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# WHERE ARE THE GRAPHICS? COMMUNICATING LEGAL IDEAS EFFECTIVELY USING IMAGES AND SYMBOLS \*

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TANIA LEIMAN \*\*

## I INTRODUCTION

In 2015, the LexisNexis Innovation Panel Series ‘invited Australian industry leaders from legal, corporate, commercial and academic sectors to discuss the topic of innovation across six states with 200 attendees.’<sup>1</sup> Panel members at the session held in Adelaide in July discussed a number of issues including acknowledging increasing demands from clients that complex legal information be communicated in more concise, clear ways. Each described use of various graphical techniques such as pie charts, graphs, flowcharts and decision trees to meet these demands. In August 2015, at Flinders Law School’s ‘Thinking About the Future of Legal Education’ seminar, John Kain spoke about Kain Lawyers’ Innovation Internship partnership with Michigan State University [MSU] Law School and its Reinvent Law Laboratory™ (as it was then known), to host MSU Law summer interns to bring innovative technological approaches and ‘lean’ legal systems<sup>2</sup> to their law practice. One focus of the inaugural 2015 project was on developing decision trees for use in advising clients.

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\* The ideas contained in this paper were first presented by the author in Tania Leiman, ‘Is Drawing OK? Communicating Legal Ideas Effectively Using Pictures and Symbols’ (Paper presented at the Teaching Legal Analysis and Writing Skills Symposium, Melbourne Law School, 10 December 2015). They were further developed in Tania Leiman, ‘Are the Robots Really Coming? Legal Practice and the Information Revolution’ (Paper presented at the Flinders Law School Research Seminar Series, 25 May 2016). The author wishes to thank Deborah Ankor, Professor Steve Redhead, the LER editors and anonymous reviewers for their very useful comments on drafts of this article. All errors remain those of the author.

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<sup>1</sup> LexisNexis, *Innovation Inertia LexisNexis Roadshow Report 2015* (28 October 2015) <<http://lexisnexis.com.au/media-centre/blog-articles/2015-Oct-28-Download-Innovation-Inertia-2015-Lexisnexis-Roadshow-Report.html>>.

<sup>2</sup> Cathy Reisenwitz, ‘What is Lean Law? A Conversation with Expert Kenneth A. Grady’ on *Capterra Legal Software Blog* (9 June 2015) <<http://blog.capterra.com/what-is-lean-law-a-conversation-with-expert-kenneth-a-grady/>>.

Implicitly, each of the presentations above begged the following questions:

- How can members of the public with legal problems access legal information provided in forms they can understand and apply effectively?
- To what extent are ‘new’ legal communication skills, now perceived as vital in legal practice in the 21<sup>st</sup> century, being (or not being) taught in traditional legal writing courses in Australian law schools?

Increasingly, the first step is to search online for answers or providers of legal services, often using mobile devices. Writing in 2006, Sherwin, Feigenson and Spiesel noted

Lawyers are already beginning to cater to people’s expectation that, in the digital era, information is something that they can and should be able to seek out and interact with rather than something that they passively receive.<sup>3</sup>

In the decade since 2006, access to digital information has become even more pervasive and expectations about capacity to access it more entrenched. The cost of private legal services and increasing pressure on legal aid funding means that greater numbers of individuals, families and businesses are now relying on websites as their primary source of legal information, with the ubiquity of smartphones closing the ‘digital divide’ — the gap between those who have access to information technologies and those who do not.<sup>4</sup>

Those who do formally engage legal services, whether as personal clients, businesses, governments or policy makers, are demanding different, more concise and more accessible forms of communication from their legal advisors — including document sharing, graphs, flowcharts, pie charts, diagrams, and decision trees.<sup>5</sup> Beyond the scope of this paper, but even more broadly, the emergence of smart forms,<sup>6</sup> contract review software,<sup>7</sup> blockchain technology,<sup>8</sup> and smart contracts<sup>9</sup> allows parties to construct and review legal documents, communicate and carry out transactions in completely new ways.

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<sup>3</sup> Richard K Sherwin, Neal Feigenson and Christina Spiesel, ‘Law in the Digital Age: How Visual Communication Technologies are Transforming the Practice, Theory, and Teaching of Law’ (Working Paper No 979, Bepress Legal Series, February 2006) 38 <<http://law.bepress.com/expresso/eps/979>>.

<sup>4</sup> James E Cabral et al, ‘Using Technology to Enhance Access to Justice’ (2012) 26 *Harvard Journal of Law & Technology* 241, 268.

<sup>5</sup> LexisNexis, above n 1, 2.

<sup>6</sup> Cabral et al, above n 4, 252.

<sup>7</sup> See, eg, Kira, *Kira Systems* <<https://kirasystems.com/>>; RAVN, *RAVN* <<https://www.ravn.co.uk/>>.

<sup>8</sup> For an overview of blockchain see Don Tapscott and Alex Tapscott, *Blockchain Revolution* (Portfolio, 2016).

<sup>9</sup> Antony Lewis, ‘A gentle introduction to smart contracts’ on *Bits on Blocks* (1 February 2016) <<https://bitsonblocks.net/2016/02/01/a-gentle-introduction-to-smart-contracts/>>.

This context raises further questions for practitioners and legal educators, about the nature of skills and legal work itself — questions including:

- What are the implications of these changing approaches to accessing and consuming legal information and advice? What does this mean for both consumers of that information or advice and the lawyers or others who provide it?
- What skills do effective and efficient communicators need in the 21<sup>st</sup> century?
- What role do these communication skills have in demystifying the law, providing practical, pragmatic legal advice and increasing access to justice?
- What role should legal academics have in developing law student skills in communicating complex legal ideas in these ways?
- Can developing these skills also benefit teaching and support student learning?
- Can this assist our students to meet the challenges of disruptive innovation currently facing the legal profession?

As Sherwin, Feigenson and Spiesel identify,

[t]he task before us is to make sense of the practice of law in this non-essentialist, screen-dominated, and pervasively visual digital era. How might legal decision makers, legal academics, and the interested public come to understand what is already recognized in many other fields, namely, that representations can thoroughly mediate knowledge without seeming to dissolve that knowledge into mere adversarial contentions?<sup>10</sup>

This article seeks to explore the effective communication of legal ideas in the 21<sup>st</sup> century. Part I discusses why communication about the law can benefit from using tools other than text. Part II provides a brief overview of visual communication in the law — the past, the present and the challenges. Part III considers some of the existing technologies that can support visual communication and gives some examples of current best practice. Part IV seeks to understand what this might mean for lawyers and legal educators, and it begins to consider how legal education can best ‘serve the needs of a new generation of students who have strong visual literacy.’<sup>11</sup> It concludes with some irony, noting that an article focusing on visual communication includes no images or graphics, and instead merely highlights that increasing the adoption of visual techniques as a valid and effective means of legal communication will require a change of mindset for lawmakers, the legal profession, legal academics and law students.

<sup>10</sup> Sherwin, Feigenson and Spiesel, above n 3, 4.

