



Institute for  
**TRANSNATIONAL  
ARBITRATION**

# 27<sup>th</sup> Annual ITA Workshop

## Subconscious Influences in International Arbitration



### 27<sup>th</sup> Annual ITA Workshop Subconscious Influences in International Arbitration

June 17 - 19, 2015

Westin Galleria Hotel • Dallas, Texas

**Register Now!**  
[cailaw.org/ita-wkshp](http://cailaw.org/ita-wkshp)

### Highlights

- | The #1 annual international arbitration conference in America
- | Keynote Speaker: **Prof. Jeffrey J. Rachlinski**, Cornell Law
- | Featured Luncheon Speaker: **Donald Francis Donovan**, Debevoise & Plimpton LLP, New York
- | Mock scenes and expert panels on subconscious influences, cultural expectations and persuasion
- | Young Arbitrators Dallas Roundtable
- | Workshop Dinner at the Sky Lobby, The Petroleum Club of Dallas and other special networking events
- | **ITA Members** attend the Workshop and all membership activities for **free**, including the Advisory Board Annual Dinner at the Dallas Country Club and ITA Forum



*ITA is an Institute of*  
**THE CENTER FOR AMERICAN  
AND INTERNATIONAL LAW**

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Miami, FL

**Margaret L. Moses**  
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School of Law  
Chicago, IL

**Luke A. Sobota**  
Three Crowns LLP  
Washington, D.C.



2014 ITA Workshop

*“Addressing some of the toughest/complex issues with clarity and thoughtful presentations.”*

- 2014 Participant

### Introduction

What makes a human being decide something in one way or another?

Under most civilized conceptions, “justice” is based on an objective application of pre-set rules to the facts. Factors extraneous to the rules or the facts are considered to have no place in a fair determination. Hence, the blindfold on the image for the figure holding the scales of justice in her hand.

Most civilized systems of justice, at least on paper, agree that the consideration of some factors, such as race, religion, and gender cannot in fairness be considered when rendering an impartial decision. In some societies much attention has been paid to the need to exclude such factors from consideration and indeed some progress has been made.

Recent research has shown, though, that many other far, subtler extraneous factors affect human decision-making. As it turns out, the human reasoning process is subject to subconscious influences that can lead to decisions that are not the product of an “objective application of pre-set rules to the facts.”

In his groundbreaking work, Nobel Prize winner and Princeton Professor Daniel Kahneman has shown how cognitive biases such as anchoring, hindsight bias, confirmation bias, and other flaws derail logic and cause us to reach erroneous results. This phenomenon, then, must be a key concern to those involved in the administration of justice and the resolution of disputes. If we agree that a sound justice system for an orderly society depends on an objective application of pre-set rules to a set of facts, then these error-inducing factors should be extirpated from the system. Understanding the factors and how they affect our decision-making is a first step towards that end.

In this year’s annual program, the ITA will take on this important subject. Keynote speaker Cornell Law Professor Jeffrey Rachlinski will present specific evidence of how these factors affect even the most sophisticated and best decision-makers. The program will then dissect the arbitral process into stages, and see how factors such as the biases mentioned affect perception and decision-making. Beyond that, the program will look at the effect of different legal cultures such as a common law orientation and civil law orientation have on the process. Experts will discuss the impact of these issues upon the overall strategy of the case, selection of arbitrators, written advocacy, oral advocacy, and tribunal deliberations. The program brings together leading arbitration specialists from around the world, assuring cross-cultural perspectives of these important issues. The audience will have an opportunity to ask questions of these experts.

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3:00 REGISTRATION

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3:30 WELCOME TO THE WORKSHOP

— **R. Doak Bishop**, Chair, ITA Advisory Board, King & Spalding LLP, Houston

### YOUNG ARBITRATORS DALLAS ROUNDTABLE

*Presented by the*  
ITA Young Arbitrators Initiative Committee

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3:35 WELCOME TO THE ROUNDTABLE

— **Ruth Teitelbaum**, Vice Chair, Young Arbitrators Initiative Committee, Freshfields Bruckhaus Deringer US LLP, New York

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## 3:40 IS INTERNATIONAL ARBITRATION REALLY FLEXIBLE?

Although procedural flexibility is one of the most cited benefits of arbitration, some procedures have become widely accepted by international arbitration practitioners. Are these widely accepted procedures the natural product of years of arbitration experience or are they actually the result of unexamined habit and/or the preponderance of a given legal culture? As new players with different backgrounds enter to the international arbitration market, are the usages applied by these new-comers being truly assimilated by international arbitration?

