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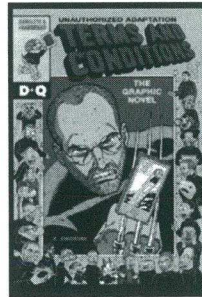
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TOWARD A UNIVERSAL VISUAL LANGUAGE OF LAW

Michael D. Murray*

Abstract. There is a legal language that is more universal than text, that can communicate across language and cultural barriers: it is the language of visual images. Visual communication of law provides a means to transmit the content, meaning, and implications of law and legal analysis in legal documents and multimodal communications that are accessible and understandable not only to those trained in the law or highly literate in the dominant written language of the communication, but also to those whose basic language skills in the dominant language of the communication would otherwise not allow them to receive or understand the legal advice, rights, or requirements contained in the communication.



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1. Terri LeClercq et al., Illustration of a man emphasizing the importance of prisoners following criminal procedure, in *TERRI LECLERCQ, PRISON GRIEVANCES: WHEN TO WRITE, HOW TO WRITE (A GRAPHIC NOVEL)* (2013).

2. R. Sikoryak, Illustration on Cover of *Terms and Conditions The Graphic Novel*, in R. SIKORYAK, *TERMS AND CONDITIONS THE GRAPHIC NOVEL* (2017).

3. Lexi Ginsburg Mota, Photograph of Cake, in *Brief for Cake Artists as Amici Curiae in Support of Neither Party at 4, Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111), 2017 U.S. S. Ct. Briefs LEXIS 3254, at *4.

In the very near future, scholars anticipate that visual legal rhetoric will become a standard part of legal practice not just in litigation, but also in transactional practice and all areas of law because of the communicative and rhetorical power of visual media.⁴ The goal of this Article is to apply the lens of visual legal rhetoric, visual literacy analysis, visual cultural studies, and *mise en scène* analysis to evaluate and critique representative examples of legal communications that use visual images as a means to overcome language and cultural barriers. I hope to draw lessons in visual communication for lawyers, judges, legislators, and regulators to encourage them to make visuals a more integral part of legal works in transactional, litigation, legislative, regulatory, and legal informational contexts. Visuals can overcome barriers in communication that words alone cannot, and visual legal works can be made more universal in their communication, interpretation, performance, and enforcement.

4. 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 (2006).

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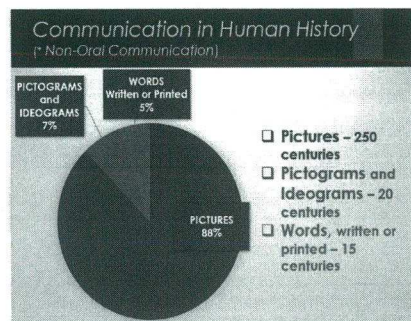
I. INTRODUCTION TO THE UNIVERSALITY OF VISUAL COMMUNICATION

A. *Is There Such a Thing as a Truly Universal Form of Communication?*

There is a form of communication used across the globe, on every continent, and among persons of manifestly diverse cultures: visual communication.⁵ Visual communication can transcend the limits and gaps in verbal communication when one's primary goal is to transmit information that will be received and understood by the widest possible audience or by a target audience that has known difficulties in the original verbal language of the communication.⁶

Communication through visual images is the oldest form of non-oral communication on the planet.⁷ A key component of the greater universality of visual communication among humans is the fact that it predates and has a much longer history than textual verbal communication: researchers estimate that separate from oral communication, humans have used pictures to record and communicate their ideas and experiences for 250 centuries, and subsequently used pictograms and ideograms for the next 20 centuries, and have used written or printed words as a primary verbal form of communication only for the last fifteen centuries.^{8 9}

Not only does visual communication predate communication through words and languages by hundreds of centuries, but it also is more universal than text and can communicate across language and cultural



5. Teun Velders, Sjoerd de Vries & Loreta Vaicaityte, *Visual Literacy and Visual Communication for Global Education 4–5* (2007) (unpublished manuscript) (on file with the University of Twente Research Information).

6. *Id.*

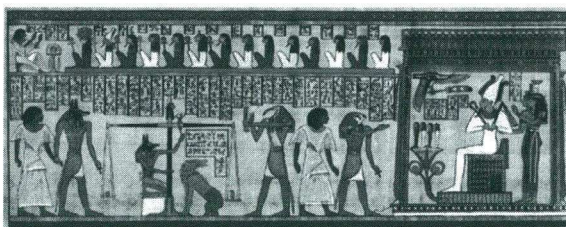
7. DUNCAN DAVIES, DIANA BATHURST & ROBIN BATHURST, *THE TELLING IMAGE: THE CHANGING BALANCE BETWEEN PICTURES AND WORDS IN A TECHNOLOGICAL AGE* 2, 32 (1990); *see generally* LEILA AVRIN, *SCRIBES, SCRIPT AND BOOKS: THE BOOK ARTS FROM ANTIQUITY TO THE RENAISSANCE* 327 (1991); LUCIEN PAUL VICTOR FEBVRE & HENRI-JEAN MARTIN, *THE COMING OF THE BOOK: THE IMPACT OF PRINTING 1450–1800* (Geoffrey Nowell-Smith & David Wootten eds., David Gerard trans., 1976); Richard K. Sherwin, *A Manifesto for Visual Legal Realism*, 40 *LOY. L.A. L. REV.* 719, 724 (2007) (explaining that Gutenberg's invention of the printing press in the fifteenth century marked the transition from primarily pictorial communication to primarily verbal communication).

8. DAVIES ET AL., *supra* note 7, at 32; *see also* AVRIN, *supra* note 7; FEBVRE & MARTIN, *supra* note 7; Sherwin, *supra* note 7, at 724 (2007).

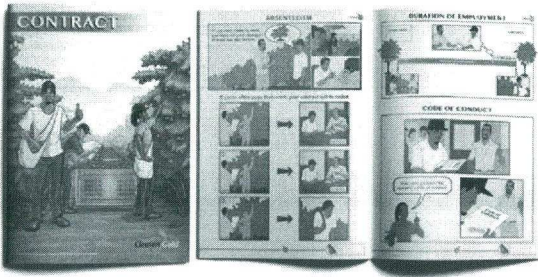
9. Chart of Communication in Human History, in Michael D. Murray, Spears-Gilbert Professor of Law, Presentation at the University of the Sunshine Coast School of Law and Criminology Graphic Justice Research Alliance Conference: Drawing the Human (Nov. 28, 2019).

barriers. When applied to legal communications and legal works, visual communication provides a means to transmit the content, meaning, and implications of law and legal analysis in legal documents and multimodal communications that will be accessible and understandable not only to those trained in the law or highly literate in the dominant written language of the communication, but also to those whose basic language skills in the dominant language of the communication would otherwise not allow them to receive or understand the legal advice, rights, or requirements contained in the work.

The goal of this Article is to apply the lens of visual legal rhetoric, visual literacy analysis, visual cultural studies, and *mise en scène* analysis to evaluate and critique representative examples of legal communications that use visual images as a means to overcome language and cultural barriers. The Article will apply the lens to evaluate and critique five aspects of visual legal works: immediate visual context; immediate verbal context; visual cultural context; *mise en scène* and the rhetorical topic of arrangement; and visual rhetoric, ethics, and professionalism. I hope to draw lessons in visual communication for lawyers, judges, legislators, and regulators who have for centuries relied on verbal text as the vastly dominant and usually exclusive form of legal communication. Many of the works examined here are fledgling efforts to make visuals a more integral part of legal works in transactional, litigation, legislative, regulatory, and legal informational contexts, and I seek to encourage these efforts. Visuals can overcome barriers in communication that words alone cannot, and visual legal works can be made more universal in their communication, interpretation, performance, and enforcement.



In the Article, I seek to apply lessons of visual communication drawn from historical works of visual narrativity, such as the example (at left) *Weighing the heart*, from the *Book of the Dead of Hunefer* (c.



*Masterpiece Cakeshop*¹⁴
(at left, bottom). Others are contracts and transactional documents, such as the comic book employment contract created by South African attorney, Robert de Rooy¹⁶ (at left).

In this Article, I continue my inquiry into visual legal communication that has examined cognitive psychology and the neuroscience of the brain,¹⁷ data visualization and rhetorical topics of visual arrangement,¹⁸ and visual legal communication as a topic and trope of visual rhetoric.¹⁹ My focus in this Article is to examine methods of legal communication that seek as far as practicable to communicate across language and cultural barriers. The subjects of my study are

14. Lexi Ginsburg Mota, Photograph of Cake, *in* Brief for Cake Artists as Amici Curiae in Support of Neither Party at 10, *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111), 2017 LEXIS 3254, at *11.

15. See Mota *supra* note 3; see also *infra* Part VII.

16. Robert de Rooy, *ClemenGold Comic Contract* (photograph), *in* ROBERT DE ROOY, *CLEMENGOLD EMPLOYMENT CONTRACT*, 1, 12–13 (2016), <https://creative-contracts.com/clemengold/>; see also *infra* Part IX(A).

17. See Michael D. Murray, *The Great Recession and the Rhetorical Canons of Law and Economics*, 58 LOY. L. REV. 615, 621–22, 629, 642, 646–49 (2012) [hereinafter *Rhetorical Canons of Law and Economics*]; Michael D. Murray, *After the Great Recession: Law and Economics' Topics of Invention and Arrangement & Tropes of Style*, 58 LOY. L. REV. 897, 901, 924–26, 929–35 (2012) [hereinafter *Topics and Tropes*]; Michael D. Murray, *Leaping Language and Cultural Barriers with Visual Legal Rhetoric*, 49 U.S.F. L. REV. F. 61, 62, 67–68 (2015) [hereinafter *Leaping Language*]; Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 J. LEGAL WRITING INST. 185, 186, 193–200 (2016) [hereinafter *Visual Rhetoric and Tropes*]; Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM'C'N & RHETORIC: JALWD 107, 108, 124–30, 142, 146, 149, 152–54 (2016) [hereinafter *Ethics of Visual Legal Rhetoric*]; Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, 68 J. LEGAL EDUC. 64, 65, 72–73 (2019) [hereinafter *Sharpest Tool*]; Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Legal Rhetoric*, 68 KAN. L. REV. 241, 251–58 (2019) [hereinafter *Mise en Scène*].

18. See *Topics and Tropes*, *supra* note 17, at 905–23 (discussing data visualization and rhetorical topics of visual arrangement); Michael D. Murray, *Cartoon Contracts and the Proactive Visualization of Law*, 16 U. MASS. L. REV. 98 (2021) [hereinafter *Cartoon Contracts*]; Michael D. Murray, *Diagrammatics and the Proactive Visualization of Legal Information*, 43 U. ARK. LITTLE ROCK L. REV. 323 (2021) [hereinafter *Diagrammatics*]; *Leaping Language*, *supra* note 17, at 64, 66–69; *Visual Rhetoric and Tropes*, *supra* note 17, at 209–18; *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 107–08, 143; *Mise en Scène*, *supra* note 17, at 248–61.

19. See *Rhetorical Canons of Law and Economics*, *supra* note 17, at 620, 632 (discussing visual legal communication as a topic and trope of visual rhetoric); see also *Topics and Tropes*, *supra* note 17, at 905–18, 932; see also *Visual Rhetoric and Tropes*, *supra* note 17, at 197–98, 201.

several examples of largely pictorial, non-verbally-oriented works of legal communication:

- Legal Informational Materials
- Exhibits and Illustrations used in Briefs, Memoranda, and Regulatory and Administrative Rulemaking
- Cartoon Briefs
- Pictorial or Photographic Briefs
- Graphic Novel Legal Texts
- Proactive Visual Contract Genres – Cartoon Contracts, and Multimedia “Smart” Contracts

My lens is the discipline of visual legal rhetoric,²⁰ narrativity,²¹ and the overlapping principles of visual literacy²² regarding the reception, comprehension, and communication of law in cross-lingual and cross-cultural contexts.

B. Modern Media and Communication

A focus on cross-lingual and cross-cultural communication coincides with changes in how all audiences receive and process information in the developed and developing world in the twenty-first century: by all known accounts, world media has become intensely visual.²³ People in the contemporary developed world are living in a time of multimodal and multimedia delivery and consumption of information and entertainment, and almost all media has a visual component.²⁴

20. See *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 109 (defining visual legal rhetoric as “the use of graphics, photographs, and other depictions for communication, for construction of knowledge and understanding, and ultimately for persuasion of the truth and rightness of the communication”); see also *Leaping Language*, *supra* note 17, at 67.

21. The context for this discussion is rhetoric, the art and science of effective communication, and within this subject area, the specific sub-topics of visual legal rhetoric and narrativity. See, e.g., Elizabeth Fajans & Mary R. Falk, *Untold Stories: Restoring Narrative to Pleading Practice*, 15 J. LEGAL WRITING INST. 3, 3–4 (2009); Brian Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 J. LEGAL WRITING INST. 17, 18–19 (2008); Steven J. Johansen, *Was Colonel Sanders A Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ASS’N LEGAL WRITING DIRS. 63, 65 (2010); 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); J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM’N & RHETORIC: JALWD 247 (2015); 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); Ruth Anne Robbins, *An Introduction to Applied Storytelling and to this Symposium*, 14 J. LEGAL WRITING INST. 3 (2008).

22. See *infra* notes 25, 130, 143.

23. See Sherwin et al., *supra* note 4 (discussing how visuals are becoming more useful for communication in the legal profession); see also 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 (2012).

24. See *supra* notes 17, 21.

Visual images are becoming the predominant form of communication across a range of informational, learning, and teaching resources delivered across a range of media and formats, and the ratio of visual image to text is increasing.²⁵ “Particularly, in the Internet, where borders have disappeared and a multi-cultural environment has been formed, pictures and photos are functioning as a common language through which everyone can virtually communicate.”²⁶ As the world moves from printed news to news websites, and from letters, email, and messaging to Snapchat, Instagram, YouTube, Twitter, and Facebook,²⁷ visual media has become the norm in day-to-day communication, and the media most directly supplanted by visual media are static, verbal, textual media—in short, the printed word.²⁸

Along with the growing diversity in media, there is a continuing perception that diversity in language and culture poses challenges in verbal communication.²⁹ Language diversity and cultural diversity go hand in hand; the diversity of the languages written and spoken in a nation is a marker for overall cultural diversity

25. Marina Mohd Arif & Fatimah Hashim, *Young Learners’ Second Language Visual Literacy Practices 2–3, 5–8* (2009) (unpublished manuscript) (on file with Penn State University) (accessible at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.520.2586&rep=rep1&type=pdf>); ANNE BAMFORD, *THE VISUAL LITERACY WHITE PAPER 2* (2003), <https://www.aperture.org/wp-content/uploads/2013/05/visual-literacy-wp.pdf>; LONDON GRID FOR LEARNING, <https://national.lgfl.net/home/about-us> (last visited Sept. 10, 2021); FRANK SERAFINI, *READING THE VISUAL: AN INTRODUCTION TO TEACHING MULTIMODAL LITERACY 1–3* (Celia Genishi & Donna E. Alvermann eds., 2014); Aric Sigman, *Does Not Compute, Revisited: Screen Technology in Early Years Education, in TOO MUCH, TOO SOON?: EARLY LEARNING AND THE EROSION OF CHILDHOOD 266* (Richard House ed., 2011).

26. Ebru Uzunoglu, *Using Social Media for Participatory City Branding, in GLOBAL PLACE BRANDING CAMPAIGNS ACROSS CITIES, REGIONS, AND NATIONS 94, 97* (Ahmet Bayraktar & Can Uslay eds., 2017).

27. Sara Martín, *Social Networks: The List of Most Used Social Networks in 2020*, METRICOOL.COM (Jan. 23, 2018), <https://metricool.com/most-important-social-networks/>.

28. See PETER HINSEN, *THE NEW NORMAL: EXPLORE THE LIMITS OF THE DIGITAL WORLD* (2011) (predicting the highly visual digital world as being the new normal); Nicholas A. Kosar, *The New Normal in Professional Services Marketing*, MARKETINGPROFS (Nov. 7, 2013), <http://www.marketingprofs.com/articles/2013/12017/the-new-normal-in-professional-services-marketing> (referencing statistics on visual and multimedia consumption by professionals); Patricia Maranga, *6 Marketing Trends to Watch in 2013: New Research*, SOC. MEDIA EXAM’R (July 23, 2013), <http://www.socialmediaexaminer.com/marketing-trends-2013/> (“Keep in mind that capturing your customers’ attention will become harder as media multitasking becomes the new normal. Your digital content will need to be smarter, more creative and more visual to connect and engage today’s audiences.”).

29. E.g., DEBORAH CAO, *TRANSLATING LAW 3–5, 23–32* (Susan Bassnet & Edwin Gentzler eds., 2007); CLAIRE KRAMSCH, *CONTEXT AND CULTURE IN LANGUAGE TEACHING 1–3, 8–11, 13–14* (1993); Lynda Yates, *Pragmatic Challenges for Second Language Learners, in PRAGMATICS ACROSS LANGUAGES AND CULTURES 287, 287–302* (Anna Trosborg ed., 2010).

of the nation.³⁰ While diversity in language and culture may inhibit verbal communication, developments in many fields indicate that visual communication has the ability to overleap many of these barriers.³¹

C. Critical Information About Healthcare, Law, and Policy is Communicated with a Universal Visual Language

The COVID-19 crisis of 2020 and 2021 (and ongoing as of the time of this writing) has demonstrated that when governments, intergovernmental organizations (such as the United Nations), and national and regional health agencies want to communicate something critically important to the widest possible audiences, anticipating that some audiences will have low or negligible literacy skills in the native language or in any written language, these entities turn to visual communication.³² And the most remarkable observation about this fact is that these entities use the exact same type of visuals—in other words, they use a universal form of communication that is visual.³³

30. Rich Morin, *The Most (and Least) Culturally Diverse Countries in the World*, PEW RSCH. CTR. (July 18, 2013), <https://www.pewresearch.org/fact-tank/2013/07/18/the-most-and-least-culturally-diverse-countries-in-the-world/>; see also *Cartoon Contracts*, *supra* note 18 at 6.

31. See Jay A. Mitchell, *Whiteboard and Black-Letter: Visual Communication in Commercial Contracts*, 20 UNIV. PA. J. BUS. L. 815, 816–20 (2018); *Leaping Language*, *supra* note 17; Stefania Passera & Helena Haapio, *Transforming Contracts from Legal Rules to User-centered Communication Tools: a Human-Information Interaction Challenge*, COMMC’N DESIGN Q., Apr. 2013, at 38–45.

32. See Michael D. Murray, *Cross-Cultural Communication in a Crisis: The Universality of Visual Narrative in the COVID-19 Pandemic*, 32 ALBANY L.J. OF SCI. AND TECH. (forthcoming 2022) [hereinafter *Visual Narrative in the COVID-19 Pandemic*].

33. The style of graphics used in the Covid-19 examples is popularly known as the “cartoon” or “comic book” form and officially referred to as “sequential narrative.” See NEIL COHN, *THE VISUAL LANGUAGE OF COMICS: INTRODUCTION TO THE STRUCTURE AND COGNITION OF SEQUENTIAL IMAGES 1* (2013); WILL EISNER, *COMICS AND SEQUENTIAL ART 1–2* (2008) [hereinafter *COMICS AND SEQUENTIAL ART*]; WILL EISNER, *GRAPHIC STORYTELLING AND VISUAL NARRATIVE*, at xvii (Denis Kitchen ed., 2008) [hereinafter *GRAPHIC STORYTELLING*]; SCOTT MCCLLOUD, *UNDERSTANDING COMICS: THE INVISIBLE ART 5–9* (Mark Martin ed., 1994). The style of cartoon or comic depiction varies slightly from example to example, often using a business graphics style as compared to an artistic and pictorial style, or a “cartoony” style associated with humorous works. See *Cartoon Contracts*, *supra* note 18, at 132–42.

In this section, I have excerpted indicative examples from different regions of the world and each of the major continents³⁴ regarding communication of the COVID-19 crisis.³⁵

34. The examples from Antarctica were few in number and not as indicative of the visual sequential narrative style of the rest of the world. See, e.g., *Coronavirus Antarctica COVID-19* (illustration), iSTOCK (Mar. 17, 2020), <https://www.istockphoto.com/vector/antarctica-map-with-a-coronavirus-cell-in-red-viewfinder-gm1212946797-352305830>; see also Odisha TV, *Dozens Test Covid-19 Positive in Antarctica, Coronavirus Has Now Infected Every Continent*, YOUTUBE (Dec. 25, 2020), https://www.youtube.com/watch?v=j5u_DJo7AVY.

35. Many of these examples show the English language translation of the verbal portions of these examples, and I selected them for ease of my anticipated readers, but in most cases, the works are also available in other languages. For example, the examples from South Africa were available in IsiZulu, IsiXhosa, Setswana, Sesotho, Sepedi, SiSwati, Tshivenda, Xitsonga, Afrikaans, Yoruba, Luo, French, and English. See, e.g., Wits Univ., *Hay'khona Corona! Spreading the word, not the virus*, UNIV. WITWATERSRAND, JOHANNESBURG (Apr. 2, 2020), <https://www.wits.ac.za/news/latest-news/general-news/2020/2020-04/haykhona-corona-spreading-the-word-not-the-virus.html>.

West Asia/Middle East & North Africa

Tunisia³⁹

Doğru El Yıkamanın Aşamaları;

Turkey⁴⁰Middle East (Arabic-Speaking)⁴¹

39. Int'l Lab. Org., Illustration of COVID-19 Poster from Tunisia, in *Public Poster developed by ILO Tunisia to raise awareness on preventive measures against COVID-19 Bulletin*, ILO TUNISIA, https://www.ilo.org/wcmsp5/groups/public/—ed_emp/—emp_policy/—invest/documents/image/wcms_738705.png (last visited Oct. 25, 2021).

40. Illustration of COVID-19 Leaflet, in *#COVID-19 Turkish Ministry of Health: Leaflet-Turkish*, OPERATIONAL DATA PORTAL: REFUGEE SITUATIONS (Mar. 25, 2020), <https://data2.unhcr.org/en/documents/details/74811>.

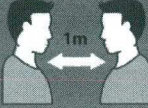

41. *How to Protect Students and Workers in Schools and Nurseries from Covid-19* (illustration), in WHO REG' L OFF. FOR THE E. MEDITERRANEAN,

South Asia

नोवल कोरोनावायरस (COVID-19)

कोरोनावायरस से बचाव के उपाय

आपस में कम से कम 1 मीटर की दूरी,
सबकी सुरक्षा के लिए जरूरी


अपने हाथों को बार-बार
साबुन और पानी से धोएं।



साबुन और पानी उपलब्ध न हों तो,
कम से कम 60% अल्कोहल-आधारित
हैंड सैनिटाइजर का उपयोग करें



अपनी आंखों, नाक और मुंह को छूने
से पहले हाथों को धो लें



प्रयोग किए गए टिशू को
तुरन्त बंद कूड़ेदान में डालें



छींकते और खासते समय अपनी नाक
और मुंह को रुमाल/टिशू से बंद करें



सामाजिक आयोजनों और
भीड़-भाड़ वाली जगहों से दूर रहें

India⁴²

د ټوحي يا پرنجې په راتلو
خولې يا پوزې مخې ته نشو
اونيسې يا په غبرگه ځنگل
خوله پټوي
(په لاس نه)



كوم خلك چې د نزلې په
شان علامتونه لري، له
هغوي څخه له رابطې پرهبز
وكړئ



که لاسونه مو وينځلي نه وي
نو سترگو، خولې او پوزې ته
گوټې مه وړئ



استعمال شوي تيشو
سجدستي د گند سر پټې
ټوكرۍ كې واچوئ



که چيرې خاصخا بهر وځن
نو د گټې ځايونو څخه ډډه
وكړئ
اس ملاتړو څخه پرهبز
وكړئ



لاسونه باقاعده بيا بيا
وميښخ: يا په لاسونو الكولي
محلول استعمالوئ

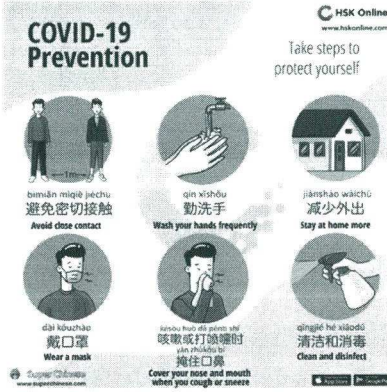

Pakistan⁴³

<https://applications.emro.who.int/docs/EMCSR267A.pdf?ua=1> (last visited Oct. 25, 2021) (depicting a COVID-19 informational graphic with text in Arabic).

42. *Protective Measures Covid-19 Awareness Poster* (illustration), in GOV'T OF INDIA, MINISTRY OF HEALTH AND FAM. WELFARE, https://www.mohfw.gov.in/assets/images/ProtectivemeasuresHin_page-0001.png (last visited Oct. 25, 2021).

43. *Covid-19 Prevention Flyer* (illustration), in GOV'T OF PAK., MINISTRY OF NAT'L HEALTH SERVS. (Mar. 26, 2020), <https://data2.unhcr.org/en/documents/details/74847> (depicting a COVID-19 flyer with text in Pashto).

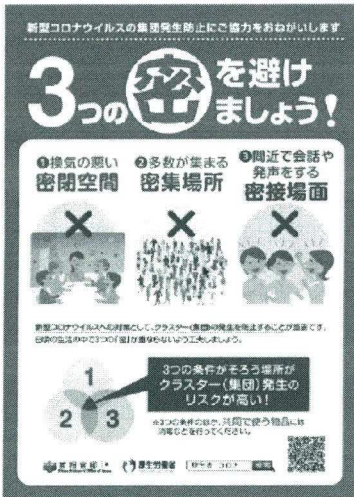
East Asia



China⁴⁴



China⁴⁵



Japan⁴⁶



Taiwan (Republic of China)⁴⁷

44. *Covid-19 Prevention* (illustration), in HSK ONLINE, <https://pbs.twimg.com/media/ETyJaPQUEAEps0Z?format=jpg&name=small> (last visited Oct. 25, 2021).

45. *Stay Clean, Stay Strong Poster* (illustration), in JWDC STUDIO (2020), <https://static.designboom.com/wp-content/uploads/2020/02/jwdkpartners-coronavirus-posters-designboom-001.jpg>.

46. *Avoid the Three C's "sanmitsu"* (illustration), in JAPAN MINISTRY OF HEALTH, LAB., AND WELFARE (2020), <https://www.mhlw.go.jp/content/000645566.pdf> (depicting the Three C's "sanmitsu" ("the three too-close-nesses")). Yijiang Zhong, *3-Cs and the Three Mysteries: Japanese Esoteric Buddhism's Response to the Covid-19 Pandemic*, ASIA RSCH. CTR. (Sept. 25, 2020), <https://ari.nus.edu.sg/20331-51/>.

47. Illustration of COVID-19 Bulletin in Taiwan, in TAIWAN CTRS. FOR DISEASE CONTROL, https://www.cdc.gov.tw/File/Get/C9FcbwSKr_13Y0PMzflNoQ (last visited Oct. 25, 2021).

Australia



48



49

48. State of Victoria, *Protect Yourself and Your Family* (illustration), in *Coronavirus—Resources For Your Family*, NOFASD AUSTL. (Mar. 18, 2020), <https://www.nofasd.org.au/blog/coronavirus/> (depicting a COVID-19 bulletin from Australia).

49. Illustration of COVID-19 Bulletin in Australia, in Northern Territory Government, *Coronavirus—Resources For Your Family*, NOFASD AUSTL. (Mar. 18, 2020), <https://www.nofasd.org.au/wp-content/uploads/2020/03/NT-visual-coronavirus.jpg>.

Europe



Serbia⁵⁰



United Kingdom⁵²



Spain⁵¹



United Kingdom⁵³

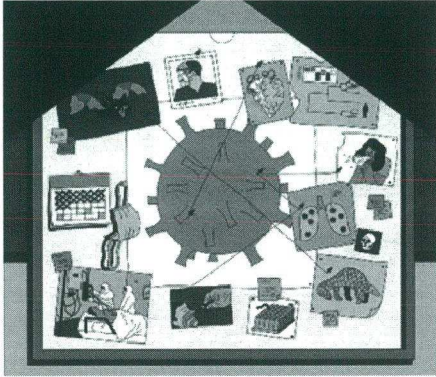
50. World Health Org. Eur., *COVID-19 Children and Masks* (illustration), in *COVID-19 Children and Masks*, WORLD HEALTH ORG. (Mar. 11, 2020), <https://who.canto.global/v/coronavirus/album/VOF6R?display=thumbnail&viewIndex=1&gSortingForward=false&gOrderProp=uploadDate&from=thumbnail&column=image&id=d1364fuccd4357c246g2bof97q>.

51. Government of Spain, Ministry of Health, Information for Citizens, <https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/ciudadania.htm>

52. *Hand-washing technique with soap and water* (illustration), in NAT'L HEALTH SERVS. (Jan. 12, 2017), <https://www.hey.nhs.uk/wp/wp-content/uploads/2017/01/Hand-washing-1.png>.

53. *If You Have Been to Wuhan, China in the Last 14 Days...* (illustration), in *Coronavirus (COVID-19) Update*, NAT'L HEALTH SERVS., (Feb. 12, 2020), https://www.thh.nhs.uk/images/news/2020/feb/Coronavirus-England-poster-advice-16_9.jpg.

