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THE TEN COMMANDMENTS AS A SECULAR HISTORIC ARTIFACT OR SACRED RELIGIOUS TEXT: USING *MODROVICH V. ALLEGHENY COUNTY* TO ILLUSTRATE HOW WORDS CREATE REALITY

ANN SINSHEIMER*

I. INTRODUCTION

In his essay, *The 'Ideograph': A Link Between Rhetoric and Ideology*, Michael Calvin McGee proposes that our system of beliefs is shaped through and expressed by words. We are consciously and unconsciously conditioned and controlled by the words we hear and use. Words carry ideology and convey and create meaning. Like Chinese characters, words are "ideographs" that "signify and 'contain' a unique ideological commitment," that is frequently unquestioned.¹ McGee also suggests that by understanding that a single word can carry ideology and that ideology can be expressed in a single word, we are better able to expose and evaluate ideology and choose to accept or reject such ideology. However, if we fail to recognize the ideographic nature of words, we risk creating and promoting a reality that is removed from our system of beliefs.

For the legal community, McGee's theory of ideograph is an important tool to understand legal argument and to construct arguments that effectively persuade decision-makers. When lawyers and law students select a particular word, we consciously and unconsciously express a certain view of reality. Our choice of words can help to resolve conflict and create conflict. Words shape our jurisprudence.

McGee's theory of ideograph² helps to identify when, for example, a trial or appellate court might view the Ten Commandments as artifacts of history and when a court might see the Commandments

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1. Michael C. McGee, *The 'Ideograph': A Link Between Rhetoric and Ideology*, 66 Q. J. OF SPEECH 1 (1980), reprinted in CONTEMP. RHETORICAL THEORY 425, 428 (John Louis Lucaites et al. eds., 1999).

2. *Id.*, reprinted in CONTEMP. RHETORICAL THEORY 425, 428 (John Louis Lucaites et al. eds., 1999).

as an expression of religion or ideology. More broadly, ideographic analysis, with its attention to the words or “ideographs” the courts and parties use, will allow us to identify some of the many beliefs and values expressed in this decision-making process and allow us to examine the role language plays in creating an understanding of reality.

Through this article, I hope to summarize McGee’s theory. To illustrate, I model how McGee’s theory can develop a lawyer’s critical thinking and writing skills by identifying the ideographs in the cases prior to *Modrovich v. Allegheny County*³ and by applying these ideographs to analyze the *Modrovich* case and the various court documents filed in the dispute. I also use these materials to offer practical suggestions as to how ideographic analysis could be used to construct legal documents. Finally, I conclude with some thoughts on how ideographic analysis might be used in legal education, focusing particularly on how they could be used to teach legal writing.

II. UNDERSTANDING IDEOGRAPHS

As McGee illustrates in his essay, words create knowledge and beliefs as well as express existing knowledge.⁴ Words carry ideology and as we hear and use particular words we are conditioned unconsciously and consciously to accept the ideology.⁵ The words we select to express an idea or ideology or to persuade another to accept an idea or ideology may over time become so familiar that we forget that the words could signify another idea or that an ideology could be open to question.⁶ The words become a means to create a reality, a “projected environment,” which is distinct from an objective reality, or “human environment.”⁷ For example, we are conditioned to react in a particular way to words such as “law,” “liberty” or “freedom of religion.”⁸

3. 385 F.3d 397 (3d Cir. 2004).

4. *Id.*

5. *Id.*

6. *Id.* (noting the way state or political bodies “make rhetoric to persuade us of necessity and later forget that it’s a rhetoric and regard negative judgments of it as unreasonable. . . . We make a rhetoric of war to persuade us of war’s necessity but then forget that it is a rhetoric and regard negative popular judgments of it as unpatriotic cowardice.”). *Id.*

7. McGee, *supra* note 1, at 436.

8. *Id.* at 428.

A. Ideographs Shape Reality

We, as a community, accept that ideographic words mean a certain thing, and the words evoke a certain response. We may not even be aware of the ideology, but we respond in some particular manner. We are, in effect, socialized by the words. When words become charged in this way, they are what McGee refers to as “ideographs.”⁹ These ideographs are one of many linguistic mechanisms used by a community to express its system of values and beliefs.¹⁰

Ideographs derive their meaning as they are used publicly to persuade audiences.¹¹ Ideographs operate as part of what Celeste Michelle Condit and John Louis Lucaites refer to as “the rhetorical process of public argumentation in which various organized and articulate interest groups negotiate the problems of resource distribution in collective life of the community, and there’s a shared rhetorical culture out of which they all draw as they strive to express their particular interests.”¹² By “rhetorical culture,” Condit and Lucaites refer to the range of linguistic usages available to a community, such as allusions, metaphors, myths, narratives, images and ideographs.¹³ An ideograph is a central element of a rhetorical culture because “[a]n ideograph is a culturally biased, abstract word or phrase drawn from ordinary language, which serves as a constitutional value for a historically situated collectivity.”¹⁴

With regard to the law, judicial opinions represent “a temporary compromise between competing ideological interests.”¹⁵ The opinions form a “rhetorical limit” upon which lawyers may draw upon in the future to negotiate their needs and interests.¹⁶ The courts provide a forum for “a community [to] actively negotiate its common

9. *Id.*

10. Celeste Michelle Condit, *The Rhetorical Limits of Polysemy*, reprinted in CONTEMP. RHETORICAL THEORY 494, 494-95 (John Louis Lucaites et al. eds., 1999).

11. CELESTE MICHELLE CONDIT & JOHN LOUIS LUCAITES, CRAFTING EQUALITY: AMERICA’S ANGLO-AFRICAN WORD xiii (1993).

12. *Id.* at xiv-xv.

13. *Id.* at xii.

14. *Id.*

15. *Id.* at xv. See also Theodore O. Prosise & Craig R. Smith, *The Supreme Court’s Ruling in Bush v. Gore: A Rhetoric of Inconsistency*, 4 RHETORIC & PUB. AFFAIRS 605, 607 (2001) (following the work of Marouf Hasian, Jr., as well as Condit and Lucaites, the authors express law as polysemic, and note that legal advocates make various linguistic choices according to the context, image or narratives with which they are confronted).

16. CONDIT & LUCAITES, *supra* note 10, at xv.

needs and interests.”¹⁷ The parties to a dispute seek “to determine the ‘best course of action’ in contingent situation . . . [where the] ‘[b]est course of action’ . . . is the result of a consensus.”¹⁸ Judges use ideographs to express their solution in the dispute; what they believe to be the best course of action.

