I. Introduction

Cross-cultural mediations can be more complex than domestic mediations because of the impact that cultural differences can have on mediation and negotiation styles and strategies. Mediators who find themselves in a cross-cultural mediation can apply basic principles and methods to improve the likelihood of success and minimize the potential impact of cultural factors on a mediation by being aware ahead of time of the cultural aspects of a mediation, and preparing accordingly for it. This will take time and effort on the part of the mediator. However, those efforts will likely pay off in the ultimate outcome of the mediation.

Florida in general, and from the “I-4 Corridor” down to Miami in particular, is a geographical area where the number of culture and ethnic groups have significantly increased in the past 30 to 40 years. As such, even “domestic” mediators in Florida are increasingly likely to be involved in disputes between people who represent distinctly different ethnic, racial, or national origin cultures.

As such, from a mediation and negotiating point of view, it is increasingly important for mediators (and counsel) to be aware of the impact that cultural differences could have in the process and outcome of a mediation. Even the most skilled and experienced mediator could face new challenges in a cross-cultural mediation.

Moreover, cross-border disputes, which used to be relatively rare, are now increasingly common. In practice, this means that the mediator (and
counsel) should investigate and become familiar with, among other things, the extent and potential of any cultural, sub-cultural, legal system or tradition to bear on disputes and their resolution. In cross-border disputes, the combination of foreign legal frameworks and cross-cultural issues is a daunting challenge for the increasing number of U.S. businesses who are engaged in cross-border deals, and who are burdened with a growing number of cross-border litigation and arbitrations.

Parties to these cross-border disputes need to be aware of local legislation and legal culture, and when necessary obtain advice from local counsel in the jurisdictions they do business in, including as to local mediation rules and practice, if any, and what their opponent may expect of the mediation process.

In the event the parties’ contract calls for arbitration of any dispute, and designates an arbitration institution to administer any future dispute, counsel for the parties need to become familiar early in the dispute as to any “mediation window” that may be incorporated into the arbitration rules, and how those work and how the mediator (and co-mediator) may be selected and where the mediation would be held.

Mediation is often perceived part of a single, coherent movement called Alternative Dispute Resolution (ADR) that originated in the U.S. before spreading to other common-law jurisdictions, and to some civil law jurisdictions. However, it would be erroneous to assume that mediation as a method of dispute resolution is understood, practiced, or accepted everywhere in the same manner and under the same process and methods as it is in the U.S., and in Florida in particular.

This presentation will discuss the principal studied and recognized cultural differences, their particular factors, and how they may impact the process and negotiations during mediation; and also how a mediator may best prepare to anticipate and cope with such cultural differences and factors.
II. **Multiple Cultures – What is Culture?**

A single comprehensive definition of “culture” is difficult. “Culture” is said to be comprised of many values, norms, beliefs, activities, institutions, communication patterns, and standards practices particular to a group (in general), and to an individual (in particular), such as: individual experiences, socio economic status, occupation, gender, race, religion, national origin, etc.

These various “cultural” factors can come into play not only with individuals from other cultures, but even with sub-groups within the United States or Florida. Culture is both pervasive and also largely invisible. Culture can be compare to water around fish, or air around people. Geert Hofstede defines culture as “… the collective programing of the mind that distinguishes the members of one group or category of people from others.”

Cultural differences can (and often do) play a significant role in domestic as well in cross-border mediations, especially if the parties, counsel and mediator come from different cultures. It is likely that a person’s culture may have a significant impact on that person’s attitudes toward and during a mediation, and for the same reasons, also on the outcome of a mediation.

Normally, most of us interpret the behaviors of people from other cultures as if those people were from our own culture. The result is that at times cross-cultural differences create friction and frustration. In the context of mediation, cultural differences can make us question whether the other party is playing fair, and whether we want to negotiate with them or continue a business relationship with a person from another culture.

