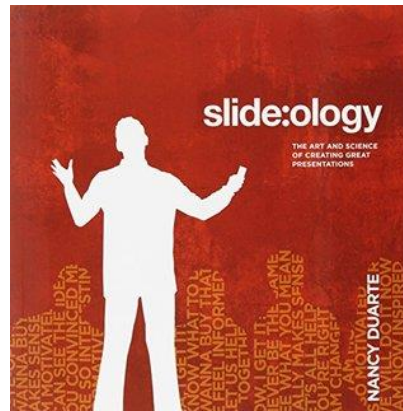


Life and Death by PowerPoint: The Use of Multimedia in the Courtroom

By Dr. John F. Sase

"We are all inherently visual communicators. Consider kindergarten: crayons, finger paints, and clay propelled our expression, not word processors or spreadsheets." --Nancy Duarte, Slide:ology: The Art and Science of Creating Great Presentations (O'Reilly Media, 2008)



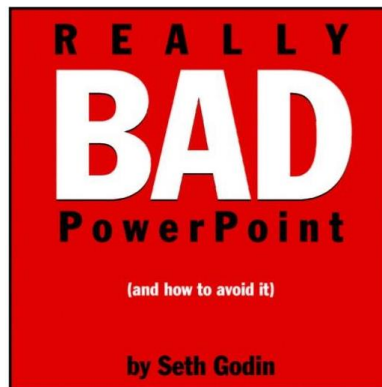
This article discusses the approaches and methods for using PowerPoint in presentations delivered by attorneys and expert witnesses in jury or bench trials. We will address the use of forensic media that has developed from twentieth-century instructional technology. We have chosen to discuss this issue because a presentation frequently gives the last impression about a plaintiff or defendant to the judge or jury before they retire to deliberate a verdict.

In a previous post, we discussed the specific qualities for which attorneys should look when searching for an expert witness. In addition to possessing the qualities of relevant experience and the peer-conferred license of a Ph.D., we noted that experts who teach or speak publically tend to maintain an excellent working knowledge of modern media technologies. Of these technologies, PowerPoint and comparable slide ware have emerged as the most popular tools in many areas. However, though PowerPoint remains the most used media tool in business meetings, in the classroom, and at court, it also represents these technologies' most abused.

This discussion hopes to provide information that will help stop this abuse in the courtroom and aid attorneys in winning cases. Survey Says: Americans Would Give Up Sex to Avoid PowerPoint Presentations Recently, Sliderocket Research (www.clearslide.com/product/sliderocket/) released the results of a survey that underscores the points that presentation gurus have made about PowerPoint abuses for more than two decades. Not much has changed over time. It seems that one-fourth of the professionals surveyed reported that they would rather forego having sex than sit through yet another PowerPoint presentation. Also, more than one-fifth of respondents would rather do their taxes instead of attending a PowerPoint presentation. Another fifth preferred the option of a trip to his/her dentist. Finally,

one-third of the survey respondents admitted to falling asleep at least once during such presentations.

Suppose this survey indeed does reflect the attitude of working society at large. In that case, we must pause to ask why—especially before considering using this media technology on a captive audience in a court of law. However, technology is not to blame. The above research resounds loudly and clearly on this point. Instead, the human element provides the quality, design, content choice, and delivery of these presentations. These elements determine whether or not a presentation "turns on" or "turns off" the presiding judge and the jury members.



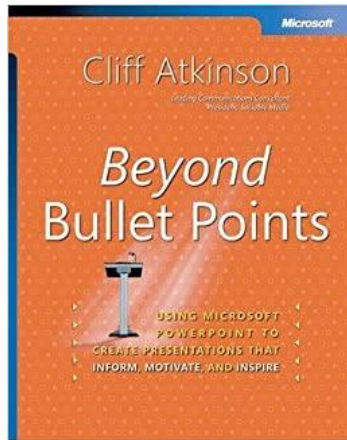
Addressing this point, leading presentation author Seth Godin (www.sethgodin.com) circulated *Really Bad PowerPoint (and How to Avoid It)*, a ten-page e-booklet published in 2001 (www.amazon.com).

