

Chapter 12

Fundamental Principles of an Effective Presentation

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§ 12.01 **Overview**

Ham Porter to Smalls: “You’re killing me Smalls! These are s’more’s stuff! Alrite now pay attention. First you take the graham, you stick the chocolate on the graham. Then you roast the ‘mallow. When the ‘mallows flaming . . . you stick it on the chocolate. Then cover with the other end. Then you scarf. Kind of messy, but good!”

—*The Sandlot* (1993)

When the case finally arrives at the Resolution Venue, the ability to persuade another person or a group of people to adopt your recommendation or point of view is the most important skill needed by the Litigation Team. The use of effective visuals is an important component to the success of that persuasion effort. However, the best visuals or demonstrative exhibits a judge or jury has ever seen or that money can buy will not carry the day if the overall presentation is poor. By poor, I mean ineffective, with too much logic, too little emotion, too little passion, too list Story, and too many bad design choices.

The goal of the Litigation Team is to make an **Effective Presentation**—a term used throughout this chapter and section of the book. An Effective Presentation is: The telling and showing of an intellectually and emotionally believable Story. Many presentations fail to meet this definition. Why is that so often the case? This chapter and section discusses the four reasons:

1. Too much logos
2. Too little ethos and pathos
3. Too little Story
4. Too many bad design choices

This chapter discusses the first two reasons. Chapter 13 addresses the art of story-telling and provides insights on how to become a better story-teller of your Complex Case. Chapter 14 instructs on how to make better design choices for the visuals that support the Message and Messenger (terms defined below).

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The principles discussed in this book apply to any type of presentation where both the Message and the Messenger are important, which is virtually every important presentation made in the life of a Complex Case. Consequently, the principles taught in these chapters apply to presenting an opening statement or a closing argument and all other presentations to an important **Audience**. The term **Audience** refers to the person (e.g., judge or Client) or group of persons (e.g., a jury) that is the audience for the presentation.

An Effective Presentation must be carefully planned, thoughtfully prepared and flawlessly executed to be successful. My hope is that these next few chapters will provide you with a good set of guidelines for making an Effective Presentation.

§ 12.02 A Short History on How We Got to “You’re Killing Me Smalls”**[1] Is PowerPoint to Blame?**

Many presentations I’ve been forced to sit through consist of an endless stream of poorly designed PowerPoint® slides presented in bulleted-text serving as the speaker’s (for our purposes the Messenger’s) teleprompter. The Messenger is transformed into the “Official Slide Clicker/Reader.” Often the Messenger is literally and figuratively dwarfed by text-laden slides, which completely take over and dominate the presentation. The Messenger is doing nothing more than reading the many bulleted-text points on the slides. (As the pudgy catcher, Ham Porter, said to the diminutive “Smalls” in the movie *The Sandlot*, “You’re killing me Smalls!” That’s the type of pain these types of presentations inflict on the audience: “You’re killing me, Speaker!”)

PowerPoint 1.0 was created in Silicon Valley in 1987 by two software engineers, Robert Gaskins and Dennis Austin, as a way to display presentation images on a Mac computer. Gaskins and Austin developed PowerPoint (initially named “Presenter”) as a tool to help them communicate engineering ideas with marketing folks and *vice-versa*. The newly-developed software program was seen as a clever way to communicate without having to present slides the old fashion way: using 35 mm slides or, worse, foils using an overhead projector.

Microsoft bought the program that year and converted it for use with a PC. PowerPoint hit the streets a couple of years later and by the 1990’s was widely used for most business presentations. By the end of that decade, it was apparent that Gaskins and Austin had created a monster. Soon not-very-good and usually down right awful PowerPoint slides dominated

many business meetings and eventually presentations made in Resolution Venues. The phrases “Death by PowerPoint” or “PowerPoint Hell” described many presentations.

