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The Guide to Advocacy

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Stephen Jagusch QC and Philippe Pinsolle

Associate Editor

Alexander G Leventhal

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Tips for Second-Chairing an Oral Argument

Mallory Silberman and Timothy L Foden¹

Effective oral argument requires the impossible – that counsel simultaneously speak, listen, think, remain flexible, stay on track, read an outline or script, search for citations, prepare responses to questions, watch the clock, triage, consult with co-counsel, make judgement calls, watch the arbitrators and opposing counsel, take notes for later, worry about the translations, remember all details of all documents, wage war on Murphy’s Law² and remember to breathe. In the absence of a multitasking superpower, there is no way for a single person to handle it all.

Enter the ‘second chair’.

The second chair is the team member who sits next to the speaker (or ‘first chair’) and serves as a second pair of eyes, a second pair of ears, a second pair of hands and second-in-command. While the first chair speaks, the second chair looks, listens and troubleshoots. He or she locates citations and drafts responses to questions. He or she watches the clock and decides what arguments can be jettisoned. He or she pours water and clicks through slides. He or she intercepts notes from other team members and determines what to pass on to the speaker. The art of the second chair is complex but the job is simple: let the speaker focus on speaking by handling all the rest. Below are some tips on how to do this job well.

Know the case

The best second chair knows everything – from exhibit numbers to what time the hearing starts each day, what the first chair should say in response to anticipated questions, the facts of analogous cases, the dates of key events, your opponent’s best argument, the weaknesses in your claims. Here’s how to become the world’s leading expert on your case.

1 Mallory Silberman is a partner at Arnold & Porter and Timothy L Foden is a partner at Lalive (London) LLP.

2 Murphy’s Law is an adage typically stated as: ‘Whatever can go wrong, will go wrong.’

The right number of mock arbitrators

The lazy mind might assume that a mock arbitration (to make it realistic) should mimic the actual proceeding, and therefore be handled by three arbitrators. This is questionable. Since there are no unilaterally appointed mock arbitrators (and since each mock arbitrator should try to toughen the team by being fairly hostile), the ideal number may well be two – and a sole individual perfectly adequate. When there are three mock arbitrators, one or more of them may be tempted to underprepare in reliance on the others.

– Jan Paulsson, Three Crowns LLP

First, in the weeks leading up to the hearing, reread all the documents that might possibly be relevant. Reread the pleadings, the witness statements and expert reports, the key exhibits and authorities, and the procedural orders. Though you undoubtedly have read these documents many times before – and perhaps contributed to drafting some of them – it is important to have everything fresh in your mind.

Second, think carefully about all the documents you have read. What are your side's strengths and weaknesses? What are your opponent's? Where can your opponent poke holes in your case? Do you have a full understanding of the evidence in the record? Do you know what evidence is not in the record? Given what you have read, which arguments do you expect your opponent to emphasise? What questions do you expect the arbitrators to ask? What questions do you expect your first chair to ask?

Third, bear in mind that, to answer all the questions that are likely to come your way, you do not need to remember every piece of information you have consumed; you just need to be able to quickly locate and process that information. In the weeks leading up to the hearing, do whatever you can to make things easier for yourself on hearing day. Draft summaries of the key arguments on each side, annotated with citations to specific passages of the pleadings. Create a list of your opponent's admissions. Compile a detailed chronology from the exhibits and witness testimony. Draft 'cheat sheets' for important jurisprudence, summarising the facts and explaining how each case relates to the matter at hand. Compile a list of the questions that you expect the arbitrators (or your first chair) to ask, and draft potential responses thereto. Make a list of any hearing-related rules that appear in the procedural orders. In short, do whatever legwork you can now to save time and effort in the future.

Finally, make sure you can deploy your knowledge when it really counts. Save all your summaries, lists and cheat sheets in a folder on your desktop. (Assume that Murphy's Law applies and that, accordingly, the internet will go down and you will not have access to your law firm's network.) Put copies of the pleadings, procedural orders, and exhibit and authority indices in the folder as well. Print out two copies of any document that the first chair might have to read aloud (one copy for him or her and one for you). It is much easier to hand the first chair a piece of paper than to hand over your laptop.

Know your first chair

Much as beauty is in the eye of the beholder, the qualities of a good second chair typically depend on the first chair and what he or she wants and needs. What is helpful to one first chair might be distracting to another. Thus, when assigned to be second chair, you must determine what type of second chair you need to become. It is time to get to know your first chair.

