



Exercises for Improving Impartiality Becoming a Better Arbitrator

Speaker: David Waddell

Webinar – August 2018

Books Mentioned in This Webinar

Epstein, Mark. *Thoughts without a Thinker: Psychotherapy from a Buddhist Perspective*. Basic Books, 2013.

Mitchell, Stephen, and Zhuangzi. *The Second Book of the Tao: Compiled and Adapted from the Chuang-Tzu and the Chung Yung, with Commentaries*. Penguin Books, 2010.

Pillay, Srinivasan S. *Tinker Dabble Doodle Try: Unlock the Power of the Unfocused Mind*. Ballantine Books, 2017.

Other Resources That Have Influenced My Habits of Introspection

Banaji, Mahzarin R., and Anthony G. Greenwald. *Blindspot: Hidden Biases of Good People*. Bantam Books, 2016.

Berger, John. *Ways of Seeing: Based on the BBC Television Series with John Berger*. British Broadcasting Corp., 2012.

Coates, Ta-Nehisi. *The Beautiful Struggle: a Memoir*. Verso, 2016.

Coates, Ta-Nehisi. *Between the World and Me*. Random House US, 2017.

Comey, James B. *A Higher Loyalty: Truth, Lies, and Leadership*. Macmillan, 2018.

Gladwell, Malcolm. *Blink: The Power of Thinking without Thinking*. Little, Brown and Co., 2005.

Goffman, Alice. *On the Run: Fugitive Life in an American City*. Picador, 2015.

Gonzales, Laurence. *Deep Survival: Who Lives, Who Dies, and Why: True Stories of Miraculous Endurance and Sudden Death*. W.W. Norton & Co., 2004.

Hoff, Benjamin. *The Tao of Pooh: The Principles of Taoism Demonstrated by Winnie-the-Pooh*. Egmont, 2015.

Kahneman, Daniel. *Thinking, Fast and Slow*. Farrar, Straus and Giroux, 2015.

Mesquita, Bruce Bueno de. *Predictioneers Game: Using the Logic of Brazen Self-Interest to See and Shape the Future*. Random House, 2010.

Tufte, Edward R. *The Cognitive Style of PowerPoint: Pitching out Corrupts Within*. Graphics Press, 2011.

Impartiality Resources

Search for anything that has Jerry Kang, Mark Bennett or their co-authors on bias.

- IAT (Implicit Association Test)
<https://implicit.harvard.edu/implicit/education.html>
- Information from Jerry Kang regarding how the IAT test meets rigorous standards for statistical validity.
<http://jerrykang.net/2015/04/12/edwards-lecture-video-online>
- Iowa Federal Judge Mark Bennett's article on implicit bias relating to criminal trials, race and *Batson*.
http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2011/eeo/057.aut_hcheckdam.pdf
- The ABA 2014 Implicit Bias Initiative information, including a twenty-minute video.
"The Neuroscience of Implicit Bias"
- UCLA Law Review 2012- Implicit Bias in the Courtroom.
<http://faculty.washington.edu/agg/pdf/Kang&al.ImplicitBias.UCLALawRev.2012.pdf>
- Video from California for training court personnel to mitigate bias:
<http://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/implicit-bias-videos.html>
- Jane Elliott and her How Racist Are You? "training." Jane was and is a visionary and started her "training" the day after Martin Luther King Jr. was shot.
<https://www.youtube.com/watch?v=Nqv9k3jbtYU>



David W. Waddell, Esq.

Panelist Video

[View Video](#)

Current Employer-Title

Independent ProActive Arbitrator, and Principal with David W. Waddell, Legal and Business Counsel

Profession

Arbitrator, Legal and Business Counselor

Work History

ProActive Arbitraton, 2014-present;
Special Counsel, Houston Area Safety Council 2014-present;
David W.Waddell, Legal and Business Counsel 2013-present;
Arbitrator, 2003-present
Partner, Seyfarth Shaw LLP, 2001-13;
Partner/Associate, Hoover Bax Slovacek, 1989-01;
Associate, Shannon, Ustick, Tyler and Beller, 1988-89;
Associate, Plunket Gibson & Allen, 1986-88.
Part-time work for various residential contractors 1975-78 in all trades.

Experience

Arbitration advocate in approximately 60 construction and commercial disputes since 1989.

Advocated a two week ICDR commercial dispute in The Hague, Netherlands.

