under section 302—a potentially important moment in the development and consolidation of U.S. antiterrorism law. AEDPA is an important and innovative component of U.S. antiterrorism policy. The statute employs a reasonably specific definition of terrorism. Section 302 mandates a formal procedure for executive determinations of whether particular foreign organizations are classified as "terrorist," and provides for substantive judicial review of such determinations. Contrary to the judicial role (and the legal protections) Congress envisioned under section 302, however, the court's deference to the Secretary of State effectively gives unbridled discretion to the executive branch in designating foreign terrorist organizations, thereby bringing the enforcement provisions of AEDPA into play against them. It will therefore be political judgments, not legal ones, that determine how and to which groups the statute is applied. Indeed, by rubber-stamping the Secretary's action, the court has allowed the reputation of the judicial branch to be "borrowed by the political branches to cloak their work in the neutral colors of judicial action."[40]

From a transnational perspective, AEDPA is the product of a broader U.S. and international commitment to develop a global antiterrorism regime. This regime has been taking shape through the development of both international norms and effective transnational enforcement mechanisms,[41] including the multitude of treaties requiring the parties to prosecute or extradite terrorist suspects found within their borders.[42] Nevertheless, building a global antiterrorist regime requires not just treaties, but effective cooperation in implementing them. One of the obstacles to such cooperation is the widespread perception that "terrorism" is an irreducibly political and ideological, rather than legal, concept. The resulting disputes about who is a terrorist and what is a terrorist organization have undercut, and continue to undercut, international cooperation and the application and enforcement of treaties. In this context, section 302's provisions for judicial review gave the court an opportunity to analyze terrorism from a relatively nonpolitical perspective, and in terms of specific statutory definitions of "terrorist organization" and "terrorist activity." Such an analysis would have served as an important counterweight to the political and ideological conception of terrorism, and as a first step in surmounting the divisive controversies to which that conception gives rise within the international arena. The opportunity has been squandered.

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Commercial arbitration—representation by foreign counsel—illegal practice of law in California

BIRBROWER, MONTALBANO, CONDON & FRANK v. SUPERIOR COURT, 17 Cal.4th 119, 70 Cal. Rptr.2d 304.
Supreme Court of California, January 5, 1998, modified February 25, 1998.

In *Birbrower, Montalbano, Condon & Frank v. Superior Court*,[1] the California Supreme Court strongly implied, and arguably held, that acting as a representative of a party to an arbitration in California is restricted to lawyers admitted to practice in the state. California subsequently enacted legislation to modify *Birbrower*'s result, and a Rule of Court now regulates participation of lawyers from other U.S. jurisdictions in domestic California arbitrations. The decision, however,

[40] Mistretta v. United States, 488 U.S. 361, 407 (1989).

[41] *See* Ruth Wedgwood, *Responding to Terrorism: The Strikes Against Bin Laden*, 24 YALE J. INT'L L. 559, 561 (1999) (noting that this approach is central to U.S. antiterrorism policy).

[42] *See* Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 UST 1643, 860 UNTS 105; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 UST 565, 974 UNTS 177; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 UST 1975, 1035 UNTS 167; International Convention Against the Taking of Hostages, Dec. 17, 1979, T.I.A.S. No. 11081, *reprinted in* 19 ILM 33; International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 UNTS 85.

[1] 17 Cal. 4th 119 (1998), *cert. denied*, 525 U.S. 920 (1998).

coupled with the subsequent legislation and rule making, have created uncertainty: it is unclear when persons not admitted as California lawyers may represent parties in arbitrations—especially international arbitrations—in California. Birbrower and the events in its wake potentially work against the ongoing liberalization of representation in international arbitration.

In *Birbrower*, two partners of Birbrower, Montalbano, Condon & Frank (Birbrower), a New York law firm, represented a California corporation, ESQ, in pressing a claim against a Delaware corporation with its principal place of business in California. The contract was governed by the laws of California. On behalf of their client, the partners filed a demand for arbitration with the San Francisco office of the American Arbitration Association and visited California on several occasions in connection with the case. While in California the partners met with their client, investigated the claim, provided advice, interviewed potential arbitrators, and met several times with the opposing party's representatives. Eventually, the claim was settled, and the arbitration did not proceed.