Below is a survey of some of the different personality types you may encounter. The characters introduced are rough caricatures – composites of counsel we have worked with, witnessed or imagined. Nevertheless, knowing how to assist these different ‘types’ of advocates will form a foundation for the other tips that then follow.

The Parachutist Advocate

Many of today’s top international arbitration practices possess one or more industry-recognised expert advocates, who often ‘parachute’ into a case as a hearing approaches, acquaint themselves with the details of the matter and the issues to be argued and examined, perform their advocacy duties, and then depart until the next hearing in the case. In London, this advocate is often a Queen’s Counsel. Not all Parachutist Advocates are the same. Some are uninvolved in the day-to-day conduct of the case, but put their names on the written submissions, to lend them gravitas and set the stage for the advocate’s appearance at oral hearings. Others maintain a running familiarity with case developments and lend their strategic experience at critical junctures. In any case, when the time comes to prepare for the hearing, the Parachutist Advocate will need significant, in-depth familiarisation with the evidentiary record as set out below.

The Collaborator Advocate

The Collaborator Advocate tends to think of his or her oral submissions and witness examinations as a team effort. Though the advocate alone will be speaking at the hearing, he or she will prepare the required submissions and examinations in collaboration with the second chair and perhaps the wider hearing team. This often involves long brainstorming sessions at which the lead advocate maps out his or her approach, expecting team members to contribute points to be made and documents to be relied upon.

The DIY Advocate

The DIY Advocate tends to prepare his or her submissions and witness examinations alone, seeking little input from team members. This approach is typically reflective of long-standing working habits that the advocate has adopted during the course of a career. These advocates typically need to feel a personal mastery of the evidentiary record to comfortably carry out their advocacy duties. As discussed below, serving as a second chair to a DIY Advocate can present challenges.

Prepare your first chair

Preparing the first chair is the most important task that a second chair has, both in the time leading up to the hearing and during the hearing itself (particularly if the first chair is a

You are the key to smoothness and efficiency

From the perspective of a tribunal, the role of the second chair is indeed quite important. Also important is the role of the third chair and the role of those who may not even have chairs (because they are busy with other tasks, such as preparing binders and USB sticks with documents). It is very helpful to a tribunal if counsel's team can provide references to documents immediately upon an arbitrator's request; if USB sticks with the record of the case can be provided, where the record is well-organised, and the documents are easily accessible; and if key documents can quickly be shown on the screen, including at the tribunal's request. It is often the second chair who is in charge of managing those activities and they are essential for the smooth and efficient conduct of the hearing.

– Stanimir A Alexandrov, Stanimir A Alexandrov PLLC

Parachutist Advocate). Although the precise nature of the task will vary by first chair, here is a general sense of what you can expect to do.

Select the appropriate read-in materials

Although the tribunal will treat the first chair as if he or she were an expert on all the submissions, witness statements, expert reports, exhibits and legal authorities, the chances are that, like you, he or she will need some time to become an expert. Unlike you, however, he or she will not have the time or the budget to devote to reading all the materials in full. Instead, the first chair is likely to read all the relevant materials and turn to you for a quick briefing on any materials that, in the interest of time, he or she has not read. As the hearing approaches, you should carefully select the materials that the first chair should review. Whereas the second chair's job often requires thousands of pages of reading, the first chair should have to read only what is essential for delivering effective submissions and for use in witness examination.

Whittling down a vast record to something more manageable is helpful to each of the advocate personalities identified above. Obviously, the synthesis will be necessary for the Parachutist Advocate, who typically has only a short window in which to prepare. But the Collaborator Advocate will also need a base understanding from which to steer group discussion, and even the DIY Advocate will appreciate your efforts to save him or her time and focus his or her attention (so long as you stand ready to explain how you whittled the record down). Some first chairs may ask you to drip feed documents, giving them only what they need to know to focus on a particular task (e.g., preparing the opening statement, drafting a cross-examination outline). In these instances, make sure that the first chair begins with the written submissions, as these provide the best picture of the principal issues in dispute. Then identify the other documents that provide additional context: witness statements, expert reports, exhibits and authorities. Where possible, share your 'cheat sheets' and summaries with the first chair. However, if it is important that he or she should review a particular document in its entirety, do not be afraid to say that is the case.

