

Mediation Models: An International Look at ADR

By Hannah Hayes

“Suppose there was one orange in the center of the table and you and I were fighting over the orange. You said you wanted the orange. I said I wanted the orange. So I finally said . . . you take the orange; I am fed up arguing with you about it. Then we discover that you wanted the orange for juice and I wanted the rinds to bake a cake and for icing the cake. And if we had sat down and talked about it, we could have gotten it resolved.”

—former Attorney General Janet Reno

At a 1998 press conference celebrating Law Day, Attorney General Janet Reno drew the attention of many lawyers by suggesting they “discourage litigation.” Quoting Abraham Lincoln, she urged them to “persuade your neighbors to compromise whenever you can. As a peacemaker, the lawyer has a superior opportunity of being a good man [or woman].”

Reno, true to her message, formalized the use of alternative dispute resolution (ADR) in the Justice Department. Internationally, the use of mediation in everything from civil to criminal to political conflicts has seen dramatic growth. While some programs were brought by outside agencies, others arose from within as a result of a community’s need for resolution outside the courts.

The American Bar Association (ABA) founded its first international technical legal assistance program in Europe and Asia in 1990 and has since expanded these efforts to more than 20 countries. In this article, *Perspectives* takes a look at three very different mediation projects and their impact on women in the countries that shaped them.

Mediation in Mexico Project

When the Latin American Law Initiative Council (LALIC) and the ABA Section of Dispute Resolution joined with USAID/Mexico in 2001 to increase the use of mediation in Mexico, three court-annexed programs existed. Five years later, Mexico had 28 court-annexed centers operating in 17 states and more than 500 mediators had trained under the Mediation in Mexico project.

“It just snowballed,” according to Macarena Tamayo-Calabrese, a Chicago-based immigration lawyer and former LALIC director who coordinated the project.

“Our goal originally was to build one center, but when we went looking, we found 15 different places that wanted this project,” Tamayo-Calabrese says. After seeing the demand, the project members

decided to provide technical aid to increase the number of mediation centers and widen the impact. ABA project members worked with lawyers, legislators, and mediators in Mexico to address each region’s specific needs.

Through the enthusiastic efforts of the participants who trained under the program, the project coordinators garnered the support of the federal and local governments to open the mediation centers to relieve the backlog of court cases.

Today, court-annexed mediation centers in Mexico deal with everything from family law to large business disagreements. “In many instances people don’t have the money to [go to court] or the cases are just not appropriate for the courts,” Tamayo-Calabrese says. “So they have no place to go and that turns into neighborhood violence; now there is a place for people to work out their problems.”

“The ABA Mediation Project in Mexico represented a paradigm shift in mediation development in this country,”

says Cecilia Azar, a Mexican lawyer and mediation consultant on the project. The Mexican Supreme Court recently concluded that the mediation principles developed in the project should be the foundation for the drafting of state laws on mediation, Azar says.

Tamayo-Calabrese points out that the role of women in the Mediation in Mexico project was crucial to its success. The two main U.S. consultants were women. Melinda Ostermeyer was responsible for the Multi-Door Dispute Resolution program in Washington, D.C., and Dawn Martin is a lawyer who focuses primarily on mediation. Despite the fact that many women lawyers in Mexico took the lead early on, project members met with some cultural barriers.

“In the beginning, mediation was looked at as wishy-washy—like ‘girls’ stuff’ that may be done in the United States but not in Mexico,” Tamayo-Calabrese says. However, the project had the cooperation of important Mexico/U.S. leaders like Wayne Fagan from Texas. A well-respected lawyer, mediator, and international arbitrator, Fagan had substantial contacts in the Mexican legal community. He opened important doors that lent credence to the significance of mediation in the view of male jurists and lawyers in Mexico.

“Other early male leadership in Mexico was secured with the involvement of Rafael Lobo Niembro, a lawyer and mediator from Monterrey, and the then-president of the Supreme Court of Guanajuato, Héctor Manuel Ramírez Sánchez,” according to Tamayo-Calabrese. “It was this coalition of men and women lawyers from both countries that moved mediation from the sidelines and into the mainstream.”

Further, important decision makers were brought to the United States and Puerto Rico to witness mediation at work and to discuss the matter with people of similar positions. “This was a turning point,” Tamayo-Calabrese says. “It was great to see women and men in mediation acting as professionals; it made a big difference.”

Overcoming Cultural Barriers in Latin America

When Mariana Hernández-Crespo was a student at Harvard Law School, a professor asked the class to write down one idea they would like to carry out in their careers. The Venezuelan student, who was the daughter of Venezuela’s first female chief justice, wrote “the multi-door courthouse.”

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Hernández-Crespo puzzled over how to take what she learned in the ADR program at Harvard to the disenfranchised in Latin America. She recalls doing an exercise where an adversary is approached for the last time after several rounds of negotiations. “We’re supposed to think of what we want to get from them, and there is this assumption that I have to look out for my self-interest. But I couldn’t do that in Latin America, where people often think about what is best for all parties involved. We don’t have that same sense of self-protection.”

Nevertheless, Hernández-Crespo felt that a systematic use of ADR or a “multi-door courthouse” would bring increased citizen participation in Latin American countries. At the University of St. Thomas–Minnesota (UST) in St. Paul, Minnesota, she founded the International ADR Research Network and directed a pilot program to explore how to best use mediation in Brazil.

