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## Outward Bound to Other Cultures: Seven Guidelines for U.S. Dispute Resolution Trainers

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PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

# **Outward Bound to Other Cultures: Seven Guidelines for U.S. Dispute Resolution Trainers**

Harold Abramson<sup>†</sup>

## **I. INTRODUCTION**

“Would you like to go to Delhi to train people in negotiations?” the email message inquires. “Are you kidding?” you think to yourself. “Of course, I would get to do in an exotic location what I enjoy doing at home—helping others to resolve conflicts. And I also would meet fascinating people and tour an intriguing city and country with a local host.” “YES,” you reply after working out the logistical details. Now as you begin to pack your off-the-shelf training materials, you start to wonder how you should adapt your training for this foreign location. You do not want to be accused of cultural imperialism or insensitivity. This article will explore what to do before getting on the airplane, from the point-of-view of a U.S. trainer.

So, what do we need to do? We need to adapt our off-the-shelf training materials to account for cultural differences. Wow, now that is not a particularly surprising or insightful answer. We already know that. We routinely say so. We also routinely criticize training programs for failing to do so. We criticize traveling trainers as cultural imperialists, promoting the U.S. way of doing things without any meaningful effort to respect or account for cultural differences. To avoid these charges, we need to meticulously

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adapt our materials and presentations for export. And we need to do this based on understanding the cultural assumptions embedded in our off-the-shelf programs and the cultural upbringings of the participants.

This article was inspired by the opportunity to observe a two day negotiation training program<sup>1</sup> put together by Hamline University School of Law in Rome. It was called “Developing ‘Second Generation’ Global Negotiation Education.” The trainers conducted a high level program for around thirty sophisticated professionals. And over forty scholars observed the training and then spent another two days discussing what was observed. Based on that experience as an observer and my own experience teaching and training abroad, along with additional research, I have identified seven guidelines for U.S. trainers. These guidelines should help trainers reduce any cultural mishaps, prepare for the inevitable surprises, and ultimately deliver an effective program in other cultures.

## II. GUIDELINES FOR TRAINING ABROAD

### *1. Acquire a Culturally Educated Lens*

We all wear culturally shaped lenses through which we observe and judge behavior around us. When someone is unwilling to make a commitment in writing, or does not bring all the people with settlement authority, or just shows up late, we are likely to interpret these behaviors negatively, based on our experiences at home. But in other cultures, these behaviors may not be negative; they may just reflect different practices. Before we, as U.S. trainers, go abroad, we need to acquire a new prescription. We need to be able to discern which behaviors of ours are culturally shaped, as well as the range of cultural behaviors that may be exhibited where we are training.

Many excellent books and articles provide conceptual models of culture, and they further illustrate particular cultural practices including practices that can impact how people negotiate.<sup>2</sup> These materials have taught us

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1. The program was held in May, 2008. The subjects that were superbly presented would be familiar to any experienced trainer. The program covered positional and interest-based negotiations, communication skills, impasse-breaking, and ethics with the bonus of a culture and gender module.

2. See John Barkai, Cultural Dimension Interests, the Dance of Negotiation, and Weather Forecasting: A Perspective on Cross-Cultural Negotiation and Dispute Resolution, 8 PEPP. DISP. RESOL. L.J. 403 (2008), B.C. Goh, Typical Errors of Westerners, in THE NEGOTIATOR'S FIELDBOOK 293 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006), GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES (1980), MICHELLE LeBARON & VENASHRI PILLAY, CONFLICT ACROSS CULTURES: A UNIQUE EXPERIENCE

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about a multitude of behavior continuums that can be found across cultures.<sup>3</sup> We need to be acquainted with them. Well-known continuums include high to low context communicators,<sup>4</sup> individualism to collectivism,<sup>5</sup> universalism to particularism,<sup>6</sup> high to low power distances,<sup>7</sup> long-term to short-term orientations,<sup>8</sup> and high to low uncertainty avoiders.<sup>9</sup> Unless we arrive fitted with an educated lens through which we can recognize our own cultural behaviors as well as others, we may be misunderstood by local participants, and miss or misinterpret their contributions and comments.

For example, during a debriefing of a negotiation exercise in Argentina, an uneducated trainer may misinterpret comments by participants in a commercial dispute when the participants explain that they spent most of their time on small talk and getting to know each other. Thinking that the participants failed to meet the disputing parties' interest in a new contract, a perfectly reasonable interpretation in Westernized terms, a trainer might suggest ways the parties could have moved in that direction within the time constraints of the exercise. In so doing, the trainer would have failed to inquire about the possibility that culturally, the participants had less interest in the terms of any new contract and more interest in the relationship (that the parties may operate closer to the relationship pole on a contract-to-relationship continuum).

Unfortunately, we cannot simply read books to learn about the participants' cultural practices because the practices of each participant can be a product of multiple cultural experiences, and those experiences are not frozen in time—they can evolve based on life's experiences and external influences. All we can do is observe participants' behavior with a sensitive vision.

