

ENHANCING THE EFFECTIVENESS OF MEDIATION IN KOREAN-AMERICAN FAMILY DISPUTES: CULTURAL SENSITIVITY TRAINING FOR MEDIATORS AND CO-MEDIATION TEAMS

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I. INTRODUCTION

The old Korean proverb—“if the hen crows, the home is in ruins”¹—reflects a traditional notion in Korean society: a female who deviates from her socially prescribed role causes disharmony in the social order.² The proverb originates from Confucianism—the philosophy that has guided Korea since the fourteenth century—and that continues to have relevance in contemporary Korean communities.³

Arguably, a woman’s role in Korea has slowly evolved in favor of gender equality; however, many of the traditional attitudes persist in Korean-American communities, as many immigrants cling to the values of their homeland.⁴ Ironically, Korean immigrants continue to espouse old-fashioned values, even as gender roles undergo significant changes in contemporary Korea.

This Note will explore the unique needs of Korean-Americans in the American legal system, especially with regard to family disputes and the prevailing methods of conflict resolution. Mediation processes typically applied in American disputes are inherently incompatible when applied to Korean-American women, and this Note advocates for a modified mediation model in light of cultural understanding. This Note will discuss ways in which traditional

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¹ While the proverb is well-known and used in Korea, the English translations may differ slightly.

² ROBERTA L. COLES, *IN RACE AND FAMILY: A STRUCTURAL APPROACH* 103 (2006).

³ *Confucianism in Korea*, <http://www.asianinfo.org/asianinfo/korea/rel/confucianism.htm> (last visited Jan. 29, 2009).

⁴ Margaret Abraham, *Isolation as a Form of Marital Violence: The South Asian Immigrant Experience*, 9 *J. SOC. DISTRESS & HOMELESS* 221 (2000) (discussing the difficulty of leaving behind cultural values from home when immigrating to a foreign land).

Korean gender roles affect recent immigrants to the United States and how these effects can be harmful to Korean-American women during the legal process.

This Note focuses primarily on first generation⁵ Korean-American women who remain loyal to community values that follow traditional Korean norms, especially when it comes to gender and family roles.⁶ To demonstrate the effects of these social values, this Note will analyze conflicts stemming from the various roles and identities (e.g., as a wife or mother) of Korean-American women. In addition, this Note will discuss the different ways Koreans and Americans view the legal systems in their respective countries, and how Koreans generally have a more favorable view of mediation than the confrontational model of litigation. This Note will focus on domestic violence in analyzing whether mediation can serve as an effective tool for resolving family and gender disputes.

While litigation is the most common method for resolving family disputes, this Note will propose a cross-cultural, co-mediation model as a superior alternative to litigation for conflicts involving Korean-American women. First, this Note will briefly explore the relatively short period of time in which Koreans immigrated to America. Next, it will discuss the traditional role of women in Korean society, and how those roles continue to influence Korean-American women's attitudes in the communities in which they settle. Finally, this Note will explore why litigation may not be the best option for Korean-American women, why co-mediation is a favorable alternative, and how co-mediation should be implemented to produce the best results. This Note will advocate for special training for all mediators involved in cross-cultural dispute resolution, with a particular emphasis on cultural sensitivity and the instruction of co-mediators on working together to effect better results in cross-cultural disputes.

⁵ The focus of this Note is on first generation Korean-Americans; the premise is that the more recent the immigration, the harder it is to let go of traditional Korean values.

⁶ See El-Hannah Kim, *The Social Reality of Korean-American Women: Toward Crashing with the Confucian Ideology*, in *KOREAN-AMERICAN WOMEN: FROM TRADITION TO MODERN FEMINISM* 23-35 (Young In Song & Ailee Moon eds., 1998).

II. BACKGROUND

A. The Immigration History of Korean-Americans

The Immigration and Nationality Act of 1965 abolished the quota system that restricted the number of immigrants permitted to enter the United States.⁷ As a result, beginning around 1970, a large number of Asian-American immigrants entered the United States,⁸ many of whom were Korean.⁹ By 1980, Korea was one of the top ten countries of origin to send immigrants to the United States.¹⁰ Even so, about one in every four foreign-born Koreans in the United States arrived in 2000 or later,¹¹ which illustrates the fairly recent wave of Koreans to America.

In contrast to immigrants who left their home countries because of factors like political oppression, known as a “push” factor, most Koreans were “pulled” to the United States, seeking increased freedom and better economic opportunities.¹² Once in the United States, Koreans settled in major cities and formed ethnic communities.¹³ The “Korea-towns” in Queens, New York,¹⁴ and Los Angeles, California¹⁵ reflect the concentration of Koreans in parts of major cities. Like many immigrants, Koreans sought to remain connected to their culture by settling into estab-

⁷ Asian Nation, <http://www.asian-nation.org/1965-immigration-act.shtml> (last visited Feb. 22, 2009).

⁸ Rhoda J. Yen, *Racial Stereotyping of Asians and Asian-Americans and its Effect on Criminal Justice: A Reflection on the Wayne Lo Case*, 7 ASIAN L.J. 1, 2 (2000).

⁹ All references to Koreans in this Note refer to people who emigrated from South Korea, not North Korea. North and South Korea have been effectively divided since the Korean War of 1950, and North Korea does not have open relations with the United States.

¹⁰ Aaron Terrazas, *Immigrants in the United States*, Migration Policy Institute, Jan. 2009, <http://www.migrationinformation.org/USfocus/display.cfm?id=716>.

¹¹ *Id.*

¹² KYEYOUNG PARK, *THE KOREAN-AMERICAN DREAM* 12 (Cornell Univ. Press 1997).

¹³ *Id.* at 1; see also Pyong Gap Min, *Korean Immigrants in Los Angeles*, INST. FOR SOC. SCI. RES. VOL. V. 1989–90 — CALIFORNIA IMMIGRANTS IN WORLD PERSPECTIVE: THE CONFERENCE PAPERS, APRIL 1990. PAPER 2.

¹⁴ See PARK, *supra* note 12, at 1 (estimating that “[t]wo-thirds of [New York City’s] Koreans live in the borough of Queens.”). This figure illustrates the concentrated demographics of Korean immigrants in New York City.

¹⁵ See Min, *supra* note 13 (stating that “the Los Angeles Korean community, the home of some 200,000 Koreans, has become not only the largest Korean center in the United States, but also the largest overseas Korean center.”).

lished Korean neighborhoods, creating large Korean-American communities.¹⁶

Consequently, the growth of these concentrated ethnic communities made it harder for Korean-Americans to assimilate into mainstream American society. Language and cultural barriers¹⁷ further isolated these communities.¹⁸ Members of Korean-American communities simply followed their own cultural norms and traditions, shielding themselves from the otherwise negative effects of isolation from mainstream American society.¹⁹ In fact, it was common for Korean immigrants to reside in these communities without ever learning a word of English, let alone culturally assimilate into American society. To illustrate this point, in 2007, fifty-seven percent of Korean immigrants had limited English proficiency.²⁰ Many immigrants have been in America for decades and cannot speak English,²¹ finding no need to change their cultural values and attitudes.²²

B. Stereotypes: “Model Minority” Versus the “Yellow Peril”

The Korean-American community is the fifth largest Asian-American Pacific Islander ethnic population,²³ despite the relatively short period of Korean immigration.²⁴ During this relatively

¹⁶ See PARK, *supra* note 12, at 1; see also Min, *supra* note 13 (illustrating the continuing growth of Korean-American communities in major cities in the United States).

