

Beyond Bullet Points on Trial

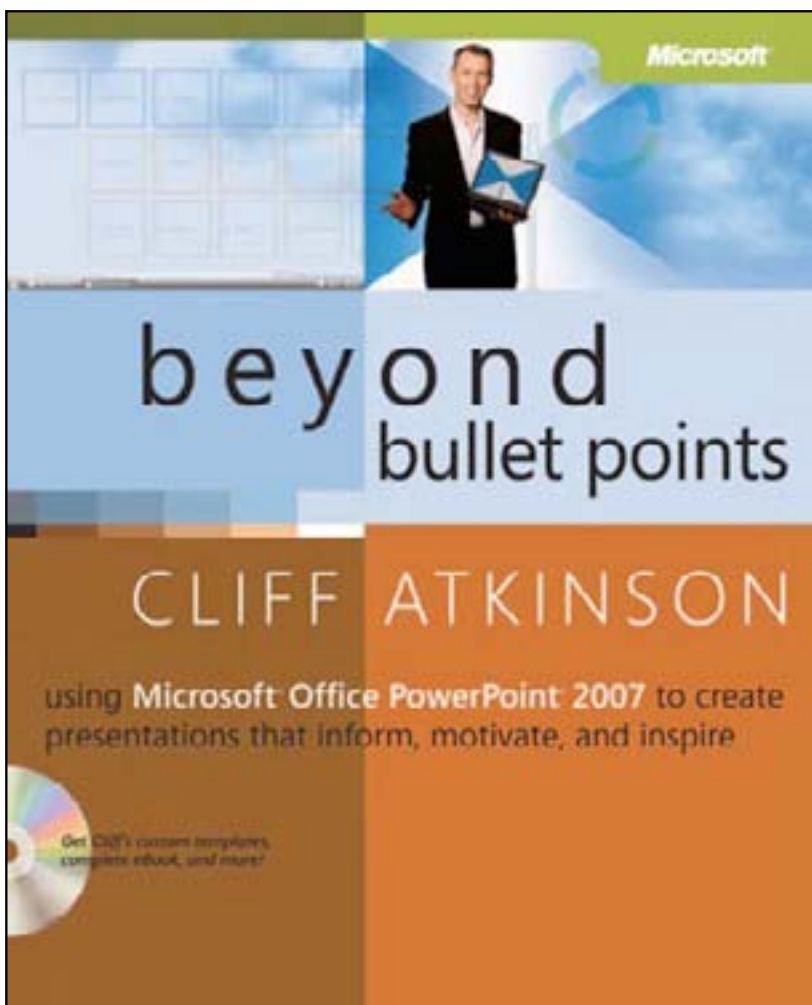
Jason Barnes and Brian Patterson

[Jason Barnes](#), a.k.a. "The Graphics Guy" is a graphic designer and trial consultant based in Dallas, Texas. He has been practicing visual advocacy since 1990 and has worked in venues across the country. He specializes in intellectual property and complex business litigation cases. You can read more about Mr. Barnes and how he can help you tell better stories in the courtroom at his [webpage](#).

Brian Patterson became a graphic designer in 1990. In 1998, he began work at DecisionQuest, a national jury research and trial consulting company. As Art Director of their Dallas office, he created and oversaw production of multimedia presentations for more than a hundred courtroom proceedings. He joined Barnes & Roberts in 2007 as a Trial Consultant where he continues to prepare clients for trial. He blogs regularly on presentation topics at www.igetlit.com.

Much has been written about the shortcomings of Microsoft PowerPoint™, and especially the way many people utilize it's default templates to churn out uninteresting and uninformative presentations. Cliff Atkinson, author of the book *Beyond Bullet Points*, has proposed a method he believes will transform both the audience's and presenter's experience with PowerPoint. Though Atkinson rightly criticizes the structure and design of the basic bullet-point-based PowerPoint template, his solution simply substitutes a rival structure and design template without addressing the broader problem of users blindly applying the same template (any template) to every presentation.

Beyond Bullet Points ("BBP") was initially aimed at corporate and sales presentations. In that setting, the BBP template may be a good way to get rid of bullet point presentations while still enforcing consistency within a business. It does not so much break with the so-called "PowerPoint Culture" (i.e., standards based design) as it seeks to shift that



culture in a more aesthetically pleasing direction. However, Atkinson has increasingly targeted his methods at the legal market, a situation which requires us to look critically at the BBP method and its applicability to our situation as courtroom presenters.

