

INDIA ADR WEEK DAY 4: DELHI

Witness Preparation and Cross Examination in Construction Arbitration

10:00 AM To 12:00 AM IST

MODERATOR

Mr Dinesh Pardasani, Partner, DSK Legal

SPEAKERS

Mr. Arpinder Singh, India & Emerging Markets Leader EY Forensic & Integrity Services

Ms. Avni Malik, Manager (Contracts & Risks), Mitsui & Co. Ltd.

Mr. Hamish Lal, Founder Partner Hamish Lal Partners

Mr. Ratan K Singh SA, Founder and Chairman, Society of Construction Law India

1 **HOST:** We will be starting with our next session. So, I request everyone to kindly be seated.
2 The next session is hosted by Society of Construction Law India and DSK Legal. The topic of
3 the session is "Witness preparation and Cross examination in Construction Arbitration". The
4 session is moderated by Dinesh Pardasani. The speakers include Arpinder Singh, Avni Malik,
5 Hamish Lal and Ratan Singh. I request the speakers to kindly come on stage. Thank you.

6 **DINESH PARDASANI:** Good morning, everyone. I think, just give us a couple of more
7 minutes. Mr. Ratan Singh is also coming. So, good morning, everyone. The quorum is still not
8 complete. Mr. Hamish Lal is running late. But we'll still start and he'll join us shortly.

9 First of all, a very thank you to MCIA for organising this and SCL being part of it. Both are
10 pioneers. I would say that MCIA is Indian version of these international arbitration
11 institutions, ICC, SIAC or LCIA, and we are proud of them that they are doing good work. The
12 rules of MCIA are equivalent to all these international rules of ICC or SIAC. So, we are
13 competing with them. And I wish them all the best. SCL, of course, Mr. Singh is here. We need
14 an institution for construction disputes. And Mr. Ratan Singh has been promoting, or is, I
15 would say, a promoter of SCL in India and doing again a very good job. Mr. Singh and I were
16 together last night, and we were coming in the elevator and he mentioned that. Look, what is
17 the topic? I said sir, it's cross examination. He said okay 45 minutes? I said no, 2 hours. But
18 he wasn't surprised, because usually when we have these events or these topics, we usually
19 have it for 45 minutes or one hour. But the topic itself is so interesting that both of us were not
20 surprised at... 2 hours, oh, we'll be able to discuss, because I would say this is heart of any
21 dispute. And especially in construction dispute, or I would say in any dispute, cross
22 examination of Witness is something which can make or break your matter. And it is that stage
23 where you actually prepare for your entire matter, and then you figure out where are the gaps.
24 And those gaps then you fill in cross examination. Maybe sometimes you feel that you're
25 perfectly fine, you don't need any statements from the Witnesses. You don't cross examine. So,
26 it's a strategic call, which you take based on what you're looking for, because a bad cross
27 examination is more damaging than no cross examination. So, it's very critical subject. And as
28 we discuss there are important or interesting live examples that Mr. Singh can share. And the
29 good part about this panel, not because I'm moderating it, if you see, we have Mr. Singh, who
30 is doing arbitrations in India. He's, of course, also an Arbitrator. He does have experience in
31 international arbitration also, so we have one complete domestic flavour for this topic. Then
32 we have Mr. Hamish Lal who is doing international arbitration. So, we have international
33 flavour to it. We have Avni, who is Manager in Mitsui. So, you have Client's perspective. And
34 then, last but not the least, Expert. Now when we talk about Experts, these days, arbitrations

TERES

1 are not possible without Experts, so Arpinder fills that place. So, you have flavours from all
2 the stakeholders in this cross examination bit. Okay, importance of cross examination is also
3 apparent from the fact that when we are doing these arbitrations, we can do all the hearings
4 online, we can do arguments also online, but when it comes to cross examination, even the
5 Arbitrators or the lawyers feel that we should cross-examine physically. So that we see the
6 mannerism of the Witness, the tenor and delivery of the Witness, hear the Witness live. So, it
7 becomes very important and that shows that how cross examination in Witness Statements
8 are important in the scheme of things.

9 Now, let's start with the topic which we have thought about. And let's start with, maybe I can
10 just give a brief introduction for my panellist members. Start with Avni. Avni is Manager
11 Contracts and Risk Management in Mitsui. She has more than eleven years of experience.
12 She's handling disputes in Mitsui. Mitsui has been doing lot of work in India, specifically in
13 the infrastructure sector, they have been bidding and winning contracts with the DFCCIL, and
14 we also know that there are disputes, which are inevitable. So she's also advising Mitsui and
15 also handling multiple disputes.

16 Moving on to Mr. Ratan Singh. Needs no introduction, but he's a senior Counsel and very
17 actively involved in construction disputes. And I must admit that whenever we are stuck in
18 construction arbitration, we do go to him for advice, because what we get from him, it's not
19 easy, because you don't have senior Counsels who are so deep into construction disputes. So,
20 that's where we look towards.

21 Hamish, of course, let him come.

22 Let me introduce Arpinder. Arpinder is with E&Y. With loads of experience he has multi
23 jurisdiction... He has been doing multi jurisdiction investigations, forensic accounting and
24 dispute advisory in India, US, UK and other regions. He has almost three decades of
25 experience.

26 Thank you very much, panellists. And we hope that we are able to have interesting discussions
27 with live examples. Let's start with Mr. Singh. Mr. Singh, first question. Because it's a
28 construction dispute, and that's what we'll be focusing on, the correspondence between the
29 Parties is very exhaustive. These days, we see that for everything you have a letter. Now, with
30 all that correspondence already in place, and we see documents are in lakhs. We are doing an
31 arbitration where the Defendant has filed 1,24,000 documents and we, of course, also filed
32 one lakh document. So now with two and a half lakh document, do we really need cross
33 examination?

TERES

1 **RATAN SINGH SA:** Good morning. Good question, Dinesh. If you really want to have
 2 answer to this issue, whether documents are enough for any construction arbitration and do
 3 we really need to have cross examination, first thing we need to understand is purpose of cross
 4 examination, objectives of cross examination. And very funny thing, there is one cross
 5 examination going on, where two sides are India's biggest construction entities, and I am
 6 representing one of them and I had cross examination yesterday also. Two retired Supreme
 7 Court judges and one retired Engineer are on the panel. And once I was asking a question to
 8 the Witness and two retired judges said, Mr. Singh, you cannot get your proof through the
 9 other side Witness, you can get your case proof through the mouth of the your side. Ladies and
 10 gentlemen, biggest problem is we need to understand the objective of cross examination.
 11 Objective of cross examination is to prove your case through the mouth of the Witnesses.
 12 Demolish the case of the other side through the mouth of the other side Witness. Educate the
 13 Tribunal, impeach the credibility of other side's evidence. The question which Dinesh asked is
 14 when you have so many documents, lakhs of documents contemporaneous documents, do we
 15 really need cross examination? We all know and particularly in India, and India in Indian
 16 perspective, even if a project which is delayed by, let's say, three years, if you see the
 17 documentation, both sides will attribute entire three years' delay on the other side. Contractor
 18 says entire delay is on the head of the Employer. Employer says entire delay.... So, what are
 19 these correspondences, then? And what is the importance and relevance of or what is the
 20 credibility of those evidences, where both sides are attributing entire delay on the head of the
 21 other side? So, how to really get to the bottom of the issue, and how to really get the real facts
 22 out on the table before the Tribunal is the key. And that happens or that can happen only
 23 through cross examination.

