

**Online Dispute Resolution:
What We've Learned and What We Need to Learn**
August 12, 2022

Rochelle Klempner:

Well, good afternoon and welcome to online dispute resolution. What we've learned and what we need to learn. I'm Rochelle Klempner, I'm Staff Counsel to the Permanent Commission on Access To Justice, which is one of your conference hosts for this conference. And I'm really excited to have Renee Danser, Associate Director of Research and Strategic Partnerships with Harvard Law School's Access to Justice Lab and David Allen Larson, Professor and Senior Fellow at the Dispute Resolution Institute at Mitchell Hamline School of Law, both of whom who've had significant experience studying court-based online dispute resolution initiatives. I refer you to their full bios, which are available from our online agenda. So, today Renee is going to present first, followed by David. Then the two of them will talk a little about some of the key takeaways they've learned from the ODR projects they've been involved with as well as other technology projects.

And we encourage you to open the chat feature, which depending on how you came into Teams is on the upper right of your toolbar or is somewhere in the middle of your screen at the bottom. But open up the chat feature because we will be taking questions at the end and you can put them in the chat throughout. And we will also be launching a few polls today that will also appear in the chat.

This session is being recorded and we'll post the slides and the recording on the Primary Commission's website at some point after the conference. And now here is Renee Danser.

Renee Danser:

Thanks, Rochelle. I'm going to go ahead and share my screen, so just give me a second. Okay. So, thank you so much for including me in this day and in this conference. The sessions I've attended thus far have been fabulous. I feel really honored to participate. My name is Renee Danser. I work at the Access to Justice Lab at Harvard Law School. We focus on rigorous evaluations of access to justice interventions. So, I'm going to talk to you today about an evaluation we just completed, attempting to understand the effect of online dispute resolution. We're seeing lots of installations of online dispute resolution throughout the country on all case types, but we don't have any rigorous evidence that it's doing what we hope it's doing.

We have a couple of empirical studies from other countries that focus on user experience, but it's not been all that long since ODR was really embraced in the US, so we don't have a lot here. We have some pre-ODR and some post-ODR

analyses with analysis often done by the courts themselves or the platform vendor itself, so we want those to be confirmed by independent research. We also want to think through what the limitations of those might be. What could have changed, for example, in the intervening time that could also explain the results we're seeing and how big of a deal could that be with respect to our data.

ODR is being used by courts across the country in all sorts of different case types. Often those that are high volume. Some characterize these matters also as low stakes. But I do hesitate to do that, for the parties I'm sure the stakes are quite high. Things like eviction dockets, small claims dockets, some family matters. But in this evaluation we were working on traffic compliance matters. That's a subset of traffic cases. Things like the driver didn't have their license with them when they were pulled over or had an out-of-date registration. In these instances, the court is looking for proof that these issues were repaired, so to speak.

Like I said in the beginning, at the Access to Justice Lab, we focus on a rigorous evaluation design. Specifically the randomized control trial, which requires sorting cases into groups to allow for the law of large numbers to ensure that the groups are nearly identical but for intervention. One of those groups then must get that intervention and the other not. We structured this evaluation that I'll discuss with you today using a specific RCT design. The encouragement design. So, we're going to do a quick audience poll here to find out what you think that means. So, if you could please launch the poll.

Renee Danser:

So, Rochelle, I am not seeing the poll. If you are able to see the results and tell me when it's done.

Brendan P. Burke:

Rochelle, I think you were muted there.

Rochelle Klempner:

Thanks, Brendan. Do you see it in the chat? The results have been tallying.

Renee Danser:

Let me get to the chat. That would be helpful.

Rochelle Klempner:

Right. So, most people should see it in the middle of their screen. If not, they'll see it in the chat. And definitely the answers have compiled in the chat as we're speaking.

