**Improving Diversity in Arbitration:**

**International Arbitration**

[Online and In-person Colloquium](https://info.law.tamu.edu/diversity-in-arbitration)

Day One:  Tuesday, November 2, 2021

Moderator:  [Colin Rule](https://law.scu.edu/faculty/profile/colin-rule/), CEO, Arbitrate.com; Practitioner in Residence, Texas A&M University

School of Law

Panelists:

* [Emeritus Prof. Ben Davis](https://www.utoledo.edu/law/faculty/emeriti/davis-ben.html), University of Toledo College of Law
* Arbitrator [Katherine Simpson](https://www.simpsonadr.net/about.php)
* [Prof. Guillermo Garcia Sanchez](https://law.tamu.edu/faculty-staff/find-people/faculty-profiles/guillermo-jose-garcia-sanchez), Texas A&M University School of Law

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**Transcript of Zoom video** [**https://youtu.be/iDxCL8wfGFU**](https://youtu.be/iDxCL8wfGFU):

- Welcome, everyone. Thank you for joining our symposium today. We are very delighted to be coming to you from the conference center here at Texas A&M Law School in Fort Worth, Texas. Round of applause for A&M.

[APPLAUSE]

It's been a wonderful, warm welcome, and the community has been great here IN helping us sponsor this event. But most of our attendees today are going to be attending from around the world via Zoom. So I think the way we're going to do it is, we have three panelists today-- Guillermo and Katherine and Ben. And we're going to go in sequence, and each of them are going to do a 15 minute presentation. And we're going have a little Q&A after each individual presentation, mostly for clarifying questions. But after our third presentation, Ben's presentation, we'll open it up for everybody to ask comments and questions.

I'm going to be manning the chat. So if you have any questions or comments you'd like to make, please don't hesitate to put it into the chat.

And I think maybe we could just get started with my friend Guillermo. So let me tell you a little bit about Guillermo. Guillermo Garcia-Sanchez is associate professor here at Texas A&M University School of Law. His research and teaching focuses on international energy law, international transboundary resources, investor/state dispute resolution, and arbitration. He's published in the Harvard International Law Journal, the Houston Journal of international Law, the Arizona Journal of International and Comparative Law, Nevada Law Journal, and Tulane Law Review.

Prior to entering academia, Professor Garcia-Sanchez was an associate in the international arbitration department of Curtis, [INAUDIBLE] Provost, Colt, and Mosley-- did I pronounce that correctly?-- in Mexico City, and served as a legal advisor in the Mexican Ministry of Foreign Affairs. He received his BA in law with honors and a BA in international relations from ITAM University in Mexico. He also holds a doctorate in judicial sciences, and an LLM from Harvard Law School and an LLM in international law from the Fletcher School of Law and Diplomacy. His doctoral dissertation on judicial dialogues amongst constitutional and international courts received the 2017 HLS John Gallup Leland prize. And I know that's a long introduction, but we're here with a lot of academics, so it's good for them to hear your credentials and all your accolades. So with that, let me hand it over to you, Guillermo, to kick us off.

Thank you so much, Colin, for the kind words. And thank you everybody for joining us, and for the sponsoring institutions-- A&M, [INAUDIBLE], and Arbitrate.com. Thank you for sponsoring this event. This is a fascinating opportunity for everyone to engage for the first time, at least in a hybrid mode. We were just talking about it, that after two years of not having any type of conferences, this is the first time we're having a hybrid event. And I think it's really a success in that sense. Thank you so much for the students joining us today. Many of them, we already met them during class. So thank you for being here with us today.

So my presentation today is going to be mainly focused on international investment arbitration, which is the area that I know the most about. Let me share my screen with you. So all of the data that I'm going to be showing and sharing with you today was basically reported by ICSID, which is the international center for dispute resolution between investors and states. And as you know, those are the biggest arbitration providers or institutions available for investor/state disputes. But I must confess that there are other investor cases out there administered by either the International Chamber of Commerce or the Stockholm Chamber. So I'm not saying this is all the universe, but this is-- we can at least have a sense of, the vast majority of investment claims are administered by this particular institution.

So just to give you a little bit of context, ICSID investment cases have been on the rise. Just last year, 2021, represented 232 cases. That is actually the largest number of cases ever administered in a single fiscal year by ICSID. So again, disputes are on the rise, at least when it comes to investment claims. And that actually a amounts to almost 40% of ICSID lifelong cases. So in total, since its foundation, ICSID has administered 838 cases total.

When we look at the last year's composition of the subject matter of disputes, that you can see a good number of them involved either oil and gas or energy-related disputes. And I always like to say, these probably-- even to my students is, if you want to go into international investment arbitration, you better start in some energy and international oil and gas law, because that's going to be at least 40% of your practice. And this has been a trend that has been going on globally.

When we look at the actual regions, as you can see, they are spread all over the place. One of the things that is always interesting when you look at investment places, that they don't only involve developing-- quote unquote, "developing" nations, or capital-importing nations, but now we see a lot of investment places also in exporting capital nations, like Spain, for example. The United States has also faced a number of investment claims. Canada. So you see, these type of disputes are all over the map globally.

When we actually look at the distribution from last year, you see here a good number of cases-- most of them, again, still even we have some westerns. They do involve-- South America, for example, represents 14%. Sub-Saharan Africa, 14%. Western Europe, it's 10%. The Middle East is 9%. Central America is 7%. Southeast Asia and Pacific, it's 7%. And why does this matter when it comes to diversity? I wanted to show you this particular graph, because it's really telling us that global arbitration cases really involve a diversity of nations. This involves a diversity of languages and a diversity of backgrounds and a diversity of legal systems. So just by looking at those numbers, one would expect that actually, the practice, or at least the arbitrators that are being selected for this kind of disputes, are as diverse as the regions where these disputes originate. But I'm going to prove you wrong in a couple of seconds, because actually, it's not that diverse.

So the geographic distribution of the appointment by arbitrators, look at the stark contrast. On the left side, you have the graph of the original nation of the disputes where they are coming from. And on the right-hand side, you actually have where the arbitrators are coming from. So even though Western Europe, for example, is only 10% of the disputes, we see that actually, 43% of the arbitrators come from Western Europe. So that's a striking contrast.

The same thing with North America. You see here, 80% of the arbitrators are actually from North America. And here, they put Canada, United States, and Mexico together just because that's the economic region. But that doesn't mean that it is full of Mexicans in that 80%. We are actually going to go deep into that in a second. But it really gives you a sense of, even though, again, there are certain regions where you have more investment claims, they are not actually represented geographically when it comes to the origins of the arbitrators.

When we disaggregate that data into the actual countries where they are coming from, you can see here that the most employed arbitrators, at least from last year, were coming from the United Kingdom, the United States, France, Canada, Spain, Switzerland. We had a couple of Argentinians there, and some mixed dual nationalities-- Argentina or Portugal. But you can see here, the vast majority, again, they are United Kingdom, the United States, France, Canada, which tend to represent also the big capital-exporting states.

And at the same time, I would say these are the places where also arbitration is the most practiced. So we have many of these arbitral institutions are located in one of these actual jurisdictions. And then we have a few cases where only one arbitrator comes from other regions-- like for example, Nigeria, Paraguay, Slovak Republic, Brazil, Switzerland. So you have, again, the real representation of these, when it comes to the countries of origins of the arbitrators, does not fit with the country of origin of the disputes.