<sup>11</sup> Klaus F Rohl ‘Visual Communication in and About Law’ in David S Clark (ed), *Encyclopedia of Law & Society: American and Global Perspectives* (Sage Publications, 2007) 1561, 1563.

## II WHY COMMUNICATE USING TOOLS OTHER THAN TEXT?

If people cannot readily digest or understand the information they access about the law, whether that information is bespoke and provided to them privately or available publicly online, they will not be empowered by that knowledge.<sup>12</sup> To be effective communicators, lawyers must consider who the users or consumers of the content will be<sup>13</sup> — and very often those users are without legal training.

Lawyers are communication professionals, even though we do not tend to think about ourselves in these terms. Most of us give advice and produce content and documents to deliver a specific message.<sup>14</sup>

Lawyers create and communicate content — orally in speaking with clients and other professionals or when acting as formal advocates in courts and tribunals; in writing via letters of advice, memos, reports, opinions, articles, emails, and content for websites; in drafting pleadings, contracts, legislation, policy.

Legal academics create and communicate content — collating and curating legal resources and readings for our students; modelling problem solving techniques; assigning and assessing writing exercises in a variety of traditional legal genres including essays, problem questions, letters of advice to imaginary clients and drafting documents. Much of this is written, but some content, such as lectures, tutorials, and consultations with students, is communicated orally.

A significant component of the work law students are routinely required to submit for assessment is written content: written assignments, exams, mock documents. In addition, many law students are also required to undertake oral exercises such as class presentations, client interviews, negotiations or advocacy exercises.

Far less frequently though, lawyers, legal academics, or law students are given the opportunity or are required to communicate using images or graphics, and they may have had little or no chance to develop the skills to do so effectively. This in turn may lead to the perception that using images or graphics is not accepted in the discipline as a legitimate means of communication. While this may not be surprising given that using images or graphics is not the usual, and therefore not the expected, means of communication, it overlooks the potential power of visual communication: ‘Certain special properties of images are important, since they better catch a person’s attention, motivate study, and enhance memory.’<sup>15</sup>

The advent of computers and word processing has meant that lawyers, academics and even students can now churn out vast quantities of written material. Legal documents of all types are becoming longer

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<sup>12</sup> Ibid.

<sup>13</sup> Helena Haapio and Stefania Passera, ‘Visual Law: What Lawyers Need to Learn from Information Designers’ on *VoxPopuLII* (15 May 2013) <<https://blog.law.cornell.edu/voxpop/2013/05/15/visual-law-what-lawyers-need-to-learn-from-information-designers/>>.

<sup>14</sup> Ibid.

<sup>15</sup> Rohl, above n 11, 1563.

and more complex. As Sue Scott noted in 2000 when exploring how people access and use online legal information: 'People will choose the path of least resistance in their quest for information; information is more likely to be used if it is readily accessible.'<sup>16</sup> Most do not even scroll down to the end of webpages they land on.<sup>17</sup>

In an age where more and more people are accessing information electronically, and particularly via mobile devices such as smartphones or tablets, '[t]he digitalisation of media demands an ever closer integration of text and images.'<sup>18</sup>

Younger generations are growing up in a world which is shaped by images, if not dominated by them. They therefore develop communication skills and habits which are strongly visually biased. Their communication habits will be shaped more visually, less by either writing or text.<sup>19</sup>

Graphic alternatives to prose, such as tables, lists, flowcharts and diagrammatic representations of possible options have been shown to be easier to understand than text alone, especially where decisions are required.<sup>20</sup> These ideas are not new. McCloskey argued in 1998:

Seeing the legal landscape can provide a way to remember the law, a way to learn the law, and even a way to synthesize case law. There is no reason to be absolutely wed to text, especially when making maps of the law could so greatly increase clarity and efficiency in legal analysis and communication.<sup>21</sup>

Despite more recent claims that 'there is already a trend toward visual legal communication practices,'<sup>22</sup> as noted primarily in the context of adversarial courtroom advocacy,

legal scholars have been less quick than their counterparts in other academic fields to heed the implications of the cultural shifts to the visual and the digital. Consequently, they have not yet adequately addressed such urgent questions as: What sort of knowledge and meanings do lawyers construct when they picture reality for judges and jurors? How do lawyers using digital visual displays lead legal decision makers and the public to take up desired meanings and participate in

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<sup>16</sup> Sue Scott, 'Law online: How do people access and use legal information on the Internet?' (2000) 25 *Alternative Law Journal* 24.

<sup>17</sup> Farhad Manjoo, 'You Won't Finish This Article' on *Slate* (6 June 2013) <[http://www.slate.com/articles/technology/technology/2013/06/how\\_people\\_read\\_online\\_why\\_you\\_won\\_t\\_finish\\_this\\_article.html](http://www.slate.com/articles/technology/technology/2013/06/how_people_read_online_why_you_won_t_finish_this_article.html)>.

<sup>18</sup> Volker Boehme-Neßler, *Pictorial Law: Modern Law and the Power Of Pictures* (Springer, 2011) 87.

<sup>19</sup> *Ibid* 117.

<sup>20</sup> Rob Waller, 'What makes a good document? The criteria we use' (Technical Paper No 2, Simplification Centre, April 2011) 16.

<sup>21</sup> Matthew J McCloskey, 'Visualizing the Law: Methods for Mapping the Legal Landscape and Drawing Analogies' (1998) 73 *Washington Law Review* 163, 164.

<sup>22</sup> Colette R Brunschwig, 'On Visual Law: Visual Legal Communication Practices and Their Scholarly Exploration', in Erich Schwehofer et al (eds), *Zeichen und Zauber des Rechts: Festschrift für Friedrich Lachmayer* (Weblaw, 2014) 899, 919.

the reconstruction of one story, one version of reality, rather than another?<sup>23</sup>

Similar questions arise in relation to the provision of bespoke advice to clients, and the generation of publicly available legal information:

- what sort of knowledge and meanings are legal professionals constructing when they describe the application and impact of case law, legislation or other regulatory regimes?
- how can lawyers use visual displays to explain the obligations and rights imposed by written documents?
- how can legal decision makers communicate information about the law and how to participate in the legal system in ways that increase access to justice for more of our community?

Sherwin, Feigenson and Spiesel continue:

As the world of law, both in and out of court, is increasingly made available through visually designed digital environments — texts subsumed within framing pictures, displayed on electronic screens — this understanding becomes more necessary than ever.<sup>24</sup>

This is no less true of legal education: ‘Visual tools [should] enter into legal education where they serve the needs of a new generation of students who have strong visual literacy.’<sup>25</sup> In response, in the US, one law school has since 2001 offered a course in ‘visual persuasion in the law’.<sup>26</sup>

Haapio and Passera’s 2013 blog post<sup>27</sup> opens with the challenge:

For decades, words have been lawyers’ tools of trade. Today, we should no longer let tradition force us to think inside the text-only box. Apart from words, there are other means available.<sup>28</sup>

This call is not to try something new for its own sake. Instead,

[t]he purpose of presenting methods for visualizing the law is to give lawyers a more effective way to conceive of legal issues and communicate them to their clients [and to allow them] to make informed strategic decisions.<sup>29</sup>

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<sup>23</sup> Sherwin, Feigenson and Spiesel, above n 3, 12.

