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Too Few Women Among Top International Arbitrators

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Just two women arbitrators appeared in our first survey of large arbitrations in 2003, as we pointed out in a cover story the following year [See "Madame La Présidente," Summer 2004]. Six years after that first scorecard, those two women, Gabrielle Kaufmann-Kohler and Brigitte Stern, have risen to become the second- and third-busiest arbitrators in our survey, with 20 or more cases apiece. But while the highest echelon of the club has clearly been integrated, women have a precarious foothold in our high-stakes survey. Only 10 women arbitrators appeared, representing 4 percent of about 250 arbitrators. "Of course progress is being made," says Stern, a professor at the Université Paris I–Panthéon-Sorbonne, "but the progress is quite slow."

She and Kaufmann-Kohler are the winners of a reputation tournament. They stand in stark contrast to the other women in the survey, who boast one case apiece, and the legions of women excluded. But they and other practice leaders interviewed agree that an up-and-coming-generation of outstanding women practitioners will -- in time -- crack the ranks of big-case arbitrators.

"I see a lot of women on arbitration teams and they will make their way," says Kaufmann-Kohler, a name partner at Geneva's [Lévy Kaufmann-Kohler](#). "We've already broken through the glass ceiling," adds Jennifer Kirby of [Herbert Smith](#). "It's just a question of how many people are going to be standing up there on the roof how quickly." Still, the dynamics of arbitral selection and the incentives at major law firms suggest that parity will be a long time coming.

In a field where clients pick the judges -- and where high-stakes rulings can't be appealed -- caution governs the judicial selection process. "When I advise a client that the best people for the job are A, B and C," says [Freshfields Bruckhaus Deringer's](#) Lucy Reed, "he or she will always ask: 'How many arbitrations have they done, and for how much money?' That's where women get hung up." The London arbitration head at another major firm tells of offering a general counsel a choice of four fresh names, of whom three were women. The client openly worried how the other two arbitrators on the panel would regard his nominee if he chose a woman, and ended by rejecting all four offered choices in favor of a usual (male) suspect. "No one ever got fired for choosing IBM," says Louise Barrington, the founding president of a 400-member networking and mentoring group called [ArbitralWomen](#). "That attitude hurts those who aren't blue-chip names."

Those blue-chip men tend to have silver manes, especially in big cases. "We used to say, 'Oh, 50, that's a young arbitrator,'" recalls Kirby of her days helping to choose arbitrators as an administrator at the International Chamber of Commerce. "Certainly, we wouldn't consider 60 [to be] old." Indeed, the list of top arbitrators is dominated by men who have retired from major law firms. Partly that's because general counsel like gravitas -- but it's also because major law firms frown upon partners sitting as arbitrators. That reluctance creates another hurdle for women. "So many of these ladies are coming up through big firms that discourage partners sitting as arbitrators," says Kirby. "It's not a moneymaker, it creates conflicts, and it's basically more of a headache than it's worth. When these ladies are really going to hit their stride as arbitrators is when they're pulling away from representing clients or on their way out and thinking about what to do in their dotage." The result is a longer lag time for diversifying the arbitrator pool than the practitioner pool.

This is unfortunate for a field that has long been criticized for relying on a few star arbitrators. The description of this club as a "mafia" -- repeated in the classic study of arbitrators "[Dealing in Virtue](#)," by Bryant Garth and Yves

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Dezalay -- is inappropriate in its connotations of corruption, but accurate in conveying the exclusivity of the uber-arbitrator set: Once you're "made," you're made. Stern, Kaufmann-Kohler, and nine men dominate the survey to an absurd degree, with at least 10 arbitrations apiece.

"The biggest challenge facing the field is expanding the universe of good arbitrators," says Stephen Bond, a former secretary general of the ICC International Court of Arbitration who now practices at [Covington & Burling](#) in London. "We need to go beyond the top 20. So expanding the number of women is part of the solution."

Catherine Rogers, a professor at The Pennsylvania State University's Dickinson School of Law, has an idea that would promote diversity. Rogers envisions an online directory -- she calls it the Arbitrator Information Resource -- that would assemble the writings, experience and awards of every arbitrator, as well as client feedback. Such a tool would make arbitral selection both more transparent and more democratic. "It's difficult now to build a reputation as a superb arbitrator," argues Rogers. "It's not only women who have trouble breaking in."

None of this is to say that women aren't making progress as advocates in arbitration. Five years ago, [Shearman & Sterling](#) practice head Emmanuel Gaillard forthrightly called it a "disgrace" that his group lacked women partners, and went on to elevate Yas Banifatemi into the partnership. Claudia Salomon co-chairs the arbitration group at [DLA Piper](#). Other arbitration group leaders include Lucy Reed at Freshfields, Judith Gill at [Allen & Overy](#), and Paula Hodges at Herbert Smith. Distinguished women practitioners are too numerous to list.

Abby Cohen Smutny, one of six female arbitration partners at [White & Case](#), points out that the *PSEG v. Turkey* arbitration pitted a team with two women from W&C against a team with two women from [Sidley Austin](#), arguing before a panel that included Kaufmann-Kohler. At the same time, she recognizes that having so many women on a single case is still the exception.

"I hate the fact that we're still writing stories about women in arbitration," says Smutny. "But the fact that there are only 10 women arbitrators in a set of 250 demonstrates that it is a legitimate topic. Unlike in, say, Afghanistan, the fact that I'm a female is not usually the defining characteristic in my life. I just want to be seen as an arbitrator or a lawyer."