



Drafting a Compelling Facts Section: How to Win the Hearts and Minds of the Tribunal? *

Summary

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

The session titled "Drafting a Compelling FAQ Section: How to Win the Hearts and Minds of the Tribunal" was part of Washington Arbitration Week on November 29, 2022. Moderated by Ashley Rivera, a counsel at Boomerang, the panel included experts Juan Pedro Plumb, Maria Catalina Duran, and Miguel Naturally, who shared insights on effective arbitration practices.

The discussion emphasized the importance of storytelling in arbitration, particularly in presenting facts. Maria Catalina highlighted that while legal arguments are crucial, the ability to weave facts into a compelling narrative is essential for persuading the tribunal. She recommended clarity, simplicity, and relatability in drafting factual sections to maintain the tribunal's engagement.

Miguel Naturally stressed the need for experts to be involved early in the process, as they provide critical insights that shape the factual narrative and quantitative assessments. He underscored the iterative nature of fact-gathering, suggesting that teams should thoroughly examine all available information and maintain open communication to create a cohesive story.

The panelists discussed the distinct approaches required for different stages of arbitration documents, such as requests for arbitration, memorials, and replies. They agreed that while it's vital to present a strong narrative, it's equally important to address any negative facts transparently and strategically, as ignoring them could undermine credibility.

The session concluded with a Q&A, addressing the challenges of drafting and the necessity for law students to engage with practical drafting exercises and read high-quality pleadings to enhance their skills. The panelists reiterated that effective advocacy in arbitration hinges on the ability to tell a persuasive story backed by factual evidence, ensuring that the tribunal understands the context and significance of the arguments presented.



Authors

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Topics

Practical session

Category

WAW

Full Transcript

00:00:02

Our second session today, Washington

00:00:07

arbitration tickets, 29th of November

00:00:10

2022. And we have the

00:00:13

privilege today. I'm having a

00:00:15

fantastic active session. We had

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a great kick off this

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morning on arbitration technology and

00:00:24

we're going to follow it

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up with a great session

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titled drafting a compelling FAQ



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section, how to win the

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hearts and minds of the

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tribunal, and this is focused

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on, you know, obviously the

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practice of arbitration and this

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very important part of that

00:00:44

practice. Before we get going,

00:00:46

I want to thank Miller

00:00:49

shovel for Miller and she'll

00:00:52

be a 4-string and holding

00:00:57

this event in person where

00:00:58

we being virtual the last

00:01:01

couple of years. And now



00:01:03

we've been able to be

00:01:04

you know, almost I think

00:01:05

80 90% in person as

00:01:07

well, but part of I

00:01:09

think the roots of Washington

00:01:12

arbitration week is that we

00:01:14

have attempted to be as

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accessible as possible to students

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young practitioners older practitioners in

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the arbitrator's the whole the

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whole group but to make

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available the expertise and the

00:01:29

experiences of Washington as a



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center of arbitration and it

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says fantastic Center as you'll

00:01:35

see today. Some of our

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experts on R panel, I

00:01:39

will be a great demonstration

00:01:41

of that. So thanks to

00:01:42

Margarita Sanchez Miller and shovel

00:01:47

ye as well as Virginia

00:01:49

Newman to both put fantastic

00:01:53

efforts of Human Service in

00:01:56

putting together a today's channel.

00:01:59

So and and the panel's

00:02:01

to follow. Two more in



00:02:03

person panel. So thanks very

00:02:05

much to Miller and shovel

00:02:07

pay for their contribution hosting

00:02:10

today. So we're going to

00:02:13

start off. I'm going to

00:02:15

introduce our moderator Ashley, a

00:02:19

Rivera is a council at

00:02:22

Boomerang hearing here, in Washington.

00:02:24

D.c., I've worked many years

00:02:27

with Ashley on Penny, International

00:02:31

arbitration commercial and greedy, arbitrations

00:02:34

and when Ashley and I

00:02:37

talked about some of the



00:02:38

panels, we might do for

00:02:40

this week. She said, we

00:02:41

should do something practical. We

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should do something. That it

00:02:44

is something useful for particularly

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younger practitioners folks, who maybe

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you're a little newer to

00:02:52

the arbitration world and provide

00:02:55

some practical tips and some

00:02:59

idea of a kind of

00:03:00

what it looks like to

00:03:01

actually. Practice International arbitration. Then

00:03:05

so from that Genesis today



00:03:09

we have this this panel

00:03:11

and actually is going to

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take control from here and

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thank you so much Ashley

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for doing this. I know

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is a great deal of

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work for you and the

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panel. Thank you panel and

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I'll pass it off to

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you guys. Thank you very

00:03:25

much to our panelists today.

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Have a lot of experience

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and investor States and treaty



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arbitration Okay. And we all

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agreed that shorter intros would

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be better so that we

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have plenty of time to

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talk about our topic. So

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immediately to my left is

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one, Pedro Plumbing, he's a

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senior associate at freshfields. He's

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been practicing for about 12

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years to his left is

00:03:57

Maria, Catalina Duran. She is

00:04:00

a senior managing associate at

00:04:01

Italy and has been practicing



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for about 12 years and

00:04:05

then representing the expert point

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of view for us today

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is Miguel naturally. He is

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the Executive Vice President at

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Compass lexecon. He's based in

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Houston, Texas. And he has

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over 20 years of experience,

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giving both oral and written

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testimony and he'll be helping

00:04:24

to provide an alternative view

00:04:26

of the use and implementation

00:04:29

of fact. Now I will



00:04:31

say our panelists today have

00:04:33

experience working across a variety

00:04:35

of Industries. They've worked on

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Large team, small teams working

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for claimants for respondent some

00:04:43

even, I believe for arbitrary

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arbitrary pianos. And so they

00:04:48

will be bringing all of

00:04:49

those perspectives to their advice

00:04:51

today. So when we were

00:04:54

all getting to know each

00:04:55

other we realize that we

00:04:56

share what I believe one



00:04:58

called an obsession with the

00:05:00

facts and and I think

00:05:03

met Maria Catalina, could you

00:05:05

talk a little bit about

00:05:06

why the facts matter Thank

00:05:14

you so much for the

00:05:15

invitation, it's a pleasure to

00:05:16

be here. Thank you for

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company for the invitation and

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everybody at the Washington arbitration

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week. 4 scores, the legal

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portion is very important but

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the facts are key and



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it's not only about the

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facts about about the storytelling

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in the store. You build

00:05:35

with those facts, humans are

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biologically wired to connect with

00:05:40

stories stories are persuasive. Stories

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move people into action and

00:05:49

they're much more memorable than

00:05:52

facts alone in commercial and

00:05:55

investment arbitration cases, you deal

00:05:58

with a very complex set

00:06:01

of facts and so the

00:06:04

task of the advocate is



00:06:05

to take those facts and

00:06:07

make them digestible, simplify them.

00:06:10

Tell the story to the

00:06:11

tribunal, it explains to the

00:06:13

tribe. You know, why you're

00:06:14

here? Why the tribunal should

00:06:16

rule in your favor and

00:06:19

why you're right about your

00:06:20

argument and not to take

00:06:24

too much time with the

00:06:25

introduction? I live with the

00:06:27

four, very basic recommendations when

00:06:30

you're riding the fact that



00:06:32

I read in several articles

00:06:33

books about effective writing it

00:06:35

cetera. You need to be

00:06:36

clear. You need to be

00:06:37

simple and relatable make it

00:06:40

interesting. You don't want your

00:06:41

tribunal to get bored by

00:06:42

page 10 of the 400

00:06:44

page with your reading and

00:06:47

never never ever. Ever missed

00:06:49

it. The fact you need

00:06:50

to tell your story but

00:06:51

you need to base it



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on actual facts. Great. Thank

00:06:58

you Miguel from from your

00:07:02

perspective is an expert. How

00:07:04

do you how do the

00:07:06

facts impact your work on

00:07:08

a case? But in our,

00:07:09

in our case, our first

00:07:11

thank you for the invitation

00:07:12

but I'm glad to hear

00:07:13

your voice interpretation week from

00:07:16

industry experts and we are

00:07:20

dealing with FOX. Also the

00:07:23

time we may not have



00:07:24

to fight the bleeding as

00:07:26

lawyers to but we do

00:07:28

have the first thoroughly understand

00:07:31

the facts. Make sure that

00:07:32

that we know exactly the

00:07:35

story. We know what are

00:07:37

the supporting documents that were

00:07:40

the Witnesses are going to

00:07:41

say, because that's where we

00:07:43

are going to use, as

00:07:44

the starting point, from any

00:07:46

quantitative assessment. There's issues of

00:07:49

conversation that we need to



00:07:51
deal with my recommendation, mostly

00:07:54
for the lawyers in the

00:07:56
audience. Don't forget about your

00:07:58
experts. I get them involved.

00:08:00
We need to deal with

00:08:01
the facts. We need to

00:08:02
understand them, know them very

00:08:03
well and we need to

00:08:06
know them plain and simple

00:08:07
as a 13-0 was saying,

00:08:10
I couldn't complete set of

00:08:12
foxes is the starting point

00:08:13
for us. So it's his



00:08:15

Feast of other important for

00:08:18

us as well. Now, as

00:08:20

a little background for, I

00:08:22

know, we have some students

00:08:23

in the audience and perhaps

00:08:24

those who aren't as familiar

00:08:26

with investor States and Commercial

00:08:28

arbitration on some of the

00:08:30

biggest. He says, you can't

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have just one or two

00:08:33

people drafting everything. So you

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will end up having Specialties,

00:08:38

you'll have teams of attorneys



00:08:39

room, charges back door in

00:08:41

charge of quantum, or in

00:08:42

charge of the legal section.

00:08:43

And there can be more

00:08:44

than just those breakdowns depending

00:08:47

on how big the cases.

00:08:48

But so Quan say you've

00:08:50

been put in charge of

00:08:51

a fact section where do

00:08:53

you begin Well, thanks for

00:08:58

the invite to be here.

00:09:00

And I think you said

00:09:00

and very interesting topic, very



00:09:05

passionate about it. So where

00:09:07

do we start adding? When

00:09:08

the, when they know we're

00:09:10

discussing this before Before, We

00:09:12

Gather here was very Bland

00:09:14

and he said, it's a

00:09:15

mess and it's really a

00:09:17

master's. Got a message that

00:09:20

you have to follow, but

00:09:22

the overall process is never

00:09:24

straight line to get what

00:09:26

you want to be. So

00:09:27

the first thing I do



00:09:31
and I want my team

00:09:32
to do is to just

00:09:33
read everything. You can find

00:09:35
every piece of paper you

00:09:37
can get from the client

00:09:38
and specially what you don't

00:09:40
get from the client go.

00:09:42
Search the web searches you

00:09:45
gather as much information as

00:09:47
you can and try to

00:09:48
get it on a video

00:09:49
of the universe of facts

00:09:51
that's out there. And then



00:09:53

the next thing you want

00:09:54

to understand Should I put

00:09:56

everything in perspective and you

00:09:58

want to have a good

00:09:59

sort of chronological, kind of

00:10:02

a timeline knew what happened

00:10:04

when you put all the

00:10:06

mess of facts in order

00:10:08

and you start to see

00:10:09

a pattern and you started

00:10:11

seeing you know where things

00:10:12

went wrong, you know, where

00:10:14

are your arguments and how



00:10:15

you can start to think

00:10:17

about what you're saying about

00:10:20

the story, right? You can

00:10:23

only come up with a

00:10:24

story once, you know, the

00:10:25

facts. You cannot make you

00:10:27

guys just kind of makeup

00:10:28

facts. We have to make

00:10:30

everything fit into a nice

00:10:31

compelling. Interesting story. So, where

00:10:36

do we start? I read

00:10:37

everything I can. That's why

00:10:38

I did. Miguel. Do you



00:10:41
only take the fact that

00:10:43
your client and your attorneys

00:10:44
give you? Or do you

00:10:45
do at Wanda's and go

00:10:48
searching out onto the internet

00:10:50
and elsewhere? Do a similar

00:10:52
approach ourselves to me. We

00:10:54
obviously take the facts, you

00:10:57
should either a memo that

00:10:58
I put together with some

00:11:01
initial thoughts or, or, or

00:11:02
they are from the same

00:11:04
but it is our responsibility



00:11:07

and Duty as independent experts

00:11:09

and I said about Quantum

00:11:11

or in the sea to

00:11:12

to go on and also

00:11:15

verify you know, this publicly

00:11:17

available information to himself, a

00:11:19

sympathy glasses are in a

00:11:21

large at which application Casey's

00:11:23

you're probably companies involved so

00:11:24

that means they're fighting. So

00:11:26

final report just in case.

00:11:28

Even for companies in another

00:11:31

countries you may find their



00:11:32
their financial statements press release

00:11:36
is so it is that

00:11:37
we do that work at

00:11:38
the beginning, way with your

00:11:39
son. How about a teams

00:11:41
working in our cases with

00:11:43
that? Somebody together for us

00:11:44
as well, to make sure

00:11:46
that the story is is

00:11:47
died and that what we

00:11:48
are being told you no

00:11:50
correspondence with, we will be

00:11:52
seeing anybody, the main I



00:11:54

need to know, then we

00:11:54

can follow up with questions.

00:11:56

So that's that's the way

00:11:57

we also, make sure that

00:11:58

we are going to eat.

00:11:59

When is Trump putting in

00:12:00

this house of the all

00:12:01

the facts, Okay, so now

00:12:04

you've done your due diligence

00:12:06

you've gone and dug through

00:12:08

your clients files. You've conducted

00:12:09

witness interviews, you've searched the

00:12:12

public domain Madea, Catalina are



00:12:14

ready to write your facts,

00:12:16

don't you? Just put them

00:12:17

in chronological order the storytelling,

00:12:27

but think about a document,

00:12:30

a two-page document as it's

00:12:33

filled with data, pure dates

00:12:37

and events on what happened.

00:12:38

That is not compelling after

00:12:41

the third bullet point. You

00:12:42

won't remember what happened in

00:12:43

the first bullet point and

00:12:45

you don't even remember why

00:12:46

are you reading through all



00:12:47
of this? So probably be

00:12:50
maybe the it's not it's

00:12:53
a tool but we turn

00:12:54
to or I can to

00:12:56
organize the facts by seems

00:12:59
so that you can tell

00:13:00
the story in a more

00:13:02
compelling. Or so that it's

00:13:04
comprehensible for the tribunal to,

00:13:06
to put forward. The point,

00:13:08
you want to make you

00:13:09
the tribunal. You'd only want

00:13:11
to tell them this heart



00:13:12
of the events that happened.

00:13:13
You want to explain those

00:13:14
events. Put them into context.

00:13:16
Explain the intention of the

00:13:18
parties of why they why

00:13:19
they did what they did.

00:13:20
So no, I don't only

00:13:24
use college that may be

00:13:25
only the first of a

00:13:27
rough draft. And I will

00:13:29
second that, I think the

00:13:31
team seems can be very

00:13:32
useful tool for the tribunal,



00:13:34
especially to the extent that

00:13:37
you can even have a

00:13:38
few somatic points that you

00:13:40
are able to weave, you

00:13:42
know, throughout the pleadings and

00:13:43
even leave at 3 or

00:13:44
legal section and your, your

00:13:46
Quantum section. I'm so, so

00:13:49
yes. Chronology can be useful.

00:13:51
And there are some cases,

00:13:52
especially that short, a time

00:13:54
line cases that lend themselves

00:13:55
to chronology, but I agree



00:13:58

that the medic very compelling.

00:14:00

Now, on you mentioned that

00:14:02

the whole fact-gathering process is

00:14:05

a mess. Can you talk

00:14:08

more about how your team's

00:14:09

function? So if you have

00:14:11

a larger case and you

00:14:12

got a number of people

00:14:12

on your team, how do

00:14:14

you actually sit down and

00:14:15

construct a fax? Well course,

00:14:21

you will start with the

00:14:22

time that you will understand



00:14:23

what the universe of facts

00:14:25

are but then how you

00:14:29

build the, what is going

00:14:32

to be your fax section,

00:14:34

you have to start with

00:14:35

an outline on the other

00:14:37

line will have to fit

00:14:37

into your case Theory. So

00:14:40

when you're thinking about the

00:14:42

owls on your house, so

00:14:42

you must keep in your

00:14:44

head. What's the story on

00:14:45

telling the tribunals here? Obviously



00:14:48

has to match your history

00:14:51

so you will definitely start

00:14:53

with an outline. You know,

00:14:55

I use my preference is

00:14:58

always to be Colonel jiggle,

00:14:59

that has to be a

00:15:00

very compelling. Reason not to

00:15:02

follow a chronological order of

00:15:04

the facts that may be

00:15:06

cases in, which is good

00:15:07

to have seems, but you

00:15:12

come up with an outline,

00:15:13

and once you see what



00:15:15

the other one looks like,

00:15:15

yeah, you see the outline.

00:15:18

It's usually not going to

00:15:20

be flushed out. It's going

00:15:21

to be bullet points. You

00:15:22

started, right? Then you realize

00:15:24

this doesn't work. So you

00:15:25

have to start all over

00:15:26

again. See, you have a

00:15:27

new outline and you will

00:15:28

have to, you know, any

00:15:30

working on it again because,

00:15:32

you know, the process is



00:15:34

Never, As I said, if

00:15:35

he needs never straight line,

00:15:36

I wish it was, we

00:15:38

would save so much time

00:15:39

and money. But especially with

00:15:42

investment arbitration cases, or very

00:15:44

complex in of long-term a

00:15:46

contractual relationships with lots of

00:15:49

things happened. It's it's, it's

00:15:51

hard. It's a difficult process

00:15:52

and I think we need

00:15:54

to do that at some

00:15:54

point, but it changes depending



00:15:57

on what kind of bleeding

00:15:58

you're working on so that

00:15:59

we can discuss that later.

00:16:00

But definitely you need an

00:16:02

outline. You cannot start just

00:16:04

stream of conscience. That is

00:16:07

going to be enough, sleep

00:16:08

train wreck. So yes I'm

00:16:10

in terms of How we

00:16:12

doing? Well, of course, there's

00:16:13

there's the more senior people

00:16:15

versus partners and and seen

00:16:17

her. So she started doing



00:16:18
that the Deep sinking into,

00:16:20
you know, how what is

00:16:21
this case about. So you

00:16:23
know to be a senior

00:16:26
associate would come up with

00:16:27
an idea of the outline

00:16:28
and then we will distribute

00:16:30
asks. I'm here we're going

00:16:32
to have a mid-level associate

00:16:34
you know dealing with a

00:16:35
specific section of the sides

00:16:36
with help with the junior.

00:16:38
I'm going to do that



00:16:39

for another station with the

00:16:42

overall strategy, he tends to

00:16:44

be handled by another senior

00:16:47

members of a team. Marriott.

00:16:51

How does your, does your

00:16:52

process mirror that or do

00:16:53

you have some? Cuz I

00:16:54

know we all work for

00:16:55

different firms and so and

00:16:56

four different partners. So this

00:16:58

process can be slightly different

00:16:59

depending on where you're working.

00:17:02

Sure, it's it's very similar.



00:17:05

We are themes are or

00:17:07

much are smaller, is dirt.

00:17:09

They tend to be very

00:17:10

lean Lee stopped but in

00:17:14

general, it's the same process.

00:17:15

The we create an outline

00:17:18

be as long as key.

00:17:19

Your roadmap, we like detailed

00:17:23

outline because then the putting

00:17:26

pen to paper will be

00:17:27

much easier and that's why

00:17:30

I said, once you finish

00:17:31

the outline, you realize it's



00:17:32

all wrong and it will

00:17:33

make no sense. You need

00:17:34

to rewrite it, but it

00:17:37

is, it tends to be

00:17:39

the same though. Senior Associates

00:17:40

are overseeing. The strategy with

00:17:43

the partners and the reviewing

00:17:47

the draft when you're wearing

00:17:49

your drafting a fact, your

00:17:51

section. And in general, there

00:17:52

be if you need to

00:17:53

revise revise and revised make

00:17:54

it simpler less is more,



00:17:56

that will be more persuasive

00:17:58

and the more Junior It's

00:18:02

our digging. All the facts

00:18:04

making all the summaries that

00:18:05

Megan was talking about giving

00:18:07

all the information to the

00:18:08

more senior Associates and partners

00:18:11

to decide what's the strategy

00:18:12

of the case? Miguel. Miguel.

00:18:16

At what point do you

00:18:18

think that it's most advisable

00:18:19

to be bringing your experts

00:18:21

into what we've all been



00:18:22
describing as a fairly iterative

00:18:24
process? Is it right towards

00:18:26
the end somewhere in the

00:18:27
beginning? Where, where do you

00:18:28
find it? Most beneficial for

00:18:30
your clients on board? The

00:18:38
beginning. You not experience we

00:18:41
will tend to be in

00:18:42
both early early in the

00:18:44
process, by by the law

00:18:45
firms. Maybe have someone from

00:18:47
the Explorer theme. You need

00:18:49
to be there. If I



00:18:50

find out that you finance

00:18:50

or someone sitting in a

00:18:52

meeting particular, you are having

00:18:54

with the business people, from

00:18:56

the client, for example, right?

00:18:58

We're going to explain how

00:19:00

the breach is Korea, other

00:19:02

contractual or 3T affected them.

00:19:05

I saw you want, I

00:19:06

want from this problem hearing

00:19:08

that you want to provide

00:19:10

them with the primary sources

00:19:11

of information with or without



00:19:13

The mammals which are great

00:19:15

assassination point of view, but

00:19:16

at the end of the

00:19:17

day, we have to document.

00:19:18

I mean, don't forget that

00:19:20

your experts are going to

00:19:22

be facing. We Trust combination

00:19:23

with they're going to put

00:19:24

the native document in front

00:19:25

of them. And she wanted

00:19:26

to have that. Understanding of

00:19:29

the facts as well. So

00:19:30

we don't need to be



00:19:32

on every meeting with the

00:19:34

client, but if there are

00:19:36

specific meanings that you think

00:19:37

you would be nice to

00:19:39

for the extra 2 year

00:19:40

lease. And then I'm going

00:19:41

to tell them about these

00:19:42

may be a better way.

00:19:44

Would be to actually invite

00:19:45

someone from the team and

00:19:46

be there and I hear

00:19:48

those those a condom So

00:19:54

just to add to that,



00:19:55

I think it's I think

00:19:59

it's really, really important to

00:20:00

get the experts involved because

00:20:02

when you go to claim

00:20:04

and obviously at the end

00:20:05

of the day you know

00:20:07

you want to have your

00:20:08

award that says you want

00:20:10

a liability. But he also

00:20:11

was damaged. So, your strategy,

00:20:13

you know, we have to

00:20:15

be thinking about what you

00:20:16

we will, what you will



00:20:17

be arguing on damages from

00:20:19

they want. And so, you

00:20:21

know, when you're thinking about

00:20:22

the Casey or you can

00:20:23

just forget about the images

00:20:25

and how are you going

00:20:26

to do it? So I

00:20:27

think it's absolutely important getting

00:20:28

both. Yeah, we we please

00:20:30

have Casey see now, which

00:20:32

is funny because if you

00:20:34

see, like, 34 pages in

00:20:35

the memorial describing a particular



00:20:37

bridge by that is, that

00:20:39

is so outrageous, right on

00:20:42

and they're so much put

00:20:43

into that. And then when

00:20:44

we talked about it, what

00:20:45

is the actual impact monitor

00:20:46

impact may be fairly small

00:20:48

or near leaving, because maybe

00:20:50

your client was able to

00:20:51

meet you. What's the weather?

00:20:53

There is this a bridge

00:20:55

and there's four cop like

00:20:56

a unit price controls me



00:20:57

to write that in theory.

00:20:59

Sounds like your prices were

00:21:01

under control and you must

00:21:04

have been affected with. Not

00:21:05

really because we were able

00:21:06

to do this and that

00:21:07

doesn't hear that for Shannon.

