Lecture 14

Judicial Review of Arbitration Awards

by Roger Batchelor

Tonight's class tackles one of the most contested tensions in American arbitration law: **to what extent can, should, and will a court review an arbitration award?** The question sits at the intersection of procedural policy, constitutional concerns, and the fundamental purpose of arbitration as an alternative — not merely a precursor — to litigation.

The Central Question

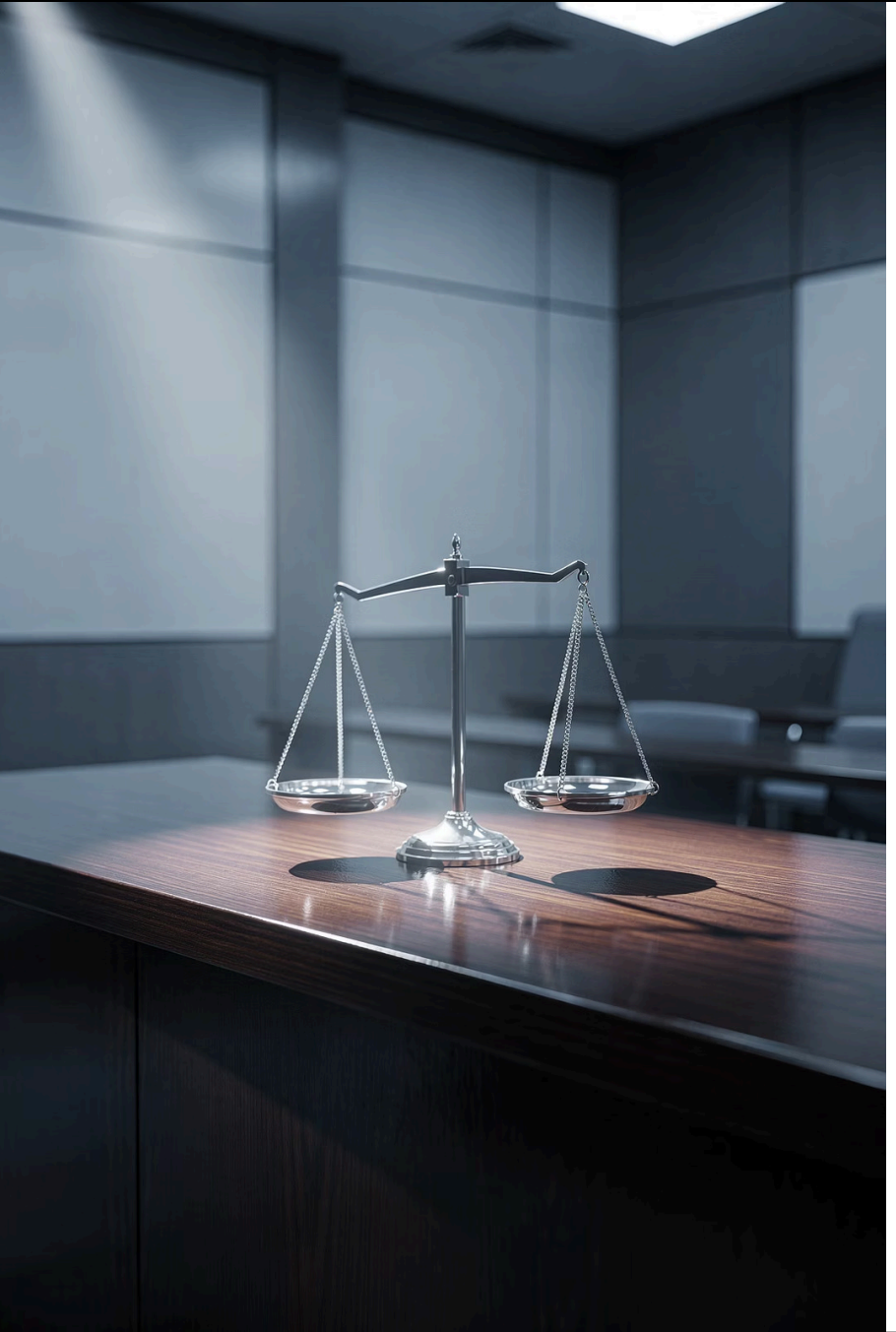
The Risk of Too Much Review

Permitting robust appellate-style review would convert every arbitration into a mere preliminary hearing, undermining the speed, finality, and cost savings that make arbitration attractive.

