Johnny Veeder QC 1948-2020

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VV (Johnny) Veeder QC

The arbitration community is mourning the loss of leading arbitrator **Van Vechten Veeder QC** – known as VV Veeder or Johnny – who died this week at the age of 71.

Veeder died on 8 March, following a long illness. In a sign that all was not well, he had recently resigned from a number of investor-state arbitrations he was hearing.

In a statement, Essex Court Chambers says he died peacefully, surrounded by family – adding that the loss to chambers, to the Bar and to the world of international arbitration and international law is "inestimable".

The statement was accompanied by a tribute from Veeder's colleague in chambers and fellow international arbitrator **Toby Landau QC**, who said "Johnny is recognised worldwide as one of the most brilliant, visionary and respected counsel, arbitrators, scholars and teachers in the field of international dispute resolution and international law. He was, truly, a legend in his lifetime."

As a highly sought-after arbitrator, Veeder heard major commercial and investor-state arbitrations all over the world, contributing to the analysis of important international law issues and shaping the way they are approached today.

Cases he arbitrated included *Plama v Bulgaria* and *World Duty Free v Kenya* at ICSID; the related NAFTA cases of *Methanex v US* and *Apotex v US*; and the UNCITRAL case of *Chevron and Texaco v Ecuador* at the Permanent Court of Arbitration in The Hague, which concerns environmental damage in the Amazon rainforest and is now in its quantum phase.

He sat on the ad hoc UNCITRAL tribunal which heard *Achmea v Slovakia*, the case which gave rise to the Court of Justice of the European Union's 2018 ruling that investor-state dispute settlement clauses in all intra-EU bilateral investment treaty were incompatible with EU law.

And he was on the tribunal that finally put an end to ICSID's longest-running case, brought by the centenarian Spanish publisher Victor Pey Casado against Chile over the expropriation of his newspaper business during the rule of Augusto Pinochet. Veeder had previously fended off challenges by Pey Casado's counsel based on Chile's alleged history of instructing barristers from Essex Court Chambers.

Other investor-state cases he heard were against Argentina, Canada, Cyprus, Egypt, El Salvador, Estonia, Hungary, Grenada, Jordan, Kuwait, Mexico, Peru, the Philippines, South Korea, Uganda and Uzbekistan, among other countries. He heard 30 cases at ICSID alone and was the "poster boy" for the centre, chairing the arbitration that is photographed on the home page of its website.

With his affable, courteous and relaxed demeanour, Veeder was adept at helping parties to even the most fraught dispute feel comfortable with the arbitral process.

He also shaped arbitration in other ways – through contributing to the drafting of laws and rules in England and further afield and advising and assisting institutions including the LCIA, ICSID, the ICC International Court of Arbitration, the SCC Arbitration Institute and the Milan Chamber of Arbitration.

"He taught. He mentored. And he captured imaginations with his genius mind and enormous heart," says Landau.

He was also "principled to the core" and sought constantly to steer the arbitration community towards higher standards of practice and conduct.

Destined for arbitration?

Veeder was born in London into a prominent Dutch-American family, though he was British himself.

His ancestors had been among the early European settlers of New Amsterdam (now New York) in the 1640s and were among seven families that moved into the Hudson River Valley and founded the city of Schenectady in New York state. Portraits of them hang in the Metropolitan Museum of Art and the New York State museum in Albany. One ancestor, Colonel DeWitt Veeder, was a friend of George Washington.

At the time of his birth, Veeder's father was working as an executive for an American oil company in Paris and he spent his early years there, attending a local primary school and learning to speak near perfect French. He completed his education in England, at Clifton College in Bristol, where his uncle was headmaster; then at Jesus College, Cambridge.

Named Van Vechten Veeder after his grandfather, who was a distinguished judge of the Eastern Circuit in New York in the early 1900s, Veeder seemed preordained for a legal career. However, his original dream was to be a diplomat and he started reading modern languages at Cambridge before switching to law.

Having settled on law, he used to tell how he fell into international arbitration by accident after failing an exam to become a criminal barrister in Liverpool.

Instead, he briefly joined Freshfields in London and worked for partners **Alan Redfern** and **Martin Hunter** in the then relatively unknown field of arbitration – including on a major case related to Kuwaiti oil.

That grounding meant that, after being called to the Bar in 1971 and joining Essex Court Chambers, he was selected to become **Michael Mustill's** (later Lord Mustill's) researcher for the first edition of his seminal work on international arbitration, written with **Stewart Boyd QC** and published in 1982.