North America



North America⁵⁴



Canada⁵⁵



Mexico⁵⁶



United States⁵⁷

54. Fabio Buonocore, Illustration of the deadly impact of the COVID-19 virus, in David Cyranoski, *Profile of a Killer: The Complex Biology Powering the Coronavirus Pandemic*, NATURE (May 4, 2020), <https://www.nature.com/articles/d41586-020-01315-7>. This example is instructive because it is one of the few that takes a wholly visual and not a multimodal approach (using words in addition to pictures).

55. Fraser Health Authority, *Covid-19-How to practice physical distancing* (illustration), in *Covid-19 Posts and Infographics*, DECODA (Mar. 31, 2020), <https://decoda.ca/wp-content/uploads/Physical-distancing-infographic-791x1024-1.jpg>.

56. *Recommendations Provided by the WHO so You Can Protect Your Family and Everyone Around You from COVID-19* (illustration), in *COVID-19 Health News and Tips*, EUROAMERICAN SCH. OF MONTERREY, https://web.euroamericanosur.edu.mx/apps/pages/index.jsp?uREC_ID=1716184&type=d&pREC_ID=1942037 (last visited Oct. 29, 2021).

57. *Stop the spread of germs* (illustration), in *Infographics*, BALTIMORE CITY HEALTH DEPT., https://health.baltimorecity.gov/sites/default/files/CDC%20Poster_stop-the-spread-of-germs_Chinese-page-001.jpg (last visited Oct. 29, 2021) (depicting COVID-19 informational graphic in Chinese).

South America



Colombia⁵⁸



Brazil⁵⁹

58. Después de 9 meses de implementación (illustration), in RELIEFWEB (July 2020), <https://reliefweb.int/sites/reliefweb.int/files/styles/report-large/public/resources-pdf-previews/1528779-78018.png?itok=5Or4Jul6>.

59. Alan Magalhães, Illustration of Brazilian stamps dedicated to COVID-19, in *Brazilian Post Launches Stamps Dedicated to COVID-19 in Association with PAHO*, PAN AM. HEALTH ORG. (July 8, 2020), https://www.paho.org/sites/default/files/styles/flexslider_full/public/2020-08/selos-correios-opas-covid19-1000px.jpg?h=707772c7&itok=MMwm_sxS.

Why would governments, U.N. agencies, and national and local health authorities all use the same form of communication? The answer is that visual communication can reach the widest possible audiences and communicates across cultures, verbal languages, and literacy limitations.⁶⁰ Governments and other authorities choose visual infographics as the media for communicating essential information about health and safety in the Covid-19 crisis *because* visual media can communicate to all members of a population, including indigenous peoples, persons from diverse and unassimilated cultures, and persons with limited literacy skills who cannot receive and comprehend the information in verbal textual form no matter what language the verbal text is translated into.⁶¹ As expressed by the Rainforest Foundation,

Informing citizens of the dos and don'ts to prevent infection is key to contain the spread of the virus. In much of Latin America, however, useful and verified information doesn't always reach vulnerable and remote populations, including indigenous peoples, and misinformation is in abundance.⁶²

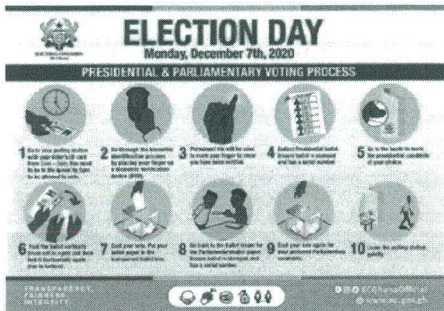
In case readers are wondering if the Covid-19 crisis is a one-off, a sui generis rhetorical situation of extreme and exigent circumstances, the same patterns are observed in the legal realm in the communication of laws and regulations regarding voting rights and polling procedures across the globe.⁶³ In the case of voting laws, the time period for communication is not as compressed or urgent as the time requirements for communicating serious public health information regarding a global pandemic, but the overall goal of the communication is the same: to communicate important legal information to as many persons as possible, including people of diverse cultures and with limited language skills who cannot receive and comprehend the information in verbal textual form. Once again, from country to country and culture to culture, the same visual sequential narrative style is used to communicate voting laws and polling procedures:

60. Mark Egan et al., *Bright Infographics & Minimal Text Make Handwashing Posters Most Effective – Result From an Online Experiment*, BEHAV. INSIGHTS TEAM (Mar. 23, 2020), <https://www.bi.team/blogs/bright-infographics-and-minimal-text-make-handwashing-posters-most-effective/> (analyzing efficacy of Covid-19 public health informational materials using different multimodal and visual designs).

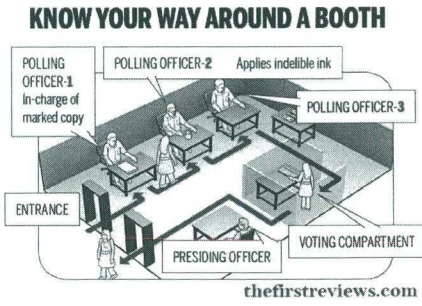
61. See Rainforest Foundation, *Indigenous Peoples in the Amazon Mobilize to Prevent COVID-19*, RAINFOREST FOUND. U.S., (Mar. 28, 2020), <https://rainforestfoundation.org/indigenous-peoples-in-the-amazon-mobilize-to-prevent-covid-19/>; see also Witts University, *supra* note 35.

62. See Rainforest Foundation, *supra* note 61.

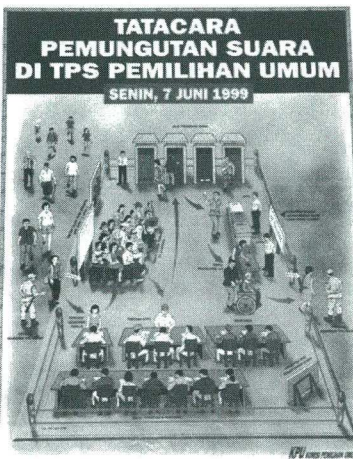
63. See Michael D. Murray, *Visualizing Voting: the Universality of Visual Narrative in the Communication of Voting Laws and Polling Procedures*, 15 FLA. INT'L L. REV. (forthcoming 2021).



Ghana⁶⁷



India⁶⁸



Indonesia⁶⁹



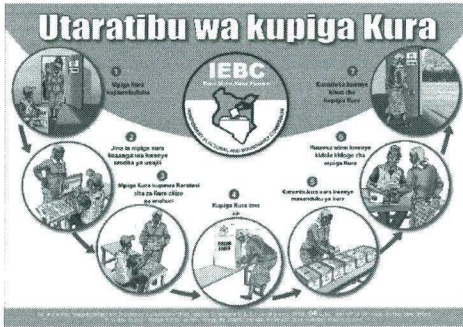
Jamaica⁷⁰

67. *Election Day* (illustration), in Electoral Comm'n of Ghana (@ECGhanaOfficial), TWITTER (Dec. 3, 2020, 11:44 AM), <https://pbs.twimg.com/media/EoVJy42XcAEaJ6?format=jpg&name=900x900>.

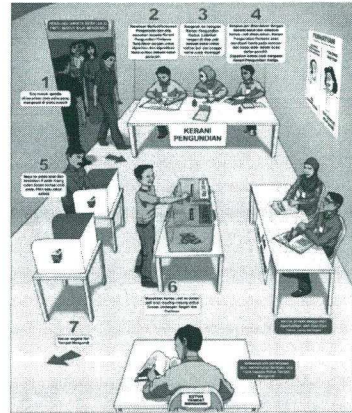
68. *Know Your Way Around a Booth* (illustration), in *How to Vote India*, THEFIRSTREVIEWS.COM (July 27, 2020), <https://www.thefirstreviews.com/wp-content/uploads/2020/07/2-4.jpg>.

69. *Tatacara Pemungutan Suara Di Tps Pemilihan Umum* (illustration), in *Indonesia: Poster by Indonesian Election Commission (KPU) [1999]*, ACE PROJECT (1999), [https://aceproject.org/ero-en/regions/asia/ID/indonesia poster-1.jpg/image](https://aceproject.org/ero-en/regions/asia/ID/indonesia%20poster-1.jpg/image) (last visited Oct. 30, 2021) (explaining voting procedures in Indonesian for an Indonesian election on June 7, 1999).

70. *The Correct way to Vote using EVIBIS* (illustration), in *The Electronic Voter Identification and Ballot Issuing System*, ELECTORAL COMM'N OF JAM.(Oct. 2017), <https://ecj.com.jm/wp-content/uploads/2017/10/How-to-vote-poster-768x1024.jpg>.



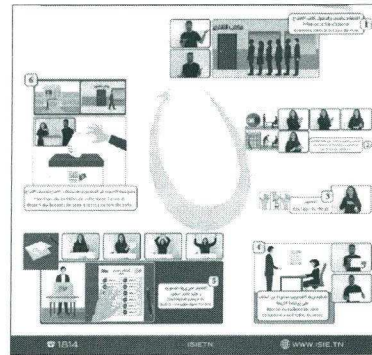
Kenya⁷¹



Malaysia⁷²



Paraguay⁷³



Tunisia⁷⁴

71. Illustration of voting procedure in Kenya with text in Kiswahili, in INDEP. ELECTORAL AND BOUNDARIES COMM’N, https://www.iebc.or.ke/images/voting_kis.jpg (last visited Oct. 30, 2021).

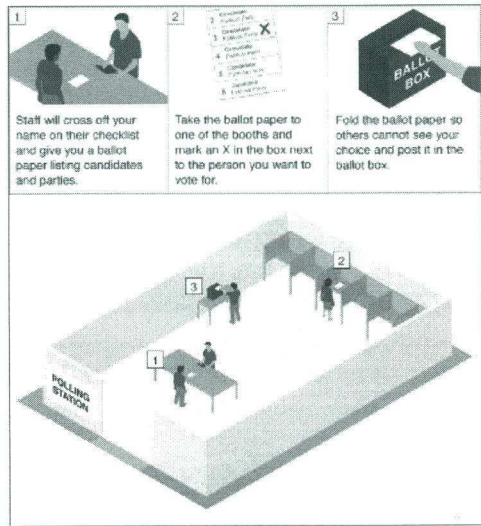
72. Election Comm’n of Malaysia, illustration of voting procedure in Malaysian elections, in Ellia Pikri, *The A-Z of How to Vote in Malaysia’s Upcoming General Elections*, VULCAN POST (Feb. 7, 2018), <https://vulcanpost.com/632562/general-elections-voting-malaysia/>.

73. Justicia Electoral, *Proceso de Votación* (photograph), in *Voting Process*, ELECTION ACCESS (May 2016), <http://www.electionaccess.org/en/resources/voter-education/voter-education/427/> (depicting a graphic with photographs explaining the process of voting in Paraguay).

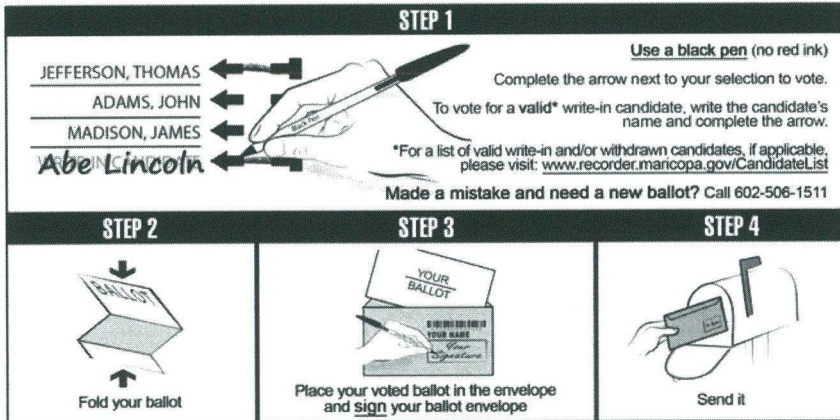
74. *Assistance for Voters with Disabilities Poster* (illustration) in TUNISIA INDEP. HIGH AUTH. FOR ELECTIONS (Dec. 2018), https://eaccess.s3.amazonaws.com/media/resource/Tunisia_voter_education_poster_2018.png.740x0_q85_autocrop_crop-smart_upscale.jpg.



Ukraine⁷⁵



United Kingdom⁷⁶



United States (Arizona)⁷⁷

75. Illustration depicting steps of the voting process for a 1998 Ukrainian election, in Ukraine: Poster "Steps in the Voting Process" (1998), ACE PROJECT, <https://aceproject.org/eroen/regions/europe/UA/UA-doc1.jpg> (last visited Oct. 30, 2021).

76. Illustration explaining the process of voting at a polling station in a UK election in 2015, in Election 2015: How to Vote, BBC NEWS (May 6, 2015), https://ichef.bbci.co.uk/news/976/media/images/82824000/png/_82824260_voting_process_624_v2.png.

77. Maricopa Cnty. Elections Dep't., Illustration of instructions for voters to correct a mistake on their ballots, in Jessica Boehm, Can You Correct a Mistake on Your Ballot? New Instruction Spurs Debate in Maricopa County, AZCENTRAL (Aug. 20, 2020, 7:01 AM), <https://www.azcentral.com/story/news/local/phoenix/2020/08/20/maricopa-county-lets-voters-cross-out-mistakes-ballots/3400558001/>.



United States (Vermont)⁷⁸

In terms of visual context, visual cultural context, and visual rhetoric, this collection of communications about voting laws and polling information from around the globe is an important visual object lesson for the universality of visual communication. While the text of the examples varies from nation to nation and language to language, the visual forms do not. All of the nations sampled above use sequential narrative devices. All of these nations choose visual forms of sequential narrative. Most of the nations sampled use pictorial forms (comics, cartoons,

78. Stephanie Zuppo, *A Guide to Voting in Vermont in the 2020 General Election* (illustration), *in* VPR Staff, *A Cartoon Guide to Voting in Vermont's General Election*, VT. PUB. RADIO (Oct. 2, 2020, 3:57 PM), <https://www.vpr.org/vpr-news/2020-10-02/a-cartoon-guide-to-voting-in-vermonts-general-election>.

graphic depictions) and some use diagrams and flowcharts, but all of these nations communicate legal information on voting and polling laws visually.⁷⁹

This study of the communication of voting laws and polling procedures teaches significant lessons for legal communication because the overall goal of the communication of voting information was to communicate important legal information to as many persons as possible, including those whose language and literacy skills are limited and who cannot receive and comprehend the information in verbal textual form. From country to country and culture to culture, the same visual sequential narrative style is used to communicate voting laws and polling procedures as was used to communicate critical health and safety information.

D. Universality and the Science of Perception and Cognition

The lessons of the universality of visual communication begin with the science of perception and cognition. The study of visual communication in cognitive neuroscience builds on the discovery that the eyes are really an extension of the brain,⁸⁰ and the additional discovery that visual perception is a learned skill.⁸¹ Neuroscientists have successfully tested the theory that the development of visual perception and comprehension is culturally- and community-influenced; in other words, neuroscientists have tested and confirmed that a viewer's community and cultural experiences play a role in the viewer's visual perception and comprehension of images.⁸² In fact, there is a sub-field of neuroscience referred to as cultural neuroscience and neuroanthropology.⁸³ One observable effect of

79. It is important to observe that it is not just one particular image—one cartoon or picture—that is copied and repeated over and over again. Instead, it is the visual genre—visual sequential narrative—that is repeated over and over again.

80. See JOHN E. DOWLING, *THE RETINA: AN APPROACHABLE ART OF THE BRAIN* 8 (1987); see also Lies De Groef & Maria Francesca Cordeiro, *Is the Eye an Extension of the Brain in Central Nervous System Disease?*, 34 *J. OCULAR PHARMACOLOGY & THERAPEUTICS* 129 (2018); see generally JAMES T. ENNS, *THE THINKING EYE, THE SEEING BRAIN* (2004).

81. See R.B. BURNS & C.B. DOBSON, *INTRODUCTORY PSYCHOLOGY* 406–09 (Springer 2012) (1984); *LEARNING TO SEE (BETTER): IMPROVING VISUAL DEFICITS WITH PERCEPTUAL LEARNING* 5 (Gianluca Campana & Marcello Maniglia eds., 2015); AMY E. HERMAN, *VISUAL INTELLIGENCE: SHARPEN YOUR PERCEPTION, CHANGE YOUR LIFE*, at xv–xvi, 31 (2016).

82. That community and culture play a role in visual perception and comprehension of images has been a staple of cognitive development theory for decades. See PAUL MARTIN LESTER, *VISUAL COMMUNICATION: IMAGES WITH MESSAGES* 69–70 (6th ed. 2014); STEPHEN VON TETZCHNER & MOGENS HYGUM JENSEN, *PERSPECTIVES ON THEORY AND PRACTICE IN AUGMENTATIVE AND ALTERNATIVE COMM.* 113–15, 121 (2003); *HANDBOOK OF VISUAL COMMUNICATION: THEORY, METHODS, AND MEDIA* 553–76 (Kenneth L. Smith et al. eds. 2004).

83. See generally JOAN Y. CHIAO, *CULTURAL NEUROSCIENCE: CULTURAL INFLUENCES ON BRAIN FUNCTION* (2009); *CRITICAL NEUROSCIENCE: A HANDBOOK OF THE SOCIAL AND CULTURAL CONTEXTS OF NEUROSCIENCE* (Suparna Choudhury & Jan Slaby eds., 2016); *THE ENCULTURED BRAIN: AN*

community and culture on perception and comprehension tested by neuroscientists is the development of mirror neurons in the brains of members of a community that fire in empathetic reaction to an event in which one member of the community receives a stimulus or reward.⁸⁴ The mirror neurons fire in the brains of the observers looking at the event at the same rate as is occurring in the brain of the community member receiving the stimulus or reward.⁸⁵ From evidence such as the development of mirror neurons, the theory has developed that there is a shared visual experience among members of a community⁸⁶—and with contemporary world media being both globally accessed and intensely visual, this research supports the theory that world media has become a “visual commons,”⁸⁷ and that “connected” and “plugged-in” viewers across the globe experience a common “visual culture” in a global community.⁸⁸

INTRODUCTION TO NEUROANTHROPOLOGY (Daniel H. Lende & Greg Downey eds., 2012); THE OXFORD HANDBOOK OF CULTURAL NEUROSCIENCE 53 (Joan Y. Chiao et al. eds., 2016).

84. See Roy Mukamel et al., *Single-Neuron Responses in Humans During Execution and Observation of Actions*, 20 CURRENT BIOLOGY 750–56 (2010); see also Vilayanur Ramachandran, *Mirror Neurons and Imitation Learning as the Driving Force Behind the Great Leap Forward in Human Evolution*, EDGE (May 31, 2000), <https://www.edge.org/conversation/mirror-neurons-and-imitation-learning-as-the-driving-force-behind-the-great-leap-forward-in-human-evolution>; Giacomo Rizzolatti et al., *Understanding Motor Events: A Neurophysiological Study*, 91 EXPERIMENTAL BRAIN RSCH. 176–80 (1992).

85. See sources cited in note 84, *supra*.

86. See generally Richard Cook et al., *Mirror Neurons: From Origin to Function*, 37 BEHAV. & BRAIN SCIS. 177 (2014); Marco Del Giudice et al., *Programmed to Learn? The Ontogeny of Mirror Neurons*, 12 DEVELOPMENTAL SCI. 350–63 (2009); GIACOMO RIZZOLATTI & CORRADO SINIGAGLIA, *MIRRORS IN THE BRAIN: HOW OUR MINDS SHARE ACTIONS AND EMOTIONS* 38–49, 180–92 (Frances Anderson trans., Oxford University Press 2008) (2006); Giacomo Rizzolatti & Laila Craighero, *The Mirror-Neuron System*, 27 ANN. REV. NEUROSCIENCE 169, 169 (2004). The theory is not without its critics. See Antonia F. de C. Hamilton, *Reflecting on the Mirror Neuron System in Autism: A Systematic Review of Current Theories*, 3 DEVELOPMENTAL COGNITIVE NEUROSCIENCE 91 (2013); GREGORY HICKOK, *THE MYTH OF MIRROR NEURONS: THE REAL NEUROSCIENCE OF COMMUNICATION AND COGNITION* (2014); JohnMark Taylor, *Mirror Neurons After a Quarter Century: New Light, New Cracks*, SITN (July 25, 2016), <http://sitn.hms.harvard.edu/flash/2016/mirror-neurons-quarter-century-new-light-new-cracks/>.

87. See NICHOLAS MIRZOEFF, *HOW TO SEE THE WORLD* 94–97 (2015) [hereinafter *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, 208–17 (Jens Eder & Charlotte Klonk eds., 2017); Jussi Parikka, *The City and the City: London 2012 Visual (Un)Commons*, in POSTDIGITAL AESTHETICS: ART, COMPUTATION AND DESIGN 203 (David M. Berry & Michael Dieter eds., 2012).

88. See generally VISUAL CULTURE: IMAGES AND INTERPRETATIONS (Norman Bryson et al. eds., 1994); MARGARET DIKOVITSKAYA, *VISUAL CULTURE: THE STUDY OF THE VISUAL AFTER THE CULTURAL TURN* 47–84

(2005); CHRIS JENKS, *VISUAL CULTURE* (2017); NICHOLAS MIRZOEFF, *AN INTRODUCTION TO VISUAL CULTURE* 1–31 (1999).

The influence that media, culture, and community exert in the perception and comprehension of visual images is expansive. For decades culture and media theorists have observed that mass media, starting with radio, film, and television, and leading up to our current internet and social media environment, have made the world smaller and common cultural influences broader, at least to persons in the developed and developing world with access to contemporary media of the times, presently including the internet and social media.⁸⁹ One of the groundbreaking (at the time) observations of media theorist Marshall McLuhan was that modern media creates a culture of its own—a “global village”⁹⁰—and this effect of media is greater than individual content—in fact, “the medium is the message.”⁹¹

The growing knowledge of the effectiveness and greater universality of visually-dominated communications has lessons for law practice. The practice of law has participated in an expanded use of visuals in legal documents and works of advocacy, but adoption has been slow and in many cases reluctant.⁹² “[C]omputers and computer-generated . . . images have become increasingly prevalent in the courtroom, to the point of becoming one of a ‘litigator’s most powerful weapon[s].’”⁹³

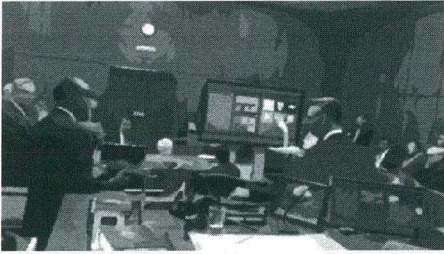
89. See, e.g., Anthony Faiola & Sorin A. Matei, *Cultural Cognitive Style and Web Design: Beyond a Behavioral Inquiry into Computer-Mediated Communication*, 11 J. COMPUT.-MEDIATED COMM’N 375, 375–94 (2006); HOW TO SEE THE WORLD, *supra* note 86, at 146–49; Len Unsworth, *Multiliteracies and Metalanguage: Describing Image/Text Relations as a Resource for Negotiating Multimodal Texts*, in HANDBOOK OF RESEARCH ON NEW LITERACIES 377–405 (Julie Coiro et al. eds., 2014); 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).

90. See MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN, at xii–xiii (1964); MARSHALL MCLUHAN & QUENTIN FIORE, THE MEDIUM IS THE MESSAGE 63 (1968). The latter text was accidentally printed with the title “Message” not “Message,” but McLuhan happily accepted the revised title as ironically appropriate. See Eric McLuhan, *Commonly Asked Questions (and Answers)*, MARSHALL MCLUHAN, <https://marshallmcluhan.com/common-questions/> (last visited Sept. 26, 2021).

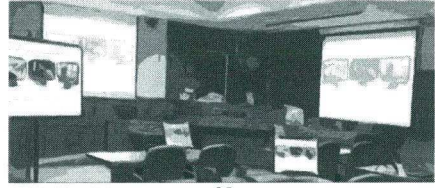
91. See *supra* note 89.

92. See NEAL FEIGENSON & CHRISTINA SPIESEL, LAW ON DISPLAY: THE DIGITAL TRANSFORMATION OF LEGAL PERSUASION AND JUDGMENT, at xi–xiii, 4–5 (2009); 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, 25–27 (2015); Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1695–98 (2014); Rebecca Tushnet, *Worth a Thousand Words: The Images of Copyright*, 125 HARV. L. REV. 683, 694 (2012); VOLKER BOEHME-NEBLER, PICTORIAL LAW: MODERN LAW AND THE POWER OF PICTURES, at ix, 127–30 (2010) (attorneys are slow to adopt using visuals to practice law in Germany, too).

93. Matthew S. Robertson, *Guilty as Photoshopped: An Examination of Recent Case Law and Scholarship Regarding the Use of Non-Probative Images in the Courtroom*, 55 WASHBURN L.J. 731, 732 (2016) (quoting Katherine A. Godden, *Cartoon Criminals: The Unclear Future of Computer Animation in the Minnesota Criminal Courtroom—State v. Stewart*, 30 WM. MITCHELL L. REV. 355,



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In the very near future, scholars anticipate that visual legal rhetoric will become a standard part of legal practice not just in litigation, but also in transactional practice, and all areas of law⁹⁶ because of the communicative and rhetorical power of visual media.⁹⁷ This Article attempts to spread the knowledge of greater universality of visual legal communication and examine and critique specific examples of highly visual legal works under a lens of visual literacy, visual rhetoric, and *mise en scène* design analysis. This Article will discuss and critique examples

356 (2003)); *see also* *Visual Rhetoric and Tropes*, *supra* note 17, at 207–10; *Sharpest Tool*, *supra* note 17, at 64–67.

94. Photograph of visuals in a courthouse, in David Handschuh, *Nassau Supreme Court Displays New Courtroom Technology*, LAW.COM (Sept. 19, 2019 1:27 PM), <https://www.law.com/newyorklawjournal/2019/09/19/nassau-supreme-court-displays-new-courtroom-technology/?slreturn=20210810181804>.

95. Photograph of visuals in a courthouse, in *Trial Tip: Top 10 Extra Hardware Items Every Trial Presentation Tech Should Bring to the Courtroom*, TRIALSUPPORT.US, https://i1.wp.com/www.trialsupport.us/wp-content/uploads/2018/08/Courtroom-5_multiscreen-trial_technology_screens-1-e1535574205215.jpg?fit=2000%2C665&ssl=1 (last visited Oct. 30, 2021).

96. *See generally* FEIGENSON & SPIESEL, *supra* note 92; Lenora Ledwon, *Understanding Visual Metaphors: What Graphic Novels Can Teach Lawyers About Visual Storytelling*, 63 DRAKE L. REV. 193, 237 (2015); Porter, *supra* note 92, at 1687–1782; Christina O. Spiesel, Richard K. Sherwin & Neal Feigenson, *Law in the Age of Images: The Challenge of Visual Literacy*, in CONTEMPORARY ISSUES OF THE SEMIOTICS OF LAW 231, 231 (Anne Wagner et al. eds., 2005); Richard K. Sherwin, *A Manifesto for Visual Legal Realism*, 40 LOY. L.A. L. REV. 719, 724–36 (2007).

97. *See, e.g.,* *Cartoon Contracts*, *supra* note 18, at 111; Fred Galves, *Where the Not-So-Wild Things Are*, 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 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, 323–24 (2010); *see generally* 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).

that indicate that outside the courtroom, visuals are making inroads in contracts, legal information guides, and other forms of legal communication.⁹⁸

II. ANALYSIS OF COMMUNICATION BY IMAGES

The analysis of whether highly visual legal works fulfill the objective of cross-lingual and cross-cultural communication begins with an examination of the interpretation of images. The first step is to understand the definition of an “image” as “a sight which has been recreated or reproduced.”⁹⁹ An image is a human-made or human-designed appearance or set of appearances, which is separated from the place and time or the concept it depicts, creates, or recreates.¹⁰⁰

Like textual verbal communications, images are authored and embody the author’s way of seeing.¹⁰¹ For example, photographs are not a mechanical record, but rather an author’s creation of an image that is distinct from an infinity of other possible ways of envisioning and creating that image.¹⁰²

Humans “are neurologically wired with an overwhelmingly visual sensory ability.”¹⁰³ “Research estimates that eighty to eighty-five percent of our perception, learning, cognition, and activities are mediated through vision.”¹⁰⁴ Images become imprinted in our visual memory,¹⁰⁵ which connects us to the visual culture around

98. See *infra* notes 176–84, 263–71, and 293–312.

99. JOHN BERGER, *WAYS OF SEEING* 9–10 (1972); see also *COMMUNICATION STUDIES: THE ESSENTIAL RESOURCE* 11–12 (Andrew Beck, Peter Bennett & Peter Wall eds., 2013); SUNIL MANGHANI, *IMAGE STUDIES: THEORY AND PRACTICE*, at xxv (2012); *Cartoon Contracts*, *supra* note 18.

100. *Cartoon Contracts*, *supra* note 18, at 111; see also BERGER, *supra* note 98, at 9–10.

101. BERGER, *supra* note 98, at 9–10; *Mise en Scène*, *supra* note 17, at 243; *Cartoon Contracts*, *supra* note 18, at 111.

