

Visual Legal Writing

A Bibliography

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I. Introduction

As those who teach legal writing know, there is more to writing than words on a page, spelling, grammar, and syntax. (And, as someone once asked me, it is not about penmanship). As scholars in the field of legal writing, we have explored different types of legal documents,¹ and studied the art (and science) of persuasion,² storytelling and narrative theory,³ and rhetoric theory.⁴ While there has always been a visual component to legal writing, the digital revolution opened wider possibilities, and scholars turned their eye toward exploration of visual aspects of legal writing.

For most of the twentieth century, the visual aspect of legal writing was fairly static. Produced largely on typewriters, lawyer-written documents were linear and text based, with little variation in appearance. While lawyers gave an occasional nod towards graphic representation by including charts or diagrams, for the most part legal documents contained only words. Constraints imposed by the limits of technology precluded incorporating visual elements on a widespread basis. Toward the end of the twentieth century, as personal and office computers became more available, and word-processing programs became more sophisticated,

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¹ Carrie W. Teitcher, *Legal Writing Beyond Memos and Briefs: An Annotated Bibliography*, 5 J. ALWD 133 (2008).

² Kathryn Stanchi, *Persuasion: An Annotated Bibliography*, 6 J. ALWD 75 (2009).

³ J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM & RHETORIC 247 (2015).

⁴ Michael R. Smith, *Rhetoric Theory and Legal Writing: An Annotated Bibliography*, 3 J. ALWD 129 (2006).

lawyers started paying more attention to the appearance of document design—fonts and the like—and the number of visual elements in legal writing began to increase.

As we have moved further into the twenty-first century, communication has become increasingly visual, using memes, emojis, video, and other visual forms to share thoughts, ideas, and feelings. While lawyers haven't embraced images to such a degree in legal writing, it is increasingly common to see lawyers incorporate visual elements into the documents they create. Many academics have turned their eye toward understanding more about how visual elements affect written communication and assessing when it is effective.

This bibliography attempts to capture the growing body of scholarship related to visual aspects of legal writing. As a relatively new area of study, the number of books and articles is smaller than other more well-developed topics of legal writing scholarship, yet enough has been written about this subject to warrant collection and consideration. I was able to identify 68 works, included here, and there are undoubtedly some that I missed. My goal is that this bibliography will serve as a valuable resource for scholars delving into the subject for the first time, as well as practicing lawyers looking for guidance on different aspects of including visual elements into their own legal writing. And I particularly hope the bibliography will be of use to those scholars looking to develop their own new and exciting work on the exploration of visual legal writing.

II. The bibliography

Scholarship on visual aspects of legal writing is still developing, so I have erred on the side of inclusion in selecting works to include in this bibliography. Because the use of visual elements in legal writing is a relatively new concept, many works, both long and short, address the “how to” of incorporating visual elements into writing. Others focus more on “why” incorporating visual elements is a good (or bad) idea. Some scholars have taken on the difficult work of theorizing visuals and the role they play in communication. I cast a wide research net to gain a wholistic sense of the issues lawyers and scholars have tackled in their exploration of visual aspects of legal writing.

Nonetheless, there are limits on what I have included here. While the use of visual images in legal documents is relatively recent, the use of visual evidence in the courtroom has been around for centuries.⁵

⁵ Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237, 240–41 (2010).

Numerous articles address the use of visual images in trial advocacy. While some of those may touch on issues relevant to the use of visuals in writing, this bibliography focuses on works that address written communication and theoretical works relevant to that topic. In keeping with the mission of *Legal Communication & Rhetoric*, I have similarly omitted articles discussing the role of images in understanding substantive law and those that focus on visual images as a tool for pedagogy.

In choosing what to include and exclude, I have inevitably made errors in judgment, and it is possible that despite extensive research, I have omitted works that should have been included, and for that I take full responsibility.

The bibliography is organized into broad categories. It is impossible to draw clear lines with many of these pieces, and many of the books and articles could likely fit into more than one category. I tried to group works with broad strokes, rather than having a large number of precise categories with only one or two articles in each. The categories are based either on the type of visual mode involved (typography, image), practice area (appellate, transactional), or theoretical use of images. In the big picture, I hope the bibliography shows which areas are more fully explored and which still have much room for more development.

