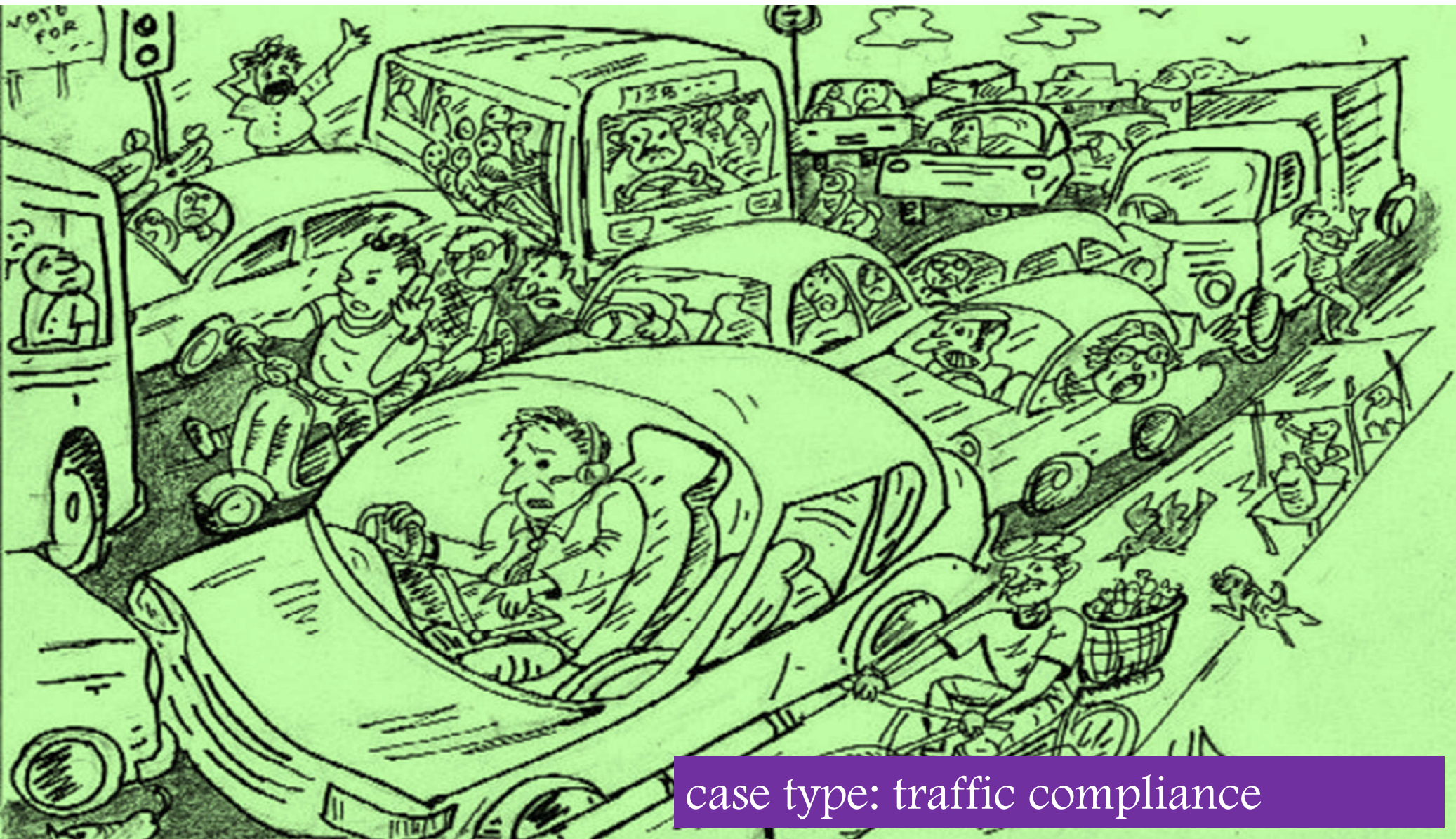




Evaluating Online Dispute Resolution Using an Encouragement Design

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case type: traffic compliance

a what design...?



