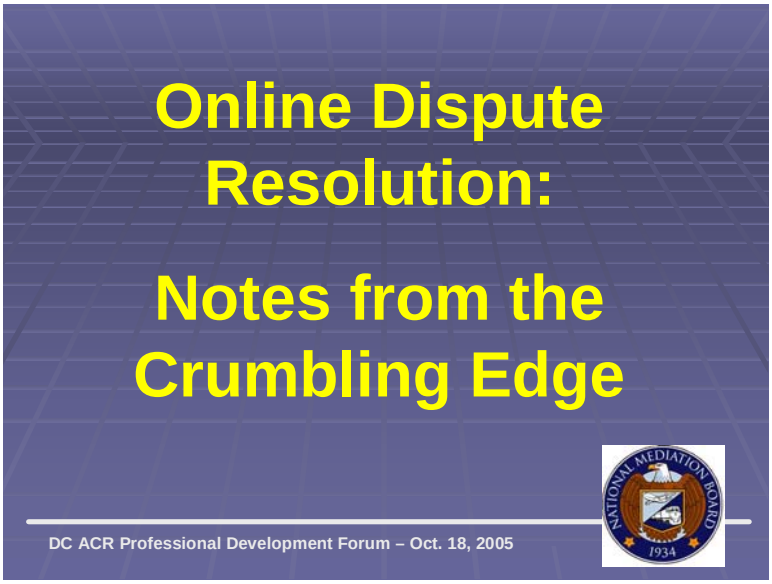


I'll explain the use of "Crumbling Edge" as we go along.

To begin with, let me say that I find it somewhat ironic that I am standing here today talking about technology applications. Many years ago, in the early days of personal computers, I actually had some pens made up with this message on the barrel of the pen: "Boycott Computer Literacy – Use This Pen!"

But a number of things have happened to me over the years to make me more of a believer in technology.

One was a visit to the British Library. I was walking through the special collections area of the library when I stopped to look at a display case with the original handwritten lyrics for the Beatles' "Yesterday." Then I turned around and came face to face with the Magna Carta. But that was not the point of my epiphany. I wandered into a small room off the main display area to find several flat screen, high definition monitors that would allow me to call up images of the collection and "virtually" turn the pages – looking at the entire document, not just what was open in the display case. This, it seemed to me, was a perfect micro display of the notion that, if you lose some things by operating in a cyber-

environment, you may also gain some things – in this case, access to more of the item in which I was interested.

As my colleague, Ethan Katsh, has said, mediation is about communicating and managing information. Computer can do that very well – why should they not have a place in dispute resolution?

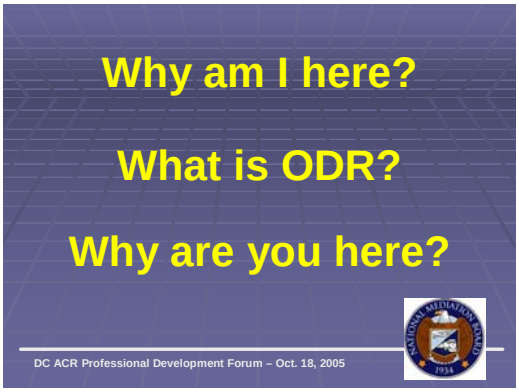
My colleagues and my wife have laughed at me for waiting until the last minute to get my thoughts together for presentations – I was putting the finishing touches on my notes last night. What they don't understand is that in the company I have been keeping lately, I actually over-prepare.

As fate would have it, I have recently shared the stage a number of times with two of the true leading lights in the field of ODR: Ethan Katsh, who wrote the first book about ODR, and Colin Rule, who wrote the second book about ODR and who is the Director of ODR for eBay.

We were getting ready to do a panel presentation/discussion at an ABA meeting – I had done my notes the night before. Ethan came to the room early to do his notes before the audience arrived. Colin did his notes and Power Point while Ethan was speaking.

I think the subliminal message is that things change very quickly in the world of technology.

I am involved, with the rest of the NMB/Umass/NSF, in some interesting work on the "Leading Edge" of ODR. That, I think, is why I'm here. (More on the crumbling nature of that Edge later.)

