

Modria - The Operating System for ODR Mediator – Colin Rule

Aled: Hi, everyone. My name is Aled Davies, founder of MediatorAcademy.com, home of the passionate mediator. You know what we do on here, we interview the very best mediators and thought leaders from right around the world, we find out how they've become successful, how they approach aspects of their mediation practice, and handle all sorts of challenges and dilemmas. But it's also an opportunity for us to learn about new challenges and opportunities in our field.

I'm passionate about mediation, and I'm also a big fan of technology. So in this interview I want to find out as much as I can about ODR and understand how a system can help parties resolve disputes. I also want to understand the impact and opportunities for mediators as online mediation becomes more mainstream.

Now my guest today is the Mark Zuckerberg of online dispute resolution. He was the first director of online dispute resolution for eBay and PayPal, and has worked in the dispute resolution field for more than two decades as a mediator, trainer, and consultant. He's the author of "Online Dispute Resolution For Business", published by Jossey-Bass. He holds a master's degree from Harvard University's Kennedy School of Government in conflict resolution and technology. He's a graduate certificate in dispute resolution from UMass Boston, a BA in peace studies from Haverford College. He's currently co-chair of the advisory board of the National Center for Technology and Dispute Resolution, and he's the founder and COO of Modria.com.

It's a real privilege to welcome Colin Rule onto Mediator Academy. Colin, Welcome.

Colin: Thank you so much, Aled. That was an incredibly generous introduction, although I have one correction to make. I like to say that Mark Zuckerberg is the Colin Rule of social networking. So it's a little bit more accurate.

Aled: Yeah, absolutely, absolutely. When I interview Mark, I'll mention that. Well, Colin, Modria's platform has been described by TechCrunch as "a fairness engine," which sounds a lot better than "the Judge Judy for cyber shoppers."

Colin: That's true.

Aled: I did a little reading this afternoon. But on a serious note, tell us about Modria and the platform you've built for resolving online disputes.

Colin: Sure. Well, Modria, actually it's interesting, is a spin-out from eBay and PayPal. So as you mentioned, I worked at eBay and PayPal for eight years and we built a lot of really

advanced technology. At eBay we resolve more than 60 million disputes a year and eBay spent tens of millions of dollars building out some of that functionality. And what I said to the leaders at eBay and PayPal is, "There's a lot of use for this technology outside of the e-commerce disputes between buyers and sellers. So would it be possible for me to take this technology and expand it into some of these other applications?" And they agreed to that.

So in 2011 I spun it out and started Modria with a good friend of mine from PayPal, Chittu Nagarajan. And we've built Modria over the years and actually built on that eBay technology to do a wide variety of different kinds of disputes. So we do family and divorce disputes online, we do debt collection disputes, we do insurance disputes, we do tax disputes, and we still do e-commerce and payments.

So there's just a lot of issues that arise both in the face to face world and online. And the goal of Modria, "Modria" actually stands for "Modular online dispute resolution implementation assistant." So our goal is to be the operating system for online dispute resolution. So any kind of dispute, no matter how complicated or how simple, how high volume or low volume, we can use these building blocks at Modria to build an appropriate resolution path for that dispute. So that's our objective.

Aled: Okay. So say a little bit more about the technology itself.

Colin: Yeah, well I think there are four main building blocks that I talk about at Modria, and the first one is what we call "problem diagnosis". So in the face to face world of mediation, most of the time by the time we get access as live mediators to a dispute, odds are the parties have already been negotiating with each other for a very long time and they've probably reached impasse and they're very frustrated with each other. That's why they feel the need to go and find a third party dispute resolver to help them reframe the issues, and maybe even that third-party dispute resolver will play a decision making role, like you talked about with Judge Judy.

The thing about online dispute resolution is we get access to disputes much earlier in their life. At eBay we were actually talking with complainants before they communicated their problem to the respondent. It's a different situation, you're not dealing with a negotiation that's at impasse, you're trying to help set expectations and expand that, what we call, ZOPA, the Zone Of Potential Agreements, for those disputants.

So that first-phase problem diagnosis is enormously powerful. You can think about that as on online wizards that can really coach disputants through what their options are, what kind of resolution the process would look like to resolve their dispute, how long it would take, maybe look at other resolutions that have been achieved in similar types of problems. So that's the first module.

The second module is what we call technology facilitated negotiation, or TFN. And that's where the software really facilitates a conversation between the parties. There's no

human neutral, so it's just the two disputants. But the software, and this is one of the things that Ethan Katsh has written a lot about, the idea of technology as the the fourth party in a dispute.