“Mediation has been promoted a lot in the region by the World Bank

and other organizations,” Hernández-Crespo says. The lack of a strong legal system (in some countries courts are backlogged for up to 10 years) combined with cultural norms to cede power to certain individuals resulted in questionable success.

“The reality of ADR in the region is that arbitration is used for those who don’t have access and the judiciary [is used] for those who can afford the lawyers and the luxury of waiting,” Hernández-Crespo says. Further, she adds that “if you don’t like what is offered, you can’t resort to the judiciary because they are backlogged. As a result, many people are willing to take whatever ruling they can get.”

In many Latin American countries, the legal system had been imported by European colonizers, which means that historically people gave it little respect. A tradition of mediation outside the system evolved, particularly in the *favelas* (slums) of Brazil, where people rely on strong-armed “mediators” or representatives of gangs and drug traffickers.

Last year, the UST International ADR Research Network completed a 10-month study in Brazil to examine how a successful mediation program might be implemented. “We used a consensus-building model that brought in lawyers, judges, academia, business leaders, and leaders from the *favelas*,” Hernández-Crespo says. The goal was to cross the historical and cultural barriers that kept mediation from reaching the people who needed it the most.

The project concluded that for mediation programs to work, all stakeholders need to be on board. During the process, technology was used to create virtual public squares so all participants could communicate. At the study’s completion, web cams and online classes proved helpful to carry out and expand mediation training.

While UST continues to train mediators, their approach is different. “Instead of saying ‘here is the American way of doing things,’ we do it very differently,” Hernández-Crespo says. “We say, ‘here is what we can

(Continued on page 14)

and minorities who are available to speak to the media or write articles about special areas. This exposure is helping women and minorities become known in the field and is leading to their selection as neutrals, says Sasha Carbone, associate general counsel and chair of the AAA Diversity Committee, based in New York.

AAA also agreed to provide training at a reduced rate for a National Asian Pacific American Bar Association meeting in the spring and has other minority bar association trainings in the pipeline. "It was a deep

commitment to make sure that we meet these needs," Carbone says.

Both JAMS and AAA provide free training for their fellows. AAA also provides fellows with free access to its programs and events. In addition, AAA helps its panelists refine both their résumés and experience to help them get selected.

Meanwhile, organizations that feature panels of neutrals such as AAA, the Financial Industry Regulatory Authority, and JAMS continue to recruit minority candidates by attending conferences and minority, local, state, and

national bar association meetings.

Community-based programs, especially volunteer programs, are eager to provide opportunities for women and minority neutrals to get experience. Some offer apprenticeship programs where experienced neutrals act as mentors, Volpe says.

And other diversity initiatives exist, too, Johnson says. "So far they haven't met with success, but they are plugging away at it. It is going to take time." ❗

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MEDIATION MODELS: AN INTERNATIONAL LOOK AT ADR

(Continued from page 9)

offer, and let's see what we can learn from each other.' "

Restorative Justice in Northern Ireland

The term "ordinary decent crime" (ODC) may strike some as odd, but in countries transitioning from violent histories, the expression denotes nonterrorist or politically related crimes. In Northern Ireland, ODC remained a problem long after the 1998 peace agreement between the British and Irish governments and the communities in conflict.

Throughout the 30-year conflict, communities on both sides of the Catholic and Protestant divide distrusted police and a judicial system largely focused on containing violence against the state. Thus, an informal system of justice evolved with paramilitaries policing their respective communities. The responses to ordinary crime involved violent beatings, punishment shootings in the form of a bullet in the kneecap, and banishment from the community—all administered by paramilitaries.

Seeking to end the violent response to problems, the Catholic and Protestant communities formed separate programs aimed at bringing the perpetrators to confront community members where they were given

opportunities to make amends.

"Neither of the two communities had a grand plan about how it was supposed to look, but it took shape based on community needs and the skills and knowledge of the key individuals in both communities," says Anna Eriksson, a lecturer at the Institute of Criminology and Criminal Justice, Queen's University of Belfast. Eriksson studied criminology at the University of Cambridge and has written extensively on community restorative justice in Northern Ireland.

"This organic way of practice continued, and programs that initially targeted 'punishment violence' now work with a wide range of cases, from work complaints to more serious crimes," Eriksson points out. The programs now receive government funding, following the eventual agreement of both communities to abide by government-established protocols. The British government is now considering a similar initiative to deal with youth crime in England.

In addition to transitioning away from violence, the process empowered women and other previously marginalized groups. "It is not just about reducing recidivism, but also personal and community empowerment," Eriksson says. "Several brilliant women played a major role in the

formation and running of these projects in both communities. They train and use a large number of volunteers who have subsequently gone on to further education and training."

Beyond Borders

Even in cultures where mediation runs deep within the area's tradition, governments are seeing a need for more formalized mechanisms to adequately ensure access to justice for every member of society. Organizations like Mediators Beyond Borders (MBB) are partnering with governments and nongovernmental organizations to increase access to justice, whether in court-annexed programs or collaborative negotiations and restorative justice initiatives.

"Our purpose at MBB is mainly so they don't have to reinvent the wheel," says Lynn Cole, a Florida-based mediator and president-elect of MBB. "It's very important to go into a new country with an open heart and an open mind to help develop what's best for that particular country."

And while "mediation programs from country to country are vastly different," Cole concludes, "what is fascinating is that in many countries the pioneers in mediation are women." ❗

Hannah Hayes is a Chicago area freelance writer.