



Lee Hornberger

The Chair's Corner

by Lee Hornberger

Introduction

There are three books that I read at least once a year. These are *The Destruction of the Bismarck*,¹ *Hell in a Very Small Place: The Siege of Dien Bien Phu*,² and *Vietnam: A History*.³ *Bismarck* is about the British, with background American support, sinking of the German battleship Bismarck during World War II. *Hell in a Very Small Place* is about the fall of Dien Bien Phu in 1954. *Vietnam* is mainly about the French and American wars in Vietnam.

Each of these books teaches us some lessons concerning negotiating.

***Bismarck* teaches us about the vital need to listen.** The German Fleet Admiral on the Bismarck did not believe the radio messages he was receiving from German Naval Headquarters in Paris. Paris Headquarters told him the British had lost track of the Bismarck. He did not believe Headquarters, even though the British had indeed lost track of the Bismarck. Headquarters told him to stop sending radio messages, albeit in code, of every movement the Bismarck made. Not appreciating that the British had actually lost the Bismarck [but the British knew how to triangulate], he ignored the warnings from Headquarters. He was not listening. This, among other things, led to his doom, the sinking of the Bismarck, the death of over 2,000 sailors, and the failure of his mission. In short, listening to what other people are trying to tell us can be useful.

***Hell in a Very Small Place* teaches us to respect the other side and, especially at negotiation sessions, to treat the other side with courtesy.** The French, exercising their implicit bias, underestimated the Viet Minh. Because of this, the French failed to develop realistic options and strategies. The French subjected their artillery crews at Dien Bien Phu to firing from open artillery pits without providing the crews with flak jackets. The French had their infantry and airborne troops fighting from trenches without providing them with trench periscopes. The U.S. Secretary of State, John Foster Dulles, failed to exercise courtesy when he refused to shake Zhou Enlai's hand during the 1954 Geneva negotiations. This was rectified almost twenty years later when President Nixon shook Zhou Enlai's hand in 1972.

In *Vietnam*, the Americans, like the French before them, following their implicit bias, underestimated the other side, and did not develop realistic options and strategies. After a decade of war, the Americans discovered their BATNA was simply to come home.

The ADR Section in 2017-2018

The ADR Section had several goals for 2017-2018. These goals included the following.

Diversity and Inclusion

One overriding major continuing goal was diversity and inclusion. Under the leadership of Diversity Task Force Chair **Danielle Potter**, the Section valued and developed greater opportunities for diversity and inclusion. An important part of this endeavor was the February 15, 2018, "The Neuroscience of Decision-Making: What's Really Controlling the Way You Think?" program, featuring nationally renowned speaker, **Kim Papillon**, at Detroit Mercy Law School. The three co-sponsors for this event were the ADR Section, Detroit Mercy Law, and Miller Canfield Paddock & Stone. Those actively involved included **Michelle Crockett**, Hiring Chair and Diversity and Professional Development Principal of Miller Canfield Paddock and Stone; **Megan Fidorra Jennings**, Associate Dean for Student Affairs, Detroit Mercy Law; **Shel Stark**, Chair, the ADR Section's Skills Action Team; and **Mary Anne Parks**, ADR Section Administrator.

As indicated in the following demographics information, the ADR Section is doing an outstanding job concerning diversity and inclusion within the Section's present and future leadership structure.

Here are the demographics of the presenters at the ADR Section's upcoming October 12-13, 2018, Annual Meeting and ADR Conference in Traverse City.

Male: 16 51.6 %

Female: 15 48.4 %

White: 28 90.3 %

African American: 3 9.7 %

Here are the demographics of the SBM membership.

SBM members female: 34.2%

SBM members African American origin: 5.6%

Here are the demographics of the ADR Section membership.

ADR Section members female: 34.5%

ADR Section members African American origin: 8.1%

Here are the demographics of the ADR Section Council.

2017-2018 ADR Section Council female: 25 %

2017-2018 ADR Section Council African American origin: 12.5%

2018-2019 ADR Section Council female: 29.1 %

2018-2019 ADR Section Council African American origin: 16.7%

Here are the demographics of the ADR Section Action Team/Task Force Chairs.