Take an active role in the preparation of witnesses and experts

In many international arbitration proceedings, it is permissible for advocates to ‘prepare’ their side’s witnesses for examination, by posing practice questions to them. Some first chairs (like the DIY Advocate) may take an active role in this. In many instances, however, the first chair’s schedule will not allow him or her to take part in the witness preparation. You should step in not only for the sake of the witness, but also for the sake of the first chair, who needs a candid assessment of how the witness is likely to perform.

Prepare the cross-examination outlines

In addition to helping the first chair prepare for examination of your own witnesses, you also should help him or her prepare to examine the other side’s. In most instances, the first chair will depend on you to identify the key points that should be made and to prepare an initial draft of the cross-examination script. The Parachutist Advocate is likely to rely on this legwork substantially. The Collaborator Advocate, too, will use the preparation as a basis for brainstorming. Even the DIY Advocate – who prefers to work alone – can benefit from an extra perspective on how to approach the witness.

Working with the DIY Advocate in the lead-up to a hearing can be perplexing. One might think: ‘If she wants to handle things herself, what am I supposed to do?’ You may feel you have been left with little to do as the first chair secludes himself or herself with the case file, plotting out submissions and cross-examinations. But even to the DIY Advocate, your help is still valuable. Offer to cite-check, proofread, time or moot draft presentations and examinations – taking time to review the drafts for substance in the process. The DIY Advocate, no matter how talented, is not infallible and will at times focus myopically on some issues to the exclusion of others. It is in those moments that you can provide much-needed perspective. Additionally, you should, to the extent possible, use this opportunity to observe the DIY Advocate’s approach and store away any useful habits and tactics for use in your own advocacy in subsequent cases.

Identify and attack case weaknesses

In the lead-up to hearing, the lead advocate’s focus will be on the strengths of his or her client’s position. Therefore, it will often fall to the second chair to make sure that the lead advocate is briefed on all the factual and legal issues on which the other side has the better of the arguments. This can often be stressful – in the hearing preparation phase, some arbitration teams and lead advocates can often gee themselves up by focusing largely on the positive aspects of their positions. A state of groupthink can take hold. A good second chair will take care to maintain a position of equanimity and identify areas of vulnerability. It is not enough to simply be contrarian, however. As the person with mastery of the case file, it is for you to assist the first chair in finding ways to shore up the case weaknesses: find pieces of mitigating factual evidence, distinguish unhelpful authorities, and – when it makes better sense to admit and accept the weakness – find some way to explain why the weakness ultimately does not matter.

A practitioner's perspective: Keep calm and carry on

I was involved in a high-profile arbitration for which the opposing party had put forward a highly regarded professor, from an Ivy League university, as an expert witness. I was second chair to a partner who was both a woman and from the Middle East. While we were preparing for the cross-examination the week before, the partner suggested that I look at publicly available records to see if the professor had been cross-examined before. In the course of this research, we came across a transcript in which he had testified before a federal judge and the judge had criticised his testimony.

Tip 1: There is no substitute for preparation, but it also helps to think on your feet and outside the box.

During cross-examination of the expert, the professor was questioned on his prior testimony. Clearly taken aback, he became extremely belligerent and started attacking the partner personally in a very rude and unprofessional manner. The partner kept calm and did not react adversely but continued pressing on the questions. This was extremely shocking to me and my inclination was to go to the tribunal to complain about these thinly veiled attacks on her gender and race. But the partner instead continued asking the questions and the professor continued with his antics. The consequence was that when the cross-examination resumed after a short break, the arbitral tribunal made the expert apologise to the partner.

Tip 2: Pick your battles carefully and realise that silence is not always weakness. The tribunal can see what is happening.

At the closing argument, the partner again focused on the case without focusing on the expert's behaviour. The focus was on the issues, which were presented persuasively. The outcome was great – not only did we prevail in the arbitration but we were also awarded costs.

Tip 3: Focus on the story and the issues that are important for the tribunal; do not let every event become a battle.

– *Kabir Duggal, Arnold & Porter*

Be the first chair's eyes and ears

To do the job effectively, the first chair needs to maintain a myopic focus on the submissions that he or she is to give and the examinations he or she is to undertake. To do this, he or she is likely to need to keep a certain distance from the hive of activity that is the team's 'war room' and the constant preparation that is going on. He or she also will need to excuse himself or herself early to get sufficient sleep. To help the first chair keep a focus in the right direction, you will have to take on more project- and team-management responsibilities than usual. You also must pick up on any verbal and non-verbal signals from the tribunal that the lead advocate may not be able to see while performing her advocacy duties. In short, you must be the lead advocate's eyes and ears.

