**Improving Diversity in Arbitration:**

**U.S. Domestic Arbitration**

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

Day Two:  Wednesday, November 3, 2021

Moderator:  [Prof. Amy Schmitz](https://law.missouri.edu/person/amy-j-schmitz/), University of Missouri School of Law

Panelists:

* [Prof. Michael Z. Green](https://law.tamu.edu/faculty-staff/find-people/faculty-profiles/michael-z-green), Texas A&M University School of Law
* [Prof. Homer LaRue](https://www.cadreworks.org/about-us/speaker/homer-larue), Howard University School of Law
* [Prof. Sarah Cole](https://moritzlaw.osu.edu/sarah-rudolph-cole), Ohio State University Moritz College of Law

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**Transcript of Zoom video** [**https://youtu.be/cB0mDNDH2\_E**](https://youtu.be/cB0mDNDH2_E):

- Welcome. Welcome, everyone, to the second event in our series talking about diversity in arbitration. Today we are focused on the US domestic arbitration market, and I'd like to hand it over to my good friend, Professor Amy Schmitz from the University of Missouri School of Law, to host us today. So, Amy, take it away.

- All right. So thank you, everyone, for taking time with us today. This is going to be a lot of fun. We have sort of a rock star panel of amazing presenters who are going to be talking about a very important issue, diversity in arbitration at the domestic level. So I'm going to without further ado kick it off and introduce the panel.

The panel includes Professor Homer La Rue, Professor Sarah Cole, and Professor Michael Green. Just to give you a little bit of background about each, they are in fact biggest experts we could have for this panel in diversity in arbitration. Each of them has written and has done research in the area and have ideas. And that's going to be the best part, I think, is the fact that we're going to talk about ideas to really make a difference, and that is really exciting.

So, Professor Homer La Rue. He's a professor at Howard University School of Law. He was also one of the founding faculty at the City University New York School of Law. He's been heavily involved in clinical legal education for many, many years and has won awards in that space.

He also is an arbitrator and actively arbitrates as well as continuing to teach clinical legal education especially. And we have Professor Sarah Rudolf Cole. She's currently the Michael E. Moritz chair in alternative dispute resolution at the Ohio State University Moritz College of Law. I'm really excited because I'll be soon her colleague, and I'm just really pleased that she could take time with us today.

She is an expert in arbitration and mediation and recently published an article in the Washington University Law Review on diversity in arbitration, and in fact CPR is doing a serialized newsletter of her work, which is really exciting as well. She has case books on mediation and dispute resolution, negotiation, mediation, and other processes as well as a book that came out in 2021, Discussions in Dispute Resolution with Andrea Schneider and Art Hinshaw.

And of course we also have Michael Green, who is there live in person, and Professor Michael Green is the-- a couple of lots of things. He's the director of Workplace Law Program at Texas A&M School of Law. He has written extensively in workplace dispute resolution and is an authority on the issue. He's talked and worked extensively with respect to diversity as well in dispute resolution more generally.

He is part of the National Academy of Arbitrators, and he's also on the panel of the American Arbitration Association's National Labor Arbitration Panel, the Federal Mediation and Conciliation Service Labor Panel, and as a hearing officer for the Dallas Area Rapid Transit Trial Board. And also let me add that all three of our esteemed panelists all have experience as arbitrators and mediators, so this is great.

We get both the academic perspective and we get the perspective as practitioners as well. To kick it off, we're going to start with Professor Green, who's going to give us just a brief introduction of the problem as it were, and then we're going to start to talk about solutions. So take it away, Professor Green.

- All right. Thank you very much, Amy. I appreciate that wonderful introduction, and just to kind of frame the issue, I just have a couple of slides. They basically referred to a June 2021 report that was done by the American Association for Justice, and the title of it was Where White Men Rule, How the Secretive System of Forced Arbitration Hurts Women and Minorities. Just a couple of highlights from that study as background as we move into our discussion of our topic today.

From that study, they highlighted that arbitrators are mostly male, overwhelmingly white, that women and minorities are more likely than white men to be forced into arbitration, as they referred to it, which prevents them from having judges and juries hear their cases, that corporate defendants disfavor female and minority arbitrators. And when they do oversee cases, female arbitrators may rule in favor of consumers employees more often than male arbitrators.

Just to highlight some of the data that they had. When you look at race-- and this is both looking at information from the American Arbitration Association and also JAMS. But here you see that the percentage of arbitrators is 88% white. If you look at some of the other groups, very, very small percentages for people of color, with 3.9% Black/African-American, 3.7% Hispanic/Latina, and then the smaller numbers for the other people of color.

Also, when it came to gender, in terms of gender issues there were 77% male and 23% female. So based upon those numbers, it highlights these disparities based upon percentages. As Amy mentioned, how do I get involved in this? I've written a couple of articles about it, and in general my orientation is this is not about the fact that you can't have white males be excellent in handling these cases, but the system-- if you want people to participate in the system that they feel can be fair, you just have to have more opportunities for people like them to be able to get involved.

So what does this mean? As far as I'm concerned, it's about winning. And when you think about winning, the people who are the selectors, their selector bias comes into play in terms of continuing to want to select the same people that they feel like they know will win the case for them. So that's my kind of introduction to the issue.

I know we're going to have a rich discussion about some of the thoughts that all of us may have in terms of how we deal with this issue. But now I'll pass it on back on to Amy and stop sharing.

- Yes. Great. Thank you very much for giving us the introduction. Now we're going to do essentially a round robin of about 10 to 13 minutes per panelist to talk about some of the ideas that they have had and what they have written about on the subject with respect to possible ideas for improving diversity in arbitration. I'm going to start with Professor Homer La Rue.

- Thank you, Amy. And thank you, Michael, for the introduction, and I thank everyone here for being with us this afternoon. To me, this is one of the most important topics that we in the ADR community can be dealing with. In my mind, what we're literally talking about is the perception of legitimacy and fairness going forward, and then lest we deal with this, I think that the entire industry has an issue.

I want to pick up-- before I start talking about the solutions, I'm going to add something, a footnote, if you will, to Michael's introduction. It's based on the research that I and my colleague did that's in the Howard Law Journal article. We started looking at our own organization, the National Academy of Arbitrators, and we did an assessment of what the composition of the organization is. For those of you who don't know, the National Academy of Arbitrators is an organization that represents-- it is a membership organization composed of labor management and employment arbitrators, some would say the best in the US and Canada.

Whether that's true or not, what is true is that many collective bargaining agreements require that the arbitrators chosen by the parties be members of the National Academy of Arbitrators. So the organization and the members of the organization do exercise some cloud. The organization is 75 years old. In that time, according to our review of membership roles in the academy, there have been-- well, let me just go to what it is now. It hasn't changed that much.