So how is this different-- some people ask me, when we look back in time, was it different? Are we getting better? So I looked all the way back to 2011, and look at the numbers. They are actually very similar. The vast majority here we were French, Canadian, the US, Germany, Argentina. Again, they represent the vast majority of the arbitrators. England, British, here. The same thing.

Now, when it comes to the appointment of these arbitrators, when you look, it doesn't-- I would say ICSID as an institution, they have actually tried to bring more diversity into the equation. So when it comes to the institution selecting the panel, the presence of the [INAUDIBLE], or selecting the arbitrators for the parties, they try to actually bring a little bit more diversity. You can see here, for example, some effort's not enough. So 2011, still, ICSID appointments are the blue lines. And the yellow lines are the appointments made by the parties. Still, the parties prefer the vast majority from Western Europe. And if you look here again, I would say most of these are Canadian, or American or the US-based arbitrators.

And then going back to 2012, same thing, same phenomenon. Remains the same thing with the appointments. The vast majority tend to be from Western Europe or Canada. So we can really say that, in the last 10 years, even though there have been some efforts, it hasn't really changed.

So the last graph here is 2010. So this is the latest one that I found. Oh, actually, this is 2015. Same thing. France, United States, Canada. So this is a trend that we haven't been actually really able to change.

Now, looking at, for example, some particular regions in Mexico-- when I look down into Mexico, for example, what we find is that even though there has been some Mexican appointments, they tend to be concentrated in one or two to three really strong repeat players. So even the Mexican arbitrators, or the Mexican or the Argentinian or the Colombian arbitrators are going to see, they're concentrated in a handful of them. And I would say there is one characteristic of this group, is that many of them either still work for US-based law firms or British law firms, or actually, they went to live abroad, do their PhDs or their master's degrees abroad. So in terms of culturalization, they are closer, I would say, to a Western-oriented legal training than an actual training in a civil jurisdiction. They didn't make their career in civil jurisdiction. They actually at some point went abroad.

So for example, to give you a quick example, Mexican arbitrators have been selected in 78 cases, so that's 9.3% of all ICSID caseload. And they are highly concentrated in these places. So Claus von [INAUDIBLE] have had 22 cases. As you can already see from his surname, Claus von [INAUDIBLE] is actually Mexican-German. So again, that's another comparative that we can fit it in the other category.

The other one is Eduardo [INAUDIBLE], 11 cases. And we have Ricardo Ramirez-Hernandez, 10 cases. And Judge Bernardo [INAUDIBLE], who was actually a Mexican judge at the ICJ, seven cases. Then Hugo [INAUDIBLE], seven cases. So together, all these five players represent 73% of all Mexican appointees in all of the ICSID-related cases, and all of them have one trend. They've all been abroad. They've all studied abroad. They had some [? physical ?] exposure, at least, to international law firms, or international institutions in the case of Ricardo [INAUDIBLE] and Judge Bernardo [INAUDIBLE].

So Colombian arbitrators, you can find the same. Again, they only represent 60 cases total. 7.1% of all total ICSID caseload. And this is actually even more concentrated. So Eduardo Zuleta has actually arbitrated 30 cases out of all the 60 cases were Colombian arbitrators were appointed. So this is 50% of all of that. Then Enrique Gomez- [INAUDIBLE], 8%. And again, Enrique, for example, he works at [INAUDIBLE] in Washington, DC. And then Fernando [INAUDIBLE], he works for Latham & Watkins in Paris. Again, so another trend there. So together, only these three Colombian arbitrators represent 71% of all the cases where Colombian arbitrators have been [INAUDIBLE]. And again, that's a small number compared to the whole general cases, which is only 7.1%.

Now, when it comes to gender, I must say, it's even more striking the difference. So when we look at from 1966 all the way to 2020, only 12% of the arbitration cases have involved one female arbitrator. So 88%. So a highly male-dominated cases proceeding, I would say. Again, from 1966 to 2020, the same thing gets repeated. Claimants only appointed 32 women. Respondent appointed 147 women. Parties jointly, 47. Co-arbitrators here. And ICSID, the secretary, again, they are doing a big effort here. 102. And that's a conscious effort, which is more interesting, because when you talk to ICSID arbitrators, as an institution, they are trying to bring more diversity. So it's a conscious decision to bring more diversity into the equation. So that represents, actually, 342 women compared to the 2,464 times that men have been appointed to one of the arbitration proceedings.

Now to make it even a little bit more complicated, this is just last year. You can see there is a little improvement. Last year, 31%. Improvement compared to previous years. This 31%, again, compared to 2021, that's 14% that was an increase. 2019 was 24%, 2015 16%, 2014 11%. Again, and ICSID appointed 37% of female appointees in 2021. So that's 11.4% of the total appointed last year, compared to 2015, was 2.3% Respondent appointed 23%, claimants appointed 30% of the women, jointly appointed 21%. But the co-arbitrators appointed 6%. So these are when two arbitrators have to select the president of the panel. Only 6% of the time is [INAUDIBLE].

Now, another interesting thing of these cases is that they tend also to be concentrated in just a handful of players. So I went and looked at the two most appointed female arbitrators, and you have, Brigitte Stern had been an arbitrator in 98 cases. And out of those 98, 72 were cases where she was appointed by the respondent. So she very much is known as a pro-state arbitrator, so governments tend to appoint her. Only in two cases she was jointly appointed, one case only by the claimant, and three was during the annulment proceedings.

The other big players, Gabrielle Kaufmann-Kohler. She's a professor at the University of Geneva, and she was appointed 45 cases total-- one case by the respondent, 15 cases jointly appointed, 9 by the claimant, 12 by co-arbitrators appointed, one in annulment proceeding. So these two female arbitrators represent 143 cases out of the 838. So again, that's 42%. That's almost half of the numbers of all females arbitrators are these two female arbitrators. So again, that even makes it even harder. And again, another trend, if you look at Professor Brigitte Stern, she's in Paris. She's a professor in Paris. Gabrielle Kaufmann-Kohler, a professor in Geneva. Again, Western-oriented arbitrators.

And why does this matter? Because if you think about [? figuring ?] investment claims are claims involving government actions, are claims involving other jurisdictions and legal systems. And so you need to have more diversity when it comes to understanding other legal systems. I'm not saying that being an international law expert or investment expert doesn't qualify you to analyze other cases, but it does shift and changes and it shapes the kind of conversations that arbitrators have when it comes to understanding why certain governments took certain actions. They are all seen through the lenses of Western-oriented legal systems, and I think that has a particular effect-- I mean, that's why we see some pushback from some developing nations when it comes to understanding why the system has become what it has.

When it comes to location and languages, I'm just going to go over it with you here. So out of 252 sessions or hearings held in 2021-- that was a record 53% increase over the previous fiscal year. And due to COVID-19 there were no in-person hearings or sessions held in 2021. So that's very interesting. Even though there was an increase of hearings, most of them were online. So going back to the online became a big thing.

