The Human Face of On-line Dispute Resolution

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In September 2004, we were both at the Association for Conflict Resolution conference in Sacramento talking about on-line dispute resolution (ODR). We were lucky enough to be in a room with some of the most experienced on-line mediators in the world, including people who had mediated three thousand or more disputes on-line. We also had as our guest the chief executive of SquareTrade.com, now one of the largest providers of alternative dispute resolution worldwide, with a record of handling more than 1.5 million disputes (Conley Tyler, 2005b). Yet we only half-filled one of the smallest rooms at the massive conference venue. It led us to articulate the question: What is going wrong with ODR?

Our suspicion is that most alternative dispute resolution (ADR) practitioners still regard the role of technology in dispute resolution as something of a fringe issue. Usually known as on-line dispute resolution, or by its acronym, ODR, this area can appear specialist, technical, and irrelevant to some dispute resolution practitioners.

George Alter's recent article in *ACResolution* (2005, p. 9) sums this up nicely with a (fictional) letter from a frustrated mediator, "Face-to-Face in Springfield":

> I am continually accosted by ODR experts who are trying to convince me that integrating ODR into my practice is a good thing. (Right!) I am convinced that ODR cannot work because there is no body language, no nonverbal cues in online communications. You can't expect me to be able to guess people's moods and attitudes if I can't see them! Besides, the last thing I want to do right now is to learn another difficult computer technology. Please help me disprove this ODR

effectiveness myth, because I am fed up with the suggestion, and I swear, the next person who tells me I should integrate ODR into my practice is getting some empathetic empowerment right in the kisser.

While this is a parody, it does neatly illustrate some views that we believe are widespread among conflict resolution practitioners. We think there are good reasons for attitudes like this to change.

As "traditional" ADR practitioners, we both started out with some variation of this attitude. With dispute resolution experience, including court-connected civil and domestic mediation, negotiated rulemaking and public dispute facilitation, international treaty negotiations, community mediation in the Bronx, and reconciliation work in South Africa, we were not obvious candidates for developing enthusiasm in ODR. But the more we learned about the potential role of technology in dispute resolution, the more we started to see the potential of ODR to assist with a range of disputes. One of us was commissioned to do an in-depth study of ODR, carefully weighing its potential. The other tried it with a skeptical view toward proving it was bunk, and was converted. Both of us have learned that ODR can prove itself useful, powerful, and indispensable in some kinds of cases.

No Longer Conjecture

For the purposes of clarity, we define ODR as dispute resolution processes conducted with the assistance of communications and information technology, particularly the Internet. Similar terms are "on-line ADR," "eADR," "iADR," "virtual ADR," "cyber mediation," and "cyber arbitration." Simply providing information about ADR on a Web site is not ODR: some dispute process must be attempted. A range of communication methods can be used, including the following:

E-mail: a virtually instantaneous transfer of mainly text messages

Instant messaging: a variant on e-mail that allows synchronous on-line conversation

On-line chat: a synchronous, text-based exchange of information

Threaded discussion (also known as bulletin boards): an asynchronous, textual exchange of information organized into specific topics

Video and audio streams: asynchronous transfer of recorded messages

Videoconferencing: synchronous transfer of video information

The figures alone should convince some that ODR is worth watching. So far more than 115 ODR sites and services have been launched worldwide (Conley Tyler, 2005b), with services now available in all regions. ODR has been used to resolve disputes as varied as family, workplace, e-commerce, insurance, and political conflict.

Many of the ODR systems designed to date involve ingenious solutions to human problems. For example, the state of Santo Spirito in Brazil was encountering lengthy delays in dealing with claims for compensation from car accidents. The solution: send a district judge with an artificial intelligence program in a van to analyze witness statements and assessors' reports and deliver a judgment at the scene of the accident (Conley Tyler, 2005b). This aptly named "Justice on Wheels" program uses technology to increase access to justice.