¹⁷ Isabelle R. Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55, 75 (stating that “even [Korean-Americans] whose families have been in the United States for generations will confront the ‘Gosh you speak English so well!’ phenomenon. There is always the question with ‘foreigners’ that they don’t really understand ‘our ways.’”).

¹⁸ See Abraham, *supra* note 4, at 221 (“Isolation is an important factor in marital abuse among South Asian immigrant families. It lends itself to the invisibility immigrant women experience based on their ethno-gender status in the United States.”).

¹⁹ Practically speaking, there may be no reason to speak English because these communities provide all services in Korean.

²⁰ Terrazas, *supra* note 10 (“[t]he term limited English proficient refers to any person age 5 and older who reported speaking English ‘not at all,’ ‘not well,’ or ‘well’ on their survey questionnaire. Individuals who reported speaking only English or speaking English ‘very well’ are considered proficient in English.”). The website does not explain the distinction between “well” and “very well.”

²¹ See *id.*; see also Gunning, *supra* note 17, at 75.

²² See Abraham, *supra* note 4, at 221 (discussing the reluctance and difficulty of relinquishing traditional values).

²³ Linda Sohn, *The Health and Health Status of Older Korean-Americans at the 100-Year Anniversary of Korean Immigration*, 19 J. CROSS-CULTURAL GERONTOLOGY 203, 205 (2004).

²⁴ See Terrazas, *supra* note 10.

narrow time span in the United States, Korean-Americans faced two somewhat conflicting stereotypes—the “model minority” and the “yellow peril.”²⁵

Korean immigrants, along with the rest of the Asian-American community, quickly built a reputation as “model minority,”²⁶ perhaps escaping the kind of negative scrutiny often encountered by newly arrived immigrants.²⁷ The term “model minority” derives from the perception that “Asian cultural values of hard work, family cohesion, self-sufficiency and a drive for success propelled recent immigrants into and beyond the American middle class within a generation or two.”²⁸ On the other hand, Korean-Americans have had to endure what is known as the “yellow peril.”²⁹ The phrase “yellow peril” refers to an Asian stereotype that has the negative connotation of viewing Asian-Americans as “foreigners who have different (generally inferior) cultural practices, as well as lower moral and ethical standards, from white Americans, and who therefore constitute a threat to American stability.”³⁰

Both stereotypes served to further alienate Korean-Americans from American society, as they found themselves branded and blocked from assimilation into American culture.³¹ While Asian stereotypes were perpetuated toward all subgroups of the Asian-American community,³² Korean-American women had a particularly difficult time reconciling the clash between their traditional roles in Korea and gender equality approaches in the United States.³³ In addition to the pressures of adjusting to a western culture, Korean-American women were faced with an additional burden of reconciling more immediate gender conflicts imposed by the Korean-American communities.³⁴

²⁵ While Korean-Americans faced many stereotypes, only these two will be discussed due to their pervasiveness and relevance to this Note’s topic.

²⁶ George Lowery, *Model Minority? A ‘Myth of the American Dream,’ says Panelist at Asian-American Discussion*, CHRON. ONLINE, Apr. 25, 2007, http://www.news.cornell.edu/stories/modelminority_html; see also Sohn, *supra* note 23, at 203.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Yen, *supra* note 8, at 1.

³⁰ *Id.* at 6.

³¹ See Abraham, *supra* note 4, at 221–22.

³² See *id.*

³³ Erin Cho, *Caught in Confucius’ Shadow: The Struggle for Women’s Legal Equality in South Korea*, 12 COLUM. J. ASIAN L. 125, 125 (1998).

³⁴ See Abraham, *supra* note 4, at 234.

C. The Confucian Tradition and Korean Women

To better understand the pervasiveness of cultural rearing in gender roles, it is important to explore Korean women in the context of Korean history and current Korean society. Societal values and the role of women are still deeply rooted in Confucianism, which continues to govern Korean society today.³⁵

The spread of Confucianism was “[o]ne of the most significant historical events to impact the modern attitude of Koreans [regarding] dispute resolution.”³⁶ The term Confucianism refers to the moral, religious, ethical, and spiritual teachings of Kongfuzi, now known as Confucius.³⁷ Confucianism helped shape Korean society as we know it today—“the moral system, the way of life, social relations between the old and young, high culture, and the legal system” were all greatly influenced by it.³⁸ Even today, Confucian ideologies are taught at all levels of schooling in Korea through history, Chinese language, and philosophy curriculums.³⁹

Confucianism emphasizes the importance of putting others before one’s self and creating a hierarchical society based on a variety of factors.⁴⁰ This hierarchy governs all relationships—from familial relationships to those between strangers—and is based on age, with seniority often corresponding to superiority.⁴¹ Nancy White and Jun Lee explain that “[a] person lower in the hierarchy or in an equal position tends to avoid disputes or to use informal means of resolving [them].”⁴² To do otherwise would convey disrespect, and respect is “the currency by which face is maintained” in Confucian societies.⁴³ “The concept of ‘saving face’ is really a reestablishment or an affirmation of the hierarchy or a reestablishment of the hierarchy, if it has been breached.⁴⁴ The person of lower

³⁵ Nancy White & Jun Lee, *Dispute Resolution in Korean and United States Markets: A Comparison*, 19 AM. J. BUS. 23, 27 (2004).

³⁶ *Id.* at 23.

³⁷ *Id.*

³⁸ Fr. Alvara Pachero, *Cultural Transition: From Confucianism to Modern Thinking*, www.pdk-korea.org/index.php?option=com_content&task=view&id=2&Itemid=1 (last visited Feb. 28, 2010); see generally Ilhyung Lee, *Korean Perception(s) of Equality and Equal Protection*, 31 B.C. INT’L & COMP. L. REV. 53 (2008).

³⁹ The author experienced this curriculum firsthand, attending two years of elementary school, middle school, and high school in Korea.

⁴⁰ See generally Lee, *supra* note 38, at 60–61.

⁴¹ White & Lee, *supra* note 35, at 26.

⁴² See *id.* at 27.

⁴³ *Id.* (citation omitted).

⁴⁴ *Id.*

status apologizes to the person of higher status,” thus maintaining that hierarchy, and there is no other alternative to this.⁴⁵

Because of Korea’s long-standing relationship to Confucianism, Koreans were not raised under the theory of “equality,” but rather under the natural hierarchy created by Confucianism,⁴⁶ in which women are placed at the bottom.⁴⁷ The practical effects of this hierarchy are identified in the history of the treatment of women in a family setting.⁴⁸ Once married, the woman leaves her parents and becomes a member of her husband’s family.⁴⁹ She then occupies the lowest position in her husband’s family and is “often abused and mistreated by both her mother-in-law and sisters-in-law” due to her low status; it is only when she gives birth to a son that she establishes some status in the new household.⁵⁰

Being placed at the bottom of this hierarchy, Korean women are not prescribed a strong individual identity; society views them as “mothers, caregivers and wives,” rather than as individual “women.”⁵¹ Korean women themselves want to live up to the Confucian ideal image of becoming a *Hyun Mo Yang Chuh*, literally read as being a sacrificial mother and a submissive wife,⁵² an image not compatible with the lifestyle of modern career women.⁵³ Calling a Korean woman a *Hyun Mo Yang Chuh* was once considered a great compliment to women, and is considered a worthy goal to achieve in family life.⁵⁴ To help further this goal, schooling involved gender-specific classes, such as cooking and sewing, for Korean adolescent girls.

