

March/April 2017

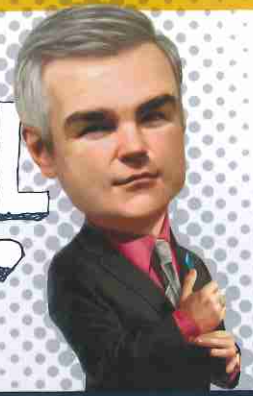
MARC WHITEHEAD & ASSOCIATES
ATTORNEYS AT LAW, LLP
A NATIONAL DISABILITY CLAIMS LAW FIRM

Vol. 3

Issue: 02

\$uccessful Barrister

THE NEWSLETTER
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WELCOME to the latest issue of the \$uccessful Barrister!

This monthly newsletter is stuffed with advice and guidance for lawyers seeking to improve their practices and their lives while making piles of money and still staying sane. In this issue we cover, the pitfalls of trial law, how to grow your law firm, and zeroing in on your marketing target.

If you know anyone you think would enjoy this newsletter, please email me their contact information at marc@marcwhitehead.com and I will be pleased to add them to the mailing list.

INSIDE THIS ISSUE

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CRUCIAL CONVERSATIONS

Tools for Talking When Stakes Are High!

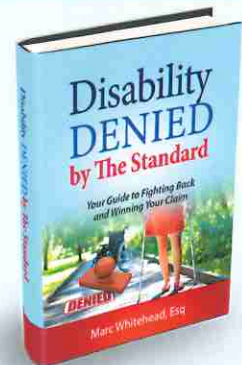
Joseph Grenny, Ron McMillan and Al Switzler is a great book to help you think about what you really want to say.

These are the main tips you will pick up from this book:

- How to prepare for high-stakes situations with a proven technique.
- How to transform anger and hurt feelings into powerful dialogue.
- How to make it safe to talk about almost anything.
- How to be persuasive, not abrasive.

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FEATURE BOOK



Call Us For a Free Copy of Marc's Latest Book!

PAGE 1 OF 8



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BOARD CERTIFIED - PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
BOARD CERTIFIED - SOCIAL SECURITY DISABILITY LAW
NATIONAL BOARD OF SOCIAL SECURITY DISABILITY ADVOCACY

Relationships are the priority of life and our practices, and these conversations help us care for our business relationships with talking and listening. The quality of your work life comes out of the quality of your dialogues and conversations. Crucial Conversations by Kerry Patterson,

- How new techniques, skills and tools work together to enable success.

But FIRST- What IS a Crucial Conversation?

A crucial conversation is a discussion between two or more people where stakes are high, opinions vary and emotions run strong. The effects of conversations gone bad can be both devastating and far reaching. Research has shown that strong relationships, careers, organizations and communities all draw from the same source of power — the ability to talk openly about high-stakes, emotional, controversial topics.

MASTERING CRUCIAL CONVERSATIONS

Each of us enters conversations with our own opinions, feelings, theories and experiences about the topic at hand and this unique combination of thoughts and feelings make up our personal pool of meaning. This pool not only informs us but also propels our every action. When two or more of us enter crucial conversations, by definition we don't share the same pool.

“Everything is funny, as long as it's happening to somebody else.”

– Will Rogers

Filling the Pool of Shared Meaning

People who are skilled at dialogue do their best to make it safe for everyone to add their meaning to the shared pool — even ideas that at first glance appear controversial, wrong or at odds with their own beliefs. Now,

obviously, they don't agree with every idea; they simply do their best to ensure that all ideas find their way into the open.

Better Choices

Not only does a shared pool help individuals make better choices, but since the meaning is shared, people willingly act on whatever decisions they make. As people sit through an open discussion where ideas are shared, they take part in the free flow of meaning. Eventually they understand why the shared solution is the best solution, and they're committed to act.

START WITH HEART

How do you encourage the flow of meaning in the face of differing opinions and strong emotions? The truth is people can change. But it requires work. You can't simply drink a magic potion and walk away renewed. Instead, you'll need to take a long, hard look at yourself.