Renee Danser:

Yes. Okay. I do see it. Thank you so much, Rochelle. That's really helpful. And you're right. And so most people have answered correctly. B is the correct answer. So, if you selected B, you're right. Sometimes we can't directly avoid participants from getting our intervention, which is kind of key to a randomized control trial. So, we need to design a scenario in which it's more likely that one group will get it than the other. That doesn't always require the use of the encouragement design, but that design is one way to try to accomplish this. It means rather than assigning ODR to some and not to others for resolution, we provided extra encouragement to use the ODR, excuse me, to use ODR to some and not to others. If the design works and those that got the encouragement end up being more likely to use ODR than those who didn't by a big enough margin, we can effectively randomize the use of ODR and analyze the results as if we did. It's a risky design. It requires a lot of things to go right.

So, here's what that looked like. On the top of the slide here, you'll see that we... Excuse me. So, we sorted our participants into two groups. The status quo, which is what you're seeing at the top of the slide here, and encouragement, which is what you're seeing at the bottom of the slide. The status quo group proceeded as usual. They got a ticket. It had a lot of things on it like all tickets do. One of which was a URL for ODR. One of which was a hearing date and time. The idea was you could use ODR, but if you didn't, the court had already scheduled a hearing for you. One way or the other, you're getting to a resolution. Moving to the bottom for the encouragement group, we tried to get the encouragement group to use the ODR platform more often than not.

So, after the citation we sent a postcard reminding them about the ODR platform and encouraging them to use it as an easier way to resolve their case. Either way, if they use it, or if they go to court, they would get to a resolution in some form or fashion just like the status quo group. Here's what our distribution looked like. 289 people in the encouragement group. That's the bar on the left. 274 people in the status quo group, the bar on the right. You may wonder why they aren't equal. That's what random means, right? You may end up with a slightly unequal distribution. Random is not every other one. Random is not when you select a case based on your predetermined criteria and put them into the bucket. Random is exactly as it suggests, random. So, now that you know the design, what do you think happened? So, can we launch the next poll, please?

Okay. I'm going to give a couple more seconds. We have a really smart group though. Okay.

So, if you selected D, that's the right answer. It looks like the encouragement didn't make a difference on our two groups, which is what we're displaying here in the graph. You can see that both groups in the encouragement and the

non-encouragement group used ODR at the same rate. Nearly exactly the same rate. So, the bar on the left of each set of bars shows you the rate at which folks used the ODR platform. So, that probably brings the question to the group. Why am I here talking about this? No, we are not launching another poll. I'll just tell you. Because we saw that those that got the encouragement postcard were more likely to resolve their case shown in the graph on the left and more likely to appear at their subsequent court events shown in the graph on the right. We saw that those that received the encouragement resolved their cases at a greater rate than those that did not, to a very high degree. 25 percentage points more likely.

And those that received the postcard were just over 12 percentage points more likely to appear for their hearings. So, what we think we are seeing is a lot of people were able to access the platform regardless of encouragement. So, the platform itself is easy to access. But subsequently, those that got the postcard paid attention to their case more than those who didn't. So, this leads us to our renewed hypothesis. A combination of simplified processes, plus reminders, equates to increased use, a great amount of increased use, so far greater than either of those things alone if you compare them to past research about each of those individual items themselves.

So, it's important to note though here that this is just our hypothesis. We didn't test for this, but it's what our data appears to suggest. We and other researchers need to do more research into the effect of these combined processes to really know. It's not just about testing reminders, though, without going through the process simplification journey and then being sure to incorporate information to allow the user to know or perceive that the process is simpler than what it was. So, encouragement didn't change things here. But we do think that combining simplified processes with reminders can increase usage by a lot.

So, that is my presentation. I'm going to turn it over to Professor Larson and I look forward to answering any questions at the end.

David Allen Larson:

I think we're good to go. Good afternoon.

David Allen Larson:

So, what am I doing here? Why is Larson here? Well, I'm the American Bar Association liaison to the New York Unified Court System, state court system. I'm also Chair of the ABA section of dispute resolution. First point really important. I'm not an employee of the New York court system, so I'm not speaking officially on their behalf to a degree I make any misrepresentation mistakes they're entirely mine. So, just keep those in mind. I started working with the court back in October, 2016 as a system designer to build the ODR

platform. For first year and a half we had an honorarium, but since then I've worked over 2000 pro bono hours, so I feel some allegiance with the audience. You work really hard and you don't get paid enough for what you do. I've been working with ODR since actually 1999. And why do I continue doing it? Because I really think it's important for improving access to justice, that it has great potential to increase access to justice. And it's a really exciting opportunity to reimagine what justice looks like. Parties can't always appear in court. Shame, fear, no vacation time, transportation issues, childcare, physically intimidated by other parties, disability. So, yes, ODR definitely can improve access to justice, but not always.

