CPR News

CPR's Howard Law-Ray Corollary Initiative Event Seeks to Expand the ADR Profession's Diversity Efforts

BY KATHERINE SIMPSON

What I loved about the event is that never before has anyone or other organization crafted and executed such a responsive solution to a targeted problem as what I saw unfold. It was history in the making. Everyone knows there's a DEI problem in neutral selection. Inviting neutral selectors and diverse neutrals to an event that rivaled the best matchmaking or speed-dating forums was genius. It directly challenged the notion of the recurring statement, "I don't know any diverse neutrals," and it makes diverse neutrals feel like change is in progress. I am hopeful that the next time that parties and counsel seek diversity in their neutral selection, they will reach out to the neutrals that they met at Howard Law or consult the registry of resumes. They will be hiring us not because we are diverse—they will be selecting us because we are exceptional neutrals who just happen to be diverse.

— *New York-based JAMS Neutral Damali Peterman*

* * *

On May 16, selectors (i.e., actors that appoint neutrals for their conflict resolution matters) and neutrals gathered in Washington, D.C., for a historic evening at Howard University School of Law.

The event, "Driving Toward More Diverse Selection of Neutrals: The Ray Corollary Initiative at Work," was one of a kind: It included a

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International ADR

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needs-based solutions to conflicts and harm; including mediation for civil matters."

The plan is to repeal a 2008 law on arbitration and conciliation in commercial matters, to be replaced by separate laws governing arbitration and mediation. It will allow the KIAC to be the default appointing authority in ad hoc matters, and fill in gaps in the current law's framework.

The new Rwandan mediation law, according to the report, will adopt the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018). The report also vows that the nation will ratify the United Nations Convention on International Settlement Agreements Resulting from Mediation, best known as the Singapore Convention on Mediation (see www.singaporeconvention.org).

The report estimates implementation costs will require additional funding, on top of current institutions' capacity building efforts, of nearly $2.1 million over a five-year period through 2027.

With this policy, national or international private institutions will be allowed to provide ADR services, especially mediation used by the citizens in civil, commercial, labor, and administrative cases. Reports from the judiciary institutions indicate that the monetary value of cases that were successfully resolved through mediation rather than litigation amounted to more than 11 billion Rwandan francs. Hudson Kuteesa, "Rwanda: Over Rwf11 Billion Saved Through Mediation Mechanisms—Judiciary," *New Times* (Nov. 28, 2022) (available at https://bit.ly/3HFjyEz). See also Edwin Musoni, "Judiciary banks on mediation to reduce backlog in courts," *New Times* (Oct. 14, 2022) (available at bit.ly/3YcLtDe).

Currently, the Rwanda Bar Association is raising awareness for the support of ADR, still reportedly a newer phenomenon for lawyer dispute resolution where there is some resistance, but with commercial developments pegged to be early targets for reform. Daniel Sabiiti, "Rwanda Makes a Step Further in Legal Mediation System," *KT Press* (March 21) (available at https://bit.ly/45ZiPK2); Hudson Kuteesa, "Are lawyers blocking mediation efforts?" *New Times* (March 21) (available at https://bit.ly/43lg3gg).

The ADR Policy Report acknowledges that ADR mechanisms are known as rapid, confidential, and flexible processes compared to litigation. The idea is simply that having more institutions that provide ADR services will allow citizens to have better access to justice.

"Ultimately," the report states, "this Policy reflects Rwanda's apparent destiny to make sense of the incomprehensible and to demonstrate the full strength of the human spirit to rise above the difficulties of the past to meet the promises of the future."

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"speed dating"-type exercise that facilitated selectors' opportunities to talk with arbitrators and other ADR professionals. It was different, and a step above traditional conference networking where, following a panel discussion, everyone would simply be left to their own devices to network during a cocktail hour.

The May 16 event was specifically designed to break down obstacles to the selection of diverse neutrals in ADR.

Indeed, it was a historic first step in disproving the all-too-frequent lament and demonstrably false trope, "There aren't any," that has too often been used to excuse the failure to even consider the appointment of well-qualified neutrals who are diverse.

