



Practical Session: Fact and Expert Witnesses, Witness Declarations and Witness Preparation for the Hearing *

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 2024 focused on the practical aspects of working with fact and expert witnesses in arbitration. Moderated by Ashley Rivera from Crowell & Moring, the panel included experienced professionals: Miguel Naturally, Andy Has, Chris Paulsen, and Michael Refrigerate, who brought a combined 120 years of expertise.

The discussion began with the distinction between fact witnesses and expert witnesses. Fact witnesses provide firsthand accounts of events relevant to the dispute, while expert witnesses offer specialized knowledge and opinions to assist the tribunal. The panel emphasized the importance of selecting the right witnesses, ensuring they are articulate, knowledgeable, and prepared to testify effectively.

Key points included the necessity of thorough preparation for witnesses, including understanding their statements and potential cross-examination documents. The panel discussed the importance of drafting witness statements that reflect the witness's own words and experiences, as well as the need for collaboration between attorneys and witnesses.

The concept of "hot tubbing," or concurrent testimony, was explored as an efficient way to present expert opinions, allowing for direct questioning by the tribunal and facilitating comparisons between opposing experts. However, the panel noted that this approach is not widely adopted and often depends on tribunal preferences.

The session concluded with insights on conducting opposition research on witnesses, highlighting its importance in preparing for potential challenges during cross-examination. Overall, the discussion provided valuable guidance for both junior and senior practitioners in enhancing their skills in witness preparation for arbitration hearings.



Authors

Ashley Riveira, Andrew Ness, Miguel Nakhle, Chris Polson, Michael Guiffre

Topics

Fact Witnesses, Expert Witnesses, Witnesses, Declarations, Witness Declarations, Witness Preparation, Workshop

Category

WAW

Full Transcript

00:00:04

Well, good morning everybody and

00:00:07

welcome to Houston way back

00:00:09

here on the 9th and

00:00:10

welcome to cool & More

00:00:12

in here. DC. We're here

00:00:20

at day for hard to

00:00:24

believe of Washington arbitration 2024.

00:00:29

We've had an exciting three

00:00:31

days of channels all across

00:00:35



Washington DC with our many

00:00:39

supporters and partners. It's been

00:00:43

a fantastic conference this year.

00:00:45

We've had some really great

00:00:47

receptions the introductory welcoming reception

00:00:51

on Tuesday was a huge

00:00:52

success of the World Bank

00:00:54

a great crowd and and

00:00:56

I was a real pleasure

00:00:57

to hear from Professor Brower

00:01:01

giving us the latest on

00:01:04

developments in the investor State

00:01:06

arbitration World week. We have

00:01:08



the pleasure this morning of

00:01:10

kicking off the day with

00:01:11

an excellent panel and I'll

00:01:14

give you the title. It's

00:01:16

actually part of our effort

00:01:18

this year to actually address

00:01:20

practical topic. So we actually

00:01:22

called this practical session colon

00:01:26

working with the fact witness

00:01:27

witness declaration and the witness

00:01:30

preparation for the hearing and

00:01:32

we're hoping that this is

00:01:35

a great review for a

00:01:36



more senior folks as well

00:01:38

as for junior practitioners who

00:01:41

need to improve their skills

00:01:44

not to say the one

00:01:46

the one thing certainly over

00:01:48

my some 25 years doing

00:01:50

International arbitration. I've always taken

00:01:54

advantage of learning from my

00:01:56

colleagues and I think that's

00:01:57

kind of the the way

00:01:59

you continue to become a

00:02:01

better lawyer and to improve

00:02:03

yourself. We have a great

00:02:05



panel here today. Our moderator

00:02:09

is Ms. Ashley Rivera. Who's

00:02:13

the council here at Crowell

00:02:14

& moring. He's been practicing

00:02:16

for now almost 15 plus

00:02:19

years 17 years and has

00:02:23

been pretty exclusively working in

00:02:25

the international arbitration field doing

00:02:27

International commercial arbitration under various

00:02:30

rules as well as extensive

00:02:31

work and if investor-state arbitration,

00:02:34

and she really is one

00:02:37

of the go to people

00:02:38



in our group when we're

00:02:42

looking to deal with the

00:02:43

exact issues we have today

00:02:44

dealing with this witness is

00:02:46

absolutely a critical function of

00:02:49

any fact of element in

00:02:51

any case and and won

00:02:53

the Tennessee fraught with all

00:02:55

sorts of mine filled. So

00:02:56

something that merits a good

00:02:58

discussion and we're going to

00:02:59

have that this morning. And

00:03:01

again, welcome to Crowell &

00:03:02



moring. I want to show

00:03:05

everyone are duck. This is

00:03:07

the crawl Duckworks if you

00:03:09

come down and see the

00:03:10

session you'll get it. So

00:03:12

I added incentive but we're

00:03:14

here in person and I

00:03:15

Going to pass over moderator

00:03:18

duties to Ashley Rivera Ashley.

00:03:21

Thank you Ian and good

00:03:23

morning, everybody. I at the

00:03:26

end mentioned fact Witnesses expert

00:03:30

Witnesses. This this is a

00:03:32



topic that is very near

00:03:33

and dear to my heart.

00:03:34

I spend a lot of

00:03:35

time working with our fax

00:03:36

an expert Witnesses and experts

00:03:38

and I am joined today

00:03:40

by a fantastic panel. We

00:03:43

were doing some back-of-the-napkin math

00:03:46

this morning and I believe

00:03:47

we have about 120 years

00:03:49

of experience up here today.

00:03:50

So hopefully we can impart

00:03:53

some some interesting and new

00:03:55



things for your consideration. So

00:03:57

to my left is Miguel

00:03:59

naturally, he's the Executive Vice

00:04:02

President at Compass lexecon. He's

00:04:04

based in Houston. Miguel has

00:04:07

an economist by training and

00:04:09

he's worked as a Quantum

00:04:10

expert for the last 20

00:04:11

years and he's provided written

00:04:14

and oral testimony or expert

00:04:16

advice and more than fifty

00:04:18

three cases and Commercial arbitration

00:04:21

cases then to Miguel's left

00:04:25



is Andy has Andy has

00:04:27

been practicing litigation and arbitration

00:04:29

for about 40 years and

00:04:32

he spent much of that

00:04:33

time working at large international

00:04:35

law firm in about 5

00:04:37

years ago, and he transitioned

00:04:39

into being exclusively an arbitrator

00:04:43

and a mediator and he's

00:04:44

at jams now and Andy's

00:04:46

experience is in both International

00:04:49

and domestic arbitration with a

00:04:51

particular expertise in construction and

00:04:54



Engineering dispute. For those who

00:04:57

don't know construction arbitration is

00:04:59

a specific subset of arbitration

00:05:02

and they can be gigantic

00:05:04

cases. The hearings can last,

00:05:06

you know, upwards of six

00:05:08

weeks and the witness statements

00:05:10

and expert reports can be

00:05:11

truly daunting. So Andy has

00:05:14

a lot of experience to

00:05:15

share with us. Then Tandy's

00:05:18

left is Chris Paulsen. Chris

00:05:20

is a partner at PWC.

00:05:21



He's based in Toronto and

00:05:24

he has served as both

00:05:25

a fact witness and an

00:05:26

expert particularly with respect to

00:05:29

accounting practices and damages and

00:05:31

valuation issues. And Chris was

00:05:33

previously an investment banker in

00:05:35

the mining and energy sector

00:05:37

and last but not least

00:05:39

we have joining us virtually

00:05:40

my colleague Michael's refrigerator he

00:05:43

has worked as a lawyer

00:05:44

for about 30 years and

00:05:45



his practice focuses on both

00:05:47

litigation and international arbitration and

00:05:50

Michael in particular will be

00:05:52

able to offer us some

00:05:55

of the con Crafts and

00:05:57

distinction between how Witnesses and

00:05:59

experts are used in arbitration

00:06:01

versus how you see them

00:06:02

used in litigation. So with

00:06:05

that Michael so we were

00:06:10

just talking about that Witnesses

00:06:12

and experts those those rules

00:06:15

are not synonymous. Can you

00:06:17



talk to us about the

00:06:18

distinctions between what a fact

00:06:20

witness says versus what an

00:06:21

expert witness is supposed to

00:06:23

accomplish for the opportunity to

00:06:30

be on this channel today.

00:06:31

I wish I could be

00:06:33

there in person with you

00:06:34

all and also wish I

00:06:36

was able to attend what

00:06:37

sounds like a great welcome

00:06:39

you to reception. I do

00:06:41

think that is helpful to

00:06:42



keep in mind for this

00:06:43

session as we progressed today

00:06:45

the different roles that fact

00:06:48

and expert witnesses can have

00:06:49

an international arbitration fact Witnesses

00:06:53

are utilized to provide first-hand

00:06:56

information to the tribunal about

00:06:59

the events at issue. They

00:07:01

were involved in the events

00:07:02

that were relevant to the

00:07:04

disputed. They're there to educate

00:07:06

the tribunal about what happen.

00:07:08

Based on their personal knowledge

00:07:10



in contrast with expert Witnesses.

00:07:14

They are there to present

00:07:16

information to educate the tribunal

00:07:19

with respect to areas that

00:07:21

are outside the expertise of

00:07:23

the tribunal members. And so

00:07:25

they'll Express opinions within their

00:07:28

fields of expertise about issues

00:07:30

that are relevant to the

00:07:31

dispute based on their review

00:07:34

of the underlying evidence a

00:07:37

fact witness may or may

00:07:39

not have a personal stake

00:07:40



in the outcome of the

00:07:42

dispute, but for certain and

00:07:44

a witness is always required

00:07:46

to be independent and objective

00:07:48

and their duty is really

00:07:50

to help the tribunal and

00:07:51

I'm not to be an

00:07:52

advocate for the party that

00:07:54

engaged under Thank you and

00:07:58

Chris for some of our

00:07:59

younger practitioners. Can you give

00:08:01

some examples of what types

00:08:03

of experts you would see

00:08:04



in an arbitration case shapes

00:08:09

and forms, honestly, if they

00:08:11

could be anyone who has

00:08:14

a specific subject matter expertise

00:08:16

which allows the panel to

00:08:18

draw inferences or help them

00:08:21

to understand some of the

00:08:23

facts that are particularly complex.

00:08:24

Obviously Financial quantum's is one

00:08:28

of the most common but

00:08:29

I've you regularly see medical

00:08:32

or engineering expert I've even

00:08:34

seen a professional chef in

00:08:36



one instance which was sort

00:08:37

of interesting aside from just

00:08:41

the subject matter though. There's

00:08:42

also the issue of what

00:08:44

what form is experts come

00:08:46

in and depending on the

00:08:48

panel and the preferences the

00:08:49

council bacon. You talking about

00:08:52

Quantum in Cincinnati this year.

00:08:54

They can be academics from

00:08:58

you know, prestigious universities and

00:09:00

they are particularly good when

00:09:02

you're dealing with issues. They

00:09:05



can be industry practitioners. Will

00:09:07

you know what you're dealing

00:09:08

with your Mystics the practicality

00:09:10

of how you would deal

00:09:11

with these issues are often

00:09:12

very compelling or you getting

00:09:14

to where the unique and

00:09:16

bespoke kind of analysis. You

00:09:17

can push presnell Services firms

00:09:19

or accounting send Economist tackle

00:09:22

the subject. So let's talk

00:09:27

about we're going to go

00:09:29

back and forth today talking

00:09:30



about fact Witnesses and our

00:09:32

expert Witnesses. So we'll talk

00:09:34

about each of those issues

00:09:35

and treat them distinctly Andy

00:09:39

from an arbitrator's perspective. Can

00:09:41

you talk about the characteristics

00:09:43

of a compelling fact Witness?

00:09:47

Sure, the ideal fact with

00:09:49

us needs to balance a

00:09:51

whole list of qualities. You

00:09:54

need to be articulate clearly

00:09:56

but not pedantic not too

00:09:59

guarded or evasive but on

00:10:01



the other hand not to

00:10:02

open and chatty because you

00:10:04

have a witness that you

00:10:05

don't know what's going to

00:10:05

come out of her mouth

00:10:06

next week to any kind

00:10:10

of extreme but Iowa and

00:10:12

not boastful or too strident

00:10:14

and most importantly they wouldn't

00:10:16

be steeped in the facts

00:10:17

and really know what he

00:10:19

or she is talking about

00:10:19

and have a good memory.

00:10:21



Now if you find out

00:10:23

idea what else you should

00:10:24

send up a flare because

00:10:25

they don't actually exist in

00:10:27

reality. You will find that

00:10:30

a number of people are

00:10:32

just Naturals at at most

00:10:34

of those qualities and a

00:10:35

piece of cake Amanda just

00:10:37

really like they've been doing

00:10:39

all her lies, but then

00:10:41

there are others who are

00:10:42

very intelligent, people, but when

00:10:44



it comes to testifying they

00:10:46

really strong Weather for various

00:10:48

reasons and they need lots

00:10:49

of preparation to just be

00:10:51

merely Attic by other hand.

00:10:54

You may need them in

00:10:56

your case a knowledgeable employee

00:10:58

that substance abuse support your

00:11:00

case is very important, but

00:11:04

on the other hand if

00:11:04

they do a really poor

00:11:05

job to witness it can

00:11:06

end up undermining your pace

00:11:08



significantly up there evasive defensive

00:11:11

belligerent combative. Sometimes people just

00:11:15

get in that mode on

00:11:16

and sometimes the lawyer trying

00:11:17

to trigger the witness to

00:11:19

get into that are successful.

00:11:21

And I know if you

00:11:23

can have a problem on

00:11:24

your hands and then the

00:11:25

other considerations you have to

00:11:26

think about who the tribunal

00:11:29

expects to hear from them

00:11:31

and they've looked at some

00:11:32



of the documents that I've

00:11:33

heard in advance of the

00:11:35

hearing they've heard about some

00:11:37

of the people that have

00:11:37

been involved with her, but

00:11:38

prior Witnesses. A person's a

00:11:41

key participant and clearly played

00:11:44

a central role but doesn't

00:11:45

appear then question start to

00:11:47

pop into the arbitrator's my

00:11:48

eyes out. What is what

00:11:50

that witness would have to

00:11:51

say negative not going to

00:11:53



be helpful. Why isn't he

00:11:55

or she here could be

00:11:57

that, you know, they bring

00:12:01

them back from another employer.

00:12:03

But if you're going to

00:12:05

have to answer that question

00:12:06

in the arbitrator's mind since

00:12:08

we're going to respond. I'm

00:12:11

curious agree with everything you

00:12:13

say and your experience. Is

00:12:15

it easier to coach a

00:12:17

fact witness or play it

00:12:19

as it lays and then

00:12:20



adjust your style as counsel.

00:12:22

We have to be able

00:12:23

to adjust your style but

00:12:25

the coaching coaching the witness

00:12:29

preparing the wedding or chatting

00:12:36

the way it can be

00:12:44

a real challenge. Oakcrest can

00:12:52

you talk about what some

00:12:53

of the characteristics of a

00:12:56

compelling expert should possess and

00:12:59

he's just told us about

00:12:59

this hypothetical magical perfect witness.

00:13:03

Someone who needs his little

00:13:04



woodshedding as possible. I would

00:13:06

start with opinions vary on

00:13:09

the topic or sure different

00:13:11

Council different panels prefer different

00:13:13

styles, but I think one

00:13:15

thing we would all agree

00:13:16

with is that you're looking

00:13:18

for two qualities, you're looking

00:13:20

for competence and you're looking

00:13:21

for integrity in your expert

00:13:24

competence is certainly a measure

00:13:27

of their past experience the

00:13:29

things you see on their

00:13:30



CB but I'll submit to

00:13:32

you. It's also a matter

00:13:33

of of preparedness and being

00:13:35

very familiar with the facts

00:13:36

of this particular case. You'll

00:13:38

often see Witnesses expert Witnesses

00:13:40

who are eminently qualified, but

00:13:43

as they get up on

00:13:44

the stand to testify becomes

00:13:45

clear that they are perhaps

00:13:47

not as thoroughly immersed in

00:13:48

the subject. They should be

00:13:50

there Juniors written the report

00:13:52



and that's going to have

00:13:54

an impact on their credibility.

00:13:55

Right someone is able to

00:13:58

get up there and speak

00:13:59

fluently and candidly and and

00:14:01

in a manner that is

00:14:03

without technical. Jargon and very

00:14:05

understandable. I think immediately comes

00:14:07

across as credible and unfortunately

00:14:10

is pretty rare actually. It's

00:14:12

the other half of that

00:14:14

is integrity and I Canyon

00:14:19

Berry on this is well,

00:14:20



but I will say the

00:14:22

ability to engage sincerely and

00:14:26

thoughtfully with the questions that

00:14:27

are put to you both

00:14:28

by the panel and opposing

00:14:29

counsel. I think it's a

00:14:30

very important quality. There is

00:14:33

an instinct particularly when you

00:14:35

are young expert is to

00:14:36

be very defensive and disagreeable

00:14:40

into you know, try to

00:14:41

cut them off at every

00:14:43

pass with the line of

00:14:44



questioning that comes I think

00:14:45

that's actually very ineffective. I

00:14:48

think your job in the

00:14:50

send an Essence is to

00:14:52

be there to assist the

00:14:53

panel with understanding the box

00:14:55

and if you believe in

00:14:56

your case and you believe

00:14:57

in your analysis, you should

00:14:59

be able to do that

00:15:00

as thoroughly and thoughtfully as

00:15:02

possible without dodging questions. I

00:15:08

agree with that. I agree

00:15:10



with everything you say most

00:15:12

of the best experts that

00:15:14

I've dealt with think of

00:15:16

themselves as teachers at explaining

00:15:20

things clearly in the way

00:15:21

of the teacher what and

00:15:23

personality personality makes a big

00:15:25

difference. If your expert has

00:15:28

an obviously big ego is

00:15:32

hesitant to back off graciously

00:15:33

when they need to take

00:15:36

a back off graciously and

00:15:37

largely negate the force of

00:15:41



sound opinions. I think arrogance

00:15:45

is a smokescreen for not

00:15:46

knowing the subject matter. When

00:15:52

we were preparing for this

00:15:53

panel Michael we did talk

00:15:55

about this a little bit

00:15:56

when you are faced with

00:15:58

selecting an expert who is

00:16:01

absolutely the unequivocal hop top

00:16:05

person who knows that fueled

00:16:07

versus but has never testified

00:16:09

or served as an expert

00:16:10

versus somebody who is a

00:16:13



professional expert but might not

00:16:15

be quite so steep in

00:16:16

the subject matter. How do

00:16:18

you make the calculation about

00:16:19

which one you should retain

00:16:21

for your client the best

00:16:29

information and education to the

00:16:31

tribunal to help them make

00:16:34

the decisions on the issues

00:16:36

that that are in just

00:16:37

spews it is a delicate

00:16:40

balancing process. You certainly have

00:16:43

the advantage with a more

00:16:45



experienced expert of being able

00:16:48

to predict event count on

00:16:51

house. They will perform both

00:16:53

in terms of their analysis

00:16:56

and preparation of the iceberg

00:16:58

report and their testimony before

00:17:00

the tribunal. Where is a

00:17:03

less experienced experts who may

00:17:05

have lived the life of

00:17:07

the matters that he's testifying

00:17:09

about or she's testifying about

00:17:12

maybe so uncertain about the

00:17:15

process that they're their tenancy

00:17:18



their nervousness can really impact

00:17:22

the quality of the information

00:17:23

they provide so it obviously

00:17:26

has to be done on

00:17:27

a case-by-case basis. And you

00:17:30

need to really that what

00:17:32

the difference is in terms

00:17:33

of the substance that will

00:17:34

be provided to the tribunal

00:17:36

but where you go with

00:17:38

that less experienced has Define

00:17:41

expert the the perhaps more

00:17:44

experienced real life expert. I

00:17:47



found it. It's often quite

00:17:50

helpful to pair. Search up

00:17:52

together have that more experienced

00:17:55

to testify an expert who

00:17:56

is also working on the

00:17:57

case work hand-in-hand with the

00:18:00

person who has less testifying

00:18:02

experience have them help structure

00:18:04

an expert report and explain

00:18:07

what your issues to focus

00:18:09

on. I have them work

00:18:11

with the the less experienced

00:18:14

expert in terms of how

00:18:15



to prepare to testify. I've

00:18:18

seen that that's been a

00:18:19

very valuable exercise and has

00:18:22

helped with the ultimate presentation

00:18:24

to the Tribunal. 2 on

00:18:28

this topic of selecting experts

00:18:31

or selecting Witnesses should attorneys

00:18:35

be conducting opposition research on

00:18:37

their own experts and Witnesses.

