

Technology Mediated Dispute Resolution (TMDR) and the Deaf Community: A Community Prepared to Receive and to Lead

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It's Not Always Easy to Make Predictions Regarding Technology

- "Who in their right mind would ever need more than 640k of ram!?" Bill Gates, 1981
- "Computers in the future may weigh no more than 1.5 tons." *Popular Mechanics*, forecasting the relentless march of science, 1949
- "I think there is a world market for maybe five computers." Thomas Watson, chairman of IBM, 1943



You Might Want to Reconsider...

- "I have traveled the length and breadth of this country and talked with the best people, and I can assure you that data processing is a fad that won't last out the year." Prentice Hall editor in charge of business books, 1957
- "There is no reason anyone would want a computer in their home." Ken Olson, President, Chairman and founder of Digital Equipment Corp., 1977



Runner Ups

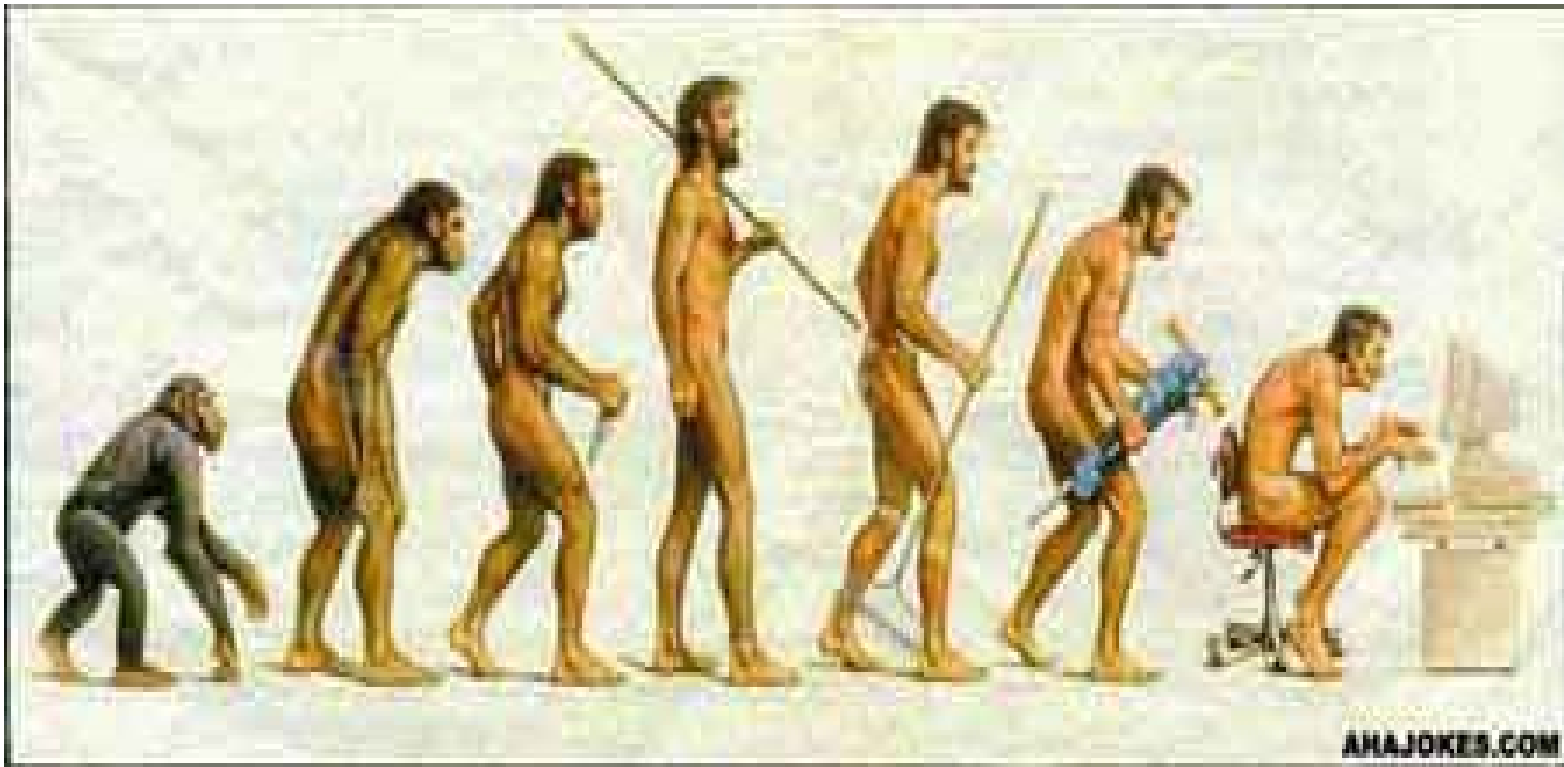
- “Who in the hell wants to hear actors talk?” H.M. Warner, Warner Bros., 1927
- “Heavier than air flying machines are impossible,” Lord Kelvin, President, Royal Society, 1895
- “Drill for oil? You mean drill into the ground to try to find oil? You’re crazy.” Response to Edwin L. Drake’s proposed oil drilling project, 1859



