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Technology Mediated Dispute Resolution and the Deaf Community

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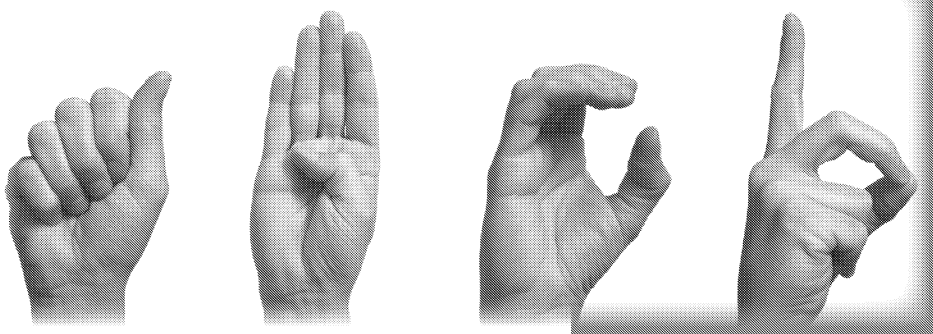
The work of American Sign Language (ASL)/English interpreters is filled with complex interpersonal, linguistic, and cultural challenges. "Interpreting is a discourse process in which interpreters are active participants who need to . . . understand interactional behavior as well as explicit ways in which languages and cultures use language . . . interpreters make intentional, informed choices from a range of possibilities."[1] The decisions and ethical dilemmas interpreters face on a daily basis are countless and the potential for disagreement regarding those decisions is great. Technology Mediated Dispute Resolution (TMDR)[2] processes can be particularly helpful when misunderstandings and conflicts arise. Conversely, the communication skills that the Deaf Community and interpreters employ routinely can provide valuable insights for everyone who uses new technologies to communicate and resolve disputes.

When a consumer or colleague believes a working interpreter has violated the underlying principles and guidelines set forth in the 2005 NAD-RID Code of Professional Conduct (CPC),[3] he or she may file a grievance at the Registry of Interpreters for the Deaf (RID), a national professional organization for sign language interpreters and transliterators. The RID, established in 1964 and incorporated in 1972, has experienced a short history of vigorous growth and development. The formative first eight years included publication of the first Code of Ethics for sign language interpreters. The Code is not revised often; the most recent revision was approved and released in July, 2005. The 2005 NAD-RID CPC is now the document professional interpreters, transliterators, and students of interpretation look to for guidance.



The RID maintains a triad of programming which includes the Ethical Practices System (EPS), the National Testing System, and the Certification Maintenance System. These complementary programs support and enforce the quality of service and ethical behavior expected from professional Sign Language interpreters. They include both the CPC and a mediation system to address grievances filed against interpreters. If mediation fails to resolve the conflict in a manner that satisfies both the complainant and the working interpreter (the respondent), then the complaint is referred to a formal adjudication process.[4] Mediation, however, has become the core process of the EPS.

David Allen Larson previously addressed the opportunities and dangers inherent in technology.

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Larson believes that Alternative Dispute Resolution (ADR) practitioners and theorists must study the way in which individuals increasingly use technology to communicate. Those practitioners and theorists then must determine how those technologies can be integrated into dispute resolution processes most productively. He offers three distinct reasons why we need to approach technology in this manner: (1) teens and preteens rely heavily on technology to communicate and we need to become competent in those technologies; (2) fuel prices continue to rise and technology allows us to communicate effectively without incurring travel expenses; and (3) security concerns have made physical travel less convenient and perhaps less safe.[5]

This article examines the mediation process within the RID EPS and suggests when and how technology may be utilized to enhance that process. Background information regarding the interpreting profession, the Deaf Community, and the process for filing and reviewing grievances will provide a context for this discussion. An overview of the technologies already being used within the Deaf Community and the interpreting field will help to determine where new technologies can be introduced most effectively. Each of the three steps in the EPS will be analyzed to assess how additional technologies can be integrated productively. Finally, peripheral activities surrounding the EPS and mediation process will be identified, highlighting elements in which technology may be used.

"To say the work of interpreters is complex and therefore ripe for conflict could be described as a gross understatement. Nonetheless, interpreted exchanges occur successfully a great majority of the time."

I. The Interpreting Profession

At its most basic level, interpreting is the process of facilitating communication between two or more parties who do not share a common language. The work of ASL/English interpreters incorporates spoken English and ASL or, in recognition of the linguistic diversity within the American Deaf Community, a variety of signed English and ASL. Researchers in the field further define interpreting by addressing the complex relational, linguistic, and cultural elements inherent in an interpreter's work and decision making processes.[6] For instance, Dennis Cokely defined interpretation as:

> The competent and coherent use of one naturally evolved language to express the meanings and intentions conveyed in another naturally evolved language for the purpose of negotiating an opportunity for a successful communicative interaction in real time within a triad involving two principal individuals or groups who are incapable of using, or who prefer not to use, the language of the other individual or group.[7]

In Cokely's article, "interpreter" is defined as a professional possessing cultural competence and linguistic fluency who facilitates communication between Deaf and non-Deaf individuals in a variety of settings. Inherent in this definition are the complexities illustrated in Cokely's previously noted definition. The generic term Deaf is used to represent consumers of interpreting services in the United States who use Sign Language to communicate. The term includes not only members of the American Deaf Community who use ASL, but also individuals who use a variation of signed English.

Many people mistakenly assume that ASL is simply English on the hands. Nothing could be further from the truth, as is pointed out by Baker-Shenk & Cokely (1980) in their timeless text for teachers of ASL and Deaf Culture entitled *American Sign Language: A Teacher's Resource Text on Grammar and Culture*:

> The vocabulary and syntax of English have developed within a community of users who can speak and hear. ASL, however, is a visual-gestural language with its own vocabulary and syntax. The vocabulary and syntax of ASL have developed within a community of users who rely upon their bodies and eyes. The differences between these two languages in the areas of vocabulary and syntax are significant.[8]

Interpreters work in a variety of settings including, but not limited to, legal, medical, employment, social service, and educational. The decisions interpreters make in each of these environments can make an indelible impression on the lives of those involved. The depth of this impact is keenly assessed by Cokely:

> As individuals, and certainly as interpreters/transliterators, we face choices that can have profound effects on other people and their lives—choices of how we will act in certain situations. 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.[9]

To say the work of interpreters is complex and therefore ripe for conflict could be described as a gross understatement. Nonetheless, interpreted exchanges occur successfully a great majority of the time. There are times, however, when consumers or interpreting colleagues believe a working interpreter has made an unethical decision warranting attention by the Ethical Practices System (EPS) of the RID. When that situation occurs, the objecting party can file a formal grievance.

The RID, the national professional organization of interpreters in the United States, understands that conflicts can escalate into an experience that is both unfortunate and harmful for all parties involved. The EPS Policy and Procedures Manual points out that the RID encourages parties to make every effort to resolve the conflict on their own. The parties should attempt to clarify the dispute with one another and refer to the CPC and RID staff for further assistance.[10] RID also acknowledges that for a variety of reasons some disputes may not be independently resolved and that individuals may choose to file a formal grievance.[11] The Manual is written in a first-person narrative directly to the complainant and thoroughly describes the process for filing a grievance.

A complaint, as defined in the Manual, must: (1) be based on the possible violation of the official NAD-RID CPC; (2) be filed due to an incident related to the provision of interpreting services; (3) describe an incident that occurred after the interpreter's services were contracted through a verbal or written agreement, either on a paid or volunteer basis; and (4) be filed as a result of the contracted interpreter's conduct prior to, during, or after an interpreting assignment.[12]

The complaint may be submitted in written English, or videotaped and submitted in ASL, and must be received by the RID within 90 days of the alleged violation.[13] Once the complaint has been received, intake begins (the first of the grievance procedure's three processes: intake, mediation, and adjudication). During the intake process, the complaint is reviewed by RID national office staff and is either accepted because it meets all of the conditions required of a complaint as defined above, or it is rejected because it does not satisfy one or more of the same criteria.