The number of persons of color who are members of the National Academy of Arbitrators is approximately 3%. That's any black, brown, yellow. About 3%. The number of women is approximately somewhere between 20% and 30%, and so what we see represented in the academy is a microcosm of what Michael was talking about in his introduction.

Overwhelmingly, that organization is male, older-- I think the median age the last time we did a study is somewhere around 67 years old-- and white. So the answer to the question that we're going to be talking about today or the question is when Alan and I, my co-author, asked people-- how do you choose an arbitrator? How do you choose the mediator?

- Then I need to-- I don't know what I can do.

- OK. Somebody needs to mute, please. The overwhelming answer to that question is I chose persons whom I know. And what that means in my mind is that if you look at who these people are and who they know, they are predominantly white and male. And what happens is that the selection process ends up that way as well.

And so there is-- at least empirical studies that Alan and I looked at tend to show that there is maybe implicit bias in the selection process and that there needs to be a different way for the parties to think about and for rostering agencies to think about constituting the slates from which arbitrators are selected. Now I'm going to focus primarily on arbitration. The article is about arbitration in the labor management context and employment context, but I submit to you that my remarks are applicable beyond the labor management and employment context.

So, what happens? Why the status quo, and how can we change it, affect it? The empirical studies that I looked at and that Alan and I both looked at show that if you change the composition of the slate for selection-- not the larger pool but the slate. So we're focusing on the back end, the selection process.

Yes, there is a front end issue as well, which I call the pipeline issue. We're dealing with it. Probably been dealing with that part of the problem for quite some time, but we have not focused on what our article focuses on, and that is the selection process. In the selection process, the empirical studies show that if that final selection slate is 30% diverse-- and we define diverse, and we can talk about that later on-- is 30% diverse, the probability of selecting a diverse arbitrator goes up exponentially.

And I won't go through all the numbers. They're in the article, and I recommend it to you, but the number that jumped out at me that was quite surprising is that if you add two persons of color in the finalist pool of four the odds of selecting a person of color goes up to 193.72%. If you only add one person of color to the slate, the chances of a person of color being selected as an arbitrator is zero, absolute zero.

So it's pretty startling. And to sum up that part of it, then what we have to do, I think, is to begin to focus on what I call the back end issue. That's where I want to share with you some developments that-- Amy, are we to go into our solutions at this point or wait on that?

- I think it's fine for you to go into the ideas, and then we'll do the Q&A amongst the panelists.

- Very well. So the article talks about the Ray Corollary Initiative. Can everybody see the screen? Amy, is the screen showing?

- Yes, it is. Looks good.

- All right. It's based upon two other initiatives that have been around for a while. One is the Rooney Rule, and the other is the Mansfield Rule. Both of them are based upon seeing to it that the finalist selection pool contains persons of color.

The Rooney Rule inapplicable to the hiring of Black coaches and now females as well in the NFL requires the interview of at least one person of color and one female during that process. That doesn't seem like much. It was an extraordinary move at the time that it was implemented. It has a lot of area for, I guess, reassessment and improvement.

The Mansfield Rule applies to the big law, and that's where the 30% metric has come into play. What the Mansfield Rule says to big law firms-- when you're selecting people for partnership, you're selecting people for pitch teams, and upper level management teams, the final selection slate must include 30%. And number of firms-- now Mansfield is I think 3.0%. There are 170 some firms participating, wanting to be Mansfield certified, and there's an entire process by which they go through.

So Alan and I decided we don't need another rule. Let's build on the Mansfield and the Rooney rules, and so we came up with a corollary. I'm not a mathematician, but I think a corollary follows from a rule, and the corollary is the Ray Corollary Initiative. If you see here, it was named after a graduate of-- Charlotte Ray was the first female graduate of Howard University School of Law in 1872.

She was also the first Black woman to receive a law degree in the United States and the first to be admitted in to a bar in the United States. So we thought it appropriate to name this initiative after her. What is it? This is the mission statement.

Since the time that Al and I wrote the article, which is about 2 and 1/2, almost three years now, we have formed the RCI Corporation, a not-for-profit. And it's intended to do-- the mission of that not-for-profit is, as you can see here, to increase diversity, equity, and inclusion in the selection of arbitrators, mediators, and other ADR neutrals. And we're going to do this-- we seek to do this by encouraging a commitment to what we call the RCI pledge, and to otherwise engage in research, and find other tools to support the selection of diverse neutrals.

What is the pledge? Here is a sample of the pledge that we are working on that we would present to a corporate entity. The idea is that we would change this to fit any individual or entity. So if it's a labor union, we're going to make some changes in it if it's some membership organization. If it's a rostering agency, we're going to make some changes in it.

But this is the means by which the RCI is at least initially going forward to try to move the diversity needle. The pledge is based upon three principles. First of all, the pledge builds on ABA Resolution 105. You may remember that the DR section was the one who pushed this. It got through the House of Delegates, and it's aimed at increasing diversity in ADR.

The second element of the pledge is intended to-- the pledge is intended to garner support for and encourage ADR providers and selectors to strive for their slates and rosters of proposed neutrals for any given matter to include at least 30% of diverse neutral candidates. And then, finally, the pledge is based upon empirical research that shows that by using the 30% metric we do move the needle, and that's the point.

I'll stop here, and there's more that I'll want to talk about in terms of developments, but we can do that during the Q&A. Thank you.

- Thank you. Homer, that was great. Really interesting stuff. I'm excited to dig in once we kind of put everything on the table and then we get a chance to dig in further. Next, we're going to have Professor Sarah Cole, and she's going to tell us about some of the proposals that she's developed in her research. Sarah, take it away.

- Thanks a lot, Amy, and I'm really honored to be part of this group of folks who've been working on this issue for a very long time. I also want to give credit to the organizations that provide arbitrators to the public-- CPR, AAA, JAMS-- all of them are engaging in efforts to try and increase the pool of arbitrators who have diverse characteristics. And like Homer, there are a lot of ways to talk about what constitutes diversity, but minimally I do think these organizations really are trying hard to increase the pool, which doesn't mean they can't keep trying, but that the issue really comes down to how arbitrators are selected.

I guess I want to just give some context that I think we all know that arbitration-- particularly, what some people call forced arbitration-- has been under fire for a long time because of its perceived unfairness to people with less power, like consumers, employees, and other sort of little guys. And that part of-- although I certainly wouldn't view it as the major part, but part of that criticism is because those arbitrators who might ultimately be resolving these disputes don't share many of the characteristics of the people who are disputing in front of them.

