A Historical Perspective on ADR and New Orleans
The ADR Krewe by the Neutral Ground in the Big Easy

By Imre Stephen Szalai

Bonjour, y’all! Who dat! I am grateful and excited that the 2020 Annual Spring Conference will be held in the Big Easy, my birthplace and hometown. With the sounds of sublime jazz, a gumbo of rich, spicy foods representing the mixing of many cultures, the boisterous, imaginative Mardi Gras krewes, the City’s rebirth following the big flood, and in so many other ways, New Orleans embodies the theme of our annual conference, Innovation, Improvisation, and Inspiration. View Imre Szalai’s presentation.

I want to share a few special connections involving New Orleans and dispute resolution. The unique legal framework of Louisiana, a hybrid, mixed system consisting of both common law and civil law influences, serves as a constant reminder that the New Orleans area involves a mix of cultures. As a commercial, port city with many different cultures, misunderstandings and disputes are an inevitable part of the fabric of the city. The hotel for the Spring conference, the Sheraton Hotel, sits on Canal Street, which is known locally as a “neutral ground,” an apt name for our gathering of many neutrals. This main thoroughfare of Canal Street was a dividing line between the Creole French Quarter side of the city, and the city that developed on the other side of Canal Street when a more Anglo-American population arrived after the Louisiana Purchase. Rivalries developed between the newcomers and the established Creole French, and thus Canal Street came to be known as a “neutral ground” between the rival groups. Today, this term “neutral ground” is used throughout the city to describe any median on any street.

A few blocks from the site of our conference is the building that housed the New Orleans Cotton Exchange, a trade association established in New Orleans during the 1800s and lasting until the 1960s. This association helped facilitate a market for trading cotton by establishing cotton pricing and cotton quality standards. The Cotton Exchange involved thousands of transactions worth millions of dollars every year, with most of the trading apparently done without written contracts, and disputes often arose with this volume of trading. To help with these commercial transactions, the New Orleans Cotton Exchange established a standing committee on arbitration, with an appellate arbitration tribunal, to handle disputes involving prices, the quality or grading of cotton, and membership in the Exchange.

The New Orleans Cotton Exchange has been called the first major commodities market in the United States to establish such an arbitration system. Through the Cotton Exchange, one can easily see the traditional benefits associated with arbitration, with the efficiency, speed, and cheap costs of a decision from an expert arbitration tribunal. Also, this system of arbitration allowed the industry to enforce its own standards or norms. I’ve read arguments that these arbitration tribunals used for cotton-related disputes would allow for calculation of damages that a court would not use, and thus such arbitration tribunals enabled the group to implement its own standards. The New Orleans Cotton Exchange exemplifies a traditional use of arbitration in the context of a trade association.
The late Professor Ian Macneil, and others, have recognized that arbitration first took root in America within the context of communities and trade organizations. In such settings, community pressures may have encouraged parties to utilize arbitration systems, even if arbitration agreements were not legally binding before the 1920s. Today, with the hyper-enforceable nature of arbitration agreements arising from the Federal Arbitration Act passed during the 1920s and arising from the Supreme Court’s expansion of the Federal Arbitration Act in the last few decades, arbitration has been able to take root outside of this traditional setting of trade associations and smaller communities, and one can now find arbitration agreements in every part of American society today. But at one time in American history, before arbitration agreements were legally enforceable, trade associations such as the New Orleans Cotton Exchange provided fertile grounds for arbitration to be used.

Another fascinating part of New Orleans history and dispute resolution involves dueling. New Orleans developed a reputation as the dueling capital of the United States, and one can visit a famous landmark in New Orleans City Park called the Dueling Oak, a majestic oak tree thought to be older than the United States and under which much blood was shed from duels. Today, looking back, it may be inconceivable to modern Americans that dueling was viewed as an honorable way of resolving disputes at one time in American history. If you are interested in learning more about dueling and dispute resolution, I highly recommend Doug Yarn’s article titled “The Attorney as Duelist’s Friend,” which explores how duelists’ “seconds” or friends, who acted as both advocates and peacemakers, can serve as a valuable role model for attorneys involved with dispute resolution. In addition to the infamous Dueling Oak, City Park is also filled with many activities and sites for visitors, including a beautiful outdoor sculpture garden; an art museum; a children’s museum; mini-golf; a café serving beignets; a botanical garden; playgrounds; an amusement park with rides; bike trails and rentals of multi-person surrey bikes; and lagoons or bayous with kayak and pedal boat rentals.

New Orleans is a vibrant city, with multiple historical sites of interest, renowned restaurants, and many music venues to explore, too many to explore during the weekend of the conference and too many to describe in this short article. For those of you attending the 2020 Annual Spring Conference, I strongly encourage you to carve out some time to experience the cultural wonders of this unique city. To quote a popular local saying, laissez les bon temps rouler!

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