Mediation is relatively new to RID. Mediation is a problem-solving process in which a neutral third party engages the disputing parties in a conversation, helps them define the problem, identify their interests and work towards resolution. Mediators, unlike arbitrators and judges, do not issue an award or render a judgment. Mediation became an integral part of the grievance process in 1999 as a result of motions that were passed by the membership and Board of Directors.[14] The minutes from the 1999 convention reveal two reasons why the membership included mediation in the grievance process: (1) the desire that grievances be processed in a timely manner; and (2) the belief that ADR was the most cost-effective approach.[15] Although these reasons typically are relevant whenever one considers any ADR process, TMDR processes are particularly well suited to address these concerns.[16]

Since 1999, nearly 160 complaints have been filed against interpreter practioners, with over 30 ending with mediated agreements.[17] The mediators are members of the National Association of the Deaf (NAD) and/or the RID and are "interpreters and Deaf individuals who have completed professional mediation training through RID. All of the mediators are fluent in ASL and knowledgeable in Deafness and the interpreting process."[18] RID generally sends a team of mediators (frequently a Deaf person and an interpreter) to each session and chooses the team based on their availability and their geographic location.[19] In an effort to increase the comfort levels and respect the privacy of the complainant and respondent, RID tries to send mediators from outside of the geographic region where the mediation will take place.[20]

If a resolution is reached, then a mediation agreement is written by the mediator, signed by both parties and filed with RID.[21] The RID EPS coordinator or designee monitors the terms of the agreement.[22] Once the terms are satisfied, the case is closed.[23] If an agreement is not reached, then a non-agreement form is signed by both parties and the original complaint is referred to the next step in the grievance process, adjudication.[24]

A panel of three peer adjudicators evaluates the evidence of the alleged violation and determines whether the action was in violation of the NAD-RID Code of Professional Conduct.[25] If a violation is found, then the panel determines the necessary sanctions (in contrast to a mediator).[26]

Relying upon the preceding description of the interpreting profession, the Deaf Community, and the grievance filing process this article will now explore how technology can be further integrated into the RID Ethical Practices System. Section II will analyze how technology is being used in TMDR systems and then suggest how those technologies can be combined with the technological advances already adopted in the Deaf Community and interpreting profession.

II. Technology

Technology has not been embraced by alternative dispute resolution practitioners. Regardless of whether dispute resolvers are intimidated by technology, are creatures of habit, or simply are convinced that traditional face-to-face approaches are more productive, neutrals are not recognizing technology's potential. There are certain populations and circumstances, however, which are uniquely prepared for TMDR. The Deaf Community, for example, has demonstrated that technology facilitated communication can be very effective. Deaf people are well-positioned both to increase reliance on technology in their own dispute resolution systems and to teach other communities how technology can improve communication and dispute resolution.

A. Technology and ADR

TMDR includes and expands upon the potential for problem solving offered by online dispute resolution (ODR). Parties communicating online can send e-mail, meet in secure online virtual spaces, chat using instant messaging, exchange messages on listserves, stream video, or videoconference. ODR systems can facilitate negotiation or mediation or they can offer virtual juries and different arbitral processes.[27] Some commentators still use the term ODR even when online communication is used in combination with more traditional offline forms of technology based communication such as fax, telephone, and standard mail.[28] Other terms have been used in the literature to represent technology facilitated communication, such as computer mediated communication (CMC) and information and communication technologies (ICT).[29] Technology Mediated communication (TMC) is a term describing communication facilitated by technology. If one relies on TMC to resolve a dispute, then he or she is engaged in Technology Mediated Dispute Resolution (TMDR), a term that embraces the full range of technology-based communication options as opposed to focusing solely on online communications.[30] For purposes of this paper, the focus on a holistic view of the technology reflected in TMC and TMDR will be used when considering the application of technology to the RID EPS.

> The fact that technology allows parties to preserve communications, review them on demand, and perhaps correct or further explain those communications can be invaluable where two parties are communicating in different languages.

Technology can improve dispute resolution processes. It does not take much imagination to recognize that technology can save parties both money and time. Additionally, certain individuals may be more comfortable relying on technology mediated communications rather than face-to-face exchanges. The fact that technology allows parties to preserve communications, review them on demand, and perhaps correct or further explain those communications can be invaluable where two parties are communicating in different languages. When an interpreter, a Deaf person, and a mediator (or a team of mediators) are working together the parties are likely to communicate in ASL. It is likely that ASL is not the native or natural language of one or more of the parties. As a result, it might prove very helpful if their communication can be reviewed repeatedly or supplemented.[31]

There are, of course, challenges. When parties do not have equivalent experience, access, or skills concerning technology every effort must be made to minimize or eliminate those disparities. When dispute resolution system designers begin relying on video all parties will need an infrastructure sufficient to support that technology. The specific technologies employed must be accessible to each individual.

When the Deaf Community does not participate in the design of a technology based communication system, that system may not be accessible. The accessibility concern is shared by individuals with a wide variety of disabilities. The danger is so real that on December 21, 2007, the U.S. House of Representatives responded by releasing a draft of the "Twenty First Century Communications and Video Accessibility Act."[32] This draft addresses, among other issues, hearing aid compatibility, relay services, internet-based services and equipment, universal service support, closed captioning decoding (expanding requirements from televisions with screens thirteen inches or larger to all video devices that can receive or display simultaneously transmitted video and sound), video description capabilities, digital television technology compatibility, and conspicuous first level on-screen menu access for closed captioning and video description user interfaces.[33]

Technology can protect parties from uncomfortable or threatening face-to-face confrontations and offer vulnerable individuals a place where their communications can appear as forceful as the statements of someone who is physically much larger and louder. That said, technology is not a panacea and parties still can be victimized.

Cyberbullying is a fact of life in Cyberspace. For example, approximately one-third (32%) of the 935 teenagers surveyed by the Pew Internet and American Life project report that they have been the targets of behaviors ranging from annoying to potentially menacing.[34] The unwelcome conduct includes sending threatening messages, forwarding e-mail and text messages without consent, posting pictures without permission, and spreading rumors online.[35] Yet there is evidence that virtual spaces provide more protection from bullying than one finds in the physical world. Two-thirds (67%) of the surveyed teens agree that bullying and harassment occur more often offline than online and less than one-third (29%) report that this unwelcome conduct occurs more frequently online.[36] Despite the relative safety that virtual environments offer, cyberbullying is a very real concern and a danger about which individuals must remain vigilant.

Parties sometimes believe that when they engage in technology-based communications, as opposed to face-to-face communications, they cannot create the trust that may be required to resolve a dispute. While the specific strategies and techniques employed by neutrals to establish trust may have to be adjusted when working in a virtual environment, principles and concepts basic to any dispute resolution process still provide guidance.

Katsh and Rifkin assert that there are three fundamental features that must be considered when developing an ODR or TMDR system: convenience, trust, and expertise.[37] A convenient process must be accessible both financially and physically and the process must be user-friendly. Katsh and Rifkin recommend that, "the convenience level must be set at the lowest common denominator."[38]

The parties must at some minimal level trust each other, the technology, and the third-party neutral(s). The importance of trust in this environment cannot be overstated: "while a lack of convenience creates a feeling of frustration, lack of trust results in a feeling of risk."[39]

Finally, a TMDR/ODR system must offer expertise. A system that provides expertise does not simply produce useful information. That system also will provide a valuable process; a process that keeps the parties engaged and moving towards a resolution.[40] Collecting and sharing information will not be sufficient. The parties must believe that the technology adds value beyond what they could accomplish on their own.

