

## IMS Insights Podcast: Episode 14- Britta Stanton Leveraging Graphics and the Tools of Persuasion at Trial and in Remote Settings

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In this episode of the IMS Insights podcast, we speak with trial strategy advisor Britta Stanton about how attorneys can leverage graphics and tools of persuasion at trial and in remote settings.

**Teresa Barber:** An area you mentioned recently was witnesses and we help clients find great expert witnesses, but also just preparing those experts and preparing fact witnesses. How can clients get their arms around preparation right now, while so many people are under stay at home orders? What can be done to get those witnesses in solid shape?

**Britta Stanton:** It's difficult. We're all facing the idea of a remote deposition, and the court reporters assure us that it's simple, and I've taken remote depositions and it is relatively simple, but it's certainly not the same, but then once you realize, "Okay, I think I'm comfortable taking this deposition." On the other end, you're thinking, "Okay, now I have to defend my client for a remote deposition and to do that I need to prepare my client and you're not supposed to come to my office right now." So obviously video teleconferencing is our friend in doing that and we have to remember what the real goal of preparing someone for that position is, and that's familiarizing them with the documents, familiarizing them with a process of giving a deposition and the goal, which are dramatically different for trial testimony versus a video deposition.

**Stanton:** Then also just making sure they understand where their safe points are when they're giving their testimony. So that's really a great exercise and it's one of my very favorite things to do as a consultant, is to help prepare witnesses. That's a great exercise in which you really distill your themes of your case. So, it's important to spend all the time that you can possibly, give it working through the tricky points of each opponent's deposition testimony and distilling what their theme or their safe spaces when they get to those tricky areas. I love to do that with witnesses and I love to prepare them for trial too and the added benefit of using a consultant when you prepare a witness for trial is sometimes you need to tell them, "Hey, that's a really lousy answer," or "Wow, you're really coming across like a jerk when you say this stuff," and that's a difficult thing for a lawyer to tell his own clients, sometimes the person who's signing the check for your legal bills.

**Stanton:** So it's nice to be able to rely on a consultant to kind of be the bad guy or to do a tough faux

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cross-examination with your witness and you're going to want to do that before your witness testifies, you're going to want to do some tough cross and sometimes the client can't really separate who you are as a fake cross-examiner versus who you are as the lawyer they're supposed to like and trust. So, it's nice to be able to let someone else be the bad guy and I'm happy to be the bad guy.

**Barber:** What else should clients be keeping in mind? What should attorneys be keeping in mind right now to move cases forward and this virtual kind of new normal new, temporary normal?

**Stanton:** There's going to be a lot of novel litigation that arises from coronavirus, COVID-19, and so if you don't keep your cases that are presently set moving forward right now; you're going to have too many peaks and valleys in your practice. You want to make sure things are continuing to flow through your system so that things don't get stagnant and people lose the desire to have that litigation or to see it through and just want to settle all their cases. There are ways to keep your cases flowing right now. I know there are jurisdictions in the country, Texas included, who are tolling statutes of limitations for filing, but you are still able to file new cases, so this is a good time to take advantage of getting a lot of that paperwork done, filing some motions that have been sitting around. Anything for which a personal appearance in court is not absolutely essential you're going to want to push those things forward.

**Stanton:** The other thing is you've got to embrace technology, because I think we all are realizing that even after these social distancing restrictions are lifted—we're going to be living in a different kind of world. We're going to realize that in-person things aren't always necessary. So if you don't teach your judges, and if you don't teach your juries, and if you don't teach the people at your office with whom you work to live in a digital and remote world now, you're going to be missing out in the future. So you need to make sure you understand when writing a brief that you might not get an oral hearing anymore because your judge just got used to ruling on the papers or you might get a very brief oral hearing or you might get a hearing that's over video teleconference even though there's no need for it to be over video teleconference.

**Stanton:** So take advantage of this time to spend more time on your brief and to insert hyperlinks, to put in some graphics into your actual brief and to make sure you have those things ready, so that the judge sees all those things now and in the future when we have less oral arguments, which I anticipate happening, you will be ready for it.

**Barber:** That's really good tips, Britta. Another question I wanted to ask you, we've heard so much from clients who've really enjoyed working with you, working with Chris Rutter, working with Jason Barnes, our advising team, because there's an ability to connect the dots to really get elements like witnesses, like jury data, like graphics all pulled together in a clear view. It sounds like a lot of what you've been working with clients over the last few weeks has been able to shift into a virtual environment. Can you talk to me a little bit about what that clarity, what that ability to connect those dots, what that means for attorneys and for clients and talk to me a little bit about how you've been able to do some of that dot connection in the virtual platform.

