

# Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs

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There is a mountain of advice about how to write a better legal brief. Most of the advice is about how to write more succinctly, clearly, and logically.<sup>1</sup> There are also books, articles, and websites on style, grammar, and typography. As Professor Charles Wright says, “the only tool of the lawyer is words.”<sup>2</sup>

Words may be a lawyer’s primary tool, but they’re not the only tool. Well-crafted images—charts, diagrams, photographs—can make your briefs more interesting and persuasive, and law schools would do well to incorporate instruction in visual presentation. A chart can persuasively show factual and legal points; a diagram can explain a case’s procedural history, and a photograph can save five pages of your brief.<sup>3</sup> As Edward Tufte says, “[w]ords and pictures belong together.”<sup>4</sup> It’s why newspapers, magazines, and professional journals so often combine words and images to convey complex ideas.<sup>5</sup>

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1. See, e.g., Brian A. Garner, *The Elements of Legal Style* (Oxford Univ. Press, 2d ed. 2002); Ross Guberman, *Point Made: How to Write Like the Nation’s Top Advocates* (Oxford Univ. Press 2011); Matthew Butterick, *Typography for Lawyers* (Jones McClure Pub. 2010); Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* xix (West 2008).
2. Garner, *supra* note 1, at xvi (foreword by Charles Alan Wright).
3. See, e.g., Thomas G. Collins & Karen Marlett, *New Tools Can Enhance Legal Writing*, *New York Law Journal*, June 2003; Edward R. Tufte, *Beautiful Evidence* 122-139 (Graphics Press 2006); Edward R. Tufte, *The Visual Display of Quantitative Information* 180-182 (Graphics Press, 2d ed. 2001) [hereinafter Tufte, *Visual Display*].
4. Tufte, *Visual Display*, *supra* note 3, at 180.
5. See, e.g., Stephen J. Rose, *How We Spend And What That Tells Us About the Economy*, *The Atlantic*, April 2012, at 46 (using text and charts to compare consumer spending habits in 1967 versus 2007); 10 States, *Diverse Challenges*, *USA Today*, Mar. 5, 2012, at 5a (discussing “Super Tuesday” in Republican primary race and using chart to show 10 states’ varying economic problems); Landon Thomas, Jr., *Greece Nears the Precipice, Raising Fear*, *N.Y. Times*, Sept. 19, 2011, at A1 (describing Greece’s financial condition and using diagram titled “Greece on the Edge” to show possible outcomes if Greece does not receive more financial aid from other members of the European Union).

Not surprisingly, lawyers have been slow to integrate images into their written work. Like any profession, change comes slowly—the law has been a text-only profession for hundreds of years. And unlike the physical sciences, the law usually deals in abstract ideas. A doctor can use an anatomical diagram to make a point, but it’s difficult for a lawyer to explain a legal concept in anything but words. And until recently, it has been expensive and time-consuming to integrate images into a brief.

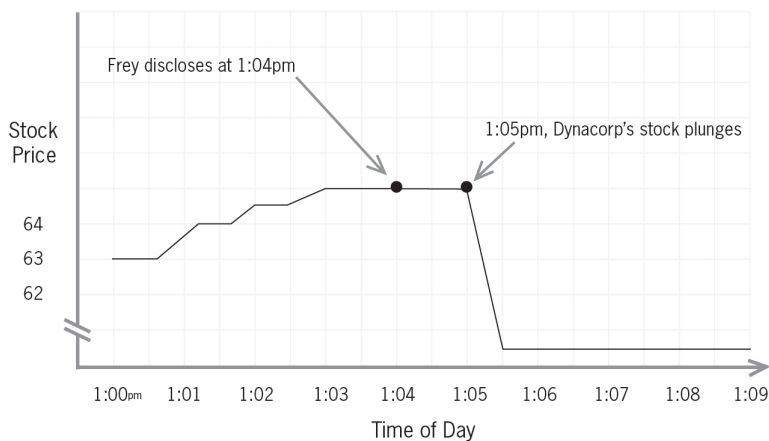
But that has changed. Advances in computers make it relatively easy to integrate images with text, and there’s every reason to think that courts (and other consumers of legal work) would welcome innovative displays of information. The legal brief itself, for example, has changed over time to reflect changes in the practice. The modern brief, with mandatory “procedural history,” “facts,” and “legal argument” sections, is a “relatively recent invention, not an ancient legal tradition.”<sup>6</sup> And the federal courts have reformed their rules in response to technological and other changes, most recently to accommodate advances in electronic record collection and storage.<sup>7</sup> As Herald Fahringer said 30 years ago in “Working With Words,” most lawyers “cheer any device that will help them understand the facts or issues of a case.”<sup>8</sup>

There are several ways to use an image to improve your brief.

