



## Corruption, Fraud and Violations of General Principles of Law in International Arbitration \*

### Summary

**\* Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session at Washington Arbitration Week focused on the critical issues of corruption, fraud, and violations of general principles of law in international arbitration. The panel was moderated by Ken Risen, a prominent figure in the arbitration community, who introduced the topic as both timely and timeless, particularly highlighting its relevance to commercial contracts and investment treaty arbitrations.

The discussion was framed by recent significant legal decisions, including the English court's annulment of a billion-dollar award against Nigeria due to corruption, and the French court's similar action regarding a substantial award involving the Republic of Turkestan. These cases prompted a deeper examination of how arbitrators should handle allegations of corruption and fraud.

The panel featured several experts:

- Jen Turner, an investigator specializing in corruption and fraud, outlined the investigative process and the importance of understanding the networks involved in corruption.
- Professor McGonagall discussed the implications of illegality in investment treaty arbitration and the drafting of treaties.
- Even Ben examined how allegations of corruption are treated during arbitration and by enforcing courts post-award.
- Jennifer Crabtree, an expert in forensic accounting, discussed the valuation impacts of fraud and corruption on transactions.

The panel emphasized the need for arbitrators to be proactive in investigating claims of illegality, even when parties may not raise such defenses. They debated the extent to which tribunals should intervene in cases of apparent imbalance between parties and the challenges of addressing corruption discovered after the arbitration process.

The session concluded with a Q&A, where the audience engaged with the panelists on various aspects of the discussion, including the difficulties in obtaining evidence in



international cases and the role of tribunals in ensuring justice. Overall, the session provided valuable insights into the complexities of managing corruption and fraud within the context of international arbitration.

### Authors

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### Topics

WAW

### Category

WAW

### Full Transcript

00:00:18

We're just finishing the technical

00:00:22

aspects of this session while

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welcome back to our second

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session dates at Washington arbitration

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week. Start off the day

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with a breaker panel on

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the addition in valuation. And

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we're moving on to some



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other very important topic. Another

00:00:43

important topic, International arbitration panel

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is titled, Russian fraud and

00:00:49

violations of general principles of

00:00:51

Law and International Education. And

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we are privileged today to

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have an excellent panel before

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you. And our moderator is

00:01:00

one of the teams of

00:01:01

the international arbitration World here

00:01:04

in Washington DC. And it's

00:01:06

always my pleasure to introduce

00:01:08

can rise until Tuesday, Global



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leader of bakerhostetler arbitration team

00:01:16

Chambers and legal 590 lawyer.

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And a judge Learned Hand

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award recipient just last year.

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So congratulations on that. He's

00:01:27

among the world's leading Advocates

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and arbitrators and cross-border contract,

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commercial licensing, and investment treaty

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disputes. Genocide over 40 years

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experience, especially representing Global for

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all of the prominent and

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Regional arbitration Center. So we

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all know. So well, it's



00:01:49

a great pleasure to have

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you here today to moderate

00:01:53

this panel. And I'll just

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take the opportunity to thank

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the battle and the let's

00:01:59

get going and looking forward

00:02:01

to sitting back and listening

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to what everyone else to

00:02:05

say. Hello everyone is welcome.

00:02:10

I have to say it's

00:02:13

a great pleasure and thank

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you for checking in and

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as well as Jose Antonio



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and the entire washing arbitration.

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Weak leadership to allow us

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to prevent this program today

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on corruption and fraud. And

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other violations of general principles

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of law in international arbitration,

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The topic is timely and

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Timeless particularly for those who

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are active in commercial contracts

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and treaty arbitrations involving State

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and State Patrol that, we

00:02:48

hope to provide some practical

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insights for console and arbitrators



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alike. As I would like

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to call it use, you

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could use I will get

00:03:08

this to all right. It

00:03:19

is commandeered. The full attention

00:03:21

of the international arbitration ever.

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Since the English set, aside

00:03:28

a billion-dollar arbitration award obtained,

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by the BVI company process

00:03:36

and Industrial developments limited p&id

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against the federal republic of

00:03:43

Nigeria. English Court, decision was

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issued approximately 14 months ago



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and has spawned a cottage

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industry of speculation as to

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how arbitral tribunal of highly

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respected British arbitrators and Juris.

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Including Lord, Hoffman and Sir

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Anthony Evans before whom I

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actually brought cases could have

00:04:09

missed that the underlying gas

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supply. Contract was riddled with

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corruption from its Inception which

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deception was aggravated by the

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Crump Manor and wouldn't the

00:04:20

arbitration process was carried out.



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AB, without the knowledge of

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the arbitration panel. Nigeria did

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not raise to the defense

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of illegality or corruption in

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the preceding, the tribunal apparently

00:04:39

did not know and did

00:04:42

not inquire. That one of

00:04:43

the government Witnesses was being

00:04:45

paid under colluding commercial party

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to testify falsely that the

00:04:51

government's lawyers team was sharing

00:04:53

privileged documents and information with

00:04:57

the other side during the



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hearings and does knew exactly

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what to anticipate in their

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key Windows, Hunter herself to

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keep the crop transaction from

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being exposed. The case reflects

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that even the most admired

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and respected arbitrators can be

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Hoodwinked. If the parties are

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in collusion and the council

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for one party or the

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Nigerian government has ineffective counsel

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Traditionalist, wall. Arbitrators, in that

00:05:34

case, accepted the evidence, including



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some apparent anomalies, we do

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proactively inquiring into the veracity

00:05:44

of the transaction in a

00:05:46

subsequent, set aside, for 8,

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weeks, and proceedings itself included

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that there were serious irregularities

00:06:01

leading to Serious Injustice. Justin

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Noble been set aside the

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awards, he also challenged the

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arbitral community to consider whether

00:06:12

the tribunal. Should be have

00:06:14

been more interventionist and proactive

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insuring out the front yard



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in with the shell that

00:06:24

got nowhere near the truth,

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underlying the transaction before. The.

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IDK equally consequential set aside

00:06:36

of an arbitral award by

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the Supreme Court. In the

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case of Bella can be

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the Supreme Court upheld. The

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2017 decision of the Paris

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court of appeal to set

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aside. A 15 billion dollar

00:06:53

buyer, parasita tribunal in favor

00:06:58

of a lot fee in



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investor against the Republic of

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Turkestan. The court of appeal

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rejected enforcement of the award

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on grounds that would permit.

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The Victorious claiming to benefit

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from the proceeds of a

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money-laundering scheme. Contrary to the

00:07:16

principles of international public policy.

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With these two English and

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French Quarter projections of arbitral

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Awards as a backdrop. We

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will focus on when and

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how arbitrator should handle allegations



00:07:33  
of corruption fraud in the

00:07:34  
legality. Our discussions of the

00:07:38  
topic we've added to twist.

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We will lead off with

00:07:43  
a professional investigator, just fine

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back witness who routinely reviews

00:07:49  
transactions that are suffused with

00:07:51  
corruption fraud or money order.

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And we will conclude with

00:07:56  
evaluations expert testifying expert, who

00:07:59  
will discuss the impact Elite

00:08:01  
illegality of allegations have on

00:08:05  
the valuation of a transaction



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in the risk profile of

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a country. I want to

00:08:16

know introduced our distinguished panel,

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Jen Turner to my right

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is a partner and head

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of groups, Washington, DC office.

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They are well-known investigators useful

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at all stages of the

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arbitral process, including him determining.

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If her project is infected

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with, brought with her transactions,

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may be set, aside for

00:08:38

illegality. How to uncover illicit.



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Proceeds are attachable assets, Genco

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had the firm and specializes

00:08:50

in these types of Investigations

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large-scale dispute, including enforcement of

00:08:56

multibillion-dollar arbitration Awards and jurisdiction

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raging for Western Europe, Latin

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America, and the Caribbean General

00:09:06

layout, the fact-finding. Tools investigators.

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Bring the beer to ferret

00:09:11

out corruption. She promises to

00:09:14

provide pointers on how Council

00:09:16

can best utilize these invest

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in a skill. Professor McGonagall.



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Ronnie Beasley to my right

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is a professor of international

00:09:29

law. Invited professor at the

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Academy of international law, admitted

00:09:38

to practice prayer, edited by

00:09:41

the state's corporations, and international

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organization is a member of

00:09:49

the ancient panel of arbitrators

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having been appointed by Belgium

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and his shirt as a

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member of Fixodent, Norman Cosmetics.

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I will analyze illegality please

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in international treaty arbitration, he



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will propose a topology of

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investors illegality, and then examine

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how tribunals deal with it.

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He also touched upon drafting

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of treaties and the scepter

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ability. Immediately to my love.

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My colleagues, even been will

00:10:27

then examine issues of corruption

00:10:29

in international commercial arbitration in

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first and how they these

00:10:36

allegations are treated during an

00:10:38

arbitration. And then I would

00:10:41

enforcing courts and tribunals deal



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with the issues after an

00:10:45

arbitration award has been She

00:10:48

is an Adjunct professor of

00:10:54

law at Georgetown, University hongkong,

00:11:01

and singapore-based arbitration and enforcement

00:11:05

proceedings in Singapore, and New

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York. I will then provide

00:11:10

some comments from the experience

00:11:12

as an arbitrator. And from

00:11:14

the point of view of

00:11:15

a Tribunal Does a tribunal

00:11:18

have a duty to be

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interventionist in pursuance of corruption?



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Even if the parties do

00:11:25

not want it to do.

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So, In the memorable words

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of the Michael W. Are

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tribunal's, watch dogs, or Bloodhounds

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should assume the role of

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Sherlock Holmes and launched into

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an independent investigation on the

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road, upon the percent of

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illegal. Any being a book

00:11:49

or alternatively, like a watchdog

00:11:52

should try Beatles, merely make

00:11:54

appropriate inquiries when the benches



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too, pungent to a dork.

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I tend to stand in

00:12:01

the latter camp but ultimately

00:12:02

depends upon the parties agreement.

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Jennifer crab to build is

00:12:16

our last speaker. He's a,

00:12:18

he's a partner in HK

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is forensic, accounting and Commercial

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damage and practice here in

00:12:24

Washington. DC is an accredited

00:12:27

senior appraiser and certified fraud

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Examiner. Prior to becoming a

00:12:33

testifying right expert. He served



00:12:36  
in the corporate finance department

00:12:37  
of Lockheed Martin. Income Division

00:12:41  
and Lahey Layman brothers, and

00:12:45  
Office of the chief chief

00:12:46  
accountant at the SEC. Many

00:12:52  
cases involving fraud and Corruption.

00:12:57  
Including those involving North Macedonia,

00:13:00  
respect to Stan and turkey.

00:13:03  
Kevin will provide statistics from

00:13:05  
LeBron and anti-corruption and we'll

00:13:08  
analyze their impacts on the

00:13:11  
arbitration. Speakers will make a

00:13:16  
short presentation. We will then



00:13:18  
have questions for the panel.

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And of course, we will

00:13:23  
at the end, we will

00:13:24  
have questions for the floor

00:13:25  
given that we're working on.

00:13:27  
Don't work. I asked everybody

00:13:31  
speak into a microphone and

00:13:34  
I see we have a

00:13:35  
substantial group here in the

00:13:39  
conference room and of course

00:13:41  
on soon. So thank you

00:13:42  
all for participating. With that,

00:13:46  
I turned to Jen. Thank



00:13:48

you, and thank you for

00:13:49

being here, and I hope

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I can live up to

00:13:50

that introduction. Appreciate it during

00:13:57

various stages of arbitration proceedings.

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And even often and contemplation

00:14:01

of arbitration for many of

00:14:02

the things were talking that

00:14:04

today looking for a dish

00:14:05

of Correction, at the start

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of an investment understanding help

00:14:09

humans from. That investment, may

00:14:11

have been used to facilitate



00:14:12  
corruption or funneled into structures.

00:14:14  
That could be important. In

00:14:15  
the enforcement, is a proceeding

00:14:17  
and looking at undisclosed sometimes

00:14:20  
to arbitrate or other potentially,

00:14:22  
problematic knows of influence in

00:14:24  
the matter. And at the

00:14:26  
core of our investigative work

00:14:27  
right now to find key

00:14:28  
players and how they offer

00:14:30  
and this is often a

00:14:31  
combination of research on the

00:14:33  
public record and talking to



00:14:34

people who have knowledge of

00:14:35

how the events unfolded and

00:14:37

relevant individuals. And one thing

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has been really interesting and

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instructive and ran into investment

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being distraught at or having

00:14:58

opportunity taken away and all

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of them, followed a similar

00:15:01

place that has really helped

00:15:03

us guide. A lot of

00:15:04

our event and just generally

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five steps to find a

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person to trust. This is



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often a relative for setting

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up the structures that may

00:15:17

be difficult to trace. So

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this could be in the

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form of impenetrable companies, and

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trusts, or losing money, or

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assets into the structure. And

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then, eventually, the money has

00:15:28

to come out and play.

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And if he should be

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out of information, that can

00:15:33

be developed, And there were

00:15:38

frequently asked to identify and



00:15:39

dig into these patterns in

00:15:42

one matter. We were asked

00:15:43

to delve into contract, the

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national oil companies, which have

00:15:46

been cancelled following a regime

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change to see if we

00:15:49

could establish that the contract

00:15:50

has been awarded the contract

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involved. Enter the company involved

00:16:00

in the joint venture, commence

00:16:02

arbitration and we were taking

00:16:04

identify indications that the contract

00:16:05

have been obtained through. And



00:16:08

we got a series of

00:16:08

side contract with jurisdiction for

00:16:12

oil services. We are never

00:16:14

been no service provided these

00:16:17

contracts and the BVI entities

00:16:19

and beneficial ownership of the

00:16:24

minister of oil. And we

00:16:26

look at the contract and

00:16:30

other documents to help tie

00:16:34

them back into this. Information

00:16:37

was used in an effort

00:16:38

to an ulcer. And that

00:16:41

he's also underscores, the importance



00:16:43  
of understanding and individuals networks

00:16:45  
and how they operate. So

00:16:47  
we bring all of these

00:16:48  
angles to bear in an

00:16:49  
investigation, which is often holistic

00:16:51  
approach to looking at an

00:16:53  
individual including understanding, their family

00:16:56  
members operate. And so, we're

00:17:05  
also was thinking about good

00:17:06  
sources, people who we could

00:17:07  
try to speak with during

00:17:09  
an investigation, for example, and

00:17:11  
Concession, bidding process of losing



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bidders are often minded to

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Speak with investigators here, early,

00:17:16

if there's been Foul Play,

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We had another matter where

00:17:25

you were brought in to

00:17:26

investigate, how contract for confessions

00:17:28

had been awarded in the

00:17:30

mining skis. And we managed

00:17:31

to track down a former

00:17:32

employee of the company Award

00:17:34

of the contract have been

00:17:35

heavily involved in the negotiations.

00:17:36

And he told us he



00:17:38

had serious concerns about the

00:17:39

person who negotiated the contract

00:17:41

and the individual headache started

00:17:49

at the payment, be divided

00:17:50

into three bank accounts. One

00:17:52

of the name of the

00:17:53

government Ministry, one to a

00:17:54

numbered bank account, and went

00:17:56

to an account in the

00:17:57

name of the company that

00:17:57

was owned by the individual

00:17:59

doing. Answer. The first time

00:18:01

we spoke with indicated, he



00:18:02  
had resigned from the company

00:18:03  
before the final payment for

00:18:05  
me personally because of the

00:18:06  
way that he is instructed.

