

The naked truth

By MICHAEL G. BROCK

Some people who do driver's license evaluations for Secretary of State Administrative Hearing Section appeals say they are 99% successful, by which they are implying that their clients get their license back 99% of the time (I'm sure if you called them they would say that's not what they mean). This is simply false advertising. Nobody's evaluation clients get their license back all the time, nor is it the function of the evaluator to advocate for their clients.

Some attorneys may advertise that they have a 99% or 100% success rate, but this is clearly different. First of all, the attorney is the client's advocate. It is appropriate for legal counsel to view success as the client obtaining the license he or she is seeking. They may also decide not to take the case to a hearing until they are certain of success. I'm not sure if this makes the most sense for the most clients, but it is a possible approach and I've seen it practiced.

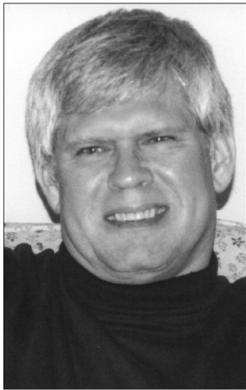
If this attorney thinks the client needs another year of AA before he is ready, then he or she may wait a year before moving forward. Moreover, he may also contract with the client to continue to represent him or her without charge until a license is obtained if the first appeal is not successful. In this way he or she can honestly proclaim a near perfect record of success over the long haul. The only failures would be those who dropped out after being denied once or twice.

However, what evaluators are supposed to be doing is an independent evaluation, which is unbiased and will help the hearing officer make an informed decision about whether or not to restore someone's driving privileges. He or she will take this evaluation into consideration along with other factors, and decide what they think is in the best interests of the people of this state.

Some of the attorneys I work for have told me they are successful with my evals 95% of the time, but this of course presumes both a good evaluation and good legal representation. Even with both of these factors on their side, there are some clients that cannot be saved from themselves. In AA they describe these people as constitutionally incapable of being honest with themselves: "There are such unfortunates. They are not at fault; they seem to have been born that way."

One recent client was repeatedly warned by both myself and his legal counsel that, while he might get away with lying about some things, lying about what is a matter of record is a sure prescription for failure. None the less, he repeatedly gave his last arrest for DUI date when the hearing officer asked him several times for the last time he had driven a car. Given that he had several arrests for driving without a license, his credibility was completely destroyed and he was predictably denied. There is no cure for stupid.

It is very important for clients to realize that the evaluator is not their advocate or their counselor. The client should be trying to make the best impression he or she can on the evaluator, and to treat this evaluation as what it is—an interview that will produce evidence regarding the client's substance abuse and recovery history and which will be discussed and taken into consideration at the hearing. The client should not be confiding information he doesn't want shared with the hearing officer.



Michael G. Brock

Clients should also understand that the evaluation is a one-time event. There is no reason for the client to be required to attend multiple visits. It is presumed that the client is sober/abstinent at least a year and has done the necessary counseling and/or AA to establish and maintain their condition prior to scheduling the evaluation. If the evaluator believes they have not, they should tell the client up front, but if they are saying the client must complete therapy with them before they will do the eval, they are essentially engaged in a form of extortion.

Moreover, the evaluator may also be expressing their bias in the report by recommending that the client needs more therapy or should go back to AA. It may be their belief that no sobriety is safe unless they person remains in a 12-step program. However, that bias sends the message to the hearing officer that this person is not ready to be trusted with a driver's license. If the evaluator expresses this belief, it is unlikely that the hearing officer will disagree and the client will probably be told to attend more meetings and come back in a year.

If I were an attorney I would prep my client before he goes for his evaluation—this is not a counseling appointment; both your sobriety and its quality are being assessed. I would also have a specific evaluator whom I trust to do a capable job and would not take chances on those who do this as an ancillary part of their practice, or worse, those who are assigned these cases by the clinic they work for. The process is too complicated to be trusted to anyone who does not stay up with the current changes.

If the evaluator did a bad job, or made an unfavorable recommendation regarding my client, I would get another opinion. He may have wasted his money on the first eval, but if he goes to the hearing with bad evidence, he has very little chance of prevailing. Sober clients with a good evaluation have a good chance, and those who also have a good attorney have a great chance. It's a matter of controlling what you can and trusting the process to work.

