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## A New Methodology for the Analysis of Visuals in Legal Works

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# A NEW METHODOLOGY FOR THE ANALYSIS OF VISUALS IN LEGAL WORKS

*Michael D. Murray\**

The goal of this Article is to introduce a comprehensive methodology for the analysis of visuals used for communication in legal works, by which I mean transactional and litigation documents, legal instruments, primary and secondary sources of law, and legal informational materials. To date, the scholarship on visuals in legal communications has been heavily descriptive, with some forays into the ethical and practical considerations of the use of “visualized” legal works. No one has yet devised a comprehensive analytical methodology that draws upon the disciplines of visual literacy, visual cultural studies, visual rhetoric, and *mise en scène* analysis to evaluate the strengths and weaknesses of actual examples of highly visual legal documents and critique their efficacy and propriety in a variety of legal settings. This Article will fill that gap in the literature.

The new methodology evaluates the following aspects of visual legal works:

- **Immediate Visual Context**
  - **Analysis of Meaning**
  - **Taxonomy of Purpose and Function**
- **Immediate Verbal Context**
- **Visual Cultural Context**
- **Mise en Scène and the Rhetorical Topic of Arrangement**
- **Visual Rhetoric and the Ethical and Professional Propriety of the Work.**

Lawyers, judges, and law students typically do not receive training in visual literacy regarding the reading and interpretation of visual images, and much less so in the design principles required to create the most effective visuals for legal communications and legal instruments, such as contracts. This condition persists in spite of the fact that visual images can communicate

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across language and cultural barriers, taking advantage of the enormous speed and power of visual communication. In equal measure, knowledge and understanding of these principles will enable lawyers to design and use effective visuals, and to challenge or respond to the visual legal communications proffered by their opponents in litigation or negotiation, or their counterparts in a transaction.

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## I. INTRODUCTION

Visuals *are* the present and future of legal works.<sup>1</sup> There is an expanding conversation in legal scholarship on visual communication in law that discusses visual legal rhetoric,<sup>2</sup> the use of visuals and visualization in narrativity and applied legal storytelling,<sup>3</sup> cognitive psychology and brain science of visual communication and persuasion,<sup>4</sup> visualization in the

<sup>1</sup> On the present “visual” practice of law, see Richard K. Sherwin, Neal Feigenson & Christina Spiesel, *Law in the Digital Age: How Visual Communication Technologies Are Transforming the Practice, Theory, and Teaching of Law*, 12 B.U. J. SCI. & TECH. L. 227, 230–36 (2006) [Sherwin, *Law in the Digital Age*]. On what the future “visual” practice of law might look like in part, see Margaret Hagan, *Visual Law*, OPEN LAW LAB, <http://www.openlawlab.com/project-topics/illustrated-law-visualizations/> (last accessed July 1, 2020); Margaret Hagan, *Examples of Legal Communication Designs*, [www.legaltechdesign.com/communication-design](http://www.legaltechdesign.com/communication-design) (last accessed July 1, 2020).

<sup>2</sup> On visual legal rhetoric, see generally NEAL FEIGENSON & CHRISTINA SPIESEL, *LAW ON DISPLAY: THE DIGITAL TRANSFORMATION OF LEGAL PERSUASION AND JUDGMENT* (2009); Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 LEGAL WRITING 57, 86–93 (2015); Lenora Ledwon, *Understanding Visual Metaphors: What Graphic Novels Can Teach Lawyers About Visual Storytelling*, 63 DRAKE L. REV. 193, 237 (2015); Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1687–1782 (2014); Christina O. Spiesel, Richard K. Sherwin & Neal Feigenson, *Law in the Age of Images: The Challenge of Visual Imagery*, in CONTEMPORARY ISSUES OF THE SEMIOTICS OF LAW 231 (A. Wagner et al. eds., 2005); Richard K. Sherwin, *A Manifesto For Visual Legal Realism*, 40 LOY. L.A. L. REV. 719, 724–36 (2007) [hereinafter Sherwin, *Manifesto*]; Sherwin, *Law in the Digital Age*, *supra* note 1.

<sup>3</sup> On narrativity generally, including visual narrativity, see Elizabeth Fajans & Mary R. Falk, *Untold Stories: Restoring Narrative to Pleading Practice*, 15 J. LEG. WRITING 3 (2009); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 820–24 (1993); Brian Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 LEG. WRITING 17 (2008); Derek H. Kiernan-Johnson, *A Shift to Narrativity*, 9 LEGAL COMM. & RHETORIC: JALWD 81, 93–95 (2012); Cathren Page, *Not So Very Bad Beginnings: What Fiction Can Teach Lawyers About Beginning A Persuasive Legal Narrative Before A Court*, 86 MISS. L.J. 315, 318–20 (2017); Ruth Anne Robbins, *Harry Potter, Ruby Slippers, and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 SEATTLE U. L. REV. 767 (2006).

<sup>4</sup> On cognitive psychology and the brain science of persuasion, including the use of visuals, see Fred Galves, *Where the Not-So-Wild Things Are: Computers in the Courtroom, the Federal Rules of Evidence, and the Need for Institutional Reform and More Judicial Acceptance*, 13 HARV. J.L. & TECH. 161, 190 (2000); Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for a Judicial Audience*, 57 U. KAN. L. REV. 631 (2009); Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain A Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237, 264–66 (2010); David S. Santee, *More Than Words: Rethinking the Role of Modern Demonstrative Evidence*, 52 SANTA CLARA L. REV. 105, 108 (2012); Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2011); Kathryn M. Stanchi, *Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy*, 60 RUTGERS L. REV. 381 (2008); Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 MICH. ST. L. REV. 411 (2006).

Proactive Law movement,<sup>5</sup> and visualization in the Legal Design movement<sup>6</sup> that recognizes the speed<sup>7</sup> and power<sup>8</sup> of visual communication and its potential to expand the access to and comprehension of law beyond current limits of language, culture, and verbal literacy.<sup>9</sup>

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<sup>5</sup> On the Proactive Law movement, see Gerlinde Berger-Walliser, Thomas D. Barton & Helena Haapio, *From Visualization to Legal Design: A Collaborative and Creative Process*, 54 AM. BUS. L.J. 347, 351–54 (2017); Gerlinde Berger-Walliser & Paul Shrivastava, *Beyond Compliance: Sustainable Development, Business, and Proactive Law*, 46 GEO. J. INT'L L. 417, 436 (2015); Gerlinde Berger-Walliser, *The Past and Future of Proactive Law: An Overview of the Development of the Proactive Law Movement*, in PROACTIVE LAW IN A BUSINESS ENVIRONMENT (2011); Helena Haapio, *Introduction to Proactive Law: A Business Lawyer's View*, A PROACTIVE APPROACH 21–22 (2010).

<sup>6</sup> The Legal Design Alliance defines legal design as “an interdisciplinary approach to apply human-centered design to prevent or solve legal problems.” LEGAL DESIGN ALLIANCE, [www.legaldesignalliance.org](http://www.legaldesignalliance.org) (last accessed July 1, 2020). Through legal design, a document may be framed in a more accessible way using simpler language, and a number of design patterns can be used to make it more understandable. See generally LEGAL DESIGN ALLIANCE, *The Legal Design Manifesto* (v2), [www.legaldesignalliance.org/#v2](http://www.legaldesignalliance.org/#v2) (last accessed July 1, 2020); Thomas D. Barton, Gerlinde Berger-Walliser & Helena Haapio, *Visualization: Seeing Contracts for What They Are, and What They Could Become*, 19 J. L. BUS. & ETHICS 47 (2013); Amanda Perry-Kessaris, *Legal Design for Practice, Activism, Policy and Research*, 46 J. L. & SOC'Y 185, 201–02 (2019); Stefania Passera, Anssi Smedlund & Marja Liinasuo, *Exploring Contract Visualization: Clarification and Framing Strategies to Shape Collaborative Business Relationships*, 2 J. STRATEGIC CONTRACTING & NEGOT. 69 (2016); Robert Waller, Jenny Waller, Helena Haapio, Gary Crag & Sandi Morrisseau, *Cooperation Through Clarity: Designing Simplified Contracts*, 2 J. STRATEGIC CONTRACTING & NEGOT. 48 (2016).

<sup>7</sup> Studies have found that the brain processes visual images roughly 60,000 times faster than it processes text. Daniel Newman, *Why Visual Content Will Explode in 2015*, FORBES (Dec. 23, 2014, 9:17 AM), <https://www.forbes.com/sites/danielnewman/2014/12/23/why-visual-content-will-explode-in-2015/#1f3e31971cb5>; see also MICHAEL S. GAZZANIGA, *NATURE'S MIND: THE BIOLOGICAL ROOTS OF THINKING, EMOTIONS, SEXUALITY, LANGUAGE, AND INTELLIGENCE* 95–102 (1992); ALLEN NEWELL, *UNIFIED THEORIES OF COGNITION* 24 (1990); Mirjam Keetels & Jean Vroomen, *Perception of Synchrony Between the Senses*, in *THE NEURAL BASES OF MULTISENSORY PROCESSES* (Micah M. Murray & Mark T. Wallace eds., 2012) (noting that sounds “travel through air much slower than visual information”); Mirjam Keetels & Jean Vroomen, *The Role of Spatial Disparity and Hemifields in Audio-Visual Temporal Order Judgments*, 167 J. EXPERIMENTAL BRAIN RES. 635–40 (2005); Douglas R. Vogel et al., *Persuasion and the Role of Visual Presentation Support: The UM/3M Study* (Mgmt. Info. Sys. Res. Ctr., Working Paper No. MISRC-WP-86-11, 1986), <http://misrc.umn.edu/workingpapers/fullpapers/1986/8611.pdf> [<https://perma.cc/5SED-UDXX>].

<sup>8</sup> See ANN MARIE SEWARD BARRY, *VISUAL INTELLIGENCE: PERCEPTION, IMAGE, AND MANIPULATION IN VISUAL COMMUNICATION* 15 (1997) [hereinafter BARRY, *VISUAL INTELLIGENCE*]; Sabrina Bresciani, *Do You See What I See? The Effect of Culture on the Reception of Visual Communication*, *THEORETICAL TURBULENCE IN INTERCULTURAL COMMUNICATION STUDIES* 82 (Saila Poutiainen ed. 2014); DONIS A. DONDIS, *A PRIMER OF VISUAL LITERACY* 18 (1973); TIMOTHY GANGWER, *VISUAL IMPACT, VISUAL TEACHING: USING IMAGES TO STRENGTHEN LEARNING* 24 (2009); Nevzat Özel, *Developing Visual Literacy Skills Through Library Instructions*, in *INFORMATION VISUALIZATION TECHNIQUES IN THE SOCIAL SCIENCES AND HUMANITIES* 37 (Veslava Osinska & Grzegorz Osinski eds., 2018); COLIN WARE, *INFORMATION VISUALIZATION: PERCEPTION FOR DESIGN* 2–6 (2d. ed. 2012). On the foundations of visual literacy, see John L. Debes, *Some Foundations for Visual Literacy*, 13 AUDIOVISUAL INSTRUCTION 961–64 (1968); John L. Debes, *The Loom of Visual Literacy*, 14 AUDIOVISUAL INSTRUCTION 27 (1969).

<sup>9</sup> See generally Michael Doherty, *Comprehensibility as a Rule of Law Requirement: The Role of Legal Design in Delivering Access to Law*, 8 J. OF OPEN ACCESS TO L. (2020), <https://ojs.law.cornell.edu/index.php/joal/article/view/100/98> (last accessed Apr. 28, 2020); Jay A.

### A. Getting Visual in Legal Scholarship

In 2012, I began a study of visualization in legal communications that examined the growing use of visual, pictorial, and graphic devices for the communication of law, legal rules, and legal concepts, including data visualization and the communication of legal and economic analyses,<sup>10</sup> the concept of authorship in visual works,<sup>11</sup> use of visuals for cross-lingual and cross-cultural legal communications,<sup>12</sup> topics of invention and arrangement and tropes of style in visual legal rhetoric,<sup>13</sup> ethical issues in visual legal rhetoric,<sup>14</sup> visual content in legal educational materials,<sup>15</sup> and mise en scène design analysis of visuals in legal documents.<sup>16</sup>

My works<sup>17</sup> and the works of other scholars cited above<sup>18</sup> and throughout this Article most often have focused on introducing the modern visual techniques employed by practitioners in litigation and transactional contexts, and on discussing and critiquing a limited number of examples of

Mitchell, *Whiteboard and Black-Letter: Visual Communication in Commercial Contracts*, 20 U. PA. J. BUS. L. 815, 816–20, 851, 853, 857–58, 862 (2018); Stefania Passera & Helena Haapio, *Transforming Contracts from Legal Rules to User-Centered Communication Tools: A Human-Information Interaction Challenge*, 1 COMM. DESIGN QTRLY. 38–45 (2013), [sigdoc.acm.org/wp-content/uploads/2012/09/CDQ-April-1-3-FINAL.pdf](http://sigdoc.acm.org/wp-content/uploads/2012/09/CDQ-April-1-3-FINAL.pdf).

<sup>10</sup> Michael D. Murray, *After the Great Recession: Law and Economics' Topics of Invention and Arrangement and Tropes of Style*, 58 LOY. L. REV. 897 (Winter 2012) [hereinafter Murray, *After the Great Recession*]; Michael D. Murray, *The Great Recession and the Rhetorical Canons of Law and Economics*, 58 LOY. L. REV. 615 (Fall 2012) [hereinafter Murray, *The Great Recession*]. This study of rhetorical topics of arrangement and the visual presentation of legal and economic information continues in Michael D. Murray, *Diagrammatics and the Proactive Visualization of Legal Information*, 43 U. ARK. LITTLE ROCK L. REV. 323 (2021) [hereinafter Murray, *Diagrammatics*].

<sup>11</sup> Michael D. Murray, *Post-Myriad Genetics Copyright of Synthetic Biology and Living Media*, 10 OKLA. J.L. & TECH. 71 (2014) [hereinafter Murray, *Post-Myriad Genetics*].

<sup>12</sup> Michael D. Murray, *Leaping Language and Cultural Barriers with Visual Legal Rhetoric*, 49 U.S.F.L. REV. F. 61 (2015) [Murray, *Leaping Language*]. This study of cross-lingual and cross-cultural visual communication continues in Michael D. Murray, *Toward a More Universal Visual Language of Law*, 46 L. & PSYCH. REV. (forthcoming, 2021) [hereinafter Murray, *Toward a Universal Legal Language*].

<sup>13</sup> Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 LEGAL WRITING J. 185 (2016) [hereinafter Murray, *Visual Rhetoric: Topics and Tropes*].

<sup>14</sup> Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM. & RHETORIC: JALWD 107 (2016) [hereinafter Murray, *Ethics of Visual Legal Rhetoric*].

<sup>15</sup> Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, 68 J. LEGAL EDUC. 64 (2019) [hereinafter Murray, *Sharpest Tool*].

<sup>16</sup> Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Legal Rhetoric*, 68 U. KAN. L. REV. 241 (2019) [hereinafter Murray, *Mise en Scène*].

<sup>17</sup> See *supra* notes 11–17.

<sup>18</sup> See *supra* notes 2–10.

visual legal works.<sup>19</sup> To the extent that individual works have been analyzed and deconstructed in the studies cited above, the analysis generally has been limited to an evaluation of the communicative and persuasive potential of visual works as rhetoric or legal reasoning,<sup>20</sup> and sometimes analyzing the ethical and professional issues arising from the use of specific works in legal contexts.<sup>21</sup>

There is a separate but parallel conversation on the use of visuals in contracts, transactional documents, legal informational materials, and in laws themselves.<sup>22</sup> This parallel area of study is identified generally as the “visualization of law” movement.<sup>23</sup> The common motivation for the study of visualization is to make laws and legal documents and instruments more accessible, engaging, and understandable to persons not trained in the law and not indoctrinated in the verbally-dominated world of the legal writing discourse community. There are two specific areas of study, scholarship, and practical application of visualization known as the Proactive Law movement<sup>24</sup> and the Legal Design movement,<sup>25</sup> which both seek to improve legal works in general, and contracts and transactional documents in particular, through the use of visualization.

