

**1 Thanks to Rick, Klaus and Humaira for organizing this session.**

**Very glad to be here.**

**David Fairman sends his apologies – he had thought he could make this changed date, but as it turns out could not do so.**

**David and I worked together as part of the broad initiative under which the system I am talking about today was developed. As well, we have active aspirations to work together on several other initiatives.**

**Ghk international is a London based consulting company with permanent offices in Canada, the EU, Hong Kong, India, Pakistan, the Philippines as well as scattered project offices. We are employee owned, with about 40% of employees owning shares and serious limits on the amount of shares any single employee can own.**

**We undertake a lot of urban environmental servicing and municipal governance assignments and have engineers, planners, municipal finance, and like people for that. As well we have a developed country based consulting practice undertaking community and regional development, program evaluation, and related work. We also have a cultural architecture practice in our London and Portsmouth offices – worth visiting our web site to see some of the neat things they have done.**

**Two recent ghk developments with which I am associated are exciting– development of a performance management approach for all of our consulting services – and establishing an M&E capacity based in our Delhi office and staffed with nationals.**

**2 Disclaimer – mention briefly**

**Acknowledge wonderful people I have worked with:**

**Oregon – Mike Niemeyer and Brody**

**USIECR – Kirk Emerson, Dale Keyes**

**EPA – Will Hall and Lee Scharf**

**Florida – Bob Jones and Chris Peterson**

**PCI – Chris Carlson, folks at MODR, and of course David Fairman**

**Big caveat – I am not from the ADR field – trained as an economist – have been working with ADR clients for almost three years now.**

**I know that some of the terms I use are not universal by any means –**

**E.g. “neutral” – practitioner, facilitator, mediator**

**E.g. – ECR, ADR, collaborative processes, agreement and non-agreement seeking**

**Ask your permission to make some slips and for general use of terms – please ask if I confuse you**

### **3 Cheaper better faster**

**You know that many advocates promote ADR on these grounds – perhaps less now than previously – but it is pretty clear to me that this is one of the expectations of funders – e.g. the Oregon legislature, as I will show you shortly.**

**I challenge this claim. There is insufficient – far from sufficient – evidence that this could be true. And particularly for environmental, complex public policy cases.**

**The evaluation system I am talking about today is one of the first, if not the first, systematic attempt to assess the contributions of ADR in these venues.**

**And to translate cheaper better faster we are really talking about program effectiveness – *collaborative processes are more effective than a reasonable or likely alternative approach***

**In my view it is quite urgent that we address the effectiveness of ADR – I think that the patience of funders is wearing thin – evidence – state (Oregon, MODR, Ohio) programs are facing serious challenges to their existence and some could be ended this year. Also foundations such as the Hewlett foundation who have been funding ADR work for years are now requiring performance reporting and reducing funding levels.**

**The cheaper better faster claim is what an evaluator will focus on – if ADR is not effective it should not be funded.**

- 4 This system takes a performance management approach – similar to what is promoted by the bank, us federal government through GPRA, many states through results based accountability (including Florida and Oregon).**

**It is designed to accomplish the goals of those approaches:**

- Focus the organization on results**
- Clarify the results being pursued**
- Provide information for improved decision making**
- Enable internal and external reporting of results compared to activities and counts of outputs**

**The system has a very high level of face validity – looks right – to both ADR people and evaluators**

- Was developed collaboratively Oregon / USIECR – then reviewed by ADR peers in many venues – then looked at and adopted by other agencies – EPA, Florida, Interior, Maryland, Lisa Kloppenberg for her evaluation of the 9<sup>th</sup> circuit pilots, ADR conferences, AEA and CES conferences...**

**System addresses utilization issues – clear this is still an issue**

**5 Skip – list of agencies**

**Show briefly and go on**

**6 Focus on the three GPRA questions**

**These questions are a paraphrasing of what GPRA is pursuing – government performance results act under which us federal agencies need to report**

**It is striking how few can answer this – e.g. attendees at performance management training I provide**

## **7 Quick overview of the approach**

**I use outcome charts – first cousin to a logic model or logframe – the difference is a singular focus on results → outcomes, and a much fuller articulation of those outcomes.**

**The rationale for this is that the outcomes are what give programs the answers to the first two questions:**

- What is my unit / agency supposed to achieve?**
- What will it look like when we have achieved it?**