[2] Criticisms of PowerPoint

In 2001, marketing guru and author Seth Godin wrote a 10-page mini-book called *Really Bad PowerPoint* that sold on Amazon and became a best-selling e-book. Godin described the state of affairs:

It’s [PowerPoint] actually a dismal failure. Almost every PowerPoint presentation sucks rotten eggs and much of the fault lies with Microsoft. Microsoft has built wizards and templates right into PowerPoint. And those ‘helpful’ tools are the main reason that 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.¹

In a September 2003, Edward Tufte, a professor emeritus at Yale, wrote an article for *Wired Magazine* titled *PowerPoint is Evil*. The article begins:

Imagine a widely used and expensive prescription drug that promised to make us beautiful but didn’t. Instead, the drug had frequent serious side effects: It induced stupidity, turned everyone into bores, wasted time, and degraded the quality and credibility of communication. These side effects would rightly lead to a worldwide product recall.

Yet slideware—computer programs for presentations—is everywhere: in corporate America, in government bureaucracies, even in our schools. Several hundred million copies of Microsoft PowerPoint are churning out trillions of slides each year. Slideware may help speakers outline their talks, but the convenience for the speaker can be punishing to both content and audience. The standard PowerPoint presentation elevates format over content, betraying an attitude of commercialism that turns everything into a sales pitch.²

Tufte wrote that a presentation format, such as PowerPoint, should do no harm. But, PowerPoint slides usually tend to dominate and trivialize content and, according to Tufte, too often resemble a school play: “very loud, very slow, and very simple.”³

¹ Seth Godin, *Really Bad PowerPoint (and How To Avoid It)*, 1 (2001) (available as a PDF and on Amazon.com).

² Edward Tufte, “PowerPoint Is Evil,” *Wired Magazine* (September 2003), 1.

³ *Id.* at 4.

167 FUNDAMENTAL PRINCIPLES OF AN EFFECTIVE PRESENTATION § 12.02[4]**[3] The Problem with “Slideumentation”**

Often times the presentation consists of the speaker reading densely worded (sometimes 12.0 font) PowerPoint slides, which are nothing more than the slide-version of a memo or some other document that captures the logical thinking (Logos) of the speaker. In his book *Presentation Zen*, author Garr Reynolds calls this type of presentation a “**Slideumentation**”—a cross between a document and a presentation—which fails in both regards. Commenting on presenting a Slideumentation, Seth Godin said:

If all you want to do is create a file of facts and figures, then cancel the meeting and send in a report. Do it in PowerPoint if you want, but it’s not a presentation, it’s a report. It will contain whatever you write down, but don’t imagine for a second that you’re powerfully communicating any ideas.⁴

[4] Why Many Lawyers Present a Slideumentation

Lawyers give Slideumentation-type presentations for three reasons—all of which impugn the quality of both the Message and the Messenger and render the presentation ineffective. First, the lawyer erroneously believes that if he or she can somehow transfer all of that content off the slide, it will miraculously end up into the mind of the Audience and, if so, “mission accomplished.” As explained below, this type of presentation will not appeal to the Elephant and will not be an effective way of persuading the Elephant.

Second, lawyers, as they say, “dwell in small details.” The fact that slides are packed full of facts and case cites shows diligence, a mastery of the details, and an apparent command of the subject matter. They are also terrifically boring and can deal a death blow to the presentation. The Audience will stop paying attention because the presentation is tedious, requires extensive concentration and, frankly, is not entertaining. There is nothing hooking the Audience to either the Message or the Messenger. Absent a hook, the Audience drifts away.

Third, giving a Slideumentation lessens or totally eliminates the rehearsal time for the presenter. Because the slides are a virtual script that the presenter need only read, little actual rehearsal time is seen as needed. And, little actual rehearsal time occurs. In many instances what happens is that the presenter has not rehearsed the presentation and has no idea how long it will take to read the slides. When the presenter realizes that time is running out, the presenter will quickly click through a series of slides to get to the most

⁴ Seth Godin, *Really Bad PowerPoint (and How To Avoid It)*, 4.

important slides—typically buried deep into the slide deck. By then the presenter’s fate is sealed and the Audience concludes that the presenter did not respect them enough to take the time to rehearse the presentation properly. Credibility is destroyed. The presentation is a complete failure.