00:18:10  
We've also seen cases, where

00:18:12  
the alleged corruption with sophisticated

00:18:14  
and involved several steps to

00:18:16  
avoid leaving any leaving any

00:18:18  
paper trail. So in one

00:18:20  
instance of Rivals, allegedly date

00:18:21  
of the regular Network. So

00:18:31  
as we spoke with indicated

00:18:34  
that the company CEO was



00:18:35

fly from one country to

00:18:37

another swap planes. Fly to

00:18:39

another country avoid going through

00:18:41

customs and then me at

00:18:42

a safe house without elaborate

00:18:44

web also. Created several people

00:18:46

who made Fallout and be

00:18:47

willing to speak with us

00:18:48

at some point from Pilots

00:18:50

to former security Personnel. The

00:18:52

others who may have been

00:18:53

in a room where people

00:18:55

go to the Great Plains,



00:19:04

That's terrific. I want open

00:19:07

up to her panel, ask

00:19:08

Jen, any questions they have?

00:19:12

But I'd like to ask

00:19:13

a question if you don't

00:19:14

mind. I mean, it is

00:19:15

in addition to investigating corruption

00:19:17

at the Inception, ordering a

00:19:20

contract. Have you been involved

00:19:22

in in looking at 4

00:19:23

on during arbitral proceedings, you

00:19:27

know, we're off Netflix, undisclosed

00:19:33

ties or In one case,



00:19:37

you're asked to develop evidence

00:19:38

of improper influence on a

00:19:40

tribunal, from a number of

00:19:41

different angles, including that the

00:19:42

body was influence more probably

00:19:44

by a country's Judiciary or

00:19:46

possibly other government officials. And

00:19:49

so, we first started conducting

00:19:51

research on the public record.

00:19:52

Really heavily on speaking to

00:19:54

people on the ground, to

00:19:56

get an understanding of the

00:19:57

reputation of one member of



00:19:59

the tribunal, and we were

00:20:01

knocking on doors of lower-level

00:20:03

people on, who'd worked closely

00:20:05

with him and managed to

00:20:06

develop information that the individual

00:20:08

had previously taken bribes in

00:20:10

another matter. And so one

00:20:11

person we spoke with her

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with it information which has

00:20:15

the type of information so

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that they might be willing

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to seek. That's terrific. I

00:20:32

think we'll turn to, I'm



00:20:34  
sure there'll be questions for

00:20:35  
Jen at the end. I

00:20:37  
think we'll turn to Gonic

00:20:38  
now to talk investor-state. Thank

00:20:42  
you very much. So I

00:20:48  
would keep it short because

00:20:54  
you did not conduct during

00:21:19  
investment operations. Facebook's time investment

00:21:33  
is made on the one

00:21:37  
hand, he guaranteed in the

00:21:40  
making of investment of the

00:21:45  
investment. Ali gatie in Jamaica.

00:21:49  
This is a guinea pig



00:21:50

and considering the lack of

00:21:52

compliance with bureaucratic of the

00:22:00

means we can use to

00:22:02

make investment into work. Correction

00:22:07

as we got a legal

00:22:08

entity of investment research is

00:22:09

can consist in business. So

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I mainly focused on this

00:22:21

category So the question that

00:22:30

we need to look into

00:22:33

his, what is the effect

00:22:35

of such as I need

00:22:36

to guarantee The Words which



00:22:42

state is considered the show?

00:22:46

Me print or is it

00:22:49

a matter of trying to

00:22:55

unravel the considerations which in

00:22:58

the determination of the night?

00:23:00

So the American Federation switch

00:23:03

coming to pay, some of

00:23:04

them are very practical things

00:23:06

to traveling on saying that

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for the sake of Judicial

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Code of Conduct the drafting

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of International Investment agreements. And

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whether or not in the



00:23:30

text of the agreement, there

00:23:31

is no guarantee requirements when

00:23:38

making investment definition of investment

00:23:50

or is it to the

00:23:53

admission? Whether it is to

00:23:57

be found in detective, 23?

00:24:00

There's a consensus among tribe

00:24:02

in Ark that when there

00:24:04

is such a requirement in

00:24:05

the treaty is to get

00:24:07

our contact is a matter

00:24:08

of jurisdiction. Men's Testaments in

00:24:12

the crotch with a new



00:24:13

and some tribunal Springfield that

00:24:15

this is a matter of

00:24:16

jurisdiction. Russian in subject, matter

00:24:18

jurisdiction. Beyond this message, another

00:24:30

common denominator like that. Minor

00:24:34

league is not sufficient to

00:24:37

retract most to decline. Moving

00:24:53

on to those treaties, which

00:24:54

do not contain a legality

00:24:56

requirement. Arbitrator practices, more diverse.

00:25:03

Don't try the moon Sorensen's

00:25:05

in Phoenix. Consider that there

00:25:07

is kind of an implied



00:25:09  
traditional requirements to come by

00:25:11  
with the time investment business.

00:25:15  
Irrigation we should consider that

00:25:19  
there is such a traditional

00:25:22  
requirement is set. The special,

00:25:24  
very high to decline. The

00:25:30  
tribunal has considered that this

00:25:32  
is not a jurisdictional issue,

00:25:33  
but the decision has to

00:25:35  
be dealt with at the

00:25:36  
marriage State wide is, the

00:25:44  
state of consent is not

00:25:45  
directly condition to count the



00:25:48  
investment on again. In between

00:25:51  
some five, most considerate that

00:25:53  
into consideration to take off

00:26:04  
entry, which I'll try to

00:26:15  
determine the impact of the

00:26:17  
weather. So, those burning principal,

00:26:25  
and I will refer to

00:26:25  
two of them and one

00:26:28  
of them is actually right

00:26:30  
to the competent. question, being,

00:26:34  
how do tribunals conceit of

00:26:38  
the school and the nature

00:26:40  
of Tracy, for which plays



00:26:46

a role in. The Suburban

00:26:47

is the principal DoubleTree whether

00:26:52

or not driving. This is

00:26:54

Raven in the context of

00:26:56

investment returns for instance, or

00:26:59

to refer to the I

00:27:09

think that the nature of

00:27:19

investment into commercial arbitration or

00:27:26

do they considered International Investment

00:27:50

form of commercial arbitration, as

00:28:11

a matter of fact, I

00:28:23

know there is tration of

00:28:26

the impact of how tribunal



00:28:28  
consider the nature of investment.

00:28:48  
I do have one question

00:28:51  
for you. Y'all are we

00:28:54  
know from our experience than

00:28:55  
municipal authorities. Take a long

00:28:58  
time to figure it out

00:29:00  
corruption in on the project

00:29:03  
it can take years of

00:29:05  
investigation and then further years-old

00:29:08  
proceedings even after an indictment

00:29:11  
or in some civil proceeding

00:29:13  
proceeding. What is your thought

00:29:18  
on how a tribunal should



00:29:21

a review or Take into

00:29:24

account that Corolla proceeding shouldn't

00:29:28

stay the proceedings, shouldn't shouldn't

00:29:32

in some cases should have

00:29:34

prevented from proceeding with Angie.

00:29:36

It's going to interfere with

00:29:38

the ongoing nature of the

00:29:41

investment treaty arbitration. What it?

00:29:43

What are your thoughts? Toyota

00:29:47

criminal investigation in the so

00:29:57

then we could stay or

00:29:58

not but I think that's

00:30:03

any way we can decide



00:30:10  
when I'm going to take

00:30:23  
a nap and then But

00:30:38  
that's obviously the countervailing. And

00:30:48  
it can't be. You can't

00:30:51  
push her too long before.

00:31:25  
I thought I saw on

00:31:27  
one of them all of

00:31:28  
mine who is on the

00:31:30  
phone by Zoom had raised

00:31:32  
the question. All if you

00:31:33  
want to, you can raise

00:31:34  
it now. okay, we will

00:31:41  
wait, then why don't you



00:31:47

Okay, and thank you again

00:31:49

and thank you for the

00:31:50

palace that the organizers for

00:31:52

organizing this week. So my,

00:32:01

said, they are kind of

00:32:02

going to focus on the

00:32:03

role of commercial arbitration to

00:32:05

treating issues of corruption fraud

00:32:07

and illegality. And I kind

00:32:10

of want to adjust the

00:32:11

post of those issues with

00:32:12

some of the issues that

00:32:13

we saw with investors State



00:32:16

arbitrations and divide up the

00:32:19

comments by focusing on issues

00:32:21

that arise during the arbitration

00:32:23

that arise after the arbitration

00:32:26

award has been issued and

00:32:28

the prodigal a for a

00:32:30

crush and has been discovered.

00:32:32

I'm going to look at

00:32:33

this economy in that kind

00:32:34

of said, I'll start off

00:32:36

with an obvious observation and

00:32:38

that in the commercial context

00:32:40

issues of Rod. Come out



00:32:43  
of your corruption are typically

00:32:46  
arrives in the As a

00:32:48  
affirmative defense that are responded

00:32:50  
or typically respond, it raises

00:32:52  
on this affirmative defense intake

00:32:54  
on a different day, on

00:32:56  
Clean, Hands in Paris, delete

00:32:58  
the other for the doctrine

00:33:01  
of the hue. Are the

00:33:05  
doctrine of locusts when attention

00:33:07  
is one of the hardest

00:33:08  
words in the world miserably

00:33:17  
at the gala T, is



00:33:28

it can also be raised

00:33:29

to espante by the arbitrator's

00:33:31

themselves. Perhaps, the most famous

00:33:33

example of this is judged

00:33:35

against awarded back in 1963,

00:33:40

and when she just missed

00:33:42

arbitration claims, because there was

00:33:44

bribed the evidence surprise in

00:33:47

the commercial arbitration before him

00:33:48

of Argentine, government officials, say

00:33:52

innocent in legality, cut alerts

00:33:55

in the background at all

00:33:56

times and can or drown



00:33:58  
himself in a commercial arbitration

00:33:59  
at any time. A visit

00:34:02  
to be also the case,

00:34:03  
even with consent two words

00:34:04  
to just to kind of

00:34:05  
give an interesting story on

00:34:07  
this. I was involved in

00:34:08  
a case in which we

00:34:10  
discovered that the respondents which

00:34:12  
was a government entity a

00:34:14  
confidential matter Sunday in the

00:34:17  
description and manipulated the control

00:34:25  
board of the queen. Until



00:34:27  
they actually were representing both

00:34:29  
sides of the vehicle at

00:34:30  
one point in the arbitration

00:34:32  
and then concocted the plan.

00:34:34  
If an Essence that they

00:34:36  
would get you a spent

00:34:37  
the war of corruption throughout

00:34:40  
it and So eventually make

00:34:43  
you lose control of the

00:34:45  
claimants in that matter. And

00:34:46  
so is that they're playing,

00:34:47  
didn't go through. But we

00:34:48  
raised the issue of respondents



00:34:50

were attempting to do. This

00:34:53

planet was discovered Friday, illegality.

00:35:02

The issue of corruption illegality

00:35:11

is not likely to cause

00:35:13

a jurisdictional challenge to the

00:35:16

tribunal online. As, as they

00:35:18

mentioned. That's a typical thing

00:35:20

that may arise in a

00:35:21

bit. Because many of us,

00:35:24

as he mentioned, a requirement

00:35:26

that the host state, it

00:35:28

would be best to be

00:35:29

made in the courts. With



00:35:30  
the loss of the host

00:35:33  
at times can be perceived

00:35:38  
as an advantage for the

00:35:39  
stage because he's kind of

00:35:42  
used to the works of

00:35:43  
art of karate. Is it

00:35:45  
is it is it gives

00:35:48  
you a lot of the

00:35:50  
tribunal to examine the suspect

00:35:52  
in the eye of the

00:35:52  
investor but kind of, without

00:35:55  
looking at the plank in

00:35:56  
the eye of the state,



00:35:57

indeed commercial The accusations of

00:36:02

Fraud and corruption in the

00:36:03

illegality can be only really

00:36:06

be raised as a defense

00:36:08

and it doesn't get to

00:36:08

jurisdiction. One example that would

00:36:10

be or the one exception

00:36:12

I would say to that.

00:36:13

Are there been cases of

00:36:14

a allegations of forgery or

00:36:16

fraud in the signing of

00:36:17

the arbitration agreement. Singapore recently

00:36:20

had a case about this



00:36:21

Reliant Energy vs. Shanghai Electric

00:36:24

in which the issue was

00:36:25

brought up but it is

00:36:26

not a jurisdictional challenge. Now

00:36:30

there's been a lot of

00:36:31

standard of proof. Pro proven

00:36:39

that the consensus generally is

00:36:42

that the height of the,

00:36:43

the higher standard, the clear

00:36:44

and convincing standard is the

00:36:46

standard that there's a minority

00:36:51

of tribunals that have come

00:36:52

to the conclusion. That it's



00:36:54  
a slightly lower standard because

00:36:56  
of the difficulty is that

00:37:06  
a vast majority have come

00:37:08  
to that conclusion, that the

00:37:09  
height of a standard against

00:37:16  
me or should I find

00:37:17  
myself on the opposite side?

00:37:18  
I offer no opinion on

00:37:21  
that matter. I do want

00:37:24  
to repay talk on issues

00:37:26  
that arise post arbitration and

00:37:28  
there's a few issues that

00:37:29  
come up here. What are



00:37:30  
the biggest one is if

00:37:32  
fraud corruption and illegality? Which

00:37:35  
is the worst be difficult

00:37:36  
to text or Rises after

00:37:38  
the arbitration award has been

00:37:41  
issued, does the tribunal have

00:37:43  
the authority of the power

00:37:44  
to Rio Pinar revisit its

00:37:46  
own decision? I'm assuming that

00:37:49  
it would have had a

00:37:50  
material effect on that issue

00:37:55  
of whether or not they

00:37:56  
can do. So when they



00:37:57

confirmed in a ward, I

00:38:02

need to spend the time.

00:38:03

But the applicant has to

00:38:05

set aside and give an

00:38:07

example, not set aside an

00:38:13

award under any of the

00:38:14

enumerated ground after 90 days

00:38:17

from your work, being served

00:38:18

on the parts. So we

00:38:20

had a kind of a

00:38:21

situation in which we detected

00:38:23

it and another case that

00:38:24

fraud and Corruption had occurred,



00:38:26

but it wasn't part of

00:38:27

the arbitration. And then we

00:38:29

were unfortunately time we were

00:38:32

out of sight of the

00:38:32

night. And do we have

00:38:35

to extend that time. Under

00:38:39

the use of arguing? Basic

00:38:43

be better if we couldn't

00:38:44

have known fraud or corruption

00:38:45

that is. And we found

00:38:49

it an interesting decision from

00:38:51

the Hong Kong quartz, which

00:38:52

is another, is that role



00:38:53  
models jurisdiction in which such

00:38:57  
men, as me, not just

00:39:08  
an interesting plan work. Also,

00:39:21  
I just want to quickly

00:39:23  
highlight issues up set aside

00:39:25  
at of a nit of

00:39:27  
a commercial Ward. There's kind

00:39:29  
of a call lessons that

00:39:30  
when there's prod corruption or

00:39:32  
illegality related to the artificial

00:39:36  
process. That is genuine grounds

00:39:38  
for set aside, I've highlighted

00:39:39  
cure section 10 of the



00:39:40

FAA. Where is an example

00:39:43

of that. We also look

00:39:45

at the arbitration act 1996,

00:39:47

and one of the serious

00:39:49

irregularities were set aside in

00:39:51

the ward. Is that the

00:39:52

order was obtained by fraud,

00:39:53

or the ordinary way it

00:39:54

was secured contrary to the

00:39:56

public policy. Interesting from model

00:40:00

law does not have one

00:40:01

of the enumerated or set

00:40:03

aside from your convention Article,



00:40:06

5, and it doesn't mention

00:40:09

of butter. Corruption is one

00:40:11

of the grounds for set

00:40:11

aside. Some people could I

00:40:13

get to the public policy

00:40:14

ground would a pump and

00:40:17

10th and Castle a bit,

00:40:18

but some beautiful models. Fiction's

00:40:21

most only Australia have for

00:40:24

the avoidance of Doubt, noted

00:40:26

that fraud and corruption in

00:40:27

the basement. But award is

00:40:29

aground for set aside, Singapore.



