but the feelings and associations they bring up are not the same.¹⁷⁴

Besides impacting the way we view individual facts, our language choices also reflect the society in which we live.¹⁷⁵ We see this impact in the hierarchical aspects of the American courtroom where language choices, such as referring to the judge as “Your Honor” and the lead juror as “Madame Foreperson,” indicate societal status within the trial.¹⁷⁶ But the impact of language may also run the opposite way.¹⁷⁷ It could be such that “the hierarchical authority structure in courtrooms would be seen partly as the effect of such language usage as calling the judge “*your honor*.”¹⁷⁸ In other words, do we call the judge “Your Honor” because courtrooms are formal places? Or did courtrooms become formal places because we call the judge “Your Honor”? Either way, “[t]wenty-first century sociolinguistics assumes a dynamic and reciprocal relationship between language and society, so that language usage at the same time both reflects and shapes society.”¹⁷⁹ Thus, as we make language choices, we are both acting on and reacting to the world around us.¹⁸⁰

From a functional linguistic viewpoint, we choose words and grammar from a range of options to achieve a “communicative goal in a specific situation.”¹⁸¹ One key choice we make as we use language is how to refer to other people, what linguists call “person reference.”¹⁸² For instance, in English, the person with the proper

170. *Id.*

171. See Brenda Danet, ‘Baby’ or ‘Fetus’?: Language and the Construction of Reality in a Manslaughter Trial, 32 SEMIOTICA 187, 191 (1980).

172. *Id.*

173. *Id.*

174. *Id.*

175. EADES, *supra* note 165, at 5.

176. *See id.*

177. *See id.*

178. *Id.*

179. *Id.*

180. *See id.*

181. Chaemsaitong, *supra* note 9, at 199.

182. *Referential Practice and Contested Identities*, *supra* note 156, at 46.

name “Josette Reynolds” could be called Josette, Josie, or Ms. Reynolds.¹⁸³ But she could also be referred to by her occupation or social status as “teacher” or “daughter.”¹⁸⁴ Or she could be referred to indirectly as “the Defendant.”¹⁸⁵ The choice of reference is more complex than we might think.

“Person reference” is the focus of Socio-onomastics.¹⁸⁶ A field of linguistic research, socio-onomastics is a “sub-discipline within onomastics,” which is itself the study of names.¹⁸⁷ Socio-onomastics is a “systematic perspective on the dynamic analysis of names and naming” and focuses on “how names are used.”¹⁸⁸ Specifically, socio-onomastic linguists analyze name use in daily interactions, including such aspects as “variation in name usage, why some names are avoided, why some names are coupled with particular pejorative attitudes, and how name users themselves perceive the very names they use.”¹⁸⁹ Socio-onomastic linguists also analyze the “social, cultural, and situational domains in which names are used,” as well as social and situational variations of such use.¹⁹⁰ Socio-onomastic linguists study the “attitudes and stance towards names and name usage”¹⁹¹

Through the study of socio-onomastics, we learn that what we choose to call something—the name we give—can both create and reinforce social structures and social relationships.¹⁹² More specifically, we learn that some naming structures create distance between the writer and the subject while others create solidarity.¹⁹³

183. *See id.*

184. *See id.*

185. *See id.*

186. *Socio-onomastics and Pragmatics*, in *SOCIO-ONOMASTICS: THE PRAGMATICS OF NAMES* 7 (TEHRI AINLALA, & JAN-OLA OSTMAN eds., 2017) (“The term *socio-onomastics* (or rather *Sozioonomastik* in German) was first used by Hans Walther in 1971 in *Namenforschung heute*. He defined the two main missions of socio-onomastics to be the following: (a) the study of the social origin and use of different variants of proper names within various situations and contexts [and] (b) taking into account the name-giver, name-bearer[,] and name-user.”) (citation omitted).

187. *Id.* at 2.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. Abrams & Potts, *supra* note 3, at 88-93. Although the victim impact statements Abrams and Potts examined used naming conventions that they viewed as “unlikely to have been conscious,” they “nonetheless expose[d] underlying understandings about social roles and relationships between interlocutors.” *Id.* at 90.

193. *Id.* at 90; *see also* Donald D. Hook, *First Names and Titles as Solidarity and Power Semantics in English*, 22 INT’L REV. APPLIED LINGUISTICS IN LANGUAGE TEACHING 183, 184 (1984) (explaining that if pronouns or other grammatical structures cannot indicate power differences, “they will find their expression by other linguistic means”).

Within socio-onomastics, the socio-pragmatic approach focuses on the use of names within social interactions and their role in identity construction and negotiation.¹⁹⁴ This approach acknowledges that names are not used in a vacuum but are part of a broader social and communicative context.¹⁹⁵ It emphasizes understanding how names are used in real-life situations, including how they reflect and influence social relationships, cultural norms, and power dynamics.¹⁹⁶ For instance, using a first name might signal closeness or equality, while using a formal title could convey respect or a hierarchical relationship.¹⁹⁷ In legal contexts, the choice of naming can strategically position defendants and victims in ways that influence jurors' perceptions.¹⁹⁸

The socio-pragmatic approach opens a broader understanding of the role of names in social interaction, revealing their dynamic and powerful nature in shaping human communication and relationships.¹⁹⁹ This perspective is crucial for lawyers, who need to understand the effect of language use, and for linguists, who are interested in the intersection of language, society, and identity.²⁰⁰

Referring to lawyers' use of names, Bryan Garner unflatteringly opined, "[a]s a profession, we don't seem semantically savvy enough to know that names make stories more vivid and interesting . . . [and that] they powerfully influence how we understand problems—in far subtler ways than most of us realize."²⁰¹ But to wield that power, we must be able to use names in a way that our audience can remember them. And then we must know how to use names most effectively. To do that, we need to know about person reference and its socio-onomastic and pragmatic underpinnings.²⁰²

Ultimately, the way we choose to refer to people is influenced by four types of social and pragmatic factors:

- 1. Expressing Relationships:** The choice of reference can show the speaker's sense of distance, involvement, or solidarity with the people and topics

194. See Chaemsaitong, *supra* note 9, at 199.

195. See *id.*

196. *Id.*

197. *Id.* at 199-200.

198. *Id.* at 200-02.

199. See *id.* at 199.

200. See *id.* at 199-200.

201. Bryan A. Garner, *The Power of Naming: Word Choice Influences the Way Jurors Understand Your Argument*, 101 A.B.A. J. 24, 24 (2015).

