

**The University of Toledo College of Law
International Symposium**

***"Enhancing Worldwide Understanding through
Online Dispute Resolution"***

**Keynote Address
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**Daniel Rainey
Director, Office of Alternative Dispute Resolution Services
The National Mediation Board**

First, of course, I'd like to thank Professor Ben Davis for the invitation to attend this conference, and for giving me the opportunity to make a few remarks today. I find that being asked to make comments in public is a powerful inducement for me to reflect on what I believe and *why*.

I'd also like to thank Ben and the entire University of Toledo College of Law group for making this conference possible, from support at the Dean's level down to the gracious Law Review members who picked us up from the airport, ushered us around, and generally have made sure that things run smoothly and on time.

Last night many of us went to the Toledo art museum, which was a treat far beyond my expectations. What you probably don't know is that there is a serendipitous connection between the University of Toledo and the art museum. When this institution was founded in 1872, long before it became the University of Toledo, there were two courses of study offered by

the school – painting and architectural drawing, both of which figure large in the outstanding collection of the museum.

There's another connection that I have with Toledo – the city is one of the largest rail hubs in the United States, and of course my agency, the National Mediation Board, is directly involved in labor-management conflict in the railroad industry.

Probably like you, I have endured the gamut of keynote speeches. On the high end, I've heard rousing manifestos like the one delivered a couple of weeks ago in Atlanta at the ABA ADR conference. Representative John Lewis, from Georgia, was the speaker. He is a dyed-in-the-wool hero of the civil rights movement, a very successful politician, and if he had not gone into politics he surely would have had a successful career as an evangelical preacher. For fifteen minutes he treated us to bits of his life story. At the end he got a standing ovation, and he left everyone feeling like we needed to go out and march on something. I don't think I'll have you wanting to march today, but I do hope to offer some thoughts worth talking about as a community after we leave this conference.

The first issue for me was to decide *what* to talk about here today. I've been making the rounds of conferences over the past couple of years talking about ODR and the work we are doing at the NMB and UMass on a National Science Foundation grant, so I've certainly built up enough material to fill up time with that. Actually, I remain very excited about the work with UMass and the NSF, and it is tempting to talk about the technology we are developing and the applications that I think our research will have to the field of online dispute resolution. But you will hear a lot about technology today from the other speakers who are here.

My aim for today is to do more than just fill up time with talk about technology.

The first place a keynote speaker should look for clues about what to address is the title of the conference. So, loosely, I'm going to talk about "Enhancing Worldwide Understanding through Online Dispute Resolution." I'll start out with a story that I have not told in public in a couple of years, so it will probably be new to most of this audience.

A Texan went on a business trip to Maine and after his business was done he rented a car to take a drive out into the Maine countryside. As he drove along he came upon an old Maine farmer standing by a field. The Texan stopped to make small talk. "Is this your place," he asked? "Ayah," answered the Maine farmer. "Well," the Texan asked, "how big is it?" The Maine farmer pointed, saying, "It starts heah where I'm standin', runs up to the ridge line theah, across to the big tree over theah, then down to the fence line theah, and back to where we are heah." "Is that it," cried the Texan? Why, son, back in Texas I can jump in my old pickup truck and it takes me a whole day just to drive across my ranch." After thinking about it for a moment the Maine farmer said, "Ayah, I had a truck like that once."

Now, what, you ask, does that have to do with "Enhancing Worldwide Understanding through Online Dispute Resolution?" To my mind it has quite a lot to do with enhancing understanding.

I think it is possible to get too focused on the technology – the truck – and lose sight of the territory – dispute resolution. Given the pace and direction of technology advancement, it is in fact very *easy* to get focused on the technology, and I suffer from this myself. For some of us, standing next to a new piece of software looks a lot like Homer Simpson standing next to a donut.