A. Document design and typography

Since documents are the coin of the realm, both in law practice and legal academia, it is no surprise that scholars have turned an eye towards understanding the visual aspects of the written word. The experience of the reader is a paramount consideration for legal writers, and as the profession transitions from paper to electronic files, numerous issues arise relating to how visual aspects of the document affect that experience. A significant number of articles and books address this topic, ranging from articles exploring the brain science behind readability to concrete identification of best practices regarding typography and navigation of electronic documents. Some of these works touch on the broader topic of Legal Design, a growing field in its own right, and I have included them here when they touch on issues relevant to document design in legal writing.

Articles

Mary Beth Beazley, *Hiding in Plain Sight: "Conspicuous Type" Standards in Mandated Communication Statutes*, 40 J. LEGIS. 1, 31–35 (2014).

Gerlinde Berger-Walliser, Thomas D. Barton & Helena Haapio, *From Visualization to Legal Design: A Collaborative and Creative Process*, 54 AM. BUS. L.J. 347 (2017).

- Maria Perez Crist, *The E-Brief: Legal Writing for an Online World*, 33 N.M. L. REV. 49 (2003).
- Bryan A. Garner, *Pay Attention to the Aesthetics of Your Pages*, 89 MICH. B.J., Mar. 2010, at 42.
- R. Lainie Wilson Harris, *Ready or Not Here We E-Come: Remaining Persuasive Amidst the Shift towards Electronic Filing*, 12 LEGAL COMM. & RHETORIC 83 (2015).
- Peter M. Mansfield, *Citational Footnotes: Should Garner Win the Battle Against the In-Line Tradition?*, 19 APPALACHIAN J.L. 163 (2019–2020).
- Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 LEGAL COMM. & RHETORIC 1 (2015).
- Ruth Anne Robbins, *Conserving the Canvas: Reducing the Environmental Footprint of Legal Briefs by Re-imagining Court Rules and Document Design Strategies*, 7 J. ALWD 193 (2010).
- Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ALWD 108 (2004).
- Mark Sableman, *Typographic Legibility: Delivering Your Message Effectively*, 17 SCRIBES J. LEGAL WRITING 9 (2017).

Books

- MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS* (2d ed. 2015).
- ELIZABETH FAJANS, MARY R. FALK & HELENE S. SHAPO, *WRITING FOR LAW PRACTICE: ADVANCED LEGAL WRITING* (3d ed. 2015).
- BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* (2d ed. 2013).
- BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* (4th ed. 2018).
- JOYCE J. GEORGE, *JUDICIAL OPINION WRITING HANDBOOK* (5th ed. 2007).
- MARK P. PAINTER, *THE LEGAL WRITER* (3d ed. 2005).
- WAYNE SCHIESS, *PREPARING LEGAL DOCUMENTS NONLAWYERS CAN READ AND UNDERSTAND* (2008).

B. Images

Writing does not get more visual than when it includes actual images. Images are a powerful tool to convey meaning, especially in our

increasingly visual society. While the inclusion of images in traditional legal writing has been slow compared to the proliferation of images in other written media, lawyers have increasingly adopted the practice. The use of images in legal writing has invited scholarly attention to the rhetorical role of images in legal communication, as well as the complex ethical issues involved.

Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 LEGAL WRITING 57 (2015).

Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM. & RHETORIC 107 (2016).

Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Rhetoric*, 68 U. KAN. L. REV. 241 (2019).

Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, 68 J. LEGAL EDUC. 64 (2018).

Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687 (2014).

Rebecca Tushnet, *Worth a Thousand Words: The Images of Copyright*, 125 HARV. L. REV. 683 (2012).

C. Legal analysis

Communicating legal analysis is at the heart of legal writing. Whether the goal of a piece of writing is to convince a judge or advise a client, it must clearly set out the analysis in a way the reader can understand and follow. Because law has traditionally been text-based, so too has legal analysis. Yet the visual aspect of writing has always played a role, and in our increasingly visual and digital world, that is more the case than ever. This group of articles focuses on the way that the use of visual techniques ranging from sentence diagramming to flow charts affect the substance and communication of legal analysis.

Kristen K. Davis, *"The Reports of My Death Are Greatly Exaggerated": Reading and Writing Objective Legal Memoranda in a Mobile Computing Age*, 92 OR. L. REV. 471 (2013).

Rossana Ducato, Editorial, *De Iurisprudencia Picturata: Brief Notes on Law and Visualization*, 7 J. OPEN ACCESS L. 1 (2019).

James Durling, Comment, *Diagramming Interpretation*, 35 YALE J. REG. 325 (2018).

