THE GUIDE TO ADVOCACY

SIXTH EDITION

Editors
Stephen Jagusch KC, Philippe Pinsolle and Alexander G Leventhal

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Publisher's Note

Global Arbitration Review (GAR) is delighted to publish this new edition of *The Guide to Advocacy*.

For those new to GAR, we are the online home for international arbitration specialists, telling them all they need to know about everything that matters.

Most know us for our daily news and analysis. But we also provide more in-depth content, including books like this one, regional reviews, conferences with a bit of flair to them and time-saving workflow tools. Visit us at www.globalarbitrationreview.com to find out more.

As the unofficial 'official journal' of international arbitration, we sometimes spot gaps in the literature. At other times, people point them out to us. That was the case with advocacy and international arbitration. We are indebted to editors Philippe Pinsolle and Stephen Jagusch KC for having spotted the gap and suggesting we cooperate on something.

The Guide to Advocacy is the result.

It aims to provide those newer to international arbitration with the tools to succeed as an advocate, whatever their national origin, and to provide the more experienced with insight into cultural and regional variations. In its short lifetime, it has grown beyond either GAR's or the editors' original conception. One of the reasons for its success are the 'arbitrator boxes' (see the Index to Arbitrators' Comments on page xv if you don't know what I mean) wherein arbitrators, many of whom have been advocates themselves, share their wisdom and war stories, and divulge what advocacy techniques work from their perspective. We have some pretty remarkable names (and are always on the lookout for more – so please do share this open invitation to get in touch with anyone who has impressed you).

We hope you find the Guide useful. If you do, you may be interested in some of the other books in the GAR Guides series, which have the same tone. They cover energy, construction, M&A, mining, telecoms, intellectual property and investor–state disputes, in the same unique, practical way. We also have a guide to

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assessing damages, and to evidence, and a citation manual (*Universal Citation in International Arbitration – UCIA*). You will find all of them in e-form on our site, with hard copies available to buy if you aren't already a subscriber.

My thanks to our editors, Stephen Jagusch KC, Philippe Pinsolle and Alexander G Leventhal, for their vision and editorial oversight, to our exceptional contributors for the energy they have put into bringing it to life, and to my colleagues in our production team for achieving such a polished work.

David Samuels
Global Arbitration Review
London
July 2023

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Introduction

Stephen Jagusch KC, Philippe Pinsolle and Alexander G Leventhal[1]

It is with great pleasure that we welcome you to the sixth edition of Global Arbitration Review's *The Guide to Advocacy*. Each edition offers the opportunity to explore new aspects of the advocate's role in international arbitration – from the artistry of oral and written advocacy to the expertise of regional or sector-specific arbitration to the guile of a master strategist. With this sixth edition, we are pleased to offer our esteemed readers new perspectives on second-chairing an oral argument and on cultural considerations in India.

The sixth edition carries the honour of being this publication's first edition to be released in a fully post-covid era. The pandemic forced arbitration practitioners to explore new ways of pursuing the administration of justice, adopting tools of technology that have been available for some time, but ill-exploited for a multitude of reasons. By no means have old methods become obsolete. However, there can be no doubt that the virtual era of arbitration has left its mark.

This is apparent in the technological trappings that can be expected in any arbitration. Remote hearings, paperless filings and virtual bundles are now a common feature of any arbitration and are here to stay for good. That is not without its effect on how the arbitration advocate approaches his or her task – whether that may be the significant challenges of cross-examining a witness remotely or using the benefits of technology to produce a more compelling written brief. Arbitration practitioners have had to adapt their advocacy to these exciting new conditions – as the sixth edition's authors explain.

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1 Stephen Jagusch KC, Philippe Pinsolle and Alexander G Leventhal are partners at Quinn Emanuel Urquhart & Sullivan LLP.

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However, that is not all. The post-covid world has given new voice to practitioners in jurisdictions and sectors beyond those historically favoured by arbitration. This edition seeks to give those practitioners an opportunity to explain to the rest of us the unique tasks of an arbitration advocate as well as the aspects that are common to virtually all jurisdictions and sectors.

Advocacy in arbitration covers a limitless array of concepts, skills and viewpoints. It is, no doubt, the art of persuasion: the capacity to transcend legal, cultural, contextual, linguistic and technological barriers to secure a favourable outcome for one's client. It is the arrows in the advocate's quiver that allow him or her to marshal evidence and present it in such a way that it guides the arbitrators' decision-making – the power of trenchant and tactful prose, a compelling opening presentation, the artfulness of a line of questioning in cross-examination, and the ability to transcend distance and physical barriers to draw the decision maker into one's argument. But advocacy in arbitration is also the art of strategy: the ability to craft a case theory from a boundless set of facts and an exotic applicable law, the adroitness to tailor the arbitral process to suit one's strategy. *The Guide to Advocacy* seeks to pull together the diverse strands of arbitral advocacy in one compendium and offer the reader the views of some of the most renowned practitioners in the field.

As you pore over the pages of this Guide, leading arbitration practitioners will invite you into their breakout room and offer you their thoughts on advocacy through each step of the arbitral process. They will share with you their meditations on how to forge a robust case strategy, execute eloquent written advocacy, conduct effective direct and cross-examination, act as an indispensable resource for the first chair in a hearing, deliver persuasive opening and closing presentations, and much more.

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CHAPTER 8

Cross-Examination of Experts

David Roney[1]

The cross-examination of expert witnesses is one of the most challenging aspects of advocacy in international arbitration. When executed effectively, it is possible not only to neutralise the evidence of the opposing party's expert witness, but also advance your own case theory in powerful ways. As with all witness examination, this requires complete mastery of the case file, careful preparation and a disciplined questioning technique.

Expert evidence may be adduced on a wide range of subject matter, such as defects in the design of software, delay in construction projects, the chemical composition of pharmaceuticals, the valuation of expropriated investments and questions of law. To conduct an effective cross-examination, it is necessary to become immersed in the relevant subject matter in a focused and practical way, usually by working closely with your client and own expert witness. This will enable you to expose the weaknesses in the expert evidence of the opposing party and help the arbitral tribunal understand and resolve the disputed expert issues in favour of your client.

This chapter sets out certain frameworks of analysis and guidelines for cross-examination that can be applied regardless of the subject matter of the expert evidence. These frameworks and guidelines can also be applied whether a particular international arbitration has a more common law or civil law character, although it is always necessary to tailor cross-examination to the specific witness

1 David Roney is a partner at Sidley Austin LLP. The author wishes to thank Tanya Landon at Sidley Austin LLP, as well as Michelle Chan and Dorothee Schramm, both formerly of Sidley Austin LLP, for their valuable assistance in the preparation of this chapter.