Thirty (30) years as a trial attorney, and business and legal consultant assisting clients in clear thinking; 15-20 jury verdicts, and 25-35 bench trial judgments; represented clients in 120-160 mediations; completed mediator training (basic and advanced) in 1992, choosing to be a mediator only rarely.

Construction experience in commercial, industrial, and residential projects including the prosecution and defense of claims involving architects, bid awards, bond and lien claims, delay claims, design defects, environmental issues, erection disputes, payment and performance issues, site conditions, surety issues, warranty issues, wrongful termination, Texas Residential Construction Liability Act, EIFS, and mold claims.

Commercial experience in real estate, bankruptcy (Board Certified in Business Bankruptcy 1990-1995), M&A, recapitalization, healthcare, ERISA, shareholder derivative and minority oppression, and products liability.

Commercial experience with national financial institutions involving FCRA, FDCPA, etc, lender liability, real estate, defamation, and bankruptcy.

Experience in ethics as retained expert, speaker's directory for the Texas Bar Professionalism Committee, former 4H grievance committee member.

David W. Waddell, Esq.
Neutral ID : 151639

Member/Chair Texas Supreme Court Grievance Oversight Committee 1997-2002.

Alternative Dispute Resolution Experience

American Arbitration Association sole and panel arbitrator since 2002.

20+ arbitrations to award since 2014 (three panels, one as chair (presently)).
5 arbitrations to award 2002-2013.

Member of AAA's Construction Panel; Large, Complex Commercial Panel; R-7 Arbitrator.

Has provided proactive training.

Alternative Dispute Resolution Training

2018

TICLE 31 Ann. Const. Conf.: Arbitration Multi-Party Const., San Antonio
AAA Arbitrator Performance and Demeanor, ACE 08, San Antonio
ITA-IEL-ICC 5th Ann. Joint Conf.: Intl. Energy Arbitration, Houston
HBA ADR, Disclosures, Discovery & Motions: Pre Hearing, Houston

2017

HBA ADR, Evaluating Risk of Trials in Era of No Trials
AAA Constr. Conf.: Navigating Unique Aspects of Constr Arb., NYC
ITA 29th Ann. Workshop: Challenges to Legitimacy of Intl Arb., Dallas
AAA Motion Practice Under AAA Rules - What You Need to Know
HBA ADR, Annual Conference, Houston
HBA ADR, ADR in Personal Injury Litigation, Houston
HBA ADR, The Evolution of Arbitration in America, Houston
TICLE 30th Ann. Constr. Law Conf.: Advocate or Neutral? San Antonio
TX Bar ILS 29th Intl. Law Inst.: Selecting Arbitrators, Houston
ITA-IEL-ICC 4th Ann. Joint Conf.: Intl. Energy Arbitration, Houston
HBA ADR, ADR & the Oil and Gas World, Houston

2016

AAA Consolidation, Joinder In Constr. Arb.: Ignorance Is Not Bliss, (Faculty)
HBA ADR, The Ultimate Dispute in Need of Resolution, Houston
First EENR Speaker Series—Governing Law and ADR, Houston
HBA ILS, Intl. Disputes: IDR From a Client Perspective, Houston
ITA 28th Ann. Workshop: Arbitrators and Interim Measures, Dallas
AAA The Role of Fairness and Justice in Arbitration
HBA ADR, Annual Conference, Houston
ITA-ASIL Conf.: Ethics in Intl. Arb.: Advocates, Arbitrators, Awards, Dallas
HBA ADR, Arbitration: A Panelist's View of the Perks and Pitfalls, Houston
TICLE 29th Ann. Constr. Law Conf.: Deflate Gate and Arb., San Antonio
HBA ADR Ethical Challenges in Arbitration & Mediation, Houston
ITA-IEL-ICC 3rd Ann. Joint Conf.: Intl. Energy Arbitration, Houston
AAA Roundtable Arbitrator Disclosures and Disqualifications

2015

HBA Constr. AAA Rules and Optional Appellate Procedure, Houston
ABA Construction ADR Summit, San Antonio

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The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

AAA Take the Initiative! Your Obligation to be a Proactive Arbitrator, (Faculty)
ITA 27th Ann. Workshop: Subconscious Influences in Intl Arbitration, Dallas
AAA Constr. Conf. – Keeping Arbitration Lean, Santa Monica, CA
HBA ADR, Ethical Practices in Mediation and Arbitration, Houston