<sup>24</sup> Ibid 52.

<sup>25</sup> Rohl, above n 11, 1563.

<sup>26</sup> See, eg, New York Law School, *Richard K Sherwin* <[http://www.nyls.edu/faculty\\_profiles/faculty\\_profiles/richard\\_k\\_sherwin/](http://www.nyls.edu/faculty_profiles/faculty_profiles/richard_k_sherwin/).

<sup>27</sup> Haapio and Passera, above n 13.

<sup>28</sup> Ibid.

<sup>29</sup> McCloskey, above n 22, 165.

### III VISUAL COMMUNICATION IN THE LAW: A BRIEF OVERVIEW

#### A *The Past*

Using images to communicate legal ideas is not new.<sup>30</sup> The four mediaeval law manuscripts *codices picturati* of the German *Sachsenspiegel* (c1220-1230) contained pictures.<sup>31</sup> Modern law, however, has been 'logocentric'.<sup>32</sup> Communicating legal ideas using visual images was not a means of communication familiar in the 19<sup>th</sup> and 20<sup>th</sup> centuries. As Volker Boehme-Neßler has noted:

Images have a shadowy existence in modern law. Legal texts — whether laws, judgements or learned documents — on the whole contain no images or graphics. Text-books without images are almost symbolic of the subject of law.<sup>33</sup>

#### B *The Present*

By contrast, in the 21<sup>st</sup> century, effective visual communication is no longer reliant on such resource-intensive artisanal labour. Changes in digital communication technology have been rapid in recent years and the pace in which new innovations emerge is increasing. Visualisation and other data presentation software enabling high 'aesthetic-visual quality'<sup>34</sup> formatting, graphics, diagrams, mind-mapping, and decision trees are now widely available, including some resources that are open source and free.<sup>35</sup> Some of these can be tailored to be legal specific.<sup>36</sup> Collaborations between lawyers, graphic and visual designers and technology developers are now producing material that contains different colours, diagrams, icons, images, is not English-language dependent, and is online and interactive — often cheaply, quickly, yet of high quality.<sup>37</sup> Demographic changes are predicted to

<sup>30</sup> Brunswig, above n 23, 900.

<sup>31</sup> Rohl, above n 11, 1561.

<sup>32</sup> Boehme-Neßler, above n 19, 106–7.

<sup>33</sup> *Ibid* 105.

<sup>34</sup> *Ibid* 115–16.

<sup>35</sup> See, eg, Lucidchart, *Lucidchart* <<https://www.lucidchart.com/>>; Microsoft, *Visio* <<https://products.office.com/en-au/visio/flowchart-software>>; Creately, *Creately* <<http://creately.com/>>; RAWGraphs, *RAWGraphs* <<http://rawgraphs.io/>>; Tableau Public, *Tableau Public* <<https://public.tableau.com/en-us/s/>>; see also Capterra, *Top Data Visualization Software Products* <<http://www.capterra.com/data-visualization-software/>>.

<sup>36</sup> See, eg, Smartdraw, *Legal Examples* <<https://www.smartdraw.com/legal/examples/>>; Zingtree, *Small Claims Limits by State* <[https://zingtree.com/host-gallery.php?gallery\\_id=56&persist\\_names=Restart&persist\\_node\\_ids=1](https://zingtree.com/host-gallery.php?gallery_id=56&persist_names=Restart&persist_node_ids=1)>.

<sup>37</sup> See, eg, PILCH Homeless Persons' Legal Clinic, *What's the cost? Infringements System Review* (November 2013) <[https://www.justiceconnect.org.au/sites/default/files/Infringements%20System%20Review%20\(November%202013\).pdf](https://www.justiceconnect.org.au/sites/default/files/Infringements%20System%20Review%20(November%202013).pdf)>; Candy Chang, *Street Vendor Guide* (2009) <<http://candychang.com/main/street-vendor-guide/>>; TDL, *How to obtain a motorcycle licence* <<https://tdl-creative.com/portfolio/motorcycle-licence/>>.



increase the importance of these types of this visual communication,<sup>38</sup> especially as millennials and subsequent generations enter the workforce and become legal consumers.<sup>39</sup> This is no less true of legal education, especially for a 'new generation of students who have strong visual literacy.'<sup>40</sup>

As far back as 1995, Ethan Katsh

predicted that multimedia would have a profound effect on lawyers, the practice of law, and law itself. He pointed to four specific purposes for which law can use images: First, to persuade. Second, to measure and monitor. For instance, one can demonstrate increases and decreases visually through changes in size, shape, or color of objects on a computer screen. Third, to represent, because lawyers can more effectively communicate some data visually than textually. This is particularly true of numerical data represented as graphics. Consequently, legal argument should make more use of statistics and similar data. Fourth, and most obvious, to provide evidence.<sup>41</sup>

Sherwin Feigenson and Spiesel argue that helping lawyers, legal professionals and law students to

put ... their thinking into visual form leads [them] to brainstorm and strategize their cases differently. When lawyers visualize a case, different possible relationships between elements can emerge that remain invisible when those same elements are described only verbally. This is because visual spatial arrangements are different from linear linguistic sequences.<sup>42</sup>

As Margaret Hagan asks:

How can we make text-heavy legal resources more visual, and more comprehensible? Can we re-humanize cases, statutes, opinions, and legal commentary — bring back in the human element, and ground the abstract in practical visualizations?<sup>43</sup>

Writing in 2013, Rosman cited Edward Tufte, renowned for his publications regarding data visualisation and visual explanations,<sup>44</sup> declaring:

Words may be a lawyer's primary tool, but they're not the only tool. Well-crafted images — charts, diagrams, photographs — can make your briefs more interesting and persuasive, and law schools would do well to incorporate instruction in visual presentation. A chart can persuasively show factual and legal points; a diagram can explain a

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<sup>38</sup> Boehme-Neßler, above n 19, 117.

<sup>39</sup> See Jackie L Hartman and Jim McCambridge, 'Optimizing Millennials' Communication Styles' (2011) 74 *Business and Professional Communication Quarterly* 22.

<sup>40</sup> Rohl above n 11, 1563.

<sup>41</sup> Ibid 1562.

<sup>42</sup> Sherwin, Feigenson and Spiesel, above n 3, 11.

<sup>43</sup> Margaret Hagan, *About Open Law Lab* <<http://www.openlawlab.com/about/>>.