Godin lays the blame on Microsoft's doorstep. He states, "Microsoft has built wizards and templates right into PowerPoint. And those 'helpful' tools are the main reason we've got to live with page after page of bullets, with big headlines and awful backgrounds. Let's not even get started on the built-in clip art." Godin continues to explain that people do not use PowerPoint (PPT) as a communication tool. Instead, they use PPT as a crutch to accomplish three things, none of which leads to a good presentation. These include

- Using the PPT as a teleprompter from which the presenter reads the slides
- Presenters are handing out printed copies of their "Slideuments" (documents embedded in slides) to the audience to avoid the task of writing a formal report
- Using the handouts of the slide set to make it easier for their audience, presenters attempt to remember everything--sort of like reading slides, but better.

According to Godin and others, the bottom line is that "normal" PowerPoint is out of sync with how human beings learn and communicate. Through six Vioxx bellwether trials in Texas, New Jersey, California, Alabama, Illinois, and Florida around 2005, PowerPoint took on a life of its own with the help of a lot of fertilizer from Microsoft, which joined the battle to defeat the beast.

Microsoft has published one of the top books on how to avoid the problems while, at the same time, providing a case study of great interest to attorneys. Cliff Atkinson, who served as the presentation consultant for the plaintiff in the case of the estate of Robert Ernst v. Merck and Co., Inc., wrote *Beyond Bullet Points: Using Microsoft Office PowerPoint to Create Presentations That Inform, Motivate, and Inspire* (Microsoft Press, 2008).



In the Ernst v. Merck suit, known popularly as the Texas VIOXX case, Ernst died after taking VIOXX, a non-steroidal anti-inflammatory drug. The jury decided in favor of the plaintiff and delivered a \$253.4 million verdict. Afterward, this lawsuit rose to prominence as the first of over 3,800 state and federal VIOXX cases to go to trial. In an FDA Memorandum of 30 September 2004, David J. Graham, MD, MPH, Associate Director for Science, Office of Drug Safety, cites evidence that 27,785 heart attacks and sudden cardiac arrests occurred from VIOXX before Merck took it off of the market in 2004.

([http://www.fda.gov/downloads/Drugs/DrugSafety/Postmarket Drug Safety Information for Patients and Providers/ucm106880.pdf](http://www.fda.gov/downloads/Drugs/DrugSafety/Postmarket%20Drug%20Safety%20Information%20for%20Patients%20and%20Providers/ucm106880.pdf)).

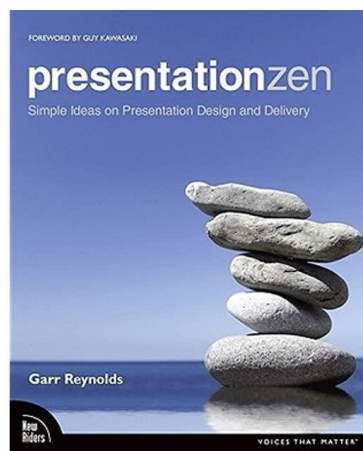
After finding an earlier edition of Atkinson's book online during trial preparation, the already media-savvy attorney Mark Lanier retained the author to join the team in Texas. With this strategy, Lanier went to court with a full presentation arsenal in which he successfully integrated media technology with his down-to-earth courtroom style. Lanier opened by introducing Carol Ernst, Robert Ernst's widow, and their daughter to the jury. Then Lanier passed in front of the jurors, making eye contact with each of them individually. Knowing his audience, all of whom were high-school graduates in their twenties and forties from a wide range of professions, Lanier pushed aside the podium to put himself on a more personable level with the jury.