Each use of an ideograph adds to the range of available meanings for a given ideograph. However, the potential meanings of an ideograph are limited by the way in which an ideograph has been used in the past by a community, limited by the way an ideograph is defined in relation to other ideographs, and limited by the way an ideograph is used to modify and mediate situations.¹⁹ Ideographs are short forms for the “collective commitments of the members of a public, and they typically appear in public argumentation as the necessary motivations or justifications for actions performed in the name of the public.”²⁰ The word “equality” is one such example of this “short form.”²¹ The various ideographs used by a community express the beliefs and value systems acceptable to that community.²²

Ideographs express what has been deemed “legitimate” or “reasonable.”²³ Condit and Lucaites say, “[t]o participate in a rhetorical culture one thus must pay allegiance to its ideographs, employing them in ways that audiences can judge to be reasonable. This does not mean, however, that rhetors²⁴ need ‘necessarily’ pay allegiance to any ‘particular’ usage or interpretation of an ideograph in a particular context.”²⁵ They must be mindful of the range of uses because “[r]hetors who employ ideographs in public discourse seek to achieve assent of a particular audience and thus are constrained to use such terms in ways that are more or less consistent with the rhetorical culture.”²⁶ For example, Condit and Lucaites point out that “[a]n ideographic phrase such as ‘freedom of speech’ can take on a wide range of meanings within the practices of a rhetorical culture,

17. *Id.* at xii.

18. *Id.*

19. *Id.* at xiii.

20. *Id.* at xii-xiii.

21. CONDIT & LUCAITES, *supra* note 10, at xv.

22. *Id.* at xiii (“Taken in their entirety, the ideographs for a particular rhetorical culture identify the range of acceptable public beliefs and behaviors within any publicly constituted community.”). *Id.*

23. *Id.* at xv, xiii.

24. “Rhetors” refers to speakers or writers; people who are addressing a public of some sort as opposed to members of an audience.

25. CONDIT & LUCAITES, *supra* note 10, at xiii.

26. *Id.* at xiv.

depending upon the particular context in which it is employed and the specific phenomenon it is used to praise or blame."²⁷

B. Ideographs Shape the Law

Ideographic analysis is powerful in that it allows us to expose ideologies that might otherwise remain hidden in a dispute or conflict. We can, at these moments of conflict, identify and question assumptions and perhaps change the course we take. For example, we may take ideographs for granted until conflict among ideographs, which is distinct from conflicts in meaning around a particular ideograph, causes ideographs to become the "center-sun about which every ideograph orbits."²⁸ McGee claims that it is in these moments of conflict that we have an opportunity to describe ideology and the use of power, beliefs and behaviors within a community.²⁹ For legal professionals, law students and law professors, ideographic analysis provides a method to critically evaluate legal discourse. By examining the vocabulary used in a particular dispute, we can uncover the various ideologies that are fueling the dispute.

McGee's theory suggests that by studying the vocabulary used by a particular community, such as the legal community, we will discover the belief systems operating within that community. By looking at the use of vocabulary by a particular community over time, we may also gain an understanding of how communities are persuaded and conditioned to adopt or adhere to a given belief system. McGee suggests the need to have a decidedly narrower focus of examination than what many legal professionals might be used to examining. In the legal profession, and in legal education, we often draw upon argumentation theory to understand the way in which language expresses a belief system and can be used to persuade or to control and shape outcomes.³⁰ When we examine an argument, we look at

27. *Id.* at xiii. See also Marouf Hasian, Jr., *Vernacular Legal Discourse: Revisiting the Public Acceptance of the 'Right to Privacy' in the 1960's*, 18 POL. COMM. 89 (2002) (looking at public and legal discourse surrounding the acknowledgment of the "right to privacy" using ideographic methods, Hasian says that "[w]hen we adopt such an approach, we give up the quest for any pristine, clear, transcendent legal theory and accept the fact that there are always competing theories vying for legitimacy."). *Id.*

28. McGee, *supra* note 1, reprinted in CONTEMP. RHETORICAL THEORY 425, 428 (John Louis Lucaites et al. eds., 1999).

29. *Id.* at 436.

30. *Id.* at 428 (explaining that argumentation theory assumes that the fundamental unit of analysis is "an integrated set-series of propositions. . . . To argue is to test an affirmation or

assertions about the truth-value of a claim. For example, an argument looks at a claim, such as “[t]he rule of law’ is a primary cultural value in the U.S.”³¹ However, if we focus instead on a smaller unit of analysis, like the term “rule of law,” which McGee identifies as an ideograph, we will be better able to identify the belief systems upon which such a claim rests.³² Also, we will be better able to understand and question whoever or whatever has influenced and shaped an individual’s reality.³³ We can, in turn, build more effective arguments.

We are conditioned to believe that terms like “rule of law,” “religion” and “freedom of speech” have obvious meaning, and we learn to set these types of terms apart. McGee proposes that we not just look at these terms as part of a proposition or claim, but as “basic units of analysis” or “structural elements” because these words are “building blocks of ideology.”³⁴ These words are “one-term sums of an orientation.”³⁵ They illustrate a “collective commitment to a particular but equivocal and ill-defined normative goal.”³⁶ These terms, says McGee, presume to express a belief system held by each member of a community.³⁷ Those who rely on ideographs do so because the logic behind ideographs apparently cannot be questioned: “Everyone is conditioned to think of ‘rule of law’ as a ‘logical’ commitment just as one is taught to think that ‘186,000 miles per second’ is an accurate empirical description of the speed of light even though few can work the experiments or do the mathematics to prove it.”³⁸

Each ideograph has an etymology, a history, and its current meaning is linked to its past use, but it is also crucial to look at the “horizontal meaning” of an ideograph, the way the ideograph functions presently in different contexts.³⁹ Different ideographs may not appear to be in conflict if we just consider their historic uses, but if we look at the use of ideographs within a particular context, a clash in belief

denial of claims, argumentation is the means of proving the truth of grammatical units, declarative sentences, that purport to be reliable signal representations of reality.”) *Id.*

31. *Id.*

32. *Id.*

33. McGee, *supra* note 1, reprinted in CONTEMP. RHETORICAL THEORY 425, 428 (John Louis Lucaites et al. eds., 1999).

34. *Id.* at 428.

35. *Id.* at 425.

36. *Id.* at 435.

37. *Id.* at 428.

