TERES

INDIA ADR WEEKDAY 4: DELHI

SESSION 4

Witness Evidence and Preparation in International Arbitration: Cross-Cultural Perspectives

02:00 PM To 4:00 PM IST

Moderator:

Sanjna Pramod, Senior Associate, Clifford Chance

Speakers:

Richa Kaushal, Senior Associate, Clifford Chance

Nakul Dewan, Senior Advocate & Barrister, Twenty Essex

Ila Kapoor, Partner, Shardul Amarchand Mangaldas

Sachin Trikha, Partner, Clifford Chance

Ajay Kharbanda, Chief Legal Officer, North and West Sector , GMR Airports

HOST: The next session is by Clifford Chance on Witness Evidence and Preparation in International Arbitration: Cross-Cultural Perspectives. On the panel we have Ms. Sanjna Pramod, Senior Associate at Clifford Chance, Richa Kaushal, Senior Associate at Clifford Chance, will be co-moderating the session. We have Mr. Nakul Dewan, Senior Advocate and Barrister at Twenty Essex. Ms. Ila Kapoor, Partner at Shardul Amarchand Mangaldas, Mr. Sachin Trikha, Partner at Clifford Chance and Mr. Ajay Kharbanda, Chief Legal Officer, North and West Sector, GMR Airports.

SANJNA PRAMOD: Thanks very much, Charvi. And thank you MCIA Neeti, Madhukeshwar, Charvi, really, the entire organizing committee for making this event so seamless. So we have a very interesting topic, and thank you very much for joining us. We have a tough job of keeping you all awake post lunch. As Charvi mentioned, I am a Senior Associate at Clifford Chance in Sydney, and I'll be co-moderating this panel with Richa, who's also a Senior Associate in the arbitration team in Sydney. So we primarily have four objectives for this panel discussion. First, we'll draw on our collective experiences from India, Singapore, the UK and New York to examine the differences in approach to witness evidence and preparation, and the similarities. Second, we're going to discuss the challenges that are faced by Arbitrators and the Arbitrator is going to share some tips for practitioners. Third, we'll explore the unique challenges faced by in-house Counsel in managing witness evidence in arbitration proceedings. And finally, we will consider how best to present our clients' cases and make it robust and persuasive while taking into account these various cultural nuances. So, to assist us in achieving these very ambitious objectives, we put together an extraordinary panel.

We have Nakul Dewan, a multi-jurisdictional star arbitration practitioner, qualified in India, UK and Singapore and also sits as arbitrator. Nakul is such an avid traveller, that his most frequented office space is the aircraft. So, the next time you need a meeting with Nakul, just ensure you're on the same flight.

Speaking of aircraft, we're honoured to have Mr. Ajay Kharbanda, the Chief Legal Officer of GMR Airports with us today Ajay is the undisputed king of airports. He brings over 12 years of expertise in arbitration, litigation and transactions with the GMR Group. So his wealth of knowledge is sure to elevate our discussion.

Then from the big apple to the big achievements, we have Ila Kapur, former New York lawyer and now a partner at Shardul Amarchand Mangaldas. With extensive arbitration experience across various sectors and rules, she's been recognized as a global leader by several directories.

Last but not least, we have our very own star, Sachin Trikha. He's an arbitration practitioner at Clifford Chance's London office and also the go to expert for some of the world's. Most complex disputes in energy, infrastructure and oil and gas sectors. While he's not donning his lawyer hat, Sachin is a talented singer and he effortlessly belts out Daljit Dosanjh songs faster than Spotify. So make sure you track him down after this event and get him to sing a song for you.

SACHIN TRIKHA: That needs to be fact checked, I think.

SANJNA PRAMOD: So, let's get down to business then, and we'll first look at setting some context about this topic and sort of make our way through these various jurisdictions. Ila, my first question is to you. So, in the US, we know that witness preparation is quite comprehensive, and it also allows significant interaction between lawyers and witnesses, including coaching. And there is this perception that lawyers may feel obligated to coach their witnesses, as otherwise they would fail to represent the clients properly, and it may even be deemed as malpractice. Do you have any points to share on that? Like is that position is like. Right? And how does that differ from the Indian approach?

ILA KAPOOR: So, that's a very biased UK opinion. Coaching is certainly not allowed in New York law under the New York Bar Rules or the Professional Conduct Rules. New York law does allow you to meet your witness, prepare them, even have a mock trial, but they're very clear or the rules of professional conduct are very clear in what the line is. What a lawyer can do in terms of preparing a witness, as to how they can present the evidence, and not telling them what to say. In fact, there are cases in New York and it's, a very fine line where you have to be very careful that you're not presenting or you don't know that you're presenting false evidence. It's not unheard of to have New York lawyers being disbarred, because in one case that I recall, they had written out the answers to potential questions and then this was produced by the other side to show the judge that what they were doing was coaching. So, in New York, there you're allowed to prepare a witness. You're not allowed to help them tell a lie. And it's, as I said, a thin line. And my experience in a New York law firm was that most partners were very squeamish about where this line was drawn. They would be to depend on the Partner. But I remember once him telling one witness, read your witness statement, go out there and tell the truth. That had disastrous results, as you can imagine, when this poor witness was cross examined. How does this, how is this different from India? In India, we don't really have any guidelines as to what can be included when you're preparing a witness. So, it really is dependent on who the lawyer is, who's doing the preparation and what they think is appropriate and how far they can go in preparing the witnesses. Sometimes we see very strange

results. In a recent case, I'm doing against a PSU, there are 18 different witnesses from 18 different departments. All 18 witness statements have identical verbatim paragraphs as to their own opinion of the Claimant, who's a foreign company, being like the East India Company. So clearly somebody has sat there, presumably their lawyer, written it out for all 18 of those witnesses and has thought that that is perfectly fine. So I think in India it's more a question of each lawyer drawing the line for themselves, rather than being concerned about professional roles.

SANJNA PRAMOD: Thanks, Ila. I think that's giving some respite for all the New York lawyers in the room for clearing that perception out. So, moving across to Sachin, we want to understand the position in the UK, and the general perception again, is that the interaction between lawyers and witnesses is more restricted and the primary rule is that witnesses must give their own truthful and independent accounts of the events in question. Do you want to elaborate on that?