<sup>44</sup> Edward R Tufte, *The Visual Display of Quantitative Information* (Graphics Press, 2<sup>nd</sup> ed, 2001) 180.

case's procedural history, and a photograph can save five pages of your brief.<sup>45</sup>

Boehme-Neßler takes a wide view:

In the modern world images are becoming ever more important. Images are in the process of taking over from books as the main cultural medium. The law cannot exempt itself from this development. In recent times the signs are growing ever stronger that the importance of images in the law is gradually increasing.<sup>46</sup>

Rosman goes on:

Advances in computers make it relatively easy to integrate images with text, and there's every reason to think that courts (and other consumers of legal work) would welcome innovative displays of information.<sup>47</sup>

### C *The Challenges*

Despite already being widely deployed, increasing use of visualisation poses challenges for communication about the law both now and in future. Some of these challenges, as identified by Boehme-Neßler are inherent in 'the task of the law to guarantee stability and to produce predictable results':<sup>48</sup> visual communication may either be perceived as or actually be lacking focus or definition, or open to interpretation in an unpredictable or imprecise way. As Andersen notes, a drawback of using images is 'the risk of losing nuance', and it is time consuming to 'find out what nuance you can safely leave out and what you need to focus on'.<sup>49</sup>

Other challenges emerge as existing tools to interpret text are applied to interpret non-textual communication:

Jurisprudence has for centuries, if not millennia, been developing methods of how communication can be understood. But the usual legal interpretation skills are suitable for text. That was — and is — correct, as the law is still strongly rooted in and fixated with text. But in the world of images it becomes a problem. Images can scarcely — or only unsatisfactorily — be interpreted using the normal methods of the law. The trend to visual legal communication which is already beginning to become discernible, will therefore (have to) have an impact on the interpretation of legal communication. What's to be done? Legal dogmatics will have to develop new methods which are suitable for interpreting visual legal communication.<sup>50</sup>

Still more challenges arise because of the skills and competencies of lawyers as communicators: 'Lawyers are not trained in visual design

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<sup>45</sup> Adam L Rosman, 'Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs' (2013) 63 *Journal of Legal Education* 70, 70.

<sup>46</sup> Boehme-Neßler, above n 19, 115–16.

<sup>47</sup> Rosman, above n 46, 71.

<sup>48</sup> Boehme-Neßler, above n 19, 152.

<sup>49</sup> ABC Radio National, 'Comic Contracts', *Law Report*, 4 October 2016 (Rachel Carbonell) <<http://www.abc.net.au/radionational/programs/lawreport/comic-contracts/7898330#transcript>>.

<sup>50</sup> Boehme-Neßler, above n 19, 183.

and often ignore principles of good visual design in presenting their written communication.’<sup>51</sup> This gives rise to consideration of how best the legal profession can be encouraged to accept and use these forms of visual communication to assist their clients, and how to most effectively teach these skills at law school.

To date, neither training nor competency in these skills is a requirement for admission as a legal practitioner. The Threshold Learning Outcomes (‘TLOs’) for both the LLB<sup>52</sup> and the Juris Doctor<sup>53</sup> in Australia include *TLO 5 Communication and Collaboration*, requiring that graduates will be able to ‘communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences’, and ‘collaborate effectively’.

Many universities list effective communication as one of their Graduate Attributes, but few explain this with the level of detail in the statement from Griffith University: the ‘capacity to communicate effectively with others using ICTs, multimedia, visual, musical and other forms appropriate to their disciplines’.<sup>54</sup>

The areas of knowledge required by the admitting authorities, such as those in South Australia,<sup>55</sup> refer only to substantive areas of law, and do not require any specific skills in communication. The *Australian Solicitors’ Conduct Rules* require solicitors to ‘deliver legal services competently, diligently and as promptly as reasonably possible’,<sup>56</sup> and to ‘provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices’.<sup>57</sup>

These obligations can be contrasted with the American Bar Association (‘ABA’) Rule 1.1: which requires that

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.<sup>58</sup>

<sup>51</sup> Margaret Hagan, ‘Do Lawyers Want Bad Visual Design?’ on *Open Law Lab* (28 June 2016) <<http://www.openlawlab.com/2016/06/28/do-lawyers-want-bad-visual-design/>>.

<sup>52</sup> Sally Kift, Mark Israel and Rachael Field, ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Learning and Teaching Academic Standards Project, Australian Learning & Teaching Council, December 2010).

<sup>53</sup> Sally Kift, ‘Juris Doctor Threshold Learning Outcomes’ (Report, Council of Australian Law Deans, March 2012) <[http://www.cald.asn.au/assets/lists/Resources/JD%20TLOs%20\(March%202012\)%20Andrew%20Kenyon.pdf](http://www.cald.asn.au/assets/lists/Resources/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon.pdf)>.

<sup>54</sup> Griffith University, *Graduate Attributes Written Communication Toolkit* <[https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0004/290920/Written-communication.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0004/290920/Written-communication.pdf)>; see also University of Wollongong, *Effective Communicator* <<http://www.uow.edu.au/student/qualities/effectivecommunicator/UOW090504.html>> which provides that graduates should be able to ‘articulate ideas and convey them effectively using a range of media.’

<sup>55</sup> Legal Practitioners Education and Admission Council, *Rules of the Legal Practitioners Education and Admission Council* (at 15 December 2015).

<sup>56</sup> Law Council of Australia, *Australian Solicitors’ Conduct Rules* (at 24 August 2015) r 4.1.3.

<sup>57</sup> *Ibid* r 7.1.

<sup>58</sup> American Bar Association, *Model Rules of Professional Conduct* (at August 2016) r 1.1

The comment on this rule notes that

[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.<sup>59</sup>

Despite its reference to ‘benefits and risks associated with relevant technology’, even the ABA Rule does not impose any requirement for acquiring or demonstrating visual communication literacy. In the US, while the MacCrate Report did ‘not include visual communication skills among the requisite “effective methods of communication”’,<sup>60</sup> Recommendation 7.1 of the ABA’s 2016 Report on the Future of Legal Services in the United States<sup>61</sup> refers to ‘the importance of incorporating... design-thinking into the development of new delivery models and technology tools for the public to access legal services’ and goes on to note that ‘such tools are already driving important changes to how the public accesses some kinds of legal services.’

Given these difficulties of encapsulating, applying, defining and interpreting the meaning of images in a predictable, precise, detailed and certain way, careful thought needs to be given by lawyers, legal educators and law students as to when and how visualisation tools can and should be used to accurately communicate complex legal ideas and information. But these challenges are not reasons to reject the use of images and graphics, or to restrict legal communication to the traditional textual forms. The following section explores some existing examples of best practice, as inspiration for what might be possible.

#### IV COMMUNICATING VISUALLY ABOUT THE LAW: EXAMPLES OF BEST PRACTICE

As Curtotti and McCreath note,

[t]he presentation of the law (or in its 21<sup>st</sup> century manifestation — its visualization) has long been known to influence its readability (itself a dimension of the accessibility of law).<sup>62</sup>

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<[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html)>.

<sup>59</sup> Ibid r 1.1 [8]

<[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/comment\\_on\\_rule\\_1\\_1.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1.html)>.