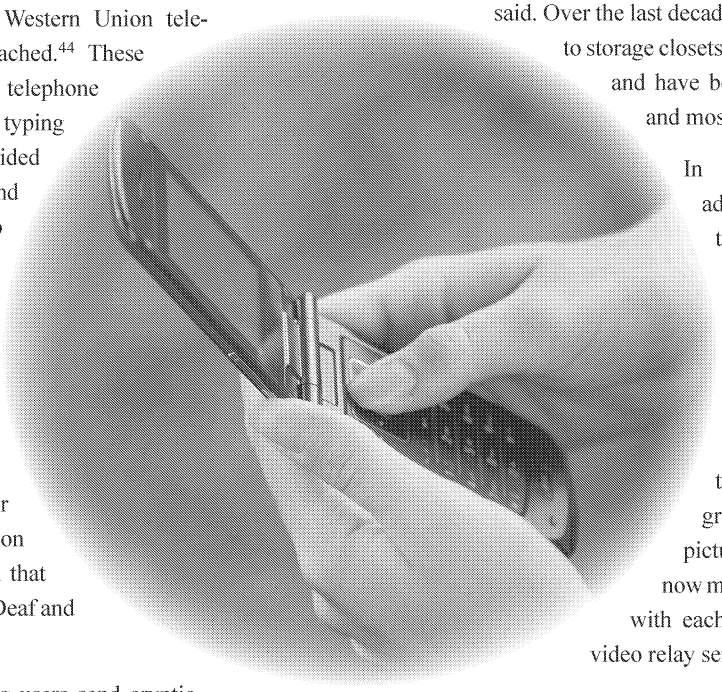
Katsh and Rifkin provide a graphic illustration of this concept in the form of a convenience, trust, and expertise triangle.[41] The emphasis placed on each of these three features, and thus the shape of the triangle, will vary depending upon the parties involved and the circumstances. If a problem is particularly troubling,

for example, then the parties may be willing to participate even though the process is not particularly convenient. In this situation, the shape of the triangle changes and becomes elongated. The convenience feature is represented by the short side of the triangle and the trust and expertise features appear as longer sides.[42] The respective weights that are assigned each feature require careful consideration.

B. Technology and the Deaf Community

Technology is not new to the Deaf Community. Deaf people have a long history of creatively adapting technology to help them live in a non-Deaf world. For instance, they use various visual signaling devices to alert them to crying babies, doorbells, and phones ringing. They used caption decoders before laws mandated that texting technology be included in televisions. Deaf persons have long used various technologies to communicate when face-to-face meetings were not possible.[43]

The first Teletypewriters (TTYs), also known as Telecommunication Devices for the Deaf (TDDs), were Western Union teletypewriters with a phone coupler attached.[44] These devices allowed Deaf people to use the telephone and call others with similar machines, typing messages to one another.[45] TTYs provided significant independence for Deaf and hard of hearing individuals who no longer needed to rely on others to make telephone calls on their behalf. Despite the benefits of TTYs, there also were drawbacks. Typed conversations took much longer to complete than spoken communications. As a result, Deaf people incurred higher phone bills, particularly when they made numerous or lengthy long-distance calls.[46] This situation eventually was remedied by legislation that provided discounts on phone service to Deaf and hard of hearing people.[47]



When cell phone and instant messaging users send cryptic text messages to each other it might appear that nuance, tonal cues, and emotional cues are sacrificed in exchange for speed and efficiency.[48] Yet if we look to the Deaf Community, we can see that cues are communicated and that emotions, even subtleties, are not an inevitable casualty of a text-based communication system. Long before a colon, a dash, and a half parentheses conveyed a positive mood with a smiley face :-), the Deaf Community was communicating 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).[49]

As a result of widespread adoption of e-mail, instant messaging, and text-messaging (short message service known as SMS[50]), technology users throughout society are learning how to communicate emotion in a text-based environment. Individuals can use text-markers that underscore or **emphasize** *important* ideas.[51] Additionally, sensory words can create images and a feeling of physical presence, for instance, when one states "I feel," "I sense," or "you've got me scratching my head."[52] One should not use sensory words indiscriminately and must be careful regarding assumptions when communicating in a text-based environment. Braeutigan's examples include "I see" and "so, what I am hearing." Message recipients who are not able to see or persons who do not hear may not appreciate references to senses they do not possess. If one makes sensory allusions within a question rather than a statement, for example, and asks repeatedly "Do you hear me?," then that characterization may interfere with the effort to build trust and rapport.

When the Americans with Disabilities Act (ADA) was enacted in 1990, the Telecommunications section required that telecommunications relay services be provided for people who are Deaf or hard of hearing.[53] Telephone relay services (TRS) employed hundreds of operators across the country, connecting Deaf and hearing callers by reading what the Deaf caller typed on their TTY and typing back to the Deaf caller what the hearing person said. Over the last decade, however, TTYs have been moved to storage closets as a back-up communication device and have been replaced by pagers, Sidekicks, and most recently, videophones.

In the mid-1990s, technological advances offered a new twist on the traditional relay service-video relay. Deaf people used videophones and the internet via high-speed services to connect with a communication assistant (a qualified interpreter) who dialed the non-Deaf caller on a traditional phone and interpreted the call.[54] The initial technology was grainy and did not offer a very clear picture, but that has since changed and now many Deaf people are communicating with each other via videophones and using video relay services (VRS) on a daily basis.

The impact of this technology on the Deaf Community cannot be understated. In the spring of 2007, the National Association of the Deaf (NAD) and others hosted a demonstration of Video Relay Service in the U.S. Senate and House of Representatives.[55] The NAD President, Bobbie Beth Scoggins, declared "[b]eing able to communicate in American Sign Language when making telephone calls levels the playing field for Deaf consumers. Interested persons attending the event will see how VRS works firsthand and gain a greater understanding and appreciation of its far-reaching value to the American Deaf community."[56] Scoggins' comments are noteworthy in that they underscore an inherent advantage realized in VRS services and videophones: Deaf people can communicate in their natural language, American Sign Language. Although TTYs, Sidekicks and other text-based technologies were appreciated and utilized, those English language based devices required Deaf users to communicate in literally a second language. Consequently, users confronted the same challenges faced by other second language speakers and the risk of misunderstandings and misinterpretations increased.

The exponential increase in the use of videophones and VRS[57] is only one example of how technology has impacted the Deaf Community. The Community also is finding an ASL-friendly medium in YouTube[58] and V-logs.[59] While YouTube contains postings from both Deaf and non-Deaf people about a wide range of topics, V-logs increasingly are being used to conduct rich discussions about significant ASL and Deaf Culture issues in ASL. V-logs are a form of blogs.[60] Although V-logs, or video logs, can be used for a multitude of purposes, Deaf individuals use V-logs to post ASL messages they have recorded.

Although there is much talk in the Community about the affordability of, and access to, high-speed internet options for Deaf and hard of hearing people, the equipment is readily available. Many VRS providers offer Deaf consumers free videophones and education on how to use the technology and VRS services.[61] The services are free of charge to the end users because the Federal Communications Commission (FCC) administers the program that supports VRS and reimburses providers on a per-minute basis for calls processed.[62]

Larson describes Millennials as "digital natives in a land of digital immigrants."[63] Deaf children are certainly no different. In fact, in light of the opportunities that technology offers, Deaf children may be even more engaged with technology than their peers who are not Deaf. Deaf children who are growing up in homes with videophones and Sidekicks and posting V-logs on the Internet may not worry whether there are TTYs stored safely in the hall closet, "just in case."

"In fact, in light of the opportunities that technology offers, Deaf children may be even more engaged with technology than their peers who are not Deaf."

C. Technology and the Interpreting Profession

The profound impact that technology and VRS have had on the Deaf Community also is felt by the interpreting profession. Many interpreters, particularly those who interpret in their own private practice on a freelance basis, have utilized various technologies both to stay connected with their clients and to run their businesses more efficiently. Technology's impact on the interpreting profession can be observed, for example, in the June 2007 issue of the *VIEWS*, the monthly newsletter published by the Registry of Interpreters for the Deaf. The entire issue is devoted to technology, distance communications, and video interpreting. RID President Angela Jones' article outlines the different ways RID has embraced technology, which includes forming Yahoo! groups[64] for activities of various committees and task forces, videophone usage by all RID board members, the unveiling of a new and improved RID website,[65] and the implementation of a policy regarding the use of traditional e-mail as well as the use of video e-mail.[66] Jones embraces the message of John S. Parke, President and CEO of Leadership Synergies, LLC, who declares: "As technology continues to dominate our society, it is vital for organizations—particularly nonprofits—to stay ahead of the game. Board members of nonprofits should recognize how some of the latest technology could spur their organizations to new heights."[67]

In the same issue, Weisenberg and Garcia offer words of caution with regard to VRS and its impact. They suggest that a history similar to that seen in the industrial revolution may be repeating itself with the advent of VRS, routinizing and depersonalizing the work of interpreters.[68] Recognizing that one must be attentive to the short- and long-term implications of VRS for the Deaf Community and interpreting, the RID leadership nonetheless is modeling ways in which technology can be used productively.