Later, ESQ sued Birbrower in the California courts for legal malpractice in connection with the matter, and Birbrower counterclaimed for its legal fees. The trial court granted ESQ's motion for summary judgment and dismissed Birbrower's claims for fees. The Court of Appeals affirmed the trial court's order[2] and the California Supreme Court granted review.

The California Supreme Court opinion in Birbrower assumed that the activities of Birbrower's two partners constituted the practice of law, and focused on the *extent* to which those activities took place "in" California, thereby constituting the unlicensed practice of law.[3] In order to determine when law is practiced "in" California, the court adopted an approach that depends upon the extent and nature of the contacts between the "unlicensed lawyer" and the "California client":

> Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law "in California." The primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations.
>
> Our definition does not necessarily depend on or require the unlicensed lawyer's physical presence in the state. Physical presence is one factor . . . , but it is by no means exclusive. For example, one may practice law in the state . . . by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means.[4]"

In explaining the above standard, the court made little mention of arbitration as such.[5] Birbrower had argued, however, that representing parties in arbitration was different in important respects from the practice of law and had urged the court to exempt representation in arbitration from the prohibition of practice of law by nonlawyers.[6] In rejecting Birbrower's argument, the court considered the relevance of *Williamson v. John D. Quinn Const. Corp*,[7] in which the U.S. District Court for the Southern District of New York, applying New York law, allowed an out-of-state lawyer to recover fees for services rendered in an arbitration in New York. The court distinguished the facts in *Williamson* from those in the instant case, however: "none of the time that the New York attorneys spent in California was spent in arbitration."[8] Though acknowledging, without comment, that a New York City Bar Association report had

[2] 49 Cal. App. 4th 801 (1996).

[3] Business and Professions Code §6125 provides: "No person shall practice law in California unless the person is an active member of the State Bar." Violation of this section is a misdemeanor. CAL. BUS. & PROF. CODE §6126 (West 1990). Further, "No one may recover compensation for services as an attorney in this state unless [the person] was at the time the services were performed a member of the State Bar." Hardy v. San Fernando Valley Chamber of Commerce, 99 Cal. App. 2d 572, 576 (1950). *See Birbrower*, 17 Cal. 4th at 127.

[4] 17 Cal. 4th at 128–29 (footnotes omitted).

[5] The Court mentions arbitration only at the end of this portion of its opinion, referring to exceptions for international conciliations (*see* discussion *infra* note 32 and associated text) and for labor negotiations and arbitrations. *See id.* at 130–31.

[6] *See id.* at 133.

[7] F.Supp. 613, 616 (S.D.N.Y. 1982).

[8] *Birbrower*, 17 Cal. 4th at 133. The same point is also made in a footnote. *See id.* at 134 n.4.

concluded that representing a party in arbitration was not the unauthorized practice of law,[9] the court specifically declined to "craft an arbitration exception to section 6125's prohibition of the unlicensed practice of law in this state. Any exception is best left to the Legislature . . . ."[10]

The *Birbrower* opinion also considered and rejected the argument that the Federal Arbitration Act[11] preempts California law, thus permitting out-of-state lawyers to represent parties to arbitrations in California.[12] Citing *Volt Information Sciences v. Board of Trustees of Leland Stanford Jr. University*,[13] the court noted that the dispute in connection with which Birbrower had been rendering services in California involved California law, and that Birbrower had not shown any conflict between California law and the Federal Arbitration Act.[14]

Judge Kennard dissented, arguing that the trial court should not have granted summary judgment in the first place. The question of whether Birbrower's activities in California constituted the practice of law was a question of fact on which the trial court should have heard evidence— specifically, in order to determine whether the activities of the practitioner required "the application of that degree of legal knowledge and technique possessed only by a trained legal mind."[15] Thus, although his dissent displays an inclination to treat representation in arbitration more liberally than does the majority, Judge Kennard's logic does acknowledge that representation in arbitration *may* constitute the unauthorized practice of law.

