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A U.S. Legal Support Company



Visual Path to Verdict: Building Persuasive Litigation Graphics



Introduction

It can be risky to try a case in front of a jury, primarily because one can never know juror sentiment or which facts of the case will sway their decision-making. Fortunately, legal graphics can vastly aid in juror education, trial fact retention, and case storytelling.

Legal Graphics for Pre-Trial Testing and Opening Statements

By: Lorrie Messinger, Executive Vice President, DecisionQuest

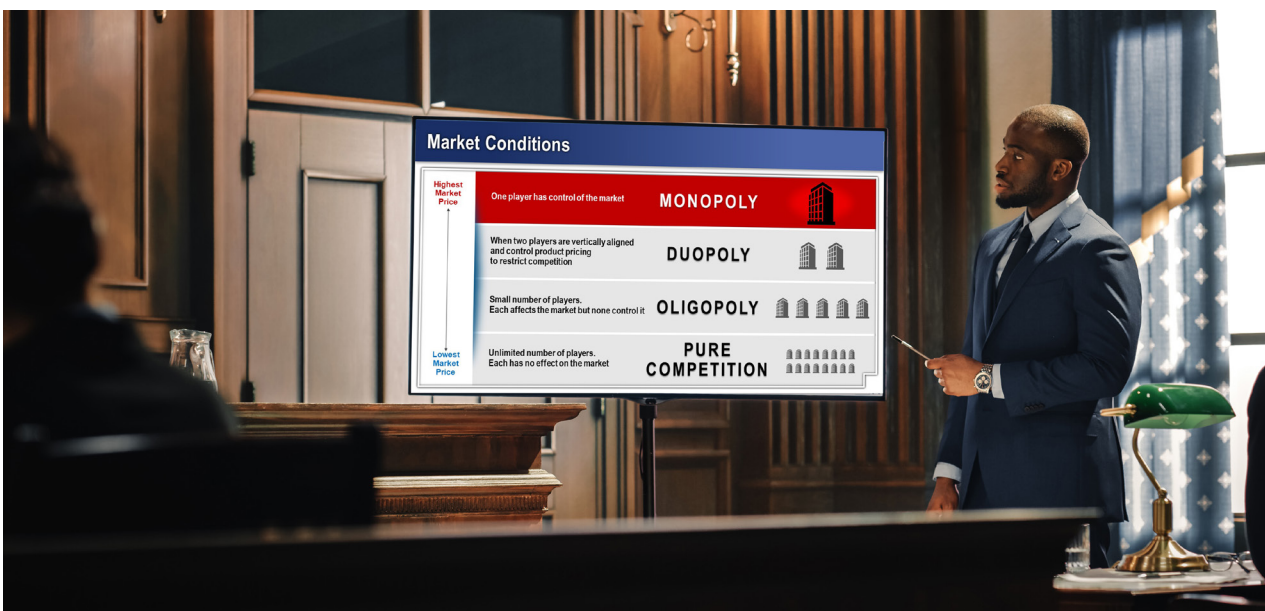
Prior to litigation, in-person and online mock trials are often held to test the “battle of the stories.” Mock trials are intended to help test and refine arguments so that you are telling the most compelling story at trial, as well as determine how jurors are likely to perceive case issues and their assessment of each party’s strengths and vulnerabilities. Using visuals at the mock trial stage has two key benefits:

#1 – Visuals make the mock trial a more effective exercise.

Using visuals to support your presentation at a mock trial study enhances the exercise for both the presenters and the decision-makers. Presenters can use them as prompts to help emphasize their key points. Decision-makers find graphics helpful to better understand and retain information. Additionally, their interest level typically rises when graphics are shown because they “bring to life” many of the case issues and facts. Clarifying each side’s argument results in more valuable and usable feedback from the mock jurors.

#2 – Visuals help jurors with both comprehension and retention of facts.

Depending on what the trial team is seeking, there are creative variations to what is tested and how it is tested. There’s also the added benefit that, given the limited time for presentations, including visuals during each side’s presentation often accelerates the comprehension of the dispute, the parties involved, timing of events, meaning of the critical data, and importance of key documents.