So there's a lot of things you can do, especially if you know a lot of details about the dispute coming in, to build a communication environment that really optimizes the chances that the parties are going to be able to work it out. Now if they can't work it out through a negotiation, technology assisted negotiation, then they go to mediation.

That's more traditional, what we think about in the face to face world, where a third-party human neutral assists the parties in their negotiation and tries to work it out.

Then the last phase is evaluation. I intentionally use that word "evaluation," as opposed to "arbitration," because a lot of the evaluative processes we build are not necessary enforceable in a court. There are a lot of creative ways you can get evaluative outcomes to disputes. Now also you can use that module as an appeals layer, too, if you think an appeals process is appropriate.

These big main building blocks are under girded by very a sophisticated case management infrastructure. So any time there's a dispute, we open an online room. It can have audio conferencing, it can have video conferencing, it can have scheduling, it can have document management, the parties can communicate asynchronously via text, we have a lot of wizards where you can use agreement builders to help you put together mediation agreements both sides are happy with.

So really what we're doing is convening online conversations and then working through this sort of staircase of escalation, from diagnosis to negotiation to mediation to evaluation.

Aled: Okay, so the diagnosis section, is it something like a triage service, if you like?

Colin: Yeah, you can think about it as a workbook. So there are two different stages to diagnosis. One is where, say somebody is getting a divorce, the first thing they do is go to Google and type in "divorce." They don't know what the process is, odds are this is their first divorce, so they probably want to find a website that can just walk them through it. What does this look like? What are the questions you're going to have to answer? Are you going to have to think about co-parenting, are you going to have to think about spousal support, are you going to have to think about dividing pensions? These things, it's all new.

So that's before anybody registers. They're not providing any information about themselves, they're just going through a Q and A, there's a resource available to them so that they can educate themselves about what the process might look like and what the key questions are.

Now once they decide to begin that process, then they may register. Then they may provide some information about themselves, like, Do you have kids? What kind of assets do you have? Those kinds of questions.

Then the diagnosis process can get much richer because then it can start to customise itself on the basis of the situation of the individual disputants. So that diagnosis process. But again, in an e-commerce dispute, that could be very expedited.

Aled: Yeah.

Colin: "Hey, I bought an item, I didn't get it."

"Okay, all right. What's the item number?"

"All right, here's the item number."

"Okay, do we know tracking, do we know the value of the item, how fast was shipping that you paid for, how heavy is it? What information do we have about that dispute?" We can dynamically diagnosis and provide information on the basis of that information to the disputant.

Aled: Okay.

Colin: So that diagnosis process, you want to make it very, very smart so that it provides the right information at the right time. And we eventually got to the point at eBay where 90% of the disputes that came in of those 60 million we could resolve without a human neutral getting involved. So no decision had to be made, no mediator needed to be engaged. That meant that the 10% the 6 million disputes that did get to the point where it was a mediation or an arbitration, we knew that those were the cases that most could benefit from the help of a live human neutral.

So the low-hanging fruit type cases, it's just information asymmetry. We could get the key piece of information, maybe a tracking number or something, and work that case out quickly. But that meant it was almost like a filter, the cases that made it to the later stages were the ones that neutrals really should spend their time on.

Aled: Okay, so it sounds like the technology is very customisable, depending on who wants to use it.

Colin: Absolutely. And in 1976 there was a conference in the United States called the Pound Conference on the future of law. And a guy named Frank Sander was a judge and he did a presentation there, and talked about the multi-door courthouse. And what Frank was talking about is instead of somebody walking in the door to the courthouse and saying, "I have a dispute," and then they're ushered immediately into a courtroom in

front of a judge, there would be a counter there, say, "What kind of dispute do you have?"

"Well, I have a family dispute," or, "I have a landlord-tenant dispute," or, "I have an intellectual property dispute." And Sander's notion was that there would be multiple doors and the parties could walk through those doors and get a customised resolution process appropriate to their needs.

So what we're trying to do at Modria is we want to build an online multi-door courthouse, and we want there to be not just several doors, not five or ten or a dozen, we want there to be thousands of doors. I would like to build a custom door for every single dispute. When someone comes in and tells me, "This is the kind of problem that we have," we can dynamically build a resolution process. In "Getting To Yes", a very famous book by Fisher and Ury, they talk about fitting the forum to the fuss.

Aled: Yeah.

Colin: That's what we want to do, we want to use technology to dynamically build an appropriate resolution process for any kind of dispute that walks in the door. So that's the ultimate aspiration of what we're doing at Modria.

Aled: Well, what are the key features of the technology then, of the platform?

Colin: I talked about this case management system, but in pretty much every case there's going to be some sort of filing process. So we have a configurable intake process where certain questions are asked. The beauty of that filing process is it can be very dynamic. So based on the answer to question one, you can ask a different question two. So if people come in and they say, "All right, this is my role in the case," great. Well, you can give them a different filing process that asks questions that are appropriate to them. But then you have a real workflow system.

