

A Picture is Worth a Thousand Words

Enhancing Your Brief with Visual Aids

BY MICHAEL A. BLASIE

Have you ever tried to describe a police lineup in a brief? How about a property line, a crime scene, or a trademark? What about a scientific process, a timeline, or a trail of money? Have you struggled to describe a web of subsidiaries or a comparison under a multi-factor test? You have options. A picture can often convey what paragraphs of text cannot. So use a picture and lower your word count.

Rarely used yet always appreciated are visual aids like charts, maps, diagrams, and pictures.¹ Some concepts are just easier to understand pictorially.

Simple visual aids are best. Remember, visual aids are substitutes for less effective main text, so they should be uncomplicated and self-explanatory. If they need explaining, they are not working. For example, do not describe a scene and then include a map that matches the description. Just use the map.²

If you're new to visual aids, do not fear. You don't need to be an artist or a computer wizard. Although you must use care when designing the aid, it need not be elaborate or artistic. As you will see below, many are basic and occasionally hand drawn.

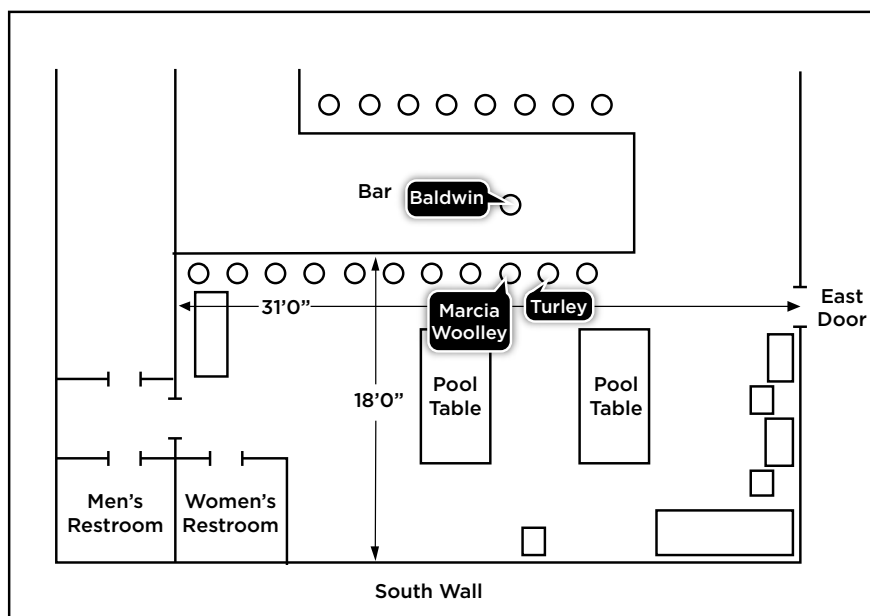
Finally, even if the visual aid is part of the record, include it in the brief rather than as an exhibit or a record citation. Keep the brief a cohesive unit with all the information a court needs in one place.

Here are some published opinions that use visual aids effectively. They show courts using them for three reasons: (1) to orient readers or help them visualize the scene, (2) to make a comparison, or (3) to summarize facts.³ Each example includes the paragraph introducing the visual aid.

Orienting the Reader

Woolley v. Rednour, 702 F.3d 411 (7th Cir. 2012)

Busch also concluded that the trajectory of the bullet holes caused by the initial shots to both Baldwin and Turley were consistent with a shooter being located by the barstools and that the shots could not have been made by someone coming out of the men's restroom. First, the bullet that caused Turley's wound was found in the tavern's east door. Had the bullet been fired by someone by the men's restroom or walking along the south wall (as Ogryzek testified), the bullet would have had to change its course almost 90 degrees after striking Turley to end up in the east door. The diagram below reflects the tavern's layout and locations of Marcia Woolley, Turley, and Baldwin at the time of the shootings.