2014

AAA What We Have Here is a Failure to Communicate
AAA Optimize Your Arbitration! The Role of the Proactive Arbitrator (Faculty)
AAA "Exceeded Powers": Recent Trends in Challenging Arbitrator Authority
AAA Winning at Arbitration: Specific Tips Advocates Can Use to Improve
AAA Principled Deliberation, Dallas
AAA Conducting Research & Investigations, Dallas

Other

Construction Conference: ADR Works, 2008
AAA Chairing an Arbitration Panel: Managing Procedures, ACE005, 12/05
AAA Arbitrator Ethics & Disclosure, ACE003, 12/04
AAA Construction Arbitrator II Training, San Francisco, 10/03
AAA Arbitrator I Training-Fundamentals of Arbitration, Dallas, 11/02
A.A. White, Advanced Mediation Training, Houston, 1992
A.A. White, Basic Mediation Training, Houston, 1992

Professional Licenses

Admitted to the Bar: Texas, 1986; U.S. District Court: Southern, Western, Northern, and Eastern Districts of Texas; U.S. Court of Appeals, Fifth Circuit. Various other state and federal court admissions.

Professional Associations

State Bar of Texas (ADR, Business, Construction, Corporate, Litigation, and International Sections);

Houston Bar Association, ADR (council member), Construction, Corporate Counsel, Federal Practice, International, and Litigation sections, and Gender Fairness Committee;

Texas Bar College, 2015-present;

AAA-ICDR Foundation, Chair's Circle 2015-present;

Institute for Transnational Arbitration, Advisory Board 2015-present;

ABA, Forum on Construction Law 2015-present;

Formerly (1989-2015) Associated Builders and Contractors of Greater Houston; Served as: Board Director, Co-Chapter Counsel, PAC Trustee; Legislative Comm. Officer(s); on Industrial Committee; Member of the Year, 1999;

Formerly (early 90s) Greater Houston Builder's Association member;

Education

Trinity University, BA Psychology (emphasis in Finance) 1982;

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St. Mary's University, JD 1986.

**Publications and
Speaking Engagements**

ProActive Arbitrator, Keeping Litigation Out of Arbitration, TX Bar Corp Counsel
Newsletter, 2016

Speaking

AAA Webinars (see above, 2014-16), Trainer (2015-16);
HBA ADR speaker, "Optimizing Your Arbitration," (2015);
ABC speaker on various constr. topics: A201, Liens, Implicit Bias, pre-2015;
ASSE, Liability Issues in Construction - Safety Leadership Seminar, 2003;
GHBA, Legislative Update and Legal Seminar, 2001;
"Texas Construction Lien Laws," various CLE groups, 1995-1996.

**Citizenship
Languages
Locale**

United States of America

English

Houston, Texas, United States of America

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AMERICAN ARBITRATION ASSOCIATION®

INTERNATIONAL CENTRE
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EXERCISES FOR IMPROVING IMPARTIALITY

Becoming a Better Arbitrator



Recorded Webinar
August, 2018

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SPEAKER



David Waddell

ProActive Arbitrator

Houston, Texas

PROACTIVE
ARBITRATION™

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GOAL

**To provide arbitrators with
cognitive tools which can
develop enhanced
impartiality.**

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POLLING QUESTION



Have you actively engaged in exercise(s) to improve your impartiality?

- A. I was born impartial- no exercise needed.
- B. I work to be introspective, does that count?
- C. I meditate, does that count?
- D. B and C.

- E. ...No, why do you think I'm here?

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The Blank Slate



Survival Instincts Danger Identified as Unusual



Cringe Worthy



Driving - Senses



Driving – Other Drivers



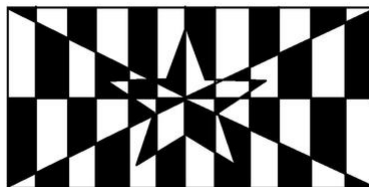
Driving - Radio



Boat Without a Rower



Sirens - Art





Can Inherent Bias Be Avoided?

- A. Don't Know, But If Not, How Do the Parties Get a Fair Hearing?
- B. That's the Reason I Registered for This Webinar and I Still Don't Know.
- C. Cognitive Introspection of How I Process Evidence Can Provide Understanding of My Judgment of the Evidence.

Default Mode Network



Put Yourself in an Unfamiliar Context



Everyone is _____



QUESTIONS



AAAEducation@adr.org