However, on the way to reaching that goal of becoming a *Hyun Mo Yang Chuh*, the reality is often different. A married woman is referred to as an *ahjuma*, which holds the negative connotation of an old married woman.⁵⁵ Once an *ahjuma*, a woman who

⁴⁵ See *id.*

⁴⁶ Lee, *supra* note 38.

⁴⁷ SONG & MOON, *supra* note 6, at 24.

⁴⁸ Andrea Matles Savada & William Shaw, *Changing Role of Women, in SOUTH KOREA: A COUNTRY STUDY*, June 2010, available at <http://memory.loc.gov/frd/cs/krtoc.html>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² SONG & MOON, *supra* note 6, at 23.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Digital Chosunilbo, *Avoiding the Stigma of Being an Ajumma*, English translation available at <http://english.chosun.com/w21data/html/news/200610/200610210001.html> (last visited Feb. 25, 2009).

cannot bear a son is often shunned within her husband's family.⁵⁶ With marriage, a woman leaves behind her own family and follows the choices of her husband's family, even if this means immigrating to a foreign place such as the United States.⁵⁷ By virtue of such relocation, a Korean woman is even more isolated from those in whom she can confide and may be easily subjected to the control of her husband and his family.⁵⁸

Another example of Confucian ideals favoring men at the top of the hierarchy is that of *Nam Jon Yu Bi*, which legitimizes a woman's inherent inferiority and incompetence as compared to men.⁵⁹ These terms denote the inherent distinction between male superiority and female inferiority.⁶⁰ The fact that they have continued prevalence in contemporary Korean culture illustrates their lasting impact on the construction of Korean gender norms.

Women in Korea have begun fighting for gender equality;⁶¹ however, change is slow, and Korean society is still largely dominated by traditional views. In fact, older generations of Korean women, including the first generation of Korean-American immigrants, still abide by these traditional roles and values.⁶² Thus, Korean-American families tend to adhere to traditional understandings of gender roles even after immigrating, even as Korean citizens reconsider those roles.

Once they arrive in America, Korean women often fail to see their husbands as oppressors, and they fail to see the impact of oppressive cultural traditions on their own lives; rather, their joint struggle to adjust often imbues a sense of sympathy for their spouse.⁶³ Women often view their husbands as fellow breadwinners because, in most cases, both need to work to make ends meet.⁶⁴ Nevertheless, such economic teamwork does not translate into equal power in the domestic realm.⁶⁵ Newly immigrated Korean-American women are unlikely to be responsive to any femi-

⁵⁶ See Abraham, *supra* note 4.

⁵⁷ See generally Cho, *supra* note 33, at 148 (outlining the language of family law in Korea—once married, the woman had to obtain consent from the husband to take legal action, and generally followed the husband's wishes in all matters).

⁵⁸ Abraham, *supra* note 4.

⁵⁹ SONG & MOON, *supra* note 6, at 27.

⁶⁰ See *id.*

⁶¹ See generally Cho, *supra* note 33.

⁶² See generally Abraham, *supra* note 4.

⁶³ SONG & MOON, *supra* note 6, at 13.

⁶⁴ COLES, *supra* note 2, at 104.

⁶⁵ *Id.* at 103–04.

nist movements because they are unable to separate themselves from their husbands or from their traditional cultural heritage.⁶⁶

Korean-American women are often confronted with what authors Song and Moon call the “triple oppression” of gender, race, and status.⁶⁷ A Korean-American woman often finds herself in a “bind between traditional Confucianism and the prevailing social behavior in American society.”⁶⁸ In other words, Koreans who are used to the traditional culture of a male-dominated Confucian society are confronted with the opposite extreme when they come to America, where society places an emphasis on equality and feminism, as embodied in American ideals of individual rights and autonomy.⁶⁹ There is inevitably an inherent clash in these values.

III. LITIGATION VERSUS MEDIATION

A. Different Approaches to Conflict Resolution: American and Korean

In addition to the inherent clash between the American culture and the traditional norms of Korea, both cultures differ in their approach to resolving disputes.⁷⁰ In general, conflict resolution in the United States is characterized by a win-lose approach.⁷¹ The American approach to resolving disputes is based on the premise that there is a right and a wrong party to each suit,⁷² which is exemplified by the adversarial litigation system.⁷³ Most Americans respect the legal system and the law despite its shortcomings of being too expensive and time-consuming.⁷⁴ Koreans, on the other hand, approach disputes with a different attitude—all parties are

⁶⁶ SONG & MOON, *supra* note 6, at 14.

⁶⁷ *Id.* at xii.

⁶⁸ *Id.* at 1.

⁶⁹ Sung Sil Lee Sohng, *A Critical Feminist Inquiry in a Multicultural Context*, in KOREAN-AMERICAN WOMEN: FROM TRADITION TO MODERN FEMINISM 11 (Young In Song & Ailee Moon eds., 1998) (“feminism as an ideology advocates that women should have political, economic, and social rights equal to those of men.”); *see generally* DRUCILLA CORNELL, *AT THE HEART OF FREEDOM: FEMINISM, SEX, AND EQUALITY* (Princeton Univ. Press 1998).

⁷⁰ *See* White & Lee, *supra* note 35, at 23.

⁷¹ *See generally* ROBERT A. KAGAN, *ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW* (2001).

⁷² White & Lee, *supra* note 35, at 23.

⁷³ *See* KAGAN, *supra* note 71.

⁷⁴ White & Lee, *supra* note 35, at 23.

partly wrong and all parties are partly right.⁷⁵ According to Koreans, disputes are best resolved in indirect and non-confrontational ways, in order to bring the relationship back into the balance that existed prior to the dispute.⁷⁶

As a cultural matter, Koreans do not look favorably upon those who cannot resolve disputes without involving a third party authority figure.⁷⁷ In addition, Koreans generally have little trust in the legal system and, if possible, tend to look for non-legal techniques to resolve disputes.⁷⁸ This attitude can be explained in part by examining Korean political history, as Koreans have had a tumultuous relationship with the government, which has resulted in a natural distrust of authority.⁷⁹ In April 1991, the Korean Legal Institute undertook a study of the attitude of Korean people toward the law and other related topics.⁸⁰

Over half of the respondents [fifty-six] percent gave a negative view of law. Other questions and answers were: Do you think law is well observed in our society? [Eighty-two] percent said no. Who do you think is the worst violator of the law?⁸¹ [Sixty-one] percent said politicians. If you are involved in a dispute, and hear the statement “[I]et’s resolve it through legal methods,” what would your reaction be? Over [fifty] percent responded negatively and of that, [nearly twenty-four] percent chose “inhuman” as the response.⁸²

The poll results demonstrate Koreans’ preference to avoid the legal system and compromise rather than to adjudicate disputes.⁸³ Koreans have never agreed with the black-and-white view of one party to a dispute as right and the opponent as wrong.⁸⁴ Therefore, Koreans do not favor dispute resolution mechanisms, such as litigation or arbitration, which assign blame or fault to only one party.⁸⁵

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 26.