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Remember who is on the tribunal!

I recall a hard-fought case in which an advocate was vehemently arguing that testimony by a particular individual should be discarded on the basis of his qualifications. The witness in question was a technical surveyor. What the advocate had overlooked was that the arbitrator his party had appointed was also a surveyor!

I looked at my neighbour, perplexed: the advocate had just made his job more difficult simply by failing to keep in mind the very people to whom he was addressing his arguments. Presumably, at the outset of the case, technical expertise had seemed a valuable characteristic for this party, but as the case moved along, other considerations prevailed. Or perhaps it was simply the heat of the moment . . .

– Jackie van Haersolte-van Hof, London Court of International Arbitration

and arbitral tribunal. Before delving into the specifics of preparing and executing the cross-examination of an expert witness, it is useful to begin by considering the role of expert evidence in international arbitration.

The role of expert evidence in international arbitration

Expert witnesses have become a routine feature of international arbitration. Unlike fact witnesses, expert witnesses do not testify about events in which they were personally involved. Instead, the role of the expert witness is to provide opinion evidence to assist the arbitral tribunal in understanding and deciding specialised issues that go beyond the ordinary experience and knowledge of the layperson.

While there are different practices and procedures for dealing with expert evidence,[2] the most common approach in international arbitration today involves each party appointing one or more expert witnesses to prove its case. There are no formal rules of evidence governing the admissibility and use of this expert evidence in international arbitration. Nonetheless, certain general principles regarding party-appointed experts are now widely accepted.

2 Depending on the legal background of the parties and arbitral tribunal, expert evidence may be adduced through party-appointed expert witnesses or tribunal-appointed witnesses or some combination of the two approaches. This diversity of approaches is recognised by most of the major rules of arbitration: International Chamber of Commerce Arbitration Rules, Articles 25(2) and 25(3); London Court of International Arbitration Arbitration Rules, Articles 20 and 21; Swiss Rules of International Arbitration, Articles 27 and 28; Singapore International Arbitration Centre Arbitration Rules, Articles 25 and 26; and Hong Kong International Arbitration Centre Administered Arbitration Rules, Articles 22 and 25.

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Set an expert to catch an expert

The cross-examination of an expert witness is a very delicate exercise. Unless your own expert has provided you with ammunition that will make it possible for you to embarrass the expert, you are often well advised to ask only a few innocuous questions to which you know the answers, or even to ask no questions at all!

How to impugn the credibility of an expert? Ask your own expert to research thoroughly the written and oral musings of your opponent's expert. I recall some years ago (long before the internet or Google) that an expert witness I was cross-examining had opined previously in an obscure scientific magazine the exact opposite of the thesis he was presenting that day to the court. At an appropriate moment, I confronted the witness with his earlier article. He squirmed and tried to explain the different context, etc., but his credibility was damaged and the judge gave no weight to his opinion.

And, by the way, do not forget to ensure that your own expert has disclosed to you all written and oral opinion pieces on the subject matter of his or her expertise!

– Yves Fortier KC, Twenty Essex and Cabinet Yves Fortier

First and foremost, it is now almost universally accepted that a party-appointed expert must be independent and objective. For example, Article 5(2) of the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration (the IBA Rules) requires that a party-appointed expert must disclose 'his or her present and past relationship (if any) with any of the Parties, their legal advisors and the Arbitral Tribunal' and provide 'a statement of his or her independence from the Parties, their legal advisors and the Arbitral Tribunal'.[3] Certain guidelines and practices go further, particularly those influenced by English court procedures. This is best illustrated by Article 4 of the Chartered Institute of Arbitrators' Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration, which stipulates that '[a]n expert's opinion shall be impartial, objective, unbiased and uninfluenced by the pressures of the dispute resolution process or by any Party' and that '[a]n expert's duty, in giving evidence in the Arbitration, is to assist the Arbitral Tribunal to decide the issues in respect of which expert evidence is adduced."[4] Whether or not

3 The International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration 2020 (the IBA Rules), Article 5(2).

4 The Chartered Institute of Arbitrators, The Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration (2007), Article 4. See also V V Veeder, 'The Lawyer's Duty to Arbitrate in Good Faith', *Arbitration International*, 18(4) (2002), 431.

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party-appointed experts are considered to have an overriding duty to the arbitral tribunal, it is clear that experts must not be partisan advocates or 'hired guns', tailoring their evidence to suit the party that has appointed them.

Second, arbitral tribunals generally accept party-appointed experts as learned and qualified to express opinions within a given field of expertise, subject to cross-examination and specific submissions on the matter. Consequently, there is ordinarily no need for a party to apply for leave to submit party-appointed expert evidence or to prove in any formal way that the expert is qualified or that the testimony is the product of reliable principles and methods. That said, when adducing expert evidence, a party is well advised to demonstrate both that there are important disputed issues requiring expert evidence and that the specific party-appointed expert will be of assistance to the arbitral tribunal in deciding these issues. Questions most often arise in this respect with legal experts – many arbitral tribunals doubt the utility of lengthy expert legal opinions that cover well-trodden areas of the law and are effectively legal submissions in all but name.

Third, in most international arbitrations, each party is free to decide whether or not to cross-examine the opposing party's expert witnesses. Where no request is made to cross-examine an expert witness, Article 5(6) of the IBA Rules provides that none of the parties 'shall be deemed to have agreed to the correctness of the content of the Expert Report'.[5] If the IBA Rules have not been adopted, it is prudent to verify that this matter is covered by the relevant procedural rules to avoid the risk that the arbitral tribunal may draw adverse inferences from a decision not to cross-examine. Once you have determined that no adverse inferences will be drawn, it is important to ask yourself whether cross-examining each of the opposing party's expert witnesses will advance your case. For example, if an expert witness is demonstrably partisan and the issues that he or she addresses are not central, it is unlikely that your case will be advanced by giving that witness a platform to espouse partisan views in front of the arbitral tribunal. Instead, it may be far more effective to address these matters by oral or written submission. Also, if an expert witness does not actually testify at the hearing, the evidence of that expert often fades into the background and tends not to play a major role in the decision-making processes of the arbitral tribunal.

With these general considerations and principles in mind, the practical steps to be followed when preparing for and conducting the cross-examination of an expert witness will be considered.