24 Now, I'll give you one example. Let's talk about a linear project. I was talking to Mr.
 25 [UNCLEAR]... just before we started the event and he said again about the delay analysis and
 26 so on, so forth. We'll get into all of this. So, you have Fact Witnesses, you have Expert witnesses
 27 and what are they doing? I am doing one cross examination last Saturday and Sunday. There
 28 is a Witness and I was talking to Arpinder about that particular Witness. He's an Expert. And
 29 for a completed project, which is a linear project he has used one of the methods of delay
 30 analysis recognised by SCL Delay and Disruption Protocol; that is called impacted as plan
 31 method of delay analysis. Now, what he did, Dinesh, is surprising. He has relied upon only the
 32 documents which Claimants filed. Now Claimants all through said all delays on the head of the
 33 Employer, whereas Employer said all delays on the head of the Contractor. So, how to get to
 34 the bottom of the issue? Simple. Preparation for cross examination starts with preparation of
 35 Statement of Claim or a Statement of Defence. That is the first thing you need to understand.
 36 Second, break the case, break the dispute into pieces, into issues. And how to go about it, is

TERES

1 another issue. And for that, again, Dinesh will have another set of questions. To cut it short, if
 2 you have documents, but you do not agree with the content of the documents, because,
 3 according to you, the contemporaneous documents are not telling you the truth. Only way how
 4 you can discover truth is by doing proper cross examination. How to prepare for cross
 5 examination and all of that, I think that will be another round of question.

6 **DINESH PARDASANI:** So, Arpinder, from your perspective, do you think with all the
 7 documents in place, if a delay analyst carries out its analysis and says that, look, these are the
 8 letters I have seen. In my view, these are the reasons for delay. This is a critical delay event
 9 and this is what your assessment is. Do you think that is good enough for Tribunal to take a
 10 decision, and you don't need to get into specific documents, as Mr. Singh said, that look, of
 11 course, for certain reasons, you still need to go for cross examination, what's your view on this?

12 **ARPINDER SINGH:** Can everybody hear me? First, good morning and thank you. I just
 13 wanted to clarify one thing, because, the moderator kept saying, I'm three decades old, so I
 14 think I'm not that old; so, I just thought I'd start with that clarification on a light note. But on
 15 correspondences, you're absolutely right. I think Expert Witness cross examination is very well
 16 required. And I'll tell you why. At least that gives an opportunity for the senior Counsel of the
 17 other side to get some statements which can be obviously relevant for their final arguments,
 18 because the way I look at it, very simplistically and I learned that in Singapore when I was at
 19 SIAC, because in India, on a lighter note again, I always thought the job of the Counsels on the
 20 other side was just to embarrass the Expert Witness. Because we were generally kept on the
 21 chairs and Expert Witness... I've done nearly 28 cross examinations, so always my impression
 22 as an Expert was that the job of the person cross examining you was to tell you how useless
 23 you are. And that's what my experience in *ad hoc* arbitrations in India was till then. Because I
 24 had very famous senior Counsels. I won't give the names now, whose job they started by
 25 saying, you're useless, I put it to you, you're useless. I put it to you that your information in
 26 your report is all fake. I put it to you, you have no knowledge. I put it to you, you have no sector
 27 experience. I put it to you this way, that way, by the end of it, I feel I'm the most useless human
 28 being in the world. But they never cross examined me on the facts of my report. I'm waiting
 29 for them to ask me a simple question from the report. Sometimes that never gets to there
 30 because they're so busy trying to tell me how useless I am. Then I went to Singapore; this was
 31 quite a few years back, at the beginning of my career. And there the Counsel educated me
 32 saying the whole purpose of cross examination is so that you get some relevant points for your
 33 arguments at the end. And I think that sometimes gets lost in the questions. So why... Coming
 34 back to the question you asked. If you have huge number of correspondences, there's always
 35 some weak spots, I can assure you. Now, in my 28 reports, I would say 26 out of 28 have had
 36 serious weaknesses in my report, but the Counsel on the other side has to be smart enough to

TERES

1 go through the correspondences and ask me the right questions to get me to accept, maybe
 2 sometimes, or maybe to show weaknesses which can be used in the arguments at the end of
 3 the day. So, I think cross examination, in my view, is a great opportunity to get there. Though
 4 I know there's a cultural issue. I went to one in Hague in Europe, and there they didn't want
 5 to cross examine for that long. My cross examination finished in half an hour; so, I was actually
 6 shocked. I'm used to being cross examined in India for four days. In Singapore, maybe for half
 7 a day. Here, they did it for 1 hour or half an hour. So, I was actually shocked, so I understood
 8 that it's a cultural difference also maybe where they relied more on what that information was,
 9 and they worked off reading your document and using that for the argument. So I found that
 10 very interesting how culturally the way I was cross examined varied between India, Singapore,
 11 London, Hague, etc.. That's one point. Second, I would come later but I want to say that you
 12 have the beauty today of AI. So, when you mentioned about these 124,000 documents and
 13 124,000 documents, I must tell you that I was being cross examined, and this happened a
 14 month back. Now, I am not that smart but I have a smart team. So, they are very young and
 15 smart, so they said I was cross examined for one day. As you can imagine, we have the
 16 questions. Everybody knows the process, right? Because you're all lawyers in arbitration. So,
 17 you sign a document at the end of the day and you get that back, right? Saying these are the
 18 questions asked from you. Normally in a day, you asked about 60 to 70 questions on an average
 19 in India at least. I'm not talking about Singapore, where you have this transcription happening,
 20 which is faster, where you have a typist and he's typing 70 questions is what you get. We put
 21 that whole 70 questions into an AI internal system, and we were able to predict the questions
 22 the Counsel will ask me the next day. I am not kidding you, sir. 98% of the questions were the
 23 same. The next day I answered beautifully because I knew exactly what question he was going
 24 to ask me. So obviously we'll, address that later, but I'm saying today, I think in arbitrations
 25 you must use technology. It can be quite useful.

