

ENHANCING COMMUNITY MEDIATION PROGRAMS FOR LATINOS:  
INCORPORATING CULTURAL COMPETENCIES FROM OREGON AND  
OAXACA

by

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## THESIS ABSTRACT

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Title: Enhancing Community Mediation Practices for Latinos: Incorporating Cultural Competencies from Oregon and Oaxaca

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Community mediation programs exist to provide the general public a low cost and efficient way to resolve disputes peacefully. Community mediation is a voluntary process in which skilled mediators facilitate a conversation between the disputants, but do not advocate or impose solutions. I question whether community mediation practices, mediators and mediation programs are responsive to minority cultures.

This thesis conceptualizes culturally appropriate dimensions to add to dispute resolution practices for a Latino demographic. Using a comparative analysis of community mediation programs in Oaxaca, Mexico and in Oregon, I highlight areas of departure from more traditional views of mediation. I argue that such programs will be more effective by incorporating practices grounded in the Latino cultural context of each region, including greater attention to group-oriented priorities within families, engaging in more personal contact with disputants, provision of childcare, enhancing efforts to attract Spanish-speaking mediators, and training mediators in intra-generational cultural competency.

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## CHAPTER I

### INTRODUCTION

Community mediation centers worldwide have the potential to strengthen democracy at the local level through the education and empowerment of the community to peacefully resolve their own disputes. In order to achieve this potential, community dispute resolution services have to effectively serve all people, including those from minority demographics. This thesis aims to uncover community conflict resolution processes and models that are responsive to the cultural values of Latinos to better serve them in mediation. The term Latino references “individuals from various cultures from North, Central, and South America” and embodies the idea that each individual will have “unique histories, customs, and experiences in the United States” (Glass & Owen, 2010, p.252). The term Hispanic is also utilized throughout this thesis and refers to the same group.

To narrow the scope of this research, I explore the ways in which community mediation centers in Oregon can best demonstrate cultural inclusiveness and sensitivity to expand their services to a Latino population. The scope is further narrowed to examine the culture and conflict resolution norms of Mexicans. Latinos are the largest minority demographic in Oregon and the majority of that population originates from Mexico. The Pew Hispanic Center states that more than six-in-ten Hispanics in the United States self-identify as being of Mexican origin (2011). The 2010 Census Bureau statistics indicate that Latinos comprise 11.2 percent of Oregon’s population and that 12.1 percent of the population speaks a language other than English at home. Furthermore, Latinos are a

population that does not typically utilize mediation but might derive great benefit from doing so since mediation is a low cost and efficient alternative to litigation.

A mix of qualitative methods informs my conclusions. I combine observations of community mediation programs in Mexico, interviews with key actors involved in mediation programs in both Mexico and Oregon, and a discussion of the literature on culturally responsive conflict resolution to suggest culturally appropriate dimensions to add to dispute resolution practices for a Latino demographic. While this thesis explores culturally sensitive conflict resolution options for Latinos in Oregon, the findings are relevant for community mediation centers nationally and internationally.

### **What Is Community Mediation?**

In the United States, community mediation is an alternative form of dispute resolution that occurs outside the courts and is not mandated, though some of the cases might include matters typically resolved in court setting. Types of community cases include landlord/tenant matters, neighborhood concerns such as noise and property boundaries, school-related issues of behavior, interpersonal differences and large group concerns around public policy, environmental, or community issues (Hedeen, 2004). Some programs also provide specialized services such as civil small claims, family, and restorative justice cases.<sup>1</sup>

For example, John is annoyed because the neighbor kids play rock music at high volume every evening. He is able to hear the music even when his windows are closed. Last year these same kids egged his car. When he confronted the parents, they refused to

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<sup>1</sup> Family cases include parent-teen disputes and dissolution of marriage agreements. Restorative justice is also called Victim Offender Mediation. It typically involves a mediation between first-time minor offense teens and their victim(s) to determine appropriate punishment.

acknowledge that their kids were responsible. For this reason, he does not feel comfortable talking to his neighbors directly to address this situation. He calls the community mediation center and initiates a case. After explaining his problem to an intake person, he learns that mediation is a voluntary and confidential process. If he and his neighbors both choose to participate, they will have a joint meeting to discuss the problem with a trained mediator. The mediator will help facilitate a conversation between the participants using techniques like active listening, empathizing, clarifying and validating. The mediator is neutral and impartial to the outcome and does not impose solutions for the parties.

According to the National Center for Community Mediation, to qualify as a community mediation center, programs must:

- i. “Be a private non-profit or public agency or program thereof, with mediators, staff, and governing/advisory board representative of the diversity of the community served.
- ii. Use trained community volunteers as providers of mediation services; the practice of mediation is open to all persons (volunteers are not required to have academic or professional credentials).
- iii. Provide direct access to the public through self referral and strive to reduce barriers to service, including physical, linguistic, cultural, programmatic, and economic [barriers];
- iv. and provide services to clients regardless of ability to pay” (Hedeen, 2004, p.104).

These standards establish that community mediation programs have an ethical responsibility to ensure that everyone, regardless of race, socioeconomic status, educational level, sexual orientation, language, or physical ability, has the ability to access justice.

As part of that ethical responsibility, community dispute resolution programs can work towards the goal of achieving cultural and linguistic competence to design culturally appropriate dispute resolution processes. A U.S. Department of Health and Human Services Office of Minority Health report explains that cultural and linguistic competence “is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations” (p.4). The Consortium for Appropriate Dispute Resolution in Special Education defines a culturally competent system as one that “is staffed by people whose behaviors, attitudes and policies recognize, respect and value the uniqueness of individuals and groups whose cultures are different from those associated with dominant American culture” (Engles, Fromme, LeResche, and Moses, 2007, p. 5). These statements demonstrate that the healthcare and educational fields understand that cultural competency is necessary in order to ensure that minority demographics receive quality service. Community mediation programs should also strive to be culturally and linguistically competent.

## **Organization of Thesis**

Chapter II provides an explanation of the problem I am addressing. This section examines Oregon mediation programs’ history in expanding services to

Hispanics/Latinos and Spanish speakers. It identifies past progress and areas that still need to be addressed in order to achieve the objective of providing culturally competent mediation services to Latinos and Spanish Speakers. This section provides the justification for this thesis.

Chapter III details the research methodology. This critical portion aids the reader in understanding the means I used to derive conclusions and make recommendations about how community mediation centers can offer services appropriate for a Latino demographic. Moreover, it validates the use of qualitative research strategies.

Chapter IV focuses on mediation's significance in the United States, Latin America, and Mexico through an account of its historical application. It shows how mediation is used today to increase access to justice and strengthen democracy in those countries. This section lends credence to the argument that community mediation centers have the responsibility to ensure service to diverse demographics and non-mainstream cultures.

Chapter V considers the intersection of culture, conflict, and conflict resolution. This section discusses culture and cultural differences through broad cultural paradigms. It then specifies common Latino cultural values. Finally, it discusses other's ideas on how the "Anglo" version of mediation should be adjusted for Latinos.

Chapter VI offers an account of the culture and history of Oaxaca, where I observed Mexican community mediation programs. It informs the reader of Oaxacan demographics, politics, government, geography, and education. This section explains how a history of immigration created a relationship between the State of Oregon and the

State of Oaxaca. It also provides insight into the varied backgrounds of Latinos who now reside in the United States.

Chapter VII examines Oregon's diversity. It delivers information about the minority demographics that exist in Oregon today as a way to help mediation programs think about providing services to other minority demographics. This chapter considers the lives of Latinos living in Oregon and emphasizes a difference between recent immigrants and those who have a longer past in Oregon. It also highlights differences between immigrants with legal documentation compared to those without them.

Chapter VIII compares Oregon and Oaxacan mediation programs and grounds these comparisons in a cultural context. These observations are later used to justify recommendations to Oregon community mediation centers on how to deliver appropriate services to Latinos. It helps the reader become more familiar with both states' mediation practices.

Chapter IX proposes recommendations, based on research and observations, to Oregon mediation centers. It identifies barriers to achieving the goal of providing Latinos culturally competent mediation services. It offers suggestions on how to overcome those barriers.

## CHAPTER II

### STATEMENT OF PROBLEM

Community mediation grew as a grassroots movement, born from the need to increase access to justice (Hedeen, 2004). In the past, as is true today, the best way to ensure that this goal is met is to have community dispute resolution programs (CDRPs) that can competently offer and serve all demographics within a community, including minority ethnicities, people of low income status, people with disabilities and people of various sexual identities, to name a few. This thesis seeks to answer the question, what processes and models best serve Latino populations in community mediation? Therefore, this section will identify shortfalls that need to be addressed in order to provide culturally appropriate conflict resolution for Hispanics/Latinos and Spanish speakers.

#### **Problem Background**

In 2000 The Oregon Dispute Resolution Commission (ODRC) recognized a need to address how to provide culturally appropriate services to the rapidly growing Hispanic/Latino and Spanish-speaking population in community mediation organizations (Erbes, 2004). At that time, Oregon's Hispanic/Latino population was eight percent of the total population with projections of rapid growth (Erbes, 2004). Thus, the ODRC applied for and was awarded a \$250,000 grant from the Hewlett Foundation "intended to design and deliver culturally appropriate dispute resolution services to Oregon Hispanic/Latino and Spanish-speaking communities" (Erbes, 2004, p. 6).

The ODRC explained the goals and intentions of the grant to existing CDRPs, and six CDRPs submitted proposals to demonstrate how they would work to meet the goals of



the project (Erbes, 2004, p. 6). The six centers that participated are Community Dispute Resolution Program (Deschutes County), East Metro Mediation (Multnomah County), Linn-Benton Mediation Services (Linn and Benton Counties), Mediation Works (Jackson County), Resolutions Northwest (Multnomah County) (Erbes, 2004). The percentage of the Hispanic/Latino and Spanish-speaking population in each of the six project communities widely varied, from 4.4 percent to 17.7 percent (Erbes, 2004, p.7).

Each of the centers that participated in the grant made substantial headway in providing culturally appropriate services to the Latino and Spanish-speaking community. They translated outreach and promotional materials as well as documents used in mediation sessions into Spanish. They also trained bilingual and bicultural mediators. Finally, they began building social capital by seeking collaborative partnerships with organizations that work directly with the Latino and Spanish speaking community (Erbes, 2004). Despite these achievements, evaluations conducted after the grant ended identified barriers CDRPs faced in their abilities to provide culturally appropriate services to this population.

### **Current Shortfalls**

Once the grant ended, some community dispute resolution centers found it difficult to continue the services and projects they had started. Thus, the focus population could no longer trust that they would receive reliable and consistent services (Erbes, 2004). In the article *Considerations in Providing Mediation and Conflict Resolution Services to Spanish-speaking Latinos*, Sandy Bacharach explains that consistency in the work of providing services to Hispanics and Latinos is “of most importance.” She asks,

“What happens when someone actually wants to utilize your services? That’s when the rubber hits the road, because no amount of marketing or networking will make a difference if, when the person calls or comes in, they are not attended to or attended in a way that feels comfortable for them” (2007). In other words, organizations should not waste time and money advertising services if they are not able to offer the services long term.

Additionally, “All Hewlett Grant programs had a lack of success retaining Hispanic/Latino board members” (Ozawa, 2004, p.16). Stable and continuing leadership is a vital aspect of any social-service organization with the goal to deliver reliable and supportive services. Diverse leadership is also a way to make sure that the organization considers the needs of all potential clients.

The Hewlett Grant programs also “faced challenges in recruiting, training and retaining Hispanic/Latino volunteers” (Ozawa, 2004, p.16). In terms of efforts to deliver culturally competent services to Latinos and Hispanics in general, Benavides and Hernandez (2007) explain that Hispanic and Latino participation is crucial. They assert that inclusion of underrepresented populations is a “best practice” for serving diverse communities.

Furthermore, Hewlett Grant programs faced challenges training bicultural and bilingual mediators. Ozawa (2004) explains that “despite substantial investment in advertising mediation training in Spanish and English, attendance was unexpectedly low and often irregular” (p.16). The “lack of Spanish-speaking mediation trainers” was an additional burden of the training process. The use of a non-mediator Spanish Language translator increased the length of the training due miscommunication issues “and the

constant need for correction” (p.16). Despite the challenges of training bicultural and bilingual mediators, Ozawa (2004) underscores the value of doing so. She explains, “Mediators native to the target community understand the cultural context and act as natural publicity bridges into the community. With the premium value placed on face-to-face encounters and personal relationships in this (and many other immigrant) culture(s), this is especially valuable” (pp.17-18).

Another impediment towards providing culturally appropriate conflict resolution services is attributed to a lack of uniformity in training methods and content across all CDRPs. All aspiring mediators in Oregon must complete the basic 32-40 hour training. The Oregon Office of Community Dispute Resolution requires the training to include specific components. However, training methods and materials are idiosyncratic to each organization or trainer. For example, there is not a standard cross-cultural curriculum (Erbes, 2004). The length of this component of the training in the basic mediator training varies from an hour or less to six hours to separate all-weekend trainings (personal communication, June 17, 2010). The implementation of uniform training standards is a way to create consistency in services across all CDRPs and establish a common foundation among practitioners who wish to discuss cultural issues in mediation.

Finally, Lederach and Wehr (1991) describe the process model used in the United States as “narrow” and “formal” with a strong focus on neutrality. (See Appendix A for an example of a mediation process model). This basic process model may not be intuitive to all demographics or work well for conflicts in which cultural issues are at the forefront.

LeBaron (n.d.) explains, “Designing flexible models is one important focus for multicultural work. With it must come the cultivation of capacities for working effectively with diversity, change and complexity.”

## **Conclusions**

Thus, at least three aspects of community mediation need to be examined in order to fully expand community mediation to meet the needs of Oregon Latinos:

1. Outreach: How can mediation centers use their resources to best inform the target population about mediation? How can mediation centers attract and retain volunteers and mediators from this population?
2. Training: How can mediators be trained to ensure that they become aware of, are able to develop and continue to improve their cultural competency skills?
3. Process: What are some process models that work well with the target population? Is there a way to change or mold current mediation process models so that they are transcultural?

Through an understanding of successful outreach practices, development of transcultural mediation models, and an increase in mediator use and awareness of culturally competent skills, community mediation centers in Oregon may be better able to serve community members of the non-dominant culture.

## CHAPTER III

### METHODOLOGICAL DESIGN

I used a variety of qualitative methods to inform my thesis research to draw conclusions about how to create community mediation services that are appropriate for Latinos. The techniques I employed are a discussion regarding cultural competency in conflict resolution and current ideas on working with Spanish speakers or a Latino culture in a variety of professional and social settings. I conducted ethnographic research at mediation centers in Oaxaca, Mexico and used those observations to make recommendations to Oregon community mediation programs. I also analyzed three community mediation centers in Oregon to understand their current practices and focus on access to diverse cultures. Finally, I supplemented my findings and ideas with interviews with professionals who have current or past involvement in community mediation programs in Mexico and Oregon. The use of multiple data collecting sources to argue a single concept is called triangulation. I used triangulation as a “means of mutual confirmation of measures and validation of findings” (Berg, 2007).

#### **Literature**

I drew from the literature on culture and conflict resolution to demonstrate how culture affects conflict and conflict resolution. I researched Latino cultural traits and explained how these cultural differences could be considered in the realm of mediation. I used this information later in the paper to explain and understand community mediation programs and practices in Mexico. The information in this section is valuable for practitioners who desire to improve their cultural competency skills. John Paul Lederach, Michelle LeBaron, Edward Hall, Stella Ting-Toomey, William Gudykunst and Young

Yun Kim are some of the authors who helped me to understand the impact of culture on conflict and conflict resolution.

### **Ethnographic Research**

With financial support from the Thurber Award in International Studies, I spent two months in Oaxaca, Mexico in the summer of 2010. During these two months I immersed myself in the culture and learned as much as possible about the government, the people, the food and the language. I spent one week at a Spanish Language school in Puerto Escondido on the coast of Oaxaca where one of my Spanish instructors poetically informed me, “*La cultura es el espejo de la lengua.*” In English, her sentiment is that in order to understand and learn the language one first has to understand the culture. Similarly, researchers should know context and culture in order to understand and make points about observations in ethnographic research.

For three weeks I observed Oaxacan community mediation programs. I chose to examine mediation programs in this state because many Oaxacans live in Oregon today. Oregon has a long relationship with Oaxacan immigrants starting with the Bracero Program in the 1940s, when the United States government recruited agricultural workers from Oaxaca to fill a labor shortage (see chapter VII for more details). Therefore, learning about mediation programs in Oaxaca has direct relevance to enhancing mediation services for Latinos in Oregon.

Mexico implemented judicial and community mediation programs beginning in 2001. The U.S. government partially funded the development of these programs and the American Bar Association (ABA) trained mediators and helped write mediation laws.

(See chapter IV for more details). Consequently, I outlined three main areas of inquiry that questioned the United States' influence in the development of mediation in Mexico before I departed. I determined that a comparative focus in the three areas (discussed below) would lead to important insights about cross-cultural differences in mediation practices.

First, I was eager to learn what type of process models mediators utilized in mediation; did the project funders provide Mexico with mediation process models, procedures and ethical guidelines from the United States, or did project participants create their own? If they devised their own methods, did traditional forms of conflict resolution have any influence? If mediators successfully used the same process model typically used in mediations in Oregon and the United States, it would negate criticisms that this model is not transcultural. If they utilized a different process model, it would lend credibility to rethinking Oregon's model in order to be more culturally competent.

Second, I wanted to understand the mediator's role and responsibilities. What process did mediators have to go through, if any, in order to be allowed to mediate? Did they have the same ethical responsibilities as mediators do in Oregon? Were they trained to be third party neutrals, as they are in Oregon, or were participants seeking services from a trusted and well-known community member? What kind of style did the mediators utilize: transformative, evaluative or other? A comparison of Mexican and Oregon mediator ethical responsibilities and training procedures would highlight cultural differences between the two states. Answers to the above questions would confirm or negate the literature that argues that Latinos in conflict desire evaluative advice from a trusted elder (Weller & Martin, 1996).

Third, I aimed to learn about Mexican mediation outreach campaigns. How did the centers in Mexico inform the community of mediation services? Did they have to heavily educate the citizenry, or was the public already familiar with the practice? Were people skeptical or enthusiastic about using mediation? Lessons learned about outreach in Mexico could help mediation centers in Oregon advertise more effectively to Latinos.