III. **Communication Context**

Living, practicing, shopping, and socializing in many areas of Florida should make it abundantly clear to any mediator or attorney practicing in these areas that using and hearing multiple languages is more of the norm than the exception in Florida. One hears Spanish, Portuguese, Creole, Russian,
and occasionally English, on a daily basis. Moreover, as to Spanish, there is a common saying that “Latin America is a continent separated by the same language.” In other words, all “Spanish” is not created equal.

Therefore, domestically as well as in cross-border disputes, the “language” and the communication differences of the parties involved in a mediation needs to be considered ahead of time by the lawyers and the mediator. The mediator needs to be aware of any language and communication concerns. The mediator should also make sure that the terms, conditions, and amounts of any settlement that may be reached are clearly articulate in a language all parties understand before a settlement agreement is signed. This is part of the mediator’s role in protecting the “process” of mediation.

To accomplish this, at times (depending on the nature, complexity and monetary amount of the dispute), may require the use of a co-mediator; that is, the participation of a co-mediator who is familiar with the language culture, and the communication style of the parties from a foreign venue (in the case of cross border mediations), or from the sub-culture involved in a domestic mediation.

Cross-cultural mediations will usually benefit from extensive use of caucuses and pre-mediation meetings because the mediator has the opportunity to meet privately with each party to define the issues of mediation, to understand the cultural awareness of each party about the other party’s culture, to explore the parties knowledge of the culture and values of the opposing party, and the communication style of the parties.

A discussion of cross-cultural factors in mediation should begin with the concept of “low-context” and “high-context” communication. The concept of low-context and high-context communication was pioneered by Edward T. Hall. Communication differences will likely be the most important cultural difference in many cross-cultural and/or cross-border mediations. Low and high context refers to how people interact and communicate with other members of their culture.
A. Low-Context Communication

In “low-context” cultures, people communicate directly and rely on verbal communication (words) as opposed to non-verbal communication to express themselves; the discussion is straightforward and to the point. Important issues are explicitly discussed no matter how sensitive the subject matter is. Low-context cultures are more present and future-oriented and value change over tradition.

People from the USA, Canada, Australia, Europe (with the exceptions noted below), Israel, and Scandinavia use a direct, explicit, low-context communication style.

B. High-Context Communication

In “high-context” cultures, the information lies in the context, is not always verbalized, and the conversation goes around the points like a circle. Much of the meaning of the communication is already “programmed” into the receiver of the message as a result of the shared experience, connection and history of the sender and the receiver.

People are more likely to infer, suggest and imply than say things directly and to the point. Often no words are necessary to carry the message – a gesture or even silence is sufficient to communicate meaning. High-context cultures are more past oriented and value traditions over change.

Asian, Indian, Mexican, most Middle Eastern, French, Spanish and Greek people use indirect, implicit, high-context communication.

If one party in a mediation is a high-context communicator and the other party is a low-context communicator, the mediator might need to act as a communication “translator” between the parties. A mediator can help the parties to understand messages.
People form low-context cultures are more focused on the facts, whereas people from high-context cultures will be generally implicit, indirect and assume the mediator and the other party understand the nuances of communication just as well as they do.

Obviously, these two different but prominent cultural communication styles can have a significant, and at times negative impact in mediation negotiations and outcome. Members of high-context cultures are often uncomfortable with direct confrontation and would prefer negotiations with more caucusing, rather than direct negotiations. People from low-context cultures are more focused on the facts and people form high-context cultures will be generally implicit and indirect. A mediator needs to be able to assist the parties understand the messages being conveyed.

IV. **Individualist vs. Collectivist Negotiations**

A. **Individualist**

Dutch psychologist, Geert Hofstede, in his “Culture and Organizations: Software of the Mind”, notes that in general, people from the U.S., and Northern and Western Europe are “individualists” whose social pattern of negotiation emphasizes the individual’s personal preferences, goals, rights, needs and interests, all of which tend to be self-reliant and competitive. Hofstede and other scholars observe that these cultures tend to be very rules-driven, with laws spelling out what is and is not acceptable.

