Notes for:

How Collaborative Technology Can Improve Your Mediation Practice

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These short notes are the speaker's notes for Dan's part of the Collaborative Technology panel.

Let me start by saying that there have been attempts to create "bespoke" platforms for online dispute resolution for quite some time. I use the term bespoke – the term that is used to describe custom tailored clothing in the UK – because one of the earliest platforms to be created for ODR use was a UK based platform called The Mediation Room. More than a decade ago, Graham Ross, a lawyer in the UK, created the Mediation Room as a full service mediation platform, offering everything from intake to agreement construction. The problem was that he built it – and no one came.

Why did no one come? Probably lots of reasons, including the fact that Graham created his platform on the front end of the ODR wave, at a time where there were simply not enough interested potential customers among the parties or the third parties.

But another significant problem was that Graham, like May-Britt Kollenhof-Bruning and her colleagues at JuriPax in the Netherlands, took the standard North American Model of mediation, built it into a platform, and offered a cradle-to-grave experience built on that model. Most practitioners and parties were not ready for the grave then, and still are not.

Today, there is a lot of ODR work going on, but most of it is not done inside platforms that are expressly built for dispute resolution work – but more on that later.

The made-for-ODR platforms that have succeeded have tended to be platforms that operate in a narrow, specific environment, and offer expedited ways to deal with disputes that tend to be repetitive both in generation and resolution. For example, CyberSettle was designed to address insurance subrogation, where the question, over and over again, is "how much money do I get from you?" In environments like insurance subrogation it is possible to develop algorithms that move parties through a bounded process, with little or no human intervention – true ODR platforms, true fourth parties.

In the world of e-commerce, "pure" ODR platforms are the norm – online entities like e-Bay (60 million disputes every year), Amazon, AirBNB, and others, create algorithm driven platforms that operate very well for what I call "bounded" disputes – where there are only so many things that can go wrong, and only so many ways to resolve the dispute created when something went wrong.

But, as we all know, most of the disputes we deal with are not bounded – in fact, they can get quite messy.

In a series of NSF research grants, a group of us looked at the idea of using process modeling to create ODR technology – basically breaking the mediation process down to its component parts and building software to drive those parts. What we found was that the "process" of mediation is, in fact, not really linear, and not addressed best by traditional process modeling theory. That has given rise to some interesting computer science research in what is being called "process families," but that's another presentation.

The upshot of all this is that most of the platforms being used for dispute resolution are platforms not "bespoke" - they are, rather, off-the-shelf applications designed to do things other than dispute resolution.

And they tend to be built to do three of the functions that are central to all third party work.

What do we do?

Facilitate Communication

Manage Information

Manage Group Dynamics

They facilitate communication (and create new communication channels), help us manage information (sometimes in amazing ways), and help us managed dispersed-group dynamics (and perhaps help us redefine what a "group" is).

The Next Generation?

MODRIA.

What we will see today are some of the "off-the-shelf" applications to which I referred. But there is a new generation of "bespoke" ODR software that I suggest you check out. One example is Modria.com, a modular application, built around the basic functions common to many dispute resolution processes, able to be configured to do everything from divorce mediation, to real estate assessment challenges.

Just Google Modria.com and you'll see demos of their platform, with the various high level functions

But, beyond some of the newer bespoke applications, what's out there for us as mediators?

The most significant thing I see on the horizon for mediators is the potential for development in the information handling area. We've already seen today (with Miriam's intro) an example of the creation of new communication channels, and we will see some of the collaborative opportunities that now exist. And, in the polling that we will do today, you'll get the tip of the iceberg of the information handling possibilities that exist. I don't have time to talk a lot about it today, but in the near future there will be applications that will help third parties manage, assess, read, and make sense of party input, particularly in large multi-party or massive-input cases.

Basically, I predict that we will see more of the fourth party as a "second-chair" to third parties.