“Use a picture. It is worth a thousand words.” A newspaper editor named Arthur Brisbane is often credited with first giving this advice in 1911, suggesting to his reporters that words are not always adequate (or preferable) to get a point across.

The same advice is applicable to briefs. Demonstratives can be powerful argument enhancers. They can succinctly make a point that words cannot, particularly when complex information is being conveyed. Demonstratives can also, importantly, make the brief more interesting and capture the judge’s attention. Research indicates that people often remember things they see better than things they hear. As a result, when used in conjunction with words, demonstratives can make an argument more memorable (and perhaps improve that argument’s chances if the other party gets the last word).

Yet most lawyers do not use demonstratives in briefs. (It is probably more accurate to say most lawyers do not think to use them.)

Anecdotal evidence suggests that many of these lawyers think that legal briefs are no place for hifalutin pictures and may not be received well by a judge. To the contrary, a number of judges have stated that demonstratives in briefs are more than welcome. A couple of examples:

- “I just want to put in a plug for diagrams, photographs, charts, and other graphic ways of communicating. Everything doesn’t have to be communicated with long sentences. Some things are better done through graphs.”\(^2\)
- “I think that any form of demonstrative evidence that is going to speed the process by which the court is going to understand what you are saying makes great sense. I mean, you know the adage a picture is worth a thousand words, sometimes these charts and other forms of demonstrative evidence are very, very useful. . . . And we are seeing an increasing use, at least I am, especially in patent cases, of technicolor inserts, photographs and things like that in the briefs that are very helpful, at least to me.”\(^3\)

Skeptical lawyers should also keep in mind that the same judges who are reading their briefs are constantly bombarded with information in the form of graphics. Major newspapers, including the *New York Times*, *Wall Street Journal*, and *USA Today*, regularly include graphics (sometimes referred to as “infographics”) to summarize, support, or explain the news they report. Why? Because they recognize that sometimes words alone are not sufficient.

To be sure, not all arguments require demonstrative support, and many arguments do not benefit from demonstratives at all. Indeed, some lawyers are guilty of overusing demonstratives when mere words would suffice. It cannot be overstated that careful consideration and

---

judgment should be used when determining whether demonstratives will improve an argument—or if they will only serve to detract from the point being made.

There are many ways that demonstratives can be used to improve the understandability or persuasiveness of a brief. Perhaps the most fundamental way to use a demonstrative is to show the court what the dispute is actually about, particularly if the details of the case are not commonly known. For example, assume that the case is about a particular type of corkscrew (for removing wine corks) called a “rabbit” corkscrew. The judge may not know what a rabbit corkscrew is, or perhaps has seen that type of corkscrew but not know what it is called. Regardless, it is in the lawyer’s best interest to ensure that the judge becomes familiar with a rabbit corkscrew, so that the judge has all of the tools necessary to understand the argument. Thus, as shown in the following example, an image of a rabbit corkscrew can be included in the brief alongside a description of the device.

This case involves a specific type of corkscrew called a “rabbit” corkscrew, so-called because the device resembles a rabbit. Seen below, the rabbit corkscrew works through a combination of pressure grips and a lever that permit a user to easily insert the auger (what most people understand as the “corkscrew”) into the wine cork and remove it with minimal effort. The rabbit corkscrew also permits the user to easily remove the wine cork, by operating the lever in the

Figure 14—Examples of Demonstratives in Briefs: Visual Depiction of an Object

A lawyer can also use a diagram that is color coded to delineate the various components of a device, as seen in the next figure. This type of demonstrative may be applicable in a products liability or patent infringement case to educate the judge about the product or patent
The asserted patent is invalid because each of the elements of the asserted claims are found in the prior art. As seen in Figure 1 of the Smith reference, for example, the prior art disclosed a device for removing a wine cork that having a handle (blue), an auger (grey), and an extraction lever (yellow). These prior-art elements are identical to the limitations recited in the asserted claims. When viewed in conjunction with the other prior-art devices disclosing a similar mechanism.

