

WASHINGTON COLLEGE OF LAW

ALTERNATIVE DISPUTE RESOLUTION NEWSLETTER

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Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. -- Abraham Lincoln, "Notes for a Law Lecture," 1850

WHO WE ARE

The Alternative Dispute Resolution (ADR) Society is a student organization dedicated to promoting student interest in ADR at the Washington College of Law. The Society serves to help students gain an understanding of and promote the use of ADR as an effective alternative to litigation. The group provides students with the opportunity to hear from prominent ADR experts in the field and to participate in local mediation trainings and competitions. The Society also participates in events sponsored by ADR groups at other area law schools.

BOARD MEMBERS

- Debra Berman, *Founder and President*
- Moray Horne
- Kelly Liggett
- Sean McDonald
- Travis Markley
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- Kevin Rosenthal
- Matt Trumble
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TABLE OF CONTENTS

<i>WHO WE ARE</i>	2
<i>FALL 2006 EVENTS:</i>	2
<i>WORK ACCOMPLISHED BY THE SOCIETY</i>	2
<i>PRACTITIONER SPOTLIGHT</i>	4
<i>COMPETITIONS</i>	4
<i>ADR COURSES @ WCL</i>	5
<i>ADR COURSES @ OTHER SCHOOLS</i>	5
<i>INT'L ARBITRATION PROGRAM AT WCL</i>	6
<i>GLOBAL ADR NEWS & INITIATIVES</i>	7
<i>ARTICLES</i>	99
<i>Mediation and Culture: How Different Cultural Backgrounds Can Affect the Way People Negotiate and Resolve Disputes</i>	99

FALL 2006 EVENTS:

- **September 14-15:** Intra-School Negotiations Competition. Seven students were selected for teams on this year's regional ABA competitions.
- **October 5:** One hour introduction to mediation with the director of the AU Mediation Services.

- **October 9-12:** 3rd Annual Seminar on International Commercial Arbitration at WCL. Taught by leading practitioners in the field, this four-day intensive advanced seminar provided critical skills and practical insight into handling BIT arbitration cases under the auspices of the International Centre for Settlement of Investment Disputes (ICSID). More information can be found on the WCL website.
- **October 27-29:** Free 20 Hour Mediation Training at American University. Each semester, AU Mediation Services conducts a weekend-long (20 hours) basic mediation skills training. This training is mandatory for all individuals who wish to become AUMS volunteer mediators. Please contact the American University's Mediation Services office at (202) 885-1313.

WORK ACCOMPLISHED BY THE SOCIETY

Since the Society began in September of 2004:

- Three new adjunct ADR professors were hired.
- One new section of Lawyer Bargaining was added.
- Two new sections of ADR were added.
- A coach was hired to train a team that entered the ABA Representation in Mediation Competition in March and a team to enter the ABA Negotiations Competition in November.
- WCL's team won the regional Mediation Competition and advanced to the final round of the national competition in Atlanta in April.
- This September, twelve students participated in an Intra-School Negotiations Competition for spots on this year's regional ABA Negotiation and Mediation competition.
- A team has been chosen to be sent to the ICC International Mediation Competition in Paris this February.
- Ten WCL students participated in AU's free 20 hour basic mediation training and are now certified mediators.
- The students and faculty joined together and are working to add a mediation and arbitration seminar for the next academic year.

WHAT IS ADR?

There are many ways to resolve conflicts. The movement toward ADR, sometimes referred to simply as conflict resolution, grew out of the belief that there are better options than going to court for settling disputes. Today, the terms ADR and conflict resolution are used somewhat interchangeably and refer to a wide range of processes that encourage nonviolent dispute resolution outside of the traditional court system. The field of conflict resolution also includes efforts in schools and communities to reduce conflict and help young people develop communication and problem-solving skills. Common forms of dispute resolution include:

- **Negotiation** is a discussion among two or more people with the goal of reaching an agreement.
- **Mediation** is a voluntary and confidential process in which a neutral third-party facilitator helps people discuss difficult issues and negotiate an agreement. Basic steps in the process include gathering information, framing the issues, developing options, negotiating, and formalizing agreements. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome.
- **Arbitration** is a process in which a third-party neutral, after reviewing evidence and listening to arguments from both sides, issues a decision to settle the case. Arbitration is often used in commercial and labor/management disputes.
- **Mediation-Arbitration** is a hybrid that combines both of the above processes. Prior to the session, the disputing parties agree to try mediation first, but give the neutral third party the authority to make a decision if mediation is not successful.
- **Early Neutral Evaluation** involves using a court-appointed attorney to review a case before it goes to trial. The attorney reviews the merits of the case and encourages the parties to attempt resolution. If there is no resolution, the attorney informs the disputants about how to proceed with litigation and gives an opinion on a likely trial outcome.
- **Peer Mediation** refers to a process in which students act as mediators to help resolve disputes among their peers. The student mediators are trained by a teacher or other adult.