5 The IBA Rules, Article 5(6).

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If the tribunal loses confidence in the expert's view of even a few issues, it will cause them to question their opinion on other issues

Don't try to rebut every issue on which the expert has opined. Pick the points on which you can most easily undermine the expert's credibility. If the tribunal loses confidence in the expert's view of even a few issues, it will cause them to question his or her opinions on other issues. This is particularly true when the expert's opinion reads more like an advocate's statement than that of a neutral and independent expert. In those circumstances, focus on the expert's most extreme statements.

When the expert's opinion has failed to acknowledge grey areas, on cross-examination the expert must either concede that another position is also reasonable or demonstrate, by refusing to do so, a lack of credibility. In one case, where I took this approach, the expert finally looked at me and said: 'Please stop.'

– David W Rivkin, Arbitration Chambers

Frameworks for analysing expert evidence

Every effective cross-examination of an expert witness begins with a careful analysis of the expert evidence on record, preferably with the assistance of your client and own expert witness. This analysis should be directed to two main objectives: (1) identifying areas for attacking the evidence of the adverse expert witness; and (2) identifying areas for seeking agreement with the adverse expert witness.

Identifying areas for attacking the expert evidence

When preparing for cross-examination, it is useful to think of the expert opinion as a conceptual construct built on several distinct pillars. One of the main objectives of your cross-examination is to weaken or destroy as many of these pillars as possible, so that the construct collapses.

Is the expert witness independent?

The independence of the expert witness is the first and most fundamental pillar of every expert opinion. If it can be demonstrated through cross-examination that an expert witness is not independent, this will often undermine the entirety of the expert opinion and the arbitral tribunal will place little or no weight upon it. Given the potentially devastating consequences of this line of attack, it is always worthwhile exploring this area in cross-examination, even if only briefly.

Begin broadly by asking whether the expert witness has any past or present relationship with the party that appointed him or her. For example, this issue may arise if an expert witness on accounting issues is also the auditor of the party. Beyond possible violations of professional rules applicable to auditors, this

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You must become an expert too

A good expert is one who can use simple, clear terminology when explaining technical issues to a layperson.

Make sure you instruct your expert at the outset and work with your expert in drafting your submissions and your cross-examination.

It can sometimes appear from the overuse of technical language in the submissions and their brevity on expert issues, including quantum, that counsel have not themselves properly understood the points they are making. Remember that your client does not just want to win, your client wants either to maximise recovery or minimise the amount they have to pay. Spend as much time as is necessary with your expert to master the technical issues and then ensure your submissions explain the issues effectively and in sufficient depth. If calculations are included, ensure they are again as detailed as possible so that the tribunal can follow them and understand how to apply the formula used. If the tribunal doesn't understand the technical issues or understand how the quantum is calculated, it can't give you the award you are seeking for your client.

– Juliet Blanch, Arbitration Chambers

witness likely has a direct financial interest in maintaining the ongoing auditor engagement and also may have been personally involved in certain factual issues in dispute.

The expert witness also should be asked whether he or she has been previously appointed as an expert by the same party or same law firm and, if so, how many times and when the last appointment occurred. In a recent London-seated arbitration, the adverse expert witness had listed the law firm that had appointed him as a reference in his curriculum vitae. Under cross-examination, the expert revealed that he had been appointed by this law firm more than 10 times during the previous five years. The opposing barrister attempted to downplay the significance of these repeat appointments by joking that he too listed the law firm in question as a reference on his curriculum vitae. The joke fell flat when the barrister was reminded that he had been engaged as an advocate, while the expert was meant to be independent.

This is one area where, contrary to the fundamentals of good cross-examination technique, you will need to ask open questions without knowing what answer will be given. The risks of asking open questions about an expert witness's independence are well worth taking, since the potential downside is minimal and the potential upside is significant.

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Dealing with an evasive professor

I was acting as counsel in a case under the SIAC Rules in which both sides engaged experts in foreign law. I was cross-examining the other side's expert, a distinguished law professor, and found that she was not answering my questions directly. So I asked her politely to please answer my questions 'Yes' or 'No' first, and then give whatever explanation she felt was necessary afterwards. She replied: 'No, I cannot do that. I am a professor of law. I cannot just give a "Yes" or "No" answer. I must first explain the general law, and then I will answer your question.' So as not to waste further time in arguing this approach with her, I then asked her a question which, admittedly, was a little long and complex. She then proceeded to give a long explanation about the general principles of the relevant foreign law, but concluded her answer without a 'yes' or a 'no'. I said: 'Professor, I have accommodated you by letting you give a long explanation of the law, but you haven't answered my question "yes" or "no".' She then looked at me blankly and said: 'And what was your question again?'

– Michael Hwang SC, Michael Hwang Chambers LLC

Is the expert witness qualified?

The expert witness's qualifications are the second pillar of every expert opinion. Specifically, does the expert witness have the requisite qualifications and experience to express an authoritative and reliable opinion on the subject matter? The entirety of the expert opinion or certain specific conclusions can be undercut by demonstrating through cross-examination that the expert witness is not qualified to express the opinions given or is straying beyond his or her field of expertise.

When preparing for cross-examination, it is advisable to investigate what academic and professional credentials are typically obtained by experts in the field, and to determine whether the adverse expert witness possesses these credentials. If not, this can be developed into a powerful line of questioning.

Academic and professional credentials are, however, only part of the picture. Most international arbitrations arise out of complicated real-world problems. As a result, an expert witness's practical experience in a given industry or field is often more relevant for the arbitral tribunal. Even if an expert witness has stellar academic credentials, it may be possible to attack the reliability of his or her evidence by demonstrating a lack of practical experience and insight. Similarly, an expert witness with good general experience in a given field may be open to challenge if he or she has no relevant experience with the specific expert issues in dispute. This type of attack is particularly effective if your own expert possesses both impressive credentials and relevant practical experience.

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For example, in a high-stakes arbitration seated in Geneva, the adverse expert witness expressed the view that a technology company would have no difficulty attracting highly skilled foreign workers to a facility in a developing country. Under cross-examination, the expert admitted that he had never visited the country in question and had never attempted to recruit skilled workers for that or any other developing country. He was ultimately compelled to accept that the arbitral tribunal should therefore prefer the evidence of our expert witness, who had first-hand experience of the country, including the difficulties of recruiting skilled foreign workers owing to ongoing civil unrest.