26 **DINESH PARDASANI:** I don't know whether AI can be banned for tutoring you, but let's
 27 move on. Mr. Singh what is your strategy while preparing for a Fact Witness in construction
 28 arbitration? Because I think we all need to learn from you having so much experience that
 29 what is it that we should be thinking, as I mentioned, 1 24,000,2,50,000 documents and then
 30 you have to decide. How do you prepare? Because you can't end up asking questions for five
 31 days. You get two, three sessions, and within which you have to get what you want, what is
 32 your objective. So how do you prepare for such a lengthy or with loads of documents, how do
 33 you sort of strategize and decide?

34 **RATAN SINGH SA:** See, there are three kinds of Witnesses. One is Fact Witness. Another
 35 category is the Expert Witnesses. Again, you will have three subtypes of Expert Witnesses.
 36 Delay, disruption then quantum side of it and then technical side of it. Wherever you have

TERES

1 issues or defects or other issues, structural issues or engineering issues. And the third category,
 2 which is called quasi-Experts. And in construction arbitrations, most of the Fact Witnesses are
 3 quasi-Expert witnesses because they are engineers, invariably. And they know the projects
 4 well. So now, when it comes to preparation for Fact Witnesses, how to go about it? As I said,
 5 earlier that preparation starts at the time of preparation of the SoC, Statement of Claim or
 6 Statement of Defence. You have to break the case into pieces. Let us talk about an arbitration
 7 where you have delay claims and you are representing the Respondent or the Employer. How
 8 to deal with it? You have delay claims. Now, it sounds very easy, but cross examining a Witness
 9 or set of Witnesses, including the Expert Witnesses on delay is the most complex thing. So,
 10 how to deal with that? First thing, when they have a claim for prolongation claim, as we call it
 11 in construction arbitration, they will say that Employer has delayed for, let's say, three years.
 12 Now they would tell you that delays were on for following reasons. X number days, handing
 13 over, delay in handing over of the sites. Y number of days in approving the drawings. Z number
 14 of days in handing over some material which you were supposed to provide so and so forth,
 15 variations and so on and so forth. So, how to deal with them? First thing, prepare chronology
 16 of events. So, ask your office to assist you in preparation of chronology of events that is from
 17 day one till the last. You must compile all the documents in a sequential manner. Before you
 18 start doing that, a tip for the new lawyers sitting in the hall. Before you start looking at those
 19 2,40,000 pages of documents, see the last set of correspondences exchanged between the
 20 Parties. There they'll put their position clear. You will get to know what are the disputes, both
 21 which Parties are raising against each other. Read those few letters. You will have flavour of
 22 the disputes between the Parties and Parties' position. Then prepare chronology of events.
 23 Thereafter, let us talk about arbitration, dealing with delay claims. How to deal with that? First
 24 thing, first see what are the hits of delays alleged against you. So put, create compartments.
 25 First, delay in handing over of the site. Second, delay in approval of the drawing. Third,
 26 variation orders, whereby you wanted the other side to change their scope of the work, so and
 27 so forth. So, now one arbitration became multiple arbitrations. Then, for those one delay event
 28 have your all documents and the dates picked up from your chronology of events. Put all the
 29 documents relating to that particular delay event in one bundle. Now this has become one
 30 arbitration for you. Then what you should do is this. Prepare a case theory for that particular
 31 delay event. What is case theory? Case theory is... Young lawyers can note down. This will help
 32 you even in court proceedings where you are going to argue your case. Case theory is very
 33 simple. Most of the senior advocates or good lawyers arguing in Supreme Court in two minutes
 34 uses case theory sometimes without knowing that what they are doing is called case theory.
 35 What is case theory? Simple. Write down, what is the dispute? Two, what is your position?
 36 And three, why are you right? So, what is the dispute? Dispute is that this particular head of
 37 delay is about handing over of... delay in handing over of the site. Write that, this is the dispute.

TERES

1 Now what is your position? Your position is, site wise given in a manner where Contractor,
 2 always have available site work fronts to work on that. If it is a linear project, this is how you
 3 deal with them. Linear projects like highways, expressways, roads, gas pipeline, metros, all of
 4 these are linear projects, where same set of activities are repeated. Now assuming that under
 5 the contractual stipulation, under the Contract, you are supposed to give them... Railways,
 6 again, linear project. Suppose under the contract you are supposed to give them 90% of land
 7 or within, let's say, under 50 days, you get 70%. Obviously, it appears to be a case of breach of
 8 Contract, but as we all know, Contractors are supposed to mitigate the delay. As a result of
 9 which they are mitigating loss, which is the requirement even under Section 73 of your
 10 Contract. This is the requirement of all literature protocol.

11 Now, that's why, for preparation of cross examination, three things are very, very important.
 12 Mastery of facts. You should know facts better than Witness knows. Mastery of law. When I
 13 said that you have to see, develop your case theory based on this principle of law, that
 14 Contractors are supposed to mitigate the delay. Right? Now, so, first is mastery of facts, second
 15 is mastery of law. And third is mastery of technical side of the dispute. What really transpired
 16 at the site, one? What is the nature of the dispute? What is being said about this particular
 17 dispute by both sides? What are the technicalities involved in this? You must master that. Let
 18 us assume that you have an Expert Witness before you who is to be cross examined. You must
 19 know what are the methodologies which have been adopted by the Expert, what are the
 20 problems with his methodology, what ought to have been the right methodology, whether he
 21 has taken the right exemptions or wrong assumptions. Obviously, we will have that turn for
 22 Expert.

23 **DINESH PARDASANI:** That issue we will cover.

24 **RATAN SINGH SA:** I'm coming back to Fact Witnesses. So once you have identified one
 25 delay event. One, you must have a case theory. What is the case theory? First, what is the
 26 dispute? Second, what is my position? Your position is despite of sufficient and available work
 27 fronts Contractor did not work. That is your position. And third, why you are right or you are
 28 right? Now in construction disputes Contractors will submit... I'm just giving one example.
 29 They will submit Daily Progress report or Monthly Progress Report or Quarterly Progress
 30 Reports or they will have MoM, Minutes of Meetings, recorded. So you have contemporaneous
 31 documents. If from that those documents and in fact, this week, currently I am doing six cross
 32 examinations, parallel. Most of the engagements are for cross examination. Now, what I did
 33 was simply this. DPR submitted by the Contractor, I just asked my briefing Counsels to take
 34 from that DPR what were the available work fronts according to them, rather than getting into
 35 the availability of work fronts on day-to-day basis because it would have been a very complex

