

## PowerPoint Jury Instructions

By Judge Herbert B. Dixon Jr.

When I started discussing my experience giving jury instructions by PowerPoint, one of my colleagues blurted out, “I’m not sure I see the point. If you want them to follow along, why not just give them each a set of typed instructions to read while you’re reading them out loud? . . . I find PowerPoint unspeakably boring and oppressive. It’s generally an indulgence that hinders rather than promotes communications. It’s a bit like being forced to watch your neighbor’s two-hour slide show following a vacation.” My colleague then defiantly inquired: “How do you *know* the jurors liked it? . . . I hated the PowerPoint presentation I was forced to watch when I was a juror, but no one ever asked me. No doubt the lawyer who used it will claim that jurors like it.”

Well, it seems that my colleague really gave me a piece of his mind on the intrusion of PowerPoint into his life. To some extent I understand his concerns. Proponents of PowerPoint have the enthusiasm of religious converts or social activists. They believe in what they are saying—seemingly as a result of divine guidance. Based on their own opinion and on anecdotal evidence, they are certain that a PowerPoint presentation enhances the jury’s understanding of the subject. And PowerPoint bashers like my colleague are equally certain that PowerPoint is unspeakably boring and oppressive: “an indulgence that hinders, rather than promotes, communications.”

I fully understand the response of pragmatists, skeptics, and naysayers. However, I now have something beyond anecdotal evidence to support the premise that PowerPoint assists and enhances

### FIRST-DEGREE PREMEDITATED MURDER WHILE ARMED

1. That the defendant caused the death of the decedent;
2. That the defendant intended to kill the decedent;
3. That he did so after premeditation;
4. That he did so after deliberation; and
5. That at the time of the offense, the defendant was armed with a firearm.

Figure 1a

the jury’s understanding of those lengthy and boring jury instructions. I now have data from several months of juror surveys that, for me, confirm the principle that PowerPoint can be a valuable addition to a judge’s jury instructions. After 11 serious and complex criminal jury trials and survey responses from 141 deliberating jurors and alternates, I now have statistical proof that *97 percent of my jurors agreed or strongly agreed with the statement that “Viewing the judge’s instructions on the monitors improved my understanding of the laws in the case and my responsibilities as a juror.”* Instead of gloating over my apparent success at this effort, I will share my approach to the task of PowerPoint-aided jury instructions with the hope that judges who have made similar efforts will share their experiences and other judges will be motivated to try it. This description of my process to create PowerPoint jury instructions involves only criminal cases; however, the approaches that I have adopted are applicable to any case in which jury instructions must be given.

In all instances, I read the full jury instructions to the jury. The PowerPoint slides are a supplement—not a substitute—for the full jury instructions. In one of my

trials, a note from the deliberating jury requested a copy of the PowerPoint slides that I displayed during the jury instructions. My response to the jury, to which no counsel objected and with which all counsel agreed, was that the PowerPoint slides would not be provided to the jury; the written instructions that they had received were the official instructions of law that must guide the jury’s deliberations.

I start with the principle that any attempt to give all of the instructions in PowerPoint will likely diminish the effectiveness of the presentation. Accordingly, I make an educated guess concerning the instructions that can best be summarized in a PowerPoint slide and exercise my judicial discretion to ensure fairness to the



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**PREMEDITATION:** forming an intent to kill . . . .

**DELIBERATION:** considering and reflecting on the intent to kill . . . .

Figure 1b

parties. For this reason, I always include the elements of the charged offenses, as well as the defenses raised by the evidence or argued on behalf of the defendant. Generally, I do not include any animation within a PowerPoint slide, other than causing specific word groups or sentences to appear at once when being discussed during the verbal instructions. For example, **Figure 1a** on page 37 shows a slide that I have used when instructing a jury on the elements of first-degree premeditated murder while armed.

The word grouping that describes each element of the offense appears on the screen *seriatim* as I discuss that element during the instructions. With this instruction, I display an additional slide emphasizing premeditation and deliberation as those terms are defined in the instructions. See **Figure 1b**, page 37.

Obviously, the elements of the offense

enumerated in any PowerPoint slide are only a brief summary of the lengthy verbal and written instructions given to the jury. Only legal rules and principles of law are set forth in the slides. Until there is some appellate review of the process that I have adopted, I judge the adequacy of the slide's summary statement of the law by the same standard I judge an attorney's

opening statement or closing argument to the jury. That is, would the summary statement in the PowerPoint slide survive an objection if the same words had been recited verbatim by one of the attorneys during an opening statement or closing argument to the jury.

A slide is displayed while the jury instruction discussing that principle is being read to the jury. I include a title for every PowerPoint slide that I display during jury instructions. I intuitively believe that a slide title enhances the jury's understanding of the principle of law being discussed because the title previews that principle. See, for example, **Figure 2**, above, a slide that is displayed during the instruction on the presumption of innocence.

PowerPoint slides displaying prosecution and defense theories are important to enhance a jury's understanding of principles that the jury must apply during deliberations. For example, the slides shown in **Figures 3a, 3b, and 3c** on this page are displayed during instructions on self-defense, identification, "aiding and abetting."

