Kluwer Arbitration Blog

A Fireside Chat With Gary Born: How to Become a Star in International Arbitration in Five (Easy?) Steps, and Is It Still Possible?

Gary B. Born (Wilmer Cutler Pickering Hale and Dorr LLP) and Mikhail Kalinin (Norton Rose Fulbright (Central Europe) LLP) · Saturday, January 12th, 2019 · WilmerHale

On 23 October, **Gary Born** participated in a Fireside Chat titled "*How to Become a Star in International Arbitration in Five (Easy?) Steps, and is it Still Possible?*". The interview took place in Moscow and was conducted by **Sergey Usoskin** of Double Bridge Law, and **Mikhail Kalinin** of Norton Rose Fulbright. It was moderated by **Alexandra Shmarko** of Baker McKenzie and covered a series of questions about careers in, and the future of, international arbitration.

Key takeaways are summarised below, while the full interview is available to watch here.

The chat kicked off with Mr Born's thoughts on the five steps proposed as key to start a career in international arbitration.

First, international arbitration requires its practitioners to speak a variety of languages. While English is a prerequisite, speaking other languages represents a potential advantage. Mr Born noted that Spanish is becoming increasingly important and that Latin America enjoys enduring strength as a source of disputes. Portuguese may present an opportunity to stand out, as Brazilian arbitrations have been increasing in number over the last two years. Other languages, such as Russian, are important for the critical client relationship aspects of work as counsel.

Second, Mr Born shared his opinion on international moot courts. While acknowledging that they are great fun, he suggested that participation in a moot court is not in and of itself decisive for hiring. However, he observed that there is a natural affinity between the characteristics required for successful participation in moot courts and those characteristics which law firms seek. He also stressed the value of activities such as taking other law courses, attending international events, undertaking internships at law firms, and writing articles to demonstrate ambition and ability.

Third, Mr Born addressed a question on LL.M. programmes and internships at arbitral institutions. He answered that specialised LL.M. programs would not be his first choice and suggested taking a general LL.M. instead. The reason for that is twofold; firstly, a lot of firms operate firmwide hiring and evaluate the general legal knowledge of graduates, and secondly arbitration requires knowledge in other substantive legal areas, often including corporate and commercial law.

He recommended internships at arbitral institutions as a more effective way forward for graduates, both timewise and in terms of the costs. Inside an arbitral institution you can experience arbitration in a completely different way; instead of the details of a particular case you will see the broad sweep of the entire process. In three to six months 150 cases come in, and you will see 150 different requests for arbitration, tribunals and awards, which is an enlightening experience. You will also have an important addition to your CV, which law firms will value as a resource and a sales point to potential clients.

Fourth, Mr Born was asked whether it is crucial to start one's career in an arbitration practice of a leading international law firm. He asserted that experience in a quality institution – including strong domestic firms and regardless of the practice – is a plus. He explained that when someone moves from one international arbitration practice to another you are tempted to ask why. On the other hand, when someone moves to arbitration from a strong litigation or corporate practice in a high-quality domestic firm, he or she brings with them valuable new experience in a distinctive area of practice.

Fifth, Mr Born commented on authoring articles and speaking at conferences. In his opinion, writing is a more valuable exercise, as written papers last forever, while conferences have a one-day impact and attention is divided across all the other speakers at the conference. He stressed that neither can be a one-shot effort – building a career is like building a snowman. Other practitioners cite your article, then invite you to write a chapter in a book, and in this way your reputation grows.

Having addressed the beginning of one's career in arbitration, the chat moved on to discuss how to further develop an arbitration practitioner's profile.

Firstly, Mr Born was asked when a young practitioner should get a chance to speak before a tribunal and whether younger colleagues appear equally persuasive to more senior arbitrators. He answered that this will depend on when the individual in question feels comfortable in front of a tribunal, but stressed that law firms should provide younger practitioners with such opportunities and push them beyond their comfort zone. Firms should delegate the examination of less important witnesses to their younger associates and deliberately take on smaller cases on which they can assign substantive roles, including presenting opening statements, to more junior lawyers. He also confirmed that the increasing diversity of international arbitration must include not only gender or ethnic diversity, but also age diversity, and that younger associates may sometimes appear even better prepared than their senior colleagues.

Mr Born was then asked to share any tips on surviving lengthy hearings and managing stress. He agreed that one cannot simply say to oneself that "it doesn't matter," and suggested other options including – crucially – getting enough sleep. Mistakes sometimes occur and Mr Born advised the audience to accept that fact and address a mistake rather than pretend that nothing has happened. Finally, it is important to acknowledge that one person cannot be responsible for everything, and having a good team and being able to delegate is of paramount importance.

Another aspect of stress related to hearings is the adversarial nature of arbitration proceedings, which often entail exchanging harsh words between counsel on different sides. Mr Born's advice was to always try and be the politest person in the hearing room, not least because building a good profile with peer practitioners is important, and that even if one has to play rough, play fair. Even when the other side acts unreasonably and makes it difficult to stick to that, he suggested, this approach will strengthen your position in the proceedings and undermine the other party's tactics.

Mr Born was asked for his advice on time management and to shed some light on how he manages to write so much. He explained that the International Commercial Arbitration treatise was based on a US casebook that he had authored previously, but that his initial idea to restructure the original casebook turned into an entirely new work, which took him five years and at least 5,000 hours to write. Yet, he treats both editions as drafts and always has in mind the advice given to him by a judge he once worked with, who said, "Once you have done 90% of the work, you are finished."

The discussion then touched upon the importance of an academic background in arbitration. Mr Born agreed that it serves as an important complement to arbitration practice, along with other related activities in the spheres of politics, government and public affairs. At the same time, he suggested that a PhD is not necessarily the best way to build one's academic experience. For example, by teaching and therefore having to think through every point, a lawyer actually learns more than by simply studying. He also acknowledged that his own professorial and other academic appointments boost his reputation as counsel and arbitrator.

Lastly, the chat moved on to discuss the future of arbitration, in particular the growing competition between arbitration and national courts, as well as on the development of technology.

Mr Born argued that national courts – whether those established in Europe and operating in English or common law courts, including those established in Dubai and Kazakhstan – cannot compete with international arbitration. Despite styling themselves as "international courts", they remain national courts established by national authorities and comprising judges appointed by national authorities and then imposed on the parties to a dispute. Mr Born stated that the development of such national courts is, in principle, a positive development, as courts need to stay up-to-date with international commerce. At the same time, he expressed concern that there might be a subtext of jealousy of the arbitral process, which could undermine national courts' commitment to supporting international arbitration.

As regards technology, Mr Born was asked to comment on what new technology could be introduced to assist arbitration lawyers in their practice. He mentioned the elimination of paper, which people keep saying is just around the corner. However, all the bundles and boxes are still there. He also talked about video conferencing. With good connectivity, examination of witnesses can actually be clearer to the tribunal via video conferencing and he sees no reason why an evidentiary hearing should not take place in a virtual space, saving time and cost.

*Baker McKenzie and **Double Bridge Law** co-sponsored the event, which was organized by **RAA40** and **RAA25**, the younger branches of the Russian Arbitration Association.*

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