III. Technology and the RID Ethical Practices System

As illustrated above, Deaf Community members consciously, creatively, and routinely have adopted various technologies in order to live in a non-Deaf world. Many interpreters and neutrals, however, have not been as proactive. Although some interpreters and neutrals have embraced technology with a passion, it is not difficult to sympathize with those who have not adopted the most recent technologies. In light of the pace at which technology is advancing, it sometimes seems impossible to stay informed. Nonetheless, it is important to consider the ways in which technology can improve dispute resolution processes for everyone involved—parties, neutrals, and interpreters. When considering which forms of TMC could be used most effectively in the RID EPS, one must focus on both the people and the context.[69]

The parties most likely to be involved with disputes processed by the EPS are Deaf people, non-Deaf consumers, and interpreters. Deaf people, interpreters, and neutrals involved in EPS mediations typically have used some form of technology-assisted communication in the past. Regardless of one's initial comfort level with technology, the RID is encouraging the use of technology. Accordingly, it makes sense to explore how technology mediated communications can be integrated into the current EPS system.

Individuals participating in the EPS may have dramatically different levels of experience and comfort when it comes to technology. Consequently, a variety of technologies must be available that lend themselves

to different combinations. EPS coordinators and/or the mediators first must assess a party's abilities concerning technology. Although the simplest solution is to employ the technologies that represent the lowest common denominator, one should not assume that the parties will be unable or unwilling to be educated regarding more sophisticated technologies.

The Deaf Community is not populated by technophobes. The challenge, in fact, may be to educate the interpreters, neutrals, and the non-Deaf participants. Because Deaf people will be involved in nearly every dispute resolution process, either as complainants, respondents and/or mediators, videoconferencing and video-based technology appear to be most compatible with the visual–gestural nature of ASL. Additionally, given the popularity of video-based technology in the Deaf Community in V-logs, videophones and VRS, it is likely that many Deaf people will have some level of familiarity and experience with this technology.

Most video-based technology supports a synchronous process, allowing disputing parties to communicate in real-time with each other and the mediators. Asynchronous TMDR does have certain advantages, however, which the RID EPS and participants should not ignore. An asynchronous communication system provides opportunities for careful review before a participant transmits a hurried message, lets heated and unproductive emotions cool, allows for research and consultation before each communication, and creates flexibility and convenience when it comes to scheduling and participation.

There are disadvantages to an asynchronous system. For example, anyone who has sent an e-mail message and, while waiting for a reply, felt his or her emotions drift from eager to puzzled to anxious to irked to angry can appreciate one of the difficulties associated with asynchronous communication. When one party does not reply promptly and does not provide an explanation for the delay, a conversation that was developing productively can instead deteriorate rapidly.

A dispute resolution process designer should invest the time necessary to identify specifically the advantages and disadvantages of each TMC option. The process available for each dispute does not need to be identical. Nonetheless, in light of the Deaf Community's familiarity with technology, disputing parties usually should be given synchronous, video-based communication options as well as the opportunity for asynchronous communication. Videophones, for example, can be incorporated into the Ethical Practices System.

Videophones have specific system requirements that must be satisfied in order for the technology to function properly. Each VRS service provider makes recommendations regarding the specific requirements needed to support their service. All the service providers are governed by the FCC.[70] The FCC requires videophones to be compatible across systems.

According to CSDVRS,[71] computers must have: Pentium III–800 MHz or higher processor, 8MB video card (16 MB video card is recommended), 16K color (minimum), 256 MB RAM, 20 MB free disk space, USB based web cam, cable, DSL, or other broadband Internet connection.[72] The minimum Digital Subscriber Line (DSL) or cable speed needed to support VRS are 256 Kbps upload and download speed; 256kbps upload and download speeds or higher are recommended for optimal use and clarity.[73]

The web cameras CSD VRS recommends include the Logitech Quickcam for Notebook Pro or the Logitech Quickcam Pro 4000 or 5000.[74] The camera must have a CCD sensor—CMOS sensors are not recommended because they may slow down the videoconference capabilities.[75] Sorenson VRS manufactures the Sorenson VP 100, Sorenson VP 200, and the i2eye D-link videophones that they exclusively distribute.[76] The Active X and Net Meeting software also are required to support VRS calls and may be downloaded via a link available on the CSD VRS website.[77]

Other videoconferencing technology may be an option when considering TMDR and RID. For example, the College of St. Catherine in St. Paul, Minnesota uses a Tandberg 3000 MXP Video Conferencing System, which provides excellent quality video transmission for ASL users to communicate from distant locations.[78] The connection is made via Internet2, which provides greater capacity and much faster connectivity than the regular Internet.[79] The system supports direct point-to-point connections; bridging technology is available that will allow multiple sites to connect.[80] This Internet2 system functions at about 1500 MHz and is available at most Level 1 educational institutions and some businesses.[81] Although one could construct a similar technology infrastructure, one also could simply create partnerships or negotiate a license for limited access at colleges and businesses.[82] Additionally, videophones could be used immediately to support mediations within RID's Ethical Practices System without having to develop an independent infrastructure.

Finally, Communication Service for the Deaf (CSD) is a non-profit agency serving Deaf and hard of hearing people in offices located across the country. They currently use videoconferencing systems for point-to-point connections. These systems also can be used in the EPS. The CSD videoconferencing systems use Polycom systems or IP-based systems using h.323-based technology.[83] The Polycom PVX system is a personal video conferencing solution that extends the quality of h.323 videoconferencing to the user's PC and webcam.[84]

A. Recommendations for the RID Ethical Practices System

Certain communities and populations are well positioned to integrate more technology into their dispute resolution processes. The Deaf Community is one of those communities. While it is important to identify communities that are prepared to increase their reliance on technology, that identification should not end the inquiry. It also is important to take the next step and provide specific examples of how technology can improve a community's dispute resolution process. This section describes the RID Ethical Practices System and then makes recommendations as to how technology can improve those practices concerning intake, mediation and adjudication

i. Intake

There are several ways in which technology could improve the intake process. First, the initial stage of intake would be improved if greater information about the EPS, including the EPS manual, was provided in ASL and in a video format. Second, notice that is currently sent via post to inform parties about whether a complaint is accepted into the system for further processing or is rejected could be more efficient if it is also sent by e-mail.

> Mediations will be most successful when the parties' substantive and procedural interests are addressed as effectively as possible. When the parties have expressed a strong preference for using a particular technology, then a mediator who cannot use that technology is not the appropriate person to assist those parties.

a. Recommendation One

Complainants typically access the EPS Policy and Procedures manual online via the RID website.[85] Forms can be printed off the website, completed, and sent to the RID National Office, or complainants can videotape responses to the introductory questions and submit their complaint via videotape.[86]

This initial stage would be improved if greater information about the EPS, including the EPS manual, was provided in ASL and in a video format. Video clips of a Deaf person explaining the intake process, the mediation process, and other parts of the manual in ASL would make the information more accessible to a critical target audience. Furthermore, this format also would help alert more potential users that the EPS exists. Video and digitally-based technology would increase consumer awareness and lead to greater utilization of the process.

b. Recommendation Two

When a complaint is received, it is reviewed based upon explicit criteria. The complaint must be based on the possible violation(s) of the official NAD-RID CPC and must be related to the provision of interpreting services.[87] Additionally, it must describe an incident that occurred after the interpreter's services were contracted through a verbal or written agreement and can involve paid or volunteer interpreter service.[88] The complaint may be filed as a result of the contracted interpreter's conduct prior to, during, or after an interpreting assignment."[89] The complaint will either be accepted into the system for further processing (which could include a mediation referral) or rejected.[90] The complainant always is notified by letter as to the disposition and, if the complaint is accepted, then both the complainant and the respondent receive letters explaining the subsequent steps in the process.[91]