The Risk of Too Little Review

Insulating arbitral awards from meaningful scrutiny could entrench unfairness, reward procedural misconduct, and allow arbitrators to disregard the law with impunity.

Courts have labored to strike a delicate balance. We will work through the doctrinal standards, examine the FAA's statutory grounds, and interrogate how courts have interpreted — and at times stretched — those grounds.



The Core Tension: Finality vs. Fairness

The foundational dilemma in arbitral review doctrine is philosophical. Arbitration derives its value precisely from its **finality**. Parties who choose arbitration are presumed to be trading away full appellate rights in exchange for faster, cheaper, and more expert resolution. If every losing party could relitigate the merits, arbitration would lose its distinctive character entirely.

And yet finality without accountability breeds its own pathologies. The question is not *whether* courts should intervene in extreme cases — but rather *how liberally or narrowly* the grounds for intervention should be drawn. As the Supreme Court reiterated in *AT&T Mobility LLC v. Concepcion* (2011), the FAA embodies a **"liberal federal policy favoring arbitration agreements."**

The Case For and Against Review

The Case for Finality

- Preserves arbitration's efficiency and cost advantages
- Respects party autonomy and contractual choice
- Prevents courts from becoming de facto appellate arbitration panels
- Encourages robust private dispute resolution ecosystems

The Case for Review

- Protects parties from corrupt or biased arbitrators
- Ensures minimum procedural fairness guarantees
- Maintains public confidence in adjudicative legitimacy
- Prevents arbitrators from openly defying controlling law

FAA § 10

Statutory Grounds for Vacatur

The primary vehicle for challenging an arbitration award is **Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10**. Congress deliberately enumerated only four narrow grounds for vacatur. Notice what is *absent*: there is no statutory ground based on an arbitrator's error of law or erroneous findings of fact. This omission is deliberate and consequential.

1

Corruption, Fraud, or Undue Means

§ 10(a)(1): Award procured by corruption, fraud, or undue means. Fraud must not have been discoverable by due diligence before or during arbitration.

2

Evident Partiality or Corruption

§ 10(a)(2): Evidence of partiality or corruption in arbitrators. Per *Commonwealth Coatings* (1968), arbitrators must disclose relationships creating an appearance of bias.

3

Misconduct in Procedure

§ 10(a)(3): Arbitrators guilty of misconduct in refusing to postpone, refusing to hear material evidence, or misbehavior prejudicing a party's rights.

4

Exceeding Powers

§ 10(a)(4): Arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award was not made. The most frequently litigated ground.

JUDICIALLY-CREATED DOCTRINE

Manifest Disregard of the Law

Because the FAA's four statutory grounds offer only limited relief, courts developed a judicially-created doctrine — **"manifest disregard of the law"** — to fill the gap. The doctrine originated in a cryptic line in *Wilko v. Swan*, 346 U.S. 427 (1953). Lower courts developed a demanding two-part test:

Part 1: Knowing Refusal

The arbitrator knew of a governing legal principle yet refused to apply it or ignored it altogether. Mere legal error — even significant error — does not suffice.

Part 2: Clear Applicable Law

The law ignored was well-defined, explicit, and clearly applicable to the case. The doctrine requires something closer to **conscious defiance**, not mere mistake.

In *Hall Street Associates v. Mattel* (2008), the Supreme Court held FAA vacatur grounds are *exclusive*, declining to affirm manifest disregard as an independent ground — leaving its survival deeply uncertain.

KEY CASE LAW

Hall Street Associates v. Mattel (2008): Limiting Review

In this pivotal case, the Supreme Court clarified the boundaries of judicial review under the Federal Arbitration Act (FAA). The central question was whether parties could agree to expand the statutory grounds for vacating an arbitration award beyond those explicitly listed in Section 10.

1

FAA Grounds Are Exclusive

The Court held that the four statutory grounds for vacatur in FAA § 10 are exclusive. Parties cannot contractually create or expand additional grounds for review.