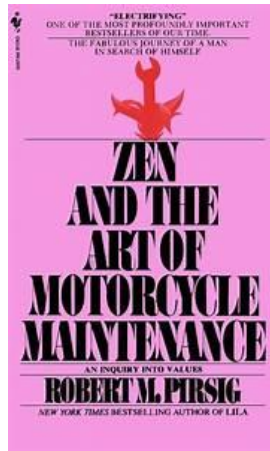
Standing alongside a ten-foot screen that he used as a backdrop, Lanier presented a PPT that told the tragic story of Robert Ernst emotionally. Lanier transferred his emotional appeal to the engaged jurors in a choreographed presentation that projected the integration of colors, images, and words into an absorbing media experience. Merck's legal team delivered a "normal" PPT exhibit complete with bullet points, impersonal images, and detailed scientific graphs and data in rebuttal. The rest is history. Form Follows Function.

To understand how one side in the Ernst/Merck case engaged the jury successfully while the other did not, we must begin our analysis at the conceptual level rather than practical. We need to start with the approach used to conceive a presentation before considering building one. For most of the past decade, I (Dr. Sase) have introduced the use of PowerPoint into my teaching at the university level. In addition to developing presentations to serve as learning tools for my lectures on Economics, I have continuously improved the integration of assigned term papers and student PPT presentations that amplify these papers' subjects.

Understanding that when these students graduate and enter the professional world of work, they will need to communicate what they have learned and continue to learn to a diverse audience effectively. This professional audience has become accustomed to using PowerPoint and similar slideware as the standard in government, business, and institutional meetings. I introduce my students to the subject of professional communication at the philosophical and conceptual levels.



I do so by discussing, recommending, and passing around the book *Presentation Zen* (New Riders, 2008) by Garr Reynolds. In his top-down approach, Reynolds reminds us that the art of presentation—especially in professional circles—shares some of the same ethe with Zen's ancient practice. Do you remember Robert M. Pirsig's philosophical autobiography *Zen and the Art of Motorcycle Maintenance* (William Morrow and Co., 1974)? In Reynolds' words, "[T]he essence or spirit of the many principles found in Zen concerning aesthetics, mindfulness, connectedness, and so on can be applied to our... presentations."



Reynolds states that a presentation's objective is to communicate with more clarity, integrity, beauty, and intelligence through the use of restraint, simplicity, and naturalness. The goal is to win the case. Reynolds explains that Presentation Zen is more of an approach to personal awareness and the ability to see and discover. Presentation Zen involves restraint in preparation, simplicity in design, and naturalness in delivery to produce greater clarity for the presenter and the audience.

This approach should produce less suffering for all by engaging judges and jurors. After that, the mantle for success falls on the shoulders of the attorney.

Our Conceptual Age

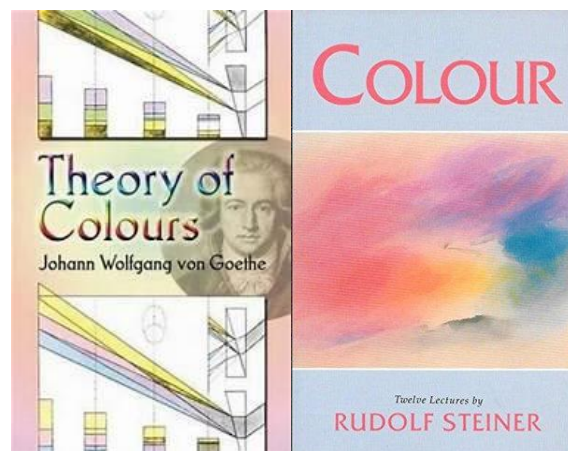
We live in a conceptual age where communication equates to the transfer of emotion, not just to inform. We must design our communications well to accomplish this task. They need to convey a story that unites colors, images, and words symphonically and articulately. Also, our story must elicit empathy from our audience and must do so sincerely. To make this happen, we need to include play and humor elements, not just for comic relief but as a counterpoint to the grave and sometimes tragic elements that we must convey to a jury. Our communication must give meaning in ways that engage both hemispheres of the recipient's brain—the emotional, musical, and moody elements along with agility, facts, and complex data.

