VISUAL RHETORIC: TOPICS OF INVENTION AND ARRANGEMENT AND TROPES OF STYLE

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I. INTRODUCTION

One picture can replace a thousand words of legal discourse.¹ An attorney or counsel at law can supplement or even replace several pages of narrative or legal reasoning with a graphical visualization of the communication—a photograph, a cartoon, a painting, a model, or another form of visual or graphical rendering—and in so doing, improve the document’s communicative and persuasive potential.² The near instantaneous cognitive and communicative power of visual images makes visual rhetoric a

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¹ Although this adage is hardly new, and much used, the adage still is worthy of a Harvard Law Review article title. Rebecca Tushnet, Worth a Thousand Words: The Images of Copyright, 125 HARV. L. REV. 683 (2012).

This Article evaluates visual legal rhetoric in order to demonstrate the potential of visual-graphical devices and narrative elements for use in legal discourse. The subject of my demonstration of graphical rhetorical devices is the famous work of modern rhetoric, Reverend Dr. Martin Luther King, Jr.’s “Letter from Birmingham Jail.” I will perform a rhetorical analysis of the verbal topics of invention and tropes of style in the text of the letter, and simultaneously demonstrate the use of images and visual elements in an “illustrated” form of the letter.

Part II of this Article provides an introduction and background information regarding Dr. King’s letter. Part III will provide a brief background on modern legal rhetoric. In part III(A), I will discuss the communicative power of visual and graphical works as symbolic speech and communication, and how visual rhetoric is the next logical step for legal rhetoric and advocacy. In part III(B), I will discuss several lessons regarding visual rhetoric concerning pathos-based modes of persuasion to address cognitive and situational effects on decision-making. Part IV will discuss the use of visual rhetorical devices as a topic of invention and arrangement and a trope of style within contemporary legal rhetoric and modern argument theory. The discussion traces the potential of visual-graphical expressions of ideas and concepts as an effective means of communication to build knowledge and understanding of the ideas and concepts or to advocate a position. Part V presents my rhetorical analysis and demonstration of an illustrated “Letter from Birmingham Jail.”

My goal here is to critically examine the potential of visual-graphical topics of invention and arrangement and tropes of style
as contemporary legal rhetorical devices. The recognition that visual rhetoric is rapid, efficient, constructive, and persuasive reveals the potential of visual rhetorical devices to serve as topics and tropes in legal discourse to construct meaning and to inform and persuade legal audiences. However, the cautions of scholars as to the dangerous power of visuals to deceive or to overpower more deliberative forms of rational thought and analysis should not be dismissed lightly. The speed and power of visuals is seductive. Visual topics and tropes are subject to abuse and must be used ethically and with careful regard to their propriety as a tool to create meaning and inspire imagination and not as a tool of deception or obfuscation within the rhetorical situation at hand.

This, of course, is a lesson for all rhetoricians of legal discourse, whether employing strictly verbal tools of communication and persuasion, or a mixture of verbal and visual tools.

In conclusion, the Article asserts that visual rhetorical devices are a proper form of legal rhetoric if they are used to construct knowledge and understanding of the meaning and message of the communication and do not mislead or prejudice the audience’s reception or understanding of the communication.

4. E.g., Neal Feigenson & Christina Spiesel, Law on Display: The Digital Transformation of Legal Persuasion and Judgment 8, 9 (2009) (“People tend (again, initially and unreflectively) to conflate representations with direct perceptions of reality, to ‘look through’ the mediation at what is depicted. To see the picture is to see the real thing, unmediated. What a picture depicts just seems to have presence, a kind of being in the world. As a consequence, the meaning of the picture is understood to be identical to its content.” (endnote omitted)); see also Jennifer L. Mnookin, The Image of Truth: Photographic Evidence and the Power of Analogy, 10 Yale J.L. & Human. 1, 1–2 (1998) (“Seeing a photograph almost functions as a substitute for seeing the real thing.” (Footnotes omitted)); Tushnet, supra note 1, at 691, 759 (photographs “stop us from thinking’ because they are so immediately persuasive” (quoting Michael Meyer, Recovering Reality: Errol Morris Takes on Abu Ghraib, Colum. Journalism Rev., Mar.–Apr. 2008, at 53, 54)); Allan Sekula, On the Invention of Photographic Meaning, in Photography Against the Grain: Essays and Photo Works 1973–1983, at 3, 5 (1984) (“Put simply, the photograph is seen as a re-presentation of nature itself, as an unmediated copy of the real world. The medium itself is considered transparent. The propositions carried through the medium are unbiased and therefore true.”); Christina O. Spiesel et al., Law in the Age of Images: The Challenge of Visual Literacy, in Contemporary Issues of the Semiotics of Law: Cultural and Symbolic Analyses of Law in a Global Context 231, 237 (Anne Wagner et al. eds., 2005) (“[V]isual stories use a different code for making meaning than do written texts or oral advocacy. . . . They are . . . rich in emotional appeal, which is deeply tied to the communicative power of imagery. This power stems in part from the impression that visual images are unmediated. They seem to be caused by the reality they depict.”).”


II. THE LETTER FROM BIRMINGHAM JAIL

Reverend Dr. Martin Luther King, Jr.'s “Letter from Birmingham Jail” is regarded as a great work of modern rhetoric. Dr. King’s Letter is, of course, a text with no drawings, pictures, or illustrations. This Article analyzes the letter as verbal rhetoric, but simultaneously presents and analyzes a version of the letter that is illustrated with images that are, in most instances, contemporaneous to its time as a demonstration of the potential power of visual rhetoric in conjunction with the letter’s equally powerful verbal rhetoric.

The letter, also titled as “Letter from Birmingham City Jail,” “From the Birmingham Jail,” “The Negro is Your Brother,” or “Why the Negro Won’t Wait,” is approximately sixteen pages long, and is dated April 16, 1963. Dr. King was jailed during his


participation in the Birmingham Campaign, which began on April 3, 1963. Reverend Fred Shuttlesworth’s Alabama Christian Movement for Human Rights and Dr. King’s and Reverend Shuttlesworth’s Southern Christian Leadership Conference designed and coordinated the Birmingham Campaign as a form of “direct action,” non-violent protest. They used coordinated marches and sit-ins to protest the lingering effects of “Jim Crow” laws, unrelenting racism, and continued racial segregation in Birmingham, Alabama.\(^9\)

On April 10, 1963, Alabama Circuit Judge W. A. Jenkins issued a blanket injunction against “parading, demonstrating, boycotting, trespassing and picketing” without a permit in and around Birmingham.\(^10\) The leaders of the Birmingham Campaign announced that they would disobey the ruling.\(^11\) On Good Friday, April 12, 1963, Dr. King, Reverend Ralph Abernathy (King’s chief aide), and Reverend Shuttlesworth dressed for an arrest in rough, denim work clothing, and led a march toward the Birmingham City Hall.\(^12\) Dr. King, Reverend Abernathy, and Reverend Shuttlesworth all were arrested that morning.\(^13\)

Shortly after his arrest, King received a newspaper that contained “A Call for Unity”—an open letter published in the Birmingham News by eight clergymen from Alabama—Bishop C. C. J. Carpenter, Bishop Joseph A. Durick, Rabbi Milton L. Grafman, Bishop Paul Hardin, Bishop Nolan B. Harmon, Reverend George M. Murray, Reverend Edward V. Ramage, and Reverend Earl Stallings.\(^14\)

9. Lohr, supra note 7; KENNETH B. CLARK, KING, MALCOLM, BALDWIN: THREE INTERVIEWS 23 (2d ed. 1987) (“[N]on-violent direct action is a method of acting to rectify a social situation that is unjust and involves in engaging in a practical technique that nullifies the use of violence or calls for non-violence at every point.”).
11. Id. at 310.
14. C.C.J. Carpenter et al., A Call for Unity (Apr. 12, 1963), available at http://1.bp.blogspot.com/-T6wKbEwaco8/UE7En9TrkiI/AAAAAAAGBQ/3aQPjBhuM4k/s1600/King%2bClergy%2bLetter.jpg; see also White Clergymen Urge Local Negroes to Withdraw from Demonstrations, BIRMINGHAM
These eight white clergymen stated their opposition to King and his “unwise and untimely” methods, advised patience, and appealed “to both our white and Negro citizenry to observe the principles of law and order and common sense” by calling for an end to the marches and protests. The authors feared the violence these direct-action demonstrations might provoke. Reading “A Call for Unity” stirred King into action, and he quickly started to write a response. As King later recounted “on the margins of the newspaper in which the statement appeared, while I was in jail, the letter [then] continued on scraps of writing paper supplied by a friendly [black] trusty, and concluded on a pad [his] attorneys were eventually permitted to leave [him].”

The letter summarizes the reasons Dr. King is marching, the reasons for non-violent resistance to oppression, and the moral basis for these beliefs and actions. The letter also addresses multiple audiences. It initially addresses the eight clergymen who wrote against King in “A Call for Unity,” but then redirects its focus to an audience that has been described as “intelligent and religious moderates.” By the end, it is clear that the letter is speaking more generally to all African Americans and to all concerned citizens who hate oppression and discrimination.

III. A BRIEF BACKGROUND ON MODERN LEGAL RHETORIC

The advanced study of advocacy and persuasion in legal writing and oral communication requires an understanding of rhetoric. A critical part of rhetoric is the study and discipline of

15. Carpenter et al., supra note 14; White Clergymen Urge, supra note 14, at 2.
16. King, supra note 8, at 76 author’s note; see also Lohr, supra note 7.
17. See generally King, supra note 8, at chs. 1–3; Laurel Lacroix, Martin Luther King’s Letter from Birmingham Jail—A Rhetorical Analysis, MILLIKIN UNIVERSITY, http://faculty.millikin.edu/~moconnor/writing/king1a.html (last updated Apr. 16, 2009, 5:09 p.m.).
19. Id. at 123–24; see also Smith, supra note 7.
20. See James Boyd White, Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life, 52 U. CHI. L. REV. 684, 695 (1985). White stated that [l]ike law, rhetoric invents; and, like law, it invents out of something rather than out of nothing. It always starts in a particular culture and among particular people. There is always one speaker addressing others in a particular situation, about concerns that are real and im-
the methods and modes of persuasion, but rhetoric stretches even further to the “discovery and transmission of insight and knowledge.”

Rhetoric is the discipline that examines “ways of winning others over to our views, and of justifying those views to ourselves as well as others, when the question of how things in the world ought to work is contested or contestable.”

“Rhetoric is primarily verbal, situationally contingent, epistemic art that is both philosophical and practical and gives rise to potentially active texts.”

Much of the scholarly attention within the discipline of rhetoric has been directed to effective communication with a particular focus on techniques for persuasive communication and argumentation; thus, many familiar definitions of rhetoric revolve around persuasion in discourse.
This Article refers to the academic study of rhetoric, both in its classical\textsuperscript{25} and contemporary\textsuperscript{26} forms. Rhetoric as the study of persuasion and argument has a noble and classical tradition, but the discipline has had difficulty shaking off a common but enduring slur that is traced to ancient sources: Socrates and Plato described the early study and practice of rhetoric by the ancient Greek Sophists as the art of flattery and trickery, and the slur has stuck throughout the ages.\textsuperscript{27} However, this slur is not the

\textsuperscript{25} Classical rhetoric began in the fifth century B.C. and was continued over the course of the next 1,000 years of Greco-Roman history by Aristotle, Cicero, and Quintilian; this constitutes the defining study of public discourse in classical times. See Edward P.J. Corbett & Robert J. Connors, \textit{Classical Rhetoric for the Modern Student} 15–16, 18–19 (4th ed. 1999). The scholarship and teachings of classical rhetoric were followed as the dominant discipline for developing legal arguments until the first quarter of the nineteenth century. See \textit{Id.} at 15, 489. The origin of classical rhetoric as a discipline devoted to the study of legal discourse and argumentation is traced to Corax of Syracuse. See, e.g., Michael Frost, \textit{Introduction to Classical Legal Rhetoric: A Lost Heritage}, 8 S. Cal. Intercic. L.J. 613, 615 (1999).