Mind the tribunal

Tribunals typically give a number of cues – verbal or non-verbal – about what they find interesting, important or, frankly, boring. Keep track of these cues, in case the first chair has missed them; they offer real-time feedback on his or her performance. It is part of your job to alert the first chair to these cues. As discussed below, how to do this depends on the first chair – you might hand over a note, whisper a brief remark or inform him or her of a particular observation during a break.

Mind the team

The preparation for, and the conduct of, an evidentiary hearing can be a particularly stressful period. Tensions run high and morale can plummet. First chairs are often also the team leaders; it is up to them to manage the team. However, because the first chair tends to focus on advocacy duties, he or she may be unaware of friction among team members or of poor morale. He or she also may not have the time to intervene in every petty squabble precipitated by sleep-deprived junior lawyers. As second chair, you should therefore take a more hands-on approach to managing the team and keep a constant measure of the team's collective morale. Bring any serious problems to the lead advocate's attention before relations become overly fraught.

That being said, keep in mind also that evidentiary hearings should be fun. Do your best to keep the proceedings light. Everyone will be aware of the seriousness of the undertaking, but an opportune joke, a team meal and a healthy sense of self-deprecation can make a stressful situation far more bearable. And remember that the team members are, first and foremost, people; modern science has not yet invented arbitration robots. Though it might be easy to forget, life continues outside the hearing room. Team members may be dealing with pregnant spouses, sick family members or personal issues in addition to their work responsibilities. Strive to treat your team members in the way you would like to be treated in those circumstances.

Mind the client

As with your team members, your client – whether a party or a representative (such as in-house counsel or government minister) – typically will have needs that must be serviced during the course of the hearing. Although it is often the first chair who works most closely with the client, when the first chair's attention turns to advocacy, client service must be maintained. A good second chair will pick up the slack in this regard. He or she will act as a sounding board for the client's suggestions, concerns and complaints. He or she will also explain hearing processes to the client, decode the arbitrators' cues and evaluate the witnesses' performances. He or she will take the client to dinner. Importantly, he or she will act as a gatekeeper between the client and the lead advocate. While some lead advocates are skilled at simultaneously handling clients and preparing for a hearing, this is not always the case. Where it is not, the second chair has an important role in listening to the client's suggestions and complaints and filtering the important, helpful and necessary information for the lead advocate.

Mind the witness

As a hearing approaches, witnesses often begin to grow nervous about giving their evidence and, in particular, facing cross-examination. The lead advocate usually cannot dedicate himself or herself to the task of calming nerves, except for perhaps the most important witnesses (or clients who also serve as witnesses). The second chair, then, must take on the role of providing comfort to nervous witnesses and ensuring that they remember their training (subject to the applicable ethical rules). Usually this will involve further preparation sessions and, at times, arranging social engagements to take the witness's mind off matters. Of course, there may be times when it is necessary for the lead advocate to intervene. Witnesses can have fits of pique, they can begin to doubt their own evidence (even if it is objectively true) and they can even threaten to refuse to give their evidence. In these more extreme circumstances, as part of your triage and gatekeeping responsibilities, you should make the lead advocate aware of the witness's particular misgivings and ask him or her to speak with the witness if necessary.

Mind the opposition

Although you have significant responsibilities in aiding the lead advocate during submissions and cross-examinations, you also are best placed to monitor the behaviour and reactions of the opposition. While most lawyers aspire to maintain strong 'poker faces' during the course of an evidentiary hearing, the opposition's intended stoic façade is frequently not sustained. Sometimes a particular reaction can provide insight into weaknesses in the other side's case, or alert you to an imminent objection. Although you should not read too much into the outward behaviour of opposing counsel, there are times when a reaction or a pattern of conduct can allow your team to change tack, or to focus additional questioning on issues that appear to be a sensitive area for opposing counsel.

Be the gatekeeper

Given the number of tasks required of the first chair at hearings – and the sheer excitement of 'doing battle' – people are always volunteering to help. On the one hand, help is constructive. When it comes to thinking through a problem, looking for evidence or listening for admissions, two minds (or pairs of eyes or ears) generally are better than one. On the other hand, help can be harmful – for example, when too many people pass notes to the speaker (or worse, pass incorrect or contradicting notes). As second chair, your job is to make sure that help offered to the speaker actually is helpful. Sometimes, this means defending the speaker from well-intentioned colleagues who pass distracting notes on minor issues or at inopportune times.

