

How Not to Use PowerPoint in the Courtroom

THE THEME OF this issue of *The Federal Lawyer* is technology, and the message is simple: technology can be your friend or foe. Good use of technology can protect your clients from liability; abuse of technology will create liability. Much of the evidence on which litigants rely is created, stored, collected, reviewed, produced, and ana-

and analyzed using a computer. One misstep in this area can lead to a spoliation claim—even sanctions. Thus, it is no surprise that the subject of electronic discovery—dead or alive—is a hot topic. Lawyers are staying connected with clients, colleagues, and the courts 24/7 using fancy cell phones and PDAs. But now we are told that this multitasking leads to mistakes and inefficiencies.¹ This is not good news for lawyers. What is the lesson in all of this? Lawyers need to use technology wisely and selectively.

This theme and message leads me to the subject and title of this month's "At Sidebar": How *Not* to Use PowerPoint in the Courtroom. You have, of course, seen hundreds of articles touting the use of technology in the courtroom, including the use of presentation graphics programs. I, too, was once a PowerPoint evangelist. More than a decade ago, while transitioning from a career in computer graphics to law, I urged lawyers to support their oral presentations with good visuals using software programs like PowerPoint: "You can do this yourself! It's easy," I would say, "teach first, then persuade." But back then, the great orators in this profession scoffed—"Atticus Finch would never stoop so low." And the sophisticated graphics "consultants" looked at me in disgust—"No real graphic artist would use a crude slide show program when a \$100,000 animation could do the job." Then, PowerPoint caught on—like wildfire.

It's 2007 and PowerPoint is everywhere. Today, attorneys walk into the courtroom with a three-hour presentation for every 10 minutes of oral argument. Anything and everything is squeezed into their PowerPoint slides. The slides are doing the talking. It is time to back away from the routine use of PowerPoint. Here are my 10 tips for reform:

1. Quit trying to cram every word of your brief into your PowerPoint slide show. You are the speaker. PowerPoint is speaker *support*. The focus should be on you, not on your slides.
2. Remember that oral argument is an opportunity to have a conversation with the judge. Stop assuming that you can present your oral arguments in a linear, slide show sequence. Use the interactive features of PowerPoint to give you flexibility in moving from visual to visual in response to points you need to make in oral argument.
3. Do not create slides that no one (that is, the judge and jury) can read. Will the courtroom be light or dark? Choose a font that is easy to read. Do not type the words using all capital letters. Think smart about color; color carries meaning. Make sure that the words can be read when the image is projected. If you cannot read your slide, delete it.
4. Do not overuse the builder animation effect. The repetitive technical routine of going slide after slide, bullet point after bullet point will put everyone to sleep.
5. PowerPoint should not be your only visual medium. Mix up your visual aids using different presentation tools. PowerPoint provides good general support for the speaker; however, other display techniques can be powerful, especially in contrast with canned-looking slide show presentations.
6. Clip art that is perfectly appropriate for informal slide shows may look goofy in a courtroom presentation. Choose your clip art carefully.
7. Resist using elaborate fly-ins and slow-moving transitions. Spirals, flips, and checkerboard fly-ins are not suitable introductions to serious factual information or legal points. Run through your slide show before it is projected to ensure that word builders and slide transitions are professional.
8. Do not forget the evidentiary basics when preparing your presentation graphics for trial. Illustrative exhibits, including PowerPoint slides, help to explain testimony and may not be admissible evidence.² Any illustrative rendering, including PowerPoint presentations, should assist the jury to ascertain truth effectively and efficiently.³ Many courts require parties to exchange illustrative graphics to allow for objections prior to displaying the visual images to the jury. Accordingly, it is important to discuss this topic with the court and with the parties prior to trial.
9. Never bark orders to your assistant from the podium. ("Slide 10 please. No! Back. No! Go forward.") If you are going to use presentation technology in the courtroom, learn how to push the buttons yourself. If you cannot, think about going back to

the flip chart. It's still okay to use it.

10. Do not blame others when things go wrong. Be familiar with the presentation equipment ahead of time. What equipment will you have available? Where are the electrical outlets? What are the court's local rules for bringing equipment into the courthouse? Can you—yes, *you*—turn the system off and on? Always have a Plan B available. Equipment will fail at some point. Are you ready for this problem?

Conclusion

Benefits:

Wise and Selective Use of PowerPoint in the Courtroom

- Judge or jury will remember
- Judge or jury will be interested
- Complex information can be better communicated
- It makes it easier to persuade
- It will help you win

Happy creating. **TFL**

Becky R. Thorson is a member of the FBA Board of Directors and Editorial Board.

Endnotes

¹Steve Lohr, *Slow Down, Brave Multitasker, and Don't Read This in Traffic*, N.Y. TIMES, at 1 (Mar. 25, 2007).

²See, e.g., *United States v. Bray*, 139 F.3d 1104, 1112 (6th Cir. 1998) (distinguishing between various forms of illustrative summations and providing guidance on the admissibility of each). See also Fed. R. Evid. 611 advisory committee's note (The rule "restates in broad terms the power and obligation of the judge as developed under common law principles [relating to] the use of demonstrative evidence").

³Fed. R. Evid. 611(a)–(b).

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