Although this approach may be adequate, it could be improved. Because there still are legitimate concerns regarding whether everyone has convenient and affordable access to technology, it may be prudent to continue providing written notice. Sending the notice as a hard copy letter underscores the importance of that information. Additionally, sending a printed letter creates documentary evidence should a question later arise as to whether appropriate notice was provided. Nonetheless, it would be helpful to also send the notice via e-mail or even text message because, assuming that many individuals are like the authors of this article, the mail that receives our attention first every day is our e-mail and text messages, not our postal service delivered paper mail.[92] In addition to initial notice, both the complainant and the respondent should be sent case status updates via e-mail. The updates can be sent as simple textual e-mail messages or can be provided in video form.[93] Furthermore, if an important deadline or significant issue arises, then a person-to-person videophone call may be the most effective medium.

ii. Mediation

The process of mediation could also be vastly improved by technology. First, using the RID website, which includes calendars and other logistical services, can be helpful in coordinating the schedules of the two parties, a mediator, and anyone else who is involved in the process. Second, the EPS manual, which parties are encouraged to review thoroughly before a mediation, could be available on a website along with internet links to various sites offering tools to help parties prepare for negotiations. Third, necessary logistics for mediators who travel from out-of-state could be vastly improved through the use of technology. Finally, if the parties and the mediator are not in the same location, then final arrangements for settlement will proceed more expeditiously if the Mediation Agreement form is circulated among the parties via e-mail attachment or fax.

a. Recommendation One

Logistics for scheduling mediation sessions currently are coordinated by national office staff or the EPS coordinator.[94] Information is shared via numerous e-mail and phone communications, including both telephone and videophone. Although it is commendable that videophones are used for scheduling, this use is expected. Schedules can be arranged more efficiently if one adds additional tools. Calendars and scheduling demands for each session can be placed in a secure area of the RID website. Passwords then can be sent to each party so that he or she can access the information on demand.

Furthermore, a video introduction in ASL can be added for each case. This introduction could be presented by the mediators themselves. The introduction might simply take the form of a greeting and a personal introduction from the mediators or could serve a much more substantial function. In a typical mediation, after the parties and the mediators are introduced to one another mediators provide an orientation; an explanation as to how the mediation will proceed.[95] Mediators take this opportunity to provide information that usually includes a procedural outline for the session contractual, statutory, and common law confidentiality requirements; and an explanation of the mediators' role and responsibilities.

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. This introduction may help the parties begin to feel more comfortable and secure about the upcoming mediation session.

A mediator, however, may be uncomfortable personally appearing in a video. If that is the case, then the mediator should consider presenting his or her introduction as an avatar, a three-dimensional person or creature created to "live" in cyberspace.[96] Video and animation technology has advanced to the point that attractive, surprisingly lifelike avatars can be created easily. For an excellent example of an avatar using ASL, albeit in a different context, one should view a video created by Vcom3D and Gallaudet University.[97] Companies such as Inperson allow users to create videos that can be used by anyone with an internet connection.[98] VIDITalk lets users create videos that can be e-mailed or streamed to websites and "virtually any mobile device."[99]

There are several advantages to presenting a video introduction. The introductory video, which will be available on demand, can be reviewed repeatedly by each party to ensure that he or she understands the mediator and is prepared for the upcoming mediation. Although introductions must be tailored to each dispute and the specific parties, much of the information conveyed in an introduction is rather generic. For example, unless there has been a change in the law or ethical requirements regarding confidentiality or the parties have unusual confidentiality requirements articulated in their mediation agreement, 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.

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 that is ordinarily provided. A thorough repeatedly vetted video introduction that is reviewed and adjusted to fit each case would avoid this problem.

Recognizing that the emphasis must be on the parties and the dispute itself does not mean that one should ignore the fact that a reusable editable video introduction could prove to be efficient for the mediator. The temptation and concern is that a mediator will not take the necessary time to review and edit the video to make certain it is not only appropriate, but is as helpful and productive as possible for each unique dispute. This concern is not a reason to abandon the tool—it merely is a caution and a call to be responsible.

The fact that the parties can review the introduction repeatedly will help them become more comfortable with video technology. Additional technologies can be explained and illustrated on the video. A video introduction can remind the parties that mediation is not a punitive process, a perception which could lead to frustration and hinder the process. The notion of using a video introduction for a mediation session may make some mediators aghast. But mediators should not allow their own unfamiliarity or discomfort with technology to deprive parties of the technological tools that serve the parties most effectively and productively.

The authors believe that mediators work hard to listen actively, to identify parties' desires and concerns, and respond to parties' needs. As uncomfortable as a mediator may be when it comes to technology, that mediator should not avoid using tools that may facilitate resolution. If a mediator does not feel competent using a particular technology, but the parties themselves would like to use that technology, then the mediator should seek technical assistance. Such assistance should not compromise the mediation process because the individual who is skilled at using technology need not participate in the mediation or have access to confidential information in order to assist the mediator. The difficult question is what should happen if the mediator cannot find adequate assistance or is unable to master the technology. Mediations will be most successful when the parties' substantive and procedural interests are addressed as effectively as possible. When the parties have expressed a strong preference for using a particular technology, then a mediator who cannot use that technology is not the appropriate person to assist those parties.

Each case must be assessed initially and then continually throughout the process. There will be cases where the parties themselves will want to avoid technology because they are uncomfortable with, inexperienced regarding, or distrustful of technology-mediated communications. The parties should not be forced into TMDR. Mediators must recognize that many members of the Deaf Community are very experienced using technology and often will be receptive to the idea of using technology such as video introductions. If a mediator has reservations, then that mediator should keep in mind that a video introduction does not preclude subsequent real time communications regarding the introduction.

In fact, if a video introduction is used, then it is incumbent upon the mediator to follow up and ensure that his or her message was understood. In this respect, the video introduction offers a wonderful opportunity to identify questions and issues, explore those concerns, and answer questions as completely as possible in advance of the formal mediation session. This is preferable to quickly pushing through those concerns on the day of the formal session in a rush to get the "real" mediation session started.

b. Recommendation Two

The EPS manual instructs parties not to prepare evidentiary artifacts or other items that normally would be seen in a courtroom.[100] Parties are encouraged to review the entire manual in preparation for the session.[101] In addition to merely reading the EPS manual, parties also 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. These additional suggestions can be communicated by a brief ASL description on the website, for instance, with internet links to various sites offering tools to help parties prepare for negotiations.[102]

c. Recommendation Three

Participants in EPS mediation sessions include the complainant, respondent and most often 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 and ensure the parties are comfortable with the process. In an effort to achieve these goals, typically mediators from outside the region are retained and all travel expenses are paid by the RID.[103] A mediation session generally is scheduled for an entire day, and occasionally even for two days if the issues appear complex or particularly difficult.

A variety of technologies can be employed to make the process more effective and efficient. As mentioned earlier, the mediator's introduction in ASL can be recorded in video and posted in a secured location on the RID website. The video presentation also can be e-mailed directly to each party. This asynchronous form of communication offers the mediator more time to plan how he or she can communicate concepts clearly and concisely in ASL and provides the mediator with the luxury of erasing and re-recording. If a mediator's introduction is confusing or misleading, then it may establish an unproductive tone for the entire session.

Synchronous tools, such as videoconferencing and bridging technology, can be used to connect the parties and mediators in different locations and allow them to conduct the mediation in ASL. The places where the parties and mediators will be located at the time of the mediation must be determined in advance to ensure that everyone has access to the necessary technologies. Both synchronous activities, such as caucuses, and asynchronous communications can be accomplished using videophones, video e-mail, traditional e-mail, instant messaging, or other appropriate technologies.

