

ACR-GNY Roundtable Breakfast | July 1, 2021

ZOOM MEETING PUBLIC CHAT TRANSCRIPT

- 01:22:54 Niki Borofsky | JAMS NYC: Welcome to all! This meeting is being recorded, and the video and public chat transcript will be available by next week on the ACR-GNY website at: <https://acrgny.org/RTB-Videos>
- 01:23:52 Niki Borofsky | JAMS NYC: Welcome to Breakfast number 239!!!
- 01:26:39 Kenny Green (Stamford, CT): What was the name of the book Dennis mentioned he was reading? Sounds like an exciting book.
- 01:27:53 CUNY Dispute Resolution Center: Noise
- 01:27:59 Susan Glatki - Massachusetts: While I look forward to mediating in person again, I hope you keep these roundtables virtual. I have been to many in the past year and find them so good. Since I live in MA I would not be able to attend.
- 01:28:12 Niki Borofsky | JAMS NYC: Welcome to Professor La Rue!  
<https://laruedisputeresolution.com/>
- 01:32:38 Niki Borofsky | JAMS NYC: National Academy of Arbitrators: <https://naarb.org/>
- 01:43:47 Lou Lenhartsville, PA: What if the selectors are diverse persons
- 01:44:02 Niki Borofsky | JAMS NYC: Welcome to everyone joining late and apologies regarding our Zoom link confusion this morning. Professor La Rue's presentation is being recorded, and will be available on the ACR-GNY website at: <https://acrgny.org/RTB-Videos>
- 01:44:34 Niki Borofsky | JAMS NYC: The Rooney Rule:  
[https://en.wikipedia.org/wiki/Rooney\\_Rule](https://en.wikipedia.org/wiki/Rooney_Rule)
- 01:44:41 Lauren Jones Watkins: Is there some place we can get those selection statistics? That is very powerful.
- 01:46:16 Niki Borofsky | JAMS NYC: The Mansfield Rule:  
<https://www.diversitylab.com/mansfield-rule-4-0/>
- 01:47:40 Harvey Newman West Palm Beach, FL: Is this named after Senator Mansfield?
- 01:48:18 Niki Borofsky | JAMS NYC: @Lauren Jones Watkins: Homer's article in the Howard Law Journal contains many of the citations and stats | The Ray Corollary Initiative: How to Achieve Diversity and Inclusion in

Arbitrator Selection |

[https://www.americanbar.org/content/dam/aba/events/labor\\_law/2021/midwinter/adr/materials/increasing-diversity-in-arb.pdf](https://www.americanbar.org/content/dam/aba/events/labor_law/2021/midwinter/adr/materials/increasing-diversity-in-arb.pdf)

- 01:48:40 Lauren Jones Watkins: Thanks Niki!
- 01:48:51 Niki Borofsky | JAMS NYC: The Ray Corollary Initiative | <https://laruedisputeresolution.com/raycorollaryinitiative/>
- 01:50:01 Chuck Newman NYC: Was religion ever considered as a factor of diversity? Since it is included in so many diversity definitions, is there a reason it's not included here?
- 01:54:10 Giovanna Del Nero (Brazil / NYC): Hello everyone, thank you for this wonderful and insightful event! I have some questions. Do you think there is a way of the public entities involved in dispute resolution, as for example Court's mediation and arbitration programs, to also assume this commitment to include diverse neutrals? Do you think that in public institutions is easier to include neutrals considering, for example, that in public programs usually the parties are not entitled to choose the neutral but the Program's administration?
- 01:56:02 Cheryl Agris: As to who would be included in the pool, have you envisioned that the pool would just have 30% "diverse" members? There is always the risk that the 30% could include, e.g., all women, persons of color, etc.
- 01:56:52 Laura Kaster: Many corporations already have adopted have adopted diversity initiatives but they often fail to include the law firm's selection of experts and neutrals - if we simply encouraged the inclusion of metrics year over year of selection or recommendations of neutrals and if the corporations required improvement - that would help us move the needle=. There is also a CPR clause that requires selection of at least one diverse neutral on an arbitration panel of 3 - the clause could be adapted to any provider : The parties agree that however the arbitrators are designated or selected, at least one member of any tribunal of three arbitrators shall be a member of a diverse group, such as women, persons of color, members of the LGBTQ community, disabled persons, or as otherwise agreed to by the parties to this Agreement at any time prior to appointment of the tribunal.
- 01:57:16 Chuck Newman NYC: Since we know selectors (A) will reach out to neutrals they know (B), could we suggest that A ask B for recommendations of diverse neutrals known by B? Either to be a co-member with B of a neutral panel; or simply A saying: "You know we love you, B, but can you introduce us to some diverse neutrals so we can enlarge our quiver?" Is that OK under the rules of ADR service provider orgs?
- 01:57:48 Laura Kaster: <https://www.cpradr.org/resource-center/model-clauses/arbitration-model-clauses/diversity-focus>

