
Juror-Friendly Animation for the Courtroom

BY LOUIS GENEVIE

The use of animation in the courtroom has grown tremendously during the last few years, and for good reason. Animations empower an expert witness with a dynamic visual display, creating memorable impressions that jurors will remember (and use to argue your case) during deliberations. Animations provide communication leverage, bringing the ideas and concepts they represent to the forefront of the judge and jury's minds.

As with any form of leverage, however, investment in animation can cut both ways. Well done animation can be a tremendous aid to persuasion; poorly done animation can be counter-productive, creating unintended reactions. Unfortunately, many animations used in the courtroom are so weakly conceptualized and poorly implemented that they often obscure the intended message and sometimes inadvertently support the opposition's case.

WHAT IS ANIMATION?

An animation is a visual display of information about events, products, or processes that has been put into motion through the use of graphic images and computer programs. In litigation, animation should always be presented as part of an expert's testimony. In a patent case, for example, complex equipment and processes can be visualized in order to communicate them clearly to the judge or jury. In a products case, a moving image can be produced that shows cars and trucks approaching an intersection and then colliding.

Moments and events can be depicted from a wide range of angles, perspectives, and speeds, dramatically increasing the viewer's understanding of what really happened. If

properly constructed, the animation can illustrate events more clearly than a film of the actual event. The expert will use the animation as demonstrative evidence as he leads the judge or jury step-by-step through the events pictured.

A recent intellectual property case in federal court in Philadelphia was a dramatic illustration of the power of animation. The case involved two major manufacturers of photographic equipment. The plaintiff claimed that the defendant's equipment and the computer program that controlled it performed the same function in basically the same way as its patented equipment. The defendant produced an animated film as an aid to expert testimony, hoping to show that its equipment and computer program, while achieving similar results, achieved those results in a very different way.

Unfortunately for the defense, the jury did not agree. Post-trial interviews with jurors revealed that the majority found the defense expert's testimony confusing; the animation served only to highlight and intensify that confusion. Unable to understand the testimony, the jury's attention drifted to the expert's demeanor and presence in the courtroom. Here too, the expert fell short as his stiff, formal demeanor impeded communication even further.

Jurors were also impressed by plaintiff's use of the defense animation. At two critical points in the cross-

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examination of the defendant's expert, plaintiff's attorney froze the videotape and superimposed a simple acetate slide over the still frame. By moving the acetate up and down, then left and right, he was able to show a striking degree of similarity in the design of the defendant's equipment. This similarity became a critical point for jurors in their decision-making and ultimately helped to produce a victory for the plaintiff.

While such a dramatic turn in the fortunes of the defense is relatively rare, many lesser mistakes can severely undermine the value of an animation. If a few basic strategic principles are followed, however, an animation can be the highlight of a trial.

LOOK TO THE JURY'S PERCEPTIONS

The key to the development of an effective animation is telling a good story that deals directly with the themes and issues the *jury* perceives as important. Most jurors do not carefully weigh evidence or delay judgment until all facts are known. Instead, they look for evidence during the trial that supports their pre-existing values and attitudes. The relevant values and attitudes vary by venue and type of case; but in every instance they create a perpetual filter through which all events, including those illustrated by animations, are viewed.

Jurors listen to expert testimony selectively, keying in on some aspects of the case, while ignoring others. This selective perception creates an *hierarchy of relevance* among case issues which must be taken into account when conceptualizing the expert's testimony and the accompanying animation. The more central the issue in jurors' minds, the more important it is to highlight it through animation. Anything the animation portrays that does not address the issues *jurors* perceive as important stands a good chance of being distorted or simply ignored all together.

EMPHASIZE KEY ISSUES

While the end result can appear simple, the process of creating a good animation is complex, requiring the coordination of computer programmers, engineers, artists, producers, and communication specialists. Many of the judgments that must be made are much the same as those encountered in creating a good film. Timing, point of view, and pace are used to create effective communication of ideas and concepts.

