



## **Practical Session: Drafting the Procedural Order and the First Hearing: Workshop on investor-State and International Commercial Arbitration on How to Draft the Procedural Order \***

### **Summary**

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

The session at Washington Arbitration Week, moderated by Jose Antonio Rivas, focused on the significance of Procedural Order Number One (PO1) in international arbitration. Rivas introduced the event, emphasizing its role in fostering knowledge within the international arbitration community. He acknowledged the contributions of various sponsors and participants, including Jeff Rosenberg, a prominent figure in international dispute resolution.

The panel included experienced practitioners: Jose Garcia, Stacy K. A. C., Simon Considine, and Ken Figueroa. They discussed the importance of the first session in arbitration, highlighting that it is a crucial moment to make a strong first impression on the tribunal. The panelists stressed the need for attorneys to be well-prepared, flexible, and appropriately dressed, as first impressions can have lasting impacts.

The conversation transitioned to the evolution of procedural orders, noting advancements in technology and the shift towards virtual hearings. The panelists agreed that while virtual sessions have become common, in-person meetings can provide valuable insights into tribunal dynamics.

Key topics included the content of PO1, with the panelists providing their opinions on what should be included, such as applicable rules, identification of counsel, confidentiality agreements, and procedures for witness and expert testimony. They debated whether to address hearing logistics in PO1 or defer them to a pre-hearing conference, ultimately advocating for clarity and thoroughness upfront to avoid complications later.

The discussion also touched on strategies for handling uncooperative opposing counsel and managing client expectations regarding advocacy styles. The importance of direct communication with opposing counsel was emphasized as a means to streamline procedural discussions.



The session concluded with a Q&A segment, addressing common concerns in arbitration, such as the penalties for late submissions and the importance of confidentiality in proceedings. Overall, the panel underscored the evolving landscape of arbitration practices and the importance of maintaining professionalism and clarity throughout the process.

### **Authors**

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### **Topics**

Drafting, Procedural Order, First Hearing, Investor-State Arbitration, International Commercial Arbitration, Workshop

### **Category**

WAW

### **Full Transcript**

00:00:29

So good afternoon everyone and

00:00:32

welcome once again to Washington

00:00:34

arbitration, which this is I

00:00:37

believe I have lost count

00:00:39

but I'm pretty sure that

00:00:41

not work over a half

00:00:43

of our program and with

00:00:46



with great success. I would

00:00:48

like again to say thank

00:00:49

you to Decker which has

00:00:51

been a great host. And

00:00:54

for those that might not

00:00:55

or might be new to

00:00:58

Washington on vacation week at

00:01:00

my name is Jose Antonio

00:01:01

Rivas and I am one

00:01:03

of the co-founders of squash

00:01:05

is arbitration week 4 years

00:01:07

ago. We we started this

00:01:08

adventure trying to in a

00:01:13



waster of the the Washington

00:01:16

International nutrition community and those

00:01:20

that that are related to

00:01:22

Washington d.c. Either through International

00:01:24

TSA schnoor International Investment International

00:01:27

commercial arbitration. And it's been

00:01:31

4 years and and that

00:01:32

we're really excited at that

00:01:33

all the panels have been

00:01:35

heavily concerned and that where

00:01:38

we're bringing more and more

00:01:40

part of the international arbitration

00:01:41

community calendar is is in

00:01:45



there from crawl in the

00:01:46

morning and and I hit

00:01:48

myself on International arbitration practice.

00:01:51

You're in DC. We do

00:01:55

investor-state arbitration as well as

00:01:57

International commercial arbitration and public

00:01:59

international law, but this is

00:02:01

not so much about me.

00:02:02

But but not about those

00:02:04

that have been making this

00:02:08

this possible that happened enabling

00:02:10

us to make this possible

00:02:11

among Scholars or sponsors and

00:02:15



on our Advisory board members

00:02:18

and one of them is

00:02:20

Jeff Rosenberg who actually helped

00:02:22

us quite a bit during

00:02:25

during the the whole 4

00:02:27

edition. So thank you chip

00:02:29

and I know that you

00:02:30

want me to keep it

00:02:32

light, but I have to

00:02:33

say that at the time.

00:02:37

Cheap was between firms, I

00:02:39

believe and then he became

00:02:41

counsel and now he reappeared

00:02:44



in in our International nutrition

00:02:46

life. And now he's a

00:02:46

partner is at Squire Patton

00:02:50

Boggs, and he is of

00:02:54

course in the group of

00:02:56

international dispute resolution. He is

00:02:58

a specialist in public international

00:03:00

law and international arbitration focusing

00:03:03

on goals investment re arbitration

00:03:06

and international commercial arbitration. He

00:03:08

has experience in under various

00:03:11

rules of international arbitration including

00:03:13

ICC the switch Chamber of

00:03:17



Commerce NASA and the DCT

00:03:20

arbitrations also specializes in the

00:03:23

US and international enforcement of

00:03:26

Court judgements an arbitral award

00:03:28

before Having the two chips,

00:03:33

I would like to say

00:03:33

that this this actual session

00:03:35

is one or for a

00:03:37

few that we decided to

00:03:40

implement in Washington arbitration with

00:03:43

you which are practical session

00:03:44

how to do things. We

00:03:48

are very excited about the

00:03:50



panels that have some special

00:03:54

specialization topics director have many

00:03:58

but the question is how

00:04:01

to expand knowledge amongst our

00:04:05

own community and those that

00:04:07

might be coming at to

00:04:09

enter our community. So part

00:04:12

of the mission of of

00:04:13

Washington arbitration week is is

00:04:14

it and you can't within

00:04:17

our community and Beyond and

00:04:19

that is one of the

00:04:20

reasons why as you know,

00:04:22



Washington arbitration week is completely

00:04:27

Cost free and we want

00:04:30

to keep it that way.

00:04:31

Currently. We have people from

00:04:33

various last American states here.

00:04:35

We have people from from

00:04:37

Europe from France and China.

00:04:39

I don't want we want

00:04:40

to keep on expanding the

00:04:43

notion of international relations because

00:04:44

I strongly believe that that

00:04:46

parts of depression of the

00:04:49

system is that many might

00:04:52



not understand what it is

00:04:53

and therefore we need to

00:04:58

keep on doing that. So

00:04:59

with that thank you. Thank

00:05:03

you very much for the

00:05:04

Antonio. Good afternoon and welcome

00:05:07

to this town discussion on

00:05:09

procedural order number one and

00:05:12

the first session. Now perhaps

00:05:16

I'm a little biased because

00:05:18

I moderating the stand on

00:05:19

but in my view this

00:05:22

is the most important practical

00:05:25



and relevant program in Washington

00:05:28

arbitration week why you may

00:05:32

ask well if you have

00:05:36

an arbitration where the kids

00:05:37

can sit down and fiction

00:05:39

and damages don't matter. Well

00:05:40

you made a panel on

00:05:41

bifurcation trifurcation, but hey, there's

00:05:44

no choice of subjects in

00:05:45

arbitration, so it doesn't even

00:05:47

come up. In contrast every

00:05:50

single International Tracer more or

00:05:53

less has a procedure or

00:05:55



number one and a first

00:05:56

session. Given the popularity and

00:06:01

importance of these two aspects

00:06:04

we've assembled this panel of

00:06:06

extremely experienced International arbitration practitioners

00:06:10

in their words. They've done

00:06:13

this dozens of times. So

00:06:16

allow me to very briefly

00:06:18

very very brief. Am I

00:06:21

right is Jose Garcia Twitter?

00:06:26

He's a partner at Clifford

00:06:27

chance. He's originally from Spain.

00:06:29

Correct. Correct. Good good received

00:06:33



from Georgetown law has been

00:06:35

with Clifford chance for nearly

00:06:37

a decade. Fun fact like

00:06:40

me despite having a formal

00:06:42

name of Jose Garcia. It

00:06:44

goes by the more informal

00:06:46

name. What's the correct next

00:06:54

is a c k Stacy

00:06:56

is an international relations specialist

00:06:58

at Crowell & moring where

00:06:59

she has been since 2007.

00:07:01

She has earned her JD

00:07:02

from the University of Miami

00:07:04



Law School. Fun fact Stacy

00:07:08  
is an avid fan of

00:07:09  
my NFL team has the

00:07:12  
best record in the NFL.

00:07:17  
Next is Simon considine. He's

00:07:30  
council at three crowns here

00:07:32  
in Washington. He received his

00:07:33  
LM from Columbia Law School

00:07:35  
and privacy practice International tration

00:07:38  
at freshfields. Fun fact despite

00:07:43  
popular misconception or perhaps just

00:07:46  
mine Simon hails from New

00:07:48  
Zealand nuts, Australia Jordan. Fun

00:07:53



fact that one lastly. We

00:07:56

have Ken Figueroa. Correct. Correct,

00:08:00

Hawaii during DC earned his

00:08:07

ba from Yale and his

00:08:09

JD from Columbia. Fun fact

00:08:12

end speaks three languages another

00:08:15

fun fact, that's two more

00:08:16

languages. This program will be

00:08:21

run as follows. I first

00:08:23

I have some questions for

00:08:24

the panelists at the end.

00:08:28

We'll have a separate question-answer

00:08:29

session book for fleas throughout.

00:08:32



If you have any questions,

00:08:33

feel free to raise your

00:08:34

hand and asked if he

00:08:36

great to make this interaction.

00:08:40

Okay. the starting off topic

00:08:44

1 you only get one

00:08:47

chance to make a good

00:08:48

first impression. The first session

00:08:52

is the first time that

00:08:53

the parties need the Tribunal.

00:08:56

Panelist What's significant about this

00:08:58

first meeting your way your

00:09:01

your best suit your practice

00:09:03



and to ensure that you

00:09:04

can correctly pronounce. The arbitrator's

00:09:06

names what's significant? Okay, I'll

00:09:15

start taking this one. Obviously

00:09:16

Antonio. Thanks to the Western

00:09:19

arbitration week for inviting me.

00:09:21

Thank you for everyone who's

00:09:22

here. And who's the remote

00:09:24

I will answer this one

00:09:26

by quoting one of our

00:09:28

hosts are officially who said

00:09:30

while overlooked by some as

00:09:32

a formality. We underestimated and

00:09:38



then he has ads as

00:09:40

in every form of. Advocacy

00:09:41

First Impressions can be lasting.

00:09:46

The first time you need

00:09:47

your tribunal you have an

00:09:48

excellent opportunity to introduce yourself

00:09:51

to introduce your client and

00:09:54

you get to introduce your

00:09:55

case. You need to be

00:09:57

flexible to the extent in

00:10:00

my opinion that you pee

00:10:01

too much. You can eliminate

00:10:02

the tribunal on the other

00:10:04



side can object. If you

00:10:06

are too shy maybe you'll

00:10:07

lose a wonderful opportunity. So

00:10:11

always remember that one. It

00:10:14

is important to go well-dressed.

00:10:16

I seen is a practical

00:10:18

panel. I really literally seen

00:10:20

people in t-shirts and smoking

00:10:21

cigarettes while on a station

00:10:23

that he didn't look very

00:10:26

well second be preferred. There

00:10:29

is a huge difference between

00:10:31

the attorney who's there who's

00:10:33



read the the differences has

00:10:35

prepared the differences and he's

00:10:37

ready to pee to the

00:10:38

tribunal gently on the differences

00:10:40

between the parties and that

00:10:42

another person who comes unprepared

00:10:43

you may bring stats. You

00:10:46

may bring figures from other

00:10:47

cases. You may bring examples.

00:10:50

My point is be ready,

00:10:51

but not only be ready

00:10:53

for the differences get ready

00:10:55

also for questions on this

00:10:56



cuz something's driving us go

00:10:58

off road and Princess two

00:11:00

weeks ago. I had our

00:11:01

first session and we decided

00:11:03

that our calendar. They agreed

00:11:05

calendar by the parties. It

00:11:06

doesn't like so we had

00:11:08

to adjust to you. Wait,

00:11:13

that's about the parties agree

00:11:14

or are you flexible? You

00:11:16

need to be right to

00:11:17

be flexible? Because remember this

00:11:19

is one game. You have

00:11:21



a whole league you need

00:11:22

to win the season. That's

00:11:23

when you get your don't

00:11:25

alienate the members of your

00:11:27

Tribunal. That doesn't mean be

00:11:29

soft to the extension. You

00:11:31

don't need the last thing

00:11:33

I would say is. there's

00:11:36

a misconception in my opinion

00:11:38

as to the importance between

00:11:40

in-person and virtual but I've

00:11:43

seen one thing that is

00:11:44

and we will further discussing

00:11:47



this later and what I've

00:11:48

seen recently in the last

00:11:49

3 years. It is very

00:11:52

difficult to read the Dynamics

00:11:53

of the tribunal With Your

00:11:55

Truck lyrics it's the first

00:11:57

time you're seeing them interact

00:11:58

and basically what happens in

00:12:00

this week's to Poker Face

00:12:04

has an indie keep going.

00:12:07

Two separate rooms to discuss

00:12:08

this does not happen in

00:12:10

in person cases. So your

00:12:11



case you think is important.

00:12:12

You don't know the interaction

00:12:14

with the with the tribunals.

00:12:16

Another important thing for the

00:12:18

first session is not only

00:12:19

make a good impression try

00:12:21

to push for an in-person

00:12:22

hearing and I know it's

00:12:23

more costly but but that's

00:12:30

something I see and what

00:12:33

do you guys think? I

00:12:34

agree with everything? You said

00:12:36

I think in the last

00:12:38



5 years we change with

00:12:41

these first procedural sessions because

00:12:43

five years ago. It was

00:12:45

absolutely the case that the

00:12:46

default was that the first

00:12:47

session would be in person.

00:12:49

If you were the potty

00:12:51

who was seeking to do

00:12:52

it the AAA you had

00:12:55

the onus of proving why

00:12:56

that should be the case.

00:12:57

I think it's very clear

00:13:01

that that's not completely slept

00:13:02



that it is the default

00:13:04

position is that these kinds

00:13:06

of procedural conference should proceed

00:13:08

with Sheila it'll possible and

00:13:09

if you do the potty

00:13:10

who is seeking to do

00:13:11

it in person you need

00:13:12

to justify why that expense

00:13:14

and delay that is usually

00:13:16

Occasions by that this is

00:13:19

necessary. You will find yourself

00:13:22

is Council Under Pressure to

00:13:24

do this virtually that has

00:13:26



become the default as I

00:13:27

say don't do stunts. So

00:13:31

reflexively adult that position. They

00:13:33

will be times when the

00:13:36

issues that are still to

00:13:37

be resolved between the parties

00:13:38

that need to go to

00:13:39

the tribunal very simple guy.

00:13:42

I should we have three

00:13:43

months between briefs or three

00:13:45

and a half months. So

00:13:46

we should we use the

00:13:46

schedule or the Redskin schedule,

00:13:49



but all the times they

00:13:52

will be issues in your

00:13:53

case. That is sufficiently material

00:13:55

to the overall direction and

00:13:59

potentially the outcome of the

00:14:00

case that you really do

00:14:02

want to be arguing those

00:14:04

in person in front of

00:14:05

the tribunal has to give

00:14:07

one and it go to

00:14:08

not wanting to delve into

00:14:10

war stories to do much

00:14:11

but Some years back. I

00:14:15



was representing Elliott again in

00:14:17

its investment treaty arbitration against

00:14:19

the Republic of Korea and

00:14:22

we filed a notice of

00:14:24

arbitration and statement of claim

00:14:26

on the Beyond suit railroad

00:14:29

to commence the case. That's

00:14:31

the language of the relevant

00:14:32

Raul. It requires you to

00:14:34

file a notice of arbitration

00:14:36

and statement of claim. Now,

00:14:38

what we actually filed was

00:14:40

really just a notice of

00:14:41



arbitration in the usual way

00:14:42

of giving the background facts

00:14:44

of the case, you'd be

00:14:45

usual nuts and bolts that

00:14:47

go in that first pleading

00:14:49

that in the CIT arbitration

00:14:50

the Republic of Korea responded

00:14:53

to your the next step

00:14:58

in this proceeding will be

00:14:59

that we will fly last

00:15:00

time the defense And then

00:15:03

obviously represented a serious the

00:15:04

front to a claimant who

00:15:06



is essentially The Proposal as

00:15:08

you will be deprived of

00:15:09

what you expected which is

00:15:11

that you will get to

00:15:12

put in a statement of

00:15:13

claim a company by witness

00:15:14

statements to Company by expert

00:15:15

report in the usual way.

00:15:17

We were unable to reach

00:15:19

agreement with counsel for Korea

00:15:20

that was a point of

00:15:22

immense gratitude to the overall

00:15:24

direction of the case. We

00:15:26



felt it was not obvious.

00:15:28

What why the tribunal Woodrow

00:15:30

because the wording of the

00:15:31

language and used railroad was

00:15:33

a bit strange and we

00:15:35

definitely want to that point.

00:15:37

I'll get it in person

00:15:38

and we did not want

00:15:40

to leave that to what

00:15:41

was at the time a

00:15:42

relatively novel thing of doing

00:15:44

these over a video conference.

00:15:46

So you will find yourself

00:15:49



under pressure to to do

00:15:51

them to actually because that

00:15:52

space things out that's easier

00:15:54

for everybody Fox ask yourself.

00:15:56

Is this something that's on

00:15:58

the ballot for this hearing

00:16:01

that is so in Wouldn't

00:16:03

that I really do think

00:16:04

we need to be in

00:16:05

person and if so fight

00:16:07

for that interesting hearing. Just

00:16:13

one really big, I'm just

00:16:15

so I'm going to follow

00:16:16



up with Mike. OK mentioned

00:16:17

to me the most important

00:16:18

aspect of the first session

00:16:20

is seeing how the tribunal

00:16:22

interacts in months. Do you

00:16:24

have to remember we are

00:16:26

very small community very small,

00:16:28

you know, we're all going

00:16:30

to see each other again.

00:16:31

I'm going to definitely see

00:16:32

each of my Coke analyst

00:16:34

in some cases in the

00:16:37

future. I'm sure. They all

00:16:40



know each other. They probably

00:16:42

been on panels together. They

00:16:43

probably socialized together. So you

00:16:46

really want to see how

00:16:47

the tribunal interacts does the

00:16:49

president kind of lean a

00:16:50

little more to the right

00:16:51

and because he or she

00:16:53

may know she may know

00:16:54

somebody, you know on this

00:16:56

side of the panel versus

00:16:58

the side of the panel

00:16:58

and maybe the person knows

00:17:00



this person a little better.

00:17:01

So you kind of want

00:17:02

to see you know, who

00:17:03

are they going to do

00:17:04

a little more are the

00:17:05

interacting a lot of monks

00:17:06

each other or are they

00:17:07

kind of keeping to themselves?