⁷⁸ *Id.*

⁷⁹ See generally YOUNG W. KIH, *TRANSFORMING KOREAN POLITICS: DEMOCRACY, REFORM, AND CULTURE* (2005).

⁸⁰ White & Lee, *supra* note 35, at 26.

⁸¹ *Id.*

⁸² *Id.*

⁸³ KAGAN, *supra* note 71.

⁸⁴ *Id.*

⁸⁵ *Id.*

While Americans easily distinguish mediation from litigation, Asians do not make such a clear distinction.⁸⁶ Involving a third party in dispute resolution is particularly uncomfortable for Koreans regardless of whether the method is litigation or mediation;⁸⁷ if there is a problem, a family member should be consulted, for example, a mother-in-law.⁸⁸ Even so, if applied properly, mediation can still be preferable to litigation, as litigation has the potential to expose much more of the family's "dirty laundry."

B. The Problem of Cultural Defense in Litigation

Besides the fact that Koreans inherently dislike adjudication, there are other reasons why mediation may be preferred over litigation. Mediation has benefits that litigation cannot offer in cross-cultural conflicts. For example, mediation has the flexibility to take multiculturalism into consideration by allowing traditional cultural norms to constitute a defense.⁸⁹ Such a practice is not necessarily integrated into the American litigation system, as it often gives rise to the slippery slope problem illustrated below.⁹⁰ Accordingly, it is important to acknowledge the benefits of alternatives to litigation, such as mediation, in which these problems are avoided.

One critic states that "[n]on-European immigrants, particularly those from Asia . . . bring patriarchal customs with them to the United States, such as . . . wife beating and killing."⁹¹ The cultural practices of Asian immigrants inhabit a domestic sphere that "European-American women began leaving in the mid-to-late nineteenth century."⁹² This disconnect often becomes a problem in the courtroom, when defendants want to use a "cultural defense," arguing that their behavior is justified by some larger cultural practice. In the highly progressive American society, saying "I beat my

⁸⁶ M. Scott Donahey, *Seeking Harmony—Is the Asian Concept of the Conciliator/Arbitrator Applicable in the West?*, 50 DISP. RESOL. J. 74 (June 1995).

⁸⁷ White & Lee, *supra* note 35, at 23.

⁸⁸ *Id.*

⁸⁹ Sharan K. Suri, *A Matter of Principle and Consistency: Understanding the Battered Woman and Cultural Defenses*, 7 MICH. J. GENDER & L. 107 (2000).

⁹⁰ *Id.* at 132.

⁹¹ Leti Volpp, *Talking "Culture:" Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573, 1575 (1996).

⁹² *Id.* (quoting Doriane Lambelet Coleman, *Individualizing Justice Through Multiculturalism: The Liberals' Dilemma*, 96 COLUM. L. REV. 1093, 1140 (1996)).

wife because she didn't fulfill the faithful obliging role of a Korean woman" may never be accepted as a defense. However, it cannot be altogether denied that this is happening in our society today.⁹³ *People v. Dong Lu Chen* demonstrates the kinds of cultural defenses that may come up in such domestic conflicts.⁹⁴ In that case, a Chinese immigrant was convicted of fatally smashing his wife's skull with a hammer upon learning of her infidelity.⁹⁵ In analyzing this case, Leti Volpp uses the defendant's cultural defense to illustrate why culture should be considered.⁹⁶ During the trial, an expert testified that:

a "normal Chinese person from Mainland China" would react in a more extreme and much quicker way than an "American" [O]ne could expect a Chinese to react in a much more volatile, violent way [in reacting to adultery] than someone from our own society. I think there's no doubt about it.⁹⁷

The case outlines the kinds of reasoning employed by Asian men who justify their actions in the cultural context.⁹⁸ While this is an extreme case in which mediation is certain not to apply, it illustrates the complexity of a cultural defense. In less serious cases, mediation can be a preferential method; raising cultural defenses during litigation may be cast in a negative light, as they are essentially an excuse or justification for inherent cultural differences. Therefore, there is a considerable advantage in approaching cross-cultural disputes through mediation rather than litigation.

C. The Benefits of Mediation in Cross-Cultural Conflicts

Taking culture into consideration in a mediation setting does not have the same consequences as it would in a litigation setting. For one, because the decisions in mediation are left to the parties and the mediators cannot enforce anything upon the parties,⁹⁹ any

⁹³ COLES, *supra* note 2, at 103.

⁹⁴ Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57, 59 (1994) (citing *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. 1988)). While mediation will be impossible for such cases, *Dong Lu Chen* illustrates the kinds of cultural defenses about which Americans are generally concerned.

⁹⁵ *Id.* at 64.

⁹⁶ *Id.* at 65-66.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Christopher Honeyman & Nita Yawanarajah, *Mediation*, Sept. 2003, <http://www.beyondintractability.org/essay/mediation/>.

cultural consideration can be used advantageously to facilitate an open discussion and perhaps even a creative solution. When mediators possess cultural understanding and the parties feel comfortable, the goals of mediation can be effectuated even in sensitive situations such as Korean-American domestic violence disputes.

Also, mediation is party-specific and very personal.¹⁰⁰ Thus, mediated disputes should not serve as precedent for parties heading toward litigation, eliminating the concern for a slippery slope situation in the American legal system.¹⁰¹ Most importantly, the notion that most Korean-Americans will avoid the legal system at all costs, even in the face of domestic violence, can be overcome by offering them an alternative to litigation. Though mediation may be a foreign process to most Korean-Americans, it can be applied effectively to the narrow group of Korean-Americans who do wish to pursue the mediation process. The success of resolving these disputes ultimately lies with the type of mediation the parties will undergo. When these parties are given the benefit of a well-trained, culturally sensitive mediator, there is great potential for success.

IV. INVOLVING MEDIATION TO RESOLVE FAMILY DISPUTES

A. Family Disputes Involving Korean-Americans

Domestic violence is a universal problem for women, but Korean-Americans who suffer from domestic violence have an additional hurdle because of their position in society.¹⁰² It is important to note at the outset that many of these disputes go unreported and will probably never come to light due to a reluctance to report these matters to authorities.¹⁰³

Family disputes involving Korean-Americans involve a gross imbalance of power between the two genders,¹⁰⁴ which often cre-

¹⁰⁰ *Id.*

¹⁰¹ Volpp, *supra* note 94, at 65–66.

¹⁰² ABA Comm'n on Domestic Violence, *Key Statistics*, <http://www.abanet.org/domviol/statistics.html> (last visited Feb. 20, 2009) (provides statistics of reported domestic violence incidents).

¹⁰³ *See id.*; COLES, *supra* note 2, at 105.