- 01:58:03 Niki Borofsky | JAMS NYC: Homer C. La Rue's contact information:  
  
Arbitrator Mediator Professor of Law  
Vice-President, National Academy of Arbitrators  
Howard University School of Law  
Founder and Director, Howard Law ADR Program  
5305 Village Center Drive, Suite 339  
Columbia, MD 21044  
Email: [homer@laruedisputeresolution.com](mailto:homer@laruedisputeresolution.com)
- 02:01:07 Harvey Newman West Palm Beach, FL: In general pledges have a powerful effect on better outcomes.
- 02:01:54 Laura Kaster: We know that selection on the basis of “fit” results in biased decision making
- 02:02:29 Shreya Shankar, Bangalore (she/her): Thank you so much for this session!
- 02:02:59 Mich Thompson: Great point
- 02:05:31 Shakira Abdul-Ali: Great question - reflecting corporate CULTURE. AND bringing in diverse candidates - eg more Black and Brown folks - will, by default, IMPACT/CHANGE corporate culture. Are the organizations READY for that?
- 02:06:07 Mich Thompson: It has been displayed that some corporations will use the leverage of picking diversity just to sadly just look like diversity on the surface, yet will conduct corruption and maintain implicit bias and remain with no change or transformation
- 02:06:52 Niki Borofsky | JAMS NYC: Many institutions provide tools like DEI clauses: JAMS | <https://www.jamsadr.com/pdf-viewer.aspx?pdf=/files/Uploads/Documents/JAMS-Diversity-Inclusion-Rider.pdf> | CPR | <https://www.cpradr.org/resource-center/model-clauses/arbitration-model-clauses/diversity-focus>
- 02:07:46 Nancy M. Thevenin: Many thanks for this excellent presentation and discussion!
- 02:08:49 Richard Brigham: ACR requires its chapters to appoint a Diversity Inclusion point person to the chapter board of directors. Are there any tips for the function of that role in the organization?
- 02:10:05 Susan Glatki - Massachusetts: This is great when there are already diverse neutrals to include. I think the bigger question - the earlier question is how to increase the number of diverse neutrals?. How should we go about encouraging members of diverse communities to consider being mediators?

- 02:10:51 Niki Borofsky | JAMS NYC: Great resource from the ADR Inclusion Network on how to plan inclusive events and programs:  
<https://static1.squarespace.com/static/596f7177f5e23161e2ee5cf8/t/5cd1d0559e8f7f0001bbdf39/1557254229871/ADR-IN+Tip+Sheet+on+Inclusivity.final+5-6-2019.pdf>
- 02:11:58 Maria R. Volpe - NYC: All of the recordings are posted at [www.acrgny.org](http://www.acrgny.org) The link will also be sent to everyone who registered asap.
- 02:12:02 Richard Brigham: Thanks Niki.
- 02:12:18 Judith McKay: Thank you for all of these helpful links
- 02:12:51 Niki Borofsky | JAMS NYC: Watch this space for a forthcoming article of relevance:  
<https://cumberlandlawreview.com/>
- 02:13:07 Harvey Newman West Palm Beach, FL: The Mansfield Rule is named after Arabella Mansfield, the first woman admitted to the bar in the US.
- 02:13:30 Michael Cassandra: Thank you, Professor La Rue. In this discussion are there any issues that you see with enlarging the pool itself with all types of diversity in this field.. Is the field attracting enough diverse persons?
- 02:14:11 Mary Austin NYC: Harking back to the Rooney Rule in football — it seems that coaches of color once hired have a much shorter leash. They generally get fired pretty quickly compared to white coaches with similar results. They also seem to have a much harder time getting hired for the next big position. In the legal/neutral arena, a persistent problem seems to be that a diverse neutral gets at best one chance to hit it out of the park or else be deemed lacking. It would be great to stress that inclusion requires that diverse candidates be evaluated on the same longer-term scale as others. You lose a lot of talent when you make snap judgments on the basis of one experience.
- 02:14:54 Richard Sussman: To "increase the size of the pool," the ADR community needs to make becoming an ADR professional a "cool" economically viable choice. In early 2000's, members of ACRGNY took a first step when they developed the "STOP" (Students Teaching Options for Peace) program in a few predominately minority population NYC public schools. It worked to reduce violence among students.
- 02:16:04 Teresa Calabrese she/her: This is a great program and shout out to you Homer-you were my professor at CUNY Law and it is great seeing you after many years!
- 02:16:45 Ellyn Rabinowitz Nyack NY: Thank you for the presentation. Is there research available how often parties in a dispute directly request diverse neutrals - a woman and/or people of color. As a psychotherapist as well, more and more - clients are requesting therapists they feel can relate to their culture, background and ethnic group.

