Teaching Online Dispute Resolution:
Results from a Survey of Students

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Introduction

As a topic of conversation, and as an approach to the practice of alternative dispute resolution (ADR), online dispute resolution (ODR) has gone from being a novelty in the late 1990's to approaching mainstream in 2010.[2] As I write this, the 9th annual ODR International Forum is scheduled for Buenos Aires, Argentina, in June, 2010, and it promises to be the best attended and most significant of the international ODR meetings.[3]

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[2] As I have suggested elsewhere, the definition of ODR has shifted along the way, beginning with a conception of ODR as online-generated disputes resolved online, to my current shorthand definition: the appropriate application of information and communication technology to the practice of conflict and dispute intervention.

[3] From a handful of attendees at the first ODR International Forum, the Forum in Haifa, Israel, in 2009 drew over 300 attendees from around the world.

In parallel with growing interest in ODR has been the increasing availability of formal courses teaching the basics of ODR, including courses imbedded within traditional ADR and conflict resolution programs.[4]   The University of Massachusetts at Amherst, to the best of my knowledge, offered the first university ODR course (an undergraduate ODR course taught online).[5]   An early course was, and is, the ODR course taught at Hamline University Law School by Professor David Larson, and there are now graduate courses in ODR at Southern Methodist University, Creighton University, and the University of Maryland at Baltimore.[6] The courses at Creighton and UM Baltimore are, to my knowledge, the only required ODR courses that are part of an ADR graduate degree program. They were both in development at the same time, but the Creighton course was taught first, making it the first required ODR course in the world to actually be offered as part of a graduate course of study in dispute resolution.

In addition to full courses in ODR, there are increasing calls for ODR information to be inserted into other courses, both as part of law school ADR curricula, and as part of undergraduate and graduate programs in conflict resolution. And, finally, short

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[4] I have not set out to do a definitive survey of available ODR courses – the half dozen or so mentioned above are ones with which I have some link, or that I know from communication with the instructors. In addition to the courses cited above, there are a few others of which I have knowledge. The Haifa Law Faculty in Israel offers a Seminar on Dispute Resolution and Technology, and the law schools at Washington University in St. Louis and Dublin City College in Ireland offer modules of study on ODR within other courses. Dublin City College and the Michigan State University College of Law both have plans to introduce a full ODR course within the next year, and Graham Ross of The Mediation Room has been asked to develop full courses for universities in the UK and India.

[5] I taught the UMass course in 2004 and 2005. That course has also been taught by UMass faculty members Ethan Katsh and Alan Gaitenby, and eBay Director of Dispute Resolution, Colin Rule.

[6] The SMU course was inaugurated by Colin Rule – I have taught it since 2007. The Creighton course was co-designed in 2008 by Colin Rule and me, and after team teaching it once, I have taught it alone since the beginning of 2009. The UM Baltimore course was designed and is taught by Michael Wolf.

courses are beginning to show up in ADR certification and training programs, such as the one I teach for the Northern Virginia Mediation Service (NVMS).[7]

Because the number of courses is increasing, the time seems right to look back at the past few years of ODR instruction to see what has worked and what has not worked, and to note the changes in perceptions of ODR among the students in ODR courses.

After the most recent ODR course that I taught for Southern Methodist University (Fall, 2009), I began thinking about how to revise and update the course, and I thought it would be helpful to gather some feedback from students who have taken my ODR courses over the past few years. When I began gathering the feedback I had no intention of sharing the results, consequently the questions are rather more loosely phrased and informal than they would have been if this had started out as a formal research project. However, the responses seemed to me to be instructive, and I thought it would be useful to share the results with others who may be designing or teaching ODR courses.

The primary means of gathering feedback was a short survey I posted online. I distributed the URL to all of the students who have taken my ODR courses, and for whom I have active e-mail addresses.[8] I had contact information for 120 students (from SMU and Creighton), of whom 34 (28%) responded to the survey questions.

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[7] The NVMS ODR course can be taken as part of a certification program, or as a stand alone course for area mediators. See http://www.nvms.us/ The Mediation Room has offered ODR training for a number of years (http://www.themediationroom.com) and the InternetBar.Org is developing ODR courses to offer in conjunction with its work in micro-commerce and rule of law (http://www.internetbar.org).

