

Graphics in briefs: Why not? (Part 2)

BY WAYNE SCHIESS

HOW TO INCREASE THE USE OF GRAPHICS IN BRIEFS

Part 1 of this article discussed using graphics in briefs only as an abstract concept. For guidance on how one might decide whether to use a graphic in a brief for a particular point, there is an excellent law-review article by Steve Johansen and Ruth Anne Robbins, "Articulating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning."¹

The authors helpfully divide graphics into three categories: organizational visuals such as bullet lists, timelines, and tables (even the Table of Contents); interpretive visuals such as flowcharts, pie charts, and Venn diagrams; and representative visuals such as images and maps. They then ask writers to imagine the legal argument visually and identify what type of graphic would aid the reasoning.²

Once the writer has decided to use a graphic in the brief, Johansen and Robbins suggest, it's still beneficial to assess where the graphic would fall along a "usefulness" continuum: on one end are decorative graphics that are visually interesting but that have a limited connection to the analysis; on the other are transformative graphics — they have a purpose as part of the legal reasoning and serve as a form of visual analysis.³

Purely decorative graphics would be nixed; transformative graphics would go in.

Consider some types and examples of graphics.

Here are two simple ways to use one type of graphic — images — in briefs, as recommended by survey respondents:

- I mostly use screenshots of the contractual or other language I'm interpreting.
- Many of mine are labeled photos — essentially, evidentiary documents but placed in the body text rather than in an appendix.

But there are other ways. Shown here are some simple examples writers can consider that would not be difficult to create. These graphics come from examples sent to the author, from other sources, and from another excellent article on graphics by Adam L. Rosman: "Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs."⁴

Graphics in briefs can be as simple as the following table showing who held what position in a corporation.⁵ The information here is more quickly and easily grasped than if it were conveyed in textual format.

Ralph Gilbert
Lester Start
Graydon Treat
Justin Bister
Mary Sholes
Harvey Flexer

Chief Executive Officer
Chief Financial Officer
Chief Investment Officer
Board Director
Board Director
Board Director

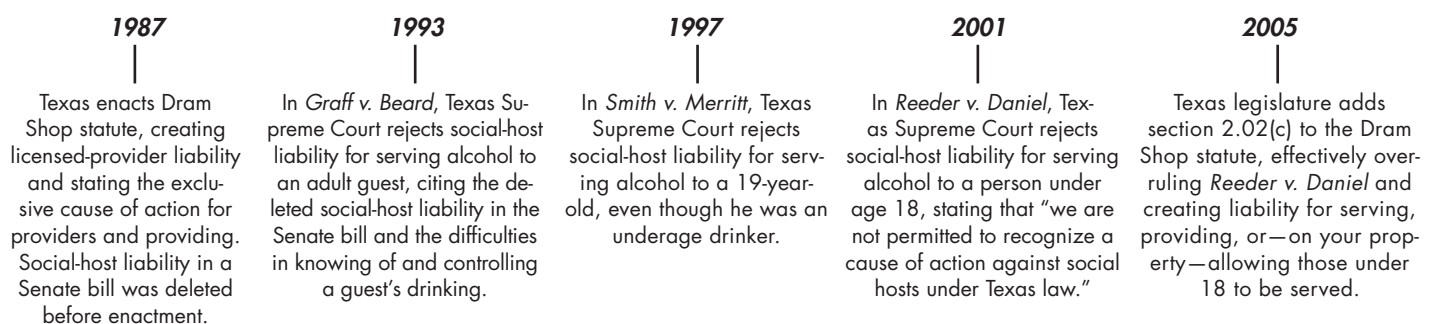
The following portion of a larger table was used to address a 12-factor legal test as applied to a set of facts. This is a good example of a graphic that makes digesting the analysis easier when compared to a traditional-text format. (Note: because of the single-column format, the first two examples below are more spread out horizontally than would normally appear.)