Figure 15—Examples of Demonstratives in Briefs: Identifying Components Using Color

Similarly, demonstratives can be used to identify the different components of an actual device or mechanism that does not lend itself to color coding. In the next example, the various components of a bottle opener are labeled. This type of demonstrative will help to familiarize the judge with the terminology used in the case, and may serve as a handy (and easy-to-find) reference if the judge encounters unfamiliar terminology elsewhere in the briefs.
Demonstratives are often effective to show a timeline or a series of key events. Simply put, many people are visual learners, and seeing events identified in a timeline can provide important context about how events relate to other events. For example, timelines can be particularly effective when showing that certain events are far apart or that one event triggered another.

As the timeline below demonstrates, Initech obviously filed this lawsuit in retaliation for Acme’s becoming leader in the corkscrew market:

Initech could have sued Acme in 2002, when it entered the market, or during any of the seven years before it became the market leader. The fact...
Timelines can also be effective to show that certain events or occurrences are clustered together (e.g., an industrial accident resulting in higher incidence of cancer in a small town), timing of core facts in relation to external events, frequency of events, etc.

Likewise, demonstratives can be particularly effective to show the similarities or differences between two things. In the following example below, demonstratives are used to show that the alleged infringing bottle opener on the right is unlike the bottle opener described in the patent.

Demonstratives are also useful for emphasizing a particular part of a document, particularly if it relates to a key fact or admission. Skeptics may say that they can simply tell the judge what the document says. True enough. But seeing the document speak for itself can be more persuasive (and draw more attention) than burying the fact or admission in the text where it looks like, and can get lost among, all of the other words.
It has been known for nearly a century to include a bottle opener with a corkscrew, as this advertisement from the 1930s makes clear. It simply cannot be reasonably disputed that it would have been obvious at the time the asserted patent was filed to include a standard bottle opener with a standard corkscrew. A person having ordinary skill in the art would be motivated to combine these components in order to reduce

A word about formatting demonstratives in briefs. When a demonstrative in a brief is significantly narrower than the width of a line of text, it is best to avoid placing graphics in-line with text. If not, the result is distracting dead space on the page and does not look aesthetically pleasing.
When feasible, it is best for the text to wrap around the image, in the same way that images are formatted in books and newspapers. This formatting looks more professional and also minimizes the amount of space taken up by the image (thereby giving you more words if you are constrained by page limits). The following example looks better than the previous in-line example and provides substantial space for additional words on the page. To apply this formatting in Microsoft Word, right-click on the image and use the “Square” or “Tight” option under the “Wrap Text” context menu. To apply the formatting used in Figure 21 below, use the “Top and Bottom” option.

The asserted patent is invalid because each of the elements of the asserted claims are found in the prior art. As seen in Figure 1 of the Smith reference, for example, the prior art disclosed a device for removing a wine cork that having a handle (blue), an auger (grey), and an extraction lever (yellow). These prior-art elements are identical to the limitations recited in the asserted claims. When viewed in conjunction with the other prior-art devices disclosing a similar mechanism.

Figure 21—Formatting Demonstratives in Briefs—Preferable: Wrapping Text Around the Image
Briefs can have demonstratives incorporated into the text and also attached as exhibits. The same brief can have both as in the two following examples from a trademark case. The first example, comparing different logos, was embedded in the text of the brief.

Because Sony Ericsson maintains registered trademarks for its Sphere with Swirl Mark, Sony Ericsson owns valid and protectable marks to satisfy the first element of the infringement test.

B. Sony Ericsson’s Trademark Infringement Claim Is Focused On Its Specific Mark In Its Specific Industry.

Defendants cannot and do not dispute that, until their recent entry into the market, Sony Ericsson was the only player in the mobile communications business using a sphere with swirl mark with green and silver/chrome/grey colors. Indeed, Defendants seek to dilute and color Sony Ericsson’s position by depicting a chart with some 60 entities that use spherical logos. However, those 60 companies include soccer leagues, video game companies, and energy companies that conduct no business in the mobile communications industry. When one actually examines the relevant field and classes of use, Defendants’ comparison of 60 spherical logos reveals just two in the same field of mobile communications: Sony Ericsson and AT&T (which happens to be Sony Ericsson’s co-branding partner). And those two logos look nothing alike.

Figure 22—Demonstratives in Briefs: Embedded
The second example shows the geographic expansion of service over time. It takes up an entire page and therefore was attached as an exhibit to the brief.

Figure 23—Demonstratives in Briefs: Attached Exhibit