00:18:39

And at what point should

00:18:40

they do that Andy? Thank

00:18:46

you, in terms of overlapping

00:18:50

and duplicative kinds of witness

00:18:53



statements as you usually want

00:18:57

the one who has the

00:18:59

more more knowledge and will

00:19:01

be the better witness to

00:19:03

take the lead on and

00:19:04

then other witnesses can chime

00:19:07

in and confirm and supplement

00:19:09

that lead witness. But I

00:19:12

often see witness statements were

00:19:14

witness statement to is literally

00:19:18

cut and pasted from witness

00:19:19

statement want I mean pages

00:19:21

and pages that are exactly

00:19:22



the same tax and that

00:19:25

is that doesn't win you

00:19:26

any points with any arbitration

00:19:27

tribunal only I got to

00:19:28

Wade through all that and

00:19:30

it immediately calls into question.

00:19:32

How much of this is

00:19:33

really The witnesses actual testimony

00:19:36

any two people are testifying

00:19:39

about the same topic or

00:19:40

going to use different words

00:19:41

and the calls into question

00:19:46

immediately. So you can use

00:19:48



the second witness to confirm

00:19:49

but not directly overlap. In

00:19:54

Michael, I'm kind of come

00:19:56

back to you again and

00:19:58

ask you how how might

00:19:59

that differ from litigation if

00:20:00

he's got multiple upper if

00:20:02

you have multiple choices of

00:20:03

different experts. Do you put

00:20:05

them all forward? Do you

00:20:06

only select one and he's

00:20:08

talked a little bit about

00:20:09

how we might choose among

00:20:11



our Witnesses potential Witnesses? Make

00:20:14

sure I understand correctly. We

00:20:16

talked it out with dr.

00:20:17

Expert Witnesses. So with with

00:20:21

fact Witnesses, I do think

00:20:24

you also ask about the

00:20:26

distinction between litigation and arbitration.

00:20:28

I believe with litigation. Do

00:20:31

you have to keep in

00:20:33

mind the process of how

00:20:34

a fact witness testifies fact

00:20:37

witness in litigation is going

00:20:39

to present their testimony their

00:20:41



affirmative testimony that you would

00:20:43

ordinarily Sienna written witness statement

00:20:46

live in person in the

00:20:48

courtroom in front of a

00:20:49

jury and also then be

00:20:52

cross-examined as a result you

00:20:54

have perhaps testimony that will

00:20:56

take longer to put before

00:20:58

the Trier of fact, then

00:21:00

you would see in arbitration

00:21:01

and if you look at

00:21:04

him just a docket and

00:21:06

the patience of a jury

00:21:07



that you really have to

00:21:08

take into account that you

00:21:10

just don't have the time

00:21:11

in and you don't want

00:21:12

to be wasting the core.

00:21:14

Time by presenting Witnesses who

00:21:16

are merely saying the same

00:21:18

thing. I think in arbitration.

00:21:19

It's it's a slightly different

00:21:21

analysis. You don't have affirmative

00:21:26

testimony that's in the written

00:21:28

witness statements. OB erratically. The

00:21:30

testimony should not take as

00:21:32



long to present to the

00:21:35

panel in in that case

00:21:37

the doctor really may fall

00:21:39

more on the attorneys deciding

00:21:42

whether to cross-examine the witness.

00:21:44

If you call three Witnesses

00:21:47

who say the same thing

00:21:48

and cross-examine them on all

00:21:50

of the same issues who's

00:21:52

really wasting the tribunals time

00:21:54

as the tribunal going to

00:21:55

hold that against the attorneys

00:21:57

during the cross-examination more than

00:22:00



the attorney who represents three

00:22:02
to click it if witness

00:22:03
statements the tribunal theoretically could

00:22:06
appreciate having multiple witness statements

00:22:08
to support the same fact

00:22:10
that the tribunal ultimately is

00:22:11
going to find that said

00:22:14
Completely agree with Andy that

00:22:16
you do not want to

00:22:18
annoy the channel to arbitrators

00:22:21
by submitting duplicate of witness

00:22:24
statements especially ones that are

00:22:26
cut and pasted into multiple

00:22:28



witness statements that definitely takes

00:22:32

away from their time and

00:22:33

can call The witness's credibility

00:22:34

into question. So we've been

00:22:39

talking about this wonderful hypothetical

00:22:41

scenario where you have three

00:22:43

or four options of witnesses

00:22:45

that you can put forward

00:22:46

who can all support your

00:22:47

case sometimes however, the events

00:22:50

in question happened decades ago

00:22:52

potential witness is maybe no

00:22:55

longer has good health. They

00:22:57



might not be with the

00:22:58

company any more variety of

00:23:00

reasons. You might not even

00:23:02

have a witness available at

00:23:05

that point Miguel should you

00:23:07

ask your expert to present

00:23:08

the relevant facts? Yeah, and

00:23:17

what is it that you're

00:23:18

going to be asking the

00:23:19

expert 2% I think Michael

00:23:23

was saying earlier. We expect

00:23:26

different things from a fight

00:23:27

when you said you don't

00:23:29



want an expert witness presenting

00:23:32

the facts of the case.

00:23:33

I'll see if he or

00:23:34

she know where they are

00:23:36

at what percent of Social

00:23:37

Security have first-hand knowledge of

00:23:40

when we normally don't we

00:23:44

we are as expert Witnesses

00:23:46

retain a point of the

00:23:48

arbitration wind if I sell

00:23:50

already taken place and we

00:23:52

are simply there to engage

00:23:54

the tribunal on certain issues

00:23:55



but having said that it

00:23:58

is, sometimes beneficial to the

00:24:01

tribunal to have the expert

00:24:05

witness of the subject matter

00:24:06

expert explain certain key facts

00:24:09

of the case to the

00:24:10

tribunal so far. Uncle if

00:24:11

you do have a case

00:24:13

involving mine and you have

00:24:16

everything in mining expert to

00:24:18

compute 2% for sample the

00:24:20

projections of the revenues for

00:24:23

the production of the mind

00:24:24



going for work at the

00:24:26

same person maybe the adequate

00:24:29

person to educate the tribunal

00:24:30

on the potential of the

00:24:32

Mind what was the process

00:24:34

by which these particular company

00:24:37

acquired a license to explore

00:24:38

the mine because I was

00:24:40

involved in that explanation that

00:24:42

comes from the area of

00:24:44

expertise of the person when

00:24:47

I said experts we are

00:24:48

the regularly asked to explain

00:24:52



for example the economic rationale

00:24:54
of the contract so we

00:24:55
have a commercial dispute. It's

00:24:56
a contractual Clause what what

00:24:58
is what we can say

00:24:59
how the park is negotiated

00:25:01
that close. We were not

00:25:03
in the room, but we

00:25:04
can certainly help the tribunal

00:25:07
see the reason for the

00:25:09
for the clothes. What the

00:25:11
police may have been trying

00:25:13
to do a citizen of

00:25:15



service? I think that they'll

00:25:16

spot you in Hindi actress

00:25:18

explaining sometimes they fax particularly

00:25:21

if the fact when this

00:25:22

is not available, but I

00:25:24

think Isis Andy said also

00:25:25

if you are not going

00:25:27

to pretend that I witnessed

00:25:27

for whatever reason and I'm

00:25:29

determined I would expect to

00:25:30

see that I witnessed trying

00:25:32

to replace that I wouldn't

00:25:34

be an expert may not

00:25:35



may not be the best

00:25:36

because you anyway come out

00:25:37

that that there's something there's

00:25:39

a got there right? I

00:25:40

need to be able to

00:25:40

explain it. Thank you. I'm

00:25:43

going to be going to

00:25:45

ask you one more follow-up

00:25:46

question on this if an

00:25:51

issue when a case is

00:25:52

critical and you retained say

00:25:55

you've retained of quantum expert.

00:25:57

Do you think it helps

00:25:59



having more than one expert

00:26:00

in in the areas where

00:26:02

you have a truly critical

00:26:03

issue we done. I think

00:26:08

a Christmas saying they're the

00:26:09

same is it is it

00:26:11

depends on the size of

00:26:12

a case of the issue

00:26:15

but it is not uncommon

00:26:16

to see one. Like I

00:26:20

said, I can leave expert

00:26:22

Mae normally be the person

00:26:24

who is finally putting together

00:26:25



the deck in the quantum

00:26:27

case for the damages figure

00:26:29

for the tribunal being assisted

00:26:32

in a way by other

00:26:34

more specifically before construction cases.

00:26:39

That's a typical case. You

00:26:42

would have the construction claim

00:26:44

with a delay. For example

00:26:46

of a sign in the

00:26:47

reliability on who's responsible for

00:26:49

it for the delay is

00:26:51

it is a pretty complicated

00:26:53

task and there are people

00:26:56



that specialize in the kennel

00:26:57

Des Les analysis. So you

00:26:59

would you want someone who

00:27:01

can do that part and

00:27:03

potentially feed that into the

00:27:06

final 12 minutes studies presented

00:27:09

to a tribunal mining oil

00:27:12

and gas, you know, you're

00:27:13

leaving Reservoir. Sometimes you may

00:27:15

want to engage someone who

00:27:16

can talk about the geology

00:27:18

of the reservoir give you

00:27:20

that the complex figures that

00:27:22



you need to plug into

00:27:23

your financial molar. So it's

00:27:26

having a collaboration between the

00:27:35

two experts in terms of

00:27:36

the substance that starts with

00:27:37

the presentation, right? So, how

00:27:39

are you going to resend

00:27:40

the front of you now.

00:27:42

where can I get to

00:27:42

the topic of the shooting

00:27:44

but their support that's a

00:27:45

very critical part of the

00:27:46

scene in which your exercise

00:27:47



going to pretend to the

00:27:48

tribunal before the cross-examination you

00:27:51

want that to be perfect

00:27:53

and sometimes having a collaboration

00:27:56

between expert and help achieve

00:27:57

that so Andy, you mentioned

00:28:01

earlier having multiple Witnesses say

00:28:05

the same thing can be

00:28:07

a little frustrating for the

00:28:08

tribunal. How do you feel

00:28:09

about having multiple overlapping experts

00:28:13

as a general rule? Each

00:28:17

expert should have a primary

00:28:19



focus that is unique and

00:28:22

different from the other experts

00:28:24

out of extent. They have

00:28:25

overlapping expertise and can offer

00:28:28

opinions about another expert has

00:28:31

done. It's fine for them

00:28:33

to confirm the other expert

00:28:35

usually confirm sometimes and sometimes

00:28:39

course the two different approaches

00:28:41

to the same problem. I

00:28:43

had a case recently where

00:28:44

the key question was. What

00:28:47

was the composition of this

00:28:48



contaminant and the end so

00:28:51

you have one expert that

00:28:52

sells x-ray diffraction analysis, and

00:28:54

another one that does a

00:28:55

different kind of analysis there

00:28:57

both. Directions that's perfectly fine.

00:29:02

I can really add a

00:29:03

lot actually, but it would

00:29:05

have to be a really

00:29:06

critical question that the whole

00:29:08

case turns on to have

00:29:09

two experts in my mind

00:29:11

have to ask for precisely

00:29:15



the same opinion on it

00:29:16

precisely the same way. I'll

00:29:21

ask this more broadly to

00:29:22

the panel at what point

00:29:23

should counsel be reaching out

00:29:26

to an expert. Starbucks We

00:29:41

see in our experience. Course

00:29:43

in English in the express

00:29:45

early is is beneficial is

00:29:47

more efficient. It allows for

00:29:50

no reason. I mean that

00:29:52

it is said that instead

00:29:55

of you know, maybe some

00:29:57



fact-finding that Dolores definitely have

00:29:59

to do on the wrong

00:30:00

with the clan before no

00:30:01

need to have expressed their

00:30:02

initial point, but you won't

00:30:05

have to make sure that

00:30:07

you are making the case

00:30:09

at the end of the

00:30:09

day, you know, you want

00:30:10

to make the most sordid

00:30:11

case also in terms of

00:30:13

the specific subject matter is

00:30:18

shoes and the quantum issues.

00:30:19



So the earlier the better

00:30:23

it helps save the expectations

00:30:25

with the clients, you know,

00:30:28

you was as loyal as

00:30:29

you do a deal with

00:30:30

your clients happen, it has

00:30:33

happened many times where you

00:30:34

going to case you are

00:30:36

returned for the case and

00:30:37

then you realize that you

00:30:38

know, the kind has had

00:30:39

an idea all along. 4/4

00:30:42

months that's something claims that

00:30:45



the numbers that may not

00:30:47

be feasible given the evidence

00:30:49

on the claims of Victorious

00:30:51

can support from an IV

00:30:53

perspective. So I think in

00:30:55

that sense is beneficial is

00:30:57

it in managing expectations? So

00:30:59

if everybody is more efficient

00:31:01

expert who typically work with

00:31:03

the team of people so

00:31:05

you don't need to have

00:31:06

to send me a text

00:31:06

if I'm actually moving everything

00:31:08



but having the the the

00:31:09
team is is is helpful

00:31:11
helps identify the document also

00:31:14
prioritize the claims you want

00:31:17
yours. You got a number

00:31:18
of claims and we've had

00:31:20
a vacation in the in

00:31:22
the past when you have

00:31:23
like pages and pages of

00:31:24
Memorial dedicated to a claim

00:31:26
that may not really move

00:31:28
the needle from a perspective.

00:31:29
So do you really want

00:31:31



to tell you not to

00:31:31
focus on. Or do you

00:31:32
want them to focus on

00:31:33
the things out at the

00:31:34
end of the day matter

00:31:36
to the time most Can

00:31:42
I have the agree with

00:31:44
mikkel said retain the experts

00:31:46
as early as her only

00:31:49
much better and coordinating the

00:31:51
witness statements and reports is

00:31:53
highly important easy cross-examination father

00:31:59
if the expert clearly has

00:32:01



not is not familiar with

00:32:02

what some of the fact

00:32:03

that I know. It's just

00:32:05

a piece of cake. I'm

00:32:06

so you don't want to

00:32:08

be in that position its

00:32:10

particular problem actually with Quantum

00:32:12

experts because the damage is

00:32:14

people tend to be off

00:32:16

in a world of their

00:32:16

own sometimes and maybe not

00:32:18

fully cognizant of what all

00:32:21

the different fact Witnesses have

00:32:22



said or some of the

00:32:23

technical experts are Best Buy

00:32:24

at earlier. And so you

00:32:27

see that fairly regularly, it's

00:32:29

clear from the report of

00:32:31

the quantum expert.. Here. She's

00:32:33

including damages that. Just one

00:32:36

supported by the fact that

00:32:37

all and giveaway I would

00:32:43

just add that. I think

00:32:45

this was an easy one

00:32:46

where we can all just

00:32:47

agree get them involved early.

00:32:48



But from my perspective, I

00:32:51

see having experts involved early

00:32:54

helps you build your case

00:32:56

or your defenses. It really

00:32:59

can help you focus on

00:33:01

what's important but it also

00:33:03

helps give the XpertThief actual

00:33:07

the underlined factual basis that

00:33:09

that expert needs in order

00:33:10

to render their opinion. The

00:33:13

11 things that I would

00:33:14

add is that sometimes experts

00:33:16

are stuck in their office

00:33:17



looking at documents spreadsheets, whatever

00:33:21

and may not truly appreciate

00:33:23

the the actual events that

00:33:26

took place one way that

00:33:28

can help really bring this

00:33:29

home for the expert is

00:33:31

to conduct site visits go

00:33:32

to the client's office see

00:33:34

the, you know, the the

00:33:36

structures that are at issue

00:33:38

things like that so that

00:33:41

they can really gain and

00:33:42

Standing of what happened in

00:33:45



a way that you can't

00:33:46

get just by reading documents.

00:33:50

I think that's a great

00:33:50

Point Chris when we were

00:33:52

talking about this issue earlier,

00:33:54

you had mentioned there might

00:33:56

be some reasons why you

00:33:57

wouldn't want to engage your

00:33:59

expert, you know, at the

00:34:00

outset of the case can

00:34:02

talk about that. Why is

00:34:03

it trying to be a

00:34:03

bit of a contrarian for

00:34:04



fun? Clearly you do like

00:34:08

the number one reason I

00:34:10

think people put forward for

00:34:11

not engaging experts right away

00:34:13

is and I understand that

00:34:16

once the clock starts running.

00:34:17

It adds up quickly. I

00:34:22

do think that comes at

00:34:23

the cost of all the

00:34:24

things we've just spoken about

00:34:25

their own nests in a

00:34:27

familiarity with the case. And

00:34:28

in my opinion in the

00:34:30



tray. Just isn't worth it.

00:34:31

Frankly. You can manage your

00:34:33

experts you can manage their

00:34:38

yard cut the case that's

00:34:40

time and money well spent

00:34:43

The other potential reason I

00:34:46

could think of is not

00:34:47

to have them perhaps too

00:34:49

closer too much in the

00:34:50

kitchen at the outset of

00:34:52

a file. The last thing

00:34:54

you want is yours to

00:34:55

find say why I never

00:34:56



would have built that mine.

00:34:57

Anyway, something like that, right?

00:34:59

So make sure that you've

00:35:01

got the the theory of

00:35:03

the case. So they Consolidated

00:35:04

you got your story straight

00:35:07

and everything and you haven't

00:35:09

got the expert watching a

00:35:11

bit of a tennis match

00:35:12

between Council and client. That's

00:35:14

the right way to approach

00:35:15

something. That's a great point.

00:35:20

So I'd like to shift

00:35:22



our Focus to drafting the

00:35:25

fact witness statements and the

00:35:27

expert reports. For those of

00:35:29

you who might not be

00:35:30

familiar in arbitration a witness's

00:35:33

testimony and an expert's direct

00:35:35

testimony is first put forward

00:35:38

in written form. These reports

00:35:40

can be, you know, a

00:35:42

short facts statement might be

00:35:44

only ten or fifteen pages

00:35:45

and the sky is really

00:35:47

the limit on how long

00:35:48



extra reports can get as

00:35:51

the panel to my left

00:35:52

here. Can can a test

00:35:53

Michael. Can you talk to

00:35:55

us a little bit about

00:35:56

how do you go about

00:35:57

helping your Witnesses draft their

00:35:59

their fat statements? I'll be

00:36:03

happy to as a universal

00:36:07

proposition. I'd say attorneys generally

00:36:09

draft the fact witness statements

00:36:12

but it is always important

00:36:14

to bear in mind that

00:36:16



this is the witness's statement.