The Howard Law diversity, equity, and inclusion event facilitated introductions between selectors and highly qualified and readily appointable persons of color, women, and other diverse candidates. As Timothy K. Lewis, an arbitrator and former Third U.S. Circuit Court of Appeals judge based in Schnader Harrison Segal & Lewis's Pittsburgh office (and former board member of CPR, which publishes this newsletter), stated,

> The "Driving Toward More Diverse Selection of Neutrals" event was an important step toward enhancing opportunities for both selectors and ADR specialists because it provided a chance to actually sit down and get to know each other. There's just no substitute for a direct, in-person encounter between individuals committed to opening doors of opportunity and individuals who are ready, willing and—most important—*able* to walk through them. That is what this program accomplished. But its real success will be measured by the results it, and more programs like it, might achieve.

Transforming Appointments

Indeed, the selectors who participated in the event can transform the phrase, "I only appoint arbitrators and mediators whom I know" into a statement of inclusion, rather than one of exclusion.

Many of the featured neutrals were panel members with JAMS, CPR Dispute Resolution Services, the American Arbitration Association, and peer-nominated organizations like the National Academy of Distinguished Neutrals, the National Academy of Arbitrators (NAA), and the College of Commercial Arbitrators.

Howard Law professor and co-chair of the school's ADR Program Homer C. La Rue, opened by providing a brief history of the Ray Corollary Index, which co-sponsored the event (more on the groups, including *Alternatives*' publisher, the CPR Institute, below). The RCI began with a law review article by La Rue—who also is an arbitrator, and RCI

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board chairman (see https://laruedisputeresolution.com/)—and Alan Symonette that was published in the *Howard University Law Journal*, "The Ray Corollary Initiative: How to Achieve Diversity and Inclusion in Arbitrator Selection," 63 *Howard L.J.* 215 (2020) (available at https://bit.ly/3N3KOAz).

The article describes the studies that show that when there are at least two diverse candidates on a hiring slate, and those candidates make up at least 30% of that hiring slate, the chances that a diverse candidate will ultimately be hired is disproportionately higher than their representation on the slate.

Below that mark, however, the converse is true: there is almost no chance that a diverse candidate will be hired.

The article proposed applying the 30% metric that has been used successfully in the Mansfield Rule in the employment context, to arbitrator appointments. (See an overview of the Mansfield Rule at https://bit.ly/43ul8mN). That's the goal of the Ray Corollary Initiative, which works to increase diversity, equity, and inclusion in the selection of arbitrators, mediators, and other ADR neutrals.

Thus, pursuant to the RCI Pledge—see www.raycorollaryinitiative.org/the-pledge—signatories set specific goals for slates of neutrals from which appointments are made. Thirty percent of each slate of neutrals must be "diverse" within the meaning of ABA Resolution 105 (available at https://bit.ly/40oL69n), and signatories must track their progress in meeting that goal.

As Prof. La Rue has often said, "Without a metric and a commitment to collect the data related to the application of the metric, diversity in selection will remain for the next 50 years what has been for the past 50—merely an aspiration." This metric, like the action that followed through this event, are indeed moving DEI from aspiration to implementation.

The Washington event was Howard Law Dean Danielle Holley's final public appearance before she takes the helm as president of Mount Holyoke College in South Hadley, Mass. Holley provided insight into Howard Law's unique and innovative history.

She told the audience about attorney Charlotte Ray, an 1872 Howard Law graduate, and the first Black woman to be admitted to a U.S. bar. The Ray Corollary Initiative is named in her honor.

Prof. La Rue then recognized the presidents of the three arbitration providers that have committed to improving diversity in ADR by signing the RCI Pledge. Bridget Mary McCormack, former Michigan Supreme Court chief justice, who joined the American Arbitration Association in New York as president and CEO in February; JAMS' President Kimberly Taylor, based in Irvine, Calif., and Allen Waxman, New York-based CPR's president and CEO (and *Alternatives*' publisher)—the three most significant U.S. appointing authorities—were on the dais, and members of their teams attended the event, getting to know neutrals and selectors.

Neutrals and selectors alike said they appreciated the presence and commitments of the three organizations, all of which maintain neutrals' rosters. As JAMS' London- and Atlanta-based arbitrator, Rebekah Ratliff, reflected, "This was a historic event at a historic location. What was most significant to me was the impact on the CEOs of the ADR providers who were present. They were inspired to contribute to the momentum of the RCI effort."

In his closing remarks, Prof. La Rue challenged all involved in the selection of ADR neutrals to find ways to replicate the Howard Law event. He suggested that such "greet & meet" events could be held in conjunction with regional and national conferences held by bar associations and other membership organizations.

