

## Do's and Don'ts in Investment Arbitration: Arbitrators and Party Representatives \*

### Summary

**\* Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session at the Washington Arbitration Update, co-chaired by Ian Laird and Dr. Jose Antonio Rivas, focused on the practical aspects of investment arbitration, specifically discussing the "do's and don'ts" for arbitrators and party representatives. The panel featured notable participants including Nick's Lawn, who moderated the discussion, and other experts who shared insights on the intricacies of investment arbitration.

Key topics included the importance of arbitrator impartiality and independence, with discussions on the standards for appointing arbitrators and the implications of repeat appointments by one party. The panelists emphasized the need for arbitrators to have a solid understanding of the investment arbitration framework, including relevant legal precedents and procedural rules. They highlighted that an arbitrator's background—whether in civil law, commercial arbitration, or as a civil servant—can influence their understanding of the cases at hand, but does not inherently imply bias.

Moreover, the discussion underscored the necessity for arbitrators to be well-prepared and technologically adept, as modern arbitration increasingly relies on digital tools. The importance of clear communication and direction from arbitrators to parties was also stressed, as was the need for arbitrators to make decisive rulings rather than avoiding difficult decisions.

The session culminated in a call for professionalism among counsel, urging them to present their cases ethically and transparently, while also being aware of their responsibilities to the tribunal and the arbitration system at large. The panelists collectively advocated for a commitment to maintaining the integrity of the investment arbitration process, reinforcing the need for practitioners to act as proud officers of the court.

### Authors

Nicholas A Lawn, José Antonio Rivas, Hugo Perezcano Díaz, Gaela Gehring Flores, Eduardo Sisqueros

## Topics

Investment Arbitration, ISDS, Guidelines, Best Practices, Good Practice, Arbitral Proceeding, Arbitrator, Counsel

## Category

WAU

## Full Transcript

00:00:00

pleasure to be The real

00:00:02

pleasure to be here, you

00:00:04

know, they're being fantastic hosts.

00:00:07

The facilities are being marvelous

00:00:11

in the hospitality of course

00:00:13

has been fantastic. So just

00:00:16

thank you very much to

00:00:17

our hosts. My name is

00:00:19

Ian Laird. I am co-chair

00:00:22

along with Dr. Jose Antonio

00:00:24

Rivas of world arbitration update

00:00:27

who has Corgan eyes the

00:00:32

the conference and help set

00:00:35

up some of the panels

00:00:36

and the next panel is

00:00:37

is it really very apropos

00:00:40

one following the comments make

00:00:44

near that we just heard

00:00:46

it's titled do's and don'ts

00:00:49

in investment arbitration arbitrators and

00:00:52

party representatives and will have

00:00:55

the opportunity to dig into

00:00:57

some of those issues and

00:00:58

urban myths and so forth

00:01:00

that Was talking about butts

00:01:03

get into some of the

00:01:04

practicalities of how these up

00:01:06

arbitrations operate and we have

00:01:10

a great group here today,

00:01:11

and I'll ask her a

00:01:13

moderator Nick's lawn from Vandellas

00:01:16

and belly firm in London

00:01:18

to the directions. I just

00:01:22

wanted to thank you for

00:01:24

coming today and organizing this

00:01:27

group. I think we'll have

00:01:28

a fantastic session experience in

00:01:32



international arbitration in investor-state arbitration,

00:01:35  
and I think we'll do

00:01:38  
a great job on this

00:01:38  
panel. So thank you Nick

00:01:40  
and I'll pass over the

00:01:41  
microphone and welcome everyone to

00:01:43  
World arbitration update. Thank you.

00:01:48  
Play Welcome to the best

00:01:50  
panel of the inaugural session

00:01:52  
off the floor and operation

00:02:14  
When was thinking about this,

00:02:16  
we should discuss the wild

00:02:27  
wild west of international mission

00:02:39  
statement? It's just one plant

00:02:44

mentioned that be many men

00:02:46

planets. iPad 5 which is

00:03:07

more 1 to detect the

00:03:09

traffic in a real sense,

00:03:12

they are just They're all

00:03:15

really none called opossums motion

00:03:19

or documents and files. Speculation

00:03:27

when shorty reports in the

00:03:28

newspapers misrepresentations of fact usually

00:03:38

got a list of lawyers

00:03:40

Macon Conference Center and hotel

00:03:43

are they flying in on

00:03:52

the Super Bowl? listing deficiencies

00:04:03

of the isds system Hawaii

00:04:07

tribune-herald legal interpretation given by

00:04:20

the basic check powers the

00:04:37

quiet friendships, Atlantic Will be

00:04:51

at some of the issues.

00:05:10

The second is that I

00:05:11

will be more practical and

00:05:14

counseling. Let me introduce. best

00:05:33

commercial the best of treatment

00:05:46

operation It's is arbitration but

00:06:25

commercial. Let me know. arbitration

00:06:46

based commercial Botetourt road to

00:06:54

do what Find me in

00:07:07

the least care insurance Washington

00:07:12

DC office has represented commercial

00:07:21

and investment disputes over 20

00:07:23

years. Has been listed the

00:07:30

recommended. Thank you. Thank you,

00:07:57

Nick. And and thank you

00:07:59

to Google and the to

00:08:01

the and also the Institute

00:08:04

and thank you for being

00:08:06

here and I'm done believing

00:08:09

in in this world arbitration

00:08:11

update for me to know

00:08:12

her to be in Mexico.

00:08:13

I will get that down

00:08:15  
to the to the topic

00:08:17  
because I know that time

00:08:18  
is precious so I've been

00:08:21  
asked to HEB initiate our

00:08:26  
discussion with the other being

00:08:40  
an appointment and the third

00:08:42  
one. Happy neurotic. issues for

00:08:59  
discussion I came up with

00:09:26  
this work. Issue if they

00:10:08  
are just looking at it

00:10:20  
maybe. Chase is on the

00:10:28  
case. measures that the US

00:10:56  
had actually taken better name

00:11:10

is Gilbert. given a speech

00:11:28

a Canadian government Canadian decide

00:11:54

on issues latest speech West

00:12:08

Indies Do you think that

00:12:15

there were justifiable Docs? whether

00:12:19

or not I could have

00:12:22

swore he would not be

00:12:24

impartial. One one big issue

00:12:29

there. I'm was the standard.

00:12:32

What what is the standard?

00:12:33

Should there be absolute certainty

00:12:36

that Or would that somebody

00:12:40

with the sum reasonable? What

00:12:46

is the lawyer craps well?

00:13:15

As a consequence he resigned.

00:13:19

Start it, but there was

00:13:35

it was very telling that

00:13:38

the standard is not necessary

00:13:40

that there should be absolute

00:13:42

certainty that decided one way,

00:13:45

but the notion of justice

00:13:46

is is a very healthy

00:13:49

one has to protect their

00:13:55

interests. yep issue office our

00:14:05

appointments repeat appointments by a

00:14:17

specific party appointment by thank

00:14:21

you. involved immediately an issue

00:14:29

of of of loughran Personality

00:14:31

or Independence And there unless

00:14:38

there is evidence of either

00:14:41

lack of Independence or or

00:14:43

a personality. I would like

00:14:45

to take a step back

00:14:46

and and understand the notion

00:14:50

that is the freedom of

00:14:55

parties to point arbitrators either

00:14:58

famous or respondent and the

00:15:00

freedom of those parties to

00:15:03

select that arbitrator that according

00:15:08

to their history that according

00:15:11

to their background their educational

00:15:14

background professional background, etcetera would

00:15:17

best wood would be best

00:15:19

align with a notion of

00:15:22

interest if they're appointing them

00:15:23

is because there is a

00:15:25

new well this person might

00:15:27

better understand the position that

00:15:29

the investor he's coming from

00:15:31

one of the positions that

00:15:32

the state is coming from.

00:15:33

So I would like to

00:15:35

emphasize a number of issues

00:15:37

that aren't taking into account

00:15:38

and that make that sat

00:15:41

persona. More appropriate for either

00:15:45

the investor or the state

00:15:48

and that doesn't mean that

00:15:49

there's a conflict or there's

00:15:50

lack of Independence is simply

00:15:52

whether any of you as

00:15:56

say Branson's civil law lawyers

00:15:59

would better understand the position

00:16:02

of the state's World War

00:16:05

the last American state or

00:16:07

not or an investor coming

00:16:09

from Mexico or not. So

00:16:11

that that's really the back

00:16:13

from what what I'm referring

00:16:14

to so I number of

00:16:15

elements are important whether the

00:16:21

person have comes from a

00:16:23

legal background. Where were there

00:16:25

was a Republican National Law

00:16:27

or civil litigation background whether

00:16:35

the person is more leaning

00:16:36

towards an international commercial arbitration

00:16:38

background whether that person was

00:16:41

a civil servant or not.

00:16:43

Do play into whether or

00:16:46

not that potential arbitrator will

00:16:48

be best suited to act

00:16:52

as an arbitrator. Not because

00:16:54

he's going to one side

00:16:56

or the other but he

00:16:57

does he or she might

00:16:59

better understand one perspective and

00:17:02

that doesn't mean that that

00:17:03

that there's a conflict of

00:17:05

interest. the issue of double

00:17:11

tap Find a shoe with

00:17:17

the what should the arbitrator

00:17:19

on the feet. Yost Road

00:17:52

Respectively there are already sanctioned.

00:18:08

What what is it? specific

00:18:16

there is a cooling-off period

00:18:31

between the time that somebody

00:18:36

As an arbitrator the time

00:18:40

that he or she and

00:18:42

Council or related cases. 3

00:18:55

years in some cases. So

00:19:00

ultimately if the the new

00:19:08

case is related to a

00:19:10

measure. Or if it's related

00:19:14

to a party of which

00:19:17

the person was an arbitrator

00:19:19

that we have a three

00:19:20  
years ago station if if

00:19:23  
the the new case is

00:19:26  
at 1 related to a

00:19:29  
treaty or an investor and

00:19:35  
investment contract station. The notion

00:19:47  
of double had in his

00:19:48  
career. truly be a strong

00:20:20  
arbitrator you rounded arbitrator each

00:20:24  
you haven't seen both sides

00:20:38  
of the story by is

00:20:46  
is a stepping stone in

00:20:49  
in India. Gratian of James

00:20:59  
Crawford should be relinquished. I

00:21:15

have more steak but doing

00:21:20

so would be somehow. disrespectful

00:21:25

with my obviously, it's a

00:21:56

question that has many facets

00:21:58

because repeat ball I set

00:22:06

up capping been repeatedly say

00:22:11

a respondent keeps such a

00:22:20

traitor or Search arbitrators being

00:22:24

repeatedly appointed by same type

00:22:29

of respondents for claimants. Patrician

00:22:35

Community you have you can

00:22:38

work early distinguish between three

00:22:41

types of arbitrators that is

00:22:45

appointed by a respondent state.