BENEFITS OF ADR

While ADR cannot guarantee specific results, there are trends that are characteristic of ADR. ADR processes generally produce or promote:

- Economic decisions
- Rapid settlements
- Mutually satisfactory outcomes
- High rate of compliance
- Comprehensive and customized agreements
- Greater degree of control and predictability of outcome
- Preservation of an ongoing relationship
- Amicable termination of a relationship
- Workable and implementable decisions
- Agreements that are better than simple compromises or win/lose outcomes
- Decisions that hold up over time

ONLINE RESOURCES

- The ABA Section of Dispute Resolution
<http://www.abanet.org/dispute>
- Association for Conflict Resolution
<http://www.acresolution.org>
- American Arbitration Association
<http://www.adr.org>
- Center for Analysis of ADR
<http://www.caadrs.org>
- CPR Institute for Dispute Resolution
<http://www.cpradr.org>
- The Conflict Resolution Information Source
<http://www.crinfor.org>
- Northern Virginia Mediation Service
<http://www.gmu.edu/departments/nvms>
- Dept. of Justice Office of Dispute Resolution
<http://www.usdoj.gov/odr>

CONFLICTS APPROPRIATE FOR ADR

ADR can be used to help resolve almost any type of dispute. Family mediators, for example, help people with divorce, custody issues, parent-child or sibling conflicts, elder care issues, family business concerns, adoption, premarital agreements, neighbor disputes, etc. Other types of conflicts that respond well to ADR include workplace disputes, labor/management issues, environmental and public policy issues, international conflicts, and others.

PRACTITIONER SPOTLIGHT:***NORMAN H. STEIN, PROFESSOR & WCL ALUM***

Since 1989, Professor Stein has been an Adjunct Professor at American University, Washington College of Law. He teaches a negotiations course called *Lawyer Bargaining*, which involves student simulations and classes focused on such issues as factual analysis, persuasion and problem solving. Professor Stein currently teaches this course in the fall and the spring.

Following his graduation from WCL, Professor Stein worked in Philadelphia as a legal services attorney from 1974-76. From 1976-79, he was the Clinical Supervisor of the civil legal clinic at the University of Pennsylvania Law School. In addition to his work in the clinic, starting in 1977, he taught a weekly seminar on civil practice skills. From 1979-84, he was an Assistant Professor and Associate Director of Clinical Programs at the University of Arkansas at Little Rock School of Law. He administered the clinical program in addition to teaching.

From 1984-86, he was an Assistant Professor and Director of Clinical Programs at Hofstra University School of Law. There, in addition to directing several clinics, he founded the Alternative Dispute Resolution Clinic. The clinic received one of the first grants of its kind to fund legal education in alternative dispute resolution under Title 9 of the Higher Education Act from the United States Department of Education. While at Hofstra, in addition to teaching civil practice skills courses, he directed the mediation program and co-taught a mediation seminar with Professor Baruch Bush.

From 1989 through 1994, he was an Adjunct Clinical Professor at Brooklyn Law School where he directed the alternative dispute resolution clinic. He supervised students at the Brooklyn Mediation Center sponsored by the Victim Services Agency. Each semester involved an intensive training course, which he co-taught to the students over a three day period.

From 1986 to the present, he has engaged in the private practice of law concentrating in the areas of health care, labor, and employment law. His practice focuses on the interaction between the law, government policy and regulation, business, and health care.

COMPETITIONS

WCL is proud to announce that it sent two teams to this year's ABA Regional Representation in Mediation Competition on March 4th. The following students participated: *Sebastian Astrada, Debra Berman, Whitney Robinson, and Elaine Wang*. Sebastian Astrada and Whitney Robinson won the regional competition and represented WCL at the national competition where they advanced to the final round. The national competition was held in Atlanta this past April. This competition, in which law students role-play as advocates and clients in a mediation setting, measures how well students model appropriate preparation for and representation of a client in mediation and provides students with a valuable opportunity to experience the mediation process. Congratulations to the teams and to their coach, Dennis Sharp!

WCL will also send two teams to the ABA Regional Negotiation Competition this November. The competition promotes greater interest among law students in legal negotiation and provides a means for them to practice and improve their negotiating skills. The competition simulates legal negotiations in which law students, acting as lawyers, negotiate a series of legal problems. The simulations consist of a common set of facts known by all participants and confidential information known only to the participants representing a particular side.