Insights and observations took place at different mediation centers in Oaxaca, Mexico. I spent the majority of my time at two centers. One was located in the coastal port of Salina Cruz: *Centro de Mediacion Comunitario de Salina Cruz* (Community Mediation of Salina Cruz). The other, *Centro de Mediacion Judicial* (Judicial Mediation Center), was located five hours (by bus) to the north in Oaxaca City, the state capital (See Figure 1). I also visited four satellite mediation centers located in remote towns: two were close to Salina Cruz and two were located in small towns outside of Oaxaca City.<sup>2</sup>

### **Investigation of Current Practice: Oregon**

Out of 18 community mediation centers identified by the Oregon Office of Community Dispute Resolution, I examined three in depth.<sup>3</sup> These profiles are used to supplement data regarding current practices and concerns in providing culturally competent services for Latinos in Oregon. These three centers do not represent the practices of all CDRPs in Oregon. However, two of the programs in the case study were part of the Hewlett Grant. Thus, it is reasonable to assume that they are better able to

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<sup>2</sup> Satellite centers are located in rural communities so that all people, including those without transportation, or money to afford transportation have access to services. Satellite centers are typically small, one-room buildings and employ one person who is responsible for all job roles and duties.

<sup>3</sup> I do not refer to interviewees and mediation centers by name in this thesis because the point is not to commend or berate mediation centers for their ability or inability to competently serve diverse cultures, only to take the pulse about where some mediation centers are in terms of this objective.



offer appropriate services to Latinos than those centers that were not part of the grant. The third center in the case study best represents those CDRPs that were not recipients of the grant. These three programs are dispersed throughout the state along the I-5 corridor. They are also located in cities with large and diverse populations compared to other cities in Oregon that are demographically homogeneous.

**Figure 1:** Detailed map of Oaxaca. Shows the locations of cities of Salina Cruz and Oaxaca de Juárez, or Oaxaca City.



**Source:** [http://www.voyagesphotosmanu.com/mapa\\_oaxaca.html](http://www.voyagesphotosmanu.com/mapa_oaxaca.html).

I interviewed executive directors or program directors of each organization. The questions I asked were designed to collect information about the organization's commitment and ability to serve diverse populations in mediation. I also asked questions

specifically about services to Latinos. For instance, I asked about the organization's outreach methods to diverse populations, case types most common to Latino participants, the current number of bilingual and bicultural board and volunteer members and how mediations worked when participants were non-native English speakers. (See Appendix B for a copy of the interview questions). I also spoke with two bilingual mediators about their experiences mediating with Latinos in an unstructured interview format. I conducted interviews by phone, and when possible, in person.

Finally, I employed an analysis of each organization's individual websites. I specifically checked to see if websites reflected diversity. For instance, I looked for pictures of diverse demographics. I also checked to see if they advertised bilingual services and links to information in Spanish. Finally, I noted whether the sites provided audio information for people who are visually impaired or illiterate.

### **Investigation of Current Practices: Oaxaca**

In order to clarify aspects of mediation I did not understand from ethnographic research, I interviewed key people in Mexico and the United States who helped design and implement mediation programs in Mexico. I interviewed one person from the ABA who helped design mediation programs in Mexico. This person explained why there was a need to create mediation programs in Mexico and explained the process that the ABA and the United States Agency for International Development (USAID) went through to generate stakeholder interest in the project. I also interviewed a Mexican lawyer/mediator who had helped design mediation programs in Mexico. This person highlighted

differences between mediation programs in different states in Mexico. He also expressed opinions on differences between American and Latino behaviors in mediation.

These interviews were conducted in English. I asked questions about my observations in Mexico to clarify aspects that I was unclear about and to confirm accuracy in my observations. I learned that mediation program designs can vary widely from state to state in Mexico. Thus, what I observed in Oaxaca does not necessarily apply to mediation programs in other states in Mexico.

## CHAPTER IV

### MEDIATION'S SIGNIFICANCE

“Every society that has adopted a democratic system of government has recognized that the stability of all democratic institutions rests upon a justice system founded on principles of equal access, impartiality, and independence... Mediation has the ability to bring about a paradigmatic social change from litigation and violence to pacification and cooperation. Mediation also gives to the individual a measure of control over his or her own destiny”

(Moyer & Haynes, 2003, p. 667).

Mediation is a process used to address conflicts in national and international realms. This section provides information about the origins of mediation in the United States, Latin America and Mexico. It will demonstrate that access to community conflict resolution services is a way to ensure peaceful justice and foment democratic government both domestically and abroad. I make this argument through an account of mediation's origins in the United States and in Latin America. I then focus on the history and the importance of community mediation in Mexico.

#### **United States**

The most common formal method of resolving conflicts in the United States is through the courts. Forms of alternative dispute resolution (ADR) have gained widespread attention and popularity, however, in order to address some of the law's shortcomings. Arbitration, negotiation and mediation are examples.

Research does not reveal a complete or detailed history about mediation's historical application. Although many agree that mediation techniques have roots in indigenous and religious dispute resolution practices worldwide. It is a process that was traditionally geared toward preserving and repairing interpersonal relationships and was

often utilized in societies that valued social harmony. Mediation's origins in the United States, for example, lie within Christian (Quaker and Puritan) and Jewish traditions in which "face-to-face engagement between disputants was a religious and communal obligation" (Auerbach, 1983, p.23). Also, since colonial communities in the United States were typically homogenous and close-knit, mediation was the preferred method of resolving disputes.

Litigation began to replace mediation and arbitration "when the social context changed so that disputing individuals wanted to resolve private claims, not communal cohesion" (Auerbach, 1983, p.35). Lawyers and courthouses completely took over at the end of the 18<sup>th</sup> century when "the Enlightenment sanctified the inalienable individual rights of liberty and property (Auerbach, 1983, p.23)." ADR processes did not completely disappear though.

The United State's Department of Labor appointed a panel called the Commissioners of Conciliation to deal with labor/management disputes in the early 1900s ("MediationADR," 2011). This conciliation panel became a federal entity which was renamed the Federal Mediation and Conciliation Service in 1946 ("The Origin of Mediation, 2011"). In 1963, the government founded an alternative to family court litigation called the Association of Family and Conciliation Courts. In the 1970s mediation was increasingly used as an alternative to litigation as the courts sought ways gain relief from an overburdened docket (LeBaron, 2001). Mediation is currently a mandated prerequisite to litigation in certain types of disputes in many states. In Oregon, for example, divorce proceedings are often required to undergo mediation first if the couple cannot agree on child custody issues ("Oregon State Bar," 1997).

The 1970s were also when mediation detached from the legal system and settled into communities as neighborhood justice centers. In addition to case overload, many people, including judges and scholars, “began to question the appropriateness and effectiveness of the court case process for certain types of disputes” (Hedeem, 2004, p. 102). The neighborhood centers also grew from the “need to escape the institutionalization of a legal system that was attacked for distancing those who could not afford its services” (“The Origin of Mediation,” n.d.). Mediation responded to this need as a flexible and cost effective alternative to litigation that was truly for the people by the people.

The idea of community mediation spread as a grassroots movement that shared the broad goal of increasing access to justice to all citizens. Hedeem (2004) explains:

Community mediation was embraced as an empowerment tool for individuals and communities to take back control over their lives from a governmental institution (the courts) that was seen not only as inefficient, but oppressive and unfair. This vision included equipping citizens to resolve their own disputes and the building of a truly alternative system that would keep many disputants from seeing the inside of a courthouse (p. 103).

Today community-based mediation centers are found across the United States and all over the world. In 1993, 16 countries were represented in Buenos Aires at the first inter-American meeting on ADR, an indication of mediation’s universal appeal (Moyer and Haynes, 2003).

## **Latin America**

Similar to the United States, ADR and mediation are called on in Latin America to address shortcomings in the judicial system and to foster a more participatory democratic society. Because many of these countries share a long history of colonialism, governments are not always geared toward equitably and adequately serving or inspiring trust in every echelon of society. In fact, many Latin Americans “view the administration of justice as slow, tending to favor those in power and corrupt (Moyer & Haynes, 2003 p. 640).

Latin Americans are familiar with authoritative regimes in which officials make decisions for them. Since they have been prevented from making their own decisions and solving their own problems, they have also been thwarted “from learning and using constructive forms of conflict resolution” (Moyer & Haynes, 2003 p 624). Additionally, traditional systems of conflict resolution have been disrupted through an increase of rural-urban migration which has “exacerbated the inability of families and communities to resolve their own problems and conflicts like they were able to in the past” (Moyer & Haynes, 2003 p. 624). Furthermore, many Latin Americans have suffered violence at the hands of oppressive governments.

Consequently, ADR has gained widespread attention and use in Latin America in the last two decades. Moyer and Haynes (2003) comment, “Now that many Latin American countries are currently undergoing long and painful transitions from authoritarian regimes to more participatory forms of government, judicial reform has become a priority for both national and international organizations” (637). Today mediation is used to educate the population so that they learn new modes of

communication and peaceful dispute resolution methods. It is also used to constructively curb violence and unlawfulness in society.

**Argentina:** Mediators from North America trained mediators in Argentina. By 1992, 60 mediators were certified. Of those, ten were chosen to develop a mediation center (Moyer & Haynes, 2003). The mediation centers operate under ethical standards similar to those in place in the United States (Moyer & Haynes, 2003). In 1995 Argentina statutorily established mandatory mediation. In 1997 the program expanded to include community mediation in Buenos Aires (Moyer & Haynes, 2003). Maria Gomez, a community mediator in Buenos Aires comments that most of her focus is on prevention of violence through education on “how to respect the opinion, space and life of the other (2005, p43). She writes, “mediation is one of the most effective ways to resolve social conflict without the courts to promote collaborative relationships between neighbors and to sustain the peace in the neighborhood” (p. 16).

**Bolivia:** One of the countries in Latin America with the highest indigenous population is Bolivia (“The World Bank,” 2011). Indigenous practices inform methods of community dispute resolution. For example, spouses in conflict can participate in sponsorship. In this traditional form of mediation, a sponsor of a married couple participates in the resolution of conflicts without imposing any position (Moyer & Haynes, 2003).

The United States Agency for International Development (USAID) helped implement ADR in Bolivia to address the public’s lack of access to the formal justice system and to decrease the backlog of court cases (USAID, 2004). The organization established conciliation and arbitration centers within the Chambers of Commerce in



Bolivia's three major cities (*USAID*, 2004). USAID also helped develop a program of Integrated Justice Centers intended for areas where citizens lack access to the legal system. These justice centers "provide both formal and alternative forms of justice and conflict resolution to the most vulnerable citizens of society. The centers inform citizens of their legal rights, provide conciliatory services, and work closely with the formal justice system to address the needs of the centers' clients" (*USAID*, 2004).

**Chile:** Two mediation centers were opened in 1996, which, according to USAID, settle a high percentage of cases (2004). ADR professionals were trained through a USAID contract to Corporación de Promoción Universitaria. The main objective of Corporación de Promoción Universitaria is to contribute to social development through scientific and technological knowledge underpinned by the values of humanism ("CPU," 2011). It is responsible for the ongoing development of ADR options and programs in Chile (*USAID*, 2004).

In 2001, lawyers from the California Western School of Law worked with Chile's Ministry of Justice to establish a more efficient and culturally sensitive mechanism for the resolution of family disputes among indigenous people. They created a project that strived to apply the traditions of the indigenous Mapuche people to a modern judicial system as a way to increase the Mapuche people's ability to access justice ("California Western," n.d.).

**Columbia:** The Ministry of Justice in Columbia established conciliation programs in 1991. Conciliation is similar to mediation (Moyer & Haynes, 2003). In 1993 the Ministry of Justice created pilot neighborhood programs in five cities (Moyer and Haynes, 2003). In 1994 the U.S. and Columbian governments supported the House of

Justice and Peace Program to increase community access to justice (“Energy API,” 2007). The program included the “construction of a building to house the offices of judicial and social services, enabling easy access for ordinary citizens; an increase in the number of judicial and social service officials all trained in conflict resolution, particularly relating to domestic violence; and speedier resolution of conflicts through conciliation routes rather than through the legal system” (“Energy API,” 2007). USAID worked with the Ministry of Justice to provide financial and technical assistance, train staff, and conduct community outreach and education to Justice and Peace Houses. As of 2004, 23 Justice and Peace Houses had been established (USAID, 2004).

Currently, Mediators Beyond Borders (MBB) is exploring the idea of developing rural community mediation centers along with local reconciliation organizations. Its goal is to integrate mediation and dialogue into many areas of Colombian life. MBB’s website states that its role in the region will be to provide mediation training to its Colombian partners and community members (“Mediators Beyond Borders,” 2011).

**Ecuador:** USAID helped the expansion of ADR as a formal option within the judicial process beginning in 1996. They focused on providing indigenous persons, women and the poor access to justice. In 1999, 660 indigenous families utilized ADR and related legal services (USAID, 2004). Mediation centers staff two lawyers, two psychologists and two social workers (Moyer & Haynes, 2003).

**El Salvador:** USAID also funded ADR programs in El Salvador to help reform its judicial process. It supported ADR through the establishment of community-based mediation centers through collaboration with municipalities as well as the Public Defender’s Office in response to “high levels of social and economic inequality,

joblessness, and violent crime [that] threatened the peace process initiated to stabilize post-civil war El Salvador” (*USAID*, 2010). In 2002, USAID-supported community-based mediation centers handled 1,870 cases and six centers were opened (*USAID*, 2004).

A USAID press release in 2009 states: “Since May of 2007, USAID has contributed more than 1.4 million dollars toward improving mediation centers by providing technical assistance, trainings, and office furniture. The centers offer free services in family, inheritance, labor, school, university, community, neighbor, criminal, and traffic matters” (*USAID/El Salvador*). The project also implemented school based mediation programs “across 40 schools in the greater San Salvador area” (*USAID*, 2010).

**Guatemala:** USAID funded mediation programs mostly aimed to increase access to justice for the country’s large and poor indigenous population. It opened 20 centers in indigenous communities that combine ADR with principles of Mayan law when agreeable to the disputing parties (*USAID*, 2004). However, a “recent evaluation conducted by an independent firm reminded USAID in Guatemala of the importance of not confusing Mayan law with ADR. USAID aims to “keep this difference in mind when supporting the justice system, so that the Mayan law can be respected and developed according to national and international laws, specifically ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries” (*USAID*, 2004). However, the Academy of Education Development describes the mediation framework in Guatemala “completely Mayan” (“AED”, 2011).

**Nicaragua:** Mediation arrived in Nicaragua in 1993. Mediators were trained by the Center for Dispute Resolution at the Capital University Law and Graduate Center. Various organizations worked to adapt mediation training materials and programs to the

Nicaraguan culture (Moyer and Haynes, 2003). USAID and Catholic Relief Services supported the development of Peace Commissions to help victims of domestic violence and other human rights abuses. “These peace commissions give inhabitants a means to resolve disputes, to monitor human rights abuses, and to express their concerns to government authorities Many of the Commissions operate in areas where there is no government presence, and serve as surrogates for absent police and courts” (USAID, 2005).

**Panama:** Similar to its presence in other countries, USAID worked at the local level in panama to train mediators to work at community-based centers at local universities. According to USAID, “These community-based centers provide unprecedented access to justice and promote the use of informal resolution of conflicts as an acceptable mechanism to solve disputes without clogging the courts” (USAID, 2005).

**Peru:** Peru’s judicial system “is incapable of serving its varied populace due the intertwining of three disparate geographical areas: coastal desert, highlands, and jungle, each with their own unique human, social, and cultural characteristics” (Vazquez, 1995). Moyer and Haynes reiterated this point in 2003 when they wrote: “Peru’s justice system is perceived as one that not only fails to recognize the distinct cultural and social realities of peasant and indigenous litigants but also requires them to express themselves in Spanish even though many only speak rudimentary Spanish if at all” (p. 664).

To address this problem, Peru implemented a Justice of the Peace system that provides official justice for the peasant and indigenous groups. Justices are not legally trained, nor are they compensated. They are local residents and generally belong to the same social class as the parties to a conflict. They propose solutions until the parties

agree on one (Moyer and Haynes, 2003). Furthermore, USAID supported conciliation programs in Peru from 1997 to 2002:

Under this program, USAID-financed legal and conciliation centers of the Ministry of Justice, which provided free legal conciliation services to the poor in nearly 700,000 cases. A significant percentage of these involved domestic violence and child support cases brought by women. This combined with support to private groups that promoted conciliation resulted in conflict resolution training to 1,500 conciliators and the establishment of approximately 570 conciliation centers across the country. By 2004, there were more than 17,000 accredited private conciliators and 615 public and private conciliation centers in Peru (USAID, 2004).

Conciliators play a more active role in the development and implementation of acceptable solutions for the parties in comparison of conciliation to mediation (Sgubini, Prieditis & Marighetto, 2004).

## **Mexico**

Mexico's long past of colonialism and dictator rule results in many obstacles for achieving democracy today. Stark class divisions between the indigenous populations and those with European blood characterize the country ("Encyclopedia Britannica," 2011) The country is also characterized by widespread mistrust of government officials and corruption at all levels of the government (Morris, 2009). Moreover, until recently, Mexico employed an inquisitorial criminal justice system inherited from the Spanish,

which “severely limited judicial development and independence in Mexico” (*USAID*, 2004).

The presidential election in the year 2000 signified the end of 71 years of single-party government when Vicente Fox of the National Action Party (PAN) unambiguously won the presidential election over the Institutional Revolutionary Party (PRI). This election was “Mexico's first truly democratic national contest in a century” (Krauze, 2006). Eleven years later, Mexico is considered a young democracy and “both government and public support for judicial reforms, as well as legal profession and legal education reforms, has grown” (*USAID*, 2004). Thus, Mexico has gained international attention and support for creating a more equitable and peaceful society.

In 2001, for example, the American Bar Association (ABA) in partnership with the Latin American Legal Initiatives Counsel (LALIC) began the Mediation in Mexico Project. They reasoned that the implementation of mediation programs throughout Mexico could help address Mexico’s inefficient and corrupt judicial system. They also felt that mediation would provide a peaceful outlet for small claims disputes for which there was no other recourse in their judiciary system. USAID funded the project as part of its larger goal to increase democracy and strengthen the rule of law in Latin America and the Caribbean (*USAID*, 2004).

During its initial stages, the ABA and LALIC approached key Mexican institutions and people in order to assess the desire and feasibility of implementing mediation programs across the country. They discovered people who had already demonstrated a commitment toward utilizing mediation and invited them to be a part of

the program design process. The project aimed to ensure local ownership of initiatives by supporting the vision, leadership and decisions of Mexican members (*ABA/USAID*, n.d).