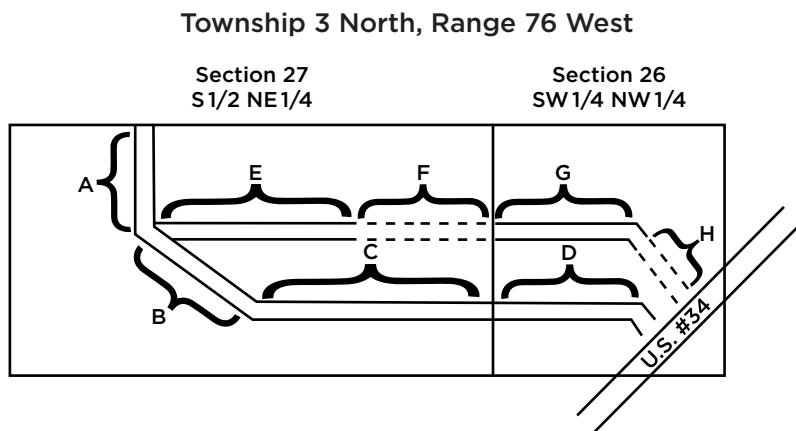


Orienting the Reader

Board of Commissioners of Grand County v. Baumberger, 513 P.2d 1075 (Colo.App. 1973)

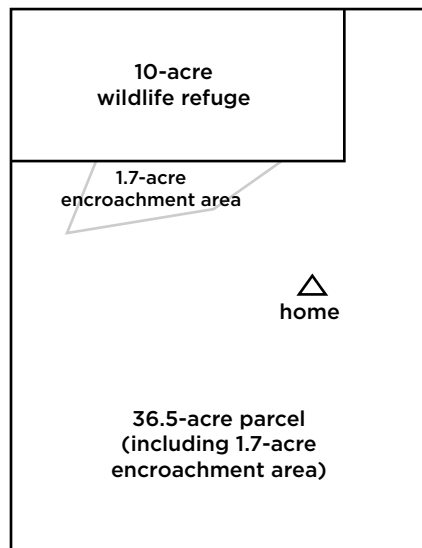
The court ordered that a deed transferring a right-of-way for a road from Digor to the county be reformed and that the defendants among others be permanently restrained and enjoined from interfering with the county's or the public's use and possession of the property described in the reformed deed. We affirm.

On December 1, 1953, defendant Digor filed a plat signed by him in which a proposed road across his land, represented by the segments A, B, C, and D in the diagram below, was designated "Digor Drive."



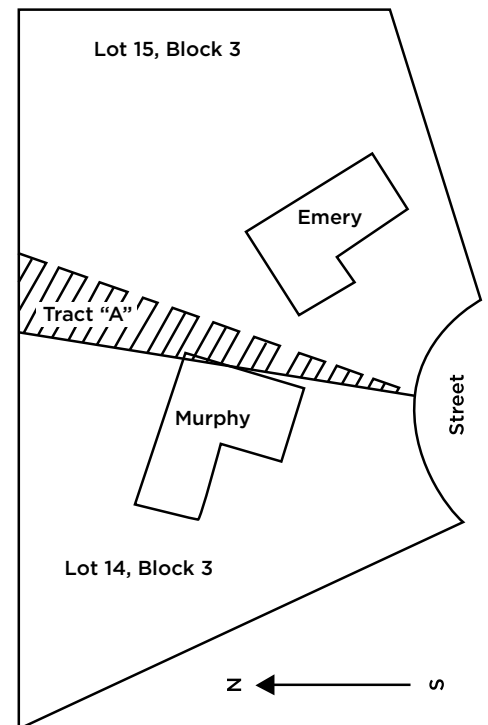
Graham v. Jules Investment, Inc., 2014 COA 136 (Colo.App. 2014)

The following diagram shows the approximate relative relationship of the properties that we have described above. This diagram is for illustrative purposes only, and it is not drawn to scale.



Emery v. Medal Building Corp., 436 P.2d 661 (Colo. 1968)

This writ of error presents a rather knotty problem and arises from the fact that a house was so constructed as to encroach about 2 feet on an adjoining lot. To aid in an understanding of the entire matter, there is set forth below a diagram, not to scale, which when considered in connection with the balance of this opinion will hopefully bring the dispute into focus.