00:40:32

It apparently has its own

00:40:34

kind of it as an

00:40:35

independent, cuz it's separate and

00:40:36

apart from that the public

00:40:39

policy ground under the youth

00:40:41

model model, law has a

00:40:43

section 24 also allows for

00:40:45

the set aside of award

00:40:46

based upon that. That is

00:40:52

kind of a, I'll send

00:40:55

in terms of the issues

00:40:56

that the public policy around

00:41:02

4 set aside of reward



00:41:04

does include issues of Fraud

00:41:07

and Corruption when you did

00:41:10

too in a situation which

00:41:12

you're you're representing us toward

00:41:14

better. You know, we know

00:41:16

that the public coffee grounds

00:41:19

supposed to be interpreted to

00:41:22

ask, how is it that

00:41:25

particular ground men in this

00:41:28

case? So, in the United

00:41:34

States, have a pot of

00:41:36

coffee ground first, against it.

00:41:38

Based on the Unseen hand.



00:41:39

I put up here a

00:41:41

quote from the third circuit,

00:41:43

but it's literally a hundred

00:41:45

other quotes that explain the

00:41:46

similar things. But this is

00:41:49

based on a long-standing tradition

00:41:52

of public policy to protect

00:41:53

the integrity of course. So

00:41:55

I would argue that the

00:41:56

defense of unclean hands could

00:41:58

be used or not enforced,

00:42:00

resistant. *Horseman United States*, likewise

00:42:04

in this will be the



00:42:04  
last in the UK. If

00:42:07  
we look at kind of

00:42:08  
a Seminole decision on illegality,

00:42:10  
which is to tell peepers

00:42:11  
of the one frame, the

00:42:16  
whole context of the Galaxy

00:42:18  
defense in the context of

00:42:20  
public policy, concerns grew out

00:42:23  
of a gas station by

00:42:28  
public policy but should be

00:42:38  
considered while with them. Attributable.

00:42:55  
After back, find determines that

00:42:58  
there is no fraud or



00:43:00  
corruption. But it hasn't been

00:43:03  
proven what Jeffery should a

00:43:07  
subsequent reviewing Court provide to

00:43:10  
that tribunal, find it. And

00:43:13  
I mean this race is

00:43:14  
there is a split in

00:43:15  
jurisdictions on how to address

00:43:17  
this you mentioned about time

00:43:20  
decision in your in your

00:43:21  
introductory remarks provided absolutely no

00:43:26  
difference to the findings of

00:43:28  
the tribunal and kind of

00:43:29  
had its own back, binding



00:43:31  
on the issues that were

00:43:33  
raised in that place in

00:43:35  
the United States has been

00:43:38  
a tendency of course to

00:43:39  
provide deference to the decision,

00:43:41  
to raise the decision before

00:43:45  
the tribunal and they didn't

00:43:46  
find enough evidence. They're interesting

00:43:51  
case from the English. Court

00:43:52  
of the West Acres. Only

00:43:54  
time that they were really

00:43:55  
kind of look at it

00:43:56  
as if the evidence of



00:43:58

Fraud and Corruption emerged after

00:43:59

the arbitration, but it doesn't

00:44:02

work. They do have also

00:44:04

an exception for perjury as

00:44:06

well. The tribunal rejected claims

00:44:15

of Fraud and Corruption and

00:44:17

the circuit substantially different hos

00:44:19

by Houston and I'll revisit

00:44:21

the bed. But it is

00:44:26

a very interesting question because

00:44:28

I just want one part

00:44:30

of that is the power

00:44:34

of Investigation, so it could



00:44:39

be a case made that,

00:44:40

you know, the French system

00:44:41

might give a little bit

00:44:43

more lenient or warm or

00:44:45

head would it burn for

00:44:46

an award letter to look

00:44:48

at All right, so I'm

00:44:52

going to try to get

00:44:53

fine PowerPoint back on. Thank

00:45:05

you. so I'm going to

00:45:25

give an overview of the

00:45:27

role of tribunals in dealing

00:45:30

with the I first mentioned



00:45:35  
the triangle sources or Tribune

00:45:37  
funeral in her and powers

00:45:39  
to investigate. And then what

00:45:42  
specific authorization is there are

00:45:44  
the great tribunals the opportunity

00:45:47  
to independently review of factual

00:45:50  
investigation. I'll look at the

00:45:52  
inherent limitations on the power

00:45:55  
of a tribunal and I'll

00:45:56  
make practical tools that are

00:45:59  
tribunal May employ. So good

00:46:02  
sources are really similar. No

00:46:17  
bitching. The court knows, the



00:46:20

law allows arbitrators and this

00:46:30

arises from the generally. The

00:46:33

Inca quizzes for Ariel nature

00:46:37

of the civil law system.

00:46:39

Secondly, tribunals have a duty

00:46:42

to render in forceful war

00:46:44

and that is set forth

00:46:46

in the ICC. Arbitrary rule

00:46:49

for example, and therefore must

00:46:53

make every effort to think

00:46:55

about how it would be

00:46:56

enforceable in the sinus of

00:46:59

the arbitration brakes. Are there



00:47:01  
other places? Show me authorization

00:47:08  
to engage in Suez, fonte

00:47:12  
investigation by a tribunal most

00:47:16  
of the major arbitration laws.

00:47:17  
I just swiped, for example,

00:47:20  
section 34 of the arbitration

00:47:21  
act, and of course, the

00:47:23  
major institutions. Also G tribunals

00:47:27  
power to sua, sponte, or

00:47:29  
order to produce evidence of

00:47:32  
facts and identified, some of

00:47:35  
the armored troll rules that

00:47:38  
are applicable. So what are



00:47:42  
the limitations on the power

00:47:44  
of a tribunal to investigate

00:47:45  
number one? Leading, our virtual

00:47:52  
Mendon? And that is a

00:47:53  
very serious one. If if

00:47:56  
you if it tribunals her

00:47:58  
to do it with the

00:47:59  
birdies, haven't you made me

00:48:03  
do that as being Ultra

00:48:05  
petite? Which is beyond the

00:48:07  
petition. So that would be

00:48:09  
a ground to to overturn

00:48:12  
in the war. There's also



00:48:14

a few process considerations as

00:48:17

as Steven had mentioned. You

00:48:20

don't want to have The

00:48:22

burden shifted unnecessarily which it

00:48:26

would harm one of the

00:48:28

parties. And you also don't

00:48:34

want to have the tribunal

00:48:35

to be seen as helping

00:48:36

one of the parties, in

00:48:38

its case against the other

00:48:40

violation of the principle of

00:48:42

equal treatment. Show me, metal

00:48:47

plan, the breakfast and the



00:48:51  
tribunal noted stated that the

00:48:53  
idea is not to punish

00:48:54  
one party at the cost

00:48:56  
of the other. But to

00:48:57  
ensure the promotion of the

00:48:58  
rule of law which entails

00:49:00  
that are Court to not

00:49:02  
Grant assistance to a party

00:49:03  
that it engaged in a

00:49:04  
crop that so that's the

00:49:06  
purpose of engaging review at

00:49:11  
the tribunal of it. And

00:49:13  
then were practical limitations and



00:49:15

that is they don't have

00:49:17

as Stephen mentioned constabulary Powers

00:49:21

they can't subpoena directly Witnesses.

00:49:24

Third parties. In question will

00:49:28

come back later with Jen

00:49:30

as to how that affects

00:49:32

when faced with serious consideration

00:49:40

of Fraud and illegality, they

00:49:43

may hunt the actual investigation

00:49:46

to a subscriber of You

00:49:48

by Court which would have

00:49:50

the power to bring forth

00:49:53

more evidence to the question.



00:49:57

I mentioned just a couple

00:50:01

practical tools that are considered

00:50:03

inappropriate case. We mentioned, John

00:50:07

acted, I mentioned a little

00:50:09

bit. Should you have a

00:50:11

bifurcated proceedings? The first part

00:50:14

on the jurisdictional issue of

00:50:15

whether they're the underlined transaction

00:50:18

as fraudulent and order for

00:50:21

school. And the question of

00:50:23

the state tested, two more

00:50:35

domestic and sleight of hand

00:50:42

in those investigations. They're also



00:50:48

could be attributed to be

00:50:50

sensitive to applying broader principles

00:50:54

of disclosures. And for example,

00:50:57

they may approve 1782, Discovery

00:51:00

request. They may ask the

00:51:01

court to issue letters rogatory.

00:51:03

They may be given more

00:51:06

opportunity to engage and document

00:51:10

production. In one case I

00:51:15

was involved in, as a

00:51:16

tribunal member of the parties

00:51:19

had in their contract. It

00:51:23

was commercial case. Provided that



00:51:26  
the parties could engage in

00:51:28  
a position that they found

00:51:32  
out in the course of

00:51:33  
deposing. The US general counsel

00:51:36  
of a Taiwanese manufacturing company

00:51:38  
that all the books and

00:51:39  
records that have been presented

00:51:41  
to the, to the tribunal

00:51:43  
had been fortunate in that.

00:51:46  
The company had indeed been

00:51:48  
keeping two different sets of

00:51:51  
books and Records when we

00:51:53  
were all of its other



00:51:54  
reasons. And in her case,

00:52:02  
the last two I'll mention

00:52:05  
are the adverse inferences which

00:52:07  
are Typically stated. And then,

00:52:13  
of course, allocation across, which

00:52:14  
is the usual way of

00:52:17  
dealing with parties who are

00:52:20  
engaged and Corruption. So this

00:52:23  
is our last week. If

00:52:37  
you just send your sharing.

00:53:10  
I think, again, thank you

00:53:14  
very much, prison week. We're

00:53:16  
very happy to be hosting



00:53:17

the session at RHA office

00:53:19

in Washington. D.c. going to

00:53:22

be going over some other

00:53:24

issues related to fraud and

00:53:26

Corruption. So, from a Quantum

00:53:28

expert and a forensic accounting

00:53:30

perspective, the value of a

00:53:32

company can be distorted in

00:53:35

arbitration due to Illegal schemes

00:53:38

of acid. This preparation and

00:53:40

finish with the statements. So

00:53:42

this can make it difficult

00:53:43

to get that accurate. I



00:53:45  
wish that through them testify

00:53:46  
and Studies have shown that.

00:53:48  
Actually, the average career to

00:53:50  
buy you a ton of

00:53:51  
violations is 5.3 years. So

00:53:54  
we're crossing over fiscal Years

00:53:56  
and we're dealing with actions

00:53:59  
basically a fraud that our

00:54:00  
tempers be covered up from

00:54:01  
one year to another year.

00:54:03  
And so again, we're modifying

00:54:05  
one year were one of

00:54:06  
your being modified to cover



00:54:07

up another year. I left

00:54:09

because you're one of the

00:54:10

brightest star or the wish

00:54:21

to continue to do so

00:54:26

because the more adjustments need

00:54:35

to be made on the

00:54:36

income statement side, you're looking

00:54:37

at two differences of how

00:54:39

much your sales are. Our

00:54:40

Modified by force is now

00:54:42

on your balance. You're looking

00:54:43

at maybe having to make

00:54:45

him just message to not



00:54:46

only your assets but your

00:54:47

retained earnings. So as evaluator

00:54:50

when you're asking for financial

00:54:51

statements, you looking at a

00:54:53

number of years so that

00:54:55

you can kind of see

00:54:55

what the. Of time that

00:54:57

was may be unaffected by

00:54:58

potential product options. One of

00:55:04

the things that have a

00:55:05

weiner would do was to

00:55:06

look at the internal control

00:55:07

that can be put in



00:55:08

place, such as policies and

00:55:10

procedures to protect its assets.

00:55:12

A fishing season in Sherman

00:55:14

Mitchell statements and that will

00:55:16

to talk about what's the

00:55:17

risk of potential fraud so

00:55:19

restricting. Physical assets is one

00:55:21

way, so that'd be locked

00:55:23

up team. And then on

00:55:27

the digital side looking at

00:55:28

wasn't a password to security

00:55:30

systems that aren't used to

00:55:32

evaluate whether or not. There's



00:55:34

actually a lower risk of

00:55:35

Fraud and informal job descriptions

00:55:38

isn't mandatory vacation. Policy is

00:55:41

another way, if the company

00:55:42

has a policy where you

00:55:44

have to take a week

00:55:44

or two until somebody comes

00:55:47

in and then is able

00:55:48

to potentially look at what's

00:55:50

being done and tells whether

00:55:52

or not, there's an issue

00:55:53

a product corruption on so

00:55:54

it will tell nobody where



00:55:56

it's at policies. In place

00:55:57

are there could be a

00:55:58

potential lower risk of fraud.

00:56:01

Duplicate authorization, for payments, made

00:56:03

up of a set. The

00:56:04

alarm also, a bribe is

00:56:05

attempted to be made. If

00:56:07

somebody can just go to

00:56:08

the bank and pull out

00:56:08

the money or can write

00:56:09

a check, now, they have

00:56:10

to have two people as

00:56:12

we've discussed this harder to



00:56:14

conceal. A product Mother's Day,

00:56:19

craft cancellations, background checks, and

00:56:22

then annual or surprise audits.

00:56:24

If you have an annual

00:56:25

audit, that's great. Very important.

00:56:27

But then looking at whether

00:56:32

or not, there's a possible

00:56:33

place for a surprise, all

00:56:34

right, even if it's a

00:56:34

partial price on it to

00:56:36

potentially show that there's a

00:56:38

lower risk of fraud for

00:56:40

fraud team to Texas. I



00:56:44  
want to go into a

00:56:45  
little bit more about the

00:56:46  
perception of bribery by country.

00:56:48  
So in a study Executives

00:56:50  
were asked how often your

00:56:52  
firm's headquarters in the country

00:56:53  
to engage and bribery in

00:56:55  
the country. And these are

00:56:57  
a lot of a larger

00:56:58  
economies and a larger number

00:57:00  
of developed countries because in

00:57:02  
smaller countries can happen in

00:57:04  
front of can happen anywhere,



00:57:05

but there's not a lot

00:57:06

of information that's been provided

00:57:08

from a lot of other

00:57:09

countries. And the way this

00:57:11

scale works is that one

00:57:13

is the average instance where

00:57:16

an executive said that bribery

00:57:18

potentially occurred in the country.

00:57:20

So looking all the way

00:57:21

on the left hand side

00:57:22

of the Russia at one

00:57:24

point three almost. So that

00:57:27

there's a 30% increase chance



00:57:29  
that an executive replied that

00:57:31  
there was bribery involved in

00:57:32  
the country. So looking at

00:57:34  
China is an initial 20%

00:57:36  
above average Mexico and Indonesia

00:57:39  
have 10%. What's the value?