Seventeen Mexican states, including Aguascalientes, Baja California Sur, Chihuahua, Coahuila, Colima, Guanajuato, Jalisco, Michoacán, Nayarit, Nuevo León, Oaxaca, Puebla, Querétaro, Quintana Roo, Sonora, Tabasco, Tamaulipas and the country's capital, Mexico City, expressed interest in participating. Leaders of the executive and judicial branches of these states comprised an advisory committee that helped with the administration and implementation of project initiatives (*ABA/USAID*, n.d). Each state then engaged in strategic planning and helped create a national vision for the implementation of mediation. Experts in mediation from the United States provided technical and administrative assistance to Mexican states and institutions as they designed and implemented strategic plans (*ABA/USAID*, n.d).

Each state also wrote laws for mediation. In some cases this changed the state constitution. Since the state's constitution is respected as the highest law of the state, a change in the constitution lent strong credibility to the use and practice of mediation (personal communication, March 17, 2010). Each state drafted unique laws and designed distinct processes based on its individual commitment to mediation, financial capabilities, and collaborative abilities (personal communication, March 11, 2010). However, the ABA provided guidelines for mediation to create some uniformity throughout the country. For instance, all laws had to be based on eight formal principles. According to these principles, mediation in Mexico should be voluntary, confidential, flexible, neutral, impartial, equitable, legally permissible and honest (*ABA/USAID*, n.d).

After developing this theoretical framework for the practice of mediation, the project began to dedicate a significant amount of time and effort to the professional training of mediators in the country. The ABA offered courses such as a basic mediator training, mediation center design, management and operations workshop, train the trainer and follow-up mentored training courses along with legislation on mediation workshop (ABA/USAID, n.d). Train the trainer was a program in which individuals selected for their competence in mediation traveled to different states to train other mediators. Trainings were held in select states to encourage collaboration, uniformity and technical support between states (personal communication, March 11, 2010). The basic mediation trainings were 40 hours long and devised to teach mediation as a practical dispute resolution tool (personal communication, March 11, 2010).

USAID funding for the project ended in 2006. Since then the ABA has not been involved. One criticism of the mediation programs today is that programs are not uniform from state to state. Each state drafted its own mediation law, which has led to major differences between programs. For example, states might use different terminology when talking about the same idea or program, which makes it difficult to offer a country-wide analysis of mediation (personal communication, March 17, 2011). Additionally, Mexico City's mediation law mandates that only lawyers can be mediators, which raises questions about access. Additionally, each state's resources differ. Mediation buildings in the state of Guanajuato, for example, are brand new with two-way mirrors built in for mediator training purposes. Finally, the most concerning criticism is that the current funding system is not sustainable since state governments pay for every aspect of the programs. Programs do not use volunteers or have contracts with churches or other



private or public agencies. If state governments find that they cannot continue to fund mediation programs, mediation services are at risk of continuing.

## **Conclusions**

ADR is relatively new in Latin America. The modern idea for community mediation began in the United States and spread to many countries in Latin America and throughout the world. Similar to the United States, community mediation developed in Latin America to respond to criticisms of the formal justice system. Community mediation centers provide people a cost-effective method to resolve their own disputes in both the United States and Mexico. Populations that have cheap access to non-violent methods of dispute resolution, in which they are educated and empowered to solve their own problems, are better equipped to fulfill the ideals of democracy.

## CHAPTER V

### CULTURE, CONFLICT AND CONFLICT RESOLUTION

Culture is an integral aspect of any conflict that sometimes goes unrecognized. Rendon (1994) explains, “A person’s cultural background is a strong, though sometimes invisible, factor that permeates the whole process of mediation and that should be explored and addressed in order to effectively communicate with parties in mediation.” LeBaron and Pillay (2006) explain that culture is always a factor in conflict. “Culture may play a central role in conflict, or it might influence the conflict subtly and gently, but for any conflict that touches us where it matters, where we hold precious values and continually construct our identities, there is always a cultural component” (p. 16). This section aims to bring awareness to how culture affects conflict and conflict resolution. It will also identify general cultural values attributed to Latinos and help mediators consider mediation processes that are culturally appropriate for Latino participants.

#### **What Is Culture?**

Culture is learned both implicitly and explicitly (Weaver, 1998) and shapes people’s values and identity (William, 1994). People’s cultural identities might stem from their race, ethnicity, gender, sexual orientation, class, religion, country of origin, geographic region, language and socioeconomic status (Williams, 1994). People who identify as part of a particular cultural group will share similar interpretations about values, norms and beliefs (Lustig and Koester, 2003). People’s behaviors and actions are strongly influenced by their culture. In other words, culture and behavior are inextricably intertwined.

Hall (1976) compares culture and behavior to an iceberg. He explains that people's behaviors, or external culture, are like the tip of an iceberg: easily visible from the surface, it includes what people are consciously aware of. However, under the surface is the larger but hidden part of the iceberg, or the subconscious feature of culture. It contains attitudes, values, thoughts, and beliefs. Weaver (1998) continues the iceberg metaphor to explain intercultural conflict. When two icebergs collide, it occurs under the surface. Similarly, when two cultures collide, the conflict "occurs at the internal level, when values, thought patterns, central beliefs, perceptions and attitudes clash" (p. 73). Intercultural competence is a useful tool mediators can cultivate in order to begin to understand culture's affect on conflict.

### **Intercultural Competence**

Since culture is either a subtle or overt element of conflict, mediators may not be considered competent or effective unless they can demonstrate that they are culturally competent. Rendon (1994) asserts that practicing mediation without sufficient cultural competency may border as unethical. A report by the U.S. Department of Health and Human Services Office of Minority Health states that intercultural competence "implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities" (2001). According to Bucher (2004) culturally competent skills allow people to interact in a way that respects and values differences. Gudykunst and Yun Kim (1995) argue that understanding the culture of the 'other' is necessary in order to achieve

cross-cultural communication skills. Italian attorney turned American mediator

Alessandra Sgubini writes:

Mediation is not based on legal premises, but on communication, and can thus be applied virtually anywhere in the world when communicative and cultural barriers are broken down. 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 make mediation successful globally is to understand the cultural effect on both business negotiation and communication techniques (2006).

With this in mind, I will discuss four important cultural values that influence people's behavior.

I address cultural preferences regarding personal identity, interpersonal communication, authority, and gender. I include these broad cultural characterizations to increase mediation practitioners' awareness of how culture impacts conflict and conflict resolution. I use these cultural paradigms to highlight cultural preferences among Latinos later in the paper.

**Individualism and Collectivism:** Ting-Toomey and Chung (2005) discuss individualism as the tendency to emphasize individual identity over group identity, individual rights over group obligations and individual achievements over group concerns. Collectivism, on the other hand, is the value tendency that emphasizes group identity over individual identity, group obligations over individual rights and group concerns over individual wants and desires (Ting-Toomey and Chung, 2005).

Individualistic cultures are outcome oriented. That is, they expect a productive and tangible outcome to most interactions whereas collectivistic cultures are process oriented and are more concerned with maintaining relationships (Ting-Toomey and Chung, 2005). Even if both individualist and collectivist cultures consider it important to demonstrate respect for the other's public image, for example, the dynamics of how to show respect is acted out differently in each culture (LeBaron, 2003). Researchers place Africa, many Asian countries and Latin America on the collectivist side of the spectrum. The United States, Canada, and western European are usually aligned closer to the individualistic side of the spectrum ("Iowa State University," 2005).

Individuals who identify as independent are autonomous and self-reliant. They see themselves as agents of change and rational choice makers. Those with an interdependent self-concept base their identity in a group, like their family. They also value group harmony (Ting-Toomey and Chung, 2005). People whose identity resides in the group will make decisions based on a different set of value criteria than those whose identity is based in the individual. People or cultures that differ in self and group identity may have a hard time understanding the behavior of the other if they are not aware that different identity orientations exist.

**Low and High Context:** Those in low context cultures generally belong to groups characterized by individualism, overt communication and heterogeneity. They value direct communication; meaning or intention is expressed through explicit verbal messages (Hall, 1976). Communication in low context cultures tends to focus more on the written or spoken word and messages are taken at face value (Ting-Toomey, 1999).

High-context cultures convey intention or meaning through the context and through nonverbal communication. To understand messages in a high-context culture one must read between the lines and pay attention to contextual cues like history or traditional social roles (Ting-Toomey, 1999). According to LeBaron (2003) this approach prevails in Asian countries including Japan, China and Korea, as well as in Latin American and African countries.

Misunderstanding and conflict can easily stem from a lack of awareness about someone's communication style that differs from one's own. LeBaron (2003) expresses how this construct can lead to problems for the unformed mediator:

A mediator who brings low-context communication expectations to mediation may encounter reticence from those with more high-context communication patterns. This may lead to miscommunication and to misattributions, since bad motives are sometimes associated with those whose communication is different from our own. Further, when communication is indirect, then the very methods that may seem "natural" to a low-context mediator to elicit information will not work (LeBaron, 2003).

The above passage underscores people's tendency to understand and judge others' communication styles from the reference point of their own personal communication preferences.

**Power Distance:** refers to cultural ideas regarding the importance of hierarchy, status and equality. Cultures with low power distance believe in the importance of minimizing social or class inequalities, questioning or challenging authority figures,

reducing hierarchical organizational structures, and using power only for legitimate purposes (Lustig & Koester, 2003).

Conversely, high power distance cultures believe each person has a rightful and protected place in the social order, and that the actions of authorities should not be challenged or questioned. They also believe that hierarchy and inequality are appropriate and beneficial (Lustig & Koester, 2003). LeBaron (2003) notes a correlation between collectivist and individualist cultures and their alignment with high or low power distance:

Those from collectivist cultures tend to expect vertical hierarchies and function well within them. Many dominant culture Americans carry individualist assumptions, including the primacy of horizontal relationships; that is, they expect equality and acknowledgment while collectivists may be more comfortable with wider and more pronounced power differentials and deference to those higher in status (LeBaron, 2003).

Disparate views on status can be a cause of unclear communication. It can also lead to unintentional disrespect if someone in a higher social role is treated as equal to someone who they consider to be in a lower status position.

**Masculinity and Femininity:** Refers to the distribution of roles between the genders (“Clearly Cultural,” n.d.). Masculine cultures emphasize inequality between the sexes and specific gender roles, whereas feminine cultures emphasize equality between the sexes and flexible sex-role norms (Ting-Toomey & Chung, 2005). Cultures on the masculine side of the spectrum also value male assertiveness and women as nurturers (Lustig & Koester, 2003, p 128). People in masculine cultures are characterized as

ambitious and competitive (*Itim International*, 2009). Accumulation of material wealth demonstrates success in masculine cultures. Moreover, people in high-masculine cultures “believe in ostentatious manliness.” In fact, “sexual inequality is regarded as beneficial” (Lustig & Koester, 2003, pp. 127-128).

Feminine cultures are concerned with nurturance. For example, feminine cultures teach sympathy for the unfortunate and place importance on service to others (Lustig & Koester, 2003). They place more importance on quality of life issues as well (Ting-Toomey & Chung, 2005). These cultures have less prescriptive role behaviors associated with each gender; both men and women can demonstrate nurturing qualities (Lustig & Koester, 2003).

Geert Hofstede created a masculinity index that rates cultures on their orientation toward masculinity and femininity. According to this index, Mexico, Austria, Italy and Japan are countries that fall on the masculine side of the spectrum. Chile, Portugal, Sweden and Thailand are on the feminine side (Lustig & Koester, 2003, p.127).

Differing ideas on gender norms have the potential to create misunderstanding and conflict within families, between two people or groups of people and even between countries. People’s ideas regarding proper gender norms will impact perceptions of power; who has it and who should have it. Mediators who are aware of different gender values and roles will be better able to recognize when these values have an impact on the conflict. Moreover, they will be better equipped to interact appropriately with parties who have different ideas on gender from the mediators’ own values.



## Stereotypes

One criticism of placing culture into categories to explain cultural differences is that it reduces people to stereotypes. However, Bennett (1998) assures that:

It is necessary in intercultural communication to make *cultural generalizations*.

Without any kind of supposition or hypothesis about the cultural differences we may encounter in an intercultural situation, we may fall prey to naïve individualism, where we assume that every person is acting in some completely unique way. Or we may rely inordinately on ‘common sense’ to direct our communication behavior (P. 6, emphasis in the original).

In other words, generalizations are a useful way to begin to think about how culture impacts behavior and communication.

On the other hand, Lederach (1995) stresses, “cultural awareness and understanding of another culture does not mean that one can understand the motivations, needs and expectations of a particular individual simply because one has a general understanding of the individual’s cultural background” (p. 200). Thus, people who align with the above mentioned groups might share many of the broad national cultural patterns while differing significantly in the more specific patterns of their respective ethnicities. LeBaron explains, “Family socialization, individual life experience, popular culture and immigration or intergroup contact experience will all have differential effects on the value formation process of an individual (n.d., p. 57). Gender, socioeconomic status, religion, personal preferences based on temperament, and physical ability are other examples of specific identities that influence people’s daily interactions.

Bennett (1998) offers an example. He writes, “To ‘know’ an actor’s culture (‘he is Mexican’) will not allow you to predict his behavior unless you know ‘all’ his cultures – he is an engineer, educated in the United States, of southern *indio* background, evangelical Protestant, etcetera” (p.5). Thus, practitioners should remember to look past national identities to fully appreciate and understand a person as a whole. However, practitioners may find it difficult to be sensitive to and aware of other cultures without resorting to stereotypes. One idea on how to achieve this goal is for practitioners to widen their experience with others who differ culturally. A second idea is to foster self-awareness. A discussion on how these tools help practitioners follows:

**Experience:** In an ideal situation practitioners are culturally fluid, meaning that they are able to successfully participate in many different cultures. Barrera and Corso (2002) recognize, however, that practitioners can find the idea of being familiar with cultural parameters for everyone with whom they might interact overwhelming and unrealistic, especially when many people participate in multiple cultures. They believe that the key to cultural competence lies in the ability to “craft respectful, reciprocal, and responsive interactions, both verbal and nonverbal, across diverse cultural parameters” (p. 103). This might require practitioners to leave their comfort zone and seek experience with cultures they are not familiar with. Respectful, reciprocal and responsive qualities are expressed through the desire to be both cognitively and experientially knowledgeable about others who differ culturally (Barrera & Corso, 2002). As long as these interactions are rooted in respect for boundaries and in acknowledgement of others’ perceptions as valid, practitioners will challenge their stereotypes, or better understand them.

**Self-awareness:** The development of self-awareness is another way to mitigate the negative power of stereotypes. Self-awareness will enable practitioners to recognize when their perceptions of others had an impact on their thoughts and interactions (Gudykunst & Kim, 1995). Practitioners can use self-awareness to better understand their personal communication behaviors and cultural values and to better respond to others who are culturally different. Sue (2006) argues that through self-awareness practitioners can increase their levels of comfort with clients who differ in values.

Reflective practice is one way to develop self-awareness. Through self-reflection practitioners will be able to acknowledge and address stereotypical assumptions (Bucher, 2004). Reflective practice in mediation includes the mediator analyzing their role in a mediation session after each session. Practitioners might reflect on the parties' reactions to their questions and attempts at neutral reframing. The mediator can ask whether he or she was more attentive to one party over the other. If this did occur, the mediator can think about why this happened and what they would do differently to make sure it didn't happen next time. A mediator who replays the session in his or her mind and asks analytical questions regarding how the session went and what they might do differently in the next session are tenants of reflective practice (Sue, 2006). A co-mediator's input might also help each mediator process the session and determine techniques that helped the process and areas for improvement.

### **Latino Cultural Values and Conflict Resolution**

Jackson, Hodge, and Vaughn (2010) researched culturally sensitive interventions for health-related behaviors and found that clinical effectiveness is enhanced when

interventions reflect the cultural norms of a population. Similarly, Folberg and Taylor (1984) assert that mediation is universal and understandable to people of many different cultural views, as long as it is provided in a way that is consistent with their beliefs and traditions. A discussion of common Latino values follows to help shape culturally appropriate mediation processes and outcomes.

**Identity:** Values such as interdependence and spirituality are often affirmed in Latino culture (Jackson, Hodge, and Vaughn, 2010). Irving and San Pedro (1999) describe Latino culture as an allocentric culture, “a culture in which the interests of the group and relations among group members take precedence over individual concerns or internal psychological states” (p. 327). Group members typically include the family. A fundamental aspect of families is that each family member fulfills a specific social role and that each individual is to be respected for fulfilling that function (Owen & Glass, 2010, p. 253). For instance, men are generally the head of the household and have the primary responsibility to protect and preserve the family’s well being. Women’s responsibilities include care giving and household management (Irving & San Pedro, 1999).

The Latino definition of family extends beyond the nuclear family. The term *familismo* or familism, describes the value that places much importance on the multigenerational, informal extended family and close friends. Bussel (2008) explains:

The tenets of familism are to place the family ahead of individual interests and to prioritize the fulfillment of responsibilities and obligations to immediate family members and other kin, including godparents. Families who ascribe to values of familism often live in close proximity or share the same dwelling with extended

family members. In keeping with family obligations and respect for elders, adult children may supplement their parents' income.

Familism encompasses a range of values and behaviors that reflect cultural ideals. For this reason, recent Latino immigrant families who now reside in the United States may hold to these values and practice these behaviors with much greater consistency than U.S.-born families who identify as Latino.

**Communication:** In terms of interpersonal conflict resolution, Latinos will generally aim to promote harmony, goodwill and honor. Interpersonal conflicts are usually handled indirectly through avoidance or the use of a trusted go-between (Irving and San Pedro, 1999). Social interaction is characterized as generally friendly and spontaneous. Social contact is frequent and involves public hugging and kissing. Emotions are close to the surface and are expressed through tears, rage or laughter (Irving and San Pedro, 1999). According to Falicov (2010) it is even accepted and “desirable” that Latino men are affectionate: “They can show tender feelings, kiss and hug including male children and close friends” (p. 314). Falicov also notes that in his experience as a counselor, “Latino immigrant men in therapy are often quite capable of showing positive and negative emotions, without much embarrassment over these displays” (2010, p. 314).

**Authority:** Respect for authority is another important cultural tenant. This value expresses itself through guarded nonverbal communication in the presence of an authority figure. Silence and avoidance of eye contact are also common. Irving and San Pedro (1999) note that these behaviors do not imply resistance or lack of cooperation, but rather deference.

