

# Maximizing the Value of Your Case Through Power Point

By Matthew McNicholas

*Editor's Note: "PowerPoint" is the registered trademark of the Microsoft Corporation. As used in this article, Power Point is a general reference to any computer-based visual, on-screen presentation.*

In the current environment, where television shows like "Dateline" are able to put together programs that show digital recreations of space shuttle crashes the same day the event occurs, viewers become accustomed to viewing current events and news alongside visual aides that are powerful, technical, and highly effective. This is the "Dateline" phenomenon, and it requires trial lawyers to essentially do the same thing. In other words, when TV viewers become jurors, and the news or current events become the lawyer's case, the jurors will need to see the case unfold with appropriate visual aides. Otherwise, you will be unable to capture and hold your "Dateline Jury's" attention, and will therefore be unable to deliver your message.

One such tool is a Power Point presentation. When used properly, it can elevate the credibility of the lawyer and the message, just as if the jurors were seeing the case on Court TV, and can help maximize the value of a case.

## A. The Goals

The goals of using a Power Point presentation are to simplify your case, create high visual impact for judge and jury, and highlight and piece together the evidence in an effective, argumentative manner. Through this approach, you are able to deliver your message and win the battle for courtroom credibility.

The goal of the presentation, however, should not be to include every piece of evidence, nor to include every word of what will be in the presentation. Rather, it should act as the framework of evidence upon which you hang your oral presentation. It is a means to the end, it is not the end itself. The focus should be on the advocate with the Power Point as an aide, not the other way around.

## B. When Power Point Is Useful

A Power Point presentation is most commonly used in mediation, opening statement, and closing argument. It is not effective, generally speaking, when examining witnesses or other similar situations where you do not have complete control over every word that will be said. That is because a Power Point presentation is pre-"canned." That means that each slide is created and finalized before the presentation is made to illustrate a specific point. Power Point does not lend itself to editing or changing slides during a presentation. Therefore, it requires the presenter to stay on-script the whole time, which most likely cannot happen during the examination of a witness, especially cross-examination.

The digital visual aides that lend themselves to the examination of witnesses are real time projection mechanisms, such as an Elmo, and an evidence storage and recollection program like Sanction. These tools allow you to display evidence, documents, objects, and text on an as-needed basis. They do not require the user to follow a specific script. For example, through Sanction, you can call up any exhibit desired, in whatever order desired, and then highlight any portions of the exhibit being reviewed with the witness



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by enlarging portions of the document or emphasizing them with what appears on the screen as digital yellow highlighter ink. These are the type of tools for on-the-fly examinations and presentations, not Power Point.

Of course, the items you display during trial with tools like Sanction and an Elmo may, and often do, find themselves into a Power Point closing argument. The question becomes which items wind up being in the ultimate presentation.

## C. Materials Displayed Through Power Point

Power Point is nothing more than a series of slides displayed through a projector on a screen. It is similar to the old slide shows people used when they displayed their vacation photos, only with Power Point, you manipulate and create the slides on a computer to include any and all media, not just still pictures from a camera.

Power Point slides can display text, documents, full motion video, photographs, x-rays, MRI and CAT scan films, and video depositions. Also, animations of any kind can be created and placed in a Power Point presentation. For example, if a case has a digital reconstruction of how an accident occurred, that reconstruction can appear as part of the presentation on a slide with accompanying text. Further,

any still diagrams, like organizational charts in employment cases or Bramble Maps in road design cases, can also be part of a Power Point. The bottom line is that any medium that can be used in a courtroom can be used in a Power Point presentation.

In fact, a Power Point should never be only text-based. Such a presentation is boring and ineffective. The true strength of Power Point is the ability to display and organize all the pieces of a case, with only sparing textual accompaniment.

#### **D. Ideas to Communicate with Power Point**

To maximize case value, a Power Point presentation should necessarily focus on delivering messages that are more strongly supported by multimedia rather than plain text.

The presentation can show pictures of your client before the accident, or video footage from their birthday party prior to injury. It can show a series of photos of the

client with their spouse and kids, or doing the things they like to do and used to be able to do pre-injury.

The presentation can put things into motion, like showing before and after pictures of damaged property or vehicles.