00:57:47  
We are looking at what

00:57:48  
country you're dealing with in

00:57:49  
an arbitration could potentially deal

00:57:51  
with what's your chance of

00:57:53  
dealing with fraud issue. Next

00:57:57  
week's going to charge you

00:57:58  
some of the perceptions of



00:57:59

Barbie by industry. So, another

00:58:01

study feckless were asked how

00:58:03

often do firms in each

00:58:04

sector, engaging barbell. Low-level public

00:58:06

officials were able to speed

00:58:08

up and so they are

00:58:10

granting licenses. Some people might

00:58:12

consider increasing the wheels are

00:58:20

Financial individuals in arbitrations using

00:58:24

improper contributions to high-ranking, politicians

00:58:27

to achieve influence was another

00:58:29

area. Or if they pay

00:58:31

received bribes from other private



00:58:33

firms, it would have been

00:58:34

great in the study of

00:58:35

whether or not they had

00:58:36

provide information as to which

00:58:37

one of these they reply

00:58:39

to. But this is the

00:58:41

top 10 Industries. I don't

00:58:42

think there's much shocked around

00:58:44

the top 5 public works

00:58:46

with number one, utilities real

00:58:48

estate oil and gas and

00:58:50

Mining and rounding out the

00:58:51

top 10 and power generation



00:58:53

Pharmaceuticals, heavy manufacturing areas, where

00:58:58

a lot of money is

00:58:59

needed to engage in projects

00:59:01

and where there's regulations. So

00:59:03

that potential Broderick eruption could

00:59:05

game babe. Moving from the

00:59:13

perception by Executives to the

00:59:15

actual actions of primary by

00:59:16

Regulators actions taken against the

00:59:21

heavy manufacturing industry in Pharmaceuticals,

00:59:23

are to the highest average

00:59:26

about 50%, considering that in

00:59:29

the executives, the response was



00:59:31

that they were around the

00:59:33

7th or 8th, so I

00:59:35

feel like I was that

00:59:37

much bribery and Corruption going

00:59:39

on. But the charges Oil,

00:59:44

gas has 13% and Technology

00:59:47

6.5%. Although the last 20

00:59:57

years, there's an increased with

00:59:59

a lot of nationalization onshoring

01:00:01

and trade Wars where knowledge

01:00:03

is becoming more of an

01:00:05

issue and sleep or getting

01:00:07

that they aren't left behind.



01:00:16

So ugly actions that were

01:00:17

taken the findings. Found that

01:00:20

the purpose of the Bride

01:00:21

77.2% were given exchange for

01:00:24

political and Regulatory favors. 7.9%

01:00:28

were given for preferential tax

01:00:30

or tariff. Treatments. And 18%

01:00:33

were given for continuing of

01:00:34

a license or permit and

01:00:37

approves do this so that

01:00:39

they're going to get a

01:00:40

high reward, you're not doing

01:00:42

this risk for no reason,



01:00:43

so on average it but

01:00:45

the game was 28 million.

01:00:47

But when you look at

01:00:53

the size of the bride

01:00:54

and compared to the amount

01:00:56

of the business that's in

01:00:57

the affected, the amount of

01:00:59

the sales, it's a 6.8

01:01:01

\* return. Southern Maine fraud

01:01:09

and buy me some front

01:01:11

and back on the main

01:01:12

reason why I want to

01:01:19

increase their sales. Of course,



01:01:21

that's not bad. That's just

01:01:32

because in the study, there's

01:01:34

people that found that there

01:01:35

was two reasons why they

01:01:37

potentially In this analysis then

01:01:48

byways will take steps of

01:01:50

a Digital Risk if it's

01:01:51

fraud or four accounting practices

01:01:53

I noticed suspected that's just

01:01:55

one way out. If somebody's

01:01:57

been prematurely post earnings are

01:02:00

there. One of the way

01:02:10

that the valuator make risk



01:02:15

is that a with increased

01:02:16

coming back on vibration? It's

01:02:24

just one methodology that potentially

01:02:26

could be used. Overall friends

01:02:29

are found that were charged

01:02:30

with bribery and financial fraud

01:02:33

experience on average of cubits

01:02:35

of loss of 54.9%. Outside

01:02:41

of the diminution of value

01:02:42

in evaluation expert at or

01:02:46

Touched by an arbitration. Another

01:02:48

decision that you can make

01:02:50

with the potential Precision. So,



01:02:52  
if you do with a

01:02:52  
contract cancel, the contract and

01:02:55  
returning to a pre-contractual position

01:02:57  
and the situation of the

01:03:00  
amounts of the funds of

01:03:01  
the resources that were put

01:03:02  
into the project would be

01:03:04  
measured by the rest of

01:03:06  
the amount of chicken out.

01:03:08  
Another issue that can be

01:03:10  
decided by the tribunal is

01:03:12  
a counterclaim. So, there were

01:03:14  
taxes that were voided or



01:03:16  
additional sales are working to

01:03:17  
Legal Aid. Those to be

01:03:19  
measured by the test by

01:03:20  
an expert and awarded, by

01:03:21  
the Tribunal, Just the last

01:03:25  
area is at issue that

01:03:28  
controls should be put into

01:03:29  
place, so they can issue

01:03:31  
that frog, training program. A

01:03:33  
hotline my expert. Witness me?

01:03:37  
What? The average cost for

01:03:38  
implementing such evidence would be

01:03:40  
and then monitoring program could



01:03:44

be either ordered by the

01:03:45

Tribunal. And those are just

01:03:50

a few of the remedies.

01:03:56

I turned it to her.

01:03:57

Lol analyst. So, for me

01:04:01

and asked, could you have

01:04:03

a situation where in an

01:04:06

expropriation case, the value of

01:04:10

the asset has been diminished

01:04:13

by corruption or product, but

01:04:16

it wasn't sufficient. Corruption of

01:04:18

broadly before the contract, or

01:04:21

two, under my jurisdiction of



01:04:23  
the tribunal in April, with

01:04:27  
some level of fraud, when

01:04:29  
you as a damaged expert,

01:04:31  
be the one to be

01:04:31  
testifying as to, whether the

01:04:35  
level of fraud that was

01:04:36  
proven is sufficient to affect

01:04:39  
the value of the company.

01:04:40  
I think the panel that

01:04:45  
probably have his been to

01:04:54  
analyze, what are the red

01:04:56  
Flats. So as a certified

01:04:57  
fraud examiner, we don't make



01:04:59  
determinations that there actually is

01:05:00  
brought. We would go to

01:05:01  
the measures to say whether

01:05:03  
or not Product Promotion potential

01:05:04  
and then it would be

01:05:06  
for the traffic to determine

01:05:08  
if it was at the

01:05:08  
making of the investment, wasn't

01:05:10  
a task that I should

01:05:11  
be reached legal issues to

01:05:18  
discuss. But if there were

01:05:20  
taxes that were not paid

01:05:23  
over a. Of time because



01:05:26  
of a certain region and

01:05:28  
the red slime made without

01:05:31  
highlighted, that could be a

01:05:32  
potential reason, why there wouldn't

01:05:34  
be a full of valuable

01:05:37  
business. So total, Destruction. It

01:05:41  
may be a reduction of

01:05:42  
the value of a potential

01:05:44  
be claimed in an expiration.

01:05:46  
I certainly could have her.

01:05:50  
Any other questions? I think

01:05:52  
we're now open for questions

01:05:54  
from the audience. I see.



01:06:01

We have a couple that

01:06:02

come in on a, through

01:06:04

the chat box. Turn to.

01:06:11

One question, considering general principles

01:06:15

of the law to what

01:06:16

extend to Trevino to intervene

01:06:18

to ensure Justice or equality

01:06:20

between the parties and contract

01:06:23

or treaty arbitration. The equitable.

01:06:33

Can I turn to the

01:06:34

ionic or just even if

01:06:36

you have any questions or

01:06:38

any responses? Well, maybe where



01:06:46  
is your question to my

01:06:55  
time with you? I'm not

01:06:56  
sure exactly what the balance

01:07:01  
between depression and looking at

01:07:08  
the other part, but I

01:07:10  
think it has to do

01:07:11  
with the with the question

01:07:13  
is getting, at is Big

01:07:14  
to the extent, the tribunal

01:07:16  
should intervene when they see

01:07:18  
an imbalance of the parties,

01:07:19  
in the interest of the

01:07:25  
representation, by one side was



01:07:28

not of the Nigerian state

01:07:31

would not as a stellar

01:07:33

at what I never want

01:07:35

to criticize anybody, but it

01:07:37

was obvious issues of corruption

01:07:39

that we're kind of out

01:07:40

there but not being prosecuted

01:07:42

or not. At rest. And

01:07:44

so do the was a

01:07:45

comment in the in the

01:07:46

judgment. And the Nigeria case

01:07:48

on the judge, where is

01:07:50

a wiring? What extent arbitrator



01:07:54  
should step in. When they

01:07:56  
see that one side is,

01:07:57  
clearly being out our door

01:07:59  
overpowered by another side, Inn

01:08:01  
in that arbitration in terms

01:08:03  
of the certificate sophistication of

01:08:05  
other parties in, in terms

01:08:07  
of the prosecution of the

01:08:08  
case, against this idea of

01:08:11  
what, what extent, the tribunal

01:08:13  
member should intervene on their

01:08:15  
own initiative and in a

01:08:18  
generally would think that it



01:08:19  
is acceptable. So long as

01:08:21  
they give each of the

01:08:22  
parties opportunity to Alpine on

01:08:25  
what it what they're doing.

01:08:26  
So I think that was

01:08:34  
I think that makes good

01:08:35  
sense of that is a

01:08:36  
good interpretation of ineffective. Assistance

01:08:38  
of counsel was a main

01:08:40  
contributor to the case the

01:08:44  
feet and IDK as much

01:08:47  
as people at work about

01:08:50  
that. But it didn't lead



01:08:52

to a tribunal being left

01:08:55

in the dark, which could

01:08:59

have come out with a

01:09:00

more effective counsel to the

01:09:02

second question here, if a

01:09:05

bit is signed under economic

01:09:06

or political pressure, And whose

01:09:11

State denies protection to an

01:09:14

investor on these grounds do

01:09:16

tribunals typically except Saturday. Someone

01:09:37

that can be a gram

01:09:40

of that, maybe someone could

01:10:16

undermine a treaty obligation. Is



01:10:39  
there any time limitation? To

01:10:45  
bring a fraud in the

01:10:47  
inducement claim to the notice

01:10:48  
of the of the tribunal

01:10:50  
and other words books, assume

01:10:53  
your you've already plead the

01:10:54  
case you've already gone through

01:10:56  
your appeal. One process, you've

01:10:59  
already had pleadings of both

01:11:03  
sides and suddenly you realize

01:11:05  
the action, can you then

01:11:10  
bring it to the attention

01:11:12  
of the tribunal and see



01:11:14  
tremens and so that could

01:11:16  
be both in a commercial

01:11:17  
or so, in the Singapore

01:11:22  
case that I mentioned that

01:11:24  
was your stove is allegation

01:11:26  
to Portrait. That was one

01:11:27  
of the problems that the

01:11:29  
award at her face is

01:11:31  
that they didn't discover the

01:11:33  
alleged forgery in till after

01:11:35  
the award was issued, right?

01:11:36  
And basically the Singapore International

01:11:39  
Court said that they had



01:11:42  
waved at Archbishop, by not

01:11:43  
bringing it up. Could have

01:11:45  
found the forgery at that

01:11:47  
time, when you can bring

01:11:51  
these arguments up earlier the

01:11:56  
better strangers, dictions have absolute

01:11:59  
are stringing up new arguments,

01:12:01  
even as late as at

01:12:02  
at the hearing right now

01:12:03  
in Hong Kong. For example,

01:12:05  
introducing a new argument that

01:12:08  
he could be a natural

01:12:10  
Justice in the sense that



01:12:11

you have not offered, your

01:12:12

counterparties opportunity to respond in

01:12:15

writing and so you know

01:12:17

it can be a pretty

01:12:20

difficult question but you protected

01:12:22

cuz fraud and Corruption does

01:12:24

often get detected late in

01:12:26

the game or in the

01:12:28

process. And so you know

01:12:30

it's a balancing act that

01:12:32

way when dealing with this

01:12:36

kind of issue of limitation

01:12:37

overall. if that's the case



01:12:42  
that you have any thoughts

01:12:43  
on that issue, whether you

01:12:55  
should have known We have

01:13:14  
a great deal of reluctance

01:13:26  
and argument by the opposing

01:13:28  
party if one party product

01:13:30  
fraud claim late in the

01:13:32  
game. So it would have

01:13:35  
to be a lot of

01:13:36  
explanation about why? Wasn't sure?

01:13:40  
Cuz I was earlier and

01:13:41  
presented earlier, but sometimes you

01:13:44  
may have a criminal investigation.



01:13:46

There are also two reasons

01:13:52

that Beyond the control of

01:13:54

the party for these types

01:13:58

of allegations to arrive. And

01:14:00

one example, that is not

01:14:04

Prosecuting an agreement. And, you

01:14:07

know, this is happening in

01:14:11

which it had a agreement

01:14:16

suggested involvement of our counterparty

01:14:19

it in that agreement, and

01:14:22

that was well, after the

01:14:23

award on my ability had

01:14:25

already been issued. And so,



01:14:26

you know that What do

01:14:29

you do at that point?

01:14:29

You know, Wendy's public investigations

01:14:33

are repealed. So Jenna question

01:14:38

is, I have you on

01:14:39

the calendar instances where information

01:14:42

is hard to come by

01:14:43

it, in Vesta, getting International

01:14:45

cases. And if so, how

01:14:48

did you resolve that to

01:14:49

provide the best possible evidence

01:14:51

to bind? And I think,

01:15:01

you know, there was one



01:15:02  
interesting point. The actual knowledge

01:15:13  
or no proof of that.

01:15:15  
And I think that interesting

01:15:19  
in terms of that question,

01:15:21  
but Austin again, it's figuring

01:15:22  
out what different information we

01:15:25  
can hold together to understand

01:15:29  
what's going on. But that's

01:15:30  
trying to look at the

01:15:34  
people that might be. Thinking

01:15:37  
about are there strong expat

01:15:39  
communities networks of people that

01:15:40  
we can speak to you



01:15:41  
in the area who can

01:15:42  
help with that information? So

01:15:45  
I think it's just a

01:15:46  
matter of how all of

01:15:46  
the Pieces come together and

01:15:48  
what information we can take

01:15:49  
from both the public record

01:15:51  
to really understand. I want

01:15:57  
to ask you, Jen Apollo

01:15:59  
question and difficult to detect

01:16:06  
and it comes up in

01:16:09  
different ways, and it often

01:16:12  
takes a lot of looking



01:16:15  
at bank accounts, across country

01:16:17  
lines. Can you undertake a

01:16:21  
credible investigation of money, laundering

01:16:23  
schemes without using subpoena powers

01:16:26  
of Courts, things that you

01:16:32  
are able to get from

01:16:34  
the side that you are

01:16:34  
representing mnp sing some of

01:16:36  
that together? But you know

01:16:38  
I think it does a

01:16:39  
little bit to get there.

01:16:44  
Can you find Circle contract?

01:16:46  
Can you find information from



01:16:47  
prior matter? If we sign

01:16:49  
people follow a lot of

01:16:50  
the same habits and patterns?

01:16:51  
Do you have there been

01:16:53  
cases involving individuals or companies

01:16:55  
where we Certain information on

01:16:58  
the public record in the

01:16:59  
past that can help us

01:17:00  
piece together. But I think

01:17:01  
you are really trying to

01:17:03  
build out all of that

01:17:04  
information with with Donald So,

01:17:08  
you have to work with



01:17:09  
outside counsel to bring 1782.

01:17:36  
And if not everything else,

01:17:38  
okay, it looks like we've

01:17:42  
covered this very complex topic,

01:17:45  
come up with some reason.