Counsel:	In your CV attached as Appendix A to your first expert report, you set out a long list of countries that you have visited.
Expert:	Yes.
Counsel:	[Country X] is not on that list?
Expert:	No, it is not.
Counsel:	You have never been to [Country X]?
Expert:	No, I have never been there.
Counsel:	In your CV, you also list in detail your professional experience.
Expert:	Yes.
Counsel:	You set out your specific responsibilities in each position in some detail.
Expert:	Yes, the descriptions are quite detailed.
Counsel:	You did not leave out any significant responsibilities in these different positions?
Expert:	No, I don't believe so.
Counsel:	You do not state anywhere that you have experience in recruiting skilled workers to [County X], do you?
Expert:	No, I have never done that.
Counsel:	In fact, you do not say anywhere that you have experience in recruiting skilled workers to any developing country, do you?
Expert:	No, I have never really been involved in recruiting workers.
Counsel:	You understand that [Claimant]'s expert, Ms [Y], lived for almost 15 years in [Country X]?
Expert:	That is what she has said.
Counsel:	Well, you do not dispute that fact, do you?
Expert:	No, I do not.
Counsel:	You also understand that, during the period from 2013 to 2015, Ms [Y] attempted to recruit skilled foreign workers to [Country X]?
Expert:	Yes, she has said that.
Counsel:	Ms [Y] has testified that she had great difficulty recruiting skilled foreign workers because of the ongoing civil unrest at that time in [Country X].
Expert:	I understand that.

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Counsel: Since Ms [Y] has first-hand experience of attempting to recruit workers to [Country X] during the relevant period, she is in a better position to testify about the difficulty of doing so than you are?

Expert: Yes, I suppose I have to accept that.

From time to time, expert witnesses with solid qualifications are engaged to address a particular subject matter and then go on to express opinions on matters outside their field of expertise. This often occurs because the instructing party does not wish to incur additional costs for a second expert. Whatever the reason,

On cross-examining legal experts

The answer to the question 'Should you cross-examine legal experts?' may differ for legal experts in technical issues or domestic law versus legal experts in international law.

In my view, counsel should cross-examine experts in technical or domestic law issues in which the arbitrators do not already have independent expertise. Whether to cross-examine experts in international law, however, should be determined case by case. Arbitrators will benefit most from cross-examination of legal experts in areas in which the arbitrators are less knowledgeable themselves.

– Stanimir A Alexandrov, Stanimir A Alexandrov PLLC

A better approach to legal experts

Cross-examination of legal experts is unhelpful and should be avoided. Instead I suggest the following method. Each party drafts a list of the questions they wish to ask the legal experts. These lists are communicated to the arbitral tribunal a few days in advance of the hearing or the experts' examination. The arbitral tribunal selects in those lists the questions that it finds useful to ask the experts and adds any questions that it finds appropriate. The list set up by the arbitral tribunal is not communicated before the examination. The questions are addressed to the experts sitting together at the witness stand. Once the list is exhausted, the parties may ask further questions if they wish. In most cases, counsel will not do so. The main advantage of this procedure is that it is time-efficient and that when legal experts are heard together, they tend to narrow their positions and agree on most issues. I firmly believe that a traditional cross-examination of legal experts does not make sense. It is totally unhelpful.

– Bernard Hanotiau, Hanotiau & van den Berg

it may be possible to demonstrate through cross-examination that the expert witness's qualifications are limited to a given field (for example, the quantification of damages), and certain conclusions in his or her expert report relate to a

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Defusing one expert's report
'I was criticised . . . this has caused me great personal concern'

The case involved the claimant's ability to develop a gas field in Northern Iraq, and to export the gas produced to Turkey and beyond. The respondent filed an 'expert report' from a North American lawyer who had some years of experience advising foreign investors in upstream energy projects in Iraq. His report concluded that the project was doomed because of local legal, constitutional, economic and political reasons. The report had something of the tone of a submission, rather than being a disinterested statement of opinion of an independent expert. The expert's cross-examination by a leading London silk commenced this way:

Q Now, Mr [X], are you qualified as an Iraqi lawyer?
A I am not.

Q Are you a constitutional law specialist?
A I am not.

Q Are you an expert on the interpretations of constitutions?
A I only have worked on petroleum regimes which, in my view, include those features of a constitution that speak to petroleum.

Q I see. Is it correct that you were recently called as an expert witness in the High Court here in England?
A On a matter involving [A] and [B], yes, I was.

Q And you were called as an expert in three areas. Industry practice, oil industry financing and Kurdish law.
A That is correct.

Q And is it correct that you were severely criticised by the trial judge [. . .]?
A It is correct that I was criticised by the judge in that case.

Q And he expressed, did he not, in his judgment, considerable doubts about your suitability as an expert witness on those two topics that were dealt with?
A He expressed doubt of my suitability as an expert witness on matters of investment banking, corporate finance.

Q I think he said that your expertise in the two fields that you dealt with were markedly inferior – was markedly inferior to the other experts.

. . .

Q I think we can look at the judgment if necessary. But I think when one reads it one sees that he says in the investment banking and the oil industry financing your knowledge, on your own admission, was peripheral?
A That's correct. I look back on this matter and would say that the evidence that I gave which I was asked to give in respect of oil and gas matters in the Kurdistan region evolved to include, as pleadings developed, discussion of matters related

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to investment banking. And I accept that that is at the periphery of my expertise. I think I have . . . I have some experience there, but perhaps not expertise. I was criticised.

. . .

Q It's also correct, isn't it, that he made serious criticisms of the substance of your evidence? The mistakes you had made, the changes that appeared at various stages in the reports, and so on. Is that correct?

A I would say he described two aspects of what I did as misleading. And, again, this has caused me great personal concern that I need to be careful in ensuring that when I speak to issues that are at the periphery of my expertise that I avoid any aspects of, you know – I stay within the boundaries of what is my expertise.

Q [The trial judge] also expressed doubts as to your independence, didn't he?

A He did express those doubts. All I can say is that I was independent of [A]. I had no intention to mislead the court in that matter. And I'm disappointed that the . . . with the outcome that suggested that I . . . that I had ventured beyond my area of expertise.

Q This is not a question of venturing beyond the area of your expertise. This criticism was based on what he called your tendency to act as an advocate. Do you remember that?

A I do remember those comments.

Q And so he thought you weren't independent because you saw your role to advocate your client's case; is that right?

. . .

Q But I put it to you that you're doing exactly the same thing in this case. Your reports are very substantially advocacy in support of [respondent's] position. Isn't that correct?'

In his closing, the claimant's counsel was hard-pressed to rely on Mr X's report.