218 cases, so 69%, were in English. Only 16 cases were in Spanish, and four cases were in French. Think about the diversity of the location. So again, English has become the most common language employed. And again, that also has to do with the fact that arbitrators speak English, politicians speak English, so everybody has to adapt to that mode. But that doesn't mean that, actually, you could have more diversity when you allow other proceedings to be taken more in Spanish or in French, or in some cases even, say, Russian [INAUDIBLE]. Again, this is just to compare the regions of origin. Clearly, English-speaking language in those regions is not the primary language spoken, even though we are conducting the proceedings in that [INAUDIBLE].

And I think with that, I will end my presentation. I look forward to questions, comments, and a conversation with our colleagues.

- Absolutely. Excellent, Guillermo. Any questions for Guillermo? Clarifying questions? Absolutely, you can save your questions as well for the Q&A for all three panelists at the end. But anything about the statistics he shared, or some of his conclusions? Online? We didn't have any come in on the chat. So please feel free to break in. Why don't we proceed to Katherine.

So our next speaker is Katherine Simpson. Dr. Katherine Simpson is an arbitrator based in the US and London. She has served as sole arbitrator in 11 international disputes, including one conducted under the commercial rules of the American Arbitration Association, AAA. She's also chaired virtual hearings. She's been involved in over 50 international commercial and investment arbitrations, many of which have been ranked as the most influential cases of the past decade.

She's also well known for her initiatives to promote equality in international dispute resolution. In January 2020, in response to the EU and Canada's failure to include any women in the chairperson's roster for the Comprehensive and Economic Trade Agreement, CETA, she created a roster of 70 women who, on a skills level, could replace at least one of the arbitrators who had been nominated. And in June and August 2020, she and Nancy [? Thevenin ?] published the Arbitrators of African Descent Roster, which contains the brief bios of over 120 arbitrators of African descent who accept international cases that have a connection to the US.

She holds a doctor of juridical sciences, international law, and banking, and a master's degree in international business and economic law, from the University of Cologne, Germany; a JD from the University of Baltimore School of Law; a master in European Studies, Center for European Integration studies in Bonn, Germany; and a bachelor and master's degree in political science from Ohio University. So, thank you so much for being here with us, Doctor Simpson, and you may take it away.

- Thank you so much. And I will hope that I am sharing the correct screen. And as we're testing that out, I would also share that before Professor Garcia-Sanchez was Professor Garcia-Sanchez, he was Guillermo, and he and I had our very first case together 11 years ago. So can you see the PowerPoint, Diversity & Inclusion in International Arbitration?

- We can.

- We can. All right. Very good. Then that is what I will be speaking with you about today. And before I really let go, I wanted to ask, just a show of hands, as much as we can do this, however you define your ideal professional field of whatever you want to be doing. How many of you want to be number one in the field? Very good. I see I see some hands, and I appreciate--

- There's hands in the room. Yes.

- There are hands in the room. Good. Thank you. Now how many of you want to be number one in the field if that field is segregated by race or gender?

- No hands. No hands in the room.

- No hands. No hands. And that's how it came out the first time that I did that question at a Practicing Law Institute presentation. 96% of the audience said, no. I do not want to be number one in the field if that field is segregated by race or gender. I did it with another panel a few days ago, and people were asked just to do a thumbs down for no. And instead, sssh, going across the screen, no, that's not for me, because when we're talking about diversity, we're talking about legitimacy. We're talking about the-- well, we're talking about making arbitration more efficient, more predictable, less vulnerable to accusations of corruption. And where we're looking at creating a field where people are not excluded on the basis of sex, race, ethnicity, gender, disability, gender identity, or any other ground that has nothing to do with a person's ability to resolve the dispute. I think I'm--

- Sorry about that. I've muted [INAUDIBLE]. Over. Please continue.

- [LAUGHS] Not to worry. At least we're all hearing voices, right? Right.

- [LAUGHS]

- Now, even though diversity is all about legitimacy and preserving, maintaining, or even creating the legitimacy of our field, it's not really dealt with in many of our foundational documents. And as an example, I would take article 14 of the ICSID Convention. This is where, of course, ICSID is talking about its commitment to diversity. At Section 2, it will have "due regard to the importance of assuring representation on the panels of the principal legal systems of the world and the main forms of economic activity."

In the context of 1966 in the United States, water fountains were newly desegregated. But you could still discriminate against women in the workplace. Probably, racial equality and gender equality were not at the forefront of people's minds, and maybe would have prevented some countries from even signing on to the ICSID Convention. It was already a novel idea to allow companies to bring claims in their own names, rather than have to go through the offices and channels of a home government-- or even with the assistance of military force-- to resolve a dispute. But there are other clues that women in particular weren't really thought of as having even the potential of being players in international law and, by extension, international arbitration.

I loved this picture-- Study on the impact of the Peace Palace. I had to use this picture because the title. And I'm using this picture of the Peace Palace because the Peace Palace is where international law is supposed to live. And this date at the top, July 17, 1995, is an important one in Peace Palace history. It doesn't really come up on the Peace Palace's bio like it should. But it does come out in an interview with Judge Rosalind Higgins, where she explained how the big change that had to happen once she got appointed to the ICJ was that they needed to add a women's restroom to the judge's area at the ICJ, because you see, the entire building where international law was supposed to live was constructed around the idea that women were not going to be using it, so there would be never a need to have a women's restroom in the judge's chambers. It's pretty hard to argue with the physical, architectural fact of a building that is designed around the assumption that an entire gender would not be using it, and the Peace Palace is that building.

Now, it does have a women's restroom now, and if you're trying to think of other things that are older than the women's restroom at the Peace Palace, you might think of Forrest Gump, the movie, or even everyone on this call. [INAUDIBLE] are still all older than the women's restroom at the Peace Palace.

And the potty question never ceases to impress me still in international arbitration, that even the actual buildings where we are conducting business are not equipped to enable female arbitrators to relieve 100% of their bodily functions, even though they are equipped to allow men, without question, to privately, securely, safely relieve 100% of theirs.

So what am I talking about? I'm talking about lactation space. The ICSID hearing centers are among the only ones in the world that have lactation space. This means that when you are using ICSID's hearing centers as a party, you have the choice to be represented by a woman who has recently given birth, or to have an arbitrator on your panel who has recently given birth. In other hearing centers, this is not an open option. Instead, still, in 2016, women using other hearing centers were still being directed to broom closets, or to stand topless in women's rooms with counsel from all sides coming in while everyone relieved their needs.

International arbitration is still not physically built for women. But it can be, and ICSID is one of the few that is making it possible for young women to participate as fully in arbitration as males.

So against that backdrop, for me, it's pretty-- I guess logical is the word. I can kind of understand why some countries and people might have trouble even finding women to be arbitrators in the first shot, because if the people who were building the buildings and creating the actual hearing centers weren't even thinking that the space was going to be used by women as well, chances are that that might affect people's ability to search for and find the arbitrator that they want.

And so people try using neutral search terms to find their ideal arbitrator. And if you are like the European Union and Canada, you come out with a list of names that is completely male. What on Earth are you supposed to do with that? Well, some people say, well, I found 20 names. That's clearly all there can be. Other people look at those 20 names and say, hmm Maybe there's a little bit of sexism already buried in my terminology.