01:17:49  
They're raising a different form

01:17:51  
of the question in the

01:17:52  
future. The future event. But

01:17:55  
thank you very much for

01:17:57  
joining us today. Thank you

01:17:59  
for the organizers. We're just

00:00:20  
finishing the technical aspects of

00:00:24  
this session while welcome back



00:00:26

to our second session dates

00:00:30

at Washington arbitration week. Start

00:00:34

off the day with a

00:00:35

breaker panel on the addition

00:00:38

in valuation. And we're moving

00:00:39

on to some other very

00:00:41

important topic. Another important topic,

00:00:44

International arbitration panel is titled,

00:00:47

Russian fraud and violations of

00:00:50

general principles of Law and

00:00:51

International Education. And we are

00:00:54

privileged today to have an

00:00:56

excellent panel before you. And



00:00:59

our moderator is one of

00:01:00

the teams of the international

00:01:03

arbitration World here in Washington

00:01:05

DC. And it's always my

00:01:07

pleasure to introduce can rise

00:01:10

until Tuesday, Global leader of

00:01:13

bakerhostetler arbitration team Chambers and

00:01:18

legal 590 lawyer. And a

00:01:20

judge Learned Hand award recipient

00:01:22

just last year. So congratulations

00:01:24

on that. He's among the

00:01:27

world's leading Advocates and arbitrators

00:01:29

and cross-border contract, commercial licensing,



00:01:31  
and investment treaty disputes. Genocide

00:01:34  
over 40 years experience, especially

00:01:36  
representing Global for all of

00:01:44  
the prominent and Regional arbitration

00:01:47  
Center. So we all know.

00:01:48  
So well, it's a great

00:01:50  
pleasure to have you here

00:01:52  
today to moderate this panel.

00:01:54  
And I'll just take the

00:01:55  
opportunity to thank the battle

00:01:58  
and the let's get going

00:02:00  
and looking forward to sitting

00:02:02  
back and listening to what



00:02:04

everyone else to say. Hello

00:02:09

everyone is welcome. I have

00:02:12

to say it's a great

00:02:13

pleasure and thank you for

00:02:15

checking in and as well

00:02:17

as Jose Antonio and the

00:02:18

entire washing arbitration. Weak leadership

00:02:21

to allow us to prevent

00:02:24

this program today on corruption

00:02:26

and fraud. And other violations

00:02:28

of general principles of law

00:02:30

in international arbitration, The topic

00:02:34

is timely and Timeless particularly



00:02:39

for those who are active

00:02:41

in commercial contracts and treaty

00:02:43

arbitrations involving State and State

00:02:46

Patrol that, we hope to

00:02:48

provide some practical insights for

00:02:50

console and arbitrators alike. As

00:02:53

I would like to call

00:02:54

it use, you could use

00:03:07

I will get this to

00:03:09

all right. It is commandeered.

00:03:20

The full attention of the

00:03:21

international arbitration ever. Since the

00:03:24

English set, aside a billion-dollar



00:03:31

arbitration award obtained, by the

00:03:34

BVI company process and Industrial

00:03:37

developments limited p&id against the

00:03:42

federal republic of Nigeria. English

00:03:45

Court, decision was issued approximately

00:03:47

14 months ago and has

00:03:50

spawned a cottage industry of

00:03:52

speculation as to how arbitral

00:03:55

tribunal of highly respected British

00:03:58

arbitrators and Juris. Including Lord,

00:04:02

Hoffman and Sir Anthony Evans

00:04:04

before whom I actually brought

00:04:06

cases could have missed that



00:04:10  
the underlying gas supply. Contract

00:04:12  
was riddled with corruption from

00:04:14  
its Inception which deception was

00:04:17  
aggravated by the Crump Manor

00:04:20  
and wouldn't the arbitration process

00:04:22  
was carried out. AB, without

00:04:27  
the knowledge of the arbitration

00:04:29  
panel. Nigeria did not raise

00:04:32  
to the defense of illegality

00:04:34  
or corruption in the preceding,

00:04:37  
the tribunal apparently did not

00:04:40  
know and did not inquire.

00:04:42  
That one of the government



00:04:44

Witnesses was being paid under

00:04:46

colluding commercial party to testify

00:04:49

falsely that the government's lawyers

00:04:52

team was sharing privileged documents

00:04:54

and information with the other

00:04:57

side during the hearings and

00:04:59

does knew exactly what to

00:05:01

anticipate in their key Windows,

00:05:05

Hunter herself to keep the

00:05:09

crop transaction from being exposed.

00:05:12

The case reflects that even

00:05:15

the most admired and respected

00:05:16

arbitrators can be Hoodwinked. If



00:05:20

the parties are in collusion

00:05:21

and the council for one

00:05:23

party or the Nigerian government

00:05:25

has ineffective counsel Traditionalist, wall.

00:05:33

Arbitrators, in that case, accepted

00:05:36

the evidence, including some apparent

00:05:39

anomalies, we do proactively inquiring

00:05:43

into the veracity of the

00:05:44

transaction in a subsequent, set

00:05:47

aside, for 8, weeks, and

00:05:55

proceedings itself included that there

00:06:00

were serious irregularities leading to

00:06:03

Serious Injustice. Justin Noble been



00:06:07

set aside the awards, he

00:06:09

also challenged the arbitral community

00:06:11

to consider whether the tribunal.

00:06:13

Should be have been more

00:06:15

interventionist and proactive insuring out

00:06:18

the front yard in with

00:06:23

the shell that got nowhere

00:06:25

near the truth, underlying the

00:06:27

transaction before. The. IDK equally

00:06:34

consequential set aside of an

00:06:37

arbitral award by the Supreme

00:06:39

Court. In the case of

00:06:41

Bella can be the Supreme



00:06:44

Court upheld. The 2017 decision

00:06:47

of the Paris court of

00:06:48

appeal to set aside. A

00:06:51

15 billion dollar buyer, parasita

00:06:56

tribunal in favor of a

00:06:58

lot fee in investor against

00:07:01

the Republic of Turkestan. The

00:07:03

court of appeal rejected enforcement

00:07:06

of the award on grounds

00:07:07

that would permit. The Victorious

00:07:09

claiming to benefit from the

00:07:11

proceeds of a money-laundering scheme.

00:07:13

Contrary to the principles of



00:07:18  
international public policy. With these

00:07:22  
two English and French Quarter

00:07:24  
projections of arbitral Awards as

00:07:26  
a backdrop. We will focus

00:07:28  
on when and how arbitrator

00:07:31  
should handle allegations of corruption

00:07:33  
fraud in the legality. Our

00:07:37  
discussions of the topic we've

00:07:39  
added to twist. We will

00:07:42  
lead off with a professional

00:07:43  
investigator, just fine back witness

00:07:47  
who routinely reviews transactions that

00:07:50  
are suffused with corruption fraud



00:07:52

or money order. And we

00:07:54

will conclude with evaluations expert

00:07:57

testifying expert, who will discuss

00:07:59

the impact Elite illegality of

00:08:02

allegations have on the valuation

00:08:06

of a transaction in the

00:08:08

risk profile of a country.

00:08:15

I want to know introduced

00:08:17

our distinguished panel, Jen Turner

00:08:19

to my right is a

00:08:21

partner and head of groups,

00:08:23

Washington, DC office. They are

00:08:26

well-known investigators useful at all



00:08:29

stages of the arbitral process,

00:08:31

including him determining. If her

00:08:33

project is infected with, brought

00:08:35

with her transactions, may be

00:08:37

set, aside for illegality. How

00:08:40

to uncover illicit. Proceeds are

00:08:43

attachable assets, Genco had the

00:08:46

firm and specializes in these

00:08:50

types of Investigations large-scale dispute,

00:08:53

including enforcement of multibillion-dollar arbitration

00:08:58

Awards and jurisdiction raging for

00:09:01

Western Europe, Latin America, and

00:09:03

the Caribbean General layout, the



00:09:07

fact-finding. Tools investigators. Bring the

00:09:10

beer to ferret out corruption.

00:09:13

She promises to provide pointers

00:09:15

on how Council can best

00:09:17

utilize these invest in a

00:09:18

skill. Professor McGonagall. Ronnie Beasley

00:09:26

to my right is a

00:09:28

professor of international law. Invited

00:09:33

professor at the Academy of

00:09:36

international law, admitted to practice

00:09:39

prayer, edited by the state's

00:09:41

corporations, and international organization is

00:09:46

a member of the ancient



00:09:50  
panel of arbitrators having been

00:09:52  
appointed by Belgium and his

00:09:55  
shirt as a member of

00:09:57  
Fixodent, Norman Cosmetics. I will

00:10:01  
analyze illegality please in international

00:10:04  
treaty arbitration, he will propose

00:10:07  
a topology of investors illegality,

00:10:11  
and then examine how tribunals

00:10:14  
deal with it. He also

00:10:16  
touched upon drafting of treaties

00:10:18  
and the scepter ability. Immediately

00:10:24  
to my love. My colleagues,

00:10:26  
even been will then examine



00:10:28  
issues of corruption in international

00:10:31  
commercial arbitration in first and

00:10:35  
how they these allegations are

00:10:37  
treated during an arbitration. And

00:10:40  
then I would enforcing courts

00:10:42  
and tribunals deal with the

00:10:43  
issues after an arbitration award

00:10:46  
has been She is an

00:10:52  
Adjunct professor of law at

00:10:55  
Georgetown, University hongkong, and singapore-based

00:11:02  
arbitration and enforcement proceedings in

00:11:06  
Singapore, and New York. I

00:11:09  
will then provide some comments



00:11:11  
from the experience as an

00:11:12  
arbitrator. And from the point

00:11:14  
of view of a Tribunal

00:11:17  
Does a tribunal have a

00:11:19  
duty to be interventionist in

00:11:21  
pursuance of corruption? Even if

00:11:24  
the parties do not want

00:11:26  
it to do. So, In

00:11:28  
the memorable words of the

00:11:30  
Michael W. Are tribunal's, watch

00:11:34  
dogs, or Bloodhounds should assume

00:11:39  
the role of Sherlock Holmes

00:11:41  
and launched into an independent



00:11:43  
investigation on the road, upon

00:11:46  
the percent of illegal. Any

00:11:48  
being a book or alternatively,

00:11:51  
like a watchdog should try

00:11:53  
Beatles, merely make appropriate inquiries

00:11:55  
when the benches too, pungent

00:11:58  
to a dork. I tend

00:12:00  
to stand in the latter

00:12:01  
camp but ultimately depends upon

00:12:03  
the parties agreement. Jennifer crab

00:12:15  
to build is our last

00:12:17  
speaker. He's a, he's a

00:12:19  
partner in HK is forensic,



00:12:21  
accounting and Commercial damage and

00:12:23  
practice here in Washington. DC

00:12:25  
is an accredited senior appraiser

00:12:28  
and certified fraud Examiner. Prior

00:12:32  
to becoming a testifying right

00:12:34  
expert. He served in the

00:12:36  
corporate finance department of Lockheed

00:12:38  
Martin. Income Division and Lahey

00:12:42  
Layman brothers, and Office of

00:12:45  
the chief chief accountant at

00:12:47  
the SEC. Many cases involving

00:12:53  
fraud and Corruption. Including those

00:12:58  
involving North Macedonia, respect to



00:13:01

Stan and turkey. Kevin will

00:13:04

provide statistics from LeBron and

00:13:06

anti-corruption and we'll analyze their

00:13:09

impacts on the arbitration. Speakers

00:13:16

will make a short presentation.

00:13:17

We will then have questions

00:13:21

for the panel. And of

00:13:22

course, we will at the

00:13:23

end, we will have questions

00:13:24

for the floor given that

00:13:27

we're working on. Don't work.

00:13:29

I asked everybody speak into

00:13:32

a microphone and I see



00:13:35

we have a substantial group

00:13:38

here in the conference room

00:13:39

and of course on soon.

00:13:41

So thank you all for

00:13:43

participating. With that, I turned

00:13:46

to Jen. Thank you, and

00:13:48

thank you for being here,

00:13:49

and I hope I can

00:13:50

live up to that introduction.

00:13:51

Appreciate it during various stages

00:13:57

of arbitrations proceedings. And even

00:14:00

often and contemplation of arbitration

00:14:02

for many of the things



00:14:03

were talking that today looking

00:14:05

for a dish of Correction,

00:14:06

at the start of an

00:14:07

investment understanding help humans from.

00:14:10

That investment, may have been

00:14:11

used to facilitate corruption or

00:14:13

funneled into structures. That could

00:14:15

be important. In the enforcement,

00:14:16

is a proceeding and looking

00:14:18

at undisclosed sometimes to arbitrate

00:14:21

or other potentially, problematic knows

00:14:23

of influence in the matter.

00:14:25

And at the core of



00:14:26

our investigative work right now

00:14:28

to find key players and

00:14:29

how they offer and this

00:14:30

is often a combination of

00:14:32

research on the public record

00:14:33

and talking to people who

00:14:35

have knowledge of how he

00:14:36

events unfolded and relevant individuals.

00:14:48

And one thing has been

00:14:50

really interesting and instructive and

00:14:51

ran into investment being distraught

00:14:57

at or having opportunity taken

00:14:59

away and all of them,



00:15:00

followed a similar place that

00:15:02

has really helped us guide.

00:15:03

A lot of our event

00:15:04

and just generally five steps

00:15:08

to find a person to

00:15:13

trust. This is often a

00:15:14

relative for setting up the

00:15:16

structures that may be difficult

00:15:18

to trace. So this could

00:15:19

be in the form of

00:15:20

impenetrable companies, and trusts, or

00:15:22

losing money, or assets into

00:15:25

the structure. And then, eventually,



00:15:27  
the money has to come

00:15:28  
out and play. And if

00:15:30  
he should be out of

00:15:32  
information, that can be developed,

00:15:37  
And there were frequently asked

00:15:38  
to identify and dig into

00:15:40  
these patterns in one matter.

00:15:42  
We were asked to delve

00:15:43  
into contract, the national oil

00:15:45  
companies, which have been cancelled

00:15:47  
following a regime change to

00:15:48  
see if we could establish

00:15:49  
that the contract has been



00:15:50  
awarded the contract involved. Enter

00:16:00  
the company involved in the

00:16:01  
joint venture, commence arbitration and

00:16:03  
we were taking identify indications

00:16:05  
that the contract have been

00:16:06  
obtained through. And we got

00:16:08  
a series of side contract

00:16:09  
with jurisdiction for oil services.

00:16:13  
We are never been no

00:16:15  
service provided these contracts and

00:16:18  
the BVI entities and beneficial

00:16:21  
ownership of the minister of

00:16:24  
oil. And we look at



00:16:28  
the contract and other documents

00:16:33  
to help tie them back

00:16:35  
into this. Information was used

00:16:37  
in an effort to an

00:16:38  
ulcer. And that he's also

00:16:42  
underscores, the importance of understanding

00:16:43  
and individuals networks and how

00:16:46  
they operate. So we bring

00:16:47  
all of these angles to

00:16:48  
bear in an investigation, which

00:16:50  
is often holistic approach to

00:16:53  
looking at an individual including

00:16:55  
understanding, their family members operate.



00:16:59

And so, we're also was

00:17:05

thinking about good sources, people

00:17:07

who we could try to

00:17:08

speak with during an investigation,

00:17:09

for example, and Concession, bidding

00:17:12

process of losing bidders are

00:17:13

often minded to speak with

00:17:15

investigators here, early, if there's

00:17:17

been Foul Play, We had

00:17:24

another matter where you were

00:17:25

brought in to investigate, how

00:17:27

contract for confessions had been

00:17:29

awarded in the mining skis.



00:17:30

And we managed to track

00:17:32

down a former employee of

00:17:33

the company Award of the

00:17:34

contract have been heavily involved

00:17:35

in the negotiations. And he

00:17:37

told us he had serious

00:17:38

concerns about the person who

00:17:40

negotiated the contract and the

00:17:47

individual headache started at the

00:17:49

payment, be divided into three

00:17:51

bank accounts. One of the

00:17:52

name of the government Ministry,

00:17:54

one to a numbered bank



00:17:55  
account, and went to an

00:17:56  
account in the name of

00:17:57  
the company that was owned

00:17:58  
by the individual doing. Answer.

