

PUBLIC EXPECTATIONS REGARDING ONLINE DISPUTE RESOLUTION: A COMPARISON OF DISPUTE RESOLUTION PROCESSES DURING THE COVID-19 PANDEMIC.

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§1. EXECUTIVE SUMMARY

Recent surveys conducted by the National Center for State Courts have consistently highlighted public interest in online court services¹. One service that is growing in popularity and public support is online dispute resolution (ODR). States like Utah² and Michigan³ are actively implementing large-scale court-sponsored ODR programs but the COVID-19 pandemic has fast-tracked this transition across the country⁴, making it even more important to assess potential users' expectations about using these services. This report presents findings from a two-part online survey completed by participants recruited from Amazon's *MTurk*⁵.

The first, *between-groups* section provided participants with information about one of three dispute resolution processes and asked them to respond regarding their expectations for that process only. Participants were randomly assigned to read one of three descriptions of court processes for resolving a hypothetical dispute (see Appendix A): adversarial small claims trial, alternative dispute resolution (ADR), and online dispute resolution (ODR). A fourth, control group did not receive information about any of the resolution processes such that these individuals could only rely on what they already knew (or thought they knew) about dispute resolution with the courts. Our findings in this section suggest that:

- **Participants were equally likely to engage with the courts via ODR, ADR, and small claims trial processes.** Participant willingness to engage was relatively high for all three methods.
- **Providing descriptive information about any of the court processes had positive effects.** Participants who were not presented with a description of any of the resolution processes were least likely to engage and had the most negative responses in terms of their vulnerability to harm; their understanding of the process; and concerns about its length, expense, and level of complication.

The second, *within-groups* section asked participants to report their relative expectations by directly comparing all three dispute resolution processes which were briefly described as “going to trial” (small claims trial), “meeting in-person with a court facilitator” (ADR), and “meeting online with a court facilitator” (ODR). Our findings in this section suggest that:

- **Participants were most willing to engage via ODR and it was rated more positively than small claims trials or ADR** in terms of its expense and the likelihood of exposure to COVID-19.
- Despite their higher willingness to engage, **participants rated ODR more negatively than small claims trials and ADR** in terms of their concern that they would not be able to express their side of the story, that the courts would make a mistake, and that they would not have someone to explain the process.

Together, our work suggests that these online processes may not reduce public willingness to engage with the courts and may even increase it. It cautions, however, that these processes may raise concerns that are different from appearing in person.

¹ Gerstein, Bocian, & Agne Strategies, *The State of State Courts: A 2018 NCSC Public Opinion Survey*, National Center for State Courts (2019).

² <https://www.utcourts.gov/smallclaimsodr/>

³ <https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Documents/contact/index.html>

⁴ Lorri Montgomery, *State courts lead national effort to maintain access to justice despite COVID-19 pandemic*. (April 20, 2020). <https://www.ncsc.org/newsroom/news-releases/2020/state-courts-lead-national-effort-to-maintain-access-to-justice>

⁵ <http://mturk.com>

§2. METHOD

§2.1. Sample

Participants for this study were recruited using Amazon's Mechanical Turk (*MTurk*). Of the 246 valid responses⁶, roughly 75% self-identified as White or Caucasian, 10.2% as Asian, 7.3% as Black or African American, 5.3% as Hispanic, 0.4% as American Indian or Alaskan Native, and 1.6% identified as other/multiracial. The sample was approximately half male with 44% of participants self-identifying as female. The average age of our participants was about 40 years old with a minimum age of 22 and a maximum age of 74. About 25% of our sample reported an annual household income between \$50,000 and \$74,999. Another 20% reported income above \$100,000 while approximately 12% had an income below \$24,999. Roughly 51% of the sample self-reported as politically liberal, about 36% as conservative, and 12.8% reported that they were neither.

A majority of our participants (62%) had been to court previously, though a much smaller percentage had been to court in the last year (13.8%). Three and seven-tenths percent (3.7%) of the sample reported for jury duty but were not selected, 3.3% served on a jury, 2.8% were witnesses in a case, 2% were a plaintiff in a lawsuit, 1.2% were victims of a crime, 0.8% were criminal defendants, 0.4% were a defendant in a lawsuit, and 1.6% went to court for an unspecified reason.

§2.2. Survey

The survey was designed and hosted on Qualtrics.com. The survey took an average of 13 minutes to complete and respondents received \$1.00 for completing the survey.

§2.2.1. Section One. Between-Groups Comparisons

Section One was designed to shed light on how participants would react to each dispute resolution process independently. To that end, each participant read the following scenario:

You have decided to move out at the end of your lease with your current landlord. When you moved in, you paid the required security deposit of two month's rent. According to state law, your landlord had 30 days to either return the security deposit or to explain why it will not be returned. When the 30 days passed you still had not heard anything. Two weeks later, you called your landlord and they refused to return your deposit or to explain anything.