= YOU ARE =
awesome
∨

A hand-drawn graphic consisting of a heart shape. The top half of the heart is formed by two curved lines meeting at the top. Inside the heart, the words "YOU ARE" are written in a simple, uppercase, sans-serif font, flanked by equals signs on both sides. Below "YOU ARE", the word "awesome" is written in a lowercase, cursive script font. The bottom half of the heart is formed by two lines meeting at a point at the bottom, creating a downward-pointing arrow shape.



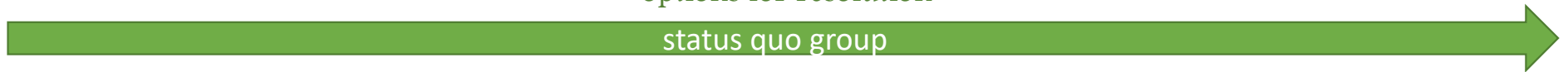
citation



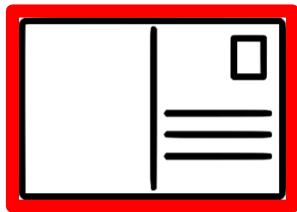
options for resolution



resolution



citation



reminder

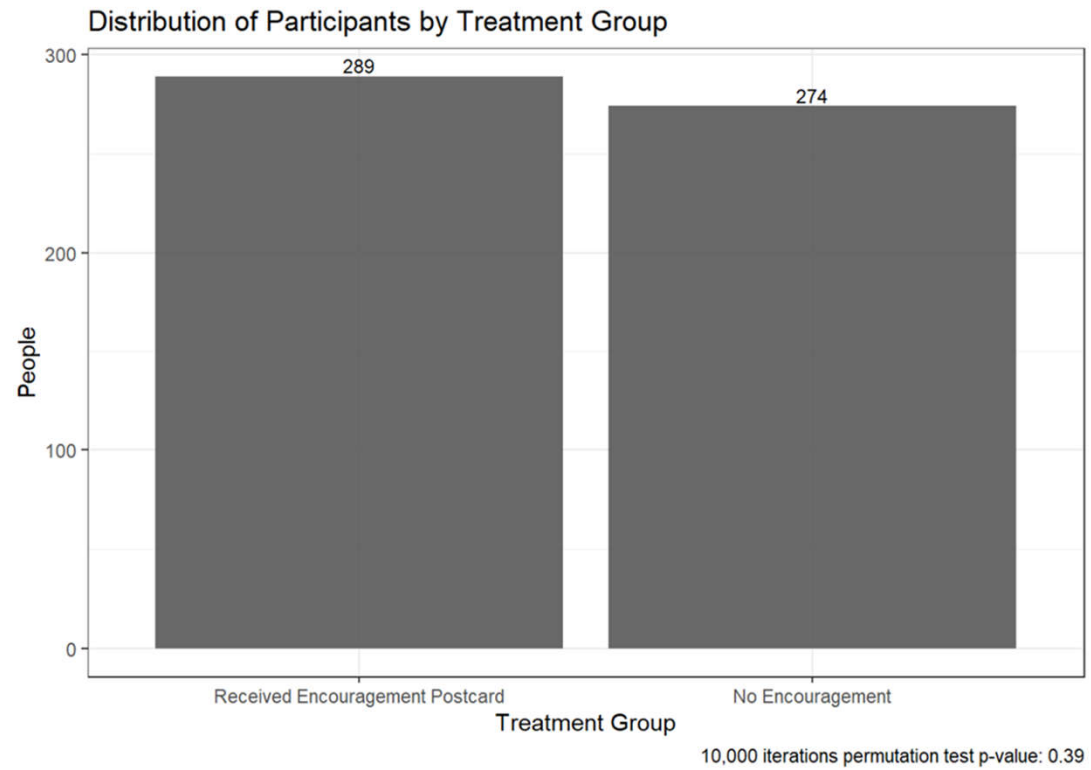


options for resolution

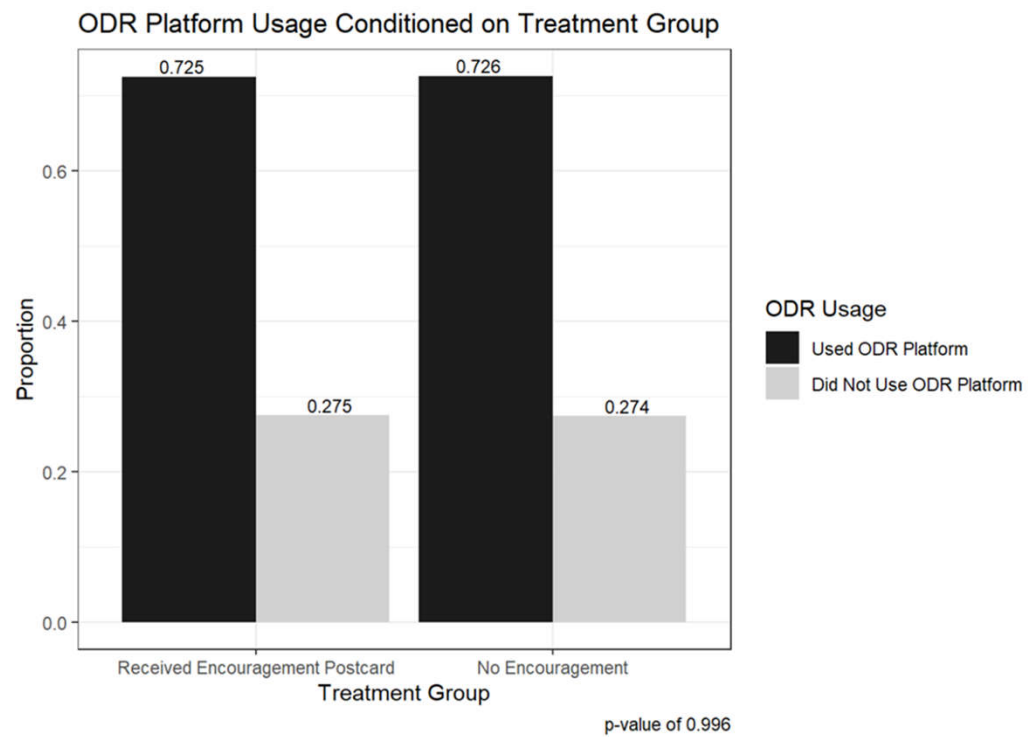


resolution

the sample

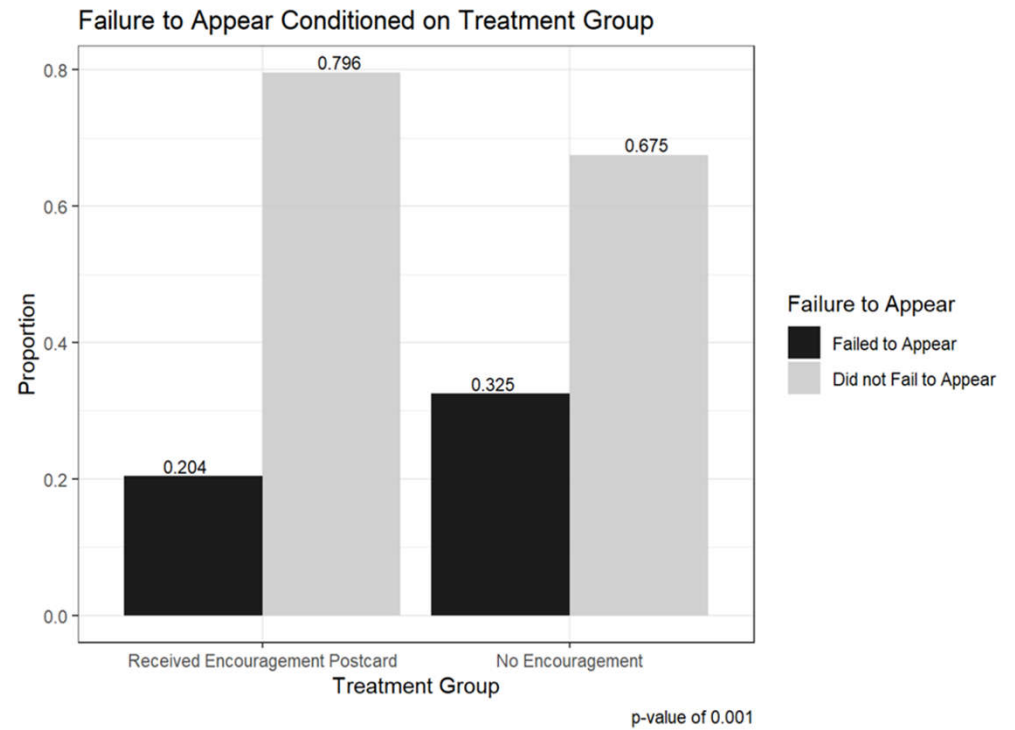
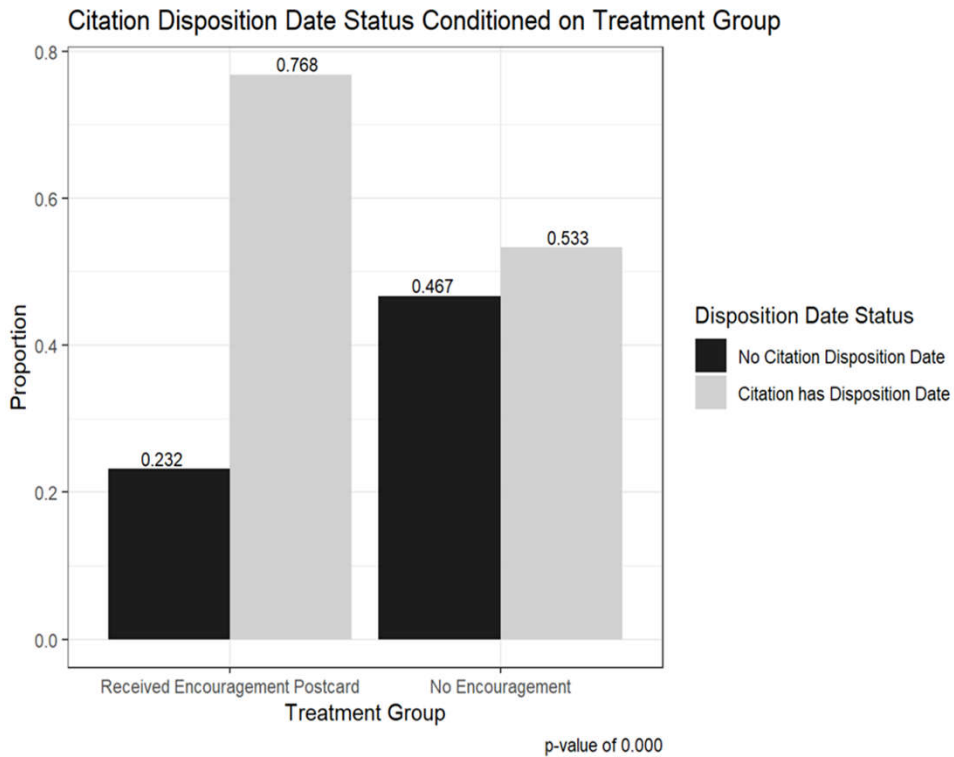