In addition to these competitions, WCL will send a team to the ICC International Mediation Competition being held in Paris in January of 2007 and hopes to send a team to the Wilhelm Vis International Commercial Arbitration Competition in Vienna in April of 2007.

An Intra-School Negotiations Competition was held in September to determine which students will be eligible to compete in next year's competitions. Twelve students competed and seven were selected to represent WCL in this year's regional ABA ADR competitions. A similar competition will be held during the fall semester of each year to select teams for that year's competitions. For more information, please contact the coach at dennis@sharpresolutions.com.

ADR COURSES @ WCL

LAW-614 Alternative Dispute Resolution (3 hrs.) Examines various dispute resolution techniques, including negotiation, mediation, arbitration, mini-trials, and negotiated rule making, as alternatives or supplements to court litigation and administrative agency adjudication. Tactical and ethical issues as well as emerging legal and public policy issues (e.g., use of mandatory arbitration clauses) will be covered, and student participatory role-plays will be used extensively to give the course a practical dimension. *B. Murphy, D. Sharp*

LAW-651 Lawyer Bargaining (3 hrs.) Studies the lawyer's role in the resolution of disputes through nonadjudicatory processes such as negotiation, mediation, arbitration, and minitrial. The course focuses on theories underlying each form of dispute resolution and the lawyering skills necessary to implement effectively those processes. The lawyer's role and required skills will be explored from the dual perspective of the lawyer as advocate and as impartial dispute resolver. *Milstein, N. Stein., Clark/Twomey*

LAW-733 Seminar: International Environmental Dispute Resolution (2 hrs.) Surveys the various tribunals to which environmental disputes involving nations or nationals of different states can be presented for resolution. The course considers the ICJ, the European Court of Justice, and the U.S. federal court system, as well as the roles of the General Agreement on Tariffs and Trade, various human rights courts, and the International Labor Organization, along with the potential of alternative dispute resolution and roles of individuals and nongovernmental organizations. *Zaelke, Clark, Hunter*

LAW-789 Seminar: International Commercial Arbitration (3 hrs.) Analysis of the practical legal problems that arise in the arbitration of international commercial disputes. Drafting of arbitration agreements, selection of arbitral procedures and forums, and enforcement of arbitral awards as they arise under both domestic law (in U.S. and other major arbitration forums) and international law.

ADR COURSES @ OTHER SCHOOLS

One of the goals of the ADR Society is to increase the number of ADR classes available to students. If WCL does not offer a class you would like to take, you may be allowed to take classes at other area law schools and receive credit for them at WCL.

George Washington University

Course	Credits
Environmental Negotiations	2
International Arbitration	2
International Negotiations	2
Consumer Mediation Clinic	2-3
Mediation	2
Alternative Dispute Resolution	2-3
Negotiations	2-3
Mediation and Alternative Dispute Resolution	3
Negotiation and Conflict Management Systems Design	3
International Dispute Resolution	3

Georgetown University

Course	Credits
Alternative Dispute Resolution Seminar	3/2
Alternative Dispute Resolution: Theory- Practice- and Policy	3
International Negotiations Seminar	2
Labor Arbitration Seminar	3
Mediation Seminar	3
Multi-Party Dispute Resolution Seminar: Consensus Building and other Negotiation Processes	3
Negotiation and Mediation in Public Interest Settings	3
Negotiations and Mediation Seminar	3
Negotiations Seminar	3
Dispute Resolution in Federal Systems of Government	3
Dispute Resolution Under International Trade and Investment Agreements	2
International Commercial Arbitration	2
International Negotiations Seminar	2
Investor-State Dispute Settlement	2

INT'L ARBITRATION PROGRAM AT WCL

International arbitration is a flourishing legal practice area posing unique challenges to legal practitioners all over the world and has become the recognized dispute resolution method for the international business and economic fields. The widespread use of arbitration in bilateral investment treaties accentuates its role in the resolution of semi-public international disputes involving private and state parties.

The International Arbitration Program was developed at the Washington College of Law with the purpose of analyzing the practical and theoretical issues surrounding the development of international commercial arbitration and contributing to the task of better understanding this phenomenon. The Program prepares the legal profession to face these new challenges. Created under the direction of Dr. Horacio A. Grigera Naón, former Secretary General of the International Court of Arbitration of the International Chamber of Commerce, the Program builds on WCL's commitment to building a world community by identifying transnational legal issues and addressing these issues through the expertise of our accomplished full and part-time faculty, alumni and practitioners.