202. See Chaemsaitong, *supra* note 9, at 199.

being discussed.²⁰³ For example, “The defense team argues that the evidence is inconclusive.” Referring to “the defense” creates a sense of distance between the speaker and the defense, implying that the speaker is not personally involved or associated with them. Or “[i]n presenting our evidence, we aim to demonstrate the clear truth of the matter.” The use of “our evidence” and “we” indicates that the speaker is actively participating in the case, either as a member of the legal team or as a directly involved party, such as the plaintiff or the defendant. This language choice shows personal engagement and responsibility in the case. Finally, “Together with the plaintiff, we seek justice in this matter.” This statement shows solidarity with the plaintiff, suggesting a collective goal or common cause in seeking justice, and aligns the speaker closely with the plaintiff’s position.

2. **Assigning Roles and Responsibilities:** How we refer to someone can also convey the “roles and responsibilities” assigned to them.²⁰⁴ For example, “As the lead investigator, Detective Smith will oversee all aspects of the forensic analysis.” In this statement, referring to “Detective Smith” as “the lead investigator” explicitly assigns and communicates the role and primary responsibility of overseeing the forensic analysis in the investigation. This reference not only identifies “Detective Smith” by name but also highlights her specific duty and authority in the context of the investigation.
3. **Constructing Identities:** The way we name or refer to people helps shape identities.²⁰⁵ For example, “Attorney Rivera, known for her advocacy in human rights cases, will represent the plaintiff in this landmark trial.” This statement, referring to the individual as “Attorney Rivera, known for her advocacy in human rights cases,” constructs an identity of a lawyer who is not only proficient in legal matters but also has a specific reputation and expertise in human rights. This designation informs others about Attorney Rivera’s professional focus and establishes her as a significant and specialized figure in the legal community, particularly in the realm of human rights law. This reference shapes how others perceive her role and expertise in the upcoming trial.²⁰⁶
4. **Signaling Authorial Stances and Reality Claims:** The choice of person reference can also convey the speaker’s viewpoint and claims about reality.²⁰⁷ For example, “The eyewitness, whom I believe to be entirely

203. *Referential Practice and Contested Identities*, *supra* note 156, at 46.

204. *Id.*

205. *Id.*

206. *See id.*

207. *Id.*

credible, clearly saw the defendant at the scene.” In this statement, the choice to describe the eyewitness as someone “whom I believe to be entirely credible” signals the speaker’s personal viewpoint and stance regarding the reliability of the eyewitness. This not only conveys the speaker’s belief in the truthfulness of the eyewitness’s account but also implicitly makes a claim about the reality of the situation, namely, the presence of the defendant at the scene. The speaker’s choice of reference underscores their perspective and influences how the testimony of the eyewitness might be perceived in the context of the case.

Therefore, referring to people does more than just identify them. Each choice of reference tells us a lot about the roles and relationships between the speaker and listener, their ideologies, and their purposes as authors.²⁰⁸ In the next Section, I introduce the overarching framework of referential practice and how it relates to the name versus description decision we face when making reference decisions.

A. Referential Practice: Nomination, Categorization, and Impersonalization

Within the realm of person reference, socio-semantic tools help us analyze how language represents social actors and actions.²⁰⁹ Names are tools for “constructing and negotiating social identities”²¹⁰ How a person is named in a conversation can reflect and shape their social status, group membership, and individual identity.²¹¹ For example, the choice between using a formal title, a first name, a nickname, or a descriptive label can signal different levels of intimacy, respect, authority, or stigma.²¹² Names can be used to express and negotiate relationships and power dynamics between individuals.²¹³ For instance, using a first name might signal closeness or equality, while using a formal title could convey respect or a hierarchical relationship.²¹⁴

Naming practices are deeply embedded in cultural and social norms.²¹⁵ They can reflect societal values and beliefs, such as naming conventions that signify gender, marital status, or ethnic background.²¹⁶ In multicultural or bilingual contexts,

208. *See id.*

209. Chaemsaitong, *supra* note 9, at 216.

210. *Id.* at 196.

211. *See id.* at 199.

212. *See id.* at 199-200.

213. *See id.*

214. *See id.*

215. *See id.* at 195.

216. *See Referential Practice and Contested Identities, supra* note 156, at 46.

the choice or language of a name can signal cultural identity or alignment with certain cultural groups.²¹⁷

Linguistically, person references fall into three representation categories: “nomination, categorization, and impersonalization.”²¹⁸

First, when a person is nominated—or labeled with a name—as expected, some version of the person’s name is used.²¹⁹ Using a name, the person is humanized—or personalized—and the unique characteristics that contribute to that person’s identity are highlighted.²²⁰ Name choices themselves vary from “very formal (last name only) [to] informal (first name only)” and may also include the use of titles like “Dr.” or “Mr.”²²¹ Formal nominations and titles add authority and legitimacy to the person referenced.²²² In contrast, informal nominations without titles can show a person’s lack of power or status.²²³

The second person reference category is “categorization,” which involves referencing the person not by name but by a category—or description—that the person shares with other people.²²⁴ Such categories are typically function- or identity-based, so the two subtypes of categorization are “functionalization and identification.”²²⁵ Functionalization, as its name suggests, refers to a person by something the person does, the person’s job or social role.²²⁶ Many indefinite descriptions fall into this category: the teacher, the seller, the leasee, etc. Identification, on the other hand, involves referring to a person “in terms of something they more or less permanently or inexorably are”²²⁷ Identification can be either relational or physical and includes “the major categories by means of which a given society or institution differentiates between classes of people” such as “age, ethnicity, gender, race, religions, sexual orientation, [and] personal, work, or kinship relations”²²⁸ Finally, physical identification references the person by physical characteristics.²²⁹

217. See Chaemsaitong, *supra* note 9, at 195-96.

218. *Referential Practice and Contested Identities*, *supra* note 156, at 46.

219. *Id.*

220. *Id.*

221. *Id.*

222. *See id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* (quoting THEO VAN LEEUWEN, DISCOURSE AND PRACTICE: NEW TOOLS FOR CRITICAL DISCOURSE ANALYSIS 42 (2008)).