When we are fitted with this educated lens, we can identify the embedded cultural assumptions in our own off-the-shelf training as well as

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OF BRIDGING DIFFERENCES (2006), MICHELLE LEBARON, BRIDGING CULTURAL CONFLICTS: A NEW APPROACH FOR A CHANGING WORLD (2003), JESWALD W. SALACUSE, MAKING GLOBAL DEALS: WHAT EVERY EXECUTIVE SHOULD KNOW ABOUT NEGOTIATING ABROAD (1991).

3. See, e.g., Barkai, *supra* note 2, Goh, *supra* note 2, HOFSTEDE, *supra* note 2, LEBARON & PILLAY, *supra* note 2, LEBARON, *supra* note 2, SALACUSE, *supra* note 2.

4. See, e.g., LEBARON & PILLAY, *supra* note 2, at 32-36.

5. See *id.*

6. See *id.* at 39.

7. See *id.* at 33, 45-48.

8. See, e.g., HOFSTEDE, *supra* note 2, at 359.

9. See *id.* at 161.

more accurately understand what is happening in the training as it unfolds. But we are not yet ready to get on the plane. We need to modify our training materials and presentations.

## 2. *Behave Like a Guest: Be Flexible, Open-Minded, and Elicitive*

As any experienced trainer knows—when we train, we vigorously multi-task, and we may do that for seven to ten uninterrupted hours in a single day, as we try to make the time together fun, engaging, and educational.<sup>10</sup> And when we go abroad, we must add another task: to behave like a guest—as an outsider in the room—who is flexible, open-minded, and elicitive.

As guests, we should be *flexible* and therefore prepared for the unexpected. Our success does not depend on avoiding all cultural blunders. Our success depends on how well we deal with inevitable surprises. If we inadvertently cause someone to lose face, for instance, find a way for the person to regain face—quickly. If we mistakenly pair people of different ranks in a hierarchical society, correct it. We need to be prepared to adjust the training as it unfolds.

As guests, we should not get carried away with our “expertise.” We arrive as experts, but only from where we come from. We are outsiders to the culture where we are training. When it comes to local cultural practices, the experts are our hosts and participants. We can learn from them. We should be *open-minded*, which includes being non-judgmental and respectful of differences as we learn about their culture(s).<sup>11</sup> And, we need to be more than inquisitive. We should *elicit* a continuous stream of input as we formulate our programs and deliver them.<sup>12</sup> Before we leave, we can ask our hosts about local practices by conferring with them or employing a formal survey. At the training, we can give genuine attention to getting to know the participants, especially in relationship-based cultures, in an effort to draw the participants out and learn from them.

For example, recently I needed to learn about the nature of the relationship between attorneys and clients in Switzerland for a mediation representation training program in Geneva. We know that the relationship

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10. When training, we are not just presenting lectures. We are lecturing, organizing, and administering exercises, using multiple technologies (power points, DVDs, flip charts, and sometimes more), facilitating fragile discussions, and most importantly, doing what is necessary to maintain the energy of the participants for a long day (by constantly fine tuning the pace and schedule including the timing of feeding breaks).

11. See HAROLD ABRAMSON, *MEDIATION REPRESENTATION-ADVOCATING IN A PROBLEM-SOLVING PROCESS* 175-180 (2004).

12. Morgan Brigg, *Mediation, Power, and Cultural Difference*, 20 CONFLICT RESOL. Q. 287, 301 (2003).

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can vary in different regions of the world. In the U.S., clients tend to rely heavily on their attorneys, with their attorneys taking the lead. But, in some European countries, especially civil law ones, business clients can assume a more prominent role. Before the Geneva training, I asked my host to educate me about attorney-client relationships and then began the relevant training segment by pointing out that how responsibilities between attorneys and clients are shared is a choice. I then elicited from the participants what the local practices were and used their responses to explore other types of arrangements when representing clients in mediations.

We should be flexible, open-minded, and elicitive about local practices throughout our trainings.<sup>13</sup> In short, we should be the consummate guest.

### *3. Be Mindful of Cultural Assumptions and Differences, and Adapt Training*

We need to be cognizant of how our own cultural values may be reflected in our training materials and presentations in order to effectively deliver our trainings.<sup>14</sup> Otherwise, participants may misunderstand us, or worse, privately dismiss what we are presenting because they may think “it does not work in our culture.” We cannot necessarily rely on participants to raise cultural differences, because they may be too polite. So, we need to edit our training materials and revise our presentations to acknowledge our practices, and incorporate differing practices of the trainees.

#### *a. Getting to Yes Concepts*

Because *Getting to Yes* concepts form the foundation of most, if not all, U.S. based negotiation and mediation trainings, we should acknowledge and discuss the cultural critique of the concepts when training abroad. The main critique characterizes “interests” and “separating the people from the problem” as Western values, although I think that much (but not all) of this critique is based on misunderstandings.<sup>15</sup>

The critique views interests narrowly as a Western concept that reflects social norms of individualistic, independent, and autonomous values of parties.<sup>16</sup> In contrast, Islamic values, for instance, focus on needs that go

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13. *Id.* at 300.

