

IMS Insights Podcast: Episode 21 - The Post-COVID (Remote) Courtroom: Digital Bailiffs, Best Practices, and Perspectives on the Staying Power of the Remote Courtroom

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In this episode of the IMS Insights Podcast, we are joined by guest Jeff Dahm, IMS Director of Trial Presentation and Technology, to discuss practical tips for preparing for remote courtroom hearings and events, the challenges and opportunities of virtual courtroom environments, and the potential for sustained adoption of certain types of remote court events.

Teresa Barber: So, hi, Jeff. Welcome. So glad you were able to join us today on the IMS Insights Podcast.

Jeff Dahm: All right, thanks, Teresa. Thanks for having me again. It's so great to be here with you.

Barber: I've been really interested because you have been doing some really interesting work lately. And obviously, we all know about the global pandemic and it's created a lot of disruption, a lot of negativity has come out of it, but one of the things I've heard you mention was there's actually been a little bit of some positive sprouts happening, especially in the legal space. Can you tell me if you think that there have been any positive outcomes to happen over the last year or so?

Dahm: I mean, it was, as we all know, I'm sure for everybody, I mean, 2020 was a tough year. And it was especially tough for courts because of the lack of in-person hearings, in-person trials. That just went away or went to a very minimal amount in the way we could do it. So the whole industry had to figure out how are we going to do this? How are we going to keep cases going forward and pivot to online proceedings? That was the question. So earlier in the year, last year, when everything shut down, we all had to figure how we were going to do this and how it's going to come about.

Dahm: And so I'm really happy to say that for the past seven months, eight months, the legal industry really has pivoted to working in online proceedings to keep litigation moving forward. And it is at a smaller clip, a smaller amount, but it's definitely there. And it's been quite a learning experience for everybody in the industry and for me, and for technicians and for consultants and everybody. It's just been a great pivot to an online world, and it works. It really does. That's the surprising thing, it really

does work.

Barber: So who would have thought, right?

Dahm: Right.

Barber: So, but I guess we were catalyzed, the litigation community was sort of catalyzed by the events of last year. And Jeff, you've handled a number, hot seat trial presentation, you've handled a number of virtual events, since we started to really see some adoption of hearings and arbitrations. Certainly, you've gathered a couple of things to watch out for, pitfalls to be mindful of. What's your advice?

Dahm: So I'd say the biggest pitfall is that people are not treating an online proceeding like it's the same effect as it is in court. People think just because they're at their home office, they're not dressed up, everything, that they're not going to court, that they don't have to treat it the same. And I highly disagree. You really have to ... I mean, it's just as important. The weight is just as important. So you need to plan exactly like you're going to be in court.

Barber: There's still some decorum.

Dahm: Yeah. I mean, there is. You have to know it is. It's really important to plan, to think about what you're going to show, how you're going to show it, if you need to display evidence. If you need to display videos, depositions, anything. You have to think about these things and how to do it. And a lot of people before the pandemic really weren't using videoconference software as much because people would fly. You fly to the boardroom for a two-hour meeting or you fly to court for your two-hour hearing. And people didn't think about it as much, but now you sort of have to. So everybody's shifting.

Barber: Yes. It's interesting. And I want to get into some of the planning in a moment, because I think that's really interesting and a useful topic. But just thinking about the decorum and sort of the management of the proceeding, right, the hearing, the event, a host, the technical bailiff, what's the term? And what's the use of that in a new, completely new remote environment? Can you explain a little bit about how that might work?

Dahm: Sure. So now that we're all going to these online proceedings, the one thing that was not obvious when we began doing this is you really need someone to control the whole situation that's not involved in the litigation. You need a host. So we started calling them a host, the technical bailiff. So what this person does, is their ultimate goal is to make sure the proceedings run as smooth as possible with as little interruptions as possible. This person plays a neutral party for all, for everybody. And so they're working for everybody to make sure that everybody's connected. They're responsible for the coordination of the proceeding, they send out the meeting invites, they coordinate with the parties and the arbiters to have a joint session to test. They take care of the document repository. They keep the witnesses in a breakout room, until they're ready to bring them in.