TERES

1 thing. I said on quarterly basis. So, like, sometimes for some methods of delay analysis, experts
 2 go by the window delay analysis, AP-AB and so on, so forth. I did it myself. It was more like a
 3 delay analysis through cross examination of a Fact Witness. So, I created this quarter and you
 4 had available work fronts of X kilometre, you have worked only X minus Y. So, therefore, you
 5 have not mitigated the delay. So, based on the documents available on record, relied by the
 6 other side, you can break their case if you have prepared your case theory. So what is your case
 7 theory? What is the dispute, One. What is your position? That they have not mitigated the
 8 delay. And third, why are you right? Because law says that if there is, even if there is a delay
 9 on your part, other side has to mitigate the delay. If they have not work on the available work
 10 front, so therefore they are in delay. So this is how for every delay... head of delay, you prepare
 11 your case. If it is variation again prepare. So one arbitration, you have to break into multiple
 12 arbitrations and take every single issue and aspect of that arbitration as one arbitration.
 13 Prepare your case theory, prepare your questions, and then we will have another question on
 14 tech.. on the techniques of cross examination.

15 **DINESH PARDASANI:** Correct, sir. Thank you so much. Coming to Avni. So, when you
 16 have to decide for a Fact Witness, will you go for an honest Witness in your company, will you
 17 go for a smarter one, technically sound or maybe sometimes you feel that you can do it better
 18 and you can become a Witness? What is your thought process in company when you are
 19 sending someone as a witness or suggesting?

20 **AVNI MALIK:** While we are preparing or sending a Witness from our side, the only thing
 21 which we make sure that the Witness will be independent. He will be just mentioning what is
 22 effect as it is not giving 'my opinions' while I'm preparing him. He should not be sounding like
 23 me. He just keep putting the facts only. Then this will be good for me. While putting him as a
 24 witness, the truthfulness should be there. The independence should be there. He should be
 25 independent, and he should not be looking at me as well at the times so that I can help him
 26 out, so that will be...

27 **DINESH PARDASANI:** I think lawyers corrupt the system, not Client.

28 **AVNI MALIK:** Yes, sometimes.

29 **DINESH PARDASANI:** Okay. No, thank you, Avni. That was helpful, and I think that is
 30 what the need is because different jurisdictions have different systems where they provide to
 31 what extent a Witness can be prepared or trained. We'll come to that topic little later, when
 32 our last panellist is also around. But on the same subject, on cross examination of Fact
 33 Witnesses, my question would be, I think to Arpinder and Mr. Singh that, how do you prepare

TERES

1 your Witness Statement or how you prepare for cross examination when you have a domestic
 2 Tribunal or an international Tribunal? Because the way Indian Tribunals conduct arbitrations
 3 is, I would say, still different from how cross examinations are conducted overseas. To give
 4 you an example, in India, the Tribunal members might interfere in your questions, may not
 5 allow you some questions, though they have not completely read the file, whereas
 6 internationally I would say that they've given you fixed time to carry out your cross
 7 examination, and they would expect you to ask whatever you want to ask in a flow, but finish
 8 your cross examination within a particular period of time. So, from that perspective, Arpinder,
 9 how will you be preparing for your cross examination when you are appearing in domestic
 10 arbitration or international arbitrations? Thank you.

11 **ARPINDER SINGH:** No, thank you so much. And Dinesh, very well put actually, about the
 12 limited time, which was the point I made earlier. In Singapore, you're given like 4 hours or 6
 13 hours to finish it. Well here it can go on for three, four days. So in India, how I prepare for my
 14 Expert Witness is first I spend a day on the affidavit, because the counsel on the other side
 15 spends a significant amount of time proving the affidavit wrong. Then I spend a lot of time on
 16 conflict of interest because a lot of questions come on, conflicts. Then I also spend a lot of time
 17 on silly things like who was the attorney. I, in fact, asked my secretary the other day, can you
 18 show me a photograph of him because he had come to our office and had forgotten what he
 19 looked like. And one Counsel asked me, does he have a moustache or doesn't have a
 20 moustache. So, you get some really odd questions like that in a cross examination. At least I've
 21 got in India. Is this person alive or dead? Is he still there? No, I haven't checked it. I've signed
 22 the report a year back, whether he's still there or not. So, that is so in India, you really have to
 23 work on a lot of the noise around it. And I have to also work a lot on examining a counsel, so I
 24 do a lot of background check on someone like Mr. Ratan Singh and say, what type of questions
 25 does he ask? What type of person is he? So in India, I do really odd kind of preparation for my
 26 crosses. I actually investigate the Counsel so that I know this is the type of questions he will
 27 ask. This is the type of question he won't ask. He's very aggressive. Not very aggressive. But
 28 when I go to Singapore, I keep it very factual to my facts of my report. I prepare to the facts of
 29 my report because I know the cross examination will be very focused at specific time, they will
 30 ask me good, relevant questions for what is in my report, and I need to be technically very
 31 updated with what's the data in my report is. So very different ways of preparing.

32 Like I'll give an example. Again, in India, there were two Counsels cross examined me at
 33 different times for different one. One was the criminal senior Counsel. That means, I don't
 34 know why he was cross examining me, but I think he had a good relationship with the Client.
 35 His whole examination was extremely aggressive, so I actually prepared. And he was a
 36 Chartered Accountant, unfortunately, also. So he was a CA and a lawyer. But his questions

TERES

1 were very, very abrasive. In fact, he accused me that I will actually file a case in the CA Institute
 2 against you. So, you know, the style was very different, and I had to prepare very differently.
 3 While another expert, the lawyer was an Engineer, so he actually missed the cue totally in the
 4 cross because he didn't come prepared. He got questions from his junior and he started
 5 examining me on time delay. Now I totally sidestepped it like a spin ball and I said, I'm not an
 6 engineer, so I cannot answer any of your questions on time delay. I'll answer on quantification
 7 only. Because there was a separate Expert. He had no questions to ask me the rest of the day.
 8 It finished in 1 hour because he had come fully prepared to spend a day or two with me on
 9 delay assessment, and I totally derailed by saying I'm not the delay Expert, I've only given a
 10 report on qualification damage. So devil is in the details. But for me, I think India is moving
 11 towards the Singapore. I want to give the positive because my last three, four cross
 12 examinations have finished faster. The questions have been more relevant. So, I feel even
 13 Indian Arbitrators now are giving a very low rope to the Counsels. They say finish it in 5 hours
 14 or finish it in 6 hours. So I feel the great news is that these are converging. Another thing which
 15 I was very impressed in my last cross examination was where the arbitrators actually told the
 16 Counsel, if you put even one question 'I put it to you', I will throw you out of the room. So I got
 17 zero 'put it to you'. I got zero irrelevant questions. I got only relevant questions. And it finished
 18 in half a day. So, I think we're moving in the right direction.