Socrates and his student, Plato, critiqued the early tenets of the discipline, see text accompanying note 27 \textit{infra}, and Plato’s student, Aristotle, subsequently refined those tenets, see John H. Mackin, \textit{Classical Rhetoric for Modern Discourse} vii, 6–7, 17–18 (1969). The most important writings of classical rhetoric are those of Aristotle, \textit{Aristotle, The Rhetoric}, supra note 24; Cicero, Marcus Tullius Cicero, \textit{De Inventione} 93, 104 (H.M. Haleb trans., 1949); Marcus Tullius Cicero, \textit{De Oratore} (E.W. Sutton trans., 1942); and Quintilian, \textit{1 Marius Fabric Quintilian, Institutio Oratoria} 273 (H.E. Butler trans., 1954), which together define the canons of the discipline that serve as a rhetorical lens on legal discourse.

\textsuperscript{26} See, e.g., Kenneth Burke, \textit{A Grammar of Motives} (1969) [hereinafter Burke, \textit{Grammar of Motives}]; Kenneth Burke, \textit{A Rhetoric of Motives} (1950) [hereinafter Burke, \textit{Rhetoric of Motives}]; Umberto Eco, \textit{A Theory of Semiotics} (1976); Marshall McLuhan, \textit{Understanding Media: The Extensions of Man} (1994); C. K. Ogden & I.A. Richards, \textit{The Meaning of Meaning} (1972); Lloyd P. Bitzer, \textit{The Rhetorical Situation}, 1 Phil. & Rhetoric 6, 6–8 (1968) (the impact of situation). Over time, the cognitive rhetoric group divided into two separate groups: the process theory cognitivists and the discourse community cognitivists. See Robbins-Tiscione, supra note 24, at 79–80. The process theory cognitivists believe that the study of rhetoric should focus on the process of writing, a recursive creative process rather than a linear one. See Linda Flower & John R. Hayes, \textit{A Cognitive Process Theory of Writing}, 32 C. Composition & Comm. 365, 366–69 (1981), available at http://kdevries.net/teaching/teaching/wp-content/uploads/2009/01/flower-hayes-81.pdf. The process of writing teaches writers how to reason, persuade, and improve their communication by examining each stage of the writing process. See Robbins-Tiscione, supra note 24, at 79. On the other hand, the discourse community cognitivists believe the study of rhetoric is a study of the writer’s assimilation into and acceptance of the tenets, vocabulary, and expectations of a discourse community, such as the legal writing discourse community. See \textit{Id.} at 80. A third school of thought, the socio-epistemic group, combines social theories of community with epistemological theories of learning to form a theory of communication that considers the “interaction between speaker, subject matter, and audience.” \textit{Id.} at 81.

\textsuperscript{27} Socrates apparently did not devote his time to the publication of works, so we rely on Plato whose writings purport to represent Socrates’ criticisms of rhetoric in such famous dialogues as \textit{Plato, Phaedrus}, available at http://www.classicallibrary.org/plato/
subject of this Article. Rhetoric, the academic discipline, is not the study of hollow speech, nor is it puffery designed to prop up specious assertions, nor hyperbole employed to distract an audience from the truths or falsities of the speakers’ position. In short, it is nothing like the meaning of the commonplace phrase, “mere rhetoric.” This Article does not propose or support the use of visuals (images, photographs, drawings, and other visual elements) as schemes of exaggeration, distraction, or trickery, but rather as elements of a discipline with a well-developed system of argumentation and persuasion that offers lessons for legal discourse.

A. Visual Rhetoric for Purposes of Communication and Advocacy—The Next “Logical” Step for Legal Rhetoric and Advocacy

The contemporary period of rhetorical study began in the mid-twentieth century. Major movements in thought and science have broadened the study of rhetoric to include all aspects of communication, including linguistics, ethics and persuasion, practical reasoning, human motivation, composition theories, cognitive studies, and socio-epistemic studies. The “common thread” among these schools of thought in the developing discipline of contemporary rhetoric is a “shift in thinking on the nature of knowledge and truth.” The indeterminacy of purely


30. See ROBBINS-TISCIONE, supra note 24, at ch. 3.

31. Id. at 61–82; see, e.g., ROLAND BARTHES, ELEMENTS OF SEMIOLOGY (Annette Lavers & Colin Smith trans., 1968) (language as symbols); BURKE, GRAMMAR OF MOTIVES, supra note 26; Burke, RHETORIC OF MOTIVES, supra note 26.

32. See ROBBINS-TISCIONE, supra note 24, at 81; Kristen K. Robbins, Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Legal
verbal language, and even of “truth,” means that an advocate is striving for a decision-maker to adhere to the advocate’s “version” of reality constructed through the discourse she is creating.\textsuperscript{33} The progression of this thread points to greater use of visual-graphic tools for rhetoric because cognitive studies and brain science continually demonstrate the advantages of speed and efficiency of visual rhetorical elements over purely verbal communication,\textsuperscript{34} and socio-epistemic and law and society studies affirm that as our culture becomes increasing visual, so, too, must discourse of every kind become increasingly visual.\textsuperscript{35}

Yes, there are bounds—certain facts, events, and conditions will be conclusively established, and certain aspects of the law and the rules governing the dispute will not be contestable. But within these bounds, the advocate has a wonderful breadth of opportunity in which to construct reality through discourse. The signs and symbols of verbal language (i.e., words) take time to construct knowledge and understanding; visual signs and symbols work faster. Hence the adage, “one picture is worth a thousand words.”\textsuperscript{36}


34. Jewel, supra note 3, at 264; Sherwin et al., supra note 2, at 239.


36. E.g., Tushnet, supra note 1, at 692.
Visual imagery is not only faster than words; it is better than words. Brain science demonstrates that images allow greater perception, comprehension, and retention of certain kinds of information. Visual rhetoric has an unusual advantage over verbal works: visuals, such as photographs and videos, generally are perceived by audiences as “showing the truth,” as opposed to making an appeal to persuade or manipulate the audience. “The power of images comes not just from the emotions they evoke but also from the linked feature that they are hard to see as arguments: they persuade without overt appeals to rhetoric.”

This is especially important in the context of an emotional appeal (in classical rhetorical terms, an appeal to pathos) because a highly charged emotional appeal in words often can backfire if the audience perceives the author as attempting to manipulate the audience to set aside reason and follow an emotional response. An audience might dismiss such verbal maneuvers as “hyperbole”—a highly disfavored trope of rhetoric. Not so with the use of visual devices. Scientists in cognitive studies and brain science have demonstrated over and again that photographs and video are perceived as true because you can look right at them and see reality for what it is.

38. See the sources cited within note 4, supra.
39. Tushnet, supra note 1, at 692.
40. Id. (quoting Sekula, supra note 4, at 37).
41. See Richard K. Sherwin, A Manifesto for Visual Legal Realism, 40 LOY. L.A. L. REV. 719, 725–26 (2007) (“Viewers tend to react to screen images in the same way that they react to reality. Naïve realism apparently is the natural default setting for visual common sense. Subject to our unthinking gaze, which is mostly how we watch, the screen
Audiences from lay people\textsuperscript{42} to United States Supreme Court justices\textsuperscript{43} are ready to say that a photograph or video “quite clearly” speaks for itself; it obviously is the truth. This may at times (or often) be a manifestation of the bias of naïve realism\textsuperscript{44} or cognitive illiberalism.\textsuperscript{45} But audience bias is one of the conditions of the rhetorical situation that advocates will face, and use of photographs and video is one method of putting that bias to work to communicate ideas and construct knowledge and understanding, provided that the author is not using images to play upon the bias to obfuscate or deceive the audience.

B. Lessons for Visual Rhetoric Concerning Pathos-Based Modes of Persuasion to Address Cognitive and Situational Effects on Decision-Making

A significant part of contemporary cognitive studies and brain science challenges the assertion that legal decision-makers are autonomous individuals weighing costs and benefits in individualistic terms, unaffected by context and situation.\textsuperscript{46}
Under the traditional and still prevailing doctrine of rational choice, rational decision-making should not be affected by situation, meaning that choices that maximize the decision-makers’ ends should not be affected by situation.\textsuperscript{47} The values and interests implicated by a choice may be different from individual to individual, but once identified, the choices made in recognition of the same values and interests should not change from situation to situation.\textsuperscript{48} However, cognitive studies and brain science on situational decision-making take the opposite position based on empirical evidence and argue that decisions are affected by biases and heuristics that are connected to the context and situation of the decision-making.\textsuperscript{49}

Cognitive studies and brain science have worked a similar correction in contemporary rhetoric’s modern argument theory: the assumptions and premises of classical and traditional theories of rhetoric regarding audience have been refined by modern social science and cognitive studies that redefine the concept of the rhetorical situation in a way that affects every part of persuasive discourse—the audience, the message, and the speaker.\textsuperscript{50} The lessons learned in cognitive studies and brain science inform modern argument theory that visual rhetorical devices can improve communication, comprehension, belief, and adherence of audiences to the ideas presented in legal discourse.\textsuperscript{51}

Visual rhetorical devices—referred to here as topics of invention and arrangement and tropes of style—fill a gap in communication and comprehension because they work rapidly, almost immediately, to communicate ideas, achieve the belief of the audience in the meaning and truth of the ideas communication,


\textsuperscript{48} Michael D. Murray, After the Great Recession: Law and Economics’ Topics of Invention and Arrangement & Tropes of Style, 58 LOY. L. REV. 897, 931 (2012).


\textsuperscript{50} See, e.g., MAKAY, supra note 24, at 9; ROBBINS-TISCONE, supra note 24, at 9; Bitzer, supra note 26, at 6–8; Wetlaufer, supra note 24, at 1546; White, supra note 20, at 695.

\textsuperscript{51} See sources cited within note 3, supra.
and thus persuade the audience of the truth and propriety of the speaker’s communication. 52 Visual perception produces the effect known as naïve realism—the bias that contributes to the belief that everything one sees is, in fact, true; that for rhetorical purposes, seeing really is believing. 53

Situational decision-making often implicates the different values that people assign to different choices depending on the context and situation in which the decision is to be made, 54 and a rhetorical examination of values leads to the analysis of pathos 55—the emotional response to persuasive discourse 56—


53. See Benforado & Hanson, supra note 44, at 513–14; Lammon, supra note 44, at 233; Ross & Shestowsky, supra note 44, at 1088.


55. Pathos is one of the three artistic topoi of invention—an essential mode of persuasion in classical rhetoric. See ENCYCLOPEDIA OF RHETORIC 99 (Thomas O. Sloan ed., 2001); Robert F. Blomquist, Dissent Posner-Style: Judge Richard A. Posner’s First Decade of Dissenting Opinions, 1981–1991—Toward an Aesthetics of Judicial Dissenting Style, 69 MO. L. REV. 73, 158 (2004). Quintilian put great stock in emotional appeals, see Michael Frost, Ethos, Pathos & Legal Audience, 99 DICK. L. REV. 85, 91, 100–04 (1994), claiming that, “this emotional power . . . dominates the court[,] it is this form of eloquence that is queen of all.” 2 QUINTILIAN, 2 INSTITUTIO ORATORIA 419 (H.E. Butler trans., 1954). Quintilian, like Aristotle, thought that “the duty of the [advocate] is not merely to instruct: the power of eloquence is greatest in emotional appeals.” Id. at 139; see Frost, supra note 55, at 91. Over-reliance on the logos, the logical presentation, of an argument may be a myopic tendency of lawyers, but it is likewise clear that pathos cannot be controlled directly by legal argument. CORBETT & CONNORS, supra note 25, at 78; see also Kenneth D. Chestek, Judging by the Numbers: An Empirical Study of the Power of Story, 7 J. ALWD 1, 3, 5, 29–30 (2010) (detailing an empirical study of the persuasiveness of logos-centric versus pathos-centric briefs). The classical rhetoricians recognized that our emotions are not entirely under the control of our will and our intellect. CORBETT & CONNORS, supra note 25, at 78. We cannot use logic to argue an audience into an emotional state any more than we can will ourselves into an emotional reaction based on an intellectual conviction that we should have a certain emotional reaction to a certain set of facts or a particular logical appeal. See id. An advocate who explicitly announces that he or she will play on the audience’s emotions in the presentation of the discourse will inevitably achieve the opposite result; the audience, made wary of emotional manipulation, will, at best, steel themselves not to be manipulated, and, at worst, will discount the advocate’s presentation on the grounds that the advocate has engaged in trickery and subterfuge. See id. at 78–79. Thus, the advocate must not openly play upon the audience’s heart strings, but instead
because values in contemporary brain science appear to be the most important trigger of emotional conviction. Contemporary rhetoric encompasses examination and consideration of the values, passions, and biases of the audience in its study of the use of practical reasoning and informal logic, narrative reasoning (and its many sub-categories—storytelling, mythical forms, parable forms, hero-antihero archetypes), and the schemes and tropes of composition in analogical and literary forms (e.g., schemes and figures of speech, metaphor theory, and literary allusion).  

must carefully and subtly arrange the facts and narrative reasoning of the case in conjunction with the logic and legal reasoning of the argument. See id.; Chestek, supra note 55, at 2, 3, 5, 29–32; Frost, supra note 55, at 94.


