

# Speak Louder About Arbitrator Diversity: Reflections From MLK Day

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Please **do not** stop talking about gender and racial diversity as it pertains to the arbitrator diversity problem. Of course I know my learned friend penned his proposal (and I think it is a good one) to be a call to action, but I think it is essential to not only continue the conversation regarding arbitrator diversity but to expand that dialogue further.

*"If you can't **fly**, then **run**, if you can't **run**, then **walk**, if you can't **walk**, then **crawl**, but by all means, **keep moving**." – Dr. Martin Luther King, Jr.*

As young African-American practitioner seeking my path to becoming a world-renowned arbitrator (or maybe somewhere just shy of that) these words by the great Dr. Martin Luther King, Jr. resonated in my mind on his birthday (January 15<sup>th</sup>) as I prepared to celebrate his life and achievements and especially as I contemplated this issue of arbitrator diversity. I believe there are a handful of additional avenues that should be utilized in order to encourage and expand diversity. They are as follows:

1. Mentorship. A tradition nearly as old as our profession itself should be used to greater effect. Sure, there are programs like that offered by Young ICCA, Arbitral Women, and Club de Arbitraje Espanol, which offer mentoring to younger practitioners, but there **must** be more of an intentional effort. For you veteran practitioners, arbitrators and institutional staff that value diversity, now reading this article—consider how, if at all, and to what extent you have a relationship with a professional woman or person of color who seeks to be appointed an arbitrator? I assure you, there are numerous listservs, conferences, and other correspondence of these would-be-arbitrators seeking such a guiding hand forward. If you're keen to know where to find such a mentee, he is authoring this piece (shameless plug!). But seriously, that point will be addressed more fully in a subsequent section below.
2. Sponsorship. As an aspiring arbitrator, I am frustrated by the monetary cost to attend many arbitration events, whether they be skills training, or theme-focused conferences or dialogues—Aside from providing tactical advice, and sage wisdom, is the need for financial support. Often, there is a desire to attend trainings and other events that would help an aspiring arbitrator develop skills, expand her network, or otherwise uplift said arbitrator, however, the financial burdens of these events sometimes make the experience cost-prohibitive. Specifically, I am referring to arbitration-centric conferences, trainings and courses. While I am not suggesting that those looking to be supportive fly mentees around the world and finance all aspects of their attendance at one of these events, I **am** proposing some

additional financial consideration. What if these events offered discounted rates for diverse arbitrators? If that is untenable, what if the event allowed attendance on the condition that such diverse arbitrators report on the occurrences at the event or contributed in some other manner? My point is this—If there isn't access to the venues where the conversations and empowerment regarding our profession is being had, then inclusion becomes an ever-distant fantasy.

3. Observers. It is well understood that arbitral proceedings are typically taken as private and/or confidential. However, perhaps counsel for the parties, the arbitrators and the institutions could provide for more opportunities for disinterested third parties, under the compulsion of confidentiality, to observe the various phases of resolution of disputes before the tribunal. Although not the same as an appointment, such experience could help bolster a novice arbitrator's resume.
4. Inclusion. I have been attending arbitration related events in various jurisdictions for the past several years. One disappointing commonality has been the lack of representation and inclusion of diverse speakers, and authors in publications. Admittedly there have been steadily increasing numbers of female authorities, but as we all recognize, the ranks are dominated by, as rightly described in Mr. Benton's article, non-diverse representatives. Having recently organized a couple such conferences, I reflect with some recent impressions on how to achieve this objective. As organizers, we should intentionally seek out qualified diverse speakers and authors. One way to do this is by inquiring of institutions, arbitrators or practitioners. If that line of questioning is unsuccessful, then seeking out groups representing this pool of arbitrator professionals is also an alternative. (eg. Arbitral Women). Frankly, if we honestly cull our own memories, LinkedIn Pages, peer's networks, and other personal resources, diverse arbitrators are there, we must include them. All of that said, I admit, in my own recent event organization and journal preparation, I could have done more to be more intentionally diverse—however, I hope this vantage point spurs others to take different approaches in their next project.
5. Engagement with minority organizations. At this point you may be asking "But Chris, where do we find these diverse arbitrators to mentor and appoint?", and I'm glad you've asked! I am certain that I cannot codify the entire list of organizations you should consider, but aside from Arbitral Women as referenced above, you should contemplate:
  - Arbitral Institutions. Just ask them for the type of arbitrators you're looking for (that one is easy).
  - Ethnic Bar Associations/Legal Societies. Eg. National Asian Pacific American Bar Association, The National Bar Association, The International Association of Jewish Lawyers & Juris, Hispanic National Bar Association. These organizations tend to be U.S. practitioner focused, however, I am confident that similar organizations exist in other States around the world. These organizations are often aware of the practitioners of suitable qualification.
  - Local Judges/Neutrals. While they may have to be careful in their recommendation, other neutrals that operate in the industry or region should be able to provide diverse arbitrators, or know the right place to look to find a diverse alternative.

### **Final Thoughts:**

I know that this conversation, and these recommended actions by myself, Mr. Benton, and the scores of others clamoring for greater arbitrator diversity will be met with push-back. However, I think we must overcome that resistance. I am reminded of one final anecdote before I conclude—

In 1972, the National Collegiate Athletic Association ("NCAA") in the United States implemented Title IX of the Education Amendments Act of 1972, which changed the landscape of college athletics. In summation, it required, under threat of financial or administrative penalty for non-compliance, that American public universities must maintain equal numbers of athletic scholarships for male and

female athletes. This revolutionary act of leadership enshrined a spot at the athletics table for generations of female athletes at both the collegiate and professional level. Some critics at the time said that the NCAA should let the schools do what they want and in their own time. Other opponents, railed against the NCAA's actions as overreach, and said that it would destroy college athletics. Nearly 50 years later, we know that was not the case. However, had it not been for the NCAA, we may have never known the names Brandi Chastain, Dawn Staley, or Pat Summit. If not for the actions of arbitral institutions, we as practitioners, and calls for change in policy as advocated by Mr. Benton, how many potential arbitrators' names will remain unknown? "The time is always **right** to do what is **right**." (MLK, Jr.)

It is encouraging and reaffirming to know that this conversation is continuing, and that apparently we are at the time to **act**. It is my hope that I am exploring the field as the path continues to clear for more diverse arbitrators. I equally hope that you, dear reader, if you are unable to **appoint**, then **recommend**, if you can't **recommend**, then **mentor**, if you can't **mentor**, then seek out those to **include**, but by all means **keep talking** - the next generation of clients and arbitrators needs you to.