[8] The entire survey is attached to this document as Appendix 1.

What follows are their responses to some broad questions, and my initial reflection on what their comments might mean to an ODR course designer or teacher. I will report on some general observations about student perceptions and their responses to the survey, and, finally, I will make some observations about what the responses might mean for ODR course designers and teachers.

Student Perceptions of Advantages and Disadvantages of ODR

To begin, I have a general observation that comes not from the responses to the survey, but from a shift in attitudes that I have noticed as a result of an exercise that I use to open each ODR class. When I first started teaching ODR courses I established a pattern of beginning each class with two brainstorms. I ask the students, 1) what do you perceive to be the *disadvantages* inherent in using ODR technology, and 2), what do you perceive to be the *advantages* inherent in using ODR technology?

Responses to the advantages brainstorm have shifted very little over the past few years. At the top of the list of the brainstorms from almost all of the classes has been cost savings, convenience (no travel), and, interestingly, personal safety in those cases where one party or the other could be fearful of the other.

Responses to the disadvantages or barriers brainstorm have shifted significantly. When I first did the disadvantages brainstorm, almost ten years ago, the most common responses were: computer illiteracy, technology phobia, generational differences (a polite way of saying that old folks didn't deal with technology well), access to the Internet, and cost. Most recently, computer illiteracy, tech phobia, cost, and access to the Internet have fallen off the list completely. It seems that current students assume that everyone is basically computer literate (even us old folks), and that most people have access to the Internet. I think cost has fallen off

the list because of the proliferation of free online services and the increasing willingness to use those free services to communicate. Taking the place of the old list are responses that focus on issues of practice instead of focusing on the technology itself. The responses now seem to fall into two general categories: issues of trust and security, and issues related to loss of nonverbal cues when the parties are not face-to-face.

As I write this, the general trend that I noted above is being borne out by the responses to a set of brainstorms that I have up for a class at Salisbury State University in Maryland. [9] I asked the students in the class to respond to the two basic questions about advantages and disadvantages, and their responses so far indicate that the major advantages relate to speed and convenience and that the major disadvantages relate to the loss of face-to-face non-verbal cues.

What this shift may indicate is that information and communication technology ICT has become such an integral part of social interaction at large that it is no longer unusual to think of using technology to communicate. After all, conflict or dispute intervention[10] is essentially an exercise in communication, so the changing nature of communication and the injection of technology into the communication process *should* have an impact on our perception of the place of technology in conflict resolution.

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[9] ODR will be the subject of one class session within a graduate class in ADR. I will appear in the course via web video.

[10] I am mindful of the debate in the field on the "proper" use of terms like conflict, dispute, resolution, etc. The field is broad, from long term peacebuilding work to mediation sessions referred by the courts in which the mediator has an hour or two to either get a deal or send the case back to court. I think there is a place for technology across the entire breadth of the field.

General Course Structure

Over time, the ODR courses that I currently teach for Creighton University and Southern Methodist University have undergone some evolutionary change, but the basic framework has remained intact. The basic elements that have become the backbone of the courses are:

- A discussion of the evolution of online technology generally, including a brief history of the development of the Internet and the growth of social media;

- A discussion of the relationship between ODR and ADR;

- An advantages/disadvantages brainstorm;

- A discussion of trust building and ODR;

- A discussion of ODR and intercultural/international issues;

- A discussion of ODR as it relates to law and government;

- A discussion of the impact of ODR on the practice of intervention;

- Descriptions of existing ODR platforms;

- A practicum during which students choose ODR technology and apply it to intervention in a case;

- A paper designing an ODR intervention in the venue of the student's choice.[11]

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[11] A sample syllabus can be found at
http://sites.google.com/site/danielraineyorg/Home/organizations---associations/other-projects-1/smu

The Creighton course is taught over a seven week period, online (2 graduate credits), and the SMU course is taught face-to-face over two long weekends (3 graduate credits), so the timing is a bit different for the two courses, but the content tracks across both.