THIRD ANNUAL SEMINAR ON INTERNATIONAL COMMERCIAL ARBITRATION:

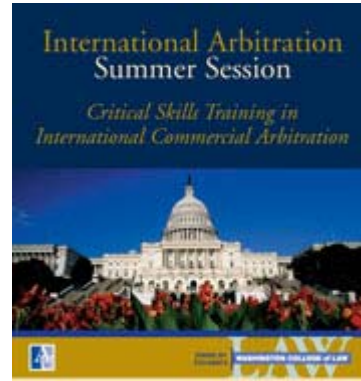
How to Handle a BIT Arbitration under the ICSID Rules, October 9 - 12, 2006

This four-day intensive advanced seminar provided critical skills and insight into handling cases under the International Rules of Arbitration of the American Arbitration Association's (AAA) International Centre for Dispute Resolution. Through dynamic interactive lectures and scenario-based exercises, participants were taught skills, strategies, and tactics for successfully conducting international arbitration cases on various factual and legal bases. A similar seminar will be offered again next year.

Please contact arbitration@wcl.american.edu with any questions about the program.

2007 INTERNATIONAL ARBITRATION SUMMER SESSION May 29-June 14, 2007

The Washington College of Law announces its third annual Summer Session on International Arbitration. Each year the International Arbitration Program gathers a distinguished faculty of leading practitioners in the area of international arbitration on the practical and theoretical aspects of specific international arbitration topics.



The Summer Session, open to practitioners for continuing legal education (CLE) credit and to JD and LLM candidates for academic credit, will touch on practical and theoretical aspects of procedural and substantive law topics currently arising in the practice of international arbitration and their foreseeable future developments.

The following courses will be offered:

- Salient Issues in ICC Arbitration (1 credit)
- Nuts and Bolts of International Commercial Arbitration (1 credit)
- International Arbitration and Choice-of-Law Issues (1 credit)
- How to Conduct an Arbitration Hearing (1 credit)
- Investor-State Arbitration: Current Developments (1 credit)

Director of the International Arbitration Program

Dr. Horacio Grigera Naón, is an independent international arbitrator and consultant on business and international law matters. He is a former Secretary General of the International Court of Arbitration of the International Chamber of Commerce and has been a practitioner in the field of international commercial arbitration and international business law for over twenty-five years. He holds LL.M. and S.J.D degrees from Harvard Law School, LL.B and LL.D. degrees from the School of Law of the University of Buenos Aires

GLOBAL ADR NEWS & INITIATIVES

*Excerpted with permission from:
Mediation News and Updates, September edition by Keith Seat*

Mediation Growing in Asia Pacific Region

Bernama General News, July 18, 2006

Participants from India, Australia, Malaysia, Japan, Hong Kong, Cambodia, Vietnam and the Philippines attended the Asia Pacific Conference on Contemporary Trends in Mediation and Arbitration in Kuala Lumpur in mid-July. The keynote address by Malaysian Chief Justice Ahmad Fairuz stated that his country is considering mediation legislation which would cover both voluntary and court-directed mediation in order to reduce court backlogs. The Chief Justice emphasized that courts around the world struggle to keep up with expanding caseloads and noted the successful use of mediation in Singapore, the United Kingdom, Canada and Australia. The conference was organized by the International Islamic University Malaysia and an arbitration center.

**Mediation Consistent with Tenets of Koran,
According to U.S. Judge**

Pakistan Link (August 14, 2006)

U.S. Ninth Circuit Judge J. Clifford Wallace recently stated in Pakistan that he believes use of mediation is consistent with the requirements of the Koran. Discussing difficulties facing judiciaries around the world, Judge Wallace emphasized mediation and its success in most of the 50-60 countries in which he has worked. Judge Wallace noted the potential for mediation in Pakistan and praised Pakistan's Supreme Court Justice Jilani for his encouragement of alternative dispute resolution.

Malaysia Cites Mediation In Litigation Decline

New Straits Times, July 11, 2006

Civil litigation has been declining notably in Malaysia in recent years, and observers credit mediation along with cyclical factors such as the fact that the Asian economic crisis a few years ago is no longer generating new cases. Private mediation and arbitration are both growing in the region, while the recently established Financial Mediation Bureau handled 3,700 cases in its first fifteen months.

