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Technology Mediated Dispute Resolution Can Improve the Registry of Interpreters for the Deaf Ethical Practices System: The Deaf Community is Well Prepared and Can Lead by Example

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Abstract

The work of American Sign Language (ASL)/English interpreters is filled with complex interpersonal, linguistic and cultural challenges. 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) processes can be particularly helpful when misunderstandings and conflicts arise. Technology Mediated Dispute Resolution is a more inclusive phrase than Online Dispute Resolution (ODR) and includes cellular telephones, radio frequency devices, and satellite communication systems. The Deaf Community has learned to adapt and rely upon a variety of technologies and, because many Deaf individuals already are comfortable with technology, it makes sense to further integrate technology into dispute resolution processes. And while the Deaf Community can benefit from a greater reliance on technology, 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.

David Allen Larson previously has addressed the opportunities and dangers inherent in technology. He believes that Alternative Dispute Resolution (ADR) practitioners and theorists must study how individuals increasingly are using 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, who soon will be adults, 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 potentially less safe.

This article examines the mediation process within the Registry of Interpreters for the Deaf Ethical Practices System 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 provides a context for this discussion. An overview of the technologies already being used within the Deaf Community and interpreting field assists in determining where new technologies can be introduced most effectively. Each of the three steps in the EPS is analyzed to assess how additional technologies can be integrated productively. Finally, peripheral activities surrounding the EPS and mediation process are identified, highlighting elements in which technology may be used

TECHNOLOGY MEDIATED DISPUTE RESOLUTION CAN IMPROVE THE REGISTRY OF INTERPRETERS FOR THE DEAF ETHICAL PRACTICES SYSTEM: THE DEAF COMMUNITY IS WELL PREPARED AND CAN LEAD BY EXAMPLE

By David Allen Larson* and Paula Gajewski Mickelson**

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 Medi-

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[1] Cynthia B. Roy, *Training Interpreters – Past, Present, and Future*, in INNOVATIVE PRACTICES FOR TEACHING SIGN LANGUAGE INTERPRETERS 10 (Cynthia B. Roy ed., 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.

ated Dispute Resolution (TMDR)[2] processes can be particularly helpful when misunderstandings and conflicts arise. And 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,[3] he or she may file a grievance with 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 has not been revised often and the most recent revision was approved and released in July 2005. The 2005 NAD — RID Code of Professional Conduct 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 provide support for, and enforcement of, the quality of service and ethical behavior expected from professional Sign Language interpreters. The Ethical Practices System includes both the Code of Professional Conduct 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

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2 Technology Mediated Dispute Resolution (TMDR) is a term that Professor David Allen Larson began using in an article published in 2006. *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. 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 A joint task force of the RID and the National Association of the Deaf (NAD) developed this most recent code of professional conduct for professional interpreters. *See* RID Code of Professional Conduct, http://www.rid.org/UserFiles/File/pdfs/codeofethics.pdf (last visited October 11, 2008).

referred to a formal adjudication process.[4] Mediation, however, has become the core process of the EPS.

David Allen Larson previously has addressed the opportunities and dangers inherent in technology. He believes that Alternative Dispute Resolution (ADR) practitioners and theorists must study how individuals increasingly are using 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, who soon will be adults, 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 certainly have made physical travel less convenient and perhaps less safe.[5]

This article examines the mediation process within the Registry of Interpreters for the Deaf Ethical Practices System 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 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 the mediation process will be identified, highlighting elements in which technology may be used.

I. THE INTERPRETING PROFESSION

Interpreting can be defined as 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 lin-

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[4] *See* RID Ethical Practices Flowchart, http://www.rid.org/ethics/enforcement_procedures/index.cfm/AID/67 (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, 214 (2006).

guistic diversity within the American Deaf Community, a variety of signed English and ASL. Researchers in the field, including Cynthia Roy, have further defined interpreting by addressing the complex relational, linguistic and cultural elements inherent in an interpreter's work and decision making processes.[6] For instance, interpretation is defined by Dennis Cokely 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 this 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. The term Deaf is equivalent to other familiar linguistic identifiers such as French and Mandarin.

Many people naively assume that ASL is simply English of 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]

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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 (Gallaudet Univ. Press 1980).

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 or will not 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 happen quite 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 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 each other and they should refer to the Code of Professional Conduct and RID staff for further assistance.[10] The RID also acknowledges that for a variety of reasons some disputes may not be independently resolved and that the individuals may choose to file a formal grievance.[11] The Manual is written in a first-person narrative, directed to the complainant, and thoroughly describes the process for filing a grievance.