What Legal Graphics Are Most Effective During a Mock Trial?

Visuals at the mock trial stage should aim for impact – eliciting decision-makers’ reactions and opinions on the case. Keep in mind that the most effective visuals at mock trial should do the following:

- Present key players
- Clarify main arguments
- Define unfamiliar and complex terms
- Provide a chronological framework
- Provide simple tutorials to explain complex concepts
- Present “hot” documents and key testimony (through narrative or video clips)

Legal Graphics for Opening Statements: Thematic Storytelling

Opening statements begin the path to verdict. And lawyers know the opening statement is the first opportunity to provide jurors with an overview of the case and what the evidence will show. Though it is confined to facts and cannot be argumentative, themes and storytelling are what make opening statements engaging and effective. To organize new and often unfamiliar information, telling a story provides the framework jurors need to make sense of the dispute and reach a verdict in which they feel confident. Visuals can greatly assist in thematic storytelling and making the story “come alive” for jurors.

KEY THEMES

- ▶ Defendant was an *extraordinary* CEO of InCo
- ▶ InCo *benefitted* from Defendant’s hard work and efforts
- ▶ InCo’s knowledge of Defendant’s bad acts waives its right to his compensation
- ▶ He is entitled to keep his compensation and bonuses that he *properly* earned



What Legal Graphics Are the Most Effective for Opening Statements?

Keeping the goal of thematic storytelling in mind, persuasive legal graphics used in opening statements are critical. They should:

- Support the story being told
- Preview important evidence that will later be introduced in trial
- Ensure your client is seen in the best possible light
- Be clear and, most importantly, memorable

Examples of effective demonstratives for opening statements include:

A simple text chart listing 3 or 4 key themes

Use your key themes as a roadmap to walk jurors through each point of your narrative and what facts and evidence will be shared in support of each.

Visual anchors

Introduce memorable images that are symbolic of the messages you want to convey.

Timeline of events

Tell your story by showing a chronology of key events and how they relate to each other.

Witnesses

Introduce key witnesses by showing their photos and previewing their testimony.

Contracts, patents, or other key documents

Enlarge and read the relevant portion(s) around which the dispute developed.





Maximizing Witness Testimony with Strategic Legal Graphics

By: Diana D. Bullard, Graphics Division, DecisionQuest

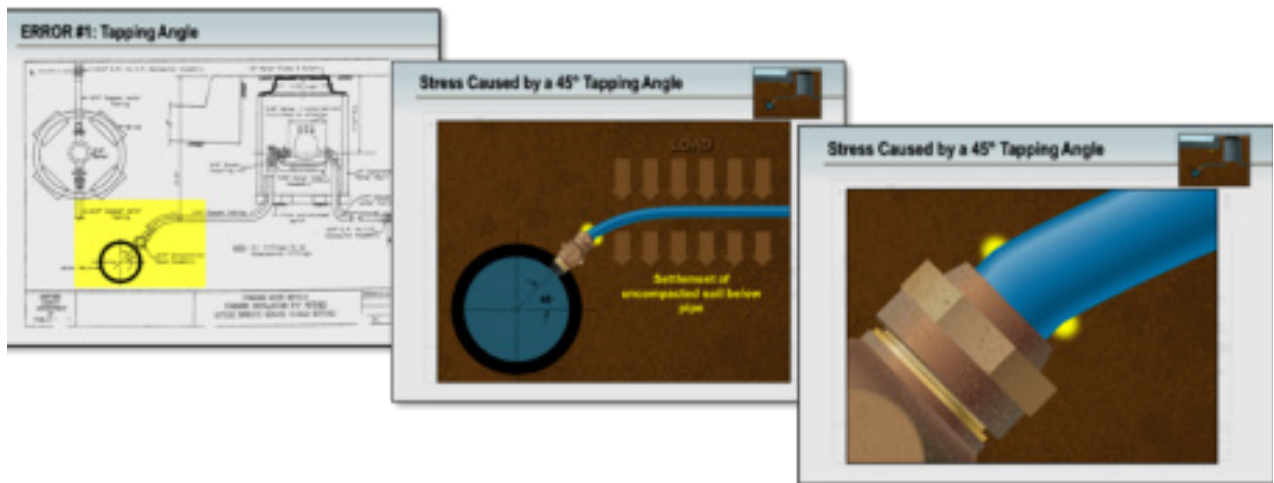
During the opening statement, one presents key themes and commits to a position. Now it is time for witnesses to not only explain their findings and authenticate the evidence, but to bring their testimony to life. There are a number of strategies for developing legal graphics that can foster greater comprehension for the jury during witness testimony.