Take the phrase, for example, "Alan Redfern is an excellent chairwoman." Is there anything wrong with that statement? If chairwoman is supposed to be gender neutral and inclusive of everyone, just as chairman, surely Alan Redfern would be and could be considered an excellent chairwoman. He is, after all the, author of one of the major textbooks on international arbitration.

Or, maybe some of you are stepping back and thinking, whoa. That's pretty bold. Has Simpson just slighted Alan Redfern by calling him a chairwoman? I won't make people raise their hands to that. The idea that it could be offensive to be called a woman is just some of that underlying tension that is really all over the place in this field when we're trying to find neutrals. And Alan has consented to the use of his name for this example.

It's difficult to do a merit-based arbitrator selection. I'm sorry, I'm using different screens than I thought I was. This "Alan Redfern, excellent chairwoman." There we go. When we're getting into merit-based arbitrator selection, we're looking at, what does the contract require? What does the applicable law require? What's the arbitration knowledge that's needed? And by the end of this, we should have a broad range of neutrals to choose from. Unfortunately, it's not always the case.

So what do you do when you have these 20 male arbitrators? Well, you could reach for the ERA pledge. The equal representation and arbitration pledge says, 50-50. So if you're going to have 20 white males on your proposed list, go out and find 20 females to match. You will find them. They make up 50% of the population, and a little bit over 50% of every graduating class now.

And while you're working on this, you might think to yourself, hmm, racial equality is also important, too. You can grab on to the US Census, where 15% of the population is African-American. Making the math work, I know I will find six black female arbitrators to hit that 15%, and 14 other female arbitrators any race. On the one hand, it works for getting gender equality. It works a little bit for getting racial equality as well, and forcing people to shake off whatever -isms drove their initial search to be all white and all male.

But which group is missing from this pot? Using the ERA pledge alone unfortunately ends up excluding diverse men. And diverse men are just as much and are just as important in this field. And that's why, for international as well as domestic cases, I've started to work with the Ray Corollary Initiative. And full disclosure, I'm now on their board. And we're calling on places to ensure that 30% of their roster is diverse. I see that it is less than 50%, but it's calling on people to be thinking about all of these different diversities at the same time, to try to put forward a slate of neutrals that represents really the best of who could be resolving a dispute without excluding people on the basis of race or gender or disability or gender preference or gender identity. And these are people who may have already been somehow excluded in the initial search, even if just by skimming.

To do the same problem applying the RCI, you hold on to your 20 white male arbitrators. There was something in your search that made you like them, and choosing your arbitrator is going to be one of the most important decisions for your case. Use your 20 male arbitrators to find your additional arbitrators. When I was working on the CETA list, I found 70 women who matched the five men who had been appointed, of course because I was looking for women who had similar or, frankly, identical professional experience. And you can do that, too.

One frequent excuse that comes up is this one-- the pool of potential candidates is very limited, and there's a general unevenness in the quality of candidates. I can feel the hair on the back of some people in the rooms next standing, and I understand. I'm not quoting that British businessman from 2020. I'm not quoting the AAA in response to Jay-Z's concerns. I'm quoting Griffin B. Bell, who was attorney general under-- excuse me, under President Johnson. He was explaining how the pool of potential candidates to be judges was so limited, and it was limited because a person could not be expected to be even considered for the position of a judge unless he or she knew a Senator personally, knew someone who did, or was owed some kind of political favor by that Senator.

And what they had found was that this who-you-know attitude was simply not conducive to-- it simply did not guarantee that the candidates you had were going to be excellent judges. And they switched the United States onto a merit-based approach for appointing judges, and in doing so, in looking at people's abilities, education, their skills, in having people apply and show themselves, they were able to appoint more women and more people of color than had all prior presidents combined.

And that is something that we can also do for arbitration. We can start to add merit back into the appointment process, so that parties can really feel assured that their case is getting resolved by the best possible person who could do it, not just the best possible male or the best possible Caucasian or the best possible person that the lawyer knew. We can start by doing more merit-based appointments, getting to the best possible arbitrator. Thank you so much, and I look forward to your questions.

- Thank you so much, Dr. Simpson. That was great. Does anybody have any comments or questions for Dr. Simpson before we move on to Ben?

[INTERPOSING VOICES]

- Go ahead.

- Yes, hi. But maybe we'll let Ben go first?

- Sure. Absolutely. We can do Ben, and then discuss everything together. But actually, Mireze-- I'm eager to hear your perspective-- is one of the founders of Arbitral Women. So maybe--

- OK, perfect.

- We'll come to you.

- [INAUDIBLE] too, too wrong, but I'm not familiar with [INAUDIBLE].

- I have to mute you, Cynthia. I'd love with you, but it's my favorite part of Zoom. Thank you very much, Katherine. That was great. Let's go on to our third presenter, the formidable Benjamin Davis, who worked in these very halls for many years back when it was Texas Wesleyan University. But he is now an emeritus professor. He worked at the University of Toledo College of Law beginning in 2003, and retiring on January 31, 2021. He is now a visiting professor of law at the University of Illinois for the School of Law for the fall 2021.

He's a graduate of Harvard College, Harvard Law School, and Harvard Business School, where he was articles editor for the Harvard International Law Journal, and then also spent many years in Paris, France, working as a development consultant in West Africa as a strategic business consultant with Mars and Co.

And in 1986, he became the American legal counsel at the International Court of Arbitration of the International Chamber of Commerce, ICC, where he supervised directly or indirectly over 1,000 international commercial arbitration and mediation cases, made filings before courts around the world on behalf of the ICC, assisted with the drafting of arbitration laws in countries such as India and Sri Lanka, and led conferences in Eastern and Western Europe, North America, and Asia.

In 1996, he was promoted to director of conference programs and manager at the Institute of World Business Law, where he organized training sessions on international contracts, dispute resolution, project finance, and electronic commerce. He is the creator of the fast-track international commercial arbitration, and the inventor of the International Competition for Online Dispute Resolution, within which students from around the world compete in online negotiation, mediation, arbitration, and litigation.

Much like our esteemed host, Nancy, Ben served as former chair of the American Bar Association Section of Dispute Resolution. And he's a former board member of the Society of American Law Teachers, and a former member of the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline, and the ABA Standing Committee on Law and National Security. I would also point out that in 2018, Ben received the Champion of Change Award from Arbitral Women, which is the International NGO of women ADR practitioners, of which, of course, Mireze is the founder. So with that, let me turn it over to you, Ben.

- Thank you very much, Colin. I'm going to do a share screen here. OK. Let's see if I can make it work. Bada boom, bada bing. Start broadcast. OK. There we go. And you are there, and then I should be able to get to the-- yes! There we go.

- Victory.

- Excellent. All right. And I should start slide show. There we go. Slide show from start. There we go. Everyone can see that?

- Yes. Thumbs up.

- All right. Great. So my title is my subject and my conclusion at the same time, which is Hire, Promote, and Appoint. That means hire and promote inside of the law firms that make up those large numbers that Guillermo wa kind enough to point out, and also appoint in those cases that those large numbers of law firms operate on with regards to people of, at least in America, of four categories-- women, minorities, lawyers with disabilities, and LGBTQIA lawyers.

So I'm just going to speak to some parts of this. First of all, let me start out by showing my wonderful moment when I got my emeritus status at University of Toledo announcement there, and I celebrated that among many of my colleagues at that point. Obviously, a very happy moment, a bunch of us having a good time. Yet for that to happen, you have to appreciate just how long the battle has been to even allow that possibility to happen.