14. *Id.* at 301.

15. Amr Abdalla, *Principles of Islamic Interpersonal Conflict Intervention: A Search within Islam and Western Literature*, 15 J. L. & RELIGION 151, 160-61 (2000-2001).

16. *See id.* at 162.

beyond narrow Western interests and reflect social norms of interdependence and community involvement, even in interpersonal matters.<sup>17</sup> The separating the people from the problem principle also has been critiqued as one that runs counter to the values of some other cultures. It has been suggested that relationship issues can be as significant as any substantive issue, especially in cultures based on interdependence and relatedness among community members.<sup>18</sup> While these narrow characterizations of interests and the separation of people from the problem principle can be encountered in the West, a close reading of *Getting to Yes* reveals a broad definition of interests, one that can include relationship needs. Fisher and Ury explained in what is now a widely-cited quote that: "Interests motivate people; they are the silent movers behind the hubbub of positions. Your position is something you have decided upon. Your interests are what caused you to so decide."<sup>19</sup> Fisher and Ury highlighted how broad interests can be when they emphasized that: "*The most powerful interests are basic human needs*. In searching for the basic interests behind a declared position, look particularly for those bedrock concerns which motivate all people . . . Basic human needs include: security, economic well-being, a sense of belonging, recognition, [and] control over one's life."<sup>20</sup>

And Fisher and Ury did not ignore or subordinate concerns about a party's interest in relationships. They recognized that it can be a more important interest than a party's substantive interests, and they made this point in their chapter entitled "Separate the PEOPLE from the Problem."<sup>21</sup>

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17. *See id.*

18. *See id.* at 165. Niko Besnier suggests that in some cultures, you cannot separate the people from the problem because the human emotional dimension and problem are culturally "intricately interwoven." Niko Besnier, *Language and Affect*, 19 ANNUAL REV. OF ANTHROPOLOGY 419, 431 (1990). Also, cultural protocols can impede the ability of parties to articulate interests in a mediation session. Morgan Brigg, *Mediation, Power, and Cultural Difference*, 20 CONFLICT RESOL. Q. 287, 296 (Spring 2003).

19. ROGER FISHER & WILLIAM URY, *GETTING TO YES* 41-48 (Bruce Patton ed., Penguin Books 1991) (1983). Even though Menkel-Meadow contends that we should recognize "needs" as something that goes beyond the rational that underlies interests, her definition of needs that "include such intangibles as respect, dignity, care, sympathy, empathy, apology, and recognition" sound like the ones covered by the broad definition of interests offered by Fisher and Ury. Symposium, *Correspondences and Contradictions in International and Domestic Conflict Resolution: Lessons from General Theory and Varied Contexts*, 2003 J. OF DISP. RESOL. 319, 343 (2003). *See also* FISHER & URY, *supra* note 19, at 48.

20. *See* FISHER & URY, *supra* note 19, at 48.

21. *See id.* at 17-39. Len Riskin, in his classic article on the orientations of mediators, also broadly defines interests to encompass the "relatedness and community" mentioned by Abdalla when he suggests that third parties can approach parties' needs over a continuum of four levels from a narrow perspective of a legal dispute to the broad perspective of community interests. *See* Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, HARV. NEGOT. L. REV. 7, 18-22 (1996), and Abdalla, *supra* note 15, at 175.

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As a result of this analysis and my own experience, I have come to believe that the term “interests”, as broadly construed, is culturally neutral, while the content can be culturally shaped. Success stories of Western trainers in non-Western societies support this distinction and should help us feel secure presenting this powerful *Getting to Yes* concept abroad.<sup>22</sup> But, we should not ignore the stories of caution.<sup>23</sup> We should remain open to new cultural understandings as we learn more about conflict resolution in non-Western societies, including continuing testing the distinction between neutral interest and cultural content.

We also ought to test the cultural acceptability of other *Getting to Yes* concepts like “inventing options” and “objective criteria.” Professor John Barkai has raised the possibility that inventing options can be uncomfortable in a high uncertainty avoidance culture, and selecting what is objective can be influenced by cultural values.<sup>24</sup>

As a guest presenting the *Getting to Yes* concepts, we can elicit, examine, and incorporate insights from the participants. Let me illustrate one possible approach. We could commence discussions by offering a broad conception of interests, and then inquire what might be the interests of each side in a particular problem. We could assertively involve the participants in identifying possible interests including ones unfamiliar to us based on their own personal values, and then use those answers to sort out whether they are articulating interests or positions—familiar teaching territory for any experienced trainer.

#### b. Cultural Variations in the Negotiation Dance

We should recognize that the negotiation dance can vary in other cultures. As Adair and Brett hypothesized and showed in their empirical study:

We predict that like dancers from different cultures, negotiators from different cultures will share a holistic view of the negotiation process that will lead them through similar cooperative and competitive stages. Like dancers from different cultures, we also expect

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22. Wallace Warfield, *Response to Carrie Menkel-Meadow's "Correspondences and Contradictions in International and Domestic Conflict Resolution: Lessons from General Theory and Varied Contexts"*, J. DISP. RESOL. 417-26 (2003) (Warfield successfully taught interest-based negotiation in Rwanda).