China and India Expanding Use of Mediation

The Hindu, July 23, 2006

ShanghaiDaily.com, July 28, 2006

Both India and China are rapidly expanding local mediation programs in order to achieve efficiencies and greater satisfaction among parties to disputes, including multi-party disputes. In the Indian state of Andhra Pradesh, High Court Chief Justice G. S. Singvi announced that the High Court has decided to open alternative dispute resolution centers in all 23 districts in the state. A proponent of mediation, the Chief Justice urged newly-trained mediators not to be deterred by initial resistance to mediation from local practitioners. Similarly, Shanghai – China's largest city, with over 17 million residents – plans to open alternative dispute resolution centers in every district court, following the success of the mediation program established in 2003 in the Changning district court in Shanghai.

Appellate Commercial Mediation**Training Held in Nepal**

The Rising Nepal, August 30, 2006

Over ninety mediators and Nepalese Supreme Court judges attended an appellate commercial mediation training program in Kathmandu in late August. The program was organized by local groups with American instructors and supported by the U.S. Agency for International Development. Speakers emphasized the growing popularity of mediation worldwide and its importance in reducing court caseloads and ensuring equal access to justice.

ABA and USAID Help Bring Mediation to Liberia

The Analyst (Monrovia), July 4, 2006

A week-long mediation training for 50 participants in Liberia was organized by the American Bar Association and the U.S. Agency for International Development as a step to help sustain the peace in Liberia. In addition, a one-day workshop on the need for mediation legislation in Liberia was organized by the United Nations and the ABA. Noting similarities between modern mediation and traditional African dispute resolution by elders and chiefs, mediation legislation is sought to institutionalize mediation in Liberia and establish uniform standards that meet international norms.

Poland Proposes Large Payments to
Mediation Counsel

Polish News Bulletin, July 4, 2006

Draft executive regulations from the Polish Minister of Justice would provide state reimbursement for lawyers taking part in mediations that may be up to 150% of what is paid in ordinary court cases. Generous fees would encourage mediation, which only began in civil cases in Poland in December 2005, but ultimately will be set by the court.

Mediators Address Community Divisions After
London Bombing

Yorkshire Evening Post, July 4, 2006

Fearing conflict between Muslims and non-Muslims in south Leeds following disclosure that two terrorists in the July 2005 London bombing lived in the neighborhood, the Leeds council called in mediators to help. Two large meetings were held, with thirteen mediators facilitating smaller group discussions of community members' fears and concerns. The facilitated conversations brought out shared commitment to the community, and high levels of concern about being "invaded" by the police and media after the bombing.

Maryland County Approves Mediation
for Zoning Disputes

Baltimore Sun, July 19 and August 2, 2006

The Council of Howard County, Maryland authorized its Zoning Board to suggest voluntary mediation in zoning disputes over what the new zone or development plan should be. However, mediation is not to be used to resolve the initial legal issue of whether any zoning change is justified due to a change in the neighborhood or a prior zoning mistake.

West Virginia Expanding Court-Annexed Mediation

Charleston Daily Mail, July 26, 2006

The success of the circuit court mediation program in Kanawha County, West Virginia has resulted in a mediation pilot project in the magistrate court. Four other counties in West Virginia currently have magistrate court mediation programs, and the state bar's goal is to have court-annexed mediation in every magistrate court in the state.

Department of Energy (DOE) Requires Mediation in
Nuclear Power Industry Disputes

Final Rule, August 12, 2006

In a final rule published August 12, the Department of Energy established a two-step resolution process for disputes with nuclear power companies. The new rule provides government insurance to nuclear power companies to cover costs of delay due to litigation, in order to encourage investment. The first step for disputes is a fifteen-day mediation process, in which the mediator is to be chosen and paid for jointly by the parties. If no resolution is reached, the dispute is to be resolved through binding arbitration by the recently established Civilian Board of Contract Appeals, which is comprised of members of contract appeals boards of various federal agencies, including Department of Energy.

Appellate Mediation Increasingly Accepted
and Effective

Daily Record, August 3, 2006

Overcoming initial skepticism, mediation of complex civil disputes at the appellate level is now quite common and effective, as illustrated by the success of the U.S. Court of Appeals for the Sixth Circuit. Processing over 1,000 cases a year with four full-time mediators, the Sixth Circuit's mediation program has markedly reduced costs for both the court and litigants, as well as reducing resolution times. All of the federal circuit courts and 23 states now have appellate mediation programs. Appellate programs report a 45-55% success rate, despite working with cases that previously failed to settle and in which a lower court judgment has been rendered. In contrast with pre-trial mediation, more of the appellate level work is with attorneys rather than parties, looking at the merits of appellate issues and settlement options. In judicial circuits spread across several states, much of the mediation practice is through telephone conferences, although as the value of mediation has been demonstrated, the trend is increasingly toward face-to-face mediations.