Factor	Analysis
Evidence of actual or potential harm to patients, clients, or the public	There was actual or potential harm in this case, as Respondent’s patient in the February 2011 incident went into code-blue cardiac distress when Respondent failed to fulfill her responsibilities under the standards of care for nurses. This is an aggravating factor in determining a penalty.
Evidence of a lack of truthfulness or trustworthiness	Although Respondent failed to comply with the standards of care, the ALJ does not find evidence in the record that establishes any lack of truthfulness on Respondent’s part here. Respondent admitted her actions, and except in regard to whether she informed Ms. Phills that she was leaving the unit, there was little dispute over Respondent’s conduct—none of which involved dishonesty or untruthfulness.
Evidence of misrepresenting knowledge, education, experience, credentials, or skills that would lead the public, an employer, a healthcare provider, or a patient to rely on the misrepresentation	There is no evidence of this type of conduct by Respondent.

This next chart appeared in a response to a plaintiff’s motion to consolidate. It was the writer’s attempt to emphasize that although the same party owned the two apartment-complex phases at issue, the buildings, subcontractors, and materials differed substantially, and the two cases would not require the same evidence. After attempting to describe the content in textual paragraphs, the writer decided to use this chart:

	Phase 1	Phase 2
Owner	Ten Pines Partners	Ten Pines Partners
General Contractor	Letco	Trescore
Architect	AATC	AATC
Completed	July 2007	July 2008
Buildings	A, B, C, D, E, F, G, N, P	K, Q, R, S, T
Subcontractors	Mega Insulation Gonzalez Roofers Jeremy Construction A&J Plumbing Double T HVAC	Mega Insulation Roscoe Roofing Rickett’s Protective Coatings D-Tech Commercial Tempfan Products
Siding	Traditional	Redstrong Synthetic
Defendants	Ten Pines Partners Mega Insulation Letco Gonzalez Roofers Jeremy Construction A&J Plumbing Double T HVAC	Ten Pines Partners Mega Insulation Trescore AATC Roscoe Roofing D-Tech Commercial Tempfan Products

This timeline conveys key events in the evolution of social-host liability for serving alcohol under Texas law.



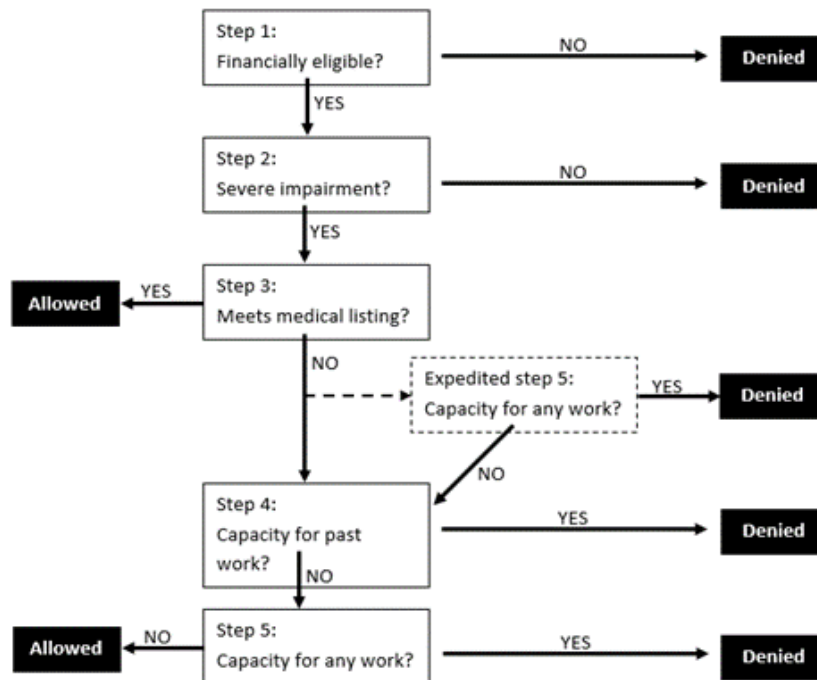
Here's another timeline, showing membership on a board of directors over time.⁶

	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				Foster	Foster	Foster	Foster
7					Shapiro	Shapiro	Shapiro
8					Galenter	Galenter	Galenter

Maps can be particularly helpful as graphics in disputes relating to locations, in boundary disputes, and for other geographically related information.⁷