00:22:50

An arbitrator that is primarily

00:22:52

appointed by claimants. the recent

00:22:57

there is evident because the

00:23:03

individuals the arbitrator may have

00:23:06

a particular leaning towards. the

00:23:13

arguments of a state or

00:23:16

defenses of a state or

00:23:18

inversely It might be that

00:23:24

arbitrators have worked. As was

00:23:33

mentioned a Mike have a

00:23:35

particular experience as a types

00:23:43

of parties. Martin such as

00:23:51

those that are be expressed

00:23:52

in that case. particular Repeat

00:24:13

the arbitrator. I think the

00:24:21

answer is yes, but only

00:24:23

if there has been a

00:24:27

pattern that you can't distinguish

00:24:29

with that individual has been

00:24:32

responding State say that the

00:24:37

Republic is that individual casac

00:24:51

and the other party? idology

00:25:01

of that individuals this with

00:25:02

respect a place that is

00:25:16

not an independent arbitrator their

00:25:19

repeated locations already indicated. But

00:25:31  
that is not the case

00:25:33  
went to see Jesus in

00:25:44  
different situations where the arguments

00:25:47  
that are being addressed on

00:25:50  
planes under a treaty or

00:25:52  
different trees are diapers. So

00:25:55  
how you sometimes Sonora Trader,

00:26:00  
I really have been challenged.

00:26:04  
Recent lack of impartiality for

00:26:07  
Independence. The last time this

00:26:09  
occurred was quite a few

00:26:11  
years ago. Text little independent,

00:26:27  
even though they have been

00:26:28

repeatedly appointed by same state.

00:26:33

same group of companies The

00:26:41

answer is not Direct. which

00:26:49

that individual is intended to

00:26:52

be a similarities such that

00:27:03

you can identify that that

00:27:05

arbitrators no longer an arbitrator

00:27:08

because the issues discussed are

00:27:16

all the address. Coming back

00:27:31

to the circumstances to deal

00:27:42

with Windows Hardware in arbitrator

00:27:45

has repeatedly Council. Take a

00:28:02

look at the ivy. It

00:28:15

states that it may create

00:28:17

I have been in that

00:28:31

situation. And when the party

00:28:37

that we wanted to party

00:28:58

and we have to be

00:29:13

aware of it. So there

00:29:31

were there were some initial.

00:29:35

Given this to all I

00:29:37

ask an arbitrator. I listen

00:29:41

either satisfied that there was

00:29:52

no other way to be.

00:30:11

It's not for me. So

00:30:14

that's we respond to one

00:30:16

party, but it goes to

00:30:23

a challenge. The gist of

00:30:29

it. I wish that is

00:30:40

funny. Whether it really created

00:31:03

a small either way, that's

00:31:06

an easy one because we

00:31:07

have some lunch there. The

00:31:13

more parties have to say

00:31:25

before I appreciate your the

00:31:36

keys. I think is much

00:31:38

more complicated issue. Why do

00:31:45

you and this is I

00:31:46

think the channel like you

00:31:48

but it's not no unanimous

00:31:52

arbitrators have to be impartial

00:31:58

creators that are state are

00:32:20

well. And it's difficult to

00:32:33

deal with what about it?

00:32:36

I'm not sure if I

00:32:37

were to ride it doesn't

00:32:44

fall into the other category.

00:32:45

So I'm not sure that

00:32:49

it has been repeatedly by

00:32:55

investors repeatedly appointed by States

00:32:59

Vise people in this matter.

00:33:20

Where's the storm? But I

00:33:28

think it says create a

00:33:29

problem is the arbitrator being

00:33:32

impartial investor. I'm more comfortable

00:33:42

knowing that it has appointed

00:33:45

a particular person. Well as

00:33:53

Supreme Council my view when

00:33:55

I was 10. back in

00:33:57

the day I didn't. But

00:34:07

I especially in this area.

00:34:16

It's partly our client. economy

00:34:32

Miss you so we were

00:34:34

there just to send it

00:34:46

whether he committed the states.

00:34:57

I need a decision that

00:35:00

I can live with. Decision

00:35:03

that doesn't create a systemic

00:35:06

problem necessarily a decision. That

00:35:09

is my favorite where for

00:35:14

many years. I know that

00:35:16

governments. For good or bad

00:35:19

reasons make certain decisions that

00:35:22

affect. Investors or the community

00:35:26

were the local competition or

00:35:30

that's what governments do difficult

00:35:37

for the government to act,

00:35:39

you know corruption in government

00:35:51

interest. Decision that I can

00:36:08

live with decision that I

00:36:09

can understand that people often

00:36:13

say Maggie was giving some

00:36:19

figures of it. It's gone

00:36:32

off alone. So, you know

00:36:43

when I'm with a hundred

00:36:47

million dollars flame until it

00:36:55

to where 250 so but

00:37:21

it does coming back to

00:37:22

the issue. It freezes that

00:37:24

more complex and maybe that

00:37:28

has to do with track

00:37:32

record each year in the

00:37:34

cases where the arbitrator has

00:37:35

participated. Google talking about Collegiate

00:37:42

once but I think God

00:37:57

has created. Sorry, Nick. I

00:38:11

don't think we can hear

00:38:13

you. I think that you

00:38:14

need to grab the mic.

00:38:18

I'm just saying that I'm

00:38:20

going to bring you into

00:38:21

the conversation now to the

00:38:24

more practical aspects of what

00:38:31

makes the traffic so I'm

00:38:33

going to look at it.

00:38:44

Of course, thank you. Thank

00:38:46

you everyone. I am guy

00:38:48

like herrings Lourdes and I'm

00:38:49

an international arbitration partner in

00:38:51

the DC office of Allen

00:38:52

& overy. Thanks to World

00:38:55

arbitration update and I and

00:38:58

my family my fellow panelists.

00:39:00

I wish I were there

00:39:01

with you and I very

00:39:03

much regret that I can't

00:39:04

be there in person. Unfortunately

00:39:07

a broken rib has kept

00:39:09

me from has kept me

00:39:11

grounded in DC for the

00:39:13

moment and my kids would

00:39:17

be very upset if I

00:39:18

didn't say you should see

00:39:20

the other guy. As it

00:39:23

turns out. Yeah, there is

00:39:25

no other there is no

00:39:27

other guy my broken ribs

00:39:29

the results of a hiking

00:39:31

accident and I was lucky

00:39:34

to just get out with

00:39:35

one broken rib, but enough

00:39:38

about my my misfortunes in

00:39:41

the wilderness. I want to

00:39:44

talk today about the characteristics

00:39:45  
of an ideal arbitrator, but

00:39:48  
as I convalesced from my

00:39:50  
hiking accident, I thought it

00:39:51  
would be helpful to talk

00:39:53  
about these ideal arbitrator characteristics

00:39:56  
through the metaphor of an

00:39:59  
ideal Wilderness hiker, which I

00:40:02  
clearly was not a few

00:40:04  
days ago. So one. Sherwood

00:40:09  
Inn That was that was

00:40:11  
one of my problems. You

00:40:13  
need to have sure footing

00:40:14  
as an arbitrator owed. Someone

00:40:17

saying that it's that I'm

00:40:19

too loud. Not the first

00:40:21

time. I've heard that. You

00:40:25

need to have sure footing.

00:40:28

how can you have sure

00:40:30

footing as an arbitrator you

00:40:32

need to have competence from

00:40:34

experience and we've kind of

00:40:36

batted around the concept of

00:40:38

whether or not you know,

00:40:39

how do you get that

00:40:40

experience certainly one way that

00:40:42

you can get experience is

00:40:43

by being counsel in these

00:40:47

investment arbitrations beforehand you could

00:40:50

also be an academic you

00:40:52

could be a judge in

00:40:55

a national Court as well,

00:40:57

but I think It is

00:41:01

incompetent. It is incumbent on

00:41:04

any participant in the system

00:41:06

and certainly an arbitrator in

00:41:07

the investment arbitration system. To

00:41:10

gain any experience that's lacking

00:41:14

and that can be had

00:41:17

by it. Just essentially studying

00:41:21

the system. It is its

00:41:23

own specialized system and you

00:41:25

really do need experience to

00:41:27

have that sure footing as

00:41:29

an arbitrator. you need experience

00:41:32

with The different industry sectors

00:41:36

that tend to pop up

00:41:37

you need to have experience

00:41:39

in just disputes. Generally you

00:41:42

need to have experience in

00:41:44

the procedure of investment arbitrations

00:41:48

and no this is not

00:41:50

a proceeding before your favorite

00:41:52

Home Country Court. It's a

00:41:53  
specialized form with specialized rules

00:41:56  
and customs and unlike Urban

00:41:58  
myths which Meg talked about

00:42:00  
and and Nick brought up

00:42:02  
earlier There Are Rules here.

00:42:04  
There are actually rules and

00:42:07  
it's good to know about

00:42:08  
them. So we talked about

00:42:12  
sure footing and experience and

00:42:14  
competence as an arbitrator. You

00:42:17  
need to be untethered to

00:42:20  
go exploring in the wilderness

00:42:22  
or to be an arbitrator.

00:42:24

What do I mean by

00:42:25

untethered you need to be

00:42:27

independent? Clearly you need to

00:42:30

be impartial. I think we've

00:42:33

heard enough about those two

00:42:34

subjects. Those are very foundational

00:42:39

subjects and requirements for being

00:42:41

an arbitrator in investment arbitration

00:42:43

cases. Despite. What Perhaps many

00:42:48

Urban myths about investment investor-state

00:42:51

arbitration cases say independence in

00:42:54

partiality. Don't be Tethered to

00:42:56

any one person one party

00:42:59

one believe you need to

00:43:01

be objective and you need

00:43:03

to be independent and always

00:43:05

err on the side of

00:43:07

disclosure. I think that's always

00:43:09

a good idea. Okay. What

00:43:12

else do you need to

00:43:13

be prepared? You need to

00:43:15

be prepared for your adventure

00:43:17

as a hiker or an

00:43:19

arbitrator? What does that mean

00:43:21

again? Kind of going back

00:43:23

to having sure footing having

00:43:25

experience. You need to be

00:43:27

well-read into your specific case.

00:43:30

You need to read all

00:43:32

the documents. You need to

00:43:34

read and explore the exhibits.

