

## Visual Storytelling in Complex Arbitration – Episode 65 [Podcast, Video]

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IMS Legal Strategies

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Pinsent Masons partner [Clea Bigelow-Nuttall](#) joins IMS | Z-Axis Consultant & Advisor Cindy Buxton to discuss their work on a gold mine dispute and explain why it is so important to tell a visual story to the tribunal.

Hello, and welcome to the IMS Insights Podcast. Today's host is Cindy Buxton from the IMS | Z-Axis European team. Joining her is Clea Bigelow-Nuttall, a partner at Pinsent Masons's London office who specializes in commercial and investment arbitration, including the mining and energy sector. Cindy and Clea will share insights from their work on a gold mine dispute and explain why it's so important to tell a visual story to the tribunal. (If you are listening only and would like to watch the interview, visit our YouTube channel.)

### **Cindy Buxton:**

Clea, thank you for joining us today. Before we get into the specifics of a case that we worked on together, I wanted to ask you, what role does a visual presentation play in your overall strategy and storytelling in an arbitration?

### **Clea Bigelow-Nuttall:**

Well, thank you very much, Cindy. It's an absolute pleasure to be chatting with you today. Visuals and storytelling. Lawyers are storytellers. Our job is to leave a tribunal with a compelling, a clear, and accurate understanding of our client's position. And in my experience, visuals are one of the most effective ways to be impactful. So, in arbitrations there are lengthy written submissions, long hearings, long oral openings, and a visual is often one of the best ways to make an impact and to underscore a key point that you're trying to get across. If you can distill your case down to a few key points that you want a tribunal to understand to have in the forefront of their minds when they're deliberating, then often an image, a visual, a tool that you can leave them with, either during that hearing or afterwards, to my mind, is really effective in telling that story.

### **Cindy Buxton:**

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And when do you typically start thinking about visuals for any of your cases? How soon do you get involved yourself?

**Clea Bigelow-Nuttall:**

Well, I think ideally as early as possible. You know, as I mentioned, there are often written phases of an arbitration before you get to the oral hearing, but the case preparation itself happens, you know, often long before that first written submission goes in. And I think that the earlier that you think about how to communicate the key messages, whether that's done using visuals, I think the better. A lot of the work that I do is in the construction and infrastructure sector. And those are, you know, those are projects, those are disputes that are about tangible things that often an image is really engaging or useful. Often our disputes will involve lots of things like plans, diagrams, site photographs, all of that kind of goes onto the record at some point in the arbitration, but the earlier you can start identifying what, which of those images are going to help you get across some key points and how you can use those to create some visuals, I think the better.

That said, I also know that sometimes it's hard to engage our clients to get them on board with visuals early because for them, first of all, they don't want to be in an arbitration. And second of all, if they are in an arbitration, they may not want to see it running its full course through to a hearing. And so often, if you are talking about visuals, something that's used at a hearing, you know, that's not necessarily the narrative that a client wants to hear. So sometimes when we're talking about visuals, we're talking about them, not just as hearing aids, but as aides to you put the strongest foot forward through written submissions as well, or to be used in a mediation or other ways that we can do it rather than something that's going to be prepared at the start, but then held on to and used, kind of, much later on in the process.

**Cindy Buxton:**

Right. Speaking of the process, do you have a sort of a clear idea, yourself, about what you think would really help to get the main issues across? Or do you tend to consult, you know, a visual presentation company and ask their advice only because of their experience of working on hundreds or, you know, thousands of cases? And so which way do you go, or is it sort of half and half?

**Clea Bigelow-Nuttall:**

Of course. Well, I mean, I think every case is going to be, is going to be different. But certainly, in my experience, it's the latter. It's looking for input from consultants. Lawyers have many talents. We have to be legally creative. We have to be commercially creative. And I think there are probably lots of frustrated artists amongst the lawyer population, certainly lots of frustrated actors, but I'm not sure that we're necessarily famed for our artistry, our ability to kind of create visuals that are necessarily going to communicate a message. And I think that having consultants who are able to listen to what the issues are in a case and come up with some suggestions of how that might be illustrated or how it might be animated or how it might be put in a visual way that would be really, really engaging and compelling, I think is an absolute an absolute must.

