11-2018

Getting Visual

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Now or in the very near future, legal briefs and office memoranda will use color, graphics, photographs, embedded videos, active links, depictions, and diagrammatical elements. In other words, the instruments of legal practice will be highly visual.¹

An attorney or counselor at law can supplement or even replace several pages of narrative or legal reasoning with a graphical visualization of the communication—a photograph, a cartoon, a painting, a model, or another form of visual or graphical rendering—and in so doing, improve the document’s communicative and persuasive potential.³

How does a visual improve the communication or the argument? Because visual imagery is not only faster than words, it is better than words. Visual images possess nearly instantaneous cognitive and communicative power.³ Visual devices work at microsecond-level speed to communicate ideas and attain the audience’s adherence to the meaning and truth of the ideas communicated, and thus are able to persuade the audience of the truth and propriety of the speaker’s communication faster than verbal media. Brain science demonstrates that images allow greater perception, comprehension, and retention of information.⁸

The power of visual media works both offensively and defensively when attorneys are designing effective visuals for advancing their cases and raising objections to or attempting to counter the rhetorical effects of an opponent’s submission.⁹ As a result, the use of visual images as tools of rhetoric and narrativity in litigation carries with it an enormous responsibility not to abuse the

Exhibits used as legal argument regarding allegedly infringing cell phone designs in Apple v. Samsung.²

Images and video can be used substantively and argumentatively, to prove facts or strengthen a legal argument.
power of images. The power of visual rhetorical devices in legal discourse requires a careful attention to the author’s ethical and professional responsibilities not to use the power to confuse, mislead, or overwhelm the reasoning power of the audience.10

In conclusion, visual devices are a powerful and even recommended form of legal communication if they are used to construct knowledge and understanding of the meaning and message of the communication and do not mislead or prejudice the audience’s reception or understanding of the communication.

ABOUT THE AUTHOR
MICHAEL D. MURRAY was appointed in 2018 as an Assistant Professor of Legal Research and Writing at the University of Kentucky College of Law. Professor Murray graduated from Loyola College in Maryland and from Columbia Law School. He clerked for United States District Judge John F. Nangle of the Eastern District of Missouri, and practiced commercial, intellectual property, and products liability litigation for seven years at Bryan Cave law firm in St. Louis. His 20 years of law teaching experience have taken him to the law schools of Saint Louis University, University of Illinois, Valparaiso University, University of Michigan, and University of Massachusetts. Professor Murray currently has published 27 books and numerous law review articles on advocacy, legal research and writing, rhetoric, copyright, art law, right of publicity, and other topics.

ENDOTES


2. Apple (left) and Samsung (right) Trial Exhibits used in Apple, Inc. v. Samsung Electronics Co., Ltd., No. 12-CV-00630-LHK (N.D. Cal. Apr. 15, 2011), available at http://arstechnica.com/tech-policy/2012/08/apple-case-that-samsung-copied-the-iphone-and-ipad-in-pictures/. The rhetorical use of these images is critiqued in Murray, Ethics of Visual Legal Rhetoric, supra note 1, at 133-36. Apple 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 it came out. Samsung 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. Id.


6. Single Frame of Jason Van Dyke Defense Team Animation of Fatal Shooting of Laquan McDonald from Officer’s Perspective (Sep. 25, 2018). Van Dyke’s counsel created an alternative video, albeit an animation, in order to attempt to show the scene from the perspective of Van Dyke, the police officer who shot McDonald.


9. Observers have noted that uses of adversarial visual rhetoric often are one-sided, with one party in litigation exploiting the power and effectiveness of visual media, and the other side responding with nothing. See, e.g., Jewel, Through a Glass Darkly, supra note 7, at 281, 295 (“The ability to recognize and attack logical fallacies in text-based arguments has always been a part of effective advocacy; now, attorneys must learn how to apply that skill to visual arguments. . . . Most of the cases involving improprieties in visual advocacy have also contained grievous imbalances in the deployment of visual arguments.”).

10. Murray, Ethics of Visual Legal Rhetoric, supra note 1, at 126.