102. See BERGER, *supra* note 98, at 9–10; *COMMUNICATION STUDIES*, *supra* note 98, at 11–12; MANGHANI, *supra* note 98, at xxv; *Cartoon Contracts*, *supra* note 18, at 111; see also *Burrow-Giles Lithographic Co. v. Saroni*, 111 U.S. 53, 58 (1884) (discussing the elements of authorship of visual expression); Michael D. Murray, *Post-Myriad Genetics Copyright of Synthetic Biology and Living Media*, 10 OKLA. J.L. & TECH. 1, 7–8, 43–44, 52–53 (2014) [hereinafter *Post-Myriad Genetics*].

103. SUNNI BROWN, *THE DOODLE REVOLUTION: UNLOCK THE POWER TO THINK DIFFERENTLY* 222 (2014); see also Pauline Dewan, *Words Versus Pictures: Leveraging the Research on Visual Communication*, 10 PARTNERSHIP: CANADIAN J. LIBR. & INFO. PRAC. & RSCH. 1, 2 (2015); Christophe Morin, *The Biological Basis of Visual Perception*, LINKEDIN (Mar. 23, 2016), <https://www.linkedin.com/pulse/biological-basis-visual-perception-christophe-morin-ph-d->; *Cartoon Contracts*, *supra* note 18, at 106.

104. Thomas Politzer, *Vision Is Our Dominant Sense*, BRAINLINE (July 26, 2018), <https://www.brainline.org/article/vision-our-dominant-sense>; see also *Cartoon Contracts*, *supra* note 18, at 106.

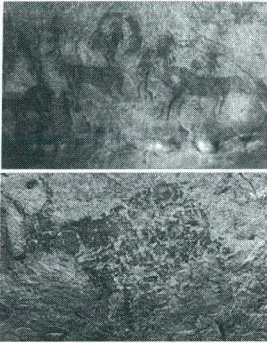
105. See RICHARD HOWELLS & JOAQUIM NEGREIROS, *VISUAL CULTURE*, at xi (2d ed. 2012).

us, and leads to the concepts of a collective understanding of visuals reflected in the concept of a global village,¹⁰⁶ a “visual commons,” and a “visual community.”¹⁰⁷

A. Historical and Contemporary Universality of Visual Communication

There are many examples, some current and some historical, where purely visual devices communicate a universal or broadly cross-cultural message, as seen in the following examples:

PICTORIAL COMMUNICATION



Cave Paintings

The earliest form of non-oral communication was pictorial, and examples from (clockwise from top left) India,¹⁰⁸ Libya,¹⁰⁹ France,¹¹⁰ and Borneo,¹¹¹ show a remarkable similarity in execution of the images of natural creatures across far-distanced cultures.

106. See MCLUHAN, *supra* note 89, at vii-viii; MCLUHAN & FIORE, *supra* note 90, at 63, 67.

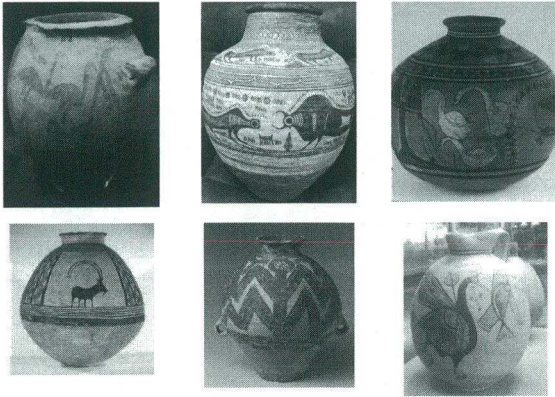
107. See *supra* notes 86–87.

108. Photograph of Bhimbetka rock shelter painting, in Soudip, *Bhimbetka Rock Shelters Historical Facts and Pictures*, THE HISTORY HUB (July 29, 2017), <https://www.thehistoryhub.com/bhimbetka-rock-shelters-facts-pictures.htm>. The Bhimbetka rock shelters paintings are estimated to be 30,000 years old. *Bhimbetka Rock Shelters*, NEW WORLD ENCYC., https://www.newworldencyclopedia.org/entry/Bhimbetka_rock_shelters (last visited Sept. 26, 2021).

109. Photograph of rock paintings in Libyan Desert, in *Libya's Cave Paintings are Between a Rock and a Hard Place*, TRT WORLD (Feb. 23, 2018), <https://www.trtworld.com/art-culture/libya-s-cave-paintings-are-between-a-rock-and-a-hard-place-15438>. These rock paintings are estimated to be 14,000 years old. *Id.*

110. Photograph of aurochs, horses and deer in the Lascaux Caves in Montignac, France, in *Lascaux Caves*, ANCIENT-WISDOM, <http://www.ancient-wisdom.com/francelascaux.htm> (last visited Sept. 26, 2021). The Lascaux cave paintings are estimated to be 20,000 years old. *The Cave Paintings of the Lascaux Cave*, BRADSHAW FOUND., <http://www.bradshawfoundation.com/lascaux/> (last visited Sept. 26, 2021).

111. Luc-Henri Fage, photograph of “[a] painting of wild cattle, dated at about 40,000 years old, in a cave in East Kalimantan, Borneo, part of a large panel containing at least two other animals,” in Ian Sample, *World's ‘Oldest Figurative Painting’ Discovered in Borneo Cave*, THE GUARDIAN (Nov. 7, 2018), <https://www.theguardian.com/science/2018/nov/07/worlds-oldest-figurative-painting-discovered-in-borneo-cave>. The “painting of a beast daubed on the wall of a limestone cave in Borneo may be the oldest known example of figurative rock art.” *Id.*



*Artistic and Symbolic
Expression on Pottery*

Similarly, the pictorial illustrations on pottery from (top row, left to right) Egypt,¹¹² India (Indus Valley),¹¹³ Sudan (Nubia),¹¹⁴ (second row, left to right) Iran (Chalcolithic),¹¹⁵ China (Majiayao),¹¹⁶ and Cyprus,¹¹⁷ show remarkable similarity in the rendering of forms of birds and other natural creatures.

Visual communication evolved from pure pictorial communication to the use of more abstract and symbolic representations (pictograms) of persons, objects, places, and actions, and to even more abstract metaphorical representations (ideograms) to communicate ideas and concepts.¹¹⁸

112. Photograph of Egyptian (Abydos) Bronze Age pottery, in Sunday Moulton, *The Bronze Age Art: Pottery & Sculpture*, STUDY.COM, <https://study.com/academy/lesson/the-bronze-age-art-pottery-sculpture.html> (last visited Sept. 26, 2021).

113. Photograph of “3rd Millenium BCE Indus Valley painted vessel,” in @arosen423, PINTEREST, <https://www.pinterest.com/pin/528680443743985868/?lp=true> (last visited Oct. 29, 2021).

114. Photograph of 1st Century BCE Nubian pottery from Meroe, Sudan, in @treefrogcreativ, PINTEREST, <https://www.pinterest.com/pin/419397784023508260/?lp=true> (last visited Oct. 29, 2021).

115. *Storage jar decorated with mountain goats* (photograph), in *Storage Jar Decorated with Mountain Goats*, THE MET, <https://www.metmuseum.org/toah/works-of-art/59.52/> (last visited Nov. 26, 2019).

116. *Jar (Guan)* (Photograph), in *Jar (Guan)*, THE MET, <https://www.metmuseum.org/art/collection/search/44722> (last visited Sept. 26, 2021).

117. *Bronze Age Jug, about 3500 B.C. Cyprus* (photograph), in Elizabeth Hawksley, *Bulgarian Pottery: The Shock of the Old*, ELIZABETHHAWKSLEY.COM (Apr. 23, 2017), <http://elizabethhawksley.com/the-shock-of-the-old/>.

118. Pictograms or pictographs are visualizations depicting the actual subject, be it a person, place, activity, or object, using simplified representations as symbolic imagery. Elif Ayiter, *Ideograms*, THE HIST. OF VISUAL COMM’N, <https://www.historyofvisualcommunication.com/02-ideograms> (last visited Sept. 27, 2021); see also George Yule, *Pictograms and ideograms*, in GEORGE YULE, *THE STUDY OF LANGUAGE 21* (3d ed. 2005). An example of a pictogram is using an outline or silhouette of a padlock to represent an actual padlock. Ideograms or ideographs are one step more abstract than pictograms and attempt to visually communicate a concept or idea through visual metaphor using a collage of symbols or shapes. Ayiter, *supra*. For example, using an outline of a lock with a dollar sign

PICTOGRAMS & IDEOGRAMS

	Fish	Bird	Ax	Arrow	Bottle
MESOPOTAMIA					
EGYPT					
CHINA					

120

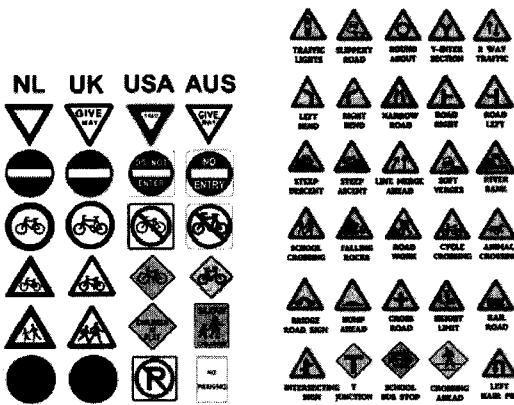
Pictogrammatic and Ideogrammatic Writing

As shown in these examples from three ancient languages developed at different times and in widely separated locations of the ancient world, the development of languages from the representational to the symbolic, in the form of pictograms (or icons) to ideograms, is a common characteristic of the earliest written forms of communication, occurring across cultures and languages.¹¹⁹

on it, combined with an outline of a person whose hand is moving a key toward the lock to communicate the concept of “locking up your money” or “securing your investment.”

119. See Denise Schmandt-Besserat, *The Evolution of Writing*, in INT’L ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 761–66 (James Wright ed., 2d ed. 2015); Gasper Vidovic, *Icons – The Only Language Everyone Understands*, THE WORLD OF ICONS (Aug. 4, 2016), <https://world-of-icons.com/icons-the-only-language-everyone-understands-daf6d8f5009>; *International Language: The Emergence of Icons and Pictograms*, JOTFORM (July 20, 2020), <https://www.jotform.com/blog/the-emergence-icons-pictograms-58839/>.

120. Gaston Maspero, *Comparative evolution of Cuneiform, Egyptian and Chinese Characters* (illustration), in *Ideogram*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Ideogram> (last visited Sept. 27, 2021).



International & Nigeria¹²³



International GHS Pictograms¹²⁴



China¹²⁵

*Common Road Signage,¹²¹
Shipping and Transport
Hazard Warnings¹²²
in Many Countries*

(pictogrammatic and ideogrammatic communication)
In the modern world, pictograms (icons) are used in many contexts from road signs, shipping containers, packaging, product instructions, to airport signage to communicate more universally across the barriers of language and culture.

121. See *infra* note 123; see also *Road Signs for Cycling in the Netherlands*, BICYCLE DUTCH (June 4, 2012), <https://bicycledutch.wordpress.com/2012/06/04/road-signs-for-cycling-in-the-netherlands/>; *A Guide to Road Signs in Saudi Arabia*, EXPATWOMAN (Sept. 26, 2013), <https://www.expatswoman.com/saudi-arabia/home-car/guide-to-road-signs-in-saudi-arabia>.

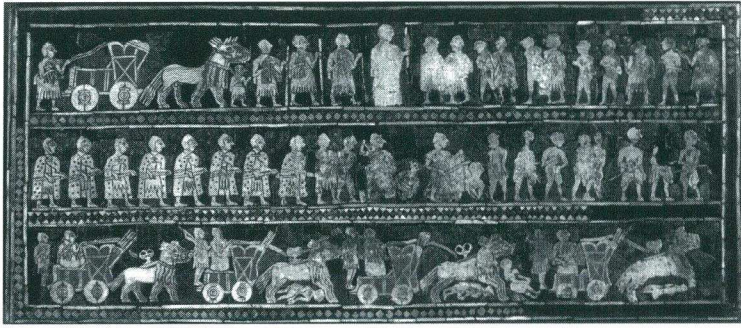
122. See *infra* notes 124–25.

123. Illustration of traffic signs from the Netherlands, the UK, the United States, and Australia, *in Netherlands Traffic Signs, MOVE TO NETHERLANDS*, https://movetonetherlands.com/survivaltips_getting_around_traffic_signs.html (last visited Sept. 27, 2021) (image on the top left); Illustration of road signs and their meanings, *in Hassana Obi, Road Signs in Nigeria - Everything You Need to Know*, NAIJAUTO (Oct. 5, 2018), <https://naijauto.com/safe-driving/road-signs-in-nigeria-everything-you-need-to-know-1259> (image on top right).

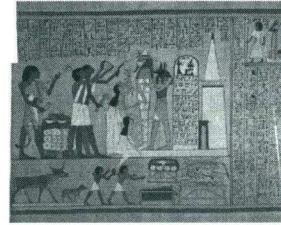
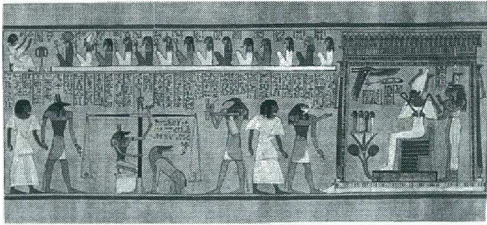
124. Illustration of GHS Hazard Pictograms, *in GHS Hazard Pictograms*, CONCEPTDRAW (last visited Sept. 27, 2021) <https://www.conceptdraw.com/solution-park/engineering-ghs-hazard-pictograms>.

125. Illustration of Chinese GHS hazard pictograms, *in China Approves Final Standard on GHS Codes and Hazard Statements*, CHEMICAL WATCH (Feb. 17, 2016), <https://chemicalwatch.com/45202/china-approves-final-standard-on-ghs-codes-and-hazard-statements#overlay-strip>.

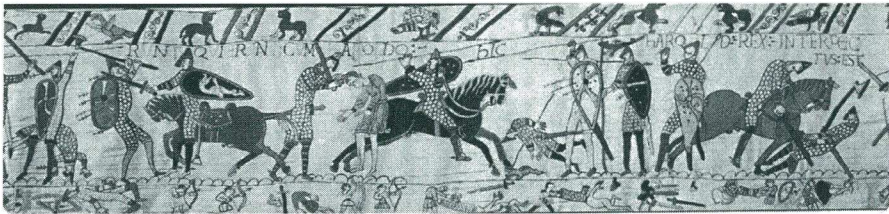
While icons and ideograms developed into modern languages (e.g., Chinese, Japanese), simultaneously, the visual genre of sequential narrative developed in the ancient world. This method of storytelling is recognizable in works from ancient Ur in Mesopotamia and Egypt, and more recently, from France:



Mesopotamia: Royal Standard of Ur, War Panel (c. 2600 BCE)¹²⁶



Egypt: Book of the Dead of Hunefer,
Hunefer's Judgment in the Presence of Osiris (c. 1275 BCE)^{127 128}



France: Bayeux Tapestry (c. 1070)¹²⁹

126. Photograph of the Standard of Ur "War Panel," in *The Standard of Ur – Mesopotamia Mosaic – The British Museum – London, England*, MOSAIC ART SOURCE (Jan. 17, 2007), <https://mosaicartsource.wordpress.com/2007/01/17/the-standard-of-ur-mesopotamia-mosaic-the-british-museum-london/>.

127. *Page from the book of the Dead of Ani* (photograph), in *Hunefer's Judgment in the Presence of Osiris*, SMARTHISTORY.ORG, <https://smarthistory.org/hunefers-judgement-in-the-presence-of-osiris/> (last visited Sept. 10, 2021).

128. *Id.*

129. Photograph of the Bayeux Tapestry, in *The Complete Bayeux Tapestry*, THE HISTORY OF THE DISCOVERY OF CINEMATOGRAPHY, <http://www.precinemahistory.net/bayeux.htm> (last visited Sept. 27, 2021). The Bayeux Tapestry is a work of sequential storytelling that "tells the story of William of

These remotely distanced examples give an indication of the development of symbolic and pictorial communication over the 250 centuries when visual communication was the dominant recorded form of communication.

B. *The Method of Analysis*

An analysis of a highly visual legal communication¹³⁰ should be evaluated through the lens of visual literacy studies,¹³¹ visual rhetoric,¹³² and *mise en scène* principles.¹³³ Specifically, for each example, I will analyze the:

- Immediate visual context,¹³⁴
- Immediate verbal context,¹³⁵
- Visual cultural context,¹³⁶
- *Mise en scène* and the rhetorical topic of arrangement,¹³⁷ and
- Visual rhetoric, ethics, and professionalism.¹³⁸

Normandy's invasion of England and of it's [sic] King Harold, and the Battle of Hastings in 1066 as well as the events immediately following. . . . The Bayeux Tapestry is not a true tapestry," because "[a] true tapestry is woven," but the Bayeux work is "a sewn embroidery." *Id.*

130. This article employs the same method of analysis described in Michael D. Murray, *A New Methodology for the Analysis of Visuals in Legal Works*, 15 FLA. INT'L L. REV. (forthcoming 2021) [hereinafter *New Methodology*]. This method is used in several other works. See *Diagrammatics*, *supra* note 18; *Cartoon Contracts*, *supra* note 18.

131. See, e.g., Amy K. Anderson, *Image/Text and Text/Image: Reimagining Multimodal Relationships through Dissociation* 48 (2014) (Ph.D. dissertation, University of Kentucky), https://uknowledge.uky.edu/english_etds/11/; David S. Birdsell & Leo Groarke, *Toward a Theory of Visual Argument*, 33 ARGUMENTATION AND ADVOC. 1, 5 (1996).

132. See, e.g., Jewel, *supra* note 97; *Visual Rhetoric and Tropes*, *supra* note 16, at 186, 193–200; *Ethics of Visual Legal Rhetoric*, *supra* note 16, at 108, 124–30, 142, 146, 149, 152–54; Sherwin et al., *supra* note 3, at 260; Stanchi, *supra* note 95, at 305.

133. *Cartoon Contracts*, *supra* note 18, at 11–12; *Mise en Scène*, *supra* note 17, at 259–312.

134. See *supra* note 132.

135. See generally *Cartoon Contracts*, *supra* note 18, at 11, 13.

136. See *supra* note 87; HOW TO SEE THE WORLD, *supra* note 86.

137. See *supra* note 132.

138. See generally *Ethics of Visual Legal Rhetoric*, *supra* note 17; *Mise en Scène*, *supra* note 17, at 259–312. Several authors have evaluated the ethics and professionalism of works of visual legal rhetoric. See generally Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 J. LEGAL WRITING INST. 57 (2015); Porter, *supra* note 92. Johansen and 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 that are decorative, or distracting and "unprofessional," and on the other, "transformative" uses that are ethical and effective in achieving organizational, interpretive, or representative functions. Johansen & Robbins, *supra* note 137.

1. Immediate Visual Context

The concept of “immediate visual context” focuses on the visual, non-verbal contents of a work and their placement with other visual components of this work.¹³⁹ Visualization of works that communicate the law seeks to clarify, augment, simplify, or illustrate these legal works by turning unclear and opaque legal jargon and “legalese” into accessible communication.¹⁴⁰ Thus, the tools used—single images, multiple images, diagrammatics, and other visual compositions—must be evaluated by the lessons of *mise en scène*¹⁴¹ and interpreted by the principles of visual literacy¹⁴² and visual culture.¹⁴³ Individually, a single image can communicate a message, even an argument, but in combination, the sequential narrative of multiple images can tell a much more complete story,¹⁴⁴ and, in legal contexts, form a complete expression of a legal communication.¹⁴⁵

Even in this first step of the analysis, one can see 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,¹⁴⁶ and by the principles of visual literacy¹⁴⁷ concerning the reading and interpretation of works within a visual cultural context.¹⁴⁸ Individually, a single image can communicate a message, even an argument,¹⁴⁹ and in combination, the sequential narrative of multiple images can tell a complete story.¹⁵⁰ In legal

139. *New Methodology*, *supra* note 129, at 88.

140. *Id.* at 11.

141. *See infra* Part II(B)(4).

142. *See supra* notes 25, 130 and *infra* note 146.

143. *See infra* Part II(B)(3).

144. *See generally* COHN, *supra* note 33; COMICS AND SEQUENTIAL ART, *supra* note 33, at 1–5; GRAPHIC STORYTELLING, *supra* note 33, at xvi–xvii; MCCLOUD, *supra* note 33, at 62–69; TERENCE WRIGHT, THE PHOTOGRAPHY HANDBOOK 75–77 (2002).

145. *See Ethics of Visual Legal Rhetoric*, *supra* note 17, at 131–32 (analyzing sequential storytelling in a comic strip brief).

146. *Mise en Scène*, *supra* note 18, at 259–312.

147. *See* Maria Avgerinou & John D. Ericson, *A Review of the Concept of Visual Literacy*, 28 BRIT. J. EDUC. TECH. 280 (1997); *see also* 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 (L. Burbank & D. 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.”).

148. *See generally* VISUAL CULTURE: IMAGES AND INTERPRETATIONS (Norman Bryson et al. eds., 1994); DIKOVITSKAYA, *supra* note 87; Faiola & Matei, *supra* note 88, at 375–94; JENKS, *supra* note 87; MIRZOEFF, *supra* note 87, at 1–31; Young, *supra* note 88, at 325–26, 327–31, 343–52.

149. *See supra* note 14.

150. *See, e.g., supra* note 21.

contexts, images might form a complete expression of a legal communication,¹⁵¹ but is far more likely that legal works will be multimodal in design, using both words and images.¹⁵²

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*,¹⁵³ I discussed the support for a plain meaning rule that examines visual works on their face to find and apply their meaning.¹⁵⁴ Courts have applied a plain meaning analysis to visuals in contracts, transactional documents, and other legal works.¹⁵⁵ Copyright, trademark, and patent laws rely on the ability of the courts and the finders of fact to examine visual works on their face and discern the content and meaning and all other relevant aspects of the works.¹⁵⁶

151. See *supra* note 18.

152. See Gerlinde Berger-Walliser et al., *From Visualization to Legal Design: A Collaborative and Creative Process*, 54 AM. BUS. L.J. 347, 349–50, 372–73 (2017) [hereinafter *From Visualization to Legal Design*]; Margolis, *supra* note 92, at 25–26.

153. *Cartoon Contracts*, *supra* note 18 (discussing the use of a photograph to convey an argument in litigation).

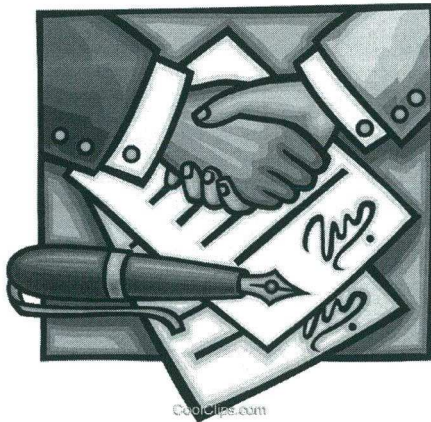
154. *Id.*

155. See *Blaylock v. City of Philadelphia*, 504 F.3d 405, 413–14 (3d Cir. 2007) (examining two police photographs to determine whether the parties tell contradictory stories); *United States v. Courtade*, 929 F.3d 186, 192 (4th Cir. 2019) (“[W]e can dispose of this case based on the objective characteristics of the video alone.”); *United States v. 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, 769 (10th Cir. 2018) (applying plain meaning rule to determine whether something is a “graphic, illustration, [or] chart” in contract proposals); *Kasparian v. AvalonBay Cmty’s, Inc.*, 66 Cal. Rptr. 3d 885, 894–95 (Cal. Ct. App. 2007) (“It is incumbent on the reviewing court to examine the photographs for itself and make its own determinations.”); *cf. Caruthersville v. Huffman*, 171 S.W. 323, 325 (Mo. 1914) (“In construing plats of this character [this court] must give effect to the plain meaning and intent they exhibit by their outlines as well as by their words.”); *accord Weis v. Miller*, 805 S.W.2d 683 (Mo. Ct. App. 1990).

156. 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] examine[s] ‘whether the work is informational or creative.’” (quoting *Worldwide Church of God v. Phila. Church of God*, 227 F.3d 1110, 1118 (9th Cir. 2000))); *see also id.* (“[Under t]he 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.’” (quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 586 (1994))). 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); *see also 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*, 318 F.3d 1143, 1148 (Fed. Cir. 2003) (“After

Commentators have noted that, “[the] plain meaning rule comes as close as possible to representing the current prevailing interpretive method for images in law.”¹⁵⁷ The plain meaning rule also applies to litigation documents including exhibits in litigation¹⁵⁸ and photographic and audiovisual works submitted in a legal proceeding.¹⁵⁹

Immediate Visual Context Analysis Example



Immediate Visual Context: This image¹⁶⁰ communicates a business contracting situation. The image communicates this without words through symbolic imagery that would be recognizable across many countries and many cultures: a handshake is symbolic of an agreement. The handshake is depicted over two written documents each of which has a squiggle line symbolic of a signature. The depiction of a handshake over a signed writing communicates that the writing is a contract. Some effort was taken to show that the signature and the lines on the two documents are the same—as in

duplicates of the same writing; another characteristic of a contract. The signature symbol is reinforced by the image of an old-fashioned fountain pen, most likely chosen for two reasons: older pens used ink, not some kind of gel or other fluid, and “putting ink to the paper” and “inking a signature” are concepts associated with business and contracting. In addition, the distinctive nib of a fountain pen helps to distinguish this cartoon image from other slender cylindrical objects (pencils,

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); *accord* Day Int’l, Inc. v. Reeves Bros., 260 F.3d 1343, 1348 (Fed. Cir. 2001).

157. Porter, *supra* note 92, at 1778; see also James Durling, *Diagramming Interpretation*, 35 YALE J. ON REGUL. 325, 334–35 (2018) (explaining that the court may visually diagram a contract to interpret its meaning); Mitchell, *supra* note 31, at 838–43 (gathering factors to explain why courts are equipped to interpret images in contracts).

158. See also Griffin Indus. v. Irvin, 496 F.3d 1189, 1206 (11th Cir. 2007); Ginsberg v. Lennar Fla. Holdings, 645 So. 2d 490, 494 (Fla. Dist. Ct. App. 1994).

159. *E.g.*, Scott v. Harris, 550 U.S. 372, 380–81 (2007) (“[The lower court] should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.”).

160. Business Contract Image (illustration), in COOLCLIPS, http://clipart.coolclips.com/480/vectors/tf05177/CoolClips_vc013690.png (last visited Mar. 12, 2021). CoolClips offers royalty free images and icons for personal, non-commercial use. See *Royalty-Free License Agreement*, COOLCLIPS, <http://search.coolclips.com/support/License.aspx>.

crayons, markers, screen styluses), none of which communicate “ink” and “signature” nearly as well as a fountain pen. The “business” context of this agreement is shown by the formal business suits worn by the two persons. Only the end of the jacket sleeves and the cuffs of the shirts are needed to communicate that the persons are businesspeople or professionals engaged in an important activity. Formal suit coats, blazers, or sports coats are not worn for casual activities. The image needs no words to communicate all of these messages, but the viewer may desire a little more to the story of the image, and here, Gestalt psychology¹⁶¹ would fill in the narrative that precedes the image: two people agreed to a writing and signed off on duplicate forms of the same document. Hence, in its totality (its Gestalt), this image depicts the formation of a contractual agreement.

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(B)(3) below), the analysis should look for more subtle, sometimes nuanced, or ambiguous meanings.¹⁶² Where the meaning appears to be ambiguous, or even contradictory from the text, the ambiguity or the contradiction should be noted in the analysis.¹⁶³

2. 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.¹⁶⁴ The methodology evaluates the words used and their contribution to the meaning of the entire multimodal work, and it evaluates whether the words are required to make a clear and meaningful statement of the message of the multimodal work as a whole.¹⁶⁵

161. See RUDOLF ARNHEIM, *ART AND VISUAL PERCEPTION: A PSYCHOLOGY OF THE CREATIVE EYE* 4–6 (2d ed. 2004); E. BRUCE GOLDSTEIN, *COGNITIVE PSYCHOLOGY: CONNECTING MIND, RESEARCH AND EVERYDAY EXPERIENCE* 64, 71–72 (4th ed. 2015); see also Lisa Graham, *Gestalt Theory in Interactive Media Design*, 2 J. HUMANS. & SOC. SCIS. 1–2 (2008); BRUNO PETERMANN, *THE GESTALT THEORY AND THE PROBLEM OF CONFIGURATION* 29–39 (1999); PAUL THAGARD, *COHERENCE IN THOUGHT AND ACTION* 58–59 (2002).

162. See Roland Barthes, *IMAGE, MUSIC, TEXT* 39–41 (Stephen Heath trans., 1977); JOHN A. BATEMAN, *MULTIMODALITY AND GENRE: A FOUNDATION FOR THE SYSTEMATIC ANALYSIS OF MULTIMODAL DOCUMENTS* (2008) (discussing “multiplication of meanings”).

163. See Mitchell, *supra* note 31, at 837–39 (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 to the meaning of the visual elements. *Id.*

164. *New Methodology*, *supra* note 129, at 18.