Other ODR systems overcome distance; for example, the on-line auction company eBay uses SquareTrade.com's ODR system to enable a disgruntled buyer in Wyoming to get redress from a seller in Washington, D.C. (Abernethy, 2003). According to Steve Abernethy, cofounder, president, and CEO of SquareTrade.com, "When you get both parties to participate, over 80 percent of the cases can be resolved through automation" (Uehara, 2001). When the automated systems are not enough to resolve the dispute, then the parties have the option of bringing in an on-line mediator who comes from a roster of mediators located all over the United States and worldwide.

Just as in off-line processes, on-line dispute resolution programs have varying settlement rates depending on the program design, type of cases handled, and the skills and training of the roster of neutrals. While more work needs to be done to evaluate ODR programs, it appears that settlement rates are similar to those found in many off-line ADR processes handling similar cases (Conley Tyler and Bretherton, 2003). Client satisfaction levels can be high; for example, 80 percent of the customers surveyed by SquareTrade.com said they would use the service again. During its initial efforts, ClickNSettle.com offered both automated on-line settlement tools as well as e-arbitration using live arbitrators. About half of all clients chose to use the on-line settlement tools, with about 45 percent resolving their cases with no additional assistance needed (Conley Tyler and Bretherton, 2003).

Other ODR systems help deal with the language barrier. At CCForm, for instance, a consumer can submit a complaint in his or her own language, which is automatically translated into the language of the company involved

(Conley Tyler, 2005b). SquareTrade.com offers bilingual mediation services at no extra cost. Many of these disputes involve miscommunications or misunderstandings of the terms of the sale due to linguistic barriers.

Some ODR systems, like the Federal Mediation and Conciliation Service, overcome problems with access to technology by bringing laptops, projectors, and software to the workplace to help mediate labor-management disputes (Conley Tyler and Bretherton, 2003). Others, such as the Retail Tenancies Unit of New South Wales, Australia (Conley Tyler and Bretherton, 2003), use on-line communication for case management while still employing face-to-face mediation.

Some ODR systems enable communication when it would otherwise be literally impossible. Info-Share enables the parties in the peace process in the Sri Lankan conflict to engage in dialogue when it is impossible to meet due to security and safety concerns (Hattotuwa, 2005). The Federal Court of Australia has an eCourt facility that offers videoconferencing particularly for Native Title hearings involving indigenous people living in remote areas (Tamberlin, 2005). In the Philippines, where mobile phones have much more penetration than personal computers, ODR is offered via mobile phone short messaging service (SMS) (Conley Tyler, 2005a).

Learning more about what has been tried in ODR so far raises fascinating questions for those of us who ask, "What if?" Why not use ODR to promote bicommunal dialogue among Turkish-Cypriot and Greek-Cypriot Diaspora communities? Such a project is currently being discussed (Conley Tyler and Martyres, 2005). Why not use ODR to help resolve distance education disputes? This is also a current area of research (Whipple and Schaedle, 2005). Why not use ODR proactively to prevent disputes? (For an example, see Balvin, 2005.)

We encourage readers to look at hard evidence to test our assumptions about the role of technology, particularly the idea that it is depersonalizing. To give a concrete example, many people blithely assume that face-to-face communication is the natural and best way to resolve disputes. They assume that the use of technology must be a compromise. This has broadly been the view taken to date by writers who have proposed that issues such as limited communication cues, difficulties of creating trust, and barriers to encouraging information sharing due to on-line communication are all likely to create poor negotiation outcomes in an on-line environment (Eisen, 1998). Specifically, writers have hypothesized that the proportion of integrative (win-win) outcomes would be highest in face-to-face negotiations and lowest in on-line negotiations.