We started with a New York unified state court online credit card debt collection system. And it was kind of a unique genesis. In most jurisdictions when people turn towards ODR, they turn towards it as a pilot experiment just to see if ODR works. But in New York, in this instance, there was a real crisis. And that's the fact that debt collectors were relying on state courts to be their debt collectors. And only 4% of consumers were represented, they weren't filing answers, lots of default judgments. It was a real crisis. So, the impetus for the ODR experiment in New York wasn't just to see if ODR works. It was to resolve a really pressing issue. And the hope was that ODR could reduce that default rate and increase access to justice. When I came out in October, I thought and said I don't think this is the right case. It's just too regulated. But the fact is it was a real crisis and there didn't seem to be an apparent solution and it wasn't a bad idea to think that, well, maybe ODR can help.

We had a two-stage system. We were going to build an expert system called knowledge engineering where a lot of modules for all the users and particularly the consumers, they could learn about the process of how ODR worked, get legal referrals, find out about financial resources so they could understand really what they could pay and what they could manage, in-person court support, consumer protection. Importantly, we had a module on legal defenses. For example, maybe debts aren't collectable because they've already been discharged in bankruptcy. Maybe certain funds are protected from social security. So, we wanted to let consumers know that. So, the whole idea was that unrepresented parties would receive information support from an expert system which would be like having a legal counsel at their side.

The next step would be a structured negotiation. A critical concern throughout the process, to stay consumer friendly, be protective, lots of links and off ramps to legal services. We got surprising resistance. Debt collection does have significant consumer protection legislation. CLARO, who I know is here today, was uncomfortable with the system and their kind of initial response was don't allow debtors to go online alone because when we are involved, we always win. And again, I certainly want to make clear that I don't disagree that if people are represented, that's probably the best-case scenario. It's just that the reality is that people aren't represented and about 4% of people appearing on

these cases were represented. So, with this first iteration, we learned to be as transparent as possible, but for over a year, we reached out and talked to everybody we could including some legal service providers. You've got to anticipate conflicts and tensions with state policies. For example, period within which you have to file an answer when you get a complaint. A lot of things have to be adjusted to accommodate an ODR platform.

We were going to build a program using an external vendor, and that required a request for proposal to be issued. Then there was a concern about to a degree people didn't understand the platform or were concerned about it, could we show them the platform in their entirety so they'd have a better understanding or would that taint the request for proposal process? And the fear was that would taint the request for proposal process if you did a selective distribution early. So, there really was never a full opportunity to hand over the platform. And I think that led to some misunderstanding, but there was a good of reason for that I think. A really important lesson is build a top down, not bottom up. And I think Utah is really good example. Justice Deno Himonas was a big supporter of ODR from the outset and explained it and promoted it, and they had a really successful implementation in Utah with the leadership of a Supreme Court Justice there.

Would ODR have been better? ODR service providers said that when we assist clients, we win. And again, I don't doubt that, but the problem is that's not going to happen in our lifetime. We're just not going to get the kinds of funds or support we need so that everybody can be represented in court. So, I think the comparison is not what happens when people are represented as compared to ODR. The comparison is what's currently happening in the court system compared to ODR. And what's happening in the court system now is debtors come to court unrepresented. They sign settlement agreements in the hallway at discount rates. Those agreements often have acceleration clauses that if you're late or you miss a payment, the entire debt becomes immediately due. They take these agreements into the courtroom; the agreement is approved. You've got a court judgment now. Now when you are late, you can attach the property and garnish wages. And yes, it's true that a judge is there, but it's unrealistic to think that they're going to have time to really go through and explain those agreement terms to the consumers. And so compared to having no guidance or support at all, at least the ODR platform is providing information, hyperlinks, education modules, so I'll always maintain that that would've been an improvement from what is happening now. But in a way that's all moot because we've moved to small claims. So, that's what we're doing now in New York. And originally it was going to be very limited in terms of what kinds of cases. Weren't going to be any real property cases, no landlord tenant, no third-party actions, no public agencies, no cases with domestic violence history/order of protection, no cases where an attorney was involved.