00:17:08

So to me that actually

00:17:11

is the most important kind

00:17:12

of knowledge you can gain

00:17:14

as far as progressing your

00:17:16

case forward is washing to

00:17:17



see how the tribunal members

00:17:19

interact amongst each other obviously

00:17:23

completely agree with Michael panelists

00:17:25

as far as do our

00:17:26

presentation, but to me the

00:17:28

most important information you can

00:17:30

gain is how the tribunal

00:17:32

is interacting amongst themselves. How

00:17:37

have you managed to deal

00:17:39

with this? Cuz I really

00:17:41

struggle distance to see the

00:17:42

Dynamics many percent. Absolutely. Do

00:17:45

you definitely don't honestly see

00:17:49



that is probably the first

00:17:50

10 or 15 minutes when

00:17:51

the tribunal is getting settled

00:17:52

if they have an automatically

00:17:54

dumped you into a breakout

00:17:55

room. You know, I I

00:17:57

was just going to hearing

00:17:59

not a profession hearing but

00:18:01

any of her to a

00:18:01

hearing last week and the

00:18:04

tribunal members knew each other

00:18:06

very well. They we were

00:18:08

just put into the into

00:18:10



the main hearing and everybody

00:18:11

was put into the main

00:18:12

hearing room and at least

00:18:14

two other tribal members came

00:18:16

hello-how-are-you the great to see

00:18:17

you last week. Let's have

00:18:18

coffee and then the other

00:18:20

one came in and they

00:18:21

you know, we're talking on

00:18:23

the phone to each other

00:18:24

on the phone. So, you

00:18:28

know, that was the time

00:18:29

we actually got to see

00:18:30



how they interacted with each

00:18:32

other. And then once we

00:18:34

went into the hearing, you

00:18:36

know any time we went

00:18:37

to a breakout they went

00:18:38

right into their breakout room

00:18:39

and we saw Interaction until

00:18:41

they came back in the

00:18:41

president you never address the

00:18:43

parties so that that was

00:18:45

really the only time but

00:18:47

otherwise, yeah completely agree. It

00:18:49

is very hard to read

00:18:50



my age here. But I

00:18:54

remember was first such as

00:18:55

we're telephonic they were done

00:18:57

by conference call, right? But

00:18:58

to me, it's a virtual

00:19:01

what you were doing in

00:19:04

conference calls. You had no

00:19:05

idea what was going on

00:19:06

tried, you know some arbitrator

00:19:08

something we sit together another

00:19:09

one was off because he

00:19:10

couldn't make it wherever the

00:19:11

arbitrator's were. So I think

00:19:13



this at least lets you

00:19:14  
see a little bit of

00:19:15  
the body language of the

00:19:17  
arbitrator's I'm going to be

00:19:19  
representing states. There is a

00:19:20  
cost issue in which you

00:19:22  
do for the first session

00:19:23  
of procedural matters in particular

00:19:25  
is really not an upside

00:19:27  
to do it in person.

00:19:28  
Unless everybody happens to be

00:19:30  
an all the arbitrator's happen

00:19:31  
to be near the same

00:19:32



city is very difficult. It's

00:19:37

virtually impossible, but sometimes you

00:19:38

can tell subtly by The

00:19:40

question then back up ques

00:19:41

do Mexico arbitrators right? Where

00:19:44

is and where is the

00:19:45

president kind of kind of

00:19:46

pushing with respect to a

00:19:47

particular question or not? And

00:19:49

that's going to be valuable

00:19:49

going forward to my one

00:19:51

comment in my own advice

00:19:53

and picking up on underwear.

00:19:54



My co-pilot sucks that it

00:19:56  
is not to be careful

00:19:57  
and turns giving us a

00:19:59  
first impression when to press

00:20:01  
your pleading when it went

00:20:03  
to argue your case or

00:20:04  
not you but sometimes you

00:20:05  
are going to have to

00:20:06  
us as I've been mentioned

00:20:07  
but generally UPS ground to

00:20:09  
pot right? So if there's

00:20:09  
a way you can trust

00:20:11  
us whatever All You Need

00:20:12



To Say by saying this

00:20:13

is not the moment. I

00:20:14

realize this will be a

00:20:16

moment. We'll play this one

00:20:17

of our you this but

00:20:18

because my pros and cons

00:20:20

about this up, I need

00:20:21

to mention XYZ and I

00:20:23

think that's critical because otherwise

00:20:24

you do immediately get tied

00:20:27

by the tribunal as kind

00:20:28

of that argumentative party stuff

00:20:33

tomorrow. So when we come

00:20:40



Let's talk now about the

00:20:41

evolution of procedural order number

00:20:45

one. How have you seen

00:20:46

procedure or a number ones

00:20:48

change or of ball over

00:20:50

time? I'll start on that

00:20:52

one when I first started

00:20:55

and I've been doing this

00:20:56

since 2007 and my very

00:20:58

first case in case we

00:21:01

had a file buy stocks

00:21:02

and we had to get

00:21:04

all of our correspondents by

00:21:05



fax to imagine filing a

00:21:07

200-page grief plus a couple

00:21:09

hundred pages of witness statements

00:21:11

at 11:45 at night dreaming

00:21:13

of a fax machine to

00:21:14

go faster. So and not

00:21:17

only are probably use the

00:21:18

old one filing that's probably

00:21:19

other people filing in other

00:21:21

matters also tying up a

00:21:23

fax machine. So I cannot

00:21:25

tell you how many times

00:21:26

you know, we would we

00:21:27



would stand there in literally

00:21:29

yell at the fax machine

00:21:29

to go faster. So a

00:21:33

transmission of documents is definitely

00:21:35

one way that we have

00:21:36

seen things changed. Just technology

00:21:39

and Jen. Has really changed

00:21:40

how to proceed orders of

00:21:42

bolts. We used to have

00:21:43

to do everything in paper

00:21:44

tribunals never wanted anything all

00:21:46

the electronics, you know, we

00:21:48

would submit everything we have

00:21:50



facts and then we would

00:21:51

have it all printed out

00:21:52

and a group of paralegals

00:21:54

sitting in a conference room.

00:21:55

Not unlike this one to

00:21:56

seeing boxes and boxes and

00:21:59

boxes of exhibits and then

00:22:00

sending it off so papers.

00:22:02

Definitely one way that we

00:22:04

seen a virtual hearings obviously

00:22:08

are now commonplace where you

00:22:10

know, even a few years

00:22:11

ago a witness testified by

00:22:13



video conference with controversial the

00:22:15

matter you so and I

00:22:19

think the the future and

00:22:21

where we're going, you know,

00:22:23

what is that talking about

00:22:24

things like cyber security data

00:22:26

and a I are now

00:22:28

commonplace where is before? I

00:22:29

don't think we even thought

00:22:31

about it as even an

00:22:32

issue. That should come up

00:22:33

in a procedural. What are

00:22:34

but now you expected especially

00:22:37



if you're dealing with an

00:22:38

EU based party. Fiber in

00:22:40

particular and data protection. They're

00:22:43

all really common place. Now.

00:22:45

I'm not sure if any

00:22:46

of Michael panelist have any

00:22:47

other comments are things they've

00:22:48

seen or even a lucky

00:22:53

you are. It's absolutely true.

00:22:56

You're quite you got your

00:23:04

answer and within 30 days

00:23:06

and all of these things

00:23:06

in it, you know, the

00:23:07



electronic filing has made life

00:23:09

a lot easier and absolutely

00:23:10

there is nothing worse than

00:23:11

you finally file on a

00:23:13

Friday night and electronically and

00:23:14

then you wake up the

00:23:16

next day and remember all

00:23:17

Wild by Monday. We've got

00:23:19

a send-off, you know, a

00:23:21

paper copies of this and

00:23:22

they will go to be

00:23:22

paged her and everything like

00:23:24

that. So I think a

00:23:25



very happy Eeveelution boats for

00:23:26

the planet and prettiest fiance

00:23:28

is is the increased focus

00:23:30

on on electronic filing being

00:23:32

being in office and fortunately,

00:23:33

you know, many many are

00:23:35

betrayed his nowadays often busy

00:23:37

and on the go there

00:23:38

there. I'm way better at

00:23:41

using technology. There are many

00:23:44

who don't fall in that

00:23:45

category still of course and

00:23:46

I think as a say

00:23:48



a generation grows older and

00:23:51

become the arbitrators of the

00:23:53

of the next 20-30 years.

00:23:54

I think it will only

00:23:56

continue to be the case.

00:24:01

No, that's why they're maybe

00:24:04

what I've seen him one

00:24:05

part of the old as

00:24:06

you are used to stamp

00:24:08

documents. Manually right. One. That

00:24:13

was a that was interesting,

00:24:14

but would at least what

00:24:19

I thought he was back

00:24:20



in the day were three

00:24:21

pages and then you add

00:24:23

up to \$20 for every

00:24:26

issue. Now, I think I

00:24:27

do know is are maybe

00:24:28

more sophisticated or their parties

00:24:29

are more sophisticated to and

00:24:31

we try to address most

00:24:32

of it until 1. So

00:24:34

now we have like 20

00:24:35

Pages if you want, but

00:24:37

yes, it's cleaner. One practical

00:24:40

comment when you get tier

00:24:42



one and they're weird stuff

00:24:44

like there's weird. Let's use

00:24:46

this protocol. Why don't we

00:24:48

use this data protection thing?

00:24:51

Please check if the members

00:24:53

of the tribunal have actually

00:24:54

participated doing that cuz I

00:24:56

had a very fun experience

00:24:57

like 6 months ago in

00:24:59

which opposing counsel was basically

00:25:00

saying what are the CPR

00:25:02

things on I really dumb

00:25:04

cuz I can't remember International

00:25:07



arbitration do the 2022 thing

00:25:09

very novel and its share

00:25:11

of our tribunal. She had

00:25:12

drafted. On the other side

00:25:15

was basically saying this is

00:25:16

useless. Of course, there are

00:25:22

things that you're not used

00:25:24

to. Maybe just go back

00:25:26

check. What are they and

00:25:28

who preferred them? Cuz you

00:25:30

may be at you may

00:25:31

be losing an excellent opportunity

00:25:32

to maybe congratulating someone or

00:25:35



you may get yourself into

00:25:37  
a I'll be cold by

00:25:38  
Annie a lion eating one

00:25:39  
of the members of your

00:25:40  
tribe in my experience. I

00:25:42  
think one way in which

00:25:48  
has changed. I know what

00:25:49  
kind of bread is that?

00:25:50  
There's always now at least

00:25:52  
what I've seen and I'll

00:25:53  
be curious to see if

00:25:54  
it still exists in some

00:25:55  
of the more recent ones

00:25:56



but there's always a cause

00:25:59

they're about what happens if

00:26:00

someone gets over to where

00:26:01

there's a Public Health crisis,

00:26:03

right? And there's already has

00:26:05

the arbitrator's thinking. Well, someone

00:26:06

does get colder. There is

00:26:08

some kind of public health

00:26:09

issue. What are we going

00:26:10

to do? We're going to

00:26:10

suspend the hearing we're going

00:26:12

to negotiate another proceeding. There's

00:26:14

going to be a true

00:26:16



test ammonia for example, and

00:26:18

that's been much more common

00:26:19

in at least the ones

00:26:20

I've seen either recently. It's

00:26:21

still there. But I think

00:26:23

that now that covid is

00:26:23

kind of more of just

00:26:24

like a It'll become a

00:26:26

little bit more of a

00:26:27

typical flu thing. Maybe there's

00:26:28

less and less of that.

00:26:29

But but I remember that

00:26:30

change. Okay, we're going to

00:26:34



move now to the contents

00:26:36  
of p01 and this is

00:26:39  
I believe going to be

00:26:40  
a while. She's in arbitration

00:26:42  
week first the way that

00:26:45  
we do this, so I'm

00:26:47  
going to identify a list

00:26:50  
one by one of a

00:26:51  
pair of an issue and

00:26:53  
I want each of the

00:26:54  
panelists a very quickly. Give

00:26:55  
me a yes. It should

00:26:57  
be include a one or

00:26:58



no one should not be

00:26:59

included. I have a list

00:27:01

of the top 20 and

00:27:09

we just want a yes

00:27:10

or no. All right applicable

00:27:15

rules. What? a lawyer for

00:27:25

the arbitration Identification of counsel

00:27:33

yes. Yes. Yes. Yes. Yes,

00:27:35

Oregon identification tribunal secretary or

00:27:48

a system. Ideally, yes, yes.

00:27:52

Yes. Yes confidentiality. Can I

00:27:59

take depends on the case?

00:28:01

And make you say yes

00:28:02



or no? No, yes. Yes.

00:28:08

Yes production process including whether

00:28:16

a red fern schedule or

00:28:17

astern schedule. What the steps

00:28:27

are going to be? Yes,

00:28:28

whether it's a Redfin or

00:28:29

Stern. No. I was saying

00:28:32

yes to both not extraordinary

00:28:35

detail. The basic steps were

00:28:37

going to be but I

00:28:38

do think right for her

00:28:39

strength matters because reading it

00:28:41

this way restaurant tremendously important

00:28:44



structural witness statements structure of

00:28:58

witness statements. buy structure meeting

00:29:09

that the witness statement the

00:29:10

other basic structure into the

00:29:11

basic elements that don't have

00:29:13

to be that yes. Details

00:29:17

about structured expert report no,

00:29:19

no, no. Translations yes. Yes.

00:29:26

Yes. Yes Manner and timing

00:29:30

a filing submission. I'm going

00:29:34

to have to say yes

00:29:35

to that your paralegal appreciate

00:29:38

that. Yes. Yes. earring location

00:29:45



Yes. Yes to the city

00:29:47

but not to the specific

00:29:48

venue for the seat but

00:29:52

not so where the hearing

00:29:53

will eventually be. I'm next

00:30:03

hearing bundles. Oh, yeah. Absolutely.

00:30:10

Yes. Democracy is adhering. Nope.

00:30:17

Yes or no. Reporting at

00:30:26

hearing no. No, no. Witness

00:30:32

attendance at hearing including use

00:30:34

of virtual testimony. Yes, I

00:30:40

think so. Procedure for witness

00:30:45

testimony at hearing no. Yes.

00:30:49



No. No. Procedure for expert

00:30:55

testimony of urine no. Yes,

00:30:57

no, no. Yusuf virtual hearings

00:31:02

Yes, no. Yes. It's a

00:31:05

possibility. cybran data protection I

00:31:11

say yes. Yes. Yes. Yes

00:31:13

and lastly post you in

00:31:17

Greece. Nope. No, no, no.

00:31:21

Okay. All right, that was

00:31:23

exhausting. We're not going to

00:31:24

do that. But but but

00:31:32

she wishes that that I

00:31:34

like to talk about today

00:31:35



seem to be some disagreement

00:31:36

here first is the hearing

00:31:40

including hearing issues in 501.

00:31:43

I basically should we be

00:31:46

including the details of the

00:31:48

hearing now to get is

00:31:49

proceeding in Pier One or

00:31:51

should we kicking this down

00:31:53

the road to a pre-hearing

00:31:54

conference right before after the

00:31:56

Ravens winning right before the

00:31:58

hearing because You don't really

00:32:04

know what the hearing is

00:32:07



going to require at the

00:32:09

time. You're doing procedural order.

00:32:11

Number one in my opinion.

00:32:13

The only thing you need

00:32:15

to guess at that point

00:32:18

is how long are you

00:32:20

going to need for the

00:32:21

hearing and he has to

00:32:23

do that because you have

00:32:24

to have a date in

00:32:25

the calendar months from now

00:32:27

when there's going to be

00:32:28

here. She has to guess

00:32:30



how many days are we

00:32:30

going to need your guessing

00:32:32

you're always getting it wrong

00:32:34

is going wrong, but your

00:32:36

guessing you're over guessing because

00:32:37

the worst thing right are

00:32:41

you going to have that

00:32:41

you've got to have some

00:32:42

rough idea that we're going

00:32:43

to need one way to

00:32:44

wait 3 weeks. Whatever it

00:32:45

is. That's all you can

00:32:47

do at that point. You

00:32:49



don't even know what this

00:32:50

juncture how many witnesses you're

00:32:53

going to have. Are there

00:32:54

even going to be experts

00:32:56

how many issues are going

00:32:58

to still be alive at

00:32:59

the time we go to

00:33:00

trial how many how many

00:33:02

these things are going to

00:33:03

still be on the table

00:33:04

this time to go to

00:33:04

trial so In order to

00:33:09

continue to promote the flexibility

00:33:12



of the procedure that we

00:33:13

all hail to a client's

00:33:15

is being this big advantage

00:33:16

of arbitration y La Casa

00:33:19

selves in right at the

00:33:20

beginning of a case to

00:33:22

a procedure that becomes incredibly

00:33:24

difficult to depart from his

00:33:26

we get more and more

00:33:27

of a cereal with are

00:33:28

with our opponent as the

00:33:29

case goes on when we

00:33:31

could have left it open

00:33:33



and let the tribunal decide

00:33:36

with the full facts based

00:33:38

on actual data points at

00:33:40

a sensible time part of

00:33:41

the Earth. If I may

00:33:43

have just been thinking I'm

00:33:45

probably about to talk to

00:33:46

you cuz you're keeping a

00:33:46

respondent that is particularly important

00:33:49

when your response and respond.

00:33:55

You haven't seen you make

00:33:58

it five reports on your

00:34:00

eye Greensboro three-day hearing and

00:34:02



that's the worst case scenario.

00:34:03

So so yesterday comes to

00:34:06

the opposition, I would say

00:34:09

that I think on the

00:34:11

road I think because he

00:34:12

needs which is what happens

00:34:18

if an expert or witness

00:34:20

catch you up at the

00:34:20

hearing. I think that needs

00:34:23

to be clarified at the

00:34:24

very beginning and the end

00:34:26

whether that means that that

00:34:28

testimony is going to be

00:34:29



discounted or whether its lack

00:34:30

of discretion of the tribunal

00:34:31

that ruled needs to be

00:34:33

set out because if you

00:34:34

wait for the hearing or

00:34:35

three weeks before the hearing

00:34:37

when you're ready. No, one

00:34:38

of your witness is not

00:34:39

going to make it you

00:34:40

can be fighting yourself. Just

00:34:43

started going to be fine

00:34:45

that it's not and that

00:34:46

issue can be resolved in

00:34:47



the very beginning now. I'm

00:34:48

so just I mean, I

00:34:49

I was approached his kind

00:34:50

of you know, if you

00:34:52

were at the Rawls that

00:34:53

the available just kind of

00:34:54

assumed you're always going to

00:34:55

be the worst position. I

00:34:56

felt so you don't want

00:34:57

it that's entirely cut off

00:34:58

that testimony but you trying

00:35:01

to find a middle ground,

00:35:01

but they might be other

00:35:03



position was strategically in your

00:35:05

client might want to push

00:35:06

for that one position with

00:35:08

a bunch of a hearing

00:35:09

that's important to know up

00:35:11

front. So no disrespect Michael

00:35:15

penalized. I have a preference

00:35:21

for having everything up front

00:35:24

because there are two words.