A complaint, as defined in the Manual, must:

- be based on the possible violation of the official NAD – RID Code of Professional Conduct;

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

[10] *See generally* RID ETHICAL PRACTICES SYSTEM POLICY MANUAL (2006). http://www.rid.org/UserFiles/File/pdfs/EPS_Manual.pdf (last viewed Aug. 15, 2007) [hereinafter RID EPS Manual].

[11] *Id.* at 1.

- be filed due to an incident related to the provision of inter-
  preting services;
- describe an incident that occurred after the interpreter's ser-
  vices were contracted through a verbal or written agreement,
  and may involve paid or volunteer service;
- may be filed as a result of the contracted interpreter's con-
  duct prior to, during, or after an interpreting assignment.[12]

The complaint may be submitted in written English, or video-
taped and submitted in ASL, and must be received by the RID
within ninety days of the alleged violation.[13] Once the complaint
has been received, the first of three processes in the grievance pro-
cedure begins: intake.

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 the RID. 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]

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[12] *Id.* at 2.

[13] *Id.*

[14] Three motions guided the development and integration of mediation into the EPS. Con-
ference motion C93.07 (1993) reads: "RID establish an ad hoc committee to 1) investigate Ethi-
cal 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: "To accept Ethical Practices Oversight Committee recommendation #EPO 96.06, to au-
thorize the Association Administrator to pursue funding sources to develop and provide media-
tion training." Board motion 99.56 (1999) reads:
> To accept the Ethical Practices Oversight Committee's listing of roles, responsibili-
> ties, members qualification and committee goals. Role: Uphold the integrity of ethi-
> cal standards among interpreters. Provide technical assistance to the RID Board of
> Directors as a triad member. Responsibilities: Establish and update the Ethical Prac-
> tices System Guidelines. Implement the Mediation component of the Ethical Prac-
> tices 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: Working 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 re-
> main active until mediation is up and running. Other committee goals: More cultural
> diversity. Ethical Practices brochure. Increased Deaf membership on committees.
> National Office staff person for Ethical Practices System. Ethical Practices materials
> in alternate formats.

The minutes from that 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 one hundred and sixty complaints have been filed against interpreter practioners, with over thirty 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] The 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 geographic location.[19] In an effort to increase the comfort levels and respect the privacy of the complainant and respondent, the 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 the RID.[21] The RID EPS coordinator or designee monitors the terms

E-mail from Cheryl Moose, RID President, to Paula Gajewski Mickelson (Mar. 4, 2008) (on file with author).

15 Stephanie Criner, Executive Summary, Evaluation Project RID's Pilot Mediation Program 6, (2004) (unpublished manuscript, on file with the RID and also with author Paula Gajewski Mickelson).

16 *See* ETHAN KATSH & JANET RIFKIN, ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICTS IN CYBERSPACE 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 26–27 (Prentice Hall 2004); COLIN RULE, ONLINE DISPUTE RESOLUTION FOR BUSINESS 61 (Jossey-Bass 2002).

17 E-mail from Matthew O'Hara, RID Director of Finance and Administration to Paula Gajewski Mickelson (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 RID EPS Manual, *supra* note 10, at 6:
   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

of the agreement.[22] Once the terms are satisfied, the case is closed.[23] If an agreement is not reached, 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 the panel deems a violation did occur, then the panel will determine the sanctions.[26]

Relying upon the preceding description of the interpreting profession, the Deaf Community and the grievance filing process, this article next will 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.

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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 will keep a copy of the signed Mediation Agreement." *Id.* at 7.

[22] "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." *Id.*

[23] "When all actions are completed, the case is considered closed." *Id.*

[24] "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." RID EPS Manual, *supra* note 10, at 7.

[25] RID EPS Manual, *supra* note 10, at 8:
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 the EPS) who review, confer, and make a decision.

[26] RID EPS Manual, *supra* note 10, at 10.

II. Technology

Technology and ADR

As explained earlier, 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 chat rooms, employ instant messaging to engage in real-time online conversations, exchange messages on list servs, stream video or videoconference. ODR systems can facilitate negotiation or mediation or they can offer virtual juries and a variety of arbitral processes.[27] Some commentators still use the term ODR even when online communication is used in combination with more traditional offline forms of communication such as fax, telephone, and standard mail.[28] Other terms have been used in the literature to represent this same concept with slight variations, such as computer mediated communication (CMC) and information and communication technologies (ICT).[29] Larson, while recognizing and distinguishing the nuances of these terms, suggests the use of "technology mediated communication" (TMC), and thus "technology mediated dispute resolution" (TMDR), as the terms that embrace the various technological options available today for communicating and resolving conflicts, as opposed to solely focusing on the channel ("online") used to access communication.[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 Ethical Practices System.