Here are some focus points to help do just that:

- **Work on Me First**
Although it's true that there are times when we are merely bystanders in life's never-ending stream of head-on collisions, rarely are we completely innocent. More often than not, we do something to contribute to the problems we're experiencing.
- **Stay Focused**
Skilled people Start with Heart. That is, they begin high-risk discussions with the right motives, and they stay focused no matter what happens.
- **Refocus Your Brain**
You're speaking with someone who completely disagrees with you on a hot issue. How does all this goal stuff apply? As you begin the discussion, start by examining your motives. Going in, ask yourself what you really want.
- **Return to Dialogue**
Stop and ask yourself some questions



that return you to dialogue:

- What do I really want for myself?
- What do I really want for others?
- What do I really want for the relationship?
- How would I behave if I really wanted these results?

LEARN TO LOOK

When caught up in a crucial conversation, it's difficult to see exactly what's going on and why. When a discussion starts to become stressful, we often end up doing the exact opposite of what works. We turn to the less healthy components of our Style Under Stress.

To break from this insidious cycle, LEARN TO LOOK.

Here's how:

- Learn to look at content and conditions.
- Look for when things become crucial.
- Learn to watch for safety problems.
- Look to see if others are moving toward silence or violence.
- Look for outbreaks of your Style Under Stress.

STATE My Path

Once you've worked on yourself to create the right condition for dialogue, you can then draw on five distinct skills that can help you talk about even the most sensitive topics. These five tools can be easily remembered with the acronym STATE.

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GETTING PERSONAL WITH PERSONAS



When asked to describe your target market or target audience, I'm sure your answer has sounded very similar to the following:

Women 25-54. Married with children. Household income \$100k+. Drives a luxury vehicle.

While that demographic information is certainly useful to some degree and is needed to run quantitative data reports, it can be deceiving and doesn't paint a picture of who your target audience truly is.

Consider the following two women.

Lauren is a 38 year old woman from Plano, TX. She is married to Tanner, and they live in a big beautiful home with their three children. Lauren started her career as an accountant but now is living the dream as a stay at home mommy. Her days are spent cleaning their home, frequenting Starbucks and The Bar Method, and shuttling the kids around between school and their various after school activities in her Lexus RX 330. Tanner was recently laid off from his job as a project manager for the Fluor Corporation and has taken a contract assignment making substantially less, but Lauren is reluctant to scale back on their standard of living. Appearances are everything, you know.

And then there is Carmen.

Carmen is a 25 year old living the high life in Uptown Dallas. Days are spent sleeping in, nights are spent at her job as a dancer at the upscale Spearmint Rhino. On her days off, Carmen whips around Dallas in her Corvette – a gift from one of her regulars at the club. Over the years

Carmen has developed a drinking problem and her Corvette can often be found parked crooked in the parking garage of her Uptown apartment. Hardly anyone knows about Juan, her high school sweetheart she impulsively married at 18 and has not gotten around to filing for divorce, or Carter, her 6 year old who lives in Richardson with her parents for a more stable home life.

Are both Lauren and Carmen Women 25-54? Yes. Are they both married with children? Yes. Do both have a household income of over \$100k? Likely. Do they both drive a luxury vehicle? Yes.

Lauren could be in the market for an attorney for family law, bankruptcy, tax, estate planning or maybe employment. Carmen could be in the market for an attorney who practices family law, DWI or criminal law, perhaps immigration.

Ensuring your website is well optimized and ranked in Google should already be a critical component of your marketing plan, and the best way to do so is for your website is loaded with fresh, quality and relevant content. However, what good is that going to do if your content doesn't speak to Lauren in a way that will capture her attention and compel her to pick up that phone? And if it's Carmen you're going after, what are you going to say to ensure she fills out that form to contact your office in her time of need?

