

PRESENTED AT

39th Annual Page Keeton Civil Litigation

October 29-30, 2015

Austin, Texas

Persuading Visually in Motions and Briefs

Robert Dubose

Author Contact Information:

Robert Dubose

Alexander Dubose Jefferson & Townsend, LLP

1844 Harvard Street

Houston, Texas 77008

rdubose@adjtlaw.com

713-523-2358

Summary

For some types of information and legal arguments, visual images can inform and persuade judges more effectively and persuasively than the written word. This paper illustrates how visuals can be used in briefs and motions. And it offers tips for creating effective visuals to use in written legal arguments.

It is time to start using visuals in written legal argument

Much has been written about the importance of visual images in persuading juries. And most trial lawyers use visuals during trial. But little has been written about using visuals in written legal argument to persuade court. And rare is the filed motion or brief that actually uses them.

Why have lawyers hesitated to use visuals in written argument?

One reason is that written argument must rely largely on words, sentences, and paragraphs. Our law—statutes, rules, and court opinions—consists of words. It is difficult to explain a legal rule without resorting to the language of the rule itself.

A second reason has to do with tradition and technology. For decades, legal filings were prepared on typewriters. In typewritten documents, it was difficult to insert and manipulate visuals. Nor did this change for the first 20 years or so years that computers and word processing were used in legal offices. Programs such as MS Word and Word Perfect did not allow most computer users to insert images until the last decade or so. Since then, we have had the technology to use images in our filings, but it has not occurred to most lawyers to use them. Or they have been held back by a long tradition of relying solely on words in motions, briefs and other legal documents.

It is time to re-think our exclusive reliance on words in legal argument. Visual information is a key component of persuasion. Images grab our attention. The effect of an effective image can be almost immediate—unlike words and sentences which require time and energy to read and process. Plus, an effective image can stick in a judges' mind much longer than even a well-crafted sentence.

Additionally, as law is applied to a more complex, data-driven world, words alone are often inadequate. Complex information such as elaborate relationships or statistical analysis can often be better understood when they are represented visually rather than through words.

Consider how we receive information online. Most websites devote as much space to images as they do to words in order to inform and persuade. That is because web designers have studied website users and learned that visuals are often required to communicate.

Even judges have begun to complain about the reluctance of lawyers to use visuals in written argument. For instance, as Seventh Circuit Judge Richard Posner observes:

Yet so disfavored are pictures, maps, objects, and diagrams in appellate briefs ...
that I've said some lawyers think a word is worth a thousand pictures.

RICHARD A. POSNER, REFLECTIONS ON JUDGING 143 (2013). Judge Posner, who may use more images in his opinions than any other American judge, encourages lawyers to do the same.

Five ways to use visuals in legal argument

Incorporating visuals into documents is now easy with computer technology. To use images effectively, it helps to know how they can be used to convey ideas in place of words. The following are some illustrations of effective ways to use visuals in legal argument.

1. Photos as argument

I first used an image in a brief in 2007 when I realized words just would not describe the scene of an accident in a premises-liability case. My client had been riding a motorcycle on a commercial motorcycle track when he was impaled on a tree stump just on the other side of a raised turn in the track. The issue was whether the stump on the other side of the turn was an inherently dangerous condition. The record contained testimony that the stump was on the other side of the turn, and that riders frequently crashed, falling at the edge of that turn. But the testimony did not describe the stump—and give the reader such a visceral image, as well as a photo did. Because my word-processing program still did not have the ability to incorporate external files, I left a large space in the document, cut a copy of the photo of the stump with scissors, and taped it into the brief.



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Persuading Visually in Motions and Briefs

Also available as part of the eCourse

[Litigation Tactics: The Texas Motion to Dismiss, Texas Expedited Action Rules, Millennial Jurors and Visual Persuasion](#)

First appeared as part of the conference materials for the
39th Annual Page Keeton Civil Litigation Conference session

"Persuading Visually in Motions and Briefs: How and Why to Use Photos, Charts, and Graphs to Persuade Judges in Written Filings"