¹⁰⁴ Gross imbalance of power is one of the major criticisms of utilizing mediation in domestic violence disputes. *See* Rene L. Rimelspach, *Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program*, 17 OHIO ST. J. ON DISP. RESOL. 95, 102 n.35 (2001–2002) (discussing how to successfully handle the power imbalances during mediation).

ates difficulty in resolving such disputes. Domestic violence is further complicated in Asian-American communities “by other factor [sic] such as language, immigrant status, culture, and racial stereotypes.”¹⁰⁵ In such cases a Korean-American woman has to deal with multiple identities: as an Asian battered woman and as an immigrant.¹⁰⁶ American laws are not equipped to deal with the multiple identities of an Asian-American woman because the laws are “constructed largely along binary lines (e.g., the ‘black-white’ paradigm of race).”¹⁰⁷

Since Korean women are not inclined to speak openly about their internal family issues,¹⁰⁸ exact statistics on whether domestic violence is more prevalent in Korea than other countries is unavailable.¹⁰⁹ Korean women are often viewed as docile, submissive, and quiet, and not without reason—that is the role that Korean society assigns to women.¹¹⁰ All of these factors contribute to the difficulty in dealing with these types of disputes.

B. Utilizing Mediation in Domestic Violence Cases

Generally, mediation is advantageous for resolving domestic violence disputes. Mediation can help spouses relate to one another in a new, non-threatening way if they are in the company and comfortable environment of supportive mediators.¹¹¹ Contrary to popular belief,¹¹² mediation can also serve disadvantaged parties (presumably, the battered spouse in domestic violence disputes), by offering a forum to regain their “identity, dignity, and self-esteem.”¹¹³ Indeed, while some may argue that litigation is the best way to approach cases involving power imbalances such as domes-

¹⁰⁵ Karin Wang, *Battered Asian-American Women: Community Responses from the Battered Women's Movement and the Asian-American Community*, 3 *ASIAN L.J.* 151, 153 (1996).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 153–54; the term “binary lines” means that due to the historical relationship between Blacks and Whites in American society, laws are often sensitive to and constructed with this particular paradigm in mind.

¹⁰⁸ COLES, *supra* note 2, at 105.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Rimelspach, *supra* note 104, at 102 n.31.

¹¹² It is contrary to popular belief because the norm is that mediation is inappropriate for domestic violence cases.

¹¹³ Holly Joyce, Comment, *Mediation and Domestic Violence: Legislative Responses*, 14 *J. AM. ACAD. MATRIMONIAL L.* 447, 458 (1997).

tic violence, the adversarial nature of litigation may exacerbate an already fragile situation.¹¹⁴

In cases involving Korean-American families, mediation may be seen as novel, yet effective, while litigation can possibly be seen as a threatening gesture to the male, challenging his role as the head of the family.¹¹⁵ Regardless of cultural discussions, there is much controversy involving the application of mediation to disputes involving domestic violence.¹¹⁶ It is important to analyze the benefits of mediation in these types of disputes.

A mediator is “an impartial third party whose role is to help parties identify needs, interests, and arrive at a mutually beneficial outcome. The final decision lies with the parties.”¹¹⁷ Implicit in this definition is an assumption that the impartial third party will be able to mediate a conflict between two parties of equal power, and facilitate a mutually beneficial agreement.¹¹⁸ Proponents of mediation in domestic violence disputes argue for its effectiveness even in the light of gender disparities and power imbalances,¹¹⁹ while critics argue that the use of mediation in domestic violence cases cannot work even with the most highly-skilled mediators.¹²⁰

Those in favor of mediation argue that power imbalances are not an absolute dead-end to applying mediation, and that effective mediators should be trained to balance out the power *during* the mediation process.¹²¹ Power imbalances are not unique to domestic violence cases and are common in many other kinds of disputes.¹²² To exclude the possibility of mediation solely based on the unequal bargaining power of the disputants would be unwise.

Regardless of whether mediation is the preferred method for resolving domestic violence cases, distinctions must be drawn; each case is different, and each must be treated as such.¹²³ Some argue

¹¹⁴ Rimelspach, *supra* note 104.

¹¹⁵ Cho, *supra* note 33, at 125.

¹¹⁶ Rimelspach, *supra* note 104, at 95.

¹¹⁷ Donna M. Stringer & Lonnie Lusardo, *Bridging Cultural Gaps in Mediation*, 56 DISP. RESOL. J. 29, 30 (2001).

¹¹⁸ Jennifer P. Maxwell, *Mandatory Mediation of Custody in the Face of Domestic Violence: Suggestions for Courts and Mediators*, 37 FAM. & CONCILIATION CTS. REV. 335, 337 (1999).

¹¹⁹ Rimelspach, *supra* note 104, at 97 n.4.

¹²⁰ Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1553 n.28 (1991).

¹²¹ Maxwell, *supra* note 118.

¹²² *Id.* at 335.

¹²³ See Rimelspach, *supra* note 104, at 100 n.23 (arguing that each domestic violence case is different, and that the profiles of each batterer also differ).

that, “[a] batterer is not someone who can cooperate;”¹²⁴ “battered women have been socialized over the course of their abusive relationship to pay attention to the abuser’s needs and to denigrate their own.”¹²⁵ It would be presumptuous to categorize all domestic violence as identical.¹²⁶ There is a fundamental difference between the elderly couple arrested for throwing coffee at one another, and a couple in which the man has systematically beaten his wife for a number of years. One author states,

[w]hen I read pronouncements that mediation should never be attempted in cases involving domestic violence, it seems the authors are assuming all domestic violence-related situations fit one basic scenario involving a victimized . . . woman and her controlling, brutal, defensive male partner.¹²⁷

While a male-dominated society is not solely a characteristic of Asian society, male domination is more systematic in Asian-American communities because of their history and tradition.¹²⁸ Culture is often at the root of Korean-American domestic violence disputes and these disputes cannot be solved without discussing the real source of the conflict—the batterer. Each batterer is different, especially in cases involving Korean-American families. For one, these cases are distinct because the so-called “abusive” relationship does not start with the union of the partnership (i.e., marriage), but rather as a result of Korean cultural upbringing.¹²⁹ It may very well be that the husband’s purpose is to put the woman back in her place, a place prescribed to her by Confucian society.¹³⁰ The “violence” that is unconditionally and absolutely condemned in American society is met with less disapproval in Korean society.¹³¹ It is important to realize that

[f]or some, “[a]ttitudes toward violence against women reflect gender norms and social ideologies about male domination over women” [T]raditionalists [still] remain in this country This serves as yet another key aspect that mediators . . . must

¹²⁴ Rimelspach, *supra* note 104, at 97 n.7.

¹²⁵ Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2169 (1993).

¹²⁶ See Rimelspach, *supra* note 104, at 100 n.23.

¹²⁷ *Id.* (quoting Ann W. Yellot, *Mediation and Domestic Violence: A Call for Collaboration*, 8 MEDIATION Q. 34, 44 (1990)).

¹²⁸ See *Confucianism in Korea*, *supra* note 3.

¹²⁹ For an explanation of “cultural upbringing,” see *infra* Part II.C.

¹³⁰ SONG & MOON, *supra* note 6, at 24.