Michael G. Brock, MA, LLP, LMSW, is a forensic mental health professional in private practice at Counseling and Evaluation Services in Wyandotte, Michigan. He has worked in the mental health field since 1974, and has been in full-time private practice since 1985. The majority of his practice in recent years relates to driver license restoration and substance abuse evaluation. He may be contacted at Michael G. Brock, Counseling and Evaluation Services, 2514 Biddle, Wyandotte, 48192; 313-802-0863, fax/phone 734-692-1082; e-mail, michaelgbrock@comcast.net; website, michaelbrock.com.

THE EXPERT WITNESS

Recommendations for PowerPoint in the courtroom

By JOHN F. SASE, PH.D., GERARD J. SENICK, SENIOR EDITOR JULIE GALE SASE, COPYEDITOR

"One of the most important skills of the economist, therefore, is that of simplification of the model."

—Kenneth Ewart Boulding, *american economist*, "The Skills of the Economist" (Howard Allen, 1958)

In this month's column, we offer some recommendations for creating effective PowerPoint presentations to attorneys and their associates, suggestions that may help to carry a case in the desired direction. There is an inherent power to enlighten, to understand, and to persuade in Microsoft PowerPoint, Apple Keynote, and other presentation software. Though many people will say that they do not like the kinds of presentations that are created with these packages, very likely these viewers mean that they dislike slide presentations that are too long, too slow-moving, too wordy, or simply...boring. This sort of presentation has introduced a new word into our language—"slideument" (embedding a lengthy document into a slide or a series of slides). In addition, people complain about font types and sizes that are too difficult to read from the back of a classroom, a lecture hall, or a jury room. Many of us have experienced a "Death-by-Bulletpoint" presentation at least once in our careers.

Using slides to communicate with a jury is becoming de rigeur in our Digital-Media Age. However, a bad presentation can alienate a judge or a jury by putting them to sleep while a good presentation can help an attorney to bring his/her case to the desired conclusion. For an entertaining presentation of bad PowerPoint, watch "Life after Death by PowerPoint" by Don McMillan (<https://youtu.be/lpvfmeU2Ck> and <https://youtu.be/zDvmIPVtg-Wo>).

In teaching, I (Dr. Sase) use PowerPoint and videos in the classroom extensively and require my upper-level students to present the high points of their term papers by using a format of 20 slides lasting 20 seconds each. This 20/20 format is known as Pecha Kucha (Japanese for "chatter"). Though not an appropriate format for all presentations, it does serve as a powerful educational tool by offering an experience for developing professional communication skills. I also have my students offer anonymous written critiques to the presenter after his/her Pecha Kucha. For additional information, visit www.pechakucha.org.

Alex Brown, the director of operations at the A2L Litigation-Consulting practice, weighs on the subject by specifically addressing the needs of attorneys. In "12 Things about PowerPoint You Probably Never Knew" (his blog article of 9 June 2016), Brown tells us, "PowerPoint is not always used to create litigation graphics to the best effect. But that doesn't mean you should blame the tool." He continues with pointers for using PowerPoint in a manner that will educate and excite. To those of us



John F. Sase

who use presentation graphics extensively, many of these ideas are common knowledge. These include creating clear and simple slides to move along the story, avoiding excessive verbiage, and developing live-presentation skills. Some techniques are performable at a professional level by most users in this arena. For more challenging techniques, a firm may want or need to contract a professional in the field of Litigation Consulting such as A2L Consulting (www.a2lc.com).

In many ways, practicing law in front of a jury resembles teaching a small class of students. Approximately 65 percent of the population learns visually, responding well to visual cues such as pictures, notes and diagrams. Successful trial attorneys and their forensic experts tend to be comfortable with storytelling to a jury. However, the addition of digital media to the mix requires the assemblage of a deck of simple but interesting slides and videos that reflect the issues of the case and help to tell the story. For many attorneys and experts, a rule of thumb is that the number of words on each slide should be limited if we expect our audience to listen to us and not to be distracted by reading words on the slides. Leading presentation gurus like Seth Godin (www.sethgodin.com), Garr Reynolds (garrreynolds.com), and Nancy Duarte (www.duarte.com) concur that six to ten words per slide appear to be the optimal maximum. Attorneys and experts want to maintain eye contact with their audiences while addressing them. The worst thing that any presenter can do is to turn his/her back on the audience and read text aloud from a "slideument." Any spoken words should be memorized and delivered directly to the jurors. Reading words in the form of a quote should be kept to a minimum and should be used for dramatic emphasis only. An equally important rule to remember is not to crowd a slide with multiple ideas. Presentations should follow the rule of One Slide, One Idea. This allows the audience to absorb, to digest, and to retain the message as one might eat an elephant, one bite at a time.