Making a Comparison

People v. Williams, 2016 COA 48 (Colo.App. 2016)

¶ 42 And even if (1) defendant’s identity as the perpetrator of the crime had been at issue; or (2) modus operandi evidence were admissible in cases other than sexual assault or domestic violence cases to prove the crime’s actus reus, we would nonetheless conclude that evidence of the February drug deal was not admissible to prove defendant’s modus operandi. When we compare the February drug deal with the May drug deal in the chart below, we see that, although the two drug deals were similar in some respects, they lacked the striking similarities and distinctive methodology that the law requires to show that both drug deals were the handiwork of one perpetrator. . . .

	Prior Act	Changed Act	Similar?	Distinctive?
Substance	Cocaine	Cocaine	Yes	No
Location	Defendant’s apartment	Defendant’s apartment	Yes	No
Cost	\$40	\$20 or \$40	Unclear	No
Packaging	Baggie	Paper	No	No
Paraphernalia Found	Scale	Scale	Yes	No
	Cash, pipe, baggies	—	No	No
	—	Box cutter	No	No

Baig v. Coca-Cola Co., 607 Fed. Appx. 557 (7th Cir. 2015)

When Baig saw a billboard advertisement for Diet Sprite Zero in September 2004, he contacted Coca-Cola to threaten litigation over its purported infringement of his mark. Below are pictures of “Diet Sprite Zero” and “Naturally Zero.”



Hawg Tools, LLC v. Newsco International Energy Services, Inc., 2016 COA 176M (Colo.App. 2016)

Figure 2 compares the Hawg sealed bearing pack (Figure 2a) and the Newsco sealed bearing pack (Figure 2b). . . .

Fifth, a defense expert compared the Hawg design to designs that had been publicly available at that time. One of these was illustrated by U.S. Patent Application Pub. No. 2003/0015352 fig. 1 (filed July 17, 2001), which we compare to the Hawg design in Figure 3.

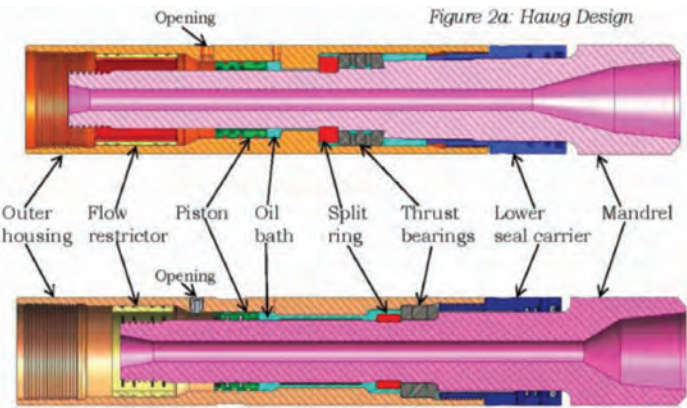


Figure 2: Comparison of Hawg and Newsco Designs

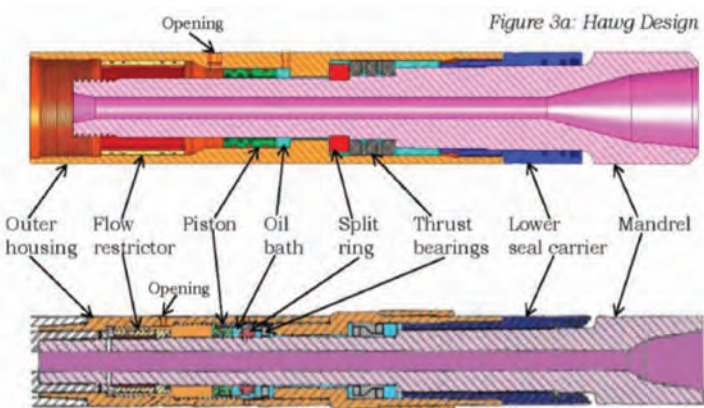


Figure 3: Comparison of Hawg Design and Illustrative Design

Making a Comparison

In re Johnson, 325 Fed. Appx. 337 (5th Cir. 2009)