You know, often lawyers will have a basic idea of what it is that we're trying to communicate, but we're not necessarily also as tech savvy as other consultants might be. I think we're certainly trying to become more so, but I think having the benefit of consultants who have, you know, added and worked on visuals in hundreds or thousands of cases, as you say, and who have got lots of examples of visual aids that they've used successfully, is really helpful to see. And I know that certainly, you

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know, on work that we've done together or other cases I've been on, seeing some of those anonymized examples of other types of visuals can be a really, kind of, thought provoking process about think about thinking about how to get a certain point across.

**Cindy Buxton:**

Right. What is your process, how do you persuade your client on the advantage of using visuals to help tell your story or to explain a complex fact? I would imagine it must, at times, be quite difficult to persuade them, you know, because obviously it's going to cost. And do you ever consider it for settlement as well as for the hearing?

**Clea Bigelow-Nuttall:**

I think there's a few parts to that question. Starting off with how we convince, or how we convince, how we help our clients to understand that a visual might be useful to them. Often our clients are technical professionals. Again, as I mentioned, a lot of the work I do is in construction, infrastructure, and energy and those disputes can be very technical. And so, the clients who are speaking to us, they know their industry inside and out. And we are lawyers, and we know the law inside and out. And so each time we have a new case about a new a new thing, a new piece of infrastructure or whatever it might be, we need to learn about it through our clients.

And one of the ways that I found really useful to explain to a client that a visual might be used is that if they're using visuals to explain to me, their lawyer, what the dispute is about, that I'm going to need to use those visuals, or at least some visuals, to help educate the tribunal as to what it's about. Because, you know, our job as counsel is to make to make things as clear and as easy as possible for the tribunal to understand. And if the issues are complex, if they're factually complex, if they're technically complex, and sometimes even legally, then often a visual is the way to do that. You know, I think we've all become very accustomed to seeing pictures, plans, programs, diagrams in written submissions. In the same way, you know, we can use visuals in our oral submissions. And I think that, you know, when we are putting together a case, when we're putting together a case theory, even before we submit a first request for arbitration or statement of claim, you know, if there are any visuals that I've needed to look out to understand myself, what the case is about, then more likely than not, the tribunal is going to want or indeed need to see some visuals as well. And I think once a client understands that, then they understand the, kind of, the value of having visuals.

As to whether or not we use visuals or we advocate for the use of visuals in respect of settlements, I think, in our mind we are always thinking about what's best for our client in the dispute. Sometimes that's fighting everything tooth and nail to the end. Sometimes that is maneuvering a client into the best position to negotiate the settlement. So, settlements are always on our mind. We're always thinking about, is this a dispute that's ripe for settlement? Is this the right time to have those types of conversations? And just in the same way that visuals can be really useful in helping a tribunal understand, you know, the main points and issues of a case, same that can be said for a mediator or indeed the same can be said for the other side. You know, often, you know, when you find yourself in a situation, when you're having a mediation or even commercial negotiations between senior representatives, C-suite level members of the disputing parties, sometimes, you know, things come down to just a misunderstanding of the other side's position. And if those points can be communicated clearly and compellingly through visuals, then that can be just as effective as going through to a full final hearing and using the visuals in that scenario.

**Cindy Buxton:**

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Yeah, absolutely. You used an interactive timeline for one of your cases that related to part ownership with a government of a gold mine. And the timeline also incorporated the market values over time of various minerals and damages incurred. How did this timeline graphic, how did it bring value to your case?