165. See *Cartoon Contracts*, *supra* note 18, at 11, 13.

The consideration of “immediate verbal context” takes into account the contemporary practice of multimodal communication¹⁶⁶—in other words, communication through both words and pictures in the same work. Given the overwhelming prevalence of multimodal communication in contemporary media¹⁶⁷ and in legal communication, which typically does not use images alone but only in combination with words,¹⁶⁸ the analysis of immediate verbal context in addition to immediate visual context will be required in almost every example examined in this Article. Immediate verbal context analysis first evaluates whether the image or images alone make a clear and meaningful statement or argument apart from the contextualization of the words accompanying the image.¹⁶⁹ Second, it evaluates the meaning of the entire work, words and images, using the interpretation principles and principles discussed in the section above.¹⁷⁰

Immediate Verbal Context Analysis Example



Camilla Baasch Andersen, *Three-Panel Cartoon on Intellectual Property Rights*¹⁷¹

166. See generally BATEMAN, *supra* note 161; GUNTHER KRESS & THEO VAN LEEUWEN, *MULTIMODAL DISCOURSE: THE MODES AND MEDIA OF CONTEMPORARY COMMUNICATION* 20 (1st ed. 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* 325 (Claire Lutkewitte ed. 2014); Ticien Marie Sassoubre, *Visual Persuasion for Lawyers*, 68 *J. LEGAL EDUC.* 82, 91 (2018).

167. See *supra*, note 165.

168. See Clay Calvert, *Every Picture Tells A Story, Don't It? Wrestling with the Complex Relationship Among Photographs, Words and Newsworthiness in Journalistic Storytelling*, 33 *COLUM. J.L. & ARTS* 349, 360–61 (2010); Dustin Marlan, *Visual Metaphor and Trademark Distinctiveness*, 93 *WASH. L. REV.* 767, 783 (2018); EDWARD F. MCQUARRIE & BARBARA J. PHILLIPS, *VISUAL BRANDING: A RHETORICAL AND HISTORICAL ANALYSIS* 179 (2016); Sassoubre, *supra* note 166, at 91.

169. Anderson, *supra* note 130 at 37–48.

170. See *supra* Part II(B)(1).

171. Camilla Andersen & Loui Silvestro, *Illustration of Three-Panel Cartoon on Preserving and Sharing Intellectual Property Rights*, in *Practical Examples of Comic Book and Creative Contracting*, *COMIC BOOK CONTRACTS.*, [https://www.comicbookcontracts.com/overview-practical-examples_\(last](https://www.comicbookcontracts.com/overview-practical-examples_(last)

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.

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.¹⁷² 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.¹⁷³

3. Visual Cultural Context

“Visual cultural context” examines the community and societal context that has educated the viewer and continues to influence the perception and interpretation of images.¹⁷⁴ Developing a sense and thereafter a skill in interpreting visually coded messages leads to an understanding that there is a visual culture of images¹⁷⁵ that includes iconic images from landmark cases and legal controversies, as well as

visited July 19, 2020). This example is further analyzed in *Cartoon Contracts*, *supra* note 18, at 72–74.

172. See *From Visualization to Legal Design*, *supra* note 152, 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. See also Lori D. Johnson, *Say the Magic Word: A Rhetorical Analysis of Contract Drafting Choices*, 65 SYRACUSE L. REV. 451, 452–55 (2015).

173. See generally Barthes, *supra* note 162, at 17–20.

174. See generally Sassoubre, *supra* note 166.

175. *Id.* at 87–88.

stock stories and stock scenes¹⁷⁶ that allow attorneys and the target audiences of legal communications to make sense of visual and multimodal communication.¹⁷⁷ 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.¹⁷⁸ 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).¹⁷⁹ The Gestalt effects allow viewers to expand the meaning and message of static media into a more complete narrative,¹⁸⁰ and permits viewers to fully understand the denoted and connoted messages of the work.¹⁸¹

Visual Cultural Context Analysis Example



The U.S. Department of Labor made a public service announcement video¹⁸² 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.

176. The doctrine of *scènes à faire* in copyright law presumes that there are stock images and stock scenes that are not the creation of any one author, but are part of the collective culture of images. *See* *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1118–19 (9th Cir. 2018); *see also* *Benay v. Warner Bros. Ent.*, 607 F.3d 620, 624–25 (9th Cir. 2010); *see also* Leslie A. Kurtz, *Copyright: The Scenes à Faire Doctrine*, 41 FLA. L. REV. 79, 86–99 (1989); Michael D. Murray, *Copyright, Originality, and the End of the Scènes à Faire and Merger Doctrines for Visual Works*, 58 BAYLOR L. REV. 779, 781 (2006) [hereinafter *Copyright, Originality, and the End*].

177. *Sassoubre*, *supra* note 166, at 1.

178. *See generally* *Copyright, Originality, and the End*, *supra* note 176.

179. *See* *Graham*, *supra* note 161.

180. *See supra* note 161. The Gestalt theory is not connected to Gestalt Psychotherapy, aside from sharing the root word, “Gestalt” (German for “shape,” “form,” or “configuration”). ARNHEIM, *supra* note 161, at 4. The connotation of “Gestalt” as used in cognitive psychology is that the “form” or “shape” referred to as the “Gestalt” is a whole that is constituted by smaller parts, but the whole (or the meaning of the whole) is greater than the sum of the individual parts, and dissembled parts would not convey the meaning that the whole conveys. PETERMANN, *supra* note 161, at 29–39; *see also* *Gestalt*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/gestalt> [https://perma.cc/6R3N-77AF].

181. *See* *Barthes*, *supra* note 162, at 17–21, 25–31, 42–47.

182. U.S. Dep’t of Lab., *Batgirl Teaches Batman a Lesson about Equal Pay*, YOUTUBE (Aug. 11, 2011), https://www.youtube.com/watch?v=n00xZ_mKQgk (screen capture at 0:06).

Visual Cultural Context: The success of the Department of Labor’s video depends on its audience having a visual cultural understanding of the American superhero 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.¹⁸³

4. *Mise en Scène* and the Rhetorical Topic of Arrangement

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.¹⁸⁴ *Mise en Scène* examines topics that, with regard to both visual and verbal media, would fall under the rhetorical topic of arrangement.¹⁸⁵ 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.¹⁸⁶ This step of the analysis is relevant to graphical diagrammatics¹⁸⁷ as well as to pictorial and artistic works¹⁸⁸ and highly representational works.¹⁸⁹

183. *Id.*

184. *See supra* note 18.

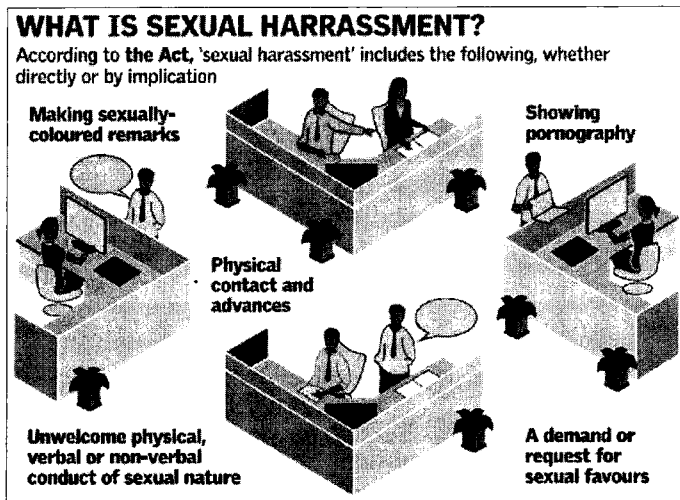
185. Regarding the topic (topoi) of arrangement in rhetoric, *see* EDWARD P.J. CORBETT & ROBERT J. CONNORS, *CLASSICAL RHETORIC FOR THE MODERN STUDENT* 17, 19–20 (4th ed. 1999); *see also* Gabriele Knappe, *Classical Rhetoric in Anglo-Saxon England*, 27 *ANGLO-SAXON ENGLAND* 5, 25 (1998), *see also* *Visual Rhetoric and Tropes*, *supra* note 17, at 201; *see also* 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*].

186. *Mise en Scène*, *supra* note 17, at 259.

187. *See, e.g., supra* note 18.

188. *See, e.g., supra* note 18.

189. *See, e.g., supra* note 18.

Mise en Scène and Arrangement Analysis Example

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Mise en Scène and Arrangement: The composition and arrangement of this legal informational visual allows four vignettes of office-level sexual harassment to be depicted in the same small space by creating a scene of a crowded cubical arrangement. The visuals carry a lot of the communication load, although the labels appearing throughout the work are necessary to clarify what conduct is shown in the vignettes. None of the images are graphic or heavy-handed in depicting the acts of harassment, but in combination with the labels, the separate offenses shown in the vignettes are made clear. The work uses business graphics¹⁹¹ for its depictions, which is a toned-down and less emotional or inflammatory genre of sequential narrative imagery. It is perhaps helpful to keep the depictions at a “business-like” level of discourse, but it does sacrifice some of the attraction and engagement potential of more artistic or cartoon-like methods.¹⁹²

190. Kanan Dhru, *What is Sexual Harassment?* (illustration), in *EMPLOYMENT LAW, VISUAL LAW LIBRARY* (Jan. 19, 2015), <https://www.legaltechdesign.com/visualawlibrary/2015/01/19/sexual-harassment/>.

191. See *infra* Part IV (discussing business graphics); see also *Cartoon Contracts*, *supra* note 18; *Diagrammatics*, *supra* note 18, at 27–28.

192. See *infra* Part IV (discussing cartoon, comic, artistic, and pictorial methods of depiction). See also *Cartoon Contracts*, *supra* note 18.

5. 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.¹⁹³ 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.¹⁹⁴ The last step of the methodology's analysis also 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.¹⁹⁵ 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,¹⁹⁶ 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.¹⁹⁷

193. See generally Johansen & Robbins, *supra* note 138; *Ethics of Visual Legal Rhetoric*, *supra* note 17; *Mise en Scène*, *supra* note 17, at 259–312.

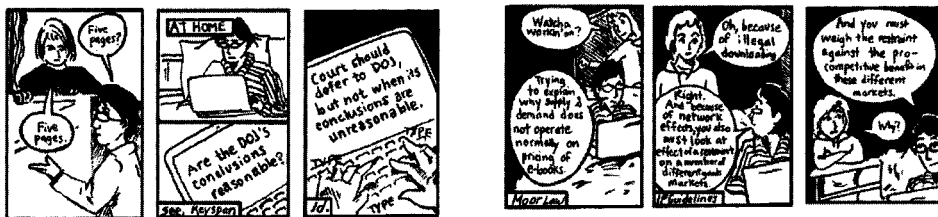
194. See JOHN J. MAKAY, SPEAKING WITH AN AUDIENCE: COMMUNICATING IDEAS AND ATTITUDES 11 (1977); KRISTEN KONRAD ROBBINS-TISCIONE, RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION 9 (2009); Gerald B. Wetlaufer, *Rhetoric and Its Denial in Legal Discourse*, 76 VA. L. REV. 1545, 1546 (1990).

195. See generally *Ethics of Visual Legal Rhetoric*, *supra* note 17; *Mise en Scène*, *supra* note 17, at 259–312. Several authors have evaluated the ethics and professionalism of works of visual legal rhetoric. See, e.g., Johansen & Robbins, *supra* note 138; Porter, *supra* note 92. Johansen and 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 that are decorative, or distracting and "unprofessional," and on the other, "transformative" uses that are ethical and effective in achieving organizational, interpretive, or representative functions. See Johansen & Robbins, *supra* note 138.

196. See generally LIESBETH KORTHALS ALTES, ETHOS AND NARRATIVE INTERPRETATION: THE NEGOTIATION OF VALUES IN FICTION, at vii–viii (2014); *Ethics of Visual Legal Rhetoric*, *supra* note 17.

197. See Derek H. Kiernan-Johnson, *The Potemkin Temptation or, the Intoxicating Effect of Rhetoric and Narrativity on American Craft Whiskey*, 15 LEGAL COMM'N & RHETORIC: JALWD 1, 36–37 (2018); *Rhetorical Canons of Law and Economics*, *supra* note 17, at 634–35; *Visual Rhetoric and Tropes*, *supra* note 17, at 214; *Rule Synthesis and Explanatory Synthesis*, *supra* note 185, at 236.

Visual Rhetoric, Ethics and Professionalism Analysis Example



Comic Strip Brief in *U.S. v. Apple, Inc.*¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰ 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 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

198. Bob Kohn, Comic Strip Brief in *U.S. v. Apple, Inc.* (illustration), in Brief of Bob Kohn as Amicus Curiae Supporting Petitioners at 1–2, *United States v. Apple, Inc.*, 889 F. Supp. 2d 623 (S.D.N.Y. 2012) (No. 12-cv-2826 DLC) [hereinafter Brief of Bob Kohn]. The visual rhetorical techniques and the ethics and professionalism issues raised by this brief have been critiqued in *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 130–32.

199. See *supra* note 198.

200. See *supra* note 198.

late into the evening writing amicus briefs).²⁰¹ 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.²⁰²

III. THE GOALS OF CROSS-LINGUAL AND CROSS-CULTURAL LEGAL COMMUNICATION

In a multimodal world of legal communication, where a diversity of languages and cultures is present in the audiences and participants in legal communication, there are a limited number of means of bridging the gaps in language and culture: One option is to ignore the gaps, and to treat "English" as the *Lingua Franca* of legal communication,²⁰³ and produce all legal communications verbally and in English. This option will undoubtedly remain popular in the United States and other English-speaking countries for years to come,²⁰⁴ but it is anathema to the theme of this Article, which seeks methods of bridging gaps in language and culture in the audiences of legal communications which make it difficult or impossible for the audiences to understand the meaning and implications of the legal communications.

A second option is to increase the use of human language translation services or machine translation software (e.g., Google Translate, Yandex.Translate, Microsoft Translator, IBM Watson Language Translation, and Systran)²⁰⁵ to attempt to convert the legal communication into the target language of the audience.²⁰⁶ Human legal language translation is a service industry in the law and

201. *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 131–32.

202. *Id.*

203. English already is recognized by many foreign scholars as the legal *Lingua Franca*, meaning the common language used in transnational and international legal communications. E.g., Jens Drolshammer & Nedim Peter Vogt, *English as the Language of Law? An Essay on the Legal Lingua Franca of a Shrinking World*, in *THE ANTHOLOGY OF SWISS LEGAL CULTURE* 1–59 (Thomas Cottier, Jens Drolshammer & Pascal Pichonnaz eds., 2003); María Angeles Orts Llopis, *Legal English as the Lingua Franca for International Law. Traits and Pitfalls for ESP Practitioners and Legal Translators*, 8 VAKKI PUBL'NS. 17 (2017), http://www.vakki.net/publications/2017/VAKKI2017_Orts_Llopis.pdf.

204. See, e.g., DAVID CRYSTAL, *ENGLISH AS A GLOBAL LANGUAGE* 127–39 (2d ed. 2003).

205. See *Best Machine Translation Software*, G2, <https://www.g2.com/categories/machine-translation> (last visited Oct. 29, 2021).

206. See Sam Berner, "Lost in Translation": *Cross-Lingual Communication, and Virtual Academic Communities* (2003) (Paper presented at the 5th Annual Conference on World Wide Web Applications); Melita Koletnik Korošec, *Applicability and Challenges of Using Machine Translation in Translator Training*, 8 ELOPE: ENG.LANGUAGE OVERSEAS PERSPS. AND ENQUIRIES 7 (2001); Hao-Chuan Wang et al., *Machine Translation vs. Common Language: Effects on Idea Exchange in Cross-*

requires a great deal of advance planning for effective use and proper timing, and it raises the possibility of potentially significant costs.²⁰⁷ As a result, many attorneys have turned to the available “do-it-yourself” tools of machine translation. Contemporary machine translation does not simply involve substituting words in one language for another, but instead applies complex linguistic algorithms that take into account syntax and grammar, semantics, and morphology (combining words from smaller words or other units of meaning), and further take into account the ambiguities of words in one or both languages involved in the translation.²⁰⁸ Even here, my discussion is simplified, because the technology of machine translation has divided between “statistical machine translation,” that compares likelihoods of whole phrases in one language being a match for whole phrases in another language, and “neural machine translators” or “deep machine learning” translators, which attempt to replicate the functions of the human brain, and examine every word and phrase for context, meaning, nuance, and many other factors that contribute to accuracy in both syntax, semantics, and intent.²⁰⁹

Machine translation is improving, but in legal contexts, the jury is still out on whether the speed and relative cost-saving nature of the service—compared to professional human legal language translation—is worth the errors, inaccuracies, and potentially prejudicial mistakes that can be and often are introduced in machine-translated legal documents.²¹⁰ There also are client confidentiality concerns raised because the most advanced of the machine translation services (e.g., Google Neural Machine Translation) incorporate the user’s input and the service’s translation of it

Lingual Groups (2013), (Paper presented at the Proceedings of the 2013 Conference on Computer Supported Cooperative Work).

207. See CONSORTIUM FOR LANGUAGE ACCESS IN THE COURTS, GUIDE TO TRANSLATION OF LEGAL MATERIALS 4–10 (2011), <https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/232>. See also Rose Kennedy, *Much Ado About Noting: Problems in the Legal Translation Industry*, 14 TEMP. INT’L & COMP. L.J. 423, 423–27 (2000).

208. See Berner, *supra* note 206, at 6; Madison Elizabeth Wahler, *A Word is Worth a Thousand Words: Legal Implications of Relying on Machine Translation Technology*, 48 STETSON L. REV. 109, 120–23 (2018).

209. Wahler, *supra* note 208, at 120–23; see also Dzmitry Bahdanau et al., *Neural Machine Translation by Jointly Learning to Align and Translate* 7 (May 19, 2016) (conference paper for Int’l Conf. on Learning Representations 2015), <https://arxiv.org/pdf/1409.0473.pdf>; Karen Turner, *Google Translate Is Getting Really, Really Accurate*, WASH. POST (Oct. 3, 2016), <https://www.washingtonpost.com/news/innovations/wp/2016/10/03/google-translate-is-getting-really-really-accurate/>; Robert D. Hof, *Deep Learning*, MIT TECH. REV. (Apr. 23, 2013), <https://www.technologyreview.com/technology/deep-learning/>.

210. Aaron Lukken, *No, Counsel, Machine Translation is *Not* Just Fine (Yet)*, HAGUE LAW BLOG (Sept. 21, 2017), <https://www.haguelawblog.com/2017/09/no-counsel-machine-translation-not-just-fine-yet/> (stating that with legal translation of any kind, if the objective is to be “cheap, fast, and accurate,” the best one can do is pick two out of the three objectives); Andrew Trotter, *Machine Translation for Legal Documents?*, GLOB. LINGO (May 2, 2014), <https://global-lingo.com/machine-translation-legal-documents/>; see generally Wahler, *supra* note 208, at 111–12, 139.

into the service's own database for development and artificial intelligence training purposes, and without extraordinary protections by contract or encryption, the original and translated versions of the text will be accessible to many eyes not within the sphere of client confidentiality.²¹¹ And more importantly for the purposes of this Article, machine translation does not assist the audience member who is illiterate in the original language of the communication, and less than fully literate in the target audience language of the translated communication.

A third option—and the option discussed in this Article—is the use of a more universal language of visuals to broaden and improve the understandability and persuasiveness of legal communications. The effort with regard to contract law, as described by Robert de Rooy, the founder of “Creative Contracts” and co-designer of its cartoon contracts, is to address and remedy the following:

[C]ontracts always seem to be documents “written by lawyers for lawyers.” They are dense, complex and hard to read if you are very literate, and nearly impossible if you have low literacy skills.²¹²

[T]o help everyone understand the contracts they must sign [will] improve contractual relationships and outcomes. At the same time, no one should be subjected to the indignity of having to sign a contract that they cannot reasonably be expected to read or understand. The best way to achieve this purpose is . . . to make contracts understandable for everyone. . . .²¹³

Drawing on the principles of visual legal rhetoric²¹⁴ and visual literacy,²¹⁵ this Article will analyze efforts to apply visuals in legal communications in five areas:

- Legal Informational Materials
- Exhibits and Illustrations used in Briefs, Memoranda, and Regulatory and Administrative Rulemaking
- Cartoon Briefs
- Pictorial or Photographic Briefs
- Graphic Novel Legal Texts

211. Matthew Blake, *Man vs. Machine: Google Translate Jeopardizes Client Confidentiality, eDiscovery*, ABOVE THE LAW (Jan. 5, 2015), <https://abovethelaw.com/2015/01/man-vs-machine-google-translate-jeopardizes-client-confidentiality-ediscovery/>; Wahler, *supra* note 208, at 135–36; Trotter, *supra* note 210.

212. Robert de Rooy, *Why Comic Contracts?*, CREATIVE CONTRACTS, <https://creative-contracts.com/why-we-do-it/> (last visited Oct. 30, 2021).

213. Robert de Rooy, *Our Story*, CREATIVE CONTRACTS., <https://creative-contracts.com/our-story/> (last visited Oct. 30, 2021).

214. *See supra* notes 17 and 21.

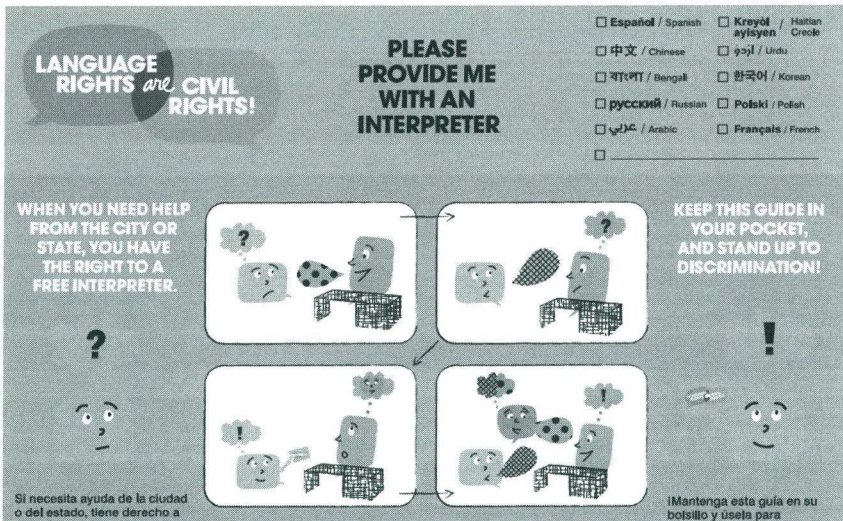
215. *See supra* notes 95–102.

- Proactive Visual Contract Genres – Cartoon Contracts, and Multimedia “Smart” Contracts

With each example, I will analyze the immediate visual context; immediate verbal context; visual cultural context; mise en scène and the rhetorical topic of arrangement; and visual rhetoric, ethics, and professionalism.

IV. LEGAL INFORMATIONAL MATERIALS

The first category of examples is the most direct form of communication of law: informing members of the public of the contents and requirements of the law. The election and voting materials displayed above are this kind of communication. Most infographics created by government and private entities to communicate employment laws, labor laws, wages and benefits, transportation laws and regulations, food safety, and many other topics fall within this category.²¹⁶ I will lead off with strong examples of the genre created by a private organization, the Center for Urban Pedagogy (CUP),²¹⁷ which attempted to explain the New York laws requiring the provision of an interpreter in dealings with city and state agencies, courts, schools New York City Vendor Licensing Rules in the following visuals:



Informational Guide Regarding the Right to an Interpreter

216. 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*, CTR. FOR URBAN PEDAGOGY, <http://welcometocup.org/About> (last visited June 27, 2019).

217. CTR. FOR URBAN PEDAGOGY, *supra* note 11.

Visual Context: 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.²¹⁸ In this excerpt, the images visualize the actual subject matter of the pamphlet—language translation—in a manner that is simple, attractive, and engaging for the viewer. The “characters” in the graphic are colorful talking blobs, and the colors reflect a nod toward diversity and racial inclusion because the colors for the characters (orange, green, and blue) are not used in a stereotypical manner (black, white, brown, or yellow for skin tone). In other words, the pamphlet does not feature particular persons of a certain color, race, or nationality, which makes the pamphlet more welcoming for a diverse audience who might use the pamphlet.

Verbal Context: The guide benefits from the words used. The top of the form presents a check box for the particular language for which the bearer requires a translator, but as far as I can tell from the languages I know and recognize, the box only lists the name of the language (e.g., the characters “Zhong wen” for “Chinese”; Français for French; etc.). The remaining text is only provided in English and Spanish. But the clever part is the visualization of the concept of translation shown in the images in the middle of the guide.

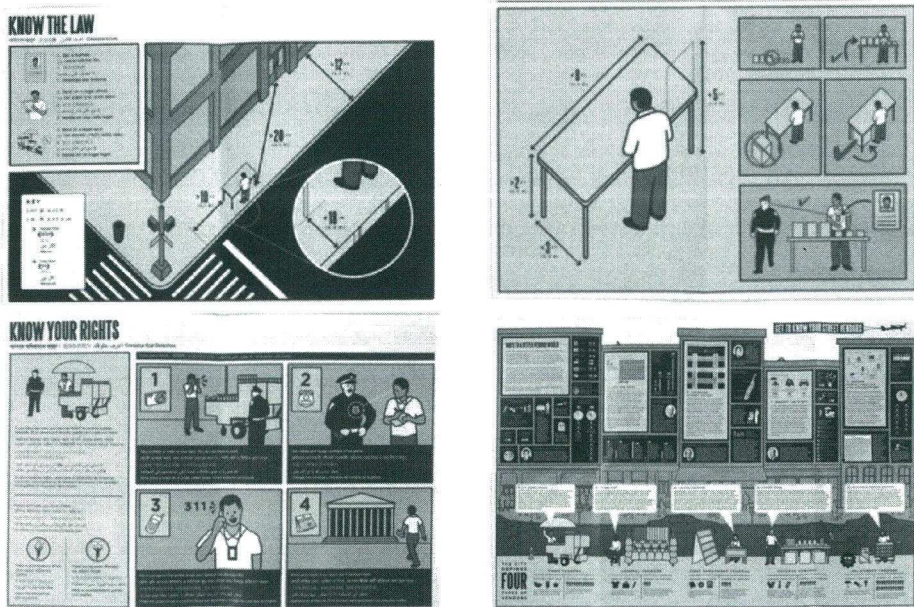
Visual Cultural Context: As noted in the visual context section, the guide does not draw on stereotypical coloration or renderings of its target audience. It uses neutral blobs, with minimal personification, to broaden the appeal of the work beyond persons of certain races, colors, or nationalities. The visual in the middle of the guide is simple enough for just about any person to follow whether or not the person is familiar with comic and cartoon narrativity.

Mise en Scène and Arrangement: I have described the design elements above that make the work simple and easy to use. Even in the cartoon portion, arrows are used to show the order in which the panels should be viewed. This work shows careful design to make it accessible and engaging to a wide variety of potential users of this legal informational work.

Visual Rhetoric, Ethics, and Professionalism: I admire the visual legal communications produced by the Center for Urban Pedagogy (CUP). The visuals of the publication are rendered in a simple, accessible, but still highly professional style. The artwork is slightly more “cartoonish” or comical than the second example of CUP’s work shown in the next example, but the artwork is not intentionally funny or amusing. It is open, accessible, and engaging, and that seems entirely

218. CENTER FOR URBAN PEDAGOGY, *supra* note 11.

appropriate for a small guide intended to be carried in the pocket of the user who needs translation services.



Vendor Power! Informational Guide²¹⁹

Visual Context: In this second example of the work of the Center for Urban Pedagogy, CUP has tried to explain and illustrate the vendor rules and regulations of New York City in a highly visual manner.²²⁰ Particularly in the *Know the Law* graphic, the ratio of pictures to words is highly tilted toward pictures. The publication uses stock images—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—to explain the different rules and steps both to comply with the law and to enforce one’s own rights.

Verbal Context: The words fill in important details of information that is 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

219. Illustrations of the rules, regulations, and rights of street vendors in New York City, in CENTER FOR URBAN PEDAGOGY, *VENDOR POWER! A GUIDE TO STREET VENDING IN NEW YORK CITY 2-4* (2009), http://welcometocup.org/file_columns/0000/0980/mpp_vendor_power.pdf.

220. *Id.*

among literate users of the publication.²²¹ If there were no text captions whatsoever, it would be more difficult for the reader to have an understanding of their rights or how the law actually operates, but, at least in the *Know the Law* and *Know Your Rights* sections, the text is kept to a minimum (although the captions appear to be longer because of the five translations provided).

Visual Cultural Context, Mise en Scène, and Visual Rhetoric: The diagrams and visuals of the publication are rendered in a simple, accessible, but still highly professional style that is not “cartoonish” or comical. The authors appear to have paid attention to depicting 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. A small amount of racial or geographical identity is drawn into the separate vendors who have names and genders in the *Get to Know Your Street Vendors* section. The intent of this approach to the artwork most likely is to help a majority of the intended audience of the publication easily identify with the central characters 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 the readers. There is a certain bite to the history and commentary on New York City government and prior mayors of New York in the *Get to Know Your Street Vendors* section 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.