And whether that's sort of widely known or not, certainly when these issues are debated in Congress, the issue of the dominance of white men over 60 comes up again and again. It's really easy to point to that as another problem associated with arbitration. I think at least one commentator referred to arbitration and arbitrators as the least diverse corner of the profession. And one of the things I read recently-- Andrea Chandrasekhar just did an empirical study that she hasn't yet published about the lack of diversity in arbitration.

I think Michael referred to just how low the numbers are particularly for minorities. Not only is it the number astoundingly low, but it's not even close to representing the percentage of minorities who are in the legal profession. So even if we say pipeline problem, it's much, much worse because we know for many years that law schools have been admitting around 10% minorities at war and also that women have been about 50% of most law school classes for almost the entire time I've been teaching. And yet there's still sort of these claims of pipeline problem-- where are the women, where are the minorities who are qualified to be arbitrators.

And I think that part of the problem is that many women and minorities don't stick it out to partnership at big law firms and other sources of sort of the typical arbitrator. So those are problems as well, and I think a lot of this comes down also to the notion that when you get to selection-- and I think Michael will probably talk about this a little bit, too-- you want to pick an arbitrator you know or at least minimally an arbitrator that has a reputation as an arbitrator. Both of those things make it very difficult to break into the field of arbitration.

One of the things I've thought about in terms of potential solutions-- we can go back to talk later about why diversity in decision makers is even an important factor. I think it will give more credibility to arbitration as a process, which is something I'd like to see happen. To the extent that arbitration panels often involve more than one arbitrator, the diversity and viewpoint experience may also contribute. But I think, to be honest, it's a real struggle to get companies who have committed to diversity in their own corporation often seeking to hire more diverse employees and make decisions that incorporate issues of diversity.

Somehow, when it comes to actually picking the arbitrator, they outsource that to I suppose their outside law firms who are fearful of disappointing the client with some arbitrator who isn't known and who they are ultimately blamed for if they lose. So in some ways I think a better approach is a [INAUDIBLE]. I definitely support the Ray Corollary, and I'll mention a little bit about that. But one of the things I think would be more helpful is more direct appointment of arbitrators.

That part of the problem is even when you pick an arbitrator you know, if that arbitrator rules against you, your client may blame you for picking someone you knew. And I think CPR can weigh in on this as well, and we have someone from CPR here. But I know AAA has formed something they call the National Roster of Arbitrators. And if those arbitrators opt in to doing consumer arbitrations, they will be appointed directly to hear consumer cases.

I'm sure there's some way for the parties to give a peremptory challenge to someone who's directly appointed that way, but I had conversations with AAA where they told me that has dramatically increased the number of diverse arbitrators they're able to appoint. Where their normal numbers for diversity are around 23%, 25% women and around 9% or 10% minorities, with respect to the national roster being appointed to consumer cases, they're more at 32%.

So even though that's not maybe 50% or wherever you think the numbers ought to be, there hasn't been that much pushback from the parties when an arbitrator is appointed to the case. I think that that's one way that organizations could sell the notion of increasing diversity is to say we'll take the selection part away from you. You won't have to stress out about it anymore.

You won't have to worry I'm picking an arbitrator who I know, who might rule against me, or an arbitrator who I don't know who might rule against me. Either situation results in blame, but instead just take it out of your hands and say I think AAA and CPR roster a lot of people with great expertise in this area. And as long as they fit certain criteria, let's just allow for direct appointment.

And I do recognize that selecting an arbitrator is a big part of why people pick arbitration, but I also think it's a fraught area. I'm sure both Homer and Michael can weigh in on the fact that a lot of times when people come to me and say I have this roster of arbitrators. Can you help me make a decision about them? I'll maybe no one out of 10, and they'll know none. So the notion that people are always picking arbitrators who they know personally is probably a bit of a misnomer.

I think more often it's the case that you are just going on these sort of things that you think are markers of someone who might be fair in making a decision. And certainly that would be an opportunity for implicit bias to play a role with what you think good decision maker is as a former judge or a big law firm partner. Those are both going to be categories that favor the sort of white male over 60.

And just keep me updated, Amy, on the time. In terms of other options, I really think direct appointment has a lot of potential. One of the problems with the way AAA did their direct appointment and consumer disputes is they only do it in cases that involve claims of $10,000 or less. And unfortunately, David Horton did a study which found that only about 24% of consumer claims involve a claim of $10,000 or less.

So the mean claim even in a consumer dispute is much, much higher than that threshold number. So one of the things I think that organizations might experiment with is both increasing that number in the context of consumer disputes and thinking about what might be an appropriate number. I threw out $100,000 because it's a round number. For an employment discrimination claim, it might be that it should be a higher number based on what the mean numbers are with respect to the kinds of claims people put in because, not surprisingly, people often claim for more than they're ultimately going to be awarded. And if the selection is at a really low threshold, that's going to be a problem.

I think that David Horton's study found that the mean demand even of a consumer dispute was $143,000, so well above that 10,000, which is a problem. I think another thing that might be possible and has happened a lot in the labor and employment area, particularly the labor area, is permanent arbitration panels. Those could be constituted with a more diverse group of people.

I do some labor arbitration in Ohio, and basically the union and management get together and try to identify people who they think will be good arbitrators. Then they try them out for a while, and they keep some and get rid of some, and as a result they have a much more diverse panel because they can try people out and ultimately eliminate them if either side thinks that they don't do the kind of job that they're hoping for.

One of the things Gordon's study also showed was that they're starting to see a whole lot more repeat playing plaintiffs lawyers in the consumer context. And I know we're seeing that more in the employment context. And with that sort of advent of the internet, which I guess you can't really call it in advent anymore, there ought to be ways for plaintiffs groups either in the consumer context or the employment context to be able to amass the kind of information about arbitrators that a lot of big defense-side law firms have.

So one idea might be to try and develop an information base for plaintiffs lawyers who practice in those areas to identify arbitrators who they think will be good arbitrators. And it's very possible to get that done outside of the union management context. Another idea and is kind of a Ray corollary idea, too, would be to send arbitrator lists that have greater diversity. I would say 40% to 50%, but I'd live with 30%, and I don't know necessarily what the objection to doing it that way would be.

It would increase the likelihood that the appointment would be of someone who's diverse. We haven't really seen that happen, and I'm guessing the organization feels that's not fair to the other arbitrators not to put their names on it. I'm not sure. That's what I'd really like to hear more about from organizations as to why that's a difficult thing to do.