229. *Id.*

The final type of person reference is impersonalization. Unlike nomination and categorization, which emphasize aspects of the person's identity, an impersonalization reference "de-emphasizes [the] human characteristics of the referent, thereby backgrounding her personal identity or social role and lending impersonal authority to her actions."²³⁰ For example, "The verdict was delivered by the foreperson with absolute impartiality." In this statement, referring to the individual simply as "the jury foreperson" rather than by their personal name or with any personal characteristics de-emphasizes their individual identity or personal role. Instead, it foregrounds the role and function of the position within the legal process. This form of reference lends an impersonal authority to the action of delivering the verdict, focusing on the institutional role and the expected impartiality of that role rather than on the individual's personal qualities or identity. Likewise, the use of passive construction to avoid emphasis on the person who is the actor in the scene creates an impersonalized reference because it emphasizes the action itself or the object of that action but eliminates any mention of the actor.²³¹

Often, impersonalization is achieved through generic categorization.²³² Such is the case when lawyers use procedural posture to refer to parties.²³³ For example, when the prosecutor refers to the "Defendant" rather than using a name, the person is immediately impersonalized, and social distance is created between the person and the jury.²³⁴ The person's identity is backgrounded so that, in the eyes of the jury, the person's only identity is that of a person on trial for wrongdoing.²³⁵ It doesn't matter if the defendant is a doctor, an engineer, or a mechanic outside the courtroom; all social status is removed by the simple choice to refer to the person as "Defendant," thereby taking away any credibility or authority the person's status might have with the jury.²³⁶

Another example of impersonalization is referencing people with generic descriptions—like calling the object of a heinous murder the "victim" rather than using the person's name.²³⁷ This impersonalization puts the victim in the background, and rather than making the victim a person with a name and an identity with whom

230. *Id.* at 47.

231. *Id.* at 47.

232. *See id.* at 46.

233. *Id.* at 58.

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.* at 46. Professor Kathryn Stanchi addresses the idea that calling a person a victim essentially reduces them to a flat character in her piece, *Women in Justice Kennedy's Jurisprudence*, in *THE RHETORIC OF JUDGING WELL: THE CONFLICTED LEGACY OF JUSTICE ANTHONY M. KENNEDY* 201 (David A. Frank & Francis J. Mootz eds., 2023).

the jury is likely to empathize; such impersonalization makes the victim a sterile, faceless, literally nameless being that was somehow involved in the events that are the focus of the case.²³⁸

Finally, references to single body parts—called “somatization”—allow the referent to be impersonalized.²³⁹ An example of this reference occurs in sexual assault cases when the lawyer refers “to the victim’s body parts to create distance between the action and the [victim].”²⁴⁰ For example, “the Defendant fondled the breast” impersonalizes the victim by making her only a body part rather than a complete person. Jessie Hill, Law and Gender scholar, dug into somatization (without using the term) when she scrutinized Justice Anthony Kennedy’s decision upholding the federal Partial Birth Abortion Ban Act of 2003 in *Gonzales v. Carhart*.²⁴¹ As Hill notes, “the woman herself barely makes an appearance” in the Court’s “graphic and seemingly thorough” description of the “various methods of abortion.”²⁴² The first introduction to the woman is through a body part: “the cervix.”²⁴³ In the seven-page description of the process, the word “woman” is used only five times, while the words related to the doctor and the fetus are used forty-one and thirty-one times respectively, and the woman is more often referred to as “the cervix” or something through which “the fetus ‘pass[es]’ or ‘is removed’ [—] a mere bystander or perhaps not present at all.”²⁴⁴

Each of these impersonalization techniques assigns the referent specific characteristics while ignoring others and signaling a message about the referent.²⁴⁵

As we have just seen, the three types of person reference line up directly with the key choices lawyers must make when referring to people:

1. Do we use a person’s **name** to highlight their unique identity, and if so, do we use a formal or informal variant of that name to highlight authority, status, or familiarity, and do we strategically use such names to humanize or distance individuals?

238. *Referential Practice and Contested Identities*, *supra* note 156, at 47. This makes the judge’s decision in the Rittenhouse case even more ironic as he viewed the label “victim” as too personal and too inciting.

239. *Id.*

240. *Id.*

241. See generally B. Jessie Hill, *Dangerous Terrain: Mapping the Female Body in Gonzales v. Carhart*, 19 COLUM. J. GENDER & L. 649 (2010).

242. *Id.* at 660.

243. *Id.* (quoting *Gonzales v. Carhart*, 550 U.S. 124, 137 (2007)).

244. *Id.* at 660-61 (quoting *Gonzales*, 550 U.S. at 139-40).

245. See *Referential Practice and Contested Identities*, *supra* note 156, at 47.

2. Do we refer to people not by name but by **category or role**? Do we focus on their job or social role? Or do we refer to permanent characteristics like age, gender, race, or relationships? Or do we use such categories to frame perspectives like the “unborn child” versus “fetus” example?
3. Do we **impersonalize** to de-emphasize personal identity or social role? Do we use passive construction or generic categorization to make the person distance? Do we create social distance or reduce empathy through impersonalized reference?

I examine these specific decisions and the theories underlying them in more detail in the next Sections.

B. Proper Names: Nomination Theory and Practice

Having explored the concept of nomination, let’s delve deeper into its multi-faceted implications. Nomination, the use of a person’s name in discourse, is more than just a linguistic feature; it’s a tool with profound effects in various contexts, especially in legal narratives.²⁴⁶ But, before we can examine those effects, we must define what we mean by a “name.”

On top of the multiple purposes that drive the use of names as forms of person reference, defining a “name” is itself an issue. Describing what exactly constitutes a name is a complex task in both grammar and logic.²⁴⁷ First, proper names seem almost separate from other types of language because they usually don’t appear in dictionaries, except for some encyclopedic entries like “Italy” or “Abraham Lincoln.”²⁴⁸ Also, the question of whether names are translated between languages is highly debated.²⁴⁹

Second, from a linguistic standpoint (though less so from a sociolinguistic one), there are few limits on what can make up a proper name.²⁵⁰ Proper names can be formed in various ways. For example, a proper name might consist of a single proper noun like “Utah,” a combination of proper nouns like “Barack Obama,” a proper noun and a numeral as in “Charles III,” a proper noun and a common noun” like “Lake George,” or even a mix of a “determiner, common noun, and adjective” without any proper noun, as in “the Princess of Wales.”²⁵¹ Names can even be made

246. *See id.* at 48.

247. Bazzoni, *supra* note 12, at 250.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

from elements with no lexical component,²⁵² such as, for instance, Elon Musk's son's name, "X Æ A-12."²⁵³

A person's name itself is powerful in shaping the impression that person makes on others. Names "influence perceptions and decisions, especially when other information is limited."²⁵⁴ Studies on name-based discrimination show that when employers review resumes, they are less likely to interview candidates with "distinctively Black names, such as Lakisha," than they are those with "distinctly white names," such as "Emily."²⁵⁵ That said, other studies find that Black names do not seem to result in educational discrimination.²⁵⁶ The explanation for the difference is likely the amount of interaction and information the person making the judgment has about the person bearing the name.²⁵⁷ Fortunately, the more interaction and time the audience has with the bearer of the name, the less likely the initial judgment and connotation will govern.²⁵⁸

Race isn't the only factor that impacts the connotation of a name.²⁵⁹ Even some "baby name" books themselves reinforce stereotypes that accompany some names.²⁶⁰ To those who grew up in the 1980s and 1990s, "Brandon" would bring to mind a likable, attractive, hero-type figure,²⁶¹ but that name today brings to mind a completely different image. Today's "Brandon" conjures up a far-right activist, shaking his fist at the President with a "not-so-secret handshake that signals they're

252. *Id.*

253. The name, which is pronounced Kyle, is a combination of the unknown variable "x," the "elven spelling [of Ai] meaning love or artificial intelligence," and the Archangel-12 airplane, which Musk calls "the coolest plane ever." See Rachel Lerman, *Elon Musk's Baby Name Isn't Just Weird, it May be Against California Regulations*, THE WASH. POST (May 8, 2020, 2:19 PM), <https://www.washingtonpost.com/technology/2020/05/08/musk-grimes-baby-name/>.