In addition to in-class sessions for the face-to-face class, I have created an online workspace with course information and group work spaces. For the online courses, there are podcasts posted for each week, weekly discussion forums, group work spaces, and information posted on my web site to supplement the discussions.

My own assessment of possible course changes, before seeing the student responses, was that the time I had been spending on the background of the Internet, the rise of social media, etc., was of less value to the students now than it was when I first started teaching ODR courses. That assessment is partially related to the shift in perceptions among the students about the place of technology in society generally: the current generation of students does not have to have ICT placed in a context – they just assume it has been around forever and don't really think about, or care, how it developed. Again before seeing the student responses, I assumed that the discussion surrounding practice and the hands-on work with applications would be seen as the most useful. As it turned out, my assumptions tracked pretty well with the student responses.
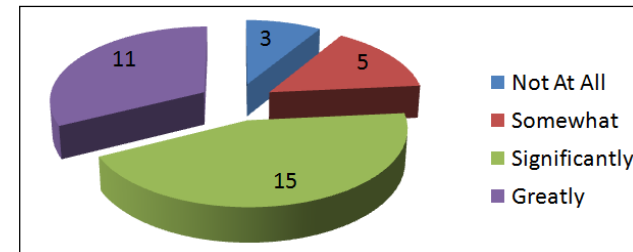
Selected Questions and Responses

Q: **When did you participate in the ODR course?**
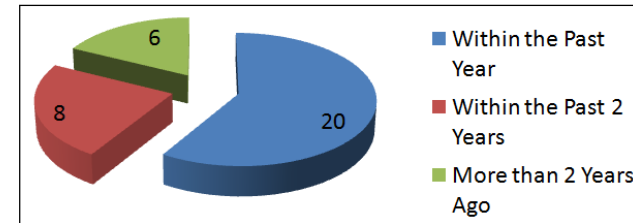
The 20 who have taken the course within the past year are from both SMU and Creighton, as are the 8 who have taken the course within the past two years. Those who took the course more than two years ago are all from SMU.

Q: **Was your attitude regarding ODR changed by taking the course?**

Only 3 respondents (9%) indicated that their attitudes about ODR were unchanged by the course. 26 respondents (76%) indicated that their attitudes were either

significantly or greatly changed by the course. The comments tended to indicate that the changes in perception were changes based on moving from a position of no knowledge or skepticism to one of some awareness regarding the possible use of technology. For the most part, the movement seemed to be from neutral or negative to positive. Some representative comments are presented below:

> *I originally thought communication [using technology] could never be as good as face-to-face. However, I found that with the technologies available communication can be just as good if not better in many circumstances.*

> *I envisioned ODR as a movement applicable to a very limited group of disputes; I've learned the applications are much more widespread . . . .*

> *It was really my first exposure to the topic . . . I had not imagined the immense potential . . . .*

> *My attitude was changed significantly in a positive way . . . . I was amazed at how much you could achieve through an online platform.*

> *I had a basic concept and it was wrong . . . . That couldn't have happened without the class.*

> *I had no idea of the amount of information or platforms available . . . .*

> *I now appreciate the complexity and the opportunities . . . .*

A significant element of the positive change seems to have been a realization that using ODR technology did not require abandoning face-to-face work. In addition to an increased awareness of the ability to communicate using technology, the idea of blending the use of technology with face-to-face sessions seems to be a major factor in changing attitudes about ODR.

Q: **Did participating in the course address or reduce your reservations about using technology in the practice of dispute resolution?**
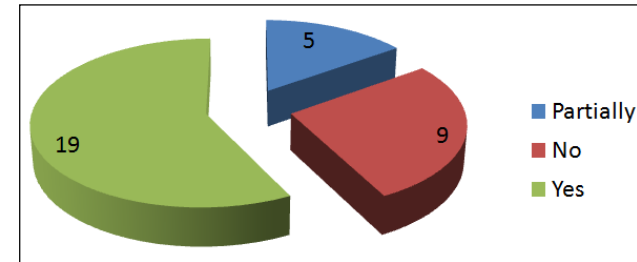
28 of the respondents (85%) indicated that their reservations about using ODR were either reduced or partially reduced. Most of the comments indicated that simple familiarity with the concept of ODR and some of the applications that could be used addressed their reservations. Some representative comments are presented below:

> *I saw that interaction was on a far more personal level that I thought it could be.*

> *The . . . practicum . . . actually using the tools to perform mock ODR . . . [reduced] my reservations simply by familiarizing [me] with the process and the tools . . . .*

> *. . . the keys were the introduction of the breadth of modalities available . . . . and the practical applications across distance, culture, and costs . . . .*

> *Just learning the features and platforms . . . helped to address the reservations I had.*

From the responses and from my own observations, it seems that the single most important factor influencing attitudes about using ODR technology in the practice of dispute resolution is the ability to learn about and use a variety of applications.

Q: **Which information or experience in the course has been most useful or influential for you?**
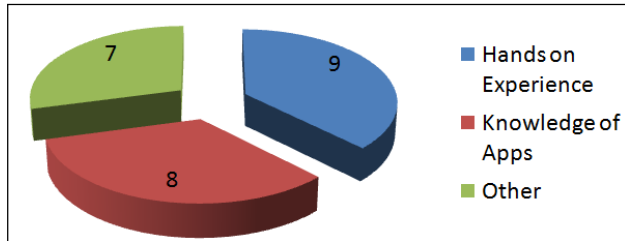
The comments seem to suggest that simply finding out what applications are available and getting to experiment with them in a risk-free environment are the most useful things. Some representative comments are presented below:

[Finding out about] the technologies available.

Actually using an ODR-like product in the simulation.

Just knowing the technology that is available.

Sampling the different technology . . . .

Being able to use an online platform . . . .

Again, it would appear that the ability to learn about and then to actually use some online applications is perceived by the students to be the most important and influential aspect of the courses.

Q: **Suggestions for changes or improvements for the course.**

As one might expect from the prior questions, the comments about changes or improvements generally suggested adding more hands-on work, and more specific reviews of applications. Some representative comments are presented below:

It would be good to define a basic tool set . . . understanding that this set is not fixed in stone [particularly for the practicum exercises] . . . .

Continue to share your life experiences [and your guests'] and the obstacles that you have overcome with ODR.

. . . an emphasis on privacy, anonymity, and roles . . . .

. . . the exercises (using the tools) provided a good basis . . . .

. . . explore and test drive a variety of platforms to see how they work . . . .

In addition to the suggestions regarding hands-on work, there was a significant interest in practical suggestions (how to draft an opening statement, agreement to mediate, etc.) and in how to address some of the unique ethical issues presented by the use of technology.

Quid Tum?

So what? This is one of the most powerful questions to prompt discussion and debate, and one that I routinely ask during classes. So what - now that I am familiar with the information we've just discussed, what should I do with the information, or how should it affect me as an intervener?

I'll ask the same question here: now that I have the responses back from a set of students who have taken ODR courses, what are the implications for designing and teaching ODR courses in the future?

There are four primary lessons that I take away from the survey results, and that I will incorporate into revisions of my ODR courses.

First, students clearly come to ODR courses with some preconceptions about what ODR is, and what disadvantages may accrue from the use of technology. My reading of the comments suggests that it is desirable to surface those preconceptions early in the course, and to address them directly. The comments demonstrate that some activity like the advantages/disadvantages brainstorm is a good idea, and that the items surfaced in the brainstorm can be used as a touchstone throughout the class. The responses also demonstrate that it is necessary to be honest about the limitations of ODR as well as the opportunities that technology brings to dispute resolution practice.

Second, it seems important to focus early in the class on the relationship between ADR generally and ODR as a component of ADR. The comments suggest that understanding what ODR is, how it relates to other intervention activities, and how the use of technology can compliment a wide range of practice is important to

acceptance of ODR. Based on the response to a question about changing the name of the courses from ODR[12] it seems clear that students continue to see ODR as a special sub-set of ADR, and that they are comfortable understanding ODR as a way to practice ADR.