00:43:37

Another way, you need to

00:43:38

be well-read again going back

00:43:40

to Sure footing and experience

00:43:42

is you need to be

00:43:44

well-read in relevant International Investment

00:43:47

treaty precepts jurisprudence and procedure

00:43:51

again, you need to know

00:43:53

this stuff if you're going

00:43:54

to be arbitrating this stuff

00:43:56

and and I guess I

00:43:58

should pause here. This is

00:44:00

certainly coming from my perspective

00:44:01

as counsel. I primarily sit

00:44:04

as counsel in investment arbitration

00:44:07

cases. So this is may

00:44:09

be my bias point of

00:44:10

view as counsel and what

00:44:11

I would love to see

00:44:12

if in an arbitrator and

00:44:15

then next with respect to

00:44:18

being prepared, you have to

00:44:20

have and be able to

00:44:22

use the right equipment. This

00:44:25

is where this may be

00:44:28

it may have been my

00:44:29

biggest downfall as a hiker.

00:44:30

I did not have the

00:44:31

right shoes on and that

00:44:35

was the problem. Now as

00:44:40

an arbitrator, what's the equivalent

00:44:42

of the right equipment? I

00:44:44

think it's technology and innocence

00:44:47

essentially. Are you fluent in

00:44:52

today's technology how proficient are

00:44:55

you in all of the

00:44:56

technology that we use and

00:44:59

we need in these proceedings,

00:45:00

you know word excel chess

00:45:04

clock apps time zone apps

00:45:08

electronic signatures scanning scheduling apps

00:45:12

Zoom teams and all of

00:45:15

their trappings. Do you know

00:45:17

how to unmute yourself? Are

00:45:19

you sure you're not going

00:45:20

to show up as a

00:45:21

cat when you're speaking things

00:45:24

like that. Let's be part

00:45:27

of the world that were

00:45:28

in today and the world

00:45:30

that were in today involves

00:45:31

a lot of technology and

00:45:33

in fact in a going

00:45:36

back to the hiking metaphor.

00:45:37

It allows us to save

00:45:38

some trees as well. Next

00:45:43

have a plan let people

00:45:45

know where you are. No

00:45:47

one to ask for help.

00:45:49

How does this apply to

00:45:51

an arbitrator give the parties

00:45:53

and Council clear Direction and

00:45:57

I think it had a

00:45:59

reference to it in the

00:46:00

new exit rules there now

00:46:02

case management proceedings where I

00:46:04

think this is an opportunity

00:46:06

for arbitrator or arbitrators and

00:46:09

tribunals to give the parties

00:46:11

very clear Direction on where

00:46:14

things are going let them

00:46:16

know let the parties and

00:46:18

Council know where you you

00:46:19

are at. Let them know

00:46:21

what issues need attention areas

00:46:25

of Interest or concern and

00:46:28

asked. Council to explain or

00:46:32

clarify that's the equivalent of

00:46:35

asking for help and no

00:46:37

no one likes to ask

00:46:38

for help but you should

00:46:40

ask for clarification. You should

00:46:43

ask for explanation so that

00:46:45

all of the issues are

00:46:46

truly heard also. Have a

00:46:52

spine you need to have

00:46:54

a spine as an arbitrator.

00:46:56

Sometimes you're faced with difficult

00:46:59

situations. Sometimes you're faced with

00:47:00

Rocky. Terrain. You need to

00:47:02

face that difficult situation head-on

00:47:04

and with a plan and

00:47:06

not just with a sword

00:47:07

to split the baby all

00:47:09

the time make those difficult

00:47:12

decisions gives parties certainty and

00:47:16

a conclusion because and I

00:47:19

know there's a temptation to

00:47:21

really split the baby and

00:47:22

and maybe kind of appease

00:47:25

both parties at the same

00:47:26

time, but it really does

00:47:27

lead to any efficiencies in

00:47:29

consistencies and just general uncertainty

00:47:32

and we all know that

00:47:33

in the foreign investment World

00:47:35

uncertainty is kind of our

00:47:37

Kryptonite. Also this counsel or

00:47:41

parties are engaging in bad

00:47:43

behavior going back to those

00:47:44

Urban myths and this might

00:47:46

be the one where there's

00:47:47

a little kernel of Truth

00:47:49

to that. Urban, Miss. Is

00:47:53

councillor engaging and bad behavior

00:47:54

stop it? There are consequences

00:47:59

there can be consequences in

00:48:01

investment arbitration to bad behavior

00:48:03

make it happen have a

00:48:05

spine. All right, and last

00:48:08

but not least perspective when

00:48:10

you are going on your

00:48:12

adventures in the wilderness when

00:48:13

you are going on adventures

00:48:14

as an arbitrator. You need

00:48:17

to have perspective you need

00:48:19

to have the ability to

00:48:20

truly see and appreciate what

00:48:21

is before you and then

00:48:23

the arbitration world. What does

00:48:24

that mean? I think it

00:48:26

means diversity. I think it

00:48:28

means cross cultural sensitivity. These

00:48:32

things are needed for arbitrators

00:48:33

to truly see the issues

00:48:35

in front of them. And

00:48:37

if you don't necessarily come

00:48:39

from a particularly diverse background

00:48:41

been read into it read

00:48:45

an increase your experience so

00:48:47

that you might begin to

00:48:48

see and appreciate more perspective

00:48:50

is not just the perspective

00:48:52

that might dominate from White

00:48:54

patriarchal Colonia store neo-colonial neo-colonial

00:48:58

list experiences lastly. With perspective

00:49:03

you need to know your

00:49:04

audience. You need to be

00:49:06

very knowledgeable of the parties

00:49:08

with what you're dealing Council

00:49:10

the investment arbitration system the

00:49:13

world in a way and

00:49:15

why because the world is

00:49:16

watching everyone is watching and

00:49:18

if they're not they should

00:49:20

be and with that I

00:49:23

will end my comments on

00:49:24

the ideal arbitrator. thinking to

00:49:42

getting garlic us valuable points

00:49:44

or some of which To

00:49:52

be considered by both your

00:49:56

trailer and by Council. And

00:50:00

does she mention that is

00:50:01

one of the last to

00:50:03

know your audience? Indeed the

00:50:07

arbitrator guests know who the

00:50:09

audience is. The arbitrator's going

00:50:13

to be addressing. I think

00:50:15

that's particular more relevant later.

00:50:22

She was mentioning cross-cultural. Sensitivity

00:50:28

this is not only sensitive

00:50:36

to but knowledgeable. In Della

00:50:40

point it out correctly yet

00:50:42

another Trader cast to be

00:50:44

here cast to study Justice

00:50:49

Council has to study. The

00:50:52

case of Governor has to

00:50:54

examine the case that I

00:51:04

would find that an arbitrator

00:51:08

piece is the ability. You

00:51:16

can shave arbitrator that likes

00:51:20

to examine dress. Which one

00:51:30

they want me. Rapist responsibilities

00:51:42

of an arbitrator is being

00:51:46

ready to decide. What are

00:51:48

these are issues on procedure

00:51:50

or police are issued on

00:51:53

the merits of the arbitrator's

00:51:55

greater responsibility and the gala

00:51:58

touched on that is the

00:52:00

arbitrator needs to be ready

00:52:02

to design. and sometimes you

00:52:09

know it it's I just

00:52:13

tested Domestic Court that's an

00:52:16

international arbitration and investor-state arbitration.

00:52:21

It's easy to criticize the

00:52:23

judge. Tonight was canceled and

00:52:28

some instances. We should be

00:52:37

easy for the court to

00:52:39

decide. Would you become a

00:52:42

partner first time? used to

00:53:01

go with earlier also you

00:53:18

abortion when you don't care.

00:53:24

black and white and you

00:53:26

have many shades of grey

00:53:28

lyrics Try not to get

00:54:04

too near the microphone. So

00:54:06

it is perceived as being

00:54:12

the baby but when the

00:54:13

Tribune issues are not always

00:54:16

white or black there's many

00:54:19

shades as I was mentioning

00:54:20

earlier of grey and unfortunately

00:54:22

sometimes a decision in the

00:54:24

middle. Wants to avoid splitting

00:54:34

the baby when this is

00:54:36

not. What did you sense

00:54:40

to do a person? Yeah,

00:54:45

let me know such people

00:54:56

that sit as arbitrators shoots

00:54:58

try but one of them

00:55:01

was rendering a service to

00:55:10

both parents should expect and

00:55:15

we deliver the lot of

00:55:21  
materials and they have a

00:55:23  
right to expect that they

00:55:24  
will be there. condados at

00:55:28  
Council as in the dark

00:55:29  
and as far between her

00:55:31  
a little bit into Guild

00:55:39  
Council that later but know

00:55:44  
that it's important to laugh

00:55:49  
at Freddy's know our team

00:55:54  
get back to be knowing

00:56:05  
the facts. Well, I've seen

00:56:07  
arbitrators that come with not

00:56:10  
much food as to what

00:56:13

time tomorrow. I don't know.

00:56:22

I can be obsessive compulsive

00:56:29

eating being an arbitrator like

00:56:33

it is to be expected.

00:56:44

Hardee's have a right to

00:56:46

have arbitrators that are Peach

00:56:48

here. Give the parties directions.

00:56:57

Let them know where there

00:56:58

are. I think that the

00:57:00

one 1048 Witnesses and we

00:57:36

going back beat decision, but

00:57:38

that's about it. I know

00:57:55

I can I can live

00:57:56

with in that first decision,

00:57:58

but I think at least

00:58:04

And do you know because

00:58:06

you know, the other example

00:58:28

is the famous where I

00:58:30

should say. Who would have

00:58:35

thought that meant turn would

00:58:37

go down in arts of

00:58:38

War for his Redford schedules

00:58:42

and for his writings? Decision

00:58:56

saying okay denied for lack

00:58:58

of relevance. I want to

00:59:04

know if it was denied

00:59:05

a position was accepted to

00:59:17

tooth with me whatever, you

00:59:19

know at least entering into

00:59:41

the issues. And of course

00:59:42

there are granted or denied.

00:59:52

Oh yes or no. I'm

00:59:53

very unsatisfied. Sometimes it's more

01:00:27

or less interested in whether

01:00:34

it is a document on

01:00:36

a procedural vote on the

01:00:39

motion on the awards. Going

01:00:56

to hear from leading architect.

01:01:07

What is it? my turn.

01:01:19

I will criticize cancel cancel.

01:01:25

Please naturally a good arbitrator

01:01:35

makes good arbitration. This is

01:01:38

certainly true. It's good arbitrators

01:01:43

and good counsel, The arbitrator

01:01:53

will have for his responsibilities.