00:35:25

I just like we're number

00:35:28

one expensive word number to

00:35:30

uncertain. Okay clients Kendall not

00:35:34

like those words. I like

00:35:36



to know right up front

00:35:37

what what are client should

00:35:39

expect so for example, let's

00:35:43

say the client serving as

00:35:47

a witness to client submitting

00:35:48

a witness statement which happens

00:35:51

quite often. It may be

00:35:53

in dispute as you know,

00:35:55

one party may think will

00:35:56

typically that the client allowed

00:35:58

to sit through the entire

00:35:59

entire proceedings including the opening

00:36:01

as long as he or

00:36:02



she is the first person

00:36:03

to testify that's fairly standard,

00:36:05

but not always I want

00:36:09

to make sure my client

00:36:10

knows that if he or

00:36:11

she is putting in a

00:36:12

written statement that they will

00:36:13

be allowed to hear the

00:36:14

entire case. I want that

00:36:15

in the procedural order. I

00:36:18

want to see hearing bundles

00:36:19

are very very very important

00:36:21

to me is something that

00:36:22



personally I would normally handle

00:36:25

so I want to know

00:36:27

right up front here. So

00:36:28

I don't need to know

00:36:29

very specific but no one

00:36:30

has give me that bundle

00:36:31

2 is going to be.

00:36:31

But I want to know

00:36:32

what's going to be the

00:36:34

content generally very generally of

00:36:36

the bundles. Are we going

00:36:37

to organize them in numerical

00:36:39

order? Are we going to

00:36:40



organize them in chronological order?

00:36:41

Because I can tell you

00:36:43

we've actually had that today,

00:36:44

you know where one party

00:36:47

wanted it one when one

00:36:48

party one of the other

00:36:49

because it's procedure ordering was

00:36:50

not clear. I want to

00:36:52

know that we are going

00:36:53

to the court reporter cuz

00:36:54

I've had hearing from other

00:36:56

party didn't think we needed

00:36:57

a court reporter. I don't

00:36:59



need to know the name

00:36:59

of the court reporter. I

00:37:00

Choose You know that we're

00:37:01

going to have a court

00:37:02

reporter. I think having everything

00:37:04

up front so you can

00:37:05

tell your client what to

00:37:06

expect is important. I think

00:37:10

you can also kind of

00:37:11

Taylor your activities, you know,

00:37:13

when you're the way you

00:37:14

present your case to the

00:37:17

Tribunal based on you know,

00:37:19



what you already know and

00:37:20

what the parties have already

00:37:21

agreed to I have never

00:37:23

had an instance where I

00:37:24

we come back and say

00:37:26

why do we put that

00:37:27

in the procedure to order

00:37:28

will be always come back

00:37:29

and see if you didn't

00:37:30

we put that in the

00:37:31

procedure order because in a

00:37:34

lot of instances when we

00:37:35

get to be here like

00:37:36



a pre-hearing stage and a

00:37:37

pre-trial conference often is unnecessary

00:37:40

unless there's a substance dispute

00:37:41

which is a completely separate

00:37:43

issue, but when we a

00:37:45

lot of times because we've

00:37:46

already dealt with everything up

00:37:47

front by the time we

00:37:48

get to the pre-hearing conference

00:37:50

we canceled it because we've

00:37:52

already discussed all of these

00:37:53

pre-hearing procedural issues. So to

00:37:57

me it gets a lot

00:37:58



more certainty to the lawyers.

00:38:00

It gives a lot more

00:38:01

certainty to the client and

00:38:03

honestly if we don't have

00:38:04

to spend time writing letters

00:38:06

and you know, sitting and

00:38:08

prepping for a pre-hearing conference

00:38:09

attending a pre-hearing conference potential

00:38:12

correspond after the pre-hearing conference,

00:38:14

do you all hear the

00:38:15

billing going so that the

00:38:16

client? Going going, you know,

00:38:19

it's me. It just makes

00:38:20



more sense from both a

00:38:22

cough and a logistical perspective

00:38:24

to have everything set up

00:38:26

front. There are going to

00:38:27

be things that are going

00:38:28

to come up that no

00:38:29

one anticipated cuz that always

00:38:31

happens as I pick up.

00:38:34

I don't know what has

00:38:35

happened but there are things

00:38:36

that no one foresaw, you

00:38:39

know. Especially happened when 2020

00:38:41

rolled around and all the

00:38:42



sudden, you know, you got

00:38:43

a notice and says, you

00:38:45

know my witness just tested

00:38:46

positive for covid in here.

00:38:47

She can't be there next

00:38:48

week. I know things like

00:38:50

that changed, but to me

00:38:52

I prefer to have the

00:38:54

certainty and have already, you

00:38:57

know, max out. Basically my

00:38:58

entire case my last point

00:39:00

on this is just what

00:39:02

I look at a procedural

00:39:03



order. I am thinking about

00:39:04

it backwards. I am not

00:39:06

thinking about filing statement of

00:39:08

claim. I am thinking about

00:39:09

filing the post here and

00:39:10

breathe and I were cops

00:39:12

you to order backwards. Okay,

00:39:14

because everyone's thinking about if

00:39:16

you're claimed it by Statement

00:39:17

of plan I am thinking

00:39:19

how am I going to

00:39:20

turn that thing to clean

00:39:21

and securing bundle of the

00:39:22



hell am I going to

00:39:22

use it with a witness

00:39:23

at the hearing? I am

00:39:25

thinking about that from the

00:39:26

day. We filed a notice

00:39:27

of arbitration. Okay, because I

00:39:29

am thinking about doing number

00:39:31

these as exhibit a or

00:39:32

do we number the Misty

00:39:33

wants you to see 3

00:39:34

and I am but a

00:39:35

number to C1 C2 C3.

00:39:36

So to me, I am

00:39:38



always thinking about it backwards

00:39:40

because the last thing I

00:39:42

want to do is get

00:39:43

to the, you know, we

00:39:44

joined our filing coming in

00:39:46

and having a mess on

00:39:48

my hand between the parties

00:39:49

who have used different numbering

00:39:51

system. Some of them they

00:39:52

see numbers are numbers of

00:39:54

them their use the word

00:39:55

an ax or the artist

00:39:56

exhibit or something. So if

00:39:58



we can get all of

00:39:59

that clarified right in the

00:40:01

very beginning and you know,

00:40:03

I've thought about this and

00:40:04

I planned for that and

00:40:06

by the time I get

00:40:07

to the prep for the

00:40:09

hearing preparing the hearing bundles

00:40:11

working with the team to

00:40:12

prepare, you know, the the

00:40:13

witness kept everything is organized

00:40:16

and it's done. And it's

00:40:18

logical to me. I prefer

00:40:21



to fit everything in right

00:40:22  
in the front. So on

00:40:24  
this Clarity at the beginning

00:40:26  
point, I want to ask

00:40:28  
about procedure calendars cuz I

00:40:30  
had a I thought we

00:40:31  
were allowed to fight. Don't

00:40:44  
want this point on what

00:40:45  
can said I'll get back

00:40:46  
to you on the point

00:40:50  
of what happens when a

00:40:52  
witness does not show up

00:40:53  
on an understanding why you

00:40:56



want to see that but

00:40:58

I've seen people shoot themselves

00:40:59

on the leg because what

00:41:02

is your witness and then

00:41:04

you get to break here

00:41:04

in Cumberland, you know, and

00:41:06

there's a rule that says

00:41:07

strike out. And I've seen

00:41:19

a witness not have a

00:41:20

Visa. I'm sorry. I'm sorry.

00:41:23

I'm me being the bad

00:41:26

guy saying well. I need

00:41:32

was unfair it was not

00:41:34



really under their control and

00:41:36

the witness could strike out.

00:41:38

That's why I think I

00:41:41

think that that's what I'm

00:41:44

saying. Is that a rather

00:41:44

have that fight in the

00:41:46

beginning then when were three

00:41:47

weeks or month away from

00:41:48

the hearing doing three weeks

00:41:50

away from hearing the stakes

00:41:52

are pretty clear. Like, you

00:41:53

know, if your witness is

00:41:54

going to have a piece

00:41:55



or not. I'd rather have

00:41:56

the fight in the beginning

00:41:57

or you're more likely to

00:41:58

get something like, oh you

00:42:00

would he'll he'll testify for

00:42:01

actually or the tribunal will

00:42:03

take into account his testimony

00:42:05

within the context of the

00:42:06

rest of it and you're

00:42:07

less likely to get precise

00:42:09

because people are scared to

00:42:09

answer the phone. You just

00:42:11

count his testimony entirely, right?

00:42:13



And I think also it

00:42:14

gets closer down the road

00:42:21

when they were ready, maybe

00:42:21

make some Judgment at the

00:42:22

hunt for in the witness's

00:42:23

or is it exactly I

00:42:31

want to put on Stacy

00:42:33

back to you. If you

00:42:37

see the best practices that

00:42:40

big cities using every time

00:42:42

you get up here from

00:42:43

8 to now, it has

00:42:44

nothing with respect to the

00:42:45



hearing. There are blank either

00:42:47

party won a fight over

00:42:49

that and put it in

00:42:51

the PO and regulate that

00:42:52

they well but according to

00:42:54

its next best practices human

00:42:56

body says no and the

00:42:58

other party says yes, there's

00:43:00

nothing and that's why you

00:43:01

go to the procurement conference.

00:43:02

So take me to we

00:43:03

are not wrong. Yeah, I

00:43:06

would write it in. What

00:43:18



is station is your position

00:43:21

is that always your position

00:43:23

or if you're against opposing

00:43:26

counsel, do you know of

00:43:27

a very experienced? They've been

00:43:30

the earring 110,000 time? Are

00:43:33

you willing to be a

00:43:34

bit more relaxed that will

00:43:35

hearing Logistics upfront or you

00:43:37

scarred by some experience you

00:43:38

had with some firm when

00:43:39

you've done and I'm going

00:43:41

to put it on the

00:43:42



therapist cash for what what

00:43:43

happened? First thing is what

00:43:53

I walk into a sharing

00:43:53

room. I know that I

00:43:55

am probably more experience than

00:43:56

90% of the hearing room.

00:43:58

I've ever walked in. I've

00:43:59

done more than 50 hearings.

00:44:01

I've done 40 plus cases

00:44:04

most attorneys will probably 2122

00:44:08

a year and most because

00:44:10

of the time these things

00:44:11

take I work on average

00:44:13



five to six. So, you

00:44:16

know part of it is

00:44:18

being scarred from from previous

00:44:20

and just knowing you know,

00:44:22

how how things have gone

00:44:25

in the past this summer

00:44:26

we weren't and we know

00:44:27

where we were and as

00:44:28

prepared with a procedure with

00:44:29

her because obviously this is

00:44:31

a this is a learning

00:44:32

process every case you're going

00:44:33

to go to there's going

00:44:34



to be something really like

00:44:35

how I really like how

00:44:36

we did that and I

00:44:37

hope we can do it

00:44:38

again in another case whether

00:44:40

it be some piece of

00:44:41

technology or even hearing the

00:44:43

venue. Maybe you really liked

00:44:45

her court reporter you really

00:44:46

like you're going to learn

00:44:48

something. I mean I've been

00:44:49

doing this for a long

00:44:50

time. Like I said, I've

00:44:50



done a lot of hearing

00:44:51

that. A lot of pieces

00:44:52

and I'm still learning things,

00:44:54

you know with every case

00:44:56

and with every hearing and

00:44:57

with every new person that

00:44:58

I work with. So yes

00:45:01

come from previous experience of

00:45:05

being prepared in the procedural

00:45:08

order and I'm really having

00:45:10

to learn and you know,

00:45:12

so for me and make

00:45:15

it a little bit of

00:45:16



a battle wounds cases where

00:45:21

I'm up against firms that

00:45:23

are represented on the panel

00:45:24

and they're very experienced. Do

00:45:27

you know what you're going

00:45:27

to get your meeting at

00:45:28

sensible opposing counsel or done?

00:45:30

It many many times. There

00:45:32

are other cases where you

00:45:33

might come up against the

00:45:34

regional us firm. That's really

00:45:37

a litigation for establishing an

00:45:39

arbitration. First time. They're going

00:45:40



to try and impose Federal

00:45:41

rule civil procedure on you

00:45:43

and in that kind of

00:45:44

scenario. I can really see

00:45:46

the benefit of what you're

00:45:47

saying because you kind of

00:45:49

know they do. Know the

00:45:50

rules of your game you

00:45:52

want to lay it out

00:45:53

for them and then I'm

00:45:54

strongly suspect that confirms. You

00:46:03

are kind of jumping into

00:46:04

the arbitration sphere and to

00:46:08



the point of you know,

00:46:09

I have an education them

00:46:11

a little bit at the

00:46:11

first session even just sometimes

00:46:13

and terminology. I'm sure we've

00:46:15

all heard syrup. I don't

00:46:16

know what that if we

00:46:17

joined our more than you

00:46:18

know more than we care

00:46:20

to save. But yeah, I

00:46:21

definitely think you know something

00:46:23

that I think it sets

00:46:27

the tone with the tribunal

00:46:29



because especially when you are

00:46:31

maybe in a situation like,

00:46:32

you know, sign language just

00:46:34

just discussing, you know, what

00:46:36

the fur maybe that isn't

00:46:37

as familiar with arbitration Tamia

00:46:39

sets the tone of like

00:46:41

tribunal look at us. We

00:46:43

know what we're doing. We

00:46:44

know what the procedure is

00:46:45

me know how this goes

00:46:46

know what you expect. You

00:46:47

know, we are we've done

00:46:49



this before We've seen this

00:46:51

before send it to me

00:46:52

at all. So anyways, that's

00:46:54

the tone with the tribunal

00:46:55

of like tribunal look at

00:46:57

us. We know arbitration. We

00:46:58

know what we're doing you

00:47:00

can trust us. And I

00:47:14

asked this question because I

00:47:16

really had an excellent case.

00:47:17

We got draft p01 in

00:47:19

the party spent a good

00:47:21

two weeks agreeing upon three

00:47:24



different versions of procedural calendar.

00:47:26

When was no bifurcation and

00:47:29

has all the submissions in

00:47:30

the hearing date one is

00:47:32

bifurcation, but by conditions requested

00:47:35

but not granted and the

00:47:36

other was bifurcation is your

00:47:38

question bifurcation is Brandon so

00:47:39

you can go after pure

00:47:41

one and you'll have three

00:47:43

different kind of road maps

00:47:45

different scenarios for house in

00:47:46

arbitration to play out my

00:47:48



question for the panelists because

00:47:51

ultimately only one of those

00:47:52

path is going to be

00:47:54

chosen. Is it worth the

00:47:56

time and expense for Council

00:47:58

to be negotiating and agreeing

00:48:00

upon these different versions upfront

00:48:03

or should we just be

00:48:05

having one just general procedural

00:48:06

calendar and then deal with

00:48:08

it as things come up.

00:48:11

I don't mind doing that.

00:48:13

Actually. I think it can

00:48:16



be very helpful because one

00:48:19

you need to know the

00:48:21

different routes Goldsmith hearing day

00:48:24

today hitting two. We need

00:48:25

to know that as soon

00:48:25

as possible and if there's

00:48:26

more than one. Earring date

00:48:29

that needs to be brought

00:48:30

to then provisionally then so

00:48:32

be it but we need

00:48:33

to book that now so

00:48:34

I think we do need

00:48:34

to caution against that because

00:48:36



there's so much risk of

00:48:38

July if you don't and

00:48:39

then you do get it

00:48:40

but skated in in there

00:48:41

is a hearing and you

00:48:44

run into real trouble. What

00:48:52

is a matter of fact

00:48:53

is going to be the

00:48:55

effect on the calendar. I

00:48:58

think that's a helpful data

00:48:59

point for them to know

00:48:59

rather than see her to

00:49:00

be discussed in a vacuum.

00:49:02



So obviously we end up

00:49:06

spending more time than we

00:49:07

should tweaking dates and getting

00:49:09

it all done and it

00:49:10

feels like a bit of

00:49:10

a waste of time sometimes

00:49:12

as we're doing it, but

00:49:13

I think in the round

00:49:14

that can be efficient and

00:49:15

it does go to that

00:49:16

important point of when is

00:49:18

the rain going to be

00:49:19

I also have some more

00:49:20



of a Trader is when

00:49:21  
was just on it also

00:49:22  
has why I had a

00:49:23  
situation where you know, we

00:49:24  
had schedule a that's kind

00:49:26  
of it, you know, and

00:49:27  
I delete the discussion was

00:49:29  
whether or not we were

00:49:29  
going to buy 4K and

00:49:30  
you know, well, I don't

00:49:31  
know if I want to

00:49:31  
buy forgive her if I

00:49:32  
have your social justice of

00:49:33



the less you the memorial

00:49:34

and so the tribunal kind

00:49:37

of stopped us at wait

00:49:38

a second. What if there

00:49:39

is a chance he might

00:49:40

buy for kids and I

00:49:41

want to know the schedule

00:49:42

up front so they sent

00:49:43

us back to negotiate. Let

00:49:44

me go she ate those

00:49:45

three those three colonies. I

00:49:46

think it has a lot

00:49:47

to do with a lot

00:49:49



of these arbitrators, you know,

00:49:50

it's just a small pool.

00:49:51

They're all very busy. They

00:49:53

want to know what's going

00:49:54

to happen in there. So

00:49:56

yeah, I mean I have

00:49:57

to go to practice point

00:49:58

I would include it because

00:49:59

I think most of those

00:50:00

I would truly appreciate it

00:50:01

is happening in company blood

00:50:03

pressure for you is a

00:50:04

frequent phone Council to identify

00:50:08



earlier than you might otherwise

00:50:09

have done if you're going

00:50:11

to be launching in Olean.

00:50:19

LOL leaving. Is there going

00:50:20

to be an Okie? Should

00:50:21

we should Define it? Right?

00:50:22

And of course you even

00:50:24

if I kind of have

00:50:24

a sense of what I

00:50:25

want to do, I want

00:50:25

to show my cards yet.

00:50:26

And I don't think I

00:50:27

should Arbor trace of Galilee

00:50:33



been very respectful, but that

00:50:44

there's pressure. There's also beneficial.