00:21:10

And you going to be

00:21:11

a gourmet. Tell you, you

00:21:12

know, what all of those

00:21:13

these are for your pretty

00:21:14

here. It's not going to

00:21:15

be translated into a confrontation.



00:21:18

You know, makes it worth

00:21:19

it to spend all this

00:21:20

time of the tribunal in

00:21:22

the arguing for this point.

00:21:23

So I guess that's why

00:21:25

we tend to provide a

00:21:27

cross-check us, whether what's, what's

00:21:31

relevant and was maybe not

00:21:32

that big of a know.

00:21:33

Where do you start with

00:21:40

the facts? You know, often

00:21:43

times you will actually invite

00:21:44

your Quantum experts, in particular,



00:21:46

to some of the key

00:21:47

meetings, especially with the numbers

00:21:50

people at the client. I'm

00:21:52

in particularly, when you are

00:21:53

a claimant in your ear

00:21:54

flushing out, your damages quantum

00:21:57

theory as well. And muddy

00:22:00

at you. You have already

00:22:01

answered this question. I think

00:22:02

that was there. Anything else

00:22:03

you want to add on

00:22:04

that point? No, I agree

00:22:07

with everything that they're saying



00:22:08

you should get involved with

00:22:11

get the experts involved early

00:22:13

early on even when you're

00:22:15

only and then because it's

00:22:18

also not only about the

00:22:19

damages expert, but the legal

00:22:20

experts, the technical experts mean,

00:22:23

we're dealing with a case

00:22:24

in the electricity sector. No

00:22:27

way. Are you going to

00:22:28

become the extra? You need

00:22:30

to recover that guys, you

00:22:31

need to have a constant



00:22:32

dialogue with the experts to

00:22:34

make sure that the facts

00:22:35

you're telling her are actually

00:22:37

correct technocrats and they help

00:22:40

your story. Okay, so trusting

00:22:44

the facts. We've talked about

00:22:45

can be a massive iterative

00:22:47

process so you're starting to

00:22:49

see the light at the

00:22:50

end of the tunnel on

00:22:51

your fax section. How do

00:22:52

you on your different case?

00:22:54

Seemed how do you guys



00:22:55

marry your facts to your

00:22:57

legal Theory, to your Quantum

00:22:59

case because those teams have

00:23:02

also been going through their

00:23:03

own. Iterative process has been

00:23:04

parallel. Usually 2 to what

00:23:07

you're doing. So so how

00:23:08

does that look on a

00:23:09

big case? One? Well yeah,

00:23:14

I definitely you in a

00:23:15

big case you will have

00:23:16

people singing about different topics

00:23:18

or or aspects of the



00:23:19

case and doing, you know

00:23:20

some people do you need

00:23:23

more legal research, do you

00:23:24

know paying that much attention

00:23:25

to the fox? Say I

00:23:27

mean we won't the way

00:23:30

we do it. If it's

00:23:31

a really big team, we

00:23:32

always have two partners in

00:23:34

any case and partners 10.

00:23:36

Both to be involved in

00:23:37

every strategic issue that we

00:23:39

discussed when we're coming up



00:23:41

with a strategy for the

00:23:42

case to store you're going

00:23:43

to tell if they look

00:23:43

at outlines so they approve

00:23:45

what the story is going

00:23:47

to be and then you

00:23:48

also and you know counselor

00:23:50

to seeing her so she

00:23:50

had to just push things

00:23:52

forward on, it fits really

00:23:54

big. You're going to have

00:23:55

more than one senior associate.

00:23:56

You know looking at facts



00:23:58

and the other one looking

00:24:00

at you no liability and

00:24:01

damages perhaps. So it's absolutely

00:24:04

key to maintain to be

00:24:08

really close to me. Now,

00:24:12

shared rocks, so you can

00:24:14

see what I'm saying in

00:24:15

the Box section and I

00:24:16

can see what you're staying

00:24:16

on on, on the legal

00:24:17

section that, you know, we

00:24:18

did an outline but you

00:24:21

tend to figure out the



00:24:22

outline station in the legal

00:24:25

side, you may get excited

00:24:27

about something you really want

00:24:28

case. But wait, what are

00:24:30

the facts of the? Okay.

00:24:31

That case. Well, haven't you

00:24:33

can see? They're that age.

00:24:35

Now we didn't get a

00:24:36

license for this so that

00:24:37

changes things because it may

00:24:44

happen that you weren't communicating

00:24:45

and you send a new

00:24:48

you with all of the



00:24:49

Frankenstein, you have these different

00:24:52

sections on you, put them

00:24:53

all together, you stitch them

00:24:54

the best you can and

00:24:55

then you send it to,

00:24:57

you could be to the

00:24:59

senior Associates or review or

00:25:00

two partners to read the

00:25:02

whole thing on there, going

00:25:04

to say wait. We're saying

00:25:06

this year, but they were

00:25:07

saying this. What's going on?

00:25:09

And it's funny because we



00:25:11
can communicate enough. So yeah,

00:25:14
it seems you need the

00:25:16
senior people to be real

00:25:17
weekly calls and if you're

00:25:20
in the same office, just

00:25:23
now over coffee, discussing issues

00:25:25
all day long. I mean,

00:25:26
we just get really, really

00:25:27
Maria you mentioned that you

00:25:32
sometimes. Work on more lean

00:25:33
Lisa cases. So, how does

00:25:35
this process look on a

00:25:37
on a smaller? Not smaller



00:25:38

case but then we're leaving

00:25:39

the staff case it's kind

00:25:42

of similar. So even if

00:25:44

it's at least our case

00:25:46

you have one person dealing

00:25:48

with the fact that maybe

00:25:49

another associate dealing with the

00:25:51

lead on the damages but

00:25:54

in the end you need

00:25:55

exactly what I wanted was

00:25:57

saying, you need constant communication

00:25:59

and you need it like

00:26:00

a senior associate at a



00:26:02

partner. Two, two sets of

00:26:05

eyes reading through the whole

00:26:06

thing to make sure you're

00:26:07

not making consistent arguments. You're

00:26:10

not stating the facts and

00:26:11

consistently in the facts on

00:26:12

them. When you're applying them

00:26:14

in the legal section, you're

00:26:15

saying something completely different. At

00:26:18

the end of the day,

00:26:18

somebody needs to read through

00:26:20

the whole thing and make

00:26:22

sure it's consistent. That's right,



00:26:25

I'm in. And then I

00:26:26

will just pay for my

00:26:27

own perspective. I've even worked

00:26:28

on case teams where I

00:26:29

was particularly close to my

00:26:31

colleagues and we would just

00:26:33

go right in a war

00:26:34

room. So you would have

00:26:35

facts and legal and damage

00:26:36

all working away in the

00:26:38

room. And it has to

00:26:40

be the right mix of

00:26:40

personalities. But you can just



00:26:42

as you're talking today or

00:26:44

did, you know, I just

00:26:45

saw this document, does that

00:26:46

help what you're writing and

00:26:48

so on and so forth?

00:26:49

And it's not always the

00:26:50

most efficient way to write,

00:26:52

but it can at the

00:26:53

end of the day, make

00:26:54

a more seamless product. But

00:26:57

again, that's that's for your

00:26:59

most favorite colleagues, and then

00:27:02

I was at another Law



00:27:02

Firm last year and the,

00:27:04

the paralegal said that they

00:27:06

set up virtual War rooms

00:27:08

during the pandemic. So, people

00:27:10

could just come in and

00:27:11

log in and have I

00:27:12

think, at the time it

00:27:13

was zoom on in the

00:27:14

background and, and confer to

00:27:16

speaking up that way if

00:27:17

they wanted, I personally have

00:27:18

never experienced this, but there

00:27:20

are many, many ways to



00:27:21
stitch together your different teams.

00:27:24
Show me how you had

00:27:26
mentioned when we were talking

00:27:27
that not only do you

00:27:29
want the person who's going

00:27:31
to be testifying and defending,

00:27:32
the quantum case to see

00:27:34
the facts sections early on.

00:27:35
But also, sometimes even the

00:27:38
more Junior people over at

00:27:40
that expert side, and you

00:27:43
had actually an interesting story

00:27:44
about where you could see



00:27:46
that that hadn't happened before

00:27:48
and wondered if you could

00:27:49
share. So, for the team

00:27:55
because we have us and

00:27:58
if you've ever seen a

00:27:59
man in defeating the Catlettsburg

00:28:01
want to make a report

00:28:02
that they are create stands.

00:28:04
They having in many cases,

00:28:06
do sense of hundreds of

00:28:08
activities, which means that we

00:28:10
are very much in touch

00:28:12
with the documents to do,



00:28:14
it is a source of

00:28:16
additional checking if you want

00:28:18
when you have a draft

00:28:20
of the memorial of the

00:28:22
back section Sherry with you,

00:28:24
Run and see that they

00:28:26
may be able, we may

00:28:27
be able to spot thinks.

00:28:28
I may know if, you

00:28:29
know be consistent with what

00:28:32
they do and say or

00:28:33
the other Witnesses, may have

00:28:34
said in the meeting at



00:28:36
the dental, do it. So

00:28:37
that it was the last

00:28:38
thing you want, is that

00:28:39
disconnect between what the experts

00:28:43
are relying on and what

00:28:45
you were arguing now. And

00:28:46
I was mentioning, we had

00:28:48
an example of a few

00:28:49
years ago, on the other

00:28:52
side, with the facts of

00:28:55
the case were, is a

00:28:56
contractual dispute. So there was

00:28:58
a lack of payment for



00:28:59

services and, you know, that

00:29:01

this story that I did,

00:29:03

so put together was basically

00:29:04

off of lack of funding

00:29:06

by the company was not

00:29:07

doing well, so you are

00:29:08

provided to us. You have

00:29:09

to understand that we aren't

00:29:11

we don't have enough money

00:29:12

to pay you. So you

00:29:13

can have the same boat

00:29:13

as asked and then we

00:29:16

find that their experts were



00:29:19

actually putting attic series to

00:29:21

their report, a financial statement.

00:29:24

Will you could see that

00:29:25

accompany was actually flush with

00:29:27

cash, and was actually paying

00:29:28

dividends today, today, today, cuz

00:29:30

of the parent company to

00:29:31

it. Those kind of things

00:29:33

that, you know, that you

00:29:34

have to disconnect that can

00:29:35

create the biggest down the

00:29:37

road because now we're you

00:29:38

told, you are very nice



00:29:39

concise. No compelling, interesting story.

00:29:43

I can fall apart when

00:29:45

stuff like that happens, so

00:29:46

I will be in July.

00:29:48

That's my people. You don't

00:29:49

like my advice, basically, use

00:29:52

your expertise to help you.

00:29:54

Make sure that everything you

00:29:56

said is consistent with the

00:29:57

facts in the document, but

00:29:59

also to make sure that

00:30:00

they may not be saying

00:30:01

something about the other day,



00:30:02

may be inconsistent with with

00:30:04

your story. And I just

00:30:07

just to add to that.

00:30:08

There is obviously in the

00:30:11

damages analysis. There's a key

00:30:13

element which is from a

00:30:17

legal perspective to show it

00:30:19

but it to send you

00:30:20

the actual. I'm so you

00:30:23

know it's going to make

00:30:24

experts are excellent at telling

00:30:26

you well Your damage is

00:30:29

enough flooring, you mentioned earlier



00:30:31

and so on. And sometimes

00:30:34

there multiple ways in which

00:30:36

you can value damages, right?

00:30:38

You can take you from

00:30:38

having, you can bring some

00:30:40

electricity cases are super Complex

00:30:42

in Tempe. Have to make

00:30:43

modeling so your assumptions. What

00:30:47

goes into your mothering? You

00:30:49

have to be able to

00:30:50

explain what your assumptions are.

00:30:51

You know, what should we

00:30:53

take this factor into account?



00:30:54

Yes, or no. And if

00:30:55

we do, how can you

00:30:56

explain it? You know, within

00:30:59

your universe and legally, how

00:31:02

does this work? And we

00:31:04

we had experienced recently in

00:31:05

cases. Where do they knew?

00:31:06

Which they rightly going to

00:31:09

us when it was that?

00:31:11

You know, we we've agreed

00:31:14

that this is how we're

00:31:14

going to Value damages. But

00:31:17

this dust dust just doesn't



00:31:19

add up. And we're adding

00:31:20

this assumption here with. How

00:31:23

can we explain it wasn't

00:31:25

factual. He was legal. How

00:31:27

can you explain it legally?

00:31:28

And so, we had to

00:31:29

go back and look at

00:31:30

shorts out. And I'm thinking

00:31:32

about, you know, how, how

00:31:34

does Siri work and can

00:31:36

we make it work? So

00:31:37

we had to tweak if

00:31:38

things get on there, or,



00:31:40

you know, if acquired some

00:31:41

homework, but at the end

00:31:44

of the day, was a

00:31:45

much stronger bleeding, this is

00:31:48

because our DNS be questions

00:31:52

with. We're really good questions

00:31:53

and issues. So I think

00:31:54

it's it's it's it's really

00:31:56

important to a dream of

00:31:58

noches, noches Amiga Express Parts

00:32:00

Authority in such such an

00:32:04

issue and that is factual

00:32:05

issue. Are you definitely need



00:32:07

them? So Maria work, we're

00:32:14

talking about experts quite a

00:32:15

bit, but a key part

00:32:17

of any back section is

00:32:18

also your witness is your

00:32:20

witness testimony which is written

00:32:22

for the first-round. So how

00:32:24

do you integrate the Frankenstein

00:32:27

of the legal brief with

00:32:30

your witness statement? So Witnesses,

00:32:34

and witness statements are a

00:32:36

key component of the storytelling,

00:32:37

but you need to be



00:32:39

very careful with words because

00:32:40

memory is not reliable. Most

00:32:44

of this case is are

00:32:45

dealing investor-state in particular, said

00:32:47

they're dealing with facts that

00:32:48

have been 10, 20 years

00:32:50

ago, and of course memories

00:32:53

are built on. The person's

00:32:54

own experience on what happened

00:32:56

before during and after, but

00:32:59

Witnesses are very useful, not

00:33:01

only for the memory components

00:33:02

but also to explain I



00:33:07

got contemporary put into context,

00:33:09

a contemporaneous document, maybe the

00:33:11

document, the language in the

00:33:12

document is not the clear

00:33:13

and then you find the

00:33:14

author of that letter that

00:33:16

they on the author can

00:33:18

explain, why he wrote the

00:33:19

letter, what he meant when

00:33:20

he wrote the letter. And

00:33:22

so that's when witnessing him

00:33:24

to become very powerful. Of

00:33:27

course, you need to be



00:33:28

very careful about choosing your

00:33:30

Witnesses. You don't need a

00:33:31

witness Explain every single fact

00:33:33

you put out there in

00:33:34

the brief too many witnesses,

00:33:36

can be very tricky to

00:33:37

manage and very risky at

00:33:39

the hearing, is you never

00:33:40

as much as you prefer

00:33:42

them. You never know, form,

00:33:43

of course, you need to

00:33:45

choose very credible Witnesses but

00:33:47

it's not all under your



00:33:51

control as much as we

00:33:52

wish it would wear. And

00:33:55

then once you have the

00:33:56

witness statements, they need to

00:33:57

be Incorporated into the story

00:34:02

you're telling. Because if you

00:34:04

have on the witness statements

00:34:05

on their own, then you're

00:34:07

missing a box of the

00:34:08

opportunities of why, the way

00:34:10

this is important why. His

00:34:12

story is a orchids explanation

00:34:16

proves your point and proves



00:34:18

The Other Side Story wrong.

00:34:19

And yeah, so that's, I

00:34:23

mean, that they're very important,

00:34:25

but you need to be

00:34:25

very careful. How, you know,

00:34:26

this might be a topic

00:34:29

for next year. The next

00:34:30

session is preparing Witnesses, but

00:34:32

so we haven't talked about

00:34:34

this. I'm going to Spring

00:34:34

this on you a little

00:34:35

bit, but do you you

00:34:36

when you're putting together your



00:34:38
faction and your Witnesses? Is

00:34:40
it your preference to have

00:34:42
a witness own particular set

00:34:44
of facts or particular topic

00:34:47
or do you like to

00:34:48
have you sometimes you can

00:34:49
have two or three people

00:34:50
that know about a set

00:34:52
of documents? You put all

00:34:53
of them forward to put

00:34:54
one forward. How does that

00:34:56
work for you? It really

00:34:57
depends on on the case



00:34:59

on How much? They remember?

00:35:02

What explanations? They gave you

00:35:04

during the witness interviews because

00:35:06

I mean one you're choosing

00:35:08

her witness you need to

00:35:09

do. I witness interview and

00:35:12

in those injuries, you need

00:35:13

to challenge a little bit

00:35:15

their story to make sure

00:35:16

that what they're telling you.

00:35:18

I mean one is true

00:35:19

and true that they're their

00:35:22

memories is kind of correct



00:35:25

for the ones. You showed

00:35:27

them documents and sell those

00:35:28

start. Remembering more toilet. Really

00:35:31

depends. If it's if it's

00:35:33

one person that wrote one

00:35:35

document and it's like he

00:35:37

document for the case, you

00:35:38

have only one win this.

00:35:39

If you need somebody to

00:35:41

back that person up, you

00:35:43

may choose to have one

00:35:44

or two people backing him

00:35:46

up in case. I mean



00:35:49

to people saying the same

00:35:50

thing, I can kind of

00:35:52

have a powerful effect against

00:35:55

only one person. And in

00:35:57

just like, there are never

00:35:59

perfect fax patterns, we always

00:36:01

end up with bad but

00:36:02

there's no such thing as

00:36:04

a perfect witness, as much

00:36:05

as we wish they were

00:36:06

out there, it's the the

00:36:07

unicorn of gift boxes. Sometimes

00:36:10

you have a witness that



00:36:11

you have to use even

00:36:13

if they don't they're not

00:36:15

what you wish you had.

00:36:16

If I may add to

00:36:19

that and we haven't discussed

00:36:21

if you need to deal

00:36:23

with backpacks. You should never

00:36:26

run when you're riding the

00:36:28

effectual section or the witness

00:36:29

or preparing the witness statements

00:36:32

and all of that you

00:36:34

should never run from backpacks.

00:36:35

You need to deal with



00:36:37

them, minimize them as possible

00:36:39

and contextualize them. Otherwise, it's

00:36:42

going to come back and

00:36:43

bite the other hearing and

00:36:44

your case is going to

00:36:46

be in a very bad

00:36:47

situation and could even bite

00:36:48

you in the next round

00:36:49

of gas because our day

00:36:51

will say your claimant and

00:36:52

you ignore all the bad

00:36:53

parts of your story will

00:36:54

respond and we'll throw a



00:36:55

parade around those persons. Story

00:36:57

& Miguel. You had actually

00:36:59

mentioned before that from the

00:37:00

slightly outside perspective that you

00:37:04

can tell when somebody's running

00:37:06

away from back. Then. Tomorrow.

00:37:09

I say, I said reader

00:37:11

leaving, you know, that way

00:37:12

within to read a lot

00:37:13

of them and y'all and

00:37:15

of course, I will treat

00:37:16

her sweet to. You can

00:37:18

start to find a spot



00:37:19
that you can tell to

00:37:20
see what there's something missing

00:37:22
that is gloss over. Or,

00:37:24
you know, if you can

00:37:25
happen, you're in. You kind

00:37:27
of sense that there's more

00:37:28
to the story that. If

00:37:30
you cannot happen. It just

00:37:31
ended like this. There must

00:37:33
have been a response to

00:37:34
this letter that must have

00:37:35
been. That's when we start

00:37:38
asking you questions too. So



00:37:40

so you know if we

00:37:42

can see them the tribunal

00:37:43

will be able to see

00:37:44

them. So didn't even with

00:37:47

those with those facts, I

00:37:48

think he's is very important.

00:37:49

We have to do with

00:37:51

those fat butt cuz I'm

00:37:52

cold backpacks, 2017 from conversation

00:37:56

point of view. Because we

00:37:58

are going to have to

00:37:59

respond to an to the

00:38:00

stuff that you have to



00:38:01

respond to it, to the

00:38:03

counter Memorial or reply, we

00:38:05

have to respond to us

00:38:06

another expert Port, so that

00:38:09

we will have to deal

00:38:10

with that. Make sure that

00:38:11

the tribunal understand Sam scism

00:38:14

in context, and that everything

00:38:16

you see is, you know,

00:38:17

consistent with, with those to

00:38:19

do if you have to

00:38:20

do So I'm going to

00:38:23

stick with you for a



00:38:23
minute. So when you're writing

00:38:26
your expert reports, we know

00:38:28
you have to deal with

00:38:29
the facts. We know you

00:38:30
have to address the the

00:38:31
causation backs. But how many

00:38:34
facts do you put in

00:38:35
your actual expert report? I

00:38:40
would say that in general

00:38:41
that reported more concise you

00:38:46
don't want to be telling

00:38:47
stories that you don't need

00:38:48
to be telling, but having



00:38:49

said that, you're just know

00:38:51

that your experts will need

00:38:52

to tell tax. You know,

00:38:53

there's there's no question around

00:38:55

that you provide them with

00:38:59

such restrictive instructions in which,

00:39:01

you know, I want you

00:39:02

to exactly these and nothing

00:39:04

else, but you were still

00:39:05

going to expose them to

00:39:06

to cross-examination later on this

00:39:08

week. We're going to have

00:39:10

a section on on Fox



00:39:11

stole from our point of

00:39:12

view, from the technical perspective.

00:39:13

From London perspective, we will

00:39:17

have to explain, to me

00:39:18

how the damage is Flo

00:39:20

from, They alleged breaches, we

00:39:23

are not going to explain

00:39:24

to the tribunal. Why the

00:39:25

bridges are considered we met

00:39:28

in some senses from your

00:39:30

expectations with me have to

00:39:32

do with that. But for

00:39:34

the most part we have



00:39:35

to say hey these damages

00:39:36

flow from these facts and

00:39:39

do not from this other

00:39:41

facts that are not considered

00:39:42

a mental health station to

00:39:47

the story. That is very

00:39:48

important and will be in

00:39:50

your damages expert report. Also

00:39:52

know that I make sure

00:39:54

that you are aligned and

00:39:55

there's no an alternative description

00:39:58

of the facts that you

00:40:00

may not be aware of



00:40:01

after you've done so much

00:40:03

with your beautiful pleading that

00:40:05

someone else may be doing

00:40:06

anything illegal or the damage

00:40:08

report. So from my perspective,

00:40:14

I understand the need for

00:40:15

facts. If he reports I'd

00:40:19

rather to have any tracks

00:40:21

for the reasons that you

00:40:23

mentioned but asking so we

00:40:27

will go over it on,

00:40:28

bring it down and we're

00:40:30

going to ask you. Do



00:40:31

you really need to talk

00:40:31

about all this? Because even

00:40:33

if it's consistent with weird

00:40:35

saying we just want to

00:40:36

have a single boy and

00:40:37

that's easier. When you have

00:40:38

one boys, which is the

00:40:40

bleeding and so we try

00:40:43

to keep it as tight

00:40:44

as we can and chords

00:40:46

we we've seen a tendency

00:40:49

some experts to bring lots

00:40:52

of facts into their reports,



00:40:54

sometimes even like that are

00:40:59

nowhere mentioned in either the

00:41:01

other sites beatings or witness

00:41:03

statements and and you know,

00:41:05

you read it. And what's

00:41:06

going on? Why do we

00:41:07

need this often? Times? Those

00:41:09

facts are not relevant for

00:41:11

the analogy. Is W experience

00:41:13

doing and it's just more

00:41:16

argument, which is my view,

00:41:19

very detrimental for the expert,

00:41:21

which, but the experts sells



00:41:23
is credibility. So the moment

00:41:26
you were sort of, you

00:41:27
know, showing you no new

00:41:29
Fox and making arguments, you

00:41:32
know, you become what are

00:41:33
your perceived us parties. And

00:41:34
so that is another reason

00:41:36
why we prefer not to

00:41:39
have a fax in statements,

00:41:42
there is but you're talking

00:41:48
about a legal expert in

00:41:51
that say, you have a

00:41:53
case in Argentina. And so



00:41:55

you're with driving us know,

00:41:57

from Argentina you won't explain

00:41:58

what the guys will have

00:42:01

a choice in case. This

00:42:03

it's it's not the applicable

00:42:05

to the case it's a

00:42:06

fact. So in that case

00:42:08

you do you want your

00:42:09

expert to be very clear

00:42:10

about, you know, little things

00:42:13

and have a lot to

00:42:13

expect because he's stunning facts

00:42:15

of the end of the



00:42:15
day. LOL, I think in

00:42:19
general. Less is more. and

00:42:30
I think this is all

00:42:31
so it's not something that

00:42:32
we talked about but but

00:42:33
as as were all talking

00:42:35
about interacting with our experts

00:42:37
be that damages experts are

00:42:38
quantum or your technical industry

00:42:41
experts Be in essence, become

00:42:44
a part of the team

00:42:45
because they are participating so

00:42:46
much, but they do. Absolutely



00:42:48

have to be able to

00:42:49

stand in front of the

00:42:49

tribunal and say this is

00:42:51

my independent expert opinion and

00:42:53

I'm not a hack. I'm

00:42:55

not you're being paid to

00:42:56

say exactly what my legal

00:42:58

team wrote. So is that

00:42:59

something that you run up

00:43:01

against quite a bit Miguel?