00:18:01  
The first time we spoke

00:18:01  
with indicated, he had resigned

00:18:03  
from the company before the

00:18:04  
final payment for me personally

00:18:06  
because of the way that

00:18:07  
he is instructed. We've also

00:18:11  
seen cases, where the alleged

00:18:13  
corruption with sophisticated and involved

00:18:15  
several steps to avoid leaving



00:18:16

any leaving any paper trail.

00:18:18

So in one instance of

00:18:20

Rivals, allegedly date of the

00:18:22

regular Network. So as we

00:18:33

spoke with indicated that the

00:18:34

company CEO was fly from

00:18:36

one country to another swap

00:18:38

planes. Fly to another country

00:18:40

avoid going through customs and

00:18:42

then me at a safe

00:18:43

house without elaborate web also.

00:18:45

Created several people who made

00:18:46

Fallout and be willing to



00:18:47

Speak with us at some

00:18:49

point from Pilots to former

00:18:50

security Personnel. The others who

00:18:52

may have been in a

00:18:53

room where people go to

00:18:56

the Great Plains, That's terrific.

00:19:05

I want open up to

00:19:07

her panel, ask Jen, any

00:19:08

questions they have? But I'd

00:19:12

like to ask a question

00:19:13

if you don't mind. I

00:19:14

mean, it is in addition

00:19:16

to investigating corruption at the



00:19:18

Inception, ordering a contract. Have

00:19:21

you been involved in in

00:19:22

looking at 4 on during

00:19:24

arbitral proceedings, you know, we're

00:19:29

off Netflix, undisclosed ties or

00:19:36

In one case, you're asked

00:19:37

to develop evidence of improper

00:19:39

influence on a tribunal, from

00:19:40

a number of different angles,

00:19:41

including that the body was

00:19:43

influence more probably by a

00:19:45

country's Judiciary or possibly other

00:19:47

government officials. And so, we



00:19:50  
first started conducting research on

00:19:51  
the public record. Really heavily

00:19:53  
on speaking to people on

00:19:55  
the ground, to get an

00:19:56  
understanding of the reputation of

00:19:58  
one member of the tribunal,

00:19:59  
and we were knocking on

00:20:02  
doors of lower-level people on,

00:20:04  
who'd worked closely with him

00:20:05  
and managed to develop information

00:20:06  
that the individual had previously

00:20:09  
taken bribes in another matter.

00:20:10  
And so one person we



00:20:13

spoke with her with it

00:20:14

information which has the type

00:20:25

of information so that they

00:20:26

might be willing to seek.

00:20:30

That's terrific. I think we'll

00:20:33

turn to, I'm sure there'll

00:20:34

be questions for Jen at

00:20:35

the end. I think we'll

00:20:37

turn to Gonic now to

00:20:39

talk investor-state. Thank you very

00:20:43

much. So I would keep

00:20:48

it short because you did

00:21:18

not conduct during investment operations.



00:21:30

Facebook's time investment is made

00:21:34

on the one hand, he

00:21:38

guaranteed in the making of

00:21:42

investment of the investment. Ali

00:21:48

gatie in Jamaica. This is

00:21:50

a guinea pig and considering

00:21:51

the lack of compliance with

00:21:53

bureaucratic of the means we

00:22:01

can use to make investment

00:22:03

into work. Correction as we

00:22:07

got a legal entity of

00:22:08

investment research is can consist

00:22:10

in business. So I mainly



00:22:20  
focused on this category So

00:22:28  
the question that we need

00:22:32  
to look into his, what

00:22:34  
is the effect of such

00:22:36  
as I need to guarantee

00:22:37  
The Words which state is

00:22:43  
considered the show? Me print

00:22:47  
or is it a matter

00:22:50  
of trying to unravel the

00:22:55  
considerations which in the determination

00:22:59  
of the night? So the

00:23:01  
American Federation switch coming to

00:23:03  
pay, some of them are



00:23:04

very practical things to traveling

00:23:07

on saying that for the

00:23:09

sake of Judicial Code of

00:23:13

Conduct the drafting of International

00:23:26

Investment agreements. And whether or

00:23:29

not in the text of

00:23:30

the agreement, there is no

00:23:33

guarantee requirements when making investment

00:23:39

definition of investment or is

00:23:51

it to the admission? Whether

00:23:57

it is to be found

00:23:57

in detective, 23? There's a

00:24:01

consensus among tribe in Ark



00:24:02

that when there is such

00:24:04

a requirement in the treaty

00:24:06

is to get our contact

00:24:08

is a matter of jurisdiction.

00:24:11

Men's Testaments in the crotch

00:24:13

with a new and some

00:24:14

tribunal Springfield that this is

00:24:15

a matter of jurisdiction. Russian

00:24:17

in subject, matter jurisdiction. Beyond

00:24:28

this message, another common denominator

00:24:31

like that. Minor league is

00:24:35

not sufficient to retract most

00:24:38

to decline. Moving on to



00:24:54

those treaties, which do not

00:24:55

contain a legality requirement. Arbitrator

00:25:01

practices, more diverse. Don't try

00:25:04

the moon Sorensen's in Phoenix.

00:25:06

Consider that there is kind

00:25:08

of an implied traditional requirements

00:25:10

to come by with the

00:25:11

time investment business. Irrigation we

00:25:18

should consider that there is

00:25:20

such a traditional requirement is

00:25:22

set. The special, very high

00:25:24

to decline. The tribunal has

00:25:30

considered that this is not



00:25:32

a jurisdictional issue, but the

00:25:34

decision has to be dealt

00:25:36

with at the marriage State

00:25:37

wide is, the state of

00:25:44

consent is not directly condition

00:25:47

to count the investment on

00:25:49

again. In between some five,

00:25:52

most considerate that into consideration

00:26:03

to take off entry, which

00:26:10

I'll try to determine the

00:26:17

impact of the weather. So,

00:26:24

those burning principal, and I

00:26:25

will refer to two of



00:26:26

them and one of them

00:26:28

is actually right to the

00:26:30

competent. question, being, how do

00:26:36

tribunals conceit of the school

00:26:39

and the nature of Tracy,

00:26:45

for which plays a role

00:26:46

in. The Suburban is the

00:26:48

principal DoubleTree whether or not

00:26:52

driving. This is Raven in

00:26:55

the context of investment returns

00:26:56

for instance, or to refer

00:27:01

to the I think that

00:27:09

the nature of investment into



00:27:25

commercial arbitration or do they

00:27:27

considered International Investment form of

00:27:52

commercial arbitration, as a matter

00:28:11

of fact, I know there

00:28:25

is tration of the impact

00:28:27

of how tribunal consider the

00:28:30

nature of investment. I do

00:28:50

have one question for you.

00:28:51

Y'all are we know from

00:28:54

our experience than municipal authorities.

00:28:57

Take a long time to

00:28:59

figure it out corruption in

00:29:03

on the project it can



00:29:04

take years of investigation and

00:29:07

then further years-old proceedings even

00:29:10

after an indictment or in

00:29:12

some civil proceeding proceeding. What

00:29:17

is your thought on how

00:29:19

a tribunal should a review

00:29:22

or Take into account that

00:29:26

Corolla proceeding shouldn't stay the

00:29:29

proceedings, shouldn't shouldn't in some

00:29:33

cases should have prevented from

00:29:35

proceeding with Angie. It's going

00:29:37

to interfere with the ongoing

00:29:39

nature of the investment treaty



00:29:41  
arbitration. What it? What are

00:29:43  
your thoughts? Toyota criminal investigation

00:29:49  
in the so then we

00:29:58  
could stay or not but

00:30:02  
I think that's any way

00:30:03  
we can decide when I'm

00:30:14  
going to take a nap

00:30:24  
and then But that's obviously

00:30:41  
the countervailing. And it can't

00:30:50  
be. You can't push her

00:30:52  
too long before. I thought

00:31:26  
I saw on one of

00:31:28  
them all of mine who



00:31:29  
is on the phone by

00:31:31  
Zoom had raised the question.

00:31:32  
All if you want to,

00:31:34  
you can raise it now.

00:31:40  
okay, we will wait, then

00:31:42  
why don't you Okay, and

00:31:48  
thank you again and thank

00:31:50  
you for the palace that

00:31:51  
the organizers for organizing this

00:31:53  
week. So my, said, they

00:32:02  
are kind of going to

00:32:02  
focus on the role of

00:32:04  
commercial arbitration to treating issues



00:32:06  
of corruption fraud and illegality.

00:32:08  
And I kind of want

00:32:10  
to adjust the post of

00:32:11  
those issues with some of

00:32:13  
the issues that we saw

00:32:14  
with investors State arbitrations and

00:32:19  
divide up the comments by

00:32:20  
focusing on issues that arise

00:32:22  
during the arbitration that arise

00:32:25  
after the arbitration award has

00:32:27  
been issued and the prodigal

00:32:29  
a for a crush and

00:32:31  
has been discovered. I'm going



00:32:32  
to look at this economy

00:32:33  
in that kind of said,

00:32:34  
I'll start off with an

00:32:37  
obvious observation and that in

00:32:39  
the commercial context issues of

00:32:42  
Rod. Come out of your

00:32:44  
corruption are typically arrives in

00:32:47  
the As a affirmative defense

00:32:49  
that are responded or typically

00:32:51  
respond, it raises on this

00:32:53  
affirmative defense intake on a

00:32:55  
different day, on Clean, Hands

00:32:57  
in Paris, delete the other



00:33:00

for the doctrine of the

00:33:02

hue. Are the doctrine of

00:33:05

locusts when attention is one

00:33:08

of the hardest words in

00:33:09

the world miserably at the

00:33:18

gala T, is it can

00:33:28

also be raised to espante

00:33:30

by the arbitrator's themselves. Perhaps,

00:33:33

the most famous example of

00:33:34

this is judged against awarded

00:33:39

back in 1963, and when

00:33:41

she just missed arbitration claims,

00:33:43

because there was bribed the



00:33:44  
evidence surprise in the commercial

00:33:47  
arbitration before him of Argentine,

00:33:50  
government officials, say innocent in

00:33:54  
legality, cut alerts in the

00:33:55  
background at all times and

00:33:57  
can or drown himself in

00:33:58  
a commercial arbitration at any

00:34:00  
time. A visit to be

00:34:02  
also the case, even with

00:34:03  
consent two words to just

00:34:05  
to kind of give an

00:34:05  
interesting story on this. I

00:34:08  
was involved in a case



00:34:09

in which we discovered that

00:34:11

the respondents which was a

00:34:12

government entity a confidential matter

00:34:15

Sunday in the description and

00:34:21

manipulated the control board of

00:34:26

the queen. Until they actually

00:34:28

were representing both sides of

00:34:29

the vehicle at one point

00:34:31

in the arbitration and then

00:34:33

concocted the plan. If an

00:34:35

Essence that they would get

00:34:37

you a spent the war

00:34:38

of corruption throughout it and



00:34:41

So eventually make you lose

00:34:44

control of the claimants in

00:34:45

that matter. And so is

00:34:46

that they're playing, didn't go

00:34:47

through. But we raised the

00:34:48

issue of respondents were attempting

00:34:51

to do. This planet was

00:34:54

discovered Friday, illegality. The issue

00:35:09

of corruption illegality is not

00:35:12

likely to cause a jurisdictional

00:35:15

challenge to the tribunal online.

00:35:17

As, as they mentioned. That's

00:35:19

a typical thing that may



00:35:20

arise in a bit. Because

00:35:22

many of us, as he

00:35:24

mentioned, a requirement that the

00:35:27

host state, it would be

00:35:29

best to be made in

00:35:30

the courts. With the loss

00:35:33

of the host at times

00:35:38

can be perceived as an

00:35:39

advantage for the stage because

00:35:41

he's kind of used to

00:35:42

the works of art of

00:35:44

karate. Is it is it

00:35:45

is it gives you a



00:35:49

lot of the tribunal to

00:35:51

examine the suspect in the

00:35:52

eye of the investor but

00:35:54

kind of, without looking at

00:35:56

the plank in the eye

00:35:56

of the state, indeed commercial

00:36:01

The accusations of Fraud and

00:36:03

corruption in the illegality can

00:36:06

be only really be raised

00:36:07

as a defense and it

00:36:08

doesn't get to jurisdiction. One

00:36:09

example that would be or

00:36:11

the one exception I would



00:36:12

say to that. Are there

00:36:13

been cases of a allegations

00:36:15

of forgery or fraud in

00:36:17

the signing of the arbitration

00:36:18

agreement. Singapore recently had a

00:36:20

case about this Reliant Energy

00:36:22

vs. Shanghai Electric in which

00:36:25

the issue was brought up

00:36:26

but it is not a

00:36:27

jurisdictional challenge. Now there's been

00:36:30

a lot of standard of

00:36:34

proof. Pro proven that the

00:36:40

consensus generally is that the



00:36:42  
height of the, the higher

00:36:44  
standard, the clear and convincing

00:36:45  
standard is the standard that

00:36:47  
there's a minority of tribunals

00:36:52  
that have come to the

00:36:52  
conclusion. That it's a slightly

00:36:54  
lower standard because of the

00:36:56  
difficulty is that a vast

00:37:07  
majority have come to that

00:37:08  
conclusion, that the height of

00:37:10  
a standard against me or

00:37:16  
should I find myself on

00:37:17  
the opposite side? I offer



00:37:20

no opinion on that matter.

00:37:23

I do want to repay

00:37:25

talk on issues that arise

00:37:26

post arbitration and there's a

00:37:28

few issues that come up

00:37:29

here. What are the biggest

00:37:31

one is if fraud corruption

00:37:34

and illegality? Which is the

00:37:35

worst be difficult to text

00:37:37

or Rises after the arbitration

00:37:39

award has been issued, does

00:37:42

the tribunal have the authority

00:37:43

of the power to Rio



00:37:45

Pinar revisit its own decision?

00:37:48

I'm assuming that it would

00:37:50

have had a material effect

00:37:51

on that issue of whether

00:37:55

or not they can do.

00:37:57

So when they confirmed in

00:38:01

a ward, I need to

00:38:02

spend the time. But the

00:38:04

applicant has to set aside

00:38:05

and give an example, not

00:38:12

set aside an award under

00:38:14

any of the enumerated ground

00:38:15

after 90 days from your



00:38:17

work, being served on the

00:38:18

parts. So we had a

00:38:21

kind of a situation in

00:38:22

which we detected it and

00:38:23

another case that fraud and

00:38:25

Corruption had occurred, but it

00:38:26

wasn't part of the arbitration.

00:38:28

And then we were unfortunately

00:38:30

time we were out of

00:38:32

sight of the night. And

00:38:35

do we have to extend

00:38:38

that time. Under the use

00:38:39

of arguing? Basic be better



00:38:43  
if we couldn't have known

00:38:44  
fraud or corruption that is.

00:38:46  
And we found it an

00:38:49  
interesting decision from the Hong

00:38:51  
Kong quartz, which is another,

00:38:52  
is that role models jurisdiction

00:38:56  
in which such men, as

00:38:59  
me, not just an interesting

00:39:11  
plan work. Also, I just

00:39:22  
want to quickly highlight issues

00:39:24  
up set aside at of

00:39:26  
a nit of a commercial

00:39:27  
Ward. There's kind of a



00:39:29

call lessons that when there's

00:39:30

prod corruption or illegality related

00:39:35

to the artificial process. That

00:39:37

is genuine grounds for set

00:39:38

aside, I've highlighted cure section

00:39:40

10 of the FAA. Where

00:39:41

is an example of that.

00:39:44

We also look at the

00:39:45

arbitration act 1996, and one

00:39:49

of the serious irregularities were

00:39:50

set aside in the ward.

00:39:51

Is that the order was

00:39:52

obtained by fraud, or the



00:39:53

ordinary way it was secured

00:39:55

contrary to the public policy.