- Lisa Eichhorn, *Old Habits: Sister Bernadette and the Potential Revival of Sentence Diagramming in Written Legal Advocacy*, 13 LEGAL COMM. & RHETORIC 79 (2016).
- Derek H. Kiernan-Johnson, *Telling Through Type: Typography and Narrative in Legal Briefs*, 7 J. ALWD 87 (2010).
- Michael D. Murray, *Leaping Language and Cultural Barriers with Visual Legal Rhetoric*, 49 U.S.F. L. REV. 61 (2014).
- Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 LEGAL WRITING 185 (2016).
- Adam L. Rosman, *Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs*, 63 J. LEGAL EDUC. 70 (2013).

D. Rhetoric and persuasion

Several scholars have done the important theoretical work of considering how visual rhetoric affects thinking, exploring concepts such as visual literacy and the ways that both images and document design affect legal analysis. These works go to the heart of understanding visual communication. While these works are an excellent beginning, this is an area rich for further scholarly exploration.

Articles

- Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237 (2010).
- Ticien Marie Sassoubre, *Visual Persuasion for Lawyers*, 68 J. LEGAL EDUC. 82 (2018).
- Richard K. Sherwin, Neal Feigenson & Christina Speisel, *Law in the Digital Age: How Visual Communication Technologies Are Transforming the Practice, Theory, and Teaching of Law*, 12 B.U. J. SCI. & TECH. L. 227 (2006).

Books

- NEAL FEIGENSON & CHRISTINA SPIESEL, *LAW ON DISPLAY: THE DIGITAL TRANSFORMATION OF LEGAL PERSUASION AND JUDGMENT* (2009).
- KAREN PETROSKI, *VISUAL LEGAL COMMENTARY*, IN ANNE WAGNER & RICHARD K. SHERWIN, *LAW, CULTURE AND VISUAL STUDIES* 671 (2014).

MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* 30 (3d ed. 2012).

E. Appellate practice

The appellate brief is likely what most lawyers and law students think of when asked to picture legal writing. Appellate court decisions are the focus of legal education, and appellate lawyers are often considered among the elite of legal practitioners. Thus, although the use of visuals occurs in all types of legal writing, many scholars have explored their use in the appellate context. These articles span considerations of typography, rhetoric, and ethics.

Articles

Mary Beth Beazley, *Writing (and Reading) Appellate Briefs in the Digital Age*, *J. APP. PRAC. & PROCESS* 47 (2014).

Mary Beth Beazley, *Writing for a Mind at Work: Appellate Advocacy and the Science of Digital Reading*, *54 DUQ. L. REV.* 415 (2016).

Hampton Dellinger, *Words Are Enough: the Troublesome Use of Photographs, Maps, and Other Images in Supreme Court Opinions*, *110 HARV. L. REV.* 1704 (1997).

Arno H. Denecke, James H. Clarke & Philip A. Levin, *Notes on Appellate Brief Writing*, *51 OR. L. REV.* 351 (1972).

Nancy S. Marder, *The Court and the Visual: Images and Artifacts in U.S. Supreme Court Opinions*, *88 CHI-KENT L. REV.* 331 (2013).

Richard A. Posner, *Judicial Opinions and Appellate Advocacy in Federal Courts—One Judge's View*, *51 DUQ. L. REV.* 3, 12–13 (2013).

Leah A. Walker, *Will Video Kill the Trial Courts' Star? How "Hot" Records Will Change the Appellate Process*, *19 ALB. L.J. SCI. & TECH.* 449 (2009).

Michael Whiteman, *Appellate Court Briefs on the Web: Electronic Dynamos or Legal Quagmire?*, *97 LAW LIBR. J.* 467 (2005).

Books

BRYAN A. GARNER, *THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL AND APPELLATE COURTS* 403–55 (3d ed. 2014).

ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 136 (2008).

F. Transactional and other non-litigation writing

The term “legal writing” usually calls to mind the memos and briefs that most law school writing courses focus on, and that lawyers write in the process of representing clients in litigation. Yet there is a whole world of writing outside of this context—contracts, compliance documents, estate planning documents, and beyond. Lawyers drafting these types of documents frequently use visual elements. A number of excellent articles and books address issues of visual communication in this category of writing.