00:43:03

Yeah, I'm in need for

00:43:05

cheerleader that the law firms,

00:43:06

that would normally wear with



00:43:08

a very sophisticated experience, they

00:43:10

understand our role. They understand

00:43:13

that we have to be

00:43:14

able to Independent backup things.

00:43:16

Sometimes you do take, you

00:43:20

would find. You would find

00:43:21

yourself in situations where you

00:43:22

have to instruct your experts

00:43:24

to assume something. You know,

00:43:27

we dating sites in from

00:43:28

time to time, we normally

00:43:30

want to be careful with

00:43:31

no waiting so I could



00:43:32

trust you and you want

00:43:33

to be inside to assume

00:43:34

something that you know, is

00:43:35

contrary to fax again. I

00:43:38

mean going back to sleep

00:43:39

when the fights because then

00:43:41

you don't know if. So,

00:43:42

do not ask for any

00:43:43

information, you would explain. Your

00:43:45

document is what it says,

00:43:48

what it says. And just

00:43:51

tells me, it happens that

00:43:57

the lawyer to understand that



00:44:01

we are responsible. We have

00:44:02

this in this Independence that

00:44:05

we have to wear with,

00:44:07

you know, they updated the

00:44:09

document Sunday in the primary

00:44:11

information now, So one of

00:44:15

the panelists alluded to this

00:44:16

earlier but you know the

00:44:19

facts are not simply and

00:44:21

solely an unchanged of Lee.

00:44:22

The facts about the course

00:44:24

of the case, they tend

00:44:25

to develop you have a



00:44:26

document disclosure, you have witnesses

00:44:29

coming forward with new fax.

00:44:31

So can you talk a

00:44:33

little bit? I've actually put

00:44:34

this to everybody but we'll

00:44:35

start here with one. Can

00:44:37

you talk about the distinctions

00:44:39

between drafting facts for a

00:44:41

request for arbitration vs. At

00:44:43

Memorial, Memorial reply, rejoinder post-hearing

00:44:46

pleadings? Because those are all

00:44:48

different. Does those cleanings all

00:44:50

have different goals? You sure.



00:44:54

Well, Like you said each

00:44:57

bleeding has a different goal

00:44:59

and there's a different time

00:45:00

in the proceedings where they

00:45:02

come up once. We have

00:45:04

to be strategic about when

00:45:06

you start to think it,

00:45:07

of course you need to

00:45:08

have a story which has

00:45:09

to be consistent and ideally

00:45:11

it's going to be the

00:45:12

same until the end you

00:45:14

may run into problems. But



00:45:17
there are different levels of

00:45:19
debt in which you tell

00:45:21
that story. So, you know,

00:45:23
you will start with a

00:45:24
request for arbitration which I

00:45:26
mean, I know I've seen

00:45:29
old request form for objection

00:45:31
in my firm and that

00:45:33
used to run for maybe

00:45:35
eighty pages today. We would

00:45:38
never do that. Maybe we

00:45:40
can sweep learn the hard

00:45:41
way. You need to keep



00:45:43

it lean because you just

00:45:47

want to keep your options

00:45:48

open. This is very early

00:45:50

in the case that you're

00:45:51

still. You have any idea

00:45:53

what your case is pretty

00:45:55

been thinking about it a

00:45:55

lot but you haven't been

00:45:57

thinking it long enough as

00:45:59

you will. When you get

00:46:00

to the memorial especially you

00:46:02

won't be as familiar with

00:46:03

the facts, which supports Drive



00:46:05
the story. So for the

00:46:08
request for arbitration, be leaned

00:46:10
on very specific, just meet

00:46:12
whatever criteria you have from

00:46:14
if it's just past the

00:46:17
low bar, they have all

00:46:18
that's all you need just

00:46:20
get the register and then

00:46:22
with the memorial you want

00:46:24
to tell your positive story.

00:46:25
You want to Do with

00:46:27
that, you have a strong

00:46:28
case but at the same



00:46:30
time, he has to be.

00:46:31
You still have to be

00:46:33
kind of defensive. I agree

00:46:36
with you have to address,

00:46:38
you know what the difficult

00:46:41
sucks. You shouldn't ignore them,

00:46:43
but at the same time,

00:46:45
you just don't want to

00:46:47
make an issue of them,

00:46:48
right? If they're known issues,

00:46:50
and that's when you need

00:46:51
to show their non-issues, that's

00:46:53
something she showed up by



00:46:54

ignoring them. So, but it's

00:46:55

always a strategic, what shouldn't

00:46:57

happen. So, you didn't realize

00:46:58

there was an issue that

00:47:00

would be a real problem

00:47:00

and what you need to

00:47:03

YMCA. You need to be

00:47:04

defensive because I need to

00:47:07

become extremely common, you have

00:47:10

to open a action camera.

00:47:11

And so, you really need

00:47:13

to think about what documents

00:47:14

referring to the record. Because



00:47:17

whatever is in, there is

00:47:18

fair game to ask you

00:47:19

for other stuff. Maybe, mentioning

00:47:20

a document on the same

00:47:22

goes for Witnesses. So you

00:47:24

want to have, you know,

00:47:26

what do you want? Just

00:47:27

to say what documents you

00:47:29

wanted to reference to. So

00:47:31

you still need to play

00:47:33

a kind of defensive game

00:47:34

and cuz you still haven't

00:47:35

heard about the other side



00:47:36

has to say, and then

00:47:37

we'll have something to say

00:47:38

and then obviously, you know,

00:47:41

you will get to the

00:47:42

point of the reply which

00:47:43

is when all the bad

00:47:46

stuff came up. Ideally, you

00:47:48

had seen it. Another question

00:47:51

is, how your dresser in?

00:47:52

So and there's also another

00:47:54

function of the reply, which

00:47:56

tends to be way longer

00:47:57

way more complex than a



00:47:58

memorial. Which is for the

00:48:02

claimant. It's the last meeting

00:48:04

before the hearing. So it's

00:48:05

your moment to putting all

00:48:07

the documents you want to

00:48:08

use for cross Examination for

00:48:11

the witnesses for the experts.

00:48:12

So, you know, the Box

00:48:15

section has to include all

00:48:18

those little things that you

00:48:19

want to add some things,

00:48:20

you want to bury things,

00:48:21

right? Sometimes there's a really



00:48:23

important document that I used

00:48:24

to, you know, destroy witnessing

00:48:26

cross-examination. You happen to mention

00:48:28

it up to find the

00:48:30

part of a two-page food.

00:48:31

So there's a lot of

00:48:35

strategic issues that go into

00:48:36

a reply and it's way

00:48:38

harder, way, way harder on

00:48:40

the same happens with a

00:48:41

with a rejoinder on the

00:48:43

other side. So, yeah, I

00:48:45

H cleaning difficulties. I think



00:48:50

the worst one is, the

00:48:52

reply in the recliner light

00:48:53

bar for obvious reasons, but

00:48:55

ideally, if you had a

00:48:57

good strong story from the

00:48:59

get-go, In both your experts

00:49:02

in it, you know you're

00:49:04

going to have a compelling

00:49:05

story to tell and going

00:49:06

to be way easier. Maria

00:49:10

Catalina, you know, you had

00:49:12

offered some of this. You,

00:49:14

you had offered more of



00:49:15
the respondents perspective when we

00:49:17
spoke about this earlier. So,

00:49:18
if you could just add

00:49:19
on to that with that

00:49:20
prospective, sure, I agree with

00:49:25
everything I was saying, but

00:49:28
also we need to take

00:49:29
into account when you are

00:49:30
respondent. And, of course, claimant

00:49:32
is a permit to believe

00:49:34
bringing the case. Telling you,

00:49:36
the story when you're responding

00:49:37
to your naturally, not defensive



00:49:39

point. So you have the

00:49:42

extra task of making your

00:49:45

story affirmative as well. Cuz

00:49:47

you've your only thought telling

00:49:49

your story from a defensive

00:49:50

point and only responding to

00:49:52

what claiming is attacking you

00:49:53

with not persuasive. You need

00:49:58

special investor-state arbitration, you need

00:50:00

to explain example why the

00:50:02

state Acts were reasonable. So

00:50:05

you need to provide context,

00:50:06

you need to tell that



00:50:07

story a firm. And that's

00:50:10

your defense and that's the

00:50:11

strongest defense. And of course

00:50:14

it depends what stage of

00:50:16

the process during the counter

00:50:17

Memorial. The first time you

00:50:18

are going to hear your

00:50:21

story, you're going to poke

00:50:22

holes into the plane and

00:50:26

story bring up those backpacks.

00:50:28

They were ignoring me and

00:50:31

then in the rejoined her

00:50:32

as one was saying bringing



00:50:36
everything you need for the

00:50:37
hearing. But again you need

00:50:40
to always remind yourself to

00:50:41
to try to make that

00:50:43
an affirmative and an expensive

00:50:45
story. It's much more places

00:50:48
and Powerful. So just to

00:50:51
be clear when we were

00:50:52
talking about strategy and deciding

00:50:55
which acts to tell the

00:50:57
panel is not advising you

00:50:59
to sit on all of

00:51:00
your Witnesses and fax and



00:51:01

tell reply or or you

00:51:04

know, your final your final

00:51:05

pleading because that doesn't get

00:51:08

that doesn't move the ball

00:51:09

forward and the whole goal

00:51:11

of the facts sections in

00:51:12

these pleadings is the benefit,

00:51:14

your tribunal, is to benefit

00:51:15

your FactFinder. So, all of

00:51:17

this strategy is playing out

00:51:19

in the background, but it

00:51:20

can't just be that you

00:51:21

bury it all into the



00:51:22
last possible. Second, although, there

00:51:24
is inevitably some, some small

00:51:27
level with that. So, how

00:51:29
do you decide which acts

00:51:32
to tell you have your

00:51:33
necessary facts? But then there

00:51:35
is some facts. Maybe they're

00:51:36
not so necessary. Yeah, and

00:51:40
we were discussing this earlier.

00:51:41
I think you need to

00:51:44
be very careful about the

00:51:46
facts, Futures. Because you're telling

00:51:49
the tribunal the story you



00:51:51

want to tell but you

00:51:53

don't want to overwhelm the

00:51:54

tribunal with a thousand different

00:51:55

facts that could potentially be

00:51:57

useful for you. Fax me

00:52:00

to have a purpose. Every

00:52:01

fact, every paragraph you riding

00:52:04

into the factual section, has

00:52:06

to have a purpose. This

00:52:07

doesn't mean to just stick

00:52:09

to the very relevant dates

00:52:11

that are important for you.

00:52:13

You need to provide context,



00:52:14

but that context needs to

00:52:16

have a purpose. And the

00:52:17

purpose is, for example, to

00:52:19

explain the intent of why

00:52:20

the government after the doctor

00:52:22

door, why the claimant acted

00:52:23

the way you acted to

00:52:25

draw little bit of empathy

00:52:27

for your tribunal, but you

00:52:29

need to be careful because

00:52:30

I have seen breves where

00:52:34

the other side is trying

00:52:36

to attack the same point



00:52:38

for us. From a thousand

00:52:39

different points of view and

00:52:41

that's not useful because they

00:52:44

end up running into inconsistencies

00:52:46

into their own story and

00:52:48

then I'm not the arbitrary

00:52:51

that in that tribunal. But

00:52:52

I'm sure they're very confused

00:52:54

about what what's going on.

00:52:55

So you need to be

00:52:57

strategic about the fact, you're

00:52:58

telling me what's the purpose

00:53:00

that you have when your



00:53:02

tongue Now when we, when

00:53:05

we met to discuss this

00:53:07

panel, we had also talked

00:53:08

about. Sometimes you bring in

00:53:10

facts that aren't strictly necessary

00:53:12

because you want to add

00:53:14

a little bit of atmosphere

00:53:15

to do your case, either

00:53:17

to your client or to

00:53:18

the back section and one

00:53:19

you had specifically been talking

00:53:21

about that. So if you

00:53:22

could share Yeah, sure. I'm



00:53:25

in there may be things

00:53:26

that are not moving the

00:53:27

needle that it's so not

00:53:30

going to ask about the

00:53:31

story and the was important

00:53:35

about the story feeling that

00:53:36

you got. I just any

00:53:37

story will try to get

00:53:38

something from you. You know,

00:53:40

about recruiters, we want them

00:53:42

to feel something and you

00:53:43

know, we want them to

00:53:44

feel sympathy for our clients.



00:53:46

So you may do things

00:53:48

or you may include facts

00:53:49

that are not Necessary to

00:53:53

win the case. But that

00:53:54

will create that feeling in

00:53:56

Princeton's you know sometimes it's

00:53:58

a mining company and you

00:54:00

know they're not the most

00:54:00

popular companies out there until

00:54:04

you know, if you show

00:54:05

that there's good that they're

00:54:06

doing the community. You know?

00:54:07

Sometimes when you have these



00:54:09
gold mining cases, well you

00:54:11
know if it's not this

00:54:12
company is going to be

00:54:13
the illegal miners but someone

00:54:14
is going to get the

00:54:15
gold out and you have

00:54:17
this company, that studies, all

00:54:18
these nice things. So you

00:54:20
want to show their the

00:54:21
good cities. They're not just

00:54:23
out there to plunder which

00:54:24
is sometimes but it may

00:54:26
be what the other side



00:54:27

will say. So you want

00:54:28

to create that that feeling

00:54:29

and so is that absolutely

00:54:32

no, but will it help

00:54:34

you if it was so?

00:54:36

So yeah, there may be,

00:54:41

those kind of things that

00:54:42

you want to throw in,

00:54:43

you have to be careful,

00:54:44

you don't say something that's

00:54:45

not helpful, but sure. I

00:54:48

mean sometimes you can make

00:54:49

an exception to the rule.



00:54:51

Bolin, but sometimes they may

00:54:53

be exceptions when you can

00:54:55

benefit from. Into doesn't like

00:54:58

to hear about mining companies,

00:54:59

building schools and planting trees.

00:55:03

Okay, so on that point,

00:55:06

how often do you use

00:55:07

your sarcasm irony one? I

00:55:15

think the general feeling was

00:55:17

that, we don't do it,

00:55:18

it's extremely dangerous because you

00:55:22

can always backfire, especially when

00:55:26

you're writing it because you



00:55:27

don't know, you can't get

00:55:30

a sense of the room

00:55:31

or maybe next year and

00:55:32

you can crack a joke

00:55:33

but not in the cleaning

00:55:35

and it's, it's, it's very

00:55:38

risky. Maybe you can try

00:55:40

it irony but it has

00:55:42

to be very, very subtle.

00:55:43

But the internal now, Yeah,

00:55:48

absolutely agree with that mean

00:55:50

I'm not a fan of

00:55:51

adjectives and adverbs they should



00:55:53
be avoided unless it's absolutely

00:55:54
necessary and it can be

00:55:58
very you don't know me

00:56:00
and you will have a

00:56:02
13 arbitrator panel coming from

00:56:07
different cultures, different a background.

00:56:10
You don't know if this

00:56:11
is Joe quaal maybe serve

00:56:14
1 naira traitor but not

00:56:15
the other one. You don't

00:56:16
want to offend anybody and

00:56:18
that's why I was saying

00:56:19
specially with the fittings. It's



00:56:20
very hard because you're not

00:56:21
you can't read the room.

00:56:23
So no, I would avoid

00:56:26
it. I really maybe. But

00:56:28
it needs to be better,

00:56:29
very subtle. I agree. How

00:56:31
often do you have clients

00:56:32
that insists on putting an

00:56:34
adjectives? Sometimes you need to

00:56:38
deal with those because I

00:56:42
mean when you're drafting the

00:56:44
the the pleading you're thinking

00:56:46
of the tribunal which is



00:56:47
the ultimate goal but you

00:56:49
need to keep your client

00:56:50
happy. So you need to

00:56:53
have a balance there. Okay,

00:56:57
so, with Miguel as our

00:57:00
expert, you often have to

00:57:02
come plug. Ours are expert

00:57:03
member of the panel here

00:57:05
or Quantum expert. You often

00:57:06
have to communicate really complex

00:57:08
data to the tribunal. Can

00:57:10
you talk about some of

00:57:11
the alternative ways that you



00:57:13

present these facts and I

00:57:14

think you might have some,

00:57:15

are you doing this lights

00:57:16

when we were talking about,

00:57:21

you know, how to tell

00:57:22

the facts of the different

00:57:23

stages of of the case

00:57:25

and Juan and Karina mention,

00:57:28

what we also have, the

00:57:33

hearing we are going to

00:57:36

buy that time. We would

00:57:38

have typically to reports from

00:57:41

expert report, from the side



00:57:42
inside technique are the quantum,

00:57:43
but there's this unique opportunity

00:57:46
to address a tribunal. I

00:57:48
think, what we've learned over

00:57:51
the years of doing this

00:57:52
is that we want when

00:57:55
you are Keen on the

00:57:57
claimant side of the case,

00:57:58
you have that extra opportunity

00:58:01
to to tell your story

00:58:02
and I have to build

00:58:04
the other side has had

00:58:05
the last word or has



00:58:07
made it to use that.

00:58:10
We normally have a half

00:58:13
an hour direct presentation to

00:58:15
the tribunal. We spend a

00:58:17
lot of hours working on

00:58:19
it because it's got unique

00:58:20
time in which you want

00:58:22
to engage your tribunal and

00:58:24
tell them your story. Again,

00:58:25
took my advice from from

00:58:28
the server of the first

00:58:30
of the process is used

00:58:32
to do the same in



00:58:33
the openings, maybe you don't.

00:58:35
Don't just repeat the same

00:58:37
things and maybe copy and

00:58:38
paste from from the pleadings

00:58:40
so that they will really

00:58:41
be reading the size that

00:58:42
you tell them what you've

00:58:44
already told him in the

00:58:45
painting, is there are things

00:58:46
that you want to show

00:58:47
them to eat. I think

00:58:48
it's as powerful as I

00:58:50
just have a couple of



00:58:51

slides, maybe to that. You

00:58:54

know, it's a fake example.

00:58:56

Just to show you how

00:58:59

to do these with without

00:59:01

ties. As you mentioned, sometimes

00:59:03

you are you you want

00:59:04

to come by this story,

00:59:05

but you have to listen

00:59:06

to show them there today.

00:59:08

So you'll see my screen

00:59:11

now. So What is your

00:59:16

presentation? Okay. So basically, you

00:59:19

know a typical example that



00:59:21

we have is his treaty

00:59:23

arbitration case, we have a

00:59:25

consumer Products Company versus a

00:59:28

country or state case. The

00:59:32

company we have to show

00:59:33

the tribunal that the company

00:59:34

was doing pretty well. You

00:59:36

know, I have to a

00:59:36

certain point but we have

00:59:38

here between 2007-2011 that says

00:59:42

between 50 million and 120

00:59:44

million. They had positive earnings.

00:59:45

They were, they were they



00:59:47

have a track record of

00:59:48

profitability which in many investigations

00:59:51

has an important point to

00:59:52

show. And then we want

00:59:54

to show that there's a

00:59:55

price freeze that the that

00:59:57

the country imposed the price

01:00:00

freeze was relevant for the

01:00:02

company's that's another Factor. So

01:00:04

is impacted why? Because they

01:00:07

eat affected products are accounted

01:00:09

for 72% of their sales

01:00:10

and we want to show



01:00:12
that after that. They profitable

01:00:14
Theater 8, if you want

01:00:18
to determine to see visually,

01:00:20
see it till we start

01:00:23
with how it was before.

01:00:24
This is great. She sold

01:00:26
it a profitable business. This

01:00:27
is how we do sometimes.

01:00:29
So this is a child

01:00:30
that you see in the

01:00:30
end is much more complex

01:00:32
than these. We break it

01:00:33
up. I saw so first,



01:00:35
we show you the revenues

01:00:36
get out of this difference

01:00:39
between 50 and 1918, Nissan.

01:00:41
The profits as you can

01:00:43
see, now that you are

01:00:43
the prophet, I'm finally the

01:00:45
margin of the prophecy by

01:00:47
the by driving. So I

01:00:49
put it in the front

01:00:51
steps so that I can

01:00:53
you want to make sure

01:00:54
that you're going to use.

01:00:54
We should I add a



01:00:56

photo you at the last

01:00:57

thing you want as we

01:00:58

were discussing, the Horizon station

01:01:00

is for you to continue

01:01:01

speaking and you see that

01:01:03

the Gemini stuck in your

01:01:04

side with a child because

01:01:05

they have not yet figured

01:01:06

out. I was a child

01:01:08

was about so now we

01:01:10

show you these. The next

01:01:11

point is to show how

01:01:12

important these Alex Bridge was



01:01:15

sore from all your products

01:01:16

sales, yo, regulate, the products

01:01:19

were 73% by putting it

01:01:22

in a, in a, in

01:01:24

a bar. Like this gives

01:01:25

you an idea of the

01:01:26

magnitude, I'm waiting. You may

01:01:28

even include some pictures of

01:01:30

the products. Do it again.

01:01:31

Is visually interesting to see.

01:01:34

Okay, now there's bleach as

01:01:35

a floor while now, what

01:01:38

is the impact of this



01:01:40
alleged breaches? So now, this

01:01:41
is what I would show

01:01:42
you before. So we have

01:01:43
until 2011, the company was

01:01:45
doing relatively. Well, the first

01:01:47
thing we have is the

01:01:49
price for and then that's

01:01:51
you want. After the price

01:01:52
trees, you can already see

01:01:53
a decline in the profitability

01:01:54
year-to-year. Say, so. Now, I

01:01:59
mention earlier, like, at least

01:02:02
a fox now, I'll show



01:02:03

you with, be sure that

01:02:04

it's a now, you can

01:02:05

see how the now, of

01:02:08

course, the other side will

01:02:09

say that, that decline was

01:02:10

no results. The price free

01:02:11

sandwich, have different different. Donation

01:02:14

for biology 12, checking in

01:02:16

to see your story. And

01:02:17

we've seen these, that Danny

01:02:20

may be raining at Ward's

01:02:21

driving. I will refer to

01:02:22

the charger with Sean and



01:02:23

indirect examinations because they dance

01:02:26

to stick with them much

01:02:27

more than just, you know,

01:02:28

I know. Thank you for

01:02:34

that and I and I

01:02:35

would agree if somebody who's

01:02:36

somewhat more challenged on Quantum

01:02:38

issues that charts and pictures

01:02:41

can always help help move

01:02:44

me forward through to you

01:02:45

understanding at all you know

01:02:47

wondering or call. You could

01:02:48

actually talked about it as



01:02:49

I can. You stop question

01:02:51

to ask yourself one, do

01:02:53

you need it? Do you

01:02:54

think it's going to add

01:02:55

value and to can you

01:02:57

make sure that the tribunal

01:02:58

will understand it? You know,

01:03:00

that's the end. I think

01:03:01

that's an excellent way to

01:03:02

approach. Really any visual aid,

01:03:04

not just for your experts,

01:03:06

but as you go to

01:03:07

the hearing and you're presenting



01:03:08
your fax and using demonstrative,

01:03:10
which I think we had

01:03:12
all agreed that wants her

01:03:13
to have a role with

01:03:14
the hearing and can be

01:03:15
very compelling and one, you

01:03:18
had talked about one of

01:03:19
the things you make sure

01:03:20
you do when you're using

01:03:21
a technical demonstrative in particular.