Taking back a step, let's look at this picture here. It's from 1998. It's in Paris, at a day celebrating the gentleman standing next to me, Michel Gaudet, who was a former chairman of the ICC court. And also, he had been the first legal advisor for the European Community back in 1958. He is really one of the creators of the European Community, the European space as we know it today. And we were celebrating him, and I particularly was working hard to celebrate him that day, because he's just such a great guy. This is 10 years after he'd retired from being the chairman of the court. And he was obviously a very distinguished person in international arbitration.

Next to him, down below in the corner there, is [? Fali ?] [? Nariman, ?] who is was the kind of "god" of arbitration in India, as well as more generally. He was the guy who led the Indian effort to create the Modern Indian Arbitration Act, which had the effect of advancing India basically 50 years.

- Did we lose you, Ben? Hmm. I knew we weren't going to get through this without a hiccup. Ben, if you can hear us, please speak up.

All right. Well, I think we have no choice other than to maybe begin with some other comments and questions, and then we'll wait for Ben to rejoin us. So I know one person who's on the call who has a long history of working on these issues-- and I've been trading some messages with her in the chat-- is Mireze Felipe, one of the founders of-- or probably the founder of Arbitral Women. So Mireze, I was wondering if you could speak just a moment about the role that Arbitral Women has played in working on some of these issues, and some of the achievements and things yet to be achieved.

- Thank you very much, Colin. First, I'd like to thank both speakers. I think that the presentation was amazing, [? because ?] it is objective numbers and information, because without numbers, you cannot assess where we stand. So thank you very much.

I just wanted to make a comment in answer to Katherine's comment regarding the ERA pledge, the Equal Representation in Arbitration. The reason for which the ERA pledge is promoting women is simply because it was a very pressing issue compared-- and as Katherine stated out, and also the first speaker, clearly that there was a dearth of women in arbitration namely, but in dispute resolution in general. That is the reason for which we are promoting women. So this is the more pressing issue, and the most visible one. That being said, men are not excluded. It is simply that we cannot embrace all efforts at a time. We had to start with the most pressing one, and the most pressing one was women. So I just wanted to clarify this.

And then another comment I'd like to make also about organizations promoting women-- oh, Ben is back. Let me just finish this comment, and then I'll give you back the floor, Ben-- is Arbitral Women has been criticized by some people as not being mixed. But the reason of the very existence of Arbitral Women is to give a forum to women in dispute resolution, because they have no clubs. They are not allowed in men's clubs, and they cannot also make themselves visible by the rest of the community.

And we saw that it was very important for us to have a forum to discuss, because obviously, we meet men, our counterparts and our colleagues, in cocktails and conferences and in all places. But you cannot speak about lactation-- if I take the example that Katherine took, lactation room-- with men. You're going to discuss this issue with women. You are speaking about going to a hearing, and you need to find a lactation room. Fine. You can discuss this with the women. It doesn't interest the men. And so that we have a forum where we can discuss many issues, including substantial issues.

So I just wanted to make this clear. It is not an exclusion of men. It is simply a forum given to women in order to allow them to discuss between themselves, share experience, promote their work, promote themselves, and also be visible.

Mind you, we refuse to have all-female panels for events that we organize. We always try to have an equal representation to the extent possible. We also give awards to men. Ben was one of the people who received an award from us. So to men who promote women in dispute resolution. So it's not excluding men. It's simply opening a forum for women. I'll stop here, because Ben is back.

- Thank you, Colin. Yes. Thank you so much, Mireze. And Ben, we're going to come back to you in one second. But I think, Katherine, you had a comment you wanted to make.

- Oh, yes. And I don't mean to sound like I'm criticizing arbitral women or the Equal Representation in Arbitration--

- That's not what I meant, Katherine. Sorry. Yeah.

- Oh. Well, that's good. One thing that I've gotten to learn a lot about over the last year is the tension-- a historic tension between feminist movements on the one hand, and racial equality movements on the other within the United States. And I think that's in part why I'm working so much with the Ray Corollary Initiative, because it is so difficult to remember to think about all of these different groups at the same time and to make sure that one's research is not being inadvertently sexist, inadvertently racist, inadvertently ableist, inadvertently heterosexist. And the Ray Corollary Initiative helps me to keep all of those research hindrances in mind.

But I did want to show how just holding on to one program and the very successful Equal Representation in Arbitration pledge can have the effect that some groups feel that they can be completely ignored or excluded from the International environment. And that group seems to be diverse men. So that was what I was trying to paint with that.

But now having said the big L word in front of an audience of 62 people, I promise you are not the first men and women I have spoken to about lactation or lactation at hearing centers, because since this is such an issue, and I have worked while having all of my children, I have had to make my own space at different hearing centers around the world to serve my own bodily functions, just as dozens of other women have had to. But in order to create these spaces, we don't just have to reach out to women and hope to find audience there. We also need to be able to explain to the men that we're working with why we need 15 minutes of this particular time at that particular moment.

- Absolutely.

- Yeah I agree. I agree. So just to give another example, Katherine-- and I think we are on the same page-- I was asked a question once in an interview of, if we accept, for instance, in Arbitral Women, members who are disabled-- so women who are disabled, or women of color and so on. And I was really shocked, because just putting this question forward is discriminating. And my answer was, we don't care about what the woman is. We only care about whether she's a practitioner in dispute resolution. The rest is not interesting. She's a human being. She's a practitioner in dispute resolution. That's all I need to know. I don't need to know the rest. I think it's also important to clarify that, obviously, everyone is included, and inclusiveness is obviously important. Thank you, Katherine. Sorry for taking the time.

- No, don't apologize. And I see Ben has rejoined us. So Ben, would you like to take the conch again?

- Thank you. Can you hear me now?

- We can hear you loud and clear.

- OK. Well, wonderful. So I like to say that if there's any technical problem that happens, it's always my fault. So I'm really happy to be the one causing it this time. I've saved everybody else from having the problem. So I would just segue now, therefore, from the comments I just heard in the conversation and go with that. So to be a woman who is a practitioner in international arbitration, you have to be hired or promoted in some place that does international arbitration. So if the firms that do international arbitration are not hiring and promoting women to do it, then they would not be in a position to be arbitral women under that vision. Similarly, if you want to be an international arbitrator, and if they're not parties who are going to promote or appoint women as international arbitrators, then there will not be a lot of women international arbitrators. This sounds pretty basic math, everybody. And that's why I try to put it forward that way.

Similarly, if we take the numbers that Guillermo kindly showed us on the representation of who was in these fields, there were a lot of Europeans and North Americans-- primarily Canadian and United States in North America, as he noted. So let's just stay with those numbers.

Now, if you look in Europe, guess what? There are Asian Brits. There are Asian French. There are Black Germans. There are-- I can think of any number of different minority groups that you can think of with regards to their presence in Europe. And guess what? Do we see them in addition to women being in the law firms or being named as arbitrators? Having seen many years over there, I can tell you the answer is, no. And that, I wonder, is a problem.

