

# Diversity Task Force

*Tuesday, November 7, 2006 Meeting Minutes*

**CPR NATIONAL TASK FORCE ON DIVERSITY IN ADR  
Minutes of Meeting of November 7, 2006  
International Institute for Conflict Prevention and Resolution  
575 Lexington Avenue  
New York, New York**

The CPR National Task Force on Diversity in ADR met at CPR's offices on November 7, 2006. Mr. Morgan introduced his co-chairs and invited everyone attending to introduce themselves:

Carla Herron (Co-Chair)  
The Shell Group

Charles R. Morgan (Co-Chair)  
On Site E-Discovery

Thomas L. Sager (Co-Chair)  
E.I. du Pont et de Nemours

Henry N. Adorno  
Adorno & Yoss

Dennis W. Archer (by phone)  
Dickinson Wright

Philip M. Armstrong  
Georgia-Pacific Corporation

John G. Bickerman  
Bickerman Dispute Resolution, PLLC

Kathy Bryan  
CPR Institute

Jennifer Jester Coffman  
American Arbitration Association

Robert J. Grey, Jr. (by phone)  
Hunton & Williams

Claire P. Gutekunst  
Proskauer

Wilbur Hicks  
International Monetary Fund

Gene Johnson  
Safe Horizon Manhattan Mediation  
Programs

Marvin Johnson (by phone)  
JAMS Inc.

Nathaniel R. Jones  
Blank Rome LLP

Laura Kaster

Jeff Kichaven  
JAMS Inc.

Janet S. Kloenhamer  
Fireman's Fund Insurance Company

Nancy Lee  
Marriott International, Inc.

Barry Leon  
Torys LLP

Michael K. Lewis  
JAMS Inc.

Timothy K. Lewis  
Schnader Harrison Segal & Lewis LLP

Laurel Pyke Malson  
Crowell & Moring LLP

Richard P. Ormond (by phone)  
Buchalter Nemer

Bennett G. Picker  
Stradley Ronon Stevens & Young, LLP

Claudia Ray (by phone)  
O'Melveny & Myers

Linda R. Singer  
JAMS Inc.

Nancy Vanderlip (by phone)  
ITT Corporation

Jay W. Waks (by phone)  
Kaye Scholer

Jack Williams  
Powell Goldstein LLP

Also present:  
Peter Phillips  
CPR Institute

Mr. Morgan opened the meeting by noting the minutes of the first meeting and offering copies through Staff Liaison Peter Phillips. Mr. Phillips outlined the proposed structure of the meeting, based upon the "deliverables" from the last one: in the first part a series of reports of activities of like-minded organizations; and in the second part a discussion of proposals for concrete action.

Ms. Jennifer Jester Coffman of American Arbitration Association reported on the AAA's diversity efforts. She shared the AAA "Shared Commitment to Diversity" statement, concentrating on diversity in its work force, its Board, and its neutrals. It was articulated in

2003, and Ms. Coffman noted the advances made in many of these areas (such as AAA staff diversity and training, and neutrals composition). Neutral recruitment efforts are coordinated by case load demand, and diversity is a criterion for recruitment. Staff compensation includes success in minority recruitment as one component. She was asked about utilization rate of diverse AAA neutrals, but responded that it was impossible to determine because the gender and ethnicity data of all AAA neutrals is not currently available. Mr. Morgan asked whether any study has been made as to the ethnic and gender composition of all practitioners in the entire ADR industry, and the various organizations responded that no industry-wide study has been undertaken for any purpose, much less to determine ethnic breakdown. Mr. Lewis asked whether a benchmark can be established to determine how many arbitrators and mediators are women and minorities. Some added that it would be a very difficult study to undertake in light of the highly fragmented and individual nature of the profession. Mr. Sager noted that the area of public sector disputes may have more minorities than other areas. Mr. Bickerman questioned whether measuring current composition would have any effect on increased usage of minorities. He also noted that there is not enough work for mediators of any type, and that the best method for increasing minority usage may be to increase job opportunities of all kinds.

Mr. Bickerman reported on the ABA Dispute Resolution Section's efforts to focus on diversity at its annual meetings. Mr. Gene Johnson, Chair of the Section's Diversity Committee, agreed that there was a lack of work for mediators, and that it would be interesting to measure how much work there was to go around. He also noted that a minority practitioner's being on a provider's list is less important than getting work from it. Publishing and mentoring opportunities are also being encouraged by the Section's Diversity Committee.

Crystal Gothard of the Minority Corporate Counsel Association reported on the group's activities in the advocacy, retention and promotion of women and minorities in corporate law departments and law firms through conferences, smaller dinner meetings, publications, and research. MCCA has not yet focused on ADR as a distinct field, though the organization's best practices materials may be of use by extrapolation.

Marvin Johnson reported on JAMS' support of his and Marvin LaRue's work to encourage women and minorities in ADR through the initiative, "Access ADR." He noted a lack of diversity in pools from which users selected neutrals, and an aversion by corporate end-users to select neutrals whose work they did not already know. Most of all, these end-users were not aware of neutrals outside those pools from which they ordinarily select. Access ADR is an effort to make those persons who select neutrals more aware of skilled neutrals existing outside those narrow pools. The organization has taken steps to create such a pool, and has created a Board including representatives from leading corporations. Obstacles still exist getting names from mere appearance in this pool to actually being selected from it.