Directly counter to this, a recent research study (Tan, Bretherton, and Kennedy, 2005) challenges these assumptions with evidence that on-line communication may in fact be a more effective way of resolving certain types of disputes. Contrary to expectation, empirical evidence from a study of ninety-eight negotiators indicated that on-line communication aided the negotiation process in achieving higher rates of win-win outcomes for two individuals with conflicting agendas. Intriguingly, there were clear differences in results even among on-line communication methods: synchronous on-line communication (on-line chat) had a much higher rate of win-win solutions compared to delayed communication via e-mail.

These results cast doubt on one of the key objections that many dispute resolution practitioners have to ODR: that it will lead to more negative interaction between disputants. By contrast, these results suggest that dispute resolution practitioners should at least consider the option of ODR as a better way of achieving win-win results. This conclusion forces us to challenge our assumptions and consider the potential benefits of ODR.

The Human Face of On-line Dispute Resolution

The articles in this special colloquy aim to add this "human face" to ODR in a variety of ways. Each of the articles challenges the idea that technology is inherently depersonalizing, and encourages us to look at technology in a different way.

The four articles in this colloquy are drawn from the papers presented at the Third Forum on Online Dispute Resolution hosted by the International Conflict Resolution Centre in conjunction with the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) at the University of Melbourne in July 2005. Other papers from the UN Forum have been published on-line and are available through the Center for Information Technology and Dispute Resolution at the University of Massachusetts at www.odr.info (Conley Tyler, Katsh, and Choi 2005). Thanks are due to the conveners of the UN Forum and to the editor of *Conflict Resolution Quarterly,* Tricia Jones, for giving us the chance to pull together the papers for this colloquy.

Adapting to Change

The first article, by David Syme, talks about both the difficulties and the imperative for each of us to keep pace with changes in technology. Like

Larson (2003), Syme sees this partly as a generational issue. It is unlikely that young people growing up today will have the same hesitation about using new information and communications technology as those of us who grew up without these tools.

Like us, Syme is not a natural advocate for technology: he is a civil servant who is director of the Secretariat of the National Alternative Dispute Resolution Advisory Council (NADRAC) in the Australian Attorney-General's Department, but he is unable to avoid analyzing the implications of the introduction of new technology—including both the opportunities and challenges this technology creates for dispute resolution services.

Starting from the premise that "on-line communication is, and will increasingly become, a normal and natural part of the way disputes are resolved," Syme goes on to outline the very human process by which people adopt and adapt to new technology. He likens the current resistance to ODR among some ADR practitioners as similar to the initial resistance to ADR among lawyers and other professionals. His focus is on how standards for dispute resolution practice can be adapted and maintained in this new ODR world. In other words, how can we keep our humanity in our dispute resolution processes as we move toward ODR?

Learning from Experience

The next article, by Susan S. Raines, talks about the lived experience of an on-line mediator. What could be more human than mediating in your pajamas? A veteran of more than ten thousand on-line mediations and hundreds of face-to-face civil and domestic mediations, and a faculty member at Kennesaw State University, Raines is in an excellent position to judge exactly what is different about mediating on-line (Raines, 2005).

Her answer is that ODR has much to recommend it, both for practitioners and disputants. From the disputant's perspective, the "convenience factor" may result in reduced travel time for all concerned and ease of scheduling, thereby resulting in reduced costs. ODR may be viewed as a welcome option for disputants located in disparate jurisdictions, for whom court processes are therefore impractical or complicated. Finally, ODR may offer angry disputants some physical and emotional distance from their counterparts, which may help them to remain focused on the task of resolution.

From the practitioner's perspective, the convenience factor makes private practice more accessible to those who might otherwise be dissuaded from ADR by the necessity of driving all over town to mediate in various

court systems or other locations. Asynchronous ODR formats allow practitioners to think through their responses to messages from disputants and to mask emotion or reactions.

Raines also discusses various tips and challenges for ODR practitioners, such as managing displays of anger from disputants, building trust between people who are distanced, and building rapport in on-line communications. In sum, Raines provides an inside look at the benefits and challenges of ODR practice, providing ideas for improvement gained through discussions and interviews with other ODR practitioners.