As a junior associate, you might think it awkward – or insubordinate – to decline to pass on a note from the client, or from a more senior attorney. But as the second chair, you are the person best placed (and, indeed, authorised) to decide when to distract the speaker with a note. If you are at all concerned about how to handle a particular situation, discuss the issue with your first chair in advance. He or she may tell you to hold certain notes, but to pass others through, or to hold all substantive notes until a break. Or he or she may tell you to use your judgement and smooth things over with your colleagues if you decide not to pass on a note. But do not simply sit back and allow your first chair to be distracted – protect his or her ability to focus as best you can.

Sharing the advocacy with juniors shows confidence in your case

Sharing part of the advocacy with less senior counsel can be effective and send the right messages.

It is understandable why the most prominent, well-known and senior partners typically want to act as the leading counsel in an arbitration, even if they are not always on top of the evidentiary record. Their experience and sense of authority can lend weight to the party's case, especially when the members of the tribunal are familiar with them. However, it can also be effective, and indeed refreshing for the tribunal, if senior counsel allows less senior counsel, who is usually extremely familiar with the file, to do part of the oral pleadings and cross-examination. By sharing part of the oral pleadings with less senior counsel, senior counsel can send a message of confidence in their team and by extension to their case.

– Stavros Brekoulakis, 3 Verulam Buildings

Communicate effectively with the first chair mid-presentation

This is one of the most difficult – and important – parts of being a second chair. If you cannot relay information to the first chair in a way that can be understood, assimilated and acted upon without too much effort – or if you relay the information in a way that is distracting – then it does not matter how well you know the case, or how desperately you want to save the speaker from a difficult question. Unfortunately, learning to communicate with a speaker mid-presentation takes a bit of trial and error (and preferences often tend to differ). In general, however, here are some things to keep in mind:

- Unless instructed otherwise, expect to communicate with the speaker by handwritten note. There may be some instances when the speaker turns off the microphone to consult with you, but these will be rare. Never send messages via email or instant message; few advocates have the wherewithal to check those media while speaking (and there is always a possibility that your email or instant message could pop up on the presentation screen, for the entire room to see).
- Write legibly. Do not use shorthand or abbreviations unless you are absolutely certain that the speaker will understand.
- Err on the side of providing more detail than less. Remember, you are the leading expert on the issues for which you second-chair. You might understand that 'wrong interpretation, see Case XYZ' is shorthand for 'this particular treaty cannot be interpreted that way, as the XYZ tribunal held, because of A, B and C', but the speaker, who has spent less time immersed in all the research (and who is likely to have been trying to answer the question himself or herself during the time it took for you to scribble out your note), may not follow. Write in full sentences where possible.
- Wait to pass notes until the speaker has finished a thought and is moving on to a new thought, issue or even slide. In most instances, this is the least distracting time to pass a note.
- Establish a method for distinguishing notes intended to be read aloud from notes intended just for the speaker's information.

A practitioner's perspective: Prepare as if you are the first chair

Having a proactive attitude will take you a long way towards being a brilliant second chair. In the case of preparation of an oral argument, this means that rather than wait for guidance, step in the shoes of the first chair and structure the work in a strategic way. Consider asking yourself the following questions: What are the most important arguments? What is it you want to be certain that the tribunal takes away from the hearing? What are the risks to be avoided? What points should be made in cross-examination?

You need to have a very clear vision of the hearing schedule and know what you want to achieve in each part. Sometimes, this includes minimising risks.

Have a thorough knowledge of the case and the documents

No one will know the case better than you on the day so make sure you have read through all the material and anticipate the moves of the opposing party.

Have all the work that can be ready ahead of time prepared well before the week preceding the hearing as you will need the time preceding the hearing for adjustments, briefing of the first chair and client meetings.

Act like the bodyguard of the first chair

The most important role for the second chair role is to protect the first chair so that he or she can focus on and answer all questions coming from the team, experts, witnesses and the client. Anticipate what those questions might be.

Also anticipate any potential adjustments to the strategy of the other side. This will come in handy during the hearing to be adequately responsive. Your ability to find the appropriate answers when potentially new issues are raised will demonstrate that you have a thorough knowledge of the case. You should also anticipate the corresponding useful documents. If you anticipate that a specific authority might be cited, have it handy for the first chair.

