IN THE COURT'S IMAGE: VISUAL OPINIONS AND JUDICIAL LEGITIMACY

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The U.S. Supreme Court is experiencing a visual boom. In a break from its text-based tradition, the Court is increasingly incorporating images directly into its opinions. In the past fifteen years, pictures of prison dormitories, prayer circles, and stolen artwork have graced the pages of the U.S. Reports. Recently, the Court's visual vocabulary has grown to include a 150-year-old political cartoon, fifty-nine license plate designs, and a series of gun diagrams alongside a gif. Even more, in just the last five years, visuals have started appearing more frequently in the main body of opinions rather than being relegated to appendices.

While this rise in "visual opinions" may seem inevitable in today's visual age, it raises significant questions about the foundations of judicial authority and the nature of judicial reasoning. But while scholars have extensively analyzed visual advocacy by lawyers, the Court's own embrace of visual rhetoric—and its implications for the Court and the institution of judicial decisionmaking—has received surprisingly little attention.

This Article explores the Court's visual practices and their implications for judicial legitimacy. It makes three key contributions. First, drawing on a review of over 400 visual opinions, it provides the first account of the Court's use of images from the Founding to the present. It finds that while the Court's use of visuals has accelerated in recent years, its use of visual content finds deep and expansive roots in the nineteenth century. Second, it connects the Court's visual practices to legitimacy theory, analyzing how visuals reshape the Court's performance as a principled decisionmaker, impartial decider, and public servant. Visual content can enhance judicial reasoning by clarifying complex concepts and connecting abstract law to concrete reality. But it can also undermine core legitimacy values by compromising analytical rigor, embedding hidden biases, and transforming legal discourse into political performance.

Third, this Article advances a counterintuitive recommendation. If a picture is worth a thousand words, judges may need to write a thousand "more" words when they include pictures. Because visuals invite multiple interpretations and can overwhelm legal reasoning, courts should consider providing enhanced justification when they use images. Rather than letting visuals "speak for themselves," judges must explicitly explain their relevance, anticipate competing interpretations, and directly confront visual counternarratives. Visual opinions require more explanation, not less.

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INTRODUCTION

Judges must be persuasive storytellers. Each time they write an opinion, they must write two stories. One story is about the case itself—its facts, the law, and why the outcome follows from their intersection. The other is a deeper institutional story—about why the courts' exercise of power is proper, why its methods are sound, and why its conclusions warrant respect. When judges tell these stories well, they build credibility and foster public confidence in the courts' authority. But when these stories are told poorly, the public's trust in the judiciary erodes, sowing seeds of doubt about the decision and the courts' institutional integrity more broadly. Given the stakes, it is no wonder why judicial storytelling has captured the attention of countless scholars and commentators.[1]

[1] For foundational works, see, for example, BENJAMIN CARDOZO, LAW AND LITERATURE (1931); Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) [hereinafter Cover, *Nomos and Narrative*]. For a recent narratological reading of the Supreme Court's institutional story, see Karen M. Tani, *The Supreme Court, 2023 Term—Foreword: Curation, Narration, Erasure: Power and Possibility at the U.S. Supreme Court*, 138 HARV. L. REV. 1, 42–67 (2024).

In recent years, judicial storytelling has taken on a new dimension at the Supreme Court: It has grown increasingly visual. Take, for example, *Garland v. Cargill*, a case presenting a question of statutory interpretation.[2] The Court used six illustrations—and footnoted a gif—to explain its reasoning about the statute's scope.[3] Or consider the majority and dissenting opinions in the copyright case *Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith*.[4] Together, they feature a whopping seventeen visuals, including one photograph, two silkscreens, and five classical paintings that were not at issue in the case.[5] And just last term, the dissent in *Mahmoud v. Taylor* featured an entire children's picture book in an appendix (in response to several selected storybook pages appended to the majority opinion).[6]

These examples represent a broader trend. Over the past fifteen years, the Supreme Court has incorporated nearly three times as many visuals as in the previous decade and a half.[7] Photographs, which appeared in only nine Supreme Court opinions from 1789 to 2010, have appeared in twenty-one opinions since—twelve of which were issued in the last five years alone.[8] In these last five years, visuals have predominantly appeared within opinions themselves rather than in supplementary appendices.[9] Visuals, in other words, are moving from the wings to the center stage in the Court's reasoning and decisionmaking.

It may seem easy to shrug off these visual developments as a natural byproduct of the twenty-first century—an expected manifestation of our increasingly visual world. But treating these changes as inevitable and therefore unremarkable risks overlooking what's at stake. The Supreme Court's increasing use of visual rhetoric is not a neutral upgrade. As the Court more fully embraces visual communication, it will inevitably reshape the nature of judicial decisionmaking and the foundations of its legitimacy.

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2 144 S. Ct. 1613, 1618 (2024) (using images to illustrate how a machine gun trigger functions).

3 *Id.* at 1621–22.

4 Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith, 143 S. Ct. 1258 (2023) (holding that the Foundation's use of photographer Goldsmith's photographs was not "fair use" under copyright law).

5 *Id.* at 1267–71, 1281, 1288, 1294–96, 1308–10; *see also* Neal Feigenson, *Say It with Pictures: Image and Text in* Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 76 Ala. L. Rev. 79, 83 (2024) [hereinafter Feigenson, *Image in* AWF] (discussing AWF's "unprecedented visuality").

6 145 S. Ct. 2332 (2025) (holding that a children's picture book with LGBTQ graphics infringed upon parents' religious freedom).

7 Feigenson, *Image in* AWF, *supra* note 5, at 86.

8 *See infra* Sections II.C and D.

9 Feigenson, *Image in* AWF, *supra* note 5, at 86.

Despite these stakes, what the Court's visual turn means for judicial authority and legitimacy has received surprisingly little attention. To be sure, scholars have produced excellent and thorough work on related questions: how *lawyers* use visual content as a tool of advocacy,[10] how visuals have migrated into written legal argument,[11] and how courts treat visuals in certain image-laden contexts like copyright.[12] Others have even examined how images function in specific Supreme Court cases[13] and questioned whether Justices should use images at all.[14] But this scholarship, while illuminating, has largely left the broader institutional and legitimacy questions raised by visual use underexamined. Particularly in an era marked by increasing scrutiny of the Court's legitimacy,[15] understanding how the Justices communicate their authority has taken on new urgency. This Article begins to fill the gap, examining the Supreme Court's visual use not merely as a tool of case-specific analysis but as a window into the changing nature of judicial power.

Building on a broad review of the Supreme Court's visual decisions from the Founding to the present, this Article makes three

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[10] *See, e.g.*, NEAL FEIGENSON & CHRISTINA SPIESEL, LAW ON DISPLAY: THE DIGITAL TRANSFORMATION OF LEGAL PERSUASION AND JUDGMENT 1–162 (2009) [hereinafter FEIGENSON & SPIESEL, LAW ON DISPLAY] (discussing how visuals have transformed and pose challenges to the legal practice); Sarah Brayne, Karen Levy & Bryce C. Newel, *Visual Data and the Law*, 43 L. & SOC. INQUIRY 1149, 1155 (2018) (discussing challenges that the increased documentation of visual data poses for the law); Richard K. Sherwin, Neal Feigenson & Christina Spiesel, *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) [hereinafter Sherwin, Feigenson & Spiesel, *Law in the Digital Age*] (discussing how visuals have transformed the practice of law); Christopher J. Buccafusco, *Gaining/Losing Perspective on the Law, or Keeping Visual Evidence in Perspective*, 58 U. MIAMI L. REV. 609, 622–27 (2004) (discussing how the Federal Rules of Evidence and the Federal Rules of Civil Procedure apply to the use of images); Ronald K.L. Collins & David M. Skover, *Paratexts*, 44 STAN. L. REV. 509 (1992) (arguing how the use of images in legal practice will change our understanding and application of the law).

[11] *See* Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687 (2014) (discussing the introduction of images in litigation documents).

[12] *See* Rebecca Tushnet, *Worth a Thousand Words: The Images of Copyright*, 125 HARV. L. REV. 684 (2012); *see also* Jessica M. Silbey, *Judges as Film Critics: New Approaches to Filmic Evidence*, 37 U. MICH. J.L. REFORM 493 (2004) (exploring the use and admissibility of film as evidence).

[13] *See* Feigenson, *Image in* AWF, *supra* note 5, at 85–92 (examining *AWF*); Dan M. Kahan, David A. Hoffman & Donald Braman, *Whose Eyes Are You Going to Believe?* Scott v. Harris *and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837 (2009) (exploring implications of video use in *Scott v. Harris*).

[14] *See* Nancy S. Marder, *The Court and the Visual: Images and Artifacts in U.S. Supreme Court Opinions*, 88 CHI.-KENT L. REV. 331, 333–38 (2013) (examining the Court's visual decisions from 1997 to 2013); Hampton Dellinger, *Words Are Enough: The Troublesome Use of Photographs, Maps, and Other Images in Supreme Court Opinions*, 110 HARV. L. REV. 1704 (1997) (arguing against the incorporation of images in judicial opinions).

[15] *See* Tara Leigh Grove, *The Supreme Court's Legitimacy Dilemma*, 132 HARV. L. REV. 2240, 2240–41 (2019) (summarizing criticism).

key contributions. First, this Article uncovers a history of the Supreme Court's visual use that is longer than previously recognized.[16] While the Court's visual use has grown and evolved in recent years, its roots stretch back to the nineteenth century when Reporters of Decisions first incorporated images to enhance and explain the Court's opinions. The Justices themselves also wielded visuals in consequential ways—privileging certain maps over others to resolve territorial disputes and relying on technical drawings to adjudicate early intellectual property cases. After the invention of photography, however, the Court assumed a more cautious stance toward visuals, resisting photographs in its opinions for decades despite their regular use by lawyers. Only in 1965, in a case challenging the use of cameras in courtrooms, did a Justice first incorporate photographs into an opinion.[17] From there, the Court's visual practices evolved slowly across decades until gaining momentum in recent years. This longer arc reveals how the Court has long recognized the distinctive powers of visuals—not just to explain its reasoning, but to shape legal meaning and construct judicial authority.

Next, this Article situates the Court's use of visual content within a broader literature on judicial legitimacy, showing how visuals can both reinforce and complicate the Court's institutional role.[18] At first glance, the inclusion of visuals may seem straightforwardly beneficial because they can ground decisions in evidence and help judges present a more complete account of a case's facts. But visuals can tell stories on their own—stories that may extend beyond or even diverge from what the Court intended. People process images "as a gestalt"—all at once and with little conscious awareness.[19] This immediacy often fosters quick, intuitive judgments that viewers rarely revisit, leaving them more susceptible to implicit biases.[20] A substantial body of social science research confirms the power of visuals.[21] But one need not look beyond

16 *See infra* Part II.

17 *See* Estes v. Texas, 381 U.S. 532, 586 app. (1965) (Warren, J., concurring) (using images to show the presence of cameras at the trial proceedings).

18 *See infra* Part II.

19 Tushnet, *supra* note 12, at 690; *see also* Porter, *supra* note 11, at 1753 ("Rather than parsing an image into its constituent parts, we approach it from a gestalt perspective, taking it all in at once."); Sherwin, Feigenson & Spiesel, *supra* note 10, at 243 ("It takes a lot less time and mental effort to see a picture than to read a thousand words."); Feigenson & Spiesel, Law on Display, *supra* note 10, at 7 (coining the term "all-overness").

20 *See* Feigenson & Spiesel, Law on Display, *supra* note 10, at 7.

21 *See infra* Part II (drawing on research); *see, e.g.*, Sherwin, Feigenson & Spiesel, *supra* note 10, at 238 (providing "interdisciplinary insights into law's visual and digital meaning-making practices" by drawing from "the neurobiology and psychology of vision; cognitive psychology and narrative theory; media studies and reality judgments; and the cultural psychology of digital experience").

memes and media coverage to see how a single image can control public understanding of events and set the terms of discourse.[22]

Visuals, therefore, present challenges for an institution that stakes its authority on principled reasoning, impartial judgment, and public justification. Because images can feel self-explanatory, judges may substitute them for detailed analysis or rely on visuals that oversimplify complex issues and distract from the methodical reasoning that builds public confidence.[23] Images can also destabilize judicial impartiality by making especially vivid emotional appeals or by revealing a judge's underlying ideological commitments.[24] Finally, although visuals may help courts reach broader audiences, they can create communication problems. Unexplained images can obscure rather than clarify legal reasoning, and powerful visual narratives can make judging resemble political theater. If judges prioritize visual impact over methodical analysis, they risk diminishing public credibility and undermining legal reasoning itself.[25]

In light of these challenges, the third contribution of this Article is a proposal: Visual opinions may require more robust and candid reason-giving.[26] This may seem counterintuitive. If a picture is worth a thousand words (as the saying goes), shouldn't judges need to write "fewer" reasons when they include visuals? Doesn't the image speak for itself? The problem, however, is that judges cannot control what a visual's "thousand words" say or which of the thousand words is the loudest.[27] Images may look self-evident, stir emotion, and overshadow analysis, leading readers to conclusions at odds with the Court's reasoning. Thus, rather than requiring fewer written justifications, visuals may actually demand more. The court must respond to the fragility of visual reasoning by offering *enhanced justifications* that not only explain how visuals fit into the legal analysis, but also account for their rhetorical power and anticipate divergent interpretations. This may also require *greater candor* in judicial decisionmaking, especially when visuals expose counternarratives that

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[22] *See, e.g.*, Tim Wallace, Karen Yourish & Troy Griggs, *Trump's Inauguration vs. Obama's: Comparing the Crowds*, N.Y. Times (Jan. 20, 2017), https://www.nytimes.com/interactive/2017/01/20/us/politics/trump-inauguration-crowd.html [https://perma.cc/TZ7Y-6G9H] (comparing inauguration crowd sizes by analyzing pictures that influenced public perception of relative popularity of the presidents).

[23] *See infra* Section III.A.

[24] *See infra* Section III.B.

[25] *See infra* Section III.A.

[26] *See infra* Part IV.

[27] *See* Buccafusco, *supra* note 10, at 616 ("Statements such as . . . 'A picture is worth a thousand words' indicate the value our culture places on vision, but there also exists a distinct countervailing notion that images can be deceptive and misleading. These concerns are particularly strong in the legal culture, where certainty and reliability are paramount.").

contradict the courts' factual account. In such cases, judges must directly confront apparent contradictions rather than ignore them. When visuals complicate a case's story, judges must reason with enough clarity and depth to uphold their performance as principled, impartial decisionmakers.

In making these claims, this work contributes to several scholarly discussions about the judicial role, institutional legitimacy, and legal visual rhetoric. It also contributes to an especially pressing conversation about how courts communicate their decisions and their legitimacy in an era marked by information skepticism and eroding institutional trust. In his 2024 Year-End Report, Chief Justice John Roberts, cited disinformation as a threat to judicial independence, observing that the judicial branch "is peculiarly ill-suited to combat this problem, because judges typically speak only through their decisions."[28] On the one hand, images could be seen as a potential bridge across this communication gap—a way for the Supreme Court to speak more directly to the people and let them "see for themselves" why it reached the decision it did. On the other hand, for reasons discussed in this Article, undisciplined and unchecked visual communication risks further destabilizing judicial legitimacy.

This Article also joins the growing body of work calling for increased visual literacy among lawyers.[29] As even more sophisticated and complicated visual mediums surge in use and popularity,[30] the legal system is faced with a new visual frontier before it has properly contended with the existing one. Law, once the domain of words and text, must adapt. This evolution requires not just new tools but a

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[28] Chief Justice John Roberts, 2024 Year-End Report on the Federal Judiciary 7 (2024), https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf [https://perma.cc/EK4P-YYR2] (analyzing the role of the judiciary and present challenges the courts face).

[29] *See, e.g.*, Porter, *supra* note 11, at 1695–96, 1698 (arguing that visual literacy is missing in legal education and suggesting development of traditions for regulating images); Ticien Marie Sassoubre, *Visual Persuasion for Lawyers*, 68 J. Legal Educ. 82, 82 (2018) (describing a law course Sassoubre redeveloped to teach law and film in response to growing uses of images in legal practice); Richard K. Sherwin, *Visual Jurisprudence*, 57 N.Y.L. Sch. L. Rev. 11, 12 (2012) (analyzing the implications of image use in the legal practice); Regina Austin, *Foreward: Engaging Documentaries Seriously*, 16 Fordham Intell. Prop. Media & Ent. L. J. 707, 712–13 (2006) (introducing the symposium topic on law and film).

[30] *See, e.g.*, Lars Daniel, *Historic First—Judge Dons Oculus VR Headset to Experience Crime*, Forbes (Jan. 6, 2025, at 14:35 ET), https://www.forbes.com/sites/larsdaniel/2025/01/06/historic-first-judge-dons-oculus-vr-headset-to-experience-crime [https://perma.cc/93DX-JEVU]; Sara Reardon, *How to Spot a Deepfake—and Prevent It From Causing Political Chaos*, Science (Jan. 29, 2024, at 14:35 ET), https://www.science.org/content/article/how-spot-deepfake-and-prevent-it-causing-political-chaos [https://perma.cc/G5R4-XYWC] (describing the rise of deepfakes); Sean O'Driscoll, *Florida Judge Wears VR Headset to Step Inside Simulation of Crime Scene*, Newsweek (Jan. 3, 2025, at 09:25 ET), https://www.newsweek.com/virtual-reality-headset-court-judge-florida-aggravated-assault-case-2009193 [https://perma.cc/3WS2-AGT5].

fundamental rethinking of how legal authority and reasoning operate in an increasingly visual age.

This Article proceeds in four Parts. Part I explores the connection between judicial legitimacy and opinion writing, showing how judges perform legitimacy by writing themselves as principled, impartial, and publicly accountable decisionmakers. Part II then traces the Supreme Court's evolving visual practices, showing how the Court has long recognized and utilized the power of the visual. Part III brings Parts I and II together, evaluating how visuals affect the Court's performance of legitimacy. Finally, Part IV considers potential reforms that respond to the distinctive power of visual rhetoric, including enhanced reason-giving and greater judicial candor.

I
Writing Legitimate Opinions

To analyze how visuals affect the narrative of judicial legitimacy, it is helpful to ask what makes a court "legitimate" in the first place. Section I.A offers a baseline definition of legitimacy in the judicial context. Section I.B then examines how opinion writing serves as a primary vehicle through which judges perform legitimacy. It identifies three roles that judges often perform in their opinions: the principled decisionmaker, the impartial decider, and the public servant. These roles reflect core normative expectations of the judiciary and provide a framework for assessing whether—and how—visuals support or undermine judicial legitimacy.

A. Defining Legitimacy

The idea of legitimacy occupies a central place in contemporary debates about the federal judiciary. In recent years, prominent commentators—from top lawyers to sitting members of Congress—have openly questioned the Supreme Court's legitimacy.[31] Public approval of

[31] *See, e.g.*, Eric Holder & Sam Koppelman, *The Supreme Court Was Broken Long Before the Leak*, Time (May 7, 2022, at 07:00 ET), https://time.com/6174465/eric-holder-supreme-court-broke [https://perma.cc/BVW7-65UU] (analyzing causes of the Supreme Court's loss in legitimacy and potential solutions); David Smith, *Democrats Fight to Expand a 'Broken and Illegitimate' Supreme Court*, Guardian (May 21, 2023, at 06:00 ET), https://www.theguardian.com/law/2023/may/21/supreme-court-expansion-democrats [https://perma.cc/9ZB5-NAFY] ("There is no better symbol of the crisis of trust in American institutions than its highest court, pummeled by partisan appointments, divisive rulings and ethical scandals."); Grove, *supra* note 15, at 2240–41 (summarizing criticism); *see also* Noah Feldman, *US Supreme Court Shouldn't Adopt an Ethics Code: Noah Feldman*, Bloomberg L. (Feb. 14, 2023, at 09:00 ET), https://news.bloomberglaw.com/legal-ethics/us-supreme-court-shouldnt-adopt-an-ethics-code-noah-feldman [https://perma.cc/2EBR-PASD] (arguing that ethical reforms

the Supreme Court has dipped near historic lows.[32] Many argue that judges, and especially the Justices of the Supreme Court, must do more to promote and preserve the legitimacy of the federal judiciary.[33] This is what some call the Court's "legitimacy crisis."[34]

The concept of legitimacy, however, is slippery. One of the most influential efforts to explain the concept comes from Richard Fallon, who identified three types of legitimacy: sociological legitimacy, moral legitimacy, and legal legitimacy.[35] Sociological legitimacy is about perception and reflects the public's belief that judicial decisions deserve respect.[36] Moral legitimacy, by contrast, asks whether courts actually merit that respect.[37] Legal legitimacy is more system-focused.[38] It concerns whether courts adhere to the internal rules of the legal system and the legal principles that govern decision-making.[39]

The relationship among these three legitimacy types is marked by both conflict and interdependence.[40] On the one hand, judges face what Tara Leigh Grove calls "a legitimacy dilemma": the risk that efforts

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alone cannot restore legitimacy when deeper concerns about partisanship and methodology remain); Steve Vladeck, Opinion, *The 'Shadow Docket' Further Erodes the Supreme Court's Legitimacy*, CNN (Sep. 26, 2022, at 18:19 ET), https://www.cnn.com/2022/09/26/opinions/supreme-court-shadow-docket-vladeck [https://perma.cc/Y86W-PKEF] (explaining that the rise of the shadow docket erodes transparency, strains procedural norms, and fuels concerns about judicial legitimacy); Bruce Ackerman, Opinion, *Trust in the Justices of the Supreme Court is Waning. Here Are Three Ways to Fortify the Court*, L.A. Times (Dec. 20, 2018, 03:15 PT), https://www.latimes.com/opinion/op-ed/la-oe-ackerman-supreme-court-reconstruction-20181220-story.html [https://perma.cc/YM7U-LJR3] (concluding that political partisanship "will predictably destroy the court's legitimacy in the coming decade").