### B. Analyzing Visuals as Visuals not as Translations of Words

In analyzing the visuals used in legal works, a specific goal of this Article and the methodology it presents is to examine visual elements as *visuals*, not as a translation or alternative form of verbal communication. Many of the articles cited above do not contain a single image; they fail even

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<sup>19</sup> E.g., FEIGENSON & SPIESEL, *supra* note 2; Murray, *After the Great Recession*, *supra* note 10; Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 13; Sherwin, *Law in the Digital Age*, *supra* note 1; Sherwin, *Manifesto*, *supra* note 2; Spiesel, *supra* note 2.

<sup>20</sup> E.g., Johansen & Robbins, *supra* note 2; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14; Porter, *supra* note 2.

<sup>21</sup> See Steven J. Johansen, *Was Colonel Sanders A Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 LEGAL COMM. & RHETORIC: JALWD 63, 68–70 (2010); Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 107, 109–13.

<sup>22</sup> *Supra* notes 6–7.

<sup>23</sup> Colette R. Brunschwig, *On Visual Law: Visual Legal Communication Practices and Their Scholarly Exploration* 902–23 (2014), available at <https://www.ius.uzh.ch/dam/jcr:00000000-0b7f-a3b8-ffff-ffffe92cd50/ColetteRBrunschwigOnVisualLaw2014.pdf> (last accessed July 6, 2020); Michael A. Curtotti, *Visualising a Visual Movement - Reflections on a Growing Body of Research*, 8 J. OPEN ACCESS TO L. 1, 1-8 (2020); Michael A. Curtotti & Eric McCreath, *Enhancing the Visualization of Law* (2012); Helena Haapio, *Visualising Contracts and Legal Rules for Greater Clarity*, 44 LAW TEACHER 391, 391–94 (2010); ETHAN M. KATSH, *LAW IN A DIGITAL WORLD* 161–62 (1995); Matthew J. McCloskey, *Visualizing the Law: Methods for Mapping the Legal Landscape and Drawing Analogies*, 73 WASH. L. REV. 163, 165–65 (1998).

<sup>24</sup> See *supra* note 5.

<sup>25</sup> See *supra* note 6.

to depict the images of the works described in the articles. In other words, the analyses of visuals in many of the above cited articles—including several of my earlier works<sup>26</sup>—have tried to translate visual works into verbal arguments or verbal elements of legal reasoning (e.g., verbal tropes such as metaphors, or verbal “signs”).<sup>27</sup> This “translational” approach to the interpretation of visuals assumes that it is appropriate to approach visuals as an alternative form of *verbal* communication in legal documents.

The approach of trying to translate visual works into verbal arguments or verbal elements of legal reasoning limits the scope and the effectiveness of the visual works, because communication through visuals employs a separate visual *language*, and not in a *literal* or verbal sense, meaning the language of images as images is not defined as or limited to an understanding of images as visual metaphors or signs for words.<sup>28</sup> Visual communication “occurs without the mediation of words or language in the literal sense. . . . [W]hat is communicated visually can be described verbally . . . [h]owever, such description or translation is not a reduction of the visual to the verbal. The visual communication stands on its own feet.”<sup>29</sup> In my current works,<sup>30</sup> I seek to move the conversation forward by examining and analyzing visuals as visuals; in other words, I do not want to deconstruct visuals so as to translate them into words but instead to analyze the particular visual language of pictorial, graphic, and illustrative visual works.

In one recent work, I applied *mise en scène* analysis from video, television, photography, and film studies to the analysis of the visual communication of visual works (particularly photography) used in legal contexts.<sup>31</sup> The lessons from this study caused me to move to develop a more comprehensive method of analysis of visuals that draws from visual literacy

<sup>26</sup> See Murray, *After the Great Recession*, *supra* note 10.

<sup>27</sup> See David S. Birdsell & Leo Groarke, *Toward a Theory of Visual Argument*, 33 ARGUMENTATION & ADVOCACY 1, 5 (1996); DAVID ZAREFSKY, THE PRACTICE OF ARGUMENTATION 229 (2019).

<sup>28</sup> See Birdsell & Groarke, *supra* note 28, at 5; J. Anthony Blair, *The Possibility and Actuality of Visual Arguments*, 33 ARGUMENTATION & ADVOC. 23, 25 (1996); Paul Martin Lester, *Urban Screens: the Beginning of a Universal Visual Culture*, First Monday (2006), <https://firstmonday.org/article/view/1543/1458>; ZAREFSKY, *supra* note 28, at 229. See generally RUDOLF ARNHEIM, ART AND VISUAL PERCEPTION (1974); DUNCAN DAVIES, DIANE BATHURST, & ROBIN BATHURST, THE TELLING IMAGE: THE CHANGING BALANCE BETWEEN PICTURES AND WORDS IN A TECHNOLOGICAL AGE (1990).

<sup>29</sup> Blair, *supra* note 29, at 25 (“Visual communication may entail the use of conventions [of] visual symbolism . . . however these conventions are not a language in the literal sense. . . . Communication through visual imagery is not verbal.”).

<sup>30</sup> Michael D. Murray, *Cartoon Contracts and the Proactive Visualization of Law*, 16 U. MASS. L. REV. 98 (2021) [hereinafter Murray, *Cartoon Contracts*]; Murray, *Diagrammatics*, *supra* note 11; Murray, *Mise en Scène*, *supra* note 17; Murray, *Toward a Universal Legal Language*, *supra* note 13.

<sup>31</sup> Murray, *Mise en Scène*, *supra* note 17.



education,<sup>32</sup> visual rhetoric,<sup>33</sup> and mise en scène analysis.<sup>34</sup> The result is the method of analysis described in Section II below.

## II. METHODOLOGY OF ANALYSIS

My methodology of analysis<sup>35</sup> will examine the works through the lens of visual literacy studies,<sup>36</sup> visual rhetoric,<sup>37</sup> and mise en scène principles.<sup>38</sup> Specifically, for each example, this approach breaks down and separately analyzes the following aspects of multimodal works (works containing both words and images):

<sup>32</sup> E.g., Nancy J. Allen, *Ethics and Visual Rhetoric: Seeing's Not Believing Anymore*, 5 TECH. COMMUN. QRTY 87–105 (1996); RUDOLF ARNHEIM, *VISUAL THINKING* (1969); Marilyn J. Bazeli, *Visual Literacy Education: Developing Thinking Citizens Across Cultures*, in *VISUAL COMMUNICATION: BRIDGING ACROSS CULTURES* (1992); Denise A. Dondis, *A PRIMER OF VISUAL LITERACY* (1973); Glenda Rakes, Thomas A. Rakes, Lana Smith, *Teaching Visual Literacy in a Multimedia Age*, 43 *TECHTRENDS* 14–18 (1999).

<sup>33</sup> See *supra* note 3.

<sup>34</sup> See MICK HURBIS-CHERRIER, *VOICE & VISION: A CREATIVE APPROACH TO NARRATIVE FILM AND DV PRODUCTION* 35–39, 56–57 (2007); JANE STADLER & KELLY MCWILLIAM, *SCREEN MEDIA: ANALYSING FILM AND TELEVISION* 1–3, 26–32 (2009); JON WHITMORE, *DIRECTING POSTMODERN THEATER: SHAPING SIGNIFICATION IN PERFORMANCE* 12–16 (1994). See also *infra* note 39.

<sup>35</sup> I employ the method of analysis described here in my current works: Murray, *Cartoon Contracts*, *supra* note 30, at 114–26; Murray, *Diagrammatics*, *supra* note 10, at 6–13; Murray, *Toward a Universal Legal Language*, *supra* note 12, at 19–21.

<sup>36</sup> On visual literacy studies, see, e.g., AMY K. ANDERSON, *IMAGE/TEXT AND TEXT/IMAGE: REIMAGINING MULTIMODAL RELATIONSHIPS THROUGH DISSOCIATION* 48 (2014), [https://uknowledge.uky.edu/english\\_etds/11/](https://uknowledge.uky.edu/english_etds/11/); Birdsell & Groarke, *supra* note 27, at 5; Murray, *Cartoon Contracts*, *supra* note 30, text accompanying notes 25, 34, 37–42, 49, 53, 54, 57, 59; Murray, *Toward a Universal Legal Language*, *supra* note 9, at 19–21; *supra* sources cited in notes 8 and 32.

<sup>37</sup> See, e.g., Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237, 264–66, 269 (2010); Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 13, at 186, 193–200; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 13, at 108, 124–30, 142, 146, 149, 152–54; Richard K. Sherwin et al., *Law in the Digital Age*, *supra* note 1, at 260; Richard K. Sherwin, *Manifesto*, *supra* note 2, at 719; Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2010).

<sup>38</sup> Mise en scène literally translates from the French as “setting the stage” in the sense of staging or placing a scene in a production, but with regard to visual media of all kinds, it refers to the elements of authorship of a visual, including framing, composition, perspective and point of view, lighting, and visual design. See MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE: A COURSE BOOK* 11, 14 (2007); DAVID BORDWELL & KRISTIN THOMPSON, *FILM ART: AN INTRODUCTION* 112 (8th ed. 2008); TIMOTHY CORRIGAN & PATRICIA WHITE, *THE FILM EXPERIENCE: AN INTRODUCTION* 64 (3d ed. 2012); JILL MARSHALL & ANGELA WERNDLY, *THE LANGUAGE OF TELEVISION* 84 (2002); Gabe Moura, *Mise-en-Scène*, *ELEMENTS CINEMA* (July 1, 2014), <http://www.elementsofcinema.com/directing/mise-en-scene-in-films/> [hereinafter <https://perma.cc/3TML-TAGD>]; Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Legal Rhetoric*, 68 U. KAN. L. REV. 241, 251–58 (2019); Kimberlianne Podlas, *The Power of Stories: Intersections of Law, Literature, and Culture: Symposium Addendum: The Tales Television Tells: Understanding the Nomos Through Television*, 13 TEX. WESLEYAN L. REV. 31, 41 (2006).

<b>Immediate Visual Context</b>	The analysis of immediate visual context examines the visual, non-verbal contents of the work separate from the words of the work and considers their role and function when combined with other visual components of the work as a whole. <sup>39</sup>
<b>Analysis of Meaning</b>	In each example, I will attempt to discern as nearly as possible the plain meaning and message of the visuals within the context of the discourse or narrative of the work in which they appear. <sup>40</sup> Where the meaning appears to be more subtle or ambiguous, or even contradictory from the text, I will note the ambiguity or the contradiction. <sup>41</sup>
<b>Taxonomy of Purpose and Function</b>	This part of the analysis builds on earlier works that have created a taxonomy for the function and purpose of visuals within the overall work as a whole. <sup>42</sup> The point of a taxonomy is to explore the role of images in relationship to the text when the design of the work incorporates both text and images. <sup>43</sup>
<b>Immediate Verbal</b>	The analysis of immediate verbal context examines

<sup>39</sup> See *supra* notes 8, 32, and 36.

<sup>40</sup> It is appropriate to apply a plain meaning analysis to visuals in contracts, transactional documents, and pictorial exhibits in litigation. See *United States v. Patrick John Corp.*, 668 F.3d 379, 389 (6th Cir. 2012) (“[T]he court must determine, based on the contents within the four corners of the image, [what] the circumstances being portrayed are. . . .”); *Leader Commc’ns, Inc. v. Fed. Aviation Admin.*, 757 F. App’x 763, 770 (10th Cir. 2018) (applying plain meaning rule to “graphics, illustrations, and charts” in contract proposals).

<sup>41</sup> See *Mitchell*, *supra* note 9, at 837–39 (2018) (regarding potential ambiguities in images in legal documents); Naomi Mezey, *The Image Cannot Speak for Itself: Film, Summary Judgment, and Visual Literacy*, 48 VAL. U. L. REV. 1, 2–15 (2013). “Ambiguity” is used narrowly here as a label for messages in visual elements that send two or more non-complementary meanings that potentially could cause confusion or doubt as the meaning of the visual elements.

<sup>42</sup> Emily E. Marsh & Marilyn Domas White, *A Taxonomy of Relationships Between Images and Text*, 59 J. OF DOCUMENTATION 647–72 (2003). Professors Vesa Annola, Helena Haapio, and Merja Koskela have created a very useful concept map visualization of the Marsh-Domas White taxonomy, in Vesa Annola, Helena Haapio, & Merja Koskela, *Interpreting Images in Contracts*, pp. 5–6, draft chapter for RESEARCH HANDBOOK ON CONTRACT DESIGN (Edward Elgar, forthcoming 2021–22) (draft on file with the author).

<sup>43</sup> On the role and function of images in multimodal communication, see generally JOHN BATEMAN, TEXT AND IMAGE: A CRITICAL INTRODUCTION TO THE VISUAL/VERBAL DIVIDE 5–49 (2014); JOHN BATEMAN ET AL., MULTIMODALITY: FOUNDATIONS, RESEARCH AND ANALYSIS – A PROBLEM-ORIENTED INTRODUCTION 47–51 (2017); ROLAND BARTHES, IMAGE-MUSIC-TEXT 39–41 (1977); GUNTHER KRESS & THEO VAN LEEUWEN, READING IMAGES: THE GRAMMAR OF VISUAL DESIGN 15–18 (2006); GUNTHER KRESS & THEO VAN LEEUWEN, MULTIMODAL DISCOURSE: THE MODES AND MEDIA OF CONTEMPORARY COMMUNICATION (2001).

<b>Context</b>	the words in the work separate from the visuals and evaluates how dependent the communication of the meaning and message of the work as a whole is on words separate from any visual elements. This step examines the effectiveness of the words used and looks for any issues presented by the wording, such as complexities of language, foreign or unusual language used, or cultural or verbal ambiguities in the text. <sup>44</sup>
<b>Visual Cultural Context</b>	Visual cultural context analysis examines the community and societal cultural experiences that are required to draw the full meaning from an image or a series of images in the work. <sup>45</sup> This step of the analysis proceeds with the understanding that there is a visual culture of images that allows the target audiences to get the full denoted (express or explicit) and connoted (implied or suggested) meanings of visual and multimodal communications by drawing on their own visual cultural experiences. <sup>46</sup>
<b>Mise en Scène and the Rhetorical Topic of Arrangement</b>	Mise en Scène is a theory and method of analysis of arrangement and composition of visual media that is adapted from film and photographic theory. <sup>47</sup> Mise en Scène examines topics that, with regard to verbal media, would fall under the

<sup>44</sup> Berger-Walliser, Barton, & Haapio, *From Visualization to Legal Design*, *supra* note 6, at 371-85. A typical form of overly complex language is legalese or any legal terms of art in a document that will be used by non-lawyers. Lori D. Johnson, *Say the Magic Word: A Rhetorical Analysis of Contract Drafting Choices*, 65 SYRACUSE L. REV. 451, 452-55 (2015).

