

Global Advisory Board Interview Series

Featuring: GAB Co-Chairs Jerry Aksen and George Bermann



Jerry Aksen



George Bermann

Interview by: Jennifer Permesly, *Skadden Arps, Chair of NYIAC GAB Relations*

We sat down with NYIAC's Global Advisory Board Co-Chairs and highly sought-after arbitrators Jerry Aksen and George Bermann, to hear their thoughts on the state of arbitration, advice to counsel appearing before them, and all things New York City.

Jennifer Permesly (JP): Jerry, for years your name appeared on nearly every potential arbitrator list I reviewed. How many total cases would you say you've done, and how did you get started in the field?

Jerry Aksen (JA): My assistant kept a list of every arbitration I worked on, and presented me with a plaque a few years ago. It's more than 300, over a span of about 20 years. I started working in arbitration when the dean of my law school called me and asked me to have lunch with the President of something called the American Arbitration Association (AAA) – they were looking for a lawyer who knew something about arbitration and insurance law. I knew nothing about either, but agreed. At the time, the AAA was looking to develop a program for arbitration of uninsured motorist claims. They

won the proposal and several years later had more than 20,000 cases a year. Eventually, I became their first General Counsel.

At the time, there was very little in the way of "international" arbitration. The New York Convention had been signed but the United States had not ratified it. At that time, only 17 states in the United States enforced written agreements to arbitrate. The U.S. State Department called on a group of lawyers and law professors familiar with arbitration to put together a package for Congress to consider. We drafted Chapter 2 of the Federal Arbitration Act. Pretty soon, I was well known to colleagues overseas as being prominent in the arbitration world and when they needed a U.S. arbitrator, they started to look to me.

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George Bermann (GB): My story is very different. I rose in arbitration as an academic, which is common in Europe but much less so in the United States. After some years of practice at Davis Polk, I chose to enter academia, joining the Columbia Law School faculty and having the opportunity to go to France and Germany to study comparative and international law. When I then began teaching at Columbia, Henry DeVries — a colleague at Columbia and a Baker & McKenzie partner who was one of the real pioneers in this field — took me under his wing. I taught with him for many years. At the time I started, international arbitration was a tiny piece of a course on transnational litigation. Now, of course, there are multiple arbitration courses, as well as transnational litigation courses, at Columbia.

“Forget about objections. It’s not a court-room and I expect collegiality. You don’t make points by acting out.”

JP: You are both so in-demand, how do you select which cases to take as an arbitrator?

GB: For me the mix is really important. I really enjoy both investor-state cases, which I find very challenging, as well as international commercial matters. It’s also important to me to have opportunities to sit with new co-arbitrators or have before me counsel I haven’t seen before. As an academic, I don’t have a staff of associates to help me, and I also want to be sure to devote time to my writing and expert opinions, as well as Supreme Court advocacy, which I have

done a fair amount of in the last several years. So I would say my outer limit is 5-6 arbitrations going on at any one time, especially since I am more often than not acting as chair.

JA: I agree that variety is key. I have traveled the world as an arbitrator, and heard cases in 32 countries. Experiencing different cultures and local laws has been my favorite part of the work.

JP: Any particularly memorable or “favorite” cases you’d like to share?

JA: I sat on a case involving a dispute between a Japanese company and a US company over the rights to technology that makes laptop computers possible. The case lasted over 5 years. We met twice a year to decide procedural and other issues, and rented an entire mezzanine of the Park Hyatt hotel for the matter. The Japanese team had about 40 plus executives with them; the Americans about 2! The case ultimately spent 14 years in litigation and ended up in the U.S. Supreme Court. You can look it up — it’s the LaPine v. Kyocera¹ case.

GB: The Kyocera case! Incredible — really a watershed case for U.S. arbitration.

JA: I think the winning party finally got paid after about 19 years.

JP: What’s the top piece of advice you would give to counsel appearing before you in an arbitration?

GB: Probably the number one thing I see is that counsel are insufficiently selective in their argumentation. They taint their good arguments with weak ones. I also encourage parties to make strategically sound concessions where they can afford to; it will give them credibility.

JA: Forget about objections. It’s not a court-room and I expect collegiality. You don’t make points by acting out. Also, counsel should have

1. *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987 (9th Cir. 2003) (cert. denied, 540 U.S. 1098, 124 S.Ct. 980 (2004)).

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fact witnesses prepare the first draft of their witness statements. It is better to let the witness's words come out. It is not difficult to tell when it's written by the lawyers.

JP: What's a common myth about US/New York arbitration that really bugs you?

GB: I think that U.S. law of international arbitration is unduly characterized as inconsistent, even chaotic. Of course there's plenty of uncertainty. I hope we've addressed some of that in the recently approved Restatement of the U.S. Law of International Commercial and Investor-State arbitration.

JA: I think the reason that the Asian seats are gaining so much prominence really has more to do with the fact that such a large population is there and so a larger percentage of disputes going to arbitration are based in Asia. There's just a greater density of cases. Of course, the Singapore and Hong Kong facilities are beautiful too.

GB: In the US, a lot of parties trust the courts. The less you trust the courts, the more commonly you would go to arbitration.

JP: What would you say is the best thing about practicing arbitration in New York City?

GB: The quality of the lawyers, hands down.

JP: Any favorites in NYC — what's your favorite street, for example?

JA: The street I've lived on my entire professional life — 5th Avenue and 83rd, right across from the Met!

GB: I'd have to say Broadway, it's always been a huge part of my life. Both for the theater and because it's the street where I started my career at Davis Polk, and of course Columbia.

What would you say is the best thing about practicing arbitration in NYC?

“The quality of the lawyers, hands down.”

JP: What would you do if not arbitrating?

JA: I have a degree from Teachers' College in teaching speech therapy. But I was drafted, and I started to help represent my friends who went AWOL. When I got out of the military, I decided I should become a lawyer.

JP: Favorite thing about the practice of arbitration?

GB: No field comes close to it in terms of being able, as arbitrator, to work for the rest of your professional life with your students. So many of the students I taught and mentored are now leaders in the field, appearing before me or sitting with me. It's a thrill to work with your students directly for the entirety of your academic career.

JP: Jerry, you're retired from arbitrating, no longer accepting any appointments. That's a big loss for us, but what are your plans?

JA: I plan to spend time with my great-grandkids. I used to rise at 6, see where the (New York) Times and Wall Street Journal (WSJ) disagree, and be in the office by 8am. Now I rise at 6, see where the Times and WSJ disagree, and then the day is mine! ■