[5] The Brain’s Ability to Process Information

In 2007, an article published in The Sydney Herald entitled *Research Points the Finger At PowerPoint* discussed findings from researchers from the University of New South Wales. One of the key findings of that research: It is more difficult to process information if it is coming at you both verbally and in written form at the same time. The article stated:

Pioneered at the University of NSW, the research shows the human brain processes and retains more information if it is digested in either its verbal or written form, *but not both at the same* time. (Emphasis added.)

This finding should not be all that shocking. If you’ve ever sat through a presentation where the presenter displays dense, text slides and attempts to read those slides, you either stopped paying attention to the speaker and just read the slides or ignored the slides and tried to focus on the presenter. Or, you just checked out completely and ignored both the Message and the Messenger.

§ 12.03 What’s More Important: the Message or the Messenger?

Now that we have squarely addressed the problems with many presentations, we can transition to a discussion of how to make an Effective Presentation. Every presentation has two important components: (1) the **Message** (the content and the means used to communicate the Message, and (2) the **Messenger** (that would be YOU or someone else on your Litigation Team who is presenting). The fact that there are two components, begs the question: What’s most important: The Message or the Messenger? The answer is a resounding “Yes.”

The Message and the Messenger are both most important. The key ingredients for an Effective Presentation are a strong Message and an equally strong Messenger. Therefore, the content and the visuals that are presented must serve two functions. First, they must serve as a means—but not the exclusive means—to communicate the Message. Second, the content must enhance and bolster the Messenger. The Message and the Messenger are inseparable, closely-intertwined and connected. This point is often lost and too often we think of only the Message and give little thought to the Messenger.

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§ 12.04 Logos, Ethos and Pathos

Both ancient and modern day teachings on persuasion provide great assistance in helping us to make an Effective Presentation. Aristotle's *Rhetoric* (4th BC) discussed three modes of persuasion: **Logos, Ethos and Pathos**. Logos is the use of logical reasoning in the Message and is familiar turf for most lawyers. Ethos is the personal characteristics or attributes of the Messenger that influence the persuasion process. Pathos is the ability to arouse the audience through the passion or sincerity by which the Message is conveyed. When all three elements come together—great content (Logos), great speaker (Ethos) and great passion (Pathos)—you will have an Effective Presentation.

§ 12.05 Avoid Too Much Logos—Play to the Elephant, Not the Rider

[1] Background

Lawyers are trained both in law school and in practice to structure and use logical arguments—that is, Logos. Most experienced litigators are generally pretty good at making logical arguments, where the points of the argument flow logically from one to the next in support of an overall conclusion. However, few people, including those trained in the law, make their decisions based on a logical analysis. Instead and according to the experts on persuasion from Aristotle to modern day experts, most people decide things first based on emotion and then proceed to logically rationalize the emotional decision *already made*.

In their book *Switch, How to Change Things When Change Is Hard*, authors Chip and Dan Heath address the difficulty in causing people to change or “switch.” The authors state that in each of us there is an **Elephant** and a **Rider**. The Elephant is the emotional side of us that is the source for our creativity, passion, love, sympathy, loyalty, courage, etc. (strengths), but also the side of us that yearns for instant gratification and quick fixes (weakness). The Elephant's type of thinking is found in the right side of the brain.