Technology can improve dispute resolution processes. It does not take much imagination, for example, 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. Furthermore, the fact that technology allows parties to preserve

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

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

29 David A. Larson, *Technology Mediated Dispute Resolution (TMDR): A New Paradigm for ADR*, 21 Ohio St. J. on Disp. Resol. 629, 634 (2006).

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

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, Deaf person, and a mediator (or team of mediators) are working together it is likely that the parties are communicating in ASL. It also 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 later 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, for example, all parties must have an infrastructure sufficient to support that technology. And the specific technologies employed must be accessible for each individual.

When the Deaf Community does not participate in the design of a technology based communication system, that system may not be accessible. This accessibility concern is shared by individuals with a wide variety of disabilities. The danger is so real that on December 21, 2007, the United States House of Representatives responded by releasing a draft of the "Twenty-First Century Communication and Video Accessibility Act of 2007."[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 only 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

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

[32] *See* Twenty-first Century Communication and Video Accessibility Act, H.R. 6320, 110th Congress (2008), *available at* http://markey.house.gov/docs/telecomm/draft_of_telecom_legislation.pdf (last visited Oct. 11, 2008).

[33] *See* Summary of Draft of the "21st Century Communications and Video Accessibility Act," Coalition of Organizations for Accessible Technology (COAT), *available at* http://coatacccess.civicspaceondemand.org/node/57 (last visited Mar. 9, 2008).

statements of someone who is physically much larger and louder. But technology is not a panacea and parties still can be victimized.

Cyberbullying is a fact of life in Cyberspace. Approximately one-third (32%) of the 935 teenagers surveyed by the Pew Internet and American Life project, for example, 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, at least at the present time, there is evidence that virtual spaces do provide more protection from bullying than one finds in the physical world. Two-thirds (67%) of the surveyed teens agree that bullying and harassment occurs more often offline than online and less than one third (29%) report that this unwelcome conduct occurs more frequently online.[36] In spite of the relative safety that virtual environments may offer, cyberbullying is a very real concern and a danger about which one must remain vigilant.

Furthermore, parties may 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 have to 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 that process must be user-friendly. In fact, it is recommended 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 overrated: "while a lack of conve-

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[34] Amanda Lenhart, *Data Memo: Cyberbullying and Online Teens*, 1 PEW INTERNET & AM. LIFE PROJECT (2007), *available at* http://www.pewinternet.org/pdfs/PIP%20Cyberbullying%20 Memo.pdf (last visited Mar. 11, 2008).

[35] *Id.*

[36] *Id.* at 4, 8.

[37] Ethan Katsh & Janet Rifkin, ONLINE DISPUTE RESOLUTION RESOLVING CONFLICTS IN CYBERSPACE 73 (Jossey-Bass 2001).

[38] *Id.* at 78.

nience creates a feeling of frustration, lack of trust results in a feeling of risk."[39]

And 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 the parties can 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 would change and become elongated. The convenience feature would be represented by the short side of the triangle and the trust and expertise features would appear as the longer sides.[42] The respective weights that are assigned each feature obviously will require careful consideration.

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. They use various visual signaling devices to alert them to crying babies, and ringing doorbells and phones, for instance. They used caption decoders before laws mandated that texting technology be included in televisions. And Deaf persons have 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 tele-

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[39] *Id.* at 83.

[40] *Id.* at 89–90.

[41] *Id.* at 74–75.

[42] *Id.*

[43] *See* DEAF AND HARD OF HEARING SERVICES DIVISION, MN DEPT .OF HUMAN SERVICES, ASSISTIVE EQUIPMENT AND TECH. FACT SHEET, *available at* http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_003399 (last visited Aug. 13, 2007).

typewriters with a phone coupler attached.[44] These devices allowed Deaf people to use the telephone to call others with similar machines and type messages to one another.[45] TTYs provided significant independence for Deaf and hard of hearing individuals who no longer had to rely on others to make telephone calls on their behalf.

There were drawbacks, however. Typed conversations took much longer to complete than spoken communications. As a result, Deaf people incurred higher phone bills, particularly when they made lengthy or numerous 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 must be sacrificed in exchange for speed and efficiency.[48] But 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 parens 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

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[44] *Supra* note 8, at 246.

[45] There 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.

Id.