00:50:56

I just think I just

00:50:56

got to go to the

00:50:57

Goodwill with the tribunal because

00:50:59

I think there's nothing worse

00:51:00

than you know, finally negotiating

00:51:02

the scheduler you sat there

00:51:03

and the tribunal has canceled

00:51:05

it in and then a

00:51:07

month late do you stay

00:51:08

up for going to file

00:51:09

you no objection to jurisdiction.

00:51:12



Sorry. We need to go

00:51:13

a whole nother route including

00:51:15

maybe you know, now we

00:51:20

may have no one entire

00:51:22

life is an obvious. He's

00:51:24

going to completely change your

00:51:25

schedule and your hearing date

00:51:26

has basically out the window

00:51:27

and I think you know

00:51:29

just goes to the Goodwill

00:51:30

of the parties to the

00:51:31

tribunal of just trying to

00:51:33

be as respectful of their

00:51:35



time as possible, you know,

00:51:37

so I think having either

00:51:39

multiple pass or you know,

00:51:41

renegotiated schedule, you know, that

00:51:44

includes bifurcation or an objection

00:51:47

for jurisdiction is just showing

00:51:50

respect. The tribunal gives you

00:51:55

po1 and the tribunal has

00:51:58

proposed various language. Are you

00:52:00

reluctant to move off of

00:52:03

that language in if there's

00:52:04

agreement of the parties or

00:52:06

do you generally like, it's

00:52:09



your betray Sheehan? You can

00:52:10

create your own adventure. I

00:52:13

know typically we stay with

00:52:15

the time because if there's

00:52:17

a change in your comfortable

00:52:18

you always answer. This one

00:52:21

is easier to say unless

00:52:26

you have a strong anointing

00:52:28

on treadmill. Know what I

00:52:31

can get the agreement of

00:52:33

the other side. Okay, we

00:52:34

both both parties have agreed

00:52:35

that the closet it necessary

00:52:38



for whatever reason and intravenous

00:52:39

open to it. But otherwise

00:52:40

you better have a very

00:52:41

good argument. Otherwise you and

00:52:43

I further on strategy how

00:52:48

much effort are you as

00:52:51

counseling on Aging in to

00:52:53

reach agreement with the other

00:52:55

side so that when he

00:52:56

gets up first session is

00:52:58

only two or three or

00:52:59

four areas of the scream

00:53:01

of the tribunal consider as

00:53:03



opposed to being like really

00:53:05

sorry. We got all these

00:53:06

things to discuss how much

00:53:08

effort you put in to

00:53:09

make sure you get to

00:53:09

that kind of situation. I

00:53:11

mean, I think it's common

00:53:13

for there to be a

00:53:14

family with an email exchange

00:53:16

with different dress, and the

00:53:18

like but I think it

00:53:19

was important to pick up

00:53:21

the phone or get on

00:53:22



a zoom with opposing counsel

00:53:23

what the US litigation call

00:53:25

a meeting confer and and

00:53:27

try and see if you

00:53:28

can't results are the things

00:53:30

that remain open between you

00:53:32

because you know in many

00:53:35

instances you are able to

00:53:36

boil it down to just

00:53:37

one or two issues and

00:53:39

I think that makes your

00:53:40

procedural session significantly more efficient

00:53:43

and I think it's a

00:53:45



general rule. It's something that

00:53:47

we in the arbitration Community

00:53:49

generally don't do as well

00:53:50

as a litigation, as we

00:53:52

don't pick up the phone

00:53:53

to each other until closing

00:53:55

Council and say that you

00:53:56

without prejudice. Can you just

00:54:00

tell me what would the

00:54:01

background of that isn't, you

00:54:02

know that I spent several

00:54:04

years as a litigator. We

00:54:05

did that a lot more

00:54:06



on without prejudice basis. Just

00:54:08

between Council. Just trying to

00:54:09

tease out a little more

00:54:10

understandable better. What's the back

00:54:13

what was motivating this objection

00:54:15

that otherwise you're just reading

00:54:16

this email and like I

00:54:17

don't understand why they change

00:54:18

that works and there's no

00:54:19

context to it. Unless you

00:54:21

write a long letter will

00:54:23

pick up the phone, but

00:54:23

I think Uncle can be

00:54:25



really helpful as well do

00:54:27

a plug for that. Okay,

00:54:32

so I have one more

00:54:33

question before I do that.

00:54:35

I know the year about

00:54:36

10 minutes left. I want

00:54:37

to open the floor there

00:54:38

any questions from either the

00:54:39

audience here or or online?

00:54:48

Yes, there's a question online.

00:54:49

That's hell a be bellina at

00:54:54

Allen & overy but I

00:54:55

think we kind of answer

00:54:56



this question is what is

00:54:58

the penalty for filing late

00:54:59

or submitting in the wrong

00:55:01

format? Essentially none if you

00:55:15

file late, but that that

00:55:16

that's not a good look

00:55:18

at it. It should not

00:55:19

be done without good cause

00:55:21

what I have to say

00:55:22

in the early days of

00:55:23

my career was pretty common

00:55:25

people would routinely file if

00:55:28

you guys like and it

00:55:28



was no big deal at

00:55:29

the way things have been

00:55:32

proved since then, but I'm

00:55:33

people are generally on Sunday

00:55:34

stay. So if you are

00:55:35

going to the light ideal,

00:55:39

you would notify the other

00:55:40

side in advance and try

00:55:41

to get their agreement to

00:55:42

some extension to dress whatever

00:55:44

the issue is that you're

00:55:45

facing and then commensurate extensions

00:55:48

the rest of the timetable

00:55:50



to allow to allow for

00:55:52

that so that your opposing

00:55:53

counsel is not your opponent

00:55:55

is not penalize buy your

00:55:56

delay, but in real terms

00:56:00

with the tribunal, are you

00:56:01

going to have your Take

00:56:02

me to claim restating the

00:56:03

defense struck out because you're

00:56:05

48 hours late at ciolino.

00:56:11

Here's another question from our

00:56:14

active virtual audience. Oh and

00:56:17

then we'll go to that

00:56:17



live out in the virtual.

00:56:20

What is the best cure

00:56:21

for an uncooperative opposing counsel?

00:56:24

That's the best thing that

00:56:25

can happen to you. Because

00:56:27

of their Uncle pet Cobra

00:56:28

I have a case in

00:56:30

which I haven't seen a

00:56:31

response for a year from

00:56:33

opposing counsel. So every time

00:56:35

I am sorry I sent

00:56:39

this 2 weeks ago. I

00:56:40

have no comments by the

00:56:42



second tribunal call. so it's

00:56:50

a very busy but that

00:56:51

strategy when I agree with

00:56:53

timing or Simon, but Tribulus

00:56:59

don't like you like you

00:57:00

fight over the specific points

00:57:02

that are relevant to your

00:57:03

case. You don't find them

00:57:05

wherever they need people that

00:57:06

way if they don't like

00:57:09

you I'll let you have

00:57:11

the strongest case. There's or

00:57:13

women for that but The

00:57:28



people who are listen to

00:57:29

your case, and we're going

00:57:30

to resolve your case, and

00:57:32

we're going to rule on

00:57:33

it. Do you want to

00:57:35

see a guy in front?

00:57:35

Who's I didn't even themselves

00:57:36

all the time. They want

00:57:38

to see people who are

00:57:38

reason that goes to your

00:57:41

point of sophisticated. It's less,

00:57:46

in my opinion to see

00:57:46

people like this but it

00:57:48



still happens to your point.

00:57:50

It sometimes happens with a

00:57:52

USDA. They fight over every

00:57:54

single point and I will

00:57:56

make my life and to

00:58:00

your other friend. Please go

00:58:01

up on fortunately South your

00:58:03

phone, but you will end

00:58:06

up being the reason of

00:58:07

a guy in front of

00:58:07

the tribunal and they can

00:58:09

Angel definitely procedural procedural versus

00:58:15

substantiv pick your battles on

00:58:17



the procedural. Honestly it harder

00:58:22

for the substitute because you

00:58:23

can get around the procedural.

00:58:27

It's crushing the back yet.

00:58:38

Ask you what is your

00:58:41

window with the client asked

00:58:44

the question? That was my

00:58:54

question didn't let me ask

00:58:55

it for the record. I

00:59:04

think she wants to the

00:59:08

questions. I heard one incredibly

00:59:10

important for your client to

00:59:12

attend the procedural session is

00:59:15



at all possible. It creates

00:59:18

a very positive impression on

00:59:20

the tribunal that they care

00:59:22

about the case and they

00:59:23

respect the procedure. Second point

00:59:26

is also very important for

00:59:28

your client to see the

00:59:29

procedure. Sometimes you'll be representing

00:59:32

a client who's had 10

00:59:33

arbitrations. They've seen it all

00:59:34

they know it. Oftentimes you

00:59:36

want to be the first

00:59:37

time I've ever been involved

00:59:38



in an arbitration. They really

00:59:39

don't know much about it.

00:59:41

They're learning a lot and

00:59:42

it's incredibly important for them

00:59:44

to attend that first session

00:59:45

whether it be in person

00:59:46

or virtual and lay eyes

00:59:49

on the arbitrator's see how

00:59:51

the procedure is and and

00:59:53

start to learn a little

00:59:55

bit and get a feel

00:59:55

for what it's going to

00:59:56

be like and what is

00:59:57



going to be like going

00:59:58

forward. It's incredibly important for

01:00:00

them and the feeling that

01:00:02

they have in their bones

01:00:03

for how this arbitration is

01:00:04

going to go and what

01:00:06

might be, you know, appropriate

01:00:08

junctures for settlements or alternative

01:00:10

resolution as they go along

01:00:11

with that answer all your

01:00:14

questions, or do you have

01:00:15

something else? How do you

01:00:28

make dinner to look at

01:00:34



it? Incredibly important incredibly important

01:00:36

skill? Sorry, the question is

01:00:39

how do you persuade a

01:00:40

client who is wanting you

01:00:43

to argue zealously for every

01:00:44

point in and be very

01:00:45

forceful in front of the

01:00:47

tribunal according to handle your

01:00:51

clients expectations and look sophisticated

01:00:55

clients are pretty free capable

01:00:59

of understanding that you catch

01:01:00

more bees with honey. You're

01:01:03

you're better off trying to

01:01:04



front trying to make an

01:01:07

argument that is persuasive and

01:01:09

Cogan rather than shouting and

01:01:10

yelling every point that if

01:01:12

you've got two good points

01:01:13

to make don't camouflaged among

01:01:15

among among 10 or 12

01:01:17

with 10 bad points and

01:01:19

too good points cuz it's

01:01:19

a good point. We'll get

01:01:21

lost. There will be clients

01:01:23

who for whatever reason just

01:01:26

really want you to you

01:01:29



know, she out and and

01:01:30

and make a scene and

01:01:31

then end and sometimes you

01:01:34

know, you have to find

01:01:34

a way to incorporate that

01:01:37

a little bit. Into your

01:01:39

into your presentation to the

01:01:41

tribunal but and going back

01:01:44

almost to my first point.

01:01:46

What can sometimes work is

01:01:48

that you can take a

01:01:50

particular Point that's of some

01:01:51

particular interest to decline in

01:01:53



that first procedural session that

01:01:55

you can try and make

01:01:56

something off of it the

01:01:58

clients. He's for themselves how

01:02:00

badly that when And understands

01:02:04

going forward that's not going

01:02:07

to work and that part

01:02:09

can be incredibly important. So

01:02:11

you can find a way

01:02:12

that on a point that

01:02:14

doesn't really matter doesn't really

01:02:16

going to harm you ultimately

01:02:17

in trouble is often know

01:02:18



what's going on. They also

01:02:20

understand that you're being yeah,

01:02:22

you're instructed to make this

01:02:23

argument and you can even

01:02:25

phrase your language sometimes to

01:02:27

say I am instructed to

01:02:28

convey to the tribunal that

01:02:31

this is not something you

01:02:32

particularly believe in but if

01:02:33

you need to present it

01:02:35

for her for Klein reasons,

01:02:36

this is a follow-up. It

01:02:39

is really important in my

01:02:40



life. When is critical, right?

01:02:41

You need to explain to

01:02:42

them that this is not

01:02:43

the gation is arbitration in

01:02:45

Graceland me differently and I

01:02:47

I went by to see

01:02:48

Miami and there was a

01:02:48

power which one of the

01:02:49

art one arbitrator is very

01:02:52

commonly named said that everyone

01:02:54

do not hire pitbulls, right?

01:02:57

We don't like pit bulls

01:02:58

in arbitration Granite. We prefer

01:03:00



folks to come to an

01:03:02

agreement. Be able to kind

01:03:03

of food do things along

01:03:04

Pitbulls make our work much

01:03:06

more difficult for you to

01:03:12

come and get that sense

01:03:13

to the client. So I

01:03:15

understand this is a different

01:03:16

realm and if they want

01:03:17

to really pursue their interest

01:03:18

best in this forum that

01:03:20

has to be done within

01:03:21

that those rules right? Otherwise,

01:03:23



I love you making for

01:03:24

dinner. There's no question. I

01:03:31

see that your stated purpose

01:03:34

of having two to tango

01:03:41

and given the balanced that

01:03:44

I do have a preference

01:03:45

to the Fur Elise. Yeah,

01:03:58

so the question basically is

01:04:00

how often that we can

01:04:02

come into agreement to have

01:04:04

a more comprehensive procedure order

01:04:06

of rather than you know

01:04:07

different some of the issues

01:04:08



for me. Honestly. I would

01:04:10

say probably 95% of what

01:04:13

I want to get in

01:04:14

a procedural a Target Center

01:04:15

procedural order and I think

01:04:18

it's just largely that you

01:04:20

know based on experience. If

01:04:22

we're going to get on

01:04:22

a call with opposing counsel

01:04:24

that we can justify why

01:04:25

we think something is important

01:04:26

to be in there and

01:04:28

I we're not putting something

01:04:29



in there. I just you

01:04:30

know, because we just want

01:04:31

to listen just in case,

01:04:33

you know, we're putting it

01:04:34

in for a reason and

01:04:36

you know, fortunately, you know,

01:04:39

I think it's you can

01:04:40

kind of guess from Michael

01:04:41

Canales, you know, where any

01:04:45

got it comes down to

01:04:46

picking your battles, you know,

01:04:47

so there's things that you

01:04:51

know opposing counsel's have wanted

01:04:52



in there that you know,

01:04:53

we've kind of been kind

01:04:55

of leery. Ever unsure of

01:04:56

but you know for the

01:04:58

sake of one agreement and

01:05:00

picking our battles, we may

01:05:01

agree to something. So, you

01:05:03

know, I think generally generally

01:05:05

we we do I mean

01:05:07

my average receipt order is

01:05:08

between 15 and 25 Pages

01:05:10

without the schedule, you know,

01:05:13

just because it is so

01:05:14



comprehensive so you can justify

01:05:19

it and you can fight

01:05:21

for an advocate for it

01:05:22

and have a reason for

01:05:23

it and it's not just

01:05:24

there just to put words

01:05:25

on paper then, you know,

01:05:27

I think the party is

01:05:28

generally be able to work

01:05:29

it out. Jose Antonio Jealousy

01:05:41

issues on on the commercial

01:05:48

sensitive information from the get-go

01:05:51

or not going to yes

01:05:57



or no answers. I just

01:06:00

say one thing on that.

01:06:01

I like for there to

01:06:03

be some clarity around what

01:06:06

exactly we mean by confident

01:06:08

show up and freshen, a

01:06:09

lot of arbitration clauses say

01:06:12

submitted to bonding confidential arbitration,

01:06:15

but don't offer a lot

01:06:16

more the title and that

01:06:19

can really impact our climb

01:06:21

because a party to an

01:06:23

arbitration. It has a lot

01:06:25



of other things that they

01:06:27

are doing in the ordinary

01:06:28

course of their business they

01:06:30

may for example need to

01:06:31

refinance so they may need

01:06:33

to get new credit and

01:06:35

it's part of that they

01:06:36

need to disclose whether they

01:06:38

are party to any that

01:06:39

little guy It would be

01:06:42

dishonest not to tell that

01:06:44

perspective Linda that they party

01:06:47

to an arbitration right now.

01:06:49



So they must tend to

01:06:52

tell him but what can

01:06:54

I tell them how can

01:06:55

they give them any more

01:06:56

detail around the quantum climbed

01:06:59

the the prospects of success

01:07:01

what the lawyers have been

01:07:03

telling them etcetera etcetera. So

01:07:05

I think it's quite useful

01:07:06

to have a little bit

01:07:06

more detailed around confidentiality because

01:07:10

the arbitration agreement often doesn't

01:07:13

provide it the rules often

01:07:15



don't provide some governing laws

01:07:18

Satan and who has provided

01:07:21

some dude impact the actual

01:07:25

died today of the body.

01:07:28

Cuz I think I was

01:07:29

the only one who said

01:07:30

no to it, but I

01:07:32

said no to it on

01:07:33

a general basis. I think

01:07:35

it depends on the case

01:07:36

and depends on the client.

01:07:38

I have to say different

01:07:39

but I've really seen that

01:07:45



part is really one party

01:07:46

really push. Maybe it's in

01:07:48

your interest am not confident

01:07:49

because you're making you have

01:07:52

really dumb dumb damaging evidence

01:07:54

with our side. I seen

01:07:56

cases set up after this

01:07:58

evening. And if there would

01:08:00

have been a computer supervision

01:08:02

and we would have allowed

01:08:03

it. Maybe I think I

01:08:08

agree in principle with what

01:08:10

you said Simon cuz I

01:08:11



can't live like this house

01:08:12

without agreeing with you. But

01:08:14

but I would say Be

01:08:19

reasonable look at your case.

01:08:21

Look at the interest and

01:08:22

talk to your client. What

01:08:24

are you expected to say?

01:08:27

McKay's expected to file what

01:08:30

document and then make adjustment

01:08:34

on a case-by-case basis point

01:08:38

is clearly. I want something

01:08:39

in there. I know this

01:08:41

is a huge. But even

01:08:42



if you're not going to

01:08:44  
get into it, like let's

01:08:45  
talk about confidentiality in relation

01:08:47  
to documents as opposed to

01:08:49  
the preceding. I at least

01:08:51  
want a paragraph in there

01:08:53  
that says the parties are

01:08:54  
going to address the confidentiality

01:08:55  
even if they don't go

01:08:57  
into specific detail about confidentiality.