The Rider is the thinking side of us. The Rider is programmed by that part of our brain (the left side) that provides planning and direction (strength), but which often over-thinks the problem resulting in wheel-spinning (weakness). This left side brain characteristics is where the rational debate about whether to, say, eat a bag of salty and fatty potato chips as a snack is waged. The Rider weighs the pros and cons of any important decision, rationalizes why and why not—but ultimately gives up to what the Elephant wants to do if the

Elephant doesn't agree with the Rider's decision. The authors explain the contrast and the conflict:

[O]ur emotional side is an Elephant and our rational side is its Rider. Perched atop the Elephant, the Rider holds the reins and seems to be the leader. But the Rider's control is precarious because the Rider is so small relative to the Elephant. Anytime the six-ton Elephant and the Rider disagree about which direction to go, the Rider is going to lose. He's completely overmatched.⁵

[2] Have a Clear Message

The authors of *Switch* propose a three-part approach to switch or change behavior. First, you must direct the Elephant by providing crystal-clear direction. In the context of making an Effective Presentation, this means having a clear and unambiguous Message that is boiled down to a compelling Theory and Theme, supported by the essential points told through a compelling Story.

[3] Appeal to the Elephant

Second, you must motivate the Elephant by appealing to the Audience's emotions because only when the Elephant is willing and wants to change behavior will change actually occur. Many lawyers who make what they perceive to be logically flawless arguments cannot understand why the Audience just "didn't get it." The reason is that the logical argument did not appeal to the Elephant.

An Effective Presentation is structured from the outset to engage the Audience at the beginning of the presentation on an emotional level and keep them engaged to the conclusion of the presentation. The Elephant doesn't want to pay attention—especially to purely logical arguments—and doesn't want to work that hard—especially having to read or listen to the reading of countless text slides. It's not easy. It's not fun. The Elephant will stop paying attention even if the Rider thinks that all of this content is really good, logical and important information. Other pressing business, a ton of unread emails, Twitter, Facebook, and countless other distractions call for the Elephant to come and play.

[4] Shape the Path

Third, you must shape the path for the Rider and Elephant to follow to reach the desired decision. This is done by constructing a flow structure for the

⁵ Chip Heath and Dan Heath, *Switch, How to Change Things When Change Is Hard*, (Broadway Books, 2010), 7.

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Effective Presentation that appeals to both the Rider and the Elephant. This is best done by telling the Story of the facts of your presentation. (See discussion in Chapter 13—Fundamentals of Story Telling.) The Messenger must also inform the Audience as to the desired conclusion.

§ 12.06 Ramp Up the Ethos**[1] Convey Strength**

Ethos is the composite of the speaker's perceived virtue and goodwill and the speaker's expertise and knowledge. According to Aristotle, the ethos of the speaker must be strong for the speaker to be believed. Today, the word that best captures Ethos is "credibility"—something we all try mightily to establish with our clients, judges and juries.

[2] We Present Our Complex Cases to Skeptical Audiences

Jurors are particularly skeptical of witnesses and corporations and with good reason. It seems like every week an athlete, politician, money wizard or corporation falls from grace, e.g., Lance Armstrong (fallen Tour De France winner), Mark Sanford (fallen governor), Bernie Madoff (fallen financial wizard), Enron (fallen corporation). In many instances, the once idolized hero had steadfastly denied the allegations, only to later fess up at a tearful press conference.

Audiences are particularly cynical and skeptical of institutions because there are just so many bad examples to choose from, like the financial institutions whose greed nearly tanked the financial markets in the downturn a few years ago. Unfortunately, even if your Client is a model corporate citizen, many jurors believe that all corporations cannot be trusted.

[3] Establishing Ethos When There is No Pre-Established Credibility

There are presenters who have strong Ethos—i.e., credibility—and win the trust and respect of the Audience. Some advocates (i.e., highly-skilled and well-respected trial and appellate lawyers) have earned the trust and respect of the particular Audience by their accomplishments in the courtroom or appearances before a particular judge or court.

I heard one federal judge describe credibility like a bank account. Every lawyer before the judge had a bank account of credibility—some of the accounts are large and some are small accounts or accounts in the red based on tactics observed by the judge. We should think of our credibility and Ethos as a bank account, which you want to grow through the quality of your presentation and the credibility of your arguments. You do not want to shrink your bank account. But we see lawyers every day in courtrooms doing just

that by over-reaching, making frivolous arguments, or by being discourteous to opponents or witnesses.