00:36:17

It's their story to tell

00:36:19

and it needs to be

00:36:20

faithful to what the witness

00:36:22

knows and believes and for

00:36:24

this reason you should not

00:36:25

just drafted witness statement and

00:36:27

then work with this the

00:36:28

witness to make any revisions

00:36:29

and get a sign you

00:36:31

need to conduct interviews discuss

00:36:33

key documents and events. You

00:36:35

need to know the witness's

00:36:36



story before you write it

00:36:38

and you should also be

00:36:40

careful to avoid including anything

00:36:42

in the statement that the

00:36:43

witness doesn't know about in

00:36:45

cross-examination that the witness says,

00:36:48

they don't know anything about

00:36:50

something that's included in their

00:36:51

witness statement distance themselves from

00:36:54

it. It can damage their

00:36:56

credibility in your own. So

00:36:58

you definitely want to be

00:36:59

cognizant and careful about that.

00:37:02



And I would say finally

00:37:04

it's important to use the

00:37:06

witnesses own words where you

00:37:08

can you really need

00:37:09

to avoid using legal term

00:37:11

making arguments that I think

00:37:13

the most effective witness statements

00:37:16

just State the facts without

00:37:18

a lot of hyperbole. And

00:37:21

when we were preparing for

00:37:23

this panel, we talked about

00:37:24

you can't just email the

00:37:27

draft statement to the witness

00:37:28



and say take a look

00:37:30

at this and tell me

00:37:31

tell me if it looks

00:37:32

right to you. How do

00:37:33

you go about doing that

00:37:35

final vetting process with the

00:37:36

witness? Michael I think you

00:37:41

definitely need to be involved

00:37:43

throughout the entire process with

00:37:45

the witness before you even

00:37:47

put 10 to paper but

00:37:49

as you are a developing

00:37:52

that witness statement, it's important

00:37:54



to sit side-by-side and go

00:37:56

through every single sentence and

00:37:58

make sure that the witness

00:38:00

understands and can degrees and

00:38:03

knows about that that fact

00:38:06

that is being included in

00:38:07

there. And when you do

00:38:08

that you actually strengthen the

00:38:10

witness statement because that witness

00:38:12

is providing additional information that

00:38:15

will help you add or

00:38:16

refine what is in there

00:38:18

to Taylor to the witnesses

00:38:20



own knowledge and perception about

00:38:22

what happened. I agree and

00:38:26

e as an arbitrator, does

00:38:28

it concern you is it

00:38:29

okay with you how closely

00:38:31

involved attorneys are in crafting

00:38:33

the witness statements Covington on

00:38:38

both sides that done as

00:38:39

an advocate as well. I

00:38:41

mean, it's just a given

00:38:42

that the lawyers have to

00:38:44

be involved in drafting the

00:38:45

witness statement. It's like finding

00:38:48



the idea. There are very

00:38:49

very few Witnesses who could

00:38:53

entirely on their own sit

00:38:55

down and write their own

00:38:56

witness statement and have it

00:38:57

come out as a clerestory

00:38:59

laying out all the facts

00:39:00

clearly filling in the gaps

00:39:02

and make it all coherent

00:39:05

and clear it just that

00:39:07

would be a little concerning

00:39:08

you could do it. Just

00:39:17

not the real world so

00:39:19



it too but obviously Make

00:39:25
sure that this is the

00:39:26
witness's statement but I always

00:39:28
assumed lawyer involvement in Reading

00:39:31
any witness statement in that

00:39:32
doesn't bother me about it.

00:39:33
That's that's just a given

00:39:34
for something I Michaels that

00:39:37
I the absolute worst mistake

00:39:39
you can make is to

00:39:40
finish up the witness statement

00:39:43
and you do know you've

00:39:44
written it from your interview

00:39:46



notes and you've done your

00:39:47

best to to reflect that

00:39:48

the witness said but then

00:39:50

you email it to the

00:39:51

witness. Once I read it

00:39:52

over carefully and tell me

00:39:53

whether this is this is

00:39:55

correct or not or whether

00:39:56

you have any corrections, they

00:39:57

won't look at all that

00:39:59

carefully. They won't look at

00:40:00

what's the degree of detail

00:40:02

that you need them to

00:40:04



look at? Cuz you want

00:40:05

every detail to be there

00:40:06

if there are actual test

00:40:07

month. You have to go

00:40:09

through the draft together send

00:40:12

line by line and confirm

00:40:14

every detail of corrective necessary.

00:40:16

It's it's a disaster to

00:40:20

put a witness on the

00:40:20

stand who them professors ignorance

00:40:23

with something that's in his

00:40:23

way this tape. And I

00:40:24

know actually I don't remember

00:40:25



that at all. I wanted

00:40:26

all them that you just

00:40:30

don't want that at all.

00:40:31

And so the only way

00:40:33

to prevent that that's the

00:40:34

really expensive time and effort

00:40:35

to go through it with

00:40:36

my detail. You can find

00:40:39

me a hundred percent difference

00:40:46

between a typical expert witness

00:40:49

knows what's coming, you know,

00:40:52

so when you ride your

00:40:53

report, you know, what's going

00:40:54



to happen after work. So,

00:40:55

you know, you're going to

00:40:56

have to write the second

00:40:57

report and generally and that

00:40:58

you're going to have to

00:40:59

be subject to cross-examination of

00:41:02

witnesses have never done that

00:41:03

before so they they don't

00:41:05

appreciate that. Whatever is in

00:41:08

that witness statement. They will

00:41:10

have to sit down in

00:41:11

front of the tribunal by

00:41:13

opposing end bass pretty and

00:41:14



very sharp anthropocene Council being

00:41:17

subject to cross-examination on every

00:41:19

work and I think that's

00:41:20

you know, particularly for the

00:41:22

door is working with the

00:41:23

witness's Taking. Clear showing for

00:41:26

examples of this is what's

00:41:28

going to happen. Even if

00:41:30

not the night before the

00:41:32

hearing. But even when those

00:41:34

were in the same as

00:41:34

I put together, I think

00:41:35

it's important. So appreciate because

00:41:37



you know, we said it's

00:41:41
just I hate take a

00:41:42
look at these they may

00:41:43
not let me be busy

00:41:44
with something else appreciate the

00:41:45
importance of having as I

00:41:50
used to call witnesses. This

00:41:52
isn't an outline of your

00:41:53
testimony. This is your testimony

00:41:55
that every lawyer in this

00:42:01
room has had the experience

00:42:02
of sitting down with a

00:42:03
fact witness in curing the

00:42:05



story for the 50th time

00:42:06

and some new detail arises

00:42:09

and I remember this and

00:42:12

hearing a couple of years

00:42:12

ago was that contested accounting

00:42:15

procedure approach and the eve

00:42:18

of the hearing the client

00:42:19

mentioned while you know, it

00:42:20

was reviewed and signed off

00:42:22

on by third-party auditor. Well,

00:42:24

that's good to know like

00:42:26

they could eat that it

00:42:28

a year ago. So it

00:42:29



takes multiple iterations to get

00:42:31

this out sometime. Probably everybody

00:42:36

on this panel has been

00:42:38

and hearing and heard the

00:42:39

witnesses say some variation of

00:42:41

oh, I didn't write that

00:42:43

my lawyer put that in

00:42:44

there. I don't know anything

00:42:45

about that and you want

00:42:46

that to be the thing

00:42:47

that happens to opposing counsel.

00:42:49

Not to you. I'm positive.

00:42:51

It's Christmas when it happens

00:42:53



to you in and I

00:42:54

have had multiple occasions where

00:42:56

we've benefited from another side's

00:42:58

lack of preparation their Witnesses,

00:43:00

but if you take anything

00:43:02

away from here to make

00:43:04

sure your witness actually knows

00:43:05

what's in their statement, certainly

00:43:12

don't want the witness to

00:43:13

say I didn't write that

00:43:14

that's in that's not mine.

00:43:15

But on the other hand,

00:43:16

you know, we also do

00:43:18



you need to recognize that

00:43:19

Witnesses are human and you

00:43:22

know, how often those witness

00:43:23

statements were Long before they

00:43:26

actually do testifying and a

00:43:28

lot of fact Witnesses have

00:43:29

never testified before and are

00:43:31

not used to testify speaking

00:43:34

in front of others much

00:43:35

was testifying in that kind

00:43:37

of a very family environment.

00:43:39

And so it is inevitable.

00:43:41

It witnesses will not be

00:43:44



as articulate as early as

00:43:46

what's in their witness statement.

00:43:48

They may be nervous and

00:43:50

a little rattled by being

00:43:51

the subject of aggressive opposing

00:43:53

counsel. And so you're not

00:43:55

always going to have perfect

00:43:56

response to every question as

00:43:59

it might be laid out

00:44:00

in a witness statement. So

00:44:03

that that's something that it's

00:44:05

just important to bear in

00:44:06

mind. Yes, absolutely. So we

00:44:11



talked about how we prepare

00:44:13

witness statements Chris. Can you

00:44:14

shed some light on how

00:44:16

expert reports are prepared? Is

00:44:18

it is it a similar

00:44:19

process or is it dissimilar?

00:44:22

First let me start with

00:44:24

a concession accountants and Economist

00:44:28

are some of the worst

00:44:29

writers you'll find in the

00:44:31

face the planet. They're the

00:44:32

reports are unintelligible and accessible.

00:44:36

They have no flow stops

00:44:39



in style. Tell me how

00:44:44

you really feel this is

00:44:46

being recorded. And so in

00:44:50

that respect, we need a

00:44:51

lot of help. There's no

00:44:52

question particularly with it's a

00:44:54

university in electrical engineering reports

00:44:56

and they obviously have Mastery

00:44:57

of the subject but in

00:44:59

terms of unfolding in there

00:45:00

and if it still needs

00:45:01

work that said Council should

00:45:04

never write the report the

00:45:06



words that goes to the

00:45:08

start of the credibility issue.

00:45:09

I spoke to earlier the

00:45:10

words need to come easily

00:45:12

to the expert on the

00:45:14

day. I've been used to

00:45:14

own the analysis than you

00:45:16

did own the the calculations

00:45:19

in the conclusions are in

00:45:20

most experts are seasoned and

00:45:23

experienced enough to know a

00:45:24

little bit about how to

00:45:25

write this report, but not

00:45:26



all And I think there's

00:45:30

room for some give-and-take in

00:45:32

terms of coaching in terms

00:45:33

of how it should unfold

00:45:34

and how it how to

00:45:35

make it more accessible but

00:45:38

it is believe me. I've

00:45:39

had lawyers try it should

00:45:41

never come from the pain

00:45:42

of council. Miguel do you

00:45:46

agree? I think one of

00:45:59

the main things that we

00:46:01

learn overtime by doing this

00:46:02



repeatedly is to make the

00:46:05

reports more clear it is

00:46:06

it so difficult to write

00:46:07

to the end and I

00:46:08

think that we could do

00:46:11

benefit from the lawyers in

00:46:12

put in say hey, this

00:46:13

is this is just not

00:46:15

the one be clear to

00:46:16

the tribunal and you've tried

00:46:17

to place it in a

00:46:18

different way some people I

00:46:21

found particularly from you no

00:46:24



more like nothing if it's

00:46:27

a bringing this irrigation within

00:46:29

to do the introduction in

00:46:31

the development by the time

00:46:34

you get to the conclusion,

00:46:35

you've lost price of the

00:46:37

pool. First we tend to

00:46:41

do more seasoned experts to

00:46:44

help understand. Better than to

00:46:46

subject matter to make it

00:46:48

engaging for her for the

00:46:49

reader and you should never

00:46:53

never accept the lawyer write

00:46:55



your expense report on a

00:46:57

lawyer's you never expect will

00:46:59

try to write an x-ray

00:47:00

report for for an expert

00:47:02

and if that happens, I

00:47:04

think you can be devastating

00:47:05

for The credibility. There's a

00:47:07

way that lawyer is right.

00:47:11

If you think I'm scared

00:47:12

for us to report when

00:47:14

we know that this has

00:47:16

been written by the lawyers

00:47:17

you do you get a

00:47:18



chance you can feel you

00:47:19

can see that you don't

00:47:20

want that in your reports

00:47:22

Michael as as Council. Can

00:47:24

you give us the council

00:47:25

perspective about how how your

00:47:28

level of preferred involvement in

00:47:30

the expert drafting at The

00:47:33

X from u.s. To draft

00:47:35

the report? I always have

00:47:36

them do that, but I

00:47:38

will work with the expert

00:47:39

in advance about what the

00:47:40



report will address to ensure

00:47:43

that the expert is focusing

00:47:44

on the issues that the

00:47:45

tribe. General needs to decide

00:47:47

perhaps to discuss the structure

00:47:49

of the report, but then

00:47:52

my role is really limited

00:47:54

to providing comments on what

00:47:56

has been drafted by the

00:47:57

experts. I'm always sensitive to

00:48:00

the fact that this needs

00:48:02

to be an independent and

00:48:04

objective report that the expert

00:48:06



truly believes and that they

00:48:08

can defend a when they

00:48:09

are testifying and just to

00:48:13

sort of high-end some of

00:48:15

the points that were made

00:48:16

during the fact witness discussion

00:48:18

writing the drafting the expert

00:48:21

reports drafting. The fact witness

00:48:23

is really should be an

00:48:25

iterative process because you want

00:48:27

the experts to be aware

00:48:28

of what is being drafted

00:48:30

in the witness reports. Sorry

00:48:31



witness statements to Michael. How

00:48:34
do you how do you

00:48:35
manage that process? Do you

00:48:36
have one designated person on

00:48:38
your team sort of overseeing

00:48:41
everything is it up to

00:48:42
each individual attorney an expert?

00:48:45
How do you manage that

00:48:46
on your cases? I know

00:48:47
you run some pretty large

00:48:48
cases to the circumstances of

00:48:53
the individual case the size

00:48:55
of it the complexity of

00:48:56



the issues. And so they're

00:48:59

there is no one-size-fits-all but

00:49:01

overall, I think the whole

00:49:04

structure of preparing for preparing

00:49:09

a claim or preparing a

00:49:10

defense a Running it to

00:49:12

a tribunal and convincing the

00:49:13

tribunal. You're right. It's all

00:49:16

something that takes a combined

00:49:18

Collective effort attorneys fact Witnesses

00:49:21

expert Witnesses. And for that

00:49:23

reason, it's important to collaborate

00:49:26

along the way to make

00:49:27



sure that the experts understand

00:49:29

the other notes that they

00:49:30

are talking about and to

00:49:32

make sure that we are

00:49:33

giving the experts the underlined

00:49:35

information. They need to render

00:49:37

their opinion. So I think

00:49:39

every step of the way

00:49:40

very close interaction is important.

00:49:44

Okay, I'll answer to yes.

00:49:46

Thank you. And how do

00:49:48

you prepare Michael? How do

00:49:50

you prepare your fact witnesses

00:49:52



to testify at a hearing?

00:49:54

Okay. Well I make sure

00:49:56

they know their witness statement

00:49:57

inside and out. This is

00:49:59

very important because the the

00:50:01

witness statement is often the

00:50:03

focus of cross-examination and they

00:50:06

really need to own that

00:50:07

statement and be able to

00:50:08

speak to the facts in

00:50:10

it. You know, we've talked

00:50:12

about not wanting and witness

00:50:15

to depart from that and

00:50:17



disown a witness statement. It

00:50:20

does depend. Of course as

00:50:21

I I mention on the

00:50:23

window in the statement was

00:50:26

prepared how long the time

00:50:27

has been before they Testify

00:50:29

the length of the witness

00:50:31

statement the number of issues

00:50:32

and complexity it is difficult,

00:50:35

even if you know all

00:50:36

of this stuff to remember

00:50:37

at all and be able

00:50:38

to testify to it, but

00:50:40



that document the witness statement

00:50:43

is core 22 what they're

00:50:45

testifying about in the they

00:50:47

really need to spend a

00:50:48

lot of time ahead of

00:50:49

their testimony recall him getting

00:50:52

familiar with it again. It's

00:50:54

also I think important to

00:50:55

consider what documents may be

00:50:58

put in front of the

00:50:59

witness during cross-examination. They could

00:51:02

be asked about the documents

00:51:03

that are not even mentioned

00:51:04



in the witness statement and

00:51:06

you to the extent possible

00:51:07

one of the boys have

00:51:09

a having to witness see

00:51:10

a document for the very

00:51:11

first time on the stand

00:51:12

while they were being cross-examined.

00:51:13

Also of course can mock

00:51:18

examinations and talk with the

00:51:20

witness about the kinds of

00:51:22

questions the structure and how

00:51:23

they may form the structure

00:51:26

of their answer to help

00:51:27



them get ready for the

00:51:29

the real thing. Y'all have

00:51:32

you and as an observer

00:51:33

you sat through a lot

00:51:35

of hearing you mention 50

00:51:36

different cases. Have you have

00:51:38

you seen an issue where

00:51:39

perhaps a witness has been

00:51:40

over prepared? Yeah, I don't

00:51:43

know if they're prepared or

00:51:44

maybe but it has to

00:51:49

be that sometimes we both

00:51:53

seen and when when people

00:51:54



are finally set to testify

00:51:56

they're going to say what

00:51:58

they're going to say, you

00:51:59

know, I mean, there's still

00:52:00

so much that you can

00:52:02

try to educate them coach

00:52:05

them, but it is hard

00:52:07

when you are sitting there

00:52:08

and the pressure they going

00:52:09

to say what they're going

00:52:10

to say. So the last

00:52:11

thing you want is to

00:52:12

rather than confidence the night

00:52:14



before their their testimony, I

00:52:16

do agree with Michael front

00:52:20

of the golf course. The

00:52:21

first thing to do for

00:52:22

them to be familiar with

00:52:23

is a witness statement, but

00:52:24

there's going to be other

00:52:25

documents to them. They there's

00:52:28

is very hard that the

00:52:30

winner is by himself or

00:52:31

herself is going to go

00:52:32

find those documents. So my

00:52:35

suggestion is For the nurse

00:52:41



to bring the witness to

00:52:42

bring those documents to them

00:52:43

we time in advance you

00:52:45

maybe ask about the you

00:52:46

know, the quantum Xterra saying

00:52:47

this to make sure that

00:52:49

you see you've seen this

00:52:50

document. There's something in the

00:52:51

financial statements. Remember that that

00:52:53

you know, there are other

00:52:54

sources of facts sometimes not

00:52:56

just if the witness statement

00:52:58

so there may be a

00:52:59



document in Internet presentation of

00:53:01

the company by the notes

00:53:04

in the financial statements amamos

00:53:07

is it may be put

00:53:08

to the witness during cross-examination

00:53:10

you certainly weren't a witness

00:53:11

to to see that wait

00:53:13

time in advance before so

00:53:16

I'm mindful that were running

00:53:17

low on our time. So

00:53:19

Chris. Can you talk to

00:53:19

us a little bit about

00:53:20

how you typically get prepared

00:53:23



or were to testify at

00:53:25

a hearing? sure, how I

00:53:30

typically get prepared is there

00:53:31

is a dedicated partner and

00:53:35

two or three Associates that

00:53:36

I asserted that the damages

00:53:37

are the expert team right

00:53:39

now and they will spend

00:53:45

you know, we will have

00:53:47

a relationship throughout the matter

00:53:48

for sure. It'll heat up

00:53:50

probably two months prior to

00:53:53

the hearing will spend roughly

00:53:56



a third of the time

00:53:57

maybe on direct and refining

00:53:59

sir the presentation and where

00:54:00

you going to go with

00:54:01

you going to stay but

00:54:02

two-thirds of that'll be on

00:54:04

on cross and sort of

00:54:06

Mark crosses identifying Safe Harbor

00:54:10

series of this you earlier

00:54:14

in my career, they would

00:54:15

help you with, you know,

00:54:16

dealing with compound questions and

00:54:17

all the tricks that opposing

00:54:19



counsel are going to see

00:54:19

what you got a pretty

00:54:21

good handle on that. Now

00:54:23

I will say we talked

00:54:25

about this earlier approaches really

00:54:28

very and sometimes counsel. Almost

00:54:33

treats damages bit of an

00:54:34

afterthought. Like all we got

00:54:36

to do is win and

00:54:36

then it's a question of

00:54:37

whether how much we win

00:54:39

by a sort of a

00:54:39

nice question to wrestle with

00:54:41



and I've had more instances

00:54:44

in my career where I

00:54:46

felt Council wasn't doing enough

00:54:49

to prep for this issue.