Damasio describes the brain process of somatic marking, which is used to evaluate experience of the world, tagging certain facts as useful and valuable toward an objective, and rejecting many others. In decision-making, such as the task of jurors, the process involves the somatic marking of evidence for its salience toward the decision, winnowing down the possible choices and their consequences based on the somatic marker (loosely characterized as a “gut feeling”) assigned to the evidence. (Contemporary legal economists and behavioral scientists would characterize this as the application of affect heuristics.) E.g., Melissa L. Finucane et al., The Affect Heuristic in Judgments of Risks and Benefits, 13 J. BEHAV. DECISION MAKING 1, 2 (2000). Jurors then seek a narrative that makes sense fitting the marked evidence into a coherent, lifelike, believable story. See THOMAS A. MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWERS OF PERSUASION 116 (2d ed. 2009); Lisa Kern Griffin, Narrative, Truth, and Trial, 101 GEO. L.J. 281, 293–97 (2013); Anne Bowen Poulin, The Investigation Narrative: An Argument for Limiting Prosecution Evidence, 101 IOWA L. REV. 683, 686 & n.6 (2016). Jurors can supply their own narrative, or the advocate can supply a lifelike, believable storyline that fits the facts (and assists the client), which emphasizes the need for storytelling as a tool of narrative reasoning in legal discourse. See generally DAMASIO, DESCARTES’ ERROR, supra note 53, at 170–75; Todd E. Pettys, The Emotional Juror, 76 FORDHAM L. REV. 1609, 1628, 1631–33 (2007).

58. See, e.g., MICHAEL R. SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING, ch. 3 (3d ed, 2013); Kenneth D. Chestek, The Plot Thickens: Appellate Brief as Story, 14 LEGAL WRITING 127 (2008); Delia B. Conti, Narrative Theory and the Law: A Rhetorician’s Invitation to the Legal Academy, 39 DUQ. L.
Contemporary rhetoric applies cognitive studies and brain science to inform the predictions of audience reaction and motivation produced by the use of certain topics of invention or tropes of style. I have previously written that there are two rhetorical lessons to be drawn from the recent findings of cognitive studies and brain science: First, a single rhetorical approach to discourse may miss the audience and fall short of the rhetorical situation. Discourse should be crafted in layers, and by this I mean the use of multiple layers using different modes of persuasion directed toward the same audience for the same level of rhetorical communication. Second, an advocate should consider pathos-based modes of persuasion to target the values of the audience in the situation and present a discourse that the audience will identify and accept. This strategy will be greatly facilitated by a thoughtful and intentional use of visual rhetorical devices.


61. Id.

62. Id.
IV. APPLICATION OF VISUAL RHETORICAL DEVICES IN DISCOURSE

The recognition that visual rhetoric is rapid, efficient, constructive, and persuasive reveals the potential of visual-graphical elements as a source of topics (topoi) and tropes to construct meaning and to inform and persuade legal audiences. Visual topics and tropes inspire inventive thinking about the law that constructs meaning for the author and the audience.

Under contemporary legal rhetoric’s modern argument theory, rhetoric is the practice of crafting discourse for the audience and the situation. Modern argument theory confronts the problem of the indeterminacy of language. The linguistic limitations of indeterminacy mean that arguments are not

63. In rhetoric, the topoi [Greek] or loci [Latin] (singular, topos or locus = place) are the “topics” or “subjects” of argument that can be made in various situations. See CORBETT & CONNORS, supra note 25, at 17, 20; Gabriele Knappe, Classical Rhetoric in Anglo-Saxon England, 27 ANGOLO-SAXON ENGLAND 5, 25 (1998). Topoi are developed in the process of inventio [Latin] or heurèsis [Greek], which may be translated as “invention” or “discovery” of the type of argument that will be most persuasive in the situation, and in the dispositio [Latin] or taxis [Greek] of the argument, which translates as the “arrangement” or “organization” or “disposition” of the contents of the argument. See CORBETT & CONNORS, supra note 25, at 17, 19–20; Knappe, supra note 63, at 25.

64. A trope is a use of a word that deviates from the ordinary and principal meaning or signification of the word. See CORBETT & CONNORS, supra note 25, at 379. Tropes are developed in the rhetorical process of style (Latin elocutio; Greek lexis), which pertains to the composition and wording of the discourse, including grammar, word choice, and figures of speech. See generally id. at 378; Knappe, supra note 63, at 25–26; Smith, supra note 33, at 129, 133–34 n.2 (collecting sources on style in classical rhetoric). Figures of speech were divided into tropes (creative variations on the meanings of words) and schemes (artful deviations from the ordinary arrangements of words). Berger, supra note 53, at 51 n.179. Professors Berger, Corbett, and Connors identify the classically identified tropes as metaphor, simile, synecdoche, and metonymy; puns; antanaclasis (or repetition of a word in two different senses); paronomasia (use of words that sound alike but have different meanings); periphrasis (substitution of a descriptive word for a proper name or of a proper name for a quality associated with the name); personification; hyperbole; litotes (deliberate use of understatement); rhetorical question; irony; onomatopoeia; oxymoron; and paradox. CORBETT & CONNORS, supra note 25, at 396–409; Berger, supra note 57, at 51 n.179; see also SMITH, supra note 58, at 198–246; 328–39 (metaphors and other tropes).


66. See generally BRUKER & AMSTERDAM, supra note 22, at chs. 2–3, 6–7; PERELMAN & OLRECHTS-TYTECA, supra note 33, at 4, 15–25; FRANS H. VAN EEMEREN ET AL., FUNDAMENTALS OF ARGUMENTATION THEORY: A HANDBOOK OF HISTORICAL BACKGROUNDS AND CONTEMPORARY DEVELOPMENTS 105–17 (1996); Smith, supra note 33, at 139.
provable in the absolute unless the language used is determinate enough for absolute proof—at least “proof” within the language of that discipline—such as the language of mathematics and formal logic.\textsuperscript{67} Outside the realms of mathematics and formal logic, language is only determinative of probabilities of meaning, so that, when the discourse extends beyond pure mathematics and formal logic, argumentation depends on the construction of the most reasonable and probable argument that can be made in the social situation or institutional setting.\textsuperscript{68} The argument is not offered as incontrovertible proof, but instead as the most reasonable and probable outcome that can be advocated in the situation.\textsuperscript{69}

Invention and arrangement are topics of rhetoric that directly confront the rhetorical problem of composing communications to impart meaning to an audience and to persuade that audience in a particular situation. Within these topics, Aristotle divided modes of argument into two parts: (1) the modes of argument and persuasion that are invented or created by the author—the \textit{entechnic pisteis} or “artistic” or “artificial” proofs known as \textit{logos}, \textit{pathos}, and \textit{ethos};\textsuperscript{70} and (2) the modes of argument and persuasion that the author does not or cannot invent, but that are discovered or found—the \textit{atechnic pisteis} or “non-artistic” or “non-artificial” proofs, including facts and data, statistics and reports, documents and contracts, sworn testimony (including expert testimony), interviews, polls, and surveys.\textsuperscript{71}

\textsuperscript{67} See generally Perelman, Realm of Rhetoric, supra note 33, at 9–23; Perelman & Olbrechts-Tyteca, supra note 33, at 15–25; Toulmin et al., Introduction to Reasoning, supra note 33, at 271–74; Smith, supra note 33, at 139.

\textsuperscript{68} See generally Perelman & Olbrechts-Tyteca, supra note 33, at 4, 15–21, 62, 85; Toulmin et al., Introduction to Reasoning, supra note 33, at 16–18, 271–74; Smith, supra note 33, at 139.

\textsuperscript{69} See generally Perelman & Olbrechts-Tyteca, supra note 33; Toulmin, supra note 33. In the legal arena, this theory accepts the fact that the advocate has a client whose facts and legal situation are not necessarily the best possible circumstances for a person legally to be involved in; nevertheless, the advocate must offer the most reasonable, probable, and compelling argument in support of his or her client’s position that can be raised in the situation, with the hope that the decision-maker will find the argument more reasonable and compelling than the opponent’s arguments. Smith, supra note 33, at 139 (citing Kurt M. Saunders, Law as Rhetoric, Rhetoric as Argument, 44 J. Legal Educ. 566, 567 (1994)).

\textsuperscript{70} See, e.g., Smith, supra note 58, at 10–16.

It is noteworthy that visual rhetorical devices, particularly photographs and video, appear to bridge the two categories. They are created and applied by the author, and thus are artificial, but they are perceived as transparent, revealing only the true, actual subjects of the depiction, and thus are perceived and accepted as non-artificial. This contributes to the perception and belief that the author is not engaging in argument (or even rhetoric) when she applies representational visual depictions in discourse.

A. Visual Devices as Topics of Invention

Invention describes the means to create, devise, and conceive of persuasive discourse. The term “invention” is a translation of the Latin inventio and carries the same meaning as the Greek term for invention or discovery, heuristic (Ευρετική). The canon of invention (discovery) serves as a reminder to authors of legal discourse to consider the available means of persuasion and the interaction of the modes chosen so as not to leave out available means or employ self-contradictory or self-defeating means.

The classical rhetoricians did not consider this canon to be a list of required elements of argument. Ideally, the classical rhetorical topic of invention should be used to craft and invent a discourse to persuade through logos, a logical exposition of the argument, as well as by revealing the competence and integrity of the author to handle the exposition itself (ethos) and inspire emotions that put the audience in a frame of mind to be persuad-

1009, 1011 (2003).

72. See sources cited within notes 33–39, supra.
73. See sources cited within notes 33–39, supra.
74. Frost, supra note 25, at 617 (noting the invention or discovery of available means of argument); Frost, supra note 55, at 110.
76. See Frost, supra note 25, at 617–18; Frost, supra note 55, at 127.
77. See Smith, supra note 58, at 10–16.
ed by the argument (pathos), by using the non-artificial facts and evidence made available by the rhetorical situation.