2

Rejection of Broader Review

This ruling effectively curtailed lower courts' ability to entertain appeals based on non-statutory grounds, including the "manifest disregard of the law" doctrine, as an independent basis for vacatur.

3

Reinforcing Finality

The decision underscored the FAA's strong policy favoring the finality of arbitration awards, protecting arbitration's efficiency and reducing litigation over awards.

The Circuit Split on Manifest Disregard

Retaining the Doctrine

2nd, 6th, 9th Circuits — treat manifest disregard as surviving *Hall Street*, either as an independent ground or via § 10(a)(4).

Restricting the Doctrine

5th, 8th, 11th Circuits — hold that *Hall Street* limited vacatur to FAA statutory grounds only; manifest disregard is not independently available.

Middle Ground

Other circuits fold manifest disregard into the "exceeded powers" analysis, preserving its practical effect while remaining technically within the statutory framework.

§ 10(A)(4)

Exceeding Arbitral Powers: Drawing the Line

The most frequently litigated ground asks whether arbitrators "exceeded their powers." An arbitrator's power flows entirely from the parties' agreement. In *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013), the Supreme Court reaffirmed an **"extremely deferential"** standard: as long as an arbitrator is *"arguably construing or applying the contract"*, a court must enforce the award — even if convinced the arbitrator committed serious error.

The **"essence of the agreement"** test — from *United Steelworkers v. Enterprise Wheel* (1960) — has migrated into commercial arbitration. An award fails only when the arbitrator's interpretation is so untethered from the contract's text and purpose that no rational reading could support it.

KEY CASE LAW

Oxford Health Plans LLC v. Sutter (2013): Deferential Review

This landmark Supreme Court case further solidified the narrow scope of judicial review for arbitration awards under FAA § 10(a)(4), emphasizing extreme deference to an arbitrator's interpretation of a contract.

1

The Issue

Did an arbitrator exceed his powers by interpreting an arbitration agreement (silent on class arbitration) to permit class-wide proceedings, and could a court review that interpretation?

2

The Ruling

The Supreme Court unanimously affirmed the arbitrator's decision. Judicial review is limited to whether the arbitrator "arguably construed or applied the contract," not whether the court agrees with the interpretation.

3

Implication

The ruling reinforces that courts should not vacate an award even if convinced the arbitrator committed serious legal error, as long as the arbitrator was performing their delegated task of contract interpretation.

§ 10(A)(3)

Procedural Fairness: The Hearing Rights Floor

Courts are somewhat more willing — though still quite cautious — to police procedural fairness under § 10(a)(3). The standard remains demanding: arbitrators are not bound by the Federal Rules of Evidence and enjoy broad discretion. The question is whether exclusion of evidence was so fundamentally unfair as to deny a party a reasonable opportunity to present its case.

Identify the Procedural Irregularity

Was there a refusal to postpone, an evidence exclusion, or other arbitrator misbehavior? Document the specific ruling or conduct.

Establish Materiality

Was the excluded evidence pertinent and material to the dispute? Irrelevant evidence exclusions will not support vacatur.

Prove Prejudice

Did the irregularity likely affect the outcome? Courts require a nexus between the procedural failing and the adverse award. Technical grievances are screened out.

§ 10(A)(2)

Evident Partiality: The Disclosure Obligation

Evident partiality generates some of the most fact-intensive litigation. Unlike fraud, it can arise from undisclosed relationships that create an unacceptable **appearance of bias** — even absent proof of actual influence. The leading case, *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968), required disclosure of "**any dealings that might create an impression of possible bias,**" though Justice White cautioned against vacatur for trivial relationships.

Must Disclose

- Prior business relationships with a party
- Financial interests in the outcome
- Prior representations of parties
- Significant social or professional ties

Typically Need Not Disclose

- Remote or trivial prior contacts
- Industry familiarity common to all arbitrators
- Relationships with counsel's firm (in some circuits)

The test is **objective** — how the relationship would appear to a reasonable observer, not whether the arbitrator subjectively felt biased.