[46] 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. *See* Virginia W. Stern & Martha Ross Redden, TECHNOLOGY AND HANDICAPPED PEOPLE, BACKGROUND PAPER #2: SELECTED TELECOMMUNICATIONS DEVICES FOR HEARING-IMPAIRED PERSONS 5 (1982), *available at* http://govinfo.library.unt.edu/ota/Ota_4/DATA/1982/8225.PDF (noting that the Connecticut Public Utilities Control Authority issued an order in 1977 (docket No. 77-0250, Dec. 16, 1977), allowing a 75 percent reduction in the phone bills of Deaf TTY users for intrastate long-distance calls and that reductions were initiated in 42 other states during the next four years).

[47] *Id.*

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

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 <u>underscore</u> or **emphasize** *important* ideas.[51] Additionally, sensory words can create images and a feeling of physical presence when one declares that she feels, senses, or is scratching her head, for example.[52]

One should not use sensory words indiscriminately, however, and one must be careful regarding assumptions when communicating in a text-based environment. Braeutigan's examples of using sensory words to create a feeling of presence include "I see," and "So, what I'm hearing is."[53] Message recipients who are not able to see, or persons who do not hear, may not appreciate references to senses they do not possess. And if one makes sensory allusions within a question rather than a statement, for instance, 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 was enacted in 1990, the Telecommunications section required that telecommunications relay services be provided for people who are Deaf and hard of hearing.[54] 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.

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[49] *See* DEAF AND HARD OF HEARING SERVICES DIVISION, MN DEPARTMENT OF HUMAN SERVICES, TTY GUIDE, *available at* http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_004574 (last visited Aug. 13, 2007).

[50] *See* Puneet Gupta, *Short Message Service: What, How, and Where*, WIRELESS DEVELOPER NETWORK, http://www.wirelessdevnet.com/channels/sms/features/sms.html (last visited Mar. 17, 2008).

[51] Andrea M. Braeutigan, *What I Hear You Writing Is . . . Issues in ODR: Building Trust and Rapport in the Text-Based Environment*, 38 U. TOL. L. REV. 101, 122 (2006).

[52] *Id.*

[53] *Id.*

[54] Americans With Disabilities Act, 47 U.S.C. § 225 (1990).

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.[55] The initial technology was grainy and did not offer a very clear picture, but that has 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 United States Senate and House of Representatives.[56] The NAD Chief Executive Officer, Nancy J. Bloch declared that "[b]eing able to communicate in American Sign Language when making telephone calls levels the playing field for [D]eaf 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 [D]eaf [C]ommunity."[57] Bloch's 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 require Deaf users to communicate in literally a second language. Consequently, users confront the same challenges faced by other second language speakers and the risk of misunderstandings and misinterpretations increases.

The exponential increase in the use of videophones and VRS[58] is only one example of how technology has impacted the Deaf

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[55] Today, interpreters working in VRS Centers are generally referred to as "Video Interpreters" or "VIs." *See* FCC Consumer Facts, http://www.fcc.gov/cgb/consumerfacts/videorelay.html.

[56] 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/ste/pp.asp?c=foINKQMBF&b-2537085 (last visited Jun. 10, 2007).

[57] *Id.*

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

Community. The community also is finding an ASL-friendly medium in YouTube[59] and V-logs.[60] 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 in ASL about significant ASL and Deaf Culture issues. V-logs are a form of blog, and blogs typically are reverse chronologically ordered text-based websites that provide commentary on a wide variety of issues that range from political to intensely personal.[61] Although V-logs, or video logs, can be used for a multitude of purposes, Deaf individuals use V-logs to post the ASL messages they have recorded.

Although there is much talk in the Community about 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.[62] Because the Federal Communications Commission (FCC) administers the program that supports VRS and reimburses providers on a per-minute basis for calls processed, the services are free of charge to the end users.[63]

Larson describes Millennials as, "digital natives in a land of digital immigrants."[64] 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 who are posting V-logs on the Internet may not worry whether there are TTYs stored safely in the hall closet, "just in case."

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sorensonvrs.com; Viable VRS, http://www.viable.net/vrs;http://josephknuth.wordpress.com/2007/06/08/list-of-national-wide-video-relay-service-providers/ (blog no longer available).

[59] *See, e.g.*, http://www.youtube.com/results?search_query=ASL.

[60] See, *e.g.*, http://www.joeybaer.com/.

[61] *See* http://en.wikipedia.org/wiki/Blog (noting that the word blog is a *portmanteau* of web log).

[62] *See supra* note 58.

[63] *See supra* note 54. 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 visited Mar. 4, 2008).