32 Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, Pew Rsch. Ctr. (Sep. 3, 2025), https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low [https://perma.cc/N98E-WVAV] (analyzing poll data showing recent and decades-long decline in public Supreme Court approval, especially among Democrats).

33 *See, e.g.*, Nancy Gertner & Stephen I. Vladeck, *This Supreme Court Is Its Own Worst Enemy*, N.Y. Times (Oct. 7, 2024), https://www.nytimes.com/2024/10/07/opinion/supreme-court-legitimacy.html [https://perma.cc/Q8J4-7EWQ] ("Before it is too late, the justices have to take the court's institutional credibility far more seriously—not as an exercise in optics, but as an obligation to persuade those who don't share the majority's politics that the court is doing something other than picking sides.").

34 *See, e.g.*, Douglas Keith, *A Legitimacy Crisis of the Supreme Court's Own Making*, Brennan Ctr. for Just. (Sep. 15, 2022), https://www.brennancenter.org/our-work/analysis-opinion/legitimacy-crisis-supreme-courts-own-making [https://perma.cc/4CJ8-3DZ3].

35 Richard H. Fallon, Jr., Law and Legitimacy in the Supreme Court 21 (2018) [hereinafter Fallon, Law and Legitimacy].

36 *Id.*

37 *Id.* at 21, 23–24.

38 *Id.* at 35.

39 *Id.* at 35.

40 Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 Harv. L. Rev. 1787, 1791 (2005) (demonstrating how sociological, moral, and legal legitimacy interrelate); *see also* Rachel Bayefsky, *Judicial Institutionalism*, 109 Corn. L. Rev. 1297, 1308–09 (2024) (similar).

to secure one form of legitimacy may compromise others.[41] Consider a judge who feels pressured to change her reasoning (or even her conclusion) in order to preserve the courts' credibility.[42] By prioritizing public approval, the judge may sacrifice moral and legal legitimacy in service of sociological legitimacy.[43] At the same time, the three forms of legitimacy can depend on each other.[44] Courts that reason consistently and within accepted legal norms (legal legitimacy), for example, can earn public confidence (sociological legitimacy) by showing that their decisions are principled and not political.[45] Over time, that consistency can build enough trust to carry the institution through unpopular moments.[46]

This constant tension means that legitimacy must be continuously earned. Judges cannot simply choose to prioritize one type of legitimacy over others without risking institutional damage.[47] Moreover, because courts address multiple audiences who evaluate legitimacy according to different criteria,[48] they must carefully manage how they communicate their work and navigate competing demands. Legitimacy, in this sense, is not a static attribute but an ongoing performance.[49]

The performance of legitimacy manifests most clearly in how courts justify their decisions.[50] In his influential work on reason-giving,

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41 Grove, *supra* note 15, at 2245.

42 *See id.*; *see also* Deborah Hellman, *The Importance of Appearing Principled*, 37 Ariz. L. Rev. 1107, 1114–15 (1995) (discussing the Court's concern with the public's perception of its work, usually expressed in dissenting opinions).

43 *See* Grove, *supra* note 15, at 2245; *see also* Gillian E. Metzger, *Considering Legitimacy*, 18 Geo. J. L. & Pub. Pol'y 353, 370–78 (2020) (questioning whether judicial consideration of sociological legitimacy is ever defensible).

44 *See, e.g.*, Bayefsky, *supra* note 40, at 1310 ("[A] concern for public confidence in the judiciary is compatible with a commitment to moral and legal legitimacy.").

45 *See* Fallon, Law and Legitimacy, *supra* note 35, at 131 ("When the Justices adhere consistently to reasonable positions, we can respect their decisions, even if we think that both their methodological commitments and their substantive conclusions are ultimately mistaken.").

46 *Id.*; *see also* Stephen B. Burbank, *Judicial Independence, Judicial Accountability, and Interbranch Relations*, 95 Geo. L.J. 909, 915 (2007) ("Research suggests that diffuse support is linked to legitimizing messages about the courts, such as those that highlight the role of precedent and the rule-of-law ideal . . . .").

47 *See* Grove, *supra* note 15, at 2245.

48 *See* Nina Varsava, *Professional Irresponsibility and Judicial Opinions*, 59 Hou. L. Rev. 103, 118 (2021) ("Judicial opinions . . . have multiple potential audiences.").

49 *See* Julie Novkov, *Death Drop: The Roberts Court, Legitimacy, and the Future of Democracy in the United States*, 83 Md. L. Rev. 77, 79–81 (2023) ("[S]cholars over the years have recognized that the Court's work is also performative."); *see also* Varsava, *supra* note 48, at 120 ("Judges should write opinions in a style that serves . . . justificatory and guidance functions . . . while preserving the legitimacy of courts and the adjudicative process.").

50 *See* Chad M. Oldfather, *Writing, Cognition, and the Nature of the Judicial Function*, 96 Geo. L.J. 1283, 1336–37 (2008) (arguing that the judiciary is legitimized through its written opinions).

Frederick Schauer argued that courts cannot offer just *any* explanation for their decisions.[51] In his words, "to have a reason for a decision is to have a good reason, and what some might think a bad reason is simply no reason at all."[52] This suggests that what makes a reason "good" is not its internal logic alone, but whether audiences recognize it as acceptable justification. Understood this way, reason-giving is legitimizing in a sociological sense—i.e., whether those subject to a decision (and the courts' wider audiences) can recognize the proffered grounds as "good" reasons.

But Schauer also emphasized the normative payoffs of reason-giving. For example, the pressure to articulate acceptable reasons can foster better decisionmaking by "driv[ing] out illegitimate reasons when they are the only plausible explanation for particular outcomes."[53] The act of giving reasons also creates precedential commitment, as courts must "state in advance how they are likely to decide cases other than the one before them and that in the future they treat their prior statements as constraining."[54] In these ways, reason-giving can be legitimizing in a legal and moral sense because it disciplines judicial reasoning and better tethers judging to law and principle.[55] To be sure, just because a legal action bears markers of legitimacy does not mean the underlying decision is *actually* legitimate (or that all audiences will accept it as such).[56] But the key point for now is that legitimacy—whether real or perceived—is expressed and sustained through performance.

This understanding of legitimacy as performance has important analytical implications. Rather than treating sociological, moral, and legal legitimacy as separate qualities that courts either possess or lack, we can examine how judicial reasoning simultaneously signals each form of legitimacy to different audiences. When judges give reasons, they are not merely explaining their decisions but telling a story about how the court reached its conclusion, weaving together markers of legal discipline, moral integrity, and sociological credibility into a coherent narrative. This framework is not meant to collapse the three legitimacy types into one. Rather, it shows how they often act in tandem and

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51 Frederick Schauer, *Giving Reasons*, 47 STAN. L. REV. 633, 635 (1995) (emphasis omitted).

52 *See id.* at 635; *see also* Micah Schwartzman, *Judicial Sincerity*, 94 VA. L. REV. 987, 1004 (2008) (noting that judges "act legitimately only if they have reasons that those subject to them can, in principle, understand and accept.").

53 Schauer, *supra* note 51, at 657–58.

54 *Id.* at 657.

55 *See id.* at 652 ("So perhaps to say that an outcome 'won't write' is to say that it is justifiable only by illegitimate reasons.").

56 *See id.* at 653–54.

how a simple rhetorical choice can work across multiple legitimacy dimensions simultaneously. This Article begins with that premise: To understand how courts cultivate legitimacy, we can examine how their performances—especially their use of visuals—are crafted to signal legitimate judicial authority.

B. Writing Legitimacy

Given that judges primarily perform legitimacy through opinion writing,[57] it should be possible to identify concrete signals by which judges project authority. These signals manifest not as abstract concepts but as specific narrative strategies that demonstrate (or create appearances of) legal discipline, moral integrity, and sociological credibility.

So what are some of those signals? Before proceeding, I should note this is heavily contested terrain. Scholars and practitioners have disagreed not just about how judges should write, but about what different styles imply for judicial legitimacy. Those disagreements, in turn, echo the legitimacy tensions outlined in Section I.A.

On one side are those who argue that expressive restraint best promotes judicial legitimacy.[58] Nina Varsava, for instance, contends that the judicial role "demands that judges are transparent and candid in their legal reasoning, that they are impartial and appear to be so, and that they respect and demonstrate respect for litigants."[59] She cautions that advice urging judges to write in one's personal voice risks undermining those values.[60] Crafting a compelling account of the facts,

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[57] Of course, judges did not always write. At the Founding, most decisions were delivered orally from the bench. *See, e.g.*, Mark R. Kravitz, *Written and Oral Persuasion in the United States Courts: A District Judge's Perspective on Their History, Function, and Future*, 10 J. App. Prac. & Process 247, 248–49 (2009). Over the nineteenth century, judges—and in particular the Supreme Court Justices—began issuing written opinions and publishing them in official reporters. *See id.* at 249–54; William D. Popkin, Evolution of the Judicial Opinion: Institutional and Individual Styles 60 (2007). The shift was a response to multiple pressures. Federal judges needed to assert their authority in a political culture wary of centralized power and professional elites. *Id.*; *see also* Aaron T. Knapp, *Law's Revolution: Benjamin Austin and the Spirit of '86*, 25 Yale J.L. & Human. 271 (2013) (analyzing popular anti-lawyer public opinion during 1786). Lawyers, spread across a decentralized legal landscape, needed accessible opinions to know the law. Popkin, *supra*, at 60–61. And a democratic ethos demanded judges account to the public for their actions. *Id.* From the outset, then, the written opinion was a performance of legitimacy. Writing allowed judges to reason in public and make their work visible and contestable. *See id.* The move to written decisions was partially an effort to establish judicial authority through reasoned explanation and public accountability. *See id.*

[58] *See, e.g.*, Varsava, *supra* note 48, at 106 (describing her position on judicial writing restraints).

[59] *Id.* at 114.

[60] *Id.* at 133.

for example, may not lend itself to factual accuracy.[61] Instead, she argues that judicial opinions should conform to "a consistent, measured, and impassive style."[62] In her view, this style preserves legitimacy because it signals that judicial authority is rooted not in personal gravitas, but in legal principle and institutional duty.

Others, however, embrace a more engaging style.[63] Bryan Garner rejects the "stuffiness and jargon-laced prose that characterized so much legal writing in the past" and encourages judges to adopt accessible writing styles.[64] Judge Richard Posner has celebrated opinions written to "entertain" readers and has recommended a "conversational" voice designed "for the ear rather than for the eye."[65] Proponents of this so-called "impure" style argue that if judges can capture public attention, they can increase public awareness of legal issues, improve public understanding of judicial reasoning, and help bridge the gap between courts and the public by fostering institutional transparency.[66]

These competing views map onto the legitimacy tensions identified earlier.[67] A restrained, impassive style can reinforce legal legitimacy by emphasizing method and precedent, and it may strengthen moral legitimacy by presenting the judge as principled. Yet the same restraint can make opinions feel inaccessible, eroding sociological legitimacy. Conversely, a conversational opinion can humanize the judiciary and make reasoning easier to follow, thereby enhancing sociological legitimacy. But a more personal style also risks being read as personality rather than principle, thereby undermining legal or moral authority. This is not to say that one style always signals one type of legitimacy over others, but different stylistic approaches do carry distinct risks and opportunities for projecting judicial authority.

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61 *Id.*

62 *Id.* at 172.

63 *See id.* at 107–13 (summarizing other advice for judges to write engaging opinions with personality).

64 Bryan A. Garner, The Redbook: A Manual on Legal Style § 12.1 (4th ed. 2018).

65 Richard A. Posner, *Judges' Writing Styles (And Do They Matter?)*, 62 U. Chi. L. Rev. 1421, 1430 (1995) (comparing formalist, "pure" writing styles with direct, conversational, and "impure" writing styles); *see also* Ruggero J. Aldisert, Opinion Writing 142 (2d ed. 2009) (asserting that all writing should "entice the reader into reading it"); Joe Palazzolo, *Supreme Court Nominee Takes Legal Writing to Next Level*, Wall St. J. (Jan. 31, 2017, at 20:26 ET), https://www.wsj.com/articles/supreme-court-nominee-takes-legal-writing-to-next-level-1485912410 [https://perma.cc/862X-ZY77] (contending that Justice Gorsuch "has elevated [legal facts sections] to a form of wry nonfiction").

66 *See* Varsava, *supra* note 48, at 112–13 (summarizing justifications for judges to write more lively and engagingly).

67 *See supra* Section I.A.

Still, beneath these stylistic debates lie at least some shared narrative strategies that judges across the spectrum employ to establish legitimacy. The analysis below cuts through these disagreements about writing style to focus on core legitimacy signals, organized around three roles that courts and commentators routinely emphasize in discussions of judicial conduct: the principled decisionmaker, the impartial decider, and the public servant. These roles do not capture the full scope of any particular legitimacy type, none of which can be reduced to a set of rhetorical techniques. They do, however, offer a useful framework for tracing how opinions might perform legitimacy in writing and provide the foundation for examining how visual elements might reinforce, complicate, or transform judicial legitimacy performances.

1. The principled decisionmaker. Several practices help judges demonstrate adherence to reliable methods for finding facts and applying law. Judges structure opinions around governing rules to show that decisions are guided by law rather than discretion.[68] They cite precedent to signal fidelity to binding decisions.[69] They aim to provide comprehensive, objective accounts of the facts to signal fidelity to the record.[70] They acknowledge "bad facts" and unfavorable precedent, signaling methodological integrity.[71] Taken together, these strategies project the image of a diligent, principled decisionmaker constrained by law and fact: the judge applying the law as it is to "what really happened."[72]

To be sure, what courts present as disciplined, objective reasoning is a deeply contested performance. Critical theorists and law-and-humanities scholars argue that the language of reasoned judgment often functions as a guise, allowing courts to exercise power in ways

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[68] *See* Gerald Lebovits, Alifya V. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 Geo. J. Legal Ethics 237, 285 (2008) ("The most important thing the opinion must do is 'state plainly the rule upon which the decision proceeds.'"); *cf.* Schauer, *supra* note 51, at 657 (exploring why reasoning helps a decisionmaker commit to an opinion).

[69] *See* Abner J. Mikva, *For Whom Judges Write*, 61 S. Calif. L. Rev. 1357, 1366 (1988) (noting that citation is meant to signal "complete knowledge" of legal sources); *see also* Frederick Mark Gedicks, *Working Without a Net: Supreme Court Decision-Making as Performance*, 2018 BYU L. Rev. 57, 67 (2018) ("Citations are performatives . . . .").

[70] *See* Fed. Jud. Ctr., Judicial Writing Manual: A Pocket Manual for Judges 16 (2013) ("Above all, the statement of facts must be accurate."); S.I. Strong, *Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges*, 2015 J. Disp. Resol. 93, 122 (2015) ("[A] judge must include all the relevant facts.").

[71] *See* Lebovits, Curtin & Solomon, *supra* note 68, at 287 ("If the court considers only the facts one side presents, the court has already made its decision.")

[72] *See* Kim Lane Schepple, *Foreword: Telling Stories*, 87 Mich. L. Rev. 2073, 2089–90 (1989) (describing the law's objective in finding truth).

that preserve the existing social order.[73] Judicial opinions, they argue, use "law as a type of 'screen,'" reducing complex lived experiences into simplified narratives that fit legal frameworks.[74] "The supposedly objective point of view" of a judicial opinion, they claim, "often mischaracterizes, minimizes, dismisses, or derides" the realities of marginalized groups.[75] Still, courts continue performing principled reasoning because the alternative—openly acknowledging that decisions are purely political or personal—would be far more damaging to judicial legitimacy. To craft a coherent legal narrative, courts must impose order on messy realities, and that process inevitably sidelines competing perspectives. Nonetheless, openly abandoning the performance of principled constraint would eliminate any meaningful distinction between judicial and political authority.

2. The impartial decider. Impartiality—or the freedom from bias or prejudice—is another cornerstone of good judging.[76] Judges signal impartiality by avoiding language that suggests advocacy or personal investment in a particular outcome.[77] They maintain a professional detachment from the litigants.[78] They often work to suppress overt

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[73] *See* Cover, *Nomos and Narrative*, *supra* note 1, at 40–44 (1983) (describing the "jurispathic" function of courts); Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1615 (1986) (discussing how "the judge's interpretive act authorizes and legitimates" violence); *see also* Devon W. Carbado & Daria Roithmayr, *Critical Race Theory Meets Social Science*, 10 ANN. REV. L. SOC. SCI. 149, 155–57 (2014) (summarizing critical race theory's critiques of objectivity and neutrality that can result in the exclusion of less-privileged people in legal practice and procedure).

[74] Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2428 (1989) (arguing that marginalized groups can use narrative tools to present alternative perspectives).

[75] *Id.* at 2441; *see also* Suzanne B. Goldberg, *Constitutional Tipping Points: Civil Rights, Social Change, and Fact-Based Adjudication*, 106 COLUM. L. REV. 1955, 1959–61 (2006) (arguing that courts often present normative judgments as "facts"). To be clear, others maintain that what distinguishes courts from mere storytellers is their commitment to discovering objective truth, no matter how imperfect that search may be. *See* RICHARD POSNER, *Legal Narratology*, *in* LAW AND LITERATURE 424, 445–46 (3d ed. 2009); *cf.* DANIEL A. FARBER & SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW 98–99 (1997) (criticizing attempts to tell truthful stories that are not tied to external reality nor to legal doctrine).

[76] W. Bradley Wendel, *Impartiality in Judicial Ethics: A Jurisprudential Analysis*, 22 NOTRE DAME J.L. & PUB. POL'Y 305, 305 (2008) ("The fundamental value in judicial ethics is impartiality."); *see* Charles Gardner Geyh, *The Dimensions of Judicial Impartiality*, 65 FLA. L. REV. 493, 497 (2013) (defining impartiality by typologizing aspects of its inverse, i.e., partiality). Several judicial codes of conduct emphasize impartiality. *See, e.g.*, CODE OF CONDUCT FOR U.S. JUDGES Canons 2A, 3, 4 (JUD. CONF. OF THE U.S. 2019); CODE OF CONDUCT FOR JUSTICES OF THE SUPREME COURT Canons 2A, 3, 4 (2023).

[77] *See* Geyh, *supra* note 76, at 499–501, 505–08 (discussing judges who have a personal interest or personal bias in a case).

[78] *See, e.g.*, Steven Lubet, *Bullying from the Bench*, 5 GREEN BAG 11, 14 (2001) (characterizing one district court judge's penchant for chastising lawyers before him and

emotion in their writing, since anger can suggest punitive motive and compassion can suggest undue sympathy (both of which risk making the decision look like it rests on feeling rather than law).[79] And they frame the opinion in rational tones (even when writing in an entertaining style) to present their judgments as the product of dispassionate analysis.[80] These strategies construct the image of a neutral arbiter who decides on legal merit rather than personal sympathy: the judge who remains above the fray even in heated disputes.

This, too, is a contested performance. Critics have long questioned whether true impartiality is ever possible, noting that every judicial opinion reflects background assumptions and personal perspectives.[81] The role of emotion is particularly contested. Some scholars contend that requiring emotional detachment may actually obscure bias, since suppressing emotion makes its influence on judicial decisions "less transparent and predictable—not just to the public, but to judges themselves."[82] Again, the point here is not so much whether impartiality is achievable as much as it is how judges work to perform it convincingly in their written opinions.

3. The public servant. Judges also perform legitimacy by demonstrating accessibility and accountability to the public they serve.[83] They primarily do this by telling stories that the public can understand and relate to. Chief Justice Roberts's praise for *Brown v. Board of*

positing that "[w]hen the court becomes so contemptuous of lawyers, and so eager to insult them in public, we must wonder whether its judgments are truly free of bias").

79 *See* Jamal Greene, *Pathetic Argument in Constitutional Law*, 113 COLUM. L. REV. 1389, 1407 (2013) ("Overt appeal to emotion is as scandalous in judging as it is prevalent in trial advocacy treatises."); *see also* Brett Kavanaugh, *I Am an Independent, Impartial Judge*, WALL ST. J. (Oct. 4, 2018, at 19:30 ET), https://www.wsj.com/articles/i-am-an-independent-impartial-judge-1538695822 [https://perma.cc/RVE8-568K] (addressing emotional behavior at confirmation hearing); Jeffrey Rosen, *Sentimental Journey*, NEW REPUBLIC (May 2, 1994), https://www.newrepublic.com/article/politics/sentimental-journey [https://perma.cc/TMZ7-BYTJ] ("There is something lawless . . . about the notion that warmhearted impulses are more important than legal reasoning.").

80 *See, e.g.*, *Confirmation Hearing on the Nomination of Hon. Sonia Sotomayor, To Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 120 (2009) ("[I]t's not the heart that compels conclusions in cases. It's the law."); *The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 103 (2010) ("It's law all the way down.").

81 *See, e.g.*, Geyh, *supra* note 76, at 510 (describing judicial impartiality as "the elusive ideal"); Schauer, *supra* note 51, at 653 (noting that "decisions are often, empirically, the result of decisionmaker partiality" (emphasis deleted)); Cover, *supra* note 1, at 42 ("[D]ifferent interpretive communities will almost certainly exist and will generate distinctive responses to any normative problem of substantial complexity.").

82 Terry A. Maroney, *Emotional Regulation and Judicial Behavior*, 99 CALIF. L. REV. 1485, 1551 (2011).

83 John D. Michaels, *Baller Judges*, 2020 WIS. L. REV. 411, 417 (2020) (explaining that "baller judges" write for and engage directly with "the entire panoply of citizen stakeholders").

Education illustrates the reverence for this ideal: "a mere 11 pages—short enough that newspapers could publish all or almost all of it and every citizen could understand the Court's rationale."[84] Courts can signal this accessibility in various ways: writing in plain language, defining technical terms, providing sufficient context for non-experts.[85] Judges also may ground their reasoning in concrete examples that resonate with lived experience or acknowledge a decision's practical consequences to demonstrate awareness of real-world impact.