Usually we present in unfamiliar venues where the Audience does not know us or our backgrounds all that well. We have no pre-established credibility and nothing yet in our our bank account. We have not yet earned the Audience's trust and respect. What to do? Make the Message and the Messenger the means by which you earn that trust and respect.

You build credibility with the Audience by placing the Audience's needs first. In her book *Slide:ology*, communication expert, Nancy Duarte, stressed: Treat the Audience as King. Duarte states: "Success means giving them [the Audience] a reason for taking their time, providing content that resonates, and ensuring it's clear what they are to do."⁶ This means presenting data or other content in a simplified (but not overly-simplistic) and compelling way, by showing pictures instead of text whenever possible; by fully committing to the presentation so the Audience sees you engaged and passionate about the topic; and by presenting credible evidence and arguments. In short, you can build credibility by careful planning and preparation and by giving a passionate presentation.

[4] Be the Real "YOU"

Ethos of the speaker can be enhanced by the speaker's naturalness before the Audience, which means communicating with words and body mannerisms in a way that is entirely "YOU" and by not imitating a style that you believe will sell to the Audience. The Messages of great advocates and great speakers are received, embraced and adopted by Audiences because these Messengers are perceived as credible and, also, sincere. Consequently, being the real YOU means just that. You need to present yourself as YOU are and not as someone you think you should be. Every lawyer has their own unique style. You need to determine your own personal style and convey that style when you present. By doing so, you will be comfortable and real.

[5] Be All Knowing

To establish Ethos, you must convey to the Audience that you are all knowing about the subject matter. The Audience must believe that for the moment in time when you are on your feet presenting, you know more about the given topic than anyone else on the planet, including even the expert witnesses who have testified or will testify. How is this accomplished? Largely, if not exclusively, through intense preparation, which covers every

⁶ Nancy Duarte, *Slideology*, (O'Reilly Media, 2008), 28.

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aspect of the Message. You must prepare until you reach the point that there is nothing left to do to prepare, which I recognize sounds circular, but you will know the feeling when you get there and you will know when you are not there as soon as the first words come out of your mouth.

[6] Know Your Audience

Ethos requires knowing the Audience. If you don't know the Audience, you won't know how they think or their desires. Knowing your Audience means knowing as much as you can about their life experiences, their education (and training) and their peer group. Then you must tailor your presentation to those unique factors.

If you're a litigator handling Complex Cases and reading this book, the chances are that you work for a civil firm and make a pretty good income. You should realize that your life, education, and financial status are considerably different from the Audiences you present to—especially when the Audience is a jury. Given this difference, you need to adjust your presentation to make sure that you are using words, analogies and visuals that will completely resonate with the Audience. That's your job as the Messenger. An Effective Presentation is all about appealing to the Audience's needs, not your needs.

[7] Lawyers and Jurors See the World Differently

If you have any doubt that jurors see the world differently than lawyers, consider the following. In studies conducted by two jury focus consultants, they asked hundreds of lawyers and thousands of representative jurors they assembled for the focus group studies a couple of questions. The two groups were asked whether they agreed with the following statement:

Once a person gets a job in an organization, if the person performs well, the job should be guaranteed for life.

Lawyers: 21%; jurors 55%.

The same groups were asked this question to test their beliefs in conspiracies and again asked whether they agreed with this statement:

John F. Kennedy was killed by an organized conspiracy rather than by a lone gunman.

Lawyers: 22%; jurors: 60%.⁷

⁷ Charles Kaufman and Casey Anderson *The Air Force is Hiding the UFO's in Roswell?*, (Legal Times, February 2007).

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[8] People Agree with People They Like

In his book, *Influence: the Psychology of Persuasion*, Dr. Robert Cialdini, a distinguished social psychologist wrote about the three years he spent studying the psychology of compliance.⁸ He wanted to find out which psychological principles or techniques played the greatest role in causing someone to comply with a request. He coined these factors the “weapons of influence.” Ultimately, Dr. Cialdini boiled down the main weapons of influence to six factors: consistency, reciprocation, social proof, authority, scarcity, and *liking*. (The book is excellent and a must read for anyone interested in the psychology of persuasion and compliance.)