19 **DINESH PARDASANI:** No, thank you. That's really helpful. And I think it's a problem of
 20 grand standing where they in self-proclaiming. They end up asking questions. And I, as a
 21 Counsel for the other side, I'm happy to let the Counsel ask those questions because I know on
 22 merits it's not troubling me. And I think Tribunals have also become wiser. They do not
 23 entertain these questions anymore these days. Happy to hear from you, Mr. Singh, on your
 24 thought process, on preparing for international Tribunal or for domestic Tribunal?

25 **RATAN SINGH SA:** Before I answer this question, Dinesh, I must answer to what Arpinder
 26 has been saying that every time he is being cross examined questions 'put to you', put to him
 27 and thrown to him are just to embarrass him. Do you know why this happens? Two reasons.
 28 One, most of the literatures will tell you that never ask questions to the Experts on their areas
 29 of expertise. Ask questions on their credibility, their impartiality and independence. Those
 30 kind of literatures are creating problem for lawyers. That is one. Because I totally disagree with
 31 this notion that you cannot cross examine a Witness, Expert Witness, on his expertise. I'll tell
 32 you why. And why lawyers don't get into the merit of the reports of delay, disruption or
 33 quantum? Reason is very simple. If lawyer doesn't know the construction law, theories of
 34 construction law, basics of construction law, basics of delays, types of delays, methods delay
 35 analysis. If you are not aware of the theories. Quantification. If you do not understand these
 36 first principles of construction law, you will never be able to put questions to experts like

TERES

1 Arpinder. It is as simple as that. However, the construction lawyers are supposed to ask
 2 questions on the merit of the reports. How do you do that? For that, you need to prepare
 3 yourself. And your preparation should be such sometimes for, let's say, delay experts. If you
 4 have also got delay experts, it is permissible globally, to have some inputs from your own delay
 5 experts to prepare yourself for cross examination of other side's Expert. If you do not have
 6 delay expert, then what? At least, what you can do is this. One, read the report. And before I
 7 get into that like Arpinder said he prepares himself about the lawyer. Arpinder, we also prepare
 8 ourselves for the Experts. So, what we do is this.

9 **ARPINDER SINGH:** That's why, on a lighter note, sir, I never come on your arbitrations.

10 **RATAN SINGH SA:** So, how we prepare ourselves? First thing I'll ask my colleagues in the
 11 briefing Counsel show me the face of the Witness. Second, try to find out his papers, literature,
 12 articles, publications and see if he has taken contrary position in any of his literature. And it
 13 has happened, some of that on some of the occasions where Witness is saying something here.
 14 Let us talk about a delay analysis method. He says that for situation like this this method of
 15 delay analysis is not appropriate. However, in your arbitration, he has used that same method.
 16 So, you can very well ask questions on this. It's not about embarrassment only; it is about the
 17 credibility of the report through the mouth of his own publication. So, that is second. Third,
 18 preparation is very, very important. Read the report. And first thing is to understand the
 19 methodology which has been used by that particular Witness. Let us talk about delay because
 20 this is the most common thing which we come across. What is the method he has used? So,
 21 every single delay, experts all across the country, all across the globe will be using SCL Delay
 22 and Disruption Protocol. So, you have six methods of delay analysis. Everybody sitting in hall
 23 who has anything to do with construction arbitration you must read a SCL Delay and
 24 Disruption Protocol the way you read CPC. You may have some difficulty in the beginning.
 25 More you work on the cases, you will learn more and more about it. Simple. Suppose a
 26 particular Witness says that delays... Suppose Expert says that I have used one of the six
 27 methods as prescribed in SCL Delay and Disruption Protocol. He says the mild analysis is on
 28 As Planned versus As Built method. This is one of the methods. Delay analysis will be done by
 29 these Experts under one of the six methods. So, first of all, open the page of the SCL Delay and
 30 Disruption Protocol. Go to the table where those six methods are written and read the
 31 literature in this particular protocol itself, which tells you when a particular method is to be
 32 used. When you have... Suppose you are using a method for which you must have a robust
 33 baseline program. Baseline Program is a program or a schedule which is prepared in the
 34 beginning of the project, which tells you how many activities are to be used, are to be done,
 35 how many days will be taken by that particular activity and so on and so forth. Whether you
 36 have As Built program or not? What is the character of the documentation of the project? So

TERES

1 those six delay methods as written in the SCL Protocol will itself tell you when a particular
 2 method is to be used. Then that protocol itself tells you what are the limitations of this
 3 particular method. So, start reading them. Then start reading the literature. Good
 4 commentaries, good books on delay analysis. Understand whether this Witness has used right
 5 methodology. Invariably, in every arbitration where I go and cross examine, I have broken the
 6 whole case of the delay Expert just because he has used the wrong methodology.

7 Second, assumptions are that Expert will say I assumed a particular fact. Now, whether those
 8 assumptions are based on real facts or not, or whether it is so different from the facts that you
 9 can immediately demolish that. So, difficulty is why Arpinder has been saying it since
 10 beginning is that lawyers are just... lawyers think that I do not know the subjects. I cannot do
 11 anything on the merit. Therefore, I am going to embarrass the Witness. I never ask any
 12 question to embarrass an Expert witness; I only ask question on merit. There is one example
 13 where a particular delay analyst for a completed project said that I have used As Planned
 14 versus As Built method of delay analysis. I said, you tell me how did you determine the Critical
 15 Path of this particular delay analysis for this delay. He says it is a completed project therefore,
 16 I have used retrospective method of Critical Path determination. I showed him SCL Protocol.
 17 Column two. I said, what is this written here? It says, for Critical Path determination, even for
 18 a completed project you have to use contemporaneous Critical Path determination. He says,
 19 how can I do it, it is a completed project. That means that Witness doesn't know even A-B-C
 20 of delay analysis. For a completed project also, when you are using As Planned versus As Built
 21 method, you have to do Critical Path analysis by using contemporaneous method. How you do
 22 it? There are ways to do it. Ultimately result was... This is a Windows analysis, so there was
 23 two years of delay. You had to break those two years of delay into compartments in windows.
 24 That is the requirement of As Planned versus As Built method of delay analysis. I said,
 25 gentlemen, how many windows you have created. He said one. He had the entire gross period,
 26 entire period delay analysis, he says where are your windows? He says I have one window.
 27 Where is that? This is one window. So you enjoy this process if you know the methodology.
 28 And result was on the very first day of oral argument other side lawyer came and he says, we
 29 disown our Witness. So, a good lawyer who understands the first principles of Construction
 30 Law can enjoy in the cross examination and play with the Expert Witnesses. So I think that
 31 this is how we can go about it.