Dare to lead

With the first chair busy with preparing his or her advocacy, you will have to step into shoes that could feel enormous on the day: resolving conflict within the team, management of the client and selecting priorities. This may include collaboration with more senior team members from other practices in your firm. Remember that you are the person who is best suited to appreciate these priorities. Do not pass any question or observation note from other team members or the client to the first chair: you have to select what is relevant.

Being a second chair – although it may seem less attractive than being the first chair – is also your time to shine and prove that you are taking the steps towards taking on the next role.

Enjoy it

Last, but not least, always remember to enjoy this part of the work, as your time in this role will pass by so fast.

– *Flore Poloni, August Debouzy*

- Decide in advance how time will be tabulated: ‘30 minutes elapsed?’ ‘30 minutes left?’ Ask the speaker how much time he or she will need to make a bare-bones conclusion in the event that time is running out. Guard that amount of time.
- In the event that the speaker needs to jettison some arguments (and you have agreed with the speaker in advance that you will walk him or her through this if necessary), swap the speaker’s script or notes with a marked-up copy.
- Watch how the speaker handles your interactions and adjust as necessary. Hearings can be long, and counsel frequently must give presentations on very little sleep. What may be perfectly fine for the speaker when well rested could be distracting after an all-night work session. If the speaker tells you that he or she will not be able to handle any substantive notes, you should listen.

Expect technology to fail

During the past decade, it has become quite common for counsel to rely on tools such as PowerPoint and Prezi when making an oral argument. Though useful, these tools can also lead to stress and frustration when they malfunction. To avoid that stress and frustration, you should first do everything possible to avoid malfunction altogether. Test and practise using the technology in advance, in as realistic a setting as possible. Make sure you have all the necessary cords, adapters and accessories (e.g., a clicker). Bring batteries. Save documents to your hard drive in case the internet goes down. Learn how to fix – or know whom you should call to fix – potential mid-presentation problems. Plan for Murphy’s Law and do your best to defeat it. And, of course, have a backup plan in case Murphy’s Law prevails. What will you do if there is no internet? If you have internet but cannot connect to your firm’s network and access documents? If the vendor cannot print copies of your presentation? If your presentation cannot play? If the trial graphics vendor does not show up on time? How will this affect the first chair? How should he or she handle these situations? (Remember: as second chair, you should be the one with all the answers.)

Find a good third chair

By this point, you may be daunted by the volume and importance of the responsibilities that a good second chair must execute – and for good reason. Though the second chair’s role may not be as visible as that of the first chair, he or she is the engine that propels the hearing team vehicle. Depending on the economics or the relative complexity of the case, you might be doing everything identified above on your own. If the case allows, however, you should aim to involve a more junior lawyer to assist you.

Just as the typical second chair aspires to one day take on the lead advocate’s role, the right profile for a ‘third chair’ is a lawyer who aspires to serve as second chair. The ideal candidate is one who seems to have the capacity to take on the responsibilities outlined above. He or she will have a strong work ethic, the ability to work under pressure and to withstand stress and, ideally, maintain a smile. Perhaps most importantly, in addition to the tasks that he or she originally had been assigned (for example, preparation of certain witnesses, assistance with cross-examination outlines), he or she should aim to ease the burden of the second chair. He or she should also anticipate your needs and serve a similar gatekeeping and triage function for you, as you perform for the lead advocate.

Preferably, this person should be an ‘arbitration lifer’. It is during hearings that a team distinguishes itself. Superbly written submissions frequently can be laid bare by an arbitration team’s lacklustre performance in a hearing, its case exposed by poor cross-examinations or unconvincing and poorly prepared witnesses. Conversely, a case with bad facts and bad law can be salvaged by a team’s commanding performance in the hearing room. However, to accomplish this, the team must have a collective passion for presenting evidence and attacking weaknesses in the other side’s case. This requires long hours, thinking on one’s feet, overcoming any interpersonal tension, and – at the junior level – a great deal of thankless and often mundane tasks. To cope with those conditions requires someone dedicated to the practice of international arbitration. When selecting a third chair, the preference is for junior team members with a keen interest in pursuing a career in the field. This advice is particularly relevant in the context of American arbitration practices, where the junior lawyers often split their time with other practice groups and are testing the waters to determine whether this niche area of the law is for them. To identify a third chair who will provide the kind of support needed in the circumstances, look for someone who, no matter the assignment – or amount of sleep on which he or she operates – is still striving cheerfully to help you out.