### Display an Important Fact That Text-Only Might Leave Flat

*Not:* Moments after Defendant Frey disclosed the information, DynaCorp’s stock dropped from \$64.27 to \$2.45.

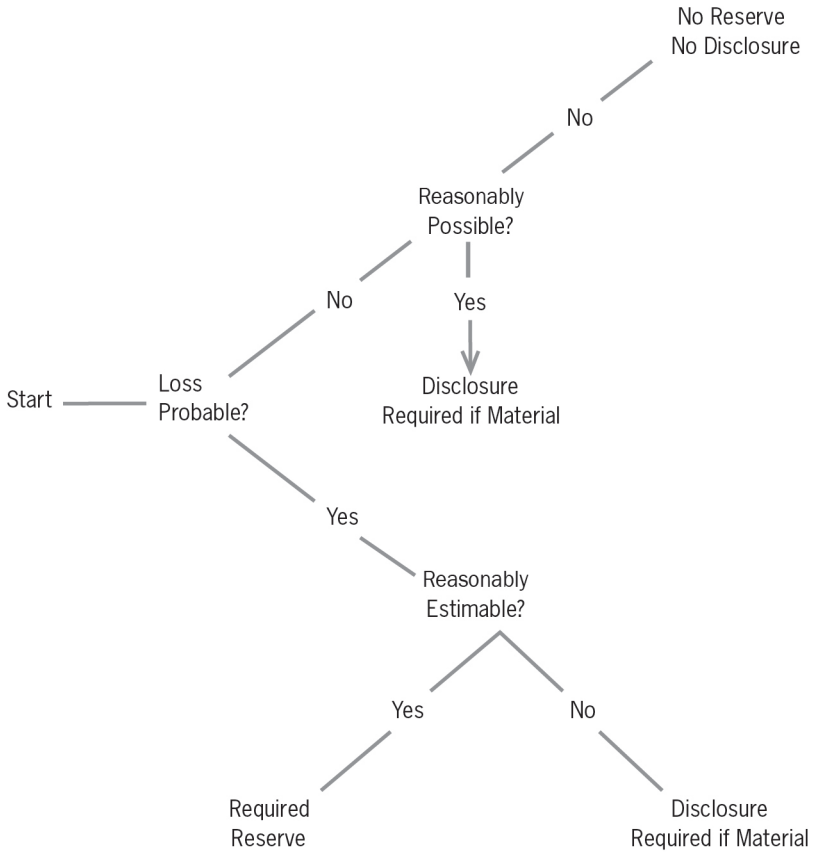
*But:* Moments after Defendant Frey disclosed the information, DynaCorp’s stock dropped from \$64.27 to \$2.45.



- Helen Anderson, *Changing Fashions in Advocacy: 100 Years of Brief-Writing Advice*, 11 J. Prac & Process 1, 17 (2010) (surveying brief-writing advice).
- See the 2006 changes to Fed. R. Civ. Pro 16, 26, 33, 34, 37, and 45 in response to technological advances in record collection, storage, and publication.
- Herald P. Fahringer, *Working With Words*, N.Y. St. Bar J., Vol. 54, No. 3, Apr. 1982, at 167.