ARTICLES

Mediation and Culture: How Different Cultural Backgrounds Can Affect the Way People Negotiate and Resolve Disputes

By: Alessandra Sgubini
Excerpted with permission from the author

The globalization of commerce has facilitated new ways of doing business and developing commercial relationships that are not connected geographically to a specific country. International commerce has created a link between people from very different cultures and backgrounds, which can be both very productive and an impediment, especially since a cultural misunderstanding can cause a negotiation to fail or a business relationship to end. Often, when a dispute arises, the difficulty of resolving it in accordance with both parties' cultural and legal standards leads to a search for a more efficient way to reconcile the differences. The secret to solve any business dispute is communication. While this might seem like a simple task, there are always outside influences that will impact that communication. Occasionally, we need the help of a third person who is an expert in the process. Under many legal systems lies a tool that is essential, fast and efficient to resolve disputes. That tool is **mediation**.

In order for mediation to be successful, it is important for the mediator to understand how parties communicate. When carrying on an international mediation or even a domestic mediation with diverse parties, a mediator must take the cultural differences between the parties into consideration. Communication methods vary from country to country, depending on the historical development, legal systems, and ethnic and cultural background of each area. The key to making mediation successful globally is to understand the cultural effect on both business negotiation and communication techniques. The following compilation of experiences in various cultures will hopefully bring some insight into the importance of culture in dispute resolution.

USA by Scott Norman

As part of a country rich in cultural diversity, many Americans associate themselves not only with the more generic "American" culture but part of the culture of their forbearers. This cultural diversity coupled with the United States' capitalist system has

sometimes led to a society that is more acutely aware or accommodating to the needs of other cultures at the bargaining table. Often, over the course of international business transactions, the American culture finds it necessary to be malleable in order to produce the most economically favorable outcome. Nonetheless, some characteristics are common of American culture. Pragmatism is the predominant characteristic of American business culture. Business relationships are nurtured by their potential for profitability and trust is often found in the terms of a binding contract. Trust, or lack thereof, profoundly influences American negotiation practices. American businesspersons prefer a straightforward dialog where needs and concerns are addressed somewhat candidly. Through a position of strength and openness each side works to make concessions until a mutually beneficial agreement can be reached.

Though some forms of ADR, such as mediation and arbitration are the predominant form of dispute settlement, the legal traditional system is still considered, by most, to be the preferred and predominant method. However, due to the potential time and expense of litigation, mediation as a dispute resolution mechanism has become a firmly established alternative to litigation in the business and legal communities. The United States' reputation for being too litigious, might slowly be deteriorating as successful applications of ADR methods are increasingly acknowledged.

The practice of mediation is becoming institutionalized. It is no longer an alternative to litigation, but characterized as the first step in resolving a dispute after unsuccessful negotiation attempts by the parties themselves. The use of mediation as an alternative to litigation will only increase as its concrete results and successes are publicized. Mediation also has the added benefit of perhaps salvaging business relationships that will almost certainly be ruined through litigation.

ITALY by Alessandra Sgubini and Stefano Cardinale

Over the centuries, the Italian peninsula has been influenced by Roman, Greek and Arabic cultures. The presence of well-established and respected traditions has made Italy one of the most conservative and traditionalist countries in Europe.

While the majority of European business relationships and legal systems continue to evolve, Italy remains crystallized in a secluded environment where traditions, such as nobility and family prestige, have not changed throughout the years. Reliability and relationship building are fundamental business practices in Italy. Business people favor personal relationships with their associates prior to doing business with them. Thus, both for the large corporation and the small business, referrals are very important in the Italian market. Moreover, credibility and social reputation when dealing with Italian businesses are decisive factors for successful negotiations. Generally, business people in Italy prefer to negotiate and maintain a business relationship with an executive or manager of a firm. Also, elegance and appearance are important considerations in Italian culture. More so than in many other countries an attractive, well-dressed individual is considered more reliable.

Italians prefer to take their time negotiating and be familiar with whom they are talking. Indeed, being in a rush to sign an agreement will lead to unfulfilled expectations. Perceptions of time can change depending upon whether business is being conducted with people from the south or north of the Italian peninsula. Southerners generally have a much more relaxed perception of time than those in the north.

In part, due to the influence of these stagnant traditions, a new tool for fast and efficient conflict resolution, such as mediation, has yet to gain wide acceptance despite its increasing prevalence throughout the international community. In many instances, mediation escapes the understanding of Italian lawyers and businesses. Sometimes, mediation may be mistakenly confused with conciliation, which is a statutorily recognized process of dispute resolution in specified types of disputes.