**Stanton:** Yeah, I think it's really nice for a client not to have to tell their story from scratch a hundred times. So, for me, it's really lovely that I don't have to refer a client to six different sources and tell them to retell their story to six different people in order to accomplish their goals. So when a client tells me their story, I know that if they need mock trial done in the future, they don't have to retell their story to a new company to do a mock trial and I know if they need an expert and they can't find it or if they're unhappy with their expert, but reluctant to change who it is, I know I can refer them to

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someone else and they don't have to retell their story because it's all under the same umbrella. Just like I know that when they need some graphics done, the themes that we came up with during our mental mining session are going to present themselves through those graphics and when they need someone to help them pick a jury, same story, which is really nice for a client to have that continuity of care.

**Stanton:** They can come into IMS in the focal point and as my law school professor used to say, "Vomit on your desk," all the facts and law that they know and know that we will put it all together and that they don't have to put it together in a coherent story for us again, that we will be there to help them organize those things and get it done, and so when they're busy and have too many deadlines and they need a consultant to help, it doesn't take more time to get the consultants to help, it actually is a huge time savings for them, which is really nice. The way the world's working right now with everything being uncertain and everything being remote, it's nice to have those relationships with clients where they know they have someone who they can call and say, "Hey, I haven't done this before. I know you guys were in the courthouse all the time. Can you help?"

**Stanton:** Almost no one has done completely remote depositions before. Some people have had a witness on the other end, but not completely remote deposition. Almost no one has done a video hearing or certainly not a video bench trial, and because our companies are in litigation all the time, we already have those reps. We're on the front lines getting that experience right away, and it's nice to know that I can give my clients that assurance like, "Hey, I know it's brand new, but we've already done it. Here's some tips."

**Barber:** Yeah, and you think about the hot seat to cushion talent on the team and folks like Jeff Dom who've really been in there and working with technology in ways that right now seem to be helpful for clients. That's certainly got to be a benefit that you've been seeing clients get too, right?

**Stanton:** Absolutely. The last thing you want to worry about when you're trying to think about, "How do I win and do I remember what the person said in their depositions so that I can impeach them?" you also don't want to be working about, "Is my microphone okay? Am I muted? How am I going to pull up that exhibit? Oh, where is it on my desktop?" That's way too many things for one person to be doing. If you're doing all those things, more power to you, but your brain isn't firing on all cylinders at that time. So that's why we strongly recommend that you get someone, even if it's a virtual hot seat, to be a neat virtual hot seat so that you're not doing all those things at the same time.

**Barber:** Britta, you talked about one of your law professors recently. Can you talk to me a little bit about how mentors have shaped you, your career, your life? Anyone who really stands out for you?

**Stanton:** Absolutely. It was a pleasure to see different lawyers in action through the course of my career, but something I picked up on at a relatively young experience level, was that you really need to find a mentor who has a style that you can emulate. I knew some people who were really brash and full of bluster when they would come into the courtroom and they were very effective, but I knew that would never be my style. My style was much more earnest and I found someone early on in my career who invested in me and had a style I could emulate and I learned so very much from him and that's Eric Pinker at my former firm, and I consider Eric a Jack of all trades and a master of all trades.

**Stanton:** He's an excellent human being; I consider him a mentor and a friend. And, going to many different trials over the course of my career, he's been a real pleasure and was one of the hardest things about leaving my law firm—was wondering if we'd had the chance to work together very much anymore. Of course, we still keep in touch. It's not the same as being a few doors down from him

down the hall, but he's a wonderful mentor and I know he purposefully invested in me and I appreciate that so much and I see him continue to do that for other lawyers and it is a selfless investment that he makes in other people, which is part of what makes the practice of law so great.

**Barber:** Thanks for sharing, Britta. One other question and we may cut this, but if you're comfortable talking about it, one thing that has been helpful, we spoke with Rudy Krishtel just last week about... he's the former senior pod counsel with Apple, had worked at Fish, whenever into consulting to work on mindfulness and wellness coaching for big law and he was talking with us a little bit about he's been very comfortable working from home for a number of years. But, it's a novel experience for many attorneys, for many people, right? So what best practices would you share for how you've been able to balance a busy legal professional career with those blurred boundaries between work and home? What's, been working for you and what advice would you give to our listeners?

**Stanton:** Well, I love a schedule. If you know me, you know I love a schedule, but what I've had to learn most in working from home is, there are times for the schedule, and there are times to throw out the schedule. I really like being at home where I can take advantage of a five-minute block here or a five minute block there to leave my office space and to run out and say, "Hey, let's all have a family lunch together," or "Hey, how's it going? Are you on your class call?" or "Have you done your homework for the morning session yet?" It's nice to have those interactions throughout the day and then it's nice to be able to focus. I told my kids, "Hey, I'm doing a podcast this afternoon," which they all thought was incredibly cool. They were like, "Ooh, are you going to be on Spotify?" and I was like, "Yeah, but I don't think you're going to come across me when you're looking at your playlist of Taylor Swift," but they were excited, and I also said, "Please don't have a wrestling match outside of my door."

**Barber:** That's good, good guidance. Yep. Well Britta, really appreciate you being our guest today. It has been wonderful speaking with you and hope you have a wonderful day and stay well.

**Stanton:** Thank you so much. You too, Teresa.

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