To address the COVID-19 pandemic, an additional statement was included which read:

Please also imagine that you have been successfully vaccinated against COVID-19 and you are now fully immune to it. This means that there is absolutely zero chance that you or anyone around you could contract COVID-19.

The purpose of this second statement was to reduce the effect of the pandemic and encourage participants to consider only the assigned dispute resolution process. This was important for the between-group portion

⁶ Five hundred and sixty-six participants were invited to complete the survey. Data quality was assessed by two independent coders who evaluated the open-ended responses to identify questionable data. The valid responses used here do not include those questionable responses; see Timothy J. Ryan, *Data Contamination on MTurk*. (2018). <http://timryan.web.unc.edu/2018/08/12/data-contamination-on-mturk/>.

of the survey given that participants could be expected to highlight ODR across the board simply because it best addressed the pandemic. Neutralizing this effect allowed participants to consider the processes themselves and report their expectations without concern for their health.

Participants were then asked the extent to which they understood the scenario and statement. Participants who indicated that they did not understand were excluded from the survey.

Participants were randomly presented with descriptions of one of three dispute resolution processes—small claims trial, alternative dispute resolution (ADR), online dispute resolution (ODR)—or a control condition which received no information about any of the dispute resolution processes. The descriptions were compiled using information from court websites and were standardized to ensure that they all presented largely the same information (see Appendix A for an example).

Participants were then asked how likely they were to try to resolve this dispute through the randomly assigned process. Because they received no additional information, participants in the control condition completed these questions based on how they assumed they would have to resolve the dispute. Participants were also asked how much they agreed with several common criticisms of court processes⁷.

§2.2.2. Section Two. Within-Groups Comparisons

Section Two asked participants to directly compare the three dispute resolution processes (small claims, ADR, and ODR) given the current (actual) pandemic conditions. This permitted a direct comparison of which process they preferred in light of the current situation and offered some potential for insight into why. Participants reported their willingness to engage and their top three concerns with each resolution process from among the following seven statements:

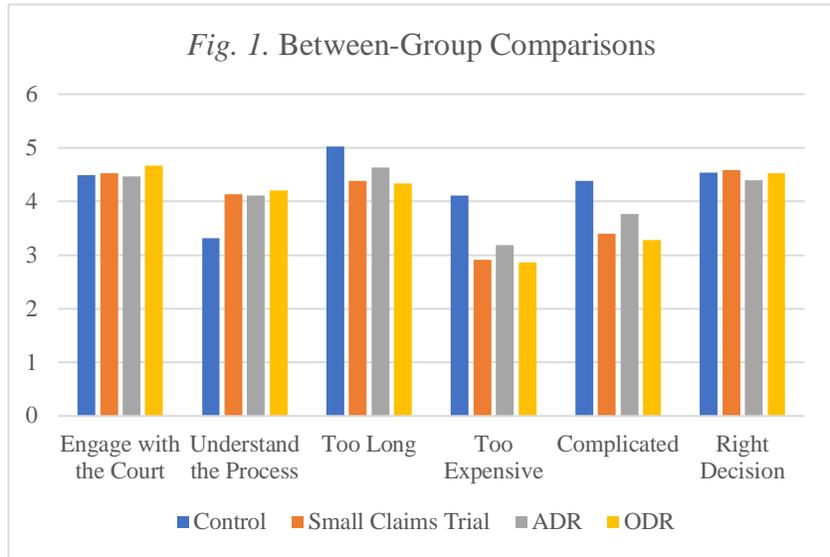
- I would be exposed to COVID-19 because the courts did not do enough to protect me.
- I would be treated rudely by people who work for the courts.
- I would be unable to tell my side of the story.
- I would receive the wrong outcome because of a mistake the courts made or something the courts misunderstood.
- I would not have anyone to explain the process so I could understand what was going on.
- The process would take too long.
- The process would be too expensive.

⁷ See Sara C. Benesh, *Understanding public confidence in American courts*, 68 J. Politics 697-707 (2006); Sara C. Benesh and Susan E. Howell, *Confidence in the Courts: A Comparison of Users and Non-users*, 19 Behavioral Sci. L. 199 (2001).

