

## How Attorneys Should Use Graphics in a “David v. Goliath” Case

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I read with great interest the post by Tom Wallerstein [From Biglaw to Boutique: The Bigger They Are, The Harder They Fall](#) regarding the “David and Goliath” match-ups of big and small firms. Having myself been a partner at a small five-attorney plaintiff firm for years, I certainly know the feeling of going against the big firms on cases that can attempt to overwhelm you with discovery, but that often have more trouble quickly reacting to the fast changes that occur in litigation.

Tom is a big-firm refugee who opened his own firm, Colt Wallerstein, and his post discusses the ways a small firm may actually be better able to serve clients and realize cost benefits than a larger firm. Tom wrote:

*Of course, no amount of knowledge or strategy will make up for a lack of skill in execution. A litigant always has to prove itself to its adversary, and this is especially true for smaller firms. When litigating against big firms, it can be helpful to demonstrate early on that your team is capable of producing work product at or beyond the level of your opponent. Early written briefing in a case can be important for sending a message and obtaining the leverage that ultimately will be needed for potential settlement if not trial.*

This point really struck me as true and good advice. Big law firms have superior resources at their disposal, but smaller firms and solos have opportunities and resources to level that playing field.

From my perspective as a small-firm litigator, and now as a litigation graphics and trial strategy provider, I wholeheartedly believe that one of the most effective ways of leveling the playing field with a larger opponent is to spend time developing effective, engaging graphics for your case—not just for trial, but for mediations and hearings as well. For too many years, litigation graphics were presented only by the big firms with big budgets and for big trials. However, with

the advent of increased computing power and better software, high-end graphics are available to anybody for any case and are the quickest way to show the other side, no matter how big, that you're ready to take them on with a jury if necessary. This levels the playing field.

An interesting and well-done [study](#) last year by Ken Broda-Bahm of [Persuasion Strategies](#) backs up my point. Ken's firm conducted a study with over 1,375 mock jurors on the effectiveness of visual persuasion in a litigation context. The study found:

*... today's juries are much more used to sophisticated visual strategies because they're more likely to see them on the news, at school, and on the Internet. ... One of our main findings is that the party using graphics is perceived as more prepared, particularly when attorneys use [the] immersion approach in which jurors see continuous imagery accompanying a presentation.*

There is simply no question that putting on a good visual presentation in front of a mediator or jury will strengthen your case. It will make your oral argument more understandable and compelling, help the audience retain that information, and leave the impression that you're well prepared and professional.

As the study concluded: “[b]ased on the ability to better explain, better show preparedness and effective presentation, and better emphasize what is central to the case, we are confident in the recommendation to use graphics, and to use them continuously rather than just occasionally.”

Coincidentally, I also recently read another of my favorite blogs by Ken Lopez over at A2L ([Say Goodbye to the David vs. Goliath Courtroom Myth](#)), which focused on the importance of litigation graphics from the perspective of “Goliath,” rather than “David.” A big company or firm should no longer be worried about coming across as “too slick” with graphics. Rather, they should worry about not having graphics as part of their case presentation. Quoting the Bay Area Trial Consultant [Sarah Murray](#), whom Cogent Legal has had the pleasure of working with in the past:

*My research and experience over the years consistently show that jurors like well-executed graphics and that a “David vs. Goliath” scenario is not a problem. The problem is when a team has not well thought out its graphics or graphic communication strategy and has a lot of graphics that go nowhere but show that a lot of money has been thrown at the case.*

So what does this all mean? Number one, that I read a lot of blog posts! Number two, it means that if you're taking on the big guys, then the time, thought and attention to a powerful visual presentation will raise you up to their level. On the other hand, if you're one the big guys, then jurors expect a well-done 21st-century graphic presentation that fits the importance of your case.

*Morgan Smith is the owner of [Cogent Legal](#), a litigation graphics and trial strategy firm based in the San Francisco Bay Area that develops clear and compelling visual presentations for attorneys to use in mediation or trial. Services include animations, 2D and 3D graphics, medical illustrations, PowerPoint or Keynote presentations, interactive timelines, videos, strategic consulting and trial support. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.*