As indicated above, legal informational material is not a narrow category. Government and private entities employ the universality of visuals in a variety of ways to explain laws ranging from voting rights to employment law, health and safety to transportation and traffic laws, and others in between. I will break down the examples into some sub-categories:

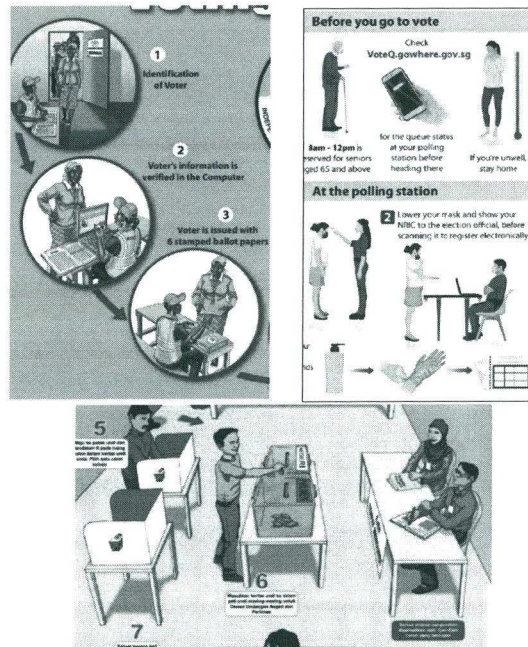
A. Cartoon and Comic Forms of Sequential Narrative

Comics and cartoons are used across the globe and in many diverse cultures. With attention to detail and with a sex- and gender-sensitive and culturally-sensitive rendering of persons and situations, comics and cartoons can reveal legal information in an engaging and unthreatening manner to widely diverse and less-than-fully literate audiences. Most of the examples below are targeted at the general

221. *Id.*

public of a state or nation, and presumably the intention is to reach as many members of the public as possible.

Even in this category, there are stylistic variations in the message. Some comic and cartoon genres are more business-like (I refer to these as business graphics²²²), while others are more cartoony, employing a comic strip sensibility using humor and exaggeration to attract and engage the viewers,²²³ while still others employ a more artistic style.²²⁴



Business Graphics²²⁵

222. *Cartoon Contracts*, *supra* note 18, at 115–17.

223. *Id.* at 117–21.

224. *Id.* at 115–17.

225. Illustration of voting procedure in Kenya with text in Kiswahili, in INDEP. ELECTORAL AND BOUNDARIES COMM'N, https://www.iebc.or.ke/images/voting_kis.jpg (last visited Nov. 4, 2021) (top left); Illustration of Covid safety measures at Singapore voting stations, in Chew Hui Min, *COVID-19: Recommended Time-bands for Voters to Cast Ballots Among New Safety Measures for Elections*, CHANNEL NEW ASIA (June 26, 2020, 1:42 PM), <https://www.channelnewsasia.com/singapore/covid-19-general-election-voting-polling-time-band-safety-720536> (top right); Election Comm'n of Malaysia, Illustration of Malaysia voting procedure, in Ellia Pikri, *The A-Z of How to Vote in Malaysia's Upcoming General Elections*, VULCAN POST (Feb. 7, 2018), <https://vulcanpost.com/632562/general-elections-voting-malaysia/> (bottom).

Visual Context: Although the above examples are not “roll on the floor laughing” funny, they do employ comic exaggeration for comic value, which presumably is intended to attract and engage viewers. The left image is excerpted from a guide to the Covid-19 crisis for Indian children produced by the India Ministry of Health and Family Welfare. Its target audience was, in fact, children, and so a highly exaggerated children’s comic style was employed. The center image—a panel from Nathaniel Burney, *The Illustrated Guide to Law, Criminal Procedure*—employs a classic comic book style, not as cartoony as the others, but recognizable for its comic-style perspective and point-of-view. The example on the right, although obviously targeted to Ukrainians of voting age, also employs a highly exaggerated cartoony style—note the placement of the eyes, nose, and mouth on the trench coat-wearing character. Again, these stylistic choices are most likely made to attract attention to the work, to welcome the hesitant viewer to stop and view the work, and hopefully to engage the viewer so that the legal information can be communicated.²²⁸

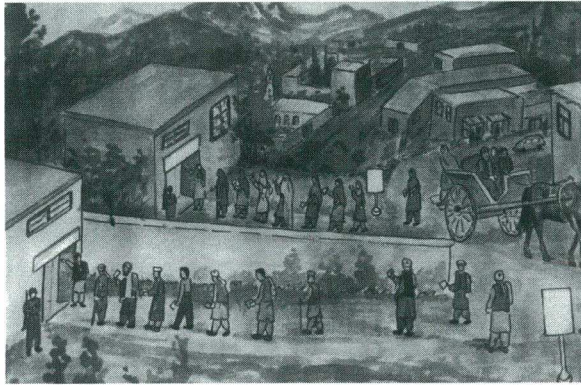
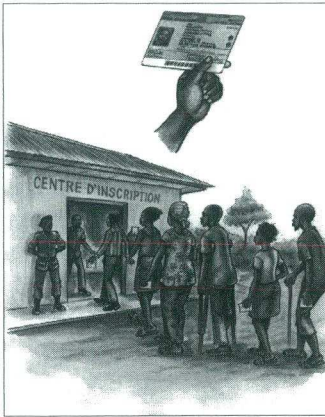
Verbal Context: The three examples here do rely heavily on verbal text to communicate the exact meaning of the message. The visuals enact and depict the verbal messages of the works, duplicating and reinforcing the messages for the benefit of both literate and literacy-challenged viewers.²²⁹

Visual Rhetoric, Ethics, and Professionalism: Although these excerpts are short, they do reveal something of the ethos of the speakers. The India Ministry of Health and Family Welfare wanted children to be informed of the seriousness of the crisis—for example, one part of the comic book tells the story of one of the children’s father who was quarantined away from his family because of the crisis, and how this is necessary to prevent his spreading of the virus²³⁰—but not to scare children into a panic. Hence, the use of a caped superhero—Vaayu—who meets the comic book children’s panic and fears with strength and reassurance that all will ultimately be well, if certain procedures are followed and a vaccine becomes available.

228. See *Cartoon Contracts*, *supra* note 18, at 138–139.

229. See *id.*

230. Khaiwal & Mor, *supra* note 227.



Artistic and Pictorial Style Sequential Narrative²³¹

Visual Context: Each of these works was created as part of a voter education campaign in the respective countries—Afghanistan, the Democratic Republic of the Congo, and India. These efforts were primarily intended to increase voter awareness in the respective countries.

231. Illustration of voters lined up in the Congo, in *Voting Day*, ELECTION ACCESS (Dec. 2014), <http://www.electionaccess.org/en/resources/voter-education/voter-education/252> (top left image); Anweesh Gupta, *Vote is Your Voice* (illustration), in *Results of Drawing Competition 2017*, CHIEF ELECTORAL OFFICER – DELHI (2017), available at: <https://pbs.twimg.com/media/C27bnOiUsAAUKwL?format=jpg&name=large>; Indep. Election Comm'n of Afg., Illustration of voters in Afghanistan lined up to vote, in *Contributing a Voice; Voter Education Campaigns*, SYSTEMATIC VOTERS' EDUC. AND ELECTORAL PARTICIPATION (June 27, 2018), <https://ecisveep.nic.in/articles.html/good-practices/international-best-practices/afghanistan-r53/> (bottom image). See also CEO, Delhi Office (@CeodelhiOffice), TWITTER (Jan. 24, 2017, 4:19 AM), <https://twitter.com/CeodelhiOffice/status/823837504734273536>.

Verbal Context: None. It is notable that these works do not use words to communicate. The image at right from India does have two small labels, “Vote is your voice” and “Electorate Turnout %” to zero in on these depictions. But whatever overall message is to be found in the three works is communicated visually.

Visual Cultural Context: The artists of each of these works took care to depict the subjects of these works with attention to culturally specific details—the manner of dress, the appearance of the local citizens, the manner in which they stand while queuing up, the local architecture, and other culturally specific memes of voting in the different nations (e.g., an I.D. card in Congo²³²; the ballot used in India).

Mise en Scène and Arrangement: The composition, coloration, and artistic rendering of these highly pictorial images allows them to attract the attention of viewers, but with enough clarity to engage them in the message of the works.

Visual Rhetoric, Ethics, and Professionalism: Artistic and pictorial works have the potential to show both the style and personality of the speaker and set a tone for the message of the depiction. Artistic and pictorial works in general can attract more attention than more mundane depictions (e.g., business graphics), they will generally have a greater emotional impact, and they may cause viewers to linger and thereby engage more with the work. This medium does sacrifice detail in favor of style, and if no words are used, the works will often rely on symbolic or metaphoric depictions, some of which might become confusing to viewers who do not share the same cultural experiences as the subjects depicted in the works. But much of the symbolic imagery of the work from India (at right) is immediately recognizable across language and cultures—the corrupting influence of money on elections, vote buying, or general indifference toward elections is contrasted with helpful images of growth, success, and self-actualization.

B. Line drawings, stick figures, and doodles

I would not have divided out this category of visual communication that uses line drawings, stick figures, and doodles except that there are so many examples in the area of law. Line drawings can exude a certain elegant confidence in their minimalistic execution, and the more free-form stick figure doodles and sketches indicate a casual simplicity that can communicate the message that the law also can be discussed and comprehended in a casual and uncomplicated manner.²³³ Many

232. *Voting day*, ELECTION ACCESS (Dec. 2014), <http://www.electionaccess.org/en/resources/voter-education/voter-education/252/>.

233. See *Better Self-Help Materials Design at Equal Justice Conference*, LEGAL DESIGN LAB (May 11, 2017), <https://www.legaltechdesign.com/2017/05/better-self-help-materials-design-at-equal->

sense. The Bill Green *Conversion* work, although intentionally using stick people and simplistically rendered buildings, trees, and vehicles, still is rendered in a clean and extremely controlled and professional-looking manner. Moving to Margaret Hagan's *Felony Murder* example (bottom right), we can see a movement to a freer, much less controlled, much less polished form of illustration that emphasizes simplicity in the form of the images. And finally, *The Litigation Process as a Timeline* (bottom left) appears completely determined to express the imagery and wording in a hasty, scribbly manner in which the images and the hand-drawn text are barely legible, even in the original size of the work.²⁴⁰

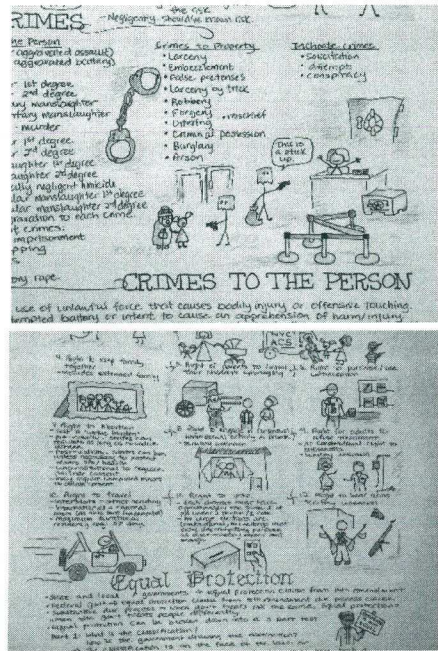
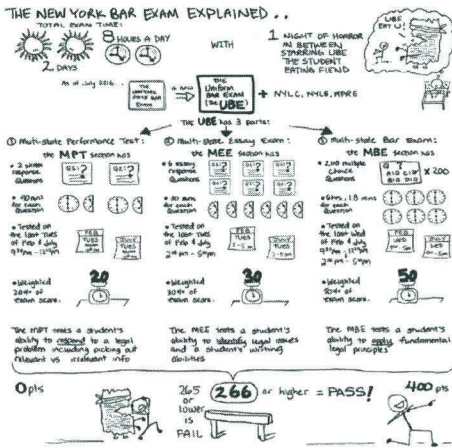
Visual Rhetoric, Ethics, and Professionalism: Nathaniel Burney's and Bill Green's works are clean, tightly controlled, and very professionally rendered, which adds a level of credibility to the imagery of the work itself and which may also carry over to add credibility and trust (i.e., ethos) to the legal communication being made in the work. Even though Green used stick people for his characters, they are the most carefully rendered stick people in the history of the genre. Margaret Hagan's *Felony Murder* example (bottom right), shows a freer, less controlled, and less polished form of illustration that employs the ethos of casual simplicity. The work uses this freer style to set the tone that the law can be discussed and comprehended in a casual and uncomplicated manner. There is nothing random about the choice to use freer, less controlled imagery; it is most definitely intended to make the work approachable and consumable without strain or effort. And finally, *The Litigation Process as a Timeline's* imagery and wording appears hasty and scribbly, and the images and hand-drawn text are barely legible. The overall impact is that the work appears to have been created by a child in a hurry, which embodies the concept discussed above that if the law can be explained in a medium that elementary school children can communicate in, the use of the medium can make the law and legal concepts discussed in the work seem less scary, less complex, and less impenetrable.

One additional example bridges the categories I have attempted to lay out in that it is a book-length work that employs line drawings, stick figures, sketches and doodles, flowcharts, and other forms of diagrammatics²⁴¹ to explain the process of and subjects tested on the New York Bar Exam. It is Wela Quan's *The New York Bar Picture Book*²⁴² in its book and website forms:

240. *Id.*

241. See generally *Diagrammatics*, *supra* note 18.

242. Wela Quan, *Crimes to the Person* (illustration), in WELA QUAN, *THE N.Y. BAR PICTURE BOOK 13* (2016) (top right); Wela Quan, *Equal Protection* (illustration), in QUAN, *supra*, at 36 (bottom right); *The New York Bar Exam Explained* (illustration), in *The New York Bar Exam Explained*, N.Y. BAR



Visual Context and Verbal Context: It is difficult to summarize the visual content on each page of the work. As the examples above show, Wela Quan visualizes both the process of the N.Y. Bar Exam and the highlights of each of the subjects tested on the exam. The drawings are illustrative, but most of the substantive information about the exam and the subjects is conveyed through the (apparently) hand-written text.

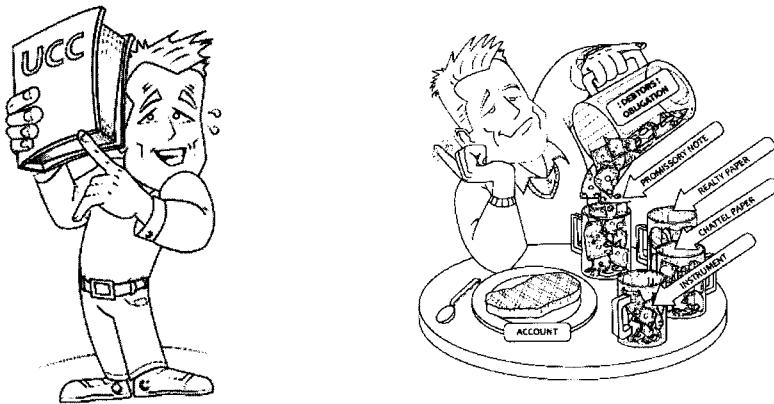
Visual Cultural Context, Mise en Scène and Arrangement: The images use a fairly classic style of line drawing for the depictions. The sketches are easy to follow and follow fairly standard and symbolic formulas for depicting the subjects and topics. The imagery is not highly culturally dependent, and as the book is intended not only for lawyers and law students but also for their parents and friends, the depictions also do not require the knowledge and experience of a law-trained reader. The images are illustrative and informative but also attractive and engaging, especially for readers who will face the bar exam in their future.

Visual Rhetoric, Ethics, and Professionalism: Would you pass the N.Y. Bar Exam from reading Quan’s book? You certainly would have an advantage because

the work does break down the exam like a good outline and study aid, and has the additional value that the work is attractive and keeps your attention. The author is serious about the construction and drafting of the book, but as with the Legal Design examples above, the use of stick figures, sketches, and doodles obviously is designed to keep the tone of the work light. The exam and its subjects are serious and weighty, but Quan’s book does not mirror the serious and weighty nature of the subject so that the work can be attractive, engaging, and even fun to read.

C. Legal Coloring Books

One step up from line drawings, stick figures, and doodles in terms of product size is the legal coloring book genre. Some of these books use a combination of images and text, while others are almost wholly pictorial. Several examples exist, sampled here below:



COLLATERAL

Chadwick is confused about the difference between an account and a payment intangible.
 "I see that both involve a right to a payment," Chadwick says, "but I don't understand why a payment intangible needs to be distinctive from an account."
 Gillie says, "Well let's think about what happens when a credit card is used."

1

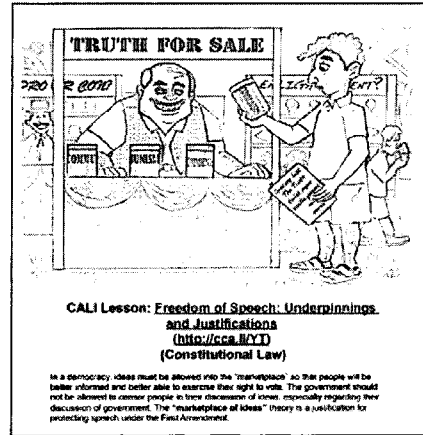
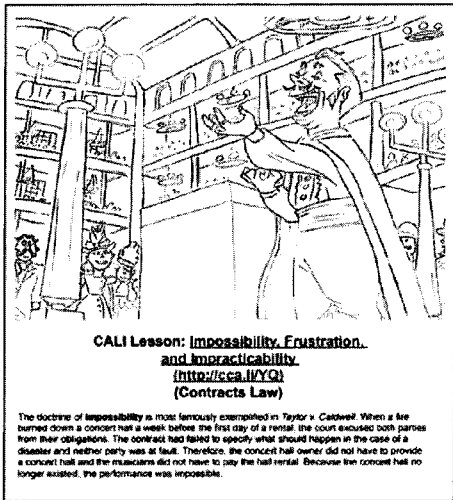
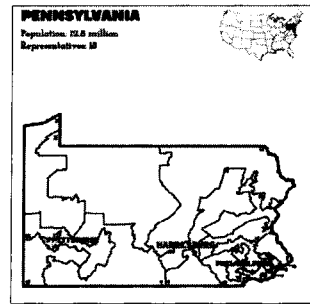
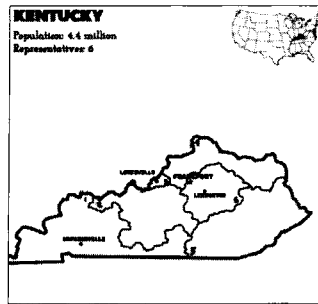
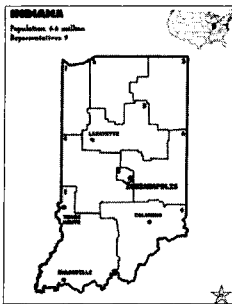
First, the debtor uses his credit card to pay for a blender at Blender Baitz and Gardens. The bank that extends that credit to the customer makes a judgment about their credit worthiness and decides on the spot whether to fund the transaction.

2

If the bank decides to fund the transaction, then the debtor will owe the bank money for the blender. This is an account because it's the right to a payment for a monetary obligation. The debtor agreed to pay any charges on the account when it took out a credit card account. The bank agreed to lend money to the debtor by extending value to the store.

Color Me Secured²⁴³

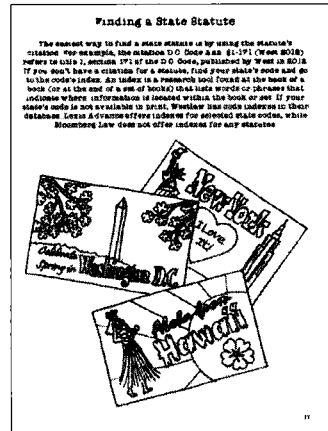
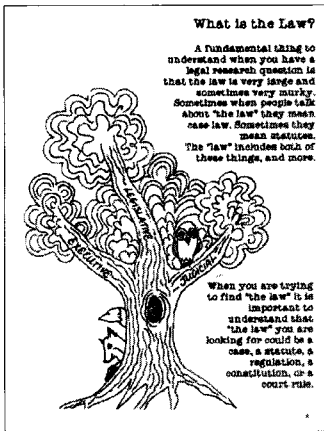
243. David Spear, Illustration depicting the Uniform Commercial Code, *in* MARC L. ROARK, COLIN P. MARKS & DAVID SPEAR, COLOR ME SECURED: EXPLORING ARTICLE 9 WITH CRAYONS 11 (2017);

CALI, Images of the Law Coloring Book²⁴⁴The United Shapes of America, United States Congressional District Coloring Book²⁴⁵

David Spear, Illustration depicting debtors' obligations, in MARC L. ROARK, COLIN P. MARKS, & DAVID SPEAR, *COLOR ME SECURED: EXPLORING ARTICLE 9 WITH CRAYONS 14* (2017); David Spear, Illustration depicting the difference between an account and a payment intangible, in MARC L. ROARK, COLIN P. MARKS & DAVID SPEAR, *COLOR ME SECURED: EXPLORING ARTICLE 9 WITH CRAYONS 18* (2017).

244. Eric Molinsky, *Impossibility, Frustration, and Impracticability* (illustration), in CALI, *IMAGES OF THE LAW COLORING BOOK 6* (2016); Eric Molinsky, *Freedom of Speech: Underpinnings and Justifications* (illustration), in CALI, *IMAGES OF THE LAW COLORING BOOK 9* (2016).

245. Max Rosenbaum, *Indiana* (illustration), in NILMINI RUBIN ET AL., *THE UNITED SHAPES OF AMERICA: UNITED STATES CONGRESSIONAL DISTRICT COLORING BOOK* (Lenora Shishido ed., 2017); Max Rosenbaum, *Kentucky* (illustration), in RUBIN ET AL., *supra*; Max Rosenbaum, *Pennsylvania* (illustration), in RUBIN ET AL., *supra*.



What Color is Your CFR?²⁴⁶

Visual Context, Verbal Context, and Visual Rhetoric: *Color Me Secured* (first group of images) opens up Article 9 of the UCC to readers.²⁴⁷ Some pages, such as the middle page²⁴⁸, contain a large amount of text explaining aspects of secured transactions, while others (the pages on the left²⁴⁹ and right²⁵⁰) are much less text-oriented.

CALI's *Images of the law Coloring Book* (second group of images) is more episodic in its coverage. The cartoon or line drawing illustrations to be colored in bear a limited relationship to the legal topic they accompany. For example, the "Freedom of Speech" page (second group, right) consists of a short paragraph on free speech principles, but the cartoon is one extended illustration attempting to visualize the "Marketplace of Ideas" metaphor that underlies part of the rationale for the First Amendments restrictions on censorship.²⁵¹ This purely metaphoric rendering of a concept may help the reader to remember the concept, but the lesson itself on the page is a mere snapshot of the topic listed, "Freedom of Expression."

246. Liz Gotaucao, *What is the Law?* (illustration), in NICOLE DYSZLEWSKI, RAQUEL ORTIZ & LIZ GOTAUCAO, *WHAT COLOR IS YOUR C.F.R.?* 9, 11 (2016), <https://www.cali.org/sites/default/files/ColoringBookFinalAug022016.pdf>; Liz Gotaucao, *Finding a State Statute* (illustration), in NICOLE DYSZLEWSKI, RAQUEL ORTIZ & LIZ GOTAUCAO, *WHAT COLOR IS YOUR C.F.R.?* 11 (2016), <https://www.cali.org/sites/default/files/ColoringBookFinalAug022016.pdf>.

247. See generally ROARK ET AL., *supra* note 243.

248. Spear, *supra* note 243.

249. *Id.*

250. *Id.*

251. Molinsky, *supra* note 244.

The United Shapes of America United States Congressional District Coloring Book (third group of images) attempts to turn the results of partisan gerrymandering into a fun activity for children and adults alike. The book uses the jigsaw puzzles of states' gerrymandered congressional districts as crayon coloring projects.²⁵² The visual rhetoric of these maps suggests that this is a peculiar way to define districts, but there is no verbal context preaching against the evils of gerrymandering or even explaining the legal framework or public policy concerning the drawing of the districts. Apparently, the authors thought the images of states with crazy quilts, snakes, and contorted shapes would be sufficient to make the point about the unusual and perhaps unexpected manner in which we are defining our congressional districts.²⁵³ The CALI sponsored *What Color is your C.F.R.?* (fourth group of images) takes on the task of mentioning the Code of Federal Regulations on various pages of a coloring book. The book primarily intends to take the reader into the research process for finding relevant portions of the C.F.R. and decorates the journey with pictures to color.²⁵⁴

D. Photographic Infographics

Photography is a powerful tool for visual legal rhetoric.²⁵⁵ The use of photography for an infographic combines the force of visual communication with the power of the heuristics of naïve realism²⁵⁶ or cognitive illiberalism²⁵⁷ that cause viewers to treat realistic visual media, such as photography and non-animated, non-CGI video as being “windows on reality,” not authored works. These heuristics

252. See generally RUBIN ET AL., *supra* note 245.

253. *Id.*


254. See generally DYSLEWSKI ET AL., *supra* note 246.





255. See generally *Mise en Scène*, *supra* note 17; *Ethics of Visual Legal Rhetoric*, *supra* note 17.

256. See generally Dale W. Griffin & Lee Ross, *Subjective Construal, Social Inference, and Human Misunderstanding*, 24 *ADVANCES EXPERIMENTAL SOC. PSYCH.* 319 (1991); Varda Liberman et al., *Naïve Realism and Capturing the “Wisdom of Dyads,”* 48 *J. EXPERIMENTAL SOC. PSYCH.* 507 (2012); W.J.T. MITCHELL, *PICTURE THEORY: ESSAYS ON VERBAL AND VISUAL REPRESENTATION* 282–87, 303, 306–09 (1994); Lee Ross & Andrew Ward, *Naive Realism: Implications for Social Conflict and Misunderstanding*, in *VALUES AND KNOWLEDGE* 103 (Edward S. Reed et al. eds., 1996); Lee Ross & Donna Shestowsky, *Contemporary Psychology's Challenges to Legal Theory and Practice*, 97 *NW. U. L. REV.* 1081, 1090 (2003); Adam Benforado & Jon D. Hanson, *Naïve Cynicism: Maintaining False Perceptions in Policy Debates*, 57 *EMORY L.J.* 499, 513–14 (2008); Natalie Frank, *Psychology and the Construction of Reality: Challenges to Naive Realism*, OWLCATION (Sept. 3, 2018), <https://owlcation.com/humanities/Psychology-and-the-Construction-of-Reality-Challenges-to-Native-Realism>; Bryan D. Lammon, *What We Talk About When We Talk About Ideology: Judicial Politics Scholarship and Naive Legal Realism*, 83 *ST. JOHN'S L. REV.* 231, 241 (2009).

257. See Dan M. Kahan et al., “*They Saw a Protest*”: *Cognitive Illiberalism and the Speech-Conduct Distinction*, 64 *STAN. L. REV.* 851, 861–62, 885–88 (2012); Dan M. Kahan et al., *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 *HARV. L. REV.* 837, 843–44, 852–54 (2009) [hereinafter *Whose Eyes Are You Going to Believe?*]; see also BROOKE A. ACKERLY, *JUST RESPONSIBILITY: A HUMAN RIGHTS THEORY OF GLOBAL JUSTICE* 104–127 (2018).

ensure that the input of highly representational images is sticky and particularly convincing.²⁵⁸ Our brains are not only highly receptive to visuals,²⁵⁹ they stubbornly cling to the lessons learned through visual media.²⁶⁰

Coronavirus - Covid-19 - Simple Guide
SAVE LIVES - How to try and stay well and avoid spreading the virus 

1) Wash hands frequently with soap and water for 20 seconds	2) Cover mouth with elbow when coughing or sneezing	3) Avoid touching your eyes, nose and mouth with unwashed hands	4) 2 metres apart keep two metres distance from each other
			
5) Stay Home Where possible stay home	Symptoms: Fever - Headache - Dry cough and shortness of breath - Muscle pain		
6) Avoid meetings and being together with other people	If you think you have the Virus keep away from other people for two weeks Most people will only have mild symptoms Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) are more likely to become severely ill		

www.rippleafrica.org

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258. See TIMOTHY GANWER, *VISUAL IMPACT, VISUAL TEACHING: USING IMAGES TO STRENGTHEN LEARNING* 24 (2005); SAILA POUTIAINEN, *THEORETICAL TURBULENCE IN INTERCULTURAL COMMUNICATION STUDIES* 82 (2014) (focusing on visuals in intercultural communication); COLIN WARE, *INFORMATION VISUALIZATION: PERCEPTION FOR DESIGN* 2–6 (3d ed. 2013).

259. Thomas Politzer *Vision Is Our Dominant Sense*, *BRAINLINE* (July 26, 2018), <https://www.brainline.org/article/vision-our-dominant-sense>; 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* 147 (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 *EXPERIMENTAL BRAIN RSCH.* 635, 635–40 (2005); Douglas R. Vogel et al., *Persuasion and the Role of Visual Presentation Support: The UM/3M Study* (Mgmt. Info. Sys. Rsch. Ctr., Working Paper No. MISRC-WP-86-11, 1986), <http://miscr.umn.edu/workingpapers/fullpapers/1986/8611.pdf>.

260. Daniel Kahneman, the Nobel Prize-winning cognitive psychologist and brain scientist, has described the process as System 2 (cognitive brain functions) overcoming the workings of System 1 (automatic, non-cognitive brain functions) that lead to rapid decisions and cognition, as well as to biases, heuristics, predictions, assessments, and judgments that are stubbornly adhered to and not easily overcome by logic and cognitive assessment. See DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* 21–25, 28, 232–33 (2011).