Invention and discovery is the most obvious method of application of visual rhetorical devices. Visuals can serve as exhibits in discourse:

| 79. | Corbett & Connors, supra note 25, at 77–84; Kennedy, supra note 74, at 68; Covino & Joliffe, supra note 23, at 17. |
| 81. | Exhibits to the court’s opinion in Satava v. Lowry, 323 F.3d 805, 810 (9th Cir. 2003). |
At the same time, the presentation of visuals runs a risk of substituting or constructing a contrived reality for actual reality, the actual facts and events of the problem. In my first amendment and art law lectures, I often display examples of visual propaganda and protest art, such as the following:

83. Michael D. Murray, Photographic Comparison of Indianapolis Colts Cap and Baltimore CFL Colts Cap in Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club, Ltd., 34 F.3d 410 (7th Cir. 1994).
84. Henry Pelham, drawing; Paul Revere, engraving, The Bloody Massacre (1770) (note how the British Grenadiers are depicted standing in a straight line shooting their rifles in a regular volley, as if they intentionally lined up to gun down the colonists).
85. Alonzo Chappel, The Boston Massacre (1868) (although painted and engraved decades after the incident, this rendering may more accurately display the chaos of the incident as a general riot in which the soldiers were surrounded and threatened by the rioters. The soldiers’ attorney, future president, John Adams, most likely would have pre-
It is easy to marginalize these depictions as propaganda—a visual form of hyperbole. If offered as proof of facts (how the events actually occurred), they would certainly be challenged as more prejudicial than probative, particularly because they were designed and crafted to depict the scene in a certain light, from a certain perspective, and in so doing to appeal to the emotions of viewers concerning the events depicted. But what of these more recent photographic depictions of a “massacre” in Boston (the Boston Marathon Bombing in 2013), or graphic photographs of injuries in a tort case against a fast food manufacturer (Liebeck v. McDonald’s Restaurants), if offered in the complaint or as evidence in a criminal prosecution:

Boston Marathon Bombing, 2013

86. Francisco de Goya, The Third of May (1808).
87. José Guadalupe Posada, Continuation of Anti-Re-Election Riots (1892).
Originally, I inserted the actual color version of these four photographs, but several commentators and editors of this Journal commented that the visual impact of the original photos was too shocking, too graphic, and too repulsive. Whatever communicative effect was intended by the use, it was overwhelmed by the distracting negative interruption in communication caused by the shocking and repulsive nature of the photographs. The feedback I received presents an object lesson to attorneys, that in spite of the fact that there is nothing staged, re-created, or re-enacted about these photographs, the visual impact is overwhelming to some decision-makers, and works against the intended rhetorical effect. A heavy-handed use of shocking, graphic images may also reduce the ethos level of the author, as the audience may begin to resent or even distrust the credibility of one who attempts to communicate in this manner.

Scholars have commented on the heavy-handed technique of prosecutors who create self-generated visual elements for their arguments to the jury in cases ranging from the American murder trial of Kennedy cousin Michael Skakel, to the Italian murder trial of American expatriate Amanda Knox. In the Michael

90. These images are derived from original photographs labeled Stella1 and Stella2, photographer unknown, depicting the injuries of Stella Liebeck in Liebeck v. McDonalds, available at http://justicebeforecharity.org/images/stella/stella1.png; and at http://justicebeforecharity.org/imag es/stella/stella2.jpg.

91. I have retained the color versions, and will provide them to any reader who would like to make the comparison between the color and the black-and-white (grayscale) versions. Email: professormichaelmurray@gmail.com.


Skakel trial, prosecutors created a sophisticated PowerPoint with embedded video and animated text excerpted from Skakel’s testimony at trial and from interviews reported in the press to highlight certain of his words that were then interwoven and shown on the screen at the same time as images from the crime scene and the victim’s murdered corpse. The images and testimony were separated by twenty-five years, but the PowerPoint’s animation and embedded video suggested that Skakel’s words of “panic” were linked to the discovery of the murder victim’s body.\footnote{94}

In the Amanda Knox prosecution in Italy, the Italian prosecutor created a computer animation depicting what the prosecutor had \textit{argued} were the facts and events of the evening that Knox’s roommate, Meredith Kercher, was brutally murdered. Although rendered in somewhat clumsy, cartoon-like 3D animation, the video displayed the completely one-sided narrative suggested by the prosecution: first, depicting the victim drinking with Knox’s friends; then showing an argument between Kercher, Knox, and Knox’s Italian boyfriend, Raffaele Sollecito; next depicting a brutal attack by Knox and Sollecito on Kercher—animated with a great deal of blood to match the actual bloodiness of the crime scene; and finally depicting certain actions taken by Knox and Sollecito \textit{allegedly} to create a false cover story of a violent break-in by a burglar.\footnote{95}
The use of rhetoric should create knowledge and understanding by constructing the actual reality for the audience. It should not be used to construct a false reality. The power of video, even animated video, is that it makes the fanciful and imagined seem completely possible just because the audience can see it with their own eyes: “See, it (could have) happened just this way.” Visual rhetoric deserves additional, careful examination for its ability to exceed the ethical and professional obligations not to put forth evidence and arguments that are unsupported by the facts, or that have the potential to mislead or obscure the facts of the matter.97

B. Visual Devices as Topics of Arrangement

The classical rhetorical topic of arrangement (Latin dispositio; Greek taxis) pertains to the order and design of the discourse for persuasive effect.98 The use of graphical and tabular material in both law review articles and court opinions99 is on the rise:

96. Images on this page are excerpted screenshots from the original video created by or for the Italian prosecutors in the Italian prosecution of Amanda Knox, republished by Apple Daily Taiwan, available at https://www.youtube.com/watch?v=DrxylYMiMVM.
97. See Murray, supra note 5.
98. See Corbett & Connors, supra note 25, at 20; Berger, supra note 53, at 49–50; Frost, supra note 25, at 618–19; Frost, supra note 55, at 123–27.
99. Murray, supra note 60, at 916.
Arrangement is driven by context and purpose. The proper and persuasive arrangement of discourse depends on the speaker, the speaker’s purpose, the setting or situation, the characteristics of the speaker’s audience, and the audience’s purpose, desire, or motivation.100 As a starting point, the classical rhetoricians developed a complex paradigm for arguments that still is applied in court rules101 for trial and appellate briefs: Exordium (introduction or statement of the issues presented), Narratio (statement of the case), Partitio (summary of the argument), Confirmatio (argument), and Peroratio (conclusion).102

As with the topic of invention, arrangement operates through two modes of logos-oriented communication and persuasion: the Entechnic Pisteis (Artistic) Modes and the Atechnic Pisteis or (Non-Artistic) Modes. Put simply, artistic modes of invention or

100. See Corbett & Connors, supra note 25, at 20; Michael H. Frost, Introduction to CLASSICAL LEGAL RHETORIC 4, 34, 35 (2005); Berger, supra note 57, at 49.
101. E.g., U.S. Sup. Ct. R. 14, 24; see Frost, supra note 100, at 45; Berger, supra note 57, at 50.
102. See Frost, CLASSICAL LEGAL RHETORIC, supra note 100, at 45. The dispositio of the argument also may contain refutatio, the making and meeting of counter-arguments. In De Inventione, Cicero named six parts: exordium, narratio, partitio, confirmatio, reprehensio (refutation, counter-argumentation), and conclusio (conclusion). Marcus Tullius Cicero, De Inventione, sec. 1.19, at 41 (H.M. Hubbell trans., 1949) [hereinafter Cicero, De Inventione]. The Rhetorica ad Herennium names six parts of dispositio: exordium, narratio, divisio (summary, breakdown of arguments), confirmatio, confutatio (counter-argumentation), and conclusio. Cicero, RHETORICA AD HERENNIIUM § 1.3 (H. Caplan trans., 1954) [hereinafter Cicero, Rhetorica]; see Russ Ver Steeg & Nina Barclay, Rhetoric and Law in Ovid’s Orpheus, 15 LAW & LITERATURE 395, 410 n.71, 413 (2003).
arrangement are created (drafted, composed, or imagined) by the author, while non-artistic modes are not created by the author, but are found or identified by the author and employed in the discourse in furtherance of the author’s goals.

Visual methods of invention and arrangement are found in both artistic and non-artistic modes of *logos*-oriented communication and persuasion. Visuals can play a direct role in contemporary legal analysis of facts and data, statistics and reports, documents and contracts, sworn testimony (including expert testimony), interviews, polls, and surveys. In short, we have come a long way in the proper presentation of the *atechnic pisteis*, or non-artistic, modes of invention. In many areas of law—e.g., antitrust law, tax law, securities law, and the calculation of damages in almost every area of contract, tort, and property law—visual forms allow the audience to process mathematical, scientific, and statistical analysis to inform and construct the audience’s understanding of the analysis. Visual depiction of the results of surveys, statistical and quantitative analyses of empirical data, diagrammatical demonstration, and four-quadrant tabular presentation of data—is a well-established method of persuasion.
The diagram above (Carte Figurative) is the rather famous chart created by Charles Joseph Minard depicting the size of Napoleon’s army marching to and from Moscow in 1812–1813. The gray area is the army of 422,000 soldiers that crossed from Poland into Russia, and the dark black area is the army, now numbering 100,000 soldiers, that retreated from Moscow, of which 10,000 soldiers eventually made it back to Poland. The black area is charted above the temperature recordings during the retreat. This diagram was featured in Edward R. Tufte, *The Visual Display of Quantitative Information* (1982), as an excellent depiction of numeric data (troop count and temperature), as well as geography, and a timeline of a historic event. This chart tells a very powerful story about the effects of weather and geography (note the losses associated with each river crossing) on an army that went from 422,000 to 10,000 in a single campaign without losing a major field battle to its adversaries.

In the direct proof of damages or an element of the case, or the persuasive ordering and presentation of evidence, the use of visual organizational schemes is substantive, but it is also rhetorical because it is employed as a language to construct
knowledge and to convince the reader that the evidence is reliable or that the proposition is proved.103

C. Visual Devices as a Trope of Style

The artistic and non-artistic modes discussed above use visual devices in a substantive manner to communicate meaning and construct knowledge and understanding. This section discusses stylistic uses of visual forms that are not in and of themselves substantive, meaning that the logos-type communication and understanding of the analysis and the potential proof of its conclusions achieved through the use of visual forms (e.g., mathematical or scientific forms) is not necessarily the primary reason for employing visual forms in the discourse. Instead, the forms are used for style effects in ways that primarily follow the pathos or ethos pathways of the communication.

Style (Latin elocutio; Greek lexis) pertains to the composition and wording of the discourse, including grammar, word choice, and figures of speech.104 In classical rhetoric, figures of speech were divided into schemes (artful deviations from the ordinary arrangements of words), and tropes (creative variations on the meanings of words).105 Style is dependent on the speaker, the context, the setting, and the audience. The audience and the situation for the discourse are, of course, very important to the analysis of the best arguments that can be raised.106

Certain visual forms can be used not simply to communicate facts, data, statistics, or other information, but to suggest rhetorically a certain level of rigor that bolsters the ethos appeal of the presentation. For example, visual mathematical forms (charts, diagrams, four-quadrant tables, algebraic formulas, etc.) can stimulate thought and imagination, constructing knowledge and understanding of the information, but the very nature of their appearance as mathematical forms can help to convince the audience of the truth and value of the information, aiding the

103. See Levine & Saunders, supra note 33, at 118–21; Simpson & Selden, supra note 71, at 1011; see also Conley, supra note 71, at 280.
104. See generally Smith, supra note 33, at 133–34 n.2 (collecting sources on style in classical rhetoric); Kristen K. Robbins-Tiscione, A Call to Combine Rhetorical Theory and Practice in the Legal Writing Classroom, 50 WASHBURN L.J. 319, 335–36 (2011).
105. Berger, supra note 57, at 51 n.179.
106. Bitzer, supra note 26, at 6–8; Greenhaw, supra note 61, at 875–80.
persuasiveness of the discourse. The following charts offer examples of this phenomenon.

Example 1:

While drafting this Article, I used a chart prepared by the Coalition for Intellectual Property Rights (CIPR) that reported “Ratings of Challenges Facing Successful Operations of a Business in Russia (Among Selected Major Brandholders and Trademark Owners Doing Business in Russia).” It was offered to demonstrate that intellectual property protection was perceived to be a primary challenge confronting international companies doing business in Russia. The methodology was described in the following way:

In the survey, respondents were asked to rate a series of “challenges confronting the successful operations of your business in Russia” using a five-point scale, where one meant “least important” and five meant “most important.” More than one-half (52%) of selected major brandholders and trademark owners doing business in Russia gave a rating of five to intellectual property protection. This ranks intellectual property protection on virtually the same high level of concern as customs (54%) and taxes (52%)—which have historically been perceived as presenting the greatest challenges to business success in Russia.

Unfortunately, this chart no longer is present on the CIPR website, so I recreated the chart using the same numbers but in regard to a fictional country of Dennisuela (named in honor of my son, Dennis):

108. I have reproduced these charts that were originally used in Murray, supra note 107, at 634–35; and in Michael D. Murray & Christy Hallam DeSanctis, Advanced Legal Writing and Oral Advocacy: Trials, Appeals, and Moot Court, at ch. 2 (2d ed. 2014).
110. The chart and supporting information previously was found at http://www.cipr.org/activities/surveys/top50/index.htm, but now is on file with Author.
111. See id. (text on file with Author).
112. Id. (text on file with Author).
Nothing in this chart is particularly mathematical except the fact that the author added up some survey numbers to produce the chart, but the demonstration of the data in a bar graph with a super-imposed variable line graph makes the presentation all the more authoritative in a rhetorical sense because it appears that a complicated mathematical formula was applied to data to produce this graph.