The notion of liking as a weapon of influence is particularly appropriate to the topic of Ethos. Liking refers to the fact that we like to do things for or agree with people we like. If the Audience believes that YOU are like them and likeable, then chances are they will agree with YOU. The more similar YOU are with the Audience, the greater the chances of compliance. But, this doesn’t mean that you must fake likeness or be someone other than the real YOU. It means that you must know the words and lingo used by that Audience. You must respect any local customs or social norms. And, YOU must refer to things by their proper names. (For example, I tried a patent case in the Western District of Wisconsin and was admonished by my local counsel that the name of the state is “Wisconsin” (emphasis on the “Wis”) and not “Wesconsin” (with the “Wis” pronounced as “Wes”). I followed the admonishment.)

§ 12.07 Have Pathos (Passion) For Your Presentation**[1] Stir the Audience**

Pathos is the passion that the speaker has for the subject and the ability to stir the Audience to receive the Message or “switch” their viewpoint because of that passion. You must convey to the Audience that whatever the content of the Message, you believe it down to the soles of your shoes. You cannot convince someone as to the merits of the Message unless you convey to the Audience that you believe it and are moved by it—just as you hope the Audience will be. The Roman philosopher, Marcus Fabius Quintilian (35–95 A.D.) put it this way:

Will he [the Audience] be angry, if the orator who seeks to kindle his

⁸ Robert B. Cialdini, PhD., *Influence: The Psychology of Persuasion* (William Morrow and Company, 1984).

anger shows no sign of laboring under the emotion that he demands from his audience?⁹

[2] Gestures Freighted with Deeper Meaning

If you are not a believer, your lack of conviction will be revealed. A slight voice inflection, a pause or hesitation at a critical time, or a glance down at your watch during the presentation may reveal a lack of Pathos about your Message. I distinctly recall the 1992 Presidential Debates between George Bush, Bill Clinton and Ross Perot. While Perot was speaking, Bush was caught looking down at his watch. This was a telltale sign of the man. Bush was seen checking his watch while Perot addressed a question from a person in the town hall audience who had just explained to Perot how the deep recession had negatively impacted his life. The gesture reflected boredom or, worse, disinterest. One commentator said that a simple gesture, like looking at your watch, can become “freighted with deeper meaning.”

[3] Find a Way to Believe and Embrace the Message

There may be instances in which believing in what you’re saying is difficult, e.g., the situation where the Client demands that you argue a position that you know the judge or jury won’t buy for a New York minute. You know that you will personally have a difficult time trying to appear convincing because you personally don’t think the argument has merit. If you find yourself in that situation, you have two choices. You can try to convince the Client to change position in light of your beliefs and feeling as to the merit of the idea; or, you can try to frame and package the argument such that you believe it and are comfortable advancing it. Ideally, there will be alignment between the Client’s position and what you believe is the proper argument.

§ 12.08 In Summary

When a presentation fails, it is often because the Messenger (i.e., the particular lawyer(s) making the presentation) focuses the presentation way too much on the Logos (the appeal to the Rider) and doesn’t focus enough on the Ethos and the Pathos (the appeal to the Elephant). Therefore, to succeed the presentation must focus on both the Rider and the Elephant. In sum, the planning, preparation and presentation of an Effective Presentation is a whole-minded, right *and* left side brain endeavor and must please both the Rider and the Elephant.

§ 12.09 Discussion Questions

1. Consider the last presentation you gave. On a scale of 1 to 5 with

⁹ Quintillian, *Institutes*, Book IV, Chapter 2.

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5 being high and 1 being low, grade the level of (a) Logos, (b) Ethos and (c) Pathos in that presentation.

2. What could you have done differently or better to raise your score?
3. What did you learn from this chapter that you can apply to any upcoming presentation in your Complex Case?
4. How will you apply what you learned to your Litigation Team's next important presentation?