01:03:24
Sure. I mean you have

01:03:27
to think whether like you

01:03:28
said, what they're going to



01:03:29
do, it will understand that

01:03:30
you definitely I need to

01:03:32
go and, you know, the

01:03:33
experts are very good at

01:03:34
this and then you going

01:03:35
to see the report and

01:03:36
they can explain you very

01:03:37
clearly about the red line,

01:03:39
is this the Blue Line

01:03:40
in stairs. And this is

01:03:41
what you're saying. So you

01:03:42
have two very clearly explained

01:03:45
to the reader. What it



01:03:47

is that they're seen in

01:03:48

this chart because you put

01:03:49

a charger, look at it.

01:03:50

It's it's it's worse. So

01:03:53

so but if it's a

01:03:56

really important thing, you know,

01:03:58

and I'm thinking about electricity

01:04:00

cases, where you have to

01:04:01

understand how the system works.

01:04:03

I could help me clean.

01:04:04

You want the tribunal to

01:04:06

understand that when they get

01:04:07

to the hearing so I



01:04:08

don't you don't need to

01:04:09

explain it at that point

01:04:10

so they may understand but

01:04:12

you never know you can't

01:04:14

you can really prove them

01:04:15

on field the hearing. So

01:04:17

maybe if this is really

01:04:20

can you want to put

01:04:20

it in your bleeding and

01:04:21

explained? Very, very clearly. What

01:04:23

is going on? And how

01:04:24

this system works. And because

01:04:27

it's it's going to be



01:04:28
something you're not showing me

01:04:29
showing them in the hearing,

01:04:31
so it's better if they

01:04:32
already get familiar with them.

01:04:33
So, in that case, you

01:04:35
know, it's good to have

01:04:37
them. Sometimes they have the

01:04:39
charger and profitability dropping dramatically,

01:04:42
you're just adds to the

01:04:43
store. Is it? And sometimes,

01:04:47
but we didn't mention. Yeah,

01:04:48
pictures, using pictures, you know,

01:04:52
there's a saying for a



01:04:53

reason and you know, pictures

01:04:55

are very powerful sometimes and

01:04:57

I know I was just

01:04:58

thinking about something you mention

01:04:59

about, I text you, you

01:05:02

have to, you have to

01:05:03

earn them. This is something.

01:05:05

I've heard many many times

01:05:06

when you hear about, you

01:05:08

know, a good dressing techniques,

01:05:10

you have to earn your

01:05:11

ride to use the right?

01:05:14

Because science tells us, he



01:05:18

knows what are we going

01:05:19

to use the worst? Because

01:05:21

they know what happened, right?

01:05:22

But they're not telling you.

01:05:24

It's this idea of show,

01:05:26

don't tell and it's Princeton.

01:05:28

You know, it's kind of

01:05:29

an expropriation, and sometimes it's

01:05:31

some point. You say, while

01:05:32

the police showed up, they

01:05:34

took over the company and,

01:05:36

you know, in a very

01:05:37

violent manner. So, this is



01:05:39

a breach of Bernie with

01:05:40

this is how you make

01:05:43

your argument. You can say

01:05:44

that, but it's way better

01:05:46

when your descriptive and you

01:05:48

say well you know what

01:05:49

happened is he was it

01:05:51

was Tuesday morning, Tim police

01:05:54

car show up out of

01:05:56

nowhere with you. No hundred

01:05:59

armed police officers coming to

01:06:02

the the the facilities in

01:06:05

a rough up and Louise,



01:06:07

you know, they take up

01:06:08

documents, we are asking for

01:06:10

it and blah blah blah,

01:06:11

all this happens. And then

01:06:12

you know, they put a

01:06:13

sign in the in the

01:06:14

front of the of the

01:06:15

building, says appropriate, expropriar do

01:06:18

appreciate it, and then you

01:06:19

show the picture. It's for

01:06:21

real, right? And so, in

01:06:23

the back and the mind

01:06:25

of the reader, you can



01:06:25

actually, you know, you see

01:06:27

an image, which is Quite

01:06:29

stunning, you Danielle, they have

01:06:30

a right to know what

01:06:35

happened before that because I

01:06:36

told just told you the

01:06:37

story, I'm going to say

01:06:38

this is outrageous. I'm going

01:06:40

to say I know. So

01:06:41

they did this without a

01:06:42

formal decree of expropriation. I

01:06:44

know you're legally this is

01:06:45

just crazy persuasive and stronger



01:06:54
and in that case you

01:06:56
know use the picture but

01:06:57
you just didn't throw the

01:06:58
picture. Larry just explain what

01:07:00
happened didn't repeat yourself. Please

01:07:03
just techniques but a single

01:07:04
day. Speech relates are incredibly

01:07:06
helpful. Storytelling. So I think

01:07:10
we have a little bit

01:07:11
of time left. What we

01:07:12
thought we might do is

01:07:13
say about time to see

01:07:15
if the audience has any



01:07:16

questions or comments that they

01:07:17

wanted to ask while we

01:07:18

have the experts are available

01:07:20

to them. Thank you again,

01:07:31

for you. You supposed to

01:07:32

be hearing from everybody, I

01:07:34

specifically wanted to ask you,

01:07:36

is specially Ashley and Maria.

01:07:38

The focus was on storytelling

01:07:40

and I can understand that

01:07:42

as far as the human

01:07:43

is concerned, but when one

01:07:45

is DraftKings for the responded,



01:07:47

is the focus still on

01:07:48

storytelling, or is there a

01:07:50

greater care to avoid giving

01:07:52

any additional facts to achievement

01:07:54

that they might use in

01:07:55

support of their case? It's

01:08:00

absolutely about storytelling as well.

01:08:03

Say for example, your responded

01:08:08

in an investor State case

01:08:10

of the statements to explain

01:08:11

in the standard usually is

01:08:13

reasonableness who you need to

01:08:16

explain why the decree was



01:08:18

issued to the measure that

01:08:23

affected the clean behind that

01:08:25

there is a whole story

01:08:28

to tell of why the

01:08:29

government reached to the point

01:08:31

that they needed to issued

01:08:32

a decree that was not

01:08:35

only in accordance with the

01:08:37

local law. But All of

01:08:40

the options for Temple of

01:08:41

the action from play my

01:08:42

motivated, the offense of that

01:08:44

decree. So you need to



01:08:46

tell the story and it's

01:08:47

absolutely about storytelling and that

01:08:49

goes back to the point

01:08:50

that I was feeling earlier.

01:08:51

When you're responded, you need

01:08:54

to tell the affirmative story,

01:08:55

not just be on the

01:08:56

defensive because you miss that

01:08:59

otherwise you must be those

01:09:01

very important. I'd walk a

01:09:04

few opportunities to compel the

01:09:07

tribunal of why the way

01:09:09

you acted. Why why you



01:09:10
did it? I would also

01:09:13
just say, you know, if

01:09:14
you think about the facts

01:09:15
as building blocks, both sides

01:09:17
have at some point in

01:09:19
proceeding, the same that have

01:09:21
blocks, but what you build

01:09:23
out of that can be

01:09:24
very different. And this is

01:09:25
where strategically ignoring some facts.

01:09:28
Maybe you do, but very

01:09:29
carefully. So they don't come

01:09:30
and buy your Witnesses and



01:09:31
experts on cross-examination. But, but

01:09:35
it's always about the story.

01:09:36
I mean, tribunal members are

01:09:37
humans and humans want to

01:09:39
know the why, why why

01:09:41
did all of this happen.

01:09:43
And so the claimant is

01:09:45
telling their tale of Woe

01:09:47
about why and the government

01:09:48
coming in and they know

01:09:49
know this is very reasonable

01:09:51
and they had it coming,

01:09:52
you know, that's why so-so



01:09:55
really the fax. It is

01:09:57
a story but everybody has

01:09:59
to tell their story in

01:10:01
the most compelling way and

01:10:02
you're again, the title of

01:10:04
the Tribune longer trying to

01:10:05
win over your Tribunal. You

01:10:07
can't win only on your

01:10:09
facts, you got the law

01:10:10
on your side, but you

01:10:12
can certainly lose a case

01:10:13
with not telling the facts

01:10:16
and especially if you you



01:10:18

know, we mentioned this lightly

01:10:19

but it can't be over

01:10:20

seated. You have to maintain

01:10:21

your credibility with the tribunal.

01:10:23

You cannot misrepresent back so

01:10:25

they don't trust you. Even

01:10:27

if you got some of

01:10:28

it right they won't. They

01:10:29

won't believe you. So tell

01:10:31

your story but be credible.

01:10:32

Wait we haven't we may

01:10:39

have additional questions from the

01:10:41

virtual origin and but in



01:10:43

the meantime I would like

01:10:46

to follow up on on

01:10:47

on what you just said,

01:10:49

Ashley. What is the risk

01:10:53

of not understanding that this

01:10:56

is about? Telling a story,

01:10:58

of course, substantiated by the

01:11:01

evidence, but still a start.

01:11:02

What is the risk of

01:11:03

Simply following a chronology? Or

01:11:08

simply indeed. Stating that there's

01:11:14

really no Clear Proof of

01:11:16

arbitrariness or expropriation. What is



01:11:21
the risk of doing that?

01:11:22
I'm simply saying, well, these

01:11:24
are the facts and, and,

01:11:25
and you should ultimately apply

01:11:28
the vit. And and, and

01:11:30
that's it. What, what is

01:11:31
the risk of of Simply

01:11:33
following are purely to the

01:11:35
technical approach? I am. And

01:11:40
this, this question is, for

01:11:41
all of you, of course,

01:11:42
where you just were to

01:11:45
tell the tribunal that the



01:11:46
facts speak for themselves and

01:11:48
they should, they should read

01:11:49
those facts and figure it

01:11:50
out for themselves. You're assuming

01:11:52
that your tribunal is going

01:11:53
to read the facts, the

01:11:54
same way that you did

01:11:55
all the supporting documents and

01:11:57
you're giving equal weight. Every

01:11:59
single fact, when that's not

01:12:01
usually helpful for a case

01:12:03
because some facts do matter

01:12:04
more some of them you



01:12:06

matter more. I mean one

01:12:07

gave an excellent example where

01:12:09

he said you know that

01:12:11

the police came and they

01:12:13

took away some documents versus

01:12:15

building the story giving the

01:12:18

atmosphere setting the stage and

01:12:20

then showing a picture. I

01:12:21

mean, one is saying a

01:12:22

fact and the second way

01:12:24

is telling a story about

01:12:25

it. Which, which one do

01:12:27

you think the tribunal is



01:12:28
more likely to award damages

01:12:29
for You John and Andy

01:12:34
decided of the story? It's

01:12:37
because I mean, You're going

01:12:41
to have the tribunal will

01:12:42
probably going to be senior

01:12:43
lawyers to get to know

01:12:44
the law. They're going to

01:12:45
be very technical term, going

01:12:47
to be cold and you're

01:12:48
not going to read the

01:12:49
Lord, but that's not what

01:12:51
you want, right? So, you



01:12:52

want someone to weed your

01:12:54

greeting and instantly, you feel

01:12:57

for your client. And because

01:12:58

at the end of the

01:12:59

day, you want them, if

01:13:02

you don't even case you

01:13:03

have to dispute, it's because

01:13:04

you're assuming people are irrational,

01:13:05

but it's because the, it's,

01:13:11

it's not as settled as,

01:13:12

it's not very clear-cut case,

01:13:15

right? And especially when you

01:13:16

pickle for a nickel, double



01:13:17
treatment or a standard of,

01:13:20
you know, I know my

01:13:23
best efforts. Did you comply

01:13:25
with all with it? You

01:13:25
like in good faith. No.

01:13:28
That's not always clear, right?

01:13:30
So at the end of

01:13:31
the day, you want the

01:13:32
tribunal to get a sense

01:13:34
of K. What's just, what's

01:13:37
what's the fair decision here?

01:13:40
It's going to be who

01:13:41
has the best story? Then



01:13:44

you won't mind me to

01:13:45

look at the lawn. It

01:13:46

may be that they lose

01:13:48

under the law, but if

01:13:49

it's a 50-50 issue or

01:13:53

you going to 60/40 you

01:13:55

when the tribunal to be

01:13:56

on your side. So they

01:13:57

might find a way to

01:13:59

justify the decision that they

01:14:01

feel is fair under the

01:14:03

law. And so I think

01:14:06

it doesn't really, really important



01:14:07
to, to to tell a

01:14:09
story more than just facts

01:14:11
and and low and, and

01:14:13
that's it. And in addition

01:14:18
to that, I would add

01:14:18
that. And if you just

01:14:20
stayed the fact, you're giving

01:14:22
the tribunal a set of

01:14:24
20 years of very complex

01:14:25
facts without explaining them, so

01:14:28
you need to explain them

01:14:29
through your story. And you

01:14:32
need to make that story



01:14:33
digestible, and relatable, simple. Something

01:14:40
that you can tell to

01:14:40
the tribunal member in an

01:14:43
elevator think of the elevator

01:14:44
pitch. Why should you rule

01:14:46
for in our favor? And

01:14:47
then you have the other

01:14:48
three hundred pages to explain

01:14:50
why why you're right? But

01:14:52
just stating the facts. I

01:14:55
mean frankly they're going to

01:14:56
get bored. So you're going

01:14:58
to get bored. You're going



01:14:59

to think of your watching

01:15:01

a movie on your board,

01:15:02

your like, that's it. But

01:15:04

if it's a compelling story

01:15:05

at wonderful movie, you're going

01:15:07

to stay in your going

01:15:08

to sit down for the,

01:15:09

maybe 3 hours, listening, or

01:15:12

watching the movie. So it's

01:15:13

it's the same thing as

01:15:14

I said in the beginning,

01:15:15

humans. Biologically wire to connect

01:15:19

with stories. I'd like to



01:15:22

ask a question regarding Quantum,

01:15:25

me go a little earlier

01:15:26

showed the slides and Quantum

01:15:29

is really very important but

01:15:31

they're they're not not all

01:15:32

cases are straightforward. Like the

01:15:35

slides. We are, you know,

01:15:37

you'll have some a loss

01:15:39

of part of your business

01:15:40

but it's very often the

01:15:43

case like a mine. For

01:15:44

example, we are. It had

01:15:47

some income at the removal



01:15:49
of a license brought about

01:15:52
a stop of most activities

01:15:54
and really never got off

01:15:56
the ground. The real big

01:15:58
part of the income that

01:16:00
would be the claim. Do

01:16:02
you have some ideas as

01:16:05
close to me, go alone

01:16:05
and others? How to deal

01:16:09
with that? Were supposed to

01:16:10
call her as well as

01:16:12
the clean the income, the

01:16:15
damage that you, that you



01:16:16
have is not cannot be

01:16:19
proven 100%. Yeah. Thank you

01:16:26
for all the question, you're

01:16:28
right. I think I I

01:16:29
am purpose. Joseph example and

01:16:32
realities is more complex. Many

01:16:36
Casey said that the case

01:16:37
that that you mentioned about,

01:16:39
you know, preoperational assets. Mean,

01:16:42
we will leave without a

01:16:43
lot in that case, I

01:16:46
mean, they're all depends how

01:16:49
you are going to argue



01:16:49
your your damages case. You

01:16:52
know, if you're going to

01:16:53
go to say, your claim

01:16:56
is an extra patient case,

01:16:57
are you going to ask

01:16:58
for the fair market value

01:16:59
of that? I said, are

01:17:00
you going to use a

01:17:01
discounted cash-flow valuation? Even if

01:17:04
it's even if it's an

01:17:05
early stage? What kind of

01:17:13
messages can I use for

01:17:14
an early stage? Where they



01:17:15

say you're going to use

01:17:15

some form of income approach?

01:17:18

I think that's right. When

01:17:19

I will benefit from seeing

01:17:21

Evidence of business plans contemporary

01:17:26

projections that you may have

01:17:27

had at the time evolution

01:17:29

of stock prices or evolution

01:17:31

of, you know, how hot

01:17:34

water company with assets, may

01:17:36

have done after the fact.

01:17:38

So, going back to how

01:17:40

you going to pretend that,



01:17:41

you know, it's not going

01:17:42

to be as straightforward as

01:17:43

these, but your evaluation presumably

01:17:46

is going to be anchored

01:17:48

on some projections or maybe,

01:17:52

you know, my recommendation and

01:17:59

a particular since you won't

01:18:00

be able to show performance

01:18:02

because it's a personal. I

01:18:03

said. But you know, what

01:18:05

you think is the most

01:18:06

compelling set of data that

01:18:10

you have that supports your



01:18:12
use of that particular method

01:18:14
rice also even pictures of

01:18:16
the business plan, right? So,

01:18:18
it took me for gas

01:18:19
that we have done that,

01:18:20
so you want to show

01:18:21
them? This is a business

01:18:22
plan include a small picture

01:18:24
of the reasons they can

01:18:25
see the real document that

01:18:28
you've seen. That is contemporary

01:18:29
was prepared for the company

01:18:31
and prepare to buy a



01:18:31
bank that was financing the

01:18:33
project so that we do

01:18:36
that sometimes too to give

01:18:38
them a sense of us

01:18:39
to see to suffer so

01:18:40
that they can see what

01:18:41
we've seen when we decided

01:18:43
to do the assessment now.

01:18:46
Hey, so there's also a

01:18:54
question from one of our

01:18:56
online audience members. Angela King

01:18:59
is asking, how does one

01:19:01
deal with bad facts that



01:19:02
cannot possibly be presented as

01:19:04
a non-issue likely because it

01:19:06
is sufficiently relevant or significant.

01:19:10
I mean, if it's something

01:19:15
that you need, you need

01:19:22
to pick your battles and

01:19:23
when you have them. So,

01:19:25
yeah, if it's definitely very

01:19:28
obvious fact and it's not

01:19:31
very flattering or your case

01:19:32
you want to mention it.

01:19:34
And then you want me

01:19:35
to put it into context



01:19:36
and explain why what it

01:19:41
means and how it fits

01:19:42
into your story. I mean,

01:19:44
if it's, if it's a,

01:19:46
if you kills your case,

01:19:47
then don't file their request.

01:19:49
So so yeah. I mean

01:19:54
it's it's it's, it's often

01:19:56
a difficult strategic goal at

01:19:59
the moment of the memorial

01:20:00
because there's no escaping it

01:20:02
in the reply, unless maybe

01:20:04
the other side didn't see



01:20:05

it, which can happen rarely.

01:20:07

But it can't happen and

01:20:10

stuff. No reason not to

01:20:11

say anything about it, but

01:20:12

it's, it's at the end

01:20:14

of this very strategic issue.

01:20:18

yeah, I absolutely agree with

01:20:19

that and when When you're

01:20:23

responding, some of the fact

01:20:27

that the grand brought out

01:20:28

by, by claiming that you

01:20:31

can ignore them a little

01:20:33

bit as long as you



01:20:34

can, but if they're brought

01:20:36

up by claiming its, I

01:20:38

mean that I've seen Breeze,

01:20:39

where the respondent seems like?

01:20:40

No, I'm not going to

01:20:41

talk about that and you

01:20:42

should never do that. You

01:20:44

should take it deal with

01:20:47

it. Maybe turn the tables

01:20:49

around. See how can you

01:20:50

you can contextualize it see

01:20:52

how you can explain? Except

01:20:54

that very bad decree that



01:20:56
the government issued? Well why

01:20:59
did you ask me if

01:21:00
it was a reasonable video?

01:21:01
Hopefully you can explain that

01:21:03
it was not entirely arbitrary

01:21:05
and there was a reason

01:21:08
behind it. So so there

01:21:09
are many ways. It's not

01:21:10
a matter of explaining it

01:21:13
and making it part of

01:21:15
your story of why you're

01:21:17
right. And I would also

01:21:19
say, especially from, if you're



01:21:21

a respondent to, to go

01:21:24

back to a point that

01:21:25

Miguel made earlier, it could

01:21:26

be that, this is a

01:21:27

bad fact and you did

01:21:29

it in your client, did

01:21:30

it, but it didn't actually

01:21:31

cause harm. Like, there's a

01:21:33

very small amount of damages

01:21:35

attributable to that act. And

01:21:37

so, if you can pull

01:21:38

that out, then that's the

01:21:40

client are. The claimant isn't



01:21:42
going to put that in

01:21:43
their story. They do they

01:21:44
did this and it's awful

01:21:45
in, but it didn't hurt

01:21:46
me. So that's, that's for

01:21:48
you to do. And I

01:21:50
will say you, no writing

01:21:53
writing a drafting of action

01:21:55
is an equal and creative

01:21:56
writing exercise, not because you're

01:21:59
being creative. It's clever with

01:22:02
the facts but because you

01:22:03
have, you were given a



01:22:05

set of facts that you

01:22:06

simply have to deal with.

01:22:07

And how do you tell

01:22:10

that story is up to

01:22:11

you? You know, how can

01:22:12

you make it as compelling

01:22:13

as possible? And so I

01:22:15

mean that's why I think

01:22:16

we all enjoy this topic

01:22:17

so much and why we

01:22:18

often work on the facts

01:22:20

teams at our firms. As

01:22:23

because of that were there,



01:22:25
any other questions you have

01:22:26
time? One more more advice

01:22:33
on academic stuff which is

01:22:36
from sang Mitra. And she

01:22:41
asked me are there courses

01:22:42
that International students could take

01:22:45
in law schools, that would

01:22:47
make the process of learning

01:22:48
to draft. Well before they

01:22:51
start working at law firm

01:22:54
in his laptop with Jason.

01:22:56
And I didn't know that

01:22:56
some of you or many



01:22:58
of you might teach and

01:22:59
Etc. Any advice on that.

01:23:02
Amateur this a course for

01:23:06
their lost puppy. At least

01:23:07
I started blowing in Argentina,

01:23:09
in the US have never

01:23:10
seen that. But the courts

01:23:13
and the Lux mood course.

01:23:15
So I mean, it's the

01:23:16
best way to learn York

01:23:19
City. They the only issues

01:23:20
you have a limited set

01:23:22
of facts but you got



01:23:24

to get creative with them.

01:23:24

So I think it's ya,

01:23:26

do mccourt's. I mean, I

01:23:31

went to law school a

01:23:32

million years ago and I

01:23:33

don't remember there being course

01:23:35

is about that, but I

01:23:36

would also say it can

01:23:40

be sort of a slow

01:23:41

night end, but read pleadings

01:23:43

read, read out an array

01:23:45

of pleadings by different law,

01:23:48

firms. By different cases from



01:23:50

Lehman's from respondents. You will

01:23:52

see pretty quickly which ones

01:23:54

are good and which ones

01:23:55

aren't and it's a little

01:23:56

shocking. How many are out

01:23:57

there that aren't great. But

01:24:00

you know, Read other Burns

01:24:03

pleadings and a really beautifully

01:24:06

drafted bleeding. You know. It's

01:24:08

a thing of beauty and

01:24:09

it's awful when you're opposing

01:24:11

counsel submissive because yeah, they

01:24:14

should win. No, no, they



01:24:15
can't you know so it's

01:24:17
a read other pleadings. It's

01:24:19
a good way to get

01:24:20
exposed but I'm not aware

01:24:21
of any courses. And a

01:24:25
nun that I would only

01:24:26
add read. Opposing pleadings and

01:24:31
like hi caliber paintings because

01:24:33
there's a narrative on one

01:24:35
side, there's narrative on the

01:24:36
other side and you can

01:24:38
compare I think that what

01:24:41
we're just one minute. I'll



01:24:43

just stand there and thank

01:24:45

you all. Our second session

00:00:04

today, Washington arbitration tickets, 29th

00:00:09

of November 2022. And we

00:00:13

have the privilege today. I'm

00:00:14

having a fantastic active session.