01:02:02

Let me start with the

01:02:03

three elements that make a

01:02:07

good counsel and a good

01:02:09

argument by councils First Council

01:02:13

should know his case. Council

01:02:18

should know Syracuse versus case

01:02:23

I'm so should know who

01:02:26

the audience is back on

01:02:30

the point that the dialogue

01:02:32

was indicating earlier. A council

01:02:37

knows his case. will be

01:02:46

we will organize the file

01:02:50

will simplify the case for

01:02:54

the tribunal because knowledge of

01:02:58

the case makes. Explanation of

01:03:03

the case easier to be

01:03:07

made to the Tribune. We've

01:03:10

all been there if we

01:03:12

know what we talkin about.

01:03:14

It's easier to communicate. If

01:03:19

we don't understand what we

01:03:21

talked about will begin evasive.

01:03:28

Topics we will not concentrate

01:03:31

on what is she so

01:03:34

organized? prepare and practice when

01:03:51

a good counselor Pierce is

01:03:54

to appear. Let me say

01:03:56

first in writing before a

01:03:58

tribunal. This must be a

01:04:01

well-organized case must be presented

01:04:05

in a manner that is

01:04:07

to be understood by betrayed

01:04:10

you. And easier the simpler

01:04:15

shorter. better I was discussing

01:04:21

earlier with one of the

01:04:23

present. I'm going to be

01:04:27

another Topic in this conference

01:04:31

and we were discussing. How

01:04:32

do you like to submit

01:04:36

memorials that are hundreds of

01:04:38

pages long? Sometimes in very

01:04:43

rare circumstances hundreds of pages

01:04:45

are justified in most cases.

01:04:48

They're not. Those places where

01:04:53

they're not they are repetitious.

01:04:57

They are disorganized. And sometimes

01:05:00

there's like to be necessary

01:05:04

argument with the memorial Council.

01:05:13

Suppressing client and what you

01:05:25

mean? You don't have today

01:05:27

or they're not. But many

01:05:33

of us here remember when

01:05:36

submitting a case and bald

01:05:38

submitting exhibits that were not

01:05:41

23 boxes. Sometimes a couple

01:05:46

dozen boxes filled with documents

01:05:50

in support of the case

01:05:53

with everything that's presented to

01:05:59

her to kill. Yes or

01:06:03

no? That's where if a

01:06:07

counselor is going to percent

01:06:10

Dustin's precedence. Show what portions

01:06:16  
of that President you do

01:06:18  
believe irrelevant? Don't over the

01:06:26  
arbitrators with excessive. information there

01:06:34  
is extremely relevant information. There's

01:06:38  
relevant information and there's trivial

01:06:40  
information. Don't bring the case

01:06:43  
with trivial information. When you

01:06:49  
are to appear before a

01:06:51  
Tribunal. engage with a tribunal

01:06:55  
address to Tribune audience you

01:07:03  
have to convince the Tribunal.

01:07:06  
engage look into the eyes

01:07:09  
of the members of the

01:07:10

Tribunal If possible don't read

01:07:14

your presentations. I know some

01:07:19

counsel. Practice and they do

01:07:24

prefer to read materials because

01:07:28

these materials go into the

01:07:30

record. And it's easier to

01:07:33

read. A document that's going

01:07:37

to be transcribed into the

01:07:39

record. It's going to be

01:07:41

read on the record easy

01:07:43

does not necessarily engage with.

01:07:48

That does not even allow

01:07:50

you to determine what the

01:07:53

tribunes thinking about your case.

01:07:56

Would you address a tribunal

01:07:58

from you and you look

01:07:59

into the eyes of the

01:08:00

members of the you can

01:08:03

immediately identify whether your argument

01:08:06

is being CBC with receipt

01:08:09

back? When you are acting

01:08:15

as counsel. Understand your adversaries

01:08:20

case and know what your

01:08:22

weaknesses are in address those

01:08:24

weaknesses. Don't try to hide

01:08:27

them anyway, so don't try

01:08:31

to hide them address them.

01:08:33

An address in the best

01:08:36

manner that you can with

01:08:39

the solid organs. waited for

01:08:49

Elementary my view is most

01:08:52

relevant for concert and that

01:08:54

is I'm just be professionally

01:09:00

honest ethical and honest and

01:09:10

ethical to the tribunal Council.

01:09:24

Don't try to advance the

01:09:30

position for a council with

01:09:35

a good Council does not

01:09:37

try to misrepresent the facts

01:09:40

misrepresent documents both and writing

01:09:44

an orderly and I'm sure

01:09:46

many of us here have

01:09:48

seen that it is amazing

01:09:51

that the council would even

01:09:53

think of doing it. Sometimes

01:09:56

they do it something to

01:09:58

try to advance their clients

01:10:00

position. It's not easy to

01:10:05

have. wheat Chase a weak

01:10:10

argument McKay's We both have

01:10:14

it but we've spent the

01:10:20

week case. But an arbitrator

01:10:24

immediately identify when you are

01:10:29

Mister presenting a fact for

01:10:32

misrepresenting argument and your credit.

01:10:45

And that creates two out

01:10:46

the rest of the proceedings,

01:10:48

but let me know. Google

01:10:52

and I are sharing this

01:10:54

Saturday part of the section

01:10:58

and let me go. What

01:11:24

I think it is the

01:11:32

ideal is knowing how to

01:11:37

navigate. It's got a lot

01:11:46

to know how and when

01:11:59

to shift Focus pending on

01:12:01

what I was saying how

01:12:02

you read the Tribune today

01:12:11

a lot of the lawyers

01:12:13

and indeed the advocacy. Arbitrators

01:12:24

get hit with some patients

01:12:27

have some concern. Answer their

01:12:44

questions or still deal with

01:12:47

it. just a couple To

01:13:23

understand the case and of

01:13:25

course, they might be two

01:13:27

cases one by my account

01:13:29

by by responded how well

01:13:36

can you summarize the case

01:13:37

how well can you be

01:13:44  
on the phone LG LG

01:13:46  
simply a tool but beyond

01:13:49  
that you need to put

01:13:50  
before the tribunal a narrative

01:13:54  
story that makes sense. And

01:13:57  
sometimes we think well doesn't

01:13:59  
matter why it just Treat

01:14:02  
them unfairly and there's no

01:14:05  
objective tests. And that's that's

01:14:07  
where they they they didn't

01:14:10  
pay compensation. And that's what

01:14:12  
we need. Maybe the trees

01:14:14  
say that but the human

01:14:18

mind goes way beyond that.

01:14:20

Why did it happen? It's

01:14:29

very hard for the tribunal

01:14:30

to understand the story. I

01:14:34

believe that but that part

01:14:36

of the story is very

01:14:36

important. So that that's that's

01:14:39

one aspect that I would

01:14:40

like her to start over

01:14:42

ask her where she wants

01:14:46

summarizing in one of the

01:14:47

key issues and their baby.

01:14:51

Dozens of issues but but

01:14:53

the case would normally the

01:14:55

Sounders diction or our marriage

01:14:57

will be decided by B.

01:15:01

one or two issues that

01:15:02

you have to focus on

01:15:03

the other the other asked

01:15:09

me to do what what

01:15:14

what are the spice that

01:15:15

Council should be fighting? At

01:15:21

least in my spirit whenever

01:15:23

I've seen Council. issue 888

01:15:33

don't want to be having

01:15:36

adults fighting like the Are

01:15:43

those boots sold between the

01:15:47

parties procedurally? Have you sold

01:15:51

them like adults and then

01:15:53

before the tribunal goes that

01:15:55

that that Council have addressed

01:15:58

and tried some so but

01:16:00

they have unfortunately so that

01:16:03

that's more of an adult

01:16:06

to it. And and the

01:16:08

last thing that I would

01:16:08

say is that is very

01:16:10

much connected to but at

01:16:13

least be an asset of

01:16:15

counsel, which is which Hope

01:16:23

the child is this case

01:16:36

that goes with being an

01:16:47

actor? Not making as you

01:17:02

go along. If it's the

01:17:09

arbitrator's then. That may be

01:17:16

the most precious. Well, thank

01:17:37

you for that. And I

01:17:39

mean it's hard to improve

01:17:40

upon what has already been

01:17:42

said, I as Council certainly

01:17:45

strive to meet all of

01:17:47

those all of those characteristics,

01:17:50

but you know, we're human

01:17:53

beings and one of the

01:17:56  
things that all notes just

01:17:57  
for instance with respect to

01:17:59  
lengthy written submissions one area.

01:18:04  
Great area of tension. There

01:18:05  
is just the fact that

01:18:10  
If you think about it.

01:18:12  
What council and investment arbitrations

01:18:15  
are tasked with is submitting

01:18:19  
in writing essentially an entire

01:18:23  
motion for summary judgment, and

01:18:26  
this is kind of catering

01:18:27  
to a u.s. Pack tichenor,

01:18:28  
you know an entire motion

01:18:31  
for summary judgment pleading and

01:18:32  
half of the trial in

01:18:34  
writing. The arbitrators need to

01:18:39  
know need to have the

01:18:41  
case simplified for them. They

01:18:44  
need to know and have

01:18:45  
highlights and summaries of what

01:18:47  
all the witnesses and all

01:18:48  
the experts are saying so

01:18:50  
I am actually in Jose

01:18:53  
Antonio actually knows this. I

01:18:54  
am a big advocate for

01:18:56  
page limits in an investment

01:18:58

arbitration very few. Actually. No

01:19:02

tribunal has ever taken me

01:19:03

up on it. I love

01:19:06

the idea of page limits.

01:19:07

I do think it makes

01:19:09

it much more challenging for

01:19:11

Council because the because the

01:19:13

challenge that we do faced

01:19:14

it is is quite bright

01:19:16

given all of the information

01:19:18

that that you're required to

01:19:20

distill in these, you know,

01:19:23

if you have a pretty

01:19:24

complex investment arbitration at hand

01:19:27

and then I guess last

01:19:29

on Eduardo's comment regarding professionalism

01:19:34

being honest being ethical. I

01:19:37

would certainly like to think

01:19:39

that Council who often appear

01:19:45

before investment tribunals would consider

01:19:48

them would consider themselves the

01:19:52

equivalent of officers of the

01:19:54

Court. We have a duty

01:19:56

to be officers of our

01:19:59

profession of our specific profession

01:20:02

in this case that is

01:20:04

being officers of the investor-state

01:20:07

arbitration system. if you want

01:20:10

to continue to have this

01:20:13

profession, then you should with

01:20:15

pride be officers before that

01:20:19

investment arbitration system and Present

01:20:24

your arguments. Ethically clearly. That's

01:20:29

a I hope that's a

01:20:31

very very low bar but

01:20:34

I do think it is

01:20:37

incumbent upon all of us

01:20:40

practitioners in the system to

01:20:42

consider ourselves proud officers of

01:20:46

the system and the presenting

01:20:49

arguments and behaviors in that

01:20:53

system that we can be

01:20:55

proud of and that don't

01:20:57

lead to its destruction and

01:20:58

that don't lead to these

01:21:00

Urban myths that exist quite

01:21:03

strongly in the world today.