§3. MAJOR FINDINGS

§3.1. Between-Group Comparisons

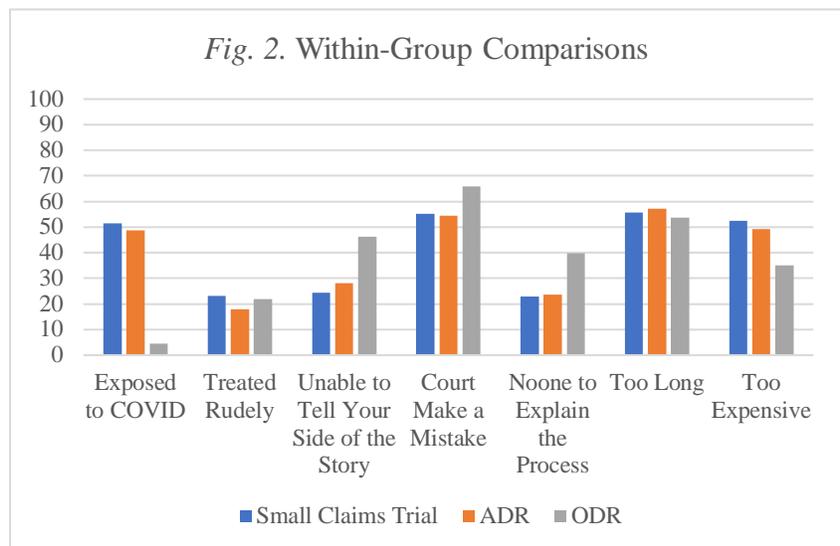
Across conditions, respondents were similarly likely to engage with the courts and to expect that the courts would make the right decision during the case (see Fig. 1; see Appendix B for all comparison statistics). Those in the control condition were statistically significantly less likely to expect that they would understand the process but more likely to believe that the process would be too long, too expensive, and complicated as compared to all three dispute resolution processes. Differences among small claims, ADR, and ODR were generally not significant but trends were identified suggesting that participants may have felt that ADR takes longer, is more expensive, and is more complicated than small claims or ODR processes.



§3.2. Within-Group Comparisons

When they were able to directly compare, respondents were least willing to engage via the small claims process (Mean = 3.09 [out of 5]) but were significantly more willing to use ADR (Mean = 3.33), and most willing to use ODR (Mean = 3.68).

Regarding their top three concerns for each court process, significantly fewer participants reported that exposure to COVID was in their top three concerns for ODR than ADR or small claims but participants were also significantly less worried about the expense for ODR than the other two processes (see Fig 2). Participants, however, were significantly more worried about their inability to tell their side of the story, the potential that the court would make a mistake, and that there would not be anyone to



explain the process for ODR than ADR or small claims. Participants were not differentially concerned about being treated rudely or that the process would take too long and differences between ADR and small claims were non-significant.

§4. CONCLUSIONS AND CAVEATS

The current survey sheds light on the use of online dispute resolution processes. When individuals were presented with only one dispute resolution process (and were not vulnerable to COVID-19), they did not distinguish among processes. This suggests that expectations may not be impacted by the process when the public is unable to directly compare. **Thus, our work provides no evidence that online court processes significantly impacts the decision to engage with the courts.**

Importantly however, presenting information about that process does appear to be important. Participants who were not presented with any information about the dispute resolution process had the most negative responses. **This suggests that the courts would be well-advised to ensure that descriptions of court processes are readily available.** Simply reading our relatively brief explanation resulted in more positive evaluations for all three processes.

Our survey also sheds light on participant expectations when they are able to select among resolution processes (in the context of the current pandemic). Although participants were generally willing to engage with the courts, they were significantly more likely to report a willingness to engage via ODR as compared to ADR or small claims (they also preferred ADR to small claims). Most interestingly, participants reported different concerns for the three processes. Participants were significantly more worried that ODR would prevent them from being able to tell their side of the story, that the courts would make a mistake, and that there would be no one to explain the process. Unsurprisingly, participants were less concerned about exposure to COVID-19 in ODR, but they were also less concerned about expense as compared to ADR and small claims. **Together these results suggest that there may be particular concerns that courts should attend to in online processes.** Specifically, it appears to be important that courts take extra time to ensure that individuals understand that they will be able to tell their side of the story and that they will have someone to explain how the process works to them.

Most concerningly, the most endorsed issue across resolution processes was that the courts would make a mistake in ODR. Unfortunately, the current data do not allow for an analysis of what kind of mistake the courts might make or why this is more concerning in an online setting, but this does suggest that courts should spend a little more time than might appear warranted in explaining their decisions. Given the concern identified here regarding about less voice in ODR, they may also be well-served by spending some of that time connecting the decision to the information presented by both parties. Note that these recommendations track well with those regarding procedural fairness in general and the current data could be interpreted as simply encouraging greater adherence to these principles⁸ and, although we specifically evaluated ODR, these findings may also extrapolate to other online court processes as well. It is important at this point to note that decisions in some ODR models are not, in fact, made by the courts and are instead solely the result of discussions between the parties.⁹ Nonetheless, it is still worthy of note that court mistakes appear as a top concern for so many individuals. In these cases, courts are not able to provide further insight into the decision but may be well-served by working to ensure that users understand their role in the process.