Dahm: Pretty much they're making sure that the whole thing runs smoothly. And I have been in proceedings when they don't have one. And let me tell you, it is not fun. Because it was always someone, their connection's not working, they can't get the screen share to work. And the technical bailiff or the host has solved all of these problems before the proceedings begin, so you have this smooth proceeding. But when you don't have one, these haven't been solved before, and it just

creates a longer proceeding. It's more hiccups, more breaks. It's quite frustrating at times.

Dahm: The technical bailiff and the host is not as common in a court hearing as it is in arbitration because usually the court hearings, they are the ones hosting. The court is hosting the proceeding. But in arbitration, the arbiters are looking to both sides to say, "Hey, how are we going to make this run smooth?" And so both sides are going "Okay, well let's get a host." And this has been the newest evolution of my job and my career is creating this host position. And hot seat operators have been working in the courtroom, they have been shuffling things around at a really high pace, bringing up documents really quick, making sure everything moves at a hundred different times, different things at once—they are perfectly designed for this role, and it works great.

Barber: I can see the translation there, just into a different platform. And really critical to, I mean, we think about just, a board meeting, right? Any kind of discussion, just being able to manage it. That makes tons of sense. And another word you mentioned—we were chatting the other day—and you mentioned Zoom trial ready. What is that? What does that mean?

Dahm: Okay. So I've been saying this to my clients. And just to make sure that they are ready for their trial, I'll send them an email saying, are you Zoom trial ready? And they're like, "What?" What that means is there is a lot to think about if you're going to have a Zoom trial or just a videoconference trial. Whether it's Zoom or whether it's—I use and prefer Zoom—but if you Webex or Skype, whatever you have, if you have a Zoom trial, you have to get ready.

Dahm: You have to make sure that your camera is right, and it looks good on you. You have to make sure your lighting is correct. You need to make sure that your microphone is good. You need to make sure your background is good. There are so many things to think about. You have to think about your video. You have to think about your audio. How are you going to sound? How are you going to look? How are you going to display your exhibits? You need to think about all of these things just as though you were in trial, you would think about all the things you have to do to be in trial in person. You have another list, just as long, to be ready for trial on Zoom.

Barber: And I would imagine that's important, right? Because the remote technology, that remote platform can certainly amplify, you know—it can amplify everything.

Dahm: Oh yeah, definitely. You really need to make sure because if you, you don't turn your mute off and you walk away and it's just, there's a lot of things you have to plan for. You want to make sure you're ready.

Barber: And so there certainly must be a standard setup that you would suggest, right? What would you, is there special equipment or special things that should be done to really get to that place of "I'm Zoom trial ready, yes"?

Dahm: Yeah. So what I've been doing is when I have our trial tech hotseat operator, now Zoom bailiffs, go into my clients'... Clients have been setting up their trial and saying, "Okay, we have a trial, we have a trial over Zoom, trial over Webex. We have to figure out how we're going to configure this." So I will send a trial technician over to their office and plan their setup. And the usual setup that I recommend is to have one room for your examining room. And that's where you set up a camera, a computer, a share screen monitor so you can see the exhibits, a ring light, you have backdrop, make sure everything is a beautifully clear for your presentation. And then you have that as your presentation room. And that's where everybody presents from. Then you make another room or another conference room, your witness room, and you set up a monitor and a computer microphone,

light, the whole setup again for a Zoom set up for the witness room. And that's going to be in a separate room.

Dahm: Now, when you're in the main room where you're examining, you only want to have one active mic and one active speaker. If not, you get feedback. And this is really where the testing and preparation comes into play in advance because you need to make sure that you test all of this stuff before you go live and you have feedback and you can't figure it out. So I've been sending technicians to my clients' offices to be able to help them get Zoom trial ready and it's been very successful. And it's been a lot of what we've been doing lately. And clients are so happy to do it because these technicians know exactly what they're doing when it comes to this. I mean, they know how to set up for a Zoom trial. So it's great. It's been really effective.