My roots are in rural Mississippi, and I mean *rural* Mississippi. When I was young, the height of technology for us was warming up my grandfather's

RCA tabletop radio to listen to the Grand Ole Opry on Saturday night, and the only reason we could do that is because FDR's rural electrification project came through and brought electricity, whether you wanted it or not.

Back then, my relatives in the backwoods of Northern Mississippi were living an existence that was in many ways little changed, socially, from the late 19th Century. That's where I started my life, and I find the range of changes in the world since then to be nothing short of breathtaking.

But some things have not changed. One of those things is the need for people to interact, to get along with each other, and the need to find ways to bring a sense of dignity, safety, and order to a world that often conspires to strip away dignity, create danger, and foster chaos.

Today, I want to step away from the truck – the technology – and talk about the territory – dispute resolution. I want to talk about why I think we need to work together to create a true community of those involved in using technology in the pursuit of dispute resolution.

How did I wind up working in the field of dispute resolution? I think, in a general sense, I came to this territory in much the same way that most of my colleagues did. I don't mean that I planned a career in dispute resolution. In fact, my wife has been known to remark that I have not had a career – I've had a series of loosely related work episodes.

I started out studying architectural design, moved into urban planning, then into communications. I've taught communication, written poetry, written plays, directed and produced video and film, done tech design for theatre – and occasionally served as a third party.

If you look back over that list, on the surface it would seem that there has not been a lot of direction in my life, and I'll admit to being a child who

never really grew up. But there is a thread there, even if it is only apparent to me.

Most of the people I have known who have been drawn toward dispute resolution share with me a desire to first understand why people behave the way they do toward each other, particularly in times of stress, and second to understand how to help people in times of stress.

For me, and I think for most of my colleagues, this work is about reinforcing dignity, building trust, creating safe spaces, managing communication, and, in the words of the title of this conference, “enhancing understanding.” It is terribly easy to lose sight of these important goals and get sidetracked by the glitz of the technology – it is easy to lose a sense of the territory while wondering at the technology.

Because we come from such diverse backgrounds, there is an inherent tendency to define the scope and purpose of ODR based on our own backgrounds – therefore, we may all stand for, and conceive of, something different when it comes to “enhancing understanding.” We come together at conferences like this one, talk about what we are doing, then go back and continue to work in our own spheres. There is nothing wrong with conferences like this one. In fact, they are an invaluable way to share information and network. But conferences like this one do not create a community – they allow people who have similar interests to come together for brief periods. Coming together to let you know what I’m doing and find out what you are doing is good, and it reinforces the fact that we share some interests and ideas, but it does not make us a community.

A colleague who works in peace-building in a very dangerous part of the world has said that he doesn’t care if he ever resolves any disputes *per se* – he wants to transform the dispute environment.

I was very marginally involved in a project in Bethlehem in which the focus was exactly the opposite - not to transform the dispute environment, but to resolve "low-level" social disputes among neighbors.

For some commercial online services it is *all* about resolving disputes – over 2 Million Served, as some would say.

Some of my colleagues are convinced that "smart" software, assisting with resolution through algorithms, is the ultimate expression of ODR. I tend to like "dumb" software that keeps the third party actively involved in resolution. There are, of course, venues in which both are appropriate.

Recently I've been partly involved in and partly observing a friendly debate between two colleagues who disagree about the impact that avatar-based ODR will have, and how soon it will be a significant force. I'm betting sooner rather than later, by the way.

My point is that all of our special experiences, training and education, with the technology and with dispute resolution generally, can easily have us concentrating on separate technical devices, applied in different settings, and setting us off down different paths. To use an overused bit of jargon – we tend to be "stove-piped" in our approach to the development of ODR.

At the end of the day, though, we're not developing technology for the sake of the technology – we are developing technology because it can help make a difference in people's lives. Technology can enhance communication and understanding.