How to Use Legal Graphics During Witness Testimony

Start with a familiar image and slowly add more complexity

The average juror may have little experience and some trepidation when confronted with complex technology. A key strategy to make complex information more understandable is to start with a known image and then advance in a series of steps to increased levels of complexity.

For example, in the construction dispute below, the expert needed to explain why the County's insistence on a 45° installation angle caused the water pipes to fail. We start with the blueprints provided by the County, then in a series of animated slides, explain how the weight of soil above the pipe and the settlement of uncompacted soil below the pipe caused significant stress at the tapping assembly.

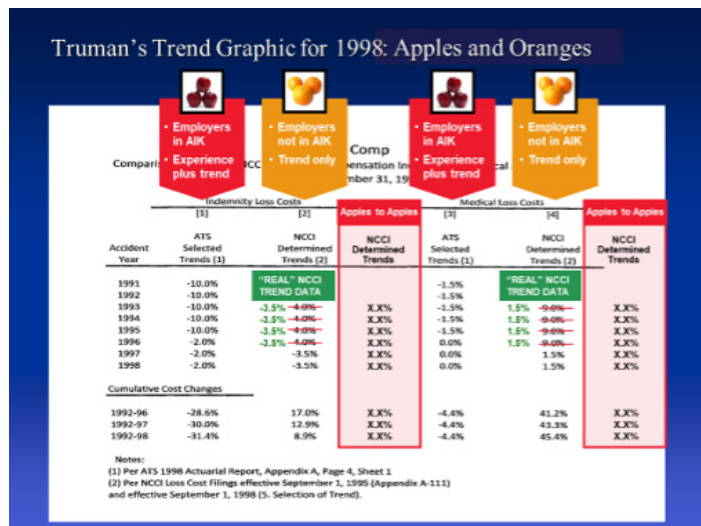
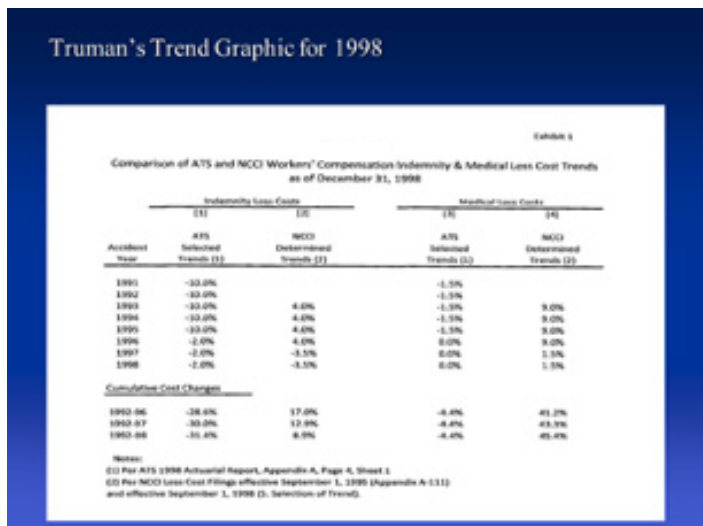