We've expanded the case types, but we're still excluding domestic violence/order of protection, still attorney...excluding cases where clients are represented by attorneys. Still excluding cases involving New York City municipalities, claims for employment wages, and then cases with counterclaims and third-party actions. We've got hard opt-out questions: I have an attorney representing me, a history of domestic violence, there's an order of protection. If any of those are true, you're just going to be ineligible for the platform. We also have soft opt-out questions. I think these are really important. Are you comfortable saying what you think and standing up for what matters to you? Do you have difficulties accessing the internet? Do you have challenges with reading or seeing text on a computer smartphone? Difficulty reading or writing in English? Is there any other reason it might be difficult for you to use ODR to resolve your case online?

So, they're soft opt-out questions because even if somebody says yes, I have difficulties accessing the internet, it may be that they have a workaround, they have a public library they can go to. So, even though somebody may say they have one of these challenges, we leave it to them to decide whether or not they want to go forward because they may have a support platform, network available, that can help them do it. And it's a little too paternal, I think, to take these cases away. The other party can't see the answers to these questions, which also we think is important.

So, what does it look like now? You can initiate online or in person. We show animated videos about the ODR process and about small claims court. There's a blind bidding stage where people propose the claimant makes a demand. The debtor makes an offer and they go back and forth three times. If there's an overlap, that means they've agreed to a settlement amount. That's just the first stage. Then they have to go through a structured, direct negotiation where they're deciding things like the number of payments, the start date, what happens on default. If they get hung up at any stage along here, they can't get an agreement, they have an opportunity to engage in direct messaging to see if they can get past that point.

If they can get the terms together, as well as the amount, they would auto-populate into a stipulation for settlement. If they cannot, there is an online opportunity for mediation with two community mediation centers, the New York Peace Institute and the Long Island Dispute Resolution Center. In terms of building the platform because those are external entities that required a little more coordination and training. Had to build a dashboard, work with them about what the consent to mediated agreement would look like. Had to devise a kind of weighted algorithm between the two centers, because they don't have the same number of mediators to figure out how we're going to distribute the cases. So, again, in terms of building an ODR platform, when you're working with external mediation centers involves a little more work.

Learned some more lessons working on small claims. Do you want to use an outside vendor or build your own platform? If you build your own platform, you got a lot more control, but you're going to have to update it. You're going to have to maintain it. You're going to have to continue to train people. And when your workforce turns over, you're going to have to train new people. We had selected Matterhorn first, but this is what can happen. They were bought by a government brand. So, you spent a lot of time working with someone who becomes intimately familiar with what you're trying to do and then the company is bought and you have all new personnel that have to be introduced to what you're doing. And so that's something you have to expect if you're working with an outside vendor.

You have to be flexible. We had the pandemic. It used to be that you had court hearing dates. When we first conceived the program, the idea was going to be that we would have a set period for the ODR platform. And if it didn't resolve, then you would go to court. You had a court date. And that court date was kind of an incentive to use the platform. And if you didn't use it, you knew that court date was coming. Once court dates were suspended, now that stick at the end of the process suddenly was taken away. And the incentive to using ODR went down. We had to come up with kind of an arbitrary number. What would be the settlement period, understanding there wasn't that, call it a threat of a court hearing date at the end of the ODR process, so that made defendant engagement a lot more challenging. We'll probably say a few more things about engagement in a minute. So, I don't want to talk too long and I want to leave time for questions and discussions, so I'm going to finish right there.

Thank you and don't hesitate to contact me. Always keep in mind that I'm not an employee of the state court and what I say doesn't bind them.