Let us consider a few key principles in the use of fonts. First, it is important to have good contrast in order to make letters clear to the reader. Black on white and white on black are the most obvious. Beyond this basic technique, a light background with dark

shades of color is the general rule. For example, dark red, dark blue, or dark green letters against a light beige background work well for clarity and also tend to be easy on the eyes.

Second, sans serif fonts work better than serif fonts. As a refresher, sans serif fonts are those without adornments. These include Arial, Calibri, Microsoft Sans Serif and a number of others. The basic reason that these fonts are preferred ones rests with the fact that digital images are discrete rather than continuous. This means that each letter-image is composed of many squares, the pixels on a computer screen. A horizontal or vertical line-segment appears smooth and continuous. However, any angled or curved letter such as an "A" or an "O" looks ragged or saw-tooth in sections. This quality makes the type more difficult for both the eye and the brain to assimilate. The only solutions are to rid the font of adornments and/or to increase the font size. Increasing the size renders a letter-image with more pixels per square inch. The result is a character that is smoother and is easier to read.

Third, the smaller the screen or the further away that the viewer sits from the screen, the more difficult any font is to read. Therefore, maintaining a font size of at least 28 points for regular text and 36 points for titles helps viewers in the back of the room to read easily and to avoid eyestrain.

Let us remember that graphics are good. A picture speaks a thousand words! In court, as in a classroom, we communicate more effectively if we choose a single image that portrays or exemplifies the idea at hand. This matter grows more complex when we create technical tutorials for jurors or students to view. We must note that the dissimilarity between students and jurors is that jurors may lack common prerequisites, which students generally share. Though one may hope to assemble a group of jurors who can grasp the matters of the case easily, it may be difficult to select an entire panel of jurors who can be brought up to speed on relevant technical matters quickly. Differences may be due to field and level of education as well as relevant life experiences.

Technical media involving blueprints, math, or statistics should be prepared by a forensic expert who is knowledgeable in his/her field and who is experienced with presenting to a live audience. Experts who teach classes on a regular basis and who produce their own media-materials may have the necessary prerequisites. Alternately, working with a qualified member of the law firm or with a skilled litigation consultant may produce the best results. Technical jargon and/or mathematics should be kept to a minimum. As an economist, I (Dr. Sase) recall the approach used by the English economist Alfred Marshall, who is considered an economist's economist. Marshall wrote, "I had a growing feeling in the latter years of my work at the subject that a good mathematical theorem dealing with economic hypothesis was very well unlikely to be good economics, and I went more and

more on the rules: (1) Use mathematics as shorthand language, rather than as an engine of inquiry. (2) Keep to them till you have done. (3) Translate into English. (4) Then illustrate by examples that are important in real life. (5) Burn the mathematics. (6) If you can't succeed in 4, burn 3. This last I do often." (Letter to A.L. Bowley, 27 February 1906, cited in David L. Sills and Robert King Merton, eds., "Social Science Quotations: Who Said What, When, and Where, Transaction Publishers," 2000).

A legible organizational chart or process-diagram can be simplified and placed on one slide. However, flow charts and timelines can be trickier. For comprehension by all viewers, it may be best to place each individual segment on a separate slide and then to compile a summary slide for the end of the series. This technique may help counsel to avoid any conflicts in storytelling. If words or numbers must appear often, highlighting or changing the color of the text helps to illuminate the central key idea.

Sometimes it is necessary to produce a table that contains many numbers. From teaching Economics, I have discovered that the best way to avoid an overflow of information is to select one to three numbers on the page and then to highlight each one with a strong red box drawn around the number on which you want your viewer to focus. By doing this, the eye of the viewer is directed toward the most important values while the other numbers remain visible if needed for further reference.