The facts of the petitioner's brutal sexual assault and murder of 25-year-old LaTasha Curry on January 21, 1999 have been set forth in detail in our earlier opinion and the opinion of the Texas Court of Criminal Appeals. We will not repeat them here. Some of the relevant dates have been set forth above. We repeat these dates and others in the timeline set forth below:

November 19, 1999: Johnson sentenced to death.

October 22, 2001: Johnson files state petition for writ of habeas.

January 30, 2002: Tex. Court of Criminal Appeals ("TCCA") affirms Johnson's conviction on direct appeal.

June 20, 2002: U.S. Supreme Court issues Atkins.

October 8, 2003: TCCA denies habeas relief.

February 11, 2004: TCCA modifies the "two-forum rule," which required dismissal of a state writ or successive writ if a federal proceeding was pending, even if that proceeding was stayed. *Ex parte Soffar*, 143 S.W.3d 804, 804 (Tex.Crim.App.2004).

May 17, 2004: Johnson files first federal writ.

September 18, 2007: Federal writ denied by district court.

December 2, 2007: District court denies motion for new trial.

April 7, 2008: Johnson seeks COA from Fifth Circuit.

October 2, 2008: Fifth Circuit denies COA.

January 16, 2009: Execution date set for April 30, 2009.

March 9, 2009: U.S. Supreme Court denies cert to Johnson's challenging the Fifth Circuit's denying his COA.

April 28, 2009: Johnson attempts to file successive writ with TCCA based on Atkins claims.

April 29, 2009: TCCA denies subsequent writ because Johnson failed to make a prima facie case of mental retardation. Johnson files the current motion.

Summarizing Facts

United States v. Newman, 490 F.2d 139 (3d Cir. 1974)

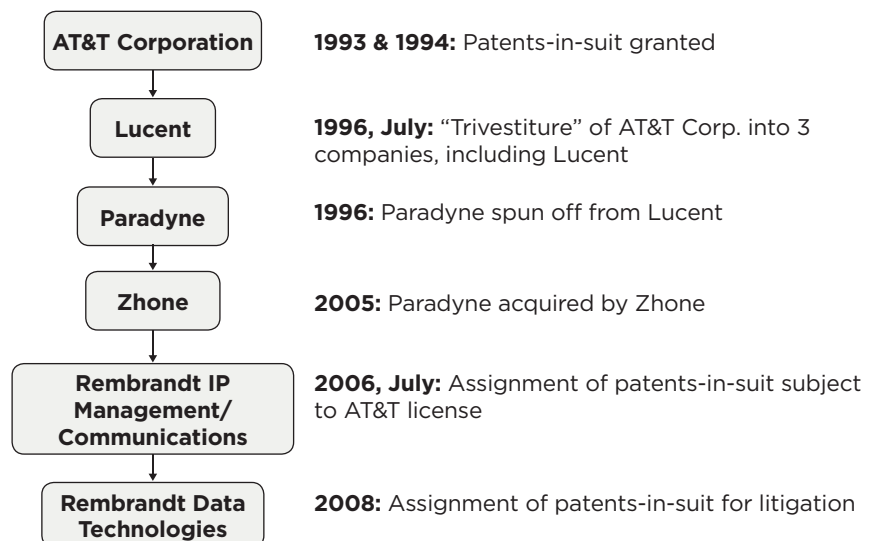
On cross-examination, witness Nee frequently asserted his Fifth Amendment privilege. The chart below outlines the context in which these assertions were made:

Page	Question	Purpose of Question
1) Tr. 195-197	Nee was questioned as to how he had tapped his ex-girlfriend's phone.	To show that Gaca did not participate in all tapings performed by Nee.
2) Tr. 199	Nee was questioned as to whether he had committed any crimes other than those about which he testified on direct examination.	To impeach Nee's credibility.
3) Tr. 255	Nee was questioned as to whether he had received any money from wiretaps in 1970.	To impeach credibility.
4) Tr. 257, 258	Nee was questioned as to whether he had tapped the phones of: a) members of the underworld, and b) a man by the name of Lou Posick.	To show that Gaca did not participate in all tapings performed by Nee.