**MODERATOR** — Julie Bédard, Skadden, Arps, Slate, Meagher & Flom LLP, New York

**PANELISTS** — Fabiano Robalinho Cavalcanti, Sergio Bermudes Advogados, Rio de Janeiro  
— Noradèle Radjai, Lalive, Geneva

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## 4:30 BREAK

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## 4:40 IS INTERNATIONAL ARBITRATION REALLY OPEN TO NEW FACES?

Arbitral institutions are making a great effort in creating opportunities for new faces, by nominating younger professionals as arbitrators. However, are practitioners and parties prepared and willing to appoint new faces? What does it take to be nominated as arbitrator in international cases?

**MODERATOR** — Cecilia Flores Rueda, Co-Chair, Membership Committee, Flores Rueda Abogados, Mexico City

**PANELISTS** — Erica Franzetti, Weil, Gotshal & Manges LLP, Washington, D.C.  
— Thomas W. Walsh, Sullivan & Cromwell LLP, New York

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## 5:30 CLOSING REMARKS

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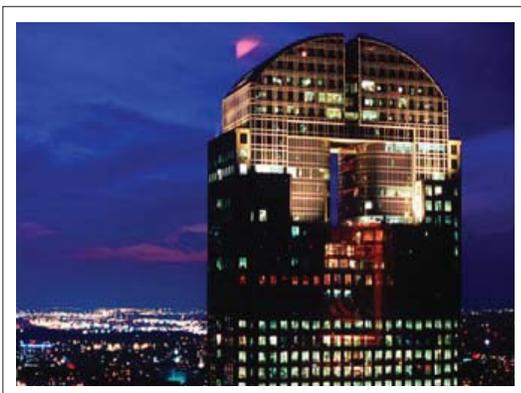
## 5:30 WORKSHOP WELCOME RECEPTION

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## 7:00 WORKSHOP DINNER (Optional)



**SKY LOBBY, THE PETROLEUM CLUB OF DALLAS**  
40th Floor, JP Morgan Chase Tower Building

*Sponsored by*

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& Plimpton**

*(Please indicate on the registration form if you wish to attend – ticket price: \$110 per person. Buses will depart from the hotel lobby at 6:40 for dinner and will return to the hotel at the end of the evening).*

# June 18

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## 9:00 WELCOME

— R. Doak Bishop, Chair, ITA Advisory Board, King & Spalding LLP, Houston

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**9:10 SUBCONSCIOUS INFLUENCES IN ARBITRAL DECISION-MAKING**

A number of studies by psychologists show that most decision-making actually occurs at a subconscious level. This panel will discuss how arbitrators, by recognizing the role of subconscious intuition, may arrive at better decisions. Conversely, the panel will consider how advocates who understand subconscious forces may more persuasively influence the decision-making process.

**MODERATOR** — Prof. Margaret L. Moses, Workshop Co-Chair

**KEYNOTE** — Prof. Jeffrey J. Rachlinski, Cornell University Law School, Ithaca

**COMMENTARY: Individual versus Group Decision-making in Arbitration** — Prof. Shari Seidman Diamond, Northwestern University School of Law, Chicago

**COMMENTARY: Enhancing the Deliberative Overlay in Arbitrator Decision-Making** — Edna Sussman, SussmanADR LLC, Scarsdale

**10:20 CROSS-CULTURAL APPROACHES TO ADVOCACY AND ARBITRAL DECISION-MAKING**

A panel of advocates and arbitrators from unique legal and cultural traditions will provide a different perspective on subconscious influences by considering the impact of national and legal cultures on advocacy and judging. Panelists will explore areas of convergence between different groups in experiencing and addressing subconscious influences, reflecting the common threads of human cognition and decision-making. Panelists will also explore areas of divergence, including the impact of culture on perception and norms of legal process.

**INTRODUCTION AND MODERATOR** — R. Doak Bishop, King & Spalding LLP, Houston

**PANELISTS** — David Brynmor Thomas, Thirty Nine Essex Street Chambers, London

— Andrés Jana, Bofill Mir & Alvarez Jana, Santiago

— Laurent Lévy, Lévy Kaufmann-Kohler, Geneva

— June Junghye Yeum, Clyde & Co LLP, Singapore and New York

**11:05 BREAK**

**11:25 STRATEGIES FOR PERSUASION IN THE FACE OF SUBCONSCIOUS INFLUENCES AND CULTURAL DIFFERENCES: ARBITRATOR SELECTION AND OVERALL THEMES**

The common, and indeed sound, wisdom is that the selection of the arbitrator is a, if not the, key decision made in the arbitral process. Much has been written about how to select an arbitrator, his or her desired qualities, and the need to do due diligence before making a selection. While some steps such as looking at prior arbitral awards to glean helpful insights into the arbitrator's views and beliefs are basic to arbitrator selection, the selection process remains fairly unsophisticated. How is the process affected by the effect of biases and other extraneous affecting factors?