254. Martin Abel & Rulof Burger, *Unpacking Name-Based Race Discrimination*, June 2023, at 1, 2.

255. *Id.*

256. *Id.* at 40.

257. *Id.*

258. *Id.*

259. See generally BRUCE LANSKY & BARRY SINROD, *THE BABY NAME SURVEY BOOK: WHAT PEOPLE THINK ABOUT YOUR BABY'S NAME* (1998).

260. See, e.g., *id.* Reviews on Amazon are quick to note the stereotypes and judgments in this book, saying such things as: "[T]his book is basically a book about preconceived notions relating to any name. Example, 'Fatima' ('a fat, unattractive woman') or 'Michael' ('a strong, handsome man') or . . . 'Melissa' ('petite, young girl who is sweet but[] spoiled'). The concept is interesting but, I do not think extremely valid[,] and the reason is, we go through fads, fashions, [and] cycles of popularity where names come and go." *The Baby Name Survey Book*, AMAZON, <https://www.amazon.com/Baby-Name-Survey-Book/dp/0671023853#customerReviews> (last visited Sept. 23, 2024) (punctuation modified for clarity).

261. To older generations, this may conjure up the image of Brandon Walsh, the character on the original Beverly Hills 90210 series portrayed by Jason Priestly.

in sync with the party's base."²⁶² Similar comparisons could be made with names like Karen or Chad.

In legal contexts, the choice of naming can strategically position defendants and victims in ways that influence jurors' perceptions.²⁶³ Such nomination practices are familiar to litigators who often make naming choices when referring to people within the trial context.²⁶⁴ For example, many "trial practice manuals recommend lawyers . . . refer to opposition witnesses by their role, [combined with] first name, and last name" (e.g., *Detective Sara Miller*) "to distance [themselves] from that witness."²⁶⁵ That label may also impart status, but on the other hand, a label like "Officer" may be negative for members of the audience who have negative perceptions of the police. Further, friendly witnesses are often referred to by their first name only to better personalize them and show a close association with the party for whom they are testifying.²⁶⁶ Similar nomination conventions are used when referring to crime victims—especially when dealing with violent crime.²⁶⁷ Prosecutors often refer to victims by first name or even nicknames, while defense counsel more often uses full names or last names alone.²⁶⁸

But should audience perception of names be part of an attorney's consideration? For example, should a prosecutor lean hard on a person with a Latinx name in a drug case because he believes that a predominately white jury may stereotype or prejudice the person because of that name? Or should a defense attorney choose to emphasize his client's academic title as "Dr.," assuming that it would lend credibility and prestige and thereby make the jury more likely to believe his version of events?

The practical implications of these strategies are significant. Attorneys choose the name to use based on their objectives, whether it's to evoke empathy, assert authority, or create distance, and that choice can influence the outcome of the case.²⁶⁹

262. Colleen Long, *How 'Let's Go Brandon' Became Code for Insulting Joe Biden*, ASSOCIATED PRESS (Oct. 30, 2021, 4:08 PM), <https://apnews.com/article/lets-go-brandon-what-does-it-mean-republicans-joe-biden-ab13db212067928455a3dba07756a160>.

263. Chaemsaithong, *supra* note 9, at 197-98.

264. *See generally Referential Practice and Contested Identities*, *supra* note 156.

265. *Id.* at 46 (internal quotation marks and citation omitted).

266. *Id.* (finding, "first names are recommended for personalizing purposes.").

267. *Id.* at 46-47.

268. *Id.*

269. *See generally* Chaemsaithong, *supra* note 9.

C. Definite Descriptions: Not a Name, but More than Just a Category

In this Section, I further explore the use of definite descriptions. Even if the speaker decides to forgo the use of proper names, she must consider what to use instead. Often, she will settle on a definite description. Definite descriptions are unique linguistic constructs that are not merely names nor are they as broad as indefinite descriptions. A definite description is a phrase that precisely identifies a specific individual, object, or concept.²⁷⁰ It typically includes the word “the” followed by a noun and modifiers, if any, that uniquely describe that entity. For example, “the first female justice of the United States Supreme Court” or “the largest city in Europe” are definite descriptions because they refer to one particular entity that fits the description. Definite descriptions offer a precise way to refer to entities in various contexts. Unlike proper names, which directly refer to entities, definite descriptions provide a way to refer to something by describing its properties. When dealing with people, definite descriptions do not name the person directly but rather describe a unique role that only one person at a time can occupy.

The uses and interpretations of definite descriptions vary widely based on context. In everyday conversation, we often use definite descriptions to refer to things that all parties involved commonly understand. For example, we might refer to “the court” while writing or talking with members of the local bar. Everyone who is in the know would understand that “the court” refers to our local federal district court. But when we write or speak in more complex or formal contexts, the definite description must be more precise—we must specify the United States District Court for the District of Utah to prevent misunderstanding.

In legal contexts, the use of definite descriptions can have significant implications. Lawyers often strategically use them to refer to people, places, or things in a precise way, yet leave room for interpretation. For example, referring to “the alleged perpetrator of the crime,” rather than using a suspect’s name can influence how jurors perceive the evidence and the accused.

For lawyers, the evolution from direct description to categorization is particularly powerful. Direct descriptions serve as straightforward linguistic tools for identification and reference. But when these descriptions transcend mere identification and venture into the realm of categorization, they take on a new role. Categorizations, whether through functionalization or relational identification, do more than just describe—they frame an individual or situation in a specific light, often with

270. See Bazzoni, *supra* note 12, at 249-55.

significant implications.²⁷¹ Such categorizations, rooted in the principles of direct descriptions, can influence perceptions, narratives, and ultimately, legal outcomes.