00:54:51

Then where they had over

00:54:52

prepped. I've had cases where

00:54:54

they hand me stage notes

00:54:56

about like wait, when does

00:54:57

sort of pause and look

00:54:58

up show me once which

00:55:02

was a bit of an

00:55:02

Overkill but but more often

00:55:04

than not it's sort of

00:55:06



you got this champ. Good

00:55:07

luck. You are the expert

00:55:10

to one topic that our

00:55:14

panel had a lot of

00:55:15

opinions about is something called

00:55:17

hot tubbing, which I know

00:55:19

Andy you just like that

00:55:20

term concurrent testimony Miguel. Can

00:55:24

you describe from your experience?

00:55:26

What is hot tubbing? The

00:55:31

name came to me but

00:55:33

it is it is there

00:55:34

now so we might as

00:55:36



well go into the hot

00:55:37

tub. Maybe you haven't seen

00:55:43

this doesn't happen to have

00:55:48

the different at the opposing

00:55:51

Xpress. I say after they've

00:55:52

done their representation on cross-examination.

00:55:55

Maybe they have some time

00:55:58

at the end of the

00:55:59

hearing to see them together

00:56:01

in in in the witness

00:56:03

stand and asked questions. So

00:56:06

let's say for example. Chris

00:56:07

and I are working at

00:56:08



6% for the opposing parties.

00:56:10

We've done a testimony. We've

00:56:12

been cross-examined by the opposing

00:56:14

counsel and then it'll say

00:56:16

okay, you know, please come

00:56:17

here sit down in front

00:56:18

of me. I'm going to

00:56:19

be asking you questions and

00:56:21

the lawyers will have a

00:56:24

little involvement with the experts.

00:56:29

It's a very interesting exercise

00:56:30

very efficient. There's a completely

00:56:34

different manner of answering questions.

00:56:37



When is the tribunal asking

00:56:39

you a question are you

00:56:40

this is different from an

00:56:42

opposing counsel during cross-examination. So

00:56:44

now they're trimming is going

00:56:45

to be asking you questions.

00:56:46

You better be direct better

00:56:47

be concise some clear and

00:56:50

the questions going to be

00:56:51

posted with you to one

00:56:52

of the express first and

00:56:54

then the other extreme a

00:56:55

respond to it and then

00:56:57



maybe a little bit back

00:56:58

and forth until I've had

00:57:00

what I need next question,

00:57:01

if you know the other

00:57:03

expert has the first and

00:57:06

then do sit back and

00:57:07

forth and then so on

00:57:08

and so forth. Well, the

00:57:15

I'm a big fan of

00:57:16

concurrent expert testimony. I'm not

00:57:20

a big fan of the

00:57:21

tournament was intended to be

00:57:26

a little derogatory because of

00:57:28



the implication of we're all

00:57:29

going to sit around a

00:57:30

hot tub join hands and

00:57:31

sing Kumbaya, which is not

00:57:33

what happens. Of course, there's

00:57:37

any expert testimony and a

00:57:39

highly efficient way of getting

00:57:40

focused on the real issues

00:57:43

that the tribunal is concerned

00:57:44

about obviously the experts have

00:57:47

to have matched areas of

00:57:48

expertise but starts asking questions

00:57:53

presentations or do direct and

00:57:58



you go directly to the

00:57:59

tribunal asking questions instead of

00:58:00

going to cross examination is

00:58:03

going to focus on the

00:58:05

things that are Really getting

00:58:13

to the issues. So if

00:58:14

I've got these two gentlemen

00:58:16

sworn in sitting together on

00:58:18

the witness stand I can

00:58:20

say that's why why is

00:58:24

that and then I turn

00:58:26

to Chris and I say

00:58:27

why is why is why

00:58:28



better than that? I don't

00:58:30

let them ask questions of

00:58:31

each other. That's that's that's

00:58:33

kind of a lose control,

00:58:34

but I'm a little debate

00:58:38

that you manage until it's

00:58:41

clear exactly where the difference

00:58:42

is in. The similarities are

00:58:44

on a key issue and

00:58:45

move on to the next

00:58:45

one and the bat. It's

00:58:49

a much more effective way

00:58:50

to accomplish this otherwise in

00:58:52



a long hearing for a

00:58:54

week or so. They may

00:58:56

be testifying two or three

00:58:57

weeks apart. I can barely

00:58:59

remember what Miguel's had went

00:59:00

by the time Chris gets

00:59:01

on the stand. This is

00:59:03

directly allows you to compare

00:59:06

and contrast as soon as

00:59:08

the arbitrator and I just

00:59:10

a highly efficient now they

00:59:11

are just absolutely remarkable when

00:59:14

I would have been able

00:59:15



to do this. I've seen

00:59:17

a situation where two experts

00:59:20

who would each take a

00:59:21

full day. And when you

00:59:23

do the concurrent testimony, they're

00:59:26

both completed in a little

00:59:27

more than a half a

00:59:28

day or two in the

00:59:29

afternoon. They're gone and you're

00:59:30

moving on to the next

00:59:31

thing and that's even after

00:59:33

you allow counsel course to

00:59:35

conduct a normal cross-examination after

00:59:38



the tribunal's ask questions because

00:59:40

there's always things that Council

00:59:41

feel like they need to

00:59:42

clean out them and the

00:59:43

rest of it but still

00:59:45

you have a 60% or

00:59:48

75 Add Pine shavings in

00:59:50

completing those experts at saving

00:59:52

an enormous amount of time

00:59:54

and money. The key is

00:59:55

you have to have an

00:59:56

agreed protocol for how it's

00:59:58

going to unfold that's been

00:59:59



decided in advance well in

01:00:01

advance for the hearing and

01:00:03

then you ask for being

01:00:05

all of you often have

01:00:06

to kind of help Council

01:00:08

to feel a little more

01:00:09

comfortable about the process provided.

01:00:11

The biggest obstacle to widespread

01:00:13

adoption is a council reluctance

01:00:16

and the biggest issue. The

01:00:18

council have is I'm going

01:00:19

to lose control my experts

01:00:21

up there and he's going

01:00:22



to be asked a bunch

01:00:22

of questions by the panel

01:00:25

and I have no I'm

01:00:27

going to be very hesitant

01:00:27

to ask Jack to the

01:00:28

panel's questions and I really

01:00:32

have no control over what's

01:00:33

going to happen my experts

01:00:34

there on his or her

01:00:35

own and yeah that is

01:00:37

that is an issue but

01:00:38

you got to have confidence

01:00:39

in your expertise and experience

01:00:41



and doing it on the

01:00:42

part of the expertise is

01:00:43

obviously very helpful, but the

01:00:45

efficiency just outweighs everything else.

01:00:47

I don't I'm of The

01:00:48

View The tribunal does not

01:00:49

usually unless the roles or

01:00:52

unusual or there's an agreement

01:00:53

can't impose this on the

01:00:56

parties. You can suggest it

01:00:58

you can heavily recommended, but

01:01:00

you can tell him that's

01:01:01

the way we're going to

01:01:02



do it. I would add

01:01:07

that if the arbitrator tells

01:01:10

me that they want to

01:01:10

do it. I'm not going

01:01:11

to disagree but I do

01:01:14

think that that this form

01:01:16

of presenting expert testimony is

01:01:19

actually one of the the

01:01:20

bigger advantages of international arbitration

01:01:22

over litigation one tweak that

01:01:28

that I would add two

01:01:29

to what Andy said is

01:01:31

that when it comes to

01:01:34



two Experts of similar discipline

01:01:37

testifying they don't necessarily need

01:01:40

to testify weeks apart. It

01:01:43

is something the parties can

01:01:45

collaborate and agree to a

01:01:47

procedure where those two experts

01:01:49

the opposing experts testified back-to-back

01:01:52

and then perhaps go directly

01:01:54

into conferencing from them and

01:01:58

that can also be a

01:01:59

very effective way of coalescing

01:02:01

the issues dog and making

01:02:03

sure that you don't lose

01:02:05



some of the The knowledge

01:02:07

that you have by the

01:02:08

time you get to the

01:02:10

other side's expert witness says

01:02:12

after hearing other testimony in

01:02:15

between. If the tribunal. Has

01:02:18

to come out several times

01:02:19

but renal suggests concurrent testimony

01:02:22

Council can agree to that

01:02:24

all back the tree all

01:02:26

comes back with this. Let's

01:02:27

at least put them back

01:02:28

to back away to hear

01:02:29



from them to match that

01:02:30

first one after the other.

01:02:33

I'm curious Chris and Miguel.

01:02:35

I like to hear from

01:02:36

both of you on this.

01:02:37

How often do you find

01:02:39

that you're being hot tub.

01:02:41

These days? Miguel Miguel Not

01:02:52

much quarter quarter the time

01:02:55

at most is its proposed

01:02:57

by the tribunal sometimes but

01:03:01

it is really only a

01:03:02

valued to be clear and

01:03:03



certain scenarios like you you

01:03:05

will not have an expert

01:03:07

concede. Your right my position

01:03:11

is wrong his position as

01:03:12

writer that is some insight

01:03:17

into the reasoning the line

01:03:19

of reasoning that they've used

01:03:20

and maybe some implicit assumptions

01:03:23

in their work. Should be

01:03:25

very clear and Apparent from

01:03:27

the report and to the

01:03:28

extent it is clear and

01:03:29

apparent that the reports. I'm

01:03:30



not sure hot tub is

01:03:31

going to add a whole

01:03:32

lot more but where there

01:03:34

is carefully disguised assumptions or

01:03:37

reasoning this maybe not as

01:03:39

clearly laid out a hot

01:03:40

tub integrated approach. I find

01:03:43

it very rarely clearly differentiate

01:03:49

the different explanations and and

01:03:52

allow you to distinguish them.

01:03:53

But when you have the

01:03:55

two of them sitting there

01:03:56

together it becomes painfully Apparent

01:03:59



at least, you know that

01:04:01

you don't have a good

01:04:02

answer to Miguel's Point yet.

01:04:05

A lot of the time.

01:04:07

Always depends on the tribunal

01:04:19

has a much more engaged

01:04:21

and they may not need

01:04:23

it by the time they've

01:04:24

heard of the 21st because

01:04:25

they ask questions during the

01:04:28

testimony. That's that's very very

01:04:32

good for us when that

01:04:33

happens because you know, the

01:04:35



tribunal disengage is listening to

01:04:37

you. You have no money

01:04:38

a half an hour 45

01:04:40

minutes presentation to the tribunal

01:04:41

before you cross examination. And

01:04:44

if you are interrupted during

01:04:45

the presentation if Colin cigarette,

01:04:47

let me let me get

01:04:48

this this is what the

01:04:54

other Expo camps then the

01:04:55

questions posed to get extra

01:04:57

particular. They're back-to-back will already

01:05:00

have that effect because having

01:05:02



their way About what's your

01:05:06

opinion on it? And maybe

01:05:07

by the time we're done

01:05:08

with that time happens in

01:05:17

the minority of the occasion.

01:05:18

So, can you give a

01:05:20

little bit of insight Chris

01:05:21

into what it looks like?

01:05:22

What is your normal presentation

01:05:25

to the tribunal look like

01:05:26

do you sit down and

01:05:27

just go straight into Cross

01:05:28

or do you and to

01:05:30



give her presentation? How does

01:05:31
it work. It's time to

01:05:38
make that presentation. Usually a

01:05:40
lot of points to try

01:05:41
and squeeze in depends on

01:05:45
whether you're responding or or

01:05:47
claimant care, you know in

01:05:48
terms of what your your

01:05:50
substance matter is going to

01:05:51
look like you the claimants

01:05:52
obviously trying to lay out

01:05:53
the case in the argument

01:05:54
in the analysis. The respondent

01:05:56



is more often than not

01:05:57

saying I've heard all of

01:05:58

that is why you shouldn't

01:05:59

swallow it Hook Line &

01:06:01

Sinker. Interesting lady is as

01:06:05

a responding responding the number

01:06:06

times. Yeah, you're often up

01:06:09

late at night the night

01:06:11

before that the night before

01:06:12

I started preparing for responses

01:06:14

to things you may have

01:06:14

heard the first time in

01:06:16

the day, you know, it's

01:06:16



done. The claim is testimony

01:06:18

and you're trying to squeeze

01:06:20

all of that into your

01:06:21

presentation and addition to what

01:06:23

year was really intended to

01:06:24

say. So complicated I think

01:06:28

Mino probably allowed to like

01:06:29

you really need to put

01:06:31

this in lace because well

01:06:32

and make it as intelligible

01:06:34

and as accessible as possible,

01:06:36

that's that's the key because

01:06:37

everyone's suffered through a PowerPoint

01:06:41



of numbers and tables and

01:06:42

facts and figures without a

01:06:44

clear narrative or or got

01:06:46

understanding of what's happening. And

01:06:47

that's the real expert challenge.

01:06:50

This morning before the panel

01:06:54

started there was some discussion

01:06:55

about how a lot of

01:06:56

lawyers went into the field

01:06:58

of law because numbers weren't

01:07:00

our thing. Although Kris his

01:07:02

his somewhat Vindicated Us by

01:07:04

by noting that maybe some

01:07:06



some Economist writing isn't their

01:07:08

thing but but I've even

01:07:10

heard from very well-known arbitrators,

01:07:12

you know, who the morning

01:07:13

of Damages damages do. I

01:07:16

do think translating the numbers

01:07:18

into really understandable points is

01:07:23

is critical for experts back

01:07:27

and say numbers are a

01:07:28

language to and it's a

01:07:30

it's a language that some

01:07:31

people are fluent in in

01:07:33

conversant in and you should

01:07:35



be able as an expert

01:07:36

to translate from numbers to

01:07:39

Regular English, it's very accessible

01:07:44

to everyone. wait. I'm just

01:07:51

wanting to bring out one

01:07:52

final point and then I'd

01:07:54

like to give give the

01:07:56

room a couple minutes for

01:07:57

questions when we were preparing

01:07:59

for the panel and he

01:08:00

mentioned something that the rest

01:08:02

of us had not heard

01:08:03

of and it had to

01:08:04



do with hot tubbing or

01:08:06

concurrent fact Witnesses. Could you

01:08:09

talk about that a little

01:08:10

bit because that was that

01:08:11

was A New Concept for

01:08:12

me. This is something else

01:08:15

that's coming into Vogue and

01:08:18

very similar in some ways

01:08:19

to the hot tub idea.

01:08:20

But you square in multiple

01:08:22

fact Witnesses the same time

01:08:24

and have them sit as

01:08:25

a panel. Where are you

01:08:28



need that need all three

01:08:30

Witnesses size three more than

01:08:31

three. I guess pretty pretty

01:08:33

too complicated. But they handle

01:08:35

different aspects of the same

01:08:36

basic Topic in a big

01:08:39

construction dispute. For example, you

01:08:41

may have two or three

01:08:42

years worth of events and

01:08:45

you want a narrative witness

01:08:46

who can store tell a

01:08:47

story what happened during the

01:08:48

project, but you've got 32

01:08:50



Project managers who had different

01:08:52

time. It works incredibly. Well.

01:08:55

Bring them all together and

01:08:57

have them testify on Direct

01:09:01

Council asking about the first.

01:09:04

Time your project number manager

01:09:06

number one tells about what

01:09:07

happened and your project manager

01:09:09

number to you were number

01:09:10

three in that way. So

01:09:14

you got a good narrative

01:09:15

that flows through the whole

01:09:17

topic and then cross-examination can

01:09:20



be conducted. However, the the

01:09:22

other side wants to do

01:09:24

it but it's often I'm

01:09:26

going to focus all my

01:09:27

questions on witness number one

01:09:29

first, and then I'm going

01:09:30

to move to witness or

01:09:30

two and then I moved

01:09:31

with the number three in

01:09:33

this is a good thing

01:09:35

is Miguel gets a question

01:09:38

and His answer was with

01:09:41

last night was really after

01:09:42



the time. When I was

01:09:44

there or that was an

01:09:45

issue that I wasn't particularly

01:09:46

involved in. Chris was the

01:09:47

guy who really handled that

01:09:49

and Chris is right there.

01:09:50

So Chris can also been

01:09:52

canceled but let him jump

01:09:54

in and and respond to

01:09:55

that particular question again much

01:09:57

more efficient. You've got finished

01:09:59

in a combined proceeding and

01:10:02

you've used up half or

01:10:05



two-thirds. The title would have

01:10:06

taken to house them three

01:10:07

independent to clarify the panel

01:10:11

of witnesses could be cross-examined

01:10:13

that way as well. And

01:10:14

that's what you seem to

01:10:15

go out. Dre for cross-examination

01:10:17

of each contact where you

01:10:29

got such a huge dispute

01:10:31

and numbers of you all

01:10:32

can have or complex Doctor

01:10:35

Shoe that has different angles

01:10:37

to it and different people

01:10:38



were involved. That's that's really

01:10:39

the key. The from MacArthur

01:10:41

okay. So it looks like

01:10:43

we have one minute left.

01:10:45

Does anybody have a quick

01:10:47

question they would like to

01:10:48

ask or there is a

01:10:50

question in the back. Thank

01:11:01

you. I just wanted to

01:11:04

pick up on a question

01:11:05

that Ashley Australia which I

01:11:07

don't think was picked up

01:11:08

by the panel, which is

01:11:10



how important it is to

01:11:11

do opposition research on your

01:11:13

own Witnesses. How often you

01:11:15

do it on the other

01:11:15

side's witness is on what

01:11:17

it is that you're looking

01:11:18

for? Michael to take out

01:11:24

on it. They come it's

01:11:25

always smart to know what

01:11:27

may come up and cross-examination

01:11:29

and help your witness be

01:11:31

prepared for it. So I

01:11:33

do you do some opposition

01:11:34



research on my own Witnesses.

01:11:36

You may be stuck with

01:11:39

a fact witness who has

01:11:40

a blemish on the record

01:11:42

but doing a little bit

01:11:43

of opposition research ahead of

01:11:45

time may help make the

01:11:47

difference in terms of deciding

01:11:49

who it is you use

01:11:50

as a witness if you

01:11:51

have those options. I also

01:11:54

think that it's particularly important

01:11:57

to do opposition research for

01:11:59



anyone you're contemplating engaging as

01:12:01

an expert witness. I've seen

01:12:04

us Court decisions that specifically

01:12:07

named experts and disqualify them

01:12:09

or otherwise critics criticize their

01:12:11

opinions, and this could seriously

01:12:14

undermine and experts. Competence and

01:12:16

credibility if Court opinions like

01:12:19

these or other adverse information.

01:12:21

Submitted in the arbitration. So

01:12:23

I want to know that

01:12:24

in advance and not get

01:12:26

surprised with it when I'm

01:12:27



in the middle of the

01:12:28

hearing. Thank you, Michael. Does

01:12:33

anybody else on the panel

01:12:34

Chris? I see your button

01:12:35

your finger on the button.

01:12:37

Should be done in every

01:12:38

case. I would think I

01:12:40

had an interesting scenario few

01:12:42

years ago where the opposing

01:12:44

expert had a t u

01:12:47

no citations of the back

01:12:48

of your CV and as

01:12:49

it turned out they'd been

01:12:50



debited out on 40 or

01:12:53

50 of those. Happy research.