This session will focus on the interplay of cognitive biases and other issues such as legal culture on two key events in the arbitral process.

First, the setting of the overall strategy on a case, including the different approaches that lawyers from different legal cultures might take to the same case. Indeed, the setting of the overall strategy will determine the course that most subsequent decisions will take.

Second, the session will focus on the selection of the arbitrator. Teams from a common-law law orientation and a civil law orientation will each expound on the considerations that they would take into account when deciding what arbitrator would be ideal to decide the case at hand.

**INTRODUCTION AND MODERATOR** — José I. Astigarraga, Workshop Co-Chair

**SCENE 1: COMMON LAW PERSPECTIVES**

Common Law In-House Counsel .....**Suzana M. Blades**, Senior Counsel, ConocoPhillips, Houston

Common Law Advocate ..... **Mark W. Friedman**, Debevoise & Plimpton LLP, New York

Common Law Advocate .....**Jay Alexander**, Baker Botts L.L.P., London

## SCENE 2: CIVIL LAW PERSPECTIVES

Civil Law In-House Counsel..... **William Peter Hartert**, Head of Legal Affairs  
 Business Development Global Generation, Enel S.p.A., Rome

Civil Law Advocate..... **Benoit LeBars**, Lazareff Le Bars, Paris

Civil Law Advocate..... **Eduardo Gonçalves**, Mattos Filho, São Paulo

Panel Discussion and Audience Q&A

12:30 LUNCHEON

### A NEW ERA OF INVESTOR-STATE ARBITRATION?

**Donald Francis Donovan**  
 Debevoise & Plimpton LLP, New York

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**GARDERE**

2:00 WRITTEN ADVOCACY, SUBCONSCIOUS INFLUENCES AND DIFFERING CULTURAL EXPECTATIONS

Written advocacy may in some circumstances have even more persuasive power than oral advocacy. This panel will consider how counsel can shape their written advocacy by using various heuristics to bend the arc of decision-making in favor of their client. Panel members will also discuss how different cultural expectations may impact the effectiveness of written advocacy.

**INTRODUCTION AND MODERATOR** — **Margaret Moses**, Workshop Co-Chair

**PANELISTS** — **José María Alonso**, Baker & McKenzie Madrid S.L.P., Madrid

— **Jennifer Kirby**, Kirby, Paris

— **Maria Vicien-Milburn**, Paris

2:40 ORAL ADVOCACY, SUBCONSCIOUS INFLUENCES, AND DIFFERING CULTURAL EXPECTATIONS

Many of the most effective persuaders in history have been great orators. Oral advocacy is a vital part of the arbitral process today. This session will examine how subconscious influences, cultural and other factors such as “primacy,” “recency,” and repetition come into play when advocating orally. This session will feature oral arguments by a common law and a civil law lawyer and will culminate with a discussion of oral advocacy among the lawyers and renowned arbitrators.

**INTRODUCTION AND MODERATOR** — **José I. Astigarraga**, Workshop Co-Chair

### SCENE 3: PRESENTATION OF ORAL ARGUMENT

Common Law Advocate ..... **James L. Loftis**, Vinson & Elkins RLLP, London and Houston

Civil Law Advocate..... **Anne Véronique Schlaepfer**, Schellenberg Wittmer Ltd, Geneva

Arbitrator..... **Eduardo Zuleta**, Gómez-Pinzón Zuleta, Bogotá

Arbitrator..... **Claus von Wobeser**, Von Wobeser Y Sierra, Mexico City

Arbitrator..... **John M. Townsend**, Hughes Hubbard & Reed LLP, Washington D.C.

Panel Discussion and Audience Q&A

3:40 BREAK

## 4:00 ETHICS AND SUBCONSCIOUS INFLUENCES

Panelists will discuss the legal and ethical implications arising from a mock scenario in which counsel inadvertently copies the Tribunal president on internal correspondence regarding a privileged memorandum that addresses the merits of that party's case. Panelists will consider the scenario in light of the heuristics and biases identified earlier in the day, and then discuss the practical steps that arbitrators and counsel should take in response to the issues implicated.