Despite its contribution, our work is not without limitations and chief among these is generalizability. *MTurk* workers are reasonably representative of the general population¹⁰, but they necessarily oversample individuals who are generally comfortable with technology: 95% of our sample reported that they were at

⁸ See <http://www.proceduralfairness.org/>

⁹ Michigan's MI-Resolve is an example of such a model.

¹⁰ See Kevin E. Levay, et al., *The Demographic and Political Composition of Mechanical Turk Samples*, 6 Sage Open 1 (2016).

least somewhat comfortable using technology to communicate. Additionally, as with all general population samples, our work under-samples minority groups who may be less willing to engage with the courts online or have different concerns. Finally, it is important to note that the lack of differences in the between-group condition comparisons rests on a statistically null result. Thus, although we appear sufficiently powered to identify a significant effect and the means are numerically quite similar, such results should be treated with caution.

APPENDIX A. COURT PROCESS DESCRIPTIONS EXAMPLE (ODR)

Resolving a Landlord/Tenant Dispute

You can resolve a landlord/tenant dispute (e.g., a disagreement about a security deposit) using our court's online dispute resolution process.

Starting the Process

To start the online dispute resolution process, you can simply apply using our online system. You will be asked to provide the name and address of your landlord, how much you are claiming, and a brief explanation of why your landlord owes you money. In this process, you are the plaintiff and your landlord is the defendant. You DO NOT need an attorney to use the online dispute resolution system.

Preparing

The online dispute resolution process will involve an online discussion. Before the discussion, gather all your receipts, your lease agreement or contract with the landlord and any other information that may be useful as evidence in your favor, including proof that you gave your landlord a forwarding address.

The Process Itself

During the online discussion, the plaintiff (you) and the defendant (your landlord) will work with a third party from the court (a facilitator) to try and reach a solution using an online program. A facilitator is a neutral person trained to help people reach an agreement. You will NOT need to go anywhere or do anything at a specific date or time. This program allows you and the defendant to send and reply to messages, much like email.

Outcome

You and the defendant will decide how to resolve your dispute with the help of the facilitator. If the defendant agrees they owe the money and all parties agree on the amount owed, the facilitator can help you set up a payment plan. If the defendant agrees they owe you the money but disagrees about the amount owed, the facilitator can help you come to an agreement on the amount owed. Any agreement will be enforced by the court. If you don't come to an agreement, you still have the right to go to trial.

APPENDIX B. REPORT STATISTICS

Table 1. Between-Group Comparisons

Question/Statement	Control (<i>n</i> = 62)	Small Claims (<i>n</i> = 65)	ADR (<i>n</i> = 61)	ODR (<i>n</i> = 58)	
Given that you are immune to COVID-19, how likely are you to try and get your deposit back?	4.49	4.53	4.47	4.67	
How well do you understand how to resolve your dispute?	3.32 ^{a,b,c}	4.14 ^a	4.11 ^b	4.20 ^c	
<i>Thinking about the process for getting your money back as you understand it, to what extent do you agree with the following statements?</i>	This process is going to take a while.	5.03 ^{a,b,c}	4.38 ^a	4.63 ^b	4.34 ^c
	This process is going to be expensive.	4.11 ^{a,b,c}	2.91 ^a	3.18 ^b	2.87 ^c
	This will be a complicated process.	4.38 ^{a,b,c}	3.40 ^a	3.77 ^{b,d}	3.28 ^{c,d}
	The courts are likely to make the right decisions throughout this process.	4.54	4.59	4.39	4.52

Note. Responses to the first two questions were scored on a 1-5 scale. The last four were scored on a 1-6 scale. Means that share a superscript are statistically significantly different at $p < .05$.

Table 2. Within-Group Comparisons

Question/Statement		Small Claims	ADR	ODR
How likely would you be to resolve this dispute using this method?		3.09 ^{a,b}	3.33 ^{a,c}	3.68 ^{b,c}
<i>Please select your top three concerns.</i>	I would be exposed to COVID-19 because the courts did not do enough to protect me.	51.6% ^a	48.8% ^b	4.5% ^{a,b}
	I would be treated rudely by people who work for the courts.	23.2%	17.9%	22.0%
	I would be unable to tell my side of the story.	24.4% ^a	28.0% ^b	46.3% ^{a,b}
	I would receive the wrong outcome because of a mistake the courts made or something the courts misunderstood.	55.3% ^a	54.5% ^b	65.9% ^{a,b}
	I would not have anyone to explain the process so I can understand what was going on.	22.8% ^a	23.6% ^b	39.8% ^{a,b}
	The process would take too long.	55.7%	57.3%	53.7%
	The process would be too expensive.	52.4% ^a	49.2% ^b	35.0% ^{a,b}

Note. Mean responses were scored on a 1-5 scale. Means and percentages that share a superscript are statistically significantly different at $p < .05$.