what happened



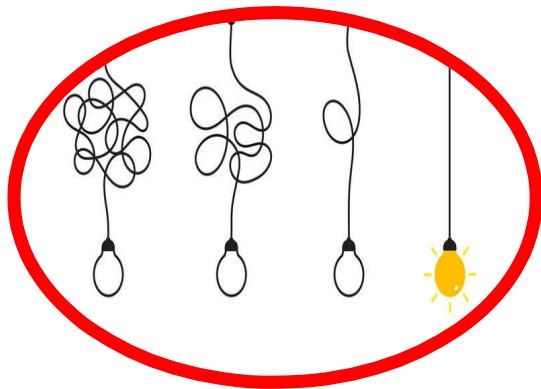
encouragement didn't work

but wait...something may have happened

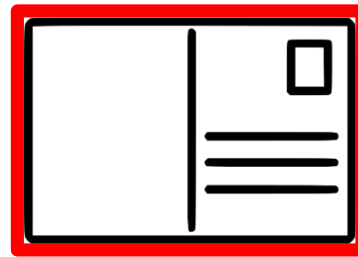


a reminder effect? a BIG reminder effect.

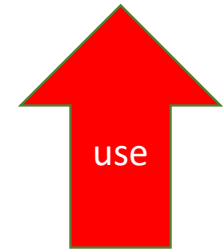
hypothesis

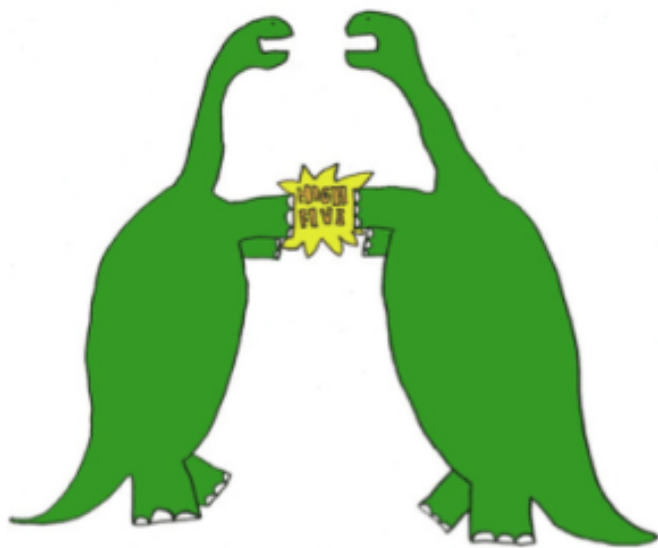


simplification



reminders





HIGH-FIVE-ASAURS

looking
forward to
Prof.
Larson up
next!

The New York Small Claims Court ODR Pilot Project

Professor David Allen Larson

Mitchell Hamline School of Law

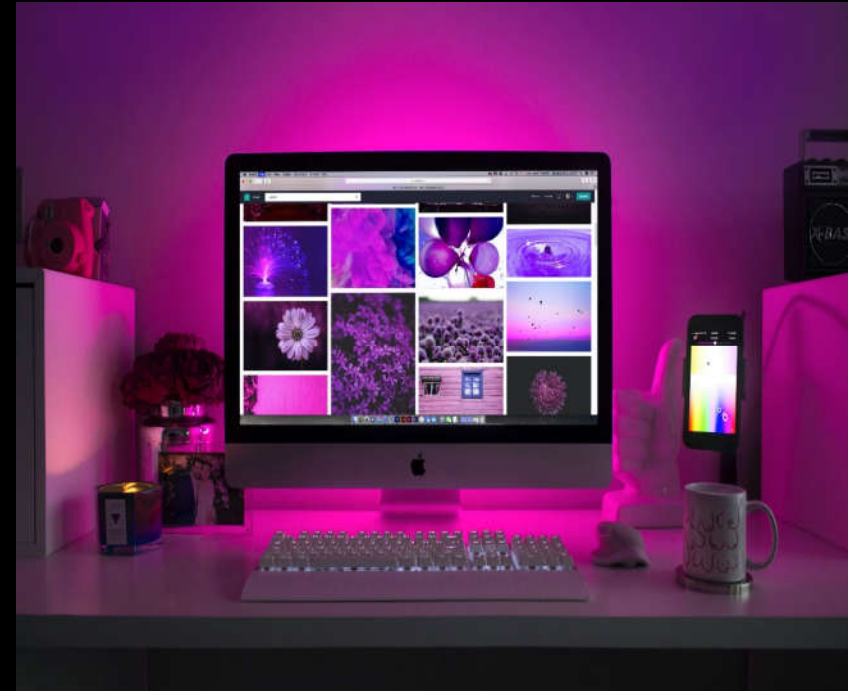
Senior Fellow, Dispute Resolution Institute