Embedding an active Microsoft Excel chart or video into PowerPoint does work for presenting to a jury. However, if something can go wrong with this, it will. Computer glitches can create an embarrassing pause. Here is my advice: If you must use active cross-links between programs, then Practice, Practice, and Practice. In addition, have a low-tech backup presentation ready in case of emergency. Experience has taught me that many courtrooms have electrical grids with oddities that can wreak havoc with our modern digital equipment. Foam-core boards and large newsprint pads can be just as—if not even more—effective at times.

Earlier in this article, we referred to "Life after Death by PowerPoint" by Don McMillan. We encourage you to view this video multiple times with your colleagues. Most importantly, listen to the reaction of the audience. McMillan is an engineer by profession. However, McMillan is akin to a standup comedian performing in front of a live audience and interjecting solid information with lots of humor. In respect to fonts, McMillan tells us that one's selection of a font reflects the individual's personality. He states, "Using Times New Roman means that you're lazy, apathetic, unimaginative, and always use the default." (Comic Sans in a courtroom? Never!) On bullet-points, McMillan has this to say: "Avoid excessive bullet-pointing. The term 'bullet-point' comes from people firing guns at annoying

presenters." In viewing McMillan's videos, ask, "What has grabbed the attention of the audience?" Listen, learn, and laugh.

Regarding color palettes, remember that black font on white background or white font on black background works by default. Beyond that are fifty shades of grey and the wonderful world of color. Before attempting color, look through Chapter Seven of slide:ology, The Art and Science of Creating Great Presentations by Nancy Duarte (O'Reilly Media, 2008) or watch my short video "PowerPoint: Choosing the Color Palette" (<https://youtu.be/RdLLPw0X6j0>).

We hope that these few simple lessons from the classroom will help attorneys to master the art of digital presentation in the courtroom. Though it is not the responsibility of counsel to master digital-presentation packages, it is important to learn enough to engage and to maintain a connection with judge and jury by employing digital persuasion tools in the hope that the audience learns, understands, and retains the information needed in order to reach a fair and just decision at trial. Still hesitant about PowerPoint? Then read Cliff Atkinson's book "Beyond Bullet Points" (Microsoft Press, 2008). Atkinson designed the presentations that helped to win the first Vioxx case in 2005. The jury awarded \$253 million to the plaintiff.

PDF copies of this article will be posted at www.saseassociates.com. In addition, we post original and curated videos related to Economics on www.YouTube.com/VideoEconomics.

Dr. John F. Sase has taught Economics for thirty-five years and has practiced Forensic and Investigative Economics since the early 1990s. He earned a combined Masters in Economics and an MBA at the University of Detroit, and a Ph.D. in Economics at Wayne State University. He is a graduate of the University of Detroit Jesuit High School. Dr. Sase can be reached at 248.569.5228, www.saseassociates.com, and www.YouTube.com/VideoEconomics.

Gerard J. Senick is a freelance writer, editor, and musician. He earned his degree in English at the University of Detroit and was a Supervisory Editor at Gale Research Company (now Cengage) for over twenty years. Currently, he edits books for publication and gives seminars on writing and music. Mr. Senick can be reached at 313.342.4048 and at www.senick-editing.com. You can find some of his writing tips at www.YouTube.com/SenickEditing.

Julie G. Sase is a freelance copyeditor and proofreader. She earned her degree in English at Marygrove College and her graduate certificate in Parent Coaching from Seattle Pacific University. As a consultant, Ms. Sase coaches clients, writes articles for publication, and gives interviews to various media. Ms. Sase can be reached at sasej@aol.com and www.Quill2Keyboard.com.

Only
YOUR NAME HERE
can prevent
wildfires.

Ad Council www.smokeybear.com U.S. Forest Service

PART INFO GETTING PLUS PART IDEA SHARING
Equals total government connecting.

Get info. Find answers. Share ideas. Your connection begins at USA.gov – the official source for federal, state and local government information.

USA.gov
1 (800) FED-INFO

YOU MIGHT JUDGE YOURSELF SOBER
ANOTHER JUDGE MAY NOT