261. Ripple Africa, *Coronavirus - Covid-19 - Simple Guide* (photographs), in *Coronavirus - Covid-19 - Simple Guide*, RIPPLE AFRICA (Sept. 2020), <https://www.rippleafrica.org/wp-content/uploads/2020/04/Coronavirus-Africa-English-b.pdf>.

Visual Context, Verbal Context, and Visual Rhetoric: Each of these examples shows the power of photographic communication. Photographs are one huge step closer to reality than any cartoon, business graphic, or artistic rendering of the same subject matter. The *Covid-19 Guide* from Malawi (top row) repeats many of the same messages as other Covid-19 guides from neighboring countries in Africa, but with photographs there is little or no guesswork in the recommendations made. The subjects of the photographs appear to be local people, the same people for whom the guide was created.

The *Illustration of an Accessible Election Process* from Indonesia (second row) shows the recommended accommodations in photographs, and again, the subjects appear to be local Indonesians, not models or persons from a different country or culture.

The *Vehicle Weight - Motor Carrier Safety Poster* (bottom row, left) brings to life the possible checks and measurements at a truck “weigh station.” The full-color, dramatic photographs make a mundane set of inspections look exciting, something to be geared up and ready for if you are a driver.

The City of Yonkers *Red Light Camera Ticket* (bottom row, right) illustrates its communication of information about the tickets with a multimodal visual and textual illustration of contents. The Yonkers Red Light Camera ticket gains the enormous rhetorical communicative and persuasive advantage of using visual photographic illustration²⁶⁵ that conveys the means, method, and justification for the issuance of the ticket. It would be difficult to misinterpret or rebut the message of “That’s your car. That’s a red light. That’s your car going through the red light,” when shown in three photographs.

E. Video Infographics

Audio visual and video legal informational works round out the discussion here. As a logical extension of photographic information, audio visual media adds the dimensions of sound and movement, and compresses many thousands of frames of visual content into a work instead of showing a dozen or so frames in a cartoon or comic strip. It was the international spread of the audio-visual media of television

265. I refer here both to the general power of visual rhetoric, *see, e.g., Mise en Scène, supra* note 17, at 250–52, and the specific power of realistic media, such as photography, in instantly obtaining the recognition and acceptance of the truth of the communication through the heuristic known as naïve realism or cognitive illiberalism. *See, e.g., id.* at 252–54; *Ethics of Visual Legal Rhetoric, supra* note 17, at 123–25.

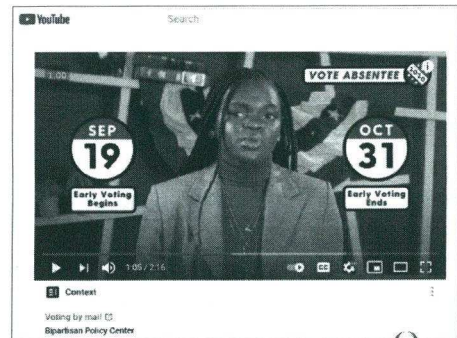
that caused media theorists to opine that the world was becoming one global village,²⁶⁶ sharing a single universal global visual culture.²⁶⁷



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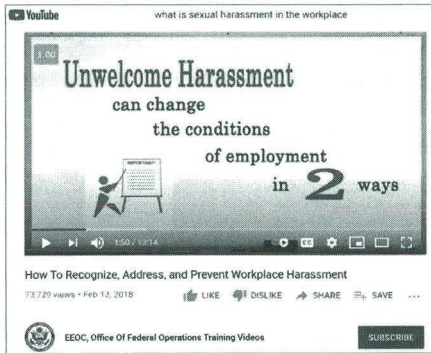
266. See *supra* note 90.

267. See *supra* notes 87, 88, 106, 148.

268. LegalZoom, *Copyright, Trademark and Patent: What's the Difference?*, YouTube (Apr. 28, 2015), https://www.youtube.com/watch?v=HsTi3vD_Usw (left image) (screen capture from LegalZoom informational video at 1:40); LegalZoom, *Last Will vs. Living Trust: What's the Difference?*, YouTube (July 31, 2015), <https://www.youtube.com/watch?v=6Cy191vAnI8&t=4> (right image) (screen capture from LegalZoom informational video at 0:21).

269. Pew, *Introducing the Voting Information Project | Pew*, YouTube (Oct. 24, 2011), <https://www.youtube.com/watch?v=Th7VJoRqAzI> (screen capture at 1:45).

270. How to Vote in Every State, *How to Vote in Virginia 2020*, YouTube (Mar. 18, 2020), <https://www.youtube.com/watch?v=eBUERiEQUWM> (screen capture at 1:05).



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Visual Context, Verbal Context, and Visual Rhetoric: These several examples drive home the variety of means of communication about the law and legal matters that are available to authors. Some of these examples are animated video with voice over (e.g., the LegalZoom examples (top row) and Pew’s Voting Process (second row, left)); some are live action (Voting in Virginia (second row right)); some involve recreations and staged scenes (Harassment video (bottom row, left) and Inside Look at Appellate Courts (bottom row, right)).

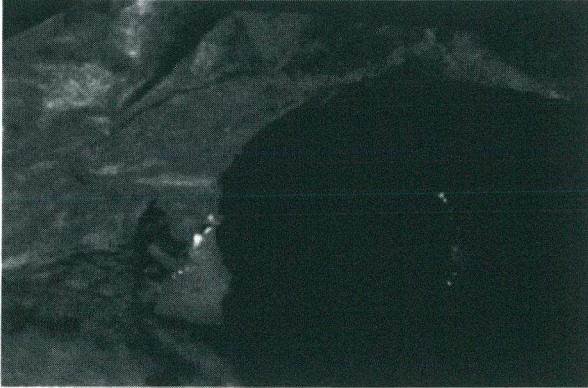
V. EXHIBITS AND ILLUSTRATIONS AS USED IN BRIEFS, MEMORANDA, AND REGULATORY AND ADMINISTRATIVE LAW

Single images can play a role in illustration and argument of both informing and persuading the audience. A single narrative image might not need words to communicate its message.

Images used in actual legal documents are generally less striking than the ones I have selected in the sections above. Some have narrative qualities, but the images do not tell a properly informative story or assert an effective argument without a caption and explanatory verbal context.

271. EEOC OFO, *How to Recognize, Address, and Prevent Workplace Harassment*, YOUTUBE (Feb. 13, 2018), <https://www.youtube.com/watch?v=tVtJcVbbjCA> (screen capture at 1:50).

272. United States Courts, *Knowledge Seminar: An Inside Look at Federal Appellate Courts*, YOUTUBE (May 18, 2016), <https://www.youtube.com/watch?v=aC6dXDsgwsg> (screen capture at 0:08).

7	patrol car, and opened the Burger King bag. Deputy Bylsma carefully unwrapped the
8	burger on his lap and pulled the top bun off exposing the lettuce and other ingredients.
9	He carefully held up both sides of the burger to see if he could see anything amiss.
10	Everything looked fine. He then laid the top portion of the burger on the wrapper and
11	pulled the meat patty off the bottom bun and found a slimy, clear and white phlegm glob
12	on the meat patty.
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	COMPLAINT FOR DAMAGES - 3
	11345-001235 922032x
	STAFFORD FREY COOPER,
	PROFESSIONAL CORPORATION
	601 Union Street, Suite 3100
	PLUMBING, HEATING & AIR

*Bylsma v. Burger King Corp.*²⁷³

Visual Context and Visual Cultural Context: Referring to the image above, and not the page out of the complaint excerpted with the image, the visual context and potential visual cultural context of the image is uncertain simply because it is difficult to make out the dominant subject of the image. Perhaps with careful scrutiny, a viewer could discern that there was a shiny substance on a vaguely round, dark object, that was resting on some kind of tissue or paper.

Verbal Context: Given that this image has a verbal context—the complaint filed in the suit—the viewer would be able to read the alleged narrative from the perspective and point of view of the plaintiff, a police officer, who received the

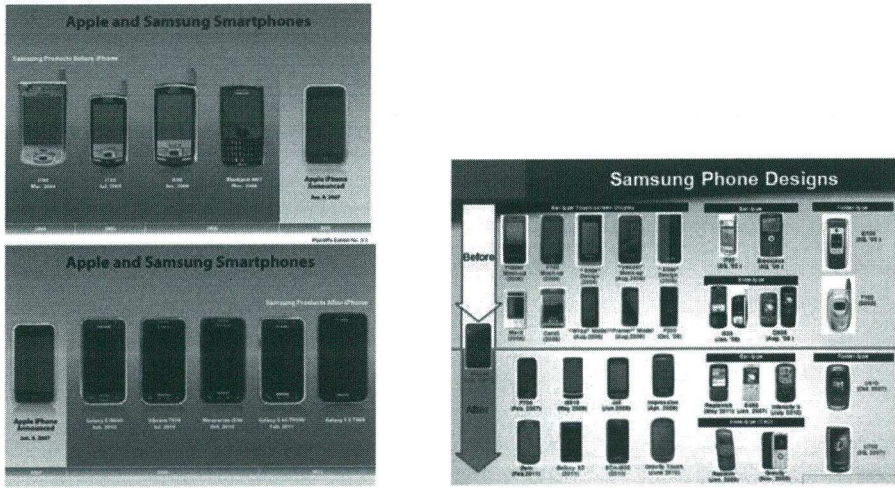
273. Complaint for Damages at 3, *Bylsma v. Burger King Corp.*, 706 F.3d 930 (9th Cir. 2013); see also *Bylsma v. Burger King Corp.*, 706 F.3d 930 (9th Cir. 2013).

hamburger sandwich described in the complaint into which a Burger King employee had spit his saliva.

Mise en Scène and Arrangement: After learning the background facts, the image still is a very poor device. It is far too dark, lacks contrast, and lacks a proper figure-ground relationship in which the dominant subject is distinctly identifiable from the background or foreground subjects. It is difficult to identify what the dominant subject of the image is. Perhaps with the verbal context, it is enough that a tiny glimmer of a slimy substance is visible on one of the shapes of the image, and that shiny glob is sufficient to gross out the viewer and inspire a sympathetic pathos reaction to the injuries alleged in the complaint.²⁷⁴

Visual Rhetoric, Ethics, and Professionalism: I do not question the propriety of the use of this image as an exhibit in a complaint. The attorneys inherited an artifact image and made the best use of it that they could in the case. The image and the way it is framed and presented in the complaint could provoke a sympathetic pathos reaction toward the plaintiff, although revulsion toward the entire incident and by extension the entire lawsuit also is possible.

274. The concept referred to here is “priming for disgust.” See 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, 307 (2010); LINDA L. BERGER & KATHRYN M. STANCHI, LEGAL PERSUASION: A RHETORICAL APPROACH TO THE SCIENCE 13–14 (2018). When scientists are trying to prime for disgust—or other emotions such as anger and aggression, or sadness—they often use visual imagery. See, e.g., Craig A. Anderson, *Effects of Violent Movies and Trait Hostility on Hostile Feelings and Aggressive Thoughts*, 23 AGGRESSIVE BEHAV. 161 (1997) (testing scenes from *The Karate Kid III* against scenes from *Gorillas in the Mist* for priming effects on aggression); Brad J. Bushman, *Moderating Role of Trait Aggressiveness in the Effects of Violent Media on Aggression*, 69 J. PERSONALITY & SOC. PSYCH. 950, 950 (1995) (explaining the results of three studies conducted to show that “[v]ideotape violence was more likely to increase aggression in high trait aggressive individuals than in low trait aggressive individuals”); Christopher J. Ferguson & John Kilburn, *The Public Health Risks of Media Violence: A Meta-Analytic Review*, 154 J. PEDIATRICS 759 (2009) (describing the effect of violent media on aggressive behavior); Randy J. McCarthy et al., *Does Playing Video Games with Violent Content Temporarily Increase Aggressive Inclinations? A Pre-Registered Experimental Study*, 67 J. EXPERIMENTAL SOC. PSYCH. 13 (2016) (describing video games’ effect on aggressive behavior); Simone Schnall et al., *Disgust as Embodied Moral Judgment*, 34 PERSP. SOC. PSYCH. BULL. 1096 (2008) (explaining how scenes from the films *Trainspotting*, *The Champ*, and *Planet Earth* were used to prime for and assess reactions of disgust and sadness).



*Apple v. Samsung*²⁷⁵

Visual Context: These exhibits were used as legal argument regarding allegedly infringing cell phone design in *Apple v. Samsung*.²⁷⁶ Apple (the images on the left) attempted to show that Samsung's phone designs looked nothing like the iPhone before the iPhone came out, but Samsung's phones started to look like the iPhone when the iPhone came out. Samsung (the image at right) countered by showing that several of its designs before the iPhone resembled the iPhone, while many of its phone designs before and after the iPhone looked nothing like the iPhone.²⁷⁷

Verbal Context: Although difficult to perceive in the reduced-sized images shown above, all three of the exhibits have captions and labels which allow the viewer to understand the illustrations and comparisons being made. The images were used in the context of briefs and filings submitted by the parties.

Visual Cultural Context: In order to understand what is depicted in the image, the viewer must have some familiarity with modern cell phones and smart phones, the fact that they come in different styles, and that the styles change over time.

275. *Apple and Samsung Smartphones* (illustrations), in Jon Brodtkin, *Apple's Case that Samsung Copied the iPhone and iPad—in Pictures*, ARS TECHNICA (Aug. 8, 2012), <http://arstechnica.com/tech-policy/2012/08/apples-case-that-samsung-copied-the-iphone-and-ipad-in-pictures/> (left images); *Samsung Phone Designs* (illustration), in Josh Lowensohn, *Top Evidence in Apple v. Samsung According to Juror* (pictures), CNET (Aug. 25, 2012, 11:13 AM), <http://www.cnet.com/pictures/top-evidence-in-apple-v-samsung-according-to-juror-pictures/2/> (right image); see also Complaint, Apple, Inc. v. Samsung Electronics Co., No. 11-CV-01846-LHK (N.D. Cal. Apr. 15, 2011); *Ethics of Visual Legal Rhetoric*, *supra* note 16, at 133–36 (critiquing the rhetorical use of these images).

276. See *supra* note 276.

277. See *supra* note 276.

Many viewers across the globe would have the required level of experience to understand what is depicted in the exhibits.

Mise en Scène and Visual Rhetoric, Ethics, and Professionalism: Both exhibits are smartly constructed. Substantively, the Samsung exhibits countered the Apple exhibits well, by visually pointing out Apple’s logical fallacy of the undistributed middle. Apple’s depictions make the implicit claim that “Before the iPhone, all of Samsung’s phones did not resemble the iPhone; after the iPhone, all of Samsung’s phones looked just like the iPhone.” The fallacy is the implicit suggestion of “all” phones. Samsung responded to the exhibit by pointing out Apple’s selective construction of the depictions above that created the implicit message of “all of Samsung’s phones . . .” and showed a rebuttal exhibit displaying the full range of “Samsung products” before and after the iPhone.²⁷⁸

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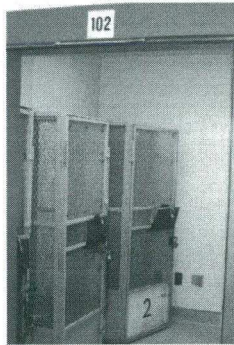


Mule Creek State Prison
Aug. 1, 2008



California Institution for Men
Aug. 7, 2006

c



Salinas Valley State Prison
July 28, 2008
Copyrighted. Treatment Center utility room/holding area for people waiting for mental health crisis bed

*Brown v. Plata*²⁷⁹

278. Samsung Trial Exhibit used in *Apple, Inc. v. Samsung Electronics Co.*, No. 11-CV-01846-LHK (N.D. Cal. Apr. 15, 2011), available at <http://www.cnet.com/pictures/top-evidence-in-apple-v-samsung-according-to-juror-pictures/2/>.

279. *Mule Creek State Prison* (photograph), in *Brown v. Plata*, 563 U.S. 493, 548 (2011) (left image) (photograph taken on Aug. 1, 2008); *California Institute for Men* (photograph), in *Brown v. Plata*, 563 U.S. 493, 548 (2011) (center image) (photograph taken on Aug. 7, 2006); *Salinas Valley State Prison*

Visual Context: *Brown v. Plata* was a case about California prison-overcrowding and its effect on the mentally ill population in the prisons, and whether remedial measures undertaken to address the problem were ameliorating violations of eighth amendment cruel and unusual punishment standards.²⁸⁰ The court majority voted to affirm the unusual (Scalia, dissenting, called it “radical”²⁸¹) injunctive relief ordered by a three-judge district court below that California must release tens of thousands of prisoners to relieve the overcrowding. Kennedy punctuated the majority opinion with three images of the prisons’ conditions²⁸² to communicate a narrative of crowded, chaotic, and in some ways, inhumane conditions.

Verbal Context: Only certain aspects of the photographs speak for themselves—the rooms depicted in the first two photographs are very crowded and chaotic, with beds and bodies stuffed into the frame. It remains for the captions and for the text of the opinion itself to explain that these are not temporary shelters, but actual images of prison conditions. The caption for the third image provides the necessary, and chilling, explanation of the dominant subjects: “Correctional Treatment Center (dry cages/holding cells for people waiting for mental health crisis bed).”²⁸³ Justice Kennedy’s opinion notes that the cages were for prisoners with suicidal tendencies.²⁸⁴

Visual Cultural Context: Some viewers may identify the “prison” narrative in these photographs, but in our modern cultural experience of media coverage of wartime and economic refugees, not to mention natural disaster and environmentally displaced persons, the first two pictures may suggest a narrative of temporary emergency shelters. The last picture shows cages, but what they are used for is not obvious from the photograph itself (without the caption).

Mise en Scène and Arrangement: The composition of the first two photographs is crowded, messy, cluttered, and disorienting. There is no single dominant subject—the subject *is* the chaos of these over-crowded, uncomfortable, and disorienting scenes. In the context of the case, Kennedy used these photographs to illustrate his findings that conditions in the prisons were unacceptable. Regarding

Correctional Treatment Center (dry cages/holding cells for people waiting for mental health crisis bed) (photograph), in *Brown v. Plata*, 563 U.S. 493, 549 (2011) (right image) (photograph taken on July 29, 2008); see also *Mise en Scène*, *supra* note 17, at 21–23 (evaluating the rhetorical properties of these images).

280. *Brown v. Plata*, 563 U.S. 493 (2011).

281. *Id.* at 550 (Scalia, J., dissenting).

282. *Id.* at 548–49.

283. *Id.* at 549.

284. *Id.* at 503.

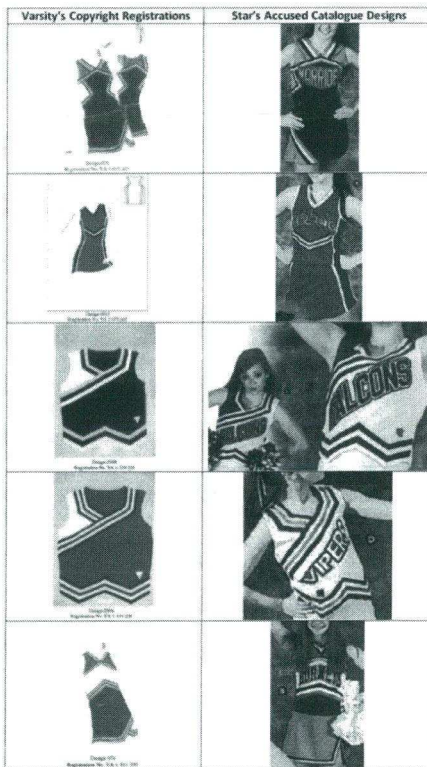
the third photograph, the extremely cramped cages—that are even called “cages”—look inhumane even for animals. The mesh wire and enormous locks are straight out of set dressing for a laboratory torture scene. And the fact that it is a photograph of a “treatment” center makes the viewer wonder what sort of treatment is undertaken on these prisoners.

Visual Rhetoric, Ethics, and Professionalism: Some commentators criticized Justice Kennedy for his use of the three images shown above.²⁸⁵ The criticism revolved around whether a reader and viewer of the opinion and its exhibits would understand whether the images were indicative of all of the prison situations discussed in the opinion, or only indicative of the two prisons depicted in the photographs, on a particular day, at a particular time.²⁸⁶ The photograph of the “dry cages” was described as being indicative of this kind of confinement used in the prisons discussed in the opinion, and the photograph simply shows what the words were describing. I agree that it is important to situate the exhibits with the conditions described in the opinion, and the labels do an adequate job of the task. Beyond that, illustrations of conditions are better than no illustrations of conditions; the photographs communicate a message of crowding, confusion, and chaos that words alone cannot communicate as well as the images. Part of the criticism is that none of the other judges in *Brown v. Plata* commented on the photographic exhibits,²⁸⁷ which serves as a reminder that if judges or attorneys do not educate themselves in visual literacy, they will not be able to confront the exhibits proffered by litigants and opponents, and deal with any inherent prejudice or defect presented by the visual communication.

285. Nancy S. Marder, *The Court and the Visual: Images and Artifacts in U.S. Supreme Court Opinions*, 88 CHIC.-KENT L. REV. 331, 349–57 (2013) (critiquing the Court’s determination that the images could “only be interpreted one way” and, thus, did not need an explanation); see also Hampton Dellinger, *Words Are Enough: The Troublesome Use of Photographs, Maps, and Other Images in Supreme Court Opinions*, 110 HARV. L. REV. 1704 (1997) (characterizing photographs, maps, and other images as generally being unhelpful and unnecessary in Supreme Court opinions, though the article pre-dates the *Brown v. Plata* decision).

286. Marder, *supra* note 286.

287. *Id.*



*Star Athletica v. Varsity Brands*²⁹¹

Visual Context: The *Star Athletica v. Varsity Brands* litigation started with Varsity Brands, the owner of several copyrights on cheerleading uniform designs (pictured in the left column of the images shown here), suing Star Athletica, the retailer of cheerleader uniforms (such as those pictured in the right column of images) for copyright infringement.²⁸⁸ The issue on review at the Supreme Court was whether Varsity's designs were separable pictorial, graphic, or sculptural works, subject to copyright, or if they were inseparable parts of "useful articles" (i.e., functional, utilitarian works) in the form of the uniforms themselves. The images in the exhibits (as recompiled into a side-by-side collage²⁸⁹) do a very good job supporting the infringement case by making a strong visual argument that Star Athletica's designs are substantially similar as copies or derivative works of Varsity's copyrighted designs.²⁹⁰

Verbal Context: The images compiled here were part of various filings, and so were constantly surrounded by the verbal arguments of counsel. Nevertheless, it is possible to imagine them as "separable" from the arguments and evaluate their visual communicative properties.

288. *Star Athletica*, 137 S. Ct. 1002.

289. See Hyman et al., *infra* note 291.

290. Case Comment, *Copyright Act of 1976—Useful Articles—Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 131 HARV. L. REV. 363 (2017). The Court sided with Varsity Brands and found the cheerleading uniforms' designs were separable pictorial or graphic works and were subject to copyright protection. *Id.*

291. Illustration comparing Varsity's copyright registrations with Star's accused catalogue designs, in Jonathan Hyman et al., *Chevrons, Stripes, Cheerleaders, and Copyright: The Supreme Court Hears Oral Argument in Star Athletica v. Varsity Brands*, JD SUPRA (Nov. 5, 2016), <https://www.jdsupra.com/legalnews/chevrons-stripes-cheerleaders-and-94125/>; see also *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017).

Visual Cultural Context: For a viewer to have a complete understanding of the images, some visual cultural experience with cheerleaders and the uniforms they wear would be helpful, but even an inexperienced and uninformed viewer can make visual comparisons of the patterns and designs shown for similarity.

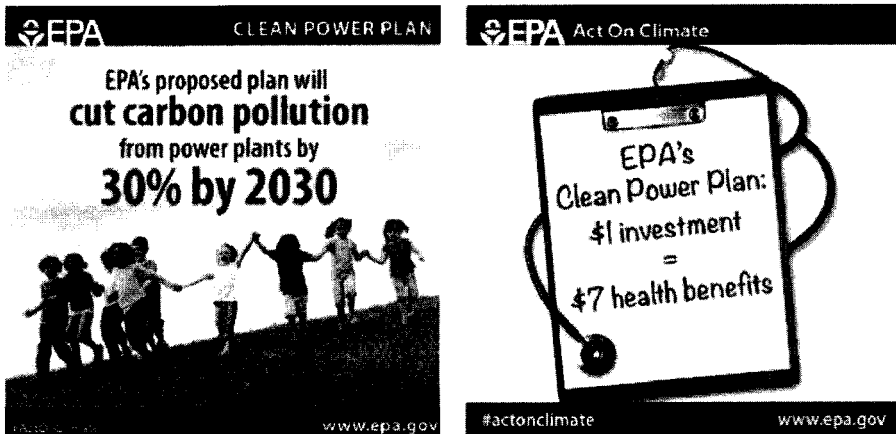
Mise en Scène and Arrangement: The images are nicely framed, well lit, and the dominant subject is obvious with no confusion as to the figures vs. grounds. The juxtaposition of Varsity's designs alongside Star's products allows the viewer to instantly compare the similarity of the works. When viewed in color, the comparison of the similar "total concept and feel"²⁹² of the works may be evaluated.

Visual Rhetoric, Ethics, and Professionalism: These images, particularly as framed and presented in juxtaposition with each other for visual comparison, effectively support the plaintiff's arguments regarding copying and substantial similarity.

In addition to visual rhetorical devices being used in litigation contexts, observers have noted that visual works have been employed in regulatory and administrative rulemaking campaigns, particularly involving Obama Administration's Environmental Protection Agency's Clean Power Plan initiatives, and regarding the Equal Pay Act, and Clean Water Act.²⁹³

292. *E.g.*, *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 538 (4th Cir. 2015); *Universal Furniture Int'l, Inc. v. Collezione Europa USA, Inc.*, 618 F.3d 417, 436 (4th Cir. 2010); *Atkins v. Fischer*, 331 F.3d 988, 993 (D.C. Cir. 2003); *Tufenkian Imp./Exp. Ventures, Inc. v. Einstein Moomjy, Inc.*, 338 F.3d 127, 130 (2d Cir. 2003); *Boisson v. Banian, Ltd.*, 273 F.3d 262, 272 (2d Cir. 2001).

293. Elizabeth G. Porter & Kathryn A. Watts, *Visual Rulemaking*, 48 ENV'T L. REP. 10698 (2018); Elizabeth G. Porter & Kathryn A. Watts, *Visual Rulemaking*, 91 N.Y.U. L. REV. 1183 (2016).



Environmental Protection Agency's Clean Power Plan Initiatives²⁹⁴

Visual Context: The Clean Power Plan tweets above are focused on the verbal information communicated, but they are dressed in an attractive visual backdrop of happy, healthy, energetic kids (image at left, above), and a doctor's chart and stethoscope (image at right, above). The images suggest that if the Clean Power Plan goes into effect, children will be happier and more energetic, and everyone will be healthier.

Verbal Context: The words incorporated into the images are very important to communicating the details of the Clean Power Plan, but the total concept of happier, healthier children and adults is communicated without words.

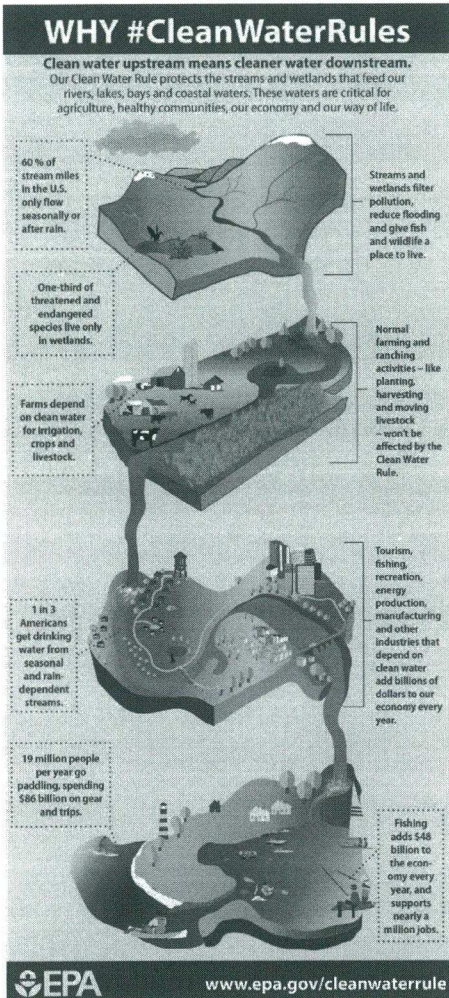
Visual Cultural Context: Happy kids playing outdoors in a clean, healthy-looking atmosphere should translate well in most if not all cultures. A stethoscope should be recognized by most people in developed and developing nations for what it is and as a symbol of health care and by extension healthy conditions.

Mise en Scène and Arrangement: The Gestalt of the images is that the Clean Power Plan will reduce carbon pollution and produce great health benefits, and thereby make everyone, children and adults, happier, healthier, and more energetic (which is appropriate, because it is a "power" generation regulatory plan).