In addition it has become clear to me that there are many academic and professional fields in which the central questions with which we are concerned as dispute resolvers, and online dispute resolvers, are pursued – communication, psychology, sociology, business, law, information

technology, conflict resolution, theology, and undoubtedly many more that I have not listed. Unfortunately we, as a group interested in ODR, don't always cross the boundaries between and among these fields. At conferences or professional meetings I routinely ask the question, "are you familiar with so and so?" and find that even though individuals may have similar interests and are sometimes just across town from each other, each person's work is unknown outside a narrow band of colleagues in a particular field. That is our loss as a community, and it is a loss for the development of ODR.

This issue was driven home to me earlier this week when I was told about what happened at a meeting in Washington, D.C., at a major institution deeply involved in peace efforts around the world. At this meeting, another institution was mentioned that is located just down the interstate from D.C., is world renowned (in some circles), and is also involved in significant dispute resolution efforts around the globe. One of the leaders of the D.C. organization had never heard of the other institution at all, and of course had no communication with his "colleagues" there.

I'll go back to what drew me to dispute resolution in the first place – I think most of us stand for enhancing understanding among people and facilitating human interaction, whether that's through peace-building, creating coherent cyber-law, or resolving consumer disputes. How we do it, the truck we drive, so to speak, is largely irrelevant to our intent.

e-Bay/SquareTrade resolves disputes that involve relatively little money, with predictable parameters, based on commercial transactions online. Their research shows that the value seen by their customers is not in the outcome itself, but in the fact that they are able to get *some* resolution in a speedy manner, putting the dispute behind them. e-Bay/SquareTrade has developed very good technology tools to facilitate resolution of their disputes, but for the parties it seems that it's not the software that is important –

that's just a tool that allows them to attain some peace of mind. For them, and for us as ADR/ODR professionals, it's not about the truck, it's about the territory.

In Sri Lanka, technology is being used to encourage dialogue, monitor elections, build safe community spaces, and address deep seated divisions. Their thinking about technology, and the application of technology, has been very sophisticated and very successful, but the goal has not been to create cool technology – the goal has been to make a difference in the lives of the people of Sri Lanka and transform the conflict environment so that children born now will have, literally, a different world in which to grow up from the one their parents had. It's not about the truck, it's about the territory.

Kenneth Burke, who was one of the leading lights in literary and social criticism in the middle of the 20th Century, is my role model for how to think about method and the tools available to understand human interaction. He was once asked, what is your method, how do you work at understanding why people behave as they do? His response has been a mantra for me throughout my series of work episodes – he said, I'll use anything I can find, from anywhere I can find it, that will help me understand why people act as they do. I think we can take that approach with the application of technology to dispute resolution – we should seek whatever tools, from wherever they come, combined in any way we can imagine, but always with a question in mind: "How is this going to make life better for someone?" It's not about the truck – it's about the territory.

For me the "so what?" attached to what I've been saying here today is twofold.

First, we have an opportunity to use technology to make life better for people – to help people – whether it is in the very basic sense of keeping them from getting ripped off in commercial transactions, or in transforming

lethal social environments. The technology is a set of tools to help us get where we want to get philosophically - helping people.

Second, we have an opportunity to cross many professional and academic boundaries, learning from each other in the creation of a true ODR community.

One of the necessary ingredients in helping other people is for *us* to form a coherent community, where our differences, if not submerged, are at least held at bay in favor of a unifying vision of where we want ODR to go and why we want it to go there.

What it really means to be a community is the subject of volumes of academic research, but I want to highlight five things that I think we need to work on together.

1. We need to work on creating a sense of common identity. In short, who are we? As individuals we can easily place ourselves within the orbits of cyber-law, information theory and mathematics, process elicitation, computer assisted communication, etc., but what do we stand for as an entire ODR community?
2. We need to create a meeting place outside of *ad hoc* conferences where we can share perspectives across a wide range of common interests, and where we can focus on what we are all trying to accomplish by advancing ODR. The annual ABA ADR conference and the annual ACR conference are certainly places where many of us come together, and conferences like this one certainly add opportunities for interaction, but in some ways they reinforce the fractured nature of our group. One of the lawyers in our group is just learning about ACR and has never attended one of their meetings. Most of the people at the

ACR conferences do not attend the ABA meetings. The group here today is a select group, focused mostly on the law and arbitration. We do not blend across academic and professional boundaries very well, in part I think because there is no “place” for us to do so.