The positive words in an “individualist” culture are: self, friendship, do your own thing, contract, litigation, self-respect, I, me, individual, self-interest, dignity, pleasure and privacy.

At mediation, for parties from these cultures it is not uncommon for them to quickly insist on getting down to business, because in these cultures “time is money.” In both joint sessions and private caucuses, communication tends to be direct and to the point, leaving little
unsaid. They ask direct questions, their language is often colorful, loud and forceful.

B. Collectivist

On the other hand, “collectivists”, predominate in much of Africa, the Middle East, most of Asia, South America, Mexico, Nepal, and parts of Eastern Europe. Israel is in the mid-scale, according to Hofstede.

These cultures may tend to be more focused on group harmony, solidarity based on a sense of communal duty and responsibility. Their framework focuses less on rigid rules or standards of behavior and more on how the behavior itself impacts group harmony and solidarity. Preservation of relationships is very important for these cultural groups. There is a sense of communal duty and responsibility to the family, to the company or to society in general.

The positive words in a collectivist culture are: harmony, face, obligation, sacrifice, group, family, tradition, honor, duty, loyalty, decency, shame. There is a high correlation between high-context communication and collectivist cultures.

The implications for mediations and mediators is that mediations among so-called individualists follow a more “lineal” model, focused on the negotiation task starting with fact gathering, then issues clarifications, then to needs and interests identification, g with the generation and selection of options.

Collectivists, on the other hand, will generally approach mediations in a more relationship-oriented way, initially establishing a basis of trust in the mediator and each other upon which to build negotiations. Maintaining harmony and avoiding discomfort is very important for this group. In mediation, individualist are focused on the negotiation task; collectivists are focused on building and maintaining a relationship within the group.

These may not be necessarily exclusive of each other, and an experienced mediator should be able to find a common threat between these poles to benefit the mediation process and the ultimate outcome of the mediation.
In dealing with “collectivists” it is also important to keep in mind that all decision makers may not be seated at the mediation table.

Usually, Western business teams of negotiators have individual decision makers which are given authority to make the final decision at the bargaining table. Some collectivist groups, such as Asian negotiating teams, usually do not have authority to make concessions to reach a final agreement. The mediator has to clarify the decision-making procedures for the parties at the mediation. These kinds of cultural differences in negotiating approach can at time also impact the mediator selection.

V. **Assertiveness vs. Cooperativeness**

A. **Assertiveness**

Also related to Hofstede’s work is what he calls “assertive” vs. “cooperative” cultures. A culture of assertiveness values achievement, control, power, the accumulation of money and wealth, independence, recognition, “hardball”, aggressiveness, dominance, challenges, ambition, competition, physical strength, and can be summarized with the phrase “win at all costs.” In these cultures, there tend to be more rigid gender roles and their ethic is one of a “live to work” orientation.

Countries which have a tendency to be more assertive are the Australia, China, Japan (the “wolf in sheep’s clothing”), Slovakia, Switzerland, Austria, Venezuela, Italy, Mexico, Ireland, Jamaica, Great Britain, Germany, and the Arab World.

The U.S. and most European countries and Israel appear to be in mid-scale in this index, according to Hofstede’s research.

Positive words for assertiveness cultures are: career, competition, fight, aggressive, assertive, success, winner, deserve, merit, excel, force, big, fast, tough, quantity, power and action.
B. Cooperativeness

A culture of cooperativeness has a more “win-win” approach to negotiations, and values not raising your voice, small talk, agreement, and being warm and friendly in conversation. These cultures value cooperation, nurturing, and relationship solidarity, and the ethic is more one of “work to live.”

Positive words for cooperativeness cultures are: caring, solidarity, modesty, compromise, help, love, grow, small, soft, slow, tender and touch.

The Scandinavian countries, as well as Finland, Thailand and South Korea tend to be more cooperative.