**My approach also assumes that agencies are competent at planning, implementing and reporting on activities & outputs. The problem has been that those have not previously been structured to achieve results**

**To enhance utilization practitioners must view the information as valid and reliable. It must also be accessible.**

**The charts have been reviewed extensively to achieve face validity – and I have worked with the early data to confirm the statistical validity and reliability.**

**8 Information comes from questionnaires to parties, neutrals, project/case managers – parties are surveyed twice – at conclusion of the process and later, roughly 6 months, but when appropriate.**

**The neutral and project manager tell us when the case is concluded or finally stalled, and when the follow-up should be – they also can defer evaluation if appropriate to the case**

**Information is reported as averages – the average score of parties on each outcome. Parties are the primary information source – we have empirical suspicions that neutrals are systematically optimistic. 0 – 10 scale**

**We use best practices in survey design (Don Dillman) and are getting response rates approaching 70% and expect them to increase.**

**Currently mainly mail administration – moving now to web and email – experimenting with handing out for short ADR processes.**

**Taking about 10 hours per ADR case to administer, analyze and report – is self administered**

**This approach has been designed for implementation in the u.s. it intentionally stays outside the process to avoid any chance of adversely affecting the collaborative process. However it is entirely feasible that an evaluation process could be part of the process using participatory methods, and serving both evaluation and the process itself – so long as the evaluation standards were not compromised.**

**9 I am going to work only with the dispute resolution (ADR) services today – the system includes a wide range of other collaborative services but no time today**

**The example I will use is from Oregon – the others are very similar, modified to suit the agency and context and practice**

**E.g. in some agencies staff also provide neutral services, in others they only serve as project or case managers**

**10 This is what we call the “top level” chart – it represents agency accountabilities for all of its’ programs and services.**

**Note the very top accountabilities – this is what is in the ODRC enabling legislation – note cheaper better faster!**

**ODRC – or the PPP – has 4 main program areas – the executive order to bring ADR throughout state government – a roster, dispute system design – and case management – or ADR cases.**

**It is on the latter that I will focus today – note that we speak of good process and good agreements equally.**

**Let’s start with the “ADR successful...” outcome.**

- 11 This is the case management – or ADR chart. Think of this as a drilling down from the top level chart – click on case management – this is what you see underneath it – just as you clicked on the “ADR successful ...” outcome to get here**

**These are the outcomes that are being accepted as a reasonable articulation of best practice factors for ADR.**

**Focus on process 2 elements and agreements, and other stuff**

**Remind them of the face validity checks and the need to adapt to specific programs**

**This was the first chart developed – the basic structure has remained the same across different agencies –USIECR initial response – does not work for us – hmm – it does seem to work**

**One of the benefits of the multi agency adoption is continual adaptation and some significant re articulation or clarifications. E.g. – capacity outcome in Florida stated as repeated use of the process is much more in line with what we know from adult education.**

**13 But even this drilling down from the top level chart still has ambiguity – need to more fully articulate outcomes if we are to address the first two questions**

**I refer to this as nesting outcomes – many of the outcomes you saw in the ADR / case management chart have a whole set of outcomes that themselves must be achieved if the charted outcome is to be realized.**

## **14 Right neutral nested outcomes**

### **Chart is timed**

- a. Want to illustrate how nested outcomes work, and how these relate to both information gathering and reporting.**

**Start with the appropriate neutral outcome – what on earth does that mean?**

- b. Nested outcomes**

**What will display here are the five nested outcomes that constitute appropriate neutral – see that it is practice focused, not just selection. Note that we do not use arrows – process is dynamic and complex – not simple linear relations – the rolling out of what a neutral does to accomplish these nested outcomes, and thus the charted outcome – is the art in their practice. But we can describe the art in a way that we can assess performance**

- c. The nested outcomes still are not really observable – need to drill down further – click – to see further set of outcome that are what we ask about on our questionnaires.**
- d. Summary – we go from the questions (what the neutral has to achieve to “manage the process well”) to the nested outcomes that have to be achieved to be an “appropriate neutral”.**

**15 These are the results from an illustrative case in Florida – the FCRC.**

**I use this for two reasons – convenience – and cheerleading – I had it at hand compared to the Oregon data which I have just received an update on – and it shows great results – practitioners have expressed concern about how the information will be used – see – no worries!**