– J William Rowley KC, Twenty Essex

different field (for example, marketing strategies for mobile phones in Asia). A strong argument can be made that the expert witness's opinions on any matters beyond his or her specific field of expertise should be rejected outright.

Notwithstanding the importance of qualifications, this is an area of cross-examination that should be approached cautiously and respectfully. Unless you are confident that the expert witness's overall credibility will be diminished because of serious deficiencies in his or her qualifications, an aggressive attack may backfire and create sympathy for the expert.

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Is the expert witness's opinion consistent with previously expressed views?

The third pillar of an expert witness's opinion is consistency. To weaken or destroy this pillar, it is necessary to determine whether the expert witness has previously expressed views on the expert issues in dispute. If so, two alternative lines of attack may be available.

First, if the expert witness has expressed views in publicly available sources that are inconsistent with those advanced in the arbitration, this will provide powerful ammunition for challenging both the substance and objectivity of the expert evidence.

This is most common with academics, since they tend to have a large body of academic publications in their field of expertise. In particular, legal experts will likely have published articles and books on the specific area of law in question and may have testified in the past on these issues in court or arbitral proceedings. Any discrepancy in the legal expert's views may cast doubt on his or her professionalism and objectivity.

It also may be possible to identify inconsistencies in the previously expressed views of professional expert witnesses. For example, investment treaty awards or court judgments may reveal that valuation experts have taken positions on the correct approach to choosing discount rates or assessing country risk that are incompatible with those advanced in the current arbitration.

Similarly, where there have been a number of different legal proceedings in connection with the same dispute, it is sometimes possible to find inconsistencies or helpful admissions in the past reports and testimony of the same expert witness.

Expert witnesses who have been criticised for a lack of consistency or objectivity by courts or other arbitral tribunals in published decisions, whose expert reports were excluded as lacking a credible foundation, or who have been disqualified as an expert in another case, are particularly vulnerable to attack during cross-examination.

Second, an alternative line of attack may be available if it can be shown that the expert witness has preconceived views that prevent him or her from considering the disputed expert issues in an objective and open-minded manner.

On occasion, expert witnesses are actively involved in policy development and may have made statements in the press demonstrating a commitment to a particular agenda. An expert witness may work closely with a competitor or competing technology, and therefore may be unable to view the technology in dispute in a neutral manner. Or perhaps the expert witness was personally

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involved in the events in dispute and took a particular position that he or she feels compelled to defend in the arbitration. In all of these instances, the expert witness's objectivity may be called into question.

Has the expert witness relied upon proper instructions and sound factual assumptions?

The instructions and factual assumptions relied upon by the expert witness are the fourth pillar of every expert opinion. This is one of the most common and successful areas of attack in cross-examination. It is frequently difficult to establish that an expert witness lacks proper qualifications or has made serious errors within their field of expertise. But in many cases, it is possible to undermine the expert witness's conclusions by showing that they are dictated by instructions designed to generate a particular outcome or are based upon flawed factual assumptions.

Expert reports usually set out the scope of the instructions received, a statement of the facts relied upon, a list of all materials reviewed and the conclusions reached on the different issues in dispute. For each conclusion contained in the report, you should carefully analyse what specific instructions and factual assumptions have been relied upon by the expert witness. Often, it is possible to demonstrate that the instructions have resulted in the expert witness carrying out an analysis that is too broad or too narrow, or directed to matters that are not relevant. For example, when quantifying damages for breach of a distribution agreement, one expert witness was instructed to calculate lost profits based upon a market that encompassed territories not covered by the distribution agreement during the relevant period. In other cases, a close review of the expert report may reveal instances where the expert witness has avoided giving a direct answer to a specific question put by the instructing party. This is usually because the expert witness does not agree with the proposition suggested by the question – a helpful point worth highlighting in cross-examination.

There are several different ways to challenge the factual assumptions underpinning the expert witness's conclusions. One classic approach is to substitute one of the expert witness's assumptions with a counter-assumption that is more reasonable and logically leads to a different conclusion. A fair-minded expert will often accept that, based upon this different assumption, he or she would reach a different conclusion. If an expert witness refuses to do so, this will suggest a lack of objectivity.

In some cases, it may be possible to find authoritative sources in the public domain that independently establish that the expert witness's factual assumptions are unreliable or unrealistic, or that different assumptions would be more

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appropriate in the circumstances. Sources of this kind might include studies published by international organisations, statistics gathered by regulatory agencies or standards issued by industry bodies.

Perhaps the most powerful way to challenge an expert witness's factual assumptions is to demonstrate that they are not consistent with the evidence on record. This can be done by taking the expert witness to contemporaneous documents that contradict the factual assumptions relied upon. If it can be shown that the expert witness neglected to read or cite an important document that does not support his or her position, or cherry-picked the evidence relied upon in reaching a specific conclusion, this will undermine not only the substance of the expert witness's opinion but also his or her overall credibility.

Similarly, an expert witness's opinion can be undercut by showing that key factual assumptions are inconsistent with the evidence of the fact witnesses who were personally involved in the events in question. In one recent construction arbitration relating to a large energy project, the owner's expert witness took the position that the contractor had performed certain works that were not required at the time because no project schedule was in place. When the owner's project manager admitted under cross-examination that there was, in fact, a project schedule at the relevant time, this admission was put to the expert witness. Instead of conceding the point, the expert argued that the views of those actually involved in the project were not relevant to his opinion on the need for the contractor's works. This prompted the presiding arbitrator to wryly comment that, while he understood the theory advanced by the expert, the arbitral tribunal was required to decide the case based on the facts.

Counsel:	In paragraph 416 of your second expert report, you state: 'It is quite simply wrong and nonsensical for [Contractor] to argue that it was necessary to proceed with the out-of-scope works in February 2010 because [Employer] was insisting on compliance with the project schedule at that time.'
Expert:	Yes.
Counsel:	Your position is that there was no project schedule in place after January 2010?
Expert:	Yes. That is my position.
Counsel:	On that basis, you go on to say that there was no schedule-driven reason for [Contractor] to proceed with the out-of-scope works in February 2010?
Expert:	Correct.
Counsel:	Are you familiar with Ms [X] of [Employer]?
Expert:	Yes.
Counsel:	She was one of the leaders of [Employer]'s technical team for the project?
Expert:	That is correct.

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Counsel: She worked on the project from the beginning until the end, when the project was cancelled?

Expert: Yes. That is my understanding.

Counsel: You were present in the hearing room on Tuesday when Ms [X] was testifying?

