

Animation in Court - Part 1 of an Occasional Series

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WHY USE ANIMATION IN COURT?

It's difficult to find important court cases today that do not make use of animation. So it might seem to be begging the question to ask why. But asking the question actually reveals a lot.

If you answered, "Because it's persuasive" or "Because everybody's doing it", you'd have a point, but you'd also miss the mark. The real answer is that NOT using animation in most cases is a waste of human cognitive resources [how's that for a heady concept?] – essentially, NOT using animation is a drag on juries.

The truth is, we humans are WIRED FOR ANIMATION. We've "learned" to use static pictures and text, but using animation is in our DNA!

The first anatomically modern humans appeared between 250,000 and 170,000 years ago https://en.wikipedia.org/wiki/Human_evolution#H._sapiens, and all of them responded to a moving, visual world – as had their non-human ancestors before them – not unlike today's animations. After all, they had no choice!

Fascinatingly, the earliest truly representational art created by humans, about 39,000 years ago in caves, ATTEMPTED TO SHOW ANIMATION!

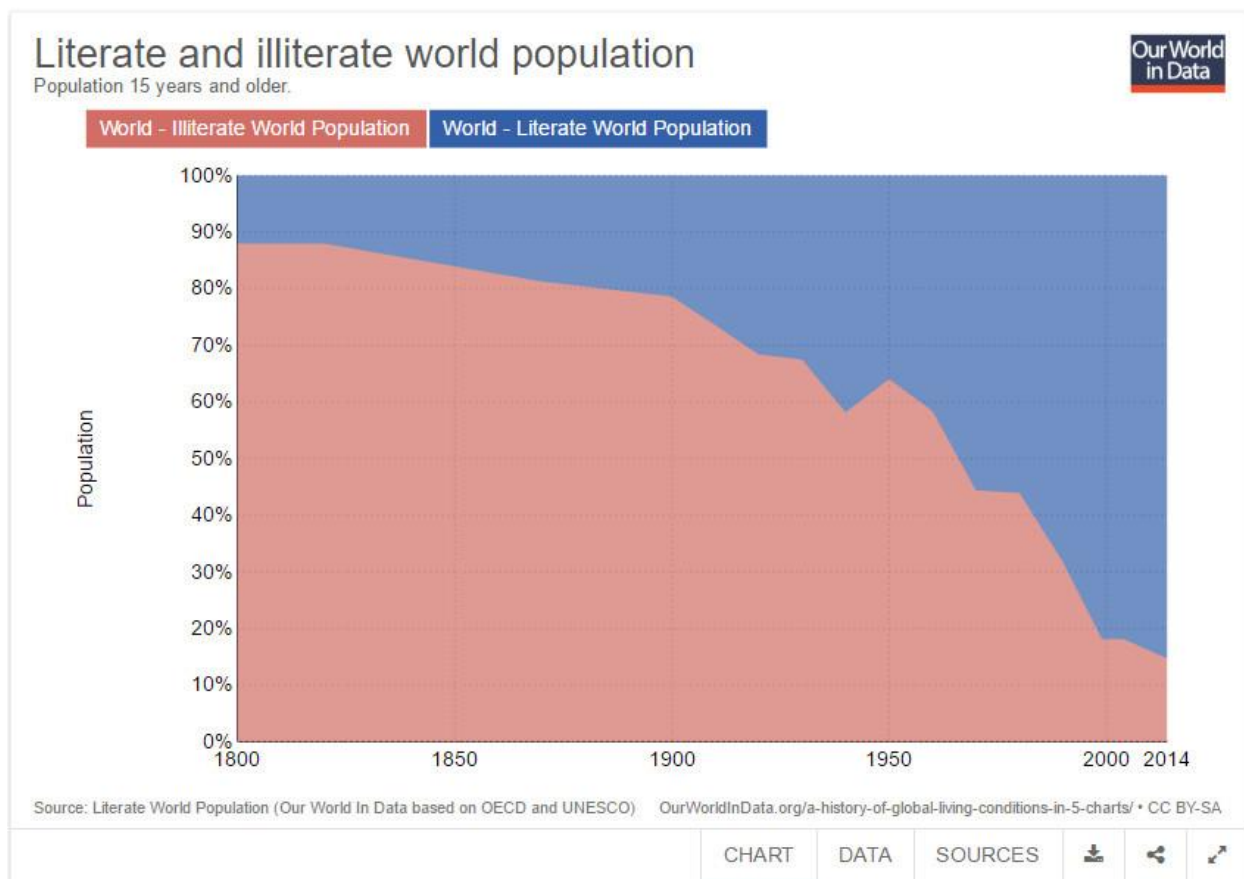


Truly static art did not emerge until later.

The earliest writings appeared a mere 5,500 years ago.



But as recently as 1830, 7 out of 8 humans were still illiterate.



With the multiple inventions of the 1890s that gave the world modern motion pictures, the technology finally arrived to give humans what they'd always craved... the visual experience of motion on demand. [<https://www.britannica.com/art/history-of-the-motion-picture>]. Theater goers in the US, Europe, India, and elsewhere were spellbound, and flocked to moving pictures by the millions.