Atkinson Credits a \$253 Million Verdict to Beyond Bullet Points

In 2005, trial attorney Mark Lanier represented the Plaintiff in Ernst v. Merck, the first of several highly publicized lawsuits surrounding the drug Vioxx. Lanier felt he needed an unconventional approach (watch his explanation [here](#), beginning at about the 5:00 mark) and chose the Beyond Bullet Points method, contacting Atkinson to assist him in developing a presentation. His opening statement received attention from the [New York Times](#) and a reporter from Fortune called his remarks “frighteningly powerful”. The graphics were received with less enthusiasm, being described as “imaginative, easily understood (if often hokey).”

*“On the first day of the nation’s first Vioxx trial, in a case brought against Merck by the widow of a man who died of a heart attack that she believes was caused by the painkiller Vioxx, plaintiff’s lawyer W. Mark Lanier of Houston gave a frighteningly powerful and skillful opening statement. Speaking in state court in Angleton, Texas without notes and in gloriously plain English, and accompanying nearly every point with **imaginative, easily understood (if often hokey) slides and overhead projections**, Lanier, a part-time Baptist preacher, took on Merck and its former CEO Ray Gilmartin with merciless, spellbinding savagery.” [Emphasis added.] [Fortune Magazine, July 15, 2005](#)*

The trial resulted in a [\\$253 million jury verdict](#) for the Plaintiff. Atkinson [touts the verdict on his website](#) as proof that his method is a success in a trial setting:

“Is it worth it? Ask trial lawyer Mark Lanier. He used BBP techniques to present his case against drug maker Merck in a famous legal trial that made international news. And he won a verdict of \$253 million.” [Emphasis added.]

Atkinson rewrote his Beyond Bullet Points book in 2008, the first chapter of which now describes the strategy and slides which Lanier used at trial, again citing the favorable verdict as evidence that the system is effective. (Atkinson 1)

But the \$253 million jury verdict isn’t the end of the story. First, the initial verdict was reduced to \$26.1 million due to caps on punitive damages in Texas. More importantly, the verdict was overturned by the appellate court citing [lack of evidence](#). Lanier may have won on emotion, but the panel found that he had not proven his case. Similar reversals occurred in the second Vioxx trial held in New Jersey.

Atkinson’s Beyond Bullet Points approach cannot be blamed for the reversal any more than it can be credited for the verdict – at least, not without a complete analysis of the case. But such a task is unnecessary. The peculiar circumstances of the case serve to highlight what we perceive to be the insidious danger of the BBP method. Both the BBP methodology and its templates encourage the production of presentations which are high on emotion but low on evidence – exactly the problem in the Vioxx trial.

What Is the Beyond Bullet Points Methodology and Template Structure?

Many observers have noted that people using PowerPoint often rely on the default templates

provided with the program. Users enter the text of their presentation onto the slide in bulleted lists, then read those bullet points to the audience during their presentations. The unsurprising result is a dry, text-heavy slide show and a bored, disengaged audience. This comes as no surprise to any experienced presentation designer.

Atkinson’s solution to this problem was to devise a system of steps and practices which replaced bullet point presentations with something different. In his book, he lays out his method which is based largely on his interpretation of the multimedia research of [Richard Mayer](#) (Atkinson 29), as well as classic story structure and his own experience creating corporate presentations. While it is not possible in this space to discuss the pros and cons of every aspect of Atkinson’s method as it relates to litigation, we will try to explain the key parts of the system, as well as a few of the benefits and problems we see.

The basic steps of the BBP method begin with creating the titles of his slides in a Microsoft Word™ template provided with the book. The template loosely follows the three act story structure used in ancient Greek tragedies as well as many Hollywood movies and is divided into a table with three Acts. Act II is further divided into three Key Points, each with three Explanations, and three Details to support each Explanation. The author teaches that this will allow him to present three versions of his story: the 5 minute version with Key Points only, the 15 minute version including Explanations, and the 45 minute version which delves into the supporting Details. He claims that conforming stories to this template is the most effective way to create a presentation. (Atkinson 58-62)

Then, he imports the Word document into PowerPoint which will generate slides following the Act:Key-Point:Explanation:Detail structure of the outline. Next, he adds his speaking notes – not as bullet points, but in the notes section. Finally, he creates a visual, which usually takes the form of clip art or stock photography, to support the title of each slide.