01:08:59  
I would at least one

01:09:01  
something in there that says,

01:09:02  
you know, the parties will

01:09:04



separately undertake to draft a

01:09:06  
confidentiality agreement, you know, just

01:09:08  
an end if that doesn't

01:09:11  
come to be because it's

01:09:12  
unnecessary then so be it,

01:09:14  
but I at least wanted

01:09:15  
address in the front especially

01:09:17  
if I'm a claimant and

01:09:18  
I know So for example,

01:09:19  
there may be some highly

01:09:21  
sensitive and highly confidential documents

01:09:23  
and even to just you

01:09:24  
know, how the parties are

01:09:25



going to handle them with

01:09:26

third parties even something as

01:09:28

simple as handy to send

01:09:29

something to a vendor to

01:09:30

have copies made so I

01:09:32

can send them to my

01:09:32

Witnesses. You know, I want

01:09:34

to at least want something

01:09:35

address in the procedure ordered

01:09:37

that says that acknowledges the

01:09:39

existence of confidential information confidentiality

01:09:43

of the proceedings is a

01:09:44

whole subject, but I at

01:09:46



least want something in there,

01:09:47  
even if it's just a

01:09:48  
two-sentence paragraphs that says will

01:09:50  
address it. Thank you Stacey.

01:09:53  
I think that is all

01:09:54  
her time. But thank you

01:09:56  
very much for listening and

01:09:58  
I think So good afternoon

00:00:31  
everyone and welcome once again

00:00:34  
to Washington arbitration, which this

00:00:36  
is I believe I have

00:00:39  
lost count but I'm pretty

00:00:41  
sure that not work over

00:00:42



a half of our program

00:00:44

and with with great success.

00:00:47

I would like again to

00:00:48

say thank you to Decker

00:00:50

which has been a great

00:00:52

host. And for those that

00:00:55

might not or might be

00:00:57

new to Washington on vacation

00:00:58

week at my name is

00:01:00

Jose Antonio Rivas and I

00:01:02

am one of the co-founders

00:01:04

of squash is arbitration week

00:01:06

4 years ago. We we

00:01:08



started this adventure trying to

00:01:12  
in a waster of the

00:01:14  
the Washington International nutrition community

00:01:19  
and those that that are

00:01:21  
related to Washington d.c. Either

00:01:24  
through International TSA schnoor International

00:01:26  
Investment International commercial arbitration. And

00:01:30  
it's been 4 years and

00:01:32  
and that we're really excited

00:01:33  
at that all the panels

00:01:35  
have been heavily concerned and

00:01:37  
that where we're bringing more

00:01:39  
and more part of the

00:01:40



international arbitration community calendar is

00:01:44

is in there from crawl

00:01:46

in the morning and and

00:01:47

I hit myself on International

00:01:50

arbitration practice. You're in DC.

00:01:54

We do investor-state arbitration as

00:01:56

well as International commercial arbitration

00:01:58

and public international law, but

00:02:00

this is not so much

00:02:01

about me. But but not

00:02:03

about those that have been

00:02:04

making this this possible that

00:02:09

happened enabling us to make

00:02:11



this possible among Scholars or

00:02:13

sponsors and on our Advisory

00:02:17

board members and one of

00:02:20

them is Jeff Rosenberg who

00:02:21

actually helped us quite a

00:02:23

bit during during the the

00:02:26

whole 4 edition. So thank

00:02:28

you chip and I know

00:02:30

that you want me to

00:02:31

keep it light, but I

00:02:32

have to say that at

00:02:35

the time. Cheap was between

00:02:38

firms, I believe and then

00:02:40



he became counsel and now

00:02:42

he reappeared in in our

00:02:44

International nutrition life. And now

00:02:46

he's a partner is at

00:02:49

Squire Patton Boggs, and he

00:02:52

is of course in the

00:02:55

group of international dispute resolution.

00:02:57

He is a specialist in

00:02:59

public international law and international

00:03:01

arbitration focusing on goals investment

00:03:05

re arbitration and international commercial

00:03:07

arbitration. He has experience in

00:03:10

under various rules of international

00:03:11



arbitration including ICC the switch

00:03:17

Chamber of Commerce NASA and

00:03:19

the DCT arbitrations also specializes

00:03:23

in the US and international

00:03:25

forcement of Court judgements an

00:03:27

arbitral award before Having the

00:03:31

two chips, I would like

00:03:33

to say that this this

00:03:34

actual session is one or

00:03:37

for a few that we

00:03:39

decided to implement in Washington

00:03:42

arbitration with you which are

00:03:43

practical session how to do

00:03:45



things. We are very excited

00:03:49

about the panels that have

00:03:52

some special specialization topics director

00:03:58

have many but the question

00:04:00

is how to expand knowledge

00:04:03

amongst our own community and

00:04:06

those that might be coming

00:04:08

at to enter our community.

00:04:10

So part of the mission

00:04:12

of of Washington arbitration week

00:04:14

is is it and you

00:04:16

can't within our community and

00:04:18

Beyond and that is one

00:04:20



of the reasons why as

00:04:22

you know, Washington arbitration week

00:04:25

is completely Cost free and

00:04:29

we want to keep it

00:04:30

that way. Currently. We have

00:04:32

people from various last American

00:04:35

states here. We have people

00:04:36

from from Europe from France

00:04:38

and China. I don't want

00:04:40

we want to keep on

00:04:41

expanding the notion of international

00:04:44

relations because I strongly believe

00:04:45

that that parts of depression

00:04:49



of the system is that

00:04:50

many might not understand what

00:04:52

it is and therefore we

00:04:58

need to keep on doing

00:04:59

that. So with that thank

00:05:02

you. Thank you very much

00:05:04

for the Antonio. Good afternoon

00:05:06

and welcome to this town

00:05:08

discussion on procedural order number

00:05:11

one and the first session.

00:05:14

Now perhaps I'm a little

00:05:17

biased because I moderating the

00:05:19

stand on but in my

00:05:21



view this is the most

00:05:23

important practical and relevant program

00:05:27

in Washington arbitration week why

00:05:32

you may ask well if

00:05:33

you have an arbitration where

00:05:37

the kids can sit down

00:05:38

and fiction and damages don't

00:05:39

matter. Well you made a

00:05:41

panel on bifurcation trifurcation, but

00:05:43

hey, there's no choice of

00:05:45

subjects in arbitration, so it

00:05:46

doesn't even come up. In

00:05:49

contrast every single International Tracer

00:05:52



more or less has a

00:05:54

procedure or number one and

00:05:56

a first session. Given the

00:06:00

popularity and importance of these

00:06:03

two aspects we've assembled this

00:06:06

panel of extremely experienced International

00:06:09

arbitration practitioners in their words.

00:06:12

They've done this dozens of

00:06:14

times. So allow me to

00:06:17

very briefly very very brief.

00:06:21

Am I right is Jose

00:06:23

Garcia Twitter? He's a partner

00:06:27

at Clifford chance. He's originally

00:06:29



from Spain. Correct. Correct. Good

00:06:32

good received from Georgetown law

00:06:34

has been with Clifford chance

00:06:36

for nearly a decade. Fun

00:06:39

fact like me despite having

00:06:41

a formal name of Jose

00:06:42

Garcia. It goes by the

00:06:44

more informal name. What's the

00:06:49

correct next is a c

00:06:55

k Stacy is an international

00:06:57

relations specialist at Crowell &

00:06:58

moring where she has been

00:06:59

since 2007. She has earned

00:07:02



her JD from the University

00:07:03

of Miami Law School. Fun

00:07:06

fact Stacy is an avid

00:07:09

fan of my NFL team

00:07:11

has the best record in

00:07:14

the NFL. Next is Simon

00:07:29

consider. He's council at three

00:07:31

crowns here in Washington. He

00:07:33

received his LM from Columbia

00:07:35

Law School and privacy practice

00:07:37

International traction at freshfields. Fun

00:07:41

fact despite popular misconception or

00:07:45

perhaps just mine Simon hails

00:07:48



from New Zealand nuts, Australia

00:07:51

Jordan. Fun fact that one

00:07:54

lastly. We have Ken Figueroa.

00:07:58

Correct. Correct, Hawaii during DC

00:08:06

earned his ba from Yale

00:08:08

and his JD from Columbia.

00:08:10

Fun fact end speaks three

00:08:13

languages another fun fact, that's

00:08:16

two more languages. This program

00:08:21

will be run as follows.

00:08:22

I first I have some

00:08:23

questions for the panelists at

00:08:27

the end. We'll have a

00:08:28



separate question-answer session book for

00:08:30

fleas throughout. If you have

00:08:33

any questions, feel free to

00:08:34

raise your hand and asked

00:08:35

if he great to make

00:08:37

this interaction. Okay. the starting

00:08:43

off topic 1 you only

00:08:46

get one chance to make

00:08:48

a good first impression. The

00:08:51

first session is the first

00:08:53

time that the parties need

00:08:54

the Tribunal. Panelist What's significant

00:08:58

about this first meeting your

00:09:00



way your your best suit

00:09:02

your practice and to ensure

00:09:04

that you can correctly pronounce.

00:09:05

The arbitrator's names what's significant?

00:09:12

Okay, I'll start taking this

00:09:15

one. Obviously Antonio. Thanks to

00:09:19

the Western arbitration week for

00:09:20

inviting me. Thank you for

00:09:22

everyone who's here. And who's

00:09:23

the remote I will answer

00:09:25

this one by quoting one

00:09:28

of our hosts are officially

00:09:29

who said while overlooked by

00:09:31



some as a formality. We

00:09:37

underestimated and then he has

00:09:38

ads as in every form

00:09:40

of. Advocacy First Impressions can

00:09:43

be lasting. The first time

00:09:46

you need your tribunal you

00:09:48

have an excellent opportunity to

00:09:50

introduce yourself to introduce your

00:09:53

client and you get to

00:09:54

introduce your case. You need

00:09:57

to be flexible to the

00:09:59

extent in my opinion that

00:10:00

you pee too much. You

00:10:02



can eliminate the tribunal on

00:10:03

the other side can object.

00:10:06

If you are too shy

00:10:07

maybe you'll lose a wonderful

00:10:08

opportunity. So always remember that

00:10:13

one. It is important to

00:10:15

go well-dressed. I seen is

00:10:17

a practical panel. I really

00:10:19

literally seen people in t-shirts

00:10:20

and smoking cigarettes while on

00:10:22

a station that he didn't

00:10:26

look very well second be

00:10:27

preferred. There is a huge

00:10:29



difference between the attorney who's

00:10:33

there who's read the the

00:10:34

differences has prepared the differences

00:10:36

and he's ready to pee

00:10:37

to the tribunal gently on

00:10:39

the differences between the parties

00:10:41

and that another person who

00:10:42

comes unprepared you may bring

00:10:44

stats. You may bring figures

00:10:47

from other cases. You may

00:10:48

bring examples. My point is

00:10:51

be ready, but not only

00:10:52

be ready for the differences

00:10:54



get ready also for questions

00:10:56

on this cuz something's driving

00:10:57

us go off road and

00:10:59

Princess two weeks ago. I

00:11:01

had our first session and

00:11:02

we decided that our calendar.

00:11:04

They agreed calendar by the

00:11:06

parties. It doesn't like so

00:11:08

we had to adjust to

00:11:09

you. Wait, that's about the

00:11:14

parties agree or are you

00:11:15

flexible? You need to be

00:11:17

right to be flexible? Because

00:11:18



remember this is one game.

00:11:20

You have a whole league

00:11:21

you need to win the

00:11:22

season. That's when you get

00:11:24

your don't alienate the members

00:11:27

of your Tribunal. That doesn't

00:11:29

mean be soft to the

00:11:30

extension. You don't need the

00:11:33

last thing I would say

00:11:33

is. there's a misconception in

00:11:38

my opinion as to the

00:11:39

importance between in-person and virtual

00:11:42

but I've seen one thing

00:11:44



that is and we will

00:11:46

further discussing this later and

00:11:48

what I've seen recently in

00:11:49

the last 3 years. It

00:11:51

is very difficult to read

00:11:53

the Dynamics of the tribunal

00:11:54

With Your Truck lyrics it's

00:11:56

the first time you're seeing

00:11:57

them interact and basically what

00:12:00

happens in this week's to

00:12:03

Poker Face has an indie

00:12:05

keep going. Two separate rooms

00:12:08

to discuss this does not

00:12:09



happen in in person cases.

00:12:11

So your case you think

00:12:12

is important. You don't know

00:12:13

the interaction with the with

00:12:15

the tribunals. Another important thing

00:12:17

for the first session is

00:12:18

not only make a good

00:12:20

impression try to push for

00:12:21

an in-person hearing and I

00:12:22

know it's more costly but

00:12:29

but that's something I see

00:12:31

and what do you guys

00:12:33

think? I agree with everything?

00:12:35



You said I think in

00:12:38  
the last 5 years we

00:12:39  
change with these first procedural

00:12:42  
sessions because five years ago.

00:12:43  
It was absolutely the case

00:12:46  
that the default was that

00:12:47  
the first session would be

00:12:48  
in person. If you were

00:12:50  
the potty who was seeking

00:12:52  
to do it the AAA

00:12:53  
you had the onus of

00:12:55  
proving why that should be

00:12:57  
the case. I think it's

00:12:58



very clear that that's not

00:13:01

completely slept that it is

00:13:04

the default position is that

00:13:05

these kinds of procedural conference

00:13:07

should proceed with Sheila it'll

00:13:08

possible and if you do

00:13:10

the potty who is seeking

00:13:11

to do it in person

00:13:12

you need to justify why

00:13:13

that expense and delay that

00:13:15

is usually Occasions by that

00:13:17

this is necessary. You will

00:13:21

find yourself is Council Under

00:13:23



Pressure to do this virtually

00:13:25

that has become the default

00:13:27

as I say don't do

00:13:30

stunts. So reflexively adult that

00:13:32

position. They will be times

00:13:35

when the issues that are

00:13:36

still to be resolved between

00:13:38

the parties that need to

00:13:39

go to the tribunal very

00:13:41

simple guy. I should we

00:13:43

have three months between briefs

00:13:44

or three and a half

00:13:45

months. So we should we

00:13:46



use the schedule or the

00:13:48

Redskin schedule, but all the

00:13:51

times they will be issues

00:13:52

in your case. That is

00:13:53

sufficiently material to the overall

00:13:58

direction and potentially the outcome

00:14:00

of the case that you

00:14:01

really do want to be

00:14:03

arguing those in person in

00:14:05

front of the tribunal has

00:14:06

to give one and it

00:14:07

go to not wanting to

00:14:08

delve into war stories to

00:14:11



do much but Some years

00:14:14

back. I was representing Elliott

00:14:16

again in its investment treaty

00:14:18

arbitration against the Republic of

00:14:20

Korea and we filed a

00:14:24

notice of arbitration and statement

00:14:26

of claim on the Beyond

00:14:28

suit railroad to commence the

00:14:30

case. That's the language of

00:14:32

the relevant Raul. It requires

00:14:34

you to file a notice

00:14:35

of arbitration and statement of

00:14:37

claim. Now, what we actually

00:14:39



filed was really just a

00:14:41

notice of arbitration in the

00:14:42

usual way of giving the

00:14:43

background facts of the case,

00:14:44

you'd be usual nuts and

00:14:45

bolts that go in that

00:14:48

first pleading that in the

00:14:49

CIT arbitration the Republic of

00:14:52

Korea responded to your the

00:14:57

next step in this proceeding

00:14:58

will be that we will

00:15:00

fly last time the defense

00:15:02

And then obviously represented a

00:15:04



serious the front to a

00:15:05

claimant who is essentially The

00:15:08

Proposal as you will be

00:15:09

deprived of what you expected

00:15:10

which is that you will

00:15:12

get to put in a

00:15:12

statement of claim a company

00:15:13

by witness statements to Company

00:15:15

by expert report in the

00:15:17

usual way. We were unable

00:15:18

to reach agreement with counsel

00:15:20

for Korea that was a

00:15:21

point of immense gratitude to

00:15:24



the overall direction of the

00:15:25  
case. We felt it was

00:15:27  
not obvious. What why the

00:15:29  
tribunal Woodrow because the wording

00:15:31  
of the language and used

00:15:32  
railroad was a bit strange

00:15:34  
and we definitely want to

00:15:36  
that point. I'll get it

00:15:37  
in person and we did

00:15:39  
not want to leave that

00:15:40  
to what was at the

00:15:42  
time a relatively novel thing

00:15:44  
of doing these over a

00:15:45



video conference. So you will

00:15:49

find yourself under pressure to

00:15:51

to do them to actually

00:15:52

because that space things out

00:15:53

that's easier for everybody Fox

00:15:55

ask yourself. Is this something

00:15:57

that's on the ballot for

00:16:00

this hearing that is so

00:16:01

in Wouldn't that I really

00:16:04

do think we need to

00:16:05

be in person and if

00:16:06

so fight for that interesting

00:16:08

hearing. Just one really big,

00:16:14



I'm just so I'm going

00:16:15

to follow up with Mike.

00:16:16

OK mentioned to me the

00:16:18

most important aspect of the

00:16:20

first session is seeing how

00:16:21

the tribunal interacts in months.

00:16:23

Do you have to remember

00:16:25

we are very small community

00:16:27

very small, you know, we're

00:16:30

all going to see each

00:16:30

other again. I'm going to

00:16:32

definitely see each of my

00:16:33

Coke analyst in some cases

00:16:35



in the future. I'm sure.

00:16:40

They all know each other.

00:16:41

They probably been on panels

00:16:43

together. They probably socialized together.

00:16:45

So you really want to

00:16:46

see how the tribunal interacts

00:16:48

does the president kind of

00:16:50

lean a little more to

00:16:51

the right and because he

00:16:52

or she may know she

00:16:53

may know somebody, you know

00:16:56

on this side of the

00:16:57

panel versus the side of

00:16:58



the panel and maybe the

00:16:59

person knows this person a

00:17:00

little better. So you kind

00:17:02

of want to see you

00:17:03

know, who are they going

00:17:03

to do a little more

00:17:04

are the interacting a lot

00:17:06

of monks each other or

00:17:07

are they kind of keeping

00:17:08

to themselves? So to me

00:17:10

that actually is the most

00:17:12

important kind of knowledge you

00:17:13

can gain as far as

00:17:15



progressing your case forward is

00:17:16

washing to see how the

00:17:18

tribunal members interact amongst each

00:17:21

other obviously completely agree with

00:17:25

Michael panelists as far as

00:17:26

do our presentation, but to

00:17:28

me the most important information

00:17:29

you can gain is how

00:17:32

the tribunal is interacting amongst

00:17:33

themselves. How have you managed

00:17:38

to deal with this? Cuz

00:17:41

I really struggle distance to

00:17:42

see the Dynamics many percent.