### Explain a Statute, Regulation, or Rule

The flow chart below, adapted from an article about setting litigation loss reserves under Financial Accounting Standard 5, is an excellent example. In the article's text, the authors explain, among other things, that if a litigation loss is "probable," and the loss can be "reasonably estimated," then the company should set a loss reserve.<sup>9</sup> After discussing other aspects of the issue, the authors use this chart to explain the concept:

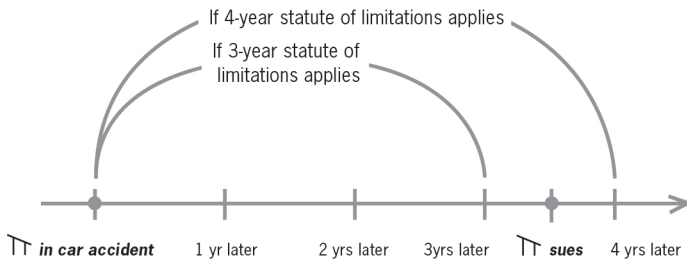


9. Jessica L. Evertt-Garcia, Dan L. Bagatell & Thomas Johnson, Top 10 Issues To Consider When You Are Sued: Issue #8: Disclosing Litigation and Reserving for Litigation Losses, *Perkins Coie—News/Publications*, Mar. 11, 2007, available at [www.perkinscoie.com/news/pubs\\_detail.aspx?publication=1323&op=updates](http://www.perkinscoie.com/news/pubs_detail.aspx?publication=1323&op=updates).

Similarly, a diagram can be used to explain a *statute of limitations*.

*Not:* If a three-year statute of limitation applies, plaintiff's claim is time barred. If a 4-year statute applies, plaintiff can proceed.

*But:* If a three-year statute of limitation applies, plaintiff's claim is time barred. If a 4-year statute applies, plaintiff's claim can proceed.

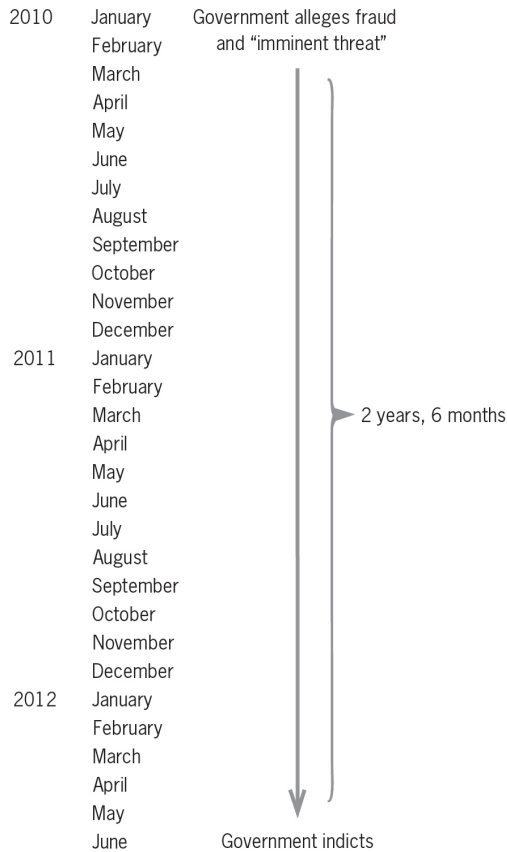


### Show the Passage of Time

It's often useful in litigation to show that your opponent failed to act for a period of time, usually a long period of time. That point is usually most useful in a statute of limitations context, but can be applied more broadly, to show, for example, that a government agency abused its discretion by waiting so long to take action.

*Not:* The government then waited until June 2012 to act.

*But:* The government then waited for over three years—until June, 2012 to act.



### Show Where Someone Was

It's often necessary to prove where someone was at a particular time. This is especially true in a criminal case—a key issue is often where the defendant was at the time of crime.

*Not:* Two eyewitnesses confirmed that the defendant was on the northwest corner of Maple and Main at the time of the crime.

*But:* Two eyewitnesses confirmed that the defendant was on the corner of Maple and Main at the time of the crime.



Clark Street, Chicago/©iStockphoto.com

This technique can help in civil cases too. Plaintiffs often need to prove that the CEO or board member was at a particular meeting when a key presentation was made.

*Not:* Director Johnson’s calendar showed that he was at the October 22 Board meeting.

*But:* Director Johnson’s calendar showed that he was at the October 22 Board meeting.