23. See Brigg, *supra* note 12, at 296-97 (concerned that the local cultural context impeded the ability of Aboriginal Australian people to articulate interests in a mediation session).

24. See Barkai, *supra* note 2, at 445.



negotiators from different cultures to enact different behavioral sequences at the bargaining table, leading to difficulty in synchronization and inefficient deals.<sup>25</sup>

Therefore, we should incorporate in our exercises, including the debriefings, a discussion of the variations in the negotiation dance because the trainees may dance differently than we do. Here are three illustrations.

*i. The Haggle*

The familiar haggle can vary in other cultures. I became personally familiar with how different it can be when haggling for purchases in China; my students were getting much better results than me. I was negotiating based on the norms I was familiar with. It turns out that not only were opening offers and the concession process different, so was the nature of the interaction. Chinese negotiators generally pad offers more than Westerners, are more enamored with the back-and-forth process, and favor compromises that result from the ritualistic haggle.<sup>26</sup>

*ii. High-Low Context Communicators/Negotiators*

As a likely low-context communicator and trainer from the U.S., we may need to consider how high-context communicators may handle differently the scope and ways of sharing information during the negotiations.<sup>27</sup> These differences in communicating can produce different dance steps.<sup>28</sup> In their empirical study, Adair and Brett found that high-context communicators were skilled in both direct and indirect forms of communication, and used more diverse, strategic moves than low-context negotiators who rely on relatively more direct means of conveying information.<sup>29</sup> In contrast, low-context negotiators showed less ability to communicate in, or understand, high-context communications.<sup>30</sup>

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25. Wendi L. Adair & Jeanne M. Brett, *The Negotiation Dance: Time, Culture, and Behavioral Sequences in Negotiation*, 16 ORGANIZATIONAL SCIENCE 1, 35 (2005), available at <http://watarts.uwaterloo.ca/~wladair/papers/Org%20Sci%202005%20negotiation%20dance.pdf>.

“[A]lthough the functional stages of a normative negotiation model may be universal (or etic), we expect some of the behavioral content of stages to be culture-specific (or emic).” *Id.* at 37. See also Barkai, *supra* note 2, at 403.

26. John L. Graham & N. Mark Lam, *The Chinese Negotiation*, HARV. BUS. REV., Oct. 2003, at 1, 3, available at <http://cumba.net/hbr/negotiation.pdf>.

27. See Adair & Brett, *supra* note 25, at 48.

28. See *id.* at 37-38.

29. See *id.* at 46.

30. *Id.* In this study, there is some positive news for those of us who are low-context communicators training in high-context societies. *Id.* The study implicitly suggests that participants who are high-context communicators are better able to understand and communicate with us than if

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*iii. Different Speeds Through Stages of Negotiations*

The speed for progressing through the stages of negotiations can vary culturally. Task-oriented Western negotiators can move quickly through the information exchange stage to the longer stage of exchanging and testing proposals.<sup>31</sup> In contrast, relationship-oriented negotiators, such as from many Asian and Latin American countries, can move slowly through the information-exchange stage until sufficient, mutual trust is established, and then move more quickly through the stage of exchanging proposals and bargaining.<sup>32</sup>

c. Common Terms with Different Meanings

We should be alert how some terms we frequently use in our trainings may have different meanings in other cultures. Because these terms may be understood differently than we intended, we risk confusing the trainees. Here are a few illustrations. The prior section showed how the common characterization of negotiation as a dance can imply practices that can vary across cultures. Other terms that convey meanings that may vary culturally include: attorney-client relationships, mediation, apologies, parties, preserving face, and the ubiquitous inquiry, why.

The familiar understanding of the “attorney-client relationship” in the U.S., in which the attorney is a central advisor, can vary in other cultures where the attorney may perform a more limited role. The nature of the relationship can shape how the attorney participates in the negotiation or mediation process.

The commonly used word “mediation” envisions a process that can vary in different cultures and even within the same culture. In the U.S., for instance, there are at least three distinctively different visions of mediation (transformative, facilitative, evaluative), and many Asian countries lean toward a version of mediation that has been called wisely directive.<sup>33</sup> In Europe—a Western culture, Jeremy Lack, a lawyer and mediator in

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the situation was reversed, and we were high-context communicators trying to train low-context communicators. *Id.* at 46-48.

31. G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE* 119 (Viking Penguin ed., 1999).

32. *Id.* at 119-20.

33. HAROLD I. ABRAMSON, *MEDIATION REPRESENTATION ADVOCATING IN A PROBLEM-SOLVING PROCESS* 70-72 (National Institute for Trial Advocacy 2004).

Switzerland and astute observer of European practices, suggests that there are four different conceptions of mediation practiced.<sup>34</sup> He has identified the U.K. efficiency approach, the French philosophical approach, the Dutch pragmatic approach, and the Ostro-Germanic perfection approach.<sup>35</sup>

While an *apology* in the U.S. may be viewed as an admission of liability and as a result is rarely offered, in some other places an apology can be an essential and expected offering, unrelated to making an admission.