SACHIN TRIKHA: Yeah. I think that's a fairly accurate summary of the position in England, and actually quite reassured to hear Ila mention the position in New York. You sometimes fear when you're up against these American law firms that behind the scenes that are sitting there coaching their witnesses and experts precisely what to say, when to say, but it sounds like it's much more nuanced than that. So, in England, and let me just be absolutely clear, when I say in England, for lawyers in England there are guidelines. In fact, there are rules, and their rules and code of conduct, in the SRA code of conduct. So, the code of conduct that governs solicitors. The rule is that you should not be influencing the substance of evidence, and that's witness evidence and expert evidence. And that means in terms of gathering the witness evidence, in terms of statements, you got to make sure that it's the witness's own evidence. And then so far as the preparation for a hearing is concerned, you really must be careful to ensure that you're not influencing, contaminating, manufacturing the witness's evidence. And that's, dare I say it, quite a serious rule. It's a code of conduct point. Now, of course, some lawyers will be a bit more fast and loose than others on that. But look, the default position is set out in the rules.

I mean, the broader question which I think you posed to Ila is, is this a good thing? Is this a good thing or a bad thing? Should coaching be almost seen as part of a solicitor's duty? Hey, look, as a fully paid up member of the England Solicitors Club, born and raised, I think the rule as it's set out in England is perfectly proper, perfectly correct. Really, if one takes a step back and lawyers, us lawyers, we always want to have control over everything, don't we? But if we take a step back, can we look at this a bit more holistically and think, if we're trying to come

up with a just outcome here, you're sitting in the shoes of the Tribunal, are you really going to be assisted by manufactured evidence? Is that really credible? It's not really, is it? I mean, the truth must come out. And in my view, a skilful cross examiner will get to the truth. If you trying to coach a witness, I do think a good cross examiner will find that out. I also think it's a bit unfair on the witness. The witness is going to sit there being all confused about what the truth is and what we want them to say. I think that that's the rule in England. I mean, you captured it correctly. I happen to think it's a good rule as well.

ILA KAPOOR: I just want to add that it's not manufacturing evidence. Nobody, none of us, all of us train lawyers, if we are put before a cross examination without preparation, we are going to falter, and that isn't necessarily the truth coming out. So, I actually think it's important. I think it's a duty for a lawyer to prepare the witness.

SACHIN TRIKHA: Yeah. And I guess it all depends on what we mean by prepared, doesn't it? I mean it's that line between identifying for the witness, perhaps the documentation that may be put to them. Maybe the themes that may be put to them. That's not necessarily influencing their evidence, but it's giving them the ammunition to prepare. Totally different line if you're telling them what to say, which I'm not sure many lawyers feel comfortable doing.

SANJNA PRAMOD: Thanks Sachin. And Nakul, just moving to Singapore now. Does Singapore usually follow the UK position when it comes to witness evidence and preparation? Or is it a culmination of what we heard from Ila in New York?

NAKUL DEWAN: So, the good thing about Singapore is that because it's so nimble on its feet with everything, it takes the best from everywhere and adopts the best possible rules that exist. But as far as witness evidence is concerned, it's a little more aligned to the UK position. And that's also because historically, the Singapore rules of court have derived themselves from the UK rules of court and so have their legal professional conduct rules. So, yes, in Singapore, there are legal professional conduct rules. And those rules do set out how lawyers are required to conduct themselves for the purposes of one, drafting witness statements as well as dealing with preparation of witnesses.

Now, just a couple of points which seem very logical, but for some reason lawyers still seem to falter when it comes to actually preparing and getting witness statements ready. I mean, the first point that a Singapore rule will tell you is that the witness statement must set out facts which a witness can give orally, which means it's within the witness's personal knowledge. No

great shakes, but you will still find witness statements about matters which a witness would have no clue about.

Two, and this is an important rule -- as a lawyer, you're not required to second guess or doubt a witness when a witness sets out a statement of fact, because you're supposed to take that statement of fact and see what you can do with it when you're arguing a case, but you're not supposed to doubt that.

Then, the third point, and this is important, is that you can't get a witness to give false evidence. Now, that's an important rule, because if the witness is telling you something and you can see that it's contradicted by documents, you are then under an obligation to inform the witness that I don't think what you're saying is correct. Now, these are three simple, basic rules which lawyers are required to follow and adopt when they are looking at drafting witness statements.

What about preparation? Can you do a practice run? Yes, you can. But can you bring all the witnesses into one room and do a practice run so that if you think one witness isn't giving a great answer, you get a response from another witness. He says, I think this answer could have been set out slightly differently. And then can you get a third witness who says if he answers the question in this way, when I put da-da-da-da-da question I will answer it in this way, and the answer to that is no, you cannot do it. Now, how did all of this come out? It came out because of the judgment of the court. How did that judgment come out? Because some lawyer decided to do it. Finally, charges were dropped against the lawyer, but all of this became public and reasonably embarrassing for the lawyer. So, the point is this, Singapore very similarly mirrors the UK, doesn't allow coaching, doesn't allow influencing. But yes, you can do a preparatory run with your do's and don'ts when you draft a witness statement.

SANJNA PRAMOD: Thanks very much Nakul. That was really helpful. Now we'd just like to hear from Mr. Ajay, the real consumer of various arbitration practices and how he's finding this experience. So, in what way do you think in-house legal teams can most effectively contribute to the preparation of witness evidence in arbitration proceedings? And also, the second question is, what are your expectations as in-house counsel from external lawyers and senior advocates to help in this process and make it more efficient? Do you find these practice runs very useful or what has really worked for you and your team?

AJAY KHARBANDA: Basically, if we look at the Indian context, it's not much different from English law or whatever is practiced in, when the arbitration is now maturing in India, in Singapore, whatever is practiced. Main thing, which is coming from Indian context is when it

is around the witness statement is, can it be questioned on the issue of the public policy or the independence? If the independence of the witness is questioned, that's a major drawback for any claim. And for that purpose, definitely, when I look at the preparation of the witness and the way it is structured, the witness evidence is structured, witness affidavit is structured, that has to reach a parameter where we cannot allow a question to come on the independence of the witness. It should not look like a coached drafting of its affidavit. It should look like as if, and it should rather be as someone which is coming from the mouth of the witness and lawyers are helping. They are allowed to help to draft that witness affidavit. But yes, questions come, questions are put on the determination of the independence of the witness. And if witness is not able to answer them properly, that becomes a case of disallowance of that witness, and that can create a problem for any of your claim or counterclaim.

To how we overcome all these things, yes, what is important is because when it is an organization's data, if it is in relation to the organization data, definitely the witness would be somebody who is internal. How we have to ensure its independence *qua* the claim or counterclaim, that is important for us, which we take care while witness is brought for the cross examination, after its affidavit. And when it is coming to the expert witness, third party witness, in both cases also we allow our counsels to counsel them in terms of how to be prepared, how to be ready and how to respond to the questions, but not really on the questions themselves, the issue themselves, but in the general guidance, so that they do not fumble. They know what questions generally can be, the way they can be put, not related to the subject, but in general. They are given guidance, so that they maintain their position there, whatever they have stated, and also the procedures and rules which are generally followed in the Indian context or we have handled the cases in SIAC on the arbitration. So, to some extent on the way to handle the arbitration witness, we allow them to be coached by third parties or by our counsels. That way, so far we have been handling our matters.