Rembrandt Data Technologies, LP v. AOL, LLC, 641 F.3d 1331 (Fed. Cir. 2011)

The ownership genealogy of the '236 and '578 patents is documented in the chart below.

'256 and '578 Patent Ownership




Summarizing Facts

International Union, United Mine Workers v. Jim Walter Resources, Inc.,
6 F.3d 722 (11th Cir. 1993)

JWR operates four coal mines west of Birmingham, Alabama. The parties refer to the mines as Mines 3, 4, 5, and 7. Mine 3 is located in Jefferson County, Alabama, near Adger, Alabama. Mines 4, 5, and 7 are located in Tuscaloosa County, Alabama. The number of layoffs at each mine and the percentage of workers affected are reflected in the chart below:

Mine	No. of Workers Before Layoffs	No. of Workers Laid Off	Percentage Laid Off
3	657	140	21.31%
4	695	165	23.74%
5	518	166	32.05%
7	641	169	26.37%

Conclusion

Visual aids are powerful tools readers will thank you for using. Keep them at the forefront of your options. If you are spending paragraphs describing something, seriously consider whether a visual aid will help. 

This article, with slight variations, first appeared in the CBA-CLE Legal Connection.



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NOTES

1. “Wherever possible, use pictures, maps, diagrams, and other visual aids in your briefs. Some lawyers seem to think a word is worth a thousand pictures. The reverse, of course, is true. Seeing a case makes it come alive to judges.” Posner, “Effective Appellate Brief Writing,” *Appellate Practice J.* (Spring 2010), https://apps.americanbar.org/litigation/litigationnews/trial_skills/appellate-brief-writing-posner.html. See also Guberman, *Point Made: How to Write like the Nation’s Top Advocates* 293–94 (2d ed. Oxford University Press 2014).
2. Unlike brief writing, during a trial you might decide such repetition is useful to the jury.
3. See also Armstrong and Terrell, *Thinking Like a Writer: A Lawyer’s Guide to Effective Writing and Editing* 127–30 (3d ed. Practising Law Institute 2008) (discussing use of lists and bullet points); Guberman, *supra* note 1 at 295–300 (same); Guberman, *Point Taken: How to Write Like the World’s Best Judges* 73–77 (2015) (discussing same in an opinion’s Statement of Facts).

HOW TO CREATE
VISUAL AIDS

Here are some helpful resources on creating visual aids.

Designing Charts and Graphs

- Cole Nussbaumer Knaflic, *Storytelling with Data: A Data Visualization Guide for Business Professionals* (Wiley 2015).
- Edward R. Tufte, *The Visual Display of Quantitative Information* (2d ed. Graphics Press 2001).
- Gene Zelazny, *Say It With Charts: The Executive’s Guide to Visual Communication* (4th ed. McGraw-Hill Education 2001).

Creating Flowcharts, Charts,
and Graphs in Microsoft Word

- Add a drawing to a document, <https://support.office.com/en-us/article/Add-a-drawing-to-a-document-348a8390-c32e-43d0-942c-b20ad11dea6f>.
- Saikat Basu, How to Create Stunning Flowcharts With Microsoft Word the Easy Way, <http://www.makeuseof.com/tag/create-stunning-flowcharts-microsoft-word>.
- Insert a chart from an Excel spreadsheet into Word, <https://support.office.com/en-us/article/Insert-a-chart-from-an-Excel-spreadsheet-into-Word-0b4d40a5-3544-4dcd-b28f-ba82a9b9f1e1>.
- How to Add a Graph to Microsoft Word, <http://www.wikihow.com/Add-a-Graph-to-Microsoft-Word>.