<sup>45</sup> See generally MARGARET DIKOVITSKAYA, VISUAL CULTURE: THE STUDY OF THE VISUAL AFTER THE CULTURAL TURN 59-60 (2005); VISUAL CULTURE (Chris Jenks ed., 1995); NICHOLAS MIRZOEFF, AN INTRODUCTION TO VISUAL CULTURE 1-31 (1999); VISUAL CULTURE: IMAGES AND INTERPRETATIONS (Norman Bryson, Michael Ann Holly, & Keith Moxey eds., 1994); NICHOLAS MIRZOEFF, HOW TO SEE THE WORLD: AN INTRODUCTION TO IMAGES, FROM SELF-PORTRAITS TO SELFIES, MAPS TO MOVIES, AND MORE 94-97 (2016) [hereinafter MIRZOEFF, HOW TO SEE THE WORLD]; Nicholas Mirzoeff, *The Visual Commons: Counter-Power in Photography from Slavery to Occupy Wall Street*, in IMAGE OPERATIONS: VISUAL MEDIA AND POLITICAL CONFLICT 208, 208-217 (Jens Eder & Charlotte Klonk eds., 2017); see also Jussi Parikka, *The City and the City: London 2012 Visual (Un)Commons*, in POSTDIGITAL AESTHETICS: ART, COMPUTATION AND DESIGN 203, 203-18 (David M. Berry & Michael Dieter eds., 2015).

<sup>46</sup> See sources cited in note 45, *supra*. On denoted and connoted messages in visual works and the role of cultural experience, see BARTHES, *supra* note 43, at 17-21, 25-31, 42-47.

<sup>47</sup> See sources cited, *supra* notes 16, 34, and 38.

	rhetorical topic of arrangement. <sup>48</sup> In this step of the analysis, the methodology calls for examination of the composition, framing, perspective, point of view, coloration, and other spatial and formal characteristics of the visual elements in the work, and their arrangement in juxtaposition with all of the other elements of the work. <sup>49</sup>
<b>Visual Rhetoric and the Ethical and Professional Propriety of the Work</b>	The last step of the methodology's analysis will examine the complete work under the lens of visual rhetoric, with particular attention to the ethical and professional propriety of the uses of images and their effect on the overall communicative potential of the work. <sup>50</sup>

### III. THE FUNCTIONING OF THE METHODOLOGY

#### A. Immediate Visual Context

As noted above, immediate visual context analysis examines the visual, non-verbal components of the work separately from any verbal components. It considers the selection and placement of individual visual elements in conjunction with other visual components of the work.<sup>51</sup> This step of the analysis is defined to focus on: (a) the meaning of the visuals in the work, and (b) the function and purpose of the visuals within the legal work.

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<sup>48</sup> Regarding the topic (topoi) of arrangement in rhetoric, see EDWARD P.J. CORBETT & ROBERT J. CONNORS, *CLASSICAL RHETORIC FOR THE MODERN STUDENT* 17, 19–20 (4th ed., Oxford U. Press 1999); Gabriele Knappe, *Classical Rhetoric in Anglo-Saxon England*, 27 *ANGLO-SAXON ENG.* 5, 25 (1998); Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 13, at 201; Michael D. Murray, *Rule Synthesis and Explanatory Synthesis: A Socratic Dialogue Between IREAC and TREAT*, 8 *LEGAL COMMUN. & RHETORIC: JALWD* 217, 236 (2011) [hereinafter *Rule Synthesis and Explanatory Synthesis*].

<sup>49</sup> *Mise en scène* analysis of visual media in legal and non-legal works is demonstrated in Murray, *Mise en Scène*, *supra* note 16.

<sup>50</sup> See generally Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14; Murray, *Mise en Scène*, *supra* note 16, at 259–312. Several authors have evaluated the ethics and professionalism of works of visual legal rhetoric. *E.g.*, Johansen & Robbins, *supra* note 2; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14; Porter, *supra* note 2. Johansen & Robbins have contributed a sliding scale of the ethical and professional propriety of uses of images in legal works, which on one end rates “Extraneous” uses (decorative, or distracting and “unprofessional” uses), and on the other, “Transformative” uses that are ethical and effective in achieving organizational, interpretive, or representative functions. Johansen & Robbins, *supra* note 2.

<sup>51</sup> See sources cited, *supra* notes 8, 32, and 36.

Even in this first step of the analysis, it can be observed that the methods of analysis within the methodology are interrelated because the efficacy of works containing one single image or multiple images, separate or in sequence, are defined by the lessons of *mise en scène* regarding the design, arrangement, and creation of a scene,<sup>52</sup> and by the principles of visual literacy<sup>53</sup> concerning the reading and interpretation of works within a visual cultural context.<sup>54</sup> Individually, a single image can communicate a message, even an argument,<sup>55</sup> and in combination, the sequential narrative of multiple images can tell a complete story.<sup>56</sup> In legal contexts, images might form a complete expression of a legal communication,<sup>57</sup> but is far more likely that legal works will be multimodal in design, using both words and images.<sup>58</sup>

The first task of the analysis of immediate visual context is to interpret the meaning of the images in the work. As noted in the table above, a plain meaning analysis is appropriate for this purpose because that is very likely to be the standard that a court or tribunal would use. In my recent work, *Cartoon Contracts and the Proactive Visualization of Law*, I discussed the support for a plain meaning rule that examines visual works on their face to find and apply their meaning.<sup>59</sup> Courts have applied a plain meaning analysis to visuals in contracts, transactional documents, and other legal works.<sup>60</sup>

<sup>52</sup> Murray, *Mise en Scène*, *supra* note 16, at 259–312. *See generally supra* notes 34, 38.

<sup>53</sup> *See* Maria D. Avgerinou & John D. Ericson, *A Review of the Concept of Visual Literacy*, 28 BRIT. J. EDUC. TECH. 280–91 (1997); Kristen Harrison, *What Is Visual Literacy?*, VISUAL LITERACY TODAY, <https://visualliteracytoday.org/what-is-visual-literacy/> (last visited June 20, 2019); John A. Hortin, *Visual Literacy and Visual Thinking*, in CONTRIBUTIONS TO THE STUDY OF VISUAL LITERACY 99 (Lucille Burbank & Dennis Pett eds., 1983) (“Visual literacy is the ability to understand (read) and use (write) images and to think and learn in terms of images, i.e., to think visually.”).

<sup>54</sup> *See generally* VISUAL CULTURE: IMAGES AND INTERPRETATIONS (Norman Bryson, Michael Ann Holly & Keith Moxey eds., 1994); MARGARET DIKOVITSKAYA, VISUAL CULTURE: THE STUDY OF THE VISUAL AFTER THE CULTURAL TURN 47–84 (MIT Press 2005); Anthony Faiola & Sorin A. Matei, *Cultural Cognitive Style and Web Design: Beyond a Behavioral Inquiry Into Computer-Mediated Communication*, 11 J. COMPUT.-MEDIATED COMM’N. 375, 375–94 (2005); VISUAL CULTURE (Chris Jenks ed., Routledge 2017); NICHOLAS MIRZOEFF, AN INTRODUCTION TO VISUAL CULTURE 1–31 (Routledge 1999); Patricia A. Young, *Exploring Culture in the Design of New Technologies of Literacy*, in HANDBOOK OF RESEARCH ON NEW LITERACIES 325–26, 327–31, 343–48, 349–52 (Julie Coiro et al. eds., 2014).

<sup>55</sup> *See supra* note 28.

<sup>56</sup> *See, e.g., supra* note 3.

<sup>57</sup> *See* sources cited, *supra* notes 1, 2.

<sup>58</sup> *See* Berger-Walliser, Barton & Haapio, *From Visualization to Legal Design*, *supra* note 5, at 349–50, 372–73; Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 LEGAL COMM’N & RHETORIC: JALWD 1, 25–26 (2015).

<sup>59</sup> Murray, *Cartoon Contracts*, *supra* note 30, at 116–18.

<sup>60</sup> *See* Blaylock v. City of Phila., 504 F.3d 405, 413–14 (3d Cir. 2007) (courts examine photographs on their face to determine if the photographs contradict a party’s account of events); United States v. Courtade, 929 F.3d 186, 192 (4th Cir. 2019) (Court of Appeals stated, “we can dispose of this

Copyright, trademark, and patent laws rely on the courts' and the finders of fact's ability to examine visual works on their face and discern the content and meaning and all other relevant aspects of the works.<sup>61</sup> Commentators have noted that, "[t]he plain meaning rule comes as close as possible to representing the current prevailing interpretive method for images in law."<sup>62</sup> The plain meaning rule also applies to litigation documents, including exhibits in litigation<sup>63</sup> and photographic and audiovisual works submitted in a legal proceeding.<sup>64</sup>

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case based on the objective characteristics of the video alone."), *cert. denied*, 140 S. Ct. 907 (2020); *United States v. Patrick Young Corp.*, 668 F.3d 379, 389 (6th Cir. 2012) ("[T]he court must determine, based on the contents within the four corners of the image, [what] the circumstances being portrayed are . . . ."); *Leader Commc'ns, Inc. v. Fed. Aviation Admin.*, 757 Fed. App'x 763, 770 (10th Cir. 2018) (applying plain meaning rule to "graphics, illustrations, and charts" in contract proposals); *Kasparian v. AvalonBay Cmty's, Inc.*, 156 Cal. App. 4th 11, 24 (2007) ("It is incumbent on the reviewing court to examine the photographs for itself and make its own determinations."). *Cf. City of Caruthersville v. Huffman*, 262 Mo. 367, 375 (Mo. 1914) (in construing plats, courts must give effect to the plain meaning and intent that they exhibit by their outlines as well as by their words); *Weis v. Miller*, 805 S.W.2d 683 (Mo. Ct. App. 1990); 62 C.J.S. *Municipal Corporations* § 104 (2020).

<sup>61</sup> In copyright law, courts make substantive analyses of visual works by examining the works on their face. *E.g.*, *Tresóna Multimedia, LLC v. Burbank High Sch. Vocal Music Ass'n*, 953 F.3d 638, 650 (9th Cir. 2020).

("In analyzing the second [fair use] factor . . . , the nature of the copyrighted work, the court examines whether the work is informational or creative . . . . [Under the] third [fair use] factor . . . , [the court] examines whether the amount and substantiality of the portion used in relation to the copyrighted work as a whole is reasonable in relation to the purpose of the copying.")

Trademarks, including visual and pictorial marks, are evaluated on the basis of their appearance, sound, and meaning determined by examining the mark itself. *E.g.*, *4SEMO.com, Inc. v. S. Ill. Storm Shelters, Inc.*, 939 F.3d 905, 910–11 (7th Cir. 2019) (evaluating the appearance of the mark on its face), *cert. denied sub nom. S. Ill. Storm Shelters v. 4SEMO.com, Inc.*, 140 S. Ct. 2642 (2020); *Affliction Holdings, LLC v. Utah Vap or Smoke, LLC*, 935 F.3d 1112, 1115 (10th Cir. 2019). In patent law, the courts examine drawings, figures, and illustrations on their face in the process of claim construction. *Prima Tek II, L.L.C. v. Polypap, S.A.R.L.*, 318 F.3d 1143, 1148 (Fed. Cir. 2003) ("After identifying the plain meaning of a disputed claim term, the court examines the written description *and the drawings* to determine whether use of that term is consistent with the ordinary meaning of the term.") (emphasis added); *Day Int'l, Inc. v. Reeves Bros., Inc.*, 260 F.3d 1343, 1348 (Fed. Cir. 2001).

<sup>62</sup> Porter, *supra* note 2, at 1778; *see also* James Durling, *Diagramming Interpretation*, 35 *YALE J. ON REGUL.* 325, 334–35 (2018) (the court may visually diagram a contract to interpret its meaning); Mitchell, *supra* note 9, at 838–43 (gathering factors regarding why courts are equipped to interpret images in contracts).

<sup>63</sup> *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206, 1210 (11th Cir. 2007); *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. Dist. Ct. App. 1994).

<sup>64</sup> *E.g.*, *Scott v. Harris*, 550 U.S. 372, 380–81 (2007) (lower court "should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.").

### Immediate Visual Context Analysis Example



Image of a team in celebration<sup>65</sup>

**Immediate Visual Context:** The image needs no words to communicate a victory celebration for a team. People of most cultures on the planet would recognize that the photograph depicts a sports team based on the nature and appearance of the numbered jerseys and the fact that they are hoisting a trophy. Closer observation would reveal that the sports team is connected to the United States of America based on the flags displayed at the scene. It most likely would require a little more specific cultural experience to recognize that the sport most likely is soccer (football) or volleyball because of the different color jerseys for two of the players—the goalies or liberos.

Gestalt psychology<sup>66</sup> would fill in the narrative that precedes the photograph: a team competed and won a great victory. If there is no conflicting verbal introduction or alternative suggestion provided, then most—if not all—viewers will view this as a scene of players who are ecstatic over their victory. By the Gestalt of the scene and the effect of naïve realism, the average viewer would not readily think that this was an unsuccessful team pretending to be victors, nor would the average viewer see this as actors dressing up and staging a fake victory photograph.

<sup>65</sup> VI-Images/Getty Images, Photograph of The United States Women's National Team, in Alexandra Licta, *Celebrities, Politicians, and Sports Superstars Celebrate the United States Women's World Cup Victory on Twitter* (July 7, 2019, 2:24 PM), <https://www.businessinsider.com/twitter-reactions-united-states-womens-world-cup-victory-2019-7>.

<sup>66</sup> See text accompanying sources cited *infra* note 86.

Nevertheless, sometimes the meaning of the immediate visual context is more obvious than at other times. Visuals have a great capacity for communication, but because the full interpretation of a visual often relies on a viewer's visual cultural experience (discussed in section III(D) below), then the analysis should look for more subtle, sometimes nuanced, and sometimes ambiguous meanings.<sup>67</sup> Where the meaning appears to be ambiguous, or even contradictory from the text, then the ambiguity or the contradiction should be noted in the analysis.<sup>68</sup>

The second step of the Immediate Visual Context analysis is to place the images in a category of role and function according to a taxonomy. The taxonomy I am employing was developed by Marsh and Domas White.<sup>69</sup> In Marsh and Domas White's taxonomy, there are functions expressing little relation to the text (Type "A"), such as "A1. Decorate – Make the text more attractive without aiming to produce any real effects on the reader's understanding or memory"; functions expressing a close relation to the text (Type "B"), such as "B1.2 Humanize: Represent elements within the text in the form of a living being, thereby making the text more accessible"; and functions that go beyond the text (Type "C"), such as "C1 Interpret: Provide illustrations of complex ideas in concrete form." An image or series of images might play several roles,<sup>70</sup> such as to "B5.1 Define," "C1.1 Emphasize," and "C2.2 Contrast." This "meaning multiplication" explains in part the power and flexibility of multimodal communication.<sup>71</sup>

The taxonomy was further refined in the form of a concept map by Annola, Haapio, and Koskela<sup>72</sup>:

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<sup>67</sup> This "multiplication of meanings" is discussed in BARTHES, *IMAGE-MUSIC-TEXT*, *supra* note 43, at 39–41, and BATEMAN, *TEXT AND IMAGE*, *supra* note 44.

<sup>68</sup> See Mitchell, *supra* note 9, at 837–39 (regarding potential ambiguities in images in legal documents); Mezey, *supra* note 41, at 2–15. "Ambiguity" is used narrowly here as a label for messages in visual elements that send two or more non-complementary meanings that potentially could cause confusion or doubt as the meaning of the visual elements.

<sup>69</sup> Marsh & Domas White, *supra* note 42, at 666–72.