So as far as these are the matters which are basically in arbitrations, but when we look to the cases which are in the lower courts, when we had to do the witness, we see many times when we are on the defendant side, particularly in the labour matters. As you have said that we see same witness, if there are 35 levels drafted same way, only name has changed. Yes, it depends. Our lawyer, if he has raised a question, sometimes it is accepted, sometimes courts grant the leeway, saying that they are ignorant and all that. So we face those challenges, particularly in the lower courts on the witness side.

ILA KAPOOR: It is basically determinable under the cross examination.

SANJNA PRAMOD: Thanks very much, Ajay. That was really insightful, and I think we all have our homework to do on that front to make it easy for you to manage the process. So, Nakul, coming to you and now wearing your arbitrator hat, your double hat. So, what are some of the challenges? And now that you have these cross cultural perspectives, including from yourself, what are some of the challenges that you have faced with witness evidence given you said as arbitrator and cross border disputes with parties coming from various nationalities, different cultural backgrounds and also different countries? And is particularly focusing on disputes involving foreign parties and Indian parties?

NAKUL DEWAN: Honestly, it's really one of preparation. And that's important because you certainly see some witnesses who are absolutely ultra smooth. And, you know, they've spent days and days preparing for their cross examination. Now, there could be preparation because they've been assisted by Counsel. It could be preparation because someone like Ajay, who's the General Counsel of the company, has brought all of these guys into a room and said get ready, you're the commercial people. But, get ready with your witness statements and get ready with knowing your documents well. Or it could be their own self preparation, because they know they're getting onto a witness stand. And then you compare that with a section of people who come thoroughly unprepared. And when they come thoroughly unprepared, it becomes a problem. And the reason why it becomes a problem is, because very often they start giving evidence, which is inconsistent with the documents in a way that doesn't help them. So literally, that then calls for a nice long re-examination where those documents are put back and they're asked to correct their position, but they've just come in absolutely unprepared.

When you're sitting as an Arbitrator, you can't look at manner and mode of delivery of a witness statement to understand whether it's substantively correct or not. And that's something you just have to shut yourself out. And if you do that, you will pick up the essence of what a witness is really saying and figure out which part of the witness evidence really relates to the case and how it's going to impact the case. And that, apart from preparation, is another aspect which goes towards language, because when you're sitting in international arbitrations, not everybody is fluent with English. And again you get a different approach from people with different language skills in the manner by which they answer a question. And again, you have to sit down and just take the substance of that evidence, and if you're making notes, make notes with that or consider that to be the relevant evidence. So, these are challenges which I face when I actually have to sit and listen to witness evidence, preparation and language, but you just have to learn how to decipher what is relevant for you.

SANJNA PRAMOD: Thanks, Nakul. We'll just now touch upon documentary evidence as the general theme, and Sachin, my first question to you. So, at a pre-dispute stage, what are some of the crucial and preliminary steps you advise your clients to take in relation to preservation of documentary evidence? Because we take it for granted that most clients do that, sort of issue a litigation whole letter or set up a protocol or policy within their respective teams and especially the business side of the client, but that's not necessarily done. So, it's really the onus is on external lawyers sometimes. So, what are some of the steps that you advise your clients on?

SACHIN TRIKHA: Yeah. No, like 100%. I mean, the document holds. The document retention notice has got different terms, but it's all the same thing. Is really the crucial step, and it's our duty as lawyers to remind in-house Counsel to send that whole notice out so the documents aren't destroyed, lost, et cetera. After the issues given rise to the dispute come to light. Because if documents are destroyed off at that point in time does give rise to that inference, perhaps an irresistible inference that they would delete it for a reason. And that reason was that they were unfavourable to you. So, getting that document hold notice out is a crucial, perhaps the crucial step that you take pre-dispute. I mean, just more broadly on documentation, we're living in a world now where the volume of data is just huge and long gone are the days where the documents that are relevant to a case are limited to the odd letter here, the odd email there. We're now talking hundreds of emails, if not more than that. WhatsApp, Teams messages, screenshots, voice notes, you name it. And getting on top of that data early is really important. So, gathering that data from your clients, processing it, deep duplicating it, putting it on your platform, understanding it, mining it, seeing whether there's some harmful stuff in there, some helpful stuff in there. The earlier that's done, in my view, the better. And I think that's the era that we're now living in.

SANJNA PRAMOD: And that's really some of the issues that Richa and I, in particular deal with when we're given this large dump of various documents and data, like you said, and it is important to get started on that early on. So, just on that point, Ila, where we receive so much data and there's a whole universe to comb through? How do you determine which documents are relevant and material to the case, especially given the large volume?

ILA KAPOOR: So, since you've asked me to speak about my prior experience as a New York attorney, as well, I want to say that as a junior lawyer, all one did for years and years and years is review documents. There were armies of lawyers and law firms really racking up billable hours. And I think that's how New York law firms have been built, by discovery. And the reason it works is because, clients are very conscious of the litigation hold. They will hand over their

entire inboxes. There will be custodians who will, you will just take the inbox for like, 5, 10 years and start going through them. We will be sitting there, second year, third year, fourth year, associates going hot, very hot, been through every one of those millions of documents, and that's how we would prepare for evidence in New York. In India, this is something that is diametrically, this is very different. Because you can tell your clients that they should hand over all the documents to you. The dispute is coming. Don't destroy it. You're likely to get the opposite result which is that documents will disappear. And you can tell your client that "Look, your lawyer is like your doctor. Don't hide it from us. It may come out anyway." They may very likely hide it. Not you Ajay, because you're not like that. So the point is, in India it's much easier to figure out what the relevant documents are, because your clients are going to actually hand it to you. It's going to be a much smaller subset. You're not wading through boxes of evidence. Maybe you're saving time and certainly saving a lot of money. And the discovery process by Indian Tribunals and courts is anyway not as stringent as it is in New York or in any America state, so it may not be necessary.

SANJNA PRAMOD: So Ajay, now that you've heard Ila's pains with in- house counsel, but she also made clear that you're the exception, what factors do you consider at the pre-dispute stage to ensure preservation of documents, and do you have a general guidance you provide to your project team on maintaining good records during this time?