While the *party* to a dispute in the U.S. is usually the person directly involved with the dispute, although family members may sometimes provide psychological support or input, the party in some other cultures can be the *family* of the person directly involved with the dispute. The family can be the *de facto* party. Family members can be part of a tightly knit unit, and the dispute may be viewed as involving the whole family.<sup>36</sup> Family members may want to be present, with the head of the family playing a leading role.

*Preserving face* in the U.S. has been described as reflecting "... a person's need to reconcile the stand he takes in a negotiation ... with his principles and with his past words and deeds."<sup>37</sup> This U.S. view is narrower than in some other cultural views, which is apparent whenever I read this definition to students and lawyers from Asian cultural backgrounds and hear their surprise and their much deeper and broader view of the need to preserve face.<sup>38</sup>

The essential *why* inquiry for uncovering underlying interests can be offensive in other cultures as I was startled to learn when recently training Dutch lawyers in the Netherlands. After I praised this simple and powerful

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34. See generally Jeremy Lack, *ABA International Mediation Leadership Summit: A Swiss Perception of Different Models of Mediation around the World*, Hague 2008, [http://www.abanet.org/dispute/hague/Jeremy%20Lack%20-%20ABA%20Mediation%20Summit%20\(The%20Hague%2031.10.2008\)%20-%20short%20version.pdf](http://www.abanet.org/dispute/hague/Jeremy%20Lack%20-%20ABA%20Mediation%20Summit%20(The%20Hague%2031.10.2008)%20-%20short%20version.pdf).

35. See generally *id.*

36. See generally GEERT HOFSTEDE, *CULTURE'S CONSEQUENCES* 225-30 (2d ed. 2001).

37. See FISHER & URY, *supra* note 19, at 28.

38. See Graham & Lam, *supra* note 26, at 9:

In Chinese business culture, a person's reputation and social standing rest on saving face. If Westerners cause the Chinese embarrassment or loss of composure, even unintentionally, it can be disastrous for business negotiations. The Chinese notion of saving face is closely associated with American concepts of dignity and prestige. *Mianzi* defines a person's place in his social network; it is the most important measure of social worth. . . [W]hen those negotiating with the Chinese break promises or display anger, frustration, or aggression at the negotiation table, it results in a mutual loss of face. In the West, sometimes a mock tantrum is used as a negotiating tactic, but in China it invariably backfires one way or another. Causing the Chinese business partner who brought you to the table to lose *mianzi* is no mere faux pas; it's a disaster.

*Id.*

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inquiry profusely, I was politely informed that mediators are taught *not* to ask why because the question suggests a touch of criticism and could be experienced as too probing and not neutral. I was advised to begin such an inquiry with “what”—as in, “What is the reason for you wanting that result?”

d. Familiar Body Language and Behavior with Different Meanings

We should be conscious of how body language and behavior familiar to us can have different meanings in different cultures. In the Rome training, for instance, I heard one participant suggest the following self-test to assess whether you were really listening: 1) Are you letting the speaker speak without interrupting?; and 2) Are you making appropriate eye contact?

This advice may be sound when listening in the United States; however, it is imbued with Western cultural values. We know, for instance, that in some other cultures eye contact is considered immodest and to be avoided.<sup>39</sup> Also, speaking without being interrupted is not the norm everywhere, as President Jimmy Carter stumbled on during the Camp David mediation. In his daily diary, President Carter commented that: “With one exception of interrupting other speakers, Begin was the epitome of propriety and good manners.”<sup>40</sup> Afterwards, he said he finally understood Begin’s behavior when he “visited the Israeli Knesset and tried to speak above the hubbub.”<sup>41</sup> Carter realized where Begin got his training and negotiation habits.<sup>42</sup>

e. Culturally Influenced Reframing

When we teach reframing, a powerful technique for shifting the attitude or orientation of the parties, we should point out that what we select to reframe and how we do it can reflect our own cultural vision of productive or unproductive behavior in the negotiation.<sup>43</sup>

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39. See Andrew Sagartz, *Resolution of International Commercial Disputers: Surmounting Barriers of Culture Without Going to Court*, 13 OHIO ST. J. ON DISP. RESOL. 675, 687 (1998). “[E]ye contact can be revealing. Japanese usually avoid eye contact because they consider staring impolite.” *Id.*