Title and outline		
Act I: Setting the story from the audience's viewpoint ("Act II, what's at stake?")		
Setting (minutes:0)		
Title (minutes:0)		
Point A (minutes:0)	Call to Action (minutes:0)	Point B (minutes:0)
Act II: Developing the action ("I-2-3, show me only what I need to see")		
Key Point (1 minute)	Explanation (11 minutes)	Detail (11 minutes)
1		
2		
3		
Act III: Setting the resolution ("To be completed in the storyboard phase")		

Atkinson's BBP template for creating presentation outlines creates rigidity. (Atkinson 59)

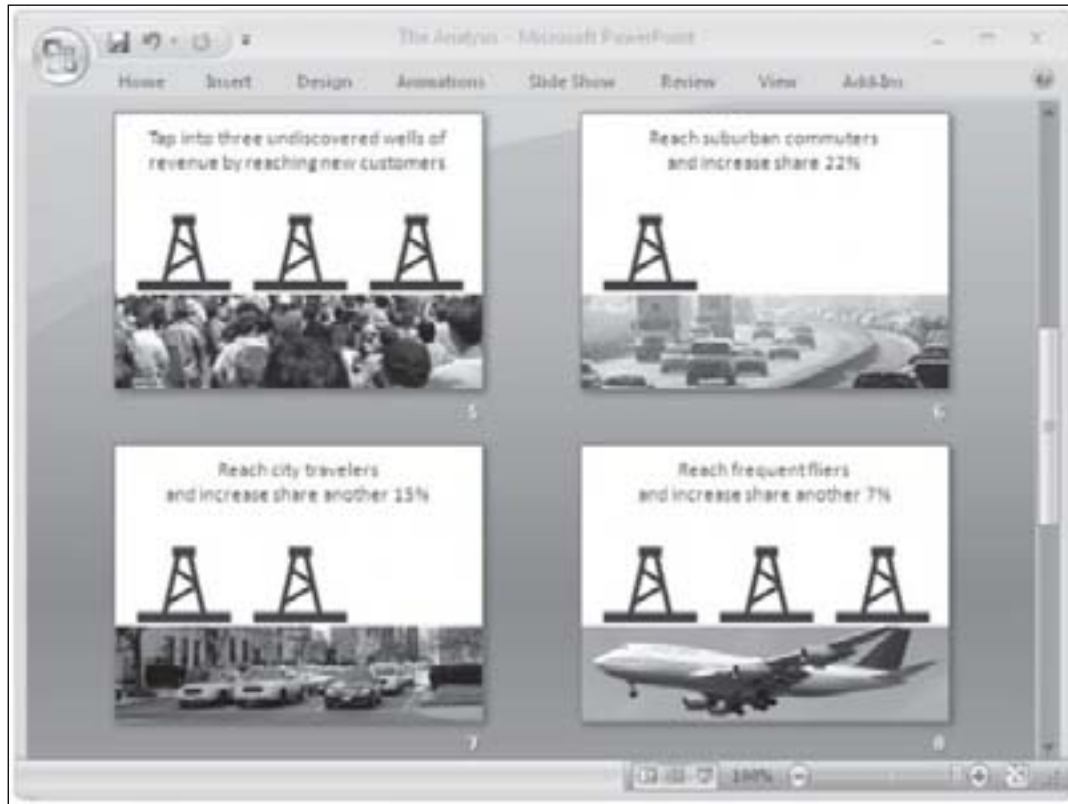


As for the PowerPoint template supplied with the book, it does not get any simpler. In fact, it is hardly a template at all unless one considers the absence of anything but a title bar to be a template. It does, however, come in four shades of grey.

In the BBP method, the titles should be complete, declarative sentences in the active voice. The method uses very little text on screen, save for the titles which present the single point of the slide. Instead, all other text is relegated the notes section of PowerPoint, so the presenter still has access to it when using the presenter’s view in PowerPoint, but the audience doesn’t see it on screen.

What the audience does see on screen is the title, along with

a simple visual that reinforces the title. These are accompanied by verbal narration. There are several examples in the book and online that show the type of visuals Atkinson thinks should be used – mostly predictable, if not trite, stock photography and clip art.



Exemplar graphics in BBP lack basic design and refinement. (Atkinson 302)

So What Is Wrong with Beyond Bullet Points?

First, we want to be clear that we have no opinion as to whether or not the BBP method is appropriate for standard corporate or sales communications. In that environment, perhaps the enforcement of template-based procedures and “[motivational-poster](#)” imagery are good ideas. However, both of those things are inapposite to the production of effective visual communications in trial. Let’s take them one at a time:

Trading One Template for Another: It is ironic that, after determining that the thoughtless adherence to templates (bullet point templates from Microsoft) was the root of bad corporate communications, Atkinson proposes yet another template that, though stripped of the much vilified bullet point, is subject to the same abuse by users. It is easy to follow a template – the path of least resistance. It is more difficult to ask and find answers to the questions:

“Is this a good template?”

“Should I modify this template?”