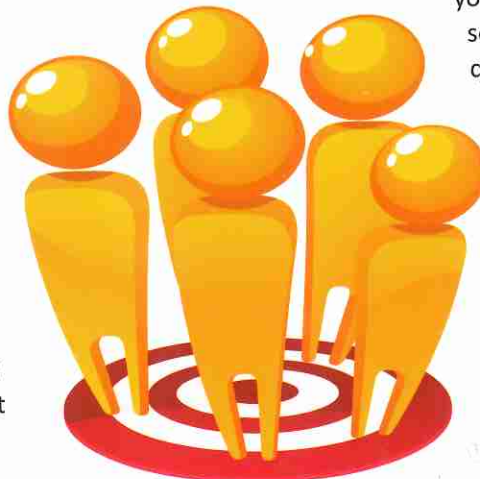
Writing personas to describe all your target audiences is the perfect way to ensure your marketing efforts are speaking to the right people, in their language. And, it's fun!

My imagination runs wild when developing prospective personas.

Sometimes I may even create Pinterest boards for my personas, pinning things they would pin in order to truly get in their mindset.

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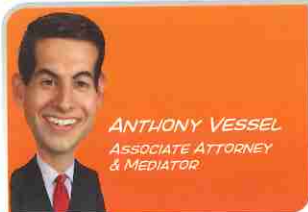
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PITFALLS TO AVOID

as Illustrated by the **O.J.** Simpson Trial



I've been watching "*The People v. O.J. Simpson*" lately and it's got me thinking about the "*trial of the century*" again. This trial was one of the most engrossing, bizarre, and entertaining lawsuits

to ever take place in American history. It truly was a clash of the titans where the prosecution had incredibly strong evidence to convict, and Simpson not only had the "*dream team*" on his side, but also a likeable household name, and a racially charged social climate shaped by the Rodney King controversy. Despite all of the other factors, one overarching canon of trial practice that was exemplified in this case was: it's not necessarily about facts, it's about the narrative (or lack thereof). Although, the prosecution seemed to have stronger physical evidence, the defense made a better story. Consequently, despite having a stronger case, the prosecution made some detrimental mistakes in the course of the trial that likely cost them the conviction.

1. Assuming the jury understands you and your case

Every trial lawyer knows that their primary role at trial is to persuasively present their case to the finder of fact. The prosecution had some of the most favorable evidence one could ask for in a murder case. They had blood from both victims, and the defendant, on the defendant's sock, found in his residence on the night in question. They had bloody foot prints made by boots in Simpson's size. They had the victims' blood on the white bronco parked at Simpson's home. Last, but certainly not least, there was blood from the victims on the glove owned by Simpson.

Although the highly scientific, quite new (at the time) DNA evidence all pointed to **O.J.**, making the jury understand how conclusive it is was a whole other ball game. Just because the evidence is favorable

isn't enough. Being a good trial attorney also means breaking complex legal concepts down for the public to understand. (*Think My Cousin Vinny, not Justice Cardozo*).

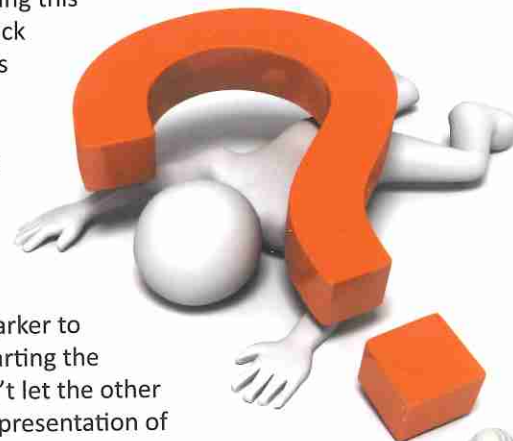
This is one of the areas where the prosecution failed in presenting their case. The DNA expert spoke in highly technical and scientific jargon. The direct questioning was not sharp enough to cut through the technical jargon to highlight the important inferences made by the evidence. Essentially, the prosecution relied heavily upon relatively boring and complicated DNA evidence, and by the time they got to this witness, it was too late. Conversely, Johnny Cochran spoke "*like a preacher at church*" delivering understandable and relatable narratives. Cochran and the defense, continually gave the jury a story to cling to, and it seemed the jury never let go.