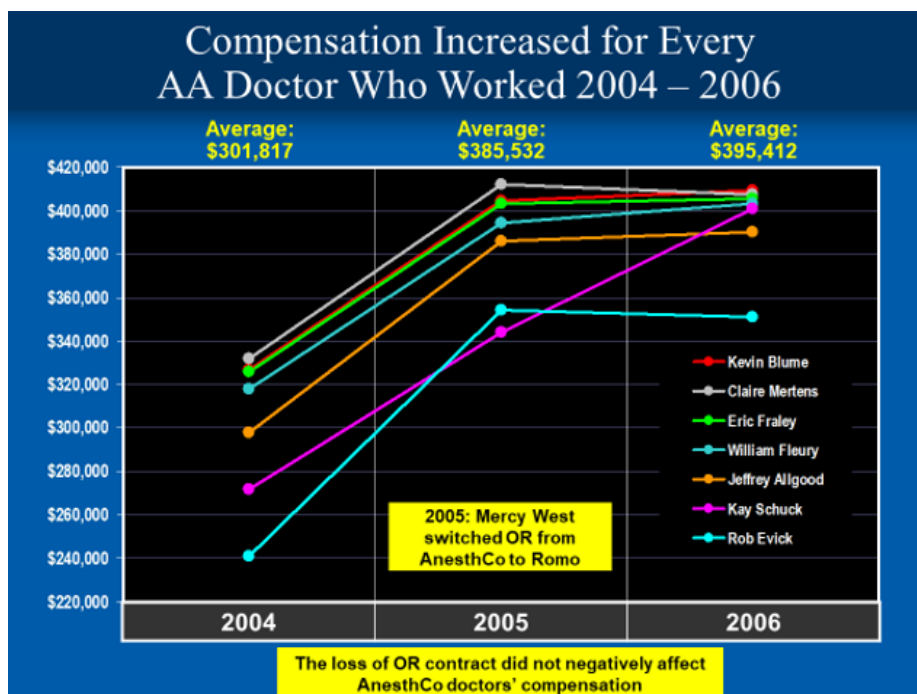
Use simple graphic techniques to make data easier to read and remember

Expert analyses often result in complicated spreadsheets, charts, and graphs. We have developed two strategies for making these data points more juror friendly.

- First, wherever possible, **enhance the data points** as the expert is explaining the analysis by using color, explanatory text boxes and by revealing the annotations sequentially as the expert explains the calculations.



- Second, consider **adding a conclusion** or what you would like jurors to understand from the graph. This takeaway can be added on a mouse-click as a succinct wrap up to explain what the data shows. It also provides a cue for the expert to state his or her findings in a simpler way that most jurors can understand.





Involvement fact witnesses early

Fact witnesses often provide testimony to explain a sequence of events, provide a window into the company's culture, or explain the provenance of certain documents. Supporting demonstratives can become a valuable tool to keep the testimony focused, remind the witness of key points to be made, and provide a crucial sense of security. To ensure the witness is comfortable using the legal graphics, work closely with your witness and professional design team so the images and text are consistent with the testimony. By involving the witness at an early stage, he or she will feel more ownership and confidence in using the demonstratives.

Examples of Visuals to Boost Witness Credibility

Key documents

Jurors rely on documents admitted into evidence to gauge credibility of both your witnesses and your case themes. Jurors want to read the documents at issue, see the signatures, and double-check the dates so they can reach their own conclusions. You can increase the credibility of your witnesses by integrating excerpts from key documents into the demonstratives.

Timelines

Emphasize the veracity of your story by using an interactive graphic in which each entry appears on a mouse click and key entries link to specific document excerpts.