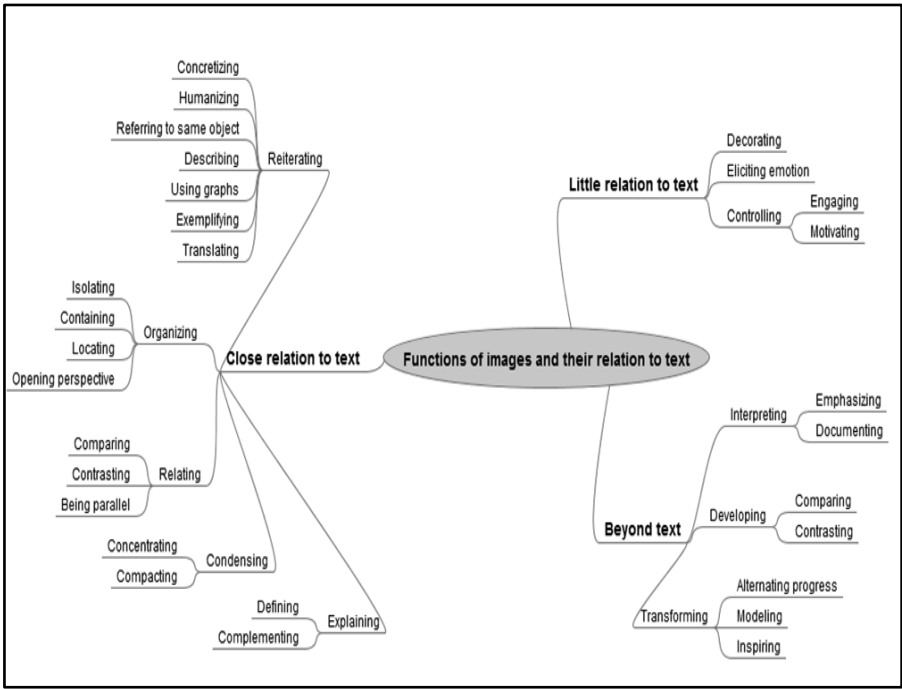
<sup>70</sup> *Id.* at 652.

<sup>71</sup> See BATEMAN, *TEXT AND IMAGE*, *supra* note 43, at 5–49; Julia Kruk, Jonah Lubin, et al., *Integrating Text and Image: Determining Multimodal Document Intent in Instagram Posts*, 2019 PROC. OF THE 2019 CONF. ON EMPIRICAL METHODS IN NAT. LANGUAGE PROCESSING AND THE 9TH INT'L JOINT CONF. ON NAT. LANGUAGE PROCESSING 4622, 4624–26, 4630, <https://www.aclweb.org/anthology/D19-1469.pdf>.

<sup>72</sup> The concept map in Annola, Haapio, and Koskela, *supra* note 42, at 6, is derived from the Marsh-Domas White taxonomy. Marsh & Domas White, *supra* note 42, at 666–72.



**Concept Map of the Relationship of Images to Text**



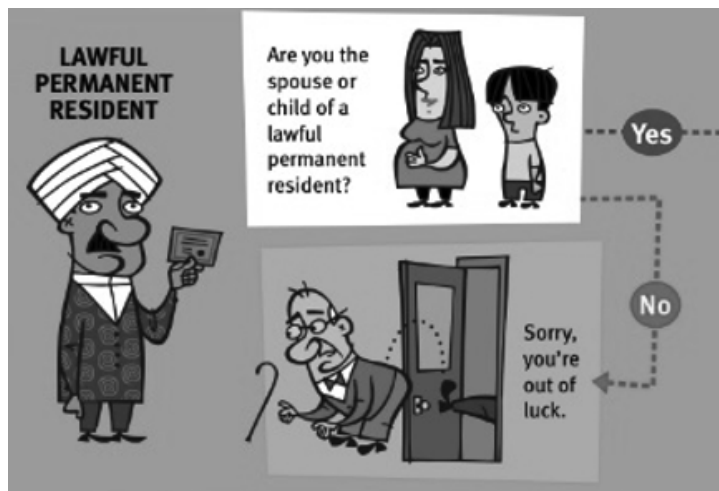
73.

In the analyses below, I will refer to roles and functions of images by their one or two-word labels reflected on this concept map diagram.

The use of this concept map to categorize the roles and functions of images prompts the viewer to engage in a more careful analysis of the impact of the visuals on the message of the work. For example, consider the taxonomy examples below:

73 Annola, Haapio, and Koskela, *supra* note 42, at 6. This concept map diagram is excerpted from an unpublished manuscript and is used here with the permission of the authors.

### Taxonomy Analysis Example A



These images are a small excerpt from the graphic, *What Part of Legal Immigration Don't You Understand?* (Example 2 in Section IV, p. [ 30 ] below), a work explaining the processes, criteria, and timing of the legal immigration system in the United States (circa 2008).<sup>74</sup>

**Taxonomy:** As shown even in this excerpt, the functions of the images are many and varied. There are functions that bear a close relation to the message of the work (*Concretizing, Describing, Comparing, Contrasting, Compacting, Defining*), and functions that bear little relation to the work (*Decorating*, with entertaining and highly colorful comic strip-style imagery; *Engaging*, again with friendly, inviting, personable graphics), and functions that go beyond the text (*Interpreting, Developing, Modeling*). Further observation and reflection will probably produce other functions for the images, such as *Humanizing*, by showing many human characters engaged in the immigration process, and their facial and bodily reactions to their situation, some of which is exaggerated for comic value (the literal “kicked out of the door” image), but overall is likely to be intended to bring the viewer in empathetical contact with the subjects involved in the process. As seen in the larger work analyzed in Example 2 [ p. 30 ] below, the authors and illustrators used a very diverse group of characters whose appearance would suggest many different races and nationalities to further *Engage* the viewers and *Humanize* the overall work.

<sup>74</sup> Mike Flynn, Shikha Dalmis & Terry Colon, *What Part of Legal Immigration Don't You Understand?*, REASON (Oct. 2008), at 32–33, <http://www.openlawlab.com/wp-content/uploads/2011/10/IMmigration-Law-Comic-Terry-Colon-Reason.jpg>.

## Taxonomy Analysis Example B

**LANGUAGE RIGHTS are CIVIL RIGHTS!**

**PLEASE PROVIDE ME WITH AN INTERPRETER**

Español / Spanish     Kreyòl / Haitian Creole  
 中文 / Chinese     اردو / Urdu  
 বাংলা / Bengali     한국어 / Korean  
 русский / Russian     Polski / Polish  
 عربي / Arabic     Français / French  
 \_\_\_\_\_

WHEN YOU NEED HELP FROM THE CITY OR STATE, YOU HAVE THE RIGHT TO A FREE INTERPRETER.

KEEP THIS GUIDE IN YOUR POCKET, AND STAND UP TO DISCRIMINATION!

Si necesita ayuda de la ciudad o del estado, tiene derecho a un intérprete gratis.

如果您需要从纽约市或纽约

**YOU HAVE THE RIGHT TO AN INTERPRETER AT**

¡Mantenga esta guía en su bolsillo y úsela para protegerse de la discriminación!

These images are an excerpt from the Center for Urban Pedagogy's informational pamphlet, *Language Rights are Civil Rights*, regarding the legal right to an interpreter in interactions with New York City and State government agencies, courts, schools, and other offices.<sup>75</sup> The cartoon diagram in the middle of the work visualizes the concept of translation.

**Taxonomy:** In this excerpt, the images have functions that bear a close relation to the message of the work (*Describing, Defining, Exemplifying*), functions that bear little relation to the work (*Decorating* the overall work, and potentially *Engaging* the viewer, with colorful storybook graphics), and functions that extend beyond the work (*Interpreting* and *Emphasizing*). The graphic does not appear to engage in much

<sup>75</sup> Center for Urban Pedagogy, *Language Rights are Civil Rights!* (2012), [http://welcometocup.org/Store?product\\_id=49](http://welcometocup.org/Store?product_id=49). This work also is analyzed in Murray, *Toward a Universal Legal Language*, *supra* note 12 at 4–5, 34–35.

*Humanizing*, as the “characters” in the graphic are dehumanized into colorful talking blobs. But the colors reflect a nod toward diversity and racial inclusion because the colors for the speakers (tan, green, and blue) are not used in a stereotypical (black, white, brown, yellow) sense. This choice seems intentional to make the work welcoming and engaging to as many people as possible.

### B. Immediate Verbal Context

The analysis of immediate verbal context is the flipside of the analysis of the immediate visual context: it examines the meaning of the words used in the work separate from the images used. The methodology evaluates the words used and their contribution to the meaning of the entire multimodal work, and evaluates whether the words are required to make a clear and meaningful statement of the message of the multimodal work as a whole.<sup>76</sup>

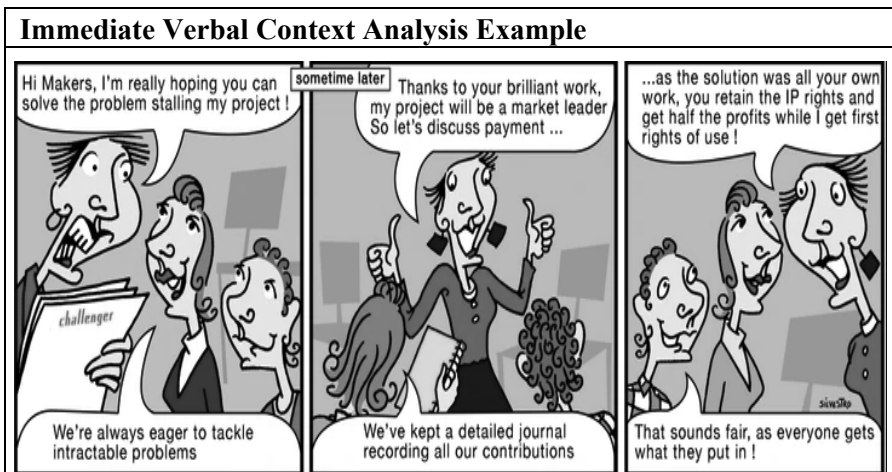
Almost all legal works in any category—contracts, instruments, litigation documents, legal sources, informational materials—are highly dependent on words in addition to images.<sup>77</sup> Given the overwhelming prevalence of multimodal communication in contemporary media and in legal communication, the analysis of immediate verbal context in addition to immediate visual context will be required in every example examined in this article.<sup>78</sup>

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<sup>76</sup> See Murray, *Cartoon Contracts*, *supra* note 30, at 119–20; Murray, *Toward a Universal Legal Language*, *supra* note 12, at 25–26.

<sup>77</sup> Gerlinde Berger-Walliser, Thomas D. Barton & Helena Haapio, *From Visualization to Legal Design: A Collaborative and Creative Process*, 54 AM. BUS. L.J. 347, 349–50, 372–73 (2017).

<sup>78</sup> See generally JOHN A. BATEMAN, MULTIMODALITY AND GENRE: A FOUNDATION FOR THE SYSTEMATIC ANALYSIS OF MULTIMODAL DOCUMENTS (Palgrave Macmillan, 2008); GUNTHER KRESS & THEO VAN LEEUWEN, MULTIMODAL DISCOURSE: THE MODES AND MEDIA OF CONTEMPORARY COMMUNICATION 20 (Arnold Publishers, 2001); GUNTHER KRESS & THEO VAN LEEUWEN, READING IMAGES: THE GRAMMAR OF VISUAL DESIGN 177 (2d ed. 2006); Joddy Murray, *Composing Multimodality*, in MULTIMODAL COMPOSITION: A CRITICAL SOURCEBOOK (Claire Lutkewitte ed., 2013); Ticien M. Sassoubre, *Visual Persuasion for Lawyers*, 68 J. LEGAL EDUC. 82, 91 (2018).



Camilla Baasch Andersen, *Three-Panel Cartoon on Intellectual Property Rights*<sup>79</sup>

This example shows a three-panel cartoon on preserving and sharing intellectual property rights. The use of the cartoon form in these visualizations of steps to preserve and protect IP rights transformed the original legal jargon into a more friendly and unthreatening form of communication, which made the warnings more accessible and engaging to readers than the unadorned legal text that they replaced.

**Immediate Verbal Context:** The words in this example are essential to communicating the message concerning how to preserve and protect IP rights. Even with only three panels, the cartoon contains a lot of words. The visuals supplement the terms by illustrating that more than one person is involved, discussions are held, collaboration is anticipated, and the participants should keep a record in a journal or flash drive, but the communication relies almost entirely on the words used. The target audience (university students) was presumably literate and highly skilled in the native language of the communication so as to allow verbal communication and comprehension of the terms with or without the visuals.

<sup>79</sup> Camilla Baasch Andersen, *Illustration of Three Panel Cartoon on Preserving and Sharing Intellectual Property Rights*, [https://user-images.githubusercontent.com/1252507/Strip\\_2\\_wv046o.jpg](https://user-images.githubusercontent.com/1252507/Strip_2_wv046o.jpg) (last visited July 19, 2020); see also Camilla Baasch Andersen, *Practical Examples of Comic Book and Creative Contracting*, COMIC BOOK CONTRACTS, <https://www.comicbookcontracts.com/example-comic-book-contracts> (last visited July 19, 2020). This example is further analyzed in Murray, *Cartoon Contracts*, *supra* note 30, at 182–84.

Words can be provided in text, captions, speech bubbles (as in the example above), callout boxes, footnotes, or just about anywhere in the work. The analysis of immediate verbal context identifies any issues presented by the wording, such as complexities of language, foreign or unusual language used, or ambiguities in the text.<sup>80</sup> In areas where both the visual and verbal elements are rich and complex, the methodology calls for the examination of the denoted meanings (explicit or express) and connoted meanings (implied or suggested), particularly in relation to cultural experience.<sup>81</sup>

### C. Visual Cultural Context

Visual cultural context analysis examines the community and societal cultural experiences that are required to draw the full meaning from an image or a series of images in a work.<sup>82</sup> Visual culture<sup>83</sup> educates the viewer and continues to influence the perception and interpretation of images. Developing a sense and thereafter a skill in interpreting visually coded messages leads to an understanding that there is a visual culture of images that allows the target audiences of communications to make sense of visual and multimodal communication by drawing on their own visual cultural experiences.<sup>84</sup> The experience of visual culture leads to the phenomenon of a “global village” and global “visual commons” described by media theorists and sociologists.<sup>85</sup> It also connects to the lessons of Gestalt psychology

<sup>80</sup> Berger-Walliser, Barton & Haapio, *From Visualization to Legal Design*, *supra* note 5, at 371–85. A typical form of overly complex language is legalese or any legal terms of art in a document that will be used by non-lawyers. Lori D. Johnson, *Say the Magic Word: A Rhetorical Analysis of Contract Drafting Choices*, 65 SYRACUSE L. REV. 451, 452–55 (2015).

<sup>81</sup> See generally BARTHES, *IMAGE-MUSIC-TEXT*, *supra* note 43, at 17–20.

<sup>82</sup> See *supra* note 45.

<sup>83</sup> See VISUAL CULTURE: IMAGES AND INTERPRETATIONS (Norman Bryson, Michael Ann Holly, & Keith Moxey eds., 1994); MARGARITA DIKOVITSKAYA, *VISUAL CULTURE: THE STUDY OF THE VISUAL AFTER THE CULTURAL TURN* 47–84 (The MIT Press, 2005); CHRIS JENKS, *VISUAL CULTURE* (Routledge, 2017); NICHOLAS MIRZOEFF, *HOW TO SEE THE WORLD* 94–97 (Basic Books, 2015); NICHOLAS MIRZOEFF, *AN INTRODUCTION TO VISUAL CULTURE* 1–31 (Routledge, 1999).

<sup>84</sup> See *supra* note 45.