AJAY KHARBANDA: Yes, basically we know where we are likely to get the disputes arisen over a period of time. So what policy from the legal department perspective, we have down the line to the commercial teams, basically, and within the legal also, preservation of documents. In any transaction, knowing how because in any international transaction, we generally have SIAC as a rule, and we know how the evidence rules apply there vis-à-vis India, those are different. So, our general guidance to the team is always whichever mail you are exchanging with a counterparty with having contract as well as even before the consummation of the contract, because those can be used in the interpretation time as evidence. So, we preserve those emails. We keep them separately, project wise. And data also, we have a policy for preservation of data for the certain time, so that at least during the limitation period, and some years after that as well, if situation demands, for that particular issue, which has arisen we can use that. Still, we struggle many times, as you rightly said, despite these guidelines for us also to give the data to our counsels, to dump them with them, we internally have to juggle around and come to a common point, put our commercial teams on the same page, have a dedicated resource from them who can put the data in the VDR for the lawyers to review them. Yes, challenges are there despite having the process in place, we face that. But majorly, we have seen that because of those policies we, at least on the crucial documents we are able to lay the

hands. It is only the in between communications where something sometimes we are not able to connect all dots. Some things are missing, and we face that every time.

SANJNA PRAMOD: Thank you. I don't envy your position, especially given the various forms that evidence can take right now. How do you really rein in your project team and gathering WhatsApp chats or team chats and people having one on one calls, minutes are not documented. So I do hope external lawyers can help that process to the extent possible. But Richa now has some burning questions on lay witness evidence and expert evidence, so I'll let her get on with it.

RICHA KAUSHAL: Yeah. So, the question master has changed. We briefly touched upon the relevance of lay witness evidence in international arbitration. Of course, it's a critical topic. We have a lot of burning questions on that, but we all know from firsthand experience that testimony of lay witnesses can significantly impact the outcome of arbitration proceedings. Their testimony can pretty much make or break the case. So, it's vital that we get it right. So, we'll start with the Arbitrator on the panel. Nakul, what specific strategies you think lawyers can deploy, parties can deploy to ensure the credibility and reliability of lay witness evidence during arbitration proceedings?

NAKUL DEWAN: So, before I answer that, let me give you the importance of a lay witness and I'm going to give you an example of a lay witness in a case which I did as counsel, where the witness was part of the team which I was representing, and he was asked some very burning factual questions on a particular contractual provision and the level of liquidated damages that it provided. And after being very eloquent about every answer, which was extremely credible, he was asked a question, "So, do you think a clause like this was put in to deter, the counterparty from reaching the contract?" And he said, "Of course, why else would we put it?" The Arbitrator held it was penal in nature and under Indian law decided that we were not entitled to our liquidated damages because it breached the rule of penalty. Now that's a forthcoming witness, extremely credible, who's just made you lose your entire case.

But the point I now want to talk about is, when do witnesses lose their credibility? Because they are certainly very important when they appear before an arbitrator. They lose their credibility if they are obstinate about the position that they have taken in their witness statements. The cross examiner has a job. The cross examiner is there to poke holes in a witness statement and to show the witness that the witness is incorrect. And if a witness or a factual witness faces a situation like that, sometimes he gets a document which contradicts what has been set out in a witness statement, then I think the factual witness has to

acknowledge that there could potentially be an error or even look at explaining away that position as opposed to being obstinate and saying what I've said in my witness statement is correct, and just not sound sounding credible at all. So, acknowledgement of a mistake or acknowledgment of a valid point made in cross examination, only helps a witness be credible.

Another aspect which is important for the credibility of the witness is demeanour. I had a witness once who went into the room and we told him, sit up straight, look at the arbitrator. Look at the counsel on the other side. Please address them as sir or ma'am or whatever it is, be polite. He did exactly the opposite. Started becoming overfamiliar with the cross examiner, sat down on the chair, crossed his legs, was rocking up and down as if he had been given a rocking chair, and it was just irritating the arbitrator, no end. And one hour into his cross examination, he told the person who was crossing him, he said, can you hold on for a minute? Looked at the arbitrator. And said, can we take a ten minute break? I just need to take a smoke. Certainly it didn't help this case. Witness evidence was disregarded. There was an adverse remark in relation to his credibility when the award came out, and again, that doesn't help. So in an acknowledgment, of, say, a mistake or acknowledgement of a valid point made in cross examination, I think it's very good for witness credibility and demeanour is another aspect which is very important for witness credibility.

AJAY KHARBANDA: I would add to this, we also encountered the same thing in Singapore. That witness thought that he is more expert than even we are. So we have to drop him in between to avoid any adverse outcome in our case.

ILA KAPOOR: This is why mock trial is a good idea.

AJAY KHARBANDA: He refused that also.

RICHA KAUSHAL: Thank you very much, Nakul. I think the common theme coming out of this is, witness prep is crucial. Mock examinations like Ila mentioned would be really helpful. Perhaps not the best idea to put all witnesses in one room. Moving on to addressing some of the cultural and linguistic issues we would face in international arbitrations, especially, so, of course, we would like to address what cultural and linguistic differences in witness preparation issues can come up. When I was thinking about it, I was like, it would be almost imagining, like a kangaroo explaining quantum physics to a koala. And, of course, sounds tricky. So, my next question is to you, Sachin. What role does cultural and linguistic diversity play in the preparation of lay witness evidence? And how do you think practitioners can best address these challenges?

SACHIN TRIKHA: Yeah, I mean, it certainly plays a role. Naturally, I think language, the language of the arbitration. I actually think it's quite an underestimated part of an arbitration clause, gloss over it. But does determine whether you have to translate everything in due course for the benefit of the Tribunal. But the language for your witness, I do think it's really important that you assess pretty early on. The language that the witness is most comfortable testifying in, and I think that's different to the languages that the witness speaks. The witness may be able to speak five or six languages, but what are you most comfortable testifying in? Because this is important stuff. And you want to be absolutely sure that you understand every word, every nuance in every word, and that you're able to provide your testimony as effectively as you can. If that means you need an interpreter, then don't worry. We can sort that out. So, I think assessing the language that the witness is most comfortable testifying in early on, is absolutely crucial. From a cultural perspective, again absolutely key consideration in the context of international arbitration, of course.

I think just two points on that. The first is, just one anecdote that I'll share with you. And I was interviewing a witness in South Korea. And of course, I had a lawyer with me who was fluent in Korean. And if ever I asked a question to some very senior people that was a little too direct and may have offended them culturally, she used to draw a little unhappy face in my notepad. And if I got the tone and the nature of the question absolutely right, she used to draw me a smiley face. I got the hang of it towards the end. So actually, that cultural familiarity with the witness is really important. Having someone who's familiar with our culture, with you, also very important.