Award Winners

- “We don’t like their sound, and guitar music is on the way out.” Decca Recording Company, rejecting the Beatles, 1962
- “Everything that can be invented has been invented,” Charles H. Duell, Commissioner, U.S. Office of Patents, 1899
- <http://www.slinkycity.com/technology-mistakes.html>

Progress?





So What is the Future of TMDR/ODR?

- Recognizing that at ODR Forum 2020 I could appear on the same kind of terribly bad predictors list I just recited...
- I'll keep my predictions and observations narrow in scope



A Critical Suggestion

- Technology Mediated Dispute Resolution will experience significant growth when TMDR service providers and neutrals follow rather than lead
- TMDR platforms and formats must track technology users' day to day practices and patterns



It's Not Just About the Business, It's Also the People

- Successful TMDR/ODR providers have identified industries and businesses that appear amenable
- Insurance, for example
- But there are specific, identifiable cultures and populations that also are well-positioned for TMDR/ODR



Consumers and Developers

- Not only are certain communities well-prepared to utilize TMDR/ODR
- But these communities also can facilitate and accelerate the development and adoption of TMDR/ODR



PowerPoint Based on Article

- Based in large part (not entirely) on an article I wrote with Paula Gajewski Mickelson
- *“Technology Mediated Dispute Resolution Can Improve the Registry of Interpreters for the Deaf Ethical Practices System: The Deaf Community is Well Prepared and Can Lead by Example”*
- To be published in the Cardozo Journal of Conflict Resolution (2008)



It's Easy to Forget How Quickly Technology Advances

- [24pilot.avi](#)



TMDR/ODR – The Best Thing Since Baked Bread?

- Apparently not – at least judging by the response of some (many?...most?) individuals and businesses
- Why not?
- ODR Forums have identified reasons for parties' hesitation
- Reluctant to say “same old, same old...”



Why Not Embraced More Quickly and Universally?

- Persistently troubling reasons that cause parties to avoid TMDR that include:
- We need face to face (FTF) contact,
- We need verbal and nonverbal cues, and
- We will never get technology to do what we need it to do



Nevertheless...Great Enthusiasm in Some Sectors

- Insurance, for example – Smartsettle and Cybersettle
- But adoption has been uneven and incremental



Recent Developments Will Accelerate TMDR Adoption

- 2006 article *“Technology Mediated Dispute Resolution (TMDR): Opportunities and Dangers”*
- Vol. 38, No. 1, The University of Toledo Law Review



Oil and Terror

- Developed countries cannot curb their appetite for oil and developing countries' demand is surging
- It is becoming too expensive to meet FTF so default will be TMDR
- Additionally, personal security and safety concerns are discouraging travel
- So again, parties will consider TMDR



Increasing Motivation to Use TMDR

- Concerns may be so serious they will encourage widespread use of TMDR
- But even if that is true, TMDR proponents still need to be strategic
- Ask - what populations and communities already are prepared to transition to TMDR?



TMDR and the Deaf Community

- Integrating TMDR more thoroughly into the Deaf Community will result in a “two way street”
- First, the Deaf Community has relied on technology to communicate for generations
- This community is well-positioned to use TMDR and TMDR can make dispute resolution services more accessible



Two Way Street

- Second, this is not only an opportunity to find consumers/clients receptive to TMDR
- It also is an opportunity to learn from the Deaf Community,
- To see that some of the concerns about technology that have delayed the widespread adoption of TMDR can be overcome



TMDR and the Deaf Community –

- American Sign Language (ASL)/English interpreters face complex interpersonal, linguistic and cultural challenges
- Many issues that concern interpreters working in the Deaf Community also are relevant to interpreters working in any multilingual or cross-cultural environment



The Grievance Process

- When consumers/colleagues believe an interpreter has violated the 2005 NAD-RID Code of Professional Conduct, a grievance can be filed with the Registry of Interpreters for the Deaf (RID)
- The RID created the Ethical Practices System (EPS) to ensure service quality and ethical behavior
- The EPS includes a mediation process and adjudication (a peer review process)



Who is an “interpreter”?