Inside the United States, we are now roughly 70 years after Brown v. Board of Education. I will-- what is it, spot you the first 50 years, until 2004, when I wrote my first article about it. And at that point in time, for minorities, at least in international arbitration, there weren't any. So I'm saying, gee, if we have cases that are dealing with Latin American parties, and there's an American law firm that's there, why isn't there a Hispanic American on the team? If there is a case out in Asia, why aren't there any Asian-Americans on that team?

If you want to just do that kind of matching. Personally, I think that if there was somebody who is Hispanic-American who'd love to do Asia work, why couldn't they be out there in the Hong Kong office doing the Asia work if they had the skill set? Or similarly, an Asian-American who'd want to be in the London office of an American firm.

So all of these things that I'm saying are just to point out to you that there's something seriously wrong inside the American international arbitration community, and I daresay in Europe, with regards to hiring and promoting people who are typically non-male and non-white. Or and/or. I don't know which way it goes, but anyway. And I have talked with people who are in the field-- trust me, a lot of wonderful people, a lot of people I like and all that. I'm not saying there's anything wrong with them, in the sense of being good people or bad people. But the bottom line is that, as the system works, it does not work to include more diverse people in the hiring, promotion, and also in the appointment.

And there can be any number of reasons why that happens. Personally, with regards to women, I am a one who would say, of course there's misogyny. I'd be crazy to say there wasn't misogyny going on. And with regards to people of other groups, including minorities, of course there's racism going on. I mean, it'd be crazy to live in America today-- and I think that that's part of it. Are we better than we were back in 1960 when I first started going to elementary school in the United States? Of course we're better than that. But to say that it doesn't exist anymore, or we've gotten over it, is just simply false. And I think it's healthy for us to just recognize it and endeavor to do more.

So what do you do? If you really want to change things, what do you do? Here is what I suggest that you do. You hire somebody at your firm, and you have them work in your international arbitration group, from one of the underrepresented groups-- women, minorities, LGBTQ, or lawyers with disabilities. You give them the work. They hopefully will do the job. And they do the job great, you promote them. And then you'll be on your way.

Secondly, when you are looking for arbitrators, you look for women. Guess what? You look for minorities. You look for LGBTQ if people are out. And that's a whole issue in itself around the world, because some places in the world, it's actually a crime to be LGBTQ, and so people have to stay in the closet just to stay alive. But in the United States, you look for it.

And beyond that, I would say to with regards to lawyers with disabilities, we did have a panel once with a number of lawyers with disabilities talking at the ABA's annual meeting. And it was very interesting to hear what they said about what they had to confront as people with disabilities in what they are doing in their practice. And there's a number of biases and things that operate around them that we need to maybe raise our consciousness about, too, in trying to make sure that they get included too. I decided to stop--

- Can I interrupt quickly? I want to ask you, are you intending to show the rest of your slides? Because we don't see them.

- Yeah. I'm not. I figured, what the hell. I'll just talk.

- No worries. Just wanted to make sure. I just wanted to make sure.

- Yeah, no, no problem. I don't want to make everything longer than it should be. The main point of the slides is to say that there's a lot of heavy attitudes that are out there that have a long history, that actually go back, if I wanted to do it, 500 years. Please, understand how old this problem is. So in 1452 to 1455, the pope at the time wrote to the king of Spain and to the king of Portugal. And Dum Diversas was one, and Romanus Pontifex, where he said, "you have the blessing of God and the protection of God for enslaving perpetually Africans and taking their property." And then in 1478, you had Pope Sixtus who started the Spanish Inquisition, who basically said that you needed to go after Jews, but also go after infidels in Granada. And that was part of that dynamic that's been going on for literally 500 years of a view of oppression.

Now, most of you will say, my god, this guy is talking craziness. No, I'm not. That English translation of that 1478 papal bull was actually only first gotten this year. There's a Latin version that's been getting an English version. And it points out to an effort of basically showing, at that time, European supremacy morphed into what we call today white supremacy over time in the United States. And it just gives you a sense of how old these attitudes are, and what you're up against when you're trying to change these attitudes.

And one of the last ironies, of course, of all this is that, at the center of international trade for the United States for the longest period of time have been Black people. For if you look at all that wealth and all that trade that went on through all those years of slavery, it was on the backs of Black people that that was done. And if you can't deal with that, then you have a problem. And I guess that hits me, because I'm sitting here in Charlottesville, Virginia, where we talk about a journey through hallowed ground. And we see the legacies of all that every day in what we live each day here. So I just leave that with you.

- Thank you so much, Ben. Thank you. And I want to open it up now for a general Q&A, so we can discuss with all the panelists and attendees.

I do see a question here from Mark Gannon in the chat. He said, "how exhaustive should we make our search for diverse candidates? Is there a balance we should strike between our desire for representative spread of candidates and efficiency in the process?" Does anybody want to tackle that?

- Sure.

- Please. Dr. Simpson had her hand up. Let's go with Katherine, and then we'll go to you, Ben.

- The appointment-- your choice of arbitrator is one of the biggest decisions that you're going to make in your arbitration, right next to whether or not you're going to take the case. So be sure to give it exactly as much attention as it needs. I think it's helpful to have some sort of standard to hold on to. And why not-- if you're in the United States, you've got a matter connected with the US, why not think of the US Census and say, look, 50% of law school graduates are women? 15%-- or I think maybe is it 20%?-- are also African-American. Because I know that African-Americans are graduating law school now at rates that exceed their representation in the actual population. Or stick with the Census. Say 15%, because I've got that in my head. And you have that as your goal.

Now, go and do your research and think, who am I really trying to find as arbitrator? What skills does this person need? They need to be able to write an arbitral award. Maybe you'd like somebody with a little bit of mediation experience-- not necessarily forgetting you and the other party to work together, but because you want somebody who can work well with other arbitrators and really get the award written. Maybe you've got an energy case. Do you want somebody who's completely siloed into mining and energy disputes? Or do you recognize that those disputes often have additional elements to them like related to labor, or related to the environment? Or maybe another international-- maybe you need somebody who's at least heard of the Energy Charter Treaty.

Figure out the elements of the person that you're looking for, and go look. Start pulling CVs. And after you've got about 20 CVs, look at everybody that you've collected. And can you say, wait a minute, everybody that I found is white male? I wasn't actually looking for a white male, and yet somehow, whiteness and male has crept into my research. That happens to a lot of people.

And when it happens, you step back, figure out who you were looking for, and you try again. Delete your cookies. Google will spit back the results that it thinks that you're looking for. Or maybe you were excluding people who had photographs of themselves on their websites. Maybe you want to go back and include those. Maybe you weren't looking at inclusive organizations. Maybe, in addition to looking at the ICSID list, where different governments have proposed candidates who they think could resolve the kind of dispute you're looking at, in addition to that, you're looking at the Arbitral Women membership and seeing if you can find somebody there, or you're going to ICA. If you wanted to come to my website and look at the Arbitrators of African Descent list, I think that you will find the arbitrators who you are looking for simply searching through the document.

But what I think you should do is spend a reasonable amount of time making sure that your search results that you're going to be presenting to your client have not been dictated by sexism, racism, ablebodiedism, or heterosexism. And, frankly, you're smart enough to do that and you have the tools to do so, whether it's getting recommendations from-- frankly, many people on this call I would reach out to and have reached out to for recommendations on arbitrators. So I think that's the long and the short answer. You do your research until it's done.