[64] Larson, *supra* note 5, at 218 (citing Lee Raine, Speech to Annual Conference of Public Library Association, Boston: Life Online: Teens and Technology and the World to Come (Mar. 23, 2006), *available at* http://www.pewinternet.org/ppt/Teens%20and%20technology.pdf, at 2–3).

Technology and the Interpreting Profession

The profound impact that technology and VRS have had on the Deaf Community also has been felt by professional interpreters. Many interpreters, particularly those who interpret in their own private practices 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 RID 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 the formation of Yahoo! Groups[65] for activities of various committees and task forces, the usage of videophones by all RID Board of Directors, the unveiling of a new and improved RID website,[66] and the implementation of a policy regarding the use of traditional e-mail as well as the use of video e-mail.[67]   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.[68]

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.[69]

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[65] *See* Jones, *infra* note 67. Yahoo! Groups is a service offered by Yahoo! that allows individuals with shared interests to meet in cyberspace and share messages, files, photos and calendars. *See generally,* http://groups.yahoo.com/ (last visited Mar. 16, 2008).

[66] Registry of Interpreters for the Deaf, http://rid.org/ (last visited Mar. 16, 2008).

[67] Angela Jones, *What's Technology Got to Do with it?*, 24 RID VIEWS 4, 5 (Jun. 2007).

[68] *Id.* at 4.

[69] Julie C. Weisenberg & Emmanuel Garcia, *From Telephone to Dial Tone: A Look at Video Interpreting*, 24 RID VIEWS 32 (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 of interpreters today, drawn to working in video relay centers:

Recognizing that one must be attentive to the short and long term implications of VRS for the Deaf Community and the interpreting profession, 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 many neutrals, however, have not been as proactive.

There are, of course, exceptions. Some interpreters and neutrals embrace technology with a passion. And the more reluctant interpreters and neutrals certainly can be forgiven for not adopting the most recent technologies. In light of the pace at which technology is advancing, it sometimes seems impossible to stay informed. It is understandable that one simply may want to throw his or her hands in the air and cry, "enough already!" But after that moment passes, it is time to look more closely at how technology can improve dispute resolution processes for everyone involved — parties, neutrals, and interpreters.

When considering which forms of technology-mediated communication could be most effectively used in the RID Ethical Practices System (EPS), one must focus on both the people and the context.[70]

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 the neutrals involved in EPS mediations typically have used some form of technology assisted communication already. But regardless of one's initial comfort level with technology, the RID is encouraging the use of technology. Ac-

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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.

70 *See* KATSH & RIFKIN, *supra* note 37, at 74.

cordingly, 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. Accordingly, a variety of technologies must be made available which will lend themselves to different combinations. EPS coordinator(s) 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 EPS dispute resolution process, either as complainants, respondents and/or mediators, videoconferencing and video-based technology appear to be the 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 technology-mediated dispute resolution does have certain advantages, however, that the RID EPS and participants should not ignore. An asynchronous communication system provides opportunities for careful review before a participant transmits a hurried message, heated and unproductive emotions to cool, research and consultation before each communication, and flexibility and convenience when it comes to scheduling and participation.

This is not to say, of course, that an asynchronous system does not have disadvantages. 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 instead can deteriorate rapidly.

A dispute resolution process designer should invest the time necessary to identify specifically the advantages and disadvantages

of each TMC option. The processes available to resolve each dispute need not 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, certainly can be incorporated into the EPS. One must keep in mind, however, that 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, however, are governed by the Federal Communications Commission (FCC).[71] The FCC requires videophones to be compatible across systems.

According to CSDVRS,[72] PC 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[73]

The minimum Digital Subscriber Line (DSL) or cable speed needed to support VRS are 256 kbps upload and download speed; higher is recommended for optimal use and clarity.[74]

The web cameras CSD VRS recommends includes the Logitech Quickcam for Notebook Pro or the Logitech Quickcam Pro 4000 or 5000.[75] The camera must have a CCD sensor; CMOS sensors are not recommended because they may slow down the videoconference capabilities.[76] Sorenson VRS manufactures and exclusively distributes the Sorenson VP 100, Sorenson VP 200 and the i2eye D-link videophones.[77] The Active X and Net Meeting

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[71] "Video Interpreters", *supra* note 55.

[72] Communication Service for the Deaf Video Relay Service (CSDVRS): Frequently Asked Questions, http://csdvrs.com/support/faq.aspx (last visited Mar. 4, 2008).