01:21:06

So yes, I would I

01:21:09

would love to see an

01:21:13

investment arbitration bar of practitioners

01:21:16

who are very proud officers

01:21:19

of that investment arbitration bar.

01:21:30

for rent no place could

01:21:44

be found Council so professional.

01:21:52

so experienced investment arbitration the

01:22:00

first case that I that

01:22:02

I can't it's two years

01:22:07

ago. I remember it well

01:22:09

and died. substitute dark trigger

01:22:15

for Mexican soccer trainer that

01:22:18

cat Wake the ill. Trading

01:22:35

Places Bass I would fight

01:22:47

that everyone here today in

01:22:50

this room. watching investment arbitration

01:22:55

is I asked you to

01:23:36

stay it's going to be.

00:00:00

pleasure to be The real

00:00:02

pleasure to be here, you

00:00:04

know, they're being fantastic hosts.

00:00:07

The facilities are being marvelous

00:00:11

in the hospitality of course

00:00:13

has been fantastic. So just

00:00:16

thank you very much to

00:00:17

our hosts. My name is

00:00:19

Ian Laird. I am co-chair

00:00:22

along with Dr. Jose Antonio

00:00:24

Rivas of world arbitration update

00:00:27

who has Corgan eyes the

00:00:32

the conference and help set

00:00:35

up some of the panels

00:00:36

and the next panel is

00:00:37

is it really very apropos

00:00:40

one following the comments make

00:00:44

near that we just heard

00:00:46

it's titled do's and don'ts

00:00:49

in investment arbitration arbitrators and

00:00:52

party representatives and will have

00:00:55

the opportunity to dig into

00:00:57

some of those issues and

00:00:58

urban myths and so forth

00:01:00

that Was talking about butts

00:01:03

get into some of the

00:01:04

practicalities of how these up

00:01:06

arbitrations operate and we have

00:01:10

a great group here today,

00:01:11

and I'll ask her a

00:01:13

moderator Nick's lawn from Vandellas

00:01:16

and belly firm in London

00:01:18

to the directions. I just

00:01:22

wanted to thank you for

00:01:24

coming today and organizing this

00:01:27

group. I think we'll have

00:01:28

a fantastic session experience in

00:01:32

international arbitration in investor-state arbitration,

00:01:35

and I think we'll do

00:01:38

a great job on this

00:01:38

panel. So thank you Nick



00:01:40

and I'll pass over the

00:01:41

microphone and welcome everyone to

00:01:43

World arbitration update. Thank you.

00:01:48

Play Welcome to the best

00:01:50

panel of the inaugural session

00:01:52

off the floor and operation

00:02:14

When was thinking about this,

00:02:16

we should discuss the wild

00:02:27

wild west of international mission

00:02:39

statement? It's just one plant

00:02:44

mentioned that be many men

00:02:46

planets. iPad 5 which is

00:03:07

more 1 to detect the

00:03:09

traffic in a real sense,

00:03:12

they are just They're all

00:03:15

really none called opossums motion

00:03:19

or documents and files. Speculation

00:03:27

when shorty reports in the

00:03:28

newspapers misrepresentations of fact usually

00:03:38

got a list of lawyers

00:03:40

Macon Conference Center and hotel

00:03:43

are they flying in on

00:03:52

the Super Bowl? listing deficiencies

00:04:03

of the isds system Hawaii

00:04:07

tribune-herald legal interpretation given by

00:04:20

the basic check powers the

00:04:37

quiet friendships, Atlantic Will be

00:04:51

at some of the issues.

00:05:10

The second is that I

00:05:11

will be more practical and

00:05:14

counseling. Let me introduce. best

00:05:33

commercial the best of treatment

00:05:46

operation It's is arbitration but

00:06:25

commercial. Let me know. arbitration

00:06:46

based commercial Botetourt road to

00:06:54

do what Find me in

00:07:07

the least care insurance Washington

00:07:12

DC office has represented commercial

00:07:21

and investment disputes over 20

00:07:23

years. Has been listed the

00:07:30

recommended. Thank you. Thank you,

00:07:57

Nick. And and thank you

00:07:59

to Google and the to

00:08:01

the and also the Institute

00:08:04

and thank you for being

00:08:06

here and I'm done believing

00:08:09

in in this world arbitration

00:08:11

update for me to know

00:08:12

her to be in Mexico.

00:08:13

I will get that down

00:08:15

to the to the topic

00:08:17

because I know that time

00:08:18

is precious so I've been

00:08:21

asked to HEB initiate our

00:08:26

discussion with the other being

00:08:40

an appointment and the third

00:08:42

one. Happy neurotic. issues for

00:08:59

discussion I came up with

00:09:26

this work. Issue if they

00:10:08

are just looking at it

00:10:20

maybe. Chase is on the

00:10:28

case. measures that the US

00:10:56

had actually taken better name

00:11:10

is Gilbert. given a speech

00:11:28

a Canadian government Canadian decide

00:11:54

on issues latest speech West

00:12:08

Indies Do you think that

00:12:15

there were justifiable Docs? whether

00:12:19

or not I could have

00:12:22

swore he would not be

00:12:24

impartial. One one big issue

00:12:29

there. I'm was the standard.

00:12:32

What what is the standard?

00:12:33

Should there be absolute certainty

00:12:36

that Or would that somebody

00:12:40

with the sum reasonable? What

00:12:46

is the lawyer craps well?

00:13:15

As a consequence he resigned.

00:13:19

Start it, but there was

00:13:35

it was very telling that

00:13:38

the standard is not necessary

00:13:40

that there should be absolute

00:13:42

certainty that decided one way,

00:13:45

but the notion of justice

00:13:46

is is a very healthy

00:13:49

one has to protect their

00:13:55

interests. yep issue office our

00:14:05

appointments repeat appointments by a

00:14:17

specific party appointment by thank

00:14:21

you. involved immediately an issue

00:14:29

of of of loughran Personality

00:14:31

or Independence And there unless

00:14:38

there is evidence of either

00:14:41

lack of Independence or or

00:14:43

a personality. I would like

00:14:45

to take a step back

00:14:46

and and understand the notion

00:14:50

that is the freedom of

00:14:55

parties to point arbitrators either

00:14:58

famous or respondent and the

00:15:00

freedom of those parties to

00:15:03

select that arbitrator that according

00:15:08

to their history that according

00:15:11

to their background their educational

00:15:14

background professional background, etcetera would

00:15:17

best wood would be best

00:15:19

align with a notion of

00:15:22

interest if they're appointing them

00:15:23

is because there is a

00:15:25

new well this person might

00:15:27

better understand the position that

00:15:29

the investor he's coming from

00:15:31

one of the positions that

00:15:32

the state is coming from.

00:15:33

So I would like to

00:15:35

emphasize a number of issues

00:15:37

that aren't taking into account

00:15:38

and that make that sat

00:15:41

persona. More appropriate for either

00:15:45

the investor or the state

00:15:48

and that doesn't mean that

00:15:49

there's a conflict or there's

00:15:50

lack of Independence is simply

00:15:52

whether any of you as

00:15:56

say Branson's civil law lawyers

00:15:59

would better understand the position

00:16:02

of the state's World War

00:16:05

the last American state or

00:16:07

not or an investor coming

00:16:09

from Mexico or not. So

00:16:11

that that's really the back

00:16:13

from what what I'm referring

00:16:14

to so I number of

00:16:15

elements are important whether the

00:16:21

person have comes from a

00:16:23

legal background. Where were there

00:16:25

was a Republican National Law

00:16:27

or civil litigation background whether

00:16:35

the person is more leaning

00:16:36

towards an international commercial arbitration

00:16:38

background whether that person was

00:16:41

a civil servant or not.

00:16:43

Do play into whether or

00:16:46

not that potential arbitrator will

00:16:48

be best suited to act

00:16:52

as an arbitrator. Not because

00:16:54

he's going to one side

00:16:56  
or the other but he

00:16:57  
does he or she might

00:16:59  
better understand one perspective and

00:17:02  
that doesn't mean that that

00:17:03  
that there's a conflict of

00:17:05  
interest. the issue of double

00:17:11  
tap Find a shoe with

00:17:17  
the what should the arbitrator

00:17:19  
on the feet. Yost Road

00:17:52  
Respectively there are already sanctioned.

00:18:08  
What what is it? specific

00:18:16  
there is a cooling-off period

00:18:31  
between the time that somebody

00:18:36

As an arbitrator the time

00:18:40

that he or she and

00:18:42

Council or related cases. 3

00:18:55

years in some cases. So

00:19:00

ultimately if the the new

00:19:08

case is related to a

00:19:10

measure. Or if it's related

00:19:14

to a party of which

00:19:17

the person was an arbitrator

00:19:19

that we have a three

00:19:20

years ago station if if

00:19:23

the the new case is

00:19:26

at 1 related to a

00:19:29

treaty or an investor and

00:19:35

investment contract station. The notion

00:19:47

of double had in his

00:19:48

career. truly be a strong

00:20:20

arbitrator you rounded arbitrator each

00:20:24

you haven't seen both sides

00:20:38

of the story by is

00:20:46

is a stepping stone in

00:20:49

in India. Gratian of James

00:20:59

Crawford should be relinquished. I

00:21:15

have more steak but doing

00:21:20

so would be somehow. disrespectful

00:21:25

with my obviously, it's a

00:21:56

question that has many facets

00:21:58

because repeat ball I set

00:22:06

up capping been repeatedly say

00:22:11

a respondent keeps such a

00:22:20

traitor or Search arbitrators being

00:22:24

repeatedly appointed by same type

00:22:29

of respondents for claimants. Patrician

00:22:35

Community you have you can

00:22:38

work early distinguish between three

00:22:41

types of arbitrators that is

00:22:45

appointed by a respondent state.

00:22:50

An arbitrator that is primarily

00:22:52

appointed by claimants. the recent

00:22:57

there is evident because the

00:23:03

individuals the arbitrator may have

00:23:06

a particular leaning towards. the

00:23:13

arguments of a state or

00:23:16

defenses of a state or

00:23:18

inversely It might be that

00:23:24

arbitrators have worked. As was

00:23:33

mentioned a Mike have a

00:23:35

particular experience as a types

00:23:43

of parties. Martin such as

00:23:51

those that are be expressed

00:23:52

in that case. particular Repeat

00:24:13

the arbitrator. I think the

00:24:21

answer is yes, but only

00:24:23

if there has been a

00:24:27

pattern that you can't distinguish

00:24:29

with that individual has been

00:24:32

responding State say that the

00:24:37

Republic is that individual casac

00:24:51

and the other party? idology

00:25:01

of that individuals this with

00:25:02

respect a place that is

00:25:16

not an independent arbitrator their

00:25:19

repeated locations already indicated. But

00:25:31

that is not the case

00:25:33

went to see Jesus in

00:25:44

different situations where the arguments

00:25:47

that are being addressed on

00:25:50

planes under a treaty or

00:25:52

different trees are diapers. So

00:25:55

how you sometimes Sonora Trader,

00:26:00

I really have been challenged.