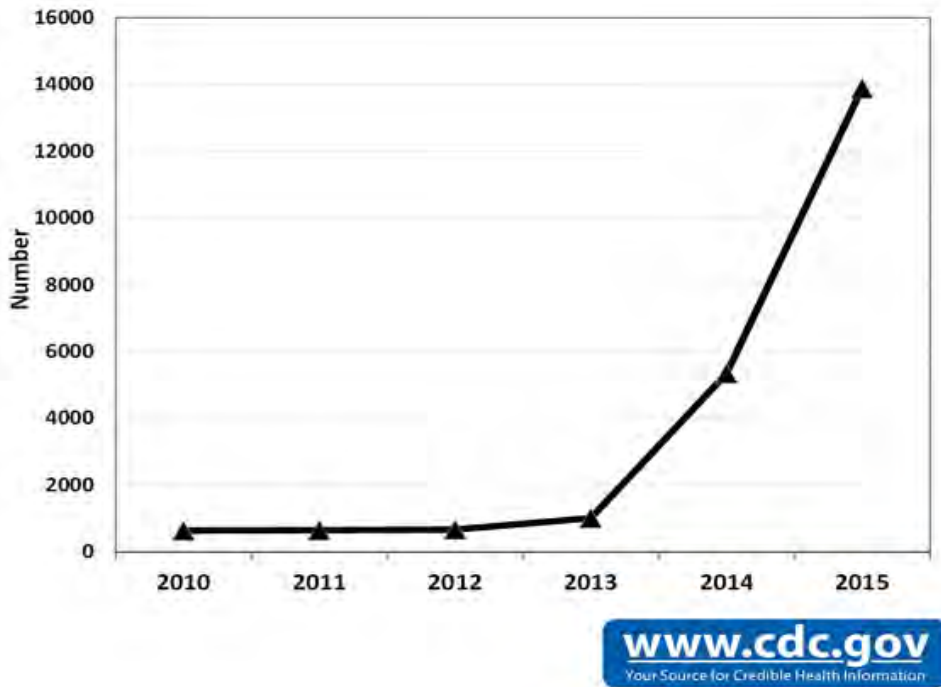


A flowchart can simplify what in the abstract seems like a complex decision.⁸



Traditional charts (such as the pie chart in Part 1 of this article) and graphs can work, too. Here’s one depicting the number of reported law-enforcement encounters testing positive for fentanyl in the United States.⁹

Number of Reported Law-Enforcement Encounters Testing Positive for Fentanyl in the US: 2010–2015



Consider, or reconsider, using graphics in a brief.

These examples may give you some ideas, but it’s up to you to consider the information or analysis and decide whether a graphic is right for your brief. Think creatively, get some help, improve your skills, and recognize that judges are generally favorably disposed to graphics in briefs. Then try it.

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ENDNOTES

1. 20 J Leg Writing Inst 57, 59–60 (2015), available at <<https://scholarship.libraries.rutgers.edu/esplora/outputs/journalArticle/Art-iculating-the-analysis-systemizing-the-decision-to-use-visuals-as-legal-reasoning/991031549943304646>> [<https://perma.cc/5NLC-J8A8>]. All websites cited in this article were accessed May 3, 2022.
2. *Id.* at 67.
3. *Id.* at 69.
4. 63 J Leg Educ 70, 70 (2013), available at <<https://jle.aals.org/cgi/viewcontent.cgi?httpsredir=1&article=1094&context=home>> [<https://perma.cc/U2Z4-WU7T>].
5. *Id.* at 78.
6. *Id.* at 79.
7. Regalia, *An Eye for Legal Writing: Five Ways Visuals Can Transform Your Briefs and Motions*, Appellate Advocacy Blog (May 25, 2019) <https://lawprofessors.typepad.com/appellate_advocacy/2019/05/developing-an-eye-for-legal-writing-five-ways-visuals-can-transform-your-briefs.html%20> [<https://perma.cc/YN8D-S9X8>].
8. *Id.*
9. *Reported Law Enforcement Encounters Testing Positive for Fentanyl Increase Across US*, CDC (August 9, 2021) <<https://www.cdc.gov/drugoverdose/deaths/fentanyl-encounters/index.html>> [<https://perma.cc/V4PD-P3MC>].