2. Turning your momentum over to the other side

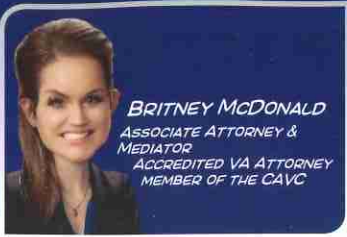
One of the most memorable events and quotes of the trial revolved around the infamous gloves found at the murder scene. I know you all want to say it, so go ahead... "*If the glove doesn't fit, you must acquit.*" However, this powerful line should have never been uttered.

The prosecution had a sales receipt linking **O.J.** to the gloves, and even pictures of him wearing these rare designer gloves, but decided to take it a step further and had him try on the gloves. Upon seeing this scene, I was taken back to trial advocacy class in law school when we had to present our visual on a white board. If you forgot to preserve your exhibit, the professor ran over to it with a big fat marker to draw all over it, imparting the valuable lesson: Don't let the other side mess with your presentation of evidence.

The gloves were rare, they had a receipt tying **O.J.** to the gloves, and also had many pictures of him wearing them.



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Law Firm **GROWTH** and **SUCCESS** PART I

Most of us trial lawyers have either at one time fantasized, or even now constantly aspire, to own and manage our own law firms. If any of you have reckoned with this ambition, congratulations; clearly, it was not done without hard work, sweat, and probably a few tears. If you are still working your way into a situation where you can realize this dream, it will be helpful to note the main stages of growth and some of the keys to successful development as recognized by numerous attorneys and entrepreneurs like yourselves. But even if you own and manage your own firm, taking note and implementing these stages of growth and keys to success can help your firm develop its true potential. This installment will focus on the stages of law firm growth, recognizing some of the common problems that practitioners experience, while briefly discussing some management tips that will generate success. The remainder of those tips can be found in Part II of this installment.

One attorney, Ken Hardison, is the well-known "Authority on Legal Marketing" and has provided insight into how to "get to the next level" within your practice. Within his 10+ years of advising lawyers like us, and a lengthy 35 years of practicing, he has targeted the five main stages key in the growth of your law firm. Ken has directed five main stages of growth for firms; noting that growth largely depends on the actions you take and in the activities you participate. Ken Hardison is the well-known founder of

PILMMA Platinum Masterminds, a group of "like-minded individuals" who can best be described as "one part board of directors and one part peer-advisory committee."

This group is typically made up of entrepreneurs and business owners who share their individual business experiences in trial and error to contribute to each other's successes. Ken preaches that involvement in a group like PILMMA is crucial to not only growing your firm, but how you are able to cultivate it. Your involvement benefits from the strength that is found from the diversity in groups, as well as the resources, strategies, and short cuts that members willingly offer in support of your success. Ken's "stages/keys to growth" is one such "resource" provided to aid other attorneys in the progression of their practices.

Throughout his practice, Ken has identified five stages of law firm growth; solo practice, small practice, midsize practice, large practice, and preeminent practice. Understanding the difference and development of each stage is important as you plan ahead for the future of your firm. Each of these stages comes with its own core set of problems to overcome. Your focus will require shifting as you build up your practice, as will your responsibilities.

For example, during your time as a solo practitioner, you will mostly focus on managing your caseload. Typically, this stage is your reality when you are managing and representing 0-250 cases at a given time. Here, you are dealing with reactive vs. proactive thinking, or tactical vs. strategic thinking. In the next stage up, with anywhere from 250-500 cases, you likely have associates who join in to help you work on your cases. Again, at this stage, you are more so dealing with tactical vs.

strategic thinking patterns. Once you hold from about 500-1000 cases, you are considered to be a midsize practice. At this stage, your associates have begun to manage the caseload; you are managing the office and are more proactive in your practice. You have now shifted to more strategic thinking in the midsize stage.