01:12:59

Absolute killer for the tribunal

01:13:07

is usually lying on the

01:13:10

resume for an expert in

01:13:15

a few if you didn't

01:13:16

walk across the platform and

01:13:17

get that diploma from the

01:13:19

dean, you know, and you

01:13:21

remember that and if you

01:13:22

put in there that you

01:13:23

graduated from someone that's not

01:13:26

cracked even though you complete

01:13:27



all the course work, but

01:13:28

you never actually graduated that

01:13:30

is just a devastating kind

01:13:33

of thing to bring out

01:13:33

and cross examination sounds like

01:13:37

something you seem to happen.

01:13:38

So, you know, we've reached

01:13:41

the end of our time.

01:13:42

I'd like to thank everybody

01:13:43

for joining us both in

01:13:44

person and online and we

01:13:46

hope you can join us

01:13:47

for the rest of the

01:13:48



events this week for wow.

01:13:50

Thank you very much. Well,

00:00:05

good morning everybody and welcome

00:00:07

to Houston way back here

00:00:09

on the 9th and welcome

00:00:11

to cool & More in

00:00:12

here. DC. We're here at

00:00:21

day for hard to believe

00:00:25

of Washington arbitration 2024. We've

00:00:29

had an exciting three days

00:00:31

of channels all across Washington

00:00:37

DC with our many supporters

00:00:40

and partners. It's been a

00:00:43



fantastic conference this year. We've

00:00:46

had some really great receptions

00:00:48

the introductory welcoming reception on

00:00:51

Tuesday was a huge success

00:00:52

of the World Bank a

00:00:54

great crowd and and I

00:00:56

was a real pleasure to

00:00:57

hear from Professor Brower giving

00:01:02

us the latest on developments

00:01:05

in the investor State arbitration

00:01:06

World week. We have the

00:01:09

pleasure this morning of kicking

00:01:10

off the day with an

00:01:11



excellent panel and I'll give

00:01:14

you the title. It's actually

00:01:16

part of our effort this

00:01:18

year to actually address practical

00:01:21

topic. So we actually called

00:01:23

this practical session colon working

00:01:26

with the fact witness witness

00:01:28

declaration and the witness preparation

00:01:30

for the hearing and we're

00:01:32

hoping that this is a

00:01:35

great review for a more

00:01:36

senior folks as well as

00:01:39

for junior practitioners who need

00:01:42



to improve their skills not

00:01:44

to say the one the

00:01:46

one thing certainly over my

00:01:48

some 25 years doing International

00:01:51

arbitration. I've always taken advantage

00:01:54

of learning from my colleagues

00:01:56

and I think that's kind

00:01:58

of the the way you

00:01:59

continue to become a better

00:02:01

lawyer and to improve yourself.

00:02:03

We have a great panel

00:02:05

here today. Our moderator is

00:02:10

Ms. Ashley Rivera. Who's the

00:02:13



council here at Crowell &

00:02:15

moring. He's been practicing for

00:02:17

now almost 15 plus years

00:02:19

17 years and has been

00:02:23

pretty exclusively working in the

00:02:25

international arbitration field doing International

00:02:28

commercial arbitration under various rules

00:02:30

as well as extensive work

00:02:32

and if investor-state arbitration, and

00:02:36

she really is one of

00:02:38

the go to people in

00:02:40

our group when we're looking

00:02:42

to deal with the exact

00:02:43



issues we have today dealing

00:02:45

with this witness is absolutely

00:02:47

a critical function of any

00:02:49

fact of element in any

00:02:51

case and and won the

00:02:53

Tennessee fraught with all sorts

00:02:55

of mine filled. So something

00:02:56

that merits a good discussion

00:02:58

and we're going to have

00:02:59

that this morning. And again,

00:03:01

welcome to Crowell & moring.

00:03:03

I want to show everyone

00:03:05

are duck. This is the

00:03:07



crawl Duckworks if you come

00:03:09

down and see the session

00:03:10

you'll get it. So I

00:03:12

added incentive but we're here

00:03:14

in person and I Going

00:03:15

to pass over moderator duties

00:03:18

to Ashley Rivera Ashley. Thank

00:03:22

you Ian and good morning,

00:03:24

everybody. I at the end

00:03:26

mentioned fact Witnesses expert Witnesses.

00:03:30

This this is a topic

00:03:32

that is very near and

00:03:33

dear to my heart. I

00:03:34



spend a lot of time

00:03:35

working with our fax an

00:03:36

expert Witnesses and experts and

00:03:39

I am joined today by

00:03:41

a fantastic panel. We were

00:03:44

doing some back-of-the-napkin math this

00:03:46

morning and I believe we

00:03:47

have about 120 years of

00:03:49

experience up here today. So

00:03:51

hopefully we can impart some

00:03:53

some interesting and new things

00:03:55

for your consideration. So to

00:03:58

my left is Miguel naturally,

00:04:00



he's the Executive Vice President

00:04:02

at Compass lexecon. He's based

00:04:05

in Houston. Miguel has an

00:04:07

economist by training and he's

00:04:09

worked as a Quantum expert

00:04:11

for the last 20 years

00:04:12

and he's provided written and

00:04:14

oral testimony or expert advice

00:04:17

and more than fifty three

00:04:18

cases and Commercial arbitration cases

00:04:21

then to Miguel's left is

00:04:25

Andy has Andy has been

00:04:27

practicing litigation and arbitration for

00:04:30



about 40 years and he

00:04:32

spent much of that time

00:04:33

working at large international law

00:04:36

firm in about 5 years

00:04:38

ago, and he transitioned into

00:04:40

being exclusively an arbitrator and

00:04:43

a mediator and he's at

00:04:44

jams now and Andy's experience

00:04:47

is in both International and

00:04:49

domestic arbitration with a particular

00:04:52

expertise in construction and Engineering

00:04:55

dispute. For those who don't

00:04:57

know construction arbitration is a

00:04:59



specific subset of arbitration and

00:05:03

they can be gigantic cases.

00:05:05

The hearings can last, you

00:05:07

know, upwards of six weeks

00:05:08

and the witness statements and

00:05:10

expert reports can be truly

00:05:12

daunting. So Andy has a

00:05:14

lot of experience to share

00:05:15

with us. Then tandy's left

00:05:18

is Chris Paulsen. Chris is

00:05:20

a partner at PWC. He's

00:05:22

based in Toronto and he

00:05:24

has served as both a

00:05:25



fact witness and an expert

00:05:27

particularly with respect to accounting

00:05:29

practices and damages and valuation

00:05:32

issues. And Chris was previously

00:05:34

an investment banker in the

00:05:35

mining and energy sector and

00:05:38

last but not least we

00:05:39

have joining us virtually my

00:05:41

colleague Michael's refrigerator he has

00:05:43

worked as a lawyer for

00:05:44

about 30 years and his

00:05:45

practice focuses on both litigation

00:05:48

and international arbitration and Michael

00:05:51



in particular will be able

00:05:52

to offer us some of

00:05:55

the con Crafts and distinction

00:05:57

between how Witnesses and experts

00:05:59

are used in arbitration versus

00:06:01

how you see them used

00:06:02

in litigation. So with that

00:06:08

Michael so we were just

00:06:10

talking about that Witnesses and

00:06:12

experts those those rules are

00:06:15

not synonymous. Can you talk

00:06:17

to us about the distinctions

00:06:19

between what a fact witness

00:06:20



says versus what an expert

00:06:21

witness is supposed to accomplish

00:06:24

for the opportunity to be

00:06:30

on this channel today. I

00:06:32

wish I could be there

00:06:33

in person with you all

00:06:34

and also wish I was

00:06:36

able to attend what sounds

00:06:38

like a great welcome you

00:06:39

to reception. I do think

00:06:41

that is helpful to keep

00:06:42

in mind for this session

00:06:44

as we progressed today the

00:06:46



different roles that fact and

00:06:48

expert witnesses can have an

00:06:50

international arbitration fact Witnesses are

00:06:54

utilized to provide first-hand information

00:06:56

to the tribunal about the

00:06:59

events at issue. They were

00:07:01

involved in the events that

00:07:03

were relevant to the disputed.

00:07:05

They're there to educate the

00:07:06

tribunal about what happen. Based

00:07:09

on their personal knowledge in

00:07:11

contrast with expert Witnesses. They

00:07:14

are there to present information

00:07:17



to educate the tribunal with

00:07:20

respect to areas that are

00:07:21

outside the expertise of the

00:07:23

tribunal members. And so they'll

00:07:25

Express opinions within their fields

00:07:28

of expertise about issues that

00:07:30

are relevant to the dispute

00:07:32

based on their review of

00:07:34

the underlying evidence a fact

00:07:38

witness may or may not

00:07:39

have a personal stake in

00:07:41

the outcome of the dispute,

00:07:43

but for certain and a

00:07:44



witness is always required to

00:07:46

be independent and objective and

00:07:49

their duty is really to

00:07:50

help the tribunal and I'm

00:07:51

not to be an advocate

00:07:53

for the party that engaged

00:07:54

under Thank you and Chris

00:07:58

for some of our younger

00:07:59

practitioners. Can you give some

00:08:02

examples of what types of

00:08:03

experts you would see in

00:08:05

an arbitration case shapes and

00:08:10

forms, honestly, if they could

00:08:12



be anyone who has a

00:08:14

specific subject matter expertise which

00:08:17

allows the panel to draw

00:08:19

inferences or help them to

00:08:21

understand some of the facts

00:08:23

that are particularly complex. Obviously

00:08:26

Financial quantum's is one of

00:08:28

the most common but I've

00:08:29

you regularly see medical or

00:08:32

engineering expert I've even seen

00:08:34

a professional chef in one

00:08:36

instance which was sort of

00:08:37

interesting aside from just the

00:08:41



subject matter though. There's also

00:08:42

the issue of what what

00:08:44

form is experts come in

00:08:46

and depending on the panel

00:08:48

and the preferences the council

00:08:50

bacon. You talking about Quantum

00:08:53

in Cincinnati this year. They

00:08:56

can be academics from you

00:08:58

know, prestigious universities and they

00:09:01

are particularly good when you're

00:09:02

dealing with issues. They can

00:09:05

be industry practitioners. Will you

00:09:07

know what you're dealing with

00:09:08



your Mystics the practicality of

00:09:10

how you would deal with

00:09:11

these issues are often very

00:09:12

compelling or you getting to

00:09:15

where the unique and bespoke

00:09:16

kind of analysis. You can

00:09:18

push presnell Services firms or

00:09:19

accounting send Economist tackle the

00:09:22

subject. So let's talk about

00:09:27

we're going to go back

00:09:29

and forth today talking about

00:09:30

fact Witnesses and our expert

00:09:32

Witnesses. So we'll talk about

00:09:34



each of those issues and

00:09:36

treat them distinctly Andy from

00:09:40

an arbitrator's perspective. Can you

00:09:42

talk about the characteristics of

00:09:44

a compelling fact Witness? Sure,

00:09:47

the ideal fact with us

00:09:50

needs to balance a whole

00:09:52

list of qualities. You need

00:09:55

to be articulate clearly but

00:09:56

not pedantic not too guarded

00:09:59

or evasive but on the

00:10:01

other hand not to open

00:10:02

and chatty because you have

00:10:04



a witness that you don't

00:10:05

know what's going to come

00:10:05

out of her mouth next

00:10:06

week to any kind of

00:10:10

extreme but Iowa and not

00:10:12

boastful or too strident and

00:10:15

most importantly they wouldn't be

00:10:16

steeped in the facts and

00:10:17

really know what he or

00:10:19

she is talking about and

00:10:20

have a good memory. Now

00:10:22

if you find out idea

00:10:23

what else you should send

00:10:24



up a flare because they

00:10:25

don't actually exist in reality.

00:10:27

You will find that a

00:10:31

number of people are just

00:10:32

Naturals at at most of

00:10:34

those qualities and a piece

00:10:36

of cake Amanda just really

00:10:37

like they've been doing all

00:10:39

her lies, but then there

00:10:41

are others who are very

00:10:42

intelligent, people, but when it

00:10:44

comes to testifying they really

00:10:46

strong Weather for various reasons

00:10:48



and they need lots of

00:10:49

preparation to just be merely

00:10:51

Attic by other hand. You

00:10:55

may need them in your

00:10:56

case a knowledgeable employee that

00:10:58

substance abuse support your case

00:11:00

is very important, but on

00:11:04

the other hand if they

00:11:05

do a really poor job

00:11:06

to witness it can end

00:11:07

up undermining your pace significantly

00:11:10

up there evasive defensive belligerent

00:11:12

combative. Sometimes people just get

00:11:15



in that mode on and

00:11:16

sometimes the lawyer trying to

00:11:17

trigger the witness to get

00:11:19

into that are successful. And

00:11:22

I know if you can

00:11:23

have a problem on your

00:11:24

hands and then the other

00:11:25

considerations you have to think

00:11:27

about who the tribunal expects

00:11:29

to hear from them and

00:11:31

they've looked at some of

00:11:32

the documents that I've heard

00:11:33

in advance of the hearing

00:11:36



they've heard about some of

00:11:37

the people that have been

00:11:37

involved with her, but prior

00:11:39

Witnesses. A person's a key

00:11:41

participant and clearly played a

00:11:44

central role but doesn't appear

00:11:45

then question start to pop

00:11:47

into the arbitrator's my eyes

00:11:48

out. What is what that

00:11:51

witness would have to say

00:11:52

negative not going to be

00:11:53

helpful. Why isn't he or

00:11:55

she here could be that,

00:11:57



you know, they bring them

00:12:01

back from another employer. But

00:12:03

if you're going to have

00:12:05

to answer that question in

00:12:07

the arbitrator's mind since we're

00:12:08

going to respond. I'm curious

00:12:11

agree with everything you say

00:12:13

and your experience. Is it

00:12:15

easier to coach a fact

00:12:17

witness or play it as

00:12:19

it lays and then adjust

00:12:20

your style as counsel. We

00:12:23

have to be able to

00:12:23



adjust your style but the

00:12:25

coaching coaching the witness preparing

00:12:30

the wedding or chatting the

00:12:36

way it can be a

00:12:47

real challenge. Oakcrest can you

00:12:52

talk about what some of

00:12:54

the characteristics of a compelling

00:12:56

expert should possess and he's

00:12:59

just told us about this

00:13:00

hypothetical magical perfect witness. Someone

00:13:04

who needs his little woodshedding

00:13:05

as possible. I would start

00:13:06

with opinions vary on the

00:13:09



topic or sure different Council

00:13:11

different panels prefer different styles,

00:13:13

but I think one thing

00:13:15

we would all agree with

00:13:17

is that you're looking for

00:13:19

two qualities, you're looking for

00:13:20

competence and you're looking for

00:13:22

integrity in your expert competence

00:13:26

is certainly a measure of

00:13:27

their past experience the things

00:13:29

you see on their CB

00:13:30

but I'll submit to you.

00:13:32

It's also a matter of

00:13:33



of preparedness and being very

00:13:35

familiar with the facts of

00:13:36

this particular case. You'll often

00:13:38

see Witnesses expert Witnesses who

00:13:41

are eminently qualified, but as

00:13:43

they get up on the

00:13:44

stand to testify becomes clear

00:13:46

that they are perhaps not

00:13:47

as thoroughly immersed in the

00:13:48

subject. They should be there

00:13:51

Juniors written the report and

00:13:53

that's going to have an

00:13:54

impact on their credibility. Right

00:13:56



someone is able to get

00:13:58

up there and speak fluently

00:13:59

and candidly and and in

00:14:02

a manner that is without

00:14:03

technical. Jargon and very understandable.

00:14:05

I think immediately comes across

00:14:08

as credible and unfortunately is

00:14:10

pretty rare actually. It's the

00:14:12

other half of that is

00:14:15

integrity and I Canyon Berry

00:14:19

on this is well, but

00:14:20

I will say the ability

00:14:23

to engage sincerely and thoughtfully

00:14:26



with the questions that are

00:14:27

put to you both by

00:14:28

the panel and opposing counsel.

00:14:30

I think it's a very

00:14:31

important quality. There is an

00:14:33

instinct particularly when you are

00:14:35

young expert is to be

00:14:36

very defensive and disagreeable into

00:14:40

you know, try to cut

00:14:42

them off at every pass

00:14:43

with the line of questioning

00:14:44

that comes I think that's

00:14:45

actually very ineffective. I think

00:14:48



your job in the send

00:14:51
an Essence is to be

00:14:52
there to assist the panel

00:14:53
with understanding the box and

00:14:55
if you believe in your

00:14:56
case and you believe in

00:14:57
your analysis, you should be

00:14:59
able to do that as

00:15:00
thoroughly and thoughtfully as possible

00:15:02
without dodging questions. I agree

00:15:08
with that. I agree with

00:15:10
everything you say most of

00:15:12
the best experts that I've

00:15:14



dealt with think of themselves

00:15:16

as teachers at explaining things

00:15:20

clearly in the way of

00:15:21

the teacher what and personality

00:15:23

personality makes a big difference.

00:15:25

If your expert has an

00:15:28

obviously big ego is hesitant

00:15:32

to back off graciously when

00:15:34

they need to take a

00:15:36

back off graciously and largely

00:15:40

negate the force of sound

00:15:42

opinions. I think arrogance is

00:15:45

a smokescreen for not knowing

00:15:46



the subject matter. When we

00:15:52

were preparing for this panel

00:15:54

Michael we did talk about

00:15:55

this a little bit when

00:15:57

you are faced with selecting

00:15:59

an expert who is absolutely

00:16:01

the unequivocal hop top person

00:16:05

who knows that fueled versus

00:16:08

but has never testified or

00:16:09

served as an expert versus

00:16:12

somebody who is a professional

00:16:13

expert but might not be

00:16:15

quite so steep in the

00:16:16



subject matter. How do you

00:16:18

make the calculation about which

00:16:20

one you should retain for

00:16:21

your client the best information

00:16:29

and education to the tribunal

00:16:32

to help them make the

00:16:34

decisions on the issues that

00:16:36

that are in just spews

00:16:38

it is a delicate balancing

00:16:40

process. You certainly have the

00:16:43

advantage with a more experienced

00:16:46

expert of being able to

00:16:49

predict event count on house.

00:16:52



They will perform both in

00:16:54

terms of their analysis and

00:16:56

preparation of the iceberg report

00:16:58

and their testimony before the

00:17:00

tribunal. Where is a less

00:17:03

experienced experts who may have

00:17:05

lived the life of the

00:17:08

matters that he's testifying about

00:17:09

or she's testifying about maybe

00:17:14

so uncertain about the process

00:17:16

that they're their tenancy their

00:17:18

nervousness can really impact the

00:17:22

quality of the information they

00:17:24



provide so it obviously has

00:17:27
to be done on a

00:17:27
case-by-case basis. And you need

00:17:30
to really that what the

00:17:32
difference is in terms of

00:17:33
the substance that will be

00:17:35
provided to the tribunal but

00:17:37
where you go with that

00:17:38
less experienced has Define expert

00:17:42
the the perhaps more experienced

00:17:44
real life expert. I found

00:17:48
it. It's often quite helpful

00:17:50
to pair. Search up together

00:17:52



have that more experienced to

00:17:55

testify an expert who is

00:17:57

also working on the case

00:17:58

work hand-in-hand with the person

00:18:00

who has less testifying experience

00:18:02

have them help structure an

00:18:05

expert report and explain what

00:18:07

your issues to focus on.

