

by Jan Frankl Shau

Closing Argument

The 1976 Pound Conference offered a revolutionary “big bang” concept of Alternative Dispute Resolution (ADR) and transformed the American legal justice system. Chief Justice of the Supreme Court Warren Burger articulated a vision for a more “informal” justice system that included qualitatively better options and a broader range of substantive remedies. Harvard Law Professor Frank E.A. Sander envisioned a system in which the parties would be empowered in procedure and process, democratizing the way justice was attained.

Efficient and Timely

University of California, Irvine Law Professor Carrie Menkel-Meadow saw ADR as a “co-optation” of the more formal and legalistic approach to problem-solving. Mediation offered both quantitative efficiency, by making justice more accessible, cheaper, and faster, and qualitative satisfaction, by allowing the parties to redress the legal claims and defenses as well as the underlying interests and needs of the parties.

In 2016, the original Global Pound Conference resumed through a series of meetings worldwide designed to examine and shape the future of ADR. Michael Leathes, who heads the International Mediation Institute at the Hague,

The Future of ADR After the Coronavirus

called for the pressing need to “overcome the deadly drag of status quoism” and to seek a new paradigm for problem solving.

Enter the coronavirus of 2020 when, in the span of one week, the courts, law offices, and all nonessential businesses were ordered to close. Initially, the only option seemed to be to continue all previously scheduled mediation hearings, but, soon, there was a mad dash to adapt by using ZOOM or other online platforms as a substitute for face-to-face hearings.

Using ZOOM is anything but status quo, and, yet, there are many attributes that suggest this may be the new alternative to conventional ADR. ZOOM is easily accessible on any smart phone and can be used without the need for travel. The platform itself flattens the hierarchy: each participant occupies the same geographic space on the screen. The mediator can control participation by placing the participants on mute or hiding their faces, if

desired, and can easily join the parties together or separate them into private breakout rooms.

Intimate Connections

Oddly, there is something intimate about a mediation on ZOOM. One can learn a lot about people when they are observed in their own comfortable surroundings. A client who speaks directly, looking at a camera on his or her own computer screen, can make a clear “connection” that is in some ways better than the one made in a sterile conference room space. There is a safety in communicating through a screen but also an intimacy when the parties are required to be free of distraction and focused on the narrative at hand.

Just as the popularity of videotaped depositions has exploded, the chance to hear the parties’ narrative in the confidential confines of a mediation via the safety of a visual platform can pave the way to better understand the other’s perspective in ways that were essential

to the origins of ADR.

Professor Sanders envisioned a “multi-door courthouse” where disputes were resolved in the courts or through arbitration and mediation. With ZOOM, there are no doors or walls. There is no limit to how many cases can be mediated: conference space is unlimited and free. Undoubtedly, once the courts reopen, there will be a considerable backlog. Clients will appreciate the ability to mediate those disputes without waiting for the traditional wheels of justice to churn.

Self-Empowerment

In 1994, Joseph P. Folger and Richard A. Baruch Busch wrote a seminal book, *The Promise of Mediation*, in which they suggest that people not only have a chance to reach agreements and solve problems but also to transform themselves in the midst of conflict. This would give disputants a greater sense of their own efficacy and an increased openness to others, valuing personal strength and compassion above all.

The hallmark of ADR has always been to promote open-mindedness, exchange perspectives, and solve problems with creativity, flexibility, and efficiency. If online dispute resolution can foster those values, this new paradigm may be here to stay. ■

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