The public servant role is also contested both in terms of effectiveness and audience. Some critics argue that judges' elite backgrounds limit their ability to speak to the public in meaningful ways.[86] Opinions may be written clearly, but still fail to resonate with or address the concerns of most members of the public. Others question whether courts—including the Supreme Court—are writing for the public at all. Most people encounter judicial opinions through media intermediaries, which shape and filter the message, often reducing complex legal reasoning to simplified narratives that may or may not capture the courts' intended meaning.[87] As a result, the courts' role as a public servant demands not just clarity and simplicity in writing, but also attentiveness to who is listening and how the judicial story will travel.

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The principled decisionmaker, impartial decider, and public servant roles reveal the complex legitimacy work that judicial opinions perform. Courts have developed sophisticated textual strategies for managing

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[84] John G. Roberts, C.J., 2019 Year-End Report on the Federal Judiciary (Supreme Court of the U.S. 2019), https://www.supremecourt.gov/publicinfo/year-end/2019year-endreport.pdf [https://perma.cc/89AG-BA5N].

[85] *See* Garner, *supra* note 64, at § 12.1 (describing the trend toward plain language); Lebovits, Curtin & Solomon, *supra* note 68, at 247 ("Important decisions should be written so that people can easily understand how their rights are affected.").

[86] *See, e.g.*, Mugambi Jouet, *Is the Supreme Court Disconnected from the Real World?*, Hill (Apr. 22, 2014, at 13:00 ET), https://thehill.com/blogs/congress-blog/judicial/203982-is-the-supreme-court-disconnected-from-the-real-world [https://perma.cc/65UC-6BVV] ("[T]he Justices sometimes seem either disconnected from the real world or deliberately oblivious to it."); *see also* Alex Badas & Katelyn E. Stauffer, *Someone Like Me: Descriptive Representations and Support for Supreme Court Nominees*, 71 Pol. Rsch. Q. 127, 131 (2018) (describing how diversity promotes legitimacy).

[87] *See* Varsava, *supra* note 48, at 121–22 (summarizing debate on the Supreme Court's role as a public educator); Gerald N. Rosenberg, *Romancing the Court*, 89 B.U. L. Rev. 563, 564–66 (2009) (citing studies that suggest that the public does not follow the Court's work or read its opinions); *see also* Nathaniel Persily, *Introduction* to Public Opinion and Constitutional Controversy 9 (Nathaniel Persily, Jack Citrin & Patrick J. Egan eds., 2008) (noting that Supreme Court decisions "can elevate issues onto the national agenda through media coverage, elite discussion, and other behavior that follows in their wake").

these sometimes competing demands. But what happens when courts incorporate visual elements into these performances? The analysis that follows examines how images might alter the legitimacy calculus that has traditionally operated through text alone.

II
Visualizing Judicial Opinions

Part I outlined a framework for understanding judicial legitimacy and identified several strategies that judges use to construct a narrative of legitimacy in written opinions. This Part shifts focus to examine another dimension of judicial communication: the rise of visuals in judicial opinions. Below, I show that while visual content in Supreme Court opinions is not new, its use has evolved dramatically over time. Recent years have seen unprecedented expansion in visual practices and new forms of visual media. Ultimately, this shift presents new challenges and opportunities for judicial legitimacy—a focus I take on more fully in Part III.

To map the full scope of visual practices, this Part draws on a review of visual content in Supreme Court opinions, from the Founding to the present. To identify visual content, I began by examining the opinions identified in preexisting scholarship on Supreme Court visual decisions.[88] I and a team of research assistants then expanded the collection by searching all volumes of the *United States Reports* (*U.S. Reports*), the official publication of the Supreme Court, for visuals. Volumes for the 1991 term through the present are available on the Supreme Court's website, as are slip opinions not yet bound for publication.[89] For all earlier terms, this review relied on Harvard Law School's Caselaw Access Project, a digitized public database of decisions published by courts in the United States.[90] The Caselaw Access Project's copies of the *U.S. Reports* proved to be the most accessible resource for

[88] Two comprehensive studies of the Supreme Court's visual opinions have previously been conducted. *See* Marder, *supra* note 14, at 334–36 (reviewing visual opinions from 1997–2013); Feigenson, *Image in* AWF, *supra* note 5, at 86 (reviewing visual opinions from 2010–2023).

[89] *See U.S. Reports*, Sup. Ct. U.S., https://www.supremecourt.gov/opinions/USReports.aspx [https://perma.cc/6HM8-MDTN] (last visited Oct. 7, 2025).

[90] The Caselaw Access Project's version of the *U.S. Reports* is available at *United States Reports (1754–2014)*, Caselaw Access Project, https://case.law/caselaw/?reporter=us [https://perma.cc/DPE4-C7J2] (last visted Oct. 7, 2025). *See also About*, Caselaw Access Project, https://case.law/about [https://perma.cc/UX7H-UZ6E] (last visited Oct. 7, 2025) (describing the objective of the project).

efficient review, and its comprehensiveness appeared to surpass other platforms.[91]

The review identified over four hundred visual opinions spanning the Court's history, including approximately 200 opinions that included illustrations or diagrams, 160 that included maps, 30 that included photographs, and 45 that included other visual artifacts. The review also uncovered a variety of charts, graphs, fully transcribed textual artifacts, and several video and audio files. This collection serves as the foundation for the analysis that follows.

A. The 1800s: The Many Powers of the Visual

The principal source of visuals in Supreme Court publications of the 1800s was not any particular Justice of the Court but instead the Reporter of Decisions. While today's Reporter performs relatively limited editorial work,[92] early Reporters helped shape how the Court's work reached the public at a time when Justices still delivered most rulings orally.[93] Reporters were responsible for transcribing and publishing the Court's opinions.[94] And unlike the short syllabi accompanying decisions one would find today, early Reporters provided comprehensive, multi-page accounts of the cases' facts and lawyers' arguments.[95] The Court endorsed this practice. In 1830, when Reporter of Decisions Richard Peters asked

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[91] Sources like Westlaw and Lexis have long been criticized for failing to include visuals. *See, e.g.*, Dellinger, *supra* note 14, at 1708 n.27; Marder, *supra* note 14, at 342–43; Porter, *supra* note 11, at 1691–92. While I found that these databases have improved on the visual front, several gaps (especially in older cases) made reliance on them precarious. HeinOnline also had gaps (mostly in the form of missing pages) and is significantly more difficult to review due to download limitations. That said, one limitation of the publicly accessible Case Law Access Project's database was the redaction of publisher-copyrighted content (like headnotes) for volumes not yet in the public domain. While these redactions did not impede the primary goal of locating visual content in the Court's opinions (which were not redacted), researchers consulted physical copies of the *U.S. Reports* or unredacted versions on other databases when necessary.

[92] *Court Officers and Staff: Reporter of Decisions*, Fed. Jud. Ctr., https://www.fjc.gov/history/administration/court-officers-and-staff-reporter-decisions [https://perma.cc/CJQ5-LW9F] (last visited Oct. 7, 2025) (describing the Reporter's duties).

[93] *See* Popkin, *supra* note 57, at 60, 66; *see also* Frank D. Wagner, *The Role of the Supreme Court Reporter in History*, 26 J. Sup. Ct. Hist. 9, 14 (2001) ("Of course, the Reporter has not always been the same sort of bureaucratic nobody as is your humble narrator."); Erwin C. Surrency, A History of American Law Publishing 44–45 (1990) ("[A] definite feeling persisted that the reporter was far more important than the judges who rendered the decision."). The formal practice of Justice-written opinions began only in 1834, with the change likely taking place over time. *See* Fed. Jud. Ctr., *supra* note 92; Popkin, *supra* note 57, at 83 ("At most, the 1834 order reflects a growing practice of written opinions, not their requirement.").

[94] *See* Elizabeth Feaster Baker, Henry Wheaton, 1785–1848, at 26–27 (1937) (describing arrangement).

[95] Popkin, *supra* note 57, at 66–67.

Chief Justice John Marshall whether he might exclude summaries of the lawyers' arguments to avoid having to publish two volumes for a single term, Chief Justice Marshall responded that the argument summaries "contribute very much to explain the points really decided by the Court."[96]

It was in these Reporter-written case summaries that many of the first visuals in the *U.S. Reports* appeared. In their earliest form, these visuals were essentially reproductions of key textual documents.[97] Alexander Dallas, the Court's first unofficial Reporter, included a form bill of exchange in his summary of a 1798 contract case.[98] Henry Wheaton, the Court's third (and first official) Reporter, included a copy of a lottery ticket in one case summary and a bank check in another.[99] Later, the visuals became more graphic in nature. Benjamin Howard, the Court's fifth Reporter, introduced the first map to appear in the *U.S. Reports* in an 1845 property case.[100] He went on to include several other maps and diagrams.[101] By the mid to late 1800s, visuals had become a familiar feature of Reporter-written case summaries.

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96 Letter from John Marshall, C.J., U.S. Sup. Ct. to Richard Peters, Rep. of Decisions (March 22, 1830), *reprinted in* 28 U.S. (3 Pet.) vi (1830).

97 Reporters also frequently transcribed key documents—such as letters between parties, contracts, and other legal materials—in full to provide readers with greater clarity about the disputes. *See, e.g.*, Geyer v. Michel, 3 U.S. (3 Dall.) 285, 293 n.* (1796) (providing commission and endorsement "to gratify curiosity at a future period"); The Mary and Susan, 14 U.S. (1 Wheat.) 25, 26–28 (1816) (invoice and two letters).

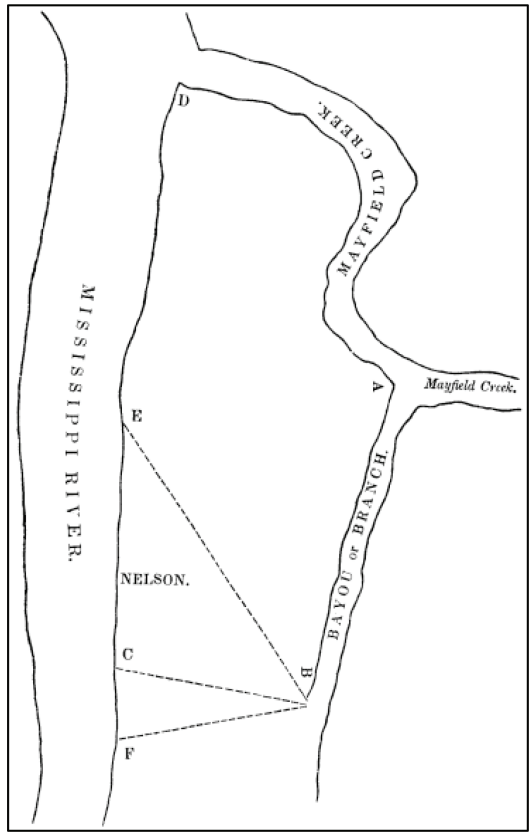
98 Jones v. Le Tombe, 3 U.S. (3 Dall.) 384, 384 (1798).

99 Clark v. Mayor of Wash., 25 U.S. (12 Wheat.) 40, 44 (1827) (lottery ticket); Mechs.' Bank of Alexandria v. Bank of Columbia, 18 U.S. (5 Wheat.) 326, 327 (1820) (bank check).

100 Croghan's Lessee v. Nelson, 44 U.S. (3 How.) 187, 188 (1845).

101 *See, e.g.*, Jourdan v. Barrett, 45 U.S. (4 How.) 169, 170 (1846); Missouri v. Iowa, 48 U.S. (7 How.) 660, 661 (1849); United States v. Boisdore, 52 U.S. (11 How.) 63, 66 (1850); Walden v. Bodley's Heirs, 50 U.S. (9 How.) 34, 35 (1850); Jones v. Johnston, 59 U.S. (18 How.) 150, 150 (1855); Foxcroft v. Mallett, 45 U.S. (4 How.) 353, 354 (1846); Van Rensselaer v. Kearney, 52 U.S. (11 How.) 297, 298 (1850).

FIGURE 1: THE FIRST MAP TO APPEAR IN THE *U.S. REPORTS*[102]



The Reporters included visual content despite some reluctance. One reason for their reluctance was cost. Unlike today's government-employed Reporters, the first Reporters were independent businessmen, and printing was expensive.[103] Another reason was the uncertain role of images in law. In one patent case, Reporter John William Wallace included ten diagrams in his summary of the case (in addition to the twelve diagrams included in the Court's opinion).[104] But he openly questioned their propriety, asking readers if he might be "excused from encumbering a book of law reports with drawings."[105]

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102 *Croghan's Lessee*, 44 U.S. (3 How.) at 188.

103 *See* Ross E. Davies, *Marshall's Maps, the* U.S. Reports*, and the New Judicial Restraint*, 15 GREEN BAG 2D 445, 447 (2012) (discussing how Chief Justice Marshall insisted on including visuals in his popular writing despite his publisher's concerns about cost and effort).

104 *See* Burr v. Duryee, 68 U.S. (1 Wall.) 531, 534–49, 558–62(1863).

105 *Id.* at 533.

Still, the Reporters recognized and embraced the visuals' explanatory power. Visuals provided readers with an understanding of a case's facts that words alone could not offer. At times, Reporters declared that it would be "impossible to understand the opinion of the court without a map or diagram."[106] Indeed, when Reporters could not provide visuals (due to expense or another reason), they sometimes withheld summary of the case altogether. In one case, Reporter Benjamin Howard expressed, with dismay, his inability to give the reader a clear idea of the lawyers' arguments, noting that "the court room was filled with models and drawings, introduced upon either side, to which constant reference was made by counsel."[107] His summary of the case's facts ended there.

This focus on the Reporters' use of visuals is not to say that the Justices denied the power of the visual. To the contrary, the Supreme Court spent much of the nineteenth century imbuing certain visuals with legal authority. It first used maps to help define the nation's borders. The nineteenth century witnessed the transformation of the United States from a small group of Atlantic states into a sprawling continental nation. This rapid territorial expansion necessitated a system for establishing and formalizing sovereign boundaries, and geographic maps became central to the effort.[108] After the Revolution, Congress enacted the Land Ordinance of 1785 and the Northwest Ordinance of 1787 to control, among other things, the survey of land in the western territories.[109] By 1832, Congress established the Army Corps of Topographical Engineers to perform mapping work across the continent.[110] And by 1897, the Library of Congress opened a Hall of Maps and Charts.[111]

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106 *Croghan's Lessee*, 44 U.S. (3 How.) at 187; *see also Walden*, 50 U.S. (9 How.) at 34 ("The caues [sic] were exceedingly complicated, and cannot be understood without a reference to the following plat.").

107 McCormick v. Talcott, 61 U.S. (19 How.) 402, 403 (1857) ("The reporter despairs of giving any intelligible account of the argument in this case.").

108 *See* SUSAN SCHULTEN, MAPPING THE NATION: HISTORY AND CARTOGRAPHY IN NINETEENTH-CENTURY AMERICA 13 (2012) ("The idea of sovereignty certainly does not date to [the nineteenth century], but its *territorial* dimension might . . . ."); WILLIAM RANKIN, AFTER THE MAP: CARTOGRAPHY, NAVIGATION, AND THE TRANSFORMATION OF TERRITORY IN THE TWENTIETH CENTURY 7 (2016) ("Geo-epistemology and territory go hand in hand.").

109 28 JOURNALS OF THE CONTINENTAL CONGRESS, 1774–1789, at 375–76 (John C. Fitzpatrick ed., 1933); 32 JOURNALS OF THE CONTINENTAL CONGRESS, 1774–1789, at 334 (Roscoe R. Hill ed., 1936); *see also* PETER S. ONUF, STATEHOOD AND UNION: A HISTORY OF THE NORTHWEST ORDINANCE 21–66 (1987) (examining the Land Ordinance of 1785).

110 *See* An Act to Increase the Present Military Establishment of the United States, and for Other Purposes, 25 Cong. Ch. 162, 5 Stat. 256 (July 5, 1838); FRANK N. SCHUBERT, THE NATION BUILDERS: A SESQUICENTENNIAL HISTORY OF THE CORPS OF TOPOGRAPHICAL ENGINEERS 1838–1863, at 24 (U.S. Army Corps of Eng'rs Off. of Hist. 1988).

111 *See About this Reading Room*, LIBRARY OF CONG. GEOGRAPHY & MAP DIV., https://www.loc.gov/research-centers/geography-and-map/about-this-research-center [https://perma.cc/8F2T-87MD] (last visited Oct. 7, 2025).

During this period of expansion, the Supreme Court often relied on maps to resolve disputes over property and territorial boundaries, granting certain maps elevated legal weight over others. For instance, in the aftermath of the Mexican-American War, the Court was frequently tasked with adjudicating Spanish and Mexican land claims in California.[112] These cases often presented competing visual narratives: hand-drawn diseños—or maps used by Spanish and Mexican claimants to delineate their holdings—and the more technical maps produced under the new American survey system.[113] The diseños, while historically significant, were often dismissed as unreliable, error-laden, and based on "vague tradition."[114] For the Court, the visual representations produced under American survey specifications typically carried greater legal weight.[115]

The Court also embraced the power of visuals in the realm of innovation, where illustrations were imbued with significant legal authority. The mid to late 1800s saw a patent litigation explosion,[116] flooding the Supreme Court docket with technical drawings. Between 1850 and 1899, over 100 opinions issued by the Supreme Court included technical drawings.[117] Volume 126 of the *U.S. Reports* (covering the October 1887 term) is devoted entirely to the *Telephone Cases* concerning the invention of the telephone.[118] It contains over one hundred illustrations and diagrams.

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112 *See* Marco Basile, *The Splintering of American Public Law*, 92 U. Chi. L. Rev. 1529, 1579 (2025); *see also* Karen B. Clay, *Property Rights and Institutions: Congress and the California Law Act of 1851*, 59 J. Econ. Hist. 122, 122–23 (1999) (examining the transition of property rights after the Mexican-American War).

113 *See, e.g.*, *In re* Fossat, 69 U.S. (2 Wall.) 649, 651, 654 (1864) (including map and diseño).

114 De Arguello v. United States, 59 U.S. (18 How.) 539, 546 (1856); *see also* Stephen R. Miller, *The Visual and the Law of Cities*, 33 Pace L. Rev. 183, 191–99 (2013) (discussing the role of diseños in nineteenth-century land disputes).

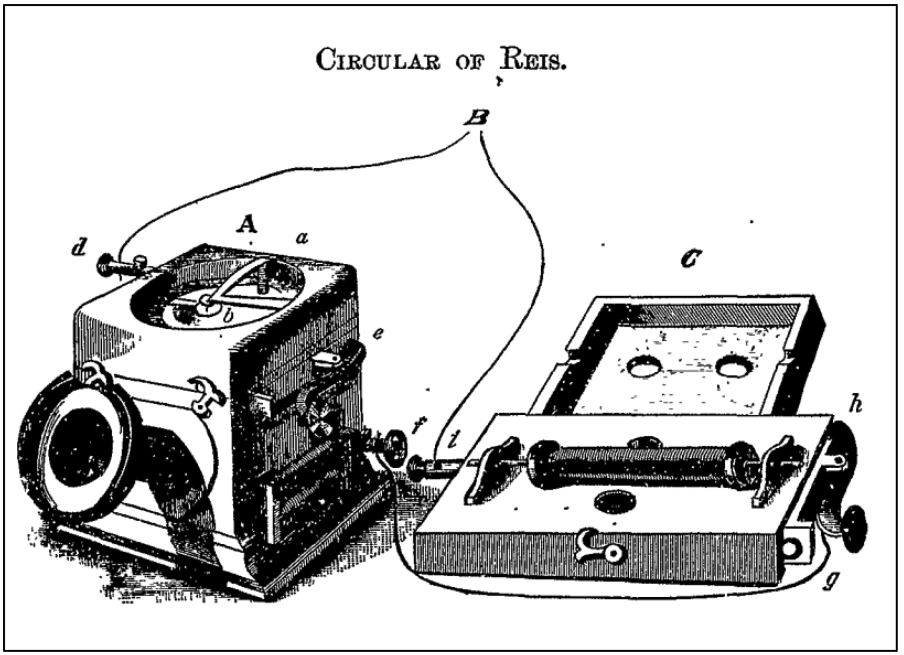
115 *See, e.g.*, Miller, *supra* note 114, at 197–98; De Arguello, 59 U.S. (18 How.) at 546; *cf.* Austin Stewart, *Wielding the Power of Mapping: Cherokee Territoriality, Anglo-American Surveying, and the Creation of Borders in the Early Nineteenth-Century West*, 110 Transactions Am. Phil. Soc'y 71, 71–72 (2021) (describing how Cherokee leaders adopted Anglo-American mapping practices to preserve control over territories).

116 *See generally* Christopher Beauchamp, *The First Patent Litigation Explosion*, 125 Yale L.J. 848 (2016) (discussing the increase in patent enforcement beginning in the middle of the nineteenth century and tracing its development through the start of the twentieth century).

117 These numbers differ remarkably from the half centuries preceding and following this time period: Zero opinions included technical drawings before 1850, and fewer than twenty opinions included technical drawings between 1900 and 1949. While many of the late-nineteenth-century visuals appeared in Reporter summaries rather than in the Court's direct reasoning, the distinction matters little for understanding the Court's visual practices at the time. Whether in the opinion proper or the Reporter's summary, these images were integral parts of the official published record, serving as authoritative references for future courts and litigants.

118 126 U.S. 1 (1888).