Another idea that I had is the way these lists go out right now is in a typical arbitration an identical list of 10 names and sent to each party. The parties have 15 days to strike those names that they object to and then rank the remainder. And I thought another way of addressing the issue of getting rid of people who you don't know would be to say just eliminate those arbitrators who you find to be unacceptable, and instead of ranking the remainder so the person with the lowest rate is the one who's selected, just don't rank them. They're all acceptable, and then that allows the arbitration organization to potentially appoint a more diverse arbitrator because they're keeping track of their own stats on that, and that would allow them to do that more frequently, I think.

One of my final ideas is sort of something that's come out of the way judges are sort of dealt with by some states, and that's the notion of having a more robust evaluation system for arbitrators than currently exists. If you go on any of the websites, you'll find it's pretty difficult to get much information about arbitrators. You can get sort of their basic biographical information, the organizations they joined or are members of, and can see if they're a former judge, but there's not a whole lot of other additional information about them.

AAA recently started doing videos or giving arbitrators an opportunity to do a video so that the parties could see the arbitrator and maybe get a little more sense in a two-minute video of what that person is like. There are some comments about arbitrators on the JAMS website. I didn't find any sort of feedback mechanism on AAA's or CPR's, but that always also creates a risk of bias.

It might be that you see a woman or a minority and you say, you know, I'm not going to pick that person for those reasons. But I think the thinking would be that arbitrators the parties don't become more familiar to them because they see a video and see they look like someone who could make a good decision, or be fair, or seems bright enough to be capable of doing that. But you could have a more robust merit evaluation system for arbitrators, recognizing that there are some potential for bias in doing something like that. But 17 states already do that for evaluating judges for retention elections. So I talk more about that in-- it'll be both in the CPR articles and the larger article in the Wash U Law Review.

So I'll stop there for now and come back, but those are some initial thoughts about ways to address the problem.

- OK. Well, great. Thank you, Sarah. Adding more to the table, and we're going to move to Professor Michael Green.

- All right. Thank you. Always difficult to be the last one because I feel like at least hearing Sarah and Homer talk is like preaching to the choir. Everything they said I kind of agree with and support completely.

I'll start with talking about this as Homer talked about it in terms of the pipeline versus the selection. Some people have referred to this as the supply versus the demand aspects. And so if you look at the pool of arbitrators and the diversity, certainly if you draw from mostly lawyers, attorneys, or if you even ratchet that up into judges, then you have to start with how many people of color, how many women go to law school, and how many attend law school. And those numbers aren't the greatest, as we know.

So that starts the supply issue. However, and as Sarah mentioned, the neutral service providers are key collaborators in this process. And they try and do a good job in terms of finding good people to serve on their panels, that are diverse and have the skill set that the parties would want in selecting an arbitrator. And so what I've seen more or at least I believe is more of the issue that I've tried to focus on is not the supply issue, although that's certainly a key problem in continuing to draw upon that as a base for feeding the pipeline.

But I look more at the demand issue, and, again, that's more the selection process. I have really focused on it in the context of-- so some people call it forced. Some people call it mandatory, but at least the context where so-called-- I think Jean Sternlight refers to this as little people versus big guys, where you have individuals with little bargaining power, be it consumers or individual employees, who have to agree to arbitrate and now arbitrate maybe complex legal issues because the corporate entity that they are interacting with has required them to arbitrate.

If that is the process we're going to use, the Supreme Court, in its overwhelming endorsement, love, affection, romanticism of agreeing to allow arbitration to go forward under any circumstances has basically suggested it's just another form to the court system. And yet there's one stark difference in the selection process-- the parties in court systems do not select their judges. And the arbitrator is the judge.

Now, when we get to jury issues, there is some form of selection process, and there's concerns about that, though. When the parties stray too far, there are so-called Batson limitations on selecting the jurors based upon race and gender. And while you may be critical of how effective Batson is, it certainly is at least some mechanism to allow a party who may be concerned that this individual or this group of individuals who are going to decide my fate in this case, that there might have been some bias involved in their selection process.

In the arbitration process, you have no equivalent process to the Batson process to even raise an objection. And as I started in my introduction, I'm not suggesting that you could not have wonderful arbitrators who are white, male, and 80 years old, who might be able to handle fairly and without any prejudice or any concern a key sexual harassment or racial harassment case. This is more about the integrity and the perception of justice in this system that if I'm one of those little guys and I see the selection process for the arbitrator, there is really no one that looks like or has my life experiences who is even possible to be selected. That's what creates the unfairness in the process, and so that's why we have to open up the selection process more so that when you get to this process you can at least have a chance.

Doesn't mean that you have a guarantee. Certainly, if I compare Supreme Court justices and you gave me two arbitrators, and one was Thurgood Marshall and one was Clarence Thomas, I might certainly not care about race in that context. But I might certainly have felt strongly about one of them over the other.

And certainly in terms of gender, if you gave me Justice Sandra O'Connor and Justice Sonia Sotomayor, I might certainly not care about gender in the context of that decision. But there may be other reasons, but I'd certainly like to know that if I have life experiences and look like one or the other that at least someone like that might be a possibility to select. Also, if there is a chance that someone like that is on the panel and the other side seems intent upon removing that person from the panel or excluding them from being selected, then I'd like to be able to have a process where I might be able to challenge that concern, which you don't have now.

And so the one way to get rid of that, as Sarah talked about, is remove the selection from the parties. And since the arbitrator is both judge and juror, I think that there are many aspects that make sense. And what my solution was-- and I highlighted this in an article that was published in 2020 in the Fordham Law Review. It's called Arbitrarily Selecting Black Arbitrators. What I suggested is that you model the court systems in terms of how judges are selected and use some kind of random process.

All of the service providers have all the data about the diversity of their panels and can use and do use. And Sarah highlighted how in the consumer panels they could have selection without the parties just actually. The parties are paying these service providers, and they're relying upon them to use their skills and expertise. So let them go out, do the vetting, find these people, and prime the pump and deal with the supply issues. And then once they request an arbitrator, let those service providers use some kind of random factors.

Maybe you use the Rooney Rule that Homer's come forward with with some percentage and start off with a panel that has a certain percentage, and then randomly select the arbitrators. Let the service providers do that, and then just tell the parties here's who's been appointed to be the arbitrator. That was my suggestion of how to kind of address this issue.

This removes the gatekeeper problem, and I've actually seen what I call the reverse Batson issue sometimes with talking to attorneys of color who might be representing these corporate clients. And they really care about diversity. Their corporate clients say they care about diversity, but they're not going to select an arbitrator and, especially as Sarah highlighted, in distinguishing between maybe low-risk, low-status type of decisions versus high-stakes litigation, lots of money.

They're not going to risk just picking someone because they're supporting a diversity rationale. They want to win, and so if it's somebody they don't know, or if it's someone who they maybe had some prior dealings with, or they have some indication, they're not-- I'm not suggesting they're looking at race or gender, but we already know the pool is already very stratified. So that's much more potential for them to exclude those folks, especially someone they have never come across, from the becoming the ultimate decision maker.