Now a lot of times you have the two disputants and you have the mediator, but you may also have administrative organisation that's managing the process. They may have hundreds or thousands of these disputes and they want to make sure that the disputes are being resolved effectively and quickly, efficiently.

So what they can do is they can use this system, as well, to log in and then get reports out of all of the cases that are in the system. How many have been filed, how long have they been open, which cases may be hitting sticking points. They can check the performance of individual mediators that are working cases. So that kind of workflow management is very important in getting efficient management of all these cases.

You have the intake process, you have that workflow management. I talked about security and document management, too. Often times if you're in a divorce or if you've got a healthcare dispute or an insurance case or a debt case, you may be sharing

information that you're nervous about getting out. So one of the things that's very important at Modria is all of our information is encrypted. Every session that people have is authenticated so we know every person that's using our system. We put lots and lots of money and resources into making sure the system is really bulletproof.

One of the things that makes me nervous about mediators using technology is often times they use tools like Skype or they use email or they use Google Docs, and unfortunately these services are not that secure. If somebody wanted to get into them, it wouldn't be very hard for them to do so. So if you're sending out documents over email and one of the parties accidentally forwards that to someone else, your security is compromised.

We put a lot of time in Modria to ensuring that our platform, any cases that go through our platform, the information there is totally secure. So that when mediators say to their parties, "Hey, I'd like to use this platform, and I can assure you that your information is going to be kept confidential if we work within this system." They know that when they make that representation, it's true.

Aled: Yeah.

Colin: The other thing we have is dynamic status and messaging. So any time there's any state change on any case, everyone is notified. That can be via SMS or that can be via email, so that people always know what's going on in a case. They can log in 24 hours a day, seven days a week and they can post a new message, upload more information, see what information has been submitted by the other side. It really does leverage the power of the Internet for an always-on resolution experience, so that people always feel like they're in control of the process.

Aled: It sounds like the technology can be used to resolve disputes high volume, as well as identify those disputes that need special treatment. So the intervention of the mediator, for example.

Colin: Yeah, and you put your finger on an important point. There are some disputes that I think shouldn't be resolved online. This is not that I'm, "Rah, rah," cheerleader, "Every dispute in the world needs to come onto the Internet." But I think a lot of mediators, maybe some mediators who are not that comfortable with technology, they say, "Well, I don't like resolving disputes online." They kind of have a dichotomy in their head, "Are we going to do this online or are we going to do this offline?" I think the reality is our lives are both now.

Our parties are coming in and they use technology in every area of their lives. We manage the highest volume case load for the American Arbitration Association, uses our software, and that's insurance claims, called a "New York No-Fault" process. Every single one of those cases ends with an in-person hearing, in-person arbitration hearing. Now, a lot of cases don't even get that far because they work out online. But everything is online,

the filing, the document management, the scheduling. Even the follow-up once a decision is made, the arbitrator fills out all that information online and it's submitted to the parties. But the actual hearing, if it gets to that, happens face to face.

I think it's very important people understand, (A) not every dispute should be online, and there are plenty of times when it should be face to face. But, (B) ODR is not opposed to ADR. The best use, in many disputes, is a hybrid of the two. Our platform makes it so that we have tools that can facilitate that face to face and make the face to face process much more efficient because you're already dealt with all the administrative nonsense before you get into the face to face.

Aled: Yeah, I mean you talked about one of your typical customers, who is Modria best suited for as a platform in its current form?

Colin: Well, that's a good question. We've had a lot of success dealing with tax appeals in the United States, we're now the number one company for resolving property tax assessment appeals. So we do all of the property tax assessment appeals for Nashville and Atlanta and New Orleans and Gainesville, Florida and Durham, North Carolina and Vancouver, B.C. So it turns out that's a good transactional issue. You have an assessor and a tax payer that need to work out a dispute, our platform is a perfect fit with that.

Aled: Okay.

Colin: But we also, as I mentioned, we're experimenting with family disputes, we have a project with the Dutch Legal Aid Board.

Aled: Right.

Colin: It turns out in the Netherlands, 75% of divorces are paid either fully or partially by the government. So we built an end to end divorce mediation platform called the Rechtwijzer, and we're going to be launching that in British Columbia soon.

We're doing debt cases, commercial debt where someone takes out a loan to expand their business and they can't continue paying at that rate, so they want to renegotiate the loan.