Visual Rhetoric, Ethics, and Professionalism: Most of the message to be communicated is verbal, but there is nothing inherently deceptive or misleading

294. Elizabeth G. Porter & Kathryn A. Watts, *Visual Rulemaking*, 91 N.Y.U. L. REV. 1183, 1207 (2016) (first citing U.S. EPA (@EPA), TWITTER (June 2, 2014), <https://twitter.com/EPA/status/473528421201752064> (left image)); then citing U.S. EPA (@EPA), TWITTER (Sept. 24, 2014), <https://twitter.com/EPA/status/514806567141908481> (right image)).

about decorating the verbal message with images that will make viewers think about healthier kids and healthier conditions if the overall regulations are enacted.



EPA's WHY #CleanWaterRules Infographic

Visual Context and Visual Culture:

This WHY #CleanWaterRules infographic²⁹⁵ was produced by the Environmental Protection Agency (EPA) for its “Waters of the United States” rulemaking expansion effort regarding Clean Water Act rules.²⁹⁶ 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.

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.

295. *Why #CleanWaterRules* (illustration), in *Why #CleanWaterRules*, EPA, https://19january2017snapshot.epa.gov/cleanwaterrule/why-clean-water-rules_.html.

296. See *Waters of the United States*, EPA, <https://www.epa.gov/wotus-rule> (last visited Oct. 4, 2021) (explaining the Waters of the United States rulemaking).

Visual Cultural Context: The basic images of mountains, farms, lakes, rivers, cities, and harbors should be immediately identifiable to persons across many cultures. But persons with experience in modernized societies with modern, full-color school texts will 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.

Mise en Scène and Arrangement: The infographic uses a pleasant color scheme and attractive depictions of the subjects. The font and wording match the simple, accessible, but professional approach of the graphics to maximize readability and comprehension of the material. The visual graphics are rendered in a simple, accessible, but still highly professional style, and in a format and composition that harkens back to school textbook diagrams.

Visual Rhetoric, Ethics, and Professionalism: The intended audience of the work consists of Americans who can exert some influence regarding a major EPA initiative. As such, the graphic, for all of reasons stated above, is an effective tool of regulatory advocacy.



Batgirl Teaches Batman a Lesson about Equal Pay

50,374 views

311 likes 18 comments SHARE SAVE ...



USDepartmentofLabor
Published on Aug 11, 2011

SUBSCRIBE 15K

Dep't of Labor, *Batgirl Teaches Batman a Lesson About Equal Pay* Video²⁹⁷

297. 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 (screen capture at 0:06).

Visual Context: The U.S. Department of Labor made a public service announcement in which Batgirl teaches Batman some fundamentals of the Equal Pay Act.²⁹⁸ The image above is a screen capture from the YouTube video.²⁹⁹

Verbal Context: The words of the video—i.e., the dialogue between the characters—communicates the basic requirements of the Equal Pay Act.³⁰⁰

Visual Cultural Context: The work relies on the viewer being able to pull from visual cultural memory 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. That group of viewers probably includes most Americans—the target audience of the video—but the video and its characters would leave many persons of other cultures in the dark. All of the depictions and dialogue in the video rely on a visual cultural understanding of the superhero genre, especially the main characters and their narratives as told in DC’s (Detective Comics’) Batman franchise.

Mise en Scène and Visual Rhetoric: The scene is staged and dubbed effectively. As a choice of Equal Pay spokesperson, Batgirl is a decent choice because of her similar role and similar job responsibilities with regard to the employer, Batman, and her fellow employee, Robin. However, commenters regarding the video (on YouTube)³⁰¹ point out that Robin has a lot more experience than Batgirl, and more frequently and actively supports Batman’s missions, each time at great personal risk, so perhaps Robin would be deserving of a performance bonus beyond basic pay.

Visual Rhetoric, Ethics, and Professionalism: The audio-visual work is clever and attractive. It is an ingenious vehicle to get people to stop and think about the Equal Pay Act for a moment. But the words and actions depicted in the video also communicate a somewhat counterintuitive message of Batgirl seeming to be willing to leave Batman and Robin in mortal peril from a ticking time bomb unless Batman agrees that she is entitled to equal pay under federal law for doing the same job as Robin. This bad faith tactic seems counterintuitive to the actual visual cultural message of Batman and his associates, who always support each other through dangers thick and thin.

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.* (see comments section following the video).

Governmental laws and regulations have been explained and illustrated from time to time in a more visual manner, sometimes by government itself (as depicted by the EPA’s explanation of the operation of the Clean Water Act and the Department of Labor’s explanation of the Equal Pay Act, above) or by private parties.

VI. CARTOON BRIEFS

Were it not for the efforts of one amicus curiae attorney in the in the United States Court of Appeals for the Second Circuit in the case, *United States v. Apple, Inc.*,³⁰² who submitted a five-page cartoon brief³⁰³ to the court, we would have no real-life examples of the cartoon litigation brief medium. In this case, the amicus Mr. Bob Kohn protested the unreasonableness and unfairness of the Department of Justice’s application of a simple supply and demand theory to the pricing of ebooks.³⁰⁴



302. *United States v. Apple, Inc.*, 889 F. Supp. 2d 623 (S.D.N.Y. 2012).

303. Brief of Bob Kohn, *supra* note 198. The visual rhetorical techniques and the ethics and professionalism issues raised by this brief have been critiqued in *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 130–32.

304. Brief of Bob Kohn, *supra* note 198; *see also Ethics of Visual Legal Rhetoric*, *supra* note 17.

Visual Context: Kohn's cartoon novelette presents 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.³⁰⁵

Verbal Context: It is noteworthy that the amicus-attorney included so much text that the brief really is a short verbal summary of the highlights of the originally proffered brief's twenty-five-page argument. The brief presents an entirely verbal argument, but one delivered through a cartoon medium, rather than a visual argument communicated through visual rhetorical means. The cartoon brief even cites legal authority in cartoon narration boxes.³⁰⁶

Visual Cultural Context: The cartoon format requires a certain level of experience with the comic and cartoon sequential narrative form in order to follow the story from panel to panel, left to right and top to bottom. Aside from that, the images are not complicated or culturally-based—a court, a judge, laptops, simply drawn characters in everyday situations, working from bed, or sitting on a park bench.

Mise en Scène and Visual Rhetoric: Bob Kohn's cartoon brief is fun to look at, and it is eye-catching in a decorative sense. But the cartoon 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 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. The cartoon itself does not effectively convey the legal analysis, only the verbal content does, nor do the visuals contribute to the overall theory of the case.

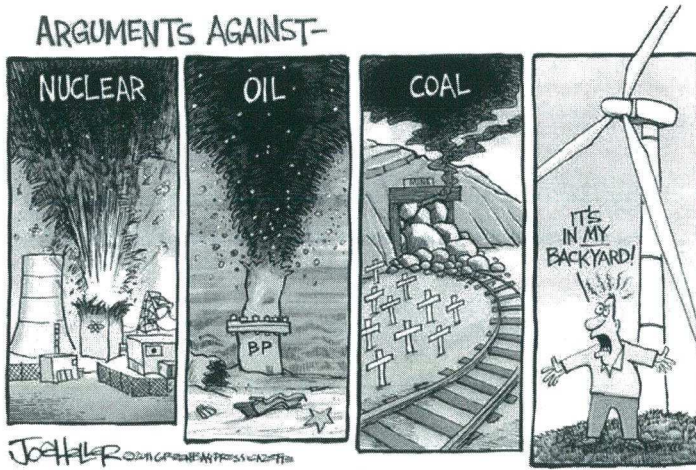
Visual Rhetoric, Ethics, and Professionalism: It appears that in the comic brief, the attorney, Bob Kohn, was protesting and expressing his irritation with the court's requirement rather than trying to improve the delivery of his arguments against the DOJ's position in the case. As noted above, the cartoon 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 and demand theory to the pricing of ebooks. The characters in the cartoon—the author, we presume, and a bright young woman companion—are just mouthpieces used to parrot the bullet points of the actual amicus brief. There is

305. Brief of Bob Kohn, *supra* note 198; see also *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 130–32.

306. *Ethics of Visual Legal Rhetoric*, *supra* note 17 at 132.

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).³⁰⁷ 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.³⁰⁸

Compare the following non-legal example by cartoonist Joe Heller:



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Visual Context: This cartoon uses sequential storytelling with an overwhelming pictorial, rather than verbal, rhetorical message, to assert that the arguments raised against wind energy are trivial in comparison to the arguments against nuclear, oil, and coal energy. Visually it is supremely well-crafted visual communication of the points of argument being asserted.

Verbal Context: There are only ten words and one set of initials in this entire cartoon (“arguments, against, nuclear, oil, BP, coal, mine, it’s, in, my, backyard”).³¹⁰ The words drive home the comparison being made, but as explained above, the visuals do a supremely well-crafted job of communicating the points of argument being asserted. It might be indispensable to the message to explain in words why the man in the fourth panel does not like the wind power generator

307. *Id.*

308. *Id.* at 131–32.

309. Joe Heller, Illustration of visual argument against wind power, in @dorsetenergized, *Arguments Against Wind Power*, PAPER BLOG, <http://en.paperblog.com/arguments-against-wind-power-cartoon-says-it-all-223660/> (last visited Oct. 29, 2021) (demonstrating and commenting on visual rhetoric relying primarily on images, not words).

310. *Id.*

depicted behind him—just simply showing him with symbols of anger or irritation over his head and a glare on his face might indicate a number of messages—anger over a high power bill, anger over the noise, anger over the aesthetic interruption of the generator in a green grassy space, or, as was intended, anger that the generator is in his backyard.

Visual Cultural Context: The cartoon makes uses of visual cultural memes that should be readily identified by persons from many different cultures in the developed or developing world: a cooling tower and atomic symbol for a nuclear facility, a pipeline with a black substance erupting from it in an underwater environment (bubbles, seashells) to indicate an underwater oil pipeline leak, a wood framed entrance to a mountain or hillside with a railroad track leading to it to indicate a mine, and crosses and rocky blockage in the entrance to indicate a deadly mining disaster; and a well-rendered cartoon image of a wind power generator.

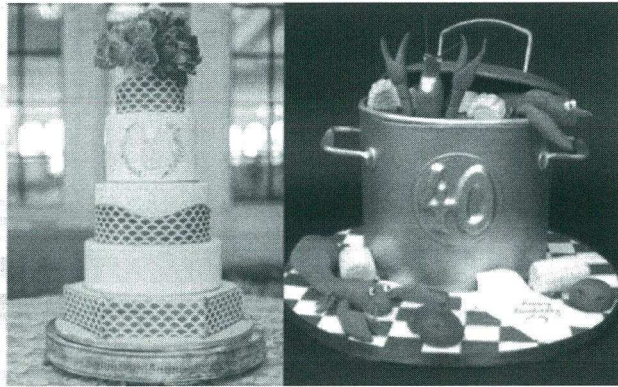
Mise en Scène and Visual Rhetoric: The stock images, the settings, and the perspective chosen all work together to communicate that the arguments raised against wind energy are trivial in comparison to the arguments against nuclear, oil, and coal energy. As an example of sequential comic argumentation, Joe Keller's cartoon is an effective work of visual advocacy.

VII. PICTORIAL OR PHOTOGRAPHIC BRIEFS

In recent years, some litigation briefs have been submitted that were highly pictorial—by which I mean the most important part of the substantive points of argument raised in the brief were communicated through pictures. A recent instance is the amicus curiae brief submitted by Cake Artists in the case of *Masterpiece Cakes v. Colorado Civil Rights Commission*.³¹¹ The brief argues that that cakes are expressive works entitled to first amendment protection, that the design and preparation of custom cakes is an artistic and expressive activity, and that cake artists merit as much protection for their expressive work as artists using other media.³¹² While the amici do express a significant portion of their argument in words, and do cite legal authority in the brief, arguably the most significant part of the brief is the illustrations—full color photographs of highly artistic decorated cakes.

311. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018).

312. Brief for Cake Artists as Amici Curiae in Support of Neither Party, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111), 2017 U.S. S. Ct. Briefs LEXIS 3254.



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The wedding cakes that petitioner Jack Phillips has created belong, with *amici's* cakes, in the same category of artistic, custom cakes. Various images of his wedding cakes—made before the rulings of the Colorado tribunals in this case—establish as much. The following images,⁴ while reflecting his individual style, are unquestionably

⁴ These images were taken from the website of petitioner Masterpiece Cakeshop, <http://masterpiececakes.com/wedding-cakes> (last visited Sept. 6, 2017). Counsel for petitioners consented to *amici's* use of these pictures.

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16

the result of extraordinary creativity and effort:

3. *Same-sex wedding cakes can be especially artistic*
 Same-sex weddings could (and many do) use cakes that are not notably distinct from any other wedding

Visual Context: The use of images in the brief is intended to show the artistry, beauty, inventiveness, and variety of cake designs to reveal their potential as expressive speech. The photographs accomplish this task.

313. *Supra* notes 15 and 16.

314. Brief for Cake Artists as Amici Curiae in Support of Neither Party, *supra* note 312, at 15–16.

Verbal Context: The brief is formatted in the usual manner of a United States Supreme Court amicus brief; it uses words, legal citations, footnotes, a table of contents, table of authorities, and all other sections of text normally found in an amicus brief. But as noted above, the better parts of the arguments are made using visuals.

Visual Cultural Context: An ornately decorated cake or one crafted to depict other worldly objects and creatures may be a phenomenon of highly developed societies, but persons from many cultures should be able to recognize beautiful craftwork. The message of the *Masterpiece* brief is that the cakes shown are *art*, and the artistic nature of the works should be observable by many for whom the cakes themselves and the celebrations for which the cakes are created are not within their cultural experience.

Mise en Scène and Arrangement: Each cake photograph is well executed, the dominant subjects of the photographs are clear, the lighting is adequate and effective, and the frames are properly filled and not overcrowded.

Visual Rhetoric, Ethics, and Professionalism: The point of argument being asserted in this amicus brief is a limited point—that decorated cakes are a form of artistic expression, and that the cakes and the people who design and make them are entitled to first amendment protection—but this point was critical to the overall issues of the case which involved constitutional issues of free speech, free exercise of religion, and protection from discrimination under equal protection. In conjunction with the constitutional law first amendment verbal legal argument asserted, the brief does a good job making its points.

A notorious example of a picture brief is the short, summary-judgment brief filed by the Dallas Mavericks in the *Hillwood Investment Properties v. Radical Mavericks Management* case.³¹⁵ Mark Cuban's (Radical Management) attorneys wanted to ridicule plaintiffs' assertion that Cuban had made questionable business and financial decisions concerning the Mavericks and had caused the value of the Mavericks to decline over the course of his control, compared to the time when the plaintiff, Hillwood, had controlled the franchise.³¹⁶ The brief is little more than a

315. Defendants' Motion for Summary Judgment, *Hillwood Inv. Props. v. Radical Mavericks Mgmt., LLC*, No. 10-05639, 2011 WL 2649590 (D. Tex. June 22, 2011). The brief is four pages long, with one full page taken up only by the law firm's signature block and certificate of service. *Id.*; see also Barry Petchesky, *The Brilliant Legal Mind Behind Mark Cuban's "Fuck You" Brief*, DEADSPIN (June 22, 2011, 3:10 PM), <http://deadspin.com/5814499/the-brilliant-legal-mind-behind-mark-cubans-fuck-you-brief>.

316. See Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 136–40 (discussing the visual rhetoric, ethics, and professionalism of this picture brief).

single photograph that shows a victorious Mavericks team celebrating their league championship in 2011³¹⁷:

CAUSE NO. 10-09030

HILLWOOD INVESTMENT PROPERTIES III, L.P.D., individually and on behalf of DALLAS BASKETBALL LIMITED D/B/A DALLAS MAVERICKS,

Plaintiff,

v.

192ND JUDICIAL DISTRICT

11/08/22 10:30 AM
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11/08/22 10:30 AM

DEFENDANTS, DALLAS COUNTY, TEXAS

WORLD CHAMPION DALLAS MAVERICKS AND RADICAL MAVERICKS MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT

Come now Defendants Dallas Basketball Limited d/b/a Dallas Mavericks ("World Champion Dallas Mavericks") and Radical Mavericks Management, L.L.C. ("RMM") and hereby move for summary judgment and would show the Court as follows:

I. BACKGROUND

On May 11, 2016, Plaintiff Hillwood Investment Properties III, L.P.D. ("Hillwood"), a five-percent owner of the World Champion Dallas Mavericks, filed its Original Petition claiming that majority owner Mark Cuban ("Cuban") has made a "series of questionable, business, financial and personnel decisions" regarding the World Champion Dallas Mavericks. Hillwood claims that Cuban has been "careless and reckless" in his decision-making, allegedly causing Hillwood to "lose substantial investment value." Finally, Hillwood claims that the World Champion Dallas Mavericks are "imminent and/or in imminent danger of insolvency," and seeks to take the team away from Cuban and hand the World Champion Dallas Mavericks over to a court-appointed receiver.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - Page 1

question that Hillwood's claims of mismanagement lack merit and Hillwood's claims should be disposed of on summary judgment.

III. CONCLUSION

For the reasons detailed above, the World Champion Dallas Mavericks and RMM request this Court grant summary judgment in their favor on all Hillwood's claims and award the World Champion Dallas Mavericks and RMM such further relief to which they are entitled (although they are quiet at present at this moment).

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - Page 2

II. SUMMARY JUDGMENT EVIDENCE AND ARGUMENT

On June 12, 2011, the World Champion Dallas Mavericks defeated the Miami Heat to claim the franchise's first NBA championship. A true and correct photo of one of the many victory celebrations is incorporated herein:



Under Hillwood's ownership, the team was deemed the "most successful" in all of professional sports. Under Cuban's stewardship the Mavericks have become one of the league's most successful teams and are now NBA champions. Accordingly, there can be no genuine

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - Page 2

Dated: June 2, 2011

Repositively submitted,

RSJ & RICHARDSON P.C.

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 Texas State Bar No. 09789974
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 1717 Main Street, Suite 3000
 Dallas, Texas 75201
 Telephone: (214) 747-8076
 Telex: (214) 747-7091

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on Plaintiff's counsel of record, Don Collinson, 1400 Bank of America Plaza, 901 Main Street, L0 125, Dallas, Texas 75202, on June 22, 2011, via hand delivery.

Thomas M. Melchiorre

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - Page 3

Visual Context: The argument of the summary judgment brief is hinged on the one photograph that argues: "How can Mark Cuban have mismanaged the team when it won a league championship under his management." It is possible there

317. Defendants' Motion for Summary Judgment, *supra* note 315.

were other motives for using the photograph, perhaps a hope that the state district court judge in Dallas would be a Maverick's fan, or at least happy and proud that the team won a championship under Cuban's management.

Verbal Context: The meaning of the photograph in this litigation depends on the context in which it is used. Defendants placed it in a summary judgment motion which, other than the photograph, is communicated verbally. With this context, it becomes apparent that the defendants intend to counter all of the claims alleged by the plaintiffs by asserting one point, "The Mavericks won a championship under Cuban's management." The one point was made visually, with the photograph of the championship celebration.

Visual Cultural Context: Basketball is one of the most globally recognized sports, and the American NBA is one of the most identifiable sports leagues in the world. Even non-NBA fans would recognize the visual cultural image of a basketball team celebrating with a championship trophy. For actual NBA fans, there are enough Dallas Maverick jerseys and logos visible to identify the team that is the winner of the championship.

Mise en Scène and Visual Rhetoric, Ethics, and Professionalism: The photograph in the brief is adequate for the limited purpose of reminding the audiences of this brief, particularly the court evaluating this summary judgment motion, that the Mavericks won an NBA championship. The verbal context reveals that this one championship occurred under Mark Cuban's management, and that it should contradict defendants' allegations of mismanagement. Beyond that, it is a questionable work of visual legal rhetoric and professionalism.³¹⁸ The brief does not address the specific claims and allegations of mismanagement raised by the opponents, and instead seems to argue, "Forget all of that. Mark Cuban's ownership group won a championship. None of the plaintiffs' legal allegations or arguments even matter." It seems that the Mavericks' attorneys eventually realized that this position may be ethically and professionally questionable because they withdrew the photograph brief and replaced it with a traditional, completely verbal, amended summary-judgment brief; the trial court granted summary judgment to the Mavericks, and the judgment was affirmed.³¹⁹

Pictorial briefs can make use of the powerful persuasive effects of visual media both to make complete visual arguments on their own and to support verbal arguments in the same brief. Often in legal disputes, the arguments of counsel are complicated enough that a verbal presentation is needed to properly communicate

318. See Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 137–38.

319. See *Hillwood Inv. Props. v. Radical Mavericks Mgmt., LLC.*, No. 05-11-01470-CV, 2014 WL 4294968 (Tex. App. Aug. 21, 2014).

the argument, in which setting the visuals support and enhance the communication and persuasiveness of the verbal argument.

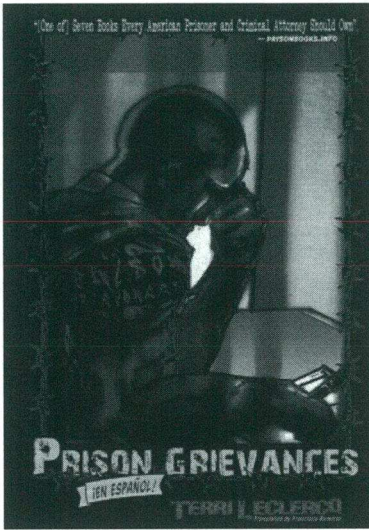
Visuals used in sequence can make a stronger logical and emotional appeal than single images alone.³²⁰ However, not every image or sequence of images can communicate a proper and complete point of argument. The Bob Cohn cartoon brief made a purely verbal argument and merely used the comic sequential storytelling device as a vehicle to deliver the words in an eye-catching format. The *Radical Mavericks* brief is troubling in that it suggests through visual rhetoric that the judge should ignore the facts and issues raised by the opponents in their summary judgment brief and focus only on one fact, that the Cuban ownership group delivered a championship. It is an irresponsible appeal purely to pathos and emotion that encourages the court to follow counsel's lead and decide the case in defendant's favor regardless of the facts, the law, and the application of the law to the facts. Therefore, the photograph is an obvious distraction that does not enhance the reader's comprehension of the analysis. It wants the reader to forget that there is any analysis to perform.³²¹

VIII. GRAPHIC NOVEL LEGAL TEXTS

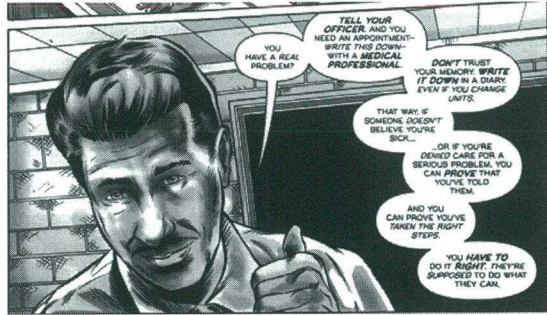
Beyond the short form cartoon briefs or informational pamphlets discussed in the sections above, some legal authors have turned to a large format graphic novel approach both to communicate the law more effectively to all readers, and specifically to overcome language barriers of the illiterate or less-than-fully literate audiences of the works.

320. See sources cited *supra* note 33.

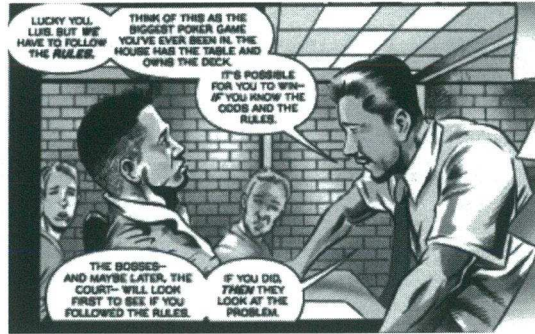
321. See Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 136–40.



322



Terri LeClerc, *Prison Grievances* 323



Visual Context and Visual Cultural Context: Terri LeClerc’s *Prison Grievances: When to Write, How to Write*, uses the graphic novel medium to inform prisoners of their rights. The visuals place the lessons within the prison context.³²⁴ The persons depicted—prisoners, guards, an attorney and prisoners’ advocate, prison administrators—should all be readily identifiable to the intended audience, who are incarcerated persons.

Verbal Context: While the illustrations are extremely high-quality graphical works and do a very effective job setting the scene and providing a welcoming context for the intended audience of actual prisoners, the information

322. TERRI LECLERCQ, PRISON GRIEVANCES EN ESPAÑOL: QUANDO ESCRIBE, COMO ESCRIBE (2015).
 323. LECLERCQ, *supra* note 1.
 324. *Id.*

communicated in the work is largely verbal. Even here, the author went to great lengths to make the text readable by those at a 5th Grade reading level, and there are further rhetorical arrangement decisions, such as to provide many checklists and lists of instructions and considerations to allow readers to readily understand and apply the lessons. The text of the book has been translated into Spanish, too, for easier access by the Spanish-speaking prisoner community.³²⁵

Mise en Scène and Visual Rhetoric, Ethics, and Professionalism: A graphic novel whose pictures are rendered in very high quality art, and whose text is written at a 5th Grade reading level will be a very attractive and accessible resource for prisoners compared to a booklet that relies on text alone. Even if the most valuable information is presented verbally, the book has the look and feel of a work that can be understood and enjoyed by all prisoners. The graphic novel format both markets itself and presents the information in a more attractive format. There is no reduction in the information communicated because of the format.

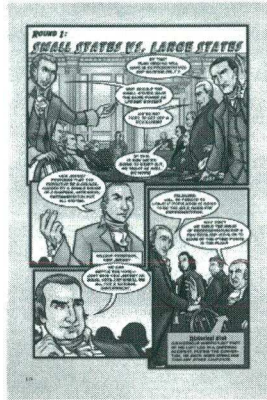
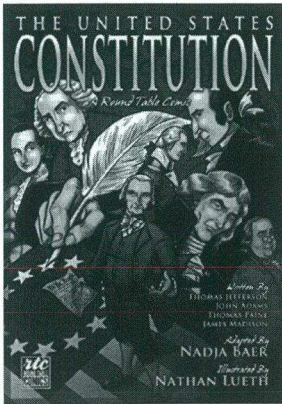
There are many other examples of this genre:



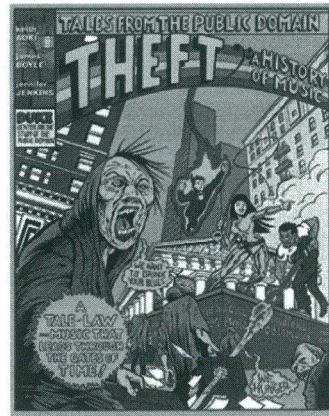
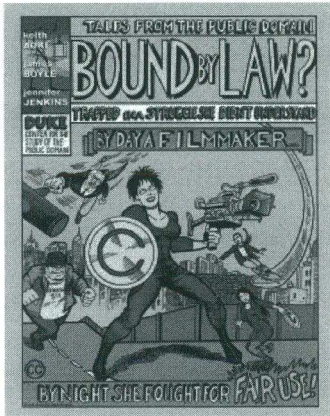
Jonathan Hennessey & Aaron McConnell, *The United States Constitution: A Graphic Adaptation*³²⁶

325. TERRI LECLERCQ, PRISON GRIEVANCES EN ESPAÑOL: QUANDO ESCRIBE, COMO ESCRIBE (2015).

326. Aaron McConnell, Illustrations depicting a graphical adaptation of the Constitution, in JONATHAN HENNESSEY & AARON MCCONNELL, THE UNITED STATES CONSTITUTION: A GRAPHIC ADAPTATION 9, 15 (2008).



Nadja Baer & Nathaniel Lueth, *The United States Constitution: A Round Table Comic Graphic Adaptation*³²⁷



Tales from the Public Domain series:
*Bound by Law?*³²⁸
*Theft! A History of Music*³²⁹

327. Nathan Lueth, Cover and Illustrations depicting a graphical adaptation of the Constitution, in NADJA BAER ET AL., *THE UNITED STATES CONSTITUTION: A ROUND TABLE COMIC GRAPHIC ADAPTATION*, 10, 19 (2012).

328. Illustration on the cover of *Bound by Law?*, in KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *BOUND BY LAW?* (2006).

329. Illustration on the cover of *Theft! A History of Music*, in KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *THEFT! A HISTORY OF MUSIC* (2017).



*Terms and Conditions – the Graphic Novel*³³⁰

Visual Context: These works vary in the scope of their visual message—the two works on the Constitution try to illustrate both the story of the framing of the Constitution and increase the reader’s comprehension of its terms by illustrating the words and concepts used. The works of the *Tales from the Public Domain* series try to guide the reader through copyright matters pertaining to infringement, fair use, and the public domain, and tell the story with reference to history and case law. The *Terms and Conditions* graphic novel uses the actual words of the Apple iTunes terms and conditions (in 2016), and the graphics do nothing substantively to communicate the terms, but the graphics are the most interesting, accessible, and engaging part of the work. The graphics turn the dry and clumsy legal terms into an entertaining visual stroll down comic and cartoon memory lane, *and also* communicate the actual terms along the way.