<sup>60</sup> Neal Feigenson and Christina Spiesel, *Law on Display: The Digital Transformation of Legal Persuasion and Judgement* (New York University Press, 2011) 305; see also American Bar Association Section of Legal Education and Admission to the Bar, ‘Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and The Profession: Narrowing the Gap’ (Report, 1992) (‘MacCrate Report’).

<sup>61</sup> American Bar Association Commission on the Future of Legal Services, ‘Report of the Future of Legal Services in the United States’ (Report, 2016).

<sup>62</sup> Michael Curtotti and Eric McCreath, ‘Enhancing the Visualization of Law’ (Paper presented at the 2012 Law via the Internet Twentieth Anniversary Conference,

Vast amounts of legislation are in operation currently, much of it couched in terms not easily understood by members of the public or even by lawyers. While publicly available online parliamentary, academic and subscription-only proprietary databases improve ease of accessing the legislation, they do not assist in understanding its meaning. Lengthy statutes containing multiple clauses and subclauses can make navigation extremely difficult. Common words may be given special meanings; uncommon words that are terms of art may not be defined. '[S]tatutory interpretation "now constitutes a distinct body of law"', and 'the teaching of statutory interpretation is a fundamental part of legal education'.<sup>63</sup> Even for those who are legally trained, statutory interpretation can be challenging.<sup>64</sup> This level of complexity is increased exponentially for those readers whose first language is not English.

Some areas of the law traditionally have been well accustomed to incorporating or dealing with images: patent and trademark law<sup>65</sup> use images to convey important properties or rights; the *Australian Road Rules* include graphics to specify uniform road signage requirements.<sup>66</sup> The following examples are only some of the innovations now attempting to use images and visualisation more broadly to increase clarity of meaning.

The Australian Commonwealth Office of Parliamentary Counsel began its approach to improving the design of legislation with the 1995 Corporate Law Simplification Task Force aimed at increasing

the comprehensibility and readability of legislation. Design interplays with language and contributes to the message by highlighting the levels of structures in a text. This makes it easier for readers to find and absorb the material.<sup>67</sup>

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Cornell University, 9 October 2010)

<<http://users.cecs.anu.edu.au/~Michael.Curtotti/papers/visualizationfinal.pdf>>.

<sup>63</sup> Catherine Brown, Judith McNamara and Cheryl Treloar, 'Good Practice Guide (Bachelor of Laws) Statutory Interpretation' (Report, Australian Learning & Teaching Council, 2011) 2.

<sup>64</sup> Michael Kirby, 'Statutory Interpretation: The Meaning of Meaning' (2011) 35 *Melbourne University Law Review* 113, 118.

<sup>65</sup> Colette R Brunswick, 'Law Is Not or Must Not Be Just Verbal and Visual in the 21<sup>st</sup> Century: Toward Multisensory Law' in Dan Jerker B Svantesson and Stanley Greenstein (eds), *Nordic Yearbook of Law and Informatics 2010–2012: Internationalisation of Law in the Digital Information Society* 231, 245.

<sup>66</sup> See, eg, National Transport Commission, *Australian Road Rules* (at February 2012) Part 8, 'Traffic Signs and Road Markings'.

<sup>67</sup> Corporations Law Simplification Program Task Force, *Drafting issues – Designing the law* (June 1995) Office of Parliamentary Counsel, 2 <<https://www.opc.gov.au/plain/docs/designing.pdf>>. As noted by Justice Ian Callinan in an extra judicial speech in 1998: 'The simplification task force was comprised of three lawyers and a linguist, Dr Robert Eagleson. The simplification process effectively formulated the *First Corporate Law Simplification Act 1995* (Cth). Complexity and inflexibility were the acknowledged foes; clarity, simplicity and plain language the objectives. The *Second Corporate Law Simplification Bill* was introduced into Parliament, but was not passed before the proroguing of Parliament for the 1996 federal election. It is a testament to the dedication and accuracy of the task force that although the *Second Corporate Law Simplification Bill* was not

In Canada in 2000, graphic designer David Berman submitted a proposal to the Human Resources Development Canada and Justice Canada pilot project. Berman's submission took as its goal passing new versions of specific legislation using 'plain language' and 'plain design'.<sup>68</sup> Plain design follows three guiding principles:<sup>69</sup>

- 'Organize information logically to increase comprehension and comprehension speed';<sup>70</sup>
- 'Organize information so it is visually inviting and reassuring';<sup>71</sup> and
- 'Organize information to leverage the impact of legal documents'<sup>72</sup> (elsewhere referred to as 'make it easy to quickly find what one is seeking').<sup>73</sup>

More recently, government departments in the Netherlands and Belgium have been using pictorial representations of legislation and processes to visualise the law, and 'uncover the structures of the laws they administer and identify duplication and inconsistency'.<sup>74</sup> The UK's Central Customer Directorate at HM Revenue and Customs is exploring this method in connection with tax laws.<sup>75</sup>

Similarly, the US Department of Energy uses decision trees expressed as visual flowcharts to assist business operators to determine whether their alternative fuel provider fleet is covered by the *Energy Policy Act*.<sup>76</sup> Many of the textboxes in the decision tree embed hyperlinks to text setting out relevant legislative definitions. The same information is available as text as a series of questions, but even there careful thought has been given to how a complex regulatory regime can be communicated as clearly as possible.

The Philip C Cook Low-Income taxpayer clinic at Georgia State University in the US includes on its website a decision tree relating to

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enacted as part of the simplification process, it has been largely incorporated as part of the current reforms; in the *Company Law Review Act 1998* (Cth)': Justice Ian Callinan, 'The Corporate Law Economic Reform Programme: An Overview' (Speech delivered at the Corporations Law Update Conference, Sydney Marriott Hotel, 26 October 1998) <[http://www.hcourt.gov.au/assets/publications/speeches/former-justices/callinanj/callinanj\\_calspe.htm](http://www.hcourt.gov.au/assets/publications/speeches/former-justices/callinanj/callinanj_calspe.htm)>.

<sup>68</sup> David Berman, *Toward a New Format for Canadian Legislation* (30 November 2000) <<https://www.davidberman.com/NewFormatForCanadianLegislation.pdf>>.

<sup>69</sup> *Ibid* 14.

<sup>70</sup> *Ibid*.

<sup>71</sup> *Ibid* 15.

<sup>72</sup> *Ibid*.

<sup>73</sup> *Ibid* 5.

<sup>74</sup> Nick Birks, 'Updates on Good Law: Visualising Tax Law' on *Good Law* (13 November 2015) <<http://good-law.tumblr.com/post/133133255176/visualising-tax-law>>; Clarity International, *7 September 2016 – Visualising Tax Law (London)* <<http://www.clarity-international.net/7-september-2016-visualising-tax-law/>>.

<sup>75</sup> Clarity International, above n 75.