La Rue noted that RCI will partner with other organizations to expand opportunities for selectors and neutrals to meet and to expand exposure to the experts who can help increase ADR diversity.

The Washington event showed off some of those partners. The event was made possible through the efforts and support of *Alternatives*' publisher, the International Institute for Conflict Prevention and Resolution-CPR. Howard Law and CPR sponsored the event along with Association of Corporate Counsel's ACC Foundation; the RCI itself; the American Bar Association's Section of Dispute Resolution's Women In Dispute Resolution Committee, and the Minority Corporate Counsel Association.

Not a Nicety: Building ADR

Participants recognized that diversity is not a moral imperative or cosmetic nicety. Improving the diversity of neutrals appointed in ADR cases could be one step toward ensuring ADR's sustained appeal to parties and governments, alike. It is also a way to ensure that ADR is fully using all of the talent available.

"Absent the use of the full array of talented neutrals," said Homer La Rue, "ADR faces an existential crisis. That crisis is an unwillingness by would-be users to accept as fair a system of justice that selects decision-makers and facilitators only from a narrow demographic of the population."

A panel of experts—moderated by this author, and including Seth Kraus, chief legal officer at Endeavor Operating Co., which operates entertainment and sports agent firms and related companies in Beverly Hills, Calif.; Audrey Roofeh of Mariana Strategies, a Washington, D.C.-based workplace consulting firm, and CPR's Ellen Waldman, who is vice president of advocacy and educational outreach—discussed the increased profitability and sustainability that diverse teams provide.

Waldman explained that "neutral selection remains a highly subjective referral-based process, subject to both the status quo and familiarity biases. The result is a population of busy neutrals that skews toward old, white males. If we are to bring forth a more representative, diverse

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generation of future neutrals, we must adopt more objective, evidence-based tools—tools like the RCI."

Audrey Roofeh reminded the audience that, "at its core, inclusion and diversity is a process that places value on everyone—not just some people. In order for inclusion and diversity efforts to be successful in ADR, everyone in the ADR community needs to embrace their value and role in ADR's success."

The comment resonated with a number of those present. Keisha Williams, an RCI board member who is program director for labor relations at the University of Maryland, in College Park, Md., noted that "the event was abuzz with enthusiasm for driving diversity in the selection of neutrals. Selectors and neutrals alike expressed their appreciation for the RCI shepherding this effort, which has long been necessary as businesses, the government, and society continues to recognize that diversity leads to better outcomes."

Washington, D.C., attorney Merril Hirsh, who serves as executive director of the Academy of Court-Appointed Neutrals, a Tallahassee, Fla.-based advocacy and training association, expressed similar views. "ADR prides itself on being a self-determined process," noted Hirsh after the event, "but this puts a thumb on the scale against creating new opportunities for people the parties do not already know. It is important to create new pathways for people to get known and be accepted, and one way to do that is what the program did: put selectors and potential neutrals in a room together to talk."

After the panel discussion, attendees enjoyed a reception and then broke into small groups made up of selectors and neutrals. While selectors and neutrals were free to move among rooms, the interview rooms were assigned according to whether the neutrals/selectors were seeking ADR opportunities/engagements related to labor/employment, commercial matters, or international arbitration.

Organizers planned to facilitate speedy interviews by signaling to participants that it was time to move to a new partner at regular intervals. This timing and the subject-area division helped selectors efficiently find the neutrals that would be most relevant to their later searches.

Views on the Event

Following the event, attendees offered praise and comments.

Myron Lloyd, attorney and lead counsel for global information technology at General Motors Co. in Detroit also expressed gratitude: "A special thanks is owed to the organizers for creating a platform that amplified the critical need for greater diversity among neutrals in ADR. I came away enlightened and inspired. The work these organizations are doing fosters trust, enhances creativity, and promotes fair outcomes, ensuring that the resolution process truly reflects the complexities and nuances of a diverse society."

Washington, D.C. Dechert LLP Partner Alexandre de Gramont noted, "It was a wonderful event. It confirms once again that the talent and diversity of available arbitrators is enormous and that diverse panels should be the norm rather than the exception."