Over the last few years Italian business people have started to realize that the commonly accepted culture of "I win, you lose" is slowing down the judicial system; causing many businesses to lose money and time in long and expensive trials that, for a majority, end without the complete satisfaction of a "winner." Thus, the Italian business community is slowly joining other European countries in searching for an efficient alternative to trial and arbitration. Small, medium-sized and large Italian companies are

beginning to turn their attention to mediation as their first choice when confronted with a dispute.

Indeed, it appears that the concept of mediation has set in a new era in business in motion for Italians, as well as in other European countries where commercial enterprises respond to legislative reform in corporate law. New legislative activity reflects the increasingly prominent role mediation will play in resolving future commercial disputes in Italy. The Italian legislature recently approved the use of mediation and conciliation in commercial disputes.

SWITZERLAND *by Michel Schmidt*

Switzerland has tried for years to be present in the world negotiation scene offering its perceived neutrality and geographical position as an advantage over other countries.

The Swiss mentalities can vary according to the different part of Switzerland. The Swiss Germans appear colder and are less amenable to change, but they are also more precise, motivated and disciplined. Conversely, Swiss Romans are generally perceived as being more fun loving, enjoying life, and contesting authority. Finally, the Swiss Italians are generally considered friendlier, more trusting and generous.

Mediation is already used at the cantonal level and is also currently being considered in Federal legislation. Some cantonal constitutions re-quest the governments to encourage private mediation. Geneva for instance, having already included mediation in its criminal procedure law, became the first Swiss canton to include mediation in its civil law in 2004. A Swiss association of judges for mediation and conciliation had also been created to promote these techniques.

MALTA *by Herman S.J. Zandt*

Malta offers a clear mixture of the very best that history brought this Mediterranean pebble over the centuries. The Maltese economic environment shows diverse traits of different origins, most prominently the British-like traditional and conservative approach to conducting business, combined with high levels of timekeeping and reliability. The country's central and historically strategic location in a more easy-going Mediterranean region causes business meetings to be less formal – with a large focus on the individual.

Corporate interactions in Malta are largely based on established relationships, not in the least supported by the relatively large amount of family-run enterprises

existing. Maintaining and, where possible, improving these relationships is a key factor for current and future business success.

Maltese businesspeople are assertive negotiators, who clearly know what they want and with a strong will to excel. A wide international orientation is combined with a strong ability to make and take the best out of any emerging business opportunity.

The importance of maintaining and improving business relationships has proven to be the foundation under which corporate negotiations and disputes are handled. Upon dispute emergence, a significant number of efforts are undertaken to avoid escalation. These attempts are directly targeted at the dispute partners, most commonly through face-to-face negotiations as is facilitated by the small distances on Malta.

Still, nearly every unresolved dispute is referred to a third party, instructed by a disputant to act on his behalf. Disputes with stakeholders external to the organization are transferred to a qualified third party external to the organization. Disagreements with internal stakeholders are preferably handled by a third party internal to the organization.

Despite several implementation attempts since 1998, mediation in Malta is still in its embryonic stage. It is only since December 2004 that the Mediation Act was enacted, followed by the set up of a governmental Mediation Centre as a central point of reference. Current activities, initiated on a governmental level, are primarily focused on increasing mediation awareness.

Familiarity and personal experience with corporate mediation is low. Nonetheless, voluntary mediation out of Court is perceived as highly effective and more successful than traditional litigation or arbitration.

The main challenge is to overcome an apparent deeply rooted and mutual mistrust amongst Maltese disputants who are to maximally exploit their personal empowerment obtained. The real value of mediation is still to be discovered.

SPAIN by *Paco Gimenez-Salinas and Stefano Cardinale*

In Spain, due to its cultural diversity, there are many models of behavior during negotiations. Historically, Spain has been made up by the union of many different peoples. Each one of these different groups has its own personality and history, which involves a different way of negotiating. The two areas in Spain which have a more open economy and a

foreign oriented market are Catalonia and the Basque Country. In these two autonomous communities the “Latin character” of the Spanish people has been overwhelmed by a stronger “European personality”, or, by a more moderated and individualist character.

The Spanish people have a strong need of a human relationship as a base for good business alliances, contracts and agreements. The paths and difficulties to reach such a relationship change depending on the area of the country being examined – it is commonly said that the “Gallegos,” from the north west area, “don’t trust anything or anybody,” while the Latin character of those from the south makes it easier to establish a personal relationship.

