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
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
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 illliberalism

- 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**

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<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Is the idea of the visual effective at enhancing the reader’s comprehension of the analysis?</td>
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<td>Does the visual improve the document’s overall design?</td>
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<td>Does the visual meet professionalism norms?</td>
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<td>In or out? The verdict.</td>
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*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 a scene that communicates the narrative.
Manipulation of video:

I will light you up! Get out!
- Wow.
**Color:** When is necessary? When is it inadvisable?

Satava v. Lowry
Color does not change the facts, but it clarifies the perception

- Rogers v. Koons
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.**
For further information, see