00:18:09

I have them work with

00:18:11

the the less experienced expert

00:18:15

in terms of how to

00:18:16

prepare to testify. I've seen

00:18:19

that that's been a very

00:18:20



valuable exercise and has helped

00:18:22

with the ultimate presentation to

00:18:24

the Tribunal. 2 on this

00:18:28

topic of selecting experts or

00:18:31

selecting Witnesses should attorneys be

00:18:35

conducting opposition research on their

00:18:37

own experts and Witnesses. And

00:18:39

at what point should they

00:18:40

do that Andy? Thank you,

00:18:47

in terms of overlapping and

00:18:51

duplicative kinds of witness statements

00:18:53

as you usually want the

00:18:58

one who has the more

00:18:59



more knowledge and will be

00:19:01

the better witness to take

00:19:03

the lead on and then

00:19:05

other witnesses can chime in

00:19:07

and confirm and supplement that

00:19:10

lead witness. But I often

00:19:13

see witness statements were witness

00:19:15

statement to is literally cut

00:19:18

and pasted from witness statement

00:19:19

want I mean pages and

00:19:21

pages that are exactly the

00:19:22

same tax and that is

00:19:25

that doesn't win you any

00:19:26



points with any arbitration tribunal

00:19:28

only I got to Wade

00:19:29

through all that and it

00:19:31

immediately calls into question. How

00:19:33

much of this is really

00:19:34

The witnesses actual testimony any

00:19:38

two people are testifying about

00:19:39

the same topic or going

00:19:40

to use different words and

00:19:42

the calls into question immediately.

00:19:47

So you can use the

00:19:48

second witness to confirm but

00:19:49

not directly overlap. In Michael,

00:19:54



I'm kind of come back

00:19:56

to you again and ask

00:19:58

you how how might that

00:19:59

differ from litigation if he's

00:20:01

got multiple upper if you

00:20:02

have multiple choices of different

00:20:04

experts. Do you put them

00:20:06

all forward? Do you only

00:20:07

select one and he's talked

00:20:08

a little bit about how

00:20:10

we might choose among our

00:20:11

Witnesses potential Witnesses? Make sure

00:20:15

I understand correctly. We talked

00:20:16



it out with dr. Expert

00:20:17

Witnesses. So with with fact

00:20:22

Witnesses, I do think you

00:20:25

also ask about the distinction

00:20:27

between litigation and arbitration. I

00:20:29

believe with litigation. Do you

00:20:32

have to keep in mind

00:20:33

the process of how a

00:20:34

fact witness testifies fact witness

00:20:37

in litigation is going to

00:20:39

present their testimony their affirmative

00:20:42

testimony that you would ordinarily

00:20:44

Sienna written witness statement live

00:20:47



in person in the courtroom

00:20:48

in front of a jury

00:20:49

and also then be cross-examined

00:20:53

as a result you have

00:20:55

perhaps testimony that will take

00:20:57

longer to put before the

00:20:59

Trier of fact, then you

00:21:00

would see in arbitration and

00:21:03

if you look at him

00:21:04

just a docket and the

00:21:06

patience of a jury that

00:21:07

you really have to take

00:21:08

into account that you just

00:21:10



don't have the time in

00:21:11

and you don't want to

00:21:13

be wasting the core. Time

00:21:14

by presenting Witnesses who are

00:21:17

merely saying the same thing.

00:21:18

I think in arbitration. It's

00:21:20

it's a slightly different analysis.

00:21:23

You don't have affirmative testimony

00:21:27

that's in the written witness

00:21:28

statements. OB erratically. The testimony

00:21:31

should not take as long

00:21:32

to present to the panel

00:21:35

in in that case the

00:21:37



doctor really may fall more

00:21:40

on the attorneys deciding whether

00:21:42

to cross-examine the witness. If

00:21:45

you call three Witnesses who

00:21:47

say the same thing and

00:21:48

cross-examine them on all of

00:21:50

the same issues who's really

00:21:52

wasting the tribunals time as

00:21:54

the tribunal going to hold

00:21:56

that against the attorneys during

00:21:57

the cross-examination more than the

00:22:00

attorney who represents three to

00:22:02

click it if witness statements

00:22:04



the tribunal theoretically could appreciate

00:22:06

having multiple witness statements to

00:22:09

support the same fact that

00:22:10

the tribunal ultimately is going

00:22:12

to find that said Completely

00:22:14

agree with Andy that you

00:22:17

do not want to annoy

00:22:18

the channel to arbitrators by

00:22:22

submitting duplicate of witness statements

00:22:24

especially ones that are cut

00:22:26

and pasted into multiple witness

00:22:29

statements that definitely takes away

00:22:32

from their time and can

00:22:33



call The witness's credibility into

00:22:35

question. So we've been talking

00:22:39

about this wonderful hypothetical scenario

00:22:42

where you have three or

00:22:43

four options of witnesses that

00:22:45

you can put forward who

00:22:46

can all support your case

00:22:47

sometimes however, the events in

00:22:50

question happened decades ago potential

00:22:54

witness is maybe no longer

00:22:55

has good health. They might

00:22:58

not be with the company

00:22:59

any more variety of reasons.

00:23:00



You might not even have

00:23:02

a witness available at that

00:23:05

point Miguel should you ask

00:23:07

your expert to present the

00:23:09

relevant facts? Yeah, and what

00:23:18

is it that you're going

00:23:18

to be asking the expert

00:23:19

2% I think Michael was

00:23:23

saying earlier. We expect different

00:23:26

things from a fight when

00:23:28

you said you don't want

00:23:30

an expert witness presenting the

00:23:32

facts of the case. I'll

00:23:33



see if he or she

00:23:34

know where they are at

00:23:36

what percent of Social Security

00:23:37

have first-hand knowledge of when

00:23:42

we normally don't we we

00:23:44

are as expert Witnesses retain

00:23:47

a point of the arbitration

00:23:49

wind if I sell already

00:23:50

taken place and we are

00:23:53

simply there to engage the

00:23:54

tribunal on certain issues but

00:23:56

having said that it is,

00:23:59

sometimes beneficial to the tribunal

00:24:01



to have the expert witness

00:24:05

of the subject matter expert

00:24:07

explain certain key facts of

00:24:09

the case to the tribunal

00:24:10

so far. Uncle if you

00:24:12

do have a case involving

00:24:14

mine and you have everything

00:24:16

in mining expert to compute

00:24:19

2% for sample the projections

00:24:21

of the revenues for the

00:24:23

production of the mind going

00:24:25

for work at the same

00:24:26

person maybe the adequate person

00:24:29



to educate the tribunal on

00:24:30

the potential of the Mind

00:24:32

what was the process by

00:24:34

which these particular company acquired

00:24:37

a license to explore the

00:24:38

mine because I was involved

00:24:40

in that explanation that comes

00:24:43

from the area of expertise

00:24:44

of the person when I

00:24:47

said experts we are the

00:24:49

regularly asked to explain for

00:24:52

example the economic rationale of

00:24:54

the contract so we have

00:24:55



a commercial dispute. It's a

00:24:56

contractual Clause what what is

00:24:58

what we can say how

00:25:00

the park is negotiated that

00:25:02

close. We were not in

00:25:03

the room, but we can

00:25:05

certainly help the tribunal see

00:25:08

the reason for the for

00:25:09

the clothes. What the police

00:25:12

may have been trying to

00:25:13

do a citizen of service?

00:25:15

I think that they'll spot

00:25:16

you in Hindi actress explaining

00:25:19



sometimes they fax particularly if

00:25:21

the fact when this is

00:25:22

not available, but I think

00:25:24

Isis Andy said also if

00:25:26

you are not going to

00:25:27

pretend that I witnessed for

00:25:28

whatever reason and I'm determined

00:25:29

I would expect to see

00:25:30

that I witnessed trying to

00:25:32

replace that I wouldn't be

00:25:34

an expert may not may

00:25:35

not be the best because

00:25:36

you anyway come out that

00:25:38



that there's something there's a

00:25:39

got there right? I need

00:25:40

to be able to explain

00:25:41

it. Thank you. I'm going

00:25:43

to be going to ask

00:25:45

you one more follow-up question

00:25:47

on this if an issue

00:25:52

when a case is critical

00:25:53

and you retained say you've

00:25:56

retained of quantum expert. Do

00:25:57

you think it helps having

00:25:59

more than one expert in

00:26:01

in the areas where you

00:26:02



have a truly critical issue

00:26:04
we done. I think a

00:26:08
Christmas saying they're the same

00:26:09
is it is it depends

00:26:11
on the size of a

00:26:12
case of the issue but

00:26:15
it is not uncommon to

00:26:17
see one. Like I said,

00:26:21
I can leave expert Mae

00:26:23
normally be the person who

00:26:24
is finally putting together the

00:26:26
deck in the quantum case

00:26:28
for the damages figure for

00:26:29



the tribunal being assisted in

00:26:32

a way by other more

00:26:34

specifically before construction cases. That's

00:26:39

a typical case. You would

00:26:42

have the construction claim with

00:26:44

a delay. For example of

00:26:46

a sign in the reliability

00:26:48

on who's responsible for it

00:26:49

for the delay is it

00:26:51

is a pretty complicated task

00:26:53

and there are people that

00:26:56

specialize in the kernel Des

00:26:57

Les analysis. So you would

00:26:59



you want someone who can

00:27:01

do that part and potentially

00:27:04

feed that into the final

00:27:07

12 minutes studies presented to

00:27:09

a tribunal mining oil and

00:27:12

gas, you know, you're leaving

00:27:13

Reservoir. Sometimes you may want

00:27:15

to engage someone who can

00:27:16

talk about the geology of

00:27:18

the reservoir give you that

00:27:20

the complex figures that you

00:27:22

need to plug into your

00:27:23

financial molar. So it's having

00:27:32



a collaboration between the two

00:27:35

experts in terms of the

00:27:36

substance that starts with the

00:27:38

presentation, right? So, how are

00:27:39

you going to resend the

00:27:40

front of you now. where

00:27:42

can I get to the

00:27:42

topic of the shooting but

00:27:44

their support that's a very

00:27:45

critical part of the scene

00:27:46

in which your exercise going

00:27:47

to pretend to the tribunal

00:27:49

before the cross-examination you want

00:27:52



that to be perfect and

00:27:54

sometimes having a collaboration between

00:27:56

expert and help achieve that

00:27:59

so Andy, you mentioned earlier

00:28:02

having multiple Witnesses say the

00:28:05

same thing can be a

00:28:07

little frustrating for the tribunal.

00:28:08

How do you feel about

00:28:09

having multiple overlapping experts as

00:28:14

a general rule? Each expert

00:28:17

should have a primary focus

00:28:20

that is unique and different

00:28:23

from the other experts out

00:28:25



of extent. They have overlapping

00:28:26

expertise and can offer opinions

00:28:28

about another expert has done.

00:28:32

It's fine for them to

00:28:33

confirm the other expert usually

00:28:37

confirm sometimes and sometimes course

00:28:40

the two different approaches to

00:28:41

the same problem. I had

00:28:43

a case recently where the

00:28:44

key question was. What was

00:28:47

the composition of this contaminant

00:28:49

and the end so you

00:28:51

have one expert that sells

00:28:52



x-ray diffraction analysis, and another

00:28:54

one that does a different

00:28:55

kind of analysis there both.

00:28:59

Directions that's perfectly fine. I

00:29:02

can really add a lot

00:29:03

actually, but it would have

00:29:05

to be a really critical

00:29:06

question that the whole case

00:29:08

turns on to have two

00:29:09

experts in my mind have

00:29:11

to ask for precisely the

00:29:15

same opinion on it precisely

00:29:16

the same way. I'll ask

00:29:21



this more broadly to the

00:29:22

panel at what point should

00:29:24

counsel be reaching out to

00:29:26

an expert. Starbucks We see

00:29:42

in our experience. Course in

00:29:44

English in the express early

00:29:45

is is beneficial is more

00:29:47

efficient. It allows for no

00:29:51

reason. I mean that it

00:29:54

is said that instead of

00:29:55

you know, maybe some fact-finding

00:29:57

that Dolores definitely have to

00:29:59

do on the wrong with

00:30:00



the clan before no need

00:30:01

to have expressed their initial

00:30:03

point, but you won't have

00:30:05

to make sure that you

00:30:08

are making the case at

00:30:09

the end of the day,

00:30:10

you know, you want to

00:30:11

make the most sordid case

00:30:12

also in terms of the

00:30:14

specific subject matter is shoes

00:30:18

and the quantum issues. So

00:30:20

the earlier the better it

00:30:24

helps save the expectations with

00:30:26



the clients, you know, you

00:30:28

was as loyal as you

00:30:29

do a deal with your

00:30:30

clients happen, it has happened

00:30:33

many times where you going

00:30:35

to case you are returned

00:30:36

for the case and then

00:30:37

you realize that you know,

00:30:38

the kind has had an

00:30:39

idea all along. 4/4 months

00:30:43

that's something claims that the

00:30:46

numbers that may not be

00:30:47

feasible given the evidence on

00:30:50



the claims of Victorious can

00:30:51

support from an IV perspective.

00:30:54

So I think in that

00:30:55

sense is beneficial is it

00:30:57

in managing expectations? So if

00:30:59

everybody is more efficient expert

00:31:02

who typically work with the

00:31:03

team of people so you

00:31:05

don't need to have to

00:31:06

send me a text if

00:31:07

I'm actually moving everything but

00:31:08

having the the the team

00:31:10

is is is helpful helps

00:31:12



identify the document also prioritize

00:31:15

the claims you want yours.

00:31:18

You got a number of

00:31:19

claims and we've had a

00:31:20

vacation in the in the

00:31:22

past when you have like

00:31:23

pages and pages of Memorial

00:31:25

dedicated to a claim that

00:31:26

may not really move the

00:31:28

needle from a perspective. So

00:31:30

do you really want to

00:31:31

tell you not to focus

00:31:31

on. Or do you want

00:31:32



them to focus on the

00:31:33

things out at the end

00:31:34

of the day matter to

00:31:36

the time most Can I

00:31:42

have the agree with mikkel

00:31:44

said retain the experts as

00:31:47

early as her only much

00:31:49

better and coordinating the witness

00:31:51

statements and reports is highly

00:31:54

important easy cross-examination father if

00:31:59

the expert clearly has not

00:32:01

is not familiar with what

00:32:02

some of the fact that

00:32:04



I know. It's just a

00:32:05

piece of cake. I'm so

00:32:07

you don't want to be

00:32:08

in that position its particular

00:32:11

problem actually with Quantum experts

00:32:13

because the damage is people

00:32:15

tend to be off in

00:32:16

a world of their own

00:32:16

sometimes and maybe not fully

00:32:19

cognizant of what all the

00:32:21

different fact Witnesses have said

00:32:22

or some of the technical

00:32:23

experts are Best Buy at

00:32:24



earlier. And so you see

00:32:27

that fairly regularly, it's clear

00:32:29

from the report of the

00:32:31

quantum expert.. Here. She's including

00:32:34

damages that. Just one supported

00:32:36

by the fact that all

00:32:37

and giveaway I would just

00:32:43

add that. I think this

00:32:45

was an easy one where

00:32:46

we can all just agree

00:32:47

get them involved early. But

00:32:49

from my perspective, I see

00:32:52

having experts involved early helps

00:32:55



you build your case or

00:32:57

your defenses. It really can

00:33:00

help you focus on what's

00:33:01

important but it also helps

00:33:04

give the XpertThief actual the

00:33:07

underlined factual basis that that

00:33:09

expert needs in order to

00:33:10

render their opinion. The 11

00:33:13

things that I would add

00:33:15

is that sometimes experts are

00:33:16

stuck in their office looking

00:33:18

at documents spreadsheets, whatever and

00:33:21

may not truly appreciate the

00:33:24



the actual events that took

00:33:26

place one way that can

00:33:28

help really bring this home

00:33:29

for the expert is to

00:33:31

conduct site visits go to

00:33:32

the client's office see the,

00:33:34

you know, the the structures

00:33:38

that are at issue things

00:33:40

like that so that they

00:33:41

can really gain and Standing

00:33:43

of what happened in a

00:33:45

way that you can't get

00:33:46

just by reading documents. I

00:33:50



think that's a great Point

00:33:51

Chris when we were talking

00:33:53

about this issue earlier, you

00:33:55

had mentioned there might be

00:33:56

some reasons why you wouldn't

00:33:58

want to engage your expert,

00:34:00

you know, at the outset

00:34:00

of the case can talk

00:34:02

about that. Why is it

00:34:03

trying to be a bit

00:34:03

of a contrarian for fun?

00:34:05

Clearly you do like the

00:34:08

number one reason I think

00:34:10



people put forward for not

00:34:11

engaging experts right away is

00:34:13

and I understand that once

00:34:16

the clock starts running. It

00:34:18

adds up quickly. I do

00:34:22

think that comes at the

00:34:23

cost of all the things

00:34:24

we've just spoken about their

00:34:26

own nests in a familiarity

00:34:27

with the case. And in

00:34:29

my opinion in the tray.

00:34:31

Just isn't worth it. Frankly.

00:34:32

You can manage your experts

00:34:34



you can manage their yard

00:34:38

cut the case that's time

00:34:41

and money well spent The

00:34:43

other potential reason I could

00:34:46

think of is not to

00:34:47

have them perhaps too closer

00:34:49

too much in the kitchen

00:34:50

at the outset of a

00:34:52

file. The last thing you

00:34:54

want is yours to find

00:34:55

say why I never would

00:34:56

have built that mine. Anyway,

00:34:57

something like that, right? So

00:35:00



make sure that you've got

00:35:01

the the theory of the

00:35:04

case. So they Consolidated you

00:35:05

got your story straight and

00:35:07

everything and you haven't got

00:35:09

the expert watching a bit

00:35:11

of a tennis match between

00:35:12

Council and client. That's the

00:35:14

right way to approach something.

00:35:17

That's a great point. So

00:35:21

I'd like to shift our

00:35:22

Focus to drafting the fact

00:35:25

witness statements and the expert

00:35:27



reports. For those of you

00:35:29

who might not be familiar

00:35:30

in arbitration a witness's testimony

00:35:33

and an expert's direct testimony

00:35:35

is first put forward in

00:35:38

written form. These reports can

00:35:41

be, you know, a short

00:35:43

facts statement might be only

00:35:44

ten or fifteen pages and

00:35:46

the sky is really the

00:35:47

limit on how long extra

00:35:49

reports can get as the

00:35:51

panel to my left here.

00:35:52



Can can a test Michael.

00:35:55

Can you talk to us

00:35:55

a little bit about how

00:35:56

do you go about helping

00:35:58

your Witnesses draft their their

00:36:00

fat statements? I'll be happy

00:36:03

to as a universal proposition.

00:36:07

I'd say attorneys generally draft

00:36:10

the fact witness statements but

00:36:13

it is always important to

00:36:14

bear in mind that this

00:36:16

is the witness's statement. It's

00:36:18

their story to tell and

00:36:19



it needs to be faithful

00:36:21

to what the witness knows

00:36:22

and believes and for this

00:36:24

reason you should not just

00:36:25

drafted witness statement and then

00:36:27

work with this the witness

00:36:28

to make any revisions and

00:36:30

get a sign you need

00:36:31

to conduct interviews discuss key

00:36:33

documents and events. You need

00:36:35

to know the witness's story

00:36:37

before you write it and

00:36:38

you should also be careful

00:36:40



to avoid including anything in

00:36:42

the statement that the witness

00:36:43

doesn't know about in cross-examination

00:36:46

that the witness says, they

00:36:48

don't know anything about something

00:36:50

that's included in their witness

00:36:52

statement distance themselves from it.

00:36:54

It can damage their credibility

00:36:56

in your own. So you

00:36:58

definitely want to be cognizant

00:37:00

and careful about that. And

00:37:03

I would say finally it's

00:37:04

important to use the witnesses

00:37:07



own words where you can

00:37:08

you you really need to

00:37:09

avoid using legal term making

00:37:12

arguments that I think the

00:37:13

most effective witness statements just

00:37:16

State the facts without a

00:37:18

lot of hyperbole. And when

00:37:22

we were preparing for this

00:37:23

panel, we talked about you

00:37:25

can't just email the draft

00:37:28

statement to the witness and

00:37:29

say take a look at

00:37:30

this and tell me tell

00:37:31



me if it looks right

00:37:32

to you. How do you

00:37:33

go about doing that final

00:37:35

vetting process with the witness?