At the large practice stage, with around 1000-2000 cases, you, as the firm's founder, are working more on business while your associates manage more of the practice, and you manage your associates. You may have even developed numerous practice areas at this point. Here, you are proactive and thinking strategically. Lastly, when your firm has grown substantially, you will usually have 2000 plus cases handled by the firm. At this stage, the practice likely runs without you through systems of mega productivity. You are likely working almost entirely on strategic projects that will boost the firm's revenue and general client satisfaction.



IN STAGE ONE: solo practice, the most typical problems that hinder development and growth are usually cash flow generation problems and juggling case management and productivity. At this point, it is important to create a winning marketing plan and vision for the firm. Ideally, this will generate steady cash flow and efficient case management.

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When you have a tough message to share, or when you are so convinced of your own rightness that you may push too hard, **remember to STATE your path:**

1. Share Your Facts

Start with the least controversial, most persuasive elements from your Path to Action.

2. Tell Your Story

Explain what you're beginning to conclude.

3. Ask for Others' Paths

Encourage others to share both their facts and their stories.

4. Talk Tentatively

State your story as a story — don't disguise it as a fact.

5. Encourage Testing

Make it safe for others to express differing or even opposing views.

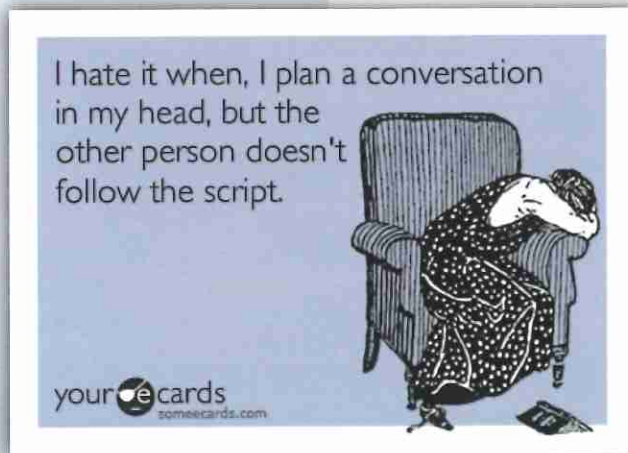
CATCH YOURSELF

When we believe strongly in a concept or a cause, our emotions kick in and we start trying to force our way onto others. As our emotions kick in, our ideas no longer flow into the pool. Instead, our thoughts shoot out of our mouths like water out of a raging fire hydrant. And others become defensive. When this happens, when our emotions turn our ideas into a harsh and painful stream of thoughts, our honest passion kills the argument rather than supports it.

Catch yourself before you launch into a monologue.

Realize that if you're starting to feel indignant or if you can't figure out why others don't buy in, you need to recognize that you're starting to enter dangerous territory. Back off your harsh and conclusive language, not your belief. Hold on to your belief; merely soften your approach.

This is an excellent book to help you work out how you currently hold your own crucial conversations and what you can do to improve their outcomes. These skills come in handy not only with my firm's management teams, but also with any attorney or paralegal that has extended contact with clients. Conversations can get heated, especially during times of misunderstandings and knowing how to not only handle but direct these conversations is a life saver. I would highly recommend picking up a copy for yourself and your teams! ☺



Lauren's Pinterest account still has her secret wedding board that she made long before Tanner proposed. These days it's loaded with DIY kids activities, lots of #thinspiration work out type images, and healthy recipes she may or may not cook. Carmen's account is not as robust as Lauren's (because who has time for that when you're out living the high life?), but it does have some outfits, perhaps some workouts to stay in stripper shape, and cocktail recipes.

"People who think they know everything are a great annoyance to those of us who do."
 — Isaac Asimov

Then, as I'm writing that next blog, sharing an article on Facebook, or creating landing page content for a specific PPC campaign, every single piece of content I write and every piece of media I buy has to pass the persona litmus test.