Third, it is clear that getting the students some hands-on experience with ICT platforms and/or applications is important. Time and again in the survey, the ability to see and touch applications was cited as a reason for positive changes of attitude, and, more importantly, for really understanding how ODR could work as part of an ADR practice. Early in past courses I have done demonstrations for students where they watched me manipulate an application online, followed by a discussion of how it might be applied. Later in the courses, I have supplied a list of potential applications and assigned groups the task of picking from the list (or finding other applications) and running through a mediation case study using technology. From the responses, I think it may be important to shift their hands-on use to earlier in the class, and perhaps to give them more than one case study to work through.

Fourth, issues of practice seem to be important. Ethical issues like disclosure of risk from online work, and procedural issues like drafting agreements to mediate and opening statements, are perceived as essential to proper use of technology. In past courses I have conducted limited discussions on these issues, and I have given students sample boilerplate agreements and opening statements, but it may be important to spend more time talking about how to integrate these issues of practice into the hands-on use of the applications.

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[12] See Question 8, Appendix I. The responses were 24-10 in favor of maintaining the ODR name.

Looking back at the current basic course framework, there are some adjustments I will make based on the student comments.

- A discussion of the evolution of online technology generally, including a brief history of the development of the Internet and the growth of social media *[This section of the course will be cut back, with information posted online for the students to read.]*;

- A discussion of the relationship between ODR and ADR;

- An advantages/disadvantages brainstorm;

- A discussion of trust building and ODR;

- A discussion of ODR and intercultural/international issues;

- A discussion of ODR as it relates to law and government;

- A discussion of the impact of ODR on the practice of intervention *[This section will be moved to the beginning of the course and bundled with the description of existing ODR platforms.]*;

- Descriptions of existing ODR platforms *[This section will be moved up to the beginning of the course and coupled with the "practice" information.]*;

- A practicum during which students choose ODR technology and apply it to intervention in a case *[I will consider doing two practicum exercises instead of one.]*;

- A paper designing an ODR intervention in the venue of the student's choice. *[The paper will remain as the primary individual activity of the course.]*

As loosely structured and un-scientific as the survey and my "analysis" has been, there may be some nuggets that ODR instructors can use to plan and conduct courses.

It seems clear that there is increasing interest in ODR, and that ODR courses are capable of influencing ADR practitioners' attitudes about the field, and about the place of ODR in the continuum of dispute resolution practice. This informal report on a sample of ODR student comment is offered in hopes that their comments provide some insights into course design or delivery for those who are engaged in ODR instruction or who are planning future ODR courses.

Appendix I: Survey Questions

1. At what institution did you participate in the ODR course?
   - 24   SMU
   - 10   Creighton

2. When did you participate in the course?
   - 20   Within the Past Year
   - 8   Within the Past 2 Years
   - 6   More Than 2 Years Ago

3. Was your attitude regarding ODR changed by taking the course? Using the following scale [Not At All – Greatly], please indicate the extent to which your attitude regarding ODR was changed. If you attitude did change, please us the comment box to indicate how your attitude changed as a result of the course.
   - 3   Not At All
   - 5   Somewhat
   - 15   Significantly
   - 11   Greatly

4. Before taking the course, did you have reservations about using technology in the practice of dispute resolution [Yes/No]? If so, please use the comment box to describe your reservations.
   - 15   Yes
   - 19   No

5. Did participating in the course address or reduce your reservations about using technology in the practice of dispute resolution [Yes/No]? Please use the comment box to describe your response.
   - 19   Yes
   - 5   Partially
   - 9   No

6. Since participating in the course, have you used technology in your practice [Yes/No]? If so, please use the comment box to indicate how you have used technology.
   - 28   No
   - 5   Yes

7. Which information or experience in the course has been most useful or influential for you after the course? [Comments without categories - the responses seemed to group into three broad categories.]
   - 9   Hands-On Experience
   - 8   Knowledge of Applications
   - 7   Other

8. Do you think the course title should be changed from ODR or Online Dispute Resolution [Yes/No]? If so, to what should it be changed?
   - 10   Yes
   - 24   No

9. If you have any suggestions for changes or improvements for the course (additions or deletions of content, changes in format, etc.) please indicate your suggestions here [in comment box].
   - Comments – no categories