Appendix 1

The Contributing Authors

Mallory Silberman

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Mallory Silberman is a partner at Arnold & Porter, with a practice focused primarily on dispute resolution between multinational corporations and sovereign States. To date, Ms Silberman has served as counsel in nearly 40 investor-state arbitrations, under ICSID, Additional Facility, UNCITRAL or ad hoc rules. She has been recognised for this work by *Who's Who Legal* (Future Leader in International Arbitration, 2017–2019), *Super Lawyers* (Rising Star in International Law, 2015–2019), *Latinvex* (Latin America's Top 100 Female Attorneys, 2017–2019), *The Legal 500: Latin America* (International Arbitration, 2018) and *DCA Live* (Emerging Women Leaders in Private Practice, 2019).

In addition to her work as counsel, Ms Silberman is an adjunct professor at Georgetown University Law Center, where, since 2012, she has taught a substantive and oral advocacy course on international arbitration.

Timothy L Foden

Lalive (London) LLP

Timothy Foden joined Lalive in 2018. Tim's practice focuses on investor-treaty and complex commercial arbitrations in the mining and energy sectors, with additional experience in technology licensing, commodities and hospitality.

During the past 10 years, he has represented dozens of investors in bringing claims against states under the Energy Charter Treaty and various bilateral investment treaties, and multiple global mining and energy corporations. Tim also has extensive commercial arbitration experience, having represented, inter alia, international chemical engineering firms, global mining concerns, a leading international hospitality management company and a major aluminium smelter.

He has acted in proceedings under the ICSID, ICC, SCAI, UNCITRAL, LCIA and ICDR arbitration rules and has extensive experience in the enforcement of commercial and ICSID arbitration awards in the courts of the United States, England and Belize.

Tim currently serves as a board member of American Qualified Lawyers in London. He acted as co-chair of Young ICCA (2011–2014), deputy editor of the *European International Arbitration Review* (2011–2016) and speaks regularly on international arbitration matters around the world. He has been recognised by *Global Arbitration Review* and *Who's Who Legal* as a 'rising star in international arbitration' for the past three years.

Before joining Lalive, Tim Foden worked as of counsel of the international arbitration group of a leading US firm in London and prior to that as an associate in the arbitration department of a magic circle law firm (2011–2013). Before that, Tim was an associate in the international arbitration group of a prominent US law firm (2008–2011). Tim began his legal career working as a staff attorney for the Eleventh Circuit Federal Court of Appeals in Atlanta, Georgia (2006–2008). He holds a Juris Doctor magna cum laude from the American University (2005) and a BA magna cum laude from the George Washington University (2002).

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Appendix 2

The Contributing Arbitrators

Jan Paulsson

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Jan Paulsson has been counsel and arbitrator in several hundred international arbitrations conducted under the rules of all major arbitral institutions. He has also been a member of the governing bodies of many of these institutions, and has served as president of the London Court of International Arbitration and vice president of the ICC International Court of Arbitration in Paris. He holds law degrees from Yale and the University of Paris. His principal publications include the monographs *Denial of Justice In International Law* (Cambridge University Press, 2005) and *The Idea of Arbitration* (Oxford University Press, 2013).

Stanimir A Alexandrov

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Stanimir A Alexandrov has more than 20 years of experience working as an arbitrator and counsel in treaty-based investor-state disputes and international commercial arbitrations, and has been appointed to the panels of arbitrators of various arbitral institutions. Until August 2017, he was global co-leader of the international arbitration practice at Sidley Austin LLP. Since then, he has established his own practice as an arbitrator. Mr Alexandrov is consistently listed as a leader in the field of international arbitration in publications including *The Best Lawyers in America*, *Chambers*, *The Legal 500: United States*, *The Legal 500: Latin America* and *Who's Who Legal*, and has been recognised as 'Lawyer of the Year International Arbitration – Governmental' and 'Lawyer of the Year International Arbitration – Commercial'. He is also a professor at The George Washington University Law School. Prior to joining Sidley Austin LLP, he practised at Powell Goldstein Frazer & Murphy from 1995 to 2002.

Mr Alexandrov has published several books and numerous articles on matters of public international law and international arbitration. He obtained his degree in public international law from the Moscow Institute of International Relations, and master's and doctoral

degrees in international law from The George Washington University Law School. Prior to engaging in private practice, Mr Alexandrov was vice minister of foreign affairs of Bulgaria. He is fluent in several languages.