Because mediators located outside the region typically are retained in order to protect the parties' privacy interests and to make the parties more comfortable with the process, travel expenses can be significant. Greater reliance on technology can result in significant cost savings.

d. Recommendation Four

When EPS mediation results in a settlement, a Mediation Agreement form is completed by the mediator and signed by both parties.[104] The RID EPS coordinator or designee monitors the terms of the agreement and, when he or she is satisfied, officially closes the case.[105] If an agreement is not reached, then the case is referred to the next step in the EPS, the adjudication process.[106]

If the parties and the mediator are not in the same location, then final arrangements for settlement will proceed more expeditiously if the Mediation Agreement form is circulated among the parties via e-mail attachment or fax. Signatures may be added and faxed back to the RID office or the parties can agree that electronic signatures are sufficiently binding and exchange copies via e-mail. Although not necessary, hard copy originals subsequently can be circulated using the US Postal Service. If an agreement is not reached, then the parties can receive updates via the designated 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.

iii. Adjudication

The EPS provides that if a mediation effort is unsuccessful, then a panel of three peer adjudicators will review the original complaint and response and render a final decision.[107] If the panel determines an ethical violation occurred, then it decides what sanctions should be imposed.[108] Generally the adjudicators do not meet with the parties.[109] There are times, however, when additional clarification or information is needed and the adjudicators will schedule a hearing with the parties prior to rendering their decision.[110]

Again, videoconferencing technology, videophones, video e-mail and text-based technology also can be used throughout the adjudication stage. Text-based technology, such as instant messaging, can be used to connect the parties and the adjudicators.

iv. Mediator Support

All of the mediators in the RID Ethical Practices System possess specialized skill and knowledge in ASL, Deaf Culture, and the interpreting process in addition to the skills they possess in mediation and ADR practices.[111] Yet even for these highly skilled individuals, ongoing educational opportunities (and requirements) can improve performance. Although continuing education activities have been offered, these opportunities have been infrequent (probably because of time and cost). Workshops and seminars offered on-line or utilizing distance learning technologies could increase the offerings made available in a cost effective manner.

a. Recommendation One

The RID should use technology to provide more educational opportunities and better support for its mediators. The RID could offer a class to mediators and adjudicators in remote locations by using teleconferencing equipment to support live interaction or they could host a class in a virtual world, such as Second Life[112] or There.com.[113] In these venues the neutrals could join the class as avatars and interact with instructors and each other. This medium would allow neutrals to attend an interactive class from anywhere in the world with internet access. The neutrals would not have to worry about travel costs and the RID would not have to worry about how many individuals will invest travel time and costs. Just as importantly, presenting a class in a virtual world would provide a risk-free opportunity for mediators and adjudicators to experiment and familiarize themselves with virtual world interactions. This experience would help prepare mediators and adjudicators to provide dispute resolution services in a virtual world.[114]

A self-paced online course also could be offered.[115] It could be made more interactive by inviting participants to post messages on a listserv or join a chat room. The RID website can host a secured V-log for mediators and adjudicators where the neutrals can articulate their questions, concerns, or dilemmas and solicit peer support or consultation. Mediators and adjudicators who will be serving on panels can use this technology to meet and prepare for upcoming sessions, exchange information during the proceedings, and debrief afterwards. This technology can be used to provide peer mentoring and support for new mediators and adjudicators who are brought into the system. Video also can be used to provide general information to the public. Videos can be uploaded and shared easily on websites such as Vimeo.[116]

b. Recommendation Two

The RID should consider how it can use technology to improve its support for and delivery of consumer education. Practicing interpreters, students of interpreting, and both non-Deaf and Deaf consumers alike could 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. The RID could maintain a Frequently Asked Questions (FAQ) link, for example, similar to the links provided by most commercial retailers operating online. The RID can use technology to distribute and communicate information about conflict management and

resolution and thus empower individuals and entities to resolve conflicts before they escalate into a dispute requiring mediation.

IV. Conclusion

The Deaf Community and the interpreting profession have been affected by technology in immeasurable ways. Deaf people today are communicating in unprecedented manner and frequency. Video-based technologies, for example, allow individuals to communicate across the globe using a natural, visual language.

When interpreters serve as the communication link between Deaf people using ASL and non-ASL users, conflicts can arise and there is a very real need for dispute resolution options. The Ethical Practices System of the RID is an excellent option for resolving disputes that escalate into grievances. Greater reliance on technology, however, can improve the EPS.

Technology allows parties and neutrals to communicate in a variety of mediums quickly and inexpensively. An individual at a remote location can communicate by sending real time video images of him or herself. The videos can be saved and made available on demand. Parties and neutrals can agree to meet in virtual worlds such as Second Life and There.com and present themselves as three dimensional avatars. V-logs, e-mail, instant messaging, and chat rooms can facilitate information exchange and relationship building. The RID can dramatically expand its educational efforts by presenting online continuing education courses for mediators and adjudicators, including support and mentoring services for both new and experienced neutrals. The RID also can create a Frequently Asked Questions (FAQ) link for both consumers and neutrals.

This article addresses a variety of topics ranging from interpreting to ASL and the Deaf Community to ADR and technology, and makes specific recommendations for the RID Ethical Practices System. The recommendations list is not exhaustive. The authors hope that this article will inspire further discussion regarding additional technologies that can be integrated into the EPS and also further conversation regarding the role of technology in other RID programs such as the National Testing System, the Certification Maintenance and Continuing Education programs, and legislative activities.

1 Cynthia B. Roy, Training Interpreters—Past, Present, and Future, in C. Roy (ed.), Innovative practices for teaching sign language interpreters at 10 (2000). Much of the discussion in this article is relevant not only to interpreters working with the Deaf Community, but to interpreters working in any multilingual or cross-cultural environment. This article, however, focuses on American Sign Language (ASL)/English interpreters.

2 *See* David Allen Larson, *Technology Mediated Dispute Resolution (TMDR): A New Paradigm for ADR*, 21 Ohio St. J. On Disp. Resol. 629 (2006); *see infra* note 30 and accompanying text. Technology Mediated Dispute Resolution (TMDR) is a term that Professor David Allen Larson began using in an article published in 2006. Larson asserts that the more commonly used terminology Online Dispute Resolution (ODR) is not sufficiently inclusive and fails to acknowledge the potential of other communication technologies such as cellular telephones, radio frequency devices, and satellite communication systems.

3 *See* http://www.rid.org/UserFiles/File/pdfs/codeofethics.pdf for the complete NAD-RID Code of Professional Conduct. A joint task force of the Registry of Interpreters of the Deaf (RID) and the National Association of the Deaf (NAD) developed this most recent code of professional conduct for professional interpreters.

4 *See* http://www.rid.org/ethics/enforcement_procedures/index.cfm/AID/67 for the flowchart explaining the course for processing a complaint filed with the RID Ethical Practices System.

5 David A. Larson, *Technology Mediated Dispute Resolution (TMDR): Opportunities and Dangers*, 38, U. Tol. L. Rev. 213, 213-14 (2006).

6 *See* Roy, *supra* note 1, at 1–14.

7 Dennis Cokely, *Interpreting Culturally Rich Realities: Research Implications for Successful Interpretations*, RID J. of Interpretation, 1, 4 (2001).

8 Charlotte Baker-Shenk & Dennis Cokely, American Sign Language: A Teacher's Resource Text on Grammar and Culture 65 (1980).

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

10 *See generally* http://www.rid.org/UserFiles/File/pdfs/EPS_Manual.pdf for the RID Ethical Practices System Policy Manual. (2006) (last viewed August 15, 2007) [hereinafter RID EPS Manual].

11 *Id.* at 1.

12 *Id.* at 2.

13 *Id.*

14 Three motions guided the development and integration of mediation into the EPS. Conference motion C93.07 (1993) reads: "RID establish an ad hoc committee to 1) investigate Ethical Review Mediation Processes, 2) select those that are sensitive to the cultures and communities represented in our society for potential adoption, and 3) assist RID in educating its members and consumers on the use of this Mediation Process." Board motion 96.97 (1996) reads: "[T]o accept Ethical Practices Oversight Committee recommendation #EPO 96.06, to authorize the Association Administrator to pursue funding sources to develop and provide mediation training." Board motion 99.56 (1999) reads: "[T]o accept the Ethical Practices Oversight Committee's listing of roles, responsibilities, members qualification and committee goals. Role: Uphold the integrity of ethical standards among interpreters. Provide technical assistance to the RID Board of Directors as a triad member. Responsibilities: [E]stablish and update the Ethical Practices System Guidelines. Implement the Mediation component of the Ethical Practices System. Oversee the operations of the Ethical Practices System. Provide or coordinate training for the Ethical Practices System. Enhance public awareness of the Ethical Practices System. Serve as liaison for the Ethical Practices Committees. Regularly review and evaluate the Ethical Practices System. Committee member qualifications: [W]orking knowledge of the Code of Ethics. Working knowledge of the interpreting process. Understanding of the grievance process. Understanding of the benefits of mediation. Time commitment: up to two face-to-face meetings per year. Two or more two-hour conference calls. National conference attendance. Ongoing Ethical Practices System training. Access to e-mail and/or fax. Commitment to remain active until mediation is up and running. Other committee goals: [M]ore cultural diversity. Ethical Practices brochure. Increased Deaf membership on committees. National Office staff person for Ethical Practices System. Ethical Practices materials in alternate formats." E-mail from Cheryl Moose, RID President (March 4, 2008) (copy on file with author).

