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Women's Interest Network: 2016 in Review

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I. Gender Equality in International Arbitration

Characterized only half in jest as “PMS” (i.e., pale (white), male, and stale (aged)), the ranks of international arbitrators have long been criticized for their lack of diversity.¹ May 18, 2016, however, marked a turning point for gender equality in the international arbitration community. Led by co-chairs Sylvia Noury and Wendy Miles QC, the Equal Representation in Arbitration (ERA) Steering Committee officially launched and opened for signature the “ERA Pledge,” designed to remedy the under-representation of women on international arbitration tribunals.² As the word “pledge” suggests, this is not a wish or hope, but “a binding promise or agreement to do.”³

The ERA Pledge has two general objectives: (1) raising the profile and increasing the representation of women in arbitration; and (2) appointing women as arbitrators on an equal opportunity basis.⁴ To achieve these objectives, the ERA Pledge sets forth a number of specific practical commitments, including ensuring: (a) that “committees, governing bodies and conference panels in the field of arbitration include a fair representation of women;” (b) that “lists of potential arbitrators or tribunal chairs provided to or considered by parties, counsel, in-house counsel or otherwise include a fair representation of female candidates;” (c) that “states, arbitral institutions and national committees include a fair representation of female candidates

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1. See Michael D. Goldhaber, *Madame La Présidente – A Woman Who Sits As President of a Major Arbitral Tribunal Is a Rare Creature. Why?*, TRANSNAT'L DISP. MGMT., July 2004, at 1–2, <https://www.transnational-dispute-management.com/article.asp?key=158>.

2. See Mirèze Philippe, *Equal Representation in Arbitration (ERA) Pledge: A Turning Point in Arbitration History for Gender Equality*, KLUWER ARB. BLOG (June 2, 2016), <http://kluwerarbitrationblog.com/2016/06/02/equal-representation-in-arbitration-era-pledge-a-turning-point-in-the-arbitration-history-for-gender-equality/>.

3. See *Pledge Definition*, MERRIAM-WEBSTER ONLINE, <https://www.merriam-webster.com/dictionary/pledge> (last visited Dec. 14, 2016).

4. See EQUAL REPRESENTATION IN ARB., <http://arbitrationpledge.com/> (last visited Dec. 14, 2016).

on rosters and lists of potential arbitrator appointees, where maintained by them;” (d) that, “where they have the power to do so, counsel, arbitrators, representatives of corporations, states and arbitral institutions appoint a fair representation of female arbitrators;” (e) that “gender statistics for appointments (split by party and other appointment) are collated and made publicly available;” and (f) that “senior and experienced arbitration practitioners support, mentor/sponsor and encourage women to pursue arbitrator appointments and otherwise enhance their profiles and practice.”⁵

Since its launch, the ERA Pledge has found significant support among international arbitrators and arbitration practitioners, academics, law firms, corporations, states, and international arbitration institutions around the world.⁶ As of December 14, 2016, there are 1,568 signatories, including the International Chamber of Commerce International Court of Arbitration (ICC Court) and the London Court of International Arbitration (LCIA).⁷

The ICC’s and LCIA’s commitment to the ERA Pledge reflect growing trends of transparency and diversity in the international arbitration world. For the first time in the history of the institution, the ICC in 2016 disclosed statistics on gender balance on ICC arbitral tribunals, reporting that women arbitrators represented just over 10 percent of all appointments and confirmations in 2015.⁸ For the same year, the LCIA reported that 15.8 percent of all arbitrators appointed were women.⁹ In another landmark move, the ICC in 2016 began publishing on its website the names and nationalities of the arbitrators sitting in ICC cases, in addition to information concerning whether each appointment was made by the parties or by the institution, and which arbitrator is the chair of the tribunal.¹⁰ This practice will shed further light on gender balance on ICC tribunals, and will raise the profiles of the women serving on those tribunals.

When the dismal statistics on gender diversity on arbitral tribunals have been raised in the past, the frequent refrain has been that “there aren’t enough qualified women” to serve as international arbitrators. One key feature of the ERA Pledge website is a search function that is designed to help refute that claim. Specifically, when a requester provides relevant details about a particular arbitral proceeding (e.g., pertinent areas of expertise, the applicable law, the language and place of arbitration, etc.), the

5. *See id.*

6. *See id.*

7. The complete list of signatories can be found on the Pledge website. *See id.*

8. *See ICC Arbitration Posts Strong Growth in 2015*, INT’L CHAMBER OF COM. (May 11, 2016), <http://www.iccwbo.org/News/Articles/2016/ICC-Arbitration-posts-strong-growth-in-2015/>.

9. *See* LCIA REGISTRAR, LCIA REGISTRAR’S REPORT 2015, at 4, <http://www.lcia.org//media/download.aspx?MediaId=500>.