Renee Danser:

Okay. Great. Thank you, Professor Larson. I'm going to share my screen again, and we're going to have just a discussion among the two of us until we are told by Rochelle that we'll start taking question. So, we have really just prepared some high-level discussion thoughts. So, Professor Larson, maybe you can go first and talk about some considerations that you advise for courts and our legal aid friends who are here and other organizational friends who are here that they should consider while they're preparing to introduce a new tool. And in our instance, the new tool, of course, was an ODR platform, but I'm sure that some of those considerations will be universal.

David Allen Larson:

Yeah. Yeah. Thank you, Renee. Couple things. I'll throw them out and then we can bounce back to Renee. One thing is to reach out as far as possible, as widely as possible, to get feedback. We tried to do that for a year. It's impossible to touch base with everybody. We did talk to legal service

providers. We thought we had it nailed down as much as possible. Apparently we didn't. But certainly when you're going to introduce a platform, talk to as many involved affected parties and entities as you can to get as much feedback as possible and as much buy-in as possible. One thing we didn't have the first time around, we had more support for this when we did small claims, we understood this, is that if you have support from the highest levels of the judiciary, it's going to help with the adoption. It's just when the, for example, if you have a Supreme Court Justice or the head of a particular court saying this is a good idea and I'd like you to all work on making this implementation effective, I think that's really going to help the entire process.

One thing you certainly have to consider is compatibility. And New York, when we started in 2016, was not fully digitized. And that meant that we were going to have to have human involvement, manual tasks. And then you've got to think about how you can leave the platform for a moment to achieve a particular task and then come back into the platform as seamlessly as possible. And obviously to the degree you are more digitized, the better it's going to be. And over time, New York in fact has become more digitized and it's made some things easier. But that's certainly a consideration, the extent of the digitization and also the compatibility of all the different software programs. You got to keep both of those in mind. I suppose the last thing is you got to think about cost.

If you're using an outside vendor, how are they going to bill you? Is it going to be an annual fee? Is it going to be per case? That's going to have to be negotiated. You're going to have to think about that. And if you're going to build it in-house, I don't think you can underestimate the challenge that's going to be in terms of hiring enough people that have the expertise that can build that kind of a platform and then keeping them around so they can maintain the platform and the update it whenever it needs to be updated. So, that's just a few of the considerations and I'll just give it back to Renee.

Renee Danser:

Yeah. So, I think that I would be remiss if I didn't say that one consideration that you should be thinking about from the get-go is how are you going to know if your platform or your tool is doing what you had hoped it would be doing. And so that's thinking about evaluation from the beginning. And that includes thinking about what data you are currently collecting and what data you should be collecting so that you can really understand the effect of your tool. And I would also encourage folks to think about not just qualitative analysis. So, not just understanding impressions of the user, which are very important. That definitely should be one component of your evaluation. And not just trying to understand how this is affecting case processing metrics, but really thinking about how is your intervention affecting the community members you're hoping to effect and the communities that you're hoping to effect. And so

really looking at outcomes that go beyond just case processing and also incorporate things in addition to qualitative analysis.

The other thing I think a big message that came from my presentation was that reminders coupled with process simplification really increase... You can potentially really increase usage by quite a big margin. And so this to me really wraps in nicely with the idea of things to consider while you're preparing to introduce a new access to justice intervention. And that is thinking about your process at the outset and where can you really tighten it up and simplify it and just make it easier to use. And then how are you going to communicate out to the communities that you're hoping to serve that you've done that, that you have a new solution for them, and how are you going to know that that communication is reaching the communities that you're hoping to reach.

And so that also gets you to another kind of pre-implementation planning item, which is to really think critically about, who are you trying to help with your tool. Is this a tool that you expect to be universally helpful or are you really targeting specific and individual communities or communities of users, however you choose to define that. But really think critically about that definition and consider building your tool and your process around those specific users.