HALL STREET PROBLEM

Contractual Modification of Review

In *Hall Street Associates v. Mattel* (2008), the Supreme Court held that the FAA's enumerated grounds are **exclusive** — parties cannot contractually expand (or contract) review beyond what the statute provides. Allowing private parties to rewrite the review standard would undermine the FAA's purpose of treating arbitration awards as "nearly final."

Open Question: Less Review?

May parties contract for *less* review — agreeing no court shall vacate even for evident partiality? The Court expressly reserved this question.

Open Question: State Law?

May parties pursue vacatur through state law, accessing broader review grounds under state arbitration statutes? Courts have divided. The FAA's intersection with the California Arbitration Act and the RUAA generates persistent doctrinal friction.

Socratic Focus: If Hall Street holds FAA grounds are exclusive when parties invoke the FAA, what happens when parties draft their agreement to invoke state arbitration law instead? Does the FAA preempt a more permissive state review standard?

Fact Patterns for Discussion

The following hypothetical scenarios test your understanding of where the doctrinal lines fall. For each, consider: **(a)** which ground for vacatur is most plausibly available; **(b)** what additional facts would strengthen or defeat the challenge; and **(c)** how a court applying the deferential review standard would likely rule.

HYPOTHETICAL 1

The Misread Contract

An arbitrator awards damages based on a reading of the damages clause that both parties' counsel agree — in post-award briefing — is plainly contrary to the contract's unambiguous text. The arbitrator's opinion cites no authority and offers no interpretive rationale.

Manifest Disregard?

Did the arbitrator know of and consciously ignore a clear legal principle? Or merely err in contract interpretation?

Exceeded Powers?

Was the arbitrator even arguably construing the contract, or did the award fail the "essence of the agreement" test entirely?

Circuit Matters?

In a circuit that has abolished manifest disregard, does the analysis change? Can § 10(a)(4) do the same work?

HYPOTHETICAL 2

The Undisclosed Relationship

After the award issues, the losing party discovers that the neutral arbitrator sat on the board of a nonprofit foundation to which the prevailing party had donated **$50,000** two years earlier. The arbitrator did not disclose this. The donation was publicly listed on the foundation's website.

Evident Partiality?

Does a board seat at a foundation that received a $50,000 donation constitute a "substantial dealing" under *Commonwealth Coatings*? Would a reasonable person view this as compromising?

Due Diligence Defense?

The donation was publicly listed. What is the relevance of the losing party's failure to independently investigate before and during arbitration? Does public availability negate the nondisclosure claim?

HYPOTHETICAL 3

The Excluded Witness

The arbitrator refuses to allow a key damages expert to testify on the ground that her report was submitted two days late — even though the other side suffered **no prejudice** from the delay and the parties' arbitration rules contained no express deadline.

§ 10(a)(3) Misconduct?

Does refusing to hear pertinent, material expert testimony constitute arbitrator misconduct, particularly absent any express deadline rule?

Prejudice Requirement

The opposing party suffered no prejudice from the delay. Does the challenging party still need to show the exclusion affected the outcome of the award?

Materiality

Was the damages expert's testimony material to the outcome? What must the challenging party demonstrate to satisfy the causation requirement?

Standards of Review: A Comparative Summary

Understanding the applicable standard of review for each type of challenge is essential to advising clients and analyzing arbitral awards. Vacatur petitions fail the overwhelming majority of the time — courts take the finality norm seriously.

Ground for Challenge	Governing Standard	Degree of Deference	Practical Success Rate
Error of Law / Fact	No review — not a cognizable ground under FAA	Absolute deference	None
Manifest Disregard	Arbitrator knew of and consciously ignored clear governing law	Extremely deferential	Very low (~5–10%)
Exceeded Powers § 10(a)(4)	Award not "arguably construing" the contract; fails "essence" test	Highly deferential	Low (~10–15%)
Procedural Misconduct § 10(a)(3)	Material evidence excluded; prejudice to outcome demonstrated	Moderately deferential	Low-moderate
Evident Partiality § 10(a)(2)	Significant undisclosed relationship; reasonable appearance of bias	Moderately deferential	Low-moderate
Fraud / Corruption § 10(a)(1)	Award procured by fraud not discoverable by due diligence	Less deferential (if proven)	Rare but viable when proven

Policy Dimensions: Why the Balance Matters

The legal doctrine of arbitral review reflects broader policy choices about access to dispute resolution, power imbalances between repeat-player arbitration users and one-time parties, and the role of courts in a system increasingly dominated by private adjudication.

