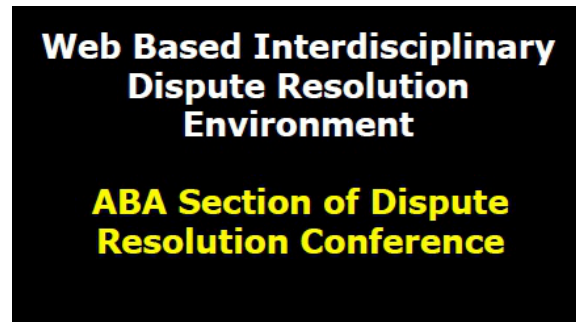Notes for:

Web-Based Interdisciplinary Dispute Resolution Environment (WIDRE)

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

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

Some pretty big names in the legal and dispute resolution fields are confidently predicting that technology will be the driving force behind transformational changes in the law and dispute resolution. At the risk of being too cynical, that's a bit like seeing an avalanche coming down the mountain and turning to your fellow citizens and confidently saying, "there will be snow in our future." That's not a great feat of prognostication.

But I don't really think "technology" will drive transformational changes. I don't think so partially because "technology" is not a unified, monolithic, thing. As Evgeny Morozov said in a recent *Slate* article, "Can we please bury this Technology idea . . . ? There's no Technology, and therefore it can't want [or do] anything."

What *will* make for transformational change is the way we, practitioners of the law and dispute resolution, choose to make use of communication channels, information handling applications, and collaborative group work spaces, all of which may exist in the cloud of stuff that we refer to as "technology."

There will be technology in our future, but we will/must control what that technology looks like and how it operates in relationship to existing legal and dispute resolution systems.

The task I was given for this morning was to very briefly provide a definition of ODR, and to point toward some of the things I think ICT will allow us to do or do differently.

So, first to definitions.

The original, classic definition of ODR refers to the use of online tools to address or resolve disputes created online. There's plenty of material out there about the history of ODR (for a good read have a look at Ethan Katsh "ODR and History" chapter in ODR Theory and Practice). I won't belabor the point, but I have to note the NSF decision in 1992 to drop the ban on commerce on the Internet, an action that created e-commerce, and created the first of the disputes that led to the development of the concept of Online Dispute Resolution.

ODR Today

The appropriate use of technology to facilitate resolution, management, or settlement of disputes and/or conflict, regardless of where the disputes are generated.

I think a more accurate definition of ODR today would be the one in this slide – practitioners from all areas of the law and dispute resolution are using ICT for a myriad of tasks and function, many of which are closely integrated with face-to-face work.

At this conference we've already heard about e-filing, e-discovery, and other online tools being used by the courts and by attorney's working with clients around the world.

A good question is, "why should I adopt ODR technology as part of my practice?"

What's In It For You?

Offer services that attract new clients.
Better use of time.
Do things you can't do now.

First of all, you can offer services that will attract new clients. If you use ODR technology to make it easy for clients to confer with you, share information with you, and work through the existing court system, your practice will stand out from those who cling to the traditional justice system's people/paper/places focus.

Second, you can make better use of your time. I said, in one of my cynical moments a few years ago, that as soon as lawyers could figure out how to bill for using technology, ODR would take off. Well, we are there: using ODR technology wisely does not mean that you will lose money – in fact, it probably means that you will be more profitable in your practice, particularly if you are among the leaders in adopting client-friendly, practice-centered technology.

Finally, you can actually do things you can't do now. The work that UNCITRAL and EU is doing with international ODR systems is just the tip of the iceberg – at some point in the future, you will be able to work in extra-legal, private justice systems around the world from your office here in the US.

Let me give you an example of a complex case in which the use of technology was key to success and client satisfaction.

My agency was involved in a complex contract negotiation with a corporation and one of its major unions. There were more than a dozen people "at the table" for the negotiations, and there were literally hundreds of issues that needed to be addressed.

We set up an online collaboration platform for the parties, on which they could share information, offer proposals, brainstorm options, and jointly edit final contract language. Use of the online platform was centered on the periods of time between face-to-face meetings, making the F2F time more productive. After several months of negotiations, a deal was reached. At the end of the process, one of the parties told us that, by their reckoning, they had saved about one day of work per week over the months of negotiations by using the online platform. When we tried to take the platform down after the contract was signed, both parties asked us to leave it up so they could use it to work through other non-contract issues. Six years later, they are still using it.

That's an example of ODR technology being used in a very traditional context, to add value to the process and to maximize the amount of real work we could do with the parties (not just maximizing the amount of time we had to spend in the same room with the parties).

But where are we going in the future – what does that snow that's coming down the mountain look like?

The most common reaction that I've seen (and had) to making predictions about the future and technology is a head slap and an expression of, "Duh, I wish I hadn't said that."

But there's one area I think is already emerging that can have a tremendous impact on the way we do business.

Complex/Multi-Party Cases

Where we are headed:
Handling multi-party, massive input - e.g., environmental cases, special master cases, class actions, etc.

The ability for computers to read and digest large amounts of information, and to draw inferences about the information they are reading, has some interesting implications for the law and for dispute resolution.

One of the biggest headaches for third parties who are dealing with large multi-party disputes is how to deal with the avalanche of words and data that are accumulated during the process. Think of the volume of discovery information in large complex cases, or the inflow of comments in a public decision making forum. Applications that are available now, and which are getting cheaper and better all the time, can "read" and analyze that mountain of words and data at an amazing speed and with an amazing accuracy – we are rapidly moving to re-define the notion of data bases and data analysis in such a way that makes the online tools truly a "fourth party" in the process.

The Snow Is Here

So, I've looked up the mountain, seen the avalanche coming, and I'm telling you, there really is snow in our future – in fact it's here now, and it's going to be coming down harder.