00:26:04

Recent lack of impartiality for

00:26:07

Independence. The last time this

00:26:09

occurred was quite a few

00:26:11

years ago. Text little independent,

00:26:27

even though they have been

00:26:28

repeatedly appointed by same state.

00:26:33

same group of companies The

00:26:41

answer is not Direct. which

00:26:49

that individual is intended to

00:26:52

be a similarities such that

00:27:03

you can identify that that

00:27:05

arbitrators no longer an arbitrator

00:27:08

because the issues discussed are

00:27:16

all the address. Coming back

00:27:31

to the circumstances to deal

00:27:42

with Windows Hardware in arbitrator

00:27:45

has repeatedly Council. Take a

00:28:02

look at the ivy. It

00:28:15

states that it may create

00:28:17

I have been in that

00:28:31

situation. And when the party

00:28:37

that we wanted to party

00:28:58

and we have to be

00:29:13

aware of it. So there

00:29:31

were there were some initial.

00:29:35

Given this to all I

00:29:37

ask an arbitrator. I listen

00:29:41

either satisfied that there was

00:29:52

no other way to be.

00:30:11

It's not for me. So

00:30:14

that's we respond to one

00:30:16

party, but it goes to

00:30:23

a challenge. The gist of

00:30:29

it. I wish that is

00:30:40

funny. Whether it really created

00:31:03

a small either way, that's

00:31:06

an easy one because we

00:31:07

have some lunch there. The

00:31:13

more parties have to say

00:31:25

before I appreciate your the

00:31:36

keys. I think is much

00:31:38

more complicated issue. Why do

00:31:45

you and this is I

00:31:46

think the channel like you

00:31:48

but it's not no unanimous

00:31:52

arbitrators have to be impartial

00:31:58

creators that are state are

00:32:20

well. And it's difficult to

00:32:33

deal with what about it?

00:32:36

I'm not sure if I

00:32:37

were to ride it doesn't

00:32:44

fall into the other category.

00:32:45

So I'm not sure that

00:32:49

it has been repeatedly by

00:32:55

investors repeatedly appointed by States

00:32:59

Vise people in this matter.

00:33:20

Where's the storm? But I

00:33:28

think it says create a

00:33:29

problem is the arbitrator being

00:33:32

impartial investor. I'm more comfortable

00:33:42

knowing that it has appointed

00:33:45

a particular person. Well as

00:33:53

Supreme Council my view when

00:33:55

I was 10. back in

00:33:57

the day I didn't. But

00:34:07

I especially in this area.

00:34:16

It's partly our client. economy

00:34:32

Miss you so we were

00:34:34

there just to send it

00:34:46

whether he committed the states.

00:34:57

I need a decision that

00:35:00

I can live with. Decision

00:35:03

that doesn't create a systemic

00:35:06

problem necessarily a decision. That

00:35:09

is my favorite where for

00:35:14

many years. I know that

00:35:16

governments. For good or bad

00:35:19

reasons make certain decisions that

00:35:22

affect. Investors or the community

00:35:26

were the local competition or

00:35:30

that's what governments do difficult

00:35:37

for the government to act,

00:35:39

you know corruption in government

00:35:51

interest. Decision that I can

00:36:08

live with decision that I

00:36:09

can understand that people often

00:36:13

say Maggie was giving some

00:36:19

figures of it. It's gone

00:36:32

off alone. So, you know

00:36:43

when I'm with a hundred

00:36:47

million dollars flame until it

00:36:55

to where 250 so but

00:37:21

it does coming back to

00:37:22

the issue. It freezes that

00:37:24

more complex and maybe that

00:37:28

has to do with track

00:37:32

record each year in the

00:37:34

cases where the arbitrator has

00:37:35

participated. Google talking about Collegiate

00:37:42

once but I think God

00:37:57

has created. Sorry, Nick. I

00:38:11

don't think we can hear

00:38:13

you. I think that you

00:38:14  
need to grab the mic.

00:38:18  
I'm just saying that I'm

00:38:20  
going to bring you into

00:38:21  
the conversation now to the

00:38:24  
more practical aspects of what

00:38:31  
makes the traffic so I'm

00:38:33  
going to look at it.

00:38:44  
Of course, thank you. Thank

00:38:46  
you everyone. I am guy

00:38:48  
like herrings Lourdes and I'm

00:38:49  
an international arbitration partner in

00:38:51  
the DC office of Allen

00:38:52  
& overy. Thanks to World

00:38:55

arbitration update and I and

00:38:58

my family my fellow panelists.

00:39:00

I wish I were there

00:39:01

with you and I very

00:39:03

much regret that I can't

00:39:04

be there in person. Unfortunately

00:39:07

a broken rib has kept

00:39:09

me from has kept me

00:39:11

grounded in DC for the

00:39:13

moment and my kids would

00:39:17

be very upset if I

00:39:18

didn't say you should see

00:39:20

the other guy. As it

00:39:23

turns out. Yeah, there is

00:39:25

no other there is no

00:39:27

other guy my broken ribs

00:39:29

the results of a hiking

00:39:31

accident and I was lucky

00:39:34

to just get out with

00:39:35

one broken rib, but enough

00:39:38

about my my misfortunes in

00:39:41

the wilderness. I want to

00:39:44

talk today about the characteristics

00:39:45

of an ideal arbitrator, but

00:39:48

as I convalesced from my

00:39:50

hiking accident, I thought it

00:39:51

would be helpful to talk

00:39:53

about these ideal arbitrator characteristics

00:39:56

through the metaphor of an

00:39:59

ideal Wilderness hiker, which I

00:40:02

clearly was not a few

00:40:04

days ago. So one. Sherwood

00:40:09

Inn That was that was

00:40:11

one of my problems. You

00:40:13

need to have sure footing

00:40:14

as an arbitrator owed. Someone

00:40:17

saying that it's that I'm

00:40:19

too loud. Not the first

00:40:21

time. I've heard that. You

00:40:25

need to have sure footing.

00:40:28

how can you have sure

00:40:30

footing as an arbitrator you

00:40:32

need to have competence from

00:40:34

experience and we've kind of

00:40:36

batted around the concept of

00:40:38

whether or not you know,

00:40:39

how do you get that

00:40:40

experience certainly one way that

00:40:42

you can get experience is

00:40:43

by being counsel in these

00:40:47

investment arbitrations beforehand you could

00:40:50

also be an academic you

00:40:52

could be a judge in

00:40:55

a national Court as well,

00:40:57

but I think It is

00:41:01

incompetent. It is incumbent on

00:41:04

any participant in the system

00:41:06

and certainly an arbitrator in

00:41:07

the investment arbitration system. To

00:41:10

gain any experience that's lacking

00:41:14

and that can be had

00:41:17

by it. Just essentially studying

00:41:21

the system. It is its

00:41:23

own specialized system and you

00:41:25

really do need experience to

00:41:27

have that sure footing as

00:41:29

an arbitrator. you need experience

00:41:32

with The different industry sectors

00:41:36

that tend to pop up

00:41:37

you need to have experience

00:41:39

in just disputes. Generally you

00:41:42

need to have experience in

00:41:44

the procedure of investment arbitrations

00:41:48

and no this is not

00:41:50

a proceeding before your favorite

00:41:52

Home Country Court. It's a

00:41:53

specialized form with specialized rules

00:41:56

and customs and unlike Urban

00:41:58

myths which Meg talked about

00:42:00

and and Nick brought up

00:42:02

earlier There Are Rules here.

00:42:04

There are actually rules and

00:42:07

it's good to know about

00:42:08

them. So we talked about

00:42:12

sure footing and experience and

00:42:14

competence as an arbitrator. You

00:42:17

need to be untethered to

00:42:20

go exploring in the wilderness

00:42:22

or to be an arbitrator.

00:42:24

What do I mean by

00:42:25

untethered you need to be

00:42:27

independent? Clearly you need to

00:42:30

be impartial. I think we've

00:42:33

heard enough about those two

00:42:34

subjects. Those are very foundational

00:42:39

subjects and requirements for being

00:42:41

an arbitrator in investment arbitration

00:42:43

cases. Despite. What Perhaps many

00:42:48

Urban myths about investment investor-state

00:42:51

arbitration cases say independence in

00:42:54

partiality. Don't be Tethered to

00:42:56

any one person one party

00:42:59

one believe you need to

00:43:01

be objective and you need

00:43:03

to be independent and always

00:43:05

err on the side of

00:43:07

disclosure. I think that's always

00:43:09

a good idea. Okay. What

00:43:12

else do you need to

00:43:13

be prepared? You need to

00:43:15

be prepared for your adventure

00:43:17

as a hiker or an

00:43:19

arbitrator? What does that mean

00:43:21

again? Kind of going back

00:43:23

to having sure footing having

00:43:25

experience. You need to be

00:43:27

well-read into your specific case.

00:43:30

You need to read all

00:43:32

the documents. You need to

00:43:34

read and explore the exhibits.

00:43:37

Another way, you need to

00:43:38

be well-read again going back

00:43:40

to Sure footing and experience

00:43:42

is you need to be

00:43:44

well-read in relevant International Investment

00:43:47

treaty precepts jurisprudence and procedure

00:43:51

again, you need to know

00:43:53

this stuff if you're going

00:43:54

to be arbitrating this stuff

00:43:56

and and I guess I

00:43:58

should pause here. This is

00:44:00

certainly coming from my perspective

00:44:01

as counsel. I primarily sit

00:44:04  
as counsel in investment arbitration

00:44:07  
cases. So this is may

00:44:09  
be my bias point of

00:44:10  
view as counsel and what

00:44:11  
I would love to see

00:44:12  
if in an arbitrator and

00:44:15  
then next with respect to

00:44:18  
being prepared, you have to

00:44:20  
have and be able to

00:44:22  
use the right equipment. This

00:44:25  
is where this may be

00:44:28  
it may have been my

00:44:29  
biggest downfall as a hiker.