**Gender:** Latino men are generally characterized as “macho” or as demonstrating “*machismo*.” This word “typically describes negative aspects such as sexism, aggressive attitudes, hyper masculinity and interpersonal dogmatism” (Glass & Owen, 2010, p. 253). However, this term does not account for “positive aspects like pride in and taking responsibility for the family” (Glass & Owen, 2010, p.253). *Cabellerismo*, which means gentleman, denotes the positive aspects of the typical Latino male. *Cabellerismo* refers to the male value of “protection of wife and children and providing for them through whatever means” (Zayas & Torres, 2009, p. 294). It is a “dimension of machismo defined by egalitarian beliefs, affiliation, positive family relationships and empathy” (Glass & Owen, 2010, p. 253).

More traditional males adhere to long valued cultural expectations of masculine gender characteristics like toughness, stoicism, self-reliance, a belief in never showing weakness, avoidance of anything feminine, success at work, restricted expression of feelings, homophobia, objectify sex. (Zayas & Torres, 2009, p. 294). However, Falicov (2010) clarifies:

Gender relations also undergo continual renegotiation as immigrant women and men rebuild their families in the United States. Several factors, such as differences between the sending and the receiving country with respect to women’s increased economic opportunities, the decreased influence of the Catholic Church on control of fertility, and the U.S. legal protections against family violence, facilitate immigrant woman’s striving toward a more modern type of marriage based on greater trust, intimacy and sexual love. Men’s reactions to these new expectations vary from becoming more entrenched in old definitions

of sex roles to slowly embracing new ways of being and behaving toward women (p. 312).

This passage affirms that cultures are constantly in flux. It also demonstrates how context impacts cultural values.

Even though cultural value differences exist between Latinos, the above information offers a helpful starting place to think about how conflict resolution processes can be adjusted to meet the needs of Latinos. LeBaron (n.d.) writes, “To truly respond to a multicultural community, [mediators] must move away from assuming there is only one viable conflict resolution system.” The next section uses the broad cultural characteristics above to consider culturally appropriate mediation practices for Latinos.

### **Mediation and Latinos**

John Paul Lederach, a well-known international conflict resolution practitioner with extensive experience in Latin America felt that the mediation model used in the United States was not responsive to cultures outside the “Anglo” culture. Lederach provides a model to analyze different approaches to conflict resolution in his book *Preparing for Peace: Conflict Transformation Across Cultures* (1995). He uses the five basic mediation stages used in the United States: Entry, Gather Perspectives, Locate Conflict, Arrange/Negotiate and Way Out/Agreement, and describes how they can be altered to fit a Latino cultural paradigm using his experiences working in Latin America. These ideas are discussed below and are supplemented with additional views.

**Entry:** Parties initiate the mediation process in the entry stage. Typically, one of the parties to the conflict contacts or is referred to the mediation center. If the center

determines that the conflict is suitable for mediation and both the initiating party and the other party to the conflict agree to mediate, then the case moves forward to a joint meeting with an assigned mediator(s). According to the Anglo model, the mediator must be “neutral and disinterested and have no personal connection to either party (Weller, & Martin, 1996 p. 9). The entry stage also includes the introduction to the joint mediation. At this point the mediator discusses ground rules. The mediator explains how the session is run and requests that the parties participate in good faith.<sup>4</sup> The parties also agree to confidentiality (Weller & Martin, 1996, p. 9).

However, Latino parties may prefer a mediator who comes from within the social network and knows the parties and their culture due to a cultural value of not airing out problems in front of strangers (Weller & Martin, 1996). When writing about Latino students and their parents in the United States educational system, Villalba & Indelicato (2006) explain that Latinos “find it difficult to rely on relationships for help other than from their family, friends, or community.” Irving and San Pedro (1999) verify this claim. They state:

Among Latino families, rapport is likely to involve more than merely developing trust. It means moving from the status of outsider to that of insider, with whom private family matters may be freely discussed. To that end, practitioners need to develop a personal relationship with key family members. Such personal involvement places demands on oneself not normally experienced in dealing with white clients, including issues of self-disclosure, the boundary between

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<sup>4</sup> Parties agree to mediate in good faith which means that they are striving to resolve the conflict throughout the entire session.



professional and personal, and established notions of professional expertise having to do, for example, with public touching and displaying affect (P. 332). According to Weller and Martin (1996) a familiar and trustworthy mediator might be more valued than a mediator who has had training or certification (p. 60).

**Gather Perspectives:**<sup>5</sup> Each party's perspectives regarding the conflict are gathered prior to a mediated session. In the Anglo model, mediators only gather the viewpoints of the parties directly involved. However, "with Latino parties mediation has to be more holistic." The extended family is important, so the mediator may want to gather perspectives from the extended family as well (Weller & Martin, 1996, p. 62). In order to not compromise confidentiality, the mediators need to "clarify with the parties whom the mediator would like to include and obtain permission of the parties before expanding discussion in this way" (Weller & Martin, 1996, p. 62).

Once parties are together in mediation, the mediator will ask each party to explain what brought them to mediation again. This is done so that both parties hear what each other's concerns are. In the Anglo model, the second party to engage in this exercise is asked not to respond to what the first party said, but rather, tell their perspective as if they were the first one to speak. The mediator(s) then highlight areas of concern that both parties share. However, Latino parties may need to vent first (Weller & Martin, 1996, p. 62). Additionally, Latino parties may not be direct when they express what their concerns are. They may talk about issues that are seemingly unrelated to the other party in mediation (personal communication, March, 2011).

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<sup>5</sup> See Fisher, Ury and Patton (1981). *Getting to yes: Negotiating agreement without giving in* to learn more about how U.S. mediators are trained to gather perspectives. Also available in Spanish: *Obtenga el si, el arte de negociar sin ceder*.

Moreover, Gomez (2005) a longtime community mediator in Argentina asserts that the process of gathering perspectives should not occur in the mediation session with parties together. Her reasoning is that the second party to respond will have difficulty asserting his or her point of view without responding to the allegations of the first party. The term for this occurrence is the colonization of narratives.<sup>6</sup> Instead, the mediation should start with a private caucus with each party separately (Weller & Martin, 1996, p 62). When they are brought back together, the mediator will report back what the issues are through neutral reframing. He or she will also highlight common concerns to help develop a common narrative.

**Locate Conflict:** In this stage of the Anglo mediation model, mediators differentiate party's interests from their positions.<sup>7</sup> However, Lederach points out that interests are culturally specific and depend on preferences toward the individual or the collective. Thus, mediators should not assume that Latino parties will focus primarily on their individual interests. They may be more concerned with interests such as saving face and respect in their family and community than with personal economic or material gains. In other words, those who subscribe to a collectivistic orientation will most likely desire to promote the welfare of their family as much as or more than their own welfare (Weller & Martin, 1996, p 62).

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<sup>6</sup> See Cobb, S. (2001). Dialogue and the practice of law and spiritual values: Creating sacred space: Toward a second-generation dispute resolution practice in the *Fordham Urban Law Journal* to learn more about the colonization of narratives.

<sup>7</sup> See Fisher, Ury and Patton (1981). *Getting to yes: Negotiating agreement without giving in* to learn more about positions and interests. Also available in Spanish: *Obtenga el si, el arte de negociar sin ceder*.

**Arrange/Negotiate:** Mediators who identify with European American cultural paradigms may be tempted to negotiate issues identified in earlier stages in a linear fashion. A more holistic approach might be more appropriate with Latino parties. A holistic approach would recognize that seemingly independent issues might be intertwined. Participants who tend to problem solve from a holistic premise will have difficulty dealing with issues separately. LeBaron (n.d.) explains, “Relationship, identity and behavior are not viewed as divisible in collective cultural contexts.”

When it comes to negotiating solutions, the U.S. model dictates that parties develop their own solutions. The mediator should not impose his or her opinions or advocate for one party’s ideas over another. However, mediators may have to direct parties to their solutions considering the cultural norm of Latino respect for authority and hierarchy (Weller & Martin, 1996, p. 63). Similarly, in the United States, mediators are charged with balancing power disparities in mediation through facilitation techniques. However, empowering the less assertive party may be inappropriate or ineffective with Latinos since they are more accepting of hierarchy and operate under the norm of power difference (Weller & Martin, 1996, p. 20).

**Way Out/Agreement:** The mediator(s) consider the case closed once parties sign an agreement in the model typically followed in the United States (Weller & Martin, 1996, p. 64). However, Latino participants may want mediators keep the case open. In addition, “the parties may want a third party to serve as an arbitrator to enforce the agreement in lieu of detailed written provisions in the agreement specifying the obligations of each party. This gives the agreement a more collectivist approach to enforcement, as

the arbitrator can interpret the agreement according to cultural norms” (Weller & Martin, 1996, p. 64).

**Consideration of Cultural Complexity:** The term Latino refers to a broad group of people. Cultural differences emerge between recently-arrived Latinos living in the United States and families that have lived in the U.S. for generations. Cultural differences also occur within families, between those who were born outside the U.S. and those who were born in the U.S. For these reasons, Latino families and individual family members will distribute on a continuum regarding group identification. Some will “identify passionately with their Latino origin. Others repudiate that origin, while most fall somewhere between these extremes” (Llapur, n.d.). These differences have implications for mediation. Llapur explains:

Those who identify easily with Latino origin and values will operate more collectively and will give much more importance to relationships. Furthermore, they will probably feel more comfortable with a Spanish-speaking mediator who is a trusted part of his community while the ones who repudiate the Latino origin will tend to operate more individualistically and use the external and more neutral mediator as the appropriate one” (Llapur, n.d.).

It is also worth pointing out that cultures are constantly influx. Globalization inundates other cultures with Western media and products. This often leads to cultural transformation.

## **Conclusions**

I highlighted four cultural paradigms to help mediators increase their awareness of how culture impacts conflict and conflict resolution in this chapter. I then discussed Latino cultural values in terms of the four categories. I offered a discussion of other's ideas regarding how to alter Anglo mediation practices to meet the needs of Latinos. I also reminded the reader that cultural generalizations can offer a helpful starting place to think about these issues, but that many differences emerges between members of specific cultural groups and depend on the context. For this reason, I asserted that the practitioner should use the methods of increased experience with other cultures and self-awareness to mitigate the use of stereotypes and cultural generalizations.

## CHAPTER VI

### OAXACAN CONTEXT AND CULTURE

Each one of Mexico's 31 states is historically, politically, demographically, geographically and economically diverse. This section covers the historical context and cultural attributes of Oaxaca. The information might challenge the reader's stereotypes about immigrants from Mexico.

Oaxaca is one of the largest Mexican states and lies in the southern portion of the country. The Pacific Ocean forms Oaxaca's western border. Guerrero and Puebla border the top half of the state and Puebla and Veracruz lie to the east. Chiapas, the last state before Guatemala, completes Oaxaca's southern border (See Figure 2). Oaxaca's climate varies significantly from location to location due to diverse geographic features such as mountain ranges and coastline. Additionally, the climate is marked by two seasons: rainy and dry.

#### **History**

On September 16, 2010, Mexico celebrated its 200th year of independence from Spain. Yet, numerous aspects of Mexican society today reflect the 300 years of Spanish colonization. Many cities in Mexico reflect Spanish architecture, for example. Cobblestone roads, immaculately adorned cathedrals and central town squares are such physical remains of Spanish rule. In addition to a legacy of Spanish architectural charm, the Spanish also left a legacy of indigenous marginalization, especially in Oaxaca.

**Figure 2:** Map of Mexico. Shows the location of Oaxaca in relation to other Mexican states.



**Source:** [http://www.pickatrail.com/jupiter/location/north\\_america/mexico/oaxaca.html](http://www.pickatrail.com/jupiter/location/north_america/mexico/oaxaca.html)

Native people were relegated to the bottom of the social order when the Spanish implemented a hierarchical class system upon their arrival in the 16<sup>th</sup> century. The highest class was comprised of those who were born in Spain; they became rulers in the New World. Those who were born in the New World, but still had pure Spanish blood were most likely landholders. Mestizos, or those with both Spanish and Native blood, assumed a middle position. Finally, native Indians were subordinate to all others (Murphey, & Stepick, 1991). Even though the hierarchy “remained constant throughout the 300 years of the colonial era, the basis for social stratification gradually evolved from individual and family heredity to economics” (Murphey, & Stepick, 1991, p. 15). In other

words, Indians today are still relegated to the bottom of the social order through economic marginalization.

As Arthur McGovern (1989) explains, “The Spanish and the Portuguese came to the lands of America with dual goals: to dominate and to evangelize.” He further explains that the colonizers used their belief in God to justify their domination of the land and the people. “To Spain and Portugal, he writes “it gave them *jus patronatus*: a patronage that entrusted to them the propagation of the faith and gave them the right to share in the beneficiaries and tithes the church would receive in these lands.” The church and its missionaries successfully converted indigenous populations to Catholicism. Thus, the church was used as a mechanism for control in Latin America. It also paved the way for further inequality and exploitation of the people, since the church owned much of the land.

## **People**

Chiapas and Oaxaca are respectively ranked as the first and second poorest states in Mexico. Approximately 75 percent of Oaxaca’s people live in extreme poverty (Bacon, 2008). The most affected regions are the Mixteca, the Sierra Sur, the Cañada, and the Costa (“Si Paz,” 2011). (See Figure 3).

Education levels illustrate the consequences of poverty. The average level of school completed in Oaxaca is five and a half to six years. Most people do not continue past fifth grade. Additionally, 34 percent of children over five years old do not attend school according to government statistics (“Gobierno del Estado,” 2010). Lack of education correlates with high illiteracy rates: 21.5 percent of the Oaxacan population is illiterate. Women have a higher illiteracy rate than men. (“Gobierno del Estado,” 2010).



One third of Oaxaca's population is indigenous. Again, Oaxaca is second to Chiapas in term of its indigenous presence (Bacon, 2008). Oaxaca boasts 16 different indigenous groups, each with its own languages and customs. In addition to speaking their own dialect, 80 percent also speak Spanish ("Si Paz," 2011). Two of the largest indigenous groups are the Zapotec and the Mixtec. The Zapotec Indians are believed to be among the earliest ethnic groups to gain prominence in the region (Schmal, 2006).

**Figure 3:** Regional Map of Oaxaca. Shows Oaxaca's eight regional distinctions.



Source: [http://www.sipaz.org/data/oax\\_en\\_01.htm](http://www.sipaz.org/data/oax_en_01.htm)

### **Government and Politics**

Until recently, Mexico was ruled by the Institutionalized Revolutionary Party (PRI). The PRI had never lost a presidential, gubernatorial, or senatorial election since its

inception in 1929. Because of Mexico's extreme centralization of government, the PRI had indirectly controlled most local governments (Murphey, & Stepick, 1991). In 2000 a new party was elected to the federal government for the first time. However, it was ten more years before a PRI defeat in Oaxaca. On July 4, 2010, Oaxacans elected a state governor from the National Action Party (PAN).

Oaxaca is divided into 571 municipalities, or counties, which is more than any other state. This high number of municipalities is "a reflection of the state's ethnic and geographic diversity and of the citizen's intense identification with their local communities" (Fox & Rivera-Salgado 2004, p. 451). Each municipality elects a president who is responsible for providing all the public services for his or her constituents. It acts administratively second to the state government.

Municipalities play an important role in the community. They serve as the basic point of integration between the state and civil society. "It is the municipality where the logic of the state and the daily life are dynamically combined" (Gomez, 2005). Furthermore, Fox and Rivera-Salgado (2004), describe municipalities as "distinct social, cultural and political universes" (p. 451). The municipality operates like a family and demonstrates a cultural regard for the collective whole and interpersonal relationships.

In each municipality, indigenous communities practice their own form of government called Uses and Customs (*Usos y Costumbres*). All citizens serve in a public office and do so out of sense of moral and civic obligation to the community. Important community problems are often discussed and solved through traditional practices of collective decision-making in communal assemblies (Fox & Rivera-Salgado, 2004, p. 452). Each community member is expected to serve on the council at some point in his or

her life. This form of government survived Spanish conquest and co-exists today with the modern form of government.

### **Protest and Violence**

Oaxacan culture is geared toward protest and resistance, a response to years of oppression through colonization. Protesters frequently fill the streets to express their political voices. The *Zocalo*, or public square in Oaxaca City, the state capital, plays a socially significant role. It is an active place constantly filled with families, businesses, street vendors (including young children), tourists and protestors. Political artwork and signs are placed on the same side of the *Zocalo* as government offices. Heavily armed police and state military personnel patrol this area in teams.

In 2006 a commonplace protest was repressed through violence. Favela (2010) explains “2006 was a year of major political and economic unrest in Oaxaca, which resulted in the displacement of thousands of families and set the stage for the historic uprising that began with a teachers’ strike and evolved into a massive campaign for social justice.” Teachers, many of whom were indigenous, took over Oaxaca’s central business district for six months “angered by the refusal of the Institutional Revolutionary Party (PRI) governor, Ulises Rtiiz, to negotiate a higher base salary” (Stout, 2008). At this time teachers typically earned the equivalent of \$220 a month, with a portion of this money used to purchase school materials (Favela, 2010).

During the protest, teachers “occupied two spacious plazas, the *Zocalo* and the Alameda, and spilled into nearly 50 surrounding city blocks. They erected tents and lean-tos and improvised kitchens, portable bathrooms, and first-aid stations” (Stout, 2008).

The protest became violent at dawn on June 14<sup>th</sup> when those camped in the main plaza were “stormed by police squads and helicopters dropping tear gas.” After the attack ended, “there were multiple reports of rapes and beatings committed by police and government supporters” (Favela, 2010).

The following years brought little closure to the incident and many people suffered psychologically. Mexico’s Supreme Court ruled that Governor Ruiz was responsible for grave human rights violations in Oaxaca during the 2006 uprising. However no criminal charges or impeachment proceedings were initiated. This is because the “justice system remains bound to the interests of a weak federal government and state and local government controlled by despots and drug cartels in Oaxaca” (Carlsen, 2008).

Another example of indigenous marginalization occurred in April of 2010 when Triqui Indians in the town of San Juan Copala declared themselves autonomous from the Mexican government. In response, paramilitary groups barricaded the town. For several months the Triqui were not able to receive water, food, or medicine. The situation garnered international attention when paramilitaries under the command of the municipal government opened fire on a humanitarian aid van attempting to deliver supplies. Of the 30 people present, two were killed and ten were injured (L.A. Times/World, 2010).