40. JIMMY CARTER, KEEPING FAITH: MEMOIRS OF A PRESIDENT 344 (Bantam Books 1982).

41. See *id.*

42. See *id.*

43. See Brigg, *supra* note 12, at 295-97.

Consider reframing “interests” and “separating the people from the problem.”<sup>44</sup> When we reframe to cull out a party’s interests, we may be projecting what we think are the interests.<sup>45</sup> Our particular wording may be based on our views of what we think would be important to us in our own culture.<sup>46</sup> When we reframe to remove toxic words, we may be reframing to reduce the charged emotional language, under the assumption that a less charged negotiation will help.<sup>47</sup> When we reframe to be empathetic, we may be reframing in a way that we think will demonstrate our understanding of how the other side feels, in an effort to defuse hard feelings.<sup>48</sup> These types of reframings, to remove toxic words and to be empathetic, may be motivated by an effort to separate the person from what is perceived to be a separate substantive problem.<sup>49</sup> But, do these reframings comport with the cultural needs of the recipients? Are such phrases even the right ones to reframe? Some humility here will be appreciated by the participants, and as always, we should elicit their reactions and suggestions.<sup>50</sup>

f. Hypotheticals that Resonate with Participants

We should edit our hypotheticals to resonate with local participants. I discovered the importance of modifying hypotheticals when I taught my first course abroad in Moscow, a year after the break-up of the Soviet Union. I embarrassed myself by using examples that had no meaning to the students. I mistakenly gave a hypothetical about comparative shopping for cars at a time when there was only one supplier of automobiles. I then used what I thought was a humorous intellectual property case involving Johnny Carson and a toilet bowl company using the slogan “Heeere’s Johnny!” in its advertisements. The students had never heard of Johnny Carson.

John Barkai, an experienced trainer, tells the story of how he tried to be culturally sensitive when training in Micronesia by revising one of his favorite exercises, the Ugli Orange. He substituted a coconut for the orange that the disputing parties wanted. He focused the integrative lesson on one party wanting the coconut milk and another person the coconut meat—but was later told that the same coconut can rarely serve both needs in Micronesia.

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44. See FISHER & URY, *supra* note 19, at 17-39.

45. See Brigg, *supra* note 12, at 297.

46. See *id.* at 295.

47. See *id.* at 295-96.

48. See *id.* at 295-97.

49. See *id.* at 295-96.

50. See *id.* at 297-98.

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Here is one brief illustration of how we might revise a hypothetical. A U.S. off-the-shelf problem is likely to be based on the practice of the contract as the deal—that is what American lawyers learned in law school and is reinforced in law practice. However, that cultural assumption may be jarring in some foreign locations, such as in Asia and Latin America, where deals are based more on relationships, although that is changing. We can modify the problem to emphasize the importance of the relationship over the contract details. And when in doubt about local practice, we can also inquire during the debriefing about local propensities and then incorporate local insights accordingly.

We can reduce the risk of cultural blunders by re-reading all our hypotheticals for cultural appropriateness and, when possible, by asking our hosts to review them. We want to avoid facts and situations that are so obviously foreign or inaccurate to the participants that they become distracted or, even worse, alienated. The payoff for editing out blunders can be enormous.

g. Studies or Readings Relevant to Location

We should be aware of the source and cultural focus of the studies or articles that we cite or assign to support our learning points. If they are written by Western authors for Western audiences about Western practices, and we are now training in a non-Western country, we should acknowledge the sources as distinctly Western. In addition, we should try to find studies relevant to the location. It is not always easy to find them, but trainees appreciate it when we can cite Western authors discussing non-Western practices, or even better, non-Western authors discussing non-Western practices.

4. *Educate Participants about Training Techniques*

We may need to prepare the participants for our use of active learning methods,<sup>51</sup> the centerpiece of any U.S. training program, because these methods can be unwelcomed and intimidating to participants not familiar with these pedagogies.

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51. U.S. trainers thrive on using a mix of training techniques that include National Institute for Trial Advocacy's (NITA) learning-by-doing methods such as: role-play exercises, small group collaborations, fishbowl exercises, public and private self-critiques, and interactive discussions; all while minimizing the number and length of lectures.

I recall my first experience using an interactive learning method abroad when teaching a law course in Moscow in 1993. Employing the Socratic method, I expected students to be prepared for class and called on them, my practice for years at home. The result was a daily decline in attendance. After the third day, a student apologized for the dwindling attendance and explained that Russian students do not come prepared for class and are not accustomed to being called on. They first hear the lecture and then read the materials afterwards. They did not like the Socratic approach.

Similar resistance was encountered when a major U.S. sponsor of commercial mediation used role-playing exercises in its first training program in Beijing in 2004. Shortly after the program began, several participants requested that the role-playing exercises be discontinued. It seemed that some of the most senior participants did not feel comfortable performing with colleagues and less senior people. At the host's request, the trainer conducted the rest of the program through illustrated lectures.

Even though these active learning methods are becoming progressively more familiar to participants abroad, we may not want to use these techniques intact. We may want to adjust them to fit local cultural conditions.

When the trainer returned to Beijing in 2005, for instance, he was able to use role-playing after learning that the younger Chinese participants, many of whom had studied in the West, did not object to the role-playing and some were intrigued by it. He then successfully conducted the training with younger Chinese participants and several Americans.

I have facilitated the use of role-plays by "training" students on how to participate. In China, for instance, I met with the Chinese students the day before a negotiation exercise with U.S. law students. We met for over an hour to review the role-plays and how to participate. For each of the three years that I did this, the Chinese students diligently prepared for and enthusiastically participated in the exercises. Of course, less ambitious trainings are feasible.