And then also in terms of the nature of the evidence that they provide. If there is a cultural explanation for some of the actions that they've taken, during the course of the project or the event or the issue which may not be obviously apparent to the Tribunal because they are not necessarily as familiar with that culture. Then the witness really should explain it, and we should encourage them to explain it and not feel ashamed to explain it. It's our duty as lawyers to facilitate that so that there's a proper understanding of the nature of what happened and why it happened.

ILA KAPOOR: If I may share, this cultural difference, we see it in international arbitration all the time, and it's very interesting. When Indian lawyers cross examine, they take a very aggressive, largely very aggressive, adversarial tone when they're cross examining, which I personally believe these are all commercial civil litigations. These are not criminal trials. These are all directors of companies. But the questions can be like, "I put it to you that you're lying",

and for some reason, they'll go down the entire list of things that they're going to put to the witness that he lied about. Totally, I think, pointless because he's not going to agree that he lied. But what it does is, if you have a Tribunal made of international people from Civil Law countries, England, whatever they find, this very offensive. They feel like you're telling this person who is like an MD of a company that he's lying, is just not on. The director of the company, or whoever this person is, is there in his professional capacity. Even I have had Korean clients. They are really taken aback when they are told that they've lied. They find it, they cannot carry on with the cross after that because they are just appalled at this attack on their integrity. So these are things that, as lawyers, we have to prepare ourselves and prepare our clients for when we go into a situation where we might see this coming.

RICHA KAUSHAL: Thanks very much, Ila and Sachin. I'll move on to Ajay, because I think he has the most tricky part role in witness, lay witness preparation, and that is to convince the members of his team to give evidence. Ajay, as some leader of the in-house team, what challenges have you faced in convincing members of your team to provide witness evidence? Can you share some tips and tricks for us for how to turn reluctant witnesses into star performers?

AJAY KHARBANDA: Yeah, that's a very tricky task, to convince a person to be a witness in a case. They are shy of, though they may be aware of all the facts. They know they can present the case better, but they are shy of being available as a witness and to be present there. So, what we do is when we see that, yes, this person is the right person, we had to do a lot of preparation with him and convincing him to be a witness, but we have come across despite that, many people fail. They are not able to withstand that pressure at that time. And this has not happened with the lower team. I have seen the people, the level of the CEOs and CFOs also, who have fumbled at that time, that last time when questions are put to them. So, it's always a tricky task for us. And many times we have seen they have a confidence before the witness and suddenly they fumble. And we are still struggling on this part. I would say we are still struggling.

NAKUL DEWAN: I won't give this to you from an in-house perspective, but the reality is that if people haven't given witness evidence, they're always very concerned before getting into a witness box. I mean, you would see the most confident people ask you such silly questions, but it's not silly for them because they're just so concerned about how that cross examination is going to happen.

AJAY KHARBANDA: That's where what we try, we try to give them a lot of e-witness cross-examination preparations so that at least they know, in terms of the demeanour, their confidence can be shackled. That will always be an attempt to bring out something which is not there so that their independence can be questioned. Their transparency is questioned, their status as a witness is also questioned. These are generally the aspects. At a start of the witness, every cross examiner tries to do, so that witness gets shambled and is not able to come out with his actual case, what it is. So, those are the things which we allow them to be strengthened and prepared through. There are many consultancy firms, which are available to prepare the witness on those aspects but still we have seen, despite we being confident that, yes, things will be fine, after ten questions, it melts.

NAKUL DEWAN: I'll give you a real life example, where the director of a company in a SIAC arbitration. This was about 15 years, a little over ten years ago, and sitting in very confident, asked, question, question, when you're answering. And somewhere down the line about half an hour in, must have been tired. He's asked, he says, so do you think. Mr. So and so do you think what you did was a breach of contract? Yes!" To maintain that poker face, then knowing that you're entire case has gone down is not easy.

SACHIN TRIKHA: The redirects on that might have been quite interesting.

NAKUL DEWAN: I didn't even try it. It was a clear question with a clear answer.

SANJNA PRAMOD: I just wanted to jump in with my own anecdote, and it's interesting that Ila mentioned usually the aggressive posturing taken by Indian counsel. So I was acting for a Korean constructor in a room around the corner, actually, from here last year. Delhi seated arbitration against Indian PSU. So we had to fly in a Korean interpreter and the Indian Counsel for the state owned entity was so aggressive that they were shouting at the Korean interpreter who was just trying to do her job. She actually took a break because she just burst into tears and couldn't handle the aggressive nature of the questioning. So maybe it's something like a tip for Indian counsel in the room, possibly not in this room.

ILA KAPOOR: [INAUDIBLE]

SANJNA PRAMOD: Okay.

ILA KAPOOR: May be UK is softer.

SACHIN TRIKHA: No comment. Honestly interpretation in a high stakes arbitration with people who are familiar with the language on the sidelines, it's a high stakes job. It's not for the faint hearted.

NAKUL DEWAN: That's fine.

ILA KAPOOR: Are you sure. We are moving on to experts.

NAKUL DEWAN: All I'm going to say was 30 seconds, right? I mean, the point is this you might want to do this little great bravado and this overacting during your cross examination, but remember that three months later, when the award is being written, people are just reading a transcript and they're going to read what is written and what the answer is, and that's how they're going to make a decision.

ILA KAPOOR: No, but, Nakul, you just said that the arbitrator also looks at the demeanour, and that goes to his credibility of the witness.

NAKUL DEWAN: I'm talking about the counsel.

ILA KAPOOR: Sometimes you look at the question and gone up and you can just go for it again, even though you shouldn't. We've all done it.

NAKUL DEWAN: I've opposed you, so you probably know better.

RICHA KAUSHAL: Okay, moving on to what I think is probably the hardest terrain of witness preparation, dealing with experts. Expert evidence, is like having a secret weapon in your legal arsenal. It's that difference between saying, I think, this bridge is safe and having an engineer with 20 years of experience say this bridge is safe because I've done the calculations, and here are the blueprints to prove it. But let's be honest, finding the right expert can sometimes feel like searching for a needle in a haystack. You need someone who not only knows their stuff, but can also explain in a way that doesn't make everyone fall asleep in the room, just like what we are trying to do here. My next question is to you, Sachin and Ila both. But we will start with Sachin perhaps. How do you crack the code to find the right expert witness? And how do you ensure their independence and impartiality in your jurisdiction?

SACHIN TRIKHA: Okay yeah. So, two separate things there. How do you find the right witness, expert witness? I mean, look there's some standard things you're looking for, right?