Obviously, these cultural differences, referred to by Hofstede in terms of masculinity and femininity, can have a significant impact on mediation, since assertive negotiators will attempt to dominate the others through power tactics, and will be reluctant to make concessions, as opposed to cooperative negotiators, who will prefer to discuss interests, offer concessions, try to separate the people from the problem, and be willing to consider the dispute in a more neutral way. Mediators may find it useful to familiarize themselves with, and consider, the way gender roles may play out in the cultural context of the mediating parties.

VI. Uncertainty Avoidance

Another of Hofstede’s cultural indexes is whether people in a culture are prone to avoid risks or to take risks, and therefore, how well they may adapt to change; that is, the level of tolerance for uncertainty and ambiguity
within a culture. This index measures the extent to which people feel threatened by unstructured or unknown situations, compared to the more universal feeling of fear caused by known or understood threats. It focus on the level of tolerance and the important of truth in a culture, as compared to other values.

A. **High Uncertainty Avoidance**

A High Uncertainty Avoidance culture creates a rule-oriented society that institutes laws, rules and controls in order to reduce the amount of uncertainty in the environment. People from these cultures tend to dislike risky and unclear situations, and prefer rules and structured circumstances. For them, precision and punctuality are important.

In general, negotiators from a High Uncertainty Avoidance culture will prefer to keep the mediation structured, and will always follow the ground rules set forth by the mediator, since in general they are not comfortable in unconventional situations. They tend to value precision and leave very little to chance. They will choose strategies that offer lower rewards, but have a higher probability of success.

They prefer to have precise answers to questions, precise instructions and detailed job descriptions, and will distrust negotiating partners who display unfamiliar behaviors, and have a need for structure and ritual in the negotiation process. Negotiating teams from High Uncertainty Avoidance cultures are likely to consist of specialists; moreover, they become frustrated by a lack of structure, are guided by fear of failure, and put a premium in the maintenance of harmony and the absence of discord.

Positive words for High Uncertainty Avoidance cultures are: structure, duty, truth, law, order, certain, pure, clear, secure, safe, predictable, and tight.

Countries which have High Uncertainty Avoidance cultures are Greece, Israel, Portugal, Guatemala, Uruguay, Belgium, Salvador,
Japan, Yugoslavia, Peru, France, Chile, Spain, Costa Rica, Panama, and Argentina.

B. **Low Uncertainty Avoidance**

Cultures which have a Low Uncertainty Avoidance usually tolerate a greater degree of uncertainty, are less rule oriented, and are open to new situations. They will be more open to new ideas, be more creative in their problem solving approach, show more tolerance for a variety of opinions, and accept more risks and change.

These cultures value risk-taking, problem-solving, flat organizational structures, and tolerance for ambiguity. Negotiation teams from these cultures are likely to include generalists, and are more motivated by the hope of success. These culture groups tends to be less expressive and less openly anxious.

Positive words for Low Uncertainty Avoidance cultures are: maybe, creative, conflict, tolerant, experiment, spontaneous, relativity, insight, unstructured, loose, and flexible.

Countries with Low Uncertainty Avoidance are the U.S., China, Jamaica, Denmark, Singapore, Hong Kong, Ireland, and Great Britain.

These cultural differences can be important in mediation negotiations, since there is a chance that the parties will find trouble cooperating if one side is constantly proposing new options toward settlement, and the other is unwilling to change its position, or to consider more creative or riskier or unusual solutions. If not recognized and addressed, these cultural differences could significantly affect a mediation’s outcome and potentially lead toward failure from the outset.

A person’s cultural background and orientation is a strong factor that permeates his/her whole approach to the process of mediation, and should be explore and addressed early in the process in order for the mediator to
effectively communicate with the parties during mediation, and thereby increase the likelihood of a successful mediation.