00:44:30

I did not have the

00:44:31

right shoes on and that

00:44:35

was the problem. Now as

00:44:40

an arbitrator, what's the equivalent

00:44:42

of the right equipment? I

00:44:44

think it's technology and innocence

00:44:47

essentially. Are you fluent in

00:44:52

today's technology how proficient are

00:44:55

you in all of the

00:44:56

technology that we use and

00:44:59

we need in these proceedings,

00:45:00

you know word excel chess

00:45:04

clock apps time zone apps

00:45:08

electronic signatures scanning scheduling apps

00:45:12

Zoom teams and all of

00:45:15

their trappings. Do you know

00:45:17

how to unmute yourself? Are

00:45:19

you sure you're not going

00:45:20

to show up as a

00:45:21

cat when you're speaking things

00:45:24

like that. Let's be part

00:45:27

of the world that were

00:45:28

in today and the world

00:45:30

that were in today involves

00:45:31

a lot of technology and

00:45:33

in fact in a going

00:45:36

back to the hiking metaphor.

00:45:37

It allows us to save

00:45:38

some trees as well. Next

00:45:43

have a plan let people

00:45:45

know where you are. No

00:45:47

one to ask for help.

00:45:49

How does this apply to

00:45:51

an arbitrator give the parties

00:45:53

and Council clear Direction and

00:45:57

I think it had a

00:45:59

reference to it in the

00:46:00

new exit rules there now

00:46:02

case management proceedings where I

00:46:04

think this is an opportunity

00:46:06

for arbitrator or arbitrators and

00:46:09

tribunals to give the parties

00:46:11

very clear Direction on where

00:46:14

things are going let them

00:46:16

know let the parties and

00:46:18

Council know where you you

00:46:19

are at. Let them know

00:46:21

what issues need attention areas

00:46:25

of Interest or concern and

00:46:28

asked. Council to explain or

00:46:32

clarify that's the equivalent of

00:46:35

asking for help and no

00:46:37

no one likes to ask

00:46:38

for help but you should

00:46:40  
ask for clarification. You should

00:46:43  
ask for explanation so that

00:46:45  
all of the issues are

00:46:46  
truly heard also. Have a

00:46:52  
spine you need to have

00:46:54  
a spine as an arbitrator.

00:46:56  
Sometimes you're faced with difficult

00:46:59  
situations. Sometimes you're faced with

00:47:00  
Rocky. Terrain. You need to

00:47:02  
face that difficult situation head-on

00:47:04  
and with a plan and

00:47:06  
not just with a sword

00:47:07  
to split the baby all

00:47:09

the time make those difficult

00:47:12

decisions gives parties certainty and

00:47:16

a conclusion because and I

00:47:19

know there's a temptation to

00:47:21

really split the baby and

00:47:22

and maybe kind of appease

00:47:25

both parties at the same

00:47:26

time, but it really does

00:47:27

lead to any efficiencies in

00:47:29

consistencies and just general uncertainty

00:47:32

and we all know that

00:47:33

in the foreign investment World

00:47:35

uncertainty is kind of our

00:47:37

Kryptonite. Also this counsel or

00:47:41

parties are engaging in bad

00:47:43

behavior going back to those

00:47:44

Urban myths and this might

00:47:46

be the one where there's

00:47:47

a little kernel of Truth

00:47:49

to that. Urban, Miss. Is

00:47:53

councillor engaging and bad behavior

00:47:54

stop it? There are consequences

00:47:59

there can be consequences in

00:48:01

investment arbitration to bad behavior

00:48:03

make it happen have a

00:48:05

spine. All right, and last

00:48:08

but not least perspective when

00:48:10

you are going on your

00:48:12

adventures in the wilderness when

00:48:13

you are going on adventures

00:48:14

as an arbitrator. You need

00:48:17

to have perspective you need

00:48:19

to have the ability to

00:48:20

truly see and appreciate what

00:48:21

is before you and then

00:48:23

the arbitration world. What does

00:48:24

that mean? I think it

00:48:26

means diversity. I think it

00:48:28

means cross cultural sensitivity. These

00:48:32

things are needed for arbitrators

00:48:33

to truly see the issues

00:48:35

in front of them. And

00:48:37

if you don't necessarily come

00:48:39

from a particularly diverse background

00:48:41

been read into it read

00:48:45

an increase your experience so

00:48:47

that you might begin to

00:48:48

see and appreciate more perspective

00:48:50

is not just the perspective

00:48:52

that might dominate from White

00:48:54

patriarchal Colonial neo-colonial neo-colonial

00:48:58

list experiences lastly. With perspective

00:49:03

you need to know your

00:49:04

audience. You need to be

00:49:06

very knowledgeable of the parties

00:49:08

with what you're dealing Council

00:49:10

the investment arbitration system the

00:49:13

world in a way and

00:49:15

why because the world is

00:49:16

watching everyone is watching and

00:49:18

if they're not they should

00:49:20

be and with that I

00:49:23

will end my comments on

00:49:24

the ideal arbitrator. thinking to

00:49:42

getting garlic us valuable points

00:49:44

or some of which To

00:49:52

be considered by both your

00:49:56

trailer and by Council. And

00:50:00

does she mention that is

00:50:01

one of the last to

00:50:03

know your audience? Indeed the

00:50:07

arbitrator guests know who the

00:50:09

audience is. The arbitrator's going

00:50:13

to be addressing. I think

00:50:15

that's particular more relevant later.

00:50:22

She was mentioning cross-cultural. Sensitivity

00:50:28

this is not only sensitive

00:50:36

to but knowledgeable. In Della

00:50:40

point it out correctly yet

00:50:42

another Trader cast to be

00:50:44

here cast to study Justice

00:50:49

Council has to study. The

00:50:52

case of Governor has to

00:50:54

examine the case that I

00:51:04

would find that an arbitrator

00:51:08

piece is the ability. You

00:51:16

can shave arbitrator that likes

00:51:20

to examine dress. Which one

00:51:30

they want me. Rapist responsibilities

00:51:42

of an arbitrator is being

00:51:46

ready to decide. What are

00:51:48

these are issues on procedure

00:51:50

or police are issued on

00:51:53

the merits of the arbitrator's

00:51:55

greater responsibility and the gala

00:51:58

touched on that is the

00:52:00

arbitrator needs to be ready

00:52:02

to design. and sometimes you

00:52:09

know it it's I just

00:52:13

tested Domestic Court that's an

00:52:16

international arbitration and investor-state arbitration.

00:52:21

It's easy to criticize the

00:52:23

judge. Tonight was canceled and

00:52:28

some instances. We should be

00:52:37

easy for the court to

00:52:39

decide. Would you become a

00:52:42

partner first time? used to

00:53:01

go with earlier also you

00:53:18

abortion when you don't care.

00:53:24

black and white and you

00:53:26

have many shades of grey

00:53:28

lyrics Try not to get

00:54:04

too near the microphone. So

00:54:06

it is perceived as being

00:54:12

the baby but when the

00:54:13

Tribune issues are not always

00:54:16

white or black there's many

00:54:19

shades as I was mentioning

00:54:20

earlier of grey and unfortunately

00:54:22

sometimes a decision in the

00:54:24  
middle. Wants to avoid splitting

00:54:34  
the baby when this is

00:54:36  
not. What did you sense

00:54:40  
to do a person? Yeah,

00:54:45  
let me know such people

00:54:56  
that sit as arbitrators shoots

00:54:58  
try but one of them

00:55:01  
was rendering a service to

00:55:10  
both parents should expect and

00:55:15  
we deliver the lot of

00:55:21  
materials and they have a

00:55:23  
right to expect that they

00:55:24  
will be there. condados at

00:55:28

Council as in the dark

00:55:29

and as far between her

00:55:31

a little bit into Guild

00:55:39

Council that later but know

00:55:44

that it's important to laugh

00:55:49

at Freddy's know our team

00:55:54

get back to be knowing

00:56:05

the facts. Well, I've seen

00:56:07

arbitrators that come with not

00:56:10

much food as to what

00:56:13

time tomorrow. I don't know.

00:56:22

I can be obsessive compulsive

00:56:29

eating being an arbitrator like

00:56:33

it is to be expected.

00:56:44

Hardee's have a right to

00:56:46

have arbitrators that are Peach

00:56:48

here. Give the parties directions.

00:56:57

Let them know where there

00:56:58

are. I think that the

00:57:00

one 1048 Witnesses and we

00:57:36

going back beat decision, but

00:57:38

that's about it. I know

00:57:55

I can I can live

00:57:56

with in that first decision,

00:57:58

but I think at least

00:58:04

And do you know because

00:58:06

you know, the other example

00:58:28

is the famous where I

00:58:30

should say. Who would have

00:58:35

thought that meant turn would

00:58:37

go down in arts of

00:58:38

War for his Redford schedules

00:58:42

and for his writings? Decision

00:58:56

saying okay denied for lack

00:58:58

of relevance. I want to

00:59:04

know if it was denied

00:59:05

a position was accepted to

00:59:17

tooth with me whatever, you

00:59:19

know at least entering into

00:59:41

the issues. And of course

00:59:42

there are granted or denied.

00:59:52

Oh yes or no. I'm

00:59:53

very unsatisfied. Sometimes it's more

01:00:27

or less interested in whether

01:00:34

it is a document on

01:00:36

a procedural vote on the

01:00:39

motion on the awards. Going

01:00:56

to hear from leading architect.

01:01:07

What is it? my turn.

01:01:19

I will criticize cancel cancel.

01:01:25

Please naturally a good arbitrator

01:01:35

makes good arbitration. This is

01:01:38

certainly true. It's good arbitrators

01:01:43

and good counsel, The arbitrator

01:01:53

will have for his responsibilities.

01:02:02

Let me start with the

01:02:03

three elements that make a

01:02:07

good counsel and a good

01:02:09

argument by councils First Council

01:02:13

should know his case. Council

01:02:18

should know Syracuse versus case

01:02:23

I'm so should know who

01:02:26

the audience is back on

01:02:30

the point that the dialogue

01:02:32

was indicating earlier. A council

01:02:37

knows his case. will be

01:02:46

we will organize the file

01:02:50

will simplify the case for

01:02:54

the tribunal because knowledge of

01:02:58

the case makes. Explanation of

01:03:03

the case easier to be

01:03:07

made to the Tribune. We've

01:03:10

all been there if we

01:03:12

know what we talkin about.

01:03:14

It's easier to communicate. If

01:03:19

we don't understand what we

01:03:21

talked about will begin evasive.

01:03:28

Topics we will not concentrate

01:03:31

on what is she so

01:03:34

organized? prepare and practice when

01:03:51

a good counselor Pierce is

01:03:54

to appear. Let me say

01:03:56

first in writing before a

01:03:58

tribunal. This must be a

01:04:01

well-organized case must be presented

01:04:05

in a manner that is

01:04:07

to be understood by betrayed

01:04:10

you. And easier the simpler

01:04:15

shorter. better I was discussing

01:04:21

earlier with one of the

01:04:23

present. I'm going to be

01:04:27

another Topic in this conference

01:04:31

and we were discussing. How

01:04:32

do you like to submit

01:04:36  
memorials that are hundreds of

01:04:38  
pages long? Sometimes in very

01:04:43  
rare circumstances hundreds of pages

01:04:45  
are justified in most cases.