“Should I combine with another template?”

“Should I reject templates entirely?”

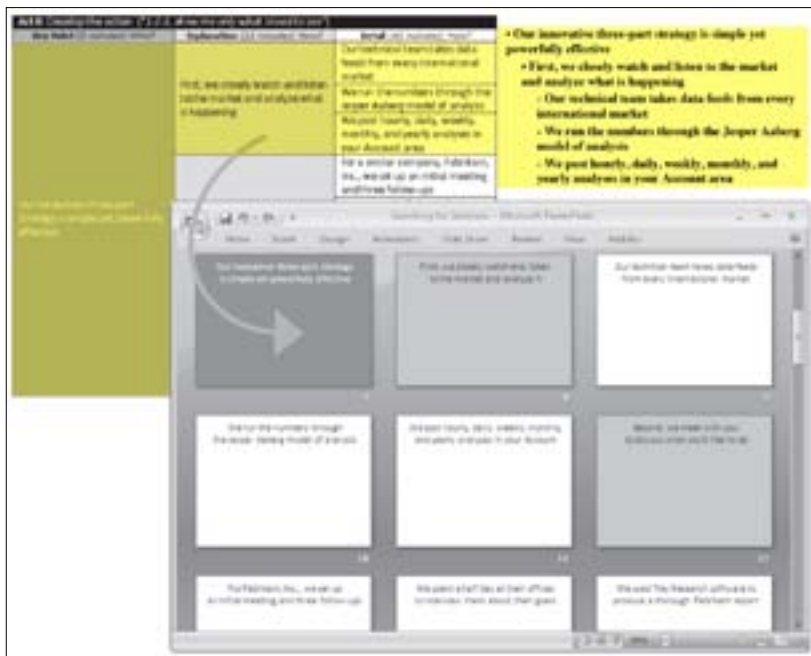
In using Atkinson’s template, much like using the PowerPoint default templates he is criticizes, Atkinson imposes a specific organization strategy which simply does not fit in all cases. His answer to that seems to be, Make it fit, because this is what works, but he offers us no research to suggest that this particular structure, ordered in this particular way, is any more or less effective than any other structure. There is nothing wrong with creating a structure for your presentation, in fact, structure is unequivocally good. But to suggest that this template is sufficient for all cases is an illusion. Using the BBP template and “filling in the blanks” as he calls it (Atkinson 62), is as ill-suited for our presentations as using the old bullet point template.

As noted above, the BBP template is structured in 3 parts that stem from its origination in the world of corporate sales pitches: 5 minutes, 15 minutes and 45 minutes. So how do we apply that structure to an opening statement? We cannot. In the Ernst v. Merck case cited earlier, it is [reported](#) that Mark Lanier’s opening statement was nearly three hours long, almost four times as long as the longest suggested Beyond Bullet Points presentation. A presentation of that length obviously requires serious modification to the BBP template, undercutting Atkinson’s claim that adhering to his method was the key to success.

Although it is claimed that the BBP Story Template is based on Hollywood script writing techniques (Atkinson 58), it looks nothing like a Hollywood script. There are many script writing applications and templates available, but we can find none that follow the BPP format. In fact, contrary to the BBP template, screen plays (synonymous with “scripts”) are linear documents which incorporate rich visual descriptions along with the dialog. As shown below in the example, the visuals are developed synchronously with the dialog. In other words, following the Hollywood model, we ought to develop our visual ideas and our spoken words simultaneously, not first one then the other.

Scripts interlineate the visuals and the dialog

If anything, the BBP Story Template, looks like an outline of bullet points. As shown in the yellow highlighting, bullet points have not been eliminated, just reformatted. They are written as complete sentences and spread out one for each slide, but removing the bullet character does nothing to change the nature of the language and structure.



BBP Story Template is nothing more than one bullet point per slide. (Atkinson 66)

Further, Atkinson teaches that we must make the jury the protagonist of our story to properly apply his method (Atkinson 91). While this may fit some stories well, it certainly does not fit in each case and largely ignores the reality of most stories in which our client is the real protagonist. Of course, many stories told in court rely on the construct that the jurors are active participants and will “write the final chapter.” That does not make them protagonists, that makes them authors. Sometimes jurors are actors on the stage and play many different roles: sympathetic friend, grieving parents, police officer, community conscience or even crime scene investigators. Sometimes they are the playwright and must finish the work to

determine whether the result is triumph or tragedy.