¹³¹ See Volpp, *supra* note 94, at 57.

take into account when dealing with a domestic violence situation.¹³²

C. A Case Study: Hong Kong

In considering a mediation model that is sensitive to the particular needs of the Korean-American community, it may be helpful to analyze Hong Kong's adoption of mediation as an alternative dispute resolution method in family disputes.¹³³

The concerns of the Chinese regarding mediation are strikingly similar to the concerns of Koreans. For example:

Chinese clients are likely to approach mediation with an acute sense of failure, shame, and loss associated with the breakdown of their marital relationship . . . a strong sense of privacy . . . the shame and loss of face associated with sharing problems outside the family, Chinese clients are reluctant to seek professional help.¹³⁴

Like the Chinese, when Koreans begin mediation, the process may be viewed as a last resort to resolve the conflict.¹³⁵ Like other parties, they approach mediation with a sense of uncertainty and distrust.¹³⁶

In Hong Kong, the successful mediation model has been characterized as the "ability to establish relationships that [involve] . . . respect, warmth, empathy, acceptance, and trust."¹³⁷ While these characteristics are important in any mediation setting, it is particularly important in mediating domestic violence disputes among Korean-Americans. Koreans tend to avoid confrontation and often look to an authority figure to resolve conflicts.¹³⁸ This is perhaps because they are used to a power structure rather than a concept of a neutral mediator.¹³⁹ The mediator may be viewed as a trustworthy authority figure rather than a law enforcer.

¹³² Aimee Davis, Note, *Mediating Cases Involving Domestic Violence: Solution or Setback?*, 8 CARDOZO J. CONFLICT RESOL. 253, 264 (2006).

¹³³ The Hong Kong Study analyzes the introduction of mediation into Hong Kong society and does not deal specifically with domestic violence issues.

¹³⁴ Patricia L. Sullivan, *Culture, Divorce, and Family Mediation in Hong Kong*, 43 FAM. CT. REV. 109, 117 (2005).

¹³⁵ *Id.*

¹³⁶ *Id.* at 110.

¹³⁷ *Id.* at 117.

¹³⁸ White & Lee, *supra* note 35, at 25–28.

¹³⁹ *Id.*

V. IMPROVING CROSS-CULTURAL MEDIATION

A. What is Cross-Cultural Mediation?

The American justice system has started to recognize the significance of culture in alternative dispute resolution methods.¹⁴⁰ Cross-cultural mediation is one that takes culture into account when resolving disputes.¹⁴¹

American models of mediation generally expect mediators to remain neutral and separate the disputants' feelings from the issues.¹⁴² This is an alien concept for people from cultures "where emotions are overt, accepted, and considered integral to the issue."¹⁴³ "For people from . . . [these] cultures, the more rational model of mediation can be both alienating and ineffective."¹⁴⁴ Especially in cases of domestic violence, separating feelings from the issues may be hard. The issue is often emotion-ridden, and involving family members makes the issues particularly sensitive. In addition:

[m]any cultural communities keep conflicts within the community to avoid "airing dirty laundry." This expectation that some things are not discussed with outsiders may lead some parties to withhold some information in order to save face for both themselves and for their larger community. This may include issues [such as] . . . child disciplinary practices . . . extramarital affairs, and other charges, however true or untrue.¹⁴⁵

Saving face in Korean-American communities is not uncommon; the preference for doing so is so strong that women often attempt to save face and protect their batterers to avoid community alienation, and thus go against their cultural norms.¹⁴⁶ This problem is especially complicated in the case of women immigrants because the only family they may have in America is through their husband.¹⁴⁷ By pursuing any type of legal action, they will most likely be alienated from these families and face the additional pos-

¹⁴⁰ Cynthia A. Savage, *Culture and Mediation: A Red Herring*, 5 AM. U. J. GENDER & L. 269, 272-73 (1996).

¹⁴¹ Stringer & Lusardo, *supra* note 117, at 30.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 33.

¹⁴⁶ See generally White & Lee, *supra* note 35, at 23.

¹⁴⁷ *Id.*

sibility of community ostracism.¹⁴⁸ Korean women are trained by their culture to avoid airing disputes in any public forum. Consequently, by its nature, mediation is a better choice because it is the only forum that allows women to openly and comfortably speak about their disputes.

In addition to the cultural hurdles mentioned above, there are also some practical barriers to effective mediation. For example, consider:

[a]ctions that appear to reflect assent . . . may in fact be merely a culturally appropriate manner of acknowledging a viewpoint and a misunderstanding at this level can be fatal to the mediation process. Similarly, sensitivity to language differences may be especially important in discussing issues that may generally be deemed inappropriate for public fora in one party's culture. This notion also applies to differences of understanding in the meaning of concepts—for example, the adequacy of financial support can mean vastly different things depending upon whether one lives in Johannesburg or Tokyo.¹⁴⁹

The deeper cultural differences and practical barriers such as language are “‘bits and pieces of larger cultural myths’ [that must be juggled] during the process of the mediation.”¹⁵⁰

Some disagree on the degree of cultural consideration,¹⁵¹ but ignoring all cultural influence in disputes is not an effective approach. Critics argue that by trying to “understand” multiculturalist values, we disregard universal values that respect women.¹⁵² By allowing parties to put forward a cultural “excuse,” the American justice system is somewhat condoning these actions that are considered absolutely unacceptable in American culture.¹⁵³ For example, in America, stoning or honor killings are unacceptable forms of punishment for adultery, and the idea of such punishment is so foreign to Americans that most have great difficulty in understanding its acceptance in other cultures. By allowing few in society to argue that “culture” makes certain actions justifiable, the system may enter a murky area where no standard exists.¹⁵⁴ Most importantly, Americans may look disapprovingly upon a legal system that

¹⁴⁸ *Id.*

¹⁴⁹ James B. Boskey, *ADR Can Help Ease Unique Problems Inherent in Transnational Family Disputes*, 4 No. 3 DISP. RESOL. MAG. 13, 15 (1998).

¹⁵⁰ Gunning, *supra* note 17, at 70.

¹⁵¹ See Volpp, *supra* note 91, at 1573.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

makes exceptions to universal values and to the law that is upheld in the United States.¹⁵⁵

Another criticism of utilizing mediation in cross-cultural dispute cases is that a mediator is supposed to remain neutral, and any insertion of the mediator's influence may corrupt the purpose of mediation.¹⁵⁶ This is perhaps a significant concern, as it cuts directly against the principle of the mediation process. However, mediation is not a one-size-fits-all process, especially when considering the diversity in American society.¹⁵⁷

If mediation is ultimately chosen as a viable means to resolve the case at hand, then an optimal structure of mediation should be discussed and implemented.¹⁵⁸ The American legal system must be ready to respond to different cultural expectations.¹⁵⁹ There are still communities within America that maintain the lifestyle, customs, and traditions of their country of origin or culture,¹⁶⁰ and a uniform approach will not suffice. An ethnocentric attitude, that anyone who does not subscribe to the Western ideal is inferior, must be addressed. The idea that respecting women is certainly a universal value rather than a Western value, and ignoring the problems of multiculturalism within American society brings about a dangerous result; it is not an appropriate or helpful attitude for approaching mediation of this sort.