Chair, American Bar Association Dispute Resolution Section

John H. Faricy Jr. Chair for Empirical Research

Recent publications at <http://ssrn.com/author=709717>

david.larson@mitchellhamline.edu



“Why is Larson here?”

American Bar Association Liaison to the
New York Unified Court System

Chair ABA Section of Dispute Resolution

**Not an employee, do not speak for the
court**

Since October 2016 – System Designer
Honorary 1st year and a half, over
2000 pro bono hours

ODR since 1999 – Access to Justice and
Reimagine Justice



How Can ODR improve access to justice (A2J)?

Parties cannot always appear in court

Shame, fear, no vacation time, transportation issues, childcare, physically intimidated by other party, disability

Yes, ODR can improve A2J....but not always



New York Unified State Court Online Credit Card Debt Collection System

Unique Genesis – Not an ODR experiment

Debt collectors rely on state courts
Only 4% of consumers represented & don't
file answers – so default judgments

ODR can reduce default rate & increase
access to justice

Me – October 2016, wrong case type – too
regulated

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Two Stage Online System

1) Expert System – knowledge engineering

Modules: Understanding the Process, Legal Referrals, Financial Resources and Services Referrals, In-person Court Support, Consumer Protection, and Legal Defenses.

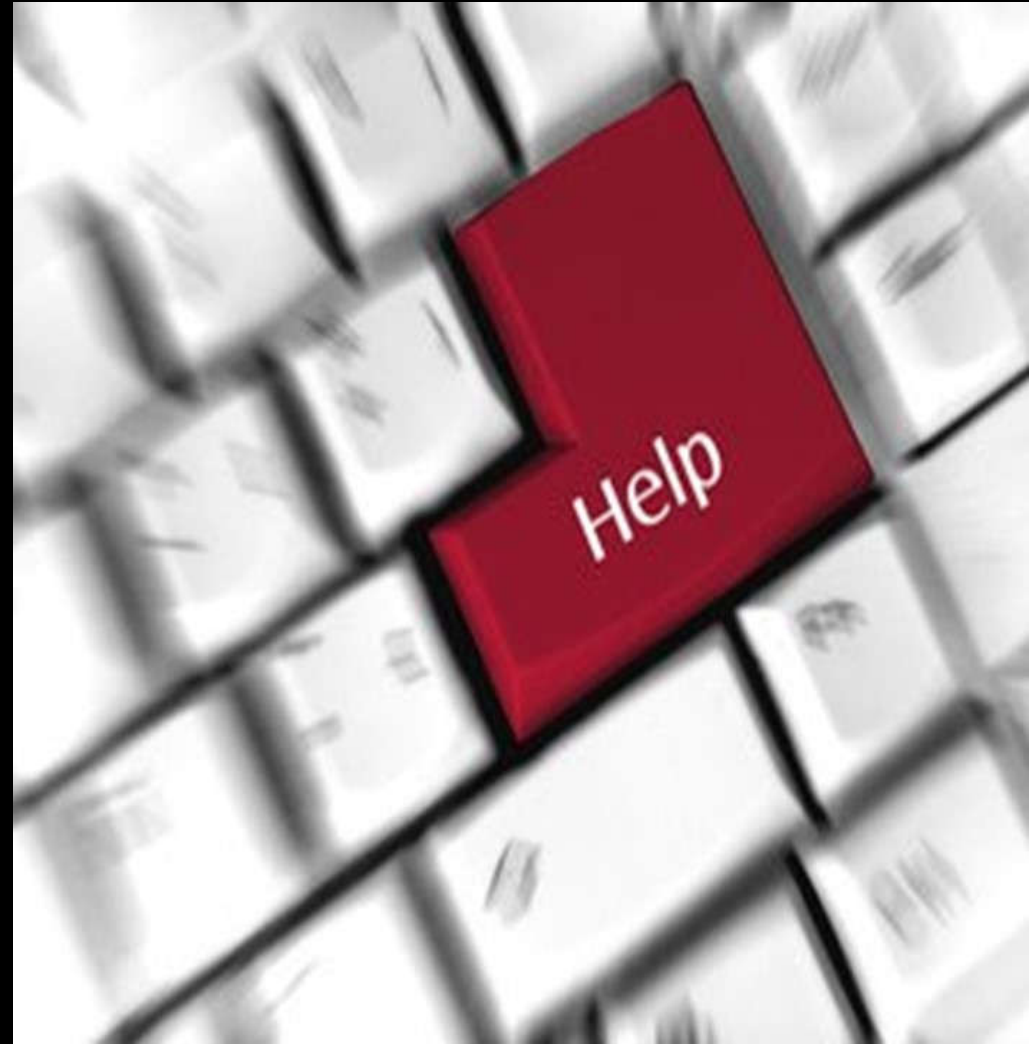
Unrepresented parties receive information and support from Expert System otherwise receive from legal counsel