- Ben did you have a comment you wanted to make on that?

- Yeah, quick and dirty. I don't think this is a kind of either/or situation of diversity versus efficiency. These are the kind of false dichotomies that you see people throw out sometimes. I say, please be efficient in your search. Absolutely. Be efficient. But being efficient doesn't mean you can't be diverse.

One of the things I would start out with is saying is, who is trying to find the arbitrator? And is it-- the law firm that's trying to do it, is everybody in this law firm white guys? Is it a diverse law firm? Because if you have a diverse law firm, you might have more discussion of the kinds of candidates that are there. You might not also, but you might also. If you're going to be asking senior partners at the firm who they know, are all the senior partners of a generation where they didn't see anybody of anything except other white guys like themselves? So they're going to be biased already in the terms of the names that they would suggest to you.

You can do this efficiently, but recognizing that there are ingrained biases with regards to the process of even making a who to look at and who to evaluate. If the firm turns out to not be diverse, guess what? Hire diverse people, as I've said from the beginning, and promote them, and have them be in the position to make these kinds of calls and choices.

Secondly, your client. Many of the business clients have very strong diversity inclusion programs that come through their general counsel's office, and your client may have a general counsel staff that is much more diverse than the law firm. And they may want to ask something more about trying to have a little more diversity in the choices than maybe even the law firm people would be. So think strategically, but also be efficient. But that does not mean that you can't get diverse appointments of quality people.

- Absolutely. Now, Guillermo, you had a comment you wanted to make.

- Yes. So very quickly, because I know that there are many other questions out there. So I think it is very important that, when you look at the roster of arbitrators provided by institutions, you also provide feedback to the institutions if you don't find enough diversity. It's important to start pushing back when you see lists that are only composed of certain gender or certain origin. You have to pressure these institutions to provide you with enough diversity in their own rosters, otherwise it's a perfect weighting process. And the same if you are the client on your end, and you are seeking to engage in an arbitration proceeding and the law firm only throws back arbitrators with a certain gender or a certain country of origin. It's up to you also to push back saying, can you find more diverse arbitrators? How come this case involves a gas field in Bolivia and all the arbitrators are male Western, French, or German? Couldn't you find something in the whole list of arbitrators that doesn't comport with those kind of profiles? So it's also-- and that goes back to Ben's points. You have to have some sort of reflection when you're looking at the different options out there, and push back.

And here's another comment related to where to start to find diversity. I think of, for example, ICSID as an institution. They have done a lot also within their own ranks. And going back to Katherine's point, when you look at the ICSID secretariat-- so these are the secretaries of the arbitration tribunals that they operate, and they help the tribunal to reach a decision-- they've really made a huge effort to have a diverse pool of members of the secretaries. And those, at the same time, after spending a couple of years in there, they eventually make it to the law firm.

So when you look at the law firms are more diverse right now that do investment arbitration, many of their female or Latin American or African oriented or Caucasian or from the Caucasus background, they were the secretary at some point. And then they basically learned their task, [? deepen ?] network, and then eventually they were hired by the law firms to become partners or associates, and vice versa. And now they are actually-- now some of them ended up making it to this roster of arbitrators. So those institutions have a lot of power in creating and giving that first opportunity to junior associates or recently graduated from the law schools to go there and learn the task, to do the network, and eventually make it. So never underestimate the power that you have to influence those institutions to bring more diversity to the equation.

- Yeah. I think the slow, steady process of influencing these institutions is going to be essential in making the change over the long term. That's what some of your statistics revealed.

I also want to share, Mireze made a comment in the chat. She said, "it is easier today to call out colleagues when lists prepared are not diverse. Until 10 years ago, it was not. Thanks to the work done by Arbitral Women and--" oh, let's see. Another chat just kind of jumped it. "Thanks to the work done by Arbitral Women and ERA Pledge, it's no longer a shame or difficult to point out the absence of diversity on the list of arbitrators prepared." And I think that gets to your point. I think it takes the work. Arbitral Women has been around for a decade making these points, and now that's a concern that enters people's minds.

- Mireze, please.

- Three decades. 30 years.

- Three decades. Three decades.

- Yeah. And it took us 20 years in order to start to be heard. 20 years. It's only 10 years ago that organizations and our peers, our counterparts, our colleagues, even female colleagues started listening to us and accepting the message. But one thing I also learned by experience is that, if you're shouting, you get nowhere. You need to be perseverant, but you need to show the capacity you have, and you need to show your word. But if you're shouting, nobody would want to listen to you.

So I don't think it serves to be aggressive. And sometimes we see that either in writings or in listening to some people speak about this issue. But the problem is the unconscious bias. It has been like this for centuries. Minds have to change. But you cannot change them from the day to the next. I have seen a huge change in the last 30 years, mainly in the last 10 years. And I hope that this will continue , and I hope that before I leave this world, we will no longer need to speak about diversity and getting to equal representation. But it might still take some time.

- Right.

- So I think-- yeah, go ahead. Sorry. Go.

- Mireze, you Make. Such a good point, which is, for this change to occur and then not to be easily undone, we have to change minds. And that takes a long time. And I think that's what Arbitral Women has been doing, is persuading people of the necessity to ask these questions. Betty posted-- oh, please. What did you want to say?

- Sorry, Colin, just one more comment about statistics. Statistics help us to assess where we stand, as I said earlier. And when I started publishing statistics 10 years ago, I was also criticized, and I was not allowed to do it. Luckily, two other people also started doing it-- Lucy Greenwood and Noyemi Galore. So when we started doing that, the organizations and the users of dispute resolution saw the dearth of numbers in the numbers and saw the discrepancies. And raising the awareness was important. So everyone now understood that publishing statistics, annual statistics, is important to measure the improvement, hopefully. There has been now in the last 10 years. When I started publishing, it was 7.32% of women arbitrators. And last year, we reached 23.4%, which is already good. But we still have a long way to go. So statistics are important. And thanks, Katherine, thanks, Guillermo, for the statistics you showed.

- Can I just jump in, Colin, for one second?

- Please, Ben. Please.

- I would like to say that there are, yes, cultural differences in approaches to be taken with regards to this matter in different parts of the world. But I would just like to say that, I think it's OK for people to be aggressive about this. I think it's OK for people to insist and actually call things out, because at least in my experience, it has not been that calling things out has been something that's been done by too many people, or at all. In the contrary, it's generally been a lot of whispering, maybe, [? and ?] [? hide ?] [? much. ?]

And that part of a calling out that has happened, which is one of the things that happened really that I should congratulate Katie Simpson on, was she actually did the numbers for all the major international arbitration practices of the major law firms in the United States. And they found in their numbers, if I remember right, were there are 3,434 lawyers that do international arbitration in the United States in the top groups that [? GAR ?] or whatever would put. And of those lawyers, only 57 could possibly be Black, which is something like 4%-- in 2021.

And so that kind of number says that being nice, so to speak, about doing it obviously isn't working. Yelling, maybe it doesn't work either. But something's got to figure out to work it out, because that's inexcusable in this year. Actually, no. That's 1%. Sorry. 1.2%. I got it wrong. That's just inexcusable, that in the hiring and promoting in these firms, they would not in their international arbitration group have more people of African origin.