Expert: Yes. I was present.

Counsel: At page 1892, line 13 of the transcript, Ms [X] stated as follows: 'When [Employer]'s Technical Committee considered the additional scopes of work proposed by [Contractor] for February 2010, we compared the proposal against Project Schedule M.'

Expert: Yes.

Counsel: Further down in transcript at page 1895, line 20, Ms [X] testified as follows: 'Project Schedule M was the only schedule in place at that time and all the works had to progress in accordance with the dates set out in Project Schedule M.'

Expert: OK. That is what she said.

Counsel: You accept that, contrary to what you stated in your expert report, there was in fact a project schedule in place after January 2010?

Expert: Well – that is her opinion.

Counsel: Ms [X] was on the ground at that time and actively involved in the project, correct?

Expert: Yes.

Counsel: And you were not.

Expert: No, I wasn't. But my opinion on the validity of the schedule is not necessarily based on looking at what the people on the project think was the schedule. I do not consider an unrealistic schedule to be a valid reason to proceed with works.

Counsel: So you are saying that Ms [X]'s understanding of whether there was a valid and binding project schedule in place in February 2010 is not relevant to your analysis?

Expert: Yes, I suppose that is what I am saying.

Counsel: But you agree that the parties understood there was a valid and binding project schedule in place in February 2010?

Expert: They appeared to be relying on Project Schedule M, yes.

Counsel: Whether or not you sitting here today in 2016 believe that project schedule was reasonable, the fact of the matter is that both parties were working to achieve Project Schedule M back in February 2010.

Expert: My view is that it was not reasonable or realistic for the parties to be working towards Project Schedule M back in February 2010.

Presiding arbitrator: Mr [Expert], I understand your position. But the Tribunal must decide this case based on the facts at that time. The Tribunal will need to consider whether, based on the agreed project schedule in place in February 2010, [Contractor] had an obligation to proceed with the works necessary to achieve that schedule.

Expert: Mr Chairman, yes, I understand the difference in the question.

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Has the expert witness chosen appropriate methodologies and applied them correctly?

The fifth and final pillar of every expert opinion is the correct choice and application of methodologies. Expert witnesses are invariably required to apply a specific methodology, theory or calculation to analyse each disputed expert issue and arrive at a conclusion. This often involves choosing one methodology over another, which may affect the conclusions that are reached. Whatever methodology has been chosen, it is equally important to consider whether the expert witness has applied this methodology correctly.

Through cross-examination, it may be possible to establish that there are several different recognised methodologies in a given field and, for no particular reason, the expert witness has selected the one methodology that favours the appointing party. Alternatively, the expert witness may have chosen to apply different methodologies to similar types of claims in an effort to arrive at particular outcomes.

Another approach is to attack the choice of methodology on the basis that it is not generally accepted in the field or not applicable to the case at hand. To pursue this line of questioning, it is necessary to determine whether the expert witness's choice of methodology is supported by authoritative treatises, guidelines or similar sources. If there are no such sources, you must investigate whether there is any consensus within the relevant community of experts regarding the reliability of the chosen methodology and the appropriateness of applying it in the circumstances. If the majority of experts in the field would ordinarily use a different methodology and arrive at a different conclusion, this will cast serious doubt on the reliability of the expert witness's evidence.

Occasionally, the expert witness's approach or methodology involves nothing more than an expression of pure subjective opinion. Since it is difficult to test the accuracy and reliability of such an opinion, cross-examination may simply highlight the unsubstantiated and unverified nature of this expert evidence. In closing submissions, the arbitral tribunal should be reminded to take this into account when deciding what, if any, weight to afford the expert witness's opinion.

One additional way to attack the expert witness's choice of methodology is to compare and contrast it with the methodology adopted by your own expert. If it can be demonstrated that your expert witness's methodology is more accurate, reliable or appropriate for the case based on several objective factors, this will provide strong grounds to argue that the arbitral tribunal should prefer the conclusions that your expert has reached.

Beyond critiquing the choice of methodology, it is necessary to ascertain whether the expert witness has made any errors in applying the methodology. Unless your law firm has an in-house team of accountants, economists or

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How to examine the tribunal's legal expert

A tribunal presented with irreconcilable expert testimony about the same legal system, or by evidence from only one side because the respondent has chosen not to participate in the proceeding, sometimes calls in its own legal expert.

That presents the lawyers in the case with the need to decide whether to cross-examine the tribunal's expert. If the conclusions reached by the tribunal's expert are consistent with the lawyer's case, or can be reconciled with it, the lawyer would do well to remember that the most effective cross-examination often consists of: 'No questions, Madam President.'

However, a legal expert, even a tribunal-appointed expert, who presents a view of the applicable law that would be fatal to the lawyer's case must be cross-examined.

Unlike an adversary's legal expert, the tribunal's expert cannot be treated as a hostile witness, because the tribunal will resent this treatment of someone it selected. The most effective way to approach the delicate task of cross-examining the tribunal's expert is first to elicit confirmation of all the points on which the expert is in agreement with the lawyer's case – there will always be some. The challenge is then to politely draw the expert's attention (and the tribunal's) to the shortcomings of the expert's reasoning on the points of disagreement or to authorities that contradict that reasoning. However tense the examination may become, and however hostile the expert may appear, the lawyer must never appear other than perfectly polite.

– John M Townsend, Hughes Hubbard & Reed LLP

scientists, your own expert witness can usually do this efficiently. Any errors in applying the chosen methodology can then be highlighted to good effect during cross-examination.

Where scientific tests, financial modelling or any other type of complex or time-intensive analyses have been undertaken, it is worth exploring in cross-examination who exactly carried out this work and how closely they were supervised. It is often the case that the expert witness has delegated this type of work to others who may or may not have been appropriately qualified to do the work or adequately supervised. If it can be demonstrated that this was the case or that the expert witness is not sufficiently familiar with the details of the work performed, the arbitral tribunal may not be comfortable relying upon the conclusions reached by the expert witness on the basis of this work.

Identifying areas for seeking agreement with the expert witness

A second and perhaps even more important objective of your cross-examination is to highlight areas where the adverse expert witness agrees with facts or conclusions that support your case theory.

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For example, an expert witness might make a number of statements in favour of the appointing party, but the logical implications of these statements could confirm your position. By carefully positioning each of these statements in cross-examination, the expert witness may be boxed in and compelled to accept the logic of your argument.