00:17:44



Absolutely. Do you definitely don't

00:17:46

honestly see that is probably

00:17:49

the first 10 or 15

00:17:50

minutes when the tribunal is

00:17:52

getting settled if they have

00:17:53

an automatically dumped you into

00:17:55

a breakout room. You know,

00:17:57

I I was just going

00:17:58

to hearing not a profession

00:18:00

hearing but any of her

00:18:01

to a hearing last week

00:18:02

and the tribunal members knew

00:18:05

each other very well. They

00:18:08



we were just put into

00:18:09

the into the main hearing

00:18:11

and everybody was put into

00:18:12

the main hearing room and

00:18:14

at least two other tribal

00:18:15

members came hello-how-are-you the great

00:18:17

to see you last week.

00:18:18

Let's have coffee and then

00:18:19

the other one came in

00:18:20

and they you know, we're

00:18:22

talking on the phone to

00:18:23

each other on the phone.

00:18:26

So, you know, that was

00:18:29



the time we actually got

00:18:30

to see how they interacted

00:18:31

with each other. And then

00:18:34

once we went into the

00:18:35

hearing, you know any time

00:18:36

we went to a breakout

00:18:37

they went right into their

00:18:39

breakout room and we saw

00:18:40

Interaction until they came back

00:18:41

in the president you never

00:18:42

address the parties so that

00:18:45

that was really the only

00:18:46

time but otherwise, yeah completely

00:18:48



agree. It is very hard

00:18:49

to read my age here.

00:18:54

But I remember was first

00:18:55

such as we're telephonic they

00:18:56

were done by conference call,

00:18:58

right? But to me, it's

00:18:59

a virtual what you were

00:19:04

doing in conference calls. You

00:19:05

had no idea what was

00:19:06

going on tried, you know

00:19:07

some arbitrator something we sit

00:19:08

together another one was off

00:19:10

because he couldn't make it

00:19:11



wherever the arbitrator's were. So

00:19:13

I think this at least

00:19:14

lets you see a little

00:19:15

bit of the body language

00:19:16

of the arbitrator's I'm going

00:19:19

to be representing states. There

00:19:20

is a cost issue in

00:19:21

which you do for the

00:19:22

first session of procedural matters

00:19:25

in particular is really not

00:19:26

an upside to do it

00:19:27

in person. Unless everybody happens

00:19:30

to be an all the

00:19:30



arbitrator's happen to be near

00:19:31

the same city is very

00:19:36

difficult. It's virtually impossible, but

00:19:38

sometimes you can tell subtly

00:19:39

by The question then back

00:19:41

up ques do Mexico arbitrators

00:19:43

right? Where is and where

00:19:44

is the president kind of

00:19:45

kind of pushing with respect

00:19:47

to a particular question or

00:19:48

not? And that's going to

00:19:49

be valuable going forward to

00:19:51

my one comment in my

00:19:52



own advice and picking up

00:19:54

on underwear. My co-pilot sucks

00:19:55

that it is not to

00:19:57

be careful and turns giving

00:19:58

us a first impression when

00:20:00

to press your pleading when

00:20:02

it went to argue your

00:20:03

case or not you but

00:20:05

sometimes you are going to

00:20:05

have to us as I've

00:20:07

been mentioned but generally UPS

00:20:08

ground to pot right? So

00:20:09

if there's a way you

00:20:10



can trust us whatever All

00:20:11

You Need To Say by

00:20:12

saying this is not the

00:20:14

moment. I realize this will

00:20:15

be a moment. We'll play

00:20:16

this one of our you

00:20:17

this but because my pros

00:20:19

and cons about this up,

00:20:20

I need to mention XYZ

00:20:22

and I think that's critical

00:20:23

because otherwise you do immediately

00:20:26

get tied by the tribunal

00:20:27

as kind of that argumentative

00:20:30



party stuff tomorrow. So when

00:20:34

we come Let's talk now

00:20:41

about the evolution of procedural

00:20:44

order number one. How have

00:20:46

you seen procedure or a

00:20:48

number ones change or of

00:20:50

ball over time? I'll start

00:20:52

on that one when I

00:20:54

first started and I've been

00:20:56

doing this since 2007 and

00:20:58

my very first case in

00:21:00

case we had a file

00:21:02

buy stocks and we had

00:21:04



to get all of our

00:21:04

correspondents by fax to imagine

00:21:07

filing a 200-page grief plus

00:21:09

a couple hundred pages of

00:21:10

witness statements at 11:45 at

00:21:13

night dreaming of a fax

00:21:14

machine to go faster. So

00:21:17

and not only are probably

00:21:18

use the old one filing

00:21:19

that's probably other people filing

00:21:20

in other matters also tying

00:21:22

up a fax machine. So

00:21:24

I cannot tell you how

00:21:25



many times you know, we

00:21:26

would we would stand there

00:21:28

in literally yell at the

00:21:29

fax machine to go faster.

00:21:30

So a transmission of documents

00:21:34

is definitely one way that

00:21:36

we have seen things changed.

00:21:37

Just technology and Jen. Has

00:21:40

really changed how to proceed

00:21:41

orders of bolts. We used

00:21:43

to have to do everything

00:21:43

in paper tribunals never wanted

00:21:46

anything all the electronics, you

00:21:48



know, we would submit everything

00:21:50

we have facts and then

00:21:51

we would have it all

00:21:52

printed out and a group

00:21:53

of paralegals sitting in a

00:21:54

conference room. Not unlike this

00:21:56

one to seeing boxes and

00:21:58

boxes and boxes of exhibits

00:22:00

and then sending it off

00:22:01

so papers. Definitely one way

00:22:04

that we seen a virtual

00:22:07

hearings obviously are now commonplace

00:22:09

where you know, even a

00:22:11



few years ago a witness

00:22:12

testified by video conference with

00:22:14

controversial the matter you so

00:22:18

and I think the the

00:22:20

future and where we're going,

00:22:22

you know, what is that

00:22:23

talking about things like cyber

00:22:25

security data and a I

00:22:27

are now commonplace where is

00:22:29

before? I don't think we

00:22:30

even thought about it as

00:22:32

even an issue. That should

00:22:33

come up in a procedural.

00:22:34



What are but now you

00:22:37

expected especially if you're dealing

00:22:38

with an EU based party.

00:22:40

Fiber in particular and data

00:22:41

protection. They're all really common

00:22:44

place. Now. I'm not sure

00:22:46

if any of Michael panelist

00:22:47

have any other comments are

00:22:48

things they've seen or even

00:22:53

a lucky you are. It's

00:22:55

absolutely true. You're quite you

00:23:04

got your answer and within

00:23:05

30 days and all of

00:23:06



these things in it, you

00:23:07

know, the electronic filing has

00:23:08

made life a lot easier

00:23:09

and absolutely there is nothing

00:23:11

worse than you finally file

00:23:12

on a Friday night and

00:23:13

electronically and then you wake

00:23:15

up the next day and

00:23:16

remember all Wild by Monday.

00:23:19

We've got a send-off, you

00:23:20

know, a paper copies of

00:23:22

this and they will go

00:23:22

to be paged her and

00:23:23



everything like that. So I

00:23:25

think a very happy Eeveelution

00:23:26

boats for the planet and

00:23:27

prettiest fiance is is the

00:23:29

increased focus on on electronic

00:23:31

filing being being in office

00:23:32

and fortunately, you know, many

00:23:35

many are betrayed his nowadays

00:23:36

often busy and on the

00:23:38

go there there. I'm way

00:23:40

better at using technology. There

00:23:43

are many who don't fall

00:23:44

in that category still of

00:23:45



course and I think as

00:23:47

a say a generation grows

00:23:50

older and become the arbitrators

00:23:52

of the of the next

00:23:53

20-30 years. I think it

00:23:56

will only continue to be

00:23:57

the case. No, that's why

00:24:02

they're maybe what I've seen

00:24:04

him one part of the

00:24:05

old as you are used

00:24:07

to stamp documents. Manually right.

00:24:12

One. That was a that

00:24:14

was interesting, but would at

00:24:18



least what I thought he

00:24:20

was back in the day

00:24:20

were three pages and then

00:24:22

you add up to \$20

00:24:24

for every issue. Now, I

00:24:26

think I do know is

00:24:27

are maybe more sophisticated or

00:24:28

their parties are more sophisticated

00:24:30

to and we try to

00:24:32

address most of it until

00:24:33

1. So now we have

00:24:34

like 20 Pages if you

00:24:36

want, but yes, it's cleaner.

00:24:39



One practical comment when you

00:24:41

get tier one and they're

00:24:44

weird stuff like there's weird.

00:24:45

Let's use this protocol. Why

00:24:48

don't we use this data

00:24:49

protection thing? Please check if

00:24:52

the members of the tribunal

00:24:53

have actually participated doing that

00:24:55

cuz I had a very

00:24:56

fun experience like 6 months

00:24:58

ago in which opposing counsel

00:25:00

was basically saying what are

00:25:01

the CPR things on I

00:25:03



really dumb cuz I can't

00:25:04

remember International arbitration do the

00:25:08

2022 thing very novel and

00:25:11

its share of our tribunal.

00:25:12

She had drafted. On the

00:25:14

other side was basically saying

00:25:16

this is useless. Of course,

00:25:17

there are things that you're

00:25:24

not used to. Maybe just

00:25:26

go back check. What are

00:25:28

they and who preferred them?

00:25:29

Cuz you may be at

00:25:30

you may be losing an

00:25:31



excellent opportunity to maybe congratulating

00:25:34

someone or you may get

00:25:36

yourself into a I'll be

00:25:37

cold by Annie a lion

00:25:38

eating one of the members

00:25:39

of your tribe in my

00:25:42

experience. I think one way

00:25:48

in which has changed. I

00:25:49

know what kind of bread

00:25:50

is that? There's always now

00:25:51

at least what I've seen

00:25:52

and I'll be curious to

00:25:54

see if it still exists

00:25:55



in some of the more

00:25:56

recent ones but there's always

00:25:58

a cause they're about what

00:25:59

happens if someone gets over

00:26:01

to where there's a Public

00:26:02

Health crisis, right? And there's

00:26:03

already has the arbitrator's thinking.

00:26:06

Well, someone does get colder.

00:26:07

There is some kind of

00:26:08

public health issue. What are

00:26:10

we going to do? We're

00:26:10

going to suspend the hearing

00:26:11

we're going to negotiate another

00:26:13



proceeding. There's going to be

00:26:14

a true test ammonia for

00:26:17

example, and that's been much

00:26:19

more common in at least

00:26:20

the ones I've seen either

00:26:21

recently. It's still there. But

00:26:22

I think that now that

00:26:23

covid is kind of more

00:26:24

of just like a It'll

00:26:26

become a little bit more

00:26:26

of a typical flu thing.

00:26:28

Maybe there's less and less

00:26:28

of that. But but I

00:26:30



remember that change. Okay, we're

00:26:34

going to move now to

00:26:35

the contents of p01 and

00:26:38

this is I believe going

00:26:40

to be a while. She's

00:26:42

in arbitration week first the

00:26:44

way that we do this,

00:26:45

so I'm going to identify

00:26:48

a list one by one

00:26:50

of a pair of an

00:26:52

issue and I want each

00:26:53

of the panelists a very

00:26:55

quickly. Give me a yes.

00:26:56



It should be include a

00:26:58

one or no one should

00:26:59

not be included. I have

00:27:01

a list of the top

00:27:01

20 and we just want

00:27:10

a yes or no. All

00:27:12

right applicable rules. What? a

00:27:20

lawyer for the arbitration Identification

00:27:32

of counsel yes. Yes. Yes.

00:27:34

Yes. Yes, Oregon identification tribunal

00:27:48

secretary or a system. Ideally,

00:27:52

yes, yes. Yes. Yes confidentiality.

00:27:58

Can I take depends on

00:27:59



the case? And make you

00:28:02

say yes or no? No,

00:28:03

yes. Yes. Yes production process

00:28:15

including whether a red fern

00:28:17

schedule or astern schedule. What

00:28:27

the steps are going to

00:28:27

be? Yes, whether it's a

00:28:29

Redfin or Stern. No. I

00:28:31

was saying yes to both

00:28:34

not extraordinary detail. The basic

00:28:36

steps were going to be

00:28:37

but I do think right

00:28:38

for her strength matters because

00:28:40



reading it this way restaurant

00:28:42

tremendously important structural witness statements

00:28:56

structure of witness statements. buy

00:29:05

structure meeting that the witness

00:29:09

statement the other basic structure

00:29:11

into the basic elements that

00:29:12

don't have to be that

00:29:13

yes. Details about structured expert

00:29:18

report no, no, no. Translations

00:29:25

yes. Yes. Yes. Yes Manner

00:29:29

and timing a filing submission.

00:29:33

I'm going to have to

00:29:34

say yes to that your

00:29:37



paralegal appreciate that. Yes. Yes.

00:29:41

earring location Yes. Yes to

00:29:47

the city but not to

00:29:48

the specific venue for the

00:29:51

seat but not so where

00:29:52

the hearing will eventually be.

00:30:03

I'm next hearing bundles. Oh,

00:30:07

yeah. Absolutely. Yes. Democracy is

00:30:16

adhering. Nope. Yes or no.

00:30:25

Reporting at hearing no. No,

00:30:27

no. Witness attendance at hearing

00:30:33

including use of virtual testimony.

00:30:35

Yes, I think so. Procedure

00:30:44



for witness testimony at hearing

00:30:47

no. Yes. No. No. Procedure

00:30:54

for expert testimony of urine

00:30:56

no. Yes, no, no. Yusuf

00:31:00

virtual hearings Yes, no. Yes.

00:31:05

It's a possibility. cybran data

00:31:08

protection I say yes. Yes.

00:31:12

Yes. Yes and lastly post

00:31:16

you in Greece. Nope. No,

00:31:18

no, no. Okay. All right,

00:31:23

that was exhausting. We're not

00:31:24

going to do that. But

00:31:32

but but she wishes that

00:31:34



that I like to talk

00:31:34

about today seem to be

00:31:36

some disagreement here first is

00:31:39

the hearing including hearing issues

00:31:42

in 501. I basically should

00:31:46

we be including the details

00:31:47

of the hearing now to

00:31:49

get is proceeding in Pier

00:31:50

One or should we kicking

00:31:52

this down the road to

00:31:53

a pre-hearing conference right before

00:31:56

after the Ravens winning right

00:31:57

before the hearing because You

00:32:03



don't really know what the

00:32:06

hearing is going to require

00:32:08

at the time. You're doing

00:32:10

procedural order. Number one in

00:32:13

my opinion. The only thing

00:32:15

you need to guess at

00:32:17

that point is how long

00:32:20

are you going to need

00:32:21

for the hearing and he

00:32:22

has to do that because

00:32:23

you have to have a

00:32:24

date in the calendar months

00:32:27

from now when there's going

00:32:27



to be here. She has

00:32:29

to guess how many days

00:32:30

are we going to need

00:32:31

your guessing you're always getting

00:32:33

it wrong is going wrong,

00:32:35

but your guessing you're over

00:32:37

guessing because the worst thing

00:32:38

right are you going to

00:32:41

have that you've got to

00:32:42

have some rough idea that

00:32:43

we're going to need one

00:32:44

way to wait 3 weeks.

00:32:45

Whatever it is. That's all

00:32:47



you can do at that

00:32:48

point. You don't even know

00:32:50

what this juncture how many

00:32:52

witnesses you're going to have.

00:32:53

Are there even going to

00:32:55

be experts how many issues

00:32:57

are going to still be

00:32:59

alive at the time we

00:33:00

go to trial how many

00:33:01

how many these things are

00:33:03

going to still be on

00:33:03

the table this time to

00:33:04

go to trial so In

00:33:09



order to continue to promote

00:33:11

the flexibility of the procedure

00:33:13

that we all hail to

00:33:14

a client's is being this

00:33:15

big advantage of arbitration y

00:33:18

La Casa selves in right

00:33:20

at the beginning of a

00:33:21

case to a procedure that

00:33:23

becomes incredibly difficult to depart

00:33:25

from his we get more

00:33:27

and more of a cereal

00:33:28

with are with our opponent

00:33:29

as the case goes on

00:33:30



when we could have left

00:33:32

it open and let the

00:33:35

tribunal decide with the full

00:33:37

facts based on actual data

00:33:39

points at a sensible time

00:33:41

part of the Earth. If

00:33:43

I may have just been

00:33:44

thinking I'm probably about to

00:33:45

talk to you cuz you're

00:33:46

keeping a respondent that is

00:33:48

particularly important when your response

00:33:50

and respond. You haven't seen

00:33:56

you make it five reports

00:34:00



on your eye Greensboro three-day

00:34:01

hearing and that's the worst

00:34:03

case scenario. So so yesterday

00:34:06

comes to the opposition, I

00:34:09

would say that I think

00:34:10

on the road I think

00:34:12

because he needs which is

00:34:18

what happens if an expert

00:34:19

or witness catch you up

00:34:20

at the hearing. I think

00:34:22

that needs to be clarified

00:34:24

at the very beginning and

00:34:26

the end whether that means

00:34:27



that that testimony is going

00:34:28

to be discounted or whether

00:34:30

its lack of discretion of

00:34:31

the tribunal that ruled needs

00:34:33

to be set out because

00:34:33

if you wait for the

00:34:34

hearing or three weeks before

00:34:37

the hearing when you're ready.

00:34:38

No, one of your witness

00:34:38

is not going to make

00:34:39

it you can be fighting

00:34:41

yourself. Just started going to

00:34:44

be fine that it's not

00:34:45



and that issue can be

00:34:46

resolved in the very beginning

00:34:47

now. I'm so just I

00:34:49

mean, I I was approached

00:34:50

his kind of you know,

00:34:52

if you were at the

00:34:52

Rawls that the available just

00:34:54

kind of assumed you're always

00:34:55

going to be the worst

00:34:56

position. I felt so you

00:34:57

don't want it that's entirely

00:34:58

cut off that testimony but

00:35:00

you trying to find a

00:35:01



middle ground, but they might

00:35:03

be other position was strategically

00:35:04

in your client might want

00:35:05

to push for that one

00:35:08

position with a bunch of

00:35:09

a hearing that's important to

00:35:10

know up front. So no

00:35:14

disrespect Michael penalized. I have

00:35:21

a preference for having everything

00:35:23

up front because there are

00:35:25

two words. I just like

00:35:26

we're number one expensive word

00:35:30

number to uncertain. Okay clients

00:35:32



Kendall not like those words.