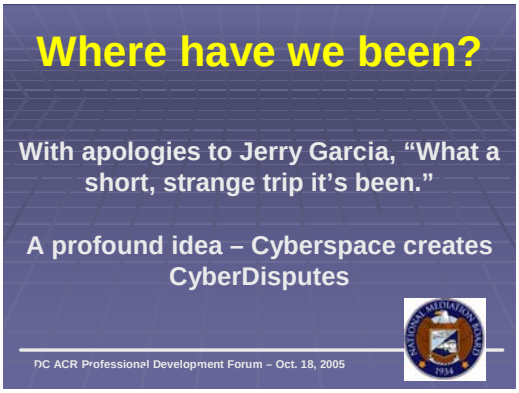


I take a very simple view of Online Dispute Resolution: ODR = The use of networked technology in Alternative Dispute Resolution or in "traditional" litigation. That takes in a lot of territory, and for me it even takes in the use of technology in the room with the participants, whether we are technically online or not.

I'll organize my thoughts today around these major points . . .

I'm particularly interested in the "So What?"

A short, strange trip . . .
From August, 1962 – paper memos on the possibilities, to 1990 – ARPANET transtion to Internet.



From 1986-1995 NSFNET put $200 million into basic research (NSF is our current partner w/Umass in the ODR research currently underway.)

15 years from inception to the mayor of San Francisco recently declaring high speed wireless to be a "basic right." http://www.isoc.org/internet/history/brief.shtml

A profound idea at the inception of ODR – (Katsh – "Cyberspace can produce more conflict than ODR can ever resolve.")

The question of whether ODR is good is moot for these "cyber" disputes – the parties in cyber disputes will never have a F2F relationship – their world *is* online – without ODR, there may be no dispute resolution system available to them at all.

There are many such Cyber communities – and many ODR systems that work well for them – the challenge is whether ODR has a place in "real" communities – I think it does.

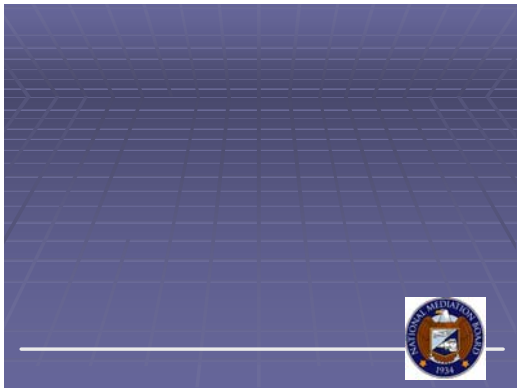
Wide variety – some general like Fac.com, WebEx, Claim Room – some very narrow like blind bidding systems.

SquareTrade is the poster child – a narrow application adapted and applied to specific situations (eBay, insurance claims) – probably the largest provider of ADR services in the world – closing in on 3 million mediations for eBay.

eBay and PayPal have sunk millions of dollars of development and programming money into their ODR systems – why? They see them as an essential trust element in their business.

What we lack are inexpensive, accessible ODR platforms for a general use (although some exist).

Responses came from, among others, VA, FAA, Education, USAF, IRS, EPA, US Bankruptcy Cours, FDIC, NIH, GSA, DoD



85% EEO
70% Workplace
48% Labor Relations

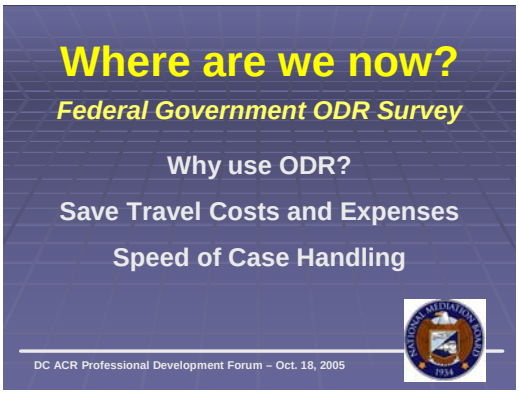
26% Civil Enforcement
11% Customer Service

52% FAX
63% Phone
59% E-Mail

7% Instant Messaging

56% Eliminate Travel
56% Cost Savings
52% Speed

33% Early Intervention
26% To Ensure Anonymity
(See Instant Messaging and E-Mail Above)



These results are not surprising. Jaime Tan's results on non-F2F interactions are surprising.