<sup>85</sup> The concept of a global village caused by modern multimodal (particularly audio and visual) communications was first developed by media theorists Marshall McLuhan and Quentin Fiore in MARSHALL MCLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* xii–xiii (The MIT Press, 1964); MARSHALL MCLUHAN & QUENTIN FIORE, *THE MEDIUM IS THE MESSAGE* 63 (Bantam Books, 1968) (sic, spelling of “Message” is intentional). Later, sociologists have discussed the concept of a global “visual commons” where worldwide media allows the same or a very similar cultural experience of visuals and audiovisual sources for many people across the globe. See NICHOLAS MIRZOEFF, *HOW TO SEE THE WORLD* 94–97 (Basic Books, 2015); Nicholas Mirzoeff, *The Visual Commons: Counter-Power in Photography From Slavery to Occupy Wall Street*, in *IMAGE OPERATIONS: VISUAL MEDIA AND POLITICAL CONFLICT* (Jens Eder & Charlotte Klonk eds., 2016). See also Jussi Parikka, *The City and the City: London 2012 Visual (Un)Commons*, in *POSTDIGITAL AESTHETICS: ART, COMPUTATION AND DESIGN* 203–18 (David M. Berry & Michael Dieter eds., 2012).

regarding the perception and cognition of visual media, wherein a viewer's life experience allows them to expand the meaning and message of static media into a more complete narrative<sup>86</sup> and permits viewers to fully understanding the denoted and connoted messages of the work.<sup>87</sup>

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<sup>86</sup> See RUDOLF ARNHEIM, *ART AND VISUAL PERCEPTION: A PSYCHOLOGY OF THE CREATIVE EYE* 4–6 (University of California Press, 2004); E. BRUCE GOLDSTEIN, *COGNITIVE PSYCHOLOGY: CONNECTING MIND, RESEARCH AND EVERYDAY EXPERIENCE* 64, 71–72 (Cengage Learning, 2014); Lisa Graham, *Gestalt Theory in Interactive Media Design*, 2 J. HUMANITIES & SOC. SCI. 1–2 (2008), <https://pdfs.semanticscholar.org/4719/da4f55d4a4633b7f81ca1eea5571c5364504.pdf>; BRUNO PETERMANN, *THE GESTALT THEORY AND THE PROBLEM OF CONFIGURATION* 29–39 (Routledge, 1999); PAUL THAGARD, *COHERENCE IN THOUGHT AND ACTION* 58–59 (The MIT Press, 2002).

<sup>87</sup> See BARTHES, *IMAGE-MUSIC-TEXT*, *supra* note 43, at 16–20, 24–30, 41–46.

### Visual Cultural Context Analysis Example



Batgirl Teaches Batman a Lesson about Equal Pay

50,374 views

👍 311

👎 18

➦ SHARE

🔖 SAVE

⋮



USDepartmentofLabor

Published on Aug 11, 2011

SUBSCRIBE 15K

The U.S. Department of Labor made a public service announcement video<sup>88</sup> in which Batgirl teaches Batman some fundamentals of the Equal Pay Act. The words of the video—i.e., the dialogue between the characters—communicates the basic requirements of the federal law.

**Visual Cultural Context:** The success of the Department of Labor’s video depends on its audience having a visual cultural understanding of the American super-hero genre, especially the mainstream characters and their narratives as told in DC Comics’ (Detective Comics’) “Batman” comic books, television, and motion picture enterprises. Specifically, the work relies on viewers being able to pull from their experience of visual culture the knowledge that Batgirl, Batman, and Robin are costumed crime fighters, that they work together, that in some ways Batman is the “employer” of Batgirl and Robin, and that Batgirl and Robin have somewhat similar jobs—i.e., supporting Batman in his crime-fighting efforts.

<sup>88</sup> U.S. Department of Labor, *Batgirl Teaches Batman a Lesson about Equal Pay*, YOUTUBE (Aug. 11, 2011), [https://www.youtube.com/watch?v=n00xZ\\_mKQgk](https://www.youtube.com/watch?v=n00xZ_mKQgk).



The visual culture is not just an individual experience, but a collective, community experience that informs the mind of stock images and scenes, visual and audiovisual memes, familiar storylines (e.g., myths, plotlines, parables), and common historical narratives.<sup>89</sup> The experience of visual culture allows the mind to work an effect described in Gestalt psychology as filling in a complete scene (Gestalt completion), which imports a “before narrative” that is continued in the scene depicted (Gestalt continuation) and an expectation of closure not yet depicted in the scene (Gestalt closure).<sup>90</sup>

#### *D. Mise en Scène and the Rhetorical Topic of Arrangement*

The mise en scène and arrangement step of the analysis considers the strength and efficacy of the arrangement and overall composition of the visuals as part of the larger, multimodal legal work. Mise en scène principles define superior versus inferior works of visual communication in terms of their framing, composition, perspective, point of view, lighting, coloration, and other spatial and formal characteristics of the visual elements of the work and their arrangement in juxtaposition with other elements of the work.<sup>91</sup> This step of the analysis is relevant to graphical diagrammatics<sup>92</sup> as well as to pictorial and artistic works<sup>93</sup> and highly representational works.<sup>94</sup>

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<sup>89</sup> The depth and richness of the lessons of experience of visual culture allow the recollection of characters, scenes, and storylines from history and literature that a good legal author can draw upon in narrative reasoning and applied legal storytelling. *See supra* note 3.

<sup>90</sup> *See* RUDOLF ARNHEIM, *ART AND VISUAL PERCEPTION: A PSYCHOLOGY OF THE CREATIVE EYE* 4–6 (University of California Press, 2004); E. BRUCE GOLDSTEIN, *COGNITIVE PSYCHOLOGY: CONNECTING MIND, RESEARCH AND EVERYDAY EXPERIENCE* 64, 71–72 (Cengage Learning, 2014); 13 BRUNO PETERMANN, *THE GESTALT THEORY AND THE PROBLEM OF CONFIGURATION* 29–39 (Routledge, 1999); PAUL THAGARD, *COHERENCE IN THOUGHT AND ACTION* 58–59 (The MIT Press, 2002); *see also Gestalt*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/gestalt>.

<sup>91</sup> *See* Murray, *Mise en Scène*, *supra* note 16.

<sup>92</sup> *See, e.g.*, works analyzed in Murray, *Diagrammatics*, *supra* note 10.

<sup>93</sup> *See, e.g.*, works analyzed in Murray, *Cartoon Contracts*, *supra* note 30; Murray, *Toward a Universal Legal Language*, *supra* note 12.

<sup>94</sup> *See, e.g.*, works analyzed in Murray, *Mise en Scène*, *supra* note 16.

### Mise en Scène and Arrangement Analysis Example



Ironworkers eating lunch on a beam of a skyscraper under construction. *Rockefeller Center Construction, New York, NY (1932).*<sup>95</sup>

**Mise en Scène and Arrangement:** The composition and staging of this striking photograph might make the viewer queasy just by looking at it. Even in black and white, this image is indelible. The atmospheric perspective of the scene captured by the photographer indicates that the dominant subjects—the ironworkers—are sitting at a great height, perched on a beam. The subjects are centered nicely on a diagonal that runs roughly from the upper third to the lower third of the work (thus following the Rule of Thirds in photographic composition).<sup>96</sup> The fact that the workers look like workers, not models, and that they are so casually engaged in a routine daily activity, eating lunch, instead of something more “showy,” such as doing handstands or dangling from a cable, leads to the overall verisimilitude of this mise en scène arrangement. The Gestalt of the scene would lead a viewer to reasonably conclude that these workers are incredibly brave (or high risk-takers) by performing all of the tasks of their

<sup>95</sup> TIME, 100 PHOTOGRAPHS: THE MOST INFLUENTIAL IMAGES OF ALL TIME 27 (2016). This work also is analyzed in Murray, *Toward a Universal Legal Language*, *supra* note 12, at 38.

<sup>96</sup> See Murray, *Mise en Scène*, *supra* note 16, at 289–91.

workday, including eating lunch, on a narrow beam and some tight wires hundreds of feet above the ground.

By the attire of the workers, a viewer would probably be able to place the time period depicted in the photograph as the 1920's-1930's. Some viewers might pick out Central Park in the background in the middle of a "forest" of large buildings and discern that the photograph shows midtown Manhattan. A greater understanding of the scene would require additional verbal information: the photograph is from 1932, in Depression Era America, and it was staged—not faked, but staged—by one of three photographers—Charles C. Ebbets, Thomas Kelley, or William Leftwich—who visited the construction site of Rockefeller Center in New York City to take publicity photos. There is no photographic manipulation, but the scene was orchestrated; it is not a snap shot that happened to catch a group of eleven workers on their lunch break, but rather one of several high-flying scenes staged and photographed on the same day, all starring the actual ironworkers constructing Rockefeller Center. The image became emblematic of American progress and the will and determination to rise above the troubles of the Depression.<sup>97</sup>

### *E. Visual Rhetoric and the Ethical and Professional Propriety of the Work*

The final step of the methodology's analysis will examine the communicative potential of the complete work under the lens of visual rhetoric.<sup>98</sup> My work intends to place the overall analysis of visual works within the realm of rhetoric, the science and art of effective communication and persuasion.<sup>99</sup>

An effective communication or argument is dependent on four elements working in conjunction: the Speaker, the Message, the Audience, and the

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<sup>97</sup> See TIME, 100 PHOTOGRAPHS: THE MOST INFLUENTIAL IMAGES OF ALL TIME 27 (2016).

<sup>98</sup> See generally Johansen & Robbins, *supra* note 2; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14; Murray, *Mise en Scène*, *supra* note 16, at 259–312.

<sup>99</sup> JOHN J. MAKAY, SPEAKING WITH AN AUDIENCE: COMMUNICATING IDEAS AND ATTITUDES 11 (1977); KRISTEN K. ROBBINS-TISCIONE, RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION 9 (2009); Gerald Wetlaufer, *Rhetoric and Its Denial in Legal Discourse*, 76 Va. L. Rev. 1545, 1546 (1990).

Context for the communication.<sup>100</sup> The analysis will touch on each element of this process that is relevant to the effectiveness of the communication. The Speaker's motivation for the communication and the contents of the Message created generally will be front and center in every analysis. In most instances, the intended Audience for a legal work should receive attention because a multimodal visual work of a certain style may work well for one audience (e.g., courts and other tribunals, or government agencies), but not others (e.g., parties with no legal representation, or clients with limited verbal literacy skills). The Context generally is relevant, too, as it provides the reason for the communication and sometimes places constraints on the Speaker in creating the Message—for example, where a particular legal situation requires a certain protocol or form for the communication (e.g., communication between an attorney and a court), but not another (communication between an attorney and her client).

The last step of the analysis pays particular attention to the ethical and professional propriety of the uses of images and their effect on the overall communicative potential of the work. The phrase “ethical and professional propriety” refers to *ethos*, which is a classic term in rhetoric to refer to the good will, fairness, credibility, and integrity communicated by a work,<sup>101</sup> but the term is no less apt an label for the positive or negative effects on communication that might be wrought by applications of images in a work. In other words, a careful, thoughtful, and highly professional application will boost the *ethos* credibility of a work and its author, but a careless, thoughtless, improperly motivated, or deceptive application will detract from the *ethos* credibility of the work and its author.<sup>102</sup>

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<sup>100</sup> See Lloyd F. Bitzer, *The Rhetorical Situation*, 1 PHIL. & RHETORIC 6–8, 389–92 (1968); JAMES L. KINNEAVY, A THEORY OF DISCOURSE: THE AIMS OF DISCOURSE 19 (1971); Murray, *After the Great Recession*, *supra* note 10, at 905–06; Murray, *The Great Recession*, *supra* note 10, at 632; Murray, *Mise en Scène*, *supra* note 16, at 248–250; JAKOB WISSE, ETHOS AND PATHOS FROM ARISTOTLE TO CICERO 7–8 (1989).

<sup>101</sup> See generally LIESBETH KORTHALS ALTES, ETHOS AND NARRATIVE INTERPRETATION: THE NEGOTIATION OF VALUES IN FICTION vii–viii (2014); Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14.

<sup>102</sup> See Derek H. Kiernan-Johnson, *The Potemkin Temptation or, the Intoxicating Effect of Rhetoric and Narrativity on American Craft Whiskey*, 15 LEGAL COMM. & RHETORIC: JALWD 1, 36–37 (2018); Murray, *Great Recession*, *supra* note 10, at 634–35; Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 13, at 214; Murray, *Rule Synthesis and Explanatory Synthesis*, *supra* note 48, at 236.

### Visual Rhetoric, Ethics and Professionalism Analysis Example



#### Comic Strip Brief in *U.S. v. Apple, Inc.*<sup>103</sup>

The story behind the comic strip brief is that Bob Kohn, an amicus curiae (friend of the court) in the case *U.S. v. Apple, Inc.*, protested the unreasonableness and unfairness of the Department of Justice's application of a simple supply and demand theory to the pricing of ebooks.<sup>104</sup> Kohn's comic novelette presented the story of the amicus author's opposition to the government's action in the case in a sequential narrative format, and the author purported to file it as a replacement for a twenty-five-page amicus curie brief that had earlier been rejected by the court for exceeding the court rules' page limit.<sup>105</sup> Limited to five pages, Mr. Kohn submitted a five page comic strip brief.

**Visual Rhetoric, Ethics and Professionalism:** The comic strip brief is questionable from an ethics and professionalism standpoint. It appears that in the comic brief, the attorney, Bob Kohn, was protesting and expressing his irritation with the court's requirement rather than trying to improve the delivery of his arguments against the DOJ's position in the case. The comic strip form was not chosen because the *form itself* allowed superior communication of the highlights of the argument through symbolic imagery or depiction of the circumstances discussed and alluded to in the brief—the unreasonableness and unfairness of applying a simple supply

<sup>103</sup> Excerpt of Brief of Bob Kohn as Amicus Curiae Supporting Respondents, *United States v. Apple, Inc.*, 889 F. Supp. 2d 623 (S.D.N.Y. 2012) (No. 12-cv-2826 (DLC)), [http://media.wix.com/ugd/c526cc\\_439cb9e2d97049c38c04d5b9b43bf361.pdf](http://media.wix.com/ugd/c526cc_439cb9e2d97049c38c04d5b9b43bf361.pdf) (last visited July 20, 2020) [hereinafter Bob Kohn Amicus Curie Brief]. Excerpts from two pages of the brief are shown here. I have previously critiqued the visual rhetorical techniques and the ethics and professionalism issues raised by this brief in Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 130–32.

<sup>104</sup> See Bob Kohn Amicus Curie Brief, *supra* note 103; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 130–32.