Indeed, recent events in ADR—including the continued exodus from the Energy Charter Treaty (for details, see www.energycharter.org), which calls for arbitration of disputes, and the shrinking of arbitrator mandates in, at least, U.S. employment arbitration (see, e.g., Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, at https://bit.ly/3VlvfpP)—point to a compelling conclusion: ADR's appeal and its future may depend on its ability to embrace diversity and inclusion in the selection of neutrals, without which it is simply not possible for ADR to use all of the talent that is available.

Stacey M. Cameron, who works as a dispute resolver across disciplines based in Atlanta and New York City, reported that she enjoyed re-connecting with other neutrals who she stated helped make the space open to everyone. She explained how seasoned neutrals like New York-based JAMS neutral Lisa D. Love and Washington, D.C.-area neutral DeAndra Roaché, who heads Cynergis Dispute Resolution Services, helped create an ideal atmosphere by welcoming new neutrals at the event. They and others helped create a safe space, Cameron said, one where everyone was open and willing to talk and share with one another.

Cameron created a video with event highlights (available on her website at https://bit.ly/3MEQlMN). DeAndra Roaché also remarked that she "enjoyed meeting selectors who seemed genuine in their interest in appointing talented diverse neutrals."

Differing Skills

While there is significant crossover between the skills involved in different branches of ADR, each area has its own requirements and diversity concerns.

For example, labor arbitrators must commit to what is called "full neutrality." This means that they must refrain from the practice of law and from engaging in activities that involve representing partisan interests in disputes while having a labor arbitrator practice.

"Double-hatting"—acting simultaneously as counsel and as arbitrator (albeit in different cases)—is strictly prohibited in labor arbitration. While double-hatting is permitted in international and commercial arbitration, it is now subject to new soft-law restrictions (contained in UNCITRAL Working Group III's draft Code of Conduct for Arbitrators; see press release details at https://bit.ly/3CbzTyv). Labor, commercial and international arbitration face significant diversity hurdles.

According to a February 2023 study, the demographics of established labor arbitrators have changed only marginally since 2015. Harry Katz, Alexander Colvin, Ariel Avgar, Katrina Nobles & Mark Gough, "2022 NAA Member Survey: Diversity, Practice Characteristics and

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Remote Technologies" (ILR Scheinman Institute, Cornell University February 2023). This is despite efforts to increase diversity of neutrals.

Nevertheless, 85% of the respondents—established labor arbitrators—view the lack of diversity among labor arbitrators as a problem and even more, 90%, support affirmative steps to increase diversity among labor arbitrators. Consistent with that viewpoint, the event was welcomed by labor arbitrators and arbitrator selectors alike.

RCI Board Member Michael Gan, a partner in Washington's Peer, Gan & Gisler, who frequently represents labor unions and employees in collective bargaining, arbitration, and litigation, exclaimed: "I have waited for 30 years for an opportunity like this and the RCI event at Howard Law delivered! So nice to engage in thoughtful conversation on making diversity a priority in the selection of arbitrators with other selectors and neutrals alike."

> 'Without a metric and a commitment to collect the data related to the application of the metric, diversity in selection will remain for the next 50 years what has been for the past 50—merely an aspiration.'

CPR facilitated thoughtful conversation by priming participants to engage in meaningful quasi-interviews. CPR prepared a list of possible interview questions to help participants prepare for the event, and to help ease any tension that participation in this event might create conflicts of interests. The questions ranged from topics such as arbitration philosophy to ADR billing rates, and they helped participants engage in focused discussion.

United Airlines Inc. Director of Labor Relations and Legal Strategy, Eric Mennel, of Chicago, also found the gathering helpful: "The structure of the event was excellent. First, we got to meet the neutrals in an informal reception, but then we met with them with other selecting users. It was great to listen to them explain their experience as well as their perspective in that setting. We met at least two neutrals whom we plan to contact for further discussion."

This event was also welcomed by selectors in the commercial and international spheres. Lisa Richman, a partner in the Washington, D.C., office of McDermott, Will & Emery, stated, "The event was the perfect combination of an opportunity to connect and mingle with in-house and outside counsel who are interested in increasing diversity in ADR and to engage in fast-paced rounds of quasi-interviews with some of the hidden gems of diverse arbitrators. The resumes of these individuals might not otherwise have crossed my desk. This was a creative event expertly organized. …"

Liz Snodgrass, a partner at the Washington, D.C., office of international law firm, Three Crowns, explained that "a key part of the service we offer is to advise clients on the selection of arbitrators and to help them broaden the pool of talent from which appointments are drawn. We therefore welcome opportunities such as this to expand our own networks to include a larger number of diverse candidates. Thanks and congratulations to CPR for helping us help our clients."