Legal discourse is replete with examples of functionalization references.²⁷² These occur when a person is referred to by a function they perform within a case, such as a buyer, seller, lessor, lessee, and so on.²⁷³ This type of categorization is so prevalent that even the Federal Rules of Appellate Procedure direct lawyers writing appellate briefs to use them.²⁷⁴ Such categorizations can subtly shape the narrative of a case by focusing on the role rather than the individual. For example, what if a case involved a law student who encountered a violent incident while walking home, and the victim, who was a prostitute, was found in critical condition? The attorney could use categorization to describe the facts like this: “A passerby found an injured person on the street. The individual, requiring urgent medical attention, was quickly assisted by emergency services.” In the initial description, the narrative focuses heavily on the roles and occupations of the individuals involved: “a law student” and “a prostitute.” This categorization can inadvertently lead to stereotyping or biased interpretations based on these roles. The revised description shifts the focus from their roles to the situation at hand. Describing the law student as “a passerby” and the victim more neutrally as “an injured person” reduces the emphasis on their roles or occupations. This approach helps shape the narrative in a way that focuses more on the incident and the human aspects of the situation rather than on preconceived notions or stereotypes associated with their backgrounds or professions.

Relational identification references are also common in legal practice, particularly in litigation.²⁷⁵ An example is when the prosecution refers to the defendant as “your son” while cross-examining the defendant’s mother.²⁷⁶ This type of categorization can imply biases or suggest motives, such as the possibility of the witness lying to protect her son, thereby influencing the jury’s perception.²⁷⁷

To illustrate the impact of these categorization tools, consider the language used in abortion debates. Proponents of criminalizing abortion often use terms like

271. See generally *Referential Practice and Contested Identities*, *supra* note 156.

272. See generally *id.*

273. *Id.* at 46.

274. FED. R. APP. P. 28(d) (“In briefs and at oral argument, counsel should minimize use of the terms ‘appellant’ and ‘appellee.’ To make briefs clear, counsel should use the parties’ actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as ‘the employee,’ ‘the injured person,’ ‘the taxpayer,’ ‘the ship,’ ‘the stevedore.’”) (emphasis added).

275. *Referential Practice and Contested Identities*, *supra* note 156, at 46.

276. *Id.*

277. See *id.* at 46-47.

“unborn child” or “baby,” thus categorizing the aborted entity as a living person.²⁷⁸ In contrast, those supporting abortion rights tend to use the term “fetus,” categorizing the entity that is not alive.²⁷⁹ Such language choices frame the aborted entity in dramatically different lights, thereby influencing public and legal perceptions.

The ethical considerations of such categorizations warrant critical analysis. Is it fair or just to reduce a person to a single aspect of their identity or role? What potential biases and stereotypes arise from such categorizations? For instance, referring to an individual as “the victim” or “the accused” can lead to different emotional and cognitive responses, and thus impact the fairness of legal proceedings.²⁸⁰ Thus, when lawyers use definite descriptions, we must do so fully aware of the impact that choice will have on our audience.

D. Indefinite Descriptions: Relevance Theory and Impersonalization

Finally, I address the most general and least personal reference choice we can make as lawyers: the indefinite description. An indefinite description is a phrase that refers to any member of a class or category rather than to a specific, identifiable entity.²⁸¹ Indefinite descriptions usually include words like “a” or “an” and do not specify which particular instance of the category is being referenced.²⁸² For example, “a female justice” or “a European city” are indefinite descriptions because they could refer to any female member of the Court or any city rather than a specific one.

Traditionally, indefinite descriptions were often considered semantically ambiguous; they were thought to have multiple meanings or interpretations inherent in their semantic structure.²⁸³ For instance, “a legal expert” could mean any legal expert in general (attributive) or a specific, known legal expert (referential).²⁸⁴

Many linguists challenge this view, arguing that these descriptions are not inherently ambiguous at a semantic level.²⁸⁵ Instead, they posit that the different interpretations arise due to pragmatic factors — that is, factors related to how

278. *Id.* at 46.

279. *See id.*

280. *See* Chaemsaitong, *supra* note 9, at 216.

281. *See Indefinite Description*, OXFORD REFERENCE, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100000704#:~:text=A> (last visited Oct. 6, 2024).

282. *See id.*

283. Villy Rouchota, *On Indefinite Descriptions*, 30 J. LINGUISTICS 441, 441-42 (1994).

284. *See id.*

285. *Id.* at 445, 452.

language is used and understood in context.²⁸⁶ This pragmatic approach is based on relevance theory.²⁸⁷

Relevance theory emphasizes the role of context in interpreting communication.²⁸⁸ At its core, “[t]he central claim of relevance theory is that the expectations of relevance raised by an utterance are precise enough, and predictable enough, to guide the hearer towards the speaker’s meaning.”²⁸⁹ Thus, even absent a definite reference, relevance theory posits that listeners use contextual clues to infer the speaker’s intended meaning.²⁹⁰ They do this by choosing the interpretation that best fits their understanding of the context and requires the least cognitive effort.²⁹¹ When an indefinite description is used, the listener uses context to infer which entity the speaker is referring to.²⁹² For example, if someone says, “I saw a dog in the park,” the listener uses the context to understand which dog is being discussed, even though it’s not specified. Or the listener may just think of a generic dog, which would be fine and would require less effort and would not undermine the speaker’s meaning. Because, if it would, the speaker would give more information.

According to relevance theory, every utterance is expected to carry relevance sufficient to make it worth processing.²⁹³ When a speaker uses an indefinite description, they expect the listener to find it relevant in the given context. As speakers, this expectation of relevance guides how we formulate our communication and how listeners interpret it: the listener will “follow a path of least effort [in interpreting the communication] because the speaker is expected (within the limits of her abilities and preferences) to make her utterance as easy as possible to understand.”²⁹⁴

Moreover, relevance theory differentiates between implicit and explicit communication.²⁹⁵ It acknowledges that much of communication relies on implicatures (“implicit premises and conclusions”), by which the meaning is implied rather than explicitly stated.²⁹⁶ In other words, often our real message is not directly spoken but

286. *Id.* at 448.

287. *Id.* at 451-52.

288. Deirdre Wilson & Dan Sperber, *Relevance Theory*, in *ENCYCLOPEDIA OF LANGUAGE & LINGUISTICS* 608-09 (Laurence R. Horn & Gregory Ward eds. 2006).

289. *Id.* at 607.

290. *Id.* at 608.

291. *Id.* at 608-09.

292. *Id.*

293. *Id.* at 612-14.

294. *Id.* at 613-614.

295. *Id.* at 615.

296. *Id.* at 617.

is instead suggested or hinted at, requiring the listener to read between the lines to grasp the full meaning.