<sup>105</sup> See Bob Kohn Amicus Curie Brief, *supra* note 103; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 130–32.

and demand theory to the pricing of ebooks. The characters in the comic—the author, we presume, and a bright young woman companion—are just mouthpieces used to parrot the bullet points of the actual amicus brief to make an intensely verbal, not visual, argument. There is nothing new or illuminating about the substance of the argument when the author is shown typing it on a laptop while in bed (except perhaps a low-level *pathos* appeal for the poor guy who has to work late into the evening writing amicus briefs).<sup>106</sup> The cartoon brief is “fun” to look at, and it is eye-catching in a decorative sense. But the visuals are unconnected to the message of the brief itself. Thus, the brief is memorable as a spectacle, but not as a great work of advocacy. In sum, the cartoon seems more about the attorney’s desire to poke the court in the eye rather than to achieve superior communication of the substance of the argument.<sup>107</sup>

#### IV. APPLYING THE ANALYSIS TO VISUAL WORKS

In this section, I will present six examples of the method of analysis described above as applied to highly visual works of legal communication. This section draws two examples from each of my concurrent works on the topic of visual legal rhetoric and visualization.<sup>108</sup>

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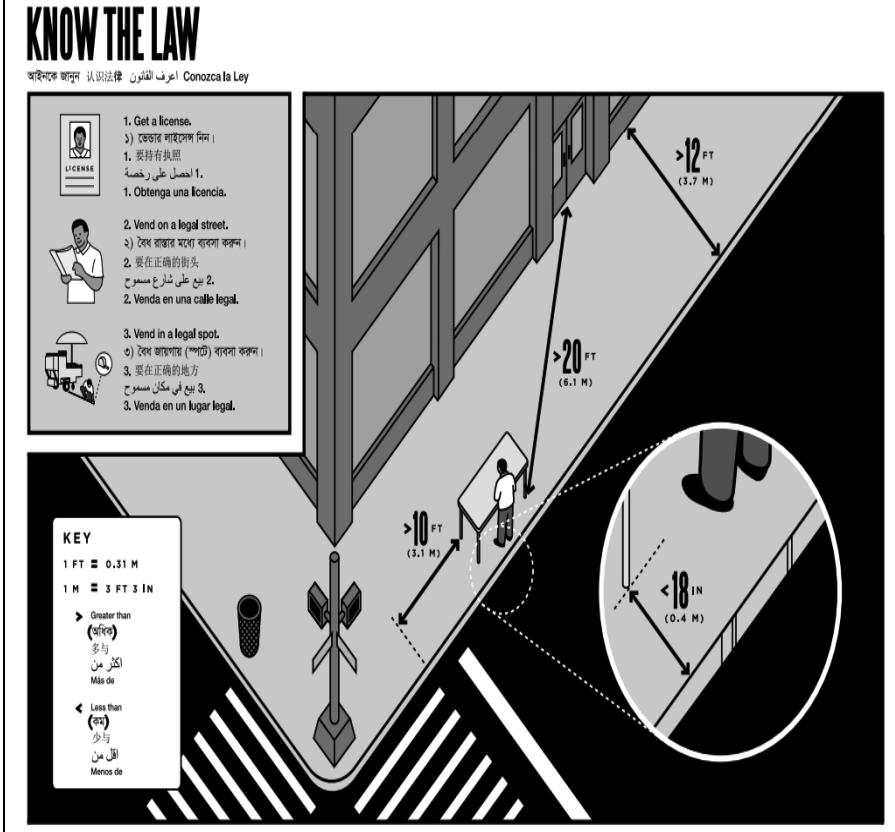
<sup>106</sup> Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 131–32.

<sup>107</sup> *Id.*

<sup>108</sup> Murray, *Diagrammatics*, *supra* note 10; Murray, *Cartoon Contracts*, *supra* note 30; Murray, *Toward a Universal Legal Language*, *supra* note 12.

**Example 1: Legal Information Brochure on the Laws Regulating Street Vendors**<sup>109</sup>

Visuals in legal works can describe, exemplify, and interpret the meaning and application of laws that apply to a certain activity. One particularly good visual explanation and illustration of the New York City Vendor Licensing Rules, created by the Center for Urban Pedagogy (CUP),<sup>110</sup> attempts to explain the rules restricting the sales activities of street vendors<sup>111</sup>:



109 Center for Urban Pedagogy, *Vendor Power!- A Guide to Street Vending in New York City* (Illustration), [http://welcometocup.org/file\\_columns/0000/0980/mpp\\_vendor\\_power.pdf](http://welcometocup.org/file_columns/0000/0980/mpp_vendor_power.pdf). This work also is analyzed in Murray, *Cartoon Contracts*, *supra* note 30, at 150–52.

110 The Center for Urban Pedagogy (CUP) is a nonprofit organization that applies visual art and design principles to enable greater and more meaningful civic engagement especially among underrepresented communities. *About CUP*, CENTER FOR URBAN PEDAGOGY, <http://welcometocup.org/About> (last visited July 15, 2020).

111 The three graphics depicted here (left, and right top and right bottom) are from CUP’s publication, *Vendor Power!- A Guide to Street Vending in New York City*, [http://welcometocup.org/file\\_columns/0000/0980/mpp\\_vendor\\_power.pdf](http://welcometocup.org/file_columns/0000/0980/mpp_vendor_power.pdf), clockwise from top left: (1) Know the Law, <http://rostenwoo.biz/content/vp/vendorpower.pdf>; (2) Know Your Rights,

# KNOW YOUR RIGHTS

আপনার অধিকারকে জানুন | 懂得你的权力 | عرف حقوقك | Conozca Sus Derechos



**If you follow the rules, you have the RIGHT to vend on a public sidewalk. Store owners and security guards can't make you move.**  
 আইনের অঙ্গসম করে রাখার পরে আপনি ভেঙার ব্যবসা করতে পারেন। স্টোরের মালিক বা সিনিয়িটিটি গার্ড আপনাকে সরতে পারবে না।  
 如果你遵守规则，当你在公共人行道上工作时，店员和保安人员不能让你离开。  
 إن لم تكن على علم على البيع على الرصيف العلبي  
 ليس من حق أرباب المحلات والحراس أن يمتك من مكانك.

**Si usted sigue las reglas, usted tiene el DERECHO de vender en una acera. Los propietarios de tiendas o atacornientos y los guardias de seguridad no le pueden hacer mover.**

**Police can't make you move, unless:**  
 পুলিশ আপনাকে সরতে পারবে না যদি না,  
 在以下四种情况下，警察有权力让你离开：  
 ليس من حق الشرطة أن يمتك من مكانك إلا في:

**La policia no le puede mover, a menos que:**



**There is an emergency, (Fire)**  
 কোন ধরনের অগ্নিকাণ্ডের  
 সুযোগ  
 在紧急情况下 (如火灾)  
 هناك حالة طارئة حريقاً  
 Haya una emergencia.  
 (Un incendio)



**There is a big event, (Parade)**  
 বড় ধরনের প্যারেড  
 在有大型活动情况下 (如游行)  
 هناك مناسبة كبيرة مسورة احتفالاً  
 Haya un acontecimiento grande.  
 (Un desfile)

**If you get a ticket: टिकटें। 如果你得到罚单: تذكرة (الشرطة) / Si le ponen una multa:**



**1**

**Take a photo or video of your spot. You can use these in court.**  
 ফটো বা ভিডিও করে নিন আপনার বেডের বাসস্থান (স্পট) এবং এ ফিরে তুলুন।  
 尽量拍下现场或录像，可以作为法庭的证据  
 أخذ صورة أو فيديو لمكانك والحدث لكي تستخدمهما في المحكمة  
 Tome foto o video de su lugar, usted puede utilizar estos en un tribunal.



**2**

**Get names and badge numbers of the police.**  
 অফিসারদের নামকোর্ড (টিকট দেওয়ার) পুলিশের স্কে নম্বর ও নাম নিয়ে নিন।  
 记下以下警察的名字和警号。  
 سجل اسم ورقم badge الشرطي  
 Consiga los nombres y números de insignia de la policía.



**3** 311

**File a complaint if the police abuse your rights or are disrespectful.**  
 পুলিশ যদি আপনার অধিকার এ হানিকারে ক্রম করে তাহলে তার বিরুদ্ধে অভিযোগ নিন।  
 如果警察滥用您的权力或对您不尊重，您有权力投诉他。  
 سجل شكوا إذا الشرطة انتهكت حقوقك أو تعاملت معك بعد احترام  
 Haga una queja formal si la policia abuse sus derechos o le trata con una falta de respeto.



**4**

**Show up in court. If you don't, you'll be fined more.**  
 কোর্টে হাজিরা দিন। হাজিরা না দিলে, আপনার টিকট বেশী জরিমানা করা হবে পারে।  
 一定要按时出庭。如果没有出庭，你将会增加重罚。  
 احضر إلى المحكمة إذا لا تحضر سيعزز أكثر  
 Aparezca en el tribunal. Si no lo hace, será penalizado con mayores multas.

**Visual Context:** My focus here is on the **meaning** of the *visuals* used in this work, which is why I am providing images in which the text is too small to be read.<sup>112</sup> CUP has tried to explain and illustrate the vendor rules and regulations of New York City in a highly visual manner. In all three panels shown above, the ratio of pictures to words is highly tilted toward pictures, or rather, pictograms, because the images are simplified renderings of the actual objects, persons, and activities involved in the communication. Using stock images as the basis for the pictograms—a street vendor at a table, a hot dog or food vendor’s cart, a police officer wearing a badge, a courthouse, a cell phone, an ID badge—the publication explains the different rules and steps both to comply with the law and to

<http://rostenwoo.biz/content/vp/vendorpower.pdf>; (3) Get to Know Your Street Vendors, [http://welcometocup.org/image\\_columns/0000/2747/vendor-power\\_089\\_guggenheim\\_520.jpg](http://welcometocup.org/image_columns/0000/2747/vendor-power_089_guggenheim_520.jpg).

112 Compare Vendor Power with *supra* note 109.



enforce one's own rights. Under the **taxonomy**, the visuals perform roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the law communicated in the work. There is a certain amount of *Motivating* the reader to know and protect their rights that is communicated partly in the visuals but largely through the captions and text. None of the visuals are used simply to *Decorate* the text.

**Verbal Context:** If you examine the actual document cited in note 110, you will see that the words fill in important details of information that are not depicted in the images, and each caption and explanatory bubble is written in five languages—English, Hindi, Chinese, Arabic, and Spanish—for great accessibility among literate users of the publication. If there were no text captions whatsoever, it would be more difficult for the reader to understand their rights or how the law actually operates, but in both the *Know the Law* and *Know Your Rights* sections shown here, the text is kept to a minimum (although the captions appear to be longer because of the five translations provided).

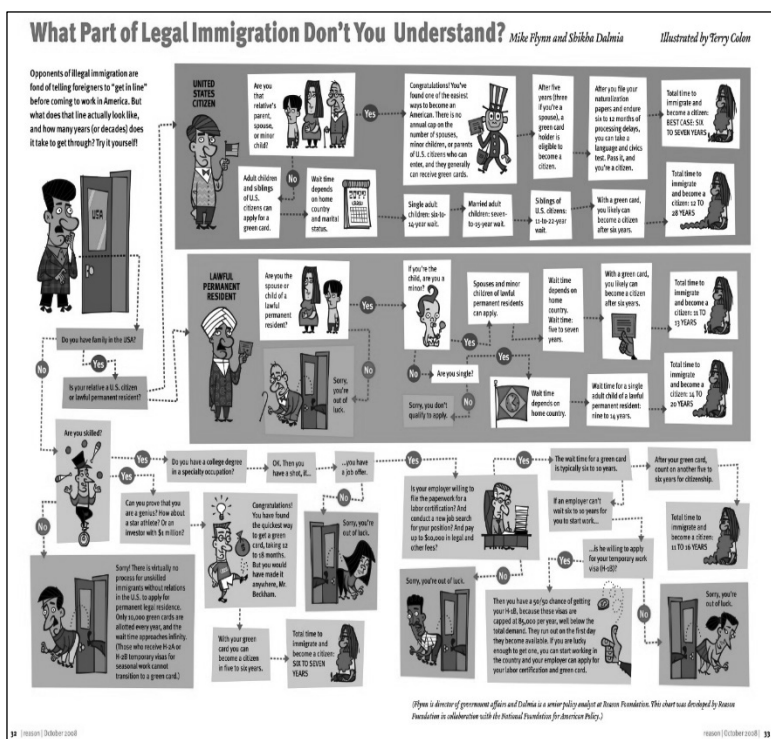
**Visual Cultural Context:** The authors appear to have worked hard to depict the vendor in the *Know the Law* and *Know Your Rights* sections as a generic “person of color,” a demographic that most likely is a large part of the target audience for this publication. But the figure is not distinctly of one race or another, i.e., not distinctly of African, Asian, European, or South or Central American ancestry. The intent of this approach to the artwork most likely is to help a majority of the intended audience of the publication, actual and potential street vendors, easily identify with the central character of the depictions. As noted above, the stock images of carts, vending tables, police officers, and other aspects of the vending environment are well-rendered and should be easily identifiable by readers with even a small amount of familiarity with the street vending environment in New York City.

**Mise en Scène and Arrangement:** The arrangement and composition of the graphics is one of the strongest parts of the CUP works. Each graphic depicts just enough legal information, most of it is visualized (e.g., proper placement of goods for sale, distance of vending table from corners and fixtures), and the limited color and grayscale imagery makes the panels

clean and allows the subjects to be the center of attention. As in good filmmaking, the perspective changes from medium-range to close-up to birds-eye views as necessary to best depict the scene and the subjects doing the actions.

**Visual Rhetoric, Ethics, and Professionalism:** The diagrams and visuals of the publication are rendered in a simple, accessible, but still highly professional style that is not “cartoonish” or comical. Elsewhere in the pamphlet, in a portion not depicted above,<sup>113</sup> the text has a certain bite to it regarding the history and commentary on New York City government and prior mayors of New York, which betrays a certain suspicion and criticism of the city and its leadership. This seems to be a bit of a detour from the overall empowerment and access to law motivations of the publication, but it is a minor detour and does not defeat the overall communication strengths of the work.

### Example 2: Pathways to Legal Immigration Infographic



113 Vendor Power, *supra* note 109, *Get to Know Your Street Vendors* section.

The above work, *What Part of Legal Immigration Don't You Understand?*<sup>114</sup>, is difficult for me to categorize because it incorporates elements of a flowchart, an information pathway, and a decision tree. I will call it an “illustrated infographic,” because the pictorial elements—the artistic, cartoon-like depictions—are so integral to the overall look and feel of the work. There even is a sort of illustrated timeline where the different steps of immigration are presented in linear chronological order with a discussion of the time frame for various options, and each timeline is further illustrated by a repeated cartoon image of a man whose beard grows longer or shorter relative to the length of time of an immigration option.

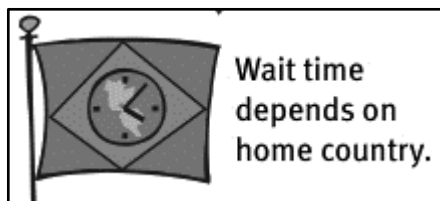
**Visual Context:** The **meaning** of the work is to communicate the different pathways to legal immigration into the United States, how you might succeed or fail on these paths, and the relative time frame involved in each path.<sup>115</sup> Just focusing on the visual context of the work is a significant task because the illustrator, Terry Colon, has worked in so much visual content, and yet he manages to deliver a work that is readable and usable by a verbally and visually literate audience. The work employs a color scheme that has organizational meaning, directing a viewer’s attention to the separate pathways of the communication. From there, the elements of a flowchart of information become evident, and a decision tree component with “Yes-No” navigation is employed to take the viewer through the pathway of information depending on if the viewer’s answers are “Yes” vs. “No” to the questions presented in the flowchart. The infographic uses cartoon images and illustrations of the persons following the various immigration paths, and further illustrates the dispositions of most of the paths (i.e., failure to obtain citizenship through the pathway, or a period of waiting time). There are many clever visual elements, such as a flag similar in design to Brazil’s flag, but the center element is replaced by a clock face to indicate that different countries have different waiting times for applicants who are single adult children of U.S. citizens

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<sup>114</sup> Mike Flynn, Shikha Dalmis & Terry Colon, *What Part of Legal Immigration Don't You Understand?* (Illustration), REASON MAG. 32–33 (Oct. 2008), <http://www.openlawlab.com/wp-content/uploads/2011/10/Immigration-Law-Comic-Terry-Colon-Reason.jpg>. This work also is analyzed in Murray, *Diagrammatics*, *supra* note 10, at 345–50.

<sup>115</sup> I am evaluating the work as an infographic for those desiring to learn more about the legal pathways to citizenship in the United States. Thus, for the analysis, my conception is that at least one audience for the work could be applicants for legal citizenship. It is possible based on the caption that begins the work that the sole intended audience for the work was Americans who oppose immigration and have a misconception about the processes and time it takes to “stand in line” to obtain legal citizenship. Mike Flynn, *supra* note 114, at top left corner.