38. McGee, *supra* note 1, reprinted in CONTEMP. RHETORICAL THEORY 425, 428 (John Louis Lucaites et al. eds., 1999) at 429.

39. *Id.* at 432-33.

systems often becomes apparent. The “consonant relationship can be restructured, perhaps broken, in the context of a particular controversy.”⁴⁰ Terms such as “freedom of religion,” “history” and “separation of church and state” have meanings that might not seem to be in conflict if we consider the meanings used over time, but they clash with one another as they come to express a particular ideological view in their present use.⁴¹

III. USING IDEOGRAPHS AS A TOOL TO IMPROVE LEGAL ANALYSIS AND WRITING

*Modrovich v. Allegheny County*⁴² illustrates how ideographic analysis can help critically evaluate legal reasoning and can help focus our writing. By examining the ideographs used by others and by ourselves, we can enhance our understanding of the issues we face and the implications of our choices.

A. *Modrovich v. Allegheny County: Ideographs Shape Decisions*

In *Modrovich*, the United States Court of Appeals had to consider whether Allegheny County, a government body, was endorsing religion in violation of the Establishment Clause of the First Amendment of the United States Constitution.⁴³ It decided that the county did not violate the Constitution by posting the Ten Commandments; holding, perhaps surprisingly, that the Ten Commandments do not express religious ideology but historic significance.⁴⁴ Judge Fuentes, who wrote the opinion, affirmed the District Court’s ruling, stating that “the plaque” which was given to the county in 1918 would be perceived by a reasonable observer to “serve the legitimate secular purposes of ‘historic preservation and commemoration of the rule of law’ rather than endorsing religion.”⁴⁵

40. *Id.*

41. *Id.* at 433 (“Considered rhetorically as ‘forces,’ ideographs seem structured horizontally, for when people actually make use of them presently, such terms as ‘rule of law’ clash with other ideographs [like] ‘principle of confidentiality’ or ‘national security,’ and in the conflict come to mean with reference to synchronic confrontations.”). *Id.*

42. 385 F.3d 397 (3d Cir. 2004).

43. U.S. CONST. amend. I.

44. *Id.*

45. *Summary and Analysis*, 73 U.S.L.W. 1218 (2004) (discussing the holding in *Modrovich*).

The plaque was first placed on the main façade of the courthouse in 1918. It remained in that location until sometime before 1976 when it was moved to its current place on the Fifth Avenue side of the courthouse.⁴⁶ In 1976, the courthouse, which was built in 1888, was named a National Historic Landmark.⁴⁷ Although the plaintiffs Modrovich and Moore, both atheists, argued that the placement of the Ten Commandments on the side of the courthouse was government endorsement of religion, Judge Fuentes rejected their arguments, stating that “[o]ur country’s history is steeped in religious traditions. The fact that government buildings continue to preserve artifacts of history does not mean that they necessarily support or endorse the particular messages contained in those artifacts.”⁴⁸

Judge Smith joined the majority opinion, but Judge Gibson wrote a dissenting opinion stating that the district court judge improperly resolved factual disputes in the county’s favor. Judge Gibson pointed to “conflicting evidence, particularly with respect to the present intent of the county officials,” and with respect to their sincerity “when they articulated secular reasons for keeping the Plaque in place.”⁴⁹ Consequently, Judge Gibson believed that the case should have gone forward so that a jury or judge, acting as the finder of fact, could resolve these factual issues.⁵⁰

Their decision reflects a choice among a range of ideologies and corresponding ideographs. The ideographs ultimately chosen to express their opinion both expresses knowledge and shapes knowledge. By studying the ideographs they inherit through precedent, we can sharpen our understanding of a court’s rationale and, in turn, become better at predicting future decisions. For example, to reach a decision in the case, the court, and the parties who brought the dispute before the court, encountered what McGee describes as “a vocabulary of concepts”⁵¹ that have conditioned them to beliefs and behaviors regarding religion and the relationship between the state and religion. These are the ideographs that influence the shape and texture of our individual and collective reality regarding the role of religion in our society. As the court approached this issue, the judges had already been conditioned to believe in the meanings of many clusters of ideographs, terms that allow them to explain, justify

46. *Modrovich*, 358 F.3d at 405-07.

47. *Id.* at 404.

48. *Id.* at 414-15.

49. *Id.* at 415.

50. *Id.* at 417.

51. McGee, *supra* note 1, at 428.

and guide policy. These are the ideographs that, apparently not in conflict, express our collective commitment to a particular goal.

B. Religious Ideographs Throughout Our Legal History

Terms such as “Establishment Clause,” “freedom of religion,” “separation of church and state” and Thomas Jefferson’s notion of “a wall between church and state” are some of the abstract terms that, as Condit and Lucaites note in their study of “equality,” have become a sort of “national credo.” Derived from the language of the Establishment Clause, “Congress shall make no law respecting an establishment of religion,”⁵² these abstract terms express material ideas within our culture. The appellate court in *Modrovich* frequently explicitly and implicitly draws on these terms and the beliefs they represent as the court discusses the relevant “law.”

The prior case law interpreting and applying the Establishment Clause contains a body of ideographs that express the range of meanings available to the court.⁵³ Although not the only meaning available to the Third Circuit, the prior case law in this area forms a “rhetorical limit” as discussed by Condit and Lucaites. The precedent provides “a shared rhetorical culture” from which the court draws to express its decision. We can see what will be an acceptable argument or how an argument might best be framed to advance a client’s position. For example, in discussing how best to determine whether government action violates the Establishment Clause, the court uses the terms “secular purpose,” “excessive entanglement,” “endorsement or []approval of religion,” “religious display,” and “religious activity.”⁵⁴ Lawyers involved in these cases can illustrate their knowledge of this rhetorical culture by drawing on this language. These terms signify our society’s ideological commitment to “prohibit[]...government from...adherence to a religion relevant in any way to a person’s standing in the political community.”⁵⁵ Our

52. U.S. CONST. amend. I.

53. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Lynch v. Donnelly*, 465 U.S. 668 (1984); *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

54. *Modrovich*, 385 F.3d at 400-01.