Kabir Duggal

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Dr Kabir Duggal is an attorney in Arnold & Porter's New York office focusing on international investment arbitration, international commercial arbitration and public international law matters. Dr Duggal's experience includes complex disputes under numerous bilateral and multilateral investment treaties and contracts in South Asia, Latin America, Central Asia, Middle East, Europe and Africa. His experience flows from his triple training in international law, common law and civil law traditions. The total value of the disputes he has been involved in exceeds \$80 billion. He has facilitated the mediation and negotiation of complex disputes. He also acts as a consultant for the United Nations Office of the High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) on the creation of a new Investment Support Programme, which was shortlisted by Global Arbitration Review for the category of 'Best Developments' in 2018.

Dr Duggal is a lecturer-in-law at the Columbia Law School, teaching international investment law and arbitration. He is also a course director and faculty member for the Columbia Law School-Chartered Institute of Arbitrators comprehensive course on international arbitration.

Dr Duggal is a graduate of the University of Mumbai (University Medal), University of Oxford (DHL-Times of India Scholar), NYU School of Law (Hauser Global Scholar) and the Leiden Law School (2018 Academic Prize by CEPANI). He is admitted to practise in England and Wales (solicitor), India, New York and Washington, DC.

Stavros Brekoulakis

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Stavros Brekoulakis is a professor in international arbitration and commercial law at Queen Mary University of London, and a member at 3 Verulam Buildings. He is the director of the Institute for Regulation and Ethics at Queen Mary, co-chair of the ICCA-Queen Mary Task Force on Third-Party Funding, a member of the International Chamber of Commerce (ICC) Task Force on Emergency Arbitrator Proceedings, a member of the ICC Commission on Arbitration, an assistant rapporteur in the International Law Association Committee on International Commercial Arbitration, the general editor of the *Journal of International Dispute Settlement* and the editor-in-chief of the Chartered Institute of Arbitrator's *International Journal of Arbitration, Mediation and Dispute Management*.

Professor Brekoulakis has been involved in international arbitration for more than 20 years as counsel, arbitrator and expert. Having practised commercial law, arbitration and litigation as in-house counsel and private practitioner, he currently serves as arbitrator and expert. He is regularly listed in *Who's Who Legal: Arbitration* and was listed in *Who's Who Future Leaders: Arbitration 2017* as one of the 10 most highly regarded future leaders, described as 'very thorough and professional' and 'held in the highest regard'. He was also named in *Who's Who Legal: Thought Leaders – Arbitration 2018*, which includes an exclusive list of 'the most highly regarded arbitrators who truly stand out in their field as being leaders and who are held in the highest esteem by their clients and fellow practitioners'. He was nominated for the Best Prepared and Most Responsive Arbitrator award by Global Arbitration Review in 2016 and 2017.

Professor Brekoulakis has been appointed in more than 30 arbitrations, as chairman, sole arbitrator, co-arbitrator and emergency arbitrator under the rules of the ICC, the London Court of International Arbitration, the Stockholm Chamber of Commerce, the Danish Institute of Arbitration, the Court of Arbitration for Sports as well as in ad hoc arbitrations under the UNCITRAL Arbitration Rules. His professional expertise focuses on arbitrations in the context of major construction and complex infrastructure projects, energy and natural resources projects, as well as international business and trade transactions, including sales of goods, financial transactions, indemnity and distribution shareholders' agreements, intellectual property contracts and sports disputes.

Flore Poloni

August Debouzy

Flore Poloni is a counsel in August Debouzy's litigation, arbitration and white-collar crime practice group in Paris.

She represents companies from around the globe in pre-litigation, mediation, litigation and arbitration proceedings across a wide range of disputes, with a focus on industrial clients operating in sectors such as defence, automotive or chemicals. She has notably spent 18 months on secondment with a client's litigation and claim management team in the defence sector. She frequently participates as counsel in shareholders' disputes and in cases involving cross-border transactions. She has solid experience in the enforcement of arbitral awards in France, including seizing assets.

Prior to her current role, Flore spent a couple of years in the international arbitration group of Gide (Paris), after having trained at Shearman & Sterling, Bredin Prat and CVML's former Tokyo office.

Flore is very involved in the arbitration community in France as she co-founded the Paris Very Young Arbitration Practitioners in 2012. She is a co-chair of the Young International Arbitration Group of the London Court of International Arbitration.

She was admitted to the Paris Bar in 2008. A French national, Flore works in French and English.

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Successful advocacy is always a challenge. Throw in different languages, a matrix of (exotic) laws and differing cultural backgrounds as well and you have advocacy in international arbitration.

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