You're looking for experience, expertise, subject matter knowledge, credibility, experience. All these things. But when I was a junior lawyer, someone once said to me that there's three types of experts in this world. There's the expert that says to you, right, what do you want me to say. There's the expert that says, well, look, I've taken a look at some of the material, and I just don't think you have a position. And then there's the expert that says, taking I've taken a look at some of the papers and I think you've got a position. I think you're right. And that third bracket of expert, that's the expert you want to hire, ten times out of ten, who genuinely and authentically is supportive of your client's position. That's not an issue of independence and impartiality at all. That's their own honest opinion.

How do you ensure their independence and impartiality? I mean, look, I think, candidly, that good experts there's no real ensuring. You don't really need to do that. They know that they need to be independent and impartial. They know that if they're not independent and impartial, then they will get a reputation in the market as being someone that's not trustworthy, someone that takes the position that they're instructing solicitors take. So look, I think the good experts don't really need much ensuring, to be honest with you. The onus is really on us as instructing lawyers to make sure that we get the right expert.

I'll just share one further point around independence and impartiality. I think it goes to independence and impartiality. But perhaps it's a bit broader than that. And that's something that's prevalent in England, and I see it across arbitrations across the world now, but that's a principle of inequality of arms and that is the idea that the experts should have access to the same body of material on which to base their opinions. And I see Tribunals really favouring that, appreciating that, because candidly, if one expert's giving an opinion on one set of facts and another experts giving evidence on a different set of facts or a broaden set of facts and the ships have passed in the night and the Tribunal haven't really been terribly assisted. So quality of arms is an important principle. And that also means that we need to just manage and monitor the information that flows to the experts.

RICHA KAUSHAL: Ila?

ILA KAPOOR: Sachin, the point is that a party-appointed expert can never, in my opinion, be fully impartial or independent, because ultimately he is taking a position that you want him to take and the opposing party can produce on those exact same facts and interpretation that is diametrically opposite to your expert. So there of course, IBA Rules, they are CIAR detailed protocols and what expert evidence should look like, what kind of disclosures they need to give. But arguably, a party-appointed expert is always presumed to be some sort of a hired gun

for their party. And what are the checks and balances? Well, it is the cross examination again. Let the other side's Counsel cross examine this expert on his qualification, on his assumptions, on his conclusion, and let the Tribunal decide whether this expert's witness testimony is something that they find credible. And of course, usually in these cases, the other side will produce an expert of their own, which will presumably have a different answer. So the Tribunal is going to see both these reports and is going to look at the cross examination there. Of course, international practices which we all use when the Tribunal deems necessary, like hot tubbing, when you produce the experts and question them simultaneously. Sometimes, not very often in India, the Tribunal may appoint their own experts. So just some techniques which we use to make sure we have credible evidence.

RICHA KAUSHAL: That's really insightful, Sachin and Ila. And I can tell that use of a common database for all of the documents that we are briefing our experts with, I think is a trick that is perhaps the most useful because I've done... I did an arbitration a few years ago where the Tribunal was served with expert evidence that was based on documents that were completely different. And they almost had to restart the entire expert evidence stage for our matter. And of course, the clients were not happy about that. Perhaps I'll move to Ajay on that. Ajay, in the world of business, the idea of bringing an expert can sometimes be met with the same enthusiasm as a root canal. Have you been on a receding end of questions from your business, like, do we really need an expert? Or perhaps I should ask, how often do you get asked by the business if we really need an expert for a case? And if so, how do you convince the team that we do, in fact, need a witness, an expert witness?

AJAY KHARBANDA: You have put a right question. Basically, first we ask this question to ourself as a legal person whether this case can be better fought by in-house witness or do we need an expert witness. Because majorly we have seen while they are alien to us, they can come out with something which, in terms of the valuation or since some technical aspect, they can throw more light for the arbitrators to understand the things. But that we have seen, the knowledge is available within the team, so between the expert and in-house, we prefer in-house than the expert witness. But yes, in some cases we bring expert witness with an understanding that his impartiality will not be considered the same pedestal as if he is totally independent. Particularly in the international arbitrations, on the valuation side or to decipher the financial accounts of other side and to put a claim based on that, we have seen that when we engage an expert belonging to the same jurisdiction where our counterparties has proved very helpful to us both in terms of understanding the way the things in terms of the quantum are put vis-à-vis with other party, and avoiding any difference of cultural aspects or opinions visible the two jurisdictions. So we have seen, particularly the international arbitrations, and

we have taken experts. Those have proved fruitful. But in domestic arbitration, we have seen that internal witnesses have proved better than the expert witness. Rather, very seldom we have seen those expert witness have given us positive results.

RICHA KAUSHAL: Thank you very much, Ajay. Nakul, moving on to you, but this time with your arbitrator hat on. In any arbitration, conflicting expert opinion can feel like a game of intellectual tug of war. On one side, you have an expert passionately arguing that the sky is blue, while on the other hand, we have another expert equally convinced that the sky is green. And then there you are, caught in the middle, trying to make sense of it all without losing your sanity. So, how do you handle these situations? How do you navigate the stormy seas of expert disagreements and emerge with a clear, fair and reasoned decision? In short, how do you turn this chaos into clarity?

NAKUL DEWAN: So, okay, so the first thing is, it's not easy, right? And let's take a situation where you have two credible experts who have given exceptionally good expert testimony. I'm not looking at a scenario where you've got one expert who isn't as credible as the other. Well, you've heard the evidence and you are not certain which one to accept? One of the things that you first do is look out for the written submissions which come in and see how each party is criticizing the other side's expert. Okay? That gives you some cue of, maybe, some of the points that you want to think through. But more importantly, when that witness evidence is going on, you also have some questions to ask, and those are questions which are relevant to what's playing in your mind in relation to determining that particular case. And you ask those questions of the experts, you give both experts an equal opportunity of answering those questions. And if you have that data available with you and you have the party's criticism of each other's experts. You literally collate that together and you try, then make a determination of what you think is the most appropriate and the correct decision. Do you always get it right? Well, I'd like to believe you do, but it may not always be the case. Your job becomes much easier if one of the expert's statement is undermined during cross examination and that's the point I think Ila was trying to make. And you can undermine a witness's cross exam... I mean, an expert's cross... witness statement in many ways. Expertise, experience is one of them, but more importantly, the substance. So, in fact, the last award that I wrote for a SIAC arbitration, we had two experts who were both very credible on paper. But during the cross examination, it emerged that one person's witness statement in reliance on certain documents was, in fact, inconsistent with expert evidence that he had given in another case. And how did that come out? Because there was a reported judgment of the Singapore High Court, which had dealt with that expert testimony in the other case and made a reference to certain documents that had been done. Now, as an expert, you cannot make a mistake like this, because what you're

effectively telling this Tribunal is that documents that you considered were irrelevant, and these are publicly available documents, for this case, were in a very similar case, the very basis of your expert testimony. And that was it so that certainly helped you make a decision on looking and accepting the counterparty's witness statement.