Articles

- Thomas D. Barton, Gerlinde Berger-Walliser & Helena Haapio, *Visualization: Seeing Contracts for What They Are, and What They Could Become*, 19 J.L. BUS. & ETHICS 47 (2013).
- Mary Beth Beazley, *Ballot Design as a Fail-Safe: An Ounce of Rotation Is Worth a Pound of Litigation*, 12 ELECTION L. J. 18 (2013).
- Collette R. Brunschwig, *Contract Comics and the Visualization, Audio-Visualization, and Multisensorization of Law*, 46 U.W. AUSTL. L. REV. 191 (2019).
- Margaret Hagan, *User-Centered Privacy Communication Design*, PROCEEDINGS OF THE SYMPOSIUM ON USABLE PRIVACY AND SECURITY (SOUPS) 2016, June 22, 2016, <https://law.stanford.edu/publications/user-centered-privacy-communication-design/>.
- Stephen R. Miller, *The Visual and the Law of Cities*, 33 PACE L. REV. 183 (2013).
- Jay A. Mitchell, *Putting Some Product into Work-Product: Corporate Lawyers Learning from Designers*, 12 BERKELEY BUS. L.J. 1 (2015).
- Jay A. Mitchell, *Whiteboard and Black-Letter: Visual Communication in Commercial Contracts*, 20 U. PA. J. BUS. L. 815 (2018).
- Stefania Passera, *Flowcharts, Swimlanes, and Timelines: Alternatives to Prose in Communicating Legal-Bureaucratic Instructions to Civil Servants*, 32 J. Bus. & Tech. Comm. 229 (2018).
- Sefania Passera, Anne Kankaanranta & Leena Louhiala-Salminen, *Diagrams in Contracts: Fostering Understanding in Global-Business Communication*, 60 IEEE TRANSACTIONS ON PROF. COMM. 118 (2017).
- Genevieve B. Tung & Ruth Anne Robbins, *Beyond #thenew10—The Case for a Citizens Currency Advisory Committee*, 69 RUTGERS U. L. REV. 195 (2016).

Books

GEORGE W. KUNEY & DONNA C. LOOPER, *LEGAL DRAFTING IN A NUTSHELL* (4th ed. 2016).

RICHARD K. NEUMANN & J. LYN ENTRIKIN, *LEGAL DRAFTING BY DESIGN: A UNIFIED APPROACH* (2018).

G. Short works

While the focus of this bibliography is scholarly works, the use of visuals in legal writing is highly relevant to practicing attorneys, so I have included shorter works aimed at that audience. There are more entries in bar journals and other publications aimed at the practicing bar than I could possibly include, so I have chosen to highlight those pieces that are particularly useful and/or are written by known scholars in the legal writing field.

Linda Berger, *Document Design for Lawyers: The End of the Typewriter Era*, 16 GA. BAR J., Feb. 2011, at 62.

Susan Hanley Duncan, *Best Dressed Briefs—Why Appearance Matters*, BENCH & BAR, Jan. 2011, at 56.

Daniel B. Evans, *You Are What You Print*, from Counselor's Comp. & Mgt. Rep., *reprinted in* 20 LAW PRAC. MGT., July–Aug. 1994, at 58.

Suzanne Suarez Hurley, *Advancing the Legal Profession with Typography*, 86 FLA. BAR J., Nov. 2012, at 53.

Emily Hamm Huseh & Michael F. Rafferty, *A Picture Can Save A Thousand Words*, 61 FOR DEFENSE, Feb. 2019, at 22.

Gerald Lebovits, *E-Filing: Mastering the Tech-Rhetoric*, 83 N.Y. ST. BAR ASS'N J., May 2011, at 64.

Philip N. Meyer, *Picture This*, 102 A.B.A. J., Feb. 2016, at 27.

Michael D. Murray, *Getting Visual*, 82 BENCH & BAR, Nov./Dec. 2018, at 24.

Ellie Neiberger, *Judge-Friendly Briefs in the Electronic Age*, 89 FLA. BAR J., Feb. 2015, at 46.

Brian C. Potts, *40 Writing Hacks for Appellate Attorneys*, 19 SCRIBES J. LEGAL WRITING 49 (2020).

Marcello Rodriguez, *Researching the Use of Emojis in the Legal Profession*, SLAW, Oct. 15, 2020, <https://perma.cc/FH7S-8PBH>.

Adam L. Rosman, *Happy Warriors Against Herein: Ten Rules for Creating Better Legal Documents*, 17 SCRIBES J. LEGAL WRITING 47 (2016–17).