00:37:38

Michael I think you definitely

00:37:42

need to be involved throughout

00:37:44

the entire process with the

00:37:45

witness before you even put

00:37:47

10 to paper but as

00:37:50

you are a developing that

00:37:52

witness statement, it's important to

00:37:54

sit side-by-side and go through

00:37:56

every single sentence and make

00:37:58



sure that the witness understands

00:38:01

and can degrees and knows

00:38:04

about that that fact that

00:38:06

is being included in there.

00:38:07

And when you do that

00:38:08

you actually strengthen the witness

00:38:10

statement because that witness is

00:38:12

providing additional information that will

00:38:15

help you add or refine

00:38:17

what is in there to

00:38:19

Taylor to the witnesses own

00:38:21

knowledge and perception about what

00:38:22

happened. I agree and e

00:38:26



as an arbitrator, does it

00:38:28

concern you is it okay

00:38:29

with you how closely involved

00:38:31

attorneys are in crafting the

00:38:33

witness statements Covington on both

00:38:38

sides that done as an

00:38:39

advocate as well. I mean,

00:38:41

it's just a given that

00:38:43

the lawyers have to be

00:38:44

involved in drafting the witness

00:38:46

statement. It's like finding the

00:38:48

idea. There are very very

00:38:50

few Witnesses who could entirely

00:38:53



on their own sit down

00:38:55

and write their own witness

00:38:56

statement and have it come

00:38:58

out as a clerestory laying

00:38:59

out all the facts clearly

00:39:01

filling in the gaps and

00:39:04

make it all coherent and

00:39:05

clear it just that would

00:39:07

be a little concerning you

00:39:08

could do it. Just not

00:39:17

the real world so it

00:39:19

too but obviously Make sure

00:39:25

that this is the witness's

00:39:26



statement but I always assumed

00:39:29

lawyer involvement in Reading any

00:39:31

witness statement in that doesn't

00:39:32

bother me about it. That's

00:39:33

that's just a given for

00:39:36

something I Michaels that I

00:39:37

the absolute worst mistake you

00:39:39

can make is to finish

00:39:42

up the witness statement and

00:39:44

you do know you've written

00:39:45

it from your interview notes

00:39:46

and you've done your best

00:39:47

to to reflect that the

00:39:48



witness said but then you

00:39:50

email it to the witness.

00:39:51

Once I read it over

00:39:52

carefully and tell me whether

00:39:54

this is this is correct

00:39:55

or not or whether you

00:39:56

have any corrections, they won't

00:39:58

look at all that carefully.

00:39:59

They won't look at what's

00:40:00

the degree of detail that

00:40:03

you need them to look

00:40:04

at? Cuz you want every

00:40:05

detail to be there if

00:40:06



there are actual test month.

00:40:08

You have to go through

00:40:09

the draft together send line

00:40:13

by line and confirm every

00:40:14

detail of corrective necessary. It's

00:40:17

it's a disaster to put

00:40:20

a witness on the stand

00:40:20

who them professors ignorance with

00:40:23

something that's in his way

00:40:24

this tape. And I know

00:40:25

actually I don't remember that

00:40:26

at all. I wanted all

00:40:27

them that you just don't

00:40:30



want that at all. And

00:40:32

so the only way to

00:40:33

prevent that that's the really

00:40:34

expensive time and effort to

00:40:35

go through it with my

00:40:36

detail. You can find me

00:40:39

a hundred percent difference between

00:40:46

a typical expert witness knows

00:40:50

what's coming, you know, so

00:40:52

when you ride your report,

00:40:53

you know, what's going to

00:40:54

happen after work. So, you

00:40:55

know, you're going to have

00:40:56



to write the second report

00:40:57

and generally and that you're

00:40:59

going to have to be

00:40:59

subject to cross-examination of witnesses

00:41:02

have never done that before

00:41:04

so they they don't appreciate

00:41:05

that. Whatever is in that

00:41:08

witness statement. They will have

00:41:10

to sit down in front

00:41:11

of the tribunal by opposing

00:41:13

end bass pretty and very

00:41:14

sharp anthropocene Council being subject

00:41:18

to cross-examination on every work

00:41:19



and I think that's you

00:41:21

know, particularly for the door

00:41:22

is working with the witness's

00:41:24

Taking. Clear showing for examples

00:41:27

of this is what's going

00:41:28

to happen. Even if not

00:41:30

the night before the hearing.

00:41:32

But even when those were

00:41:34

in the same as I

00:41:34

put together, I think it's

00:41:35

important. So appreciate because you

00:41:39

know, we said it's just

00:41:41

I hate take a look

00:41:42



at these they may not

00:41:43

let me be busy with

00:41:44

something else appreciate the importance

00:41:46

of having as I used

00:41:50

to call witnesses. This isn't

00:41:52

an outline of your testimony.

00:41:53

This is your testimony that

00:41:55

every lawyer in this room

00:42:01

has had the experience of

00:42:02

sitting down with a fact

00:42:04

witness in curing the story

00:42:05

for the 50th time and

00:42:08

some new detail arises and

00:42:10



I remember this and hearing

00:42:12

a couple of years ago

00:42:13

was that contested accounting procedure

00:42:15

approach and the eve of

00:42:18

the hearing the client mentioned

00:42:20

while you know, it was

00:42:21

reviewed and signed off on

00:42:22

by third-party auditor. Well, that's

00:42:25

good to know like they

00:42:26

could eat that it a

00:42:28

year ago. So it takes

00:42:29

multiple iterations to get this

00:42:31

out sometime. Probably everybody on

00:42:36



this panel has been and

00:42:38

hearing and heard the witnesses

00:42:40

say some variation of oh,

00:42:42

I didn't write that my

00:42:43

lawyer put that in there.

00:42:44

I don't know anything about

00:42:45

that and you want that

00:42:47

to be the thing that

00:42:48

happens to opposing counsel. Not

00:42:49

to you. I'm positive. It's

00:42:52

Christmas when it happens to

00:42:53

you in and I have

00:42:54

had multiple occasions where we've

00:42:56



benefited from another side's lack

00:42:59

of preparation their Witnesses, but

00:43:01

if you take anything away

00:43:03

from here to make sure

00:43:04

your witness actually knows what's

00:43:06

in their statement, certainly don't

00:43:12

want the witness to say

00:43:13

I didn't write that that's

00:43:14

in that's not mine. But

00:43:15

on the other hand, you

00:43:17

know, we also do you

00:43:18

need to recognize that Witnesses

00:43:20

are human and you know,

00:43:22



how often those witness statements

00:43:23

were Long before they actually

00:43:26

do testifying and a lot

00:43:28

of fact Witnesses have never

00:43:30

testified before and are not

00:43:31

used to testify speaking in

00:43:34

front of others much was

00:43:36

testifying in that kind of

00:43:38

a very family environment. And

00:43:40

so it is inevitable. It

00:43:41

witnesses will not be as

00:43:44

articulate as early as what's

00:43:46

in their witness statement. They

00:43:48



may be nervous and a

00:43:50

little rattled by being the

00:43:52

subject of aggressive opposing counsel.

00:43:54

And so you're not always

00:43:55

going to have perfect response

00:43:57

to every question as it

00:44:00

might be laid out in

00:44:01

a witness statement. So that

00:44:03

that's something that it's just

00:44:05

important to bear in mind.

00:44:07

Yes, absolutely. So we talked

00:44:12

about how we prepare witness

00:44:13

statements Chris. Can you shed

00:44:15



some light on how expert

00:44:16

reports are prepared? Is it

00:44:18

is it a similar process

00:44:19

or is it dissimilar? First

00:44:24

let me start with a

00:44:24

concession accountants and Economist are

00:44:29

some of the worst writers

00:44:30

you'll find in the face

00:44:31

the planet. They're the reports

00:44:33

are unintelligible and accessible. They

00:44:38

have no flow stops in

00:44:40

style. Tell me how you

00:44:44

really feel this is being

00:44:47



recorded. And so in that

00:44:50

respect, we need a lot

00:44:51

of help. There's no question

00:44:53

particularly with it's a university

00:44:54

in electrical engineering reports and

00:44:56

they obviously have Mastery of

00:44:57

the subject but in terms

00:44:59

of unfolding in there and

00:45:00

if it still needs work

00:45:01

that said Council should never

00:45:05

write the report the words

00:45:07

that goes to the start

00:45:08

of the credibility issue. I

00:45:09



spoke to earlier the words

00:45:11

need to come easily to

00:45:13

the expert on the day.

00:45:14

I've been used to own

00:45:15

the analysis than you did

00:45:16

own the the calculations in

00:45:19

the conclusions are in most

00:45:21

experts are seasoned and experienced

00:45:23

enough to know a little

00:45:24

bit about how to write

00:45:25

this report, but not all

00:45:29

And I think there's room

00:45:31

for some give-and-take in terms

00:45:32



of coaching in terms of

00:45:33

how it should unfold and

00:45:34

how it how to make

00:45:35

it more accessible but it

00:45:38

is believe me. I've had

00:45:39

lawyers try it should never

00:45:41

come from the pain of

00:45:42

council. Miguel do you agree?

00:45:46

I think one of the

00:45:59

main things that we learn

00:46:01

overtime by doing this repeatedly

00:46:03

is to make the reports

00:46:05

more clear it is it

00:46:06



so difficult to write to

00:46:08
the end and I think

00:46:08
that we could do benefit

00:46:11
from the lawyers in put

00:46:12
in say hey, this is

00:46:13
this is just not the

00:46:15
one be clear to the

00:46:16
tribunal and you've tried to

00:46:17
place it in a different

00:46:18
way some people I found

00:46:22
particularly from you no more

00:46:24
like nothing if it's a

00:46:27
bringing this irrigation within to

00:46:29



do the introduction in the

00:46:31

development by the time you

00:46:34

get to the conclusion, you've

00:46:35

lost price of the pool.

00:46:38

First we tend to do

00:46:41

more seasoned experts to help

00:46:44

understand. Better than to subject

00:46:47

matter to make it engaging

00:46:48

for her for the reader

00:46:49

and you should never never

00:46:53

accept the lawyer write your

00:46:55

expense report on a lawyer's

00:46:58

you never expect will try

00:46:59



to write an x-ray report

00:47:00

for for an expert and

00:47:03

if that happens, I think

00:47:04

you can be devastating for

00:47:06

The credibility. There's a way

00:47:08

that lawyer is right. If

00:47:11

you think I'm scared for

00:47:12

us to report when we

00:47:15

know that this has been

00:47:16

written by the lawyers you

00:47:17

do you get a chance

00:47:18

you can feel you can

00:47:19

see that you don't want

00:47:21



that in your reports Michael

00:47:23

as as Council. Can you

00:47:25

give us the council perspective

00:47:26

about how how your level

00:47:28

of preferred involvement in the

00:47:30

expert drafting at The X

00:47:34

from u.s. To draft the

00:47:35

report? I always have them

00:47:37

do that, but I will

00:47:38

work with the expert in

00:47:39

advance about what the report

00:47:41

will address to ensure that

00:47:43

the expert is focusing on

00:47:44



the issues that the tribe.

00:47:45

General needs to decide perhaps

00:47:48

to discuss the structure of

00:47:49

the report, but then my

00:47:52

role is really limited to

00:47:54

providing comments on what has

00:47:56

been drafted by the experts.

00:47:58

I'm always sensitive to the

00:48:00

fact that this needs to

00:48:02

be an independent and objective

00:48:04

report that the expert truly

00:48:06

believes and that they can

00:48:08

defend a when they are

00:48:09



testifying and just to sort

00:48:13

of high-end some of the

00:48:15

points that were made during

00:48:16

the fact witness discussion writing

00:48:20

the drafting the expert reports

00:48:22

drafting. The fact witness is

00:48:24

really should be an iterative

00:48:25

process because you want the

00:48:27

experts to be aware of

00:48:28

what is being drafted in

00:48:30

the witness reports. Sorry witness

00:48:32

statements to Michael. How do

00:48:34

you how do you manage

00:48:35



that process? Do you have

00:48:36

one designated person on your

00:48:38

team sort of overseeing everything

00:48:41

is it up to each

00:48:42

individual attorney an expert? How

00:48:45

do you manage that on

00:48:46

your cases? I know you

00:48:47

run some pretty large cases

00:48:49

to the circumstances of the

00:48:53

individual case the size of

00:48:55

it the complexity of the

00:48:56

issues. And so they're there

00:48:59

is no one-size-fits-all but overall,

00:49:02



I think the whole structure

00:49:05

of preparing for preparing a

00:49:09

claim or preparing a defense

00:49:10

a Running it to a

00:49:12

tribunal and convincing the tribunal.

00:49:14

You're right. It's all something

00:49:16

that takes a combined Collective

00:49:18

effort attorneys fact Witnesses expert

00:49:22

Witnesses. And for that reason,

00:49:23

it's important to collaborate along

00:49:26

the way to make sure

00:49:28

that the experts understand the

00:49:29

other notes that they are

00:49:30



talking about and to make

00:49:32

sure that we are giving

00:49:34

the experts the underlined information.

00:49:36

They need to render their

00:49:37

opinion. So I think every

00:49:39

step of the way very

00:49:41

close interaction is important. Okay,

00:49:45

I'll answer to yes. Thank

00:49:47

you. And how do you

00:49:48

prepare Michael? How do you

00:49:50

prepare your fact witnesses to

00:49:52

testify at a hearing? Okay.

00:49:55

Well I make sure they

00:49:56



know their witness statement inside

00:49:58

and out. This is very

00:50:00

important because the the witness

00:50:02

statement is often the focus

00:50:03

of cross-examination and they really

00:50:06

need to own that statement

00:50:07

and be able to speak

00:50:09

to the facts in it.

00:50:10

You know, we've talked about

00:50:12

not wanting and witness to

00:50:15

depart from that and disown

00:50:18

a witness statement. It does

00:50:20

depend. Of course as I

00:50:21



I mention on the window

00:50:25

in the statement was prepared

00:50:26

how long the time has

00:50:27

been before they Testify the

00:50:30

length of the witness statement

00:50:31

the number of issues and

00:50:32

complexity it is difficult, even

00:50:35

if you know all of

00:50:36

this stuff to remember at

00:50:38

all and be able to

00:50:38

testify to it, but that

00:50:41

document the witness statement is

00:50:43

core 22 what they're testifying

00:50:46



about in the they really

00:50:47

need to spend a lot

00:50:48

of time ahead of their

00:50:49

testimony recall him getting familiar

00:50:52

with it again. It's also

00:50:54

I think important to consider

00:50:56

what documents may be put

00:50:58

in front of the witness

00:50:59

during cross-examination. They could be

00:51:02

asked about the documents that

00:51:03

are not even mentioned in

00:51:05

the witness statement and you

00:51:07

to the extent possible one

00:51:08



of the boys have a

00:51:09

having to witness see a

00:51:10

document for the very first

00:51:11

time on the stand while

00:51:12

they were being cross-examined. Also

00:51:15

of course can mock examinations

00:51:19

and talk with the witness

00:51:21

about the kinds of questions

00:51:22

the structure and how they

00:51:24

may form the structure of

00:51:26

their answer to help them

00:51:28

get ready for the the

00:51:29

real thing. Y'all have you

00:51:32



and as an observer you

00:51:33
sat through a lot of

00:51:35
hearing you mention 50 different

00:51:36
cases. Have you have you

00:51:38
seen an issue where perhaps

00:51:39
a witness has been over

00:51:41
prepared? Yeah, I don't know

00:51:43
if they're prepared or maybe

00:51:46
but it has to be

00:51:49
that sometimes we both seen

00:51:53
and when when people are

00:51:54
finally set to testify they're

00:51:57
going to say what they're

00:51:58



going to say, you know,

00:51:59

I mean, there's still so

00:52:00

much that you can try

00:52:03

to educate them coach them,

00:52:05

but it is hard when

00:52:07

you are sitting there and

00:52:08

the pressure they going to

00:52:09

say what they're going to

00:52:10

say. So the last thing

00:52:11

you want is to rather

00:52:12

than confidence the night before

00:52:14

their their testimony, I do

00:52:16

agree with Michael front of

00:52:20



the golf course. The first

00:52:21

thing to do for them

00:52:23

to be familiar with is

00:52:23

a witness statement, but there's

00:52:25

going to be other documents

00:52:26

to them. They there's is

00:52:29

very hard that the winner

00:52:30

is by himself or herself

00:52:32

is going to go find

00:52:33

those documents. So my suggestion

00:52:36

is For the nurse to

00:52:41

bring the witness to bring

00:52:42

those documents to them we

00:52:43



time in advance you maybe

00:52:45

ask about the you know,

00:52:46

the quantum Xterra saying this

00:52:48

to make sure that you

00:52:49

see you've seen this document.

00:52:50

There's something in the financial

00:52:51

statements. Remember that that you

00:52:54

know, there are other sources

00:52:55

of facts sometimes not just

00:52:57

if the witness statement so

00:52:59

there may be a document

00:53:00

in Internet presentation of the

00:53:01

company by the notes in

00:53:04



the financial statements amamos is

00:53:07

it may be put to

00:53:08

the witness during cross-examination you

00:53:10

certainly weren't a witness to

00:53:12

to see that wait time

00:53:13

in advance before so I'm

00:53:16

mindful that were running low

00:53:18

on our time. So Chris.

00:53:19

Can you talk to us

00:53:20

a little bit about how

00:53:21

you typically get prepared or

00:53:23

were to testify at a

00:53:25

hearing? sure, how I typically

00:53:30



get prepared is there is

00:53:32

a dedicated partner and two

00:53:35

or three Associates that I

00:53:36

asserted that the damages are

00:53:38

the expert team right now

00:53:40

and they will spend you

00:53:45

know, we will have a

00:53:47

relationship throughout the matter for

00:53:49

sure. It'll heat up probably

00:53:51

two months prior to the

00:53:53

hearing will spend roughly a

00:53:56

third of the time maybe

00:53:57

on direct and refining sir

00:53:59



the presentation and where you

00:54:01

going to go with you

00:54:01

going to stay but two-thirds

00:54:03

of that'll be on on

00:54:05

cross and sort of Mark

00:54:07

crosses identifying Safe Harbor series

00:54:11

of this you earlier in

00:54:14

my career, they would help

00:54:15

you with, you know, dealing

00:54:16

with compound questions and all

00:54:18

the tricks that opposing counsel

00:54:19

are going to see what

00:54:20

you got a pretty good

00:54:22



handle on that. Now I

00:54:23

will say we talked about

00:54:26

this earlier approaches really very

00:54:29

and sometimes counsel. Almost treats

00:54:33

damages bit of an afterthought.

00:54:35

Like all we got to

00:54:36

do is win and then

00:54:36

it's a question of whether

00:54:38

how much we win by

00:54:39

a sort of a nice

00:54:39

question to wrestle with and

00:54:42

I've had more instances in

00:54:45

my career where I felt

00:54:47



Council wasn't doing enough to

00:54:49

prep for this issue. Then

00:54:51

where they had over prepped.

00:54:52

I've had cases where they

00:54:54

hand me stage notes about

00:54:56

like wait, when does sort

00:54:57

of pause and look up

00:54:59

show me once which was

00:55:02

a bit of an Overkill

00:55:02

but but more often than

00:55:04

not it's sort of you

00:55:06

got this champ. Good luck.