As I mentioned, we're doing AAA, we're doing these insurance cases, which are medical insurance claims in the wake of a motor vehicle accident. But we're also doing more traditional mediation, landlord-tenant. We're working with New York State and Michigan to build their statewide court-connected ADR case-management systems. So we do real estate disputes. I mean really the spectrum is absurdly broad. We work with telecommunications companies, we do product liability.

But I will say that, personally, when you ask what the best application of technology is, I agree with you, Aled. I think it's high volume, lower value cases. If you've

got a \$10 million case, that's enough money at stake to justify getting a lawyer, going to a court, having multiple hearings, having depositions.

I think the main utility area for ODR right now, is higher volume cases, lower value I would say less than, say, \$25,000. But also cross-border, situations where it's very complicated or expensive to get the parties together face to face, that's a good fit with ODR.

In the early days of ODR, we thought that emotional disputes, relationship disputes were not a good fit.

Aled: Right.

Colin: I remember back in 2000, 2001, 2002 saying, "I don't want to deal with workplace harassment, I don't want to deal with divorce cases." But I think, actually, the culture has changed and the younger generation in particular almost prefers online interaction for some of these types of cases. So I've changed my tune a little bit on that. I think it's very important to choose disputes where you can effectively enforce the outcome.

So I do have potential customers who come in sometimes and they want decisions, but they can't enforce the outcomes, and I say, "Look, this is not a good fit with out solution. You need to be able to reach a decision either by mutual agreement or through evaluation. And the you have to be able to make that decision matter in some way, make that stick."

Those are some of the constraints that I think about when we target case volumes, to say, "Is this going to be a successful use of Modria?"

Aled: Yeah, okay. So you talk about where the technology is right now. I read an article you posted on Mediate.com, "The Future of Social Technology in Support of Peace and Justice." Lovely article.

Colin: Great, that's a very new article, you really do your research, Aled.

Aled: It was a lovely article, I really enjoyed reading it. You talked about your hope for the future of mediation. In it, you refer to the concept of singularity and I think you suggested that we're 25 years away before we reach that point.

Colin: Sure. Well, the singularity, for people that don't know, there's a lot of philosophers that talk about that in Silicon Valley. A point at which computers become more intelligent than human and what computers can conceptualise exceeds our ability to understand what the computers are conceptualising. So obviously computers are very powerful now, but estimates say about 25 years out, 2040, will be when that singularity occurs.

A lot of people ask me in ODR, "Are you building digital mediators, are you building digital judges that can go and decide these cases?" That's not really what we're focused on at Modria. Fundamentally what I'm interested in is using computer mediated communication to help people resolve problems. So it's more of a facilitative model. Everything that we do here is dependent on human neutrals working within the platform.

This is not about writing a computer algorithm that's going to replace mediators. Although I do think a lot of the cases that mediators get are just simple misunderstandings. Computers can work that out in advance, sometimes, if it's one piece of information, "Where's my item?"

"Oh, here it is."

"Okay, great. We don't need a mediator".

I think that once we get out 10 years, 20 years, hopefully you and I will both see that, my friend. Although I guess that depends on how clean living we are between now and then.

I think that there are some very interesting aspects of how people trust computers in a different way than they trust a human neutral. I think that human neutrals can play an important role, but I think computers can play, also, a very interesting role. We'll have to see how that pans out over time.

The justice system, in particular, I think a lot of the inequities and bad outcomes out of the justice system have been well documented. It's interesting to think how technology can combat that problem.

Aled: Yes.

Colin: As it gets more and more efficient, effective, circumspect, I think we're going to see a greater and greater use of algorithmic approaches to resolving disputes as we move forward.

Aled: Absolutely. Colin, look, before we go, I'd like to include some kind of demo, if possible, of Modria. Seeing under the hood both from an administrative perspective, but also from a user's perspective. Just to see how simple, easy it is to use from a consumer. But also, if we've got administrators, what they need to understand about the various building blocks, for example, or the case management infrastructure. All of that, how that works.

Colin: Sure, absolutely. I can do a quick video demo and maybe you can include it in this interview and people can take a look. I'd love to do further demos, and people can go to Modria.com and try out the actual platform themselves. But I think that's a great thing to include, it makes it a little more realistic to see it in action.

Aled: Yeah, yeah. Lovely videos on your website, by the way, which really help get across the idea and your vision.

So if you're watching the interview, go to Modria.com and there's lots of information and videos on that.

Look, Colin, you've been really generous with your time. Once again, I really appreciate that and I look forward to our continued collaboration. I've put the dates for the conference in New York in my calendar.

Colin: Great. The next ODR forum, we want you there.

Aled: Yeah, so I look forward to that. And I'm sure we'll be in touch before then.

Colin: Fantastic, thanks a lot, Aled.

Aled: All right, thanks, Colin.