01:04:48  
They're not. Those places where

01:04:53  
they're not they are repetitious.

01:04:57  
They are disorganized. And sometimes

01:05:00  
there's like to be necessary

01:05:04  
argument with the memorial Council.

01:05:13  
Suppressing client and what you

01:05:25  
mean? You don't have today

01:05:27  
or they're not. But many

01:05:33  
of us here remember when

01:05:36

submitting a case and bald

01:05:38

submitting exhibits that were not

01:05:41

23 boxes. Sometimes a couple

01:05:46

dozen boxes filled with documents

01:05:50

in support of the case

01:05:53

with everything that's presented to

01:05:59

her to kill. Yes or

01:06:03

no? That's where if a

01:06:07

counselor is going to percent

01:06:10

Dustin's precedence. Show what portions

01:06:16

of that President you do

01:06:18

believe irrelevant? Don't over the

01:06:26

arbitrators with excessive. information there

01:06:34

is extremely relevant information. There's

01:06:38

relevant information and there's trivial

01:06:40

information. Don't bring the case

01:06:43

with trivial information. When you

01:06:49

are to appear before a

01:06:51

Tribunal. engage with a tribunal

01:06:55

address to Tribune audience you

01:07:03

have to convince the Tribunal.

01:07:06

engage look into the eyes

01:07:09

of the members of the

01:07:10

Tribunal If possible don't read

01:07:14

your presentations. I know some

01:07:19

counsel. Practice and they do

01:07:24

prefer to read materials because

01:07:28  
these materials go into the

01:07:30  
record. And it's easier to

01:07:33  
read. A document that's going

01:07:37  
to be transcribed into the

01:07:39  
record. It's going to be

01:07:41  
read on the record easy

01:07:43  
does not necessarily engage with.

01:07:48  
That does not even allow

01:07:50  
you to determine what the

01:07:53  
tribunes thinking about your case.

01:07:56  
Would you address a tribunal

01:07:58  
from you and you look

01:07:59  
into the eyes of the

01:08:00

members of the you can

01:08:03

immediately identify whether your argument

01:08:06

is being CBC with receipt

01:08:09

back? When you are acting

01:08:15

as counsel. Understand your adversaries

01:08:20

case and know what your

01:08:22

weaknesses are in address those

01:08:24

weaknesses. Don't try to hide

01:08:27

them anyway, so don't try

01:08:31

to hide them address them.

01:08:33

An address in the best

01:08:36

manner that you can with

01:08:39

the solid organs. waited for

01:08:49

Elementary my view is most

01:08:52

relevant for concert and that

01:08:54

is I'm just be professionally

01:09:00

honest ethical and honest and

01:09:10

ethical to the tribunal Council.

01:09:24

Don't try to advance the

01:09:30

position for a council with

01:09:35

a good Council does not

01:09:37

try to misrepresent the facts

01:09:40

misrepresent documents both and writing

01:09:44

an orderly and I'm sure

01:09:46

many of us here have

01:09:48

seen that it is amazing

01:09:51

that the council would even

01:09:53  
think of doing it. Sometimes

01:09:56  
they do it something to

01:09:58  
try to advance their clients

01:10:00  
position. It's not easy to

01:10:05  
have. what Chase a weak

01:10:10  
argument McKay's We both have

01:10:14  
it but we've spent the

01:10:20  
week case. But an arbitrator

01:10:24  
immediately identify when you are

01:10:29  
Mister presenting a fact for

01:10:32  
misrepresenting argument and your credit.

01:10:45  
And that creates two out

01:10:46  
the rest of the proceedings,

01:10:48

but let me know. Google

01:10:52

and I are sharing this

01:10:54

Saturday part of the section

01:10:58

and let me go. What

01:11:24

I think it is the

01:11:32

ideal is knowing how to

01:11:37

navigate. It's got a lot

01:11:46

to know how and when

01:11:59

to shift Focus pending on

01:12:01

what I was saying how

01:12:02

you read the Tribune today

01:12:11

a lot of the lawyers

01:12:13

and indeed the advocacy. Arbitrators

01:12:24

get hit with some patients

01:12:27

have some concern. Answer their

01:12:44

questions or still deal with

01:12:47

it. just a couple To

01:13:23

understand the case and of

01:13:25

course, they might be two

01:13:27

cases one by my account

01:13:29

by by responded how well

01:13:36

can you summarize the case

01:13:37

how well can you be

01:13:44

on the phone LG LG

01:13:46

simply a tool but beyond

01:13:49

that you need to put

01:13:50

before the tribunal a narrative

01:13:54

story that makes sense. And

01:13:57

sometimes we think well doesn't

01:13:59

matter why it just Treat

01:14:02

them unfairly and there's no

01:14:05

objective tests. And that's that's

01:14:07

where they they they didn't

01:14:10

pay compensation. And that's what

01:14:12

we need. Maybe the trees

01:14:14

say that but the human

01:14:18

mind goes way beyond that.

01:14:20

Why did it happen? It's

01:14:29

very hard for the tribunal

01:14:30

to understand the story. I

01:14:34

believe that but that part

01:14:36

of the story is very

01:14:36

important. So that that's that's

01:14:39

one aspect that I would

01:14:40

like her to start over

01:14:42

ask her where she wants

01:14:46

summarizing in one of the

01:14:47

key issues and their baby.

01:14:51

Dozens of issues but but

01:14:53

the case would normally the

01:14:55

Sounders diction or our marriage

01:14:57

will be decided by B.

01:15:01

one or two issues that

01:15:02

you have to focus on

01:15:03

the other the other asked

01:15:09

me to do what what

01:15:14

what are the spice that

01:15:15

Council should be fighting? At

01:15:21

least in my spirit whenever

01:15:23

I've seen Council. issue 888

01:15:33

don't want to be having

01:15:36

adults fighting like the Are

01:15:43

those boots sold between the

01:15:47

parties procedurally? Have you sold

01:15:51

them like adults and then

01:15:53

before the tribunal goes that

01:15:55

that that Council have addressed

01:15:58

and tried some so but

01:16:00

they have unfortunately so that

01:16:03

that's more of an adult

01:16:06

to it. And and the

01:16:08

last thing that I would

01:16:08

say is that is very

01:16:10

much connected to but at

01:16:13

least be an asset of

01:16:15

counsel, which is which Hope

01:16:23

the child is this case

01:16:36

that goes with being an

01:16:47

actor? Not making as you

01:17:02

go along. If it's the

01:17:09

arbitrator's then. That may be

01:17:16

the most precious. Well, thank

01:17:37

you for that. And I

01:17:39

mean it's hard to improve

01:17:40

upon what has already been

01:17:42

said, I as Council certainly

01:17:45

strive to meet all of

01:17:47

those all of those characteristics,

01:17:50

but you know, we're human

01:17:53

beings and one of the

01:17:56

things that all notes just

01:17:57

for instance with respect to

01:17:59

lengthy written submissions one area.

01:18:04

Great area of tension. There

01:18:05  
is just the fact that

01:18:10  
If you think about it.

01:18:12  
What council and investment arbitrations

01:18:15  
are tasked with is submitting

01:18:19  
in writing essentially an entire

01:18:23  
motion for summary judgment, and

01:18:26  
this is kind of catering

01:18:27  
to a u.s. Pack tichenor,

01:18:28  
you know an entire motion

01:18:31  
for summary judgment pleading and

01:18:32  
half of the trial in

01:18:34  
writing. The arbitrators need to

01:18:39  
know need to have the

01:18:41  
case simplified for them. They

01:18:44  
need to know and have

01:18:45  
highlights and summaries of what

01:18:47  
all the witnesses and all

01:18:48  
the experts are saying so

01:18:50  
I am actually in Jose

01:18:53  
Antonio actually knows this. I

01:18:54  
am a big advocate for

01:18:56  
page limits in an investment

01:18:58  
arbitration very few. Actually. No

01:19:02  
tribunal has ever taken me

01:19:03  
up on it. I love

01:19:06  
the idea of page limits.

01:19:07

I do think it makes

01:19:09

it much more challenging for

01:19:11

Council because the because the

01:19:13

challenge that we do faced

01:19:14

it is quite bright

01:19:16

given all of the information

01:19:18

that that you're required to

01:19:20

distill in these, you know,

01:19:23

if you have a pretty

01:19:24

complex investment arbitration at hand

01:19:27

and then I guess last

01:19:29

on Eduardo's comment regarding professionalism

01:19:34

being honest being ethical. I

01:19:37

would certainly like to think

01:19:39

that Council who often appear

01:19:45

before investment tribunals would consider

01:19:48

them would consider themselves the

01:19:52

equivalent of officers of the

01:19:54

Court. We have a duty

01:19:56

to be officers of our

01:19:59

profession of our specific profession

01:20:02

in this case that is

01:20:04

being officers of the investor-state

01:20:07

arbitration system. if you want

01:20:10

to continue to have this

01:20:13

profession, then you should with

01:20:15

pride be officers before that

01:20:19  
investment arbitration system and Present

01:20:24  
your arguments. Ethically clearly. That's

01:20:29  
a I hope that's a

01:20:31  
very very low bar but

01:20:34  
I do think it is

01:20:37  
incumbent upon all of us

01:20:40  
practitioners in the system to

01:20:42  
consider ourselves proud officers of

01:20:46  
the system and the presenting

01:20:49  
arguments and behaviors in that

01:20:53  
system that we can be

01:20:55  
proud of and that don't

01:20:57  
lead to its destruction and

01:20:58

that don't lead to these

01:21:00

Urban myths that exist quite

01:21:03

strongly in the world today.

01:21:06

So yes, I would I

01:21:09

would love to see an

01:21:13

investment arbitration bar of practitioners

01:21:16

who are very proud officers

01:21:19

of that investment arbitration bar.

01:21:30

for rent no place could

01:21:44

be found Council so professional.

01:21:52

so experienced investment arbitration the

01:22:00

first case that I that

01:22:02

I can't it's two years

01:22:07

ago. I remember it well

01:22:09

and died. substitute dark trigger

01:22:15

for Mexican soccer trainer that

01:22:18

cat Wake the ill. Trading

01:22:35

Places Bass I would fight

01:22:47

that everyone here today in

01:22:50

this room. watching investment arbitration

01:22:55

is I asked you to

01:23:36

stay it's going to be.