Where can we turn for practical inspiration? Since attorneys of the old school already tend to be wordsmiths of the highest order, let us invest more of our page space in the other two presentation elements--color and images. Nancy Duarte, whom we cited in our opening quote, thoroughly covers the use of color and its power in her chapter "Using Visual Elements: Background, Color, and Text." Duarte explains the necessity of developing a consistent color palette in response to three questions

- Who is your audience?
- In what field or profession are you working?

- As the hookah-smoking caterpillar in Alice in Wonderland is wont to ask, "Who are you?"

Using the color-pickers developed from the Newtonian color wheel, Apple and Microsoft provide the platform for a practical discussion of Monochromatic, Analogous, Complementary, and other color-wheel relationships. These help to emote feelings that range from earthy to strong, calm to powerful, or masculine to feminine, to name but a few. For the more daring artist, we suggest reading the masterpiece *Theory of Colours* by Johann Wolfgang von Goethe (1810; Dover reprint, 2006) and Rudolf Steiner's lectures from 1914 through 1924 published as *Colour* (Anthroposophic Press, 2nd ed. 1992). As an example of what may raise one's consciousness, Steiner describes the polarity between the colors red and blue, paraphrased as follows: We see the color red in sunrise and sunset because we are looking at the light through the darkness.



However, the sky appears blue during the day because we view the darkness of space through light. (Let that bake your noodle for a few moments.) Images play a prominent role in the composition of slideware presentations. To understand this point better, we suggest that our readers watch and study the variety of high-quality documentaries produced for the History Channel, the Public Broadcasting System (PBS), the National Geographic Channel, and other forums. Not only will these shows offer education in terms of what types of images work well in presentations, but the production work also demonstrates the appropriate use of unobtrusive zoom and movement that help to hold the interest of viewers. Unless the fair-use doctrine covers the pictures you want to use, attorneys or experts may need to search for appropriate images. Garr Reynolds includes a list in his chapter "Presentation Design: Principles and Techniques." Having shopped around the sites that he recommends, we find that most royalty-free images cost less than \$10. These sites include www.istockphoto.com, www.dreamstime.com, www.fotolia.com, and www.shutterstock.com. Also, some sites offer free images. These include www.flickr.com/creativecommons and www.imageafter.com.

Your forensic photographer or day-in-the-life videographer may be able to help you as well, especially with stills or footage shot locally. Help, My Brain Is Going to Explode! Assuming that

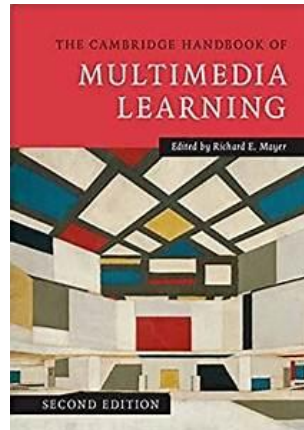
you have engaged the jury in your presentation, you do not want to make their heads explode by pushing too much information at them and doing so too quickly.

The simplest way to understand the Gestalt theories of information processing and memory retention is to imagine two kitchen funnels taped together. Imagine taping together the funnels' two narrow tubes so that you have a large opening on the left, a space narrowing to the middle where the two funnels connect, and the space enlarging again on the right. You have the task of pushing information past the jurors' sensory preceptors—eyes and ears, mostly—at the left-side opening, through the narrow tubes of their short-term working memory, and out to their long-term memory on the right, where they organize and store thoughts. A problem arises if PPT slides contain too much information and move too fast. This overflow results in either no learning or, at best, incomplete learning. However, a well-managed information flow produces meaningful learning and fuller long-term retention.