Example 2: \(^{113}\)

I consider example 2 to be an excellent use of visual scientific charting (taking the form of an informational or decisional flow chart) to make a purely rhetorical point: “The procedure for acquiring a firearm in Quebec is too complicated; just look at it.”

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Example 3:114

This chart (example 3) discusses the rise and fall of mentions of particular city names in English language literature, and claims that this Google Lab chart reports the results of a search of city names in the vast amount of literature that Google has

scanned and compiled for searching.\textsuperscript{115} The chart purports to tell us something about “the relative importance of different centers of power in the public imagination.”\textsuperscript{116} The author could have stated quite simply: when searching for Paris, London, New York, Boston, and Rome, in the scanned English literature from 1750 to 2008, interest in London remained steady and at a higher level than Paris, Boston, and Rome, while interest in New York started at a very low point but grew steadily, surpassing London in approximately 1910, and continued to rise in popularity until 1980, when it began a steady decline. This would have accurately stated the purported findings, but the graphing of the information sends a very different rhetorical message—that something scientific was done to produce the results the readers see before them.

Mathematical and scientific forms are a persuasive visual tool; but the tool is only as good as the user, and the user must be careful about proper uses in proper situations.\textsuperscript{117} In general legal discourse, the use of mathematical and scientific forms and schemes as an artistic or stylistic mode comes with a word of caution: the rhetorical power of a mathematical proof or a demonstration of a scientific deduction or induction lies in the openness and transparency of the demonstration. The premises (major and minor) and the nature of the hypothesis induced from the comparison of genus and species of data must be fully disclosed and described so as to allow the presentation to be analyzed and rebutted. The assertions made in reference to the information displayed must be falsifiable. Tautological explication (wherein the information is presented as self-evident or self-established, or in simpler terms, that the information is what it is) adds nothing to meaning or understanding and does not contribute to the mode of persuasion that points to truth. Using mathematical forms simply to dazzle or confuse the audience or obfuscate the relevant information pertinent to the issue is the worst form of trickery (\textit{mere rhetoric}, not actual rhetoric). Consider the following chart of the Obama Health Care Reform initiative:\textsuperscript{118}

\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} See generally Murray, \textit{supra} note 5.
\textsuperscript{118} Image was original available at Paul Ibrahim, \textit{Politics, Economics, and More Blog},
One might question whether the author of this chart intended to make clear the available options offered under the health care reform initiative.

V. THE ILLUSTRATED LETTER FROM BIRMINGHAM JAIL: A RHETORICAL ANALYSIS

This final section analyzes Martin Luther King, Jr.’s “Letter from Birmingham Jail,” as supplemented by images provided by me. My methodology is to demonstrate the potential of visual rhetoric in conjunction with verbal rhetoric. I imagine and attempt to create the letter that Dr. King might have written had he had access to a modern personal computer in his cell in


119. This version of the “Letter from Birmingham Jail” can be found in KING, supra note 8, at ch. 6.
Birmingham, and had he attempted to insert visuals to support his rhetoric.\textsuperscript{120}

April 16, 1963

My Dear Fellow Clergymen:\textsuperscript{121}

While confined here in the Birmingham city jail,\textsuperscript{122} I came across your recent statement calling my present activities “unwise and untimely.” Seldom do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my desk, my secretaries would have little time for anything other than such correspondence in the course of the day, and I would have no time for constructive work.\textsuperscript{123} But since I feel that you are men of genuine good will and that your criticisms are sincerely set forth,\textsuperscript{124} I want to try to answer your statement in what I hope will be patient and reasonable terms.\textsuperscript{125}

\textsuperscript{120} My method in the use of the images is to display small, thumbnail versions of the original images, and to transform them in meaning and purpose by recontextualizing them together and in a new setting for new purposes of education, comment, and historical educational reference. See Bill Graham Archives v. Dorling Kindersley, Ltd., 448 F.3d 605 (2d Cir. 2006); Bouchat v. Baltimore Ravens Ltd. P’ship, 619 F.3d 301 (4th Cir. 2010); Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146 (9th Cir. 2007); Michael D. Murray, What Is Transformative? An Explanatory Synthesis of the Convergence of Transformation and Predominant Purpose in Copyright Fair Use Law, 11 CHI.-KENT J. INTELL. PROP. 260, 266 (2012).

\textsuperscript{121} The polite opening is both courteous and deferential (ethos).

\textsuperscript{122} King opens with a reference to his confinement. While factually undeniable, the lead in achieves a pathos purpose to remind the readers of his mistreatment and discomfort. I have added a picture of his mug shot from his booking on April 12, 1963 (pathos).

\textsuperscript{123} The reference to his “constructive work” and possessing multiple secretaries seemed geared to bolster the clergymen’s opinion of him. He is an important man, whose many activities warrant more than one assistant (ethos).

\textsuperscript{124} King flatters his critics (ethos). This is a rhetorically appropriate use of flattery, not obsequious or pandering.

\textsuperscript{125} The dominant theme of the opening is an ethos appeal tinged by pathos. The two photographs I have chosen document parts of the story, but are not added for any logos purpose—no one needs proof or even reminding that King was incarcerated. Instead, the photographs are added for their pathos value, much in the same way that King has added
I think I should indicate why I am here in Birmingham, since you have been influenced by the view which argues against “outsiders coming in.” I have the honor of serving as president of the Southern Christian Leadership Conference, an organization operating in every southern state, with headquarters in Atlanta, Georgia. We have some eighty-five affiliated organizations across the South, and one of them is the Alabama Christian Movement for Human Rights. Frequently we share staff, educational and financial resources with our affiliates. Several months ago the affiliate here in Birmingham asked us to be on call to engage in a nonviolent direct-action program if such were deemed necessary. We readily consented, and when the hour came we lived up to our promise. So I, along with several members of my staff, am here because I was invited here. I am here because I have organizational ties here.

But more basically, I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left verbal pathos-oriented references in the opening.

126. The image that appears above shows the moment of King and Abernathy’s surrender to police. I find the expression of resignation and submission on King’s face to be poignant. Even more so are the figures in the background, white and black men, who are falling to their knees in the face of baton-wielding police officers rushing toward them in an allusion of submission and prayer (pathos).

127. As he promised above, King “patiently” explains how and why he came to be in Birmingham (ethos).

128. Aphorism that succinctly spells out the mission and moral justice of King’s activities in Birmingham.

129. King reveals his university theological education to the clergy addressees (ethos) by his rhetorical allusion to the “8th Century BC prophets,” Amos, Hosea, Micah, and Isaiah, using insider language of his theologically trained discourse community. This training distinguishes King from other leaders of the Birmingham Campaign who lacked seminary or university training, such as Reverend Fred Shuttlesworth. The choice of prophets is intentional in a logos and ethos sense because these prophets are associated with the condemnation of and the need to confront injustice and oppression, along with a call for ministering to the needs of the poor and oppressed. See Amos 2:6–8; 3:11–15; 4:1; 8:5–6; Isaiah 3:1; Hosea 5:8–14. Isaiah is well known, too, for his messages of deliverance, Isaiah 40–66, and Messianic prophecies, Isaiah 7:14; 8:13; 9:6–7; 11:1–10; 28:16; 40:3–8; 42:1–4; 44:6; 50:6; 53:1–12. That these prophets also foretold of the oppression of a people,
their villages and carried their “thus saith the Lord” far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. Like Paul, I must constantly respond to the Macedonian call for aid.

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial “outside agitator” idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.

Israel, and the ultimate redemption of the people, adds to the logos and ethos appeal of this reference.

130. The appeal to authority is high—the apostle Paul is highly regarded as a scholar as well as a missionary in Christian circles. This appeal is broad-based, not limited to insiders of King’s discourse community. It also is well known that Paul wrote great, important letters while imprisoned. I have added a depiction of Paul, in prison, writing a long letter, to drive home the rhetorical comparison.

131. Perhaps coincidental, but Greco-Roman is a shorthand allusion to classical rhetoric. See, e.g., Frost, supra note 55.

132. Extended metaphor—King is like Paul, the imprisoned letter writer, and also like the eighth century BC prophets, which works out to be an ethos appeal.

133. Insider reference, almost completely directed to members of the theologically trained discourse community (ethos). The reference is to Acts 16:9, wherein the apostle Paul has a vision in the night of a man from Macedonia pleading with him to come their aid to preach the gospel in Macedonia, which Paul followed by traveling to Macedonia. Allusion to Paul again is a linking of King to high Christian authority.

134. This aphorism is one of the most quoted elements of King’s letter. It is pithy, and an example of rhetorical epistrophe: anywhere . . . everywhere.

135. A rapid, extended and mixed metaphor that uses irony—the network is inescapable, but the trap is one of mutuality. The garment weaves people together tightly, but in a common destiny.

136. Another epistrophe: directly . . . indirectly.

137. This paragraph appeals to the addressees to realize they already are on King’s team; they already are bound to him and with him. Thus, in rhetoric, the appeal is simply to agree with his efforts and support him.
You deplore the demonstrations taking place in Birmingham. But your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations.\textsuperscript{138} I am sure that none of you would want to rest content with the superficial kind of social analysis that deals merely with effects and does not grapple with underlying causes.\textsuperscript{139} It is unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city's white power structure left the Negro community with no alternative.\textsuperscript{140}

\textsuperscript{138} The contrast in what the clergyman addressees say and what they do is so striking as to approach a rhetorical oxymoron beyond simple irony or antithesis. But this rhetorical correction of erroneous views still bears a kind and friendly tone for ethos purposes.

\textsuperscript{139} An appeal to the addresses' better judgment—they are not the kind of hypocrites who would persist in erroneous views once the error is pointed out to them.

\textsuperscript{140} The schemes of anaphora and parallelism are used: unfortunate . . . more unfortunate.
In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices exist; negotiation; self-purification; and direct action. We have gone through all these steps in Birmingham. There can be no gainsaying the fact that racial injustice engulfs this community. Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of brutality is widely known. Negroes have experienced grossly unjust treatment in the courts. There have been more unsolved bombings of Negro homes and churches in Birmingham than in any other city in the nation. These are the hard, brutal facts of the case. On the basis of these conditions, Negro leaders sought to negotiate with the city fathers. But the latter consistently refused to engage in good faith negotiation.

141. On this page and the page that precedes it and the page that follows it, I have added provocative photographs with a direct pathos purpose. One might note that the bombings and arrests depicted in these photographs occurred later in 1963 in Birmingham, after the initial draft of the letter, but versions of the letter were reedited and released later.

142. This is the second reference to "self-purification" in the letter. This may have been an obscure reference for the direct addressees of the letter, but not for the core members of King's movement. The letter refers to one of the "four basic steps" of non-violent civil disobedience revealed in this letter: "The collection of the facts to determine whether injustice exists; negotiation; self-purification; and direct action." Self-purification is the step wherein the participants rid themselves of their own "anger, selfishness and violent attitudes from [their] heart[s] and soul[s] in preparation for a nonviolent struggle." See Glossary of Nonviolence, "Purification", THEKINGCENTER.ORG, http://www.thekingcenter.org/glossary-nonviolence (last visited July 6, 2016). It was deemed necessary in order to suffer the verbal and physical abuse of oppressors in the actions of nonviolent resistance, and not to react to the hatred, violence, and abuse in kind. PeaceUp CoRR, Self-Purification, http://corr.peacefulprising.org/elements/self-purification (last visited July 6, 2016). The results of self-purification are revealed by the stoic and dignified ability of protestors to sit quietly while being verbally and physically assaulted in sit-ins at lunch counters, and while picketing and protesting. See id.

143. I have added photographs of the Birmingham newspapers' coverage of bombings. As with the above photographs, the bombing depicted in the newspapers occurred later, after the initial draft of the letter.