As a species, we're WIRED to understand moving information – what we call “Animation” today.

As an attorney, YOUR case may be on trial today, but the very institution of modern jurisprudence is on trial EVERY DAY. Your jury - and society at large - deserve nothing less than the most understandable presentation you can possibly give them.

Here is a test you can perform on yourself.

Listen to an attorney making a presentation of complex material, but WITHOUT using animation. Now ask yourself what you're doing in your mind. Odds are, you're building a “mental picture”. Odds are further, it's a moving mental picture. In other words, YOU'RE BUILDING AN ANIMATION IN YOUR HEAD. Everyone does this when trying to grasp complex events.

By presenting your data as an animation, you're simplifying what juries need to do to understand you. Anything less is only half a job done.

Animation in Court - Part 2 of an Occasional Series

WHY USE ANIMATION IN COURT?

On Flag Day of this year, June 14 2017, I published the first article in this series, and I promised more. This is the second one. There will be more!

As I mentioned at the time, it's difficult to find important court cases today that do **not** make use of animation.

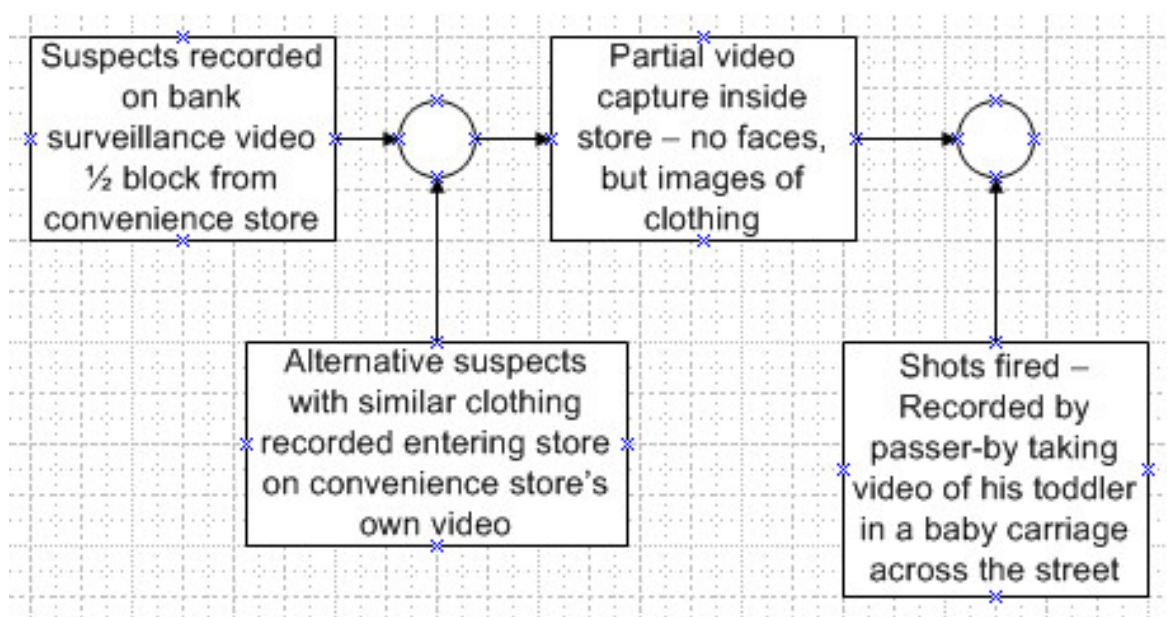
The MOTIVATION for the use of animation by counsel is that it's persuasive to juries.

The VALUE of animation for the citizenry, writ large, is the provision of the highest standard of justice possible, for all.