The use of self-criticism may also need some adapting, depending on the local cultural practices. One experienced U.S. academic trainer made these illuminating comparative comments about his experiences: Because U.S. students lacked experience in self-criticism, he needed to coach them on how to reflect on both positive and negative experiences. For Mexican males who were reluctant to engage in public self-criticism—presumably because of concerns for preserving face—he asked participants to prepare private self-reflective memos for him. For Japanese students who had considerable experience in self-criticism and could comfortably and naturally comment on what they did wrong, he found that they had difficulty sharing any *positive* comments. They did not want to be viewed as boasting,

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so during the debriefing he gave disproportionately more attention to commenting on the positive.<sup>52</sup>

Instructor feedback, a prized part of good training programs, may need to be further refined in cultures where criticism by an authoritative figure can be devastating, as in Japan.<sup>53</sup> We may need to give even more attention than usual to delivering carefully crafted negative feedback, and we might try to supplement our comments with feedback from the other participants, who may offer more culturally credible reactions.

But, not all active learning techniques are unfamiliar to people abroad. Some of the techniques could be especially suitable in particular cultures. For instance, collaborating in small groups may be congruent with some foreign local values, and even more so than in the United States.<sup>54</sup> In those cultural settings, we may want to create more teamwork-based exercises, especially at the beginning of the training, before we move toward less familiar forms of active learning.

The lessons from these experiences are clear—do not surprise participants with unfamiliar active learning methods. Educate and prepare them. Warn them in advance that we will be using these methods, take time to explain how to participate in the exercises, including role modeling the techniques before using them,<sup>55</sup> and start with methods that may be more congruent with the local culture. Also, be sensitive to our guest status, our authoritative role, any local face-saving values, and hierarchical concerns in hierarchical societies. Even with all this preparation and sensitivity, we may still encounter some resistance. Therefore, we ought to progress slowly, look for any hesitancy, and most importantly, be flexible. We may need to adjust our techniques, exercises, and schedule even in the midst of the training.

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52. Michael F. Fowler, *Culture and Negotiation: The Pedagogical Dispute Regarding Cross-Cultural Simulations*, 9-10 (Feb. 1, 2009) (unpublished article, on file with International Studies Perspectives).

53. *Id.* at 10.

54. *Id.* at 9.

55. Professor Lela Love at Cardozo Law School likes to model techniques with her co-trainer. By modeling a simulated role or self-criticism, for instance, the participants not only see how to use the technique but also might be more comfortable doing it when copying someone else's behavior.



### 5. *Adjust Presentation When English is Not the Participants' First Language*

Even when trainees say that they can participate in English, their English may not be as fluent as that of the trainees at home. In the Rome program, for instance, some of the Italian participants complained that a few of the presenters talked too quickly. We as trainers need to adjust, and it is not easy to change a lifetime habit of presenting.

First, try to not only talk slower (not louder!), but also to cover less and give more attention to simplifying key points. I was surprised at the Rome program when I could not keep up. I thought that most of the speakers covered too much material even for me, a specialist who was familiar with most of the substance—only the delivery was different. This consumer experience has since caused me to reduce my coverage when training abroad.

Second, be aggressively conscious of the use of vernacular and unfamiliar metaphors. Remember, for instance, that baseball is a uniquely American sport when you are about to say, “That was a home run point,” or that the Cadillac is better known as a car when you are about to say that, “This is a Cadillac version of the training,” or that “No name calling” does not mean to not use each other’s names, as a Japanese trainee recently thought.<sup>56</sup> Obviously, we need to be self-conscious, but do not panic if one of these dual-meaning references slips out. Just correct it by gracefully translating the point like, “Yes, this is a premium program.”

Third, use visual aids to supplement lectures and exercises. We commonly use visual aids at home in an effort to reach different learning styles of the participants. Visual aids can be essential supplements when trying to reach participants whose first language is not English.

Fourth, permit participants to use their first language when it can enhance the learning without diluting the effectiveness of the overall training program.<sup>57</sup> Using their first language can reduce educational losses that may result from participants learning in a non-native language. Participants can practice translating key points into their own language, and use their own language when participating in simulations and small group collaborations and discussions. By practicing in their native language, they will more likely internalize the lessons and use what they learned. However, participants speaking in their first language can reduce our understanding of

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56. Professor John Barkai reported this experience when training Japanese attorneys and businesspeople in November, 2008. *See* Barkai, *supra* note 2, at 403.

57. These suggestions are offered by Professor John Barkai who has done considerable training in Japan, China, and several Pacific Ocean Islands. *See generally* Barkai, *supra* note 2.

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what is happening in the exercises and therefore reduce our opportunities to teach. In order to restore some capacity to teach during the exercises, we can walk around with an interpreter who can summarize what is being said in each group or ask participants to switch to English, the language of the program, when we come by to listen.