FIGURE 2: ONE OF OVER ONE HUNDRED ILLUSTRATIONS IN THE *TELEPHONE CASES* VOLUME OF THE *U.S. REPORTS*[119]



A good example of the Supreme Court's increasingly visual approach is its treatment of the first design patent statute.[120] In reviewing the statute in *Gorham Co. v. White*,[121] a case about the design on a spoon and fork handle, the Court explained that design protection encompassed "not so much utility as *appearance*."[122] The Court reasoned that "if, in the eye of an ordinary observer, . . . two designs are substantially the same [and] the resemblance is such as to deceive such an observer, . . . the first one patented is infringed by the other."[123]

119 Dolbear v. Am. Bell Tel. Co., 126 U.S. 1, 60 (1888).

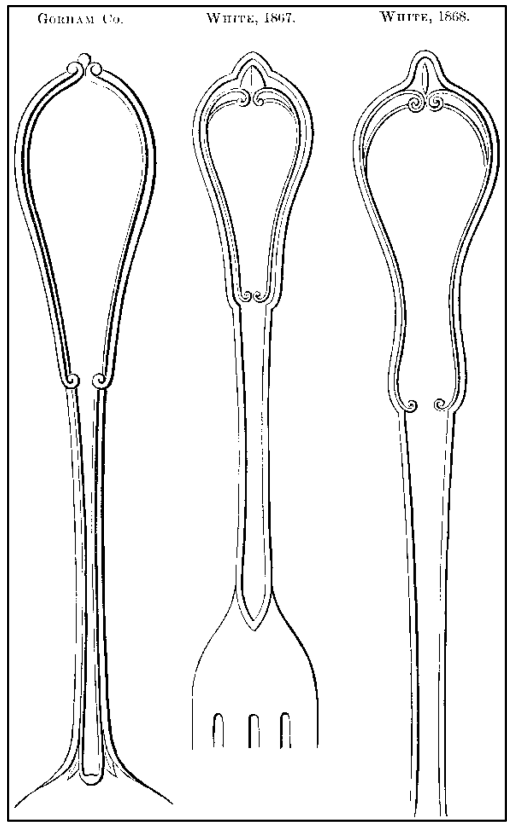
120 Patent Act of Aug. 29, 1842, § 3, 5 Stat. 543 (1842); *see also* Peter Lee & Madhavi Sunder, *Design Patents: Law Without Design*, 17 STAN. TECH. L. REV. 277, 280–83 (2013) (recounting the history of design patents).

121 81 U.S. (14 Wall.) 511, 524 (1871).

122 *Id.* (emphasis added).

123 *Id.* at 528.

FIGURE 3: SPOON STEMS IN *GORHAM CO. V. WHITE*[124]



By declaring that "the eye alone is the judge of the identity of the two things,"[125] the opinion elevated visual perception to a decisive role in legal adjudication.[126] In patent cases like this, visual use extended beyond explanatory purposes and became determinative in resolving disputes. Courts relied heavily on illustrations to assess the similarities between contested designs, often making images central to infringement decisions. And by grounding decisions in the perceptions of an "ordinary observer," the Supreme Court implicitly endorsed the notion that visuals possess an inherent, universally accessible meaning.[127] The Court's approach suggested that the visual could speak directly to the observer

124 *Id.* at 521.

125 *Id.* at 526 (quoting Holdsworth v. McCrea [1867] 2 AC 380 (HL) 388 (appeal taken from Eng.)).

126 *See id.* at 528 ("Applying this rule to the facts of the present case, there is very little difficulty in coming to a satisfactory conclusion.").

127 *But see* Rebecca Tushnet, *The Eye Alone Is the Judge: Images and Design Patents*, 19 J. INTELL. PROP. L. 409, 410–11 (2012) (noting the Federal Circuit's struggle with this standard);

and that perceptual judgment and legal determination could be one and the same.

In these ways, the Supreme Court's use of visuals in the nineteenth century embraced multiple dimensions of visual power. Images served an explanatory function, grounding readers in representations of concrete evidence and translating abstract concepts into visual form. They wielded territorial authority, as shown when the Court used maps to draw geographic boundaries. And in patent disputes, visual representations appeared to offer an objective and definitive basis for judgment. Yet as the century drew to a close, photography—a new visual form that lawyers had been experimenting with for decades—would test these assumptions about visual objectivity and interpretation.

B. 1897–1964: The First Photograph and a Long Pause

By some accounts, the first photograph ever included in a Supreme Court decision appeared in 1897.[128] But the photograph's inclusion was not directly the work of the Court itself. The case, *Missouri v. Iowa*, revisited a longstanding boundary dispute between the states, and the Court appointed three commissioners to survey the land.[129] The commissioners' report, spanning twenty-five pages, featured a diagram of how the land was surveyed, a chart of land measurements, and a single photograph submitted to support the commissioners' findings.[130] The Court adopted and published the report in full, making the photograph—depicting the cross-section of an oak tree at the state boundary—the first to appear in the *U.S. Reports*.[131]

Christopher Buccafusco, *Making Sense of Intellectual Property Law*, 97 Corn. L. Rev. 501, 524 (2012) (noting "patent judges' discomfort with deciding questions of visual aesthetics").

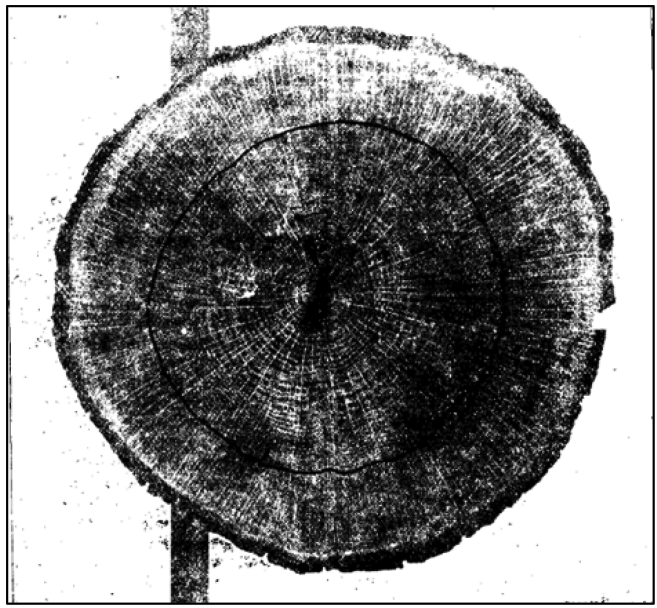
[128] *See, e.g.*, Dellinger, *supra* note 14, at 1705 n.2. My own review of the *U.S. Reports* confirms that 1897 was the first year a photograph appeared in the official reports.

[129] Missouri v. Iowa, 165 U.S. 118 (1897).

[130] *See id.* at 124, 140, 142.

[131] *See id.* at 142.

FIGURE 4: THE FIRST PHOTOGRAPH TO APPEAR IN THE *U.S. REPORTS*[132]



This seemingly incidental inclusion of a photograph in a Supreme Court order reflected a broader national trend: By the late 1800s, lawyers across the country were experimenting with photography as a tool of advocacy.[133] As photographic technologies became more accessible, photographs appeared in trial courtrooms across a wide range of civil and criminal contexts.[134] Lawyers used images to establish identity,[135] prove mental or physical (in)capacity,[136] and reconstruct crime or accident

132 *See id.*

133 For an insightful account of the mid- to late-nineteenth century introduction of photography as a tool of courtroom advocacy, see Jennifer L. Mnookin, *The Image of Truth: Photographic Evidence and the Power of Analogy*, 10 YALE J. L. & HUMAN. 1, 7–14 (1998).

134 *See id.*; *see also* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890) ("Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life.").

135 *See, e.g.*, Marcy v. Barnes, 82 Mass. 161, 163–64 (Mass. 1860) (handwriting); Udderzook v. Commonwealth, 76 Pa. 340, 342 (1874) (murder victim); Luke v. Calhoun Cty., 52 Ala. 115, 118–19 (1875) (same); Walsh v. People, 88 N.Y. 458, 464–65 (1882) (same).

136 *See, e.g.*, Gilbert v. West End St. Ry. Co., 160 Mass. 403, 405 (1894) (holding that it was within the trial court's discretion to refuse to admit a photograph of a man as evidence of his "health and strength"); Varner v. Varner, 9 Ohio C.D. 237, 276 (1898) (holding that a jury could not determine a man's mental capacity "from the looks and features portrayed" in a photograph).

scenes.[137] They also frequently relied on photographs of specific locations to provide context or evidence in land dispute and boundary cases.[138]

Even though the photograph "had become a significant evidentiary tool" by the end of the nineteenth century,[139] it would be over sixty years before a Supreme Court Justice would incorporate a photograph into an opinion. This reluctance stemmed from a mix of cultural and professional transformations in American legal practice.[140] First, the Court's nineteenth-century transition from an oral adjudicative body to a written one was substantially complete by the turn of the century.[141] Advocates were now required to submit written arguments,[142] and oral advocacy was sharply curtailed—from days of open-ended debate to just one hour per side by 1925.[143] These changes reflected an emerging professional ethos that valued the articulation of legal reasoning through text.

Second, the dominance of legal formalism and the development of modern legal education at the turn of the century further solidified the preference for written legal reasoning.[144] Legal formalism conceptualized law as a "science," aiming "to separate politics from law" and "subjectivity

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137 *See, e.g.*, Kan. City, Memphis & Birmingham R.R. Co. v. Smith v. Smith, 90 Ala. 25, 27 (1890) (car wreckage); Dederichs v. Salt Lake City R.R. Co., 14 Utah 137, 137 (1896) (railway tracks); Blair v. Pelham, 118 Mass. 420, 421 (1875) (horse and buggy accident).

138 *See, e.g.*, Randall v. Chase, 133 Mass. 210, 213 (1882) (affirming the admission of a photograph of the surrounding structures along disputed boundary line); Hollenbeck v. Sykes, 17 Colo. 317, 319 (1892) (reviewing evidence including maps and phtographs to settle dispute over boundary); Mitchell v. Prepont, 68 Vt. 613, 619 (1896) (considering photographs and maps showing the physical relationship between buildings and the contested land to determine ownership).

139 Mnookin, *supra* note 133, at 14.

140 *See* Porter, *supra* note 11, at 1704 (describing how formalism and cultural esteem for typographical word hindered adoption of visual aids in jurisprudence).

141 *See* Popkin, *supra* note 57, at 82–84. For an expanded historical discussion of the law's textual turn, see Collins & Skover, *supra* note 10, at 514–33.

142 *See* R. Kirkland Cozine, *The Emergence of Written Appellate Briefs in the Nineteenth-Century United States*, 38 Am. J. Legal Hist. 482, 483 (1994) (tracing history); *see also* William H. Rehnquist, *From Webster to Word-Processing: The Ascendance of the Appellate Brief*, 1 J. App. Prac. & Process 1, 3 (1999) ("With these new requirements, the modern brief was born.").

143 *See* Sup. Ct. R. 22(3), 222 U.S. 586 (1911) (repealed 1925) (permitting one and a half hours per side for oral argument); Sup. Ct. R. 26(4), 266 U.S. 653 (1925) (repealed 1928) (permitting one hour per side for oral argument). The reduction in argument time continued over the years. Today's rule permits a half hour per side unless the Court directs otherwise. *See* Sup. Ct. R. 28(3) (2022); Erica L. Ross, Walter Dellinger, Jeff Fisher & Neal Katyal, *Oral Argument at the Supreme Court Before, During, and After the Pandemic*, 106 Judicature 1, 81 (2022) (noting that after the COVID-19 pandemic, oral argument has changed to include "a brief uninterrupted introduction" for the advocate, "followed by the customary free-for-all questioning" followed by "seriatim questioning in order of seniority").

144 *See* Porter, *supra* note 11, at 1704–05.

from objectivity."[145] As Elizabeth Porter has recognized, these goals aligned neatly with the written word, which formalists viewed as a medium capable of promoting analytical discipline and impersonality.[146] The emergence of modern law schools under figures like the first dean of Harvard Law School, Christopher Columbus Langdell (whom Porter characterizes as "a writer's lawyer") helped enshrine this typographic model as the profession's gold standard.[147] This approach emphasized reasoning that was deliberately abstract, detached, and rooted in text.[148] As a result, visual materials were largely excluded from legal analysis.

Another way to understand the absence of photographs in Supreme Court decisions is rooted in the judiciary's role as a gatekeeper to the courtroom. Jennifer Mnookin has demonstrated that courts confronted competing views of photographs: as objective "mirror[s] with memory" or as "dangerous perjurer[s]" that could manipulate reality.[149] Under either view, photographs posed institutional threats. If truly objective, they risked making judicial reasoning redundant; if manipulable, they threatened to overwhelm rational deliberation.[150] By analogizing photographs to other representational forms like maps and diagrams, courts "disempower[ed] the photographic image," reducing it to "mere illustration"—something appropriate for the realm of evidence and advocacy, but not for judicial reasoning.[151]

This boundary reflected a deliberate choice to preserve textual reasoning as the domain of professional legal judgment. Courts had developed a particular narrative style—written, abstract, detached—that marked judicial reasoning as distinctively professional and authoritative. Visuals, though valuable for aiding lay reasoning and thus beneficial for juries, were not deemed conducive to the professional reasoning that was the domain of text. Moreover, given the ongoing challenges and controversies surrounding the photograph's reliability and prejudicial effects, adhering to law's new textual tradition was the safer course.

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145 *Id.* (citing Morton J. Horwitz, The Transformation of American Law, 1780–1860, at 257 (1977)).

146 *Id.*; *see also* Collins & Skover, *supra* note 10, at 525 ("The legal manuscript distanced the author from the word and then abstracted that word in the 'letter of the law.'").

147 *See* Porter, *supra* note 11, at 1705; *see also* Lawrence M. Friedman, A History of American Law 472 (3d ed. 2005) ("Langdell's proudest boast was that law was a science, and that his method was highly scientific."); Bruce A. Kimball, The Inception of Modern Professional Education: C.C. Langdell, 1826–1906, at 45, 267 (2009) (describing Langdell as a "master craftsman of the written brief").

148 *See* Friedman, *supra* note 147, at 472.

149 Mnookin, *supra* note 133, at 14–27.

150 *See id.* at 57–58.

151 *See id.* at 6.

C. 1965–2009: Resistance and Surrender

Given judicial skepticism toward photography, it is noteworthy that the first Supreme Court Justice to include a photograph did so in a case criticizing cameras in courtrooms. In the 1965 case *Estes v. Texas*, the Court overturned the conviction of Billie Sol Estes, a prominent Texas businessman whose trial for fraud was televised.[152] Writing for a five-Justice plurality, Justice Thomas C. Clark concluded that the presence of television crews and news photographers violated Estes's due process rights.[153] He vividly described the disruption—"[c]ables and wires snaked across the courtroom floor, three microphones . . . on the judge's bench and others . . . beamed at the jury box and the counsel table"—and concluded that "[t]he videotapes of these hearings clearly illustrate that the picture presented was not one of that judicial serenity and calm to which [the defendant] was entitled."[154]

In his concurrence, Chief Justice Earl Warren took an even stronger stance. He condemned the cameras' "merciless badgering" and likened the spectacle to a Soviet-style trial.[155] To emphasize the prejudicial impact of the media's presence, Chief Justice Warren appended seven photographs to his opinion.[156] They showed photographers and newscasters accompanying the defendant into the courtroom, cameras pointed at the defendant during a hearing to exclude cameras, a television van parked outside the courthouse, and the television booth set up inside the courtroom itself.[157] The Court's decision not only reversed Estes's conviction but sent an important message about limiting the intrusion of cameras in judicial proceedings. Just a few years later, in 1972, the Judicial Conference of the United States adopted a complete ban on cameras in federal courtrooms.[158]

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152 381 U.S. 532, 535 (1965).

153 *See id.* at 540–41, 544–48.

154 *Id.* at 536.

155 *Id.* at 552, 575, 577, 580 (Warren, C.J., concurring).

156 *See id.* at 586 app.

157 *See id.*

158 *See* Marjorie Cohn & David Dow, Cameras in the Courtroom: Television and the Pursuit of Justice 112 (1998); Kelli L. Sager & Karen N. Frederiksen, *Televising the Judicial Branch: In Furtherance of the Public's First Amendment Rights*, 69 S. Cal. L. Rev. 1519, 1521–22 n.8 (1996) (recounting the history of the prohibition on cameras in courtrooms).

FIGURE 5: ONE OF SEVEN PHOTOGRAPHS APPENDED TO CHIEF JUSTICE EARL WARREN'S CONCURRING OPINION IN *ESTES V. TEXAS*[159]

To be sure, the skepticism expressed in *Estes* centered on the influence of cameras in the courtroom—not the integrity of a camera's resulting images. But the choice to include the photographs revealed an interesting tension: Even as the Justices resisted letting cameras into courtrooms, they saw value in photographs as tools to bolster their own decisions.

Even so, the Court's embrace of photography remained cautious. Over the following four decades, photographs appeared in only a handful of cases, averaging roughly one per decade. Whether documenting a military base's openness in *Greer v. Spock* (1976);[160] showing the placement of a nativity scene and menorah in *County of Allegheny v. ACLU* (1989);[161] demonstrating a cross's location on statehouse grounds

159 *Estes*, 381 U.S. at 586 app.

160 424 U.S. 828, 851, 871–72 app. (Brennan, J., dissenting) (appending three photographs of military base to demonstrate it was "an open post" that should permit political expression).

161 492 U.S. 573 at 622 app. (including two photographs showing the setting of nativity scene and menorah displays).

in *Capitol Square Review & Advisory Board v. Pinette* (1995);[162] or providing context for a Ten Commandments monument in *Van Orden v. Perry* (2005),[163] the Court followed a pattern: It used photography to document spatial relationships and physical contexts.[164] This same pattern extended to the Court's other visual practices, where maps and diagrams were used to clarify geography and jurisdiction.[165] But aside from the dramatic images appended in *Estes*, the Justices seemed to have carefully avoided photographs of human subjects and emotionally charged scenes.

This cautious use of visual materials still raised concerns among legal academics. Writing in 1997, Hampton Dellinger argued that while images might be "understandable" in some contexts, their persuasive power risked misleading readers and distorting judicial analysis.[166] Photographs are especially problematic, he argued, but even maps could prove "a distraction" and contribute to "confusion" in judicial reasoning.[167] He urged the Court to "forgo future reliance" on visual materials.[168] Later, Ross E. Davies reflected on the Court's infrequent use of visuals in the first decade of the 2000s.[169] Observing what appeared to be a deliberate retreat from visual materials, he described it as a new form of judicial restraint.[170] He speculated that the Justices had either chosen "to limit themselves to cases that could be decided without lavish illustration" or determined "that there is no such thing as a case that cannot be decided without lavish illustration."[171] Either way, he framed this shift as an "admirabl[e]" break from the prior era.[172]

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162 515 U.S. 753 at 795–96 app. (Souter, J., concurring) (appending two photographs showing cross placement within broader plaza context); *id.* at 816 app. (Stevens, J., dissenting) (including closer photograph of cross to emphasize its religious effect).

163 545 U.S. 677, 702 at 706–07 app. (Breyer, J., concurring) (including bird's eye photograph and map of Capitol grounds showing monument's location among other monuments); *id.* at 736 app. (Stevens, J., dissenting) (including closer photograph of Ten Commandments monument).

164 Even the lone non-First Amendment case—the Fourth Amendment case, *Kyllo v. United States*, 533 U.S. 27 (2001)—focused on spatial imagery. *See id.* at 52 app. (Stevens, J., dissenting) (attaching infrared images of a home).

165 The Court's most consistent visual tool during these decades was the map, especially in cases involving voting districts and territorial boundary disputes. *See, e.g.*, Shaw v. Reno, 509 U.S. 630, 658 app. (1993) (racial gerrymandering challenge); Georgia v. South Carolina, 497 U.S. 376, 412–13 (1990) (interstate boundary dispute); Texas v. New Mexico, 462 U.S. 554, 577–78 (1983) (interstate water allocation case).

166 Dellinger, *supra* note 14, at 1706–07.

167 *Id.* at 1729.

168 *Id.* at 1704, 1710.

169 Davies, *supra* note 103, at 451–52.

170 *Id.*

171 *Id.*

172 *Id.*

Outside the courthouse, however, culture was moving in the opposite direction. The rise of the digital age ushered in an unprecedented era of visual communication.[173] Advances in technology made high-quality photography and videography widely accessible and easier to use.[174] Digital photography, video-sharing platforms, and the rapid rise of social media allowed everyday people to capture, share, and consume visual content on an extraordinary scale.[175] Images and videos became central to how people documented and understood events, fueling a societal shift toward visual forms of storytelling and persuasion.[176] These cultural shifts inevitably began to affect legal practice. Visuals became a growing part of courtroom advocacy—not just in jury trials, but in materials and arguments presented to judges themselves. Even in appellate courts, where juries are absent and fact-finding is largely complete, visuals and multimedia content became tools for framing legal issues, clarifying complex concepts, or creating emotional impact.[177]

It was against this backdrop that the Court issued its 2007 decision, *Scott v. Harris*.[178] In that case, a motorist who was rendered quadriplegic after being rammed by police during a high-speed chase sued for excessive force.[179] The 8-1 majority held that the officer's actions were reasonable as a matter of law because the respondent's driving posed a significant danger to bystanders and officers.[180] Central to the decision was a dashboard video of the chase, which the Court cited as "clearly" showing the plaintiff's recklessness.[181] Confronted with a dissent by Justice John Paul Stevens who argued that reasonable people could view the videotape differently (as, indeed, the district and appellate courts had concluded),[182] the majority did something unprecedented. The Court uploaded the video to its website, included a link to the

173 *See* Feigenson & Spiesel, Law on Display, *supra* note 10, at 17 ("[T]he spread of digital visual and multimedia technologies is transforming the very nature of mediated expression and communication.").

174 *Id.* at 17–19.

175 *See* Lev Grossman, *You. Yes, You. Are TIME's Person of the Year*, Time (Dec. 25, 2006, at 00:00 ET), https://time.com/archive/6596761/you-yes-you-are-times-person-of-the-year [https://perma.cc/L6FL-25KW] (describing revolution in social media).