PRI Governor Ulises Ruiz Ortiz was again blamed as responsible for the actions of two paramilitary groups that carried out approximately twenty killings in San Juan Copala – deaths included several women and children. Witnesses reported that the paramilitary was also responsible for beatings, rapes and disappearances. The former Governor still has not been brought to justice for accusations of genocide and election

rigging from the years he held office: 2004 -2010. Stout sums up the political corruption that plagues Oaxaca:

For more than a century, Oaxaca has been known as one of Mexico's most corrupt states. A privileged minority holds power, and there is little trickle down of the money these people manipulate; not surprisingly, Oaxaca's ex-governors are among the wealthiest land holders in the state. Meanwhile, more than 45 percent of its 3.5 million residents are indigenous, 76 percent of them earn less than 70 pesos a day slightly more than six U.S. dollars (2008).

Nevertheless, there is recent expectation of future positive change. During a historic political election on July 4, 2010, the PRI was defeated. This resulted in the end to 80 years of PRI rule. Gabino Cue of the Party of the Democratic Revolution (PRD) was elected as Oaxaca's new governor.

## **Economy**

Mexicans earn their salaries by the day, not by the hour (Witness for Peace, 2010). A large percentage of the population works in the informal economy and do not have benefits (Witness for Peace/Mexico, 2010). The minimum wage is based on a zone system, with the country divided into three geographic zones (Witness for Peace/Mexico, 2010). Oaxaca is in zone C and has the lowest minimum wage at \$54.47 per day, or a little over \$4.50<sup>8</sup> (Witness for Peace/Mexico, 2010). An average family needs to earn an average of five minimum wages to cover the cost of bare necessities (Witness for Peace/Mexico, 2010). Food costs in Mexico are barely cheaper than food costs in the United States. Moreover, families pay for public education in addition to school supplies

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<sup>8</sup> The symbol for American dollars (\$) and Mexican pesos is the same.

and uniforms and socialized public health system is only accessible by the less than 40 percent employed in the formal sector (Witness for Peace/Mexico, 2010).

Oaxaca is among the least developed states in Mexico. It receives one of the lowest federal subsidies, despite having the ninth largest population of the thirty-one states (Murphey & Stepick, 1991). The state is rich in resources such as timber, uranium, gold, silver and water. But most of those resources have been sold off to U.S. and Canadian companies, with the people of Oaxaca seeing very little benefit (Donahue, 2006).

Oaxaca today, as in the past, is a market-oriented agricultural economy whose most important productive activities are agriculture, artisanry and commerce. Agriculture, with mainstays like corn and beans, has always been a vital part of indigenous society (Murphey & Stepick, 1991). The Guelaguetza celebration highlights the historical and current importance of agriculture. The Guelaguetza occurs every July, at the rainy season's midway point, in Oaxaca City. Guelaguetza is a Zapotec word which means offering or sacrifice. The celebration is a mix of bright colors and traditional dances to plead to the gods for the continuation of rain and a bountiful harvest ("Guelaguetza," 2011).

However, a decrease in land fertility and the inability to compete with the price of subsidized corn imported from the United States under the North American Free Trade Agreement (NAFTA) has led to the demise of the corn farmer and the abandonment of the Mexican countryside. Today, remittances from those living and working in the United States provide the third highest source of income for Oaxaca, after tourism and coffee ("Si Paz," 2011).

## **Migration**

Oaxaca is one of the main starting points for the current stream of Mexican migrants coming to the United States (Bacon, 2008). The State has a population of four million people and nearly 25 percent have migrated to the United States and other parts of Mexico. Economic desperation is the leading cause of this migration. Political turmoil is another reason (Bacon, 2008).

Migration from Oaxaca to the United States dates back to the mid 1900s when many Oaxacans migrated during the Bracero program (discussed further in chapter VII). Many Oaxacans, having experienced migration over previous generations used their experience and personal connections to find work in the North. These interpersonal connections and networks have led more than 90 percent of migrants to settle in State of California – in the cities of San Diego, Los Angeles, Santa Monica, Oxnard, Ventura, and the San Joaquin Central Valley – and in other states such as Oregon, Washington, North Carolina and New York (“The Oaxaca Fund,” 2008).

The State of Oaxaca is characterized by high levels of migration among its indigenous population and has been for the last 30 years. Additionally, more indigenous migrants leave Oaxaca than any other state. The Mixteca region has the highest levels of migration with an uninterrupted increase since 1940. Forty-six percent of a central valley community’s household included at least one migrant (Cohen & Rodriguez, 2004). 91.5 percent of Oaxacan municipalities have sent migrants to the US (IOAM, 2008).

Because many Oaxacans are in the United States as unauthorized immigrants and given the tightening of the border, the frequency of their return visits has been reduced (Kearney & Besserer, 2004, p. 461). High rates of permanent and temporary migration

have strained the capacity of many Oaxacan municipalities to fill offices and maintain effective government. “What is at stake here is the viability of an ancient, time-tested form of essentially democratic community governance” (Fox & Rivera-Salgado, 2004, p. 453). Additionally, the generally higher rate of male migration compared to females has affected gendered identities and roles (Fox & Rivera-Salgado, 2004, p. 460).

## **Conclusions**

Poverty and assaults to human rights have caused many Oaxacans to leave their communities. Thus, it is reasonable to conclude that many Oaxacans in the United States today come from a background of political oppression and economic desperation. They might also come from low educational backgrounds and speak multiple languages. The next chapter will provide a better idea about the characteristics of Latinos in Oregon.



## CHAPTER VII

### DIVERSITY IN OREGON

In order to interact competently with people from different cultures Bennett (1998) advises us to look beyond immediate projected images to “cultural patterns that can only be ascertained through research” (p. 8). Thus, this section is designed to summarize the research about the presence of minority demographics in Oregon. The reader will first become aware of the largest minority populations that live in Oregon. The rest of this section focuses exclusively on the lives of Latin Americans. It covers aspects such as the history of Latinos in Oregon, family characteristics, education, and employment. Through understanding these areas of the immigrant experience, social service organizations can better assist Latinos and Spanish speakers.

Oregon has one of the most rapidly growing foreign-born populations in the United States (Bussel, 2008). This population is comprised of new refugees and immigrants who have arrived in Oregon in large numbers, mostly since the 1990s. Russians, Ukrainians, Southeast Asians and Africans comprise the largest groups of new refugees. Many arrive from places like the former Soviet Union, Somalia, Ethiopia, Bosnia, Vietnam, and Cambodia (Hume & Hardwick, 2005). In terms of total new refugees, Oregon ranks eleventh in the nation.

The majority of new immigrants has settled in cities with supportive economies. In the early 1990s, Portland, the most populous city in Oregon, was thriving economically. By the year 2000, the foreign born population accounted for 12 percent of the total population of Portland. According to Hume and Hardwick (2005) Portland’s high foreign-born population is a reflection of the city’s robust economy and active support networks for refugees and immigrants. The foreign population grew 136 percent

in Portland between 1990 and 2000, which is more than double the national growth of foreign-born residents (Bussels, 2008).

More than 100,000 Russian-speaking refugees and immigrants from the former Soviet Union currently reside in the Portland Metro area. Census figures reveal that no place in the nation has had more of an influx from the Soviet Union than the Northwest (Bussels, 2008). Oregon is number two in the nation for Russian-speaking new-comers (Ecumenical Ministries of Oregon 1999-2010) and this population is expected to rise in upcoming years (<http://www.emoregon.org/ross.php>). Additionally, Somalis are the largest nationality among about 20,000 African immigrants from 28 countries who have settled in the Portland metro area (Brence, 2007). The largest minority demographic residing in Portland, however, are Asians (Bussels, 2008). Portland's distribution of foreign-born populations by place of origin is much more balanced, relative to other cities in Oregon like Medford or Salem (Bussels, 2008).

Spanish-speaking immigrants currently form the largest majority of Oregon's foreign-born population. The bulk of the adult population of Latinos<sup>9</sup> is composed of first generation immigrants: 70 -80 percent of the population have arrived within the last ten to 15 years (Bussels, 2008). However, part of this population's growth is caused by new births; Latino children were about 15 percent of the states' population under age 18 in 2006, and Latino births were 20 percent of the total births in Oregon (Bussels, 2008). An

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<sup>9</sup> The Census Bureau (2010) defines Hispanics or Latinos as: "people who classified themselves in one of the specific Spanish, Hispanic, or Latino categories listed on the Census 2000 questionnaire –'Mexican, Mexican Am., Chicano,' 'Puerto Rican', or 'Cuban'- as well as those who indicate that they are 'other Spanish/Hispanic/Latino.' Persons who indicated that they are 'other Spanish/Hispanic/Latino' include those whose origins are from Spain, the Spanish-speaking countries of Central or South America, the Dominican Republic or people identifying themselves generally as Spanish, Spanish-American, Hispanic, Hispano, Latino, and so on. Origin can be viewed as the heritage, nationality group, lineage, or country of birth of the person or the person's parents or ancestors before their arrival in the United States" ([http://quickfacts.census.gov/qfd/meta/long\\_RHI725209.htm](http://quickfacts.census.gov/qfd/meta/long_RHI725209.htm).)

estimated 90 percent of new Latino immigrants trace their family roots to the country of Mexico. The remainder has origins in Central and South American countries (Bussels, 2008).

**Figure 4:** Map of the State of Oregon. The state is situated on the west coast of the United States, between the states of California and Washington. The Pacific Ocean forms the western border and the State of Idaho lies to the east. The most populous cities are located directly off Interstate 5, the major west coast freeway that connects southern California to Canada. Eastern Oregon is desert and less populated. The state is divided by the Cascade Mountains.



**Source:** [http://www.brookings.or.us/About%20Brookings/state\\_of\\_oregon\\_map.htm](http://www.brookings.or.us/About%20Brookings/state_of_oregon_map.htm)

Latinos in Oregon live “in towns and cities from the Oregon coast to the Willamette Valley, extending across the Cascades into the central and eastern part of the state” (Bussels, 2008, p.34). The twenty-one counties in Oregon (out of thirty-six) whose Hispanic populations more than doubled between 1990 and 2000 are Benton, Clackamas, Clatsop, Crook, Curry, Deschutes, Jackson, Jefferson, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill (Bussels, 2008). Latinos comprise a large percentage of the foreign-born population in Eugene, Oregon’s second most populated city, Salem, the state capital, and Medford, the largest city in southern Oregon.

**Table 1:** Oregon demographic percentage breakdown from the 2010 census figures

White	<b>89.90%</b>
American Indian/Alaskan Native	<b>1.60%</b>
Asian	<b>3.70%</b>
Foreign Born	<b>8.50%</b>
Black	<b>2.00%</b>
Hispanic or Latino	<b>11.20%</b>
Native Hawaiian	<b>0.03%</b>

**Source:** <http://quickfacts.census.gov/qfd/states/41000.html>

According to the most recent census, Oregon has a total population of 3,825,657 people. Table 1 above shows that Latinos comprise a little over 11 percent of the total

population. The foreign born-population is around 8.5 percent of the total population. Latinos are the largest minority demographic and are expected to grow quickly. Moreover, census data most accurately reflects information on authorized immigrants. The recent census figures may not include potentially larger numbers of unauthorized immigrants who reside in Oregon as in other parts of the United States (Bussel, 2008).

## **History**

Because of Oregon's long history as a site of Latino settlement, small towns and communities continue to attract ever-larger numbers of new migrants from Latin America, especially from rural Mexico, because of the linguistic, cultural, and social support that is well established in certain parts of the state (Bussel, 2008). The report *Understanding the Immigrant Experience in Oregon* comments that "Mexicans and other Spanish-speaking workers have long journeyed to Oregon to take jobs that will pay enough to help support families both in the United States and back at home" (Bussel, 2008 p.16). The continuing request for agricultural labor in the northwest "established a pattern in which Mexicans were alternately greeted as desirable immigrants and denounced as undesirable intruders into America's social and economic life" (Bussel, 2008, p. 28).

For instance, the 1940s saw an increase in Mexican migration to the United States and Oregon under a government sponsored importation program to address wartime agricultural labor shortages: the Bracero Program. In Oregon, this program existed from 1942 to 1947 and resulted in approximately 15,136 Mexicans being contracted as farm laborers (Bussel, 2008). Additional Braceros were employed on Oregon railroads from

1943 to 1946. They were also put to work constructing fire lanes during forest fires and planted pine seedlings in reforestation projects for the U.S. Forest Service (Bussel, 2008).

Some of the first Mexican families settled permanently in the Woodburn, Hubbard, and St. Paul areas in the early 1950s. For this reason the generational history is much deeper and longer in Woodburn (Mendoza & Stephen, 2008). In the 1970s a second wave of migration came to rural Oregon from Mexico, including migrant farmworkers from the state of Michoacán and the first indigenous Oaxacans brought up by labor contractors from California (Bussel, 2008). By the mid-1970s, Mexicans and other Latino immigrants had firmly established themselves as a visible presence in Oregon (Bussel, 2008).

### **Indigenous Presence**

Indigenous workers from the state of Oaxaca were also among the new migrants who came to Oregon in the 1990s. “Although their migration began several decades before the passage of the North American Free Trade Agreement (NAFTA) in 1994, Oaxacans left in greater numbers following rising food prices and stiff economic competition from American farmers that drove many of them off the land” (Bussel, 2008, p. 29). The Oregon Law Center has documented the presence of fourteen different indigenous ethnic groups and languages among Mexican and Guatemalan immigrants in Oregon including Mixteco Alto, Zapoteco, Mixteco Costa, Chinaneco, Tzotzil, Maya, Mixteco Bajo, Triqui, Nahuatl, Zoqur, Chatino, Tojolabal, and Kanjobal.

Cities like Woodburn and Salem have been better able to incorporate indigenous Mexicans into daily life through social and cultural support. For instance, The Indigenous

Project of the Oregon Law Center based in Woodburn, Oregon, has been training indigenous language interpreters for courts and medical situations (Bussel, 2008). During the last two years in the fall, the city of Salem recreated the Guelaguetza celebration of indigenous dance and sacrifice to the gods that occurs in Oaxaca City every July.

Despite efforts of integration and cultural support, indigenous migrants are more prone to gangs, alcohol, drugs and teen pregnancy due to cultural and linguistic barriers (Mendoza & Stephen, 2008). They also show limited success at attending college (Mendoza & Stephen, 2008). Furthermore, the practice of the racial hierarchy denigrating indigenous people in Mexico continues in Oregon. Mexicans from Mexico City, for example, look down on indigenous Mexicans from Oaxaca. (Bussel, 2008).

## **Education**

Latinos in Oregon are a young population due to a higher birthrate among Latinos than for the overall U.S. population (Wozniacka, 2008). The presence of this young population is most apparent in Oregon public schools. According to the Oregon Department of Education, the population of Latino children in Oregon public schools has grown by more than 200 percent in the last ten years. At the current growth rate, the Oregon Department of Education projects that 28 percent of student enrollment in the state will be Latino by the year 2020 (Mendoza & Stephen, 2008).

Studies on Latinos in the Oregon educational system illustrate that Latino students are not as likely to succeed in school as their European-American counterparts. A study of middle school students enrolled in English as a Second Language (ESL) programs in Oregon, for example, “documented high levels of anxiety; alienation from school

counselors, teachers and classmates (especially from European American and more acculturated Latino students); and a lack of procedures for the identification of gifted and talented students enrolled in ESL programs” (Mendoza & Stephen, 2008). The Oregon Department of Education in 2006 found that the school drop out rate for Latinos is 2.5 times higher than non-Latino Whites in Oregon (Mendoza & Stephen, 2008). “These disparities are particularly alarming in light of research that demonstrates that school success is among the most important correlates of overall physical, mental, and social well-being for school-age youngsters and negative behaviors like substance use, delinquency and associations with deviant peers is correlated with low academic functioning” (Mendoza & Stephen, 2008).

## **Family**

Latino households are larger than the typical American household because extended kin commonly live together with the primary family. Latinos are described as family centered, community oriented, and autocratic in the sense that they demonstrate respect for authority (Mendoza & Stephen, 2008). Mexican families, in particular, relate through strong family ties, interdependence, mutual trust, and loyalty. Children are taught discipline through physical punishment and are taught to have unquestioned respect for fathers and authority figures (Mendoza & Stephen, 2008). These value and lifestyle differences can cause misunderstanding and conflict between Latino and Anglo families in the United States.

Furthermore, difficulties arise for immigrant parents who have children born in the United States due to cultural differences (Bussel, 2008). Children born in the states to



Latino parents have the ability to adopt the characteristics of the new culture relatively quickly. They learn English much faster than their parents and easily conform to popular tastes in clothing, music and technology (Bussel, 2008). Thus, parents and children in immigrant families may operate under different value sets. Spanish-speaking parents may rely on their English-speaking children to translate for them. A relationship in which the parents rely on their children to convey important information creates a dynamic in which the children have more power and can be a source of familial conflict.

While few studies have closely examined how different rates of cultural adoption between Latino parents and their children impact families, initial studies in Oregon suggest that large culture differences between the parent and child can negatively affect parenting practices. For instance, frustrated immigrant parents tend to reduce support, communication and monitoring of their teens who adopted the new culture (Mendoza & Stephen, 2008). Consequently, this response can increase teen problem behaviors as they succumb to negative peer influences (Mendoza & Stephen, 2008). This problem may become more visible and problematic in communities as the high proportion of young Latinos age.

Multiple Stage immigration, in which family members arrive in the United States at different times, is also a source of familial conflict. Sometimes one or both parents immigrate first before the other family members. Mendoza & Stephen (2008) explain in the report *Gender, Families and Latino Immigration in Oregon*, that children who were born in Latin America and remained there for some time with other relatives, but then were raised for part of their childhood in the United States may feel estranged in immigrant families (p.35). Furthermore, the negative effects of these separations and

reunifications can affect those in subsequent generations (Mendoza & Stephen, 2008).

Other problems that might occur due to a new life in the United States stem from an adjustment of family roles. Fathers, who are normally the respected authority figure, may feel threatened by acculturated children who do not demonstrate deference or their wives who are also earning an income. Latino men, whose culture discourages admitting weakness, may respond to these threats “with denial, adultery, or violence” (Weller, 2001). When there are problems, many Latinos will try to keep problems in the family or may be more likely to try to avoid or tolerate disputes.

### **Status and Employment**

Immigrants work in a variety of occupations ranging from professional and sales to manufacturing, services, and construction. Of the ten most populous immigrant groups in Oregon, Vietnamese, Ukrainians, and Mexicans have fared less well in the labor market (Bussel, 2008). Both male and female immigrants tend to be employed in industries and occupations that are more seasonal or subject to volatility, another factor that may affect the steadiness of their employment. Mexicans have had the most challenging labor market experiences, although occupational mobility and earnings may increase over time (Bussel, 2008).