VII. Long-Term v. Short-Term Orientation

A. Long-Term Orientation

Long-Term Orientation focuses on the extent that a culture embraces traditional, forward thinking values and exhibits a pragmatic future oriented perspective, rather than a conventional historic or short-term point of view. It is a measure of a culture’s virtue. Its central value is “sacrifice for the future.” These culture are more likely to make long-term commitments and have a great respect for tradition.

There is a strong work ethic, and long-term rewards are expected as a result of today’s hard work. These cultures tend to respect thrift, status, perseverance, order, sense of shame, and have a high savings rate. There is a willingness to make sacrifices now in order to be rewarded in the future.

Positive words for Long-Term Orientation cultures are: work, safe, moderation, endurance, duty, goal, permanent, future, economy, virtue, invest, afford, and effort.

Asian countries score high on this dimension. There is no score for Israel in this Index in Hofstede’s scale.

Long-term orientation cultures may experience people from short-term orientation cultures as being irresponsible, and is willing to throw away money. This perception can be an important factor that a mediator should keep in mind. Also, Long-Term Orientation cultures may engage in extended negotiations, especially if the culture has a polycentric time orientation (more on this below). For example, during the Vietnam Paris Peace Talks, the Americans came to Paris and
rented hotel rooms for a month; the Vietnamese rented rooms for a year!

B. **Short-Term Orientation**

In a culture of Short-Term Orientation, change can occur more rapidly because long-term traditions and commitments do not become impediments to change. A short-term orientation leads to an expectation that efforts should produce quick results. A short-term orientation culture has a concern for saving face. Short-term orientation cultures may experience people from long-term orientation cultures as being stingy and cold.

Most Western countries, the Philippines and Australia score high on this dimension.

The words with a positive connotation for a Short-Term Orientation culture are: relation, gift, today, yesterday, truth, quick, spend, receive, grand, tradition, show, image, and bottom line.

Negotiators from Short-Term Orientation cultures should be mindful that in negotiations, parties from long-term orientation cultures may see the past or the distant future as part of the present.

On the other hand, negotiators from Long-Term Orientation cultures may need to remember that a present orientation can bring needed change. This is an important difference in perspective for mediators to keep in mind, and use as may be needed to arrive at an agreement.

**VIII. Monchroic Culture vs. Polychronic Culture**

A. **Monchroic Culture**

A Monchroic Culture perceives time as linear, quantifiable, and in limited supply; people from these cultural groups believe that it is
important to use time wise and not waste it. Efficiency is important, which leads to a sense of urgency, and the needs of people are adjusted to suit the demands of time, resulting in developing schedules and deadlines in the manner considered most efficient to do one thing at a time. Unforeseen events should not interfere with plans, and interruptions are seen as a nuisance. A monochronic culture’s approach to time is linear, sequential and involve focusing on one thing at a time.

These approaches are most common in the European-influenced cultures of the U.S., Switzerland, Japan and Scandinavia.

B. Polychronic Culture

A Polychronic culture orientation involve simultaneous occurrences of many things and the involvement of many people. The time it takes to complete an interaction is elastic, and is considered more important than any schedule. Time is perceived as limitless and not quantifiable, and time is adjusted to suit the needs of people. Schedules and deadlines get changed as needed, and people may need to do several things simultaneously. It is appropriate to split attention between several people and tasks, and it is not necessary to finish one thing before starting another.

Mediterranean and Latin American cultures, as well as Africa and the Middle Eastern cultures rank high on this orientation.

IX. Cross-Cultural Approaches to Negotiation

According to Michelle LeBaron (and other authorities he refers to), in his article, “Culture-Based Negotiation Styles” published in July 2003 in Beyond Intractability, these are some of the various cultural approaches to negotiations he notes as to the United States, Japan, Europe, and Latin America:
A. United States

- Americans tend to be competitive negotiators, they come to the table with a fall-back position, but begin with an unrealistic offer;
- Are energetic, confident, persistent, enjoy arguing their positions, and talk about broad applications of ideas;
- They concentrate on one problem at a time;
- They focus on areas of disagreement, not of commonality;
- They like closure and certainty.