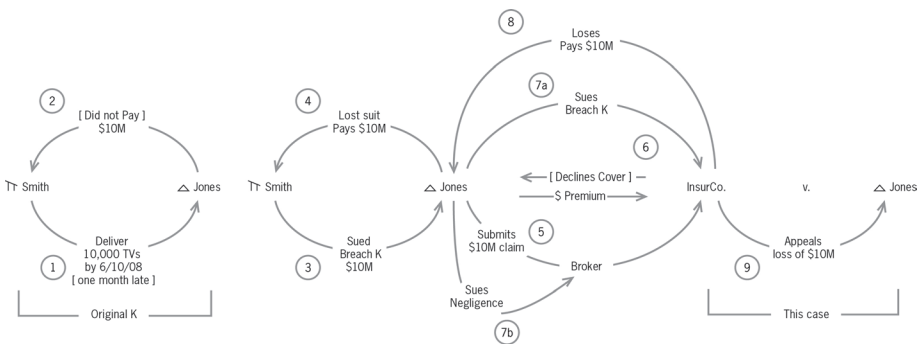


### Explain a Case’s Procedural History

The court needs to understand a case’s procedural history before it can rule on factual and legal issues. But it’s often complex, confusing, and can take several pages to convey. A diagram can help the judge (and more importantly, the judge’s law clerks) quickly understand. Try something like the following:

#### I. Procedural History

On January 10, 2008, Respondent Jones and Ralph Smith entered into a contract (1) where Smith was to deliver 10,000 high definition television sets to Jones by June 10, 2008, and Jones would in turn pay Smith \$10 million. Smith delivered the television sets, but one month late, and Jones, citing the contract, refused to pay him (2). Three months later, in September 2008, Smith sued Jones in the District Court for \$10 million (3), alleging breach of contract. Over one year later, in December 2009, a jury ruled for Smith and awarded him \$10 million in damages (4). After paying Smith, Jones notified his insurance broker of the \$10 million loss (5), who in turn notified Petitioner InsurCo, Jones’s insurance company. After evaluating the matter, InsurCo declined to pay Jones’s claim (6), citing section 16.2(a) of the insurance policy. In March 2010, Jones sued both InsurCo for breach of contract (7a) and, in the alternative, his insurance broker for negligence. (7b) In December 2011, the District Court granted Summary Judgment for Jones. (8). Two months later, InsurCo filed a notice of appeal with this Court. (9)



The chart is intricate because the data—a lawsuit’s complex progression—requires it. As Tufte says, “[s]howing complexity is hard work.”<sup>10</sup>

10. Edward R. Tufte, *Envisioning Information* 50 (Graphics Press 1990). Diagrams like the ones above are relatively easy to produce using graphic design programs imbedded in PCs and Macs. But another good option is to retain a graphic artist to produce diagrams for you. The diagrams in this paper were designed by XOTK Design (xotkdesign@gmail.com).



**Keeping Track of Who's Who**

Legal problems often involve a lot of people—plaintiffs, defendants, CEOs, CFOs, boards of directors, etc. It gets confusing, and most lawyers use cheat sheets to keep things straight. Make it easier on your reader by doing the work for them. So:

*Not:* The plaintiffs allege violations of the securities laws by Chief Executive Officer Ralph Gilbert (“Gilbert”), Chief Financial Officer Lester Stark (“Stark”), Chief Investment Advisor Graydon Treat (“Treat”), and Board Members Justin Bister (“Bister”), Mark Sholes (“Sholes”), Eric Duprey (“Duprey”), and Harvey Flexer (“Flexer”). Plaintiffs allege that Gilbert and Stark, together with Bister, Treat, and Harvey conspired to . . .”

*But:* The plaintiffs allege violations of the securities laws by several of ABC Corporation’s Officers and Directors. For ease of reference, they are set out below:

Ralph Gilbert	Chief Executive Officer
Lester Start	Chief Financial Officer
Graydon Treat	Chief Investment Officer
Justin Bister	Board Director
Mark Sholes	Board Director
Harvey Flexer	Board Director

Specifically, plaintiffs allege that CEO Gilbert materially mislead investors during the April 23 earnings call when he . . .”

- ii. As an aside, there’s no need to write (“Gilbert”) after writing “Ralph Gilbert”—it’s a distracting, lawyerly habit that does nothing but ruin the flow of your sentences. Just take a look at the paragraph above.) At the very least, if you must say “Gilbert” right after saying “Ralph Gilbert,” don’t put the second “Gilbert” in quotation marks; just write (Gilbert). It’s less distracting.