**In Florida we just have 4 nested outcomes – the satisfaction with neutral nested outcome goes somewhere else because of state accountabilities**

**Note – easy to see how you did – averages and the 0 to 10 scale is quite intuitive**

**16 But how good is good – what is a reasonable level of performance**

**Usually we see scores ranging from 6 to 8 – sometimes much lower when something has gone wrong. How good is this – is it good enough?**

**Well – look at this chart – this is again FCRC – same case with high scores – but even here you can see a cascading diminution of results – as you move from the bottom where you have the early practice factors – through to the results of these in terms of collaboration, narrowing of issues where scores are slightly lower – then to the agreement outcomes where scores are again lower. And finally to the system wide results that are even lower.**

**First – this is what is supposed to happen – confirms that the quality of the process affects the quality of agreements and downstream benefits.**

**Second – think of this across many cases – we can id practice factors that need attention – or with a single case factors whose underachievement was problematic.**

**These outcomes are all reportable at the nested outcome level as well – remind of appropriate neutral – the system is testing valid and reliable, is widely accepted, identifies potential improvements, provides results info for reporting – and is comprehensible**

- 18 That is what I have time to show you about the system today  
These are the other dispute resolution processes that have been developed and are being used at different agencies**
- 19 I am confident that my claim that the system works is true  
I am also confident that the system is useful is true – we have seen dramatic benefits first from**
- a. Developing the charts so for the first time articulating what ADR people do**
  - b. Bringing back the information – used for professional development with neutrals, used for a common base for understanding and sharing what you do thereby enabling reflective practice**
  - c. Already aiding external accountability reporting – Oregon**
  - d. Is providing the basis for a systematic reflection on ECR practice in us federal and state agencies – in may 2004 the results of this will be presented and ECR practitioner training program announced that will address the findings**

**20 Now for the caveats!**

**Effectiveness → partially there**

**Incrementality → very limited**

**Effectiveness and incrementality are related – ADR is more effective than reasonable alternatives**

**21 I am optimistic that we will get the resources we need to address these challenges.**

**Think we have a limited time frame – the system we have developed will buy 2-3 years – we are moving on from stories – have results focused data – can show improvement – but will not satisfy competent critics in congress or state legislature – of which there are many – or at least staffers and OMB analysts**

**The challenge arising from the complexity and heterogeneity of environmental and complex public policy cases**

**There are no reasonable counterfactuals for comparison – disputes often go through all options in their history – and there are very serious measurement issues and conceptual challenges in effectiveness**

**But we will get there – it is not a long reach - \$300k and 2 years and we will be there.**

**Now – briefly on the two challenges**

## **22 Finding counterfactuals**

**Give it up – they are rare – find a like case in terms of issues, parties, history, context – one that has used a reasonable alternative – not necessarily litigation – and then get access to parties and information without attorneys inhibiting for often very valid reasons → give it up**

**Different from, say, family court or hr settings where cases are large in number and quite homogeneous.**

**We propose identifying and working with exemplars of counterfactuals – different classes of cases and alternative processes**

**Can be done – use mining example**

## **23 Now for effectiveness**

**Problems here are conceptual and measurement.**

**Effectiveness = amount of benefit/resources required to get that**

**I think that ADR is often more costly during the transaction period – it when we move downstream when the benefits of a more complete and durable agreement set in that we will start to see the advantages of ADR – taken at the transaction period alone will systematically underestimate effectiveness of ADR**

**Measurement problems of recall – we need “coefficients” and determinants to forecast downstream effectiveness gains**

## **24 We have a plan**

**25 My claim**

**This system works well – it is a valid, reliable, comprehensible and useful way to:**

- a. Articulates your practice**
- b. Gets information to improve the practice**
- c. Provides a base and information for reflective practice**
- d. Successfully addresses internal and external reporting and accountability requirements**

**26 This is a public domain system – funded by public and foundation funds – all agencies contributing enthusiastically encourage and assist others to use it**

**Of course I am available to help you set it up and develop the implementation systems – but once that is done you can run it on your own**

**Thanks – if you want copies of the slides and my speaking notes please give me your card with a note to that effect – or contact me.**