- An individual with cultural competence and linguistic fluency who facilitates communication between Deaf and non-Deaf persons
- ASL is not simply “English on the hands.”
- English was developed by users who can speak and hear.
- ASL is a visual-gestural language with its own vocabulary and syntax



Critical Consequences

- To say the work of interpreters is complex and ripe for conflict is an understatement.
- The choices we make, and the actions that follow from those choices, can uphold or deny the dignity of other people, can advocate or violate the rights of other people, and can affirm or disavow the humanity of other people.

Dennis Cokely, *Exploring Ethics: A Case for Revising the Code of Ethics*, RID J. of Interpretation, 2000, 25, 27.



Technology is Not New To the Deaf Community

- Long history of creatively adapting technology to live in a non-deaf world
- Assistive Equipment and Technology fact sheet published by the MN Department of Human Services, Deaf and Hard of Hearing Services Division at

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_003399



Baby Cry Signalers and More

- Alerting Devices such as Baby Cry signalers and Doorbell signalers
- Telecommunication Devices such as Amplified Ringers/Telephones and TTY/TDDs – type over telephone lines
- Voice Carry Over (VCO) Telephones - persons unable to hear can use their voice to speak and a relay service to read messages



More Technologies

- Assistive Listening Devices (ALDs):
- Audio Induction Loop – microphone, amplifier, wire/cable encircle seating area and listener wears receiver
- FM system – radio waves
- Infrared systems – transmit sound via invisible light beams
- Personal amplified system
- TV Infrared Listening Device



And More Technologies...

- Captioning:
- Closed Captioning requires closed caption decoder or decoder chip
- Open Captioning is a permanent part of the picture
- Real Time Captioning is simultaneously prepared and transmitted using stenotype
- TV Decoder - TVs 13" and larger



The Point Is...

- The Deaf Community has embraced and adapted new technologies
- This is a community from whom we can learn much about technology mediated communication
- Text
- Videophones
- V-logs



Text

- The first Teletypewriters (TTYs), or Telecommunication Devices (TDDs), allowed users to call each other and type messages
- Sophisticated method of nonverbal communication began to evolve



Embraced Text Communication Long Before Text Messaging

“There are certain *rules* that people generally follow when using a TTY...: always identify yourself (“PAT JONES HERE” or “ THIS IS PAT JONES” since you generally cannot tell who a person is by how s/he types; when you want the other person to respond, type GA (“THIS IS PAT JONES GA) so that the other person knows it is his/her turn to Go Ahead;



Embraced Text Communication Long Before Text Messaging

- When you are done with your conversation, type SK or GA ("SEE YOU TOMORROW SK or GA") so the person can decide to stop (SK = "STOP KEY" or continue to respond "GA"); conversations are ended by typing SKSK." Charlotte Baker-Shenk & Dennis Cokely, American Sign Language A Teacher's Resource Text on Grammar and Culture 246 (1980). *(Three decades ago...)*

Emotions and Subtleties Can Be Captured in Text

- Long before : -)
- The Deaf Community was texting emotion
- ha ha (laughter), ILY (I love you), OXOX (hugs and kisses) and SMILE (conveys you are smiling)
- and using “cryptic messages” as a strategy for making the TTY conversation more efficient – CUL (see you later), msg (message), mtg (meeting) and NP (no problem).
- TTY Guide from the MN Department of Human Services, Deaf and Hard of Hearing Services Division
http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_004574



Text Can Communicate Emotions And Preserve Communications

- When an interpreter, Deaf person, and a mediator are working together, it is likely that ASL is not the natural or native language of one or more parties
- Can be very helpful if communications can be reviewed repeatedly or supplemented



Videophones

- Video Relay Services (VRS) – mid 1990s successor to TTYs
- Deaf people use videophones and the internet via high-speed services to connect with a “communication assistant” – a qualified interpreter – who dials the non-deaf caller on a traditional phone and interprets the call.