The California legislature reacted to *Birbrower* by amending the law to make express provision for lawyers from out of state to represent parties in arbitration—provided that the party is also represented by locally admitted counsel.[16] The State Bar of California quickly adopted procedures under revised CCP §1282.4,[17] and a new Rule of Court implementing CCP §1282.4 took effect July 1, 1999.[18]

* * * *

Birbrower is, from many perspectives, an unfortunate decision. As a matter of logic, the court's reasoning applies to international arbitrations held in the state.[19] Moreover, coupled with the effect of relevant California legislation,[20] the result is that in many instances lawyers from other jurisdictions outside *and* inside the United States may not be able to act in such proceedings—even if these lawyers associate with locally admitted co-counsel. As such, the

[9] *See id.* at 133 (citing Comm. Rep., *Labor Arbitration and the Unauthorized Practice of Law* 30 REC. ASS'N BAR CITY OF N.Y. (May/June 1975)).

[10] *See id.* at 133-34. Since the court had already distinguished the case before it as not involving any time spent in arbitration, this statement is arguably *dictum*. The opinion also implies, however, that representation in arbitration *is* the practice of law by citing *Moore v. Conliffe*, 7 Cal. 4th 634, 637-38, 29 Cal. Rptr. 2d 152 (1994), which held that "private AAA arbitration [is] functionally equivalent to judicial proceedings to which the litigation privilege applies."

[11] 9 U.S.C.A. §§ 1–16

[12] 17 Cal. 4th at 134-35.

[13] 489 U.S. 468, 477 (1989).

[14] *Birbrower*, 17 Cal. 4th at 134-35 (citing and quoting *Volt Information Sciences*, *supra* note 13). In that case, the United States Supreme Court upheld a California statute (CCP §1281.2(2)) that allows a party to an arbitration agreement to avoid the effect of the agreement and to litigate in court, where an indispensable third party cannot be joined in the arbitration. The United States Supreme Court reasoned that such a rule did not conflict with the Federal Arbitration Act because the parties had agreed to be subject to California law, including the statute in question. *See infra* note 29 and associated text for further discussion of the relevance of the Federal Arbitration Act to the decision in *Birbrower*.

[15] *Id.* at 145.

[16] AB 2086 (1998), amending §1282.4 of the California Code of Civil Procedure [hereinafter CCP]. Revised CCP §1282.4 came into effect January 1, 1999, and allows representation of parties in arbitration by "an attorney admitted to the bar of any other state." The provision sets forth detailed procedures that must be followed by the out-of-state lawyer, ones that subject him to the jurisdiction of the California courts and the discipline of the State Bar. CAL. CIV. PROC. CODE §282.4 (b) and (d). The arbitrator must approve the participation of the out-of-state lawyer. CAL. CIV. PROC. CODE §1282.4 (c). The amended provision will lapse at the end of 2001. CAL. CIV. PROC. CODE §1282.4(j).

[17] *Out-of-State Attorney Arbitration Counsel Program Rules and Regulations* (effective January 1, 1999). (State Bar of California: Office of Certification, San Francisco CA.), Dec. 1998 at Attachment 2, *available in* <http://www.calbar.org/2cer/osaas/osaacreg.htm>.

[18] CAL. RULES OF COURT CODE § Div IV R 983.4 (Deering 1999), effective July 1, 1999 (out-of-state attorney arbitration counsel).

[19] *See infra* note 32 and associated text.

[20] *See infra* notes 28–29 and associated text.

decision is a clear step backward from the liberal view of representation in arbitration—a view that, though sparsely represented in case law,[21] had seemed to prevail in the United States. The decision of the highest court of a large and important state is, indeed, bound to be cited (and quite possibly followed) in cases arising in other United States jurisdictions,[22] few of which have clear precedent in this area. Within a larger international context, *Birbrower* runs against the trend of judicial precedents and legislative enactments that have been liberalizing the right of representation in a number of countries[23]—often, ironically, under American pressure.[24] The decision is thus an embarrassment to those in the United States who have been preaching liberal policies in such matters to the rest of the world.[25]