55. *Lynch*, 465 U.S. at 687 (O’Connor, J., concurring). In *Lynch*, the Court considered the constitutionality of the city’s holiday display that included a crèche and other decorations normally associated with Christmas. The Court held that the display did not impermissibly advance religion and therefore was constitutional. *Id.* at 686.

concern is over the “‘fears and political problems’ that gave rise to the Religion Clauses in the 18th century.”⁵⁶

In her dissenting opinion in *Lynch v. Donnelly*, Justice O’Connor offers us some insight as to the shared beliefs these ideographs express:

Government can run afoul of [the] prohibition [in the Establishment Clause] in two principal ways. One is excessive entanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by nonadherents of the religion, and foster the creation of political constituencies defined along religious lines. The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.⁵⁷

At an abstract level, we, as O’Connor expresses, share an ideology in our culture that government and religion should be separate and that this separation is a positive aspect of our society that should be preserved. However, at a more concrete level, as we try to implement this view, we see that our community is in conflict as to exactly what it means for church and state to be separate.

Although Justice Brennan expressed in his dissenting opinion in the *Lynch* case, “[t]he principles announced in the compact phrases of the Religion Clauses have . . . proved difficult to apply,”⁵⁸ we can see from cases like *Lynch* and *Modrovich* that terms such as “Establishment Clause” or “religious freedom” seem to represent the “collective commitment to a particular but equivocal and ill-defined normative goal.”⁵⁹ The terms express a commitment to “ensure that the organs of the government remain strictly separate and apart from religious affairs, for ‘a union of government and religion tends to

56. *Id.*

57. *Id.* at 687-88 (cites omitted).

58. *Id.* at 694.

59. McGee, *supra* note 1, at 435.

destroy government and degrade religion.”⁶⁰ As the Court expressed five years later in *County of Allegheny v. ACLU*, “[w]hether the key word is ‘endorsement,’ ‘favoritism,’ or ‘promotion,’ the essential principle remains the same. The Establishment Clause, at the very least prohibits government from appearing to take a position on questions of religious belief.”⁶¹

While the legal community shares a rhetorical culture, which includes the separation of church and state, when the Court actually tries to uphold these principles, the sense of harmony within the community is lost. Members of the community ascribe different meanings to the words. The meanings change according to the interests and values of the members, and where members of the rhetorical culture once seemed to agree, they now openly conflict. We see that ideographs derive their meaning from context; their meanings are flexible and allow for the expression of particular interests which, at times, conflict with ideographs expressing other interests.

Areas where the meanings deviate can help us to understand what might be unspoken, or hidden, ideological conflicts. By identifying the different sets of ideographs the parties use, we can strengthen our legal analysis. In the context of the Establishment Clause, one division we observe occurs around the meaning of “the religion clauses.” The Court in *Lemon v. Kurtzman*⁶² alludes to this potential clash of ideologies, when it notes the language in the Religion Clauses of the First Amendment:

Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they command that there should be ‘no law *respecting* an establishment of religion.’ A law may be one ‘respecting’ the forbidden objective while falling short of its total realization. A law ‘respecting’ the proscribed result, that is, the

60. *Lynch*, 465 U.S. at 698 (quoting *Engel v. Vitale*, 370 U.S. 421, 431 (1962)).

61. 492 U.S. 573, 593-94 (1989). In *County of Allegheny*, the Court again addressed whether a city’s holiday display was constitutional; the displays included a crèche, a Christmas tree, and a menorah. The Court held that the crèche did violate the Establishment Clause, but the menorah was constitutional. *Id.* at 578.

62. 403 U.S. 602. In *Lemon*, the Court reviewed the constitutionality of two state statutes that provided state aid to church related schools. The Court held that both statutes were unconstitutional because they involved excessive entanglement between government and religion. *Id.* at 611-25.

establishment of religion, is not always easily identifiable as one violative of the Clause.⁶³

Words such as “endorsement,” “favoritism,” “promotion” and “respecting” no longer exist in harmony but carry conflicting meanings reflecting conflicting ideologies.

Justice Burger shows us another meaning and the disagreement within the rhetorical culture as he discusses in *Lynch* the flexibility in the language of the Establishment Clause: “We have refused to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history.”⁶⁴ “The purpose of the Establishment Clause,” writes Justice Burger, “was to state an objective, not to write a statute.”⁶⁵ He adds “The real objective of the [First] Amendment was to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government.”⁶⁶

As courts use ideographs to resolve disputes, the ideographs take on different and competing meanings, and the ideographs associated with a particular ideograph conflict. The “Religion Clauses,” therefore, become associated with, on the one hand, ideographs such as “respecting,” as in “no law respecting the establishment or religion,” “realization” and “proscribed result” that tend to look at the effects of government action and restrict conduct so that the government does not influence any religion. While on the other hand, “Religion Clauses” are associated with “non-literalness,” “constitutional objective,” as in “the purpose of the Establishment Clause was to state an objective, not to write a statute,” “national ecclesiastical,” “exclusive patronage” and “prevent” that allow for fewer constraints on government conduct as long as it does not promote a national religion.

The Court in *Lynch* held that a city holiday display that included a crèche along with decorations like a Santa’s house, candy striped poles, and a Christmas tree did not violate the Constitution because any benefit the display provides one religion or all religions was merely “incidental.”⁶⁷ Justice Burger acknowledged that the display did advance religion but “on occasion some advancement of

63. *Id.* at 612.

64. *Lynch*, 465 U.S. at 678 (citing *Walz v. Tax Comm’n*, 397 U.S. 664, 671 (1970)).

65. *Id.* at 678 (citing *Walz v. Tax Comm’n*, 397 U.S. 664, 668 (1970)).

66. *Id.* (quoting J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 728 (1833)).

67. *Id.* at 683.

religion will result from governmental action,” and this does not make the action unconstitutional if merely providing an “incidental benefit” to a religion.⁶⁸ In *Lynch*, the city had a “secular purpose” to “celebrate the holiday.”⁶⁹ Burger specifically rejected the dissent’s concern that the display may indicate to some that “the city has aligned itself with the Christian faith by including a Christian symbol in its display.”⁷⁰ In the exchange between the majority and dissenting opinions, we see the conflicting beliefs expressed through the different use of ideographs. The majority speaks of a “secular purpose,” “incidental benefit,” and a value recognizing a general “religion,” while the dissent speaks of the “Christian faith,” “Christian symbols,” “Christ’s birth,” and a need for government to maintain a “neutral posture.”⁷¹

C. Religious Ideographs Affecting Our Law Today

As these ideographs will be used again in future conflicts, the members of the rhetorical community learn to recognize these words as conveying a particular meaning or ideology. The words are electrified in that they can, in a single word, convey a belief system. The words “‘do work’ in explaining, justifying or guiding policy.”⁷² Ideographic analysis helps us to identify when a court is using vocabulary purposefully to convey or advance a certain ideology. We can look behind the words. When the Third Circuit attempts to resolve the dispute in *Modrovich*, they inherit the ideographs and the conflicts that swirl around these ideographs. Additionally, because they address a dispute about the Ten Commandments, the court not only inherits the ideographs associated with the “Establishment Clause,” but it also inherits the ideographs associated with the Ten Commandments.