B. The Role of Cultural Sensitivity Trained Mediators

The training of mediators involved in these cross-cultural disputes is crucial. They must be culturally trained to approach these issues in a non-judgmental manner without the common stereotypes, to the best of their abilities.

It is also important to keep in mind that “[c]ultural differences may not be the actual source of a dispute, but . . . these differences

¹⁵⁵ *Id.*

¹⁵⁶ Stringer & Lusardo, *supra* note 117, at 30.

¹⁵⁷ See Cynthia R. Mabry, *African Americans “Are Not Carbon Copies” of White Americans—The Role of African American Culture in Mediation of Family Disputes*, 13 OHIO ST. J. ON DISP. RESOL. 405, 460 (1998).

¹⁵⁸ Each family dispute is unique; however, when mediation is indeed the applicable and proper method, several guidelines should be met.

¹⁵⁹ See Mabry, *supra* note 157, at 405.

¹⁶⁰ See Abraham, *supra* note 4, at 221.

sometimes play a crucial role in the outcome of a mediation.”¹⁶¹ Furthermore:

[d]efining cross-cultural issues in mediation does not mean that the dispute is regarding overtly cultural issues. That is, the parties are not accusing each other of racism, sexism, homophobia, or other culture-based behaviors. Rather, cultural differences between the parties—or between the parties and the mediator—often affect both process and outcome. To the degree that these issues are hidden to either of the parties or to the mediator, they are powerful contributors to the outcome of mediation.¹⁶²

Not only do mediators have to be aware of these “hidden” issues, but the parties themselves must also be able to confront them. This will ultimately be the role of an effective mediator in this type of dispute.

As previously mentioned, Korean-Americans¹⁶³ are reluctant to speak openly about family disputes.¹⁶⁴ Mediators may also be reluctant to discuss any cultural misunderstanding out of fear of being called racist or ignorant. Such reluctance by the participants may hinder any discussions of the underlying hidden stereotypes or misconceptions related to a certain type of culture or race, limiting the effectiveness of mediation. As one researcher observed:

[H]umans form their cultural norms and values by the time they are 10 years old. Those core values . . . remain intact throughout a lifetime unless an individual has a significant emotional experience that challenges them, such as falling in love with someone whose values are different, life-threatening illnesses, or significant losses.¹⁶⁵

Therefore, to overcome such obstacles, “[a] mediator who is aware of these [cultural] subtleties and is sensitive enough to act accordingly is most likely to succeed in helping parties with different cultural backgrounds achieve a satisfying resolution to their dispute.”¹⁶⁶ Although mediation is often specifically structured to

¹⁶¹ Stringer & Lusardo, *supra* note 117, at 30.

¹⁶² *Id.*

¹⁶³ This is not a characteristic of just Korean-American women, but rather may be a result of Asian culture in general. While there are subtle differences in each Asian country, the history and culture of most Asian-Americans is to keep their family affairs private, within the family boundaries.

¹⁶⁴ See White & Lee, *supra* note 35, at 23.

¹⁶⁵ Stringer & Lusardo, *supra* note 117, at 30.

¹⁶⁶ *Id.*

fit the problem at hand, awareness of cultural subtleties should be mandatory for mediating such disputes.¹⁶⁷

Moreover, just because mediators are supposed to be neutral and impartial does not mean that in reality, their own ideas and personal experiences are excluded from the process.¹⁶⁸ In fact:

[b]eing impartial . . . does not imply that the mediator's own cultural expectations, styles, and approaches will not affect the process or the outcome of mediation. Consequently, as we explore cross-cultural issues involved in mediation, it is important that the mediator understand her or his own cultural patterns in order to be effective.¹⁶⁹

Further, “[a]t a time of conflict, especially when cultures collide, thoughtful, nonjudgmental questioning allows historical reasons to surface and be reasonably compared with the ways others do things to address similar issues.”¹⁷⁰ Cultural upbringing and personal identity are not something that can be readily shed by the parties involved, including the mediator.¹⁷¹ However, with the right training and discipline, mediators can maximize their effectiveness in family disputes that involve cultural issues.

Just as a Korean-American woman can hardly change her views formed during childhood, a mediator will have a hard time changing his perception of normative values. A mediator's personal experience and/or culture is more than how he understands the world; it is the lens through which he perceives the world as “normal” or “natural,” and “simply the way the world is.”¹⁷² When confronted with different values, a person's culture and experience shapes their perception of what constitutes “abnormal” or “strange.”¹⁷³ As such, differences are individually evaluated through the person's own lens, i.e., “cultural grammar,” and can be “wrong” within those standards.¹⁷⁴ By understanding their background, a mediator can attempt to “understand the system of meanings and beliefs within which a seemingly ‘abnormal’ or ‘inex-

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Kevin Avruch & Peter W. Black, *Conflict Resolution in Intercultural Settings*, in CONFLICT RESOL. THEORY & PRAC. 131–45 (Dennis J.D. Sandole & Hugo van der Merwe eds., Manchester Univ. Press 1993), article summary available at <http://www.beyondintractability.org/articlesummary/10033/>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

plicable' event is seen as normal and understandable."¹⁷⁵ After assessing each mediator's background, selecting mediators who are trained for cultural sensitivity may be optimal.¹⁷⁶

In analyzing how to inject cultural understanding into the mediation process, one must be careful when dealing with the term "culture." Depending on how it is interpreted, it can be more divisive, instead of serving as a reference point for evaluating and understanding the parties involved.¹⁷⁷ Semantics are essential. For example, if one were to define culture as "ethnicity" and introduce a mediator of Korean ethnicity into a Korean-American family dispute, there is no guarantee that the mediation will be more successful. Perhaps that mediator will be a second generation Korean-American who is from an American suburb and has never spoken Korean in his life. The fact that the mediator and parties share the same ethnicity alone cannot guarantee successful mediation.¹⁷⁸ It is important to note that mediation is never a guarantee of success;¹⁷⁹ it is only a process available before litigation. Therefore, there is no single recipe for success. Rather, the characteristics of the parties involved will dictate the kinds of mediators that are appropriate to deal with the matter at hand. It is difficult to ascertain the exact characteristics of the mediator in these types of disputes. However, the need to keep these cultural considerations in mind when selecting the mediators can be the turning point for success. The process must be flexible, practical, and applied on a case-by-case basis. In light of the difficulty of overcoming mediator bias, two mediators can serve as "checks and balances" to each other to improve the effectiveness of the mediation process.

C. Co-Mediation: Advantages and Disadvantages¹⁸⁰

Co-mediation is proposed as the best mediation model in domestic violence disputes involving Korean-American women. The

¹⁷⁵ *Id.*

¹⁷⁶ Harold Abramson, *Selecting Mediators and Representing Clients in Cross Cultural Disputes*, 7 CARDOZO J. CONFLICT RESOL. 253 (2006).

¹⁷⁷ See Savage, *supra* note 140, at 272.

¹⁷⁸ See Stringer & Lusardo, *supra* note 117, at 30.