What is especially sad is that all of these consequences flow from a decision that was, at least in the opinion of this writer, wrongly decided. As noted above, the *Birbrower* court addressed the issue of preemption under the Federal Arbitration Act. Apparently intending to apply the rule for preemption laid down by the United States Supreme Court in *Volt*, the court determined that there should be no preemption because the matter being handled by Birbrower concerned California law, and there was no conflict between California law and the Federal Arbitration Act. In this almost perfunctory analysis the *Birbrower* court failed to notice, much less take into account, the reasoning of the United States Supreme Court in *Mastrobuono v. Shearson Lehman Hutton, Inc.*[26] In *Mastrobuono*, the Supreme Court expanded on its ruling in *Volt Information Sciences* to hold that where the applicable arbitral rules contemplated award of punitive damages, New York state law prohibiting award of punitive damages in arbitration conflicted with the agreement of the parties and was accordingly preempted under the Federal Arbitration Act. The *Birbrower* case presented an analogous situation concerning the right to representation. Rule 22 of the American Arbitration Association Commercial Arbitration Rules is to the effect that any party may be "represented by counsel or other authorized representative." Since this rule was part of the agreement to arbitrate in the *Birbrower* case, there *was* a conflict between the parties' agreement and California law of a kind comparable to that in

[21] Before *Birbrower* the only reported cases in the United States relating to whether representation in arbitration is the practice of law appear to be the *Williamson* case, *supra* note 7, and *American Auto. Association v. Merrick*, 117 F. 2d 23 (D.C. App. 1940), with both finding that such representation was not the practice of law. Until recently, moreover, nonjudicial authorities generally supported a liberal rule. *See, e.g.*, Comm. Rep., *Recommendation & Report on the Right of Non-New York Lawyers to Represent Parties in International and Interstate Arbitrations Conducted in New York*, 49 REC. ASS'N BAR CITY OF N.Y. 47 (1994) and Gerald Aksen, *Arbitration and the Unauthorized Practice of Law*, N.Y.L.J., Dec. 11, 1974, at 1.

[22] *See* Fought v. Steel Eng'g & Erection, 87 Haw. 37, 951 P. 2d 487 (1998) (where Oregon lawyers assisting Oregon client with appeal proceedings, negotiation, and mediation in Hawaii had associated local counsel, the Hawaiian Supreme Court distinguished *Birbrower* and held that there had been no unauthorized practice of law); Estate of Condon, 65 Cal. App. 4th 1138, 76 Cal. Rptr. 2d 922 (1st Dist. 1998) (applying *Birbrower*, Colorado lawyer helping Colorado resident in a probate matter pending in California was not practicing California law because client was not resident of California).

[23] *See* Lawler, Matusky & Selly v. Attorney-General, No. 320 (High Ct. 1981) (Barbados) (the court required that local counsel also be associated); Zublin Muhibbah Joint Venture v. Malaysia, 1990-3 MLJ 125 (High Ct. 1989) (Malaysia) (locally qualified lawyers also appeared in the arbitration); The Legal Profession Act, Section 34A, (1992) (Sing.) (Singapore Legal Profession Act amended to exempt from prohibitions of acting "as an advocate or a solicitor" any person acting as such in any arbitration in Singapore, provided that he or she must appear jointly with a locally qualified lawyer where the case involves Singapore law, It appears that either lawyers qualified outside Singapore or persons who are not lawyers at all may act in arbitrations with venue in Singapore.); Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers, Law No. 66 of 1986, Art. 2(11), *as amended by* Law No. 65 of 1996 (Japan) (any lawyer admitted anywhere can act as an advocate on behalf of clients in international arbitrations in Japan; there is no requirement for the association of local counsel even when Japanese law applies). For an English translation of the full text of the law as originally enacted in 1986, see Note, *Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers*, 21 LAW IN JAPAN 193 (1988). The law as amended to date is available in English translation issued by the Japanese Ministry of Justice, but the writer is not aware what, if any, published English versions may exist.

[24] *See, e.g.*, Robert Greig, *International Commercial Arbitration in Japan—A User's Report*, 6 J. INT'L ARB. 21 (1989); Charles R. Ragan, *Arbitration in Japan: Caveat Foreign Drafter and Other Lessons*, 7 ARB. INT'L 93, 108, 112 (1991). *See also* David W. Rivkin, *Keeping Lawyers out of International Arbitrations*, INT'L FIN. L. REV., Feb. 1990, at 7; Andreas F. Lowenfeld, *Singapore and the Local Bar: Aberration or Ill Omen*, 5 J. INT'L ARB. 71, 73 (1988).