David, I didn't know if you had any additional follow-ups that you'd like to interject in this or should we move on to our next-

David Allen Larson:

Yeah, I'll just say a couple more things. One is that on the front end, you also have to make certain you have the staff and the personnel that have the qualifications to make this assessment. It's one thing to say let's try it out and then realize you don't have anybody really experienced in doing the vetting and investigation that you need to be able to do. And people are going to have to educate themselves as to how to select a tool and make the decision of whether we want to go in-house or not. And we've never thought about these kinds of questions before. So, you do have to pause in the beginning and get something in place that you can actually make an assessment of should we do this and how are we going to decide how to do it and who's going to make those decisions? And that's a really important first step. I'll just stop there. We can go to the second question.

Renee Danser:

Yeah. I just want to follow up and say I couldn't agree more. Really thinking about the components in an RFP and thinking about who's your project manager and giving that person authority or those people authority to make decisions and iterate as you learn and go with your new process is really key.

Okay. So, Professor Larson, let's move on to the next high-level question. What is your sage advice for determining components of a new tool?

David Allen Larson:

I don't know if it's sage advice. We could call it my advice. One thing I think is really important is that I think accessibility is really important and accessibility is a really broad term and it has to do with technology accessibility. Whatever you're doing, is it going to be accessible on mobile phones, for instance, because that's the way that a lot of people access the internet now. They may not even have a computer. They do everything they do virtually, they do it on a mobile device. And if that's so, that's a little screen and you're going to have to do a design that's going to be usable and understandable on a small scale.

You can look at different statistics, but one out of four people, according to Center for Disease Control, United States Census Bureau, has a disability. And there's all kinds of disabilities. You can have visual, you can have hearing, you can have motor, but whatever you're doing with your platform, you need to make sure that it's going to be accessible for people with disabilities given that high percentage of people that do have disabilities and given the fact that increasingly we're living our lives online. I think this is not just for ODR providers, that for anybody who's doing anything online, that we really have to make accessibility an important part of not only our design, but our request for proposals. Put it right up front that that's important to you and see how they're going to address accessibility concerns when they make their proposals. I think you've got to keep it right at the forefront from the very beginning.

And I suppose the last thing is that's something we're thinking a little bit about it with New York, is that how many steps do you want in your new tool? And that kind of goes to something Renee was saying, and the suspicion is that maybe that data is really revealing something. One thing we did in New York is that we really wanted to be protective of consumers. And so we have lots of screening questions. We created these videos to watch. We gave lots of information and what we thought were helpful tools.

But every time you do that, that's another step. And are people going to do all the steps or are they going to disengage? And so I think a consideration that is part of the evolution of how we understand ODR is that maybe too many steps is not a good thing. Even though you think you're doing the best you possibly could, you're going to have to think about that. Now I don't think it's something you can't get past, but if you are having multiple steps, then you have to think really hard about engagement. And after we finish this question, we'll get to engagement. But another thing to think about is how many steps do you want in your process?

Renee Danser:

Oh, I couldn't agree more. Every step you add, right, is an additional burden that you've decided that you're going to place onto the user. And so maybe that's not a conscious decision, but just know that every step that you have in a

process is an additional burden that you are effectively communicating you've decided to place onto the user.

So, my thoughts on determining components of a new tool and the things that we should consider really come down to two things. And especially in the instance of ODR, one of them, I think Professor Larson, you touched on is the incentive to use the platform, right? So, lots of the installations that we saw at the Access to Justice Lab and that you might be seeing around the country are really just an additional option for resolution of one's case with the court, right? And so why would a user choose to use that option over the existing mechanism that you have? And so really thinking about what is the incentive to use the platform? Why would they do that? And in the instance of an adversarial proceeding where you have two parties, right, you need to think about both parties. Why would each of those parties use the platform? So, for example, creating a process that really just kind of slots ODR in an existing process and doesn't actually change any of the prior process or the surrounding steps, there's very little incentive, right, to use that, to use the platform. Because it's actually just an additional step. It's not transforming your process at all. So, just something to think about there.

And then the other thing that kind of came out of these evaluations is really thinking about eligibility to use your tool and in this case ODR, right? So, we were seeing some jurisdictions that drew really narrow eligibility guidelines and what that ended up doing, what that served to do for the community or for the users, was to create confusion, right? They thought they were able to use ODR. And in fact their information they received from the court provided information about ODR and against all odds they were still able to find the website and use it only to learn that they're actually ineligible even though it seemed like it was kind of a nonsensical ineligibility, right?