176 *See* Timothy Lau, *"Pics or It Didn't Happen" and "Show Me the Receipts": A Folk Evidentiary Rule*, 76 Vand. L. Rev. 1681, 1683–93 (2023) (tracing the origins of "Pics or It Didn't Happen" and "Show Me the Receipts" back to the early 2000s).

177 *See* Porter, *supra* note 11, at 1695 (describing how "image-driven written argument threatens the factfinding role of the jury by placing the facts—seemingly [the truth]—before a judge").

178 550 U.S. 372 (2007).

179 *Id.* at 374–75.

180 *Id.* at 384.

181 *Id.* at 378–80.

182 *Id.* at 389, 396–97 (Stevens, J., dissenting).

video in a footnote, and said that it was "happy to allow the videotape to speak for itself."[183]

FIGURE 6: SCREENSHOT OF THE *SCOTT V. HARRIS* VIDEO[184]

The *Scott* decision marked a turning point in the Court's relationship with the visual. By uploading the video and inviting public viewing, the Court had crossed a threshold from traditional text-based reasoning to multimedia engagement. The decision elicited sharp criticism,[185] but a precedent had been set. As visual communication increasingly dominated the world outside the courthouse, the Court seemed poised to embrace its own evolution in visual reasoning. The question was no longer whether the Court would engage with visuals, but how extensively and with what consequences for judicial legitimacy.

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183 *Id.* at 378 n.5 (majority opinion).

184 *Media Files Cited in Opinions*, Scott v. Harris, SUPREME COURT OF THE UNITED STATES, https://www.supremecourt.gov/media/video/mp4files/scott_v_harris.mp4 (last visited Oct. 9, 2025).

185 *See, e.g.*, Kahan, Hoffman & Braman, *supra* note 13, at 841; FEIGENSON & SPIESEL, LAW ON DISPLAY, *supra* note 10, at 36–49; Neal Feigenson, *Visual Common Sense*, *in* LAW, CULTURE AND VISUAL STUDIES 105, 108–09 (Anne Wagner & Richard K. Sherwin eds., 2016) [hereinafter Feigenson, *Visual Common Sense*]; Naomi Mezey, *The Image Cannot Speak for Itself: Film, Summary Judgment, and Visual Literacy*, 48 VALPARAISO U. L. REV. 1 (2013); Suja A. Thomas, *The Fallacy of Dispositive Procedure*, 50 B.C. L. REV. 759, 762–65 (2009); George M. Dery III, *The Needless "Slosh" Through the "Morass of Reasonableness": The Supreme Court's Usurpation of Fact Finding Powers in Assessing Reasonable Force in* Scott v. Harris, 18 GEO. MASON UNIV. CIV. RTS. L.J. 417, 442–44 (2008); Howard Wasserman, *Video Evidence and Summary Judgment: The Procedure of* Scott v. Harris, 91 JUDICATURE 180 (2008).

D. 2010–2025: The New Visual Boom

Though photographic decisions appeared only sporadically throughout the late twentieth century (roughly once every ten years), this trend shifted dramatically after 2010. Photographs have made more regular appearances in Supreme Court opinions, appearing in approximately one case per year.[186] In addition, since the Court first uploaded the *Scott v. Harris* video to its website in 2007, it has gone on to upload nine other video and audio files to its website, as well as one animated graphic.[187] More than half of all Supreme Court opinions that include photographs have been issued in the past five years.[188] Photographs and other visual media are no longer occasional curiosities. They are a regular part of the Court's vocabulary.

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[186] The following is a list of all opinions featuring photographs since 2010. For pre-2010 "photographic" opinions, see *supra* Sections II.A, II.B, and II.C. *See* Brown v. Plata, 563 U.S. 493, 548–59 app. (2011) (prison housing unit and holding cell); Lozman v. Riviera Beach, 568 U.S. 115, 132–33 app. (2013) (floating home and wharf boat); Brumfield v. Cain, 576 U.S. 305, 350 app. (2015) (Thomas, J., dissenting) (crime victim); Walker v. Tex. Div., Sons of the Confederate Veterans, Inc., 576 U.S. 200, 220 app. (2015) (license plate); *id.* at 236 app. (Alito, J., dissenting) (same); Hernandez v. Mesa, 582 U.S. 548, 562 app. (2017) (Breyer, J., dissenting) (President Lyndon B. Johnson and Mrs. Lady Bird Johnson at the U.S. Border); Star Athletica, LLC v. Varsity Brands, Inc., 137 S. Ct. 1002, 1017 app. (2017) (cheerleader uniforms); *id.* at 450 app. (Breyer, J., concurring) (artwork); Am. Legion v. Am. Humanist Ass'n, 588 U.S. 29, 105–08 app. (2019) (Ginsburg, J., dissenting) (memorials); Egbert v. Boule, 142 S. Ct. 1793, 1800, 1801 (2022) (bed-and-breakfast accommodations); Shurtleff v. Boston, 142 S. Ct. 1583, 1594 app. (2022) (flagpoles); *id.* at 1608 app. (Gorsuch, J., concurring) (flags); Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2436, 2438, 2439 (2022) (Sotomayor, J., dissenting) (football field prayers); Ysleta del Sur Pueblo v. Texas, 142 S. Ct. 1929, 1953 app. (2022) (electronic bingo machines); Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith, 143 S. Ct. 1258 (2023) (artwork); *id.* at 1291 (Kagan, J., dissenting) (artwork); Jack Daniel's Props., Inc. v. VIP Prods. LLC, 143 S. Ct. 1578, 1584, 1585, 1590 (2023) (alcohol bottles); DeVillier v. Texas, 144 S. Ct. 938, 942 (2024) (submerged property near highway); Cassirer v. Thyssen-Bornemisza Collection Found., 142 S Ct. 1502 app. at 2094a–2094b (2022) (artwork); Bondi v. VanDerStok, 145 S. Ct. 857, 867 (2025) (firearms); Am. Freedom Def. Initiative v. King Cnty., Wash., 136 S. Ct. 1022, 1026 app. (2016) (Thomas, J., dissenting from denial of certiorari) ("Faces of Global Terrorism" advertisements); Apache Stronghold v. United States, No. 24-291, slip op. at 4 (U.S. May 27, 2025) (Gorsuch, J., dissenting from denial of certiorari) (girl at an Apache Sunrise Ceremony).

[187] *See* Media Files Cited in Opinions, Supreme Court of the United States, https://www.supremecourt.gov/media/media.aspx [https://perma.cc/CJ9V-TKP6] (last visited Oct. 6, 2025); Garland v. Cargill, 144 S. Ct. 1613, 1622 n.5 (2024) (citing a gif, https://www.supremecourt.gov/media/images/AR-15.gif [https://perma.cc/5727-3BPM] (last visited Oct. 1, 2025)). A brief note about these media files: When examining the opinions corresponding to the media files uploaded to the Court's website, only a few provide a direct link to the Supreme Court's website. Most of the opinions provide a link to external internet sources. Thus, it is unclear whether the Justices themselves approved of the posting of these specific files to the Court's website or whether this was the initiative of the Court's webmaster. If the latter, this could represent an emerging role reminiscent of nineteenth-century Reporters of Decisions, who often supplemented the Court's opinions with their own explanatory summaries and images. *See supra* Section II.A.

[188] *See* Feigenson, *Image in* AWF, *supra* note 5.

This is the Court's new visual boom. The shift is borne out in empirical work by Nancy Marder and Neal Feigenson, both of whom have catalogued image use in Supreme Court opinions. In a 2013 study, Marder identified twenty-three cases from 1997 to 2009 that included images—mostly maps, charts, and diagrams, with just a few photographs.[189] Feigenson's study, covering 2010 through 2023, found that image use nearly doubled in case frequency and nearly tripled in image volume.[190] Photographs overtook maps as the most common type of image, and Justices began embedding visuals directly into the body of their opinions rather than relegating them to appendices.[191]

Individual Justices have varied in their reliance on images, but the overall trend reflects more than personal style. Justice Breyer, for example, was particularly prolific in his use of visual content—a trait that Marder attributes in part to his interests in architecture and his previous career as a law professor.[192] But since Justice Breyer left the Court at the end of the 2021 term, the Court's visual opinions have not decreased. In fact, since his retirement, fifteen opinions (across eleven cases) have included various visual elements.[193] Five Justices have contributed to this count: Justice Thomas, Justice Alito, Justice Kagan, Justice Sotomayor, and Justice Gorsuch. Justice Thomas has issued the same amount of opinions containing photographs as Justice Breyer: five. And recent visual opinions have proven to be dynamic—for example, in the notable instance where Justice Sotomayor's opinion featuring nine visual figures was met with Justice Kagan's dissent incorporating eight of her own.[194] While the few years since Justice Breyer's retirement

189 Marder, *supra* note 14, at 334–35.

190 Feigenson, *Image in* AWF, *supra* note 5, at 86–87.

191 *See id.*

192 Marder, *supra* note 14, at 337.

193 *See, e.g.*, Andy Warhol Found. For Visual Arts, Inc. v. Goldsmith, 143 S. Ct. 1258, 1288 app. (2023) (artwork); *id.* at 1294–96, 1308–10 (Kagan, J., dissenting) (artwork); Allen v. Milligan, 143 S. Ct. 1487, 1586–48 app. (2023) (Thomas, J., dissenting) (maps); Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2042 (2023) (fact sheet); Jack Daniel's Props., Inc. v. VIP Prods. LLC, 143 S. Ct. 1578, 1584, 1585, 1590 (2023) (alcohol bottles); DeVillier v. Texas, 144 S. Ct. 938, 942 (2024) (submerged property near highway); Alexander v. S.C. State Conf. of the NAACP, 144 S. Ct. 1221, 1239, 1246 (2024) (maps); *id.* at 1286–87 (Kagan, J., dissenting) (maps); Garland v. Cargill, 144 S. Ct. 1613, 1621–22 (2024) (gun illustrations); Bondi v. VanDerStok, 145 S. Ct. 857, 867, 872 (2025) (firearms); *id.* at 501 (Thomas, J., dissenting); Mahmoud v. Taylor, 145 S. Ct. 2332, 2365–74 (2025) (storybook pages); *id.* at 2402–27 (Sotomayor, J., dissenting) (storybook); Apache Stronghold v. United States, 145 S. Ct. 1480, 1481, 1483 (2025) (mem.) (Gorsuch, J., dissenting from denial of certiorari) (girl at an Apache Sunrise Ceremony and map of area in question); MacRae v. Mattos, 145 S. Ct. 2617, 2618–19 (2025) (mem.) (Thomas, J., concurring in denial of certioriari) (screenshots of TikTok posts).

194 *Warhol*, 143 S. Ct. at 1288 app.; *id.* at 1294–96, 1308–10 (Kagan, J., dissenting). For an illuminating discussion of this case, see generally Feigenson, *Image in* AWF, *supra* note 5.

provide a narrow window and limited data, the sustained use of visuals suggests that visual opinions are here to stay.

The Court did not merely expand its use of images; it has transformed how and why it uses them. The Supreme Court's first use of photographs in a decision during this period marked a significant shift from what had come to characterize the Court's visual practice in the fifty years before. In the 2011 case, *Brown v. Plata*, the Supreme Court affirmed a lower court's order requiring the release of incarcerated people because prison overcrowding and deficient medical care failed to meet minimal Eighth Amendment requirements.[195] Justice Anthony Kennedy, the author of the opinion, appended two distinctly human-focused photographs to the Court's decision, showing rows of bunk beds in two separate prisons, and a third photograph depicting a holding cell for individuals awaiting mental health treatment.[196] The photographs were included without explanation. Unlike earlier photographs of monuments or public spaces, these images depicted people—blurred but plainly visible—in states of vulnerability.

FIGURE 7: ONE OF THREE PHOTOGRAPHS APPENDED TO THE COURT'S OPINION IN *BROWN V. PLATA*[197]

195 563 U.S. 493, 502 (2011).
196 *Id.* at 548–49 app.
197 *Id.*

The photograph included in Justice Clarence Thomas's dissent in the 2015 case *Brumfield v. Cain* was also distinctly human.[198] The case concerned Kevan Brumfield, a death-sentenced incarcerated person who argued that he was intellectually disabled and therefore ineligible for execution under the Eighth Amendment.[199] The majority held that the trial court's refusal to allow an evidentiary hearing on his claim was unreasonable and remanded the case.[200] In dissent, Justice Thomas faulted the Court for minimizing Brumfield's crime—"devot[ing] a single sentence" to it—and he instead recounted the life of the victim, Betty Smothers, a "14-year veteran of the Baton Rouge Police Department" who also "work[ed] a second job to support her family."[201] To underscore his point, Justice Thomas appended a photograph of Smothers standing outside her police car and looking directly into the camera.[202]

FIGURE 8: THE PHOTOGRAPH OF BETTY SMOTHERS APPENDED TO JUSTICE THOMAS'S DISSENT IN *BRUMFIELD V. CAIN*[203]

198 576 U.S. 305, 350 app. (2015) (Thomas, J., dissenting).
199 *Id.* at 307 (majority opinion).
200 *Id.* at 307, 310.
201 *Id.* at 325 (Thomas, J., dissenting).
202 *Id.* at 350 app.
203 *Id.*

Smothers' photograph was the first photograph of an individual person to be featured in a Supreme Court opinion.[204] The second portrait in a Supreme Court opinion would appear two years later: a photograph of President Lyndon Johnson and Mrs. Lady Bird Johnson at the U.S.-Mexico border.[205] The next portrait, a photograph of Prince.[206] The next, Marilyn Monroe.[207]

Beyond its human focus, the photograph in *Brumfield* stands out for another reason: It appears to have come from outside the legal record.[208] While historically the Justices relied primarily on the record for visual elements, they have increasingly ventured beyond case evidence to source images. Justices do not always provide a clear citation explaining where they found the image.[209] But the expanded search seems to have led them to amicus briefs,[210] the art world,[211] the pages of *Harper's Weekly*,[212] and the short films of *Schoolhouse Rock!*.[213] And in one case, Justice Breyer created his own visual: a process map detailing DNA analysis in modern forensic laboratories.[214]

The Court has also shown willingness to incorporate visuals that extend beyond the immediate legal questions at hand. Some of these visuals provide background education. For instance, in *Google v. Oracle America*, a case centered on fair use and Application Programming Interfaces, the majority opinion included a diagram explaining general computer system features and programming interfaces.[215] The diagram explicitly noted that it was "not intended to reflect any specific technology

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204 While Justice Warren's *Estes* concurrence included photographs of people, they appeared only as parts of crowds. *See* Estes v. Texas, 381 U.S. 532, 586 app. at 1–7 (1965) (Warren, C.J., concurring). Smothers marked the first individual portrait.

205 Hernandez v. Mesa, 582 U.S. 548, 562 app. (2017) (Breyer, J., dissenting).

206 Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 143 S. Ct. 1258, 1267 (2023).

207 *Id.* at 1294 (Kagan, J., dissenting).

208 *See* Brumfield v. Cain, 576 U.S. 305, 350 app. (2015) (Thomas, J., dissenting) (citing Betty Smothers's son's book, Warrick Dunn & Don Yaeger, Running for My Life: My Journey in the Game of Football and Beyond (2008)).

209 *See, e.g.*, Brown v. Plata, 563 U.S. 493, 548–49 app. at B–C (2011) (three photographs without citation).

210 *See, e.g.*, Garland v. Cargill, 144 S. Ct. 1613, 1620–22 & n.3 (2024) (six illustrations from amicus curiae brief).

211 *See, e.g.*, Star Athletica, LLC v. Varsity Brands, Inc., 137 S. Ct. 1002, 1037–38 app. (2017) (Breyer, J., dissenting) (two photographs of a lamp, Vincent Van Gogh's "Shoes," and Marcel Duchamp's "In Advance of the Broken Arm").

212 *See, e.g.*, Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246, 2270 (2020) (Alito, J., concurring) (political cartoon).

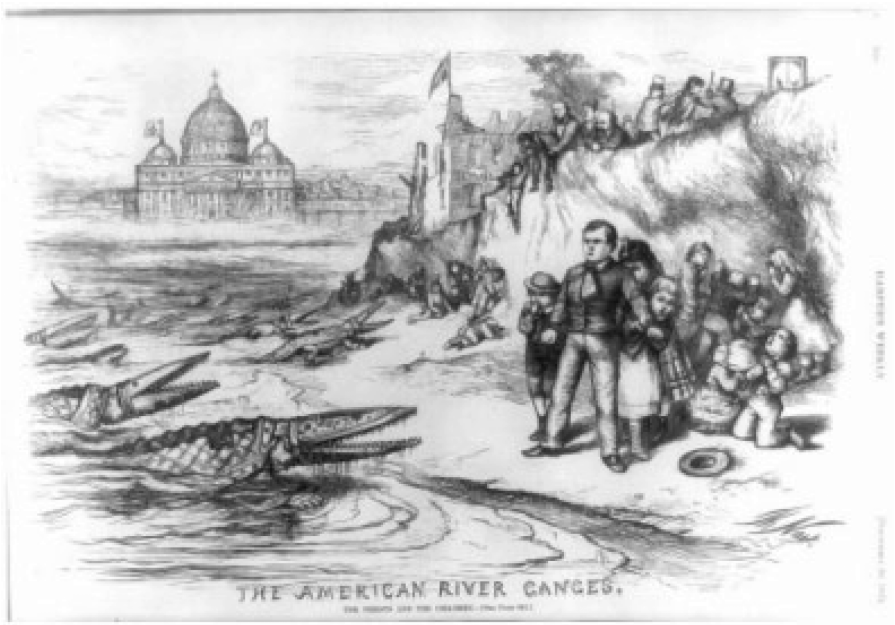
213 *See* Seila L. LLC v. Consumer Fin. Prot. Bureau, 140 S. Ct. 2183, 2226 (2020) (Kagan, J., concurring) (citing a *Schoolhouse Rock!* clip available on the Court's website).

214 Williams v. Illinois, 567 U.S. 50, 100–02 app. at A–C (2012) (Breyer, J.).

215 141 S. Ct. 1183, 1209 at app. A.

at issue in this case."[216] Other visuals offer non-essential background on the case's facts. For instance, in *Espinoza v. Montana Department of Revenue*, the Court held that a state-based scholarship program that provided public funds to allow students to attend private schools could not exclude religious schools from eligibility.[217] In his concurrence, Justice Samuel Alito emphasized the law's discriminatory origins, pointing to its roots in anti-Catholic animus.[218] To emphasize his point, he included an 1871 cartoon—"The American River Ganges" by Thomas Nast—that captured "[t]he feelings of the day," showing Catholic bishops as crocodiles approaching American children.[219]

FIGURE 9: *THE AMERICAN RIVER GANGES*[220]



What emerges from these developments is not merely an increase in the number of visuals but a transformation in their role. The Justices are no longer reluctant users of images but active curators. They have moved beyond using visuals merely to ground legal analysis in concrete evidence or explain complex technical concepts. Instead,

216 *Id.*
217 *Espinoza*, 140 S. Ct. at 2251, 2262.
218 *Id.* at 2268–69 (Alito, J., concurring).
219 *Id.* at 2270.
220 *Id.*

they increasingly deploy visuals to engage readers emotionally and to persuade them of the decision's correctness. In other words, the visual, once peripheral, has become central to how the Court communicates its decisions and authority.

This transformation raises crucial questions about whether the Court's visual use supports or undermines the legitimacy principles that have traditionally governed judicial communication. Part III turns to those questions.

III
Assessing Visual Opinions

The preceding Parts traced two different stories: first, how courts have traditionally performed legitimacy through the medium of written opinions; and second, how the Supreme Court has evolved in its use of images. This Part brings those stories together, asking what the Court's visual practices reveal about the performance of judicial legitimacy. It returns to the roles identified in Part I—the principled decisionmaker, the impartial decider, and the public servant—to consider how visuals reshape those performances.

The analysis finds that visual content creates both opportunities and risks for judicial legitimacy. Images can illustrate complex concepts and create a more direct line of communication with the public. But they can also short-circuit careful legal analysis, amplify implicit bias, and create tensions between accessible communication and principled analysis. Ultimately, this Part suggests that the Court's visual practices require more careful attention to how they affect the legitimacy performances that shape judicial communication.

A. The Principled Decisionmaker and Visual Facts

Recall that the principled decisionmaker claims legitimacy by demonstrating adherence to reliable methods for finding facts and applying law. This performance depends on signaling diligence and methodological rigor: framing opinions around clear governing rules, citing precedent, demonstrating fidelity to the record, and confronting "bad" facts and authority.[221] The goal is to apply legal principles with an appearance of scientific rigor to an objective account of the facts.

Visuals can support this performance in several ways. Photographs, charts, or diagrams can visibly tether opinions to the evidentiary record, creating the impression that courts are showing facts rather than simply

[221] *See supra* Section I.B.1.

telling them.[222] Visuals also allow judges to present the facts in fuller detail than words alone might manage, capturing technical or spatial features that would otherwise remain abstract.[223] In this sense, images can project factual comprehensiveness by suggesting that the Court has confronted the complexity of the record rather than flattened it into selective narrative. Moreover, because visuals—especially photographs—often present themselves as direct "windows onto reality," they can amplify the impression that judicial reasoning rests on "objective" evidence.[224]

The apparent objectivity of visuals, however, can also create a false sense of methodological rigor. Because images seem to offer unmediated access to "what really happened," they can invite a different (and potentially less rigorous) mode of reasoning than the careful textual analysis that has traditionally anchored judicial legitimacy. Judges, like everyone else, are susceptible to "naïve realism," or the belief that one's perception reflects objective reality.[225] Photographs in particular exploit this tendency. The human brain processes visual information in as little as thirteen milliseconds,[226] creating an illusion of instant comprehension.[227] Upon seeing an image, people often feel they fully understand what it depicts.[228] Research shows that information paired with visuals is perceived as more credible, even when those visuals are irrelevant or misleading.[229]

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222 *See* Porter, *supra* note 11, at 1740 ("The most common purpose of images in opinions is explanatory . . . ."); Lau, *supra* note 176, at 1691 (noting the preference for "pics" over "verbal accounts of events").