00:00:18

We had a great kick

00:00:21

off this morning on arbitration

00:00:23

technology and we're going to

00:00:25

follow it up with a

00:00:26

great session titled drafting a

00:00:29

compelling FAQ section, how to

00:00:32

win the hearts and minds



00:00:33

of the tribunal, and this

00:00:36

is focused on, you know,

00:00:37

obviously the practice of arbitration

00:00:41

and this very important part

00:00:44

of that practice. Before we

00:00:46

get going, I want to

00:00:48

thank Miller shovel for Miller

00:00:52

and she'll be a 4-string

00:00:55

and holding this event in

00:00:58

person where we being virtual

00:01:00

the last couple of years.

00:01:02

And now we've been able

00:01:04

to be you know, almost



00:01:05

I think 80 90% in

00:01:07

person as well, but part

00:01:09

of I think the roots

00:01:10

of Washington arbitration week is

00:01:13

that we have attempted to

00:01:15

be as accessible as possible

00:01:16

to students young practitioners older

00:01:20

practitioners in the arbitrator's the

00:01:21

whole the whole group but

00:01:23

to make available the expertise

00:01:28

and the experiences of Washington

00:01:31

as a center of arbitration

00:01:32

and it says fantastic Center



00:01:34
as you'll see today. Some

00:01:37
of our experts on R

00:01:38
panel, I will be a

00:01:40
great demonstration of that. So

00:01:42
thanks to Margarita Sanchez Miller

00:01:46
and shovel ye as well

00:01:48
as Virginia Newman to both

00:01:51
put fantastic efforts of Human

00:01:55
Service in putting together a

00:01:58
today's channel. So and and

00:02:00
the panel's to follow. Two

00:02:03
more in person panel. So

00:02:04
thanks very much to Miller



00:02:06

and shovel yay for their

00:02:09

contribution hosting today. So we're

00:02:13

going to start off. I'm

00:02:15

going to introduce our moderator

00:02:17

Ashley, a Rivera is a

00:02:20

council at Boomerang hearing here,

00:02:24

in Washington. D.c., I've worked

00:02:27

many years with Ashley on

00:02:30

Penny, International arbitration commercial and

00:02:33

greedy, arbitrations and when Ashley

00:02:36

and I talked about some

00:02:38

of the panels, we might

00:02:39

do for this week. She



00:02:40

said, we should do something

00:02:41

practical. We should do something.

00:02:43

That it is something useful

00:02:46

for particularly younger practitioners folks,

00:02:49

who maybe you're a little

00:02:51

newer to the arbitration world

00:02:54

and provide some practical tips

00:02:57

and some idea of a

00:03:00

kind of what it looks

00:03:01

like to actually. Practice International

00:03:04

arbitration. Then so from that

00:03:07

Genesis today we have this

00:03:11

this panel and actually is



00:03:13

going to take control from

00:03:15

here and thank you so

00:03:17

much Ashley for doing this.

00:03:17

I know is a great

00:03:19

deal of work for you

00:03:19

and the panel. Thank you

00:03:21

panel and I'll pass it

00:03:23

off to you guys. Thank

00:03:24

you very much to our

00:03:28

panelists today. Have a lot

00:03:30

of experience and investor States

00:03:32

and treaty arbitration Okay. And

00:03:41

we all agreed that shorter



00:03:42

intros would be better so

00:03:44

that we have plenty of

00:03:45

time to talk about our

00:03:46

topic. So immediately to my

00:03:48

left is one, Pedro Plumbing,

00:03:50

he's a senior associate at

00:03:52

freshfields. He's been practicing for

00:03:54

about 12 years to his

00:03:56

left is Maria, Catalina Duran.

00:03:58

She is a senior managing

00:04:00

associate at Italy and has

00:04:03

been practicing for about 12

00:04:04

years and then representing the



00:04:07

expert point of view for

00:04:08

us today is Miguel naturally.

00:04:10

He is the Executive Vice

00:04:12

President at Compass lexecon. He's

00:04:15

based in Houston, Texas. And

00:04:17

he has over 20 years

00:04:19

of experience, giving both oral

00:04:21

and written testimony and he'll

00:04:23

be helping to provide an

00:04:25

alternative view of the use

00:04:28

and implementation of fact. Now

00:04:31

I will say our panelists

00:04:32

today have experience working across



00:04:35

a variety of Industries. They've

00:04:37

worked on Large team, small

00:04:39

teams working for claimants for

00:04:42

respondent some even, I believe

00:04:44

for arbitrary arbitrary pianos. And

00:04:47

so they will be bringing

00:04:48

all of those perspectives to

00:04:50

their advice today. So when

00:04:54

we were all getting to

00:04:54

know each other we realize

00:04:56

that we share what I

00:04:58

believe one called an obsession

00:04:59

with the facts and and



00:05:03

I think met Maria Catalina,

00:05:04

could you talk a little

00:05:05

bit about why the facts

00:05:07

matter Thank you so much

00:05:14

for the invitation, it's a

00:05:16

pleasure to be here. Thank

00:05:17

you for company for the

00:05:18

invitation and everybody at the

00:05:19

Washington arbitration week. 4 scores,

00:05:27

the legal portion is very

00:05:28

important but the facts are

00:05:29

key and it's not only

00:05:31

about the facts about about



00:05:33

the storytelling in the store.

00:05:35

You build with those facts,

00:05:36

humans are biologically wired to

00:05:40

connect with stories stories are

00:05:42

persuasive. Stories move people into

00:05:46

action and they're much more

00:05:51

memorable than facts alone in

00:05:55

commercial and investment arbitration cases,

00:05:57

you deal with a very

00:06:00

complex set of facts and

00:06:03

so the task of the

00:06:04

advocate is to take those

00:06:06

facts and make them digestible,



00:06:09

simplify them. Tell the story

00:06:11

to the tribunal, it explains

00:06:13

to the tribe. You know,

00:06:14

why you're here? Why the

00:06:15

tribunal should rule in your

00:06:17

favor and why you're right

00:06:20

about your argument and not

00:06:24

to take too much time

00:06:24

with the introduction? I live

00:06:26

with the four, very basic

00:06:29

recommendations when you're riding the

00:06:31

fact that I read in

00:06:32

several articles books about effective



00:06:34
writing it cetera. You need

00:06:36
to be clear. You need

00:06:37
to be simple and relatable

00:06:39
make it interesting. You don't

00:06:41
want your tribunal to get

00:06:42
bored by page 10 of

00:06:43
the 400 page with your

00:06:45
reading and never never ever.

00:06:48
Ever missed it. The fact

00:06:49
you need to tell your

00:06:50
story but you need to

00:06:51
base it on actual facts.

00:06:57
Great. Thank you Miguel from



00:07:01
from your perspective is an

00:07:03
expert. How do you how

00:07:06
do the facts impact your

00:07:07
work on a case? But

00:07:09
in our, in our case,

00:07:10
our first thank you for

00:07:11
the invitation but I'm glad

00:07:13
to hear your voice interpretation

00:07:14
week from industry experts and

00:07:19
we are dealing with FOX.

00:07:22
Also the time we may

00:07:24
not have to fight the

00:07:25
bleeding as lawyers to but



00:07:28

we do have the first

00:07:29

thoroughly understand the facts. Make

00:07:32

sure that that we know

00:07:34

exactly the story. We know

00:07:37

what are the supporting documents

00:07:39

that were the Witnesses are

00:07:40

going to say, because that's

00:07:42

where we are going to

00:07:43

use, as the starting point,

00:07:45

from any quantitative assessment. There's

00:07:49

issues of conversation that we

00:07:50

need to deal with my

00:07:53

recommendation, mostly for the lawyers



00:07:55
in the audience. Don't forget

00:07:58
about your experts. I get

00:07:59
them involved. We need to

00:08:01
deal with the facts. We

00:08:02
need to understand them, know

00:08:03
them very well and we

00:08:05
need to know them plain

00:08:06
and simple as a 13-0

00:08:10
was saying, I couldn't complete

00:08:12
set of foxes is the

00:08:13
starting point for us. So

00:08:15
it's his Feast of other

00:08:17
important for us as well.



00:08:19

Now, as a little background

00:08:21

for, I know, we have

00:08:22

some students in the audience

00:08:23

and perhaps those who aren't

00:08:25

as familiar with investor States

00:08:27

and Commercial arbitration on some

00:08:30

of the biggest. He says,

00:08:31

you can't have just one

00:08:33

or two people drafting everything.

00:08:35

So you will end up

00:08:36

having Specialties, you'll have teams

00:08:39

of attorneys room, charges back

00:08:40

door in charge of quantum,



00:08:42

or in charge of the

00:08:42

legal section. And there can

00:08:44

be more than just those

00:08:45

breakdowns depending on how big

00:08:47

the cases. But so Quan

00:08:49

say you've been put in

00:08:51

charge of a fact section

00:08:52

where do you begin Well,

00:08:57

thanks for the invite to

00:09:00

be here. And I think

00:09:00

you said and very interesting

00:09:03

topic, very passionate about it.

00:09:06

So where do we start



00:09:07

adding? When the, when they

00:09:09

know we're discussing this before

00:09:11

Before, We Gather here was

00:09:14

very Bland and he said,

00:09:14

it's a mess and it's

00:09:16

really a master's. Got a

00:09:19

message that you have to

00:09:20

follow, but the overall process

00:09:23

is never straight line to

00:09:26

get what you want to

00:09:26

be. So the first thing

00:09:28

I do and I want

00:09:32

my team to do is



00:09:32
to just read everything. You

00:09:34
can find every piece of

00:09:36
paper you can get from

00:09:38
the client and specially what

00:09:40
you don't get from the

00:09:40
client go. Search the web

00:09:44
searches you gather as much

00:09:46
information as you can and

00:09:47
try to get it on

00:09:48
a video of the universe

00:09:51
of facts that's out there.

00:09:51
And then the next thing

00:09:54
you want to understand Should



00:09:55

I put everything in perspective

00:09:57

and you want to have

00:09:58

a good sort of chronological,

00:10:01

kind of a timeline knew

00:10:04

what happened when you put

00:10:06

all the mess of facts

00:10:08

in order and you start

00:10:09

to see a pattern and

00:10:10

you started seeing you know

00:10:11

where things went wrong, you

00:10:14

know, where are your arguments

00:10:15

and how you can start

00:10:16

to think about what you're



00:10:19
saying about the story, right?

00:10:22
You can only come up

00:10:24
with a story once, you

00:10:24
know, the facts. You cannot

00:10:26
make you guys just kind

00:10:28
of makeup facts. We have

00:10:29
to make everything fit into

00:10:30
a nice compelling. Interesting story.

00:10:33
So, where do we start?

00:10:36
I read everything I can.

00:10:38
That's why I did. Miguel.

00:10:41
Do you only take the

00:10:42
fact that your client and



00:10:44
your attorneys give you? Or

00:10:45
do you do at Wanda's

00:10:47
and go searching out onto

00:10:49
the internet and elsewhere? Do

00:10:51
a similar approach ourselves to

00:10:54
me. We obviously take the

00:10:56
facts, you should either a

00:10:57
memo that I put together

00:11:00
with some initial thoughts or,

00:11:02
or, or they are from

00:11:04
the same but it is

00:11:05
our responsibility and Duty as

00:11:08
independent experts and I said



00:11:10
about Quantum or in the

00:11:11
sea to to go on

00:11:14
and also verify you know,

00:11:16
this publicly available information to

00:11:18
himself, a sympathy glasses are

00:11:20
in a large at which

00:11:22
application Casey's you're probably companies

00:11:24
involved so that means they're

00:11:25
fighting. So final report just

00:11:28
in case. Even for companies

00:11:30
in another countries you may

00:11:32
find their their financial statements

00:11:34
press release is so it



00:11:37

is that we do that

00:11:38

work at the beginning, way

00:11:39

with your son. How about

00:11:40

a teams working in our

00:11:42

cases with that? Somebody together

00:11:44

for us as well, to

00:11:45

make sure that the story

00:11:46

is is died and that

00:11:48

what we are being told

00:11:49

you no correspondence with, we

00:11:52

will be seeing anybody, the

00:11:53

main I need to know,

00:11:54

then we can follow up



00:11:55
with questions. So that's that's

00:11:57
the way we also, make

00:11:58
sure that we are going

00:11:59
to eat. When is Trump

00:12:00
putting in this house of

00:12:01
the all the facts, Okay,

00:12:03
so now you've done your

00:12:06
due diligence you've gone and

00:12:07
dug through your clients files.

00:12:08
You've conducted witness interviews, you've

00:12:11
searched the public domain Madea,

00:12:14
Catalina are ready to write

00:12:15
your facts, don't you? Just



00:12:16

put them in chronological order

00:12:18

the storytelling, but think about

00:12:29

a document, a two-page document

00:12:30

as it's filled with data,

00:12:34

pure dates and events on

00:12:38

what happened. That is not

00:12:39

compelling after the third bullet

00:12:41

point. You won't remember what

00:12:43

happened in the first bullet

00:12:44

point and you don't even

00:12:45

remember why are you reading

00:12:47

through all of this? So

00:12:49

probably be maybe the it's



00:12:52

not it's a tool but

00:12:54

we turn to or I

00:12:55

can to organize the facts

00:12:58

by seems so that you

00:13:00

can tell the story in

00:13:02

a more compelling. Or so

00:13:04

that it's comprehensible for the

00:13:05

tribunal to, to put forward.

00:13:08

The point, you want to

00:13:09

make you the tribunal. You'd

00:13:10

only want to tell them

00:13:11

this heart of the events

00:13:13

that happened. You want to



00:13:14

explain those events. Put them

00:13:15

into context. Explain the intention

00:13:18

of the parties of why

00:13:19

they why they did what

00:13:20

they did. So no, I

00:13:23

don't only use college that

00:13:25

may be only the first

00:13:26

of a rough draft. And

00:13:29

I will second that, I

00:13:30

think the team seems can

00:13:32

be very useful tool for

00:13:33

the tribunal, especially to the

00:13:35

extent that you can even



00:13:37

have a few somatic points

00:13:40

that you are able to

00:13:40

weave, you know, throughout the

00:13:43

pleadings and even leave at

00:13:44

3 or legal section and

00:13:45

your, your Quantum section. I'm

00:13:48

so, so yes. Chronology can

00:13:50

be useful. And there are

00:13:51

some cases, especially that short,

00:13:54

a time line cases that

00:13:55

lend themselves to chronology, but

00:13:57

I agree that the medic

00:13:59

very compelling. Now, on you



00:14:01

mentioned that the whole fact-gathering

00:14:04

process is a mess. Can

00:14:07

you talk more about how

00:14:08

your team's function? So if

00:14:10

you have a larger case

00:14:11

and you got a number

00:14:12

of people on your team,

00:14:13

how do you actually sit

00:14:15

down and construct a fax?

00:14:18

Well course, you will start

00:14:21

with the time that you

00:14:23

will understand what the universe

00:14:25

of facts are but then



00:14:28

how you build the, what

00:14:31

is going to be your

00:14:33

fax section, you have to

00:14:34

start with an outline on

00:14:36

the other line will have

00:14:37

to fit into your case

00:14:38

Theory. So when you're thinking

00:14:41

about the owls on your

00:14:42

house, so you must keep

00:14:44

in your head. What's the

00:14:45

story on telling the tribunals

00:14:46

here? Obviously has to match

00:14:50

your history so you will



00:14:53
definitely start with an outline.

00:14:54
You know, I use my

00:14:56
preference is always to be

00:14:58
Colonel jiggle, that has to

00:15:00
be a very compelling. Reason

00:15:01
not to follow a chronological

00:15:03
order of the facts that

00:15:06
may be cases in, which

00:15:07
is good to have seems,

00:15:09
but you come up with

00:15:13
an outline, and once you

00:15:14
see what the other one

00:15:15
looks like, yeah, you see



00:15:17
the outline. It's usually not

00:15:20
going to be flushed out.

00:15:20
It's going to be bullet

00:15:21
points. You started, right? Then

00:15:23
you realize this doesn't work.

00:15:24
So you have to start

00:15:25
all over again. See, you

00:15:27
have a new outline and

00:15:28
you will have to, you

00:15:29
know, any working on it

00:15:31
again because, you know, the

00:15:33
process is Never, As I

00:15:35
said, if he needs never



00:15:36

straight line, I wish it

00:15:37

was, we would save so

00:15:38

much time and money. But

00:15:40

especially with investment arbitration cases,

00:15:43

or very complex in of

00:15:45

long-term a contractual relationships with

00:15:48

lots of things happened. It's

00:15:51

it's, it's hard. It's a

00:15:52

difficult process and I think

00:15:53

we need to do that

00:15:54

at some point, but it

00:15:56

changes depending on what kind

00:15:57

of bleeding you're working on



00:15:58

so that we can discuss

00:16:00

that later. But definitely you

00:16:02

need an outline. You cannot

00:16:03

start just stream of conscience.

00:16:06

That is going to be

00:16:07

enough, sleep train wreck. So

00:16:09

yes I'm in terms of

00:16:11

How we doing? Well, of

00:16:13

course, there's there's the more

00:16:14

senior people versus partners and

00:16:16

and seen her. So she

00:16:17

started doing that the Deep

00:16:19

sinking into, you know, how



00:16:21

what is this case about.

00:16:22

So you know to be

00:16:25

a senior associate would come

00:16:27

up with an idea of

00:16:28

the outline and then we

00:16:30

will distribute asks. I'm here

00:16:31

we're going to have a

00:16:32

mid-level associate you know dealing

00:16:34

with a specific section of

00:16:36

the sides with help with

00:16:37

the junior. I'm going to

00:16:39

do that for another station

00:16:39

with the overall strategy, he



00:16:44

tends to be handled by

00:16:46

another senior members of a

00:16:48

team. Marriott. How does your,

00:16:52

does your process mirror that

00:16:53

or do you have some?

00:16:54

Cuz I know we all

00:16:55

work for different firms and

00:16:56

so and four different partners.

00:16:57

So this process can be

00:16:58

slightly different depending on where

00:17:00

you're working. Sure, it's it's

00:17:04

very similar. We are themes

00:17:06

are or much are smaller,



00:17:08

is dirt. They tend to

00:17:10

be very lean Lee stopped

00:17:12

but in general, it's the

00:17:15

same process. The we create

00:17:17

an outline be as long

00:17:19

as key. Your roadmap, we

00:17:22

like detailed outline because then

00:17:24

the putting pen to paper

00:17:26

will be much easier and

00:17:29

that's why I said, once

00:17:30

you finish the outline, you

00:17:31

realize it's all wrong and

00:17:33

it will make no sense.



00:17:33

You need to rewrite it,

00:17:34

but it is, it tends

00:17:38

to be the same though.

00:17:39

Senior Associates are overseeing. The

00:17:42

strategy with the partners and

00:17:44

the reviewing the draft when

00:17:48

you're wearing your drafting a

00:17:50

fact, your section. And in

00:17:52

general, there be if you

00:17:52

need to revise revise and

00:17:54

revised make it simpler less

00:17:56

is more, that will be

00:17:57

more persuasive and the more



00:18:01

Junior It's our digging. All

00:18:03

the facts making all the

00:18:05

summaries that Megan was talking

00:18:06

about giving all the information

00:18:08

to the more senior Associates

00:18:10

and partners to decide what's

00:18:12

the strategy of the case?

00:18:13

Miguel. Miguel. At what point

00:18:17

do you think that it's

00:18:18

most advisable to be bringing

00:18:20

your experts into what we've

00:18:22

all been describing as a

00:18:23

fairly iterative process? Is it



00:18:25
right towards the end somewhere

00:18:27
in the beginning? Where, where

00:18:28
do you find it? Most

00:18:29
beneficial for your clients on

00:18:38
board? The beginning. You not

00:18:39
experience we will tend to

00:18:42
be in both early early

00:18:43
in the process, by by

00:18:45
the law firms. Maybe have

00:18:47
someone from the Explorer theme.

00:18:48
You need to be there.

00:18:49
If I find out that

00:18:50
you finance or someone sitting



00:18:52

in a meeting particular, you

00:18:53

are having with the business

00:18:55

people, from the client, for

00:18:57

example, right? We're going to

00:18:58

explain how the breach is

00:19:01

Korea, other contractual or 3T

00:19:04

affected them. I saw you

00:19:05

want, I want from this

00:19:07

problem hearing that you want

00:19:09

to provide them with the

00:19:11

primary sources of information with

00:19:12

or without The mammals which

00:19:14

are great assassination point of



00:19:16

view, but at the end

00:19:17

of the day, we have

00:19:18

to document. I mean, don't

00:19:19

forget that your experts are

00:19:21

going to be facing. We

00:19:22

Trust combination with they're going

00:19:24

to put the native document

00:19:25

in front of them. And

00:19:26

she wanted to have that.

00:19:27

Understanding of the facts as

00:19:30

well. So we don't need

00:19:32

to be on every meeting

00:19:34

with the client, but if



00:19:35
there are specific meanings that

00:19:37
you think you would be

00:19:38
nice to for the extra

00:19:39
2 year lease. And then

00:19:40
I'm going to tell them

00:19:41
about these may be a

00:19:43
better way. Would be to

00:19:44
actually invite someone from the

00:19:46
team and be there and

00:19:48
I hear those those a

00:19:49
condom So just to add

00:19:54
to that, I think it's

00:19:55
I think it's really, really



00:20:00

important to get the experts

00:20:02

involved because when you go

00:20:04

to claim and obviously at

00:20:05

the end of the day

00:20:05

you know you want to

00:20:08

have your award that says

00:20:10

you want a liability. But

00:20:11

he also was damaged. So,

00:20:12

your strategy, you know, we

00:20:15

have to be thinking about

00:20:16

what you we will, what

00:20:17

you will be arguing on

00:20:18

damages from they want. And



00:20:20

so, you know, when you're

00:20:22

thinking about the Casey or

00:20:23

you can just forget about

00:20:25

the images and how are

00:20:26

you going to do it?

00:20:26

So I think it's absolutely

00:20:28

important getting both. Yeah, we

00:20:29

we please have Casey see

00:20:31

now, which is funny because

00:20:33

if you see, like, 34

00:20:35

pages in the memorial describing

00:20:37

a particular bridge by that

00:20:39

is, that is so outrageous,



00:20:41

right on and they're so

00:20:42

much put into that. And

00:20:44

then when we talked about

00:20:44

it, what is the actual

00:20:45

impact monitor impact may be

00:20:47

fairly small or near leaving,

00:20:49

because maybe your client was

00:20:51

able to meet you. What's

00:20:53

the weather? There is this

00:20:53

a bridge and there's four

00:20:56

cop like a unit price

00:20:57

controls me to write that

00:20:59

in theory. Sounds like your



00:21:01

prices were under control and

00:21:03

you must have been affected

00:21:04

with. Not really because we

00:21:05

were able to do this

00:21:06

and that doesn't hear that

00:21:09

for Shannon. And you going

00:21:10

to be a gourmet. Tell

00:21:11

you, you know, what all

00:21:12

of those these are for

00:21:13

your pretty here. It's not

00:21:14

going to be translated into

00:21:16

a confrontation. You know, makes

00:21:19

it worth it to spend



00:21:20

all this time of the

00:21:21

tribunal in the arguing for

00:21:23

this point. So I guess

00:21:24

that's why we tend to

00:21:26

provide a cross-check us, whether

00:21:30

what's, what's relevant and was

00:21:31

maybe not that big of

00:21:33

a know. Where do you

00:21:40

start with the facts? You

00:21:42

know, often times you will

00:21:43

actually invite your Quantum experts,

00:21:46

in particular, to some of

00:21:47

the key meetings, especially with



00:21:49

the numbers people at the

00:21:51

client. I'm in particularly, when

00:21:53

you are a claimant in

00:21:54

your ear flushing out, your

00:21:56

damages quantum theory as well.