3. We need to create opportunities to pull our heads out of the technology and discuss global questions. What does it mean to be an ODR professional? Are there differences in ethics, standards, and conduct for online practitioners? The list of global issues is quite long, and some of them are currently being discussed among some sub-groups among the larger ODR group, but they are not the subject of focused attention across the larger group.
4. We need to work on mentoring colleagues who are entering the world of ODR in mid- or late-career, and those who are younger and are entering ODR as they begin to define their careers. Again, this happens in fractured ways, like the online competition for law students we are celebrating with this conference, but not in a way that will foster integration and cooperation in the future.
5. Finally, we need to work on developing a way to engage in joint action as a community. It is nice that the ABA has the ability to serve as an effective public voice in questions about the application of ADR and ODR, but the ABA does not represent everyone interested in ODR. Non-lawyers might even have a good idea or two about issues that cut across our professional and academic borders.

Ethan Katsh, among others, has recently been investigating the dynamics of creating communities online. This is a very important thing for us as a group to discuss – it is, in the most basic sense, what I mean when I say that we should be talking about the territory and not the technology. We

may be able to use online community building technology to bring our community members together virtually, but again the technology is the tool, the truck we can drive, but the territory is more important.

I'll go back to my southern roots for a moment and quote William Faulkner, because he speaks to what drives me to care about dispute resolution and ODR in the first place. In his Nobel acceptance speech Faulkner said:

It is easy enough to say that [we are] immortal simply because [we] will endure: that when the last dingdong of doom has clanged and faded from the last worthless rock hanging tideless in the last red and dying evening, that even then there will be one more sound: that of [our] puny inexhaustible voice, still talking. I refuse to accept this . . . [we] will endure because [we] . . . [have] a spirit capable of compassion and sacrifice and endurance.

Harnessing that spirit is what drew me to dispute resolution, and I suspect that it is what drew many of you, as well.

Today, as it happens, is Earth Day. It would not hurt us to pay attention to the driving vision behind the community that annually reminds us of our tenuous position on this planet. They declare that they are:

working throughout the world to save life on Earth . . . if we work together . . . , *our efforts can produce positive results that will spread throughout the web of life.*

"Producing positive results that will spread throughout the web of life," is not bad as a calling, and as corny as it may sound, I think a similar goal is what drew many of us to dispute resolution.

If we, as a group of people who are interested in ODR, don't work with each other and form a coherent notion of where we want this field to go, ODR will continue to develop and expand, but it will do so along the fractured lines that I've described. The commercial world will go its way, the peace builders will go their way, the arbitrators will go their way, and so on.

At this still early stage in the development of ODR, we have the opportunity to learn from each other, to be creative in the application of technology, to define where we want ODR to go and what we want it to do. We have the opportunity to be more than a herd – we can be a true guiding community for the application of technology to human interaction.

I have three short term suggestions for places we can start building a true ODR community.

- Expand the ICODR competition to include non-law students, or, if that's not practical, think about how to do something similar for students in conflict resolution, ADR, labor relations, and communication programs.
- Convene a conference, online or in person, where there is no set agenda, and where we don't read papers to each other. Let's use our considerable skills as facilitators to elicit from a wide range of those interested in ODR (and some who may not know they are interested) a plan for community building.
- Use Cyberweek as the "big bang" for ODR community building. What this means could be determined by an online discussion across the groups who we currently identify as element of the larger ODR group.

For now, we all have the great good fortune to be involved at the very leading edge of the ODR movement. We have the opportunity to be creative,

to do good things, to truly guide the development of online dispute resolution. My plea to you all is simple – let's not squander the opportunity.