00:39:57

Interesting from model law does

00:40:00

not have one of the

00:40:02

enumerated or set aside from

00:40:05

your convention Article, 5, and

00:40:06

it doesn't mention of butter.

00:40:10

Corruption is one of the

00:40:11

grounds for set aside. Some

00:40:13

people could I get to

00:40:13

the public policy ground would

00:40:15

a pump and 10th and

00:40:17

Castle a bit, but some



00:40:19  
beautiful models. Fiction's most only

00:40:22  
Australia have for the avoidance

00:40:25  
of Doubt, noted that fraud

00:40:27  
and corruption in the basement.

00:40:28  
But award is aground for

00:40:30  
set aside, Singapore. It apparently

00:40:33  
has its own kind of

00:40:34  
it as an independent, cuz

00:40:36  
it's separate and apart from

00:40:37  
that the public policy ground

00:40:40  
under the youth model model,

00:40:42  
law has a section 24

00:40:44  
also allows for the set



00:40:46

aside of award based upon

00:40:47

that. That is kind of

00:40:52

a, I'll send in terms

00:40:55

of the issues that the

00:41:01

public policy around 4 set

00:41:03

aside of reward does include

00:41:05

issues of Fraud and Corruption

00:41:08

when you did too in

00:41:11

a situation which you're you're

00:41:13

representing us toward better. You

00:41:15

know, we know that the

00:41:16

public coffee grounds supposed to

00:41:19

be interpreted to ask, how



00:41:25

is it that particular ground

00:41:27

men in this case? So,

00:41:29

in the United States, have

00:41:35

a pot of coffee ground

00:41:37

first, against it. Based on

00:41:38

the Unseen hand. I put

00:41:41

up here a quote from

00:41:42

the third circuit, but it's

00:41:43

literally a hundred other quotes

00:41:45

that explain the similar things.

00:41:47

But this is based on

00:41:49

a long-standing tradition of public

00:41:52

policy to protect the Integrity



00:41:54

of course. So I would

00:41:55

argue that the defense of

00:41:57

unclean hands could be used

00:41:59

or not enforced, resistant. Horseman

00:42:02

United States, likewise in this

00:42:04

will be the last in

00:42:06

the UK. If we look

00:42:08

at kind of a Seminole

00:42:09

decision on illegality, which is

00:42:10

to tell peepers of the

00:42:11

one frame, the whole context

00:42:17

of the Galaxy defense in

00:42:19

the context of public policy,



00:42:21

concerns grew out of a

00:42:23

gas station by public policy

00:42:28

but should be considered while

00:42:39

with them. Attributable. After back,

00:42:56

find determines that there is

00:42:59

no fraud or corruption. But

00:43:03

it hasn't been proven what

00:43:05

Jeffery should a subsequent reviewing

00:43:08

Court provide to that tribunal,

00:43:11

find it. And I mean

00:43:13

this race is there is

00:43:15

a split in jurisdictions on

00:43:16

how to address this you



00:43:19  
mentioned about time decision in

00:43:21  
your in your introductory remarks

00:43:22  
provided absolutely no difference to

00:43:27  
the findings of the tribunal

00:43:29  
and kind of had its

00:43:30  
own back, binding on the

00:43:32  
issues that were raised in

00:43:34  
that place in the United

00:43:37  
States has been a tendency

00:43:39  
of course to provide deference

00:43:40  
to the decision, to raise

00:43:43  
the decision before the tribunal

00:43:45  
and they didn't find enough



00:43:47  
evidence. They're interesting case from

00:43:52  
the English. Court of the

00:43:52  
West Acres. Only time that

00:43:54  
they were really kind of

00:43:56  
look at it as if

00:43:57  
the evidence of Fraud and

00:43:58  
Corruption emerged after the arbitration,

00:44:00  
but it doesn't work. They

00:44:04  
do have also an exception

00:44:05  
for perjury as well. The

00:44:13  
tribunal rejected claims of Fraud

00:44:15  
and Corruption and the circuit

00:44:17  
substantially different hos by Houston



00:44:20  
and I'll revisit the bed.

00:44:25  
But it is a very

00:44:27  
interesting question because I just

00:44:29  
want one part of that

00:44:31  
is the power of Investigation,

00:44:38  
so it could be a

00:44:39  
case made that, you know,

00:44:40  
the French system might give

00:44:43  
a little bit more lenient

00:44:44  
or warm or head would

00:44:46  
it burn for an award

00:44:47  
letter to look at All

00:44:51  
right, so I'm going to



00:44:52

try to get fine PowerPoint

00:44:54

back on. Thank you. so

00:45:25

I'm going to give an

00:45:26

overview of the role of

00:45:28

tribunals in dealing with the

00:45:32

I first mentioned the triangle

00:45:36

sources or Tribune funeral in

00:45:39

her and powers to investigate.

00:45:40

And then what specific authorization

00:45:43

is there are the great

00:45:45

tribunals the opportunity to independently

00:45:48

review of factual investigation. I'll

00:45:52

look at the inherent limitations



00:45:53  
on the power of a

00:45:55  
tribunal and I'll make practical

00:45:57  
tools that are tribunal May

00:46:00  
employ. So good sources are

00:46:04  
really similar. No bitching. The

00:46:19  
court knows, the law allows

00:46:22  
arbitrators and this arises from

00:46:31  
the generally. The Inca quizzes

00:46:34  
for Ariel nature of the

00:46:37  
civil law system. Secondly, tribunals

00:46:42  
have a duty to render

00:46:43  
in forceful war and that

00:46:45  
is set forth in the



00:46:47

ICC. Arbitrary rule for example,

00:46:51

and therefore must make every

00:46:54

effort to think about how

00:46:55

it would be enforceable in

00:46:58

the sinus of the arbitration

00:47:00

brakes. Are there other places?

00:47:06

Show me authorization to engage

00:47:11

in Suez, fonte investigation by

00:47:13

a tribunal most of the

00:47:16

major arbitration laws. I just

00:47:18

swiped, for example, section 34

00:47:21

of the arbitration act, and

00:47:23

of course, the major institutions.



00:47:25

Also G tribunals power to

00:47:28

sua, sponte, or order to

00:47:31

produce evidence of facts and

00:47:32

identified, some of the armored

00:47:36

troll rules that are applicable.

00:47:41

So what are the limitations

00:47:43

on the power of a

00:47:44

tribunal to investigate number one?

00:47:47

Leading, our virtual Mendon? And

00:47:53

that is a very serious

00:47:54

one. If if you if

00:47:57

it tribunals her to do

00:47:58

it with the birdies, haven't



00:48:00

you made me do that

00:48:03

as being Ultra petite? Which

00:48:06

is beyond the petition. So

00:48:09

that would be a ground

00:48:10

to to overturn in the

00:48:12

war. There's also a few

00:48:14

process considerations as as Steven

00:48:19

had mentioned. You don't want

00:48:21

to have The burden shifted

00:48:24

unnecessarily which it would harm

00:48:27

one of the parties. And

00:48:33

you also don't want to

00:48:34

have the tribunal to be



00:48:35

seen as helping one of

00:48:37

the parties, in its case

00:48:39

against the other violation of

00:48:41

the principle of equal treatment.

00:48:45

Show me, metal plan, the

00:48:48

breakfast and the tribunal noted

00:48:52

stated that the idea is

00:48:54

not to punish one party

00:48:55

at the cost of the

00:48:56

other. But to ensure the

00:48:58

promotion of the rule of

00:48:59

law which entails that are

00:49:01

Court to not Grant assistance



00:49:03  
to a party that it

00:49:04  
engaged in a crop that

00:49:05  
so that's the purpose of

00:49:07  
engaging review at the tribunal

00:49:11  
of it. And then were

00:49:13  
practical limitations and that is

00:49:16  
they don't have as Stephen

00:49:19  
mentioned constabulary Powers they can't

00:49:22  
subpoena directly Witnesses. Third parties.

00:49:26  
In question will come back

00:49:28  
later with Jen as to

00:49:31  
how that affects when faced

00:49:37  
with serious consideration of Fraud



00:49:41  
and illegality, they may hunt

00:49:44  
the actual investigation to a

00:49:47  
subscriber of You by Court

00:49:49  
which would have the power

00:49:51  
to bring forth more evidence

00:49:54  
to the question. I mentioned

00:49:59  
just a couple practical tools

00:50:02  
that are considered inappropriate case.

00:50:05  
We mentioned, John acted, I

00:50:08  
mentioned a little bit. Should

00:50:11  
you have a bifurcated proceedings?

00:50:13  
The first part on the

00:50:14  
jurisdictional issue of whether they're



00:50:16  
the underlined transaction as fraudulent

00:50:19  
and order for school. And

00:50:22  
the question of the state

00:50:24  
tested, two more domestic and

00:50:39  
sleight of hand in those

00:50:43  
investigations. They're also could be

00:50:49  
attributed to be sensitive to

00:50:51  
applying broader principles of disclosures.

00:50:55  
And for example, they may

00:50:57  
approve 1782, Discovery request. They

00:51:01  
may ask the court to

00:51:02  
issue letters rogatory. They may

00:51:04  
be given more opportunity to



00:51:07  
engage and document production. In

00:51:13  
one case I was involved

00:51:15  
in, as a tribunal member

00:51:17  
of the parties had in

00:51:20  
their contract. It was commercial

00:51:23  
case. Provided that the parties

00:51:27  
could engage in a position

00:51:29  
that they found out in

00:51:33  
the course of deposing. The

00:51:34  
US general counsel of a

00:51:36  
Taiwanese manufacturing company that all

00:51:39  
the books and records that

00:51:40  
have been presented to the,



00:51:42

to the tribunal had been

00:51:44

fortunate in that. The company

00:51:46

had indeed been keeping two

00:51:50

different sets of books and

00:51:52

Records when we were all

00:51:53

of its other reasons. And

00:51:55

in her case, the last

00:52:04

two I'll mention are the

00:52:05

adverse inferences which are Typically

00:52:09

stated. And then, of course,

00:52:13

allocation across, which is the

00:52:16

usual way of dealing with

00:52:19

parties who are engaged and



00:52:20

Corruption. So this is our

00:52:24

last week. If you just

00:52:37

send your sharing. I think,

00:53:12

again, thank you very much,

00:53:15

prison week. We're very happy

00:53:16

to be hosting the session

00:53:18

at RHA office in Washington.

00:53:20

D.c. going to be going

00:53:22

over some other issues related

00:53:25

to fraud and Corruption. So,

00:53:27

from a Quantum expert and

00:53:29

a forensic accounting perspective, the

00:53:31

value of a company can



00:53:32  
be distorted in arbitration due

00:53:37  
to illegal schemes of acid.

00:53:38  
This preparation and finish with

00:53:40  
the statements. So this can

00:53:42  
make it difficult to get

00:53:44  
that accurate. I wish that

00:53:45  
through them testify and studies

00:53:48  
have shown that. Actually, the

00:53:49  
average career to buy you

00:53:50  
a ton of violations is

00:53:52  
5.3 years. So we're crossing

00:53:55  
over fiscal years and we're

00:53:57  
dealing with actions basically a



00:53:59

fraud that our tempers be

00:54:00

covered up from one year

00:54:02

to another year. And so

00:54:04

again, we're modifying one year

00:54:05

were one of your being

00:54:06

modified to cover up another

00:54:08

year. I left because you're

00:54:10

one of the brightest star

00:54:11

or the wish to continue

00:54:22

to do so because the

00:54:34

more adjustments need to be

00:54:35

made on the income statement

00:54:36

side, you're looking at two



00:54:38  
differences of how much your

00:54:40  
sales are. Our Modified by

00:54:41  
force is now on your

00:54:42  
balance. You're looking at maybe

00:54:44  
having to make him just

00:54:45  
message to not only your

00:54:47  
assets but your retained earnings.

00:54:48  
So as evaluator when you're

00:54:51  
asking for financial statements, you

00:54:52  
looking at a number of

00:54:53  
years so that you can

00:54:55  
kind of see what the.

00:54:56  
Of time that was may



00:54:57  
be unaffected by potential product

00:54:59  
options. One of the things

00:55:04  
that have a weiner would

00:55:05  
do was to look at

00:55:06  
the internal control that can

00:55:08  
be put in place, such

00:55:09  
as policies and procedures to

00:55:10  
protect its assets. A fishing

00:55:13  
season in Sherman Mitchell statements

00:55:15  
and that will tow lot

00:55:16  
about what's the risk of

00:55:17  
potential fraud so restricting. Physical

00:55:20  
assets is one way, so



00:55:22

that'd be locked up team.

00:55:26

And then on the digital

00:55:27

side looking at wasn't a

00:55:28

password to security systems that

00:55:31

aren't used to evaluate whether

00:55:33

or not. There's actually a

00:55:34

lower risk of Fraud and

00:55:36

informal job descriptions isn't mandatory

00:55:40

vacation. Policy is another way,

00:55:41

if the company has a

00:55:43

policy where you have to

00:55:44

take a week or two

00:55:45

until somebody comes in and



00:55:48

then is able to potentially

00:55:49

look at what's being done

00:55:50

and tells whether or not,

00:55:52

there's an issue a product

00:55:53

corruption on so it will

00:55:55

tell nobody where it's at

00:55:56

policies. In place are there

00:55:58

could be a potential lower

00:55:59

risk of fraud. Duplicate authorization,

00:56:03

for payments, made up of

00:56:03

a set. The alarm also,

00:56:04

a bribe is attempted to

00:56:06

be made. If somebody can



00:56:07  
just go to the bank

00:56:08  
and pull out the money

00:56:09  
or can write a check,

00:56:09  
now, they have to have

00:56:11  
two people as we've discussed

00:56:13  
this harder to conceal. A

00:56:14  
product Mother's Day, craft cancellations,

00:56:20  
background checks, and then annual

00:56:23  
or surprise audits. If you

00:56:24  
have an annual audit, that's

00:56:25  
great. Very important. But then

00:56:31  
looking at whether or not,

00:56:32  
there's a possible place for



00:56:33

a surprise, all right, even

00:56:34

if it's a partial price

00:56:36

on it to potentially show

00:56:37

that there's a lower risk

00:56:39

of fraud for fraud team

00:56:40

to Texas. I want to

00:56:45

go into a little bit

00:56:46

more about the perception of

00:56:47

bribery by country. So in

00:56:49

a study Executives were asked

00:56:51

how often your firm's headquarters

00:56:52

in the country to engage

00:56:53

and bribery in the country.



00:56:55

And these are a lot

00:56:57

of a larger economies and

00:56:59

a larger number of developed

00:57:00

countries because in smaller countries

00:57:03

can happen in front of

00:57:04

can happen anywhere, but there's

00:57:06

not a lot of information

00:57:07

that's been provided from a

00:57:09

lot of other countries. And

00:57:11

the way this scale works

00:57:12

is that one is the

00:57:14

average instance where an executive

00:57:17

said that bribery potentially occurred



00:57:19  
in the country. So looking

00:57:21  
all the way on the

00:57:21  
left hand side of the

00:57:22  
Russia at one point three

00:57:25  
almost. So that there's a

00:57:27  
30% increase chance that an

00:57:29  
executive replied that there was

00:57:31  
bribery involved in the country.

00:57:32  
So looking at China is

00:57:35  
an initial 20% above average

00:57:37  
Mexico and Indonesia have 10%.

00:57:46  
What's the value? We are

00:57:48  
looking at what country you're



00:57:49

dealing with in an arbitration

00:57:50

could potentially deal with what's

00:57:52

your chance of dealing with

00:57:53

fraud issue. Next week's going

00:57:58

to charge you some of

00:57:59

the perceptions of Barbie by

00:58:00

industry. So, another study feckless

00:58:02

were asked how often do

00:58:03

firms in each sector, engaging

00:58:05

barbell. Low-level public officials were

00:58:07

able to speed up and

00:58:08

so they are granting licenses.