**Clea Bigelow-Nuttall:**

Yes, I remember that case well. It was one of the more memorable ones of my career to date. Our case was that the conduct of the state, the respondent state, in its treatment of my client, a gold investor, followed and was driven by the increase in the market price of gold and other precious metals and minerals. More particularly that the state in question had, kind of, followed a campaign of creeping expropriation and that those acts of expropriation mounted and intensified as the price of gold rose. So, what we wanted to do was to show the tribunal that you could map the rise in the price of gold and other precious minerals and metals to the treatment that our client was suffering at the hands of the state. And so, we were able to use the timeline that you described to highlight a series of key events along a timeline with text boxes and pop-out extracts of documents and correspondence that were on the record. So, evidence that was on the record overlaid with gold price rising as these events multiplied and intensified.

And it was a tool that we were able to use during the hearing to kind of move it along as we explained, but it was also something that the tribunal was left with that they could take away in their deliberations and that they could, you know, roll forward, roll backwards if they were interested in what was happening with the gold price at a particular time, when a particular fact was, you know, when they were thinking about that, they could, you know, maneuver it themselves. And I think that, definitely, our sense was that it was far more impactful during the hearing than just simply just narrating that story orally, you know, seeing it alongside the oral submissions that we were making, I think really had some impact. And I think also knowing that the tribunal, when they were in a room deliberating after the conclusion of the hearing, were able to use that as well, certainly left us with confidence that that was, that was a correlation between those two things that they were going to really understand. So that was certainly somewhere where I think that the use of that visual and an interactive visual gave our case a lot of impact.

**Cindy Buxton:**

Yeah. Yes, I remember that case well. It was very interesting working with you on that case. As an international arbitration lawyer, can you recall any other interesting cases where you either worked on or even was against you, where the visuals proved beneficial or even critical in clarifying or explaining complex, detailed arguments?

**Clea Bigelow-Nuttall:**

I can think of lots of cases where the visuals have been used to explain complex, detailed arguments, but I think another one of the uses of visuals can be scene setting and setting a tone. And one of the uses of visuals that sticks with me most clearly was a big dispute that I did right at the start of my career. And it was a dispute between, an agreement between a North African petrochemicals company and a Scandinavian oil and gas major. And the dispute related to the export of LNG, liquid natural gas. And we, in preparing the case, found a really old archive local news story showing the signing of an agreement between the state-owned petrochemicals company and our client.

And the whole dispute revolved around whether or not an agreement had been reached and whether

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that agreement was binding. And we unearthed this TV clip. We had all sorts of legal arguments, contractual arguments, but we found this kind of grainy old TV clip and we worked with, you know, with tech consultants to turn it into a video that we, at the very start of the arbitration, the hearing, we were claimants, so we started our openings first. And before we even said a word, you know, we dimmed the lights, we set up the TV screen, and this was back in, this is long enough ago that the hearing rooms didn't have all of the, you know, great big projector screens that we that we now have and all of the IT and everybody arranged their chairs as if we were sitting down in a movie theater.

And I think, you know, almost short of passing around popcorn, we all sat down to watch this film with the lights off. And we played this clip. And before we'd even started our opening arguments, the tone was set for the whole for the whole case. And there was this real feeling of understanding of what we had all sat there and watched and witnessed. And then, you know, the case that we put to the tribunal. And, you know, I remember it was hugely effective and that for me was kind of, probably the first time I saw just how impactful visuals can be, as I say, not just in communicating technical complex arguments, but also just really setting the scene and setting a tone for how a hearing is going to unfold.

**Cindy Buxton:**

Have you encountered any cultural differences when acting in different countries or regions? How does it, or does it, affect your strategy and visual presentation depending on where the hearing is being held?

