

Mentor Spotlight

Harrie Samaras Interviewed Bennett G. Picker

Harrie: What do you like best about serving as a neutral?

Ben: While I enjoy the intellectual challenges of arbitration, I have a passion for my work as a mediator. Unlike arbitration, mediation is an intensely personal process. I get to meet the disputants, discuss their needs and concerns and help them solve their problems. At one and the same time, I am a negotiator, a problem solver, a psychologist and an “orchestra leader.” After 25 years as a mediator, I am continually amazed by the way the process unfolds in each next mediation.

Harrie: What is the most important advice you can give to someone starting a mediation practice?

Ben: To paraphrase Justice Arthur Vanderbilt, developing a mediation practice is “not a sport for the short winded.” Passion, perseverance and patience are all required. At the outset, I would suggest taking a good full week course to learn the fundamental skills required in order to be effective. And unlike legal work which often flows to attorneys based on relationships, mediation work most often flows to those with a reputation for being highly skilled. At the beginning, I’d suggest getting involved wherever possible, perhaps in a pro bono case, shadowing an experienced mediator, or attending local workshops on mediation. Beyond that, one needs a focused marketing plan which will require networking with other neutrals and advocates who make neutral selections, participating in ADR organizations which have no barriers to entry such as the ABA Dispute Resolution Section, writing a short article and – this is key – developing a focused CV or better yet, a website, that lists all of one’s qualifications for ADR work and discusses one’s style and approach in mediation. There is no one way to market, but it is imperative to let potential clients know you are available.

Harrie: You have promoted opportunities for women and minorities in the legal profession for decades. What makes you work so hard to promote opportunities for diverse neutrals?

Ben: Well, I guess I am a “child of the 60’s.” I started out in our profession at a time when the desire to achieve social justice motivated so many of my colleagues. For many of us, promoting equal opportunity was and continues to be part of our DNA. Over the years, working on pro bono and civil rights cases, I’ve experienced the rewards of making a positive difference in people’s lives. As my career moved from litigation to ADR, I became appalled by the fact that there are so many barriers to success in the path of diverse neutrals. The lack of diversity is simply palpable. It’s a sad fact that the world of ADR is even less diverse than in law firms or in the courts. I simply want to do what I can to make the landscape of ADR more inclusive. We all benefit – neutrals, disputants, the entire profession – from the inherent values of diversity.

Harrie: You were one of the original members of the National Diversity Task Force convened by CPR a decade ago and the principal convener of a new diversity initiative on the East Coast a year ago. What do you see as the major barriers to entry and success for female mediators and arbitrators?

Ben: Regrettably, there are many barriers and, worse yet, some are invisible. Many years ago, when I started as a mediator and arbitrator, there were very few women in the pool of

available neutrals. Today, highly skilled and experienced female neutrals are available in great abundance and, yet, they are disproportionately not being selected. Why? I believe the principal reason is implicit bias. Especially in mediation, when lawyers send out an email to their colleagues asking for suggestions, the responses all too frequently reflect the past when older white males constituted the overwhelming majority of those available to serve. We need to develop meaningful programs to overcome this implicit bias and encourage corporate counsel and their outside counsel to select diverse neutrals.

Harrie: Recently, in Philadelphia, you convened two meetings of individuals to develop and implement a plan to promote diversity in ADR. Could you describe the meeting and any follow up efforts?

Ben: While I may have been the one to convene the meeting, it was to give expression to the groundswell of support for diversity initiatives throughout the region. Approximately 30 leaders in ADR from Boston to Washington, D.C. actively participated and we set a goal of establishing initiatives that would make a difference within one or two years. Almost everyone expressed their frustration as we've had so much discussion about promoting diversity but seen very little progress. We met twice in 2014. After these meetings, a small group of individuals have been meeting on a regular basis to promote specific initiatives. This group includes Deborah Masucci, a founding member of WIDR and current Chair of the International Mediation Institute; Beth Trent, Senior Vice President of CPR and head of CPR's Diversity Task Force; Hon. Timothy Lewis, former Third Circuit Judge and member of the Board and Executive Committee of AAA; and Marvin Johnson, a mediator with JAMS and current President of the International Academy of Mediators. Each of these individuals has worked for decades to promote diversity and we are cautiously optimistic.