15 Stephanie Criner, Executive Summary, Evaluation project RID's Pilot Mediation Program. Unpublished Manuscript at 6, (2004) (copy on file with author).

16 *See* Ethan Katsh & Janet Rifkin, Online dispute resolution: Resolving conflicts in cyberspace at 23–24 (2001); Susan Summers Raines, *Can Online Mediation be Transformative? Tales from the Front*, 22 Conflict Resol. Q. 437, 437 (2005); David A. Larson, *Technology Mediated Dispute Resolution (TMDR): Opportunities and Dangers*, 38 U. Tol. L. Rev. 213, 213-26 (2006); Lucille M. Ponte & Thomas D. Cavenagh, Cyberjustice Online dispute resolution (ODR) for E-Commerce at 26–27 (2004); Colin Rule, Online dispute resolution for business at 61 (2002).

17 E-mail from Matthew O'Hara, RID Director of Finance and Administration (June 22, 2007) (on file with author).

18 RID EPS Manual, *supra* note 10 at 5.

19 Telephone Interview with Matthew O'Hara, RID Director of Finance and Administration (June 18, 2007).

20 *Id.*

21 *See* RID EPS Manual, *supra* note 10 at 6 (stating that "If the parties decide upon a resolution, the mediators write the agreement and ask both parties to sign. The Mediation Agreement form includes a description of the

agreement, the issue(s) involved in the complaint, and the resolution agreed to by the parties. The resolution should include the points the parties agree on; specific action to be taken by either or both parties; expected completion dates and submission of proof, if required; and terms of compliance.") RID EPS Manual, *supra* note 10 at 7 (noting that "RID will keep a copy of the signed Mediation Agreement".)

22 *Id.* (*noting that* "The RID EPS Coordinator or designee will monitor whether the terms of the Mediation Agreement are satisfactorily completed. Individuals should supply proof that they have met all of the requirements by the completion date.").

23 *Id.* (stating that "when all actions are completed, the case is considered closed.").

24 *Id.* (*explaining that* "RID must receive a copy of the signed Mediation Non-agreement form. The case remains open and is referred to the next step in the EPS, the adjudication process, for review of the original complaint. The circumstances and the results of the mediation attempt are neither provided nor considered in adjudication.").

25 *Id. at 8* (*explaining that* "adjudication is a peer review process in which a selected panel of interpreters evaluates evidence of an alleged violation and determines whether a professional action was in violation of the NAD-RID Code of Professional Conduct. If it is determined that a violation did occur, the panel is further empowered to determine what sanctions should be imposed. A complaint and all supporting documentation are sent to a selected panel of three EPS adjudicators (members of EPS) who review, confer, and make a decision.")

26 *Id.* at 10.

27 For examples of virtual juries, see iCourthouse, http://www.i-courthouse.com (last visited March 16, 2008) and Virtualjury, http://virtualjury.com (last visited March 16, 2008). *See also* Symposium on Enhancing Worldwide Understanding Through Online Dispute Resolution, 38 U. Tol. L. Rev. 1 – 435 (2006) (for a discussion of the many different types of dispute processes that can be offered online ranging from cyberjuries to online mediation, negotiation, and arbitration).

28 *See* Ponte & Cavenagh, *supra* note 16 at 18.

29 *Supra* note 2 at 634.

30 *See* Larson, *supra* note 5 at 213.

31 Any modifications must be transparent. The parties must be able to distinguish the original message from a subsequent modification or supplementation.

32 *See* http://markey.house.gov/docs/telecomm/draft_of_telecom_legislation.pdf.

33 *See* Summary of the "21st Century Communications and Video Accessibility Act." Coalition of Organizations for Accessible Technology (COAT), *available at* http://www.coataccess.org/node/32 (last visited February 4, 2009).

34 Amanda Lenhart, *Data Memo: Cyberbullying and Online Teens*, Pew Internet and American Life Project, 1, June 27, 2007, *available at* http://www.pewinternet.org/pdfs/PIP%20Cyberbullying%20Memo.pdf (last visited March 11, 2008.)

35 *Id.*

36 *Id.* at 4-8.

37 Katsh & Rifkin, *supra* note 16 at 73.

38 *Id.* at 78.

39 *Id.* at 83.

40 *Id.* at 89-90.

41 *Id.* at 74–75.

42 *Id.*

43 *See* Assistive Equipment and Technology fact sheet published by the Minnesota 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 (last viewed February 7, 2009).

44 *Supra* note 8 at 246.

45 *Id.* at 246 (noting "[T]here 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; 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.").

46 *See* Virginia W. Stern & Martha Ross Redden, *Technology and Handicapped People*, Background Paper #2: Selected Telecommunications Devices for Hearing-Impaired Persons (December, 1982) at 9, *available at* http://govinfo.library.unt.edu/ota/Ota_4/DATA/1982/8225.PDF (last viewed February 7, 2009). Despite the antiquated terms used to describe Deaf people, this paper offers an excellent overview of the history and development of TTYs and the subsequent legislation that governed billing for long distance phone usage with TTYs. The Connecticut Public Utilities Control Authority issued an order in 1977 (docket No. *77-0250*, December 16, 1977) allowing a 75 percent reduction in the phone bills of Deaf TTY users for intrastate long-distance calls. Likewise, reductions were initiated in 42 other states during the next four years.

47 *Id.* at 9-10.

48 *See* Larson, *supra* note 29 at 633.

49 *See* TTY Guide from the Minnesota Department of Human Services, Deaf and Hard of Hearing Services Division *available at* http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_004574 (last viewed February 7, 2009).

50 *See* Puneet Gupta, *Short Message Service: What, How, and Where*, Wireless Developer Network (Mindsites Group, LLC 2008) *available at* http://www.wirelessdevnet.com/channels/sms/features/sms.html (last visited February 7, 2009).

51 Andrea M. Braeutigam, *What I Hear You Writing Is . . . Issues in ODR: Building Trust and Rapport in the Text-Based Environment*, 38 U. Tol. L. Rev. 101, 116 (2006).

52 *Id.* at 122. Although Braeutigam's suggestions and insights are valuable, one should be careful about using sensory words indiscriminately.

53 Americans With Disabilities Act, 47 U.S.C. §225. (1990).

54 *See* http://www.fcc.gov/cgb/consumerfacts/videorelay.html (noting that today, interpreters working in VRS Centers are generally referred to "Video Interpreters" or VIs). (last viewed February 7, 2009).

55 Press Release, National Association of the Deaf, NAD President Scoggins Emcees VRS Demo on Capitol Hill (Feb. 26, 2007), *available at* http://www.nad.org/scogginsvrsdemo (last viewed February 7, 2009).

56 *Id.*

57 The number of VRS providers is expanding significantly. Current service providers include: AT&T VRS – www.attvrs.com, California Association of the Deaf VRS – www.cadvrs.com, CSDVRS – www.csdvrs.com, Communication Access Center – www.cacvrs.org, Federal VRS – www.fedvrs.us, Hamilton VRS – www.hamiltonrelay.com, Hands On VRS – www.hovrs.com, Hawk VRS – www.hawkrelay.com, i711 VRS – www.i711.com, IP – VRS – www.ip-vrs.com, Life Links VRS – www.lifelinksvrs.com, My Relay VRS – www.myrelay.com, Nextalk VRS – www.nextalk.net, Snap VRS – www.snapvrs.com, SPRINT VRS – www.sprintvrs.com, Sorenson VRS – www.sorensonvrs.com, Viable VRS – www.viable.net/vrs.

58 *See e.g.* http://www.youtube.com/results?search_query=ASL.