32 **DINESH PARDASANI:** Thank you. Thank you, sir.

33 **ARPINDER SINGH:** I've taken notes.

TERES

1 **DINESH PARDASANI:** Moving on to Witness preparation and tutoring. Of course, Witness
2 preparation is required. I'm not saying no to it, but how far it should go? And let's start with
3 Avni. What are your thoughts, to what extent the preparation should go so that it doesn't
4 become unlawful?

5 **AVNI MALIK:** Thank you. So, first we need to understand why we are preparing a Witness.
6 What is the purpose behind it? So, when we are preparing a Witness, we just want the
7 Witnesses to be at a witness stand and will be facilitating the Tribunal to understand what
8 really has happened. It is not that he should be one talking about, or in a language that what I
9 have been tutored him. That should not be the case. So, the real purpose is that Witness should
10 be at the Tribunal side. I mean, as an arbitration, he should be just mentioning as... whatever
11 it is, as per his own knowledge and wisdom. And yes, you're right that sometimes while
12 preparing also we coach or tutor our Witnesses. So, that should not go far. There is a thin line,
13 actually to the line will be, as I have already stated to you, that if the truthfulness is coming
14 out of his mouth and he's independent. Whether any skilled cross examiner is mentioning that,
15 Oh, did you sign it? Or whether is this a right document? Do you remember this Variation
16 Order? If he's mentioning, independently can make a call of it. Yes, I do not know about this
17 or I do not recall signing it. If that is an independent call by himself, I have not tutored it.
18 Definitely, I have not crossed that line where it becomes impermissible. The permissibility, I
19 think, which we already know as per our laws as well. Indian legal system is already there.
20 What is permissible? You can prepare your Witness only to an extent that your Witness will
21 become confident and the Tribunal will have such... because of this construction or technical
22 issues the Tribunal is not an Expert in that scenario. He will not be able to gather all the
23 information from the documents or the pleadings you have submitted. So, they really require,
24 they completely or heavily rely on the oral evidences of the Witnesses who have come to you,
25 who have been presented. So they will be completely relying on the words. If you will be
26 presenting a Witness, an Accountant or a Project Manager or an Engineer who will be
27 disoriented or confused or will be scripted by you. So, he will not be able to put out the real
28 truthfulness or what he actually believes or he understands. The real question is the memory
29 of his, because I can give him a script that you should answer him in such way, but he will
30 definitely going to forget that script as well, firstly and he will be during the cross examination
31 also, he will be looking out for me, so that I can help him out because those 11th or 10th or 12th
32 question, I have not prepared him for. So, the only preparation in the line, I think, during
33 preparation also... I think I have few tests also Dinesh, where I can also check by myself while
34 preparing a Witness that whether I'm crossing that line or not. First will be the ownership test.
35 So, if you are hearing the words of a Witness while interviewing him or making him
36 familiarised with the documents, if he's speaking out in his own words and you cannot able to

TERES

1 hear your own words from his mouth, then definitely you have not crossed that line. Your
 2 preparation is going on perfectly fine. And second, will be the memory test you can do, like if
 3 whatever he's talking or the facts or the finding or the opinions that is, as per his own memory
 4 or the recollections, then definitely you have not crossed that line. You should always check
 5 whether by showing a document or questioning or while preparing, did I just make him
 6 recollecting the memory, just whatever refreshing the memories, because the projects goes on
 7 for years and disputes as well. Or just to check whether I have just manufactured by showing
 8 some kind of a document. That test that we should also take. If he is talking about as per his
 9 own knowledge and wisdom, I think we have not crossed that line. We have not gone so far.
 10 And I think the transparency as well. At the same time, if I do not be fearful that Tribunal
 11 might come and see my preparation note then I think we have not crossed that line as well.
 12 And I think another one test we have is the independency. If your Witness is completely relying
 13 on its own knowledge and wisdom and not looking out for you during that cross examination,
 14 then definitely he's only going to state truthfulness and whatever and with the confidence as
 15 well. He will be confident, and by that, I think we will not be crossing that line.

16 **DINESH PARDASANI:** Yeah. No, thank you. This is very helpful. But I think things get
 17 complicated when we are in international arbitrations, because different jurisdictions have
 18 different rules. As far as India is concerned, tutoring is not allowed. You can only facilitate how
 19 an Arbitrator should be conducting and how Witness should be addressing. So, all those can
 20 be given and advice to the Witness, but nothing beyond. If you take UK position, UK is also
 21 stricter. There is criminal punishment for tutoring or the license can be cancelled. They're very
 22 strict. When it comes to Australia, they are slightly liberal. When it comes to Singapore, they
 23 are further liberal. But when we go to US, it's absolutely mandatory for a lawyer to tutor or to
 24 at least give him that live experience of cross examination, and it could be a deficiency in
 25 service for a lawyer if he's not training his witness well. Now, imagine an international
 26 arbitration happening in, say Africa, between a Singapore company or a UK company or
 27 Indian company and a US company. Now, obviously they are playing under different level
 28 field. US, is absolutely allowed. You can train your witness, but whereas in your jurisdiction,
 29 you can't. So how do you address it? In my view, obviously, IBA should have handled it. But
 30 even IBA doesn't provide for rules relating to Witness preparation. It provides for rules for
 31 everything else. There is only a passing reference in IBA, obviously, because multiple
 32 jurisdictions have different rules, and even IBA is not able to come to a consensus that, look,
 33 what should be the norms for witness preparation. And therefore, ideal way to resolve this is
 34 get that clarity from the Tribunal on Day-1 so that let them set the rules for preparation of
 35 Witness, so that no Party has an advantage over the other. So, I think that can be the way
 36 forward. But otherwise, I think maybe rules are required which can lay down for arbitrations

TERES

1 that look, Witness preparation is not required. I mean as we speak, Supreme Court recently
 2 passed a judgment on tutoring. They said, look, tutoring is obviously not allowed. They have
 3 laid down the rules. We all know. But again, international arbitrations, does it work for us? Do
 4 we lose on not doing it? I mean, there are these questions which are yet to be answered, but I
 5 think it makes sense to agree on the procedure with the Arbitral Tribunal so that there is a
 6 level playing field for both the parties and lawyers. Moving on to some other topic. We don't
 7 have much time left. Yes, Sure. Go ahead.