Recent estimates indicate that from 1995 to 2004, more than 80 percent of all immigrants from Mexico have been undocumented (Bussel, 2008). Undocumented status strongly conditions these immigrants’ ability to find better jobs, advance in their education, and achieve membership in local civic institutions. Mixed households further add to the stress of an undocumented status. Mixed households include family members

of various immigration statuses. Children are especially vulnerable to the difficult situations that mixed households face. If children are citizens, for example, and their parents are unauthorized, the parents are often reluctant to seek social support services that their children are eligible to receive due to a low-income status. If children are undocumented, they may find themselves completing high school with few prospects for college, because they are not eligible for in-state tuition or federal financial aid (Mendoza & Stephen, 2008).

## **Conclusions**

Oregon demographics are rapidly changing. The Latino population is expected to increase in coming years from both births and new immigration (Bussel, 2008) Available data indicate that Oregon's Latino population will grow to a minimum of 430,000 by 2025 which is an expected growth of 184 percent (Bussel, 2008). However, Oregon is still primarily white and has historically demonstrated resistance to the presence of a growing foreign population (Bussel, 2008). Oregon public institutions are criticized as being slow to respond to the needs of a foreign-born population, who are unfamiliar with the language and culture of their new home (Bussel, 2008). This chapter offered information to bring awareness to the Latino immigrant experience in Oregon. This information can be used to help social service organizations, including mediation programs, offer culturally competent services to Latinos.

CHAPTER VIII  
MEDIATION IN OREGON AND OAXACA:  
DIFFERENCES AND SIMILARITIES

This section combines observations and knowledge about community mediation programs in Oregon with observations and knowledge about mediation programs in Oaxaca, Mexico. A comparison between programs in these two states in different countries achieves a number of objectives. One, it contributes to an overall understanding of the application of mediation worldwide. Two, the literature regarding culturally competent mediation services to Latinos will be confirmed, negated or questioned. Three, it will identify future areas of inquiry.

**Mediation Program Design**

**Oaxaca:** Oaxaca was one of the first states in Mexico to implement mediation programs in 2001. However, the ABA and USAID were hesitant to include Oaxaca in the Mediation in Mexico Project at first. They questioned the viability of mediation in Oaxaca due to the large and diverse indigenous population, the large number of small municipalities and their use of tribal law (personal communication on March, 2011). In the end, though, they chose to include Oaxaca because Oaxacan stakeholders demonstrated a high level of enthusiasm for the project (personal communication, March, 2011). The first center was located in Oaxaca City, the state capital (*USAID/ABA*, n.d.).

The court-annexed Mediation Center of Oaxaca in Oaxaca City opened 608 mediation cases during its first year in operation. In its second year, this figure doubled to 1280. During that year, 2885 people received mediation services. The success rate (measured by mediations resulting in a positive agreement between parties) in this center

was measured at 75-80 percent (USAID/ABA, n.d.). As of 2010, a total of 48 mediation centers were dispersed throughout the state of Oaxaca. Included in this number are satellite centers located in remote towns that make it easier for all sectors of the population to utilize mediation services. In these small centers, one person is responsible for all job roles and duties.

In 2004, the state judiciary drafted a mediation law that changed the state constitution. The law contains 43 provisions in six main areas. It defines mediation as a non-adversarial alternative to resolve conflicts through one or more mediators who are not able to make decisions, only facilitate communication between the parties in conflict. The goal, it states, is that parties voluntarily agree to a solution that completely or partially resolves the conflict. The types of cases in which mediation is applicable are civil, commercial, family, neighborhood, small crime and other issues that require contracts or transactions. The law mandates that the centers offer free mediation services.

All state run centers espouse the same mission and vision statements. The organizational mission is: “To provide an effective, personalized and free procedure that promotes a culture of dialogue in search of social peace through trained personnel.” The vision statement is: “To provide an opportunity for society to resolve interpersonal conflicts without confrontation and to empower citizens to make effective decisions through the procedure of mediation”<sup>10</sup> (“Centro de Mediacion,” 2009). An Oaxacan annual report of work (*Informe Annual De Labores*) states that the percentage of people using mediation services grew in the years between 2005 and 2009. It further states that the growth in numbers “undoubtedly reflect [mediation’s] benefit to society, placing

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<sup>10</sup> I translated the mission and vision statements from Spanish to English from their website. The translation was verified by a native Spanish speaker who also speaks English.

mediation as an avant-garde and effective tool in the eight regions of the state” (Mafud Mafud & Gomez, 2010, p. 5).

**Oregon:** The Oregon Office for Community Dispute Resolution (OCDR), housed in the University of Oregon Law School, grants funding to eligible community dispute resolution programs (CDRPs) in Oregon. To be a recognized program that is eligible for funding, the CDRP must be a governmental entity or a nonprofit organization registered in Oregon “with a separate dispute resolution program budget and a dispute resolution program advisory committee of a least five representative members of the community where the entity is located.” Furthermore, the advisory committee must meet at least quarterly (University of Oregon, 2011). The majority of CDRPs are nonprofit organizations.

Currently 18 CDRPs in 25 counties receive funding and support from the Oregon OCDR (personal communication, April 27, 2011). Funded centers have a responsibility to educate the community about mediation services and conflict resolution skills. Centers can hold citizen education workshops in a grassroots effort to empower community members to resolve their own problems in an effective and peaceful manner (University of Oregon, 2011). The rules also stipulate that the centers use volunteer mediators, at least part of the time.

If CDRPs charge participants a fee for dispute resolution services, a sliding scale or waiver or deferment based on income must be offered. The sliding scale begins at zero; centers are not allowed to turn away clients that cannot pay for services. Each organization is also required to match a percentage of the funding granted to them. The percentage of money the organization must match increases each year the organization is

in existence (University of Oregon, 2011). For example, this requirement is often met through in-kind contributions such as public or private grants, government contracts, and volunteer hours valued at \$30.41 per hour (personal communication, March, 2011).

Each Oregon CDRP differs in the types of services it provides due to varying organizational missions. An organization's mission is determined by board policies or the focus and expertise of organization's main players. The scope of programs offered in each organization depends on available revenue or the potential to generate revenue. The possibility of obtaining a grant for a specific program, like youth and restorative justice mediation for example, might encourage the organization to focus on developing or enhancing a restorative justice program.

**Analysis:** The definition of mediation stated in the Mediation Law of Oaxaca makes clear that the tenants of mediation are exactly the same in both Oregon and Oaxaca. According to both states, mediators are neutral third parties who facilitate a conversation between disputants whose presence is voluntary and who are responsible for finding their own solutions. Previous to completing this research I hypothesized that mediation process would be different in Oaxaca. I based this hypothesis on the literature I discussed in chapter V that explains how Latinos typically prefer a well-known and non-neutral mediator.

Community mediation emerged in both Oregon and Oaxaca to address shortfalls in the court system. In Oaxaca, programs emerged from a desire to address government corruption to and provide an outlet for smaller disputes since small claims courts do not exist (personal communication, March, 2011). Consequently, the fact that Oaxaca mediation programs are funded by the government and are connected to the judicial

system is ironic. However, mediation programs have been able to generate trust in authority in Oaxaca (Mafud Mafud & Gomez, 2010). This is evidence that users in Oaxaca perceive the mediation process to be trustworthy, most likely because mediation is free and parties are not obligated to utilize it.

Immense differences emerge between Oaxacan and Oregon mediation program designs due to differences in funding sources. Oaxacan programs are entirely funded by the government and the centers adhere to formal laws. The fact that each center has the same mission and vision statements demonstrates program uniformity throughout the state. Oregon CDRPs have more autonomy due to their reliance on varied funding sources. The fact that each organization has different mission and vision statements is evidence of this.

The fact that Oaxacan mediation centers are completely funded by the state government raises question regarding adherence to the ethical tenant of neutrality. Hedeem (2004) explains, “The potential of undue control, influence and perception of bias increases when mediation programs are funded in large part by any one source.” The recent change in government in Oaxaca illustrates this point. When the PRD replaced the PRI in the last election, the mediators were replaced as well. This event leads me to question whether mediators and services were neutral to the users of the service in Oaxaca. From what I observed, political orientation did not affect the mediation process, but this example may confirm research that asserts an emphasis on neutrality and distance between the mediator and the participants is largely an Anglo-American concern (Weller & Martin, 1991).



## **Mediator Requirements**

**Oaxaca:** Mediators in Oaxaca are full-time staff with government salaries. Oaxaca's law mandates that mediators receive thorough training and certification. According to the law, mediators must undergo a minimum of 150 hours of training from recognized institutions or organizations. They must also complete 100 hours of mentored practice. Those who mediate for judicial centers have additional requirements. Public and private mediators are also required to be Mexican citizens with full possession of their political and civil rights, and have professional experience in state legislation or three years community service in conflict resolution. Also, they must be recognized as honest with a good reputation. Finally, they must not have been condemned for an intentional crime that required more than one year of imprisonment (*Mediation Law*, 2004).

**Oregon:** Community mediators in Oregon are typically volunteers. Every volunteer mediator is required to complete a basic mediation training. The Oregon Office for Community Dispute Resolution states that the training must be at least 30 hours and include specific components as a way ensure mediator uniformity and quality standard of service (University of Oregon, 2010). Some centers employ mentorship programs. Additionally, new mediators are often paired with more experienced mediators as co-mediators during their first mediations. Oregon mediators are not certified.

**Analysis:** Mediation in Oaxaca is a profession. Mediators are required to complete substantial training requirements and the position is paid. Few people who work at community mediation centers in Oregon are professionally paid mediators. Oregon policy makers purposefully decided not to require professional standards, other than the basic training, in order to discourage a system that excludes certain sectors of the

population from becoming mediators. In Oaxaca though, a system of professional mediators may generate participant trust and increase the likelihood that participants will seek mediation services. Mediators on staff have a set work schedule and are able to consistently work with parties. In this way, parties know when they can reliably contact their mediator.

### **Ethical Standards**

**Oaxaca:** The ethical standards for mediators are established in Article 13 of the mediation law in Oaxaca. (See Appendix C for a list of Oaxacan ethical standards translated from Spanish to English). These standards mandate mediators to uphold the definition of mediation. It speaks to maintaining confidentiality and the impartial role of the mediator who does not impose solutions. Mediators are not able to serve as witnesses to a case that ends up in court. Mediators are responsible for knowing all aspects of the mediation law.

**Oregon:** Any mediator who is a member of the Oregon Mediation Association (OMA) agrees to the core standards of practice. (See Appendix D for a list of Oregon mediator ethical standards). They were developed as “an educational tool to guide mediators in Oregon in the practice of mediation, inform participants about mediation, and promote public trust and confidence in mediation as an effective and productive process for resolving disputes” (“Oregon Mediation Association,” 2005).

**Analysis:** Oregon and Oaxacan mediators adhere to similar ethical standards. Oaxaca most likely adopted these standards upon the recommendation of the American Bar Association since these same standards are also utilized across the United States.

Each one of these standards is designed to support the process of mediation as an alternative to adversarial methods of dispute resolution. They are meant to empower parties to make their own decisions and solve their own problems. Thus, mediators in Oaxaca and Oregon alike agree to not impose solutions and to keep issues discussed in mediation confidential. This information does not negate claims that Latino participants prefer the mediator to help design solutions (Weller & Martin, 1991) but does show that Latino participants (in Oaxaca and Oregon) are willing to engage in a process in which they are not receiving advice or direction from the mediator.

### **Intake Procedure**

**Oaxaca:** In Oaxaca, the initiating party (P1) arrives to the mediation center to solicit conflict resolution services. In person he or she describes their problem and learns about how their issue can be addressed in mediation. If P1 agrees to mediate, he or she provides their own and the person(s) with whom they are having a conflict (P2s) personal contact information. Within the next day or two a staff member drives to P2's residence and speaks with them in person. The employee explains mediation, that P1 solicited mediation services and asks to hear P2's perspective. If P2 agrees to mediate with P1, a date is decided upon right then. The staff person writes the date on two copies of paper, hands one to P2 and keeps the other to give to the office assistant who will enter it in the calendar and inform P1.

**Oregon:** In Oregon, the P1 typically initiates services by phone. After the intake coordinator hears P1's version of the problem or conflict, they will explain the mediation process. At that point, P1 decides if they want to participate. If so, P1 provides his or her contact information and P2s contact information. Then the coordinator contacts P2 by

phone or mail, or both. The coordinator explains mediation to the P2 and invites them to describe their version of the problem. The P2 decides if they would like to participate in mediation with the P1. If P2 also agrees to mediate, a date and time is agreed upon (sometimes after numerous phone calls).<sup>11</sup>

**Analysis:** The fact that the majority of the mediation process takes place in person in Oaxaca speaks to the cultural context that places a high value on interpersonal relationships (Campos, Schetter, Abdou, Hobel & Sandman, 2008). Face-to-face contact is a way to foster trust in the process and between the mediator and the participants. However this technique is not utilized in all Mexican mediation centers. The design is specific to Oaxaca and possibly few other states (personal communication, March, 2011). Furthermore, Latino and Spanish-speaking participants who initiate services in Oregon do so by phone and not in person (personal communication, April 2011).

I would be interested to see though, if in-person invites affect the agreement to mediate rate in Oregon. One of the most trying aspects about mediation is selling the value of the process to the parties, especially the P2, and bringing the parties together to mediate. I observed that a higher percentage of P2s agreed to mediate in Oaxaca compared to my experience in Oregon of inviting P2s to mediate by phone. A possible higher agreement rate in Oaxaca might be attributed to the fact that the P2 felt more comfortable agreeing to the process after meeting someone from the mediation center. Or P2s may have been more inclined to agree in person in order to save face. This is a possibility because agreement to mediate in person did not always correlate to P1 or P2 showing up to mediate on the decided date and time.

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<sup>11</sup> An explanation of the intake process in Oregon is based on my experience as a volunteer at two Oregon Mediation Centers, for a total of six months.

## **Contact Information**

**Oaxaca:** In Oaxaca, P1 is asked to provide their marital status, education level, and type of living situation (rent, own, etc.) in addition to their contact information. The parties are also asked to provide identification and a copy is made to include in the file. P2 provides the same information if they agree to mediate with P1.

**Oregon:** In Oregon P1 and P2 give their basic contact information such as phone numbers and addresses. Copies of identification are rarely requested. Additional personal details like education levels are not requested unless they are pertinent to the development of the case.

**Analysis:** Oregon and Oaxaca differ widely in regards to the information requested from the parties. I asked the mediators in Salina Cruz why they required the parties to provide personal information about client's education or living situations. They answered that the information was used to know what kind of parties were in dispute and how to talk to each party. This practice correlates with the research that describes Latinos' acceptance and adherence to specific social role hierarchies (*Jordan Institute for Families*, 2002). The official questions might also be another way to foment organizational credibility.

## **Process Model**

**Oaxaca and Oregon:** Mediators in Oregon and Oaxaca are trained to follow the same basic process model. The stages of mediation are: Opening or Introduction where the parties agree to participate in good faith and the desire to reach resolution. In this stage, parties also hear, once more, that the process is voluntary and that they can leave at

any point. During the second stage mediators gather perspectives and each party is asked to explain what he or she would like to solve in the mediation session. The mediator(s) create an agenda from these identified issues. In the third stage the mediator uncovers interests (underlying motivators that explains each party's positions) and clarifies the issues that need to be solved. The parties are asked to brainstorm options in the fourth stage. After options are generated, they are evaluated until the best ones are negotiated in detail. The mediator helps to ensure that these negotiations are realistic and determines who agrees to do what, by when, where and how. Finally, the mediator writes the agreement or the parties verbalize one. If the parties come to a written agreement, they sign the agreement to show that they agree to the conditions outlined in the document. The agreement then becomes a binding contract.

In each stage mediators are actively listening, clarifying through open-ended questions, validating participants, reframing inflammatory language, discovering underlying issues and pointing out mutual areas of concern. Mediators also try to balance the power by making sure that parties have equal talking time. They may utilize a private meeting with one or both of the parties for any reason to help move the mediation forward. Mediators are most concerned helping the parties look to the future as opposed to dwelling on past history.

**Analysis:** Culture can affect when and how parties enter into conflict, including the definition of conflict, the meaning of conflict for the individual and community, the perception of when a conflict requires the intervention of another person and the expectations placed on the parties to work things out by themselves (Weller and Marin, 1991, p. 15). Even though mediators in both Oregon and Oaxaca follow the same model,

the culture may dictate different approaches to navigate each stage. For example, Latinos may be more likely to chat about non-conflict related topics at the beginning of a mediated session (Bacharach, 2008). Or Latino participants may evaluate brainstormed options with different criteria than a European counterpart based on group identity orientations. Latino participants may display emotion more than European participants in a mediated session (personal communication, March, 2011). Latino participants might also be more likely to bring a support person with them to mediation (personal communication, March 23, 2011).

For example, I observed mediation in Oaxaca between a mother and her adult son. The mother's brother was also part of the mediation even though the conflict was between the mother and son. The mediator treated the support person as a party to the mediation. In fact, he often talked for his sister. In Oregon, mediators who work with Latinos might discourage the support persons' participation in the actual mediation (personal communication, March, 2011).

## **Room Design**

**Oaxaca:** Mediation rooms in Oaxaca are separate from the lobby and intake area, in the larger centers. The smaller satellite centers are typically one room and serve as both the intake area and mediation area. All spaces, though, include a round table and chairs (See Figure 5). The mediation center in Salina Cruz has two mediation rooms. One is designated for restorative justice mediations. The other had a window that opened into the main office. Because the window was not covered with any material, it was possible to see into the room from the main lobby.

**Oregon:** The design of mediation areas in Oregon CDRPs is individual to each organization and depends on available space. The two mediation centers I worked at did not use a round table. I observed that mediators in these two centers placed high priority on ensuring that the space was private so that people outside of the room could not see or hear details of the mediation.

**Figure 5:** Round mediation table in Salina Cruz. A round table with six chairs are part of the materials required for all mediation centers (Mafud Mafud & Gomez, 2010).



**Source:** Personal photography, August, 2010

**Analysis:** A mediator in Oaxaca mentioned that all mediation rooms at all mediation centers are equipped with round tables. I was impressed at the uniformity between centers and told her that some mediation centers in Oregon use rectangle tables, or whatever they happen to have. The mediator responded with concern. She explained



that round tables were purposely used to help balance power and encourage dialogue. I wonder if the reason for the round tables in Oaxaca is to also nonverbally convey to the parties that the mediator does not have a higher authority than the participants and that the mediator will not impose solutions.