223 *See* Marder, *supra* note 14, at 358 (explaining that visuals can "reveal the justices' reasoning process" and "make . . . opinions more accessible").

224 *See, e.g.*, Alex Kozinski & Robert Johnson, *Of Cameras and Courtrooms*, 20 Fordham Intell. Prop. Media & Ent. L.J. 1107, 1127 (2010) (arguing that cameras are "capable of truthfully and authoritatively recounting the events of trial . . . in order to set the record straight"); Porter, *supra* note 11, at 1754 (explaining that photographs seem to provide "windows onto reality"); Kendall L. Walton, *Transparent Pictures: On the Nature of Photographic Realism*, 11 Critical Inquiry 246, 250 (Dec. 1984) (exploring why photographs enjoy a "special status" of realism).

225 For discussions of naïve realism, see, for example, Feigenson & Spiesel, Law on Display, *supra* note 10, at 8–11; Neal Feigenson, *Naïve Realism and Visual Evidence: Theory, Research, and Legal Applications*, 31 Psych. Pub. Pol'y & L. 56, 61 (2025); Feigenson, *Visual Common Sense*, *supra* note 185, at 105–06; Porter, *supra* note 11, at 1756; Kahan, Hoffman & Braman, *supra* note 13, at 895.

226 Mary C. Potter, Brad Wyble, Carl Erick Hagmann & Emily S. McCourt, *Detecting Meaning in RSVP at 13 ms Per Picture*, 76 Attention Perception & Psychophysics 270, 270–71 (2014).

227 Richard K. Sherwin, Neal Feigenson & Christina Spiesel, *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, 243 (2006); Feigenson & Spiesel, Law on Display, *supra* note 10, at 7.

228 *See* Porter, *supra* note 11, at 1754; Tushnet, *supra* note 12, at 690; Feigenson & Spiesel, Law on Display, *supra* note 10, at 9.

229 *See, e.g.*, Eryn J. Newman, Maryanne Garry, Daniel M. Bernstein, Justin Kantner & D. Stephen Lindsay, *Nonprobative Photographs (or Words) Inflate Truthiness*, 19 Psychonomic

This inflated trust encourages overconfidence, tempting both judges and readers to treat images as dispositive on their own.[230] For a court claiming legitimacy as a principled decisionmaker, this is a double-edged sword. Visuals can reinforce the appearance of factual comprehensiveness, but they also risk conflating viewer interpretation of an image with "objective" fact.

The risks of equating visual perception with legal certainty are evident in *Scott v. Harris*.[231] Recall that the Supreme Court reviewed a dashcam video showing a high-speed police chase that ended when an officer rammed the fleeing car, leaving the respondent quadriplegic.[232] Rather than allowing the case to go to a jury, the 8-1 Court held that the police officer's actions were reasonable as a matter of law, included a link to the video, and remarked that it was "happy to allow the videotape to speak for itself."[233]

By letting the video "speak for itself," the Court substituted the visual for principled legal analysis. To be sure, the opinion was not devoid of analysis. But at a crucial moment—when the dissent pointed out that reasonable people may see the facts differently—the majority did two things: It declared the video dispositive by insisting that reasonable people could not disagree, and then it appealed directly to the public by linking to the video and presenting it as self-evident.[234] Subsequent research confirmed the problem with this approach. When researchers showed the footage to diverse viewers, they found that demographic characteristics such as race, socioeconomic status, and political ideology significantly influenced whether viewers deemed the officer's actions reasonable or excessive.[235] The Court's assumption that the video yielded only one conclusion not only proved empirically false but also

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BULL. REV. 969, 973 (2012) (finding that "the mere presence of non-probative information such as photos might rapidly inflate the perceived truth of many types of true and false claims"); Steven J. Frenda, Eric D. Knowles, William Saletan & Elizabeth F. Loftus, *False Memories of Fabricated Political Events*, 49 J. EXPERIMENTAL SOC. PSYCH. 280, 283–85 (2013) (finding that seeing a doctored photo of a fabricated event—like former President Obama shaking hands with the former leader of Iran—led people to remember having witnessed that false event on the news); Teneille Brown & Emily Murphy, *Through a Scanner Darkly: Functional Neuroimaging as Evidence of a Criminal Defendant's Past Mental States*, 62 STAN. L. REV. 1119, 1201–02 (2010) ("These data lend support to the argument that brain images have unique persuasive power, causing viewers to overlook serious logical errors and, therefore, to make improper inferences.").

230 Sherwin, Feigenson & Spiesel, *Law in the Digital Age*, *supra* note 10, at 244; Feigenson, *Visual Common Sense*, *supra* note 185, at 105–06.

231 550 U.S. 372 (2007).

232 *Id.* at 375.

233 *Id.* at 380–81, 386, 378 n.5, 386.

234 *See* Grove, *supra* note 15, at 2245 (describing tension between sociological and legal legitimacy).

235 Kahan, Hoffman & Braman, *supra* note 13, at 879.

"deprived the decision of any prospect of legitimacy in the eyes of that subcommunity whose members saw the facts differently."[236]

The apparent objectivity of visuals creates another risk for principled decisionmaking: the illusion of comprehensive fact-finding. Because images seem to offer direct access to events, judges who include visuals may appear to have grappled more thoroughly with the record. Yet visual evidence is just as susceptible to selective presentation as textual narrative. Because visual information tends to be more memorable and persuasive than text, visual accounts often become the dominant telling of events, crowding out alternative interpretations.[237] When judges disagree about what a picture shows, it reveals how comprehensive fact-finding can reflect strategic curation rather than neutral observation.

Justice Sonia Sotomayor's use of three photographs in her dissent in *Kennedy v. Bremerton School District* provides an illuminating example.[238] The 2022 case centered on Joseph Kennedy, a public high school football coach whose practice of praying at midfield after games concerned the school district, which asked him to stop on Establishment Clause grounds.[239] After Kennedy refused, the district placed him on administrative leave, issued a poor evaluation, and recommended against his rehire.[240] Kennedy sued, arguing that the district violated the First Amendment's Free Speech and Free Exercise Clauses.[241] In a 6-3 decision the Court ruled in favor of Kennedy, holding that his post-game prayers were private religious expression.[242]

The majority opinion, composed entirely of text, repeatedly emphasized the "private," "quiet," and "personal" nature of Kennedy's prayers.[243] The author, Justice Neil Gorsuch, described Kennedy's actions as a personal act of faith, occurring after games at a time when he did not solicit or invite student participation.[244] The opinion stressed that Kennedy did not actively encourage students to join, nor did he use his authority

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236 *Id.* at 842.

237 Miriam Z. Mintzer & Joan Gay Snodgrass, *The Picture Superiority Effect: Support for the Distinctiveness Model*, 112 Am. J. Psych. 113, 113 (1999); Porter, *supra* note 11, at 1753 (discussing picture superiority effect); *see also* Stephanie Lee Sargent, *Image Effects on Selective Exposure to Computer-Mediated News Stories*, 23 Comput. in Hum. Behav. 720–21 (2007) (discussing ability of images to capture attention).

238 142 S. Ct. 2407 (2022).

239 *Id.* at 2415, 2417–18.

240 *Id.* at 2418–19.

241 *Id.* at 2419.

242 *Id.* at 2432–33.

243 To provide an imperfect metric: The majority opinion, spanning roughly nineteen pages, uses the word "private" twenty-two times, "quiet" (or "quietly") twelve times, and "personal" eight times.

244 *See Kennedy*, 142 S. Ct. at 2416.

as a coach to pressure anyone.[245] Justice Gorsuch further highlighted that Kennedy's prayers were often conducted in solitude, reinforcing the idea that these moments were intimate and personal.[246] This portrayal aligns with the Court's broader reasoning that the school's interference with Kennedy's prayers violated his First Amendment rights.

Justice Sotomayor's dissent contested the majority's portrayal of Kennedy's prayers as "private" and "quiet."[247] She contended that the record showed otherwise, noting that Kennedy had asked coaches and players from other teams to join him, led pre-game prayers in the locker room, and prayed out loud with his players, including while the school district's inquiry into him was pending.[248] As proof, she included three photographs directly in her dissent: two of Kennedy standing in a group of kneeling students at midfield and one showing him in a prayer circle with spectators.[249]

FIGURE 10: ONE OF THREE PHOTOGRAPHS IN JUSTICE SOTOMAYOR'S DISSENT IN *KENNEDY*[250]

245 *Id.* at 2416, 2430.

246 *Id.* at 2416 ("Initially, Mr. Kennedy prayed on his own.").

247 *See id.* at 2435 ("As the majority tells it, Kennedy, a coach for the District's football program, 'lost his job' for 'pray[ing] quietly while his students were otherwise occupied.' . . . The record before us, however, tells a different story.") (alteration in original).

248 *Id.* at 2435–36 (Sotomayor, J., dissenting).

249 *Id.* at 2436, 2438–39.

250 *Id.* at 2438.

This stark contrast between the majority's characterization of the facts and the dissent's photographs leads to a few possible conclusions, each with distinct implications for the principled decisionmaker. One possibility, as Justice Sotomayor suggests, is that the photographs reveal significant omissions in the majority's factual analysis.[251] On this view, the images serve not just as a correction to the holding in *Kennedy*, but as a broader indictment of the majority's unwillingness to grapple with the full record.[252] Here is compelling evidence, she implies, and here is a Court either unwilling or uninterested in reckoning with it. Such evasion weakens public trust in the judiciary's role as an honest broker of fact and law.[253]

Another possibility is that the dissent's portrayal of the facts is itself incomplete or misleading. Photographs, after all, can distort reality as much as they reveal it.[254] Some commentators have noted that one difference between the majority's and Justice Sotomayor's factual accounts lies in their temporal scope: The majority examined Kennedy's conduct at the three specific games identified in the School District's disciplinary letter, while Justice Sotomayor looked at Kennedy's broader pattern of behavior.[255] Of the three photographs featured in Justice Sotomayor's dissent, one predates what the majority claims is the relevant time period, while the other two show Kennedy praying with people *other* than the players on his team—one with players from the opposing team (see Figure 10 above) and the other with adult spectators. On this reading, the dissent's version of events is also selective, raising the question of whether either side offers a truly "objective" account of the facts.

The point here is not which rendition of the facts is correct but what visual opinions expose about the performance of principled reasoning. Judicial disagreements over which facts are relevant are

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251 *Id.* at 2435 (contrasting the majority's version of events with the record before the Court).

252 *See, e.g.*, Mike Fox, *Faculty Available for Comment on 2021 Supreme Court Term*, Univ. Va. Sch. L.: News (June 30, 2022) (statement of Douglas Laycock on *Kennedy v. Bremerton School District*), https://www.law.virginia.edu/news/202206/faculty-available-comment-2021-supreme-court-term [https://perma.cc/8HNE-7SR5] (describing the majority's "systematic gerrymander" of the facts); *see also* Melissa Murray, *Children of Men: The Roberts Court's Jurisprudence of Masculinity*, 60 Hou. L. Rev. 799, 836–37 (2023) (discussing the majority's failure to grapple with key facts).

253 Robert N. Weiner, *Pretext, Reality, and Verisimilitude: Truth-Seeking in the Supreme Court*, 56 U. Mich. J.L. Reform 385, 401 (2023) ("When decisions blink the obvious facts, it raises questions regarding the Court's candor, which is essential to its legitimacy.").

254 *See supra* notes 249–52 and accompanying text.

255 *See, e.g.*, Ed Whelan, *Left's Persistent Myth on 'Rewriting Facts' in* Kennedy v. Bremerton, Nat'l Rev. (Dec. 19, 2022), https://www.nationalreview.com/bench-memos/lefts-persistent-myth-on-rewriting-facts-in-kennedy-v-bremerton [https://perma.cc/5Y7P-62EJ].

not new.[256] Yet visuals can magnify those disputes, making them more visible and fraught. When Justice Sotomayor included photographs that appeared to contradict the majority's textual narrative, she made visible what is usually hidden: the selective presentation inherent in all judicial fact-telling. The majority's emphasis on Kennedy's "private" and "quiet" prayers might have seemed like neutral description without the competing visual evidence. But when viewed against photographs showing Kennedy surrounded by students and spectators, the majority's word choices appeared strategic rather than objective. On the other hand, the photographs themselves reflect a particular framing of events, potentially overshadowing other contextual evidence that might complicate the "real" story. Visual evidence, precisely because it seems so compelling, can displace more nuanced understandings of the facts—understandings that neither the majority's nor the dissents' account may fully capture.

This creates a legitimacy problem for the principled decisionmaker. Visuals that are meant to signal comprehensive engagement with the record can instead highlight the narrative construction inherent in all judicial opinions. Rather than enhancing the appearance of methodological rigor, competing visual narratives can make both sides' selective framing more apparent, undermining the very objectivity and fidelity to the record that principled decisionmaking seeks to project.

B. The Impartial Decider and Unbiased Images

Judges claim impartiality by presenting themselves as calm arbiters: removed from advocacy and resistant to overt emotion.[257] Visuals, however, complicate this performance. While they may appear to speak with an impartial voice,[258] images are never truly neutral. Every visual reflects choices—of angle, scale, framing, and emphasis—that shape its story. A videographer's camera angle can make an interrogation look more or less coercive.[259] A photographer's choices about lighting and

256 *See* Weiner, *supra* note 253, at 400–01 (discussing the Supreme Court's "commitment to truth in litigation" in its opinions).

257 *See supra* Section I.B.

258 *See, e.g.*, Kozinski & Johnson, *supra* note 224, at 1127–28 (discussing the use of cameras to record courtroom proceedings to provide the public with an image of impartiality and authenticity).

259 Jennifer L. Mnookin, Opinion, *Can a Jury Believe What It Sees?*, N.Y. Times (July 13, 2014), https://www.nytimes.com/2014/07/14/opinion/videotaped-confessions-can-be-misleading.html [https://perma.cc/Z97C-TVUX] ("Videotaped confessions have value, but they can also be misleading.").

distance can amplify or diminish the prominence of a religious display.[260] A mapmaker's decisions about scale or color can convey subtle messages that influence the viewer's interpretation.[261] These technical choices quietly shape the story a visual tells.

These choices become especially consequential when advocacy groups create images that courts later treat as neutral illustrations. The gun illustrations in *Garland v. Cargill* provide a revealing example.[262] There, the Court held that a semiautomatic rifle equipped with a bump stock could not be regulated as a "machinegun" under the National Firearms Act.[263] Key to the majority's analysis were the mechanics of a semiautomatic rifle, how they differ from a machinegun, and how "[n]othing changes when a semiautomatic rifle is equipped with a bump stock."[264] To illustrate this point, the Court included six black-and-white diagrams[265] and a hyperlink to one animated image.[266] The diagrams illustrate that each shot requires an independent pull of the trigger because other components of the firearm prevent it from firing until the trigger is released and reengaged.[267] This process, the majority concluded, contrasts with the "single function of the trigger" characteristic of a machinegun.[268]

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260 *See* Dellinger, *supra* note 14, at 1723 (discussing how the photographs in *Cnty. of Allegheny v. Am. C.L. Union* "subtly slant the argument," with the "photograph of the constitutionally acceptable menorah [being] taken from a distance" and the photograph of "the créche, which was held unconstitutional, [being] shot from a tight angle, thereby exaggerating its size").

261 *See* Joshua Sokol, *Can This New Map Fix Our Distorted Views of the World?*, N.Y. Times (Mar. 9, 2021), https://www.nytimes.com/2021/02/24/science/new-world-map.html [https://perma.cc/L3GB-R7NB] (explaining how map distortions of shape and size impact the interpretation of maps); Carissa Carter, The Secret Language of Maps: How to Tell Visual Stories with Data 64–69 (2022) (discussing the role of bias in map creation by the mapmaker and interpretation by the viewer); Danielle Albers Szafir, *The Good, the Bad, and the Biased: Five Ways Visualizations Can Mislead (and How to Fix Them)*, ACM Interactions 26–33 (2018), https://cmci.colorado.edu/visualab/papers/p26-szafir.pdf [https://perma.cc/SQ5B-6WQA] (reviewing how forms of visualizations can "lead to engaging imagery but false conclusions").

262 144 S. Ct. 1613 (2024).

263 *Id.* at 1617.

264 *Id.* at 1622.

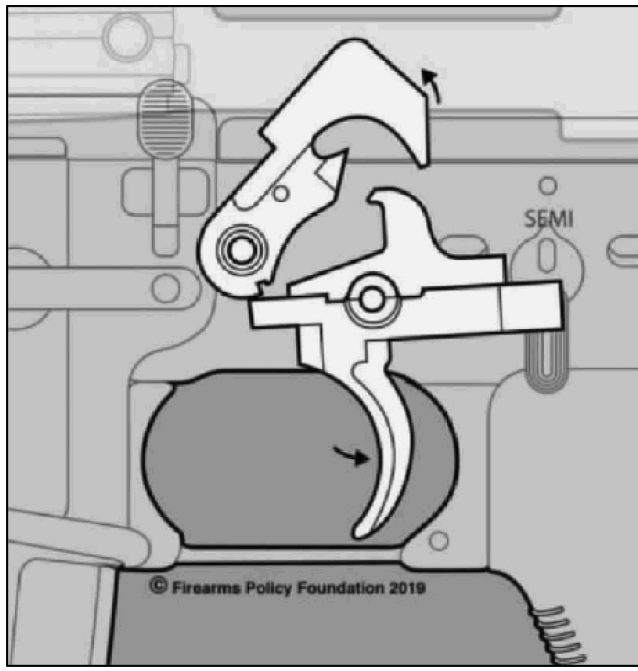
265 *Id.* at 1621–22 figs. 1–6.

266 *Id.* at 1622 n.5 (providing the following hyperlink: https://www.supremecourt.gov/media/images/AR-15.gif [https://perma.cc/H9XY-LX7P]).

267 *See id.* at 1621–22 ("A semiautomatic rifle must complete this cycle for each shot fired.").

268 *Id.* at 1622.

FIGURE 11: ONE OF SIX DIAGRAMS IN *CARGILL*[269]



The images provide technical clarity to the majority opinion. They give readers a visual guide to a firearm's mechanics and support the majority's textual analysis with concrete, easy-to-follow illustrations. Though the dissent contends that focusing on a firearm's internal mechanics is misguided (and "ignor[es] the human act on the trigger referenced by the statute"[270]), the visuals offer a detailed framework for understanding the Court's decision.

At the same time, these apparently neutral diagrams conceal their advocacy origins. They were not technical renderings by a firearm manufacturer, nor agreed-upon illustrations provided by the parties. Instead, they were illustrations commissioned by an advocacy group, drawn by an illustration and marketing firm, and submitted in an amicus brief supporting the challenge to the bump stock regulation.[271] Even if the illustrations accurately depict the internal mechanics of a gun,

269 *Id.* at 1621 fig. 2.

270 *Id.* at 1631 (Sotomayor, J., dissenting).

271 FIREARMS POL'Y COAL., *About Those Sweet, Sweet Supreme Court AR-15 Illustrations…* (June 20, 2024), https://www.firearmspolicy.org/about-those-sweet-sweet-supreme-court-ar-15-illustrations [https://perma.cc/TZ42-82TV].

their origins cast doubt on their seeming neutrality.[272] While appearing objective and technical, the diagrams were crafted to support a specific legal argument. By making the diagrams part of its reasoning, the Court quietly smuggled advocacy-driven visuals into authoritative law, blurring the line between impartial judgment and partisan argument.[273]

Even setting aside their partisan origins, the gun illustrations show how seemingly neutral diagrams reflect choices about how a case should be framed. The diagrams present the bump stock question as a matter of understanding the internal mechanics of a gun. They also portray the Court as a technical institution whose decisions are compelled by technical logic rather than judicial interpretation. Nothing about the schematics seems designed to exploit one's emotions or play on one's implicit biases. Instead, they project clinical detachment, presenting the Court as neutral and dispassionate.

This technical framing, however, represents only one possible approach to the case. The bump stock regulation at issue arose in the wake of the 2017 Las Vegas shooting, which killed fifty-eight people and injured over five hundred more.[274] Pictures from the tragedy would have told a radically different story about the case—one centered on human devastation rather than mechanical detail,[275] and one that might have supported Justice Sotomayor's dissenting emphasis on "the human act on the trigger."[276] When evaluated against the backdrop of mass casualties, the mechanical distinctions that the majority's diagrams emphasized might seem irrelevant compared to the lethal consequences that the weapon enabled.

None of this is to say that including images of the tragedy would have been the "right" choice, or that the Court's focus on mechanics was necessarily the "wrong" one. But by giving only "spare treatment" to the tragedy that prompted the regulation, the Court presented the

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272 Consider, for example, how it would appear if the Supreme Court relied on technical diagrams of voting machines created by the ACLU in an amicus brief for an election security case. Even if technically accurate, the illustrations' origins would raise questions about judicial neutrality among audiences skeptical of the ACLU, particularly if the opposing parties had no opportunity to independently verify or contest the technical illustrations.

273 *See* Douglas R. Richmond, *Unoriginal Sin: The Problem of Judicial Plagiarism*, 45 Ariz. State L.J. 1077, 1086 (2013) ("Copying a party's brief, legal memorandum, or other submission verbatim potentially signals that the court did not independently assess the case as a matter of fact or law, and may create the appearance of bias.").

274 *Cargill*, 144 S. Ct. at 1618.

275 *See, e.g.*, Andrew Katz, *The Story Behind the Most Haunting Photos From the Las Vegas Shooting*, Time.com (Oct. 2, 2017, at 17:17 ET), https://time.com/4966096/las-vegas-shooting-photographer-eyewitness [https://perma.cc/59PS-3Q3A] (describing the experience of photographing victims of the 2017 Las Vegas shooting).