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] Sorenson VRS Frequently Asked Questions, http://www.sorensonvrs.com/ (last visited Mar. 4, 2008).

software also are required to support VRS calls and may be downloaded via a link available on the CSD VRS website.[78]

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 that provides excellent quality video transmission for ASL users communicating from distant locations.[79] The connection is made via Internet2, which provides greater capacity and much faster connectivity than the regular Internet.[80] The system supports direct point-to-point connections and bridging technology allowing multiple sites to connect.[81] This Internet2 system functions at about 1500 MHz and is available at most Level 1 educational institutions and some businesses.[82] Although one could construct a similar technological infrastructure, he or she also could create partnerships, or negotiate licenses for limited access at colleges and businesses.[83] Additionally, videophones could be used immediately to support mediations within RID's EPS 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 from offices located across the country. CSD currently uses videoconferencing systems for point-to-point connections and these systems also can be used in the EPS. CSD videoconferencing systems use Polycom or IP-based systems using h.323-based technology.[84] The Polycom PVX system is a personal videoconferencing solution that extends the quality of h.323 videoconferencing to a user's PC and webcam.[85]

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[78] CSDVRS: Frequently Asked Questions, http://csdvrs.com/support/faq.aspx (last visited Mar. 4, 2008).

[79] E-mail from John Lange, Media Manager, College of St. Catherine, to David A. Larson (Aug. 13, 2007 12:50 PM) (on file with author).

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.* 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.

[84] E-mail from Jan Florand, Director of Interpreting Operations, Minnesota Communication Service for the Deaf, to Paula Gajewski Mickelson (Aug. 14, 2007 08:14 EST) (on file with author).

[85] PVX Data Sheet, http://www.polycom.omc/usa/cn/support/video/pvx.html (follow "PVX Data Sheet" hyperlink) (last visited Sept. 4. 2008).

Recommendations for the RID Ethical Practices System

This section will describe current practices and then make recommendations as to how technology can improve those practices.

Intake

1) Complainants typically access the EPS Policy and Procedures Manual on the RID website.[86] 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 complaints via videotape.[87]

This initial stage would be improved if greater information about the EPS, which is included in the EPS Policy manual, was provided in ASL and in a video format. Online video clips using ASL to explain the intake process, the mediation process, and other relevant sections of the manual 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. Digital video-based technology would increase consumer awareness and lead to greater utilization of the process.

2) When a complaint is received, it is reviewed based upon explicit criteria. The "complaint must be based upon one or more of the possible violations of the official NAD-RID Code of Professional Conduct" and must "describe an incident related to the provision of interpreting services."[88] The complaint "must describe an incident that occurred after the interpreter's services were contracted through a verbal or written agreement, and [it] may involve paid or volunteer interpreter service."[89] The complaint may "be filed as a result of the contracted interpreter's conduct prior to, during, or after an interpreting assignment."[90] The complaint is either accepted into the EPS system for further processing (which could include a mediation referral) or rejected.[91] The complainant always is notified by letter as to the disposition of the complaint. If the complaint is accepted, then both the complainant and the re-

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86 RID EPS Manual, *supra* note 10.

87 RID EPS Manual, *supra* note 10, at 2; NAD-RID Code of Professional Conduct, *supra* note 3.

88 RID EPS Manual, *supra* note 10, at 2.

89 *Id.*

90 *Id.*

91 *Id.* at 3.

spondent receive letters explaining the subsequent steps in the process.[92]

Although this approach may be adequate, it certainly 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 still would be helpful to also send the notice via e-mail 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, not our postal service delivered paper mail.[93] In addition to the initial notice, both the complainant and the respondent should receive case status updates via e-mail. The updates can be sent as simple textual e-mail messages or the updates may be provided in video form.[94] Finally, if an important deadline or significant issue arises, then a person-to-person videophone call may be the most effective medium.

Mediation

1) Logistics for scheduling mediation sessions currently are coordinated by national office staff or the EPS coordinator.[95] Information is shared via numerous e-mail and phone contacts, using both telephone and videophone.

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92 *Id.*

93 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 hardcopy 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.

94 Video messages can be sent easily and inexpensively. Videos can be created with a simple webcam and sent to parties as a video mail attachment. This method of communication, at least for some individuals, may be faster and more efficient than typing an e-mail. Of course, not every communication needs to be in a video format. But video might be helpful when communicating a particularly complex or potentially confusing message

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

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, however. 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 may access the information on demand.

Furthermore, a video introduction in ASL also can be added for each case. This introduction could be presented by the mediators themselves, for example. The introduction might simply take the form of a greeting and a personal introduction from the mediator(s), or the introduction could serve a much more substantial function. In a typical mediation, once the parties and the mediator(s) are introduced to each other, most mediators then provide an orientation, or an overview of how the mediation will proceed.[96] Mediators take this opportunity to provide, for instance, a procedural outline for the session; contractual, statutory and common law confidentiality requirements; and an explanation of the mediators' roles and responsibilities.