Like a good film, superior animation begins with a good story. Like the best cinematography, the best animation works off the story, creating a visual analogue that serves to focus and highlight the key points. The goal is the creation of *visual sound bites* that will get the jurors' attention and communicate your case effectively.

Like a good film script, the expert's story should have a beginning, a middle, and an end, woven together with the central themes of the case. The beginning must capture the jury's attention, and provide motivation for learning about the subject. In a personal injury case, for example, an overview of the manufacturing process and safety features of the vehicle or other equipment can be effective. In an environmental case, beginning with the problem the chemical or other hazardous substance solved and how the substance is used appropriately can be helpful.

The middle part of the story must draw the viewer's attention to the problem at hand. The goal is to educate jurors so that they reach desirable conclusions. One of the keys to effective education is reinforcement through *thematic repetition*. Human perception is such that rapidly occurring events do not always enter awareness. Thematic repetition — presenting different perspectives all leading to the same conclusion — helps to ensure that complex information is internalized and understood.

It is also important to find more than one purpose for presenting key segments of the animation so that the jury will see each segment at least twice. However, repetition, which is essential for teaching complex subjects, often collides with the court's understandable need not to endure hearing evidence more than once. (One way to deal with this problem is to develop a purposeful series of questions designed to convey additional information to the jury that is supported by the same segment of the animation. This will ensure that the intended message and the conclusions built into it are effectively communicated while avoiding opposing counsel's objections.) Ultimately, what can be done will depend on the judge, but one thing is certain: playing an animated film through from start to finish without stopping would, in most cases, present a visual overload for the jury. Ideally, you want your expert to have a free hand to stop the tape to elaborate or roll it back to emphasize a particular point.

The end of the story should bring home the intended message with clarity and simplicity without overstating the case. Remember that jurors like to discover things for themselves. If the story is well told, they will draw the desired conclusions.

PRODUCING AN ANIMATION

Once all of the relevant information has been accumulated and the expert's testimony formulated, the storyboards — a series of still pictures that define the main segments of the animation — can be developed. This step in the development of the animation sets the tone and feel of the final product. The quality of the film is critical since jurors are accustomed to the kind of quality graphics used on television. Anything less will be distracting and will

negatively affect communication. It is especially important to demand sharp, clear, realistic images. Cartoon-like images should be avoided because they send subtle secondary messages about the importance of the animation.

Color is also a critical element. Color affects perception in ways that can be used to gain advantage in any graphic representation, including animation. Precisely what colors in what combination to use depends on your purpose and the overall trial strategy. In a recent patent case, for example, the defense wanted to emphasize a particular part of the computer equipment at issue; a lighter color was used for that part. Since the eye tends to focus on lighter colors, this technique highlighted and focused the jury's attention on the striking differences between the two products.

Once the final data have been accumulated and analyzed, the work of creating the moving animation can begin. Close direction of the creative process provides the best visual perspective and a pace that makes sense; it makes use of technical options such as slow motion, cut-aways, and dissolves. Consideration must also be given to size, color, contrast, contour, and depth in creating realistic shape, form, and movement on the screen. Keep in mind that the jury will expect consistency in how important elements of the animation are displayed.

LENGTH AND COST

Animations are expensive. The equipment needed to produce the product is very expensive, as is the investment in software and human resources. A first rate film animation will cost \$20,000 to \$25,000, assuming a four or five minute program. An animation that is less than three minutes in duration is likely to have little impact on the jury. Ultimately, how long the animation should be and how much to spend on it, depend on the purpose of the film and the complexity of the subject matter. In one complex products liability case, the defense spent \$200,000 on a thirty-minute animation. Spending \$200,000 is rare (wealthy client; risk averse general counsel; serial litigation), but the message is clear: if you want to go all out to win and can afford to, animations can be very beneficial. Like jury research, the incremental cost is small in comparison to the gain in communication leverage.

It takes time to develop good animation. An experienced strategist can telescope time by virtue of that experience, but time remains a critical element in animation development. If you set aside enough time to do it wrong the first time, you can redo it without hysteria. Δ