[25] *See, e.g.*, Rivkin, *supra* note 24; Lowenfeld, *supra* note 24; Steven Nelson, *Report of the Section on International Practice of the American Bar Association*, 1989 A.B.A. SEC. INT'L LAW & PRAC., 24 INTERNATIONAL LAWYER 599 (1989).

[26] 514 U.S. 52, 115 S. Ct. 1212 (1995).

Mastrobuono, and the *Birbrower* court's conclusion that there was no such conflict seems—to this writer, at least—to be erroneous.[27]

California's corrective legislation, CCP §1282.4, as implemented by the California State Bar and the California Supreme Court, does not extend to persons not admitted as lawyers in United States jurisdictions.[28] Moreover, CCP §1282.4 has no application at all to arbitrations falling within the definitions of an "international" and "commercial" arbitration set forth in CCP §§1297.13 and 1297.16.[29] Thus, *neither lawyers from other United States jurisdictions nor foreign lawyers*[30] are protected from the rule in *Birbrower* in international arbitrations with situs in California, and the option of associating local counsel does *not* offer a solution if *dictum* in *Birbrower* is to be credited.[31]

There is a hint in *Birbrower* that international arbitrations might be handled differently, but little reliance can be placed on the court's discussion; the provision in question, CCP §1297.351, clearly applies only to international *conciliations*.[32] Indeed, the existence of an express exception for international conciliations but not for international arbitrations supports the contrary argument that persons not admitted to the California bar may not act as advocates in international arbitrations in California.

In conjunction with other California case law, *Birbrower*'s analysis of what constitutes the practice of law "in" California may have serious ramifications for international arbitrations. The full range of factors cited by the court included: whether the client is a California resident; whether the applicable law is California law; whether the matter is a "California legal dispute"; whether and to what degree the practitioner was physically present in California; and whether the practitioner has a "continuing relationship" with a client involving "legal duties and obligations." This factor test may not lead to clear-cut—or in some cases, even to sensible—results. To cite just one hypothetical anomaly, *Estate of Condon*[33] found the issue of residence of the client decisive. Reading *Birbrower* and *Condon* together, representation of a California company in an international arbitration with situs in California *may* be the illegal practice of law regardless of the other factors mentioned in *Birbrower*. If so, an English barrister might, in theory, represent his English client (or a New York or Nevada client) in an international arbitration in California concerning a contract under English law (or New York law), but the California-resident company might have to be content with locally qualified

[27] In defense of the California Supreme Court in this connection, it must be said that *Mastrobuono* seems not to have been cited to the court by any party or *amicus* (nor was it cited in the briefing of the petition for *certiorari)*.

[28] It might be argued that the term "state" in CCP §1282.4 includes foreign states. If only United States jurisdictions had been meant, provision should have been made for the District of Columbia and various other United States jurisdictions that are not states of the union (as, curiously, the implementing rule does do). In the nearby CCP provisions concerning international arbitrations and conciliations, the same term "states" clearly includes foreign countries. *See* CAL. CIV. PROC. CODE §§1297.11-1297.432. It should be mentioned, however, that the legislative history suggests the intent was to provide an equivalent to Rule 983 of the California Rules of Court (which allows out-of-state lawyers to appear in a California court "*pro hac vice*," likewise limited to lawyers qualified in United States jurisdictions). Legislative Analysis of AB 2086 prepared for Assembly Committee on Judiciary, Hearing May 5, 1998 (quoting representations by Morgan Stanley Dean Witter & Co). The summary of this hearing can be found on the Web site "Official California Legislative Information," <http://www.leginfo.ca.gov/>, under Bill Information, 1997–98, AB 2086 (Keeley).

[29] *See* CAL. CIV. PROC. CODE §1297.17 (which expressly supersedes many of the provisions of the Code of Civil Procedure dealing with arbitration, including §1282.4).