Applying relevance theory to indefinite descriptions, the context in which an indefinite description is used determines how it is interpreted.²⁹⁷ For instance, the interpretation of “a legal expert” as referring to any expert or a specific known one depends on the conversational context, background knowledge, and the speaker’s intentions more than on the words themselves.²⁹⁸ Without altering the semantic content of the description, the intended meaning can shift based on situational cues and the expectations of relevance in communication.²⁹⁹ For example, in this article, when I refer to “a linguist,” I presume my readers are inferring that I am referring to a trained expert on the use of language in specific contexts.

Thus, relevance theory suggests that meaning is often derived as much from how language is used than from the language itself.³⁰⁰ “[T]he construction of the context in which the utterance is intended to be processed is part of the inferential phase of utterance interpretation.”³⁰¹

Relevance theory applies to the debate on proper names versus descriptions, because it suggests that the distinction between names and descriptions may be less about inherent semantic differences and more about how the names are pragmatically employed in discourse.

Because descriptions are interpreted by context, they are subject to manipulation and, as such, are the perfect vehicle for impersonalization. We see this used routinely when prosecutors refer to defendants merely as “Defendant.” This strategy, coupled with the use of a name—particularly a first name or nickname for the victim or plaintiff—not only depersonalizes defendants but also emphasizes the victims’ individuality and humanity.³⁰² Thus, by using descriptions, the prosecution aims to create a perception of the defendant as distant and legally culpable while invoking empathy for the victims.³⁰³

On the other hand, defense attorneys may try to humanize their client, stressing their individuality and mitigating factors, while often minimizing the focus on

297. See Rouchota, *supra* note 283, at 445.

298. See generally *id.*

299. *Id.* at 457-58.

300. See *id.* at 458.

301. *Id.*

302. Chaemsaitong, *supra* note 9, at 199, 208.

303. *Id.* at 200-01.

victims.³⁰⁴ Often the defense says very little about the victims themselves while presenting their case—this is especially true of information related to the victim’s background or other context that would make them “human” to the jury—and when victims are mentioned, names are rarely used.³⁰⁵ This impersonalization puts the victim in the background, and rather than making the victim a person with a name and an identity with whom the jury is likely to empathize, this use of mere description makes the victim a sterile, faceless, and literally nameless being that was somehow “involved” in the events that are the focus on the case.³⁰⁶

Drawing on these insights from psycholinguistics and socio-onomastics, I now propose practical guidelines for making intentional naming decisions in legal practice.

V. GUIDELINES FOR MAKING INTENTIONAL DECISIONS ABOUT THE USE OF NAMES IN LEGAL PRACTICE

Working now from the premise that language is “a system of choices from which to choose,” in this Section, I attempt to consciously examine the “covert operations of linguistic choices” lawyers employ, as well as our own “underlying motivations, intentions[,] and goals that shape those choices.”³⁰⁷ By so doing, I identify reference strategies that will enhance both the use of names and descriptive noun phrases within law practice. I start with some general guidelines that apply to all decisions related to names and descriptions and then move on to address specific naming conventions.

A. *General Considerations for all Reference Strategies*

The art of legal writing involves much more than just presenting facts and legal arguments; it extends to the strategic use of language, especially in how parties are named and described. These choices are far from trivial. The way lawyers refer to the main players in a case can have a lasting impact, influence perception, and even sway the balance of a case.³⁰⁸ The initial introduction of parties in legal documents, in particular, sets a critical tone. It can leave an enduring impression, influencing how readers perceive and understand the main players throughout the

304. *Id.* at 200-01, 209.

305. *Referential Practice and Contested Identities*, *supra* note 156, at 46.

306. *See id.*

307. *Id.* at 58.

308. Josh Taylor, *Name Plaintiffs or Other Parties Precisely: Don’t Inadvertently Put Both Parties on Equal Footing in Your Briefs*, ATTORNEYATWORK (July 5, 2023), <https://www.attorneyatwork.com/name-your-plaintiff-party-precisely/>.

proceedings.³⁰⁹ The guidelines and strategies below will lead attorneys to thoughtful reference decisions, ensuring that our language aligns with the broader objectives of our advocacy.

First, when we decide what reference strategy or combination of strategies to use, we should remember that choice will influence whether the person referenced is humanized or dehumanized to the reader. This choice should be made based on the client's needs and will create a significant psychological effect on the reader. For example, in a tort case involving Janine Smith and Walmart, referring to Janine as "Ms. Smith" or "Janine" humanizes her, while calling Walmart "the Corporation" or "the Retail Chain" dehumanizes and portrays it as a faceless entity.³¹⁰

Second, when we decide what reference strategy to use, we should remember that the choice may create a power differential.³¹¹ By portraying impersonality, we can make one entity impersonal and distant while we portray a more relatable, humanized party on the other side.³¹² On the other hand, we can create power differentials by employing titles like "Dr." or "President" or by using definite descriptions like "the Chairperson of the Board."

Third, if we decide to use proper names as part of our overall reference strategy, we should start by introducing all characters, including people and businesses, by their full names to avoid audience confusion.³¹³ As the document progresses, these can be naturally shortened, mirroring everyday communication patterns.³¹⁴ We should also avoid acronyms, making our references as easy as possible for our audience.³¹⁵

Fourth, if we decide to use proper names, we should ensure that we "anchor" those names with imageable, relatable descriptions to heighten the ability for recall. Using the lessons learned from psycholinguistics, we should pair a name with a description for maximum recall. So instead of merely introducing our client as "Plaintiff Janine Smith," we would more effectively introduce her like this: "Janine Smith, the plaintiff, is a mother to six children and a dedicated kindergarten teacher. Her involvement in her local community is well-known, as she often participates in various neighborhood activities like the Girl Scouts and the Chamber of Commerce. Balancing her role as a parent with her professional and community responsibilities,

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

Janine embodies a strong commitment to both her family and the people around her.”

Fifth, when referencing groups or legal entities like organizations or agencies, use neutral and official names or descriptions—they are both easier to remember and aid in maintaining objectivity. For example, “The investigation received tips from an activist group known for its controversial tactics in exposing corporate fraud” is problematic. In this example, the group is characterized by subjective terms like “activist group known for its controversial tactics,” which could introduce bias and preconceived notions about the group’s credibility or methods. A more objective description could say, “The investigation received tips from Transparency Watch, an organization focused on corporate accountability.” Here the description uses the group’s official name and describes it neutrally as “an organization focused on corporate accountability.” This approach avoids subjective judgments and presents the group in a neutral, factual manner.

Sixth, as we make referential choices, we should ensure that they respect ethical boundaries and contribute to a fair and unbiased legal process. For example, we should avoid referring to all parties of one gender by first name or description while referring to parties of another gender by last name or title. As we make these choices, we should be aware of and responsive to evolving social norms and language use, particularly concerning gender, race, and other identity factors.