If we examine the Ten Commandments as an ideograph, we again see a conflict in ideology expressed through the choice of vocabulary. Defined in the context of religious doctrine and in relation to other ideographs in its cluster, the Ten Commandments are “religious text,” “sacred text,” and express terms, conditions and the fundamental beliefs for many religions. The Ten Commandments are central to Judaism and Christianity, but each accepts a different version of the Commandments, representative of the ideological

68. *Id.* at 683.

69. *Id.* at 681.

70. *Id.* at 683.

71. *Id.* at 708-09.

72. McGee, *supra* note 1, at 434.

differences between the two theologies.⁷³ As the plaintiffs in *Modrovich* express in their Brief in Support of the Motion for Summary Judgment, the Ten Commandments are regarded differently by different religions.

The plaintiffs note that the version at the Allegheny County Courthouse is taken from the King James Version of *Exodus* and *Deuteronomy* and includes a summary section with language from the *Book of Matthew* in the Christian Bible.⁷⁴ They state that the version is:

a decidedly Christian Protestant one. It differs in a number of ways from the versions that are accepted under the Jewish and Roman Catholic Traditions. First the text of the Ten Commandments on the Plaque is taken verbatim from the King James Version of the Bible, which is a Protestant translation that is not used by Roman Catholics or Jews. Second, the Plaque completely omits what Jews believe to be the first of the Ten Commandments, which is the recognition of the God responsible for the events of the exodus from Egypt (“God spoke all these words, saying: I the Lord am your God. . . .”).⁷⁵

The brief goes on to explain the numerous differences between the version on the Allegheny County plaque and versions accepted by the Jewish, Roman Catholic and Lutheran religions, differences that express fundamental ideological differences among these different religions.

The Ten Commandments have also been defined in the legal context as having a “secular application” as “the fundamental legal code of Western Civilization and the Common Law of the United States.”⁷⁶ However, the role of the Ten Commandments as a fundamental source of law in Western Civilization is not an

73. THE TORAH: A MODERN COMMENTARY 531-38 (W. Gunther Plaut ed., 1981).

74. Plaintiff's Brief in Support of their Motion for Summary Judgment at 3 (on file with author) [*hereinafter* Pls.' Br.], *Modrovich v. Allegheny County*, 385 F.3d 397 (3d Cir. 2004) (No. 03-3571). See THE TORAH, *supra* note 73.

75. *Id.*

76. *Stone v. Graham*, 449 U.S. 39, 41 (1980). The United States Supreme Court has, however, repeatedly acknowledged the religious importance of the Ten Commandments, stating for example, that “[t]he Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths.” *Id.*

uncontested claim. The dispute around this claim provides us with more ideographs to ponder. For example, Law Professor Marci Hamilton argues in her article, *The Ten Commandments and American Law*, that reading the language of the Commandments “demonstrates how strained is the claim that American law derives exclusively from them.”⁷⁷ She notes that the first four Commandments, if “enacted into law today,” would “constitute plain Constitutional violations.” She asserts that “the first four are religious rules not civil law.”⁷⁸

The first four Commandments deal with a person’s relation to God while the remaining Commandments address conduct related to human society. Moreover, Hamilton asserts that “[t]he claim that the Ten Commandments are the foundational source of American law defies history.”⁷⁹ In her article, she traces the many other potential sources of modern law, such as the Code of Hammurabi and the Magna Carta, and also notes that, although some Christians today claim the Ten Commandments as the “sole source of the secular law that binds everyone in secular law,” not all Christians regard, nor at all points in history have Christians regarded, the Ten Commandments in this way.⁸⁰ She states that “over the centuries, many Christians have claimed that the Ten Commandments did not govern their conduct, because they were given dispensation from the Commandments through Christ.”⁸¹ She states, instead, that the framers of the Constitution were influenced by Greek and Roman law, John Locke, Scottish Common Sense philosophers and Grotius, and that Jefferson and Adams both were critical of the idea that common law incorporated the Ten Commandments.⁸²

Limited by the historical uses discussed above, the ideographs we see in the pleadings, briefs and court opinions in the *Modrovich* case provide a rich array of meanings that conflict with one another

77. Marci Hamilton, *The Ten Commandments and American Law*, available at <http://writ.news.findlaw.com/hamilton/20030911.html>. See also Joseph R. Duncan, Jr., *Privilege, Invisibility and Religion: A Critique of the Privilege that Christianity Has Employed in the United States*, 54 ALA. L. REV. 617 (2003).

78. *Id.* See also Alan Watson, *Two Early Codes, the Ten Commandments and the Twelve Tables: Causes and Consequences*, 25 J. LEGAL HIST. 129, 131 (2004) (claiming that “the Ten Commandments are beyond doubt the most celebrated collection of laws in the Western World,” but also that “they are extremely peculiar”). *Id.* at 133. He notes that “the Commandments are split into two very distinctive parts: behaviors toward God, behavior toward other humans.” *Id.* at 133.

79. Marci Hamilton, *The Ten Commandments and American Law*, available at <http://writ.news.findlaw.com/hamilton/20030911.html>.

80. *Id.*

81. *Id.*

82. *Id.*

and reveal the different ideologies involved in the *Modrovich* case and in the other Ten Commandments cases around the country. The historic uses of these ideographs establish the rhetorical limit and affect how the court and the parties, who form a rhetorical culture, will address the issue and define the solution. We see in the decision-making process how the language shapes the understanding of the parties, the lower court, the appellate court and future parties. The terms help those involved to achieve “a temporary compromise between competing ideological interests.”⁸³ They additionally provide practitioners with a means to enhance their written works.

IV. A CLOSER LOOK AT *MODROVICH V. ALLEGHENY*

The precedent examined above establishes the rhetorical community that attorneys and courts access to resolve an issue. Ideally, the attorneys will select language that reflects an understanding of the rhetorical community. In other words, they will select ideographs that are consistent with the ideology they wish to convey.