In addition to these territorial differences, Spain has also suffered deep and intense historical and social changes in the past twenty years that have affected the whole country. During Franco’s dictatorship, Spanish society was organized in a strict structured and hierarchical way producing very autocratic conflict resolution methods. The difficult political compromises that were carried on during the transition to a democratic society are the most important example of a multi party negotiation in recent Spanish history. Collective consensus followed by the treaty to get in the European Union changed from a classical unilateral style to a more open one based on dialogue and agreement. This scenario opened the door for new conflict resolution methods, such as mediation. This result is that Spanish people now accept new cultures of negotiations brought by foreigners without renouncing their traditions.

The Spanish are intuitive, spontaneous, and able to create a good relationship with the party with whom they negotiate and are able to understand correctly the messages that the other party sends to them. Sometimes, however they cannot adapt themselves to the other party’s negotiating style and they don’t have much of a strategy. It is important not to misunderstand this way of creating a personal relationship with the lack of respect for formalities, which could strain business relationship.

South American business people perceive the Spanish style of negotiation as very aggressive and direct. However, more direct cultures, like Anglo-Saxon, consider the Spanish to be indirect and lacking respect for formalities like time and punctuality.

Spanish culture tends to find proximity between parties and a good human and personal relationship before going further with business. When facing a legal dispute, a dispute resolution method that eventually seeks the maintenance of relationships is essential. That is why mediation can be the perfect dispute resolution method in the Spanish market.

Latin cultures are influenced by a high emotional character of individuals. This is a very important issue when facing a legal dispute because many disputes normally get worse depending on emotional issues. That is why mediation, facilitated by a professionally trained mediator who can neutralize emotions among the parties, can be the perfect method to solve successfully this kind of dispute.

The actual Spanish model is based on dialogue and compromise where mediation will be psychologically welcomed by companies and individuals. The most adequate type of mediation for the Spanish market is "facilitative mediation", where the mediator doesn't even suggest a possible outcome for the case carried on. In general, mediation as the structured dispute negotiation is playing an increasing role in Spain. Not only is the government promoting this ADR tool, but also private institutions as universities, foundations, and mediation associations are promoting mediation.

The current state of Spanish society is at an ideal stage for the introduction and implementation of mediation for social, normative, and institutional purposes.

BRAZIL by *Guilherme Peres Potenza*

Brazilians are known for being warm and friendly people in personal life and in business relations. Unfortunately, such conduct may create an informal negotiation environment that may not please negotiators from other cultures. Nonetheless, some other values come in place when they are negotiating. Brazilians ranked honesty, trustworthiness and ethics as being essential during the negotiation process. Transparency and punctuality are also important factors in order to show a party is acting in good faith and is trustworthy. Finally, it is important to build a business relationship before starting a negotiation, this way the parties will try to communicate to each other the image of an honest, trustworthy and ethical person, able to duly carry on a successful negotiation.

As a result of the different attitudes, perceptions and negotiation styles, it is inevitable that conflicts will arise during the negotiation process. Therefore, Brazilians usually solve these conflicts by talking, re-negotiating and sometimes with attorneys' interference. Only when extremely necessary, will parties file a complaint. The Judiciary branch is really the last option among Brazilians because they find the Judiciary untrustworthy and plagued by bureaucratic inefficiency. This lack of trust in the Judiciary Branch leads Brazilians to be open to methods of alternative dispute resolution.

Many entities, public and private, are developing projects in efforts to increase awareness of alternative methods to resolve their conflicts without judicial involvement. In addition, the Senate is currently reviewing proposed legislation concerning mediation and the role it has to play in the court system as an alternative to litigation.

There are already successful reports of business matters being solved with the help of mediation. However many business people remain apprehensive about using mediation, even though some contracts are being executed with obligatory arbitration and mediation clauses. Demand for mediation will increase as parties are increasingly becoming contractually obligated to settle their disputes through mediation and arbitration, assisting to the assimilation of mediation as a tool for dispute resolution.

CONCLUSION

In order to succeed internationally, businesses must understand the communication and negotiation techniques of each culture they conduct business in. Not only is culture an important factor in business, but also in a legal context because a cultural misunderstanding can create a dispute or cause a negotiation to fail.

Mediation has emerged as perhaps the most predominant ADR process because it offers parties the opportunity to develop settlements that are practical, economical, and durable. Even though businesses are open to the idea of mediation, they are at the stage where they need further education on the process. Once they are familiar with the concept, they can apply it in their own business to serve the interests of the companies they represent, using it as a resources to develop business and generate revenue.