**INTRODUCTION AND MODERATOR** — **Luke Sobota**, Workshop Co-Chair

**PANELISTS** — **Rachael D. Kent**, WilmerHale, Washington, D.C.

— **Claus von Wobeser**, Von Wobeser y Sierra, S.C., Mexico City

## 4:30 THE ARBITRATORS' PERSPECTIVE: JUDGING AND JUSTIFICATION IN THE FACE OF SUBCONSCIOUS INFLUENCES AND CULTURAL DIFFERENCES

Leading arbitrators from around the world engage in an informal roundtable discussion of the impact that subconscious influences and cultural differences have on arbitral decision-making. The discussion contextualizes the themes from the Workshop by examining them in light of dynamics between counsel and the Tribunal, and in intra-Tribunal deliberations. Arbitrators identify key concerns in arbitral advocacy, and share insights regarding the impact of subconscious influences.

**INTRODUCTION AND MODERATOR** — **Susan D. Franck**, Washington & Lee University, School of Law, Lexington, Virginia

**PANELISTS** — **Professor John R. Crook**, George Washington University Law School, Washington, D.C.

— **Dominique Brown-Berset**, Brown&Page, Geneva

— **Manuel Conthe**, Independent Arbitrator, Madrid

— **L. Yves Fortier CC, OQ, QC, Ad. E.**, Independent Arbitrator, Montréal

## 5:30 CONCLUDING REMARKS

— **R. Doak Bishop**

# DALLAS NETWORKING ADVENTURE

**2:30 - 8:30**

## **DALLAS NETWORKING ADVENTURE**

Optional – Ticket Price \$85

**Dallas Arts District Museums:** Dallas Museum of Art, Nasher Sculpture Center and Perot Museum of Nature and Science  
Dinner at Meso Maya Restaurant - Mayan and Mexican cuisine in the Arts District

Don't miss this unique networking opportunity. Tickets are \$85 per person\*. Please register on your registration form.

A bus will depart from the Westin Galleria Hotel lobby at 2:30 pm and will return to the hotel at about 8:30. Then, for those who wish to continue, country and western dancing at Cowboys Red River Dancehall.

*\*Price includes the museum(s), drinks and dinner, and transportation to and from the hotel.*

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Thursday, June 18

7:45 – 8:45 a.m.

### ITA YOUNG ARBITRATORS INITIATIVE COMMITTEE ANNUAL MEETING

Young Arbitrators Initiative Committee Chair Valeria Galíndez presiding

The Young Arbitrators Initiative Committee and its annual meeting are open to all ITA Advisory Board members under the age of 40 and all ITA Young Arbitrator Members.

6:30 – 9:00 p.m.

### ITA ADVISORY BOARD ANNUAL DINNER

ITA Advisory Board Chair Doak Bishop presiding

The annual reception and dinner meeting of the Advisory Board will be held at the Dallas Country Club following the conclusion of the Workshop. Advisory Board members and their spouse or guest are invited as guests of the Institute.

At the dinner, we will conduct a little business, recognizing special contributors to the work of ITA this year, and then celebrate the conclusion of Doak Bishop's successful tenure as ITA Advisory Board Chair and welcome Abby Cohen Smutny as ITA's new Chair.

Buses will be available to transport us from the Westin Galleria Hotel and back again at the conclusion of the evening. Dress: Business or cocktail attire.

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Friday, June 19

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Americas Initiative Committee Chair Elisabeth Eljuri presiding

The ITA Americas Initiative Committee and its annual meeting are open to all members of the ITA Advisory Board in, or interested in, Latin America.

9:00 a.m. – 12:00 p.m.

### ITA FORUM

The annual ITA Forum is a special event for members of the Advisory Board, Academic Council, ITA Arbitration Report Board of Reporters, World Arbitration and Mediation Review Board of Editors, Young Arbitrator Members and Workshop faculty members, providing an unscripted opportunity to discuss current issues and share concerns off-the-record with their peers in the field of transnational arbitration.

The agenda for this wide open discussion is determined by the participants, via topics and questions submitted in advance or raised at the Forum itself. To propose topics or questions in advance that you would like to have addressed at the Forum, please e-mail [kjohnson@cailaw.org](mailto:kjohnson@cailaw.org).

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### Academic/Government/Non-Profit

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(open to universities, government agencies, judicial and arbitral institutions, non-profit corporations and full time employees of such organizations)

- One Advisory Board representative
- Recognition as an Academic/Government/Non-Profit Member in publications

# REGISTRATION

## 27<sup>th</sup> Annual ITA Workshop

### Subconscious Influences in International Arbitration

June 17 - 19, 2015 • Westin Galleria Hotel • Dallas, Texas

Workshop registration includes the Young Arbitrators Dallas Roundtable and Welcome Reception on Wednesday, the Workshop and luncheon on Thursday and all course materials.