And certainly if they did make that decision, then their clients may be looking at them like, well, we lost. Why did you select that person? And so removing that from the whole dynamic that whole selection process if the parties can really agree to it. When I've made this presentation, some people out there in the academy said I can't believe the parties will agree to let the service providers just decide this. They're really invested in their role in the selection process of arbitrators, but I think if we-- and what I recommend in my paper is that this become a part of another addition to what has been called the due process protocol so that all of the service providers, all of the key stakeholders, actually agree that this is something we want, that we think is valuable to not be involved in the selection process but to actually have these service providers do this.

And certainly there's market factors, and maybe there will be some people who just won't want to do it, just like there's some people who don't believe in all of the requirements of the due process protocol. But when it comes to the big service providers, all of the big entities and stakeholders, if we can all agree that this is what makes that process fair. And I want to end my kind of suggestion by this because I've used the hypothetical in my article, but I also have a second one that I think-- because sometimes you hear people on the other side of this issue who still don't understand what it's about.

And they still think I've been an arbitrator for years. I can handle these cases. I don't know what the criticism is. We just need to get the best arbitrators.

So one example I've used where African-American female is suing for sexual harassment and racial harassment. Her supervisor is a white male, and she finds out that all of the arbitrators happen to be white males around the same age as her arbitrator, except maybe one or two. And when they start striking and doing the selection, those one or two get cut out, and she's wondering why that is.

She has no mechanism to deal with it, and then she realizes that the arbitrator gets selected. Seems to be in the same demographic as the person she's charging with harassment. Does that mean it's unfair when that person rules against them? Of course not, but it's the appearance.

Another example I like to give you is imagine you're a police officer and you're in an arbitration where you're being disciplined and you're challenging that discipline, and there's some assessment of maybe uttering some racist epithets. And find out when you select the arbitrators the only arbitrators that are available are all of the same race of the person who you are you are basically being challenged with as making racial epithets about.

Would you think that system was fair if it seemed like the only person that might even be hearing that case when you're a police officer being charged with this discipline are of the same race about the alleged racial epithets? Would that seem like a fair system to you? And that's what we're really trying to get at.

So if you think about my solution and you think about what Sarah and Homer said, these are the things we're trying to address. These are the reasons why we believe that diversity is an important issue for the overall fairness and certainly the appearance of fairness in the system. All right. So I'll pass it back to our host, Amy, and see where we go from here.

- Great. These are lots of great ideas. I do see how there's a convergence around ideas of selection and automatic appointment. Also, the idea of providing more information, addressing the pipeline, but then also thinking about concrete ways to make a difference, trying to actually explain the problem, and make it known why this matters, and to try to-- I like the idea of the hypothetical because I think it really creates a situation where you can imagine what it would be like. Right? Walking into the room and the employment discrimination, for example, case you mentioned, Professor Green.

With this portion, now that we've kind of laid all these ideas on the table, I wanted to see, first of all, if there are any questions that the panelists have for one another.

- One of the things [INAUDIBLE]-- we've all been arbitrators, and it's always a mystery how you're chosen for any case where you are an arbitrator. But I wondered-- and I know Michael has written about this, and you mentioned it a little briefly as well about how a Black lawyer may not want to be responsible for picking a Black arbitrator because of the risk that the arbitrator is going to rule against them. And I guess the more I think about selection and the fact that, as I mentioned, oftentimes people come to me and say do any of these arbitrators. I don't know any of these arbitrators. I don't know who to pick.

And so to me it almost seems like everything is working against picking someone unknown who's maybe younger, maybe a woman, maybe a minority, that you just-- not necessarily because you're biased against women or minorities but just so uncertain and fearful about picking someone with less experience, who has not as much of a track record as some former judge, who really no one could blame you if the judge rules against you because surely the judge couldn't be more knowledgeable than he is because they're so experienced in decision making.

And I don't know other than the direct appointment or trying to make it more likely that diverse appointment occurs. Where I always come down to is I feel like in the end there's really not as much knowledge about arbitrators as I think people think that there is. And so like you said, Michael, the whole thing about someone saying, gee, I wouldn't give up the-- or we think people wouldn't want to give up selection. I guess I kind of push back on that, and Homer, you may add to it.

I don't mean directed Michael. I just know he's given that example. Before I'd love to hear both of your thoughts on that.

- First of all, Sarah, one of the things that you mentioned the article by the professor at UCLA Irvine, the article that's not out yet. In the abstract, which I'm sure is what you read as well, the last line of the abstract was the paucity of empirical data speaks very loudly about the nature of this problem. This notion that somehow the judge is going to make a better decision because he has been a judge for x number of years needs to be studied. I'm not sure that's true.

And one of the things that brings to my mind is kind of shifts it a little bit, but at some point talking about the pushback that I've gotten with regard to the Ray corollary is, well, yeah, but they're not 30% diverse arbitrators. It's certainly not black and brown, and that raises the whole question. So are we saying then wait until the pool is a certain-- and this is not what you're saying, but this is the pushback that I've got.

Until the pool reaches a certain level, we will never be able to do the 30%. I don't believe that to be true either, but at some point I'm going to ask Dr. Catherine Simpson to talk about that front end a little bit more because she's done some very groundbreaking work in terms of the list of arbitrators of African descent.

- Yeah. What I would say is in response to what Sarah asked. This question of selection, though. I think that there's all these dynamics, and we said we don't have empirical data that helps us understand what are the dynamics that goes into selection. Now, certainly we know in the labor setting where you have repeat players, right?

So you have the union on one side, which is a repeat player, and certainly they have all of their data that they collect on the arbitrators they use, who they use, and why they use them. Then the management attorneys collect all their data on all the arbitrators they used and why they use them. So they believe they have some database and selection, but then the issue of we don't know you. We don't know anything about you.

And how you kind of bridge that gap I think is one of the things Sarah's pointing to, so that the people we don't know are probably a lot of the more diverse people who are out there who could serve as arbitrators. There have been a couple of situations. I know homer was involved in one in terms of the mediation aspect, where he was working with Marvin Johnson on a program to kind of deal with the supply issue, and get more mediators of color, and actually identifying some really key people who would have the background and should be selected. And yet I know from some of his documentation of that that they still weren't getting selected.

And when I think about people who are out there who could be selected, there are a lot of labor and employment attorneys of women of color out there. Floyd Weatherspoon did a program several years ago, Minorities in Dispute Resolution, and many of us became and are now labor arbitrators and people in the national academy from that.