Barber: It's interesting because you think about the attorney community, not always the fastest to adopt new technology. How are you seeing adoption and how open do you see clients right now to making these adjustments and saying, "Yep, I do need to be, and I want to be, Zoom trial ready."

Dahm: So I started doing this in 1996, '97. And back then, there wasn't a lot of trial presentation in court. So you had to convince clients. I had so many pitches, so many meetings with clients to convince them saying, "Trust me, this will work. You can bring a computer into the courtroom. You can set up monitors and show exhibits to jurors. And they will let you do it. And it's very effective." And that was a tough sell for many, many, many years. People didn't believe that you could bring equipment into a courtroom and it'd be okay and you would be able to do it.

Dahm: So I feel like I'm sort of at the beginning of my career again, where I'm convincing clients, that this is great, this works, it's effective. And so it's just been a hark back to the beginning. And so you have a lot of attorneys who are Zoom shy. I like to call it Zoom shy, because they don't really want to be on camera and they don't know how to do it. And they're reluctant to reach out. So I've just been making sure I've been having constant communication with clients saying, "Listen, how are you doing? What do you need?" Because it's daunting. If you don't know what you're doing, it's very daunting. So it's nice to have people help you out who know what they're doing.

Barber: At the same time, it must feel good when everything works, things function.

Dahm: Yes, it's quite a nirvana. It's quite a feeling.

Barber: And there are, you mentioned Zoom and a number of other platforms, there are a lot of videoconference platforms out there. If the option's available, are they all the same, are there preferences? Are there differences?

Dahm: Sure. So, I prefer Zoom. They upgraded their security last May, and they're equivalent with the rest of the security. They follow strict security procedures and everything's secure on their website, on their platform. So there are many other platforms. I've used Webex, and Webex worked okay. A lot of courts are using Skype. Now they all have their nuances and some are a little bit quirkiest than others. The one that I have found that is not as quirky is Zoom. Zoom tends to be the one with the least amount of bugs, the least amount of quirky issues for me in my experience. And it just seems to run the smoothest for the proceedings; there's not much hiccups with Zoom.

Dahm: Also, people are concerned about the security of the meeting, whether their meeting's not going to be secure, especially in an arbitration where it is confidential. As long as you have a waiting room enabled for your meeting and you have a password on the meeting, no one can get into your

meeting. I mean, they'd have to try really hard to get into it. The stream goes over Zoom secure servers, so you're secure. I don't have the hesitancy with it, like I did before, because everybody is really secure now.

Barber: Yeah. There were some lessons learned, it seems, early in the pandemic. That makes complete sense. So hot seat operator, everyone understands that in a courtroom setting. Is that a thing in a remote setting?

Dahm: Sure. Yeah. I know. So hotseat operator as we know is called that because they're in court and they're in the hot seat. So, and yes, you can be in the [hot seat in an online proceeding](#), just the same. I have been in that hot seat a few times over the past six months. It's the same. I mean, trial presentation software works great over videoconference. You can share your screen, and you have an extra monitor attached to your computer—that's your share screen and that's your display. So in the courtroom, when everybody would see the large monitor, that's your share screen, is your monitor. So you're just showing everybody what is on your share screen to the whole meeting. And it works. It works fine. I've played video. I've showed animations, documents, graphics. I've impeached witnesses. It's really worked well.

Dahm: I worked in an international arbitration. I was a hot seat operator in an international operator arbitration that was earlier this year. And the clients were all in Europe. Our host for the whole arbitration was in Florida. We had people dialing in from all over the world for this. There was 50 or so people dialing in from all over the world. And I was presenting evidence for my client in Europe, from Oakland, California. And it worked great. And the client was very happy. And I received these ... When you receive this one compliment as a hot seat operator, the compliment is, "You seem like you can read my mind." And when I hear that compliment, that is my ultimate compliment. Because it shows that we had a connection, that we were doing the dance in the courtroom to bring up the exhibits. But we weren't in the courtroom. We were over videoconference. It worked great, and it was smooth and effective. It really did. I was surprised. And it did. So ever since then, I'm a big proponent of these online arbitrations. They work. They work.