Unfortunately, traditional bullet-point or data-table slides ignore working memory limits—that narrow tube section where the two funnels connect. Too often, the outcome is incomplete. As the short-term memory processors overload, there can be no learning at all. Kaboom! Some truth exists in the old joke, “How does one eat an elephant?—One bite at a time!” To communicate effectively, we use visual cues to highlight the organization of the PPT presentation.

Furthermore, we must present our information in bite-sized pieces. Next, we need to remember that we are working with a dual-channel system—verbal and visual. Therefore, we must match our verbal content carefully to our visual information. Studies have determined that splitting audience attention between multiple sources results in difficulty integrating mentally. One of the most common errors in making presentations occurs when the presenter reads the text verbatim concerning this principle. Rather than strengthening communication, this text redundancy reduces understanding and comprehension. For additional information, we refer our readers to the *Cambridge Handbook of Multimedia Learning* (Richard E. Mayer, editor, Cambridge University Press, 2005) and "Working Memory" by Alan D. Baddeley and Graham Hitch in *The Psychology of Learning and Motivation: Advances in Research and Theory* (G.H. Bower, editor., Volume 8, Academic Press, 1974). The take-away points of these sources are:

- People learn better from a mix of words and pictures than words alone
- Speak extemporaneously about your subject rather than reading the text off the screen.



As with the entire presentation, the organization of information flow in the individual slides is critical. Our western mindset has led us to follow the path of information from left to right, diagonally from the upper-left to the lower-right, or from top to bottom. Therefore, we emphasize the importance of prioritized information by direction and sequence of flow. Since viewers' minds are active, not passive, prioritizing helps jurors understand by guiding their working memory's attention to the most essential visual and verbal information. Making the Sausage

As promised at the top of this column, I (Dr. Sase) want to leave you with some straightforward advice and instruction to get you started in making your own forensic PowerPoints. As many feasible ways exist to assemble a forensic production, let us choose one simple working example. I will base this example, that of PechaKucha, on my classroom experiences. PechaKucha ("chatter" in Japanese; see <http://youtu.be/gdghID66kLs> for a fun video on pronunciation) is a presentation format that has increased in popularity around the world. This format consists of a set of twenty slides, each displayed for twenty seconds, for a total viewing time of six minutes and forty seconds (www.pecha-kucha.org). Though this approach's rigidity appears somewhat draconian to students, it has allowed them to present their term-end PowerPoints in a fair and time-efficient manner.

Though many judges may embrace the concept of a pure PechaKucha presentation, it probably will not work in most trial situations. Nevertheless, this format does provide the neophyte producer of presentations with a solid set of training wheels. First lesson: We do not use the standard templates provided in the PowerPoint program. Second Lesson: We delete the two default boxes from the otherwise blank slide. After that, we make nineteen copies of this pure, clean canvas. It should take the average professional only a few minutes to figure how to insert and manipulate text boxes and images.



However, if you have a seventh-grader at home, s/he can show you how to do this in half the time. In this example, we pull the information through a three-act format. We could start our construction directly on the PowerPoint slides. Many experts find it better to sketch out their scripts as a storyboard on standard-size sticky notes. As this kind of storyboarding is equivalent to "doodling," it does not require advanced artistic skills. Peter Jackson, who produced and directed *The Lord of the Rings* trilogy (New Line Cinema, 2001-03), continues to be an ardent supporter of this technique. Furthermore, he cites Alfred Hitchcock, a master storyboarder, as a major influence. As an example of his insight, Hitchcock storyboarded each of the fifty-two shots in the famous shower scene in *Psycho* (Universal Pictures, 1960) in advance of shooting (see a video analysis at <http://youtu.be/wBAMzmQ2SqQ>).

As we may feel more comfortable working with a pre-organized timeline, we will use the following three-act outline to provide our readers with a solid working format. This outline contains twenty slides.

Act I: The setup of the story—slides one through five.

- 1) Setting—The where and when to grab viewer attention
- 2) Role—The viewer should ask, "Who am I in this setting?"
- 3) Point A—What is the challenge, quest, or goal?
- 4) Point B—Where should the viewer go? The Verdict or Resolution.
- 5) The Call to Action—How will the viewer get from A to B?