So there's people out there, but it goes back to that basic question of when I make my selection. If I'm one of those gatekeepers if I make that selection and I lose, how do I justify that? If you could select a judge, if you really could-- and there is some form shopping that goes on even in the court systems that we know about in terms of trying to avoid certain circuits if I can, starting this first case in this particular circuit before it gets to the Supreme Court if I can.

So we know all of this goes on. Just how informed it is is really the issue, and we don't think that there's a lot of informed decision making about it. But certainly the pipeline is a question.

- I want to add hopefully a bit of a positive note to what sounds like not very positive from all three of us that change is possible. And it can come from the bottom up. That is from the parties. I'm looking at now the collective bargaining context, and my colleague Alan Simonet was the interest arbitrator for the city of Philadelphia and the FOP. And, as is the custom, what happens is one of the last things that the parties do is talk about what Sarah mentioned in terms of the roster, selecting a roster of arbitrators.

The parties committed themselves in that instance with Alan's assistance as the interest arbitrator to the Ray Corollary Initiative and wrote into their collective bargaining agreement that they would establish a roster, and it would be not 30%, Sarah, but 40%. And so there is a way, I think, that-- we talked about education. I think by really beginning to hammer this issue much more among the parties. I think we will find a greater resonance as part of what we're trying to do with the Ray Corollary is to raise this issue in a way that the parties-- all the presentations I've made, the parties say we need to do this and it can be done.

So another positive note. The Amtrak just went through negotiations with its some 30 unions, and they came to an agreement that they would now request from the NMB slates that were 30% diverse. And so I think that it is a matter of garnering that momentum and beginning to push it in an organized way and in a way that the diversity lab has done with the Mansfield-- that is with a body of empirical research, with training, with other assistance to the parties who will inevitably say we want to do this. How do we do it?

And we need to have an organizational structure that can bring that forward.

- And I would add, too, just to try to also be positive. And I did mention I think that all the organizations that provide arbitrators have really been focused on this issue and developing mentoring programs, diversity pledges, and other efforts to try and increase the extent to which their clients, lawyers, and corporations out there commit to having diverse arbitrators. The stats I was only able to find from AAA's reports about themselves that in 2012 their roster was 23% diverse for gender and race, and they didn't separate it out.

By 2018, they reported that their roster was 25% diverse and that they also had made 27% of their appointments of people with some characteristic that demonstrated diversity but again not separating it for gender or race. So I don't know how that comes out. Then I was sort of worried after reading the study, the abstract that you referred to, Homer, where the number of minority arbitrators is so small that really no judgments can even be made about it was kind of-- that was a bit of a sad thing to look.

- [CHUCKLES]

- I thought it was also interesting, and I think, Homer, maybe you talked about this a little bit in your presentation is this notion that women or minorities are going to make decisions that are different than men make. I know there have been a couple of studies about women arbitrators, and Andrea's study, this one we're referring to, actually said that women right now appear to be tougher on plaintiffs than men, although it's very important to note-- and women arbitrators are tougher than male arbitrators, but you also have to look at the fact that women dominate-- don't dominate, but to the extent that they are a arbitrator in arbitrator employment discrimination cases much more than they are commercial disputes. And in employment discrimination cases, it's much less likely the plaintiff is going to succeed.

So even that stat that says women arbitrators are harder on plaintiffs than male arbitrators may not be accurate, but minimally there's not that much difference. I mean, if you're using all your implicit biases to say women will be nicer to plaintiffs because they're nicer people than men or whatever, is it really-- there's no empirical data that supports any of it at this point.

- I see in the chat we have several people weighing in, and maybe you'd like to share a little bit. We see from CPR, Ellen Parker, you had some comments, and I know CPR has been working hard on this issue, as we've mentioned earlier. Maybe you want to share a little bit about your own experience.

- I'm sorry. Ellen had to step away. She had another call.

- Oh, OK.

- But she did share resources in the chat about what CPR is doing on this subject.

- Amy, you might want to call on Dr. Simpson to talk about the list, which is another innovation that I think that--

- You read my mind, Homer.

- [LAUGHS]

- We were on the same wavelength. That was the next stop. Yes, Dr. Simpson, it would be great if you wouldn't mind sharing a bit.

- Well, well thank you so much, and I've put a link to the new list arbitrators of African descent in the chat. The intention is that this list is freely available and shared. Search it just like you would a regular PDF.

If you're looking for an arbitrator that is interested in arbitrating labor disputes, put "labor" in the search and just scroll through and see who comes up. Everyone drafted their own bio. You can find out more information about the person by visiting their website.

Now, the first time that I presented the list anywhere was on a small call with about 50 arbitrators, and the reactions were great I'm creating a shadowing program. Wonderful I'm looking for an intern. I'm thinking about starting a mentoring program, and my firm is thinking about establishing a new trainee track.

What was really troubling about that was that all the senior arbitrators on the call knew about the people on the list was their skin color. And with only that knowledge, the entire call turned to mentoring and trainee opportunities. There was, I feel, a complete discounting for the very senior people who volunteered to contribute their profiles to this list, all 124 people.

And so I think it's important that institutions and appointing bodies apply the same criteria and conditions to all of the arbitrators that they're appointing. Personally, I am not aware of any senior white male arbitrator who has done a single consumer arbitration, let alone a slew of consumer arbitrations or low-value arbitrations of any sort. And so I think that perhaps as a group we can start to push back against this myth that collecting low-value and consumer arbitration cases is the way to build a profile and to become an international arbitrator.

It's not the path for senior white male arbitrators, and so to expect that it would be the path for every other arbitrator I think is a little fanciful. I think that perhaps one explanation, though, for the state of diversity that we have right now might be found going back about 40 years to what I think is a real-- I'm lacking the words right now, but a real resurgence or revival of arbitration, which was in the United States in the early '80s. The '70s were terrible in the United States if you had a court procedure.

Judges did not know what they were doing. Courts in civil cases were extremely delayed to the point of creating constitutional problems, but it wasn't until President Carter decided to expand the judiciary by using merit-based applications to become a judge. It wasn't until he expanded the judiciary and appointed more women and more people of color than had all prior presidents combined that new arbitral institutions started popping up in the United States, where suddenly you could have a retired judge-- hint, one of those retired judges who maybe had a super delayed case in the '70s, where you could get a retired judge to take care of your case.

An agreement to work with one of these institutions until the mid '80s, early '90s was an agreement to have your dispute decided by a white male because these institutions did not have women and did not have people of color on their panels. So now 40 years later, we're coming out of this event, where we had an entire country that was catering to an arbitration clientele who needed arbitration in order to get away from affirmative action. Arbitration was able to provide a solution to that group of clients, and now we recognize fortunately that sort of service is not a legitimate one. I think that's perhaps some of the origin for the huge disparities that we see in international arbitration and what was-- excuse me. In domestic US arbitration, which obviously has a huge influence even internationally.