So, if you're taking yourself out of your place in the court or your place in your organization and putting yourself into the user's shoes, does it make sense that you have some case cases in a particular case type eligible and others not? And if the answer is probably not, then the answer probably is no. And so you should think about maybe expanding those eligibility guidelines. And also think about why am I creating kind of arbitrary eligibility and think about whether it is arbitrary or it is deliberate and what the message is that you're sending. Every decision, right, you're sending a message. So, what is that message that you're sending. Professor Larson, any follow-up on that?

David Allen Larson:

We can just move to our next question. We're kind of segwaying into it anyway.

Renee Danser:

Yeah. Let's go ahead and do that.

Rochelle Klempner:

I'm going to interrupt you here just because there's a question in the chat about how are the cases screened out for DV in the New York ODR pilot. And it kind of goes right to what Renee was just talking about, about how many kick-outs should there be. But Professor Lawson, do you want to talk about the cases, the screening process for DV, and how it works in the New York module?

David Allen Larson:

Well, if there's a record of domestic violence or an order of protection, the case is out. I don't know if I understand the correct question completely.

Rochelle Klempner:

Justin can put something else in the chat about it, but I believe he wants to know how the cases are screened out. Is there just a question and what is the question? Is it more of a rigorous testing? What's the process for kicking someone out for determining DV?

David Allen Larson:

Yeah. Well, to some degree we have to rely on the veracity of the person answering. Remember each side is answering. So, even though the actor may not be willing to reveal there's an order of protection against him or her, the other side would probably be revealing who got that order of protection, so if either side indicates there's an order of protection or a record of domestic violence, that's what we call a hard opt-out. And that's not one where you can say, well, I'd like to do it anyway. That you're ineligible for the system.

Rochelle Klempner:

And is that the question? Asking specifically about-

David Allen Larson:

Yeah. Is there a history of domestic violence or is there an order of protection?

Rochelle Klempner:

I hope that answers the question for our participant. And Renee brought up a good point about how much screening is too much screening, but I guess that's what goes into determining the project. We have another question here in the chat that asks about how are litigants informed about the ODR option. And Renee talked quite a bit about the additional postcard in the Florida process, but you can both talk more about the various projects you've worked on and how the litigants find out about the ODR option.

David Allen Larson:

Well, so New York you can start a case two ways. You can file a case like you did traditionally by coming to the clerk's office and filing. At that point you will be informed about the ODR option. But you can also initiate it online. And that will be a situation where you've become aware of the platform. And as time goes on, people are become more aware of the platform. And the question then becomes how do you get the defendant involved? Well, you don't want to make it easy to get default judgments. Somebody goes online, starts a case, and the defendant never even knows about it and you get a default judgment. You don't want that to happen. So, we're still going to go back to the Clerk of Court Office. We're going to send out a service of summons with an additional attachment letter explaining that this is the ODR process. So, I think the goal is to bend over backwards to make certain by several different methods that the parties are alerted to the opportunity for ODR and that you're not going to fall in the situation where somebody sneaks onto a platform and somehow is able to get a judgment without the other party ever knowing.

Rochelle Klempner:

So, in New York, the court system, when the court sends out the notice of the case, is also sending out a notice about the option for the ODR. So, they're getting it by mail similar to what Renee is saying about the Florida project that also gets a, how do I put this, a completely zero-tech method of notification. Renee, is there anything else you wanted to add to that for other projects?

Renee Danser:

Yeah. So, in the two traffic projects that we did, the notification came in the citation, right? And we've all seen a citation. Maybe I'm over generalizing, but most of us have likely seen a citation. And on a citation is often a lot of statutory language. Like verbatim. And then in this instance there was a URL to use ODR but also a scheduled hearing date. And so intuitively that is likely confusing to the general public. I recognize the reason for that, right, is efficiency, right? Or maybe that's one of the reasons. The court wants to resolve this issue so we have a court date scheduled, but if you have the ability to resolve in advance using the ODR platform, here's how you do it.