"I guess the rest is history," said Veeder at an event years later. "It wasn't what I expected or wanted – I thought I was going to be Perry Mason."

Local and international interests

At Essex Court, Veeder developed a busy practice in commercial law, which from the 1980s onwards had an increasingly international bent.

One early case he worked on as an advocate was the *Joc Oil* case in Bermuda [*Sojuznefteexport v Joc Oil*], in which he appeared for Russia opposite a young **Albert Jan van den Berg**. Another was an arbitration between British glass manufacturer Pilkington and a Soviet foreign trade organisation. Both cases fuelled a lifelong interest in Russia.

In 1985 he teamed up with **Sir Michael Kerr** to produce innovative new rules for the LCIA, which had existed in London for nearly a century but had limited success, helping transform it into the powerhouse it is today and kindling a massive growth of international arbitration in London.

In the late 1980s, by now a silk, he was part of the Departmental Advisory Committee on Arbitration Law chaired by Mustill that advised that England, Wales and Northern Ireland should not adopt the UNCITRAL Model Law on International Commercial Arbitration. He went on to play an active role with Landau and others in the drafting of the 1996 English Arbitration Act.

Years later Veeder would describe that act as "the near perfect statute", and call for its revision so it could be made perfect.

Veeder also played a part in producing arbitration laws for Bermuda, Latvia and Pakistan among other countries, and advised numerous institutions on their rules, on a formal or informal basis. Such was his reputation in the field that it seemed no project could be completed without his input.

As the UK representative for the UN Commission for International Trade and Arbitration Law, he assisted with the 2010 amendment of the UNCITRAL arbitration rules. He also continued his involvement with the LCIA, acting as vice president of the court; contributing to new rules unveiled in 2014; and editing its journal, which for many years featured impressive contributions from a mysterious Mr Yts, who turned out to be Veeder himself.

He is even credited with inspiring the under-40 movement in arbitration by setting up the first ever such group at the LCIA, when (in Landau's words) "comfortably over 40 himself".

A project of an entirely different nature was presented by **Wang Shengchang**, a former secretary general of China's foremost arbitral institution, CIETAC, who was imprisoned in China for corruption and misuse of public funds in 2006. Wang's conviction came shortly after he was part of a tribunal that arbitrated a major joint venture dispute in Stockholm between Pepsico and a Chinese enterprise with ties to the Sichuan government, issuing an award in favour of Pepsi.

In the years that followed, Veeder campaigned behind the scenes for Wang's release and regularly raised his case at conferences to ensure he was not forgotten. Wang was eventually released from prison in 2009 after an appeal court reduced his five-year sentence.

Throughout his career, Veeder struck a balance between international interests and helping to promote English arbitration and the needs of his local community (he for a time chaired a panel that looked into capital market activities for the borough of London where he lived).

His concern for the greater good was highlighted at a conference in Mauritius in 2012, when he called on governments to follow the UK in passing legislation to limit the abilities of commercial creditors and "vulture funds" to collect on the sovereign debt of some of the world's poorest countries to enforce court judgments and arbitral awards.

"I can't see any argument against it. We're talking about countries that have to be helped," he said. "It doesn't help that state courts will enforce awards bought for tiny portions of the face value of the dispute."

Digressions within digressions

"Arbitrators should not all be grey men or women in grey suits," Veeder once said – and he himself was far from fitting this description.

Friends paint a picture of a man who was eccentric, playful and irreverent; who would fire off spoof letters to friends and colleagues; take delegations of grand lawyers to dinner at downmarket food joints ("the more dignified the company, the less salubrious the choice of restaurant," says Landau); and who once suspended a giant ciabatta from the ceiling at a conference to discuss an unpopular early draft of the English Arbitration Act, to focus minds on the question of whether they should start the baking process again.

His public speaking and his teachings as visiting professor at King's College, London, were – as Landau recalls – punctuated by "stories of the US Civil War… Stalinist Russia, Peru's shining path, the 1939 German-Soviet non-aggression pact and much else of seeming total irrelevance".

There were even digressions within digressions – in one speech reported by *GAR,* a description of the civil war era Alabama arbitrations between the US and Great Britain turned into a lengthy exposition of the plot of a Gothic novel written by one of the three arbitrators responsible for hearing the case.

Such digressions reflected Veeder's erudition and natural curiosity and delighted his students and audiences, who saw him as bringing investment arbitration alive.

"His humour was always good natured. His sheer inability to be unkind meant that he never caused offence," Landau says.