8 **ARPINDER SINGH:** So one point if I can add to this preparation of Witness, I saw
 9 interesting thing. In Singapore, when you have a whole day of cross examination, at lunch
 10 break, they actually keep you in a separate room. You can't speak to your own Counsel, you
 11 can't speak to your own side. In India, I felt, it was... you could chat. It wasn't as strict. So,
 12 maybe, as you correctly said, the rules are different, but maybe in India they should define it
 13 a bit better so that you at least know that Expert in between his arbitrations also doesn't get
 14 tutored *ki*, "You said this in the earlier half, don't say this in the second half." That's one thing
 15 which I just noticed practically. Now, I'm not a lawyer here so, I don't know the rules around
 16 it. But I just saw a much stricter guardrails outside.

17 The second thing I like to say is about lying, what you said, ma'am. One thing we've noticed is
 18 a good thing for you as lawyers and I'll give you a tip how to cross examine. If the Statement
 19 of Claim amount is the same as the Expert Witness, you have a field day because you can really
 20 ask 1000 questions. Because forget about tutoring. You have evidence of tutoring, right?
 21 Because it cannot be 100% the same as the Statement of Claim. That's the second point, I can
 22 just say. Third point on tutoring, I fully agree with Avni that lying is the first thing you cannot
 23 do, because sometimes Clients tell you that you just say this, it's fine. There's no evidence to
 24 prove it otherwise. But lying is lying. It doesn't matter whether you have evidence to prove it
 25 or that. So, I think for all Expert Witnesses, I would say stay as far away from that as possible.
 26 It's better to say I don't know, than say something which... maybe you didn't mean to lie, but
 27 you just said it because you didn't want to be embarrassed. So, another thing, it's a cultural
 28 thing. I found that with experts when we are prepping the Counsel while they are cross
 29 examining another expert, because that's become a bigger trend in India as Ratan sir said. The
 30 reality is when we are cross examining, we are also trying to ask for information, so it's better
 31 for the other side to say, I don't know than to try to create an answer because people get
 32 embarrassed. They say, if I say, I don't know, then the Arbitrators will think, oh, my God. So
 33 sometimes lying doesn't happen always because they're trying to lie happens because
 34 sometimes they just want to avoid an embarrassment. So there are many criteria and an expert
 35 but...

TERES

1 **DINESH PARDASANI:** I think even sometimes preparing a Witness too much is
2 counterproductive because the other side lawyer is also prepared and he knows his documents
3 so where it can lead, you never know. Those confident Witnesses can do more harm to you
4 than good. I think one last question. I think we'd only have four minutes left.

5 **RATAN SINGH SA:** Dinesh, you said we have 2 hours.

6 **DINESH PARDASANI:** Even I felt but...

7 **RATAN SINGH SA:** No. Watch will only show you one hour, right? So let us be sure whether
8 we have two hours or one hour?

9 **DINESH PARDASANI:** Because I was given an indication that we only have ten minutes
10 left?

11 **RATAN SINGH SA:** No. So who said this? We need to understand that so that accordingly
12 we can prepare...

13 **ARPINDER SINGH:** Can we get an Arbitrator?

14 **RATAN SINGH SA:** So now, Dinesh, there is something, I need to tell you because lot of
15 people sitting here in the hall would like to know because most of them would be cited as
16 Witnesses. You said tutoring how far and weather that has been answered by you and the
17 American position, English position and Avni also talked about this. If... Whenever somebody
18 comes to me and briefing Counsel comes to me and they ask me about this question, they ask
19 me this question, how I answer that? I say, two things are important. One, you as a lawyer owe
20 this to your Witness to tell him how this cross examination works in real life, what would be
21 the setup like? Like in the international commercial arbitration, Witnesses are supposed to sit
22 differently. They are supposed to sit on a chair, which is in front of the Tribunal. Right? He
23 may have a translator and so on and so forth. There the way cross examination happens,
24 whether you have a Tribunal which is coming from civil law jurisdictions. So, they'll be more
25 inquisitorial. If you have people coming from common law jurisdiction. And also find out from
26 your own experiences and from your colleagues whether that Tribunal is headed by people, or
27 you have people who are asking too many questions, or they simply lie down. Another thing
28 which is very important I tell the Witnesses, I hope you all understand Hindi. *Zyaada muh*
29 *khologe, makkhi jaayegi*. A Witness who tries to be over smart and speaks too much, he'll be
30 volunteering too many things, he'll be saying too many things if he's not coached well. And this
31 is from where a good cross examiner will take lead to trap you for another set of questions.
32 That is very... And last thing, Witnesses must be told what is your case theory. If he knows

TERES

1 what is the dispute, what is his position, why he is right, he should be convinced with that, he
2 should prepare himself for that, because you cannot tell him in advance, what all questions are
3 going to be asked. If he understands that, he's a good Witness.

4 **DINESH PARDASANI:** Thank you, sir. Thank you. I think moving on to the last question,
5 because we have only 15 minutes left. So, Arpinder did mention that he finds a lot of difference
6 in Indian lawyers cross examining him in India and overseas lawyers when they are cross
7 examining outside India. Now, there's a reason to it. Lawyers who work in Delhi High Court,
8 and I have all my life worked in Delhi High Court. We have never seen cross. Because all we
9 do is take injunctions and sit over it. So, we never learnt the art of cross examination. And
10 when I started doing arbitrations 10, 12 years back, it was my first arbitration. And this was an
11 arbitration filed by a Subcontractor against a Contractor and we were representing Contractor,
12 and Contractor said that look, you have to cross examine him. He received the advance of 20
13 crores, but he did not utilize it for project. And he also told me that he's utilized the money
14 when he got the advance, he gave 5 crores to mother in law, 5 crores to sister in law, 5 crores
15 to paternal uncle and 5 crores crores to some other relative. So I thought, it is my moment.
16 Now I need to cross examine him and get an answer, and obviously he will not say no to it. So,
17 obviously I started cross examining and there were two retired supreme Court judges. One of...
18 one was Chief Justice, and the third one was a Delhi High Court judge. And I started asking
19 questions from the Witness that look, is it correct that you paid 5 crores to your mother in law?
20 He said no. Is it correct that you paid 5 crores to your sister in law? He said no. I said, is it
21 correct that you paid five... I was assuming that he will say, yeah, five, five, five, five and it's
22 20. And he has not done it. The Tribunal said that, look, what nonsense questions are you
23 asking? How is it related to your matter? And he was absolutely right, because there has to be
24 some grace and respect in this entire process. And good sense prevailed and all I asked him
25 was that look, why don't you produce to me your bank statement. That was end of it. So, all
26 this learning we do, when we do cross examinations under seniors, how we learn as the process
27 goes on. But because this process was not going on in High Courts, unless people have worked
28 in District Courts, they do learn the art of cross examination, but High Court lawyers don't,
29 and thankfully, these arbitrations helped us in the last 10, 15 years to understand how it is
30 gracefully done. And I think that is why it is improving day-by-day. And I'm sure you're finding
31 difference in today's world. And we all have learned from not from cross examination in courts,
32 but from movies, like "A Few Good Men" where we see Tom Cruise and Jack Nicholson where
33 this famous question, "Did you order the code red?" So, that was all learning was from. So on
34 this background, I think I would want to know from Mr. Singh and everyone, do you think
35 there should be an animalistic dominance while cross examining a Witness? Do you think, we
36 need to overpower or it has to be a smooth process where you are taking the Witness along,

TERES

1 taking the Tribunal along? Your thoughts, because you go through that cross examination,
2 where will you be more comfortable in answering or misleading, I would say, whichever way?