**Clea Bigelow-Nuttall:**

So, culture has a huge bearing in international arbitration on how you make your arguments, your style of advocacy, how those arguments will be received by the tribunal, by opposing counsel. You know, I think, you know, that for me is one of the amazing things about international arbitration is just how much, you know, culture plays a part in what it is we're trying to do. That said, when it comes to strategy in visual presentation, one of the things that is common to arbitration, wherever it's done, in whichever jurisdiction, whichever part of the world, is that it's done by human beings. You know, our tribunals are composed of people, and people respond to visual imagery. So while there are countless ways that culture has an impact on arbitration and how we and how we arbitrate, one of the things that in my experience has remained true is that wherever you are in the world and whoever it is that you are presenting to, everybody is able to look at an image and engage with it and respond to it in some way and be affected by it in a way that's possibly more compelling than simply oral arguments.

I mean, I guess one of the particularities of arbitration is as well that, you know, sometimes, you know, we'll have a tribunal in the UK that might be composed of Cases, King's Counsel Barristers, it might be composed of former High Court judges, there might be a sense that certain types of tribunals respond better to more traditional advocacy, more traditional oral advocacy. But I think in reality, there's not a tribunal who hasn't been presented with a visual of some kind and found it useful to their understanding of the dispute. So, you know, while I think, as I say, there are definitely cultural differences to how you arbitrate and how you present your advocacy depending on where you are in the world, you know, I think the visuals always have a place. Sometimes they might be less dramatic, less showy. You know, some tribunals might not be as comfortable with, you know, with a lot of showmanship. But I think if it's done, if it's done well and properly and it's used in a focused manner, I think it's always going to be really useful.

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**Cindy Buxton:**

I mean, apart from different locations, do you have to reconsider what you're going to show depending on your audience? For instance, you know, a judge or the arbitrators, barristers, you know, do you have to take that into account as well?

**Clea Bigelow-Nuttall:**

I think you do. I think that, you know, you always have to read your tribunal. And you have to do that, you have to think about that in advance and then you have to be able to do it on the hoof as well. You need to be aware and perceptive of how your arguments and your advocacy are landing on your tribunal. If you plow on ahead, irrespective of whether they're clearly not responding well to a certain style or a certain line of argumentation, or if they're all half asleep after lunch, then you're, you know, you're not, you know, you're not doing your job properly.

I think one of the, kind of the, the facts or the truths about all tribunals, though, is that they don't want to be droned on and on at. By the time you get to a hearing, a tribunal has read probably hundreds, if not thousands, of pages of written submissions. They've got a good sense of what it is that they're here to hear. They don't just want a retelling of what they've already read. They want something fresh. They want, you know, an engaging summary. They want, they want what it is you're telling them to be presented in a new and engaging way. The UK has specialist technology and construction courts. And so often the judges who will be hearing those types of disputes will be very well versed in some of the certainly the legal issues and often some of the technical issues that you might be presenting.

Similarly, there's a very well-established construction bar in the UK composed of barristers who are construction experts, and you can have a task kind of convincing them that, you know, you might want to present something in a different way. That said, I think that all tribunal members should be open to how a party wishes to put its case in a hearing. And to the extent that a tribunal or a court is satisfied of the provenance of the data that's gone into a visual, and also that the other sides had or has had the same opportunity to interrogate that data and to kind of cross-examine on those visuals, you know, I've never seen them refused. I've always seen them well received by tribunals and by courts.

**Cindy Buxton:**

I remember actually, Clea, quite a few years ago, I did a presentation with a whole lot of judges at the Rolls Building. And I mean, they were very keen about the visuals. There were two things that their interest. One, they were very interested in timelines because that helped them sort of be able to sort of look at, you know, the process or when it happened. The other thing that they were interested in was where there was a complex issue, and they accepted that, although they were experts in construction or whatever, they could not know everything, you know. So sometimes it was really helpful for them to be able to see how something was made or how it broke or why it broke or, you know, because it wasn't built properly or whatever the case may be. And the interest there was: having a visual plus reading allowed them to understand something much more quickly and therefore save them time.

**Clea Bigelow-Nuttall:**

Yeah.