In this section, I discuss how in the *Modrovich* case, the attorneys, on both sides, and ultimately the courts, select ideographs that neutralize the religious nature of the Ten Commandments and present the Ten Commandments as an historic plaque. This occurs, in part, because the attorneys for the plaintiffs failed to consider the ideology attached to their choice of words such as “plaque” and “affixed.” These words express an ideological view of the Establishment Clause as preventing the establishment of a national religion but not precluding government support of religion generally, thereby enabling the lower and appellate courts to explain the government action as permissible.

A. *The Plaintiff*

The United States Court of Appeals for the Third Circuit decided that the Ten Commandments represented history and not religious expression by the state because it selected among a range of ideographs. These ideographs were presented to the court, in part, by the parties to the dispute in their legal pleadings which include the

83. CONDIT & LUCAITES, *supra* note 10, at xiv-xv.

complaint and answer, and their briefs. In these documents, the parties draw on the ideographs from the prior cases to present their arguments to the court. For example, as we saw in the dissent in *Lynch*, which claimed that the holiday display violated the Constitution because it expressed “Christian symbols” and the government was not “neutral,”⁸⁴ we see similar terms in the complaint: “the tablet,” “Christian lobby,” and “religious tenets” orbiting around the term “The Commandments.”⁸⁵

In the complaint filed on behalf of the plaintiffs, the plaintiffs assert that “[i]n 1918, Allegheny County mounted a bronze religious tablet on an exterior wall of its courthouse containing the text of the Ten Commandments from the Old Testament and other biblical passages from the New Testament.”⁸⁶ The plaintiffs continue, “the tablet remains bolted at eye level . . . near a well-traveled public sidewalk.”⁸⁷ The plaintiffs tell us that they are “atheists” and have “encountered the religious tablet” several times and that they are “offended” by the “unwelcome contact” with the tablet since they do “not subscribe to the religious tenets contained in it.”⁸⁸

We learn in the complaint that the “large bronze tablet” was a gift from the “International Reform Bureau,” a group that called itself “‘a Christian lobby’ and campaigned to introduce religious principles into public life through legislation and other means.”⁸⁹ We are also told that the tablet, entitled “The Commandments,” has “thirteen references to ‘the Lord or God’ and articulate such purely religious concepts as the requirement to worship a single deity. . . .”⁹⁰ At the time “the tablet” was accepted, a speech was given by “the Reverend Wilbur Fisk Crafts” who “characterized the Ten Commandments during his speech as the ‘roots’ of religion, government, and social life in the United States.”⁹¹

When asked to remove the tablet, the County refused, responding that the tablet “reflects values that are important to this community today as they were in the early part of the century.”⁹² The plaintiffs claim that by retaining this tablet, “Allegheny County creates

84. *Lynch*, 465 U.S. at 636.

85. Plaintiff’s Complaint (on file with author) [hereinafter Pls.’ Compl.], *Modrovich v. Allegheny County*, 385 F.3d 397 (3d Cir. 2004) (No. 03-3571).

86. *Id.* at 1.

87. *Id.*

88. *Id.* at ¶¶ 3, 4.

89. *Id.* at ¶¶ 9, 13.

90. *Id.* at ¶¶ 11, 12.

91. Pls.’ Compl. at ¶ 14, *supra* note 85.

92. *Id.* at ¶ 19.

the appearance to a reasonable observer that the government is taking a position on question of religious belief rather than maintaining a position of government neutrality toward religion.”⁹³

B. The Defendant

The answer to this complaint, filed by the County, presents a different set of terms. The answer uses terms that remind us of Justice Burger’s opinion in *Lynch* upholding the holiday display, terms like “secular purpose,” “incidental benefit” and “religion” used in a general sense, not tied to any specific faith. In the defendant’s answer, we now have terms like “the plaque,” “principles” and “history” orbiting around the term “The Commandments.” The defendant states that:

[R]eligious principles, ideals and beliefs have impacted our history and influenced our laws since colonial times. Principles of conduct embodied in the Ten Commandments have a particularly solid and longstanding footing in our civil and criminal laws and jurisprudence. Indeed, the plaque of the Ten Commandments at issue in this case was donated to Allegheny in 1918—in the shadow of World War I—to honor the rule of law as an alternative to war.⁹⁴

We are told that “the plaque” is one of many other plaques displayed on the walls.⁹⁵ They also note, “affixed to the exterior of the Courthouse is ‘a plaque’ that recites the Pledge of Allegiance,” which includes the words “under God.”⁹⁶ We are told that “the plaque” is not establishing “an official religious tradition,”⁹⁷ and we learn that the County wants to retain “the plaque” because it “adorns” the exterior wall of “the 112 year old Allegheny County Courthouse,” which is “a National Historic Landmark” that requires “protection.”⁹⁸

93. *Id.* at ¶ 15.

94. Defendant’s Answer at 1 (on file with author) [hereinafter Defs.’ Answer], *Modrovich*, 385 F.3d 397 (No. 03-3571).

95. *Id.*

96. *Id.*

97. *Id.* at ¶ 6.

98. *Id.* at ¶ 19.

C. *The Conflicting Realities*

Through its use of ideographs, the complaint expresses the plaintiffs' view of reality, which is essentially that the "Ten Commandments" are "a religious tablet" endorsing "Protestant Christianity" and that the "government" should "unbolt" them and remove them from the "government building." The answer expresses the defendant's view of reality, which is essentially that "the old plaque," which includes the "Ten Commandments," is "a fixture" on the wall of a "national historic landmark" and cannot be removed. After filing these pleadings, the parties both filed motions and supporting briefs in support of their motion for summary judgment, requesting that the trial judge decide in their favor without having to go to trial.⁹⁹

The parties maintain their positions in their briefs in support of summary judgment in all but one crucial respect: The plaintiffs' motions brief no longer refers to the Ten Commandments display as "a tablet." The plaintiffs' brief now refers to "[a] bronze plaque containing the text of the Ten Commandments ('the Plaque') [which] is affixed to an exterior wall of the Allegheny County Courthouse ('the Courthouse')." ¹⁰⁰ When I asked the author of this brief to explain the reason for this change, the author of the brief reported in an e-mail correspondence that this change from "tablet" to "plaque" was made because different attorneys wrote the complaint and the brief, and, therefore in writing the brief, the authoring attorney "wanted to stick to one consistent term for the Commandments plaque."¹⁰¹

This change amounts to much more than consistency in the wording. Indeed, the term "plaque" provided the author with internal stylistic consistency since the author of the complaint interchanged the term "plaque" for "tablet."¹⁰² However, the change to the use of only "plaque" proves crucial because it allows for consistency in ideology between the plaintiffs and defendant at a point when the parties are apparently expressing conflict and are urging the court to resolve the conflict in favor of their particular ideology. The plaintiffs unknowingly adopt the same ideograph that the defendant uses and thereby adopt the ideology that accompanies it. The tension among the ideographs is diffused as the plaintiffs start to use terms in the

99. Pls.' Br. at 20, *supra* note 74.

100. *Id.*

101. E-mail correspondence from plaintiff's attorney (Dec. 9, 2004) (on file with author).

102. Pls.' Compl., *supra* note 85.

defendant's ideological cluster: terms like "the plaque" and "affixed" as opposed to "The Ten Commandments" and "bolted" or "mounted."