00:58:12

Some people might consider increasing



00:58:13

the wheels are Financial individuals

00:58:22

in arbitrations using improper contributions

00:58:25

to high-ranking, politicians to achieve

00:58:28

influence was another area. Or

00:58:30

if they pay received bribes

00:58:32

from other private firms, it

00:58:34

would have been great in

00:58:35

the study of whether or

00:58:35

not they had provide information

00:58:36

as to which one of

00:58:38

these they reply to. But

00:58:40

this is the top 10

00:58:41

Industries. I don't think there's



00:58:42

much shocked around the top

00:58:45

5 public works with number

00:58:46

one, utilities real estate oil

00:58:49

and gas and Mining and

00:58:51

rounding out the top 10

00:58:52

and power generation Pharmaceuticals, heavy

00:58:54

manufacturing areas, where a lot

00:58:58

of money is needed to

00:59:00

engage in projects and where

00:59:01

there's regulations. So that potential

00:59:04

Broderick eruption could game babe.

00:59:10

Moving from the perception by

00:59:14

Executives to the actual actions



00:59:16  
of primary by Regulators actions

00:59:20  
taken against the heavy manufacturing

00:59:22  
industry in Pharmaceuticals, are to

00:59:24  
the highest average about 50%,

00:59:27  
considering that in the executives,

00:59:31  
the response was that they

00:59:32  
were around the 7th or

00:59:33  
8th, so I feel like

00:59:36  
I was that much bribery

00:59:38  
and Corruption going on. But

00:59:39  
the charges Oil, gas has

00:59:45  
13% and Technology 6.5%. Although

00:59:49  
the last 20 years, there's



00:59:58

an increased with a lot

00:59:59

of nationalization onshoring and trade

01:00:02

Wars where knowledge is becoming

01:00:04

more of an issue and

01:00:05

sleep or getting that they

01:00:08

aren't left behind. So ugly

01:00:17

actions that were taken the

01:00:19

findings. Found that the purpose

01:00:21

of the Bride 77.2% were

01:00:24

given exchange for political and

01:00:25

Regulatory favors. 7.9% were given

01:00:28

for preferential tax or tariff.

01:00:31

Treatments. And 18% were given



01:00:33  
for continuing of a license

01:00:35  
or permit and approves do

01:00:38  
this so that they're going

01:00:40  
to get a high reward,

01:00:41  
you're not doing this risk

01:00:43  
for no reason, so on

01:00:44  
average it but the game

01:00:45  
was 28 million. But when

01:00:52  
you look at the size

01:00:54  
of the bride and compared

01:00:55  
to the amount of the

01:00:56  
business that's in the affected,

01:00:58  
the amount of the sales,



01:00:59  
it's a 6.8 \* return.

01:01:07  
Southern Maine fraud and buy

01:01:09  
me some front and back

01:01:11  
on the main reason why

01:01:13  
I want to increase their

01:01:19  
sales. Of course, that's not

01:01:31  
bad. That's just because in

01:01:33  
the study, there's people that

01:01:34  
found that there was two

01:01:36  
reasons why they potentially In

01:01:47  
this analysis then byways will

01:01:49  
take steps of a Digital

01:01:50  
Risk if it's fraud or



01:01:51  
four accounting practices I noticed

01:01:54  
suspected that's just one way

01:01:56  
out. If somebody's been prematurely

01:01:58  
post earnings are there. One

01:02:10  
of the way that the

01:02:11  
valuator make risk is that

01:02:15  
a with increased coming back

01:02:22  
on vibration? It's just one

01:02:24  
methodology that potentially could be

01:02:26  
used. Overall friends are found

01:02:29  
that were charged with bribery

01:02:31  
and financial fraud experience on

01:02:34  
average of cubits of loss



01:02:35  
of 54.9%. Outside of the

01:02:42  
diminution of value in evaluation

01:02:45  
expert at or Touched by

01:02:46  
an arbitration. Another decision that

01:02:49  
you can make with the

01:02:50  
potential Precision. So, if you

01:02:52  
do with a contract cancel,

01:02:54  
the contract and returning to

01:02:56  
a pre-contractual position and the

01:02:58  
situation of the amounts of

01:03:00  
the funds of the resources

01:03:01  
that were put into the

01:03:02  
project would be measured by



01:03:04  
the rest of the amount

01:03:07  
of chicken out. Another issue

01:03:10  
that can be decided by

01:03:11  
the tribunal is a counterclaim.

01:03:13  
So, there were taxes that

01:03:15  
were voided or additional sales

01:03:17  
are working to Legal Aid.

01:03:18  
Those to be measured by

01:03:19  
the test by an expert

01:03:20  
and awarded, by the Tribunal,

01:03:24  
Just the last area is

01:03:26  
at issue that controls should

01:03:29  
be put into place, so



01:03:30

they can issue that frog,

01:03:32

training program. A hotline my

01:03:36

expert. Witness me? What? The

01:03:37

average cost for implementing such

01:03:40

evidence would be and then

01:03:41

monitoring program could be either

01:03:44

ordered by the Tribunal. And

01:03:50

those are just a few

01:03:51

of the remedies. I turned

01:03:57

it to her. Lol analyst.

01:04:00

So, for me and asked,

01:04:02

could you have a situation

01:04:04

where in an expropriation case,



01:04:08  
the value of the asset

01:04:11  
has been diminished by corruption

01:04:15  
or product, but it wasn't

01:04:17  
sufficient. Corruption of broadly before

01:04:19  
the contract, or two, under

01:04:21  
my jurisdiction of the tribunal

01:04:24  
in April, with some level

01:04:27  
of fraud, when you as

01:04:29  
a damaged expert, be the

01:04:31  
one to be testifying as

01:04:33  
to, whether the level of

01:04:36  
fraud that was proven is

01:04:37  
sufficient to affect the value



01:04:39  
of the company. I think

01:04:44  
the panel that probably have

01:04:53  
his been to analyze, what

01:04:55  
are the red Flats. So

01:04:57  
as a certified fraud examiner,

01:04:58  
we don't make determinations that

01:04:59  
there actually is brought. We

01:05:01  
would go to the measures

01:05:02  
to say whether or not

01:05:03  
Product Promotion potential and then

01:05:06  
it would be for the

01:05:07  
traffic to determine if it

01:05:08  
was at the making of



01:05:09  
the investment, wasn't a task

01:05:10  
that I should be reached

01:05:11  
legal issues to discuss. But

01:05:20  
if there were taxes that

01:05:22  
were not paid over a.

01:05:25  
Of time because of a

01:05:27  
certain region and the red

01:05:30  
slime made without highlighted, that

01:05:32  
could be a potential reason,

01:05:33  
why there wouldn't be a

01:05:35  
full of valuable business. So

01:05:38  
total, Destruction. It may be

01:05:41  
a reduction of the value



01:05:42

of a potential be claimed

01:05:44

in an expiration. I certainly

01:05:47

could have her. Any other

01:05:51

questions? I think we're now

01:05:53

open for questions from the

01:05:55

audience. I see. We have

01:06:01

a couple that come in

01:06:03

on a, through the chat

01:06:05

box. Turn to. One question,

01:06:12

considering general principles of the

01:06:16

law to what extend to

01:06:17

Trevino to intervene to ensure

01:06:19

Justice or equality between the



01:06:22

parties and contract or treaty

01:06:24

arbitration. The equitable. Can I

01:06:34

turn to the ionic or

01:06:35

just even if you have

01:06:36

any questions or any responses?

01:06:42

Well, maybe where is your

01:06:49

question to my time with

01:06:56

you? I'm not sure exactly

01:06:57

what the balance between depression

01:07:07

and looking at the other

01:07:09

part, but I think it

01:07:11

has to do with the

01:07:12

with the question is getting,



01:07:13  
at is Big to the

01:07:15  
extent, the tribunal should intervene

01:07:17  
when they see an imbalance

01:07:19  
of the parties, in the

01:07:20  
interest of the representation, by

01:07:26  
one side was not of

01:07:29  
the Nigerian state would not

01:07:31  
as a stellar at what

01:07:34  
I never want to criticize

01:07:35  
anybody, but it was obvious

01:07:37  
issues of corruption that we're

01:07:40  
kind of out there but

01:07:41  
not being prosecuted or not.



01:07:43

At rest. And so do

01:07:45

the was a comment in

01:07:46

the in the judgment. And

01:07:47

the Nigeria case on the

01:07:48

judge, where is a wiring?

01:07:52

What extent arbitrator should step

01:07:55

in. When they see that

01:07:56

one side is, clearly being

01:07:58

out our door overpowered by

01:08:00

another side, Inn in that

01:08:01

arbitration in terms of the

01:08:03

certificate sophistication of other parties

01:08:05

in, in terms of the



01:08:07  
prosecution of the case, against

01:08:10  
this idea of what, what

01:08:12  
extent, the tribunal member should

01:08:14  
intervene on their own initiative

01:08:16  
and in a generally would

01:08:19  
think that it is acceptable.

01:08:20  
So long as they give

01:08:21  
each of the parties opportunity

01:08:24  
to Alpine on what it

01:08:25  
what they're doing. So I

01:08:27  
think that was I think

01:08:34  
that makes good sense of

01:08:35  
that is a good interpretation



01:08:37  
of ineffective. Assistance of counsel

01:08:39  
was a main contributor to

01:08:42  
the case the feet and

01:08:44  
IDK as much as people

01:08:48  
at work about that. But

01:08:51  
it didn't lead to a

01:08:53  
tribunal being left in the

01:08:56  
dark, which could have come

01:08:59  
out with a more effective

01:09:01  
counsel to the second question

01:09:03  
here, if a bit is

01:09:05  
signed under economic or political

01:09:08  
pressure, And whose State denies



01:09:13

protection to an investor on

01:09:15

these grounds do tribunals typically

01:09:18

except Saturday. Someone that can

01:09:40

be a gram of that,

01:09:42

maybe someone could undermine a

01:10:26

treaty obligation. Is there any

01:10:40

time limitation? To bring a

01:10:45

fraud in the inducement claim

01:10:48

to the notice of the

01:10:49

of the tribunal and other

01:10:51

words books, assume your you've

01:10:54

already plead the case you've

01:10:55

already gone through your appeal.



01:10:57

One process, you've already had

01:11:01

pleadings of both sides and

01:11:04

suddenly you realize the action,

01:11:09

can you then bring it

01:11:11

to the attention of the

01:11:12

tribunal and see tremens and

01:11:15

so that could be both

01:11:16

in a commercial or so,

01:11:21

in the Singapore case that

01:11:23

I mentioned that was your

01:11:25

stove is allegation to Portrait.

01:11:26

That was one of the

01:11:27

problems that the award at



01:11:30

her face is that they

01:11:31

didn't discover the alleged forgery

01:11:34

in till after the award

01:11:35

was issued, right? And basically

01:11:38

the Singapore International Court said

01:11:41

that they had waved at

01:11:42

Archbishop, by not bringing it

01:11:44

up. Could have found the

01:11:46

forgery at that time, when

01:11:50

you can bring these arguments

01:11:51

up earlier the better strangers,

01:11:58

dictions have absolute are stringing

01:12:00

up new arguments, even as



01:12:01  
late as at at the

01:12:02  
hearing right now in Hong

01:12:04  
Kong. For example, introducing a

01:12:07  
new argument that he could

01:12:09  
be a natural Justice in

01:12:10  
the sense that you have

01:12:11  
not offered, your counterparties opportunity

01:12:14  
to respond in writing and

01:12:16  
so you know it can

01:12:19  
be a pretty difficult question

01:12:21  
but you protected cuz fraud

01:12:23  
and Corruption does often get

01:12:25  
detected late in the game



01:12:27

or in the process. And

01:12:29

so you know it's a

01:12:31

balancing act that way when

01:12:35

dealing with this kind of

01:12:36

issue of limitation overall. if

01:12:42

that's the case that you

01:12:43

have any thoughts on that

01:12:44

issue, whether you should have

01:12:56

known We have a great

01:13:25

deal of reluctance and argument

01:13:27

by the opposing party if

01:13:29

one party product fraud claim

01:13:31

late in the game. So



01:13:33  
it would have to be

01:13:35  
a lot of explanation about

01:13:37  
why? Wasn't sure? Cuz I

01:13:40  
was earlier and presented earlier,

01:13:42  
but sometimes you may have

01:13:44  
a criminal investigation. There are

01:13:50  
also two reasons that Beyond

01:13:53  
the control of the party

01:13:54  
for these types of allegations

01:13:59  
to arrive. And one example,

01:14:00  
that is not Prosecuting an

01:14:05  
agreement. And, you know, this

01:14:07  
is happening in which it



01:14:11  
had a agreement suggested involvement

01:14:18  
of our counterparty it in

01:14:20  
that agreement, and that was

01:14:22  
well, after the award on

01:14:24  
my ability had already been

01:14:25  
issued. And so, you know

01:14:27  
that What do you do

01:14:29  
at that point? You know,

01:14:30  
Wendy's public investigations are repealed.

01:14:36  
So Jenna question is, I

01:14:39  
have you on the calendar

01:14:40  
instances where information is hard

01:14:43  
to come by it, in



01:14:44

Vesta, getting International cases. And

01:14:47

if so, how did you

01:14:48

resolve that to provide the

01:14:50

best possible evidence to bind?

01:15:01

And I think, you know,

01:15:02

there was one interesting point.

01:15:12

The actual knowledge or no

01:15:14

proof of that. And I

01:15:18

think that interesting in terms

01:15:20

of that question, but Austin

01:15:22

again, it's figuring out what

01:15:24

different information we can hold

01:15:27

together to understand what's going



01:15:30

on. But that's trying to

01:15:33

look at the people that

01:15:35

might be. Thinking about are

01:15:38

there strong expat communities networks

01:15:40

of people that we can

01:15:40

speak to you in the

01:15:41

area who can help with

01:15:44

that information? So I think

01:15:45

it's just a matter of

01:15:46

how all of the Pieces

01:15:47

come together and what information

01:15:48

we can take from both

01:15:50

the public record to really



01:15:53

understand. I want to ask

01:15:57

you, Jen Apollo question and

01:16:05

difficult to detect and it

01:16:08

comes up in different ways,

01:16:09

and it often takes a

01:16:13

lot of looking at bank

01:16:15

accounts, across country lines. Can

01:16:19

you undertake a credible investigation

01:16:22

of money, laundering schemes without

01:16:24

using subpoena powers of Courts,

01:16:27

things that you are able

01:16:33

to get from the side

01:16:34

that you are representing mnp



01:16:36  
sing some of that together?

01:16:37  
But you know I think

01:16:38  
it does a little bit

01:16:40  
to get there. Can you

01:16:45  
find Circle contract? Can you

01:16:46  
find information from prior matter?

01:16:48  
If we sign people follow

01:16:49  
a lot of the same

01:16:50  
habits and patterns? Do you

01:16:53  
have there been cases involving

01:16:54  
individuals or companies where we

01:16:56  
Certain information on the public

01:16:58  
record in the past that



01:16:59  
can help us piece together.

01:17:00  
But I think you are

01:17:02  
really trying to build out

01:17:04  
all of that information with

01:17:05  
with Donald So, you have

01:17:09  
to work with outside counsel

01:17:10  
to bring 1782. And if

01:17:37  
not everything else, okay, it

01:17:41  
looks like we've covered this

01:17:43  
very complex topic, come up

01:17:49  
with some reason. They're raising

01:17:50  
a different form of the

01:17:51  
question in the future. The



01:17:54  
future event. But thank you

01:17:56  
very much for joining us

01:17:57  
today. Thank you for the

01:17:59  
organizers.