ADR Action Team Chairs female: 33.3%

ADR Action Team Chairs African American origin: 11 %

The SBM demographics are at:

<http://www.michbar.org/file/opinions/statewidedemographics2017.pdf>

The ADR Section demographics are at.

<https://higherlogicdownload.s3.amazonaws.com/MICHBAR/2b10c098-e406-4777-a199-33b9d3e7c568/UploadedImages/pdfs/demo.pdf>

This push for diversity and inclusion in ADR is also happening at the national level. The American Bar Association Resolution has passed Resolution 105 addressing diversity in ADR. A copy is available at: <http://www.leehornberger.com/files/ABA%20105%20ADOPTED%20August%202018.pdf>

The Resolution states:

RESOLVED, That the American Bar Association urges providers of domestic and international dispute resolution to expand their rosters with minorities, women, persons with disabilities, and persons of differing sexualorientations and gender identities ("diverse neutrals") and to encourage the selection of diverse neutrals; and

FURTHER RESOLVED, That the American Bar Association urges all users of domestic and international legal and neutral services to select and use diverse neutrals.

Automatic ADR Task Force

Another goal was the automatic mediation proposal. Many Section members, including **Bill Weber, Bob Wright, Joe Basta, Marty Weisman**, and Council liaison **Lisa Taylor** worked long and hard to draft the proposed automatic mediation language. It was originally pending in the State House of Representatives as HB 5073 and the Section is now in discussion with stakeholders throughout the state about whether the proposal should be framed as a Michigan Court Rule. The Automatic Mediation Task Force has become the Automatic ADR Task Force. The Task Force is vibrantly seeking to have automatic ADR in Michigan courts.

Training and Mixers

On **March 20, 2018**, the ADR Section was pleased to present its ADR Summit with world class mediator and trainer, **Lee Jay Berman**, at Western Michigan University-Cooley Law, in Auburn Hills. Those active in creating this wonderful Summit included **Audra Foster** of Cooley Law; Section Administrator **Mary Anne Parks**; and Skills Action Team members **Zena Zumeta, Mike Leib, Shel Stark**, and **Bob Wright**.

The Wayne County Family Law Bar Association and the ADR Section co-sponsored the Family Law Mediation Luncheon on **April 17, 2018**, in Detroit. This luncheon was organized and moderated by **Zenell Brown**.

The Section sponsored a teleseminar on “The Dirty Dozen: The 12 Biggest Mistakes in Construction Dispute Mediation” on **April 26, 2018**. The panel members were **Marty Burnstein** and **Ronald A. Deneweth**. The moderator was **Michael S. Leib**. The Technical Advisor was **Robert E. Lee Wright**

The Section, with the Grand Rapids Bar Association, co-sponsored a Mediator Mixer Symposium on **June 7, 2018**, at Mika Meyers in Grand Rapids. Recent issues facing mediators and mediator techniques were discussed. **Scott Brinkmeyer** and **Mike Leib** were the organizers. **Shon Cook** and **Pam Enslin** were the presenters.

The Section sponsored the “Negotiation, Persuasion & High Stakes-Decision Making for Mediators-What the Research Teaches Us” presentation by **Dr. Elizabeth Stokoe** on **June 19, 2018**, at Western Michigan University-Cooley Law, Auburn Hills. Dr. Stokoe provided an exciting presentation on scientific techniques that revealed what works and what does not work in settlement discussions and our daily communications. Dr Stokoe’s presentation was the result of **Barry Goldman’s** initiative and drive.

A webinar joint program with the Business Law Section and ICLE concerning ADR contract language was recorded on **July 18, 2018**, and made available for later viewing by ADR Section members. The presenters were **Daniel N. Sharkey** and **Michael Hindelang**. **Mike Leib** was the organizer and moderator.