276 *See Cargill*, 144 S. Ct. at 1631 (Sotomayor, J., dissenting).

dispute in a way that was narrower and more contained.[277] As Justice Alito emphasized in his concurrence: "The horrible shooting spree in Las Vegas in 2017 did not change the statutory text or its meaning."[278] The diagrams reinforced that impression, transforming a case born of horrific violence into a technical analysis. The Court framed itself as merely calling "balls and strikes,"[279] masking interpretive choice beneath the appearance of neutral technical judgment.[280]

Visual choices—whether technical diagrams or human photographs—can channel and shape emotional responses. At the same time, the prevailing narrative frames emotions as inconsistent with impartiality.[281] Visuals, however, naturally engage viewers' feelings, often triggering emotional responses before conscious deliberation can begin.[282] Even symbols and images of inanimate objects can hold socially ingrained meanings that evoke strong and immediate feelings.[283] For judges seeking to project impartial authority, pictures engage the very emotional responses that impartial performance seeks to suppress.

The *Cargill* diagrams, despite their technical appearance, are not immune to this dynamic. Their clean, mechanical character invites readers to trust the Court's analysis by making it appear objective and scientifically grounded, while simultaneously distancing it from the human consequences of gun violence.[284] This emotional work serves the majority's legal argument as much as any doctrinal reasoning,

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277 Tani, *supra* note 1, at 79 ("As the captive audience to these narratives, when is it fair to ask for something different, something more?").

278 *Cargill*, 144 S. Ct. at 1627 (Alito, J., concurring).

279 *See Confirmation Hearing on the Nomination of John G. Roberts, Jr. to Be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 56 (2005) (statement of then-Hon. John G. Roberts, Jr., D.C. Cir. J.).

280 *See also* Tani, *supra* note 1, at 61 ("A narrative of ease and obviousness serves the Court institutionally: This is a fraught area of law, and it will not do for the Court to seem like an inept supervisor of the lower courts, or like an actor that is doing something other than calling 'balls and strikes.'").

281 *See supra* Section I.B.; *see also* Terry A. Maroney, *Emotional Regulation and Judicial Behavior*, 99 Calif. L. Rev. 1485, 1489 (2011) ("If the pre-realist vision of the 'good judge' was of one who felt no emotion whatsoever, the contemporary vision is of one who recognizes her emotions and firmly puts them aside.").

282 *See* Feigenson & Spiesel, Law on Display, *supra* note 10, at 8 (explaining that "[t]he same areas of the brain that process visual perceptions are also responsible for mental imagery; and these are connected to the amygdala and other areas of the brain critical for emotion" and noting that "because visual information acquires emotional valence before that information ever gets to the cortex, the whole picture passes along its emotional colors even as we begin to decode its parts.").

283 *See, e.g.*, Texas v. Johnson, 491 U.S. 397, 404–05 (1989) (discussing the communicative nature of flags and flag burning).

284 *See* Tani, *supra* note 1, at 67 ("At a time when gun violence is a national public health crisis, with disproportionate effects on already-disadvantaged groups, the shelving of these arguments should be hard, not easy.").

smoothing an otherwise fraught subject into something more palatable. The diagrams shape not just what readers understand but how they *feel* about the Court's work.

Other cases make this emotional dimension more explicit. Justice Kennedy's decision to append photographs of overcrowded prisons to his *Brown v. Plata* opinion[285]—images that were included without explanation and that Justice Breyer called "pretty horrendous" during oral argument[286]—directed the reader's gaze away from doctrinal abstraction and toward the lived reality of incarceration. Similarly, Justice Thomas's inclusion of a photograph of Betty Smothers, the victim of the respondent's crime in *Brumfield v. Cain*, immediately reframed the dispute around human loss, contrasting sharply with the majority's procedural focus.[287]

These visuals channel the attention and sympathies of readers, shaping who or what the Court presents as deserving concern.[288] While the gun diagrams in *Cargill* filtered out human costs and framed the case as a technical question, Justice Kennedy's prison photographs and Justice Thomas's victim portrait redirected focus to certain individuals' humanity. In each instance, the choice of image carried with it an implicit invitation about where readers should direct their empathy. Such emotional appeals have drawn both praise and criticism from legal observers.[289]

Beyond directing readers' emotion, visuals can also expose the value commitments that judicial rhetoric typically conceals. Justice Thomas's photograph of Betty Smothers, for instance, signaled more than sympathy for crime victims. To some observers, it suggested his personal identification with the victim's son and with narratives about overcoming adversity and personal responsibility.[290] Visual

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285 563 U.S. 493, 547–49 app. at A–C (2011).

286 Transcript of Oral Argument at 20:6–21, Brown v. Plata, 563 U.S. 493 (2011) (No. 09-1233).

287 576 U.S. 305, 350 app. (2015) (Thomas, J., dissenting).

288 Tani, *supra* note 1, at 80 ("And concern is no small thing.").

289 *Compare* John Fund & Hans A. Von Spakovsky, *Justice Thomas's Dissent in the* Brumfield *Death-Penalty Case Shows Sympathy for the Victim, Not Her Killer*, Nat'l Rev. (June 19, 2015), https://www.nationalreview.com/2015/06/justice-thomass-dissent-in-brumfield-shows-sympathy-for-the-victim-not-her-killer [https://perma.cc/N3G5-JJ4A] ("And Thomas adds an appendix to his dissent that we have never seen in a Supreme Court opinion: a photograph of Betty Smothers in her police uniform standing beside her police cruiser. That is what this case was all about—lest we forget."), *with* Mark Joseph Stern, *Has Clarence Thomas Forgotten What His Job Is?*, Slate (June 18, 2015), https://slate.com/news-and-politics/2015/06/clarence-thomas-opinion-in-brumfield-v-cain-has-he-forgotten-hes-a-supreme-court-justice.html [https://perma.cc/FP2X-4LC3] ("Thomas' dissent is an effort to muddy the waters, to pass off his own retributive notions of morality as rational legal logic.").

290 *See* Stephanie Mencimer, *Justice Clarence Thomas Cites NFL Player's Memoir to Support Executing Mentally Disabled Man*, Mother Jones (June 18, 2015), https://www.

choices can convince viewers that they understand what really drove the decision: not neutral legal principle, but personal conviction and ideological alignment. In this way, visuals can pull back the curtain on judicial decisionmaking, showing audiences what they believe actually motivates judges.

For a Court committed to performing the role of the impartial decider, this is a precarious dynamic. The impartial judge is not supposed to signal advocacy, invite sympathy, or display moral commitments. Yet visuals, whether diagrams or photographs, often do just that. Of course, a judge's words can also signal advocacy and bias. But when visuals seem to bypass legal reasoning,[291] they can expose judicial motivation more dramatically than textual advocacy would. Rather than enhancing the performance of "neutral" judging, visuals can make a judge's personal and political commitments appear especially visible, undermining the very impartiality that judicial legitimacy traditionally requires.

C. The Public Servant and Visual Communication

Judges perform legitimacy as public servants by showing that they are accessible and accountable to the public. Traditionally, this means writing in plain language, defining technical terms, and grounding abstract reasoning in concrete examples that resonate with lived experience.[292] Visuals extend these strategies. Rarely are visuals directed at attorneys, who are usually more focused on doctrine and precedent.[293] Nor are they usually directed at litigants, who usually know the facts of their case intimately.[294] Instead, visual opinions are often included for broader audiences seeking to make sense of the Court's work. And visuals, like plain language or concrete examples, offer a powerful way to make the Court's work more legible (or, at least, seemingly more legible) to non-experts.

This is especially the case in today's visual culture.[295] If judicial legitimacy depends on public comprehension of judicial opinions,

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motherjones.com/politics/2015/06/clarence-thomas-brumfield-v-cain [https://perma.cc/5R64-UCQW] ("Thomas clearly identifies personally here with [Smothers' son].").

291 *See Brumfield*, 576 U.S. at 350 (Alito, J., dissenting) ("The story recounted in [part of Justice Thomas's dissent] is inspiring and will serve a very beneficial purpose if widely read, but I do not want to suggest that it is essential to the legal analysis in this case.").

292 *See supra* Section I.B.

293 *Cf.* Tani, *supra* note 1, at 53 ("Who are such narratives for? Probably not for administrative law specialists, who are likely to see them as window dressing.").

294 That said, there may be exceptions. Justice Thomas's inclusion of a photograph in *Brumfield v. Cain* may have been intended, at least in part, for a more personal audience—Smothers' sons—rather than for the broader judicial or legal community.

295 *See* Feigenson & Spiesel, Law on Display, *supra* note 10, at 14 ("[A] person in contemporary culture sees more constructed images in a day than someone living a few centuries ago did in a lifetime.").

courts must meet people where they are, and contemporary audiences increasingly expect visual communication as a marker of relevance and accessibility. Visuals thus represent a pragmatic response to how people process information. Even more, visual opinions may serve as a strategic response to the legitimacy risks created by relying on intermediaries to explain judicial decisions.[296] When complex legal holdings are filtered through news commentary or social media, meaning can be distorted or oversimplified.[297] Visuals can make readers feel more equipped to understand judicial reasoning directly, reducing their dependence on expert interpretation. Moreover, because visuals circulate more easily than text, they create new primary sources for public understanding.[298]

Images, despite all their flaws, can of course help people understand concepts.[299] The Court's inclusion of technical diagrams in *Google LLC v. Oracle America, Inc.* provides an example.[300] While the diagrams did not reflect any specific technology in the case, the Court noted that "[s]ome readers might find it helpful to start with an explanation of what a 'software platform' is," acknowledging that judicial opinions must serve audiences lacking specialized technical knowledge.[301] In this way, the diagram functioned like a plain-language explanation—an educational device designed to make otherwise difficult material more accessible. By embedding such background visuals, the Court enacted its public-facing obligation to render its work intelligible to those it governs.

Visuals can also connect abstract legal reasoning to the real world. For instance, in *Cassirer v. Thyssen-Bornemisza Collection Foundation*, the Court considered what Justice Elena Kagan described as a "prosaic" legal question concerning choice of law under the Foreign Sovereign Immunities Act.[302] Yet appended to the decision, Justice Kagan included

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296 *See* JOHN G. ROBERTS, JR., 2024 YEAR-END REPORT ON THE FEDERAL JUDICIARY 7 (Dec. 31, 2024), https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf [https://perma.cc/P82B-3CGV] (defending the federal judicary's independence amidst disinformation threatening the judiciary's legitimacy).

297 *See id.* ("[T]he modern disinformation problem is magnified by social media, which provides a ready channel to 'instantly spread rumor and false information.'").

298 *Cf.* Jack Birle, *Sotomayor, Barrett Encourage Public to Read Supreme Court Opinions as Decisions Get Fiery*, WASH. EXAM'R (Sep. 9, 2025), https://www.washingtonexaminer.com/news/supreme-court/3798506/sotomayor-barrett-encourage-public-read-supreme-court-opinions [https://perma.cc/BVC5-KWKZ] (describing Justices Sotomayor's and Barrett's public recommendations to read Supreme Court opinions for their legal analysis rather than rely on media summaries of their holdings).

299 *See* Marder, *supra* note 14, at 359 ("Images in Supreme Court opinions also can make opinions more accessible to the general public.").

300 141 S. Ct. 1183, 1209–10 app. at A, B (2021).

301 *Id.* at 1209.

302 142 S. Ct. 1502, 1506 (2022).

two photographs depicting the subject of the underlying dispute: Camille Pissarro's *Rue Saint-Honoré in the Afternoon, Effect of Rain*, an impressionist painting stolen by the Nazis from the plaintiff's grandmother, which the plaintiff was seeking to recover.[303] The image linked the dispute to a real-world object with real human stakes. In this respect, the visuals performed a legitimating function, translating a relatively abstract conflict into a controversy the broader public could recognize as involving fundamental questions of justice and historical redress.

FIGURE 12: THE PAINTING AT THE CENTER OF THE COURT'S DECISION IN *CASSIRER* HANGING IN LILLY CASSIRER'S HOME IN GERMANY[304]

Yet visual communication also carries profound risks for the public servant. Rather than enhancing public understanding, poorly deployed visuals can leave audiences more confused about the basis for a judicial decision. This is especially true when visuals appear without explanation, citation, or discussion, leaving readers uncertain about how they relate

303 *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 20–1566, slip op. app. (U.S. Apr. 21, 2022).

304 *Id.*

to the Court's analysis.[305] *Plata* offers a cautionary tale.[306] The prison photographs appended to Justice Kennedy's opinion were evocative, but he offered no commentary on how they informed the decision. As journalist Dahlia Lithwick observed:

> To what end did Kennedy attach those California prison photos? To make us angry? To justify his own strong response? To answer the pervasive criticism that the justices do not inhabit the real world? What if he miscalculated? Might viewers looking at images of huge tattooed men crowded into small spaces not react with terror that these men are about to be released back into their communities?[307]

The images' meaning—what they were meant to demonstrate and how it bore on the Court's analysis—was left entirely to the reader's imagination. When readers cannot discern why the Court ruled as it did, the opinion does not appear accessible or transparent. It appears opaque. Visuals, in this form, work against the public servant's duty to explain.

More fundamentally, the effort to reach the public can backfire, as the very techniques that make judicial opinions more accessible can also make them appear more political. Visuals are "the *lingua franca* of politics"[308] and dominate modern political communication. If the "medium is the message,"[309] courts that use visuals may inadvertently invoke the communicative mode of political discourse and make judicial reasoning appear more like political advocacy than legal analysis.

This risk is compounded by the Court's increasingly sharp internal divisions. While the Justices often try to project an image of collegiality and respectful disagreement,[310] legal commentators have noted a

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305 *See* Marder, *supra* note 14, at 361 (concluding that photographs can be "a distraction" when provided without explanation).

306 *See, e.g.*, Brown v. Plata, 563 U.S. 493, 548–49 app. at A, B & C (2011).

307 *See* Dahlia Lithwick, *Show, Don't Tell: Do Photographs of California's Overcrowded Prisons Belong in a Supreme Court Decision About Those Prisons?*, SLATE (May 23, 2011, at 18:45 ET), https://slate.com/news-and-politics/2011/05/brown-v-plata-do-photographs-of-california-s-overcrowded-prisons-belong-in-a-supreme-court-decision-about-the-case.html [https://perma.cc/6H3X-C7B7].

308 MARIA ELIZABETH GRABE & ERIK PAGE BUCY, IMAGE BITE POLITICS: NEWS AND VISUAL FRAMING OF ELECTIONS 74 (2009).

309 *See* MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN 7 (1965).

310 *See* Linda Greenhouse, *Who Cares if Supreme Court Justices Get Along?*, N.Y. TIMES (Apr. 13, 2024), https://www.nytimes.com/2024/04/13/opinion/supreme-court-friends.html [https://perma.cc/M9ZQ-HF5E] ("The Supreme Court is hurting. I can say that with confidence—not based on any inside information but on the external evidence of how hard some of the justices are working to show that everyone on the court really does get along.").

marked decline in civility in judicial opinions.[311] Visual disagreements can make these ideological divisions even more apparent to public audiences,[312] reinforcing perceptions that the Court operates more like a political institution than a legal one.

The concern extends beyond appearances to actual judicial behavior. As Elizabeth Porter has warned, efforts to connect with broader audiences through visual or emotionally resonant means may "vitiate the quality of legal discourse" itself.[313] While current visual use in opinions remains relatively modest, a trend toward emotional appeal or visual impact could make it harder to sustain the internal norms of rigor and decorum that traditionally anchor judicial decisionmaking.[314] For critics already concerned that the Court has become indistinguishable from a political institution, increased visual use might offer further evidence of a judiciary moving away from legal reasoning toward image and affect. The culminative effect could be not merely a change in style, but a deeper transformation in how courts do their work and claim legitimacy.

These concerns echo broader debates about how courts should write to maintain the narrative of legitimacy. Just as scholars debate whether judicial opinions should adopt a reserved, institutional style or a more engaging, accessible approach,[315] and just as they debate how much courts should factor public opinion into their reasoning,[316] visual opinions present courts with similar dilemmas. Images can make judicial reasoning more accessible and demonstrate awareness of real-world consequences, but they can also compromise analytical rigor and professional credibility. Visual elements, like stylistic choices more generally, tend to shape how audiences understand both the substance and the legitimacy of judicial decisions.

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311 *See, e.g.*, Josh Gerstein, *Justices' Nerves Fray in Supreme Court's Final Stretch*, Politico (June 27, 2025, at 21:22 ET), https://www.politico.com/news/2025/06/27/supreme-court-acrimony-00430590 [https://perma.cc/HRP3-PBTK]; Steven Mazie, *The Supreme Court Justices Do Not Seem To Be Getting Along*, Atlantic (Jan. 16, 2023), https://www.theatlantic.com/ideas/archive/2023/01/supreme-court-justices-public-conflict/672494 [https://perma.cc/5JHR-HBZZ].

312 *Cf., e.g.*, Mahmoud v. Taylor, 145 S. Ct. 2332, 2383 (2025) (Sotomayor, J., dissenting) (countering the majority's "selective[] excerpts" from the record with a full reproduction of one of the sources); Brumfield v. Cain, 576 U.S. 305, 325, 350 app. (2015) (Thomas, J., dissenting) (countering the majority's "single sentence" description of the crime with a photograph of the victim).

313 Porter, *supra* note 11, at 1768–70.

314 *See id.* at 1773–74 (discussing lower court opinion that criticized a lawyer by including a photograph of an ostrich with his head in the sand and a photograph of a man in the same position).

315 *See supra* Section I.B.

316 *See supra* Section I.A.

IV
Legitimizing Visual Opinions

How, then, should the Supreme Court—and courts generally—approach including visuals in its opinions? The above discussion has attempted to map the complex legitimacy challenges that visual opinions create for judicial authority. In some respects, visuals promise clearer explanations and more direct communication with the public. In others, they expose the limitations of traditional judicial reasoning and threaten values long understood as foundational to judicial authority. For a judiciary already facing questions about its institutional legitimacy, these risks demand serious attention.

This Part begins by surveying several practical recommendations proposed by other scholars that could strengthen visual opinions. It focuses on one recommendation in particular—the need to explain visuals—as an especially critical requirement. This Article then goes a step further, arguing that simply explaining what an image shows may not be enough. Because visuals are prone to misinterpretation and can convey meanings that judges never intended, courts may need to strengthen their justification practices. This means providing more comprehensive reasons for their legal conclusions and, perhaps, more candid discussion about the factual complexities that visuals can expose.

A. Back to Basics

These recommendations do not fall on a blank slate. To start, in 1997, Hampton Dellinger argued against visual opinions altogether, contending—as his article was titled—that "words are enough" because images "pose special dangers."[317] As a fallback position, he made several recommendations about how the Court (and courts generally) could better use visuals. His recommendations included the following: judges should (1) explicitly identify the source of the image (particularly which party submitted it); (2) refrain from using visuals not properly admitted into evidence by the trial court; (3) provide "more objective information" to clarify what an image depicts; and (4) ensure that visuals are included in opinion drafts circulated among Justices, allowing them to respond adequately.[318]

These proposals provide a valuable starting point for promoting judicial legitimacy. First, the need for robust citation practices remains critical. Unlike textual reasoning, which is typically subject to extensive

317 Dellinger, *supra* note 14, at 1707.

318 *Id.* at 1751–52. Dellinger also included recommendations specific to certain types of visuals. *See id.* at 1752.

citation and scrutiny,[319] the Court's visual elements often lack clear sourcing. The Court frequently says nothing about how it gained access to the image (i.e., whether it was submitted by a party or obtained elsewhere) and nothing about who created it or why.[320] Robust citation serves multiple legitimacy functions. It helps judges and Justices better examine their visual choices, enables readers to evaluate an image's reliability, and facilitates meaningful scholarly and legal discourse about visual decisions.

The prohibition against using visuals not admitted into evidence at trial, while well-intentioned, seems overly rigid thirty years later. Many decisions are reviewed at procedural stages preceding trial, before most formal evidence determinations have been made.[321] Strict adherence to this rule would shrink the pool of permissible visuals (perhaps aligning with Dellinger's primary recommendation). Moreover, this rule overlooks the communicative value of visuals beyond their evidentiary role. Justices have included visuals to contextualize cases and illustrate legal principles—none of which are bad aims in and of themselves.[322]

Nevertheless, the core insight behind this recommendation—that visuals should be subject to the adversarial process to ensure fairness and accuracy—remains valid. Evidentiary procedures at trial serve essential purposes. They allow parties to test and challenge the credibility and reliability of visual materials; they permit the application of evidentiary rules to screen for prejudice and confusion; and they generate a fuller record for evaluating the propriety of visual materials.[323] When courts bypass these safeguards, they risk undermining the principled decisionmaker ideal by appearing to favor untested evidence. Accordingly, while a categorical prohibition on extra-record visuals may go too far, courts should adopt a strong presumption in favor of visuals that are subjected to and survive adversarial testing.[324] Justices and

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319 *See* Maggie Gardner, *Dangerous Citations*, 95 N.Y.U. L. Rev. 1619 (2020), 1637–38 (distinguishing between "poorly conceived" and "poorly implemented" citations in written court opinions). *See generally* The Bluebook: A Uniform System of Citation (Colum. L. Rev. Ass'n et al. eds., 21st ed. 2d prtg. 2021) ("*The Bluebook* [is] the definitive style guide for legal citation in the United States.").

320 For example, the photographs in *Brown v. Plata* appeared without citation. 563 U.S. 493, 548–49 app. at B, C (2011).

321 *See also* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Legal Stud. 459, 461, 464 (2004) (tracing decline of cases terminated by trial from 1962 to 2002); *cf.* Nora Freeman Engstrom, *The Diminished Trial*, 86 Fordham. L. Rev. 2131, 2133 (2018) (highlighting the "vanishing" civil trial and examining "what is happening in those that remain" (emphasis omitted)).

