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CHAIRMAN’S REPORT

One clever idea now common with many beverages is the bottle cap quote. I purchased a bottle of tea recently and the African Proverb printed on the cap is apropos to our work on committees: “If you want to go quickly, go alone. If you want to go far, go together.” We are approaching the midpoint of my term as this Committees’ Chairman and I would like to reiterate my request for submissions. This is a publishing opportunity and a forum to share your knowledge with others.

The ABA year is winding down, but there are many conferences remaining on the calendar. Attending these events provides needed CLE hours as well as networking benefits. Try to attend the Annual Meeting in August. San Francisco, the host city, is home to many superb restaurants, noteworthy sights, and walking-friendly streets.

We have one more newsletter this term, and I hope to see your submission soon.

Dietrich M. von Biedenfeld
Chair, YLD Dispute Resolution Committee

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The Dispute Resolution Alternative
By Dietrich M. von Biedenfeld

One of the many benefits to Alternative Dispute Resolution is that it allows people to step a bit outside of our adversarial system of justice discernment. If not purely collaborative, the ADR system allows involved parties to take an interactive approach toward a mutually satisfying conclusion, as opposed to the lengthy wait for a determination by a judge or jury.

The incoming President of the Mississippi Bar shared a tale of a lawyer who went beyond professional obligation to serve a client in need. This highlighted the role of lawyers as advocates, counselors, and civic role models. Some of what lead us into the profession is our personalities. Each attorney I have encountered possesses varying levels of altruism; pride of citizenship; desire to seek the truth and promote fairness; and other attributes that may be best showcased in the ADR setting with more flexible procedures and remedies.

My own collaborative style of law practice is sometimes lost in a personal learning style befitting the frictional caricature of lawyers. People give me the keys to the dialogue, and I drive the discussion too fast and too directly, which can be off-putting, especially in the vulnerable state of
most people experiencing legal disputes. When I take a road trip to a place I’ve been before, unlike my road trips to new places, I tend to seek time savings by pushing the speed limit (I “observe” it, like many attorneys) and avoiding scenic detours. Passengers less familiar may protest; just as in law practice when we leave our clients behind because we know from experience the most likely outcomes. We aim to get to the expected resolution our sophisticated, experienced brains have determined. Like actuaries, we are comparing and calculating, analyzing and raising counterpoints. But clients may be dissatisfied with a positive outcome that they do not understand because we did not allow them to process and ponder at a non-lawyer pace. Because we are too smart, educated, or experienced to appreciate the value of seeking client input into his or her best interests, we may achieve the best textbook result but not the optimal goal of the client. We may even need to discard our own disdain or condescension for the person employing us. But how do you evacuate something you are not conscious of?

Monitoring our own confidence and communication when engaging with those in situations undermining that confidence, and who may not have the sophisticated training in the definitions and nuances of communication, is essential. Because successful ADR resolution takes two (or more), with multiple attorneys and clients even on the same side of the table, it can be especially challenging. Many sources cite the ease of complicating, but the genius of simplification. Unfortunately, concision does not universally allow a full range of ideas to be explored. Sometimes ambiguity of offers or expectations precludes definite solutions. Sometimes avoidance can lead to cumulative pressure that the collaborative spirit cannot contain. Lawyers may best serve clients by finding the genius of plain English and simplicity without losing the brilliance of legal analysis.

Lawyers can be clients’ “hevruta” most capably in ADR processes, asking if the client really wants money or some other recompense. This helps in exploring the true motives and goals of a client and can prevent the needless adherence to the strict effort to overcome opposing counsel. A Pyrrhic victory may be avoided by applying the Pygmalion effect to your client and even opposing counsel. In ADR the positive outlook is helpful.

This year we have endeavored to invite participation from committee members, collaborate with other law practice committees, and facilitate a dialogue about the value of this specialty. There is one more newsletter in which you can contribute. We welcome any effort to expand the benefits offered by ADR, and specifically by this committee.

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Recognizing Your Personal Cognitive Distortions of Communication
*By Hua Chiu*

Why is it important to learn to recognize your personal cognitive distortions when communicating with people?