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**Cindy Buxton:**

And that is what was of real interest. There was one particular judge there and we had sent him a little 3D model, an animated model of a blowout preventer, which you have sitting on the seabed underneath an oil platform. And we did closeups of various parts of it that related to the case. And he, you know, he was there. So, I was able to ask him, and we put it on a little memory stick, and he took it home. And I'm sure his children played with it as well. I don't know, because it was interactive. And you could click on certain parts of the device, and it would bring up close-ups or photographs or little animation. But he said it really helped him understand exactly what had happened.

**Clea Bigelow-Nuttall:**

I can well imagine that that's the case. I mean, I think visuals like that, and sometimes even the 3D models that I know that can be prepared for, you know, elements of a claim where it's about a faulty manufacturing component, whatever it might be, those can just really bring it home, really focus their attention, focus the mind. And, you know, it turns it from just words on the page or you know, words spoken by an advocate in a hearing to something that really comes alive. And as you say, those timelines, I mean, there's you know, there's thousands and thousands of pages of, you know, facts that a tribunal has to read through.

But if there's a timeline that brings it all to life for them, I think there's so many examples where, you know, where we've seen that be used effectively. And, you know, I can think of cases as well. I mean, again, you know, the construction sector probably is one that lends itself really well to this type of product. But you know, where you have a case about a delay, if you have your as-built versus your as-planned, you know, models, then you can see it being constructed on the screen side by side, or if something's a dispute about whether or not there was a change or a variation, you can see that change or that variation visually manifest itself in those side by side comparisons. I mean, I think there's really nothing, there's nothing like that. You know, in terms of advocacy, I think that's really, really very helpful.

**Cindy Buxton:**

Yeah, absolutely. In today's world, your audience may well take part via Zoom. We've certainly seen an increase in use of our services for virtual hearings. Post-pandemic, how has the ratio of in-person to online hearings changed for you?

**Clea Bigelow-Nuttall:**

Radically. I think procedural hearings are nearly all virtual now, and to my mind, rightly so. I think that these are hearings that if we look back on how we did them pre-pandemic, we, you know, we should have been doing these virtually or remotely in any event. And I think that that's a really good and welcomed development in my mind. Those procedural hearings, in my experience, don't tend to be the ones where visuals really come into their own. The procedural hearings are often just that. They are procedural, there's a, you know, a fairly formulaic list of issues that tends to be considered and discussed. And I think that those can absolutely be done virtually. We still very much see a preference for in-person merits hearings, and I think that's the reality both for tribunals, for parties, for advocates, for witnesses, for all of the actors involved, is that there's nothing quite like being in the room with your opponents, being able to look a witness or an expert in the eyes when you're cross-examining them, getting a feel for the tribunal and how they're responding in-person and I think there's still a lot of value to that.

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That said, I don't think I've had an in-person hearing since the pandemic that also hasn't had some element of hybrid to it. Meaning that, you know, you still have the ability to access that in-person hearing remotely, so you might have members of your legal team who are back at base camp or you might have members of the client's team, but rather than having to bring ten people halfway across the world to attend a hearing, if they haven't got an active participation role in that hearing, they might, you know, stay wherever they are at their home base but attend remotely. And I think there's a huge advantage to that. Both because of the environmental benefit, which I think is a very important one, I think we need to recognize that international arbitration has a big carbon footprint, and I think we should be doing what we can to minimize that where it's where it's possible.

But also, I think it allows for the democratization of arbitration. And what I mean by that is that as a junior lawyer, it was a privilege to work on a case and then to be able to attend the hearing and to see your partners, your senior advocates on their feet, to see the procedure of a hearing kind of unfold and to learn that way. But you didn't always get to do that because either the hearing was somewhere else or, you know, the budget didn't permit it or it wasn't justifiable. And I think now, with the benefit of IT and the kind of the prevalence of hybrid hearings, all of the in-person hearings I've done over the past three, four years have all had attendees from our office, from the client, people who were there to add value to the process, but also there to learn. And I think that's a great advantage. And I think that the more we can, you know, bring IT and use it effectively in these hearings, I think the better.