(see image at right). Other pictographs are more common, such as using a calendar to show a period of time (here, waiting time of an application), a coin flip to indicate a 50/50 chance, and an



actual green card to indicate a “Green card.” The cartoon illustrations of persons do not seem integral to the message, but most likely they were included to make the work more approachable and engaging to persons of different nationalities and ethnicities—i.e., the different persons depicted indicate that the chart is not directed solely to Asian, African, Middle Eastern, Latinx, or European immigrants. The general look and feel of the work is more “fun” because of the bright colors and cartoon-like depictions of applicants in the several pathways to citizenship.

The **taxonomy** of function and purpose also is rich and diverse. The chart performs primary functions related to the text of *Describing*, *Defining*, *Translating* (as in translating complex legal terms and concepts into plainer, more accessible language), *Comparing*, *Contrasting*, and *Humanizing* (by placing humans—albeit cartoon characters—into the pathways and at each juncture and decision point). The work also performs tasks that go beyond the text, such as *Interpreting* and *Emphasizing* the text’s message concerning immigration law. Arguably, the choice to present the information in the context of colorful comic strip graphics and characters is *Decorative*, but the intent was almost assuredly to make the work more *Engaging* and accessible to a wider range of audiences. Perhaps the work would be *Motivating* to some who had little idea about possible pathways to legal immigration, and after reading this highly accessible chart, would be more inclined to try one.

**Verbal Context:** All of the information about court processes and procedures is provided in text, and in one language only, English. The text is straightforward and does not require the viewer to have attained an advanced reading level in order to grasp the information. There is no explicit legalese in the form, although the very nature of the topic (immigration law) does require a facility with vocabulary that is not used in day to day conversational English (e.g., lawful permanent resident, temporary visa, etc.). More likely than not, two of the intended audiences for this communication—applicants for U.S. citizenship or persons

investigating the lawful pathways to citizenship—either know these terms or will soon learn them in the course of investigating the application process.

**Visual Cultural Context:** The above section revealed the verbal challenges of the work for persons whose native language is not English, and the specific challenges that the vocabulary of immigration law will present to a less-than-fully literate reader of English. The pictorial elements of the infographic, although attractive and potentially engaging to viewers, are not essential in communicating the core message about the different immigration pathways to citizenship. That said, the particular illustrations used should be readily identifiable: a viewer will recognize that the persons depicted are from several different cultures, races, or ethnicities; the objects depicted present fairly common imagery (calendars, clocks, calendars, bag of money); and the two ideographs (visual metaphors) used should be readily comprehended (a juggler on a unicycle indicates a skilled person; a lightbulb over a person's head indicates a good idea).

**Mise en Scène and Arrangement:** Overall, the visual arrangement and mise en scène of the work as a whole show excellent design and execution. There is a great deal of verbal and visual content, and yet the illustrator manages to deliver a work that is readable and usable by employing a color scheme that directs a viewer's attention to the separate pathways of the communication and keeping each element of the designated pathways and decision points (yes vs. no consequences) separate and readable. The overall look of the work is fun and friendly, which is generally regarded as a good attribute in legal design because fun and friendly works are more accessible and engaging as legal communications, compared to the average unfriendly and intimidating contract or legal instrument.<sup>116</sup>

**Visual Rhetoric, Ethics and Professionalism:** This illustrated infographic is eye-catching, interesting, engaging, and ultimately very informative. I received comments from a reviewer of this Article who had been through the legal immigration process, and she reported that the

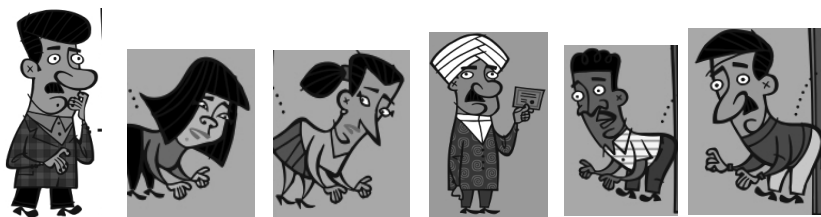
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<sup>116</sup> See generally Gerlinde Berger-Walliser, Robert C. Bird & Helena Haapio, *Promoting Business Success Through Contract Visualization*, 17 J. L. BUS. & ETHICS 55, 68–70 (2011); Berger-Walliser et. al., *From Visualization to Legal Design*, *supra* note 5, at 352; Stephanie Kimbro, *What We Know and Need to Know About Gamification and Online Engagement*, 67 S.C. L. REV. 345, 362–64 (2016).

pathways are described very accurately.<sup>117</sup>

My one significant critique of the work pertains to the decision to employ a very “cartoony” comic style in the depictions of the applicants for immigration. A cartoony style exaggerates facial features, accentuates differences in dress or demeanor, and tends to play into visual stereotypes of different races and ethnicities of persons. It is part and parcel of the cartooning process, but it is less sensitive and inclusive than other alternatives. Compare the depictions of persons of different races, ethnicities, and national origins in the Immigration work (“Cartoony”) to the business graphics-style depictions and a less “cartoony” comic style of depiction below:

### “Cartoony”<sup>118</sup>



### Business Graphics<sup>119</sup>



117 Comments of Milva Finnegan, on file with author.

118 All examples in the row titled “Cartoony” are excerpted from Flynn, supra note 114.

119 The examples in the first row of the row titled “Business Graphics” are royalty-free business graphics clip art from Cool clips, CoolClips.com (last visited Sep. 25, 2021). The examples in the second row of the row titled “Business Graphics” are excerpted from Vendor Power, Center for Urban Pedagogy (2009), [http://welcometocup.org/Store?product\\_id=17](http://welcometocup.org/Store?product_id=17).

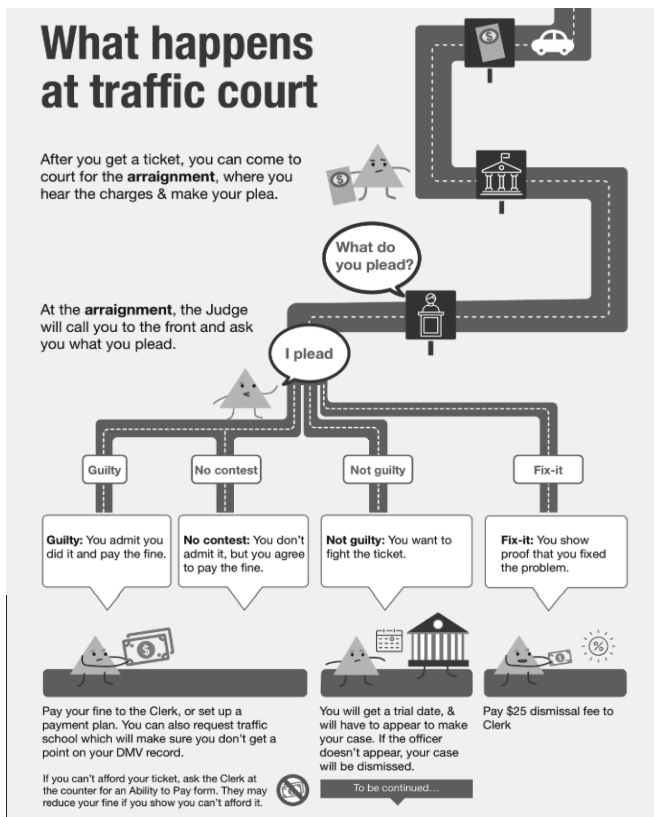
### Comic but less “Cartoony”<sup>120</sup>



The visual rhetorical implications of the cartoony comic style are that the works are more funny, but perhaps less culturally and racial sensitive. The characters of the cartoony examples also are subjected to exaggerated cartoony actions, being repeatedly and unceremoniously “kicked out the door” of the immigration process literally and figuratively. This treatment is undignified and somewhat disrespectful considering the gravity of the immigration situation of migrants, which was poor in 2008 when the immigration infographic was created, and even worse in more recent years. The business graphics examples and the less-exaggerated comic examples depict persons from different races, ethnicities, and national origins in a more dignified and respectful manner. All of the examples make the works where the “cartoony” comic style images are used to appear more friendly and potentially engaging because of the “fun factor” gained from using pictorial illustrations, but the overall *ethos* of the works might be affected by the choice to include humor in the depiction of the serious subjects involved in the legal communications.

120 The examples in the first row of the row titled “Comic but less ‘Cartoony’” are excerpted from *I Got Arrested! Now What?*, CENTER FOR URBAN PEDAGOGY (2010), [http://www.welcometocup.org/Store?product\\_id=14](http://www.welcometocup.org/Store?product_id=14). The examples in the second row of the row titled “Comic but less ‘Cartoony’” are excerpted from Robert de Rooy, *Clemen Gold Employment Contract*, Creative Contracts, <https://creative-contracts.com/clemengold/> (last visited Sep. 25, 2021).

### Example 3: Pathway and Instructions for Traffic Court<sup>121</sup>



Example 3, “What happens at traffic court,” from Stanford’s Justice Innovation-Legal Design Lab, reports the steps and decision points for a person receiving a traffic ticket.

The jurisdiction is not identified, but the information concerning the steps might be applicable in multiple states.

**Visual Context:** The **meaning** of the visual components of this infographic chart is to illustrate the process and procedures for traffic court. The infographic makes use of a pathway visual in the form of a highway, which certainly is apropos of the topic of the chart, “What happens in traffic court.”

<sup>121</sup> Stanford Law School Legal Design Lab, *What Happens at Traffic Court*, JUSTICEINNOVATION (2018), <http://justiceinnovation.law.stanford.edu/wp-content/uploads/2018/10/Traffic-Court-visual-guide-what-happens-at-traffic-court-pleading.png>. This work also is analyzed in Murray, *Diagrammatics*, *supra* note 10, at 28–31.



Friendly and inclusive icons are used in the form of a non-gender-specific, non-racially-suggestive triangle for the motorist, a rectangle with a dollar sign on it for the “ticket,” and some simplified symbols of a car, two different courthouses, a judge sitting at her or his bench, money, and a calendar

(representing a date in time). In the **taxonomy**, the function of the graphics is to *Describe*, *Exemplify*, and *Concretize* the text, for example, by not just saying in words, “Then you would go to traffic court and appear before a traffic court judge,” but actually showing an image of the court building and a judge on the pathway toward resolution of a ticket. As with most legal works that are designed for a non-law-trained audience, there is a certain amount of *Interpreting* and *Translating* of the law into a more accessible and understandable format that is occurring in this chart. The graphics are light on *Decoration*, as each image has a specific function to explain the process of resolution of a ticket.

**Verbal Context:** Aside from the attractive highway pathway and decision tree, and the friendly, inclusive icons, all of the information about court processes and procedures is provided in text, and in one language only, English. The text is found in captions, sidebars, and callout boxes. The text is straightforward and does not require the viewer to have attained an advanced reading level in order to grasp the information, but, of course, some level of literacy in English is required. There is no explicit legalese in the form; it is most likely too hard to avoid using the term “arraignment,” and the infographic used “no contest,” in lieu of “nolo contendere.”

**Visual Cultural Context:** By intentionally using an inclusive, non-gender-specific, and non-racially-suggestive icon for the motorist, the infographic avoids excluding or alienating any viewer of the work; no-one should explicitly or implicitly be turned away because the information is not for them or not about them. The choice of a triangle is a very neutral shape, and the minor personification elements (arms, legs, facial expressions) are also rendered in a neutral, broadly inclusive manner. Persons of most cultures should read the facial expressions of the triangle as those of a “concerned” motorist, perhaps one that is “determined” to get through the system, and little else. There is no further indication that the “triangle” is a reckless, irresponsible, or shameful person, and there is no suggestion that the “triangle” is fearful of using the governmental system to work through this traffic matter.

**Mise en Scène and Arrangement:** The design of this infographic chart is excellent. I have previously mentioned that the infographic makes use of a pathway visual in the form of a highway, which certainly is apropos of the topic of the chart, “What happens in *traffic* court.” The icons and images used are friendly and inclusive, and complement the text, for example, by not just saying in words, “Then you would go to traffic court and appear before a traffic court judge,” but actually showing an image of the court building and a judge on the pathway toward resolution of a ticket. The imagery of a highway allows the message to neatly fork into different outcomes in a decision tree arrangement.

**Visual Rhetoric, Ethics and Professionalism:** As discussed above, a goal of visualization is to make legal works accessible to a broader range of audiences. Sometimes that means illiterate and less-than-fully literate audiences, and sometimes it means vulnerable and disadvantaged audiences. The graphical elements of this chart are inviting and potentially engaging, welcoming partially literate persons to look at and look into the information on the chart, and the design elements welcome the potentially vulnerable or disadvantaged viewer with inclusive, non-gender-specific, and non-racially-suggestive icons, to help them stay engaged. There is no mention of police at all, in words or symbolically, nor is the ticket discussed or depicted as a crime or violation of law, which perhaps suggests to the viewer that the processes and procedures are routine and do not involve a heavy-handed governmental enforcement of “criminal” law and suppression of “illegal” behavior. It is true that the words “charges,” “plea,” “plead,” and “guilty” are mentioned, but not in the context of the words “crime,” “conviction,” or “offense.”

### Example 4: Comic Book Financial Services Contract<sup>122</sup>

South African attorney Robert de Rooy, a pioneer of the comic book and cartoon contract movement, has created a sample financial services provider contract that attempts to visualize the basic aspects of a financial planning agreement with a broker or investor:<sup>123</sup>

**3** The advisor helping you invest your money AND giving the advisor **permission to act on your behalf.**

**4** The advisor **NOT** performing a **full analysis** on your financial situation (record of advisor is limited in terms of Section B4(X)(a) of the general code).

**5** The advisor advising you to invest in either a **Cash/Money Market OR Unit Trusts** OR a combination of the two options.

The advisor could not perform a full analysis of your financial situation because:

(a) You, the client, didn't wish to give all the necessary information; or

(b) There wasn't enough time because of reasons outside of the advisor's control.

**Cash/Money Market:** A bank account that offers a higher interest rate than normal, but limited access to the funds. Access can be granted but may take up to a month.

**OR**

**UNIT TRUSTS:** These are investments where bits of different equities (stocks) are pooled into one investment portfolio and when it makes a profit or loss, it's shared among all the investors.

**6** The advisor providing you with the best possible advice available at the time, but **not taking responsibility** for poor investment performance.

**7** Paying an annual fee for the advice and help received. Please note that you, the client, **don't pay an invoice or transfer money** to the advisor; the **payment is deducted** by the investment product provider from your investment and paid directly to the advisor.

**MONTHS** X12

**Investment** X12

**Annual Fee**

**YEAR 1**

**YEAR 2**

**YEAR 3**

**BPS - What are Basis Points:** BPS measures interest rates or other percentages, including fees, in finance. 1bps = 0.01% and 100bps = 1%.

For example: Let's assume an investment value of R100 and a charge of 50 basis points. This would mean the advisor would charge a fee of R0.50 per year for providing investment advice, excluding tax.

Page 3 of 18  
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Page 4 of 18  
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<sup>122</sup> Robert de Rooy, *Financial Services Provider Contract*, CREATIVE CONTRACTS, <https://creative-contracts.com/fsp/> (last visited July 16, 2020). This work also is analyzed in Murray, *Cartoon Contracts*, *supra* note 30, at 175–78.

<sup>123</sup> All images in this table are excerpted from De Rooy, *supra* note 122, at 1–5, 17.

### What am I agreeing to?

1 Answering questions from the advisor about your money and what you want to do with it so they can create a **Risk Profile** for you.