If the video introduction features the mediator in person, then at the very least 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 simply be uncomfortable personally appearing in a video. That mediator then should consider presenting her or his introduction as an avatar, a three dimensional person or creature created to "live" in cyberspace.[97] Video and animation technology has advanced to the point that attractive and surprisingly lifelike avatars now 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.[98] Companies such as Inperson allow users to create

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96 *See* KIMBERLEE K. KOVACH, MEDIATION: PRINCIPLES AND PRACTICE 160–62 (3d ed. 2004); *see also* CARRIE MENKEL-MEADOW, LELA PORTER LOVE & ANDREA KUPFER SCHNEIDER, MEDIATION: PRACTICE, POLICY, ETHICS 224 (2006).

97 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." Second Life, http://secondlife.com (last visited Oct. 4, 2008).

98 Jason Stewart, *The Forest*, Animated ASL Video, http://www.vcom3d.com/vault_tiles/forest_asl/ (last visited Oct. 4, 2008). The Vcom3D website provides:

Vcom3D and the Laurent Clerc National Deaf Education Center of Gallaudet University are researching and developing a proof-of-concept system for creating and

videos that can be used by anyone with an internet connection.[99] VIDITalk lets users create videos that can be e-mailed or streamed to websites and virtually any mobile device.[100]

There are several advantages to presenting an introduction in video. 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 to 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 unless 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, it can be saved and later 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 simply forget to provide information that he or she ordinarily provides. A thorough, repeatedly vetted video introduction that is reviewed and adjusted to fit each case would avoid such an oversight.

Recognizing that the emphasis must be on the parties and the dispute itself does not mean that one must ignore the fact that a reusable editable video introduction could prove to be very 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 also is as helpful and productive as possible, for each unique dispute. This concern, however, is not a reason to abandon the tool; it is merely 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 technol-

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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", [sic] which was written by Jason Stewart, teacher [sic] at Kendall Demonstration Elementary School.

[99] Rovion Moving Media, http://www.rovion.com/ (last visited Oct. 12, 2008).

[100] Vidi Talk, http://www.viditalk.com/site/ (last visited Sept. 3, 2008).

ogy. The video can explain and illustrate the use of additional technologies that are available. A video introduction also can remind the parties not to view mediation as a punitive process, a perspective that can 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 may serve them most effectively and productively.

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

Each case must be assessed individually and then continually reassessed 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. But 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 video introductions, for instance. If a mediator has reservations, then he or she 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 her or his 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 certainly 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.

2) The EPS manual instructs parties not to prepare evidentiary artifacts or other items that normally would be presented in a courtroom.[101] Parties also are encouraged to review the entire manual in preparation for the session.[102]

In addition to merely reading the EPS Manual, parties 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 on the website by a brief ASL description, for instance, with live links to various sites offering tools to help parties prepare for negotiations.[103]

3) 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, RID typically retains mediators from outside the region, and pays all travel expenses.[104] A mediation session generally is scheduled for an entire day and, occasionally, for two days if the issues appear complex or particularly difficult.

A variety of technologies can be employed that will make this process more effective and efficient. As mentioned earlier, the mediator's ASL introduction can be videotaped and posted in a password-protected 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 she or he can communicate concepts clearly and concisely in ASL. Video presentations also provide the mediator with the luxury of erasing and re-recording. If a mediator's introduction

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[101] RID EPS Manual, *supra* note 10, at 6.

[102] *Id.*

[103] *See, e.g.,* http://www.aligncorp.com/images/Align_Negotiation_PrepSheet.pdf; http://www.negotiatelikethepros.com/articles (last visited Oct. 11, 2008).

[104] RID EPS Manual, *supra* note 10, at 15.

is confusing or misleading, then the introduction may establish an unproductive tone for the entire mediation 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 mediator(s) will be located at the time of the mediation must be determined in advance to ensure that everyone has access to the necessary technologies. 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.

4) When EPS mediation results in a settlement, a Mediation Agreement form is completed by the mediator and signed by both parties.[105] The RID EPS coordinator or designee monitors the terms of the agreement and, when he or she is satisfied, officially closes the case.[106] If an agreement is not reached, then the next step in the EPS is the adjudication process.[107]

If the parties and the mediator are not in the same location, then final settlement arrangements 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 may agree that electronic signatures are sufficiently binding and exchange copies via e-mail. Although not necessary, one subsequently could circulate hard copy originals using the U.S. Postal Service. If an agreement is not reached, then the parties can receive updates via the designated website space for their particular case, or through videophone or video e-mail. The parties also can assess whether they would like to continue to mediate the case.