Finally, as we use the reference conventions we choose in a given situation, we should use them clearly and consistently and monitor their impact. Whatever strategy or combination of strategies we choose, we should apply it consistently throughout our legal documents or oral arguments to avoid confusion and maintain credibility. One exception to this guideline occurs in complex cases with multiple parties. In such cases, using a mix of proper names and descriptive terms can help maintain clarity. For example, “The lawsuit, involving Johnson, Smith, Davis, and The Green Energy Consortium, has multiple overlapping claims” can be confusing. The confusion is especially likely if the audience is unfamiliar with who these parties are or their roles in the case. A description with a mix of names and descriptions would be more helpful: “The lawsuit, involving Jane Johnson, the whistleblower; Robert Smith, the former CEO; Emily Davis, the patent holder; and The Green Energy Consortium, an industry group, has multiple overlapping claims.” Here, the addition of descriptive terms (“the whistleblower,” “the former CEO,” “the patent holder,” and “an industry group”) alongside the proper names provides context and clarifies the roles or relevance of each party in the case. This approach enhances understanding, especially in cases in which the relationships and roles of the parties are crucial to comprehending the legal complexities. So, using descriptive labels

alongside proper names can help distinguish roles and responsibilities, which aids in comprehension.

Further, as documents become lengthy, reminding the reader of each party's role and context helps avoid confusion that could occur when relying solely on names—especially uncommon ones. Then, as we are consistent and clear, we should track how our naming and descriptive choices are received by the court, jury, and other parties and be prepared to adjust if they are not having the intended effect.

With these general guidelines in mind, we now turn to the specific referential choices that are tailored to the context of the case, audience, and legal strategy.

B. Specific Guidelines: Parties, Others, and Precedent Cases

In this Section, I set out some specific guidelines for referential choices as informed by psycholinguistic and socio-onomastic research. By adhering to these guidelines, lawyers can strategically employ referential conventions in their cases to craft a compelling narrative, facilitate juror and judicial comprehension, and enhance the persuasiveness of their arguments. These choices should be made with careful consideration of the desired effect on the audience and their overall legal strategy.

1. Parties to Your Case

The way lawyers refer to the parties in their case, either orally or in written documents, is key to shaping the narrative, influencing jury perception, and ultimately in decision-making. At first glance, the decision of how to refer to these parties seems fairly easy: certainly, lawyers refer to their own client by name, and then, depending on their strategy, they either refer to the opposing party by name or by procedural title. But is that really the best strategy?

Consistent with both the psycholinguistic and the socio-onomastic research, using proper names to refer to your own client aids in both personalization and clarity.³¹⁶ Proper names also help humanize individuals, making their stories more relatable and emotionally powerful.³¹⁷ Especially when paired with the unique characteristics that contribute to that person's identity, referring to one's client by name can have a powerful emotional impact that connects the person to the audience.³¹⁸

316. *Referential Practice and Contested Identity*, *supra* note 156, at 46-47.

317. *Id.*

318. *See id.*

On the other hand, if you want to create distance or emphasize a party's role or status, use descriptive terms—this is especially effective in corporate litigation. Emphasize either the proper name or descriptive title of a party based on the intended narrative. For instance, a corporate defendant might be referred to by its name to emphasize its identity or as “the manufacturer” to depersonalize it.

Recognize that unfamiliar names are harder to recall. Remember the lessons of the Baker-baker paradox: a name on its own is more forgettable.³¹⁹ So, along with the party's name, we must give enough biographical information so that our audience sees a richer image of the person that will help them remember the story and, therefore, the name.³²⁰ Ultimately, the Baker-baker paradox is less problematic in the context of the parties to the ongoing case because the person named is the subject of the case that the audience is hearing, and so the audience has the information necessary to anchor the name meaningfully.³²¹ Thus, using names for parties can help the court or jury remember who is involved in the case and reduce confusion.

Yet it often helps to associate parties with descriptive roles to make the narrative more memorable and easier to follow. A proper name anchored to a specific image (either literally or through a verbal description) can promote memory retention and reduce confusion for the court or jury. Use relatable descriptive labels (e.g., “the homeowner,” “the teacher”) to humanize your client, making them more relatable (in other words, avoid descriptive labels that would not be relatable, for example, “the billionaire”). Use consistent descriptive labels for parties throughout a document or oral argument to reinforce the legal narrative and theme. Pairing names with such memorable descriptions and then repeating them (both the names and the descriptions) often helps to ensure audience retention.³²²

For example, take these paragraphs from a hypothetical appellate brief:

Plaintiff, John Doe, a local entrepreneur, sued Defendant City Times Newspaper, a widely circulated local publication, for defamation alleging that the City Times Newspaper, through its article titled “Environmental Virtue or Vice?,” materially harmed his personal and business reputation. Doe, who owns GreenTech Innovations, a hub for eco-friendly technology in the community, alleges that the article led to a noticeable decline in customer foot traffic and community trust.

The conflict centers around an article published on March 15th in the City Times Newspaper, where it referred to Doe's business practices as

319. Semenza, *supra* note 55, at 364.

320. *See id.* at 356.

321. *See id.*

322. *See* Brennen, *supra* note 130, at 413.

“questionably ethical.” As a local entrepreneur, Doe argues that this characterization, particularly the phrase “questionably ethical,” has caused significant damage to both his personal reputation and the reputation of GreenTech Innovations.

In these paragraphs, consistent descriptive labels are used for both the plaintiff and the defendant. The plaintiff is introduced as “John Doe, a local entrepreneur,” and both his name and this descriptive label are repeated throughout, reinforcing his identity as a community-involved business owner. Similarly, the defendant is consistently called “City Times Newspaper,” maintaining a clear, identifiable entity. These descriptive labels not only help reinforce the legal narrative and theme but also help ensure that the audience (in this case, the appellate judges or readers of the brief) retains the key identities and roles of the parties involved.

Names paired with descriptions can also help avoid audience confusion.³²³ For example, lawyers can use contextual descriptions in technical or specialized legal arguments to simplify and clarify. This is the case in a hypothetical patent infringement case involving complex technical details. In this hypothetical, the author uses descriptive pairing: “The plaintiff, Innovative Tech Solutions (“the Software Development Company”) asserts that their patented algorithm, a unique machine learning protocol, has been copied by the defendant, Digital Frontier Corp. (“the Tech Hardware Manufacturer”).” Here, pairing the company names with descriptions of their primary business focus helps the audience understand the distinct roles and expertise of each entity, simplifying the complexity of the patent dispute. Similarly, lawyers can use descriptive terms to distinguish between parties with similar or confusing names to prevent ambiguity or confusion. For example, in a hypothetical case involving two individuals with the same last name: “The claimant, Emily Johnson (“the Tenant”), alleges property damage against Alex Johnson (“the Landlord”).” Here, using descriptors like “the Tenant” and “the Landlord” immediately clarifies the relationship between the parties and avoids confusion that could arise from them sharing a last name. It distinguishes their respective roles in the legal issue being addressed.