Fifth, give them take-home points. Many trainers already use end-of-training exercises to help the participants solidify what they learned. We may brainstorm with the participants a final list of key lessons or ask each person to report the one or two new lessons that will be used. When English is not their first language, this type of exercise can be essential for bringing together key concluding points. You might even solicit what they think will work or not work in their own cultures. However, this type of exercise can be quite humbling for us when the take-home points the trainees register are different than the ones we thought we were conveying.

And sixth, when in serious doubt about the participants' English language facility, use interpreters. Simultaneous interpreters are usually preferred although more expensive than consecutive ones, because we can cover more materials and do so more coherently when we do not have to pause repeatedly to wait for the interpretation. When relying on headsets for the simultaneous interpretation, we should have a back-up plan with consecutive interpreters on call in case the headsets fail to work—an annoying and sometimes damaging disruption to the training. If we use consecutive interpreters, there are advantages that may not always be obvious. The slower pace can give the participants an opportunity to improve their English by hearing the English followed by the interpretation as well as give us more time to observe whether the participants seem to be processing what is being taught.

We should know the particular art of effectively using interpreters,<sup>58</sup> including preparing interpreters by giving them samples of the materials we will be using. By doing so, the interpreters can become familiar with the vocabulary of the training and can research and identify appropriate words to fit less familiar U.S. or Western concepts. As we know already, words like “BATNA”, “compromise,” and “mediation” do not have counterparts in all languages. I recall my own awkward occasion when I failed to prepare the interpreters adequately. As I was lecturing to a group of judges in Hungary

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58. For sample guidelines, see Harold Abramson, *Mediation: Guidelines for Working with Interpreters in Mediations* (2008), available at <http://www.tourolaw.edu/facultybios/med-interpreter.pdf>.

about the multi-door courthouse concept, the judges broke into loud laughter. When I asked the audience what was so funny, I learned that the simultaneous interpreter translated the concept as the disputant peeping through the key holes of each door for the right process. It created the image of a peeping Tom, which connected with some peculiar local humor. Therefore, remember to prepare the interpreters.

#### *6. Refashion Materials and Presentation Based on Purpose(s) of Training*

The illustrations in this paper assume that the purpose of the training is to teach negotiation skills for domestic use in a foreign country (exporting domestic negotiation training). However, this is not the only purpose of a negotiation training program. At the Rome conference, I heard people passionately assert that in today's globalized world, in which many countries have become melting pots of multiple cultures, we need to know how to negotiate cross-culturally within our own countries. This assertion illustrates a second purpose of training—to teach negotiation skills to parties who negotiate cross-culturally (cross-cultural negotiation training). The purpose we choose will shape the role of culture in our trainings.

This paper has explored what needs to be done when exporting domestic training. We should identify the cultural assumptions embedded in our standard training program and then adapt the materials by flagging those assumptions and incorporating new ones relevant to the participants. In addition to the illustrations already offered, consider how we might adapt teaching impasse breaking strategies. Rather than relying primarily on our off-the-shelf examples, we might solicit the participants for examples of likely impediments in a hypothetical case. When conducting advanced mediation training in Istanbul, I asked the participants to spend time over lunch identifying impediments that they thought might be encountered in their culture. After lunch, I used the examples as a basis for discussing impasse-breaking strategies.

When training to negotiate cross-culturally, we shift our focus. Instead of adapting domestic materials for use in another culture, our training focuses on cultural differences that might arise between the parties, and how to bridge them. Even though the raw material on culture is similar, how we use the material is distinctively different. If we are training participants to negotiate cross-culturally, we examine strategies for identifying cross-cultural impasses, impasses that can arise due to the different cultural backgrounds of the parties. There are numerous opportunities for behavior that is common in one culture to be misinterpreted by someone raised in another culture. Consider the potential for misunderstandings and impasse when low-context communicators, such as U.S. parties who talk directly,

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negotiate with high-context communicators, as in China where “no” is likely to be conveyed without actually saying “no.”<sup>59</sup>

We can refashion our trainings to accomplish both purposes in the same program because much of the training material overlaps and can be complementary. However, such dual purpose training is a lot to accomplish in a one or two day program and possibly too much. If we try, we need to carefully design a program with deliberate compromises and be clear with the participants regarding our dual purposes.

#### *7. Plan to Evaluate the Training Program*

We should plan in advance to evaluate our training programs—many of us routinely do this now. When training in another culture, we should additionally evaluate whether the program was culturally responsive and effective in the specific foreign location with the specific mix of participants. We should evaluate what worked well, what did not, and what can be done to improve the training. If possible, we should design and distribute an evaluation form for the participants to fill out either after each segment or at the end of each day. Also, we should plan to spend time afterwards reflecting on the training with any co-trainer, the hosts, and some participants. This evaluation process can help our hosts assess the benefits of the program—and help us prepare for that next invitation to train abroad.

### III. CONCLUSION

These seven guidelines call for considerably more preparation than when training at home. By following them, we will be ready to pack our materials and get on the plane. We will be ready to train and to transform the inevitable cultural surprises into learning opportunities. Have a great trip!

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59. See generally Graham & Lam, *supra* note 26.