Critics of Deference

The current regime systematically disadvantages weaker parties — employees and consumers under mandatory clauses — who lack resources to mount sophisticated proceedings. Legal errors are, as a practical matter, unreviewable and unrectifiable.

Defenders of Deference

Robust judicial review would destroy arbitration's institutional value. Sophisticated commercial parties can contract for greater legal accuracy through choice of forum, robust arbitration rules, and panel composition requirements.

The Policy Ecosystem

Statutory Framework

FAA establishes narrow grounds; reflects a strong pro-arbitration congressional policy dating to 1925.

Judicial Interpretation

Courts apply deferential standards; remain split on manifest disregard's survival post-*Hall Street*.

Party Behavior

Parties draft agreements, select arbitrators, and structure proceedings to manage review risk proactively.

Policy Critique

Academic and advocacy pressure for reform; ongoing legislative proposals to expand consumer and employee protections.

Key Cases at a Glance

***Wilko v. Swan* (1953)**

First Supreme Court reference to "manifest disregard" — in dicta. Sets in motion decades of doctrinal uncertainty about non-statutory review grounds.

***United Steelworkers v. Enterprise Wheel* (1960)**

Establishes the "essence of the agreement" test in labor arbitration. Its migration into commercial arbitration has been enormously consequential.

***Commonwealth Coatings* (1968)**

Seminal case on evident partiality and arbitrator disclosure. Fractured decision creates ongoing circuit conflict about the breadth of the disclosure duty.

***First Options v. Kaplan* (1995)**

Questions of arbitrability reviewed *de novo* unless parties clearly delegated them to the arbitrator — an important exception to general deference.

***Hall Street v. Mattel* (2008)**

FAA grounds for vacatur are exclusive; parties cannot contractually expand them. Throws manifest disregard's survival into serious doubt.

***Oxford Health Plans v. Sutter* (2013)**

Reaffirms extremely deferential standard under § 10(a)(4). Award survives if arbitrator was "arguably construing the contract," even if wrong.

Seminar Preparation: Questions to Bring to Class

Ground your answers in specific case holdings and statutory text. Avoid conclusory statements — the goal is to expose the doctrinal fault lines and defend a position under challenge.

1 After *Hall Street*, is manifest disregard dead, dormant, or simply relocated?

Which circuit approach is most faithful to the FAA's text? To its purpose? Are these the same thing?

2 Where is the line between "arguably construing the contract" and exceeding powers?

Can you articulate a principled distinction using the hypotheticals, or does the line ultimately rest on judicial intuition about egregious outcomes?

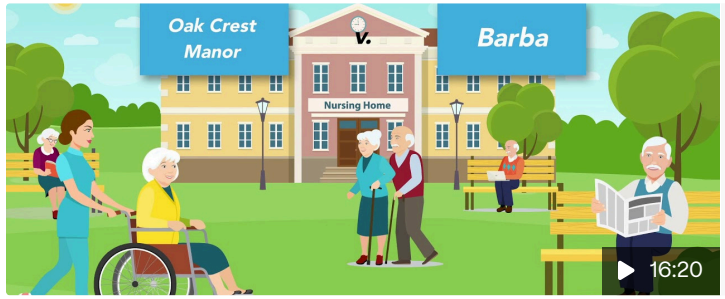
3 Does the current regime adequately protect structurally weaker parties?

Is the appropriate remedy expanded judicial review, or should reform target the enforceability of mandatory arbitration clauses at the contracting stage?

4 Should labor and commercial arbitration review standards differ?

The doctrine has roots in labor law. Does the institutional context of collective bargaining justify a different calibration of deference than in pure commercial disputes?

Reading Assignment Reminder: Come prepared with your annotations on *Hall Street Associates v. Mattel* and *Oxford Health Plans v. Sutter*. Both decisions will serve as primary anchors for tonight's discussion of § 10(a)(4) and the manifest disregard doctrine.



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