Barber: That's great. That's great to hear, Jeff. So when examining an attorney over, and Jeff I may need your help with this because I want to make sure I'm asking this question correctly, so Jeff, when an attorney is examining a witness over videoconference, how does this work? Can you walk us through what it looks like when it's effective?

Dahm: Sure. So the first thing I would say is, I would recommend to my clients to test and practice. You have to practice giving an examination to a witness over videoconference because it's different. It is different. It's not difficult; it's just different. So you have your exam. Your witness should not be in the same room as you, because it doesn't work well with the audio and video. So they can be in another location, another room. If you have a hot seat operator that's going to be presenting your evidence, they can be in the same room with you as your examination, and you can mute your microphone and speakers since they don't need to be on—but they don't have to be in the same room. If you have a hot seat operator on the line with you to be able to bring up exhibits, as you're examining the witness, the hot seat operator is going to listen, have your outline and bring up the exhibits as you're going through it, to the share screen that everybody can see.

Dahm: So it's smooth and effective. And it does work. If you can have a conversation over Zoom, you can have an examination of a witness over Zoom. And people say you don't get the same effects as you do in court, but from my experience, sitting in a conference room, watching all of these boxes, you don't have a lot of the distraction that you do in court. So you're analyzing these video boxes 10

times more than you would if you were in court, looking at everything. So I find that I'm hyper-focused on these witnesses. And so you get a lot more from the witness in a video box than you do in person, I would have to argue in some instances.

Barber: So it's almost as though, to not be prepared, you have to be cautious that those mistakes could be emphasized or amplified by the virtual platform. But at the same time, those positive influences on your strategy and your case, they can really get emphasized in a great way in the remote environment. That's really interesting, Jeff.

Dahm: Yeah, they're hyper-focused, it was really strange. I was always thinking earlier in the pandemic—I was like, "We're not going to get the same effect as in court," but you do in some instances. Now I would have to say, if it's a criminal trial you would want to be in person, for the defendant would want to have, give their defense in person. I get that. But in arbitration, a contract arbitration that's two companies, battling over something specific... That can be done over Zoom. That can be done over an arbitration. I don't see how that's a hindrance at all.

Barber: I mean, just in this conversation, I'm picking up on a number of things that you're proud of and successes that you've been able to see clients get to in this remote environment. There's a lot of conjecture about how much of what we're seeing now in the midst of really pre-full vaccine, how much of the changes and the adaptation that we've seen over the last year, many, many months, may be sustained. What's your sense of how much we may see lasting adoption to things like remote arbitration? What do you think?

Dahm: So I feel like the pandemic has affected everything in a permanent way in our industry going forward. I mean, I really think that just the whole idea that it does work over a videoconference is going to change the fact that you have a hearing in New York for a San Francisco attorney who has to fly to New York for a 15-minute hearing and come back. The court knows these hearings are effective now, and they can do it, because they've had to. You've been forced into it and had to do it. So they realize, "Oh, wait, this actually does work." And so I feel like this is going to be, there's still going to be a large percentage of hearings, especially arbitrations to international arbitrations, especially, that they're going to be over videoconference, because it works and you can save money.

Dahm: It's cost-effective; it's time effective. It keeps things shuffling forward faster. I feel like it's a piece of the litigation industry that was missing, that was forced upon us with the pandemic, and now it's here to stay and we're going to use it, and we're going to use it effectively.

Barber: It just catalyzed this solution.

Dahm: It had to happen. The technology in litigation runs at the speed of molasses. So, it was sort of forced upon all of us and it's going to be a lasting effect for sure.

Barber: Yeah. Very interesting, really interesting moment, Jeff. I can't thank you enough for coming in and sharing some of this. It's been really interesting to hear your stories from the field. I hope that you will consider coming back and giving us all an update pretty soon, as you get through a few more additional ones...

Dahm: Definitely.

Barber: Yeah, so always great to speak with you, Jeff.

Dahm: You too, Teresa. Thanks again for having me today.

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