Mr. Sager encouraged the staff to make contacts with FMCS and ACC to learn of their experiences in the area. Mr. Michael Lewis wondered whether either CPR or AAA could report that including a minority or female neutral on its panel has resulted in more work for that person. Ms. Coffman suggested that individual matching of neutral to a consumer need is the key to success. Mr. Phillips said that CPR is an unreliable source of information concerning the professional activities of the individuals on its list, in light of CPR's model of non-administered rules and procedures and its infrequent administration of cases.

Mr. Morgan asked whether sexism and racism is still, to some degree, a part of the problem. Mr. Leon thought the issue was the challenges confronting new entrants – that older,

more familiar and more experienced neutrals are preferred to younger, unfamiliar ones. Mr. Morgan questioned whether that condition – which typifies many professions including partnership in a firm or promotion within a law department – is sufficient to explain the dearth of diversity in ADR talent pools. Ms. Herron said that Shell affirmatively undertook specific changes to increase internal diversity as a business imperative, and did not wait for the market to create more diverse pools of talent. Mr. Harris urged the group to recognize there is persistent sexism and racism “out there,” and that “if we rest on our laurels it will raise its head again.” He also said that client expectations are the strongest incentive to law firm diversity, and are the driving force for change. Law firms are conservative, and follow rather than lead, and it is the corporate client who provokes change. Marvin Johnson said that young neutrals’ being mentored, and showcased to clients, is critical.

Ms. Singer said that lots of women and minorities were actively mediating, but they were not mediating the big cases. She said that it was a “demand side” problem – that the diverse experienced mediators were there, if only the end-users insisted upon them. Timothy Lewis said that there is no question that racism and sexism exist and negatively impact access to the market by female and minority practitioners. Nate Jones agreed, and said that he sensed a presumption that lawyers of color were not qualified, unless they proved themselves to be – the obverse of the way he observed white lawyers were treated. He suggested that former federal law clerks could be tracked and identified to great use. Ms. Kaster reminded the group that arbitrator pools should be kept in mind.

Mr. Sager suggested that the idea of a Pledge be revisited among corporate counsel, to commit to devoting resources and efforts to engage mediators and arbitrators of color. Ms. Kloenhamer said that focusing on certain industries, such as insurance, may be a good approach.

Ms. Herron said that corporate metrics are a key to success – for any proposal to matter, it needs to have some aspirational metric. She also said that law firms have to be on board with the process of identification of potential neutrals. The gender or ethnicity of potential neutrals should also be apparent to users, in order for any of these efforts to succeed.

Mr. Picker said the Task Force is an opportunity to meld the profession's need for increased jobs with the corporate need for more diversity in its outsourced professionals. He suggested an audit, not just a pledge, to put more concrete expectations on legal suppliers. The audit, promulgated by corporate clients, might (i) probe their law firms' commitment to ADR by determining the frequency of negotiation training, the regularity of recommending mediation to their clients, and so on; and then (ii) ask how many women and minorities were in the firm, how many were assigned to second-seat negotiations, arbitrations and mediations, and so on. The strategy was to gather data but also convey a clear message: we, the client, expect you to develop sophistication in ADR, and to ensure that women and minorities are included in that development. Mr. Morgan asked whether Mr. Picker would draft questions for this purpose for consideration at the Task Force's consideration. In addition to Mr. Picker, volunteers included Mr. Bickerman, Tim Lewis, Laura Kaster, Laurel Malson, Janet Kloenhamer and Linda Singer. Mr. Archer suggested that the MCCA might also have resources that could be used to identify lawyers of color who professionally participate in ADR activities. Mr. Bickerman endorsed the approach, observing that if demand is to be increased, economic incentives are the best way. The client message in the audit is: "If you use diverse practitioners, we will reward you."

Ms. Kloenhamer said that the diversity issue might be an appropriate component of corporate law departments' Early Case Assessment systems. Ms. Bryan said that the pledge can accompany the audit, and a corporation can encourage law firms to engage in mentoring. Mr.

Bickerman added that the resulting data on law firms could be made available to clients, to permit them to assess who among their firms is making a real difference in their practices. Mr. Morgan said that the audit can also make sure that companies actually stand behind initiatives such as Rick Palmore's "Call to Action." Ms. Singer said that the audit might plant mentoring ideas into the questions and spur changes of policy.

Mr. Worthy said that the different perspectives on adequacy of efforts among white and minority respondents in a current survey was unsurprising, and effective steps must be taken to ensure the inclusion of young women and minorities.

Mr. Morgan asked whether there were specific initiatives that were not yet on the table, and what the right next steps were to be. Mr. Harris asked whether CPR can make more efforts to make the presenters on its panels more diverse. The attendance at the upcoming CPR Annual Meeting was discussed, as well as attendance at the upcoming Employment Committee. Ms. Gutekunst asked whether selected mediators might be invited to attend the Annual Meeting to get to know CPR law firm and corporate end-users. Tentatively, the Task Force will meet again on the morning of Wednesday January 17, 2007, the day before the Annual Meeting. A selected group of mediators might also be invited to meet with the Executive Committee during lunch at the end of the Task Force session.

Respectfully Submitted,  
F. Peter Phillips