So, I would just encourage folks to consider the method of notification being both actually getting the attention of somebody but also not adding extra confusion. And if you think about it, if you look back, there was also a project done by Stacy Butler in the University of Arizona School of Law, and they evaluated a in-house build in Utah. And one of the findings was that the URL was case sensitive, you had to type it in, it was difficult for folks to use. And I would say that even in the kind of vendor-based platforms, their URLs are somewhat nonsensical, right? For a user, right? It doesn't appear like it's coming from the court. Naming the numbered jurisdiction of a court in the URL is kind of... We know what that means, right? But the general public probably

doesn't know what that means. So, just really think about and even ask your community what they would do if they if they saw this.

Rochelle Klempner:

Or QR codes?

Renee Danser:

Yeah. So, our encouragement postcard incorporated a QR code and they're all the rage these days.

David Allen Larson:

Yeah, another thing to kind of keep in mind in terms of notifications is that if you aren't going to build your own system and you're going to use a commercial vendor, they have their own template and that may not match what you would like to do. And that's going to require customization. And I think when anybody starts doing customization, there's the opportunity for things not to work as well as they did from the standard template platform. And that's something else to keep in mind. It's when you're deciding how you want to build your platform, in-house or out-house. Out-of-the-house, the better term. I think you have to consider whether or not whoever you're working with has the capability and the patience to do a customization in terms of notification for perhaps the multiple steps that you may have in your platform.

Rochelle Klempner:

Sure. Or else you'll pay for it later.

David Allen Larson:

Right.

Rochelle Klempner:

We don't have any more questions in the chat and I know that you two had another question you wanted to reach. So, why don't we take that? We have about three minutes left.

Renee Danser:

Okay. Let me go ahead and share again so we can all see it. And then Professor Larson, do you want to talk about user engagement?

David Allen Larson:

Yeah, I had just one real quick example. When we did the credit card debt collection, we really bent over backwards to build in as many consumer protections as possible. And when we finished up, we thought debt holders are

never going to do this. Right now, they're going to court, they're getting default judgements easily. They're getting default judgements in a full amount of the alleged debt. This is really working for them. Why would they ever do this? And we had conversations with them and were able to educate them to the fact that even though you can get those full judgments, you still have to go to court. You still have to then try and collect them. It's not automatic that you can garnish wages attached property. There's some process involved. You got to find the debtor. Wouldn't it be easier that, even though you may not get the full amount, if you just engage online and the cost savings you'll get may make up for the fact you're not getting the full judgment amount. So, somewhat surprisingly, at least some of the debt holders said that we're willing to try it. Which you can't expect more than that, but we weren't even sure they were going to try it. So, what Renee said earlier, but you've got to think about engagement from not just one side, from both sides is an important consideration.

Renee Danser:

Yeah. And we wanted to think about, in the context of our Florida evaluation, we added in a kind of geocoding component. And that wasn't necessarily something we typically do, but we were interested to know where are people getting tickets and where are people using the platform and how does that differ? And so what we were able to come away with were pockets of areas that you could see of high volumes of ticketing happening. Pockets of areas where you could see high or low volume relative to the usage generally of use of ODR. And you could use that to think about targeted engagement, targeted messaging, if you wanted to increase your usage. Or if, for example, we sent a postcard by mail and that can get expensive. So, if you have only a limited number of funds and you want to think about how will I get the most bang for my buck? If you want to look at communities that you know are either highly tech savvy, we know they're using our technology tools, you want to target them, or those communities that you know are kind of in the most need of this as a resolution tool. You could also use that kind of information to kind of rethink the whole ticketing process, but that's a different presentation. So, I think we're at time, also, so I just want to say thank you.

Rochelle Klempner:

We are at time. I just want everyone to join me in thanking David Larson and Renee Danser for being with us and volunteering their time and expertise in this session. And to tell everybody you have a 10-minute break and you can go back into the plenary session. The link is in the day-two agenda, I just put it in the chat, and up next is 25 apps in 50 minutes. And thank you again, everyone.