2) Structured Negotiation with Mediation Option

A critical concern throughout
our design process –
consumer friendly and
protective

Example– links and off-ramps
to legal services



Surprising Resistance

Debt collection - significant
consumer protection
legislation

Civil Legal Advice and
Resource Office - CLARO
Free Legal Advice About Debt
Collection Issues

Do not allow alleged debtors to
go online alone – “we always
win”



Lessons learned - Be transparent as possible (reached out)

Anticipate conflicts/tensions state government policies

Taint Request for Proposals procedure by selective release of ODR design?

Left some legal service advocates unaware of the multiple consumer protective features

Top down not bottom up – enlist highest levels of the judiciary from the outset



Is ODR Better?

Legal service providers objected to unrepresented debtors in virtual space with debt holders

“when we assist clients, we win”

No doubt legal representation for every debtor would be effective

But will not happen in our lifetime

Compare what currently is happening now with proposed ODR platform



Relevant Comparison Cont'd

Debtors come to court unrepresented, sign settlement agreements in hallway at discount rate, but acceleration clauses if late or miss payment

Go into courtroom, agreement is approved, now court judgment

Attach property or garnish wages

Yes, judge is present but unrealistic to assume judge will have time to explain agreement terms

ODR platform provided legal information and hyperlinks to legal services



NYC Small Claims – Goods & Services

- Originally NOT...
- Real property cases
- Cases with landlord/tenant related issues
- Cases involving 3rd Party Actions
- Cases involving public agencies
- Cases with a DV history/Order of Protection
- Cases where party has an attorney
- Now expanding



Cases still excluded:

Domestic violence
history/Order of Protection

Clients represented by
attorneys

Involving NYC municipalities

Claims for employment wages

Cases with counterclaims (&
third-party actions)



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<https://www.freepik.com/photos/central-park>'>Central park photo created by
wirestock - www.freepik.com