The decision about what to call the parties in your case becomes more complicated for the form of the name to choose or whether to add a title. Here, you must balance considerations of formality and familiarity. To convey respect, authority, or influence, you may want to include a formal title (e.g., Dr., Professor, or Ms.) with the last name.³²⁴ But if you want to encourage empathy or familiarity, you may want to start with a full name and then revert to a first name or even a nickname

323. See *Referential Practice and Contested Identity*, *supra* note 156, at 45-46.

324. See generally *id.*

(e.g., Emily Anderson becomes Emily becomes Emi).³²⁵ While this can be a powerful tool for eliciting empathy or closeness with an audience, in certain contexts, it can come across as stereotypical or even discriminatory, so caution is advised.

Finally, at times, it helps to revert from using a name to using a description—particularly a procedural designation. Such is the case when you want to pull the parties themselves back from an emotional highpoint to focus on the process. For example, in a highly contentious mediation, the mediator may revert from referencing parties by name to referring to the “complaining party” and focusing on where they are in the mediation process to de-escalate emotions.

Regardless of the choice you make, avoid using procedural labels alone. Referring to your own client as “plaintiff” or “defendant” depersonalizes them and makes the narrative less engaging and less memorable.

2. Other People in Your Case

In legal practice, the approach to naming other non-party individuals involved in a matter – such as witnesses, victims, or experts – is a subtle yet powerful tool that we can use to significantly influence the narrative and perception of our case. These choices require a strategic approach that balances the objectives of the case with ethical considerations. Our choice of names or titles for these individuals should be more than a routine decision; it needs to align with our overall legal strategy and adhere to principles of consistency and fairness.

First, we must use our reference strategy to focus on names, titles, or descriptions for individuals in a way that supports our overarching legal strategy for the case. For example, in the case of sympathetic witnesses or victims, we may choose to use proper names—even first names or nicknames—or empathetic titles to create a connection and evoke empathy from the jury or judge. With opposing witnesses, in contrast, it might seem appropriate to use more formal or distant references—like last name or indefinite description—to create a sense of impartiality or distance. This method can be particularly effective when trying to subtly undermine the credibility of the opposition’s witnesses.

But, as we make these decisions, we need to do so with an eye toward consistency and fairness. It’s crucial to apply a reference strategy consistently across similar types of individuals. For example, if you use a proper name for one witness, the same approach should be used for all witnesses to maintain fairness and avoid

325. See generally *id.*

any perception of bias. It would be improper, for instance, to refer to one witness as Professor Beazley and another simply as Johnson.

Similarly, while it's important to use naming strategically, we must take care not to cross into the realm of bias or stereotype. The way we refer to people should not unjustly sway opinion or imply judgment. By adhering to these guidelines, we can effectively use naming as a tool to support our case narrative while maintaining high ethical standards.

C. *People in Precedent Cases*

When citing precedent cases in legal documents, our approach to referencing individuals involved changes from the approach we use when referring to people in the case before the court. When we refer to legal precedents, our emphasis typically shifts away from the proper names of the parties involved to their roles or functions, as these are generally more important to the legal analysis.³²⁶ Understanding how to effectively reference individuals in precedent cases helps us draw meaningful analogies and clarify the cases' application to the current matter.

When referencing people in precedent cases, we should always remember function over name.³²⁷ Usually, the proper names of the people in precedent cases are immaterial and are unnecessary to tell your audience about.³²⁸ As I like to tell my students, your reader can only remember so many characters in this plot—make sure that the characters she remembers are those from your case, not from the precedent cases. Because their roles or functions are more important than their names, it is more effective to focus on those legally significant categories, roles, or statuses (e.g., “a teacher,” “an employer”) and omit names entirely.³²⁹ By so doing, you can directly tie the description to the legal points being discussed. As you write your descriptions, pick clear, brief descriptions based on roles or functions. This strategy streamlines the information and makes it easier for the reader to understand how the precedent applies. Ensure that your case summaries highlight the legal principles or facts relevant to your argument using role-based descriptions to emphasize the crucial elements that parallel or distinguish the precedent from the current case.

Using focused descriptions for the people in precedent cases also allows you to make clear and concrete analogies or distinctions between those cases and your case. This usage is particularly helpful if you have anchored the names of your client and other parties in your own case with descriptions. In that way, you can say,

326. See DYSART ET AL., *supra* note 49.

327. See generally *id.*

328. See generally *id.*

329. See generally *id.*

for example, that Kimball (your client) is a teacher like the teacher in the precedent case and so forth. This strategy allows you to concentrate on aspects of the parties' roles or statuses that were central to the precedent as this directly informs how the precedent relates to the current case.³³⁰

By adhering to these guidelines, legal writers can effectively reference individuals in precedent cases in a way that enhances the clarity and relevance of their arguments. The emphasis on functions or roles, rather than proper names, helps maintain focus on the legal issues at hand and aids in constructing a more persuasive legal narrative. This approach is not only practical but also aligns with legal writing conventions wherein a precedent's importance is its applicability to the matter being argued rather than the personal details of the parties involved.

VI. CONCLUSION

I return to the compelling example set by the Kyle Rittenhouse trial. This case strikingly illustrates strategic naming decisions' profound impact on legal practice. The judge's decision to prohibit the word "victims" while allowing terms such as "arsonists" and "looters" exemplifies the significant psychological and perceptual consequences embedded in the choices of names and descriptions.³³¹ But all the more so is that the attorneys weren't focusing on the victims' names.³³²

Throughout this article, I have argued that the decisions made in naming and describing parties are far from trivial; they carry the immense potential to influence perception, empathy, and, ultimately, the judge or jury's judgment. The Rittenhouse trial serves as a potent reminder of how legal narratives and the outcomes for those involved can pivot on the intentional use of language.

We, as lawyers, have a critical need to make intentional and strategic decisions about naming in our practice. Leveraging insights from psycholinguistics and socio-onomastics, I advocate for a nuanced understanding of how reference strategies can profoundly sway legal narratives and outcomes. We must move beyond traditional or intuitive approaches and strategically use the power of reference to craft persuasive legal arguments. As we do so, we will find that we are not merely picking words from a set of "choices from which to choose"³³³ but are creating references that do, in Chief Justice Roberts's words, "exactly what [we] want the law to do."³³⁴

330. *See generally id.*

331. Sullivan, *supra* note 2.

332. *Id.*

333. Chaemsaitong, *supra* note 9, at 216.

334. Garner, *supra* note 10, at 5.