I'll put another link to a recent article on that in the chat called The Diversity Dividend, which was written in honor of Professor Davis's retirement. And thank you so much. Thank you.

- I'm going to quick-- Arthur Pearlstein is here as well, and he had a question in the chat. So maybe he is willing to share it.

- Oh, sure. It was a question probably mostly for Homer, but if anyone else knows about any research anticipated. My question was about the 30% figure and whether there's a plan to do research in the arbitration context about it because my understanding, if I recall the article, is that that's based on research in the hiring and employee context, where you have a single employer doing the selection as opposed to an adversarial pair, which is to me quite different.

I'm not sure which way that cuts, but I do think-- I mean, Homer mentioned the need for more empirical research. And I wondered whether that specifically is something that's contemplated either by Homer or anyone else.

- Arthur it absolutely is. Part of the mission of the RCI Inc is to move the needle by not only implementing something like the metric that we're suggesting but embarking on empirical research because I think all of us on this panel believe that we do need to know more about what works, what doesn't work, and why. We can only do that if we start to generate a lot more research about that, so the short answer is yes. That is one of the central features of the RCI Inc.

- And can I just ask a follow-up? One thing I wonder is has there been any look at the potential for unintended consequences either in potential. I mean, I can just see-- you know, I live in Virginia. And so we just had a governor's race, and I see how people can capitalize on one just take out of context. One example and twist it and turn it around.

The other thing is also I'm wondering whether in that context it looks like you have a very broad set of what will constitute diverse. And I wonder whether an unintended consequence might be lots of people-- this would be difficult to test in the arbitration context, indicating that they have some background that makes them diverse.

- Well, I think what Arthur is pointing out is the nascent aspect of our really delving into this area and learning more about what we need to do. Part of my desire or motivation in writing the article, as was Alan's, is to begin to shed light on the lack of action, the lack of activity. Sandra Day O'Connor said in the Grutter case that by 2028 we're not going to have to worry about race anymore.

I think there's no one on this call who believes that we're going to meet that marker, but what we can do is to begin to do the things that we're doing now and talking about-- not just talking, though. Part of this reason for this panel, I think, is to begin to talk about what are the action plans, what should we be doing to implement, what should we be doing to learn more. So, Arthur, your questions are well-taken, and the answer, as Sarah pointed out in her presentation in citing the article, is that the empirical research just hasn't been there, and it's only now starting to emerge.

- And I guess as I add to that a challenge with empirical research is that the vast majority of it is controlled by the organizations that provide arbitrators. And so if they want to do that research, they can, but getting them to open their files is, I think, a big challenge. So we can only look at sort of the back end of who's been selected, but sort of why they are selected-- I thought it was interesting that our CPR representative said she does try to push back on council.

- Mhm. Mhm.

- Don't want to use an arbitrator with whom they're not familiar, but beyond that it's sort of hard to know what's going on in the selection process and how the organizations are trying to convince council to pick people who they're not familiar with or who have certain different characteristics. With respect to the unintended consequences point, I think one way to reduce the problem or the risk of the problem is if there was more direct arbitrator appointment by the organizations [INAUDIBLE] pretty careful at vetting arbitrators before they ever allow an arbitrator to affiliate with their organization.

There's pretty extensive resume requirements and indications of improving that you've done certain kinds of arbitration. I would think that would be likely to weed out someone who is going to be untruthful about having a particular characteristic. So other than taking away the party's right to select the arbitrator, which I'm not sure is right they value as much as people think they do, I don't see a lot of harm in at least experimenting with more direct arbitrator appointment.

- And so I do think with what Arthur is raised, it's an important question, and certainly I was actually jumping in there. Sarah was kind of saying the same thing a little bit. It's hard to get the data to do empirical research, right? So if you look at most of the empirical studies that have been done, someone has been able to get access to data. Maybe it's California requiring that all of those service providers provide all this information.

So then someone like Alex Colvin or David Horton can take this data and do some empirical research about it. But I think what's kind of begging the question to Arthur's question is certainly with RCI, as you start to get more entities bought into it, and maybe they agree. Or as Homer mentioned, if you have some labor collective bargaining agreements where people agree, and then they collect that data and allow people who do this kind of research to take that data and see what happens.

You have to get people who will give you that data, have access to it, and allow you to assess it. I do want to say something with Katherine was talking about on the list of arbitrators of African descent. I certainly attended one of their meetings, and even when Katherine was talking, she kind of went in back in between international and domestic. I had initially thought that list was mostly for people who are interested in international arbitration, but if it is domestic-- because she talked about searching labor.

I purposely didn't get on it because I thought it was more international, which I was not as interested in, but certainly if you have lists you ought to be able to identify areas, too. Because no one mentioned Jay-Z on this call, and I guess I'll mention him now.

- [LAUGHS]

- If we remember that there was a dispute regarding Jay-Z, and how that came up was him thinking in a dispute that there were no arbitrators of color, and certainly AAA responded to that and provided some lists and identified people. But when you think of someone being in a dispute and saying how do I find arbitrators, that's certainly going to be a question. Right? That's something Homer suggested about the 30%.

Are there really 30% out there? So how do you find arbitrators? And so developing lists, and I know the ABA dispute resolution section did this at one point. So you have all these lists of people and what is their background, whether their qualifications certainly comes into play. What is their diversity, right?

What is African-American, what is African descent, what are people of color, mixed race. You can get into a lot of things that, as Arthur suggested, it might end up with some unintended consequences. Right? Because the minute you decide to talk about and think about doing something regarding race, there are others who don't like that and may see that as a problem, as if that you're attacking people who are not in that category.

So there's certainly issues out there that think about, but if you go back to the broader concern about those numbers I started with, if we want to give a perception of the system being fair, we have to do something about it.

- I completely agree.

- And I think we've-- yeah. We've highlighted I think here a lot of different ideas but then also the need for further research. And I would say also to kind of drill down into that research and finding out what diversity really means, but then also looking at the distinctions. I imagine there are quite some differences between employment versus commercial cases and what the statistics are, which I think is another really important area, which Dr. Simpson alluded to as well.

I think it's absolutely necessary, it sounds like, for us to do more deconstruction so we can work toward reconstruction and coming up with some problem solving ideas. One thing that we wanted to do with this panel-- a great discussion, I must say. Thank you. Just lots of stuff to chew on. Lots to read and to think about.