144. Contrast: African American leaders are acting in good faith to negotiate a peaceful resolution. White leaders are not. This sentence simultaneously employs ethos, logos, and pathos, because the African American leaders are acting reasonably and rationally, they
Then, last September, came the opportunity to talk with leaders of Birmingham's economic community. In the course of the negotiations, certain promises were made by the merchants—for example, to remove the stores' humiliating racial signs.\textsuperscript{145} On the basis of these promises, the Reverend Fred Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to a moratorium on all demonstrations. As the weeks and months went by, we realized that we were the victims of a broken promise.\textsuperscript{146} A few signs, briefly removed, returned; the others remained.

As in so many past experiences, our hopes had been blasted,\textsuperscript{147} and the shadow of deep disappointment settled upon us.\textsuperscript{148} We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the

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\textsuperscript{145} I added a collage of Jim Crow signage to coincide with King's reference to “humiliating racial signs” (pathos).

\textsuperscript{146} Broken promises, lies are referenced (pathos).

\textsuperscript{147} No doubt the word “blasted” is a rhetorical allusion to the bombings previously mentioned.

\textsuperscript{148} A metaphor with pathos appeal.
national community.\textsuperscript{149} Mindful of the difficulties involved, we decided to undertake a process of self-purification. We began a series of workshops on nonviolence, and we repeatedly asked ourselves: “Are you able to accept blows without retaliating?” “Are you able to endure the ordeal of jail?”\textsuperscript{150} We decided to schedule our direct action program for the Easter season, realizing that except for Christmas, this is the main shopping period of the year.\textsuperscript{151} Knowing that a strong economic-withdrawal program would be the by-product of direct-action, we felt that this would be the best time to bring pressure to bear on the merchants for the needed change.\textsuperscript{152}

Then it occurred to us that Birmingham’s mayorality election was coming up in March, and we speedily decided to postpone action until after election day. When we discovered that the Commissioner of Public Safety, Eugene “Bull” Connor, had piled up enough votes to be in the run-off, we decided again to postpone action until the day after the run-off so that the demonstrations could not be used to cloud the issues. Like many others, we waited to see Mr. Connor defeated, and to this end we endured postponement after postponement. Having aided in this community need, we felt that our direct-action program could be delayed no longer.\textsuperscript{153}

\textsuperscript{149} A complicated mixed metaphor—“present our very bodies as a means of laying our case before the conscience of the local and the national community”—that employs rhetorical personification (laying a case before a conscience).

\textsuperscript{150} Possibly intended as rhetorical questions, implying that King’s followers’ automatic reply would be “yes.”

\textsuperscript{151} Although King provides a manifestly logos explanation of the choice of the Easter season for the protests—a popular shopping season—it subliminally reminds the addressees of another advocate, that of Jesus Christ, in his actions during Holy Week, for an added ethos and pathos effect.

\textsuperscript{152} This entire paragraph is a rhetorical anticipation of objections and King’s rebuttal of those objections to his actions.

\textsuperscript{153} The worldly, political explanation of the timing of the Birmingham Campaign in this paragraph seem out of place because it is presented as a purely worldly, political action from political motivations. This paragraph is almost devoid of reference to any higher, spiritual, justice-based reason for the actions. The photograph I have inserted is an iconic depiction of the abuse of onlookers at a lunch counter sit-in at a Woolworth’s.
You may well ask: “Why direct action? Why sit-ins, marches and so forth? Isn’t negotiation a better path?”

You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent-resister may sound rather shocking. But I must confess that I am not afraid of the word “tension.”

I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal,

so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.

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154. Another paragraph of anticipation of objections, and response to the objections.
155. Personification of the word, tension, as a force or person that might inspire fear.
156. Contrast achieved by juxtaposition of the metaphorical and personified “bondage of myths and half truths” and the “unfettered realm of creative analysis and objective appraisal.”
157. Here, King reveals the ethos of a classical education. The “gadfly” reference after the appeal to the authority, Socrates, refers to Socrates’ argument to the citizens (jurors) of Athens at his own trial where he faced the death penalty for charges of corruption of the youth of Athens. Socrates defended his actions as being like that of a gadfly, set upon the fine, large, well bred horse of Athens to stir the old horse out of a torpor of complacency into action. King’s comparison to Socrates is a clear attempt to link the valor and rightness of Socrates to King’s actions to stir the moderate, well-thinking people out of their torpor and toward his own cause. Note that the comparison is prophetic—King, too, was murdered for his efforts.
158. Contrast achieved by juxtaposition of the metaphorical “dark depths of prejudice and racism” and “majestic heights of understanding and brotherhood.” My juxtaposition of photographs here attempts to depict the same contrast and comparison. Truly, this is a contrived display as neither of the photographs on the next page here have anything to do
The purpose of our direct-action program is to create a situation so crisis packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland\textsuperscript{159} been bogged down in a tragic effort to live in monologue rather than dialogue.\textsuperscript{160}

One of the basic points in your statement is that the action that I and my associates have taken in Birmingham is untimely. Some have asked: “Why didn't you give the new city administration time to act?” The only answer that I can give to this query is that the new Birmingham administration must be prodded about as much as the outgoing one, before it will act. We are sadly mistaken if we feel that the election of Albert Boutwell as mayor will bring the millennium to Birmingham. While Mr. Boutwell is a much more gentle person than Mr. Connor, they are both segregationists, dedicated to maintenance of the status quo. I have hope that Mr. Boutwell will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from devotees of civil rights. My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure.\textsuperscript{161} Lamentably, it is an historical

\begin{flushright}
with the time period of the letter.
\end{flushright}

\textsuperscript{159} The combination of “bondage” and Southland in this paragraph calls to mind Southern slavery, from which emancipation was supposed to have occurred.

\textsuperscript{160} Ironic metaphoric contrast and periphrasis: Beloved Southland (\textit{ethos} and \textit{pathos}) standing in for Southerners, and the Southerners “live” in monologue rather than dialogue.

\textsuperscript{161} The placid, \textit{logos}-based explanation of the first seven sentences of this paragraph abruptly turns in tone and emphasis to an appeal to reason and sympathy—“My friends” (\textit{ethos} appeal), and a passionate explanation of the need to confront immoral authority. King’s voice has risen in crescendo, much as if he were delivering oratory and not writing a letter. The second half still relies on \textit{logos}, but the speech is much more saturated with \textit{pathos}. 
fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.162

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.163 Frankly, I have yet to engage in a direct-action campaign that was “well timed” in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word “Wait!” It rings in the ear of every Negro with piercing familiarity. This “Wait” has almost always meant “Never.” We must come to see, with one of our distinguished jurists, that “justice too long delayed is justice denied.”164

We have waited for more than 340 years for our constitution-al and God-given rights. The nations of Asia and Africa are moving with jetlike speed toward gaining political independence,165 but we still creep at horse-and-buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who

162. The appeal to authority here, to the German-American theologian Reinhold Niebuhr, is somewhat unusual because although Niebuhr spoke out against Nazism, he is much better remembered as the author of the “Serenity Prayer”—“God grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.” Niebuhr’s famous friend and fellow theologian, Dietrich Bonhoeffer, took a much more direct approach to opposing the Nazis, and was ultimately murdered by the Nazis in Germany. This is the background for the aphorism, “groups tend to be more immoral than individuals,” which is applied to segregationists mentioned earlier in this paragraph.

163. King uses this paragraph to work up the rhetorical tone to a level that matches the arch of his oratorial delivery. This paragraph is full of figures of speech largely collected for a single, pathos effect: we are in the right; why should we wait? This rhetorical question ultimately became the title of King’s third book that was his memoirs and reflection on the Birmingham Campaign, KING, supra note 8.

164. The reference here has ethos appeal by indirect allusion to the British politician, William E. Gladstone, and his maxim, “Justice delayed is justice denied,” and by direct allusion to Justice E. Harris Drew of the Florida Supreme Court, who, in 1957, stated, “It is a fundamental truth that justice delayed is justice denied.” State ex rel. Hawkins v. Bd. of Control, 93 So. 2d 354, 367 (Fla. 1957) (Drew, J., dissenting). Although some believe that King meant to allude to a statement of Thurgood Marshall, Marshall was an attorney, not a Supreme Court justice, at the time of the writing of King’s letter, and there is no record of Marshall having said this phrase prior to the publication of King’s letter.

165. The images here are from the successful decolonization efforts of Algeria, India, and Kenya in the 1940s, 1950s, and 1960s, prior to the writing of the letter.
have never felt the stinging darts of segregation\textsuperscript{166} to say, “Wait.” But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society;\textsuperscript{167} when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little

\textsuperscript{166} “Stinging darts of segregation” is another famous metaphor of oppression that has literary allusion (slings and arrows, William Shakespeare, \textit{Hamlet}), personification (segregation is a physical thing, a dart), and mild alliteration of the “S” sound. The words have deep pathos appeal (stinging pain). It also is an anticipation of and rebuttal of the addressees' objections, because they don’t know what it is like to have suffered the effects of segregation.

\textsuperscript{167} “Smothering in an airtight cage of poverty” is one of the strongest metaphors of the letter. It employs irony and personification (poverty is a cage; the cage smothers its captives). On the page that follows, I tried to add an image that would match the irony—a photograph of poor African Americans displaced by the Louisville floods of 1936, marching by a billboard for (white) American prosperity.
mental sky, \textsuperscript{168} and see her beginning to distort her personality by
developing an unconscious bitterness toward white people; when
you have to concoct an answer for a five-year-old son who is
asking: “Daddy, why do white people treat colored people so
mean?”\textsuperscript{169} when you
take a cross-country
drive and find it
necessary to sleep
night after night in the
uncomfortable corners
of your automobile
because no motel will
accept you; when you
are humiliated day in and day out by nagging signs reading
“white” and “colored”; when your first name becomes “nigger,”
your middle name becomes “boy” (however old you are) and your
last name becomes “John,” and your wife and mother are never
given the respected title “Mrs.”; when you are harried by day and
haunted by night by the fact that you are a Negro, living

\textsuperscript{168} One of the saddest metaphors of the letter—“ominous clouds of inferiority beginning
to form in her little mental sky”—is saturated with pathos, and communicates several
layers of meaning by mixing imagery of ominous storm clouds, clouded thinking, and black
clouds of anger and hatred.

\textsuperscript{169} A rare, personal, perhaps even biographical, anecdote in this letter, offered for its
wrenching pathos value.
constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of “nobodiness”—then you will understand why we find it difficult to wait. 170 There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. 171 I hope, sirs, you can understand our legitimate and unavoidable impatience.

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: “How can you advocate breaking some laws and obeying others?” The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that “an unjust law is no law at all.” 172

170. This paragraph is another crescendo in verbal oratory. It relies almost exclusively on the pathos appeal of the narratives and imagery it invokes. I have illustrated it with images that also rely almost exclusively on a pathos appeal.

171. This complicated, mixed metaphor contains a Biblical allusion to the 23rd Psalm (“[M]y cup runneth over. Surely goodness and mercy shall follow me all the days of my life, and I will dwell in the house of the Lord forever.”), sacred to Jews and Christians alike, but King chooses to turn it on its head—"the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair." This unexpected clash is a paradox to the careful listener, and thus draws attention to the point being made.