Landau also highlights his mentor's immense generosity and humility. On learning that a talented Essex Court pupil was struggling to afford accommodation in London, he without hesitation wrote a cheque to cover all his rent and living expenses for a year. Despite his great learning and roles at King's College, City University of Hong Kong and the School of International Arbitration at Queen Mary University of London, he never used the title professor.

Arbitration in peril

In recent years, Veeder often voiced concern about the aggressive behaviour of counsel in international arbitration proceedings, which he believed had become too combative and discourteous. The 2014 LCIA rules that he helped to draft included a limited code of conduct for party representatives intended to promote honourable behaviour.

He also drew attention to the reputational damage caused to arbitration by high-profile cases such as the *Tapie* arbitration in France; Phillip Morris's investor-state cases against Australia and Uruguay; *Vattenfall v Germany*; the *Micula* case against Romania, which attracted the intervention of the European Union; the *Yukos* arbitrations with their US$50 billion award; and the Croatia-Slovenia case at the PCA, which was rocked by the revelation that one arbitrator had secretly been liaising with the side that appointed him and seeking to steer the outcome of the case.

Despite the problems of that last case, Veeder was a defender of parties' right to appoint arbitrators, which was the subject of some high level scrutiny in the past decade, calling it a "keystone" of the process and "a genie that cannot easily be put back into the bottle."

"The fact is that most institutions cannot at present be trusted with any arbitration appointments not made with the prior informed consent of all parties," he said.

He also defended individual arbitrators' right to dissent from a collegiate decision as "imposing an important intellectual discipline on the whole tribunal", arguing that dissenting decisions often illuminate future legal thinking.

Another common theme of Veeder's public addresses was the consensual nature of arbitration and the danger of lawyers' hubristically trying to stretch the process to encompass disputes which it could not successfully address, without the support of either users or the public.

Arbitration "cannot prevent or solve every conceivable conflict," he stressed in his Alexander lecture at the Chartered Institute of Arbitrators in 2016. "If we over-promote it, we breed not only disappointment but also disillusion and eventually derision."

Veeder was confident that the EU's proposal to replace the current system of investor-state dispute settlement with a permanent international investment court and appeal body would prove unworkable and that, even if such a court were created, investors would simply seek concession agreements from states that enabled them to continue to resolve disputes through confidential arbitration. Perversely, this would be even less transparent than ISDS in its current form, he noted.

But he warned that arbitration is still in peril and that if practitioners do not seek to improve it and their own behaviour, it may be abandoned by users or subjected to invasive external regulation from a non-benevolent body. "Bottom up" initiatives for change, starting with the lawyers or institutions are far preferable, he argued.

Concrete proposals he made for the improvement of the process included giving tribunals the power to force a lawyer who had brought two unsuccessful challenges to an arbitrator to resign from a case (they should be able to name the lawyer they regarded as responsible to avoid "sacrificial patsies", he said).

More generally, Veeder emphasised the need to collate empirical data on arbitration so that practitioners are in a better position to defend the process against attack. However, he warned that their self interest meant they were not best placed to publicise its strengths, quoting Mandy Rice Davies's famous words to the Profumo inquiry – "They would say that, wouldn't they".

Eclectic passions

Although he periodically sent tongue-in-cheek letters to colleagues in chambers announcing he was fed up with his work and had decided to retire, Veeder's passion for arbitration and the history of arbitration lasted till his death. He never stopped seeking new knowledge, in particular of the little studied area of Soviet arbitration on which he wrote many illuminating articles.

After speaking at last year's Russian arbitration day in Moscow he spent hours in libraries and in conversation with leading Russian academics on this subject, showing himself to be better versed in it than them.

Outside the law, Veeder loved rugby. He played as a schoolboy and briefly for Cambridge University and Harlequins Rugby Club; and had debentures at Twickenham Rugby Ground in London from the 1980s onwards.

He also loved sailing his Concordia boat, *Hurricane*, off the coast of New England, where he and his wife Marie had a home in Manchester-by-the-Sea and where he spent part of every summer.

Veeder is survived by Marie, a former investment banker and current advisory board member of the English National Opera who became his second wife in 1991; by their 21 year-old daughter Anne; and by two children from his previous marriage, Tabitha and Sebastian.

A charitable fund has been set up in Veeder's name to facilitate work carried out by Pimlico Opera, a company with which Marie Veeder is involved, in prisons and with young children. As can be seen from his writings in relation to the fund at the link above, prison reform was another of his eclectic passions.

VV Veeder QC, 14 December 1948 - 8 March 2020

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