¹⁷⁹ *Id.*

¹⁸⁰ The issue of who will overlook the mediation process is not central to this Note. If the respective state mandates mediation prior to litigation, then courts will overlook the mediation process. If community centers are equipped to handle such matters, then they could also serve as a forum.

co-mediation model is formed when the mediation process involves two or more mediators.¹⁸¹ Recently, it has become a popular method of mediation.¹⁸² Co-mediation has many advantages that can overcome any concerns that arise from a basic sole mediator approach.¹⁸³ While there are some disadvantages of co-mediation, the general popularity suggests that any disadvantage is outweighed by its many advantages.

In order to assess the viability of utilizing co-mediation, the advantages and disadvantages of co-mediation must be discussed. Co-mediation has the following advantages:

[it] represent[s] disputants' diverse characteristics A disputant has a better chance of feeling a sense of trust with at least one of the two mediators Co-mediators can model cooperative problem-solving and direct dialogue for disputants There is a better "check" on mediator bias or other shortcomings A team is less likely to be accused of being "co-opted" by a party.¹⁸⁴

In addition to the obvious advantage of having two mediators who can complement and even enhance each other's skills,¹⁸⁵ the advantages of co-mediation suggest that it would be a good fit for domestic violence disputes in Korean-American families.¹⁸⁶

First, co-mediation is an effective model for disputes that have diverse issues. In Korean-American family dispute mediation, the addition of a cultural barrier compounds the already sensitive family issues. By increasing the number of mediators, the parties involved in the dispute will have more opportunities to identify with someone in the mediation room. This enhances the likelihood of creating a supportive environment where two parties can freely discuss any deeply rooted issues.¹⁸⁷

Further, should there be any display of bias or judgment with regard to the batterer or the battered, each mediator can "check"

¹⁸¹ Joe Epstein & Susan Epstein, *Co-Mediation*, *COLO. LAW.*, June 2006, at 21.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Alice M. Price, *The Use of Co-Mediators*, <http://toby.library.ubc.ca/ereserve/LAW/479/001/20/law479-20-b.pdf> (last visited Feb. 18, 2010).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ With more than one mediator present, the process becomes more of a conversational process, thus opening dialogue. The obvious downside is the unnecessary exposure of "dirty laundry" to an additional third party. A sole mediator may have too close of a similarity with a judge figure—a perception that should be avoided in Korean-American family dispute resolution methods.

the other during the process.¹⁸⁸ Having more than one mediator can remedy a problem that litigation cannot: the batterer will most likely feel less threatened in the conversational setting that co-mediation provides, rather than in a setting where the single mediator is also the sole enforcer and might be seen as a threatening figure. People who are generally not familiar with the American legal system may not know the difference between mediation and litigation. Therefore, a sole mediator could potentially be seen as a law enforcer, rather than as a neutral mediator.

Moreover, there can also be advantages when mediators combine their expertise. For example, adding both male and female counterparts to the mediation process could make each side feel comfortable about opening up, without feeling like they will be judged by the other sex.¹⁸⁹ In addition to these subtle gender issues, Korean-American disputes are especially complex because of their two layers: domestic violence and the cultural gap. Having a co-mediator could lighten the tension of dealing with a completely different culture in an already sensitive domestic violence matter. Each mediator can discuss his role in the process, or bring his expertise into the playing field. Perhaps one mediator can focus on cultural components, and the other can focus on the domestic violence.¹⁹⁰ In doing so, the mediators will be less overwhelmed by the facts of a complicated case.

While the advantages considerably outweigh the disadvantages, critics of co-mediation have argued that “discuss[ing] painful, embarrassing, and/or complicated matters with yet more people”¹⁹¹ can be a stressful process for the parties involved. While this is a valid concern for mediation involving Korean-Americans who are generally private about their family affairs, it is by no means an insurmountable obstacle. Once the parties have come to the table, this structure of mediation can only increase its effectiveness.

Another criticism deals with the teaming of mediators. As one critic notes, “co-mediation . . . [that] isn’t well-matched can feel out-of-balance and uncomfortable to one or both mediators, depending on differences in mediation style, personal style, exper-

¹⁸⁸ See Stringer & Lusardo, *supra* note 117, at 33.

¹⁸⁹ It is important, however, to keep in mind that a mere technical assignment of mediators will not suffice. The training of each mediator and his or her ability to work with the other mediator is central to success.

¹⁹⁰ See HOWARD H. IRVING & MICHAEL BENJAMIN, THERAPEUTIC FAMILY MEDIATION: HELPING FAMILIES RESOLVE CONFLICT 69 (Sage 2002).

¹⁹¹ Price, *supra* note 184.

iences, etc.”¹⁹² Moreover, “[i]n order to gain intercultural sensitivity, one must be able to identify cultural differences by self-reflecting and discovering one’s own biases and stereotypes Mediators may also seek to learn the general psychology of different cultures.”¹⁹³ As such, these concerns can be overcome through training. Indeed, while mediators may disagree between themselves, the impartial role of a third party neutral can be maintained so long as they are trained in this matter. Each can even serve as the check for the other when personal biases interfere with effective mediation.

To demonstrate how co-mediation can be effectively utilized, one can examine a cultural conflict outside of the domestic realm:

It is not uncommon now for groups or organizations who provide mediation services to express their concerns for negative cultural myths or power imbalances by using teams of mediators In many of the interpersonal conflicts which erupt between African-Americans and Korean-Americans in Los Angeles attempts are made to include both Korean-American and African-American mediators.¹⁹⁴

While matching parties and mediators based upon gender or race does not ensure that everyone involved will share the same or similar perspectives,¹⁹⁵ their mere inclusion could convey to the parties that the process is considerate to their needs, thereby creating a more comfortable and open environment.¹⁹⁶ Furthermore, two mediators can neutralize the situation by balancing the power disparity that the parties bring to the mediation table.¹⁹⁷

VI. CONCLUSION

Confucianism’s centuries-old influence in Korean society continues to shape the behavior and attitudes of Korean-American immigrants. In addition, Koreans generally distrust the legal system and prefer to avoid adjudicative confrontation. Therefore, the utilization of co-mediation for specific types of family disputes involv-

¹⁹² *Id.*

¹⁹³ Avruch & Black, *supra* note 171, at 131.

¹⁹⁴ Gunning, *supra* note 17, at 88.

¹⁹⁵ *Id.* at 89.

¹⁹⁶ *Id.* at 88.

¹⁹⁷ *Id.*

ing cross-cultural conflicts may be the best way to encourage dialogue and facilitate change.

Some argue that mediation is altogether inappropriate for domestic violence cases. However, with well-trained mediators and a co-mediation model, mediation can be successfully utilized in cross-cultural family disputes. The most crucial aspect of any type of mediation is the skill of the mediator. In a co-mediation model involving cross-cultural disputes, it is even more important. Mediators can be trained to recognize cultural subtleties in the conflict and can also be trained to recognize the biases and judgments within themselves. In doing so, the mediators will be able to approach cross-cultural conflicts with an open mind, thus allowing the parties to speak freely without fear of judgment.

In addition, the combination of two mediators may be optimal in domestic violence disputes that involve this additional cultural hurdle. While understanding that in some cases mediation may be inappropriate altogether, co-mediation can be the best mediation structure because of its many advantages in certain cases. Ultimately, the mediator's relation to his co-mediator and their relationship with the parties will be instrumental in successfully mediating cross-cultural domestic disputes.