“Hard Opt-Out” Questions

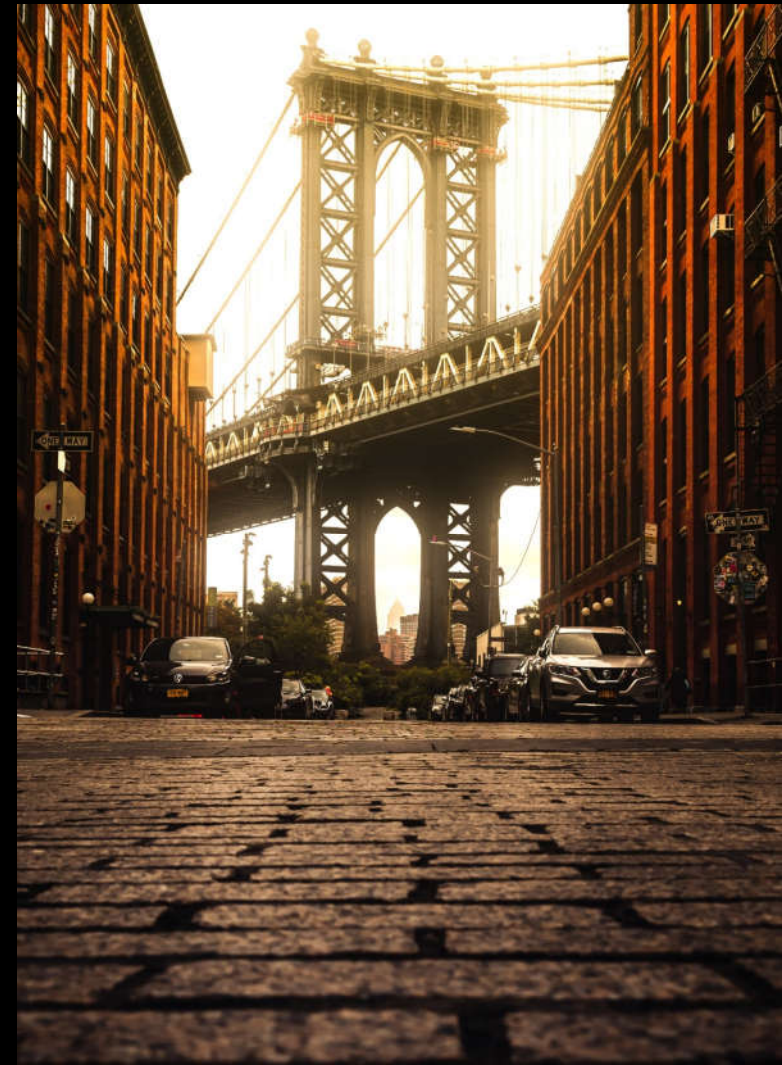
- I have an attorney representing me in this case.
- There is a history of domestic violence in this case.
- There is an order of protection against me or the other party.
- None of the statements above are true.
- \$10,000 or less



“Soft Opt-Out” Questions

- Are you comfortable saying what you think and standing up for what matters to you?
- Do you have difficulties accessing the internet via computer or smartphone?
- Do you have challenges with reading or seeing text on a computer or smartphone?
- Do you have difficulty reading or writing in English?
- Is there any other reason why it might be difficult for you to use ODR to try to resolve your case online before your court online settlement date?
- *Do you still want to continue with online dispute resolution?*
- Ask after each question AND other party cannot see answers

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ODR PROCESS

- Initiate online or in person
- Animated videos
- Blind bidding
- Three rounds – Wish to/Would
- When settled? Overlap?
Amount? Split least desirables –
“Would”
- Structured Direct negotiation –
Terms: ex. # of payments, default
- Last chance direct message
(conversation)



ODR Process cont'd

- Auto populate Stipulation of Settlement
- Mediation – community mediation centers (NYPI & EAC Network Long Island Dispute Resolution Center)
- More coordination and training, own dashboard, Consent to Mediate
- Weighted algorithm assignments



More Lessons

Outside vendor vs. build own platform?

Control, Update & Maintain, Train

New York selected Matterhorn, bought by Government Brands – new personnel

Be flexible – Pandemic – No Court Hearing Dates, remove ODR incentive
Reduced Staff/Changes (Court Clerk)

Defendant Engagement – challenging

Notifications – frequency, text, email?



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Thank you!

Please do not hesitate to contact
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<http://ssrn.com/author=709717>



considerations to prepare to
introduce a new tool

determining components of
a new tool

user engagement

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