Would Lauren read the article I'm sharing on Twitter? Probably not. Even if it was an article about engaging an estate planning attorney to plan for her kids' future, Lauren's not on Twitter. It's an article she would read on Facebook, and share with all her mommy friends.

After Carmen gets home from a DWI arrest, is the landing page she reads when searching for a DWI attorney going to be enough to give her the assurance she needs to contact your office? You might be running a campaign for the right keywords, but does the landing page break down

her options in a way that's clear, easily digestible and not condescending?

Think about your target audience, the actual person behind the numerical facts, and about how they live their everyday life. Write it down. Then re-evaluate every marketing piece you've written to promote the firm.

Would your ideal client swipe right? ☺

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Roughly quoting the series "you've been dealt a jack, a queen, and a king... why would you draw another card?" Yet, the prosecution turned one of their strongest pieces of evidence to the defendant facing a life sentence, who was also an actor. When they turned the gloves over to **O.J.**, they also essentially turned the case over to him as well.

3. Operating in an echo chamber

Many have used the term "tone deaf" to describe some of the actions of the prosecution in this trial. There were many instances supporting this claim. For example, the prosecution gave the case to Marsha Clark, despite testing very poorly with sample juries. They also failed in jury selection assuming that certain demographics would sympathize with the victims despite contrary results from the data received. They curiously added a black prosecutor to the team after many proceedings indicated that race played a big issue in the case. However, one of the most famous mishaps in this trial was examining Mark Furman as their star witness.

Mark Furman was a known and documented racist, with a lengthy conduct record with the LAPD. There were tapes discovered of him saying the "N-word" and of him disparaging the Judge's wife (*who was a supervisor of Furman's*) which nearly triggered a mistrial. What's worse is that all of this was in the wake of the Rodney King beatings. Simply put, the prosecution should have done their homework with Furman, and listened to the input given by sample juries.

I'll be the first to say that it is easy to play the role of Monday morning quarterback, especially with how much scrutiny and publicity this trial received. However, but for these key mistakes, this trial could have had a very different outcome. Of course no lawyer, despite what they may think, is perfect.

Yet, all I ask is that my fellow attorneys consider these key mistakes and others before presenting their next case at trial or at least watch this highly entertaining series. ☺

IN STAGE TWO: the small practice stage, you are usually dealing with the problems of your associates and struggling to achieve the same quality of work as when you handled each and every case yourself. Here, it is important to create effective processes and procedures that each member of the firm can rely on to drive the firm to success. You will need to scale the firm by attracting and retaining all-star employees who can assist in managing the firm's problems and achieve the success you have directed.

IN STAGE THREE: for a midsize practice, typically, you are the bottle neck in productivity, as everything still depends on answers and approval from the head honcho. At this point, it is important to create systems for training and managing your employees to not only be the best version of yourself, but to bring new and better ideas to the table, to manage the systems that you simply are too busy to directly oversee, and to ensure client satisfaction.

AT STAGE FOUR: the large practice stage, usually you will experience scaling problems and productivity issues. Here, it is important to focus on the future, not just today. Create systems for better productivity that will enable you to increase capacity and become the leader of your market.

AT THE LAST STAGE, STAGE FIVE: known as the preeminent practice stage, most extreme problems will exist within the practice itself and those who participate in its day to day productivity. There may be "culture" issues or "cliques" that form inside the business. The firm is large; so many people may feel as though they never truly have a grasp on what is happening with the firm outside of their small part. Here, it is important to get everyone working on the same team by leading with a culture of success. Only pick the best opportunities and maintain open lines of communication with your staff.