02:16:54 Laura Kaster: We know a lot of studies that demonstrate that there is better decision making by diverse groups - it causes the participants to avoid group think and to make the participants justify their approach

02:17:35 Laura Kaster: Participation of women on corporate boards directly correlate to improved financial results

02:18:39 Cheryl Agris: As to who would be included in the pool, have you envisioned that the pool would just have 30% "diverse" members? There is always the risk that the 30% could include, e.g., all women, persons of color, etc.

02:19:47 Niki Borofsky | JAMS NYC: @Ellyn: One relatively well-known McKinsey resource (third in a series of reports on the value of diversity) | Diversity wins: How inclusion matters <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters?cid=eml-web>

02:21:32 Harvey Newman West Palm Beach, FL: Ellen, perhaps the client's culture, background and ethnicity are part of their problem and choosing a non-familiar actually will help them.

02:22:16 Bathabile Mthombeni: Gender equity can be deceiving. I believe that it is still important to stratify by ethnicity when considering gender.

02:23:23 Junia Mohamed, New York, Alum Cuny Law 1990: Teresa Calabrese hi from Junia Mohamed-Roc class of 90

02:23:28 Richard Sussman: The tragic flaw of this effort was that we didn't "tap the corporate culture" to invest in the development of more STOP-like programs and promote ADR Culture and education at higher levels of education. No reason why we shouldn't revive these efforts now.

02:23:35 Ellyn Rabinowitz Nyack NY: Thanks for your responses to my question.

02:24:07 Allan Marks NYC: Can we write to individuals in attendance?

02:25:02 Maria R. Volpe - NYC: yes

02:25:31 Niki Borofsky | JAMS NYC: A little information about SPIDR: <https://acrnet.org/page/SPIDR?>

02:26:00 Allan Marks NYC: It only opens to contact co-hosts

02:26:12 Shakira Abdul-Ali: will the Chat comments be available after this workshop?

02:26:42 Alashia Chan, NJ: Is the standard to rely on candidates to self-identify as diverse?

02:26:47 Teresa Calabrese she/her: @Junia Mohammed-Roc-hi from '87!

02:27:13 Hilary: In South Africa-post apartheid, we have achieved complete diversity in our ADR community. Anyone interested to hear more, I am contactable on hilarymof@mweb.co.za. I now live in NY. Hilary

02:28:07 Niki Borofsky | JAMS NYC: A resource evaluating STOP: Evaluation of Violence Prevention Programs in Four New York City Middle Schools, 1993-1994 (ICPSR 2704) | <https://www.icpsr.umich.edu/web/NACJD/studies/2704>

02:31:48 Shakira Abdul-Ali: Seems like the "trap" is not aggressively recruiting more diverse candidates than just 2.

02:32:45 Shakira Abdul-Ali: No. You don't help them by lying to them

02:34:50 Maria R. Volpe - NYC: To ask a question or make a comment, you can raise your hand. Go to your name, click on raise hand'

02:36:48 Sandra Harris: Thank you for raising this issue!!!!

02:36:49 Shakira Abdul-Ali: OMG!!! YES!!!!!!

02:37:16 Fatima Argun: great point on the culture in which POCs have to navigate

02:39:33 Isis Rivera, NY: institutional bias is the result of implicit biases

02:41:21 Natasha Vernon: It would be helpful if Tsipora explained what she means by "unqualified." I believe she said that she trained a cohort and then realized that the minorities were unqualified. Please correct me if I got that wrong. It would be helpful if she explained what "unqualified" means to her.

02:41:59 Deirdre: Thank you Shakira!

02:43:40 Bathabile Mthombeni: LOL!!!

02:46:05 mgenoa: Thank you for an outstanding discussion

02:46:06 Richard Sussman: To accelerate the rate at which the "arc of history bends towards justice," we must persuade some of those who resist that justice is in their interests, too!

02:46:15 Bathabile Mthombeni: I would love for that to be the case. We've been making that case for over 150 years. Let's figure out why the message isn't getting through.

02:46:15 Teresa Calabrese she/her: Thank you Shakira and Bathabile

02:46:16 Margo Cates: Excellent lecture. thank you.

02:46:24 Sandra Harris: Great presentation. Thank you so much. Have a nice day everyone.

02:46:32 Bathabile Mthombeni: Thank you Professor La Rue!

02:46:35 Bathabile Mthombeni: Thank you everyone.

02:46:38 Elizabeth Davis: Thank you.

02:46:40 Judith McKay: Thank you so much, Professor!!

02:46:40 Shakira Abdul-Ali: Thank you

02:46:43 Joan Hogarth - South Orange, NJ: Thank you Professor La Rue

02:46:48 Alashia Chan, NJ: Thank you so much!

02:46:53 Richard Brigham: Thank you for your wisdom, style and example. Bravo.

02:46:55 Berlotte Antoine, NYC: Thank you

02:46:55 Frances Calafiore: Many thanks for the thought provoking and important presentation your new book