A subset of this category is showing the changing composition of a board or other organization. It's often important in litigation to show that personnel have changed over time:

*Not:* From 2006 to 2008 the Board was made up of Jones, Stephens, Edwards, Kahn, and Veasy. In 2009, Edwards resigned but the Board expanded to include Forester. In 2010, Jones resigned but the Board expanded again to include Shapiro and Galenter. In 2011, Kahn resigned but was replaced by Spellman. Ludlow took Jones's vacant seat in 2012.

*But:* From 2006 to 2008 the Board was made up of Jones, Stephens, Edwards, Kahn, and Veasy. In 2009, Edwards resigned but the Board expanded to include Forester. In 2010, Jones resigned but the Board expanded again to include Shapiro and Galenter. In 2011, Kahn resigned but was replaced by Spellman. Ludlow took Jones's vacant seat in 2012.

Graphically, the Board looked like this over time:

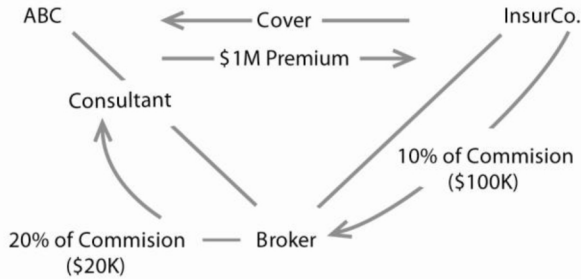
	2006	2007	2008	2009	2010	2011	2012
1	Jones	Jones	Jones	Jones			Ludlow
2	Stephens	Stephens	Stephens	Stephens	Stephens	Stephens	Stephens
3	Edwards	Edwards	Edwards				
4	Kahn	Kahn	Kahn	Kahn	Kahn	Spellman	Spellman
5	Veasy	Veasy	Veasy	Veasy	Veasy	Veasy	Veasy
6				Forester	Foster	Foster	Foster
7					Shapiro	Shapiro	Shapiro
8					Galenter	Galenter	Galenter

### Explain the Relationships Between and Among the Parties

Lawsuits are often factually complex, and it's sometimes difficult to keep clear who has sued whom for what, how much, and why. Lawyers have to spend a lot of paper explaining those relationships. In addition to the text, use a diagram.

*Not:* Corporation ABC needed insurance for its factory. ABC retained an outside consultant who in turn retained an insurance broker. The broker agreed to give 20 percent of its commission to the consultant. Broker then found InsurCo to cover ABC's risk for a premium of \$1,000,000. Broker got 10 percent commission, paid by the insurance company.

*But:* Corporation ABC needed insurance for its factory. ABC retained an outside consultant who in turn retained an insurance broker. The broker agreed to give 20 percent of its commission to the consultant. Broker then found InsurCo to cover ABC's risk for a premium of \$1,000,000. Broker got 10 percent commission, paid by the insurance company.



Using an image can help your brief in several ways. But two principles are important. First, always insert the image close to the relevant text, in the body of the brief. "This serves the convenience and understanding of readers, who can view a diagram and its relevant text together."<sup>12</sup> Never tuck the diagram into a back-of-the-brief appendix, which forces the reader to flip back-and-forth and defeats the purpose of the image in the first place: to make life easier for the reader. Second, whether you use a chart, diagram or other visual aid, it must be crafted with the same care and precision as the words surrounding it. Whatever the image, it should convey a sense of craft, detail, and credibility.<sup>13</sup>

12. Tufte, *Beautiful Evidence*, *supra* note 3, at 110.

13. There is a lot of guidance about drawing good diagrams, charts and other visual aids. *See e.g.*, William Lidwell, Kristina Holden & Jill Butler, *Universal Principles of Design* (Rockport Publishers, 2d ed. 2010); Tufte, *Beautiful Evidence*, *supra* note 3; Collins & Marlett, *supra* note 3 (citing Tufte). For a more technical analysis of diagramming in law, see Chris Reed,

Applying these principles and integrating charts, diagrams, and other images into your briefs will make certain that words are *not* your only tool. By incorporating instruction in visual presentation into legal writing and other courses, law schools can help build this crucial skill.