Expert charts and graphs

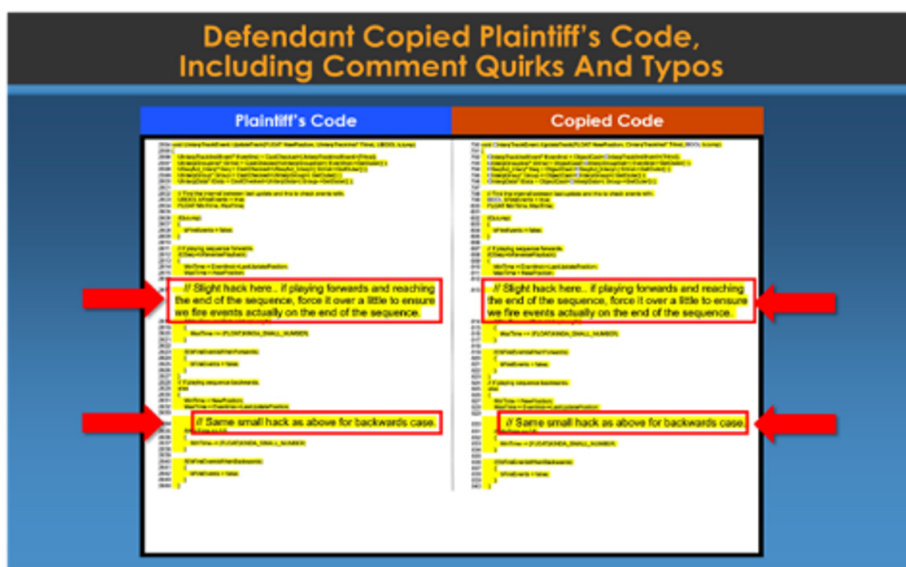
Verify findings by starting with the actual data from an expert's report and then transition to a more understandable version of the data. Use building blocks to explain complicated calculations. Start with a simple equation, then layer in additional data or steps so jurors can follow along to the expert's conclusion.

Animations

Begin with an expert report submission (e.g., a diagram of an accident reconstruction) and then transition to an animated sequence that explains what happened. When available, photographs, documents and other evidence can be inserted into the animation.

Compare and contrast evidence

Use actual documents as a basis for the graphic and add annotations and color coding to enhance testimony. In the trade secret example below, the Plaintiff was suing a competitor for copying their source code. Over multiple slides, we compared portions of the two companies' source codes using images of the actual printouts. We highlighted all the "copied" words and further annotated the exact same quirky text and typos that appeared in both printouts.





Roadmaps and “cheat sheets” help your witness and jurors stay on track

A simple text slide can be used to introduce the expert’s key findings at the beginning of testimony and to summarize the findings at the end of testimony. With limited text, this list can serve several functions: first, it provides a roadmap so jurors can clearly follow the key points of the testimony; second, it becomes a “cheat sheet” so your witness can remember crucial points and avoid distracting tangents.

As with all facets of trial preparation, beginning the creative process early can yield more robust, thoughtful demonstratives that are embraced by your witnesses and are persuasive for jurors. In preparation for closing arguments, be attentive to which witness demonstratives seem to resonate with jurors so you can reinforce the testimony supporting your key themes.

Effective Use of Legal Graphics in Closing Arguments and Their Impact on Deliberations to Verdict

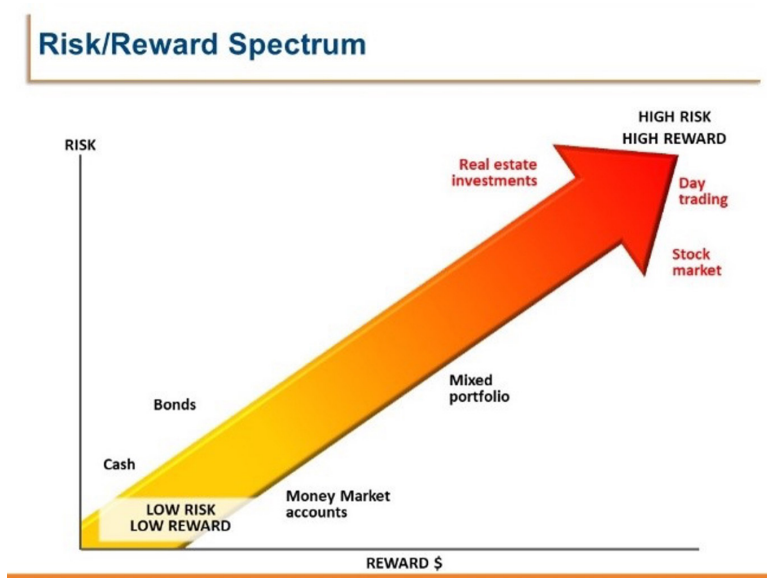
By: Gayle Mumm Rossi, Vice President, Graphics Division, DecisionQuest

Closing arguments should not be a mere recap of the trial, but it is risky to assume jurors have remembered all the key evidence presented throughout the trial. By the time a trial reaches closing arguments, many jurors are already leaning toward one side. At this stage, it is critical to arm those jurors with the visuals that they will need in deliberations to fight for your client and reach a verdict in their favor.