Taking ODR to the People

The next article, by Sanjana Hattotuwa, challenges us to give ODR a human face for the majority of the world's population. A Rotary World Peace Scholar at the University of Queensland, he reminds us of the digital divide between those countries with comparatively easy availability of information and communications technology and those in the Global South who do not have ready access to technology such as personal computers and fixed telephone lines. He also reminds us of the context for many disputes faced in the Global South, where ethnopolitical conflict, weak governance, and humanitarian emergencies limit many of the opportunities taken for granted in the Global North.

This article argues that ODR needs to move "beyond resolution" to engage in conflict transformation. While this process has just been starting (Balvin, 2005; Hattotuwa, 2005), much more work is needed to ensure that ODR can assist in situations such as fragile states with complex political emergencies or protracted ethnic conflict. This circumstance requires ODR to strengthen existing capacities and social networks with appropriate technologies. ODR also needs to engage with a range of stakeholders—from the grassroots to those involved in official peace negotiations.

In particular, existing technologies for ODR developed in the Global North are ill suited for projects in the Global South, due to the adoption of different types of information and communication technology. Technologies that are ubiquitous in developed countries, such as personal computers and Internet access, have often achieved little foothold in less-developed countries (Wahab, 2005). By contrast, other technologies, such as mobile telephones and community radio, are widespread and offer excellent penetration (Parlade, 2003). Using the technologies that are appropriate for these contexts will require a radical rethinking of current ODR paradigms, which tend to be based on a personal computer, fixed line access model.

Ensuring That the Right People Are Doing ODR

The final article, by Melissa Conley Tyler and Jackie Bornstein, looks at how to ensure that the people providing ODR are maintaining appropriate standards on-line. How can we ensure that ODR has an acceptable human face for disputants? This raises the question of whether accreditation is a viable way of ensuring the quality of ODR.

As a lawyer and a psychologist, respectively, the authors have some skepticism about the role of accreditation in ensuring quality of services for consumers. At the same time, they are convinced that the human practitioners involved in ODR will need to have adequate training and support, as is the case for other neutrals.

Accreditation of dispute resolution practitioners is a contested area, with many people passionate about mandatory accreditation. Using the American Bar Association model (American Bar Association, 2002), which distinguishes between "hurdles" that need to be fulfilled prior to offering ADR services and "maintenance" requirements to maintain quality practice, the authors show that there are a variety of potential accreditation systems, each with strengths and weaknesses.

Accreditation of ODR practitioners is already occurring. This article looks at six ODR service providers to see how they try to maintain quality practice. The criteria for accreditation should arguably be similar to those for traditional ADR, with some adaptations to practitioner knowledge, skills, and attitudes required by the new technology.

Conclusion

We hope that this special colloquy on on-line dispute resolution gives you a sense of the many human aspects, benefits, and applications of new technologies to the field of ADR. Using technology to expand the applications and the reach of services available to disputants will allow ADR to reach new audiences and customers and to expand the range of choices available to those already using or providing ADR services. The increased number of options available to both disputants and service providers is very empowering indeed. As the field grows, and as technology is developed to meet the increasingly diverse needs of disputants, it is both important to monitor and fascinating to see these rapid changes. We hope this colloquy whets your appetite to learn more, to consider the possibilities for new applications in your own work, and to understand better how ODR expands the possibilities for the application of ADR processes.

References

Abernethy, S. "The SquareTrade Experience in Online and Offline Disputes." In E. Katsh and D. Choi (eds.), *Online Dispute Resolution: Technology as the "Fourth Party." Proceedings of the UNECE Second Forum on Online Dispute Resolution.* Center for Information Technology and Dispute Resolution, University of Massachusetts, 2003. Available at www.odr.info.

Alter, G. "The Skeptic's Corner." *ACResolution,* 2005, Winter issue, 5.