Before answering this obscure question, let us understand what cognitive distortions are. Cognitive distortions are simply ways that our mind rationalizes inaccurate thoughts to reinforce negative thinking or emotions to keep us feeling bad about ourselves. Aaron T. Beck, an American psychiatrist and a professor emeritus in the department of psychiatry at the University of Pennsylvania, pioneered cognitive-behavioral therapy for the treatment of clinical depression.¹ Cognitive-behavioral therapy seeks to challenge automatic thoughts that come to mind when a particular situation occurs. Automatic thoughts are internalized perceptions involuntarily generated by an individual that may be triggered by an event or environment without logical examinations.² An example of automatic thought is “I feel cold, so I must be sick.”

Below is a summary representing ten of the most common cognitive distortions that most of us might have experienced. After reading through the list, identify ones that you might recognize as your personal distortions³:

1. **All or Nothing Thinking** – The world is either black or white; there is no grey.
2. **Overgeneralization** – A single negative event represents all future events.
3. **Mental Filter** – Focus only on the negatives.
4. **Discounting the Positives** – Filter out all positive qualities.
5. **Jumping to Conclusions** – Mind reading and assuming only negative outcomes.
6. **Magnification or Minimization** – Make a mountain out of a molehill.
7. **Emotional Reasoning** – Using emotion as the rational base for decision making.
8. **Should Statements** – Criticizing others and yourself with “should.”
9. **Labeling** – Negative labeling of yourself.
10. **Personalization and Blame** – Blaming yourself for unrelated circumstances.

As human beings, we have a tendency to make assumptions solely based on our past experiences, personal or secondhand, without a logical basis. We assume that our past experience is logical, and therefore it must be true if a similar, but not identical, event occurs; from thus, the source of cognitive distortions appears. However, without additional investigation and by failing to treat each situation as unique, we fall into the fallacy of automatic thoughts and cognitive distortions. This limits us as effective communicators seeking to better understand the people we are trying to serve.

Before you make an assumption based on your past experience under a similar circumstance, you might consider further exploring or assessing the situation by obtaining additional information, and approach each situation from a blank canvas perspective. Practice these methods to challenge your automatic thoughts and untwist your negative thinking:\[3\]

1. **Identify the Distortion** – Write down your negative thoughts and understand why you have them.
2. **Examine the Evidence** – Don’t assume the negative thought is true; examine and collect evidence.
3. **The Double-Standard Method** – Be your own best friend and be compassionate to yourself as you would to a good friend.
4. **The Experimental Technique** – Test the validity of your negative thoughts.
5. **Thinking in Shades of Grey** – Celebrate partial success rather than deem something a complete failure.
6. **The Survey Method** – Ask your friends and family about the validity of your thoughts and attitude toward yourself.
7. **Define Terms** – Ask yourself to define the label, “loser,” when you feel like one.
8. **The Semantic Method** – Don’t use harsh language when describing your reaction to a situation.
9. **Re-Attribution** – Shift your focus on solving the problem instead of blaming yourself and feeling guilty.
10. **Cost-Benefit Analysis** – List the advantages and disadvantage of the feeling, negative thought, or behavior pattern.

By understanding yours and your clients’ cognitive distortions and by learning to challenge your automatic thoughts, you become a more effective communicator. In the long-term, this growth will benefit you and those with whom you interact, both professionally and personally. In untwisting my own personal cognitive distortion, I have found it useful to look at my past experiences as an investment prospectus, where past earnings do not guarantee future earnings. Historical data is used only as a baseline to start communication. To be a good communicator, we need to approach each situation as unique.

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NEWS AND ANNOUNCEMENTS >>

2016 ABA Moscow Dispute Resolution Conference

The Section International Law and Section of Litigation will sponsor the 2016 ABA Moscow Dispute Resolution Conference. The conference will take place on September 30, 2016.

See the event detail page to register and for more information.

9th Annual Arbitration Training Institute

The Section of Dispute Resolution and Section of Litigation will co-sponsor the 9th Annual Arbitration Training Institute at the American Bar Association Offices in Chicago, Illinois. This two-day interactive institute will be presented by a panel of nationally recognized arbitrators and arbitration advocates. Let the panel of experts walk you through the arbitration process from start to finish. This limited capacity training will provide you with a unique learning environment and industry contacts you will sustain throughout your career.

The institute will take place June 2-3, 2016.