3 **ARPINDER SINGH:** I would say you're absolutely right, Dinesh. When you said that in the
4 last two, three years, I've seen Indian cross examination also become similar like global. So
5 obviously a lot of experience has come into this. It's like good wine in that sense. I would say
6 smart cross examiner is one who fools the Witness into believing it's easy, and they does it
7 smoothly. I do investigations also, right? So I, not as a lawyer, but I cross examine lot of
8 Witnesses, trust me, I do 300 interviews on investigations every year. And I find I used to
9 shout and scream earlier. Just like ten years back. And I found I never cracked a case. Now, in
10 the last one, year I become the best friends with the Witness and I find it so easy. The person
11 trusts you, the person starts opening up, they start giving information. You have a two way
12 conversation. Much more constructive than the earlier days. So to answer your question in
13 very directly, yes, sir, I think as a Witness, I can tell you the best cross examiner is one who's
14 smart enough to do it smoothly. So I start feeling comfortable. I start opening up, I start giving
15 longer answers, as Ratan sir said, because Ratan sir has a very good point, he said, don't open
16 your mouth so much, so you catch some butterfly. But the fact is the smart cross examiner will
17 get you to open your mouth and start feeling comfortable. A bad cross examiner is one who
18 makes you so scared that you hunker down and start answering in yes, no. And when you start
19 answering in yes no, the Counsel has also lost the plot because the realities I'm not giving him
20 anything. I'm so guarded, every question he asks. Is your name Arpinder Singh? I'll say... I'll
21 actually won't even respond. I actually checked my report to make sure that my mother's name
22 is not given. So, I see Arpinder Singh, I look at it four times. Then I say, yes. So, it's such a
23 guarded response when I see a very confrontational and I've had this. As I said, one senior
24 Counsel was a criminal lawyer. I was so guarded every time he asked me for a page, I'll say I
25 want to see the page. I'll go to the page. I will never talk from memory. I will read the sentence
26 I will say I want to see the documents, then I will respond after 15 minutes. Because I want to
27 be sure that there's not one word I give him which will allow him to cross examine me. To
28 answer your question in long I would say that. I'll just like to add one more thing. We haven't
29 discussed video cross examinations. Nowadays, a lot of video cross examinations are
30 happening. I feel a lot of people, again, they are cheating in the sense you got another person
31 sitting in the room. Sometimes the Arbitrators catch it. Sometimes the arbitrators don't catch
32 it. Sometimes you have things next to you to help you. You got things written there. You got
33 your team sitting there. I feel with AI, and you know how kids go for classroom tests, right on
34 video? I think the future is where the technology will detect if you are looking suspicious and
35 you're doing something suspicious, but lot of cool stuff happening in our field of Experts,
36 which I don't think four minutes are enough to...

TERES

1 **DINESH PARDASANI:** No, you're absolutely right.

2 **RATAN SINGH SA:** See, I'll tell you what. Arpinder very rightly said, and this is the first
 3 principle and first theory of cross examination, that try to take the Witness along. Try to earn
 4 the trust of the Witness. And start with, because if you try to be bully, try to, if you try to bully
 5 the Witness, Tribunal will come to their rescue. And Tribunal may get upset and angry with
 6 you. That is one thing. Secondly, you do not earn the trust of the Witness. And start with
 7 seemingly harmless innocuous questions, so that you get answers in affirmative. Then come
 8 with important, interesting and intelligent question, he is in the trap. Now, this theory and the
 9 first principle that be polite to the Witness sometimes doesn't work. In 2014, I was cross
 10 examining a Witness in London under ICC Rules in English Law, under English Law case. I
 11 was doing all my own, and I was pitted against top level KCs and so on and so forth. In
 12 international arbitration, there is something called guerilla tactics. This means unethical
 13 practices. So that Witness who was a Phoenix guy, I am 6ft. He was almost 6ft and 6ft 7inches
 14 or something. Triple of my size. He was sitting in the witness box on the witness chair. He was
 15 staring at me as if he'll eat me. I was trying to have eye contact. I was trying to be cool. I was
 16 trying to exchange pleasantries. No. So I said, hey, buddy, now let me play with you. I started
 17 with the toughest things which I had prepared for him and I still remember, 8th question, he
 18 said something and Chair was very popular British KC. Very seasoned Barrister. I started 8th
 19 question I still remember he said something and I still remember 22nd question. He just
 20 answered the opposite. For me, overcoached Witnesses are my easiest prey. And 22nd
 21 question, he just answered the opposite. And in arbitration, whenever I teach cross
 22 examination, I love teaching it. I say, even if Witness has given inconsistent answer. At one
 23 place he says yes at another place, he says no, don't take explanation from him that which of
 24 the two answers is correct? Not done. You argue it later. But I was having complete control of
 25 the witness eye to eye. Once he said the different answer. Gave different answer at 22, I said
 26 therefore, Mr. Pecken... I still remember his name. Is it correct that you were lying before this
 27 Tribunal while answering Question 8? He said, yes. And that was his funeral. So sometimes
 28 you have to change your strategies depending on the type of the Witness you are confronted
 29 with, but I totally agree with Arpinder when he says that try to be polite, earn the trust, shake
 30 hands, laugh at each other, enjoy yourself. And that is the way you should go ahead.

31 **DINESH PARDASANI:** Thank you, Mr. Singh. I think we have, just in time. 1 second left.
 32 Thank you, everyone, and I hope you enjoyed this discussion. We don't have time for any
 33 questions but happy to answer and you can ask any of the panellists while having a cup of tea
 34 or coffee. We'll be happy to answer these questions. Thank you so much,

TERES

1 **RATAN SINGH SA:** Dinesh, I have still a question for you. Was it a two hours or one hour
2 session? Thank you very much.

3 **DINESH PARDASANI:** Thank you, sir. Thank you. Maybe a Statement of Claim is required
4 against them.

5 **HOST:** Okay, thank you for this interesting discussion. We will be having a break now and
6 we'll start the next session at 12:30. Thank you.

7

8 **~~~END OF SESSION 2~~~**

9

10