

AALS Conference 2018 – San Diego
AALS Open Source Program: Visual and Popular
Culture Imagery in Legal Education

The Sharpest Tool in the Toolbox: Visual Legal Rhetoric

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- ▶ Teaching the use of **visual rhetorical** techniques to effectively communicate – i.e., **construct knowledge and understanding in the audience**
- ▶ And to **persuade** – i.e., advocate adherence to a particular “reality” or narrative of the case, the facts, and the law
- ▶ **Effectiveness** —and— **Ethical & Professional Usage**

Invention: Substantive Uses

Actual Subject
Matter

- Exhibit
- Depiction or Diagram

Demonstration

- Re-creation, reenactment
- Arrangement of info, data

Narrative

- Communicate the story; framing; redirection
- Appeal to values, emotions

Images

COGNITIVE STUDIES

Visual Learning – can process information quickly; make connections; retain more

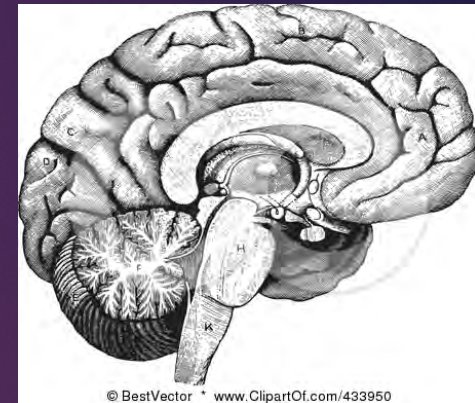
BRAIN SCIENCE

Emotional Brain (mammalian, limbic system) is much quicker than cognitive brain; **Reptile Brain** is fastest of all

Studies show we often make a quick emotional decision, then go back and sustain or justify it with a logical cognitive decision*

*Hard to overturn that emotional take

The baseline rhetorical situation



Lessons for Students (Future Lawyers)

- ▶ The **nature** of the **power** and why it is so sharp; e.g., the bias (or heuristic) of **naïve realism** or cognitive illiberalism
- ▶ The **complexity** of the **power** and why it cuts at least two ways; e.g., audience perception and cognition, and values
- ▶ The **potential for intentional abuse** – e.g., speed and power, precognitive perception
- ▶ The need for **vigilance against inadvertent misuse**—e.g., works are perceived as transparent, not authored, not mediated

The Decision to Use a Visual*

Is the idea of the visual effective at enhancing the reader's comprehension of the analysis?

Does the visual improve the document's overall design?

Does the visual meet professionalism norms?

In or out? The verdict.

*Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis*

Putting the lessons into practice

- ▶ **Mise en scène** and the **manipulation** of images, video—seeking the “perfect moment” in a visual
- ▶ **Color** vs. not **Color** —seeking the appropriate use of **color** vs. grayscale/black & white
- ▶ **Critical Eye** & **Focus groups** —seeking the reaction of a wider and more diverse test audience

Mise en scène

- ▶ **Staging, setting** a scene
- ▶ **Editing and cropping**—What to leave in and what to leave out
- ▶ **Composition**
- ▶ Determining the **center of focus**, and how to feature it in the scene—lighting, zoom, cropping, sharpening/softening, contrast

Mise en scène: Looking for or creating images that tell the best story



The perfect moment: Looking for or creating images that best tell the story



The decisive moment of an scene that communicates the narrative



Manipulation of video: Sandra Bland v. Texas (2015)

YouTube sarah bland dashboard video

Texas Department of Criminal Justice

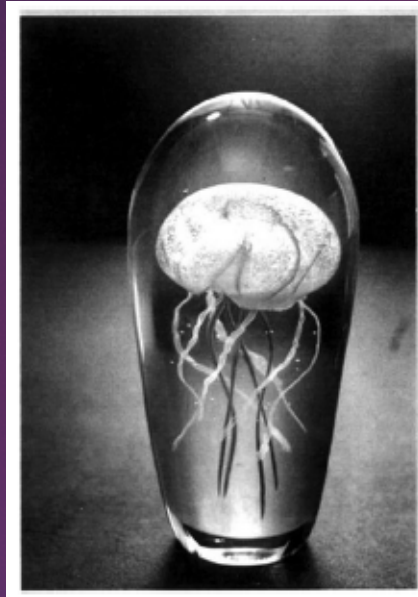
I will light you up! Get out!
- Wow.

0:05 / 1:27

SUBSCRIBE

Color: When is necessary?

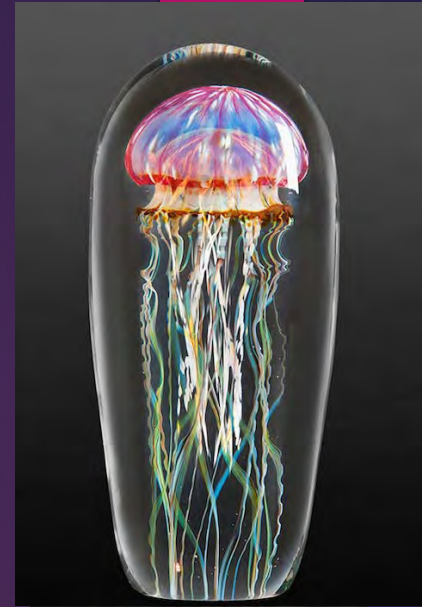
When is it inadvisable?



Satava v. Lowry



Satava



Lowry



Color does not change the facts, but it clarifies the perception

► Rogers v. Koons



Art Rogers - "Puppies"



Jeff Koons - "String of Puppies"



When is **color** inadvisable?

Warning: the next slide contains extremely graphic images of an alarming and disturbing nature

(like many of our cases)

Color images—too gruesome for illustration?



Boston Marathon Bombing, 2013



Liebeck v. McDonalds, 1992

The critical eye – what do you show the audience, and how do you show it?

- ▶ **Pornography** under the *Miller v. Calif.* test
- ▶ **Child pornography** under *Ferber, Osborne, Ashcroft v. Free Speech Coalition*
- ▶ Graphic images in a **personal injury** case
- ▶ Graphic images in a **public terrorism** case – e.g. the Boston Marathon Bombing
- ▶ Graphic images in a **war crimes or genocide** case?

The critical eye

- ▶ Examine your images critically, with an eye to **emotion, emotion, emotion**
- ▶ Will it convey the right message and the right emotional reception?
- ▶ Will it trigger the wrong kind of reaction?
- ▶ Will it be overwhelming, disgusting, anger-provoking?
- ▶ -- What you present might turn the audience against you (your ethos) because of the images you selected or created

Sharpness – the emotions – and Focus Groups

- ▶ Testing what will be effective
- ▶ **Broaden the test** – don't rely on your own perception or on the 1-2 other lawyers working on the case
- ▶ **Do as marketing people do – gather a focus group**
- ▶ At least show it to a broader, more diverse audience—not just other lawyers
- ▶ Don't explain what you were trying to do; don't set it up. **Get the instantaneous reaction.**

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ssrn.com/author=349387

For further information, see

Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Rhetoric and Narrativity*, ___ J. Legal Educ. ___ (2017)

Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM. & RHETORIC: JALWD 107 (2016), available at <https://ssrn.com/abstract=2655707>

Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 LEG. WRITING 185 (2016) <http://ssrn.com/abstract=2491911>