The presentation can combine two forms of media to give a more complete picture of liability. For example, while displaying a Bramble Map, the presentation can superimpose actual photos from the scene of the accident to give the viewers context to what they are seeing. Or, when discussing key liability documents, you can have those documents on the screen with the critical portions delineated. That way, while you are discussing liability, the key section of the document is "up in lights" the whole time for visual reference.

The presentation can display timelines that unfold as you speak. Thus, as you reach each event on the timeline, it appears on the screen one at a time. That way, the mediator or jury stays focused on one point at a time and does not read ahead of the presentation.

Alternatively, if you are using static timeline boards, you can use Power Point to display evidence that supports each of the time line entries. The timeline, which never changes throughout the case, acts as an anchor that the jury learns to rely on and constantly refers back to. In this manner, the static board is the framework of the case, and the Power Point presentation is used to fill in all of the evidence during argument. Again, if this approach is used, the Power Point presentation should only be used in those situations where you can stay on-script, e.g., closing. If you choose this path during the actual admission of evidence, something like Sanction should be used to fill in the evidence.

#### **E. Some Pitfalls of Power Point**

There are several important pitfalls to avoid when using Power Point presentations.

When used in mediation, you must take steps to not give too much away. In other words, a Power Point may be too effective.

Essentially, the presentation may prepare the defense for the plaintiff's case in a way they would never have been able to prepare otherwise. The defense will get an opportunity to see a very cogent presentation of the case. Like the trier of fact, the defense benefits from the Power Point. Therefore, if the case does not settle, the presentation may actually hinder your position since your opponent will then know exactly how to prepare their case. They will be able to conform their defense to the exact case you plan to put on.

This, of course, becomes the balancing act you must consider: put enough material in the presentation to get the message across but not too much such that the opponent gets a free look at the trial playbook. This is the biggest pitfall that must be considered in using Power Point in mediation. If there is uncertainty as to where the mediation will go, portions of the presentation should be made for the mediator's eyes only, or simply left out altogether and saved for "day two" when they may be more likely to inure to the client's benefit. If this balancing is not considered or is misjudged, the outcome could theoretically be an actual diminution in the value of the case.

Another pitfall of using a PowerPoint is not using a professional to assist in the creation, editing, and performance of the presentation. While attorneys may be skilled enough to put together basic, or even advanced, presentations, a trained professional should be used for a variety of reasons. First, the presentation will always be better. A person trained in the art has access to a variety of resources to enhance the presentation that most, if not all, lawyers, do not. Second, they have experience from being involved in similar cases, and therefore similar presentations, which allows them to explain and implement things that work and edit out things that do not. Third, if something goes wrong during the actual presentation, e.g., during trial or in mediation, they are there to remedy the problem and get the system running. That allows the attorney to focus on being an attorney and not getting bogged down with technical details that can derail focus. Ultimately, while the technician is remedying a problem, you can continue and let the presentation catch

up with you. Finally, using an outside professional allows for a properly recoverable case cost. While doing the work in-house does not prevent the cost from being properly recoverable, it can create problems when seeking a cost bill after trial.

Finally, avoid the "kitchen sink" approach. A PowerPoint presentation should streamline your case and the evidence you present. While it enhances the look and feel of all evidence, all evidence should not find its way into the presentation. It will overload the presentation, make it too long, create a lack of overall interest in the message, and defeat the entire purpose of using Power Point. The desire to put everything in should be avoided in exchange for a more surgical approach. The presentation can be five minutes, twenty minutes, or even an hour, depending on the situation.

For example, a five-minute presentation walking viewers through various insurance policies at issue that cover the period of time in question can be an

effective way to clearly explain coverage. In such a situation, coverage may be the only real issue in the case and therefore the only real issue that must be discussed in the presentation. Or, coverage may be the only issue that you wish to put up in lights, leaving the remainder for oral discussion during the settlement process. Like a mediation brief, not every presentation should be the same length, nor needs to be.

## F. Conclusion

In this current digital age, a Power Point presentation should be considered as a possible tool in almost all cases. While it certainly should not be used in all cases, properly placed in the process, i.e., the process that begins with the filing of a complaint and ends at ultimate resolution, it can be an effective tool to communicate with digital observers. Whether the intended audience is the opposing lawyer, the opposing adjuster, the judge or the jury, it can be a very effective tool if used properly. ■