**RISK PROFILE:** your risk profile shows what kind of investor you are and what investment products could work for you.

**Conservative**      **Medium Risk**      **Risk Taker**  
Low Risk      Medium Risk      High Risk

2 The advisor giving you **advice** on how to invest your money (based on risk profile).

**OPTIONS** A  B  C  ?

**OPTIONS** A  B  C  ?

**OPTIONS** A  B  C  ?

**RECORD OF ADVICE**

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**Visual Context—Meaning:** de Rooy's sample financial services comic contract is a highly visual agreement that presents a sequential narrative of a contractual relationship between a client and a financial services provider. De Rooy worked hard to create a contract that would meet the goals of a Proactive Law approach to contract drafting.<sup>124</sup> The contract is human-centered, transparent, and able to be understood by the client and the service providers, and not just their lawyers. The contract looks ahead to the relationship between the parties and strives to anticipate areas of friction or disruption so that they can be identified and dealt with before they harm or destroy the business relationship of the parties.<sup>125</sup> Each step and topic of the relationship is depicted.

Under the **taxonomy**, the comic graphics here make the agreements more friendly and unthreatening, which should help make them more accessible and engaging to readers. The graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the text. The comic genre is not used simply to *Decorate* the text.

**Verbal Context:** The work contains a significant amount of words in its captions and sidebars and the occasional callout box, and much of the communication and explanation of the terms of the agreement is made through this text. Parties and investment situations are depicted, but a large part of the visuals function more as illustrations of verbal terms than as independent content communicators.

**Visual Cultural Context:** The target audience for the model form is financial service providers, with the ultimate understanding that the completed agreement will be offered to financial services clients. In both cases, the target audience is expected to be fairly literate and skilled or at least informed about many aspects of the financial world. The model agreement therefore spends most of its time and attention illustrating some of the less-well-known aspects of the broker/service provider - client relationship, and it details the benefits and risks of investing. As with other

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<sup>124</sup> See Berger-Walliser, *supra* note 5, at 368.

<sup>125</sup> The transparent and forward-looking contract terms also attempt to eliminate or replace backward-looking, risk averse, boilerplate, and one-sided defensive clauses that typically are found in non-proactive agreements. See *supra* notes 5 and 58, at 368.

comic book-style sequential narrative examples, this model agreement relies on an audience that can read and interpret comic books—that the panels are connected, and are to be read left to right and roughly top to bottom (with help from directional arrows in some instances), and that together (with a little Gestalt closure and completion) they can tell a full “story” of the broker-client relationship.

**Mise en Scène and Arrangement:** The financial services provider agreement is a true comic book, not simply a few panels or a pamphlet. The graphics and directional flow of the narrative are clear. There is a story of a client investor and his investment advisors told in the work, covering concepts of investment (e.g., risks vs. returns, investments strategies, risk tolerance, etc.), and other aspects of the relationship (e.g., dispute resolution). De Rooy and his team made exemplary use of business graphics-style comic artwork that is in no way “cartoony,” and instead is dignified, respectful, and racially- and gender-inclusive, which should make the works friendly and accessible to the target audience of financial services providers and their clients. The visuals employ pictograms (bar graphs, directional arrows, cash bundles for “money,” single bills for “commissions” or “service fees,” a graduation cap for “education,” a house for “home,” palm tree and sun for “vacations”), ideograms (calendars with bundles of cash for “growth or loss over time,” sliding scales and pictorial bar graphs for “investment performance” or “risk tolerance”), and comic art visuals (red and green direction arrows and green checks or red X’s for yes/no, good/bad; facial expressions of happiness and success, vs. caution, or confusion; one hand up with palm forward for “no” or “stop talking”) that are very likely to communicate across many cultural and language divides.

**Visual Rhetoric, Ethics and Professionalism:** By using high quality, business graphics art, and paying careful attention to the use of symbols, pictograms, and comic visuals that are likely to communicate across cultural and language divides, the cartoon financial services contract is very likely to be understood by a wide-range of potential service providers and investors.

In addition to visual rhetorical devices being used in litigation or transactional law contexts, observers have noted that visual works have been employed in regulatory and administrative rulemaking campaigns,

particularly involving the Obama Administration's Environmental Protection Agency's Clean Water Act rulemaking initiatives.<sup>126</sup>

**Example 6: EPA Clean Water Act Rules**

**WHY #CleanWaterRules**

**Clean water upstream means cleaner water downstream.**  
Our Clean Water Rule protects the streams and wetlands that feed our rivers, lakes, bays and coastal waters. These waters are critical for agriculture, healthy communities, our economy and our way of life.

60% of stream miles in the U.S. only flow seasonally or after rain.

Streams and wetlands filter pollution, reduce flooding and give fish and wildlife a place to live.

One-third of threatened and endangered species live only in wetlands.

Normal farming and ranching activities – like planting, harvesting and moving livestock – won't be affected by the Clean Water Rule.

Farms depend on clean water for irrigation, crops and livestock.

Tourism, fishing, recreation, energy production, manufacturing and other industries that depend on clean water add billions of dollars to our economy every year.

1 in 3 Americans get drinking water from seasonal and rain-dependent streams.

19 million people per year go paddling, spending \$86 billion on gear and trips.

Fishing adds \$48 billion to the economy every year, and supports nearly a million jobs.

**EPA** [www.epa.gov/cleanwaterrule](http://www.epa.gov/cleanwaterrule)

<sup>126</sup> Elizabeth G. Porter, Kathryn A. Watts, *Visual Rulemaking*, 48 ENV'T L. REP. NEWS & ANALYSIS 10698, 10699 (2018); Elizabeth G. Porter & Kathryn A. Watts, *Visual Rulemaking*, 91 N.Y.U. L. REV. 1183, 1187 (2016).

**Visual Context – Meaning:** This WHY #CleanWaterRules infographic<sup>127</sup> was produced by the Environmental Protection Agency (EPA) for its “Waters of the United States” rulemaking expansion effort regarding Clean Water Act rules.<sup>128</sup> The visual component shows how each stage of the water sourcing and usage is connected—*visually* connected by a continuous stream of water—from upstream sources of mountains, rivers, and streams, to agricultural uses, to rural, suburban, and urban consumption, and finally to commercial and recreational uses downstream.

**Taxonomy:** The work *Uses Graphs* in the context of a visual pathway, and thus *Exemplifies, Models, Locates, Opens Perspective on,* and *Interprets* the EPA rules. The colors and style of the graphics are quite attractive, but almost assuredly are designed to attract and *Engage* the viewer and are not simply *Decorative*.

**Verbal Context:** The verbal context fills in details on the constituencies involved in the water system, and how their uses depend on the water being clean. The text is moderately rigorous and requires a good working verbal literacy level in English to understand all of the terms.

**Visual Cultural Context:** The scenes of mountains, streams, rivers, wetlands, farms, cities, and recreational bodies of water, and the activities—farming, boating, paddling, fishing (angling)—should be recognizable to persons of many different cultural backgrounds.

**Mise en Scène and Arrangement:** The infographic uses a pleasant color scheme and attractive depictions of the subjects. The visual graphics are rendered in a simple, accessible, but still highly professional style, and in a format and composition that harkens back to high quality grade school textbook diagrams. A viewer would likely be transported back to grade school in a biology, ecology, or environmental studies lesson in which they would be disposed to pay attention and learn something from the infographic. The font and wording match the simple, accessible, but professional approach of the graphics to maximize readability and comprehension of the material.

<sup>127</sup> *Why #CleanWaterRules*, EPA, <https://archive.epa.gov/epa/cleanwaterrule/why-clean-water-rules.html> (last visited Sep. 25, 2021). This work also is analyzed in Murray, *Toward a Universal Legal Language*, *supra* note 13, at 3, 44–45.

<sup>128</sup> *See Waters of the United States (WOTUS) Rulemaking*, EPA, <https://www.epa.gov/wotus-rule>.



**Visual Rhetoric Ethics and Professionalism:** The overall work is very professionally done. As noted above, the graphics and depictions should be friendly and instantly recognizable to persons from many cultures. The schoolbook nature of the design should help viewers to want to engage and stick around long enough to learn the information in the work.

## V. CONCLUSIONS

My intent in this Article and the methodology it presents is to examine visual elements as *visuals*, not as a translation or alternative form of verbal communication. The approach of trying to translate visual works into verbal arguments or verbal elements of legal reasoning limits the scope and the effectiveness of the visual works, because communication through visuals employs a separate visual *language*, and not in a *literal* or verbal sense.

Visuals are the present and future of legal works for transactional, litigation, and legal information uses, yet lawyers, judges, and law students typically do not receive training in visual literacy regarding the reading and interpretation of visual images, and much less so in the design principles required to create the most effective visuals for legal communications. This condition persists in spite of the fact that visual images can communicate across language and cultural barriers, taking advantage of the enormous speed and power of visual communication.

The process of visualization in law confronts the problem of communicating the law to increasingly large audiences who are not native English speakers and do not share the same culture, history, or social context of the typical users of legal resources in the America of the nineteenth and twentieth centuries. The growing diversity of society matches the growing diversity of persons using and interacting with the institutions of law, including law schools.<sup>129</sup> Visual images are one mode of communication that

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<sup>129</sup> See Johanna K.P. Dennis, *Ensuring A Multicultural Educational Experience in Legal Education: Start with the Legal Writing Classroom*, 16 TEX. WESLEYAN L. REV. 613, 614–15, 631–36 (2010) (discussing the need to adjust communication for multicultural audiences); Kimiko Hahn, Jenny Rivera & Ruthann Robson, *Translating Equality: Language, Law and Poetry*, 13 N.Y. CITY L. REV. 233, 244–47 (2010) (discussing English as a Second Language challenges in law school and law practice); Douglas Laycock, *The Broader Case for Affirmative Action: Desegregation, Academic Excellence, and Future Leadership*, 78 TUL. L. REV. 1767, 1772–73 (2004) (recommending re-adjustment in legal education for diverse audiences); Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 16–28 (1998) (describing the effects of traditional legal education and legal communication in practice that coerces silence among minority and traditionally underrepresented groups).

shows promise in overcoming language and cultural barriers.<sup>130</sup> At the very least, the use of visuals helps to make legal works more transparent, and can open them up to audiences who are not law-trained readers.

I have placed this discussion of the analysis of visuals in legal rhetoric<sup>131</sup>—which is to say, effective legal communication.<sup>132</sup> Rhetoric depends on understanding the language used,<sup>133</sup> and therefore, the use of visuals in legal communication requires an understanding of the language of visuals to construct knowledge that will lead audiences to persuasion or to mastery of the information.<sup>134</sup> The methodology proposed in this Article is a set of tools that can help verbally-oriented law-trained writers to become better readers, evaluators, and creators of visual communications in the law.

Attorneys and law students may believe that visualization in law is a wonderful embellishment of legal communications in a transactional or

<sup>130</sup> See generally Murray, *Leaping Language*, *supra* note 12; Murray, *Toward a Universal Legal Language*, *supra* note 12.

<sup>131</sup> The study of rhetoric encompasses many things, but primarily effective communication. See JEROME BRUNER & ANTHONY G. AMSTERDAM, *MINDING THE LAW* 134 (2002) (discussing the use of categories and narratives as communication in the law); see also James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 684 (1985) [hereinafter *Law as Rhetoric, Rhetoric as Law*] (stating that rhetoric establishes, maintains, and transforms the community and the culture); James Boyd White, *A Symposium: The Theology of the Practice of Law February 14, 2002 Roundtable Discussion*, 53 MERCER L. REV. 1087, 1090 (2002) [hereinafter *The Theology of the Practice of Law*] (“So the minute we begin to think and talk about anything at all we live in the world of language, a world of contingent resources for thought and speech, and rhetoric is a perfectly good term for how we do that.”).

<sup>132</sup> The part of rhetoric that studies the language of a particular discipline (e.g., the law) and its coding, delivery, and reception of the language is particularly important to the discussion here. See Hans-Georg Gadamer, *The Expressive Power of Language*, 107 PUBL’N MOD. LANGUAGE ASS’N AM. 348, 348 (1992); Francis J. Mootz, III, *Law in Flux: Philosophical Hermeneutics, Legal Argumentation, and the Natural Law Tradition*, 11 YALE J.L. & HUMAN. 311, 311 (1999); White, *Law as Rhetoric, Rhetoric as Law*, *supra* note 131, at 695 (“Like law, rhetoric invents, and like law, it invents out of something rather than out of nothing. It always starts in a particular culture and among particular people. There is always one speaker addressing others in a particular situation about concerns that are real and important to somebody, and speaking a particular language.”).

<sup>133</sup> Jules L. Coleman & Brian Leiter, *Determinacy, Objectivity, and Authority*, 142 U. PA. L. REV. 549, 571 (1993) (“Meaning is not radically indeterminate; instead, meaning is public—fixed by public behavior, beliefs, and understandings.”); see KENT GREENAWALT, *LAW AND OBJECTIVITY* 72–73 (1992) (discussing how “social practice” can lend determinacy to rule-following); Christopher L. Kutz, Note, *Just Disagreement: Indeterminacy and Rationality in the Rule of Law*, 103 YALE L.J. 997, 1010 (1994) (noting that under Wittgenstein’s premises, the correct use of a word will show the user community’s “natural tendencies”); Brian Langille, *Revolution Without Foundation: The Grammar of Scepticism and Law*, 33 MCGILL L.J. 451, 493 (1988) (noting that a necessary prerequisite of language is the community’s “agreement in judgements”); John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2396 n.29 (2003) (describing the need for a common language in statutory interpretation); John F. Manning, *Textualism and the Equity of the Statute*, 101 COLUM. L. REV. 1, 96 (2001) (noting that a linguistic community’s agreements about judgments are a necessary prerequisite for language). See also LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* §§ 134–42 (G.E.M. Anscombe trans., 3d ed. 1953) (emphasizing the use of words in linguistic interactions within a relevant community).

<sup>134</sup> See sources cited in *supra* notes 28, 32.

litigation context, and if a client or fellow counsel wants to invest in it, the attorney always can hire outside experts to do the actual planning and design. But this abdicates the responsible to become visually literate so as to analyze, interpret, critique, and ultimately confront the visual designs offered by opponents in litigation or the other parties in transactions or negotiations.<sup>135</sup> The world is growing increasingly visual in every form of media,<sup>136</sup> and the legal world is catching up in every area of practice.<sup>137</sup> Attorneys and judges who are not visually literate will be at a disadvantage in evaluating the visual works they will encounter on a more frequent basis as this trend plays out in the practice of law.

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<sup>135</sup> See Murray, *Mise en Scène*, *supra* note 12, 16, at 244.

<sup>136</sup> See Richard K. Sherwin et al., *Law in the Digital Age: How Visual Communication Technologies Are Transforming the Practice, Theory, and Teaching of Law*, 12 B.U. J. SCI. & TECH. L. 227, 230–34 (2006); RICK WILLIAMS, JULIANNE NEWTON, *VISUAL COMMUNICATION: INTEGRATING MEDIA, ART, AND SCIENCE* xv–xvi (2007). See also SHANI ORGAD, *MEDIA REPRESENTATION AND THE GLOBAL IMAGINATION* 50–51 (2014).

<sup>137</sup> See generally NEAL FEIGENSON & CHRISTINA SPIESEL, *LAW ON DISPLAY: THE DIGITAL TRANSFORMATION OF LEGAL PERSUASION AND JUDGMENT* (2009); Lenora Ledwon, *Understanding Visual Metaphors: What Graphic Novels Can Teach Lawyers About Visual Storytelling*, 63 DRAKE L. REV. 193, 237 (2015); Christina O. Spiesel, Richard K. Sherwin & Neal Feigenson, *Law in the Age of Images: The Challenge of Visual Imagery*, in *CONTEMPORARY ISSUES OF THE SEMIOTICS OF LAW* 231 (A. Wagner et al. eds., 2005); Richard K. Sherwin, *A Manifesto For Visual Legal Realism*, 40 LOY. L.A. L. REV. 719, 724–36 (2007).