[30] An exception may exist for registered Foreign Legal Consultants, foreign lawyers who are permitted to provide legal services in the state but, among other limitations, cannot appear in court proceedings or give any advice except on the law of the jurisdictions for which they are qualified. Registered Foreign Legal Consultant Rules and Regulations, §9.0. It would seem that any right Foreign Legal Consultants may have to practice law in California by acting for clients in arbitrations is limited to the law of the country of qualification. As of December, 1999, only 14 persons were registered as Foreign Legal Consultants in California. The current list is available through the Web site of the State Bar of Calilfornia, <http://www. calbar.org>.

[31] The *Birbrower* court went out of its way to correct what it described as the trial court's "implied assumption" that Birbrower might have been in compliance had they associated local counsel. 17 Cal. 4th at 127 n.3. In fact, this point was made unequivocally by the Court of Appeal in *Birbrower:* "Clearly if the Birbrower firm had associated with locally licensed counsel, its fees would have been recoverable." 49 Cal. App. 4th at 809.

[32] 17 Cal. 4th at 133 (CCP §§1297.11-1297.432 "specify that, in an international commercial conciliation or arbitration proceeding, the person representing a party . . . is not required to be a licensed member of the State Bar" (footnote omitted)). Earlier in the opinion, however, the Court correctly states that the exception is only for international conciliations. *See id.* at 130-31.

[33] *See supra* note 22.

counsel. Since CCP §1282.4 does not apply, a similar anomaly would, in an international arbitration, apply to the hiring of out-of-state counsel from other United States jurisdictions by a California party.

Applicable treaties may change the result. In his *Birbrower* dissent,[34] Justice Kennard referred to the Inter-American Convention on International Commercial Arbitration,[35] and to the Rules of Procedure of the Inter-American Arbitration Commission[36] (Rules) promulgated under that Convention. The Rules provide that parties to arbitration under the Rules may be represented by persons of their choice;[37] the Convention provides that the Rules will apply unless the parties to the arbitration have agreed otherwise;[38] and that provision is given force of law in the United States.[39] Accordingly, the *Birbrower* rule does not apply to arbitrations to which the Convention applies. The same is arguably true as to the representation of nationals from countries with which the United States has entered a bilateral treaty of friendship, commerce, and navigation containing provisions on arbitration and also commitments of national or most-favored-nation treatment.[40] The theory has also been advanced that customary international law allows free choice of representatives in international arbitration.[41]

The uncertainties, exceptions, and anomalies in its application suggest that California courts should interpret *Birbrower* narrowly to make it consistent with federal legislation and case law, and federal courts should disregard it as contrary to the teaching of *Mastrobuono*. In any event, California should enact legislation to eliminate this threat to its role as a forum for international arbitration.

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[34] 17 Cal. at 146.

[35] 14 ILM 336 (1975), 9 U.S.C.A. §303(b)(1990), TREATY DOC. No. 97-12, 97th Cong., 1st Sess. 3–7 (1981), Jan.30, 1975, CTIA DOC. No. 1703.

[36] *Dispute Settlement: Commercial Arbitration* (as amended, July1, 1988), *available in* <http://www.sice.oas.org/dispute/comarb/iacac/rop_e.asp>.

[37] *See id.* Art. 4

[38] *See id.*

[39] *See supra* note 35, 9 U.S.C.A. §303(b)(1990).

[40] For example, the Treaty of Friendship, Commerce and Navigation between the United States and Japan, Apr.2, 1953, 4 UST 2063, TIAS No. 2863, 206 UNTS 143, Art. IV(1) assures "national and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies" of the two countries. Applying *Moore v. Conliffe*, *supra* note 12, Article IV(1) should extend to arbitral tribunals, *but cf. In re* application of NBC Inc., 165 F. 3d 184 (2d Cir. 1999) *and* Republic of Kazakhstan v. Biedermann Int'l, 168 F 3d 880 (5th Cir. 1999) (arbitral tribunal not a "tribunal" for purposes of 28 U.S.C.A. §1782).

[41] *See* Lowenfeld *supra* note 25. Prof. Lowenfeld would limit this right to lawyers only.