B. Japan

- They focus on group goals, interdependence and hierarchical orientation;
- There is awareness of group needs and goals; deference to those of higher status;
- Known for their politeness and emphasis on establishing relationships;
- Prefer use of power in muted and indirect ways, are concerned with face-saving and avoiding confrontation;
- Prefer harmony and calm, and disclose less about themselves and their goals than French and Americans.

C. European

- Styles vary according to region, nationality and language and other contextual factors;
- The French are very aggressive negotiators, using threats, warnings, and interruptions to achieve goals;
- Germans and British negotiators are moderately aggressive.
D. Latin American

- Role expectations influence negotiations;
- Responsibility to others considered more important than schedules and tasks accomplished;
- Negotiation approach related to polychronic orientation to time;
- High-context communication and communitarianism;
- Negotiation is done within networks, and relationships are emphasized;
- Open ruptures are avoided;
- Prefer a storied, holistic approach to negotiations, rather than a linear, analytical one;
- **But, Brazilians** are very similar to Americans in their approach to negotiations.

Some of the above styles as to Latin America may apply more to Central America than to the Southern region; again, “Latin America” is not a monolithic unit as to language or culture.

X. **Impact of Culture and Traditions on Decision Making**

As noted above, in some cultures decision-making takes time and follows tradition and cultural mores – mediations within these cultural groups require patience and cultural sensitivity on the part of the mediator; those will be very important components of the mediator’s tool box: For example:

- In parts of Asia, having tea or a light meal with an adversary shows courtesy and helps build trust;

- People with consensus-based or familiar attitude to negotiations will often seek the guidance and feedback of a patriarch, matriarch or older sibling before making a decision;
- Latino families, who are often very close-knit (and often operate a business together), may come to the mediation knowing that there are other “stake-holders”, whether at the table or not, who may need to be consulted and may need approve any proposed deal;
• Most American mediators prefer to deal with issues one at a time, sequentially; however, parties from other cultures or other American sub-cultures may take a global approach and try to resolve the issues through in an integrative manner;
• Certain cultures, including Mediterranean, Arab, and Latin American, are more tactile and allow more touching. Asian, indigenous Americans, Canadians, and U.S. cultures discourage touching outside of intimate situations;
• Some cultures allow cross-gender touching, including the U.S., while same-gender touching may not be acceptable in other cultures;
• In Arab cultures, it is considered disrespectful to cross one’s legs so that the soiled soles of one’s shoes are exposed;
• Among Asians, business cards are offered and accepted with both hands, scrutinized, but never written on;
• At mediation, offering the chair on the mediator’s immediate right to the CEO or highest officer in most Asian or Arab corporations may be expected.

XI. Conclusion

For the mediator or counsel to disregard or be insensitive to cultural or ethnic differences, or to fail to connect culturally with one side, could result in missed opportunities. But, if the mediator recognizes cultural differences and learns how to address them, a new set of “tools” becomes available to the mediator.

Cross-cultural or sub-culture mediations are more complex than domestic mediations because of the differences note above. However, in these settings, mediators can apply basic principles and methods to improve the likelihood of success, such as:

1) Learn the cultural stereotypes as well as the cultural differences of the parties who will come to the mediation;

2) Investigate the actual people who will be involved at mediation, their relative “rank” in the respective organizations’ hierarchy, as well as the issues involved in the dispute;
3) Be flexible and patient, and understand that the parties may well act differently than their cultural stereotypes; but that knowing the stereotypes is useful in planning and preparing for the mediation.

4) A mediator must identify and address his/her own cultural and gender perceptions and biases and discourage attitudes that may be judgmental or stereotypical, in order to avoid creating barriers, so as to develop the credibility and trust that is necessary for a successful mediation.

**Sources Relied Upon, Referred to, and Used in Preparing this Presentation**


Michelle LeBaron, “Cultural-Based Negotiation Styles,” Beyond Intractability, July 2003.