The use of these terms makes it easier for the trial and appellate courts to decide in the defendant's favor, since the acceptance of these terms seems to create "consonance and unity" among terms that might otherwise appear in conflict. As Condit and Lucaites explain, courts are to provide a forum for "competing voices," and the judges, as leaders, are "to determine the 'best course of action' in contingent situations."¹⁰³ This best course of action becomes that which "is the result of a consensus represented by the assent that an audience, cast in the role of 'public,' grants to a rhetor, cast in the role of 'leader.'"¹⁰⁴ To gain this assent, leaders "must pay allegiance to [the rhetorical culture's] ideographs, employing them in ways that audiences can judge to be reasonable."¹⁰⁵ In this case, the public the courts must address are more likely to assent to "the plaque" as something "secular" rather than "the tablet" or "The Ten Commandments" as something "secular." The plaintiffs, therefore, in adopting the term "plaque," have diminished some of their power to present their claim as a "legitimate ideological interest."¹⁰⁶

D. *The Courts Determine Reality*

Indeed, the district court held in favor of the defendant, stating that "the reasonable observer" would "not conclude that the continued display of the Ten Commandments Plaque reflects an intent by the current county officials to promote or favor one religion over another or indeed even to promote religion over non-religion."¹⁰⁷ "The Plaque," the judge says, has been retained by the county because it is "an important part of the heritage and tradition of an historic building" and that the Plaque commemorated the rule of law."¹⁰⁸ The judge disassociates "the plaque" from its content: "The Plaque" is important because it is "part of the entire Courthouse,"¹⁰⁹ and the County has "legitimate secular reasons" to retain the plaque, as opposed to

103. CONDIT & LUCAITES, *supra* note 10, at 9-10.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Modrovich v. Allegheny*, no. 03-357, 36 (Docket) (C.A.3 Aug. 28, 2003) (on file with author).

108. *Id.* at 35-36.

109. *Id.* at 37.

returning “The Ten Commandments” because they are a “sacred text.”¹¹⁰

By the time the controversy reached the United States Court of Appeals for the Third Circuit in *Modrovich v. Allegheny County*,¹¹¹ the appellate court was able to easily define the issue they must address as “whether the display of a plaque containing the text of the Ten Commandments on the Allegheny County Courthouse violates the Establishment Clause of the First Amendment of the U.S. Constitution.”¹¹² In framing the issue as “whether the display of a plaque” violates the Constitution, the court makes a critical move. They put forward an ideograph, “a plaque,” that allows the court to push aside the ideographs surrounding the “Ten Commandments” as a religious text that conflicts with the ideographs surrounding “the Establishment Clause.” For example, the court uses the word “plaque” 187 times in its opinion of approximately 10,000 words. The court never uses the word “tablet.” In contrast, the court uses the word “Ten Commandments” only thirty-six times, and often when it refers to the “Ten Commandments,” it is referring to another case and not to the particular Allegheny County Commandments.¹¹³ Again, as we saw in the pleadings, the briefs and the lower court opinions, “the plaque,” in the appellate court’s view, is something permanently “affixed to the stone wall of the Allegheny County Courthouse.”¹¹⁴ Moreover, “the plaque” has been there “a long time,”¹¹⁵ just like the similar “plaque” in Chester County, Pennsylvania that the Third Circuit upheld in 2003 as “an historical artifact.”¹¹⁶

In *Freethought v. Chester County*,¹¹⁷ Judge Dalzell of the United States District Court for the Eastern District of Pennsylvania dealt with very similar facts: a Ten Commandments plaque, presented by a Christian organization and posted in 1920 on the façade of an historic courthouse, was challenged by an atheist group.¹¹⁸ The district court, however, held that “[t]he tablet displayed alone outside the Chester County Courthouse, however much an icon it may be to

110. *Id.* at 39.

111. 385 F.3d 397.

112. *Id.* at 399.

113. “Plaque” is a word that the court can more easily express as “secular” particularly because the Ten Commandments are commonly discussed as being engraved “on two stone tablets,” available at <http://www.britannica.com>.

114. *Modrovich*, 385 F.3d at 399.

115. *Id.* at 403.

116. *Id.* (discussing *Freethought v. Chester County*); 334 F.3d 247 (3d Cir. 2003).

117. 191 F. Supp. 2d 589 (E.D. Pa. 2002).

118. *Id.* at 590.

mainline Protestantism and others, thus runs against the strong current of disestablishment in this nation, to which the First Amendment only in recent decades has added its power.”¹¹⁹

Judge Dalzell was apparently unable to ignore the “sacred” nature of the text.¹²⁰ The history, rather than neutralizing the religious nature of the text, confirmed for the judge that the text is an expression of the Protestant faith.¹²¹ In the opinion, the judge often refers to the Ten Commandments as “the tablet,” occasionally as “the Ten Commandments plaque” or simply as “the Ten Commandments.” Only rarely does the court refer to “the plaque” without some qualification of it as a religious text, saying for example, “Chester County’s history of receiving the plaque demonstrates that it was ‘abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters’ when it accepted the gift in 1920.”¹²²

However, in *Freethought*, the United States Court of Appeals for the Third Circuit reversed the trial court, and, as in *Modrovich*, the court referred to the Ten Commandments almost exclusively as “the Plaque.” Noting the county’s “desire to preserve a longstanding plaque,” the court stated that “While the reasonable observer may perceive the Ten Commandments (in the abstract) as portraying a religious message, he or she would view the *plaque* as a reminder of past events in Chester County. Thus, history provides a context which changes how the reasonable observer would regard the plaque.”¹²³ The court, earlier in the opinion, stressed “that history provides a context which can change the effect of a religious display.”¹²⁴

In *Modrovich*, the court again relied on “history” as an ideograph to support its decision, making such statements as “the Plaque” is a fixture on a courthouse which is a “National Historical Landmark.”¹²⁵ Although “the Plaque” does contain the language of the Ten Commandments, by accepting “the Plaque” in 1918, during World War I, the county was acknowledging the role of the Commandments “in the formation of our laws” and, therefore, had a “secular purpose.”¹²⁶ In fact, the court suggests that over the

119. *Id.* at 600.