Harrie: What are some of the protocols or programs this newly formed group has initiated?

Ben: Individually and collectively, we have developed training modules on how implicit bias plays into the neutral appointment process impacting unrepresented groups; worked with the ABA Dispute Resolution Section on a directory of diverse neutrals; worked on initiatives with corporate groups committed to diversity in the profession such as LCLD.net; worked with ADR providers on enhanced ways to identify neutrals with diverse backgrounds and developed an ADR Champions project involving coaching, mentoring and sponsoring. Also, Beth, Deb and Tim co-wrote an article in a recent issue of *Dispute Resolution Magazine* entitled "The Dismal State of Diversity: Mapping a Chart for Change." We know our challenges are complex and difficult, but we are all determined.

Harrie: What steps can ADR service providers take to support female neutrals?

Ben: I think we're talking mostly about arbitration as most mediation is ad hoc. In arbitration, I think we are actually making modest progress today. I know that organizations such as CPR and the American Arbitration Association have worked with diverse neutrals to enhance their CVs. I believe the American Arbitration Association now reports 20% of all lists of candidates for appointment sent to parties are diverse neutrals. Of course, as I've said, we still need to overcome implicit bias and take affirmative measures to assure the selection of diverse neutrals.

Harrie: What steps can corporate counsel and their outside trial counsel take to support female neutrals?

Ben: I would begin with “Diversity Matters” – a CPR pledge for corporations and law firms that promotes the inherent values of diversity in ADR and seeks a commitment to include diverse neutrals among any list of mediators or arbitrators proposed. Beyond that, each company and law firm, through their diversity officers and litigation chairs, needs to breathe life into the pledge by seeing that the actual practices within their organizations gives realization to the pledge. Further, to the corporate managers of litigation, I would suggest that they monitor results in a serious way. Corporations are all over their clients today when it comes to managing the costs of litigation and managing diversity within their law firms. They need to manage the ADR diversity issues with the same level of concern and diligence.

Harrie: What do you predict will be the state of the ADR profession five years from now?

Ben: Predictions for the future are precarious. I am reminded of Harry Warner, the co-founder of Warner Brothers, who in the late 1920’s said “No one will ever want to hear actors talk.” Nevertheless, I believe that with the internet and in an increasingly global marketplace we will see a dramatic rise in mediation internationally. I believe the future offers great promise for non-traditional jobs such as ombuds, settlement counsel, diagnostics, system design, corporate coaching and consensus building, just to name a few. And I believe the future is also likely to allow for individuals to enter the field at a much earlier age in one’s career. Finally, while societal and other barriers to equal opportunity in ADR may not disappear in five years, I am optimistic about the promise of far greater opportunities for diverse neutrals in the field. However, we will all need to do our part to make the full promise of diversity a reality.

Bennett G. Picker serves both as a mediator and arbitrator in business disputes. He has successfully resolved several hundred domestic and international commercial disputes with a cumulative value of several billion dollars. Mr. Picker is a member of the National Panel of Distinguished Neutrals of the International Institute for Conflict Prevention & Resolution (CPR); a member of the Commercial Mediation, Arbitration, International and National Class Action Panels of the American Arbitration Association; a fellow of both the American College of Civil Trial Mediators and the International Academy of Mediators and is certified by the International Mediation Institute. He is the author of *Mediation Practice Guide – A Handbook for Resolving Business Disputes (Second Edition)* published by the American Bar Association Section on Dispute Resolution, and has written numerous book chapters and articles on mediation and arbitration. Mr. Picker has lectured widely on ADR related topics at law schools, business schools, and organizations such as the American Bar Association, the American Arbitration Association, CEDR and CPR.