00:35:35

I like to know right

00:35:36

up front what what are

00:35:39

client should expect so for

00:35:41

example, let's say the client

00:35:46

serving as a witness to

00:35:48

client submitting a witness statement

00:35:49

which happens quite often. It

00:35:53

may be in dispute as

00:35:54

you know, one party may

00:35:56

think will typically that the

00:35:57

client allowed to sit through

00:35:58

the entire entire proceedings including

00:36:01



the opening as long as

00:36:02

he or she is the

00:36:02

first person to testify that's

00:36:04

fairly standard, but not always

00:36:07

I want to make sure

00:36:09

my client knows that if

00:36:11

he or she is putting

00:36:12

in a written statement that

00:36:13

they will be allowed to

00:36:14

hear the entire case. I

00:36:15

want that in the procedural

00:36:16

order. I want to see

00:36:18

hearing bundles are very very

00:36:20



very important to me is

00:36:22

something that personally I would

00:36:23

normally handle so I want

00:36:27

to know right up front

00:36:27

here. So I don't need

00:36:28

to know very specific but

00:36:29

no one has give me

00:36:30

that bundle 2 is going

00:36:31

to be. But I want

00:36:32

to know what's going to

00:36:33

be the content generally very

00:36:36

generally of the bundles. Are

00:36:37

we going to organize them

00:36:38



in numerical order? Are we

00:36:40

going to organize them in

00:36:41

chronological order? Because I can

00:36:42

tell you we've actually had

00:36:43

that today, you know where

00:36:46

one party wanted it one

00:36:47

when one party one of

00:36:48

the other because it's procedure

00:36:49

ordering was not clear. I

00:36:52

want to know that we

00:36:53

are going to the court

00:36:54

reporter cuz I've had hearing

00:36:55

from other party didn't think

00:36:56



we needed a court reporter.

00:36:57

I don't need to know

00:36:59

the name of the court

00:37:00

reporter. I Choose You know

00:37:01

that we're going to have

00:37:01

a court reporter. I think

00:37:03

having everything up front so

00:37:05

you can tell your client

00:37:06

what to expect is important.

00:37:09

I think you can also

00:37:10

kind of Taylor your activities,

00:37:13

you know, when you're the

00:37:14

way you present your case

00:37:15



to the Tribunal based on

00:37:18

you know, what you already

00:37:19

know and what the parties

00:37:20

have already agreed to I

00:37:22

have never had an instance

00:37:24

where I we come back

00:37:25

and say why do we

00:37:26

put that in the procedure

00:37:27

to order will be always

00:37:29

come back and see if

00:37:29

you didn't we put that

00:37:31

in the procedure order because

00:37:33

in a lot of instances

00:37:34



when we get to be

00:37:35

here like a pre-hearing stage

00:37:37

and a pre-trial conference often

00:37:39

is unnecessary unless there's a

00:37:40

substance dispute which is a

00:37:42

completely separate issue, but when

00:37:44

we a lot of times

00:37:45

because we've already dealt with

00:37:47

everything up front by the

00:37:48

time we get to the

00:37:49

pre-hearing conference we canceled it

00:37:51

because we've already discussed all

00:37:53

of these pre-hearing procedural issues.

00:37:56



So to me it gets

00:37:58

a lot more certainty to

00:37:59

the lawyers. It gives a

00:38:01

lot more certainty to the

00:38:02

client and honestly if we

00:38:04

don't have to spend time

00:38:05

writing letters and you know,

00:38:07

sitting and prepping for a

00:38:08

pre-hearing conference attending a pre-hearing

00:38:10

conference potential correspond after the

00:38:13

pre-hearing conference, do you all

00:38:14

hear the billing going so

00:38:16

that the client? Going going,

00:38:17



you know, it's me. It

00:38:20

just makes more sense from

00:38:21

both a cough and a

00:38:23

logistical perspective to have everything

00:38:25

set up front. There are

00:38:27

going to be things that

00:38:28

are going to come up

00:38:28

that no one anticipated cuz

00:38:31

that always happens as I

00:38:33

pick up. I don't know

00:38:34

what has happened but there

00:38:35

are things that no one

00:38:37

foresaw, you know. Especially happened

00:38:40



when 2020 rolled around and

00:38:42

all the sudden, you know,

00:38:43

you got a notice and

00:38:44

says, you know my witness

00:38:45

just tested positive for covid

00:38:47

in here. She can't be

00:38:48

there next week. I know

00:38:50

things like that changed, but

00:38:51

to me I prefer to

00:38:53

have the certainty and have

00:38:56

already, you know, max out.

00:38:58

Basically my entire case my

00:39:00

last point on this is

00:39:01



just what I look at

00:39:02

a procedural order. I am

00:39:04

thinking about it backwards. I

00:39:06

am not thinking about filing

00:39:07

statement of claim. I am

00:39:09

thinking about filing the post

00:39:10

here and breathe and I

00:39:11

were cops you to order

00:39:12

backwards. Okay, because everyone's thinking

00:39:15

about if you're claimed it

00:39:16

by Statement of plan I

00:39:18

am thinking how am I

00:39:20

going to turn that thing

00:39:20



to clean and securing bundle

00:39:22  
of the hell am I

00:39:22  
going to use it with

00:39:23  
a witness at the hearing?

00:39:24  
I am thinking about that

00:39:25  
from the day. We filed

00:39:27  
a notice of arbitration. Okay,

00:39:29  
because I am thinking about

00:39:30  
doing number these as exhibit

00:39:32  
a or do we number

00:39:32  
the Misty wants you to

00:39:34  
see 3 and I am

00:39:35  
but a number to C1

00:39:36



C2 C3. So to me,

00:39:38

I am always thinking about

00:39:39

it backwards because the last

00:39:41

thing I want to do

00:39:42

is get to the, you

00:39:44

know, we joined our filing

00:39:45

coming in and having a

00:39:47

mess on my hand between

00:39:48

the parties who have used

00:39:50

different numbering system. Some of

00:39:52

them they see numbers are

00:39:53

numbers of them their use

00:39:55

the word an ax or

00:39:56



the artist exhibit or something.

00:39:58

So if we can get

00:39:59

all of that clarified right

00:40:01

in the very beginning and

00:40:02

you know, I've thought about

00:40:04

this and I planned for

00:40:05

that and by the time

00:40:06

I get to the prep

00:40:08

for the hearing preparing the

00:40:10

hearing bundles working with the

00:40:12

team to prepare, you know,

00:40:13

the the witness kept everything

00:40:15

is organized and it's done.

00:40:17



And it's logical to me.

00:40:19

I prefer to fit everything

00:40:22

in right in the front.

00:40:23

So on this Clarity at

00:40:25

the beginning point, I want

00:40:28

to ask about procedure calendars

00:40:30

cuz I had a I

00:40:31

thought we were allowed to

00:40:32

fight. Don't want this point

00:40:44

on what can said I'll

00:40:46

get back to you on

00:40:49

the point of what happens

00:40:52

when a witness does not

00:40:53



show up on an understanding

00:40:55

why you want to see

00:40:57

that but I've seen people

00:40:59

shoot themselves on the leg

00:41:00

because what is your witness

00:41:03

and then you get to

00:41:04

break here in Cumberland, you

00:41:05

know, and there's a rule

00:41:06

that says strike out. And

00:41:19

I've seen a witness not

00:41:20

have a Visa. I'm sorry.

00:41:23

I'm sorry. I'm me being

00:41:25

the bad guy saying well.

00:41:31



I need was unfair it

00:41:34

was not really under their

00:41:35

control and the witness could

00:41:36

strike out. That's why I

00:41:40

think I think that that's

00:41:41

what I'm saying. Is that

00:41:44

a rather have that fight

00:41:45

in the beginning then when

00:41:47

were three weeks or month

00:41:48

away from the hearing doing

00:41:49

three weeks away from hearing

00:41:51

the stakes are pretty clear.

00:41:53

Like, you know, if your

00:41:54



witness is going to have

00:41:54  
a piece or not. I'd

00:41:56  
rather have the fight in

00:41:56  
the beginning or you're more

00:41:58  
likely to get something like,

00:41:59  
oh you would he'll he'll

00:42:00  
testify for actually or the

00:42:03  
tribunal will take into account

00:42:04  
his testimony within the context

00:42:06  
of the rest of it

00:42:07  
and you're less likely to

00:42:08  
get precise because people are

00:42:09  
scared to answer the phone.

00:42:10



You just count his testimony

00:42:12

entirely, right? And I think

00:42:14

also it gets closer down

00:42:20

the road when they were

00:42:21

ready, maybe make some Judgment

00:42:22

at the hunt for in

00:42:23

the witness's or is it

00:42:24

exactly I want to put

00:42:32

on Stacy back to you.

00:42:34

If you see the best

00:42:38

practices that big cities using

00:42:40

every time you get up

00:42:42

here from 8 to now,

00:42:43



it has nothing with respect

00:42:45

to the hearing. There are

00:42:46

blank either party won a

00:42:48

fight over that and put

00:42:51

it in the PO and

00:42:51

regulate that they well but

00:42:54

according to its next best

00:42:55

practices human body says no

00:42:57

and the other party says

00:42:58

yes, there's nothing and that's

00:43:00

why you go to the

00:43:01

procurement conference. So take me

00:43:03

to we are not wrong.

00:43:05



Yeah, I would write it

00:43:06

in. What is station is

00:43:20

your position is that always

00:43:22

your position or if you're

00:43:24

against opposing counsel, do you

00:43:27

know of a very experienced?

00:43:29

They've been the earring 110,000

00:43:32

time? Are you willing to

00:43:33

be a bit more relaxed

00:43:35

that will hearing Logistics upfront

00:43:36

or you scarred by some

00:43:38

experience you had with some

00:43:39

firm when you've done and

00:43:40



I'm going to put it

00:43:42

on the therapist cash for

00:43:43

what what happened? First thing

00:43:52

is what I walk into

00:43:53

a sharing room. I know

00:43:54

that I am probably more

00:43:55

experience than 90% of the

00:43:57

hearing room. I've ever walked

00:43:59

in. I've done more than

00:44:00

50 hearings. I've done 40

00:44:04

plus cases most attorneys will

00:44:07

probably 2122 a year and

00:44:10

most because of the time

00:44:11



these things take I work

00:44:12

on average five to six.

00:44:14

So, you know part of

00:44:18

it is being scarred from

00:44:19

from previous and just knowing

00:44:21

you know, how how things

00:44:24

have gone in the past

00:44:25

this summer we weren't and

00:44:27

we know where we were

00:44:28

and as prepared with a

00:44:29

procedure with her because obviously

00:44:31

this is a this is

00:44:31

a learning process every case

00:44:33



you're going to go to

00:44:34

there's going to be something

00:44:35

really like how I really

00:44:36

like how we did that

00:44:37

and I hope we can

00:44:37

do it again in another

00:44:39

case whether it be some

00:44:40

piece of technology or even

00:44:43

hearing the venue. Maybe you

00:44:44

really liked her court reporter

00:44:46

you really like you're going

00:44:47

to learn something. I mean

00:44:49

I've been doing this for

00:44:49



a long time. Like I

00:44:50  
said, I've done a lot

00:44:51  
of hearing that. A lot

00:44:52  
of pieces and I'm still

00:44:53  
learning things, you know with

00:44:55  
every case and with every

00:44:56  
hearing and with every new

00:44:58  
person that I work with.

00:44:59  
So yes come from previous

00:45:04  
experience of being prepared in

00:45:08  
the procedural order and I'm

00:45:10  
really having to learn and

00:45:12  
you know, so for me

00:45:13



and make it a little

00:45:15

bit of a battle wounds

00:45:17

cases where I'm up against

00:45:22

firms that are represented on

00:45:24

the panel and they're very

00:45:26

experienced. Do you know what

00:45:27

you're going to get your

00:45:28

meeting at sensible opposing counsel

00:45:29

or done? It many many

00:45:30

times. There are other cases

00:45:32

where you might come up

00:45:33

against the regional us firm.

00:45:36

That's really a litigation for

00:45:38



establishing an arbitration. First time.

00:45:40

They're going to try and

00:45:41

impose Federal rule civil procedure

00:45:42

on you and in that

00:45:44

kind of scenario. I can

00:45:46

really see the benefit of

00:45:47

what you're saying because you

00:45:48

kind of know they do.

00:45:50

Know the rules of your

00:45:51

game you want to lay

00:45:53

it out for them and

00:45:53

then I'm strongly suspect that

00:45:55

confirms. You are kind of

00:46:04



jumping into the arbitration sphere

00:46:06  
and to the point of

00:46:08  
you know, I have an

00:46:09  
education them a little bit

00:46:11  
at the first session even

00:46:13  
just sometimes and terminology. I'm

00:46:15  
sure we've all heard syrup.

00:46:16  
I don't know what that

00:46:17  
if we joined our more

00:46:18  
than you know more than

00:46:19  
we care to save. But

00:46:21  
yeah, I definitely think you

00:46:23  
know something that I think

00:46:25



it sets the tone with

00:46:28

the tribunal because especially when

00:46:30

you are maybe in a

00:46:31

situation like, you know, sign

00:46:33

language just just discussing, you

00:46:35

know, what the fur maybe

00:46:36

that isn't as familiar with

00:46:38

arbitration Tamia sets the tone

00:46:40

of like tribunal look at

00:46:42

us. We know what we're

00:46:43

doing. We know what the

00:46:44

procedure is me know how

00:46:45

this goes know what you

00:46:46



expect. You know, we are

00:46:48

we've done this before We've

00:46:50

seen this before send it

00:46:52

to me at all. So

00:46:53

anyways, that's the tone with

00:46:54

the tribunal of like tribunal

00:46:56

look at us. We know

00:46:57

arbitration. We know what we're

00:46:59

doing you can trust us.

00:47:02

And I asked this question

00:47:15

because I really had an

00:47:17

excellent case. We got draft

00:47:18

p01 in the party spent

00:47:20



a good two weeks agreeing

00:47:23

upon three different versions of

00:47:25

procedural calendar. When was no

00:47:28

bifurcation and has all the

00:47:29

submissions in the hearing date

00:47:31

one is bifurcation, but by

00:47:33

conditions requested but not granted

00:47:36

and the other was bifurcation

00:47:38

is your question bifurcation is

00:47:39

Brandon so you can go

00:47:40

after pure one and you'll

00:47:42

have three different kind of

00:47:43

road maps different scenarios for

00:47:46



house in arbitration to play

00:47:47

out my question for the

00:47:49

panelists because ultimately only one

00:47:52

of those path is going

00:47:54

to be chosen. Is it

00:47:56

worth the time and expense

00:47:57

for Council to be negotiating

00:48:00

and agreeing upon these different

00:48:02

versions upfront or should we

00:48:04

just be having one just

00:48:06

general procedural calendar and then

00:48:07

deal with it as things

00:48:09

come up. I don't mind

00:48:12



doing that. Actually. I think

00:48:16

it can be very helpful

00:48:17

because one you need to

00:48:20

know the different routes Goldsmith

00:48:23

hearing day today hitting two.

00:48:24

We need to know that

00:48:25

as soon as possible and

00:48:26

if there's more than one.

00:48:28

Earning date that needs to

00:48:30

be brought to then provisionally

00:48:31

then so be it but

00:48:32

we need to book that

00:48:33

now so I think we

00:48:34



do need to caution against

00:48:36

that because there's so much

00:48:38

risk of July if you

00:48:39

don't and then you do

00:48:40

get it but skated in

00:48:41

in there is a hearing

00:48:42

and you run into real

00:48:44

trouble. What is a matter

00:48:53

of fact is going to

00:48:55

be the effect on the

00:48:56

calendar. I think that's a

00:48:58

helpful data point for them

00:48:59

to know rather than see

00:49:00



her to be discussed in

00:49:01

a vacuum. So obviously we

00:49:06

end up spending more time

00:49:06

than we should tweaking dates

00:49:08

and getting it all done

00:49:09

and it feels like a

00:49:10

bit of a waste of

00:49:11

time sometimes as we're doing

00:49:12

it, but I think in

00:49:14

the round that can be

00:49:15

efficient and it does go

00:49:16

to that important point of

00:49:17

when is the rain going

00:49:18



to be I also have

00:49:20

some more of a Trader

00:49:21

is when was just on

00:49:22

it also has why I

00:49:23

had a situation where you

00:49:24

know, we had schedule a

00:49:25

that's kind of it, you

00:49:27

know, and I delete the

00:49:28

discussion was whether or not

00:49:29

we were going to buy

00:49:30

4K and you know, well,

00:49:30

I don't know if I

00:49:31

want to buy forgive her

00:49:32



if I have your social

00:49:32

justice of the less you

00:49:33

the memorial and so the

00:49:36

tribunal kind of stopped us

00:49:38

at wait a second. What

00:49:38

if there is a chance

00:49:40

he might buy for kids

00:49:41

and I want to know

00:49:41

the schedule up front so

00:49:43

they sent us back to

00:49:43

negotiate. Let me go she

00:49:45

ate those three those three

00:49:46

colonies. I think it has

00:49:47



a lot to do with

00:49:48

a lot of these arbitrators,

00:49:50

you know, it's just a

00:49:51

small pool. They're all very

00:49:52

busy. They want to know

00:49:54

what's going to happen in

00:49:55

there. So yeah, I mean

00:49:56

I have to go to

00:49:57

practice point I would include

00:49:59

it because I think most

00:50:00

of those I would truly

00:50:00

appreciate it is happening in

00:50:02

company blood pressure for you

00:50:04



is a frequent phone Council

00:50:06

to identify earlier than you

00:50:08

might otherwise have done if

00:50:10

you're going to be launching

00:50:11

in Olean. LOL leaving. Is

00:50:20

there going to be an

00:50:21

Okie? Should we should Define

00:50:22

it? Right? And of course

00:50:23

you even if I kind

00:50:24

of have a sense of

00:50:25

what I want to do,

00:50:25

I want to show my

00:50:26

cards yet. And I don't

00:50:27



think I should Arbor trace

00:50:33

of Galilee been very respectful,

00:50:34

but that there's pressure. There's

00:50:45

also beneficial. I just think

00:50:56

I just got to go

00:50:57

to the Goodwill with the

00:50:58

tribunal because I think there's

00:50:59

nothing worse than you know,

00:51:01

finally negotiating the scheduler you

00:51:03

sat there and the tribunal

00:51:04

has canceled it in and

00:51:06

then a month late do

00:51:08

you stay up for going

00:51:09



to file you no objection

00:51:11

to jurisdiction. Sorry. We need

00:51:13

to go a whole nother

00:51:13

route including maybe you know,

00:51:16

now we may have no

00:51:21

one entire life is an

00:51:23

obvious. He's going to completely

00:51:24

change your schedule and your

00:51:25

hearing date has basically out

00:51:26

the window and I think

00:51:28

you know just goes to

00:51:29

the Goodwill of the parties

00:51:30

to the tribunal of just

00:51:33



trying to be as respectful

00:51:34

of their time as possible,

00:51:36

you know, so I think

00:51:38

having either multiple pass or

00:51:40

you know, renegotiated schedule, you

00:51:44

know, that includes bifurcation or

00:51:47

an objection for jurisdiction is

00:51:49

just showing respect. The tribunal

00:51:55

gives you po1 and the

00:51:57

tribunal has proposed various language.

