

From the Chair  By Benjamin G. Davis

Various things that have crossed my desk recently have reminded me of the value of technology, the power of determination, and the importance of simply allowing people to tell their stories.

Technology

A few months ago, when someone was seeking help for a presentation on technology and dispute resolution, my thoughts went back to a case from 2006 called Ximenes-Lopes v. Brazil (http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_ing.pdf). I initially learned of this case from Fernando R. Delgado and Deborah Popowski, who worked on it when they were in law school. In that case, Irene Ximenes-Lopes-Miranda sued the country of Brazil for the horrendous treatment her brother had suffered at a private psychiatric clinic in the town of Sobral in the state of Ceará.

The case strikes me as interesting not so much for the decision as for how the case came about. After expressing concern about her brother’s treatment and getting no satisfaction from local authorities, Ximenes-Lopes-Miranda did an online search for human rights (direitos humanos in Portuguese) organizations from an Internet cafe in the small town of Sobral in northeastern Brazil. She sent an inquiry to each of the hundreds of sites that matched her query, asking for help in her brother’s case.

The Inter-American Commission on Human Rights, which received one of those inquiries, had no official online complaint form at the time, but whoever was doing intake moved the inquiry forward. The letter summarizing Ximenes-Lopes-Miranda’s concerns became the basis for an official complaint at the Inter-American Court of Human Rights and, eventually, a judgment in favor of Ximenes-Lopes Miranda, finding that Ximenes-Lopes-Miranda’s brother had been subject to inhuman and degrading hospital conditions and that Brazil had violated the American Convention on Human Rights in his treatment.

For me, this story succinctly highlights how technology can provide crucial access to justice. In a small rural town, a woman determined to get help for her brother found a way, through an Internet cafe, to step outside the unresponsive local power structure and get results.

Silence Breakers

On the day I drafted this column, Time magazine hailed “the Silence Breakers” as the Persons of the Year, recognizing the courage of those who have come forward to talk about the sexual harassment, abuse, and assault they suffered, some as children and others as adults, and seek accountability. This, in turn, reminded me of Barbara Blaine, who was sexually abused by her local priest when she was a 14-year-old in Toledo, Ohio, where I live. Many years ago Blaine founded the Survivors Network of Those Abused by Priests (SNAP) as a support group for people who had suffered as she had. From that humble beginning, SNAP became a powerful organization instrumental in filing cases against priests who had abused children in the United States.

I got to know Blaine when she was working on taking a complaint related to the priest abuse to the International Criminal Court (ICC). When she submitted her complaint, citing the then-Pope and a high Vatican official, to the ICC, there was much press coverage around the world. In part because of that attention, almost overnight, people from some 65 countries came forward, telling the stories of the abuse that they or their loved ones had endured. Even though the ICC decided not to proceed on the complaint because of jurisdictional concerns, its response showed that the complaint had been heard. Barbara Blaine’s determination — and the ICC’s complaint process — raised consciences and empowered people all around the world to present their pain.

Arbitration

As many of you know, last summer the Consumer Financial Protection Bureau (CFPB) promulgated a rule banning pre-dispute arbitration agreements. This past fall, Congress and President Trump nullified that rule.

Because this topic is so important, I have been trying since August to get representatives of the CFPB and the Comptroller of the Currency to come to our Spring Conference to present all of the arguments. Neither one has so far made any of its current or past leaders available for a discussion, but I remain hopeful that we can interact with our government institutions on this crucial subject. Institutions — whether they are the CFPB, the ICC, or the Inter-American Court of Human Rights — must ensure that ordinary people
Inside the ABA

The Section of Dispute Resolution has been in the forefront on matters affecting the entire ABA and the dispute resolution field. As a Section, we have provided significant input on the ABA’s reflection on dues strategy and other association matters, including review of NAFTA dispute resolution mechanisms. We have identified 80 excellent panels (out of a record 166 proposals) for the 25/20 Spring Conference, which will be held in Washington, DC, April 4 through April 7, 2018. Registration for the conference is now open, so do sign up soon. We are also seeking sponsors, so please consider helping that way. In hopes of enhancing the experiences of our younger colleagues at the conference, we are working to design a Young Scholars Opportunity for a limited number of members of the Young Lawyers Committee, the Young Lawyers Division, and the Law School Division.

Our efforts to reach colleagues of all ages continue. We recently put on a joint podcast with the Young Lawyers Division titled “How to Become a Mediator,” which was very well attended, and at the invitation of the Law Student Division, I participated in a podcast on the life of a law professor (https://abaforlawstudents.com/2017/11/28/the-life-of-a-law-professor-podcast/) that includes advice I received a long time ago that has stood the test of time. I hope it is of interest, and I welcome any feedback. The excellent Negotiation and Mediation Institutes this fall in Washington, DC, and at Pepperdine in Malibu, California, provided advanced training to help individuals become better ADR professionals. And our online webinar series continues to explore discrete aspects of dispute resolution to help deepen the professionalism of all participants.

So on we go. My very best to all of you. I hope you continue to enjoy this 25/20 year, baby!

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