59 *See e.g.* http://www.joeybaer.com/.

60 *See Blog*, Wikipedia, *available at* http://en.wikipedia.org/wiki/Blog (last visited March 28, 2009). Blogs are text-based websites that provide commentary on a wide variety of political to intensely personal issues typically arranged in reverse chronological order. The word blog is a portmanteau of **web log**;

61 *See supra* note 57.

62 Americans With Disabilities Act, 47 U.S.C. §225 (1990). Telecommunications relay services, which are mandated in Title IV, the Telecommunications Title of the American's with Disabilities Act include the provision of video relay services. FCC Consumer Facts, *available at* http://www.fcc.gov/cgb/consumerfacts/videorelay.html (last viewed February 7, 2009).

63 Larson, *supra* note 5 at 218, (quoting Lee Rainie from the Public Library Association's annual conference in March 2006).

64 *See* Jones, *infra* note 66. Yahoo! Groups is a service offered by Yahoo that allows individuals with shared interests to meet in cyberspace and share messages, file, photos and calendars, http://groups.yahoo.com/ (last visited March 16, 2008).

65 *See* http://rid.org/.

66 Angela Jones, What's Technology Got to do With it?, 24 RID Views 4–5 (June, 2007).
67 *Id.* at 4.
68 Julie C. Weisenberg & Emmanuel Garcia, *From Telephone to Dial Tone: A Look at Video Interpreting*. 24 RID Views 32 (June 2007). Weisenberg and Garcia raise concern over the high demand for interpreters in video relay settings by identifying similarities between the experience of artisans during the industrial revolution and interpreters today, drawn to working in video relay centers. "In the world's industrial revolutions, the ones who suffered the most were the artisans, those who were literally crafting and manufacturing products by hand. Then we moved to mechanization in which factories could increase manufacturing rates by using cheap labor. When the artisans were driven out, they became factory workers and fell into routinization and unimaginative assembly line work. We can draw parallels to video interpreting. We have interpreters, who possess a talent for mediating communication and who have traditionally worked in face-to-face situations, moving from the community to machine-based work. Interpreters facilitate calls following specific routines based on the software and equipment for specified periods of time."
69 Katsh & Rifkin, *supra* note 16 at 74.
70 *Supra* note 54.
71 CSDVRS Help Documents and Videos, http://csdvrs.com/support/faq.aspx (last visited February 7, 2009).
72 *Id.*
73 *Id.*
74 *Id.*
75 *Id.*
76 Sorenson VRS Products, http://www.sorenson.com/products/ (last visited April 9, 2009).
77 CSDVRS Frequently Asked Questions, http://csdvrs.com/support/faq.aspx (last visited March 4, 2008).
78 E-mail from John Lange, College of St. Catherine Media Manager (August 13, 2007) (on file with author).
79 *Id.*
80 *Id.*
81 *Id.*
82 Programs within the College of St. Catherine have used the Tandberg 3000 MXP Video Conferencing System in a variety of ways. Both the ASL & Interpreting Department and the CATIE Center have conducted meetings and seminars using this system with Deaf and non-Deaf participants using ASL. The Master of Library and Information Science (MLIS) conducts distance courses for their non-Deaf students in conjunction with Dominican University in River Forest, Illinois.
83 E-mail from Jan Florand, CSD MN Director of Interpreting Operations (August 13, 2007) (on file with author).
84 *See* http://m2l.market2lead.com/go/polycom/pvx_trial_sw (Accessed February 7, 2009).
85 *See supra* note 10 at 2.
86 *Id.*
87 *Id.*
88 *Id.*
89 *Id.*
90 RID EPS Manual, *supra* note 10 at 3.
91 *Id.*
92 First class mail at the Hamline University School of Law, for example, is not delivered to the faculty until after 3:00 p.m. Monday through Friday and the mail is not delivered at all on the weekends. In contrast to this "snail mail" system, e-mail is delivered instantly seven days a week and twenty-four hours a day. Although there can be an occasional lapse in an e-mail system, those delays are addressed quickly and the digital messages then are delivered. The authors suspect that it is unlikely that the percentage of lost e-mail messages exceeds the percentage of paper letters that are "lost in the mail." But more importantly, it would be extraordinarily unlikely that a Complainant's hard copy written notice would be lost or not delivered by the United States Postal Service and that same notice also would be lost or not delivered by an e-mail server. If the goal is to ensure that the Complainant not only receives the notice but does so in a timely manner, then the notice also should be dispatched via e-mail.
93 Video messages can be sent easily and inexpensively. Videos can be created with a simple web camera and sent to the other party or parties as a video mail attachment. Using this method of communication, at least for some individuals, may be faster and more efficient than typing a message. Every communication does not need to be in a video format. But video might be helpful when a particularly complex or potentially confusing message needs to be communicated.
94 *Supra* note 10 at 5.
95 *See* Kimberlee K. Kovach, Mediation: Principles and Practice (West, a Thomson Business 3rd ed.) 160-162 (2004); Carrie Menkel-Meadow, Lela Porter Love, Andrea Kupfer Schneider, Mediation: Practice, Policy, Ethics, 224 (Aspen Publishers, 2006).
96 *See* http://secondlife.com/whatis/avatar.php. (Accessed February 8, 2009). A now familiar example of a virtual environment populated by avatars is Second Life, which describes itself as "an online, 3D virtual world imagined and created entirely by its Residents."
97 "Vcom3D and the Laurent Clerc National Deaf Education Center of Gallaudet University are researching and developing a proof-of-concept system for creating and delivering animated stories using the full range of facial expression and body language of American Sign Language, as well as manual signs. Results from this Phase I proof-of-concept will provide the basis for developing an authoring system and run-time software for creating these animated stories. For this research, we will evaluate how the use of newly developed "Lifelike Expressive Avatars" affects the reading comprehension of Deaf and hard of hearing students. The evaluation tool includes the following story, titled "The Forest", which was written by Jason Stewart, teacher at Kendall Demonstration Elementary School," http://www.vcom3d.com/vault_files/forest_asl/. (Accessed February 8, 2009).
98 *See* Rovion Moving Media, http://www.rovion.com/index.asp.
99 *See* http://www.viditalk.com/site/.
100 *See supra* note 10 at 6.
101 *Id.*
102 *See, e.g.*, http://www.aligncorp.com/images/Align_Negotiation_PrepSheet.pdf;http://tutorials.freeskills.com/negotiation-stage-1-preparation.htm http://ezinearticles.com/?Six-Steps-For-Negotiation-Preparation&id=413338; http://groupmindexpress.com (Accessed February 8, 2009).
103 *See supra* note 10 at 15.
104 *Id.* at 7.
105 *Id.*
106 *Id.*
107 *See* RID EPS Manual, supra note 10 at 9.
108 *Id.*
109 *Id.*
110 *Id.*
111 *Id.* at 5.
112 *See supra* note 96.
113 *See* There.com, *available at* http://www.there.com/ (last visited March 28, 2009).
114 *See* Arno R. Lodder, *Second Life and Other Three Dimensional Visual Worlds: Next Phase for Online Dispute Resolution?* Proceedings of 4th International Workshop on October 5–6, San Jose, USA (2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014845#PaperDownload (last visited February 8, 2009) (discussing the potential for dispute resolution in a virtual three-dimensional environment).
115 Eve Tahmincioglu, *The Faculty Is Remote, But Not Detached,* N.Y. Times, Jobs 15, March 9, 2008, *available at* http://www.nytimes.com/2008/03/09/jobs/09starts.html?_r=1&sep=1&sq=Tahmincioglu&st=nyt&oref=slogin (last visited February 8, 2009) (noting that online courses of all types increasingly are being offered by colleges and universities. Almost 3.5 million students enrolled in online courses in the fall of 2006 and more than two-thirds of all higher education institutions have some type of online offering. Some universities have a truly significant presence online. The University of Phoenix, for example, reports that it has approximately 12,500 online faculty members [primarily part-time]).
116 *See* http://www.vimeo.com/ Similar to YouTube and Google Video, Vimeo allows users to upload, store, and share video. Vimeo distinguishes itself as "the first site to enable High Definition (HD) video sharing." http://www.vimeo.com/press (last visited February 8, 2009).