My experiences working at mediation centers in Oregon instilled a belief that ensuring privacy was an important aspect of adhering to the ethical tenant of confidentiality. That is why I expressed concern to the mediators in Salina Cruz that people waiting in the lobby could see into the mediation room. The mediators were not troubled at the scenario since people outside the room were not able to hear what was being said. In a collectivistic culture in which individual problems are often viewed as group problems, I wonder if my concerns stem from a different cultural understanding of privacy. A future study that explores cultural conceptions of privacy in mainstream American culture and Latino culture might uncover insights about culturally appropriate mediation processes for Latinos.

## **Outreach**

**Oaxaca:** A government sponsored campaign in Mexico airs television and radio commercials to inform the public about mediation. Each center also has posters and flyers with the official logo (See figure 6). The mediation center in Oaxaca has brochures printed in 16 different indigenous languages. If needed, mediators who can speak the indigenous languages are available. Because the mediation centers are government sponsored, the advertising campaign works for all the mediation centers. However, most people learn about mediation through word of mouth (personal communication, March,

2011). I witnessed firsthand clients who arrived at the mediation center upon the recommendation of a friend or family member. In fact, they typically wanted to talk to the same mediator that helped their friend or family member.

**Oregon:** In contrast, community mediation centers in Oregon each do their own outreach. Individually each organization creates brochures, tables at community events, writes letters to the editor in newspapers and creates news or television advertisements. Judges, lawyers or other public officials sometimes refer parties to mediation. For example, some centers have entered into contractual relationships with government agencies in which the local police or animal services refer people to mediation, when the situation is appropriate.

**Analysis:** A state advertising campaign in Oaxaca and promotional material with the judicial stamp is a way to establish credibility and authority in the community. Word of mouth recommendations and referrals from other agencies have the most powerful influence on participant's decision to mediate and are how the majority of parties hear about mediation in both Oregon and Oaxaca (personal communication, March, 2011). Previous research conducted in the United States affirms that the most powerful influence toward referring cases is word-of-mouth recommendation (Hedeen, 2004, p. 109).

**Figure 6:** Promotional posters from Salina Cruz, Oaxaca City and Santiago Apostol Ocotlan, Oaxaca.



**Source:** Personal Photography. August 2010, Oaxaca, Mexico

## Types of Cases

**Oaxaca:** The most common cases seen by mediators in Oaxaca are commercial (Mafud Mafud & Gomez, 2010). Instead of borrowing money from banks that many Oaxacans view as unreliable, corrupt and unhelpful; they borrow funds from friends and family. Mediation is used to resolve conflicts that result from the borrower's failure to repay. Sometimes the mediation reveals that the money borrower cannot repay the money plus interest and the mediator helps the parties negotiate a plan to recover some money.

Commercial cases also include conflicts that stem from business transactions between a consumer and a business; either the consumer did not pay or the merchant did

not deliver the promised services. For example, I witnessed a case in which a man building a house sought mediation services because he paid a business for a certain amount of concrete that he did not receive. The case did not go to mediation because the business delivered the rest of the concrete after it received its in-person mediation invitation.

Family disputes were another category of cases I observed in Oaxaca. For example, I observed a divorced couple who used mediation to renegotiate child support payment. The ex-couples' child was over 18, but handicapped. The mother asked the father to pay more money to support the cost of care for their child with disabilities.<sup>12</sup>

**Oregon:** Records of types of cases mediated by Oregon project CDRPs during the Hewlett Grant reveal that family and neighbor-to-neighbor cases were the most prominent case types between Latino and Spanish-speaking participants. An evaluation of the project CDRPs divides these cases into two categories: cross-cultural (between a Hispanic/Latino party and a non Hispanic/Latino party) and Hispanic/Latino Cultural (Ozawa, 2004). According to records, the main issues that fueled both cross-cultural and mono-cultural conflicts were:

not at their core essentially cases of cultural differences, but rather problems arising due to language challenges and miscommunication. Conversely, in some cases the substantive basis for the dispute was inflamed by actual or perceptions of cultural prejudice by one or both of the parties. In the mono-cultural Hispanic/Latino cases, generational differences especially between family

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<sup>12</sup> Men automatically pay child support after a divorce in which the couple has children in Oaxaca. It is my understanding that the money is automatically deducted from his paycheck.

members appeared to present a frequent source of irritation in family conflicts (Ozawa, 2004, p.12)

**Analysis:** The cultural context plays a large role in determining conflict types and causes. This is evidenced by the differences in dispute types and causes of disputes between Oaxaca and Oregon. Latinos in Oregon face different problems and have different conflicts than community members in Oaxaca. For example, conflicts may stem from miscommunication issues between native English speakers and non-native English speakers in Oregon.

### **Psychologists**

**Oaxaca:** In addition to a staff of mediators and office assistants, mediation centers in Oaxaca also employ psychologists. In certain circumstances, a psychologist will work with parties before mediation to help prepare them for the work in a mediation session. Sometimes they join the mediation session as a support person. They might continue to work with their client after a session to help them fulfill agreements that they made. If a mediated session reveals that one of the parties has a drug addiction, or a history of violence for example, the mediator will suggest that the party seek help from the psychologist. Sometimes mediators determine through pre-mediation that a joint mediated session will not work unless a party seeks psychological help to work through his or her issues beforehand. Psychological help is a free service offered to the parties at a mediation center.

**Oregon:** To the best of my knowledge, psychologists and mediators do not coordinate their efforts explicitly at community mediation centers in Oregon. Mediation

centers do refer parties to other support services when the situation is not appropriate for mediation. Mediators might also ask a participant if they have considered using counseling or psychological services to work through personal issues.

**Analysis:** The inclusion of psychologists in mediation is a holistic approach to conflict resolution. In this way conflict and conflict resolution becomes a community event that receives community support. Someone who has a drug or violence problem, for instance, is not only hurting themselves but his or her family and the community at large. These are not issues that can be solved in one or even three mediation sessions between two or more stakeholders.

For example, a psychologist was included in a case in Oaxaca because alcoholism was a source of conflict between a mother and her adult son; the son's drinking habit created a set of problems like his inability to financially support the family. The psychologist joined the mediation session to support the parties and to help them understand how the disorder fueled the conflict. The son agreed to continue meeting with the psychologist to work on his problem as part of the mediation agreement.

### **Child Care**

**Oaxaca:** Most centers in Oaxaca have a room dedicated to children's entertainment. When parties enter with children in tow, and they often do, their children can go play while their parents work through their issues. These rooms are equipped with toys and coloring books. However, I never saw any children use these spaces. They preferred to stay with their parents instead.

**Oregon:** In the two mediation centers I worked at in Oregon, I noticed that most people did not bring their children. Also, the centers did not have separate rooms designed to occupy children. Mediators who work with Latino families in Oregon, however, explained that Latino participants would usually bring their children with them to mediation. In these cases the children are included in the mediation and, for the most part, are very well behaved (personal communication, March, 2011).

**Analysis:** Mediation centers in Oaxaca are designed to accommodate the culture's strong family values. Common practice among Latino parents is to have children accompany their parents. This is not a strong cultural trait among U.S. parents.

## **Conclusions**

Community mediation arrived in Oaxaca ten years ago. Today community mediation in Oaxaca is described as an "indispensible tool for the development of society" (Mafud Mafud & Gomez, 2010, p. 13). An analysis of community mediation programs in Oaxaca compared to Oregon revealed that cultural differences impact certain aspects of mediation programs and practices. Oaxacan community mediation programs, for instance include psychology as a treatment option, have more face-to-face contact, and offer child care. Furthermore, the mediators require more training. However, the core components of mediation, including its definition and ethical standards are the same in both Oregon and Oaxaca.

## CHAPTER IX

### RECOMMENDATIONS

This section suggests ideas and options for expanding community mediation services that are responsive to the culture of Latinos. These options are based on research, observations and interviewee input.<sup>13</sup> This section also identifies barriers that limit organizations' abilities to implement these suggestions.

#### **Organizational Diversity**

Irving and San Pedro (1999) confirm that conflict resolution organizations and practitioners have an obligation to provide culturally competent services. They state:

The trend is clear that North America is becoming steadily more culturally diverse, while mediation's commitment to self-determination dictates against imposing white, middle-class norms and standards. Similarly, the private and informal character of mediation places the onus on practitioners to avoid conscious or unconscious expression of ethnocultural stereotypes and prejudices (p. 326).

However, progress evaluations of the Hewlett Grant programs revealed that the grant programs found it difficult to recruit and retain bilingual and bicultural board members and volunteers. Two of the three CDRPs I talked to expressed that they experienced difficulty in this area, despite actively recruiting underrepresented demographics as volunteers and board members.

A more effective strategy may be to alter the organization's focus from actively seeking diversity to a focus on building an organizational environment where different

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<sup>13</sup> Interviewees are people who have provided mediation services for diverse demographics.



values and beliefs are accepted and everyone is valued equally. In my opinion, people of all cultures will seek to be a part of an organization that they recognize as welcoming and sensitive to cultural differences.

One way an organization can begin to demonstrate that it respects Latino cultural preferences is to incorporate practices that are sensitive and knowledgeable of Latino family dynamics. The organization can identify, for example, creative ways to make the mediation center more family friendly. CDRPs might create a separate space for children who come with their parents to mediation, as is common practice among Latino participants in both Oregon and Oaxaca.<sup>14</sup> If a separate room is not available, centers might consider placing a basket of toys and books in the lobby.

Mediators can incorporate knowledge of Latino family dynamics to gain Latino participants' trust during the mediation process. For example, the mediator might recognize that the family adheres to traditional gender values. If this is the case, the mediator will know that they need to show deference to the male head of the household.

A holistic approach to mediation is another way to demonstrate organizational sensitivity to other cultural paradigms. A holistic method would work to incorporate other social services with mediation. For example, CDRPs could establish collaborative relationships with psychologists or social workers. For Latinos, a bicultural psychologist or social worker could act as a support person before, during and after a mediation session. Lederach and Wehr (1991) suggest that mediators be advocates for Latino parties in mediation. However, if other professionals are brought in to be advocates instead, mediators are still able to adhere to the ethical tenant of neutrality, while Latinos receive extra support.

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<sup>14</sup> Based on observation in Mexico and personal communication with Oregon mediators.

An organization that respectfully addresses language differences is going to gain reciprocal respect from non-native English speakers. The Hewlett Grant in 2000 helped fund bilingual English/Spanish basic mediation trainings in order to generate interest and attract Latino volunteers to CDRPs. One criticism of this process was the extra time the training took because of translation. An ideal alternative to a bilingual training is to have a basic mediation training conducted solely in Spanish. This would eliminate extra time needed for the training caused by translating and demonstrate respect for people's busy schedules. In turn, participants might desire to join the sponsoring organization.

Moreover, the trainers could employ Lederach's elicitive approach in the training to demonstrate sensitivity to varying cultural paradigms. Traditional "prescriptive" trainings use the teacher-student model: teachers are expected to hold the knowledge and students are expected to learn from the teachers. An elicitive approach, on the other hand, begins from the premise that the students bring valuable knowledge and can be effective teachers as well.

According to Lederach (1995) an elicitive training is a highly participatory process in which the participants design the training and the trainers become facilitators of the process. For instance, role-plays are a common tool used in basic trainings to demonstrate the mediation process. An elicitive approach would ask participants to help design these role-plays. Participants will use conflicts from their own lives to inform the details of the role-play.<sup>15</sup> Of course these trainings would need to combine both prescriptive and elicitive approaches. Participants would need to first understand the basic tenants of mediation and rules that are specific to Oregon so that everyone begins with a common foundation.

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<sup>15</sup> For more information see Lederach (1995) *Preparing for Peace*. Syracuse University press.

Latinos might have more interest in attending the training if mediators from Mexico, or other Spanish speaking countries, are invited to help facilitate the process. This would reverse the more common paradigm in which professionals from the United States and Europe are invited to share their knowledge in other countries. Mediation also becomes more of a credible process when Latino participants learn that it is not a process solely used in the United States.

Websites and promotional brochures are other tools to demonstrate organizational diversity if the organization decides to use them that way. For example, CDRPs often include their organizational mission statements on their webpage. These statements could be written to explicitly state that the organization values diversity and aims to work competently with diverse cultures, if they don't already. CDRPs can include pictures that include people from various cultures as a visual demonstration of this point. They could include an audio advertisement or promotional video so that people can learn about the organization without reading. Finally, organizations could provide links to information written in Spanish for those whose native language is Spanish.

A paid staff person who is dedicated to Latino outreach will be able to establish and cultivate community partnerships with Latino organizations. Organizations that are able to fund this position permanently will help grow the number of Latinos who seek mediation services. This position will also ensure that the organization provides consistent services. Outreach coordinators should be paid in order to "engender a sense of responsibility unencumbered by additional commitments, and also implicitly establish a line of accountability since staff not fulfilling responsibilities may be fired. Paid staff also create an informal repository of growing expertise, as the staff person accumulates

important but undocumented knowledge through daily experiences on the job” (Ozawa, 2004, p.15). One interviewee suggested that the person chosen to conduct outreach in the Latino community is someone who is older and has already established respect and community connections.

Offering services that respect Latino family values, incorporating holistic approaches to conflict resolution, providing trainings in Spanish and hiring an outreach coordinator are four ways Oregon CDRPs can offer culturally appropriate services for Latinos. CDRPs who are able to demonstrate that they value Latino culture will have better success attracting Latino volunteers, board members and participants. Once more Latinos are active and involved in the organization, they will be able to help discuss and design other culturally appropriate practices.

**Barriers:** Lack of organizational resources and funding will limit an organization’s ability to implement the above strategies. Sometimes organizations can secure temporary funding, like a grant, for a particular project, but once that funding ends the long-term viability of the project is in danger. An organization needs to be able to provide consistent and reliable services to all populations in order to maintain trust and relationships. When participants can’t depend on quality services, they will not think to use them when they need them, or recommend them to friends and family that need them.

Right now many Oregon CDRPs’ funding situations are uncertain and tenuous (personal communication, April, 2011). Even though Latinos could benefit from low-cost and efficient conflict resolution services, CDRPs might not be able to afford to provide them. One solution might be to make sure other professionals that work with Latinos are trained in mediation skills. These professionals can then use these skills when needed.

This is a responsible solution to ensure that Latinos have reliable and equal access to conflict dispute resolution until CDRPs identify consistent funds to adequately serve Latino participants.

Establishing organizational diversity might not be enough to attract and retain volunteers and board members from underrepresented communities. Interviewees from Oregon CDRPs commented that their most dependable volunteers are retired. Students also commonly serve as volunteers. Since the position is unpaid, it is difficult for people who have a full-time job to dedicate their time to the organization, especially if this person has a family and is involved in other activities. Thus, a more appropriate solution might be to locate Latino-run organizations and help them design an internal mediation program. Mediator Sandy Bacharach, confirms this view. She writes, “Mediation works best in an environment that fosters trust, security and confidence. An environment that is non-threatening, welcoming and already established within the Latino Community is most effective such as Latino community based organizations, housing development organizations, community centers, clinics churches...” (2009).

Organizations that are just beginning to think about how to encompass diverse people, values and views might start with a diversity plan.<sup>16</sup> A diversity plan, similar to a strategic plan, begins with recognition of current organizational practices and identifies problem areas. From there the organization can create goals and take stock of available resources to accomplish those goals. Finally, it helps to specify who will accomplish what by when. After ideas have been implemented, the organization should conduct an evaluation in order to assess whether their strategies are reaching desired results. The

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<sup>16</sup> See Holland & Ritvo, (n.d.). *Nonprofit organizations: principles and practices*. For more information about diversity plans.

organization can adjust their tactics if an evaluation reveals that they are not on track for achieving their benchmarks.

CDRPs might follow the example set by Resolutions Northwest, a CDRP recognized in Oregon as a leader in thinking about issues of diversity and conflict resolution (personal communication, April, 2011). Resolutions Northwest surveys their volunteers each year to determine how they are doing in terms of service delivery to diverse populations. They use this information to improve their services. (See Appendix E for an example of this survey).

### **Mediator Cultural Competency**

Organizational diversity is further promoted when culturally competent mediators deliver services. LeBaron (2010) explains: “Mediation as a tool will be less likely to perpetuate racism and privilege if it is dispensed by a diverse group of practitioners who have the skills to adapt the process to users and a complex appreciation of culture.” Attaining cultural competency is a life-long endeavor and requires the desire to learn about others and the ability to question assumptions.

The basic training is the first time soon-to-be mediators learn that culture is an important component of mediation. However, the time the training dedicates to the topic varies depending on the organization that sponsors it. The material taught may also differ from training to training. Thus, a committee of mediators across the state could develop standard material for this component in order to ensure every mediator starts from an equal foundation. To better emphasize the valuable and tricky relationship between culture, conflict and conflict resolution, trainings could refer to cases where cultural

difference impact mediation throughout the entire training. Currently, most trainings treat culture as a separate component (personal communication, April 27, 2011).

Since mediators cannot realistically learn how to be effective and ethical mediators in one basic training, CDRPs utilize additional methods to train their volunteers. For example, they provide extra training options for volunteers at various points throughout the year. Some CDRPs consider attendance mandatory and will take mediators off active duty if they do not fulfill this obligation (personal communication, April 27, 2011). Other centers are not as strict. In order to promote effective and ethical mediators, CDRPs should try to ensure that their active mediators attend these extra trainings. If they do not accumulate a certain number of hours or training per year, they should not be considered active mediators for the organization.

Training topics will vary throughout the year, but some should be explicitly about competency in cross-cultural situations. A U.S. Department of Health and Human Services Office of Minority Health report states that trainings to increase professional's awareness and impact of culture on service "should be based on sound educational (i.e., adult learning) principles, include pre- and post-training assessments, and be conducted by appropriately qualified individuals. Training objectives should be tailored for relevance to the particular functions of the trainees and the needs of the specific populations served..." (p. 12, 2001).

Additionally, these trainings could include role-play scenarios in which culture is an apparent aspect of the conflict. For example, the role-play could be between a landlord who is a Caucasian male and an ex-tenant who is a Latino-family. The conflict is about return of deposit money. Mediators could take turns mediating the situation. During and

after the role-play the mediators will learn from the role-play actors and each other whether their interventions were effective or offensive. Qualified professionals with experience in cultural competency issues should also be present to offer direction and advice.