Now Communicate in Our Natural Language

- Interpreters working in VRS Centers are generally referred to as a “Video Interpreter” (VI) or “Communications Assistant” (CA)
- <http://www.fcc.gov/cgb/consumerfacts/videorelay.html>
- The playing field is leveled
- We finally can communicate in our native language



How VRS Works

- The VRS caller, using a television or a computer video camera device and a broadband Internet connection, contacts a VRS CA, a qualified sign language interpreter.
- They communicate with each other in sign language.
- The VRS CA then places a telephone call. The VRS CA relays the conversation back and forth between the parties -- in sign language with the VRS user, and by voice with the called party.



How VRS Works

- A voice telephone user can also initiate a VRS call by calling a VRS center, usually toll-free.
- The VRS CA can be reached through the VRS provider's Internet site, or through video equipment attached to a television. Currently, more than a half dozen providers offer VRS.
- VRS is free to the caller. VRS providers are compensated from the Interstate TRS Fund, which the Federal Communications Commission (FCC) oversees.



VRS Benefits

- Because communication is in sign language rather than text, users can more fully express themselves through facial expressions and body language.
- A VRS call flows back and forth like a telephone conversation between two hearing persons.
- The conversation takes place much more quickly.



V-logs

- Video logs increasingly are being used to conduct rich discussions about significant ASL and Deaf culture issues
- http://www.youtube.com/results?search_query=ASL
- <http://www.joeybaer.com/>



How Can TMDR Improve the RID Ethical Practices System?

- The Deaf Community is not populated by technophobes. The challenge may be to educate the interpreters, neutrals and the non-Deaf participants.
- Videoconferencing and video-based technology appear to be most compatible with the visual – gestural nature of ASL.
- Given the popularity in the Deaf Community of video-based technology such as v-logs, videophones and VRS, many Deaf people will be comfortable with this technology.



Recommendations for the RID Ethical Practices System

- The RID website should provide more information about the EPS, including the EPS manual, in an ASL video format
- Currently when a complaint is filed, the Complainant is notified by letter of the disposition
- Notice and case updates should be sent by e-mail as well as by letter
- Significant or complex issues can be addressed by videophone or in a video format



EPS Mediation

- Calendars should be placed in a password secured area of the RID website
- Parties should be encouraged to prepare for the mediation by reviewing their case, clarifying their concerns (their interests), considering their priorities, identifying possible solutions, and noting issues about which they are willing to be flexible and/or compromise.



EPS Mediation

- These suggestions regarding preparation can be communicated by a brief ASL description on the website with links to various sites offering tools to help parties prepare for negotiations.

http://www.aligncorp.com/images/Align_Negotiation_Pr epSheet.pdf; <http://groupmindexpress.com>.



Video Orientation

- Consider a video orientation
- Explain how the mediation will proceed, provide a procedural outline for the session; explain contractual, statutory and common law confidentiality requirements; and discuss the mediators' role and responsibilities.



Video Orientation

- If the video introduction features the mediator in person, then the video will inform the parties as to the mediator's appearance and demeanor.
- The parties will have a clearer image of the person with whom they will be dealing which may help the parties begin to feel more comfortable and secure about the upcoming mediation session.



Video Orientation

- If a mediator is uncomfortable appearing in a video, s/he should consider presenting the introduction as an avatar, a three dimensional person/entity created to “live” in cyberspace.
- An excellent example of an avatar **using the full range of facial expression and body language of American Sign Language** was created by Vcom3D and Gallaudet University at http://www.vcom3d.com/vault_files/forest_asl/index.html?detectflash=false



Backup Link...

- http://www.vcom3d.com/vault_files/forest/asl/



Options Increasing for Creating Video

- Companies such as Inperson allow users to create videos that can be used by anyone with an internet connection.
- <http://www.rovion.com>
- VIDITalk lets users create videos that can be e-mailed or streamed to websites and “virtually any mobile device.”
- <http://www.viditalk.com/site/>



Benefits of Video Orientation

- Although introductions must be tailored, much of the an introduction is rather generic.
- Unless there has been a change in the law or ethical requirements regarding confidentiality, or unless the parties have unusual confidentiality requirements, that part of the introduction will be fairly standard. Once a video introduction is prepared, the introduction can be saved and edited for future mediations.