Best Practices: Legal Graphics and Closing Arguments

Reintroduce your road map and/or visual anchors

Use visuals to reinforce the story you want jurors to remember. It is important to reintroduce your roadmap that you showed in your opening statement. One effective approach is to use **visual anchors** during trial to help jurors retain the information days or even weeks later in deliberations. In this example, we used a bold arrow to convey the range of investments from low risk to high risk. The jury could quickly grasp the takeaway - that of all the investment options, the plaintiff chose those with higher risk/higher reward. The jurors may have forgotten the details, but they will remember the vibrant orange-to-red arrow on the risk/reward spectrum.





Utilize opposing counsel’s legal graphics

Another powerful tactic to use in closing is to recall the “corrected” slides created from the opposing side’s legal graphics. During your experts’ testimony, it is highly effective to take graphics shown by the other side and demonstrate how the information is missing or misleading. For example, in a series of builds, insert what data was omitted or show how the scale of a bar chart was skewed. In a personal injury case, the plaintiff claimed the car accident caused his mental issues and alcohol problems. A timeline with an accurate plotting of his medical records revealed the mental health problems and struggles with alcohol preceded the accident by a year.

Anticipate challenges jurors will face in deliberations by walking through a list of the other side’s key points and providing a counterpoint, showing why each point is inaccurate or false. In addition, **highlight any inconsistencies** in the plaintiff’s story. This will cause jurors to question plaintiff’s version of events. These approaches provide jurors with a way to process the days of testimony and evidence in a concise summary. Use these types of graphics again in closing to **cast doubt** on the other side’s arguments right before deliberations.

ACCORDING TO THE PLAINTIFF:	IN FACT:
Defendant did FALSE about DSD	Plaintiff agreed to leave it in place on a different loan. Defendant never tried to use it on this one
Defendant held a FALSE plaintiff's home at all times because FALSE cancelled DSD	Loan documents show neither Defendant nor Plaintiff considered the house as collateral
Defendant lied to FALSE January 2008 when McCoy told him FALSE of margin	Plaintiff has admitted he was out of margin in January 2008 and his LTV exceeded 85%
McCoy's incentive to FALSE to get 'points' under Defendant FALSE for bringing in \$1.7M from Wachovia	McCoy made no money from the Wachovia transfer. Why risk losing a customer?
With \$1.7M 'control' FALSE collateral, Plaintiff lacked FALSE to stay in Belford	Plaintiff had full trading authority and chose to keep his money invested
"Defendant" lost FALSE plaintiff's money in the RBIS accounts	RBIS is a different company. Defendant had nothing to do with the performance of Plaintiff's investment portfolio

Don't forget the photographs

Most trials require jurors to sit through hours and hours of testimony by multiple fact and expert witnesses. When you reach closing arguments, refresh jurors' memories of the key witness testimony by creating a chart with their photo (for ease of recall) and a truncated synopsis of their findings.