<sup>76</sup> US Department of Energy, *Decision Tree for Alternative Fuel Provider Fleets* (2 July 2012) State & Alternative Fuel Provider Fleets <<https://epact.energy.gov/covered-fleets/fuel-provider-decision-tree>>.

tax matters as a resource for student interns advising clients of the clinic on those matters.<sup>77</sup>

The Judicial College of Victoria has developed a series of flowcharts in its Uniform Evidence Manual explaining the application of the *Uniform Evidence Act*.<sup>78</sup> These flowcharts are available to the public on the College's website, and map out a number of legal rules contained in the *Evidence Act 2008* (Vic), clearly showing the process for admitting or excluding various types of evidence, identifying exceptions and the impact of those exceptions.

Graphics are used in the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Qld) as explanatory diagrams to communicate road rules.<sup>79</sup> In the UK, information about how to obtain a motorcycle licence is available in text form on the GOV.UK website.<sup>80</sup> UK design consultancy TDL proffers an example of how such information might alternatively be interpreted and communicated visually very effectively using a bubble flowchart.<sup>81</sup>

The Center for Urban Pedagogy works annually with other collaborators as part of its Making Policy Public to develop other similar visual and graphic posters to communicate legal information about rights and obligations to vulnerable community members.<sup>82</sup> Candy Chang's *Vendor Power! A Guide to Street Vending in New York City* uses detailed pictures and posters to 'serve as an educational /advocacy tool' and to help

clarify the rules through diagrams and minimal text in English, Bengali, Arabic, Chinese and Spanish, so NYC's diverse vendors can understand their rights, avoid fines, and earn an honest living.<sup>83</sup>

With JincomEHS Communications, Capetown lawyer Robert de Rooy has created a comic contract for use by South African agricultural firm ClemenGold and its seasonal fruit pickers, minimising the difficulty of translating a detailed legal document written in English to workers with low levels of literacy who speak local languages Tsonga and Shangaan.<sup>84</sup>

Indian website LawforMe brings together 'lawyers, designers, illustrators and coders' to make 'law and legal processes accessible to all citizens through the innovative use of design and technology' — using simple cartoon pictures, flowcharts and scenarios to provide

<sup>77</sup> Philip C Cook Low-Income Taxpayer Clinic, *Decision Tree* <<http://taxclinic.law.gsu.edu/handling-cases/decision-tree/>>.

<sup>78</sup> Judicial College of Victoria, *Uniform Evidence Manual* (2 August 2016) <<http://www.judicialcollege.vic.edu.au/publications/uniform-evidence-resources>>.

<sup>79</sup> Curtotti and McCreath, above n 63, 16; *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Qld).

<sup>80</sup> GOV.UK, *Riding a Motorcycle, Moped or Motor Tricycle* (28 March 2017) <<https://www.gov.uk/ride-motorcycle-moped/overview>>.

<sup>81</sup> TDL, above n 38.

<sup>82</sup> Center for Urban Pedagogy, *Making Policy Public* <<http://makingpolicypublic.net/index.php>>.

<sup>83</sup> Chang, above n 38.

<sup>84</sup> ABC Radio National, above n 49; Jincom, 'Comic Contracts' on *Jincom* (22 August 2016) <<http://jincom.com/comic-contracts/>>.

information about common legal issues.<sup>85</sup> Also in India, the Lawtoons website aims to ‘create interesting cartoons on laws for kids.’<sup>86</sup> These follow in a long line of picture books as devices to educate children about legal issues.<sup>87</sup> In Switzerland, a ‘reading and picture book’ by Dr Caroline Walser Kessel ‘offers age appropriate introduction to everyday legal matters’.<sup>88</sup> In Australia, cartoons by illustrator David Messer are used in a book designed to educate primary school age children about the law.<sup>89</sup>

Haapio and Passera’s seminal blog post ‘*Visual Law: What Lawyers Need to Learn from Information Designers*’<sup>90</sup> includes examples of Aza Raskin’s Mozilla Privacy icons developed ‘for the rapid communication of complex content on the Web’.<sup>91</sup> If agreement could be reached among jurisdictions or even within jurisdictions about standard icons (similar to those agreed as traffic signs),<sup>92</sup> using icons as signposts in legislation has the potential to improve its readability, navigation and accessibility. Haapio and Passera also include a ‘metro map’ which maps a contractual process from provisional acceptance through to possible alternative outcomes of final acceptance or a right to claim liquidated damages.<sup>93</sup> They, with Michael Curtotti, have also presented examples of what they call ‘contract visualization’<sup>94</sup> which include graphical demonstrations of concepts such as duration, renewal or termination points for the contract, or the impact of instalment payments made at different times.<sup>95</sup>

The UK’s Simplification Centre’s website contains examples of redesign that can more effectively communicate consumer information, planning and tenancy notices and penalty charge notices.<sup>96</sup> Fine print, especially that on the back of expiation notices and standard form contracts, can be confusing, intimidating and lead to increased disputes. The Simplification Centre argues that effective redesign ‘makes it more likely that people will deal with the issue quickly rather than put it

<sup>85</sup> LawforMe, *About Us* <<http://lawforme.in/>>.

<sup>86</sup> Lawtoons, *Lawtoons* <<http://www.lawtoons.in/>>.

<sup>87</sup> See Laura Singleton, *Government and the Rule of Law* Center for Education in Law and Democracy <<http://www.lawanddemocracy.org/book.gov.pix.html>>.

<sup>88</sup> Colette R Brunschwig, ‘Book Review: Caroline Walser Kessel, *Kennst du das Recht? Ein Sachbuch für Kinder und Jugendliche [Do You Know the Law? A Specialized Book for Children and Adolescents]*’ (2012) 5 *Phoenix Law Review*, 747, 747.

<sup>89</sup> Chris Winslow and David Messer, *Why Should I? A Fun Way to Learn About the Law* (Law Week, 2<sup>nd</sup> ed, 2006).

<sup>90</sup> Haapio and Passera, above n 13.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Convention on Road Signs and Signals*, signed 8 November 1968, ECE/TRANS/196 (entered into force 6 June 1978) (‘*Vienna Convention on Road Signs and Signals 1968*’).

<sup>93</sup> Haapio and Passera, above n 13.

<sup>94</sup> Stefania Passera, Helena Haapio and Michael Curtotti, ‘Making the Meaning of Contracts Visible - Automating Contract Visualization’ (Paper presented at the International Legal Informatics Symposium, University of Salzburg, 20 February 2014).

<sup>95</sup> *Ibid.*

<sup>96</sup> Simplification Centre, *Welcome to the Simplification Centre* (2017) <<http://www.simplificationcentre.org.uk/>>.



off.’<sup>97</sup> Their Technical Paper 2: What Makes good documents?<sup>98</sup> includes design criteria regarding ‘the visual impact of the document and the way its design influences usability’ such as ‘use of legible fonts and text layout’ and ‘use of tables, bullet lists, graphs, charts, diagrams, etc.’<sup>99</sup> Legal Design Jam has ‘borrowed from hackathons’ to ‘[bring] together a group of motivated individuals, ideally from different fields (eg designers, lawyers, policy-makers, coders, innovators, business people...) ... [to] ...give an extreme, user-centric makeover to a target legal document.’<sup>100</sup>

Both the Visual Law Library<sup>101</sup> and the Open Law Lab<sup>102</sup> websites contain many examples of visualisation of law. These are resources not only for use by law students and legal academics, but also intended to assist in improving access to justice.<sup>103</sup>

The New South Wales Law and Justice Foundation’s Publishing Toolkit contains eight factsheets to assist in preparing plain language and plain design publications.<sup>104</sup> A wide variety of software products are available to enable the production of high quality visual products, as are many mind-mapping software options and online decision tree tools,<sup>105</sup> some of which are free and open source.