172. The second half of this paragraph, and the one that follows it, is an intensive moral and legal argument on why unjust laws (passed by men) should not be followed, and thus it adopts a logos-based topos of arrangement based on the classical rhetorical syllogism. In the course of setting the major premises of the syllogism, King cites both Saint Augustine of Hippo, and Saint Thomas Aquinas. These two were great philosophers and theologians, proponents of the natural law (of God), and both are highly regarded beyond their Roman Catholic associations. One of the addressees of the letter was a Roman Catholic, and King is likely to have gone out of his way to include these appeals to Roman Catholic authority. The appeal also reveals the breadth of King's theological education and understanding beyond his own Protestant denomination.
Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.\textsuperscript{173} Any law that uplifts human personality is just. Any law that degrades human personality is unjust.\textsuperscript{174} All segregation statutes are unjust because segregation distorts the soul and damages the personality.\textsuperscript{175} It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.\textsuperscript{176} Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an “I–it” relationship for an “I–thou” relationship and ends up relegating persons to the status of things.\textsuperscript{177} Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and sinful. Paul Tillich has said that sin is separation.\textsuperscript{178} Is not segregation an existential expression of man’s tragic separation, his awful estrangement, his terrible sinfulness?\textsuperscript{179} Thus it is that I can urge men to obey the 1954 decision of the Supreme Court, for it is morally right; and I can urge them to disobey segregation ordinances, for they are morally wrong.\textsuperscript{180}

\begin{itemize}
\item \textsuperscript{173} St. Thomas Aquinas is known for his philosophy and theology of natural law (naturally flowing from the Lord above), and for his philosophy of distributive justice, making him a logical authority to point to when building the natural law legal argument King is constructing here.
\item \textsuperscript{174} The topos of arrangement here is a syllogism, but it is extended to include several major premises of what kinds of laws are unjust before applying the rule to segregation laws.
\item \textsuperscript{175} A bit of alliteration to go with the negative personification of segregation.
\item \textsuperscript{176} A poignant use of the rhetorical scheme of antithesis in parallel structure. A bit of rhyming also is used to draw attention to the point.
\item \textsuperscript{177} King refers to the authority, Martin Buber, the Jewish philosopher and author of the work, “I thou,” most likely for its inclusiveness in faith (one of the addressees of the letter was a Jewish rabbi), and because the core of Buber’s philosophy was one favoring dialogue (“dialoge” intersubjectivity, in Buber’s terms). Here, the accusation is that white segregationists dehumanize blacks—they are an “it,” not a person. The message of dehumanization in the context of Judaism alludes to the Nazis campaigns of dehumanization and extermination without overtly labeling segregationists as Nazis.
\item \textsuperscript{178} The reference to Tillich most likely is an insider reference directed toward the theologically-trained discourse community of the addressees for ethos purposes.
\item \textsuperscript{179} A well-crafted use of consonance alliteration of “S” sounds in an asyndeton construction with several rapidly phrased clauses strung together without conjunctions.
\item \textsuperscript{180} A use of anaphora in parallel structure—“I can urge . . . I can urge . . .”—combined with antithesis in the same parallel structure—“morally right . . . morally wrong.”
\end{itemize}
Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is *difference* made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is *sameness* made legal.

Let me give another explanation. A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Who can say that the legislature of Alabama which set up that state's segregation laws was democratically elected? Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters, and there are some counties in which, even though Negroes constitute a majority of the population, not a single Negro is registered. Can any law enacted under such circumstances be considered democratically structured?

Sometimes a law is just on its face and unjust in its application. For instance, I have been arrested on a charge of parading without a permit. Now, there is nothing wrong in having an ordinance which requires a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First-Amendment privilege of peaceful assembly and protest.

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181. Voting rights was and continued to be one of the most violent and intractable issues of the early-1960s civil rights marches. A few weeks after the first publication of the letter, Medgar Evers would be assassinated at his home in Mississippi for his voter registration activities. I have selected two images relating to the voting rights effort to illustrate this section.
I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.\textsuperscript{182}

Of course, there is nothing new about this kind of civil disobedience. It was evidenced sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake. It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practiced civil disobedience. In our own nation, the Boston Tea Party represented a massive act of civil disobedience.\textsuperscript{183}

We should never forget that everything Adolf Hitler did in Germany was “legal” and everything the Hungarian freedom fighters did in Hungary was “illegal.”\textsuperscript{184} It was “illegal” to aid and comfort a Jew in Hitler’s Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers. If today I lived in a Communist country where certain principles dear to the Christian faith are suppressed, I would openly advocate disobeying that country’s anti-religious laws.\textsuperscript{185}

I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years I have been gravely disappointed with the white moderate.\textsuperscript{186} I

\textsuperscript{182}. This paragraph is difficult to deconstruct because the argument is paradoxical, but it appears to be wholly logos-oriented, not offered as a scheme.

\textsuperscript{183}. In rapid succession, King appeals to Biblical, religious, philosophical, and patriotic authority.

\textsuperscript{184}. Allusion to Nazis, once again, in connection with an argument against segregationist laws.

\textsuperscript{185}. A fairly blatant ethos appeal: “I would have aided my Jewish brothers. . . . I would oppose communist anti-religion laws.”

\textsuperscript{186}. This transition redirects the appeal of the letter to a new audience—the white moderate. For several paragraphs, King is directly targeting moderate whites more than
have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.¹⁸⁷

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing justice and that when they fail in this purpose they become the dangerously structured dams that block the flow of social progress.¹⁸⁸ I had hoped that the white moderate would understand that the present tension in the South is a necessary phase of the transition from an obnoxious negative peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.¹⁸⁹

the clergy addressees of the letter.

¹⁸⁷. Although he courts them, King's disdain for the new audience, or moderate whites, is palpable. King makes an allusion to the Biblical admonition against lukewarm faith in Revelation 3:16: "So, because you are lukewarm—neither hot nor cold—I am about to spit you out of my mouth."

¹⁸⁸. White moderates are metaphorically described as dams that block the flow of social progress.

¹⁸⁹. Lancing an extended boil metaphor with parallel structure.
In your statement you assert that our actions, even though peaceful, must be condemned because they precipitate violence. But is this a logical assertion? Isn't this like condemning a robbed man because his possession of money precipitated the evil act of robbery? Isn't this like condemning Socrates because his unswerving commitment to truth and his philosophical inquiries precipitated the act by the misguided populace in which they made him drink hemlock? Isn't this like condemning Jesus because his unique God-consciousness and never ceasing devotion to God's will precipitated the evil act of crucifixion? We must come to see that, as the federal courts have consistently affirmed, it is wrong to urge an individual to cease his efforts to gain his basic constitutional rights because the quest may precipitate violence. Society must protect the robbed and punish the robber.

I had also hoped that the white moderate would reject the myth concerning time in relation to the struggle for freedom. I have just received a letter from a white brother in Texas. He writes, “All Christians know that the colored people will receive equal rights eventually, but it is possible that you are in too great a religious hurry. It has taken Christianity almost two thousand years to accomplish what it has. The teachings of Christ take time to come to earth.” Such an attitude stems from a tragic misconception of time, from the strangely irrational notion that there is something in the very flow of time that will inevitably cure all ills. Actually, time itself is neutral; it can be used either destructively or constructively. More and more I feel that the people of ill will have used time much more effectively than have the people of good will. We will have to repent in this generation not merely for the hateful words and actions of the bad people but for the appalling silence of the good people. Human progress never rolls in on wheels of inevitability; it comes through the tireless efforts of men willing to be co-workers with God, and without this hard work, time itself becomes an ally of the forces of social stagnation. We must use time creatively, in the knowledge that the time is always ripe to do right. Now is the time to make

190. King asks a series of rhetorical questions (erotema) that climax (auxesis) with an analogy to Christ’s crucifixion.
191. Parallelism with epanalepsis: protect the robbed and punish the robber.
192. King uses a series of parallel antitheses to anticipate and rebut objections of the addressees and the new audience of white moderates. Again and again in this paragraph, he juxtaposes “is” with “is not” phrases: ill will, and good will; bad people, good people.
real the promise of democracy and transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity.\footnote{King ends the paragraph with strong, albeit mixed, metaphors and personification of his ideas and themes that attract proper attention to the comparisons made here.}

You speak of our activity in Birmingham as extreme. At first I was rather disappointed that fellow clergymen would see my nonviolent efforts as those of an extremist. I began thinking about the fact that I stand in the middle of two opposing forces in the Negro community.\footnote{Here, King shifts focus once again to a new audience: the African American community. The message to this audience is an appeal to follow King's moderate but assertive path of nonviolence leading to direct action, rather than a more violent, radical, extremist path, or a passive path of inattentiveness and complacency. Radical elements and complacent, lukewarm elements of African American society are given equal (negative) attention. My images of black "extremism" (i.e., militarism, and nationalism), are, unfortunately, not contemporaneous with the time period of King's letter.} One is a force of complacency, made up in part of Negroes who, as a result of long years of oppression, are so drained of self respect and a sense of "somebodiness" that they have adjusted to segregation; and in part of a few middle-class Negroes who, because of a degree of academic and economic security and because in some ways they profit by segregation, have become insensitive to the problems of the masses. The other force is one of bitterness and hatred, and it comes perilously close to advocating violence. It is expressed in the various black nationalist groups that are springing up across the nation, the largest and best-known being Elijah Muhammad's Muslim movement. Nourished by the Negro's frustration over the continued existence of racial discrimination, this movement is made up of people who have lost faith in America, who have absolutely repudiated Christianity, and who have concluded that the white man is an incorrigible "devil."

I have tried to stand between these two forces, saying that we need emulate neither the "do-nothingism" of the complacent nor the hatred and despair of the black nationalist.\footnote{King draws a contrast to place himself in the middle of—in fact as a mediator of—the complacent, passive black middle class, and the aggressive, black nationalists. Ethos} For there is the
more excellent way of love and nonviolent protest. I am grateful to God that, through the influence of the Negro church, the way of nonviolence became an integral part of our struggle. If this philosophy had not emerged, by now many streets of the South would, I am convinced, be flowing with blood. And I am further convinced that if our white brothers dismiss as “rabble-rousers” and “outside agitators” those of us who employ nonviolent direct action, and if they refuse to support our nonviolent efforts, millions of Negroes will, out of frustration and despair, seek solace and security in black nationalist ideologies—a development that would inevitably lead to a frightening racial nightmare.\textsuperscript{196}

Oppressed people cannot remain oppressed forever. The yearning for freedom eventually manifests itself, and that is what has happened to the American Negro. Something within has reminded him of his birthright of freedom, and something without has reminded him that it can be gained. Consciously or unconsciously, he has been caught up by the \textit{Zeitgeist}, and with his black brothers of Africa and his brown and yellow brothers of Asia, South America and the Caribbean, the United States Negro is moving with a sense of great urgency toward the promised land of racial justice. If one recognizes this vital urge that has engulfed the Negro community, one should readily understand why public demonstrations are taking place. The Negro has many pent-up resentments and latent frustrations, and he must release them. So let him march; let him make prayer pilgrimages

\begin{footnotesize}
\textsuperscript{196} A doomsday scenario portrayed for the benefit of all of the audiences of this letter.
\end{footnotesize}
to the city hall; let him go on freedom rides—and try to understand why he must do so. If his repressed emotions are not released in nonviolent ways, they will seek expression through violence; this is not a threat but a fact of history. So I have not said to my people, “Get rid of your discontent.” Rather, I have tried to say that this normal and healthy discontent can be channeled into the creative outlet of nonviolent direct action. And now this approach is being termed extremist.

But though I was initially disappointed at being categorized as an extremist, as I continued to think about the matter I gradually gained a measure of satisfaction from the label. Was not Jesus an extremist for love: “Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you.”197 Was not Amos an extremist for justice: “Let justice roll down like waters and righteousness like an ever flowing stream.”198 Was not Paul an extremist for the Christian gospel: “I bear in my body the marks of the Lord Jesus.”199 Was not Martin Luther an extremist: “Here I stand; I cannot do otherwise, so help me God.”200 And John Bunyan: “I will stay in jail to the end of my days before I make a butcher of my conscience.” And Abraham Lincoln: “This nation cannot survive half slave and half free.” And Thomas Jefferson: “We hold these truths to be self evident, that all men are created equal . . .”201 So the question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love? Will we be extremists for the preservation of injustice or for the extension of justice?202 In that dramatic scene on Calvary’s hill three men were crucified. We must never forget that all three were crucified for the same crime—the crime of extremism. Two were extremists for immorality, and thus fell below their environment.203 The other, Jesus Christ, was an extremist

197. Matthew 5:44.
200. King turns his own rejection of extremism into a paradoxical allusion to authority, all of whom are now labeled by King as “extremists.”
201. The listing of paradoxical “extremists” dives into a patriotic appeal.
202. A series of rhetorical questions.
203. The imagery of Calvary is powerful, but the message is confusing. The thieves crucified with Jesus rarely are given the status of an authority, and both were being executed for thievery, not for radicalism or immorality. The one repenting his crime provides an object lesson of the power of repentance and belief in Jesus as the Christ, the
for love, truth and goodness, and thereby rose above his environment. Perhaps the South, the nation and the world are in dire need of creative extremists.\textsuperscript{204}

I had hoped that the white moderate would see this need.\textsuperscript{205} Perhaps I was too optimistic; perhaps I expected too much. I suppose I should have realized that few members of the oppressor race can understand the deep groans and passionate yearnings of the oppressed race, and still fewer have the vision to see that injustice must be rooted out by strong, persistent and determined action. I am thankful, however, that some of our white brothers in the South have grasped the meaning of this social revolution and committed themselves to it. They are still all too few in quantity, but they are big in quality. Some—such as Ralph McGill, Lillian Smith, Harry Golden, James McBride Dabbs, Ann Braden and Sarah Patton Boyle—have written about our struggle in eloquent and prophetic terms. Others have marched with us down nameless streets of the South. They have languished in filthy, roach-infested jails, suffering the abuse and brutality of policemen who view them as “dirty nigger-lovers.” Unlike so many of their moderate brothers and sisters, they have recognized the urgency of the moment and sensed the need for powerful “action” antidotes to combat the disease of segregation.