120. *Id.* at 595.

121. *Id.* at 599.

122. *Freethought*, 191 F. Supp. 2d at 589.

123. *Freethought*, 334 F.3d at 265 (emphasis in original).

124. *Id.* at 263.

125. *Modrovich*, 385 F.3d at 404.

126. *Id.* at 405.

eighty-plus years that the plaque has hung on the Courthouse, it has lost its religious quality. People frequently pass by it without a thought:

It does not hang in any preeminent place, but is affixed to a side entrance. . . . The Plaque is not protected from the weather and hangs at street level unprotected from potential vandalism. The text can be read when walking immediately past the plaque . . . but not from across the street.¹²⁷

Moreover, the county has not “made any effort nor expended any funds to repair, clean or polish it since 1918.”¹²⁸ The plaque is no different than the other plaques “commemorating various historic events, people and organizations, for example a victory during the French and Indian War, a Civil War protest, the Veterans of Foreign Wars Association, the County’s bicentennial celebration, National POW/MIA Recognition Day, the Pledge of Allegiance and memorials for private individuals.”¹²⁹ Additionally, the case is “distinguishable” from cases in other circuits finding that the Ten Commandments displays violate the Constitution, because “this Plaque” is “an historic artifact” rather than “a new display.”¹³⁰

Through these ideographs, the court is able to create an understanding of “the Plaque” as something completely separate from the religious text it contains. As a result of these ideographs, the court and the public have a secular understanding of “the Plaque.” “The Plaque” ideograph secularizes the Ten Commandments; “the Plaque,” as a term, sanitizes, neutralizes, and disassociates the object from the text which it contains. In the recent Supreme Court decision *Van Orden v. Perry*,¹³¹ which determined the Ten Commandments on the Texas State Capitol grounds to be constitutional, the Court selected similar neutralizing language in the majority opinion.¹³² The Court referred to the Ten Commandments as “the monument” in the majority and concurring opinions, while the dissenting opinions referred to “the Commandments.”¹³³ In contrast, in the Supreme Court decision

127. *Id.* at 408.

128. *Id.* at 409.

129. *Id.* at 405-06.

130. *Id.* at 413-14 (discussing other circuit court decisions).

131. 125 S. Ct. 2854 (2005).

132. *Id.*

133. *Id.*

McCreary County v. American Civil Liberties Union of Kentucky,¹³⁴ the Court held the Ten Commandments displayed at the county courthouses to be unconstitutional; the majority and concurring opinions referred to “the Commandments,” while the dissenting opinion selected neutralizing language such as “the Foundations Displays.”¹³⁵

Drawing on reasoning from external sources, like history, may help a judicial decision appear more objective. According to Benjamin Genshaft, the Supreme Court and the lower courts use history to “secularize” religious symbols and practices as a way “to establish an aura of objectivity.”¹³⁶ Additionally, an emphasis on history and tradition serves the Court’s “ideological agenda.” In *Modrovich*, the use of history appears to serve both the appellate and lower courts’ “ideological agenda,” an agenda which appears to be to preserve the status quo and avoid having to make the controversial decision of removing the Ten Commandments or which could be to impose a Protestant Christian perspective. Allowing the court to express an agenda, the ideographs create the vocabulary that can condition our behaviors and beliefs.

V. CONCLUSION

The *Modrovich* case and the supporting texts reveal the usefulness of the ideograph as a means of studying, attacking and creating legal arguments. Using ideography to uncover the ideology of the participants in *Modrovich* allows us to gain insight into how language can be used to persuade, to limit and to expand our choices. Ideographic analysis helps us to expose meaning and allows us to consider alternate meanings, to challenge the assumptions or logic upon which these meanings are based, to catch “mistakes,” and to counter ideologies with which we do not agree. Ideographs, therefore, can provide a useful analytical tool for the attorneys who bring disputes before the court. Ideographs can help attorneys decide how exactly to craft an argument. Moreover, viewing words as ideographs can be used to teach future attorneys to analyze and synthesize legal opinions, and to generate legal theory and draft documents.

134. 125 S. Ct. 2722 (2005).

135. *Id.*

136. Benjamin S. Genshaft, *With History, All Things Are Secular: The Establishment Clause and the Use of History*, 52 CASE W. RES. L. REV. 573, 573-80 (2001).

Ideographs can be used to design a reading and critical thinking exercise to teach first year law students how to closely analyze judicial opinions. For example, students could be given a series of cases to synthesize and, in addition to determining the rule of law as expressed in these cases, they could also identify the rhetorical cultures and subcultures represented in these cases. Such an exercise would help students to articulate what rhetorical moves courts make to support their decisions, how courts categorize ideas, and what vocabulary the legal community uses to express different viewpoints. Students can also consider what vocabulary and belief systems are used intentionally and what is used unintentionally or inadvertently.

Ideographs can also be used to sharpen oral communication and writing skills. After asking students to identify and consider the various rhetorical cultures that exist in an area of law, such as the Establishment Clause cases, they could then be asked to apply this knowledge to resolve a hypothetical problem. They could, for example, be asked to write a brief on behalf of a client like Modrovich or to represent the County. In drafting these briefs, they should consider how they should express their legal theory. They should consider what vocabulary to use and whether their choice of language expresses the appropriate ideology. They could also consider whether the opposing side is expressing hidden ideology that they might be able to expose. The brief writing exercise could be followed by an oral argument.

Finally, ideographs could be used as a means of introspection and as a tool to sharpen students' lawyering skills. For example, if a student represents Modrovich, but discusses the Ten Commandments as "the plaque that endorses religion," we could use our knowledge of ideographs to ask the student whether he or she perceives any difference between the word "plaque" and the words "The Ten Commandments." We can also ask the student to consider whether his or her choice of language is inadvertently conveying ideological beliefs or whether his or her personal beliefs might be influencing the choice of language and whether the client's beliefs might perhaps be in conflict with the student's personal beliefs.