Some larger Australian law firms are already using the Minto Pyramid Principle<sup>®</sup><sup>106</sup> (using a pyramid structure with key problem/conclusion at the apex and each lower level exploring options or sub-issues) or similar approaches to assist in organising complex material and to develop in-house style guides for problem solving. Barbara Minto’s classic book<sup>107</sup> makes significant use of graphics to explain her approach. This diagrammatic structure could be carried further with the diagrams themselves provided to clients, instead of or in addition to the detailed text produced by way of legal advice.

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<sup>97</sup> Simplification Centre, *Simple Action 1: Penalty Charge Notice: A Draft Redesign* (March 2014) <<http://www.simplificationcentre.org.uk/downloads/reports/SimpleAction1-PenaltyChargeNotice.pdf>>.

<sup>98</sup> Waller, above n 21.

<sup>99</sup> Ibid 5.

<sup>100</sup> Legal Design Jam, *Legal Design Jam* <<http://legaldesignjam.com/>>.

<sup>101</sup> Visual Law Library, *Visual Law Library* <<http://www.legaltechdesign.com/visualawlibrary/>>.

<sup>102</sup> Open Law Lab, *Open Law Lab* <<http://www.openlawlab.com/>>.

<sup>103</sup> Open Law Lab, *Access to Justice Innovations* <<http://www.openlawlab.com/project-topics/access-to-justice-innovations/>>.

<sup>104</sup> Law and Justice Foundation, *Publishing Toolkit* (2 August 2016) <<http://www.lawfoundation.net.au/information/publishing/toolkit>>.

<sup>105</sup> See, eg, above nn 36-7.

<sup>106</sup> Minto Pyramid Principle, *The Minto Pyramid Principle* <<http://www.barbaraminto.com/>>.

<sup>107</sup> Barbara Minto, *The Pyramid Principle: Logic in Writing and Thinking* (Prentice Hall, 3<sup>rd</sup> ed, 2010).

In the US, Richard Sherwin's Visual Persuasion Project includes resources in relation to 'visual litigation services',<sup>108</sup> which include links to service providers such as animators and illustrators.<sup>109</sup>

More experimentally, a video by Perry-Kessararis expresses 'perception[s] or expectation[s] of law' using graphical representations of the word 'law' — providing the starting point for philosophical questioning about law's role or impact.<sup>110</sup> Brunschwigg goes even further, regarding law 'increasingly as an audiovisual and a tactile-kinesthetic phenomenon',<sup>111</sup> making claims as to the importance of the latter in relation to lawyers' ability to think clearly, manage stress, and be more present in client interactions.<sup>112</sup> She has also explored the use of legal education films for law students and legal information films for members of the public.<sup>113</sup>

## V IMPLICATIONS FOR LEGAL EDUCATION

Engaging with the technologies that support good visual design can be challenging for lawyers,<sup>114</sup> and those not trained in this area often ignore the principles of good visual design in presenting their written communication electronically or online.<sup>115</sup>

This does not mean however that lawyers must become design professionals or that legal education must include in its curricula extensive training in specific visual design techniques. Instead the focus should be on 'understand[ing] how new (and more established) visual technologies change the ways that their users and their audiences think'.<sup>116</sup>

Sherwin, Feigenson and Spiesel address this head on:

Discussions of vision, visibility, and visual culture abound in the non-legal academy today, but tend to miss the point that pictures are not just about aesthetics. People outside the law school environment who learn of our teaching often remark, 'Oh, you are teaching art to law students.'

<sup>108</sup> New York Law School, *Visual Persuasion Project* <<http://www.visualpersuasionproject.com/>>.

<sup>109</sup> See, eg, Executive Presentations, *Executive Presentations* <<http://www.executivepresentations.com/services/animation.asp>>.

<sup>110</sup> Amanda Perry-Kessararis, *What can graphic design reveal about law?* (18 November 2014) Vimeo <<https://vimeo.com/112165899>>.

<sup>111</sup> University of Zurich, *Dr Colette R Brunschwigg* (10 September 2012) <<http://www.rwi.uzh.ch/en/oe/zrf/abtrv/brunschwigg.html>>.

<sup>112</sup> Colette Brunschwigg, 'Legal Tactile Kinesthetics for Lawyers: the What, the Why and their Positive Impacts' on *Beck-Community* (2 March 2012) <<http://community.beck.de/gruppen/forum/legal-tactile-kinesthetics-for-lawyers-the-what-the-why-and-their-positive-impacts>>.

<sup>113</sup> Colette Brunschwigg, 'Legal Education Films for Law Students' on *Beck-Community* (2 June 2011) <<http://community.beck.de/gruppen/forum/audio-visual-law/legal-education-films-for-law-students>>.

<sup>114</sup> Margaret Hagan, 'Visual Design And Access To Justice Technology At The ABA Tech Show' on *Open Law Lab* (28 March 2016) <<http://www.openlawlab.com/2016/03/28/visual-design-and-access-to-justice-technology-at-the-aba-tech-show/>>.

<sup>115</sup> Hagan, above n 44.

<sup>116</sup> Sherwin, Feigenson and Spiesel, above n 3, 44.

The answer to that is a resounding no. We are teaching visual thinking and visual rhetoric; we are teaching about visual texts and how they can be used to convey information as well as arguments. We teach how lawyers can deploy visual culture as well as verbal culture to make their points. That people respond as they do betrays a confusion — that picturing can be thought of only as art itself, opening the door to forbidden pleasures in the severe realm of the law. To the contrary, lawyers and law students need to understand that making pictures, just like writing, can be an effort to think aloud or to communicate for specific purposes. Picturing, like speaking or writing, is performative, and recognizing that is especially crucial in law, where justice depends on the rhetoric lawyers deploy to persuade judges and juries.<sup>117</sup>

Instead, the

aim ... is to train future lawyers who will know to pay attention to all of the elements that visual media put in play and who will be much better at strategizing and designing their cases by thinking visually and, when desired, at using the services of design professionals to accomplish their goals.<sup>118</sup>

These and other similar reasons underlie pleas by those such as Sherwin, Feigenson and Spiesel that

the imperative that legal scholars face is to rethink the theory and practice of law in and through the visual. Thus may we begin to come to grips with the various ways in which visual communication technologies are transforming the practice, theory, and teaching of law in the digital age<sup>119</sup>

and that

the most pressing challenge before the legal academy today ...[is] retooling the legal mind so that it may be better adapted to function effectively in a legal (and popular) culture transformed by new communication technologies constitutes.<sup>120</sup>

Many legal academics already use diagrams as an integral part of their teaching — flowcharts for applying legal rules and principles, diagrams to explain the facts of cases or the interactions between parties to a transaction. Consideration could be given to developing these tools more intentionally. This will require legal educators to think creatively and differently about what they do, developing new skills and new pedagogy as they go. Students could be encouraged to develop their own visual schema as part of a problem solving process. Comparing student and educator generated schema could provide rich teaching opportunities as the reasons for differences in approach are explored, and unpacking how and why interpretation of the meaning of graphics might differ, and how accuracy of meaning can be ensured in visual communication.