American Bar Association, Section of Dispute Resolution Task Force on Credentialing. *Discussion Draft: Report on Mediator Credentialing and Quality Assurance.* 2002. Available at www.abanet.org/dispute/taksforce_report_2003.pdf. [Accessed March 30, 2005].

Balvin, N. "The Cultures of Peace News Network: Is there Room for Peace Building in ODR?" In M. Conley Tyler, E. Katsh, and D. Choi (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre, University of Melbourne, in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific. 2005. Available at www.odr.info.

Conley Tyler, M. "Online dispute resolution initiatives in the Asia Pacific region." Paper presented to Peace, Justice and Reconciliation in the Asia-Pacific Region, Brisbane, Australia, 2005a.

Conley Tyler, M. "115 and Counting: The State of ODR 2004." In M. Conley Tyler, E. Katsh, and D. Choi (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), 2005b. Available at http://www.odr.info/unforum2004/.

Conley Tyler, M. and Bretherton, D. *Research into Online Alternative Dispute Resolution: Exploration Report.* Prepared for the Department of Justice, Victoria. International Conflict Resolution Centre, University of Melbourne, 2003. Available at www.justice.vic.gov.au, www.psych.unimelb.edu.au/icrc.

Conley Tyler, M., Katsh, E., and Choi, D. (Eds.). *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), 2005. Available at http://www.odr.info/unforum2004/.

Conley Tyler, M., and Martyres, R. *Project Proposal: Cyprus Bi-Communal Online Dialogue Project.* June 2005. Available from the authors at martyr@unimelb.edu.au.

Eisen, J. "Are We Ready for Mediation in Cyberspace?" *Brigham Young University Law Review,* 1998, p. 1305.

Hattotuwa, S. Y. "Untying the Gordian Knot: ICT for Conflict Transformation and Peacebuilding." In M. Conley Tyler, E. Katsh, and D. Choi (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre, University of Melbourne, in collaboration with

the United Nations Economic and Social Commission for Asia and the Pacific, March 2005. Available at www.odr.info.

Larson, D. "Online Dispute Resolution: Do You Know Where Your Children Are?" *Negotiation Journal,* 2003, *20,* 199.

Parlade, C. V. "Challenges to ODR Implementation in a Developing Country." In E. Katsh, and D. Choi (eds.), *Online Dispute Resolution: Technology as the "Fourth Party."* Papers and Proceedings of the 2003 United Nations Forum on Online Dispute Resolution. Center for Information Technology and Dispute Resolution, University of Massachusetts, 2003. Available on CD-ROM and at www.odr.info.

Raines, S. "The Practice of Mediation Online: Techniques to Use or Avoid When Mediating in Cyberspace," In M. Conley Tyler, E. Katsh, and D. Choi, (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre, University of Melbourne, in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific, 2005. Available at www.odr.info.

Tamberlin, B. "Online Dispute Resolution and the Courts." In M. Conley Tyler, E. Katsh, and D. Choi (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* 2005. International Conflict Resolution Centre, University of Melbourne, in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific. Available at www.odr.info.

Tan, J., Bretherton, D., and Kennedy, G. "Negotiating Online." In M. Conley Tyler, E. Katsh, and D. Choi, (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre, University of Melbourne, in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific, 2005. Available at www.odr.info.

Uehara, L. "Online Arbitration Speeds Settlement." Great Neck, N.Y.: Associated Press, 2001.

Wahab, M. "Online Dispute Resolution and Digital Inclusion: Challenging the Global Digital Divide." In M. Conley Tyler, E. Katsh, and D. Choi, (eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution.* International Conflict Resolution Centre in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific, 2005. Available at www.odr.info.

Whipple, R., and Schaedle, L. "Use of Online Dispute Resolution to Resolve Distance Learning Disputes." Paper presented at Cyberweek, April 2005. Available at http://www.robertwhipple.net/odrandDL.htm.

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