Reflecting on the event, Arif H. Ali, a partner in the Washington and London offices of Dechert LLP, who participated as a neutral and as a selector, stated, "CPR has long demonstrated unparalleled leadership in promoting diversity, equity and inclusion in the field of dispute resolution. This forum was yet another example of that leadership. The opportunity to interact with diverse neutrals, sharing personal stories and professional experiences not only helped build community, but also helped lengthen my list of candidates with excellent qualifications whom I will now consider for appointments."

Arbitrator and mediator Reginald A. Holmes, who has a global practice based in Pasedena, Calif., remarked, "The best thing about the 'Driving Toward More Diverse Selection of Neutrals' event was that it took place at all. Good things always happen when people and organizations needing help are put in an open, friendly and engaging environment with people with the experience, skills and desire to provide that help. All the more so when the help needed is to engineer the resolution of disputes and conflicts, restore harmony and facilitate the return of all parties to purposeful and beneficial pursuits. The event was superbly executed and no doubt will result in the fairer and more effective selection of neutrals. That benefits everyone. Kudos to the RCI, CPR, and the other organizers for presenting the event. Let's hope it's the first of many to come."

The Institutions Speak

Each institutional leader shared their views on the event, the RCI Pledge, and improving diversity in ADR.

American Arbitration Association-International Centre for Dispute Resolution President and CEO Bridget McCormack stated that,

> The American Arbitration Association is thrilled to be a signatory to the RCI pledge. Our sleeves are rolled up and we are ready to be proactive in building a future for ADR in which the public can have confidence. We are grateful to be a part of this historic effort. This event was a first, and a great success: instead of talking about the importance of building a diverse bench of neutrals, the program went ahead and built the foundation. The presentations were impactful, but the opportunity for market buyers to meet talented diverse neutrals was one-of-a-kind. Sometimes to get something hard done you just have to do it. Homer [La Rue] and his team are doing it.

Kim Taylor, JAMS' president, remarked,

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> Signing the RCI Pledge is an important step for JAMS in reinforcing our longstanding commitment to diversity in ADR. By signing onto the RCI, we have joined an important effort and detailed plan of action to create a more equitable, fair and inclusive standard within the industry. We believe that a more diverse selection of arbitrators, mediators and other ADR neutrals is essential in providing a broader perspective and can inspire greater confidence amongst law firm clients in the fairness of the ADR process. We are encouraged by the progress that this initiative has already made, including the collaboration that it has inspired across the ADR industry, and we are proud to be a part of it."

Allen Waxman, CPR's president and CEO, who also is on the RCI Board, and whose organization was among the first to sign the RCI Pledge, summed up the night by noting,

> For ADR to reach its full promise in offering a reliable, just means for resolving disputes, it must deploy all, not *some*, of the talent available to arbitrate and mediate disputes. Experience has shown that this is not going to happen without affirmative efforts to overcome biases—unintended or otherwise—and to encourage the participation of a more diverse set of neutrals than had previously been deployed. It is the reason that CPR signed onto, and began implementing, the RCI several years ago. And, it works. In our experience, parties are considering and deploying a greater diversity of neutrals to meet their needs. The event at Howard highlighted the virtues of the RCI and also practiced what it preached by bringing more diverse people together to grow more familiar with one another. The engagement of the selectors with neutrals they had never previously met underscored the hunger for expanding networks and connections. We are hopeful that this will actually turn into more diversity and more excellence in the field.

Waxman concluded that CPR is thankful to its co-sponsors at the Howard University School of Law, RCI Inc., WIDR, the ACC Foundation, and MCCA. "We also join the other major domestic, arbitral providers, AAA and JAMS, in persisting at these efforts and promoting more of these events," he said.

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In addition, the RCI is grateful to its Board of Directors members for their tireless commitment to the RCI mission and thanks them: Board Chair Homer C. La Rue; Vice Chair Dr. Katherine Simpson; Treasurer Alan Symonette; Secretary Sarah Espinosa; and Board Members Michael Gan, Andrea Gansen, Chris M. Kwok, David Allen Larson, Rebekah Ratliff, Allen Waxman and Keisha Williams.