But then also I wanted to challenge the three panelists in our final time here. We're going to do a lightning round, and I want each panelist to give me three top action items. OK? So it'll be your three top, if you can only choose three, and I'm going to start with Professor Green since I made Professor Green go last. You get to go first this time.

[LAUGHTER]

- I was going to just say my three are what Sarah, what Homer said.

- Yeah. [LAUGHS]

- OK, so--

- Ditto!

- Yeah. Yeah, right? So three things. I mean, I think if there's some way in agreement, and I think this would have much more transformative effect, as I mentioned, in terms of the due process protocol. But where all the stakeholders-- certainly what Homer's doing with the RCI Project. But all the stakeholders just kind of come together and agree that we have to do something regarding selection that allows a fair process, where even the little guys or people or individuals in the process have an opportunity to feel like the person who is going to be selected as an arbitrator who will decide this very life important decision for them is selected in a way that is not biased and somehow doesn't suggest a lack of access to justice.

So if I pick that, I'd say, number one, we have to do something where we agree on selection, and certainly number two is continuing to increase the pool because there's always this argument out there. Well, there's not enough. We love to do it, but there's not enough both of the diverse arbitrators out there.

So not only [INAUDIBLE] the pool, have these lists, have these people, but also continue to in low-stakes things maybe give people opportunities to become arbitrators so you can get familiar with them. You can see them do certain things, and then on my third one I'll just defer to whatever Homer and Sarah say.

[LAUGHTER]

- Yeah. What he said, what she said. And Sarah gets to go because Homer got to go first before, and now we'll kind of backtrack and now Sarah you get to go next.

- Well, I get to say ditto.

- Exactly. Yeah, ditto everything Michael just said, but I definitely would want to get in the room where decisions are made at these organizations like AAA, CPR, and JAMS to talk to them about why some of these proposals don't seem to work for them. They're all very interested in diversity.

They all have-- I believe JAMS now has a person in charge of diversity. I emailed my article to her and never got a response. CPR has been great. Obviously, they serialized my article, but I still haven't been in the room with any decision makers on anything. AAA was kind of interested but hasn't followed up with me.

I've sent it to them. It's like, so you wonder-- and I'm not saying they're doing lip service. I'm just saying we at least have the three of us who are very interested in this topic, and who are the decision makers, how do you get in a room with them to convince them that these things are worth trying. And Katherine mentioned the issue about consumer arbitration. I've actually been on several panels for consumer arbitration always with white males.

So I don't know that there aren't white males doing consumer arbitration since my experience has been otherwise. But I guess I would say that trying to get more people in on those direct appointments for consumer arbitration which are lower value cases might give you that experience that you need when you fill out the form for AAA or CPR to get on other panels. I mean, a big issue is just how do you get enough experience so that someone will take you seriously as an arbitrator.

That's a big challenge, so I would try to encourage greater outreach to minorities and women with respect to getting on at least initially some of those panels. And then I guess I'll make my number three whatever Homer says, but--

[LAUGHTER]

- I love this. It's a good way to sort of-- and would just echo that I think even when you talk about the case managers, they are kind of sharing the wealth and appointing new people because sometimes they don't. And so I think that's important, too, even with the appointed arbitrators. So Homer, you get to clean up and take it away, and you can't just say ditto. You have to add.

- I will do that. Number one, sign on to the RCI pledge because it commits to action. Yes, we do need to do the research, but the need to do the research should not be an excuse for paralysis. So sign on to the RCI pledge. It focuses on the selection of diverse arbitrators, and that's what we need to do.

Number two, I think that all of the discussions that I've been having around the country-- what I have a sense that we need is a broad-based national diversity conference. What we've said here today is that there are a myriad of ideas. What I have seen in my research in talking to people is that there are experiments going on, but we're doing them in silos.

We're not sharing, and so we're not learning, and therefore I think that a broad-based national diversity conference on ADR is absolutely necessary. Now I can say ditto to what Michael said and to what Sarah said. Those are my three.

- Well, interestingly for-- everybody on the call probably is interested in arbitration, obviously. They're here. Just so you know, tomorrow there's a hearing in Congress, and I posted the link in the chat in case you're interested. That is going to be on employment arbitration tomorrow, so that's something to take a look at.

I'm not sure if they're going to talk about diversity. I hope they do talk about it, but I do think that could be interesting. So, any final thoughts anyone would like to share before we sign off for the afternoon?

- So--

- Say if anybody has the kind of information about ways, inroads into the organizations, by all means share them.

- And I love it. Yeah, you guys have thrown the gauntlet down. We're like, this is good.

- I would like to-- Amy, I would like to just share one thing since the CPR representative wasn't able to stay on. This is kind of a shout-out to CPR. They read my article, invited me to speak, and shortly thereafter CPR incorporated the 30% metric, which, Sarah, I hope goes up. [LAUGHS]

I'm not committed to 30%. I would like to see it greater, but start with something that everybody knows, and they know the 30% metric because of the Mansfield, and so we start there. But I want to commend CPR for what I would call pioneering work that they've done in terms of changing their rostering system to incorporate the 30% metric.

- So I would say-- and I know Catherine said this in a chat, but yesterday we had this great program on international arbitration and diversity. And today we're talking about domestic. And when you talk about labor-- and I think Catherine mentioned some connections with labor and international, but there really are different concepts. For instance, like with the list of arbitrators of African descent, I'm not sure you have it, but there's the National Academy of Arbitrators is the premier organization for labor arbitrators.

I'm not sure you have all of the African-American members who are members of the national academy on your list, but that's because, like I said, for me personally I didn't do it because I'm not interested in international arbitration. So there are distinctions, and so people-- if I'm a corporation, I'm looking and say I want to find some diverse members who can handle a labor arbitration dispute, you probably might think I'll look at the National Academy of Arbitrators list and see who's diverse there.

Would I go to the list that Catherine has and search labor? I don't know, but I think that certainly when we create these sources we ought to be broad and think about it creatively because the main thing is just making sure that there are folks out there who have these opportunities and that the selectors or the service providers can decide, vet them, and have them on their list.

- Excellent. Thank you. I just want to say a special thank you. Thank you to everyone who attended. Thank you, thank you, thank you to our esteemed panelists.

I really enjoyed this. I think we all have, and I just want to say a big round of applause for our fantastic panel. Thank you, thank you, thank you, and thank you, Colin, for kind of hosting and pushing the buttons, as it were.

[LAUGHTER]

- Absolutely. And thank you, Amy, for hosting and for Texas A&M for hosting us as well. We have recorded this session, and we will edit it down and share the link with all of the registrants.

- Mhm.

- But I just want to say thank you so much to all of our panelists and to everyone for attending, and have a wonderful day, everyone.

- Thank you.

- Thank all of you.