Alternatively, important admissions may be obtained by launching a collateral attack on matters that were not addressed in the expert report, but are squarely within the witness's field of expertise. The expert witness is usually not prepared for these lines of questioning, and therefore may more readily accept propositions helpful to your case. In one recent Paris-seated arbitration, an expert witness was called to testify about alleged deficiencies in certain specific tests carried out by an independent inspection agency. While not addressed anywhere in his report, the expert was compelled to make a number of crucial admissions under cross-examination about general industry standards applicable to such agencies. Arbitral tribunals will frequently allow these questions because they help to narrow the issues in dispute.

Guidelines for the cross-examination of expert witnesses

Once the expert evidence on record has been analysed, it is helpful to consider certain practical guidelines for planning and executing the cross-examination of an expert witness. These guidelines focus on: (1) the preparation of a topic outline for cross-examination; and (2) techniques for conducting an effective cross-examination.

Preparing a topic outline for cross-examination

One of the keys to an effective cross-examination is a detailed topic outline. This outline will structure not only your notes, but also your overall strategy for approaching the different lines of questioning to be pursued.

- Each area of cross-examination should be broken down into one or more separate chapters.[6] Each chapter should focus on one specific fact or goal that advances your case theory. You should then map out your questions in a logical progression towards that specific fact or goal. Each chapter should be free-standing, so that it can be moved around within the overall cross-examination to achieve the best effect.

6 For the chapter method of cross-examination, see L S Pozner and R J Dodd, *Cross-Examination: Science and Techniques* (The Michie Company, 1993).

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On hot-tubbing
'Approach expert conferencing with caution'

Expert conferencing is becoming increasingly popular in international arbitration. For the tribunal, expert conferencing can provide a welcome opportunity to see the experts directly engage each other, which may help to find areas of agreement and thus narrow the issues in dispute. However, counsel should approach expert conferencing with caution. In my experience, the personalities of the experts can have a significant impact during expert conferencing. An expert with a more forceful personality can overshadow a more knowledgeable expert who is more reserved or does not insist on having the last word. Before agreeing to expert conferencing – indeed, perhaps even when engaging an expert at the outset of the case – counsel should carefully evaluate not only the expert's knowledge and presentational skills but also his or her demeanour in person.

– Stanimir A Alexandrov, Stanimir A Alexandrov PLLC

- The different chapters of your cross-examination should then be ranked as strong, moderate or weak. Ideally, it should be possible to identify two or three 'power chapters' that will cleanly emphasise important aspects of your case theory.
- All the chapters should then be sequenced to give structure to the cross-examination. The basic rule of sequencing is to start strong and end strong. This is because the beginning and the end of your cross-examination will have the greatest impact on the arbitral tribunal. Always start with two or three short and strong chapters, so that you gain control over the expert witness. Longer and more complex chapters should be placed in the middle of the cross-examination, where certain risks can safely be taken. Finally, end with a power chapter, so that the arbitral tribunal is left with a positive overall impression of the cross-examination.

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Technical witness conferencing yielded more insight than cross-examination

Cross-examination of technical witnesses and experts may not always be the most efficient method. Years ago, I was chairing an ICC arbitration where the core of the dispute revolved around intellectual property rights and one of the main issues was which side was entitled to use the developments and improvements of the original invention. The contract concluded at the origin by the parties provided for sharing specific developments of certain segments of the invention. The witnesses who appeared to testify were all former or present technicians of the parties who were involved in the negotiations of the contract at the outset and who over several years were jointly involved in the further development of the invention. When being cross-examined by counsel, they were so well prepared that they virtually repeated what they had written in their witness statements. Realising that this was fruitless, the members of the tribunal successfully proposed witness conferencing with all the technicians. After about half an hour, the witnesses forgot about the instructions they had received from counsel prior to the arbitration and started communicating among themselves in a very open and congenial manner. The arbitrators had the impression that the witnesses were just continuing with the technical exchange they had at the time they closely worked together. With the 'revival' of the cooperative team spirit, a constructive basis was found, which allowed the arbitral tribunal to put questions to the witnesses and receive useful answers for the better understanding of the relevant technical aspects.

– Georg von Segesser, von Segesser Law Offices Ltd

Techniques for conducting an effective cross-examination

By carefully analysing the expert evidence and preparing a detailed topic outline, you will develop a clear strategy for your cross-examination. To execute this strategy at the evidentiary hearing, it is essential to apply certain tried and true techniques for conducting an effective cross-examination of an expert witness.[7]

- Many of the challenges of cross-examining expert witnesses are related to the complexity of the subject matter. The more complex the subject matter of the cross-examination, the more important it is to focus on the fundamentals of good questioning technique:

7 These cross-examination techniques are drawn from many different sources, including the author's personal experiences and original materials on advocacy, Foundation for International Arbitration Advocacy workshop materials and L S Pozner and R J Dodd, *Cross-Examination: Science and Techniques* (The Michie Company, 1993).

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  - Use a 'headline' to identify each new topic to be covered; for example: 'I would now like to focus on the methodology you adopted to quantify the net present value of the investment.'
  - Use only closed questions, unless there is a specific reason for not doing so. A closed question is a declarative statement of fact, not an enquiry; for example, 'You inspected the power plant on two occasions?'
  - Use facts, not conclusions. Do not argue your case with the expert witness, but instead focus each question on a specific fact established by the evidence on record.
  - Ask only one fact per question. Keep each question short and use simple words. Ideally, use the expert's own words to make your point, rather than characterising or paraphrasing. Avoid all adjectives or quibble words. This is essential for control and clarity when covering complex technical subjects.
  - Listen carefully to the answer, and follow up. Do not be fixated on the next question in your notes. Make certain that you obtain the answer you want before moving to the next point.
- At the beginning of the cross-examination or possibly at the beginning of different chapters, it may be necessary to destroy certain 'safe havens' that the expert witness could use to evade damaging lines of questioning. For example, you may need to establish that the expert witness reviewed certain key documents or was aware of particular facts before you will be able to obtain helpful admissions.
- Each point to be made on cross-examination needs to be set up. Usually, the best approach is to develop a point obliquely, rather than confronting the expert witness directly. By carefully marshalling a series of individual facts, you will enable the arbitrators to draw their own inferences and conclusions regarding the expert's evidence. This is always far more convincing than argumentative questioning by counsel.
- Once the cross-examination is under way, do not change the planned sequence of your chapters. Expert witnesses are often adept at deflecting questions by raising side topics or new matters. Do not be distracted by them. You have structured your cross-examination in a certain way for good reason, and it is important to remain confident in your plan of attack.
- It is nonetheless necessary to remain flexible as the cross-examination evolves. Be ready to discard chapters or change strategy as appropriate. If a particular line of questioning becomes bogged down, there is nothing to be gained by

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arguing endlessly with the expert witness. It is far better to move on to a different short and strong chapter that will allow you to reassert control and refocus the arbitral tribunal's attention on your case theory.