The Section sponsored the Diversity and Inclusion in ADR and the Legal Profession Lunch at the Ann Arbor City Club in Ann Arbor on **August 7, 2018**. The organizers were **Danielle Potter, Betty Widgeon, Joe Basta**, and **Shel Stark**. **Phyllis Crocker**, Dean, Detroit Mercy Law; **Betty Widgeon**; and **Rabih Hamawi**, Law Office of Rabih Hamawi PC, were the presenters.

The Marquette County Bar Association and the ADR Section cosponsored a lunch for mediators and other ADR practitioners on **September 21, 2018**, in Marquette, Michigan. This lunch was organized and chaired by **Thomas L. Solka** (Ret. Circuit Court).

The Section sponsored a mediator ethics teleseminar on **October 3, 2018**. As mediators, we face complicated delicate issues during the mediation process from disclosure obligations before retention to our post-mediation activity. **Scott Brinkmeyer** was the moderator. **Donald D. Campbell, John A. Hohman, Jr.**, and **Alecia M. Ruswinckel** were the presenters. **Robert E. Lee Wright** was the Technical Advisor.

Information concerning the Action Teams and Task Forces is available at: <http://connect.michbar.org/adr/reports/teams> .
2018 Annual Meeting

The ADR Section's **2018 Annual Meeting and ADR Conference**, including 11 hours of advanced mediator training, will be Friday, October 12, and Saturday morning, October 13, 2018, at the Park Place Hotel in Traverse City. Many Section members, including **Shel Stark, Bob Wright, Zena Zumeta, Mike Leib, Bill Gilbride**, and Section Administrator **Mary Anne Parks** have worked very hard to organize this event.

Zenell Brown and **Ed Pappas** have been nominated to be ADR Section Council members and will be on the ballot for Council at the **October 13, 2018**, Annual Meeting.

The ADR Section Distinguished Service Award, Nanci S Klein Award, George N. Bashara, Jr. Award, and Hero of ADR Awards will be presented at the Friday evening, **October 12, 2018**, Awards Banquet. **Earlene Baggett-Hayes** will receive the Distinguished Service Award. **Dr. Jane Millar**, Executive Director of Northern Community Mediation, will receive the Nanci S. Klein Award. The recipient of the George N. Bashara, Jr. Award will be announced at the Banquet. **Erin Archerd** and **Graham Ward** will receive Hero of ADR Awards.

Next year's Annual Meeting and ADR Conference will be **October 11 and 12, 2019**, at The Inn at St. John's in Plymouth.

Publications

The ADR Section is privileged to be sponsoring the February 2019 ADR theme issue of the **Michigan Bar Journal**. The Section will also continue *The Michigan Dispute Resolution Journal* under the leadership of its Editor, **Erin Archerd**. The Journals are available at:

<http://connect.michbar.org/adr/journal> .

2019 ADR Summit

The ADR Section's Fifth Annual ADR Summit with **Dwight Golann** as the presenter will be **March 19, 2019**, at Western Michigan University-Cooley Law in Auburn Hills, Michigan. This event is organized by the Section's Skills Action Team.

And, Your 2018-2019 Incoming Chair: Bill Gilbride

Under the outstanding leadership of incoming Chair **Bill Gilbride**, the continuation and creation of laying the foundation for future Section activities and leadership is expected.

<http://connect.michbar.org/adr/council>

The ADR Section Council and Executive Committee meeting schedule is available at:

<http://connect.michbar.org/adr/home> .

The mission of the ADR Section is to encourage conflict resolution by:

1. Providing training and education for ADR professionals;
2. Giving professionals the tools to empower people in conflict to create optimal resolutions; and
3. Advancing the use of alternative dispute resolution processes in our courts, government, businesses, and communities. **

Endnotes

1. Paul J. Bercuson and Holger H. Herwig, *The Destruction of the Bismarck* (Overlook Press, 2001).
 2. Bernard B. Fall, *Hell in a Very Small Place: The Siege of Dien Bien Phu* (Da Capo Press, 1966).
 3. Stanley Karnow, *Vietnam: A History* (Penguin Books, 1997).
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