Distributive results = "fixed pie"

Integrative results = joint benefits

In Tan's research (U. of Melbourne) there were more Integrative results with both synchronous online mediation (chat room) and with asynchronous online (e-mail, etc.) than with F2F.

"Negotiating Online" – to be published in Dispute Resolution Quarterly

I've had discussions with Colin Rule and others about the issue of how applications should be developed – we seem far apart, but I think we are not.

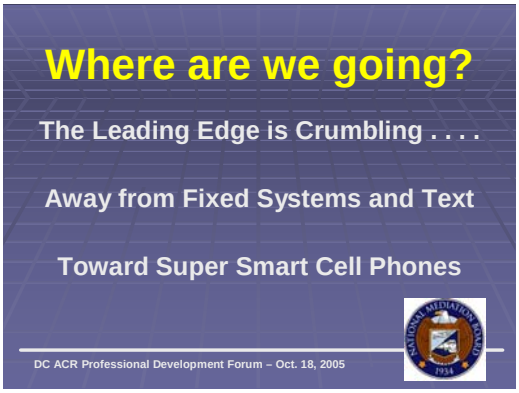
He advocates for nimble, changeable software that can be specialized, and I advocate for nimble, changeable software tied to underlying principles of dispute resolution – the model we were all taught when we learned how to mediate. The essence is the nimbleness. He's dealing with multi national contexts with a fixed pool of disputes, and I'm dealing with a wide range of disputes in a fixed culture (and there is bias built into the model – but that's for another day).

At Umass we are creating a process model (illustrated) that is based on the basic mediation process, and tying the software to that – it should – *should* – make the application nimble.

Our goal (this is a screen shot of the prototype) is to produce a development process that will guide application development into the future – and to make available a low cost, intuitive, mediation process driven application to as many people as possible.

Predictions = things you said that you wish you hadn't said.

The "leading edge" just gives you a good view of the ideas passing you by – something is always coming right behind you to render your brilliant work irrelevant and/or archaic.

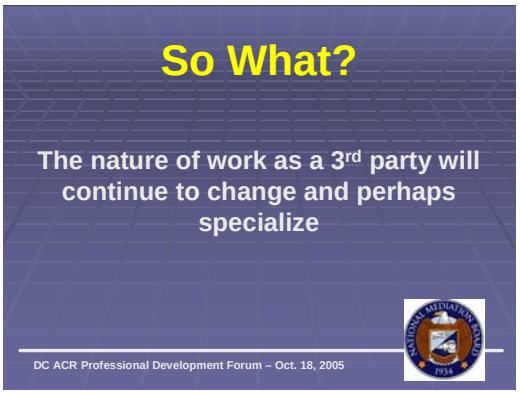


Example: providers are planning to ring Africa with high speed fiber optic cable, then drop in to the continent with high speed service hubs. Before they are nearly done, WiMax (wireless covering hundreds of square miles with one tower) will render fiber obsolete. Heaven knows what will render WiMax obsolete, but *something* will.

Example: We can do it, but should we? Putting MPG3 players and storeage devices in surgical implants, then connecting them to earphones via Blue Tooth wireless.

We are going toward integration of VOIP and video (example: Skype/eBay) and the use of small, non-fixed systems. There are more cell phones in China than there are people in the US – and in the rest of the world cell phones are smarter (iPAQ example) – more and more, young people would prefer to "work it out with IM."

A heads up: from Carly Fiorina (formerly with HP) – if you think the last decade has brought rapid change, just wait – it was only the "warm up act."



Feds have a history of leadership in development (NSF)

There is a stable environment for dispute resolution – disputes within a work force that is used to ADR, widely dispersed, and used to technology.

The primary barriers to overcome are the traditional ones familiar to ADR practitioners.