Adjudication

The EPS provides that if a mediation effort is unsuccessful, then a panel of three peer adjudicators will review the original

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[105] *Id.* at 7.
[106] *Id.*
[107] *Id.*

complaint and response and render a final decision.[108] If the panel determines an ethical violation occurred, then the panel decides what sanctions should be imposed.[109] Generally, the adjudicators do not meet with the parties.[110] There are times, however, when additional clarification or information is needed. As a result, the adjudicators may schedule a hearing with the parties prior to rendering a decision.[111]

Again, as we suggested regarding the earlier stages in the process, videoconferencing technology, videophones, video e-mail and text-based technology also can be used throughout the adjudication stage. If the adjudicators are all native English speakers, then text-based technology such as instant messaging may be used to connect the parties and the adjudicators.

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.[112] Yet even for 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 factors).

1) The RID should use technology to provide more educational opportunities and better support for its mediators. The RID could, for example, 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[113] or There.com.[114] In this venue 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 any location in the world that has internet access. The neutrals would not have to incur travel costs and the RID would not have to worry about how many individuals will invest travel time and costs. And just as importantly, presenting a class in a virtual world would provide a risk-free opportunity for mediators

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108 *Id.* at 9.

109 *Id.* at 7.

110 RID EPS Manual, *supra* note 10, at 7.

111 *Id.*

112 *Id.* at 5.

113 Second Life, *supra* note 97.

114 *See generally*, There.com, http://www.there.com/ (last visited Sept. 3, 2008).

and adjudicators to experiment and familiarize themselves with interactions in the virtual world. This experience would help prepare mediators and adjudicators to provide dispute resolution services in a virtual world.[115]

A self-paced online course also can be offered.[116] A self-paced course can 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 participating in panels can use this technology to meet and prepare for upcoming sessions, exchange information during the proceedings, and debrief each other afterwards. This technology can provide peer mentoring and support for mediators and adjudicators who are new to 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.[117]

2) The RID should consider how it can use technology to improve its support for, and delivery of, consumer education. Practicing interpreters, students of interpreting, non-deaf and Deaf consumers alike could benefit from information online (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 FAQ sections provided by most online commercial retailers. The RID can use technology to distribute and communicate information about conflict management

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115 For an interesting discussion about the potential for dispute resolution in a virtual three-dimensional environment, see Arno R. Lodder, *Second Life and Other Three Dimensional Visual Worlds: Next Phase for Online Dispute Resolution?* PROCEEDINGS OF FOURTH INTERNATIONAL WORKSHOP ON ODR, San Jose, USA, 59–62 (2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014845#PaperDownload (last visited Mar. 10, 2008).

116 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. Eve Tahmincioglu, *The Faculty Is Remote, But Not Detached,* N.Y. TIMES, Mar. 9, 2008, § Jobs at 15, *available at* http://www.nytimes.com/2008/03/09/jobs/09starts.html?_r=1&scp=1&sq=Tahmincioglu&st=nyt& oref=slogin. 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). *Id.*

117 Vimeo.com, Press Releases and Buzz, http://www.vimeo.com/press (last visited Mar. 19, 2008). Similar to YouTube and Google Video, Vimeo allows users to upload, store, and share videos. Vimeo distinguishes itself as "the first site to enable HD [High Definition] Video sharing." *Id.*

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

Conclusion

Technology has impacted the Deaf Community and interpret-ing profession in immeasurable ways. Deaf people today are com-municating in unprecedented fashion. Video-based technologies, for example, allow individuals to communicate across the globe us-ing 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 ("EPS") of the RID is an excellent option for resolving disputes that escalate into grievances. Greater reliance on technology, however, can improve the EPS.

Technology enables parties and neutrals to communicate in a variety of mediums quickly and inexpensively. An individual can communicate from a remote location by sending real time video images of herself or himself. The videos also 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 contin-uing education efforts by presenting online 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 inter-preting to ASL and the Deaf Community to ADR and technology. The article makes specific recommendations for the RID Ethical Practices System. The recommendations list, of course, is not ex-haustive. It is hoped that this article will inspire further discussion regarding other potential technologies that can be integrated into the EPS and also further conversation regarding the role of tech-nology in other RID programs such as the National Testing System, the Certification Maintenance and Continuing Education pro-grams, and legislative activities.