Other educational workshops that are not explicitly about culture could still imbed cultural components. Workshops about parent-teen mediation, for example, could discuss different concepts of family and familial values and how these values inform the type of conflict and appropriate solutions. For instance, conflicts between U.S. born teens and their immigrant parents may need to be approached differently than a parent-teen mediation between a U.S. born parent-teen dynamic. Or they could utilize a role-play scenario between European-American siblings who are in conflict about how to best care for their elderly parents. During the role-play debriefing process mediators could talk about how the scenario might differ if it were Latino participants instead.

Practicing informed consent is another way mediators can demonstrate cultural competency. The ethical tenant of informed consent dictates that mediators provide clients transparent information so that the parties are empowered to make decisions that are best for them. During case development, in all case types, mediators should explain their mediation approach and background. They should then explicitly ask if the parties accept them as their mediator or if they would prefer someone different. In this way the clients can decide what they need individually and the mediator will not be in danger of acting on cultural assumptions.

Finally, mediators should engage in reflective practice in order to realistically determine their comfort and abilities mediating certain situations. Reflective practice is



also a way to learn and grow in mediation practice. Osterman and Kottkamp (1993) describe reflective practice as “challenging, demanding, and often trying process that is most successful as a collaborative effort” (p. 2). They explain that awareness through reflective practice is essential for behavioral change and:

To gain a new level of insight into personal behavior, the reflective practitioner assumes a dual stance, being, on one hand, the actor in a drama and, on the other hand, the critic who sits in the audience watching and analyzing the entire performance. To achieve this perspective, individuals must come to an understanding of their own behavior; they must develop a conscious awareness of their own actions and effects and the ideas or theories-in-use that shape their action strategies (p. 2).

Through reflective practice, mediators might be more willing to accept and admit that they are not suited to mediate every type of case and prevent providing clients substandard services.

## CHAPTER X

### CONCLUSIONS

I strongly believe mediation is a beneficial conflict resolution process and that community mediation programs are invaluable to society. However, this study developed from a personal concern that certain aspects of mediation and community mediation programs in Oregon were not able to meet the needs of all community members. In particular, I considered undocumented Latino immigrants who could derive great benefit from community mediation to resolve disputes since, as non citizens, they will not be well served by U.S. court processes. During my experience as a volunteer intern at two community mediation programs during 2007 and 2008, I noticed that Latinos were not typical users of the service. I also noticed that Latinos did not participate in the organizations as volunteers, staff, or board members. Furthermore, they were not present during basic trainings, which are open to the entire community.

For these reasons, I traveled to southern Mexico for the summer in 2010 and observed community mediation programs in Oaxaca. I hypothesized that mediation processes would be quite different in Mexico than mediation processes in the United States, due to cultural differences. I thought that I would return to Oregon and be able to offer Oregon mediation programs a different process model to use with Latino participants. Of course, this is not what happened. Instead, I found that the mediation process model, the ethical tenants of mediation and the role of the mediator are the same in Oaxaca as they are in Oregon. From what I observed, the mediators and participants in Oaxaca also strongly believed in mediation and benefited from the service. Therefore, I conclude that mediation is a process that transcends culture. I think that mediation can

work for any participant who values interpersonal relationships and desires to live in harmony with others.

However, I did uncover, through personal observation, readings, and interviews, cultural differences that I think will help community mediation programs consider how to provide services that are appropriate for Latinos, and in turn, attract more Latino participation in community mediation. For example, the Latino definition of family includes extended family members like grandparents, aunts and uncles and cousins. Latino culture is collectivistic, meaning that they tend to consider group needs over individual needs. Latino men and women have different roles in the family and are not necessarily considered equal. Both Latino men and women are characterized as passionate and are not afraid to express emotion. Latinos also have a more holistic view of healthcare and share responsibility for helping someone through mental or physical health problems.

Awareness of cultural differences can help mediators and CDRPs respond to the needs of this population to provide appropriate and competent dispute resolution services. This awareness coupled with additional mediator training that explicitly addresses culture and organizational and mediator evaluations will further the goal to become a culturally competent organization. People from diverse cultures who view an organization as inclusive of diversity will be more inclined to participate.

### **Study Limitations**

This thesis is limited by the narrow scope of my study. An examination of one state in Mexico does not qualify me to say anything of value about all Spanish speakers

or Latinos, especially in consideration of the diverse cultures of the numerous Spanish-speaking countries. Moreover, different states in Mexico and different cities in those states might not culturally identify with one another. Thus, I may resort to making cultural generalizations throughout this thesis to make my points and recommendations. These recommendations might not apply to all Latinos in Oregon.

Cultural generalizations are a helpful starting place but the practitioner has to be careful about stereotyping and acting on those stereotypes because doing so simplifies a very complex topic. Therefore, practitioners need to understand that not all Latinos have the same values and beliefs. In fact, just because a mediation participant has a Hispanic last name does not mean that they align with Latino cultural values. Latinos comprise a large and diverse cultural group. This group does not just include people from Mexico, or people from Oaxaca. The term Latino also includes people from Central and South American Countries as well as people who have lived in the United States, sometimes for generations.

Latinos who have lived in the United States for years will have different needs and expectations than those who are more recent immigrants. For example, language barriers might be more at the forefront for more recent immigrants. These cases might require mediators who speak Spanish and have the ability to translate. For these reasons I advocate that organizations provide the basic mediation training in Spanish and utilize Lederach's elicitive approach.

The decision to examine mediation practices in the Mexican state of Oaxaca is justified since the majority of Latinos in the United States are from Mexico. The choice to study Oaxaca is also justified because of the long history of immigration shared

between Oregon and Oaxaca. Therefore, this study will serve to begin the foundation of providing more culturally-aware mediation services to Latinos in Oregon and possibly Latinos in other states.

### **Future Inquiry**

I was only able to observe Oaxacan community mediation centers for three weeks. If I had more time I would have liked to have learned more about traditional forms of conflict resolution and how people resolved conflicts before the mediation centers existed. I would also like to know if people still used traditional forms, such as seeking the advice of their elders, for certain types of disputes, such as marriage problems. Information about traditional dispute resolution practices could be beneficial in terms of designing dispute resolution practices for Latinos.

I would also like to learn more about the users of the service and the mediators in Oaxaca. Specifically I question whether there are class differences between the users and the mediators or if certain classes do or do not use mediation. I also question if certain indigenous groups are more likely to use mediation services than other groups, or not at all. Finally, I wonder about the role of the government in the mediation centers and the political orientations of users and mediators. Information about difference in class, political and identity orientations of the users and the mediators might reveal insights about the accepted role of neutrality in mediation services.

Based on the research that Latinos prefer mediators who make decisions for them, I question whether mediators in Oaxaca tend to be more evaluative compared to mediators here. Evaluative mediators are those that tend to help parties develop solutions

to their problems in the mediation. I would need to see more mediators in action in Oaxaca and create a systematic way to determine mediator involvement in the generation and selection of solutions. Self-reporting techniques would most likely not reflect the situation accurately. Knowledge of mediator styles in Oaxaca might be useful to mediators here who work with recent Latino immigrants.

If I were to redo this study I would interview Oaxacans who went through the mediation process to get their perspective on how it worked for them. I would attempt to discern what parts, if any, they appreciated and what aspects, if any, felt foreign and unhelpful. I might ask them how they would change the process to better fit their needs. Their feedback might be the best way to get at appropriate conflict resolution models for Latinos.

Similarly, I think this research should be supplemented with the perspectives of Latinos in Oregon who have and have not used mediation services. For those who have utilized mediation services, I would like to know how the process was for them and what aspects they would change if they could. For those who have not I would ask why they have not and what might make them consider using the services or getting involved with the organization.

APPENDIX A

MOVING THROUGH THE MEDIATION PROCESS

<p><b>Stage 1:</b> <b>The Opening</b></p>	<ul style="list-style-type: none"> <li>• Create a positive environment</li> <li>• Build trust in the mediator and in the process</li> <li>• Establish structure</li> <li>• Gain commitment to begin the process</li> </ul>
<p><b>Transition</b></p>	<ul style="list-style-type: none"> <li>• Ask transition question</li> </ul>
<p><b>Stage 2:</b> <b>Information Sharing</b></p>	<ul style="list-style-type: none"> <li>• Foster bridge-building</li> <li>• VECS</li> <li>• Help parties tell their story by paraphrasing and asking clarifying questions</li> <li>• Help parties to communicate by inviting them to paraphrase each other</li> <li>• Balance time and attention given to parties</li> </ul>
<p><b>Transition</b></p>	<ul style="list-style-type: none"> <li>• Summarize, with an emphasis on commonalities and positives</li> <li>• Ask transition question</li> </ul>
<p><b>Stage 3:</b> <b>Identifying Issues and Interests</b></p>	<ul style="list-style-type: none"> <li>• VECS</li> <li>• Create agenda to focus discussion on main topics or issues</li> <li>• Continue to help the parties speak to, and share with, each other</li> <li>• Help parties discover and focus on interests</li> <li>• Help each party understand interests of other</li> </ul>
<p><b>Transition</b></p>	<ul style="list-style-type: none"> <li>• Summarize by refining the agenda in terms of interests and by pointing out additional commonalities and positives</li> <li>• Ask transition question; build agreement on reframed agenda</li> </ul>
<p><b>Stage 4:</b> <b>Generating and Evaluating Options</b></p>	<ul style="list-style-type: none"> <li>• Brainstorm options using refined agenda</li> <li>• Expand possibilities – no judging</li> <li>• Focus on interests and the future</li> <li>• Begin to evaluate options based on interests</li> </ul>
<p><b>Transition</b></p>	<ul style="list-style-type: none"> <li>• Summarize, by noting shared concerns and points of agreement</li> <li>• Ask transition question</li> </ul>

<p style="text-align: center;"><b>Stage 5:</b> <b>Reaching Resolution</b></p>	<ul style="list-style-type: none"> <li>• Negotiate and close each issue</li> <li>• Balance interests</li> <li>• Draft agreement, with clarity and specificity</li> <li>• Have parties sign the agreement</li> </ul>
<p style="text-align: center;"><b>Stage 6:</b> <b>The Closing</b></p>	<ul style="list-style-type: none"> <li>• Acknowledge and thank the parties for their hard work</li> <li>• Congratulate them!</li> <li>• Ask them to evaluate their experience with mediation</li> <li>• Invite them to return if additional issues arise</li> </ul>

**Source:** Community Mediation Services, Eugene, Oregon



## APPENDIX B

### INTERVIEW QUESTIONS FOR EXECUTIVE DIRECTORS

1. When did the organization first become concerned with diversity and cultural competency issues?
2. What steps have been taken to attract diversity and expand mediation services to diverse populations?
3. How does the organization market/conduct outreach to diverse demographics?
  - i. How does the organization market/conduct outreach to Latinos?
4. What is the mediator opening statement? (Could I get a copy)?
5. If an agreement is reached, do mediators read the agreement aloud?
6. How many board members does this organization have?
  - i. How many would you identify as bicultural?
7. How many volunteers does the organization have?
  - i. How many are bilingual?
  - ii. Which languages?
8. What is your experience with mediation cases in which you identified culture as an explicit aspect of the conflict?
  - i. Examples?
9. How many cases does the organization receive with Spanish speakers per year?
10. How do Spanish speakers or Latinos typically learn about your organization's services?
11. Are Spanish speakers more likely to do intake by phone or in person?
12. In past cases with Spanish speakers, what type of cases do you see? (Family, Commercial, Landlord Tenant?)
  - i. How does this compare to overall statistics on frequency of case types?
13. What challenges does your organization face to provide conflict resolution services to Spanish speakers and Latinos?
14. When there are mediations with Spanish speakers, how is the language barrier dealt with?

## APPENDIX C

### ETHICAL STANDARDS OF MEDIATION: OAXACA

Mediators in Oaxaca are required by law to:

1. Initiate the mediation to conform to the established law and other applicable requirements.
2. Ensure that the parties to mediation understand and comprehend the scope of and process of mediation from the beginning until the end.
3. Convince the parties to cooperate and be willing to solve the conflict.
4. Educate themselves about the provisions contained in this law and other applicable provisions
5. Declare the inadmissibility of mediation in cases where it is appropriate to do so.
6. Exclude themselves from the mediation when they find themselves in cases (established in the article 161 of the Code of Civil Procedures for the State) where they are familiar with specific details of the case because of their work, profession or position.
7. Develop their function as an impartial mediator, encouraging equal opportunities to communicate between each party; abstain from making decisions for the parties.
8. Abstain from giving extra services in the mediation.
9. Conserve the confidentiality of the dates, reports, comments, conversations, agreements or positions of the parties to which the mediator might have access due to his or her role; except in those cases in which there is a crime of child abuse.
10. Be free of the obligation to serve and be prohibited from serving as a witness in points relating to the negotiation that mediator had facilitated, and prohibited from being sponsors or lawyers for the parties in any subsequent formal or informal processes.
11. To only know the issues that correspond to their functions.

**Source:** Mediation Law of Oaxaca: *Ley de Mediacion para el Estado de Oaxaca* (2004). Retrieved from: <http://www.reformapenal.inacipe.gob.mx/pdf/leyOaxaca.pdf>.

## APPENDIX D

### ETHICAL STANDARDS OF MEDIATION: OREGON

Mediators in Oregon agree to follow the Oregon Mediation Association's core standards of Practice. I took the standards as they were written on the OMA website and reworded them to be action statements as opposed to descriptions:

1. Ensure that the parties have control over the mediation process. Parties should be informed that mediation is a voluntary process and either party can choose to take part or leave at any point.
2. Help participants make informed decisions about the mediation process, including possible options for resolution. Mediators can foster informed-consent by offering full disclosure about themselves and their facilitation approaches.
3. Mediators should demonstrate impartial regard throughout the mediation process by conducting mediations fairly, diligently, even-handedly, and with no personal stake in the outcome. If there is a conflict of interest, such as a prior relationship with one of the parties, this standard dictates that the mediator should disclose that information to both parties so that they can make an informed and voluntary decision about whether to continue with that mediator. Mediators should consider not serving if they recognize personal biases or have reactions to "any position, argument, participant, representative, or other person in attendance."
4. Inform parties that the issues discussed in mediation are confidential. Mediators are also not allowed to report on how the parties acted in mediation. Mediators should learn exceptions to confidentiality in the different contexts that they serve. Situations involving elder or child abuse, for example, are reporting obligations in most cases.
5. Mediators request that parties participate with an open mind and a desire to solve the dispute at the outset of a mediated session.
6. Mediators who do charge a fee should have written fee policies or agreements. Payment should not depend on whether an agreement is reached.
7. In terms of advertising their services, mediators should be truthful and not mislead by omission. Mediators should not make promises or guarantees of specific results. They should not claim they are certified unless they have actual certification from an authorized authority. Completion of the basic training does not signify a person has been certified to mediate.
8. If a mediator serves in another professional capacity, such as a lawyer or counselor, they should not provide participants with services from the other profession during mediation without the prior informed consent of the participants. Before providing other professional services, mediators should consider the impact they may have on the other participants' views of the mediator's impartial regard when providing these services.
9. Mediators should act in a way that enhances the integrity and quality of the mediation field. This includes promotion in the public and engagement in research in order to improve the practice of mediation.

**Source:** Oregon Mediation Association (2005). Core standards of practice. Retrieved from: <http://www.omediate.org/pg61.cfm>.

APPENDIX E

MEDIATOR VOLUNTEER EXIT SURVEY

Resolutions Northwest (RSNW) surveys their volunteers at the end of each year to see where they are in terms of service deliver to diverse populations, among other things. The organization uses answers to these surveys to adjust their methods if needed. Part II focuses explicitly on diversity issues.

Name (Optional) \_\_\_\_\_

Volunteer Exit Interview

Instructions: It is important to RNW to hear from you about how we're doing. We really do review and listen to your suggestions, bask in the glow of your compliments and try to put all your good input to good use in improving our services both to you and for our clients. Some of our questions you'll answer individually, and others (Part II, 4-6) will be a facilitated dialogue. Your thoughts on how we're doing will help guide what we do with future volunteers to ensure that we provide a meaningful and comfortable experience for all. You are invited to share your thoughts during our conversation and are also welcome to share your comments in writing afterwards.

**PART 1: OVERALL PROGRAM**

1. Please tell us how you feel about your experience in the volunteer training program in relation to the following aspects of it (please circle).

	Strongly				Strongly
Learning (Specifically: conflict resolution, communication skills, mediation, etc.)	1	2	3	4	5
Sense of community	1	2	3	4	5
Program structure	1	2	3	4	5

Mentor support/relationship	1	2	3	4	5
Support of other RNW staff	1	2	3	4	5
Relevancy (Was what you learned applicable for you in your life?)	1	2	3	4	5
Professional Growth (Relevance in your current or future profession)	1	2	3	4	5
Connection to other RNW programs	1	2	3	4	5
Current mediation opportunities	1	2	3	4	5
Welcoming community (Do you feel RNW was welcoming as a community?)	1	2	3	4	5

Other comments on any of the above aspects you particularly did/didn't appreciate?

2. Are there ways you see the program could be improved?
  
3. Do you plan to continue to volunteer with RNW? Why or Why not?
  
4. Did you feel engaged by other RNW staff (besides your mentor) throughout your volunteer mentorship experience? If so, how? If not, how would you have liked to be engaged?
  
5. How important was it to you to utilize this opportunity for professional development:

**Not at all important**

**Very Important**

**1**

**2**

**3**

**4**

**5**

**PART 2: DIVERSITY**

1. What are your social and cultural identities? Did you feel supported in expressing your identity? If yes, how were you supported? If no, what could we do to make you feel more supported?
  
2. From your perspective as a volunteer, was RNW supportive of differences among volunteers? If yes, how did you see support? If no, what could have been done or do in the future to provide more support?
  
3. How well did you feel supported in engaging with clients from communities other than your own? How effective did you feel in those engagements?
  
4. Did the intercultural components within the basic training feel relevant to your experience as a mediator? Did it help you feel prepared? Were there other

opportunities (in shift or otherwise) for you to gain more experience/preparation in this area? What more would you like to see offered?

5. How prepared did you feel in mediating across cultural differences?

**Not at all Prepared**

**Well Prepared**

**1**

**2**

**3**

**4**

**5**

**Questions for Discussion:**

6. Do you think our services (as they are currently offered) are relevant to diverse communities? Why? Why not? Is there anything about the mediation process that you feel might present barriers to any cultural group?

7. How have you seen RNW involved in communities that are important to you? (Alternatively, what would it look like for RNW to be involved in communities that are important to you)?



Would you like to talk to a staff person about any of your answers?    Yes    No

*If yes, please provide your name and if you have any preference who contacts you.*

**Source:** Resolutions Northwest, Portland, Oregon

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