- Finally, always be respectful and polite to the expert witness. You must earn the right to become aggressive by repeatedly demonstrating that the expert is being unfair, unreasonable or untruthful. No matter how difficult the expert, remain professional and in control – this is essential to assess the witness's evidence and the impact of your questioning on the arbitral tribunal.

Additional considerations relating to virtual cross-examination

With the travel and other restrictions adopted in response to the covid-19 pandemic, virtual hearings have now become commonplace in international arbitration. Having settled into this new reality, arbitral tribunals are likely to be more open to conducting hearings, in whole or in part, in a virtual format.

As a consequence, every counsel active in international arbitration must now master the virtual cross-examination. There are a number of key considerations in this respect.

- Preparation is essential to ensure that you are fully comfortable with all aspects of the technology and are able to navigate it seamlessly throughout your virtual cross-examination. It is particularly important to verify that the documentary evidence is well organised (preferably in an electronic bundle) and then practise making use of it in advance of the hearing.
- Before beginning your cross-examination, ensure that the expert witness is alone in the room where he or she is testifying and only has access to a clean set of the case materials (not to any notes or electronic modes of communication).
- Put up your cross-examination notes on the screen directly in front of your video camera so that you can both see your notes and maintain eye contact with your camera.
- Throughout the cross-examination, speak slowly and in very short sentences to avoid speaking over the expert witness, creating confusion and losing control. As you cannot rely on your physical presence and body language for emphasis, focus on modulating your voice to keep the expert focused and the arbitral tribunal engaged.
- If possible, during the virtual cross-examination, put up each document on the screen. Then identify the document and each passage clearly before addressing it. Read in all quotes from the documents. If the documents cannot be put up on the screen, ask the expert witness to expressly confirm that he or

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Experts can make or break a case

Experts can make or break a case. Once, counsel for the losing party asked me, as its party-appointed arbitrator – well after the award had been rendered and the period for set-aside had passed – what I viewed as the single most important reason for his loss. My answer was simple. Expert testimony in the case was critical not only on damages but also on liability issues, and his expert was self-contradictory, evasive, unfamiliar with the basic literature, not to mention overly defensive. Under these circumstances, superb advocacy by counsel can go only so far.

– George A Bermann, Columbia Law School

she is looking at the relevant document and passage before asking any question about it, to minimise the risk of misunderstandings and to create a clear record on the transcript.

- Establish a confidential means of communicating with your own legal and expert teams so that you can easily and securely obtain real-time input on potential follow-up questions or other observations regarding answers provided by the opposing expert.
- Due to the challenges of maintaining clear communications and navigating documents in a virtual format, plan for your questioning to take longer than usual. Focus on the critical points and generally be less ambitious with the scope of your cross-examination.
- Be aware that your facial expressions and interactions with your team members are more visible to the arbitral tribunal in a virtual hearing. Monitor your own video image to ensure that you come across as professional at all times.
- The facial expressions and reactions of the expert witness are also magnified, which helps both cross-examining counsel and the arbitral tribunal to assess the expert's testimony. Use this feature of the virtual cross-examination to your advantage.

Additional considerations relating to witness conferencing

In addition to cross-examination, it is now commonplace in international arbitration to hear expert witnesses through witness conferencing.[8] Witness conferencing is the simultaneous questioning of two or more witnesses from the opposing sides of the case. The exact format and procedure for witness conferencing can vary

8 W Peter, 'Witness Conferencing', *Arbitration International*, 18(1) (2002), 47.

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significantly from one arbitrator and case to the next. Often, however, traditional cross-examination is followed by witness conferencing with the opposing expert witnesses on a particular subject matter being heard together.

While a full discussion of witness conferencing is beyond the scope of this chapter, it is important to consider in advance of the hearing whether each point to be covered with the opposing expert witness would be best addressed through cross-examination, witness conferencing or both.

- During cross-examination, you have complete control over the topics that are covered. This is not the case with witness conferencing. Accordingly, any critical points should be addressed, initially at least, through cross-examination. Also, if a clear foundation needs to be established through a series of questions, it is usually best to develop the point first through cross-examination. Witness conferencing can often be a free-for-all, and you will rarely have the opportunity to ask more than two or three questions in sequence without interruption.
- Other points might, however, be made more effectively through witness conferencing. For example, you may be able to put a few key questions to your own expert witness and then immediately use the answers to pin down the opposing expert in a way that would not be possible in cross-examination. This can be particularly useful if the arbitral tribunal is having difficulty grasping a complicated technical issue or where the opposing expert is using technical double-speak to confuse the issue.
- In any case, as counsel, your ability to control witness conferencing is limited. Consequently, you should not overestimate what can be achieved through witness conferencing, and instead rely primarily on cross-examination to advance your case theory.

Conclusion

By applying the frameworks of analysis and guidelines for cross-examination outlined in this chapter, any reasonably intelligent lawyer can learn to conduct a competent cross-examination of an expert witness. Cross-examination is not a dark art – it is the product of know-how, hard work and practice.

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APPENDIX 2

Contributing Authors

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David Roney is a partner and global co-leader of Sidley Austin LLP's international arbitration group, based in Geneva, Switzerland. With more than 30 years of experience, he has acted as counsel in international commercial and investment treaty arbitrations involving a broad range of industry sectors, business transactions, governing laws and places of arbitration. In addition, David has served as chair, sole arbitrator and co-arbitrator in numerous international arbitrations under the major institutional and ad hoc arbitration rules.

David is co-founder and president of the board of trustees of the Foundation for International Arbitration Advocacy. In that capacity, he has provided training in the examination and cross-examination of fact and expert witnesses to hundreds of international arbitration practitioners around the world. He is also a member of the Arbitration Court of the Swiss Arbitration Centre, a member of the Users Council of the Singapore International Arbitration Centre and an adjunct faculty member at the MIDS – Geneva LLM in international dispute settlement offered by the Graduate Institute of International and Development Studies. He speaks and publishes regularly on international arbitration topics.

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Successful advocacy is always a challenge. Add a matrix of languages, (sometimes exotic) laws and cultural backgrounds – and you have advocacy in international arbitration.

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