

C O M M E N T

The Transformation Toward Visual Communication and Brevity, aka Lawyers Can Communicate Differently and Still Be Lawyers

by Roger Martella

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Putting words to paper is part of a lawyer's DNA. We're taught from the first days of law school that the currency we most often trade in is the quality—and quantity—of the written word. The first assignment for many law students is graded on the comprehensiveness of the legal documents they generate. Many attorneys spend their early years writing memos that are rewarded based on how much they write—and then transition to writing briefs where the first question asked frequently still is: what's the word limit?

Thus, the premise in *Visual Rulemaking*, by Professors Elizabeth Porter and Kathryn Watts—that graphics and visuals are gaining traction on the written word in the regulatory setting—seems to threaten the very nature of everything to which lawyers have dedicated their careers. But the transformation they identify is real and necessary. It's increasingly true that to be successful in persuading an audience to adopt a point of view, lawyers need to transform their advocacy methods to employ new forms of communication, both relying on visuals as the authors discuss and—another concept antithetical to much legal training—adopting a theme of brevity.

I. The Growth of Visuals in Legal Communications

Porter and Watts provide numerous examples of how the adage “a picture is worth a thousand words” increasingly is becoming the norm in regulatory advocacy.

This does not surprise me. Going back to my tenure at EPA from 2006 to 2008, smart advocates already were making use of visuals to stand out from endless stacks of rulemaking comments. When considering a final rule, I would ask the team to share the best comments on both sides of an issue. What struck me was that they rarely

brought lengthy comments with four sublevels of legal arguments, but rather ones that contained graphics, tables, and summaries. And when I prepared for meetings in the White House's Roosevelt Room, I quickly learned that busy cabinet secretaries and chiefs of staff would focus their full attention on graphics, tables, and maps, and barely reference even short memos.

Thus, I moved from government service into private practice appreciating that even regulators, who are legally compelled to read it all and translate comments into countless pages of Code of Federal Regulations text, are drawn to the visual and concise over lengthy tomes.

This trend only has accelerated in recent years. In the middle of my EPA tenure, Steve Jobs gave his famous introduction of the first iPhone while the senior EPA lawyers were meeting in New York City. I remember us dreaming of trading in our text-based BlackBerry phones for the visual iPhones. But as unrealistic as that seemed at the time, none of us anticipated how smartphones with limitless apps like YouTube and Instagram would produce a generation that learns by watching as opposed to reading, and thus accelerate the pace of change in how people acquire information toward communications dominated by visuals. Lawyers may not want to admit it, but clients and regulators are not immune to this trend.

Finally, along with the consumption of visual communication comes an increasing sophistication in the creation of such messages. When I worked at EPA 10 years ago, we were pretty proud if we simply generated a poster every few months that looked clean and creative. In contrast, Porter and Watts demonstrate the sharply more sophisticated visual messages the Obama and Trump Administrations routinely create in real time on issues big and small. Agencies and the public are vastly more experienced with technology than a decade ago, creating new expectations for

the inclusion of quality visuals, and the rapid pace at which they're generated. The reality is that today lawyers risk having even the most well-reasoned and passionately-written messages ignored if they are not part of such a clean and professional visual communication.

There is a consequence to this visual transformation, evident in perhaps the most surprising theme from the examples the professors cite: previously arcane regulatory issues are being transformed into full marketing campaigns using visuals, themes, and trending hashtags worthy of major advertising drives. While lawyers at core are advocates, the standards of advertising and marketing can sometimes clash with the ethical standards which lawyers must uphold in our collective search for the truth.

This is perhaps the more troubling element of this trend; more concerning, I believe, than the “administrative record” issues the professors cite. While lawyers increasingly need to incorporate visual communications into their advocacy and presentations, they must continue to enforce the principles of accuracy, truthfulness, and integrity in all communications, whether written or visual—a standard that probably sets a higher bar than advertising and marketing, or even pure policy advocacy. For lawyers who communicate with graphics, there is no double standard for what is written versus what is drawn. Enforcing the same principles is critical to the integrity of the message and the individual.

II. Beyond Visuals: The Brevity Transformation

The article's recognition of the growth in visual communications complements a trend with arguably more impact on legal advocacy: brevity. As with visual communications, here again the world has transformed where the success of a lawyer's position increasingly may depend not on how detailed his or her presentation is, but on concision in expressing an idea.

The transition toward brevity may be the most significant development in how lawyers communicate effectively. The pride of the lawyer's work product—the 25- to 50-page research memo—is now the stigma of the industry, much the same way large V8 badges on cars from the prior decade signal obsolescence in today's environmentally conscious era. Efficiency is trending in everything, from fossil fuels to word counts. Lawyers already have experienced the transition from “paper trail” memos to emails or even slides in communicating with clients and other audiences. This trend toward brevity continues to build; many audiences expect to be able to digest messages communicated on not much more than a smartphone screen.