Let me take note of my other major disappointment. I have been so greatly disappointed with the white church and its leadership.\textsuperscript{206} Of course, there are some notable exceptions. I am not unmindful of the fact that each of you has taken some significant

\textsuperscript{204} King's climax returns to Jesus as an extremist authority—for love, truth, and goodness.

\textsuperscript{205} Back to the white moderate audience.

\textsuperscript{206} And back, again, to the original addressees of the letter.
stands on this issue. I commend you, Reverend Stallings, for your Christian stand on this past Sunday, in welcoming Negroes to your worship service on a nonsegregated basis. I commend the Catholic leaders of this state for integrating Spring Hill College several years ago.207

But despite these notable exceptions, I must honestly reiterate that I have been disappointed with the church. I do not say this as one of those negative critics who can always find something wrong with the church. I say this as a minister of the gospel, who loves the church; who was nurtured in its bosom; who has been sustained by its spiritual blessings and who will remain true to it as long as the cord of life shall lengthen.

When I was suddenly catapulted into the leadership of the bus protest in Montgomery, Alabama, a few years ago, I felt we would be supported by the white church. I felt that the white ministers, priests and rabbis of the South would be among our strongest allies. Instead, some have been outright opponents, refusing to understand the freedom movement and misrepresenting its leaders; all too many others have been more cautious than courageous and have remained silent behind the anesthetizing security of stained glass windows.

In spite of my shattered dreams, I came to Birmingham with the hope that the white religious leadership of this community would see the justice of our cause and, with deep moral concern, would serve as the channel through which our just grievances could reach the power structure. I had hoped that each of you would understand. But again I have been disappointed.

207. Two of the addressees receive (small) commendations. This is a bit dangerous, as it has the obvious potential of alienating the other addressees who receive no commendation, not even a small one, for what they most likely believe are whole careers of good works in their lives and community.
I have heard numerous southern religious leaders admonish their worshipers to comply with a desegregation decision because it is the law, but I have longed to hear white ministers declare: “Follow this decree because integration is morally right and because the Negro is your brother.” In the midst of blatant injustices inflicted upon the Negro, I have watched white churchmen stand on the sideline and mouth pious irrelevancies and sanctimonious trivialities. In the midst of a mighty struggle to rid our nation of racial and economic injustice, I have heard many ministers say: “Those are social issues, with which the gospel has no real concern.” And I have watched many churches commit themselves to a completely other worldly religion which makes a strange, un-Biblical distinction between body and soul, between the sacred and the secular.

I have traveled the length and breadth of Alabama, Mississippi and all the other southern states. On sweltering summer days and crisp autumn mornings I have looked at the South's beautiful churches with their lofty spires pointing heavenward. I have beheld the impressive outlines of her massive religious-education buildings. Over and over I have found myself asking: “What kind of people worship here? Who is their God? Where were their voices when the lips of Governor Barnett dripped with words of interposition and nullification? Where were they when Governor Wallace gave a clarion call for defiance and hatred? Where were their voices of support when bruised and weary Negro men and women decided to rise from the dark dungeons of complacency to the bright hills of creative protest?”

Yes, these questions are still in my mind. In deep disappointment I have wept over the laxity of the church. But

208. A challenging series of rhetorical questions.
be assured that my tears have been tears of love. There can be no deep disappointment where there is not deep love. Yes, I love the church. How could I do otherwise? I am in the rather unique position of being the son, the grandson and the great-grandson of preachers. Yes, I see the church as the body of Christ. But, oh! How we have blemished and scarred that body through social neglect and through fear of being nonconformists.

There was a time when the church was very powerful—in the time when the early Christians rejoiced at being deemed worthy to suffer for what they believed. In those days the church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society. Whenever the early Christians entered a town, the people in power became disturbed and immediately sought to convict the Christians for being “disturbers of the peace” and “outside agitators.” But the Christians pressed on, in the conviction that they were “a colony of heaven,” called to obey God rather than man. Small in number, they were big in commitment. They were too God-intoxicated to be “astronomically intimidated.” By their effort and example they brought an end to such ancient evils as infanticide and gladiatorial contests.

Things are different now. So often the contemporary church is a weak, ineffectual voice with an uncertain sound. So often it is an archdefender of the status quo. Far from being disturbed by the presence of the church, the power structure of the average community is consoled by the church’s silent—and often even vocal—sanction of things as they are.

But the judgment of God is upon the church as never before. If today's church does not recapture the sacrificial spirit of the early church, it will lose its authenticity, forfeit the loyalty of millions, and be dismissed as an irrelevant social club with no meaning for the twentieth century. Every day I meet young people whose disappointment with the church has turned into outright disgust.

Perhaps I have once again been too optimistic. Is organized religion too inextricably bound to the status quo to save our
nation and the world? Perhaps I must turn my faith to the inner spiritual church, the church within the church, as the true ekklesia\textsuperscript{210} and the hope of the world. But again I am thankful to God that some noble souls from the ranks of organized religion have broken loose from the paralyzing chains of conformity and joined us as active partners in the struggle for freedom. They have left their secure congregations and walked the streets of Albany, Georgia, with us. They have gone down the highways of the South on tortuous rides for freedom.\textsuperscript{211} Yes, they have gone to jail with us. Some have been dismissed from their churches, have lost the support of their bishops and fellow ministers.

But they have acted in the faith that right defeated is stronger than evil triumphant. Their witness has been the spiritual salt that has preserved the true meaning of the gospel in these troubled times. They have carved a tunnel of hope through the dark mountain of disappointment.

I hope the church as a whole will meet the challenge of this decisive hour. But even if the church does not come to the aid of justice, I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are at present misunderstood. We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with America’s destiny. Before the pilgrims landed at Plymouth, we were here. Before the pen of Jefferson

\textsuperscript{210} An obvious insider word for King’s theologically trained discourse community.

\textsuperscript{211} The images I have inserted here are from the start, and tragic end of a Freedom Riders bus ride.
etched the majestic words of the Declaration of Independence across the pages of history, we were here. For more than two centuries our forebears labored in this country without wages; they made cotton king; they built the homes of their masters while suffering gross injustice and shameful humiliation—and yet out of a bottomless vitality they continued to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

Before closing I feel impelled to mention one other point in your statement that has troubled me profoundly. You warmly commended the Birmingham police force for keeping “order” and “preventing violence.” I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, nonviolent Negroes. I doubt that you would so quickly commend the policemen if you were to observe their ugly and inhumane treatment of Negroes here in the city jail; if you were to watch them push and curse old Negro women and young Negro girls; if you were to see them slap and kick old Negro men and young boys; if you were to observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I cannot join you in your praise of the Birmingham police department.

It is true that the police have exercised a degree of discipline in handling the demonstrators. In this sense they have conducted themselves rather “nonviolently” in public. But for what purpose? To preserve the evil system of segregation. Over the past few

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212. King’s verbal crescendo resounds with parallel epistrophe: “we were here.”
213. The verbal imagery here is offered in a strong pathos appeal. I have added photographs with similar appeal.
years I have consistently preached that nonviolence demands that the means we use must be as pure as the ends we seek. I have tried to make clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or perhaps even more so, to use moral means to preserve immoral ends. Perhaps Mr. Connor and his policemen have been rather nonviolent in public, as was Chief Pritchett in Albany, Georgia, but they have used the moral means of nonviolence to maintain the immoral end of racial injustice. As T. S. Eliot has said: “The last temptation is the greatest treason: To do the right deed for the wrong reason.”

I wish you had commended the Negro sit-inners and demonstrators of Birmingham for their sublime courage, their willingness to suffer and their amazing discipline in the midst of great provocation. One day the South will recognize its real heroes. They will be the James Merediths, with the noble sense of purpose that enables them to face jeering and hostile mobs, and with the agonizing loneliness that characterizes the life of the pioneer. They will be old, oppressed, battered Negro women, symbolized in a seventy-two-year-old woman in Montgomery, Alabama, who rose up with a sense of dignity and with her people decided not to ride regated buses, and who responded with ungrammatical profundity to one who inquired about her weariness: “My feets is tired, but my soul is at rest.” They will be the young high school and college students, the young ministers of the gospel and a host of their elders, courageously and nonviolently sitting in at lunch counters and willingly going to jail for conscience’ sake. One day the South will know that when

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214. Parallel antithesis with epistrophe: moral, immoral.
215. Allusion to Rosa Parks, now depicted here.
these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo-Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.

Never before have I written so long a letter. I'm afraid it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else can one do when he is alone in a narrow jail cell, other than write long letters, think long thoughts and pray long prayers?

If I have said anything in this letter that overstates the truth and indicates an unreasonable impatience, I beg you to forgive me. If I have said anything that understates the truth and indicates my having a patience that allows me to settle for anything less than brotherhood, I beg God to forgive me.

I hope this letter finds you strong in the faith. I also hope that circumstances will soon make it possible for me to meet each of you, not as an integrationist or a civil-rights leader but as a fellow clergyman and a Christian brother. Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

Yours for the cause of Peace and Brotherhood,
Martin Luther King, Jr.

216. King winds up the letter in a manner often used by the apostle Paul at the beginning and end of his epistles, many of which were written while Paul was imprisoned. E.g., Ephesians 6:23-24 (“Peace to the brothers and sisters, and love with faith from God the Father and the Lord Jesus Christ. Grace to all who love our Lord Jesus Christ with an undying love.”); Philippians 1:7-8, 1:12-14 (“I have you in my heart and, whether I am in chains or defending and confirming the gospel, all of you share in God’s grace with me. God can testify how I long for all of you with the affection of Christ Jesus. . . . Now I want you to know, brothers and sisters, that what has happened to me has actually served to advance the gospel. As a result, it has become clear throughout the whole palace guard and to everyone else that I am in chains for Christ. And because of my chains, most of the brothers and sisters have become confident in the Lord and dare all the more to proclaim the gospel without fear.”).

217. At the end, another extended, mixed metaphor, rich with personification.
V. CONCLUSION

The recognition that visual rhetoric is rapid, efficient, constructive, and persuasive reveals the potential of visual rhetorical devices to serve as topics and tropes in legal discourse to construct meaning and to inform and persuade legal audiences. The visual rhetorical topics and tropes inspire inventive thinking about the law that constructs meaning for the author and the audience. For many members of the legal writing discourse community—judges, practitioners, government agencies, and academics—the modes of persuasion of visual rhetoric can construct meaning and improve the persuasiveness of legal discourse generally in content, arrangement, and style. However, the cautions of scholars as to the dangerous power of visuals to deceive or to overpower more deliberative forms of rational thought and analysis are not lightly to be dismissed. The speed and power of visuals is seductive. Visual topics and tropes are subject to abuse and must be used ethically and with careful regard to their propriety as a tool to create meaning and inspire imagination and not as a tool of deception or obfuscation within the rhetorical situation at hand. This, of course, is a lesson for all rhetoricians of legal discourse, whether employing strictly verbal tools of communication and persuasion, or a mixture of verbal and visual tools.

In conclusion, the Article asserts that visual rhetorical devices are a proper form of legal rhetoric if they are used to construct knowledge and understanding of the meaning and message of the communication and do not mislead or prejudice the audience’s reception or understanding of the communication.