RICHA KAUSHAL: Thanks very much, Nakul. Just on that, wanted to draw on my own experience, something similar that we were faced with as well where annexed there was a high stakes matter, and we were getting lots of technical experts involved. But before we engaged them on the matter, we actually looked for all of the cases reported judgments where they had given expert evidence, just to make sure that they haven't said something different to our client's case. So that proved to be helpful. I think we are almost at the close of the event, we wanted to open the floor for any questions from the audience.

SANJNA PRAMOD: Go for it.

RICHA KAUSHAL: Absolutely. Can we get a mic, please?

SUSHIL SHANKAR: Those of you who are already in Mumbai, forgive me. Yeah, I'm Sushil Shankar. This is based on... I had asked that question, and then something that, a question that Richa asked, which was answered by Sachin, made me think about it again. You mentioned the Chartered Institute of Arbitrators Protocol. Sorry. You mentioned about repeat witnesses and there was an answer about the protocol of the Charactered Institute of Arbitrators and the IBA also regarding witness conduct. So in the case of expert witnesses, while there is a protocol, if you compare it with the protocol with the orange and red list for the actual Arbitrators, there is an actual bar which prevents a person being appointed as an Arbitrator based on that, which is hard coded in our statute. So, my question over there was, isn't it time to take care of all these discussions that there should be a bar also, not just a guidelines, but an actual bar stating that a witness cannot be appointed by a party beyond a certain number of times?

ILA KAPOOR: Do you mean expert witnesses?

SUSHIL SHANKAR: Yes.

ILA KAPOOR: All the experts won't like that question.

SUSHIL SHANKAR: I know. And on that panel, Montek was on the panel. He didn't like it.

ILA KAPOOR: Montek is right here.

SUSHIL SHANKAR: Sorry, I didn't see you. I probably wouldn't have asked the question.

ILA KAPOOR: The IBA rules do require you to disclose your independence from the party, from the tribunal, and from the counsel. Yes. And so, along with your expert report and Montek, you can correct me if. I'm wrong, you are going to say how many times this counsel has appointed you in the past. And that's certainly something that will come up in cross examination, even if you don't put it down in your disclosure state statement?

SUSHIL SHANKAR: It might, but there's no bar still.

SACHIN TRIKHA: I think there's two separate points. The first is that I think there is a difference for the rules as they apply to arbitrators and the rules as they apply to experts. Because your arbitrators are your decision makers. They're the ones that are going to finally resolve this dispute. So far as experts are concerned, if you appoint an expert that let's say, meet one of the criteria in the non-waivable red list under the IBA conflict of interest rules, or is so sufficiently dependent upon you, then that's one foolish from yourself. But secondly, it will go to the waiting credibility the evidence that the expert gives. So rather, I'm not necessarily sure we need to bar them. It's just that what will happen is that that expert's evidence will be so undermined by their dependence on you that it's of no use anyway. So I'm not sure you really need to make it a bar. That's my personal view.

SUSHIL SHANKAR: There's a basis for this question because it's all very well to say that they are not supposed to be hired guns. But in actual practice, we all know what happens, right?

SACHIN TRIKHA: Well, that's interesting, because that mirrors Ila's observation earlier, which is that the moment for an expert is paid by an instructing party, they lose an element of their independence. I'd be interested in the experts in the room's observations on that comment.

SANJNA PRAMOD: We can get Montek's view on this.

SUSHIL SHANKAR: Over to you.

MONTEK MAYAL: I won't answer that right now. I'd much rather use this panel to ask a question. Just, I mean the short answer to hired guns point is, I think the professional witnesses, I don't think can afford that because bad reputation will mean we won't get engaged again and ultimately, none of us can be then help be helpful to the counsel and all the tribunals. I think we would just stop getting appointed if our views were not taken seriously. But the question I have for the panel is, and this goes back to some of the points even Nakul mentioned. The difference is, when you have two credible experts, how helpful is, in your view and actually everybody else's view, is a witness conferencing or hot tubbing to weave out difficult issues because you're able to move away from game playing, which often is cross examination because as a counsel, you'll focus on your strengths. You will not necessarily look at the substance of the issues in many cases, but how helpful is it for counsel and as an arbitrator to have hot tubbing, especially on those three or four issues, which ultimately many claims will move the answer from one end to the other. And what's your experience of that?

NAKUL DEWAN: It's very helpful as long as the Tribunal is prepared. And that's important because it's a Tribunal, which has to be the master of the hot tubbing exercise. And if you don't have a prepared tribunal and the hot tubbing pretty much goes out of control, then you just get a lot of irrelevant evidence and a lot of irrelevant banter between two expert witnesses who both tell the Tribunal, we know it better than the other and that's not helpful.

SACHIN TRIKHA: So, I think from counsel's perspective, it's a bit nerve wracking because we've totally lost control of the process. And that's over to the Tribunal. I've seen it work very effectively, to Nakul's point when the Tribunal were invested in it and were on top of the material. And even on one occasion when they weren't so familiar with the issues. They asked the experts, they're quantum experts to come up with a list of the ten key areas where you have a disagreement, and the experts came up with that list. And then the Tribunal is went through it one by one, right? That issue, what's your position? What's your position? And in real time, they got the competing opinions of the experts on the key issues that were between them, and it was very quick and it was very effective. And I thought it worked quite well, actually. From a holistic perspective, I can see how it assists the Tribunal. We were a bit nervous through it, but I guess that's just life.

KHUSHBOO: Yeah, hi. I'm Khushboo. So, my question relates to the initial conversation that started with that all the witness statements, they are exactly, similarly worded. Right? So, in the domestic arbitration, which I have generally seen, that the witness statements are nothing but the reiteration of the Statement of Claim or the Statement of Defence. That's what they have filed. And the Civil Procedure Codes, which are not applicable on the arbitrator. So

can an arbitrator effectively send the disregard the witness statements in that sense that it's just a reiteration of the Statement of Claim or the Statement of Defence, and ask the parties to refile the witness statements. Can that be done?

ILA KAPOOR: I don't think the arbitrator needs to do that. The arbitrator just needs to see whether they think that these are the witness's words and opinions. And you're right that very often you'll see bits of the pleading in a witness statement, but that doesn't necessarily mean the witness is lying, because the witness may have been with the counsel when that pleading was being drafted. And that's his fact, opinion, whatever, which was put into the pleading in the first place. So, as I said, it's not necessary in that situation that this is the... the witness is lying for his witness statement. When they say the same thing in five of their witness statements, then they're lying.