00:21:58

And muddy at you. You

00:22:01

have already answered this question.

00:22:02

I think that was there.

00:22:03

Anything else you want to

00:22:03

add on that point? No,

00:22:07

I agree with everything that

00:22:08

they're saying you should get

00:22:09

involved with get the experts



00:22:12
involved early early on even

00:22:14
when you're only and then

00:22:16
because it's also not only

00:22:18
about the damages expert, but

00:22:20
the legal experts, the technical

00:22:22
experts mean, we're dealing with

00:22:24
a case in the electricity

00:22:25
sector. No way. Are you

00:22:28
going to become the extra?

00:22:29
You need to recover that

00:22:31
gays, you need to have

00:22:32
a constant dialogue with the

00:22:33
experts to make sure that



00:22:34

the facts you're telling her

00:22:36

are actually correct technocrats and

00:22:39

they help your story. Okay,

00:22:42

so trusting the facts. We've

00:22:45

talked about can be a

00:22:46

massive iterative process so you're

00:22:49

starting to see the light

00:22:49

at the end of the

00:22:50

tunnel on your fax section.

00:22:52

How do you on your

00:22:53

different case? Seemed how do

00:22:55

you guys marry your facts

00:22:57

to your legal Theory, to



00:22:59

your Quantum case because those

00:23:01

teams have also been going

00:23:02

through their own. Iterative process

00:23:04

has been parallel. Usually 2

00:23:06

to what you're doing. So

00:23:08

so how does that look

00:23:09

on a big case? One?

00:23:11

Well yeah, I definitely you

00:23:14

in a big case you

00:23:16

will have people singing about

00:23:17

different topics or or aspects

00:23:19

of the case and doing,

00:23:20

you know some people do



00:23:21

you need more legal research,

00:23:24

do you know paying that

00:23:25

much attention to the fox?

00:23:26

Say I mean we won't

00:23:30

the way we do it.

00:23:30

If it's a really big

00:23:32

team, we always have two

00:23:33

partners in any case and

00:23:35

partners 10. Both to be

00:23:36

involved in every strategic issue

00:23:39

that we discussed when we're

00:23:40

coming up with a strategy

00:23:41

for the case to store



00:23:42

you're going to tell if

00:23:43

they look at outlines so

00:23:45

they approve what the story

00:23:47

is going to be and

00:23:47

then you also and you

00:23:49

know counselor to seeing her

00:23:50

so she had to just

00:23:51

push things forward on, it

00:23:53

fits really big. You're going

00:23:55

to have more than one

00:23:55

senior associate. You know looking

00:23:57

at facts and the other

00:23:59

one looking at you no



00:24:00
liability and damages perhaps. So

00:24:04
it's absolutely key to maintain

00:24:06
to be really close to

00:24:09
me. Now, shared rocks, so

00:24:14
you can see what I'm

00:24:14
saying in the Box section

00:24:15
and I can see what

00:24:16
you're staying on on, on

00:24:17
the legal section that, you

00:24:18
know, we did an outline

00:24:19
but you tend to figure

00:24:21
out the outline station in

00:24:25
the legal side, you may



00:24:26

get excited about something you

00:24:28

really want case. But wait,

00:24:30

what are the facts of

00:24:31

the? Okay. That case. Well,

00:24:32

haven't you can see? They're

00:24:34

that age. Now we didn't

00:24:36

get a license for this

00:24:37

so that changes things because

00:24:43

it may happen that you

00:24:45

weren't communicating and you send

00:24:47

a new you with all

00:24:49

of the Frankenstein, you have

00:24:51

these different sections on you,



00:24:53

put them all together, you

00:24:54

stitch them the best you

00:24:55

can and then you send

00:24:56

it to, you could be

00:24:58

to the senior Associates or

00:25:00

review or two partners to

00:25:02

read the whole thing on

00:25:03

there, going to say wait.

00:25:05

We're saying this year, but

00:25:07

they were saying this. What's

00:25:09

going on? And it's funny

00:25:10

because we can communicate enough.

00:25:12

So yeah, it seems you



00:25:14

need the senior people to

00:25:16

be real weekly calls and

00:25:19

if you're in the same

00:25:20

office, just now over coffee,

00:25:24

discussing issues all day long.

00:25:26

I mean, we just get

00:25:27

really, really Maria you mentioned

00:25:32

that you sometimes. Work on

00:25:33

more lean Lisa cases. So,

00:25:35

how does this process look

00:25:36

on a on a smaller?

00:25:37

Not smaller case but then

00:25:39

we're leaving the staff case



00:25:40

it's kind of similar. So

00:25:43

even if it's at least

00:25:45

our case you have one

00:25:47

person dealing with the fact

00:25:48

that maybe another associate dealing

00:25:51

with the lead on the

00:25:52

damages but in the end

00:25:54

you need exactly what I

00:25:56

wanted was saying, you need

00:25:57

constant communication and you need

00:26:00

it like a senior associate

00:26:01

at a partner. Two, two

00:26:04

sets of eyes reading through



00:26:06

the whole thing to make

00:26:07

sure you're not making consistent

00:26:09

arguments. You're not stating the

00:26:10

facts and consistently in the

00:26:12

facts on them. When you're

00:26:13

applying them in the legal

00:26:14

section, you're saying something completely

00:26:16

different. At the end of

00:26:18

the day, somebody needs to

00:26:20

read through the whole thing

00:26:21

and make sure it's consistent.

00:26:24

That's right, I'm in. And

00:26:26

then I will just pay



00:26:26

for my own perspective. I've

00:26:28

even worked on case teams

00:26:29

where I was particularly close

00:26:31

to my colleagues and we

00:26:32

would just go right in

00:26:33

a war room. So you

00:26:34

would have facts and legal

00:26:36

and damage all working away

00:26:38

in the room. And it

00:26:39

has to be the right

00:26:40

mix of personalities. But you

00:26:42

can just as you're talking

00:26:43

today or did, you know,



00:26:44

I just saw this document,

00:26:46

does that help what you're

00:26:47

writing and so on and

00:26:49

so forth? And it's not

00:26:49

always the most efficient way

00:26:51

to write, but it can

00:26:52

at the end of the

00:26:53

day, make a more seamless

00:26:55

product. But again, that's that's

00:26:58

for your most favorite colleagues,

00:27:00

and then I was at

00:27:02

another Law Firm last year

00:27:03

and the, the paralegal said



00:27:06

that they set up virtual

00:27:07

War rooms during the pandemic.

00:27:09

So, people could just come

00:27:11

in and log in and

00:27:11

have I think, at the

00:27:13

time it was zoom on

00:27:14

in the background and, and

00:27:15

confer to speak up that

00:27:17

way if they wanted, I

00:27:17

personally have never experienced this,

00:27:19

but there are many, many

00:27:21

ways to stitch together your

00:27:22

different teams. Show me how



00:27:25

you had mentioned when we

00:27:26

were talking that not only

00:27:29

do you want the person

00:27:30

who's going to be testifying

00:27:31

and defending, the quantum case

00:27:33

to see the facts sections

00:27:35

early on. But also, sometimes

00:27:37

even the more Junior people

00:27:40

over at that expert side,

00:27:42

and you had actually an

00:27:44

interesting story about where you

00:27:45

could see that that hadn't

00:27:47

happened before and wondered if



00:27:48

you could share. So, for

00:27:53

the team because we have

00:27:57

us and if you've ever

00:27:59

seen a man in defeating

00:28:01

the Catlettsburg want to make

00:28:02

a report that they are

00:28:03

create stands. They having in

00:28:06

many cases, do sense of

00:28:08

hundreds of activities, which means

00:28:10

that we are very much

00:28:12

in touch with the documents

00:28:13

to do, it is a

00:28:15

source of additional checking if



00:28:17

you want when you have

00:28:19

a draft of the memorial

00:28:22

of the back section Sherry

00:28:24

with you, Run and see

00:28:26

that they may be able,

00:28:27

we may be able to

00:28:27

spot thinks. I may know

00:28:29

if, you know be consistent

00:28:30

with what they do and

00:28:32

say or the other Witnesses,

00:28:34

may have said in the

00:28:35

meeting at the dental, do

00:28:37

it. So that it was



00:28:38

the last thing you want,

00:28:39

is that disconnect between what

00:28:43

the experts are relying on

00:28:44

and what you were arguing

00:28:45

now. And I was mentioning,

00:28:48

we had an example of

00:28:49

a few years ago, on

00:28:51

the other side, with the

00:28:54

facts of the case were,

00:28:56

is a contractual dispute. So

00:28:58

there was a lack of

00:28:58

payment for services and, you

00:29:01

know, that this story that



00:29:02

I did, so put together

00:29:04

was basically off of lack

00:29:05

of funding by the company

00:29:07

was not doing well, so

00:29:08

you are provided to us.

00:29:08

You have to understand that

00:29:10

we aren't we don't have

00:29:11

enough money to pay you.

00:29:12

So you can have the

00:29:13

same boat as asked and

00:29:15

then we find that their

00:29:17

experts were actually putting attic

00:29:21

series to their report, a



00:29:23
financial statement. Will you could

00:29:24
see that accompany was actually

00:29:26
flush with cash, and was

00:29:28
actually paying dividends today, today,

00:29:30
today, cuz of the parent

00:29:31
company to it. Those kind

00:29:32
of things that, you know,

00:29:33
that you have to disconnect

00:29:34
that can create the biggest

00:29:36
down the road because now

00:29:37
we're you told, you are

00:29:38
very nice concise. No compelling,

00:29:41
interesting story. I can fall



00:29:44

apart when stuff like that

00:29:46

happens, so I will be

00:29:47

in July. That's my people.

00:29:49

You don't like my advice,

00:29:50

basically, use your expertise to

00:29:53

help you. Make sure that

00:29:55

everything you said is consistent

00:29:57

with the facts in the

00:29:58

document, but also to make

00:29:59

sure that they may not

00:30:01

be saying something about the

00:30:02

other day, may be inconsistent

00:30:04

with with your story. And



00:30:07

I just just to add

00:30:08

to that. There is obviously

00:30:10

in the damages analysis. There's

00:30:13

a key element which is

00:30:14

from a legal perspective to

00:30:18

show it but it to

00:30:19

send you the actual. I'm

00:30:22

so you know it's going

00:30:24

to make experts are excellent

00:30:25

at telling you well Your

00:30:28

damage is enough flooring, you

00:30:31

mentioned earlier and so on.

00:30:33

And sometimes there multiple ways



00:30:35

in which you can value

00:30:36

damages, right? You can take

00:30:38

you from having, you can

00:30:39

bring some electricity cases are

00:30:41

super Complex in Tempe. Have

00:30:43

to make modeling so your

00:30:45

assumptions. What goes into your

00:30:47

mothering? You have to be

00:30:49

able to explain what your

00:30:51

assumptions are. You know, what

00:30:52

should we take this factor

00:30:53

into account? Yes, or no.

00:30:55

And if we do, how



00:30:56

can you explain it? You

00:30:58

know, within your universe and

00:31:00

legally, how does this work?

00:31:03

And we we had experienced

00:31:05

recently in cases. Where do

00:31:06

they knew? Which they rightly

00:31:08

going to us when it

00:31:09

was that? You know, we

00:31:13

we've agreed that this is

00:31:14

how we're going to Value

00:31:15

damages. But this dust dust

00:31:18

just doesn't add up. And

00:31:20

we're adding this assumption here



00:31:22

with. How can we explain

00:31:24

it wasn't factual. He was

00:31:26

legal. How can you explain

00:31:28

it legally? And so, we

00:31:29

had to go back and

00:31:30

look at shorts out. And

00:31:32

I'm thinking about, you know,

00:31:33

how, how does Siri work

00:31:36

and can we make it

00:31:37

work? So we had to

00:31:38

tweak if things get on

00:31:39

there, or, you know, if

00:31:40

acquired some homework, but at



00:31:44

the end of the day,

00:31:44

was a much stronger bleeding,

00:31:47

this is because our DNS

00:31:51

be questions with. We're really

00:31:52

good questions and issues. So

00:31:54

I think it's it's it's

00:31:56

it's really important to a

00:31:57

dream of noches, noches Amiga

00:32:00

Express Parts Authority in such

00:32:02

such an issue and that

00:32:04

is factual issue. Are you

00:32:06

definitely need them? So Maria

00:32:12

work, we're talking about experts



00:32:15
quite a bit, but a

00:32:16
key part of any back

00:32:17
section is also your witness

00:32:19
is your witness testimony which

00:32:21
is written for the first-round.

00:32:23
So how do you integrate

00:32:25
the Frankenstein of the legal

00:32:29
brief with your witness statement?

00:32:32
So Witnesses, and witness statements

00:32:35
are a key component of

00:32:36
the storytelling, but you need

00:32:38
to be very careful with

00:32:39
words because memory is not



00:32:42

reliable. Most of this case

00:32:44

is are dealing investor-state in

00:32:47

particular, said they're dealing with

00:32:48

facts that have been 10,

00:32:49

20 years ago, and of

00:32:52

course memories are built on.

00:32:54

The person's own experience on

00:32:55

what happened before during and

00:32:56

after, but Witnesses are very

00:33:00

useful, not only for the

00:33:01

memory components but also to

00:33:04

explain I got contemporary put

00:33:08

into context, a contemporaneous document,



00:33:10

maybe the document, the language

00:33:11

in the document is not

00:33:12

the clear and then you

00:33:14

find the author of that

00:33:15

letter that they on the

00:33:17

author can explain, why he

00:33:19

wrote the letter, what he

00:33:20

meant when he wrote the

00:33:21

letter. And so that's when

00:33:23

witnessing him to become very

00:33:25

powerful. Of course, you need

00:33:27

to be very careful about

00:33:29

choosing your Witnesses. You don't



00:33:31
need a witness Explain every

00:33:32
single fact you put out

00:33:33
there in the brief too

00:33:35
many witnesses, can be very

00:33:37
tricky to manage and very

00:33:38
risky at the hearing, is

00:33:40
you never as much as

00:33:41
you prefer them. You never

00:33:42
know, form, of course, you

00:33:45
need to choose very credible

00:33:46
Witnesses but it's not all

00:33:50
under your control as much

00:33:52
as we wish it would



00:33:53

wear. And then once you

00:33:56

have the witness statements, they

00:33:57

need to be Incorporated into

00:34:02

the story you're telling. Because

00:34:03

if you have on the

00:34:04

witness statements on their own,

00:34:06

then you're missing a box

00:34:08

of the opportunities of why,

00:34:10

the way this is important

00:34:11

why. His story is a

00:34:14

orchids explanation proves your point

00:34:16

and proves The Other Side

00:34:19

Story wrong. And yeah, so



00:34:23

that's, I mean, that they're

00:34:24

very important, but you need

00:34:25

to be very careful. How,

00:34:26

you know, this might be

00:34:28

a topic for next year.

00:34:29

The next session is preparing

00:34:31

Witnesses, but so we haven't

00:34:33

talked about this. I'm going

00:34:34

to Spring this on you

00:34:35

a little bit, but do

00:34:36

you you when you're putting

00:34:37

together your faction and your

00:34:39

Witnesses? Is it your preference



00:34:41

to have a witness own

00:34:43

particular set of facts or

00:34:45

particular topic or do you

00:34:47

like to have you sometimes

00:34:49

you can have two or

00:34:50

three people that know about

00:34:51

a set of documents? You

00:34:53

put all of them forward

00:34:54

to put one forward. How

00:34:55

does that work for you?

00:34:56

It really depends on on

00:34:59

the case on How much?

00:35:01

They remember? What explanations? They



00:35:03

gave you during the witness

00:35:04

interviews because I mean one

00:35:07

you're choosing her witness you

00:35:09

need to do. I witness

00:35:11

interview and in those injuries,

00:35:13

you need to challenge a

00:35:14

little bit their story to

00:35:16

make sure that what they're

00:35:17

telling you. I mean one

00:35:19

is true and true that

00:35:21

they're their memories is kind

00:35:25

of correct for the ones.

00:35:27

You showed them documents and



00:35:28

sell those start. Remembering more

00:35:29

toilet. Really depends. If it's

00:35:32

if it's one person that

00:35:34

wrote one document and it's

00:35:35

like he document for the

00:35:38

case, you have only one

00:35:39

win this. If you need

00:35:40

somebody to back that person

00:35:42

up, you may choose to

00:35:44

have one or two people

00:35:45

backing him up in case.

00:35:47

I mean to people saying

00:35:50

the same thing, I can



00:35:51

kind of have a powerful

00:35:52

effect against only one person.

00:35:57

And in just like, there

00:35:58

are never perfect fax patterns,

00:36:01

we always end up with

00:36:01

bad but there's no such

00:36:03

thing as a perfect witness,

00:36:05

as much as we wish

00:36:06

they were out there, it's

00:36:07

the the unicorn of gift

00:36:09

boxes. Sometimes you have a

00:36:10

witness that you have to

00:36:12

use even if they don't



00:36:14

they're not what you wish

00:36:16

you had. If I may

00:36:18

add to that and we

00:36:20

haven't discussed if you need

00:36:23

to deal with backpacks. You

00:36:26

should never run when you're

00:36:27

riding the effectual section or

00:36:29

the witness or preparing the

00:36:31

witness statements and all of

00:36:32

that you should never run

00:36:34

from backpacks. You need to

00:36:36

deal with them, minimize them

00:36:38

as possible and contextualize them.



00:36:41

Otherwise, it's going to come

00:36:43

back and bite the other

00:36:44

hearing and your case is

00:36:45

going to be in a

00:36:46

very bad situation and could

00:36:48

even bite you in the

00:36:49

next round of gas because

00:36:50

our day will say your

00:36:51

claimant and you ignore all

00:36:53

the bad parts of your

00:36:53

story will respond and we'll

00:36:55

throw a parade around those

00:36:56

persons. Story & Miguel. You



00:36:58

had actually mentioned before that

00:37:00

from the slightly outside perspective

00:37:03

that you can tell when

00:37:05

somebody's running away from back.

00:37:06

Then. Tomorrow. I say, I

00:37:10

said reader leaving, you know,

00:37:12

that way within to read

00:37:13

a lot of them and

00:37:14

y'all and of course, I

00:37:16

will treat her sweet to.

00:37:17

You can start to find

00:37:19

a spot that you can

00:37:20

tell to see what there's



00:37:21
something missing that is gloss

00:37:23
over. Or, you know, if

00:37:24
you can happen, you're in.

00:37:26
You kind of sense that

00:37:27
there's more to the story

00:37:29
that. If you cannot happen.

00:37:31
It just ended like this.

00:37:32
There must have been a

00:37:33
response to this letter that

00:37:35
must have been. That's when

00:37:38
we start asking you questions

00:37:38
too. So so you know

00:37:41
if we can see them



00:37:42

the tribunal will be able

00:37:44

to see them. So didn't

00:37:47

even with those with those

00:37:48

facts, I think he's is

00:37:49

very important. We have to

00:37:51

do with those fat butt

00:37:52

cuz I'm cold backpacks, 2017

00:37:55

from conversation point of view.

00:37:57

Because we are going to

00:37:59

have to respond to an

00:38:00

to the stuff that you

00:38:01

have to respond to it,

00:38:02

to the counter Memorial or



00:38:04

reply, we have to respond

00:38:06

to us another expert Port,

00:38:08

so that we will have

00:38:10

to deal with that. Make

00:38:11

sure that the tribunal understand

00:38:13

Sam scism in context, and

00:38:16

that everything you see is,

00:38:16

you know, consistent with, with

00:38:18

those to do if you

00:38:19

have to do So I'm

00:38:22

going to stick with you

00:38:23

for a minute. So when

00:38:25

you're writing your expert reports,



00:38:27

we know you have to

00:38:28

deal with the facts. We

00:38:29

know you have to address

00:38:31

the the causation backs. But

00:38:33

how many facts do you

00:38:34

put in your actual expert

00:38:36

report? I would say that

00:38:40

in general that reported more

00:38:44

concise you don't want to

00:38:46

be telling stories that you

00:38:47

don't need to be telling,

00:38:48

but having said that, you're

00:38:50

just know that your experts



00:38:52

will need to tell tax.

00:38:53

You know, there's there's no

00:38:54

question around that you provide

00:38:59

them with such restrictive instructions

00:39:01

in which, you know, I

00:39:01

want you to exactly these

00:39:03

and nothing else, but you

00:39:05

were still going to expose

00:39:06

them to to cross-examination later

00:39:08

on this week. We're going

00:39:09

to have a section on

00:39:10

on Fox stole from our

00:39:12

point of view, from the



00:39:13
technical perspective. From London perspective,

00:39:15
we will have to explain,

00:39:18
to me how the damage

00:39:20
is Flo from, They alleged

00:39:22
breaches, we are not going

00:39:24
to explain to the tribunal.

00:39:25
Why the bridges are considered

00:39:26
we met in some senses

00:39:29
from your expectations with me

00:39:32
have to do with that.

00:39:33
But for the most part

00:39:34
we have to say hey

00:39:35
these damages flow from these



00:39:37

facts and do not from

00:39:40

this other facts that are

00:39:42

not considered a mental health

00:39:45

station to the story. That

00:39:48

is very important and will

00:39:50

be in your damages expert

00:39:51

report. Also know that I

00:39:54

make sure that you are

00:39:55

aligned and there's no an

00:39:57

alternative description of the facts

00:39:59

that you may not be

00:40:01

aware of after you've done

00:40:02

so much with your beautiful



00:40:04
pleading that someone else may

00:40:06
be doing anything illegal or

00:40:07
the damage report. So from

00:40:13
my perspective, I understand the

00:40:15
need for facts. If he

00:40:17
reports I'd rather to have

00:40:19
any tracks for the reasons

00:40:23
that you mentioned but asking

00:40:26
so we will go over

00:40:27
it on, bring it down

00:40:29
and we're going to ask

00:40:30
you. Do you really need

00:40:31
to talk about all this?



00:40:32

Because even if it's consistent

00:40:34

with weird saying we just

00:40:35

want to have a single

00:40:36

boy and that's easier. When

00:40:38

you have one boys, which

00:40:39

is the bleeding and so

00:40:42

we try to keep it

00:40:44

as tight as we can

00:40:45

and chords we we've seen

00:40:49

a tendency some experts to

00:40:51

bring lots of facts into

00:40:52

their reports, sometimes even like

00:40:56

that are nowhere mentioned in



00:41:00

either the other sites beatings

00:41:02

or witness statements and and

00:41:04

you know, you read it.

00:41:05

And what's going on? Why

00:41:07

do we need this often?

00:41:09

Times? Those facts are not

00:41:10

relevant for the analogy. Is

00:41:12

W experience doing and it's

00:41:14

just more argument, which is

00:41:18

my view, very detrimental for

00:41:21

the expert, which, but the

00:41:22

experts sells is credibility. So

00:41:25

the moment you were sort



00:41:26

of, you know, showing you

00:41:29

no new Fox and making

00:41:30

arguments, you know, you become

00:41:33

what are your perceived us

00:41:34

parties. And so that is

00:41:36

another reason why we prefer

00:41:38

not to have a fax

00:41:40

in statements, there is but

00:41:46

you're talking about a legal

00:41:50

expert in that say, you

00:41:53

have a case in Argentina.

