

COMMENTARIES

WORDS ARE ENOUGH: THE TROUBLESOME USE OF PHOTOGRAPHS, MAPS, AND OTHER IMAGES IN SUPREME COURT OPINIONS

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In this Commentary, Mr. Dellinger defines and analyzes a heretofore unrecognized class of United States Supreme Court decisions: those in which a photograph, map, replica, or reproduction is attached to a Justice's opinion. Such attachments, all relying on visual attributes that uniquely differentiate them from words, have appeared in a number of seminal decisions. Mr. Dellinger argues that the use of visual attachments poses special dangers. Because their neutrality and accuracy are so readily assumed, such attachments often elude the skepticism with which the written portions of Court opinions are generally reviewed. Yet their inherent distortions and vulnerability to manipulation make the Justices' reliance on them problematic. Mr. Dellinger reviews the past use of attachments and finds their use to have been generally unnecessary and unhelpful. He then argues that the Court should forgo any future reliance on visual attachments. In the alternative, the Justices, the companies that reproduce Court opinions, and readers should improve significantly the ways in which they respectively use, publish, and review these attachments.

Customarily, United States Supreme Court opinions come unadorned, words on paper and nothing more. For the most part, the Justices rely on this venerable means of communication to great benefit. Written opinions have an aura of dignity, and offer an opportunity for explication and reflection, that helps to elevate the High Court above the soundbite-driven arena in which the political branches often do battle. Even the Court's cherished reputation as the "least dangerous" governmental branch is arguably attributable, at least in part, to the unprepossessing medium on which its members so heavily rely.

More than two hundred years after its adoption by the Court, however, the traditional words-only opinion has inherent limitations that seem particularly acute when compared with modern media such as photography, television, and computers.¹ Pure prose frustrates with its relative lack of immediacy and its inability to record or re-create visual reality. At the same time, as a conduit for conveying information,

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¹ See THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES 608 (Kermit L. Hall, James W. Ely, Jr., Joel B. Grossman & William M. Wiecek eds., 1992) (noting that, during the Court's first decade, most opinions were not captured in writing).