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<sup>117</sup> Ibid 51.

<sup>118</sup> Ibid 49–50.

<sup>119</sup> Ibid 58.

<sup>120</sup> Ibid 53.

Colette Brunschwig identifies some examples in the context of legal education both for law students and more generally for children and adults in the general public, although many of her footnotes refer to sources in languages other than English.<sup>121</sup> She has also pioneered a ‘course that encouraged law students to produce, analyze, and evaluate material legal visualizations for learning purposes’.<sup>122</sup> Camille Andersen and Adrian Keating have collaborated in experimenting with contracts illustrated with cartoons/comics in a cross disciplinary collaboration between legal and engineering academics and students.<sup>123</sup> Richard Sherwin teaches a course, ‘Visual Persuasion in the Law’ at New York Law School, designed to ‘cultivate through hands-on visual production the skill-set that lawyers need for effective visual communication and advocacy in the digital age’.<sup>124</sup>

Developing the skills to generate appropriate and effectively use images is one thing. Accurately and precisely interpreting those images is likely to demand additional skills. As Boehme-Neßler notes:

Images can scarcely — or only unsatisfactorily — be interpreted using the normal methods of the law. The trend to visual legal communication which is already beginning to become discernible, will therefore (have to) have an impact on the interpretation of legal communication. What’s to be done? Legal dogmatics will have to develop new methods which are suitable for interpreting visual legal communication<sup>125</sup>... If images do — and it looks like they will — become an important legal method of communication, they have to be understood. The challenge for the future is clear: the law must develop performant methods of interpretation which can interpret and understand legal images. In the long term iconology will become a further method of legal interpretation.<sup>126</sup>

Legal educators might have a role here too, in developing robust methods for interpretation of legal iconography, or in critiquing those methods developed by others as varied such as the courts, legal professionals, software providers, or information or graphic designers.

## VI CONCLUSION

Legal professionals in the 21<sup>st</sup> century will continue to require the ability to read, understand and write technical and complex legal text, but increasingly will also need to develop the skills to convert this text effectively into visual means of communication.

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<sup>121</sup> Brunschwig, above n 23, 909–10.

<sup>122</sup> Ibid 909.

<sup>123</sup> Adrian Keating and Camille Baasch Andersen, ‘A Graphic Contract: Taking Visualisation in Contracting a Step Further’ (2016) 2 *Journal of Strategic Contracting and Negotiation* 10.

<sup>124</sup> Richard K Sherwin, *About the Course: Visual Persuasion in the Law Seminar Visual Persuasion* Project  
<[http://www.visualpersuasionproject.com/visual\\_legal\\_training/about\\_the\\_course/](http://www.visualpersuasionproject.com/visual_legal_training/about_the_course/)>.

<sup>125</sup> Boehme-Neßler, above n 19, 183.

<sup>126</sup> Ibid 185.

The examples given above of new approaches and new possibilities can guide future best practice for lawyers, legal academic and law students.

Building a realisation that people are accessing and consuming legal information and advice in different ways, and an awareness of the growing place of visual communication in 21<sup>st</sup> century society can act as a catalyst to rethink what good and effective legal communication looks like. This awareness can in turn act as the foundation for building the skills necessary in an increasingly visual age. The skill of conversion is crucial here — effective visual communication relies on thorough and accurate understanding of the text to be converted, but goes beyond expecting that this alone will be sufficient to produce readability, increase access to information, identify priorities or point to important decision points. Consumers of legal services and legal information, while accustomed to reading and watching visual forms of communication, rarely have expertise or experience in interpreting legal text, and so cannot assess for themselves the accuracy of any graphical representations of that text. Lawyers, legal educators and law students therefore need to be able to do both.

Incorporating visual elements in legal writing can be beneficial in demystifying the law by providing easy-to-comprehend signposts, allowing easy navigation of lengthy or complex processes and documents. Students may be unfamiliar with these elements or how to use them, and so exposure to graphic design principles and explicit instruction in how best to construct these visual aids can assist them to communicate about the law in more practical, pragmatic ways. Using flowcharts, diagrams and other aids to explore and explain options and choices can be effective in supporting decision making not only for clients, but for lawyers and law students.

While moving towards increased use of images and increased exploitation of visualisation techniques should be done carefully and thoughtfully, it is impossible to hold back the tide of developments already occurring:

The formatting and presentation options for text ... are increasingly being made use of. The aesthetic-visual quality of a text becomes an (additional) quality hallmark. From the flowing legal text the text image is now arising. Information technology graphics are beginning to become an accepted means of judicial communication – even if initially mainly in training materials... there are more and more tables, synopses, graphics, decision trees and flow diagrams to be found in legal professional publications. Spatial relationships are shown graphically. Figures are presented, or at least clarified, in aesthetically presented diagrams. Legal textbooks are also beginning to open up to visualification. ... graphical presentations continue to be very rare in court judgements. But even here practice shows that the tide has begun to turn.<sup>127</sup>

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<sup>127</sup> Boehme-Neßler, above n 19, 117.

If legal education has a role in developing law student skills in communicating complex legal ideas, and the discussion above suggests that is certainly the case, then engaging with the emerging importance of visual communication is important. Clearer, more creative methods of communication about the law are likely both to benefit teaching and support student learning, assisting our students to meet the challenges of legal practice in the 21<sup>st</sup> century.

*So Where Are The Graphics?*

This article advocates for increased use of images in communicating legal ideas, yet it includes none!

This irony serves to illustrate just how difficult it is to translate ideas into graphical form when the entire background context of communication about those ideas is textual.

Using graphics and images is not an 'easy' or 'lazy' approach to communication. Instead, it is an approach that requires explicit consideration of matters broader than simply substantive legal issues; thorough and detailed understanding of both the detail and the big picture of the legal ideas, principles, rules and outcomes to be communicated; compliance with publisher's requirements and other relevant regulatory parameters; and significant skill in utilising the best visual communication tools and techniques.

This is not knowledge or a competency that is easily acquired by chance, but instead will require intentional application, purposeful training and lots of practice to build capacity and ease.

Encouraging increased adoption of images and graphics as a valid and effective means of legal communication will require a change of mindset for lawmakers, the legal profession, legal academics and law students as they engage with this 'emerging field'.<sup>128</sup>

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<sup>128</sup> Keating and Andersen, above n 125, 11.