Act II: The Call to Action leads to three Key Points with an Explanation and Detail for each— slides six through seventeen.

- 6) Most important Key Point
- 7) Explanation
- 8) Detail 1
- 9) Detail 2
- 10) Second-most important Key Point

- 11) Explanation
- 12) Detail 1 13) Detail 2
- 14) Third-most important Key Point
- 15) Explanation
- 16) Detail 1 7
- 17) Detail 2

Act III: The Wrap-Up (Closing the Sale)—slides eighteen through twenty.

- 18) Summary of the Three Key Points
- 19) Conclusions are drawn by the presenter
- 20) Repeat the Call to Action. For what verdict does the presenter ask?

At the top of each slide, we type a headline that reflects the above outline. It helps if we think of the headline as a talking point rather than a text to read. Though sentence fragments often work well as headlines, we want the goal of our headlining to be the development of short but whole sentences. Viewers process complete sentences better than fragments. However, we will limit each headline to a maximum of six to ten words. Furthermore, because of computer/projector pixelization and the audience's distance from the screen, we find that Sans-Serif typefaces of twenty-eight point and more considerable work best on screen. From experience, we find that a thirty-six-point font works best for headline

Consider this reality check: If our computer monitors measure fifteen inches diagonally, let us step six feet back from our computers and read the screen. If we have trouble reading the text, so will the folks in the back row. For consistency, we choose only a few compatible typefaces to use in the entire presentation. Furthermore, we want to use the same font for similar elements. For example, we would use the same typeface and point size for the headlines on all of the Key Point slides. Subconsciously, this helps the audience to organize the information as well as to process it.



Next, we need to find appropriate images for the presentation and illustrate each slide's featured point. We find it best to compile all of the images as a group before pasting them to their respective slides for the novice. This approach helps us maintain a sense of continuity and uniformity with our selected design elements of color, image, and text. Many of the royalty-free Websites for images listed above allow users to download watermarked samples of the pictures previous to purchase.

This approach means that we can rough out our entire project before committing to, and paying for, the final selection of images. Finally, as we assemble the design elements of a slide set, we should avoid razzle-dazzle effects. However, we should allow for an abundance of white space. As an undergrad, I (Dr. Sase) took an introductory course in advertising. The importance of white space was drilled into us, students. Less is more. It is not what the viewer sees as much as what they do not see. The main point for attorneys creating presentations is to compose the words, images, and text to allow members of the jury to digest the content quickly.

After that, they will turn their attention to the expert or the attorney and his/her narration. The slides constitute the play's scenery, a backdrop in front of which the attorney or expert is the star.

It's All Butter

The best multimedia presentations given in court have been those in which the attorney and their experts have practiced, practiced, and practiced. Also, let us reflect on what a former facilities officer on a U.S. Navy nuclear submarine told me (Dr. Sase): the best-prepared operations are those in which the crew has brought identical pieces of equipment for its backup system. Legal teams that bring extra computers, projectors, and screens to the courtroom and then thoroughly test both the hardware and software before trial presentation tend to have the edge over their opponents.

In conclusion, let us refer back to the survey cited about PowerPoint abuse. Using the tools and suggestions in this month's column could mean that presenters and viewers would not have to go to the dentist or give up sex. For attorneys, a good PPT could be a "make-it-or-break-it" part of their arsenal, the lynchpin on winning or losing a case. Since many forensic presentations appear

on the final day, the jury is hungry for anything different in their sight range. When jurors appear to be rising from the dead when a presentation begins, the potential for engagement exists. Therefore, we measure the best displays by the number of alert eyeballs and refreshed faces during the first thirty seconds.

However, if an attorney fails to satisfy and hold the jurors' positive emotions, the result can turn ugly. Consider the peasantry with pitchforks and torches storming Castle Frankenstein. Case closed.

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