00:51:59

Are you reluctant to move

00:52:03

off of that language in

00:52:04

if there's agreement of the

00:52:05



parties or do you generally

00:52:07

like, it's your betray Sheehan?

00:52:10

You can create your own

00:52:11

adventure. I know typically we

00:52:14

stay with the time because

00:52:16

if there's a change in

00:52:17

your comfortable you always answer.

00:52:19

This one is easier to

00:52:25

say unless you have a

00:52:26

strong anointing on treadmill. Know

00:52:31

what I can get the

00:52:32

agreement of the other side.

00:52:33

Okay, we both both parties

00:52:35



have agreed that the closet

00:52:37

it necessary for whatever reason

00:52:38

and intravenous open to it.

00:52:40

But otherwise you better have

00:52:41

a very good argument. Otherwise

00:52:43

you and I further on

00:52:47

strategy how much effort are

00:52:50

you as counseling on Aging

00:52:52

in to reach agreement with

00:52:54

the other side so that

00:52:56

when he gets up first

00:52:57

session is only two or

00:52:59

three or four areas of

00:53:00



the scream of the tribunal

00:53:01

consider as opposed to being

00:53:03

like really sorry. We got

00:53:06

all these things to discuss

00:53:07

how much effort you put

00:53:08

in to make sure you

00:53:09

get to that kind of

00:53:10

situation. I mean, I think

00:53:12

it's common for there to

00:53:14

be a family with an

00:53:16

email exchange with different dress,

00:53:18

and the like but I

00:53:19

think it was important to

00:53:21



pick up the phone or

00:53:22  
get on a zoom with

00:53:23  
opposing counsel what the US

00:53:24  
litigation call a meeting confer

00:53:25  
and and try and see

00:53:28  
if you can't results are

00:53:29  
the things that remain open

00:53:32  
between you because you know

00:53:34  
in many instances you are

00:53:36  
able to boil it down

00:53:37  
to just one or two

00:53:38  
issues and I think that

00:53:39  
makes your procedural session significantly

00:53:42



more efficient and I think

00:53:45

it's a general rule. It's

00:53:46

something that we in the

00:53:47

arbitration Community generally don't do

00:53:50

as well as a litigation,

00:53:52

as we don't pick up

00:53:53

the phone to each other

00:53:54

until closing Council and say

00:53:55

that you without prejudice. Can

00:53:59

you just tell me what

00:54:00

would the background of that

00:54:01

isn't, you know that I

00:54:03

spent several years as a

00:54:04



litigator. We did that a

00:54:05

lot more on without prejudice

00:54:07

basis. Just between Council. Just

00:54:09

trying to tease out a

00:54:10

little more understandable better. What's

00:54:12

the back what was motivating

00:54:14

this objection that otherwise you're

00:54:15

just reading this email and

00:54:16

like I don't understand why

00:54:17

they change that works and

00:54:19

there's no context to it.

00:54:20

Unless you write a long

00:54:22

letter will pick up the

00:54:23



phone, but I think Uncle

00:54:24

can be really helpful as

00:54:25

well do a plug for

00:54:27

that. Okay, so I have

00:54:32

one more question before I

00:54:35

do that. I know the

00:54:35

year about 10 minutes left.

00:54:37

I want to open the

00:54:38

floor there any questions from

00:54:39

either the audience here or

00:54:41

or online? Yes, there's a

00:54:49

question online. That's hella be

00:54:51

bellina at Allen & overy

00:54:54



but I think we kind

00:54:56

of answer this question is

00:54:57

what is the penalty for

00:54:58

filing late or submitting in

00:55:00

the wrong format? Essentially none

00:55:05

if you file late, but

00:55:16

that that that's not a

00:55:17

good look at it. It

00:55:19

should not be done without

00:55:20

good cause what I have

00:55:22

to say in the early

00:55:23

days of my career was

00:55:24

pretty common people would routinely

00:55:27



file if you guys like

00:55:28

and it was no big

00:55:29

deal at the way things

00:55:31

have been proved since then,

00:55:32

but I'm people are generally

00:55:33

on Sunday stay. So if

00:55:34

you are going to the

00:55:35

light ideal, you would notify

00:55:39

the other side in advance

00:55:41

and try to get their

00:55:42

agreement to some extension to

00:55:44

dress whatever the issue is

00:55:45

that you're facing and then

00:55:47



commensurate extensions the rest of

00:55:49

the timetable to allow to

00:55:52

allow for that so that

00:55:53

your opposing counsel is not

00:55:54

your opponent is not penalize

00:55:56

buy your delay, but in

00:55:59

real terms with the tribunal,

00:56:01

are you going to have

00:56:02

your Take me to claim

00:56:03

restating the defense struck out

00:56:04

because you're 48 hours late

00:56:06

at ciolino. Here's another question

00:56:12

from our active virtual audience.

00:56:16



Oh and then we'll go

00:56:17  
to that live out in

00:56:19  
the virtual. What is the

00:56:20  
best cure for an uncooperative

00:56:22  
opposing counsel? That's the best

00:56:25  
thing that can happen to

00:56:26  
you. Because of their Uncle

00:56:28  
pet Cobra I have a

00:56:29  
case in which I haven't

00:56:31  
seen a response for a

00:56:32  
year from opposing counsel. So

00:56:34  
every time I am sorry

00:56:38  
I sent this 2 weeks

00:56:39



ago. I have no comments

00:56:41

by the second tribunal call.

00:56:49

so it's a very busy

00:56:51

but that strategy when I

00:56:52

agree with timing or Simon,

00:56:53

but Tribulus don't like you

00:56:59

like you fight over the

00:57:01

specific points that are relevant

00:57:02

to your case. You don't

00:57:04

find them wherever they need

00:57:06

people that way if they

00:57:09

don't like you I'll let

00:57:11

you have the strongest case.

00:57:12



There's or women for that

00:57:22

but The people who are

00:57:29

listen to your case, and

00:57:30

we're going to resolve your

00:57:31

case, and we're going to

00:57:32

rule on it. Do you

00:57:34

want to see a guy

00:57:35

in front? Who's I didn't

00:57:36

even themselves all the time.

00:57:37

They want to see people

00:57:38

who are reason that goes

00:57:40

to your point of sophisticated.

00:57:44

It's less, in my opinion

00:57:46



to see people like this

00:57:47

but it still happens to

00:57:49

your point. It sometimes happens

00:57:52

with a USDA. They fight

00:57:54

over every single point and

00:57:56

I will make my life

00:57:59

and to your other friend.

00:58:00

Please go up on fortunately

00:58:02

South your phone, but you

00:58:05

will end up being the

00:58:06

reason of a guy in

00:58:07

front of the tribunal and

00:58:08

they can Angel definitely procedural

00:58:14



procedural versus substantiv pick your

00:58:17

battles on the procedural. Honestly

00:58:19

it harder for the substitute

00:58:22

because you can get around

00:58:24

the procedural. It's crushing the

00:58:28

back yet. Ask you what

00:58:40

is your window with the

00:58:43

client asked the question? That

00:58:54

was my question didn't let

00:58:55

me ask it for the

00:59:03

record. I think she wants

00:59:08

to the questions. I heard

00:59:09

one incredibly important for your

00:59:11



client to attend the procedural

00:59:14

session is at all possible.

00:59:16

It creates a very positive

00:59:19

impression on the tribunal that

00:59:21

they care about the case

00:59:22

and they respect the procedure.

00:59:24

Second point is also very

00:59:27

important for your client to

00:59:29

see the procedure. Sometimes you'll

00:59:31

be representing a client who's

00:59:33

had 10 arbitrations. They've seen

00:59:34

it all they know it.

00:59:35

Oftentimes you want to be

00:59:37



the first time I've ever

00:59:38

been involved in an arbitration.

00:59:39

They really don't know much

00:59:40

about it. They're learning a

00:59:42

lot and it's incredibly important

00:59:43

for them to attend that

00:59:44

first session whether it be

00:59:46

in person or virtual and

00:59:48

lay eyes on the arbitrator's

00:59:50

see how the procedure is

00:59:53

and and start to learn

00:59:54

a little bit and get

00:59:55

a feel for what it's

00:59:56



going to be like and

00:59:57

what is going to be

00:59:58

like going forward. It's incredibly

01:00:00

important for them and the

01:00:01

feeling that they have in

01:00:02

their bones for how this

01:00:03

arbitration is going to go

01:00:05

and what might be, you

01:00:07

know, appropriate junctures for settlements

01:00:09

or alternative resolution as they

01:00:10

go along with that answer

01:00:14

all your questions, or do

01:00:14

you have something else? How

01:00:28



do you make dinner to

01:00:34

look at it? Incredibly important

01:00:35

incredibly important skill? Sorry, the

01:00:39

question is how do you

01:00:40

persuade a client who is

01:00:42

wanting you to argue zealously

01:00:44

for every point in and

01:00:45

be very forceful in front

01:00:47

of the tribunal according to

01:00:50

handle your clients expectations and

01:00:53

look sophisticated clients are pretty

01:00:57

free capable of understanding that

01:01:00

you catch more bees with

01:01:02



honey. You're you're better off

01:01:03

trying to front trying to

01:01:06

make an argument that is

01:01:07

persuasive and Cogan rather than

01:01:09

shouting and yelling every point

01:01:11

that if you've got two

01:01:12

good points to make don't

01:01:13

camouflaged among among among 10

01:01:16

or 12 with 10 bad

01:01:18

points and too good points

01:01:19

cuz it's a good point.

01:01:20

We'll get lost. There will

01:01:22

be clients who for whatever

01:01:25



reason just really want you

01:01:27

to you know, she out

01:01:30

and and and make a

01:01:31

scene and then end and

01:01:32

sometimes you know, you have

01:01:34

to find a way to

01:01:35

incorporate that a little bit.

01:01:38

Into your into your presentation

01:01:40

to the tribunal but and

01:01:43

going back almost to my

01:01:44

first point. What can sometimes

01:01:47

work is that you can

01:01:49

take a particular Point that's

01:01:51



of some particular interest to

01:01:52

decline in that first procedural

01:01:54

session that you can try

01:01:56

and make something off of

01:01:57

it the clients. He's for

01:01:59

themselves how badly that when

01:02:03

And understands going forward that's

01:02:06

not going to work and

01:02:09

that part can be incredibly

01:02:10

important. So you can find

01:02:12

a way that on a

01:02:13

point that doesn't really matter

01:02:15

doesn't really going to harm

01:02:16



you ultimately in trouble is

01:02:17

often know what's going on.

01:02:18

They also understand that you're

01:02:21

being yeah, you're instructed to

01:02:23

make this argument and you

01:02:24

can even phrase your language

01:02:26

sometimes to say I am

01:02:27

instructed to convey to the

01:02:30

tribunal that this is not

01:02:32

something you particularly believe in

01:02:33

but if you need to

01:02:34

present it for her for

01:02:35

Klein reasons, this is a

01:02:37



follow-up. It is really important

01:02:40  
in my life. When is

01:02:41  
critical, right? You need to

01:02:42  
explain to them that this

01:02:42  
is not the gation is

01:02:44  
arbitration in Graceland me differently

01:02:46  
and I I went by

01:02:47  
to see Miami and there

01:02:48  
was a power which one

01:02:49  
of the art one arbitrator

01:02:50  
is very commonly named said

01:02:53  
that everyone do not hire

01:02:56  
pitbulls, right? We don't like

01:02:58



pit bulls in arbitration Granite.

01:03:00

We prefer folks to come

01:03:02

to an agreement. Be able

01:03:03

to kind of food do

01:03:04

things along Pitbulls make our

01:03:05

work much more difficult for

01:03:12

you to come and get

01:03:12

that sense to the client.

01:03:14

So I understand this is

01:03:15

a different realm and if

01:03:16

they want to really pursue

01:03:18

their interest best in this

01:03:19

forum that has to be

01:03:21



done within that those rules

01:03:22

right? Otherwise, I love you

01:03:23

making for dinner. There's no

01:03:26

question. I see that your

01:03:33

stated purpose of having two

01:03:41

to tango and given the

01:03:43

balanced that I do have

01:03:44

a preference to the Fur

01:03:46

Elise. Yeah, so the question

01:03:59

basically is how often that

01:04:01

we can come into agreement

01:04:03

to have a more comprehensive

01:04:04

procedure order of rather than

01:04:06



you know different some of

01:04:08

the issues for me. Honestly.

01:04:09

I would say probably 95%

01:04:13

of what I want to

01:04:14

get in a procedural a

01:04:15

Target Center procedural order and

01:04:18

I think it's just largely

01:04:19

that you know based on

01:04:21

experience. If we're going to

01:04:22

get on a call with

01:04:23

opposing counsel that we can

01:04:25

justify why we think something

01:04:26

is important to be in

01:04:27



there and I we're not

01:04:28

putting something in there. I

01:04:29

just you know, because we

01:04:31

just want to listen just

01:04:32

in case, you know, we're

01:04:34

putting it in for a

01:04:35

reason and you know, fortunately,

01:04:38

you know, I think it's

01:04:40

you can kind of guess

01:04:41

from Michael Canales, you know,

01:04:44

where any got it comes

01:04:46

down to picking your battles,

01:04:47

you know, so there's things

01:04:50



that you know opposing counsel's

01:04:52

have wanted in there that

01:04:53

you know, we've kind of

01:04:54

been kind of leery. Ever

01:04:56

unsure of but you know

01:04:57

for the sake of one

01:04:59

agreement and picking our battles,

01:05:01

we may agree to something.

01:05:02

So, you know, I think

01:05:04

generally generally we we do

01:05:06

I mean my average receipt

01:05:07

order is between 15 and

01:05:09

25 Pages without the schedule,

01:05:12



you know, just because it

01:05:14

is so comprehensive so you

01:05:17

can justify it and you

01:05:21

can fight for an advocate

01:05:22

for it and have a

01:05:23

reason for it and it's

01:05:24

not just there just to

01:05:25

put words on paper then,

01:05:27

you know, I think the

01:05:28

party is generally be able

01:05:29

to work it out. Jose

01:05:34

Antonio Jealousy issues on on

01:05:47

the commercial sensitive information from

01:05:50



the get-go or not going

01:05:56

to yes or no answers.

01:05:57

I just say one thing

01:06:01

on that. I like for

01:06:03

there to be some clarity

01:06:04

around what exactly we mean

01:06:07

by confident show up and

01:06:08

freshen, a lot of arbitration

01:06:10

clauses say submitted to bonding

01:06:13

confidential arbitration, but don't offer

01:06:16

a lot more the title

01:06:18

and that can really impact

01:06:20

our climb because a party

01:06:23



to an arbitration. It has

01:06:25

a lot of other things

01:06:26

that they are doing in

01:06:27

the ordinary course of their

01:06:28

business they may for example

01:06:31

need to refinance so they

01:06:32

may need to get new

01:06:34

credit and it's part of

01:06:35

that they need to disclose

01:06:37

whether they are party to

01:06:38

any that little guy It

01:06:42

would be dishonest not to

01:06:43

tell that perspective Linda that

01:06:45



they party to an arbitration

01:06:48

right now. So they must

01:06:51

tend to tell him but

01:06:53

what can I tell them

01:06:54

how can they give them

01:06:55

any more detail around the

01:06:57

quantum climbed the the prospects

01:07:00

of success what the lawyers

01:07:02

have been telling them etcetera

01:07:04

etcetera. So I think it's

01:07:05

quite useful to have a

01:07:06

little bit more detailed around

01:07:08

confidentiality because the arbitration agreement

01:07:12



often doesn't provide it the

01:07:14

rules often don't provide some

01:07:17

governing laws Satan and who

01:07:20

has provided some dude impact

01:07:24

the actual died today of

01:07:26

the body. Cuz I think

01:07:29

I was the only one

01:07:30

who said no to it,

01:07:31

but I said no to

01:07:32

it on a general basis.

01:07:34

I think it depends on

01:07:35

the case and depends on

01:07:37

the client. I have to

01:07:39



say different but I've really

01:07:44

seen that part is really

01:07:45

one party really push. Maybe

01:07:47

it's in your interest am

01:07:49

not confident because you're making

01:07:51

you have really dumb dumb

01:07:53

damaging evidence with our side.

01:07:55

I seen cases set up

01:07:57

after this evening. And if

01:08:00

there would have been a

01:08:01

computer supervision and we would

01:08:03

have allowed it. Maybe I

01:08:07

think I agree in principle

01:08:10



with what you said Simon

01:08:11

cuz I can't live like

01:08:12

this house without agreeing with

01:08:13

you. But but I would

01:08:16

say Be reasonable look at

01:08:20

your case. Look at the

01:08:22

interest and talk to your

01:08:23

client. What are you expected

01:08:26

to say? McKay's expected to

01:08:29

file what document and then

01:08:33

make adjustment on a case-by-case

01:08:35

basis point is clearly. I

01:08:39

want something in there. I

01:08:40



know this is a huge.

01:08:41

But even if you're not

01:08:44

going to get into it,

01:08:45

like let's talk about confidentiality

01:08:46

in relation to documents as

01:08:48

opposed to the preceding. I

01:08:51

at least want a paragraph

01:08:52

in there that says the

01:08:53

parties are going to address

01:08:54

the confidentiality even if they

01:08:56

don't go into specific detail

01:08:59

about confidentiality. I would at

01:09:01

least one something in there

01:09:02



that says, you know, the

01:09:03

parties will separately undertake to

01:09:05

draft a confidentiality agreement, you

01:09:08

know, just an end if

01:09:10

that doesn't come to be

01:09:11

because it's unnecessary then so

01:09:14

be it, but I at

01:09:15

least wanted address in the

01:09:16

front especially if I'm a

01:09:18

claimant and I know So

01:09:19

for example, there may be

01:09:20

some highly sensitive and highly

01:09:21

confidential documents and even to

01:09:24



just you know, how the

01:09:25

parties are going to handle

01:09:25

them with third parties even

01:09:27

something as simple as handy

01:09:29

to send something to a

01:09:30

vendor to have copies made

01:09:31

so I can send them

01:09:32

to my Witnesses. You know,

01:09:34

I want to at least

01:09:35

want something address in the

01:09:36

procedure ordered that says that

01:09:38

acknowledges the existence of confidential

01:09:41

information confidentiality of the proceedings

01:09:44



is a whole subject, but

01:09:46

I at least want something

01:09:47

in there, even if it's

01:09:48

just a two-sentence paragraphs that

01:09:50

says will address it. Thank

01:09:53

you Stacey. I think that

01:09:54

is all her time. But

01:09:55

thank you very much for

01:09:56

listening and I think