Cultural Challenges to Mediation

By Pamela A. De Voe and C.J. Larkin

Today, one in nine U.S. residents is foreign-born. While we value and applaud diversity, when such a multicultural, multi-ethnic mix comes together in daily life, the result can be cacophony rather than harmony. To ease the tensions that are created as these communities interact, it is critical that we both increase the number of practicing ethnic mediators and increase all mediators' cultural fluency levels. We hope that this article, which relates some of our findings in training and mentoring multi-ethnic community mediators, will assist mediators in work with diverse ethnic communities.

Background
In 2005, two agencies, the International Institute of St. Louis, a refugee-settlement non-profit organization, and the Alternative Dispute Resolution Program from Washington University, School of Law, began working collaboratively on a multi-ethnic community mediation training project. Our primary goal was to train a cadre of multi-ethnic formal and informal leaders to be community mediators. We spent three months interviewing groups of local leaders from Africa, Asia and Latin America. We examined their salient traditional philosophies and methods of dispute resolution, the methods they had adopted/adapted in the U.S. and their perceived community needs around dispute resolution. We integrated our findings into a 24-hour basic community mediation training for 79 influential leaders from 26 ethnic communities. We trained two distinct groups. The first group consisted of 41 formally-educated, English-speaking ethnic leaders. The training stressed cultural sensitivity when facilitating with parties among ethnic group. The second training targeted 38 Somali and Somali Bantu (Eastern African) leaders, most of whom came to the U.S. as refugees and did not speak English and/or had little formal schooling. With the second group, we focused on informal, intra-community conflict.

Throughout this exciting and evolutionary process—the pre-training interviews, training, mentoring and monthly meetings—we encountered and examined contradictory, culture-based expectations of conflict resolution and the mediation process. In particular, with the help of Somali and Somali Bantu coaches and interpreters (each of whom had a minimum of 20+ hours of mediation training), we worked to understand some of the cultural differences that we encountered in the training. To prepare for each four-hour block of training, we spent two hours with the coaches and interpreters working out the dissonance between the process we were describing and the expectations of our soon-to-be-mediators.

Expectations of the Mediator
The pre-conceived expectations of the mediation process, which are a synthesis of culture and power relationships, create the greatest challenges a mediator faces when working with parties from other cultures. The five most critical expectations focus squarely on the role of the mediator. We have found that some of the pre-conceived notions of mediation include:

1. The mediator will be a wise man or woman, preferably an elder from within the community, known and respected by all parties, with a formal or informal position of leadership. This assures that the mediator would have extensive background information and experience with the parties, their families and associates because s/he is "one of them." This is at odds with the general western preference for a mediator unknown by, or at least unaffiliated with, either party.

2. The mediator will determine what is true. Many people come to mediation assuming that the mediator will listen objectively to both parties, sift
through the confusion and determine the facts. In the western model the mediator is
sifting through information and trying to help the parties come to an understanding
of facts and motives. Neutrality requires no pronouncements of what the mediator
determines to be true.

3. The mediator will reflect and uphold the morals and structure of society. This expectation is often so subtle that both the mediator and the parties may respond to it unconsciously. For example, the mediator (or interpreter) may support one party's higher social position by privilging them through with a level of politeness or respect reserved especially for people of their position. This is contrary to the western model's expectation that each party will be treated equally and no party given special privileges.

4. The mediator understands that the extended family and larger community have a stake in the mediation and will ensure that they have a voice in it. If the community does not have input into the process and resolution, it will be difficult for the parties to maintain their agreement to reconcile—particularly if the community is relatively small. This is in contrast to our individual-oriented mediation process which focuses on the immediate parties, often ignoring the larger community.

5. The mediator will provide the resolution. Having considered the parties, the facts, their desires and the possible outcomes, the mediator will provide the parties with a solution and a justification for that solution. On its face, this undermines party self-determination and empowerment and the mediator's role as facilitator, rather than judge or evaluator.

Many of our trainees applauded the western model's neutrality, open discussion and inherent respectfulness. In practice, the new mediators began their mediations in a

- Discuss potential outcomes and their impact on the parties, their families and community. Ask if anyone in addition to the two parties needs to be at the mediation or consulted.
- Discuss how an agreement would be enforced. Would third-party oversight or involvement be necessary? Often sole involvement of neutral mediators in shaping the agreement may not have the same "moral" force as if a community leader were involved.
- Explain how your program's mediation process usually works. Be specific about details of the process including what you will say in introduction, who will be in the room, where everyone will sit, what language(s) will be used, if an interpreter is necessary, caucus, written agreements, multiple meetings, etc. Discuss other decision/resolution avenues, and offer referrals or information to other experts or resources to prepare the parties and to diminish their reliance on the mediator.
- Identify and discuss any conflicting expectations regarding process or outcome.
- Move beyond orthodoxy. Determine a "win-win" process for the mediation which guarantees full awareness of the pros and cons of each process choice.

Suggestions for Clarifying Expectations
Our suggestions for resolving these tensions beg the question of how much, or even whether, any of these expectations should be taken into account, and whether the western model should be modified. Our intention is to share some of the adaptations and precautions we have used to respond positively to these expectations in a multi-cultural setting.

We have adopted the practice of pre-mediation interviews with the parties in order to discuss their expectations of the process. At these interviews, we clarify our program's assumptions about the mediator's role and the mediation process. We also create the opportunity for the parties to explore their expectations of the process and to focus on their needs and desired outcomes. Below are the areas we cover in the interview with each party.

- Get an overview of the perceived facts and issues.
- Explore past experiences with resolving conflicts with this or other parties—what was positive and non-so-positive. Don't assume, for example, that someone with a foreign-sounding name or accent will have a significantly different expectation of mediation from a native-born.
- Identify interventions or requests to authority or power sources (police, religious or community leaders, elected officials) that the parties have already made and what the outcome was.

* Discuss potential outcomes and their impact on the parties, their families and community. Ask if anyone in addition to the two parties needs to be at the mediation or consulted.
* Discuss how an agreement would be enforced. Would third-party oversight or involvement be necessary? Often sole involvement of neutral mediators in shaping the agreement may not have the same "moral" force as if a community leader were involved.
* Explain how your program's mediation process usually works. Be specific about details of the process including what you will say in introduction, who will be in the room, where everyone will sit, what language(s) will be used, if an interpreter is necessary, caucus, written agreements, multiple meetings, etc. Discuss other decision/resolution avenues, and offer referrals or information to other experts or resources to prepare the parties and to diminish their reliance on the mediator.
* Identify and discuss any conflicting expectations regarding process or outcome.
* Move beyond orthodoxy. Determine a "win-win" process for the mediation which guarantees full awareness of the pros and cons of each process choice.

Pamela A. De Vee, Ph.D., is an applied anthropologist and mediator who has worked with immigrants and refugees for more than 25 years. She is the Community Connections Manager for International Institute St. Louis.

C.J. Larkin, J.D., M.A. teaches Mediation and ADR Theory and Practice at Washington University School of Law (WULAW) in St. Louis and is the principal investigator for WULAW's mediation program in Nepal.