

# GARY BORN

WORDS: TOM MOORE; PORTRAIT: DANIEL THISTLETHWAITE

**I grew up on a military base, I was an army brat** in what was then West Germany, and they didn't need lawyers; they had commanding officers and lieutenants.

I went to university in the US and happily studied history and religion. I thought being the professor was what I wanted to do. In my last year, my faculty announced a freeze on hiring and liberal arts education was in a bit of a crisis. So, with all other options ruled out, I decided to go to law school.

**I finished law school and went off to work for a law firm**, but after six weeks my CV was out with the headhunters because I couldn't bear having to sit in this little room and fill out timesheets the way that my partners expected me to do, so I left and taught.

**I started working at Wilmer Cutler in Washington** but I don't think I ever really came to love the law until I came to London in the late 1980s, in part because London was where we had our international arbitration practice and I was passionate about that and in part because it was a smaller office and a bit more of a fluid setting.

**I am a board member of the Jerusalem Arbitration Centre (JAC)** court and drafted the JAC rules. Resolving disputes in any setting can be difficult, but how do you resolve them between Israelis and Palestinians when you get a decision in one of the others' courts that is nearly impossible to be enforced? There's essentially no way to do it. This is pro bono and entirely for a sense of doing the right thing. If you and your law firm can play a part in trying to resolve some of those disputes then that's a good thing.

**Arbitration means different things to different people.** If a speaker wants to praise arbitration it will be efficient, expert, objective, cheaper, better and more commercial than the alternatives. If a speaker wants to criticise arbitration then it's non-transparent, a black art in the hands of a small coterie of stale, pale, male, mafia-like arbitrators whose impenetrable and obscure decision making can't really be relied on. Arbitration is neither of those things.

**Arbitration has been so fertile and forward thinking.** International arbitration is a process that is continually reinventing itself.

**When on a case, whether it's going well or poorly**, you acquire a set of blinkers and the whole world narrows down with relentless tunnel vision. It seems as though everything depends on that.

**In bad moments, one thing that really sustains me is thoughts of my children when they were young.** I don't know exactly why my mind turns to that but perhaps, when the tribunal makes a completely absurd ruling on something and you're feeling deflated and that on some level they have betrayed their mandate of trust and all is dark and gloomy, a child's smile has the promise of what the future should bring.

**It sometimes feels as though there's never a day I don't work.** I love to hike. Last year I hiked the Haute Route from Mont Blanc to the Matterhorn with my daughter, which takes 14 days. You don't see very many people and most of it is above 2,500m and absolutely beautiful. I went to the Semien Mountains in Ethiopia last year too and it is utterly beautiful; it's like multiple Grand Canyons.

**There are two chief contenders for my highlight case.** The Abyei arbitration, between the Government of Sudan and The Sudan People's Liberation Movement, and the *Greenpeace v Republic of France* arbitration. That arose out of the sinking of the Rainbow Warrior as a consequence of various investigations that made it clear the Republic of France had been responsible for that tragic sinking and the deaths that resulted from that. It was my first international arbitration and Greenpeace was awarded a substantial sum in compensation for the destruction of its vessel. It was an unusual start.

**There's a temptation for tribunals to reach a compromised decision** or strike some rough justice that they think is diplomatically palatable in some general sense. It's very important for tribunals to remain modest and take very seriously what the parties asked them to do, not to do something else.

**I love written and oral advocacy and the task of analysing** the problem and then explaining that analysis to a tribunal and hopefully convincing them that it's right.

**There's a risk of trying to treat law as if it were an assembly line commodity**, using the institutional model that, say, an accounting firm is perfectly suited for. Law, and especially advocacy, requires creativity.

**The boutique model is unlikely to flourish in the longer term.** Boutiques are often driven by people who are interested in moving into roles as arbitrators, as opposed to counsel. I'm sceptical that a boutique is a good model for big international arbitration and the reason is that big arbitration, like big litigation, takes big teams – like it or not. You can bring in contract lawyers but there are quality and consistency issues with doing those things. To have a thriving practice you want not one but seven big cases and for that you need seven teams.

**Their best way to learn something is to teach it.** You can't hide from what you don't know if you have to teach it. Having to teach public international law has been hugely important in my subsequent career.

**I hope I'm most known for quality and creativity.** I hope that arbitrators and competitors, opposing counsel and the courts think the care of my and my team's arguments are as good as one can put. Not only attractive on a first read but true to the facts of it all.

**If I could improve on one thing? To be able to sleep a lot less.** I wish I was like Baroness Thatcher and able to get by on four hours a night, but I can't. Then I could do more of the same.

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*Gary Born is chair of international arbitration at Wilmer Cutler Pickering Hale and Dorr.*