00:41:54

And so you're with driving

00:41:56

us know, from Argentina you



00:41:57
won't explain what the guys

00:41:59
will have a choice in

00:42:03
case. This it's it's not

00:42:04
the applicable to the case

00:42:05
it's a fact. So in

00:42:08
that case you do you

00:42:09
want your expert to be

00:42:09
very clear about, you know,

00:42:12
little things and have a

00:42:13
lot to expect because he's

00:42:14
stunning facts of the end

00:42:15
of the day. LOL, I

00:42:19
think in general. Less is



00:42:24

more. and I think this

00:42:30

is all so it's not

00:42:31

something that we talked about

00:42:32

but but as as were

00:42:34

all talking about interacting with

00:42:36

our experts be that damages

00:42:38

experts are quantum or your

00:42:40

technical industry experts Be in

00:42:44

essence, become a part of

00:42:45

the team because they are

00:42:46

participating so much, but they

00:42:47

do. Absolutely have to be

00:42:48

able to stand in front



00:42:49

of the tribunal and say

00:42:51

this is my independent expert

00:42:53

opinion and I'm not a

00:42:54

hack. I'm not you're being

00:42:55

paid to say exactly what

00:42:57

my legal team wrote. So

00:42:59

is that something that you

00:43:00

run up against quite a

00:43:01

bit Miguel? Yeah, I'm in

00:43:03

need for cheerleader that the

00:43:06

law firms, that would normally

00:43:07

wear with a very sophisticated

00:43:09

experience, they understand our role.



00:43:11

They understand that we have

00:43:14

to be able to Independent

00:43:15

backup things. Sometimes you do

00:43:18

take, you would find. You

00:43:21

would find yourself in situations

00:43:22

where you have to instruct

00:43:23

your experts to assume something.

00:43:25

You know, we dating sites

00:43:28

in from time to time,

00:43:28

we normally want to be

00:43:30

careful with no waiting so

00:43:32

I could trust you and

00:43:32

you want to be inside



00:43:34

to assume something that you

00:43:35

know, is contrary to fax

00:43:37

again. I mean going back

00:43:38

to sleep when the fights

00:43:39

because then you don't know

00:43:42

if. So, do not ask

00:43:43

for any information, you would

00:43:45

explain. Your document is what

00:43:48

it says, what it says.

00:43:49

And just tells me, it

00:43:55

happens that the lawyer to

00:43:59

understand that we are responsible.

00:44:02

We have this in this



00:44:04

Independence that we have to

00:44:06

wear with, you know, they

00:44:08

updated the document Sunday in

00:44:10

the primary information now, So

00:44:14

one of the panelists alluded

00:44:16

to this earlier but you

00:44:18

know the facts are not

00:44:19

simply and solely an unchanged

00:44:22

of Lee. The facts about

00:44:23

the course of the case,

00:44:24

they tend to develop you

00:44:26

have a document disclosure, you

00:44:28

have witnesses coming forward with



00:44:30

new fax. So can you

00:44:32

talk a little bit? I've

00:44:33

actually put this to everybody

00:44:35

but we'll start here with

00:44:36

one. Can you talk about

00:44:37

the distinctions between drafting facts

00:44:40

for a request for arbitration

00:44:42

vs. At Memorial, Memorial reply,

00:44:45

rejoinder post-hearing pleadings? Because those

00:44:48

are all different. Does those

00:44:50

cleanings all have different goals?

00:44:53

You sure. Well, Like you

00:44:57

said each bleeding has a



00:44:58

different goal and there's a

00:44:59

different time in the proceedings

00:45:01

where they come up once.

00:45:03

We have to be strategic

00:45:05

about when you start to

00:45:07

think it, of course you

00:45:08

need to have a story

00:45:09

which has to be consistent

00:45:10

and ideally it's going to

00:45:12

be the same until the

00:45:13

end you may run into

00:45:15

problems. But there are different

00:45:19

levels of debt in which



00:45:20

you tell that story. So,

00:45:22

you know, you will start

00:45:24

with a request for arbitration

00:45:25

which I mean, I know

00:45:29

I've seen old request form

00:45:30

for objection in my firm

00:45:32

and that used to run

00:45:35

for maybe eighty pages today.

00:45:38

We would never do that.

00:45:39

Maybe we can sweep learn

00:45:41

the hard way. You need

00:45:43

to keep it lean because

00:45:45

you just want to keep



00:45:48
your options open. This is

00:45:49
very early in the case

00:45:50
that you're still. You have

00:45:53
any idea what your case

00:45:54
is pretty been thinking about

00:45:55
it a lot but you

00:45:57
haven't been thinking it long

00:45:58
enough as you will. When

00:46:00
you get to the memorial

00:46:01
especially you won't be as

00:46:03
familiar with the facts, which

00:46:05
supports Drive the story. So

00:46:06
for the request for arbitration,



00:46:09

be leaned on very specific,

00:46:11

just meet whatever criteria you

00:46:14

have from if it's just

00:46:16

past the low bar, they

00:46:18

have all that's all you

00:46:19

need just get the register

00:46:21

and then with the memorial

00:46:23

you want to tell your

00:46:24

positive story. You want to

00:46:27

Do with that, you have

00:46:28

a strong case but at

00:46:30

the same time, he has

00:46:31

to be. You still have



00:46:32

to be kind of defensive.

00:46:34

I agree with you have

00:46:37

to address, you know what

00:46:40

the difficult sucks. You shouldn't

00:46:42

ignore them, but at the

00:46:45

same time, you just don't

00:46:47

want to make an issue

00:46:48

of them, right? If they're

00:46:49

known issues, and that's when

00:46:51

you need to show their

00:46:52

non-issues, that's something she showed

00:46:53

up by ignoring them. So,

00:46:54

but it's always a strategic,



00:46:56
what shouldn't happen. So, you

00:46:58
didn't realize there was an

00:46:59
issue that would be a

00:47:00
real problem and what you

00:47:02
need to YMCA. You need

00:47:04
to be defensive because I

00:47:07
need to become extremely common,

00:47:08
you have to open a

00:47:10
action camera. And so, you

00:47:13
really need to think about

00:47:14
what documents referring to the

00:47:15
record. Because whatever is in,

00:47:17
there is fair game to



00:47:18

ask you for other stuff.

00:47:20

Maybe, mentioning a document on

00:47:21

the same goes for Witnesses.

00:47:23

So you want to have,

00:47:24

you know, what do you

00:47:26

want? Just to say what

00:47:28

documents you wanted to reference

00:47:30

to. So you still need

00:47:32

to play a kind of

00:47:33

defensive game and cuz you

00:47:35

still haven't heard about the

00:47:36

other side has to say,

00:47:37

and then we'll have something



00:47:38

to say and then obviously,

00:47:40

you know, you will get

00:47:41

to the point of the

00:47:43

reply which is when all

00:47:44

the bad stuff came up.

00:47:47

Ideally, you had seen it.

00:47:50

Another question is, how your

00:47:51

dresser in? So and there's

00:47:54

also another function of the

00:47:55

reply, which tends to be

00:47:56

way longer way more complex

00:47:58

than a memorial. Which is

00:48:01

for the claimant. It's the



00:48:03

last meeting before the hearing.

00:48:04

So it's your moment to

00:48:06

putting all the documents you

00:48:08

want to use for cross

00:48:09

Examination for the witnesses for

00:48:12

the experts. So, you know,

00:48:14

the Box section has to

00:48:17

include all those little things

00:48:19

that you want to add

00:48:20

some things, you want to

00:48:20

bury things, right? Sometimes there's

00:48:23

a really important document that

00:48:24

I used to, you know,



00:48:25
destroy witnessing cross-examination. You happen

00:48:28
to mention it up to

00:48:29
find the part of a

00:48:30
two-page food. So there's a

00:48:34
lot of strategic issues that

00:48:36
go into a reply and

00:48:37
it's way harder, way, way

00:48:39
harder on the same happens

00:48:40
with a with a rejoinder

00:48:42
on the other side. So,

00:48:44
yeah, I H cleaning difficulties.

00:48:49
I think the worst one

00:48:51
is, the reply in the



00:48:52

recliner light bar for obvious

00:48:55

reasons, but ideally, if you

00:48:56

had a good strong story

00:48:58

from the get-go, In both

00:49:00

your experts in it, you

00:49:04

know you're going to have

00:49:04

a compelling story to tell

00:49:06

and going to be way

00:49:07

easier. Maria Catalina, you know,

00:49:12

you had offered some of

00:49:13

this. You, you had offered

00:49:15

more of the respondents perspective

00:49:16

when we spoke about this



00:49:17

earlier. So, if you could

00:49:18

just add on to that

00:49:19

with that prospective, sure, I

00:49:25

agree with everything I was

00:49:27

saying, but also we need

00:49:29

to take into account when

00:49:30

you are respondent. And, of

00:49:32

course, claimant is a permit

00:49:34

to believe bringing the case.

00:49:35

Telling you, the story when

00:49:37

you're responding to your naturally,

00:49:38

not defensive point. So you

00:49:42

have the extra task of



00:49:44

making your story affirmative as

00:49:47

well. Cuz you've your only

00:49:48

thought telling your story from

00:49:49

a defensive point and only

00:49:51

responding to what claiming is

00:49:53

attacking you with not persuasive.

00:49:56

You need special investor-state arbitration,

00:49:59

you need to explain example

00:50:01

why the state Acts were

00:50:04

reasonable. So you need to

00:50:05

provide context, you need to

00:50:07

tell that story a firm.

00:50:08

And that's your defense and



00:50:11

that's the strongest defense. And

00:50:14

of course it depends what

00:50:15

stage of the process during

00:50:16

the counter Memorial. The first

00:50:18

time you are going to

00:50:20

hear your story, you're going

00:50:21

to poke holes into the

00:50:25

plane and story bring up

00:50:27

those backpacks. They were ignoring

00:50:29

me and then in the

00:50:31

rejoined her as one was

00:50:34

saying bringing everything you need

00:50:37

for the hearing. But again



00:50:39

you need to always remind

00:50:41

yourself to to try to

00:50:42

make that an affirmative and

00:50:44

an expensive story. It's much

00:50:47

more places and Powerful. So

00:50:50

just to be clear when

00:50:52

we were talking about strategy

00:50:53

and deciding which acts to

00:50:55

tell the panel is not

00:50:57

advising you to sit on

00:51:00

all of your Witnesses and

00:51:01

fax and tell reply or

00:51:03

or you know, your final



00:51:05

your final pleading because that

00:51:07

doesn't get that doesn't move

00:51:09

the ball forward and the

00:51:10

whole goal of the facts

00:51:12

sections in these pleadings is

00:51:14

the benefit, your tribunal, is

00:51:15

to benefit your FactFinder. So,

00:51:17

all of this strategy is

00:51:18

playing out in the background,

00:51:19

but it can't just be

00:51:21

that you bury it all

00:51:21

into the last possible. Second,

00:51:23

although, there is inevitably some,



00:51:26

some small level with that.

00:51:28

So, how do you decide

00:51:30

which acts to tell you

00:51:32

have your necessary facts? But

00:51:34

then there is some facts.

00:51:35

Maybe they're not so necessary.

00:51:39

Yeah, and we were discussing

00:51:41

this earlier. I think you

00:51:44

need to be very careful

00:51:45

about the facts, Futures. Because

00:51:47

you're telling the tribunal the

00:51:51

story you want to tell

00:51:52

but you don't want to



00:51:53
overwhelm the tribunal with a

00:51:55
thousand different facts that could

00:51:56
potentially be useful for you.

00:51:58
Fax me to have a

00:52:00
purpose. Every fact, every paragraph

00:52:03
you riding into the factual

00:52:05
section, has to have a

00:52:06
purpose. This doesn't mean to

00:52:08
just stick to the very

00:52:10
relevant dates that are important

00:52:13
for you. You need to

00:52:13
provide context, but that context

00:52:16
needs to have a purpose.



00:52:17

And the purpose is, for

00:52:18

example, to explain the intent

00:52:20

of why the government after

00:52:21

the doctor door, why the

00:52:22

claimant acted the way you

00:52:24

acted to draw little bit

00:52:27

of empathy for your tribunal,

00:52:28

but you need to be

00:52:30

careful because I have seen

00:52:31

breves where the other side

00:52:36

is trying to attack the

00:52:37

same point for us. From

00:52:39

a thousand different points of



00:52:40

view and that's not useful

00:52:43

because they end up running

00:52:45

into inconsistencies into their own

00:52:47

story and then I'm not

00:52:50

the arbitrary that in that

00:52:52

tribunal. But I'm sure they're

00:52:53

very confused about what what's

00:52:55

going on. So you need

00:52:57

to be strategic about the

00:52:58

fact, you're telling me what's

00:53:00

the purpose that you have

00:53:02

when your tongue Now when

00:53:05

we, when we met to



00:53:06

discuss this panel, we had

00:53:08

also talked about. Sometimes you

00:53:09

bring in facts that aren't

00:53:11

strictly necessary because you want

00:53:14

to add a little bit

00:53:14

of atmosphere to do your

00:53:17

case, either to your client

00:53:18

or to the back section

00:53:19

and one you had specifically

00:53:20

been talking about that. So

00:53:22

if you could share Yeah,

00:53:24

sure. I'm in there may

00:53:25

be things that are not



00:53:26

moving the needle that it's

00:53:29

so not going to ask

00:53:31

about the story and the

00:53:33

was important about the story

00:53:35

feeling that you got. I

00:53:37

just any story will try

00:53:38

to get something from you.

00:53:39

You know, about recruiters, we

00:53:41

want them to feel something

00:53:43

and you know, we want

00:53:44

them to feel sympathy for

00:53:46

our clients. So you may

00:53:47

do things or you may



00:53:49

include facts that are not

00:53:51

Necessary to win the case.

00:53:54

But that will create that

00:53:55

feeling in Princeton's you know

00:53:57

sometimes it's a mining company

00:53:58

and you know they're not

00:54:00

the most popular companies out

00:54:02

there until you know, if

00:54:04

you show that there's good

00:54:06

that they're doing the community.

00:54:07

You know? Sometimes when you

00:54:09

have these gold mining cases,

00:54:10

well you know if it's



00:54:11
not this company is going

00:54:12
to be the illegal miners

00:54:14
but someone is going to

00:54:15
get the gold out and

00:54:16
you have this company, that

00:54:17
studies, all these nice things.

00:54:19
So you want to show

00:54:20
their the good cities. They're

00:54:22
not just out there to

00:54:23
plunder which is sometimes but

00:54:25
it may be what the

00:54:26
other side will say. So

00:54:27
you want to create that



00:54:28
that feeling and so is

00:54:31
that absolutely no, but will

00:54:33
it help you if it

00:54:36
was so? So yeah, there

00:54:40
may be, those kind of

00:54:41
things that you want to

00:54:43
throw in, you have to

00:54:43
be careful, you don't say

00:54:45
something that's not helpful, but

00:54:47
sure. I mean sometimes you

00:54:48
can make an exception to

00:54:50
the rule. Bolin, but sometimes

00:54:53
they may be exceptions when



00:54:54

you can benefit from. Into

00:54:58

doesn't like to hear about

00:54:58

mining companies, building schools and

00:55:00

planting trees. Okay, so on

00:55:05

that point, how often do

00:55:07

you use your sarcasm irony

00:55:10

one? I think the general

00:55:16

feeling was that, we don't

00:55:17

do it, it's extremely dangerous

00:55:20

because you can always backfire,

00:55:24

especially when you're writing it

00:55:26

because you don't know, you

00:55:29

can't get a sense of



00:55:30
the room or maybe next

00:55:32
year and you can crack

00:55:33
a joke but not in

00:55:35
the cleaning and it's, it's,

00:55:37
it's very risky. Maybe you

00:55:40
can try it irony but

00:55:41
it has to be very,

00:55:43
very subtle. But the internal

00:55:45
now, Yeah, absolutely agree with

00:55:49
that mean I'm not a

00:55:51
fan of adjectives and adverbs

00:55:52
they should be avoided unless

00:55:54
it's absolutely necessary and it



00:55:57

can be very you don't

00:55:59

know me and you will

00:56:02

have a 13 arbitrator panel

00:56:06

coming from different cultures, different

00:56:08

a background. You don't know

00:56:11

if this is Joe quaal

00:56:12

maybe serve 1 naira traitor

00:56:14

but not the other one.

00:56:15

You don't want to offend

00:56:16

anybody and that's why I

00:56:18

was saying specially with the

00:56:19

fittings. It's very hard because

00:56:21

you're not you can't read



00:56:23
the room. So no, I

00:56:25
would avoid it. I really

00:56:28
maybe. But it needs to

00:56:29
be better, very subtle. I

00:56:30
agree. How often do you

00:56:32
have clients that insists on

00:56:33
putting an adjectives? Sometimes you

00:56:38
need to deal with those

00:56:39
because I mean when you're

00:56:43
drafting the the the pleading

00:56:45
you're thinking of the tribunal

00:56:46
which is the ultimate goal

00:56:48
but you need to keep



00:56:50

your client happy. So you

00:56:53

need to have a balance

00:56:54

there. Okay, so, with Miguel

00:56:59

as our expert, you often

00:57:01

have to come plug. Ours

00:57:03

are expert member of the

00:57:04

panel here or Quantum expert.

00:57:06

You often have to communicate

00:57:07

really complex data to the

00:57:09

tribunal. Can you talk about

00:57:11

some of the alternative ways

00:57:12

that you present these facts

00:57:14

and I think you might



00:57:15

have some, are you doing

00:57:16

this lights when we were

00:57:21

talking about, you know, how

00:57:22

to tell the facts of

00:57:23

the different stages of of

00:57:24

the case and Juan and

00:57:27

Karina mention, what we also

00:57:33

have, the hearing we are

00:57:35

going to buy that time.

00:57:37

We would have typically to

00:57:39

reports from expert report, from

00:57:41

the side inside technique are

00:57:43

the quantum, but there's this



00:57:45
unique opportunity to address a

00:57:47
tribunal. I think, what we've

00:57:50
learned over the years of

00:57:52
doing this is that we

00:57:54
want when you are Keen

00:57:56
on the claimant side of

00:57:57
the case, you have that

00:57:59
extra opportunity to to tell

00:58:01
your story and I have

00:58:03
to build the other side

00:58:04
has had the last word

00:58:06
or has made it to

00:58:07
use that. We normally have



00:58:12

a half an hour direct

00:58:14

presentation to the tribunal. We

00:58:16

spend a lot of hours

00:58:18

working on it because it's

00:58:20

got unique time in which

00:58:21

you want to engage your

00:58:23

tribunal and tell them your

00:58:25

story. Again, took my advice

00:58:28

from from the server of

00:58:30

the first of the process

00:58:31

is used to do the

00:58:33

same in the openings, maybe

00:58:34

you don't. Don't just repeat



00:58:36
the same things and maybe

00:58:37
copy and paste from from

00:58:39
the pleadings so that they

00:58:40
will really be reading the

00:58:42
size that you tell them

00:58:43
what you've already told him

00:58:44
in the painting, is there

00:58:46
are things that you want

00:58:47
to show them to eat.

00:58:48
I think it's as powerful

00:58:49
as I just have a

00:58:51
couple of slides, maybe to

00:58:52
that. You know, it's a



00:58:54
fake example. Just to show

00:58:58
you how to do these

00:59:01
with without ties. As you

00:59:02
mentioned, sometimes you are you

00:59:03
you want to come by

00:59:04
this story, but you have

00:59:06
to listen to show them

00:59:06
there today. So you'll see

00:59:11
my screen now. So What

00:59:15
is your presentation? Okay. So

00:59:19
basically, you know a typical

00:59:20
example that we have is

00:59:22
his treaty arbitration case, we



00:59:24

have a consumer Products Company

00:59:26

versus a country or state

00:59:30

case. The company we have

00:59:32

to show the tribunal that

00:59:33

the company was doing pretty

00:59:35

well. You know, I have

00:59:36

to a certain point but

00:59:38

we have here between 2007-2011

00:59:40

that says between 50 million

00:59:43

and 120 million. They had

00:59:45

positive earnings. They were, they

00:59:47

were they have a track

00:59:48

record of profitability which in



00:59:49
many investigations has an important

00:59:52
point to show. And then

00:59:54
we want to show that

00:59:55
there's a price freeze that

00:59:57
the that the country imposed

00:59:59
the price freeze was relevant

01:00:02
for the company's that's another

01:00:03
Factor. So is impacted why?

01:00:06
Because they eat affected products

01:00:08
are accounted for 72% of

01:00:10
their sales and we want

01:00:12
to show that after that.

01:00:13
They profitable Theater 8, if



01:00:16

you want to determine to

01:00:18

see visually, see it till

01:00:22

we start with how it

01:00:23

was before. This is great.

01:00:25

She sold it a profitable

01:00:26

business. This is how we

01:00:28

do sometimes. So this is

01:00:29

a child that you see

01:00:30

in the end is much

01:00:31

more complex than these. We

01:00:33

break it up. I saw

01:00:34

so first, we show you

01:00:35

the revenues get out of



01:00:38
this difference between 50 and

01:00:39
1918, Nissan. The profits as

01:00:42
you can see, now that

01:00:43
you are the prophet, I'm

01:00:44
finally the margin of the

01:00:47
prophecy by the by driving.

01:00:48
So I put it in

01:00:50
the front steps so that

01:00:52
I can you want to

01:00:53
make sure that you're going

01:00:54
to use. We should I

01:00:55
add a photo you at

01:00:57
the last thing you want



01:00:58

as we were discussing, the

01:00:59

Horizon station is for you

01:01:01

to continue speaking and you

01:01:03

see that the Gemini stuck

01:01:04

in your side with a

01:01:05

child because they have not

01:01:06

yet figured out. I was

01:01:07

a child was about so

01:01:09

now we show you these.

01:01:10

The next point is to

01:01:12

show how important these Alex

01:01:14

Bridge was sore from all

01:01:16

your products sales, yo, regulate,



01:01:18
the products were 73% by

01:01:21
putting it in a, in

01:01:23
a, in a bar. Like

01:01:24
this gives you an idea

01:01:25
of the magnitude, I'm waiting.

01:01:28
You may even include some

01:01:29
pictures of the products. Do

01:01:31
it again. Is visually interesting

01:01:33
to see. Okay, now there's

01:01:35
bleach as a floor while

01:01:36
now, what is the impact

01:01:38
of this alleged breaches? So

01:01:41
now, this is what I



01:01:42

would show you before. So

01:01:43

we have until 2011, the

01:01:44

company was doing relatively. Well,

01:01:46

the first thing we have

01:01:48

is the price for and

01:01:50

then that's you want. After

01:01:51

the price trees, you can

01:01:52

already see a decline in

01:01:53

the profitability year-to-year. Say, so.

01:01:58

Now, I mention earlier, like,

01:02:01

at least a fox now,

01:02:03

I'll show you with, be

01:02:04

sure that it's a now,



01:02:05

you can see how the

01:02:07

now, of course, the other

01:02:08

side will say that, that

01:02:09

decline was no results. The

01:02:11

price free sandwich, have different

01:02:13

different. Donation for biology 12,

01:02:15

checking in to see your

01:02:16

story. And we've seen these,

01:02:18

that Danny may be raining

01:02:20

at Ward's driving. I will

01:02:21

refer to the charger with

01:02:23

Sean and indirect examinations because

01:02:25

they dance to stick with



01:02:26
them much more than just,

01:02:28
you know, I know. Thank

01:02:34
you for that and I

01:02:35
and I would agree if

01:02:35
somebody who's somewhat more challenged

01:02:37
on Quantum issues that charts

01:02:40
and pictures can always help

01:02:43
help move me forward through

01:02:45
to you understanding at all

01:02:46
you know wondering or call.

01:02:48
You could actually talked about

01:02:49
it as I can. You

01:02:50
stop question to ask yourself



01:02:52

one, do you need it?

01:02:54

Do you think it's going

01:02:54

to add value and to

01:02:56

can you make sure that

01:02:58

the tribunal will understand it?

01:03:00

You know, that's the end.