10. *See* ICC Arbitral Tribunals (Chart Listing Arbitrators Appointed in ICC Arbitration Cases), INT’L CHAMBER OF COM., <http://iccwbo.org/Products-and-Services/Arbitration-and-ADR/ICC-Arbitral-Tribunals/> (last visited Dec. 14, 2016); *see also* *ICC Court Announces New Policies to Foster Transparency and Ensure Greater Efficiency*, INT’L CHAMBER OF COM. (Jan. 5, 2016), <http://www.iccwbo.org/News/Articles/2016/ICC-Court-announces-new-policies-to-foster-transparency-and-ensure-greater-efficiency/>.

search service provides the requester with the names and contact information of potential female arbitrators on a confidential basis.¹¹ This search function fills a previously unmet need in the international arbitration community and demonstrates the depth of the Pledge Steering Committee's commitment to gender parity on international arbitral tribunals.

II. Gender Equality in the Practice of Law in the United States

New research published in 2016 shows that significant gender inequality continues in the legal profession, even in the United States. The research, however, highlights a few positive trends as well.

According to 2016 data, women comprise only 21.5 percent of partners in private practice and 24 percent of the general counsels of Fortune 500 companies.¹² Similarly, only 27.1 percent of all federal and state judges are women.¹³ A different survey of top New York law firms suggests that, although women have made some progress in securing law firm leadership positions, 25 percent of the largest firms in New York City do not have a woman on their management committees and one in eight does not have a woman leading a practice group.¹⁴ For those women who make it into the partnership ranks at major firms, a significant pay gap between male and female partners persists.¹⁵ Another 2016 survey found that at large American law firms, female partners are paid 44 percent less than their male colleagues (although only two years ago that figure was 47 percent).¹⁶

Some research seems to support a conclusion that women are disadvantaged from the very start—even before they enter law school. A study by Ohio State University's Moritz College of Law (Moritz Study) identified a "leaky pipeline" in the law school admission process.¹⁷ First, fewer women than men apply to law school; second, those women who do apply are less likely to be admitted, relative to men; and, third, women who are admitted are more likely than men to attend lower-tier schools that are less successful placing their graduates.¹⁸

11. See EQUAL REPRESENTATION IN ARB., <http://arbitrationpledge.com/> (last visited Dec. 14, 2016).

12. See *A Current Glance at Women in the Law May 2016*, ABA COMMISSION ON WOMEN IN THE PROFESSION, at 2–3, http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_may2016.authcheckdam.pdf.

13. See *id.* at 5.

14. See Elizabeth Olson, *Leading New York Law Firms Lag in Including Women and Minorities*, N.Y. TIMES (Oct. 16, 2016), <http://www.nytimes.com/2016/10/17/business/dealbook/leading-new-york-law-firms-lag-women-and-minorities-diversity.html>.

15. See Elisabeth Olson, *A 44% Pay Divide for Female and Male Law Partners, Survey Says*, N.Y. TIMES (Oct. 12, 2016), <http://www.nytimes.com/2016/10/13/business/dealbook/female-law-partners-earn-44-less-than-the-men-survey-shows.html>.

16. See *id.*

17. See Deborah Jones Merritt & Kyle McEntee, *The Leaky Pipeline for Women Entering the Legal Profession*, Nov. 2016 Research Summary, http://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf (last visited Dec. 14, 2016).

18. See *id.*

Thus, although today there are as many women in law schools as men, research indicates that there are more female students attending lower-ranked schools, while a greater percentage of men are enrolled in more prestigious law schools.¹⁹ Across the country, 49.4 percent of law students are women; but, in the top fifty highest-ranked law schools, only 46 percent of the students are women.²⁰ As a possible explanation for this disparity, the Moritz Study pointed to the fact that the top fifty schools place greater emphasis on LSAT scores, which disadvantages women who on average score lower than men.²¹ Because higher-ranked schools tend to have higher job placement rates than lower-ranked schools do, the distribution of women in these schools makes a difference in the types of jobs female lawyers obtain post-graduation.

As these recent studies show, there are still miles to go before male and female lawyers will have equal opportunities to advance in the workplace. Even in the U.S., the proverbial “old boys club” is still alive and well.

19. See Elizabeth Olson, *More Law Degrees for Women, but Fewer Good Jobs*, N.Y. TIMES, (Nov. 30, 2016), <http://www.nytimes.com/2016/11/30/business/dealbook/more-law-degrees-for-women-but-fewer-good-jobs.html?ribbon-ad-idx=9&rref=business/dealbook&module=Ribbon&version=context®ion=Header&action=click&contentCollection=DealBook&pgtype=article>.

20. See Deborah Jones Merritt & Kyle McEntee, *The Leaky Pipeline for Women Entering the Legal Profession*, November 2016 Research Summary, http://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf (last visited Dec. 14, 2016).

21. See *id.*