322 *See supra* Section II.A

323 *See, e.g.*, Fed. R. Evid. 403.

324 This recommendation extends beyond visuals representing adjudicative facts to those representing legislative facts as well. While courts usually have greater latitude when

judges might facilitate this informally by asking about visuals during oral argument or requesting supplemental briefing on specific images. And ultimately, visuals that have not been subject to any adversarial testing should rarely form the basis of the Court's core reasoning.[325]

When judges or Justices reach outside the record for a visual, they should exercise extra care in screening sources and evaluating for bias. While few visual representations are entirely neutral—almost every photograph or illustration reflects deliberate choices about framing, perspective, and emphasis[326]—judges must remain alert to overtly prejudicial or manipulative visuals. These include images designed to exaggerate scale, highlight specific features, or evoke emotional reactions that could obscure reasoned legal analysis. Courts should generally avoid overly creative or metaphorical visuals without careful consideration.[327] The objective is not to pursue an unattainable standard of neutrality but to explicitly acknowledge and address the inherent biases in visuals.

Still, wherever a visual comes from, Dellinger's third and fourth recommendations—to explain visuals fully and foster dialogue about them—are crucial. Other scholars agree. Nancy Marder has proposed that images are most effective when "the justices explain why they have included them and what they think they show."[328] Elizabeth Porter has proposed a "nonplain meaning rule," which acknowledges that images lack inherent meaning and requires judges to articulate their interpretations.[329]

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presenting legislative facts, *see* FED. R. EVID. 201, visuals can change the calculus. When legislative facts are conveyed through compelling images, they can assume new importance in judicial reasoning. At that point, the key issue is less the adjudicative/legislative divide than whether the visuals themselves have been adequately scrutinized and contextualized.

325 Scholars have long recognized that good procedure builds public trust in legal institutions. For a discussion of how procedural practices shape perceptions of legitimacy, see Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283 (2003).

326 *See supra* notes 249–52 and accompanying text.

327 Elizabeth Porter identified several lower court decisions that incorporated photographs from pop culture and sources outside the record. *See* Porter, *supra* 11, at 1744 (discussing a Bob Marley photograph in *Grayson v. Schuler*, 666 F.3d 450, 452 (7th Cir. 2012), a § 1983 suit by an incarcerated person whose dreadlocks were cut); *id.* at 1747 (discussing Miss Wiggles photograph in *35 Bar & Grille, LLC v. City of San Antonio*, 943 F. Supp. 2d 706, 709–10 (W.D. Tex. 2013), a case about a challenge to an ordinance regulating strip clubs). She also identified one decision that featured a staged photograph taken in judicial chambers, where a law clerk modeled the protective workplace attire central to a steelworker compensation dispute. *See id.* at 1688–90 (citing Sandifer v. U.S. Steel Corp., 678 F.3d 590, 593 (7th Cir. 2012)).

328 Marder, *supra* note 14, at 332. Marder also argued that the Justices should exercise restraint in their visual use, especially in highly contested areas and when the selected images will likely arouse a strong response. *Id.* at 362–63.

329 Porter, *supra* note 11, at 1778. Porter also proposed a principle that visual evidence should not override established standards of review or proof. *Id.* at 1778.

These recommendations reflect the unique challenges that visuals pose compared to textual evidence. Unlike written descriptions that walk readers through an argument step by step, images hit viewers "all at once" and can trigger emotional reactions before analytical thinking begins.[330] Explicit explanation of visuals is essential for several reasons. It promotes transparency, enabling readers to understand and evaluate the role the visual played in the Court's reasoning. It clarifies for readers what messages or conclusions they should draw from the image, rather than allowing the image to speak for itself. And it can check the power of images to unconsciously sway judges by forcing them to examine and justify their reactions more consciously.

Despite the importance of these explanatory practices, the Court often falls short of the ideal. The Justices frequently incorporate visuals into their opinions without discussing their relevance or meaning.[331] Even with textual explanation, visuals can still leave readers feeling confused or misled, especially when the Court's words do not align with a reader's intuitive reaction to the image. This is to say that the meanings of pictures often, if not always, exceed what a judge can say about them.

Consequently, while explanation is necessary, it may not be enough. To effectively harness the power of visuals while minimizing their dangers, judges and Justices may need to do more than explain images.

B. The Need for Enhanced Reason-Giving

This Section makes the case for enhanced reason-giving in visual opinions. Because visuals can distort meaning and invite skepticism about judicial motivations, they pose unique risks to the perceived legitimacy of a decision. As a result, judges must not only clarify how an image fits into the opinion but also offer a stronger justification for the decision itself.

1. More Reasons

As Frederick Schauer has observed, judges are expected to offer "good" reasons for their decisions or reasons that reflect acceptable standards of legal reasoning.[332] This expectation does not disappear when a judge or Justice incorporates a visual into an opinion. In fact, visuals may heighten the threshold for sufficient judicial explanation. Put another way, an explanation that might suffice in a text-only opinion may fall short once an image is introduced.

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330 Tushnet, *supra* note 12, at 690; Feigenson & Spiesel, Law on Display, *supra* note 10, at 7.

331 *See supra* Section III.C.

332 Schauer, *supra* note 51, at 635.

The challenge stems from how visuals alter the dynamics of interpretation. Unlike text, which channels the reader through the courts' chosen analytical path, images invite viewers to draw their own inferences. Some readings may complement the courts' reasoning; others may obscure or contradict it. While text can also be misunderstood, visuals pose distinct risks: They trigger emotional responses that can cloud critical judgement[333] and because they appear less constructed than written descriptions, their persuasive force often feels more authentic and harder to counter.[334]

Including a visual thus means ceding a measure of interpretive control.[335] Consider, for example, how different viewers might interpret the same photograph of the interior of a prison.[336] Some may see crowded and cruel living conditions, while others might see dangerous criminals—and they may understand the case in light of their own perspectives.[337] Or consider how different viewers interpreted the dashboard video in *Scott v. Harris*. Some saw clear evidence of reckless driving, while others saw reasonable behavior given the circumstances and then questioned the Court's reasoning.[338] To counteract this instability, courts must recognize the multiplicity of viewer perspectives.

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333 FEIGENSON & SPIESEL, LAW ON DISPLAY, *supra* note 10, at 8.

334 *See supra* notes 223–27 and accompanying text; *see also* Tushnet, *supra* note 12, at 690–91 ("Pictures are perceived more as a gestalt, while texts appear to the reader in a set sequence, most or all of which needs to be processed for the whole to be understood."); Porter, *supra* note 11, at 1753 ("[W]e 'read' images differently than we do text.").

335 *See* FEIGENSON & SPIESEL, LAW ON DISPLAY, *supra* note 10, at 11 ("But pictures also generate meanings beyond the ones most immediately grasped and beyond those that the picture makers intended.").

336 *See* Lithwick, *supra* note 307.

337 *See id.*

338 *See* Kahan, Hoffman & Braman, *supra* note 13, at 841. Another example comes from a recent Ninth Circuit case, where a judge created a video dissent featuring himself assembling and disassembling a firearm to illustrate his disagreement with the majority's analysis of gun regulations. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *Dissent Video in 23-55805* Duncan v. Bonta, YOUTUBE (Mar. 20, 2025), https://www.youtube.com/watch?v=DMC7Ntd4d4c (on file with the New York University Law Review). Some viewers praised the dissent as offering factual clarity, while others saw it as theatrical and inappropriate for judicial discourse. *Compare* Jamie Joseph, *WATCH: Trump-appointed Judge Chides Colleagues' Ignorance on Guns in Unique Video Dissent*, FOX NEWS (Mar. 21, 2025, at 13:30 ET), https://www.foxnews.com/politics/watch-trump-appointed-judge-chides-colleagues-ignorance-guns-unique-video-dissent [https://perma.cc/6SUT-7HBL] (characterizing the video dissent as an effort to clarify how firearms function and to rebut the majority's "basic misunderstanding" of guns), *with* Angie Orellana Hernandez, *Appellate Judge Brings Out Bag of Firearms in Unusual Dissent Video*, WASH. POST (Mar. 20, 2025), https://www.washingtonpost.com/national-security/2025/03/20/lawrence-vandyke-california-gun-law [https://perma.cc/5QNS-3G4T] (describing the "unusual" video dissent), *and* Duncan v. Bonta, 133 F.4th 852, 884 (9th Cir. 2025) (Berzon, J., concurring) (calling the video dissent "wildly improper").

In other words, courts must anticipate how images might be (mis)understood and reason accordingly.

Judges may also need to provide more robust reasoning to counteract the dominating influence of a compelling visual. A powerful image may prompt readers to form conclusions about a case that overshadow the legal analysis.[339] Worse, visuals can convince viewers that they understand what really drove the decision—some emotional intuition, moral conviction, or ideological bias behind the bench.[340] In such moments, the courts' reasoning can appear secondary or even pretextual. To counteract that perception, courts must articulate reasons strong enough to reassert that legal principle—not feeling—anchors the outcome.

This enhanced reasoning involves more than just justifying the inclusion of the image or clarifying what it depicts. It requires addressing how the visual interacts with the courts' doctrinal analysis, how it might be (mis)read, and why—despite the image's emotional or rhetorical power—the decision still rests on legal principle. The aim is not to reclaim total interpretive control, but to preserve the courts' performance of principled, impartial decisionmaking.

This does not mean courts must anticipate every possible misinterpretation of a visual. What they must do, however, is accept that including images cedes some interpretive control and adjust their reasoning to account for that fact. Some images are relatively benign, and some judges manage images well. But emotionally resonant, ambiguous, or gratuitous images carry the risk of overshadowing or undermining the legal analysis itself. Courts should recognize where a particular visual falls on this spectrum: Straightforward technical illustrations drawn from the record may need minimal explanation, while emotionally powerful or tangentially relevant images will often demand more robust reasoning.

2. More Candid Reasons

Visual opinions may also call for more candid judicial reasoning. Scholars have long debated how honest judges must be about what drives their decisions, with some advocating for full transparency and others cautioning that too much openness risks undermining

339 *See* Marder, *supra* note 14, at 355 ("The viewer is likely to remember the image of the tiny, wire cage long after he or she forgets how many prisoners were held in these cages or for how long they were held.").

340 *Cf.* Brumfield v. Cain, 576 U.S. 305, 350 app. (2015) (Thomas, J., dissenting) (drawing readers' focus to the victim of defendant's crime with a photo portrait).

institutional authority.[341] For visual opinions, this debate takes on new significance. When images expose the narrative choices underlying judicial decisions, courts may need to be more candid to maintain their legitimacy as principled decisionmakers.

Consider what happens when a visual counternarrative appears in an opinion—as when Justice Sotomayor's photographs in *Kennedy v. Bremerton School District* challenged the majority's factual account.[342] In text-only opinions, judges and Justices have traditionally been able to sidestep or downplay "bad facts," even when they are raised in dissent, through careful framing, strategic omission, or emphasis on favorable details. But when a picture—in all its "all-overness"[343]—seems to directly contradict a decision's account of the facts, this strategy becomes harder to sustain. Judges who fail to explicitly confront visual counternarratives, as the majority in *Kennedy* did, risk appearing disingenuous or willfully blind.

To maintain legitimacy in the face of a dissent's visual challenge, judges must directly address the apparent contradictions between the image and their legal conclusions. They might, for example, explain why the dissent's image misrepresents the facts. Or they might demonstrate how, despite initial appearances, the image is actually consistent with the courts' decision. Or they might explicitly acknowledge that the

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341 *See, e.g.*, Richard H. Fallon, Jr., *A Theory of Judicial Candor*, 117 COLUM. L. REV. 2265, 2274 (2017) (theorizing candor); Micah Schwartzman, *Judicial Sincerity*, 94 VA. L. REV. 987, 990–91 (2008) (defending an approach in which "judges have a general duty to comply with a principle of sincerity in their decisionmaking"); Scott C. Idleman, *A Prudential Theory of Judicial Candor*, 73 TEX. L. REV. 1307, 1401 (1995) (proposing "a three-stage process for determining the propriety of candor" in any particular case); Scott Altman, *Beyond Candor*, 89 MICH. L. REV. 296, 324 (1990) ("[I]f introspection makes plain to judges in which cases they want to rule either for nondisclosable reasons or against a legal rule, it could lead them to [manipulate rules to reach their desired outcome], rather than suppress strong desires."); David L. Shapiro, *In Defense of Judicial Candor*, 100 HARV. L. REV. 731, 736–37 (1987) ("A requirement that judges give reasons for their decisions—grounds of decision that can be debated, attacked, and defended—serves a vital function in constraining the judiciary's exercise of power."); Martha L. Minow & Elizabeth V. Spelman, *Passion for Justice*, 10 CARDOZO L. REV. 37, 54 (1988) (arguing that a "judge should not disguise how he or she actually reaches a decision, and should explain the decision not only through post hoc justifications but also by recounting how the judge dealt with initial intuitive responses and initially appealing reasons before selecting one set of justifications over other possible ones."); Joseph William Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 32 (1984) ("When judges write opinions justifying their disposition of cases and their choices of rule, they should feel free honestly to express what they really were thinking about when they decided the case. These revelations will clarify the moral and political views at stake in legal controversies."); Henry P. Monaghan, *Taking Supreme Court Opinions Seriously*, 39 MD. L. REV. 1, 25 (1979) ("If justifications cannot be stated in the opinion, they should not be relied upon in entering the judgment.").

342 *See supra* notes 238–56 and accompanying text.

343 FEIGENSON & SPIESEL, LAW ON DISPLAY, *supra* note 10, at 7.

image squarely challenges the basis of their decision. In this case, a judge may need to provide a "candid recognition of the difficulties of decision and the strength of competing arguments."[344] They must then provide a reasoned explanation for why the court nevertheless reaches its conclusion.

This expanded form of candor demonstrates the type of "searching forthrightness" expected of judicial reasoning.[345] By demonstrating that courts will grapple with difficult questions, including visual evidence that challenges their conclusions, judges reinforce their performance as principled decisionmakers. Public trust depends partly on the perception that judges engage honestly with evidence, even when it complicates their preferred narrative. In an era of declining confidence in judicial institutions, visual opinions that appear to dodge obvious questions may contribute to perceptions that courts are result-oriented rather than principle-driven. Candid acknowledgment of vulnerabilities in an opinion's reasoning can help restore a court's credibility.

3. More Pictures?

The discussion thus far has focused on adding "more" reasons, "more" candid reasons, and ultimately "more" words to balance out the potentially delegitimizing power of visuals. But what if the solution isn't always more words? What about adding more pictures?

There may be logic to fighting fire with fire. If a visual tells only part of a story, additional visuals might provide the fuller context that principled decisionmaking requires. If a single image can reveal underlying bias, perhaps multiple images can restore balance. The way to "expos[e] and challeng[e] the naïvely realistic view of pictures," as Neal Feigenson and Christina Spiesel described it, is "precisely by showing *more pictures*."[346] Of course, every added visual will "generate [its] own plethora of meanings, obvious and subtle, which are themselves subject to further contestation, perhaps ad infinitum."[347] But if no single image can tell the whole truth, a broader set of visuals may at least better

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344 Shapiro, *supra* note 341, at 740. How, exactly, a judge recognizes the strength of competing arguments depends on the particulars of a case. They might, for example, provide a fuller summary of each side's arguments, discussing how the image fits into these arguments, and including any disputes over an image's accuracy, framing, or relevance. *See* Chad M. Oldfather, *Remedying Judicial Inactivism: Opinions as Informational Regulation*, 58 Fla. L. Rev. 743, 796 (2006) (recommending that opinions include "framing arguments" which are "brief, party-generated statements of the issues before the court"). Framing arguments have been provided before (by Reporters of Decisions), *see supra* Section II.A, and visual opinions prompts revisiting the practice.

345 *See* Fallon, *supra* note 341, at 2267.

346 Feigenson & Spiesel, Law on Display, *supra* note 10, at 11.

347 *Id.*

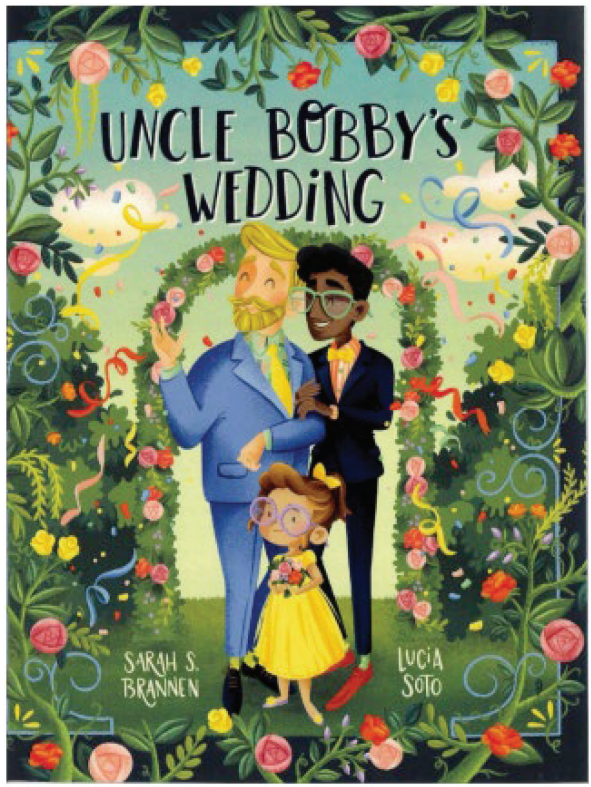
approximate it, reinforcing a judge's claim to principled, impartial, and accessible decisionmaking.

The Supreme Court's recent decision in *Mahmoud v. Taylor* offers an example of how this dynamic might unfold in practice.[348] The case involved parents from various faith backgrounds challenging their school district's policy of using certain LGBTQ+-inclusive texts in the curriculum without allowing religious exemptions.[349] Writing for the majority, Justice Alito appended several pages from the contested books to support his conclusion that the mandatory curriculum violated parents' free exercise rights.[350] The storybooks, Justice Alito explained, "are designed to present [a specific] viewpoint to young, impressionable children who are likely to accept without question any moral messages conveyed by their teachers' instruction."[351]

Justice Sotomayor responded to the images in dissent. Arguing that the majority "selectively excerpt[ed]" one of the books in order to "rewrite its story," she explained that readers should "go directly to the source."[352] She then appended the entirety of one of the storybooks to her opinion.[353] In doing so, Justice Sotomayor not only challenged the content of the majority's opinion—she raised concerns about its integrity.

348 145 S. Ct. 2332 (2025).
349 *Id.* at 2347–49.
350 *Id.* at 2365–74 app.
351 *Id.* at 2353.
352 *Id.* at 2383 app. (Sotomayor, J., dissenting).
353 *Id.* at 2403–27 app.

FIGURE 13: STORYBOOK COVER IN *MAHMOUD*[354]



At the same time, Justice Sotomayor's appendix narrowed the distance between judicial analysis and the evidentiary record. This raises another question: How much is too much? How many visuals are too many? If visual completeness becomes the metric, judicial opinions risk collapsing under the weight of the full record. Completeness isn't only impractical (as nineteenth-century Reporters of Decisions might attest[355]) but also fundamentally inconsistent with the judicial function. Judicial opinions are supposed to provide reasoned explanations for legal conclusions, not reproduce raw evidence. As Schauer has argued, reasons must be generalizable to count as reasons at all: "[I]f a reason were no more general than the outcome it purports to justify, it would scarcely count as a reason."[356] Adding more visuals might sometimes help courts tell a fuller, more balanced story. But when courts append entire

354 *Id.* at 2402 app.
355 *See supra* Section II.A.
356 Schauer, *supra* note 51, at 635.

documents or comprehensive visual records, they risk abandoning this generalizable reasoning in favor of case-specific evidence dumps. There is nothing less general—or more particular—than appending the entire record.

C. Institutional Dynamics

One last word. The obligations surrounding visual use may differ for judges writing dissenting opinions. Because they do not speak for the court, dissenters are not tasked with preserving institutional authority like the majority. Their role, instead, is oppositional: to break from "institutional solidarity," "undermine[] the certainty and confidence" in the majority's opinion, and offer a competing framework for legal and societal understanding.[357] That oppositional stance may afford dissenting judges more expressive leeway, including greater freedom to use visuals to underscore overlooked facts, highlight injustice, or dramatize the case's stakes. Of course, dissenting opinions still carry institutional and reputational weight, but they are less bound by the decorum and restraint expected of the courts' authoritative voice.

This dynamic may ultimately improve judicial decisionmaking across multiple dimensions. Strategic visual use in dissent can shift the legitimacy demands on the majority. A powerful image—like Justice Sotomayor's photographs in Kennedy—can expose weaknesses in the majority's reasoning and force a more robust justification in response. In this way, visual dissent does not merely disrupt; it helps sustain the Court's legitimacy by pressing the majority to meet a higher standard of explanation.

Conclusion

This Article has aimed to shed light on the Supreme Court's visual opinions. There are several lessons one might take from this account. The Supreme Court's long history of visual opinions illuminates the many powers of the visual—both as a tool for explanation but also as a force that shapes judicial authority. The Court's more recent visual turn signals an increasingly expansive and expressive approach to judicial communication. And the Court's visual decisions reveal how images can clarify an individual decision while simultaneously complicating the Court's institutional voice.

Perhaps more fundamentally, this Article asks whether the practice of judicial reason-giving must change as opinions become more visual.

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357 Robert Post, *The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court*, 85 Minn. L. Rev. 1267, 1347–48 (2001).

This Article has taken some initial steps to explore that question. By examining how visual opinions invite readers to construct their own narratives of cases, we can begin to understand how the Court and courts generally might respond to this interpretive shift. As visuals proliferate in judicial opinions, the Supreme Court must remain attentive to its own voice and recognize that it is always writing in its own image. Instead of leaving legal interpretation to the eye of the beholder, the Court must reinforce its foundational narrative: that of an institution dedicated to rigorous analysis, candid reasoning, and good judgment.