I use an Arial font for my slides, which has a clean, uncluttered appearance. Normally, I use 32-point font for the title of the slide, and, depending on the amount of text within the slide, 30- or 28-point font within the body of the slide. I never use font smaller than 26 points because the text must be large enough for jurors to read with ease. The PowerPoint instructions are displayed for the jury's benefit both on flat-screen, 52-inch, high-definition monitors and a drop-down projector screen on which the projected

## PRESUMPTION OF INNOCENCE

- Every defendant in a criminal case is presumed innocent.
- The burden is on the government to prove the defendant guilty beyond a reasonable doubt.
- If the government proves guilt beyond a reasonable doubt, the jury's duty is to return a verdict of guilty.
- If the government fails to prove guilt beyond a reasonable doubt, the jury must return a verdict of not guilty.

**Figure 2**

## SELF-DEFENSE

- A person may use reasonable force in self-defense.
- The defendant is not required to prove he acted in self-defense.
- The government must prove beyond a reasonable doubt the defendant did not act in self-defense.
- Deadly force may be used, if necessary, upon a reasonable belief of imminent danger of death or serious bodily harm.
- The law does not require a person to retreat, but does require a person to take reasonable steps to avoid taking a human life.

## IDENTIFICATION

- The government must prove beyond a reasonable doubt that the defendant is the person who committed the offense.
- If the government fails to make this proof, the jury must find the defendant not guilty.

## AIDING AND ABETTING

- The defendant knowingly associated himself with the commission of the crime;
- The defendant participated in the crime as something he wished to bring about; and
- He intended by his actions to make it succeed.

**Figures 3a, 3b, 3c**

image measures 85 inches diagonally.

My use of PowerPoint-aided jury instructions is still a work in progress. I think I am on the right track because in the last two trials composing this survey, after I gained some experience and practice supplementing the verbal instructions with PowerPoint slides, 100 percent of surveyed jurors agreed or strongly agreed with the statement “*Viewing the judge’s instructions on the monitors improved my understanding of the laws in the case and my responsibilities as a juror.*” In fact, further analysis of the responses revealed that over two-thirds of all jurors who responded favorably to the statement were in *strong agreement* that viewing the instructions improved their understanding of the legal principles involved and the responsibility imposed upon jurors.

Generally, I display slides listing the elements of the charged offense during both preliminary instructions (before opening statements) and final instructions. If a specific defense has been raised by counsel during pretrial, and if the defense instruction is given during preliminary instructions, I typically display a PowerPoint slide summarizing that defense during preliminary instructions. However, even if I do not present a slide describing a defense during preliminary instructions, I always show slides describing the defense theory of the case, supported by evidence at trial, during the final instructions.

I have experimented with using slides for certain general legal principals only during preliminary instructions and not using them during final instructions, although the same or similar instructions are read to the jury during final instructions. I have the impression that use of the slides during the preliminary instructions assists jurors with their initial comprehension of those principles, and that they are better able to listen and more fully comprehend the nuances of the instruction without the accompanying slide when they hear the instruction for a second time during the final instructions just before deliberations. However, the reader should be advised that this impression is purely anecdotal and not supported by any research.

### FINAL COMMENTS

- Alternate juror seats selected at random.
- Regular breaks during trial day.
- Daily schedule.
- Do not talk, text, tweet, e-mail, blog, or use the Internet regarding the case, attorneys, defendants, witnesses, or judge.

### FINAL COMMENTS

- Select a foreperson.
- Your verdict must be unanimous.
- Possible punishment not relevant.
- Send written notes while deliberating, but do not reveal your numerical vote.
- Do not talk, text, tweet, e-mail, blog, or use the Internet regarding the case, attorneys, defendants, witnesses, or judge.
- Remember, you are not partisans or advocates; you are neutral judges of the facts.

Figures 4a, 4b

On occasion, the PowerPoint slides and text within an instruction are different from what was given during the preliminary instructions. When this happens, I tell the jurors that if they spot any difference between the preliminary and final instructions, they shall be guided by the final instructions because I have had an opportunity to discuss the instructions with counsel as it relates to the facts of the case the jury has heard. Generally, I do not identify the specifics of any change that has occurred.

My most pleasant surprise during this experiment with PowerPoint-aided jury instructions is the lack of objections by counsel. My jurisdiction has a fairly activist prosecution and defense bar. However, as of the date I am writing this column, I have not had one objection by any counsel to my practice of supplementing jury instructions with PowerPoint slides. Now that I have made this pronouncement, Murphy’s Law guarantees a spate of future objections.

There are other preferences that I have developed and practices I have adopted during my PowerPoint jury instruction efforts, including an ending slide of concluding remarks during both preliminary

and final jury instructions advising or reminding the jury about various matters. These matters include daily hours; regular courtroom breaks; not talking about the case with others, or tweeting, texting, or using the Internet; selection of a foreperson; requirement of a unanimous verdict; etc. See [Figures 4a and 4b](#), above.

These concluding or summary slides assist me as a checklist on various matters, some of which have been the subject of earlier instructions, and others that are for the purpose of reinforcing jurors’ appreciation of their responsibilities and the limitations on their conduct while in service on a case.

After looking back on my efforts at jury instructions by PowerPoint, I am convinced that the doubting colleague I referenced at the beginning of this article is wrong when he declared PowerPoint an ineffective aid to enhancement of jury instructions. I am convinced that PowerPoint enhances jurors’ memory and understanding of the instructions, and that the use of PowerPoint makes the instructions more interesting to them. And, I say with pride, because of my juror surveys, “I can prove it!” ■