00:55:09

You are the expert to

00:55:12



one topic that our panel

00:55:14

had a lot of opinions

00:55:15

about is something called hot

00:55:17

tubbing, which I know Andy

00:55:19

you just like that term

00:55:20

concurrent testimony Miguel. Can you

00:55:25

describe from your experience? What

00:55:26

is hot tubbing? The name

00:55:32

came to me but it

00:55:33

is it is there now

00:55:34

so we might as well

00:55:36

go into the hot tub.

00:55:37

Maybe you haven't seen this

00:55:43



doesn't happen to have the

00:55:49

different at the opposing Xpress.

00:55:51

I say after they've done

00:55:52

their representation on cross-examination. Maybe

00:55:57

they have some time at

00:55:58

the end of the hearing

00:55:59

to see them together in

00:56:02

in in the witness stand

00:56:04

and asked questions. So let's

00:56:06

say for example. Chris and

00:56:07

I are working at 6%

00:56:09

for the opposing parties. We've

00:56:11

done a testimony. We've been

00:56:12



cross-examined by the opposing counsel

00:56:14

and then it'll say okay,

00:56:16

you know, please come here

00:56:17

sit down in front of

00:56:18

me. I'm going to be

00:56:19

asking you questions and the

00:56:22

lawyers will have a little

00:56:25

involvement with the experts. It's

00:56:29

a very interesting exercise very

00:56:32

efficient. There's a completely different

00:56:35

manner of answering questions. When

00:56:37

is the tribunal asking you

00:56:39

a question are you this

00:56:41



is different from an opposing

00:56:42

counsel during cross-examination. So now

00:56:44

they're trimming is going to

00:56:45

be asking you questions. You

00:56:46

better be direct better be

00:56:47

concise some clear and the

00:56:50

questions going to be posted

00:56:51

with you to one of

00:56:52

the express first and then

00:56:54

the other extreme a respond

00:56:56

to it and then maybe

00:56:57

a little bit back and

00:56:58

forth until I've had what

00:57:00



I need next question, if

00:57:02

you know the other expert

00:57:03

has the first and then

00:57:06

do sit back and forth

00:57:07

and then so on and

00:57:08

so forth. Well, the I'm

00:57:16

a big fan of concurrent

00:57:17

expert testimony. I'm not a

00:57:20

big fan of the tournament

00:57:25

was intended to be a

00:57:26

little derogatory because of the

00:57:28

implication of we're all going

00:57:29

to sit around a hot

00:57:30



tub join hands and sing

00:57:31

Kumbaya, which is not what

00:57:33

happens. Of course, there's any

00:57:37

expert testimony and a highly

00:57:39

efficient way of getting focused

00:57:42

on the real issues that

00:57:43

the tribunal is concerned about

00:57:44

obviously the experts have to

00:57:47

have matched areas of expertise

00:57:48

but starts asking questions presentations

00:57:56

or do direct and you

00:57:58

go directly to the tribunal

00:57:59

asking questions instead of going

00:58:01



to cross examination is going

00:58:04

to focus on the things

00:58:05

that are Really getting to

00:58:14

the issues. So if I've

00:58:14

got these two gentlemen sworn

00:58:17

in sitting together on the

00:58:18

witness stand I can say

00:58:20

that's why why is that

00:58:24

and then I turn to

00:58:26

Chris and I say why

00:58:27

is why is why better

00:58:29

than that? I don't let

00:58:30

them ask questions of each

00:58:31



other. That's that's that's kind

00:58:33

of a lose control, but

00:58:36

I'm a little debate that

00:58:39

you manage until it's clear

00:58:41

exactly where the difference is

00:58:42

in. The similarities are on

00:58:44

a key issue and move

00:58:45

on to the next one

00:58:46

and the bat. It's a

00:58:49

much more effective way to

00:58:50

accomplish this otherwise in a

00:58:52

long hearing for a week

00:58:54

or so. They may be

00:58:56



testifying two or three weeks

00:58:57

apart. I can barely remember

00:58:59

what Miguel's had went by

00:59:00

the time Chris gets on

00:59:01

the stand. This is directly

00:59:04

allows you to compare and

00:59:06

contrast as soon as the

00:59:08

arbitrator and I just a

00:59:10

highly efficient now they are

00:59:12

just absolutely remarkable when I

00:59:14

would have been able to

00:59:15

do this. I've seen a

00:59:17

situation where two experts who

00:59:20



would each take a full

00:59:21

day. And when you do

00:59:23

the concurrent testimony, they're both

00:59:26

completed in a little more

00:59:27

than a half a day

00:59:28

or two in the afternoon.

00:59:29

They're gone and you're moving

00:59:30

on to the next thing

00:59:31

and that's even after you

00:59:34

allow counsel course to conduct

00:59:36

a normal cross-examination after the

00:59:38

tribunal's ask questions because there's

00:59:40

always things that Council feel

00:59:41



like they need to clean

00:59:42

out them and the rest

00:59:43

of it but still you

00:59:46

have a 60% or 75

00:59:48

Add Pine shavings in completing

00:59:51

those experts at saving an

00:59:53

enormous amount of time and

00:59:54

money. The key is you

00:59:55

have to have an agreed

00:59:57

protocol for how it's going

00:59:58

to unfold that's been decided

01:00:00

in advance well in advance

01:00:01

for the hearing and then

01:00:04



you ask for being all

01:00:05

of you often have to

01:00:06

kind of help Council to

01:00:08

feel a little more comfortable

01:00:10

about the process provided. The

01:00:11

biggest obstacle to widespread adoption

01:00:13

is a council reluctance and

01:00:17

the biggest issue. The council

01:00:18

have is I'm going to

01:00:19

lose control my experts up

01:00:21

there and he's going to

01:00:22

be asked a bunch of

01:00:23

questions by the panel and

01:00:25



I have no I'm going

01:00:27

to be very hesitant to

01:00:28

ask Jack to the panel's

01:00:29

questions and I really have

01:00:32

no control over what's going

01:00:33

to happen my experts there

01:00:34

on his or her own

01:00:35

and yeah that is that

01:00:38

is an issue but you

01:00:39

got to have confidence in

01:00:40

your expertise and experience and

01:00:42

doing it on the part

01:00:43

of the expertise is obviously

01:00:44



very helpful, but the efficiency

01:00:46

just outweighs everything else. I

01:00:47

don't I'm of The View

01:00:48

The tribunal does not usually

01:00:50

unless the roles or unusual

01:00:52

or there's an agreement can't

01:00:54

impose this on the parties.

01:00:57

You can suggest it you

01:00:58

can heavily recommended, but you

01:01:00

can tell him that's the

01:01:01

way we're going to do

01:01:02

it. I would add that

01:01:07

if the arbitrator tells me

01:01:10



that they want to do

01:01:10

it. I'm not going to

01:01:11

disagree but I do think

01:01:14

that that this form of

01:01:17

presenting expert testimony is actually

01:01:19

one of the the bigger

01:01:20

advantages of international arbitration over

01:01:23

litigation one tweak that that

01:01:28

I would add two to

01:01:30

what Andy said is that

01:01:31

when it comes to two

01:01:35

Experts of similar discipline testifying

01:01:38

they don't necessarily need to

01:01:41



testify weeks apart. It is

01:01:44

something the parties can collaborate

01:01:45

and agree to a procedure

01:01:47

where those two experts the

01:01:50

opposing experts testified back-to-back and

01:01:53

then perhaps go directly into

01:01:55

conferencing from them and that

01:01:58

can also be a very

01:01:59

effective way of coalescing the

01:02:01

issues dog and making sure

01:02:03

that you don't lose some

01:02:05

of the The knowledge that

01:02:07

you have by the time

01:02:09



you get to the other

01:02:11

side's expert witness says after

01:02:13

hearing other testimony in between.

01:02:16

If the tribunal. Has to

01:02:19

come out several times but

01:02:20

renal suggests concurrent testimony Council

01:02:23

can agree to that all

01:02:25

back the tree all comes

01:02:26

back with this. Let's at

01:02:27

least put them back to

01:02:28

back away to hear from

01:02:29

them to match that first

01:02:30

one after the other. I'm

01:02:33



curious Chris and Miguel. I

01:02:35

like to hear from both

01:02:36

of you on this. How

01:02:37

often do you find that

01:02:39

you're being hot tub. These

01:02:41

days? Miguel Miguel Not much

01:02:53

quarter quarter the time at

01:02:55

most is its proposed by

01:02:57

the tribunal sometimes but it

01:03:01

is really only a valued

01:03:02

to be clear and certain

01:03:04

scenarios like you you will

01:03:06

not have an expert concede.

01:03:08



Your right my position is

01:03:11

wrong his position as writer

01:03:12

that is some insight into

01:03:17

the reasoning the line of

01:03:19

reasoning that they've used and

01:03:21

maybe some implicit assumptions in

01:03:23

their work. Should be very

01:03:25

clear and Apparent from the

01:03:27

report and to the extent

01:03:28

it is clear and apparent

01:03:29

that the reports. I'm not

01:03:30

sure hot tub is going

01:03:31

to add a whole lot

01:03:32



more but where there is

01:03:34

carefully disguised assumptions or reasoning

01:03:38

this maybe not as clearly

01:03:39

laid out a hot tub

01:03:40

integrated approach. I find it

01:03:43

very rarely clearly differentiate the

01:03:50

different explanations and and allow

01:03:52

you to distinguish them. But

01:03:55

when you have the two

01:03:56

of them sitting there together

01:03:57

it becomes painfully Apparent at

01:03:59

least, you know that you

01:04:01

don't have a good answer

01:04:02



to Miguel's Point yet. A

01:04:06

lot of the time. Always

01:04:07

depends on the tribunal has

01:04:20

a much more engaged and

01:04:22

they may not need it

01:04:23

by the time they've heard

01:04:24

of the 21st because they

01:04:26

ask questions during the testimony.

01:04:30

That's that's very very good

01:04:32

for us when that happens

01:04:34

because you know, the tribunal

01:04:35

disengage is listening to you.

01:04:37

You have no money a

01:04:38



half an hour 45 minutes

01:04:40

presentation to the tribunal before

01:04:42

you cross examination. And if

01:04:44

you are interrupted during the

01:04:45

presentation if Colin cigarette, let

01:04:47

me let me get this

01:04:48

this is what the other

01:04:54

Expo camps then the questions

01:04:56

posed to get extra particular.

01:04:57

They're back-to-back will already have

01:05:00

that effect because having their

01:05:02

way About what's your opinion

01:05:07

on it? And maybe by

01:05:08



the time we're done with

01:05:09

that time happens in the

01:05:17

minority of the occasion. So,

01:05:19

can you give a little

01:05:20

bit of insight Chris into

01:05:21

what it looks like? What

01:05:23

is your normal presentation to

01:05:25

the tribunal look like do

01:05:26

you sit down and just

01:05:27

go straight into Cross or

01:05:28

do you and to give

01:05:30

her presentation? How does it

01:05:31

work. It's time to make

01:05:39



that presentation. Usually a lot

01:05:40
of points to try and

01:05:41
squeeze in depends on whether

01:05:45
you're responding or or claimant

01:05:48
care, you know in terms

01:05:49
of what your your substance

01:05:50
matter is going to look

01:05:51
like you the claimants obviously

01:05:53
trying to lay out the

01:05:53
case in the argument in

01:05:54
the analysis. The respondent is

01:05:56
more often than not saying

01:05:57
I've heard all of that

01:05:58



is why you shouldn't swallow

01:06:00

it Hook Line & Sinker.

01:06:04

Interesting lady is as a

01:06:05

responding responding the number times.

01:06:07

Yeah, you're often up late

01:06:10

at night the night before

01:06:11

that the night before I

01:06:12

started preparing for responses to

01:06:14

things you may have heard

01:06:15

the first time in the

01:06:16

day, you know, it's done.

01:06:17

The claim is testimony and

01:06:20

you're trying to squeeze all

01:06:21



of that into your presentation

01:06:22

and addition to what year

01:06:23

was really intended to say.

01:06:24

So complicated I think Mino

01:06:28

probably allowed to like you

01:06:29

really need to put this

01:06:31

in lace because well and

01:06:33

make it as intelligible and

01:06:35

as accessible as possible, that's

01:06:36

that's the key because everyone's

01:06:39

suffered through a PowerPoint of

01:06:41

numbers and tables and facts

01:06:43

and figures without a clear

01:06:44



narrative or or got understanding

01:06:46

of what's happening. And that's

01:06:48

the real expert challenge. This

01:06:51

morning before the panel started

01:06:54

there was some discussion about

01:06:55

how a lot of lawyers

01:06:56

went into the field of

01:06:58

law because numbers weren't our

01:07:00

thing. Although Kris his his

01:07:03

somewhat Vindicated Us by by

01:07:04

noting that maybe some some

01:07:06

Economist writing isn't their thing

01:07:08

but but I've even heard

01:07:10



from very well-known arbitrators, you

01:07:12

know, who the morning of

01:07:13

Damages damages do. I do

01:07:16

think translating the numbers into

01:07:19

really understandable points is is

01:07:23

critical for experts back and

01:07:27

say numbers are a language

01:07:29

to and it's a it's

01:07:30

a language that some people

01:07:32

are fluent in in conversant

01:07:34

in and you should be

01:07:35

able as an expert to

01:07:36

translate from numbers to Regular

01:07:40



English, it's very accessible to

01:07:45

everyone. wait. I'm just wanting

01:07:51

to bring out one final

01:07:53

point and then I'd like

01:07:54

to give give the room

01:07:56

a couple minutes for questions

01:07:57

when we were preparing for

01:07:59

the panel and he mentioned

01:08:01

something that the rest of

01:08:02

us had not heard of

01:08:03

and it had to do

01:08:04

with hot tubbing or concurrent

01:08:07

fact Witnesses. Could you talk

01:08:09



about that a little bit

01:08:10

because that was that was

01:08:11

A New Concept for me.

01:08:13

This is something else that's

01:08:16

coming into Vogue and very

01:08:18

similar in some ways to

01:08:19

the hot tub idea. But

01:08:21

you square in multiple fact

01:08:23

Witnesses the same time and

01:08:24

have them sit as a

01:08:25

panel. Where are you need

01:08:28

that need all three Witnesses

01:08:30

size three more than three.

01:08:32



I guess pretty pretty too

01:08:33

complicated. But they handle different

01:08:35

aspects of the same basic

01:08:37

Topic in a big construction

01:08:39

dispute. For example, you may

01:08:41

have two or three years

01:08:43

worth of events and you

01:08:45

want a narrative witness who

01:08:46

can store tell a story

01:08:47

what happened during the project,

01:08:48

but you've got 32 Project

01:08:50

managers who had different time.

01:08:53

It works incredibly. Well. Bring

01:08:55



them all together and have

01:08:57

them testify on Direct Council

01:09:02

asking about the first. Time

01:09:04

your project number manager number

01:09:06

one tells about what happened

01:09:08

and your project manager number

01:09:09

to you were number three

01:09:10

in that way. So you

01:09:14

got a good narrative that

01:09:16

flows through the whole topic

01:09:18

and then cross-examination can be

01:09:20

conducted. However, the the other

01:09:23

side wants to do it

01:09:24



but it's often I'm going

01:09:26

to focus all my questions

01:09:27

on witness number one first,

01:09:29

and then I'm going to

01:09:30

move to witness or two

01:09:30

and then I moved with

01:09:31

the number three in this

01:09:35

is a good thing is

01:09:36

Miguel gets a question and

01:09:40

His answer was with last

01:09:41

night was really after the

01:09:43

time. When I was there

01:09:44

or that was an issue

01:09:45



that I wasn't particularly involved

01:09:46

in. Chris was the guy

01:09:48

who really handled that and

01:09:49

Chris is right there. So

01:09:50

Chris can also been canceled

01:09:52

but let him jump in

01:09:54

and and respond to that

01:09:55

particular question again much more

01:09:57

efficient. You've got finished in

01:10:00

a combined proceeding and you've

01:10:03

used up half or two-thirds.

01:10:05

The title would have taken

01:10:06

to house them three independent

01:10:07



to clarify the panel of

01:10:11

witnesses could be cross-examined that

01:10:13

way as well. And that's

01:10:14

what you seem to go

01:10:16

out. Dre for cross-examination of

01:10:18

each contact where you got

01:10:30

such a huge dispute and

01:10:31

numbers of you all can

01:10:33

have or complex Doctor Shoe

01:10:35

that has different angles to

01:10:37

it and different people were

01:10:38

involved. That's that's really the

01:10:39

key. The from MacArthur okay.

01:10:42



So it looks like we

01:10:43

have one minute left. Does

01:10:46

anybody have a quick question

01:10:47

they would like to ask

01:10:49

or there is a question

01:10:50

in the back. Thank you.

01:11:03

I just wanted to pick

01:11:05

up on a question that

01:11:05

Ashley Australia which I don't

01:11:07

think was picked up by

01:11:08

the panel, which is how

01:11:10

important it is to do

01:11:11

opposition research on your own

01:11:13



Witnesses. How often you do

01:11:15

it on the other side's

01:11:16

witness is on what it

01:11:17

is that you're looking for?

01:11:21

Michael to take out on

01:11:24

it. They come it's always

01:11:26

smart to know what may

01:11:27

come up and cross-examination and

01:11:29

help your witness be prepared

01:11:32

for it. So I do

01:11:33

you do some opposition research

01:11:35

on my own Witnesses. You

01:11:37

may be stuck with a

01:11:39



fact witness who has a

01:11:40

blemish on the record but

01:11:42

doing a little bit of

01:11:43

opposition research ahead of time

01:11:45

may help make the difference

01:11:47

in terms of deciding who

01:11:49

it is you use as

01:11:51

a witness if you have

01:11:52

those options. I also think

01:11:54

that it's particularly important to

01:11:57

do opposition research for anyone

01:11:59

you're contemplating engaging as an

01:12:01

expert witness. I've seen us

01:12:05



Court decisions that specifically named

01:12:07

experts and disqualify them or

01:12:09

otherwise critics criticize their opinions,

01:12:12

and this could seriously undermine

01:12:15

and experts. Competence and credibility

01:12:17

if Court opinions like these

01:12:19

or other adverse information. Submitted

01:12:22

in the arbitration. So I

01:12:24

want to know that in

01:12:24

advance and not get surprised

01:12:26

with it when I'm in

01:12:27

the middle of the hearing.

01:12:31

Thank you, Michael. Does anybody

01:12:33



else on the panel Chris?

01:12:34

I see your button your

01:12:35

finger on the button. Should

01:12:37

be done in every case.

01:12:38

I would think I had

01:12:40

an interesting scenario few years

01:12:42

ago where the opposing expert

01:12:44

had a t u no

01:12:47

citations of the back of

01:12:48

your CV and as it

01:12:49

turned out they'd been debited

01:12:50

out on 40 or 50

01:12:53

of those. Happy research. Absolute

01:13:05



killer for the tribunal is

01:13:07

usually lying on the resume

01:13:10

for an expert in a

01:13:15

few if you didn't walk

01:13:16

across the platform and get

01:13:17

that diploma from the dean,

01:13:19

you know, and you remember

01:13:21

that and if you put

01:13:22

in there that you graduated

01:13:23

from someone that's not cracked

01:13:26

even though you complete all

01:13:27

the course work, but you

01:13:28

never actually graduated that is

01:13:31



just a devastating kind of

01:13:33

thing to bring out and

01:13:34

cross examination sounds like something

01:13:37

you seem to happen. So,

01:13:40

you know, we've reached the

01:13:41

end of our time. I'd

01:13:42

like to thank everybody for

01:13:43

joining us both in person

01:13:44

and online and we hope

01:13:46

you can join us for

01:13:47

the rest of the events

01:13:48

this week for wow. Thank

01:13:50

you very much.