Because each of the five stages of law firm growth generates its own unique set of problems, Ken found that the main keys to growing your practice are in the marketing systems you develop, the management systems you implement, by hiring and retaining superstar employees, planning for the future, and lastly, your involvement in a peer group that will enable you to bounce off your ideas to one another to develop tried and true tactics for solid expansion. The main point to take from Ken's framework is that having a group like the Masterminds can help you with all areas needing tuning; the partnerships between group members hold individuals accountable for the implementation of their goals and provide insight into the best tried and true methods.

These keys are a helpful outline for how to nurture growth and success, but it is the breakdown of the components that provides the eager attorney with actual tips and statistically helpful plans to create that growth. There are endless approaches to these ideas. Even utilizing a few of those tactics in fine tuning your firm's practices will have a positive impact and help you develop your own successful methodology.

Because that discussion is important and also quite lengthy, you will have to stay tuned for part 2 of the Keys of Law Firm Growth. Until next time!! ☺

Lawyers Need a Laugh!

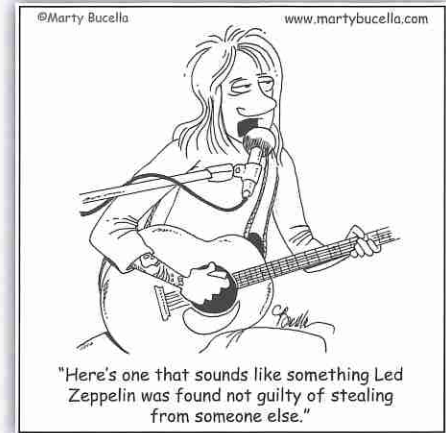
Facts to Impress Your Colleagues With at Your Next Conference

1. In 2006, an Australian man tried to sell New Zealand on eBay. The price rose to \$3,000 before eBay shut it down.
2. Reed Hastings was inspired to start Netflix after racking up a \$40 late fee on a VHS copy of Apollo 13.
3. At one point in the 1990s, 50% of all CDs produced worldwide were for AOL.
4. A 2009 search for the Loch Ness Monster came up empty. Scientists did find over 100,000 golf balls.
5. According to the National Insurance Crime Bureau, the most commonly stolen vehicle in 2012 was the 1994 Honda Accord.
6. Barry Manilow did not write his hit "I Write the Songs." He did, however, write State Farm's "Like a Good Neighbor" jingle. And "I am stuck on Band-Aids, 'cause Band-Aid's stuck on me."
7. After Leonardo da Vinci's death, King Francis I of France hung the Mona Lisa in his bathroom.

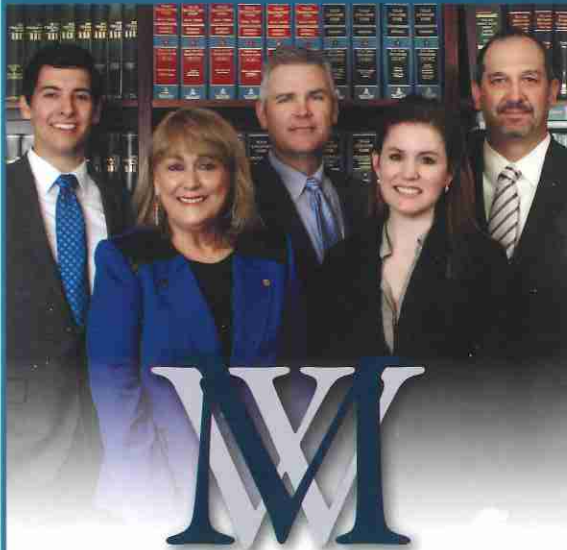
"Do not take life too seriously. You will never get out of it alive."

— Van Wilder
Elbert Hubbard

8. Marie Curie's notebooks are still radioactive. Researchers hoping to view them must sign a disclaimer.
9. In a 2008 survey, 58% of British teens thought Sherlock Holmes was a real person, while 20% thought Winston Churchill was not.
10. How many licks does it take to get to the center of a Tootsie Pop? The world may never know. But on average, a Licking Machine made at Purdue needed 364. ☺



DISABILITY & INSURANCE DENIALS



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