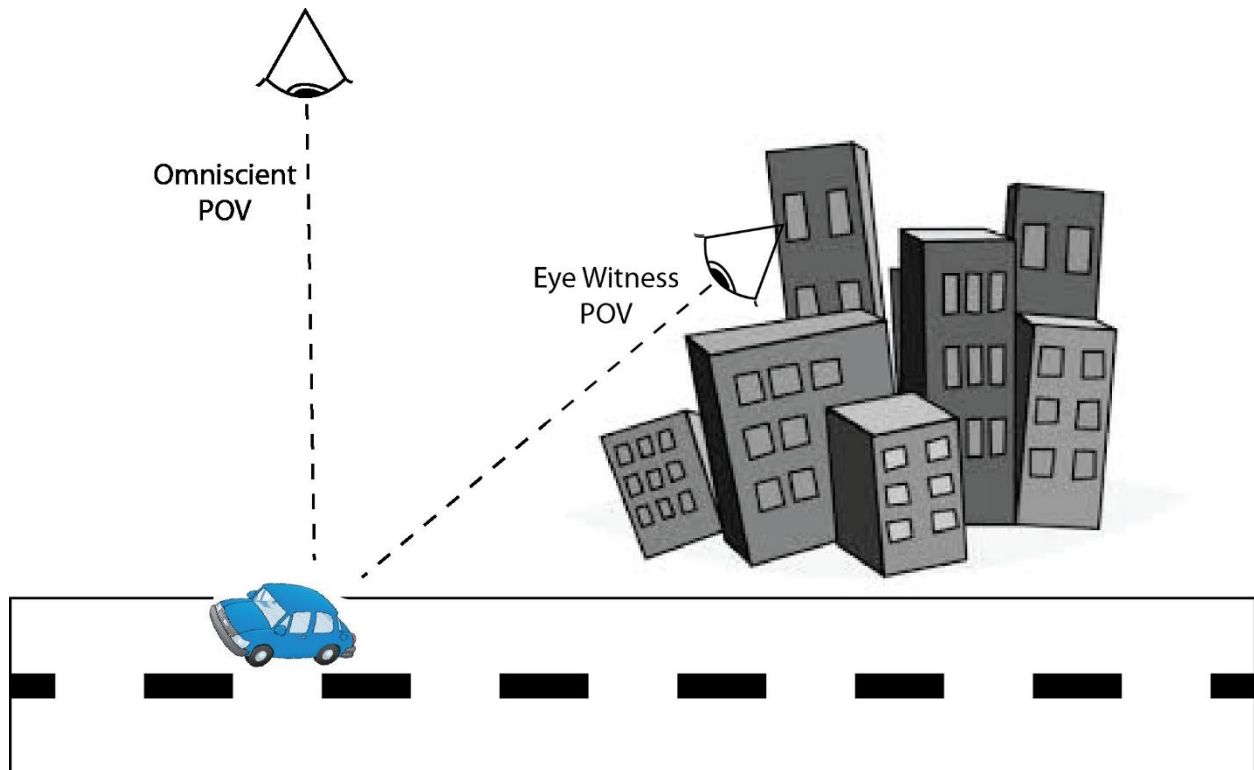
It's a happy and somewhat rare coincidence that two powerful forces such as these align so well!

Both the motivation and the value of animation rest on three pillars of human perception and reasoning:

1. Since jurors will attempt to create mental models of the events under trial anyway — no matter what else happens — it's the implicit duty of counsel to provide those jurors with the highest quality tools possible in order to help them create accurate mental models of what is often a very complex landscape of evidence. Doing any less is the equivalent of asking a shopper carrying a load of heavy packages to climb several flights of stairs instead of providing an escalator! If the technology exists to make the job easier, then NOT making it easier makes no sense.



2. By creating animations that show ALL the evidence — in its actual chronological sequence — it becomes possible to avoid having jurors incorrectly focus on one or two pieces of evidence to the exclusion of others that may have equal or greater probative or dispositive value. In properly created animations, ALL relevant evidence is presented, with focus appropriate to its value.



3. By allowing for more than one “Point of View” [also known as a POV], animations are able to show jurors multiple aspects of a situation that would be unbelievably tedious, or even impossible, to present by any other means.

Not all animation is created equal!

The standard toward which ALL animation MUST, and by all rights, SHOULD, aspire resembles nothing so much as an idealized scientific investigation. This is a very high standard [*which, it must be admitted, not even all genuinely scientific investigations achieve*]. However, true greatness is never achieved without high standards.

WEIGHING ACCURACY

In real cases, notably dynamic ones such as officer involved shootings, murders, armed robberies, assaults, public transit accidents, vehicle crashes, and structural collapses, some evidence may simply appear to contradict other evidence. Note that, from a strictly scientific point of view, conflicting, accurate evidence is impossible – which requires juries to choose which evidence to disregard on the basis of presumed accuracy. Properly crafted animations allow jurors to do this in ways not even thought possible a generation ago.

REJECTING BIAS

In the State of California, the admissibility of evidence of all types is covered by Evidence Code 352: *“The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”*

It is vital in this context to remember that ANIMATIONS are a METHOD FOR PRESENTING ACTUAL EVIDENCE. Animations are NOT actual evidence! [SIMULATIONS, by contrast, ARE offered as actual evidence. Simulations will be the subject of forthcoming article.]

Since video animations tend to be remarkably short – typically under 60 seconds – the most important item on the Court’s mind when weighing admissibility under §352 is undue prejudice. Undue prejudice can appear in many forms, and astute counsel and Court alike must be constantly on the lookout for it, ready to react to it in ways appropriate to the situation.

FACIAL EXPRESSIONS

One common form of undue prejudice is the addition of emotional facial expressions, movements, or gestures to animations of humans [*for example, sympathetic, disagreeable, pained, frightening, etc.*]. Absent actual evidence of a specific set of facial expressions [*which is extremely rare*], animations MUST use completely generic depictions of faces or risk being barred from admission. The reason is very simple... humans place great emphasis on the reading of facial cues, and absent actual evidence, the advancement of theoretical facial expressions constitutes manufactured evidence.



GENERIC [Non-Prejudicial]



EMOTIONAL [Almost certainly prejudicial]

PERSPECTIVE

A second form of undue prejudice is the use of perspectives that do not mimic those available in nature. Such practices can be very subtle, but they can lead to unexpected prejudice. Because perspective is such a powerful subject, it will be covered in my next article.

Thank you for reading this, and, to quote the original Superman, for helping in the pursuit of “Truth, Justice, and the American Way.”