At the same time, this growing expectation—from regulators, clients, and the public—of brevity can clash with most lawyers' instincts: Lawyers at core are trained to be

thorough and comprehensive, to chase down every footnote and caveat, and to take pride in producing a work product that advises on the full range of risks and scenarios.

To reconcile this new era of concision, lawyers must exercise an additional layer of judgment: they must project empathy toward deciding what the audience really needs and wants to know instead of what the lawyer wants to tell them. This is a different challenge, to take a complex message with many derivations and qualifiers and distill it down to the core takeaways for the client. A lawyer who ignores this effort risks alienating a client operating in an environment where the culture of brevity already has been embraced—basically, everywhere other than law firms and academia—and, worse yet, takes the risk that their message will be lost entirely to other competing priorities.

As with visual communications, this transformation toward brevity also creates risks for lawyers. Most legal issues cannot be adequately resolved in the space of a smartphone screen, nor should they be. Trying to present the pros, cons, and recommended path forward on a complex regulatory compliance issue through a handful of bullets is unlikely to serve the client and could create professional responsibility conundrums for the lawyer who fails to fully disclose risks and context. And in an era of brevity, conciseness, and multitasking, it's important not to forget that the nuanced legal arguments that frequently carry the day can be found in footnotes, buried deep inside documents, or in group brainstorming sessions where no stone is left unturned.

The seemingly competing concepts of brevity and legal thoroughness can be and should be reconciled for lawyers who want to make sure their messages are heard by a client while being able to counsel on important considerations and risks. The key is for the lawyer to exercise judgment in presenting information to the audience in a concise way that invites further discussion. The lawyer might briefly summarize not only a position, but also identify the considerations that are not included in that communication and warrant follow up. In other words, with this trend toward more visual and concise communication, lawyers need to be cognizant that text on the page might no longer be able to run down every legal argument, and find other ways to facilitate a more thorough discussion.

III. Transforming Toward Visuals and Brevity

At the end of the day, what every good lawyer cares about the most is being a zealous advocate and counselor for their client. A few simple rules can help facilitate the transition toward greater use of visuals and focus on brevity without reducing the rigor of critical legal analysis and judgment.

- (1) **Embrace opportunities for visuals in legal documents:** While various rules and norms of legal writing might be strict on page limits, font sizes, and margins, there are few prohibitions on including graphics. When I think back to some of the long-shot motions I won over the years or comments that changed a regulator's position, such as expedited review, preliminary injunctions, or a technical rulemaking, one theme common among them was incorporating simple graphics that showed chronologies relating to complex schedules or maps and visuals depicting irreparable harm. These are perhaps the best opportunities for lawyers to embrace visuals, when a simple graphic can depict timelines, schedules, geography, or technical data in ways that are more persuasive to present than with words alone.
- (2) **Begin with brevity:** For communications that do not follow established templates (those other than legal briefs, deal documents, formal regulatory filings, etc.), adopt an instinct to start all communications with a spirit of brevity that opens the door to more nuanced discussion. Develop empathy toward your audience and prioritize what they need to hear over what you want to tell them. After you write your draft message, go back and focus on what words and sentences can be deleted as superfluous while still preserving the key points. If the message is delivered with such consideration at the outset, a broader analysis can be invited, either through a more detailed analysis that follows, or verbally.
- (3) **Still be a great lawyer:** While the transformation toward visual communication and brevity is unavoidable, this does not and cannot excuse lawyers from rigorous legal analysis and nuanced

presentations that drive the strongest advice and outcomes. Lawyers serve their clients best when they creatively consider and exhaust a wide range of arguments, think through a broad continuum of risks, and engage in brainstorming sessions with colleagues and clients to invite diverse views. The trend towards brevity should never be used as an excuse to shortcut thorough legal analysis or avoid challenging communication; the point is to adopt new methods of communicating complex thoughts in visual and concise ways that align with the modern world's expectations and serve as a tool to set the issues up for more thorough discussion and assessment.

- (4) **Back it up:** A lawyer's use of visuals also does not excuse the need to be fully accurate, truthful, and fair. The basis for any visual should be established in a record that supports any point made in the graphic, and both the content of the graphic and the backup information should fully withstand the same scrutiny as the written word. There is no laxer standard for lawyers when using visuals.
- (5) **Always integrity first:** The examples that Porter and Watts cite are largely from advocacy campaigns, where legal professional responsibility and ethics rules might not be implicated. While lawyers should look for opportunities to incorporate visuals into their communications, the same standards apply regardless of whether the message is a graphic or written. The most important commodity for a lawyer is not the words he or she uses, but integrity in the message and in the person. Nothing in these trends for visual communications and brevity should distract lawyers from upholding the strongest principles of legal integrity.