KHUSHBOO: Yeah, so, where I mean to say, when it's a financial witness, who has to only depose about the finance of the matter. And there's another witness who's working on the construction side of the matter, but both are deposing exactly the same. So how do you draw a distinction between what's right and what's wrong?

ILA KAPOOR: By cross examination. That's really how you do it.

NAKUL DEWAN: One is that. And the other thing is, as an arbitrator you have to sit back and let the parties do their job. You can't take an over-aggressive approach on what you think is right or wrong. It's for one party to prove a case. It's for the other party to disprove it. At the end of the day, they will attack those weak parts about the case, including witness statements. Through the course of the trial, they make submissions on it, and then you just make a decision.

KHUSHBOO: Thank you. Thank you so much.

JAMES NICHOLSON: Yes. I will have a go [INAUDIBLE]. In fact, that has and I think the fact that the party's playing the expert does have some influence, but it's not as big as one might think for two reasons. Firstly, most experts are not getting repeat appointments from most parties because most parties don't have enough disputes of that expert's expertise if you like. Secondly, once an experts are appointed, it's quite hard for a party to dump the expert even before they've filed their first report, because just logistically, getting somebody else in and a report filed on time is difficult. And once the report's been filed, then it's very difficult to change an expert. What I think experts care about more is the referrals they get from the

law firms because that's their repeat source of work. And so they want, particularly the law firms, they work with to be happy. And, of course, the law firms often, but not always, of course, have a more nuanced understanding of the role of the expert and whether the expert is doing a good job. So that, I think, helps push the experts towards independence. What pulls experts away from independence is, I think the process, because once we're appointed, and I should say I'm with FTI Consulting. I act as an expert witness on damages. Once we're appointed, we spend almost all of our time working with the Counsel and the party that have appointed us, by giving us their side of their story, they're highlighting certain documents, certain arguments. What about this? What about that? We're not getting that from the other side until we engage in that very public process with the opposing expert. And that actually pulls us away from independence however hard we try, because we're human beings and we can't sift through all of that information and come to a truly objective view and only hearing one side of the story.

ILA KAPOOR: That makes sense. You're absolutely right. We're not suggesting that all the experts in this room are biased or prejudiced. By no means is that our intention.

RICHA KAUSHAL: I think we had one more question at the back. Yeah. Could we pass on a mic to her, please?

SMRITI NAIR: Sorry. Just drawing on Nakul sir's point on, you have to... arbitrations take a step back and kind of, sort of leave it to the parties because it's more about party autonomy. And also Ila's point on sometimes clients in India don't really reveal everything when you ask them for information. I've recently come across a situation in a domestic arbitration where arguments are happening, but over the course of the arguments, the opposite side has said, oh, these guys have actually been coming and trying to talk to us behind your back, and they've been trying to settle. So, in those situations, how do you deal with challenges like this from an arbitrator's perspective and from a counsel's perspective? Because then you're a little blindsided as counsel, and it's like a new thing being thrown at you. So is this something that's like a common thing that happens?

ILA KAPOOR: Sorry, I didn't get the question.

SMRITI NAIR: Sort of getting like in a situation where for instance, you're a bit blindsided. Like during the course of arguments, the opposite side comes up and says that actually these guys have been like your clients have been trying to settle with us, so new information being thrown at you?

ILA KAPOOR: And actually, that happens more often than we would like. Definitely, for example, a document that you did not think exists, you've asked your client for it for one year, doesn't exist, doesn't exist, doesn't exist. Suddenly the other side produces it. That happens all the time and what can you do? I mean, ultimately, the client is the guy who's paying for the bill. So, you go back and say, well, let's deal with it. There's nothing else to do with it.

NAKUL DEWAN: See, you'll always have something interesting that's going to crop up in a case, okay? The point is you have to learn how to disregard things which are not going to be determinative to your decision-making process. So if some, I mean, you have one counsel who say irresponsible and blurts out during closing arguments. The other counterparty came over to us last night and they said we're going to settle the case. You just have to disregard that statement. And then just put your mind to the papers that are there before you, to the evidence that's there before you, because that's what you're going to use for the purposes of making a decision.

AJAY KHARBANDA: But one thing which I have seen that it becomes duty for the arbitrator to close that issue then and there, than leaving it open and giving chance of that party to raise it after the award, 34, 37. That's important.

RICHA KAUSHAL: Any further questions?

SHOUVIK BHATTACHARYA: Just from the client perspective and the counsel's perspective, when you're thinking about. Retaining experts. What are your views on what's a good time to get an expert involved? In a dispute. And how early on are you thinking about retaining them?

SACHIN TRIKHA: There might be a difference between the Counsel and client view on that. Should I start with a Counsel? I think it depends. Horses for courses. But as a general rule of thumb, the earlier the better because I suppose it comes back to the independence point we're discussing earlier if there's a technical answer that's against my client's position, I need to know that, I need to know early. The earlier I know it, I can strategize and deal with it. If I find that out later down the line that an expert who's seen 50 of these projects in the past has looked at this and says this is just standard stuff and you're dead in the water. I mean, I need to know that as soon as I can. The issue with that, of course, is that there is a cost associated with that, and that may lead on to the client's perspective.

AJAY KHARBANDA: It depends. Definitely if you are an agreed party, you're going to make a claim. You must think on expert witness the day you raise the dispute, not either is the dispute notice. And if you are on the counter as a counterparty. Again, once you get the SOC, you must decide at that time and if your dispute is going on, that thinking should start immediately. How, if the situation comes at the arbitration level, we have to deal with this, What questions can come? You get to know from the various communications which start prior to the raising of the dispute. So, as he said, as early as possible, if we take a call that's helpful. That helps you to make up your SOC or respond to the SOC very well.

SHOUVIK BHATTACHARYA: Thank you. It's good to have unanimity in the counsel and client views on. That.

RICHA KAUSHAL: Okay, great. I don't think there are any further questions. With that, we will close this, but just wanted to point to some of the key takeaways.

Witness preparation is key. Be cautious of witness coaching. Of course, that implementing robust document preservation policies is always a good idea, because you do need tangible proof to your witness testimony. Understanding and respecting cultural differences is key to preparing good lay witness evidence. Being aware of cultural norms and communications, of course, would ensure your effective testimony. Addressing language barriers with interpreters and translation services also always helps witnesses communicate clearly and accurately. And also identifying the right expert at the right time is key.

A big thanks to all our amazing panellists for their invaluable insights. And to all of you for your active participation. Thank you.

AJAY KHARBANDA: Thank you.

~~~END OF SESSION 4~~~