Verbal Context and Visual Cultural Context: The two works on the Constitution and the *Public Domain* works have made some effort to translate the communication from legalese to more standard high school level English or lower, but *Terms and Conditions* did not; it left the actual legalese terms and conditions used by Apple alone. (That is most certainly the point of the work, to show the world how long and complicated the terms actually were). Even if readers are not culturally experienced or schooled in comic and cartoon culture displayed in these works, they would still appreciate the cartoon art for what it is. Very little of the engaging and accessible nature of the works is dependent on knowing the historical sources or references to actual cartoon and comic characters used in the works.

330. Cover and Illustrations, in R. SIKORYAK, *TERMS AND CONDITIONS THE GRAPHIC NOVEL* (2017).

Mise en Scène and Arrangement: All of these examples are skillfully executed works with masterful comic artwork and plenty of characters, images, and memes of the cartoon, comic book, and comic strip genres of sequential narrative. The framing, composition, and arrangement of each panel or page of these works cannot be summarized; all of them are as creative, varied, and communicatively advantageous as the best examples of the graphic novel genre.

Visual Rhetoric, Ethics and Professionalism: As noted with Terri LeClerc's work, *Prison Grievances*,³³¹ graphic novel whose pictures are rendered in very high quality art, and whose text is written at lay person's reading level will be a very attractive and accessible resource for persons seeking legal information on the topics of the above works. Even if the most valuable legal information is presented verbally, these books have the look and feel of works that can be understood and enjoyed by all persons. The graphic novel format both markets itself and presents the information in a more attractive format. Just considering the *Terms and Conditions* book, if one compares the graphic novel to the original text, one can see that the Sikoryak book is a magnificent work of art, and successfully provides a vehicle that is engaging enough for Apple consumers to more easily read the iTunes terms and conditions. It is unlikely that Sikoryak created the work as a public service or simply to help Apple reach its own customers, and instead intended to make the contract terms into an artistic statement. In this, he succeeded. His obvious effort and attention to comic detail gives the work a very high *ethos* rating.

IX. VISUAL, PROACTIVE CONTRACT GENRES—COMIC BOOK CONTRACTS AND MULTIMEDIA “SMART” CONTRACTS

My last category of study is perhaps the most intriguing: comic book contracts and other highly visual forms of proactive agreements and multimodal-multimedia contracts. In the areas of contracts and employment agreements, visuals are used with deliberate attention to making the agreements easy to understand with little or no need for negotiation of terms.

As the names indicate, proactive contracts and agreements are part of the proactive law movement³³² that seeks to apply the focus of legal and the advice of lawyers toward anticipating and avoiding problems in the future, rather than simply reacting and responding to problems in the past.³³³ Overall, proactive law views a

331. LECLERCQ, *supra* note 1.

332. E.g., 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 BUS. ENV'T. 13 (Gerlinde Berger-Walliser & Kim Østergaard eds., 2012).

333. See *id.*; see also Soile Pohjonen, *Proactive Contracting: In Contracts Between Businesses*, 12 IUS GENTIUM 147, 148–50, 171–72 (2006) [hereinafter *Proactive Contracting*]; Adam Sulkowski,

contract as an enabling instrument to create success and foster sustainable, cooperative relationships between parties, rather than a legal instrument filled with requirements, conditions, and disclaimers written in reaction to mistakes and disputes of the past.³³⁴ The word “proactive” implies a forward-looking, ex ante focus to act in anticipation of areas of potential trouble and dispute, taking control and exercising self-initiative to create an agreement that handles the areas of concern, instead of reacting to failures and shortcomings in past arrangements and relationships.³³⁵ Thus, the proactive approach is designed to better fulfil the will and the intentions of the parties to the agreement, more so than a reactive, lawyer-driven response to past failure and litigation.³³⁶

One approach to proactive contract design involves “visualization” within agreements.³³⁷ As with the areas discussed above—trial and appellate litigation, administrative and regulatory law, and general legal communication—the use of visuals to explain and illustrate the terms of an agreement can improve the communication and understanding of the terms of the agreement, particularly among contractors whose language skills make them less than fully literate in the native language of the contract.³³⁸

Multimodal and multimedia contracts and analog hard copy contracts may be designed with proactive anticipation of areas where visual illustration can aid communication and understanding.³³⁹ As the examples below will illustrate, none of the actual agreements discussed here eliminate all text and replace it with images. It is not anticipated that visuals will completely replace words in contracts.³⁴⁰ The effort is to illustrate and explain the terms of the agreement, particularly for those contractors whose reading skills in the language of the verbal terms of the agreement are poor or nonexistent. The agreements are not necessarily going to be written in the form of a graphic novel—meaning a long-form sequential storytelling device. Several examples of employment contracts below do communicate a

Blockchain, Business Supply Chains, Sustainability, and Law: The Future of Governance, Legal Frameworks, and Lawyers?, 43 DEL. J. CORP. L. 303, 340–41 (2019).

334. See Sulkowski, *supra* note 333, at 340–41.

335. Gerlinde Berger-Walliser et al., *Promoting Business Success Through Contract Visualization*, 17 J.L. BUS. & ETHICS 55, 58 (2011) [hereinafter *Promoting Business*]; *Proactive Contracting*, *supra* note 333, at 148–49.

336. *Promoting Business*, *supra* note 335, at 58, 61–62; *Proactive Contracting*, *supra* note 333, at 148–49; see generally George J. Siedel & Helena Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L.J. 641, 656–57 (2010).

337. See generally Mitchell, *supra* note 32.

338. See Berger-Walliser et al., *supra* note 152, at 349–50, 363–64; *Promoting Business*, *supra* note 335, at 68–69; Mitchell, *supra* note 32, at 816–24, 831–34.

339. *Supra* note 338.

340. See Berger-Walliser et al., *supra* note 152, at 371–72.

narrative of the job and its requirements and responsibilities. But a shorter form of visual communication is used employing symbols, pictograms, some cartoon images, or visual memes relating to the contract or its subject matter.

It should be noted that visualization can gain efficiencies in reliability and operation of the agreements, but highly visual instruments do require a great deal of planning and design, which makes alteration and negotiation of the contents more difficult. Visualization improves the reception, understanding, and acceptance of contracts by eliminating boilerplate, backward-looking disclaimers and provisos, and risk-avoiding measures, but the time, expertise, and method of execution of visual terms takes away some of the discretion and flexibility in formation and potential negotiation of contract provisions. The parties replace uncertainty and ambiguity with inflexibility and non-negotiability in the terms of the agreement. Such a tradeoff makes a great deal of sense in situations where the parties enjoy completely unequal and asymmetrical bargaining power, such as in the case of vulnerable, disadvantaged, and less than fully literate workers entering into an employment contract with an employer. But in a transaction between parties with relatively symmetrical bargaining power, the tradeoff may not be ideal, but the parties will have much greater opportunities and resources to alter and finetune even a highly visual contract instrument.³⁴¹

A. *Cartoon Contracts*

South African attorney Robert de Rooy has developed cartoon contracts, a hybrid combination of text and comic artwork, designed for the purpose of simplifying the content of the agreements and communicating that content to audiences with limited literacy skills in the native verbal language (English) of the agreements.³⁴² His initial works were created for his clients who were major South African agricultural growers and who employed persons who had little education and very limited reading, writing, and speaking skills in English.³⁴³ De Rooy and his clients wanted to communicate the expectations, rules, and basic human resources concepts (salary, benefits, sick leave, disciplinary procedures) to these

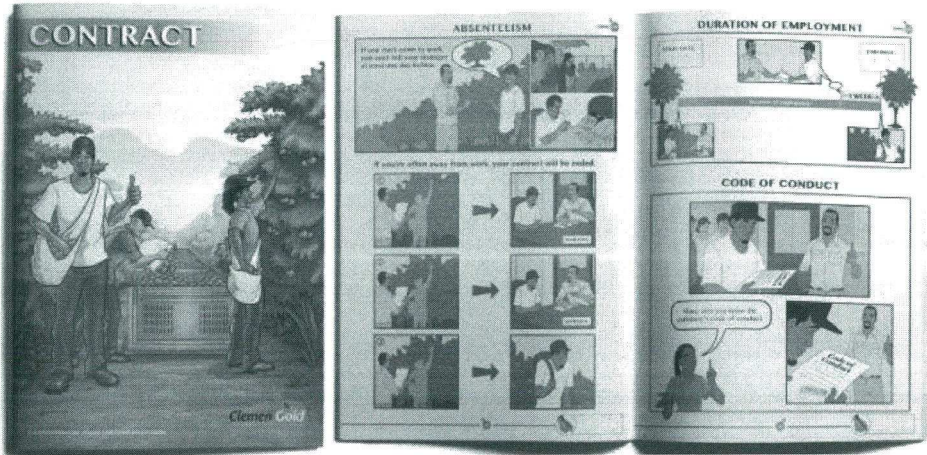
341. Sulkowski, *supra* note 333, at 334–35 (citing Jeremy M. Sklaroff, *Smart Contracts and the Cost of Inflexibility*, 166 U. PA. L. REV. 263, 264 (2017)).

342. *Rob de Rooy—Comic Contracts*, LAWYERS AS CHANGEMAKERS,

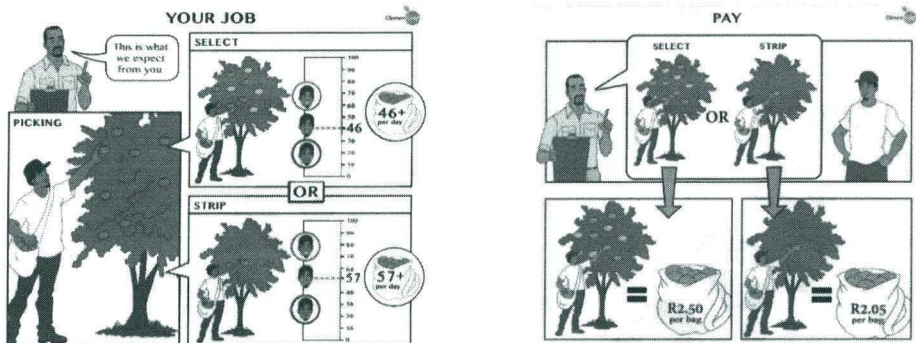
<https://lawyersaschangemakers.com/rob-de-rooy-comic-contracts/> (last visited July 16, 2019); Kate Vitasek, *Comic Contracts: A Novel Approach To Contract Clarity And Accessibility*, FORBES (Feb. 14, 2017, 7:00 AM), <https://www.forbes.com/sites/katevitasek/2017/02/14/comic-contracts-a-novel-approach-to-contract-clarity-and-accessibility/#54be54bd7635>. See also Mike Cherney, *Lawyers Turn to Comics for Help With Boring Contracts*, WALL ST. J. (May 31, 2019, 11:42 AM), <https://www.wsj.com/articles/if-a-cartoon-lightbulb-explained-your-contract-would-you-read-it-11559317351>.

343. De Rooy, *supra* note 213.

employees with cartoons and pictograms, and very little text. The result is the following work:



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Visual Context and Visual Cultural Context: As expressed in the words of the creator of these cartoon contracts, the images of workers were intended to be reflective of the actual persons who worked in the positions, but rendered with dignity and respect for the employees.³⁴⁵ The visuals employ symbols (trees, fruit, picking, IDs, equipment; different levels of managers—executives with ties, supervisors with clipboards; male and female workers), pictograms (calendars; sliding scales and pictorial bar graphs for amounts picked), and comic visuals (red and green direction arrows and checks or Xs for yes/no, good/bad; facial

344. De Rooy, *supra* note 16 (top image); Robert de Rooy, *Hayshed Comic Contract* (illustration), in *Hayshed Comic Contract*, CREATIVE CONTRACTS., <https://creative-contracts.com/hayshed/> (last visited Oct. 4, 2021) (bottom image).

345. De Rooy, *supra* note 213.

expressions of happiness and success, vs. shame and failure) that are very likely to communicate across many cultural and language divides.

Verbal Context: The works do contain words, particularly headings for the various sections of the agreement, but there is much less reliance on the words to communicate the meaning than in other examples of comic art sequential storytelling works. It is presumed that other variable terms of the employment arrangement—the exact hourly wage or salary, specific benefits, or other personal details—can be covered in a separate engagement or salary letter.

Mise en Scène and Visual Rhetoric, Ethics, and Professionalism: By using high quality art and paying careful attention to the use of symbols, pictograms, and racially- and gender-inclusive comic visuals that are likely to communicate across cultural and language divides, the cartoon employment contracts are very likely to be understood by a wide-range of partially literate or non-literate workers. Because of the enormous up-front investment in the art and graphic design, the contracts are for all intents and purposes completely non-negotiable, which, in the context of an employment agreement between a low-skill-level worker and a large agribusiness is not remarkable. The works show proactive attention to comprehension of the agreement, not flexibility or alteration of its terms.

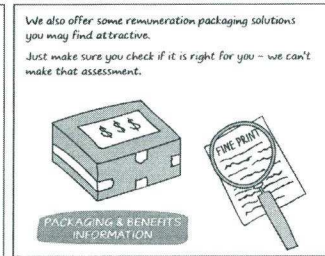
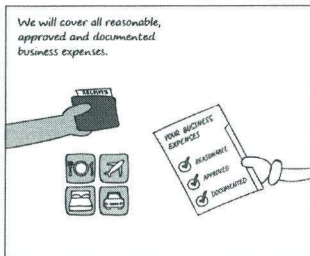
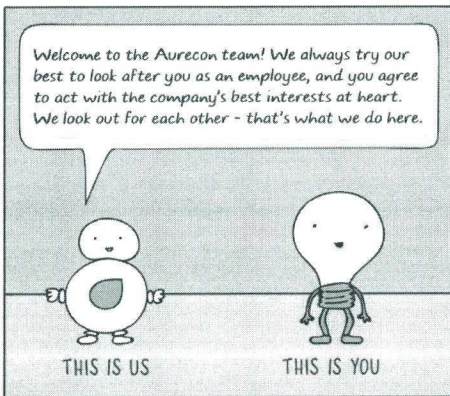
B. Multimodal-Multimedia Contracts with Pictorial Content

In Australia, the Aurecon Group engineering, design, and infrastructure advisory company³⁴⁶ has taken the cartoon employment concept one step further with a multimedia “smart” contract. As with the other proactive contract projects discussed above, the Aurecon employment contract uses visualization to anticipate problems in reception and comprehension of terms and employs visuals to communicate those terms.³⁴⁷ The “smart” part of the contract is that it is designed to be viewed on mobile media and has embedded video and hyperlinks.³⁴⁸

346. AURECON GROUP PTY., LTD., *About Aurecon*, AURECON GROUP, <https://www.aurecongroup.com/about> (last visited July 17, 2019).

347. *Australia’s First Visual Employment Contracts Launched*, AURECON GROUP (May 5, 2018), <https://www.aurecongroup.com/about/latest-news/2018/may/visual-employment-contract>. Aurecon consulted with Professor Camilla Andersen in designing their visual contract. *Id.*

348. *Id.*



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Visual Context and Visual Cultural Context: Aurecon chose to render the images in a highly stylized and simplified form of sequential narrative. The images are not “cartoony” in a comic book sense, but instead resemble children’s picture book illustrations. Human figures most often are rendered as blobby lightbulb figures with minimal facial or anatomical features, only as much as is necessary to personify the lightbulb shapes. In one section only (“Collaboration”) are the humans rendered in more humanlike form. Other creatures (e.g., penguins) are rendered with lifelike detail. Aurecon itself is rendered as a kind of snowman with the company logo on its belly. Symbols and cartoon memes (calendars, checklists, dollar signs for “money,” watercooler where “Communication” takes place, palm trees and hammock as “vacation,” magnifying glass to show “looking closely” at fine print) are used for visual communication of content.

Verbal Context: Although highly visual and containing video content through embedding and links, the Aurecon employment contract still contains a lot of words.

349. Aurecon Group, Illustrations of provisions of a visual employment contract, *in* THE AURECON CONTRACT 2, 9, <https://www.comicbookcontracts.com/aurecon-contract> (last visited Nov. 3, 2021) (top left and bottom three images); Aurecon, *Aurecon Launches Visual Employment Contracts*, YOUTUBE (Sept. 4, 2018), <https://www.youtube.com/watch?v=zanKjKVqAsk&t=129s> (screen capture 2:08).

The visuals do supplement the terms and illustrate many concepts, such as travel policies, leave, compensation, and benefits—but the actual communication relies almost entirely on the words used. The target audience was employees of the company—“ideas people,” which explains the lightbulb symbolism³⁵⁰—who presumptively are 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. The visuals are used to make the text more accessible and enjoyable to engage with.

Mise en Scène and Visual Rhetoric, Ethics, and Professionalism: The intent of the project was to communicate Aurecon’s employment policies and provisions in a form that its current and prospective employees would be happy to read and easily understand, but also to impress prospective and current employees and clients with Aurecon’s innovative and “out-of-the-box” vision of “the future of work.”³⁵¹ The company prides itself on its innovative, freethinking, and even “playful” culture.³⁵² Aurecon also acted proactively in anticipation of problems from its multicultural and polylingual workforce and client base: “Aurecon is an Australian firm operating across New Zealand, Asia, South Africa and the Middle East, with a culturally diverse workforce. Meaning can often be lost between offices, countries, cultures, and languages.”³⁵³ The choice to use very simplified, child-friendly art most likely was made in the spirit of the company’s “playful” culture,³⁵⁴ rather than for increasing the communicative power of the visuals. A children’s picture book format might also make the work both enjoyable and accessible to its audience. The use of cartoon memes, symbols, pictograms, and comic visuals will allow the images to illustrate and communicate the verbal terms for employees and clients who might have some cultural and language difficulties understanding the verbal text of the employment terms.

X. CONCLUSIONS

In rhetorical terms, the goal of legal communication should be to construct knowledge and understanding in the target audience of a communication, and not to defeat knowledge and confuse comprehension.³⁵⁵ The recognition that visuals are a rapid, efficient, constructive, and persuasive form of communication reveals

350. See AURECON GROUP, *supra* note 347.

351. See *id.*; David Marin-Guzman, *Aurecon Backs ‘Visual Contracts’ as Future of Work*, FIN. REV. (May 3, 2018, 12:30 PM), <https://www.afr.com/leadership/aurecon-backs-visual-contracts-as-future-of-work-20180502-h0zjch>.

352. See AURECON GROUP, *supra* note 347; Marin-Guzman, *supra* note 351.

353. AURECON GROUP, *supra* note 347.

354. *Id.*

355. See *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 122.

their potential to construct meaning and to inform and persuade audiences of legal documents. Visual images inspire inventive thinking about the law and can bridge gaps in communication through cultural memory and collective experience, assisted by the Gestalt psychology heuristics of continuation, closure, and completion, and the Kuleshov Effect of montage editing and sequencing of images. Visuals are a more universal language that can communicate to illiterate and culturally- and linguistically-challenged audiences.³⁵⁶

A. Universal but Complex Communication



U.S. Supreme Court evaluated flag salutes, such as the salute depicted at left here, and stated, “Symbolism is a primitive but effective way of communicating

³⁵⁷ Visual media is a complex tool because human perception is relative to each viewer,³⁵⁸ and therefore messages communicated by visual media require a certain amount of interpretation from knowledge, cognition, and cultural experience to form the actual meaning of the message.³⁵⁹ In *West Virginia State Board of Education v. Barnette*,³⁶⁰ the

356. See Bud Ward, *Photographer Documents Change in the Arctic*, YALE CLIMATE CONNECTIONS (Sept. 13, 2017), <https://www.yaleclimateconnections.org/2017/09/photographer-luca-bracali-documents-change-in-the-arctic/> (quoting photographer, Luca Bracali, “Photography is the most international language of all.”).

357. Robert Longley, *Why Americans Once Gave the ‘Bellamy Salute’*, THOUGHTCO. (Oct. 3, 2020), <https://www.thoughtco.com/why-americans-gave-the-bellamy-salute-3322328>.

358. See, e.g., Tracy D. Gunter, *Can We Trust Consumers with Their Brains? Popular Cognitive Neuroscience, Brain Images, Self-Help and the Consumer*, 11 IND. HEALTH L. REV. 483, 484, 496–97 (2014) (asserting that the notion that brain science can trace neural activity of an individual in response to rhetoric and generalize the applicability of such lessons to a larger population is highly questionable); Kevin W. Saunders, *A Disconnect Between Law and Neuroscience: Modern Brain Science, Media Influences, and Juvenile Justice*, 2005 UTAH L. REV. 695, 696–732 (2005) (summarizing the difficulties of evaluating the cognitive effects of violent media because of the different developmental and experiential differences in individual adolescents).

359. See Roland Barthes, *IMAGE, MUSIC, TEXT* 157–63 (Stephen Heath trans., 1977); George L. Dillon, *Art and the Semiotics of Images: Three Questions About Visual Meaning* (July 1999), <http://faculty.washington.edu/dillon/rhethtml/signifiers/sigsave.html> [<https://perma.cc/4H4G-R6GF>]; Claudia E. Haupt, *Active Symbols*, 55 B.C. L. REV. 821, 850–58 (2014); PAUL MESSARIS, *VISUAL PERSUASION: THE ROLE OF IMAGES IN ADVERTISING*, at xiii–xvi (1997); Qadir Qeidary, *Dilemma of Trade Dress, Informational Values and Enigmatic Distinctiveness; Semiotics Illuminating the Status of Distinctiveness*, B.C. INTELL. PROP. & TECH. F. 1, 4–5, 39 (Mar. 8, 2017), <http://bciptf.org/wp-content/uploads/2017/03/Dilemma-of-Trade-dress-Combined-Edits.pdf>.

360. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

ideas. . . . [But a] person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn."³⁶¹ The conclusion to be drawn is that visual rhetorical devices do not carry or communicate a single message to all users.³⁶² Images are not static, independent bearers of unambiguous truth.

The same can be said, of course, of all communicative media. Letters are symbolic instruments that are combined and interpreted as forming words, which are further combined and interpreted as forming a language that attempts to communicate clearly and objectively, but every language is susceptible to the propagation of ambiguities that plague both legal and nonlegal communication.³⁶³ With visual communication, the ambiguities might be more subtle, while the communication of the message (clearly or ambiguously) happens even more rapidly than with words.³⁶⁴ Nevertheless, the law often must regulate and accommodate visual media as if it has an "objective appearance" when used for factual proof³⁶⁵ or rhetorical argument in legal communication.³⁶⁶

The famous photographer, Richard Avedon, once stated, "There is no such thing as inaccuracy in a photograph. All photographs are accurate. None of them is the truth."³⁶⁷ This pithy comment reminds us that photographs, depictions, and other

361. *Id.* at 632–33. The image, of unknown origin, shows children (c. 1940) saluting the U.S. flag.

362. See ANN MARIE SEWARD BARRY, VISUAL INTELLIGENCE: PERCEPTION, IMAGE, AND MANIPULATION IN VISUAL COMMUNICATION 16–17 (1997).

363. See Barton Beebe, *The Semiotic Analysis of Trademark Law*, 51 UCLA L. REV. 621, 626–33 (2004); Peter Goodrich, *Europe in America: Grammatology, Legal Studies, and the Politics of Transmission*, 101 COLUM. L. REV. 2033, 2043–54 (2001); Roderick A. MacDonald, *Legal Bilingualism*, 42 MCGILL L.J. 119, 130–31 (1997).

364. See *supra* notes 162 and 163.

365. This article does not focus on the admissibility of visual devices under evidence law. I have discussed the evidence rules and professional conduct rules that govern visual evidence in my work. See *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 113–22 (concluding that evidence law is only a partial gatekeeper of visual rhetorical devices in litigation contexts, because visual rhetorical works are not always offered as proof of facts, but often as argumentative devices, visual metaphors, or figures of speech). See also *Visual Rhetoric and Tropes*, *supra* note 17, at 201–09. Visual works offered as demonstrative evidence to illustrate the testimony of a witness, or as a "silent witness" of facts, or as substantive proof of a fact (real evidence), must be authenticated through supporting testimony (affidavits or declarations). See *Ethics of Visual Legal Rhetoric*, *supra* note 17, at 113–22. If the work contains verbal testimony, printed or recorded, it must further overcome hearsay objections. *Id.* at 118. Naturally, the role of evidence is not negligible, and attorneys seeking to confront or rebut an opponent's use of a visual legal rhetorical device will seek to challenge it on relevance and prejudice grounds under Federal Rules of Evidence 401 and 403, in addition to any possible authentication or testimonial challenges. *Id.*

366. See *Visual Rhetoric and Tropes*, *supra* note 17, at 201–09.

367. Susana Martinez-Conde & Stephen L. Macknik, *5 Illusions Reveal How Portraits Can Lie*, SCI. AM. (July 1, 2014), <http://www.scientificamerican.com/article/5-illusions-reveal-how-portraits-can-lie/> (quoting Richard Avedon).

visual material in legal discourse are not neutral, “transparent” vessels of truth.³⁶⁸ They are a coded message in a certain medium.³⁶⁹ The medium itself does not lie—the camera and the darkroom equipment or software that produces the final displayed image tell no untruths on their own.³⁷⁰ It is the author of the work who creates the scene depicted in the photograph using the tools of her trade³⁷¹ who might slant or undermine the truth.³⁷² An advocate might not be the one to create the image, but she might choose a deceptive or misleading visual to bootstrap an argument.³⁷³

*B. The Obstacles in Moving Toward a
More Universal Form of Legal Communication*

Many if not most lawyers still shy away from using visuals in any legal document.³⁷⁴ Lawyers are expected to resist moving to include highly visual content in pleadings, briefs, contracts, and other legal documents because the use of visuals is unfamiliar, untested, and potentially expensive and time-consuming.³⁷⁵ A significant source of this aversion is attributable to the fact that on average, attorneys are not skilled or experienced in visual creation and graphic design, and therefore, at the outset of their adoption of visual content, they most likely will need to hire artistic and graphic support personnel to carry out the design and rendering of their litigation documents and transactional agreements.³⁷⁶ This Article is intended to encourage lawyers and judges to at least consider becoming more literate in the evaluation of visuals if not for their legal works and judicial opinions but simply to be able to evaluate and confront the visual devices offered by others.

368. See generally BARRY, *supra* note 354, at 15–16.

369. See Margolis, *supra* note 92.

370. See *Post-Myriad Genetics*, *supra* note 102.

371. *Id.*

372. *Id.*

373. The potential for abuse of visual rhetorical devices and the ethical considerations that should regulate such conduct are the subject of my work. See *Ethics of Visual Rhetoric*, *supra* note 17, at 107–11. See also *Visual Rhetoric and Tropes*, *supra* note 17, at 187 (“Visual topics and tropes are subject to abuse and must be used ethically and with careful regard to their propriety as a tool to create meaning and inspire imagination and not as a tool of deception or obfuscation . . .”).

374. James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 J. LEGAL WRITING INST. 87, 92, 101 (2008) (“Lawyers are not generally fond of images. Words are their trade. . . . Attorneys are wordsmiths and feel more comfortable with words than with images.”); Brian A. Garner, THE ELEMENTS OF LEGAL STYLE, at viii (1991) (foreword by Charles Alan Wright, stating: “The only tool of the lawyer is words.”); Adam L. Rosman, *Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs*, 63 J. LEGAL EDUC. 70, 70 (2013).

375. See, e.g., Mitchell, *supra* note 32, at 827, 859–60; Rosman, *supra* note 374, at 70–71.

376. Rosman, *supra* note 374, at 81.

The increased use of highly visual devices for communication often will result in decreased content.³⁷⁷ In many instances, highly visual legal communications will trade a certain level of complexity, specificity, and nuance in their terms for ease of access to and ease of understanding by literate and less-than-fully literate persons who may also struggle with cultural and language confusion issues.³⁷⁸ If that is an acceptable trade-off in the situation—for example, where highly visual contracts are being used in an employment situation where there is no negotiation of terms³⁷⁹ and completely unequal bargaining power situations, then the increase in access to and comprehension of the actual terms of the agreement by less-than-fully literate parties to it may be an acceptable tradeoff.³⁸⁰

As noted at the beginning of this Article, my goal here is to apply the lens of visual legal rhetoric and visual literacy analysis to evaluate and critique representative examples of legal communications that use visual images as a means to overcome language and cultural barriers. I hope I have provided lessons in visual communication for lawyers, judges, legislators, and regulators. I seek to encourage the use of visuals in legal communications because visuals can overcome barriers in communication that words alone cannot, and visual legal works can be made more universal in their communication, interpretation, performance, and enforcement.

377. Berger-Walliser, *supra* note 152.

378. See Marietjie Botes, *Using Comics to Communicate Legal Contract Cancellation*, THE COMICS GRID (Oct. 5, 2017), <https://www.comicsgrid.com/articles/10.16995/cg.100/> (Cartoon comics “may influence how contracting parties may choose to communicate complex legal issues in future, specifically to consumers with little formal education or when parties are confronted with severe language barriers, which is highly relevant in a country such as South Africa with eleven official languages and generally low levels of education.”).

379. Although opining that cartoon contracts should be fully enforceable, former Chief Justice of the High Court of Australia Robert French AC acknowledged the difficulty of negotiating changes in the contract terms and could not imagine a counterparty “drawing pictures on the spot to suggest variation of terms.” Aaron Goonrey & Coral Yopp, *Visual Contracts and Pitfalls of Employment Agreements*, INT’L L. OFF. (June 27, 2018), <https://www.internationallawoffice.com/Newsletters/Employment-Benefits/Australia/Lander-Rogers/Visual-contracts-and-pitfalls-of-employment-agreements>.

380. *Id.*