In fact-- it's probably going to make Katie blush here. I apologize. But she went out on her own and found 140 people who are African-Americans or of African descent who are doing arbitration, some in and some outside of these same firms. So it just shows that there's a blockage that these firms have that, I think, is unfortunate. And don't tell me that the blockage is not like the blockages firms have had at various points in our history. Right? About who could be in the firm, was it a white-shoe firm or not and all that stuff, what bright young Jewish lawyers ran into and things like that back in the day. I'm not naive. None of us are naive. So please, we can be innocent, but not naive. And if you really, really want to do something about it, it means hiring and promoting people who do the job well.

And getting over whatever the trip is in your head that makes you think that you can't do this, because it's obviously just a trip. The reason I know that is, when I started working at the ICC, they used to say, oh, women could not be counsel at the ICC because of this, that, and the other. Now we have a president of the ICC Court of Arbitration who's a woman. And obviously, everything's fine. It was just a trip.

- Well, I will say there's a truism in Silicon Valley that says, you can't change something you don't measure. And I think seeing the numbers that Guillermo shared and creating KPIs and then highlighting that and spotlighting that, I think that helps to make the case that changes minds. And I think that there is an easy way to dismiss these criticisms as, well, of course, everybody wants cases. And people that don't get cases, they're going to be upset. They're going to grump about it. But when you look at the data, the objective data, I find that very, very persuasive, and I think that's going to change minds. And that may be something that, over the long term, we can measure the progress.

- Colin, I would agree with you. And then there's another twist. If you don't want cases, as I don't, people will complain about the fact that you're not a player. So you can't win [INAUDIBLE].

- You can't win for losing, Ben. I know how that goes. I just want to surface from the chat, Betty Widget said, "if you only search your own networks, those will be the only people you consider. Find those who have additional networks, and start asking them to ask and get back to you. It's the Seven Degrees of Kevin Bacon game." And I think that's an excellent point. I think we all need to link our networks together a little bit, and I think that will help. I think Katherine made the point that Google is going to keep feeding you the same stuff unless you delete your cookie. So maybe we need to delete our mental cookies a little bit, and that may be part of the problem. Guillermo, do you have any comments on all of this?

- Nope. No, I think reaching out, again, to also universities and law schools that are doing work on this is so important. And actually, that also helps us to show the importance of bringing also more diversity to the law schools. [? About ?] Ben's point that I think the challenge of what we're facing is not only related to arbitration. It's part of also the legal practice in general, the way law schools are structured, the way law school admission works out. So it's an embedded system that has a lot of different tracks.

- Right.

- And so supporting institutions that work on issues of diversity, supporting law schools, universities that work on issues on expanding diversity in the legal profession is so important. And so reaching out to these institutions if you are on the practitioner side helps us to achieve more [? at ?] [? least ?] [INAUDIBLE].

- Absolutely. Absolutely. Let me surface one more question, because we're running out of time. Indranil asks, "thank you so much for the presentation. I have a question about the perception of the independence and impartiality of arbitral tribunals and diversity. Is there a connection between the two? Is a diverse tribunal perceived to be more independent or impartial due to the different perspectives and experiences of the arbitrators? And if so, could this be an additional reason for calling on tribunals to be more diverse?" Anybody want to speak to that?

- So I would say, just very quickly, when it comes to international investment arbitration, it's definitely important to have diversity. Having a civil law background and you're going to be deciding on an issue that involves civil jurisdiction is going to giving a completely different perspective than an arbitrator that comes from an international commercial background, that has only done transactional work, and is looking at this [INAUDIBLE] just from a contractual point of view.

When you're dealing with government actions, when you're dealing in government constitutions, we're dealing with administrative actions from a different jurisdiction, you have to understand the public interest behind those actions. And having someone in the panel that can actually bring some of that perspective is going to make the decision much more richer, and actually is going to benefit the system as a whole, because it's going to show that you are actually interested in listening to the other side, and not Just. Coming into the equation from your Western views of how the system is supposed to play. So at least in investment arbitration, [INAUDIBLE] it's essential to have more diversity from the arbitrators' point.

- Absolutely. Absolutely. Well, I'm cognizant of the fact that we're running out of time here. Mary Ellen asked a great question about more detail on the Ray Corollary Initiative. And I don't want to hand that back to you, Katherine. I know you know a lot about that. Our session tomorrow is focused on improving diversity in US domestic arbitration, and I know I'm going to do a little plug for that. Homer La Rue, who will be presenting, is also very involved with RCI. And I think he's going to be talking in even more detail about that. I don't know-- Mary Ellen asked about the Mansfield Rule. I don't know if, Katherine, you just want to explain briefly what that rule is.

- I'll do you one better. I've put another link into the chat. The National Academy of Arbitrators kindly donated some website space to the Ray Corollary initiative this year, so that it could have a temporary internet home as we are setting up the nonprofit and creating an independent website. But you can find everything here, including the articles that Homer La Rue wrote that the Initiative is based on.

- Great.

- I've put some other things in the chat, the article that Ben referenced that took attendance over that section of our industry. But I also want to draw you to my little pro bono page, because it's got the Arbitrators of African Descent list. Anyone can download it, and I hope that you will. But it's also got the CETA Where Are the Women Project. If I could confess, when that started, it didn't look to me like there were any women in international trade, because my first search results came up, I only noticed the men. And it took a few tries until I saw an Elizabeth in one of the corners. And fortunately, I was on the phone with a representative at the European Commission at that magic moment of finding Elizabeth, and that was where it started. I knew almost none of the women-- none of the 70 women who gave me their bios over that two-week period. I found over 200 women in that two-week period. And I share that to share that this is something that you can do as well for a client who is paying you.

- Absolutely. And let me just say, because I know we are out of time here today, I think the conversation will continue tomorrow-- obviously with a different focus, because we're going to be talking about US domestic arbitration. But I'd just like to see if our panelists have any final comments that they'd like to make before we wrap this meeting.

- I would just add one thing, which is, just remember that people of good will can change the world. And if we were honoring Michel Gaudet that day in 1998, the cross-cultural, cross-racial, cross-national moment of veneration and respect that we tried to do on that day just represents people of good will making things happen.

- Well, I will just say also, Neil and I are here representing the arbitrate.com community. We want to use our megaphone to tackle this issue moving forward as well. Let's all commit to re-meeting here in this room in 10 years-- with Dean Guillermo, at that point, and then we can celebrate the fact that we've made all the changes, we've moved the numbers in the right direction, and that we don't need to have this conversation anymore, because we've achieved the objectives. So 10 years from today, Dean Guillermo, you'll have to host us, and we'll see where we are. But please join us tomorrow for the conversation about US domestic arbitration. Please, can we get round of applause for all of our panelists for this wonderful session?

[APPLAUSE]

- Can we get a link to that tomorrow?

- Yes, absolutely. It's actually going to be in the exact same place that this one is occurring. So if you go to arbitrate.com, there's a banner at the top, and it has all the information with the timing. But it will be at arbitrate.com/zoom, passcode WorkItOut. So we'll send out more email notifications so everyone has the link. So please join us tomorrow, if you can. Thank you everyone for this wonderful conversation today and onward. Let's make the change that we need. All right. Good bye, everyone. Have a good rest of the day.