

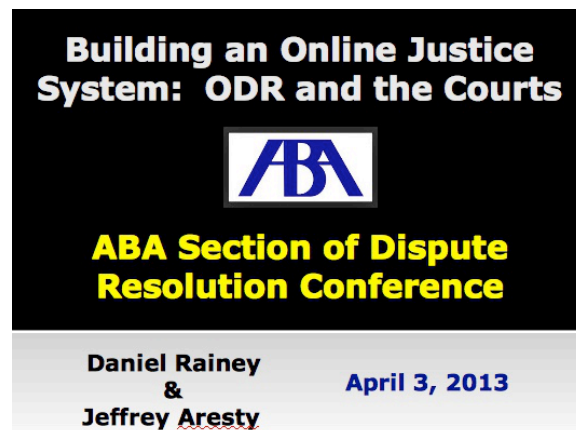
Notes for:

## **Building an Online Justice System: ODR and the Courts**

ABA Section of Dispute Resolution Annual Conference  
Symposium on ADR and the Courts

April 3, 2013

Daniel Rainey and Jeffrey Aresty



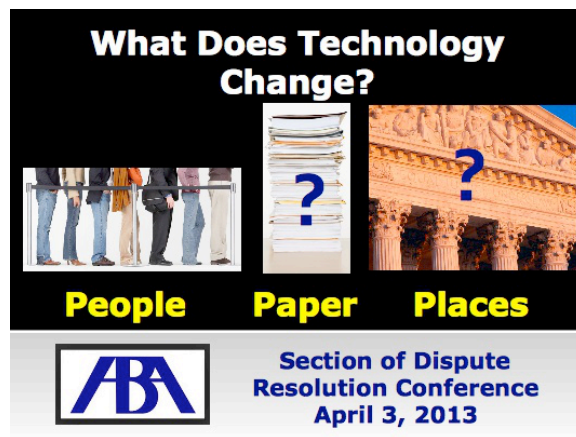
These short notes are the speaker's notes for Dan – Jeff's notes are not included. The ODR and the Courts session followed the Symposium Plenary and featured in order of appearance:

- Ethan Katsh
- Daniel Rainey
- Jeffrey Aresty
- Beth Trent
- Darin Thompson



As Jeff has said many times, the foundations of the traditional justice system are People, Places, and Paper. People are most often defined in terms of the venue in which they reside, Places are most often defined as brick-and-mortar buildings that serve as loci for venues, and Paper is most often defined as . . . just that – paper that one has to file at the Place to be a recognized People (Person?) in the venue.

Traditional justice systems assume that there is a governmental entity able to establish the boundaries of the venue, control processes, and exert pressure to enforce settlements (as opposed to resolution) of cases brought before the judges in a face to face environment.



The use of technology changes all of that for some types of disputes.

The changes are easy to see in e-commerce: a buyer in Scotland and a seller in Idaho, using a platform that resides in the cloud, are creating the potential for disputes that cross multiple state, national, and judicial borders, in an environment that suggests no long term relationship and no outlet for dispute resolution through the traditional justice systems. The definitions of People, Places, and Paper all change, and the traditional justice system is inadequate to deal with the changes.


Even outside the realm of e-commerce, the fact that, as a society, we are ever more reliant on social media and channels of communication using online platforms means that “normal” social interaction will present challenges for the traditional justice system.

As one example, in Israel there was a tremendous backlog of cases involving insurance settlements for auto accidents and other insurance settlements. The traditional justice system was unable to handle the load of cases, at least partially because even in a very small country like Israel the issue of Places put barriers in the way of People accessing the justice system, and the need to go to the Places to file Paper presented another aspect of the same problem. The solution to this problem was the creation of a private justice system that has taken the load off of the courts and the traditional legal system (with the blessing of the courts), using an online platform to negotiate resolutions for the large case load that the courts could not handle. In this alternative justice system, the People still exist – the Places and the Paper are gone.

**Areas of Change**

**What we:**

- **Already Do**
- **Can Do**
- **Must Do**
- **Want To Do**

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Even within the traditional court/justice system there are huge changes underway and on the way. Technology has changed what we already do (e-filing, presentation of evidence, web video hearings, etc.), what we can do (use collaborative work spaces for discovery, for example), what we must do (in some places e-filing is required), and most importantly, what we want to do. The application of technology has the potential to continue the creation of private justice systems, and it has the potential to transform the traditional justice system.

The example that Darin Thompson will discuss from British Columbia, is an example.