This focus on story, we fear, detracts from the importance of presenting real evidence. Story is, of course, effective and appeals to the jury on the most basic levels. However, jurors are also intellectual beings, who must find some basis in fact for their decisions even if only to satisfy their own [confirmation bias](#). More importantly, trial and appellate judges are most certainly tethered to the substantiated evidence applied to the letter of the law. So, although storytelling is an important feature of almost every jury trial, it must not come at the expense of proof.

The danger of the BBP story template is the danger inherent in any template. We all naturally want to find action templates that we can rely upon, ones that work in every situation – it would make life easy: “Follow these steps and you will be successful.” Obviously, that kind of gross oversimplification rarely works. Some templates work some of the time in some situations. Our task is to determine whether or not any particular template works in our particular situation.

Finding simplicity in your message is difficult but essential to successful communication at trial. Every case is unique and complex. The variables of each trial, lawyer, venue, judge, client, opponent, etc. compound the complexity. So, there is nothing magical about the BBP story template – nor is there any magic in any other template. We must arm ourselves with many templates – like any tools – and select the right one for the right job.

Trite Graphics at the Expense of Evidence:

It is not surprising that Atkinson would select the graphics that he does since his background is in corporate presentations. However, we find the examples Atkinson provides for visuals to be unacceptable in the context of litigation. While they are arguably fine in a sales meeting or boardroom, a courtroom is a much different setting, with special rules and expectations, and the goals of your presentation are different.

The most obvious difference between trial and a sales pitch is that, in a trial, we have an opponent who is waiting to pounce on any misstatement, mischaracterization or weakness in logic. Most sales people do not make a pitch with their competitor in the room jumping up and shouting, “Objection!” We, on the other hand, find ourselves in that exact situation and we had better make certain that we can prove the claims in our “pitch” with demonstrable facts. Simply filling the slide with some stock photography will not be enough.

Simplistic stock photography, such as a picture of a gavel (Atkinson 13), might be used sparingly in an opening or closing presentation. But in the BBP template images like this make up over 40% of the slides (Atkinson 59). Why would we spend 40% of your time talking about things that are not evidence? There is some discussion of the need to present evidence – but never any examples of just how to do that. In fact, the account of Lanier’s opening statement implies that the evidence was not in the slide presentation at all but, rather, on the document camera.

With effective graphic design and information design, there is no need to strip away the evidence that supports our point. Rather, we use that evidence to create compelling visuals that both offer evidence



BBP graphics from the first Vioxx trial are devoid of evidence. (Atkinson 283)

and resonate with our audience. While honing our message is good, reducing it to a title and stock photography is not.

We must all struggle with our evidence, trying to fit it to a coherent and compelling story. This struggle argues strongly that we must maintain as much flexibility as possible in our presentations. We do not get to choose our evidence. It is what it is, and trying to fit it into a rigid form is not the proper way to approach a trial presentation. In every presentation, form must always follow function.

What Is Useful in Beyond Bullet Points?

Even though we disagree with much of the BBP method, there are some useful ideas. Though none of them are unique to BBP, it is worth a few moments to discuss them briefly.

Focus:

Keeping each slide focused on a single, clear message is certainly good advice. We also agree with the use of declarative titles. Applying a title such as “Timeline of Events” is absolutely useless. Everyone can certainly see that it is a timeline and that it is populated with events. The more important question, and the one our title must answer, is “What is the meaning of this graphic?” The title must instruct the audience in a meaningful way – it may be the only part of the demonstrative they read. This applies not only to our imaginary timeline but to every demonstrative we prepare. However, we see no need for Atkinson’s requirement that titles should be complete sentences; complete thoughts are sufficient and often preferable.

Structure:

A well defined hierarchy in your presentation is also worth recommending. We don’t believe it needs to follow the exact BBP structure, but keeping our presentations well organized with section slides as we move from point to point will help our audience stay oriented from beginning to end. Instead of using the BBP Word template, we recommend creating a numbered outline using the strong statement titles as suggested in BBP. This will keep you organized without imposing unnecessary restrictions and allowing flexibility when it is time to create your slides.

Story:

As discussed at length above, telling our audience a compelling story, and weaving themes within and around that story, is important. Maybe that has not been the norm in a sales or business environment, but storytelling is inherent in trial lawyering. Which is not to say you should turn every case into a murder mystery, but a good story does help you connect with your audience.

Conclusion

While there are elements of the Beyond Bullet Points method that are useful in litigation, we cannot recommend the system as a practical or effective strategy for presenting cases in trial. Taken in pieces, Atkinson has articulated some sound advice, which, though not novel, is nonetheless a good reminder for those of us who create presentations. Courtroom presentation is determined by the format of the proceedings and by the case itself, and should not be shoehorned into any template that limits our ability to present real evidence in the most convincing manner possible.