Advisory Board members, members of the Executive Committee, Academic Council, ITA Arbitration Report Board of Reporters and WAMR Board of Editors, as well as Young Arbitrator Members, should register using the special link that will be sent to them by email instead of the form below.

Check applicable box:	ENTIRE ITA WORKSHOP		ROUNDTABLE ONLY	
	By 6/5/15	After 6/5/15	By 6/5/15	After 6/5/15
Regular registration fee	<input type="checkbox"/> \$645	<input type="checkbox"/> \$695	<input type="checkbox"/> \$35	<input type="checkbox"/> \$45
ITA Supporting or Sustaining Member Employee	<input type="checkbox"/> \$445	<input type="checkbox"/> \$495	<input type="checkbox"/> \$35	<input type="checkbox"/> \$45
CAIL Member or Member Employee	<input type="checkbox"/> \$445	<input type="checkbox"/> \$495	<input type="checkbox"/> \$35	<input type="checkbox"/> \$45
Government / Non-Profit / Academic Employee	<input type="checkbox"/> \$345	<input type="checkbox"/> \$395	<input type="checkbox"/> \$35	<input type="checkbox"/> \$45
SWIICL Advisory Board Member	<input type="checkbox"/> \$250	<input type="checkbox"/> \$250	<input type="checkbox"/> \$35	<input type="checkbox"/> \$45

- I will attend the Young Arbitrators Dallas Roundtable on June 17.
- I will attend the Welcome Reception for all Workshop and/or Roundtable registrants on June 17.
- \$110 - I will attend the Workshop Dinner at the Petroleum Club of Dallas (Sky Lobby), June 17.
- \$110 - I wish to bring a guest to the to the Workshop Dinner on June 17.\*\*
- \$85 - I will attend the Dallas Networking Adventure on June 19.
- \$85 - I wish to bring a guest to the Dallas Networking Adventure on June 19.\*\*

Name \_\_\_\_\_

Firm/Company/Organization \_\_\_\_\_

Address \_\_\_\_\_

City, State, Postal Code, Country \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

\*\*Please complete the following guest information (if applicable)

(1) Guest Name \_\_\_\_\_ Guest Title \_\_\_\_\_

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#### PAYMENT INFORMATION

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## 4 WAYS TO REGISTER

ONLINE  
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5201 Democracy Drive  
Plano, TX USA 75024

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credit card only  
972.244.3404 or 800.409.1090  
8:30am-5:00pm CT

PAYMENT MUST ACCOMPANY REGISTRATION

## GENERAL INFORMATION

**CANCELLATION POLICY:** Tuition, less a \$50 cancellation fee will be refunded upon receipt of written cancellation received by June 5, 2015. E-mail cancellation notice to lgaspar@cailaw.org. After this date, no refunds, but substitution of attendees for this program will be permitted. Registrants not entitled to a refund will receive the course materials.

**HOUSING:** The cost of housing is not included in tuition. However, rooms (in limited number) have been reserved at The Westin Galleria Hotel, 13340 Dallas Parkway, Dallas, TX 75240. Registrants should call 1.972.934.9494 and advise that they are attending the "27th Annual ITA Workshop" to receive a reduced rate of \$180 + tax. The last day to obtain this special rate is May 26, 2015.

**NONDISCRIMINATION POLICY:** The Center for American and International Law does not discriminate on the basis of race, color, sex, religion, national origin, age, disability, veteran status or any other protected status in educational activities, scholarship programs or admissions.

**PRESS POLICY:** All ITA conferences are held under the Chatham House Rule. Participants, including journalists, are free to use any information received, but comments may not be attributed to any speaker identified by name or affiliation.

**MCLE CREDIT:** The Workshop is approved for 6.5 hours (.5 ethics). Course ID 901315488. The Roundtable alone is approved by the State Bar of Texas for 1.5 hours (no ethics). Course ID 901315491. Credit hours for other states will vary and are subject to each state's approval and credit rounding rules.

For this conference, ITA will directly apply (if requested) for course accreditation in the following states: California, Minnesota, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas and Virginia. Some of these states may not approve a program for credit hours before the program occurs. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. ITA conferences are typically accredited by all mandatory CLE states.



Institute for  
**TRANSNATIONAL  
ARBITRATION**

**27<sup>TH</sup> ANNUAL ITA WORKSHOP**

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Dallas, Texas

Register Now! [cailaw.org/ita](http://cailaw.org/ita)

MCLE credit will be available