**Cindy Buxton:**

Yes. Yeah, I quite agree. Are you seeing any other emerging trends or advances in technology within the field of international arbitration? Are there any new?

**Clea Bigelow-Nuttall:**

Well, definitely. I don't know if it's new, but it's certainly the norm now, and it wasn't when I started, which is the use of e-bundles, electronic bundles and lots of platforms and service providers who will host an electronic hearing bundle or case bundle on their platforms, which obviously obviates the need for printing dozens and dozens of hard copy bundles for every member of the team, plus the tribunal, plus the transcriber, and one for luck.

So that that I think is a fantastic development and I think that that was obviously around pre-pandemic. There's a cost to it, which sometimes meant that it wasn't always used. And there is sometimes, I think, a reticence by tribunal members of a certain vintage to use electronic bundles. I think nowadays it is absolutely the accepted norm and we are seeing some really savvy tribunals who are not just comfortable with it but are actively asking for it. And they don't want, you know, box loads of documents delivered to their chambers or to their home offices or to wherever it may be. People don't have an appetite for that anymore. And you can understand why, it was cumbersome, and it wasn't efficient. So that's certainly a development. And I see that increasing and being used almost all the time.

I think that with the increased use of AI, I think that in, not necessarily in the hearing end, but in the preparation of a case, we're going to see a lot more streamlining and efficiency in particular aspects of arbitration when it comes to things like document production, disclosure. And I think that's a very welcome development and I expect we could see more of that. In terms of other tech that is more visual in nature, one of the things I'm starting to see more and more in the cases that I'm working on is virtual reality site visits. So, where you are unable to attend a site, either because it's locked down



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or because it's difficult logistically to get there or difficult logistically to take a whole host of people there, these, you know, drone site visits, which can, you know, zone in on particular aspects of a site or hover over a particular place or can give you a virtual reality walk through. I think those are really useful and really entertaining actually. And I think that they, when used properly, can be really effective in cases as well. So I suspect we'll see more of that. And I don't think we're yet at a stage where we'll have hologram advocates and tribunal members, but given that ABA does it, I'm sure it's maybe not too far off for us as well.

**Cindy Buxton:**

Talking of the future, how do you share your own experiences and knowledge to, you know, younger, younger lawyers? I mean, what advice do you offer them about how to use it or when not to or when the best time is to do it and all the experience that you have?

**Clea Bigelow-Nuttall:**

Sure. Well, I think, you know, a lot of our learning comes from war stories that are passed down from more senior lawyers. And I think that there's diminishing value to the war stories of, you know, hearings with paper bundles that we used to tell our trainees about. You know, back in our day, we had to hand paginate things and, you know, we had all of that is a bit archaic now. And so, the best way I find to kind of impart arbitration strategy and the importance of using visuals is to do that in practice and to bring junior lawyers along on the journey.

We can share our experience is with junior lawyers about what's worked for us in the past, but ultimately, I find that junior lawyers, today, are far more fluent with technology, and I find myself learning from them probably just as much about the tech as they might from me about the strategy. But I think that it all comes back to a strong, a clear, and a compelling story and being able to tell a story. So, I think that's the important thing to impart to junior lawyers is that we are the storytellers. We need to get our client's story across, and we need to narrate that in a really compelling way. And there's various tools at our disposal to do that. We can do that orally. We can do that in writing, but we also have this additional tool of technology and, you know, if our case theory is solid, there will inevitably be a visual angle to helping us to get that story told.

**Cindy Buxton:**

Yeah. Clea, thank you very much. You've been wonderful telling us about your experiences and the future of arbitration and thank you again very much indeed.

**Clea Bigelow-Nuttall:**

It's been a pleasure. Thank you, Cindy.

**Cindy Buxton:**

Okay. Thank you.

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