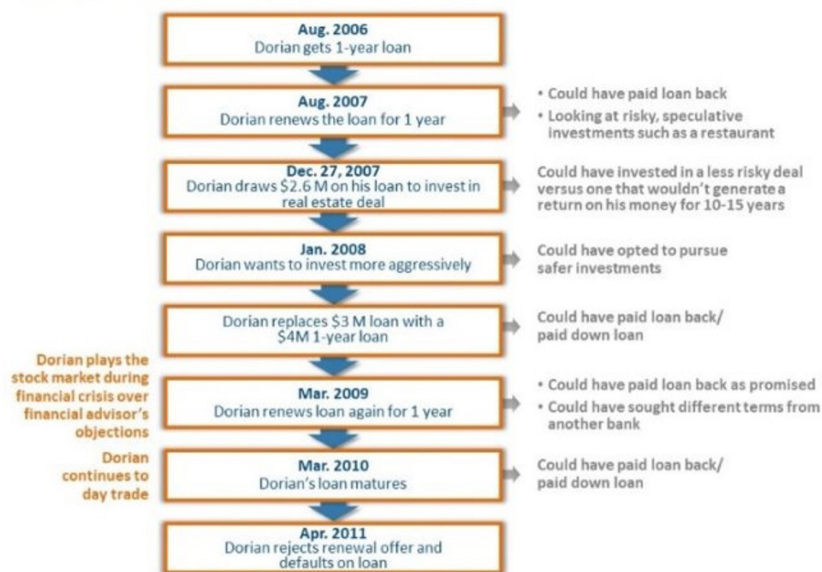


Don't tell, show

Jurors often look for common ground. For example, an individual was suing a large bank for claims related to an improper foreclosure resulting in the loss of valuable property. While the jurors could sympathize with someone who had lost their home and may have even known someone whose home was foreclosed, they were also convinced that the bank had taken reasonable measures to work with the plaintiffs. A checklist was created to focus on how the bank acted properly and within guidelines. This helped jurors feel that they were doing the right thing when they ultimately sided with the defense.

Directly placing blame on a party for their situation can offend some jurors. A more effective approach would be, in your closing argument, to create a visual showing the series of choices the individual made that led to their circumstances. For example, a decision tree can walk jurors through a series of decisions that the individual made step by step (building on separate mouse clicks) and convey the alternative paths he/she could have taken to avoid the outcome.

Dorian Made His Own Decisions



By the time you reach closing arguments, it is imperative that you have verified each theme in your story and addressed every claim. Reinforce those themes with visuals that jurors will remember and pull from in deliberations. The risk of not doing so results in jurors filling in the blanks themselves and creating a narrative that could be unfavorable to your client.

Ultimately, **the goal is to give jurors a reason to feel good about finding in favor of your client.** Legal graphics play an important role in achieving this outcome during all phases of litigation. Give proper attention to developing the legal graphics that will punctuate your strongest points. Properly armed, the jurors will be able to articulate your side and hopefully reach a favorable verdict.



About DecisionQuest

Every case is stronger when presented visually. And nobody creates persuasive graphics better than DecisionQuest, a leader in strategic legal graphics for over 30 years. We don't just create images – we can build visual strategies for every phase of litigation, including motion practice, hearings, and trials. From powerful illustrations and timelines to technical tutorials that make complex evidence clear, our litigation graphics team delivers strategic graphics that can give your case real, memorable impact – and help you gain a winning edge.

Founded in 1990, DecisionQuest, a U.S. Legal Support Company, has consulted on more than 20,000 high-risk trials, arbitrations and mediations, applying scientific research, methodology and the art of persuasion to help clients realize their best case scenario and make informed, critical decisions. As a strategic trial consulting leader, DecisionQuest provides a full suite of jury research and consulting, trial graphics and trial technology services to law firms, major corporations and insurance companies nationwide. For more information about DecisionQuest, visit the company's website at www.decisionquest.com.



About U.S. Legal Support

U.S. Legal Support was founded in 1996 with the goal of becoming the first nationwide, all-inclusive litigation support company. Nearly three decades later, we're one of the leading providers of litigation support services and the only company to provide a full suite of court reporting solutions, record retrieval, interpreting & translations, trial services and transcription services to law firms, major corporations and insurance companies nationwide. With on-demand access to 12,000+ offices in 2,700 cities across the country and a robust digital infrastructure, we can accommodate your litigation support needs quickly, comfortably, and safely from anywhere in the country. For more information about U.S. Legal Support, visit the company's website at: www.uslegalsupport.com.