Benefits of Video Orientation

- One of the dangers of presenting the same information repeatedly in real time is that a mediator might lose track of what he or she has said “this time,” and forget that he or she has not provided information ordinarily is provided.
- A thorough, repeatedly vetted video introduction that is reviewed and adjusted to fit each case would avoid this problem



More Benefits of Video Orientation

- Reviewing the introduction repeatedly will help the parties become more comfortable with video technology. Additional technologies that may be used can be explained and illustrated.
- A video introduction can remind the parties that mediation is not an adjudicative or punitive process, a perspective that can frustrate and hinder the process.



Gasp!

- Mediators should not allow their own unfamiliarity or discomfort with technology to deprive parties of the technology that may serve the parties most effectively.
- If parties are very comfortable using a particular technology for communicating,
- then a mediator who cannot use that technology may not be the appropriate person to assist those parties.



It's Not All or Nothing

- A video introduction does not preclude subsequent real time communications.
- The mediator still must follow up and ensure that the introduction was understood.
- The video introduction may raise issues and questions that can be explored in advance of the formal mediation session.
- Preferable to quickly pushing through those concerns on the day of the formal session in a rush to get the “real” mediation session started.



TMDR Will Reduce Expenses

- EPS mediation sessions typically involve two RID mediators. The mediation usually is held in a location convenient for the Complainant and Respondent.
- The Deaf Community is relatively small compared to the general population and the EPS system attempts to protect parties' privacy interests



TMDR Will Reduce Expenses

- Thus mediators from outside the region are retained and all travel expenses are paid by the RID. A mediation session generally is scheduled for an entire day and occasionally for two days if the issues appear complex or particularly difficult.
- Travel expenses can be significant. Greater reliance on technology can result in significant cost savings.



Settling the Mediation from Afar

- If the parties and the mediator are not in the same location, then the proposed Mediation Agreement can be circulated electronically.
- If an agreement is not reached, then the parties can receive updates via the designated RID website space for their particular case through videophone or video e-mail. They also can assess whether they would like to continue to mediate the case.



EPS Adjudication

- If a mediation effort is unsuccessful, then a panel of three peer adjudicators will review the case and render a final decision. If the panel determines an ethical violation occurred, then it imposes sanctions.
- Although the adjudicators generally do not meet with the parties, sometimes additional information is necessary and the adjudicators may schedule a hearing.



EPS Adjudication

- Videoconferencing technology, videophones, video e-mail and text-based technology also can be used throughout the adjudication stage.
- If the adjudicators are all native English users, then text-based technology such as instant messaging may be used to connect the parties and the adjudicators



RID Support for Its Neutrals

- Even for highly skilled neutrals, ongoing educational opportunities (and requirements) can improve performance.
- Although continuing education activities have been offered by the RID, these opportunities have been infrequent
- Time, travel, and cost considerations



RID Support for Its Neutrals

- Use teleconferencing to offer classes to mediators/adjudicators in distant locations
- A self-paced course can be made more interactive by inviting participants to post messages on a listserv or join a chat room.
- Host classes in virtual worlds such as Second Life
- Neutrals would avoid travel costs and the RID would not have to worry about who will invest travel time and costs to attend
- Mediators and adjudicators could experiment and familiarize themselves with virtual world interactions.



More Support for Neutrals

- The RID website can host a secured v-log for mediators and adjudicators where neutrals can articulate questions, concerns or dilemmas and solicit peer support or consultation.
- Mediators and adjudicators serving on panels can use this technology to meet and prepare for upcoming sessions, exchange information during proceedings, and debrief afterwards.
- V-logs can be used to provide peer mentoring and support for new mediators and adjudicators.



Educate and Inform the Public

- Video also can be used to provide general information to the public. Videos can be uploaded and shared easily on websites such as Vimeo. <http://www.vimeo.com/>
- Practicing interpreters, students of interpreting, non-deaf and Deaf consumers can benefit from information on the website (or accessible on demand in another medium) that addresses specific questions about conflict, conflict resolution and the grievance process.



More Education

- The RID could maintain a Frequently Asked Questions (FAQ) link, for example, similar to the links provided by most commercial retailers operating online.
- By communicating information about conflict management and resolution, the RID can empower individuals and entities to resolve conflicts before they escalate into a dispute requiring mediation.



Conclusion: The Deaf Community and TMDR

- The Deaf Community is prepared for TMDR
- Other populations and communities also are prepared
- Not only are the Deaf well-positioned to use TMDR, they also can teach us about technology mediated communication

Look Closely At All the Technology Users -You Never Know What You Might Learn



Mike McMahon / AP