01:03:01

I think that's an excellent

01:03:02

way to approach. Really any

01:03:03

visual aid, not just for

01:03:05

your experts, but as you

01:03:07

go to the hearing and

01:03:08

you're presenting your fax and

01:03:09

using demonstrative, which I think



01:03:12

we had all agreed that

01:03:13

wants her to have a

01:03:14

role with the hearing and

01:03:15

can be very compelling and

01:03:17

one, you had talked about

01:03:18

one of the things you

01:03:19

make sure you do when

01:03:20

you're using a technical demonstrative

01:03:22

in particular. Sure. I mean

01:03:25

you have to think whether

01:03:28

like you said, what they're

01:03:29

going to do, it will

01:03:30

understand that you definitely I



01:03:32

need to go and, you

01:03:33

know, the experts are very

01:03:34

good at this and then

01:03:35

you going to see the

01:03:36

report and they can explain

01:03:37

you very clearly about the

01:03:38

red line, is this the

01:03:40

Blue Line in stairs. And

01:03:41

this is what you're saying.

01:03:42

So you have two very

01:03:44

clearly explained to the reader.

01:03:46

What it is that they're

01:03:47

seen in this chart because



01:03:48

you put a charger, look

01:03:50

at it. It's it's it's

01:03:51

worse. So so but if

01:03:55

it's a really important thing,

01:03:57

you know, and I'm thinking

01:03:59

about electricity cases, where you

01:04:01

have to understand how the

01:04:02

system works. I could help

01:04:04

me clean. You want the

01:04:05

tribunal to understand that when

01:04:07

they get to the hearing

01:04:08

so I don't you don't

01:04:09

need to explain it at



01:04:10
that point so they may

01:04:11
understand but you never know

01:04:13
you can't you can really

01:04:15
prove them on field the

01:04:16
hearing. So maybe if this

01:04:19
is really can you want

01:04:20
to put it in your

01:04:21
bleeding and explained? Very, very

01:04:23
clearly. What is going on?

01:04:24
And how this system works.

01:04:25
And because it's it's going

01:04:28
to be something you're not

01:04:28
showing me showing them in



01:04:30

the hearing, so it's better

01:04:32

if they already get familiar

01:04:33

with them. So, in that

01:04:35

case, you know, it's good

01:04:37

to have them. Sometimes they

01:04:38

have the charger and profitability

01:04:40

dropping dramatically, you're just adds

01:04:43

to the store. Is it?

01:04:44

And sometimes, but we didn't

01:04:47

mention. Yeah, pictures, using pictures,

01:04:50

you know, there's a saying

01:04:53

for a reason and you

01:04:54

know, pictures are very powerful



01:04:56

sometimes and I know I

01:04:58

was just thinking about something

01:04:59

you mention about, I text

01:05:00

you, you have to, you

01:05:03

have to earn them. This

01:05:04

is something. I've heard many

01:05:06

many times when you hear

01:05:07

about, you know, a good

01:05:09

dressing techniques, you have to

01:05:10

earn your ride to use

01:05:14

the right? Because science tells

01:05:16

us, he knows what are

01:05:19

we going to use the



01:05:20
worst? Because they know what

01:05:21
happened, right? But they're not

01:05:23
telling you. It's this idea

01:05:25
of show, don't tell and

01:05:26
it's Princeton. You know, it's

01:05:29
kind of an expropriation, and

01:05:31
sometimes it's some point. You

01:05:32
say, while the police showed

01:05:33
up, they took over the

01:05:35
company and, you know, in

01:05:36
a very violent manner. So,

01:05:38
this is a breach of

01:05:39
Bernie with this is how



01:05:41

you make your argument. You

01:05:44

can say that, but it's

01:05:46

way better when your descriptive

01:05:48

and you say well you

01:05:49

know what happened is he

01:05:50

was it was Tuesday morning,

01:05:52

Tim police car show up

01:05:55

out of nowhere with you.

01:05:58

No hundred armed police officers

01:06:01

coming to the the the

01:06:03

facilities in a rough up

01:06:06

and Louise, you know, they

01:06:08

take up documents, we are



01:06:09

asking for it and blah

01:06:11

blah blah, all this happens.

01:06:12

And then you know, they

01:06:13

put a sign in the

01:06:14

in the front of the

01:06:15

of the building, says appropriate,

01:06:16

expropriate do appreciate it, and

01:06:19

then you show the picture.

01:06:20

It's for real, right? And

01:06:22

so, in the back and

01:06:24

the mind of the reader,

01:06:25

you can actually, you know,

01:06:26

you see an image, which



01:06:28

is Quite stunning, you Danielle,

01:06:30

they have a right to

01:06:34

know what happened before that

01:06:36

because I told just told

01:06:37

you the story, I'm going

01:06:38

to say this is outrageous.

01:06:39

I'm going to say I

01:06:40

know. So they did this

01:06:41

without a formal decree of

01:06:43

expropriation. I know you're legally

01:06:45

this is just crazy persuasive

01:06:53

and stronger and in that

01:06:55

case you know use the



01:06:56

picture but you just didn't

01:06:58

throw the picture. Larry just

01:06:59

explain what happened didn't repeat

01:07:02

yourself. Please just techniques but

01:07:04

a single day. Speech relates

01:07:05

are incredibly helpful. Storytelling. So

01:07:10

I think we have a

01:07:11

little bit of time left.

01:07:11

What we thought we might

01:07:12

do is say about time

01:07:14

to see if the audience

01:07:15

has any questions or comments

01:07:17

that they wanted to ask



01:07:18

while we have the experts

01:07:20

are available to them. Thank

01:07:31

you again, for you. You

01:07:32

supposed to be hearing from

01:07:33

everybody, I specifically wanted to

01:07:36

ask you, is specially Ashley

01:07:38

and Maria. The focus was

01:07:40

on storytelling and I can

01:07:41

understand that as far as

01:07:43

the human is concerned, but

01:07:44

when one is DraftKings for

01:07:46

the responded, is the focus

01:07:48

still on storytelling, or is



01:07:49

there a greater care to

01:07:51

avoid giving any additional facts

01:07:53

to achievement that they might

01:07:54

use in support of their

01:07:56

case? It's absolutely about storytelling

01:08:02

as well. Say for example,

01:08:05

your responded in an investor

01:08:09

State case of the statements

01:08:11

to explain in the standard

01:08:13

usually is reasonableness who you

01:08:15

need to explain why the

01:08:18

decree was issued to the

01:08:22

measure that affected the clean



01:08:23

behind that there is a

01:08:26

whole story to tell of

01:08:29

why the government reached to

01:08:30

the point that they needed

01:08:31

to issued a decree that

01:08:34

was not only in accordance

01:08:36

with the local law. But

01:08:39

All of the options for

01:08:40

Temple of the action from

01:08:41

play my motivated, the offense

01:08:44

of that decree. So you

01:08:45

need to tell the story

01:08:46

and it's absolutely about storytelling



01:08:48

and that goes back to

01:08:49

the point that I was

01:08:50

feeling earlier. When you're responded,

01:08:53

you need to tell the

01:08:54

affirmative story, not just be

01:08:56

on the defensive because you

01:08:59

miss that otherwise you must

01:09:00

be those very important. I'd

01:09:03

walk a few opportunities to

01:09:05

compel the tribunal of why

01:09:08

the way you acted. Why

01:09:09

why you did it? I

01:09:13

would also just say, you



01:09:14

know, if you think about

01:09:15

the facts as building blocks,

01:09:16

both sides have at some

01:09:19

point in proceeding, the same

01:09:20

that have blocks, but what

01:09:23

you build out of that

01:09:23

can be very different. And

01:09:25

this is where strategically ignoring

01:09:27

some facts. Maybe you do,

01:09:29

but very carefully. So they

01:09:30

don't come and buy your

01:09:31

Witnesses and experts on cross-examination.

01:09:33

But, but it's always about



01:09:35
the story. I mean, tribunal

01:09:37
members are humans and humans

01:09:38
want to know the why,

01:09:40
why why did all of

01:09:43
this happen. And so the

01:09:44
claimant is telling their tale

01:09:46
of Woe about why and

01:09:48
the government coming in and

01:09:49
they know know this is

01:09:50
very reasonable and they had

01:09:52
it coming, you know, that's

01:09:54
why so-so really the fax.

01:09:56
It is a story but



01:09:58

everybody has to tell their

01:10:00

story in the most compelling

01:10:01

way and you're again, the

01:10:04

title of the Tribune longer

01:10:05

trying to win over your

01:10:06

Tribunal. You can't win only

01:10:09

on your facts, you got

01:10:10

the law on your side,

01:10:11

but you can certainly lose

01:10:13

a case with not telling

01:10:15

the facts and especially if

01:10:17

you you know, we mentioned

01:10:18

this lightly but it can't



01:10:20

be over seated. You have

01:10:21

to maintain your credibility with

01:10:23

the tribunal. You cannot misrepresent

01:10:25

back so they don't trust

01:10:26

you. Even if you got

01:10:28

some of it right they

01:10:29

won't. They won't believe you.

01:10:30

So tell your story but

01:10:32

be credible. Wait we haven't

01:10:38

we may have additional questions

01:10:40

from the virtual origin and

01:10:43

but in the meantime I

01:10:46

would like to follow up



01:10:47

on on on what you

01:10:48

just said, Ashley. What is

01:10:53

the risk of not understanding

01:10:54

that this is about? Telling

01:10:58

a story, of course, substantiated

01:11:00

by the evidence, but still

01:11:02

a start. What is the

01:11:03

risk of Simply following a

01:11:06

chronology? Or simply indeed. Stating

01:11:12

that there's really no Clear

01:11:15

Proof of arbitrariness or expropriation.

01:11:21

What is the risk of

01:11:21

doing that? I'm simply saying,



01:11:23

well, these are the facts

01:11:25

and, and, and you should

01:11:26

ultimately apply the vit. And

01:11:30

and, and that's it. What,

01:11:31

what is the risk of

01:11:32

of Simply following are purely

01:11:35

to the technical approach? I

01:11:40

am. And this, this question

01:11:41

is, for all of you,

01:11:41

of course, where you just

01:11:45

were to tell the tribunal

01:11:46

that the facts speak for

01:11:47

themselves and they should, they



01:11:49

should read those facts and

01:11:50

figure it out for themselves.

01:11:50

You're assuming that your tribunal

01:11:53

is going to read the

01:11:54

facts, the same way that

01:11:55

you did all the supporting

01:11:56

documents and you're giving equal

01:11:58

weight. Every single fact, when

01:12:00

that's not usually helpful for

01:12:02

a case because some facts

01:12:03

do matter more some of

01:12:05

them you matter more. I

01:12:07

mean one gave an excellent



01:12:08

example where he said you

01:12:11

know that the police came

01:12:12

and they took away some

01:12:14

documents versus building the story

01:12:17

giving the atmosphere setting the

01:12:19

stage and then showing a

01:12:20

picture. I mean, one is

01:12:22

saying a fact and the

01:12:23

second way is telling a

01:12:25

story about it. Which, which

01:12:27

one do you think the

01:12:28

tribunal is more likely to

01:12:29

award damages for You John



01:12:33

and Andy decided of the

01:12:35

story? It's because I mean,

01:12:40

You're going to have the

01:12:41

tribunal will probably going to

01:12:43

be senior lawyers to get

01:12:44

to know the law. They're

01:12:45

going to be very technical

01:12:46

term, going to be cold

01:12:47

and you're not going to

01:12:49

read the Lord, but that's

01:12:50

not what you want, right?

01:12:52

So, you want someone to

01:12:53

weed your greeting and instantly,



01:12:55

you feel for your client.

01:12:57

And because at the end

01:12:59

of the day, you want

01:13:00

them, if you don't even

01:13:02

case you have to dispute,

01:13:03

it's because you're assuming people

01:13:05

are irrational, but it's because

01:13:09

the, it's, it's not as

01:13:11

settled as, it's not very

01:13:13

clear-cut case, right? And especially

01:13:16

when you pickle for a

01:13:17

nickel, double treatment or a

01:13:19

standard of, you know, I



01:13:21
know my best efforts. Did

01:13:24
you comply with all with

01:13:25
it? You like in good

01:13:26
faith. No. That's not always

01:13:29
clear, right? So at the

01:13:31
end of the day, you

01:13:32
want the tribunal to get

01:13:34
a sense of K. What's

01:13:35
just, what's what's the fair

01:13:38
decision here? It's going to

01:13:40
be who has the best

01:13:41
story? Then you won't mind

01:13:45
me to look at the



01:13:45
lawn. It may be that

01:13:47
they lose under the law,

01:13:48
but if it's a 50-50

01:13:50
issue or you going to

01:13:53
60/40 you when the tribunal

01:13:55
to be on your side.

01:13:56
So they might find a

01:13:58
way to justify the decision

01:14:01
that they feel is fair

01:14:02
under the law. And so

01:14:05
I think it doesn't really,

01:14:07
really important to, to to

01:14:09
tell a story more than



01:14:10

just facts and and low

01:14:12

and, and that's it. And

01:14:17

in addition to that, I

01:14:18

would add that. And if

01:14:20

you just stayed the fact,

01:14:21

you're giving the tribunal a

01:14:23

set of 20 years of

01:14:25

very complex facts without explaining

01:14:27

them, so you need to

01:14:29

explain them through your story.

01:14:30

And you need to make

01:14:32

that story digestible, and relatable,

01:14:35

simple. Something that you can



01:14:40

tell to the tribunal member

01:14:42

in an elevator think of

01:14:44

the elevator pitch. Why should

01:14:45

you rule for in our

01:14:46

favor? And then you have

01:14:47

the other three hundred pages

01:14:49

to explain why why you're

01:14:52

right? But just stating the

01:14:54

facts. I mean frankly they're

01:14:56

going to get bored. So

01:14:57

you're going to get bored.

01:14:59

You're going to think of

01:15:00

your watching a movie on



01:15:01

your board, your like, that's

01:15:04

it. But if it's a

01:15:04

compelling story at wonderful movie,

01:15:06

you're going to stay in

01:15:07

your going to sit down

01:15:08

for the, maybe 3 hours,

01:15:10

listening, or watching the movie.

01:15:13

So it's it's the same

01:15:14

thing as I said in

01:15:15

the beginning, humans. Biologically wire

01:15:19

to connect with stories. I'd

01:15:22

like to ask a question

01:15:23

regarding Quantum, me go a



01:15:26
little earlier showed the slides

01:15:28
and Quantum is really very

01:15:30
important but they're they're not

01:15:32
not all cases are straightforward.

01:15:34
Like the slides. We are,

01:15:36
you know, you'll have some

01:15:38
a loss of part of

01:15:40
your business but it's very

01:15:42
often the case like a

01:15:43
mine. For example, we are.

01:15:46
It had some income at

01:15:48
the removal of a license

01:15:50
brought about a stop of



01:15:53
most activities and really never

01:15:56
got off the ground. The

01:15:57
real big part of the

01:15:59
income that would be the

01:16:01
claim. Do you have some

01:16:04
ideas as close to me,

01:16:05
go alone and others? How

01:16:08
to deal with that? Were

01:16:10
supposed to call her as

01:16:11
well as the clean the

01:16:14
income, the damage that you,

01:16:16
that you have is not

01:16:17
cannot be proven 100%. Yeah.



01:16:25

Thank you for all the

01:16:26

question, you're right. I think

01:16:28

I I am purpose. Joseph

01:16:30

example and realities is more

01:16:35

complex. Many Casey said that

01:16:37

the case that that you

01:16:38

mentioned about, you know, preoperational

01:16:40

assets. Mean, we will leave

01:16:42

without a lot in that

01:16:45

case, I mean, they're all

01:16:46

depends how you are going

01:16:49

to argue your your damages

01:16:51

case. You know, if you're



01:16:53

going to go to say,

01:16:54

your claim is an extra

01:16:56

patient case, are you going

01:16:58

to ask for the fair

01:16:58

market value of that? I

01:17:00

said, are you going to

01:17:01

use a discounted cash-flow valuation?

01:17:03

Even if it's even if

01:17:05

it's an early stage? What

01:17:12

kind of messages can I

01:17:13

use for an early stage?

01:17:14

Where they say you're going

01:17:15

to use some form of



01:17:17
income approach? I think that's

01:17:19
right. When I will benefit

01:17:20
from seeing Evidence of business

01:17:23
plans contemporary projections that you

01:17:26
may have had at the

01:17:27
time evolution of stock prices

01:17:31
or evolution of, you know,

01:17:33
how hot water company with

01:17:35
assets, may have done after

01:17:37
the fact. So, going back

01:17:40
to how you going to

01:17:41
pretend that, you know, it's

01:17:42
not going to be as



01:17:43
straightforward as these, but your

01:17:45
evaluation presumably is going to

01:17:47
be anchored on some projections

01:17:50
or maybe, you know, my

01:17:58
recommendation and a particular since

01:18:00
you won't be able to

01:18:01
show performance because it's a

01:18:02
personal. I said. But you

01:18:04
know, what you think is

01:18:06
the most compelling set of

01:18:09
data that you have that

01:18:11
supports your use of that

01:18:13
particular method rice also even



01:18:15
pictures of the business plan,

01:18:17
right? So, it took me

01:18:18
for gas that we have

01:18:19
done that, so you want

01:18:21
to show them? This is

01:18:22
a business plan include a

01:18:24
small picture of the reasons

01:18:25
they can see the real

01:18:26
document that you've seen. That

01:18:29
is contemporary was prepared for

01:18:30
the company and prepare to

01:18:31
buy a bank that was

01:18:32
financing the project so that



01:18:35

we do that sometimes too

01:18:36

to give them a sense

01:18:38

of us to see to

01:18:40

suffer so that they can

01:18:41

see what we've seen when

01:18:42

we decided to do the

01:18:43

assessment now. Hey, so there's

01:18:54

also a question from one

01:18:56

of our online audience members.

01:18:57

Angela King is asking, how

01:19:00

does one deal with bad

01:19:02

facts that cannot possibly be

01:19:03

presented as a non-issue likely



01:19:06

because it is sufficiently relevant

01:19:07

or significant. I mean, if

01:19:14

it's something that you need,

01:19:22

you need to pick your

01:19:23

battles and when you have

01:19:25

them. So, yeah, if it's

01:19:27

definitely very obvious fact and

01:19:30

it's not very flattering or

01:19:32

your case you want to

01:19:34

mention it. And then you

01:19:35

want me to put it

01:19:36

into context and explain why

01:19:39

what it means and how



01:19:41

it fits into your story.

01:19:43

I mean, if it's, if

01:19:45

it's a, if you kills

01:19:46

your case, then don't file

01:19:48

their request. So so yeah.

01:19:54

I mean it's it's it's,

01:19:55

it's often a difficult strategic

01:19:59

goal at the moment of

01:20:00

the memorial because there's no

01:20:01

escaping it in the reply,

01:20:02

unless maybe the other side

01:20:04

didn't see it, which can

01:20:06

happen rarely. But it can't



01:20:09
happen and stuff. No reason

01:20:10
not to say anything about

01:20:11
it, but it's, it's at

01:20:14
the end of this very

01:20:15
strategic issue. yeah, I absolutely

01:20:19
agree with that and when

01:20:23
When you're responding, some of

01:20:26
the fact that the grand

01:20:28
brought out by, by claiming

01:20:30
that you can ignore them

01:20:33
a little bit as long

01:20:34
as you can, but if

01:20:35
they're brought up by claiming



01:20:37

its, I mean that I've

01:20:38

seen Breeze, where the respondent

01:20:40

seems like? No, I'm not

01:20:41

going to talk about that

01:20:42

and you should never do

01:20:43

that. You should take it

01:20:46

deal with it. Maybe turn

01:20:48

the tables around. See how

01:20:50

can you you can contextualize

01:20:52

it see how you can

01:20:53

explain? Except that very bad

01:20:55

decree that the government issued?

01:20:58

Well why did you ask



01:21:00
me if it was a

01:21:00
reasonable video? Hopefully you can

01:21:03
explain that it was not

01:21:04
entirely arbitrary and there was

01:21:07
a reason behind it. So

01:21:09
so there are many ways.

01:21:10
It's not a matter of

01:21:11
explaining it and making it

01:21:15
part of your story of

01:21:16
why you're right. And I

01:21:19
would also say, especially from,

01:21:21
if you're a respondent to,

01:21:23
to go back to a



01:21:24
point that Miguel made earlier,

01:21:25
it could be that, this

01:21:27
is a bad fact and

01:21:29
you did it in your

01:21:29
client, did it, but it

01:21:31
didn't actually cause harm. Like,

01:21:33
there's a very small amount

01:21:34
of damages attributable to that

01:21:36
act. And so, if you

01:21:38
can pull that out, then

01:21:39
that's the client are. The

01:21:41
claimant isn't going to put

01:21:43
that in their story. They



01:21:44

do they did this and

01:21:45

it's awful in, but it

01:21:46

didn't hurt me. So that's,

01:21:47

that's for you to do.

01:21:48

And I will say you,

01:21:52

no writing writing a drafting

01:21:54

of action is an equal

01:21:55

and creative writing exercise, not

01:21:58

because you're being creative. It's

01:22:01

clever with the facts but

01:22:03

because you have, you were

01:22:04

given a set of facts

01:22:06

that you simply have to



01:22:07

deal with. And how do

01:22:09

you tell that story is

01:22:11

up to you? You know,

01:22:12

how can you make it

01:22:12

as compelling as possible? And

01:22:14

so I mean that's why

01:22:15

I think we all enjoy

01:22:16

this topic so much and

01:22:18

why we often work on

01:22:20

the facts teams at our

01:22:21

firms. As because of that

01:22:23

were there, any other questions

01:22:25

you have time? One more



01:22:31
more advice on academic stuff

01:22:34
which is from sang Mitra.

01:22:39
And she asked me are

01:22:41
there courses that International students

01:22:44
could take in law schools,

01:22:45
that would make the process

01:22:48
of learning to draft. Well

01:22:50
before they start working at

01:22:53
law firm in his laptop

01:22:55
with Jason. And I didn't

01:22:56
know that some of you

01:22:57
or many of you might

01:22:59
teach and Etc. Any advice



01:23:01

on that. Amateur this a

01:23:05

course for their lost puppy.

01:23:06

At least I started blowing

01:23:07

in Argentina, in the US

01:23:09

have never seen that. But

01:23:12

the courts and the Lux

01:23:14

mood course. So I mean,

01:23:15

it's the best way to

01:23:18

learn York City. They the

01:23:20

only issues you have a

01:23:21

limited set of facts but

01:23:23

you got to get creative

01:23:24

with them. So I think



01:23:25

it's ya, do mccourt's. I

01:23:30

mean, I went to law

01:23:32

school a million years ago

01:23:33

and I don't remember there

01:23:34

being course is about that,

01:23:36

but I would also say

01:23:37

it can be sort of

01:23:40

a slow night end, but

01:23:42

read pleadings read, read out

01:23:45

an array of pleadings by

01:23:46

different law, firms. By different

01:23:49

cases from Lehman's from respondents.

01:23:51

You will see pretty quickly



01:23:53

which ones are good and

01:23:55

which ones aren't and it's

01:23:56

a little shocking. How many

01:23:57

are out there that aren't

01:23:58

great. But you know, Read

01:24:02

other Burns pleadings and a

01:24:05

really beautifully drafted bleeding. You

01:24:08

know. It's a thing of

01:24:09

beauty and it's awful when

01:24:10

you're opposing counsel submissive because

01:24:12

yeah, they should win. No,

01:24:15

no, they can't you know

01:24:16

so it's a read other



01:24:18
pleadings. It's a good way

01:24:20
to get exposed but I'm

01:24:21
not aware of any courses.

01:24:23
And a nun that I

01:24:25
would only add read. Opposing

01:24:30
pleadings and like hi caliber

01:24:32
paintings because there's a narrative

01:24:34
on one side, there's narrative

01:24:36
on the other side and

01:24:37
you can compare I think

01:24:40
that what we're just one

01:24:42
minute. I'll just stand there

01:24:44
and thank you all.